

**CITY OF CAPITOLA
CITY COUNCIL/REDEVELOPMENT AGENCY**

April 28, 2011
Capitola, California

MINUTES OF A REGULAR JOINT MEETING

5:30 P.M - CLOSED SESSION - CITY MANAGER'S OFFICE

At 5:30 p.m. in the City Hall Council Chambers, Mayor/Chairperson Norton noted that all Council Members/Redevelopment Agency Directors were present. He made an announcement regarding the items 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, et al. (Surf & Sand Mobile Home Park)
[Superior Court of the State of California for County of Santa Cruz, Case #CV 167716]
Surf and Sand, LLC vs. City of Capitola, et al. (Surf & Sand Mobile Home Park)
[U.S. District Court N.D., Case No. C09-05542 RS (Judge Richard Seeborg)]
Los Altos/El Granada Investors vs. City of Capitola, et al. (Castle Mobile Estates)
[U.S. District Court N.D., Case No. CV 04-05138 JF (Judge Jeremy Fogel)]
Vieira Enterprises, Inc., vs. City of Capitola (Cabrillo Mobile Estates)

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9:
One Case: Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates)
The City is in receipt of a December 30, 2010, Fair Return rent increase application for Cabrillo Mobilehome Park, which claims that if it is not granted in its entirety, the City will be liable for the unconstitutional taking of Mr. Vieira's property and further claims that the City's past enforcement of its rent control ordinance has already functioned to effect such a taking.

CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION (Govt. Code §54956.9(c))

One Case to be Discussed

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Titles: City Manager and City Attorney

LIABILITY CLAIMS (Govt. Code §54956.95)

Claimant: David and Vanessa Drivon
Claimant: David Moore, on behalf of Dorean Moore
Claimant: Theresa Viola
Claimant: Natthakan Inpong
Claimant: Daniel M. Finkel
Claimant: Edward A. Maghakian
Claimant: Veronica Shepardson
Agency claimed against: City of Capitola

Mayor/Chairperson Norton noted that there was no one in the audience; therefore, the City Council/Redevelopment Agency recessed at 5:32 p.m. to the Closed Session in the City Manager's Office.

REGULAR JOINT MEETING OF THE CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY

Mayor/Chairperson Norton called the Regular Joint Meeting of the Capitola City Council/Redevelopment Agency to order at 7:06 p.m. on Thursday, April 28, 2011, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ROLL CALL AND PLEDGE OF ALLEGIANCE

PRESENT: Council Members/Directors Stephanie Harlan, Michael Termini, Kirby Nicol, Sam Storey, and Mayor/Chairperson Dennis Norton

ABSENT: None

OTHERS: Redevelopment Agency Treasurer Debbie Johnson

STAFF: City Manager/Executive Director Jamie Goldstein, City Attorney/General Counsel John G. Barisone, Community Development Director/Deputy Executive Director Derek Johnson, Chief of Police Michael Card, Public Works Director Steve Jesberg, and City Clerk/Secretary Pamela Greeninger

1. REPORT ON CLOSED SESSION [520-25]

City Attorney Barisone reported on the items discussed in Closed Session which were listed on the posted agenda, as follows:

Surf & Sand Mobile LLC vs. City of Capitola, et al. (Surf & Sand Mobile Home Park) (2 cases): The Council received an update from City Manager Goldstein and City Attorney Barisone regarding ongoing implementation of the Settlement Agreement. No reportable action was taken.

Los Altos/El Granada Investors vs. City of Capitola, et al. (Castle Mobile Estates): The Council received an update from City Manager Goldstein and discussed this matter. No reportable action was taken.

Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates): City Attorney Barisone provided a status update on threatened litigation regarding their rent increase application. No reportable action was taken.

City Attorney Barisone said there was one item of potential litigation where the City Council needed to consider initiation of litigation. He provided a report to the council on that item, but no reportable action was taken in Closed Session.

The Council briefly discussed and considered the tort claims listed on the Closed Session agenda, including Drivon, Moore, Viola, Inpong, Finkel, Maghakian and Shepardson. City Attorney Barisone said most of the claims have arisen from the March 2011 flood, and no reportable action was taken in Closed Session. All of the claims are on the open session agenda for consideration.

