

January 4, 2005

The Benicia City Council meets the 1st and 3rd Tuesday of each month at 7:30 p.m. in the Council Chambers. Copies of Council Agendas are available in the City Clerk's office on the Friday afternoon before the Council meeting.

**MINUTES OF THE
REGULAR MEETING - CITY COUNCIL
JANUARY 4, 2005**

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:30 p.m. on Tuesday, January 4, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Mayor Messina announced the action taken at Closed Session:

Mayor Messina stated that with regards to the Whitney Sutterly vs. City of Benicia case, Council gave direction to the City Attorney to settle the case.

With regards to the second item, the four-acre site near City Corporation Yard on East Second Street currently owned by Valero, Council gave direction to Staff to begin the negotiation process for the acquisition of land for our Water Treatment Improvement expansion.

Recognition of James Stewart Claridge's donation to the Benicia Public Library:

Mayor Messina announced that in his last will and testament, Mr. Claridge donated \$5,000 to the Benicia Public Library for the specific purchase of current history books. Mayor Messina expressed his appreciation for the generous donation.

Pending adoption of item VI-C: Openings on Historic Preservation Review Commission (HPRC) - 7 openings - length of term to be determined by lot.

APPOINTMENTS:

None

PRESENTATIONS:

Semi-annual report on the status of the IT Panoche facility closure:

Ms. Kitty Hammer, Consultant, and Mr. Ray Leclerc, DTSC, reviewed the report (on file with the agenda packet) on the status of the IT Panoche facility closure.

Ms. Hammer stated that the facility had an unexpected build up of contaminated ground water underneath the center of the facility. The elevation of the groundwater is higher than desirable. IT has installed some additional extraction wells to pump the ground water level down. The wells are in operation and IT will be monitoring them during the winter to see if it does what they want it to do. They will then evaluate whether or not they need to add some additional evaporation capacity to handle the liquid. She stated that she toured the facility last month. The facility looks good. Vegetation is growing and it looks excellent. There is no sign of erosion problems.

Mr. Leclerc stated that there was not a lot he could say about the bankruptcy negotiations, as it is confidential information. He would characterize the negotiations as 'good news.' Until they are all the way through the process, it will be difficult to brief Council on any details of what is going on.

Council Member Smith stated that it was encouraging to see the list of 27 Responsible Parties (RP's). However, he was concerned the memo in the agenda packet did not reflect the higher level of contaminated ground water that Ms. Hammer described. He asked Ms. Hammer and Mr. Leclerc if they thought Council should be updated more often than every six months. Ms. Hammer stated that six-month updates are sufficient.

Vice Mayor Patterson asked Mr. Leclerc to give Council a generic sense of the nature and extent of the funding commitments from the RP's. Mr. Leclerc stated that they do not have any commitments at this point. That would be part of the settlement. There needs to be some form of a settlement before any sort of commitment is made. They are not particularly close to a settlement at this time. This could take years to achieve. They will not settle early and not get what they need to get. Vice Mayor Patterson asked if Mr. Leclerc could share the menu of choices that would work in the best interest of ensuring long-term maintenance of this site. Mr. Leclerc stated that letters of credit, cash settlement, or money placed in trust, were a few choices. Vice Mayor Patterson asked if any of the RP's on the list were no longer in business. Mr. Leclerc stated that PG&E had some bankruptcy issues that may come into play. Vice Mayor Patterson asked why Valero was on the list. She asked if it was because they assumed Exxon's liability. It is Valero's responsibility to prove whether or not they are liable for Exxon's portion of liability.

Council Member Whitney asked if DTSC had practice with other types of facilities and this type of cleanup. Mr. Leclerc stated that they have experience with this sort of cleanup. In fact, many other facilities have no money at all set aside for cleanup. He is fairly certain that they will not have to use taxpayer dollars to operate these sites. Council Member Whitney discussed 'funding forever.' He asked if there was a funding mechanism for creating some sort of funding for use to maintain the wells in the future. Mr. Leclerc discussed the Iron Mountain site. They have the funding set up to be funded for 300 years. Council Member Whitney asked if they (DTSC) have any sort of way to fund new technology for cleanup in the future. Mr. Leclerc stated that it is part of what is being done now. They have identified RP's and the work that needs to be done. If they make a determination in the future that something else needs to be done, they would have to make their case. Council Member Whitney

