

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
OCTOBER 3, 2006

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 5:30 p.m. on Tuesday, October 3, 2006, 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).

ADOPTION OF AGENDA:

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

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

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

None

INFORMATIONAL ITEMS:

Update on Priority Projects:

Jim Erickson, City Manager, gave an overview of the Staff report.

Mayor Messina applauded Mr. Erickson for the manner in which the projects were presented in the Staff report.

Commandant's Project:

Mike Alvarez, Parks and Community Services Director, reviewed the Staff report.

Mayor Messina stated that it gets frustrating that the City continues to get grants, the pot of money continues to grow, it gets the plans ready, but every time the City goes out to bid, the costs double. It seems like the City is chasing something it will never catch. The longer the City waits and the more the plans are revised, the more it will end up costing the City. Maybe the City needs to bite the bullet and start the project. He asked if it was worth looking into talking to the one person that submitted a bid, revising it and making

it work. Mr. Alvarez stated that it was his understanding that once Council has accepted or rejected the contract, the City could go back to that contractor to begin negotiation elements of that project before construction. Ms. McLaughlin confirmed that Mr. Alvarez was correct. She confirmed that it was either an 'accept' or 'reject' of the project, not 'an accept and modify.' Mayor Messina asked what the City's expectation was with the bid. Mr. Alvarez stated that the City's expectation was \$1.3 million. The bid that was received was \$2.4 million. Since the City only received one bid, it is hard to tell what other bids would have been. The contractor said there were a lot of uncertainties because it is an old building. As the building sits, it continues to degrade and costs continue to go up.

Council Member Patterson stated that she shared the Mayor's frustration. She thinks Staff has suggested the right approach, considering the City only received one bid. She stated that the City was advised by the consultant on the approximate cost of the work that needed to be done. She wondered how the consultant, who has a lot of experience, could be so far off on the cost. She expects a little more accuracy on the estimate from the consultant. If the primary source of the cost is the uncertainty, the City could structure the contract with that in mind, without committing to the full expenditure. Taking a look at the structure of the contract would be helpful. If Staff could identify the things that need to be done to ensure further degradation does not occur, that would be optimal.

Clocktower:

Mr. Erickson stated that the Clocktower was the next item on the list; however, Staff had previously told Council it did not see much opportunity in that area. However, Council directed Staff to keep the item on the priority list and continue to look for opportunities. There has been no significant change with this project. Mr. Alvarez stated that Staff continues to look for grant funding, which is becoming very limited. A new Park Bond Act will be available soon. Staff will look at that when it becomes available. Staff has recently discovered some deterioration of the sandstone and concrete at the site. The City Manager has authorized Staff to proceed with a RFP from a historic civil engineer to look at the structural integrity of the building to see what could be done. Regarding the concrete, the rebar has been exposed to air and moisture, causing the concrete to break down around it. The sandstone is starting to flake and fall in certain areas. Staff would come back to Council with a proposal on how to proceed. There are some savings available from a project at the Commandant's, so Staff may not need to ask for additional funding, it would just move that money over.

Vice Mayor Schwartzman asked how much Staff had saved. Mr. Alvarez stated it had approximately \$70,000 set aside for replacement of the two fire escapes. With the expertise and innovativeness of his in-house staff, they are doing the work on their own for a cost of approximately \$15,000, so the balance (\$55,000) could be used to proceed with the work.

Council Member Whitney asked about the degradation of the sandstone. Is this new, or has it happened in the past. Mr. Alvarez stated that it was not new. However, with the degradation higher in the elevation of the building, Staff is concerned about safety. The City has never made repairs to the sandstone. The building is checked for integrity on a daily basis, whether it is dealing with custodial needs, etc. Staff noticed it last week when

they were working on the stairway. There is some deterioration of the sandstone at the base of the Camel Barns. Degradation of sandstone is natural, and there must be something available to help Staff maintain it. Council Member Whitney confirmed that Staff would be performing regular inspections on the sandstone in the future.

Council Member Hughes stated that there had been past discussions about the possibility of restoring the ground floor for public use. Is that included in this priority project, or is this project based strictly on safety and emergency maintenance? Mr. Alvarez stated that the priority Council listed in its top-ten priority list is the downstairs renovation for rooms, redoing the elevator, ADA improvements, etc. Staff only recently discovered the degradation of the cement and sandstone. Council Member Hughes stated that initially, the Commandant's and Clocktower projects were lumped together. Mr. Alvarez stated that the projects were broken up into two projects. Council Member Hughes stated that when Council voted on this as a lump project, his vote was based on restoration of the Commandant's. He did not see the same sense of urgency with restoration of the ground floor of the Clocktower. He asked if restoring the ground floor of the clocktower by itself was still a priority. Council Member Patterson stated that it the Clocktower priority rating goes back to the requests for funds and grants. Council decided to focus on the Commandant's. However, Council said that because there might be funds available because of Prop 84, there could be an opportunity to get those funds. There is a specific plan for the Arsenal, which is focused on some of the funding mechanisms to do some of the things that it is supposed to do. She did not think that Council would want to drop that, but that is for future Council discussion. Council Member Hughes stated that he did not think Council wanted to spend a tremendous amount of time on this unless there was funding available. Mr. Alvarez confirmed that was correct. Staff continues to pursue funding for this, which does not take a lot of time. He just wanted to make Council aware of the issue of routine maintenance.

Public Comment:

1. Marilyn Bardet – Ms. Bardet stated that there was an article in a recent newspaper regarding the National Trust. There is \$2 million worth of grants available. None of Benicia's projects were listed. Citizens could vote online for projects it feels are worthy of the funding. The Commandant's Residence is a national registered building and it should have been eligible for some of the available funds.

Mr. Alvarez stated that last month he reported to Council that Staff had applied for a grant through the National Trust; that grant was denied based on the fact that the City did not have construction drawings for the Clocktower. The National Trust encouraged the City; however, they were looking for projects that were ready to move forward. The City mentioned to the National Trust, prior to the submittal of the Clocktower project, the Commandant's Residence project, but they were not interested.

Vice Mayor Schwartzman stated that if the City had drawings for the Clocktower, the National Trust might have accepted the application. Mr. Alvarez stated that was correct. Vice Mayor Schwartzman questioned whether it would be prudent to try and put together some plans, in the event the opportunity comes up again. Mr.

