

**March 1, 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  
SPECIAL MEETING - CITY COUNCIL  
MARCH 1, 2005**

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:34 p.m. on Tuesday, March 1, 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.

**PRESENTATION:**

Presentation on ABAG Projections 2005 for Benicia and Solano County by Paul Fassinger, ABAG staff:

Mr. Fassinger gave a PowerPoint presentation on ABAG Projections 2005 for Benicia and Solano County. A hard copy of the presentation is on file with the original agenda packet. ABAG's Projections 2005 included estimates for population, housing and employment based upon their recently adopted Smart Growth Policies.

**PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA:**

None

**ADJOURNMENT:**

Mayor Messina adjourned the meeting at 7:25 p.m.

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**MINUTES OF THE  
REGULAR MEETING - CITY COUNCIL  
MARCH 1, 2005**

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:31 p.m. on Tuesday, March 1, 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 Patterson, Smith, and Mayor Messina

**Absent:** Council Members Campbell (arrived at 7:33 p.m.) and Whitney (arrived at 7:32 p.m.)

**PLEDGE OF ALLEGIANCE:**

Mayor Messina led the pledge to the flag.

**ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:**

**ANNOUNCEMENTS:**

Mayor Messina announced a current opening on the Solano County Mosquito Abatement District Board of Trustees - one, two or four-year term.

The community conversations on the Discovery Builders (Seeno) project will not take place on March 2 and March 30, 2005. Staff and the developer are still attempting to resolve application completeness issues. The community conversations will be rescheduled when the issues are resolved.

The City Council Priority Setting Workshop will take place on Saturday, 3/5/05 from 8:00 a.m. - 12:00 p.m. in the Dona Benicia Room at the Benicia Public Library.

**APPOINTMENTS:**

**RESOLUTION 05-18 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF TONI HAUGHEY TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM BEGINNING MARCH 1, 2005 AND ENDING FEBRUARY 28, 2009**

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

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

**Noes:** None

**RESOLUTION 05-19 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF BLYTHE WILSON TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM BEGINNING MARCH 1, 2005 AND ENDING FEBRUARY 28, 2009**

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

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

**Noes:** None

**RESOLUTION 05-20 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF JAMES CONLOW TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM BEGINNING MARCH 1, 2005 AND ENDING FEBRUARY 28, 2008**

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

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

**Noes:** None

**RESOLUTION 05-21 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF LUIS DELGADO TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM BEGINNING MARCH 1, 2005 AND ENDING FEBRUARY 28, 2008**

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

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

**Noes: None**

**RESOLUTION 05-22 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF NIMAT GRANTHAM TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM BEGINNING MARCH 1, 2005 AND ENDING FEBRUARY 28, 2007**

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

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

**Noes: None**

**RESOLUTION 05-23 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF DONALD DEAN TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM BEGINNING MARCH 1, 2005 AND ENDING FEBRUARY 28, 2007**

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

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

**Noes: None**

**RESOLUTION 05-24 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF PATRICK DONAHUE TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM BEGINNING MARCH 1, 2005 AND ENDING FEBRUARY 28, 2006**

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

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

**Noes: None**

**PRESENTATIONS:**

**None**

**PROCLAMATIONS:**

**Mayor Messina presented a proclamation for Arbor Day to Allison Fleck and Annie Lloyd, Tree Subcommittee.**

**ADOPTION OF AGENDA:**

**Mr. Erickson suggested continuing agenda item X-A, due to potential conflicts of interest. Mayor Messina stated that Council is currently seeking an opinion from the FPPC in terms of participation. Council expects to hear back from the FPPC within 30 days. Ms. McLaughlin stated that 30 days is the**

required time for the FPPC to render their opinion, but they often take longer.

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

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

Noes: None

**COMMUNICATIONS:**

**WRITTEN:**

Mayor Messina stated that Council received one written letter from Karen Comeau, which is on file.

**PUBLIC COMMENT:**

1. Dana Dean - Ms. Dean stated that she supports the Vice Mayor's proposal to set up a committee to oversee the update of our Water Management Plan. The public needs to be engaged in conversations on this issue.
2. Janet Grothe - Ms. Grothe stated that she wanted to address the City I&I project. She lives within 100 yards of the project. She has spoken to several people (Council and Staff) about concerns she has with the project. The project has degraded the quality of her neighborhood. She stated that Staff continues to refer her back to the contractor that they are paying over \$1 million dollars to enforce the contract. She stated that the contract did not anticipate the massive amounts of dirt that would be involved in the project. She wants to reconsider the selection criteria when choosing future contractors. In the future she would like the City to consider the contractors health and safety records as well as past performance. The contractors being used for this project are sloppy. The air quality, water runoff, and speeding are all issues.