asked if there were any statutory reporting requirements for the DTSC to report to Council on a regular basis, or is it simply good will. Mr. Leclerc discussed the annual report that is required. He discussed the different types of reports the DTSC generates. He stated that the DTSC reporting directly to the Council would be on an as-needed basis. Council Member Whitney stated that he wanted to ensure that this Council as well as future Councils are kept in the loop. Ms. Hammer stated that IT has a legal obligation to provide the City with all its reports and documents. Any documents they submit to any agency must also be submitted to the City. The City staff person responsible for this item would be kept abreast of all actions. Council Member Whitney asked Ms. Hammer how the residual contamination left behind from the contaminated ground water is dealt with. Ms. Hammer stated that it could be disposed of at the facility. Part of the closure permit allows them to operate a small disposal area for waste that is generated on site, which would include sediment. Council Member Whitney asked about the groundwater studies that were done at this facility. Why was IT caught off guard by this development? Ms. Hammer stated that you can't always predict what will happen with nature.

Council Member Campbell asked why Exxon was not listed on the list of RP's, and Valero was listed in its place. Shouldn't Exxon be held responsible since they were the ones that are responsible? Mr. Leclerc stated that was a legal matter that will continue to be resolved as the dust settles. Getting a correct list of RP's is an ongoing process. They can add RP's as necessary. Council Member Smith asked how long the DTSC is planning on the funds lasting. Mr. Leclerc stated that the required 30-year minimum is the very minimum and perpetuity is the maximum. It will most likely be somewhere in between. Their goal is to have the funding part of this problem taken care of forever. There is no settlement out there like that, but it does not mean they can't have lofty goals.

PROCLAMATIONS:

None.

ADOPTION OF AGENDA:

On motion of Vice Mayor Patterson, seconded by Council Member Whitney, the Agenda was adopted as presented, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

COMMUNICATIONS:

WRITTEN:

None

PUBLIC COMMENT:

1. Council Member Smith made the following announcements:

- 1/5/05 - City Council will host a workshop to discuss the proposed Sunshine Ordinance at 6:30 p.m. in Council Chambers. The HPC will also be considering a couple of projects on D Street and a realtor notification issue that night.
- 1/8/04 - Friends of the Benicia Public Library will have its monthly book sale.

- 1/15 and 1/22 there will be two concerts. George Winston will perform at the Majestic Theatre on 1/15. 'Art of Spanish Guitar' will be at the Camel Barns on 1/22.
 - 1/17 - City Hall will be closed in recognition of the Martin Luther King holiday.
2. Council Member Whitney asked the City Manager to get the podium microphone in council chambers fixed. It continually cracks and pops and it is distracting and annoying. Mr. Erickson stated that he would have the microphone looked at.
 3. John Van Landschoot - Mr. Van Landschoot stated that having fully staffed and qualified commissioners was very important to open government. He knows of three people with planning backgrounds that have applied for two vacancies on the Planning Commission. He wants to see these openings filled, as they have been vacant for over 90-days. Mayor Messina stated that we have two commissioners whose terms are up. However, per our code, they will continue to serve until their replacements can be made. We have a fully staffed Planning Commission. Mayor Messina stated that he would be appointing Commissioners soon. Mr. Van Landschoot stated that when a commissioner's time is up, they should go before Council again for reappointment. Vice Mayor Patterson stated that Council has had a large number of applicants. They have a new process. They have been interviewing those applicants. Things have now settled down and because of the issue with the calendar, and the time to be thoughtful and contemplative about the wonderfully long list of applicants, it is their intention to have the Mayor make the appointments at the next Council meeting with the review and approval of the Council Members.
 4. Karen Burns - Ms. Burns stated that it is not necessary to combine the HPC and DRC for CLG status. This would prove detrimental to the business and tourism industries as Benicia's draw as a historically minded community will be slowly undermined. Benicia has more historic structures of local and national significance than any other studied city of similar size in the nation. Benicia's needs are unique and deserve a separate commission. We must have people familiar with and dedicated specifically to Benicia's historic buildings located within the historic district and scattered throughout the City and Industrial Park. One group of people cannot simply cross over or combine to the other without jeopardizing new construction and preserving, rehabbing, and restoring the old and keeping the integrity of our historic buildings in tact. She strongly recommended Council keep both commissions, and give the HPC some real authority. She stated that Benicia needs both commissions to guarantee the best oversight possible.
 5. Bob Mutch - Mr. Mutch discussed the Benicia Emergency Response Team (BERT). He encouraged Benicia citizens to volunteer for BERT as well as many other local volunteer organizations such as BERT Radio Auxiliary, ACS, RACES, Volunteer Fire Department, Volunteers in Police Service and the American Red Cross for Solano County.

