

**MINUTES FROM THE MAY 20<sup>th</sup>, 2004 PLANNING COMMISSION MEETING**

**CALL TO ORDER**

Chair Arguimbau called the meeting to order at 7:35 P.M.

**ROLL CALL**

**COMMISSIONERS PRESENT:** Paul Herbert, Laurie Hailer, Bill Madsen, Steve Shaiken, Pam Meigs, Chair Arguimbau

**COMMISSIONERS ABSENT:** Brian Craine

**STAFF PRESENT:** Planning Director Ken Kirkey, Senior Planner Linda Neal, Administrative Assistant Tauny Kasuya

**APPROVAL OF AGENDA**

Chair Arguimbau suggested continuing item number six until the June Planning Commission meeting to allow the Commissioners time to look over the staff report and consider the options for the slope policy.

M/S Herbert-Madsen motion to continue item number six until the June Planning Commission meeting.

**APPROVAL OF MINUTES**

Commissioner Meigs changed the minutes on page six to add that she had said 25 of the 45 trees on the lot would be removed at the end of the third paragraph. She also changed the minutes on page six, seventh paragraph to add that she has said the arborist findings were made by a visual inspection and that no specimens were taken.

Commissioner Shaiken requested changing the minutes to add on page seven that a recess was called by the chair after the vote on 190 Frustuck.

Commissioner Madsen requested changing the minutes to add that Chair Arguimbau and Commissioner Shaiken had requested continuing item # four before the applicant had an opportunity to speak to the claim that there is a property line dispute.

Both Commissioners Shaiken and Madsen disputed each other's corrections to the minutes. It was the consensus of the Commission to continue the approval of the minutes until staff can verify the proceedings of the meeting via the tape recording of that meeting.

M/S Meigs-Shaiken motion to continue the approval of the minutes until the June 3, 2004 meeting of the Commission for verification via the tape of what transpired at the meeting.

AYES: All

NOES: None

ABSTAIN: Hailer

After listening to the tape of the meeting staff determined that although there was discussion among the Commissioners about continuing item # four so that the possible property line dispute could be verified and or resolved, none of the Commissioners specifically suggested continuing the item before the applicant was allowed to speak. It was also determined by staff that the Chair did not call a recess at any time during the meeting.

**OPEN TIME FOR PUBLIC EXPRESSION**

There was no public comment at tonight's meeting.

### COMMISSIONER COMMENTS/REQUESTS

There were no Commissioners comments at tonight's meeting.

### CONSENT ITEMS

There were no consent items scheduled for tonight's meeting.

### PUBLIC HEARING ITEMS

**190 Frustuck Avenue;** request for a Hill Area Residential Development, Excavation and Encroachment permits to construct a 2,523 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).

Senior Planner Neal read the staff report.

Commissioner Herbert asked if staff had an opportunity to verify the square footage of the neighboring homes.

Senior Planner Neal said staff has no way to verify the size unless staff went out and measured the square footage of each home.

Commissioner Meigs asked staff the square footage of the decks.

Senior Planner Neal said the decks would be 688 square feet including the stairs that connect the decks.

Commissioner Meigs asked if that is included in 2,093 square feet called out in the staff report.

Senior Planner Neal said no the 2,093 square feet is just the living space.

Commissioner Madsen asked if staff would be able to verify the square footage of the neighboring homes if it became necessary.

Senior Planner Neal said that has never come up before and staff would have to check with Town Attorney Brecher to see if that was legally possible.

Planning Director Kirkey said what is before the Commission is an application for a Hillside Residential Development Permit (HRD). He said that this application meets most of the zoning requirements for the site; that the only question before the Commission is does the project meet the requirements for a HRD application.

Commissioner Meigs asked how many trees would be saved by building an uncovered parking deck.

Senior Planner Neal said the number of trees removed would be the same.

John Owens, applicant, said covered parking is typical in the neighborhood; that no trees would be saved by having uncovered parking; that eight of the last nine new houses approved in Town had covered parking. He said the house would be set down the hill so only one foot of the roofline would be visible from the street and that the arborist has found a way to save seven additional trees on the site. He said he went to the County Assessors office and made copies of the records for the neighboring homes and that most of the homes sited in the petition from the neighbors are larger than claimed on the petition, some of them significantly larger. He closed by saying most projects in Fairfax require a variance or a use permit but that his proposal meets all of the zoning requirements.

Commissioner Herbert said in the submittal from Mr. Owens there are several alternative placements for the house and the garage. He asked Mr. Owens how he felt about the different alternatives.

John Owens said his architect could probably answer that question better.

Chair Arguimbau indicated to Mr. Owens that in his comparisons of house and lot sizes it appears the proposed house at 190 Frustuck would be the largest.

John Owens said yes that is correct; but the Commission needs to keep in mind the comparison of lot size to house size.

Chair Arguimbau said of the recently approved new homes in Town it appears that all of them are smaller with the exception of 96 Forrest Ave.

John Owens said many of the new homes were on much smaller lots and that the project at 96 Forrest Ave. is the most comparable.

Chair Arguimbau asked if the alternate placements of the house were of the same size house.

John Owens said yes and the number of trees that would need to be removed with the different placements of the house would be only one or two trees.

Commissioner Madsen asked the applicant if he had considered uncovered parking.

John Owens said no because most of the homes in the neighborhood have garages and also he said uncovered parking is unsightly because everything is exposed.

Commissioner Madsen said having uncovered parking might be a compromise, which would make the neighbors happy.

John Owens said he would consider modifying the proposal with uncovered parking.

Commissioner Meigs said the Commission advised you to meet with the neighbors to try and find a workable solution.

John Owens said they set up a meeting; that only three people showed up and the only suggestions the neighbors had was that the house should be built from the bottom of the site.

Commissioner Meigs asked the applicant if he has considered reducing the size of the decks.

John Owens said because of the steepness of the lot the decks would be the only usable outdoor space.

Pete Gang, project architect, said they met with the neighbors last week; that they went with the intent to hear their ideas and suggestions; that their main suggestion was to build the project from the bottom of the site which he said would greatly disturb the natural topography of the site.

Commissioner Herbert asked Mr. Gang to compare and contrast the alternate placements of the house for desirability and feasibility.

Pete Gang said they tried alternate building sites during the design process; that the main concerns were minimizing the impacts on the site and the neighbors and that they pushed the project as far to the west as possible to minimize the impact on the adjoining neighbor.

Commissioner Madsen said the story poles are at the northern fence line. He asked Mr. Gang if that was the correct.

Pete Gang said yes the north fence greatly encroaches on the applicant's property.

Commissioner Shaiken asked Mr. Gang if they would be willing to consider an alternate design with less storage and uncovered parking.

Mr. Gang said he can't answer for his client but he thought that might be acceptable.

Chair Arguimbau asked if a smaller footprint was considered in the design process.

Mr. Gang said 2000 square feet is average for a new home; that they considered different layouts with approximately the same size square footage; that the mass of the structure comes from the parameters of the site because it is a relatively steep lot. He also said they designed a trellis system for the side of the garage and when the vines are grown it will break up the appearance of the mass.

Ray Moritz, project arborist, said testing for Sudden Oak Disease is usually done visually; that when taking specimens from the trees you have to dissect a significant section of the tree for testing and that specimen testing produces 90% false negative results so it is not productive. He said the alternative placements of the house were not superior from an arborist perspective. He also said that they determined that seven of the trees on the site are in decline; that they would probably fall down within five to seven years. He said that they are in an area of the site the owners will not use and they are not in an area where they would fall on the neighboring structures or the street so they decided to leave them standing.

Commissioner Herbert asked Mr. Moritz if they were going to be planting more trees on the site.

Mr. Moritz said yes they would be planting trees near the rock outcropping at the lower portion of the lot and along the upper portion near the street to replace the trees that are in decline and will probably die within the next five to seven years and also near the deck for screening.

Commissioner Meigs asked Mr. Moritz if the replacement trees would be native trees.

Mr. Moritz said several of them would be a species of Madrones, which are native trees.

Bill Miles, 189 Frustuck, said he has lived in the area for 25 years; that the house would be 30 feet high and that the neighbor immediately abutting the site would lose much of the privacy from her deck and that he thought the house should be built from the bottom of the site.

Commissioner Herbert asked Mr. Myles if he felt there was still a survey dispute.

Mr. Miles said yes.

Commissioner Herbert said at the last meeting the Commission had asked the neighbors who claimed that there is a survey dispute to get proof of a survey dispute and bring the results to the Commission; otherwise the Commission has no real reason to believe there is an actual survey dispute.

Commissioner Shaiken said if there is a survey dispute the Commission needs evidence that there is a survey dispute. That the Commission had asked folks to bring proof of a survey dispute forward and no one has.

Niccolo Caldararo, 155 Frustuck, said the footprint and elevation of the house would make it the biggest house in the neighborhood; that it is out of character for the neighborhood; that he has a letter from Frank Howard Allen stating that the other home in the area would decline in value if the project was built; that out of six homes near the site only one has covered parking and that the house should be built from the bottom of the site.

Chair Arguimbau asked if the problems would be minimized if the storage under the parking area were deleted and if the garage was changed to an uncovered parking deck.

Niccolo Caldararo said yes.

Commissioner Madsen said the neighbors knew there was an undeveloped lot in the area and the Town Engineer and staff have continually said this is the best placement of the house on the site to minimize the impacts of development.

Bruce Bunnell, 170 Frustuck, said he also felt the house should be built from the bottom of the site. He drew up an alternative plan for the house, which he presented to the Commission, with the house and parking lower on the site, which he felt, would be less invasive on the neighbors.

Commissioner Madsen asked Mr. Bunnell if he felt an acceptable compromise would be to change the garage to uncovered parking and reduce the storage under the parking structure.

Mr. Bunnell said no.

Michelle Digregorio, 170 Frustuck, expressed concern about the location of the driveway approach and also said she felt the house was too large for the neighborhood.

Steve Wasserman, 1 Meadow, said he felt the house was a reasonable size for the area; that he felt a closed garage would be aesthetically more pleasing and better for the neighborhood; that the proposal is under or meets all of the zoning requirements; that the lot has been empty for years and that of course the project is going to have some impact on the neighbors.

Mark Coppel, 215 Frustuck, said both the upper and lower portions of the lot are on dangerous curves with the upper curve slightly more acute but that neither is very safe; that parking is tight in the area; that many trees would need to be cut to develop the site and he felt the neighbors should buy the lot to preserve the quality of the neighborhood.

Dave Pickey, said the Commission has given incredible scrutiny to the proposal; that he sees no supporting evidence for the claims of the petition; that he is hearing that the house does not fit into the neighborhood but the petitioners did not include the house and lot sizes of all the house sited in the petition. He asked the Commission to give the same scrutiny to the petitioner's petition as they have given to the applicant's project.

Ann Sheldon, 165 Frustuck, said her house is not as large as the applicant claims it is; and that she felt the house is out of character for the neighborhood.

Steve Keston, attorney for the applicant, stated that Mr. Owens received Mr. Bunnell's drawing last night; that the parking shown on Mr. Bunnell's drawing would be in the Town's right-of-way; that the stairs up to the house would require on going expensive maintenance; that building from the bottom of the sight would require extensive excavation; that the applicant got two surveys of the property and that each of the surveys produced the same results; that they both match up with the abutting neighbors survey; that there is no proof of a survey dispute and that the neighbors fence is encroaching on the applicants property.

Chair Arguimbau asked Mr. Keston if he had a problem with the Commission relying on the information the applicant had provided regarding the lot and house sizes of the neighboring homes.

Mr. Keston said no because that information came from the Marin County Tax Assessors offices. He also said that lot is plotted out for a single family home; that growth is inevitable and he felt in fill development is a good solution.

Commissioner Shaiken said an acceptable compromise seems to be reducing or eliminating the storage space and having a carport.

Commissioner Meigs expressed concern about the safety of the driveway approach and also the number of trees that would need to be removed for the project.

Planning Director Kirkey said the Public Works Director and the Town Engineer both reviewed the proposal and both of them felt the site lines were adequate for the driveway approach.

Commissioner Herbert said the driveway would create a space for people to pull off the road if needed; that a mirror could be added at the curve; that the house would not make the curve more blind and that the same number of trees would need to be removed for a parking deck or a garage. He said he walked all of Frustuck Avenue and that most of the houses or garages on the street are built right up to the road. He said he feels that garages are aesthetically more pleasing than carports; that requiring the applicant to have uncovered parking may not be the best solution. He said building from the bottom of the site would require heavy excavation; that the house is sited down the hillside from the street so that it would have less visual impact than the neighboring homes and that the proposal is the best design for the site that the Commission has seen.

