

February 18, 2010

Capitola, California

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

**5:00 P.M. - CLOSED SESSION - CITY MANAGER'S OFFICE
CAPITOLA CITY COUNCIL**

At 5:08 p.m. in the City Hall Council Chambers, Mayor Storey noted that all City Council Members were present. He 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 Storey asked if anyone wished to address the item to be discussed in Closed Session. Seeing no one, the City Council recessed at 5:09 p.m. to the Closed Session in the City Manager's Office.

6:00 P.M. – OPEN SESSION

Mayor Storey called the Special Meeting of the City Council to order at 6:12 p.m. on Thursday, February 18, 2010, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

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

ABSENT: None

STAFF: Community Development Director Goldstein, City Attorney John G. Barisone, and City Clerk Pamela Greeninger

1. REPORT ON CLOSED SESSION [520-25]

City Attorney Barisone reported that the City Council met in Closed Session concerning the various lawsuits pending between Surf & Sand, LLC vs. City of Capitola. The Council had a discussion with their attorney and the community development director regarding that matter. No reportable action was taken in closed session.

2. ORAL COMMUNICATIONS – None

3. PUBLIC HEARING

A. Public Hearing for Project Application #09-110, 750 47th Avenue, to Consider a Tentative Map and Coastal Permit for the Subdivision of the Surf and Sand Mobile Home Park in the MHE (Mobile Home Exclusive) Zoning District and Located in the Coastal Zone. If Approved, Coastal Permit for this Project is Appealable to the California Coastal Commission after all possible City Appeals are Exhausted. Environmental Determination: Categorical Exemption. Property Owner: Surf and Sand, LLC, filed: 9/22/09; Representative: Mark D. Alpert, Hart King & Coldren; Presentation: Community Development Department. [730-75]

3. A. PUBLIC HEARING (Continued)

Mayor Storey introduced this item and discussed the process that will be followed and the amount of time allotted for the applicant, Mr. Alpert, and the park residents' representative, Mr. Constantine, to make their presentations, and for comments from members of the public. Mayor Storey announced that there is a court reporter at tonight's meeting and reminded all speakers to print their names and addresses on the sign in sheet. He then asked staff for its report.

Community Development Director Goldstein provided a verbal report on the project application utilizing a PowerPoint Presentation. *(A paper copy of the presentation is included in the record for this item.)*

He discussed the various statutes that relate to this application and summarized each of those statutes; including the Subdivision Map Act (Government Code Section 66427.5), the Mello Act (Government Code Section 65590), the Public Resources Code, and the Capitola Municipal Code pertaining to a Coastal Development Permit.

Community Development Director Goldstein informed the council that the Mello Act, Government Code Section 65590, requires a Replacement Housing Plan. At the time the Planning Commission reviewed this application, the applicant had not submitted a Replacement Housing Plan. One has since been submitted by the applicant. He explained how the Replacement Housing Plan would relate to moderate income families.

In conclusion, Community Development Director Goldstein discussed the Planning Commission's recommendations to deny the Coastal Development Permit (Planning Commission Resolution No. 2009-5) and to deny the Tentative Parcel Map for Application No. 09-110 (Planning Commission Resolution No. 2009-6). Following his report, Community Development Director Goldstein responded to questions of council members.

Mayor Storey opened the hearing to the applicant for a presentation at 6:33 p.m.

Attorney Mark Alpert of Hart, King & Coldren discussed the proposed project to subdivide the Surf & Sand Mobile Home Park. He used a PowerPoint Presentation, which is on file in the record for this item. He explained that this is a bona fide conversion; not a sham conversion, and he explained the difference between the two.

Mr. Alpert commented that a denial of a coastal permit is improper, and that it is not a discretionary land use decision as it relates to Government Code Section 66427.5(e). He went on to say the Council does not need a continuance of this item. If the application complies, then it should be approved.

In closing, Mr. Alpert acknowledged that the Council is facing a difficult choice; however, he believes the Council would be doing a disservice to the residents by not approving the application. He outlined the reasons why he believes the council should approve the conversion. Mr. Alpert also said in that the long run he believes the residents will be served by this conversion.

Mr. Alpert then responded to questions of Council Members.

At 7:14 p.m. Mayor Storey invited the attorney representing the Surf & Sand Mobile Home Park Mobile residents to come forward and make a presentation to the Council on this matter.