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda – None

B. Public Comments

1) Ron Graves, the city's representative to the METRO Board, provided the Council with a brief update on the Board's discussions and public hearings regarding route reductions. It is anticipated routes will be reduced by 12%. He said no decisions have been made pertaining to routes that will be cut. There will be 13 public hearings to consider the route cuts; two meetings will be held at Shoreline Middle School. Dates will be on community TV. He reported that Supervisor John Leopold received a letter from Mayor Norton regarding Route 69, and they are looking to make sure that route is not eliminated.

2. B. 1) ORAL COMMUNICATIONS (Continued)

Mr. Graves also commented on his appointment to the METRO Advisory Committee (MAC) and said he would like to ask Craig Agler to continue to serve. The person serving should be transit-dependent, if possible. Mayor Norton suggested that staff send a letter to Craig Agler. [1170-10]

Mayor Norton also asked if the METRO staff could come to a regular meeting of our City Council. Mr. Graves said METRO staff would be available to attend a Council meeting, and Mayor Norton asked staff to request a presentation by METRO staff at a future meeting.

2) Leonard Tyson, resident of 1500 Wharf Road (Capitola Venetian), submitted photographs and reduced copies of plans showing parking at 4970 Cliff Avenue. He discussed his concerns about the placement of bumpers and the elimination of a public parking space at that location. Mayor Norton thanked him for bringing this to their attention and suggested he meet with the public works director. [470-05]

3) Kevin Wynne, Public Information Officer for the U.S. Small Business Administration (SBA) announced that an SBA Office is open in the Capitola City Hall Community Room from 9 am to 5:30 p.m. Monday through Friday through Thursday, May 12, 2011. He said that they offer loans to victims of the flood, including home disaster loans, business physical disaster loans and economic injury disaster loans. Mr. Wynne also pointed out the SBA offers relocation loans if there is an involuntary or mandatory relocation. He urged mobile home owners to submit an application within the 60 days, which runs through June 27, for funds in the event relocation is necessary. Mr. Wynne advised that applicants are under no obligation to accept the loan, but it is important to submit an application. He said flyers and his business cards are available in the back of the room and City Hall. [420-50]

Mayor Norton asked if this information is on the scroll. City Clerk Greeninger said a News Release was recently issued regarding this; however, she was not sure if the information is included on the scroll. She will make sure the information is added.

C. Staff Comments

1) City Manager Goldstein provided brief updates regarding the Rispin property, repairs to the Police Department, and Redevelopment Agency ERAF payments.

2) Community Development Director Johnson announced the public workshop, "Help Plan Rispin Park," that will be held on Wednesday, May 4, 2011, at 6 p.m. at the Community Center at 4400 Jade Street. In addition to the evening workshop, staff will be conducting stakeholders' interviews regarding the Rispin property that afternoon.

Community Development Director Johnson reported on the second meeting of the General Plan Advisory Committee held last night. The next meeting will be on Wednesday, May 18.

D. City Council/RDA Director/Treasurer Comments/Committee Reports

Council Member Harlan asked that an item be placed on the next agenda under Committee Appointments as she may have a new appointment for the West Capitola representative on the General Plan Advisory Committee. She would also like the Council to consider appointing alternates on the committee in the event a committee member would need to step down before the committee's work is done. Council Member Termini agreed that he would feel more comfortable having an alternate as well.

E. Committee Appointments – None

F. Approval of Check Register Reports

- 1) **City: Approval of City Check Register Reports dated April 8 and April 15, 2011. [300-10]**

ACTION: Council Member Nicol moved, seconded by Council Member Storey, to approve the Check Register Reports dated April 8, and April 15, 2011, including checks numbered 65927 through 66011 in the amount of \$88,569.36, and checks numbered 66012 through 66077 in the amount of \$116,876.27, respectively; and payroll disbursements for the April 8, 2011, payroll in the amount of \$190,532.02, for a Grand Total of \$395,977.65, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None. *[Note: Mayor Norton abstained from voting on Check #66067 to SC Regional 911 for \$25,713.50.]*

- 2) **RDA: Approval of Redevelopment Agency Check Register Report dated April 15, 2011. [760-25]**

ACTION: Director Storey moved, seconded by Director Harlan, to approve the Check Register Report dated April 15, 2011, including checks numbered 2928 and 2931 in the amount of \$13,888.17, as submitted. The motion carried on the following vote: AYES: Directors Harlan, Termini, Nicol, Storey, and Chairperson Norton. NOES: None. ABSENT: None. ABSTAIN: None.