Alvarez stated that it would cost approximately \$15,000 to obtain the construction drawings. Mr. Erickson stated that he was not sure what the match would be on those particular funds. The Commandant's project is a 50-50 match, which will cost the City approximately \$1 million. To take on another project with a similar matching requirement would be difficult, unless someone came forward and offered to help out with the costs. Typically, the granting agencies are looking for matching opportunities. They do not want to put forth all of the money. If the City finds itself in the position where it wants to apply for a grant, it has to ask itself if it could afford the matching money. The City has to have good focus with the grants it goes after.

Council Member Patterson stated that it is understood that there is no single pot of magic money and that the City needs to be able to do a project with several sources of funding including foundation grants and revenue bonds. If Prop 84 passes, those are extremely competitive grants. The fact that the City has invested some amount of money in the drawings puts it in a superior position because of the merits and quality of the City and the historic resource. In anticipation of Prop 84 passing, it is necessary for the City to be prepared with as much detailed information as possible because there are a lot of requests. She hopes that when Council has its priority discussion, it is keenly aware of the need to have that kind of detail so it could be prepared to take advantage of the grants.

911 Center:

Chief Trimble reviewed the Staff report.

Community Center:

Mr. Alvarez reviewed the Staff report.

Planning for Commercial Area and General Plan Implementation:

Charlie Knox, Community Development Director, reviewed the Staff report.

Council Member Whitney congratulated the Community Development Staff on its efforts.

Fire Rescue Boat:

Chief Hanley reviewed the Staff report.

Council Member Patterson stated that public safety is the number one issue for the City. She has a long series of questions that deal with the financial and legal implications. She is still interested in the Maritime Administration and the rescue boats it has in its fleets. They are only five miles away and they are very fast. She was excited about the thought of having a boat donated; however there would still be maintenance costs, upkeep, etc. She stated that that was only the tip of the iceberg in terms of the concerns and questions she had regarding continuing to spend valuable staff time pursuing this. She discussed the legal implications of a privately owned boat and crew acting on behalf of the City. Chief Hanley stated that she raised some questions that Staff had not looked into yet. No deal would be cut until those questions were answered. Regarding the Maritime rescue boats;

he and his staff did a trial run on those boats and they did indicate that they would be interested in doing a mutual aid sort of thing; however, the City would need to put something into writing in order for them to consider it. It is strictly a patrol boat, there is no firefighting capability; it only has one operator on it; they are not trained in water rescue. It is a fantastic boat; they have total of two. At the very least, they might be interested in doing a joint rescue sort of thing.

Council Member Hughes stated that he was initially concerned about the cost of the boat and the cost of the operator. He asked about the training costs, maintenance costs, etc. He wants to make sure all direct and indirect costs are looked into. Chief Hanley stated that those costs would be looked into if one of the offers pans out. With an operator, the Benicia Fire Department would provide the rescue personnel. He has not finalized the cost with regards to training and miscellaneous costs just yet. Council Member Hughes stated that he would be interested in seeing those costs.

Council Member Whitney stated that one of his concerns was cost. Public safety is the number one concern. He wants to be sure the City is not being penny-wise and pound-foolish. Has Staff looked into lease options? Chief Hanley stated that the last direction he had was being unfunded and to look for donations first. Staff has those costs in the background waiting to compare against the donations. Council Member Whitney asked if Chief Hanley's professional opinion was that having fire rescue capabilities for its water a value to the City and was there a need for it? He wanted to know if Chief Hanley had lost enthusiasm for the project. Chief Hanley stated that there were not that many calls for service, but when there was one, it was a significant need to fill. When depending on mutual aid from Vallejo, it could take them 30-45 minutes to respond. The Coast Guard might not be able to respond because it has so many other duties. The City could be in the position of having someone right off its shore needing fire or rescue assistance and not being able to respond as it waits for the resources to respond. Chief Hanley stated that he had conversations with Chief Trimble regarding the need for patrol in the area and being able to fulfill that need. Regarding firefighting, the City has a harbor with over 300 boats and a fireboat could be very handy in fighting fire from a different direction.

Council Member Patterson stated that she would like to see a partnership with the other jurisdictions in the straight, partly because of the infrequency of firefighting calls in the water. Secondly, there is an issue of personnel who would need to be trained, etc. Public safety is paramount in her mind and the City has some unmet needs in terms of public safety such as traffic calming, and specifically the need for an urgent care facility. A fireboat would be great for the City, but is it effective and efficient cost expenditure for the City? She would like to see the alternative approaches examined.

Vice Mayor Schwartzman shared some of Council Member Patterson's concerns regarding getting other jurisdictions involved with mutual aid. He discussed the possibility of getting some companies involved in donating funds to get the program up and running. He would like to see some detail on the ongoing costs.

Joint Use Agreement:

Mike Alvarez, Parks and Community Services Director, reviewed the Staff report.

Marina Fund Financial Imbalance:

Rob Sousa, Finance Director, reviewed the Staff report.

Council Member Patterson stated that the City might be facing the issue of additional sediment dredging. She asked if the City was still pursuing the alternative disposal of dredging materials. Mr. Sousa confirmed that would continue.

Benicia Business Park:

Mr. Charlie Knox, Community Development Director, reviewed the Staff report.

State Park Road Bridge:

Dan Schiada, Public Works Director, reviewed the Staff report.

Council Member Hughes asked if there were any necessary changes as a result of the Rose Drive project. Mr. Schiada stated that no, the City just needs to make sure that in the final design, the pathway connection that connects to the Rose Drive Center provides a smooth transition from the bike path to the bridge. The driveway onto Rose Drive will be an entrance only, which makes for a safer crossing.

X-Park:

Mike Alvarez, Parks and Community Services Director, reviewed the Staff report.

ACTION ITEMS:

Scheduling policy proposals for Council Consideration:

Jim Erickson, City Manager, reviewed the Staff report.

Council Member Hughes asked if the third option was to drop the issue completely, if there was no Council backing. Mr. Erickson confirmed that was correct.

Mayor Messina stated that it would force Council to look at policy issues on a quarterly basis. It may make it easier to manage the process.