Mayor Messina directed Staff to bring this item back as a report from the City manager to allow some discussion at a future Council Meeting. Between now and then Staff should have some dialogue with the residents to make sure they understand what the community issues are.

3. Dana Brock - Ms. Brock stated that she wanted to formally rescind the appeal that she previously filed with regards to St. Catherine's Wood.
4. Council Member Smith - Council Member Smith stated there was some great work done at City Hall on 2/28. He thanked the Mayor for his leadership. Council and BUSD came to an agreement where the City will start maintaining the community ball fields on school district land. He looks forward to bringing the agreement back formally next month. Council Member Smith made the following announcements:
  - 3/2/05 - 4/15/05 - There will be an exhibit at the Library on Elizabeth I - Ruler and Legend.
  - 3/5/05 - Dalt Williams Quartet jazz concert at the Benicia Historical Museum
  - 3/5/05 - Firefighter of the Year Presentation at the Fire Museum.

- 3/11/05 - Benicia Main Street will host a St. Patrick's Day Celebration Auction and Dance.
  - 3/12/05 - Arts Benicia will present the 'Works of Developmentally Disabled Artists.'
  - 3/12/05 - The Napa Solano Audubon Society will have a birding walk on Grizzly Island.
5. John Van Landschoot - Mr. Van Landschoot congratulated Council on the appointments to the new HPRC. He stated that he supports the idea that when a term member on a commission is voted down by the governing body, that person's term should end and other applicants should be brought forward and voted on.

**CONSENT CALENDAR:**

Council pulled items VI-A, VI-C and VI-D.

On motion of Council Member Whitney, 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

Council approved the denial of claim against the City by Martha Gonzales and its referral to insurance carrier.

**RESOLUTION 05-25 - A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE METROPOLITAN TRANSPORTATION COMMISSION FOR ALLOCATION OF TRANSPORTATION DEVELOPMENT ACT FUNDS FOR FISCAL YEAR 2004-05**

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

**(END OF CONSENT CALENDAR)**

Council took the following actions:

**Approval of Minutes of February 15, 2005:**

Council Member Whitney stated that he pulled the minutes because he was not present at the meeting and wanted to abstain from voting on them.

On motion of Vice Mayor Patterson, seconded by Council Member Campbell, the minutes of February 15, 2005 were approved, on roll call by the following vote:

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

Noes: None

Abstain: Council Member Whitney

**Accept the 2004 Benicia Marina Maintenance Dredging Project as complete:**

Council Member Campbell asked Staff what the original amount allocated for the project was. Mr. Sousa stated that the amount budgeted was \$284,000. An adjustment for the project was approved in

the amount of \$100,000. Given the fact that we had a light winter, lower dredging costs were anticipated. The net would be about \$174,000 for engineering and consulting services. Staff will be approaching Council for lowering the amount that they are budgeting for this year.

**RESOLUTION 05-26 - A RESOLUTION ACCEPTING THE 2004 BENICIA MARINA MAINTENANCE DREDGING PROJECT, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAID NOTICE WITH THE SOLANO COUNTY RECORDER**

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

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

**Noes: None**

**Accept the Military West Waterline Installation Project as Complete:**

Vice Mayor Patterson asked Staff to describe the role of this element in the cross town I&I project. Mr. Schiada stated that this project was not related to the I&I project. It was a stand-alone separate project. Vice Mayor Patterson asked Staff to describe the complaints they received for this project compared to the I&I project. Mr. Schiada stated that Staff did have some issues with this project. The Alta Loma neighborhood was out of water for an entire night. Once the project was completed, citizens were satisfied. Vice Mayor Patterson stated that Council should have a future meeting on its expectations of contractors.

Council Member Whitney asked Mr. Schiada about Staff's noticing procedures. Mr. Schiada stated that the citizens were notified about the expected 8-hour water shut off. However, there was an unanticipated break in the line that extended the amount of time the water was shut off.

**RESOLUTION 05-27 - A RESOLUTION ACCEPTING THE MILITARY WEST WATERLINE INSTALLATION PROJECT, APPROVING CONTRACT CHANGE ORDER NUMBERS 2 AND 3, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SOLANO COUNTY RECORDER**

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**

**PUBLIC HEARINGS:**

**Tentative Subdivision Map for St. Catherine's Wood:**

Vice Mayor Patterson excused herself from this portion of the meeting due to a conflict of interest.

