

May 3, 2005

The Benicia City Council meets the 1st and 3rd Tuesday of each month at 7:30 p.m. in the Council Chambers. Copies of Council Agendas are available in the City Clerk's office on the Friday afternoon before the Council meeting.

**MINUTES OF THE
SPECIAL MEETING - CITY COUNCIL
MAY 3, 2005**

The special 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 3, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Smith, Whitney, and Mayor Messina

Absent: Vice Mayor Patterson (arrived at 7:03 p.m.)

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ADOPTION OF AGENDA:

Mayor Messina asked if there were any changes to the Agenda.

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

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

Noes: None

Absent: Vice Mayor Patterson

COMMUNICATIONS:

WRITTEN:

Several documents submitted (on file).

PUBLIC COMMENT:

None

UNFINISHED BUSINESS:

Approval of agreement(s) with Benicia Unified School District (BUSD) for City-provided maintenance of fields at four school sites in return for use of school facilities and appropriation of two (2) months of funding.

Heather McLaughlin, City Attorney, reviewed the Staff report.

Mayor Messina stated that he had some discussion with the President of the School Board. He received two written documents, one from Board Member Samiljan and one from Board Member Fulton, both of which have been presented in the packet to Council.

Mr. Alvarez reviewed the latest revision of the Joint Use Agreement. Staff is seeking direction on how Council wants them to proceed. If Staff is directed to proceed, they will be asking for interim funding that will take them through the remainder of the fiscal year. Staff met with the district Superintendent to bring her up to date. The issues discussed were the City maintenance access issue, use of equipment, use of classrooms, and labor issues. As a team, Staff has not had a chance to go over those issues. Staff will also be reviewing with Council the financial issues and the impact of going forward with the Joint Use Agreement.

Council Member Campbell asked Staff to briefly describe the labor issues that Mr. Alvarez referred to. Ms. O'Connell stated that from the City's perspective, we have given all of the information we have up to this point. The City feels comfortable moving forward with the agreement at this time. She stated that she thinks the City's union has issues with the temporary, part-time employees that the City would be bringing on during the interim stage. They have expressed a level of discomfort with the fact that the City is putting on 4 to 6 additional part-time employees when they feel the needs would be better addressed with full-time employees. If the district's union put up picket signs, the City's union would not cross the picket line.

Ms. McLaughlin went through the requested changes submitted by Board Members Samiljan and Fulton:

- Page I-D-24 - Scope of the Agreement: Samiljan wanted to address the issues with the BMS agreement. That agreement is not working very well. This could be a model agreement for access issues at BMS. In paragraph 2, Capital Improvement of Fields, the BHS Boosters want language added. Ms. McLaughlin read the letter submitted by the BHS Booster's (on file). She stated that if Council is agreeable about contributing towards maintenance, the following language could be added: 'The City further agrees that any annual savings in maintenance costs resulting from said improvements will be available to and may be applied towards the costs of capital improvements.'
- Page I-D-25, above paragraph (b) - Board Member Fulton wanted to add 'to the extent such documents exist.' Paragraph (b) - Board Member Samiljan wanted to add a reference to the Joint Use Committee. In paragraph (c) Vice Mayor Patterson proposed instead of cash, reimbursement in the form of years of joint use that can be extended (in the realization that the district does not have a lot of cash). The idea is to have an alternative in the event that there is not any money. It is not an either/or, but an alternative. Vice Mayor Patterson stated that this was one of the functions that the committee would work on. Ms. McLaughlin clarified that Board Member Fulton wanted to remove the reimbursement provision entirely.
- Page I-D-26, paragraph (a) 'Interference shall be determined at the sole discretion of the City', both Board Members want this language deleted. Board Member Samiljan proposed alternative language. Paragraph (b) - Board Member Fulton proposed this paragraph be

removed. Paragraph (d) - Both Board Members want to delete the first and second sentences. Paragraph (e) - Vice Mayor Patterson would like the language strengthened to make sure we have the State's legal opinion on this issue to support that the City is in compliance with the law. Board Member Fulton wanted to delete this portion.

- Page I-D-27, first full paragraph - Board Member Fulton wanted to delete the entire paragraph. Paragraph (f) Board Member Fulton wanted to delete the trucks. Board Member Samiljan is concerned with this paragraph as well. Mr. Alvarez stated that the City believes that it needs the large mower and the trucks to maintain the turf. The City has to maintain this position in the agreement. He understood that the district has one large mower and several small ones. The district would keep the small mowers, and the City would get the large mower. Had the district made the City aware that the trucks were not available, Staff would have planned around that in its financial model. Vice Mayor Patterson suggested changing the language from 'donate' to 'loan' with regards to the equipment. Council verified that the district has four trucks and one large mower. Council agreed that it would ask for 'one large mower and two trucks.'

Mr. Erickson stated that Staff had met with Kimberly Dennis, Superintendent. Staff came away with the feeling that this matter could be resolved. The two staffs could accomplish something that would work for both the City and BUSD. He would like the consideration of going back to BUSD to discuss the issues that have been raised. To get locked in right now might be a mistake. He suggested leaving the agreement the way it is right now, taking it back to BUSD with Council's suggestions, and give Staff a chance to work it out.

- Page I-D-27, paragraph 4(a) - Ms. McLaughlin feels the wording is archaic. Mayor Messina prefers the way this section was worded in the 4/25 draft copy - with regards to scheduling and field access. Mr. Alvarez stated that the former Superintendent advised Staff that the district wanted to schedule both the fields and the indoor facilities. The district has managed the scheduling of the fields well in the past. He is inclined to allow the district to continue to manage the fields. It may be easier for the community if they only had to go to one source for scheduling. Mayor Messina wanted to make it so that the district controls the schedule during school hours and the City controls it during non-school hours.

Council Member Whitney stated that he is frustrated and feels like the City is trying to put together an agreement 'on the fly.' The agreement is a good thing, but changing it before Council has had a chance to study the recent comments is not a good idea. He understands the football field needs to be taken care of right away. Other than that, Council should take time to study the district's comments.

Vice Mayor Patterson stated that she thinks Council can proceed tonight if they give very clear direction to Staff. She finds the comments Council received from the district this evening somewhat alarming. She did not like the term 'deal breaker.' They are not fostering warm feelings, however, she thinks staff can make the agreement work. Staff will let Council know if they cannot fulfill the direction given to them.

Council Member Smith stated that he wanted to proceed with the votes tonight and get the revised agreement to BUSD for Thursday's meeting.

Mayor Messina stated if Council wanted the agreement to happen, they have to go through the agreement word for word and move on.

