

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, July 2, 2014

The regular meeting was preceded by a Closed Session from 6:00 p.m. to 7:00 p.m.-

Conference with Legal Counsel- Anticipated Litigation
Government Code Section 54956.9(d)(2) and (e)(1): two cases

Conference with Legal Counsel- Existing Litigation
Government Code Section 54956.9(d)(1)
Egger, et al. v. Gardner, Marin Superior Court No. CV1401704

Call to Order/Roll Call:

COUNCILMEMBERS PRESENT:

Larry Bragman
Barbara Coler
Renee Goddard
John Reed
David Weinsoff

STAFF MEMBERS PRESENT:

Garrett Toy, Town Manager
Michele Gardner, Town Clerk
Janet Coleson, Town Attorney
Jim Moore, Planning Director
Mike Vivrette, Finance Director
Mark Mills, Fire Chief

Mayor Weinsoff called the meeting to order at 7:05 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, Mayor Weinsoff

Announcement of Closed Session Action

Mayor Weinsoff announced the Council met in Closed Session and made no decisions nor provided direction to staff.

Announcements

Mayor Weinsoff made the announcements as they appeared on the agenda. He added the following announcements: the Request for Proposals for the Fairfax Artist-in-Residence position and Creek Clean Up Day. Councilmember Coler announced there would be a fund raising event held at 19 Broadway on Thursday, July 17th for the Open Space acquisition of Sky Ranch.

Open Time

Mr. Joseph Odem, Porteous Avenue, asked whether individuals would be asked to give his or her name and address while giving public testimony. He noted the standard procedure is to request, but not require, that individuals give out this information. He cited Brown Act Section

54954.3(c), which states that public agencies shall not prohibit public criticism of their policies, procedures, programs, or services.

Ms. Valeri Hood, Dominga Avenue, expressed concern about traffic impacts that would result from the County's rezoning of parcels along the Sir Francis Drake Boulevard corridor.

Mr. John Sergeant, Ridge Road, stated it was important for individuals to identify themselves when giving public testimony since the comments from Fairfax residents should be given more weight. Town Attorney Coleson stated the Brown Act states that an entity may not require a speaker to give his or her name and address.

Liesel, a Fairfax resident, thanked the Council for making the meetings a safe place to speak and for providing a forum for input.

Mr. Clayton Smith, Mill Valley, stated he used to live in Fairfax and is concerned about the condition of the Town.

Ms. Jody Timms, Fairfax representative on the Commission on Aging, gave a brief update: 1) The Commission had a table at the Fairfax Festival; 2) The next Commission meetings would be on Wednesday, July 9th and Wednesday, August 7th; 3) The Ross Valley Seniors were meeting tomorrow at the Women's Club for the Annual BBQ; 4) The Civil Grand Jury released a report titled "Aging In Marin- What is the Plan?"

Mr. Steven Nestle, San Rafael, stated what happens in Fairfax impacts all of Marin County. Marin County needs more senior housing. He urged the Council to take a look at the Rotary Village in Lucas Valley.

Ms. Laura Seligson, San Anselmo, stated she was concerned about traffic, loss of habitat, and the change in the character of Marin County. She would like to see existing buildings re-purposed for affordable housing.

Ms. Hannah Doress, Porteous Avenue, requested a clarification of the Brown Act because these meetings are now posted on the Internet and have become very public. There are privacy concerns.

Ms. Wendi Kallins stated one does not need to live in Fairfax to care about Fairfax. Many people work, shop, and travel through Fairfax on a daily basis.

Consent Calendar

Adoption of a Resolution supporting and endorsing a proposed County of Marin parcel tax as the funding mechanism for the second generation Marin Emergency Radio Authority public safety communications system- Town Manager

Adoption of a Resolution of the Town Council of the Town of Fairfax Authorizing the Filing of an Application for Funding Assigned to MTC and Committing any Necessary Matching Funds and Stating the Assurance to Complete the Project- Town Manager

Certification of the Petition for a Referendum against Ordinance No. 778- Town Clerk

Status update on the Community Forum regarding possible General Plan and Housing Element amendments- Town Manager

Mayor Weinsoff suggested combining items #4, #5, and #6.

