

June 26, 2008
 Capitola, California

CAPITOLA CITY COUNCIL

MINUTES OF A REGULAR MEETING

6:00 P.M. CLOSED SESSION – CITY MANAGER’S OFFICE CAPITOLA REDEVELOPMENT AGENCY & CITY COUNCIL

At 6:04 p.m. in the City Hall Council Chambers, Vice Mayor/Vice Chairperson Begun noted that four members of the City Council Members/Redevelopment Agency were present, with Mayor/RDA Chairperson Nicol being absent. He made an announcement regarding the items to be discussed in Closed Session, as follows:

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

Save the Habitat vs. City of Capitola (Rispin Mansion Project)
 Soquel Union Elementary School District vs. City of Capitola
 Surf & Sand LLC vs. City of Capitola (Surf & Sand Mobile Home Park)
 Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates)

CONFERENCE WITH LABOR NEGOTIATORS (Govt. Code §54957.6)

Bargaining Units: Police Captains & Capitola Police Officers’ Association
 Negotiator: Rich Hill, City Manager

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: John C. Kinstler Jr.

Council Member Termini noted that today’s Sentinel newspaper announced that the BEVMO hearing would begin at 5:55 p.m.; however, the public hearing would be held at the Regular Council Meeting that begins at 7 p.m.

Vice Mayor/Vice Chairperson Begun asked if anyone wished to address items on the Closed Session agenda. Seeing no one, the council/agency recessed at 6:06 p.m. to its Closed Session in the City Manager’s Office.

CAPITOLA REDEVELOPMENT AGENCY – (See Redevelopment Agency Minutes)

REGULAR MEETING OF THE CITY COUNCIL

Vice Mayor Begun called the Regular Meeting of the City Council to order at 7:18 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

PRESENT: Council Members Sam Storey, Ron Graves, Michael Termini, and Vice Mayor Robert “Bob” Begun; City Treasurer Tony Gualtieri

ABSENT: Mayor Kirby Nicol

STAFF: City Manager Rich Hill, City Attorney John Barisone, Community Development Director Juliana Rebagliati, Finance Director Lauren Lai, 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 [520-25]

City Attorney John Barisone reported on the four items of pending litigation, labor negotiations with the Capitola Police Officers’ Association & Police Captains, and the tort claim of John C. Kinstler, Jr., listed on the posted agenda. He noted that Mayor/Chairperson Nicol was absent, and that Council Member/Director Termini recused himself on the Save the Habitat matter due to a conflict of interest.

1. REPORT ON CLOSED SESSION (Continued)

City Attorney John Barisone said the council received brief status reports on Existing Litigation matters Save the Habitat, Surf & Sand, LLC, and Vieira Enterprise vs. City of Capitola. No reportable action was taken. He said the Soquel Union Elementary School District matter was not discussed in closed session.

City Attorney Barisone reported that the Council met with its labor negotiator, City Manager Hill, regarding the Capitola Police Captains. Assistant to the City Manager Murphy was also present for these discussions. The council also briefly discussed the Capitola Police Officers' Association. No reportable action was taken.

Finally, the Council had a very brief discussion regarding the tort claim of John C. Kinstler, Jr., which is a matter on the open session agenda. No reportable action was taken in closed session.

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda – None

B. Public Comments – None

C. Staff Comments – None

D. City Council/Treasurer Comments/Committee Reports

1) Council Member Graves said in Mayor Nicol's absence he attended a Board of Supervisors Meeting as the city's Zone 5 representative. He reported that the Zone 5 board passed the Noble Gulch Storm Drain Line Project in Capitola, and he commented on the scope of the project. He said the project would be completed with a liner rather than replacing the line. Doing so would reduce the size of the line by only 6 inches. Council Member Termini asked if the project would impact Pacific Cove Mobile Home Park. Council Member Graves said it would not.

2) Vice Mayor Begun asked Fire Chief Bruce Clark to report on their department's involvement in the various fires. Fire Chief Clark said they have had involvement in all five major fires in Santa Cruz County, and they were also involved in setting up the Emergency Center. He was glad to report Community Development Director Rebagliati's structure was saved in Bonny Doon, and he noted there are 800 fires burning at this time statewide.

3) Fire Chief Clark also commented that a number of cities in the county have been addressing the issue of fireworks for the 4th of July.

Council Member Termini commented on the city's regulations pertaining to fireworks and asked for clarification. Chief of Police Ehle discussed the city's regulations, stating that there can be no fireworks on the beach or on other public property. He said safe and sane fireworks are allowed on private property. Chief of Police Ehle said there would be a press release tomorrow regarding fireworks, and he also told the council there would be zero tolerance for illegal fireworks, with a \$1,300 fine for violations.

4) Vice Mayor Begun then asked about the Rod & Custom Car Show. Chief of Police Ehle discussed the event and said next year's event is being planned for June 6 and 7, 2009.

5) Council Member Graves commented on the city's weed abatement program and asked if the Fire Department has taken over the program. Fire Chief Bruce Clark said that Central Fire Protection District has taken the weed abatement program over and works with the Public Works Department to see that weeds are abated in Capitola. Chief Clark said if residents have a hazard to report, they should call 479-6843.

