

MINUTES

Joint Meeting of the Scotts Valley City Council and Redevelopment Agency Board of Directors

Date: April 15, 2009

POSTING:

The agenda was posted on 4-10-09
at City Hall, the SV Library, and the
SV Senior Center by the City Clerk.

CALL TO ORDER 6:00 p.m.

PLEDGE OF ALLEGIANCE and MOMENT OF SILENCE

ROLL CALL

Present:

Mayor Johnson
Vice Mayor Reed
Council Member Aguilar
Council Member Bustichi
Council Member Lind

City Manager Ando
City Attorney Powell
Public Wks Director Anderson
Police Chief Weiss
Interim Community Dev Dir Westman
Recreation Division Manager Sudduth
City Clerk Ferrara

COMMITTEE REPORTS CM Lind reported that the County Integrated Waste Management Task Force met and reviewed a revised plan for an Eco Park to be built at the Buena Vista Landfill. She stated that the Task Force also discussed a ban on single use plastic bags and received public input. She also reported that as of July the County will begin closing the Ben Lomond Transfer Station and the Buena Vista Landfill on Sundays for cost cutting measures. The County is also proposing to close one of the three hazardous waste drop-off locations on Saturdays; however, the Task Force encouraged the County to find resources to keep all three locations open on Saturdays, since that is the only weekend day available to residents.

VM Reed reported that the Library Joint Powers Board met on April 13, 2009 and formally eliminated three positions that have been frozen for some time. He stated that additional cuts will be discussed at upcoming meetings. He also reported that the Board discussed the City of Scotts Valley's agreement with the County of Santa Cruz regarding opening a Tier II library and how costs will be shared.

PUBLIC COMMENT

Catherine O'Kelly, Scotts Valley resident, stated that the Environmental Committee of the Valley Women's Club wrote a letter to Bill Brooks of Brooks Properties regarding the townhomes that were approved on Bluebonnet Lane adjacent to the Metro Center. The letter stated that the site is better suited for single occupancy rental units, and not for families, based on the location next to the Metro Center and the current economy. In addition, they recommended that Mr. Brooks build more handicap units. She recommended that the City Council encourage Mr. Brooks to consider the recommendation from the

Environmental Committee of the Valley Women's Club and that the City Council consider giving Mr. Brooks a break on developer fees.

Frank Kertai, Scotts Valley resident and President of the Heritage Parks Homeowners Association, spoke in opposition to the April 9th Planning Commission decision granting a one-year extension to Title II for an office building on La Madrona Drive, and read the attached letter (Attachment A).

CM Aguilar stated that the Scotts Valley Senior Center will be holding its Annual Spring Fundraiser Fashion Show on May 2nd, and additional information and tickets are available by calling 438-8666.

VM Reed reviewed the criteria necessary for organizations with programs specifically geared towards supporting businesses in Scotts Valley, to apply to include an insert in the City's business license renewal mailing. He stated that the application is available at City Hall and is due by May 1, 2009.

Paul Bach, Scotts Valley Responsible Local Development Political Action Committee (SVRLDPAC), stated that he had submitted a California Public Records Act request to the City to obtain the political records of several City Council Members in order to determine who they had received donations from. He stated that Randy Johnson and Dene Bustichi had received political contributions from a consultant to Title II. He stated that he brought this to the attention of the City Attorney, and he stated that the SVRLDPAC is insisting that Randy Johnson and Dene Bustichi recuse themselves from all future discussions on Title II, from all votes on Title II, and that during such time they leave the room.

