

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
APRIL 17, 2007

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:00 p.m. on Tuesday, April 17, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: Council Member Whitney

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).

ANNOUNCEMENT OF CLOSED SESSION:

Lisa Wolfe, City Clerk, read the announcement of Closed Session.

CLOSED SESSION:

A. CONFERENCE WITH LEGAL COUNSEL – SIGNIFICANT EXPOSURE TO LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9

Number of potential cases: 5

**B. CONFERENCE WITH LABOR NEGOTIATOR
(Government Code Section 54957.6 (a))**

Agency negotiators: City Manager

Employee organization(s): Public Employees Union, Local 1

ADJOURNMENT:

Mayor Messina adjourned the meeting to Closed Session at 6:01 p.m.

RECONVENE OPEN SESSION:

Mayor Messina reconvened the meeting to Open Session at 6:42 p.m.

INFORMATIONAL ITEM:

Strategic Plan Update Study Session - Originally scheduled for April 10, 2007 and rescheduled to April 17, 2007:

Jim Erickson, City Manager, reviewed the staff report.

Council Member Patterson stated that she had extensive communication on the process with Mr. Erickson. Her frustration was that there was not a clear difference between big picture policies and some projects. For, instance there is an overarching policy item. It was the item about maintaining the City's Historic properties. The reason she voted for that item was because it was the policy in which the Commandant's Residence and the Clocktower both fall under. It is because of this confusion between policy and projects, that Council could not distinguish between the ranking of the one over the other. She was hoping that Council would conclude that Staff do the homework necessary to make that separation so that we do capture things like this. It is illustrative of the number of issues she had with the list that was presented to Council and the public.

Mr. Erickson stated that there was a matrix on the last page of the handouts that lists several strategic issues that came out of the public commentary. The projects that surround the concept areas deal a little bit with what Council Member Patterson was talking about. The projects were issued around those goal areas. Staff did a survey to find out the primary issue area that the projects relate to. There were two out of the nine issues that got the most 'hits' project wise. One was 'preserve and enhance City assets and infrastructure' (which would include the Commandants). The second was dealing with health and safety.

Mayor Messina stated that when he looked at all the items on the list, and it had 100% funding and process, he automatically took it off his list. He thought Council was picking what it wanted on its list of priorities for the upcoming year.

Vice Mayor Schwartzman stated that he looked at the list the same way. Regarding the X-Park, this should be done before the new fiscal year starts. He understood where Council Member Patterson was coming from with regards to the City's historical assets. However, in his mind, somewhere along the lines, decisions will need to be made regarding where that money is spent. In his mind, that is why he re-included the Commandant's Residence and Clocktower, because he wants to see those projects done and finished. Also, very high on the list, in the second twenty, he included preserving historical assets. He wants to make sure the two buildings are preserved.

Council Member Hughes stated that he and Vice Mayor Schwartzman were on the same page with respect to Council Member Patterson's comments. If Council put 'preserve historical assets' all together on one, as a top priority, he would not be convinced that all projects that fall under that category should be top ten priorities. He was not sure if Staff had the resources to work on all of those projects. On his list, the Commandant's Residence was on his top ten; however, the Clocktower was not. Council Member Patterson's process would not work for him. There were some of the existing top ten priorities that he left on his list because he was not confident that they would be

completed by the next budget cycle. It is important that Council is on the same page with the process.

Council Member Patterson stated that one of the criteria that needed to be established was that multiple objectives needed to be met. A matrix that shows multiple objectives needs to be done. She would like staff to come back with that added layer to it.

OPPORTUNITY FOR PUBLIC COMMENT:

1. Norma Fox – Ms. Fox stated that she submitted an email with some links to reports (on file). She brought a copy of the executive summary report, which discusses the strategic problem cities will be facing in the next ten years regarding the diminishing oil supply. The report also addressed global warming, drought, etc. She gave a copy of the report to Mr. Erickson and stated that she hoped that Council would read the information. She asked if Council would be interested in hearing a presentation from the authors of the report. She will have the author, Kristin Schwinn, contact the City Manager to try and set up a meeting.

Council Member Patterson asked Mr. Erickson to contact Ms. Schwinn to set a presentation date.

