



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

**Thursday, June 9, 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, Rod Sherry, Belinda Smith and Chair Brad Thomas

Absent: Lee Syracuse (excused)

Staff Present: Heather McLaughlin, City Attorney
Charlie Knox, Public Works & Community Development Director
Doug Vu, Associate Planner
Kathy Trinque, 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

The Commission and staff discussed changing the order of items VI B and C so that Item C is heard first, and then Item B.

Commissioner Ernst asked if the Commission would like to move the Open Government Training to after VI D. Commissioner Ernst made a motion to move the training. There was no second.

On motion of Commissioner Sherry, seconded by Commissioner Dean, the agenda was adopted, as amended, reversing the order of Items VIB and C, by the following vote:

Ayes: Commissioners Dean, Ernst, Oakes, Sherry, Smith, and Chair Thomas

Noes: None

Absent: Commissioner Syracuse

Abstain: None

III. OPPORTUNITY FOR PUBLIC COMMENT

A. **WRITTEN**
None.

B. **PUBLIC COMMENT**
None.

IV. PRESENTATION

A. **COMPLETION OF OPEN GOVERNMENT AWARENESS TRAINING**

Heather McLaughlin, City Attorney, presented the Commission with an overview of this item. She described Title 4, the Open Government Ordinance. Its goal is to make it easier for the public to access City government, that they may be more informed about what their City is doing; and that the public may be involved in a more meaningful and knowledgeable way.

The four Open Government Ordinance chapters that Ms. McLaughlin reviewed included:

1. Public Access to Meetings (Brown Act).
2. Public Information (Public Records)
3. Ethics (Code of Conduct)
4. Open Government Commission.

Ms. McLaughlin passed out a copy of the applicable Municipal Code pertaining to City Council or Mayor candidates in case any Commissioners were planning to run for office in November.

V. CONSENT CALENDAR

A. **Approval of Minutes of May 12, 2011**

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

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

VI. REGULAR AGENDA ITEMS

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

PROPOSAL:

This action is necessary to allow the property owner of 270 West H Street to purchase obsolete historic public access easements along West G Street located on their property approximately 25 feet north of the southerly property boundary.

Recommendation:

Approve General Plan Conformance to vacate the portion of the right of way easements along the south side of the property at 270 West “H” Street consistent with the goals, objectives and policies of the General Plan and based on the findings set forth in the resolution.

Charlie Knox, Public Works & Community Development Director, presented a brief overview and history of this item. This item was continued from the May 2011 meeting for further staff analysis. Vacating the right of way easements conforms with the General Plan.

Documents distributed at the meeting included a letter dated June 8, 2011 from Mr. Jack Maccoun, a copy of a webpage “Berkeley Path Wanderers Association” from Mr. Maccoun, and a plat map and a highlighted version of the easement map. Mr. Maccoun also shared a historical photograph of the Crooks Mansion from the 1880’s. (After the meeting, the photograph was returned to Mr. Maccoun.)

Three of six Planning Commissioners present had conflicts of interest. In order to maintain a quorum, the three conflicted Commissioners (Dean, Oakes and Sherry) drew cards to determine which Commissioner would remain for this item. Commissioner Oakes drew the highest card and therefore he was not recused.

The Commission and Staff discussed the following: the name of applicant (there is none, the application is a result of a mediated process); clarified that the action for this item is only to determine if the easement vacation conforms with the General Plan; reviewed the process (the next step is staff to forward the Planning Commission’s decision for City Council’s consideration to determine the vacation); asked if a public hearing occurs when the item comes before the City Council (yes); Planning Commissioners asked to see the staff report to the City Council before the meeting (City Council agenda and staff reports are posted one week prior to the meeting).

Commissioner Ernst referred to an email he sent staff expressing his concern that Planning Commission decisions are sometimes ignored by staff and staff’s recommendations to City Council are sometimes different from the Commission’s decision.

Ms. McLaughlin responded that staff’s role is to use their professional judgement, which is sometimes a different opinion from the Planning Commission’s. Usually both the Planning Commission and staff have the same opinion. The Planning Commission’s decision is presented to City Council along with staff’s recommendation. If further discussion of this topic is necessary, staff will agendize it for a future meeting.

Chair Thomas stated that the role of the Planning Commission is to provide a sounding board for the City Council, which makes the final decision.

