

**August 16, 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  
REGULAR MEETING - CITY COUNCIL  
AUGUST 16, 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, August 16, 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:**

**Mayor Messina announced that in accordance with the new Sunshine Ordinance 05-6, section 4.04.030, a plaque stating fundamental rights of each member of the public is posted above the speaker cards at the entrance to Council Chambers.**

**Mayor Messina announced the following openings on Boards and Commissions:**

- **Planning Commission - 1 full term to September 30, 2008**
- **Open Government Commission - 5 terms (various dates of expiration)**

**APPOINTMENTS:**

**RESOLUTION 05-127 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF DONALD L. RICE TO THE HUMAN SERVICES FUND BOARD TO A FULL TERM ENDING JUNE 30, 2009**

**The above Resolution was adopted, on roll call by the following vote:**

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

**Noes: None**

**PRESENTATIONS:**

**Update on PURE Committee Activities:**

**Mr. Steve Dean, Committee Member, reviewed the following presentation:**

**Siting Decision & Ammonia Removal Updates:** Paul Meyerhofer of CDM gave a presentation on the facilities siting for the project. He discussed a possible site for the Micro Filtration/Reverse Osmosis system north of the flare stack but needs more topographic data before a decision can be reached. Facility site selection is the main outstanding issue left. He also gave a brief presentation on a promising new biological process for ammonia removal (nitrification). Current Budget: Out of the \$15M that Valero originally pledged for this project \$600K has been spent and \$200K more has already been allocated for additional analytical work. That leaves a balance of \$14.2M. Environmental Review for the project: Ms. Chris Tomasik made requests for proposals to four environmental contracting firms; ESA, URS, CH2MHill, and Jones & Stokes. Only ESA responded with a bid \$130K for the environmental review. The PURE Committee has formed an interview committee to evaluate ESA's proposal. Don Cuffel and Steve Dean both offered to investigate other environmental contracting firms that may be interested in bidding on this environmental review.

**EBMUD/ Chevron Recycled Water Project:** Mr. Tom Hall gave an update on the expansion project for Chevron refinery using EBMUD wastewater and reverse osmosis. As with PURE'S project, they too are encountering similar interference issues in their analysis of the reverse osmosis concentrate water. Consequently, they are researching better analytical methods for analyzing reverse osmosis concentrate. Valero and the City of Benicia hope to enter into an information sharing agreement with EBMUD/Chevron on the best methods for analyzing the RO concentrate discharge water.

**Funding Issues:** Mr. Don Cuffel is preparing a request for additional funding from Valero. Currently the project will cost \$20.8M for the 2 MGD version, \$17M for the 1.5 MGD, and \$15M for the 1 MGD. The 2 MGD version while the most expensive is also the most cost effective and provides the entire daily amount of water required by Valero's cooling towers.

**Additional funding sources:** Ms. Tomasik gave an update on her pursuit of a grant from Proposition 50, Chapter 8 funds. She believes that this project should be eligible for a grant of \$1M and possibility up to \$3M.

Mr. Steve Dean gave a brief review of the Guidelines for Preparing, Reviewing, and Processing Water Reclamation and Reuse Project Proposals Under Title XVI of Public Law 102-575 issued by the Department of Interior's Bureau of Reclamation. This guideline states that reclamation (BoR) is authorized to fund a wastewater recycling project for up to 25% of the total project cost, but funding is limited to a maximum of \$20M per project. We are continuing to pursue this grant funding through Congressman Miller's office.

The PURE Committee has voted to hold meetings once every other month with the alternate month being an optional meeting depending on action and agenda items for that particular month.

**Benicia Historical Museum - New Exhibit:**  
Continued to a future Council meeting.

**PROCLAMATIONS:**  
Lifeguard Day - Tuesday, August 16, 2005

Mayor Messina presented a proclamation for 'City of Benicia Lifeguard Day' to Mr. Donny Biro, Aquatic Coordinator.

**ADOPTION OF AGENDA:**

Mr. Erickson stated that item X-D was withdrawn from the Agenda. In addition, if approved, item VII-E (Fairfield/Suisun System Transfer Agreement) will most likely commence in October, not on October 29th as originally planned.

On motion of Vice Mayor Patterson, seconded by Council Member Smith, 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:**

Various written items were submitted to Council (copies on file with the agenda packet).