2. Kathy Kerridge – Ms. Kerridge stated that she wanted to second what Ms. Fox stated. The City needs to start taking sustainability issues into effect. She would love to hear a presentation from an outside speaker on the issues.
3. Bob Serratt – Mr. Serratt asked if Council priority #5 (Fire Rescue Boat) was still on the list. Mayor Messina confirmed it was. Mr. Serratt stated that it was somewhat bothersome that the City would be exploring the acquisition, training, etc. of a fire rescue boat when the City had not yet done a cost analysis for the use and maintaining of the boat. What benefit would the boat really serve and what would it do? Some questions that should be asked is the cost, maintenance, training for personnel, redefining rescue personnel, renegotiating contracts for staff to incorporate new responsibilities into their jobs, cost of a marina slip, etc. Alternatives could include soliciting volunteers to police the areas in the waters. Another concern he had was that he had to drive on the wrong side of the road in order to avoid potholes in the road. When the City looks at acquiring a vessel, it should look at infrastructure issues beforehand.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 7:10 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
APRIL 17, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:10 p.m. on Tuesday, April 17, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: Council Member Whitney

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Item A - Council received information from Staff.

Item B - Council authorized the initiation of litigation for code enforcement purposes if necessary.

Openings on Boards and Commissions:

- Board of Library Trustees:
One full term to May 31, 2010
- Economic Development Board:
Two full terms to June 30, 2011

The Solano County Superior Court is accepting applications for Grand Jurors. If anyone is interested in applying, they should contact Anne Cardwell, City Manager's office.

APPOINTMENTS:

RESOLUTION 07-32 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF TEDDIE BIDOU TO THE BENICIA HOUSING AUTHORITY BOARD OF COMMISSIONERS TO A FULL TERM ENDING JUNE 30, 2011

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

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

Noes: None

Absent: Council Member Whitney

Historic Preservation Review Commission – Chuck Mang:

Council Member Patterson stated that her reason for voting against the appointment is not a reflection on Mr. Mang, but a reflection on what the State has been asking the City to do with regards to its HPRC, which is to have people who are qualified to make decisions with historic properties in the City. Another problem the City has had with its commissions is that many of the commissioners own property in town, and are not able to participate due to conflict of interest. There are often times when they don't have full commissions because of these conflicts, or sometimes even a quorum. Other applicants, who applied and were qualified with advance degrees in planning, history and knowledgeable about CEQA, did not have such conflict of interest issues. In the interest of doing the people's business, she needed to vote against the appointment.

Vice Mayor Schwartzman stated that he had a discussion with Mr. Mang and thought he would do a wonderful job. However, there are currently two HPRC commissioners who are in the construction industry. If this appointment were approved, 43% of the committee would be in the construction industry. That would not be in the best interest of the City. Because of that issue, he would be voting against the appointment.

Council Member Hughes stated that he talked with Mr. Mang. He found Mr. Mang to be a good candidate. He served a year and a half on the DRC, has a demonstrated interest in historic preservation, etc. He meets the qualifications, maybe not all three, but he does meet one of them. He would be supporting Mr. Mang's appointment.

Mayor Messina stated it appeared that there would be a split vote and this item should be continued to a future meeting.

Council Member Patterson asked for a point of order on how votes are taken for continuation.

Mayor Messina stated that this item was an appointment. He makes the appointment, and Council votes on that appointment. He stated that it was quite clear that the Mayor rules on points of order. It was important that Council Member Patterson's should follow the rules and understand them.

Council Member Patterson stated that she was asking for direction on the law from the City Attorney.

Ms. McLaughlin stated that the Mayor was correct; however, Council was required to take public comment on an item if it is to be continued. However, because this item was an appointment, it could be continued.

The appointment was continued to a future meeting.

RESOLUTION 07- 33- A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF MICHAEL RADESKY TO THE BOARD OF LIBRARY TRUSTEES TO A FULL TERM ENDING MAY 31, 2010

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

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

Noes: None

Absent: Council Member Whitney

PRESENTATIONS:

National Volunteer Week Presentation:

Officer Patti Barron, Volunteer Coordinator, Benicia Police Department, reviewed the accomplishments of the Police Volunteer's over the past year. The volunteers donated 5,355 hours of volunteer time to the City of Benicia. The volunteers presented Mayor Messina with a symbolic check for 5,355 hours.

