

September 10, 2009

Capitola, California

**CAPITOLA CITY COUNCIL
MINUTES OF A REGULAR MEETING**

**5:30 P.M. - CLOSED SESSION - CITY MANAGER'S OFFICE
CAPITOLA REDEVELOPMENT AGENCY & CITY COUNCIL**

At 5:30 p.m. in the City Hall Council Chambers, Mayor/Chairperson Begun noted that all City Council Members/Redevelopment Agency Directors were present. He made an announcement regarding the items to be discussed in Closed Session, as follows:

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

Property: Rispin Mansion Property, 2000 & 2005 Wharf Road
APN 035-371-01 & 02

Agency/City Negotiator: Rich Hill, City Manager/RDA Executive Director

Negotiating parties: The Rispin LLC, City of Capitola, and City of Capitola
Redevelopment Agency

Under Negotiation: Lease and Development Agreement

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

Property: 4140 Jade Street, APN 034-641-08

City/Agency Negotiator: Rich Hill, City Manager/Executive Director

Owner: John and Karen Huffman

Under Negotiation: Purchase of Property by City

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

Surf and Sand, LLC vs. City of Capitola
Save the Habitat vs. City of Capitola (Rispin Mansion Project)

CONFERENCE WITH LABOR NEGOTIATOR (Govt. Code §54957.6)

Negotiator: Rich Hill, City Manager

Employee Organizations: Association of Capitola Employees, Capitola Police Captains, Capitola Police Officers Association, Confidential Employees, Mid-Management Group, Building Official, City Manager, Community Development Director, and Public Works Director

Mayor/Chairperson Begun asked if anyone wished to address items on the Closed Session agenda. Seeing no one, the City Council/Redevelopment Agency recessed at 5:31 p.m. to its Closed Session.

CAPITOLA REDEVELOPMENT AGENCY (See Redevelopment Agency Minutes)

REGULAR MEETING OF THE CITY COUNCIL

Mayor Begun called the Regular Meeting of the City Council to order at 7:36 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

PRESENT: Council Members Ron Graves, Sam Storey, Kirby Nicol, Dennis Norton, and Mayor Robert "Bob" Begun

ABSENT: None

OTHERS: City Treasurer Jacques Bertrand

STAFF: City Manager Rich Hill, City Attorney John G. Barisone, Community Development Director Jamie Goldstein, Public Works Director Steve Jesberg, Interim 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 Barisone said items discussed in closed session are those items listed on the City's posted agenda. He reported on those items as follows:

Conference with Real Property Negotiator (Govt. Code §54956.8) regarding the following items:

- o Rispin Mansion Property, 2000 & 2005 Wharf Road (Lease and Development Agreement): The City Manager provided a status report regarding ongoing negotiations. No reportable action was taken.
- o 4140 Jade Street: The City Council/Redevelopment Agency Directors received a status report from the City Manager/RDA Executive Director regarding negotiations pertaining to the potential acquisition of property located at 4140 Jade Street for a library site, but took no reportable action.

City Attorney Barisone reported that he provided a status report regarding the ongoing litigation in the 9th Circuit Court of Appeals regarding Surf and Sand, LLC vs. City of Capitola. No reportable action was taken in Closed Session.

He said there was no discussion in Closed Session pertaining to the existing litigation matter, Save the Habitat vs. City of Capitola (Rispin Mansion Project).

Finally, City Attorney Barisone reported that the City Council heard from the City Manager regarding potential labor negotiations in light of the City's current budget forecast. City Manager Hill provided a status report on that matter. The City Council took no reportable action in Closed Session.

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

(Note: Public Hearing Item 4.A. was continued to the next regular meeting of the City Council to be held on September 24, 2009. See comments under Item 2.C. below.)

B. Public Comments

Tom Mader, resident of Capitola, addressed the City Council on two topics:

1) Rispin Fire danger: Mr. Mader informed the Council that Save the Habitat met with City staff and the Fire Department to discuss removal of hazardous debris around the Rispin Mansion, as Save the Habitat has a legal protective zone around the riparian habitat. He said there is no way to keep people out of the area other than electrified fences. He said that their group supports the city's plan 100%, that Save the Habitat will pay for a wildlife biologist to be on site during the debris removal, and that they will continue to work with the City to enhance and protect the riparian corridor.