Council Member Patterson stated that in general, the concept was fine. However, she was having difficulty with the placement of the discussion of policy issues on the agenda. It is currently placed at end of the agenda, which is a disservice to the public. It should be earlier in the agenda. Regarding setting priorities, what do these policy topics have to do with Council's roadmap to achieving its vision, mission statement, strategic plan, etc? She would change the proposed form to have it reflect that. Also, there are some policy items that are time sensitive. She did not see a way in this proposal that addresses that. She suggested having a second approach that addressed that. Mr. Erickson stated that time sensitive matters would be dealt with separately. The scheduling of the agenda is a job between the Mayor and himself. That would be used as a criterion in evaluating a request. He and the Mayor would determine whether something would be placed on the agenda for action based on their views of what has been said regarding the urgency of the item. When something is scheduled for immediate action, it triggers Council and Staff to be ready. He recommended leaving that up to the schedulers of the agenda with the existing rules of procedure.

Council Member Hughes stated that he agreed with the issue of it being placed earlier on the agenda, as long as there is a time limit so it did not go on all night. On the sense of urgency, if he had an issue, and he felt there was a sense of urgency, he should be able to submit it, but also have an opportunity to articulate his concerns at a meeting.

Vice Mayor Schwartzman stated that regarding the urgency aspect, he wondered if it was an urgent item, it should be able to be dealt with. He wondered if the two-step process meets the requirements.

Mayor Messina discussed the current process. The City manager has the authority to direct staff to look into issues that he deems are appropriate to be addressed. The concept that is being proposed provides flexibility for those opportunities.

Vice Mayor Schwartzman stated that moving the item up on the agenda could be worthwhile, but there are some things that could stimulate lengthy discussions. He suggested moving it up to informational items.

Mr. Erickson stated that one of the options in the two-step process would be to direct that the item come back at a regular meeting for action.

Public Comment:

Kitty Griffin – Ms. Griffin stated that if Council really wanted to hear from the public, waiting until the end of the agenda was not realistic. It is important to get public input early on in the meeting, whether it is moved up sooner in the agenda or Council makes exceptions for the public to discuss the later item at the initial public comment makes no difference, as long as it hears what the public has to say. Council has to pick and choose on a huge number of things in the General Plan. It is important that little things not be picked out at the expense of the larger issues.

Mr. Erickson stated that Staff would be assessing and analyzing using the General Plan as one of the primary reference documents for clues and assumptions on what the public feels are important. Staff thought it would be good to provide some order on policy making. The roadmap and strategy is the way Staff would like to go, but in the meantime, it needs a guideline for a methodology for dealing with policy proposals. Staff currently has six benchmarks that could be used for assisting in ranking, but it might require a lot of looking. This would be of assistance in the short run.

Council Member Whitney stated that the two-step process worked for him. Regarding placement on the agenda, Council should consider that before this is done. Something to consider is that the meetings now start earlier; the public comment was moved up, etc. Council Member Patterson stated that if it is worth putting it on the agenda, it is worth evaluating the criteria by the sponsor of the item. She would use something like the priority criteria sheet that was used in the past. There needs to be more information presented in order for it to be effective. That might shorten the discussion rather than lengthen it. She liked the word ‘hybrid’ as used by Council Member Hughes. She suggested applying that approach and taking the public comment as it is today, except to

change it to say ‘except for the comments from council’ so the public could speak on it earlier, the criteria could be structured with more information, etc.

Council Member Hughes stated that he would be in favor of Council Member Patterson’s idea. Council could try it and see if it gets things done.

Mayor Messina suggested it go before the adoption of the agenda, right after public comment.

Council Member Whitney stated that sounded fine, but suggested a time frame be set for reviewing whether or not it was working – possibly six months. If it is not working, it could be revisited.

Vice Mayor Schwartzman stated that he was fine with putting a time frame for review, as suggested by Council Member Whitney.

Mayor Messina stated that the direction to the City Attorney was to modify the rules of procedure resolution and change the sequence so that it would go before the consent calendar.

Mr. Erickson suggested that the next time the priorities comes before Council, Staff would have a paragraph for each items making it clear what each of the items mean. A question that comes back is whether Council wants Staff to add anything to the worksheet beyond that, so that Council could be ready to take action.

Mayor Messina stated that there needs to be more discussions on that.

Council Member Patterson suggested a draft example of the evaluation form for Council’s review.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 6:54 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
OCTOBER 3, 2006

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:01 p.m. on Tuesday, October 3, 2006, 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:

None

Openings on Boards and Commissions:

- Civil Service Commission:
One full term to August 30, 2009
- Sky Valley Open Space Committee:
One full term to September 30, 2010
- Open Government Commission:
One full term to November 30, 2010
- Parks, Recreation & Cemetery Commission:
One full term to November 30, 2010
- People Using Resources Efficiently (PURE) Committee:
One immediate opening

APPOINTMENTS:

RESOLUTION 06-152 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF TEDDIE BIDOU TO THE BENICIA HOUSING AUTHORITY BOARD OF COMMISSIONERS TO AN UNEXPIRED TERM ENDING JUNE 30, 2007

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

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

RESOLUTION 06-153 - A RESOLUTION CONFIRMING THE MAYORS
APPOINTMENT OF ROB BARNARD TO THE CIVIL SERVICE COMMISSION TO
AN UNEXPIRED TERM ENDING JANUARY 6, 2007

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

RESOLUTION 06-154 - A RESOLUTION CONFIRMING THE MAYOR'S
APPOINTMENT OF JERRY POLLARD TO THE HUMAN SERVICES FUND
BOARD TO AN UNEXPIRED TERM ENDING JUNE 30, 2008

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

RESOLUTION 06-155 - A RESOLUTION CONFIRMING THE MAYOR'S
APPOINTMENT OF SHARON PETRELLESE TO THE HUMAN SERVICES FUND
BOARD TO AN UNEXPIRED TERM ENDING JUNE 30, 2010

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina
Noes: None
Abstain: Council Member Patterson

RESOLUTION 06-156 - A RESOLUTION CONFIRMING THE MAYOR'S
APPOINTMENT OF SCOTT SHEPARD TO THE SKY VALLEY OPEN SPACE
COMMITTEE TO A FULL TERM ENDING AUGUST 30, 2010

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

PRESENTATIONS:

Recognition of Benicia Police Department for efforts to reduce youth access to tobacco:
Ms. Loretta Huddart-Wolfe, Solano County Health & Social Services Department,
Tobacco Prevention and Education Program, presented Officer Damien Sylvester with a
paperweight and a certificate of recognition for the Police Department's efforts.