PROCLAMATIONS:

- National Volunteer Week – April 15-21, 2007
- Opening Day on the Straits – April 21, 2007

ADOPTION OF AGENDA:

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

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

Noes: None

Absent: Council Member Whitney

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Marilyn Bardet – Ms. Bardet discussed an article written in the Benicia Herald about Mike Marcus. She wished he could be a candidate for the HPRC. Sustainability should be a top priority for Council. The City should be aiming to form an environmental commission. The City of Los Angeles formed a green committee by mayor decree, to serve Council. The City of Willits did the same thing. There is a big effort in the State of California to address this issue. The Seeno Project fails to address issues with energy and potential consequences with climate. The developer should have known that these issues would be pressed upon the City. The City has to think 'long-term.' The City has no benchmark to judge sustainability at this point in time. She did not think that the recent ordinance that was discussed about formula based businesses gets at what the City needs it to get at.
2. Susan Street – Ms. Street stated that she was sorry the Police Volunteers left. She would love for them to help her find out who wrote the recent flyer regarding growth in Benicia. She read a paragraph from the flyer. She thanked whoever sent

- the flyer. This was an exciting topic. It will galvanize 99% of the citizens in town to stop the growth it was referring to.
3. Sabina Yates – Ms. Yates stated that she received the flyer that was discussed by Ms. Street. She read a portion of the flyer.
 4. Jon Van Landschoot – Mr. Van Landschoot stated that he wanted to speak about three truths. We say that we want qualified individuals on the commissions. The City just spent money hiring a new police chief. It picked the best person. Why not pick the best people for the commissions? We tell the state that we are going to get the best, most qualified people (in order to get CLG). What are Mr. Mang’s qualifications to sit on the commission? Three other applicants are qualified. The City just spent \$250,000 for the OPTICOS Plan. He urged Council to urge the Mayor to bring the qualified individuals forward. We need qualified people on the Planning Commission and the HPRC.
 5. Norma Fox – Ms. Fox thanked Council for putting the two ordinances that will be up for a vote on the 5/3 meeting on the City’s website. Now everyone can go on the City’s website to read them. However, the ordinances are not significantly different from what she saw at the last meeting. She hoped that the provisions in the two campaign ordinances would be looked at from the citizens and voters points of view instead of just the candidate’s point of view. If there is not a cutoff date for contributions, what good is it? Council should think about what the voters were asking for at all of the Council meetings.
 6. Council Member Patterson asked that Mayor Messina adjourn tonight’s meeting in recognition of the tragedy and loss of lives at Virginia Tech.

CONSENT CALENDAR:

Council pulled items VII-D, VII-E, and VII-G.

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

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

Noes: None

Absent: Council Member Whitney

The Minutes of March 29, 2007 and April 3, 2007 were approved.

ORDINANCE 07-09 - AN ORDINANCE AMENDING SECTION OF 1.16.010 (GENERAL MUNICIPAL ELECTION) OF CHAPTER 1.16 (GENERAL MUNICIPAL ELECTIONS) OF TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE REGARDING CORRECTING THE NOTICE PROVISIONS FOR GENERAL MUNICIPAL ELECTIONS

ORDINANCE 07-10 - AN ORDINANCE AMENDING SECTION OF 1.01.010 (ADOPTION OF CODE)) OF CHAPTER 1.01 (CODE ADOPTION) OF TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE REGARDING CHANGING THE PUBLISHER’S NAME

RESOLUTION 07-34 – A RESOLUTION ACCEPTING THE BIDS FOR THE ROBERT SEMPLE SAFE ROUTES TO SCHOOL PROJECT, AWARDING THE CONSTRUCTION CONTRACT INCLUDING BID ALTERNATE TO PFISTER EXCAVATING IN THE AMOUNT OF \$88,775.25, APPROVING CONTRACT CHANGE ORDER NO. 1, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