**PUBLIC COMMENT:**

1. Alan Schwartzman - Mr. Schwartzman discussed the Bordoni Ranch project. He discussed the current traffic back-ups that occur getting off of I-780. He stated that he fears that unless we stay on top of this, it will only get worse. He is saddened that that Council is considering changing the aspects of the Planning Commission appointment process. He suggested that if the proposed ordinance change is approved, Council should switch back to a rotating mayorship. Council should be individually interviewing each potential commissioner. He expressed his concerns with each proposed change to the ordinance.
2. Fred Railsback - Mr. Railsback discussed the success of the recent Peddler's Fair. He discussed recent negative comments in the local newspaper by a few Council Members with regards to the Planning Commission and St. Catherine's Woods. Council Member's voices carry weight. Along with that weight comes the responsibility of using his or her voice for the betterment of all the citizen's of Benicia.
3. Kitty Griffin - Ms. Griffin discussed the proposed changes in the Planning Commission appointment procedures. She listed the cities that have begun using the new appointment procedures. Benicia is not the only city that has gone through this type of crisis in the past few years. There needs to be a balance in this area. The most important part of Vice Mayor Patterson's proposed change to the appointment procedure is the last part, which has to do with vacancies being left if Council cannot agree on an appointment. This is a good theme for the future. Other cities function very well with the new appointment procedure in place.
4. Jon Van Landschoot - Mr. Van Landschoot discussed some upcoming projects in historic areas. Two downtown and one in the arsenal. He proposed a moratorium on plans in the historic district. He thanked the Council Members that attended Vallejo's city council meeting last week. He thanked Mr. Schiada for the repaving of the roads that took place this past week.
5. Council Member Smith announced the following upcoming events:

- Farmer's Market held every Thursday through October
  - 8/18/05 - Chamber of Commerce Mixer at Bella Hair Salon
  - 8/19/05 - 'Outdoor Movie Night at the Gazebo' will feature 'Robots'
  - 8/26/05 - Concert at the Benicia Library featuring Teddy Randazzo Jr. and Kenon Chen
  - Arts Benicia will continue featuring 'Cream from the Top' through 8/26/05
  - 8/26 - Grand Opening of 701 Gallery
  - 9/2/05 - First Fridays on First
  - 9/10/05 - Soroptomist's 3rd Annual community talent show 'Viva Las Vegas'
6. Council Member Campbell asked Staff for an update on the paving of West K Street. Mr. Erickson stated that Mr. Schiada is currently in negotiations with the contractor that caused the disruption to that street. The discussions should be culminated in the next few weeks. Council asked Staff for a report at the next Council meeting.

**CONSENT CALENDAR:**

Council pulled items VII-B and VII-F.

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 July 19, 2005 were approved.

**RESOLUTION 05-128 - A RESOLUTION AUTHORIZING SUBMITTAL OF AN APPLICATION FOR A CALIFORNIA LIBRARY LITERACY SERVICE MATCHING FUNDS GRANT FOR FISCAL YEAR 2005/2006 AND AUTHORIZING THE LIBRARY DIRECTOR TO SIGN DOCUMENTS**

**RESOLUTION 05-129 - A RESOLUTION ADOPTING THE SOLANO AGENCIES INTEGRATED REGIONAL WATER MANAGEMENT PLAN**

The Fairfield/Suisun Transit System Transfer Agreement was approved.

**RESOLUTION 05-130 - A RESOLUTION ESTABLISHING AN APPROPRIATIONS LIMIT PURSUANT TO ARTICLE XIII B OF THE CALIFORNIA STATE CONSTITUTION FOR FISCAL YEAR 2003-04**

**RESOLUTION 05-131 - A RESOLUTION ESTABLISHING AN APPROPRIATIONS LIMIT PURSUANT TO ARTICLE XIII B OF THE CALIFORNIA STATE CONSTITUTION FOR FISCAL YEAR 2004-05**

**RESOLUTION 05-132 - A RESOLUTION ESTABLISHING AN APPROPRIATIONS LIMIT PURSUANT TO ARTICLE XIII B OF THE CALIFORNIA STATE CONSTITUTION FOR FISCAL YEAR 2005-06**

**RESOLUTION 05-133 - A RESOLUTION RETAINING AN UNDERWRITER, A BOND COUNSEL AND A DISCLOSURE COUNCIL IN CONNECTION WITH THE ISSUANCE BY THE CITY OF ITS PROPOSED CITY OF BENICIA 2005 WASTEWATER REFUNDING REVENUE BONDS**

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Second reading of an ordinance to rezone a parcel at 608 Military East from RM Medium Density Residential to PD Planned Development:

Council Member Smith pulled this item so he could renew his opposition to the lack of environmental review for this project.

**ORDINANCE 05-7 - AN ORDINANCE APPROVING A ZONE CHANGE FROM MEDIUM DENSITY RESIDENTIAL (RM) TO PLANNED DEVELOPMENT (PD) FOR APN: 0088-134-010 IN THE 600 BLOCK OF MILITARY EAST STREET**

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

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

Noes: Council Member Smith

Response to the findings and recommendations of the 2004-05 Solano Grand Jury's Final Report: Council Member Smith pulled this item because he had questions on the County's emergency response system. Mr. Erickson discussed the recent 'after action review' that took place after the most recent drill. Regarding the different agencies working together, the City of Benicia is quite organized, but we don't agree that there needs to be better organization countywide. Council Member Smith stated that he is concerned that we might be moving too fast on our upgrade if we are going to have to work in coordination with the rest of the County.

