



**BENICIA PLANNING COMMISSION
CITY HALL COUNCIL CHAMBERS**

DRAFT
REGULAR MEETING MINUTES
Thursday, July 8, 2010
7:00 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

Present: Commissioners Richard Bortolazzo, Don Dean, Rick Ernst, Rod Sherry,
Brad Thomas and Chair Dan Healy

Absent: Commissioner Lee Syracuse

Staff Present: Charlie Knox, Public Works & Community Development Director
Melissa Morton, Land Use and Engineering Manager
Kat Wellman, Contract Attorney
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

On motion of Commissioner Dean, seconded by Commissioner Sherry, the agenda order was adopted, with the exception to continue the last agenda item to the next meeting, by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Ernst, Sherry, Thomas, Chair Healy

Noes: None

Absent: Commissioner Syracuse

Abstain: None

III. OPPORTUNITY FOR PUBLIC COMMENT

A. WRITTEN

None.

B. PUBLIC COMMENT

None.

IV. CONSENT CALENDAR

A. Approval of Minutes of June 8, 2010

On motion of Commissioner Bortolazzo, seconded by Commissioner Thomas, the consent calendar was adopted by the following vote:

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

V. REGULAR AGENDA ITEMS

**A. LOWER ARSENAL MIXED USE SPECIFIC PLAN – RESOLUTION TO DENY
(CONTINUED)**

PROPOSAL:

The Draft Lower Arsenal Mixed Use Specific Plan was prepared to implement the Lower Arsenal Mixed Use Designation of the General Plan. On May 13, 2010 the Planning Commission conducted a public hearing and reviewed the proposed Plan and accompanying Environmental Impact Report (EIR). On June 10, 2010 the Planning Commission received and discussed a draft resolution recommending that the City Council not adopt the Plan and EIR as written. The Commission recommended that the draft resolution be brought back for further discussion on July 8, 2010.

Recommendation:

Modify and/or confirm the draft resolution recommending that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan and the EIR as written.

Charlie Knox, Public Works and Community Development Director, reviewed and summarized the past Planning Commission actions on this item.

Questions of staff: none.

Opened for public comment:

Mark Hajjar, resident and Arsenal property owner, spoke in favor of the LAMUSP and EIR and not in favor of the resolution. He expressed concern about two issues: (1) the 1 to 3 ratio of new buildings to existing historic buildings. The number of buildings that are currently not in compliance is large. (2) The existence of the freeway has reduced the value of the historic area. He is concerned that the amount of effort, time and money put

into the plan not be set aside. His project would be hampered by any limitations on residential use. The Specific Plan is a valuable asset in growing the Arsenal area.

Belinda Smith, resident, handed out a one-page summary of recommended changes to the resolution. She recommends that the Commission add more information and provide more background about why the HPRC made their decision. She questioned an assertion that there are 21 new buildings in District C.

Jon Van Landschoot, resident supports Belinda Smith's comments about including the HPRC findings in the resolution.

Dana Dean, 835 First Street, representing Amports spoke in support of the resolution except that she agreed with Ms. Smith's changes and considers them appropriate because they add the why factor, making it stronger. She stated that adding these statements are more in keeping with the original intent discussed at the hearing.

Marilyn Bardet, resident, spoke in support of the resolution and reminded the Commission that in the Whereas clauses everything hinges on environmental issues and clean up of the Arsenal in order to proceed with the Specific Plan. Assemblywoman Yamada's letter to the DTSC Director, urged that DTSC take leadership and promise to compel cleanup through the Army. She reminded the Commission that this is still a process in motion without certainty. She supports Randy Potter's previous letter about cleanup of his property in the Arsenal. She stated that she has a DVD containing research done for Randy Potter's Unico property.

Kathleen Olson, 920 First Street, spoke in favor of the Specific Plan and EIR and not in support of the resolution. She expressed concern about the discussion how adjacent construction could impact our National Register District designation. She stated that the National Register District was formed after the 780 freeway was constructed and wondered what building could trump a freeway through a district. She implored the Planning Commission for balance in their decision. She stated that she had never heard of a National Historic District being taken away and wants to understand why that is a fear of preservationists. Concerning the 3:1 ratio, she stated that she hoped the language will require the research behind how many buildings we have. She believes we may already be defeated in this area.

