

MINUTES

Meeting of the Scotts Valley City Council

Date: March 21, 2012

POSTING:

The agenda was posted on 3-16-12 at City Hall, the SV Senior Center, and the SV Library, by the City Clerk.

CALL TO ORDER 6:00 p.m.

PLEDGE OF ALLEGIANCE Performed by Girl Scout Troop No. 11144
and MOMENT OF SILENCE Vice Mayor Johnson presented a proclamation honoring Girls Scouts of the USA on their 100th Anniversary

ROLL CALL

Present:

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

City Manager Ando
City Attorney Powell
Comm Dev Dir/Deputy City Mgr Kates
Public Wks Director Anderson
Police Chief Weiss
WW/Env Program Mgr Hamby
City Clerk Ferrara

Absent:

Mayor Lind

COMMITTEE REPORTS

CM Bustichi reported that he visited Washington DC last week, representing the Santa Cruz Metropolitan Transit District (SCMTD), in order to lobby for transportation funding for Santa Cruz County.

CM Aguilar reported that AMBAG met and approved the recommendation for a consultant, Fehr and Peers, to do the Monterey Bay Origin Destination Study in order to improve transportation models and make our area more eligible for funding. She also reported that AMBAG approved the draft Central Coast Commercial Flows Study for review by the public, and extended the contract for their Interim Executive Director, Diane Eidam. She stated that additional information regarding the items above is available at www.ambag.org.

PUBLIC COMMENT

Chris Blask, Scotts Valley resident, spoke regarding programs at the federal, state, and local level that are available to help with funding for infrastructure improvements and new infrastructure. He provided his contact information to City staff.

Frank Kertai, Scotts Valley resident and President of the Heritage Parks Association, read the attached letter (Attachment A).

Fred Nagel, Monte Fiore/Heritage Parks resident, expressed concerns regarding the construction of the roadways and drainage systems in the Monte Fiore/Heritage Parks development and requested that City staff review the findings that Monte Fiore/Heritage Parks has compiled.

Gary Richard Arnold, expressed concerns about political policy as it relates local government, county government, and AMBAG.

Tom Miller, Monte Fiore/Heritage Parks resident, expressed concerns regarding the construction of the roadways and drainage systems in the Monte Fiore/Heritage Parks development due to concerns about safety, and requested that these concerns be evaluated by City staff and in a public forum.

CM Aguilar commended two individuals from Scotts Valley who received awards at the Annual Ag Day Luncheon held in Watsonville at the Fairgrounds: Baymonte Christian School 5th grader, Claire Saiki, won first place in the poster contest; and, Kevin Bargetto, Scotts Valley High School, was awarded with the Jimmie Cox Memorial.

ALTERATIONS TO CONSENT AGENDA

***M/S: Bustichi/Aguilar
To approve the Consent Agenda.
Carried 4/0/1 (ABSENT: Lind)***

Consent Agenda:

- A. Approve City Council meeting minutes of 3-7-12, 2-15-12
- B. Approve check register – 3-12-12, 3-5-12
- C. Approve Resolution No. 1863, adopting the City of Scotts Valley Bicycle Transportation Plan, dated March 2012
- D. Approve Memorandum of Understanding between the City of Scotts Valley and the Scotts Valley Mid-Management Association, July 1, 2011 through June 30, 2014
- E. Approve cancellation of July 4, 2012 City Council meeting

ALTERATIONS TO REGULAR AGENDA

***M/S: Aguilar/Bustichi
To approve the Regular Agenda.
Carried 4/0/1 (ABSENT: Lind)***

REGULAR AGENDA

1. **Presentation by Pedestrian Safety Work Group, a subcommittee of the Elderly & Disabled Transportation Advisory Committee, to review the results of their "Safe Paths of Travel" pedestrian improvement analysis**

CM Ando introduced Karena Pushnik, Senior Planner/Public Information Coordinator of the Santa Cruz County Regional Transportation Commission (SCCRTC), John Daugherty, Chair of the Elderly & Disabled Transportation Advisory Committee, and Veronica Elsea, Chair of the Pedestrian Safety Work Group, which are both Subcommittees of the SCCRTC.

Veronica Elsea, Chair of the Pedestrian Safety Work Group, which is a subcommittee of the SCCRTC, spoke and gave a PowerPoint presentation regarding the Work Group's results of their Safe Paths of Travel pedestrian improvement analysis, and responded to questions from Council. She stated that citizens can report problems by completing the Bicycle and Pedestrian Hazard Report form on their website at www.sccrtc.org or by calling 831-460-3200.

