

April 7, 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 5:11 p.m. in the City Hall Council Chambers, Mayor Storey noted that all City Council Members were present, with the exception of Council Member Graves. The Mayor 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 noted there was no one in the audience to address the item to be discussed in Closed Session, and the City Council recessed at 5:12 p.m. to the Closed Session in the City Manager's Office.

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6:00 P.M. – OPEN SESSION

Mayor Storey called the Special Meeting of the City Council to order at 6:10 p.m. on Wednesday, April 7, 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: Acting City Manager/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 reported that the only items discussed in Closed Session were concerning federal court lawsuits between the City of Capitola and Surf & Sand, LLC. The City Council had discussions regarding those lawsuits and took no reportable action in Closed Session.

2. ORAL COMMUNICATIONS – None

3. PUBLIC HEARINGS

- A. Continued 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 HEARINGS (Continued)

Mayor Storey introduced this item and asked for a report from staff.

Community Development Director Goldstein reminded the council that this is a continued public hearing and encouraged the Council to stay focused on new information. He then summarized the written agenda report pertaining to the previous hearings, the direction given to staff, and the outcome of negotiations. Also, using a PowerPoint presentation he reviewed the various codes that apply to the proposed subdivision application and responded to questions of Council Members.

At 6:22 p.m. Mayor Storey asked for comments from the Applicant's representative.

Attorney Mark Alpert of Hart King & Coldren, representing the property owner, Surf & Sand, LLC, commented on the negotiations, stating that the sales price that was discussed was, in their view, so far below a price that would interest the park owners that there really was not any reason to pursue further discussions. Mr. Alpert discussed opportunities to provide affordable rents, to provide ownership by park residents, to end litigation, and to end conflicts at the park by approving the subdivision application. He discussed correspondence from the park residents' counsel, Will Constantine. Mr. Alpert said the Council is truly at a crucial crossroad. There are two paths the Council can take; one is the path of continued uncertainty, and one is the path of resolution. Approval of the application would bring finality to this dispute. In closing, Mr. Alpert recommended Council approve the proposed subdivision application.

At 6:32 Mayor Storey provided the attorney representing the park residents an opportunity to address the City Council.

Attorney Will Constantine commented on: state law that requires a survey of resident support, the enormous effort put forth by the residents to work toward negotiating a price for the lots as directed by the Council, whether the current application is a bona fide subdivision, as well as various lawsuits and court decisions. Mr. Constantine discussed various comments from Mr. Alpert made at past public hearings that this subdivision application is primarily related to rent control. Mr. Constantine also stated that the park owner refused to disclose information to the residents about the purchase price for lots, nor has the park owner shown the homeowners that they would be able to purchase their lots. Mr. Constantine said he was available for questions. There were no questions of council members.

Mayor Storey opened the public hearing at 6:45 p.m.

Bill Newman, resident of Surf & Sand Mobile Home Park, Space #73, read a prepared statement which was submitted for the record urging the Council to reject what he believes was clearly a "scam conversion," and to deny the subdivision application. (He also read a letter from park resident Richard Turner against the subdivision application)

Irving Richman, Cabrillo Mobile Home Park, urged denial of the application.

Devina Baker, resident of Surf & Sand Mobile Home Park, Space #24, urged the council to please vote against the forced conversion of Surf & Sand Mobile Home Park.

George Drysdale stated said he represents academia. He commented on rent control and said economists are against rent control. Mr. Drysdale stated if you were to "Google" mobile home rent control, Capitola is on the first page. He said thousands of students of economics are watching tonight. He went on to say 44 states have outlawed rent control.

3. A. PUBLIC HEARINGS (Continued)

Mark McClelland, Surf & Sand Mobile Home Park resident, urged the council to deny the subdivision application.

Margaret Dixon, long time resident of Surf & Sand Mobile Home Park (Space 72) and President of the Homeowner's Association, read a prepared statement that was submitted for the record, which discussed the countless hours and efforts by residents of the park over the past month to comply with the 30-day deadline to negotiate a price for the mobile home park. She provided an overview of their accomplishments and informed the Council that the residents have received no response on their standing offer from the park owner or his representative. In closing, she urged the Council to deny this conversion application.

Eugenia Calande, resident of Surf & Sand Mobile Home Park and former President of the Homeowner's Association in 2003-04 when the park residents made an offer to purchase the park. Her statement was submitted to the City Council via email on April 5, 2010, and is part of the record. She urged the Council to deny the subdivision application.

Wendelyn Wells, resident of Voyage West Mobile Home Park located at Gross Road and 41st Avenue, just outside the city limits, discussed the precedent approving this application would be setting for other mobile home parks. She urged the Council to deny the proposed subdivision.

Sharon Shelgren, resident of Surf & Sand Mobile Home Park, Space 54, urged denial of the proposed subdivision application.

Jack Alsman, Surf & Sand Mobile Home Park, Space 58, urged the Council to deny the subdivision application.