3. A. PUBLIC HEARING (Continued)

Will Constantine, attorney representing the park residents, commented that this is really about the fact that the park owner is unhappy with rent control, and he cannot make a legitimate return on his investments. Mr. Constantine commented that he presented documentation to the Planning Commission showing that the owner is making a fourteen percent (14%) return.

Mr. Constantine also commented on the following issues: the average investment by mobilehome owners, which is about \$191,000; the fact that low-income housing would go away when a low-income resident leaves the space; the "Survey of Resident Support," which showed only one tenant in support and 63 residents opposed to the conversion; the need for the Council to consider the survey when making its decision; various matters of litigation and decisions pertaining to mobile home park rent control; the value of the mobile homes; negotiating with the park residents; the effect of high lot prices on the homeowners; affordable replacement housing; and the additional information he submitted to the City Council regarding the Mello Act.

Mr. Constantine commented on the letter from Carrie Birkhofer, President and CEO of Bay Federal Credit Union, expressing concern about the impact a conversion of Surf & Sand Mobile Home Park would have on Capitola's other two rental mobile home parks.

Mr. Constantine concurred with Mr. Alpert that this is going to be a difficult decision, and he suggested, "Why not negotiate reasonable lot prices."

Following his presentation, Mr. Constantine responded to questions and comments of Council Members.

There was discussion regarding whether the residents would be willing to negotiate based on an appraisal of the property. Mr. Constantine said he believed the residents would be willing to negotiate, but he would need to talk with them.

Mayor Storey opened the public hearing at 7:52 p.m.

The following people addressed the City Council on this item and urged the council to deny the proposed application:

Nancy Brewer, resident of Surf & Sand Mobile Home Park, Space #44

Bill Newman, resident of Surf & Sand Mobile Home Park, Space #73, submitted his comments for the record.

Devina Baker, resident of Surf & Sand Mobile Home Park, Space #24

Kathy Howard, Columbus Drive resident, said she was watching the meeting on television and came down to express her concern about the proposed application and urged the Council to vote against it.

Sharon Shelgren, resident of Surf & Sand Mobile Home Park, Space #54

Laura Tucker, resident of Cabrillo Mobilehome Estates, 930 Rosedale Avenue, Space #39, spoke on behalf of herself and several other families (whom she named) who are opposed to the conversion of Surf & Sand Mobile Home Park.

3. A. PUBLIC HEARING (Continued)

David Buchanan, resident of Surf & Sand Mobile Home Park, Space #32, said he appreciates how difficult this issue is. He is particularly concerned about the infrastructure in the park and the fact that the residents have not been able to get cost estimates to upgrade the infrastructure.

Herb Rossman, resident of De Anza Mobile Home Park on Delaware Avenue, Santa Cruz, said the words "market value" make him shudder. He commented on what happened at his mobile home park and said the fair market value rent for his space went up to \$5,000 per month.

Mardi Brick, resident of De Anza Mobile Home Park in Santa Cruz and a neighbor of Herb Rossman, said the City Council's decision will affect other mobilehome communities in California. She urged the Council not to approve the proposed subdivision.

Steven Sills, resident at Castle Mobile Estate, commented that people who live at the mobile home parks support their community by shopping locally.

Hank Ryan, resident of Surf & Sand Mobile Home Park, Space #56, said he bought his mobile home with the expectation of also purchasing the lot. He commented on an appraisal by the city which could be the basis for negotiating. He also believes the Council's decision will have a huge effect on mobile homes throughout the state and surrounding areas.

Henry Cleveland, President of the Aptos Pines Mobile Home Park and Chair of the County's Mobile Home Commission, said their park is a resident-supported converted mobile home park. Mr. Cleveland reviewed how to determine if the proposed application is a shoddy conversion, or actually a good plan. He discussed the 6 criteria the small business administration uses for good plans and said this proposed plan fails the test. Mr. Cleveland urged the Council to deny the proposed subdivision.

Rod Quartararo, resident of the City of Santa Cruz, discussed his background as a Santa Cruz City Planning Commissioner and a member of various boards. He has also worked as a banker for over 35 years, and he commented that banks have had to be careful lending to folks in Capitola and other parks under rent control.