2. D. 5) ORAL COMMUNICATIONS

City Manager Hill complimented Chief Clark for the cooperative efforts of the Fire District with the city. Council Member Storey asked about the vacant parcel located at Hill Street and Capitola Avenue. Chief Clark said a letter has been sent to the owner. He also clarified what the fire district can and cannot do.

E. Committee Appointments – None

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

Vice Mayor Begun asked if there were any questions on the Check Register Report. There was no discussion on this item prior to the following action being taken:

ACTION: Council Member Termini moved, seconded by Council Member Storey, to approve the Check Register Reports dated June 6, June 13, and June 20, 2008, including checks numbered 55719 through 55782, in the amount of \$76,756.70, checks numbered 55783 through 55826 in the amount of \$32,504.62, checks numbered 55827 through 55944 in the amount of \$609,032.79, payroll disbursements for the June 6, 2008, payroll in the amount of \$184,177.43, and for the June 20, 2008, payroll in the amount of \$192,221.99, for a total amount of \$1,094,693.53, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Graves, Termini, and Vice Mayor Begun. NOES: None. ABSENT: Mayor Nicol. ABSTAIN: None.

3. **CONSENT CALENDAR**

Vice Mayor Begun asked if there were any items members of the council or the public wished to pull for separate discussion. Council Member Graves pulled Items 3.H. and 3.J. He also commented on Items 3.D. and 3.G. Council Member Termini commented on Item 3.I. (*See comments under those items.*)

Vice Mayor Begun stated that Items 3.H. and 3.J. would be discussed at the end of the meeting following Other Business Item 5.E. (*See action on Page 11164.*)

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

A. **Approve Reading by Title of all Ordinances and Resolutions and declare that said Titles which appear on the Public Agenda shall be determined to have been read by Title and Further Reading Waived.**

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 – Special Joint Budget Study Sessions of the City Council and Redevelopment Agency of May 1, 14, and 28, 2008, and the Special Meeting of June 4, 2008.**

(NOTE: Pursuant to the Additional Material Agenda Report dated June 26, 2008, and with action taken by the Capitola Redevelopment Agency Directors, the Minutes of the Joint Budget Study Sessions of May 1 and 14, 2008, with the recommended corrections of Council Member/Director Graves, were also approved by the City Council.)

ACTION: Council Member Graves moved, seconded by Council Member Termini, to approve the Minutes to the Special Joint Budget Study Sessions of May 1 and 14, 2008, as corrected by Council Member/Director Graves, and the Special Joint Budget Study Session of May 28, 2008, as submitted. The motion carried on the following vote: AYES: Council Members *Storey, Graves, Termini, and Vice Mayor Begun. NOES: None. ABSENT: Mayor Nicol. ABSTAIN: *Note: Council Member Storey abstained on the Minutes of May 1, 2008.)

3. CONSENT CALENDAR (Continued)

C. Receive Planning Commission Action Minutes for the Regular Meeting of June 19, 2008. [740-50]

ACTION: The City Council unanimously received the Planning Commission Action Minutes for June 19, 2008, as submitted.

D. City Treasurer's Report for the Month Ended May 31, 2008. [380-30]

Prior to action being taken on the Consent Calendar, Council Member Graves commented on Page 4 of the City Treasurer's Report, the "Cash Balance by Fund." He did not understand the need to list the totals of the General Fund, Internal Services, and Reserves at the bottom of the page. Finance Director Lai said staff was summarizing that information as a helpful guide. Council Member Graves said it would also be helpful to be consistent when there is a negative amount that it be shown in parenthesis, not with a subtraction sign as was done on page 4.

ACTION: The City Council unanimously received the City Treasurer's Report for the month ended May 31, 2008, as submitted.

E. Receive 2008 Conflict of Interest Code Biennial Notice and direct staff to review the City's Conflict of Interest Code and submit the required notice to the Council no later than October 1, 2008. [570-20]

ACTION: Council Member Graves moved, seconded by Council Member Termini, to approve recommended action directing staff to review the City's Conflict of Interest Code, determine whether the code needs to be amended, and to submit the "2008 Local Biennial Notice" to the City Council no later than October 1, 2008. The motion carried on the following vote: AYES: Council Members Storey, Graves, Termini, and Vice Mayor Begun. NOES: None. ABSENT: Mayor Nicol. ABSTAIN: None.

F. Approve Contracts for Building Department Plan Check Services with CSG Consultants, Inc., Interwest Consulting Group, and Bureau Veritas in an aggregate amount not to exceed \$20,000. [720-10/500-10 A/C: CSG Consultants, Inc., Interwest Consulting Group & Bureau Veritas]

ACTION: Council Member Graves moved, seconded by Council Member Termini, to approve recommended action approving plan review service contracts in an aggregate amount not to exceed \$20,000, with the following three companies: CSG Consultants, Interwest Consulting Group, and Bureau Veritas. The motion carried on the following vote: AYES: Council Members Storey, Graves, Termini, and Vice Mayor Begun. NOES: None. ABSENT: Mayor Nicol. ABSTAIN: None.

