

September 23, 2009
 Capitola, California

CAPITOLA CITY COUNCIL

MINUTES OF SPECIAL MEETING OF THE CITY COUNCIL

6:15 P.M. - CLOSED SESSION - CITY MANAGER'S OFFICE

At 6:20 p.m. in the City Hall Council Chambers, Mayor Begun noted that all City Council Members were present, with the exception of Council Member Graves. Mayor Begun made an announcement regarding the item to be discussed in Closed Session, as follows:

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Govt. Code §54956.9a) Surf and Sand, LLC vs. City of Capitola

Mayor Begun asked if anyone wished to address items on the Closed Session agenda. Seeing no one, the City Council recessed to its Closed Session at 6:22 p.m.

7:00 P.M. – OPEN SESSION

Mayor Begun called the Special Meeting of the City Council of Wednesday, September 23, 2009, to order at 7:05 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

PRESENT: Council Members Sam Storey, Kirby Nicol, Dennis Norton, and Mayor Robert "Bob" Begun
ABSENT: Council Member Graves
STAFF: City Manager Rich Hill, Community Development Director Jamie Goldstein, City Attorney John G. Barisone, and City Clerk Pamela Greeninger

1. REPORT ON CLOSED SESSION [520-25]

City Attorney Barisone reported on the Closed Session regarding potential litigation that may result from the item before the Council tonight. Mr. Barisone reported that the City Council heard from its legal counsel and took no reportable action in Closed Session.

2. ORAL COMMUNICATIONS

Mayor Begun asked if anyone from the public wished to address the Council on items not on the agenda.

Paul Pelkey commented on personal matters and discussed people with special needs, saying that you cannot tell people who have special needs. Mr. Pelkey believes it is the city's obligation to assist people with needs.

3. PUBLIC HEARING

**A. Continued Public Hearing for Project Application #09-011, 750 47th Avenue, to Consider Appeal of a Coastal Permit and Sufficiency of Relocation Impact Report for the Closure of Surf and Sand Mobile Home Park in the MHE (Mobile Home Exclusive) Zoning District and Located in the Coastal Zone. This Project requires a Coastal Permit which is Appealable to the California Coastal Commission after all possible Appeals are exhausted through the City. Environmental Determination: Categorical Exemption
 Property Owner/Applicant: Surf and Sand, LLC, Filed: 1/20/09
 Representative: Mark Alpert - Hart King & Coldren
 Presentation: Community Development Department
 [730-10: 750 47th Avenue, Surf & Sand Mobile Home Park]**

3. A. PUBLIC HEARING (Continued)

Mayor Begun introduced the item and asked for comments from the City Attorney.

City Attorney Barisone discussed the reason for the continued public hearing, explaining that on August 27, 2009, the City Council had a meeting on two items, the appeal of an application for a Coastal Permit to close the Surf & Sand Mobile Home Park, as well as a hearing on the sufficiency of the Relocation Impact Report that was filed with the City in connection with that potential park closure. The Council also formed a subcommittee comprised of two council members and three staff members to assist in the preparation of the resolutions, which are included in the agenda materials. City Attorney Barisone said the public hearing was closed; however, under the Brown Act oral communications on items on an agenda are required. His recommendation to the council is to allow the public to testify as to the proposed resolutions.

City Attorney Barisone also said the Mayor may wish to consider allowing the park owner's representative and the tenant's representative to address the council for a specified amount of time, and then allowing members of the public to testify for a shorter period of time.

Community Development Director Goldstein summarized the written agenda report. *(A copy of the staff's PowerPoint Presentation is on file with the record for this item.)* He summarized the recommended action to adopt the revised draft Resolution Upholding the Planning Commission's denial of the Coastal Development Permit to close Surf & Sand Mobile Home Park, and to adopt a resolution finding the Relocation Impact Report is insufficient with the suggested corrections.

Council Member Storey asked for clarification regarding the appraisal. He said if the Council finds the RIR insufficient it would then be put back on the park owner to revise the RIR and to resubmit it to the City for consideration. He asked if, at that time, the residents wanted to submit an alternative appraisal on their particular homes, other than the Frank May appraisal, they would have an opportunity to do so. Community Development Director Goldstein said if another RIR was submitted to the City, the City would consider that Relocation Impact Report as well as any other evidence submitted to the City at that time.

Mayor Begun opened the matter to the park owner's representative at 7:31 p.m.

Attorney Mark Alpert of Hart, King & Coldren, representing the applicant, advised that he did not agree with the committee's conclusions and that the proposed mitigation measures are not reasonable and would make it impossible for a typical park owner to close a park. In conclusion, Mr. Alpert recommended that the City Council rule the Relocation Impact Report sufficient in the form originally submitted by his client.

Council Member Storey asked Mr. Alpert about his comments relative to mortgages. He questioned if he was intimating that the anti-deficiency laws apply to what is, in essence, personal property laws. Mr. Alpert referred to a letter from the Endeman, Lincoln, Turek & Heater law firm.

At 7:47 p.m. Mayor Begun then invited the attorney representing the homeowners to address the Council.

