

August 14, 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 6:03 p.m. in the City Hall Council Chambers, Mayor/Chairperson Nicol noted that all City Council Members/Redevelopment Agency Directors were present, and 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)
 Surf & Sand LLC vs. City of Capitola (Surf & Sand Mobile Home Park)
 Soquel Union Elementary School District vs. City of Capitola

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

Property: 1720 Wharf Road, Capitola, APN 035-111-10 (Golino Property-Golino
 Family as Tenants in Common, Owners)
 Agency Negotiator: City Manager
 Under Negotiation: Purchase of property by City

Mayor/Chairperson Nicol asked if anyone wished to address items on the Closed Session agenda. Seeing no one, the council/agency recessed at 6:04 p.m. to the closed session.

At 6:50 p.m. Mayor/Chairperson Nicol welcomed everyone to the Regular Meetings of the Capitola Redevelopment Agency and the City Council of April 24, 2008, and made several announcements.

REGULAR MEETING OF THE REDEVELOPMENT AGENCY (See Capitola Redevelopment Agency Minutes)

REGULAR MEETING OF THE CITY COUNCIL

Mayor Nicol called the Regular Meeting of the City Council to order at 7:23 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

PRESENT: Council Members Sam Storey, Robert “Bob” Begun, Ron Graves, and Mayor Kirby Nicol
ABSENT: Council Member Michael Termini; City Treasurer Tony Gualtieri
STAFF: City Manager Rich Hill, Deputy City Attorney John Barisone, Acting Community Development Director Anthony “Bud” Carney, Finance Director Lauren Lai, Police Captain Todd Mayer, Assistant to the City Manager Lisa Murphy, and City Clerk Pamela Greeninger

1. REPORT ON CLOSED SESSION [520-25]

City Attorney John Barisone reported that all Council Members/Directors, with the exception of Council Member/Director Termini, were present at the Closed Session, which began at 6:00 p.m. in the City Manager’s Office. He advised that Council Member/Director Graves recused himself from participating in the Real Property discussions regarding the Golino property at 1720 Wharf Road.

1. REPORT ON CLOSED SESSION (Continued)

City Attorney Barisone also reported that City Manager/Executive Director Hill and he provided a status report on the Existing Litigation item pertaining to Save the Habitat vs. City of Capitola (Rispin Mansion Project). No reportable action was taken.

City Attorney Barisone stated that there was no discussion on the Existing Litigation item regarding Surf & Sand LLC vs. City of Capitola (Surf & Sand Mobile Home Park).

He then reported that Council Member Begun provided a brief status report on Soquel Union Elementary School District item and that no reportable action was taken.

City Manager Hill reported on the Real Property Negotiations pertaining to the Golino property, which is also on the open session agenda. No reportable action was taken in closed session.

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda

City Clerk Greeninger announced that staff provided an additional memo to Council on Consent Calendar Item 3.B., recommending that the Regular/Joint Minutes of the City Council for the Meeting of June 26, 2008 be continued to the next meeting, and that only those minutes should be removed from the agenda.

B. Public Comments

1) Rebecca Dmytryr, Project Director for Wild Rescue, a project of Earth Ways Foundation, wished to thank and commend the City of Capitola for its prompt action in banning fishing off Capitola Wharf last week to protect the pelicans from fishing lines and wires, and she submitted copies of her letter to each council member. Rebecca thanked the city for working with other state agencies in their efforts. [430-80]

2) Carin Hanna expressed concern regarding the condition of the Capitola Theater property. She said the property is a complete eyesore and asked if city could contact the owner, Barry Swenson, to see that the property is properly maintained.

3) Carin Hanna said she was asked by Dennis Norton to request that Item 3.H. pertaining to the Golino property be pulled from the consent calendar as he would like to address that item at the end of the meeting.

4) Margaret Kinstler introduced herself as a representative of the Capitola Village Resident's Association and informed the council that representatives from their organization would be taking turns coming to City Council meetings.

