

MINUTES OF THE  
SPECIAL JOINT MEETING – CITY COUNCIL AND BUSD GOVERNING BOARD  
MARCH 29, 2007

The special joint meeting of the City Council of the City of Benicia and the Benicia Unified School District Governing Board was called to order by Mayor Steve Messina at 6:08 p.m. on Thursday, March 29 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Council Members:

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

Absent: None

BUSD Board Members:

Present: Trustees Switzer, Steinmann, Samiljan, and President Fulton

Absent: Trustee Stewart

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).

OPPORTUNITY FOR PUBLIC COMMENT:

None

ACTION ITEMS:

Mills School Lease Agreement Report:

Mayor Messina stated thanked City and BUSD staff for their efforts on this item. He hoped the City and BUSD would be able to resolve the two missing pieces which are: 1) the term of agreement, and 2) dealing with repairs and improvements that need to be made.

President Fulton thanked BUSD and City staff for their efforts. The District is anxious to get the Mills site back into use. It is a great facility and location. This will be great for the community. He thanked the 7-11 Committee for their work. The 7-11 Committee recommended putting the site back into use as a community center. The nature of the lease agreement is a very long-term agreement between the two entities. They were very careful in working on this agreement to make sure it was done right. He hoped the Council and Board would be able to resolve the two outstanding issues tonight.

Mr. Erickson stated that City staff enjoyed working with BUSD staff on this issue. The District staff was very intelligent and responsive. City staff felt good about the tentative agreement that had been reached. The main terms were understood and agreed upon. The lease terms are \$120,000/year, term of 10 years with two 5-year options. He hoped the City would be in the building for 20-years. The City couched its offer. The offer was subject to a report. The City wanted an inspection report to make sure the building was safe for occupancy in its current condition. A third party inspection was completed. City staff received the third party preliminary inspection report yesterday. Council has not had a chance to review the report yet. The City believes this is a terrific site; however, there are some things that need to be taken care of prior to occupancy. The report validated most of the things that were identified in the initial report; however, it did not list the numbers. The City and District are faced with remedial repairs that need to be addressed. Council informed the community that it has strong interest in this building. Council wants to secure a lease for the site to be used as a community center. It will be a great community resource for kids and seniors.

The City's interest is in securing the site for a community center. In tackling the first hurdle, the City has come up with some options. The first option would be for the District to assume responsibility for the remedial repairs, like a typical occupant/landlord situation. The second option would be for the District and City to negotiate shares of responsibilities for the remedial repairs. The third option would be that the City look to complete the inspection work and arrive at sharing the costs. The City has been thinking about things such as mutual benefit, that the agreement fulfill and be part of the overall continued District/City cooperation that has been quite evident in the recent past, and finally the neighborhood itself. One thing that has to be considered is that the neighborhood has something to gain from this. They want to make sure the neighborhood does not suffer in any way from this agreement. Something for everyone to think about is the City's financial condition and ability to pay. The City has strong financials, with a 20% reserve. At the same time, the City has a big agenda. There are some large projects coming up, such as the X-Park, Commandant's, etc. The City is right at the edge of the 20% reserve. The City needs to be mindful of that. Although City staff is conservative, whatever deal they strike has to achieve balance, fairness, etc. Let's complete the inspection work and finalize this agreement with those things in mind. There is the ability to be careful on how the agreement is structured. As long as the City is cautious of having limits with responsibility, such as setting a ceiling or limit, this could be done.

Superintendent Adams stated that she has enjoyed working with the City staff. She wanted to address the public. When Mills was closed, it was very difficult for the Mills families and the community. Making the site a community center would do a lot for the neighborhood. The site was in good condition when it was vacated. Not much has changed except for the normal things that happen when a building is vacant for 18 months. It was in wonderful condition when it was vacated. It has great potential to be a wonderful community center. She was concerned about the length of time it has taken to get the building occupied. She hopes to see resolution with this agreement soon. The District has had three inspections and the City has had two inspections done on the building.

Mayor Messina stated that he wanted to make sure there were not other concerns or issues with the meat of the contract.

