

May 7, 2009  
 Capitola, California

## CAPITOLA CITY COUNCIL

### MINUTES OF SPECIAL JOINT MEETING OF THE CITY COUNCIL/REDEVELOPMENT AGENCY

Mayor/Chairperson Begun called the Special Joint Meeting of the Capitola City Council/Redevelopment Agency to order at 6:07 p.m. on Thursday, May 7, 2009, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

#### 1. ROLL CALL AND PLEDGE OF ALLEGIANCE

**PRESENT:** Council Members/Directors Ron Graves, Sam Storey, Kirby Nicol, Dennis Norton, and Mayor/Chairperson Robert "Bob" Begun *[NOTE: Council Member/Director Graves arrived at 6:11 p.m. following action on Item 3.B.]*

**ABSENT:** None

**STAFF:** City Manager/Executive Director Richard Hill, City Attorney/Agency Counsel John G. Barisone, Community Development Director/Deputy Executive Director Jamie Goldstein, Public Works Director Steve Jesberg, and City Clerk/Secretary Pamela Greeninger

**OTHERS:** City Treasurer Jacques Bertrand and Redevelopment Agency Treasurer Debbie Johnson

#### 2. ORAL COMMUNICATIONS

Mayor/Chairperson Begun asked if there were any oral communications. There were none.

#### 3. BUSINESS

Mayor/Chairperson Begun announced that the Redevelopment Agency would deal with Item 3.B. first.

**B. Rispin Property Underground Storage Tank Removal. Staff recommendation: Redevelopment Agency Approval of a Sole Source Contract with HSR, Inc., for the removal of two Underground Storage Tanks on the Rispin Mansion Property at an amount not to exceed \$13,600. [730-10/760-05 A/C: HSR, Inc.]**

Public Works Director Steve Jesberg summarized the written agenda report and responded to a question of Director Storey pertaining to the O'Brien & Gere firm.

Public Works Director Jesberg informed the directors that if the contract is approved tonight, staff would submit an application with Environmental Health tomorrow, and the tanks can be scheduled for removal next week.

**ACTION:** Director Norton moved, seconded by Director Storey, to approve recommended action to award a Sole Source Contract to HSR, Inc., for the removal of two underground storage tanks on the Rispin Mansion property at an amount not to exceed \$13,600. The motion carried on the following vote: AYES: Directors Storey, Nicol, Norton, and Chairperson Begun. NOES: None. ABSENT: Director Graves. ABSTAIN: None.

*Council Member/Director Graves arrived at 6:11 p.m. following action on Item 3.B.*

**A. Modifications to the Rispin Lease and Development Agreement. Staff recommendation: City Council/Redevelopment Agency Approval of Changes to Attachment No. 5 of the Rispin Lease and Development Agreement Ground Lease; and Approval of the Fifth Letter Agreement (5<sup>th</sup> Amendment) Pertaining to the October 25, 2005, Rispin Mansion Lease and Development Agreement. [275-35/500-10 A/C: Rispin Partners, LLC/City of Capitola/Redevelopment Agency]**

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3. A. BUSINESS (Continued)

Mayor/Chairperson Begun introduced this item and asked for staff's presentation.

City Manager/Executive Director Hill recognized the people who have brought the Rispin Mansion project this point, including former Council Members Tony Gualtieri, Bruce Arthur, Stephanie Harlan, Gayle Ortiz, Michael Termini, and Dennis Norton, the current council members, Ron Beardslee, Jesse Nickell, Ric de la Cruz, and Community Development Directors Kathy Molloy, Juliana Rebagliati, and Jamie Goldstein, Interim Community Development Director/Consultant Planner Bud Carney, Public Works Director Steve Jesberg, Charlie Thomas, Robert Deacon, and others.

Utilizing a PowerPoint Presentation, City Manager/Executive Director Hill reviewed the amendments to the Lease and Development Agreement (LDA), the Business Proformas of Barry Swenson Builder and city staff, the construction schedule, changes to the rent schedule of the Lease, etc. *(A copy of the PowerPoint Presentation is on file.)* City Manager/Executive Director Hill responded to questions during his presentation.

