

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
MAY 1, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:00 p.m. on Tuesday, May 1, 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, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Openings on Boards and Commissions:

- Economic Development Board
Two full terms to June 30, 2011

APPOINTMENTS:

RESOLUTION 07-40 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF MARY EICHBAUER 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, Whitney, and Mayor Messina

Noes: None

Historic Preservation Review Commission:

Chuck Mang – One full term to February 28, 2011

Council Member Patterson stated that she indicated at the last Council meeting that she would be voting against this appointment. She was not voting 'no' because of the decent and responsible man. She was voting 'no' because he did not meet the goals of the commission. The goal was to have diverse experience, knowledge, and skills, and when possible, not to have the requirement of learning on the job. She was also concerned about potential conflicts of interest. The commission continues to have problems because

of those conflicts, and the public is not being served. When there are qualified incumbents and applicants, why is this particular individual being chosen? To her it was a sign of the Mayor's stubborn stance with these appointments. It was unfortunate, particularly in light of some of the private material interests that relate to these land use decisions. There needs to be qualified individuals on the commissions without potential conflicts of interest.

Vice Mayor Schwartzman stated reasons for his vote against the appointment. This would be the third commissioner who works in the construction industry. It would not be a diverse commission.

Public Comment:

1. Donnell Rubay – Ms. Rubay thanked Council Members Patterson and Schwartzman for their comments. She read the following prepared statement: "I'd like to ask two things:

- 1) First, I have a concern that a person who has attended one seminar in historic preservation has sufficient historic preservation and CEQA expertise to sit on a commission which costs historic property owners \$1500 to go before. He will be joining a commission where the majority of commissioners do not have formal training in history, historic preservation, CEQA or related areas. Of course staff can help with expertise - but non-historic property owners do not have to pay \$1500 for Staff's advice, so why should historic property owners? Therefore, I'd like to ask that the City consider eliminating, or at least lowering, the fee it charges historic property owners to go before the HPRC.

- 2) Second, from the Mayor's proposed ordinance back on April 3, it's clear that he believes that underlying zoning should prevail over Historic Plan, Secretary of the Interior and CEQA standards. Others may also believe that if we only need to follow zoning, things would be a lot simpler. I believe that the mayor's proposed appointee to the HPRC - and other members of the HPRC - may share the Mayor's views.

What really makes things confusing, though, is when the Mayor and HPRC commissioners want to follow underlying zoning yet there are Historic Plan and CEQA laws in place that say something different. The best way to resolve this situation is to decide which laws - underlying zoning or the Historic Plan and CEQA - we, as a community, are going to follow.

Therefore, I ask that the City initiate a workshop on whether or not it should retain the Historic Plan. Also, at this time historic property owners can be informed on just exactly what the costs and benefits are of a Historic Plan. Soon, the City is supposed to be bringing forward the results of the update of the Historic Survey. Consequently, this would be a good time—before, the City restricts historic property owners further - to have such a workshop. Thank you."

2. Jon Van Landschoot – Mr. Van Landschoot stated that he has felt like a second-class citizen since 1991 since the City Council voted on the two historical plans. No one Downtown asked the residents Downtown what they thought. It limited his property rights. It took away a lot of things he can no longer do. There are a lot of citizens in the Downtown and Arsenal areas that have lost their rights.

Wouldn't it be nice if the Mayor believed in the historic preservation concept and appointed qualified individuals to the HPRC? There are currently three qualified individuals who have applied. It has been three years since the CLG application process began. When Vice Mayor Schwartzman and Council Member Hughes ran part of their campaigns was on the fact that it was taking too long to get the Joint Use Agreement going. Why don't we get the survey done quickly and bring it back for Council to vote on. Council needs to get on the same page with zoning, the OPTICOS Plan, and the Historic Plan. It should not take three years to do this. Wouldn't it be nice if Council and the citizens decided what they want? He wants Council to give him back his rights. The HPRC should be renamed as the Contractor's Commission.

3. Jeanine Seeds – Ms. Seeds stated that this is getting to be repetitious – appointing people to a commission where if it were a paid job, they could never get it. Why are we appointing unqualified individuals to the commissions? As soon as someone qualified applies, everyone shudders. The condominiums downtown are still not full. Because it is not a paid position, the Mayor can appoint anyone he wants to. She has never heard of Mr. Mang before. This City is process oriented, not result oriented. If she took three years to get her job done – that would be ridiculous. Council's job is to get what the citizens want done. The citizens are looking for someone who knows what they are doing. Four qualified individuals have applied for the seat.
4. Sandra Shannonhouse – Ms. Shannonhouse stated that she thought that there are four contractors on the HPRC. She was appalled to read Ms. Rubay's letter in the paper calling for the abolition of the Downtown Historic Conservation Plan. She was one of the people who worked very hard on that. Her house is going to be delisted. She read the following prepared statement: 'I am increasingly concerned about the rules, bylaws, and ethics under which the Historic Preservation and Review Commission is operating. There are an inordinate number of conflicts of interest, because of the make-up of the commission and because the commissioners seem to be contracting/hiring each other's businesses or business with which another of the commissioners work. Both of these issues could be avoided. It is vital that they be avoided most especially because the commissioners themselves bring projects before HPRC. As well, there are an inordinate number of postponements of agenda items because commissioners are too often unable to attend. Recent reasons, I am told, are because of a fishing trip and a conference, both announced after two different public hearing dates were announced. Many tax dollars had already been spent on staff time and postage to properly notice the hearings. In the case of the May 3 hearing, commissioners had been polled and a quorum responded that they would be able to attend a public hearing on May 3, but again, after the notices were mailed one of them announced that there was a conference to attend. Everyone understands what an emergency is; fishing and conferences are not emergencies. When commissioners are appointed they accept the responsibility of the meeting schedule. If they cannot maintain their responsibilities, then they ought to resign. Further, I question the propriety and even the legality of opening a public hearing, as will be done on May 3, when one of the few commissioners that are going to vote on the matter

- will not attend. Some of the commissioners clearly do not even read their packets. If one of the only four commissioners who will be able to vote on a project will hear part of the public testimony on a tape or as recounted by staff, it would seem to imply that the public hearing process is not necessary, that is a sham. The law however is otherwise. Interested and concerned members of the public who want to attend the meetings arrange their work schedules to accommodate the City's schedule. Some of us have canceled trips, purchased plane tickets to return from working out of town, etc. Also affected are applicants who pay \$1,500 to appear before the HPRC. This is not a 'concerned citizen's' commission that they are appearing before, but rather what is supposed to be a professionally competent and diverse group within the professions of planning, historic preservation, design, and construction. I urge the Council to agendaize a discussion of HPRC and take a close look at restructuring the appointment process, the bylaws, rules, and ethics of the HPRC. You can solve the needless problems that give the appearance of being insincere about historic preservation and which when tolerated by the Council can appear to be an attempt to subvert the process."
5. Bob Mutch – Mr. Mutch stated that this issue has been coming up for a few years now. One word left out of the appointment process as of late is 'compromise.' It bothered him that in the face of common sense, the qualified individuals have not been considered. The loggerhead we have reached over the past few years brings up the term 'spite.' It seems like determination to not compromise on this subject. It makes people who often come off as unreasonable appear to be reasonable individuals. That affects the process. The position taken by the Mayor over the past few years has motivated the people to gather the ranks to face the Council as the majority, when in fact, that may not be the case. He would appreciate consideration for there being more than one side to the argument. He would like the qualified individuals to be considered and not have a 'stacked' commission. He looks forward to seeing a change in that regard.