Vice Mayor Schwartzman inquired about page IV-A-5 – 4.1 ‘as is.’ Is that what is being discussed? If it was ‘as is’ he was not sure what the issue with the inspection was and how the inspections come into play.

Mr. Erickson stated that when the City made the offer, that although the District offered the property, as is, the City felt it needed to have an inspection before it signed on the dotted line. The City could take the property as is, however, if that is the case, it should recommend making some consideration come the City’s way for doing so. It could be a significant cost.

Vice Mayor Schwartzman stated that it was difficult for him because the draft agreement states ‘as is’ but there is also the report that state that there are issues with the building, and also, in the current agreement, section 4.2 stated that the District was not required to make or construct any alterations, etc. He is just not sure where everyone is as a group on these issues. Is it ‘as is’ or not.

Mr. Alvarez stated that the draft before Council and the Board tonight was a draft. They had not yet reached an agreement. When the building originally became available, it was offered ‘as is.’ During negotiations, the City described to BUSD that it wanted to inspect the building to make sure it was safe for occupancy. The District acknowledged that as well as the City had said that they would not agree to the ‘as is’ language until it could determine the state of the building and how that issue would be resolved.

President Fulton stated that the District had always approached this as an ‘as is’ issue. The District met in closed session earlier tonight and acknowledged that there would be some small reopening costs associated with the building, and it could offer some capital along those lines, however, they were still in agreement with the issue of ‘as is.’

Mr. Erickson stated that City staff did not agree to the ‘as is’ issue. City staff needed to be assured that when it went into the building, it could be occupied safely.

Mayor Messina stated that his take on this is that the building was being offered ‘as is.’ What the City is asking for is some participation in any necessary landlord type improvements from the District. What needs to be discussed tonight is how to describe those improvements and how to quantify them.

Council Member Patterson stated that her understanding of what needed to be resolved was the issue of ‘as is’ and what are some of the non-monetary provisions that could be considered that would address the fact that some things need to be done to the school buildings before the City could use them, and that the City does not want to change certain conditions. She wanted to clarify that it was a staff to staff discussion, then it went to the Board for consideration, and that is why Council and the Board are now having the joint meeting.

Trustee Samiljan stated that in as much as the discussion occurred as to whether there would be a property report and whether that would affect the as is condition or the inhabitability of the building, as far as she was concerned, that was a staff level discussion. When it came back with a monetary value at the Board level, it changed the tenor of the arrangement. The District went through a very public process of closing the school. The City, especially the Liaison Committee was very clear that they would be using money that had been set aside for the community center to do facility upgrades on the fields. It has always been out there that at some point, the City would have interest in the building. It was distressing to the Board to have this come back as with the question of whether it was inhabitable, did it need upgrades, etc. In terms of this being a staff level discussion that was correct, it was part of staff negotiations.

Council Member Whitney stated that clearly there are a lot of repairs that need to be done out there. That will need to be resolved with cash or terms. He suspected it would be with terms more than cash. With regards to the repairs on page IV-A-8, it concerned him under 10.1.1, if there is a laundry list of repairs, the City could spend half its life with the District trying to get sign off's with the District on the repairs. Is there some way that the City could satisfy the School Board and cut through all of this red tape?

Mr. Erickson stated that the City does not think it would be a drawn out process. There are a lot of professional engineers who are readily available to do inspections, sign off on the work, etc.

President Fulton stated that it was the Board's position to facilitate that. The Board wants to get this going as soon as possible.

Council Member Whitney stated the community wanted this agreement to be done yesterday. All of this stuff just adds more tomorrows on to this.

Vice Mayor Schwartzman inquired about page IV-A-7 – utilities – he wanted to confirm that while there was a previous request to pay for irrigation on adjoining parcel, this language was specific to the Mills property only. He wanted to confirm it was for the Mills property, and did not include an adjoining District parcel.

Superintendent Adams confirmed that the agreement included the boundary of K Street. It included the school, facility, not the District office, or the field.

