

June 7, 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
JUNE 7, 2005**

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:47 p.m. on Tuesday, June 7, 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, Whitney, and Mayor Messina

Absent: Council Member Smith (arrived @ 6:56 p.m.)

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ADOPTION OF AGENDA:

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

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

Noes: None

Absent: Council Member Smith

COMMUNICATIONS:

WRITTEN:

None

PUBLIC COMMENT:

None

PRESENTATION:

Metropolitan Transportation Commission's (MTC) Regional Smart Growth Efforts:

Ms. Evelyn Baker, MTC Project Manager, reviewed a PowerPoint presentation (hard copy on file).

CLOSED SESSION:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 7:29 p.m.

**MINUTES OF THE
REGULAR MEETING - CITY COUNCIL
JUNE 7, 2005**

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:30 p.m. on Tuesday, June 7, 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:

ANNOUNCEMENTS:

- **Budget Workshop - The City Council will have a second budget workshop on June 10, 2005 at 5:30 p.m. in the Commission Room at City Hall.**
- **Budget Workshop - The City Council will have a third budget workshop on June 17, 2005 at 5:30 p.m. in the Dona Benicia room at the Library.**
- **Openings on the following Boards and Commissions:**
 1. **Human Services Fund Board - Full term to June 30, 2009**
 2. **Civil Service Commission - Full term to August 31, 2008**
 3. **Parks, Recreation and Cemetery Commission - Full term to September 30, 2009**
 4. **Parks, Recreation and Cemetery Commission - Unexpired term ending July, 2006**
 5. **Solano Transportation Authority Pedestrian Advisory Committee**

Council Member Smith stated that since the Mayor was announcing the openings on Boards and Commissions he should announce the number one opening, which is an opening on the Planning Commission - one full term to September 30, 2008.

APPOINTMENTS:

None

PRESENTATIONS:

Update on Revitalization of Solano County Fairgrounds:

Mr. Michael Wilson, Vice President, ARC Inc., reviewed a PowerPoint presentation (hard copy on file).

PROCLAMATIONS:

Mayor Messina presented the following proclamation:

- Affordable Housing Week - June 5-11, 2005 - Mr. Robert Moore, President, Affordable Housing Affiliation Board, accepted the proclamation. Mr. Moore gave Council copies of a document describing the Solano Housing Coalition in detail (hard copy on file).

ADOPTION OF AGENDA:

Jim Erickson, City Manager, introduced Ms. Diane Smikahl, the new Library Director and Mr. David Golick, the new interim Community Development Director.

Mr. Erickson stated that item VII-C should be moved up in the agenda to be the first Public Hearing item presented.

On motion of Council Member Smith, seconded by Council Member Whitney, 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 written items were submitted to Council (copies on file with the original Agenda packet).

PUBLIC COMMENT:

1. Daryl Hall, Executive Director, Solano Transportation Authority (STA) - Mr. Hall announced that there would be a few public meetings regarding a local sales tax measure they are trying to get on the upcoming ballot. The meetings will be held on 6/23/05 at 6:30 p.m. at the Benicia Library and 6/23/05 at 12:00 at the Benicia Yacht Club.
2. Donald Dean - Mr. Dean stated that the City sponsored him and other members of the HPRC to attend the Annual Preservation Foundation Conference in May 2005. He thanked Council for giving him and the other commissioners the opportunity to attend the conference. It was time well spent. He hopes Council will continue to send other City commissioners to worthwhile conferences.
3. J.B. Davis - Mr. Davis discussed the items on the agenda that addressed contracts being awarded to various vendors. He expressed his hope that the building materials for the projects be billed through the City so that the City would recognize the sales tax dollars.

Mayor Messina stated that there is a provision in the state sales tax law that requires a project in your jurisdiction that you can apply for a provision exactly for that. He stated that Staff is looking into whether some of the major projects that Valero takes on can be an example of this issue.

Mr. Erickson stated that Staff is looking into the issue that Mr. Davis raised.

Council Member Campbell asked what the status is on the money that was spent on the Valero plant with respect to the point of sale. Mr. Erickson stated that he did not have an answer to the question, but would get back to Council in the near future.