Commissioner Hailer said she has a degree in economics and she respectfully disagreed with Mr. Caldararo because usually improvements of adjacent properties increases the value of adjacent properties not decrease it. She also said the biggest issue seems to be the impact on the privacy of the abutting neighbor; that she felt the size is not out of character with the neighborhood and that the proposal meets or exceeds all of the zoning requirements and she agreed with Commissioner Herbert that this design is the best one the Commission has seen for the site.

Chair Arguimbau said if this house were built it would be the largest house in the neighborhood; that he thought the Commission had directed the applicant to reduce the size of the house, so that there would be less impact on the neighbors and less trees would have to be removed and the applicant did not do that and that he felt the application should be rejected as presented.

Commissioner Madsen said he did not remember the Commission directing the applicant to reduce the size of the house; that he thought the Commission had asked the applicant and the abutters for clarification, that he did not feel a 2000 square foot house was unreasonable; that the project would impact the abutting neighbor but that the lot is a developable lot zoned for a single family home.

Commissioner Shaiken said he felt the house size is out of character with the neighborhood and that he could not vote to approve the project as submitted.

M/S Herbert-Madsen motion to approve application #04-14 with the modification that the garage sited on the plans is changed to an uncovered parking deck and subject to the findings and conditions in the staff report.

Chair Arguimbau said he did not feel changing the garage to uncovered parking would solve the problem.

Commissioner Meigs felt the square footage of the proposal should be reduced.

Commissioner Hailer asked how much of a square footage reduction would be acceptable. She felt the Commission should give the applicant some quantifiable number and clear direction to work with.

Chair Arguimbau said it is out of character with the neighborhood.

Commissioner Hailer asked if it would be acceptable if the house were smaller than or equal to the largest house in the neighborhood.

Chair Arguimbau said yes.

Commissioner Herbert said if the storage were deleted from the project it would be smaller than the largest house in the neighborhood.

ROLL CALL

AYES: Herbert, Madsen, Hailer

NOES: Shaiken, Meigs, Arguimbau

Chair Arguimbau said since the vote was a tie vote the application is denied. He then said this is the decision of the Planning Commission and any interested party may file a written appeal at the Town Hall within 10 days. He said if there is no appeal the decision becomes final.

Commissioner Meigs recused herself after this item.

**308 Forrest Avenue;** request for a Variance to construct a deck, access stairs and hot tub within the required side yard setbacks; Nancy Reid, owner; Art Chartock, applicant; application # 04-18; Assessor's Parcel No. 002-105-18; Residential Single-family RS 6 Zone; CEQA categorically exempt per § 15305(a).

Senior Planner Neal read the staff report.

Art Chartock, architect, said the hot tub location would be tucked out of the way and would not disturb the landscaping that is currently in place. He also said the stairway the owners would like to build would allow them to access the creek for maintenance.

M/S Madsen- Hailer motion to approve application # 04-18 subject to the findings and conditions in the staff report.

Chair Arguimbau suggested amending the motion to include a condition that a 24-foot setback from the top of the creek bank will be maintained.

Commissioners Madsen and Hailer accepted the amendment to the motion.

AYES: All

NOES: None

Chair Arguimbau said this is the decision of the Planning Commission and any interested party may file a written appeal at the Town Hall within 10 days. He said if there is no appeal the decision becomes final.

**38 Willow Avenue;** request for a Use Permit to construct a 120 s.f. laundry room addition onto an existing 1,129 s.f. single-family residence located on a 4,000 s.f. property; Rosemarie Goldstein, owner; Dan Check, applicant; application # 04-19; Assessor's Parcel No. 001-234-07; Residential RD 5.5-7 Zone; CEQA categorically exempt per § 15301(e).

Senior Planner Neal read the staff report.

Dan Check, applicant, said the homeowner would like to add on a small addition to their home so that they can have a laundry room on site.

M/S Madsen-Shaiken motion to approve application # 04-19 subject to the findings and conditions in the staff report.

AYES: All

NOES: None

Chair Arguimbau said this is the decision of the Planning Commission and any interested party may file a written appeal at Town Hall within 10 days. He said if there is no appeal the decision becomes final.

**1621 Sir Francis Drake Blvd.;** request for a Parking Variance to locate a contractor's office within an existing commercial building; Paul Basker, applicant; Harold Gregory Corbett, owner; application # 04-20; Assessor's Parcel no. 002-211-02; Highway Commercial CH Zone; CEQA categorically exempt per § 15303(c).

Senior Planner Neal read the staff report.

Chair Arguimbau asked how staff determined the parking requirements for the business.

Senior Planner Neal said the parking requirements are based on the gross square footage of the building.

Chair Arguimbau said the applicants are showing three spaces but according to the staff report they need four spaces. He said it should be made clear that they need four spaces.

Senior Planner Neal said if the spaces were striped out it would be clear that there are four spaces on the site.

Paul Basker, applicant, if they had three spaces at the site they could get in and out of the parking lot without having to move their cars around.

John Hall, 19 Belle, said he is a neighbor of Mr. Basker and he has never had a problem with their business.

Bill Lehrke, applicant, said the company has two storage spaces in San Rafael for their equipment and there would be no equipment stored on the site at 1621 Sir Francis Drake Blvd.

M/S Madsen-Shaiken motion to approve application # 04-20 subject to the findings and conditions in the staff report.

Chair Arguimbau suggested amending the motion to add a condition requiring the applicants to stripe four parking spaces in the parking area.

Commissioner Madsen said he felt the applicants would use the parking area in the best way possible and that he felt stripping out the parking spots would not be necessary.

Commissioner Shaiken agreed.

Commissioners Madsen and Shaiken did not accept Chair Arguimbau's suggested amendment.

AYES: Herbert, Hailer, Madsen, Shaiken, Craine, Meigs

NOES: Arguimbau

Chair Arguimbau said this is the decision of the Planning Commission and any interested party may file a written appeal at the Town Hall within 10 days. He said if there is no appeal the decision becomes final.

**55 Broadway**; request for a Use Permit and Parking Variance to locate a real estate office in an existing commercial building; Robert and Melissa Bradley, applicants; Jeff and Janet Deleuse, owners; application # 04-21; Assessor's Parcel no. 002-115-06; Central Commercial CC Zone; CEQA categorical exemption per § 15303(c).

Planning Director Kirkey read the staff report.

Melissa Bradley, applicant, said her proposal has the support of the local businesses and the Fairfax Chamber of Commerce; that she grew up in the area and she is excited about opening an office in Fairfax.

Chair Arguimbau asked Ms. Bradley if an added condition that the employees don't park in the immediate area of the office would be acceptable.

Commissioner Shaiken said the agents should not be in the office for long because they should be out showing properties.

Ms. Bradley said at her office in San Rafael there are 20 desks but there is usually only 5 agents in the office at any time.



Planning Director Kirkey said on page 5, condition #6 in the staff report it spells out where the employees can park and also the maximum number of employees that can be in the office at any one time, so he did not think parking would be an issue.

M/S Madsen-Hailer motion to approve application # 04-21 subject to the findings and conditions in the staff report.

AYES: All

NOES: None

Chair Arguimbau said this is the decision of the Planning Commission and any interested party may file a written appeal at the Town Hall within 10 days. He said if there is no appeal the decision becomes final.

#### **DISCUSSION ITEMS**

Discussion of slope development regulations as they pertain to house size regulations.

This item was continued to the June, Planning Commission meeting.

#### **PLANNING DIRECTOR'S REPORT ON TOWN COUNCIL MEETING AND/OR ON-GOING ITEMS**

There was no report from the Planning Director at tonight's meeting.

#### **ADJOURNMENT**

Motion was made and duly carried to adjourn the meeting at 11:00 p.m.

Respectfully submitted,

Tauny Kasuya  
Administrative Assistant



# TOWN OF FAIRFAX

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

**TOWN OF FAIRFAX PLANNING COMMISSION  
NOTICE/AGENDA  
FAIRFAX WOMEN'S CLUB  
46 PARK ROAD**

**7:30 P.M., THURSDAY, MAY 20, 2004**

**CALL TO ORDER  
ROLL CALL  
APPROVAL OF AGENDA  
APPROVAL OF MINUTES**

Minutes from the April 15, 2003, Planning Commission meeting.

**OPEN TIME FOR PUBLIC EXPRESSION  
COMMISSIONER COMMENTS/REQUESTS  
CONSENT ITEMS**

There are no consent items scheduled for this meeting agenda.

## **PUBLIC HEARING ITEMS**

- 1. 190 Frustuck Avenue;** request for a Hill Area Residential Development, Excavation and Encroachment permits to construct a 2,523 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).
- 2. 308 Forrest Avenue;** request for a Variance to construct a deck, access stairs and hot tub within the required side yard setbacks; Nancy Reid, owner; Art Chartock, applicant; application # 04-18; Assessor's Parcel No. 002-105-18; Residential Single-family RS 6 Zone; CEQA categorically exempt per § 15305(a).
- 3. 38 Willow Avenue;** request for a Use Permit to construct a 120 s.f. laundry room addition onto an existing 1,129 s.f. single-family residence located on a 4,000 s.f. property; Rosemarie Goldstein, owner; Dan Check, applicant; application # 04-19; Assessor's Parcel No. 001-234-07; Residential RD 5.5-7 Zone; CEQA categorically exempt per § 15301(e).
- 4. 1621 Sir Francis Drake Blvd.;** request for a Parking Variance to locate a contractor's office within an existing commercial building; Paul Basker, applicant; Harold Gregory Corbett, owner; application # 04-20; Assessor's Parcel no. 002-211-02; Highway Commercial CH Zone; CEQA categorically exempt per § 15303(c).
- 5. 55 Broadway;** request for a Use Permit and Parking Variance to locate a real estate office in an existing commercial building; Robert and Melissa Bradley, applicants; Jeff and Janet Deleuse, owners; application # 04-06; Assessor's Parcel no. 002-115-06; Central Commercial CC Zone; CEQA categorical exemption per § 15303(c).

## DISCUSSION ITEMS

6. Discussion of slope development regulations as they pertain to house size regulations.

## PLANNING DIRECTOR'S REPORT ON TOWN COUNCIL MEETING AND/OR ON-GOING ITEMS

## ADJOURNMENT

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All interested persons are invited to attend and participate in the public hearings. In order to give all interested persons an opportunity to be heard, and to ensure the presentation of all points of view, members of the audience should:

(1) Limit presentation to three minutes; (2) Always address the Chair; (3) State name and address; (4) State views and concerns succinctly; (5) Documents presented at the meeting must be submitted first to the Planning Staff, to be entered into the record.

**Court Challenges:** If you challenge the matter(s) described above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered at, or prior to the above referenced public hearing [Govt. Code section 65009(b)]. If you need accommodation to attend or participate in this meeting due to a disability, please contact the Town Clerk at (415) 453-1584.

*If an item is continued, it is the responsibility of interested parties to note the new meeting date. Notices will not be sent out for items continued to a specific hearing date.*

Fairfax Town Council  
Regular Meeting, June 8, 2004  
Fairfax Women's Club

**CLOSED SESSION**

Mayor Egger called the meeting to order at 7:00 and adjourned the meeting to Closed Session for the purpose of discussing litigation, Berg v. Town of Fairfax, per Government Code Section 54956.9

Mayor Egger called the regular meeting to order at 7:30 p.m.

**COUNCILMEMBERS PRESENT:** Larry Bragman  
Susan Brandborg  
Frank Egger  
Mike Ghiringhelli  
Lew Tremaine

**STAFF MEMBERS PRESENT:** Alan J. Bengyel, Town Administrator  
Ken Kirkey, Planning and Building Services Director  
Bill Whitney, Public Works Director  
Joe Brecher, Town Attorney  
Ken Hughes, Chief of Police  
Judy Anderson, Town Clerk  
Maritza Fortin, Minutes Clerk

**ANNOUNCEMENT OF CLOSED SESSION ACTION**

Mayor Egger reported that the Town Attorney had provided an update on litigation, Berg v. Town of Fairfax, that the Council had given direction to the Town Attorney; and that the litigation was progressing.

**APPROVAL OF AGENDA AND AFFIDAVIT OF POSTING**

Mayor Egger acknowledged a request from John Sharp, the attorney for the Ross Valley Sanitary District, to have their matter heard before the hearing on the appeal for 190 Frustuck. In response, Mayor Egger suggested that the items be switched in order to accommodate his request.

M/S, Tremaine/Bragman, Motion to approve the agenda with item #5, appeal for 190 Frustuck to be heard after items #7 and #8, regarding an agreement with Ross Valley Sanitary regarding future development and consideration of the request to go forward with the formation of an assessment district for sewer connections on Canyon Road, and to approve the affidavit of posting.

