

March 4, 2009  
 Capitola, California

## CAPITOLA CITY COUNCIL

### MINUTES OF A SPECIAL JOINT MEETING OF THE CAPITOLA CITY COUNCIL AND PLANNING COMMISSION

Chairperson Burke called the Special Joint Meeting of the Capitola Planning Commission and the City Council to order at 6:04 P.M. in the

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

**Present:** Planning Commissioners Stephanie Harlan, Ed Newman, Gayle Ortiz, Michael Termini, and Chairperson Ron Burke  
 Council Members Ron Graves, Sam Storey, Kirby Nicol, Dennis Norton, and Mayor Robert "Bob" Begun

**Absent:** None

**Staff:** Community Development Director Jamie Goldstein  
 Housing and Redevelopment Project Manager David Foster  
 Minute Clerk Danielle Uharriet

**Others:** Deputy City Attorney Celestial Cassman

#### 2. ORAL COMMUNICATIONS – None

#### 3. PUBLIC HEARINGS

**A. Amendments to the Capitola Municipal Code Title 17 Zoning Ordinance and the Local Coastal Program related to the City's Housing Element compliance. [730-85/740-40] The two proposed amendments to be discussed are as follows:**

**1. The addition of a Density Bonus implementation ordinance (Chapter 18.03) to allow for a range of greater residential densities in exchange for levels of affordability to meet state law.**

**2. Amend Chapter 17.20 creating an Affordable Housing Overlay to allow for increased residential densities in exchange for levels of affordability on two opportunity sites: 600 Park Avenue (APN: 036-151-15) and 1745 & 1785 46th Avenue-Capitola Gardens (APN: 034-124-20 & 034-124-21).**

Community Development Director Goldstein presented the staff report pertaining to the Density Bonus Ordinance.

Councilmember Story questioned if the local ordinance would give more flexibility, and if a developer could choose to utilize state law or a local ordinance.

Commissioner Newman presented a project example clarifying that if a property has a given zoning density range the City has the discretion to approve the maximum number of units for a project. He questioned the city's authority to deny a project with a density bonus. He suggested that the Coastal Act trumps the state Density Bonus law; therefore incorporating the Coastal Act provisions into the local ordinance should add a measure of local regulation that would give the city discretion in reviewing a development project.

Commissioner Harlan stated that the city could deny a project based on environmental concerns. She questioned if the League of California Cities fought the passage of the state density bonus law. As an example of the State's regulations, she referred to the parking regulations in state density bonus law, stating that they do not meet the City's parking concerns that are addressed

through the current zoning regulations. She suggested reviewing the concessions and incentives section of the ordinance to strengthen restrictions regarding setbacks, parking, height requirements, etc.

Commissioner Termini questioned how the city would be affected if it didn't adopt a housing element. He stated the local ordinance was more onerous than state law in requiring more low income units with the consideration of the inclusionary requirements. He was concerned about adopting an ordinance that would tie the city's hands in reviewing a residential development application and forcing the approval of a project.

Councilman Nicol noted the list of concessions in the ordinance specifically states that to deny a project there must be findings made that the development has adverse impacts to public health, safety, and the physical environment. These findings may be difficult to make for denial.

Councilmember Norton stated that water restrictions will hinder development. There are not enough water credits left to support a large project. The ordinance currently sets the maximum number of units in a development, but what can actually be developed will be determined by numerous factors such as site restrictions, site design, and water availability.

Councilmember Graves questioned the necessity of a local density bonus ordinance. He asked for clarification of the differences between the proposed local ordinance and the state ordinance, which is not understandable to a layperson. A threat from the State is not a valid reason to adopt this proposed density bonus ordinance.

Mayor Begun commented that the local ordinance is less onerous than the state law.

Deputy City Attorney Cassman stated that the proposed ordinance will not prohibit the city from denying a development project. However, if the city does not adopt an ordinance then it is out of compliance with state law, and puts the city at risk when a development project application comes before the city for review, then the city may be forced to comply with state law.

