

# Judge blocks sale of Capitola Wharf lease

By JENNIFER KOSS  
STAFF WRITER

A Santa Cruz County Superior Court Judge this morning halted the city of Capitola's plans to purchase the Capitola Wharf concession lease.

Faced with what he called "a very difficult situation, a very unusual situation for the court," Judge Bill Kelsay granted a request for a preliminary injunction to stop the city's purchase of the lease until a trial can be held.

The request for the injunction was made by Dennis Beltram, a Capitola attorney and former city councilman, and Shirley Pereira. The two have also filed suit against the city and four city councilmen alleging misuse of public funds.

Kelsay set a trial date for 9 a.m. March 16.

Beltram and Pereira now have seven days in which to post a \$25,000 bond against potential damages suffered by the city of Capitola, or the injunction will be dissolved.

Beltram said he may not be able to come up with the money. He asked that it be reduced to a more "nominal" amount, or that it be waived completely.

"I'm not sure that I can post it at all," he said.

Kelsay refused to reduce the bond. "I do not like the idea that a judge just casually interferes with the legislative process," he said.

He said he felt the case was unusual enough to warrant granting the injunction, but that the decision must be accompanied by a reasonable bond based on potential damages to the city of Capitola.

Kelsay reminded Beltram that the defendants had requested a \$300,000 bond to correspond with their assessed value of the lease.

"I think I'm conservative on the amount," Kelsay said. "I think I'm very conservative in the amount. I've thought about this all weekend."

In granting the injunction, Kelsay commented on several points brought up by Beltram against the city's purchase of the concession lease, including the issue of value.

The city council voted 4-1 in

December to buy the lease for \$290,000 from Old Capitola Wharf Inc., headed by Planning Commissioner Rick Karleen. Councilwoman Stephanie Harlan cast the opposing vote.

Beltram levelled charges of "cronyism" against Mayor Bob Bucher and Councilmen Michael Routh, Ron Graves and Jerry Clarke. The four are named in Beltram's suit.

The main contention of Beltram's suit is that purchase of the lease would be a waste of public funds because the city could foreclose on the Old Capitola Wharf Inc. for two years of unpaid back rent totalling nearly \$40,000.

Karleen obtained the 26-year concession lease from the city in 1978, in exchange for dedicating the wharf to the city because he could not afford to repair the wharf's structural damage. As a public entity, the city was able to obtain grants to partially fund repairs.

Beltram has also charged that the amount the city agreed to pay for the lease was raised to \$290,000 from \$250,000 — the amount of the corporation's debt service — to cover the amount of back rent.

In a declaration attached to Capitola City Attorney Richard Manning's response to Beltram's charges, Karleen wrote that he's been on the verge of selling the lease three times from 1984-86 for \$450,000, \$326,000 and \$405,000.

Kelsay said there was not enough information submitted to determine the actual value of the lease.

"The purchase price of \$290,000 fits neatly into the obligations the Old Capitola Wharf corporation has," he said.

It could be argued that the lease is not worth the price of any of those escrows because they all fell through, Kelsay said.

Manning sketched scenarios on what could happen if the corporation declared bankruptcy, as Karleen has said it would if sale to the city falls through. However, Kelsay said there was no evidence the city had made any effort to exercise its rights under the lease, nor were scenarios drawn on what could happen if it did exercise those rights.

REFERENCE