



**BENICIA PLANNING COMMISSION
CITY HALL COUNCIL CHAMBERS
MEETING MINUTES**

**Thursday, May 12, 2011
7:00 p.m.**

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

Present: Commissioners Don Dean, Rick Ernst, George Oakes, Belinda Smith, Lee Syracuse and Vice-Chair Rod Sherry

Absent: Chair Brad Thomas

Staff Present: Heather McLaughlin, City Attorney
Lisa Porras, Senior Planner
Doug Vu, Associate Planner
Kathy Trinke, Administrative Secretary

C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. ADOPTION OF AGENDA

Heather McLaughlin, City Attorney, suggested that the Commission consider moving Item IV.A. (Open Government Awareness Training) to the end of the regular agenda items.

On motion of Commissioner Ernst, seconded by Commissioner Oakes, the agenda was adopted, as amended, by the following vote:

Ayes: Commissioners Dean, Ernst, Oakes, Smith, Syracuse and Vice-Chair Sherry

Noes: None

Absent: Chair Thomas

Abstain: None

III. OPPORTUNITY FOR PUBLIC COMMENT

A. WRITTEN

None.

B. PUBLIC COMMENT

None.

IV. PRESENTATION

A. COMPLETION OF OPEN GOVERNMENT AWARENESS TRAINING

(agenda order amended – this item moved to after Item V.B.)

V. CONSENT CALENDAR

A. Approval of Minutes of April 14, 2011

On motion of Commissioner Oakes, seconded by Commissioner Dean, the Consent Calendar was adopted by the following vote:

Ayes: Commissioners Dean, Ernst, Oakes, Smith, Syracuse and Vice-Chair Sherry.

Noes: None

Absent: Chair Thomas

Abstain: None

REGULAR AGENDA ITEMS

A. GENERAL PLAN CONFORMANCE ASSOCIATED WITH VACATION OF RIGHT OF WAY EASEMENT ALONG WEST G STREET

Description:

Vacating and selling this easement would allow the property owner of 270 West H Street to purchase the 1,125 square foot easement along West G Street located on their property approximately 25 feet north of the southerly property boundary.

Recommendation:

Consistent with the Benicia Municipal Code, staff recommended that the Planning Commission approve a resolution finding the vacation of right-of-way easement along West G Street in conformance with the goals, objectives and policies of the General Plan and based on the findings set forth in the attached resolution.

Vice-Chair Sherry and Commissioner Syracuse recused themselves for this item due to conflict of interest. Rick Ernst acted as Commission Chair.

Heather McLaughlin, City Attorney, presented an overview of the staff report to the Commission. This item is on the agenda for the Planning Commission only to determine if this action conforms to the General Plan, not whether the Commission agrees with the easement vacation. That action will be considered by the City Council. This action results from a mediation settlement agreed to by the City and therefore further details are confidential.

Commission Smith pointed out a typographical error on the Resolution.

Commissioner Oakes stated that this easement has been in place since the 1800's and he was not aware of it because it is not signed as public access. He asked if notices were sent to the neighborhood. The City should receive an offset for the loss of public access.

Ms. McLaughlin responded that a public notice is not required for this action. When it goes before City Council for final action, the public notice requirement applies.

Commissioner Dean asked if the easement continues to the west and what happens to the remainder of the easement.

Ms. McLaughlin responded that at a future date the City would recommend abandonment of the remaining easement section. The public has not had access to this easement because it has been gated off for many years. The purpose of this action is to settle a neighbor dispute and remove a liability for the City.

Commissioner Ernst asked for clarification of the plat map. If this easement was a path above the shoreline it is not being used for its original purpose. Does the easement at 251 W. G Street remain in place?

Ms. McLaughlin responded that the easement does not go through -- it stops in the middle of the property. There are technically two easements shown on the map. The easement at 251 West G Street does remain in effect.

Public Comment

Jack MacCoun of 251 West G Street referred to his letter that was sent to the Planning Commissioners. He brought pictures of the area for the Commissioners. He spoke against staff's recommendation because the General Plan Goal 2.20 does not apply to this easement because there is a gate across the easement. The property owner's stated reason that this easement vacation is to make their property more accessible and visible for emergency vehicles does not apply. There is no need to sell the easement. Public noticing of this action should be required.