CONSENT CALENDAR:

Mayor Messina pulled item VI-C from the Consent Calendar.

On motion of Council Member Smith, seconded by Vice Mayor Patterson, the Consent Calendar was adopted as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina
Noes: None

The minutes of December 1, 2004, December 7, 2004, and December 14, 2004 were approved.

The monthly investment reports for July through September 2004 were approved.

Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.

(END OF CONSENT CALENDAR)

Council took the following actions:

Second Reading and adoption of Ordinances to amend the Benicia Municipal Code (1) to replace in its entirety Chapter 2.56 to establish the Historic Preservation Review Commission (HPRC) in the City of Benicia and (2) to amend Chapter 2.84 to change Design Review responsibilities:

Public Comment:

- 1. Donnell Rubay - Ms. Rubay stated that we would be better off with two separate commissions. The compression of the commissions is not cost saving and it is not necessary to have one-stop-shopping. She discussed the need to have qualified commissioners. Ms. Rubay stated that when applying for CLG, we need to have an ordinance in place that is protective of the historic area. We do not have such an ordinance in place because we still have single-family non-historic homes unprotected. We also have the inconsistency with the zoning issue. She brought these two issues up to see if there is some timeline where we can expect the gaps to be filled.**
- 2. John Van Landschoot - Mr. Van Landschoot stated that Council should consider the proposal of leaving the DRC as is, as it is very important. He had two requests: 1) make sure the HPRC commissioners are qualified and 2) revisit this issue in one year to find out if it is really working.**

Council Member Smith stated that Ms. Burns and Ms. Rubay echoed his concerns. He asked Staff if the one-year sunset requirement was inserted into the proposed ordinances. Vice Mayor Patterson stated that it was not a one-year sunset, it was a one-year revisit. She thinks it is perfect for the adoption of the ordinance, to insert the revisit clause. It should be revisited and we should look at the effectiveness of the commission to consider reestablishing a very much-needed Design Review Board.

Vice Mayor Patterson asked Ms. McLaughlin if amending the Ordinance to insert the revisit clause needed to be done via Resolution. Ms. McLaughlin stated that it could be done by minute order. Vice Mayor Patterson stated that she is nervous about doing it by minute order, as memories may be short. However, she does not want to delay this item, Staff has suffered enough. Time is of the essence.

Council Member Campbell stated that Council should add some wording to the Ordinance stating that Council will evaluate the effectiveness of the commission. Ms. McLaughlin stated that that would not

be a fundamental change and it would not require bringing the item back for review. The change could be inserted and approved contingent on the change being made. Ms. McLaughlin asked for clarification on whether or not the annual review would apply to both Ordinances. Council agreed that the annual review statement would need to be added to both proposed ordinances.

On motion of Vice Mayor Patterson, seconded by Council Member Smith, Council approved adding a sentence requiring an annual review for the HPRC to each of the proposed ordinances, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, and Whitney

Noes: Mayor Messina

Mayor Messina stated that he had a few questions on the ordinances. When Council initially proposed the above modification, as part of that we dissolved the existing HPC and DRC. His memory served him that it was a 3-2 vote to do that. We have rules of procedure that say that we cannot remove members from boards or commissions without a super majority, which is 4 votes. This is somewhat of a subterfuge to get around their other procedures. He asked Ms. McLaughlin what has precedence. Ms. McLaughlin stated that since they are getting rid of the entire commission, the 3-2 vote prevails. Mayor Messina then asked about 'term of office' on agenda page VI-C-6, 2.56.040, section B. He had a problem with the sentence 'Following the appointment and confirmation of all seven members, lots shall be drawn for the distribution of the staggered terms.' He stated that in terms of the mayoral appointment powers, he understood that the mayor appoints specific individuals for a specific board or commission, names the individual, and appoints them for a specific term. He stated that sentence is improper. Ms. McLaughlin agreed and stated that the sentence should be removed. She believes assigning people to a particular term is an essential power of the mayor. Council can get around this by voting against the appointment if they don't agree with the appointment. She stated that removing that particular sentence would make the ordinance more proper. Staff initially recommended the sentence.

Vice Mayor Patterson stated she finds it frustrating to have a Staff recommendation that is then deemed illegal, when the intention is to have as much a democratic process in the appointment as possible, not withstanding the current State statutes governing the Mayor. Ms. McLaughlin stated that the idea of having different terms was correct but the way that we went about it was not.

