

October 25, 2007
 Capitola, California

CAPITOLA CITY COUNCIL

MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL

5:00 P.M. – CLOSED SESSION – CITY MANAGER'S OFFICE CAPITOLA REDEVELOPMENT AGENCY & CITY COUNCIL

At 5:00 p.m. in the City Hall Council Chambers, an announcement was made by Mayor Termini regarding the items to be discussed in Closed Session. Seeing no one, the Council adjourned to its Closed Session to be held in the City Manager's Office.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Govt. Code §54956.8)

Property: McGregor Drive Property, APN 036-341-02
 City Negotiator: City Manager
 Under Negotiation: Lease or Sale of City Property

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Significant exposure to Litigation Pursuant to Subdivision (b) of Govt. Code §54956.9
 Number of Potential Cases: Two (Save the Habitat claim re: Rispin Mansion Project
 and Save the Habitat claim re: PG&E Gas Transmission Line)

* ADDED CLOSED SESSION ITEM: *

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Govt. Code §54956.9a)

Los Altos El Granada Investors v. Capitola

6:45 P.M. REDEVELOPMENT AGENCY - (See *Redevelopment Agency Minutes*)

REGULAR MEETING OF THE CITY COUNCIL

Mayor Termini called the Regular Meeting of the City Council to order at 6:48 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

PRESENT: Council Members Bob Begun, Kirby Nicol, Ron Graves, Sam Storey, and Mayor Michael Termini; City Treasurer Tony Gualtieri

ABSENT: None

STAFF: City Manager Rich Hill, Assistant City Attorney Anthony Condotti, Finance Director Lauren Lai, Community Development Director Juliana Rebagliati, Senior Planner Ryan Bane, Public Works Director Steve Jesberg, Chief of Police Rick Ehle, Assistant to the City Manager Lisa Murphy, and City Clerk Pamela Greeninger

1. REPORT ON CLOSED SESSION

Assistant City Attorney Condotti announced that the first item discussed in Closed Session was a subsequent need item relating to *Los Altos El Granada Investors v. City of Capitola*, which needed to be added to the Closed Session agenda. The City Council first took unanimous action to add the Los Altos El Granada Investors litigation item to the Closed Session agenda, on the basis that the need for action arose after the meeting was noticed and there was a need to take action prior to the next regular City Council Meeting.

Assistant City Attorney Condotti reported that the council received a verbal report from legal counsel on the *Los Altos El Granada Investors v. City of Capitola* litigation, and the council approved and authorized legal counsel to file an appeal of a decision in the Federal Court which granted the plaintiff in that case the opportunity to file a late appeal of an adverse judgment.

1. REPORT ON CLOSED SESSION (Continued)

Assistant City Attorney Condotti then reported that there was discussion on the first item listed on the posted agenda, Conference with Real Property Negotiators pertaining to the McGregor Drive Property. No reportable action was taken.

The Council then received a report from legal counsel pertaining to the two items of anticipated litigation from Save the Habitat: one with respect to the Rispin Mansion Project, and a separate threatened litigation action from Save the Habitat and others concerning the Emergency Gas Transmission Line Replacement Project through Soquel Creek and the Rispin Mansion property. With respect to those two items, Assistant City Attorney Condotti reported that the council gave direction to legal counsel to respond to the demands of Save the Habitat and others through their legal counsel. He said the City Attorney's office would be preparing a response based on the City Council's direction.

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda – NoneB. Public Comments

1) Randa Solick representing the Women's International League for Peace and Freedom provided council members with a pamphlet, entitled, "The Case for a Clean Water Trust Fund," along with a copy of a resolution adopted at the U.S. Conference of Mayors pertaining to the "Importance of Municipal Water" and a sample resolution endorsing a trust fund for clean water. She explained how the trust fund would work. Ms. Solick said the Santa Cruz City Council and the County Board of Supervisors have approved this resolution, and she was here to encourage the city council to join other jurisdictions in adopting the sample resolutions.

Paula Reed Kiehne, Soquel resident and member of the Women's International League for Peace and Freedom, commented on the use of bottled water and said our water is good. She reiterated some of the comments made by the previous speaker and also encouraged the Council to support and protect that special resource for all of us.

2) Dennis Norton, Oak Drive, said the Santa Cruz County Regional Transportation Commission just received the results of its voter survey. He distributed a graph indicating how the voter survey ranked 17 transportation-related projects that could be funded with a ½% transportation sales tax if approved by the voters in Santa Cruz County. The first priority is repairing and maintaining local streets and roads, and the second priority is train service in our community. Mr. Norton said he hopes the task force takes heed of the survey results and takes the emphasis off the automobile and starts looking for alternatives.

