

October 14, 2010

BENICIA PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS

REGULAR MEETING AGENDA

Thursday, October 14, 2010

7:00 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. ADOPTION OF AGENDA

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III. OPPORTUNITY FOR PUBLIC COMMENT

This portion of the meeting is reserved for persons wishing to address the Commission on any matter not on the agenda that is within the subject jurisdiction of the Planning Commission. State law prohibits the Commission from responding to or acting upon matters not listed on the agenda.

Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN

B. PUBLIC COMMENT

IV. CONSENT CALENDAR

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Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker slip for that item.

*Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.

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A. Approval of Minutes of September 8, 2010

B. Approval of 2011 Planning Commission Meeting Schedule

V. REGULAR AGENDA ITEMS

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A. USE PERMIT FOR 257 ESSEX WAY, MODIFICATIONS TO AN EXISTING T-MOBILE WIRELESS COMMUNICATION FACILITY

PROPOSAL:

The proposed modifications to the wireless facility include installation of three (3) new equipment cabinets that measure approximately 18" x 18" each within the equipment enclosure of the existing wireless communication facility adjacent to the existing water tanks at 257 Essex Way. The purpose of this request is to provide fiber optic cable to enhance service for customers. The Ciena, UAM, and NEMA boxes will be mounted on an H-frame and painted to match the existing equipment. The Benicia Municipal Code requires a Use Permit for installation of all wireless communication facilities in all zoning districts

Recommendation:

Approve the Use Permit (10PLN-00048) to install three (3) new equipment cabinets that measure approximately 18" x 18" each within the equipment enclosure of the existing wireless communication facility adjacent to the existing water tanks at 257 Essex Way based on the findings, and subject to the conditions listed in the proposed resolution and as discussed during the public hearing.

B. APPEAL OF THE DECISION OF RECORD OF THE PUBLIC WORKS AND COMMUNITY DEVELOPMENT DIRECTOR DENYING AN APPEAL OF THE LOCATION OF A SECOND LOADING SPACE AT ROSE CENTER

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PROPOSAL:

On July 16, 2010, Mary Wika filed an appeal of the approval by Planning Division staff of the location of a second loading space at Rose Center pursuant to Condition #5 of City Council Resolution No. 10-63. Condition #5 of the resolution required that Rose Center maintain a total of 146 parking spaces and add one new loading zone. The appeal was heard on August 11, 2010 by the Public Works and Community Development Director, and the decision of record was made on August 16, 2010 denying the appeal of the location of the second loading space. On August 26, 2010 Mary Wika filed an appeal of the decision of record denying the appeal of a second loading space at Rose Center, 2100 –2158 Columbus Parkway.

Recommendation:

Adopt a resolution to deny the August 16, 2010 appeal of the Decision of Record of the Public Works and Community Development Director of the City of Benicia denying the July 16, 2010 appeal of the location of a second loading space at Rose Center, located at 2100 - 2158 Columbus Parkway.

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VI. COMMUNICATIONS FROM STAFF

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VII. COMMUNICATIONS FROM COMMISSIONERS

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VIII. ADJOURNMENT

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Public Participation

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The Benicia Planning Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Planning Commission allows speakers to speak on agenda and non-agenda matters under public comment. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Planning Commission.

Should you have material you wish to enter into the record, please submit it to the Commission Secretary.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Valerie Ruxton, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Commission discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action the Commission may take.

The Planning Commission may not begin new public hearing items after 11 p.m. Public hearing items, which remain on the agenda, may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Planning Commission decisions that are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Public Works & Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Public Works & Community Development Department during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Public Works & Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Gina Eleccion, Management Analyst, as soon as possible so that it may be distributed to the Planning Commission.