G. Approve Contract with Coastal Watershed Council for Urban Watch and First Flush Water Quality Monitoring in Soquel Creek and Lagoon. [450-10/500-10 A/C: Coastal Watershed Council]

Prior to action being taken on the Consent Calendar, Council Member Graves commented on the work to be done by the Coastal Watershed Council and possible duplication of efforts in light of the work being done by the Surfrider Foundation. He would be interested in staff including in its agenda report next year the reason why it is not.

ACTION: Council Member Graves moved, seconded by Council Member Termini, to approve a contract with the Coastal Watershed Council to continue to include the City of Capitola as part of their Urban Watch and First Flush Monitoring Program, including a quality assurance program, at a cost of \$15,136.10 for the water quality monitoring in Soquel Creek and Lagoon. The motion carried on the following vote: AYES: Council Members Storey, Graves, Termini, and Vice Mayor Begun. NOES: None. ABSENT: Mayor Nicol. ABSTAIN: None.

3. CONSENT CALENDAR (Continued)

- H. **Approve the Final Parcel Map and Condominium Plan for a 55-Unit Condominium Development at 1066 41st Avenue, Application No. 06-032, Capitola Beach Villas, LLC, Developer, and Approve a Subdivision Agreement with Capitola Beach Villas, LLC. [730-10]**

This item was pulled for separate discussion. (See page 11164 for discussion and action.)

- I. **Approve Phase 2 of the Art & Cultural Commission Sea Wall Tile Public Art Project. [1010-60]**

Prior to action on the Consent Calendar, Council Member Termini said it appears Phase 2 of the Sea Wall Tile Public Art Project would be approved. He announced that tiles for the 2nd Phase of the project will go on sale Tuesday, July 1, at 10:00 a.m. at Pacific Gallery. Council Member Termini also reported the city received a check from the Capitola-Soquel Chamber of Commerce in the amount of \$3,255 for reimbursement of the tiles and that it is truly going to be a revenue neutral item.

Council discussion was followed by this action:

ACTION: Council Member Graves moved, seconded by Council Member Termini, to approve Phase 2 of the Art & Cultural Commission Sea Wall Tile Public Art Project. The motion carried on the following vote: AYES: Council Members Storey, Graves, Termini, and Vice Mayor Begun. NOES: None. ABSENT: Mayor Nicol. ABSTAIN: None.

- J. **Adopt Resolution Repealing Resolution Nos. 3621, 3601 and 3291 and Approving a New Hourly/Seasonal and Reserve Police Officers and Annuitant Officer Employee Pay Schedule. [600-10]**

This item was pulled for separate discussion. (See page 11164 for discussion and action.)

- K. **Deny Claim of John C. Kinstler, Jr. for an undetermined amount and forward to the City's Liability Insurance Carrier. [Claims Binder]**

ACTION: Council Member Graves moved, seconded by Council Member Termini, to deny the claim of John C. Kinstler, Jr., for an undetermined amount and forward it to the city's liability insurance carrier. The motion carried on the following vote: AYES: Council Members Storey, Graves, Termini, and Vice Mayor Begun. NOES: None. ABSENT: Mayor Nicol. ABSTAIN: None.

4. PUBLIC HEARINGS

- A. **Public Hearing on the Appeal of a Planning Commission Approval of Project Application #08-018, 1820 41st Avenue (APNs 034-131-22, 034-131-24), Conditional Use-Permit with Off-Site Sale of Alcohol and Limited Consumption of Alcohol on Premises for a Retail Business Establishment, Beverages and More, Inc. (BEVMO), in the CC (Community Commercial) Zoning District. [730-65]**

Senior Planner Bane summarized the written agenda report, and then he and Community Development Director Rebagliati responded to questions of council members.

Vice Mayor Begun opened the public hearing at 7:48 p.m.

Steven Zelfer, hairdresser/small business owner in Capitola since 1985, expressed concern about big box stores being approved for Capitola. He urged the council to give thought to the people who have been supporting this small town and to keep the small village atmosphere and keep large box stores out.

4. A. PUBLIC HEARINGS (Continued)

Joseph Haselton, Attorney for the appellant, Tom Ragle, commented that it appears the Council intends to rule on the issue of public convenience and/or necessity. He believes the Council would be violating Business & Profession Code Section 23958.4 by doing such a ruling when this was not officially on the agenda. Mr. Haselton said he does not believe this is appropriately before the City Council, and he urged the council to strongly consider not ruling on that issue. Attorney Haselton said 58 pages of signatures of people opposed to BEVMO were submitted with their application of opposition, and they now have 235 pages of signatures of persons, over 2,500 signatures, opposed to the establishment of BEVMO on 41st Avenue. He said there are 8 BEVMO store locations within a 30-mile radius of Capitola and there are 88 stores in California and Arizona.