AYES: All

**ANNOUNCEMENTS AND INTRODUCTIONS**

Mayor Egger made announcements about vacancies on the General Plan Advisory Committee, the Design Review Board, Parks and Recreation Commission and the Open Space Committee, noting that the Open Space Committee vacancies should have been listed under the announcements along with the other vacancies on the

boards and commissions. Town Attorney Joseph Brecher stated that the agenda item description made it clear that applicants would be appointed and that the Council could go forward with appointments.

## PEN TIME

Bill Chaison, 16 Iron Springs, stated police officers responding to a recent incident at a party in Fairfax overreacted, unnecessarily using pepper spray on teenagers. He recommended that the incident be placed on a future council agenda for discussion. He was told by the Town Administrator that it could not be on the agenda because the Police Department was in the process of conducting an internal investigation and that a personnel matter could not be discussed at an open meeting.

Town Clerk, Judy Anderson introduced new Town employee, Maritza Fortin. Mayor Egger directed the town clerk to draft a letter to former employee, Doe Hayes, thanking her for her service to the town.

### Interview and appointment of candidates for positions open on the General Plan Advisory Committee

Susan Clifford, Fairfax resident of 8 years, stated that she had become interested during brainstorming sessions recently held by the Town, and that her interest was in contributing to the wellbeing of her community.

Chris Lang, 177 Canyon Road, said he had something positive to contribute and looked forward to helping the community.

M/S, Ghiringhelli/Brandborg, Motion to appoint Chris Lang and Susan Clifford to the General Plan Advisory Committee.

^ YES: All

### Interviews and appointments of candidates for Design Review Board for a full 3-year term to June 30, 2007.

Shane Deal, an active contractor, stated that he would like to help serve the community where he had resided for the past 4½ years before he started a family.

Mayor Egger asked Mr. Deal about potential conflicts of interest because of his work as a contractor.

Mr. Deal responded that he thought it would be a benefit to the Board to have someone with construction experience.

Edna Trim, incumbent applicant for the Design Review Board, was not present for the interview.

M/S, Ghiringhelli/Brandborg, Motion to appoint Shane Deal and Edna Trim to the Design Review Board, Deal to a full 3-year term to June 30, 2007, Trim to a full 3-year term to March 31, 2007.

Roll Call Vote:

Bragman: AYE; Brandborg: AYE; Ghiringhelli: AYE; Tremaine: AYE; Mayor Egger: NO

### Interviews and appointment of candidates for Open Space Committee for full four-year terms.

ancy Helmers, 408 Scenic Road, said she had served as a commissioner on the Marin County Parks, Open Space and Cultural Commission for the past nine years and that she would like see Fairfax with an Open Space Committee similar to San Anselmo's.

David Weinsoff, 138 Ridgeway Avenue, environmental attorney, stated that he would also like to work with San Anselmo and that they could also learn from the Mill Valley Open Space Committee.

Pam Meigs, 310 Cypress Drive, said she was currently on the Fairfax Planning Commission and had served on the General Plan Advisory Committee for the past two years, and that she would like to improve biodiversity and protect the scenic corridors.

Valerie Hood, 79 Domingo Avenue, said she would like to add more open space, that she had experience organizing fund raising events and that she was glad the Town had a ridgeline ordinance, thanks to Mayor Egger.

Charles Hickox, 69 Manor Road, said he was an amateur environmentalist and was concerned with the conservation of soil, vegetation, development and the effects autos, hiking, and biking had on open space.

Terry Goyan, 65 Pine Drive, said he became passionate about open space while living in Mill Valley next to the Homestead Valley Land Trust open space, that open space was critical and that he was a board member of Trout Unlimited.

Martha Ture, 186 Canyon Road, said she was co-steward of Cascade Canyon working with Marin County Open Space District to help preserve, restore and monitor surrounding County open space lands, and that she had written grants for the preservation of the creeks.

Ryan O'Neil, 148 Madrone, stated that he had grown up in Corte Madera, that he had recently moved to Cascade Canyon, that he had learned about environmental issues as an Eagle Scout, and that he wanted to get involved in the community.

Ted Bright, 40 Woodland, said he was attracted to Fairfax because of its scenic beauty and that he had worked to add open space in the Cascade Ridge.

M/S, Ghringhelli/Brandborg, Motion to appoint all nine candidates contingent upon the passage of an amendment to the resolution establishing the Open Space Committee to change the membership from 7 to 11 members, with said resolution revision and further interviews to be continued to the next regular meeting.

AYES: All

## **PUBLIC HEARINGS**

### **Presentation by Marin County Department of Public Works and request for adoption of Resolution No. 2324, A Resolution of the Town Council of the Town of Fairfax Approving the Marin County Final Transportation Sales Tax Expenditure Plan**

Vice Mayor Tremaine, the Fairfax representative to the Congestion Management Agency, introduced Craig Tackaberry, Executive Director of the Transportation Authority of Marin (TAM).

Craig Tackaberry, Executive Director of TAM, presented the Final Transportation Sales Tax Expenditure Plan, explained that the Congestion Management Agency was made up of four members of the Board of Supervisors and a representative from each city in Marin.

Gail Murray, a consultant who helped develop the plan, outlined the changes to the plan to further improve mobility and reduce congestion for everyone in Marin County by providing a variety of high quality

transportation options designed to meet local needs. The four implementation strategies included a seamless local bus transit system, closure of the carpool lane gap through San Rafael, transportation infrastructure improvements and reduction of school related congestion. She noted that the goal of the plan and the four strategies hadn't changed, but that the provision of crossing guards and performance criteria had been added.

She explained that when the plan was approved by the Board of Supervisors and a majority of the Town Councils representing a majority of incorporated residents in Marin, a ½ cent transportation sales tax measure would be placed on the November 2, 2004 Ballot, that the sales tax rate would be raised from 7.25% to 7.75 % until 2025, that the ballot measure would need a 2/3 voter approval in order to pass, and that approval of the measure would cost approximately \$80 annually per resident. Based on the formula detailed in the Final Plan, Fairfax would receive approximately \$60,000 per year for the life of the Sales Tax Plan.

Mayor Egger opened the public hearing.

Barbara Smith, stated that she lived on the border of San Anselmo and Fairfax, that she was a 15-year Golden Gate Transit commuter to San Francisco, that Route 24 was recently saved from elimination, and asked about the establishment of a priority for the Highway 101 commute to San Francisco described on page 10 of the Plan.

Chris Lang, Canyon Road, stated that he had been to meetings about the sales tax, that he applauded the Transportation Plan and he urged everyone to vote for it.

Mayor Egger closed the public hearing.

Vice Mayor Tremaine explained that the priority had been added because of the concerns of Novato and Southern Marin, that it was part of the compromise worked out by all the cities, and that the Transportation Authority of Marin met every month, and that there seemed to be a trend by Golden Gate Transit to phase out local transit, and that a local plan needed to be developed.

Mr. Tackaberry noted that the Plan would be evaluated every two years.

Mayor Egger said he was concerned about statewide cuts; the removal of gas taxes, State cuts in programs for the poor, increased college fees, etc. He further stated that he believed that freeway widening and maintenance were State responsibilities, not the responsibility of local government; that the work on Highway 101 from 580 to the Civic Center was going to cost more than allocated, that it was a State bailout, and that the 478 cities in California had to say that they would not continue to bail out the State.

Vice Mayor Tremaine stated that \$24 million accounted for only 9% of total tax which would be collected.

Councilmember Ghiringhelli stated that the cost to each Fairfax resident would be approximately \$80 for a total of \$600,000 to be paid by Fairfax with only a 10% return on the investment.

Mr. Tackaberry explained that the proportions were based on population and road miles.

Vice Mayor Tremaine stated that the calculation was based on population and road miles but that it wasn't a straight percentage to each community and that the amount varied.

M/S, Tremaine/Brandborg, Motion to adopt Resolution No. 2324, A Resolution of the Town Council of the Town of Fairfax Approving the Marin County Final Transportation Sales Tax Expenditure Plan

Roll Call Vote:

Bragman: AYE; Brandborg: AYE; Ghiringhelli: NO; Tremaine: AYE; Mayor Egger: NO

Adoption of Resolution No. 2325, A Resolution of the Town Council of the Town of Fairfax Approving a Joint Powers Agreement Between the Town of Fairfax and Ross Valley Sanitary District No.1 regarding future development, sewer hookups and annexation

Mayor Egger presented an overview of the sewer line extension request from the Canyon Road residents to date and described the issues involved.

Town Attorney Brecher stated that the proposed agreement was acceptable to that Sanitary District and was okay with LAFCO.

John Sharp, attorney for the Ross Valley Sanitary District, thanked the Town Council for moving the item up on the agenda, that he was in agreement with the substance of the resolution before the Council that any property developed would be annexed to the Town before being provided with sewer connections, that if there was consensus, the matter could be moved forward while the agreement was being finalized.

Mayor Egger opened the public hearing.

Chris Lang, 177 Canyon Road, stated that he believed the next agenda item should have been considered before the adoption of the resolution.

M/S, Brandborg/Ghiringhelli, Motion to adopt Resolution No. 2325, A Resolution of the Town Council of the Town of Fairfax Approving a Joint Powers Agreement Between The Town of Fairfax and Ross Valley Sanitary District No.1 regarding future development, sewer hookups and annexation.

AYES: All

Discussion/Consideration of approval of the request of Sanitary District No.1 allowing them to go forward with the approval of a Sanitary District resolution to initiate the formation of an assessment district to install sewer connections on Canyon Road.

John Sharp, Attorney for the Ross Valley Sanitary District said he believed it was reasonable to reach an agreement with the Town of Fairfax.

Mayor Egger said he thought it should be considered an agreement rather than a memorandum of understanding.

John Sharp, Attorney for the Marin Sanitary District, agreed and said he would present it to the board.

Mayor Egger opened the public hearing.

John Reed, Scenic Road, stated that the people would get their sewer while the Town was protected.

Chris Lang, 177 Canyon Road, stated that the costs weren't known, questioned whether or not there were really failing septic systems on Canyon Road, if the creek was really polluted and if the sewer connections would fix the creek. He further stated that the Town had not done a sterling job of code enforcement in the neighborhood, that the zoning of vacant lands around Canyon was in question, and, if a CEQA consultant were hired, who would pay for that?



Maurice Weitman, 145 Canyon Road, stated that the Friends of Corte Madera Creek never tested the creek on Canyon but tested below and above Canyon.

erv Van Dyke, 170 Canyon, asked about the number of residents on Canyon necessary to sign up for sewer to have it go forward.

Mayor Egger closed the public hearing.

Mayor Egger stated that there were two small lots for sale, a 23-acre lot for sale and another larger lot for sale in the area; that the Town could pre-zone the land outside Fairfax above Canyon, and suggested a one unit to four acre minimum for the area.

Planning and Building Services Director Kirkey explained the pre-zoning process.

M/S, Ghiringhelli/Brandborg, Motion to approve Ross Valley Sanitary District's request to go forward with the Notice of Intention upon the formalization of the agreement and the signing of the agreement between the Ross Valley Sanitary District and the Town.

AYES: All

Mayor Egger adjourned the meeting for a 15-minute break at 9:04 p.m.

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

Planning Director Ken Kirkey presented the staff report with a recommendation to hear the public testimony to consider the merits of approving the project with the condition that parking needs be addressed with a carport rather than the proposed garage and that the storage area be eliminated or reduced in size, noting that a Planning Commission motion to approve the project had failed in a tie vote, thereby denying the project.

Mayor Egger opened the public hearing.

John Owens, applicant, said he had submitted five alternate floor plans and was assured that the current plans met the Fairfax code. He said the square footage of the deck was not 800 square feet., but just over 600 square feet, and that the excavation did not exceed 500-700 cubic yards. He also said that the April 15, 2004 Planning Commission staff report indicated that the commission was concerned with the size and mass of the house and requested the plans be revised reducing the size of the house. He suggested the Council check the May 20<sup>th</sup> Planning Commission minutes, denying the statement was ever made. He then urged the council to approve the project.

Peter Gang, project architect, described the combined setback requirements and stated that they were crafted with specific direction from the Town's Senior Planner. He said during the May 20<sup>th</sup> Planning Commission meeting the three opposing members were most concerned with the mass of the project, that the applicant had offered to use a carport rather than a garage and to reduce the size of the storage area, but the project was still denied. He then said the direction from the Planning Commission was very vague and that they just didn't like the project.

Councilmember Ghiringhelli asked Architect Gang if he believed the house fit in with the rest of the neighborhood and why.

Mr. Gang stated he felt the house fit with the character of the neighborhood and that it would enhance the neighborhood.

Mayor Egger opened the public hearing.

