

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
OCTOBER 7, 2008

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:00 p.m. on Tuesday, October 7, 2008 in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Patterson 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:

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:
One unexpired term to September 30, 2010
- Economic Development Board
One full term to July 31, 2012
- Human Services & Arts Board
One unexpired term to July 31, 2009

Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200.

APPOINTMENTS:

None

PRESENTATIONS:

None

PROCLAMATIONS:

- Recognition of National Red Ribbon Week – October 21 – 27, 2008
- No Drugs Down the Drain! Week – October 4 - 11, 2008

ADOPTION OF AGENDA:

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items submitted (copies on file).

PUBLIC COMMENT:

1. Kathy Kerridge and Gene Daugherty – Mr. Daugherty and Ms. Kerridge discussed the issue of a sustainability commission. They would like the City to have a public forum to discuss such a commission.
2. Alan Shore – Mr. Shore discussed the change in quality and writing style of the Benicia Herald. He also discussed the issue of socially responsible business opportunities and venture capitalists.

CONSENT CALENDAR:

Council pulled item VII-G.

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

The Minutes of September 9, 2008 and September 16, 2008 were approved.

RESOLUTION 08-105 - A RESOLUTION RESCINDING THE CHEMICAL CONTRACT WITH SIERRA CHEMICAL COMPANY AND AWARDED A CHEMICAL CONTRACT TO OLIN CHLOR ALKALI PRODUCTS TO FURNISH CHLORINE TO THE CITY OF BENICIA FOR THE TREATMENT OF WATER FOR THE REMAINDER OF FISCAL YEAR 2008/09 AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

RESOLUTION 08-106 - A RESOLUTION ACCEPTING THE BIDS FOR THE UNTREATED WATER TRANSMISSION LINE REPAIR PROJECT, AWARDED THE CONSTRUCTION CONTRACT TO ARGONAUT CONSTRUCTORS OF SANTA ROSA, IN THE AMOUNT OF \$213,000, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

Council approved the denial of claim against the City by James Lewis and referral to insurance carrier.

Council approved the denial of claim against the City by Ronald King and referral to insurance carrier:

Council approved the denial of claim against the City by DeSilva Gates Construction and referral to insurance carrier:

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Second reading and adoption of an ordinance amending Title 9 (Public Peace, Morals and Welfare) to change the title of Chapter 9.28 from (Night Curfew) to (Youth Protection) and add Article 2 (Daytime Curfew) to Chapter 9.28 (Youth Protection) of the Benicia Municipal Code:

Vice Mayor Campbell inquired about performance criteria measurements.

Council and Staff discussed having detailed staff reports, coming back with a staff report detailing how performance criteria measurements would be handled, having Staff come back in one year to review the information, and how the ordinance would be enforced during the open campus lunch hour.

ORDINANCE 08-17 - AN ORDINANCE AMENDING TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) TO CHANGE THE TITLE OF CHAPTER 9.28 FROM (NIGHT CURFEW) TO (YOUTH PROTECTION) AND ADD ARTICLE 2 (DAYTIME CURFEW) TO CHAPTER 9.28 (YOUTH PROTECTION) OF THE BENICIA MUNICIPAL CODE

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

PUBLIC HEARINGS:

Vacation of a portion of the West K Street right-of-way adjacent to 1356 West K Street and land exchange benefiting the West 14th/K Street public access:

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

Council and Staff discussed the public input process, the uniqueness of the property, and deed restrictions.

Public Hearing Opened

Public Comment:

1. Richard Bortolazzo, Applicant – Mr. Bortolazzo discussed the uniqueness of the land in question.

Public Hearing Closed

RESOLUTION 08-107 - A RESOLUTION ORDERING THE VACATION OF A PORTION OF WEST K STREET RIGHT-OF-WAY ADJACENT TO 1356 WEST K STREET

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

RESOLUTION 08-108 - A RESOLUTION APPROVING A LAND EXCHANGE WITH THE PROPERTY OWNER OF 1356 WEST K STREET BENEFITING THE WEST 14TH/K STREET PUBLIC ACCESS

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Benicia Business Park Rezoning, Master Overlay, Vesting Tentative Map and Addendum (continued public hearing on traffic issues and action on the project by the City Council): Mayor Patterson discussed procedures for public comment at public hearings, and Council's Code of Conduct.