CM Bustichi stated that he had received campaign contributions of \$100 from Vic Marani in 2006, and \$100 in 2004. He stated that in 2006, Vic Marani was a consultant for a short period of time while Title II was looking to approve an office building in Scotts Valley on La Madrona Drive where Target is currently proposed. He stated that the vote approving the office building was 4/1, and that he had been the "no" vote. He stated that Vic Marani is not a resident of Scotts Valley, but an elected official on the Santa Cruz County School Board. He stated that he had also received donations of equal amounts from other County residents, including Supervisor Tony Campos, Supervisor Jan Beautz, Supervisor Ellen Pirie, and former Secretary of State Bruce McPherson. He stated that all of his campaign contributions had been disclosed in accordance with the law. He questioned why Mr. Bach, the leader of the SVRLDPAC has not filed any public records or reports for his Political Action Committee contributions. He questioned how much money the SVRLDPAC has raised, who has contributed to the Committee, who is a member of the SVRLDPAC, and if any corporations outside of the City have contributed to the SVRLDPAC. CM Bustichi stated that the SVRLDPAC had endorsed three Council candidates for the November 2008 election, and that the SVRLDPAC had paid for advertising and fliers; however, the amounts were not reported by any of those three candidates or the SVRLDPAC. He stated that he feels Mr. Bach should report what the SVRLDPAC has spent on campaigns and what has been raised by the SVRLDPAC.

Mayor Johnson stated that he had discussed this issue with the City Attorney, and he was told that it is completely acceptable to accept donations/contributions and still be able to vote on certain subjects without recusing themselves.

RDM Sudduth distributed the parent guide for the Summer Camp that is taking place through the Recreation Division.

CM Lind announced that the DARE Golf tournament, hosted by the Scotts Valley Police Department Juvenile program, was being held on May 15, 2009 at the Valley Gardens Golf Course. She stated that all proceeds go to the Juvenile program and that anyone who is interested in sponsoring, donating, or signing up should contact the Police Department at 440-5670.

**ALTERATIONS TO
CONSENT AGENDA**

CM Aguilar requested that Item G be moved to the regular agenda for discussion.

M/S: Bustichi/Aguilar

To approve the Consent Agenda as amended moving Item G to the regular agenda for discussion.

Carried 5/0

Consent Agenda:

- A. Approve check register – 4-6-09
- B. Approve 2009 License Agreement between the City of Scotts Valley and the Scotts Valley/San Lorenzo Valley Youth Soccer Club for the use of the Skypark soccer fields
- C. Approve Resolution No. 1198.56 amending the City's fee schedule for parking violations and repealing Resolution No. 1198.48
- D. Approve Memorandums of Understanding between the City of Scotts Valley and the Scotts Valley Police Officers Association and the Scotts Valley Police Supervisors Association through June 30, 2010
- E. Approve award of two year contract for traffic signal maintenance and repair in the amount of \$17,160 to Cal-West Lighting & Signal Maintenance
- F. Approve Resolution No. 1817.1 approving the final map for 125 Navarra Drive // APN 024-291-11

**ALTERATIONS TO
REGULAR AGENDA**

M/S: Bustichi/Lind

To approve the Regular Agenda as amended moving Item G to the regular agenda for discussion.

Carried 5/0

REGULAR AGENDA

- G. **Authorize the Chair of the Redevelopment Agency to execute a purchase agreement with the Ow Family Trusts for APN 022-601-01**

CM Ando presented the written staff report and responded to questions from Council.

CM Aguilar stated that she wanted to make public aware that the monies used to purchase the properties are affordable housing monies, and she wants to be sure that in the future there is above 15% affordable housing integrated into the project, which could add approximately 40 units above the 15% requirement. She encouraged housing advocates to participate in the process for the Town Center.

CM Bustichi stated that the Ow family has been very supportive in helping to get the Town Center moving with a fair price for their property. He stated that the Van Kregten property and the Ow property are just a few of the pieces of the puzzle necessary to keep the Town Center project moving forward.

Frank Kertai, Scotts Valley resident and President of the Heritage Parks Homeowners Association, stated that he feels \$22 a square foot is too high a price to pay for the property. He questioned what the plan was for the property.

CM Aguilar asked CA Powell to provide clarification regarding the use of affordable housing monies to purchase land.

CA Powell stated that in accordance with state law, if affordable housing monies are used to buy property, the City has five years in which to begin a project, which can include constructing the units or entering into an agreement with someone to construct the units. In addition, at the end of the five year period, if the City has not yet started that process, by resolution the Council can extend the process for an additional five year period. If the affordable housing is not built at the end of ten years, the City would sell the property and the money would go back into the affordable housing fund.