Council Member Campbell stated that the document is not ready to go to BUSD. Council and the district disagree with something on every page.

Council Member Whitney is not clear why Council did not have the district's comments before tonight. It is not an effective way to do business. He wants to come up with a product that works for the community. He wants to move forward and come up with an agreement, but wants to do it in an effective manner.

Vice Mayor Patterson restated that it could be done with very clear direction to staff. Staff needs that direction tonight.

- Page I-D-28, paragraph (c), both Board Members want this section removed. Paragraph (d) Board Member Fulton wanted the last two sentences removed.
- Page I-D-29, paragraph (c) - Board Member Fulton wanted the amount of the credit to be a minimum not a maximum. He would also like to delete the second paragraph regarding utilities. Board Member Samiljan made a comment as to 'when has the district not supported city measures.' Vice Mayor Patterson would like to insert a comment/clarification on the tax issue. After the word 'tax' she would like a parenthetical (fee subsidy).

Mayor Messina stated that regarding appropriation, that was never discussed. If it is clearly the City's intent not to continue, they just have to terminate the agreement. In terms of the utilities, the Council initially discussed covering the field water costs. An amount was never discussed.

Vice Mayor Patterson stated that because the cost of water will continue to rise, the City might want to put in a rider in the agreement that has a provision that the amount shown would rise as an index of the increase of water costs. Mayor Messina suggested putting something in the agreement designating 'field costs.'

Council Member Campbell discussed concerns with using the General Fund monies to fund this project. Mayor Messina stated that Council Member Campbell was being an 'alarmist.' Council Member Campbell does not want to exhaust the City's General Fund reserves.

Mayor Messina stated that in terms of the actual fees, they would have to be dealt with when Council talks about the budget. In terms of the dollar amounts coming to the City, the revenues are on the increase. We will have to do some looking or some belt-tightening. He discussed the Centex and Shea Homes and how that will increase the City's revenues. In terms of the PERS expenses, they seem to have leveled out. He shares Council Member Campbell's concerns, but not to the extent that the agreement will bankrupt the City.

Mr. Erickson stated that funding the agreement would cost approximately \$541,000 per year (see handout). He reviewed the cost breakdown and the possible scenarios for cost savings. Mayor

Messina suggested continuing this section of the meeting until after the 'regular' meeting, since there are a number of audience members that are here for the regular meeting.

On motion of Vice Mayor Patterson, seconded by Council Member Smith, Council voted (at 8:04 p.m.) to continue this item to immediately follow the regular meeting, on roll call by the following vote:

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

Noes: Council Member Campbell

**MINUTES OF THE
REGULAR MEETING - CITY COUNCIL
MAY 3, 2005**

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 8:05 p.m. on Tuesday, May 3, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ANNOUNCEMENTS/APPOINTMENTS

PRESENTATIONS/PROCLAMATIONS:

Mayor Messina announced the following upcoming events:

- Public Works Open House and Display at the Library - Open House: Saturday, May 14, 2005 from 10:00 a.m. to 2:00 p.m. at the City's Corporation Yard. Library Display: May 4-27, 2005.
- Water Awareness Display at the Library - May 4-27, 2005

APPOINTMENTS:

None

PRESENTATIONS:

None

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Mayor Messina asked if there were any changes to the Agenda.

Council Member Smith requested item VII-A be moved up in the agenda to immediately follow the adoption of the Consent Calendar.

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

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

Noes: None

COMMUNICATIONS:

WRITTEN:

Several letters were submitted to Council, all relating to Item VII-A, all of which are on file.

PUBLIC COMMENT:

1. Council Member Smith announced the following events:

- 5/4 - Staff and residents will be doing a walking tour of West N Street to review traffic safety concerns.
- 5/7 - The Playground of Dreams will have its annual maintenance day at the park.
- 5/7 - Benicia Tula Cultural Exchange will have its 'Benicia Fiesta' at the Clocktower.
- Benicia Old Towne Theatre Group will continue its run of 'Over the River and Through the Woods' for the next few weekends.
- 5/10 - The City will have the opening of the 9th Street Boat Launch
- 5/11 - The Parks Recreation and Cemetery Commission will meet to discuss (among other things) a healthy lifestyle and healthy diet mission statement.
- 5/15 - ArtsBenicia will host a reception for a new exhibit by Linda Fleming titled 'Brainstorm.'

CONSENT CALENDAR:

Vice Mayor Patterson requested item VI-A be pulled and continued to the next meeting.

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

Ayes: Council Members Patterson, Smith, and Mayor Messina

Noes: None

Absent: Council Members Campbell and Whitney

RESOLUTION 05-49 - A RESOLUTION AUTHORIZING THE DIRECTOR OF PUBLIC WORKS, ON BEHALF OF THE CITY, TO EXECUTE CONTRACT CHANGE ORDERS IN THE AMOUNT OF \$90,492 WITH RANGER PIPELINES FOR THE I/I WET WEATHER IMPROVEMENTS PROJECT

RESOLUTION 05-50 - A RESOLUTION AUTHORIZING THE DIRECTOR OF PUBLIC WORKS, ON BEHALF OF

THE CITY, TO EXECUTE CONTRACT CHANGE ORDERS IN THE AMOUNT OF \$95,418 WITH KAWEAH CONSTRUCTION FOR THE I/I WET WEATHER IMPROVEMENTS PROJECT

RESOLUTION 05-51 - A RESOLUTION ACCEPTING TWO PUBLIC UTILITY EASEMENTS AND TWO LANDSCAPE EASEMENTS ALONG MCALLISTER DRIVE, WITHIN SOUTHAMPTON UNITS D-1 AND D-6

RESOLUTION 05-52 - A RESOLUTION DETERMINING A CONTINUING NEED FOR THE EMERGENCY PURCHASE AND INSTALLATION OF HEATING AND AIR CONDITIONING UNITS AND RELATED CLEAN UP FOR THE PATROL OFFICER LOCKER ROOM IN THE POLICE DEPARTMENT AND APPROPRIATING THE FUNDS FROM THE GENERAL FUND RESERVE

RESOLUTION 05-53 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 1063 JEFFERSON STREET IN THE CITY OF BENICIA

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

(END OF CONSENT CALENDAR)

PUBLIC HEARINGS:

Appeal of the Planning Commission's decision to uphold the Design Review Commission's action adopting the mitigated negative declaration and approving design review for new construction at 221 First Street:

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

Collette Meunier, Community Development Director, reviewed the Staff report and gave a PowerPoint presentation (copy on file) .