Vice Mayor Patterson stated that her concerns are more of a regional nature. She discussed forming a joint power of authority. She is disappointed that we are not making progress on that. Mr. Erickson stated that we need to work more closely together with the rest of the County. We need to work on a continual basis to be part of the countywide approach. We fall short of this under the present 'loose' system.

The letter from the City of Benicia responding to the findings and recommendations of the 2004-05 Solano County Grand Jury Final Report was approved, on roll call by the following vote:

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

Noes: None

**PUBLIC HEARINGS:**

**Approval of Grantee Performance Report for the City's Housing Rehabilitation Revolving Loan Fund (RLF):**

**Ms. Brenda Gillarde, Consultant, reviewed the Staff report.**

**Council Member Smith stated that it sounds like many of the applicants have too high of an income. He asked if Staff was exploring whether we can offer them to a slightly higher income level. Ms. Gillarde stated that Staff was exploring that possibility. Council Member Smith stated that if it turns out that can be done, this issue be brought back to Council for discussion.**

**Public Hearing opened**

**No Comment**

**Public Hearing Closed**

**RESOLUTION 05-134 - A RESOLUTION APPROVING THE GRANTEE PERFORMANCE REPORT FOR THE CITY'S HOUSING REHABILITATION REVOLVING LOAN FUND**

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

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

**Noes: None**

**Conduct a Public Hearing to consider the application of Regency Cab to operate cab service within the City of Benicia:**

**Mr. John Andoh, Transit Manager, reviewed the Staff report.**

**Council Member Smith asked if Staff could project any downsides of this contract, such as competition. Mr. Andoh discussed the current number of cabs available with the two current cab companies and their response times. He stated that adding another cab service could enhance customer service but could also affect revenue for the other cab companies.**

**Vice Mayor Patterson asked if there was another scenario where by adding another cab service, there would be better reliability and service, which could increase the use of cabs. Mr. Andoh stated that Vice Mayor Patterson's observations were correct.**

**Public Hearing Opened**

**Public Comment:**

- 1. Sandy Taylor, Manager, Vallejo City Cab - Ms. Taylor stated that they have increased the number of cabs that service Benicia. They have given Benicia excellent service. They currently have two cabs servicing Benicia in the evenings. They have invested quite a bit of money in getting service to Benicia. Adding another cab service to Benicia would hurt the current two companies serving Benicia.**

2. **Dee Roten, Manager, Vallejo Yellow Cab - Mr. Roten stated that the applicant was a previous member of Yellow Cab company. He believes there is ample service to Benicia with the two current cab companies. He questioned the need for adding another cab service to Benicia.**

**Public Hearing Closed**

**RESOLUTION 05-135 - A RESOLUTION AUTHORIZING REGENCY CAB TO BEGIN PROVIDING TAXICAB SERVICE WITHIN THE CITY OF BENICIA AND THE EXECUTION OF THE BENICIA TAXI SCRIP PROGRAM AND SAFE RIDE AGREEMENTS**

**On motion of Council Member Smith, 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**

**UNFINISHED BUSINESS:**

**Approval of recommendations of the report on sidewalk conditions at 1251 West 7th Street: Dan Schiada, Public Works Director, reviewed the Staff report.**

**Public Comment:**

1. **Marvin Kinney - Mr. Kinney represents Mr. Carter, who lives adjacent to the property in question. The vegetation in the area is extreme. He is interested in working with City Staff to solve the immediate problems. The long-term solution is more than just enhancing the aesthetics of the channel. Mr. Carter has issues that he wants to resolve with Staff.**

**Mayor Messina clarified that Mr. Kinney is supportive of Staff's recommendation at the present time.**

**Council Member Smith stated that it is a watershed. He asked Staff if the solution would preclude the City from doing future enhancements or storm water improvements in the area. Mr. Schiada verified that that it would not. Mr. Schiada stated that this is a good immediate solution.**

**Vice Mayor Patterson stated that she has been communicating quite a bit with Staff on this issue. Protecting urban streams saves money in the long term. She discussed the Urban Stream Restoration Program. The programs are really stream bank stabilization programs. What is being done is stabilizing functions of the stream bank. The vegetation holds the stream bank together. She suggested the following changes to make sure that it is understood that what is being done is a temporary fix. The short-term solution is essential for public safety. However, we need to have a plan in place for a long-term solution. She suggested inserting 'whereas time is of the essence for a temporary repair for public safety' and 'whereas in order to have permanent stream bank stabilization, an expert plan is needed.' We also need to indicate that we will fund the plan. She would like to have a plan back to Council in six months. Mr. Erickson stated that they were thinking in coming back in October to give Council an alternative plan. Council could provide feedback at that time. Vice Mayor Patterson suggested Council give direction to Staff to get some proposals to bring back to Council for review in October.**

Mayor Messina asked clarification on the last part of the plan. Ms. McLaughlin reworded the last part as follows: 'be it further resolved, staff shall research experts and develop a preliminary proposal on a permanent solution to the stream bank stabilization and report back to Council in September/October.' Council was in agreement with this version.

