

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
SEPTEMBER 19, 2006

The special meeting of the City Council of the City of Benicia was called to order by Vice Mayor Alan Schwartzman at 6:00 p.m. on Tuesday, September 19, 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, and Schwartzman

Absent: Council Member Whitney (arrived at 6:01 p.m.) and Mayor Messina

PLEDGE OF ALLEGIANCE:

Vice Mayor Schwartzman 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).

ANNOUNCEMENT OF CLOSED SESSION:

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

OPPORTUNITY FOR PUBLIC COMMENT:

None

CLOSED SESSION:

- A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
(Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9)**

Number of potential cases: 1

ADJOURNMENT:

Vice Mayor Schwartzman adjourned the meeting at 6:02 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
SEPTEMBER 19, 2006

The regular meeting of the City Council of the City of Benicia was called to order by Vice Mayor Alan Schwartzman at 7:08 p.m. on Tuesday, September 19, 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, and Whitney

Absent: Mayor Messina

PLEDGE OF ALLEGIANCE:

Vice Mayor Schwartzman led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Ms. McLaughlin reported that Council received information from Staff.

Openings on Boards and Commissions:

- Benicia Housing Authority Board of Commissioners:
One unexpired term to June 30, 2007
- Civil Service Commission:
One full term to August 30, 2009
One unexpired term to January 6, 2007
- Human Services Fund Board:
One unexpired term to June 30, 2008
One unexpired term to June 30, 2010
- Sky Valley Open Space Committee:
One full term to August 30, 2010
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:

None

PRESENTATIONS:

None

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Mr. Erickson suggested that item XI-A (Ahwahnee Water Principles) should be discussed earlier in the meeting as an Action Item. The City recently changed how it schedules policy matters on the agenda. Unfortunately, this item got caught up in between methods. He recommended it become the first action item discussed.

Vice Mayor Schwartzman asked the Council Members for their input, as there are some important items on the Action Item list.

Council Member Patterson stated that this was an agreement that she had with the City Manager. She asked that it be honored. She spoke with the Mayor and he understood that it was a miscommunication. The City Manager was out of phone range while the agenda was being prepared and the Mayor stated that he would have said to put this item on the Action Item portion of the agenda.

Council Member Whitney asked if her agreement stipulated this item be the first action item on the agenda. Council Member Patterson stated that it was originally going to be on the agenda as a presentation, but the City Manager suggested it be put on as an action item. Originally, someone was coming in from Sacramento to speak on this item. However, that person was not able to make it tonight.

Council agreed to move item XI-A up in the agenda to go before item IX-A have it be the first action item discussed.

On motion of Council Member Whitney, seconded by Council Member Patterson, the Agenda was adopted as amended, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, and Whitney
Noes: None
Absent: Mayor Messina

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Council received two pieces of written correspondence from Norma Fox and Steven Goetz.

PUBLIC COMMENT:

1. Nancy Atkins – Ms. Atkins discussed a noise problem she was experiencing in her neighborhood caused by the City of Benicia. She lives by the City pool and the Youth Activity Center. The noise problems prompted her to purchase a decibel meter. Last Wednesday, 68 decibels came over her fence. The City does not use decibel meters. She made a complaint to the City Manager, who called her back yesterday. She has had an amicable relationship with the City in the past. However, when you put over 300 children in a small space, there will be an excessive amount of noise. When she called the City to complain last week, Staff told her that the City was below the legal noise level. Her second issue is the playground structure on the playground of the Youth Activity Center. She requested that when the youth programs are moved to the Mills site, that the play structure be removed and placed at the Civic Park across the street from the Youth Activity Center. She discussed excessive noise problems with hula classes, dog training classes, belly dancing, etc. at the Youth Activity Center. When she calls to complain, she is told to call the police. She wants her armed officers out catching crooks, sexual predators, etc. not addressing noise problems. She stated that there was one exception to all of this. It is possible to notify the neighbors when there is going to be noise. Every summer, she receives a letter from Anne Dunleavy telling her that the pool will be having ‘Family Fun Night’, which gives her a heads up. She wants the pattern of non-communication at the City to end. No one talked to the neighbors when the City decided to open a 300-child daycare behind their homes.

Mr. Erickson stated that he has talked with Ms. Atkins a few times. The City would be looking at master planning the park area across the street in the future. Regarding the noise issues, he told Ms. Atkins that he would look into this, talk with Staff to discuss protocol, and get back to her by the end of this week with a response.

Council Member Patterson asked Ms. Atkins about the range of the times she encounters the noise problems. Ms. Atkins stated that the daycare runs from 8:20 a.m. to 6:20 p.m. (the noise occurs off and on during the day). It was agreed earlier date that the gate would be locked off after hours. People go out there and play basketball at all hours. She discussed private birthday parties that have occurred that were very loud. She would like the issue clarified as to whether it is a park or not. Council Member Patterson asked Ms. McLaughlin for clarification on the noise ordinance – she understood that we have a not to exceed noise level of 70 decibels. On the other hand, we have land uses and she understood the residential limit was 45 decibels at night and 60 decibels during the day. Ms. McLaughlin was not sure about the limits at this time. The noise ordinance and sign ordinance both need work to make them better and more enforceable. She understood that in this case, there were standards that allowed the Park and Recreation programs to continue. Mr. Alvarez stated that there was a letter that clarified the noise level issue. He would provide Council with a copy of that letter if necessary. The Youth Activity Center and the pool are zoned as public/semi-

public. The area around the pool and Youth Activity Center is zoned commercial. He does not believe it zoned residential. Ms. Atkins stated that her home is zoned residential/office. The properties right next to her are residential and they take in the same amount of noise.