C. Staff Comments - NoneD. City Council/Treasurer Comments

1) City Treasurer Gualtieri reported on the Finance Advisory Committee Meeting where there was a discussion regarding the 1/4% sales tax. He commented on the information sheet provided by the finance director identifying the projects that have been completed and are contemplated to be done with Measure P funds.

City Treasurer Gualtieri also commented on the City's voter survey expected to be completed early next year and the committee's discussion regarding ballot tax measures anticipated by other jurisdictions next year. City Treasurer Gualtieri said the committee is recommending to Council that there be continued communication to the public about what the city's tax has been used for in the past and what its proposed use will be. The committee suggested using the newsletter, the website and the Mayor's Blog to keep residents informed of the use of these funds.

2. D. 1) ORAL COMMUNICATIONS (Continued)

City Treasurer Gualtieri also offered a suggestion to have a program on Community Television where residents could call in or write in with their questions about the tax. Council Member Graves asked if time would need to be given to opposing sides of the measure if this were an item discussed on Community TV. City Manager Hill commented that the city has a representative on the Community Television Board, Doree Steinman, who could possibly answer those questions. City Treasurer Gualtieri said he was interested in knowing whether it would be possible for members of the council, the city treasurer and/or other people with knowledge of this tax to have a program where they could speak to residents in a question and answer-type session.

In closing, City Treasurer Gualtieri said the committee concluded that it would wait until after the voter survey has been conducted by the city early next year and then revisit this item after the results have been tallied.

2) Council Member Begun said he reviewed the report on bridges with our Public Works Director, and a new draft would be coming out.

3) Mayor Termini acknowledged the successful Monterey Bay Unified Air Pollution Control District grant application by the Capitola Public Safety Foundation for an electric vehicle to be used by the Volunteers in Policing.

4) Mayor Termini announced that he has proclaimed October 28, 2007, National Immigrants Day. He then read the Mayor's Proclamation and called upon the people of Capitola to honor immigrants of our great country.

E. Committee Reports/Appointments – None

* * * PRESENTATION * * *

**Report on Major Investigations
by Capitola Police Detective Mark Gonzalez**

Capitola Detective Jason Grogan presented the report on major investigations on behalf of Detective Gonzalez. He reviewed several major cases that the Police Department has worked on, including a potential bomb threat at Washington Mutual Bank on 41st Avenue, a home invasion on Capitola Avenue, a sexual assault at Venetian Court during the weekend of the Art & Wine Festival, grand theft by an employee at Wells Fargo Bank, a case with Bay Federal involving unauthorized transfer of funds, and a burglary at Outdoor World. Mayor Termini thanked Detective Grogan for this episode of America's stupidest criminals.

F. Approval of Check Register Report [300-10]

Staff responded to questions of council members pertaining to checks numbered 53467 and 53489. City Manager Hill explained "triple flip" terminology on page 2 of the agenda report.

Glenn Hanna commented on Resolution No. 2683, which is cited in the agenda report, and he raised questions about the City's accounting practices.

Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Council Member Graves, to approve the Check Register Report for October 12, 2007, including checks numbered 53455 through 53507 in the amount of \$39,434.40, and payroll disbursements for October 6, 2007, in the amount of \$182,140.00, for a Grand Total of \$221,574.40, as submitted, and to direct staff to prepare a response to the comments made by Glenn Hanna under discussion of this item. The motion carried on the following vote: AYES: Council Members Begun, Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

3. CONSENT CALENDAR

Mayor Termini asked if there were any items members of the council or public wished to pull for separate discussion. None were pulled; however, there were comments on Items 3.B. and 3.D. (*See comments under those items.*)

CONSENT CALENDAR ACTION: Council Member Nicol moved, seconded by Council Member Begun, to approve the Consent Calendar as recommended. The motion carried on the following vote: AYES: Council Members Begun, Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

A. Waive Reading of all Ordinances and Resolutions on the Agenda.

ACTION: The City Council unanimously approved the reading by title of all Ordinances and Resolutions and declared that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

B. Approve City Council Minutes - Regular Meeting of October 11 and Special Meeting of October 17, 2007.

Council Member Graves commented on the memo from the City Clerk on Item 3.B. pertaining to a minor correction to the Action paragraph on Page 10955 of the October 17 Special Meeting Minutes to change the words "this administration" to "the City Council."