Mayor Messina clarified that Ms. Brock formally withdrew the appeal that she had filed.

Eric Angstadt, Associate Planner, reviewed the Staff report.

Council Member Smith asked Staff to elaborate on the process whereby the eucalyptus tree on lot #11 was removed. Mr. Angstadt stated that tree #929 was approved to be removed by Parks and Community Services Department. The tree was removed because it was determined by an arborist that the tree had a poor structure, weak branch unions, and several other issues. There was no raptor habitat in the tree at the time of its removal.

Council Member Campbell stated that it sounds to him like the tree was removed for development, not because it was dying. He stated that he has a problem with the determination on the raptor habitat as well. Council Member Campbell discussed the history of tree removal at St. Catherine's Wood. He stated that it seems there is a lack of oversight with what is going on out there. Maybe it is time for Council to take oversight on the decisions that are made out there. He stated that he thinks it is time for Council to examine future easement issues, tree removals, and the design for the remaining three to four houses in St. Catherine's Wood.

Mr. Alvarez stated pruning could not save tree #929. Staff still supports the decision to remove the tree. He discussed the habitat report done by the consulting arborists (Sycamore). There was no evidence at the time the tree was inspected that there was any sort of habitat present. Council Member Campbell discussed the nesting season for raptors.

Council Member Smith stated that Council Member Campbell's comments regarding the removal of 38 trees in the area put tonight's items (resolutions) in proper context. He does not think Council should act on the items tonight. He suggested waiting until Council can receive a fuller report on what has taken place up there. It sounds like a development gone awry and the intent of the Planning Commission has been subverted.

Council Member Whitney stated that the issue tonight is dealing with the easement. He is not opposed to the applicant. He suggested Council move forward with tonight's items.

Mr. Erickson stated that the developer had been mentioned in Council's discussions. He wanted to make it clear that the developer is not applying for the easement reduction. The property owners are the applicants. Council Member Smith stated that he understood that, however he feels it is symptomatic of a larger problem because it is precipitated by the removal of a eucalyptus tree.

Council Member Campbell stated that this is the most planned 19 lots the City has ever done. A one-vote majority approved it. It was a close vote and was heavily thought out. He does not like putting the homeowners in between him and the developer. However, he does have a problem with the developer and the way this project was developed.

Mayor Messina stated that he had some questions as to exactly what happened to all of the trees. He would like to see a report come back to Council with that information. He would like to have a fuller discussion on this.

Council Member Campbell stated that there was no law, code, or ordinance broken. However, in the

homeowners' guide, they had pages upon pages on landscaping, designs, etc. There was a plan for the development. What happened is not what the plan was.

**Applicant:**

Karen Comeau - Ms. Comeau stated that she had provided some maps and photographs for Council to review. The maps show the property lines and public access easement lines around the area in question. She stated that years ago, during the approval process for the planned development of St. Catherine's Wood, careful thought was given to protect a eucalyptus tree grove near the center of the development. Specifically, in Resolution 97-11, thought was given to the permitting process that would be required before any of the eucalyptus trees in the grove could be trimmed or removed. To further ensure protection of the trees, a public access easement in the area was moved in by approximately 10-feet along a 65-foot section into Lot 11 to encompass one of these trees. Six years later, in the fall of 2003, prior to the Comeaus purchase of the lot, an arborist evaluated several of the trees in the grove and reported that at least two trees had become further diseased and should be considered for removal. After verifying no wildlife resided in the trees, the developer requested a removal permit for one of the trees (the one on Lot 11). This is the same tree for which the public access easement was originally widened by 10 feet in 1997. An open wire fence would come within 5-feet of the side of her house, severely narrowing the area on the east side next to a sliding kitchen door. She is requesting that the 10-foot by 65-foot long and narrow section of the easement be abandoned, due to removal of the diseased tree prior to their purchase of the land. This would allow the retaining wall on their property to be straightened, which would provide for better maneuverability along the side of the home. Abandoning the narrow strip of easement is minimal, considering the large easement area. As stated by the Planning Commission, it would still allow ample public access through the existing grove. There will not be any impact to the view corridor. Pending Council's approval, the Comeaus would pay for the planting of five additional native California trees in other open space areas. With regards to signs, if she would be required to pay for two signs, she would like to have the opportunity to be involved with the sign language and work with the Parks and Community Services Director prior to installation.