ORDINANCE 05-01 - AN ORDINANCE AMENDING IN ITS ENTIRETY CHAPTER 2.56 (HISTORIC PRESERVATION COMMISSION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE TO ESTABLISH THE HISTORIC PRESERVATION REVIEW COMMISSION

On motion of Mayor Messina, seconded by Council Member Whitney, Council approved the second reading and adoption of the above ordinance on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Whitney, and Mayor Messina

Noes: Council Member Smith

ORDINANCE 05-02 - AN ORDINANCE AMENDING SECTIONS 2.84.010 (CREATION), 2.84.060 (QUORUM) AND 2.84.120 (POWERS AND DUTIES) OF CHAPTER 2.84 (DESIGN REVIEW COMMISSION) OF TITLE 2

(ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE

There was discussion amongst Council regarding correctness of the Mayor making the motion. Ms. McLaughlin verified that it was acceptable for the Mayor to make the motion for the ordinances in question.

On motion of Mayor Messina, seconded by Council Member Whitney, Council approved the second reading and adoption of the above ordinance on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Whitney, and Mayor Messina

Noes: Council Member Smith

PUBLIC HEARINGS:

Public Hearing on a Resolution adopting the City of Benicia Municipal Service Review (MSR), which is a statement and analysis of the City's ability to provide public services and facilities to anticipated growth within the City's existing Urban Growth Boundary:

Brenda Gillarde, Associate Planner, reviewed the Staff report.

Mayor Messina stated that he is concerned that in terms of LAFCO's use of the MSR, it is primarily a document that we have to prepare to satisfy any future annexation that we might do. Our sphere of influence is set as the area that we expect to grow into. He has a concern that if we pull back to the urban growth limit and indicate that we have no interest in ever moving into our sphere of influence, we might be setting ourselves up for some sort of reduction in our sphere of influence. He also realizes that if we put forth proposals to provide services to areas within the sphere of influence, it may appear to be disingenuous with regards to our urban growth limit. He is nervous that we will not be able to hold on to our existing sphere of influence. He asked if the other cities looked at their entire sphere of influence in terms of how they prepared their MSR's. Ms. Gillarde stated that Fairfield did identify lands in their sphere of influence that they thought they would annex in the next 20 years. Ms. Meunier stated that it is a requirement that this document (MSR) be updated every 5 years.

Vice Mayor Patterson stated that she submitted a list of questions that may have gotten lost, as they were not in the packet. On page VII-A-7 there is discussion in terms of additional police personnel. It should be noted that the current police facility is inadequate for additional personnel and that there will be a deficiency of an adequate facility, and this will just exacerbate that. This would be a good amendment to the MSR. Chief Trimble said it is a good point, but we need to make a nexus with this and the intent of this particular report. Mayor Messina stated that we should rephrase the question. 'Does the inadequacy of the facility preclude us from adding the beat or keep the beat from functioning appropriately. Chief Trimble stated no, not the beat itself. The issue has to do with the support of the patrol personnel. Each patrol unit is its own office. The facility has to do with the facility support, locker space, restroom facilities, training facilities, etc. Vice Mayor stated that she would like to see that amendment. There are two places where the question comes up and it needs to be altered and the MSR needs to be clear that we have an existing inadequate facility for which there has been enormous effort to replace, improve or rebuild and that the impact of the additional personnel needs to be noted. We also say on page VII-A-9 we talked about no unmet capital needs.

That is an error. We actually have an unmet capital need. Chief Trimble agreed that the amendment to the MSR would be appropriate. On page VII-A-8, item #7, we need to clarify that those are outdoor shared facilities. On page VII-A-9 there is a typo and the words water shed should be one word 'watershed.'

Council Member Smith stated that back in November, he posed 11 questions about the MSR to Staff. He appreciates Staff's response in the 4-page memo and the changes that were made. He agrees with Vice Mayor Patterson that we need to add reference to the Police Station. He is not sure we don't need to make a reference to the absence of a community center as well. If Council is going to approve the MSR they will either need to give specific direction to Staff or come up with language to address the paragraph on page VII-A-9 #11 where Staff was responding to his suggestion that we include the Police Station. We are continuing to give the impression that we have enough to meet all the needs of development that could come and we don't. We are anticipating having to add a fire station if we develop the Seeno Property. Ms. Gillarde stated that we have the capacity to add police patrol or an additional fire station, but that comes as part of the process. Ms. Meunier stated that it is important to keep in mind the context of which the document was intended. As a community do we have the resources to be able to service future development that is contemplated to come in particularly in the next 5 years. Council Member Smith stated that the paragraph in question does not adequately make that change. We don't reflect a need for a new Police Station or Fire Station if we end up developing the Seeno Property.