5) Paul Pelkey commented on matters regarding American rights and the acknowledgement of American veterans.

C. Staff Comments – NoneD. City Council/Treasurer Comments/Committee Reports

1) Council Member Graves commented on Carin Hanna's concern regarding the Capitola Theater property. He said the property is currently leased to someone to operate the parking lot; however, he was not sure exactly who the lessee is.

2) Council Member Graves also commented on the closure of the Wharf to fishing due to endangered pelicans.

3) Mayor Nicol read a Mayor's Proclamation proclaiming the week of September 21 to 27, 2008, as "Sea Otter Awareness Week." [120-40]

E. Committee Appointments – None

2. ORAL COMMUNICATIONS (Continued)

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

Staff responded to questions concerning checks numbered 56428 regarding Art at the Beach and 56472 regarding the city's water bill in the amount of \$18,900.

ACTION: Council Member Storey moved, seconded by Council Member Begun, to approve Check Register Reports dated July 18, July 25 and August 1, 2008, including checks numbered 56215 through 56291 in the amount of \$259,753.17, checks numbered 56292 through 56392 in the amount of \$605,960.00, and checks numbered 56393 through 56486 in the amount of \$241,185.44, and payroll disbursements for July 12 and August 1, 2008, in the amount of \$238,873.98 and \$233,707.21 respectively, for a Grand Total of \$1,579,479.80, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

3. **CONSENT CALENDAR**

Mayor Nicol asked if there were any items members of the council or public wished to pull for separate discussion. Council Member Graves said the Council had a request to pull Item 3.H. regarding the Golino property. Council Member Storey pulled Item 3.D. Council Member Begun asked a question regarding Item 3.M. (*See that item for comments.*) Council Member Graves commented on Item 3.G. (*See comments under that item.*)

Mayor Nicol advised that the Regular/Joint Minutes of June 26, 2008, under Item 3.B. were removed, and that Items 3.D. and 3.H. would be discussed at the end of the meeting following Other Business Item 5.C. (*See discussion and action on Page 11199.*)

CONSENT CALENDAR ACTION: Council Member Begun moved, seconded by Council Member Storey, to approve the Consent Calendar as recommended. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None. (**Note: Mayor Nicol abstained from the Minutes of June 18, 2008, and Council Member Storey abstained from the Minutes of the Special Meeting of July 31, 2008, under Item 3.B., since he was absent from that meeting.*)

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 – The Special Joint Meeting of the City Council/Redevelopment Agency of June 18, 2008, the Regular/Joint Meeting of June 26, 2008, the Regular Meeting of July 10, 2008, and the Special Meeting of July 31, 2008.

As announced under Item 2.A., Additions and Deletions to the Agenda, the Regular/Joint Minutes of June 26, 2008, were removed from the agenda and continued to the next meeting for approval.

ACTION: Council Member Begun moved, seconded by Council Member Storey, to approve City Council Minutes of the Special Joint Meeting of the Redevelopment Agency and City Council of June 18, 2008, the Regular Meeting of July 10, 2008, and the Special Meeting of July 31, 2008. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None. **Note: Mayor Nicol abstained from the meeting of June 18, 2008, and Council Member Storey abstained from the Minutes of the Special Meeting of July 31, 2008.*

3. CONSENT CALENDAR (Continued)

C. Receive Planning Commission Action Minutes for the Regular Meeting of August 7, 2008. [740-50]

ACTION: The City Council unanimously approved the Planning Commission Action Minutes for the Regular Meeting of August 7, 2008, as submitted.

D. Award Contract for the Replacement of the Deck Walkway Surfacing at City Hall to Weatherproofing Technologies, Inc., in an amount not to exceed \$24,960, and Adopt Resolution Amending the 2008-2009 Budget to Designate \$25,000 of Fund Balance for City Hall Improvements in the Public Works Facilities Contract Services Budget.