Attorney Haselton then addressed the issue of public convenience and/or necessity and discussed how other jurisdictions deal with that issue. He said the City of Temecula has a separate 9-page application for public service and necessity and that it is dealt with separately. He commented on over-saturation, stating that this store would be the 14th off-site location in the census track. He went on to comment on how other jurisdictions deal with the issue of public service and necessity and why they have a separate process for this issue, including the City of Yucca Valley, City of Modesto, City of San Jose, and the County of San Diego. Attorney Haselton also commented on the close proximity of a pediatric clinic near the proposed BEVMO.

Vice Mayor Begun asked if the matter regarding public convenience and necessity could be dealt with tonight. City Attorney Barisone stated it was his opinion, under the Brown Act, that the matter was properly before the council as all the information was provided 72 hours in advance of the meeting. He could not comment on the Business & Professions Code Section mentioned by Attorney Haselton, as he did not have a copy before him.

Mike Lyons, Senior Vice President of Operations for Beverages and More, said he has been with the company since its inception in 1994. He commented on the 2,500 signatures. Mr. Lyons submitted a map, which represents 10-minute drive time. He said they use this map to determine whether to put a store in a certain location or not. The map shows what areas they expect to draw from. He also noted that their study revealed there is a strong customer base in the city already that goes to other BEVMO locations. Mr. Lyons then discussed their Club Bev Program. He submitted a binder with pictures of their stores and discussed the various types of products sold, the public convenience of the products, store hours, etc. Mr. Lyons also stated they are a responsible alcohol retailer in that they don't hire or allow individuals under 21 in their stores. In addition, a minor decoy program is done each month.

Vice Mayor Begun asked if the company performs community service. Mr. Lyons said the company allows managers at the store level to make donations. He commented on their participation in a muscular dystrophy tournament in Irvine and a Rotary Club fundraiser in Oakland.

Council Member Storey asked about the company's policy relating to exposure of alcohol to minors. He expressed concern about the location next to pediatric clinic. Mr. Lyons said concerns are more prevalent if the location is near a school or church.

Bob Marsh said he has been a wine broker in this area for the past 25 years and has been involved with the Art & Wine Festival and Rod & Custom Classic Car Show for many years. He submitted written comments for the record on this item and verbally summarized several of the points contained in that communication. Mr. Marsh said he is not in favor of opening a Beverages and More outlet in Capitola and explained why. He is particularly concerned about the negative impact a BEVMO would have on five local businesses and social impact.

4. A. PUBLIC HEARINGS (Continued)

Lucretia Hall, Garnet Street resident, expressed her opposition to the proposed BEVMO store. She expressed interest in maintaining Capitola's small town atmosphere.

An unidentified man who lives in Santa Cruz County said he does not think a BEVMO is needed in Capitola. He discussed the tax dollar implications and potential closure of current businesses. He also questioned if BEVMO would be providing jobs for local people or bringing in people from other areas.

Steve McLaran, cofounder of BEVMO, addressed the issue of public necessity and convenience and commented that staff would be hired locally, with their manager coming from the San Jose area. He said the site on 41st is a good location for the business and a perfect fit for your community.

Vice Mayor Begun closed the public hearing at 8:25

Considerable Council discussion and deliberation was followed by this action:
ACTION: Council Member Termini moved, seconded by Council Member Graves, to uphold the ruling of the Planning Commission and approve Application #08-018 for a conditional use permit with off-site sale of alcohol and limited consumption of alcohol on premises for a retail business establishment, BEVMO, located at 1820 41st Avenue, subject to the Planning Commission's Conditions and Findings.

Under discussion of the motion, Council Member Graves commented on Condition #7 regarding delivery hours on Attachment 1, Page 5 of the Agenda Report. He would like the delivery hours limited to from 8 am to 8 pm, Monday through Friday (not on the weekends).

Council Member Graves then referred to the cover page of the Agenda Report for the following items:

Condition #13 pertaining to a lighting plan for the parking lot area - he wants to make sure that the lighting for this site be limited to the site, that it be shaded downward so it is not seen off the site.

Condition #14 pertaining to a landscape plan for the parking lot area – he suggested including language to the effect that the Landscape Plan meet the 41st Avenue Guidelines.

Council Member Graves then asked if the maker of the motion would accept those changes as part of the motion. Council Member Termini said he would accept the amendments to Conditions #7, #13 and #14 as recommended by Council Member Graves. Council Member Graves said his second stands as amended.

Council Member Storey stated he would be opposing the motion and emphasized the need for the council to be thoughtful about setting a precedent approving liquor stores for public convenience and necessity. He would like to see staff develop some standards concerning how to ascertain when it no longer becomes a public convenience and a necessity.

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

4. A. PUBLIC HEARINGS (Continued)

City Manager Hill asked if the motion included the finding of public convenience and necessity. Council Member Termini said, "no," his motion was merely to uphold the Planning Commission's recommendation and careful determination on the application.

Community Development Director Rebagliati explained that in her opening comments she informed the council that staff amended that finding to clarify the issue in response to what was meant by "much-needed" and "public necessity." She said the finding is included in the packet.

Council Member Graves clarified his second to the motion. He said it is exactly as Council Member Termini has suggested and that it was not his intent to add something the Planning Commission did not include in its action.