RESOLUTION 07-35 - A RESOLUTION AUTHORIZING AN AMENDMENT TO THE AGREEMENT WITH MV PUBLIC TRANSPORTATION, INC. TO INCLUDE FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

RESOLUTION 07-36 - A RESOLUTION APPROVING THE JULY 1, 2006 TO JUNE 30, 2010 MEMORANDUM OF UNDERSTANDING WITH THE PUBLIC EMPLOYEES UNION, LOCAL 1

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Purchase of replacement vehicles for street and water field divisions:

Council Member Patterson stated that she supported the purchase of the vehicles for two reasons: 1) the City needs the vehicles, and 2) the smaller vehicles are hybrids. She inquired about the two larger trucks. She previously inquired about using bio fuel. She was told that was not possible because the City had an arrangement with Valero. She wanted to have Staff to get this 'right.' Why have an arrangement where the City is locked into buying fossil fuels when it could be using bio fuels. Why not have an agreement with Valero, which has to meet greenhouse gas reduction under AB 32? It is time for the City to address that.

Mayor Messina stated that tonight was not the time to get into a discussion about alternative fuels. He agreed that it was a topic that Council should discuss. He suggested voting on the resolution, and bringing the discussion of the use of alternative fuels at a future meeting.

Mr. Schiada stated that the larger vehicles could use bio fuels, however, the City purchases its diesel and gasoline (at lower than market rate prices) through a good neighbor agreement with Valero. At the present time, the Benicia refinery does not offer alternative fuel.

Council Member Patterson stated that she would like to have a future discussion about this issue with Valero.

RESOLUTION 07-37 - A RESOLUTION AUTHORIZING THE PURCHASE OF FOUR REPLACEMENT VEHICLES FOR THE PUBLIC WORKS DEPARTMENT

FROM WILSON-CORNELIUS FORD OF VALLEJO IN AN AMOUNT NOT-TO-EXCEED \$101,445 AND AUTHORIZING THE CITY MANAGER TO SIGN THE PURCHASE ORDER ON BEHALF OF THE CITY

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

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

Noes: None

Absent: Council Member Whitney

Acceptance of the Military West Sidewalk and Slope Repair Project including change orders:

Council Member Hughes stated that he wanted to make sure he understood the budget impacts associated with this item. How much over-budget was this project?

Mr. Schiada stated that Staff was asking for \$18,000 to complete the project. There was not an original budget. The project came about as a result of the storms. The project was non-budgeted. The original funds approved were \$128,000. Part of the money used had been set aside for street repairs, etc. The amount spent for the project was \$189,000. Council Member Hughes stated that he has expressed concern regarding change orders in the past. There were three change orders associated with this project.

Council Member Patterson stated that she shared Council Member Hughes' concerns. She was not arguing that the change orders were inappropriate; however, Council should be informed on the changes. Council should be kept up to date on a project like this.

Mr. Erickson stated that this was an unusual project. In the future, Staff will keep Council informed and up to date on such projects.

RESOLUTION 07-38 - A RESOLUTION ACCEPTING THE MILITARY WEST SIDEWALK AND SLOPE REPAIR PROJECT AS COMPLETE, APPROPRIATING \$18,065 FROM THE GAS TAX RESERVES FOR CHANGE ORDER NO. 3, 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 Vice Mayor Schwartzman, seconded by Council Member Patterson, the above Resolution was adopted, on roll call by the following vote:

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

Noes: None

Absent: Council Member Whitney

Acceptance of the West 7th Street Sidewalk Safety Project:

Vice Mayor Schwartzman stated that he wanted to commend Staff on their efforts with this project.

RESOLUTION 07-39 - A RESOLUTION ACCEPTING THE WEST 7TH STREET SIDEWALK SAFETY PROJECT AS COMPLETE, 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 Vice Mayor Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

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

Noes: None

Absent: Council Member Whitney

PUBLIC HEARINGS:

None

ACTION ITEMS:

Introduction and first reading of an ordinance deleting section 1.04.100 (Appeal) and adding a new chapter 1.44 (Appeals) to Title 1 (General Provisions) of the Benicia Municipal Code

Heather McLaughlin, City Attorney, reviewed the staff report.