PROCLAMATIONS:

- Recognition of Domestic Violence Awareness and Prevention Month - October, 2006

ADOPTION OF AGENDA:

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

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

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Council received a letter from Miller Starr & Regalia (copy on file).

PUBLIC COMMENT:

1. Collette Meunier – Ms. Meunier read the following prepared statement:
“Proposition 90, the Government Acquisition and Regulation of Property Amendment to California’s Constitution, which we will vote on this November, is capitalizing on our concern about eminent domain to sneak in sweeping and far-reaching restrictions on the ability of California jurisdictions to adopt new laws and regulations. California’s Proposition 90 campaign has received significant funding from Howard Rich, a wealthy New York developer and aggressive property rights libertarian. This proposition is part of a broad, coordinated, and covert campaign in a number of states to limit the ability of government.

There are already limitations on government’s power established in the U.S. Constitution and well defined by case law over the past two hundred years. Generally, local government is limited to regulating for ‘public health, safety, morals, and general welfare.’ Proposition 90 would reduce the scope of regulation to ‘health and safety.’ Lots of government action falls outside this narrow authority. Think about the federal ‘Do Not Call’ legislation, which protected us from unwanted telephone solicitation. Consumer protection. Minimum wage laws, labor law, historic preservation, growth control, environmental protection for our air and water, including new initiatives to address global warming. These may not fall within Proposition 90’s constrained role for government of regulating only for ‘health and safety.’

Can’t find this provision in Proposition 90? The proponents didn’t make it easy to find. Look at Section 2 (c) and the two little words, ‘or damages’ private property. Then look at the definition of ‘damage’ under Section 3 where it includes economic loss to private property due to government rules and regulations. That’s all it takes to dramatically change the balance of power between public and private interests.

The supporters of the Proposition talk about the impact on ‘real’ property but the Proposition does not include this limitation. It applies to property broadly, and includes not only real estate, but also intellectual property, personal property, and business ownership. We will only know its true extent should it pass and after extensive litigation.

Proposition 90 is a sneaky and cynical attempt to keep government from doing what it is supposed to do: to make laws and regulations that protect and promote the general public good. Don't let extreme private interests take away our right to act together through our communities or the ballot box to protect our quality of life. What can you do? Educate yourself about Proposition 90. Go to www.noprop90.com and get the facts. Tell other people, neighbors, family, and co-workers about the hidden intent of this Proposition and encourage them to vote against it.

2. Mary Wika – Ms. Wika stated that she wanted to speak on the Rose Center Project. She was having a difficult time getting any feedback from Council on this issue. She stated that she forwarded emails to Council Members. As they could see, it has pretty much been a three way email correspondence between herself, Mr. Knox, and the City Attorney. It should not work like that. She has taken her time to come to Council meetings and voice her concerns with the project. One of the Council Members could have taken some time to address at least some of her concerns. Council Member Patterson started to, but it seemed that the City Attorney stopped her by saying that Ms. Wika might be appealing some of the building permits and it might be some sort of conflict. So, she did not hear anything further from Council Member Patterson. Council Member Hughes was going to meet with Mr. Knox and she never heard back from him. If Council followed the emails from Mr. Knox on 9/29, he admits the drugstore requires a use permit for the drive through pharmacy. He states that it is using the permits issued for the car wash. The plans building square footage has increased by 10,000 sq. ft. In the 9/29 response, he is conflicting within his own paragraph. He first states the Longs Drugs is a permitted retail use within the general commercial zoning district. Then he states that he would have considered the drug store drive through a new use that requires a use permit, but he considers the drug store drive through to replace the already approved car wash drive through. Condition #5 reads 'any alteration of the approved plans that would increase the square footage of any use would require an amendment to disapproval of the use permits. The square footage has increased for the drive through. The City is not in compliance with the conditions of approval if it allows this project. Mr. Knox went on to say that no changes were requested to the use permits. Had the applicant requested a change to a use permit approval condition the amended site plan would require additional Planning Commission review per BMC 17.104.100 (a). Mr. Knox left off the second part of the code that adds that a change to development plans that would affect the conditions of approval shall be treated as a new application. This is a change of plans that affect the conditions of approval. So, why under the same code would it not require Planning Commission review? In the same email, Mr. Knox states that no uses that require review were added or increased in size. He stated that the ordinance does not identify an increase in building square footage as constituting a substantial change in itself. Why did he bring in the issue of substantial change here? Mr. Knox also states that the amended site plan complies with other conditions of approval such as condition #27 – modifying the bike path. That is not true. The bike path is the same as on the original plans. So, the City is also non-compliant with that condition of approval. It is disappointing to her that no one on the Council has looked up

- anything she has spoken about with the project and the plans. The Council obviously feels that the City Manager and the Community Development Director have it all under control. She thinks it is Council's job to look into issues brought up by the public. Council is turning its back on many issues with this project. The curb cut on Rose Drive is a crime itself. Has anyone looked at the plans lately? Council is putting money into projects before public safety. This is the Council that allowed the sensitive access. This is the Council that allowed a 20-year old EIR to be used on the project. It allowed the Bay Trail, State Park, and Benicia citizens to be impacted by the unsafe situation on Rose Drive. Council is closed mouth with this situation. A bicyclist spoke at the last Council meeting was very graphic when explaining that a cyclist would be hit by a car, regardless of what safety measures are put in place. If that happens, the City would face a class-action lawsuit. Until then, the City has set a precedent on wide-open development. She has been told to check with CEQA, as they do not have a time limit.
3. Karen Burns – Ms. Burns invited Council and the public to the Benicia Historical Society Cemetery Restoration Committee's 8th Annual Tour at the City Cemetery. She hopes Council adds cemetery restoration to its next list of priorities. She provided directions on how to get to the cemetery.
 4. Norma Fox – Ms. Fox stated that she was not able to get to the special meeting until after it started. She missed a portion of the meeting. It is hard for the public to get to the meetings that early. The subjects covered are of interest to the public. She requested Council consider having special meetings on an alternate Tuesday at 7:00 p.m.
 5. Karen Posey – Ms. Posey read a copy of an email she sent to the City regarding the sale of alcohol at the Longs Drugs store that is going in at the new Rose Center Project (hard copy on file).
 6. Council Member Patterson stated that she did not want the public to go away thinking Council was not interested, that it did not care, or it was not following the law. She felt those accusations were disturbing. She asked Ms. McLaughlin to clarify what Council could and could not do and what the future holds, especially with a little bit of detail on the Rose Center Drive project. Ms. McLaughlin stated that under the Brown Act, Council could respond briefly to public comments; refer items to Staff, etc. Regarding the Rose Center Project, the time for appealing the bulk of the decisions that are being complained about, in fact all of them have passed. Those decisions were made early in the summer. There is nothing that Council could do about the issues that have been raised. The only opportunity it could come before Council is via an appeal on the building permit issue. The building permit issue is very narrowly limited to building code. It is not the design of the project, etc. Council is quite limited in what it could do at this time.