Community Development Director Rebagliati explained there is no set process for this. City Attorney Barisone said the ABC was contacted, and they informed staff every jurisdiction is different. It is up to the governing body of the city to determine the process by which a public convenience and necessity finding would be made.

City Manager Hill clarified action of council. He then asked if the council would like to prescribe a method to make that determination for this particular instance. Council members were not interested in doing so. City Manager Hill then said, absent direction from the council, it is likely staff will look to the Police Chief's letter on file and make an administrative determination on the matter of convenience and necessity.

Council Member Storey said he wished to go on record opposing that type of ad hoc process to fulfill the ABC requirement for Public Convenience and Necessity (PCN.) He went on to say that the issue is about ABC rules. Capitola is oversaturated with liquor dispensing businesses, and there is a process that needs to be followed. Since Capitola does not have such a process, he believes a process should be developed for future applications. Citizens of Capitola should have the ability to address the issue of public convenience and necessity.

Council Member Graves responded to Council Member Storey's comments, saying he does not concur with the City Manager that the Chief of Police needs to write a letter to the ABC, and he does not think the process should be changed mid-stream.

Council Member Storey said he would like to direct staff to develop some guidelines (a draft process) for making findings of public convenience and necessity for the purpose of ABC Liquor Licenses that would go to the Planning Commission for initial review and then to the council for final adoption.

Vice Mayor Begun asked if staff was clear regarding the council's action.

City Manager Hill clarified his understanding of the council's action as follows: The City Council approved the BEVMO application by supporting the Planning Commission's determination and has made some modifications to the conditions. Those modifications will be included as part of the conditions of approval. The council has taken no action with regards to a finding of public convenience and necessity; instead, the council has acknowledged with this application that decision will be an administrative decision based upon the letter of the Chief of Police. The council also has a motion on the table for staff to come back with guidelines for determination of public convenience and necessity for prospective projects that might require such determinations.

4. A. PUBLIC HEARINGS (Continued)

After City Manager Hill's comments, there was a consensus to direct staff to develop a draft process for making findings of public convenience and necessity as recommended by Council Member Storey.

At 8:48 p.m. the City Council took a short break and reconvened at 8:58 p.m.

Vice Mayor Begun commented on an article in the newspaper regarding fireworks in Capitola. City Manager Hill clarified that safe and sane fireworks are permissible on private property according to the city's code, although the Fire Protection District and Police Department will be issuing a press release requesting that all residents refrain from safe and sane fireworks this year, and he reiterated the fine for illegal fireworks is \$1,300.

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**JOINT PUBLIC HEARINGS OF THE
CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY**

At 9:00 p.m., Vice Mayor/Vice Chairperson Begun announced that the following Public Hearing Items would be discussed jointly with the Redevelopment Agency. He noted that four City Council Members/Redevelopment Agency Directors were present, with the Mayor/Chairperson Nicol absent. City Treasurer Gualtieri and Redevelopment Agency Treasurer Saldavia were also present.

- B. Joint Public Hearing on Adoption of the Proposed 2008-2009 Fiscal Year Budgets for the City of Capitola General Fund, the Capitola Redevelopment Agency, and the Five-Year Capital Improvement Program. Presentation: City Manager and Finance Director. Staff recommendation: 1) adopt City Council Resolution Adopting the 2008-2009 Fiscal Year City and Capital Improvement Program (CIP) Budgets; 2) adopt Redevelopment Agency Resolution Adopting the 2008-2009 Fiscal Year Budget, and 3) adopt Redevelopment Agency Resolution Making a Determination regarding the Planning and Administrative Expenditures of the Low and Moderate Income Housing Fund for Fiscal Year 2008-2009. [330-05 City/ 760-25 RDA/ 330-20 CIP/ 760-30 RDA Housing]**

Finance Director Lai summarized the written agenda report pertaining to the proposed budget for approval before the City Council and Redevelopment Agency Directors, and she responded to questions. She said the Finance Advisory Committee met on Tuesday, June 24, and have submitted additional recommendations, which the Chair of the committee, City Treasurer Gualtieri, would like to address. City Treasurer Gualtieri reviewed the committee's commendations contained on the handout entitled, "Finance Advisory Committee: 6/24/08 Meeting." Council members questioned staff regarding several of the committee's recommendations.

At 9:33 p.m. Vice Mayor/Vice Chairperson Begun opened the public hearing.

Glenn Hanna, former City Treasurer, expressed concerns regarding the proposed budget. He commented on increases in city employees' salaries over the past several years, and the need for the council to look at its expenses, particularly salaries and benefits. He commented on the budget for the Scotts Valley Police Department, the fact that they paid for seven dispatchers in their budget, and they do not participate in the Consolidated Emergency Communications Center.

Vice Mayor Begun closed the public hearing at 9:48 p.m.

4. B. PUBLIC HEARINGS (Continued)

There was no further council discussion prior to the following actions being taken:

City Council Action:

1) Adoption of the Final 2008/09 Fiscal Year City and Capitola Improvement Program (CIP) Budgets.

