

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
FEBRUARY 19, 2008

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:03 p.m. on Tuesday, February 19, 2008, 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, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Patterson 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:

Mayor Patterson announced that Staff would be opening the Commission Room so that the citizens could view the Council meeting on the television, as Council Chambers was very crowded.

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:
Two unexpired terms to September 30, 2010
- Historic Preservation Review Commission:
Two full terms to February 28, 2011

Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4210 or by email acardwell@ci.benicia.ca.us.

APPOINTMENTS:

RESOLUTION 08-11 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF JOHN FURTADO TO THE SKY VALLEY OPEN SPACE COMMITTEE TO AN UNEXPIRED TERM ENDING SEPTEMBER 30, 2010

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

PRESENTATIONS:

None

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Lisa Reynolds – Ms. Reynolds discussed difficulties with communications between the park users and the City regarding the dog park. She discussed concerns regarding a drinking fountain for humans and the lack of a paved entrance.

Mr. Erickson confirmed that he would facilitate a discussion between Staff and the dog park users regarding their concerns.

2. Carl Uebel - Mr. Uebel discussed the Grand Jury, its functions, duties, who could serve as a Grand Juror, and he encouraged citizens to apply to serve on the Grand Jury.
3. Don Basso – Mr. Basso encouraged citizens to apply to serve on the Grand Jury.
4. Jane Brady – Ms. Brady discussed the following concerns with the dog park: muddy access, lack of a paved access, lack of lighting, and water for the dogs.
5. Karen Burns – Ms. Burns asked what the actual distance was from the ramp to the dog park. The current access is prohibitive to handicapped persons. She wants to see handicap access, and lack of water. She asked the City to keep its promises.
6. Tom Hebson – Mr. Hebson discussed concerns regarding lack of access to the dog park.
7. Cynthia Bognar – Ms. Bognar discussed concerns regarding lack of access to the dog park and possibly having a notice regarding gate closure on the City's website.

Council and Staff discussed the issue of access to the dog park. The issue of paving or graveling the road to the dog park would be on the March 4, 2008 Council agenda.

8. David Lockwood – Mr. Lockwood discussed the zoning for the proposed Benicia Business Park, land patents, and rezoning the property back to its current state.

9. Bill Royal – Mr. Royal discussed his feelings toward Staff, how his Constitutional rights were violated, the problems he encountered with the City while working on his project, justice, and the City’s failure to communicate.
10. Megan Lewis – Ms. Lewis announced that the BHS SAGE Team would be hosting a design workshop on the traffic signal by the BHS campus on February 26, 2008
11. Jane Malone – Ms. Malone discussed concerns regarding the lack of water for the dogs at the dog park and the lack of handicap access to the dog park.
12. Gretchen Burgess – Ms. Burgess asked Council to continue item IX-B to a future meeting, as it is scheduled to follow the Seeno Item and would not be heard until very late in the evening. She thanked Staff and Council for agreeing to set up a meeting between the dog park users and Staff to discuss their concerns, and her concerns regarding lack of access to the dog park.

Mayor Patterson asked Ms. McLaughlin if Council could continue item IX-B to a future meeting. Ms. McLaughlin confirmed it could be done. After Mayor Patterson asked for a show of hands from the audience regarding support for continuing the item, Council unanimously agreed to continue the item to the next Council agenda.

13. Jackie Hebson– Ms. Hebson discussed concerns regarding the lack of handicap access to the dog park, and the poor attitude from Staff at the dog park.
14. John Furtado – Mr. Furtado discussed concerns regarding the A-frame signs along First Street. He suggested such signs be included in the discussion regarding the newspaper rack ordinance.

CONSENT CALENDAR:

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the Consent Calendar was adopted as presented, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

The minutes of February 5, 2008 were approved.

Council approved the denial of the claim against the City by Karen Edwards and referral to insurance carrier.

Council approved the denial of the claim against the City by Benicia Marina Homeowners Association and referral to insurance carrier.

Council approved the denial of the claim against the City by Christine Shannon and referral to insurance carrier.