Bill Madsen, Planning Commissioner, 109 Porteous, reported that he had sent a letter to the other Planning Commissioners about an incident at a recent Commission meeting that he believed to be in violation of the Brown Act, read from the letter and asked that it be made a part of the record, stated that he believed the decision to deny the project had been made prior to the Planning Commission meeting, and urged the council to make their decision based solely on its merits.

Chris Lang, 177 Canyon Road, former Planning Commissioner, said public perception sometimes became reality, that rules were in place to guide us, that the HRD process allowed flexibility, that the perception that the house was too big could be mitigated, and suggested landscaping to soften the impact.

Joan Mariah, 175 Frustuck, said that her only objection to 190 Frustuck was the removal of trees to clear for a driveway and garage. She also said if it were possible to move the driveway and garage over to some extent to save the trees and benefit both properties.

Lisa Grigsby, daughter of Joan Mariah, stated she obtained dimensions of the trees to be removed. She then proceeded to hand out a copy of a letter from her mother addressed to Mayor Egger with photos expressing her dismay which also included a letter from a realtor who suggested removal of the trees could devalue Mrs. Mariah's property approximately ten to fifteen percent.

Bruce Bunnell, 170 Frustuck, said the house was extremely invasive the way it was designed, that he wanted to have all the alternatives explored, that he was not trying to prevent construction but that he would prefer to see the carport, garage, and storage on the lower level of the lot to save the trees, which is what Fairfax was all about. He also said Joan Mariah offered to give up a portion of her own property to allow the project to continue and save the trees. He then recommended the project be denied and re-submitted.

Councilmember Brandborg stated that she had a problem with the neighbors designing the house.

Mark Copel, 215 Frustuck, said the neighborhood was having quite a reaction to the proposed development of the property, that anyone would be troubled if a 40-50 ft. wall was erected in their neighborhood, and that his recommendation would be to build the house in the middle of the lot to prevent loss of quality of life.

Michele DeGregorio, 170 Frustuck, stated that she could live with the design if the garage was moved.

Councilmember Ghiringhelli asked if the applicant would lose his view by moving the garage and Mayor Egger responded that moving the garage would not eliminate the view.

Steve Kesten, attorney representing the applicant, said the applicant was entitled to build on his property. He said his client had not only experienced impropriety but had received threats as well. He also said the project would not affect surrounding property values except perhaps to improve them; that it was probably the lowest impact residence proposed in Fairfax in the past four years; and that it was his belief that the project would enhance the street.

Steve Wasserman, Meadow Way, stated that he was representing Bob Klock, a resident across the street from the project, who wanted to go on record as having no objections to the project. He stated that he was not sure that building a garage would require extensive excavation and that it would require the applicants to walk up hundreds of steps, that it would be better to have a garage, that vines could be grown to camouflage the garage, and that a 3 bedroom, 2-bath house was a reasonable size for a house.

Steve Kesten, Attorney for the applicant, stated that parking at the bottom of the property would require 100 steps criss-crossing the property, that the neighbor who had alleged a property dispute had built on the applicant's property, that the house as designed would harmonize with the neighborhood, that the Town Engineer had approved of the design, that the Town should encourage infill housing, that it was probably the lowest impact house built in Fairfax in years, that the Town Council didn't have the benefit of the arborist's opinions that were available at the Planning Commission meeting, that it was in conformance with the Floor Area Ratio ordinance, and that it was a modest house that would fit in.

Laurie Hailer, Planning Commissioner described improprieties in procedure that she had observed at a recent meeting of the Planning Commission, stated that she was not addressing the merits of the project, but behavior of several planning commissioners at the May 20<sup>th</sup> meeting. She stated that at that meeting, several planning commissioners said they would approve the project if changes were made and then didn't vote to approve the project when proposed changes were agreed to by the applicant.

Mayor Egger closed the public hearing.

Mayor Egger stated that it had not been the original intention of the combined setback requirements in the ordinance to change back and forth along the property.

Councilmember Ghiringhelli stated that it seemed like the applicants took all the necessary steps and worked with the staff through the process and that it would benefit the neighborhood and was legal.

Councilmember Brandborg stated that, although trees would be cut down, trees would also be planted, that Mr. Moritz was a very conservative arborist, and asked about whether or not the applicants had agreed to provide a carport rather than a garage.

Planning and Building Services Director Kirkey responded that there had been no decision on a carport rather than a garage, that it had been a suggestion from staff and that there had been lengthy discussion about the issue at the Planning Commission.

David Picchi, attorney for the applicant, stated that there had been a discussion about the elimination of the garage but with the same footprint for a carport.

Mayor Egger stated that when it was heard by the Town Council on appeal it was heard "de novo" and the entire application was before them like a new application. He stated that the slope ordinance required a larger lot, that the project didn't meet the setback requirements, that the code required that the garage be moved over ten feet, that he objected to the 52-foot bulk height, that the carport could be built on the right of way, and there was no vote on the application with the required findings.

Vice Mayor Tremaine expressed concern with the carport/garage and its location, stated that he would like to have an interpretation of the sideyard setbacks and see how setbacks had been interpreted in the past.

Town Attorney Brecher stated that the code didn't speak to the interpretation of the combined sideyard setbacks but that he was inclined to agree with the Planning Director's opinion allowing them to be staggered.

Vice Mayor Tremaine stated that he didn't have the information he needed to make a decision, that he would like a carport rather than a garage, that regardless of how the setbacks were interpreted, the deck off of the garage could be reduced in size, that he had no problem with the house itself, that the Planning Commission needed to deal with the inclusion of decks in the Floor Area Ratio (FAR) ordinance, and that he would like to see a reconfiguration of the garage to a carport and to have it moved over.

In response to a question from Mayor Egger, Town Attorney Brecher stated that compliance with the State Streamlining Act was not a problem since the clock stopped while an appeal was pending on the project.

Councilmember Bragman stated that he agreed with Vice Mayor Tremaine that the project would be in Ms. Mariah's lap.

M/S, Ghiringelli/Brandborg, Motion to overturn the Planning Commission denial of the HRD Permit and Encroachment permit related to the proposed project at 190 Frustuck Avenue.

Roll Call Vote: Bragman: NO, Brandborg: AYE, Ghiringelli: AYE, Tremaine: NO, Egger: NO

M/S, Tremaine/Bragman, Motion to continue the appeal to the next meeting with a request to town staff for information regarding how setback requirements had been applied in the past and with a request to the applicant to provide drawings of a proposed carport rather than a garage moved over, with the garage deck reduced in size with story poles erected to reflect the changes and a drawing of an uncovered parking deck for consideration.

Town Attorney Brecher said he would be willing investigate how setback requirements were applied in the past and the consensus of the Council was to have him do so.

Steve Kesten, attorney for the applicant, said he would be willing to agree to extend the waiver of the Streamlining Act for thirty days.

AYES: ALL

Second Reading and Adoption of Ordinance No. 704, an Ordinance of the Town of Fairfax amending Chapter 17.26 of Title 17 of the Fairfax Town Code, adopting regulations for the residential second units and incorporating a process for the review of applications at ministerial level; Categorically exempt from the provisions of the California Environmental Quality Act (CEQA) as amended per Section 16061(b)(3)

George de Tuncq, 39 Ridge Road, stated that the Uniform Housing Code was referred to in the ordinance, that the Code was quite inclusive; that there were over 300 properties in Fairfax on the Assessor's Roll that had second units; asked if the standards would be the same for old and new units; and that an exception was made to the sewer requirement in the ordinance. He began a more detailed review of the requirements and was cautioned by Vice Mayor Tremaine that, due to the lateness of the hour and the fact that he had already been given more than the allotted time for a speaker and that his list of questions had been submitted at 7:30 p.m., that it wasn't reasonable to spend more time on his concerns.

Planning and Building Services Director Kirkey stated that the ordinance complied with State law, was much the same as the interim ordinance, and that, at the time of resale of the property, second units were required to comply.

Mayor Egger informed Mr. de Tuncq that he could help make sure that the codes were enforced.

M/S, Tremaine/Ghiringelli, Motion to waive further reading of Ordinance No. 704, An Ordinance of the Town of Fairfax, amending Chapter 17.26 of the Title 17, of the Fairfax Town Code, adopting regulations for the

establishment of residential second units and incorporating a process for the review of applications at the ministerial level; Categorically exempt from the provisions of the California Environmental Quality Act as amended per Section 16061(b)(3).

AYES: ALL

M/S, Tremaine/Ghiringhelli, Motion to adopt ordinance No. 704, An Ordinance of the Town of Fairfax, amending Chapter 17.26 of Title 17, of the Fairfax Town code, adopting regulations for establishment of residential second units and incorporating a process for the applications at the ministerial level; Categorically exempt from the provisions of the California Environmental Quality Act (CEQA) as amended per Section 16061(b)(3)

Roll Call Vote:

Bragman: AYE; Brandborg: AYE; Ghiringhelli: AYE; Tremaine: AYE; Mayor Egger: AYE

### CONSENT CALENDAR

Approval of cash disbursements for May, 2004

Approval of Town Council Minutes for May 4 and May 18, 2004

Approval of the use of Fairfax Park Picnic Grounds for Music in the Park for July 18, 25 and August 1, 8, 15, 22, and 29

Adoption of Resolution No. 2326, A Resolution of the Town Council of the Town of Fairfax Authorizing Temporary Closure of Certain Streets and Portions Thereof, to Allow a Town Parade on June 5, 2004 and Town Festival June 5, and 6, 2004.

Award of Construction Contract for Downtown Bicycle Racks

Request for authorization for expenditure of GASB implementation costs

Approval of Fairfax support for Senate Bill 291 (Kuel) the Health Care for all Californians Act

M/S, Ghiringhelli/Brandborg, Motion to Adopt the Consent Calendar.

AYES: ALL

### Presentation regarding delivery of services by Marin Sanitary Services, Patty Garbarino

Patty Garbarino, Marin Sanitary Services, presented a report to the Council on her company's service to the Town since assuming ownership. She stated that recycling rates had increased dramatically within the first three months of operation, that green waste was picked up no matter what container was used, that they were in the process of expanding commercial recycling services, that all plastic bottles were collected but that only numbers 1 and 2 were actually recycled, and that their next goal was to perform route audits.

Chris Lang, 177 Canyon Road, said he would like to thank the Fairfax Festival Committee and Patty Garbarino for excellent service provided.

Discussion/Consideration of Second Annual Fairfax Car Show on Sunday, September 12<sup>th</sup> and request for street closure for a portion of Broadway from the theater to Bolinas Road for the event

William Thomas, Drake Video owner, presented the request to conduct the car show on behalf of the Chamber of Commerce.

M/S, Ghiringhelli/Bragman, Motion to approve the second annual Fairfax car show sponsored by the Chamber of Commerce contingent upon the receipt of a certificate of insurance naming the Town of Fairfax and agreement by the Chamber to assume any extra costs that may be incurred by the Town.

AYES: All

There was a consensus of the Council to have the staff place a resolution authorizing the necessary street closure on the next agenda.

The meeting was adjourned at 11:30 p.m. with items not addressed to be continued to the next regular meeting.

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AYES: ALL

Fairfax Town Council  
Regular Meeting, July 6, 2004  
Fairfax Women's Club

**CLOSED SESSION**

Mayor Egger called the meeting to order at 6:45 and adjourned the meeting to Closed Session for the purpose of discussing litigation, Berg v. Town of Fairfax, per Government Code Section 54956.9; Conference with Labor Negotiator Town Administrator Alan J. Bengyel, regarding Fairfax Police Officers Association (POA) per Government Code Section County Superior Court No, CV 035741 and Conference with Town Attorney for status report on pending litigation, Alvillar v. Fairfax, U.S. District Court Case #CO2 5828 JSW, per Government Code Section 54956.9

Mayor Egger called the regular meeting to order at 7:40 p.m.

**COUNCILMEMBERS PRESENT:** Larry Bragman  
Frank Egger  
Lew Tremaine

**COUNCILMEMBERS ABSENT:** Susan Brandborg  
Mike Ghiringhelli

**STAFF MEMBERS PRESENT:** Alan J. Bengyel, Town Administrator  
Ken Kirkey, Planning and Building Services Director  
Bill Whitney, Public Works Director  
Joe Brecher, Town Attorney  
Judy Anderson, Town Clerk  
Maritza Fortin, Minutes Clerk

**ANNOUNCEMENT OF CLOSED SESSION ACTION**

Mayor Egger reported that the Town Attorney had provided an update on litigation, Berg v. Town of Fairfax, and described the background of the case. He explained that Mr. Berg did not want to annex to the Town and that the County had not approved annexation.

**APPROVAL OF AGENDA AND AFFIDAVIT OF POSTING**

M/S, Tremaine/Bragman, Motion to approve the Agenda and Affidavit of Posting.