ACTION: Council Member Termini moved, seconded by Council Member Storey, to adopt **Resolution No. 3704, Resolution Adopting the 2008/2009 Fiscal Year City and Capital Improvement Programs (CIP) Budgets**, with the following changes to the General Fund: an additional \$60,000 from the General Plan Update, \$25,000 from the Bay Avenue Roundabout, and \$50,000 from the Beulah House.

Following the motion, City Manager Hill articulated his understanding of the council's motion and referred to page 1 of the agenda report. He said the council is in agreement with the fund balance of July 1 of \$49,700 and is in agreement with transferring \$55,700 from the General Plan Update Fund to the General Fund. The council does not want to transfer \$34,700 from the Contingency Reserves, but would like to increase the transfer from General Plan Update Fund an additional \$60,000, to discontinue the \$25,000 expense for the CIP Roundabout project, and to discontinue the Beulah House project in the amount of \$49,000.

Finance Director Lai said with those changes there is a net deficit of \$182,900. She also recommended that the motion include about \$18,000 from the seasonal contract to be debated later (Item 3.J.), or at least state that if it is approved later tonight, it be included in the budget. Council Member Storey asked where it would be funded. Finance Director Lai replied, "the general fund." Council Member Storey said it would require transfers from the contingency reserve to cover that expense. Council Member Graves expressed his confusion over the discussion.

Finance Director Lai asked to have the motion repeated to be certain she understands.

Council Member Termini stated that his motion is to approve the budget with following changes: \$60,000 to be moved from General Plan Update Fund to General Fund; \$25,000 from the CIP Roundabout Design to General Fund; and \$50,000 to be taken from the Beulah House Rehab Project for total of \$135,000. Council Member Storey confirmed his second.

Council Member Graves commented on his difficulty with the motion and concern about a potential \$1M deficit in the FY2009/10 budget. Council Member Storey pointed out that the motion and action are on the FY2008/09 budget, not the FY2009/10 budget.

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

Council Member Graves asked how the council would handle the seasonal employee salaries and the ongoing negotiations with the Police Captains. Finance Director Lai said those would need to come back with budget amendments for those expenditures.

4. B. PUBLIC HEARINGS (Continued)

Redevelopment Agency Action:**2) Adoption of the Final 2008/09 Fiscal Year Redevelopment Agency Budget.**

ACTION: Director Termini moved, seconded by Director Storey, to adopt **Agency Resolution No. 2008-3, Resolution of the Board of Directors of the City of Capitola Redevelopment Agency Adopting the 2008/2009 Fiscal Year Budget**, with the change to move \$1 Million regarding Rispin from the FY2007/08 Budget to the FY2008/09 budget. The motion carried on the following vote: AYES: Directors Storey, Graves, Termini, and Vice Chairperson Begun. NOES: None. ABSENT: Chairperson Nicol. ABSTAIN: None.

NOTE: At 10:14 p.m., following discussion and action on Public Hearing Item 4.C., City Clerk/ Agency Secretary Greeninger noted that the Redevelopment Agency had not taken action on Agenda Item 4.B.3). Discussion and action on this item remains in this location for recordation purposes.

There was no discussion on this item prior to the following action being taken:

3) Adoption of Agency Resolution Making a Determination regarding the Planning and Administrative Expenditures of the Low and Moderate Income Housing Fund for Fiscal Year 2008/09.

ACTION: Director Storey moved, seconded by Director Graves, to adopt **Agency Resolution No. 2008-4, Resolution of the Redevelopment Agency of the City of Capitola Making a Determination regarding the Planning and Administrative Expenditures of the Low and Moderate Income Housing Fund for Fiscal Year 2008/09**, as submitted. The motion carried on the following vote: AYES: Directors Storey, Graves, Termini, and Vice Chairperson Begun. NOES: None. ABSENT: Chairperson Nicol. ABSTAIN: None.

C. Joint Public Hearing on Amendment to Conservation and Public Access Easement and Adoption of an Historic Façade Easement for the Rispin Mansion Property located at 2000 Wharf Road (APNs 035-371-01 & -02). Presentation: Community Development Department. [730-10]

Council Member/Director Termini recused himself on this item due to a conflict of interest, and he left the Council Chambers.

Community Development Director/Deputy Executive Director Rebagliati summarized the written agenda report and advised staff is requesting that the Amendment to the Conservation and Public Access Easement be continued. It was recommended that the public hearing on the easement amendment be continued to the second meeting in July.

She then provided staff's report on the Historic Façade Easement and responded to questions of council members/directors and the city treasurer regarding the easements.

The public hearing was open at 10:11 p.m. No one from the public spoke.

There was further council/director discussion prior to the following action being taken:

ACTION: Council Member/Director Storey moved to continue this Joint Public Hearing to the second meeting of the City Council/Redevelopment Agency in July, to be held on Thursday, July 24, 2008. Council Member/Director Graves seconded the motion. The motion carried on the following vote: AYES: Directors Storey, Graves, Termini, and Vice Chairperson Begun. NOES: None. ABSENT: Chairperson Nicol. ABSTAIN: None.

At 10:14 p.m. City Clerk/Secretary Greeninger noted that the last action under Public Hearing Item 4.B.3) had not been acted upon. Council Member/Director Termini returned to the meeting and the City Council/ Directors returned to that item and took action at this time. The action is recorded on the previous page.