Community Development Director Goldstein responded to the Councilmembers and Commissioners questions and comments. The local ordinance must comply with state law. The proposed local ordinance incorporates some local control with reference to state law. If the state law were physically rewritten into the local ordinance, instead of incorporated by reference, then each time the state law was modified the local ordinance would need to be modified to maintain consistency with state law. The League of California Cities did support with the most recent state law modifications. Currently, if a development application were to be submitted, the state law applies. Delaying adopting the local ordinance would allow for a development application to utilize the state law provisions and regulations. The city could deny a project based on the merits of the project, not on the basis of the density bonus; even within the state law, the city can deny a project based on the merits of the project. The first version of the local ordinance presented to the Planning Commission was much more complicated, as it incorporated the state law within the local ordinance. The direction from the Planning Commission was to mirror state law and add the local restrictions, consistent with state law.

The density bonus ordinance discussion concluded. Housing and Redevelopment Project Manager Foster presented the staff report pertaining to the Affordable Housing Overlay.

Commissioner Burke stated that this ordinance is about feasibility vs. flexibility.

Commissioner Harlan clarified that the proposed ordinance included provisions for three-story developments. She suggested that the zoning ordinance be amended to allow residential uses in the commercial districts as principally permitted uses. She questioned the need to zone for 20 units per acre.

Councilmember Graves stated that during the review of the 2004 Housing Element, the Housing Task Force direction to staff was to incorporate a residential overlay in the commercial districts.

Councilmember Nicol clarified that the Capitola Beach Villas project and any potential pending application, such as the Grimes property would not help in meeting the current RHNA numbers.

Councilmember Norton suggested rezoning the Dharma's property to meet the RHNA numbers.

Councilmember Graves and Commissioner Harlan stated that the Dharma's site was identified as a potential site in 2004, and the McGregor site should be considered along with other sites.

Commissioner Newman suggested that the Park Avenue site overlay allow for 20-units/acre and the 46<sup>th</sup> Avenue site overlay allow for 15-units/acre to be in compliance.

The public hearing was opened.

Pamela Collins, resident at 1830 46<sup>th</sup> Avenue, spoke with concerns about the proposed overlay district. She did not want to use the 46<sup>th</sup> Avenue site to meet the state requirements. She suggested considering the McGregor property as an opportunity site.

Sandra Mendoza, resident at 1842 46<sup>th</sup> Avenue, spoke with concerns additional units in the neighborhood. The neighborhood cannot support additional infrastructure, and there is no room for additional parking.

Tim Collins, resident at 1830 46<sup>th</sup> Avenue, spoke with concerns about adding more units to the area. The neighborhood is already too dense and there is not sufficient infrastructure to support more units. He suggested that there be consideration of more opportunity sites.

Stacy Nagel, resident at 1808 46<sup>th</sup> Avenue, spoke in opposition to the overlay district. She stated that the proposed overlay places a disproportionate amount of housing in one area. The three story design requirements are not compatible with the neighborhood next to quaint Capitola.

Maria Correia, resident at 1098 38<sup>th</sup> Avenue, spoke on behalf of families and residents at Capitola Manor. She was pleased to know that the property was taken out of consideration.

Jennifer Collins, resident at 1830 46<sup>th</sup> Avenue, spoke with concerns about the impact the overlay would have on the neighborhood and the city. Increasing the density should not be a response to the state mandate. The increased density would add too many people in the neighborhood, traffic congestion, and impact the current insufficient infrastructure. She did not support the use of the Capitola Gardens site as an opportunity site. She suggested that the Council and Commission consider not adopting a housing element.

Daniel Benvenuti, resident at 105 Wesley Street, would like commercial properties considered as opportunity sites. Wesley Street residents previously submitted a petition in opposition to the Park Avenue site. He suggested that low income housing be located adjacent to commercial properties instead of R-1 districts. He stated that Capitola already has a lot of low income housing.

Michael Margulies, resident at 125 Wesley Street, spoke in opposition to the use of the Park Avenue property as an opportunity site. Doubling the use of the property would have an impact in the neighborhood. He supported the use of commercial properties as the opportunity sites for low income housing. He supported an official push back to the state to let the state know that Capitola is already built out and that the city should consider not adopt a housing element.

Ruth Seidel, resident at 1800 44<sup>th</sup> Avenue, stated that the existing infrastructure at Capitola Gardens is poor, and increased density will affect the physical health of the residents and neighbors.

Melanie Newman, resident at 1263 44<sup>th</sup> Avenue, spoke with concerns about increased traffic impacts, and visual impacts of the proposed density. She supported consideration of other sites, such as the vacant land by the post office or Dharma's.

Judy Kishimura, resident at 527 McCormick Court, did not support three story buildings, and suggested that structures along the perimeter would be single story. She objected to the overlay district at 600 Park Avenue. She suggested the city consider other properties.