3. CONSENT CALENDAR

Mayor/Chairperson Norton asked if there were any items on the Consent Calendar that members of the public or the City Council/Redevelopment Agency Directors wished to pull for separate discussion. No items were pulled for discussion. Mayor/Chairperson Norton noted that Items 3.K. and 3.M. require a 4/5 vote of approval.

CONSENT CALENDAR ACTION: Council Member/Director Termini moved, seconded by Council Member/Director Harlan, to approve the Consent Calendar as recommended. The motion carried on the following vote: AYES: Council Members/Directors Harlan, Termini, Nicol, Storey, and Mayor/Chairperson Norton. 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.

- B. City/RDA: Approve Minutes of the Emergency Meeting of the City Council of March 27, 2011, the Special Meeting of the City Council of March 30, 2011, the Joint Special Meeting of the City Council/ Redevelopment Agency of April 1, 2011, and the Regular Joint Meeting of the City Council/Redevelopment Agency of April 14, 2011.**

ACTION: Council Member/Director Termini moved, seconded by Council Member/Director Harlan, to approve the Minutes of the Emergency Meeting of the City Council of March 27, 2011, the Special Meeting of the City Council of March 30, 2011, the Joint Special Meeting of the City Council/Redevelopment Agency of April 1, 2011, and the Regular Joint Meeting of the City Council/ Redevelopment Agency of April 14, 2011, as submitted. The motion carried on the following vote: AYES: Council Members/Directors Harlan, Termini, Nicol, Storey, and Mayor/ Chairperson Norton. NOES: None. ABSENT: None. ABSTAIN: None.

3. CONSENT CALENDAR (Continued)

C. Approve hiring one Records Clerk position in the Police Department and authorize the City Manager to proceed with recruitment. [650-05]

ACTION: Council Member Termini moved, seconded by Council Member Harlan, to approve hiring one Records Clerk position in the Police Department and authorize the City manager to proceed with recruitment, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

D. Deny claim of David & Vanessa Drivon in the amount of \$125,000 and forward to the City's liability insurance carrier. [Claims Binder]

ACTION: Council Member Termini moved, seconded by Council Member Harlan, to deny the claim of David and Vanessa Drivon in the amount of \$125,000 and forward it to the City's liability insurance carrier. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

E. Deny claim of David Moore, on behalf of Dorean Moore, in the amount of \$2,950 and forward to the City's liability insurance carrier. [Claims Binder]

ACTION: Council Member Termini moved, seconded by Council Member Harlan, to deny the claim of David Moore, on behalf of Dorean Moore, in the amount of \$2,950 and forward it to the City's liability insurance carrier. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

F. Deny claim of Theresa Viola in the amount of \$921.07 and forward to the City's liability insurance carrier. [Claims Binder]

ACTION: Council Member Termini moved, seconded by Council Member Harlan, to deny the claim of Theresa Viola in the amount of \$921.07 and forward it to the City's liability insurance carrier. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

G. Deny claim of Natthakan Inpong in the amount of \$8,500 and forward to the City's liability insurance carrier. [Claims Binder]

ACTION: Council Member Termini moved, seconded by Council Member Harlan, to deny the claim of Natthakan Inpong in the amount of \$8,500 and forward it to the City's liability insurance carrier. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

H. Deny claim of Daniel M. Finkel for an undetermined amount and forward to the City's liability insurance carrier. [Claims Binder]

ACTION: Council Member Termini moved, seconded by Council Member Harlan, to deny the claim of Daniel M. Finkel for an undetermined amount and forward it to the City's liability insurance carrier. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

I. Deny claim of Edward A. Maghakian for an undetermined amount and forward to the City's liability insurance carrier. [Claims Binder]

ACTION: Council Member Termini moved, seconded by Council Member Harlan, to deny the claim of Edward A. Maghakian for an undetermined amount and forward it to the City's liability insurance carrier. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

