

# MINUTES

## Meeting of the Scotts Valley City Council

**Date: May 16, 2012**

**POSTING:**

The agenda was posted on 5-11-12  
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 and MOMENT OF SILENCE**

**ROLL CALL**

Present:

Mayor Lind	City Manager Ando
Vice Mayor Johnson	City Attorney Powell
Council Member Aguilar	Comm Dev Dir/Deputy City Mgr Kates
Council Member Bustichi	Public Wks Director Anderson
Council Member Reed	Police Chief Weiss
	Recreation Division Manager Sudduth
	Senior Recreation Specialist Ard
	City Clerk Ferrara

**COMMITTEE REPORTS**

CM Aguilar reported that AMBAG met and received a presentation provided by the Transportation Agency of Monterey County, the Santa Cruz County Regional Transportation Commission, and the San Benito Council of Governments, on the metropolitan transportation plan and regional travel demand model, which can be found on the AMBAG website at [www.ambag.org](http://www.ambag.org). The Board also reviewed the budget, and they are looking to trim various areas and focus on their strategic growth council grant with regards to sustainable communities. They are also looking to continue to evaluate and report back to the Board regarding revenues and expenditures, and the sustainability of AMBAG. She also reported that CDD Kates provided an excellent article in the AMBAG monthly newsletter regarding greenhouse gas emissions and reductions.

Mayor Lind reported that the Seniors Council met and they are facing several challenges with funding, one of which is whether they will be able to serve all the meals to meet senior needs through Meals on Wheels. She also reported that the seniors farmer's market nutritional program is beginning in June, with 600 vouchers to Santa Cruz County. There will be an increased of 100 vouchers from last year due to high rate of redemption in Santa Cruz County, which is the highest in the State at 85%. She also reported that the Senior Needs Assessment Summary Report is completed is will be posted at [www.seniorscouncil.org](http://www.seniorscouncil.org).

Mayor Lind reported that the Santa Margarita Groundwater Basin Advisory Committee met and received several reports including the Butano monitoring well project, four wells that have been drilled on the former Watkins-Johnson property, and a regional water sharing program that is still being developed. She also stated that the Scotts Valley Water District reported that their recycled water program is currently distributing 160 acre feet per year, which is 11% of the total water use for our district.

Mayor Lind reported that the Council attended the Zero Motorcycle Open House, where the Vice Governor from Northern Holland was in attendance.

### **PUBLIC COMMENT**

Frank Kertai, Monte Fiore resident and President of the Heritage Parks Homeowners Association, speaking on behalf of both himself and his community of eight-one properties, read the attached statement (Attachment A) regarding Monte Fiore/Heritage Parks development.

Dave Jensen, Monte Fiore resident, read the attached statement (Attachment B) regarding Monte Fiore/Heritage Parks Development.

Jerry Weingord, Monte Fiore resident, read the attached statement (Attachment C) regarding Monte Fiore/Heritage Parks Development.

Gary Richard Arnold, expressed concerns regarding the politics of The California Reform Institute and California Forward, and what he feels are their negative impacts on California.

### **ALTERATIONS TO CONSENT AGENDA**

***M/S: Aguilar/Bustichi***  
***To approve the Consent Agenda.***  
***Carried 5/0***

#### **Consent Agenda:**

- A. Approve City Council meeting minutes of 5-2-12
- B. Approve check register – 5-7-12, 4-30-12
- C. Approve non-collection of business license fee for American Crown Circus (sponsored by Scotts Valley Chamber of Commerce)
- D. Approve the agreement between the City of Scotts Valley and the Successor Agency of the Scotts Valley Redevelopment Agency establishing a repayment schedule for the \$1,600,000 Wastewater Enterprise Fund loan
- E. Approve site rental agreement between the City of Scotts Valley and Collide Church for rental of the Scotts Valley Community Center from June 1, 2012 to December 1, 2012

### **ALTERATIONS TO REGULAR AGENDA**

**M/S: Aguilar/Bustichi**  
**To approve the Regular Agenda.**  
**Carried 5/0**

## **REGULAR AGENDA**

### **1. Recreation, Senior Center, and Community Center budget hearing**

CM Ando presented the written staff report and responded to questions from the City Council. He stated that this item is for information only and no action is required at this time.

RDM Sudduth thanked all of his staff in the Recreation Division and the Senior Center for all of their hard work this year and every year.