Council Member Hughes stated that he expressed his thoughts on this subject at the last meeting. He sat down and talked with Mr. Mang. He meets the qualifications of the commission. There are probably other individuals who may have more qualifications. He did not feel Mr. Mang had a hidden agenda.

Council Member Whitney stated that he had ex parte communications with Ms. Rubay. If Mr. Dean had been reappointed, he would have voted for him. He does not want to get sucked into a situation that polarizes the community. He is looking for a good, honest individual who does not have any hidden agendas, and who will look out for the City. He felt Mr. Mang was qualified for the HPRC. He fits his criteria and litmus test.

RESOLUTION 07-41 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF CHUCK MANG TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM ENDING FEBRUARY 28, 2011

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Whitney, and Mayor Messina

Noes: Council Members Patterson and Schwartzman

PRESENTATIONS:

Update on Benicia Emergency Response Team (BERT):

Mr. Jerry Pollard, Benicia Citizen's Council Corp, provided an update on BERT.

Council Member Patterson stated that she was pleased that they were able to get the schools involved in the program. She inquired about the medical corp. and the pet rescue efforts. Mr. Pollard stated that he was not too involved with those aspects of the program. Regarding the medical facility – since Benicia does not have a major medical facility within the community, that is a very important issue. Many people who live in the community who are medical personnel have to report back to the hospitals where they work. They have looked at how to engage retired physicians, nurses, etc. The problem has to do with the issue of licensing. There are some initiatives in other states that California is looking at. They will keep a close eye on that. Chief Hanley elaborated on the pet rescue item. There is a constant desire to make sure the BERT representatives are able to do whatever is needed in the neighborhood they are assigned to. They have identified local resources they could call upon to help out pet rescue efforts.

Council Member Whitney asked Mr. Pollard to elaborate on the proposed 'CPR in the Park' event. Mr. Pollard stated that it was in the early stages of planning. Funds are necessary for the event.

PROCLAMATIONS:

- Recognition of Water Awareness Month – May 2007
- Recognition of Peace Officer Memorial Days and Police Week in May 2007
- Benicia Museum Month – May 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, Whitney, and Mayor Messina

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Mayor Messina stated that there were many items submitted (copies on file).

PUBLIC COMMENT:

1. Dan Clark – Mr. Clark spoke on behalf of the Benicia Old Towne Theatre Group (BOTTG). The Board of Directors has eight individuals on it. They have put in over 900 hours of volunteer time in. BOTTG is seeking City funding for its programs. They would like Council to see what it is that the group does. He provided information to Council and hoped that they would come and see a performance. Council Member Patterson attended a recent performance.

- Council Member Patterson stated that she had a very good time at the recent performance. People don't have to leave Benicia to see excellent theatre.
2. Norma Fox – Ms. Fox stated that she wanted to say a few words about the campaign finance discussion that is scheduled for the 5/15 Council meeting. The comments on the City's website appear to be in draft format and she did not think they were the final drafts. Is Council still open to comments from the community? There are provisions that the citizens asked for are not included at this point. Mayor Messina stated that Council was always open to comments and suggestions. Ms. Fox stated that common sense information citizens need to make informed decisions were not included. Cut off dates were not included. Issue advocacy groups were not addressed. The issue of elected council members recusing themselves from voting on an issue that would benefit them would be an excellent addition to the ordinance. It would blow away all of the distrust that people keep mentioning.
 3. Bob Mutch –Mr. Mutch stated that he wanted to correct Ms. Fox's previous comment regarding Benicia Taxpayer's Association (BTA). If recording the candidates' answers to questions was biased, he does not know where the City could go from there. He warned citizens that there would be claims of myopic and very exclusionary points of views guiding them. There is one item that will be sure to bore people. Let's say it all together 'the sky is falling.'

(Unsolicited comments from the audience.)

- Council Member Patterson asked for a point of order. She asked Ms. McLaughlin if Mr. Mutch was talking about an agenda item. Mayor Messina stated that he was the person who made decisions on this. He rules on points of order. However, he agreed that Mr. Mutch was referring to an agenda item. He asked Mr. Mutch to refrain from comments that deal with agenda items. Mr. Mutch stated that it bothered him that he was being shouted down because of his views. His opinion should not be counted as less than other people's opinions in the room. There is an intolerance of varying opinions in this town. He suggested that the citizens who were shouting at him watch the videotape once in a while.
4. Bob Serratt – Mr. Serratt stated that at a recent Council meeting, he voiced his views on the fire rescue fireboat. He questioned the validity and cost effectiveness of the boat. There needs to be a discussion on this issue. It seems like it would behoove the City to extend resources on infrastructure repairs such as the poor street conditions on East E Street. The repairs are inadequate. Mayor Messina asked Mr. Erickson to address the issues raised by Mr. Serratt.
 5. George Delacruz – Mr. Delacruz stated that his comments were in regards to LAFCO and the formation of a port district. He contacted the California Special District Association. He was told that the City staff should contact LAFCO. He watches Amports every day. Every other automobile port gets a per unit fee for every car they unload. The City of Benicia gets nothing. We need to form a port district. The City is losing millions of dollars every year because it does not form a port district. The money the City could take in would take care of the harbor dredging costs. He would like Council and Staff to work on the issue.

CONSENT CALENDAR:

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

On motion of Council Member Whitney, seconded by Vice Mayor Schwartzman, the Consent Calendar was adopted as amended, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

Council approved the Denial of a Claim against the City by Edgar Melendez and referral to insurance carrier.

ORDINANCE 07-11 - 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

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Second reading of an ordinance to regulate formula businesses:

Mayor Messina stated that he had a conflict of interest and therefore would be excusing himself from the discussion. Vice Mayor Schwartzman chaired this portion of the meeting.

Council Member Patterson stated that at the first reading of this ordinance she voted no, hoping others would vote that way as well. She did not feel the ordinance went far enough. The City could fill all of Downtown with one of each type of formula businesses. She wants to support the restriction, but hoped the City would do more the next time.