3. CONSENT CALENDAR (Continued)

- J. Receive City Treasurer's Report for the month ended March 31, 2011 (Unaudited). [380-30]**
ACTION: Council Member Termini moved, seconded by Council Member Harlan, to accept the City Treasurer's Report for the month ended March 31, 2011 (Unaudited), as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.
- K. Accept update report on the Rispin Property Hazard Abatement Project and, by 4/5 vote approval, make the determination that all hazards at the Rispin Property have not been eliminated and there is need to continue action. [275-60]**
ACTION: Council Member Termini moved, seconded by Council Member Harlan, to accept the update report on the Rispin Property Hazard Abatement Project and made the determination that all hazards at the Rispin Property, as detailed in the March 1, 2011, Notice of Summary Abatement Order to Abate Dangerous Buildings and Grounds, have not been eliminated and that there is a need to continue action. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.
- L. Accept Quarterly Sales Tax and Transient Occupancy Tax Report for the Second Quarter of FY 2010-2011. [390-70]**
ACTION: Council Member Termini moved, seconded by Council Member Harlan, to accept the Quarterly Sales Tax and Transient Occupancy Tax Report for the Second Quarter of FY 2010-2011, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.
- M. Accept update report on Storm Drain Repair Project and, by 4/5 vote approval, make the determination that an Emergency Condition remains as detailed in Resolution No. 3863 adopted on March 27, 2011, and there is need to continue action. [260-50/420-50]**
ACTION: Council Member Termini moved, seconded by Council Member Harlan, to accept the update report on the Pacific Cove Storm Drain Repair Project and made the determination that an emergency condition remains as detailed in Resolution No. 3863 adopted on March 27, 2011, and that there is a need to continue action. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.
- N. Set Public Hearing for May 12, 2011, to consider appeal of Planning Commission denial of Project Application #11-024, for a Conditional Use Permit for a Medical Office Use (Dialysis Clinic) at 3801 Clares Street in the CC (Community Commercial) Zoning District [APN 034-261-47]. [730-10]**
ACTION: Council Member Termini moved, seconded by Council Member Harlan, to set a Public Hearing for the City Council meeting on May 12, 2011, to consider an appeal of a Planning Commission denial of Project Application #11-024, for a Conditional Use Permit for a Medical Office Use (Dialysis Clinic) at 3801 Clares Street in the CC (Community Commercial) Zoning District [APN 034-261-47], as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

4. PUBLIC HEARINGS**A. Public Hearing to consider Pacific Cove Mobile Home Park options to respond to flood damage. Presentation: City Manager's Department. [260-10/420-50]**

City Manager Goldstein summarized the written agenda report utilizing a PowerPoint Presentation. He explained there are two basic options: 1) park repair (update infrastructure to meet current code requirements), or 2) park closure. He reviewed the costs involved in bringing the mobile home park up to code, which does not include additional repair to the pipe beneath the park. After his report, City Manager Goldstein responded to questions of council members.

Mayor Norton opened the public hearing at 7:40 p.m.

The following people spoke in support of retaining the mobile home park. Residents of Pacific Cove Mobile Home Park thanked the city for its assistance after the flood.

Carol Lerno Machado, Pacific Cove Mobile Home Park resident, Space 56
 Greg Tedesco, Magellan Street resident
 Kathy Kelly, Pacific Cove Mobile Home Park resident, Space 60
 Anne Sullivan, part-time resident, Space 74 Pacific Cove Mobile Home Park
 Jeanne and Peter Roddy, Pacific Cove Mobile Home Park residents, Space 71
 Sean Miller, Pacific Cove Mobile Home Park resident, Space 66
 Sidney Jackson, Pacific Cove Mobile Home Park resident, Space 83
 Don Penner, Pacific Cove Mobile Home Park resident, Space 80

The following people spoke in support of closing Pacific Cove Mobile Home Park:

Chuck Huddleston, Soquel resident
 Carin Hanna, Capitola Village business owner
 James Wallace, Gilroy Drive resident
 Glenn Hanna, former City Treasurer
 Nels Westman, Capitola resident
 Margaret Kinstler, Riverview Avenue resident
 Gary Wetsel, Capitola resident and Village business owner
 Bob Begun, former council member and Chair of the Finance Advisory Committee

Mayor Norton closed the hearing at 8:23 p.m.