Vice Mayor Patterson asked Ms. McLaughlin for guidance, with regards to what Council has to demonstrate with a finding on all of the additional information Council has received just prior to the meeting. Ms. McLaughlin stated that for CEQA, Council needs to make the findings to adopt the mitigated negative declaration. On the appeal of the design review project, Council does not have to take affirmative action on that one. Vice Mayor Patterson stated that assuming that some of the comments pertain to CEQA, is it essential that Council comment or respond to the information. Ms. McLaughlin stated that it was her preference that Council read and respond to the oral comments and written correspondence.

Appellant:

Donnell Rubay, Appellant, read the following prepared statement:

"I will speak first on the garage issue-then Ms. Taagepera will speak on the Project's CEQA document and the segmentation issue.

As you know, multi-family residential uses are not allowed on the ground floor in the Downtown

commercial district. A reason for this is-while housing is an important element of a vibrant downtown-it is also important that housing not harm the commercial development that is essential to a downtown.

The problem with this project is that the City wishes to get around its ban against ground floor multi-family residential, without a zone change or a planned development application-but by simply saying that residential garages are not a residential use. If the City succeeds, a precedent will be set that could limit future commercial development in our downtown and, even, cause the loss of existing commercial development.

Please remember: the issue here is not-is this a good project or a bad project?

The issue is: is this a legal project? And, concerning the garages, are these garages allowed under zoning?

The City is saying-because a garage is not a room, as Staff defines "room", garages need not be considered part of a "multi-family residential use."

The problems with the City's thinking:

1. Under the City's reasoning, it is possible to have 100% residential development on downtown commercial parcels. Not only is there no prohibition against garages backing onto a street-even on First Street-but in addition to garages, the zoning code considers several other elements of residential space to NOT be "rooms" such as: connecting corridors (that is-hallways), entry ways, laundry rooms, storage rooms, pantries, closets and-even-bath and toilet rooms. Thus property could be developed in the CD zone where a combination of space-perhaps garages or even simply an entry way, closets, a laundry room and bathroom-is on the ground floor, creating 100% residential development.

Interestingly, the Staff Report states: "Staff does not agree and the City has never taken the position that spaces such as closets, pantries, bath or toilet rooms, or connecting corridors, are not part of a dwelling unit" (p. VII-A-9.) In addition when I have raised this issue in the past, city officials have scoffed at my concern-confident that Staff would never allow 100% residential projects in the CD zone.

Well just last Thursday, Staff-a different staff member-recommended approval for a project on East E Street that would be 100% residential in the CD zone. The ground floor of that project would include private residential garages as well as a "storage/garden room"-and a bathroom.

2. Under Staff's reasoning, Downtown Commercial zoning-because it allows 100% residential projects-conflicts with our General Plan. On page 26 the General Plan provides that commercially zoned land is intended to accommodate commercial uses. Also, General Plan Goal 2.12 states that our Downtown is to be "the City's central commercial zone."

3. Under Staff's reasoning, downtown commercial zoning conflicts with the Special Area Plan because the Special Area Plan allows only "limited residential" in the area of this site.

Now, rather than explain how her reasoning complies with the Special Area Plan Staff has taken the position that the Special Area Plan is "no longer a locally adopted policy document for Benicia" (p. VII-A-15.) According to BCDC's chief planner, Jeff Blanchfield, however, if the City never formally rescinded the Special Area Plan-even if the City has superseded an earlier General Plan to which it was linked-the Special Area Plan is still in effect. Yet even if the Special Area Plan was not Benicia law-it is still part of BCDC's regulations that apply to this site.

There are many state and federal laws that apply to the people of Benicia-that have not been "locally adopted." That does not mean, however, that we in Benicia are free to ignore them.

4. Staff is, very conveniently, forgetting that the walls of the garages must have an allowed use. While staff has stated that the walls are part of a multi-family residential structure (or the multi-family portion of a multi-family residential/commercial structure)-Staff has not assigned the walls an allowable use in the CD zone. These allowable uses are commercial, residential, accessory, and temporary. No one is claiming that these walls will have a commercial or temporary use. To call the walls an "accessory use" means, however, that the use of a residential structure can change depending on what is going on inside the residence. So, as an individual with a home occupancy permit, for example, wanders about his home doing his business-the use of the walls surrounding him, would change from a residential, to a commercial, use.
5. Unlike a hot tub, a home occupancy permit or an accessory structure-parking is a required component of multi-family residential development. Under Staff's reasoning, however, we have a situation where one required component of zoning-in this case parking that is required as part of a multi-family residential use-may be subject to different zoning regulations than the remaining components. As Environmental and urban planner Richard Grasseti states in the letter we have submitted-this is contrary to basic zoning theory. As Grasseti explains: "Zoning requirements with respect to land uses apply to all components of the use in question."

Further, in a follow up e-mail to us-Mr. Grasseti states "the 'accessory use' issue is a 'red herring . . . its what the use is accessory to that's the controlling factor with respect to zoning. Accessory uses cannot be legally separated from the primary uses."

6. Under Staff's reasoning, the City can require that multi-family parking be on the ground floor. Given the 1.5 to 2 spaces required by most residential units-and one parking space required per 300 square feet of commercial space-it is easy to see that-if a developer wants to add residential to upper floors, parking requirements may even eliminate the possibility that he can provide commercial space. This is, in fact, what is happening with the East E proposal. Now, not only does Staff's reasoning allow for 100% residential development in the CD zone-it could even be said to encourage it.

One question some people might have is-so where do we put the parking if we can't put it on the ground level?

1. Parking may be placed below ground-which only means more than 50% below grade that is not that hard to do. The back building, in fact, is almost at 50% below grade.
2. Also, the downtown commercial area has the in-lieu option -because of the higher intensity of use foreseen for the downtown. The City should be using this option.
3. And there is always the planned development option-which can allow parking on the ground level on a project-by-project basis.

Another question some people might have is: won't this project as it is, together with Harbor Walk, meet 90% of the Downtown Market Study's projection for needed commercial development over the next 10 years?

1. First off, the Downtown Market Study was referring to retail space-not commercial space, a much broader category.
2. The Study was done three years ago and was talking about ten years from that date. In seven years time-and forever after-these private garages will still be on prime commercial space, preventing that space from a commercial use.
3. The Study presumed that existing retail would remain. However, if private residential garages, bathrooms, entryways, etc. are allowed on the ground floor in the CD zone-unless there is a rule change, any property owner may convert his property to residential. The Tannery Building-which now houses a vast number of retail and commercial spaces-is an example of a building that could be replaced by a project similar to 221 First.
4. About the 221 First Street proposal-the Study said, specifically, that the City should encourage "high visitor occupancies"-that's a quote-on the ground floor of this project. Private garages are not "high visitor occupancy."
5. Further, if the City is concerned about too much commercial space in the downtown-why is it continuing to seek mixed use zoning which, will add commercial development to downtown's residential sides streets, and why did it so strenuously oppose the loss of commercial zoning for the First Street Green?