Council Member Whitney asked Mr. Knox about his opinion on this issue. Mr. Erickson stated that Staff would not provide personal opinions on policy positions. Staff had no objections to the proposed ordinance.

Vice Mayor Schwartzman stated that in the discussion, Council was talking about requiring a use permit. That process is deemed to help guard against a street lined with formula businesses.

Council Member Patterson stated that in her research, she found that many other cities that had outright restrictions for their downtown areas. She felt Benicia was in that same category and that it warranted restriction. She asked Mr. Erickson if Staff ever objected to the second reading of an ordinance. Mr. Erickson stated that it may have, but not to his recollection. He stated that Staff was in support of the first reading of the proposed ordinance in question. Council Member Patterson stated that it was an unnecessary challenge to Staff's position.

ORDINANCE 07-12 - AN ORDINANCE AMENDING SECTION 17.12.030 (DEFINITIONS) OF CHAPTER 17.12 (DEFINITIONS), AMENDING SECTION 17.28.010 (SPECIFIC PURPOSES), AMENDING SECTION 17.28.020 (LAND USE REGULATIONS) OF CHAPTER 17.28 (C COMMERCIAL DISTRICTS), AND ADDING A NEW SECTION 17.70.350 (FORMULA BUSINESSES) TO CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING)

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

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

Noes: None

Abstain: Mayor Messina

Approval of the amended Memorandum of Understanding (MOU) on Joint Solano Emergency (Police, Fire, and Emergency Medical Services [EMS] communications activities (SECA) with the Cities of Solano County and the Solano Emergency Medical Services Cooperative:

Council Member Patterson commended Mr. Erickson and Staff on this item. She had a concern regarding the coordination between state and federal communications. She asked Staff what the status of that was. Will the agreement be amended to include that item? Mr. Erickson stated that he was not sure if the agreement would be amended. Benicia is a member of a statewide cooperative agreement in an emergency operations plan. The plan would be pursuant to that plan. He was not aware of a new effort with the issue raised by Council Member Patterson.

Chief Hanley stated that all communications would have to go through the Office of Emergency Services (OES). Council Member Patterson stated that she thought that was the current procedures. She thought it might have been updated. She asked Staff to follow up on the issue and get back to Council with an update.

Council Member Patterson stated that another concern she had was the siting of the communication facilities. It identifies 'South County' which she believed Benicia was a part of. She asked Staff to communicate that with Council and be mindful of the special scenic corridor in South County.

On motion of Council Member Patterson, seconded by Vice Mayor Schwartzman, Council Approved the Memorandum of Understanding (MOU) on Joint Solano Emergency (Police, Fire and Emergency Medical Services [EMS] communications activities (SECA) with the Cities of Solano County and the Solano Emergency Medical Services Cooperative, on roll call by the following vote:

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

Noes: None

Approval of the job description and salary range for the position of Human Resources Manager: Jim Erickson, City Manager, reviewed the staff report.

Council Member Hughes stated that he did not have an issue with the reorganization. He agreed that the IT Department was a better fit with the Finance Department. However, it is essentially a downgrading of the Human Resources Director position. Human Resource is a critical component of any business. He understands that the position will not have a large staff reporting to it. He stated that it was not the number of people you have reporting to you, but the impact of your actions and decisions. The Human Resources Director has significant impact on the entire City and City Staff. They are involved in staffing, negotiations, reporting to Council, etc. He strongly recommended that Council not downgrade this position.

Mr. Erickson stated that it was not Staff's intent to downgrade the position, but to improve it. He has seen this work well in other cities in the Bay Area, including the cities of Davis and Vacaville. He did not think this would diminish the significance of this position. He was thinking about running an excellent and efficient position. The City would also be able to save money, have better coordination, and would be more efficient.

Council Member Hughes stated that he was all for saving money; however, this would be a classic situation of being penny-wise and pound-foolish. It does matter what it is called and what the position is paid when the City is trying to attract quality individuals. This could have a negative effect on Staff's morale.

Council Member Patterson stated that she shared some of Council Member Hughes' concerns about this issue. She was persuaded in her discussion with the City Manager that the reorganization made some sense. She had some concerns with the job description on page VII-E-6 – Supervision - she would like to delete 'department head of department' so that the department head always reports to the City Manager. If they got changed midstream to only report to a department head, it might affect the quality of the people the City gets. Council Member Patterson stated that she would like to have 'management to strength' imbedded in this job description. This could be passed with the understanding that be inserted in. Mr. Erickson stated that he was torn on the issue of where that should be inserted; however, he was okay with the concept.

Mayor Messina stated that he would hate to have the 'buzzword' tied into that and have the City tied down to that term. He would like to be able to accommodate changes that would happen over time.

Council Member Patterson stated that job descriptions should be revisited and reviewed on an ongoing basis anyway. On the section that addresses knowledge, skill, and ability, she would like to see harassment training and violence awareness inserted into the description. Mr. Erickson stated that he did not have an objection to the suggestion.

Mayor Messina stated that there was no question that the City needed to try and attract the most qualified individual for the position. Bifurcating the position to remove IT from the job would allow the position to focus on core strengths for the human resources position. He was comfortable with following the proposed course with the job description. Long term, if someone was in the position, and the title and salary needed to be changed, he would certainly be open to that.

RESOLUTION 07-42 - A RESOLUTION APPROVING THE JOB DESCRIPTION FOR HUMAN RESOURCES MANAGER AND ESTABLISHING THE SALARY RANGE

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

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

Noes: Council Member Hughes

Mayor Messina called for a 10-minute break at 8:50 p.m.

The meeting resumed at 9:02 p.m.

PUBLIC HEARINGS:

Adequacy review of the Benicia Business Park Draft Environmental Impact Report:

Jim Erickson, City Manager, briefly introduced the item. He stated that it was Staff's conclusion that the City should proceed with the EIR, however, there are issues identified in the report that need to be addressed.

Mr. Knox reviewed the timeframe for the sequence of events that led up to the City receiving the draft EIR. After the draft EIR came out, there was the standard 45-day period in which comments could be made on the draft EIR. During that 45-day period, 115 comments were submitted. This was the first time the City received an EIR since the City adopted its CEQA guidelines in November. Those guidelines require Staff to check in to see, from the initial response to comments, if there is adequacy, which is the volume, depth and breadth of information that Council needs to have to decide whether or not to move forward with a full response to comments. One of the reasons Staff knows it has enough to forward is that the draft EIR is telling the City that there is conflict between the General Plan goals, policies, and the project itself. There is a need to adjust the project through mitigation measures or other alternatives. Somewhere in all of this is the opportunity to change the project to reduce the impacts to a level that is less than significant. That step has to occur sometime between now and the final responses to comments. It could be in the form of a response or comment from the applicant. It is hard to envision, based on the significant impacts listed in the draft EIR that the project, as defined would have success in project review. The review process envisions a period of 45 days from the time Council finds the draft EIR ready to go forward. Per the City's CEQA guidelines, the project has the volume, breadth, and depth of information necessary to know that there are some mid-course corrections that need to be made.

