

October 28, 2010
 Capitola, California

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

**5:15 P.M. - CLOSED SESSION - CITY MANAGER'S OFFICE
 CAPITOLA REDEVELOPMENT AGENCY & CITY COUNCIL**

At 5:15 p.m. in the City Hall Council Chambers, Mayor/Chairperson Storey 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 LABOR NEGOTIATOR (Govt. Code §54957.6)

Negotiator: Jamie Goldstein, City Manager

Employee Organizations: Association of Capitola Employees, Confidential Employees, Mid-Management Group, Community Development Director, and Public Works Director

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9:
 One Case

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

Surf and Sand, LLC vs. City of Capitola

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

Los Altos/El Granada Investors vs. City of Capitola (Castle Mobile Estates)

Save the Habitat vs. City of Capitola – Superior Court Case #CV 149983 (Rispin Mansion Project, Stipulated Judgment)

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: Catherine A. Robinson

Agency claimed against: City of Capitola

Mayor/Chairperson Storey noted there was no one in the audience; therefore, the City Council/ Redevelopment Agency recessed at 5:15 p.m. to the Closed Session in the City Manager's Office.

CAPITOLA REDEVELOPMENT AGENCY *(See Redevelopment Agency Minutes)*

REGULAR MEETING OF THE CITY COUNCIL

Mayor Storey called the Regular Meeting of the City Council to order at 7:06 p.m. on Thursday, October 28, 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

OTHERS: City Treasurer Jacques Bertrand

STAFF: City Manager Jamie Goldstein, City Attorney John Barisone, Community Development Director Derek Johnson, Public Works Director Steve Jesberg, Sergeant Matt Eller, and City Clerk Pamela Greeninger

* * * PRESENTATIONS * * *

Mayor Storey advised he has issued a Mayor's Proclamation proclaiming November 2010 as "**National Family Caregivers Month.**" He read several paragraphs from the proclamation and encouraged all citizens to recognize its observance.

**Mayor's Proclamation Designating November 2010
"Pancreatic Cancer Awareness Month" [120-40]**

Mayor Storey read and presented the Mayor's Proclamation Designating November of 2010 "**Pancreatic Cancer Awareness Month**" to Jennifer Flaniken, Volunteer for the Bay Area Pancreatic Cancer Action Network.

Jennifer Flaniken thanked the mayor for his proclamation and discussed the increasing incidents of pancreatic cancer. Diane Borrison, a pancreatic cancer survivor, also thanked the mayor for his proclamation and, on the overhead projector, shared a chart showing the 5-year survival rate of pancreatic cancer patients and a chart showing the limited funding for pancreatic cancer research.

**Presentation by Lynda Francis, Executive Director
of California Grey Bears [330-30]**

Lynda Francis introduced herself as the outgoing executive director and informed the Council that she will be retiring next year. She thanked the City Council for its support of their programs for the approximately 300 Capitola residents who receive brown bags. She went through a typical "Brown Bag" filled with fruits and vegetables donated by agriculture distributors. Ms. Francis then shared a DVD which showed their facilities, volunteers and recipients of their services. She discussed their recycling program, composting program, and classes, as well as their thrift store.

Council Member Norton asked if anyone was interested in volunteering or in need of their service where they could call. Ms. Francis said calls could be made to 479-0055.

City Treasurer Bertrand said he was a member of the Grey Bears. He asked her to provide information about their free computer program. Ms. Francis said that volunteers serving a specific number of hours are eligible for a free computer.

Mayor Storey thanked Lynda for her good work with the organization and wished her luck in her pending retirement.

**Presentation by Kathleen Johnson,
Executive Director of Advocacy, Inc. [330-30]**

Mayor Storey announced that Kathleen Johnson was ill and would not be able to make the presentation tonight; it has been rescheduled for another Council meeting.