Following the Joint Public Hearings at 10:15 p.m., the Capitola Redevelopment Agency adjourned to its next Regular Meeting to be held on July 10, 2008.

5. OTHER BUSINESS

A. 2008 General Municipal Election. [560-10]

Vice Mayor Begun introduced this item and asked if there were any questions for staff. He asked whether the council should appoint certain members to write the argument. City Clerk Greeninger said by adopting the resolution any number of council members could author an argument for or against the measure.

There were no comments from the public prior to the following action being taken:

ACTION: Council Member Graves moved, seconded by Council Member Termini, to approve recommended action as follows:

1) Adopted **Resolution No. 3705, Resolution Ordering an Election, Requesting County Elections to Conduct the Election, and Requesting Consolidation of the General Municipal Election in the City of Capitola on Tuesday, November 4, 2008**, to Elect Two Members of the City Council, One City Treasurer, and to Include a Ballot Measure Extending the City's Transactions and Use Tax to be Administered by the State Board of Equalization until March 31, 2019, as submitted;

2) Adopted **Resolution No. 3706, Resolution Authorizing Certain of its Members to File Written Arguments For or Against City Measures**, as submitted; and

3) Approved the proposed Timeline for Filing the Impartial Analysis, Arguments and Rebuttals for the City Measure.

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

B. Adoption of Resolution Approving the Memorandum of Understanding (MOU) for the Capitola Police Officers' Association. [600-10]

Assistant to the City Manager Murphy provided a staff report to the Council and summarized the changes to the Capitola Police Officers' Association's MOU as detailed on the written agenda report. She also noted additional corrections on pages 8 and 9 regarding Education Incentive Pay, as well as page 19 regarding PERS, which were provided in the Additional Information Agenda Report. Assistant to the City Manager Murphy responded to questions of council members.

Council Members Storey and Termini discussed their reasons for supporting the Police Officers' Association MOU as proposed.

Limited Council discussion was followed by this action:

ACTION: Council Member Termini moved, seconded by Council Member Storey, to adopt **Resolution No. 3707, Resolution Approving a Memorandum of Understanding with the Capitola Police Officers' Association for the Period July 1, 2008 through June 30, 2011**, as proposed and with the changes presented verbally and identified in the additional material agenda report.

5. B. OTHER BUSINESS (Continued)

Under discussion, Council Member Graves explained his reasons for not supporting the motion as it relates to increased medical insurance costs and the 16% salary increase over the next three years.

Vice Mayor Begun echoed comments of Council Member Storey and Council Member Termini, and he also relayed comments from Mayor Nicol regarding the salary increase over three years.

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

C. Consideration of Contract Change Order No. 1 for the 2007-08 Street Resurfacing Project for Soil Stabilization on McCormick Court. [940-40/500-10 A/C: Granite Construction]

Public Works Director Jesberg discussed the Additional Material report provided to the council today pertaining to proposed costs for soil stabilization on McCormick Court. He said that at this time staff is asking for a change order in the amount of \$90,000 for this work. Public Works Director Jesberg said funding would need to come from the FY 2008/09 Pavement Management Program, since the work would be completed in the next fiscal year.

Council discussion was followed by this action:

ACTION: Council Member Graves moved, seconded by Council Member Termini, to approve Contract Change Order No. 1 with Granite Construction for the 2007-08 Street Resurfacing Project for necessary soil stabilization work on McCormick Court in an amount not to exceed \$90,000. The motion carried on the following vote: AYES: Council Members Storey, Graves, Termini, and Vice Mayor Begun. NOES: None. ABSENT: Mayor Nicol. ABSTAIN: None.

D. Approve Contract with Anthony “Bud” Carney for Interim Community Development Director Services for an amount not to exceed \$50,000. [500-10 A/C: Carney, Anthony “Bud”]

City Manager Hill summarized the written agenda report and responded to questions of council members pertaining to cost of the contract, number of hours Mr. Carney would work, and timeframe for replacement to fill the vacancy.

Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Council Member Graves, to approve Professional Services Agreement between the City of Capitola and Anthony “Bud” Carney for Interim Community Development Director Services in an amount not to exceed \$50,000. The motion carried on the following vote: AYES: Council Members Storey, Graves, and Vice Mayor Begun. NOES: Council Member Termini. ABSENT: Mayor Nicol. ABSTAIN: None.

E. Ordinance Amending Section 16 of Ordinance No. 880 by Extending the Termination Date of an Existing Transactions and Use Tax of the City of Capitola. [1st Reading] [390-70]

City Clerk Greeninger summarized the written agenda report. City Attorney Barisone clarified that the proposed ordinance is contingent upon a majority vote on the city's ballot measure at the election in November. He also stated that this is a requirement of the State Board of Equalization.

5. E. OTHER BUSINESS (Continued)

Limited discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Council Member Termini, to pass the proposed Ordinance Amending Section 16 of Ordinance No. 880 by Extending the Termination Date (to March 19, 2019) of an Existing Transactions and Use Tax of the City of Capitola to be Administered by the State Board of Equalization to a second reading, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Graves, Termini, and Vice Mayor Begun. NOES: None. ABSENT: Mayor Nicol. ABSTAIN: None.

