

MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
JANUARY 17, 2006

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:29 p.m. on Tuesday, January 17, 2006, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Absent: None

ANNOUNCEMENT OF CLOSED SESSION:

Anne Cardwell, Executive Secretary, read the announcement of Closed Session.

OPPORTUNITY FOR PUBLIC COMMENT:

None

CLOSED SESSION:

**A. Conference with Labor Negotiator (Government Code Section 54957.6(a))**

**Agency negotiators: City Manager, Human Resources Director**

**Employee organizations: BPSEA, BPOA, BFA, BDA**

**Unrepresented employees: Supervisor, Professional/Confidential, Middle Management, Police Management, Senior Management**

ADJOURNMENT:

Mayor Messina adjourned the meeting at 6:32 p.m.

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
JANUARY 17, 2006

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 17, 2006, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Heather McLaughlin, City Attorney, stated that Council received an update from its negotiators regarding labor negotiations with the Benicia Firefighters Association as well as information on negotiations with the other labor groups.

Openings on Boards and Commissions:

Parks, Recreation & Cemetery Commission – One four-year term

APPOINTMENTS:

Appointment to the Historic preservation Review Commission – One full term to February 28, 2010:

RESOLUTION 06-06 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF PATRICK DONAGHUE TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM ENDING FEBRUARY 28, 2010

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

PRESENTATIONS:

People Using Resources Efficiently (PURE) Update:

As Council is aware from a recent resolution, a contract has been let for an environmental review for the project. At the end of October, PURE expects a report that should result in a mitigated negative declaration. At this time, PURE does not anticipate any showstoppers with respect to CEQA certification.

It may be useful to point out that while both deal with environmental considerations, CEQA requirements and NPDES requirements are distinctly separate hurdles PURE must negotiate.

In that vein, PURE has completed a third round of toxicity testing with very favorable results. All species of fish tested against our RO reject to effluent blend survived at acceptable rates during the eight-day battery of tests. Six species of fish were used. Some problems included the likeliness of the results of the testing methodology and spurious readouts were encountered during earlier rounds of testing. PURE considers these to be effectively resolved.

One problem noted during the recent tests has yet to be explained. That concerns the reported levels of copper in the permeate generated in PURE's tests. Logically, these reports are not accurate and we will be conducting a basic tap water test to determine ground truth.

PURE is still on track with respect to our long-range schedule. PURE's next major benchmark is the completion of the conceptual and preliminary design phase. PURE expects to complete that phase including review and approval in midyear.

Council Member Patterson stated that the state's proposed infrastructure bond has provisions for these kinds of projects. Although the Integrated Resource Management Plan (Section 8 of a previous state water bond) also makes provisions for that, this new bond will probably have more resources. PURE may want to familiarize itself with that information and present it to the committee.

PROCLAMATIONS:

Mayor Messina presented a proclamation for the Celebration of the 200<sup>th</sup> Birthday of the City of Benicia Founder, Robert Baylor Semple.

ADOPTION OF AGENDA:

Mr. Erickson stated that Staff had received a notice relative to the 120 Incline Place matter. Also, two items that were requested for reconsideration would be on the February 7, 2006 agenda (amendment to public comment and Planning Commission appointment process).

Ms. McLaughlin stated that regarding the 120 Incline Place agenda item; Staff received a letter from the Lobdell's attorney confirming that the parties to the litigation had reached a settlement. The pending appeals will be withdrawn and dismissed as part of the

settlement. The question is whether Council should go forward with the agenda item. Ms. McLaughlin stated that Council would proceed with the agenda item because the item is a call for review (requested by a Council Member). Also, Council cannot amend its agenda after 72 hours prior to the meeting. Staff will do an abbreviated Staff report on this agenda item.

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina  
Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

One letter from Mr. Lobdell's attorney (copy on file).

PUBLIC COMMENT:

1. Bill Royal – Mr. Royal stated that it has been eight months since he applied for a building permit. He might get his permit in February. He was told by the Community Development Department that they could not issue a building permit until they get clearance from the HPRC. Mr. Brown told him in a phone conversation that he (Mr. Brown) did not believe most of what Mr. Royal was saying. Mr. Royal stated that at that time he hung up on Mr. Brown. He stated that he has no building code violations. He has no zoning violations. Yet, both issues continually appear on the City's Staff reports. He stated that the City Attorney approved a 3-month delay to perform a search that was out of the scope of HPRC. The fact that the search and its results are out of the HPRC's scope is proven by a report for the December Staff meeting. He stated that the City has won this round. Upon completion of the building, he will be selling it. He cannot afford to keep it. He has spent many thousands of dollars trying to get this project completed. He will be forced to sell his home. He has met some fine people in Benicia. It will be impossible for him to live here. This project has taken over eight months because of the City Attorney's incompetence and the City Manager's attitude.
2. Michael McCullough – Mr. McCullough stated that he brought his family to Benicia a while back. He was welcomed to the community by an illegal search by City inspectors. He would like Council to question the actions of City Staff as to why the events with Mr. Royal's project occurred.
3. Linda Jimenez – Ms. Jimenez asked if medicinal marijuana was illegal in Benicia. Mayor Messina explained how public comment worked. Council usually does not answer questions. When questions are asked, Staff will look into the issue and respond in a timely manner. Ms. Jimenez shared an article on medical marijuana use.
4. Galen Lawton – Mr. Lawton passed out some materials to Council (copies on file). Mr. Lawton is the President of the Solano Patients Group. The group defends the rights of medical marijuana patients and their caregivers. The group does not condone the use of marijuana by minors, only the use by patients whom have been prescribed the use for medical purposes. He discussed Proposition 215,