Council Member Patterson stated that she wanted to make sure this ordinance reflected the comments made by Ms. Kat Wellman, when she described what ‘interested party’ should be. The City Attorney assured her that the term ‘interested party’ meets the test. She wants to make sure that the definition is clear. She believes because the way this ordinance is being refined, that was addressed.

Mayor Messina clarified that the City would not use the term ‘interested person’ but would use the term ‘affected person.’ Ms. McLaughlin confirmed she would make that change.

Council Member Hughes discussed the difference between ‘interested person’ and ‘affected person.’ He thought the term ‘interested person’ would be better.

Council Member Patterson stated that the other items she discussed in her email was that the City was using the terminology ‘ten calendar days.’ She would prefer the term ‘ten business days’ as it would be more reasonable. Council agreed that changing the language to ‘ten business days’ was acceptable.

Council Member Patterson referred to page IX-A-7 – she would like to see that the intent of the ordinance and fee was not to thwart the ability to file an appeal. She suggested language in the referenced email ‘that does not deter or impede the public’s right of oversight by being excessively high and shall not exceed the average of similar fees levied by cities in the San Francisco Bay Area region.

Mayor Messina asked Council Member Patterson to think about the other side. This has to be balanced so that both sides are protected. His vision was that if you file an appeal

and win, you should not have to pay fees. If you lose, there should be some monetary penalty. It should not be so high that it dissuades appeals, but it should be something.

Council Member Patterson discussed the appeal process whereby at what point is it determined that an appeal has been upheld and thus the fees returned. In the case of council decisions, the next step is litigation and if the appellant prevails in court, then are the fees returned – even if it takes years to get through the legal system? With the appeals the City has had, they might be frustrating and time consuming, but they have not been frivolous. The protection for the applicant is putting forth a good project and working with Staff to come up with a good product.

Vice Mayor Schwartzman stated that he would prefer to keep things simple. If the period were eliminated the period and just state that ‘it shall not exceed the average of similar fees levied by cities in the San Francisco Bay Area region’, that would be good. By having it that way, it would not be overly expensive for the public to file an appeal.

Mayor Messina asked Staff if the City’s fees were high or low, compared to other cities in the area. Ms. McLaughlin stated that she did not think that the City had checked its fees lately, however last year, Staff proposed fee amounts that were average, and Council had them go back and lower the proposed amounts. Mayor Messina stated that he was okay with going with the ‘average’ but they should not be so high that it dissuades people from filing an appeal.

Ms. McLaughlin reminded Council that citizens could ask Council to call their items up which is a no cost process.

Council Member Patterson stated that she liked Vice Mayor Schwartzman’s proposed language ‘eliminate the period and just state that ‘it shall not exceed the average of similar fees levied by cities in the San Francisco Bay Area region.’ Another issue is the item on pg. IX-A-7 regarding the appeal process ending at a certain point. One of the places it ends is on the Uniform Building Code. If it goes to the Board of Appeals, it ends there. When she was a staff person, it was beneficial to have that appeal go to Council. It was good for Council to be able to express the direction it wants to go. The Uniform Building Code allows Council to do that.

Ms. McLaughlin stated that her reason for leaving the codes the way they were was that they were more technical issues. They are basically the City’s rules.

Council Member Hughes stated that his interpretation was different than Council Member Patterson’s regarding the appeal ending with the Board of Appeals. He asked Ms. McLaughlin to clarify which was correct. He suggested stating that if the citizen does not get the answer they are looking for at the Building Board of Appeals, they could appeal the issue to Council. He suggested changing that language to reflect that statement.

Mr. Erickson discussed the appeal process. Did Council really want to get into appeals on technical issues such as the size of pipes, etc.? That might make it more difficult for the applicant in the long run.

Mr. Schiada stated that typically the Board of Appeals issues are very technical issues. That might not be something that requires Council's action.

Council Member Patterson stated that was her point, that those types of situations were very rare. The Building Board of Appeals has met only twice in the past ten years. She stated that 99% of the time, Staff was doing the right thing and technical issues were being solved at the right level.

Vice Mayor Schwartzman stated that on one hand, Council is the final body. On the other hand, he thought that staff could take care of the technical issues.