Kathleen Olson of 920 First Street also spoke against staff's recommendation. The public should not lose its rights to public access because the easement is fenced. The City Parks and Recreation Department strives to obtain public access to the shoreline and insurance is available for a public access liability. She was surprised that there was no public notice for this action and was not impressed with staff's report. She agrees

with the previous speaker, that Mr. MacCoun's General Plan goals on his letter were on point.

Leann Taagapera of 271 West G Street/270 West H Street is the property owner. She clarified that she did not request this action, rather it is the result of a mediation agreement. There is currently no public access to her front yard. This easement has been gated off since 1907 (she brought a postcard to illustrate this). She also brought pictures for the Commission. The easement leads to nowhere. This vacation is consistent with the General Plan. She spoke in support of staff's recommendation.

John Jacobs, Benicia resident, asked if the City is giving up the public's right to this area. There would be public interest in preserving public access to this area. Why wasn't the public notified.

Ms. McLaughlin responded yes, the public would be giving up its rights to access this area.

Commissioner Ernst also responded that the Planning Commission is making a recommendation to the City Council concerning General Plan conformance. At this point there is no requirement for public notice – that will occur when it goes before the City Council.

Public Comment Closed.

Commissioner Smith asked who the applicant was. She stated concern about the need for public access along the shore. But since this easement doesn't go anywhere, she sees the advantage to the City for abandonment.

Ms. McLaughlin responded that the City is applicant.

Commissioner Dean commented that staff is asking for a Commission recommendation with a very narrow and artificial purview, which is only that this action conforms with the General Plan. It is mysterious that the City is the applicant for removing the public easement. He finds it troublesome that the context of this action is missing from the staff report because mediation agreements are confidential. The City should provide public noticing of this type of action even if it is not required.

Commissioner Oakes agreed with Commissioner Dean's comments. He does not want to close off public access to this area. It is a hidden gem. Just because it is gated, does not mean the City should give up the public's right to this area. The existing gate and vegetation hinders the view. The City should retain the easement as long as possible. He also submitted photos of the easement area.

Commissioner Dean stated that usually when staff asks for conformance with the General Plan, there's more information in the staff report. It's not clear what the intent of the City is. What happens to the rest of the easement if only part of it is vacated. He asked if this is a one-time action.

Commissioner Ernst asked who initiated this action.

Ms. McLaughlin stated that she did not remember specifically which property owner requested it. She pointed out that it is a good idea to resolve this issue between neighbors.

A motion was made by Commissioner Smith to adopt the resolution finding the vacation of right-of-way easement along West G Street in conformance with the Goals, Policies and Programs of the General Plan.

No second was made. The motion failed.

A motion was made by Commissioner Oakes and seconded by Commissioner Dean to return this item to staff for further analysis with the General Plan goals that would either support or not support this easement vacation and bring it back to a meeting no later than July 2011. The motion was adopted by the following vote:

Ayes: Commissioners Dean, Ernst, Oakes and Smith

Noes: None

Absent: Chair Brad Thomas

Abstain: (Recused) Commissioner Syracuse and Vice-Chair Sherry

B. APPEAL OF THE HISTORIC PRESERVATION REVIEW COMMISSION'S APPROVAL OF DESIGN REVIEW FOR EXTERIOR MODIFICATIONS TO THE STOREFRONT LOCATED AT 724 FIRST STREET

Description:

The appellant filed an appeal of the Historic Preservation Review Commission's requirement to remove the existing metal window sign that is in violation of the Downtown Historic Conservation Plan's signage policy as part of the design review approval to modify the façade of the existing commercial storefront located at 724 First Street. The original application for exterior modifications included painting of the walls and trim and replacement of the front door to match the existing color scheme and door of the adjacent storefront at 726 First Street.

Recommendation:

Uphold the Historic Preservation and Review Commission's approval of Design Review 11PLN-0005, based on the findings and with the conditions contained in the Draft Resolution.

Doug Vu, Associate Planner, provided a brief overview of this item that included the history of the Historic Preservation and Review Commission's action and details of the application. During staff's review of the initial application, staff discovered a sign in the window. There is a building permit on file for construction of the interior brick wall and shadow box, but no existing sign application is on file. The window sign is non-conforming within the Downtown Historic District. Mr. Vu read the definition of a sign from the code. The metal "Rellik Tavern" piece displayed in the window is consistent with the City's definition of a window sign, therefore staff recommends denying the appeal.