1. REPORT ON CLOSED SESSION [520-25]

City Attorney Barisone advised that the City Council/Redevelopment Agency met in Closed Session at approximately 5:15 p.m. in the City Manager's Office on the items listed on the City Council/Redevelopment Agency's posted agenda. He said all members were present, as were City Manager Jamie Goldstein, City Attorney John Barisone, and Assistant to the City Attorney George Kovacevich. Mr. Barisone reported on the items discussed as follows:

Conference with Labor Negotiator – City Manager Goldstein, the city's labor negotiator, provided a status report and received direction regarding ongoing negotiations with the following employee organizations: Association of Capitola Employees, Confidential Employees, Mid-Management Group, Community Development Director, and Public Works Director. No reportable action was taken.

1. REPORT ON CLOSED SESSION (Continued)

Conference with Legal Counsel – Existing Litigation - The council conferred with Deputy City Attorney Kovacevich concerning the following mobile home park litigation matters:

Surf and Sand, LLC vs. City of Capitola

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

Los Altos/El Granada Investors vs. City of Capitola (Castle Mobile Estates)

Mr. Kovacevich provided a status report regarding those three matters, and the City Council took no reportable action in Closed Session.

Conference with Legal Counsel – Anticipated Litigation - The City Council conferred with the city manager and the city attorney concerning one case where the city faces significant exposure to litigation concerning the Capitola Beach Villas project. The council received a status report on that matter and took no reportable action in Closed Session. City Attorney Barisone said the matter is scheduled for discussion in open session later in the meeting.

Due to time constraints, the Council did not address the following items in Closed Session:

Save the Habitat vs. City of Capitola – Superior Court Case #CV 149983 (Rispin Mansion Project, Stipulated Judgment)

Liability Claim of Catherine A. Robinson

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda

Community Development Director Johnson requested that the Council pull Item 3.F., pertaining to setting a Public Hearing for the Appeal of Planning Commission's Approval of Project Application #10-072 regarding the Capitola Target Store, in light of receipt of a letter dated October 27, 2010 dismissing the October 7 appeal. Community Development Director Johnson said staff will schedule an item at the next meeting to receive, accept, and file the withdrawal of that appeal.

ACTION: Council Member Graves moved to pull Item 3.F. pertaining to setting a public hearing, as there will be no need to conduct a hearing since the appeal has been dismissed. Council Member Nicol seconded the motion. The motion carried unanimously.

B. Public Comments

Marilyn Garrett, Aptos resident, commented on the mayor's proclamation pertaining to Pancreatic Cancer Awareness. She mentioned that wireless technology has been linked to certain types of cancer. She provided copies of a handout pertaining to dangers of microwave technologies on children, and she informed the council that Community Television would be airing a meeting regarding the "Truth about SmartMeters" during October and November. Ms. Garrett also announced that the Commonwealth Club would be hosting a program on the "Health Effects of Electromagnetic Fields" on November 18, 2010, in San Francisco with leading experts. She urged someone from the city council to attend.

[565-30]

C. Staff Comments

1) City Clerk Greeninger reminded everyone to vote on Tuesday, November 2, and announced that weekend voting would be available at the County of Santa Cruz Elections Department and Watsonville City Hall on Saturday & Sunday, October 30 and 31.

2) Community Development Director Johnson informed the Council that staff facilitated a meeting on Tuesday evening regarding NexCycle Recycling Center at the Nob Hill Center and this matter will return to the Council at its November 10, 2010, meeting.

2. ORAL COMMUNICATIONS (Continued)

D. City Council/Treasurer Comments/Committee Reports

City Treasurer Bertrand announced that the Finance Advisory Committee meets on the second Tuesday of each month. At its last meeting the committee changed the time for its meetings from 6:30 p.m. to **6:00 p.m.**

E. Committee Appointments

City Clerk Greeninger announced that the city is recruiting for several of its boards, commissions and committees due to terms expiring following the election in December. She said this is the time for those wishing to continue to serve to request reappointment, and for members of the community who would like to get involved to apply. Recruitment notices are available at the City Hall, the Capitola Branch Library, and also on the city's website.

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

Council Member Graves commented on the amount of money being spent purchasing parts for the new parking meters. He wondered if the meters were still having problems with acceptance of coins and said he would be interested in hearing from Lew Roseman and others performing maintenance on the meters.