4. **Gretchen Burgess** - Ms. Burgess stated that she appreciates the beautiful low income housing units that have recently been constructed in the City. She stated that there was sadness about the recent lawsuit against the City and Council Member Smith. The recent lawsuits against the City are an embarrassment. Staff time would be better spent on other issues within the City. The City's money would be better spent serving the citizens, elderly, youth, and the business people. We are a small town and we stand together.
5. **Donnell Rubay** - Ms. Rubay discussed the possible parcel tax being presented later in the agenda. She discussed recent events that have taken place at BUSD. She suggested that BUSD should commit themselves to acting in an open way in the future. They can adopt an open government ordinance. They can use one that the City has drafted, or they can draft one on their own.
6. **Steven Goetz** - Mr. Goetz stated that there was a recent request by the Solano Trust for Public Lands to the Solano County Board of Supervisors regarding operating maintenance funds from the budget to open the Lynch Canyon Open Space dawn to dusk. He suggested Council look into forming a Regional Park District and a funding source. Action on this issue by this Council should be discussed. Vice Mayor Patterson asked staff to put the requests made by Mr. Goetz on the next agenda.
7. **Tiffany Shaw** - Ms. Shaw is a senior at BHS. (See hand out on file) She requested sponsorship from the citizens for the 2005 Junior Statesmen Summer School Program (see handout for details on mailing information). The tuition is due by 6/10/05.
8. **Joel Fallon** - Mr. Fallon wanted to speak in support of Council Member Smith who has noted that an ex official of the City has a lot of things to explain. He thinks all public officials need to explain many things when they are in public office. There are too few checks and balances at the municipal level. His support for Dan Smith reflects his support for open government. Without open government, it is too tempting and too possible to fool all of the people all of the time.
9. **Jan Cox-Golovich** - Ms. Cox-Golovich discussed Valero's latest attempt to reduce its property taxes. They are trying to get it reduced by \$400,000 - \$3.2 million dollars. She asked Council to make a public, united stand to let the public know what Valero is trying to do.

Mayor Messina stated that Staff and Council are working hard on this issue. They will try and do a better job to let the public know what they are doing regarding this issue.

10. **Council Member Smith** announced the following upcoming events:
 - 6/8 and 6/29 - Community conversations will be held at the Library regarding the 520 acre development by Seeno
 - 6/9 - Celebration at the Library to honor Diane Smikahl, the new Library Director

- 6/9 - Chamber of Commerce Business at Breakfast at Randy's Grill
- 6/16 - Chamber of Commerce Business After Hours Mixer at the Inn at Benicia Bay
- 6/10 - BPAF presents Strunz and Farah at the Napa Opera House. On 6/12 -Saul Kaye pop band will be at the Inn at Benicia Bay
- 6/11 - Friends of the Library book sale
- 6/12, 6/26, 7/18, and 7/24 - Benicia Old Timers baseball team will play baseball.
- 6/17 - Outdoor movie night at the City Park presents 'The Incredibles'

Council Member Smith stated there was recently an incident and a number of rumors at BHS that he wanted to address. He praised the Police Department for their extensive and thorough response to the issues.

11. Vice Mayor Patterson toured the school grounds and fields with the Parks and Community Services department. She praised Staff's efforts. Staff works incredibly hard. It is wonderful to see the fruits of their labor. She was able to see the leak at the pool as well. She appreciated them taking the time to show her around.

CONSENT CALENDAR:

Council pulled items VI-C and VI-J.

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

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

Noes: None

The minutes of May 17, 2005 were approved.

RESOLUTION 05-79 - A RESOLUTION CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2005, FOR THE ELECTION OF CITY COUNCIL MEMBERS (2) FOR THE CITY AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA TO GENERAL LAW CITIES AND WAIVING THE FEES FOR CANDIDATES

RESOLUTION 05-80 - A RESOLUTION ACCEPTING THE BIDS FOR THE WASTEWATER TREATMENT PLANT ROTATING BIOLOGICAL CONTRACTOR MEDIA REPLACEMENT PROJECT, AWARDED TO THE CONSTRUCTION CONTRACT TO BERKELEY ENGINEERING CO. OF PALO ALTO, CALIFORNIA, IN THE AMOUNT OF \$172,714, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY OF BENICIA

RESOLUTION 05-81- A RESOLUTION ACCEPTING THE RESPONSIVE BIDS FOR THE WASTEWATER TREATMENT PLANT HELICAL SCUM COLLECTOR REPLACEMENT PROJECT, REJECTING THE BID OF RIVER CITY CONSTRUCTORS AS NON-RESPONSIVE, AWARDED TO THE CONSTRUCTION CONTRACT TO BERKELEY ENGINEERING CO. OF PALO ALTO, CALIFORNIA, IN THE AMOUNT OF \$114,860 FOR THE BASE BID PLUS \$2,500 FOR ALTERNATE BID ITEM NO.4 FOR A TOTAL AWARD OF \$117,360, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY

RESOLUTION 05-82 - A RESOLUTION ACCEPTING THE BIDS FOR THE LAKE HERMAN DAM OUTLET STRUCTURE SEISMIC PROTECTION PHASE 2 AND SLIDE GATE REPLACEMENT PROJECT, AWARDING THE CONSTRUCTION CONTRACT TO SWEETWATER CONSTRUCTION, INC. OF VALLEJO, CALIFORNIA, IN THE AMOUNT OF \$162,899, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY OF BENICIA

RESOLUTION 05-83 - A RESOLUTION ACCEPTING THE BIDS FOR THE LAKE HERMAN DAM OUTLET STRUCTURE SEISMIC PROTECTION PHASE 3 AND WEIR BOX PROJECT, AWARDING THE CONSTRUCTION CONTRACT TO SWEETWATER CONSTRUCTION, INC. OF VALLEJO, CALIFORNIA, IN THE AMOUNT OF \$97,212, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY OF BENICIA