2) Recall of Kirby Nicol: Mr. Mader said he was a member of the recall group, and speaking on behalf of the group, they were stunned and shocked by Council Member Nicol's mailer this week accusing their group of plotting to undermine the Begonia Festival. Mr. Mader said his family has been active in the festival for years picking begonias, building floats, decorating their property, etc. Mr. Mader read an excerpt from the mailer he had referred to, and then asked Mr. Nicol about statements contained in the mailer. Mayor Begun informed Mr. Mader that he is not allowed to address a particular council member, that speakers must address the entire council, and that he does not expect Council Member Nicol to reply.

Mr. Mader then said they are nearing 1,000 signatures, but still have a ways to go, but if they do make it, he asked Council Member Nicol if he would meet their challenge of paying his share of the recall expense. Once again, Mayor Begun stated that Council Member Nicol is not required to answer his question.

2. ORAL COMMUNICATIONS (Continued)

C. Staff Comments

Council Member Graves asked about Public Hearing Item 4.A., which he understood would be continued. Assistant to the City Manager Murphy said Item 4.A. pertaining to an amendment to the City's Fee Schedule will be continued to the next regular meeting to be held on September 24, 2009.

D. City Council/Treasurer Comments/Committee Reports

1) Council Member Graves commented that the music and the fireworks on September 2nd for the Twilight Concert and City's 60th Birthday Celebration were outstanding. He would like to thank those companies that donated the funds for the fireworks (Redtree Properties and Devcon Construction).

2) Council Member Graves said that tomorrow at the Transit District Board meeting he would be nominating his representative on the MAC (METRO Advisory Committee). He said he spoke to two interested applicants, and he received an application from Capitola resident Craig Agler. He believes Mr. Agler would be an excellent committee member as he lives in Capitola behind DMV and relies on METRO for transportation.

3) Council Member Norton commented on limited bus services the City has in Capitola Village. He requested that Council Member Graves, as the City's representative to the METRO Board, request direct bus service from Capitola Village to downtown Santa Cruz. Council Member Norton suggested a Portola Express, which would go from the Village along Portola Drive and not stop at the Mall. Council Member Graves said he would be happy to do so if there were a consensus from the entire council. By the nodding of heads, there was a consensus by the Council.

E. Committee Appointments1) **Council Member Nicol's Appointment to the Commission on the Environment. [430-05/110-10]**

Council Member Nicol said he spoke to 3 Capitola residents who had expressed interest in this vacancy: Denice Lucy, a graduate of the Capitola Academy, Annette Jackson, and Greg Tedesco. Applications were received from Annette Jackson and Greg Tedesco. After careful consideration, Council Member Nicol announced that he has decided to appoint Greg Tedesco as his appointee to the Commission on the Environment. He discussed Mr. Tedesco's experience and believes he will be an asset to the commission.

ACTION: Council Member Graves moved, seconded by Council Member Storey, to ratify Council Member Nicol's appointment of Greg Tedesco to serve as an At-Large Council Member Appointee on the Commission on the Environment, with a term ending December 2010. The motion carried unanimously.

Following action on Council Member Nicol's appointment, Council Member Norton commented on the qualifications of Annette Jackson and asked whether there might be a way to open another position on the commission that she could fill.

City Manager Hill informed the council that the Commission's implementing resolution would need to be amended to include an additional position. City Clerk Greeninger said that meetings of the Commission on the Environment are open to the public, and Ms. Jackson could attend and possibly participate on subcommittees of the commission.

Council Member Graves commented on his brief experience on the commission and said he believes we are well covered under the current commission membership. Council Member Nicol also commented that there has been a lot of turnover on the commission.