CONSENT CALENDAR:

Council pulled items VII-A, VII-B, VII-D.

On motion of Vice Mayor Schwartzman, seconded by Council Member Whitney, 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

ORDINANCE 06-11 - AN ORDINANCE AMENDING VARIOUS SECTIONS IN TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE REGARDING PUBLIC ACCESS TO MEETINGS AND PUBLIC RECORDS, PUBLIC ETHICS AND ESTABLISHMENT OF AN OPEN GOVERNMENT COMMISSION

RESOLUTION 06-157 - A RESOLUTION AMENDING THE CITY'S CONFLICT OF INTEREST CODE

RESOLUTION 06-158 - A RESOLUTION AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO EXECUTE CONTRACT CHANGE ORDER NO. 3 WITH MONTEREY MECHANICAL COMPANY FOR THE WATER TREATMENT PLANT IMPROVEMENT PROJECT AND AFFIRMING CONTRACT CHANGE ORDERS NOS. 1 AND 2

RESOLUTION 06-159 - A RESOLUTION AUTHORIZING THE PURCHASE OF 13 SEWAGE LIFT STATION CONTROL PANELS FROM PIPELINE SYSTEMS INCORPORATED OF CONCORD, CALIFORNIA, IN THE AMOUNT OF \$177,295.00

RESOLUTION 06-160 - A RESOLUTION APPROVING THE ANNUAL REVIEW OF THE CITY'S INVESTMENT POLICY WITH NO RECOMMENDED CHANGES

Council approved the acceptance of investment report for the quarter ended June 2006.

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 Minutes of August 30, 2006, September 5, 2006, and September 19, 2006:
Mayor Messina pulled this item because he was absent from the September 19, 2006 meeting, and needed to abstain from voting on the minutes.

Minutes of August 30, 2006:

On motion of Vice Mayor Schwartzman, seconded by Council Member Patterson, the Minutes of August 30, 2006 were approved, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

Minutes of September 5, 2006:

On motion of Vice Mayor Schwartzman, seconded by Council Member Whitney, the Minutes of September 5, 2006 were approved, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

Minutes of September 19, 2006:

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, the Minutes of September 19, 2006 were approved, on roll call by the following vote:

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

Noes: None

Abstain: Mayor Messina

Second reading of an ordinance amending the Benicia Municipal Code provisions regarding appointment of Planning Commissioners:

Council Member Patterson stated that she requested this item be pulled so she could vote against it. She voted against it the first time because she feels it is not necessary to rush and do this when Council could take some time and get additional comments on what the role of the Planning Commission, as well as other boards and commissions are, and how to provide for their qualifications.

ORDINANCE 06-12 - AN ORDINANCE AMENDING SECTION 2.52.010 (ESTABLISHMENT – MEMBERSHIP) OF CHAPTER 2.52 (PLANNING COMMISSION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE

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

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

Noes: Council Member Patterson

Second reading of ordinances amending Chapter 15.28 (Grading and Erosion Control) and adding a new Chapter 15.64 (Storm Water Management and Discharge Control):

Council Member Patterson complimented Staff for the overall efforts on this. Although she did not get everything she wanted in terms of grading, erosion control, and storm water management, it is much improved. On page VII-D-38 – she would like to propose some changes to make it more consistent. She wanted to modify the first sentence by deleting the word ‘minimize’ and adding the word ‘prevent’ so that the first sentence agrees with the third sentence. She believes that is a minor change.

Mayor Messina stated that regarding some of the changes that have been made to this; it would be in the City’s best interest to be consistent with the Regional Water Quality Control Board requirements. The Regional Water Quality Control Board is very definitive about what should and should not apply. Regarding the comments that Council Member Patterson made regarding ‘no net increase in discharge volume’ – that gave him pause because it is not consistent with the City’s General Plan and also inconsistent with the City’s Measure M. The City has situations in the Arsenal where the General Plan allows floor area ratios of 2.0 and in the Downtown Mixed Use Areas where the General Plan allows floor area ratios of 2.0 and actually encourages housing or residential above the commercial areas and increases the floor area ratios to 2.4. There is no landscaping requirement. The concept of ‘no increase in discharge volume’ in terms of some of the residential areas – he is not adverse to that. However, in terms of these specific areas, it is his sense that Council would be making it more difficult to achieve the desired result of

densification. The way it is worded might be okay for some of the areas, but in terms of the specific areas, it flies directly in the face of the General Plan. He would prefer to go back to the original language. He proposed that the changes not be adopted.

Council Member Hughes stated that this was discussed at the last meeting. He thought the term 'minimized increase' was adopted, not 'no net increase in discharge.' He agreed that there should be some flexibility there. He asked if Staff recalled what was discussed last time.

Council Member Patterson read from the minutes the discussion for the current wording. She stated that the feasibility factor was already there. If it was absolutely impossible to achieve the no net flow, the fall back position is that there is some kind of treatment facility that could be a vegetated swale, etc. She was curious about the General Plan comments. There was testimony that the General Plan states that it is the goal and policy of the City is to have no net increase in runoff. At the last Council meeting, an expert testified that the City should bring its ordinance into compliance with the General Plan, and that the ordinance already provides flexibility in the event the project could not be designed for no net flow.

Council Member Whitney asked Mr. Knox his professional opinion on the Mayor's comments. Mr. Knox stated that there might be a little confusion on volume and peak flow rate. He read policy 4.12.1. The reason it is focused on rate instead of volume is that it is the ability of water traveling at higher speeds to pick up and later deposit sediment that really creates problems with eroding the site and depositing and silting the areas downstream. The intent of the General Plan policy is to, if you can ensure after the site is developed, water is reaching the watershed at the slowest rate it can, you will minimize both upstream erosion and downstream siltation problems. He did not participate in the discussions at the last meeting, but there might be something to discuss regarding rates of volume or peak flow.