- which was passed in 1996. In 2003, SB 420 was passed by legislature and signed by the Governor. He discussed the use of identification cards for patients who have been prescribed medical marijuana. He reviewed the reasons and illnesses that may warrant the use of medical marijuana. The use of medical marijuana is not a scam it is the law.
5. John Bearden – Mr. Bearden discussed the laws regarding the use of medical marijuana.
  6. Susan Street – Ms. Street reminded the public the League of Women Voters will be hosting a reception for all elected officials. Congresswoman Lois Wolk will be in attendance. The reception is open to the public. The reception will be held at the OZ Gallery at 621 First Street.
  7. Jon Van Landschoot – Mr. Van Landschoot discussed the appointment process. He strongly suggested Council look at and adopt the model currently being used by the City of Fairfield. Council should allow ample time for interviewing all applicants for boards and commissions. He is confused and saddened that the Mayor and Council Member Whitney do not seem to want to interview all applicants. It is disingenuous for the Mayor to invite the public to come forward and serve on the boards and commissions and then not even interview all applicants. It is unfair and discourteous to ask people to help out and then not even bother to interview them. Everyone who applies deserves an interview. He appreciates the Vice Mayor's willingness to interview, but it would be better if the other Council Members and Mayor did the same.
  8. Jeanine Seeds – Ms. Seeds stated that it is difficult to educate oneself on every item on the agenda. She is unclear on how Mr. Lobdell's project was able to move utilities, but Mr. Royal could not even get a building permit. At the last few meetings, there has been a bad tension in the air. She stated that she understood Mr. Bortolazzo had to recuse himself twice at his first Planning Commission meeting. She does not know what happens between the time things are discussed at the Council meetings and all of the sudden different changes are taking place. Does Council not have time for the citizens that disagree with them? What is going on? She suggested the meetings should start at a time when the citizens can actually attend. She suggested instead of the Mayor asking 'what is the pleasure of the Council' he should ask 'what is the pleasure of the citizens of Benicia?'
  9. Jim Erickson – Mr. Erickson stated that regarding Mr. Royal's project, Council has asked Staff to report back on the status of each issue with the project. He received a report from the Community Development Director, which Council will receive in a few days. It has not yet been determined if the validity of all of Mr. Royal's units is legal. There have been various safety issues (stairways, railings, etc.). There has been a lack of cooperation with this project. There has been work going on. Mr. Royal does have some permits. He needs a remaining permit from the HPRC. Staff has issued a permit for the roof work and some other work. Some permits have not been granted.

CONSENT CALENDAR:

On motion of Council Member Patterson, seconded by Council Member Hughes, the Agenda was adopted as amended, on roll call by the following vote:

Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina

Noes: Council Member Patterson

Council Member Patterson stated that she meant to pull items VII-B and VII-C so she could vote no on them.

The minutes of December 20, 2005 and January 3, 2006 were approved.

Council approved the installation of a street clock at 636 First Street.

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 an ordinance amending Section 2.04.010 (Meeting Time and Place) of Chapter 2.04 (City Council) of Title 2 (Administration and Personnel) of the Benicia Municipal Code:

ORDINANCE 06-01 - AN ORDINANCE AMENDING SECTION 2.04.010 (MEETING TIME AND PLACE) OF CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE

On motion of Council Member Patterson, seconded by Council Member Hughes, the above Ordinance was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina

Noes: Council Member Patterson

Second reading of an ordinance amending Section 2.52.030 (Members – Term of Office) of Chapter 2.52 (Planning Commission) of Title 2 (Administration and Personnel) of the Benicia Municipal Code:

ORDINANCE 06-02 - AN ORDINANCE AMENDING SECTION 2.52.030 (MEMBERS – TERM OF OFFICE) OF CHAPTER 2.52 (PLANNING COMMISSION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE

On motion of Council Member Patterson, seconded by Council Member Hughes, the above Ordinance was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina

Noes: Council Member Patterson

PUBLIC HEARINGS:

Review and appeal of the Planning Commission's decision to uphold the approval of a lot line adjustment for 108/120 Incline Place:

Vice Mayor Schwartzman excused himself due to a conflict of interest. As a Planning Commissioner, he previously voted on this item.

Heather McLaughlin, City Attorney, briefly reviewed the Staff report. It is Staff's recommendation to move forward with the resolution in the agenda packet with one modification adding that the appeals had been withdrawn.

Council Member Patterson asked Ms. McLaughlin what other options Council could take. Ms. McLaughlin stated that Council could continue the item stating that the appeals had been withdrawn.

Appellant:

Mr. Onesti – Mr. Onesti stated that he believes his committee has reached a settlement with the Lobdell's regarding 120 Incline Place (The other committee members are Mr. Paul Werblow and Mr. Charles Wingert). They are here tonight to forgo their appeal on the project.