### **2. Wastewater and recycling budget hearing**

CM Ando presented the written staff report and responded to questions from the City Council. He stated that this item is for information only and no action is required at this time.

## **PUBLIC HEARINGS**

### **3. Consideration of increase in wastewater service fee rates**

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

## **PUBLIC HEARING OPENED - 7:00 PM**

No one came forward.

CM Ando stated that fourteen Proposition 218 protest letters were received by City staff as of May 15, 2012 at 5:00 pm.

No additional Proposition 218 protest letters were received from the public/audience during the public hearing.

CM Ando stated that a total fourteen Proposition 218 protest letters were received by City staff. And that 2,000 letters were required.

## **PUBLIC HEARING CLOSED - 7:03 PM**

**M/S: Bustichi/Aguilar**  
**To approve first reading and introduction of Ordinance No. 79.24, an ordinance of the City Council of the City of Scotts Valley amending Title 13, Chapter 13.04, Sections 13.04.200 and 13.04.205, of the Scotts Valley Municipal Code Wastewater Treatment Service Fees, and waive the reading thereof.**  
**Carried 5/0**

**M/S: Bustichi/Aguilar**

**To approve Resolution No. 1198.62, a resolution of the City Council of the City of Scotts Valley revising monthly wastewater service fees.**

**Carried 5/0**

**REGULAR AGENDA**

(Resumed)

**4. Future Agenda Items**

None.

**CONVENE TO CLOSED SESSION**

The City Council convened to closed session at 7:04 p.m. to discuss the following items:

1. Pursuant to Government Code Section 54957.6, the City Council met in closed session to confer with their labor negotiator regarding employee negotiations with Scotts Valley Police Bargaining Unit and Scotts Valley Police Supervisors Association
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

**RECONVENE TO OPEN SESSION**

The City Council reconvened to open session at 7:45 p.m.

**REPORT ON ACTION TAKEN DURING CLOSED SESSION**

Mayor Lind announced that there was nothing to report.

**ADJOURNMENT** The meeting adjourned at 7:45 p.m.

Approved:

  
\_\_\_\_\_  
Donna Lind, Mayor

Attest:   
\_\_\_\_\_  
Tracy A. Ferrara, City Clerk

20120516 Scotts Valley City Council Meeting Kertai Public Comments

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 developers of the Monte Fiore Tract were Ryland and Kauffmann & Brown. The original development had in place construction bonds of about \$4 million. In 2003, the developers asked the City to release these bonds claiming that they had met the conditions of approval for the development. The Heritage Parks Association Board worked with City Staff to over a two year period to develop a punch list of open issues for Ryland to address. In 2005, Ryland representatives convinced the City Council to release the original bonds. However, because of on-going concerns, the City released the original bonds on the stipulation that a \$414,000 performance bond be put in place with the Heritage Parks Association specified as the third party beneficiary.

Ryland has asked the City to release the \$414,000 bond. We have asked that the City call in the bond from Ryland based on non-performance.

For more than a year I have provided members of this City Council and City staff documentation regarding design and construction defects that have been identified in the Monte Fiore development. **These defects affect all 81 property owners as they are common area issues.** This documentation shows that the developers, Ryland and Kauffmann & Brown, did not meet the conditions of their development agreement. It also shows that the Monte Fiore development was not built according to City approved plans and specifications.

I have requested on multiple occasions that the City investigate our concerns and act on our claims. *I do so again today.* Based on the documentation I have provided to the City, I believe my request to be appropriate. I am asking the City to perform its enforcement responsibilities as outlined in **Municipal Code Chapters 17.54 and 4.26.** The appropriateness of such enforcement efforts is clearly described in **Municipal Code Section 4.02.010.**

We have made Ryland and Kauffmann & Brown aware of the design and construction defects and they have refused to appropriately address the issues. 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.

**Why has the city not addressed this bond issue?** The city is protected not only by State Law in this matter, but also by indemnification agreements with the developers. I don't believe there is any statute of limitations on development agreements. The intent of the performance bond was clear. Its sole purpose is for performance related issues regarding the construction of the Monte Fiore development. The developers clearly did not perform per their agreements. We ask again that the City call in this bond for the purposes of doing what the developers will not do – to help mitigate the engineering and construction defects that have been identified by reputable soils and civil engineers.