Mr. Knox stated that there were two options that could be taken. Council could find that the draft EIR was sufficient enough to allow the continuation of the response to comments, enough so that Staff would bring this back to Council in 45 days with the full set of comments and responses to comments. It is the applicant's desire to follow the straightforward process with the next step being to certify the EIR. If the draft EIR was not approved tonight, Council's only other option that could happen is to say that Council was not able to make that finding because – and fill in the blank. Staff would then have to come back with the missing information at a continuation of tonight's public hearing.

Once the EIR is certified, regardless of the changes that may or may not occur, the next step is for the applicant to determine if they want to continue with the application process. It would then need to go to the Planning Commission and Council. It would be reasonable to expect that if the project changes significantly, it is likely that to comply with CEQA the City would have to provide the public with additional comment period. The City of Benicia is the lead agency on this project. The City Council is the decision making body. It is the City's and Council's responsibility to the public to determine if a project is appropriate before the EIR is certified and approved.

Ms. McLaughlin clarified that the step being taken tonight is a 'check-in' process that needed to be followed. The City's CEQA guidelines stated that the draft EIR has to comply with the City's guidelines. There has to be an adequate response to potential environmental impacts. The City has developed its own guidelines, and it varies from the state guidelines.

Mayor Messina stated that he had spoken with many people on this issue. In terms of the information he had gathered, the City seems to have made a mistake when it adopted its CEQA guidelines and varied from the State CEQA guidelines. By varying from that, the City is now facing the unintended consequences. He suggested moving back and following the State law.

Council Member Patterson stated that she wanted to hear from the public, as they had waited a long time this evening. The public would like to have some hint on where Council stands on this. She had ex parte communications with various individuals. Council received a communication from the United States Fish and Wildlife Service that states this item should be continued, as there is new and substantial information. She would like to hear the comments tonight and then possibly continue this item. Regarding the CEQA process, it is state law that Benicia has its own CEQA guidelines. However, she was confused because this process this evening does not provide the public the opportunity to review the public comments, which includes comments from the public, applicant, State departments, trustee agencies, etc. Council did not get the comments without asking for them. Apparently, Council never even saw the Staff comments. Council is being asked to make a decision on the comments that it has not even be seen. There are several choices for Council tonight: Council could acknowledge the interim review, without having seen comments. Council could stop processing the CEQA document and make sure it has the comments that were received and commented on. She found that Staff had asked for a lot of information it never received. Council could terminate the CEQA process. Council could initiate amendments to the General Plan, which would be necessary since we cannot make CEQA "overriding considerations." Council could certify the final EIR when it comes back to Council, not approving the project. And finally, she does not understand the status of the vested tentative map.

Vice Mayor Schwartzman stated that he as well as some of the other Council Members might be confused about this particular step. Maybe there is some error to this. He requested, received, and read the full comments on this document. He was wondering if

Council should address the communication from the United States Fish and Wildlife Service before it gets into discussion.

Mayor Messina stated that the public had not yet seen the document from the Fish and Wildlife Service.

Vice Mayor Schwartzman stated that he read the document, however, it was not life changing with the decision that had to be made tonight. He questioned if Council could suggest to the applicant that the information from the United States Fish and Wildlife Service be included. He had some ex parte communications; however, nothing that would change what was going on tonight.

Council Member Whitney had ex parte communications with various individuals.

Council Member Hughes had ex parte communications with various individuals; however, none of them had any vested interest in the project.

Charlie Knox, Community Development Director, stated that he was willing to waive the remainder of the written staff report in recognition of the time constraints. It is technical in nature. He received an indication from the applicant that the applicant wanted to hear public comment before speaking tonight. It was his understanding that the information in the United States Fish and Wildlife Service document was basically the same information the received from the California State Department of Fish and Game. He was not sure if the document presented new and substantial information. The comments received from the United States Fish and Wildlife Service was not received in a timely manner. Staff's recommendation is that Council determine that the information it received from LSA is adequate and in conformance with guidelines to allow the process to continue forward to the full set of comments and full set of responses and a future hearing on the certification of the EIR. An adjunct to the recommendation is that Council provides direction to Staff or the applicant to determine what could be done to the project that would ultimately reduce the level of significant impacts identified in the draft EIR.

Adam Weinstein, Planner, LSA & Associates, reviewed a PowerPoint presentation (copy on file).

Public Hearing Opened

Public Comment:

1. Marilyn Bardet – Ms. Bardet stated that the matrix LSA presented was 56 pages long. This is an enormous matrix for a preliminary step. Many people who made comments did not receive complimentary copies of the documents. This should be considered a new document. She believed that this was not an adequate and complete document that properly characterizes the scope of the project. It is imperative that the City gets a better project. Council needs to fairly represent the public's view of a better project. Council has 45 days to come up with an alternative project that would be better for the City. The current design has

- nothing to do with land use. She would be all for a better project being designed. If the project plan and the master plan are distinctly different, as a citizen, she wants to know about it. The summary of air quality impacts that the matrix referred to was inaccurate. The comments she made were not even referred to in the document. Robert Semple School should be adequately addressed in the document, and it was not.
2. Donald Dean – Mr. Dean stated that CEQA is all about getting the information to the decision makers. He has been in the environmental business for many years. In this instance, the information is not all there. Some of the missing information is basic to the project itself. This project would grade the hills into the valleys and create a series of plateaus for the development. When you are doing grading at that level, you have to know what is going to happen. Simple information such as a soils map was not included in the document. The previous EIR for the project included that information, but the current one did not. If it is not in the document, where is it? The mitigation measures state that the information would be developed throughout the process. That would be a huge leap of faith on the City's part. The alternatives in the document might not even be feasible. The letter from the United States Fish and Wildlife Center is pertinent to that information. It is the wrong time to say that the City will deal with some of these issues later. He is interested in the process. Two years ago, there was a series of community meetings where this project was discussed. He does not see that any of that information was brought forward into the current process. This document does not provide the kind of information needed to move forward at this point.
 3. Steve Goetz – Mr. Goetz stated that this was a very important process. This is one of the largest projects in Benicia. The information in the report is sufficient enough for him to make the conclusion that this is a project the City needs to reject. This document shows that this project would be better built in Bakersfield than Benicia. It is unconscionable that Council would consider approving this project, especially with what it would do to East Second Street. He read excerpts from the report. This project would result in turning his neighborhood to a slum. The applicant does not care what the City's General Plan and zoning requirements require. Council has a way out, which is to improve a feasible alternative.
 4. Susan Street – Ms. Street thanked Mr. Schiada for the stop sign at East H and East Second Street. Ms. Street read the following prepared statement: "Two issues: 1) what do we do with Seeno? Your responsibility as Council is to set policy around how to deal with Seeno - to be clear about our expectations so there are no loopholes for any developer interpretation. You have an opportunity to be remembered for retaining Benicia's unique character, rolling hills, its downtown and its property values in the face of intense pressure from a builder who does not have our best interests at heart.
Tonight is for the second issue which is what do we do with the (Draft Environmental Impact Report) DEIR? Seeno has not provided us with a full master plan – LSA even SAID they could only respond to the "level of detail" provided by the applicant. What he has provided us does not conform to the General Plan. Information that he did provide: 1) is missing a circulation system, 2) does not have a drainage plan, 3) nor does it have a grading plan, 4) there is no