Mr. Frank Egger objected to combining these items since item #6 was a Public Hearing and noticed as such. He stated they are three separate items, each with nuanced issues.

Mr. Michael Mackintosh agreed with Mr. Egger.

Councilmember Bragman stated they could pull Consent Calendar items #3 and #4 and discuss them separately. Town Attorney Coleson stated there was no issue with combining the agenda items as long as they held the Public Hearing.

M/S, Coler/Reed, Motion to approve the Consent Calendar with the removal of items #3 and #4.
AYES: Bragman, Coler, Goddard, Reed, Mayor Weinsoff

Certification of the Petition for a Referendum against Ordinance No. 778- Town Clerk

Town Clerk Gardner noted the July 2nd date in her staff report should be changed to June 2nd.

Mr. Michael Mackintosh stated recognizing the deficiencies in the petition at an early date would have allowed for a more open forum.

Mr. Frank Egger stated this was the third referendum presented to the Town Council. He commended Town Clerk Gardner for her work.

M/S, Bragman/Reed, Motion to accept the certification of the petition for a referendum against Ordinance No. 778.

AYES: Bragman, Coler, Goddard, Reed, Mayor Weinsoff

Regular Agenda

Mayor Weinsoff asked Town Manager Toy to combine the staff reports for items #4, #5, and #6.

Status update on the Community Forum regarding possible General Plan and Housing Element amendments- Town Manager

Discuss/consider the repeal of Ordinance No. 778 (by adoption of Ordinance No. 780) or placement on the November 2014 ballot the repeal of Ordinance No. 778 which, among other things, rezoned properties from CH (Highway Commercial) to CC (Central Commercial), added new PDD (Planned Development District) zoned properties, and rezoned properties PD (Public Domain)- Town Manager

Public Hearings

Consideration of Ordinance No. 780 repealing Ordinance No. 778, a zoning ordinance that amended Town Code Chapters 5.52, 17.012, 17.020, 17.092, 17.096, and 17.104, and added Chapter 17.130, rezoned all parcels then-zoned Highway Commercial (CH) to Central Commercial (CC) Zone, rezoned APN 002-112-13 and 001-104-12 from Limited Commercial (CL) to Planned Development District (PDD); rezoned APN's 174-070-17 and 174-070-50 from UR-7 to PDD, added a Public Domain (PD) Zone; rezoned selected parcels to Public Domain (PD), provided for the supremacy of the Zoning Map over the text in events of discrepancy, corrected typographical errors, and updated the Town Zoning Map to reflect these zoning changes, in its entirety- Town Manager

Town Manager Toy presented a staff report for items #4, #5, and #6.

Councilmember Coler asked if there would be several community forums/workshops. Town Manager Garrett stated “yes”.

Mr. James Fair, Canyon Road, asked for clarification on some of the terms in the staff reports.

Ms. Mimi Willard stated it was a great idea to have a community forum and it should be an open, inclusive, flexible process. She was opposed to the use of a facilitator since that environment is often controlled and very structured. Town Manager Toy stated staff thought it would be better to bring in a neutral third party.

Mr. Clayton Smith cautioned the Council on the use of a facilitator- out of concern for its being a counterproductive experience. He cautioned against using a firm involved with ABAG, MTC, or Plan Bay Area.

Ms. Kiki LaPorta, Glen Drive, stated it was a good idea for individuals giving testimony to acknowledge whether or not they live or work in Fairfax.

Liesel, Fairfax, suggested holding different types of community forums with a facilitator. The choice of a facilitator is very important. She asked the Council to think of other ways to involve residents.

Mr. Michael Mackintosh stated perhaps a staff person could act as the facilitator- the Town could save some money.

Ms. Mallory Geithem, Fairfax, stated she had acted as a facilitator in the past and it would be difficult to find somebody who would be unbiased. One of the staff members could do a good job.

Mr. James Fair, Canyon Road, stated he supported some increased housing in Fairfax done a sensibly. He did not want housing in the downtown area to change the downtown culture. He asked if people really wanted to live downtown. He liked the idea of some increased housing on the periphery. He stated traffic was a concern.