Jim Erickson, City Manager, introduced the item.

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

Dan Schiada, Public Works Director, reviewed a PowerPoint presentation titled 'Benicia Business Park Project Supplemental Transportation Assessment' (hard copy on file).

Heather McLaughlin, City Attorney, reviewed the rules for public comment. Public comment on this item was limited to comments on traffic, public comment on all other items was closed on 6/3/08, the public hearing portion of the item should be limited to one hour so Council could have ample time to deliberate, Council was not limited in what it could discuss, Council should discuss the entire project and addendum, rules for spokesperson comments, and the applicant's rebuttal time limit of five minutes.

Council and Staff discussed the issue of limiting public comment to discussion on the traffic study, and the relationship of traffic to air quality.

All Council Members disclosed ex-parte communications they had on this item.

Council and Staff discussed truck restrictions on East Second Street, the intersection at East Second Street and Military, the a.m. peak times, lead/lag and split phasing, midday peak traffic, construction period impacts, air pollutant impacts, the intersection at East Second Street and Military, having a roundabout, feasibility of installing a roundabout, and General Plan discussions on the issue in 1996.

Applicant:

Louis Parsons, Discovery Builders, Inc. stated that he received and reviewed the supplemental traffic report. They (Discovery Builders, Inc.) agree with the assessment. They realize there have been modified conditions. They understand the new mitigation measures that came about as a result of the traffic study. They feel the exercise has been helpful. He addressed the issue of AB 32, mitigation measures, TDM measures, carpool, van pool, free shuttle, transit center, traffic calming, etc. He discussed the concerns related to East Second Street and the intersections at I-780 - they looked at the augmented conditions, and understand and agree to all of that. City Staff has done a very sufficient job. Discovery Builders, Inc. does not have an issue with the conditions or mitigation measures as presented tonight.

Organized Groups:

Benicia First:

Mr. Steve Goetz, Benicia First, reviewed a PowerPoint Presentation (hard copy on file). Mr. Goetz discussed Benicia First's concerns relating to traffic and the project.

Vice Mayor Campbell asked Ms. McLaughlin if he had a conflict of interest with this item due to the location of his residence. Ms. McLaughlin stated that he should be fine.

Marilyn Bardet, Benicia First, discussed Benicia's zoning codes relating to the project relating to human health and environment. She referenced all documentation she submitted (copies on file). Ms. Bardet discussed traffic congestion, public health impacts, design flaws in the project plans, air quality impacts, the addendum being an insufficient level of review to address the concerns, severe traffic congestion problems, comparing the revised project to the original project, the revised project not meeting the spirit of AB 32, tailpipe and roadway emissions and the severe health impacts they have on people, and the fact that the conditions of approval cannot get at the fundamental flaw in the design.

Green Gateway:

Roger Straw, Green Gateway Group, urged a no vote on the project. He discussed concerns regarding traffic impacts, air quality impacts, green house gas reduction targets, traffic study does not address air quality, consideration of the health of the children at Robert Semple Elementary, the traffic that will occur during the mid-day peak hours, the fact that property owners might not go along with the widening of East Second Street, pedestrian safety when crossing the streets in the area, inadequate mitigation measures,

additional vehicles traveling on Lake Herman Road, proposed shuttle service not being the hybrid type as they had previously suggested, inviting smaller clean tech businesses into the area, and the fact that the Green Gateway Group is eager to build and have a project, but Council has to vote no tonight.

Mark Wolfe, Counsel, Green Gateway Group, lodged an objection to the comments being limited to the supplemental traffic study. He discussed concerns relating to the limitations on comments, the revised statement of overriding considerations, and the rules of the Brown Act.

Ms. McLaughlin discussed Council's ability to beef up the findings on the statement of overriding considerations if it approves the project (if the resolution is adopted).

Mr. Wolfe discussed the levels of service at East Second Street and Military, new significant impacts, the fact that the public has not had an opportunity to review and provide a meaningful critique of the analysis, the supplemental traffic study needs to be re-circulated in the form of a subsequent EIR, Council's ability to determine whether the benefits of the project are sufficiently well defined to justify suffering the environmental costs, the EIR, and CEQA requirements. He stated that the project imposes environmental impacts. It is not worth it. Council should not be afraid to make that decision.