crime or emergency section, and 5) as it stands, there is no attention to global warming. Tonight I urge you to reject this DEIR and not allow it to move forward.”

5. Bob Craft – Mr. Craft stated that this bothered him. We are talking about modifying a project. He understood that LSA deemed the project adequate. That does not surprise him. Who would deem their own work as insufficient? The matrix is incomprehensible. People cannot visualize what 9 million cubic yards of soil would look like. They have been asking for a 3-D model for three years, and that has not happened. You could fill in the Oakland Coliseum seven times with 9 million cubic yards soil. He stated that 9 million cubic yards was equal to 600,000 dump truck loads, enough that if lined up would stretch all the way to the Atlantic Ocean and back. Also, that only 7 million cubic yards will be required to completely restore Hamilton Field in Marin to its former wetlands state. Also, the draft EIR identified a 24-inch sewer pipe as being slightly overloaded during peak periods but no mitigation was identified. Also that the report envisioned future water supplies in a "Pollyanna" scenario only. The draft EIR does not help with that. On that issue alone, the draft EIR is insufficient. There is no examination of unit energy usage figures in the EIR. The EIR is totally deficient.
6. Jan Cox-Golovich – Ms. Cox-Golovich stated she came before Council last year and mentioned that when she did her research on this project, she had a difficult time with Staff because the applicant was not providing Staff with the information it had requested. The problem still exists, as Staff is still asking for information and not receiving it. She was wondering if this was a legal issue. It is obvious from Staff's comments that this project does not conform to the City's General Plan. Council needs to tell the applicant that they need to stop right now and come up with a new project that conforms to the General Plan. She referenced the United States Fish and Wildlife Service letter. It is amazing to her that LSA would miss something so important. She hopes the City will realize the revelation that there might be endangered species out there and stop to protect them. Seeno has a very bad reputation. It would harm the public and the City. Council needs to slow the process down and take baby steps. This project will be this Council's legacy and it needs to slow it down.

Council Member Paterson asked about the endangered species protection. She asked Ms. Cox-Golovich to provide Staff with the information on how other cities address this issue.

7. Jeff Garriguess – Mr. Garriguess stated that he felt this information was above and beyond what is required in CEQA. He is a city planner and had worked with Discovery Builders in the past. His concern is with the scale of the development. Benicia is a special town. Benicia has a lot of qualities that require preservation. Planning is a tool to help preserve a small town, its qualities, and characteristics. He was disappointed to not see more discussion to respect the General Plan's intent to promote sustainable planning.
8. Joe Kearns – Mr. Kearns stated that he lives two houses off of East Second Street. This will affect his property and his family. The traffic lights are already backing up at this point. It will be grid locked. People will just be breathing pollution. This

- is all about money for Seeno. They will make money and Benicia will be stuck with the consequences. He believes the project will lower property values. He was not sure why a project this size has not gone before the citizens for a vote. A project this size is insanity.
9. George Delacruz – Mr. Delacruz stated that the project would not reflect this community at all. If the City looks at a different type of CEQA process, and if the City does not follow proper CEQA process, someone will sue the City. The draft EIR is totally inadequate. By the City not having a master plan in place allows the developer to shift the project around. The vesting subdivision approval does not seem legal. He wants to see the City mandate conditions of approval to make sure that the infrastructure of a project of this magnitude would be taken care of. Seeno does not do this. Seeno does not care about the City of Benicia. Seeno bought the City Council in the City of Pittsburg. Mr. Delacruz stated that he did not want to see that happen here. He urged Council vote that the draft EIR is inadequate.
 10. Kitty Griffin – Ms. Griffin stated that Staff made the statement that the draft EIR was adequate. Council is not equipped to make a decision tonight about moving forward. Council has to reject the conclusion that the draft EIR is adequate. The draft EIR is inadequate. Staff already admitted that. She worries that if Council accepts the conclusion in the Staff report, that it would be tying its hands. Her concern is with Lake Herman Road. In her comments to the draft EIR, the effects on Lake Herman Road were not included as an impact. She had concerns with the impact of the noise to Lake Herman Road. Quintupling the traffic on Lake Herman Road would have a huge impact. It will affect the renewal of the urban growth boundary vote.
 11. Sabina Yates – Ms. Yates stated that the Benicia Business Park would be a tax burden to the City of Benicia. She discussed the issue of emergency services (police and fire) in the area that was discussed by Council in the past. The City needs to consider the hidden costs associated with this project. She asked that Council consider better alternatives that would comply with the City's General Plan.
 12. Jeanine Seeds – Ms. Seeds stated that she was concerned about the definition of 'substantial.' The reason there are five Starbucks in Benicia is that the original plan had a carwash and a mini-mart. The City ended up with a Long's drug store. It came down to a definition of substantial. The plan that was submitted did not even have a rendering of the back wall that is now there. If we can't get a project like the Rose Drive Project down right, the City does not have any business doing a project as big as the Seeno Project. The Rose Center Project buildings have completely destroys the vistas in the area.
 13. Dan Smith – Mr. Smith stated that he appreciated Staff and the consultants' desire to continue with this project. However, this is not the first time we have seen this. It is a waste of City time and process to work on a project that does not conform to the General Plan. He agreed that this was a good time for Council and the developer to let the public know what they think would be a good project for the City. The only way this project could benefit Benicia is if it pays its own way. There has to be a site and funding mechanism for the public safety demands it