Susan Becker, resident at 1842 47<sup>th</sup> Avenue, would like the city to consider commercial properties for the overlay district. She supported the concept of 15-units/acre if the units could remain affordable.

Kevin Miske, resident at 4685 Grace Street, spoke in opposition to the overlay district. He stated that the overlay will increase traffic, trash, noise and congestion in the neighborhood. He suggested that the density be spread throughout the city.

Audrey Kim, resident at 600 Park Avenue, supported affordable housing in Capitola, noting that 600 Park Avenue is currently affordable housing. She was concerned that the overlay would reduce the number of affordable units. She suggested the following: 1. Provision to maintain 80 units at affordable housing and add the 35% affordable housing on the additional units; and 2. Require a non-profit developer for a development and not a for-profit developer.

Janice Ahlf, resident at 1785 46<sup>th</sup> Avenue, stated that seniors and disabled were residents at Capitola Gardens until 2000 when Section 8 changed to allow families. She opposed an increase to high density housing. She suggested consideration of the McGregor site with mixed use, commercial first floor and residents on the upper floors, in addition to consideration of additional sites.

Bob Mitchell, resident at 710 Orchid Avenue, spoke in opposition to three story buildings and concurred with other speakers.

Terre Thomas, resident at 516 Park Avenue, stated that low income housing should be near transit. The burden of density needs to be spread out to other parcels in the city, not just two parcels. He supported using the vacant parcel near the post office, keeping the maximum height at two stories, maintaining adequate parking, and infrastructure.

Robert Mitchell, resident at 710 Orchid Avenue, stated that the density should be spread throughout the city. Don't ruin two specific neighborhoods.

Bruce Arthur, 104 Cliff Avenue, spoke in opposition to the overlay district. He stated that Capitola is built out and that the city is being blackmailed by state. He suggested that the city utilize the funds and use it for something else.

The public hearing was closed.

Community Development Director Goldstein responded to the Councilmember's and Commissioner's comments and questions. A density of 20 units per acre is required by the state in order for the units to meet the City's low and very low-income RHNA obligation. Although commercial sites were identified in 2004, there were no specific sites identified. The commercial sites were not used to meet the 2004 RHNA numbers, but will be able to be incorporated into the

new housing element to meet the new RHNA numbers. He emphasized that the proposed overlay district is to meet the 2004 housing element obligation as well as to meet the new RHNA numbers.

Commissioner Ortiz stated that the city has previously considered rejecting the state mandates, but now if the city doesn't comply it's not the dollars lost to the state, but the dollars lost to attorney's and housing advocates.

Commissioner Termini clarified that the city can rezone the commercial sites to meet the current new RHNA numbers but not the 2004 RHNA numbers.

Councilmember Graves suggested working with the state to use the commercial rezoning to meet the 2004 RHNA numbers.

Housing and Redevelopment Project Manager Foster stated that using the commercial zones will be a hard sale to the state for the following reasons: 1. The state wants sites that allow residential use "by right", not as a conditional use; 2. If a property owner were to rebuild the new design would have to be residential and commercial; 3. The City has very limited examples of commercial sites having been developed for residential uses and no examples of low or very low-income units on commercial sites.

Councilmember Norton stated that the current proposed opportunity sites could be developed without protection for the current residents if the overlay district is not in place. He stated that page 19 of the initial study requires that there be sufficient water and that the current water situation is an impact.

Mayor Begun ascertained that the city could submit a housing element to the state, the state could reject the housing element, and the city could come back with a revision.

Commissioner Newman suggested that the city proceed with adopting the overlay ordinance to maintain compliance with the state, but not specify sites, and this would give the city time to consider additional sites.

Councilmember Graves supported rezoning the commercial sites to meet the 2004 housing element.

Commissioner Harlan suggested that the opportunity sites leave out residential district and consider commercial districts, sites along Kennedy Drive, parcels on the frontage road, including the city corporation yard and the McGregor property.

Councilmember Nicol clarified that the city is providing sufficient affordable housing based on the statistic that 55% of the total households within the city are low income.

Mayor Begun was not supportive of three-stories in the residential districts.

The participation by the City Council concluded. The Planning Commission took the following actions:

Commissioner Harlan suggested that the water issue be modified in the Initial Study.

Commissioner Newman suggested that the new housing element would address the water issue, but that the Commission could approve the proposed Addendum to the Initial Study as presented.