Mr. Schiada stated that the City needs to keep the term 'minimize runoff' because you cannot prevent runoff because the intent of the ordinance is not to have all runoff from the property placed in groundwater infiltration; it is to minimize the surface runoff. It might be more appropriate to use the term 'no net increase in peak flow rates.' The City has required such things such as grassy swales, etc. to regulate the heavy volumes of water. Mayor Messina asked how an area in the Arsenal would accommodate this. Mr. Schiada stated that if it was a parcel in the Arsenal or off of First Street, the City has properties buildings that cover 100% of the lot. In that particular case, if you went from a one-story to a two-story you would not get a change in the ability to reduce downstream runoff. The way it is worded, that the City engineer could grant an exception, there may be the ability for the City to say to the developer that it needs to put a simple filter system in the downstream drain inlet to address some water quality issues.

Mayor Messina stated that there is a big portion of the City where this could cause problems. He would rather there be some direction and not leave it too discretionary because the City would have the same problem it had in the past, that there are different treatment for different applicants.

Council Member Patterson stated that on page VII-A-36, of the September 19th minutes, Mr. Schiada clarified that the changes would read ‘insert after facility, it is the intent of this ordinance that there be no net increase in the discharge volume in the post construction condition and that the City engineer may grant an exception to the requirement providing.’ Council did agree on this. She understands Mr. Knox’s suggestion that it would be better in the first sentence that it read ‘it would prevent peak runoff.’ In addition to that, there are methodologies and techniques called low impact developments (LID’s). When you have a lot line to lot line development, you can take the runoff, capture it in a distribution system and it would be diverted for landscape watering. Some innovative, cost effective techniques could be used. The key is that the City gets the methodology correct. She was sorry it is being discussed in a way, because the key people who testified on this are not here tonight. The notion that we are not preventing runoff at all does not make sense. What the City did not do in this ordinance is go into the level of detail that she is most interested in, which is implementing the low impact development strategy, which is what the Regional Water Quality Control Board is looking for. When the City has projects that are lot line to lot line, it does not mean they cannot address the peak discharge. They can and they should.

Mayor Messina proposed leaving the first sentence as it currently is. On the third sentence, he proposed taking out ‘shall be no’ so it reads ‘the net increase in discharge volume in post construction shall be minimized.’

Council Member Patterson stated that did not address what the City is trying to affect in terms of the General Plan and the folks that testified.

Council Member Whitney asked Mr. Schiada if the Mayor’s proposed wording changes stacked up against Council Member Patterson’s concerns with regards to the Regional Water Quality Control Board. Mr. Schiada stated that the Regional Water Quality Control Board was working with each agency to minimize runoff overall from construction and development sites. From his perspective, Staff could implement either wording, as well as be consistent with the rules and regulations of the Regional Water Quality Control Board. He thought the issue is getting into the slight variation in the wording runoff vs. peak flow rates vs. discharge volume. His preference would be to reference the peak flow rates. The first sentence is enough of a statement to give the idea that the intent is to minimize overall runoff and that could be achieved by not allowing increases in peak flow rates. Council Member Whitney asked if Mr. Schiada was suggesting that ‘minimize peak flow rates’ be the way the first sentence is worded. Mr. Schiada stated that it was not critical in the first sentence. If the wording would be changed to ‘no net increase in discharge volume’, he would suggest saying ‘no net increase in peak flow rates’ which would be consistent with the wording in the General Plan. Mr. Schiada stated that the original wording was supposed to include ‘no net increase in discharge volume in the post construction condition unless new downstream conveyance installations or improvements in treatment facilities were installed.’ That was combined as one sentence. The intent was to clarify the importance of having no net increase in the downstream volumes. The City engineer could grant an exception to that intent.

Council Member Hughes proposed changing the language to read in the first sentence 'design measures be used that minimize surface runoff' and the third sentence should read 'in the design of drainage facilities, it is the intent of this ordinance that there shall be no net increase in peak flow rate' and the rest of the sentence is fine. Mr. Schiada clarified that the City engineer would still have the ability to grant an exception.

Council Member Patterson asked Mr. Knox if he wanted to respond. Mr. Knox stated that there was a good example that was adopted by the City of Emeryville. Some of the ideas range from the sophisticated to the obvious such as rooftop gardens, sod roofs, etc. There are a lot of interesting ideas out there that are esthetically appropriate, inexpensive and allow the residents some flexibility in implementing it. However, he was not prepared to give a presentation on the topic. There is a lot of innovation going on right now. These things are being done. Council Member Patterson stated that she could live with the changes suggested by Council Member Hughes, but she could not support minimize peak flow rate or anything less. She suggested continuing this item so the public could be properly informed that there are some major changes being proposed.

Vice Mayor Schwartzman stated that he was okay with the changes, since the City Engineer could make exceptions, which would give the City some wiggle room.

Mr. Erickson suggested holding off on this item and bringing it back with language changes.

Council Member Whitney stated that he would like to see this item move forward.

Ms. McLaughlin stated that substantive changes would require that this item be brought back for another first reading. Changing the language from 'no net increase' to 'minimal increase' would be a substantive change. She believed the City was under some deadlines in order to comply with its permits.

Council Member Patterson stated that Council was advised by Staff at the last meeting that the reason Council could not continue this item as requested by citizens and Council Members was that it was under a Water Board time penalty and was subject to substantial fines. She asked Mr. Knox to read the General Plan goal that relates to this item. Mr. Knox read policy 4.12.1. Council Member Patterson stated that it means no net increase. Under CEQA, you do not have minimized mitigation measures. You either mitigate or you don't. The City's ordinance ought to be consistent with the intent of the General Plan. It should not counter CEQA findings. There are opportunities for programs called Low Impact Development. It is time for the City to move forward.

Mr. Erickson stated that Staff did not see a significant difference in the way the ordinance would be administered by the City engineer. Either language would be fine. The Staff actions would be the same to his knowledge.

Council Member Patterson stated that several months ago, there was a Water Board audit of the City, which was a Water Board Staff to City staff meeting. It was her understanding that the City was not acting in good faith in executing the intent of the

Porter Colon Act. There was great unhappiness by the State Water Resources Control Board staff in terms of some of the action the City had not taken. The staff was encouraged by the City Staff's commitment to do better and move forward. They offered training so Staff could look at some of the new techniques. They said the City ought to have the strongest language possible, and although it is quite tardy in having an ordinance, and it should not lose time now in moving forward. Saying 'minimize' instead of 'no net increase' would be moving the City backwards. She asked Council to seek the report from the audit from the San Francisco Regional Water Quality Control Board. Otherwise, she would like to move forward on the suggested language by Council Member Hughes.

