

October 23, 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 REAL PROPERTY NEGOTIATORS (Govt. Code §54956.8)

Property: 504 Beulah Drive [APN 035-141-33]
 City Negotiator: Public Works Director
 Under Negotiation: Sale of City Property

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
 Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates)

CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION BY THE CITY (Govt. Code §54956.9c) - One case to be discussed

Mayor/Chairperson Nicol asked if anyone wished to address items on the Closed Session agenda.

Council Member Graves said he would like to have the Soquel Union Elementary School District vs. City of Capitola existing litigation item removed from the Closed Session agenda. He said that lawsuit has come and gone, and he does not feel it is an appropriate item for closed session. City Attorney Barisone explained that the council has the prerogative to discuss that matter in open session and, in his opinion, it can also be discussed in closed session as the implementation of stipulated judgments and settlement agreements is a proper subject for closed session discussion. Mayor Nicol said the matter is on the closed session agenda and is also on the open session agenda. Council Member Graves said the court case has been settled and in fairness to the public, he believes it should be dropped from Closed Session. Council Member Graves then made a motion to remove the Soquel Union Elementary School District vs. City of Capitola matter from the Closed Session agenda. Council Member Termini seconded the motion. After Council discussion and response by City Attorney Barisone, the motion **failed** on the following vote: AYES: Council Members Graves and Termini. NOES: Council Members Storey, Begun and Mayor Nicol. None. ABSENT: None. ABSTAIN: None. **[1150-05]**

The City Council/Redevelopment Agency recessed at 6:08 p.m. to the Closed Session.

At 7:08 p.m. Mayor/Chairperson Nicol welcomed everyone to the Regular Meetings of the Capitola Redevelopment Agency and the City Council of October 23, 2008. He announced that the meetings are being broadcast live on Charter Communications Cable Channel 8 and are being recorded for rebroadcast at 12 noon on Saturday, October 25, 2008, by Community Television of Santa Cruz County.

REGULAR MEETING OF THE CITY COUNCIL

Mayor Nicol called the Regular Meeting of the City Council to order at 7:12 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, Michael Termini and Mayor Kirby Nicol

ABSENT: City Treasurer Tony Gualtieri

STAFF: City Manager Rich Hill, City Attorney John G. Barisone, Finance Director Lauren Lai, Acting Community Development Director Anthony "Bud" Carney, Public Works Director Steve Jesberg, Police Captain Todd Mayer, Assistant to the City Manager Lisa Murphy, and City Clerk Pamela Greeninger

***** PRESENTATIONS *****

**Mayor's Proclamation Designating October 24, 2008
as "Habitat for Humanity Day" in Recognition of 20 Years
of Service to Santa Cruz County [120-40]**

Mayor Nicol read and presented the Mayor's Proclamation Designating October 24, 2008, as "Habitat for Humanity Day" in the City of Capitola, in Recognition of Habitat's 20 Years of Service to Santa Cruz County, to Michael Bethke of Slatter Construction and to Michael Floyd, Executive Director of Habitat for Humanity. Mr. Bethke said they were honored to have the mayor personally present the proclamation to them. He said the Habitat Board and staff are thankful for the recognition and are working to build more homes in Santa Cruz County.

1. REPORT ON CLOSED SESSION [520-25]

City Attorney Barisone advised that the Council/RDA Directors met in Closed Session at approximately 6:00 p.m. and that all Council Members/Directors were present. Public Works Director Steve Jesberg participated in the Closed Session regarding the One Case pertaining to Initiation of Litigation, and Council Member/Director Termini excused himself from the ongoing discussion regarding Save the Habitat vs. City of Capitola due to a conflict of interest. City Attorney Barisone then reported on the items discussed in Closed Session as follows:

- Conference with Real Property Negotiator – 504 Beulah Drive: The City Manager provided an update on negotiations, and no reportable action was taken.
- Conference with Legal Counsel regarding Existing Litigation:
 - Save the Habitat vs. City of Capitola (Rispin Mansion Project) – The City Council had a discussion with the City Manager and the City Attorney concerning this matter, but took no reportable action in closed session.
 - Soquel Union Elementary School District vs. City of Capitola – The Council had a brief conversation concerning the ongoing negotiations with the Soquel Union Elementary School District regarding Jade Street Park and the implementation of the stipulated judgment. No reportable action was taken in closed session.
 - Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates) – The City Attorney advised the council that Vieira Enterprises is now taking steps to open an escrow account to deposit the amount of the City Council's award with interest, pending the appeal in that matter. No reportable action was taken.
- Conference With Legal Counsel - Initiation of Litigation by the City: The council met with Public Works Director Steve Jesberg about an item in which the Council may need to potentially initiate litigation, but the Council took no reportable action.

2. ORAL COMMUNICATIONS**A. Additions and Deletions to Agenda**

Mayor Nicol noted an additional communication from Sandra Wallace, President of the Soquel Union Elementary School District Board, was received pertaining to agenda item 3.G.

The City Council also received an additional Agenda Report pertinent to Item 5.C. regarding the 41st Avenue Overcrossing Improvement Project.

2. ORAL COMMUNICATIONS (Continued)

B. Public Comments

1) Toni Castro, Chief Executive Officer of the Capitola-Soquel Chamber of Commerce, invited everyone of all ages to participate in the Annual Capitola Village Halloween Parade this Sunday, October 26. She said to meet at Pacific Cove Parking Lot at City Hall at 1:30 p.m., and the parade will begin at 2:00 p.m. Ms. Castro announced that there would be refreshments, entertainment and pumpkin painting activities at Esplanade Park following the parade.

2) Linda Smith introduced herself as the representative from the Capitola Village Residents' Association.

3) Ellen Jennings, candidate for Capitola City Council, expressed dismay to see the Tiki removed and urged the council to reconsider its decision. She also commented on Museum Director Carolyn Swift's participation in the Tiki.

4) Bruce Daniels, President of Soquel Creek Water District, thanked the council for the city's participation in the Capitola Water Festival that was held on October 4. He commented on the festival activities and presented the Council with artwork that was done by the children who participated in the event.

5) Lin Banks, resident of Capitola, addressed a comment made by prior speaker Ellen Jennings pertaining to Carolyn Swift's participation in the Tiki and said she does not believe Carolyn had anything to do with the Tiki.

6) Dennis Norton commented on the removal of the Tiki and said he wanted to clarify a statement he made at the last meeting in response to a question from Council Member Storey. He wished to apologize for that statement, as he believes it may have influenced votes on the item. Mr. Norton then asked the "Usual Suspects" to stand up. In closing, Mr. Norton said that if the Council decides not to put the matter on the agenda tonight to approve the Tiki, he would suggest the council accept the Art & Cultural Commission approval for one year and deal with it during that time, or allow the matter to go back through the process. He urged the council to either take action or provide direction regarding this matter tonight.

Mayor Nicol responded to Mr. Norton's comments, saying that the mayor and other council members who voted not to accept the donation were highly influenced by his testimony. [1010-10]

7) TJ Welch, Escalona Drive resident, informed the Council that they were not notified that this item was on the agenda for the last meeting. He believes if they had been at the meeting to address the item, there may have been a different outcome. He explained the situation that occurred following the installation of the Tiki, and the process they went through. He asked that the Tiki not go back to the Art & Cultural Commission again, as it has already been through the process. He would like the city council to reconsider the Tiki.

Council Member Storey said he was one who voted against it. He asked if one year would be acceptable to the "Usual Suspects" and said it seems that it would be the goal of the donor for it to be accepted permanently. TJ Welch responded that they are amenable to the Council's decision. [1010-10]

C. Staff Comments

City Manager Hill commented on the Capitola Local Government Academy meeting held last night, which was well attended. He said excellent presentations were made by Laura Brown from Soquel Creek Water District, Luis Mendez from the Santa Cruz County Regional Transportation Commission, Heidi Smith from Santa Cruz Libraries, and Chief Bruce Clark from Central Fire Protection District.