RESOLUTION 08-12 - A RESOLUTION ACCEPTING THE WATER DISTRIBUTION SYSTEM IMPROVEMENT PROJECT AS COMPLETE, INCLUDING CONTRACT CHANGE ORDERS 1 THROUGH 5, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND

AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

Council approved the amendment to the lease between the City of Benicia and Benicia Main Street:

ORDINANCE 08-01 - AN ORDINANCE AMENDING SECTION 5.32.120 (DRIVER'S PERMIT – REQUIRED) OF TITLE 5 (TAXICABS) OF THE BENICIA MUNICIPAL CODE

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

(END OF CONSENT CALENDAR)

PUBLIC HEARINGS:

Review of the Benicia Business Park Environmental Impact Report (EIR):

Jim Erickson, City Manager, introduced the item. He confirmed that it was Staff's opinion that option #1 would be the best course of action at this time.

Charlie Knox, Community Development Director, reviewed the staff report. He reviewed the differences between the four options presented by Staff.

Council and Staff discussed the issue of bifurcating an EIR from a project, and current time constraints relating to the EIR.

Applicant:

No comment.

Opponent:

Mr. Steve Goetz, Benicia First, reviewed a PowerPoint presentation (hard copy on file).

Mr. Knox informed Council that a representative of the applicant notified him (moments before) that the applicant prefers to defer its time for an opportunity of the preparers of the EIR (LSA) to answer questions that may come up. The representatives of LSA and the traffic consultants were on hand to answer any questions that Council might have.

Sal Evola, Discovery Builders – Mayor Patterson informed Mr. Evola that he missed his 15 minutes and asked if he now wished to take them. Mr. Evola indicated that no, he only wanted to clarify what Mr. Knox said. Discovery Builders only paid for the EIR; it was not their document. He was present to answer any questions. Tonight was only for the EIR presentation. He expected LSA to be the group to make a presentation.

Public Hearing Opened

Public Comment:

1. Elaine Estrada, Robert Semple PTG – Ms. Estrada spoke in opposition to the certification of the EIR.
2. Don Dean – Mr. Dean spoke in opposition to the certification of the EIR.
3. Marilyn Bardet – Ms. Bardet spoke in opposition to the certification of the EIR.
4. Michael Steinmann, GLUMAC, – Mr. Steinmann reviewed a PowerPoint presentation titled ‘Sustainable Development Concepts’ (hard copy on file). He discussed how sustainable development could be incorporated into the project.
5. Jerome Page – Mr. Page spoke in opposition to the certification of the EIR.
6. David Lockwood – Mr. Lockwood spoke in opposition to the certification of the EIR. He did not think it was right for the applicant to be allowed to wait and speak after public comment. He recommended Council approve option #2.
7. Sue Johnson – Ms. Johnson spoke in opposition to the certification of the EIR.
8. Bob Craft – Mr. Craft spoke in opposition to the certification of the EIR. He recommended Council approve option #2.
9. Frank Saitz – Mr. Saitz spoke in favor of the certification of the EIR.
10. Rod Cameron – Mr. Cameron spoke in favor of the certification of the EIR. He urged Council to approve option #1.
11. Dana Dean – Ms. Dean reviewed a letter she submitted to Council on behalf of Citizens Considering the Consequences (hard copy on file). She spoke in opposition to the certification of the EIR.

Council discussed whether the information submitted by Ms. Dean could be considered ‘substantial new information.’ Council decided the information was not substantial new information and it could proceed with the discussion on this agenda item.

12. Brian Tulloch – Mr. Tulloch discussed the need for the City to make a decision on this item so everyone could move on.
13. Joe Kearns – Mr. Kearns spoke in opposition to the certification of the EIR.

Mayor Patterson called for a 5-minute break at 9:34 p.m.
The meeting resumed at 9:40 p.m.

14. Jeanine Seeds – Ms. Seeds spoke in opposition to the certification of the EIR.

All Council Members confirmed that they did not have contact during the break with members of the public regarding this issue.

Mayor Patterson disclosed that she had ex parte communications with various individuals on this issue.

15. Jim Bird – Mr. Bird spoke in favor of the certification of the EIR.
16. Bob Berman – Mr. Berman suggested Council approve option #2.
17. JB Davis – Mr. Davis spoke in opposition to the certification of the EIR.
18. David Dias – Mr. Dias spoke in favor of the certification of the EIR.
19. Keith Dias – Mr. Dias spoke in favor of certification of the EIR.