ACTION: Council Member Nicol moved, seconded by Council Member Begun, to approve the Minutes of the Regular Meeting of October 11, 2007, as submitted, and the Special Meeting of October 17, 2007, as corrected. The motion carried on the following vote: AYES: Council Members Begun, Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

C. Receive Planning Commission Action Minutes for the Regular Meeting of October 18, 2007. [740-50]

ACTION: The City Council unanimously approved the Planning Commission Action Minutes for the Regular Meeting of October 18, 2007, as submitted.

D. Treasurer's Report for Period Ending September 30, 2007. [380-30]

Council Member Begun said he had a quick question on Item 3.D., the Treasurer's Report. He referred to the Cash and Fund Balances graphs on page 6 of the report, and asked why the cash balances are so much lower than last year. Finance Director Lai responded that it was due to the \$1 million PERS payment which was a part of the Pension Obligation Bonds financing.

ACTION: Council Member Nicol moved, seconded by Council Member Begun, to approve the Treasurer's Report for the Period Ending September 30, 2007, as submitted. The motion carried on the following vote: AYES: Council Members Begun, Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

E. Adopt Ordinance Amending Sections 15.04.010 and 15.04.050 Pertaining to Adoption of Model Codes and Modifications to the California Building Code, and Repealing Chapter 15.32 of the Municipal Code Pertaining to Electrical Nonmetallic Tubing, to become effective January 1, 2008. (2nd Reading) [570-10]

ACTION: Council Member Nicol moved, seconded by Council Member Begun, to adopt Ordinance No. 927, Ordinance Amending Sections 15.04.010 and 15.04.050 of the Capitola Municipal Code Pertaining to Adoption of Model Codes and Modifications to the California Building Code, and Repealing Chapter 15.32 of the Municipal Code Pertaining to Electrical Nonmetallic Tubing. The motion carried on the following vote: AYES: Council Members Begun, Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

3. CONSENT CALENDAR (Continued)

- F. **Accept Grant of \$4,800 from the Capitola Public Safety and Community Service Foundation and Adopt Resolution Amending the FY 2007-08 Police SLESF Fund to Transfer \$5,000 from Staff to Materials & Supplies for the Purchase and Training of a Police Canine, for a Total Expenditure of \$9,800. [330-10/480-53]**

ACTION: Council Member Nicol moved, seconded by Council Member Begun, to accept a grant from the Capitola Public Safety and Communication Service Foundation in the amount of \$4,800, and adopt **Resolution No. 3665, Resolution Amending the Fiscal Year 2007/2008 Police SLESF Fund Budget to Transfer \$5,000 from Staffing to Materials & Supplies for the Purchase and Training of a New Police Canine.** The motion carried on the following vote: AYES: Council Members Begun, Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

4. PUBLIC HEARINGS

- A. **1550 41st Avenue - Project Application #07-028. Public Hearing on Appeal of a Planning Commission Approval for a Coastal Permit, Sign Permit and Architectural and Site Review to Remodel an existing Shopping Center, and a Conditional Use Permit to expand the Existing Retail Store (Goodwill) and Establish a Cosmetology School in the CC (Community Commercial) Zoning District. (APN 034-111-22) Categorically Exempt. Filed 5/11/07 *1. Property Owner: John Figone; Representative: Goodwill Industries. Presentation: Community Development Department. [730-10]**

Council Member Nicol disclosed that on September 25, 2007, he attended the Capitola Economic Implementation Meeting at which time he was a director, and at which time the applicant for this project gave a 10-minute presentation by way of public notice.

Senior Planner Bane summarized the written agenda report, responded to questions of council members, and informed the council that staff is recommending the council uphold the Planning Commission approval of the project.

Matthew Thompson, on behalf of the Goodwill Industries Board, addressed the Council on the proposed project and responded to comments/questions of council members. He commented on the mission of Goodwill Industries, which is to "help people to work."

Michael Paul, President and CEO of Goodwill Industries, responded to a question by Mayor Termini pertaining to collection of sales tax on hair salon products.

Council Member Begun commented on tax implications to the city with Goodwill Industries owning and operating the entire center.

Mayor Termini opened the public hearing at 8:16 p.m.

The Council received comments from the public in support of the project from: Christie (Capitola resident who submitted petition signed by approximately 108 people supporting the 41st Avenue Goodwill Donation Center); Christy Miller, Shauna, and an unidentified man speaking in support of the Shoreline School of Cosmetology; Julia Jackson, Owner of Supercuts in Capitola; Martha Applegate; and Jeff Major, Capitola resident.