Vice Mayor Patterson stated that on page VII-A-49 we need to amend this to indicate that the addition of personnel would require facility improvements. On page VII-A-55 we talk about general financing methods. We should put the link in there that the General Plan says that development pays its own way. The reality is that it will pay its fair share of its own way. With a police facility we cannot charge the entire cost of a police facility to the Seeno project. In terms of the financing (page VII-A-55) we can indicate that we do have the requirements under the General Plan, but we also have the need for other revenue sources. Council Member Smith stated that he was comfortable with that approach.

Council Member Whitney stated that under the circulation/transportation section, page VII-A-48 we need to expand on the ferry services. We need to be more explicit on shared services with Vallejo's ferry service. Ms. Gillarde stated that change could be done.

Public Comment:

None

Ms. Meunier clarified that the changes suggested by Council Member Smith (via memo) would be made. In addition, three other changes would be made as suggested by Vice Mayor Patterson and Council Member Whitney.

RESOLUTION 05-01- A RESOLUTION ADOPTING THE CITY OF BENICIA MUNICIPAL SERVICE REVIEW WHICH IS A STATEMENT AND ANALYSIS OF THE CITY'S ABILITY TO PROVIDE PUBLIC SERVICES AND FACILITIES TO ANTICIPATED GROWTH WITHIN THE CITY'S EXISTING URBAN GROWTH BOUNDARY

On motion of Vice Mayor Patterson, seconded by Council Member Whitney, the above Resolution was adopted on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

Mayor Messina called for a 5-minute break at 9:03 p.m.

The meeting resumed at 9:11 p.m.

UNFINISHED BUSINESS:

Resolution supporting the efforts of the Friends of Solano Regional Park to identify options to form and fund a regional park district for Solano County:

Mike Alvarez, Parks and Recreation Director, reviewed the Staff report.

Mr. Bob Berman, Friends of Solano Regional Park District, reviewed the summary of the recent summit that took place. He stated that what the legislation does is set up a mechanism. There will still need to be a vote by the Board of Supervisors to put the measure on the ballot. He encouraged the Council to support the legislation for this issue.

Mayor Messina stated that he supports the resolution supporting the Friends' efforts. He asked what level of Staff commitment we are asking of Staff. He asked if other cities were giving the same level of commitment that we would be agreeing to, both at the staff level and the dollar commitment.

Mr. Berman discussed the organization 'Trust for Public Lands.' He stated that they are a national organization. They have recently been doing a lot of work in terms of assisting communities to do financing of open space. They have a grant to provide pro bono services to local groups to begin a feasibility study in terms of the financing mechanism. They have agreed to do this for the Tri-City group. County staff is supportive, but they want the various cities to participate. At this point, it is a low level of commitment. It is essentially making sure that Benicia has some input and gets a chance to review the work of the Trust for Public Lands. They have asked each of the communities in Solano County to participate.

Council Member Smith stated that Benicia has been well represented in the two summits of the Friends of Solano Regional Park District. He attended both summits, as did other members of the Council. He can't stress enough what an important campaign this is for the livability of Solano County for the coming century.

Vice Mayor Patterson stated that she would vote yes because time is of the essence. We have to make the commitment now and we have to make it with all the time and energy we have so that we do have a future protection of very special areas in Solano County.

Council Member Whitney stated that it is exciting to have the ability to refocus and reenergize this issue. We have City Staff, individuals in the community, the Chamber, businesses, etc. coming together to craft and create something that works. Our chances for success have gone up measurably. We are following a process that works.

Mr. Erickson discussed the proposed Resolution. It discusses the guiding principles on governance. He wanted to make sure Council understands that the options for governance are all predicated on a special district type of entity. There are other options that would be precluded if those were the only four. He wanted to make sure Council understands that the options listed for governance don't include some other options that perhaps they may wish to discuss in the future. It is not so limiting that Council could not consider some any number of options consistent with their vote.

Mayor Messina asked Mr. Berman about the issue of each city electing or appointing a representative of a board, some combination of appointed and elected and all elected. He asked Mr. Berman if the cities and counties have come to an agreement on this or is it just the way the Friends of Solano Regional Park District want to see it. Mr. Berman stated that they would like to see everyone come to an agreement. The issue of governance is one that will have to get worked out between the Board of Supervisors, the cities, and everybody else.