20. Ramon Castellblanc – Mr. Castellblanc spoke in opposition of certification of the EIR.
21. Yessenia Martinez – Ms. Martinez spoke in opposition to the certification of the EIR.
22. Sam Kershan – Mr. Kershan discussed how unions operate. He spoke in opposition to the certification of the EIR.
23. Jon Van Landschoot – Mr. Van Landschoot spoke in opposition to the certification of the EIR.
24. Jim Wallace – Mr. Wallace spoke in opposition to the certification of the EIR.
25. Susan Street – Ms. Street spoke in opposition to the certification of the EIR.
26. Jim Gilley – Mr. Gilley spoke in favor of the certification of the EIR.

Mayor Patterson notified Mr. Evola that she had clocked him approximately two hours ago. He could not approach the podium again. Mr. Evola stated that he spoke earlier to clarify why the applicant did not get up to speak initially. He was just looking to exercise his five minutes of public comment time. The applicant tonight was LSA. Ms. McLaughlin confirmed that it would be okay to give Mr. Evola his five minutes, however, LSA was not the applicant. The developer (Discovery Builders) was the applicant. Mayor Patterson notified Mr. Evola that he could have five minutes, however the situation did not reflect well on the applicant.

27. Sal Evola, Discovery Builders – Mr. Evola stated that City Staff requested the bifurcation of the EIR. If the EIR were approved, Discovery Builders would submit a project within the framework of LSA's EIR. It would be the start that could send Discovery Builders back to the drawing board and make modifications to fit within the framework of the EIR, and then bring it back for approval with 100% complete discretion of the Planning Commission and Council.

Council and Mr. Evola discussed whom the planning director was who directed them to bifurcate the EIR, and the chain of events that took place when the decision to bifurcate the EIR was made. Mr. Evola confirmed that the current project as proposed was not approvable, however, if the EIR was certified, Discovery Builders would take those mitigation measures and modify the project to fit within the framework to bring before the Planning Commission and Council. With regards to the Hillside Upland alternative, Discovery Builders could look at that preferred alternative first; however, it could not tie its hands.

Council Members Schwartzman and Campbell disclosed ex-parte communications with various individuals regarding this issue.

Council and Mr. Evola discussed the process for certifying an EIR, how Councils change, how the project evolved over the years, the City's General Plan, the project's failure to meet requirements with the General Plan, grading, modifying the project to fit the City's needs, traffic impacts on East Second Street, and the Hillside Upland alternative.

David Clore, LSA, discussed the adequacy of the document, LSA was unbiased in the process, the EIR was an objective document, that the process was consistent, and the possibility of adding additional traffic studies on East Second Street.

Bill Burton, Korve Engineering, discussed his belief that the EIR fully disclosed the traffic impacts the project would have on East Second Street, the actual traffic impacts that were documented in the EIR, safety and access to Robert Semple Elementary, how future volumes for I-680 were developed, the East Second Street and Military intersection, and the I-680 improvements were forecasted in the EIR.

Adam Weinstein, LSA, discussed the air quality surrounding Robert Semple Elementary, and how the impact conclusion was reached in the EIR.

Mayor Patterson discussed air quality standards and public health.

Public Hearing Closed

Council discussed Seeno's reputation in the community, the need for Discovery Builders to earn Council and the community's trust, Staff and LSA's indication that the EIR is adequate, the need to move forward, Seeno's tactic of divide and conquer, bifurcation of the EIR and project, Mr. Evola's stipulation that the current proposed project would not be approved, getting to a project that would be approvable, adding that the Hillside Upland be the preferred alternative, Council's obligation to have certainty in the process, concerns regarding air pollution, saying no to Seeno by certifying the EIR and asking for a new project, saying no to Seeno by sending the EIR back to the Planning Commission, urban decay, consistency with AB 32, effects the project would have on the Downtown, and the need to have an EIR that has all the tools that future Councils need, as it is a 20-year project.

Council and Staff discussed adding language to the resolution in the proposed option 1: having the Hillside Upland alternative further evaluated, having it be LEED (Leadership in Energy and Environmental Design) certifiable, adding in AB 32 consistency, and adding an alternative to the widening of I-780. Council and Staff also discussed the review process the new project would go through, expanding on what the mitigation monitoring program would address – the sustainability issues would be addressed or mitigated by LEED and traffic impacts could be addressed by a different mitigation besides the widening of I-780, stating in the resolution that an initial study would need to be done on the new project, the City would not be 'stuck' if the EIR was approved, doing an initial study on the new project, coming up with new mitigation measures for the new project that the applicant would agree to, and how the bifurcation of the project and EIR came about.