Benicia Unified School District:

Janice Adams, Superintendent, Benicia Unified School District (BUSD), discussed concerns regarding the health and safety of the students at Robert Semple. She stated that BUSD's consultants reviewed the traffic study. She discussed their lack of time to review the study. She discussed the issue of traffic safety. BUSD felt that the project should not be approved due to the negative impacts of the increased traffic.

Rosie Switzer, BUSD School Board President, stated that the District's priority is the health and safety of the students. She stated that until an agreement is made to erase anything bad with air quality, sound quality, traffic problems, etc. Council should not approve the project. We need to put the youngest community members first.

Council Member Schwartzman asked what things needed to be in writing. President Switzer stated it was having the air filtration system connected to HVAC, replacing all windows with double paned glass, noise reduction (sound wall), safety for kids walking, safety for people driving, and upgrades to the pedestrian tunnel. She stated that BUSD had given a list to Discovery Builders, Inc. with its concerns; however, it had not yet received a response from them.

Andre Stewart, Trustee, BUSD School Board Trustee, discussed asthma issues possibly caused by living by the train tracks in Chicago, the issues of unintended consequences, the need to do it correctly to avoid future litigation, reduced attendance at school due to illness, and the difficulty the District will have with recruiting teachers to the site.

Public Hearing Opened

Public Comment:

1. Brooks Peddler - Mr. Peddler spoke in support of the project. He discussed various positive aspects of the project and what it would do for Benicia.
2. Sabina Yates – Ms. Yates spoke in opposition to the proposed project. She discussed her grandchildren attending Robert Semple, air pollution in the Robert Semple neighborhood.
3. Elaine Estrada – Ms. Estrada spoke in opposition to the proposed project. She discussed the issue of environmental health and safety, air pollution, traffic impacts in the area, overriding considerations, and AB 32. She urged Council to vote no on the project.
4. Alan Shore – Mr. Shore spoke in opposition to the proposed project. He collected 14 signatures from local merchants (copy on file). He discussed there being better options available that will incorporate the First Street merchants in the future, Benicia’s General Plan, and the effects the development would have on the First Street merchants.
5. Julie Chiodo – Ms. Chiodo spoke in opposition to the proposed project. She discussed the health and safety impacts the project would have on the kids at Semple.
6. Bill Cawley – Mr. Cawley spoke in favor of the proposed project.
7. Rod Cameron – Mr. Cameron spoke in favor of the proposed project. He discussed jobs, employment rates, traffic impacts, and the need to move forward.
8. Donald Dean – Mr. Dean discussed the project, conditions of approval, mitigation measures, air quality threshold, air quality impacts, land use changes and transportation changes that would reduce the greenhouse gas levels. He asked that all restrictions on public comment be withdrawn if this item is continued.
9. Steven Abrams - Mr. Abrams spoke in support of the proposed project. He discussed the accuracy of the traffic study.
10. David Lockwood – Mr. Lockwood discussed concerns regarding traffic impacts and pollution. He spoke in opposition to the proposed project.
11. Tony Johnson – Mr. Johnson spoke in opposition to the proposed project. Robert Semple Elementary is not prepared for the impacts of the project.
12. Phil Garrett – Mr. Garrett spoke in favor of the proposed project.

Council discussed reducing the time for public comment due to the late hour. Council decided not to formally reduce the time people are allowed to speak, but asked the public to keep their comments brief and to be courteous to others and the situation.

13. Brian Tulloch – Mr. Tulloch urged Council to act as stewards of the City. He discussed the need for balance.
14. Joe Kearns – Mr. Kearns spoke in opposition to the proposed project.
15. Jerome Page – Mr. Page spoke in opposition to the proposed project. He discussed how traffic would affect the children’s health, increased air pollution generated by idling cars, and AB 32.
16. Nicole Byrd, Greenbelt Alliance – Ms. Byrd spoke in opposition to the proposed project. She discussed the City’s General Plan.