Attorney Will Constantine, representing the homeowners of Surf & Sand Mobile Home Park, addressed the City Council regarding the impacts to the residents if the proposed mitigation measures are implemented. He informed the council that the residents had a meeting on Saturday after receiving the agenda report. Using the proposed formula,

3. A. PUBLIC HEARING (Continued)

the residents determined how it would affect their particular situation, and Mr. Constantine shared that information with the Council. He questioned if the proposed formula is really going to get people into replacement housing.

Mr. Constantine commented on various points addressed by Attorney Mark Alpert in his presentation to the Council. He also noted that a key page from the Heater letter provided by Hart, King & Coldren was not included in the document provided to the city.

Mr. Constantine thanked the council for their hard work on this matter. In conclusion, he asked the Council not to make a recommendation as to what would constitute a sufficient Relocation Impact Report and to also rely on the City ordinance as a basis for finding the RIR insufficient. In closing, he said we are not doing this just for Surf and Sand Mobile Home Park, but for other rent control parks in Capitola for which it will apply. He then responded to questions of council members.

Mayor Begun asked for a show of hands from those people wishing to address the Council on this item. He said each speaker would be allowed 3 to 4 minutes and asked that they print their name on the sign-in sheet so it is reflected correctly in the minutes. Mayor Begun opened the meeting for public testimony at 8:24 p.m.

The following park residents expressed their individual circumstances and the impact the proposed closure of the mobile home park would have on them. Some residents commented on the condition of the park, the residents' interest in purchasing the park, and their concerns and opposition to the Ad Hoc Committee's recommendations.

Bill Newman (on behalf of him and his wife Ann), Space #73

Davina Baker, Space #24

Ron Hoffacker, father to resident Heidi Hoffacker, Space #52

Tim Brackett, Space #22

Nancy Brewer, Space #44

Carina Ryan, Space #56, discussed her situation and urged the council to vote no on the recommended action. Council Member Storey asked if she had copy of her statement. She did, and she submitted it to the City Attorney for the record.

Laurie Brewer, Space #44

Sandy Williams, Space #71

Sharon Shelgren, Space #54

Chris Reber, Space #57

Shirley Hill, Space #10

Margaret Dixon, President of the Surf & Sand Mobile Home Park Residents' Association and resident in Space #72, submitted her comments in writing for the record

Jack Alsman, Space #58

Geni Calande, Space #42

Robert Glenn, Space #40

The following speakers who are not residents at Surf & Sand Mobile Home Park addressed the City Council on this item. They expressed concerns about the proposed mitigation measures for Surf & Sand Mobile Home Park and the impact the Council's decision might have on other rent control parks in Capitola, as well as use of city resources on rent control litigation.

3. A. PUBLIC HEARING (Continued)

Jeanne Roddy, Pacific Cove Mobile Home Park resident
 Sandy Ericson, Capitola resident who does not live in a mobile home park
 Don MacLachlan, resident of Castle Mobile Estates
 Paul Pelkey, Capitola resident
 Staci Bartle, resident of Castle Mobile Estates
 Rene Mulk, Castle Mobile Estates resident
 Kay Brown, Castle Mobile Estates resident
 Robert Adams, Castle Mobile Estates
 Rick Halterman, resident of Castle Mobile Estates and member of the County
 Mobile Home Commission

Mayor Begun closed the public testimony at 9:50 p.m.

Council Members Storey and Nicol commented on the work of the Ad Hoc Committee to address reasonable relocation costs. Council Member Storey said he was willing to back off from the formula, but he doesn't believe that is the best thing to do.

There was considerable City Council discussion and deliberation prior to the following action being taken:

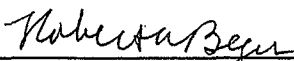
ACTION: Council Member Storey moved, seconded by Council Member Norton, to adopt **Resolution No. 3774, Resolution Affirming Capitola Planning Commission Denial of Coastal Development Permit Application No. 09-011 and Denying Applicant Surf & Sand Mobile Home Park's Appeal of Said Planning Commission Decision to the City Council**, with "Revised" first paragraph as submitted. The motion carried on the following vote: AYES: Council Members Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: Council Member Graves. ABSTAIN: None.

ACTION: Council Member Council Member Storey then moved to adopt a resolution, **Resolution No. 3775, Declaring that the Surf and Sand Mobile Home Park Owner's Relocation Impact Report is Insufficient**, because it does not meet the Standards Outlined in Capitola Municipal Code Section 17.90.070. Council Member Norton seconded the motion. The motion carried on the following vote: AYES: Council Members Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: Council Member Graves. ABSTAIN: None.


Following the vote on the second resolution, Council Member Storey clarified that, in essence, the City Council did not adopt the Ad Hoc Committee's recommendations.

4. **ADJOURNMENT**

The City Council adjourned at 10:10 p.m. to its next Regular Meeting to be held on Thursday, September 24, 2009, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.


 Robert A. Begun, Mayor

ATTEST:


 Pamela Greeninger, City Clerk MMC

MINUTES WERE APPROVED BY THE CITY COUNCIL ON 10/22/09 WITH COUNCIL MEMBER GRAVES ABSTAINING