Closed public comment.

Commission discussion and comments:

Chair Healy asked staff concerning the numbered items listed under the Now Therefore Be it Resolved, #1 about limiting size: does that mean height, square footage?

Mr. Knox responded yes, it is for height, square footage and building footprint. The COQ footprint is 5,000 square feet, excluding the basement.

Chair Healy asked about the 1 to 3 ratio of new to historic buildings. He does not remember locking into specific numbers because it doesn't guarantee the historic integrity of the area.

Mr. Knox responded that we talked about measurable ways to determine (or limit?) new construction. The 2001 SHPO letter mentions the 2:1 or 3:1 ratios. It is true that we are already past the 2:1 or 3:1 ratios in this area.

Chair Healy stated his concern that if we use the ratios, we would be vetoing any new construction, which is not our intent. Rather, we want to determine which and what residential development will be allowed. Is the issue live/work versus work/live use?

Mr. Knox explained that yes, and that Council sets the policy. Staff is not suggesting that the Planning Commission make the decision. More definition would be helpful, with more certainty provided.

Commissioner Dean's questions included: regarding historic and non-historic structures, would we include a 50 year old building, even though it is not considered historic?

Mr. Knox answered, no but in a future update to the Arsenal Historic Conservation Plan we may find additional buildings that should be designed as historic.

Commissioner Dean asked if the Tyler Street buildings are considered historic?

Mr. Knox answered yes, but they are not in Districts C or D. The Administration Building is also not in C or D.

Chair Healy summarized several issues. He is in support of the Whereas clauses in general and agrees with inserting the Secretary of the Interior's standards. He wants to protect the integrity of the district as a whole and is not in support of building ratios.

Commissioner Thomas agreed with referencing standards in the resolution.

Mr. Knox summarized as "sufficiently protect the historic integrity of the district as a whole, encompassing the Secretary of Interior Standards." Mr. Knox suggested that we gather input from the Commission tonight and incorporate that input into the resolution for the Chair's signature, rather than bringing it back to another meeting.

Commission discussion continued:

Commissioner Dean stated that he likes Belinda Smith's whereas recommendation, in compliance with guidance from the State Historic Preservation Office.

Chair Healy stated that he wants to stay away from ratios because the ratio is not possible, but he does agree with the whereas clause mentioning the 2001 guidance from Knox Mellon of SHPO.

Commissioner Ernst suggested trying to identify the residential component, whether we decide to limit it to work/live and incorporate it into the resolution.

Mr. Knox clarified the definition of live/work vs. work/live. He stated that it is hard to categorize without looking into each project because it depends on the type of work--some art is more industrial in nature.

Chair Healy stated that he is concerned about committing to any specific limitation on use of the property.

Mr. Knox explained that the Planning Commission will be recommending that City Council make a policy decision. The Planning Commission may go further into detail, but it is not essential.

Commission Thomas stated that he has no problem with finding #3 (that Council determine whether/which residential use is appropriate) because we're asking that the policy decision be made by the City Council. He prefers that because the Planning Commission doesn't have the knowledge base to make a recommendation with that level of specificity.

Commission Dean stated that he is OK with finding #3 as written.

Chair Healy would like one more item added, that the EIR incorporate more detail in terms of further assessment of the hazardous waste issue. He stated that further environmental analysis is necessary to assess the issues as discussed as recently as the June 16 DTSC letter. Chair Healy suggested adding a new #3 "to further assess the hazardous materials issues related to the lower Arsenal" and add a Whereas clause that the City is pursuing further assessment

Re-opened public comment:

Marilyn Bardet suggested, "to resolve Army liability issues and assign responsibility."

At the Chair's request, Mr. Knox suggested "...fully assess hazardous materials issues including issues related to responsibility for remediation."

Kathleen Olson stated her concern that the results of the assessment could leave the property owner to pay for the clean up. Does everything stop until we have the funds?

Mr. Knox responded that the money will likely be there for the assessment. If a major cleanup is required, that's where funding may become difficult. It makes sense to know what materials are in this area.

Mark Hajjar stated a concern that if the Army is responsible, what happens to the property owners that have contamination? What happens to the property owners whose property is clean from hazardous materials, why should they be held to this standard? We already have live/work in the Arsenal.