Vice Mayor Patterson asked Mr. Berman to explain how the principles came about, how the options have been chosen, and what the intent is of trying to narrow the choices. Mr. Berman stated the idea is that the principles were put together in early October 2004. Since that there has been several meetings. At the third summit the people put together a consensus of options in terms of governance. Twenty-eight of thirty-three people agreed to the documented principles. They understand that the summit majority does not account for the consensus in Solano County. They have continued to use the guiding principles to go to the Benicia Parks and Recreation Commission and the County Commission. Hopefully after they go to all of the various commissions they will be able to pull together a document that represents the consensus of all of the various groups. Vice Mayor Patterson stated that by making the commitment as a City we want to be able to put our efforts out in the rest of the County to help gain support for this initiative so we can have a Regional Park.

RESOLUTION 05-02- A RESOLUTION SUPPORTING THE EFFORTS OF THE FRIENDS OF SOLANO REGIONAL PARK TO IDENTIFY OPTIONS TO FORM AND FUND A REGIONAL PARK DISTRICT FOR SOLANO COUNTY TO PARTICIPATE IN DISCUSSIONS INVOLVING THE CREATION OF A REGIONAL PARK DISTRICT

On motion of Council Member Smith, seconded by Council Member Whitney, the above Resolution was adopted on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

Mayor Messina stated that with regards the direction to Staff regarding participation, he is only concerned that we do what the other cities do and not get to far out in front. He is comfortable giving direction to Staff that we participate at the same level the other cities are.

Council Member Smith requested that if Staff feels their effort is getting beyond what other cities are having to give, they let Council know.

Resolution expressing official intent regarding certain capital expenditures to be reimbursed from proceeds of a tax-exempt obligation, not to exceed \$1.4 million, relating to Phase I, Casa de Vilarrasa senior housing complex:

Rob Sousa, Finance Director, reviewed the Staff report.

Council Member Smith stated that it was a pricey settlement but one that Council is undertaking to ensure the continued use of Casa Vilarrasa as affordable senior housing.

Council Member Campbell stated that the lawsuit is predicated on a verbal commitment to back up the financing for Mr. Boax. That item never went to the City Council. He (Mr. Boax) does not have the authority to do this. Basically that means that verbal commitment is not worth the paper it is written on. It is his opinion that if ever there was a testament to a case which should be litigated zealously, this is it. This case should be in front of a jury.

RESOLUTION 05-03 - A RESOLUTION EXPRESSING OFFICIAL INTENT REGARDING CERTAIN CAPITAL EXPENDITURES TO BE REIMBURSED FROM PROCEEDS OF A TAX-EXEMPT OBLIGATION

On motion of Council Member Smith, seconded by Vice Mayor Patterson, the above Resolution was adopted on roll call by the following vote:

Ayes: Council Members Patterson, Smith, Whitney, and Mayor Messina

Noes: Council Member Campbell

Public Comment:

1. Dana Dean - Ms. Dean represents Vilarrasa Associates. She wants to let Council know what a great job Staff did on this item. She agrees with the recommendations of Staff. The settlement was the best option for all involved.

NEW BUSINESS:

Introduction and first reading of an ordinance of the City Council of the City of Benicia modifying Title 17 (Zoning) of the Benicia Municipal Code by amending Chapter 17.124 (Appeals and Calls for Review) to provide for De Novo Appeal Hearings; amending Sections 17.54.030 (Land Use and Development Regulations), 17.100.060 (Environmental Review) and 17.120.060 (Result of Planning Commission Denial) to reference the appeal process set forth in Chapter 17.124; and amending Section 17.100.060 (Environmental Review) to refer to the City of Benicia Environmental Guidelines:

Heather McLaughlin, City Attorney reviewed the Staff report.

Vice Mayor Patterson stated that she was confused on paragraph 2 of section 5. It should read 'it shall be designated as the lead City department.' That is the intent on the CEQA guidelines. It was strongly urged during the last Planning Commission hearing that the Community Development Department be the only lead department. They would work with the other department, but the CEQA expertise was intended to reside with the Environmental Officer, which is the Community Development Director. The second thing is that a lot of jurisdictions will have a designated Environmental Officer, who is sometimes a staff person. She wants to make sure that by adopting this we don't preclude that possibility, so that the Community Development Director could designate a staff person as the

Environmental Officer. Mayor Messina clarified that what Vice Mayor Patterson was asking for is to take out 'Community Development Director' and just have it read 'the City's Environmental Officer shall be designated as the lead department.' She stated that we don't need the parenthetical item that is between the two hyphens. Ms. McLaughlin stated that the changes could be made and it would actually be much better. Vice Mayor Patterson stated that there is an incomplete sentence in the second paragraph of Section 5 after 'and may designate the Planning Commission, the Historic Preservation Review Commission, the Director of Community Development, or the City Council.' It seems like something needs to follow that. Ms. McLaughlin stated that we could take paragraph out, rework it, and bring it back to Council. The introduction and first reading of the ordinance could be approved, with the exception of Section 5, paragraph 2, tonight. She could rework the paragraph and bring it back to Council at the next meeting.