ACTION: Council Member Begun moved, seconded by Council Member Nicol, to approve the Check Register Reports dated October 8 and 15, 2010, including checks numbered 64484 through 64563 in the amount of \$86,456.95, and checks numbered 64564 through 64612 in the amount of \$183,312.09, respectively; and payroll disbursements for the October 8, 2010, payroll in the amount of \$184,608.67, for a Grand Total of \$454,377.71, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None. (*Note: Council Member Norton voted no on Check #64597 in the amount of \$130,828.25 to Santa Cruz Regional 911 only.*)

3. **CONSENT CALENDAR**

Mayor Storey 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 noted that he would be abstaining on Item 3.B., Minutes of the October 6, 2010 Special Meeting, since he was absent.

Mayor Storey pulled Item 3.E. pertaining to amendments to the AMBAG By-Laws.

Mayor Storey advised Item 3.E. would be discussed at the end of the meeting following Other Business Item 5.G. (*See discussion and action on Page 11799.*)

CONSENT CALENDAR ACTION: Council Member Norton moved, seconded by Council Member Nicol, to approve the Consent Calendar as recommended. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. 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.

3. CONSENT CALENDAR (Continued)

B. Approve City Council Minutes – The Special Closed Session Meeting of October 6, 2010.

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to approve the City Council Minutes of the Special Closed Session Meeting of October 6, 2010, as submitted. The motion carried on the following vote: AYES: Council Members Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: Council Member Graves.

C. Set a Special Meeting date of Wednesday, December 8, 2010, at 6:00 p.m., for the results of the General Municipal Election to be held on Tuesday, November 2, 2010. [560-10]

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to take the following actions:

1. Set a Special Meeting of the City Council for 6:00 p.m. on Wednesday, December 8, 2010, in the City Hall Council Chambers, for the purpose of reporting the results of the City's General Municipal Election, swearing in newly elected officials, recognizing outgoing members, reorganization of the City Council, and taking other actions necessary pursuant to those results; and
2. Directed staff to notify the candidates, Community Television, the press, and other interested parties regarding the special meeting date.

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

D. Receive City Treasurer's Report for the month ended September 30, 2010 (Unaudited). [380-30]

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to accept the City Treasurer's Report for the Quarter Ended September 30, 2010 (Unaudited), as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

E. Provide consent to the proposed amendments to the AMBAG By-Laws as approved by the AMBAG Board, and direct the City Clerk to forward the record of the Council's action to AMBAG. [150-10]

This item was pulled for separate discussion. (*See discussion and action on page 11799.*)

F. Set Public Hearing on Wednesday, November 10, 2010, for an appeal of the Planning Commission's approval of Project Application #10-072 granting Conditional Use and Sign Permits for the Capitola Target Store to be Located at 1825 41st Avenue. APN 034-261-51. Property Owner: Target Corporation. Representative: Target Corporation c/o John Dewes. [730-10: 1825 41st Avenue]

Prior to action on the Consent Calendar, Community Development Director Johnson announced that the city was in receipt of a letter from the appellant dismissing their appeal of the Planning Commission's approval granting a conditional use permit for a Capitola Target Store; therefore, it is not necessary to set an appeal hearing. During Oral Communications, Additions/Deletions to the agenda, the following action was taken by the City Council:

ACTION: Council Member Graves moved to pull Item 3.F. pertaining to setting a public hearing, as there will be no need to conduct a hearing since the appeal has been dismissed. Council Member Nicol seconded the motion. The motion carried unanimously.

3. CONSENT CALENDAR (Continued)

G. Deny claim of Catherine A. Robinson and forward to the City's liability insurance carrier. [Claims Binder]

ACTION: Council Member Norton moved, seconded by Council Member Nicol, to deny the claim of Catherine A. Robinson and forward it to the City's liability insurance carrier, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

4. PUBLIC HEARINGS - None

5. OTHER BUSINESS

A. Continued Consideration of an Agreement for Rental of Capitola Beach Villas, located at 1066 41st Avenue, for an interim period of six years. [730-10: 1066 41st Avenue]

Using a PowerPoint Presentation, Community Development Director Johnson summarized the written agenda report and discussed the facilitated workshop meeting held on October 27, 2010 at City Hall. He reviewed each of the points of the agreement and six proposed changes made by Macquarie Capitola Villas Inc. subsequent to the workshop. Community Development Director Johnson said staff's recommendation is to approve the October 6, 2010, letter agreement with the proposed changes.