Dana Dean commented that as a point of order, once the resolution is crafted, would someone please read it. She suggested that the last issue has to do with the EIR line that HPRC wrote in their resolution. There is no reference to re-circulation required of the documents.

Public comment closed.

Commissioner Dean stated that he'd like language included that a new economic impact analysis report be updated.

Kat Wellman, Contract Attorney and Mr. Knox summarized the findings and operative clauses of the resolution as suggested to be modified thus far.

Commissioner Ernst stated his concern about some certainty for the property owner, so they will know what they can build.

Mr. Knox responded that it could be added under the Now Therefore Be it Resolved section with Commissioner Dean's note to include the economic impact analysis report.

Mr. Knox restated the additions to the resolution and the findings.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING THAT THE CITY COUNCIL NOT ADOPT THE LOWER ARSENAL MIXED USE SPECIFIC PLAN AND THE EIR AS WRITTEN

On motion of Commissioner Dean, seconded by Commissioner Thomas, the proposed amended resolution was adopted by the following vote:

Ayes: Commissioners Dean, Ernst, Thomas and Chair Healy
Noes: None
Absent: Commissioner Syracuse
Recused: Commissioners Bortolazzo and Sherry
Abstain: None

Charlie Knox, Public Works & Community Development Director introduced Melissa Morton, Land Use and Engineering Manager to the Planning Commission and members of the public.

B. RECOMMEND AN ORDINANCE AMENDING THE BENICIA INCLUSIONARY HOUSING ORDINANCE BASED ON A RECENT CALIFORNIA COURT OF APPEALS CASE

PROPOSAL:

A recent court case requires an amendment to the City's inclusionary housing ordinance in regard to its application to rental developments. The key impact includes removing the requirement for affordable rental housing in newly created rental developments that receive no assistance from the local government. The City of Benicia cannot impose affordable housing requirements on rental housing as a result of this court case. Developers receiving financial assistance can still be required to provide affordable rental housing. Affordable housing requirements on for-sale housing are not affected by this court case.

Recommendation:

Recommend City Council adopt an ordinance to modify and update the existing City inclusionary housing ordinance.

Kat Wellman, Commission Attorney, provided an overview on her staff report recommending a resolution that recommends adoption of an ordinance to modify and update the existing City inclusionary housing ordinance. This action is necessary to bring the City's ordinance in compliance with a recent California Court of Appeal decision that held that inclusionary requirements applied to rental housing violate the Costa-Hawkins Act, the state law governing rent control. The ordinance changes are identified in "underline/strike out" version in the packet. The only changes are under Section 1C. adding a sentence under "definitions," Section D1, adding a phrase referring to "for-sale units" and under Section 3 E. 4. a section referring to requirements "for rental units." Key impacts of this decision include:

- A requirement for affordable rental housing in newly created rental developments receiving no assistance from the local government is no longer permitted;

- Rents may be limited if the developer/builder receives either a financing contribution or a type of assistance specified in density bonus law (i.e, including regulatory relief) and agrees by contract to restrict the rents; and
- Affordable housing requirements imposed on for-sale housing are not affected by this case.

Opened for public comment:

None.

Public comment closed.

Commission discussion items:

Commissioner Ernst asked if because of this court case, we have to adopt these changes?

Ms. Wellman responded yes, we want to comply with this decision.

Commissioner Healy asked how does this apply to units that are built as residential and then converted to condos, thereby avoiding compliance?

Commissioner Sherry stated that a condo conversion would require the project to go through a tentative map process.

Mr. Knox stated that it would be a problem only if the project were built for residential rentals and converted to commercial condos (but not residential condos).

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL APPROVAL OF ZONING TEXT AMENDMENTS TO SECTION 17.70.320 (INCLUSIONARY UNIT REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 OF THE BENICIA MUNICIPAL CODE AMENDING THE APPLICATION OF THE REQUIREMENTS TO CERTAIN PROJECTS

On motion of Commissioner Ernst, seconded by Commissioner Bortolazzo, the proposed resolution was adopted by the following vote:

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

C. RECOMMEND AN ORDINANCE AMENDING THE BENICIA DEVELOPMENT AGREEMENT ORDINANCE

PROPOSAL:

The zoning text amendment would update and amend Title 17 (Zoning), specifically Section 17.116.020 establishing new requirements for any development agreement the City may enter into with a developer, applicant or permittee.

