

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
AUGUST 7, 2007

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:00 p.m. on Tuesday, August 7, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

OPPORTUNITY FOR PUBLIC COMMENT:

None

ANNOUNCEMENT OF CLOSED SESSION:

Lisa Wolfe, City Clerk, read the announcement of Closed Session

ANNOUNCEMENT:

Mayor Messina announced that due to a conflict of interest, he would recuse himself from the Closed Session discussion. Vice Mayor Schwartzman would chair the Closed Session meeting.

CLOSED SESSION:

**A. CONFERENCE WITH LEGAL COUNSEL -EXISTING LITIGATION
(Government Code Section 54956.9 (a))**

Friends of Old Town and Jerry Hayes v. City of Benicia et al., Solano County Superior Court No. FCS 029859.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 6:02 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
AUGUST 7, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:00 p.m. on Tuesday, August 7, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Ms. McLaughlin stated that Council received an update from Staff.

Openings on Boards and Commissions:

- Civil Service Commission:
One full term to August 30, 2010
- Planning Commission:
Three full terms to September 30, 2011
- Sky Valley Open Space Committee
One unexpired term to September 30, 2010

Mr. Erickson announced that the City of Benicia received a plaque in recognition of receiving Certified Local Government status.

APPOINTMENTS:

None

PRESENTATIONS:

Presentation of a Russian flag:

Ms. Eve Iversen, author of the book “Romance of Nikolai Resanov and Concepcion Arguello,” presented a Russian flag and Russian candy to the City of Benicia.

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Ms. McLaughlin stated that VII-D would be dropped from the agenda.

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Dan Clark – Mr. Clark discussed the Mills site as the community center. He expressed concern with the issue of the site being used for City offices.

Mr. Erickson stated that the site would be a genuine community center. The vast majority of space would be used for community use and would be available to the public. Any final determination on who will occupy the center would be the final decision of the City Council.

Council Member Patterson announced that the Parks, Recreation and Cemetery Commission meeting would be held tomorrow night, where continuing uses for the Mills site would be discussed.

CONSENT CALENDAR:

Council pulled item VII-B.

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

The minutes of July 17, 2007 were approved.

RESOLUTION 07-90 - A RESOLUTION APPROVING THE SALARY RANGE FOR ASSISTANT DIRECTOR OF PARKS AND COMMUNITY SERVICES

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of Amendment to Fee Deferral Payment Agreement for 1375 East 5th Street Hotel:

RESOLUTION 07-91 - A RESOLUTION APPROVING AN AMENDMENT TO THE FEE DEFERRAL AGREEMENT FOR THE 1375 EAST 5TH STREET HOTEL PROJECT

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

PUBLIC HEARINGS:

Adopt changes to the Master Fee Schedule that includes service charges and development related fees and charges:

Public Hearing Opened

Public Comment:

1. Rod Cameron – Mr. Cameron discussed lack of activity in the development industry and the cost of labor. He hopes that the City takes the fees, costs, rates, etc. into consideration when adopting changes to the Master Fee Schedule.

Public Hearing Continued

Review of the Benicia Business Park Draft Environmental Impact Report:

Vice Mayor Schwartzman asked the applicant if they would be presenting any written materials. Mr. Sal Evola stated that the only additional material that they would be submitting was a hard copy of the PowerPoint Presentation.

Mayor Messina called for a 5-minute break at 7:16 p.m.

The meeting resumed at 7:23 p.m.

Mr. Erickson and Mr. Knox reviewed the staff report.

Mayor Messina stated that the action before Council was to decide if the DEIR conformed to the City's CEQA guidelines.

Council Member Patterson discussed the issues of having the final document incorporated into a single document, the project's inconsistency with the City's General Plan, and the process.

Council Member Hughes clarified that tonight was not for Council to decide if it liked the project, whether the project conflicts with the General Plan, but it was for Council to decide if the DEIR was adequate.

Applicant:

Mr. Sal Evola, Discovery Builders, introduced the project.

Mr. Carl Campos, Loving & Campos Architects, Inc., reviewed a PowerPoint presentation (hard copy on file).

Council Member Patterson asked Mr. Campos to provide specific projects that Council could view to see examples of similar projects.

Public Comment:

1. Gary Klean – Mr. Klean spoke in favor of Council certifying the DEIR for the project.
2. Steve Lesler, Board Member, Solano EDC – Mr. Lesler spoke in favor of Council certifying the DEIR for the project.
3. Steve Getz – Mr. Getz spoke in favor of Council certifying the draft EIR, however, the DEIR grossly underestimates the negative impacts the project will have on the City.
4. Rod Cameron – Mr. Cameron spoke in favor of Council moving the project forward.
5. Citizen – The citizen spoke in favor of moving the project forward.
6. Shannon Walsh-Hill – Ms. Walsh-Hill spoke in favor of proceeding forward with the project.
7. Keith Diaz – Mr. Diaz spoke in favor of the project.
8. Bill Garrett – Mr. Garrett spoke in favor of moving forward with the project.
9. Brian Pollack – Mr. Pollack spoke in favor of Council certifying the DEIR for the project.
10. David Lockwood – Mr. Lockwood spoke in opposition of the project.
11. Marilyn Bardet – Ms. Bardet spoke in favor of having a project in the area. However, the sufficiency of the DEIR does not meet the standards of accuracy. She recommended an alternative project be considered.
12. Bob Craft – Mr. Craft questioned the appropriateness of the presentation by the applicant. He requested that the 3-D model be placed at the Benicia Public Library for the public to view. He discussed the issue of air quality.
13. Dan Smith – Mr. Smith spoke in favor of the project. However, the current project did not address the issue of building an additional fire station.
14. Doug Messner – Mr. Messner clarified that the applicant did not intend to build a truck stop as part of the project.
15. Matt King – Mr. King spoke in favor of the project.
16. Jeanine Seeds – Ms. Seeds discussed the issues of Seeno suing another City regarding permit fees, Council not listening to the public, and the developer's reputation.
17. Lupe Morgan – Ms. Morgan spoke in support of the project.

18. Donald Dean – Mr. Dean spoke in support of the project. He was concerned about the process. There is a lack of information on the DEIR.
19. Evonne Marston – Ms. Marston spoke in favor of the project.
20. Citizen – The citizen spoke in opposition of moving forward. The project is not ready.

Ms. McLaughlin clarified that it was Staff's recommendation that Council take action tonight.

Mr. Erickson stated that this was the second hearing on this item. He urged Council to take action.

Mr. Evola urged Council to allow Discovery Builders, Inc. to move to the next step.

Mayor Messina suggested closing the Public Hearing, but allowing written comments to come in for the rest of the week.

Council Member Patterson concurred with Mayor Messina. She would like to have this item extended for two weeks.

Public Hearing Closed – Written comments will be accepted through 8/20/07.

Mr. Erickson clarified that Council could certify the DEIR and continue to accept comments for a period of time. In Staff's view, there is no necessity to delay this item.

Council Member Hughes asked LSA to address the public's concerns about environmental impacts, air quality, traffic, etc.

Adam Weinstein, LSA Associates – Mr. Weinstein stated that LSA believes the DEIR is accurate. He referred to pages 371-378 of the DEIR, and reviewed LSA's findings.

Council Member Patterson discussed the issues of grading, widening I-780, creative mitigation ideas, project description, and low impact development.

Council Member Whitney clarified that the property in question is undeveloped commercial property, not open space. It makes sense that Council follow Staff's recommendation. Mr. Knox clarified that the DEIR was adequate.

Vice Mayor Schwartzman agreed the DEIR was adequate. He asked LSA to comment on the traffic at the intersection of East Second Street and East Military. It should have been evaluated more. He questioned what guarantee the City had that the project would look like what was presented tonight.

Council Member Patterson discussed the issues of traffic and assessments.

Mayor Messina suggested changing the language on the last whereas so that it reads after May 1, 2007 – ‘the public hearing was closed on 8/7/07 and the City will accept written comments from the public through 8/20/07. He also suggested deleting the final ‘Be it further Resolved.’ He made a motion to accept the resolution with the changes he suggested.

Council Member Patterson seconded the motion and reviewed additional change requests (per amended resolution submitted at Council meeting).

Christina Lawson – Ms. Lawson urged Council to refer to its City CEQA guidelines. None of the findings proposed by Council Member Patterson are legal in the CEQA guidelines.

Ms. McLaughlin confirmed the changes proposed by Council Member Patterson could be done.

Mayor Messina rejected the changes to the resolution as suggested by Council Member Patterson.

Council Member Hughes agreed with Mayor Messina on rejecting Council Member Patterson’s proposed changes.

Council Member Patterson reviewed her reasons for the proposed changes.

RESOLUTION 07-92 - A RESOLUTION REVIEWING THE DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE BENICIA BUSINESS PARK PROJECT AND DETERMINING COMPLIANCE WITH THE CITY’S CEQA GUIDELINES

On motion of Mayor Messina, seconded by Council Member Whitney, the above Resolution was adopted as amended (with Mayor Messina’s proposed changes), on roll call by the following vote:

Ayes: Council Members Hughes, Whitney, and Mayor Messina

Noes: Council Members Patterson and Schwartzman

Mayor Messina called for a 5-minute break at 9:52 p.m.

The meeting resumed at 10:00 p.m.

ACTION ITEMS:

Introduction of an ordinance repealing Chapter 9.02 (Minor Alcohol Offenses/ Parties) and replacing it with a new Chapter 9.02 (Social Host Accountability):

Heather McLaughlin, City Attorney, reviewed the staff report. She reviewed the suggested changes (clarifying what excessive noise and excessive traffic are).

Vice Mayor Schwartzman reviewed several typos.

Council Member Hughes supported the ordinance. He asked how and why this issue was different from other crimes in the City. Chief Spagnoli confirmed there were other offenses that the City charges for response. He questioned the language 'knowingly' on IX-A-8. Council agreed to delete the word 'knowingly.'

Council Member Whitney discussed the underage drinking issue. He hopes Council supports this issue.

Council confirmed the following changes were to be made: delete 'knowingly' and add definitions of excessive noise and excessive traffic, and fix typos.

ORDINANCE 07- - AN ORDINANCE AMENDING CHAPTER 9.02 (SOCIAL HOST ACCOUNTABILITY) OF TITLE 9 (PUBLIC PEACE, WELFARE AND MORALS) OF THE BENICIA MUNICIPAL CODE IN ITS ENTIRETY

On motion of Council Member Patterson, seconded by Vice Mayor Schwartzman, the above Introduction and First Reading of an Ordinance was approved as amended, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

Consideration of ordinances related to businesses selling alcohol:

Heather McLaughlin, City Attorney, reviewed the staff report.

Council Member Patterson proposed changes to the definition of 'premises,' and to change 'act of god' to 'force majeure.' Regarding the issue of camera recording – it should state 'with cause.'

Public Comment:

1. Jan Lucca – Mr. Lucca spoke in opposition to the proposed ordinances. He would have liked to have been involved in the discussions. He requested Council stop discussions, go back to the commission, and involved the business owners in the discussions.

Council Member Whitney stated that he did not have a problem taking this back to the commission and having a discussion with local business owners.

Chief Spagnoli stated that many components of the ordinance support existing requirements of ABC code.

2. Mary Francis Kelly Poe – Ms. Kelly Poe discussed the issue of underage drinking. None of the stings that had been conducted were done in a bar. She believes that the problem is selling alcohol in stores, not bars. The commission should go back and take a look at this.
3. Citizen – The citizen (did not provide name) is the attorney for Bottom of the Fifth Bar – there are problems with the proposed ordinances. The problem with underage drinking involves stores, not bars. The proposed ordinances need to be

looked at again. Local bar owners should be included in the discussion. He would be interested in being included in the discussions as well.

This item was pulled and will be brought back after the commission discusses it further.

Enhancement of Fund Balance Reserve Policy:

Rob Sousa, Finance Director, reviewed the staff report.

Vice Mayor Schwartzman stated that he would like the undesignated reserve to be as flexible as possible.

Council Member Hughes inquired about the risks. Mr. Sousa discussed the restrictions for accessing the funds.

Vice Mayor Schwartzman discussed property taxes.

RESOLUTION 07-93 - RESOLUTION APPROVING ENHANCEMENTS TO THE FUND BALANCE RESERVE POLICY

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

INFORMATIONAL ITEMS:

Reports from City Manager:

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 11:06 p.m.

Lisa Wolfe, City Clerk