Clay Kempf, Executive Director of the Seniors Council and the Advisory Council of the Area Agency on Aging in Santa Cruz and San Benito Counties, said he already testified regarding the shortage of senior housing and how critical mobile home parks, particularly Surf & Sand Mobile Home Park, are to the seniors in this community. He said both the Board of Directors of the Seniors Council and Advisory Council of the Area Agency on Aging urge the Council to oppose this conversion.

Rick Halterman, resident of Castle Mobile Estates, commented on the park residents' interest in working with the city to address litigation costs. He urged the Council to deny the application to subdivide Surf & Sand Mobile Home Park.

Sandra Williams, resident of Surf & Sand Mobile Home Park, commented on the correspondence she submitted from El Dorado Park in Palm Springs and discussions she has had with residents regarding conversion of their mobile home park. She urged the Council to deny the subdivision application.

Richard Brungraber, resident of Surf & Sand Mobile Home Park, Space #47, commented on possible eminent domain, and he urged the council to please turn down the application.

At 7:32 p.m., Attorney Mark Alpert provided brief closing comments. He said the Council has an opportunity to end the dispute, the law requires this subdivision be granted, and he hopes the council will do so.

Mayor Storey closed the public hearing 7:40 p.m.

3. A. PUBLIC HEARINGS (Continued)

Council Member Graves said he was probably the only council member on the City Council at the time the original rent control ordinance was adopted. He provided background information pertaining to the issue that prompted the city's involvement in mobile home park rent control relating to Tradewinds Mobile Home Park. He commented on the survey and believes the survey results may have been somewhat different had the park owner provided more information, such as what he thinks fair market value would be. Council Member Graves said Mr. Alpert mentioned there were appraisals made on the property and that he disagreed with the city's appraisal. Council Member Graves said one of the appraisals was based on its current use, but did not allow for the deteriorated infrastructure in the park.

Council Member Graves said there has been a lot of discussion about this particular application and the argument, "Is this an end-run to do away with rent control?" He believes it is. He then discussed the administrative service fee which was instituted by the city when he was not on the council. He expressed concerns about the fee, as it builds expectations of the residents and could be perceived as putting the city on a side, rather than being an impartial arbitrator. He believes the value placed on the mobile home park by the park owner is very inflated for its condition and its infrastructure, and he believes the spaces in this park could not sell at the fair market value the park owners expect, if the park were converted and allowed to be a subdivision tomorrow.

Council Member Graves said the park is a necessary component of the city's low- and moderate-income housing element, which is part of the City's general plan. He referred to a public comment regarding eminent domain, and he discussed his experience as a juror on an eminent domain court case. He believes the Council owes it to residents of the park and to the park owner to be fair and honest, but he does not believe the council is being dealt with fairly and honestly. Council Member Graves said the average lot size is approximately 1500 square feet, and from the information he has seen, the individual land value, not counting coaches or anything else on it, far exceeds what he would consider a reasonable fair market value for the property. He thanked the Mayor for the opportunity to comment.

Council Member Nicol commented that the council is between a rock and a hard place. He believes the council could most likely come up with findings to either deny or support a subdivision. Either way, he believes there will be litigation. If we vote to deny the subdivision, there will be ongoing litigation, with an uncertain time for resolution of such litigation. The residents have said they would be willing to help pay for the litigation. In the best case scenario we would win; however, there is a very distinct possibility we would lose. In that case the residents would lose everything, and the city would be bankrupt. If the council votes to approve the subdivision, there would be an end to litigation and stress, and cost to the city and Surf & Sand Mobile Home Park residents. The residents' equity would not be completely wiped out; it would be recovered to a certain degree. If the park were subdivided, everyone would gain back a fairly good percentage of their equity that has been frozen at zero. All residents would have the option to buy the lots under their units for fair market value, whatever that number is. Council Member Nicol said the sales price would be determined by free market. He stated that mobile homes in the Tradewinds Mobile Home Park sell in the \$240,000 to 250,000 price range; however, not all lots at Surf & Sand measure up to the lots at Tradewinds, but some lots do.

Council Member Nicol went on to say it was interesting to note there are 73 parcels proposed in the Surf & Sand subdivision, and of those 73 lots, all but seven are owned free and clear. Of those having mortgages, one is a low-income qualifying resident, three units are used for vacation homes, and he is not certain about the others. He commented on the benefits the residents have reaped over time under rent control. He reiterated his concern about risking everything as opposed to getting something, and he would be tempted to support the subdivision.

3. A. PUBLIC HEARINGS (Continued)

Council Member Begun said the council's decision is not an easy one. He commented on three issues that need to be considered: 1) He believes the Mello Act applies to this development, and the applicant's proposed housing replacement plan does not logically set forth a proper housing replacement scheme that complies with state law; 2) the Subdivision Map Act requires that the park owner provide to the tenant an offer to purchase their lot once the subdivision is complete. He believes assurances of the park owner to comply with this portion of the act are considerably less than satisfactory. He understands that an option to sell to each tenant their parcel at a fair market price is required by law. The value should be determined through a process that, if subject to dispute, the value can be objectively determined. He does not see this in the proposed application; and 3) The degree of opposition illustrated by the tenants' survey and as demonstrated during the public hearings, is compelling. The only real solution is for the two parties to sit down and work out a mutually agreeable solution. He said the purpose of the Mello Act is to insure adequate low-cost housing in the coastal zone. For these reasons, Council Member Begun said he will vote to deny the application and direct staff to return to a subsequent meeting to do so.