CM Ando stated that the affordable housing money has a "use it or lose it" component to it. He stated that there is a requirement that only so much cash can be accumulated, and the City has approximately \$5 million at this time. If the excess surplus is not spent within a certain period of time, the money would have to be turned over to the state, and spending this money now helps us not have an excess surplus in the affordable housing fund.

M/S: Bustichi/Aguilar

***To authorize the Chair of the Redevelopment Agency to execute a purchase agreement with the Ow Family Trusts for APN 022-601-01.
Carried 5/0***

- 1. Consider approval and distribution of Request for Proposal (RFP) for Construction Management Services for a new Tier II Scotts Valley Library**

ICDD Westman presented the written staff report and responded to questions from Council.

CM Bustichi recommended that the RFP separate pre-construction duties and construction duties.

Tim McBride, Scotts Valley resident, spoke in favor of the City Council approving this RFP.

M/S: Bustichi/Lind

To approve the Request for Proposal (RFP) for construction management services for a new Tier II Scotts Valley Library, and authorize City staff to distribute the RFP as amended separating pre-construction duties and construction duties.

Carried 5/0

PUBLIC HEARINGS

- 2. Consider approval of fee adjustments for various Police, Administrative, Public Works, Building, Planning, Facility Rental, and Recreation fees**

CM Ando presented the written staff report and responded to questions from Council.

After discussion, the City Council decided to keep the discount for non-profit agencies at 25% instead of the proposed 15% discount for rental of the Community Center.

PUBLIC HEARING OPENED - 6:40 PM

No one came forward.

PUBLIC HEARING CLOSED - 6:41 PM

M/S: Aguilar/Bustichi

To approve Resolution No. 1593.12 amending certain fees and charges for City recreation services as amended, keeping a 25% reduction for non-profit agencies.

Carried 5/0

REGULAR AGENDA (Resumed)

- 3. Consider approval of Resolution No. 1535.4 ordering collection of delinquent assessments and taxes for various assessments and community facilities districts pursuant to California Streets and Highways Code Section 8830 and pursuant to California Government Code Section 53356.1 // APN 021-141-05**

CA Powell presented the written staff report and responded to questions from Council. She stated that after the distribution of the City Council agenda, she was notified by Richard Johnson that the April 2008 payment has been made. She stated that in accordance with Santa Cruz County regulations, the City is unable to take the property off the tax roll unless there is a delinquency in a prior fiscal year, so if the April 2008 payment has been made, we are unable to proceed with foreclosure because one of the requirements for foreclosure is that the property be removed from the tax roll. She stated that if

delinquencies remain as of July 2009, the City can proceed with foreclosure at that time for the outstanding installments, which are December 2008 and April 2009. She stated that if the check for the April 2008 taxes does not clear, Title II would be delinquent for a prior tax year and the property could be removed from the tax roll immediately; however, if the check does clear, we will have to wait until July 1, 2009. She recommended that the Council provide direction to staff that in the event the April 2008 check does not clear, foreclosure is authorized; however, if the check does clear, staff will return to the Council on July 1 with an update.

The following italicized comments are included per amendment/approval at the 6-3-09 City Council meeting:

Paul Bach, Scotts Valley Responsible Local Development Political Action Committee, stated that *he had two major topics: (1) He stated that he wanted to rebutt a comment from CM Bustichi, where CM Bustichi claimed that he has received only \$200 from the Marani family during the last two campaigns, which Mr. Bach stated was blatantly false.*

Mayor Johnson interrupted Mr. Bach.

Mr. Bach stated that it has to do with the fact that he was asking Mayor Johnson and CM Bustichi to recuse themselves from this discussion, so he feels it is germane.

CM Bustichi stated that he had stated that the contribution had been from Vic Marani.

Mr. Bach interrupted CM Bustichi.

Mayor Johnson stated that the City Council was not going there, and if Mr. Bach wished to proceed, there was an officer that could handle the situation.

Mr. Bach stated that the Fair Political Practices Commission could intervene as well.

Per the 6-3-09 amendment/approval of the minutes the following comment is included:

VM Reed stated that he would agree to the inclusion recommended by Mr. Bach, as long as the minutes also reflect that Mr. Bach made virtually identical remarks in the open public comment portion at the beginning of the meeting, as he started to make on item 3.