Commissioner Ernst asked when the tiles in front of Benicia Home Improvement were painted.

Mr. Vu answered that we don't have that information at this time. He clarified that the recommendation tonight also recommends that the tiles at this location not be painted.

Commissioner Dean asked if the issue is that the sign is in the window.

Mr. Vu responded that it is whether or not the metal piece meets the definition of a window sign.

Vice-chair Sherry asked what if the metal piece was 20 feet back from the window.

Mr. Vu responded that if the wall structure was set back and something was in between the window and the metal piece, it would not be considered a sign but since it is mounted on the wall and enclosed, it appears to be constructed purposely to be viewed from the outside.

Commissioner Smith asked how staff determined the depth of the piece from the window. Usually a window sign is on the window or behind the window. She stated that she was surprised that this item was pulled aside because there is no application for it. This issue should have been handled at staff level and is confused about the distance between the window and the metal piece and when it stops being considered a window sign. As an art piece, this may be a subjective determination.

The Commission and staff discussed how signs are enforced on First Street and details concerning sign definition interpretation. The City's policy is that sign enforcement occurs after a complaint is received. In this case, it was discovered in the process of an application review and therefore staff has a responsibility within the context of the project to make sure there is compliance with the code. The reason it is considered a sign is because the metal piece is in the shape of the Rellik's logo, it has the company name on it and it is directly behind the window.

Public Comment:

Delando Pegan, appellant and owner of the Rellik Tavern stated that there is an unspoken rule that business owners “do first, ask forgiveness later.” He stated his goal is to have an upscale bar, be a positive business example and follow every rule. His two reasons for the window display were to prevent a “smash and grab” and to promote his business. He has spent \$6,000 to build the case around the art work. He has received no complaints and the City has received no complaints. He researched some other cities’ window sign definitions and read them to the Commission. Our ordinance should be revised to include the allowed distance from the window.

Tom Hamilton, co-owner of the Rellik Tavern stated that the window display does not harm the community. He asked if its removal would serve the community. He asked how the City would enforce other business signs in the downtown and who complained about this window sign.

The Commission and staff discussed a sign variance process.

Harry Newhall of 275 East L Street spoke in support of the appellant. He is a patron of the Rellik and he agrees with Commissioner Smith that this is a subjective call on the part of staff. There is no defined measurement for a display behind the window. The ordinance should include dimensions.

Sam Houston, business owner at 739 First Street, ABC Music, spoke in support of the appellant. He stated that he recently moved his store to First Street. He has experience working with businesses as the Downtown Asset Manager. The ordinance language is vague and restrictive. He stated concern that he would not be allowed to display merchandise in this window. The code should be clear. Businesses depend on merchandise displays for the public to see what the business sells.

John Jacobs, patron of the Rellik, spoke in favor of the appellant. He stated that the City’s code sounds broad and ambiguous. The Rellik’s display is not really a sign. He pointed out that there is a lot of drama over an improvement that is beautiful. The City has wasted too much time on this item.

Tony Shannon, of 28 Buena Vista, spoke in favor of the appellant. He distributed pictures of other businesses on First Street. He agrees that this action is a “slippery slope” and consists of selective enforcement on the part of the City. The Code definition is too broad. He asked what was the intent of the business owner. That in this case it was to make a piece of art that is more than a sign. The sign ordinance should be revised.

John Wilson, a Benicia resident, spoke in favor of he appellant. He pointed out that there is enough evidence here that this window display is not a sign. He asked if the City making it easy or hard to do business here. This business makes everything look better on First Street. The metal piece should be called art.

An unidentified resident from Hanlon way spoke in favor of the appellant. He stated that the Rellik complied with the building code and he does not support the “after the fact” enforcement. He is in favor of the window sign remaining.

Closed Public Comment.

Commissioner Ernst asked the appellant to clarify their position.

Mr. Pegan stated that they wish to proceed with painting the exterior of the building the same colors as their building next door so it looks like one business. He stated that he is in agreement with the HPRC’s approval, except regarding the tile painting. However, the design review approval is contingent on the window sign. He stated that they will comply with HPRC’s decision, but they are appealing the sign issue.

