

August 27, 2009
 Capitola, California

CAPITOLA CITY COUNCIL

MINUTES OF SPECIAL MEETING OF THE CITY COUNCIL

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

At 5:18 p.m. in the City Hall Council Chambers, Mayor Begun noted that all City Council Members were present with the exception of Council Members Graves and Norton. 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

City Attorney Barisone made an announcement prior to adjourning to Closed Session that based on correspondence received by the City Council to date regarding the item on tonight's agenda, he believes there is significant exposure to litigation, either from the park owner or the park residents. He recommended the Council meet in Closed Session to discuss those concerns.

Mayor Begun asked if anyone wished to address this item on the Closed Session agenda. Seeing no one, the City Council recessed to its Closed Session at 5:20 p.m.

SPECIAL MEETING OF THE CITY COUNCIL

Mayor Begun called the Special Meeting of the Capitola City Council to order at 6:23 p.m. on Thursday, August 27, 2009, 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

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 said the item discussed in Closed Session was an item of potential litigation pertaining to Surf and Sand Mobile Home Park, which was described prior to the Closed Session. He reported that Council Members Graves and Norton were absent at the Closed Session, and that the City Council took no reportable action.

2. ORAL COMMUNICATIONS

Mayor Begun asked if anyone wished to address the council on matters not on the agenda. No one addressed the council at this time.

3. PUBLIC HEARING

- A. 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]**

Mayor Begun introduced this item and asked staff to provide its report.

Council Member Graves said that before staff makes its presentation he wished to comment on materials received after the agenda cut-off date. He said it was a disservice to him, the community and to the applicant to receive such communications late. Council Member Graves further requested that materials arriving late not come to him by email, but that hard copies be delivered.

Mayor Begun asked the city manager to include this as an item of discussion at a future meeting.

Council Member Norton said he does not disagree with Council Member Graves' analysis; however, he does believe it is important for the council to receive all information relating to the matter before the City Council.

Using a PowerPoint Presentation Community Development Director Goldstein reviewed the proposal. He pointed out there are two separate issues before the City Council tonight: 1) Appeal of the Coastal Development Permit, and 2) determination on sufficiency of the Relocation Impact Report. He reviewed the action taken by the Planning Commission, the recommended action options, and responded to questions of Council Members.

At 6:47 p.m. Mayor Begun asked for a presentation from the applicant. Mark Alpert, Attorney from Hart, King & Coldren, introduced Thomas Kerr, who addressed the council about the Relocation Impact Report.

Thomas Kerr said he was the consultant, approved by city staff, who was hired to prepare the Relocation Impact Report. He has been involved in mobile home parks for 37 years and has provided closure impact reports for 18 mobilehome/trailer parks during the past 20 years.

Mr. Kerr said he was asked, in light of the Planning Commission's discussion, to look into what might be considered replacement housing. He commented on the supplementary information provided to council members at their places tonight; i.e., a spreadsheet of "Condominiums for Sale in Capitola early August 2009" and Mobilehomes for Sale in Capitola early August 2009." Mr. Kerr informed the council that instead of providing for replacement housing, the applicant has proposed 4 programs for resident relocation. He summarized each of those programs and responded to questions of council members. Mr. Kerr said he believes the Relocation Impact Report is more than sufficient in its presentation of information required by the ordinance. He urged the council to separate the park owner's Relocation Plan from the Relocation Impact Report so that his portion of the report could be approved.

3. A. PUBLIC HEARING (Continued)

At 7:18 p.m. Attorney Mark Alpert, representing the park owner, said the primary issues are not so much the legal issues as they are the personal impact issues and political issues relating to closure of Surf & Sand Mobile Home Park. Utilizing a PowerPoint Presentation he reviewed the various aspects of the matter before the City Council. *(A copy of Mr. Alpert's PowerPoint Presentation was submitted to the City Council and is on file.)*

Mr. Alpert stated that the City Council should reverse the decision of the Planning Commission and approve the Coastal Development Permit. He also asked that specific findings be made regarding the relocation benefits the council may require if it determines that the relocation benefits are not adequate.