Ms. Sue Johnson stated that her neighborhood has been offered a settlement from Mr. Lobdell. She was here tonight to fulfill her part of her agreement to drop her appeal on the 120 Incline Place project. She stated that she hopes in the future that the City and Council will improve the noticing on substantial, remodel, and new construction in this town. She hopes the City will clarify and straighten out the lot line adjustment procedures. She hopes the City will incorporate CC&R's in the permit procedures. She hopes the City works on the zoning and subdivision codes that are in cross-purposes. She hopes the City will truly work on the open processes of city government. She has not changed her belief on this project but she is dropping her appeal. Council's actions make citizens feel like they don't matter.

Council Member Patterson stated that Council needed to provide the opportunity for the public to speak. She wants to ensure that she can rescind her call up. There are two procedural issues. She would then recommend the item be continued. Ms. McLaughlin stated that then, the Planning Commission's actions would stand as-is.

Mr. Bob Brown reviewed the Staff report.

Public Comment:

1. Gary Heppell – Mr. Heppell represents Mr. and Mrs. Lobdell. He referred Council to the two letters he submitted (on file). He hopes Council passes the proposed resolution. It is critical that there is a resolution upholding the decision of the Planning Commission and the decisions of the Community Development Director. He suggested that the best thing for all concerned is to dispose of this

matter tonight and pass the resolution. Anything else could jeopardize the settlement.

Council Member Patterson stated that Council received some information (facts) over the weekend from the appellant. She does not want to take a vote on this because that information about legal frontage would need to be brought forward. Then Council would be back to a debate, which is mooted because there is a settlement. Wouldn't the prudent thing be to not take action on the appeal?

Ms. McLaughlin stated that under the Sunshine Ordinance, Council needs to decide if the new information is supplemental information and if it falls within the rules of the ordinance. Council can avoid that by not taking a vote. If the appeals are withdrawn and the coffer is withdrawn, Council does not need to take action because there is nothing to take action on.

Mr. Heppell asked if it would be appropriate for Council Member Patterson to withdraw her call-up in light of the settlement and dispose of the matter entirely. Council Member Patterson stated that she had done that. Mr. Heppell stated that he thought he heard that, but wanted to make sure.

2. Jon Van Landschoot – Mr. Van Landschoot stated that Ms. Johnson had four very good points. He wants Council to seriously consider those points. With the infill that is going on, those issues need to be addressed. People think they are protected but they are not. He would like to see this brought back in February or March of this year. He referred to an article in the Benicia Herald regarding infill. Neighbors have rights. This situation (120 Incline Place Project) has gone on far too long. The neighborhood has been damaged. Council can save other neighborhoods from going through the same issues. He hopes Council will prevent this from ever happening again.

Mayor Messina stated that those issues are on Council's upcoming agendas and they will be addressed. It may not be as quickly as Mr. Van Landschoot would like, but they will be addressed.

Council Member Patterson recommended this item be continued to the next meeting.

The Public Hearing was continued to the next meeting.

On motion of Council Member Patterson, seconded by Council Member Whitney, this item was continued to the 2/7/06 Council meeting, on roll call by the following vote:

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

Noes: None

Abstain: Vice Mayor Schwartzman

Review of the Planning Commission's denial of a request to subdivide a parcel at the former West 7th Street between I & J Streets (APN: 89-342-140) into three lots:

Vice Mayor Schwartzman excused himself due to a conflict of interest. As a Planning Commissioner, he previously voted on this item.

Bob Brown, Interim Community Development Director, reviewed the Staff report.

Mayor Messina stated that this item was not an appeal. It was a 'call for review.' The reasons for the 'call for review' are the same as described by Mr. Van Landschoot.

Ms. McLaughlin stated that a 'call for review' does not prejudice the decision. It is used for bringing the item up and having a discussion. That way the person calling the item up can participate in the discussion.

Council Member Patterson asked for clarification on the process. Mayor Messina stated that this has to be treated just like a Public Hearing.

Council Member Whitney asked for clarification on the property. Is the property a clear title? Mr. Brown stated that the property was a clear title. The applicant is proposing to improve the property south of the property including the alleyway. If the project goes forward, the property owner will be required to put in the storm drain line. Mr. Brown reviewed the proposed project.

Council Member Patterson stated that Council had received new material. Ms. McLaughlin stated that the new material Council received was a copy of the preliminary title report. Council needs to decide if the information was substantive or not. It is her opinion that the information was not substantive it was information that Staff had previously reviewed. Staff has reviewed the information and confirmed that the proponents are indeed the property owners. Council Member Patterson suggested after hearing from the proponent, Council should take five minutes to review the information so they can verify (on the record) what it was or was not substantive.

Public Hearing Opened.

Proponent:

Wilson Wendt, attorney for the proponent, apologized for bringing information in at the last minute. However, it was information that Staff had already reviewed. The second item submitted was a letter from the proponent's traffic consultant stating the traffic impact would be minimal. He referred to six goals in the General Plan that relate to this project. This is a smart growth infill project, which is one of the cornerstones of the City's General Plan. This project will connect the waterfront with the Willow Glen Park, which is a crucial goal of the General Plan. The General Plan is consistent with the General Plan. The project is three lots on the extension of 7<sup>th</sup> Street between I and J Streets. It seems like the biggest issue the Planning Commission had was whether the project was compatible with the neighborhood. The neighborhood is a very esoteric area of development. Only some of the alleys in the area are functioning. Not all of the alleys are paved. He referred to a map that describes the lots in the area. The project is

beneficial and will provide a number of housing opportunities for the community. The proposed trail will connect the two recreation areas.