Mayor Messina suggested Staff contact Mr. Okita at the Water Board to research and discuss these issues.

Vice Mayor Patterson encouraged Staff to contact the State Department of Water Resources regarding possible grants.

**RESOLUTION 05-136 - A RESOLUTION APPROVING RECOMMENDATIONS OF THE REPORT ON SIDEWALK CONDITIONS AT 1251 WEST 7TH STREET AND AUTHORIZING AN APPROPRIATION OF \$75,000 FROM THE GAS TAX FUND RESERVES TO MAKE THE REPAIRS**

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

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

Noes: None

Follow-up review of City of Benicia Municipal Budgets for Fiscal Years 2005-07:  
Rob Sousa, Finance Director, reviewed the Staff report.

Council Member Campbell asked for clarification on the Police Officer position. He asked about the \$361,000 loan. He asked if that took into account the amount being spent on the School District. He asked about the City gymnasium. Why did the budget amount change? Mr. Sousa explained that Staff had penciled in the gym cost into the General Fund. We had double-budgeted for the gymnasium.

Council Member Smith stated that because of the City's financial health, we are able to help the schools. He discussed the JUA. He considers this a very responsible budget. Mayor Messina asked what 'Marina Funding' was referring to. Mr. Sousa stated that Council voted to remove all funding/subsidizing of the Marina from the General Fund. The change is to pay for dredging, etc. for the next two years. The money pulled out (\$100K) is a debit not a credit. Mayor Messina has concerns about the budget. He wants a balanced budget. It is Staff and Council's job to achieve a balanced budget. He does not support the adjustments for that reason. The expenses and revenues should be the same. We are on a slippery slope. He will not support the budget until it comes back in a balanced form.

Council Member Campbell asked Mayor Messina how he proposed Council come up with the \$361,000. Mayor Messina stated that it is the City Manager's job to come up with those funds. Council should not micro manage Staff and the City's finances. Council Member Campbell stated that if we postpone or phase in the JUA, we could have a balanced budget. There is not anything else that can be cut. The JUA is the one elective expenditure that could be phased in. Mayor Messina stated that

the City Manager should be able to come up with some opportunities for those funds.

Mr. Erickson stated that we have a two-year budget, not a one-year budget. The two-year budget is balanced. One of the primary motivations of Staff is that there are some major State cutbacks. That won't be the case in the year following the two-year budget. The City's plan says it will be more than balanced next year.

Vice Mayor Patterson stated that it is misleading to the public to say that we don't have a balanced budget. Vice Mayor Patterson stated that Council adopted via resolution, the two-year balanced budget. The budget is balanced. We spent over \$700,000 on the Intermodal Transportation Station expecting a reimbursement that was not solid and speculative. That was public money spent on an idea that research has shown was not a good idea. The Mayor did not have the same hesitancy about the \$700,000 that he has \$300,000. We spent almost eight meetings discussing what we could spend, where we could spend it, what could be cut, and how we were going to run the City. After the collective effort, we have a good budget. Stating that it is up to the City Manager to come up with the funds is insinuating the City Manager is derelict in his duties. Council voted and approved the budget. The Mayor is doing the public a disservice by stating that the budget is not balanced.

Mayor Messina stated that it was Council's decision not to proceed with the Intermodal Transportation Station. Based upon that, we are not going to get reimbursed. In terms of the City Manager's job, it's not our duty to micromanage every expenditure. We hired Mr. Erickson to do that. In terms of making choices, it is his job to do that. Council makes the ultimate decisions.

On motion of Council Member Smith, seconded by Council Member Whitney, Council did not approve the revisions to the General Fund Budget Balancing Plan as directed by the City Council on June 28, 2005, on roll call by the following vote:

Ayes: Council Members Patterson and Smith

Noes: Council Members Campbell, Whitney, and Mayor Messina

Council Member Smith asked Staff where this leaves us. Mr. Erickson stated that Council adopted the budget in June. That is the budget that stands. Mayor Messina stated that it is the adjustments presented tonight that were not approved.