Vice Mayor Schwartzman asked about the issue of after hour's basketball games and the noise level after 6 p.m. at the Youth Activity Center. Mr. Alvarez stated that there are indoor activities up to 10:00 p.m. at the Youth Activity Center. The gates are open after hours because there is a playground back there. In the past, the public has used the playground. All parks are closed at dark. The enforcement of the noise enforcement is the Police Department, which is why the citizens are directed to call them with such issues.

Council Member Whitney asked about the fence and gate at the Youth Activity Center not being locked. That could create health and safety issues. He understood that the gate would be locked after hours. Mr. Alvarez stated that he would look into the issue and bring it to the Parks, Recreation and Cemetery Commission.

2. Jeanine Seeds – Ms. Seeds discussed a public comment period at a past Council meeting. A citizen spoke about wanting the City to build a new police station. During that period one or two Council Members responded to the issue in detail, when usually they just respond 'thank you for your comments.' At that same meeting, someone asked a question and they were told that public comment was not a discussion period. There seems to be differences in who can give opinions and when.
3. Marilyn Bardet – Ms. Bardet thanked Mr. Knox and the Opticos crew for what they are trying to do for Benicia. She encouraged everyone to participate in the Opticos process. One thing that came up in the Opticos process were the gateways into town. The gateways into town, especially on East Second and East Fifth Street are in poor shape. We may not own those properties, but they need to be addressed. If the City wants to be considered for such things as Sunset Magazine, it needs to think about these types of things.

Mr. Knox reviewed the balance of the Opticos process schedule. Council Member Patterson asked Mr. Knox to review where interested people should go and directions on how to get there.

CONSENT CALENDAR:

Council pulled items VII-A, VII-D, and VII-F.

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

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

Noes: None

Absent: Mayor Messina

RESOLUTION 06-142 - A RESOLUTION OF ACCEPTING THE EAST "I" STREET SANITARY SEWER MAIN RELOCATION PROJECT AS COMPLETE, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAID NOTICE WITH THE SOLANO COUNTY RECORDER

RESOLUTION 06-143 - A RESOLUTION ACCEPTING A GRANT DEED OF EASEMENT FOR A SEWER MAIN AT 401 EAST "I" STREET (APN 089-063-014) AND AUTHORIZING THE CITY CLERK TO RECORD THE GRANT DEED OF EASEMENT

ORDINANCE 06- - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA 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

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 the Minutes of August 30, 2006 and September 5, 2006:

Council Member Patterson stated that she did not receive the electronic copy of the minutes, which is how she reviews and edits them. She would like the minutes continued to the next meeting.

Introduction and first reading of an ordinance amending the Benicia Municipal Code provisions regarding appointment of Planning Commissioners and adoption of a resolution amending the Rules of Procedure

Council Member Patterson stated that for many years, many cities have been using the committees or City Council as the interviewing and appointing body for Planning Commissioners. There was resistance in City leadership on Council about changing that. There was a request through the Mayor's convergence, and through Assemblywoman Wolk, who requested that the Attorney General provide an opinion on the issue. The Attorney General opinion said that where the law provides, the Mayor has exclusive powers of appointment. This decision affects many cities in California. This especially affects the general law cities. She thinks this is a huge mistake (not a legal mistake). It is a failure to read the sense of the public's desire to have a more democratic inclusive process. Having said that, she thinks it is hasty and premature to have the changes adopted by the City. First, she would like to like to notify the League of California Cities and convene a caucus of cities to discuss this problem and perhaps amend the state statute. She believes the public wants a more inclusive appointment process. Secondly, the City has an opportunity in this ordinance to provide clarity that it is seeking diversity on its commissions. She is frustrated that Council is hastily going through to amend the

ordinance without giving due consideration to the public's interest. She wanted to indicate that she would be voting no on this item.

Council Member Whitney stated that on a prior Council, he had suggested that Council not rush into changing the rules until it received the Attorney General's opinion. He did not prevail. At that time, he indicated that he would be the first to make the motion if the Attorney General indicated that was the way the City should go. The Attorney General came back and said unequivocally that the way Council was handling appointments in the past is the way it should be done. He thinks it is in the City's best interest to align itself with the Attorney General.

Vice Mayor Schwartzman stated it was the Attorney General's opinion that way was the legal way of handling the appointments. The current method may not be in the best interest of Benicia; however, if it would be discussed further, it should be amended because it has been discussed within the past 12 months. The Mayor has the appointment authority. He thinks it is going to take an individual in leadership capacity that is open to doing things differently; we do not have that at this particular time from the person who actually makes the appointments.

Council Member Hughes stated that his recollection that this issue was just as quickly changed by the previous council. It was a hasty decision to change it before the Attorney General's opinion. He would entertain looking at this issue in the future.