Finally, the City can't simply disregard zoning based on a market study, or an Applicant's desires. If the city does not like current zoning-it must change it legally."

Leann Taagepera, Appellant, stated that Council's decision on this will affect future development downtown for many years to come. On the Staff report, page 3, regarding the adequacy of the mitigated negative declaration, she disagrees with Staff's comments. The burden of proof is on the agency that, if the environmental document is inadequate, Council does not need to adopt findings saying that it is inadequate. They are here tonight to adopt the document as adequate, and those are the findings they need to make. She is involved in the appeal because she advocates for something radical in some Benicia circles. Commercial should be required to be built along our commercial

waterfront on a project zoned downtown commercial. She advocates for compliance with applicable plans and for following CEQA. She referenced Ms. Dean's letter (on file) in which she attempts to discredit the two consultants that worked on this project. Ms. Taagepera reviewed the comments made by Ms. Dean (letter on file). Ms. Taagepera stated that a use couldn't be an accessory to another use; it is tied to that use. If a residential development and residential use are two different things, can you add any accessory use in a residential development such as an industrial accessory use? If you add an accessory use to an industrial use, could you put in another zone? It has to be accessory to something else. You can't say that the primary use is permitted but not the accessory use. The intent of the multi family residential requirement to not be on the ground floor but is to have commercial on the ground floor. That is consistent with the General Plan. She agrees with the concerns of Andrea Gaut (BCDC) that are listed in her January letter (on file). Ms. Taagepera stated that, under the Special Area Plan (SAP), she does not believe the project was processed under the correct jurisdictional framework. It is a waterfront project. Under policies by BCDC, it is not an inland project. The SAP was adopted by resolution in 1977, and has not yet been rescinded. Staff has decided the "the plan is no longer a locally policy for Benicia." Ms. Taagepera spoke with BCDC about the SAP. BCDC believes that the SPA is still in effect, as no amendments have been made. She stated that the SAP and the Bay Plan were adopted to avoid significant environmental impacts to the Bay. She discussed LSA's analysis on the fill and shoreline stabilization and the fact that it needs to be included in the negative declaration.

Dana Dean, Attorney for the Applicants - Ms. Dean stands behind everything she said in her letters/emails. Ms. Dean read the following prepared statement:

"I would like to speak for a moment about the elephant in the room. I have been coming into this room and speaking to the Council for exactly six years. In that time, I have seen people come and go. I have seen people in those chairs wield their power fairly. I have seen them abuse their power. I have seen people who sat in the other chairs in the room abuse their power as well. By this I mean I have seen those people make decisions and take actions based on personal and political issues rather than on the record before them. There are some in the community who expect you will do the same thing here tonight. I want to say to all of them I know that is not so. I have worked with all of you and I know who you are. I have absolute faith that you will make your decision based not on politics or personal feelings, but on the merits. Because if you don't, what have you really achieved? Now, on to the merits, or lack thereof, of the appeal.

While I am happy to discuss the zoning issue if you have questions, my position is clear - Structure does not equal Use. Nothing in the Benicia law precludes the planned garages. To issue a decision otherwise would send the message to all that the Municipal Code cannot be relied upon on its face.

As to the General Plan, I hardly know what to say. I will not presume to instruct the architect of that document on its meaning and interpretation. All I can say is that this is the area that gives the best clue as to why I took this case. As the record plainly shows, this project speaks directly to much of what I believe the General Plan embodies; the concepts of smart growth, public access to the water, walkable communities, a vibrant downtown, and anti-sprawl. All of these things have so much meaning and are so important to support. Look, this project may not be what you would design or what I would design. It doesn't have a waterfront restaurant or path down the middle of the property. But it does have all of the other things we want for our community. It is a very, very good project.

Finally, regarding the CEQA process, the appeal sets out a laundry list of allegations about the alleged failings of the review done by the City. Most prominent among them is that the shoreline stabilization should have been reviewed as part of the mixed use. I have set out in detail why the appeal is incorrect. But in the interest of time, I would like to focus on the second part of the analysis. If the City erred, what is the impact of their mistake? The heart of the matter is whether or not the gabion wall (that has already been permitted by BCDC, the Army Corps, and the Regional Water Board) is aesthetically offensive." Ms. Dean then gave a slide show presentation (hard copy on file) on gabion walls. She stated, "There is no doubt in my mind that this is a project worth supporting and one that you should approve."

Elizabeth Pigeon, Architect for the applicant - Ms. Pigeon discussed public access. The building has been pulled back over 21-feet from the property line to allow for parking. This widens the view corridor considerably. The public walkway is 6-feet wide. She discussed the mature landscaped sea wall. Harbor Walk is different than this project. It has residential units on the first floor. The project was designed in accordance with the ordinance. One feature that is not on the public walkway is the addition of benches, which might be added in the future.

Pat Lopes, Applicant - Ms. Lopes stated that 221 First Street has some attributes of the Mona Lisa i.e.: some observers don't interpret the same details within the painting. She asked Council to judge the appeal in accordance with facts, not faces. The property is a legacy of the Lopes family. The Lopes family has contributed to Benicia in philanthropic ways for over 90-years. The Lopes family is proud to be Benicians. They value the governmental process, as well as fairness and rights of property owners. They have chosen a plan of mixed use. Their intention is straightforward - to live in three of the residences in the building they build, just as Council Member Campbell does.