Mr. Bach then commented regarding Title II and their history of tax delinquencies and business practices. He stated that he feels it is time that the City stop all work on this project. He also stated that he feels the project is being railroaded through.

Frank Kertai, Scotts Valley resident and President of the Heritage Parks Homeowners Association, stated that he wants answers from the City Attorney regarding the Planning Commission approval for the one year extension of the Gateway South office building, and the Scotts Valley Municipal Code Sections he believes the City has violated. He questioned if anyone has approached the County to have this property removed from the tax roll and if the County regulations are a hard and fast rule or can be modified. He stated that there was a Supreme Court case last year, Save Tara v. West Hollywood, that he believes is applicable to this issue. He stated that he believes that by allowing the developer to move forward with the EIR and not paying the full EIR fees that are due to the City, the City is implicitly approving pre-development activities, and he believes the City is in legal error with respect to legal standing on this issue.

CA Powell stated that the County of Santa Cruz has told the City that it is their hard and fast rule to not remove properties from the tax roll unless they are delinquent for a prior tax year. In addition, a company the City has done bond work with in the past also confirmed with the County that this is a hard and fast rule.

VM Reed questioned CA Powell regarding the West Hollywood case that Mr. Kertai had cited.

CA Powell stated that the Save Tara v. West Hollywood case is not applicable. This case involved the City of West Hollywood entering into an agreement with an affordable housing developer to build a senior affordable housing project on property that was owned by the City. She stated that the developer had applied for federal grants for that project, the City had submitted letters on behalf of the grant application indicating that they were planning to donate the property and to pay \$1 million in development fees, and urged HUD to issue the grants. She stated that the issue in the case is whether or not the City of West Hollywood should have completed CEQA before they did that. The Supreme Court determined that the City of West Hollywood had taken such action that did not allow them to reverse their position, because they had supported a project without ever doing environmental review, which is entirely different than what is happening in our case. We have an application that is going through the environmental review and development process, and the City's action on delinquent taxes has nothing to do with that process. The City does not have the ability to stop that process because they are not paying taxes.

ICDD Westman stated that the City often receives payments in increments for projects. She stated that the City has not done more work than they have been paid for on this project, and this is checked weekly.

M/S: Aguilar/Bustichi

To authorize City staff to move forward with foreclosure proceedings in the event that the check from Title II, for their April 2008 taxes, does not clear.

Carried 5/0

4. Consider approval of Resolution No. 1119.29 certifying the negative declaration and approve a General Plan Amendment replacing the 2002-2007 Housing Element with the 2009-2014 Housing Element

ICDD Westman presented the written staff report and responded to questions from Council.

CM Aguilar stated that she is concerned about Scotts Valley's lack of very low and low income housing, and she would like to see more very low units at the Town Center.

Melanie Shaffer Freitas, Executive Director of Habitat for Humanity (HFH), gave a history of Habitat for Humanity and their criteria, and spoke regarding the City of Scotts Valley Housing Element. She distributed pictures of what HFH has constructed in Santa Cruz and stated that HFH is looking for vacant or underdeveloped land in Scotts Valley to build on. She stated that HFH is happy to help with Scotts Valley's very low income requirements and distributed HFH's latest newsletter that is sent out three times per year.

Paul Bach, Scotts Valley Responsible Local Development Political Action Committee, recommended the Title II property on La Madrona be considered for Habitat for Humanity instead of selling the property if it goes into foreclosure.

M/S: Aguilar/Bustichi

To approve Resolution No. 1119.29 certifying a negative declaration and amending the General Plan with the adoption to the 2009-2014 Housing Element for the City of Scotts Valley General Plan // ND 09-01 and GPA 09-001.

Carried 5/0

5. Future Council/RDA agenda items

None.

ADJOURNMENT

The meeting adjourned at 7:29 p.m.

Approved: _____

Randy Johnson, Mayor / Chair

Attest: _____

Tracy A. Ferrara, City Clerk / Secretary

20090415 City Council Meeting Kertai Comments

Good Evening. My name is Frank Kertai. I am a resident of Scotts Valley. I am also President of the Heritage Parks Association of Scotts Valley.