Council Member Patterson stated that it was hasty because Council is not asking Staff what are some things to do to make it abundantly clear that we want committees and commissions to be diverse. She agrees that the City has to be in alignment with the Attorney General's opinion. Council and Staff could have taken more time and had more details on the ordinance.

ORDINANCE 06- - 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 Introduction and First Reading of an Ordinance was approved, on roll call by the following vote:

Ayes: Council Members Hughes, Schwartzman, and Whitney

Noes: Council Member Patterson

Absent: Mayor Messina

RESOLUTION 06-145 - A RESOLUTION ADOPTING THE RULES OF PROCEDURE FOR THE CONDUCT OF CITY COUNCIL MEETINGS

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

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

Solano Transportation Authority's Safe Routes To School Program (SR2S).
Council Member Patterson stated that this was a very important item that should not have been buried in the Consent Calendar. She asked Mr. Schiada to review this item.

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

RESOLUTION 06-144 - A RESOLUTION APPOINTING THE CITY COUNCIL/SCHOOL BOARD LIAISON COMMITTEE TO REVIEW AND APPROVE BENICIA'S FINAL LIST OF SAFE ROUTES TO SCHOOL (SR2S) PRIORITY PROJECTS/PROGRAMS

On motion of Council Member Patterson, seconded by Council Member Whitney, the above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, and Whitney
Noes: None
Absent: Mayor Messina

PUBLIC HEARINGS:
Approval of increase of the Benicia Local Enforcement Agency Fee on Benicia residential garbage rate by one (\$.01) cent from ten (\$.10) cents to eleven (\$.11) cents to abate illegal dumping costs. (City Manager)
Assistant Fire Chief Gant reviewed the Staff report.

Public Hearing Opened
Public Hearing Closed

RESOLUTION 06-146 - A RESOLUTION INCREASING THE LOCAL ENFORCEMENT AGENCY FEE ON THE BENICIA RESIDENTIAL GARBAGE RATE BY ONE (\$.01) CENT FROM TEN (\$.10) CENTS TO ELEVEN (\$.11) CENTS

On motion of Council Member Whitney, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, and Whitney
Noes: None
Absent: Mayor Messina

Introduction and first reading of an ordinance amending Chapter 15.28 (Grading and Erosion Control) and introduction and first reading of a new Chapter 15.64 (Storm Water Management and Discharge Control). (Public Works Director)
Dan Schiada, Public Works Director, reviewed the Staff report.

Public Hearing Opened

Public Comment:

1. Steve Goetz – Mr. Goetz stated that he was concerned about the Seeno Business Park proposal that is over 500 acres. Would this be an aggressive enough approach to handle that area? Would it be competition to the tree ordinance as far as a General Fund resource? Regarding the General Fund exposure – maybe the City’s fee schedule is not appropriate and needs to be adjusted. New development should pay its own way. He discussed the letter he wrote to the City regarding his concerns and the letter from the City engineer responding – (see handout – hard copy on file). He did not know why the correspondence was not in the agenda packet. Regarding the comments on flow rates and runoff – there is a policy in the General Plan that states that post-construction peak runoff should be no greater than pre-construction runoff. Why would the City, in the ordinance, put in the ordinance a standard that undercuts the General Plan policy? This is an opportunity where the City could show an aggressive approach to storm water management implementation. The ordinance does not serve the City well. The comment regarding inspection – the approach the ordinance uses is that it uses a building code approach to enforcing the ordinance. There is no routine inspection, monitoring, and reporting for this ordinance. It exposes the General Plan to further liability. Vice Mayor Schwartzmen informed Mr. Goetz that his public comment time was up. Mr. Goetz stated that the Federal and the State could come after the City if it fails to implement the ordinance. The fines would be substantial. The City needs to have a more aggressive inspection approach to make sure the City is not liable to be sued from the government or other third parties.

Council Member Patterson pointed out that there was something wrong with the timer. It is not showing the warning time. She thanked Vice Mayor Schwartzman for letting Mr. Goetz go over a little with his time. She referred to Mr. Goetz’s letter. She asked him to elaborate on his comment about the need for the ordinance to reference the General Plan. He pointed out that there were several goals in the General Plan that were worthy of being reiterated in the ordinance: to protect water quality, preserve water bodies, protect watersheds, to minimize environmental impact of mineral production, to accommodate runoff from existing and future development, to prevent ground and surface water contamination, require hazardous materials and hazardous waste handling, and goals and procedures that are protective to human health and the environment. It establishes the standards that the City should have implemented with the ordinance. She asked him about the issue of ‘takings.’ Is he asking that the section of the ordinance be clear that any use would be consistent with the General Plan. Staff’s response that the current language is consistent with the standard attorney recommended language. It does not seem to be harmful to simply state that it should be consistent with the General Plan. Council Member Patterson stated that in paragraph 7, regarding enforcement, does he have it on good authority that the State is serious about enforcement. Mr. Goetz stated that

they say ‘they can.’ Council Member Patterson asked him about his comment #8 – where he states that the ordinance should take further measures to promote proper protection of water course on private property – she was intrigued by Staff’s response. Staff stated that section was not changed because authority is granted to the City condition and enforce watercourse protection. She asked him how he felt about Staff’s response. Mr. Goetz stated that rather than wait until a problem is created, you have a routine inspection monitoring problem to make sure the ordinance is enforced, and to make sure people aware of what is required of them. He was suggesting that the City have an annual program to let people know what is required of them. The watercourse protection certificate is a way of letting people know what is required. He does not think enough research was done to make sure the ordinance was taking an aggressive enough approach to protect the General Fund from financial liability. This is a way to help achieve that. Council Member Patterson asked him what he would like to see. He would like to see this introduction to the ordinance delayed for further consideration and review.