- will make. He asked Council to reject the draft EIR and start spending time and money on something that will conform to the City's General Plan.
14. Kathy Kerridge – Ms. Kerridge stated that we live in a time where everything counts. She referenced the letter from the United States Department of Fish and Wildlife Services. This plan does not come anywhere near what Benicia deserves. This plan should be thrown out.
 15. David Lockwood – Mr. Lockwood stated that the space that is being discussed is open space. Any change to the space would have an impact on what people can see, hear, smell, etc. If Council does not protect and preserve the community, it will have 10% of the people who will say 'let's get rid of what is here.' The project has no business being built around a medium density area. It would devalue all the homes in the Southampton bowl. It could force some people into bankruptcy. Is that what Council wants? This will affect the tax base. He has been challenged by some citizens as well as by a Council Member that the project would not devalue property in Southampton, let alone the have the domino effect in the rest of the City. He discussed a study on that very topic that he read on the Internet.
 16. Ramon Castellblanc – Mr. Castellblanc asked what the rush was with this project. Why do we have to be on a timeline? The long-range viability of the City is important. He felt like we are being asked to do this the wrong way? Why can't the City take its time and do it the right way?
 17. Mike Igueldo – Mr. Igueldo stated that he used to live in Walnut Creek and there was too much traffic. That's what will happen here if this project moves forward.
 18. Tony Shannon – Mr. Shannon stated that the EIR is not just about the project. It is about a way of life that the City will have to deal with for the next 20 years. He defines the term 'significant' as nine million cubic yards of dirt.
 19. Jon Van Landschoot – Mr. Van Landschoot stated that the Mayor Messina stated earlier tonight that Council made a mistake. Don't make another mistake. God would be upset if the hills are destroyed. No one has stood up and stated what a great project this would be. Listen to what the citizens are saying. Dump the project and start over. Seeno wants this thing in the bag before the November election.

Public Hearing Closed

Applicant:

Kristina Lawson, Miller Star & Regalia, stated that they were here to listen and answer questions or comments Council might have.

Vice Mayor Schwartzman stated he recognized that Seeno and Discovery Builders have owned the property for many years and they have rights to develop it. However, some people in town want to see nothing happen out there. He also recognized that there are some people who would be okay with something in between being built out there and nothing. He would contend that the existing project would not work. When he was on the Planning Commission, some of the biggest issues were traffic and grading. With the 2001 version, there was even more grading proposed than in the current project. He did not

think that Seeno 'heard' the public at the meetings, when that they stated that they were very concerned about the issue of grading. He believed that if the project limited retail to 100,000 sq. ft. it would be difficult to get a typical big box company. The City would then have to define what 'big box' means. There are some things missing from this draft EIR. LSA did a good job with the information they were given, however, they were not given enough information. One of the public speakers addressed the issue of staff asking for information that they had still not received. He questioned if there was a sewer plan. Mr. Schiada confirmed there was a sewer plan included. There seems to be a lot of information missing. He has a lot of issues with this. He is not ready to move this forward with the issue of the adequacy of the EIR. He had questions on air monitoring, grading, etc. In his opinion, there is not enough information in the draft EIR for him to move forward. The developer needs to come back with a project that is more in line with the City's General Plan policies. They could start with the hillside upland alternative in the DEIR. That might be the proper project that should come forward for an EIR, with alternatives from there.

Council Member Whitney stated that he too felt the draft EIR was inadequate. The hillside preservation issue that was raised was a good idea, which is where he would like to start.

Council Member Hughes stated that having the extra step in the process (per the City's CEQA guidelines) has turned out to be a pretty good process. It is important to note that whatever decision is made tonight, it does not mean that Council likes or dislikes the project. It does not mean that the final EIR would be certified. It simply means that Council would be saying that it is adequate based on certain criteria. He does not like the way the project is designed right now. He urged the applicant to take a step back and redesign the project where significant issues don't exist, where they don't need mitigation. He thought a project in that area, if it is well planned, could be a benefit and asset to the community. The conflict he had was that the decision Council has to make tonight does not have anything to do with whether or not Council likes the project. The decision has to do with whether or not the information in the draft EIR is adequate. The information he heard told him that it complies with the City's CEQA process, it adequately covers some of the major environmental impacts, etc. It is hard for him to say that it did not meet the criteria on adequacy.

Council Member Patterson thought that maybe this interim step is addressing the frustration with the current CEQA process which is that with the final EIR, by law, there is no requirement to make responses to people's comments about the adequacy of the final EIR. Therefore, flaw is that there was not the availability of the comments for the Seeno DEIR so one could have a rational connection to the matrix, and one could see all the comments. That should never happen again. The information could be posted on the City's website. She agreed with her colleagues that it has been beneficial for the developer to hear how far off the mark the proposed project was. She asked Ms. McLaughlin about the application of the Streamlining Act with this application. Ms. McLaughlin stated that because there were legislative actions included in the project, there was no permit streamlining problem. Council Member Patterson established that

she had 20 years of experience with CEQA. She asked if the City could just stop, because the environmental document is reviewing a project that would never be approved. Ms. McLaughlin stated that she would like to look at the question on the vesting tentative map. She did not know the answer. The vesting tentative map has not been recorded at the County. Could the map be recorded in the County without approval by the Benicia City Council? Council Member Patterson asked if Council never approves the map and the map is never recorded, is it a vested tentative map. Ms. McLaughlin stated that she did not know the answer to that.

Mr. Knox stated that the purpose of the vesting tentative map was to ensure someone who comes in with an application gets reviewed under the rules that were in place when the application was made. His understanding of where the City is at in the process is that if the same application that is on file and has been certified as complete gets approved ten years from now, the rules that regulate would go back to the time of the application. However, new rules may be promulgated by Council that might affect the site that is not covering the same areas of law that were applied to the application. If this were not approved for some time, there would still be the question when and if it is adopted and when the rights vest, if the rules would be carried forward in the future. He understood that some of those, specifically those relating to land use, would still apply.

Council Member Patterson stated that she did not agree with the definition of a vesting tentative map. Council Member Patterson stated that she wanted Council to be on the record that Council does not accept that the current map is vested and that it precludes Council from adopting ordinances. If the map is not recorded, it has no legal standing. If that were the case, why would Council want to move forward and finish up the environmental document? She discussed the habitat conservation plan with regards to the letter from the United States Fish and Wildlife Service. She was happy that the City received the comments. Regarding assessment of sustainable development impacts, there seemed to be a disconnect between the idea of planning and environmental impacts. You have to maintain air quality, water quality, habitat areas, etc. for sustainable development. You have to do a plan that reduces the need to drive so that you put less greenhouse gasses and air pollutants into the air. That connection with the environmental resources shows why you need to have sustainable development impact discussion. The EIR stated that the city has not adopted sustainable development criteria. The EIR could provide a mitigation measure that requires these criteria to be developed prior to approval of the project. The City received a comment from the Department of Fish and Game that was never even addressed. She took the comments that are in the draft EIR and in the matrix and went back and forth to look at the connections. The omission of responding to Staff's comment was particularly egregious. The question Staff asked about storm water runoff, flooding, etc. was not adequately addressed. She would say to stop the project and put the ball back in Seeno's court. Let's give this back to Seeno and get on with other things that would be better for the quality of life in Benicia.