On motion of Vice Mayor Campbell, seconded by Mayor Patterson, Council did not approve the Resolution as proposed in Option #2, on roll call by the following vote:

Aye: Vice Mayor Campbell and Mayor Patterson

Noes: Council Members Hughes, Ioakimedes, and Schwartzman

Council Member Schwartzman made a motion to add the following amendments to the Resolution proposed as Option #1: directing the applicant and Staff to move forward on a CEQA Initial Study for the Hillside Upland Preservation Alternative, directing the applicant and Staff to incorporate Leadership in Energy and Environmental Design (LEED) and AB 32 into the review of the Hillside Upland Preservation Alternative, the need for a new mitigation measure for the I-780 impacts, and lastly adding language regarding urban decay and sustainability.

RESOLUTION 08-13 - A RESOLUTION CERTIFYING THE BENICIA BUSINESS PARK ENVIRONMENTAL IMPACT REPORT (CONSISTING OF THE DECEMBER 2007 FINAL ENVIRONMENTAL IMPACT REPORT, JULY 2007 RESPONSE TO COMMENTS, AND NOVEMBER 2007 SUPPLEMENTAL RESPONSE TO COMMENTS), AND FURTHER RESOLVING THAT THE PROPOSED PROJECT CONSIDERED BY THE ENVIRONMENTAL IMPACT REPORT CANNOT BE APPROVED WITHOUT SIGNIFICANT MODIFICATION DUE TO NUMEROUS CONFLICTS WITH GENERAL PLAN POLICIES

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

Ayes: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: Vice Mayor Campbell

ACTION ITEMS:

Presentation of the Comprehensive Annual Financial Report for the Fiscal Year Ending June 30, 2007 and recognition of Certificate of Achievement for Excellence in Financial Reporting for the June 30, 2006 Report:

Continued

Introduction and first reading of an ordinance for establishing permitting and regulatory requirements for massage therapists:

Continued

INFORMATIONAL ITEMS:

Reports from the City Manager:

Council Member Committee Reports:

1. Mayor's Committee Meeting (Mayor Patterson) - Next Meeting Date: February 20, 2008
2. Association of Bay Area Governments (ABAG) (Mayor Patterson & Vice Mayor Campbell) - Next Meeting Date: April 24, 2008 – Spring General Assembly
3. Audit & Finance Committee (Vice Mayor Campbell & Council Member Schwartzman) - Next Meeting Date: March 7, 2008
4. League of California Cities (Mayor Patterson & Council Member Schwartzman) - Next Meeting Date: April 16-17, 2008 – Legislative Action Days

5. School Liaison Committee (Council Members Ioakimedes & Hughes) - Next Meeting Date: March 13, 2008
6. Sky Valley Open Space Committee (Vice Mayor Campbell & Council Member Ioakimedes) - Next Meeting Date: March 5, 2008
7. Solano EDC Board of Directors (Mayor Patterson & Council Member Ioakimedes) - Next Meeting Date: March 27, 2009
8. Solano Transportation Authority (STA) (Mayor Patterson & Council Member Schwartzman) - Next Meeting Date: March 12, 2008
9. Solano Water Authority/Solano County Water Agency (Mayor Patterson & Vice Mayor Campbell) - Next Meeting Date: March 13, 2008
10. Traffic, Pedestrian and Bicycle Safety Committee (Vice Mayor Campbell & Council Member Hughes) - Next Meeting Date: April 17, 2008
11. Tri-City and County Regional Parks and Open Space (Vice Mayor Campbell & Council Member Hughes) - Next Meeting Date: February 20, 2008 – Citizen’s Advisory Committee
12. Valero Community Advisory Panel (CAP) (Council Member Hughes) - Next Meeting Date: April 24, 2008
13. Youth Action Task Force (Council Members Ioakimedes & Schwartzman) - Next Meeting Date: February 27, 2008
14. ABAG/CAL FED Task Force/Bay Area Water Forum (Mayor Patterson) - Next Meeting Date: March 10, 2008

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 11:48 p.m.

Lisa Wolfe, City Clerk