Council Member Whitney thanked Mr. Goetz for coming forward with his letter. It is an example of how citizens could affect policy. Clearly, a number of Mr. Goetz’s suggestions have been incorporated into the final product. Regarding the issue of fines and inspections – is he suggesting we have a clear policy that the City would inspect the systems once per year? Mr. Goetz confirmed that was correct.

Council Member Hughes asked Staff about the comment in Mr. Goetz’s letter on ‘flow rates’. He asked for clarification. Mr. Schiada stated that the intent was to, whenever possible, require new development not to increase downstream runoff from their property. The Storm water Management Plan goes through a review and approval process through the regulatory agencies. This is something that is done in cooperation with the Regional Water Quality Control Board. He does not want to make all properties have to install onsite facilities so that there is no increased runoff.

2. Kathleen Van Velsor – Ms. Van Velsor stated that she was happy to see this item on the agenda. She has some information on this topic that she will be passing on to Staff for future reference. Many communities in California are coping with these issues, and fines are being imposed for violations. She recommended the City consider the Ahwahnee Water Principles be used to help the City guide itself through these issues. It is a very hopeful and forward-looking process. It asks communities to consider a range of options that are affordable, that can be assisted by the State of California. They may not be easy endeavors, but they are important ones. She had packets to hand out on the Ahwahnee Water Principles; however, she would do that under the auspice of her employer, ABAG, not as a private citizen.

Public Hearing Closed

Council Member Patterson stated that it might not be understood how important this grading ordinance and storm water management program is. She wanted to read four examples explaining how the City could communicate how and why this is important, keeping in mind there are developers in the City of Benicia that need to know what is expected of them. The four examples are: from Vacaville's ordinance 1) to ensure the intended use that the graded site is consistent with the policies of the land use and safety elements of the General Plan and all applicable city ordinances and regulations, 2) to avoid the disruption of natural or city authorized drainage flows caused by the activities of clearing and grubbing, grading, filling, and excavation of land, .3) to avoid the degradation or pollution of water courses with nutrients, sediments, or other materials and or pollutants generated by new development or redevelopment , and 4) to minimize increases in storm water runoff from development and redevelopment in order to reduce flooding, siltation, increases in stream temperature, stream bank erosion and maintain the integrity of stream channels. When it is argued in Staff's comments about having to operate in a straight jacket on developers, all ordinances have the capacity to state 'when feasible'. If you don't have it clear that the goal is to have no net increase, trust her, you are not going to get full cooperation to have every effort possible not to have no net increase. This is truly a penny-wise pound-foolish approach. The City could be severely fined. We need to have the right tools in place now rather than later. There is an opportunity to pay for this with a proper inspection program and a proper fee adjustment. For many reasons, she would like this to be continued so language could be added and get this in shape so it fulfills our common intent.

Council Member Whitney asked Mr. Schiada about existing vs. new property owners. Mr. Schiada stated that the ordinance would affect any new construction and changes to property that require a permit from the City; it is not tailored toward 'developers'. It is not just about major new developments. We cannot pass the costs for this program onto all new development. There are costs to it that benefit existing residents such as street sweeping. It is something that a lot of agencies are adopting - storm water fees that would be applied to all residents. The City has not gone there yet. It will be money that the City borrows or uses from the General Fund because it does not have a storm water fund. Council has already adopted the program. What Mr. Schiada is looking for is the ordinance to give the City the teeth to reinforce the program. Council Member Whitney asked Ms. McLaughlin how she saw the two positions. Ms. McLaughlin discussed why the section on 'takings' was in the ordinance. Because there are penalties attached to the City's failure to adopt the ordinance, Council might want to consider adopting the ordinance and work on amendments. Council Member Whitney stated he was not opposed to that idea. Mr. Erickson stated that the intent of this item was not for comprehensive review of storm water or grading regulations. It has been discussed to have a priority session on these items, but that has not been scheduled yet. Staff's approach was very focused. Staff recommended Council act on this item tonight. It would be on a list of items to review in a priority session. Council Member Whitney stated that the issue of fines got his attention. Mr. Schiada recommended Council adopt this tonight. In the plan that was approved by the Regional Water Quality Control Board, there was a plan of attack for implementing certain measures within a 5-year time frame. That plan has been updated. The City has to give an annual report to the Board. The City is behind

the clock on the issue of adopting the ordinance. It would give him a comfort level to proceed ahead. With regards to the letter, it looks like the flow rate issue is one concern and the certification requirement is the other concern. With regard to the General Plan goals, he thought Staff adequately addressed that on VIII-A-33, paragraph (c). He believes Staff has addressed the issues. He thought the two issues in question would require a slight modification could be addressed by stating that the intent of this is not to have increased downstream runoff, with exceptions that the improvements are in place and review/approval is given by the City Attorney. He would like to move forward with this item.