Update on Bordoni Ranch Project:

Mr. Erickson discussed the traffic issues on Rose Drive.

Mayor Messina stated that he was not sure about the items on the table going in to the meeting with Vallejo. He stated that the Vice Mayor was more right than he was regarding the issues at hand. Regarding the road improvements, there are plans and ongoing discussions to carry out improvements along Columbus Parkway. As the Fulton project is delayed, the improvements will go forward and Fulton will reimburse the developer when it moves forward. What is most important to him is that we look out for the citizens of Benicia. It is important that we preserve the things that make it easier for Benician's, including the permanent right turn lane on Rose Drive. Regarding the ridgeline, there is going to be some potential grading on the Vallejo side.

Vice Mayor Patterson stated that the lessons learned are that 1) Vallejo treats the EIR processes differently than we do, which weakens the position with the developer, 2) dialogue helps and collaboration is of value. If we want to have the bicycle bridge, we need to collaborate with Vallejo to make it happen sooner than later. Benicia needs to nurture that collaboration on a Staff level. We need to remind Vallejo of our concerns on a regular basis. She wants there to be routine contact between Vallejo and Benicia staff.

Council Member Campbell stated that during the meeting, Vallejo kept discussing what would occur with Springs Road and Benicia Road, but not what would happen at the Columbus Parkway/Rose Drive intersection. What happens when it turns out that the intersection is not enough? We might end up having to pay a lot of money to fix the intersection. The project has moved on past the EIR. At what point do we move so far ahead that we can't take legal steps to remedy this?

Council Member Campbell asked Mr. Schiada to paint a worse case scenario regarding our options. Mr. Schiada stated that he would look into this. Ms. McLaughlin stated that there are two opportunities for lawsuits. If we felt the EIR was inadequate, we could sue. If they fail to meet the mitigation measures in the EIR, we could sue on those grounds.

Vice Mayor Patterson asked how LAFCO influences the EIR. Ms. McLaughlin stated that when LAFCO takes action, they would have to either rely on Vallejo's EIR or do their own environmental document. It may be limited to the annexation issue itself. Vice Mayor Patterson suggested writing to LAFCO to emphasize our concerns. She feels the only way for us to have assurances is to continue talks with Vallejo on the issues at hand.

Council Member Smith is intrigued about Council Member Campbell's suggestion to agendize Staff's recommendation about litigation. If they indicate a willingness to assist with the funding for the bridge project, that could be taken as a gesture of good faith. It is appropriate that they participate in helping us get that fixed. Council Member Whitney stated that we need to speak softly and carry a big stick. He is concerned about the traffic overload at the Rose Drive/Columbus Parkway intersection. Cars will back up on the freeway. He is concerned for anyone that uses that exit. He asked if Vallejo made any commitments regarding the onramp/off ramp to I-780. Vice Mayor Patterson stated that they did not make any commitments regarding anything other than what was indicated in the EIR. Council Member Whitney asked Mr. Schiada what his feelings were on that traffic area. Mr. Schiada stated that there is a need for improvements, regardless of whether the project moves forward. There were concerns on Vallejo's part regarding the fair-share of funds if the Fulton project moves forward. There will be impacts on both Vallejo and Benicia.

Council Member Campbell asked Staff what the drop dead date was that Benicia has to make a decision on whether to go along with Vallejo before we can proceed with litigation. Mr. Golick will look into this and get back to Council.

Mayor Messina called for a 5-minute break at 9:46 p.m.  
The meeting resumed at 9:51 p.m.

**NEW BUSINESS:**

**Request to vacate a strip of West 10th Street right-of-way adjacent to 994 West K Street:  
Dan Schiada, Public Works Director, reviewed the Staff Report.**

Mayor Messina asked why we keep denying the applicant's request. Mr. Schiada stated that on the most recent request, the benefit to be received by the property owner and the benefit for the City to vacate the property was not clear. This right-of-way was recently improved with landscaping improvements. Mr. Schiada stated that Staff is looking for direction from Council on how they want to proceed. Ms. McLaughlin stated that according to the files in 1986, Council wanted to maintain the area as a park.

**Proponent:**

Luis Delgado, Delgado Architectural Group- Mr. Delgado stated that it has not been decided that the house will be demolished yet. It may be relocated. They have offered to buy the parcel of land (700 sq. ft) from the City. They offered the City \$60,000 for the parcel. They would leave the landscaping as is. They would entertain having a deed for the land where the landscaping is. He discussed the size of homes they could put on the lot. If they did two lots, they would have to go through BCDC. They have discussed with the neighbors that they could review the designs. They contacted by phone or in person, thirteen property owners in the City. Out of the thirteen, one was neutral and the rest supported the project.