Council Member Hughes stated that he did not want to get involved in the technical issues, but if there was a way to allow the exceptional cases to be able to appeal to the Council, he would be open to discussing that.

Ms. McLaughlin stated that maybe since there have been so few appeals to the Building Board of Appeals, she did not think there would not be much risk in simply stating that 'those decisions could be appealed up to Council.'

Vice Mayor Schwartzman stated that he would be okay with that language. However, that is just addressing the Building Board of Appeals. What about the trees? Should Council do the same thing there?

Council Member Patterson stated that she would err on the other side with that item. When you are dealing with a structure and habitable areas, the reason a technical standard exists has nothing to do with its habitable area. She would like to give the tree ordinance a chance without having to come to Council.

Vice Mayor Schwartzman stated that Council has not even seen the new tree ordinance, so he was not sure how to deal with it. How could Council vote on it when it did not know what that would be?

Mayor Messina suggested striking the 'Building Board of Appeals.'

Vice Mayor Schwartzman stated that he had no problem with the appeals, however, trees were an emotional issue.

Council Member Hughes confirmed he would strike the Building Board of Appeals, and leave in the trees and mobile homes.

Vice Mayor clarified the following changes to be made:

- 1.44.020 – 'affected person' changed to 'interested person' throughout document

- 1.44.060 – change 10 days to 10 business days
- 1.44.080 – at end of sentence, not to exceed the average of similar fees levied in ten cities in the local area
- Strike the ‘Building Board of Appeals’

ORDINANCE 07- - AN ORDINANCE DELETING SECTION 1.04.100 (APPEAL) AND ADDING A NEW CHAPTER 1.44 (APPEALS) TO TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, the above Introduction and First Reading of an Ordinance was approved as amended, on roll call by the following vote:

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

Noes: None

Absent: Council Member Whitney

INFORMATIONAL ITEMS:

Reports from the City Manager:

None

Council Member Committee Reports:

1. Mayors’ Committee Meeting (Mayor Messina) - Next Meeting Date: April 18, 2007 - Council Member Patterson stated that she had a question on the agenda included in the packet. Her question was on the item relating to formula type businesses. Mayor Messina stated that other cities were watching what was going on in surrounding cities. The other mayors were curious what Benicia was doing. There was not a discussion on the topic at the meeting. He included Benicia’s ordinance to show what the City was doing. Council Member Patterson stated that it seemed odd that it was on the agenda. If it was not going to be discussed, couldn’t their staff’s pull that information? Mayor Messina stated that he was also surprised that it was included. He did not know it was included until he got to the meeting.
2. Association of Bay Area Governments (ABAG) (Mayor Messina) - Next Meeting Date: April 19, 2007
3. Audit & Finance Committee (Vice Mayor Schwartzman and Council Member Hughes) Next Meeting Date: May 4, 2007
4. League of California Cities (Mayor Messina) - Next Meeting Date: April 30, 2007
5. School District Liaison (Council Members Whitney and Hughes) - Next Meeting Date: To be determined
6. Sky Valley Area Open Space (Council Members Patterson and Whitney) - Next Meeting Date: May 2, 2007
7. Solano EDC Board of Directors (Mayor Messina) - Next Meeting Date: May 24, 2007
8. Solano Transportation Authority (STA) (Mayor Messina) - Next Meeting Date: May 9, 2007
9. Solano Water Authority/Solano County Water Agency (Mayor Messina) - Next Meeting Date: May 10, 2007

10. Traffic, Pedestrian and Bicycle Safety Committee (Council Members Patterson and Hughes) - Next Meeting Date: April 25, 2007
11. Tri-City and County Regional Parks and Open Space (Council Member Whitney) - Next Meeting Date: April 25, 2007 (Citizen's Advisory Committee)
12. Valero Community Advisory Panel (CAP) (Council Member Hughes) - Next Meeting Date: April 26, 2007
13. Youth Action Task Force (Vice Mayor Schwartzman and Council Member Whitney) Next Meeting Date: April 25, 2007
14. ABAG/CAL FED Task Force/Bay Area Water Forum (Council Member Patterson) - Next Meeting Date: April 23, 2007

Vice Mayor Schwartzman asked when the Code of Conduct item would be brought back to Council for discussion. Mr. Erickson stated that he believed it would be on the next agenda.