 [Draft Minutes from September 8, 2010 Meeting](#)

 [2011 Planning Commission Meeting Schedule](#)

 [Use Permit for 257 Essex Way -- T-Mobile -- Modifications to existing wireless communication facility](#)

 [Appeal of Decision of Record denying appeal of second loading space at Rose Center](#)

DRAFT



**BENICIA PLANNING COMMISSION
CITY HALL COUNCIL CHAMBERS
REGULAR MEETING MINUTES**

**Wednesday, September 8, 2010
7:00 p.m.**

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

Present: Commissioners Richard Bortolazzo, Don Dean, Rick Ernst, Rod Sherry
Brad Thomas and Chair Dan Healy

Absent: Lee Syracuse

Staff Present: Lisa Porras, Senior Planner
Heather McLaughlin, City Attorney
Kathy Trinque, Administrative Secretary

C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. ADOPTION OF AGENDA

On motion of Commissioner Dean, seconded by Commissioner Bortolazzo, the agenda was adopted by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Sherry, Thomas and Chair Healy

Noes: None

Absent: Commissioners Ernst (arrived late) and Syracuse

Abstain: None

III. OPPORTUNITY FOR PUBLIC COMMENT

A. WRITTEN

None.

B. PUBLIC COMMENT

None.

IV. CONSENT CALENDAR

On motion of Commissioner Sherry, seconded by Commissioner Dean, the consent calendar was adopted by the following vote:

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

A. Approval of Minutes of August 12, 2010

V. REGULAR AGENDA ITEMS

A. USE PERMIT FOR WIND ENERGY/ WIRELESS COMMUNICATION FACILITY PROVIDED BY ISYSTEMS TECHNOLOGY AND LOCATED AT 257 ESSEX WAY

PROPOSAL:

Isystems Technology's proposal is to install a wind energy powered wireless communication facility at 257 Essex Way. This facility would provide wireless service to customers within the Industrial Park where it is currently not available. The wind energy component generates electricity for the antenna mast that distributes internet signals to a number of locations throughout the Industrial Park and will not be on PG&E's power grid. The Benicia Municipal Code requires a Use Permit for installation of all wireless communication facilities in all zoning districts. In addition, the installation of a wind energy conversion system requires a Use Permit in every zoning district.

Lisa Porras, Senior Planner reviewed the details of the proposed project. As a condition of approval, the City will also require a noise study be completed before the Use Permit is issued.

Recommendation:

Staff recommended that the Planning Commission approve the Use Permit to install a new wind energy/wireless communication facility consisting of: (a) one wind turbine attached to a ground-mounted pole measuring 21 feet 8 inches from grade to top of blade in vertical position, and (b) one antenna mast attached to a ground-mounted pole measuring 15 feet total in height and associated equipment located near the water tanks at 257 Essex Way, based on the findings, and subject to the conditions listed in the proposed resolution and discussed during the public hearing.

Planning Commission Questions:

Commissioner Bortolazzo questioned whether a noise study was performed from the backyards of the adjacent residences. He also asked if the wind turbines could be turned off?

Ms. Porras explained that the noise ordinance does require that measurements take place at the property line, either the resident's or the City's. The ordinance sets forth standards for ambient noise levels by day, evening and sleeping hours and allows equipment to be a maximum of 5 decibels above these standards. The applicant can respond to the question about turning the turbines off.

Commissioner Thomas asked how the turbines will look in relation to the existing water tanks. What is the height of the water tanks?

Ms. Porras responded that the water tank height measurements are not listed in the staff report but possibly the applicant has that information.

Commissioner Dean asked, regarding the noise levels, is the limit 60 db at the source and no more than 5 additional db at the property line?

Ms. Porras stated that was correct.

Applicant's Statement:

Mark Thieme, architect for the applicant stated that the project is not a cell facility, but a wireless internet facility designed to meet the needs of the industrial park. This location will provide internet service to businesses that currently do not have this service available. The site is contained on a very small footprint and its energy source uses a green approach. The FCC does not regulate this type of antenna. This project uses the same technology as a wireless router. The height of the wind turbine is lower than the existing water tanks and the turbine is a residential type wind turbine. It is safe, small and all components will be painted to blend in with the existing water tanks. The nearest property line is 700+ feet away from the site. Any sound from the turbine should dissipate and not negatively impact adjacent residents. Regarding safety concerns, the turbine is high enough from the ground to accommodate a truck driving under it. It is in a secured facility. Regarding bird safety, the applicant will paint the blades in a black and white checkerboard pattern which research shows allows the birds to see the blades. Regarding City staff's requirement for fencing around this site, the applicant requests that he not be required to fence the site because the entire City site is already fenced and it seems redundant to be required to do so. The applicant is proud to present a "green" project to the City.