Mr. Phil Green, Fairfax, stated he was speaking as an individual and not a member of the Planning Commission. Ordinance No. 778 originated with the owners of certain properties who stepped forward to offer affordable housing on their properties. Development applications would be subject to extensive hearings. Fairfax must plan for the future.

Councilmember Bragman stated the impetus for this process came from the State of California- there were government codes that mandated this process. In addition, the State of California required entities to make an inventory of potential affordable housing sites.

Mr. Mark Bell, Dominga Avenue, stated staff should present a map depicting the zoning designations at the upcoming community forum. He would rather not have any growth but the School Street Plaza, Lutheran Church, and Olema Road site seemed like reasonable areas for some development.

Ms. Liz Froneberger, Fairfax, discussed the need for affordable housing for young people and seniors.

Mr. Frank Egger, Meadow Way, stated in regard to item #5, he supported the repeal of Ordinance No. 778. He stated the ordinance was beyond salvaging, and that it did not create any affordable housing units. He stated he would dismiss his lawsuit the day after the Council rescinded Ordinance No. 778.

Ms. Yvette Wakefield stated she was not able to find an affordable apartment because none existed. She stated there should be no development along Sir Francis Drake Boulevard due to health concerns created by pollution from traffic.

A resident on Dominga Avenue stated the last two speakers had made some good points. Housing for the elderly should be rent-controlled. The County was maxed out on water.

Ms. Lynn Corwin, Cascade Drive, stated the proposal would not provide for housing for students and low-income residents, and would not solve people's problems. She was against the proposed zoning changes.

Mr. Christopher McManus stated the referendum was a product of manipulated data, misleading information, and exaggerations. He would like to see the Housing Element brought into the twenty-first century. The new General Plan was a good plan.

Ms. Wendi Kallins stated building affordable housing units would solve somebody's problem. She was concerned that Marin County would turn into a playground for the über-rich. She stated the Housing Element was a brilliant document that reflected the character of Fairfax and she asked the Council not to dismantle it.

Ms. Diane Hoffman, Porteous, stated the issue is not about low-income housing, as most large developments did not include many affordable units.

Mr. David McDonald, Fairfax, stated there were a lot of changes in Fairfax. Fairfax desperately needed rent control.

Mr. Bob Pendoley, representing the Marin Environmental and Housing Collaborative, stated their mission was to support affordable housing on in-fill sites and mixed-use projects. The Fairfax General Plan and Housing Element were excellent. He recommended postponing action on Ordinance No. 778 until after the public forums were held.

Mr. David Smadbeck, President of the Chamber of Commerce, stated Fairfax had traffic and parking problems. The layout of the Town was also a problem. Many employees in Fairfax did not live in Fairfax. Fairfax was in a unique position geographically and could not withstand large growth and/or development. He supported the senior housing project for the Lutheran Church property.

Ms. Bell, Dominga Avenue, stated it would be helpful to know the rental prices for the proposed affordable housing. Two-story living units in the downtown would not spoil its charm.

Ms. Amy Gosman, member of the Council of the Christ Lutheran Church, stated it was difficult to please everybody all of the time. She hoped they could keep their funding in place for the proposed affordable housing project. They were grateful for all the support.

A resident pointed out that affordable housing was not the issue. The issue was the huge amount of public money that was wasted on this process. She discussed possible projects throughout the Ross Valley and stated the residents of Fairfax needed to decide on the future of Fairfax.

Ms. Valeri Hood stated the Council should sit down with other Councils in the Ross Valley to discuss the future of the valley. She was concerned about the traffic through the valley and on Highway 101. She stated Ordinance No. 780 was not about affordable housing.

Ms. Michelle Garcia thanked the Council for reaching out to the various communities in Fairfax. She would like to see a series of community forums with childcare options for families.

Liesel submitted a list of ideas on this issue obtained from Change.org. She would like to see a continued discussion on the issue of affordable housing and looked forward to the community forums. There were many ways to create affordable housing.

A resident stated the Planning Commission took appropriate action on May 29th to uphold the Town's General Plan after extensive public comment. The General Plan preserved the Town's historic character. She urged the Council to repeal Ordinance No. 778 not because it was a bad ordinance but because of the political situation that had been created. The community forums and corrections to ordinance 778 (errata) were part of the process of moving forward.