Mayor/Chairperson Begun opened the item to the public for comments at 7:15 p.m.

Marilee Wilford, Wharf Road resident, spoke in support of the Rispin Mansion project. She is tired of the graffiti and other issues in the area of the Rispin and believes this project will take care of her concerns.

Paul Pelky, Capitola resident, said the Rispin Mansion looks like a really nice project. He mentioned several places he has worked, including Seascape Resort and Pacific Development. For the record, Mr. Pelky submitted written information regarding the places he has worked. He then commented on the wording in the LDA pertaining to food and beverage revenues, and he said that a great deal of money is made from food and beverage.

Anna Gotti said that as we near the celebration for Capitola's 60th Birthday, she looks forward to the City's future. Once completed, the Rispin Hotel will be another fine establishment among many in Capitola that we take pride in. She encouraged the members to embrace the project and move forward and not to wait any longer.

There being no further public comments, Mayor/Chairperson Begun brought the item back for council discussion at 7:19 p.m.

During the discussion, Redevelopment Agency Treasurer Johnson asked for clarification pertaining to security of the project. City Manager/Executive Director Hill said the project is secured with the assets of Green Valley Corporation. He said the last time he checked those assets exceeded \$100 Million. In addition Barry Swenson is securing the project with personal assets.

Council Member/Director Graves asked when a final set of working drawings would be available. Jesse Nickell informed him that the drawings were submitted today.

Considerable Council Member/Director discussion was followed by this action:

**ACTION:** Council Member/Director Nicol moved, seconded by Council Member/Director Norton, to approve the recommended action as follows:

- 1) Approved the changes to Attachment No. 5, the Ground Lease of the Rispin Lease and Development Agreement, as submitted; and
- 2) Approved the Fifth Letter Agreement (5<sup>th</sup> Amendment) to the October 25, 2005, Rispin Mansion Lease and Development Agreement, as submitted.

3. A. BUSINESS (Continued)

After discussion of the motion and comments by each Council Member/Director, Mayor/Chairperson Begun called for the vote.

Prior to voting, City Manager/Executive Director Hill commented that Council Member/Director Norton had expressed interest concerning the CDBG loan, and Mr. Hill would like the City Attorney/Agency Counsel to read the language that addresses that matter.

City Attorney/Agency Counsel Barisone clarified that the motion would include amending what is before the City Council/Redevelopment Agency to add a provision that if the developer fails to satisfy conditions that render the project ineligible for the CDBG loan, the city's obligation to make the in-lieu CDBG loan of \$500,000 would go away. In other words, City Attorney/Agency Counsel Barisone said the developer has to satisfy all of the conditions. Once all conditions are met, CDBG will decide whether to make the loan or not. If, for some reason, CDBG never gets to the point of making a decision on the loan because of the failure of a condition that the developer has responsibility for, the city's obligation would go away.

As the maker of the motion, Council Member/Director Nicol said he supported the proposed amendment to his motion articulated by the City Attorney. Council Member/Director Norton also amended his second to the motion as proposed.

Mayor/Chairperson Begun asked for a roll call vote on the motion to approve the changes to Attachment No. 5, the Ground Lease of the Rispin Lease and Development Agreement, as submitted, and to approve the Fifth Letter Agreement as amended to include language to paragraph 4 pertaining to the Agency's CDBG in-lieu loan.

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

Following the action on Item 3.A., Council Member/Director Norton asked for reconsideration of the vote, bringing to point paragraph C of the Lease Agreement (*Article 3, 3.1 Gross Percentage Rent, paragraph C. on Agenda Report page 11*). He would like to remove from that paragraph all wording pertaining to the CPI increases.

**ACTION:** Council Member/Director Norton then moved, seconded by Council Member/Director Storey, to reconsider the action taken by the City Council/Redevelopment Agency on Item 3.A.

City Manager/Executive Director Hill responded to questions pertaining to the motion to reconsider.

Council Member/Director Nicol asked if the CPI was discussed in the negotiations that were conducted by Mr. Termini.