Additional Questions from Commissioners:

Commissioner Sherry asked if the frequency would interfere with the City's existing communication tower.

Dean Richards, applicant, responded it would not. It is different technology.

Commissioner Thomas asked if the project includes a mechanism to store energy.

Dean Richards responded that the turbine is hooked up to two batteries – the wind turbine charges the batteries that transmit the signal.

Commissioner Bortolazzo asked if there is a back-up power source for the service.

Dean Richards responded that the batteries provide enough power for up to 10 days without any wind.

Public Comments:

Sue Wickam, of 411 Duvall Court, spoke in opposition of the project. Her concerns included: the project needs CEQA review; large raptor birds inhabit this area and could be in danger from the wind turbine; the project is precedent setting, so a study should be completed first; a better location for this facility would be in the industrial park; would rather see solar or PG&E power used because batteries require maintenance; security is questionable – routinely sees teenagers up on the water tank.

Marilyn Larkin, of 301 Durham Court, spoke in opposition of the project. Her concerns included: the project is not consistent with goal 3.02 of the General Plan; will not be with other towers, but located in a separate place; sound and vibrations will be a nuisance to residents; site is less than 600 ft from Durham Court; suggested re-locating it at the Water Treatment Plant site; suggested the power source be changed to solar; needs further study; safety of the large raptor birds.

Don Larkin, of 301 Durham Court, spoke in opposition of the project. His concerns included: harmful to wildlife; will change the environment; fire hazard caused by wind turbines; noise nuisance to residents; reduce property values and cause health problems for residents.

Rich Kauzer of 520 McCall Drive spoke in opposition of the project. His concerns included: that the use permit is in violation of the General Plan (visual clutter); may need a sound wall to mitigate the noise; bird kills for federally protected birds of prey; turbine is not required for the project; there are other options without visual clutter.

Dan Swienton, of 271 Carlisle Way, spoke in opposition of the project. His concerns included: the categorical exemption 15303 is not applicable – wireless internet service is not a utility; is this a commercial use?; doesn't like to see cell towers; noise; footprint is smaller than the turbine airspace; battery disposal; bird safety; move it to the industrial park; are generators going to be added?

Mike Park of 311 Durham Court, expressed support for the project but also stated his concerns: in addition to sound decibels, he is also concerned about sound frequency; this is a much needed service for the industrial park; he agrees that there are lots of birds that inhabit this area.

Chair Healy asked if the bird research provided by members of the public took into account that this is a small wind turbine rather than a larger commercial type.

Marilyn Larkin responded that her research did take into account the size of this turbine.

Commission Discussion:

Commissioner Bortolazzo asked the City Attorney if a categorical exemption from CEQA is appropriate.

Heather McLaughlin, City Attorney, responded that yes, this section is appropriate for this type of utility.

Commissioner Sherry expressed concern about the visual impact. He would like to see a view study for this project to see if it is visible or blends in with the background of the tank. He requested more information on the batteries. He asked if the internet service would be available for residents as well as the industrial park. He asked staff if they received comments from the Fire Department on this proposal.

Dean Richards responded that the batteries are mounted in steel boxes on a concrete pad. The boxes are locked. The batteries are a gel-type, containing no acid. They are weatherproof and tamper proof. The internet service will only be provided to the industrial park.

Ms. Porras responded that the Planning Division did not receive comments from the Fire Department.

The Commission and staff continued discussing the following items: choice of site location, option of using solar power, visual impact from the surrounding areas, protection of the residents, City's promotion of green projects, and by issuance of a use permit if conditions are not met or problems occur, the use permit may be reviewed or revoked as necessary by the City.

In addition to the conditions included in the proposed resolution, the following conditions were added:

1. Areas around the antenna, support structures, wind turbine and related structures shall be kept clear and free of brush and overgrowth.
2. The blades of the wind turbine shall be painted in black and white to deter birds.
3. Pursuant to Section 17.86.070(D) a six-foot-high safety fence, with locked gate, completely enclosing the base of the wind turbine and antenna shall be installed in such a manner to prevent unauthorized access to the facility.
4. A noise assessment, pursuant to the requirements listed in Appendix I of the City of Benicia's General Plan, shall be required and completed prior to final inspection of the facility. In addition, at least 3 locations shall be assessed, including a location downwind.
5. Periodic review of impacts to birds shall be required. Beginning one month from the date of operation, monthly inspections of the facility shall be conducted by the owner or designee and documented and submitted to the City. Documentation shall

consist of photos and an accompanying count of bird deaths in the vicinity of the wind turbine. Planning staff shall report the findings to the Planning Commission on a yearly basis.