Mr. David Haskell, Glen Drive, stated he was an officer of the Fairfax Chamber of Commerce. He was in favor of the rezoning of the Highway Commercial (CH) to Central Commercial (CC). He did not want the Town prone to franchise agencies that they did not want. This issue was paramount to many residents. He supported rezoning the following three areas as PDD- School Street Plaza, the Lutheran Church property, and 10 Olema Road. Repealing Ordinance No. 778 was a "do-nothing" option.

Ms. Jennifer Hammond, Fairfax, stated she was speaking as an individual and not on behalf of any organization. She encouraged the Council to hold numerous workshops before deciding whether or not to repeal the ordinance. She supported the current General Plan and stated this document set the vision for the Town.

Ms. Jody Timms, Cascade Drive, encouraged the Council to continue the matter until July 16th. Identifying the issues, concerns, and solutions related to Ordinance No. 778 was very important. It was also important to identify options should the ordinance be repealed. All Town ordinances and document should be subject to change on an on-going basis.

Mr. James Odem, Porteous Avenue, stated most people wanted senior housing at the Lutheran Church site and were in favor of the General Plan. Ordinance No. 778 should be repealed so they could move forward, taking things one step at a time. The Lutheran Church site could be put on a fast track.

Mr. Clayton Smith, Mill Valley, stated a fresh start was needed and the one thousand people's signatures on the petition needed to be respected. He stated MTC grants were a way to force agencies to behave in a way they would not otherwise. He stated the money goes to consultants.

Mr. Sierra Salin stated Nature was the stakeholder and not people.

Mr. Stefan Larson, Shadow Creek Court, stated he was concerned by what he had learned tonight. He was opposed to more density and more cars in the already dense corridor along Sir Francis Drake Boulevard, where he drove every day.

Ms. Hannah Doress, Porteous Avenue, supported the General Plan. She supported more community forums. There was a difference of opinion about the numbers in the plan and she suggested a diagram would help to explain where the numbers came from and how they relate. She supported the senior housing project proposed for the Lutheran Church property.

Mr. Frank Egger, Meadow Way, disagreed that items #4, #5, and #6 could be combined. In regard to item #6, he stated that Ordinance No. 778 guaranteed no affordable housing. He did not support the redevelopment of downtown Fairfax and the Sir Francis Drake Boulevard

corridor. Living wages went hand-in-hand with affordable housing and this needed to be addressed Countywide. He urged the Council to repeal Ordinance No. 778 tonight.

Ms. Mallory Geitheim stated these issues needs some clarity.

Mr. Michael Macintosh stated he would like to hear the Council and Town Attorney comment on item #6.

Ms. Pam Meigs stated she would like to hear from the Town Attorney. Town Attorney Coleson stated the public comment period is not a time for debate.

A resident stated he lost a lot of good neighbors due to high rents.

Ms. Jennifer Hammond asked if there would be a one-year hold if the repeal process started tonight.

Mayor Weinsoff closed the Public Hearing.

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

Councilmember Coler asked Town Attorney Coleson if Ordinance No. 778 could go on the November ballot even if the Council took no action on it tonight. Town Attorney Coleson stated "yes".

Councilmember Reed stated the Council should wait until after the public forum to vote on whether to repeal Ordinance 778. He stated it took time to flesh out all the details.

Councilmember Coler stated she was a member of the Affordable Housing Committee and the Countywide Community Development Block Grant that allocated funding for housing projects. She did not participate in these deliberations until May based on the advice of legal counsel but was recently advised by the Fair Political Practices Commission (FPPC) that she would be allowed to participate. She stated the community was divided and she did not see this as an argument for or against affordable housing. Ordinance No. 778 was not totally complete and was not presented as such from the beginning. It would be a mistake to take this to the ballot because it would further divide the community. She would like to take this matter up on July 16th after the community forum.

Councilmember Bragman stated that Ordinance No. 778 designated four properties for the PDD Zone. He referred to documentation from Town Council and Planning Commission meetings and stated there were some inconsistencies. The Council made better decisions when they took their time. Repeal was not a repudiation of the plan but rather recognition that there was a rush to judgment. Repeal of the ordinance would allow them to move forward. He did not want to see the matter on the November ballot.