This item was pulled for separate discussion. (See action on Page 11199)

E. Award Contract for the Construction of the Soquel Creek Lagoon Wetland Filtration Bio-Swale Project to Earthworks Paving Contractors, Inc., in the amount of \$241,920. [430-50/500-10 A/C: Earthworks Paving Contractors, Inc.]

ACTION: Council Member Begun moved, seconded by Council Member Storey, to award a contract to Earthworks Paving Contractors in the amount of \$241,920 for the construction of the Soquel Creek Lagoon Wetland Filtration Bio-Swale Project, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

F. Approve Request by Max Muscle (1420 41st Avenue) for a Special Event Permit, Entertainment Permit, Encroachment Permit, Amplified Sound Permit, Single Event Application, and All-Day Use of the Bandstand to hold a "Muscle Beach Classic" Bodybuilding, Figure, and Fitness Athletic Promotion on Sunday, August 24, 2008, from 11:00 AM to 5:00 PM. [1050-70]

ACTION: Council Member Begun moved, seconded by Council Member Storey, to approve a Special Event Permit, including Entertainment Permit, Encroachment Permit, Amplified Sound Permit, Single Event Application, and all-day use of the Bandstand Permit in the amount of \$502 for a "Muscle Beach Classic" bodybuilding, figure and fitness athletic promotion from 11:00 AM to 5:00 PM on Sunday, August 24, 2008. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

G. Approve Request for Special Event Permit, Encroachment Permit and Entertainment Permit by the Capitola-Soquel Chamber of Commerce for the 26th Annual Art and Wine Festival in Capitola Village and Live Music in Esplanade Park on Saturday and Sunday, September 6 and 7, 2008; and Approve Grant for Permits and Police and Public Works Department Fees in the Amount of \$5,068. [1050-70]

Prior to action being taken on the Consent Calendar, Council Member Graves commented on this item saying that in the current hard economic times, the city council should reconsider granting fees for various special events. He would like to place this matter on a future agenda as a discussion item.

ACTION: Council Member Begun moved, seconded by Council Member Storey, to approve the recommended action as follows:

1. Approved the Special Event Permit, including all other permits, for the 26th Annual Art & Wine Festival to be held Saturday and Sunday, September 6 and 7, 2008, and authorized the Capitola Police Department to issue said permits; and
2. Granted fees in the amount of \$5,068.00.

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

3. CONSENT CALENDAR (Continued)

H. **Terminate Efforts to Acquire Real Property at 1720 Wharf Road Owned by the Golino Family.**

This item was pulled for separate discussion. (See action on Page 11199)

I. **Acceptance of the 2007-2008 Street Resurfacing Project as Complete at a Final Cost of \$194,346.96; and Authorization to Release Contract Retention of \$19,434.70 in 35 days following recordation of the Notice of Completion. [940-40]**

ACTION: Council Member Begun moved, seconded by Council Member Storey, to accept the 2007-08 Street Resurfacing Project as complete at a final cost \$194,346.96 and authorized the release of the contract retention of \$19,434.70 in 35 days following the recordation of the Notice of Completion. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

J. **Approve Plans and Specifications for the 2008 Capitola Slurry Seal Program on Capitola Road, Jade Street, 45th Avenue, and 43rd Avenue, and Authorize Advertising the Project to Receive Bids. [940-60]**

ACTION: Council Member Begun moved, seconded by Council Member Storey, to approve the plans, specifications, and engineer's estimate for construction of the 2008 Capitola Slurry Seal Program and authorize advertising the project to receive bids. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

K. **Adopt Resolution Establishing an All Way Stop at the Intersection of Capitola Avenue, Riverview Drive, and the Pacific Cove Property Entrance. [490-60]**

ACTION: Council Member Begun moved, seconded by Council Member Storey, to adopt **Resolution No. 3716, Resolution Designating the Intersection of Capitola Avenue, Riverview Drive, and the Pacific Cove Property Entrance as Meeting the Warrant Criteria for Multiway Stop Control** and directed Public Works to install the stop signs. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