2. ORAL COMMUNICATIONS (Continued)

D. City Council/Treasurer Comments/Committee Reports

1) Council Member Storey reported on the meeting of the Monterey Bay Unified Air Pollution Control District held October 15, 2008. He said there was an agenda item pertaining to the findings of chromium 6 at the cement plant located in Davenport. The board heard from the plant staff regarding their plans to develop some regulations about acceptable levels of chromium 6 and continued monitoring at the facility. He also reported that the board would be interviewing for a new Air Pollution Control Officer on November 10, 2008.

2) Council Member Storey commented on the Tiki, saying that he would like to encourage the Art & Cultural Commission to send the council a new proposal to either reaffirm their original decision on the Tiki application or a revised one for council consideration.

3) Council Member Begun said at the League of California Cities Conference he attended a session on FEMA's Pre-disaster Mitigation Program. He would be interested in programs available to council members to receive disaster training. City Manager Hill said there are some online programs, and he would find out which ones would be appropriate for the council and forward the information to all council members.

4) Council Member Begun commented on the Tiki matter and rumors about a Tiki Contest. He would put that on the table and start over from scratch.

5) Council Member Graves reported that the search for a new executive director for AMBAG is down to one candidate, and the board hopes to make an appointment announcement the first of November.

6) Council Member Graves said he would like to see the Tiki issue renewed through the proper channels, and he would support their endeavors to put in back in the ground.

7) Council Member Termini announced that the Tiki donation will be on the Art & Cultural Commission agenda for the month of November. He also mentioned that there may be something from the Museum Board, since, previous to the Tiki donation, they were planning a Tiki exhibit. [1010-10]

8) Council Member Termini wished to thank Bruce Daniels for his oral communication regarding the Capitola Water Festival, and he wanted to acknowledge that the Soquel Creek Water District was a major cash donor, as well as a participant in the Water Festival.

9) Council Member Termini informed the council that they have regular viewers of the city council meetings at Tradewinds Mobile Home Park, and he promised a group of ladies that he would say hello to them on camera. They refer to their group as the Jacuzzi floozies. In the words of one of the presidential candidates, Council Member Termini said this is a "Shout Out" to the Jacuzzi floozies.

10) Mayor Nicol said he would support all of the previous Tiki talk from council members. He also said the ownership of Zelda's Restaurant would be interested in having the Tiki on their open-air dining area deck.

E. Committee Appointments – NoneF. Approval of Check Register Report [300-10]

ACTION: Council Member Begun moved, seconded by Council Member Storey, to approve the Check Register Report dated October 10, 2008, including checks numbered 57125 through 57229 in the amount of \$312,220.43, and payroll disbursements for the October 10, 2008, payroll in the amount of \$192,574.00, for a Grand Total of \$504,794.43, as submitted. The motion carried on the following vote: AYES: Council Member Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. 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.

Ted Donnelly, Trustee from the Soquel Union Elementary School District, requested that Item 3.G. be separately discussed and asked if it could be addressed prior to Item 4.

Council Member Storey made a few comments on Item 3.D. (*See comments under that item.*)

Mayor Nicol advised Item 3.G would be discussed following the approval of the Consent Calendar. (*See discussion and action on Page 11239.*)

CONSENT CALENDAR ACTION: Council Member Storey moved, seconded by Council Member Graves, to approve the Consent Calendar, with the exception of 3.G., as recommended. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. 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 - None

C. Receive Planning Commission Action Minutes for the Regular Meeting of October 16, 2008. [740-50]

ACTION: The City Council unanimously approved the Planning Commission Action Minutes for the Regular Meeting of October 16, 2008.