Respectfully,

Frank Z. Kertai / President Heritage Parks Association

My name is Dave Jensen. I live at 533 Shasta Park Ct in the Monte Fiore neighborhood of Scotts Valley.

I was the president of the Heritage Parks Association in 2001 when we came up with the first neighborhood punch list for Ryland. At that time, we worked well with the City regarding outstanding construction issues related to our development. I remember walking the neighborhood with Ken Anderson and making a list of the visual defects. Of course at the time we did not know what time bombs were laying just under the surface. We discovered items like the lack of J ditches on steep slopes above homes. That made no sense, why would they not put them in when it was obvious to the unschooled observer that they were necessary. This was our first glimpse of Ryland's tactics to cut as many corners as possible, get their construction bonds released and get out fast.

I am confident that Ken Anderson's presence had a positive effect on Ryland's response to build the ditches. During that time I was comfortable calling the City about my Ryland issues with the unsaid compact with the City that Monte Fiore and Scotts Valley would be around long after Ryland was gone. Yet I never felt that anyone representing the City was unfair to the developer.

In 2003 Ryland wanted all of their construction bonds released. The HOA Board worked with City Staff for two years to try and make sure all of the outstanding issues everyone was aware of were addressed by Ryland. Despite these efforts, my guess is the City had a gut feeling based on previous behavior that Ryland was not entirely finished. Consequently, the City required Ryland to put a performance bond in place in 2005 to replace the construction bonds.

Now, years later, numerous design and construction defects have been identified by professional soils and engineering firms that unequivocally shows Ryland indeed left behind the biggest land mines of all.

However, this national corporation, who has refused to address and correct the issues identified, can be forced to make things right through legal action. We, the residents of Monte Fiore ask the City of Scotts Valley to follow through with the instinct that caused them to retain the performance bond. We ask this City Council to hold a public hearing to investigate the defects that have been discovered and make public the findings. We ask that the City heed and address our concerns so we gain a fighting chance to have a safe neighborhood.

Respectfully,

Dave Jensen  
Heritage Parks Association Member

My name is Jerry Weingord and I live at 340 Silverwood Drive in the Monte Fiore Development of Scotts Valley. I have lived at this address for the last 12 years and am the original owner of my house.

Over the last 10 years there were many infrastructure items such as walls, drains, roads, and grading that failed in the Monte Fiore Development. The developer, Ryland has addressed a few of these items, but there remain many critical items that are still outstanding and **currently failing**. Due to the health and safety concern of our 81 home owners, we hired an independent soil and civil engineering firm to review the outstanding defects. The engineering experts have concluded that the work performed by Ryland was **not** in conformance with the approved plans submitted to the city for the Monte Fiore Development. We are not talking of minor defects, we are speaking of gross defects that can and will affect the safety and well being of our home owners if not corrected.

I am not only speaking as a concerned resident in the Monte Fiore Development, but I have first-hand experience of living through the consequences of gross defects from Ryland. Several years ago the hill side adjacent to my home gave way, and created a massive land slide where my children's play structure was located. Luckily, my kids were not in the backyard at the same time, which could have ended in a horrific tragedy. Due to the credit of the city council at the time, there was still a construction bond in place, which motivated Ryland to build a soldier beam retaining wall on both mine and my neighbor's property to prevent the hill from sliding further. The wall construction could have easily cost me \$250K, if I had to pay the bill. In this particular case, this is not an example of building with inferior material, but simply not putting in a retaining wall that was required per plan and leaving a 10ft high sheer cut into the hill side of exposed earth. This should paint a clear picture of the building strategy of Ryland, cut all costs where ever and whenever possible.

I'm sure each member of the city council is now asking themselves, how can they help to prevent our Scotts Valley residents from paying the bill to correct non compliance construction defects from Ryland. Please take a step back and imagine that each one of you are in the same situation that the Monte Fiore residences face. How would you want your elected city council to respond?

**We** jointly, as a city council and an HOA made an error in releasing the majority of the \$4 million bond to Ryland a few years back. We need to move forward and once again work together to have Ryland complete the work they signed up for when they submitted their plans for the Monte Fiore Development.

We request that the city council hire their own independent soils and civil engineering firm to validate the findings from the firm that the HOA hired and make this information public record. We acknowledge that we have a long road ahead to repair to infrastructure defects from Ryland, and the more support we get from the Scotts Valley community the better.

Thank you for your time and consideration.

Jerry Weingord