Mayor Messina stated that the City Council is the decision-making body in terms of the project. He felt that no matter what project gets approved, there will be buildings built on the property. In terms of the issues that have to be addressed for the community, it is

what the project would look like to them. It is Council's responsibility to protect those citizens, regarding traffic in the area, air quality, etc. Council needs to figure out how to deal with those issues. He does not want to tread lightly over on the environmental impacts with the habitats. Regarding the grading issue, 9 million cubic tons is a big, hard number. The issue should not be the number; it should be the impact it would have. The net result is what the area is going to look like when the project is done. Council needs to use the environmental document to frame what is important to it, in terms of mitigation measures so the applicant can go back and redo some things. Council has to be respectful of the General Plan. He would like the project to go forward so the applicant could get some specific direction as to what Council wants. Council can bring this item back as much as it wants. Council has to be mindful that the community has concerns on what the project will look like out there. He could support the finding that Council felt the project was moving in the right direction, but there needs to be more done.

Mr. Erickson stated that Staff felt the report was sufficient enough to go to the next step. He would be curious to hear what LSA thought about the information and comments that had been received tonight.

Mr. David Clore, LSA & Associates, stated that LSA felt that the City could proceed with the document, however, they were mindful as to whether that would be an efficient use of time, if the project would be denied. They could proceed and produce a very large response to comments document.

Mr. Knox stated that he took to heart Council Member Patterson's comment, which he took to mean that a full set of comments as well as response to those comments should have been available tonight. That is basically what the next step would be. He imagined that even if that would have been done, the situation tonight might have been the same. That information may have led to the same conclusion that the project needed to be changed. Perhaps it is time to pause and say that the full set of responses will not get the City closer to a project that the community, Council, and the developer would be happy with. He recommended having LSA produce a full set of responses, but not have them do a full scoping or determining which consultant/group would work on the EIR. The City would need to go back one step to the production of a supplement or package of mitigation measures. He recommended circulating the differences so the public could see specifically what they are talking about. That would take some time. Council needs to tell the applicant what it is looking for. He got the sense that the community would like something in the business park that would be more attention to the kinds of offices where the jobs being provided were for the demographics and skill level in Benicia. It would be worth discussing focusing on those types of uses. The client could develop a self-mitigated alternative. That would be added to the alternatives already listed. The safest thing would be for the applicant to consider that with the project.

Applicant:

Ms. Lawson stated that her client understood the direction that was being suggested. However, they would like the process to move forward. She would like to see Council allow some revisions to be made by the applicant, allow the process move forward, and

allow her client to work with LSA and City Staff to develop an alternative during the response to comment period. That way, they would work with this EIR. They would like a chance to revise the project. Restarting the process would cost them approximately \$250,000.

Vice Mayor Schwartzman stated that the applicant has had direction for quite some time. The direction is to say whether or not the report is adequate. It was clear to him that moving 9 million cubic yards of soils was not acceptable. He did not feel Council had enough information on the project to move forward. Council should put the project back on the applicant's shoulders. Council would need a lot more information on the alternatives. He did not feel the need to go further at this point, because he did not know what Seeno would present to Council in the final analysis.

Council Member Patterson stated that she did not want it to go further because the City accepted an application that was not complete, started the draft EIR without enough information, etc. This is not a game. It needs to stop. It should be noted that Mr. Clore has a distinguished degree and his knowledge, background, and skills would be better applied at helping provide the alternative desired by the community than wasting time on the responses to the document. It is a waste of intelligence, talent, and ability. The City has had some of the finest planners talk to them about this project. It is sad that the City wound up with this. Why doesn't the City have sustainability criteria? As Ms. Seeds has noted the City takes forever to do things. There is a solution, which would be that the mitigation measure would be that those sustainable development criteria would have to be adopted prior to approval of anything. Better than doing that is for the applicant not to concentrate on a project that is huge and reduce it to a smaller project. The issue is starting with the road alignment. It is the skeleton of what makes a sustainable project. If the applicant would embrace that, they might be able to come up with a project the City could work with.

Council Member Hughes stated that he was somewhat persuaded by the comments made by staff and LSA. This is a draft EIR. He was concerned that if this was stopped right now, the City could be missing out on opportunities. It sounded like there were a few options. Could there be a third alternative that Council continue this item, and allow the applicant to go back and bring forth another alternative?

Ms. McLaughlin confirmed that the guidelines allow for that possibility.

Mr. Erickson stated that the applicant has indicated that they would like Council to proceed with the process. The applicant is saying that they were willing to work with the City on some sort of alternative plan. He suggested working with the applicant until it is determined that an alternative project couldn't be done. His concern was that the opportunity would be jeopardized.

Council Member Hughes stated that Council was saying that a well-planned project would be welcomed. However, Council sees a project that was not well planned. It would like to see that property developed, but done right.

Mayor Messina stated that if the project were approved tonight, it would proceed. If it were not approved tonight, it would still move forward. The real next step is when the EIR was certified. The rest of the steps were basically checkpoints.

Council Member Hughes asked what the impact would be the applicant.

Ms. Lawson stated that they needed the EIR before they could get to the map approval stage. They are stuck in the process of trying to get the EIR before they could get to that stage. They are stuck in the middle of the process right now. If this process could be finished, they could have the discussion about the map. Before they get the CEQA document, they could not make that decision. It is a huge delay and expense to continue this. They would like to proceed forward and work with the City on this. They understood that this hearing tonight was that this would be a hearing on the entire response to comments document. It would take some time for LSA to come up with detailed response to the 115 comments. This was an unorthodox procedure. She has never seen this before in her CEQA practice. They would like the City to allow them to proceed.

Ms. McLaughlin stated that it was not totally an unorthodox procedure. Other jurisdictions have done this before. If Council decides to allow the EIR to go forward, she did not think Council could make the findings to approve a project. If the project is modified a lot, she believed it would have to be re-circulated. There are fundamental problem that need to be addressed. If you make fundamental changes to the draft EIR, it would need to be re-circulated.

Council Member Patterson addressed the issue of overriding inconsistencies with the General Plan. She did not know of any case law that would allow you to make overriding findings with inconsistency with the General Plan. What you would have to do is amend the General Plan. If anyone thinks the community was upset now, just wait until we start amending the General Plan.

Council Member Whitney stated that he wanted the project to be done right. He wants to have a project that works for the community. Clearly, the current project is troubling to the Council. It seems that continuing this item would be the most productive alternative at this time.