Council Member Patterson inquired about the start date of redoing the ordinance in 2003. Mr. Schiada confirmed that was correct. She asked if the San Francisco Water Regional Quality Control Board expressed concern about the City's lack of ordinance addressing storm water management and the inadequacies of the inspection program. She proposed continuing this item to the first meeting in October; the stated concerns could be addressed. She would like to change the purpose VIII-B-33 – she would like to see the language pulled from Vacaville's ordinance to beef up the language referring to the General plan, amend the top of page VIII-A-38 to state that the goal is a no-net increase, and then put a 'where feasible' clause in. She would like to see something regarding an inspection program. However, if after a weeks worth of work, Staff could not come up with something, she would have that go into Council's priority sessions. She would like this to be refined and brought back.

Vice Mayor Schwartzman stated that it seemed to him that the bulk of the changes had already been done and the proposed changes seem to be minor. He inquired about looking into the issue of 'inspections.' He asked Staff if that would take a long time to work on. Mr. Schiada stated that dealt with public outreach and education. The City has a tremendous program for that at this time. The City currently has an annual inspection program. What is being asked is whether or not the City should have a post-construction program inspection. That may be a program that is beyond the limitations of Staff. When the permits are negotiated, such issues are taken into consideration. He agreed that if word smithing some of the sections would be appropriate.

Council Member Hughes stated that he appreciated the information brought forward by Mr. Goetz and Council Member Patterson. Moving forward does not preclude this from making amendments in the future. He would rather adopt this tonight, move forward, and then look at making amendments in the future. A lot of the issues heard tonight have merit.

Council Member Whitney asked Mr. Schiada if he had a problem with Council Member Patterson's change of purpose. Mr. Schiada stated that he did not have a problem with the change to page VII-A-38 regarding the increased net discharge. Council Member Whitney stated that two of the three concerns that Council Member Patterson had could be addressed tonight. Then, the only outstanding issue would be that of the inspection program, which could be brought back for review.

Ms. McLaughlin stated that the verbiage on the purpose could be changed, but the second change on the flow rates and the no net increase needed work on the wording.

Council Member Whitney made a motion that the Introduction be amended with changes made to the 'purpose' and 'flow rates.'

Mr. Schiada clarified the following changes: On page VII-B-38, second sentence, fourth line down, insert after 'facilities' – 'it is the intent of this ordinance that there shall be no net increase in the discharge volume in the post construction condition.' Then add 'the City Engineer may grant an exception to this requirement providing that.' Council Member Whitney stated that he did not have a problem with the language as long as the City Attorney approved it.

Council Member Patterson stated that the suggested changes were acceptable to her, as long as this was looked at in the priority sessions and the global issue was addressed.

Ms. McLaughlin confirmed that the changes were acceptable to her as well.

ORDINANCE 06- - 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 Whitney, seconded by Council Member Hughes, Council approved the Introduction and First Reading of the above Ordinance, as amended, on roll call by the following vote:

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

Noes: None

Absent: Mayor Messina

ACTION ITEMS:

Consideration of adoption of Ahwahnee Water Principles:

Council Member Patterson stated that she asked Ms. Van Velsor and Clark Anderson to make a presentation. Mr. Anderson could not make it to tonight's meeting. The advantages would be explained by Ms. Van Velsor. They have to go through a two-step process. The presentation is that Ms. Van Velsor would be back with a more detailed presentation if Council agrees to put this back on a future agenda for action. The intent of tonight's presentation is to attempt to get Council's consensus one way or the other regarding whether it wants it on a future agenda.

Kathleen Van Velsor, ABAG, provided Council with packets (hard copy on file) on the Ahwahnee Water Principles. She briefly reviewed the information in the packet.

Council Member Whitney asked how the Ahwahnee Water Principles are brought into established communities. Ms. Van Velsor stated that question came up in the City of Oakland. The City of Oakland concluded that a zero lot line would be an impediment to employing the principles because there was not enough landscape. In many

redevelopment areas, there is space to incorporate the elements. The idea is that anything that one can do would improve the current situation. Council Member Whitney asked about the issue of down pours. Ms. Van Velsor stated that if the community were so inclined, it could request that the residents disconnect the down pours.

Council Member Patterson discussed the Los Angeles County flood district. They have come up with a way to control runoff, pollution, etc.

On motion of Council Member Hughes, seconded by Council Member Patterson, Council approved this item be brought back for discussion on an agenda, on roll call by the following vote:

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

Noes: None

Absent: Mayor Messina

Approval of Mills Act Contracts for historic properties located at 163 West J Street, 145 East I Street, 159 West G Street and 149 West G Street:

Vice Mayor Schwartzman stated that he owned property in the area, and therefore needed to abstain from portions of this discussion.

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

Council Member Whitney stated he was glad to see more properties coming forward. He asked the City dealt with managing and controlling the taxes on such properties. Mr. Knox stated that the current contracts are more sophisticated than the old ones. There are visual inspections that are done. He would like to see more in the future regarding enforcement.