**Public Comment:**

1. Grace Losado - Ms. Losado stated that she supports the project.
2. Robert Anderson - Mr. Anderson stated that he supports the project.
3. Amy Pappas - Ms. Pappas stated that she supports the project.
4. Wilma Mitchell - Ms. Mitchell is in favor of the project. She hopes it gets approved.
5. Jessica Conkle - Ms. Conkle supports the project. Going through the BCDC process took a long time. She has only seen dogs use the shrubbery on the land in question.
6. William Pappas - Mr. Pappas supports the vacation of the strip.
7. Mark Pappas - Mr. Pappas stated that the City would benefit financially from this. The offer from the applicant (price) was phenomenal. The City would win with this. The County wins too with the taxes on the parcel. He gave Council a list of neighbors that he contacted with regards to support or opposition.

Council Member Smith asked Mr. Pappas if he was employed by Mr. Delgado. Mr. Pappas stated that he volunteered on behalf of Mr. Rohr and Mr. Delgado to assist with contacting the neighbors.

Vice Mayor Patterson stated that she needed to make an ex-parte statement. She talked with Mr. Delgado about the project. They discussed why the request had been denied in the past, having a landscape easement that would be dedicated to the City in perpetuity, having design guidelines for

the future home so that the public's visual access would be maintained in the cottage-style neighborhood, and being mindful of the height restrictions that would be a requirement of BCDC. She would like Staff to reconsider this.

Ms. McLaughlin stated that if they are going to do real property negotiations, Council should probably discuss it in closed session.

Council Member Campbell stated that he too had ex-parte communications with Mr. Delgado. He and Mr. Pappas discussed the aspect of views and not wanting to block neighbor's views.

Council Member Smith also had ex-parte communications with Mr. Delgado. He thinks Ms. McLaughlin's recommendation for closed session on this item was correct. He stated that he was interested in some of the conditions brought up by Vice Mayor Patterson.

Council Member Whitney also had ex-parte communications with Mr. Delgado.

Mayor Messina stated that it was pretty unanimous that Council wanted Staff to proceed with discussions with the applicant. Obviously there will be conditions and concerns Council may have as we move forward. In terms of proceeding with the vacation of the parcel of land and the concept of splitting the parcel in two, it seems to be the consensus of the Council that this is a good idea.

Council Member Smith stated that while the applicant seems well intended, it is important to get the design guidelines in writing.

Mr. Erickson stated that we have a valuable asset, and need to keep that in mind when and if the item is discussed in closed session.

Council Member Campbell stated that \$60,000 sounds nice, but the issue of the view is a bigger problem that needs to be addressed.

Review of a proposed ordinance revising sections of Chapter 2.52, Planning Commission, of Title 2 of the Benicia Municipal Code:

Mayor Messina stated that he brought this up at a recent Mayor's conference. This will be brought to Assemblywoman Wolk in the near future. The other Mayors at the conference all felt it should be sent for the Attorney General's opinion.

Heather McLaughlin, City Attorney, reviewed the Staff report on this item.

Vice Mayor stated that Council has been trying to express the need for the Planning Commission to reflect the community. The trend throughout the State is to be more inclusive in all our business and affairs. This provision in the code (Government Code section 65101) is in the planning and zoning code. That is of interest. It is clearly designed for purposes of the best we can do for land use decision-making. Riverside uses this process. The trend is to democratize and be more inclusive. We are modernizing the process we are using in the city. It does not reflect on the current Planning

Commission. She referenced the Zuker Report that stated it would prefer to see more qualified people on the Planning Commission. In order to achieve what the Zucker Report was saying, she wrote the ordinance to make some awareness to community development. In the interest of good government and modernizing how we do things and to provide more certainty in those who serve is the main reason to do this. She was very offended that without consulting the Council, the Mayor went to the Mayor's conference and presented lord knows what, and discussed taking this to Lois Wolk's office. They (Assemblywoman Wolk's office) are in fact looking at the question. They are interested that there is an Attorney General's opinion. She does not mind the clarification from the Attorney General. She would probably welcome it. She is troubled with the way the Mayor went about doing it. It is not consistent with the intent of the open government approach. She would prefer that each of the Council's of Solano County be asked to make a decision on the merits of the question being tendered through Assemblywoman Wolk to the Attorney General. What she is questioning is the process. She thinks this will be very useful in the near future because of the tremendous land use decisions we have to make with considerable importance, particularly the Seeno project.

Council Member Smith asked about Ms. McLaughlin's reference to 'full term' edits. Ms. McLaughlin stated that it would be a clarification to read 'the term of office of each member is 4 years. No member may serve more than two full consecutive terms.'

Council Member Whitney stated that the Mayor's seeking out the opinion from the Attorney General is a good idea. He suggested supporting this, getting the opinion from the Attorney General, and moving forward. Once we have the Attorney General's opinion, we can move forward. Moving forward tonight is preemptive. We should wait to hear the Attorney General's opinion.