RESOLUTION 05-84- A RESOLUTION REQUESTING THE METROPOLITAN TRANSPORTATION COMMISSION ALLOCATE FISCAL YEAR 2003/2004 TRANSPORTATION DEVELOPMENT ACT ARTICLE 3 PEDESTRIAN/BICYCLE FUNDING FOR THE STATE PARK ROAD BIKE/PEDESTRIAN BRIDGE PROJECT

Council agreed to the approval of an amendment to the agreement with Meyers Nave for legal services related to the Marina

RESOLUTION 05-85 - A RESOLUTION AUTHORIZING THE SUBMITTAL OF GRANT APPLICATIONS FOR WASTE REDUCTION AND REUSE/RECYCLING FUNDS FROM THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

RESOLUTION 05-86 - A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR FTA SECTION 5307 FUNDING FOR THE REPLACEMENT OF CUTAWAY VEHICLES AND COMMITTING THE NECESSARY LOCAL MATCH FOR THE PROJECT(S) AND STATING THE ASSURANCE OF THE CITY OF BENICIA TO COMPLETE THE PROJECT

RESOLUTION 05-87 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT FOR PARTICIPATION IN THE TRANSLINK INTERAGENCY PARTICIPATION AGREEMENT

**Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda
(END OF CONSENT CALENDAR)**

Council took the following actions:

Denial of claims against the City by the following parties:

- **Roberson**
- **Littleton**
- **American Housing**

Council Member Smith stated that he was not satisfied with Staff's explanation of why the claims are being denied. A hard storm flooded the properties. The City's sewer line backed up. He asked that the denial of claims be deferred until staff can research the claims further.

Ms. McLaughlin stated that this item could be continued to the next meeting. She was not sure if Staff will find any more good facts, but they will look into it further. Ms. McLaughlin discussed the process Staff goes through when reviewing claims.

Council agreed to continue this item until the next Council meeting.

Initiation of proceedings for establishing 2005-06 assessment for the City of Benicia Landscaping and Lighting District:

Vice Mayor Patterson pulled this item because a citizen contacted her because she wanted Vice Mayor Patterson to investigate with her various parts of the City. The main concerns were the median areas and their maintenance. She wanted to bring to Council's and the public's attention that we cannot maintain the median strips with the current funds we are getting. We need to spend more money for water and some of the work that is done. There is a split in responsibilities between the Public Works department and the Parks and Community Services department. She believes the pictures in the PowerPoint presentation accurately depict what areas each department is responsible for. She asked Mr. Sousa to explain why the City has a budget shortfall, what it does to the budget, and what our future prospects are for addressing the issues.

Rob Sousa, Finance Director, Mike Alvarez, Parks and Community Services Director, and Dan Schiada, Public Works Director, reviewed the Staff report and a PowerPoint presentation (hard copy on file).

Mayor Messina stated that when the Landscaping and Lighting District assessments were formed, the purpose was to ensure maintenance of certain areas was to the benefit to the homeowners within the district, not the community at large. He stated that Council's direction to Staff was to have a balanced budget and that it be applied to all City funds. He asked why the City is not living within its means in terms of the two-year budget cycle.

Vice Mayor Patterson stated that there is vegetation that may die without maintenance and watering. There are trees that need to be sprayed. There is tremendous value that is added to Benicia properties with landscaping. The idea that we would allow the landscaping to die while we are getting the public informed that they are going to need to increase the assessment does not make sense to her. She was not on the Council when the information was initially brought to Council's attention that there was going to be a shortfall. We owe it to the community not to let the landscape areas fall into further disrepair, die, and not be maintained. The Fleetside area and East Second Street are major areas used by commerce. She is not suggesting the business folks would be shortsighted and not want to see them maintained. She certainly does not think this Council will be shortsighted and have the areas die and later on (when we have enough money) go through a replanting program.

Mr. Alvarez stated that there is not enough money right now to provide the type of maintenance that is needed. If we let the plants die, we will have many unhappy citizens. That is not the proper way to

go. What Staff has recommended for the last three years (but Council has not taken any action yet) is live on reserves. Staff does not have any control over some costs. Staff is doing the best they can with the resources they have. The pictures demonstrate that we are not doing what we are capable of doing or what we should be doing. It will be tougher in the next two-year cycle because we are going to run out of money.

Mr. Erickson stated that this might be better discussed when the Parks and Community Services department budget is discussed at the budget workshop.

Council Member Whitney asked if this could be addressed with a CPI index, as was done with the Business License Tax. Mr. Alvarez stated that could not be done. Under the 1972 Landscaping and Lighting District, Staff has to come back to Council for review each year. You cannot put an inflator on there. Mr. Schiada reviewed the Landscaping and Lighting District annual review process for Council's edification.

Mayor Messina suggested taking action tonight if needed, and continue the discussion at the budget workshop.

Vice Mayor Patterson asked Staff to clarify the issue of the CPI index and the levy being fixed at the budget workshop. She would like to give Staff direction to have the Parks and Community Services Department and the Public Works Department come back to Council after the budget workshop with a program on how they will consolidate the areas that are maintained. There appears to be a lot of overlap there.

Council Member Campbell asked how the mail in voting (for the Assessment Districts) would work and how much each voter would be responsible for.