RESOLUTION 06-147- A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 163 WEST J STREET IN THE CITY OF BENICIA

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

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

Noes: None

Abstain: None

Absent: Mayor Messina

RESOLUTION 06-148 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 145 EAST I STREET IN THE CITY OF BENICIA

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

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

Noes: None

Abstain: None

Absent: Mayor Messina

RESOLUTION 06-149 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 159 WEST G STREET IN THE CITY OF BENICIA

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

Ayes: Council Members Hughes, Patterson, and Whitney

Noes: None

Abstain: Vice Mayor Schwartzman

Absent: Mayor Messina

RESOLUTION 06-150 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 149 WEST G STREET IN THE CITY OF BENICIA

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

Ayes: Council Members Hughes, Patterson, and Whitney

Noes: None

Abstain: Vice Mayor Schwartzman

Absent: Mayor Messina

Vice Mayor Schwartzman called for a 5-minute break at 9:08 p.m.

The meeting resumed at 9:15 p.m.

Approval of the Traffic Calming Program. (Public Works Director)

Dan Schiada, Public Works Director, reviewed the Staff report. He stated that there were minor changes that need to be made to the report that deal with the appeal process which could be done at the Traffic, Pedestrian and Bicycle Safety Committee.

Council Member Whitney asked about the program as a whole. Mr. Schiada reviewed the physical improvements, such as the crossing at the Youth Activity Center, enforcement changes such as responding to concerns raised at neighborhood meetings, etc. There has been a great deal of participation with this issue by the community.

Council Member Hughes stated that initially, he was a cynic of traffic calming. Since then, he has received an education on this topic and is now a supporter.

Council Member Patterson stated that when the General Plan committee brought this up, it was an eye opener for her. She is pleased that people are being supportive of the program.

Vice Mayor Schwartzman stated that he was looking forward to this moving forward.

Public Comment:

1. Marilyn Bardet – Ms. Bardet stated that she was pleased to see this coming forward. The crosswalk in front of the Youth Activity Center is aesthetically attractive. She knows that Mr. Schiada has discussed the issue of bulb-outs Downtown. She discussed traffic issues such as speeding on East K Street. She would like to see more trees in the Downtown, as well as on East Second and East H Streets. Trees provide shade and it is too hot to walk in those areas without sufficient shade.

Mr. Schiada indicated that minor changes to the program, talking about the appeals process needing to follow the City's process. The neighborhood would have the opportunity to appeal issues to the City Council. Part of tonight's approval would be to direct the City Attorney to do some minor technical editing to section (g).

RESOLUTION 06-151 - A RESOLUTION APPROVING THE CITY OF BENICIA TRAFFIC CALMING PROGRAM

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

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

Noes: None

Absent: Mayor Messina

INFORMATIONAL ITEMS:

Reports from the City Manager:

Update on the status of the Rose Center Project:

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

Council Member Whitney asked if it would help Staff if Council were at some point to address clarification of 'substantial changes'. Mr. Knox stated that it absolutely would. If Staff had a threshold in the zoning ordinance clarifying the number that equated to a substantial change, it would make things much easier. Council Member Whitney stated that was something Council should address in the future.

Public Comment:

1. Tony Weston – Mr. Weston is a contractor. A 40% increase in quantity is not minor. Number 7 on the Staff report does not seem logical or legal. It is a substantial/dramatic change. The public needs a chance to review this new plan. He discussed a project that took place on Carolina Drive three years ago. The city took 5,000-10,000 yards of spoils and dumped them on Mr. Fulton's property. He asked Mr. Schiada if the contractor gave the City a decrease for not disposing of the soil properly, or did Mr. Fulton pay the City for the soil? Was there a sample analysis of the soil before they were dumped within 500 feet of the State Park and day care centers? If not, bay keepers should look into this. He asked if the City had an interest in the project with Mr. Fulton. It is unheard of that the City would

- dump such spoils on private property. Has the City ever done that before? Mr. Schiada stated that the Carolina sewer project was done at least two years ago. The contractor negotiated an arrangement with property owner without the City's knowledge. Once the City discovered this, it notified the property owner that he needed to address the situation by removing it or spreading it out per the grading ordinance. The property owner has been notified that the material needs to be addressed as part of the grading permit for this project. Typically, trench spoils within street rights of way are not subject to testing and disposal at hazardous material sites without evidence of contamination. That situation was beyond the City's control because it was between the property owner and a contractor, not as directed by the City to dispose of the materials at a particular site. Mr. Weston knows that Mr. Schiada was fully aware that the City of Benicia goes per Cal Trans. You must dispose of materials in a legal manner, at a legal disposal site. The City issued the permit to dispose of the materials on site.
2. Mary Wika – Ms. Wika read the following prepared statement: "I've provided you all with a sheet that has 4 different plans of Rose Center. #1 depicts a plan pre-approved back in 12/02. You can see Mr. Fulton has the large retail building in the upper right, which is the SW corner of the property. #2 is the plan that was approved in 7/03. Notice the large retail building has been split into two smaller buildings and parking is allowed on the west side of building 1. There was a purpose as to why planning split this large retail building into two smaller detached buildings. I asked Mr. Knox today if he knew why and he told me he did not. He did not work here during the pre-approved stages of this project. #3 is the revised plan that was sent to Mr. Knox in June 06 for approval. #4 is the plan as of last Thursday, which is still being changed as we speak. Tonight the real issue comes down to an interpretation and application of a code from the Benicia Municipal Code.