Council Member Patterson asked what a dash line was for on the map that was provided to Council. Mr. Wendt stated that it might be the historic shoreline.

Steve Bonetti, applicant, stated that although the lots in the area are eclectic and substandard in terms of total square footage and width, the lots he is proposing are not substandard. They all meet the 60-ft. requirement. He stated that he plans to deed 150-ft alleyway on the western side to the City. He will be paving 100 feet of the alleyway. Per the City's request, he is providing an access road for improved circulation between the western alley and I Street. That is a controversial item. He is providing a 17-ft. utility easement along the western border of the property for storm and sewer lines. He plans to work with the City to expedite the storm drain. He would like to see it installed this upcoming summer season. They will be granting a 10-ft. wide pathway easement along the western side of the property that will connect Willow Glen Park to the waterfront. He discussed the issue of communication. He was able to talk with some of the people. Some of them agreed to disagree. He will be a neighbor in this community.

Council Member Whitney stated that he had an ex-parte conversation with the proponent.

Council Member Patterson stated that she had an ex-parte conversation with the proponent and Ms. Olson. She asked Mr. Bonetti about the engineer's assessment that the USGS blue line stream area of the map had gone away. She asked Mr. Bonetti to explain that issue. Dan Cullen (Cullen, Sherry, and Associates), Mr. Bonetti's engineer, stated that the area is described on the USGS website as an interim stream or creek. The USGS map is old. The updates have not been verified. There is no creek between I and K Streets. The creek was underground long ago. It has not been field-verified in years. Council Member Patterson asked how Mr. Cullen would explain this issue to the Department of Fish and Game since they would only have the 'old' map and would consider their jurisdiction pursuant to Fish and Game Code 1600 for streambed alteration. Mr. Cullen stated that he was not sure how to answer that question. Council Member Patterson discussed storm water management. She would like to see that the City fulfills its General Plan goal, which is to provide more surface drainage so you get better water quality. Storm water represents the greater part of pollution in the bay. She wants to know if this would be possible with this project.

Mr. Schiada stated that the storm drainage from J Street south to the shoreline has been piped. There have been occasions where the pipeline has not been sufficient to handle a heavy storm. That is why Public Works put in a condition to the project to install or pay for a portion of the cost for installing an underground pipeline in the area. The problem in this area is that the land is very flat. It is difficult to meet the two goals for drainage. He does not think it can be achieved with an open channel system. However, as part of the City's standard requirements on any new subdivision, Staff will be looking at the building permit stage to make sure that the individual lots install the appropriate storm water measures.

Public Comment:

1. Erica Kennedy – Ms. Kennedy stated that when she purchased her property (691 West J Street) she questioned City Staff about future plans regarding West 7<sup>th</sup> Street. She was told the General Plan called for a park. During escrow, a bulldozer knocked down trees, fencing, ground cover, and sprinkler that kept the hill behind her house intact. She was told that the person was clearing weeds. She questioned whether the person should have had a grading permit. She has since learned that the City abandoned the alley behind her house. Why didn't the City give the alley to the property owners? Do the neighbors know they now have a landlord? The City abandoned the property on West 7<sup>th</sup> Street. Is this legal? She had to put up a temporary fence to keep her animals safe from the other wild animals in the area. She objects to the City's negative declaration and requested an EIR report be required for the project.

Ms. McLaughlin stated that with regards to the CEQA finding, there is a categorical exemption for minor subdivisions in urbanized areas. Staff believes this project qualifies under that exemption. Mr. Brown reviewed the exemption.

2. George Mancuso – Mr. Mancuso stated that he is embarrassed for the City of Benicia because the City gave away the land. Is that good business? The area was declared worthless to the City. The project developer wants to develop nine homes. He can't believe this is happening. The General Plan clearly states the area should be a park. There is a stream there. The City lied to him and told him the area would become a park. He would rather see a pit-bull loose on a schoolyard than see a bulldozer on the loose. Chances are the pit bull won't bite anyone. The bulldozer will change the terrain. He objects to the City's determination that the project is categorically exempt from CEQA. No one has ever built there. He discussed the owls in the area. The developer has blocked access to the area from the public and the animals.

Mr. Brown stated that the General Plan does designate a green stretch from the water to the park area. They are general and illustrative. Council has the ability to interpret and imply the policies of the intent.

Mr. Alvarez stated that the General Plan calls for a public path leading from Willow Glen Park to the waterfront. There is no designation in the General Plan between trail and parkland. With regards to the parcel, the West 7<sup>th</sup> Street corridor is actually divided. A portion of it is green, which envisions the terrain, and the rest is another color. Staff's research of the General Plan shows it is a public access link from Willow Glen Park to the waterfront.

3. Concerned Citizen (name inaudible) – The citizen discussed the number of lots being considered for this project. As far as he knows, this project is still in the zoning period. The Planning Commission initially agreed that two lots would be sufficient for the land in question. The reason for the neighbors' appeal is that one citizen should not be allowed to block access for another citizen. If three lots were approved, there would be issues with adequate parking.