17. Gary Dias – Mr. Dias spoke in opposition to the proposed project. If the school was not there and the project was approved, would counsel approve building a new school in the same location? He discussed the health and safety of the children.
18. Norma Fox – Ms. Fox spoke in opposition to the proposed project. She discussed the shuttle bus system at Lawrence Laboratory in Berkeley, and the health and safety issues the increased traffic would cause.
19. Dan Smith – Mr. Smith spoke in opposition to the proposed project. He discussed the consensus the community has seemed to reach, and the possibility of moving Robert Semple to the Mills site.
20. Keith Dias – Mr. Dias spoke in favor of the proposed project.
21. Bob Craft – Mr. Craft spoke in favor of a project, however, he was concerned about the impacts of increased traffic and pollution that will result from the proposed project.
22. Jon Van Landschoot – Mr. Van Landschoot spoke in opposition to the proposed project. He discussed concerns regarding the health and safety of the kids.

Public Hearing Closed

Rebuttal:

Ms. Kristina Lawson, Miller Starr Regalia, stated that the project was conceived 24 years ago. Her client agreed to all conditions of approval brought forward by the City. The EIR was certified in February 2008. That document contained the threshold of significance by which this project will be evaluated. The impacts identified in the supplemental traffic analysis are outside of the CEQA analysis. The impacts identified in the supplemental traffic analysis are outside of the CEQA process. It is not a CEQA document. Her client has responded to the information included in letters received by the City from both M. R. Wolfe & Associates and Miller Brown and Dannis. The information in the letters mirrors comments that have already been made throughout the process by various people. Her client has responded to those previous comments. They wanted to incorporate, by reference, the response to those previous comments.

Mayor Patterson called for a 5-minute break at 10:22 p.m.
The meeting was reconvened at 10:34 p.m.

Council and Staff discussed the traffic study and CEQA document, the study not being part of the CEQA documentation, additional impacts identified in traffic study, the addendum being a flawed process, the addendum being the appropriate document, that the supplemental traffic study was a project condition - not a CEQA condition, the addendum not being the appropriate document, changes between the 2007 and 2008 projects, the flawed process with the addendum, delays in the process, that the problem with the process has been the project, and that the 2007 project was rejected because it was not consistent with the City's General Plan.

Council asked applicant if they were willing to commit to the items listed by President Switzer to address BUSD's concerns. Sal Evola, Discovery Builders, Inc. stated that they were in preliminary discussions with BUSD. He does not have a problem with the items

as enhanced mitigation; however, where it got derailed was when he received a full needs assessment and analysis to Robert Semple which included kitchen equipment, painting, etc. What they are willing to commit to, in addition to the six items listed in the traffic study are funding for HVAC filtration upgrade, replacement of windows to address noise concerns, lighting improvements, miscellaneous improvements to the pedestrian tunnel, and miscellaneous sidewalk improvements to Hillcrest Avenue between East Second and East Third Streets.

Council and Staff discussed AB 32, air quality, cumulative impacts, case history relating to this situation, not trading traffic for human health and safety, the need to come up with something everyone can be happy with, the Attorney General's rules for greenhouse gasses, Mayor Patterson's grade for the project (C), the need for an A+ project, the need for grid or modified street pattern, mixed use, performance measures, phasing the project, green technology, creating a project that further minimizes the traffic, public transportation to and from the area, a landscaped sound wall, the issue of the project being in the works when Mills was closed, and the possibility of swapping the Mills and Robert Semple sites.