On motion of Mayor Messina, seconded by Council Member Whitney, the proposed language change to the first sentence 'minimize surface runoff' and the third sentence would read 'that the net increase in peak flow rate in post construction conditions be minimized' was not approved, on roll call by the following vote:

Ayes: Mayor Messina

Noes: Council Members Hughes, Patterson, Schwartzman, and Whitney

On motion of Council Member Hughes, seconded by Council Member Patterson, the proposed language change adding 'surface' between minimize and runoff in the first sentence, and the third sentence would read 'in the design of drainage facilities, it is the intent of this ordinance that there will be no net increase in peak flow rate in the post construction condition' was approved, on roll call by the following vote:

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

Noes: Mayor Messina

Mr. Schiada clarified the then intent was to make the sizes changed to 1-acre sites, which was consistent with the Regional Water Quality Control Board.

ORDINANCE 06-13 - AN ORDINANCE AMENDING CHAPTER 15.28 (GRADING AND EROSION CONTROL) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

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

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

Noes: None

ORDINANCE 06-14 - AN ORDINANCE ADDING A NEW CHAPTER 15.64 (STORM WATER MANAGEMENT AND DISCHARGE CONTROL) TO TITLE 15 (BUILDING AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

On motion of Council Member Patterson, seconded by Council Member Hughes, the above Ordinance was adopted as amended, on roll call by the following vote:

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

Noes: Mayor Messina

PUBLIC HEARINGS:

None

ACTION ITEMS:

None

INFORMATIONAL ITEMS:

Reports from City Manager:

None

COMMENTS FROM COUNCIL MEMBERS:

Consider directing staff to prepare a zoning text amendment amending General Commercial:

Mayor Messina stated that there were quite a few audience members who wished to speak publicly on this item, as well as one individual who wished to make a 10-minute PowerPoint presentation. Staff informed Mayor Messina that the equipment was not set up to accommodate a PowerPoint presentation.

Vice Mayor Schwartzman stated that he wanted to bring this item forward to see if Council had an interest in working on this issue. Over the past few months, there have been numerous stories in the newspapers and media about issues and certain types of development that may be coming into town. He was concerned about Benicia's small town atmosphere. He was also concerned about the existing retailers in town. He wanted to open up a discussion to see if there was an interest in what Council wants to see allowed and not allowed in general commercial areas in our town. He was interested in something citywide. There are not a whole lot of places in town where there were large building sites. His intention was for the entire city to have some rezoning done to affect what is allowed on a building square footage basis in general commercial. The one obvious site is the Discovery Builders site. The concept of that project is wonderful. However, he was concerned about what might go on top of that promontory in the commercial area. The only project coming forward at this time is the Seeno/Discovery Builders Project. He was concerned about the potential of some very large stores coming to that site and what it might do to the small town atmosphere, existing retailers, etc. It was not his intent to single out the Discovery Builders Project, but unfortunately, that is the only project coming forward at this time. He stated that he had a discussion with the City Manager to make sure that Discovery Builders knew this discussion was coming up. In the interest of fairness, he wanted to make sure they had a chance to come and talk on the issue. He wanted to clarify a few issues. He did not think anyone would be surprised that this issue was coming up. It has been all over the media lately. Also, we all need to recognize that there was a vesting tentative map on the Discovery Builders site.

Mayor Messina clarified for the public that Council was not taking any votes or actions to implement any kind of zoning text amendment. What is being discussed tonight was whether there was Council interest in pursuing this topic. If Council wishes to pursue the topic, it would give Staff direction to look into exploring the issue. If that were the case, it would come back at a subsequent meeting.

Mr. Knox stated that with an application for a vesting tentative map certified complete in the City's files, that is the subject of a forthcoming draft and EIR, that if that application were to be approved by Council, it would not be in a position to reapply retroactively any laws or provisions that would affect the conditions that were in place at the time the application being certified complete. Ms. McLaughlin confirmed that was correct. A vesting tentative map basically locks in the rules and regulations that were in existence at the time the map application was complete. The City would not be able to change the rules and regulations that apply to the project except if: 1) the state or federal law changes that would impact the rules and regulations, and 2) if there is a health and safety issue.

Vice Mayor Schwartzman stated the City received a letter from the attorneys for the Discovery Builders Project. He asked if Ms. McLaughlin could comment on that. Ms. McLaughlin stated that the short answer was that she agreed that a big box ordinance could not be applied to the Benicia Business Park Proposal. Perhaps the City could develop facts showing it was a health and safety threat, otherwise the City would be out of luck. It is totally possible to draft a big box ordinance. There are a number of parcels in town where the City could apply the big box ordinance. Vice Mayor Schwartzman stated that his concern was that anywhere in the City, there could be a huge store that would have a negative affect on existing retail. He does not want to see that here.

Council Member Patterson asked Ms. McLaughlin if there was a determination in the EIR that a large big box development was not consistent with the General Plan, that the vested tentative map could be modified to reflect the mitigation measures. Ms. McLaughlin stated that the ultimate project would have to be consistent with the General Plan as it was in effect the time the map was good. Council Member Patterson asked when it became law that where staff accepts an application determines the conditions of approval on a vested tentative map. Ms. McLaughlin stated that she would have to look that up. She has not done a lot of research on this. Mr. Knox stated that he could envision a number of different kinds of conditions of approval if this particular map that has been certified as a complete application goes forward and gains the approval of Council. There are a number of conditions that could be applied to the approval of the project, which could include design review approval of the buildings on the site.

Council Member Hughes stated that it was comforting to hear there is still some flexibility; however it sounds like Councils' window of opportunity was prior to April 2005 to move forward with something like Vice Mayor Schwartzman was recommending. He was still interested in pursuing the discussion on this issue. It all about the small town feel. He does not want to see a business open up on a Friday and another business close down on Monday.

Public Comment:

1. Carl Campos – Mr. Campos works for the law firm representing Discovery Builders. He stated that he was concerned about the way the agenda item was worded. He could not do his PowerPoint presentation, however, he handed out had copies of the presentation. He was concerned that the agenda did not say 'retail'. His company has worked in this field for over 30 years. Benicia's General

Plan was very well crafted. He reviewed the hard copy of the PowerPoint presentation.