Considerable Council discussion was followed by this action:

ACTION: Council Member Nicol moved, seconded by Mayor Norton, to approve the Park Closure option outlined on page 2 of the Agenda Report, including direction to staff as follows:

1. Proceed with short-term repairs,
2. *(It was noted that this item was deleted pursuant to City Manager Goldstein's verbal presentation that a 12-month notice of Park closure is not necessary),*
3. Prepare the documentation necessary to consider Park closure or cessation of use,
4. Prepare a CDBG grant application to consider future uses,
5. Develop a draft financing plan to fund relocation and site improvement costs, and
6. Seek grant funding to offset repairs to pipe and relocation costs.

After further Council discussion, the motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

4. PUBLIC HEARINGS (Continued)

B. Public Hearing to consider Amendments to Sections 12.12.040, 12.12.110, 12.12.190, and 12.12.270 of the Capitola Municipal Code pertaining to Community Tree and Forest Management. [Ordinance 1st Reading] Presentation: Community Development Department. [1030-60]

Community Development Director Johnson summarized the written agenda report utilizing a PowerPoint Presentation. He reviewed the proposed ordinance amendments and responded to questions of council members.

Mayor Norton opened the hearing 9:40 p.m.

Molly Ording, 218 Monterey Avenue, commented on the illegal tree removal adjacent to the Porter Path on Depot Hill last year and expressed the need for the city to fiercely protect trees in the community. She supports the proposed ordinance amendment.

An identified man commented on his understanding of the Council's discussion pertaining to the city's requirement to obtain a permit to remove a tree. The Council clarified that a permit is required to trim or remove trees over 6 inches in diameter.

Mayor Norton closed the hearing at 9:46 p.m.

Limited Council discussion was followed by this action:

ACTION: Council Member Termini moved, seconded by Council Member Harlan, to pass the proposed Ordinance Amending Sections 12.12.040, 12.12.110, 12.12.190, and 12.12.270 of the Municipal Code Pertaining to Community Tree and Forest Management, to a second reading, as submitted.

Following considerable council discussion, Mayor Norton called for a vote on the motion. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Storey, and Mayor Norton. NOES: Council Member Nicol. ABSENT: None. ABSTAIN: None.

Council Member Termini suggested, and the Council agreed, that staff be directed to report back to the Council on this in a year.

5. OTHER BUSINESS

A. Finance Advisory Committee Charter. Staff recommendation: accept the Finance Advisory Committee Charter as submitted. [330-40]

City Manager Goldstein provided a brief staff report.

Gary Wetsel, member of the Finance Advisory Committee, discussed the committee's interest in determining the charge of the committee and defining their role by establishing working principles to guide interactions between the committee and the City. The committee reviewed the Charter and recommends that the Council accept it.

Bob Begun, Chair of the Finance Advisory Committee, said Mr. Wetsel has done a great job preparing the Charter for the Finance Advisory Committee and encouraged the Council to accept it as proposed.

ACTION: Council Member Termini moved, seconded by Council Member Nicol, to accept the Finance Advisory Committee Charter, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

6. COUNCIL/RDA DIRECTORS/STAFF, COMMUNICATIONS

A) Council Member Storey said someone from the Village spoke to him about extending the Village parking permits to complete repairs issued as a result of the flood.

Chief of Police Card commented that some people have taken advantage of the permits when they do not really need them. If someone is working on their project and have a continued need for a special parking permit, the property owner/contractor should contact the police department.

Gary Wetsel commented on the special Village parking permits and encouraged the city to make sure only those who are working on construction repairs get a permit. [420-50]

B) Chief of Police Card announced there would be a swearing in ceremony at 9:00 a.m. tomorrow morning, April 29, in the Council Chambers for the city's new Police Officer. Kraig Evens.

7. ADJOURNMENT

The City Council/Redevelopment Agency adjourned at 10:13 p.m. to its next Regular Joint Meeting to be held on Thursday, May 12, 2011, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Dennis R. Norton, Mayor
Redevelopment Agency Chairperson

ATTEST:



Pamela Greeninger, MMC
Pamela Greeninger, City Clerk
Redevelopment Agency Secretary

MINUTES WERE UNANIMOUSLY APPROVED ON MAY 12, 2011