John Daugherty, Chair of the Elderly & Disabled Transportation Advisory Committee, which is a subcommittee of the SCCRTC, spoke regarding what was learned from this report and its positive impacts, and thanked the Council for their time.

2. **Consider approval of Retail Phasing Agreement between the City of Scotts Valley and Scotts Valley Land, LLC, for the Woodside Development**

CDD/DCM Kates presented the written staff report and responded to questions from Council.

Steve Garrett, Castle Companies, representing Scotts Valley Land, LLC, gave a history of Castle Companies, stated that they have constructed a number of projects throughout California over the past twenty-five years, and they have never left a project incomplete. He reviewed some of the components of the agreement and responded to questions from Council.

CM Aguilar expressed concerns about the visual effect and safety factors of the two retail/commercial building pads and recommended temporarily paving the pads.

Mr. Garrett stated that there are also concerns related to paving the pads and recommended leaving the dirt pads and placing a 3 foot high chain link fence around them.

CM Bustichi stated he would rather see a grass pad than a fence.

Mr. Garrett agreed to an amendment to the agreement requiring that the developer place grass or turf on the open retail/commercial pads until the buildings are constructed.

M/S: Bustichi/Johnson

To approve the Retail/Commercial Phasing Agreement between the City of Scotts Valley and Scotts Valley Land, LLC (Castle Companies), and authorize the Mayor to execute the agreement as amended, requiring that the developer place grass or turf on the open retail/commercial pads until the buildings are constructed.

Carried 4/0/1 (ABSENT: Lind)

3. **Discussion of increase in wastewater rates**

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

M/S: Bustichi/Aguilar

To authorize staff to prepare a notice to be mailed to all property owners and tenants, based on Scenario 2, for a 5.0% annual rate increase.

Carried 4/0/1 (ABSENT: Lind)

4. **Consider approval of Resolution No's. 1875 and 1875.1 regarding the issuance of bonds to refinance unfunded pension liability**

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

M/S: Aguilar/Bustichi

To approve Resolution No. 1875, a resolution of the City Council of the City of Scotts Valley of intention to authorize the issuance of pension obligation bonds to refund the outstanding side fund obligations of the City to the California Public Employees' Retirement System.

Carried 4/0/1 (ABSENT: Lind)

M/S: Aguilar/Bustichi

To approve Resolution No. 1875.1, a resolution of the City Council of the City of Scotts Valley of appointing financing team in connection with the proposed issuance of pension obligation bonds to refund the outstanding side fund obligations of the City to the California Public Employees' Retirement System.

Carried 4/0/1 (ABSENT: Lind)

5. **Consideration of multi-purpose auditorium at the City Library building**

CDD/DCM Kates presented the written staff report and responded to questions from Council.

M/S: Bustichi/Aguilar

To authorize up to \$10,000 for an architect to develop concept drawings, and authorize City staff to prepare a request for proposals to obtain bids from local architects for the preparation of the concept drawings.

Carried 4/0/1 (ABSENT: Lind)

6. **Future Council agenda items**

Frank Kertai, SV resident and President of the Heritage Parks Homeowners Association, requested that the City Council consider the following future agenda items:

- The City make a demand that the bond surety pay the full principal amount of the bond.
- The City direct staff to investigate and report back to the City Council on the issues for the purpose of determining whether an administrative hearing should be held concerning breach of the Monte Fiore Development Agreement.

CONVENE TO CLOSED SESSION

The City Council convened to closed session at 8:25 p.m. to discuss the following items:

1. Pursuant to Government Code Section 54956.9b, the City Council met in closed session to confer with their legal counsel regarding potential litigation – 1 case.
2. Pursuant to Government Code Section 54956.9a, the City Council met in closed session to confer with their legal counsel regarding existing litigation. Name of Case: City of Scotts Valley vs. County of Santa Cruz, et al Case No. CIV467230 San Mateo County Superior Court and Case No. A126357 Court of Appeal, First District
3. Pursuant to Government Code Section 54956.8, the City Council met in closed session to confer with their legal counsel regarding real property negotiations. APN No. 022-231-03.

RECONVENE TO OPEN SESSION

The City Council reconvened to open session at 9:10 p.m.

REPORT ON ACTION TAKEN DURING CLOSED SESSION

Mayor Johnson announced that there was nothing to report.