The Commission discussed the following: promoting business by not endorsing selective sign enforcement; the HPRC’s decision details; whether to modify the existing sign ordinance to better define window signs; whether this is a process issue because HPRC is not a regulatory commission.

Commissioner Oakes asked staff if the Rellik owners applied for a sign permit for their business at 726 First Street (next door).

Mr. Vu answered that they did apply for a sign permit for that address. If the appellant had consulted with staff prior to their building permit, or applied for a sign permit, staff could have advised them that this type of window sign does not comply.

Commissioner Dean stated that this sign looks great, but unfortunately he must support staff’s and the HPRC’s decision. Staff is required to interpret the code.

Vice-chair Sherry stated that staff did the right thing in this case. The City cannot turn a blind eye to this issue. The metal piece operates as a sign. He stated that he agrees that the sign ordinance is vague about window signs, but he is reluctant to cause local merchants to re-do something like this when it wasn’t clear in the ordinance. The intent of the ordinance was to prevent neon and/or gaudy signs on First Street, which is not the case here.

Commissioner Syracuse suggested that it may be possible to continue this item and in the interim allow filing of a variance by the appellant.

Ms McLaughlin stated that the Commission may achieve the same result by determining that this metal piece is not a sign, which would give the business owner some finality.

The Commission continued discussing whether the metal piece should be considered a sign according to the City's ordinance.

A motion was made by Commissioner Oakes and seconded by Commissioner Dean to approve staff's recommendation to uphold the Historic Preservation and Review Commission's approval of Design Review 11PLN-0005, based on the findings and with the conditions contained in the draft resolution.

Ayes: Commissioners Dean, Oakes and Syracuse
Noes: Commissioners Ernst, Smith and Vice-Chair Sherry
Absent: Chair Thomas
Abstain: None

The motion was not adopted.

The Commission continued discussing the HPRC process and the sign approval process.

Mr. Pegan, appellant, asked to speak about the HPRC decision. He stated that the HPRC approved the new paint colors, the brick, and the façade. The sign issue was separated from the other actions. Some of the HPRC members did not want the sign issue included in the approval package.

A motion was made by Commissioner Ernst and seconded by Commissioner Smith to uphold the HPRC decision in part and deny in part the section concerning the metal sculpture, adding a "whereas that the metal sculpture is not a sign"

Ayes: Commissioners Ernst and Smith
Noes: Commissioners Dean, Oakes, Syracuse and Vice-Chair Sherry
Absent: Chair Thomas
Abstain: None

The motion was not adopted.

The Commission continued discussing with staff various options to move forward with this item.

Mr. Pegan stated that he wishes to move forward with the rest of the façade work that was previously approved by the HPRC.

A motion was made by Commissioner Oakes, seconded by Commissioner Smith, to approve the staff report and resolution as drafted, striking all mention of the window sign, and continue the sign appeal by applying for a sign permit and a sign variance within two months from this meeting and was adopted by the following vote:

Ayes: Commissioners Dean, Ernst, Oakes, Smith, Syracuse and Vice-Chair Sherry
Noes: None
Absent: Chair Thomas
Abstain: None

The Commission reconvened after a short break.

By consensus, the Commission agreed to postpone the Open Government Awareness Training until the next meeting.

VII. COMMUNICATION FROM STAFF

Lisa Porras, Senior Planner, announced staff's plan to increase awareness about the City's Housing Rehabilitation Loan Program for interested low to moderate income residents.

VIII. COMMUNICATION FROM COMMISSIONERS

Commissioner Oakes requested that for future staff reports, staff provide more detailed information with better maps and graphics.

Commission Oakes asked how to proceed, before a meeting, he is asked by property owners to meet with them on items scheduled on a Planning Commission agenda.

Ms. McLaughlin responded that the Commissioner might, at the beginning of the item, state what occurred and who the Commissioner met with (an ex-parte disclosure).

Commissioner Smith asked what the appropriate process is to ask questions from staff prior to a Planning Commission meeting?

Ms. Porras responded that Commissioners can email the staff member and cc: Kathy Trinique for the record.

IX. ADJOURNMENT

Meeting was adjourned at 10:20 pm.