Mr. Schiada stated that although the separate parcels are listed, it is based on a certain amount per acre. The cost is averaged out. It will be a vote of the entire district. The number of votes is approximately 2,500.

RESOLUTION 05-88 - A RESOLUTION DESCRIBING IMPROVEMENTS AND DIRECTING PREPARATION OF ENGINEER'S REPORT FOR THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2005-2006

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

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

Noes: None

RESOLUTION 05-89- A RESOLUTION PRELIMINARILY APPROVING THE ENGINEER'S REPORT FO THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2005-2006

On motion of Vice Mayor Patterson, seconded by Council Member Smith, the above Resolution was

adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 05-90 - A RESOLUTION OF INTENTION TO ORDER THE LEVY AND COLLECTION OF ASSESSMENTS PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972 AND THEREFORE SETTING A PUBLIC HEARING ON JULY 5, 2005 FOR THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT FISCAL YEAR 2005-2006

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

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

Noes: None

Vice Mayor Patterson called for a 5-minute break at 8:55 p.m.

The meeting resumed at 9:05 p.m

PUBLIC HEARINGS:

Amendment of Downtown Historic Conservation Plan to remove 195 East F Street as a contributing structure:

Mayor Messina and Council Member Campbell excused themselves from this portion of the meeting due to a conflict of interest. Vice Mayor Patterson chaired this portion of the meeting.

Eric Angstadt, Associate Planner, reviewed the Staff report.

Ms. Carol Roland reviewed the survey findings (copy of survey on file with agenda packet) on the property in question. She reviewed definitions and standards, who sets the standards, and the grounds for claims. She discussed how she came to the conclusions that she did (hard copy of the speaker's notes on file).

Council Member Whitney asked Ms. Roland to state her title and background as an expert, for the record. Ms. Roland stated that she is the Principal of Roland-Nawi Associates, Historic Preservation Consultants. Before establishing her own consulting firm, she worked for the State Office of Historic Preservation for 12 years. After that, she became a Senior Environmental Planner with a specialty in cultural resources, for the Department of General Services at the State, subsequently, in the same position for the Department of Transportation. She has a PhD in history from the University of California.

Council Member Smith asked Ms. Roland if the criteria she used in the survey were the same that would be used when comparing various stages of a house's evolution as to what the more historically relevant stages would be.

Ms. Roland stated that a house could have several periods. Some additions to houses can add to their significance or extend the period of significance. In this case, one would look at the most relevant

periods of significance within that district. As a result of this survey, she would say that the greatest strengths for the City of Benicia lie in the 19th Century buildings. In looking at issues of how a house might be restored, one might look to that period of its potential greatest contribution within the district.

Council Member Smith stated that a particular style that is associated with a house could be subjectively viewed as being historic, and yet less historic than in earlier periods. Ms. Roland stated that not all changes to a house add to its integrity. The Secretary of the Interior sets standards for historic integrity. There are standards for restoration/rehabilitation/reconstruction. They place a strong emphasis on original historic fabric and saving original historic fabric. In this case, the original historic fabric of the house does continue to exist under the re-cladding. Whether or not it exists in the other houses in the district, she does not know.

Council Member Smith asked Staff to respond to the indications in the HPRC minutes that the commission requested this project return to them. Mr. Angstadt stated that neither the DRC nor HPRC is listed as a required step of the procedure to do a zoning map amendment. Staff still felt it was an important courtesy to take it to the HPRC for input. That commission felt that some issues should be investigated and requested the project be returned to them prior to it going before Council. Staff consulted the City Attorney about whether that was allowed, given the procedural requirements in the Benicia Municipal Code. The applicants requested they be given the speediest hearing. Staff agreed to (in an attempt to compromise) proceed forward with that very analysis. However, they were not able to complete it in time to get it to the HPRC before bringing it to the next commission meeting. It is somewhat of a compromise solution. Staff has completed all of the analysis they could possibly complete at this time.

Council Member Smith stated that he understands Staff's reasoning, but it would have been a better Staff report if it had been acknowledged that the HPRC requested the return.

Public Comment:

1. Donnell Rubay - Ms. Rubay stated that she understood that the Eastside segment was part of the Downtown Historic District. However, it sounds like when the survey was updated, the eastside segment was not part of it.

Mr. Angstadt stated that the extension of the Downtown Historic District that is an independent, separate geographical entity. It is part of the update of the survey. What Ms. Roland and Ms. Irvin found in exploring the information provided is that there are significant houses outside of that small linear area that they both feel should be included. One of the additional things that Staff wants to do is to do more survey in that area, and possibly expanding the boundaries of the district.

Ms. Rubay stated that there are three houses (in the letter/pictures she submitted to Council) in the area that should be part of the new analysis, as opposed to being brought in later. She stated that she hopes this issue is resolved because it is making her brain hurt. She thanked Staff and Ms. Roland for responding to her questions regarding her view on this. She stated that the appellants did not

raise this issue after the appeal. It was brought by another member of the community. She only provided information. There are two versions of the house, the current version and the 1890s version. The appeal is based on the 1890s version. Council needs to make it clear to the public as to what is historic in our historic plan.