Council Member Campbell asked how enforceable the Attorney General's opinion is. Ms. McLaughlin stated that the Attorney General's opinion carries great weight in the courts. He asked if in the proposed ordinance, each Council Member would be able to present applicants.

Vice Mayor Patterson stated that it is set up so that when there is an opening, people submit applications, and then the interviews would be conducted. They would then be chosen through that process. You could possibly do a round of votes. The Board of Supervisors often has one of the members appointing from a general region. Santa Barbara is quoted as having an understanding that certain regions are to have the Planning Commission appointed by that Supervisor. The more complicated the selection process gets, the less we have 'good government.' The proposed ordinance is 'good government'. It is unfortunate that it gets turned into whether or not the Mayor has power.

Council Member Smith suggested somehow expediting the Attorney General's opinion.

Council Member Whitney stated that this issue has become very politicized. We owe it to the community to be crystal clear on what the procedures are. When the Attorney General comes back with an opinion, it will be less divisive.

Mayor Messina stated that the community would be better served if all Council Members interviewed all candidates.

**Public Comment:**

- 1. Susan Street - Ms. Street supports Vice Mayor Patterson's efforts to change the process. She would like to see it go forward. She does not see why it cannot go forward tonight and change it if the Attorney General says otherwise.**
- 2. Jon Van Landschoot - Mr. Van Landschoot supports the proposed ordinance. He referenced the Zucker Report and its reference to qualified individuals. He agreed that all Council Members should be involved in the interview process. He thinks that they should all be involved in the selection process as well.**
- 3. Bob Craft - Mr. Craft stated that he has not reviewed the proposed ordinance. Regarding the Attorney General, he thinks the Mayor is trying to run out the clock. We need to do something to get past the tug of war that has been going on for months. To this point, as a group, it has been a cop out. It is possible that we could win the battle, but lose the war. The proposed ordinance should be evaluated on its merits. We need to do the best thing for Benicia.**

**Council Member Smith asked about wording 'the council may establish an ad-hoc committee.' It does not say when it should be done.**

**Vice Mayor Patterson stated that the intent was that if there were a desire to do so, you would need to make the provision in the ordinance. She does not feel it is necessary at this point, but future Council's may want to do that. It is just a provision. Council Member Smith agrees that it would be good for all five Council Members to interview the applicants. He does not see how this will get them past the impasse Council is currently at. He is not sure if an ad-hoc committee is the solution we need.**

**Vice Mayor Patterson encouraged Council to take action on this item, so they can fill the vacancy on the Planning Commission and move forward. She stated that this really is good government measure. She would like to see this taken care of so we have the Planning Commission up and running in time for the Seeno project.**

**Council Member Campbell stated that the Planning Commission appointment is political. He stated that he is concerned about circumventing the Mayor's ability to appoint.**

**Mayor Messina wanted to discuss the issue of 'qualifications.' To have anything that limits citizens from applying for the boards and commissions is not an open government. Being a registered voter in the city should be the only requirement. Regarding abilities/qualifications, those can be evaluated when the applicants are being interviewed.**

**Council Member Campbell stated that the broad statement about qualifications that Vice Mayor Patterson proposed seemed okay.**

**Council Member Smith concurred with Council Member Campbell's statement regarding the broad qualification requirements.**

Mayor Messina stated that he is not sure how he feels about the proposed term limits. Consecutive terms can provide for good stabilization. It is good to have continuity on boards and commissions. If we institute these procedures the concept of when a term is up the commissioner is gone is no longer an issue.

Council Member Smith took issue with the perception that Commissioner Lobdell was deemed an inadequate or bad commissioner. Council is trying to diversify the commission and make it reflect the community. They did not feel he furthered that goal. It is not a reflection on his performance as a commissioner.

Council Member Campbell stated that it is time to move on. He happy with all sections with the exception of #1.

Council Member Smith suggested adding to section 1b 'in the event of an appointment failing to gain majority Council support, or a commissioners term expires, the Council may establish an ad-hoc committee to seek, interview, and recommend candidates for the Planning Commission and to be considered by the City Council.'

Ms. McLaughlin clarified that under section 1a the Mayor would initially do the nomination. She suggested adding a sentence to that effect.

Council Member Campbell asked about an effective date. Ms. McLaughlin stated that you have to have the first and second reading of the ordinance. The ordinance would become effective 30 days after the second reading and adoption. Council discussed the pros and cons of making the effective date retroactive. The effective date does not need to be specified because the effective date is always 30 days after the second reading and adoption of the ordinance.