Council and Staff discussed concerns relating to traffic and transportation, the need for the overriding condition to position the City to deal with today's issues and future issues, getting away from having to deal with cars, having a community advisory panel (CAP) review the process, the need to have a shuttle service, the need for the shuttle service to be hybrid or electric busses, the need for the developer to be open to assisting the City in converting its diesel fleet to a clean fleet, the need for the developer to help fund a citywide transit study, how similar studies vary in findings, that there were various definitions for what an A+ project would be, not wanting to choose between dollars and health, having the establishment of the CAP as part of the project, adding the additional mitigation measures that the applicant agreed to (as stated by Mr. Evola) to the conditions of approval, various requirements of AB 32, addressing issues with trucks and delivery vehicles, low or zero emission vehicles, the need to promote ride sharing programs, car sharing programs, neighborhood electric vehicle program, having a bicycle pool, increasing the cost of driving and parking private vehicles, transportation center, the need to provide incentives, the need for a transportation assessment district, community facilities district, phasing, pads for green tech and bio tech, getting the applicant to agree they will not protest or sue over traffic impact fees, instituting an idling ordinance, determining the consequences of urban decay, having the applicant pay for independent urban decay study, having the recommendations binding as approved by the CAP, and the applicant paying the existing traffic impact fees, the flawed process, the tremendous opportunity for the community to develop itself and increase revenues, the need for the project to conform to the City's General Plan, rearranging the distribution of land use – retail and commercial - to make a huge impact on the traffic, the need for a significant difference in the site design of the project in order to make a significant difference in vehicle miles traveled, concerns regarding the project and economics, the City's criteria for the Master Plan, topography relating to the project – slopes over 10%, criteria for 'whenever possible', congestion management success, the need to ensure all the infrastructures are fulfilled through the community facilities district, the I-680 mitigation measures that have been identified not being on the MTC funding list, including the

addendum comments on the record of proceedings, lumen standards, and the financial impacts of asking the developer to pay the 2008 traffic impact fees as opposed to the 2002 fees (\$3.4 million).

Mr. Evola stated that he was okay with additional four mitigations for Robert Semple as previously stated on the record – in addition to the six mitigation measures that were listed in the supplemental traffic study. The CAP would be acceptable if it had oversight and make recommendation as to how the project complies with AB 32 now as well as into the future, implementation of the TDM Measures, and site planning. Regarding the comment about going after clean tech – that is already an existing condition of approval - #13. Discovery Builders’ broker understands the conditions, mitigation measures, and goals of the project. Mr. Evola stated that he was committing to that. He believed that the issue of phasing flexibility is addressed in condition of approval #91. Regarding the shuttle service to Downtown - condition of approval #98 (k) provides for implementation of the TDM Plan. Discovery Builders, Inc. has to participate in and implement it. The only aspect that has been discussed that is not in the TDM Plan is the requirement that the shuttle be clean – either electric or natural gas. He did not have a problem with that. The issues of the revenue sharing agreement and converting existing busses to clean vehicles - that revenue sharing agreement is condition #207, which has been worked out with Staff. That can’t be negotiated tonight. It has to come back to Council. However, they can advance the fees so there is no out of pocket cost to do the conversions. Regarding the traffic impact fees – the amount might not seem like a lot, but the City has gotten a lot out of this project, fire, police, etc. The project is already paying its own way. It is a zero out-of-pocket cost to the City for police, fire, public safety, etc.

Council and Staff discussed the issue of implementing a CAP.

Dana Dean discussed her experience in serving on the Valero CAP. The CAP has no authority to determine policy or affect the determinations of the Council. It only communicates with Council through the council member. Council would need to give the CAP some authority with the HPRC or another committee. It is not appropriate to make such a decision at 1:00 a.m. What has been discussed tonight does not approach what the BUSD thinks needs to be done regarding the project.

Verbatim Discussion (as requested by Council) disk #2 19:38 – 30:34:

Vice Mayor Campbell: Well, I think it’s time to take a vote. You know, we’ve got a resolution here that is to, yours to deny, this one says to accept the Business Park, and so I’m going to make a motion to vote on this. A resolution of the City Council of the City of Benicia adopting the addendum to the Benicia Business Park Final Environmental Impact Report, adopting findings related to the project, and a Statement of Overriding Considerations, and approving the Mitigation Monitoring and Reporting Program for the project. And that’s the one that has that we’re accepting the unavoidable impacts and the one to accept the...

Mayor Patterson: That’s at page 45?

Vice Mayor Campbell: Yes.

Council Member Hughes: Heather has the...

Mayor Patterson: City Attorney?