Mayor Messina asked how many units could be placed on the property. Mr. Brown confirmed that the zoning was single family residential. Zoning permits a second unit under certain explicit circumstances. Each of the three proposed lots could have a main structure and an auxiliary dwelling.

4. Ebba Navas – Ms. Navas moved to Benicia two years ago. They moved here because of the flavor of the town. They love Benicia. They saw development like what is being proposed where they previously lived in Colorado. They spent almost two years researching the neighborhood they currently live in. Now, the same thing that was happening on Colorado is happening in Benicia. The proposed project would change the look of the neighborhood. There are privacy issues with having three houses on a small strip of land. There would be severe drainage issues. She wanted to know where the street that the proposed houses would go on was. This project will not improve her neighborhood. This is not smart development it is overdevelopment. This project will cause parking issues for the neighborhood. There will be a huge environmental impact with regards to water runoff. She asked Council to not approve the project.
5. Michael Navas – Mr. Navas stated that he agreed with his wife. He is opposed to the increased number of dwellings for the project. He does not want the alleyway paved. He likes it the way it is. The project will cause parking issues. This is not smart building.

Council Member Whitney asked Mr. Navas if he was okay with having two homes on the lot. Mr. Navas stated that he was okay with that. He would like the alleyway to remain the way it is. He objects to having three homes on the lot.

6. Robert Ewell – Mr. Ewell stated that his wife is handicapped. It will be very inconvenient with a huge lot going in right next to his property. The development will be ridiculous. He would like to see the property markers exposed. How the property was quitclaimed is questionable. There is water runoff at the front of his property. It is dangerous for animals. He would like to see someone take care of the pesticides and herbicides in the runoff by his property. Two units would be within the aesthetics of the neighborhood; however, it would reduce access to the other properties. He would like to see a resolution on this project some time soon.
7. Rich Changus – Mr. Changus stated that he and his wife love this community and the small town atmosphere. He has stood before Council many times in the past. He has discussed the neighborhood flooding on various occasions. He feels there may be some unspoken motives behind allowing this subdivision to proceed. He feels the subdivision may negatively affect his property and neighborhood. He asked Council to deny the improvements to the flood conditions that he and his wife have put up with for years. He discussed the decline and ruin of Sam's Harbor. In spite of the fact that he would love to see the improvements to the flood conditions proceed, he is not willing to sacrifice what he actually moved to Benicia for. When he bought his property, the City promised him that there would not be a street on West 7<sup>th</sup> Street. He was told that the area might become a park. City Staff did not know the property was private property at that time. The neighbors never expected that any more than two homes would be built on the property. He discussed how the Clipper Bay development negatively impacted the

- flooding potential of his property. He did not buy his home in Benicia to be part of a high-density neighborhood. He heard from the applicant that if he were only allowed to build two homes, he would probably not be able to continue with the project. He believes if the City had collected fees and spent them wisely when Clipper Bay and Southampton, were built, we would not be here today discussing how we are going to fix the problem. It is time for the City to step up, support the citizens, and make the two-home solution work. He will be back to discuss the issue of four homes being built on the Sam's Harbor property.
8. Larry Grossman – Mr. Grossman stated that there is already a fair amount of a parking problem on West I Street. The development will not improve the neighborhood. The paving of an alley in conjunction with the development will make that alley a thoroughfare. Up until now, the alley ended at the West 7<sup>th</sup> Street area. Everyone living to the west of the development will be impacted by increased traffic. One of the wonderful things about the neighborhood is that the alley is not a thoroughfare. The increased traffic in the alley will negatively impact his neighborhood. There is agreement with the neighbors that having two homes on the site is reasonable. The neighbors would prefer a park.
  9. Bea Reynolds – Ms. Reynolds stated that the project is slightly beyond her stomping grounds. She wanted to voice her concerns for the eco system in the area. She and her grandchildren have looked at the land, waterway, species, etc. in the area. Council should allow nature to exist there. There might be some sort of mutual agreement that would allow nature and the rights of title as well.
  10. Ed Dixon – Mr. Dixon wanted to know exactly where the proposed development would be built. Will it impact the creek? He is a wildlife preservationist. This project seems to be in excess of greed. It does not seem to have the qualities of where things should be built. Mayor Messina stated that the applicant had not yet described the proposed project. Mr. Dixon stated that there are some historical trees in the areas. There is wildlife that uses the trees for refuge. Will the development impact the trees? There is a pond and a creek that might be impacted. The development will completely destroy the wildlife in the area.
  11. Concerned Citizen (name inaudible) – The citizen discussed his concerns that the development would endanger wildlife. He does not want to see anything bad happen to the character of the community.
  12. Kathleen Olson – Ms. Olson thanked Mr. Bonetti and the neighbors for their attention and consideration with this project. She has made some calls to try and have better communication. She stated that the goal was to have proceedings with dignity. Up to this point, the project has been handled with dignity and humor. Mr. Bonetti has spent a lot of time with the Public Works and Parks Departments. She stated that the tentative map does not create substandard lots. It does not require any variances. The title for the property went into private hands well before the 1979-1980 quitclaim deed from the City. One of the neighbors she met with was Ms. Bonnie Silveria, who mentioned that her grandparents used to own the parcel. The goal is not to create havoc in the neighborhood, but to be a good neighbor. There is a very responsible tentative map on the table. The community voted for the Urban Growth Boundary, which tends to spotlight our remaining

available vacant land. There is no request for zoning change or variance. It is all creating standard lots.