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

Staff responded to questions of council members on several checks. Council discussion was followed by this action:

ACTION: Council Member Nicol moved, seconded by Council Member Storey, to approve the Check Register Reports dated August 7, 14, 21, and 28, 2009, including checks numbered 60750 through 60834 in the amount of \$79,676.78, checks numbered 60835 through 60943 in the amount of \$191,735.08, checks numbered 60944 through 60990 in the amount of \$30,057.37, and checks numbered 60991 through 61061 in the amount of \$88,353.64, respectively; and payroll disbursements for the August 14 and August 28, 2009, payrolls in the amount of \$232,501.00 and 209,059.14, respectively, for a Grand Total of \$831,383.01, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

3. **CONSENT CALENDAR**

Mayor Begun asked if there were any items on the Consent Calendar that members of the council or the public wished to pull for separate discussion.

Council Member Graves said he would like to discuss Items 3.D. and 3.E. (See Pages 11481 and 11482 for comments on those items that were made at this time.) Mayor Begun commented on Item 3.F. pertaining to the completion for the Bay Avenue Sidewalk Project. (See comments under that Item on Page 11482.)

Council Member Norton pulled the Planning Commission Action Minutes Item 3.C. Mayor Begun noted that Item 3.C. would be discussed following Other Business Item 5.C. (See Page 11484.)

CONSENT CALENDAR ACTION: Council Member Norton moved, seconded by Council Member Nicol, to approve Consent Calendar Items 3. A., B., D. and F., as recommended. (Note: Separate action was taken on Item 3.E.) The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. 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 – Regular Meeting of August 13, 2009, and the Special Joint Closed Session Meeting of the City Council/Redevelopment Agency of August 18 & September 1, 2009.**

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to approve the Minutes of the Regular Meeting of August 13, 2009, and the Special Joint Closed Session Meeting of the City Council/Redevelopment Agency of August 18 and September 1, 2009. The motion carried on the following vote: AYES: Council Members Graves, *Storey, *Nicol, *Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: (NOTE: Council Members Nicol and Norton abstained from the minutes of August 18, 2009, and Council Member Storey abstained from the minutes of September 1, 2009; since they were not present at those meetings.)

C. **Receive Planning Commission Action Minutes for the Regular Meeting of September 3, 2009. [740-50]**

This item was pulled for separate discussion. (See Page 11484 for discussion and action.)

3. CONSENT CALENDAR

D. Adopt Resolution Accepting a Three-Year State Office of Traffic Safety (OTS) Grant in the Amount of \$478,654 to Administer the "Avoid the Nine" Campaign and Amending the FY2009/2010 General Fund Operating Budget by Decreasing Both Revenues and Expenditures by \$26,000 to reflect the Difference in the Estimated versus Actual Grant Amount. [480-05/ 330-10]

Prior to action being taken on the Consent Calendar, Council Member Graves expressed his concerns about the budgeting process for grants that the City may or may not get. He believes grant money should not be included in the budget unless it has been received, and that there should be an amendment to the budget once the grant is received.

Interim Chief of Police Ehle responded to Council Member Graves' comments and said he was informed that the City had received the grant, but then there were changes to the amount.

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to adopt **Resolution No. 3772, Resolution Accepting a Three-Year State Office of Traffic Safety (OTS) Grant in the amount of \$478,654 to Administer the "Avoid the Nine" Campaign, and Amending the FY2009-10 General Fund Operating budget Decreasing Both Revenues and Expenditures by \$26,000** to Reflect the Difference in the Estimated versus Actual Grant Amount, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

E. Approve a Revision to Administrative Policy No. III-2 Pertaining to Employee & Public Official Expense Reimbursement and Travel Regulation regarding Meal Reimbursement. [100-10/Administrative Policies Binder]

(NOTE: This item was discussed extensively prior to action being taken on the Consent Calendar. A separate motion and vote was taken for this item. The discussion and action is recorded below.)

Council Member Graves commented on the proposed revision to the Administrative Policy pertaining to Meal Reimbursement and expressed concern that one would now have to stay overnight in order to get a paid meal. He was curious as to what prompted this change.