AYES: Tremaine, Bragman, Mayor Egger  
ABSENT: Brandborg, Ghiringhelli

**ANNOUNCEMENTS AND INTRODUCTIONS**

Mayor Egger made announcements about vacancies on the General Plan Advisory Committee, the Design Review Board, Parks and Recreation Commission and the Open Space Committee.

**OPEN TIME**

Interview and appointment of candidates for positions open on the General Plan Advisory Committee

Diane Causey, 131 Mono, a 14 year Fairfax resident said was delighted to be able to participate and looked forward to the process.

M/S, Tremaine/Bragman, Motion to appoint Diane Causey to the General Plan Advisory Committee.

AYES: Tremaine, Bragman, Mayor Egger

ABSENT: Brandborg, Ghiringhelli

Interviews and appointment of candidates for Open Space Committee for full four-year terms.

Staff reported that Denise Ferry applicant would not be present for the interview.

Ruth Horn, 11 Upper Ridgeway, stated she considered the empty lot behind her property open space. She explained that Hawthorne Canyon became open space with help of the neighbors. She said it was then she had come to realize Fairfax had neither funding nor a committee to contribute to open space.

Mayor Egger stated there were still no funds available but the formation of the Open Space Committee was the first step.

Niccolo Caldararo, 165 Frustuck Avenue, explained his interest in maintaining the character of Fairfax and that he would like to facilitate its preservation any way he could. He then suggested fundraising as a means of raising money.

M/S, Tremaine/Bragman, Motion to appoint Niccolo Caldararo.

AYES: Tremaine, Bragman, Mayor Egger

ABSENT: Brandborg, Ghiringhelli

Interviews and appointments of candidates for Design Review Board for a full 3-year term to June 30, 2007.

Laura Kehrlein, 167 Bothin Road, stated she was a 12 year Fairfax resident and sought the opportunity to serve her community.

Mayor Egger, acknowledged his concern with the possibility of conflict between Ms. Kehrlein's position with DRB and her employment with the Architectural Firm which occasionally handled projects in Fairfax.

Laura Kehrlein explained the majority of her work was in San Rafael and San Anselmo. She then said the bulk of her projects were residential additions and if by some remote chance a project was associated with her firm she would decline to vote.

Karl Vavrek, 47 Porteus Avenue, stated he was a 3 year resident and had been a stay-at-home dad since January of 2001.

Councilmember Bragman asked about Mr. Vavrek's occupation.

Karl Vavrek responded that for 10 years he had been a consulting structural engineer primarily for commercial properties.

Mayor Egger asked what their sense of Fairfax was.



Karl Vavrek, stated he had always considered Fairfax a small resort community. He said the charm came from its size and diversity and that he would like to see it remain that way.

Laura Kehrelein, stated she would like to see the character of the town preserved.

M/S, Tremain/Bragman, Motion to appoint Laura Kehrlein to the Design Review Board, to a full 3-year term to June 30, 2007.

AYES: All

### PRESENTATION

Adoption of Resolution No. 2327, A Resolution of the Town Council of the Town of Fairfax in Recognition of Arlen Philpott, for His Many Years of Volunteering to Present the Free "Music in the Park" Summer Series of Concerts in Fairfax

M/S, Tremaine/Bragman, Motion to adopt resolution No. 2327, A Resolution of the Town Council of the Town of Fairfax in recognition of Arlen Philpott, for His Many Years of Volunteering to Present the Free "Music in the Park" Summer Series of Concerts in Fairfax.

AYES: ALL

Arlen Philpott, thanked the Council and stated the "Music in the Park" Summer Series was scheduled to begin the 18<sup>th</sup> of July. He explained that the musicians all contributed their time and talent gratis. His family was introduced and he thanked the Town Council.

### PUBLIC HEARINGS

54 Madrone Avenue; consideration of an appeal of the Planning Commission's approval of a request for a Use Permit to construct a 960 s.f. addition to an existing single-family residence; Rida Jamal, applicant/owner; application #04-17; Assessor's Parcel No(s). 3-132-10 & 3-132-18; Residential single family RS 6 Zone; CEOA categorically exempt per sections 15301(e)(1)

Planning Director Ken Kirkey presented the staff report with a recommendation to hear public testimony to consider the merits of approving the project and granting Use Permit application # 04-17.

Mayor Egger stated the Council was presented with the plans just prior to the meeting making it difficult to assess the project. He then asked staff whether a permit had been obtained for the retaining wall in the parking area and about the status of the Streamlining Act.

Ken Kirkey stated that the interim building inspector told the applicant that a permit was not required.

Mayor Egger asked how it was possible to obtain permits for parking when the job was already completed.

Ken Kirkey said the applicant would still have to go through the permit process before he could continue the project.

Town Attorney Joseph Brecher recommended the Town ask the applicant for a 30 day continuance considering plans had not been provided and stated that the appeal stopped the Streamlining Act

Mayor Egger stated a continuation might be in order. He then opened the public hearing.

Rida Jamal, applicant/owner, stated he had purchased the property last October and had spent 6 months working on the plans. He then stated that the interim building inspector had come out three times during the time the parking area was being created and told him that no permit was necessary. The applicant said there were only three feet of a shoulder and described the crumbling asphalt of the roadway.

Mayor Egger instructed the applicant to explain why he believed the project was good for the neighborhood.

Rida Jamal, stated he needed more living space and, to avoid conflict with neighbors, the setbacks had been either doubled or tripled; that he did not feel it was reasonable to have to modify his plans to accommodate his neighbors; that the project met all the rules and setback requirements.

Emma, 54 Madrone, stated she and fiancée Rida had moved to Fairfax because it was a family town; explained that the house was the smallest on the street and that their bedroom was only 10x10; that she understood people unwilling to accept change; that they only wanted to begin a family and live in peace; that a majority of the neighbors had been nothing but kind; that they were willing to share the parking with their neighbors and didn't understand why it had become such an issue.

Councilmember Bragman stated he had visited the property earlier that afternoon and was curious about the possibility of building a garage on the side lot.

Rida Jamal, said he had no intention of building a garage and it was not in his budget.

There was a discussion about the scope of the "denovo" hearing before the Council and whether or not it included the parking issue.

Mayor Egger, explained it was an issue because the parking had been created without a permit and the appeal meant the entire plan was being reviewed.

Town Attorney Joseph Brecher said the illegal construction of parking should be handled as a separate issue; that it was being dealt with and it was not part of the project.

Planning Director Kirkey stated the parking issue was not being ignored and that the applicant still had to meet the requirements.

Emma, offered her apologies and said it was also a safety issue. She then said after family members had fallen on a section of the slope where the asphalt was crumbling and that something had to be done.

Mayor Egger stated in the previous years the Council had been provided with plans in advance. He said when he had visited the property he was under the impression the retaining wall was part of the project and had he received the plans prior to his visit he would have known it was not.

John Sergeant, appellant, 55 Madrone, stated he was not the enemy of the applicant and understood the applicant's need to expand. He said his primary concern was preferential parking not the house, because the parking was all that affected him. He then said that, contrary to Mr. Jamal's statement at the June 17<sup>th</sup> Planning Commission Meeting, neighbors were not parking in the area in front of 54 Madrone prior to him moving in. He also said he did not believe Mr. Jamal genuinely intended to share the two new guest parking spaces with his neighbors and therefore believed the plan should be denied. He further stated that Mr. Jamal had told him he was going to build a garage and that he was going to do a lot split; that he thought doubling the size of a house was not a small expansion and asked for denial and to have the project sent back to the Planning Commission to scale down the project.

Hoye Ott, appellant, 17 Madrone Court, stated most of the issues, apart from drainage, had already been discussed by Mr. Sergeant. He said the backside of his home and Mr. Jamal's were separated by 14 feet; that a deck extended east from the back of Mr. Jamal's house approximately 13 feet creating an approximate 1 foot line of separation from the backs of their houses; and that close proximity interfered with his own privacy. He then spoke of the drainage issue stating he and some of the neighbors had some problems in the past, but that the drainage issues had not been addressed; that he did not oppose the addition; and hoped he could afford to do the same to his home. He suggested Mr. Jamal consider putting the decks on the south side.

A discussion of the possibility of moving the decks followed.

The applicant stated that moving the deck south was impossible from an engineering standpoint and would require an entire re-design.

Applicant Jamal stated he had offered to build a higher fence measuring approximately 6 feet and plant bamboo trees to help protect Mr. Ott's privacy, prior to the June 17<sup>th</sup> Planning Commission Meeting.

Porter Ryason, 60 Madrone, stated his property was adjacent to the Jamal Property. She said she had no objection to the expansion of the parking area and, with or without permits it was a necessity since the shoulder was only about 18 inches.

Dustin Ortez, 40 Madrone, stated he had been a resident for 23 years; that he was also concerned with drainage; that if the decks were to the south it would cause possible obstruction to the trees as well interfering with their privacy; and that a new owner could build a garage on the empty lot.

Jane Mack, 49 Madrone, stated she lived across the street from the applicant; that the vacant lot was one of the reasons she lived in Fairfax; that the house required expansion because it was so small; that parking was created where no parking existing before; that appeals like these gave Fairfax a bad name causing people to become afraid to build; that it was not the applicants fault the Council had not received the plans; that she had experienced delays in a project she did and knew how costly and stressful it could be; that it made more sense to add a second story instead of spreading it out on the empty lot; that she supported the applicant and recommended the Council allow them to continue their project and separate the parking issue.

Mayor Egger Closed public hearing.

Councilmember Tremaine, stated his instinct was to find a solution in which he suggested rotating the decks to the south; that he was not overly concerned with the parking and had been assured it would be dealt with; and that he said he was most concerned with the fact that a member of the community had been given false information by a Town Official and hoped the new building official would do a much better job.

Councilmember Bragman, stated his opinions were based upon walking the property; that he was concerned about Mr. Ott's privacy and the imposition of a large structure taking up what used to be empty space; that he would like to see parties seek further mitigation and suggested landscaping or solid rails around the deck. He then asked Mr. Brecher if he was allowed to speak about the parking issue considering it was not part of the appeal.

Mr. Brecher advised that parking was not an issue but that illegal construction of the retaining wall could be discussed.

Ken Kirkey stated this was also a condition of approval for the building permit.

Councilmember Bragman, stated it did not appear that the applicant was trying to circumvent anything by not obtaining the permit; that he would like to see both parties come to some sort of compromise; that his recommendation would be to deny the appeal with the condition that Mr. Jamal provide further design detail, whether it be landscaping or fencing, to protect Mr. Ott's privacy.

Mayor Egger stated he had read the staff report from front to back as well as visited the property but that not getting the plans until the night of the meeting was totally unacceptable. He then said he would like to continue the appeal and go onsite with the plans to look at the impact.

Councilmember Tremaine, stated he would also prefer to continue the approval to the August meeting with plans on mitigation to be presented.

M/S, Tremaine/ Bragman motion to deny the appeal accepting the findings and conditions of the Planning Commission decision with the additional condition that privacy mitigations be brought to the staff for review, with the motion amended by Bragman to include clarification of the mitigation to be a possible reconfiguration of the fence and /or landscaping with the right of appeal to both parties, the amendment agreed to by the maker of the motion.

Roll Call Vote:

Bragman: AYE; Tremaine: AYE; Mayor Egger: NO

190 Frustuck Avenue: appeal of 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 with a 430s.f storage area beneath; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application # 04-14; Assessors parcel No. 3-193-02; Residential Single-Family RS 6 Zone CEQA categorically exempt per sections 15303(a) and 15305(b).

Planning Director Kirkey stated that a letter had been received from Steve Kesten, attorney for the applicant, requesting a continuance for the August Town Council meeting.

32 Power Lane: continued consideration of a request for a grant of sale of Town owned property relative to existing private improvements on Town owned parcel; Denise Dunn , Property Owner, Assessor's Parcel No 002-141-35

Planning Director Kirkey presented the staff report with a recommendation to direct Staff to prepare a Resolution to be reviewed by the Town Council at the August 3, 2004 Town Council meeting, authorizing the sale of property to the applicant as outlined in Option C provided, and including the terms that the deed of sale be a quitclaim deed, that any remaining improvements meet all town code requirements relative to setbacks, and also requiring reimbursement of the Town of Fairfax for staff time related to the processing of the request.

Denise Dunn, 32 Power Lane, stated that the matter had been ongoing for the past two years; that upon surveying her 1920's home she found part of her home had been built on Town property; and that at the end of last year she had learned if the proper steps were taken, she would be able to purchase the land.

Mayor Egger opened Public Hearing and no speakers came forward.

Ken Kirkey stated his recommendation in going forward with adoption of the resolution.

Denise Dunn requested that the Town allow her to purchase 4,381 square feet of Town Property at \$6.84 per square foot for a total amount of \$29,966.04; that this would allow her to keep her stairs, deck, and take responsibility for some large sick oak trees away from the Town; and that the property was a steeply sloped and which would not be developed.