Mayor Messina stated that Council has gone beyond the amount of time agreed upon for Public Comment. He suggested either continuing or finalizing this item. No additional speakers wished to speak under public comment.

Public Hearing Closed.

Council Member Patterson asked Staff at what point does the City's hillside grading overlay district zone apply. Mayor Messina stated that it had to do with a difference in slope. If more than a certain amount of slope has to be graded, it triggers the grading ordinance. Mr. Schiada stated that he is not aware if the hillside ordinance applies to this section. Staff will have to look into that. Council Member Patterson stated that the stream the citizens are talking about is Willow Creek. She has serious concerns about whether or not it is subject to the California Fish and Game code section 1600 (stream alteration regulations). Her two concerns are the grading and the stream. She has questions on Mr. Alvarez and Mr. Brown's clarification on the General Plan designations for the public access. She takes them at their word on that, but it would be helpful to have the legislative history to describe that it was strictly public access and not more than a park. She does not remember the discussion on this during the General Plan process.

Mr. Alvarez stated that Staff could research the General Plan, but he could assure her that Park and Trail Space Master Plan does not show a park there.

Council Member Patterson stated that she has some direction for how to proceed on this matter. There is substantial information available for some decision making tonight. But that would be because she would be second-guessing some of the answers to her questions. She will let Council discuss the remaining issues.

Council Member Hughes stated that the question was whether to continue the item or have some discussion and move toward a decision. He prefers to work through the issue and try and reach a decision.

Ms. McLaughlin stated that Council Member Paterson was referring to the Hillside Development Overlay District (HD Overlay District). That is a district that can be combined with a residential district for properties that have a natural gradient in excess of 20%. An applicant or the City either initiates it. Staff does not believe this area is zoned with that overlay district.

Mayor Messina stated that according to his memory, it was another ordinance other than the HD Overlay District. It was an actual ordinance that was passed over eight years ago.

Council Member Patterson stated that the Mayor might be correct. She is unclear on how the designation process occurred. When did the City update its maps? How was the

determination that each and every parcel was or was not subject to the Hillside Development Overlay District?

Ms. McLaughlin stated that Staff would need to do some research on those issues.

Mayor Messina stated that regarding public access, he is guided by what Mr. Alvarez has said. The paving of the alleyway is not consistent with what was proposed in the General Plan. What was proposed was something that would accommodate pedestrians. He objects to the concept of having a paved road that connects the alleyway to the street. Regarding alley access, he is okay with that. Regarding the lots, the idea of adding a street to allow access to the middle lot bothers him. Having two lots may be appropriate. However, if the owner of the lots wishes to develop the lots, they should be allowed the full extent of the zoning. Regarding setbacks, heights, etc. he would not want to constrain the lot owner.

Council Member Hughes stated that there are some questions whether this project complies with all City rules and regulations. It appears that the biggest issue is compatibility with the neighborhood. He could probably argue both sides effectively. He has visited the lot. He cannot see three houses on the lot. He is a fan of infill. However, he is not fan of forced infill. It seems like we are trying to force three homes onto a lot. The design does not seem right. He is leaning towards upholding the Planning Commissions denial of the three lots.

Council Member Whitney stated that his opinions are similar to Council Member Hughes'. He is an advocate for personal property rights. The city overwhelmingly voted for the Urban Growth Boundary lines. That means that all development is driven within that boundary line. All the cool and easy to develop lots already have houses on them. Clearly, Mr. Bonetti has a right to develop the property. Therefore, he has a bundle of rights. He asked Staff if there was anything in the General Plan or Zoning Code that would prohibit Mr. Bonetti from putting three homes on the lots. Mr. Brown stated that there was not. Council Member Whitney asked Mr. Bonetti if the two lot solution would work for him. Mr. Bonetti stated that the requirement of the storm drain line was something he needed to have before he could get final map on the lots. He stated that the City needs to address the issue of flooding. Council Member Whitney asked if Mr. Bonetti was able to build something as large as he is allowed, would that work for him. Mr. Bonetti stated that he has three different parcels he is looking to develop. If Staff tells him that each project needed to be reduced by one parcel, it becomes a very difficult thing.

Council Member Patterson stated that she would like to speak to a comment made by Council Member Whitney regarding the issue is the quality of life in the City and the neighborhood. She is supportive of infill and using the land wisely. It bothers her when she can't support pretty good development ideas in terms of infill. The reasons she can't support the three-parcel project are that she had trouble with the comment about regulation not driving decision-making elements, but rather the character of the neighborhood determines the decision. Regulations are what people help get legislators to

pass to protect that character. In this case, it is the creek. While the initial regulation for creeks have something to do with protecting fish, people recognized decades ago the value of creeks to their quality of life. It is the topography. There is hilly landform. When we grade the topography away, you lose that sense of character. Limiting it to the two parcels give the development the opportunity to maintain all of those things. Let's get the creek at the surface and have it function for flood protection as well as water quality. She stated that private property rights are just part of what Council is responsible for. Council has enormous responsibility for the public health, safety, and welfare. Council needs to be very careful about placing emphasis on making a buck. Council has lots of court direction about when it can affect property rights. She wants to make sure the public does not think Council is driven by the issue of monetary gain. For that reason, she would support the Planning Commissions decision.