Assistant to the City Manager Murphy responded that there was not a clear definition in the policy regarding when someone could receive meal reimbursement. Staff checked with other agencies on their policies for meal reimbursement. Most of those agencies did not reimburse meals unless an employee or official went out of town for an overnight stay.

Council Member Graves said he has a problem with the overnight stay part of the policy and explained why. He said it relates to his service on behalf of the city as a member of AMBAG. He went on to say he believes the policy is way too strict.

City Manager Hill said the impact would be less than \$2,500 year.

Assistant to the City Manager Murphy responded to a question from Council Member Storey about overnight stay requirements; he expressed concern that this might lead to more overnight stays.

City Manager Hill commented on consortium training which is normally one day. He said some people put in for lunch and others do not.

3. CONSENT CALENDAR

Mayor Begun asked if it would make sense to add a phrase to the proposed language change, such as “abnormal working hours” or “outside of normal working hours.”

Council Member Graves referred to page 4, underlined paragraph 3. and suggested adding, “or those training sessions which have been previously approved.” That would give latitude for staff to make a determination.

Council Member Nicol said the reason staff brought this to the council was to take out some of the ambiguity, and he is comfortable with staff’s recommendation.

Council Member Graves provided examples of meetings where a council member represents the city, such as AMBAG, Monterey Bay Division League of California Cities meetings, etc. He thinks the policy works; why change it. If it doesn’t work, then he would like to know the reason why before changing it.

City Manager Hill commented on the City Selection Committee meetings and local League meetings where a meal is attached. He would not have a problem adding language to the policy that includes meal reimbursement for those official meetings, such as AMBAG, League of California Cities, and the City Selection Committee. City Manager Hill said the next issue for discussion is whether the Council would want to extend reimbursement for meals to training sessions outside the county.

Council Member Storey asked for a separate vote on Item 3.E., saying he does not support having a separate provision for meetings that would affect the council members.

Considerable Council discussion of this item was followed by this separate action:

ACTION: Council Member Graves moved, seconded by Mayor Begun, to approve revisions to Administrative Policy No. III-2 Pertaining to Employee & Public Official Expense Reimbursement and Travel Regulation regarding Meal Reimbursement with additional language that would provide reimbursement for official meetings as articulated by the City Manager. The motion carried on the following vote: AYES: Council Members Graves, Norton, and Mayor Begun. NOES: Council Members Storey and Nicol. ABSENT: None. ABSTAIN: None.

F. Accept Notice of Completion for the Bay Avenue Sidewalk Project as Complete at a Final Cost of \$154,074.59 and Authorize the Director of Public Works to Release All or a Portion of the Contract Retention of \$15,407.46 in 35 days following the Recordation of the Notice of Completion and Submittal of Securities from the Contractor. [940-40]

Prior to action being taken on the Consent Calendar, Mayor Begun asked if this project were an under-run and, if so, what is done with the extra money. Public Works Director Jesberg said the project did come in under budget and that the money will remain in the CIP fund. The funds will be moved at such time as the city needs the money for another project.

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to accept the Bay Avenue Sidewalk Project as complete at a final cost \$154,074.59 and authorized the Director of Public Works to release all or a portion of the contract retention of \$15,407.46 in 35 days following the recordation of the attached Notice of Completion and submittal of securities from the contractor, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

4. PUBLIC HEARINGS

- A. Public Hearing to Consider Amending the City's Fee Schedule Resolution No. 3756 to Correct the General Plan Maintenance Fee under Planning Department Fees. Presentation: City Manager's Department. [390-40]**

ACTION: This item was continued to the next regular meeting of the City Council to be held on September 24, 2009, as requested by staff in order to meet noticing requirements.