Mayor Egger closed Public Hearing.

M/S, Tremaine/Bragman, Motion to approve the sale of 4,381 square feet of the Town property at \$6.84 per square foot to Denise Dunn with direction to staff to prepare a resolution authorizing the sale to include the requirement that a quitclaim deed be filed and with the further condition that the \$29,966.04 be placed in the Open Space Fund.

AYES: Bragman, Tremaine, Mayor Egger

ABSENT: Brandborg, Ghiringhelli

Mayor Egger adjourned the meeting for a 15-minute break at 10:10 p.m.

Mayor Egger read the letter from Steve Kesten regarding 190 Frustuck requesting an August 3<sup>rd</sup> hearing, into the record.

Second Reading and Adoption of Ordinance No. 705, An Ordinance of the Town of Fairfax imposing further restrictions on wood burning appliances, including a ban on open fireplaces for new residences and 50% remodels to reduce air pollution.

Mayor Egger then recommended Ordinance No. 705 be continued to the August 3<sup>rd</sup> meeting. He then suggested that the response to the Draft Environmental Impact Report be discussed before Ordinance No. 706.

Fairfax Response to the Draft Environmental Impact Report, Cascade Canyon and White Hill Open Space Preserves Land Management Plan.

Mayor Egger presented the Draft Land Management Plan for Cascade Canyon, White Hill Open Space Preserve and the Draft Environmental Impact Report.

Martha Ture, 186 Canyon Road, stated she was co-steward of Cascade Canyon and paid close attention to what went on in the canyon. She said she had seven pages of written comments which she would later present to the Town Clerk. She then said the EIR was not a management plan and did not address fire danger or fuel load; did not assess the population of current species to assure they weren't diminished; didn't provide a plan to work with Fairfax; and seemed to criminalize dogs in the preserve.

Nicholas Arguimbau, 697 Cascade, stated the problem with the EIR was the District didn't know what they had. He said as a condition of the Management Plan they should have taken an inventory. He then explained that according to the EIR broom control discussion there was only a problem on the eastern half of the canyon however he had located over seven different sites to the west containing both French and Scotch broom. He explained the management plan's proposed opening of the so-called Split Rock trail and closure of the trail above the waterfall to the Inkwells; that by failing to recognize that the Split Rock trail was part of a larger system of illegal bike trails including a section, shown in photographs presented to the Council, he said the EIR and the management plan failed to address erosion problems the illegal trails had caused. He suggested the environmental review be done more diligently.

inda Novy, 611 Cascade Drive, stated that although she was a Commissioner of the Marin County Parks Open Space she was speaking as a private resident. She said she would like to see Split Rock closed; the trail above the waterfall opened, and fire modeling to include the dead oaks. She also stated that signage was needed.

Mayor Egger stated the clearing of under brush by hand is considerably healthier for the environment; that the Town had recommended closure of split rock trail and still did; and that the Town needed clarification of which trails would be closed.

Vice Mayor Tremaine stated he agreed with Ms. Ture's and Mr. Arguimbau's comments. He then recommend their comments be incorporated with those of the Town, and a letter be drafted in response to the Draft EIR.

Blaine Morris, 350 Cascade, agreed the fire issue was tremendous and was concerned it was not addressed in the EIR at all. She also said only 1% of the area were fire roads and the only place dogs were allowed off leash, and that dogs shouldn't be further restricted.

Martha Ture, stated there was a proposal to control broom with glyphosate, a toxic substance, she opposed.

Nick Arguimbau, stated it was his understanding Marin Open Space fire trails were one of the few places in the Bay Area in which dogs could be walked off leash however the Fairfax Town Ordinance No. 6.16.010 that stated it was unlawful for the owner or person having custody to have a dog on public property unless on leash; of which he said it was a double standard.

M/S, Tremaine/Bragman, Motion to direct staff to draft a letter in response to the Draft EIR incorporating by reference the letters submitted by Nicholas Arguimbau, Martha Ture, and public testimony.

AYES: Bragman, Tremaine, Mayor Egger

ABSENT: Brandborg, Ghiringhelli

Second Reading and Adoption of Ordinance No. 706, An Ordinance of the Town of Fairfax imposing further restrictions on smoking in public places in the Town of Fairfax

M/S, Tremaine/Bragman, Motion to waive further reading of Ordinance No. 706, An Ordinance of the Town of Fairfax imposing further restrictions on smoking in public places in the Town of Fairfax.

AYES: Bragman, Tremaine, Mayor Egger

ABSENT: Brandborg, Ghiringhelli

### CONSENT CALENDAR

**Approval of Cash Disbursements for June, 2004**

**Approval of Town Council Minutes for June 8, 2004**

**Approval of attendance of Council member(s) League of California Cities Conference in Long Beach September 17-19, 2004, at the cost of approximately \$1,000 per person**

**Adoption of Resolution of No. 2328, A Resolution of the Town Council of the Town of Fairfax Authorizing temporary closure of Broadway from Pacheco to Bolinas Road to Allow a Car Show sponsored by the Chamber of Commerce on Sunday, September 12, 2004**

**Adoption of Resolution No. 2329, A Resolution of the Town Council of the Town of Fairfax Setting the Amount of the Municipal Services Tax for the 2004-2005 Fiscal Year**

**Adoption of Resolution No. 2330, A Resolution of the Town Council of the Town of Fairfax Setting the Amount of the Utility Users Tax for the 2004-2005 Fiscal Year**

**Adoption of Resolution No. 2331, A Resolution of the Town Council of the Town of Fairfax establishing the rate per runoff unit pursuant to Fairfax Ordinance No. 646 (a regulatory fee to fund clean stormwater activities) for Fiscal Year 2004-2005**

**Adoption of Resolution No. 2332, A Resolution of the Town Council of the Town of Fairfax approving the Ross Valley Paramedic Authority Tax Levy for the 2004-2005 Fiscal Year.**

**Adoption of Resolution No. 2333, A Resolution of the Town Council of the Town of Fairfax continuing expenditures and revenues in accordance with the 2003-2004 Town Budget and in lieu of timely 2004-2005 budget adoption**

**Adoption of Resolution No. 2334, A Resolution of the Town Council of the Town of Fairfax replacing Resolution No. 2323, to formalize the Fairfax Open Space Committee with eleven rather than seven members and authorizing a separate financial account for open space purchases**

**Adoption to send a letter to filmmaker Michael Moore regarding the unfair distribution process whereby the Town of Fairfax, the people of Fairfax and the Fairfax Theatre are discriminated against and explaining the appropriateness of a Fairfax venue for showing Fahrenheit 911**

**Report to the Town Council on the results of the radar trailer calculations of speeds on Cascade Drive between Laurel and Canyon**

M/S, Tremaine/Bragman, motion to approve Consent Calendar with two corrections to the minutes from June 8<sup>th</sup>, 2004

AYES: Bragman, Tremaine, Mayor Egger

ABSENT: Brandborg, Ghiringhelli

**Award Construction Contract – Measure K Street and Storm Rehabilitation Program- Contract 2B**  
**b. Discussion of possible alternate bid for Cascade Drive Slip Out**

Director of Public Works, Bill Whitney presented Staff Report with the recommendation the Council award the construction contract, Measure K Street and Storm Drain Rehabilitation Program – Contract 2B, based on the Base Bid Amount to the lowest responsible bidder, Ghilotti Construction Company Inc. in the amount of \$1,013,092.25 and authorizes a 10% construction contingency in the amount of \$101,000 for a total construction budget of \$1,114,092.25.

Mayor Egger, stated it may be necessary to borrow from one project to complete this one. He said an additional \$85,000 may be needed to complete the project.

M/S, Tremaine/Bragman, motion to award the construction contract, Measure K Street and Storm Drain Rehabilitation Program, Contract 2B, based on the base on the Base Bid Amount to the lowest responsible bidder, Ghilotti Constuction Company, Inc. in the amount of \$1,013,092.25 and to authorize 10% construction contingency in the amount of \$101,000 for a total construction budget of \$1,114,092.25

YES: Bragman, Tremaine, Mayor Egger

ABSENT: Brandborg, Ghiringhelli

Discussion/Consideration of a request to support the Town of Tiburon in its position requiring MERA (Marin Emergency Radio Authority) to find a less threatening and more environmentally suitable site for its Southern Marin antenna

Town Administrator Alan Bengyel stated the Southern District is still lacking an antenna and incapable of finding a site.

Councilmember Bragman recommended they look into alternate technological methods rather than building one large antenna.

M/S, Egger/Tremaine, Motion to direct the Town's appointee to MERA to inform them that the Town Council supports the Town of Tiburon in their request to relocate antennae to sites away from residences and to inform the Town of Tiburon of the decision to support them.

AYES: Bragman, Tremaine, Mayor Egger

ABSENT: Brandborg, Ghringhelli

Set date for budget workshop meeting

Town Administrator Alan Bengyel recommended a Saturday afternoon workshop to accommodate Finance Director Jim Robison who was unable to attend evening meetings.

There was a consensus of the Council to conduct the budget meeting at 3:00 PM on Saturday, July 17<sup>th</sup> at the Youth Center.

The meeting was adjourned at 11:40 p.m. with items not addressed to be continued to the next regular meeting





# TOWN OF FAIRFAX

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

July 8, 2004

John Owens and Diana Dullaghan  
6 June Court  
Fairfax, CA. 94930

## NOTICE OF TOWN COUNCIL ACTION

RE: **190 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).

Dear Mr. Owens and Ms. Dullaghan

On July 6, 2004, the Fairfax Town Council continued the above referenced application to the August 3, 2004, meeting.

Staff would like clarification regarding the revised plans you submitted dated June 16, 2004. The entry deck immediately adjacent to the driveway ramp appears to encroach further into the required 15' setback than the permitted 2'. Also, please clarify whether or not the proposed parking deck is 5' from the westerly property line. Staff recommends that you either address these issues in writing or submit revised plans that clearly show the entry deck and parking deck complying with the setback requirements.

Finally, please note that the story poles representing the outline of the structure with the proposed changes must be erected no later than July 23, 2004. If you have any questions regarding the Town Council action please do not hesitate to contact the Fairfax Department of Planning and Building Services.

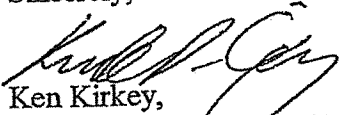
Sincerely,

Linda Neal  
Senior Planner

cc. Ken Kirkey, Director of Planning and Building Services

Please contact Linda Neal, Senior Planner regarding the revised plans and other submittal requirements for the upcoming Design Review Board meeting on September 8, 2004. If you have any other questions regarding the Town Council action, please do not hesitate to contact the Fairfax Department of Planning and Building Services.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Kirkey", written in a cursive style.

Ken Kirkey,  
Director of Planning and Building Services

Fairfax Town Council  
Regular Meeting, August 3, 2004  
Fairfax Women's Club

**CLOSED SESSION**

Mayor Egger called the meeting to order at 7:00 p.m. and adjourned the meeting to Closed Session for the purpose of discussing litigation, Berg vs. Town of Fairfax, Marin County Superior Court No. CV 035741, per Government Code Section 54956.9, and conference With Labor Negotiator Town Administrator Alan J. Bengyel, regarding Fairfax Police Officers Association (POA), Marin Association of Public Employees (M.A.P.E.), and the unrepresented Management Group per Government Code Section 54957.6; and Conference with Town Attorney for status report on pending litigation, Alvillar v. Fairfax, U.S. District Court Case #CO2 5828 JSW, per Government Code Section 54956.9

**CALL TO ORDER**

Mayor Egger called the regular meeting to order at 7:40 p.m.

**ROLL CALL:**

**COUNCILMEMBERS PRESENT:** Larry Bragman  
Susan Brandborg  
Frank Egger  
Mike Ghiringhelli  
Lew Tremaine

**STAFF MEMBERS PRESENT:** Alan Bengyel, Town Administrator  
Ken Kirkey, Director of Planning and Building Services  
Bill Whitney, Director of Public Works  
Ken Hughes, Chief of Police  
Joseph Brecher, Town Attorney  
Judy Anderson, Town Clerk

**APPROVAL OF AGENDA AND AFFIDAVIT OF POSTING**

M/S, Ghiringhelli/Brandborg, Motion to approve the Agenda and the Affidavit of Posting, with the item regarding combined services with San Anselmo to be moved to the first item under "Old Business" at the request of Councilmember Ghiringhelli.

AYES: All

**ANNOUNCEMENT OF CLOSED SESSION ACTION**

Mayor Egger announced that direction was given to the Town Attorney regarding Berg v. Fairfax and that the Council heard reports and gave direction but that no action was taken on the other matters before the Town Council, and that all the items listed for Closed Session were addressed.