Heather McLaughlin: As I mentioned earlier this evening, we can beef up the findings for the Statement of Overriding Considerations if this is the resolution Council wants to adopt. There's been plenty of testimony, and certainly plenty of stuff in the record to support the findings, contrary to what some people have said tonight. But if you would like me to connect the dots, I can do that. Like, for Finding A, regarding jobs, the Addendum estimates that there are 5,000 new jobs, and these jobs are going to reduce the commute, and as has been mentioned, they're going to provide higher quality jobs with green tech, clean tech slant. The General Plan, if you will look on Table 4 of the draft Addendum, on page 17, it goes on for several pages on how the project is consistent with the General Plan, which is the governing body, the governing document for the City. As for item C, the tax bases and services, the previous EIR and economic study estimated that there would be \$40 million surplus funds after funding everything. Over a 25-year period, that number is going to be less, since the project is smaller, but it's still going to be substantial. And maybe more importantly, we're going to get the police, fire, and corp. yard things that have been mentioned earlier. So, that economic development aspect is pretty important. Hillside, creeks – the project has been redesigned to provide better hillside and creek preservation. I think, truly, even though they may not be as much as we want them to be, the conditions in this project really lead it to be on the cutting edge of what a green commercial and industrial project can be. As we noted earlier, we can't find a built project that would be as fabulous as this one, in terms of greenness and AB32 compliance. So, I think it will be an example for other cities on how to do something right. It provides plenty of trails and open space, recreational opportunities for the public that aren't currently available. The project provides that 60% of the land will be kept for open space, including the buffering of development from Lake Herman views. The retail leakage noted in the EIR of \$28 million, (that's the Final EIR) will be captured, and will result in sales tax revenue, jobs, and reduced vehicle miles. The alternative modes of transportation included in Condition 98, and some of the other ones, including funding public transit, bikeways, and other things, are a good thing that we would not get otherwise. And, I think that's just a quick summary of some of the benefits the project will give us if Council chooses to approve it. And those items should be included in the overriding considerations.

Mayor Patterson: Okay, when we have a second, we can discuss that if necessary. Is there a second to the motion?

Council Member Hughes: Can I get a clarification?

Mayor Patterson: On the motion?

Council Member Hughes: On the motion. So, you're taking the Staff's recommendation to approve the project. But, I want to make sure that it includes the additional conditions that the applicant committed to tonight.

Vice Mayor Campbell: Actually...Okay, we will do that.

Council Member Hughes: Okay, I will second then.

Heather McLaughlin: Or, should those conditions really be in the next resolution, because that's the resolution with the Conditions of Approval. I think the conditions that they've talked about...

Council Member Hughes: Yeah, that's fine. I second the motion.

Mayor Patterson: Okay, again, then can we restate the motion please? City Clerk?

Lisa Wolfe: (inaudible)

Mayor Patterson: Well, the resolution of the City Council of the City of Benicia, adopting the Addendum to the Benicia Business Park Final Environmental Impact Report, adopting findings related to the project, and a Statement of Overriding considerations, and approving the Mitigation Monitoring Program. So, we actually would discuss what you just presented orally.

Heather McLaughlin: Yes, please.

Mayor Patterson: And then, the conditions would go, what's the page number in the packet for the next...

Vice Mayor Campbell: Page 45.

Mayor Patterson: Yeah, I've got page 45, but...

Heather McLaughlin: Page 45 is the actual resolution itself. Page 47 is where the findings begin. But the Overriding Considerations is on...

Mayor Patterson: Well, I will vote against this because, as I have said, I don't consider the Addendum as the appropriate approach to this project, because it is a new project. And I certainly don't agree that...

Council Member Hughes: Excuse me, but a point of order. We have a motion and a second? Are we not going to take roll?

Mayor Patterson: Yes, we do, and I'm discussing how I would vote.

Council Member Schwartzman: Well, we're open for discussion.

Mayor Patterson: And, well, I have tried to have why I voted on the record, and I have not succeeded in doing that, thank you. Therefore, I'm making it clear at the beginning why I'm going to vote the way I am, so it's in the record. And, that I don't agree with all the statements in the Overriding Findings. Many of the benefits are the results of the

project, and they would be subject to mitigation. And, I do agree with the idea that we want to have jobs, but I have no certainty that these jobs are going to benefit Benicia. And we're operating off of an economic study that was done in the early 2005, if I remember correctly. And you all might have noticed that our economy is not the same as it was in 2005. At the very least, we should take a look at what that means. So there's just a host of things which could be remedied, by the way, and hope springs eternal, that perhaps, by denying this, we can actually get to the project that we want.