The Council also heard from: Doug Kaplan, LOMAK Property Group, expressing concerns regarding the donation drop-off area; Forrest Cambell, President of Monterey Bay Mortgage, tenant at 1550 41st Avenue; and Jeffrey Samuels of First Alarm, who explained the security aspects of Goodwill.

Mayor Termini closed the public hearing at 8:51 p.m.

4. A. PUBLIC HEARINGS (Continued)

There was considerable Council discussion prior to the following action being taken:
ACTION: Council Member Graves moved to deny the appeal and uphold the action of the Planning Commission approving Application #07-028, with the condition that the Goodwill trailer be removed prior to any Goodwill store expansion, inside or outside, and there shall be no storage or drop-off collection outside of the building. Council Member Storey seconded the motion for discussion.

Under discussion, Council Member Nicol noted that if the Council requires the applicant to remove the current donation drop-off trailer immediately, would that effectively shut down their operation. Council Member Nicol then commented that under existing conditions imposed by the Planning Commission there is a 4-month review. He asked what happens if the situation is great for four months, but then deteriorates after that review. Community Development Director Rebagliati explained that a revocation hearing by the Planning Commission could occur if there were complaints and the permit could be revoked. There was discussion regarding the revocation process and a one-year review.

Assistant City Attorney Condotti said the benefit of having an annual review keeps the project and its conditions on the radar screen. Council Member Nicol asked if that were something the city could have the applicant do under the conditions set forth in Condition #4 or if this were something the city would do as part of its annual process. City Manager Hill said it depends upon how the condition is written; the applicant could be required to provide a self-review.

Council Member Nicol asked if the maker of the motion would accept a friendly amendment that approval include an annual review as set forth in Condition #4 of Planning Commission. Council Member Graves said he would accept the amendment to his motion, and Council Member Storey accepted the amendment to his second.

Council Member Begun asked if the suggestion to remove the trailer now was practical. Michael Paul responded that it would be difficult to do the type of operation they are doing now in the small space behind their building. Mayor Termini clarified that the trailer does not have to move until just before a building permit is issued for the very first remodel.

Council Member Graves reiterated that the idea is to get the trailer out of the current location post-haste. Mr. Paul explained the situation with the leases in the building that are up in 2009.

Council Member Graves said if they continue to be the bad neighbor, they might not get to Phase 1. It was clarified that the applicant does not plan to do anything with the exterior of the building until 2009.

Council Member Nicol clarified his friendly amendment for the City Clerk, stating that Condition #4 of the Planning Commission's list of conditions should read as follows: "The application shall be brought back before Planning Commission for review in four (4) months from issuance of the zoning permit and annually on the anniversary thereof to evaluate the donation center. The four (4) month review and subsequent annual reviews shall include a report from the applicant with statistics and information from First Alarm and the Police Department, in cooperation with the Community Development Department for verification."

As the department needing to implement this action, Community Development Director Rebagliati said she was unclear how it would work that the trailers will go away before they make improvements inside so that they have sufficient area to handle the donations. She said it takes building permits to do interior improvements and asked if those permits could be issued before the trailer is required to be removed. Mayor Termini clarified that the trailer would need to be removed, and intake of donations would need to be handled inside the building. There was also clarification by the council that the review begins now.

4. A. PUBLIC HEARINGS (Continued)

After further Council discussion of the motion, Mayor Termini called for the vote. The motion to deny the appeal and uphold the action of the Planning Commission approving Application #07-028, with the condition that the Goodwill trailer be removed prior to any Goodwill store expansion, inside or outside, and there shall be no storage or drop-off collection outside of the building, and the amendment that approval include an annual review as set forth in Condition #4 of Planning Commission, carried on the following vote: AYES: Council Members Nicol, Graves, and Storey. NOES: Council Member Begun and Mayor Termini. ABSENT: None. ABSTAIN: None.

B. Rispin Mansion Restoration & Hotel – Public Hearing to Extend Permit Timeline for One Year for Application Nos. #07-023, #97-95, and #05-005: Conditional Use Permit, Architectural and Site Review, and Coastal Permit for the Proposed Hotel (Up to 25 Rooms) at Rispin Mansion Project at 2000 & 2005 Wharf Road, located in the AR/VS/PD “Automatic Review/Visitor Serving/Planned Development” Zoning District. *2. APN: 035-371-01 and -02; Clares/Wharf 034-541-034. An EIR was certified by the City Council on March 24, 2005. Presentation: Community Development Department. [730-10]

Consultant Planner for the Rispin Project, Anthony “Bud” Carney, summarized the written agenda report and responded to questions of council members.