Council Member Norton said he has served on the City Council for 10 years and this has been the most difficult decision he has had to make as a council member, so far. It involves legal precedence and the will and the needs of his community. He explained that he has tried to take the emotional aspect out of this matter and to deal with the facts, figures and reality of the situation. One thing he has heard consistently from the community, not just the residents of the mobile home park, was, "Don't leave us standing alone; now is not the time to abandon us." He pointed to a stack of mail he received from hundreds of Capitola residents urging him to vote against the Surf & Sand conversion. Council Member Norton could better accept the concept of a subdivision at Surf & Sand if he could be assured the existing residents have a reasonable opportunity to purchase their parcels. He was hoping a compromise could be reached between the residents and the owner of the park that would make it possible for the Council to finalize this issue.

In closing, Council Member Norton said he has heard nothing as a result of the negotiations that assures him the people who live in this community would have an opportunity to stay in this community; therefore, he is going to have to vote against the subdivision.

Mayor Storey said the council's duties are to weigh the application based on California Government Code Section 66427.5 and try to apply that code section to this subdivision application. The council is not here to debate issues relating to rent control. Since there has been so much discussion about rent control in discussion of this application, it gives him a sense that this application is not a bona fide subdivision application. He then referred to the purpose of Government Code Section 66427.5, which is to avoid the economic displacement of non-purchasing residents and to give residents an option to purchase.

Mayor Storey stated it is the council's job is to try to determine whether this is good faith bona fide application. In order to do that the council has to put the evidence together that has been presented and come to a fair conclusion. One of the pieces of evidence is the survey, and the survey is overwhelmingly against the subdivision. The survey is to be a survey in support of the subdivision. The Carson Harbor Village case also indicates the City is to determine through other evidence whether this is a bona fide application. Evidence that indicates it is not includes statements made by Attorney Mark Alpert on numerous occasions, including this public hearing and the prior park closure public hearing, that this is all about mobile home rent control, and the parties would not be here if it were not for mobile home rent control. Mayor Storey said it appears this is a litigation strategy to get rid of mobile home rent control.

3. A. PUBLIC HEARINGS (Continued)

Mayor Storey said he is struck by the facts that, even after the attempts at negotiations, the applicants have not stated a price that the residents and city can rely on to assure it truly is a bona fide subdivision application. There have been references to fair market price, but he believes there should at least be some formula so that people know what is being approved. Mr. Alpert has indicated that the Council has no right to judge that, and the Council should just approve it and later see what happens. Mayor Storey said the Council is here to try and make that determination in advance as the Council does not want later, after approving this application, to have to attempt to sue to undo the subdivision because the lots are not being sold at a fair price. He said the lack of that information leads him to believe it is not a bona fide subdivision application.

Mayor Storey also expressed concern that the resident impact report does not address how the infrastructure improvements that are necessary in the park would be handled. Again, this indicates to him this is not a bona fide subdivision application. Taking all those elements together and honestly applying the statutes that the legislature has written, he has come to the conclusion to deny the subdivision application. He is hoping the City can still continue to negotiate this matter. He said the mobile home park rent control ordinance is on the city's books, and he will defend the city's ordinance. For those reasons Mayor Storey said he will be voting against the subdivision.

Considerable Council discussion was followed by this action:

ACTION: Council Member Nicol moved, seconded by Council Member Begun, to direct staff to prepare resolutions denying the Tentative Map and the Coastal Development Permit to subdivide Surf & Sand Mobile Home Park (Project Application #09-110).

Mayor Storey repeated the motion and said he assumes that as part of that motion the resolution will reflect some of the evidence that has been mentioned in the Council's deliberations about why the City Council views that it is not a bona fide subdivision application.

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

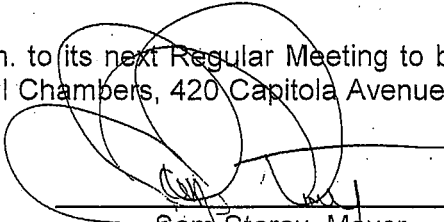
B. Public Hearing to Consider an Offer from Surf and Sand, LLC, to Settle all Litigation with the City of Capitola. Presentation: Community Development Department. [570-40]

Mayor Storey commented on this item stating that, based on the Council's previous action, this item would be moot. City Attorney Barisone agreed.


No action was taken on this item.

4. ADJOURNMENT

The City Council adjourned at 8:18 p.m. to its next Regular Meeting to be held on Thursday, April 8, 2010, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.


Sam Storey, Mayor

ATTEST:


Pamela Greeninger, City Clerk, MMC