

# Debate still going on over lease of Capitola Wharf

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The city of Capitola's purchase of the Capitola Wharf-concession lease for \$290,000 closed escrow this week, but debate over the deal is continuing.

Capitola attorney and former city councilman Dennis Beltram, who filed suit with Shirley Pereira in December to halt the purchase, has requested \$20,000 in attorney's fees and the return of a \$25,000 bond.

Santa Cruz County Superior Court Judge Chris Cottle said at a hearing yesterday he would decide next week whether Beltram is entitled to any or all of the fees and bond money.

His inclination had been to side with Beltram, he said, until he heard arguments based on a U.S. Supreme Court case prohibiting attorneys from collecting fees for public-interest suits they file themselves.

Principles brought up in the cited case made him decide to "rethink" the issue, Judge Cottle said.

Capitola City Attorney Richard Manning called Beltram's attempt to collect attorney's fees "inappropriate," in light of Beltram's charge that the lease-purchase deal represents a "gifting" of public funds.

"The irony of that sort of jumps out at everyone," Manning said.

Beltram said he did not file suit against the city to collect attorney fees, but was requesting them now to keep the way open for similar suits. Knowing they might be able to collect attorney fees, he said, would "encourage and provide the possibility for citizens to challenge government actions."

Beltram's suit charged that the city could obtain the lease by foreclosing on the leaseholder, Old Capitola Wharf Inc., for two years of unpaid rent.

He dropped his suit on March 16, the day it was scheduled to go to trial, after he was told Capitola Planning Commissioner Rick Karleen had paid the \$48,000 in back rent his corporation owed the city.

Karleen had allegedly paid the city \$41,000 in rent, plus \$7,251 in interest, on behalf of Old Capitola Wharf Inc.

Beltram said after the hearing he was doubtful Judge Cottle would grant him attorney fees, but might award a small amount to attorneys who assisted him in the suit.

One of those is Michael Spencer, who said the \$25,000 bond was provided by anonymous donors and paid out of his account. Beltram was required to post the bond to cover any harm the city might suffer, as a result of a preliminary injunction Beltram was granted in February to halt purchase of the wharf lease.

Manning has asked that the bond be retained until he can calculate the city's losses. Those figures won't be available until new concessionaires are operating on the wharf, he said.

However, he estimated the

suit cost the city \$12,000 in concession revenues and upwards of \$10,000 in court costs.

Karleen, head of Old Capitola Wharf Inc., has said he will try collecting damages as well.

He denied after the hearing charges from Beltram and Spencer that he stopped payment on the \$7,251 interest check to the city because he was short of funds.

If the check was no good, Beltram and Spencer argued, it meant the back rent on the concession lease was not paid up on March 16, as they'd been told.

That raised an ethical question, Spencer told Judge Cottle, since Beltram subsequently dropped his suit.

"I mean, this was not a minor little matter," Spencer said. "This was the whole basis on which the suit was dismissed."

Karleen said the reason he stopped payment on the check was that he discovered the city owed him \$2,500 worth of interest. He proposed writing a check for a lesser amount, but Manning convinced him to wait and he released the check.

Questioned by a reporter, Karleen reiterated yesterday what he's said all along of Beltram's charges: That because Beltram and the City Council are at "political odds," Beltram seized the concession-lease issue as a way "to make political hay."

Karleen also charged that Beltram was only able to make that "hay" through the cooperation of the local media, which have reported the issue as it's unfolded.

He added, "I really feel that I've been trapped in the political aspect of it."