Public Comment:

1. Jerry Hayes - Opposes project - Mr. Hayes stated that the project is an attempt to put 10 pounds of nails in a 5 pound sack. These are quasi-judicial proceedings. There was a misrepresentation of the Anderson Hotel in the slide show. Gabion walls were described as 'organic,' but there is nothing organic about them. They are comprised of sheet metal. The entire project has been misrepresented from the start. This is the third go-round for the project. He is concerned with the commercial/residential aspect of the project. There are many reasons to say yes to appellants and no to applicants. He is disappointed the applicant, for the third time, has not provided a better project. The segmentation of the project started early on. He urged Council to support the appeal.
2. Marge Michaels - Supports project - Ms. Michaels moved to Benicia because she liked the potential charm of the downtown area. It has amazing potential. She takes exception to the project being referred to as 'mediocre.' She sees mediocrity when she looks down First Street. This project is not mediocre. She urged Council to support the project.
3. Bonnie Silveria, President of the Historical Society - She reviewed the letter submitted to Council from the Historical Society. The letter states that the "Historical Society is concerned with the proposed construction and improvements on Benicia's Historical Waterfront. The

goal of the Historical Society is to preserve the history and heritage of the City for future generations and enhance historic Benicia through education, communication and community involvement." They look forward to working cooperatively with the City on this project as well. She stated that 'Every waterfront development project needs to follow a consistent shoreline design standard. From the Promenade through the Centex/Anderson Hotel project, the City in concert with BCDC must set and follow this standard. This includes riprap shoreline protection with a paved pedestrian pathway. Future enjoyment of a completed Shoreline Path of History will necessitate adequate and appropriate lighting. We envision an environment in the future as pleasant and inviting as the Benicia Marina, Portside Waterfront walkways and the First Street Promenade are today." She urged Council to build a Benicia waterfront pathway for the benefit and enjoyment of future generations. Ms. Meunier responded by stating that lighting could be added as a condition of approval if Council wishes.

4. Allison Fleck - Not for or against project -Ms. Fleck reviewed how gabion walls are set up.
5. Walter Kaweck, Jr. - In favor of project - Mr. Kaweck stated that he is interested in the beautification of the community. He is glad the Harbor Walk project was approved. This project will enhance the community as well. This project will beautify the area. Per Ms. Dean, the project is not in violation of the General Plan. He urged Council to take Staff's advice and approve the project and disapprove the appeal.
6. Marilyn Bardet - Ms. Bardet stated that the context of our economy is the important thing. What is the cost of not approving the project? The Lopes family may not be able to build on this property any time soon because of rising construction costs. She wants to make sure the General Plan is respected for its broad vision. In this case, we cannot shoot the project down because we fear that the Tannery building will be overtaken by residential with ground floor residential uses and ground floor garages. Lets fix the ordinances so that we never have this confusion again. She agrees with the Main Street Subcommittee regarding the design of building facades on First Street.
7. J.B. Davis - Supports project - Mr. Davis stated that the proposal has come a long way. It will be a wonderful addition to the downtown area. He urged Council to support the project and deny the appeal.
8. Carol de Maintenon- Supports project - Ms. de Maintenon stated that the project is in compliance with the General Plan. The look and feel of the project is great. Let's go ahead and beautify the area. She disagrees with the prior comment about the Planning department being mediocre. The gabion wall is an improvement to many of the existing treatments already in place.
9. Jim Conlow - Mr. Conlow discussed garages and the definitions of garages. We can't deny people the use of a garage simply because they 'may' try to convert them into a living area. As a member of the DRC, they looked at this project three times. Most of the arguments heard tonight were brought before the DRC.
10. Mike Ioakimedes - Mr. Ioakimedes stated that Council should look at the project as a precedent to what could happen down the line. We need to look at certainty in the process.

Developers need to know the ground rules. The rules should not change midstream. There is never a certainty in the process in Benicia. We need to reach out to people who want to make an investment. To trip the applicants up on a minor infraction is not acceptable. Right now, the City's word is not worth anything.

Council Member Smith asked Mr. Ioakimedes to give examples of uncertainty in the process. Mr. Ioakimedes stated that it is a perception that the community feels. He does not think the perception is just about this project. On the Olson project, they almost walked away.

Vice Mayor Patterson stated that Council approved the Olson project, East N Street project, and the Anderson Hotel. Council wants to approve projects that follow the rules. Mr. Ioakimedes stated that the message from the development community is that there is uncertainty in the process.

11. Stan Houston - Supports project - Mr. Houston stated that the project would add approximately 9,000 sq. ft. of retail space. This project will not adversely affect retail growth on First Street. He has had a few inquiries from future and existing merchants suggesting that the available space will be occupied.
12. Tony Borges - Supports project - Mr. Borges stated that many feel the problems with the project are because the applicants are related to Mayor Messina. No one should have to go through this sort of ordeal. This harassment needs to stop and Council needs to be the ones to stop it.
13. Lewis Pressgrove - Supports project - Mr. Pressgrove stated that this is harassment of the Mayor. He urged Council to approve the project and deny the appeal.
14. Reg Page - Mr. Page would have preferred to stay out of this. However, the revitalization of downtown is on the line. He is saddened to see the project is up for appeal. It is clear why the project is being appealed. The notion that the project conflicts with the General Plan is outrageous. Twisting the words in the General Plan is disingenuous to say the least. Endorsing the appeal will damage Council's image as leaders in the community. He urged Council not to go down that road.
15. Larry Fullington - Mr. Fullington stated that it seems like the reason for the appeal is to go against the applicant and not the project itself. One of the person's that filed the appeal lost to the Mayor in the last election. He listed the complaints that were brought up and subsequently addressed in the project. He wondered why the appellants have not gone after the Olson project like they have gone after the Messina project. The projects are almost mirror images.
16. Chuck Mang - Supports project - Mr. Mang stated that the appeal should be denied. The project would be positive for the City.
17. David Ernst - Mr. Earnst stated that he was distressed that the appellants are being judged for their beliefs. They have been instrumental in other issues for the City. He listed projects that the appellants have been involved in where there have been positive results from their efforts.

18. Dennis Trenton - Supports project - Mr. Trenton stated that the applicants have complied with all issues presented to them. It is a great project.
19. Pat Donahue - Supports project - Mr. Donahue stated that there are only 2 issues - the gabion wall and the garages. Did the applicant follow the rules when the project was designed? Discussed uncertainty in the process, as described by Mr. Ioakimedes. He urged Council to approve the project and deny the appeal on their interpretation of the law. Vice Mayor Patterson told Mr. Donahue about a presentation at the next Council meeting on alternative zoning approaches that will address the parking problems with the City's current zones. She urged him to tune in.
20. Sandra Shannonhouse - Ms. Shannonhouse stated that she has been a developer in town. She referenced the Downtown Historic Plan. Things like height and historic character need to be taken into account. Mr. Donahue's 3-story building looms over historic properties downtown. The issue of garages is a big issue. We need to make sure it is done right. We need to be clear what the law is.
21. John Van Landschoot - Mr. Van Landschoot asked if we really want to bulldoze First Street? The applicants have tried to wiggle through the requirements. It would be nice if all the applicants would follow the zoning codes, historic guidelines, BCDC special plan, etc. Nobody appealing this wants to stop the building from being built. He discussed planned development. The appellants were involved in the Olson project, despite an earlier comment to the contrary. Regarding the garages, they do not pass the straight-face test. The problems need to be fixed before the project goes forward. He requested Council make a decision on the garages tonight. A solution would be to put some commercial in some of the garage areas in building #2.