**Public Comment:**

1. Dana Brock - Ms. Brock explained why she formally rescinded her appeal. When she initially filed her appeal, she was not completely informed. She now feels that Ms. Comeaus request is completely understandable. A lot of what has occurred was due to their displeasure with what has taken place up to this point with the developer. The development did not turn out as planned. They trust that Staff's assurances will be carried out. They hope Council will be more involved in the oversight of St. Catherine's Wood. She asked Staff and Council not to let another tree become the victim of destruction by construction.
2. Angela Griegas - Ms. Griegas stated that tree #929 may not have been completely healthy, however there was no imminent risk. The tree had a purpose of protecting the inner trees for raptor nesting. She wants the City to monitor what happens with St. Catherine's Wood more closely.
3. Jackie Durham - Ms. Durham stated that she hopes Council approves Ms. Comeaus request for the easement.

4. Rich Griegas - Mr. Griegas stated that he hopes Ms. Comeaus request is granted. He stated that whenever a decision needs to be made, they should refer back to the original signed documents.
5. Alan Schwartzman - Mr. Schwartzman stated that there was a number of Commissioners that were not happy about tree #929 being removed. He stated that an additional layer of approval, whether it is from the Planning Commission or Council, would be a good idea.

Council Member Whitney stated that he looks forward to future discussions on what took place at St. Catherine's Wood.

Council Member Smith stated he does not want to make homeowners pay for a developer's error. However, maybe it is time to step back and take a look at how we got to this point.

Council Member Campbell stated that maybe Council needs to require signatures from Council and the Tree Sub-Committee for future tree removal.

**RESOLUTION 05-28 - A RESOLUTION AMENDING CONDITION OF RESOLUTION 97-11 APPROVING THE TENTATIVE MAP FOR ST. CATHERINE'S WOOD SUBDIVISION**

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

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

**Noes: None**

**Abstain: Vice Mayor Patterson**

**RESOLUTION 05-29 - A RESOLUTION ORDERING THE VACATION OF AN APPROXIMATELY 652 SQUARE FOOT PORTION OF THE ST. CATHERINE'S WOOD PUBLIC ACCESS EASEMENT ON LOT 11 ALSO KNOWN AS 155 ST. CATHERINE'S LANE**

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

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

**Noes: None**

**Abstain: Vice Mayor Patterson**

Mayor Messina stated that he wanted the matter of maintenance of the encroachment brought back at a future meeting. He would like to also have the issue of grading and the trees be brought back for discussion as well.

Mayor Messina called for a 5-minute break at 8:49 p.m.

The meeting resumed at 8:55 p.m.

Consideration of a Use Permit to fill and grade the lot located on the northwest corner of West L Street and West 10th Streets:

Dan Schiada, Public Works Director, reviewed the Staff report.

Vice Mayor Patterson stated that condition #13 is quaint. She was on the site, and frankly did not see any trees. That condition needs a whole lot of work. The term 'whenever possible' is a license. We do not want to provide licenses for folks to take down trees. On condition #11, it discusses noticing. The residents need to have advanced notices put on their doors. The grading plan only requires 48-hour notices. The neighbors would be better served with advanced notices distributed door-to-door. Regarding condition #12 that deals with dumping, she would like to see something more done. If we make the property owner more responsible for cleaning up the site, such that they post a bond, we will not have to call upon an enforcement issue. She would like this changed. She asked why the Planning Commission minutes were not attached to the Staff report. The issue of grading was discussed at the Planning Commission meeting. Having the minutes would have been helpful. She asked Staff how the drainage ditch would be addressed. Mr. Schiada stated that the ditch is a dry compression in the ground. It was bypassed in the 1980s. The idea is to have a gradual swale near the location where the original ditch was and have the swale curve toward the southeast corner of the lot where there will be a drainage inlet opening that ties into the existing drainage inlet.

Council Member Smith asked Staff to address the contractors' handlings of the numerous claims that we have received when they come back to Council with an update on the I&I project.

**Public Comment:**

1. Janet Grothe - Ms. Grothe stated that she resides within 100 yards of this project. She supports the overall project, but she and her husband are concerned with the transition from the I&I project to the grading project. They have concerns whether or not there will be sufficient drainage. Also, when they fixed the intersection of West 10th and L Streets, they built the intersection up about one foot. The kids love to speed over that bump. She would like that fixed.
2. Kelly Sweeney - Ms. Sweeney stated that she has been putting up with the dust and dirt for over a year now. She is concerned about the drainage as well. If there are drainage issues, it will most likely go right into her front yard. She is looking forward to seeing some trees being replanted in the lot. There were trees there before the project started.