Ms. McLaughlin stated that the purpose of a continuance would be to gather additional information to address the traffic impacts, grading impacts, environmental issues, General Plan issues, etc. They would work with the applicant and consultants to develop something that would address those issues.

Mr. Knox stated that if this were continued tonight, Council would basically be in the same position as it is tonight, however it would have the full set of comments and response to comments. If it went with option #1 in the City's CEQA guidelines, the pressure would be on at the next hearing to certify the EIR. One thing that was learned tonight is that Staff would have the full set of comments and responses and it would

circulate any new information it got on traffic analysis, etc. so that the public could see it, react to it, etc.

Ms. Lawson stated that the current EIR would work for them for CEQA. If they are taking impacts out, and not adding new ones in, this document would still work as-is.

Council Member Patterson stated that the reason to stop or continue the hearing is that every time the applicant is allowed to move forward, the advantage is on their side. They would be less responsive, and that has already been demonstrated. It was a considerable major mistake to accept the application. She does not want to compound that mistake which was done by beginning the environmental document when we did not have all the information needed. Why would Council want to make a third mistake by finishing the document? It puts the City in a very poor bargaining position. It would be ill advised to say to finish the document.

Mr. Erickson stated that proceeding would not put the City at a disadvantage. The City still has the discretionary decision of certifying the EIR, accepting or not accepting a project. The City has the leverage.

Due to a disruption in the audience, Mayor Messina asked Chief Spagnoli to escort anyone who was being disruptive out of Council Chambers.

Council Member Patterson stated that the City would not have all the leverage. She has a lot of experience in Contra Costa County. She referenced Seeno's project 'Crystal Ranch.' The project did not meet what the city wanted, but they finally got worn down, which is what the strategy was, and the project went was developed with some modest changes. She does not want the City to be put in that position. That is what Mr. Erickson is asking Council to do. If he had been around the corner a couple of times, he would understand that. Let's not go there. This is not what the community wants. She wants the City to be in the strongest position possible to work with Seeno. The City would be weakened if it takes that route of moving forward. History would show that was a mistake.

Vice Mayor Schwartzman stated that the fact of the matter is that Council does not have enough information in the draft EIR to approve it. By continuing this item and requesting information from the applicant, it is up to the applicant whether they want to provide the information. He would like to have a project more towards the realm of research and development such as Bio-Rad and Genentech. He has time and would like to see this done right.

Council Member Hughes asked Mr. Knox about his prior recommendation to approve the draft EIR for adequacy. Has tonight's discussion changed his mind? Mr. Knox stated that no, he had not changed his recommendation. The issue of not enough information vs. the right information is crucial. He was hearing Council say that whether or not it agreed there was enough information to determine whether the work LSA did fulfills the requirements of the City's CEQA guidelines is a different question of whether or not

Council was missing information or whether there was additional information that it needs to make the determination. The additional information is more than impacts or mitigation, but in the project design itself. He would support Council's determination that further information is needed. However, he had not changed his original determination.

Ms. McLaughlin suggested voting on whether or not to continue the item until future information requested, including alternatives, is received.

It was motioned by Council Member Patterson, seconded by Vice Mayor Schwartzman to continue this item until more information is received from Seeno. The motion was approved, on roll call by the following vote:

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

Council Member Patterson stated that she would like to continue the meeting to hear item IX-A, as it was a time sensitive item. If the item were not heard tonight, it would be too late to address the issue.

On motion of Council Member Patterson, seconded by Council Member Hughes, Council approved continuing the meeting at 12:23 a.m. to hear item IX-A, on roll call by the following vote:

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

ACTION ITEMS:

Consideration of a moratorium to regulate billboards:

Heather McLaughlin, City Attorney, reviewed the staff report.

Council Member Hughes asked if a temporary 45-day moratorium could be done (short-term) that would give Council time to look into this and revisit it, if necessary.

Council Member Patterson stated that she was eager to adopt the moratorium so Council could get the ordinance that has the prohibitions or appropriate design standards that the City needed.

Ms. McLaughlin clarified that the moratorium, if adopted, would only be effective for 45 days.

Public Comment:

1. Mike McCoy – Mr. McCoy stated that he submitted an application to put up a freeway advertisement display on I-680. He has put a lot of time and effort into this project. Benicia is where he wants to live, do business, etc. He does not work for any other large company. This was his own application. The proposed billboard does not obstruct any views. It meets all state requirements for spacing. It has received preliminary approval from the state. He recently became aware of the City's own advertising needs. He proposed giving the City one month worth of free advertising space. He suggested using the space for promoting City events.

His application was not for a flood of advertising space along I-680, it was only for one site. Enacting this moratorium, when someone has invested time and effort in submitting an application is not an acceptable use of power by the City. The best solution would be for the City not to enact this moratorium. The moratorium should not apply to existing applications that have been submitted. He has put over nine months of work into this project.

2. Reed Lewis – Mr. Lewis stated that typically a City would discuss controls of use when discussing moratoriums. This billboard does not affect the health, safety, or welfare of citizens. The moratorium would be an extreme measure. The applicant played by the rules and would be punished for something that is not legitimate. The City should go back and look at its code; however, this application should be processed.

Vice Mayor Schwartzman thanked the applicants for staying so late. He stated that the City did not know if other applications would be coming in the next few months. The City needs to do due diligence regarding what it wants to allow in the area.

Council Member Hughes thanked the public speakers for staying so late to speak on this item. The current Council has been criticized lately for not taking action when it had the opportunity. This is an opportunity for Council to do the right thing. It does not mean that the City would deny the billboard. If Council does not do this, they could get more applications tomorrow, and would not be able to do anything about it. Council needs to do the right thing for the City.

Council Member Whitney asked if the applicants could be allowed to move forward, and then enact the moratorium, but allow this client to proceed, since their application had already been submitted. He did not want to be unfair to the entrepreneurs, however still wants to act in the best interest of the community.

Council Member Patterson stated there would be a comprehensive discussion so the applicant would have more information to work with. Council will be expeditious in discussing this issue in the next 45 days.

ORDINANCE 07-13 - AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AN INTERIM ZONING MORATORIUM ON THE ESTABLISHMENT OF NEW BILLBOARDS IN THE CITY OF BENICIA AND ADOPTING FINDINGS INCLUDING ENVIRONMENTAL FINDINGS AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN

On motion of Council Member Hughes, seconded by Council Member Patterson, the above Urgency Interim Ordinance was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

Adoption of a Code of Conduct and Best Practices:
Continued

INFORMATIONAL ITEMS:

Reports from the City Manager:

Continued

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 12:41 a.m.

Lisa Wolfe, City Clerk