2. Norma Fox – Ms. Fox stated that she was in favor of a size limit, but she thought 75,000 sq. ft. was too big. To visualize, a football field is about 50,000 sq. ft. She does not see why Benicia needs to have those kinds of huge retail stores. That would inhibit new businesses. Also, we should consider the parking lots that would have to go with such a big building. Also, a lot of the big retail stores pay very low wages. The City should require the business to provide an economic impact report.
3. Ed Del Decaro – Mr. Delcaro works for a commercial brokerage firm in Walnut Creek, California. He was concerned with the issue limiting of space to 75,000 sq. ft. There are a lot of uses that could not fit in that limitation space. There could be unintended consequences that could hurt the City in the long run. Traffic generators help retailers, not hurt them.
4. Sabina Yates – Ms. Yates thanked Council for sponsoring the recent charrette meetings. It was a wonderful process. Putting a big box looking store in Benicia would ruin its landscape.
5. Wilson Wendt – Mr. Wendt Attorney representative for Discovery Builders. This would impact Discovery Builders plans for the business park. The plans for development have been going on for a number of years. He was concerned about the legal problem in enacting ordinances such as this. This type of big box ordinance is very controversial. He urged Council not to move forward, and to look at another way to deal with this problem. The fact that Discovery Builders has a map that is complete means that this ordinance could not be applied to the property. It was his impression that the Benicia Business Property was the project driving this issue. There is a concept in the law called spot zoning and you are not allowed to single out a property in a particular project. From a legal standpoint, he believes that Ms. McLaughlin and Mr. Knox gave Council the right advice. He urged Council to look at some other ways to deal with a very valid issue. The kinds of traffic generators that the City wants for the merchants Downtown might be impacted by a restriction like this.

Vice Mayor Schwartzman asked what other ways could be considered. Mr. Campos stated that this is a difficult area. He would be happy to sit down with Mr. Knox and Ms. McLaughlin to discuss ideas he think could work. He understands Council's concerns. Council has to understand that his client has property out there that is basically the only game in town as far as this issue is concerned. They have no plans at the present time for a big box user there. It may be that a use larger than 75,000 sq. ft is something the City and they would want.

Council Member Patterson asked for clarification on the living wage and the vested tentative map being filed. Mr. Wendt stated that before the vesting tentative map statute was enacted in 1979 or 1980, for a general run of the mill subdivision, you could only use the City rules and regulations that were in effect when the map (regular map application, not vesting tentative map) was complete. The vesting tentative map takes it one step further and says it is part of some legislative action that was meant to give property owners what the ground rules

and regulations that are going to apply to the development of the property if the application is filed. The application for the Benicia Business Park has been going on for years. There is an enormous outlay that is necessary. Discovery Builders would not be avoiding the mitigation measures and conditions of approval that are necessary to comply with the General Plan Provisions. However, ordinances that are adopted after the applicant is deemed complete would not apply to the application.

Council Member Patterson stated that the answer was that if the City adopted a living wage ordinance it would not apply to the vested tentative map. Mr. Wendt clarified that what she was asking was if the living wage ordinance was adopted, would it apply to the stores that were operating out there. He stated that he did not know the answer to that, but thought it probably would. That is not something that applies to the development of the property. Council Member Patterson stated it would be helpful to have a clarification on that. She asked if the types of retail formula – the ordinances that other cities had adopted – would apply to this since it was not dealing with the development of the property. Mr. Wendt stated that would not apply to that because it would go to the tenant mix. He does not know if a living wage ordinance would apply. Council Member Patterson stated that it appears that the choice for the Council for these types of things is either through mitigation measures with a nexus established in a CEQA document, or to deny the application. Mr. Wendt stated that the fact that there is a vesting tentative map at issue does not mean they have to satisfy CEQA because they do. They are in the process of doing that. They are going through the CEQA process. They have to comply with the CEQA process. What they don't have to comply with would be something that was enacted after the fact. That's what the vesting tentative map protects them from.

Council Member Hughes stated that he would like to continue to pursue this to see what the Council's options are.

Vice Mayor Schwartzman discussed the photographs in the PowerPoint handout. The issue is retail sales. He wondered how to make this work and have the project move forward to have things out there that would enhance the community. He would like to see everyone work together and get what everyone wants. He is most concerned about retail in the context of 'huge'.

Council Member Patterson agreed that she would like the discussion continued in a constructive way as it applies to the Seeno project. The discussion should be directed as it applies to mitigation measures or future action on vested tentative map.

Council Member Whitney stated that he thinks that one of the things should be done is to take Mr. Wendt up on his offer to meet with Mr. Knox to educate Council in some of the issues. He asked the Ms. McLaughlin to come back with a definitive answer on the issue that was brought up earlier that she could not answer.

Council Member Hughes stated that Mr. Wendt's comment about his client not moving forward with the development of big box retailers. He was curious what prompted him to say that. If his client moved that intention to a commitment, this issue would probably go away. He also wondered how willing his client would be to listen to the community on its desires. Mr. Wendt clarified that he had no idea if his client would eventually want to put a big box user out there or not. It was his understanding that there is currently no big box tenant lined up to go in the business park. His concern is that if they are prohibited from doing that it could be a big problem. It would affect the value and economic feasibility of the project. He does not want Council to have the impression that he has talked to his client at all about entering into an agreement that would preclude certain uses and allow other uses. He does not believe they have had any discussions with big box users. He would be astonished if they had. As far as the question of public input, public input in the development business is extremely important. Before a project goes forward, they would have to do a significant amount of public outreach and public discussion.

Mayor Messina stated that the direction to Staff was to clarify the vesting tentative map impacts are in terms of flexibility; what the City can and cannot do, taking into account the CEQA EIR that comes through. In terms of the development restrictions of certain types of uses, Council is asking the at the Staff spend some time finding out what is/is not working in other communities. There should be additional dialogue with Seeno at the Staff level. At the staff level, if subcommittee needs to be formed, that should take place. He would like something come back by the end of the year. The EIR comes back for comment in a month or two. Staff should present a report at the next meeting on what Staff intends to do to follow up on this.

Council Member Patterson stated that the types of retail affect walkability. For a future subcommittee, she wants to make sure the community is kept in the loop with this process.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 9:10 p.m.

Lisa Wolfe, City Clerk