Recommendation:

Review and consider proposed revisions to the development agreement ordinance with a recommendation to the City Council regarding potential changes.

Kat Wellman, Attorney, provided an overview of her report. In November 2009, the Planning Commission reviewed sections from the development agreement ordinances of other cities. The City of Livermore does require a development agreement whenever a public benefit is required to justify allowing requested deviations from the City's regulations for certain projects, such as residential or industrial planned developments. Kat further explained the benefits of development agreements. She further stated that the ordinance was written to keep it general and maintain flexibility for the City. This decision will provide the City Council with greater policy discretion.

Commission comments and questions:

Commissioner Ernst asked when was Livermore's ordinance adopted?

Ms. Wellman responded in 1999 and it's still in use.

Commission Bortolazzo asked about special zoning applications?

Ms. Wellman responded that applies when there's a change in zoning.

Commissioner Sherry asked staff to explain the development agreement process.

Mr. Knox explained that it is usually used at the prerogative of the developer for large projects built over a period of time. The City can decide when to use one and the process usually takes 6 to 8 months. It is better to have a development agreement than 200+ conditions of approval. It allows more flexibility for both parties.

Commissioner Sherry expressed concern about the amount of work required to use this process and the inclusion of contiguous parcels. Could a 2 or 3 acre parcel be required to complete a development agreement.

Mr. Knox responded that yes, the only party other than Seeno this may apply to is Amports for the land north of 780.

Commission Dean stated that he is familiar with these documents. They are worked on over time and are part of the approval package. It usually comes at the end of the process and ties everything together.

Opened for public comment:

Dana Dean, 835 First Street, representing Amports, expressed appreciation for the City Attorney's efforts concerning the research. She stated that she doesn't think this concept has been tested by law. On a macro level, it's not a bad idea since it can take 10 years to develop a property. She stated that she has a problem with the ordinance as written. It affects 2 property owners, one of which is Amports. Since Amports owns dozens of tiny properties, would the City require Amports to enter into a development agreement, an excessive burden to the property owner. It should not apply to small parcels and it takes rezoning out of the picture. She suggested that the language require a provision or dedication of land for public purposes, look at the details of the language, and avoid ambiguities.

Closed public comment:

Commission discussion/comments included:

- Adding a lower threshold of 5 or 10 acres
- Keeping 40 acres and no DA required above 5 acres
- Has a similar ordinance been tested by the courts?
- If we keep it to 40 acres, it targets 1 or 2 property owners.
- Should we broaden the requirement not just for acreage but for potential impacts?
- We could have a smaller project that would want to have a development agreement.

Kat Wellman, Contract Attorney, responded that this has not been tested by the courts, only by use. The ordinance contains the word "may" to allow the City discretion not to require a DA for smaller projects.

Mr. Knox responded that if we add 10 acres (floor) and 40 acres (ceiling) that should cover all the issues, except for re-zoning. A master plan overlay is a zoning designation. Rezoning alone does not require a development agreement.

Commissioner Dean commented that there is flexibility for the City to enter into a development agreement or not and flexibility for the applicant to propose an agreement.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL APPROVAL OF ZONING TEXT AMENDMENTS TO CHAPTER 17.116 (DEVELOPMENT AGREEMENTS) OF TITLE 17 OF THE BENICIA MUNICIPAL CODE REQUIRING CERTAIN PROJECTS TO BE SUBJECT TO A DEVELOPMENT AGREEMENT AND AMENDING THE APPLICATION REQUIREMENTS FOR DEVELOPMENT AGREEMENTS

On motion of Commissioner Bortolazzo, seconded by Commissioner Ernst, the proposed resolution was adopted by the following vote:

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

VI. COMMUNICATIONS FROM STAFF

A. Receive City Policies and Regulations on electronic billboard signs
(continued to the next Planning Commission Meeting.)

VII. COMMUNICATIONS FROM COMMISSIONERS

Commissioner Dean complimented staff on the content of the June minutes.

VIII. ADJOURNMENT

Meeting was adjourned at 8:55 pm.