Michael Termini said the CPI incrementing of the floor has always been an important point for Barry Swenson himself because he recognizes that the indexing does not take place effectively for 7 years from today. Mr. Swenson has concerns regarding the ups and downs in the economy and if the floor doesn't rise with the CPI it will cause that 6% rent to be permanent, and then the floor would be meaningless after the first ten years. Mr. Termini said he recognizes it is in the Council Members/Directors' power to take such action, but he said they should be aware this may result in it not being an acceptable deal financially for the Rispin, LLC.

## 3. A. BUSINESS (Continued)

After discussion, Council Member/Director Graves called for a vote on the motion for reconsideration.

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

Ron Beardslee, Rispin, LLC, addressed the paragraph in question, stating that it works both ways. It is not strictly in the developer's favor if there is a highly inflationary period. It also works to the City's favor as well if there is a deflationary period.

Mayor/Chairperson Begun asked for clarification regarding the paragraph under reconsideration.

City Attorney/Agency Counsel Barisone read the first sentence of paragraph C, which is the language to remain in the Ground Lease.

Council Member/Director Norton asked that all references to the CPI be taken out of the contract. City Attorney/Agency Counsel Barisone commented on his understanding of Council Member/Director Norton's motion, and he said that paragraph should read: "Notwithstanding the rent calculation called for in 3.1.B above, if during any year of the Lease term addressed in 3.1.B Gross Receipts total \$3,000,000 or less, Tenant's rent for that one year period shall be 3.5% of Gross Receipts." The language, "*(upwardly indexed as set forth hereinbelow)*" is removed, as well as the remainder of the paragraph.

**ACTION:** Council Member/Director Norton moved, seconded by Council Member/Director Storey, to remove references to the CPI in paragraph C (of Article 3, Section 3.1, of the Ground Lease of the Rispin Lease and Development Agreement); that paragraph to read:

"C. Notwithstanding the rent calculation called for in 3.1.B above, if during any year of the Lease term addressed in 3.1.B Gross Receipts total \$3,000,000 or less, Tenant's rent for that one year period shall be 3.5% of Gross Receipts."

There was further discussion of the motion by Council Members/Redevelopment Agency Directors.

Prior to voting on the motion, City Manager/Executive Director Hill announced that something has come to his attention, unrelated to the motion on the floor, that he would like Council/Member Directors to consider adding to the motion and explained. He referred to Provision 10 of the Fifth Letter Agreement on lower right page number 6 of the Agenda Report. City Manager/Executive Director Hill said he has been advised by Michel Termini that the City gave up the note from Green Valley Corporation during mediations; therefore, that paragraph is not necessary. He suggested including removal of Paragraph 10 from the 5th Amendment as part of the motion.

Council Member/Director Norton said he would accept that amendment, Council Member/Director Storey agreed.

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

3. A. BUSINESS (Continued)

There was further discussion about the timeline for execution of the approved documents and an interest in setting a deadline for that to be completed.

**ACTION:** Council Member/Director Graves moved, seconded by Council Member/Director Norton, that staff bring this matter back to the City Council/Redevelopment Agency if the documents are not executed within ten (10) working days.

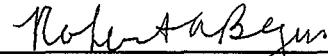
Mayor/Chairperson Begun expressed his concerns about the additional changes not having been approved by Barry Swenson Builder.

Council Member/Director Graves said he was trying to set a date certain by which the developer must respond.

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

4. **ADJOURNMENT**

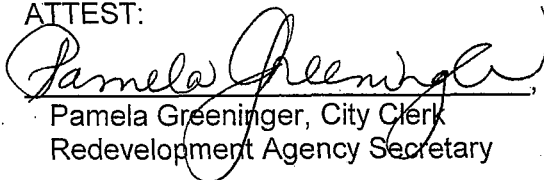
The City Council/Redevelopment Agency adjourned at 8:05 p.m. to a Special Joint Budget Study Session of the City Council/Redevelopment Agency to be held at 6:00 p.m. on Wednesday, May 13, 2009, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



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Robert A. Begun, Mayor  
Redevelopment Agency Chairperson

ATTEST:



CMC  
Pamela Greeninger, City Clerk  
Redevelopment Agency Secretary

**MINUTES WERE UNANIMOUSLY APPROVED BY THE CITY COUNCIL ON 5/28/09**