Council Member Whitney asked if this kind of opens the door to frivolous appeals. Ms. McLaughlin stated that it does not open the door any more than it already is. The bar has not been raised or lowered.

Council Member Campbell stated that it changes the bar and makes it better. We can now raise more issues to make projects better.

Mayor Messina stated that he has a few concerns. We need something to give to whoever is going to review the issues something specific to look at. He would like to see some better definition in terms of the appeal. Regarding fees, if someone points something out to Council in terms of something they have done wrong, he does not think it is fair to charge that individual. He thinks as we go forward with the larger projects, we have to raise the bar and go higher in terms of the cost of the appeals. Maybe set a minimum threshold, possibly \$100-\$1,000. Again, the individual would get their funds back if they win the appeal. Ms. McLaughlin stated that was something Council would need to consider, whether or not to raise or lower the fees for appeals.

Vice Mayor Patterson stated that regarding the legislative delegation, she wants to make sure we have the City Attorney's legal advice to Council about delegating the authority on CEQA to advisory boards and commissions. If that is allowed, there will be other things to consider when this item comes back to Council. She stated that she has been in the business for a long time and has not seen many 'frivolous appeals.' We are a small city. We want to encourage public participation. We benefit from that participation. It is a 'value added' part of our decision-making.

Ms. McLaughlin stated with regards to the appeal in section 2, paragraph A, we could say 'shall state specifically the item or decision or determination that is being appealed and general reason or reasons for the appeal.' We could add another sentence that states 'the reason for the appeal must be contained in the administrative record.'

Mayor Messina discussed the concept of a sliding scale for the fees for appeals. Vice Mayor Patterson stated that should not be considered tonight. Council needs to have a thoughtful Staff report. She discouraged the notion that we should discourage public involvement. Fees are a huge impediment and handicap. The cost to citizens can be very high and cost thousands of dollars. She preferred to

consider what is before Council tonight.

Council gave direction to Staff to look at the permutation of fees for appeals and bring it back in two or three months in a Staff report.

Ms. McLaughlin stated that one way citizens can avoid the appeal fee is to exercise the 'call for review' process.

ORDINANCE 05- - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA MODIFYING TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE BY AMENDING CHAPTER 17.124 (APPEALS AND CALLS FOR REVIEW) TO PROVIDE FOR DE NOVO APPEAL HEARINGS; AMENDING SECTIONS 17.54.030 (LAND USE AND DEVELOPMENT REGULATIONS), 17.100.060 (ENVIRONMENTAL REVIEW) AND 17.120.060 (RESULT OF PLANNING COMMISSION DENIAL) TO REFERENCE THE APPEAL PROCESS SET FORTH IN CHAPTER 17.124; AND AMENDING SECTION 17.100.060 (ENVIRONMENTAL REVIEW) TO REFER TO THE CITY OF BENICIA ENVIRONMENTAL GUIDELINES:

On motion of Vice Mayor Patterson, seconded by Council Member Whitney, the introduction and first reading of the above Ordinance was approved (with the exception of Section 5, paragraph 2) on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

Proposed 2005 Solano Transportation Authority (STA) Legislative Priorities and Platform recommend amendments or provide comments:

Michael Throne, City Engineer, reviewed the Staff report.

Council Member Whitney stated that the ferry service in Benicia is not mentioned. He would like Mr. Throne to take this comment back to the STA that we have an interest in expanding ferry service to Benicia.

Council Member Smith stated that the reference to adding ferry to Benicia service should be added to the STA document on our agenda page IX-B-12. It should state 'expand Vallejo Bay Link ferry service to Benicia' to one of the numbers in that section. He stated that in the memo originally sent by Mr. Schiada (page IX-B-16) it mentions widening State Park Road overcrossing at I-780 as a local need. He thinks that should be a route of regional significance because it is part of the Bay Area Ridge Trail.