Council Member Patterson stated that there was a typo on page IV-A-17, paragraph 23, the word should be 'on' not 'one.' She asked that there be public notice when the City undertakes a major project on the school. Also, something needs to be stated in the agreement about the issue of noise. The 7-11 Committee spent a lot of time talking about the noise issue. She asked that the term 'force majeure' instead of 'acts of God.'

Ms. McLaughlin stated that language could be used (force majeure).

Council Member Whitney inquired about page IV-A-10 – casualty damage – if there is damage to the property, one or both of the party's could give a 30-day notice. If there is damage, does the lessee have the ability to correct that damage? If there were damage that was the responsibility of the District, how would the City address that? Ms. McLaughlin stated that if there was damage to the property that was not covered by insurance, either part could fix it at their own expense.

Mayor Messina stated that if the City and District could arrive at some conclusion with the larger two issues, could the District and City basically fill in the blanks and ink the agreement in tonight. Ms. McLaughlin stated that as long as the two parties' could reach agreement on the two larger issues that could be done. If the funding problem gets the City to the 20% reserve amount, Council would have to take a special vote for that.

Mayor Messina stated that the minor issues that needed tweaking had been addressed; now they are back to the two major issues of 1) as is, and 2) dealing with the repairs and improvement issue.

President Fulton stated that the Board met in closed session earlier tonight. The two major issues were discussed. The Board wants to get this agreement going tonight. The Board's negotiations were based on a \$0.35/sq. ft. rental amount, and that was based on an as is use. The Board acknowledged there would be some reopening costs. On the other hand, the District does not have the 20% reserve that the City has. The District's funds have improved; however, it needs to restore curriculum programs in order to maintain the high academic standards it wants to achieve. The District does not have the revenue raising abilities that the City has. The District is more capital constrained that it wants to be. The District had a number not to exceed of \$25,000 that it discussed and would offer for reopening expenses. In terms of additional considerations, the District had a lot of flexibility with regards to terms of the lease. The City probably wants the maximum terms, so it could make capital expenditures. The term life could be extended. The Joint Use Agreement template has had great success. This could be another way to achieve success. There was a concept in that agreement where the improvement costs spent by the City on the ball fields would be amortized over time if the agreement was rescinded or terminated. The District was willing to adopt that methodology to this agreement. The District is limited with take backs as it is only for educational purposes. If declining enrollment problem happily reversed trend, the District would have ADA dollars to apply to amortized improvements. That concept is imbedded in the District's willingness to extend the term of the agreement.

Mayor Messina stated that Council has discussed this and wants this agreement to succeed. With the perspective dollars that need to be spent to bring the facility up to speed, they are normal tenant improvements, things the City wants to do to accommodate its needs; those are typically born by the tenant. The other items are types of repairs that may need to be made to bring it to a normal acceptable level. The term has a value to the City. It offers the opportunity to use outside funding. Most of these require a minimum term. Something of a 30-year nature opens up a lot of opportunity. The other issue is one of total cost. If the City has to spend \$1,000, it would not be a big deal. If it had to spend

\$50,000,000, it would be a big deal. That is the problem with the reports. It has been difficult to quantify the dollars that need to be spent. He suggested Council might want to discuss a threshold.

Council Member Whitney asked Mr. Alvarez what amount staff came up with for repairs. Mr. Alvarez stated that the number that City Staff came up with, excluding water intrusion problems, was \$1.1 million, with \$800,000 additional for tenant improvement costs. Staff did not have an estimate for the water intrusion issues. The water intrusion issues were confirmed by both the City and District inspectors. Council Member Whitney stated that a 30-year term would be his preference. He asked Mr. Sousa what the finance costs to the City would be if it were to finance \$1.5 million. Mr. Sousa stated that the internal funding method that the City had used in the past worked very well. Right now, the City is looking at borrowing at a 5% level. At that level, \$1 million would cost the City \$80,000 per year on a 20 year term. If the term was increased to 30 years, it would cost the City \$65,000. Council Member Whitney asked Mr. Alvarez if he had done any analysis on additional revenues the City might get by using the site. Mr. Alvarez stated that the City has an operating deficit of \$244,000, including operating costs and revenue. The increase in revenue would be about \$100,000; however, that amount would have to be credited back towards the costs to maintain the facility on an annual basis, so the numbers were the same. Council Member Whitney stated that the District and Board had to come to terms that would work.