D. Approval of Changes to the First-Time Homebuyer Loan Program Policies and Procedures Manual. [760-32]

Prior to action being taken on this item, Council Member Storey made a few comments. He said there was a typo on page 8, and also commented that certain sections may be incomplete. Housing and Redevelopment Project Manager Foster said the wording occurs in various sections, and only those pages with corrections to the manual previously provided to the council were provided. After staff's explanation, Council Member Storey withdrew his remarks.

Housing and Redevelopment Project Manager Foster said he could provide final copies of the manual to council members wishing to receive the final document.

Council discussion was followed by this action:

ACTION: Council Member Storey moved, seconded by Council Member Graves, to approve the changes to the First-Time Homebuyer Loan Program Policies and Procedures Manual, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

E. Approve Capitola/Soquel Chamber of Commerce Request for Suspending Parking Meter Enforcement in the Village from November 28, 2008 through December 26, 2008. [470-30]

ACTION: Council Member Storey moved, seconded by Council Member Graves, to approve the, Capitola Soquel Chamber of Commerce Request for Suspending Parking Meter Enforcement in the Village from Friday, November 28, 2008, through Friday, December 26, 2008, as requested. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

3. CONSENT CALENDAR (Continued)

F. Direct Staff to Obtain Proposals for Actuarial Services to Meet Requirements of Governmental Accounting Standards Board (GASB) Statement 45 Reporting for "Other Post-Employment Benefits" (OPEB). [310-20]

ACTION: Council Member Storey moved, seconded by Council Member Graves, to direct the staff to obtain proposals for Actuarial Services to meet the requirements of Governmental Accounting Standards Board (GASB) Statement 45 Reporting for "Other Post-Employment Benefits" (OPEB), as requested. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

Following action on the Consent Calendar, the City Council considered Item 3.G. as follows:

G. Receive Report on Soquel Union Elementary School District. [1150-05]

City Manager Hill said the City Council, at a prior meeting, directed staff to put on the consent agenda communications with regards to meetings from the committee on Jade Street Park with the School District. He discussed this matter with Council Member Termini and put together a brief description of what occurred in the agenda report.

Ted Donnelly, Trustee of the Board for the Soquel Union Elementary School District, read the letter dated October 22, 2008, from Soquel Union Elementary School District President, Sandra Wallace. Mr. Donnelly said the staff report makes their board look uncooperative.

Council Member Termini explained the situation that occurred and the fact that the council neglected to request any funding for a facilitator. He said there was no lack of cooperation on either group's part, and he felt it was important to make it clear to the public that there is no animosity or lack of cooperation between the parties.

Council discussion was followed by this action:

ACTION: Council Member Termini moved, seconded by Council Member Storey, to receive the Report on the Soquel Union Elementary School District and the letter from Soquel Union Elementary School District President Sandra Wallace, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

4. PUBLIC HEARINGS

A. Continued Public Hearing regarding Charter Communications Cable Television Service Complaints. Presentation: Assistant to the City Manager. (To be continued to the City Council Meeting of November 13, 2008) [565-20]

Mayor Nicol announced that this item would be continued to the next regular meeting of the City Council to be held November 13, 2008.

5. OTHER BUSINESS

A. New Homeowner Rehabilitation Manual for CDBG, HOME and CalHOME Funding. [750-60]

Housing and Redevelopment Project Manager Foster summarized the written agenda report, including the recommended action to adopt the proposed resolution. He responded to questions and comments from council members pertaining to the program manual.

Council discussion was followed by this action:

5. A. OTHER BUSINESS (Continued)

ACTION: Council Member Begun moved, seconded by Council Member Storey, to adopt **Resolution No. 3724, Resolution Adopting the Owner Occupied Rehabilitation Assistance Program Manual and Authorizing the Community Development Director to Approve and Revise the Manual as required to Meet Changes in Federal and State Regulations and to Approve and Execute Loans and Grants Under the Program**, as submitted. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

B. NPDES Storm Water Management Plan. [900-10]

Utilizing a PowerPoint Presentation, Public Works Director Jesberg summarized the written agenda report. He provided a brief history of the NPDES Program and discussed the various elements of the plan. After providing an overview, Public Works Director Jesberg discussed the potential costs for implementing the plan. He informed the Council that grants most likely would not be available, and, if the city wants to recoup some of the costs, a ballot measure (such as Measure E in Santa Cruz) would need to go to the voters in order to assess a fee. The voters would need to approve the measure by a 2/3 vote for it to pass.