Following his presentation, Community Development Director Johnson responded to questions and comments from council members. City Attorney Barisone and City Manager Goldstein also answered questions of council members.

Jim Porch, representative for Macquarie Capitola Villas Inc., responded to several questions from council members pertaining to the process of moving from rental units to owner-occupied units, use of a rental agreement opposed to a lease agreement, the number of units that would not be rented and available for sale, how much has been invested in the project, etc. He also commented that it is possible they could phase the project.

Mayor Storey opened the matter for public comment at 8:21 p.m. The following people spoke:

Randall Leonard, Loma Drive resident, thanked Community Development Director Johnson for organizing the facilitated workshop. He said it was very helpful and provided a great opportunity for dialogue. Mr. Leonard appreciates the honest effort on behalf of the owners to address their concerns. He also said he would like some of the provisions of the agreement, such as the parking requirements and number of people living in a unit, included in the CC&Rs.

Bob Henry asked how many units have been sold. He believes the owners should be selling the units at market value and not renting them as proposed.

Johanna Bowen, resident of Gladys Avenue, was concerned about the parking requirements which would result in her street being impacted. She is opposed to the City taking up this agreement.

Dean Cutter, resident on Nova Drive adjacent to the development, believes the Giants' games had an impact on the attendance at the workshop and tonight's meeting. Mr. Cutter expressed concerns regarding parking and believes a provision should be added to the CC&Rs that the garages only be used for parking.

5. A. OTHER BUSINESS (Continued)

Christine Shepard, resident on Opal Cliff Drive, commented on an email she sent to the council members today expressing her support for the agreement between Capitola Beach Villas and the City. She has no financial interest and believes it is a rational way to address the vacant building and provide rental properties to meet the shortage of rentals in the area. Ms. Shepard said she attended the workshop and felt it was very beneficial. In closing she urged the council to do what is best for the residents of Capitola.

Connie, resident of Bain Avenue, said the residents of their street would like to be included in the parking enforcement program.

John Jeffries, resident of Bain Avenue, said if the council insists on doing this, he would recommend that only $\frac{3}{4}$ of the units be allowed as rentals.

Lauren Cutter, resident on Nova Drive, said she was not able to attend workshop. She does not have problems with renters; however, she is concerned about the change from the original approval for owner-occupied units. She urged the council not to make another bad decision.

Seeing no other members of the public wishing to speak to this item, Mayor Storey closed the matter to the public at 8:40 p.m.

There was considerable council discussion on the proposed agreement and changes proposed by Macquarie Capitola Villas Inc., including several failed motions to approve the recommended action with modifications.

Council deliberation was followed by this action:

ACTION: Council Member Norton moved to deny the proposed agreement to allow Macquarie Capitola Villas Inc. to rent units for an interim period at the Capitola Beach Villas project located at 1066 41st Avenue, Capitola, California. Council Member Graves seconded the motion. The motion carried on the following vote: AYES: Council Members Graves, Norton, and Mayor Storey. NOES: Council Members Nicol and Begun. ABSENT: None. ABSTAIN: None.

B. Consider establishment of Building Inspector I and II Classifications, authorize recruitment of Building Inspector I, approve Amendment to the FY2010/11 Community Development Department Budget in the amount of \$30,000, and review other organizational changes. [600-10/330-10]

City Manager Goldstein provided an overview regarding several organizational changes within the city and responded to questions of council members.

Community Development Director Johnson discussed the building inspector position and the proposed elimination of that classification and the creation of Building Inspector I & II classifications and job descriptions. He responded to questions and comments from council members.

