

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, January 15, 2014

The regular meeting was preceded by a Closed Session from 6:00 p.m. to 7:00 p.m.-
Conference with Legal Counsel- Initiation of Litigation pursuant to Government Code
Section 54956.9(c): one potential case

Conference with Legal Counsel- Anticipated Litigation pursuant to Government Code
Section 54956.9(d)(2) and (e)(1): one case

Call to Order/Roll Call:

COUNCILMEMBERS PRESENT:

Larry Bragman
Barbara Coler
Renee Goddard
John Reed
David Weinsoff

STAFF MEMBERS PRESENT:

Garrett Toy, Town Manager
Janet Coleson, Town Attorney
Michele Gardner, Town Clerk
Jim Moore, Planning Director
Mike Vivrette, Finance Director
Chris Morin, Chief of Police

Mayor Weinsoff called the meeting to order at 7:00 pm.

Approval of Agenda and Affidavit of Posting

M/S, Bragman/Reed, Motion to approve the agenda and the affidavit of posting.
AYES: Bragman, Coler, Goddard, Reed, Weinsoff

Announcement of Closed Session Action

Mayor Weinsoff stated no reportable action was taken during Closed Session.

Announcements

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

Mayor Weinsoff announced several fundraising events that would be held for Louie Vacarro Jr. including one at Deer Park Villa on February 8th. Louie was recently injured in an accident. The Council wished Louie a speedy recovery. Mayor Weinsoff also wished Poet Laureate Kay Ryan a speedy recovery from her bicycle accident.

Open Time

Ms. Jody Timms, Fairfax Representative to the Marin Commission on Aging, gave the Council a brief update.

Mr. Tony Yudice, Forrest Terrace, stated tourism in Town brings noise pollution and congestion.

Mr. Bob Stemple, Porteous Avenue, asked the Council to clarify a sentence in the Noise Control Chapter of the Fairfax Municipal Code, and provided copies to the Council.

Ms. Valerie Hood, Dominga Avenue, stated the film "Take Back Your Power" would be shown in San Rafael on February 2nd.

Mr. Steve Bower, Forrest Avenue, stated he would like Fairfax residents to be able to vote on the Elsie Bank Roadway Improvement Plan.

Mr. Dana Rosea, San Francisco resident, talked about health care issues and the high rate of breast cancer in Marin, and provided literature to the Council.

Mr. Craig Slater, Marin County Co-Coordinator of Move to Amend, discussed corporate power and democracy.

Town Manager Report

Town Manager Toy reported the Council would hold a workshop on four Bridge Projects (Spruce Road, Marin Road, Creek Road, and Canyon Road) on January 29th at the Women's Club at 6:30 p.m.

Planning Director Moore stated staff is in receipt of the application to formalize the existing second unit on the property at 76 Spruce Road. The Building Official will be reporting to the Council at its next meeting regarding the remedial work at 159 Willow Avenue.

Town Attorney Coleson reported there is a new Brown Act requirement that the minutes record the actual vote of each Councilmember for each motion.

Councilmember Bragman stated the in-ground lights at the crosswalk from the Good Earth to the Fair Anselm Shopping Center are not working. Town Manager Toy stated he would report back at the next meeting.

Council Reports and Comments

Councilmember Reed reported he attended the Transportation of Marin (TAM) Board meeting; several Fire Board meetings; the General Plan Implementation Committee (GPIC) meeting; the Holiday Pot Luck.

Councilmember Coler reported she spoke to Marin Municipal Water District (MMWD) Director Liza Cross regarding water supply and what she perceives to be limited action by the District. Director Cross has agreed to provide an update to the Council at an upcoming meeting.

Councilmember Bragman reported he attended the Fire Board meeting.

Councilmember Goddard she attended the Chamber of Commerce Holiday Party; the Youth Commission event at the Women's Club; a County of Marin Zero Waste Committee meeting and the Crafts Fair.

Mayor Weinsoff reported he attended several Chamber of Commerce meetings; several Fire Board meetings.

Reports and Presentations

Proposition 13 Reform- *Evolve: A Community Organization*

Mr. Ian Fergosi, representing Evolve, discussed how proposed reform to Proposition 13 would address the drastic budget cuts that local government has had to endure, by increasing revenue.

