

FAIRFAX PLANNING COMMISSION MEETING MINUTES
WOMEN'S CLUB, 46 PARK ROAD
AND VIA TELECONFERENCE
THURSDAY, SEPTEMBER 14, 2023

Call to Order/Roll Call:

Chair Swift called the Special Meeting to order at 7:00 p.m.

Commissioners Present: John Bella
P. J. Feffer (attending remotely)
Robert Jansen
Brett Kelly
Mimi Newton (attending remotely)
Cindy Swift (Chair)

Staff Present: Jeffrey Beiswenger, Planning Director
Linda Neal, Principal Planner
Janet Coleson, Town Attorney
Kylie Otto, Assistant Town Attorney
Daniel Hortert, Contract Planner

Commissioner Newton and Feffer announced they are participating remotely.

APPROVAL OF AGENDA

M/s, Kelly/Jansen, motion to approve the agenda as submitted.

AYES: Bella, Feffer, Jansen, Kelly, Newton, Chair Swift

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING ITEMS

- 1. Discussion/consideration for recommendation to the Town Council of the following:
A resolution of the Fairfax Planning Commission recommending the Town Council adopt an ordinance concerning inclusionary housing requirements, approve a resolution adopting affordable housing in-lieu fees and commercial/non-residential linkage fees in the master schedule; and approve a resolution adopting affordable housing requirements and program regulations**

Contract Planner Hortert presented the staff report. Planner Hortert and staff answered questions from the Commission regarding Section 17.140.130, how the funds will work, and if the usage of the funds is open to public review; if fees could be changed and modified in the future by the Town Council; how the inclusionary percentage amounts (20% and 15%) were established and if they are consistent with what other jurisdictions are adopting; incongruences in some of the Ordinance language; the relationship between the two documents; requirements and program regulations; how this differs from what other jurisdictions are adopting; if General Plan Policies could dictate how the funds will be used; regulatory restrictions; options for compliance; definition of a mixed use project; reason for requiring sufficient reserves for on-going repairs in a sale; if short-term rentals are

allowed; the process for in-lieu fees for small parcels; three-unit minimum projects; waivers for structures that are destroyed; if Exhibit A is an overlay of the ordinance; if the inclusionary requirements are being set at the very low income level of 35% AMI; how maximum sales prices are computed.

Chair Swift opened the Public Hearing.

Mr. Rick Hamer, Fairfax, made the following comments:

- The resolution as written will do nothing towards raising funds of any consequence.
- A project comprised of luxury units could slip past the resolution without any in-lieu fees.
- The term “moderate income” should be replaced with the low income category, specifically the 65% target AMI level.

Mr. Frank Egger, Meadow Way, made the following comments:

- This resolution may be fine for San Rafael but not for Fairfax.
- They need to use numbers that are relevant to Fairfax.
- Some applications could get ministerial approval with no EIR, public hearing, or appeal process.
- He was concerned that they will lose the Town to high density and high-rise development.

Chair Swift closed the Public Hearing.

Planning Director Beiswenger and Assistant Town Attorney Otto addressed some of Mr. Egger’s comments.

Commissioner Newton provided the following comments:

- She wants to see a much bigger emphasis on low and very low housing.
- She would like to build in the ability for the Council to interpret the term “act of nature” at its discretion.

Commissioner Bella provided the following comments:

- The ordinance should tackle all of the AMI categories.
- He did not want to incentivize developers to simply pay the in lieu fees over building housing.

Commissioner Feffer provided the following comments:

- He agreed with the sentiments of Mr. Hamer and Mr. Egger.
- They should focus on the low or very low income categories.
- They will have to be looking critically at development costs.

Chair Swift provided the following comments:

- When talking to a developer they need the flexibility to do moderate income development with the low and very low.
- She would like to see clarification on the Housing Plan with respect to “sufficient reserves”.
- They can review the Ordinance and make changes in the future.

Commissioner Newton provided the following comments:

- A rent of \$2,500 is too much for someone with a low income.
- They want to create something that developers will buy into.
- She would like to see the Affordable Housing Fund focus on low and very low.

Commissioner Bella provided the following comments:

- The RHNA numbers are coming from the State and the Town has little choice in terms of delivery.
- The State Density Bonus offers an option to provide low and very low income units.