On motion of Council Member Smith, seconded by Council Member Campbell, changing the wording to reflect the changes listed above was not approved, on roll call by the following vote:

Ayes: Council Members Campbell and Smith

Noes: Council Members Patterson, Whitney, and Mayor Messina

Vice Mayor Patterson could not support the motion. She stated that it was a half-baked idea. We are trying to have an inclusive and democratic process for planning commissioners.

On motion of Vice Mayor Patterson, seconded by Mayor Messina, the alternate motion deleting the section that Council Member Smith talked about and leaving section 1 b as is, but also inserting 'to facilitate appointments' was not approved, on roll call by the following vote:

Ayes: Council Member Smith and Campbell

Noes: Council Members Patterson, Whitney, and Mayor Messina

On motion of Vice Mayor Patterson, seconded by Mayor Messina, Council did not approve the ordinance as written, with the word change on section 3 (two full consecutive terms), on roll call by the following vote:

**Ayes: Council Members Patterson and Smith**

**Noes: Council Members Campbell, Whitney, and Mayor Messina**

**On motion of Council Member Campbell, seconded by Council Member Smith, Council approved the amended introduction and First reading of the proposed ordinance, reflecting the changes 'in the event the Council cannot reach agreement on appointment, they may establish an ad-hoc committee', adding the word 'full' in section 3, on roll call by the following vote:**

**Ayes: Council Members Campbell, Patterson, and Smith**

**Noes: Council Member Whitney and Mayor Messina**

**Approval of contracts with two investment advisors for management of the City's investment portfolio:**

**Rob Sousa, Finance Director, reviewed the Staff report.**

**Ms. Gay Eichoff, Regional Director, MBIA Asset Management and Ms. Nsesa Kazadi, Senior Managing Consultant, Public Financial Management were on hand to answer any questions Council had.**

**Council Member Campbell asked Ms. Eichoff to explain what we are investing in. Ms. Eichoff stated that the securities we would be investing in are all within our state policy. The contract they are suggesting is called a non-discretionary contract. They would seek approval or authorization before a trade is made. All investments are fixed investment securities.**

**Council Member Smith asked if the investment advisors worked on an earnings commission basis. Ms. Kazadi explained that they are currently working on a transactional-based approach. She explained the difference between the transactional-based approach and the performance-based approach. She stated that 95% of their clients use the performance-based fee structure, possibly due to the benchmark aspect of it. Mr. Sousa stated that they would be working on benchmarking in the future. We could work through the benchmarking period and keep in mind that changing the fee structure to a performance-based approach once we get comfortable with the benchmark is a possibility.**

**Vice Mayor Patterson stated that she would be troubled about a performance-based approach.**

**Mayor Messina had extensive question on the risk involved. Mr. Sousa stated that there is little risk in these investments. He stated that the biggest risk would be that we would not make any money on the investment.**

**On motion of Vice Mayor Patterson, seconded by Council Member Whitney, Council authorized the City Manager to sign contracts with PFM Asset Management, LLC, and MBIA Municipal Investors Service Corporation for Investment Advisory Services, on roll call by the following vote:**

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

**Noes: None**

**Mayor Messina asked Staff to report back to Council on a quarterly basis with regards to the investments.**

**Call up of Zoning Administrator decision 05-PLN-48 allowing single-family house to be built at 177 St. Catherine's Lane:**

**This item has been removed from the Agenda at the request of Council Member Campbell.**

**On motion of Council Member Whitney, seconded by Mayor Messina, Council did not agree to continue all remaining agenda items, on roll call by the following vote:**

**Ayes: Council Member Whitney**

**Noes: Council Members Campbell, Patterson, Smith, and Mayor Messina**

**On motion of Council Member Smith seconded by Vice Mayor Patterson, Council agreed to hear item XI-A and 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**

**REPORTS FROM CITY MANAGER:**

**Update on Joint Use Agreement with Benicia Unified School District (BUSD):**

**Ms. McLaughlin reminded Council that the discussion needed to be kept generic, and not go into school site specifics.**

**Jim Erickson, City Manager, briefly reviewed the status of the JUA. Negotiations with BUSD are ongoing. Staff has had two meetings with BUSD since the last Council meeting. They have been focusing on the major issues such as access. Staff is in sync with the Superintendent on the major issues. With regards to the detailed issues, they are about half way through discussing them with BUSD. Staff feels good about the progress with negotiations made up to this point. Staff hopes to have a plan to present to Council on 9/6/05. It would not be a great idea to discuss specific details at this point, as discussions are ongoing. Again, the discussions have been positive.**

**REPORTS FROM CITY COUNCIL COMMITTEES:**

**Continued to the next Council meeting.**

**ADJOURNMENT:**

**Mayor Messina adjourned the meeting at 12:00 a.m. on 8/17/05**

**Lisa Wolfe, City Clerk**