**ANNOUNCEMENTS**

Mayor Egger announced vacancies on the General Plan Advisory Committee and that new members were welcome; one vacancy on the Parks and Recreation Commission (Buchholz) for a full four-year term; and two vacancies on the Volunteer Board, for unexpired terms to March 31, 2006 and to April 30, 2006, (Barrett and Nelson).

## OPEN TIME FOR PUBLIC EXPRESSION

Stan Schriebman, 51 Hickory, asked about a letter he received recently from the Town. Mayor Egger explained that the letter was sent soliciting contributions to the acquisition of the Melvin property on Meadow way as open space.

Graham Irwin, 88 Dominga, stated that there was confusion and concern about the Measure K work to be done on his street; that he had heard that his sidewalk might have to be enlarged for ADA accessibility; that a survey he had done indicated that the sidewalk was on his property and that he was opposed to enlarging the sidewalk from three feet to four feet in width.

Public Works Director Whitney stated that maintenance of sidewalks was up to the adjacent property owners; that he had become aware of the situation the day of the meeting; and that the town had planned to fix the sidewalk. He stated that he believed the curb was in the public right-of-way and that doing a curb cut for accessibility was part of the project.

It was suggested that Mr. Irwin meet with Director Whitney to address the problem. Mr. Irwin stated that he would provide the Town with a copy of the survey and reiterated that he did not want the sidewalk enlarged to encroach further on his property.

Chris Cosgrove, 60 Pastori Avenue, stated that the Marin Town and Country Club (MTCC) tenants had been referred to as a "lynch mob" in the newspaper after their appearance at a previous Town Council meeting. He stated that he was present because the tenants had heard that the building inspector was planning to go inside the units with a group of people and take photos; that the Town Council had never accepted the tenants' rights at MTCC; that he objected to the threat of a search of their homes and the use of intimidation by the Town; and stated that the former building inspector had threatened to tear buildings down.

Planning and Building Services Director Kirkey stated that the building official had sent a form letter to all property owners in town who had expired building permits.

Councilmember Ghiringhelli stated that he had seen copies of the letters and that they were threatening and seemed like harassment, and were talking about a team of people going in to the property.

Vice Mayor Tremaine stated that the Council should be copied on the letters that were sent.

Director Kirkey stated that the Council would receive copies of the letters.

Councilmember Brandborg stated that the Council needed to be informed about what the staff was doing and that they used to receive monthly reports describing department activities.

Dirk, tenant at MTCC, stated that he had spoken to the Council a year before when they thought they might lose their living space, that the owner of MTCC had made many improvements at the property, and that he didn't want to lose his home.

Christopher Kenton, 364 Cascade Drive, stated that he represented his neighbors, described an incident where he was run off the road when walking with his wife and child in a stroller on Cascade; that they were told by police that they couldn't take a report on the incident because they didn't witness the incident, that pedestrians weren't safe on Cascade; that there were over 150 households in their neighborhood; that the report on traffic on Cascade showed an average speed of 20 m.p.h.; thanked Mayor Egger for bringing the radar trailer to Cascade; noted that there were no sidewalks and only one way out of Cascade canyon and no enforcement; and that the neighbors wanted something done.

Alan Jacobsen, next door neighbor to Mr. Kenton, stated that he had tried to do something about the speed on Cascade several years previous; that he had turned in a packet of information including reports of incidents on Cascade from his neighbors; and that he was told that something would be done.

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; 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 23<sup>rd</sup> 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.

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.

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.

Town Attorney Brecher stated that, for a general tax in a non-election year, a fiscal emergency had to be declared and passed by a unanimous vote of the Town Council. He further stated that the Council had decided to present a special tax to the voters that required a 2/3 vote of the electorate and no declaration of fiscal emergency.

Mayor Egger stated that the Town Council had conducted two budget hearings and had received a report from the Finance Committee about the dire state of the Town's finances; that there had been a large increase, \$425,000, in the amount the Town had to pay to the Public Employees Retirement System; that the State budget had taken away approximately \$108,000 from our local revenues; that the State had taken two million dollars from the Town's property taxes in the past 12 years; that there was a fiscal emergency in the Town of Fairfax, though a declaration was not necessary for a special tax; that the Town paid out \$70,000 to a claim for a trip and fall on a sidewalk and that money was needed to take care of problems on sidewalks and streets to avoid future claims and lawsuits; and that there would be a number of competing tax measures on the November ballot, but that the Town had to take action because of the shortfall.

Councilmember Ghiringhelli stated that he didn't think the ballot measure was necessary; that the Town had runaway costs that could be controlled; that the voters should be asked to choose how to run the town; that the Town had increased revenues; and that the election could put a band aid on the problem or the Town could change the way it did business.

Garry Graham, 19 Broadway owner, stated that he sympathized with the Town Council, and stated that "it was not how you got into trouble, it was how you got out," suggested that the Town show the business community that it was in a fiscal crisis; suggested that the Council look at ways to cut expenses as well as adding taxes; and show the community that it is running a tight ship.

Mayor Egger stated that the Town had looked at various options including raising the sales tax or the utility users tax and noted that most cities were scrambling for new revenues.

Garry Graham stated that he was glad to hear that the sidewalks were going to be fixed.

Stan Schriebman, 51 Hickory, stated that he had attended the two budget hearings; that a 911 fee had been discussed as well as a half-cent sales tax for public safety. He asked the Town Council what they would do if the tax measure didn't pass.

Vice Mayor Tremaine stated that they would have no choice but to cut \$400,000 or whatever was necessary.

Stan Schriebman, 51 Hickory, talked about growing up during the Depression and the sacrifices that had to be made and suggested that the Council cut the budget now.

Dave Johansen, 126 Ridgeway, stated that the Town could no longer do the things they had done in the past; suggested that the Town Council look at more than just raising taxes; and suggested that consolidation be seriously considered.

Mayor Egger noted that the tax would sunset in five years.

Town Administrator Bengyel stated that \$465,000 would be raised in 2005-06 with the \$125 special municipal services tax.

Vice Mayor Tremaine stated that the level of service provided was the issue and the question was to either maintain the current service levels or the community would ask us to cut to the bone. The tax would make the Town whole and would begin to build up the depleted reserves and would enable the Town to continue to offer 24-hour police and fire and the ability to maintain our streets and sidewalks, and to preserve our service level.

Councilmember Brandborg stated that they hadn't been able to tell the public what would be cut and that the Council should be preparing itself for various scenarios; that the Town needed to inform its voters; that the



Finance Committee had looked at revenue enhancements; and that our budget was being balanced by receivables from the State.

Councilmember Ghiringhelli explained how the Town could save one million dollars per year by consolidating police services with San Anselmo. He stated that the two towns did not need two dispatch centers and two police chiefs, and that San Anselmo could service Fairfax for one million dollars per year.

Mayor Egger stated that Ordinance No. 228, authorizing the Town to join PERS, wouldn't provide money for the retirement costs for San Anselmo employees; that the Fairfax Police Department had always been open 24 hours, that not having it open 24 hours could save money but that the citizens wouldn't like it. He stated that he disagreed with Councilmember Ghiringhelli.

Councilmember Bragman stated that Fairfax did not control its own fiscal destiny at the local level; that Fairfax had matured as a community and that expectations had changed; that the citizens had the choice to maintain the level of services; that police services were intrusive by nature and he didn't think they should be out of local control; that the biggest single increase to the budget was the additional \$130,000 in pension costs for the fire service; and that the choice would be the people's.

Councilmember Brandborg stated that the Town existed to provide public safety and roads.

Mayor Egger stated that the increase was \$339,000, not \$429,000, as he had previously stated.

Councilmember Brandborg stated that she would like accurate figures to be provided by the Finance Director.

There was a discussion about the proposed wording for the ballot language and the proposed ordinance.

Vice Mayor Tremaine stated that the Town was asking the residents to keep the Town whole during the time of State take-aways and fiscal crisis. He suggested that the language reflect that. Councilmember Ghiringhelli stated that, if the tax didn't pass, the police department wouldn't be the first thing cut, and that to infer that in ballot language was disingenuous. He further stated that, for the sake of honesty, paying for pensions and replenishing the reserves should be added to the language.

Vice Mayor Tremaine made a motion to adopt the language presented with the addition of a statement about making up for the State takeaways that was seconded by Councilmember Ghiringhelli and later withdrawn.

Councilmember Brandborg stated that a special tax should be more specific.

Town Attorney Brecher agreed with Councilmember Brandborg that, with all the departments included in the language, it could be construed as a general tax.

Mayor Egger suggested that the language read, after "for the specific purposes of public safety," as follows, "including police, fire, emergency medical, hazard/safety improvements for streets and sidewalks."

Vice Mayor Tremaine stated that the tax was to allow for State take-aways to maintain services and that wording to that effect should be included.

Stan Schriebman, 51 Hickory, stated that new taxes imposed a hardship on Seniors on fixed incomes, single parents and young families; that Councilmember Ghiringhelli was the only Council member running a successful business; and urged the Council to make the difficult decisions instead.

M/S, Egger/Tremaine, Motion to adopt Resolution No. 2337, A Resolution of the Town Council of the Town of Fairfax Requesting the Board of Supervisors of the County of Marin, California, to Provide for the Consolidation of a Special Ballot Measure Election with the Presidential General Election to be held on November 2, 2004, with amendments to Ordinance No. 707, Exhibit "A," after "public safety" to read, "including police, fire, emergency medical and public works which includes hazard/safety improvements to our public streets and sidewalks."

Roll Call Vote:

Bragman: AYE; Brandborg: AYE; Ghiringhelli, NO; Tremaine: AYE; Egger: AYE

Adoption of Resolution No. 2336, A Resolution of the Town Council of the Town of Fairfax setting the ballot language

M/S, Tremaine/Bragman, Motion to adopt Resolution No. 2336, A Resolution of the Town Council of the Town of Fairfax setting the ballot language consistent with the language adopted for Resolution No. 2337.

Roll Call Vote:

Bragman: AYE; Brandborg: AYE; Ghiringhelli, NO; Tremaine: AYE; Egger: AYE

Review of Agenda

The Town Council reviewed the agenda at 11:05 p.m. and determined that they would address the Consent Calendar and items 12, 18 and 23, concerning Discussion/Consideration of the letter from the Marin Sonoma Mosquito and Vector Control District regarding their decision to not comply with Fairfax's pesticide "neighbor notification" law; 32 Power Lane; Discussion/Consideration of adoption of Resolution No. 2342, A Resolution of the Town Council of the Town of Fairfax approving the sale of Town owned property, option C, to Denise Dunn; Assessor's Parcel No. 002-141-35"; and Report on 6 San Gabriel abatement proceedings.

Discussion/Consideration of adoption of a Negative Declaration relative to the Cascade Drive bank stabilization project in the vicinity of 570 Cascade Drive

Discussion/Consideration of adoption of Resolution No. 2338, a Resolution of the Town Council of the Town of Fairfax increasing fees for planning entitlements and related permits to cover the incurred costs to the Town of processing said entitlements and permits

Adoption of Resolution No: 2339, a Resolution of the Town Council adopting a street and Roadway Impact Fee to Provide for the Repair and Maintenance of damaged Streets and Roads caused by Construction Activities

Adoption of Resolution No: 2340, a Resolution of the Town Council adopting a street and Roadway Impact Fee to Provide for the Repair and Maintenance of damaged Streets and Roads caused by Refuse Vehicles

Adoption of Resolution No. 2341, A Resolution of the Town Council of the Town of Fairfax adopting a revised fee schedule for the rental of town facilities

These five items were continued to the August 17, 2004 meeting.

32 Power Lane: Discussion/Consideration of adoption of Resolution No. 2342, A Resolution of the Town Council of the Town of Fairfax approving the sale of Town owned property, option C, to Denise Dunn; Assessor's Parcel No. 002-141-35

Town Attorney Brecher presented the staff report and recommended approval of the resolution approving the sale.

Councilmember Brandborg stated that it seemed inappropriate to designate the money received from the purchase of the property to Open Space when the Council was asking the citizens to pass a tax measure to help the Town continue services because of a deficit in the general fund.

Mayor Egger requested that the staff research the original purchase of the property by the Town to determine whether or not it was purchased with State Park Bond money before designating where the funds received

from the sale would be placed. He suggested placing the funds in a special reserve account with future determination to be made by the Town Council.

M/S, Ghiringhelli/Tremaine, Motion to adopt Resolution No. 2342 with amendment to #5 of the Resolution to read, "The proceeds of said sale shall be deposited in a special reserve account with future determination to be made by the Town Council for its use."