Council members addressed Mr. Alpert pertaining to his presentation and received his response on questions about a reasonable cost of relocation, value of coaches, relocation benefits, benefits for special needs residents, rent control, the Mello Act and the Ellis Act, property value, fair market value, etc.

At 8:10 p.m., William Constantine, Attorney representing the homeowners of Surf & Sand Mobile Home Park, apologized to the Council for the late submittal of his letter dated August 24, 2009, and he explained the importance of responding to Mr. Alpert's letters of August 12 and August 17, 2009. Mr. Constantine clarified the low-and moderate-income housing replacement provisions of the Mello Act, which were referred to in his letter. He also commented on his letter dated May 14, 2009, regarding the Surf & Sand Mobile Home Park Closure Application. Following his presentation, Mr. Constantine responded to questions of council members pertaining to fair market value, relocation benefits, and depreciation of mobile homes.

At 8:33 p.m. Mayor Begun asked how many people in the audience wished to speak to this issue. Council Member Norton then asked for a show of hands from residents of the mobile home park.

City Attorney Barisone suggested that this might be a good time to give the court reporter a break before opening the matter to the public.

City Manager Hill said there may be value for council members to meet in Closed Session during the break to update the entire City Council on the current nature of the law, particularly for those members (Council Members Graves and Norton) who were not present for the Closed Session prior to the Special Meeting.

The City Council recessed to a Closed Session and short break at 8:35 p.m. *(NOTE: All members of the City Council, the City Manager and City Attorney were present for the Closed Session.)*

The City Council reconvened at 9:06 p.m. At that time Mayor Begun opened the public hearing on this item.

The following park residents addressed the City Council regarding their opposition to the park owner's application for the closure of Surf & Sand Mobile Home Park:

Sandra Williams, Space 71

Heidi Hoffacker, Space 4

Nancy Brewer, Space 44

Bill Newman spoke on behalf of himself and his wife, Ann, Space 73

3. A. PUBLIC HEARING (Continued)

Chris Reber, Space 57
Leslie Cone, Space 65
Tim Brackett, Space 22.
Shirley Hill, Space 10
Richard Brungraber, Space 47
Evonne Revitt, Space 37
Eugenia Calande, Space 42
Hank Ryan, Space 56
Michaela Scott, Space 46

The following individuals, who are not residents of Surf & Sand Mobile Home Park, also addressed the City Council on this matter: Mike St. John, property owner on 47th Avenue, and Rick Halterman, resident of Castle Mobile Estates and President of the Capitola Mobilehome Owners Association.

Mayor Begun closed the public hearing at 9:57 p.m.

Attorneys Mark Alpert and William Constantine responded to comments made by the speakers during the public hearing.

Following considerable council discussion Mayor Begun commented that this is an emotional subject, and he complimented all the people who addressed the council on this item. He then said he would entertain a motion regarding the appeal of the Planning Commission's denial of the Coastal Development Permit.

ACTION: Council Member Graves moved, seconded by Council Member Storey, to uphold the Planning Commission's denial of the Coastal Development Permit for the closure of Surf & Sand Mobile Home Park, as the conditions of the Mello Act have not been met. City Manager Hill clarified that the motion should include direction for staff to return with a resolution. Council Member Graves said he would amend his motion to include that direction. Council Member Storey also agreed to amend his second to the motion. The motion carried on the following vote: AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun. NOES: None. ABSENT: None. ABSTAIN: None.

Mayor Begun then discussed the second item requiring Council action pertaining to the sufficiency of the Relocation Impact Report (RIR).

ACTION: Council Member Storey moved that the City Council finds the Relocation Impact Report (RIR) insufficient as required under Section 65863.7 of the Government Code and that as well, the benefits provided as required under Section (e) of that code does not adequately provide sufficient mitigation to offset the adverse impacts of the closure on the ability of displaced mobilehome park residents to find adequate housing in a mobile home park. In addition to that, Council Member Storey said he would move that the council establish a committee.