Commissioner Termini supported the Addendum to the Initial Study and the Density Bonus Ordinance, but suggested continuing the overlay district.

**A MOTION WAS MADE BY COMMISSIONER TERMINI AND SECONDED BY COMMISSIONER HARLAN TO APPROVE THE ADDENDUM TO THE INITIAL STUDY FOR THE HOUSING ELEMENT IMPLEMENTATION AMENDMENTS AND NEGATIVE DECLARATION (IS/ND) FINDING THE PROPOSED PROJECT REFINEMENTS MEET THE CONDITIONS IDENTIFIED IN CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTION 15164 AS THERE ARE NO NEW SIGNIFICANT ENVIRONMENTAL IMPACTS RESULTING FROM THIS PROJECT REFINEMENT.**

**MOTION PASSED 4-1, COMMISSIONER ORTIZ DISSENTING.**

**A MOTION WAS MADE BY COMMISSIONER NEWMAN AND SECONDED BY COMMISSIONER TERMINI TO ADOPT PLANNING COMMISSION RESOLUTION NO. 2009-2 RECOMMENDING THAT THE CITY COUNCIL AMEND THE CAPITOLA MUNICIPAL CODE BY ADDING CHAPTER 18.03 TO IMPLEMENT THE STATE MANDATED DENSITY BONUS ORDINANCE; AND TO DIRECT THE CITY MANAGER TO SUBMIT A LOCAL COASTAL PLAN (LCP) AMENDMENT TO THE COASTAL COMMISSION FOR FINAL CERTIFICATION; AND TO DIRECT STAFF TO REMOVE SECTION 18.03.040 OPTIONAL DENSITY BONUS AND TO INCORPORATE COASTAL ACT LANGUAGE.**

Under discussion, Commissioner Harlan clarified that there was no way to make any design criteria more restrictive than what is currently proposed.

Deputy City Attorney Cassman emphasized that the proposed ordinance includes grounds for denial, but if a project were to be denied the city will need to make findings of substantial evidence to deny to proposal.

**MOTION PASSED 4-1, COMMISSIONER ORTIZ DISSENTING.**

**A MOTION WAS MADE BY COMMISSIONER TERMINI AND SECONDED BY COMMISSIONER HARLAN TO CONTINUE THE AFFORDABLE HOUSING OVERLAY DISTRICT ORDINANCE TO CONSIDER OPTIONS AND ADDITIONAL SITES.**

Under discussion, Commissioner Ortiz emphasized the need to spend time to evaluate and consider other sites.

Commissioner Termini stated that the stated that future discussions will not refer to "putting low income people somewhere".

Commissioner Harlan suggested the Commission encourage the City Council put pressure on the state officials objecting to the state requirements and mandates.


Commissioner Newman supported taking time to figure out an ordinance that works for this community. The ordinance should be expanded to cover various types of properties in various zoning districts, and utilize sites that will meet requirements for both the 2004 Housing Element and the new housing element.

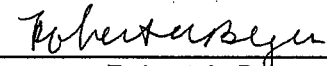
**MOTION PASSED 5-0**

4. ADJOURNMENT

The Planning Commission adjourned at 9:40 p.m. to its regular meeting to be held on Thursday, March 5, 2009, at 7:00 p.m. in the City Hall Council Chambers, 420 Capitola Avenue, Capitola.

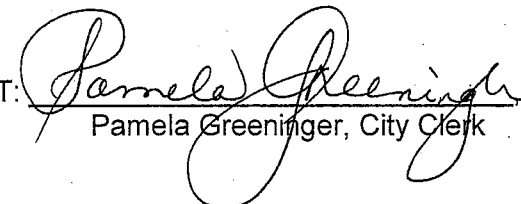
The City Council adjourned at 9:40 p.m. to its regular meeting to be held on Thursday, March 12, 2009, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola.

  
\_\_\_\_\_  
Jamie Goldstein  
Community Development Director

  
\_\_\_\_\_  
Robert A. Begun, Mayor

Minutes Prepared By:

Danielle Uharriet, Minute Clerk  
Capitola Planning Commission

ATTEST:  CMC  
Pamela Greeninger, City Clerk

THE JOINT MINUTES WERE APPROVED BY THE PLANNING COMMISSION ON 4/29/09

THE JOINT MINUTES WERE UNANIMOUSLY APPROVED BY THE CITY COUNCIL ON 5/14/09