Council Member Smith asked Staff to address the citizens concerns about drainage issues. Mr. Schiada stated that Staff would ensure that the drainage from the lot goes properly into the City's drainage system. They will be doing television inspections to check out the drainage system. Mr. Schiada stated that they would check to see that the existing pipe system is clear as well. Regarding the bump in the intersection, they have received a few complaint calls. Staff will follow up and review this. It may need to go back to the Bicycle, Pedestrian and Traffic Safety Committee. It is in accordance with the plans of the project. However, they will need to look into the situation to see if it needs to be changed.

Vice Mayor Patterson stated that when she walked the site of the project, she noticed that the contractor had put blacktop on top of the soil. That may be a violation. She complimented the Planning Commission on the level of detail and the time spent on the project was quite good. She

stated that we need to do a better job about tracking the complaints on projects. We need to log complaints in when we receive them. She stated that on condition #11, it needs to be changed so that it reads 'no less than 5 days notice, posted door-to-door.' Staff clarified that the door-to-door notices would be focused on the houses in the immediate area. Regarding condition #12, which has to do with dumping, we need to make it the responsibility of the property owner. There should be some kind of security (cash bond, certificate, etc) so that we are able to enforce that. This would be for the life of the time that the lot would be vacant. This is a way to enforce the 'no dumping' rule. Ms. McLaughlin suggested using language stating 'the property owner shall be responsible for keeping the parcel free of debris and shall post a bond to ensure prompt clean up of the property, in the amount of \$10,000 in the form approved by the City Attorney.'

Mayor Messina asked if the chain link fence would be removed. Mr. Schiada confirmed that the fence would be removed and it would be an open lot as it was prior to the project. Mayor Messina stated that it was his expectation that the property owner is grading the lot because they are expecting to do some type of development in the future. He asked how we would deal with future drainage issues with the lot. Mr. Schiada stated that the City would have a legal mechanism to deal with that type of a problem through its Storm Water Management Program.

Vice Mayor Patterson suggested deleting the condition that deals with the trees, since there are not any at this time. Hopefully we will not see 'whenever possible' in the future. Ms. Meunier stated that the reason that condition was put in was because of the trees that were in the area of the public right-of-way on 10th Street. They were in the area where we may do some additional planting. Vice Mayor Patterson stated that if there are trees that will be affected by this project, we should make sure they are replaced in the appropriate locations. Maybe it should be modified to read 'if there are trees that are removed, they will be replanted.'

Mayor Messina asked how long the grading project would take. Mr. Schiada estimated it would take 2 weeks to one month.

Council Member Smith stated that he would like the term 'whenever possible' removed. Staff agreed to remove that language.

#### **RESOLUTION 05-30 - A RESOLUTION APPROVING A USE PERMIT FOR PLACEMENT OF 4,000 CUBIC YARDS OF FILL AND GRADING THE PARCEL AT THE NORTHWEST CORNER OF WEST L AND WEST 10TH STREETS**

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

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

**Noes: None**

Ms. McLaughlin clarified the amendments to the Resolution. Condition #11 would be modified to read 'notice to residents within 300 feet of the parcel shall be hand delivered to each property.' The modification to condition #12 would read 'the property owner shall be responsible for keeping the

parcel free of debris and shall post a bond to ensure clean up of the property in an amount approved by the City Attorney.' Condition #13 would be modified to read 'existing trees shall be retained and pruned as necessary to maintain public passage on adjacent streets. If any trees are removed from the parcel, they shall be promptly replaced.'

Mayor Messina stated that when this project commences, Staff should make frequent visits to the project to make sure we don't have the dust, debris, noise, etc. issues that we had with the I&I project.

**UNFINISHED BUSINESS:**

Accept bids and award the construction contract for the First Street Peninsula Improvement project at an amount not to exceed \$771,306 and appropriate \$341,306 from General Fund Reserves: Mike Alvarez, Parks and Community Services Director, reviewed the Staff report.

Council Member Smith stated that this project would be beautiful. It will be a real boon to the Waterfront Festival. It is unfortunate about the bids for the restrooms being so expensive. This will be a significant investment in our waterfront.

**RESOLUTION 05-31 - A RESOLUTION ACCEPTING THE BIDS AND AWARDING THE CONSTRUCTION CONTRACT FOR THE FIRST STREET PENINSULA IMPROVEMENT PROJECT IN THE AMOUNT OF \$771,306 TO HESS CONSTRUCTION CO., INC., AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY, AND APPROPRIATING \$341,306 FROM THE GENERAL FUND RESERVE**

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

**Update on the City's Urban Water Management Plan:**

Dan Schiada, Public Works Director, reviewed the Staff report.