Mayor Begun suggested completing the motion on the Relocation Impact Report (RIR) and dealing with the establishment of a committee separately. There was council discussion about including a committee as part of the motion. After discussion, it was decided to deal with the RIR separately.

3. A. PUBLIC HEARING (Continued)

Council Member Storey went on to say that the motion includes direction to staff to prepare a resolution finding that the Relocation Impact Report (RIR) is insufficient because it does not meet the requirements of Section 65863.7 of the Government Code. Council Member Norton seconded the motion.

Under discussion of the motion, Council Member Nicol expressed concern about the follow-up if this motion passes, as it relates to a potential committee that would be coming up with guidelines.

Council Member Graves pointed out there was a motion and a second on the floor.

City Attorney Barisone said the council may provide direction to staff as to when to bring the Relocation Impact Report (RIR) resolution back for adoption. He clarified that the final denial will take place when the council adopts the resolution. City Attorney Barisone said he could bring back the resolution, and the committee may report to the council at the same time. At that point, it would be up to the applicant to decide whether or not to take the direction of the council with regard to the Relocation Impact Report and resubmit or challenge the City Council's decision.

Mayor Begun asked if he were comfortable with the motion on the floor. City Attorney Barisone said he was.

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

ACTION: Council Member Storey then moved to establish an adhoc committee made up of two council members, city staff and the city attorney to review the mitigation conditions as specified under Section 65863.7 of the Government Code and to come back at a future date to be set by staff to consider those conditions and communicate them to the applicant. Council Member Nicol seconded the motion, with a recommendation that a definite date be set. He recommended a Special Meeting be held on Wednesday, September 23, 2009, at 7:00 p.m. Council Member Storey said he would amend his motion to include setting the special meeting date suggested by Council Member Nicol.

After further discussion by the council, Council Member Storey reiterated his motion to establish a committee made up of two council members, city staff, and the city attorney to establish conditions as authorized under Government Code Section 65863.7 concerning the mitigation of any adverse impacts on the closure of the displaced mobilehome residents to find adequate housing in a mobilehome park, and that the Council establish a Special Meeting on September 23, 2009, at 7:00 p.m. where that matter will be brought back for deliberation and final action. It was confirmed that the committee be an adhoc committee.

Under discussion of the motion, Council Member Graves expressed concern about the previous motions and the current motion. He said the council's previous two actions, with direction to staff to prepare resolutions with findings to come back for adoption would normally come back to the next scheduled meeting; however, with the new motion those resolutions will not come back until a Special Meeting on September 23, 2009. He reminded the council members that he would not be present on September 23.

Council Member Storey responded to Council Member Graves' concerns, stating that he believes the council needs to provide the applicant with more guidelines as to what the city council would consider to be sufficient. He also wants to stay within the process contained in the city's ordinance.

3. A. PUBLIC HEARING (Continued)

After discussion of the motion to form an adhoc committee and to set a Special Meeting date on Wednesday, September 23, 2009, at 7:00 p.m., the motion carried on the following vote: AYES: Council Members Storey, Nicol, Norton, and Mayor Begun. NOES: Council Member Graves. ABSENT: None. ABSTAIN: None.

Council Members Storey and Nicol volunteered to serve on the adhoc committee.

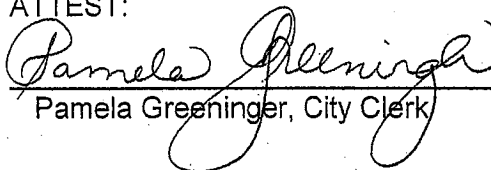
4. ADJOURNMENT

The City Council adjourned at 10:32 p.m. to its next Regular Meeting to be held on Thursday, September 10, 2009, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Robert A. Begun, Mayor

ATTEST:



Pamela Greeninger, City Clerk, MMC

MINUTES WERE UNANIMOUSLY APPROVED BY THE CITY COUNCIL ON 9/24/09