REBUTTAL:

Appellants:

Ms. Rubay discussed 'certainty.' If we make a determination that garages, bathrooms and laundry rooms can be on the first floor, we can be certain that the next developer that comes in has the right to put those things on the first floor.

Ms. Taagepera has researched and read the General Plan, Special Area Plan, Bay Plan, codes, laws, talked with experts, etc. She is a professional planner. She has 16 years of experience with CEQA. The Bay Plan and the Special Area Plan include many items applicable to this project. This project was not analyzed within that jurisdictional framework. The Special Area Plan does say that under permitted uses, only limited residential is allowed. BCDC has not approved this project. CEQA is not the only reason that a city must only approve projects consistent with applicable plans. That is state law. She hopes Council will direct Staff as part of any future projects to follow CEQA in its review of shoreline stabilization permits. The City should look for excellence in its planning process. She does not believe Sausalito would allow development of garages in its downtown beachfront area. The waterfront is an asset and a gem.

Vice Mayor Patterson stated that the appellants may have been shortchanged on their time due to malfunction of the timer and she would allow them to go over the time by two minutes to be fair. She

hoped the applicants would not ask for additional time, as they had used all of their allotted time.

Applicants:

Ms. Dean stated that regarding limited residential in terms of the Special Area Plan, she believes that it refers to limited residential in the wider area, not in each particular project. She stated that the answer to many of the questions the appellants is legislative, not judicial. The answer to their perceived problems is not in denying the project; it is in changing the zoning ordinance.

Ms. Pigeon stated that the applicants did meet with the community on two occasions. She discussed Benicia's historic downtown. There is residential in Benicia's historic downtown. The best use is to continue in the use historically that the buildings were designed. One of the unique things about Benicia's historic downtown is the intertwined commercial and residential use.

Manuel Lopes stated that he is one of the principals in this project. Steve Messina is his cousin. He hopes this will not deter Council from making a good decision tonight. He listed their family's involvement with business in Benicia. They have followed the rules. They have spent over \$250,000 on this project. He asked Council to trust the experts that have given them the permits for the project. Every time they go two feet forward, someone knocks them five feet behind. He urged them to do the right thing and allow them to go forward with the project. Vice Mayor Patterson stated that he was out of time and needed to wrap it up.

Council Member Campbell stated he wanted to give Mr. Lopes adequate time to calmly say what he wanted to say. Mr. Lopes thanked Council Member Campbell, but said he basically said what he needed to.

Vice Mayor Patterson stated that Council needed approximately 10 minutes to read the additional material submitted just prior to the Council meeting to be able to reflect the information in their deliberation.

Vice Mayor Patterson called for a break at 10:30 p.m.
The meeting resumed at 10:45 p.m.

Vice Mayor Patterson asked Staff for clarification on the property boundaries where the gabion wall is proposed. Ms. Meunier stated that the wall is flush against the boundary. She pointed out on the map where the limit is. Bay boundary was discussed. Ms. Meunier stated that the line of the high water might have some small amount of tidal action. The fill will be located behind the gabion wall and is about 13 cubic yards. The threshold for grading permits is 50 cubic yards.

Vice Mayor Patterson stated that the CEQA project description really needs to include infrastructure to avoid segmentation of the project. She wants the project description to include the map. The law is clear that the whole of the project needs to include infrastructure. The gabion wall is an infrastructure. She asked if it was permissible under CEQA to fix the segmentation problem by amending the project description and not re-circulate the negative declaration. Ms. Meunier verified that was possible. Ms. Meunier stated that BCDC reviewed the mitigated negative declaration and

found it adequate for their staff analysis. In BCDC's letter on 1/28/05, they provided discussion where there might be potential problems, however they did not raise the issue of limited residential, or the fact that the use of the property was inappropriate and not consistent with the Bay Plan. They did raise issues with the specific design of the public access and that is something they will continue to have jurisdiction over.

Vice Mayor Patterson asked if the Army Corps, BCDC, and the Regional Water Quality Control Board permits for the gabion walls have conditions of approval. Ms. Meunier stated that the BCDC permit did have conditions of approval. The engineer stated that he could not answer the question at that time. Ms. Dean stated that the Regional Water Quality Control Board did have some conditions in terms of ensuring best management practices are used. The concept is to protect the waterway. Vice Mayor Patterson stated that to amend the CEQA project description not only should the gabion wall be added to the project description as an infrastructure element, but the conditions of approval from the three permits (BCDC, SFWQCB, ACOE) as well. This could remedy the lack of information. Ms. Meunier stated that could be done. She stated that the shoreline stabilization and the conditions of approval were listed on page VII-341 of the agenda packet.

Council Member Whitney asked a representative from LSA to discuss the letter that was written by them. Ms. Lynette Diaz, LSA, discussed Mr. Lohmann and Mr. Kellner's background and qualifications. She stated that they are very well respected in their professions.

Ms. Taagepera discussed the qualifications of the consultants they used for the appeal.

Council Member Whitney asked Ms. McLaughlin about the Special Area Plan. Ms. McLaughlin briefly reviewed the plan. Council did not adopt the entire Special Area Plan, just a section of it (Marina district via resolution 77-60). A lot of the requirements in the Special Area Plan were incorporated in the General Plan. Council Member Whitney asked what development was mentioned that is 100 % residential. The property is not located on First Street, but 141 East D Street. Ms. Meunier briefly discussed that project.

Council Member Campbell asked if the issue with the Special Area Plan was an issue of access. Ms. Meunier stated that the appellant's issue was not a lack of analysis in the initial study. The CEQA requirement is not to exhaustively evaluate consistently. It is to identify conflict. She discussed 'limited residential' and how it applies to the Special Area Plan. The project is not 100% commercial. The entire frontage of the property along First Street is ground floor commercial.

Council Member Campbell asked Ms. Dean to elaborate on 'segmentation.' Ms. Dean stated that the case law that she looked into thought the EIR was inadequate. The court found it was not necessary to look at the water supply project. The shoreline protection has to go forward anyway. The critical component is whether or not there is significant impact. There is no significant impact from the gabion wall.

Kat Wellman, Legal Counsel, clarified the issue of 'segmentation.' At this point, the City does not have jurisdiction to overturn BCDC's decision on the gabion wall.

Ms. Taagepera stated that in her experience with CEQA it would be rare to have two lead agencies on one project. She thinks it is misleading to tell Council that there are two lead agencies on the gabion wall. The lead agency is the agency with jurisdiction over the project. She discussed the permit process for this project and how the permits were issued.