Councilmember Goddard stated there are already unintended consequences in repealing Ordinance No. 778, including discouraging people from public service. The Council was being placed in a corner and asked to compromise the General Plan. The litigation regarding this issue was alienating and excluded people from participating in the process. The Council had a legal and moral obligation to plan for the future of Fairfax.

Mayor Weinsoff thanked everyone for his or her comments.

M/S, Coler/Bragman, Motion to continue item #5, consider the repeal of Ordinance No. 778, to the July 16th meeting.

AYES: Bragman, Coler, Goddard, Reed, Mayor Weinsoff

M/S, Coler/Bragman, Motion to continue item #6, consideration of Ordinance No. 780 repealing Ordinance No. 778, to the July 16th meeting.

AYES: Bragman, Coler, Goddard, Reed, Mayor Weinsoff

It was the consensus of the Council to continue item # 9.

Consider FY 2014-15 Proposed Operating and Capital Improvement Budget- Finance Director

Town Manager Toy presented a staff report.

Councilmember Coler had questions about the Community Engagement software.

Councilmember Reed asked about funding for a Trails Stewards position. Finance Officer Vivrette stated staff had added \$25,000 in the General Fund Park Maintenance line item. Staff also had added \$4,000 in the Open Space line item.

Councilmember Goddard asked about funding for the receptacles in the public right-of-way for recycling. Town Manager Toy stated they could add this to the Capital Improvement Budget. Councilmember Bragman stated they might be able to get money through the franchise agreement.

Councilmember Bragman referred to the Reserves and asked if it included the Equipment Replacement Fund and similar funds. Finance Officer Vivrette stated "yes" and he noted \$1 million would be transferred to the Dry Period Fund. Councilmember Bragman referred to the Community Engagement software and noted the Local Government Commission offers assistance with technology.

Regular Agenda

Discuss/consider the extension of the Special Municipal Services Tax and direct staff as appropriate- Town Manager

Town Manager Toy presented a staff report.

Mayor Weinsoff referred to the second set of bullet points in the staff report, bullet point #4, and asked if it was the consensus of the Council to increase the amount of the tax. Councilmember Coler stated an increase (of \$20) to \$195 would represent a middle ground. Councilmember Reed agreed and stated the tax should remain under \$200. Finance Director Vivrette stated an increase of \$20 represented an additional \$74,000 in annual revenue.

Councilmember Coler referred to bullet point #6 and stated she was opposed to an annual cost inflator (CPI). The Council agreed.

Mayor Weinsoff referred to bullet point #7. It was the consensus of the Council to not allow exemptions.

Mayor Weinsoff referred to bullet point #8 and stated youth and senior programs should be enhanced. The Council agreed.

Councilmember Coler referred to ballot language Option 2 and suggested using the word "replacement" as opposed to "elimination" of the \$50 General Municipal Tax, and "Enhance youth and senior programs".

Town Manager Toy stated staff would work on the ballot language wording to keep within the 75-word limit. Staff would bring this item back to the Council on July 16th.

Mayor Weinssoff referred to the resolution and asked staff to add some wording regarding the history of the tax measures.

Mr. Michael Macintosh asked if this was a “per unit” or “per parcel” tax. Councilmember Bragman stated the tax was levied on a per unit basis. Mr. Macintosh stated a unit could be as small as 70 square feet. He was concerned that small units pay the same amount as large houses.

Mr. Frank Egger gave a history of the \$50 parcel tax. He asked if the \$50 tax would remain in effect should the \$195 tax fail. Mayor Weinssoff stated “no”. Mr. Egger stated losing the \$50 tax was a big risk.

Ms. Jody Timms thanked the Council for including enhancement of senior programs.

Discuss/consider a Fairfax rent control ordinance- Vice Mayor Bragman

This matter was continued to the July 16th Council meeting.

Council Reports and Comments

It was the consensus of the Council to continue this item to July 16th.

Town Manager Report

It was the consensus of the Council to continue this item to July 16th.

M/S, Bragman/Reed, Motion to adjourn the meeting at 11:40 p.m.

AYES: Bragman, Coler, Goddard, Reed, Mayor Weinssoff

Respectfully submitted,

Toni DeFrancis
Recording Secretary