Council Member Patterson stated that the City did not want to dip into the 20% reserves, however, it could not ask the District to come up with money the District does not have. She suggested using the foundation of the terms and using a process. Look at what the costs would be to get the building up to standards and code for use by the City as a community center. It is not going to cost \$20 million to bring a school that was recently refurbished back up to code. The building needs to be brought up to meet code. Anything beyond bringing the building up to code the City should figure out. Regarding the terms with the District, a process of bringing the building up to code for use, would be imbedded in the contract that the City could rely upon, rather than trying to set a numerical number of a 'not to exceed' amount. The City has to set a budget, so it meets public health and safety code, and the contract could have the terms so that if at phase one, if the City has exceeded the predetermined amount, the City could go back to the District at the staff level and kick in with phase two which could perhaps go beyond the 30 years, possibly up to 50 years. That would make the scouting community very pleased. The solution is not to work the numbers out, but for Council to give direction on the process so we could move forward tonight with an agreement.

Council Member Hughes stated that he supports this deal. He has wanted this to happen for a long time. Both agencies have fiscal responsibilities. This is not a 'we' vs. 'them.' He stated that one concern was a timing issue. There is an issue of uncertainty. If we knew that it was a set dollar amount, it probably could be worked out. However, there is not a known dollar amount. It could be \$50,000 or \$5 million. He would love to find a way to remove some of the uncertainty. It looks like the only way to do that is to complete the inspections and quantify the repair costs. Then, the City would know

exactly what it was dealing with and could be fiscally responsible. However, from the District's perspective, they need to get going on this, and are running out of time. He suggested literally 'buying time' to go through the inspection process. If the City paid the District 'x' amount of dollars for two months and at the end of that, it would know the dollars it was talking about, and both parties could make an informed decision. If at the end of the two months, the two parties could not reach an agreement, the District would not have to refund the money. If they could reach an agreement, the money would be credited to the terms of the agreement. He did not want to sign an agreement where in a month or two, it comes out that the agreement was not fiscally responsible. He was looking for feedback on his suggestion.

Mayor Messina asked Mr. Alvarez if the agreement were signed tonight, would the City start moving people into the buildings tomorrow. Mr. Alvarez stated that it was staff's opinion that the City could not do that, as there are corrections that needed to be done to the facility before it could be occupied. Mayor Messina asked how much and how long that would take. Mr. Alvarez stated that the unknown was the water intrusion issue, mold is present, and there is termite damage. There has not been a total destructive report on the entire building to determine the magnitude of that damage. If the lease was signed tonight, and funds were provided, and the City was obligated to assume the responsibility for the costs to get the building ready for occupancy, Staff would first need to run a conditions report, do thorough investigation to find out what the magnitude of repairs is, and the report would give staff a 'fix' and then would start the work.

Council Member Patterson clarified that City staff would work with Mr. Sousa to look at potential financing mechanisms for the repairs. Council Member Patterson asked Mr. Sousa how much time he needed to advise Council if they should include the tenant improvements in some sort of financing mechanism. Could he pull a package together within 30 days that would be operational? Mr. Sousa stated that yes; the City could arrange for financing the repairs using internal funding and arrange for external funding should that become necessary. Staff won't have an answer on the need for external funding until mid-May; until it receives all of the department's assembled financial information. The City needs to update the revenues so it could see how much was left in the reserves that it could use for funding.

Mayor Messina stated that his concern was that this was started a long time ago. Because of the process that is being followed, it is taking too long. Even if the City went with Council Member Hughes' suggestion, it could become a scenario where the City pays the District some money while it looks into this and then could decide it did not want it. He recognized that the District has other options for the property, and are hanging on to the fact that the City wants it. He does not want to force the District to go with someone else because of the City's inability to move quickly. He would like to get to the point where the City recognized there is a certain level of risk and a cost attached to that risk, but it is willing to spend the dollars. There may be some ways to delay or defer some of the costs.