5. OTHER BUSINESS

- A. Consideration of Bids to be Received on September 9, 2009, and Award Contract for the 2009 Street Overlay Project on Hill Street, Pine Street, Plum Street, and a Portion of Rosedale Avenue. [940-40/500-10 A/C: Granite Construction Company]**

Public Works Director Jesberg reported on the bids received on Wednesday, September 9, 2009, for the 2009 Street Overlay Project as follows:

Granite Construction Company	\$268,862.00
Earthworks	\$302,744.89
Chapin	\$302,790.00
Pavex	\$305,351.00

Limited discussion was followed by this action:

ACTION: Council Member Graves moved, seconded by Council Member Nicol, to receive the bids for the 2009 Street Overlay Project and award a contract to the low bidder, Granite Construction Company, in an amount not to exceed \$268,862 for completion of the project. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

- B. Receipt and Acceptance of a Three-Year U.S. Department of Justice C.O.P.S. Hiring Recovery Program (CHRP) Grant in the amount of \$291,217 (\$93,049 for FY 2009/10, \$97,298 for FY 2010/11, and \$100,870 for FY 2011/12). [370-40/330-10]**

Chief of Police Ehle summarized the written agenda report and responded to questions of council members.

Council discussion was followed by this action:

ACTION: Council Member Norton moved, seconded by Council Member Storey, to adopt **Resolution No. 3773, Resolution Authorizing the Police Department to Accept a Three-year U.S. Department of Justice C.O.P.S. Hiring Recovery Program (CHRP) Grant in the amount of \$291,217, to Hire one Additional Police Officer, and to Amend the Police Department's FY 2009/10 Budget to Reflect Additional Revenues and Expenditures of \$93,049**, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

- C. Employment Agreement for Police Chief. Staff recommendation: approve Employment Agreement with Michael Card for the Position of Police Chief effective January 4, 2010. [620-10/500-10 A/C: Card, Michael]**

City Manager Hill said he was pleased to present the proposed employment agreement for Capitola's Chief of Police with Michael Card who started his police career in Capitola. He said the contract is for three years commencing January 4, 2010, and it could be negotiated at the end of that time period.

5. OTHER BUSINESS (Continued)

Council Member Nicol expressed concern and confusion about the language contained on Page 7 of the agreement pertaining to vacation hours and vacation days, as well as accrual of vacation hours. City Manager Hill responded to his concerns and clarified that 1 day equals 8 hours. Council Member Graves also expressed his concerns about the language in the last paragraph on page 16.

ACTION: Council Member Graves moved, seconded by Council Member Storey, to approve the Employment Agreement with Michael Card for the Position of Police Chief, with the corrected Job Description, Exhibit A of the agreement. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

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

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

C. Receive Planning Commission Action Minutes for the Regular Meeting of September 3, 2009. [740-50]

Council Member Norton said he pulled this item to discuss Public Hearing Item 6.C. pertaining to a conceptual review for a proposed project at 115 San Jose Avenue. He expressed concerns about comments made during the proceedings to the applicant, Matthew Peak. One of the Planning Commissioners stated that this application was wasting the Planning Commission's time, and the city had more important things to be considering. Council Member Norton said he does not think that was something that should have been stated publicly, and he believes someone needs to address the Planning Commissioner and the Planning Commission in general, regarding how the city should treat applicants. Council Member Norton agrees with the Planning Commission's decision on this item; however, he thinks the handling of this project by this one Planning Commissioner was out of line and needs to be rectified.

Council Member Graves said he watched the meeting and believes Council Member Norton was referring to his Planning Commission appointment. He said he would be happy to discuss Council Member Norton's concerns with her.

Council discussion was followed by this action:

ACTION: Council Member Nicol moved, seconded by Mayor Begun, to receive the Planning Commission Action Minutes for the Regular Meeting of September 3, 2009, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

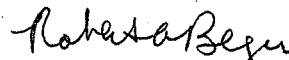
6. COUNCIL/STAFF COMMUNICATIONS – None

7. ADJOURNMENT

The City Council adjourned at 8:40 p.m. to a Special Meeting regarding Surf and Sand Mobile Home Park to be held on Wednesday, September 23, 2009, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ATTEST:


Pamela Greeninger, City Clerk



Robert A. Begun, Mayor

MINUTES WERE UNANIMOUSLY APPROVED AS SUBMITTED BY THE CITY COUNCIL ON SEPTEMBER 24, 2009