COMMENTS FROM COUNCIL MEMBERS:

Request for consideration of an ordinance clarifying the scope of design review authority – continued from the April 3, 2007 City Council Meeting:

Mayor Messina stated that the issue that was presented to him was one of making sure individuals understand the rules and that the City needed to be consistent with those rules. He hoped the City could give specific directions to potential applicants, so that when they want to do something, the City gives them the right direction the first time so they could bring back a design that complies with the requirements.

Council Member Hughes stated that he liked the fact that this would create some certainty for the homeowners. He did not necessarily agree with all of the limits, but would like to bring it back for discussion.

Vice Mayor Schwartzman stated that in this issue, there was a concern that design review was getting into some of these issues. He asked Mr. Knox if that was something that HPRC and Design Review was getting involved.

Mayor Messina stated that members of the public as well as some design review commissioners brought the issue to his attention.

Mr. Knox stated that one of the specific charges of the HPRC deals with the setback issue. Along First Street, applicants are strongly encouraged, if not required to bring the buildings to the back of the sidewalk so that there is a consistent facade with a zero setback. Likewise, buildings off of First Street are strongly encouraged, if not required, that applicants be consistent with the historic homes in the area. The height issue is one that deals more with facade. There is an inequity issue in the Historic District over the height of the buildings because the Downtown Historic Conservation Plan does not allow property owners to lift them up to change the height of the building. HPRC is not in the business of telling property owners they can't build to the maximum height, but they often weigh in on whether a flat or peaked roof would be more appropriate.

Council Member Patterson stated that she was concerned about going in this direction. The City just spent a lot of money and time developing a Downtown Master Plan and Form Based Code that she hopes would be adopted soon. The problem is better addressed by developing stronger criteria in the Secretary of Interior Standards. She would rather see that tool strengthened. It is more confusing when you start limiting what a design review is actually reviewing.

Public Comment:

1. Don Dean – Mr. Dean stated that he was interested to see this item on the agenda. It was his understanding that this was to clarify the zoning and purview of the HPRC. The DRC should have the tools available to look at all of the design areas, such as size, scale, etc. If it is not broke, don't fix it. He was not aware this was a problem in the City. The DRC has done a pretty solid job over the years. If the DRC goes outside of their purview, an appeal process could be initiated. He does not see a need for Council to play with the language.
2. Marilyn Bardet – Ms. Bardet stated that one of the problems for her with this is that she feels that there is an arbitrary divide between discussing the design of the facade as opposed to the mass and size of a project. She considers the City's Historic District's to be an endangered species. The kind of things that have been happening in the Arsenal merit concern. She felt that you couldn't discuss a project well at the HPRC level unless you can discuss the project as a whole. That has to do with space, intervals, etc. The City needs to strengthen the tool of the Secretary of Interior Standards.
3. Jon Van Landschoot – Mr. Van Landschoot stated that he agreed with Mr. Knox. The City just spent a lot of money. Why don't we let the new plan work for six months to two years? If the City does this, it would be making a non-class citizen of the historic property owners. They can't go up, sideways, talk about setbacks, etc. Someone who has a vacant property can do whatever they want. He could appeal it, but the HPRC would say that they had been stripped of the authority. It would be a bad idea to take this away.

Mayor Messina stated that what he was suggesting was to state that people had to follow the Secretary of Design Interior Standards. The City would be saying that you couldn't be arbitrary. Applicants would know the rules and standards up front. It would give something they could use to plan their projects.

Council Member Patterson asked Mr. Van Landschoot if he read the ordinance. Mr. Van Landschoot stated that he had read the ordinance. Council Member Patterson asked if he saw any reference to the Secretary of Interior Standards. Mr. Van Landschoot stated that he did not. Council Member Patterson asked Mr. Van Landschoot if he saw any reference that the design review was consistent with the Secretary of Interior Standards in the title of the proposed ordinance. Mr. Van Landschoot stated that he did not. He encouraged Council to vote not to do this and read the proposed ordinance. Council Member Patterson asked Mr. Van Landschoot if he had past experience where in the old days, the PC would be deciding things, they would be cautioned by Staff that it needed to go to DRC,

and then they would be cautioned that they were getting into Planning? Mr. Van Landschoot stated that rang a very big bell. That was one of the problems he raised about combining the two commissions. Council Member Patterson clarified that Mr. Van Landschoot was not arguing that there was a problem, just that the City is using the wrong tool in dealing with the Historic District.