Trustee Samiljan stated that she has sat through many minutes of hearing how there are over a million dollars worth of repairs on the building. She has heard comments about it

possibly being \$5 million. The reason she finds that so frustrating is because she has seen reports that the repair costs are only approximately \$100,000 to \$200,000. She does not know where the idea that it would cost millions of dollars to move classes back into the facility came from. She certainly never authorized the discussion. She sat on the Liaison committee for years at this point. She is totally fed up. She has had it. They went through the process to close the school. If the City wants to use the facility as a community center, then they should just do it. The District has other things it could be doing. The idea that it would cost millions of dollars is incorrect. The District recognizes there is a flaw in the roof. It recognizes that it will need to fix the flaw in the roof. But beyond that, the District is not paying for light switch covers, paint, carpet, etc. It is a facility. If the City wants it, it should use it. The District has other things it could be doing with its time. The repairs are not going to cost \$1 million.

President Fulton stated that he was intrigued by Council Member Hughes' comment. Both parties have reports. He acknowledged that the City had to be conservative in taking on this financial obligation. The District is on term with the 30 year term or longer if needed, and pursuing the partnership concept. The option consideration concept would work in a lot of real estate scenarios. However, the District has had this site closed for two years now. If the City takes a few more months, the District would be behind the eight ball. It does not want to go another year with the facility closed. The District wants to get the facility back in use. Plan B is an educational use for the District for younger children. It takes the District a while to ramp that type of a plan up. That is why the District wrote the City a letter in January 2007 stating that it needed an answer within 30 days. The District needs to start in April.

Superintendent Adams stated that her staff told her that if the District starts now, it could have the facility ready for the start of the 2007-2008 school year. If it were delayed, the District would have trouble meeting that deadline if this is delayed much longer. The District appreciated the offer, but it is under the gun, if the City was to say, after two or three months it did not want it. The District would not be able to meet the Plan B deadline in that case.

Mayor Messina clarified that the District was at a point where they have to fishhook the date.

President Fulton stated that on the extended term concept, or even extending the extended terms, he had positive headshakes from the other Board Members.

Council Member Patterson stated that there is a neighborhood that is in pain and a community that has been denied. She was compelled by that. In a different world, making smart business deals that allow all flexibility in the world would make sense. However, we are talking about the well-being and welfare of a neighborhood and community. This is a tremendous opportunity for the City and BUSD. The City has been waiting for a proper community center for a very long time. It has put off 40 Girl scout troops and over 10 Boy scout troops, and created a great deal of hardships for them by previous decisions that were made. Council could make a decision with the right process in place, giving

direction to staff and it is not \$5 million. It knows it has to meet public health code standards. Council has the ability to give direction to staff to get the conditions report, to begin financing schemes, get it in place, and have an operational facility. She would like to get in the direction of finding the process that everyone would be comfortable with.

Vice Mayor Schwartzman stated that he wants to see the facility as a community center. In the spirit of getting this done, he likes Council Member Hughes' suggestion, but at the same time understands the timing issue. He did not understand until recently, that it was 'as is.' He thought it was an inhabitable building. He did not think it would cost \$1 million, but no one really knows. Whether or not the City reaches agreement, or the District goes with its Plan B, the building has to meet health and safety codes. Someone has to pay for those costs. He appreciated the District coming up with some reopening money (\$25,000). He did not think those funds were sufficient. Any health and safety issues would have to be taken care of for occupancy (in a normal world). He suggested \$200,000 for the District's costs. For ten years, the District would get \$100,000 from the City instead of getting \$120,000. That would allow the City to amortize and add that into the working numbers to mitigate some of the unknowns.

Council Member Whitney stated there were some interesting opportunities. With regards to staff, there is a point where they need to run with the ball. Sometimes, it comes down to the elected officials need to make decisions. This is one of those defining moments. Giving it to staff to make the decision right now might be throwing it back into a black hole. He liked the idea of having a 30-year term with two ten-year extensions. He was open to discussing Vice Mayor Schwartzman's ideas. If there needs to be a ceiling on the number, that's okay too. A decision needs to be made.