Council Member Campbell asked what was done with Waterfront Village project. Ms. Meunier stated that it included shoreline protection as well as overall development. Another project of parallel nature would be the grading that was approved on the West 10th Street area.

Vice Mayor Patterson stated that she is troubled by the letter from BCDC dated 4/22/05 where there was discussion about the adequacy of the application before them from the Lopes. They raised a number of questions that they don't have answers to. She stated if the appeal is not upheld, Council could be approving a project that could be changed by BCDC. BCDC has put the applicants on notice that based on the information they have, the project may not be consistent with policies and laws with regards to access.

Vice Mayor Patterson had concerns with BCDC's letter that basically says that local government did not do a thorough job. The applicant goes through the City's process and then BCDC tells them that it is not adequate. Ms. Meunier stated that she sees BCDC's level of review is more analogous of a building permit or improvement plan. The nature of BCDC's regulatory authority is somewhere between our design review and our building permit process.

Vice Mayor Patterson stated that this is a very desirable project in many ways. We are not seeking perfection. There are remedies to some of the issues that have been raised. There is ambiguity in the zoning codes. This is a significant parcel on the waterfront. We need to proceed carefully and thoughtfully. We have good documentation on the design process. She believes Staff got it right on the zoning, although, there is ambiguity in the zoning ordinance. There is an illogic in the zoning ordinance. The appellants are correct in pointing out the illogic. However, there is also logic in going forward with what the Staff has suggested. She is not as comfortable about the CEQA review. She feels more comfortable that we can amend the initial study re: gabion walls and add the discussion on the Special Area Plan. What was submitted to the state agency was misleading. She hopes we don't make that mistake again. She appreciates the testimony and written material that was submitted tonight. There is no State Lands Commission jurisdiction on the state lands with regards to the gabion wall. Because of the additional material and Staff's explanation of BCDC procedures, she is comfortable that with some of the changes to the initial study, she could deny the appeal. In response to the public comment, we should address the lighting. She cited the Semple Crossing as an example for its subdued lighting and this approach would be good for this project. That condition should be added. On the public question that was raised on the transitional use for future commercial, that was a valid point. Is that a condition of approval? Collette said no, it was not. Vice Mayor Patterson asked Ms. McLaughlin if it was worthwhile adding a condition suggesting that we have a transitional use. Ms. McLaughlin agreed this should be done. The third item was to add signage direction on First Street to the waterfront public access.

Council Member Smith stated that he had a few ex-parte meetings with the applicants and appellants.

He is concerned about what kind of uses that could end up in this commercial space. He wishes we could insert some conditions/specifications as to what could end up there. Ms. Meunier stated that it was her opinion that it would not be lawful to restrict the uses. Rather than make it a particular condition, it is something that we could look at with regards changing the provisions to the downtown commercial district. He discussed the process that the project went through and the Mayor's involvement. The applicant should have followed an 'Olson Company' style of outreach. It taints the whole project that the Mayor has been up here long enough to appoint the commissioners that reviewed his project. The zoning language is not great. This project would have been better as a Planned Development. He agrees with the appellant on some issues and with the applicant on other issues. Council's job is not to trip up applicants for not dotting every 'i', it is to follow the General Plan. He supports the suggestions made by the Vice Mayor.

Council Member Whitney stated that he too met with Ms. Dean. In addition, he received written communication from Ms. Dean, Ms. Rubay, and Ms. Taagepera.

The motion was made to adopt the Resolution below with the following changes:

- Modify the project setting to clarify shoreline
- Modify project to include the gabion wall
- Modify the biologic section to incorporate the LSA memo
- Revise the section on land use to provide some discussion on the Special Area Plan - visuals to be included
- Provide a proper map
- The format for this will be in the form of a cover memo to the initial study to keep the record clear

RESOLUTION 05-54 - A RESOLUTION DENYING AN APPEAL OF THE PLANNING COMMISSION DECISION TO UPHOLD THE DESIGN REVIEW COMMISSION'S ADOPTION OF THE MITIGATED NEGATIVE DECLARATION FOR THE 221 FIRST STREET PROJECT

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

Ayes: Council Members Campbell, Patterson, Smith and Whitney

Noes: None

Abstain: Mayor Messina

On the resolution below, the motion is to incorporate the changes on the lighting, the transitional use, and the signage into the Resolution.

RESOLUTION 05-55 - A RESOLUTION DENYING AN APPEAL OF THE PLANNING COMMISSION DECISION TO UPHOLD THE DESIGN REVIEW COMMISSION'S APPROVAL OF THE 221 FIRST STREET PROJECT

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

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

Noes: None

Abstain: Mayor Messina

UNFINISHED BUSINESS:

None

NEW BUSINESS:

None

REPORTS FROM CITY MANAGER:

None

REPORTS FROM COUNCIL COMMITTEES:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 12:00 a.m. on 5/4/2005

The Special Meeting that was continued earlier in the evening resumed at 12:02 a.m.

Council had discussions on whether or not to continue the Special Meeting at the late hour. Council agreed to continue with meeting.

Mr. Erickson suggested taking the comments that were made tonight and defer final action until the budget is discussed in 30 days. There are a lot of other issues that should be looked at.

- **Page I-D-30 - utilities - Vice Mayor Patterson wanted to add a provision that the City will assist the district in seeking water conservation grants. Paragraph (e) - Board Member Fulton wanted to add 'jointly' to the second to last sentence. Paragraph (f) - Vice Mayor Patterson wanted to add some provisions to address some aesthetic considerations to some of the wireless communication facilities that have been placed on school district properties. (Council Member Campbell asked if Council could state whether or not they agree with each of the suggested changes as they are described. Council agreed to do this.) Council agreed to the suggested change. Paragraph (g1) - Vice Mayor Patterson points out that we need to be consistent with the reimbursement provisions.**

Mr. Alvarez discussed the payback issue. A portion of the Park Dedication Fund is being mortgaged to fund this. Don't take the monetary reimbursement away, just add the in-lieu.

Council agreed not to take the reimbursement provision away, but add the 'in lieu' provision.