AT THIS POINT, ITEMS REMOVED FROM CONSENT CALENDAR WILL BE CONSIDERED

3. CONSENT CALENDAR (*Items pulled for separate discussion.*)

H. Approve the Final Parcel Map and Condominium Plan for a 55-Unit Condominium Development at 1066 41st Avenue, Application No. 06-032, Capitola Beach Villas, LLC, Developer, and Approve a Subdivision Agreement with Capitola Beach Villas, LLC. [730-10]

Council Member Graves explained his concerns about approving the recommended actions for this project, including lack of CC&R's, emails from neighbors regarding fencing and lighting on the project, concerns he had relative to the architectural drawings, etc., and his desire to see these issues resolved.

Community Development Director Rebagliati and Public Works Director Jesberg commented on Council Member Graves' concerns and discussed the purpose of the Final Parcel Map.

Jason Anderlite, Project Manager for Palisade Builders and representative for Capitola Villas, LLC, discussed his interactions with the neighbors to address their concerns during construction of the project. He expressed concerns about not approving the Final Map.

Considerable Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Council Member Termini, to approve the recommended actions as follows:

1. Approved the Final Parcel Map and Condominium Plan for a 55-unit condominium development at 1066 41st Avenue, Application No. 06-032, Capitola Beach Villas, LLC, developer, and
2. Approved the proposed Condominium Subdivision Agreement (Tract No. 1516) between the City of Capitola and Capitola Beach Villas, LLC, covering construction of the improvements and providing securities for their completion and authorized the City Manager to sign the agreement on behalf of the City.

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

J. Adopt Resolution Repealing Resolution Nos. 3621, 3601 and 3291 and Approving a New Hourly/Seasonal and Reserve Police Officers and Annuitant Officer Employee Pay Schedule. [600-10]

Assistant to the City Manager Murphy summarized the written agenda report and responded to questions of council members.

3. J. CONSENT CALENDAR *(Items pulled for separate discussion - Continued.)*

Police Sergeant Darrell Harrison responded to a question from Vice Mayor Begun regarding an Annuitant Officer.

Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Director Termini, to adopt **Resolution No. 3708, Resolution Repealing Resolution Nos. 3621, 3601 and 3291 and Approving New Hourly/Seasonal and Reserve Police Officers and Annuitant Officer Employee Pay Schedules Effective July 1, 2008, though December 31, 2008.**

Under discussion of the motion, Council Member Graves said the proposed resolution is for two years, so the total fiscal impact is \$18,300. City Clerk Greeninger clarified that her understanding of the motion is that approval was for the period July 1 to December 31, 2008, only, which is Exhibit A of the proposed resolution. The motion does not include Exhibit B, which is the pay schedule for 2009. Assistant to the City Manager Murphy suggested taking off the ending date, "through December 31, 2008," and that the resolution should say "Effective July 1, 2008."

City Manager Hill said staff is looking at \$10,000 in staffing costs and direction to accommodate that \$10,000 in the 2008-09 FY budget without touching contingency reserves.

Council Member Storey amended his motion to include direction to staff to accommodate the \$10,000 staffing cost increase in the adopted 2008-09 Fiscal Year Budget without using funds from the Contingency Reserves. Council Member Termini amended his second.

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

6. ORAL COMMUNICATIONS

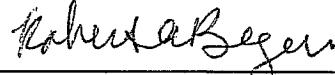
1) Council Member Graves commented on an email he received from Matt Arthur regarding the fencing near the new stairs and railroad trestle. He asked how staff arrived at that design and project. Public Works Director Jesberg said the fence was put up pursuant to an agreement the city has with Union Pacific Railroad. Council Member Graves asked if it went to the Architectural and Site Review Committee and the Planning Commission. Public Works Director Jesberg said it did not.

2) Council Member Begun reported that Mayor Nicol has been ill for approximately a month. He is at Stanford Medical Clinic and is expected to be released tomorrow. Vice Mayor Begun said he spoke to the mayor earlier tonight and was told he is feeling much better.

3) Sergeant Darrell Harrison, representing the Capitola Police Officers' Association, wished to thank each of the council members, and sent regards to Mayor Nicol who is in the hospital, for their support of the Police Officers' Associations' contract this year. On behalf of himself and Officer Van den Heuvel, he wished to thank City Manager Hill for his help in getting the POA through this process.

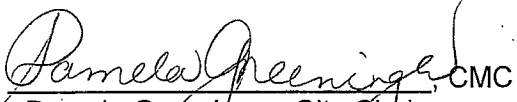
7. ADJOURNMENT

The Capitola City Council adjourned at 11:17 p.m. to the next Regular Meeting of the Capitola City Council to be held on Thursday, July 10, 2008, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Robert A. Begun, Vice Mayor

ATTEST:



Pamela Greeninger, CMC
Pamela Greeninger, City Clerk

MINUTES WERE UNANIMOUSLY APPROVED BY THE CITY COUNCIL ON 9/11/08