Vice Mayor Patterson stated that on page IX-B-15 we don't list traffic calming. That needs to be inserted as a local need. On page IX-B-6, #4, this needs to be clarified to read 'linked to land use.' She asked Staff what the criteria is for making the federal priority list. Mr. Throne stated that he could not give a precise answer. Vice Mayor Patterson stated that federal projects are hard money that often goes to roads. That was part of the problem with Measure A. We had hard money identified so those projects made it to the top of the priority list. The Feds are supposed to ensure that we have a comprehensive transit project that is funded. She would like to get the message back through the STA to the Feds that it is intended under current federal law to have a sharing of increasing limited transit

funds that go to the road projects and the transit projects. On page IX-B-8, III, item 3, the word monitor should be changed to 'support.' On page IX-B-9, she asked Staff to explain #6. Mr. Throne stated that he understood this to be for the STA to focus more on general transportation infrastructure over the more state-oriented or larger projects such as the high-speed rail project. They want the first area looked at to be the transportation network already in place and as a second tier of things to look at such as the high-speed rail project. Mayor Messina explained the process and stated that it was basically NIMBY policy. Vice Mayor Patterson stated that she could not support that. She discussed the difference between driving many hours to Southern California vs. taking a 2.5-hour high-speed train to get to the same location. She stated that we need adequate funds for all of our needs. She would like to see that statement modified or deleted. On page IX-B-9, III, #10, after reauthorization bill 'linking land use' needs to be added. On page IX-B-10, she wanted to link the things that are going on with ABAG , regional planning and smart growth with the legislative supports. We need to make sure we are supporting project delivery to the smart growth policy that is adopted by MTC and ABAG and a few other regional agencies. On page IX-B-11, bottom of the page, #6, she would like to see 'consider supporting the proposed \$10 billion high-speed rail bond scheduled for November 2006 ballot.' She stated that it would be more effective if the Council could agree and wholly support the changes that have been suggested.

Council Member Smith made a motion to support all the suggested changes, as a Council, and forward them to the STA.

On motion of Council Member Smith, seconded by Vice Mayor Patterson, Council agreed to forward all suggestions and comments to the STA, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith and Whitney

Noes: Mayor Messina

Council gave direction to Staff to focus on the five priorities listed as 'Benicia Priority Projects for Future Funding' on page IX-B-2.

REPORTS FROM CITY MANAGER:

Strategic Plan update and 2005-07 budget process

Karen Majors, Assistant City Manager, reviewed the Staff report.

Council Member Smith stated that on page X-A-7, it lists an optimistic calendar for the presentations. He asked Ms. Majors where we stand on this. Ms. Majors stated that they would begin with a brief presentation at the HPC meeting on 1/5/05. Most of the boards and commissions have not been as intimately involved with budget preparation, strategic planning and priority setting over the past years, so it will be a lot to grasp at one meeting. Someone from Staff will go to a second meeting to follow up with information. This may take up and through the end of February 2005. Staff did their first presentation at the EDB meeting last month. Council Member Smith stated that this will be a great planning tool.

Vice Mayor Patterson stated that this would be an excellent added piece for Council's consideration for priority setting. She suggested Council choose two dates for a meeting. Staff stated that Anne Cardwell would follow up and firm up two dates, most likely in the last week of February or the first

week of March.

Mayor Messina suggested Council consider having one meeting with all of the boards and commissions together. It could expedite the process. He would like to see us separate the capital and operating portions. It will probably take multiple meetings. Coming up with a list would be good but we need to be more focused in terms of how we deal with this.

Vice Mayor Patterson stated that she is still looking to see a capital improvement plan. She asked if Council would have an update from Staff on that in the near future. Ms. Majors stated that Council should see an update on the capital improvement plan in early March. Vice Mayor Patterson stated that the City would have to update its Urban Water Management Plan by 12/05. It could be a public process. She asked how Staff would present things that are not a choice, need to be done, but would benefit from a public process. Mr. Erickson stated that it could be done interactively or some other way. Staff will have to give that choice to Council as part of its time budget. He stated that it would be in a separate category. Vice Mayor Patterson stated that Staff should provide Council with an outline of what is expected and what the legislative intent is for this update.

Senior Discount Billing:

Jim Erickson discussed the recent surge in senior discounts applications. There was a recent article in the Benicia Herald that generated a number of applicants coming in for senior discounts. Staff recently sent out instructions on how to apply for a senior discount in the utility bills. Staff is also working with the utility companies on clearing up any issues with senior discounts.

REPORTS FROM CITY COUNCIL COMMITTEES:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 10:49 p.m.

Lisa Wolfe, City Clerk