Mayor Termini opened the public hearing at 9:39 p.m.

Henry Queen, Clares Street resident who lives across the street from the Rispin Mansion, expressed concern about the limited amount of parking on Clares Street and the library parking lot. Mr. Queen said he uses the walkway/bridge over Soquel Creek to Nob Hill Center and the Post Office and would like it to be open as soon as possible and maintained open with proper lighting.

Jennifer Bragar, speaking on behalf of William Parkin whose law firm represents Save the Habitat, WAVE and individuals of those organizations who entered into a settlement with the city and the developers regarding the Rispin Project, said she was here to remind the City Council of the provisions of that stipulated judgment. It pertains to conditions of approval as of September 1, 2004, and established a conservation easement over the Rispin property. No changes to the stipulated judgment are permitted without the consent of their clients. She urged the council to postpone the extension of the project, which includes the May 9, 2007, modifications to the conditions of approval.

Limited discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Mayor Termini, to continue this item to a Special Meeting to be held on Thursday, December 6, 2007. The motion carried unanimously.

5. OTHER BUSINESS

A. Noble Gulch Park Improvements and Designation as a Leash Optional Area for Dogs. [1040-10/400-10]

Public Works Director Jesberg summarized the written agenda report and responded to questions of council members.

Jacques Bertrand, representing Friends of Noble Gulch, submitted a copy of the “Friends” Mission Statement and read it to the Council. He said they are asking for the Council’s approval of an improvement plan for the park and approval of the installation of the proposed sign.

Council discussion was followed by this action:

5. A. OTHER BUSINESS (Continued)

ACTION: Council Member Begun moved, seconded by Council Member Nicol, to approve the recommended actions of the Public Works Director as follows:

1. Directed the Department of Public Works to work with Friends of Noble Gulch Park to develop an improvement plan for the park to include the placement of picnic benches, irrigation, and designation of the upper portion of the park as a leash optional area for dogs; and
2. Approved the request by Friends of Noble Gulch Park to install a monument sign in Noble Gulch Park as recommended by staff and shown as Item #3 in the Agenda Report.

The motion carried on the following vote: AYES: Council Members Begun, Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

B. Police Budget Analysis and Recommendations Concerning FY 2006-07. [330-05: 2006-07FY Budget File]

Chief of Police Ehle summarized the written agenda report to address concerns expressed by the council at its September 13, 2007, meeting regarding discussion of the 2006-07 City Fiscal Year-End Unaudited Report relating to staff overtime and materials and supplies overages in the Police Department. He responded to questions of council members regarding the report.

Council discussion was followed by this action:

ACTION: Council Member Begun moved, seconded by Council Member Storey, to receive the Police Budget Analysis Report for Fiscal Year 2006/07, as submitted. The motion carried unanimously.

C. Pacific Cove Mobile Home Park Retaining Wall Construction. [260-50]

Public Works Director Steve Jesberg announced that a third bid was received today after the preparation of the agenda report. A total of three bids were received: Granite Construction for \$68,919.12, Monterey Peninsula Engineering for \$84,066.00, and Johnson & Company, Inc., for \$43,260.00. Based on the additional bid, staff's recommendation would be to award the contract to Johnson & Company, Inc., in the amount of \$43,260.00. A budget amendment resolution would not be necessary.

Council discussion was followed by this action:

ACTION: Council Member Nicol moved, seconded by Council Member Storey, to approve the Public Works Director's recommendation to award the contract to Johnson & Company, Inc., in the amount of \$43,260.00 for reconstruction of the retaining wall behind Space #62 in the Pacific Cove Mobile Home Park. The motion carried on the following vote: AYES: Council Members Begun, Nicol, Graves, Storey, and Mayor Termini. NOES: None. ABSENT: None. ABSTAIN: None.

6. ORAL COMMUNICATIONS – None

7. ADJOURNMENT

The City Council adjourned at 10:25 p.m. to a Special Meeting of the Capitola City Council regarding the Rispin Mansion Project to be held on Tuesday, October 30, 2007, at 7:00 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

Michael Termini, Mayor

ATTEST: _____, CMC
Pamela Greeninger, City Clerk

MINUTES WERE UNANIMOUSLY APPROVED BY THE CITY COUNCIL ON 12/13/07