Mayor Messina noted that Kathleen Val Velsor left a copy of 'Guidebook to Assist Water Suppliers in the Preparation of a 2005 Urban Water Management Plan' for Council to review.

Vice Mayor Patterson stated that Council should ask themselves what they know about Benicia's Urban Water Management Plan. She stated that it is kind of an 'unknown.' The reason it is not known is because of the tried and true process of having the consultants prepare a plan, having workshops, having a few people show up, and there you have it. It is an important thing to have a grasp on this plan. The intent of the task force is to involve and engage the public in dealing with water resources. We have to identify the watershed. We need to have a clear understanding of water reliability. We need to know what we would do in a catastrophe. What are the specifics of dealing with the loss of our water connections? That is something that the public needs to understand. How is our water managed? We have a general sense of this, but what is the plan for using stored water? What would

we do in sequential, multiple dry years? The public should be involved in helping foster that understanding. What is our groundwater resource and how should we manage that? What is the relationship between land use and water? Fifty percent of the water generally in cities, is used up by landscaping. Should we continue the same pattern with land use? Should there be some connection to some of the water decisions that we make in our land-use decisions? This is our opportunity to connect that planning process. Those are some of the key things about what this water planning process does. Staff is proposing using consultants for this. There is also a proposal for the consultants conducting five workshops. Council has to adopt this plan in November 2005. Instead of having workshops, why not get the public engaged early on, do a shift with the consultants RFP, and have the workshops become the planning task force. It would not be a \$36,000 increase. The task force would engage the public. The public has a right to know. The two arguments made by Staff opposing the task force are: 1) other jurisdictions don't do this process and 2) Staff does not have the time or resources for the proposed task force. She encouraged Council to support the establishment of the Urban Water Management Plan Task Force.

Council Member Smith asked Vice Mayor Patterson if she was opposed to Staff's recommendation to use consultants for this. She stated that she was asking that we make a minor adjustment to the proposed workshops, turn that into the Planning Task Force, and add a few meetings.

Council Member Smith stated that he is concerned about whether we would get the level of public participation that the Vice Mayor is suggesting. He stated that maybe Council should recruit for the task force. Vice Mayor Patterson stated that she had been reassured that there was public interest out there for this issue. Time is of the essence.

Council Member Smith stated that since there is not a commitment from the public to man the task force, it is premature to commit the \$36,000. Vice Mayor Patterson stated that she does not think it would be \$36,000 to add two meetings. The first meeting would be handing out the existing Urban Water Management Plan. The second additional meeting would be to do some brainstorming and some visioning.

Mayor Messina supports the concept of public participation. We have to get the Urban Water Management Plan done. He does not want to spend the money. If we don't have the task force, we still have to have meetings and put the information together. He is not sure why we would need to expend the additional funds to support a committee. If we did not have a committee, what would Staff do to prepare this report?

Mr. Schiada stated that Staff has a preliminary scope of work that they will bring to Council at the next meeting to ask for an award of contract for consultants on this project. The proposal they received to do the public meeting process (4 public workshops, one public scoping meeting and one final Council review) was approximately \$16,000. To conduct the formal workshops and all that entails, they assumed there would be 9 formal meetings. That was going to cost around \$56,000. The raw difference was approximately \$40,000, which is where they derived the quote of \$36,000. He believes they can work with the consultants on that cost. The two assumptions that were made were derived from the additional support (formal preparation of agendas and minutes) in addition to the

four meetings.

Mayor Messina asked Vice Mayor Patterson if she thought having meetings every two months (so there were four or five meetings) would make her feel confident that the process would work. Vice Mayor Patterson stated that was the thought she had. We would start off with the educational aspect, getting the task force members up to speed, raise some questions, etc. We would have more meetings up front. Then the consultants go away, assemble a lot of stuff, and come back with a draft report. The task force would then meet to respond to the draft report via a public workshop. Then, the consultants go away and fix that, and then bring it back to Council for a final report. She does not see the nine meetings. She thinks a maximum of six meetings would work. It is important to get the public involved.

Mr. Schiada stated that he would like to bring back the report that they were planning to bring to Council on the award of the contract and put in there the additional scope required to conduct the formal task force process with the six meetings. There will be some additional costs involved above and beyond doing a normal public meeting process. We are looking at the formal process requiring additional man-hours. Mr. Schiada stated that schedule listed on agenda page VIII-B-2 would be the timeline they are looking at for this process.