When I spoke to Charlie Knox today, he told me that the Code just did not have the teeth it needed for him to make the call that the revised Rose Center plan has substantial changes. Because it doesn't put it in square feet. X being increase in square footage = substantial changes. I told him that I do not feel the code was made to have that gray area that you are supposed to use your common sense when applying it on what is minor or insubstantial and what is substantial. He then pointed out his first pullet point on the staff report which reads 'Staff response: site plan changes were considered insubstantial because the changes are consistent with the intent of the original approval for retail center (per BMC 17.18.090(d)). I told Mr. Knox I read that a bid differently and if we could look at it. What was left out and is included in that same code is that he may approve the changes to approved plans without a public hearing upon determining that the changes in conditions are minor and are consistent with the intent of the original approval. Revisions involving substantial changes in project design or conditions of approval shall be treated as a new application.

So, by argument Mr. Knox is using the code and stating that the revised plan is consistent with the original approval, but he fails to state that the changes are

minor in his opinion are substantial. He'll agree that the square footage of building space has increased. He even agrees that nowhere in the code does it refer to site utilization footprint. So, on Mr. Fulton's letter with his revised plan stating that he can change or replace the gas station, convenience store, car wash, for a Longs Drugs, that is, in Mr. Fulton's opinion, not anywhere in City code. In fact, in condition #5 of the approved plans it states 'any alteration of the approved plans that would increase the square footage on any use would require an amendment to this approval of the use permits. On #7 in the staff report, it states that the drug store drive through replaces the drive through approved for the car wash.

The exchange of the 15,790 square foot Longs Drugs is absolutely an increase in square footage from the prior use. Therefore, it affects condition #5, and requires an amendment to the approval of the permits. When I spoke to Solano County, Julia – a Planner – agreed with me and said that in Fairfield this would go back and that in her opinion, it was a substantial change. She told me that I needed to get my point across to the Council by putting it into terms that are real to you. Such as, if your taxes increase by 40%, would that be substantial in your opinion? If your mortgage went from \$2,800 per month to \$3,920, an additional \$1,120 per month, would you refer to this as a minor increase or substantial increase? We've been asking for and need a clear interpretation of what 17.108.090 is referring to when it states minor or insubstantial changes. Charlie Knox told me that without it being put in quantitative terms, he couldn't apply it. There are many instances throughout the code that does not qualify the terms, but you have to use your common sense as is here with minor and substantial. The community needs Council to make an action decision here tonight. If you uphold Mr. Knox's decision, you are setting a huge precedent to allowing substantial changes of 40% to be approved at staff level to all building plans here in Benicia.”

3. Phyllis Wika – Ms. Wika retired from city government. Several aspects of this plan do not comply with regulations. All problems raised by the citizens have not been addressed. The project has to be done according to the laws and regulations.
4. Barbara Wood – Ms. Wood requested Council send this project back to the drawing board. The City is spending a lot of time and effort on the development to Downtown and the Arsenal. What about the entrances to our City? The Columbus Parkway/Rose Drive intersection is an entrance to the City of Benicia. The City requested money to deal with the State Park Road Bridge for safety reasons. The approach to Rose Drive is on private property. It will be a safe bridge, but an unsafe approach.
5. JB Davis – Mr. Davis discussed the safety issue of the State Park Road Bridge. He has been working for a number of years to get funding to get the bridge more safe. By making the Rose Center Drive entrance ingress only would make this area much safer.

Council Member Patterson asked Mr. Davis if there were anything else he would like to see. Mr. Davis stated that there are some things that could make the area safer. At the driveway entrance, there could be spikes that only allow entrance on

- Rose Drive. That could be done at a relatively low cost. Also, if you put a loop detector/flashing signs to warn drivers of cyclists that would be good, along with a pushbutton signal.
6. Jeanne Woodford – Ms. Woodford discussed the entrance issue. Kids ride their bikes through the area. It makes it very dangerous. She was alarmed at the large size of the buildings in the project. It is like putting a warehouse building on Rose Drive. It takes away from the ambiance of the State Park.
 7. Karen Casey – Ms. Casey stated that at a previous meeting, she asked for the definition of ‘substantial’ and ‘insubstantial’ changes. Vice Mayor Schwartzman stated that there was no specific definition in the ordinance. She stated that without any definition, how the project could get sent back to planning. She inquired whether or not turn only lanes would be installed. Vice Mayor Schwartzman stated that he believed there would be a right turn only lane put in. He was not sure if there would be a right turn only light signal put in. Ms. Casey stated that the issue of a left turn only lane should be addressed as well. She has spoken at several meetings regarding the safety of the project and traffic. The intersection is very congested. She strongly suggested this item be sent back for review.