Public Works Director Jesberg responded to questions of council members concerning a vacuum truck, storm drains on Depot Hill, wastewater controls, and whether the city could get an exemption based on its population.

At 8:41 p.m. Mayor Nicol opened this item for public comment.

Barbara Graves, member of the Capitola Commission on the Environment, said the commission has discussed this plan, and she is happy to see it before the council. She does not believe the cost will be as high as staff anticipates, and she informed the council that the Soquel Creek Task Force worked on this and has already prepared educational materials.

Bruce Daniels commented on the Storm Water Management Plan. He said that he was on the Regional Water Quality Board when this matter was being considered. He commented on the cause of pollution, and he encouraged the council to be proactive in discouraging people from feeding the birds.

Council members commented on the proposed plan and discussed their concerns about the costs involved in implementing the plan, particularly since these are federal and state mandates they are not funding. There was also concern expressed that it may conflict with erosion control measures on Depot Hill and interest in protecting the bluffs from continued erosion. In addition, concerns were expressed about the impacts of this plan on construction sites, as well as potential projects in our community.

Council discussion was followed by this action:

ACTION: Council Member Termini moved, seconded by Council Member Graves, to approve the revised joint Storm Water Management Plan for the City of Capitola in Partnership with the County of Santa Cruz and authorized the Director of Public Works to file the Plan with Central Coast Regional Water Quality Control Board. He further moved that expenditures not exceed the \$40,000 currently budgeted for the program and that any additional expenditures be brought back to the City Council and looked at carefully. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

5. OTHER BUSINESS (Continued)

C. 41st Avenue Overcrossing Improvement Project Change Order. [940-40/500-10 A/C: Monterey Peninsula Engineering]

Public Works Director Jesberg provided information regarding the project and complications that arose during the onset of construction. CalTrans engineers have come up with a solution, and he summarized the revised project and additional cost necessary to remove the median island and place a polyester overlay on the bridge. Public Works Director Jesberg said the additional work could be completed with existing funding.

Council discussion was followed by this action:

ACTION: Council Member Termini moved, seconded by Council Member Storey, to authorize the City Manager to sign a Contract Change Order with Monterey Peninsula Engineering up to an amount of \$148,730 for the 41st Avenue Overcrossing Improvement Project, as recommended. The motion carried on the following vote: AYES: Council Members Storey, Begun, Graves, Termini and Mayor Nicol. NOES: None. ABSENT: None. ABSTAIN: None.

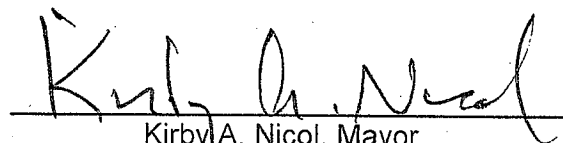
6. **COUNCIL/STAFF COMMUNICATIONS**

A) Council Member Begun noted that tonight was a first meeting where the council voted unanimously on all items.

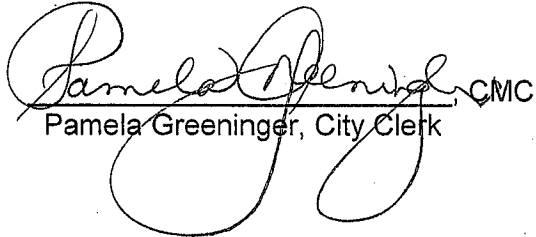
B) Council Member Termini said this is the last council meeting prior to the election, and he encouraged everyone to get out and vote.

7. **ADJOURNMENT**

The Capitola City Council adjourned at 9:17 p.m. to its next Regular Meeting to be held on Thursday, November 13, 2008, 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 11/13/08