Council Member Smith clarified that Council would not be taking action on the proposed Resolution, but they would be directing Staff to start publicizing and promoting the possibility of the formation of a task force, particularly among the bodies (the Planning Commission and the PURE Committee) suggested by the Vice Mayor. Mayor Messina added that Council should actively solicit individuals for the task force. It is a way of making the process happen.

Vice Mayor Patterson stated that the San Francisco Regional Water Quality Control Board has funds available. She has been playing phone tag with them. She is hoping that we can apply for those funds. The funds rarely go over \$10,000.

#### **NEW BUSINESS:**

Review of the General Fund Budget for Fiscal Year 2003-04 and Mid-Year 2004-05, updates to the Long Range Budget Model, and consideration of proposed budget adjustments for Fiscal Year 2004-05: Rob Sousa, Finance Director, reviewed the Staff report.

Council Member Campbell asked what year Valero's Utility Users Tax Agreement was up. Mr. Sousa stated that he believes it is up in 2006. There is an assumption that the Utility Users Tax will continue at its current amount. Staff will be working with Valero in the next few months to iron that out. Council Member Campbell stated that he is worried about that dollar amount taking into consideration Valero's co-generation. Mr. Sousa stated that he would make this a special project as he goes through the budget process. He will work with Valero to get this cleared up.

Vice Mayor Patterson stated that the Utility Users Tax is by ordinance. It then went to the vote of the people. The cap is done by Council Resolution. It is an agreement the City has with Valero. The ordinance does not go away if the Resolution changes or is not renewed. Valero is subject to the full

amount of the ordinance.

Mayor Messina stated that Staff needs to sit down with Valero and figure this out now. He would like this brought back to Council at the next meeting. Vice Mayor Patterson suggested having the City Attorney assure Council on the strength of the ordinance and its vulnerability at that time as well. Mr. Sousa asked if mid-April would be an acceptable timetable to bring this back rather than the next meeting. Mayor Messina stated that Council wants finality on this agreement before they can finalize the budget.

Council Member Smith asked Mr. Sousa about the adjustment for the Civic Center tennis court upgrade. This project has a shortfall that we were hoping to make up with contingency funds from the 9th Street project. He asked if this was the proper time to address that. Mr. Sousa stated that the amount budgeted for this is \$60,000, which will be fully covered by the grant from the State. If there is a shortfall, Staff will come back to Council to ask for an adjustment in the future.

Vice Mayor Patterson wanted to discuss the constant 20% reserve that is across the board. Mr. Sousa explained the process for the 20% reserve. Vice Mayor Patterson stated that Council said last year it would look at policies that would have proportional rates of reserve for different categories. She knows this is on the calendar and is under way. She wants to make sure that we have a sustainable maintenance and infrastructure investment policy.

Council Member Whitney asked how PERS is working out at this time. Mr. Sousa stated that the City is in pretty good shape. It looks very optimistic at this point in time. Council Member Whitney stated that one thing that was previously discussed was creating a holding account for the funds if/when we become super-funded. Mr. Sousa stated that that was currently being done, but it is not policy. Council Member Whitney asked what the policy is for recognizing possible revenues from the Seeno project. Ms. Majors stated that we are a long way away from putting this into our budget mode. We are a couple of years away at this point.

#### **RESOLUTION 05-32 - A RESOLUTION AMENDING THE 2004-2005 MUNICIPAL BUDGET**

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 Campbell, Patterson, Smith, Whitney, and Mayor Messina**

**Noes: None**

Mayor Messina called for a 3-minute break at 10:47 p.m.

The meeting resumed at 10:55 p.m.

Consider amending the appointment provisions for the various city boards, commissions and committees to provide that members serve only for their appointed term and that the Mayor must make appointments before the expiration of the term: Heather McLaughlin, City Attorney, reviewed the Staff report.

Council Member Campbell stated that his objective in bringing this up is to remind everyone of democracy - the majority rules. The basics are that if someone serves their term, and they are not reappointed, they need to stop serving.

Mayor Messina asked Council Member Campbell what would happen if Council could not get three votes to confirm a commissioner. Council Member Campbell stated that it was the Mayor's responsibility to present a candidate that is acceptable.

Mayor Messina stated that it would make a lot of sense to start the appointment process further in advance (some number of months) that has been done in the past. In terms of the Mayor appointing by a certain date, will Council be required to approve the appointment by a certain date as well?