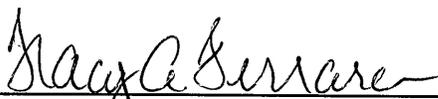
ADJOURNMENT The meeting adjourned at 9:11 p.m.

Approved:



Randy Johnson, Vice Mayor

Attest:



Tracy A. Ferrara, City Clerk

Good Evening. My name is Frank Kertai. My address is 516 Shasta Park Ct. I am a resident of the Monte Fiore development of Scotts Valley and President of the Heritage Parks Association. I am here tonight representing both myself and my community of eighty-one properties.

The Monte Fiore Development was constructed in the later part of the 1990's by Ryland Homes and Wayne R. Brown, Inc. I am one of the original homeowners in the development. My home closed escrow December 31, 1997.

In 2005, Ryland representatives came to the City Council asking for a release of around \$4 million worth of construction bonds. Councilman Randy Johnson was the only Council Member that voted against the release of these bonds. He was right to be concerned! Despite on-going 2 to 1 slope issues, and other issues of concern raised by the then HOA President at the hearing, the developers gave both the City Council and the HOA Board assurances that the development was built to approved plans and specifications and that the conditions of their development agreement had been met. Additionally, Ryland agreed to warranty the slopes. Because of on-going issues with the development, the City requested a performance bond from Ryland in the amount of **\$414,000** to replace the construction bonds. **The developers have not lived up to their slope warranty promise and have not addressed other material design and construction defects that were presented to the Council at the hearing on the bond reduction.**

In the winter of 2008, cracking on Saddleback Ridge Road became more severe. The outboard side of a large portion of the road dropped considerably. This event prompted the HOA Board to commission civil and soils engineers to investigate the root cause of the issue. Ryland was notified so that its soils engineers could participate in the investigation and evaluation. **Our soils and civil engineers concluded that Saddleback Ridge Road was simply not built per City approved specifications, including the dangerous failure to remove soil known to slide and required to be removed by the project soil engineer.** When Ryland representatives were asked if they would pay to fix the road, they declined.

At this point, the HOA Board took a number of additional actions. We entered into the pre-lawsuit Calderon process with Ryland in an attempt to come to a resolution of our issues, a process which ultimately proved unsuccessful. We commissioned additional investigative work to identify other possible significant construction and/or design issues – a number of which were discovered. Finally, in order to protect our interests, we initiated a legal action with Case No. CISCV166510 in the Superior Court of the State of California for the Court of Santa Cruz.

Additional investigation has identified a number of significant additional design and construction defects. These include the following items not built to City approved plans and specs: 1) Roads and base rock not built to required thickness, 2) inadequate debris walls not built to withstand debris flows, 3) a flag lot which should have had a debris wall but does not, 4) subdrains of insufficient depth (18 inches instead of 5 feet), 5) cribwalls of insufficient height to properly support v-ditches, 6) poor to non-existent cribwall drainage, 7) 15" storm drains built with plastic pipe instead of called for reinforced concrete pipe, 8) improper connections between plastic and RCP pipe at slope angle changes, 9) on-going water seepage through Saddleback Ridge Road due to improper drainage.

I come before you today with a call to action. I am asking the City to get involved in this issue for a number of reasons. Not only was the Heritage Parks Association misled – *so was the City of Scotts Valley*. Ryland representatives gave assurances to both the HOA and to the City that the development was built to approved plans and specifications. Investigation by reputable, local soils and civil engineers clearly shows that it was not. The estimated cost to mitigate the issues discovered to date is approximately the amount of the original construction bonds for the development. My review of thousands of pages of documents related to this case show a clear pattern of cutting corners by the developer. Additionally, the developer paid only \$80,000 in development fees. Per the actual costs provided in defense documents, the fees that should have been paid to the City are about five times that amount.

The message you are sending to developers if the City does not get involved is that it is okay for developers to ignore development agreements. Developers can simply get approval and build things any way they want. We believe it is the City's responsibility to insure that development in the City is performed per conditions of approval and approved plans and specifications. Otherwise, what is the purpose of going through the planning and approval process? In this case, significant deviations from approved plans and specifications occurred. This is not a simple case of a few homes being affected. Most of these defects are hidden from view, are part of the common area and affect all 81 property owners of the development. Additionally, the City required the developer to put up a performance bond because of on-going concerns. That bond has not been released. Your inaction leaves that status of that bond in limbo.

Respectfully,

Frank Z. Kertai
President
Heritage Parks Association