

**CAPITOLA CITY COUNCIL  
SPECIAL MEETING MINUTES  
MONDAY, SEPTEMBER 25, 2017**

**CLOSED SESSION 12:30 PM**

**CALL TO ORDER**

Mayor Harlan called the meeting to order at 12:30 p.m. with the following items to be discussed in Closed Session:

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

**[Govt. Code § 54956.9(d)(1)]**

Friends of Monterey Park v. the City of Capitola

Santa Cruz Superior Court Case No. CV 16CV01091

There was no public comment. The City Council moved to the Closed Session in the City Manager's Office, after which it recessed until the start of the public meeting.

**SPECIAL MEETING OF THE CAPITOLA CITY COUNCIL 6 PM**

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

Council Member Ed Bottorff: Present, Council Member Jacques Bertrand: Absent, Mayor Stephanie Harlan: Present, Vice Mayor Michael Termini: Absent, Council Member Kristen Petersen: Present.

**2. REPORT ON CLOSED SESSION**

City Attorney Tony Condotti reported that Council met regarding pending litigation. Present were Council Members Bottorff and Petersen and Mayor Harlan. Council Members Bertrand and Termini had previously recused themselves from the issue being litigated. The Council members received a report and gave direction to the City Attorney's Office. A question was raised about a defense and indemnity agreement from the June 23, 2016, meeting. By motion those present voted to affirm its previous approval 3-0.

**3. ADDITIONAL MATERIALS**

A. Item 4.A – 45 emailed comments.

**4. GENERAL GOVERNMENT / PUBLIC HEARINGS**

A. Reconvene a Hearing for an Appeal of the Planning Commission's Decision to Certify an Environmental Impact Report and Approve a Conditional Use Permit, Design Permit, and Coastal Development Permit for the Monterey Avenue Skate Park

RECOMMENDED ACTION: In light of the Court ruling regarding Capitola City Council's June 23, 2016, meeting on the Monterey Park skate park appeal, consider the following actions:

1. a. Adopt the attached Resolution certifying the Environmental Impact Report (EIR) and adopting written findings and the Mitigation, Monitoring, and Reporting Program (MMRP).  
b. Alternatively, by Motion, affirm the Planning Commission's certification of the Environmental Impact Report (EIR) and adopt the Mitigation, Monitoring and Reporting Program (MMRP).
2. By Motion, approve and adopt the attached findings to support issuance of a Conditional Use Permit, Design Permit, and Coastal Development Permit for a modified project as described as Alternative 1 of the EIR;
3. By Motion, authorize the City Manager to execute the attached right-of-entry agreement.

Attorney Condotti explained that this hearing reconvenes a hearing of June 23, 2016, and that all of those Council Members participating at this time were present at the dais or in the audience at the prior meeting. Community Development Director Richard Grunow provided an abbreviated review of the project as previously discussed and the Superior Court decision following litigation that sent back the previous 2-1 approval of project permits.

Marie Martorella and Tricia Proctor, applicants, spoke in favor of the project and asked that the previous approval be upheld.

Bill Parkin, attorney for Friends of Monterey Park, spoke to the Court's decision and addressed the argument of adoption by resolution versus a motion, emphasizing the need for written findings and a minimum number of votes for certain actions.

Mayor Harlan opened public comment by thanking the many people who took time to write and share their opinions on the project.

Speaking against the previous approval of the project:

Elizabeth Russell  
Richard Lippi  
Steve Shank  
Andy Furgart  
Al Globus  
Ann Stow  
Terry Thomas

Speaking in support of the previous approval of the project:

Dennis Norton  
Tori DelFavro  
Cynthia Rothmeier  
Terry Campion  
Ellie Martin  
Cheryl Ban  
Jason  
Michaela  
Richard Novak

Penny Novak Disbrow  
Diana Peters

At this point in the proceeding, there was a widespread power outage. Participants agreed to continue with battery lights and recording devices, and the clerk's computer continued to operate on battery power.

Colin Pearce, attorney for the applicants and resident of the Cliffwood Heights neighborhood, challenged the contention that a resolution is the only way for the Council to make written findings. He asserted that the judge's decision requires written findings for the EIR and project permits, but cannot mandate a resolution. He noted that the Council previously certified the EIR on a 3-0 vote.

Power was restored at this point.

Attorney Parkin equated adopting a resolution with making the required findings for both EIR certification and project permits based on the judge's signed order. He does not believe the EIR has been certified by the previous vote, saying it would require removing portions related to project approval.

Council Member Bottorff asked for clarification regarding the EIR resolutions. Attorney Condotti said the agenda packet has a revised resolution specific to the EIR with related findings.

Council Member Bottorff acknowledged the confusion of the legal concerns. He said he believes it comes down to a technicality regarding a resolution versus a motion. He supports the many youth who have spoken in support of the project over its history and upholds the previous decision.

Council Member Petersen expressed support for skating and youth recreation, but said someone can support those in general and not support this project. She said the process has not trusted the residents of the neighborhood to serve as credible witnesses to their daily experiences, unlike other situations in which the City has continued to work with neighbors to address concerns. She said a judge already overturned the previous decision on this project and she cannot support this skate park due to its location.

Mayor Harlan expressed sympathy for those who have been working and discussing this project for so long. She said the skate park doesn't fit in the neighborhood and she can't find precedent for supporting a project that the immediate neighbors oppose.

Council Member Bottorff moved to adopt the revised EIR resolution and findings, thereby certifying the EIR. Mayor Harlan seconded the motion. The motion received a vote by roll call of 2-1, which failed pursuant to Government Code § 36936 requiring adoption of a resolution by a full quorum of Council (three votes).

Council Member Bottorff offered a motion to approve the project permits. It died for lack of a second.


Council Member Bottorff then offered a motion to approve permits for a 3,500-square-foot project. It died for lack of a second.

<b>MOTION:</b>	<b>ADOPT RECOMMENDED RESOLUTION CERTIFYING THE ENVIRONMENTAL IMPACT REPORT.</b>
<b>RESULT:</b>	<b>DEFEATED [2-1]</b>
<b>MOVER:</b>	Ed Bottorff, Council Member
<b>SECONDER:</b>	Stephanie Harlan, Mayor
<b>AYES:</b>	Ed Bottorff, Stephanie Harlan
<b>NOES:</b>	Kristen Petersen
<b>ABSENT:</b>	Jacques Bertrand, Michael Termini

5. **ADJOURNMENT**

The meeting was adjourned at 8:15 p.m.

**MINUTES WERE APPROVED ON OCTOBER 12, 2017.**

  
Stephanie Harlan, Mayor

ATTEST:

  
Linda Fridy, City Clerk