PUBLIC COMMENT

Jack Maccoun, 251 West G Street spoke against staff's recommendation. He referred to his June 8 letter with his findings that the proposed vacation does not conform with the General Plan. Mr. Maccoun provided a history of the easement. He pointed out that there is 8 feet of easement on the Crooks Mansion (Ruiz) property. If the easement is vacated, the portion on the Crooks Mansion property is stranded. The City provides no maintenance. The easement was paved by the adjacent property owners. Offsets for loss of the easement should be provided.

Leann Taagepera, 270 West H Street (271 West G Street), spoke in support of staff's recommendation. She explained that she did not request this action but does support it. On March 1, the City Council directed staff to address this issue. The driveway is for ingress and egress purposes. Historically, the roadway easement was used by horses and buggies. There was a separate sidewalk easement that was a trestle bridge. It was never paved and is currently part of her front yard. The easement was never used as a pedestrian trail or vista point. There is a fence between her property and Mr. Ruiz's property. She supports staff findings that this action is consistent with the General Plan.

Kathleen Olson, 820 First Street, spoke against staff's recommendation. She does not support staff's conclusions. She asked about the public noticing for this action and asked if there will be noticing for the City Council's action. The City's policies support public access and the bluff is very valuable real estate. Public access is important to the City and the General Plan.

Steve Bovarnick, Attorney for the Taagepera's, 199 Fremont Street, San Francisco, spoke in support of staff's recommendation. He provided additional history of the easements and its original purpose, which was ingress/egress for Mr. Crooks in 1889, before West 3rd Street was constructed. He agreed with staff's conclusion that the easement is obsolete. Access to the Crooks property is now from West 3rd Street.

PUBLIC COMMENT CLOSED

Commissioners and staff held a discussion that included the following:

Commissioner Smith commented that this was a better staff report. The easement conformance is a circulation issue. She asked if this applies to circulation?

Mr. Knox responded that staff focused on public access and the waterfront view. The original easement area was a driveway to the Crooks mansion. The mansion has street access now.

Commissioner Ernst stated that since the Taagepera's have access from West H Street, the easement is not needed. Regarding the Ruiz (Crooks) property, has the owner been asked what his opinion is of this action?

Mr. Knox explained that staff contacted Mr. Ruiz who stated he has no objection or interest in these proceedings.

Commissioner Oakes asked if this action was directed by the City Council. He asked what happened and why are we considering this action and will the City be compensated for the easement vacation?

Ms. McLaughlin answered that this action is a result of a mediation agreement the City entered into with the property owners. The City Council has not directed this action.

Mr. Knox added that the City Council did direct staff to participate in the mediation. What happened in the mediation process is not relevant to the action before the Planning Commission. The details of the mediation agreement are confidential. Yes, there will be compensation for the easement.

Commissioner Ernst stated that he was convinced by Mr. Maccoun and Ms. Olson's comments. He will vote against this action because there is no reason to vacate the easement at this point in time.

Chair Thomas stated that the proposed right-of-way easement vacation determination is clear and consistent with the General Plan. The original intent of this easement was for a set period of time, until West G Street was continued. The City may have an obligation to vacate all of the easement. This easement is not treated as public right-of-way, but private use. To eliminate the liability of the City, the easement should be vacated. The staff report was excellent and the facts support General Plan conformance.

Chair Thomas made an off-motion recommendation that the Planning Commission recommend to the City Council that they consider vacating the entire remaining portion of the public easements.

On motion of Commissioner Smith, seconded by Commissioner Oakes, the resolution finding the vacation of right-of-way easements along West G Street in conformance with the goals, policies and programs of the General Plan and adopted by the following vote:

Ayes: Commissioner Oakes, Smith and Chair Thomas.
Noes: Commissioner Ernst
Absent: Commissioner Syracuse
Abstain (recused): Commissioners Dean and Sherry

B. **(This item was formerly listed on the agenda as Item C.) AMENDMENT TO USE PERMIT AND VARIANCE FOR LANDSCAPING REQUIREMENTS TO EXPAND BENICIA HEALTH AND FITNESS CLUB**

PROPOSAL:

The owner of Benicia Health and Fitness Club requested an amendment to Use Permit 03PLN-00065 to expand the existing facility by constructing a two-story, 4,800 square foot addition, and change the hours of operation to 5 a.m. to 10 p.m. Monday through Friday, 7 a.m. to 7 p.m. on Saturday and 7 a.m. to 5 p.m. on Sunday, and also requested a variance that would permit the property owner to utilize and maintain either 3,690 or 5,134 square feet of City right of way to satisfy the minimum site landscaping requirement pursuant to Title 17, depending on whether the sought area continues to be owned by the City or is exchanged to the club owner (which may be the subject of future City Council consideration).