- Page I-D-33 - paragraph (k section d) - Board Members want to add a provision that if a site is sold or leased to a third party it will automatically terminate the agreement. Council agreed to add the suggested provision.
- Page I-D-34 - paragraph (e) - Mayor Messina wanted to remove paragraph (e). Ms. McLaughlin stated it is safer because of the 30-day out as opposed to the 180-day out. Council majority wanted to take it out. Paragraph (p) - Vice Mayor Patterson wanted this section expanded. Mr. Alvarez stated that the public report needs to go to both parties. Paragraph (p) - Staffing should be provided by the district and the City. Council agreed to this change. Mr. Alvarez wanted the staffing of the Joint Use Committee to be provided by both the district and the City. Council agreed to this change.
- Page I-D-35 - arbitration - Council majority wanted to leave it the way it is.
- Page I-D-23 - Do we need the word 'classrooms' in the first 'whereas'? Council majority agreed to take it out. Mr. Alvarez wanted something added addressing vacant classrooms (facility/vacant room) for childcare. Council agreed to that change.
- Page I-D-24 - Council majority wanted to include the Middle School in the scope of the agreement.
- Page I-D-25 - Language from the BHS Boosters - Council agreed that artificial/synthetic turf would not happen, it will be taken out of the agreement. Mayor Messina did not like the wording 'contributing towards the improvements if we save maintenance costs' - he wanted this taken out. Second paragraph on I-D-25 - The Board Members want 'to the extent the documents exist' added. Council agreed to the change.
- Council Member Campbell wanted to put a cap on the annual maintenance costs for this agreement.

Council Member Whitney wanted to let the audience speak.

Public Comment:

1. Mr. McGuire and Mr. Moitoza, BHS Boosters Organization - They understand the City is working hard to work this issue out. They are more than willing to make sure this moves forward at Benicia High School. They would like to start reconstruction/rehabilitation on that facility (upper field) by June 1, 2005. The Boosters would like to present a loan (in the form of a \$32,000 check) to the City to ensure the work begins in June (good faith gesture). The Boosters are very committed to this project. Once the agreement between the City and BUSD is in place, the City would return the money to the Boosters interest-free. The Mayor clarified that the City could not move forward until an agreement was in place. The City (Mike Alvarez) will hold on to the check (loan) until the City runs it past the district to get a reaction.
- Page I-D-26 - Mayor Messina liked the language developed by Board Member Samiljan regarding access. Mr. Alvarez has issues with Board Member Samiljan's comments. Accessibility will be limited. He would prefer Council allow Staff to work out some language with the Superintendent. Council agreed to let Staff come up with alternative language for

this by Thursday, 5/5. Paragraph (b) - Council wanted to leave this paragraph in. Paragraph (d) - Council wanted to take the paragraph out. Paragraph (e) - Council wanted to take this paragraph out and get a State opinion on this. Paragraph (f) - Council agreed in earlier discussion to make it a loan, not a donation, and to have 1 large mower and 2 trucks.

- Page I-D-28 - Paragraph (c) - Council agreed to put language in about before/after school care. Paragraph (d) - Board Members wanted to delete this paragraph. This will be removed. Staff will come up with new wording regarding 'scheduling.'
- Page I-D-29 - Mayor Messina stated that Council previously agreed to cover the cost of the water for the turf areas. Council agreed that paragraph (b) should be removed. Second paragraph regarding utilities - Vice Mayor Patterson came up with alternative language inserting the words 'fee subsidy' after the word 'tax' and leave the rest in.

Public Comment:

1. Kimberly Dennis - Ms. Dennis stated that she appreciates the efforts of City Staff. She is concerned about the timelines as to when BUSD will receive the revised document. The City Attorney will have the revised document ready 5/4/2005. Ms. Dennis stated that the document changes daily. Some concerns have not been addressed. We are a ways off still. In order to have a true joint use agreement, both sides need to agree on terms. Currently, the tone at the district is very negative. She requested the City allow them to work on a cooperative agreement.

Council Member Campbell asked what the district could implement at this point. Ms. Dennis discussed the High School upper field. Council Member Campbell suggested just dealing with the High School football field. Vice Mayor Patterson agreed to start with the football field, but continue to work on the other ones as well.

Council agreed to accept the changes, as discussed by Council tonight, and integrate them into the proposed agreement. The (4) Resolutions below reflect the changes discussed and approved by Council.

RESOLUTION 05-56 - A RESOLUTION APPROPRIATING THE AMOUNT OF \$19,599.50 FROM THE GENERAL FUND RESERVE FOR THE MAINTENANCE OF THE BENICIA UNIFIED SCHOOL DISTRICT TURF SPORTS FIELDS AT BENICIA HIGH SCHOOL AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE JOINT USE AGREEMENT WITH THE BENICIA UNIFIED SCHOOL DISTRICT TO ALLOW MAINTENANCE OF THESE FIELDS

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

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

Noes: None

RESOLUTION 05-57 - A RESOLUTION APPROPRIATING THE AMOUNT OF \$19,266.50 FROM THE GENERAL FUND RESERVE FOR THE MAINTENANCE OF THE BENICIA UNIFIED SCHOOL DISTRICT TURF SPORTS FIELDS AT JOE HENDERSON ELEMENTARY AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE JOINT USE AGREEMENT WITH THE BENICIA UNIFIED SCHOOL DISTRICT TO ALLOW MAINTENANCE OF THESE FIELDS

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

Ayes: Council Members Patterson, Smith, and Whitney

Noes: Council Member Campbell

Abstain: Mayor Messina

RESOLUTION 05-58 - A RESOLUTION APPROPRIATING THE AMOUNT OF \$19,266.50 FROM THE GENERAL FUND RESERVE FOR THE MAINTENANCE OF THE BENICIA UNIFIED SCHOOL DISTRICT TURF SPORTS FIELDS AT ROBERT SEMPLE ELEMENTARY AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE JOINT USE AGREEMENT WITH THE BENICIA UNIFIED SCHOOL DISTRICT TO ALLOW MAINTENANCE OF THESE FIELDS

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

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

Noes: Council Member Campbell

RESOLUTION 05-59 - A RESOLUTION APPROPRIATING THE AMOUNT OF \$19,266.50 FROM THE GENERAL FUND RESERVE FOR THE MAINTENANCE OF THE BENICIA UNIFIED SCHOOL DISTRICT TURF SPORTS FIELDS AT MILLS/LIBERTY SCHOOLS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE JOINT USE AGREEMENT WITH THE BENICIA UNIFIED SCHOOL DISTRICT TO ALLOW MAINTENANCE OF THESE FIELDS

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

Ayes: Council Members Patterson, Whitney, and Mayor Messina

Noes: Council Member Campbell

Abstain: Council Member Smith

Discuss scope of City/Schools Revenue Options Committee:

Continued to the next Council meeting

ADJOURNMENT:

Mayor Messina adjourned the meeting at 1:21 a.m. on 5/4/05

Lisa Wolfe, City Clerk