Last Thursday, April 9th, the Scotts Valley Planning Commission granted a one-year extension to Title II for Design Review No. DR01-015 for the construction of a two story 135,899 square foot office building on a 17.6 acre undeveloped parcel on La Madrona Drive next to the Hilton Scotts Valley.

I believe this extension was granted in error, in violation of various Scotts Valley Municipal Code sections. This extension was granted despite my pointing out these code sections to the Planning Commissioners and to the Planning Director.

Specifically, this section of the municipal code states:

15.20.040 Imposition of development impact fee.

A. Any person who, after the effective date of the ordinance codified in this chapter, seeks to develop land within the city by applying for a building permit, is hereby required to pay the appropriate development impact fees established pursuant to Section 15.20.030 as the same may be applicable, in the manner, amount and for the purposes therein referenced.

B. No permits or extension of permits for the activities referenced in subsection A of this section shall be granted unless and until the appropriate development impact fees hereby required have been paid to the city.

C. Notwithstanding anything to the contrary set forth in subsection A, above, or in any other provision of this chapter, the development impact fees as established pursuant to Section 15.20.030 shall apply to any development project which has heretofore received a tentative map approval or other approval from the city, where the approval of the same, assented to by the developer, has been conditioned upon payment of the fees established as a result of the analysis and study (the "report") pertaining to development impact fees undertaken by Management Services Institute (referenced in Section 15.20.010). (Ord. 143 § 4, 1991)

Furthermore, section 17.54.010 speaks to the administration, interpretation and enforcement of the permitting process:

17.54.010 Administration, interpretation and enforcement.

A. All department officials and public employees of the city vested with the duty or authority to issue permits, certificates or licenses shall conform to the provisions of this title and shall issue no permit, certificate or license for uses, buildings or purposes in conflict with the provisions of this title; and any such permit, certificate or license issued in conflict with the provisions of this title, intentionally or otherwise, shall be null and void.

B. The planning director and planning commission, with the assistance of the city attorney, shall be responsible for the administration, interpretation, enforcement and correction of violations of the provisions of this title, subject to the provisions of Section 17.54.060 of this chapter.

C. It shall be the duty of the building official to review each application for a building permit and to refuse to issue a permit for the erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure or the use of any building, land or premises, not in conformity with

the provisions of this title. The issuance of a building permit shall not, however, stop the city from enforcing any of the provisions of this title, nor shall said building permit constitute a waiver of any provision of this title or any permit required under the provisions of Chapter 17.50 or any other chapter of this title.

Finally, section 17.54.040 speaks to the enforcement issue:

17.54.040 Enforcement.

In addition to remedies provided by any other provisions of law, the planning director shall have the authority to implement the enforcement of the provisions of this title by any of the following means:

A. Serving notice requiring the correction of any violation of this title upon the owner, agent, occupant or tenant of the improvement, building, structure or land;

B. Calling upon the city attorney to institute any necessary legal proceedings to enforce the provisions of this title, and the city attorney is hereby authorized to institute any actions to that end;

C. Calling upon the chief of police and officers of the police department to assist in the enforcement of this title.

In addition to any of the foregoing remedies, the city attorney may maintain an action for injunctive relief to restrain or enjoin or to cause the correction or removal of any violation of this title.

(Ord. 16.76 § 1(part), 1989)

Extending the approval of the office building effectively allows Title II to pull permits for this building on this site despite all of the past due taxes and fees due the city!

Given the significant past due taxes and fees in the special assessment district and the owner's inability to pay these fees, I urge the City Attorney to give the City Council the appropriate guidance to overturn the Planning Commission vote on the extension of the approval of the office building at this site.

Also, I would like to note that at the April 1, 2009 City Council meeting, city attorney Kristen Powel opined that the city is obligated because of due process to move forward with the EIR report. This is in spite of the fact that Title II has made only a partial \$100,300 payment on a \$127,000 bill due for the EIR process. Also Title II owes hundreds of thousands of dollars in past due taxes in a special assessment district. These monies are past due on the property in Gateway South, which is a special assessment district that has outstanding bond payments due for the properties in the area.

Furthermore,

Respectfully,

Frank Z. Kertai