Recommendation:

Approve an amendment to Use Permit 03PLN-00065 to allow a building addition, modified hours of operation, and approve a variance for minimum site landscaping for the Benicia Health and Fitness Club located at 1150 West Seventh Street, based on the findings and subject to the conditions of approval set forth in the proposed resolution.

Commissioners Oakes and Sherry recused themselves due to conflict of interest.

Doug Vu, Associate Planner, provided the background and overview of the proposed project.

Staff distributed to the Commission, staff and members of the public a letter received via email from Mr. Roger Lipman, property owner at 2 Ridge Circle.

Mr. Knox commented on item number 2 in Mr. Lipman's letter concerning a 1994 agreement for the applicant to underground utilities from West 7th to West 6th Streets, including Ridge Circle. The agreement was to participate in a future underground district. Also, the 20% landscaping requirement may be accomplished through a maintenance agreement or a maintenance agreement and land swap. There will be a cost to the applicant if the City Council vacates the right of way.

PUBLIC COMMENT:

Applicant, Norm Koerner, 1150 West 7th Street, stated that it has taken him over a year to get to this point with his project. The health club has 2500 members and needs to expand. He asked for the Commission's support of the project.

Commissioner Dean asked Mr. Koerner about the noise issue raised in Mr. Lipman's letter. What hours are the classes held?

Mr. Koerner responded that Mr. Lipman doesn't reside here and his tenants have not complained about noise. The classes are held from 8 am to 7:30 pm.

Roger Lipman, 2 Ridge Circle commented that he does live on Ridge Circle, but he is gone a lot. He does not object to the project, his goal is to address the noise issue and landscaping on West 6th Street that has not been installed. The City should require landscaping to make this area look better. The music from classes is too loud, it can be heard outside of the building. He stated that he would like to see the sound mitigated, otherwise it is a good project.

Barbara Sorrentino, Manager of Benicia Health and Fitness Club, responded to the questions about class hours which are from 5 am to 8 pm, Monday through Friday. On Saturdays the Club opens at 7 am and there are no classes on the weekends that begin before 8:30 am. The Club is very conscious of noise, making sure the windows are closed during aerobic classes. Their staff has talked to residents on Ridge Circle and they are not bothered by the club's music or activities.

PUBLIC COMMENT CLOSED

Commissioners and staff discussed the following items: noise level limits (65 dB for day; 60 dB for night); the project traffic engineer is retained by the applicant; how does the number of parking spaces comply with the Climate Action Plan and Green building standards (applicant chose to use the high number of parking spaces and best management practices for storm water; green building standards are not mandatory for commercial uses); more bike racks required (there are existing bike racks on site); any change to the bus shelter or driveway (no); placement of new landscaping, signage, sidewalk responsibility; use of resilient channel for sound mitigation (new building technology available, will be up to the applicant to choose which type is used); is the roof top HVAC enclosed (it is not new and is screened).

A motion to approve staff's recommended resolution was made by Commissioner Ernst.

Commissioner Smith commented that she would rather see the applicant use the minimum parking spaces with additional trees for shade.

Mr. Vu responded that when the applicant submits his application for building permits, the City will require one new tree for each six parking spaces.

Commissioner Ernst made a motion and seconded by Commissioner Smith to amend the motion to include HPRC's recommendation to modify condition #20 for the applicant to incorporate the use of new sound baffling technology (resilient channel) during construction.