Council Member Patterson asked Ms. McLaughlin about the condition of approval for this project listed on page X-A-1-2 – no exit allowed per design review condition #26. This is an existing condition. Ms. McLaughlin confirmed it was an existing condition. The project should be done according to that condition. Council Member Patterson stated that per the BMC, the approval by the Design Review Board lapses in two years from its effective date. She asked when that would be. Mr. Knox stated that the applicant requested and was approved (before it lapsed) for a one-year extension. The extension expires 11/18/06. The City’s code states that for the approval not to expire by that date, the applicant would have to have approved building plans. The applicant has submitted the majority of materials for review. If the applicant’s project is not approved by 11/18, the permit will expire. Council Member Patterson asked about the issue of substantial improvement. Ms. McLaughlin stated that the decision of the Community Development Director is final. The appeal process for that decision has expired. The approval of the building permit is outstanding. There are not a lot of things that can be picked at.

Ms. Wika asked about the letter from Mr. Knox admitting he made a mistaken the approval process. Council Member Patterson asked Ms. McLaughlin about the dialogue that could take place. Is Council running a risk by continuing this dialogue? Ms. McLaughlin stated this item was an information only item. Council was running a risk by continuing to discuss it. Council Member Patterson asked Mr. Knox for clarification on what the approval process was. Mr. Knox stated that in June, he received an application from the property owner dated 6/14 for a site plan. It showed an entrance/exit on Rose Drive. After going through the information, he forwarded the information to Ms. Wika. Ms. Wika pointed out the issue of the entrance/exit to his attention. He then notified the applicant that the

entrance/exit was not allowed. He cc'd Ms. Wika and he received confirmation the application received the information. The project was approved in June. The confirmation that condition #26 needed to be met was done in July.

Ms. McLaughlin stated that she would need to do a little more work as to when the permits would lapse.

Vice Mayor Schwartzman stated that this was an information only item. In order to move forward, Ms. Wika would need to try and get a Council Member to take the item on the agenda as an action item. Or, if the building permit is pulled, she may have an opportunity at that point.

Mr. Erickson stated that since the time for appeal has expired, the action would not pertain to the approval that Mr. Knox has given. The action would pertain to something generic, but specific to the application. Ms. McLaughlin stated that was true. Because since the time for appealing the Community Development Director's decision has passed, Council is limited in how much it can change the plan. However, Council could tell the Community Development Director he was wrong, but Council would be subject to the property owner stating Council was abusing its discretion and could be taken to court.

Update on the status of the City efforts to work with the Boy Scouts and Girl Scouts to identify a site for a Scout facility:

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

Ms. Tracy Devoncenzi, Girl Scouts, stated that the Girl Scouts would like to wait a little longer to see how the discussions go with the Mills site. They would prefer to use the Mills site. It would be the most cost effective. She stated that the Scouts would like the City to hold off on any decisions on the other options that have been offered to the Scouts until this issue is resolved.

Council Member Hughes asked about the letter and the issue of the 20-year lease. Ms. Devoncenzi stated that now, with new information that is not their second option. The Scouts might consider a 5-year lease. Council Member Hughes asked Mr. Alvarez about the lease – who decides which organizations can occupy the space? Preliminary discussions pointed that the City would want to sublease the facility. The City would have direct relationship with BUSD, not the Scouts. Preliminary discussions did not indicate that the District would have any problems with the Scouts occupying the space.

Council Member Patterson asked Staff about the issue of the lease term. Mr. Alvarez stated that the City indicated it would prefer a 20-year lease, or the maximum allowed term.

Council Member Committee Reports:

1. Mayors' Committee Meeting (Mayor Messina)
Next Meeting Date: September 20, 2006

2. Association of Bay Area Governments (ABAG) (Mayor Messina)
Next Meeting Date: October 26, 2006 (Fall General Assembly)
3. Audit & Finance Committee (Vice Mayor Schwartzman and Council Member Hughes) Next Meeting Date: October 6, 2006
4. League of California Cities (Mayor Messina)
Next Meeting Date: To be determined.
5. School District Liaison (Council Members Whitney and Hughes)
Next Meeting Date: December 14, 2006
6. Sky Valley Area Open Space (Council Members Patterson and Whitney) Next Meeting Date: October 4, 2006
7. Solano EDC Board of Directors (Mayor Messina)
Next Meeting Date: September 28, 2006
8. Solano Transportation Authority (STA) (Mayor Messina)
Next Meeting Date: October 11, 2006
9. Solano Water Authority/Solano County Water Agency (Mayor Messina)
Next Meeting Date: October 12, 2006
10. Traffic, Pedestrian and Bicycle Safety Committee (Council Members Patterson and Hughes) Next Meeting Date: October 19, 2006
11. Tri-City and County Regional Parks and Open Space (Council Member Whitney)
Next Meeting Date: November 15, 2006
12. Valero Community Advisory Panel (CAP) (Council Member Hughes)
Next Meeting Date: September 21, 2006
13. Youth Action Task Force (Vice Mayor Schwartzman and Council Member Whitney)
Next Meeting Date: September 27, 2006
14. ABAG/CAL FED Task Force/Bay Area Water Forum (Council Member Patterson)
Next Meeting Date: 9/25/06 – 10:30 a.m. to 1:30 p.m. The Integrated Regional Water Management meeting – 10//23/06.

COMMENTS FROM COUNCIL MEMBERS:

The original item was moved to ‘Action Items’ at the adoption of the agenda.

ADJOURNMENT:

Vice Mayor Schwartzman adjourned the meeting at 10:15 p.m.

Lisa Wolfe, City Clerk