2. **Bonnie Silveria, Historical Society** - Ms. Silveria read a letter from the Historical Society. The Historical Society believes that the decision to de-list the property was made in haste. She then clarified the ownership of the house. It belonged to the Bernard family, not the Vierra family. She read a letter she personally wrote to Council (hard copy on file). She stated that she wished she could take her vote (at the HPRC meeting) back. She stated that she felt blindsided and did not realize what was happening. She tried to make a case to follow her fellow commissioners before the vote was taken, but it was not well put together, so unfortunately, she was not able to make a good case. She does not feel that the homeowners should not be stopped from adding on to their home, just that the addition should fit into the present stucco style. They should leave the front of the home in its present vintage Portuguese style and Benicia would still have a little of that community that made Benicia into what we all like to say 'a charming place to live.' She apologized to the families of the Portuguese community (she listed many family names). She asked Council not to make a decision tonight, but to send this item back to the HPRC for review. She can access the resources needed to answer the questions brought up by Ms. Roland.
3. **Jan Cox-Golovich** - Ms. Cox-Golovich stated that Ms. Silveria's plea was eloquent. She wanted to second everything Ms. Silveria said. She stated that we need to take these historic things in the context of the whole history of Benicia. She discussed the cultural contributions of the Portuguese in Benicia. She stated that we have a lot of latitude here to set the direction for making communities recognize their heritage.
4. **Mike Ioakimedes** - Mr. Ioakimedes echoed what Ms. Silveria said. After hearing the expert testimony, he thought it seemed too analytical and sterile. He discussed the cultural presence of the Portuguese in Benicia. He discussed the annual Holy Ghost parade. He stated that we should maintain the spirit, character, and fabric of the community.
5. **Rick Burton**- Mr. Burton stated that he is a 21-year resident of Benicia. The City has no way of preserving the historic district. It is left up to the individuals that are incorporating the remodel. There has been nothing to date from the Historical Society or Planning Commission as to the merits that need to be met. The focus should be on restoring the original house. When the project was first started, it met all the criteria. The applicants have worked very hard. The DRC and the Planning Commission approved the project. Property owners need to have direction from the City, and possibly funds provided in the restoration process. The project should not be sent back to the HPRC. It should be decided upon tonight.
6. **Chuck Mang** - Mr. Mang stated that Staff and the DRC have done what the appellants have asked. Both Staff and the experts came to the same conclusion, that the property should be delisted. He supports that decision.
7. **Carmen DuBois** -Ms. DuBois stated that this has been a grueling experience. It has been an emotional roller coaster for 7 months. Every commission meeting they attend has a new

battle. At times, they feel like they are caught in the middle of a bigger conflict that has nothing to do with them. The only record the Community Development department has of this house regarding the survey done in the 1980s is a one-page inventory with no description of the appearance, construction history, or why it is significant. There was one previous DPR. Property owners deserve a more thorough and professional review if their rights are to be restricted. Now, two preservation consultants agree that this house does not have the integrity to be listed as a historic resource. Please consider their expertise seriously. She stated that most of the evidence that was presented by Mr. Sheehan was centered on stucco application. They then decided to call Mr. Ed Vierra and Mr. Bento on 5/26/05. According to Mr. Bento, his conversation with Mr. Sheehan was based on recollection only and there was no documentation of when the stucco was applied on the house. Mr. Bento stated that his father worked beyond 1940 and may have stuccoed the house at a later date. Her husband spoke to Mr. Vierra on 5/24/05. Mr. Vierra is a member of the Bernard family. He stated that the photograph of his grandmother wearing a black dress was taken in 1946. The house still had wood siding in the picture. Mr. Vierra also mentioned that his uncle Joe Bernard wanted to remove the stucco but did not do it because of cost. The DuBois' obtained a building record from the County Recorder's office with two photographs: one with wood siding and one with stucco. The first entry was dated 1950, so they think that the photo with wood siding was taken then. They concluded that the stucco was applied after the period of significance. She stated that she submitted to Council letters and signatures of Benicia residents who heard the project's long process and who are supportive of what they (the DuBois') are doing. She also submitted letters to the DRC from their neighbors in the immediate vicinity, some of whom are Portuguese-American, and longtime residents that have supported the project from the beginning. She asked that Council consider their views as well. She asked Council to consider the rights of the homeowners. The home will be their primary residence. This has become a financial hardship.

8. John Van Landschoot - Mr. Van Landschoot stated that this is not the only house that is suggested for de-listing on the new survey. He asked if they would each be discussed separately or as a whole. Tonight's decision could set precedent. Staff stated that the homes would be discussed as a group.
9. Chris Tringali - Mr. Tringali stated that he shares the applicant's frustration with the process. There is a continuous level of confusion and dismay in the process. The applicants purchased the property with the intention of restoring it. He asked Council to let this project go forward.
10. Elizabeth Pidgeon, Architect for the project - Ms. Pidgeon discussed the proposed project. The proposed restoration was made a condition of approval of the project by the DRC. It represents the home in the 1930s. The house was shown with the wood siding during different periods.

Council Member Smith stated that part of the Portuguese heritage occurred with clapboard siding as an Eastlake cottage. He asked Ms. Pidgeon if that was a correct statement. Ms. Pidgeon stated that the preponderance of photos between the 1930s and 1940s all show it in that configuration. The plan was to rebuild the front porch in the 1930s photo and reconfigure the windows to match. Council Member Smith asked, if based on her study, if every Portuguese family in Benicia was living in a

stucco home with wrought iron. Ms. Pidgeon stated that no, they were not. There is probably a good story to be told there. That should be looked at when we are looking at the unfolding of which building should be considered.

11. **Scott Riley** - He has watched the DuBois' go through this process over the past 7 months. He discussed how buildings change, but will still fit in the community. It has taken too long for this process.
12. **Doug DuBois** - Mr. DuBois stated that they began this project consulting the Downtown Historic Conservation Plan (DHCP) and the Secretary of the Interior Guidelines. He realizes that not everyone likes their project, but it is within the current rules and regulations. As homeowners, they need to know that the rules will be followed. They have HPRC approval and the time for an appeal has past, so there is no need to go back to the HPRC. The issue before Council tonight is the last step in a long process. The Planning Commission voted for de-listing the property. He could not find anything in the BMC as to why or how a resource is listed or de-listed, except for landmarks, with the exception of a zoning change. The requirements for a Certified Local Government (CLG) are very clear, and if Benicia wants to become a CLG, it must comply with the five requirements. One of these requirements is to maintain a system for survey and inventory of historic properties. The system must use state approved forms (DPR523) and be in line with the Secretary of the Interior Standards for identification and evaluation. Those standards require a professional to make the judgment as to whether a resource is contributing or not. As for their house, there is no DPR on their house from the first survey and no information why it was even listed. The California Code of Regulations has a specific procedure to de-list a resource. If a resource has lost its historic quality through alteration, or if new analysis shows it was not eligible at the time of listing, it shall be de-listed. Now we have a DPR and a report from two separate professionals, both of which say the property has lost its historic quality and should be de-listed. Therefore, he urged Council to de-list the property tonight and put an end to this process. He asked if Council received a letter from Roseann Nunes. Council verified that a letter had been submitted (on file). Mr. DuBois read the letter for the record.
13. **Bonnie Silveria** - (only allowed to speak again to answer the question asked earlier by Council Member Smith regarding whether or not all Portuguese families were living in stucco homes) - Ms. Silveria stated that no, all Portuguese families were not living in stucco homes at the time in question.

Council Member Smith stated that any house that is 110 years old, by definition is historic. By delisting it, we are talking about the level of historic significance. He fully appreciates the heritage and contributions of the Portuguese community. He feels a legitimate issue (Portuguese building tradition) has been raised by Mr. Shehan. We have a General Plan and Downtown Historic Plan that address historic buildings. This reflects the message that we do not modify structures or de-list homes in the Historic District lightly. He does not want to post-haste erect new historic standards in response to specific projects. We should go ahead and study this Portuguese building tradition. Perhaps the HPRC can be tasked with this.

Council Member Whitney stated that he found the experts testimony and findings compelling.

Sometimes we lose sight of personal property rights in a rush to balance the community needs. He thinks it is time to move on. He sees the property owners as ducks in a shooting range. The applicants have been very patient.

Vice Mayor Patterson stated that what a difference a year makes. She thanked the parties involved for bringing these issues to Council's attention. Council has learned a great deal from the consultants. We are making a lot of progress very quickly. We will protect our heritage. The Portuguese heritage came to her recently on a trip to Portugal. She came back with many ideas on how we can celebrate the Portuguese heritage. This project helps articulate that, but it is not the way to do it in the sense of what Council has been asked tonight. Council wants to protect the heritage, but the rules are the rules. What we have learned is that Council has a resource that has been promised to them, which is to begin a serious process of documentation of the ethnic areas attributed to the Portuguese. She wants the Mayor and Council Member Campbell to come back to discuss that issue. She supports the motion to de-list the property.

RESOLUTION 05-91 - A RESOLUTION APPROVING THE DELISTING OF 195 EAST F STREET FROM THE DOWNTOWN HISTORIC CONSERVATION PLAN

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

Ayes: Council Members Smith, Whitney and Vice Mayor Patterson

Noes: None

Abstain: Council Member Campbell and Mayor Messina

Vice Mayor Patterson stated that the Sunshine Ordinance would be discussed later in the agenda. She suggested continuing this item to another meeting due to the late hour that it would be discussed. She stated that hearing the item at 11:30 p.m. would be doing the Open Government ordinance a disservice. She asked that it be placed early on the next agenda. Council agreed to continue this item to the next agenda.

On motion of Vice Mayor Patterson, seconded by Council Member Whitney, Council agreed to continue the Sunshine Ordinance item (agenda item IX-B) to the next Council meeting, on roll call by the following vote:

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

Noes: Council Member Campbell

Approval of an amendment to the Benicia Municipal Code to allow restaurants in the General Industrial zone:

Mr. David Golick, Interim Community Development Director, reviewed the Staff report.

Vice Mayor Patterson asked Staff what the Planning Commission considered. Mr. Angstadt stated that the Planning Commission only considered the request of the applicant, which was to make the amendment apply to the IG-General Industrial zone, not to IL, IW or IP zones. Should Council decide that the amendment apply to the other zones, they could direct Staff to go back do that. Vice Mayor Patterson stated that when it is appropriate, she would like to add another zone to it.

Mayor Messina stated that he would like to know how this impacts the general growth in the area. Initially Council talked about having restaurant facilities available for the industrial zone workers. We want some locations throughout the Industrial Park that can satisfy the needs of the industrial zone workers.

Mr. Angstadt stated that it was found that the current location does not allow enough support services to meet their needs. Based on actual experience of restaurants, larger restaurants allow for meeting space for groups to use that cannot be accommodated under the current limits. Staff recommended that each case should be considered on a separate basis.

Council Member Campbell asked for clarification if a building was less than 2,500 sq. ft. it would not go to the Planning Commission. Mr. Angstadt verified that was correct. Staff is recommending that anything over the current limit (2,500) be reviewed by the Planning Commission for a use permit.

Applicant:

Mr. Larry Hazard - Mr. Hazard reviewed PowerPoint presentation showing information on 4760 East Second Street (hard copy on file). Mr. Hazard discussed how changing ordinance would have positive effects for his and other businesses.

Mayor Messina asked if there was a call for larger restaurant facilities in the Industrial Park. Mr. Hazard stated that there is a demand for more food facilities in the Industrial Park.

Council Member Campbell stated that this looks like we are using a sledgehammer to drive a tack. He asked if we could just use a use permit for the applicant. Staff stated that could not be done under the current ordinance.

Council Member Whitney asked Mr. Hazard to clarify the issue of more space being needed. Mr. Hazard discussed the reason restaurants would need more square footage in order to be full-service facilities.

Council Member Smith stated that Council received some correspondence stating concerns with parking. Staff stated that the applicants would have to apply for the use permit and the parking needs would be addressed at that time.

Mayor Messina asked where the 5,000 sq. ft. number came from. Staff stated that a commercial broker provided the number.

Council Member Campbell asked if we needed to have the number specifically listed, or could it be left 'open?' Staff stated that it could be done that way, or we could set limits based on what evidence we have from the commercial broker.

Vice Mayor Patterson stated that she was thinking along the lines of form-based zoning. She is hoping that in less than a year, Council will not have to deal with these kinds of questions about what is the

square footage because it is arbitrary. What we are interested in is compatibility. We will provide the criteria and standards in the new form-based zoning for appearance and parking. We can designate the uses and the scale of the uses. She supports this because she is looking to the future.

RESOLUTION 05-92 - A RESOLUTION APPROVING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM FOR ZONING TEXT AMENDMENTS IN THE GENERAL INDUSTRIAL ZONE

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

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

Noes: None

INTRODUCTION AND FIRST READING OF AN ORDINANCE REPLACING NOTE L-4 FOR THE IG ZONE WITH A NEW NOTE L-4.1 OF SECTION 17.32.020 (IL, IG, IW AND IP DISTRICTS - LAND USE REGULATIONS) OF CHAPTER 17.32 (INDUSTRIAL DISTRICTS) AND REPLACING NOTE L-7 FOR THE IG ZONE WITH A NEW NOTE L-7.1 OF SECTION 17.46.010 (SCHEDULE S-1) OF CHAPTER 17.46 (USE REGULATIONS SUMMARY) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

Vice Mayor Patterson stated that a ceiling of 5,000 sq. ft. is appropriate. The arbitrariness should be taken away and state 'a building up to 5,000 sq. ft.' be inserted into the ordinance.

Council discussed the idea of amending the ordinance to reflect a ceiling of 0-5,000 sq. ft.

Ms. McLaughlin stated that the proposed ordinance should be sent back to the Planning Commission if the change is made.

Council decided not to change the ordinance and that it would remain as is.

On motion of Council Member Whitney, seconded by Vice Mayor Patterson, the above introduction and first reading of an ordinance was approved as presented, on roll call by the following vote:

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

Noes: None

Approval of an amendment to the Benicia Municipal Code to allow accessory dwelling units outside the Historic District:

Vice Mayor Patterson suggested continuing this item due to the late hour. Council decided to proceed with this item.

Mr. Golick, Community Development Director, reviewed the Staff report.

Public Comment:

1. **Ross Pytlik - Mr. Pytlik stated he is an attorney associated with the office of Dana Dean. He represents the owners of 689 West J Street. They have been trying to add another unit over their garage. The most recent amendments to the code were intended to tighten up the**

procedures for authorizing accessory units as permitted by state law. The code as it currently stands makes it more difficult to accommodate affordable housing within the community. Most of Benicia's recent growth has been outward. With this ordinance we would be encouraging residential infill. If the property owners had begun the project a few months earlier, under the prior version of the code, their addition would have been permitted.

Council Member Campbell stated that every one of the additions that is in place may become affordable housing, low income, etc. He asked if there was there a way to keep track of the ones already in place. Ms. McLaughlin stated that the Community Development department keeps records of all accessory units. She stated that the City is continuing its efforts on affordable housing. We can build an inventory of all the wonderful things that we have done.

Vice Mayor Patterson stated that she is supportive of secondary units and rental units. She is concerned about adjacent property values and the effects of a poorly designed addition to the garage as proposed. She would like to see this modified so we include design review. We need to consider the height and how it affects adjoining properties, architectural integrity, and a streetscape perspective. Since the Council chose to abolish the DRC, she is not sure how to do this. It is essential to have design review with standards and criteria to protect other neighboring property values. She has no problem with secondary use, but we need to make sure there is a sense of integrity in the design.

Council Member Smith stated that the other design features are a legitimate concern. He suggested making it a staff level review. Vice Mayor Patterson stated that could be done if we incorporate the specific criteria that they need to look at. Staff would need to work on the suggested criteria.

Ms. McLaughlin stated that after hearing Council's comments she would like to go back and look at the ordinance more comprehensively to see what could be done.

Public Comment:

1. Dana Dean - It seems discriminatory to set different standards. We have to stay focused on the primary goal, which is to create affordable housing, etc. She asked that Council consider the time and energy that has already gone into this issue.
2. Debra Souza - Ms. Souza stated that it is good to support height limits. However, what about the issue of personal property such as dictating what type of windows to use. Getting a permit is a good thing. We have a very hectic community. Having a public forum is also a good thing.

Vice Mayor Patterson stated that the effect on building willy-nilly within existing neighborhoods will come back and haunt the City. She hopes this will go to the Planning Commission to begin the process.

Mr. Angstadt reviewed the current process for citizens to build additions onto their homes.

Mayor Messina is opposed to having additional design review for this. He is comfortable with the way it currently is. He is concerned with the direction we are going in terms of Staff resources.

Vice Mayor Patterson stated that the home investment in Benicia is the biggest investment most people will make. We need to set up criteria to give some authority to the commission and the planning staff to review the use permits. One of the problems we have in the City is that we do not make requirements to the level that are useful for the community to understand the perspective of the building. With a perspective of the proposed project, one will better understand the appearance. Having a perspective requirement would have avoided the results of the St. Catherine's development. She suggested sending this ordinance back to Staff for consideration of the design criteria language. There is no mandatory dictate of the architectural style or kind of window. We are talking about personal property and property rights. We have two examples in the past three months that deal with these issues.

Ms. McLaughlin stated that Staff would go ahead and take another look at this before it is finalized and voted on. If it is sent back for changes to the design criteria, it definitely needs another look. If it is adopted as is, she can make the minor changes without bringing it back.

Council Member Campbell would like to send it back to Staff to be worked on.

Mr. Angstadt suggested approving the ordinance as is and at a subsequent meeting provide further direction to the Planning Commission in the form of a motion or resolution indicating areas that should be considered when considering the applications.

Vice Mayor Patterson commented on the time when St. Catherine's Woods was being approved. She developed 10-12 points of design consideration. The former City Attorney indicated that the points could not be adopted as a condition but they would take it under advisement. We are seeing the results of not adopting the points as conditions.

Mayor Messina suggested Staff bring this item back in 2-4 weeks.

INTRODUCTION AND FIRST READING OF AN ORDINANCE AMENDING SUBSECTIONS 17.70.050 (A)(3) (NONRESIDENTIAL ACCESSORY STRUCTURES-IN RESIDENTIAL DISTRICTS-MAXIMUM HEIGHT), 17.70.060 (D)(1) (ACCESSORY DWELLING UNITS-DESIGN AND DEVELOPMENT STANDARDS-LOT SIZE) AND 17.70.060 (D)(5) (ACCESSORY DWELLING UNITS-DESIGN AND DEVELOPMENT STANDARDS-BUILDING HEIGHT) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

On motion of Council Member Whitney, seconded by Mayor Messina, the above introduction and first reading of an ordinance was not approved, on roll call by the following vote:

Ayes: Council Members Whitney and Mayor Messina

Noes: Council Members Campbell, Patterson, and Smith

On motion of Council Member Whitney, seconded by Vice Mayor Patterson, Council voted at 12:07 a.m. on 6/8/05, to continue the remaining agenda items to the next meeting, on roll call by the following vote:

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

Noes: None

UNFINISHED BUSINESS:

None

NEW BUSINESS:

Request by Council Member Campbell to support placement of a Benicia Unified School District (BUSD) parcel Tax Measure on the November 2005 ballot:

Continued to the next meeting.

Adoption of Sunshine Ordinance:

Continued to the next meeting

INTRODUCTION AND FIRST READING OF AN ORDINANCE ADDING A NEW TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE REGARDING PUBLIC ACCESS TO MEETINGS AND PUBLIC RECORDS, PUBLIC ETHICS AND ESTABLISHMENT OF AN OPEN GOVERNMENT COMMISSION

Cancellation of the August 2, 2005 City Council Meeting:

Continued to the next meeting

REPORTS FROM CITY MANAGER:

City of Vallejo Bordonni Ranch Project Update:

Continued to the next meeting

REPORTS FROM COUNCIL COMMITTEES:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 12:07 a.m.

Lisa Wolfe, City Clerk