Commissioner Jansen provided the following comments:

- The discussion on whether to focus on low income and include the other categories has been decided. There must be a profitable component.
- The in lieu fees should be used to fund low and very low income units and not moderate.

Chair Swift provided the following comment:

- She was concerned about restricting the use of these funds at this point in time.

Commissioner Bella provided the following comment:

- He agreed- he would like to remain flexible.

M/s, Newton/Jansen, motion to adopt Resolution No. 2023-26 of the Fairfax Planning Commission recommending that the Town Council adopt an Ordinance adding Chapter 17.140, Affordable Housing, to Title 17, Zoning, concerning Inclusionary Housing requirements, approve a resolution adopting Affordable Housing In-Lieu Fees and Commercial /Nonresidential Linkage Fees in the Master Fee Schedule, and approve a Resolution adopting Affordable Housing Requirements and Program Regulations with the changes reference in the errata sheet received before the meeting tonight, the changes discussed tonight in terms of clarifying Attachment “A” language about the maximum rental and maximum sale percentages, including a discussion about the Commission’s thoughts on Section 17.140.130 regarding whether to focus on low and very low affordability, adding a provision with respect to the language about exempt structures that are destroyed by fire, flood or other acts of nature, giving the Town Council the discretion to interpret that phrase and to also address Section 17.140.080(b)(7) Inclusionary provision as discussed with respect to the maintenance fund.

AYES: Bella, Feffer, Jansen, Kelly, Newton, Chair Swift

The Commission took a 5-minute break at 9:00 p.m.

**2. Discussion/consideration for recommendation to the Town Council the following:
A resolution of the Fairfax Planning Commission recommending the Town Council adopt an ordinance amending the Fairfax Municipal Code to add or amend chapters to Implement the General Plan Housing Element**

Planning Director Beiswenger presented the staff report. Staff answered questions from the Commission regarding whether the Objective Development and Design Standards (ODDS) would be woven into the code; the meaning of Section 17.027.070(B), Compliance Determination; how fence heights are measured; if any of the Zoning Code changes add height to the existing categories; if the maximum height in any of the zones is three-stories; if the Town would have a compliant General Plan if amendments are not adopted; if a State regulator checks for compliance with State Law; if a cap can be put on a ceiling height for Density Bonus purposes; if Section 17.020.030(A), Applicability is the current code; the required findings in Section 17.044.090, Authority to Grant Waivers.

Chair Swift opened the Public Hearing.

Mr. Frank Egger, Meadow Way, made the following comments:

- Fairfax should challenge these housing laws instead of rolling over.
- This “one size fits all” approach is inappropriate for Fairfax.
- Fairfax has many constraints including properties in the WUI Zone, Flood Zones, or Landslide Zones

Chair Swift closed the Public Hearing.

Chair Swift provided the following comments:

- The Commission did not have enough time to review the information in the packet.
- Red-line versions would have been helpful.
- She has a lot of questions.
- She would like to continue this item.

Commissioner Jansen provided the following comments:

- He agreed with Chair Swift. This needs more study.
- He is happy to see this coming to the Commission.

Commissioner Feffer provided the following comments:

- He is concerned about being in compliance with State law and the consequences.
- He would like everybody to be able to get behind the changes.
- He was not opposed to a continuance but would like to get something done tonight.

Commissioner Bella provided the following comments:

- It would be nice to have more time with this.
- He agreed with the concern about the December deadline.

Town Attorney Coleson and the Commission discussed the timeline and scheduling another Special Meeting of the Commission. She noted this is a living document and can be revised.

Commissioner Jansen provided the following comments:

- He would rather approve this as it stands than to review it on September 28th.
- He is concerned about “running out the clock”.

Commissioner Bella provided the following comment:

- He did not want to miss the State deadline.

Commissioner Newton provided the following comment:

- She suggested the Commission provide questions to staff and continue the item to next Thursday.

M/s, Newton/Feffer, motion to continue this item to September 21st.

AYES: Bella, Feffer, Jansen, Kelly, Newton, Chair Swift

The Commission made additional comments regarding the ordinance including integration of the ODDS, color being removed from the consideration of approval in the downtown, 90 days to act on an application involving 150 units or less, and height regulations.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:54 p.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary