



**BENICIA PLANNING COMMISSION  
CITY COUNCIL CHAMBERS**

**REGULAR MEETING MINUTES**

**Thursday, August 14, 2008**

**7:00 P.M.**

**I. OPENING OF MEETING**

- A. Pledge of Allegiance**
- B. Roll Call of Commissioners**

Present: Commissioners Rick Ernst, Dan Healy, Rod Sherry, Lee Syracuse, Brad Thomas and Chair Fred Railsback

Absent: Commissioner Richard Bortolazzo (excused)

Staff Present: Charlie Knox, Community Development Director  
Gina Eleccion, Management Analyst  
Kat Wellman, Contract Attorney

- 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. AGENDA CHANGES AND DISCUSSION**

None.

**III. OPPORTUNITY FOR PUBLIC COMMENT**

- A. WRITTEN**  
None.

- B. PUBLIC COMMENT**

A citizen stated that on Sunday, September 7<sup>th</sup>, the Benicia Bicycle Club is sponsoring a race.

**IV. CONSENT CALENDAR**

On motion of Commissioner Ernst, seconded by Commissioner Syracuse, the Consent Calendar was approved by the following vote:

Ayes: Commissioners Ernst, Healy, Sherry, Syracuse, Thomas and Chair Railsback  
Noes: None  
Absent: Commissioners Bortolazzo  
Abstain: Commissioner Sherry (Item IV-C only)

- A. **Approval of Agenda**
- B. **Approval of Minutes of June 12, 2008**
- C. **Approval of Minutes of July 10, 2008**

V. **REGULAR AGENDA ITEMS**

- A. **USE PERMIT FOR BODY ART AS AN ANCILLARY USE**  
08PLN-34 Bombshell Hair and Ink  
120 East G Street; APN: 89-342-030

**PROPOSAL:**

In accordance with Downtown Mixed Use Master Plan Town Core (TC) development regulations, the applicant requests approval of a Use Permit for the establishment of an ancillary body art business as part of an existing hair salon.

**Recommendation:** Adopt a resolution approving application 08PLN-34 to establish an ancillary body art use at 120 East G Street, with the condition that body art other than only facial aesthetic treatments customarily incidental to salon use not be allowed.

Charlie Knox, Community Development Director, gave an overview of the project.

Commissioners questioned the timing of the application in relation to the Downtown Mixed Use Master Plan. Charlie Knox noted that this was originally applied for at the time the Plan was recommended for adoption. The Plan requires a Use Permit for this type of use. He noted that this use is limited to certain zoning designations, and is allowed in other areas without a Use Permit.

Commissioners commented on the General Plan conformance difference between permanent makeup vs. tattooing. Charlie Knox noted that this is the Commission's determination to make. He noted that whatever conditions are applied to this applicant must be applied fairly in the future.

Commissioners commented on the definition of "body art." Charlie Knox noted that this has not been clearly defined by the City Council. Kat Wellman, Contract Attorney, noted that the purpose of a conditional Use Permit is to allow consideration of certain uses, and under specific conditions. She noted that each Use Permit is considered independent of previously approved uses.

The definition of ancillary was discussed. Charlie Knox noted that it is considered "secondary."

Quality of life was discussed in relation to this project. Charlie Knox noted that he does not question the quality surrounding this particular business, however, there is the potential for an impact on the quality of life in the downtown.

Kat Wellman noted that it is typical to adopt a Resolution approving a Use Permit, which makes specific findings and places specific conditions on the allowable use.

The public hearing was opened.

Cheri Graf, Applicant – She noted that she has been working on this for some time. She had originally looked at her current location, and at the time, met the requirements for that location. Subsequently, she looked at a location at 636 First Street, which was not allowed. She commented on other communities that allow tattooing. She provided information that tattooing is a fast growing industry, and has become mainstream. She noted that there are strict regulations for cleanliness and safety. In addition, she noted that she is not a permanent makeup artist, so that use would not assist her business. She cares about the quality of work and the quality of her employees. She commented on letters of support she has received, including a letter from Studio 41. She read a letter into the record from Susan Phillips. A list of supporters was read.

The applicant was questioned about what licensing is required for tattooing. Cheri Graf noted that there is no professional licensing, however individuals register themselves as professional tattoo artists. In contrast, a permanent makeup artist requires a state license.

The applicant was questioned about the use of needles and any potential health risks. She noted that there is a sharps container for disposal.

A citizen spoke in support of the business. She received her first tattoo in Vallejo and would prefer to have this done in a reputable salon in Benicia.

A citizen noted that tattooing is now an art form. She supports the project.

A citizen spoke in favor of the project.

Carla Jewell, Business Owner – She supports the project and does not believe this business will attract a negative element.

Owner of 321 First Street – She supports the project and believes this business has extremely high standards.

Robert Whitehead, landlord – He stated his support of the project.

David Archer, resident – He supports the project. He believes the downtown was established to have businesses succeed.

Earl Miller, 903 West 3<sup>rd</sup> – He supports the project.

Manny Pereira, resident – He stated that he has numerous friends with tattoos. He supports the project.

Jim Strebis, 450 East D – He commented on the variety of people he knows with tattoos. He supports the project.

Lisa Filangeri, resident – She supports the project.

A customer of the salon commented that she does not believe this will negatively affect the downtown character. She supports the project.

Mark Hancock, resident – He commented on the growth of Benicia and the diversity of First Street. He commented on the history of tattooing. He supports the project.

A stylist at the shop commented on the professionalism of the salon. She fully supports the project and noted the owner's support of other businesses in town.

Alex Pines, resident – He commented on this as an ancillary use and also how this will affect the small town character of Benicia. He stated that this business owner exemplifies the character of Benicia and enhances the small town atmosphere.

Linda Jones noted that this is Cheri Graf's dream. She disagrees with any conflict with the City's General Plan policies.

John Sheppard spoke in support of Cheri Graf. He noted that Ms. Graf truly wants to have a quality business that does not retract from the downtown character.

The public hearing was closed.

Commissioners thanked the applicant.

Charlie Knox noted that this Use Permit goes with this particular use at this particular location.

Commissioners commented on what the easiest way to define ancillary is. There was a suggestion to define ancillary as less than 50% of the square footage.

The motion included the following modified conditions:

1. Strike 120 East G (re: limitation of body art), add "based on the following conditions"
2. Add ancillary body art use at this particular business would not detract from the small town character.
3. Strike condition 3
4. Condition #4 – at no time shall approval of this construe approval of tattooing without appropriate use permit approval
5. Add condition that ancillary use is limited to less than half of the overall square footage of the primary use.
6. Condition #2 – Include definition of body art.

Commissioner Ernst stated he had a conversation in September 2007 with the applicant. Chair Railsback and Commissioner Sherry stated they had ex-parte communication with the applicant.

**RESOLUTION NO. 08-6 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT (08PLN-34) FOR AN ANCILLARY BODY ART USE AT 120 EAST G STREET**

On motion of Commissioner Healy, seconded by Commissioner Sherry, the above Resolution was adopted by the following vote:

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

A recess was called at 8:15. The meeting was reconvened at 8:23.

**B. RECOMMENDATION TO CITY COUNCIL ON THE LOWER ARSENAL MIXED USE SPECIFIC PLAN AND EIR**

The project site consists of approximately 50 acres in southeastern Benicia, and is a portion of Benicia's former Arsenal known as the Lower Arsenal. The site is generally bounded by lands adjoining I-780 on the north, lands adjoining I-680 on the east, Port of Benicia land and the Carquinez Strait on the south, and residential neighborhoods extending into downtown Benicia on the west.

**PROPOSAL:**

The proposal is implementation of a Specific Plan for the Lower Arsenal site, which is designated for mixed uses in the Benicia General Plan. The Specific Plan covers four distinct zones, each of which exhibits a unique physical character. The Specific Plan would implement a form-based code to shape future development on the project site, with primary emphasis on the physical form and character of new development. After build-out of the Specific Plan, the area would contain approximately 741,865 square feet of mixed uses, 22 residential units, and 6.39 acres of open space. The Specific Plan area currently contains approximately 525,000 square feet of mixed uses.

**Recommendation:** Recommend City Council certification of the Environmental Impact Report and adoption of the Lower Arsenal Mixed Use Specific Plan, with modification of Action 4.6.2 to prohibit granting of City permit for alteration of any structure in the Plan area more than 50 years old until the Lower Arsenal historic resource inventory has been updated.

Commissioner Sherry stated a conflict of interest on this item due to business interests and recused himself.

Charlie Knox introduced this item. He noted that the recommendation on the content of the Plan was forwarded to the City Council last year. The City Council directed staff to prepare the environmental documents. Charlie Knox noted that there would need to be an update of the Arsenal Historic Resource Inventory. He noted that the Arsenal Historic Conservation Plan protects the integrity of the historic structures in the Arsenal Historic District. He commented on the 1025 Grant Street project and the property owners' involvement in the public charrette process. A number of comments have been submitted in relation to this project being included in the Plan. The Jefferson Ridge is the only parcel subject to EIR alternatives. The senior housing alternative was highlighted. The General Plan allows consideration of live/work uses.

Adam Weinstein, LSA, gave a brief presentation. He introduced David Clore and Theresa Bravo, colleagues from LSA. An overview of the CEQA process was given. He highlighted Mitigation Measure HAZ-1. He noted that LSA met with City staff, the Army Corps of Engineers, and the Department of Toxic Substances Control. EIR adequacy was highlighted.

The public hearing was opened.

Robert Whitehead, property owner – He stated his support of the senior housing project. He commented on the different options proposed. He believes it is time to develop in the Arsenal.

Dennis McCray, SAHF – He submitted a letter to the Commission. He would like the senior housing option to be labeled as the “preferred alternative.” He stated his disagreement with Opticos' recommendations in the Plan.

Marilyn Bardet – She does not believe the Plan should be adopted at this time. She disagrees with staff's recommendation of approval. She highlighted disagreements that have not been resolved. There are contradictions in the Response to Comments. She is concerned with safety and health issues. The City has a responsibility to investigate and clean up the area.

Claudia Keppelyuhas, resident – She commented on the eclectic nature of the community. She has been waiting for the Arsenal to be restored. The General Plan intends mixed use and residential living has been happening. She commented on the 22-unit project at 1025 Grant Street and their contribution to the tax base. She referenced the tax contribution of Amports.

Dana Dean, representing Amports – She alleged missteps in the process. There was not sufficient time to review this Plan. She referred to page 291 of the Response to Comments and the City's communication with DTSC and the Army Corps of Engineers. She alleged that DTSC was not involved in developing mitigation measures. In addition, she believes the Plan is complicated for property owners to follow.

Belinda Smith, resident – She referenced the cultural resources. She commented on a letter from Knox Mellon, State Office of Historic Preservation, and believes that the Arsenal was designated as a historic district after this letter was written. She commented

on potential substantial adverse impacts. She stated the importance of the setting. There are issues regarding the Secretary of the Interior Standards. She believes the hearing should be continued.

Donald Dean, 257 West I Street – He commented on the cultural resources section of the EIR. He questioned how this plan would affect the historic integrity of the district as a whole. He does not believe this question was sufficiently answered. There needs to be a balance in developing the Arsenal and retaining its historic integrity. He would like this item continued.

Bill Simpkins, Simpkins Auto – Spoke on behalf of the owner of Star Motors and himself. He doesn't believe residential is a compatible use. There are hazards in commercial and industrial uses.

Mark Hajjar, property owner – He commented on his project at 1025 Grant Street. He submitted design items related to his project. He noted that the General Plan calls for mixed use.

A resident at 940 Grant Street – She stated that the Arsenal has a sense of community. There is a thriving artist community. She supports development, but thinks work/live is the solution. She would like development compatible with existing uses. She would like to see this move forward.

Kathleen Olson, 920 First Street – She noted that the General Plan drives this process. She reminded the Commission that there are over 190 acres in the Lower Arsenal. There are very few undeveloped properties. Individual property owners assume risk of developing. The property owner met with Amports, who stated they would be neutral on this project with proper deed notification.

Norm Koerner, 1150 West 7<sup>th</sup> Street – He commented that other residents are not here. He supports the Plan.

The public hearing was closed.

Commissioner Ernst stated he had ex-parte communications with a number of the speakers. Commissioner Healy stated he had ex-parte communications with Dana Dean and Kathleen Olson. Chair Railsback stated he had ex-parte communications with many of the speakers, as did Commissioner Thomas.

Commissioners discussed the EIR. There should be more certainty in the process. There are questions that need to be answered. The difference because Phase 1 and Phase 2 analysis was discussed. There is a risk that developers take, but they are aware of that risk.

Commissioners commented on the need to protect the historic integrity of the Arsenal. The Commandant's restoration has cost a significant amount of money.

Charlie Knox noted that Option 3 is now referred to as Option 1.5. In addition, he noted that any applicant coming forward would be required to perform environmental analysis of their site. The City would like to see the Army Corps continue its cleanup, but has no confidence that will happen.

Charlie Knox noted that if the Plan is not adopted, developers can come forward with proposals.

Charlie Knox noted that there had been a lot of agreement at the end of the charrette process, some of which has now been lost. Opticos prepared the Plan based on the feedback from the charrette. In addition, he noted that the 1025 Grant Street project came before the Commission and was received favorably prior to the Specific Plan process.

Charlie Knox noted that the hazards section of the EIR addresses those hazards that are known. There is no mechanism to have the environmental information available to property owners prior to purchase. The Army Corps has identified some areas of contamination.

Charlie Knox noted that the Commission can recommend certification of the EIR without an option recommended. A recommendation would be forwarded to the City Council no earlier than September 16<sup>th</sup>.

There is a discussion on the small percentage of developable land. The senior housing proposal was discussed. The cork oak grove is important to preserve.

Kat Wellman reminded the Commission that a Specific Plan can be amended as many times as needed. In addition, projects proposed will come before the Commission for review and environmental analysis.

Commissioner Thomas moved to recommend approval of both EIR and Plan. The motion died for lack of a second.

**RESOLUTION NO. 08-7 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL CERTIFICATION THE ENVIRONMENTAL IMPACT REPORT FOR THE LOWER ARSENAL MIXED USE SPECIFIC PLAN**

On motion of Commissioner Thomas, seconded by Chair Railsback, the above Resolution (DEIR) was adopted by the following vote:

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

**RESOLUTION NO. 08-8 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL ADOPTION OF THE LOWER ARSENAL MIXED USE SPECIFIC PLAN**

On motion of Commissioner Thomas, seconded by Commissioner Syracuse, the above Resolution (LAMUSP), with City Council determination of appropriate option, was adopted by the following vote:

Ayes:	Commissioners Syracuse, Thomas and Chair Railsback
Noes:	Commissioner Ernst
Absent:	Commissioner Bortolazzo
Abstain:	Commissioner Healy

**VI. COMMUNICATIONS FROM STAFF**

Charlie Knox noted that the Climate Action Plan will be coming before the Commission in October. In addition, he noted that the Housing Element update will begin with public workshops on October 3<sup>rd</sup> and 4<sup>th</sup>.

**VII. COMMUNICATIONS FROM COMMISSIONERS**

Commissioner Ernst stated his concern with potential future tattoo issues. He would like City Council to place a moratorium on this use until an ordinance can be drafted. Kat Wellman stated that a request of staff can be made. Charlie Knox noted that City Council members can be petitioned to request this item be agendized.

**VIII. ADJOURNMENT**

Chair Railsback adjourned the meeting at 10:50 p.m.