On motion of Mayor Messina, seconded by Council Member Patterson, Council agreed to extend the term to 40 years with two ten year options, which would bring the term to 60 years, and taking the contract as is, with the adjustments raised (typos and technical changes), and accept the \$25,000 from the District, and the City bear any additional costs incurred, on roll call by the following vote:

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

Noes: Vice Mayor Schwartzman

Mayor Messina stated that the City now had an offer on the table, and it was the District's turn to respond to the offer.

Trustee Switzer stated that the lease term for square footage alone is way below market. The land alone is worth more than \$120,000 per year. If you find termites and have to end up building a new facility, the City would still be ahead because of the land.

Vice Mayor Schwartzman stated that the City did not own the land.

Trustee Switzer reminded Vice Mayor Schwartzman that they were discussing a 60-year lease.

On motion of Trustee Samiljan, seconded by Trustee Steinmann, the Board agreed to extend the term to 40 years with two ten year options, which would bring the term to 60 years, the City would take the contract as is, with the adjustments raised (typos and technical changes), the City would accept \$25,000 from the District, and the City would bear any additional costs incurred, on roll call by the following vote:

Ayes: Trustees Switzer, Steinmann, Samiljan, and President Fulton.

Noes: None

Absent: Trustee Stewart

Council Member Patterson stated that she had a technical question. She asked about the indexing of the insurance policy. Since it is a 60-year lease, could the City do a motion that it should be indexed in a similar fashion as the rental payment?

Trustee Samiljan stated that she was okay with that.

Ms. McLaughlin stated that could be technical direction to staff. Staff would take care of that. She reminded the Board and Council that they needed to take public comment.

Mr. Erickson stated that the City did not know what the building improvement costs were. He advised Council to insert a provision in the agreement that would put a stop limit on the costs the City absorbs. The City spent \$120,000 for a small mold problem at City Hall a few years ago. The City just does not know the costs at this point, which concerned him.

Public Comment:

1. Ramon Castellblanc – Mr. Castellblanc stated that he was a member of the 7-11 Committee. The Committee was concerned about the use of the facility, and wanted it to be used as a community center. Many citizens voiced ideas as uses for the facility. Some of the needs the community put forward were to do something for the seniors, free school programs, after school facilities for teens, theatre group space, education for adults, disaster preparedness, etc. He hoped Council would be cognizant of the needs expressed by the citizens. At least 75% of the space should be used as public use. He congratulated Council and the Board for moving forward with the agreement. He did not think the repairs were as extensive as people think.

Council Member Patterson asked Mr. Castellblanc if he thought a Master Plan needed to be developed. Mr. Castellblanc stated that was a good idea. They need a process to get all of the ideas brought forward. Council Member Patterson asked about the timing for that to take place. Mayor Messina stated this was not Council's place to take care of that. That was something that should be brought back at a Council meeting.

2. Bob Craft – Mr. Craft stated that he happily discarded the comments that he was prepared to give tonight. He was proud of Council and the Board for coming to agreement. He was convinced that the decay of the building was because it has sat

vacant for so long. The right thing has been done because this is the only way Benicia could afford a proper community center.

3. Norm Haditch – Mr. Haditch stated that he was concerned that the repair costs needed to be investigated and identified at the facility. He wanted to make sure the money the City is going to invest in the facility is going to be wisely spent and in the best interest of the citizens.
4. Citizen – The citizen was a neighbor of the facility. She asked that the City keep in mind that safety is very important to the neighbors. Traffic and noise are two concerns the neighbors have. The dances at the Vet’s Hall get very loud. If it is going to be like that, she would be concerned.

Superintendent Adams thanked Council and the Board for their actions tonight. The District will support the City in the transition into the facility.

President Fulton asked if the agreement would be signed tonight. Ms. McLaughlin stated that there were some technical revisions that needed to be made. She stated that they might be able to sign on Monday. Mayor Messina suggested having a small signing ceremony in Council Chambers. The public would be notified as to the time and date.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 7:35 p.m.

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Lisa Wolfe, City Clerk