On motion made by Commissioner Ernst, as amended, and seconded by Commissioner Dean to approve an amended use permit (10PLN-00017) and a variance for minimum

site landscaping (11PLN-00018) for Benicia Health and Fitness Club located at 1150 West 7th Street and adopted by the following vote:

Ayes:	Commissioners Dean, Ernst, Smith and Chair Thomas
Noes:	None
Absent:	Commissioner Syracuse
Abstain (recused):	Commissioners Oakes and Sherry

C. **(This Item was formerly listed on the agenda as Item B.) GENERAL PLAN CONFORMANCE FOR THE VACATION OF RIGHT OF WAY ALONG WEST MILITARY**

PROPOSAL:

The property owner of Benicia Health and Fitness Club at 1150 West Seventh Street requested the vacation of approximately 3,572 square feet of existing City right of way along West Military between West Sixth and West Seventh Streets for the purpose of adjusting the lot size to match the apparent boundaries of the parcel property consistent with Title 17 of the Benicia Municipal Code. The applicant also proposed to deed to the City 2,038 square feet of private property along the eastern boundary of West Seventh Street between Military West and K Street that includes the public sidewalk and a portion of the roadway.

Recommendation:

Approve a General Plan Conformance to vacate right of way along West Military and acquire property along the eastern boundary of West Seventh Street between Military West and K Street consistent with the goals, objectives and policies of the General Plan and based on the findings set forth in the attached resolution.

Commissioners Oakes and Sherry recused themselves.

Charlie Knox gave a brief description of this project.

Commissioner Smith asked if the applicant will buy the land from the City.

Mr. Knox responded that in addition to the City vacating this right of way, the applicant will deed a strip of land along West 7th Street to the City. The difference in value will be agreed upon and paid by the applicant to the City, should the City Council approve the land exchange.

PUBLIC COMMENT

None.

On motion of Commissioner Dean and seconded by Commissioner Smith, to approve a resolution finding the vacation of right of way easement along Military West in conformance with the goals, policies and programs of the General Plan and adopted by the following vote:

Ayes:	Commissioners Dean, Ernst, Smith and Chair Thomas
Noes:	None
Absent:	Commissioner Syracuse
Abstain (recused):	Commissioners Oakes and Sherry

D. CONFORMANCE OF 2011-2031 CAPITAL IMPROVEMENT PROGRAM WITH THE GENERAL PLAN

PROPOSAL:

The Capital Improvement Program (CIP) has been updated as part of the FY 2011-13 budget process. The program includes capital improvement projects (building remodels, street overlays, waterline replacements, park playground installations), comprehensive studies (master plans, impact fee studies), special programs (stormwater program), and major vehicle and equipment replacement. Planning Commission review of the CIP is needed to ensure the program is consistent with the General Plan.

Recommendation:

Review the draft City of Benicia 2011-2031 Capital Improvement Program and make a determination that it is consistent with the General Plan.

Charlie Knox presented this item. He pointed out that there are no projects on the CIP that impact the General Fund, with the exception of \$20,000/year for Park playground upgrades and maintenance. He also reviewed a few other modifications to the program.

PUBLIC COMMENT:

None.

PUBLIC COMMENT CLOSED.

Commissioner Smith commented that the Industrial Park needs some infrastructure projects completed to attract new businesses to the City.

Commissioner Ernst commented that there was a source of funds that was designated for the Industrial Park, that should be used.

Commissioner Sherry asked about the \$75,000 for Master Plan Fee Study listed on both the Water Operations and the Water Capital Fund.

Mr. Knox explained that the cost of the study is shared by both funds, and budgeted to cost \$150,000.

On motion of Commissioner Oakes and seconded by Commissioner Sherry determining that the City of Benicia draft 2011-31 Capital Improvement Program is consistent with the Benicia General Plan and adopted by the following vote:

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

VII. COMMUNICATION FROM STAFF

Charlie Knox informed the Commission that staff has been working hard to finalize and balance the FY 11/13 budget. On June 21, 2011 City Council will hold a budget session. The Public Works and Community Development Department has reduced its General Fund expenses by 1/3 over the past 2 years.

VIII. COMMUNICATION FROM COMMISSIONERS

Commissioner Dean asked for an update on the Rellik Tavern window sign.

Mr. Knox responded that the item is scheduled for the Planning Commission meeting in July.

Mr. Vu informed the Commission that the Rellik owner has submitted a sign permit application and a variance.

Commissioner Dean asked about organizational changes in the Department and asked staff to provide an organizational chart.

Charlie explained that we have 3 divisions at City Hall: Planning, Building, Engineering, plus Administration. The satellite locations include, Water Treatment, Wastewater Treatment, Water Quality and Maintenance Division. Staff will email the latest organizational chart to Commissioners.

IX. ADJOURNMENT

Meeting was adjourned at 9:10 pm.