Vice Mayor Schwartzman stated that he thought the discussion was getting too involved, and this was supposed to be a discussion on whether or not to bring this item back for discussion at a future meeting.

Council approved placing this item on a future agenda for discussion, on roll call by the following vote:

Ayes: Council Members Hughes, Schwartzman, and Mayor Messina

Noes: Council Member Patterson

Absent: Council Member Whitney

Request for consideration of an ordinance creating a new construction Design Review ordinance:

Council Member Patterson reviewed the staff report. The purpose of the request was to have staff do the preliminary work on looking into ordinances from other cities, and for the Planning Commission to take a look at those ordinances to determine if there is a need for such an ordinance for Benicia, and if so, recommend one to Council.

Council Member Hughes agreed with Council Member Patterson. The City has to find a way to avoid surprises. He was fairly certain he would not vote for design review for all single-family homes. He would discuss the idea of story poles, which might accomplish the same thing. Design review for all projects at that threshold would be overkill.

Vice Mayor Schwartzman stated that the story poles were an interesting idea. More than anything else, the noticing is what might be necessary so the neighbors know what is going on. He was not sure if Council should look at design review for single-family homes outside the Historic District. He is not sure how to best deal with this issue.

Mayor Messina stated that he was not sure if the City should go there. Council and Staff have a lot of stuff on their plate at this point. He was concerned whether staff had the capacity to address all the issues. Regarding the aspect of 'surprise', he agreed there was room for concern. He could not support what has been proposed.

Council Member Hughes stated that he agreed with the Mayor, however, he liked the idea of coming up with a mechanism for dealing with surprises. He suggested that topic be put on a future agenda.

Council Member Patterson discussed examples and how the applicants needed to be protected. Benicia is a maturing community. Some citizens are making major changes to their properties. The City does not enforce CC&R's (as was proved with the Incline Place project). The City went out of its way to say that it did not enforce CC&R's. An

ordinance in place that states it would be consistent with CC&R's would basically provide a bill of rights for the existing neighborhood. This would provide rules for people who want to build and rules for the people who would be affected. The City should do what is best for Benicia. Council needs to understand why other cities have ordinances such as these.

Vice Mayor Schwartzman asked about the project Council Member Patterson referenced on Buena Vista. Is that a three-story home that is being built? Mr. Knox stated that if you count the front of the house where the garage is, it would be considered three stories. The issue with the house was not just the bulk and the mass, but the portion of the view corridor that it consumes. Had there been some indication with story poles or something similar, it might have been a little different. The City does not currently have a view ordinance. Vice Mayor Schwartzman stated that maybe that was something that needed to be looked into. He stated that with the Incline Place Project, the main issue was the lot line adjustment. He was not sure if there needed to be an ordinance. Maybe Council needed to tweak the zoning requirements.

Public Comment:

1. Marilyn Bardet – Ms. Bardet discussed a solar system she had installed in her home. There is now a state law that states you cannot obstruct the sunlight to a home that has a solar system.
2. Jon Van Landschoot – Mr. Van Landschoot stated that in the historic area, the story poles are a good idea. Where do you go in the other areas if the poles are too high? Unless you have some power behind this, it won't work. People are building more outside the Historic District than inside the Historic District. The City needs to think ahead with this issue.

On motion of Council Member Patterson, seconded by Mayor Messina, Council did not approve placing this item on a future agenda for discussion, on roll call by the following vote:

Ayes: Council Member Patterson

Noes: Council Members Hughes, Schwartzman, and Mayor Messina

Absent: Council Member Whitney

As requested by Councilmember Patterson, Mayor Messina asked for a moment of silence for the recent loss of lives at Virginia Tech.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 9:21 p.m.

Lisa Wolfe, City Clerk