L. **Receive Treasurer's Report for the Month Ended June 30, 2008 (Unaudited). [380-30]**

ACTION: Council Member Begun moved, seconded by Council Member Storey, to approve the Preliminary Treasurer's Report for the Period Ending June 30, 2008 (Unaudited), as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

M. **Approve Contract Change Orders No. 1 and 2 with JMA Construction for the Esplanade Restroom Remodel Project in the amount of \$30,000. [270-10/500-10 AC: JMA Construction]**

Prior to action being taken on the Consent Calendar, Council Member Begun asked staff what the breakdown is for the two items as far as excess cost. Public Works Director Jesberg stated that the material costs for the new floor is about \$20,000, and the cost for the delay that the city imposed on the contractor is about \$10,000.

ACTION: Council Member Begun moved, seconded by Council Member Storey, to approve Contract Change Orders No.1 and 2 with JMA Construction for the Esplanade Park Restroom Remodel Project in the amount of \$30,000, for changes in the work required by the City, including delay in the start time by 5 months. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

4. PUBLIC HEARINGS – None

5. OTHER BUSINESS

A. Report on an Analysis of Staff Time Related to Boards, Committees and Commissions. [110-10]

Assistant to the City Manager Murphy summarized the written agenda report prepared at the request of the City Council. She and City Manager Hill responded to questions of council members regarding the report and staff time for various committees.

ACTION: Following council discussion, it was the consensus of the City Council to receive the report as submitted.

B. Ordinance Amending Capitola Municipal Code Section 5.14.090 Pertaining to False Alarm Fines. [1st Reading] [480-05/390-20]

Captain Todd Mayer summarized the written agenda report and provided statistics on false alarms occurring nationwide. He reported that the number of false alarms in Capitola has declined since enactment of the city's ordinance. Captain Todd Mayer responded to questions of council members about the number of registered alarms in Capitola, collection of fines, chronic violators, etc.

Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Council Member Begun, to pass the proposed Ordinance Amending Section 5.14.090 of the Capitola Municipal Code Pertaining to False Alarm Fines to a second reading, and directed staff to return to council with a resolution amending the city's Bail Schedule as recommended in the agenda report, and to add a third tier violation for six or more false alarms in any calendar year at a base bail of \$200. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None.

**JOINT MEETING OF THE
CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY**

Mayor Nicol advised that the Capitola Redevelopment Agency and City Council convened jointly during the Regular Redevelopment Agency Meeting, under Item E.1. for the following item: *(There was no discussion on this item at this time. This item is included for recordation in the City Council Minutes of action taken only. Also see Redevelopment Agency Minutes at Page 1166.)*

C. Review and Adoption of RDA and City Council Resolutions pertaining to the New First Time Homebuyer Loan Program Policies and Procedures Manual. [760-32]

Housing and Redevelopment Project Manager Foster summarized the written agenda report on this item and responded to questions of Council Members/Directors. Council Member/Director Graves and Mayor/Chairperson Nicol expressed concern about not having an opportunity to read the manual since they were not provided with a hard copy of the document.

Director Storey made a motion, which was seconded by Director Begun, to adopt the proposed Agency Resolution Authorizing the Community Development Director to Approve and Revise the First Time Homebuyer Loan Program Policies and Procedures Manual for the Use of the Agency's Low and Moderate Income Housing Fund, with the following amendments: 1) that the resolution restrict the Community Development Director's authority to change the document, restricting to only what is State authorized, and 2) that the council be informed of changes to the manual as soon as changes take place. The motion **failed** on the following vote: AYES: Directors Storey and Begun. NOES: Director Graves and Chairperson Nicol. ABSENT: Director Termini. ABSTAIN: None.

5. C. OTHER BUSINESS (Continued)

There was further City Council/RDA Director discussion following the failed Redevelopment Agency Director motion, and the following joint action was taken:

ACTION: Council Member/Director Graves moved, seconded by Council Member/Director Storey to continue this item to a Joint Special Meeting of the City Council/Redevelopment Agency for this item only to be held on Tuesday, August 26, 2008, at 6:00 p.m. The motion carried unanimously.