AYES: All

Second Reading and Adoption of Ordinance No. 705, An Ordinance of the Town of Fairfax imposing restrictions on wood burning appliances, including a ban on open fireplaces for new residences and 50% remodels to reduce air pollution

This item was continued to August 17, 2004.

### CONSENT CALENDAR

Approval of cash disbursements for July, 2004

Approval of Town Council Minutes for July 6, 17 and 24, 2004

Adoption of Resolution No. 2343, A Resolution of The Town Council of the Town of Fairfax setting the rate for the Pension Override Tax for Fiscal Year 2004-2005

M/S, Ghiringhelli/Tremaine, Motion to approve the Consent Calendar with changes to the minutes: To the minutes of July 6<sup>th</sup>, on page 2, to add "and Ruth Horn" as part of the motion to appoint members of the Open Space Committee and to page 10, and, on page 10, to change the wording of the motion regarding MERA to read, "Motion to direct the Town's appointee to MERA to inform the board that the Town Council supports the Town of Tiburon in their request to relocate antennae to sites away from residences, to direct our MERA representative to vote consistent with the direction of the Town Council, and to inform the Town of Tiburon of the decision to support them.." To the minutes of July 17<sup>th</sup>, on page 4, to delete "because the YMCA program was not what it should be" in the sixth paragraph.

AYES: All

### OLD BUSINESS

Discussion/Consideration of a policy for reimbursement of Town Attorney costs in planning, building and code enforcement matters, Egger

This item was continued to August 17, 2004.

Report on 6 San Gabriel abatement proceedings, Ghiringhelli

Planning and Building Services Director Kirkey presented the staff report and stated that the property owner had made quite a bit of progress and suggested that the staff provide a report to Council on further progress at the September meeting.

Councilmember Ghiringhelli suggested that there should be a timeline established for the completion of the project and that some type of progress report should be sent to the neighbors.

Councilmember Brandborg clarified with staff that a survey was necessary before plans for the construction could be submitted.

Director Kirkey stated that the surveyor had been at the site and that a survey would be forthcoming.

Councilmember Bragman expressed concern about security at the site which he stated had been an issue for months.

Mr. McDonald, property owner of 6 San Gabriel, stated that the security issue would be addressed the following day and the work completed by the end of the week.

Councilmember Bragman suggested that staff be sent out to confirm the security measures had been implemented.

It was the consensus of the Council to have staff draft a letter to the neighbors on the status of the property.

Report to the Town Council on the results of the radar trailer calculations of speeds on Cascade Drive between Laurel and Canyon

Discussion/Possible reconsideration of decision regarding allocation of the Dunn monies to be paid for the purchase of Town property to Open Space fund during time of fiscal shortfall, Brandborg

Discussion/Reconsideration of decision to approve attendance of Council member(s) at the League of California Cities Conference in Long Beach September 17-19, 2004, at the cost of approximately \$1,000 per person, Brandborg

Discussion regarding update on combined services with San Anselmo, Ghiringhelli

These four items were continued to the August 17, 2004 meeting.

Discussion/Consideration of the letter from the Marin Sonoma Mosquito and Vector Control District regarding their decision to not comply with Fairfax's pesticide "neighbor notification" law

Mayor Egger stated that the Marin Sonoma Mosquito and Vector Control District (MSMVCD) was telling people that they could notify them to be placed on a "no spray" list, but that they refused to put the Town of Fairfax on such a list. He suggested that the District be given a Public Records Act request for information about requests from Fairfax residents for spraying and for not spraying. He also stated that the spraying might qualify as a project under CEQA and therefore require an Environmental Impact Report.

Town Attorney Brecher stated that the Marin Sonoma Mosquito and Vector Control District (MSMVCD) had indicated that they would not abide by our Neighbor Notification Ordinance and that there were two ways to proceed. One way to proceed was to consider the letter from Shanahan, the attorney for MSMVCD, as an action and to appeal the action to the State Director of Health Services. The second way to proceed would be to wait for the actual spraying to take place and the action would be by our public safety employees enforcing the ordinance. He further stated that it would be difficult to file an administrative appeal petition with the State by the deadline of Thursday, August 5<sup>th</sup>.

M/S, Egger/Bragman, Motion to direct the Town Attorney to prepare and file an administrative appeal petition with the Director of the State Department of Health Services in response to the letter from MSMVCD's attorney.

Roll Call Vote:

Bragman: AYE; Brandborg: ABSTAIN; Ghiringhelli: NO; Tremaine: AYE; Egger: AYE

Designation of voting delegate for 2004 League of California Cities annual conference

Discussion/Consideration regarding Marin Municipal Water District rate increases with possible letter sent to reconsider stated increases, Ghiringhelli

Report on status of dragon sculpture behind the Pavilion, Bragman

Discussion/Consideration of the formation of a Disaster Preparedness Subcommittee of the Town Council, Bragman

These four items were continued to the August 17, 2004 meeting.

Mayor Egger adjourned the meeting at 11:47 p.m. to Tuesday, August 17, 2004, at 7:30 p.m., at the Women's Club, 46 Park Road.



## TOWN OF FAIRFAX

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

August 9, 2004

John Owens and Diana Dullaghan  
6 June Court  
Fairfax, CA 94930

### NOTICE OF TOWN COUNCIL ACTION

**RE: 190 Frustuck Avenue; Appeal of the Planning Commission's denial on May 20<sup>th</sup>, 2004 of a Hill Area Residential Development Permit and an Encroachment Permit to construct a 2,523s.f. single family residence with an attached 430s.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 § 15303(e).**

Dear Mr. Owens and Ms. Dullaghan,

On August 3, 2004 the Fairfax Town Council overturned the Planning Commission's denial of the above application and approved the application subject to the following conditions:

- The parking structure shall be an un-covered parking deck.
- A deed restriction shall be applied to the storage area beneath the un-covered parking deck restricting conversion of the storage area to a residential use and/or an accessory dwelling unit.
- Any tree(s) identified for retention and harmed during construction shall be replaced with suitably mature trees.
- Existing trees 4,5,6,7 as outlined in the revised plan dated August 2, 2004 and other trees as identified in the June 18, 2004 plan shall be retained.
- Six 15' high trees shall be planted as proposed in the revised plan dated August 2, 2004.
- Conditions 2-10 as outlined in the April 15<sup>th</sup>, 2004 Staff Report.
- Conditions 1, 2, 3 & 5 as outlined in the letter from Arthur A. Chartock, Architect submitted at the August 3, 2004 Town Council meeting.

The Story Poles for the structure incorporating the changes as outlined in the above-described conditions, must be erected 10 days prior to the public hearing on September 8, 2004.



# TOWN OF FAIRFAX

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

September 13, 2004

John Owens  
6 June Court  
Fairfax, CA. 94930

## NOTICE OF DESIGN REVIEW BOARD ACTION

RE: **190 Frustuck Avenue**; design review of a 2,523 s.f. single-family residence and 430 s.f. cardeck; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application # 04-14; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; CEQA categorically exempt per § 15303(e).

Dear Mr. Owens

On September 8, 2004, the Fairfax Design Review Board approved the above referenced application subject to the following conditions of approval:

1. This approval is limited to the development illustrated on the plans submitted for design review by Peter Gang of Common Sense Design, pages A1 through A5 and dated 8-30-04.
2. Prior to issuance of a building permit the applicant or his assigns shall:
  - a. Submit a construction plan to the Public Works Department which may include but is not limited to the following:
    - Construction delivery routes approved by the Department of Public Works.
    - Construction schedule (deliveries, worker hours, etc.)
    - Notification to area residents
    - Emergency access routes
  - b. The applicant shall prepare and file with the Public Works Director, a video tape of the roadway conditions on the construction delivery routes (routes must be approved by Public Works Director). This condition may also be waived by the Public Works Director.
  - c. The foundation and retaining elements shall be designed by a structural engineer certified as such in the State of California. Plans and calculations of the foundation and retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Engineer.

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d. The grading, foundation, retaining, and drainage elements shall also be stamped and signed by the site geotechnical engineer as conforming to the recommendations made by the project engineer.

e. Prior to submittal of the building permit plans the applicant shall secure written approval from the Ross Valley Fire Authority noting the development conformance with their recommendations.

f. The applicant shall secure a tree cutting permit from the Town prior to removal of any on-site trees over 24 inches in circumference measured 24 inches from the ground. To further minimize impacts on trees and significant vegetation, the applicant shall submit plans for any utility installation (including sewer, water, drainage) which incorporates the services of a licensed arborist to prune and treat trees having roots 2 inches or more in diameter that are disturbed during the construction, excavation, or trenching operations. In particular, any cross country utility extensions shall minimize impacts on existing trees. Tree root protection measures may include meandering the line, check dams, rip rap, hand trenching, soil evaluation, and diversion dams. Any trimming of trees shall be supervised by a licensed arborist. *Moritz Arboricultural Consulting shall make recommendation on how to ensure the continued good health of tree # 15 during and after construction and that he be on site during the project grading.*

g. Submit a record of survey subject to review by the Town Engineer prior to issuance of the building permit.

h. Pruning should be conducted when the trees are dormant. Deciduous trees should be trimmed during the winter and evergreen species during July and August.

3. During the construction process the following shall be required:

a. The geotechnical engineer shall be on-site during the grading process (if there is any grading to be done) and shall submit written certification to the Town staff that the grading has been completed as recommended prior to installation of foundation and retaining forms and piers.

b. Prior to the concrete form inspection by the building official, the geotechnical and structural engineers shall field check the forms of the foundations and retaining elements and provide written certification to the Town staff that the work to this point has been completed in conformance with their recommendations and the approved building plans. The building official shall field check the concrete forms prior to the pour.

c. All construction related vehicles including equipment delivery, cement trucks and construction materials delivery vehicles shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case-by-case basis with prior notification from the project sponsor.



d. Additionally, any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.

4. Prior to issuance of an occupancy permit the following shall be completed:

a. The geotechnical engineer shall field check the completed project and submit written certification to the Town Staff that the foundation, retaining, grading and drainage elements have been installed in conformance with the approved building plans and the recommendations of the soils report.

b. The Town Engineer shall field check the completed project to verify that the work has been installed as per approved plan.

c. The Planning Department shall field check the completed project to verify that all design review and planning commission conditions have been complied with including installation of landscaping and irrigation, if applicable.

5. Excavation shall not occur between October 1st and April 1st. The Town Engineer has the authority to waive this condition depending upon the weather.

6. The roadways shall be kept free of dust, gravel and other construction materials by sweeping the roadway, daily, if necessary.

7. During construction developer and all employees, contractor's and subcontractor's must comply with all requirements set forth in Ordinance # 637 (Chapter 8.26 of the Town Code), "Storm Water Management and Discharge Control Program."

8. Notwithstanding section # 17.38.050(A) of the Fairfax Zoning Ordinance, any changes, modifications, additions or alterations made to the approved set of plans will require a modification of this Hill Area Residential Development Permit. Any construction based on job plans that have been altered without the benefit of an approved modification of this Hill Area Residential Development Permit will result in the job being immediately stopped and red tagged.

9. No building permits shall be issued to expand this residence without a modification of the approved Hill Area Residential Development permit and approval by the Design Review Board.

10. The applicant or owner shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, and employees to attack, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department, committee, or agency of the Town concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and

hold harmless shall be subject to the Town promptly notifying the applicant or owner of any said claim, action or proceeding and the Town's full cooperation in the applicant's or owner's defense of said claims, actions or proceedings.

11. A deed restriction shall be signed notarized and recorded indicating the storage area beneath the un-covered parking deck shall not be converted to a residential use and/or an accessory dwelling unit.

12. Any tree(s) identified for retention and harmed during construction shall be replaced with suitably mature trees.

13. The existing trees 4, 5, 6, and 7 as outlined in the revised plan dated August 2, 2004 and other trees as identified in the June 18, 2004 plan shall be retained.

14. Six 15' high trees shall be planted as proposed in the revised plan dated August 2, 2004.

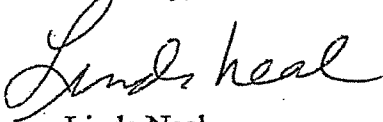
#### GENERAL INFORMATION

*If plans or other supplemental information were submitted for the Design Review Board hearing and the applicant would like to have them back, they must be picked up within 10 days of the date of the hearing or they will be disposed of.*

*There is a 10-calendar day appeal period during which any concerned citizen can appeal any Design review Board action. Contact the Planning Department staff at the Fairfax Town Hall for further information on how to appeal a Planning Commission decision.*

If you have any questions regarding the Fairfax Design Review Board action please do not hesitate to contact the Fairfax Department of Planning and Building Services.

Sincerely,



Linda Neal  
Senior Planner

cc. Ken Kirkey, Director of Planning and Building Services