Council discussion was followed by this action:

ACTION: Council Member Graves moved, seconded by Council Member Nicol, to adopt **Resolution No. 3838, Resolution Approving Building Inspector I and II Classifications and Job Descriptions and Amending the Memorandum of Understanding Between the Association of Capitola Employees (ACE) and City of Capitola to Delete the Building Inspector Classification and Add Building Inspector I and II Classifications and Related Salary Schedule and Benefits Effective October 28, 2010, Amending the FY2010/11 Community Development Budget to Transfer \$30,000 from Contract Services to Salaries and Benefits, and Authorizing the Recruitment and Hiring of a Building Inspector I**, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

5. OTHER BUSINESS (Continued)

C. Review of proposed Central Fire Protection District amendments to the 2010 California Fire Code. [1110-10/570-10]

Utilizing a PowerPoint Presentation, Community Development Director Johnson summarized the written agenda report and provided background information on this item. He understands that the County Board of Supervisors approved the proposed amendments at its meeting earlier this week.

He discussed the analysis included in the written agenda report and reviewed options in considering the proposed ordinance. Following his presentation, Community Development Director Johnson responded to questions of council members. Building Official Mark Wheeler and Central Fire Protection District Fire Marshall Jeanette Devery also provided clarification regarding sections of the district's ordinance.

Considerable Council discussion was followed by this action:

ACTION: Council Member Graves moved to deny the Central Fire Protection District's amendments to the California Fire Code. Council Member Nicol seconded the motion for discussion.

Following discussion, Council Member Nicol withdrew his second. Council Member Begun seconded the motion.

Further council discussion ensued prior to the following action being taken:

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

After the vote was taken, there was clarification pertaining to the motion to deny the fire district's amendments. Council Member Nicol said he understood the motion to be the other way around and asked for reconsideration.

Council Member Begun moved, seconded by Council Member Graves to reconsider the vote on this item. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

Mayor Storey then called for the vote on the motion to deny the Central Fire Protection District's amendments to the California Fire Code carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

D. Reaffirm support of City Council Resolution No. 3806 Supporting the California State Parks Initiative (Proposition 21). [580-40]

City Manager Goldstein summarized the written agenda report.

ACTION: Council Member Norton moved to reaffirm support of the California State Parts Initiative, Proposition 21, on the statewide ballot. Mayor Storey seconded the motion for purposes of discussion.

Council Member Norton said the city council adopted Resolution No. 3806 to support getting this initiative measure on the ballot. The action is to reaffirm that Council support of the proposition.

Further council discussion resulted in the motion passing on the following vote: AYES: Council Members Norton and Mayor Storey. NOES: Council Member Nicol. ABSENT: None. ABSTAIN: Council Members Graves and Begun.

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

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

E. Provide consent to the proposed amendments to the AMBAG By-Laws as approved by the AMBAG Board, and direct the City Clerk to forward the record of the Council’s action to AMBAG. [150-10]

Mayor Storey stated that he pulled this item for separate discussion as there is a substantive change in the By-Laws to require a super-majority vote. He is particularly concerned about this change, since Capitola is a small city.

Council Member Graves explained the reason for the amendment, which came about when some AMBAG members were not paying their assessment, and, as a result, were not able to vote.

Council discussion was followed by this action:

ACTION: Council Member Graves moved, seconded by Council Member Norton, to accept the proposed By-law Amendments with the exception of Section 16, Amendments, as the City Council opposes approval of By-law Amendments by a 2/3 vote and would prefer it be a simple majority.

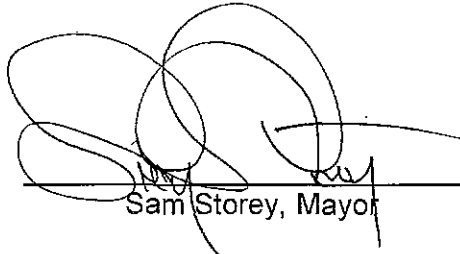
There was further discussion of the motion prior to the vote. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, and Mayor Storey. NOES: Council Member Begun. ABSENT: None. ABSTAIN: None.

6. COUNCIL/STAFF COMMUNICATIONS

None

7. ADJOURNMENT

The City Council adjourned at 10:29 p.m. to its next Regular Meeting to be held on **Wednesday**, November 10, 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 11/10/2010