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

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

D. Award Contract for the Replacement of the Deck Walkway Surfacing at City Hall to Weatherproofing Technologies, Inc., in an amount not to exceed \$24,960, and Adopt Resolution Amending the 2008-2009 Budget to Designate \$25,000 of Fund Balance for City Hall Improvements in the Public Works Facilities Contract Services Budget. [200-30/330-10/500-10 A/C: Weatherproofing Technologies, Inc.]

Council Member Storey said that it looks as though we are using carried-forward funds from 2007-08 for this project, and it was his understanding the carried-forward fund balance was needed to fill the shortfall in the 2008/09 budget. He expressed concern about adding this expense at this time and said he would prefer tabling this item for 30 days to see what happens with the State.

Council discussion was followed by this action:

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

1. Awarded a contract to Weatherproofing Technologies, Inc., in an amount not to exceed \$24,960 for the replacement of the deck walkway surfacing at City Hall, and
2. Adopted **Resolution No. 3717, Resolution Amending the 2008-09 FY Budget Designating \$25,000 from Undesignated Fund Balance for City Hall Improvements in the Public Works Facilities Budget and Increasing the Expenses by \$25,000.**

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

H. Terminate Efforts to Acquire Real Property at 1720 Wharf Road Owned by the Golino Family. [810-10]

Council Member Graves announced he has a conflict of interest regarding this item and recused himself. Since this was the last item to be discussed, Council Member Graves advised he would be leaving the meeting at this time, and he left the Chambers at 8:30 p.m.

Public Works Director Steve Jesberg summarized the written agenda report and staff's recommendation to terminate efforts to acquire the property and to send a letter to the State Resources Agency declining the award of a River Parkways grant in the amount of \$2.3 Million, so that funds can be reallocated to another community.

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

Dennis Norton, resident of Capitola, discussed the process regarding the city's acquisition of the Golino property. He said a decision was made to look for funds to purchase the property; however, an offer was never made. He expressed concern about how this matter was handled. Mr. Norton said the point he would like to make is that if in the future the city has a similar opportunity, that they look at the process and not expend a lot of staff time, consultants, etc., unless the city knows it has a deal. Mr. Norton said he supports the staff's recommendation.

Council discussion was followed by this action:

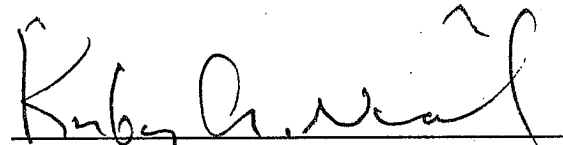
ACTION: Council Member Begun moved, seconded by Council Member Storey, to approve the recommended action to terminate all efforts by the City of Capitola to acquire the real property at 1720 Wharf Road, known as the Golino Property, to decline the award of a River Parkways Grant from the State Resources Agency in the amount of \$2.3 Million, and directed staff to send a letter to the State. The motion carried on the following vote: AYES: Council Members Storey, Begun, and Mayor Nicol. NOES: None. ABSENT: Council Member Termini. ABSTAIN: None. DISQUALIFIED: Council Member Graves.

6. ORAL COMMUNICATIONS

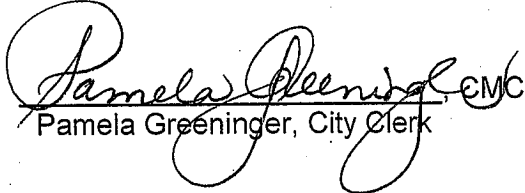
Paul Pelkey commented briefly on property matters.

7. ADJOURNMENT

The Capitola City Council adjourned at 8:40 p.m. to a Special Joint Meeting of the Capitola City Council and the Redevelopment Agency to be held on Tuesday, August 26, 2008, at 6:00 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.


Kirby A. Nicol, Mayor

ATTEST:


Pamela Greeninger, City Clerk

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