Council Member Smith stated that he supports the City Attorney spending time to develop the suggested amendments. Furthermore, he finds the Mayor's line of questioning very disingenuous, considering he has filled the Planning Commission with basically (entirely) Chamber of Commerce members. He himself had a project before them. He left a commissioner in office for several months after Council rejected him. He has been as political about this commission as he could possibly be, and he continues to do so with this line of questioning.

Mayor Messina asked Council Member Smith if he considered Bonnie Silveria and Veronica Stone Chamber of Commerce members.

Vice Mayor Patterson stated that she does not feel this conversation is useful. It does not serve the Council or the public very well. She supports the idea of having the City Attorney pursue the rewriting of various ordinances so we have a commission seat filled in a timely manner.

Vice Mayor Patterson made a motion directing the City Attorney to amend the appointment provisions for the various city boards, commissions, and committees to provide that members serve only for their appointed term, and that the seat should be filled by a certain date.

Council Member Whitney stated that this is usurping the Mayor's appointment power. Vice Mayor Patterson stated that she would remind him of that in three years. Council Member Whitney stated that he would be out working to be in the Mayor's chair himself at that time. He stated that we have a system that has been in place for some time. Everyone would have made different appointments than the Mayor has made. We keep coming back to this when there is a group of people that don't get their way. We have a system in place that works. This is a divisive topic. Council should move on and drop this issue.

Vice Mayor Patterson stated that Council should let the City Attorney earn her keep and do the research and come back to Council to let them know what would and would not work.

Mayor Messina asked Council to have the City Attorney look at what the qualifications should be to serve on a board, commission, or committee. He thinks the number 1 qualification is that the person be a citizen and a registered voter in Benicia. On motion of Vice Mayor Patterson, seconded by Council

Member Smith, Council gave direction to the City Attorney to research and look into amending the appointment provisions for the various city boards, commissions, and committees to provide that members serve only for their appointed term, and that the seat should be filled by a certain date, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, and Smith

Noes: Council Member Whitney and Mayor Messina

Vice Mayor Patterson stated that the reason the appointments to the HPRC were successful was because the individuals were qualified. She discussed the qualified individuals currently serving on the Sky Valley Open Space Committee. That should guide us for the qualifications that we would want to have on the Planning Commission. She asked if Council could direct the City Attorney to do further research on the appointment provisions of Government Code 65101, and also consider the qualifications with which we would amend our current ordinance that is bereft of anything except being a registered voter. This is probably one of the most important commissions we have in the City.

Council Member Campbell stated that it is a political appointment and having hard, fast qualifications or guidelines makes him nervous.

Vice Mayor Patterson stated that the Planning Commission requirements need to include some sort of planning background. There needs to be some working knowledge of planning, whether it is through experience, education, professional affiliation, etc.

Council Member Smith stated that this would be a difficult thing to legislate.

Vice Mayor Patterson clarified that what she was asking the City Attorney to do is find out what other jurisdictions do and if they have specific qualifications.

Council Member Whitney stated that being a registered voter and resident of Benicia should be the main qualification. The criteria need to be broad.

Mayor Messina does not want to discriminate against any of the registered voters. He does not want to make applicants feel unwelcome. He agrees that the qualifications should be broad.

Vice Mayor Patterson stated that the question is can we ask the City Attorney to find out what other jurisdictions do, and do they have other qualifications? And what does the League of California Cities recommend, as they do have a planning commission manual. We should also follow the Zucker Report, which recommended we get more qualified people on our Planning Commission.

On motion of Vice Mayor Patterson, seconded by Council Member Campbell, Council agreed to direct the City Attorney to find out what other jurisdictions do, and do they have other qualifications? And what does the League of California Cities recommend, as they do have a planning commission manual. We should also follow the Zucker Report, which recommended we get more qualified people on our Planning Commission, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, and Smith

**Noes: Council Member Whitney and Mayor Messina**

**On motion of Council Member Whitney, seconded by Council Member Campbell, Council voted at 11:34 p.m. to adjourn the meeting and continue all remaining agenda items until the next Council meeting, on roll call by the following vote:**

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

**Noes: Vice Mayor Patterson**

**REPORTS FROM CITY MANAGER:**

**Discussion of the status of the Mixed Use Zoning District Study:**

**This item was continued to a future meeting.**

**Oral update on Community Development Director recruitment:**

**This item was continued.**

**REPORTS FROM CITY COUNCIL COMMITTEES:**

**Reports held over from the February 15, 2005 meeting will be combined with the March 15, 2005 regularly scheduled reports.**

**ADJOURNMENT:**

**Mayor Messina adjourned the meeting at 11:35 p.m.**

**Lisa Wolfe, City Clerk**