Council Member Whitney stated that Council Member Patterson took his words and blew it into whether he is a personal property rights fanatic. It is a balancing act between the health, safety, and welfare of the community and personal property rights. Personal property rights often get lost by bureaucrats chewing up those rights. He is not suggesting that is going on here. He does not like being lectured. He does not think that serves any purpose. The message is that people have personal property rights. He supports those rights. There is a compelling need in the community to have a watchful eye for the public health, safety, and welfare of the community. It is a balancing act. There is no easy answer.

There were some public outbursts. Mayor Messina stated that the audience couldn't yell and boo people. If anyone in the audience continued to do that, Chief Trimble would have to escort them out. He has to be able to run the meetings.

Mayor Messina stated that one reason the two-lot solution does not work for the developer is some of the conditions that were placed on the developer. Maybe the City should bend on some of the conditions. Staff should look at the conditions with regards to the paved easement. Regarding the public access between I and J Streets, it may need to be cut out and made into public access. Regarding the easement, he could go either way. Regarding the 20-ft. width, he would rather see something along the lines of a path structure (possibly 17 ft. or close to it). He suggested taking the burden of installing the storm drain off of the applicant. Regarding paving the alley, maybe that should not be the responsibility of the applicant.

Ms. McLaughlin stated that regarding the Mayor's proposed changes, the access easement has to be disabled accessible. It has not been determined if it needs to be paved or not. It will require some sort of improvement. The 20 ft. access was required for fire truck access.

Mr. Schiada stated that you would be creating an approximate 600 ft. long dead-end alley, which is in conflict with fire codes, which only allow a 150 ft. dead-end to allow the trucks to back out. Right now, in an emergency, the fire trucks would go over the dirt lot. Once you build structures on that, the ability for the trucks to do that becomes a

problem. He suggested that if there is a desire not to have public alley access, you could incorporate an easement that can be designed to not allow for cars, but allows emergency vehicle access.

Council Member Patterson stated that she would like to see the two lots. She would like to see the drainage handled with the City's adopted Storm Water Best Management Practices for surface draining, and determine to what extent we can handle the runoff, and diminish the flooding issue. She asked Staff about the grading issues.

Ms. McLaughlin stated that she is not sure Council can get to the two parcels. The application before Council is for three parcels. If Council decides to stick with the two parcels, it should go back for revisions.

Council Member Patterson stated that it sounded like Council's recommendation is to send this back to the Planning Commission at this point.

Ms. McLaughlin stated that if Council wants to have the two lots, it should uphold the Planning Commission's decision with the direction to the applicant that it is willing to consider the two lots.

Mayor Messina asked the applicant to come forward. He asked Mr. Bonetti if it was worth his while to see if the two lots would work for him, or would he walk away from the project. Mr. Bonetti stated that it sounds like the time on the project would be pushed way into the future if he has to go back to square one. He is not sure if he would go through the project. He would like to go with the two-lot subdivision. He would like to understand what the caveats placed on the two lots would be.

Ms. McLaughlin stated that Council could not provide any certainty to the applicant but could provide some general suggestions.

Mr. Wendt stated that he thought Council could uphold the Zoning Administrator's approval of the project, but condition it on it being reduced down to two lots. He would like to see that done. He has seen it done in other cities.

Ms. McLaughlin stated that she is not sure if the revisions could be made on the fly.

Council Member Patterson clarified that action Council would take would be to uphold the Zoning Administrator's decision, but condition it to two lots. Then, the following conditions would be: the alternative drainage (surface drainage) limit grading, hours of construction, and the easement on the westside to remain unpaved and unimproved, but the public access would be improved to ADA standards.

Mr. Erickson stated that Staff needs more clarification on the issue of surface drainage. Staff would love to see the developer pay for the drainage improvement. He reminded Council that this was a budgeted project. Regarding neighborhood compatibility, there is a great deal of diversity in the neighborhood.

Mr. Cullen reviewed the drainage with the assistance of the map.

Council Member Patterson asked Staff if there was a low flow and high flow design on the Clipper bay drainage. Mr. Schiada stated that for flood control, a larger pipe was installed, which is what would need to be done here, similar to what was done at Clipper Bay. The problem with Clipper Bay was that there was not corresponding pipe put in to eliminate flooding. The funding for that did not happen. He believes Staff has a commitment from Council for that at this time. That may be something that would work.

Mayor Messina stated that Council can overturn the Planning Commission's decision and uphold the Zoning Administrator's decision with the following provisions: 1) there only be two lots, not three, 2) the alley not be paved, 3) the access between I Street and the alley not be paved and that the width of that be reduced, 4) the cost of putting in the pipe be borne by the City.

Ms. McLaughlin stated that this should be sent back for a Staff review on some of the proposed changes. The Fire Chief is not available (at this meeting). There is an issue regarding fire access in an alleyway. She is not sure there is a good reason to reduce it to less than the 20 ft. That could cause problems for the City in the future.

Council Member Patterson stated that she thinks this should be sent back for Staff review. Traffic calming studies have shown that there is fire safety with less space than 20 ft. The non-alley eastside is a scenic corridor. She would like Staff to give some thought as to how that could be controlled.

Council Member Hughes stated that there has to be a way to assure the developer that Council supports the two parcels, assure the neighbors that it does not support the three lots, and to have Staff work with the developers to keep the neighbors up to speed on the specifics.