Consent Calendar

Approval of Town Council minutes for the December 4, 2013 meeting- Town Clerk

Approval of Financial Statement and Disbursement Reports November 2013 – Finance Director

Authorization to send a letter of concern from the Fairfax Town Council to the Marin County Open Space District about Proposed Rule Changes in Elliott Nature Preserve- Vice Mayor Bragman, Councilmember Reed

Adoption of resolution in support of removing commercial properties from Proposition 13 to close the loophole to avoid tax assessments- Councilmember Reed

Adopt an administrative policy for the disposition of Town surplus personal property- Town Manager

Sponsorship of Little League Opening Day Parade March 2014- Town Manager

Adoption of a resolution directing staff to develop a process and requirements for posting noticing signs for projects proposed in Town's commercial zones- Town Manager

Approval of Agricultural Community Event Farmers Market to continue to operate a Farmers' Market in Bolinas Park- Town Manager

Adopt a resolution approving the second Amendment to the Joint Powers Authority (JPA) agreement for the Ross Valley Fire Department- Town Manager

Revise the composition of the Town's Measure "A" advisory committee- Town Manager

Adoption of a resolution promoting voluntary water conservation efforts- Mayor Weinsoff

Ratify changes to Town Council Committee Assignments due to Reorganization- Town Clerk

Adoption of a resolution declaring Town Owned Police Department vehicles as surplus to the needs of the Town and authorizing the Police Department to dispose of same by public auction- Police Chief Marin

Councilmember Coler referred to item #4 and was concerned about misinformation.

M/S, Reed/Coler, Motion to approve the Consent Calendar with the exception of item #4 and the removal of item #6 and item #13 for discussion.

AYES: Bragman, Coler, Goddard, Reed, Weinsoff

M/S, Bragman/Reed, Motion to approve Consent Calendar item #4.

AYES: Bragman, Goddard, Reed, Mayor Weinsoff

NOES: Coler

Public Hearing

Council directed referral of a Planning Commission approval of a Conditional Use Permit, Design Review, Sign Permit, and Traffic Impact Permit to operate a gas station/convenience market at 2001 Sir Francis Drake Boulevard (APN 002-116-04). Project is categorically exempt from CEQA per 14.C.C. R. Section 15301, 15302, and 15303- *Planning Director*

Town Manager Toy presented a staff report.

Councilmember Bragman asked for clarification regarding the Encroachment Permit. He thought the encroachment was for the planter areas along Bank Street. Town Manager Toy agreed. Councilmember Bragman stated the right-of-way appeared to be about 24 feet wide and included three parking spaces. He was concerned about creating a non-conforming parking situation if the Town had to take back the right-of-way and revoke the Encroachment Permit. He noted the right-of-way was granted to Fairfax by Ms. Elsie Frustuck and he entered a copy of the Grant Deed into the record. He was concerned about a 6 to 8-foot discrepancy between the survey and the grant deed. He stated that putting a driveway in this location (intersection with Bank Street) was in conflict with the Town Code section prohibiting a driveway entrance within 30 feet of any intersection. The plans show the driveway entrance as being in the intersection.

Town Traffic Engineer Consultant David Parisi clarified the traffic study methodology approved by the Town Council, and the safety of a driveway entrance forming the fourth leg of an intersection.

Councilmember Coler was concerned about the parking, limited circulation, and the ingress/egress from the site. She asked staff to discuss the parts of the General Plan that were applicable to Conditional Use Permit Finding (C).

Councilmember Reed stated they could be putting the cart before the horse because this project could prevent the Downtown Plan from taking shape. He asked if the underground tanks were under the right-of-way. Planning Director Moore stated that was a question for the applicant. Councilmember Reed referred to Conditional Use Permit Finding (B) and asked if that could include competition with other stores. Planning Director Moore stated "yes".

Councilmember Goddard asked Mr. David Parisi, traffic engineer, to discuss the traffic report and the trip generation numbers. Councilmember Goddard asked staff to clarify the California Environmental Quality Act (CEQA) Exemptions.

Mayor Weinsoff opened the Public Hearing.

Mr. Ron Jacobs, representing PM Design Group, summarized the revisions made to the project. Councilmember Bragman had questions about the circulation for the fuel delivery. Mayor Weinsoff had questions about the proposed signage

Mr. Aji Salkhi stated the site was contaminated from the previous business and that the applicant has cleaned up the site.