Stephanie Harlan, Capitola resident and member of the Planning Commission, said the Commission did not review nor consider the housing and relocation plan. She read the plan today and does not believe it is adequate as it does not meet the requirements of the Mello Act to preserve low- and moderate-income housing. The second issue relates to the support of the residents, and the residents do not support the conversion. For those reasons, Ms. Harlan urged the Council to deny this application.

Clay Kempf, Executive Director of the Seniors Council and Advisory Council of the Area Agency on Aging in Santa Cruz and San Benito Counties, wished to remind council members of the extreme shortage of affordable senior housing in this area, as well as the potential growth of seniors over the next decade. He discussed a recent statewide study that revealed forty percent of the seniors in Santa Cruz County live below the elder economic security index. Mr. Kempf stated the Board of Directors of the Seniors Council and Advisory Council of the Area Agency on Aging in Santa Cruz and San Benito Counties urge rejection of this application.

Deborah Fountain, resident of Surf & Sand Mobile Home Park, Space #68, commented on the letter she submitted.

3. A. PUBLIC HEARING (Continued)

Marilyn Chap, Cabrillo Mobilehome Estates, said each home owner has made an investment, and she believes this is an attempt to shift value from the tenants to the landlord, and that it is morally wrong. She emphasized the importance of the City Council's decision as it will affect other mobile home owners.

Margaret Dixon, resident of Surf & Sand Mobile Home Park, Space #72, informed the Council that the park owners have never given them a price. She expressed concern regarding unknown lot costs and infrastructure costs under this proposed conversion. She urged the Council to deny Mr. Reed's application.

Ms. Shirley Hill, Surf & Sand Mobile Home Park, Space #10, commented on what the residents have gone through over the years living at Surf and Sand Mobile Home Park. She asked the Council to please consider the residents' well being over the capitalism of the Reed family.

Rick Halterman, resident of Castle Mobile Estates and member of the County Mobile Home Commission, said the council is deciding whether this is a Bona fide conversion. He expressed concern about putting the decision off, and he hopes the Council does not postpone this item. He wished to reinforce the importance of the survey and said, based on the survey, this is not a bona fide conversion. Mr. Halterman said he trusts the Council will turn it down. Mr. Halterman also wished to acknowledge that the mobile home park residents recognize the overwhelming financial burden to the City for this litigation, and that is why the city has an Administrative Service fee.

Mayor Storey closed the public portion of the hearing at 8:57 p.m.

Mayor Storey opened the hearing to the applicant, Mark Alpert, for rebuttals at 8:57 p.m.

Mr. Alpert discussed the comments made by Mr. Constantine and the residents of the mobile home park. He would bet that if a poll were taken of the residents they would not agree to a purchase price of \$170,000 per lot (similar to the price for a lot at Turner Lane, which do not have ocean views as does Surf & Sand). Mr. Alpert addressed the issue of a bona fide conversion and said there is no doubt this park owner wants to sell these lots. The problem is that the residents view their investment as real property, a value it just does not have. It is important to point out that a good number of the residents are low income. He said there have been a lot of comments about the condition of the park, and the problem was caused by rent control.

Mr. Alpert commented that the fundamental principal of the 5th amendment is that a private property owner should not be forced to bear the burden that should be borne by the community as a whole. There are legitimate concerns being raised by residents who want to preserve affordable housing. He said the property owners have been subsidizing the rents of the park residents far below market for decades.

Mayor Storey closed the public hearing at 9:07 p.m.

Council Member Begun believes there is a possible solution that may take months to resolve or another route can be taken that might take years to resolve. Council Member Begun believes it is time to sit down with a mediator and try to negotiate a purchase of the park and financing it. That way all parties will find out if a park purchase can succeed or not. If not, the parties would be left with a subdivision. Council Member Begun believes the parties should get started with a mediator on a process that would last months, rather than a lawsuit that could last years and years.

3. A. PUBLIC HEARING (Continued)

Council Member Graves provided comments regarding rent control and discussions he has had with the park owner. He said he would support a 30-day delay with certain provisions and explained why. He said there are 73 units on the site. The residents should get together and take the lot plat and determine how much each lot would be worth. The Reeds should do the same and come up with a selling price for each lot. It would give the Council a starting place. Once a fair market value for the lots has been arrived at, then a determination could be made as to whether the residents can afford to purchase the lots, how many residents would need assistance, and how many residents really want to purchase the lots and be protected as low-income units. Council Member Graves said once that information is available, the council could then sit as mediators.