Mayor Messina stated that Council should continue the agenda item to the next meeting to allow Staff time to work on it in the interim.

Ms. McLaughlin wanted to verify whether Staff could turn this agenda item around before the next meeting. Mr. Erickson stated that Staff would try, but would prefer more time. Mayor Messina stated that he would like Staff to attempt to have it ready for the 2/7/06 meeting. Staff will then have some revised conditions for Council to review.

Council Member Hughes asked if Council could assure Mr. Bonetti that he would not be sent back to square one. Mayor Messina stated that Council could not assure that. Council will know more after Staff presents the information at the next Council meeting.

On motion of Council Member Patterson, seconded by Council Member Whitney, Council agreed to continue this item to the 2/7/06 City Council meeting, on roll call by the following vote:

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

Noes: None

Abstain: Vice Mayor Schwartzman

Mayor Messina called for a 5-minute break at 10:40 p.m.

The meeting resumed at 10:48 p.m.

Mayor Messina asked Mr. Erickson what agenda items needed to be addressed tonight.

Mr. Erickson stated that item IX-A needed to go forward.

ACTION ITEMS:

Approval of the Police Department Emergency Selective Seismic and Security Upgrades project and actions:

Jim Trimble, Police Chief, and Rob Sousa, Finance Director, reviewed the Staff report.

Council Member Whitney asked Chief Trimble about the sally port and how the Police Officer would secure his/her weapon. Chief Trimble explained how the Police Officers would secure their weapons when transferring patients to the sally port.

Council Member Whitney stated that he does not see a reason why Council would not go forward with this project.

Mr. Sousa will bring something back at a future meeting to delineate what the financing will be.

RESOLUTION 06-07 - A RESOLUTION ACCEPTING THE BIDS FOR THE POLICE DEPARTMENT EMERGENCY SELECTIVE SEISMIC AND SECURITY UPGRADES PROJECT AND AWARDING THE CONSTRUCTION CONTRACT TO ALBAY CONSTRUCTION, INC. OF MARTINEZ, CALIFORNIA IN THE AMOUNT OF \$948,000 AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY AND CHANGE ORDERS UP TO \$223,213

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

RESOLUTION 06-08 - A RESOLUTION APPROVING THE APPROPRIATION OF \$411,575 FROM GENERAL FUND RESERVES FOR THE POLICE DEPARTMENT EMERGENCY SELECTIVE SEISMIC AND SECURITY UPGRADES PROJECT

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

RESOLUTION 06-09 - A RESOLUTION APPROVING THE CONTRACT AMENDMENT WITH BEVERLY PRIOR ARCHITECTS FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE POLICE DEPARTMENT EMERGENCY SELECTIVE SEISMIC AND SECURITY UPGRADES PROJECT IN THE AMOUNT OF \$128,787

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina  
Noes: None

Reconsideration of Resolution No. 05-179 amending the Master Fee Schedule to reduce the appeal fee to \$150:

Heather McLaughlin, City Attorney, reviewed the Staff report.

Vice Mayor Schwartzman stated that he was the one that brought this to Council's attention. He did not do this to give Council something else to do, but since Council asks the public to follow the rules, he thought it would good for Council to do it as well.

Mayor Messina suggested that if a citizen comes forward with an appeal and they are correct, they should not have to pay the price. If the appeal is upheld, there should be no cost.

Ms. McLaughlin stated that she was not sure if Council voted on that issue at the last meeting or not.

Council Member Patterson stated that Council did not vote on that. The return of the appeal fee to a prevailing appellant is more complicated than the Mayor is saying.

Vice Mayor Schwartzman stated that he agreed with the Mayor. He amended his motion to reflect maintaining the appeal fee at \$150.00 and add that if an appellant prevails at any level, including litigation, the appeal fee would be returned.

Ms. McLaughlin discussed hypothetical scenarios that could complicate this issue of whether an appellant prevailed or 'kind of' prevailed.

Mayor Messina stated that he would like to simply use the terms 'appeal upheld' and 'appeal denied.'

Council Member Patterson stated that she did some research on this issue. She looked at a lot of jurisdictions. The only jurisdiction that had any kind of return was a county. The cities she looked at were not returning fees. Council might want to be more careful and thoughtful before making this decision.

Ms. McLaughlin reminded Council about the option for citizens to use the 'call for review' process.

RESOLUTION 06-10 - A RESOLUTION AMENDING THE APPEAL FEE IN THE MASTER FEE SCHEDULE

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

On motion of Council Member Patterson, seconded by Mayor Messina, at 11:15 p.m., Council did not approve continuing with the meeting, on roll call by the following vote:

Ayes: Council Members Patterson and Mayor Messina

Noes: Council Members Hughes, Schwartzman, and Whitney

Review of Joint Use Agreement with Benicia Unified School District (BUSD):

Continued

INFORMATIONAL ITEMS:

Reports from City Manager:

Continued

Council Member Committee Reports:

Continued

COMMENTS FROM COUNCIL MEMBERS:

Request for reconsideration of the Rules of Procedure (Resolution No. 05-198):

Continued

ADJOURNMENT:

Mayor Messina adjourned the meeting at 11:15 p.m.

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Lisa Wolfe, City Clerk