Mr. Arash Salkhi, property owner, stated he could choose to sell any brand of gas. He discussed some of the revisions he has made to the project in response to requests from the Town, including parking, the second driveway, etc. He discussed how he cleaned up the contamination of the site.

Councilmember Coler thanked Mr. Salkhi for his cooperation. She had questions about the remediation and noted the report had not been submitted to the Water Resources Board. Mr. Salkhi stated he was in the process of having the claim transferred to his name because he is the new property owner.

In answer to Councilmember Reed's question about the location of the tanks, Mr. Salkhi stated they were on the West side of the property and not under the right-of-way, and that they are up-to-code.

Mr. Arash Salkhi offered to sell the property to the Town for \$650,000.

The Council took a 10-minute break at 10:00 p.m.

Town Attorney Coleson added some information about the CEQA categorical exemption issue.

Mr. John Ferrero Jr., owner of Rino Gas Station, stated they were selling the business due to health issues.

Ms. Valerie O'Donnell objected to the building of the Chevron station because it was not in compliance with the General Plan. She stated they need to support local businesses.

Mayor Weinsoff noted the time and asked the Council to consider continuation of some of the agenda items. It was the consensus of the Council to continue agenda items #6, #13, and #16.

Ms. Jennifer Hammond, Iron Springs Road, stated she submitted a revised petition to Town clerk Gardner with more signatures in opposition to the project. She discussed the decision to evaluate the application based on the Highway Commercial, instead of the Central Commercial, code.

Mr. Mark Squires, Frustuck Avenue, referred to the 24-foot easement and stated the Council should consider the best use of this piece of property. He was opposed to giving this piece of property away.

Ms. Mallory Geitheim, Willow Avenue, had questions about the traffic report.

Mr. David Wick, Cascade Drive, stated he was opposed to a Chevron station in Fairfax.

Ms. Rachel Vaughan, Redwood Road, stated the Conditional Use Permit Findings could not be made.

Mr. Randy Ingle stated he was opposed to allowing a corporate entity to influence the spirit of Fairfax.

Mr. Christopher Kinten, Cascade Drive, discussed the economic viability of the Town and read two paragraphs from the General Plan

Mr. Frank Egger, Meadow Way, discussed the history of Bank Street and stated the applicant's

survey was in conflict with the deed for the right-of-way.

Ms. Jane Richardson Mack stated a Chevron sign would be indecent and offensive to the senses, and that the building does nothing to preserve the community character.

Wendy opposed a gas station at this location.

Mr. Brandon Barber was opposed to another gas station in Fairfax. He asked the Council to look to the General Plan.

Mr. Seth Goddard, Olema Road, was opposed to a gas station at this location.

Ms. Norma Fragoso agreed with everything said. She stated allowing the project would be a grant of special privilege.

Jolen, Cascade Drive, urged the Council to deny the project.

Mr. Tony Yudice, Forrest Terrace, stated this project, along with the Elsie Bank Roadway Project, would require two new stop lights in Town. Residents should be able to vote on this project.

Ms. Taylor Watts, Marin Road, stated allowing toxins and contaminants to flow to the center of Town was counterintuitive to the Town's goals.

Ms. Hannah Doress, Porteous Avenue, agreed with most of the statements made. She stated the issue of climate change was deeply embedded in the General Plan.

Ms. Jody Timms stated a gas station at this location was contrary to the General Plan. She stated there would be less of a dependence on oil in the future.

Peter, Claus Drive, urged the Council to support the people of Richmond by doing the right thing.

Ms. Michelle Simonson was opposed to a Chevron station in Fairfax.

Ms. Debra London, Hillside Drive, agreed with the comments made, and stated there were too many outstanding issues to approve the project.

Mr. Mark Solomons stated the Planning Commission made a mistake.

Mr. Sierra Salin agreed with the comments that had been made.

Mr. Mark Bell, Dominga Avenue, asked about the cost to remediate the site.

Mr. Salkhi stated there were 14,000 cars that drive through Fairfax and he was looking to capture their business. He wanted to reopen the location as a gas station, regardless of the brand. He stated he has met all the Town's requirements and is willing to cooperate.

Mayor Weinsoff closed the Public Hearing.

The Council took a 5-minute break at 11:30 p.m.

Councilmember Bragman asked how the driveway came to be a part of the project and had

questions about the driveway issue. Planning Director Moore stated the driveway was a Planning Commission Condition of Approval.