Council Member Graves said his concern as a council member is not to break the city on mobile home park rent control litigation lawsuits. He said this has gone on far too long, and it is important to wait 30 days to get some type of resolution and to find out how many people in the park need assistance.

Council Member Nicol said he agrees with every point made by Council Member Graves, and that he is not prepared to make a decision tonight and would be willing to give it 30 days. He would like to see the selling price numbers before making a final determination on the subdivision.

Council Member Norton said this has been the most difficult position he has been put into as a council member as it involves social issues, affordable housing, and a financial burden to the City. He is not sure 30 days is enough time and thinks 60 days would be more realistic. He would like tenants to establish potential purchase prices for the lots and the park owner to provide a purchase price also.

Mayor Storey said it appears there is a lot of animosity, and the City Council is being asked to rush to judgment. He said the City has stood behind its rent control ordinance for many years, but the City Council's responsibility is for the overall City of Capitola. Following his comments, Mayor Storey made a suggestion that the Community Development Director be directed to negotiate between the residents and the owner of the park on these particular issues and the application and then bring the matter back to the council. He suggested a time period of 30 days; however, if the negotiations completely collapse and no progress is being made, then it can come back with the results of that mediation. The council could then make the best decision it possibly can. If there is momentum and interest on the part of both parties, the time could then be extended at that point.

ACTION: Council Member Nicol said he would like to make Mayor Storey's suggestion a motion, and he moved to direct the Community Development Director to attempt to negotiate between the park residents and the owner of the park on these particular issues and the subdivision application and then bring that back to the council. He suggested a time period of 30 days; however, if the negotiations completely collapse, and no progress is being made, then it can come back with the results of that, and the council could then make the best decision it possibly can. If there is momentum and interest on the part of both parties, the time could then be extended at that point. Included in the motion, Council Member Nicol said that the next time the Council addresses this item, he would like to have a list of the fair market value of each of the proposed 73 subdivision lots, a list of all the lots that are currently occupied by low-moderate income residents, and he would expect that conditions of approval would comply with the Subdivision Map Act and the Mello Act, with its requirement that the subdivider provide replacement housing for all displaced low-moderate income residents. Finally, the motion would include conditions providing that the subdivider grant to all residents the option to purchase their lots at the fair market value designated or, under right of first refusal at such price as may be tendered by a bona fide purchaser, whichever is lesser, for a reasonable amount of time (one year, two years, etc.)

3. A. PUBLIC HEARING (Continued)

Council Member Graves seconded the motion for purposes of discussion.

Further council discussion resulted in an alternate motion as follows:

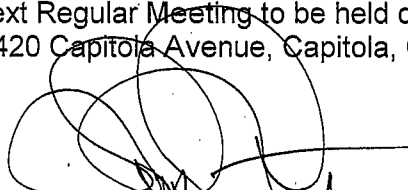
Council Member Norton proposed an alternate motion that we facilitate a meeting between the tenants and the park owners through Community Development Director Goldstein to discuss, first, the possibility of a tenant purchase and, second, the idea that with a conversion by the owners grounds that could possibly be negotiated at that point; i.e., field everything from the idea of price of lots on down, but not require that those figures come to the council in advance. He suggested that Jamie Goldstein be the facilitator and that the item be continued for 30 days. Council Member Begun seconded the motion.

There was additional council discussion of the alternate motion and a suggestion by Community Development Director Goldstein that the item be continued to a date certain. It was recommended that the hearing come back to a Special Meeting to be held on Wednesday, March 24, 2010, at 6:00 p.m.

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

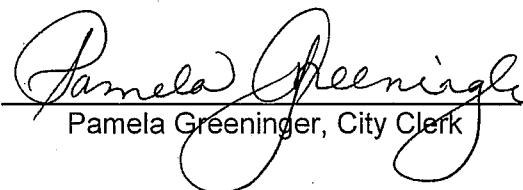
4. ADJOURNMENT

The City Council adjourned at 9:42 p.m. to its next Regular Meeting to be held on Thursday, February 25, 2010, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Sam Storey, Mayor

ATTEST:



Pamela Greeninger, City Clerk MMC

MINUTES WERE UNANIMOUSLY APPROVED AS SUBMITTED BY THE CITY COUNCIL ON 3/25/2010