Council Member Ioakimedes: I have a question for the City Attorney. The motion that's on the floor right now, is the resolution that is on page B45? There will be another motion for the one on page B47?

Heather McLaughlin: No. There will be another motion if you approve B45, to approve the resolution that's on page 183. The part that's on 47, and the part that's exhibit B, which is on page 110, will be included as part of the resolutions, so you don't need a separate action on those.

Council Member Ioakimedes: But if there's a vote to deny, then there isn't any subsequent vote, is there?

Heather McLaughlin: Right.

Council Member Ioakimedes: Okay. Thank you.

Council Member Schwartzman: Thanks, Mayor. Okay, so I just heard from the developer that the developer would agree to a whole bunch of conditions that improve the project, I think, dramatically. And, are we going to have an opportunity, if by chance the first one passes, an opportunity to ask the developer for some more conditions? Or, are we done?

Heather McLaughlin: No, you can ask the developer for conditions or for clarification before you go on to the next resolution.

Council Member Schwartzman: Okay, so if the one we've got on the table now passes, we can go back to the table and think about other conditions. If the one that we have on the table now fails, we don't go any further, we're done. Is that the way I understand it?

Heather McLaughlin: Well, then I would suggest that we do a resolution of denial. You all could direct me to go back, using the model from June 3rd, with the findings or whatever you came up with.

Council Member Schwartzman: Okay, well, I just think we're getting pretty close to being able to get a bunch of stuff done. I just heard the developer agree to a lot of things, and I think there's maybe a few other conditions we can get in there, which are pretty much... The whole idea of a CAP... We haven't had a chance to discuss the CAP, what that would be, if there's teeth, or anything else. When could we do that?

Mayor Patterson: Well, you... The discussion on the conditions would come after the vote.

Council Member Schwartzman: But only if it passes.

Mayor Patterson. Right. But if it's a fatally flawed environmental process...

Council Member Schwartzman: It's okay. I understand. That's a difference. Well, I don't feel that it's fatally flawed as far as that's concerned. I would like to support this one so we can get at the conditions, okay, and really beef this up, and get pretty much everything we've been asking for. So, that's the direction I'm going.

Mayor Patterson: Okay, any further discussion? Call for the vote please? Ms. Wolfe?

Lisa Wolfe: Council Member Campbell?

Council Members Campbell: No.

Lisa Wolfe: Hughes:

Council Member Hughes: Yes

Lisa Wolfe: Ioakimedes?

Council Member Ioakimedes: No.

Lisa Wolfe: Schwartzman?

Council Member Schwartzman: Yes.

Lisa Wolfe: And Mayor Patterson?

Mayor Patterson: No.

Heather McLaughlin: Alright, so since you didn't approve...

Mayor Patterson: So, we give direction to Staff to prepare a resolution of denial for the 'Approving a Vesting Tentative Map, Master Plan Overlay, and rezoning for the Benicia Business Park Project, with conditions.'

Heather McLaughlin: Yes, the works.

Mayor Patterson: Thank you. Anything else on our agenda?

Council Member Schwartzman: I don't think so.

Mayor Patterson: Without objection, we are adjourned.

RESOLUTION 08- - A RESOLUTION ADOPTING THE ADDENDUM TO THE BENICIA BUSINESS PARK FINAL ENVIRONMENTAL IMPACT REPORT (EIR), ADOPTING FINDINGS RELATED TO THE PROJECT, AND A STATEMENT OF OVERRIDING CONSIDERATIONS, AND APPROVING THE MITIGATION MONITORING AND REPORTING PROGRAM FOR THE PROJECT

On motion of Vice Mayor Campbell, seconded by Council Member Hughes, the above Resolution was not adopted, on roll call by the following vote:

Ayes: Council Members Hughes and Schwartzman

Noes: Council Members Campbell, Ioakimedes, and Mayor Patterson

ACTION ITEMS:

None

INFORMATIONAL ITEMS:

None

COUNCIL MEMBER REPORTS:

None

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 1:16 a.m. on 10/8/08

Lisa Wolfe, City Clerk