Councilmember Goddard stated there had been no talk about bicycle commuting on these major thoroughfares. She had concerns about sight lines.

Councilmember Reed was concerned about pedestrian access along Broadway.

Councilmember Coler stated she was struggling with making the Conditional Use Permit findings, and in particular Finding (C). She discussed the Land Use Element, the Circulation Element, the Conservation Element, and preserving the community/neighborhood character. She referred to Finding (A) and noted approval of the application could be considered a grant of special privilege due to the Encroachment Permit for the right-of-way. Not granting the Encroachment Permit could cause a lot of circulation issues and potential safety hazards. She referred to Finding (D) and stated she was struggling to make this finding.

Mayor Weinsoff stated the Council was responsible for ensuring the quality of life of residents and maintaining the spirit of Fairfax. Decisions should be consistent with these goals and the goals of the General Plan. They are also responsible for the budget.

Councilmember Bragman stated this is a valuable piece of property and he was confident that it would be a winner for the property owner. The applicant is a franchisee of Chevron and this provides an interesting backdrop. The question is whether or not the Town of Fairfax intends to uphold the integrity of the democratic decision-making process and specifically the land use and planning principles adopted in the General Plan. He stated was not able to make all the required findings. No notice was given to the public that an Encroachment Permit was sought. Approving the project and granting the applicant the right-of-way would back the Town into a corner. The project would create a lot of parking and circulation problems. Granting a Conditional Use Permit would disregard the spirit and the letter of the General Plan. He had questions about the actual dimensions of the right-of-way since there is a conflict between the survey and the grant deed. The parking spaces do not fulfill the minimum required for the square footage of the building- this could be considered a special privilege. The placement of a driveway on the North side would violate Fairfax Town Code which prohibits a driveway within 30 feet of an intersection.

Councilmember Reed stated he agreed with many of the comments made by Councilmember Bragman. He stated it comes down to a right-of-way issue and noted the use would be a special privilege. Allowing this right-of-way to be used by the project would preclude the conversation about the Downtown Plan. He questioned whether the other businesses would be able to compete. He stated that Mayor Weinsoff had made an interesting point about the need to balance the budget. He would like to see gasoline sold for a bit more and have the surplus applied to alternative transportation. They need to lower the carbon footprint. He could not make the Conditional Use Permit Findings.

M/S, Bragman/Reed, Motion to direct staff to draft a resolution with findings that reflect the conclusions that the Council has come to during this hearing process. The project does not meet the required findings per Fairfax Code Sections 17.032.060. The resolution should include the factual basis for this conclusion that the project does not meet Sections (A), (B), (C), and (D).

AYES: Bragman, Coler, Goddard, Reed, Weinsoff

Regular Agenda

Discuss/consider modifications to the Bike Spine Project- *Town Manager*

Mayor Weinsoff noted this item was continued to the February 5th Town Council meeting.

Introduction and First Reading of Ordinance No. 775 of the Town Council of the Town of Fairfax Prohibiting the Installation of Smartmeters and related equipment within the Town of Fairfax or in, along, across, upon, under and over the public streets and places within the Town of Fairfax for three years- *Vice Mayor Bragman*

Councilmember Bragman presented a report.

Mayor Weinsoff opened the meeting to public comments. There were no comments.

Town Attorney Coleson stated she would like to add the following language to Section I: "Chapter 8.68 is hereby added to the Municipal Code of the Town of Fairfax".

M/S, Bragman/Coler, Motion to introduce and waive first reading of Ordinance No. 775, an Ordinance of the Town Council of the Town of Fairfax Prohibiting the Installation of Smartmeters and Related Equipment within the Town of Fairfax or in, along, across, upon, and under and over the Public Streets and Places within the Town of Fairfax for Three Years with the amended language suggested by the Town Attorney.

AYES: Bragman, Coler, Goddard, Reed, Weinsoff

Adopt an administrative policy for the disposition of Town surplus personal property- *Town Manager*

Mayor Weinsoff noted this item was continued to the February 5th Town Council meeting.

Ratify changes to Town Council Committee Assignments due to Reorganization- *Town Clerk*

Mayor Weinsoff noted this item was continued to the February 5th Town Council meeting.

M/S, Bragman/Goddard, Motion to adjourn the meeting at 12:35 a.m.

AYES: Bragman, Coler, Goddard, Reed, Weinsoff

Respectfully submitted,

Toni DeFrancis
Recording Secretary