On motion made by Commissioner Dean, and seconded by Commissioner Sherry, the Resolution was adopted with the above listed conditions added and by the following vote:

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

B. VARIANCE TO ALLOW AN EXISTING 20 FT WIDE LANDSCAPE STRIP TO SATISFY THE DESIGN STANDARDS FOR PARKING LOTS IN RESIDENTIAL ZONE DISTRICTS AT 370 EAST L STREET, BENICIA COMMUNITY CENTER

Commissioner Sherry recused himself.

PROPOSAL:

The City of Benicia proposes to make modifications to the former Mills Elementary School for a new community center. This includes creation of a new parking lot. The Benicia Municipal Code Section 17.70.190(E) requires the parking lot to include a 10-foot wide perimeter planting area alongside East L Street. Immediately north of the site's proposed parking lot is an existing 20 ft. wide landscape strip along East L Street located in the public right-of-way. The objective is to utilize a pre-existing site feature and existing surroundings to meet the intent of the City's requirement for a 10 ft. wide landscaped area.

Lisa Porras, Senior Planner, presented illustrations of the overall project, its landscape area and the proposed variance that would include the existing 20' landscaped public right-of-way at the Mills Elementary project site.

Recommendation:

Staff recommended that the Planning Commission hold a public hearing, consider testimony and other relevant documents and approve a Variance from the 10 ft. wide onsite perimeter planting strip requirement at the new Benicia Community Center located at 370 East "L" Street based on the findings, and subject to the conditions listed in the proposed Record of Decision and discussed during the public hearing.

Commissioner Ernst asked staff about maintenance of the 20' wide landscape strip.

Ms. Porras responded that the City would be responsible for maintenance of the landscape strip for the life of the project.

Public Comment.

No comments received.

No further Commission discussion.

On motion of Commissioner Ernst, seconded by Commissioner Thomas, the Resolution was adopted by the following vote:

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

VII. ANNOUNCEMENT FROM STAFF

Lisa Porras, Senior Planner, invited Commissioners and members of the public to a facilitated community workshop for the Intermodal Facilities Project, scheduled on Saturday, September 18th from 8:30 am to 12:30 pm at Benicia Veterans Memorial Hall at 1150 First Street.

VIII. COMMUNICATION FROM COMMISSIONERS

Commissioner Ernst stated his desire for the City to agendaize for a public hearing the concerns recently expressed by members of the public about animal testing businesses being allowed in Benicia.

Ms. Porras stated that she will confer with the Amalia Lorentz, Economic Development Manager, since the Commission had, at a previous meeting, requested additional research before bringing the Zoning Amendment back before the Planning Commission.

IX. ADJOURNMENT

Meeting was adjourned at 8:45 pm.



Public Works & Community Development Department
MEMORANDUM

Date: October 6, 2010
To: Planning Commission
From: Lisa Porras, Senior Planner
Re: 2011 Planning Commission Meeting Schedule

The Planning Commission meeting schedule is listed below for your reference and approval.

January 13, 2011
February 10, 2011
March 10, 2011
April 14, 2011
May 12, 2011
June 9, 2011

July 14, 2011
August 11, 2011
September 8, 2011
October 13, 2011
November 10, 2011
December 8, 2011

**AGENDA ITEM
PLANNING COMMISSION MEETING: OCTOBER 14, 2010
REGULAR AGENDA ITEMS**

DATE : October 4, 2010
TO : Planning Commission
FROM : Sharon Williams, Development Services Technician
SUBJECT : **USE PERMIT FOR 257 ESSEX WAY, MODIFICATIONS TO AN EXISTING T-MOBILE WIRELESS COMMUNICATION FACILITY**

RECOMMENDATION:

Approve the Use Permit (10PLN-00048) to install three (3) new equipment cabinets that measure approximately 18" x 18" each within the equipment enclosure of the existing wireless communication facility adjacent to the existing water tanks at 257 Essex Way based on the findings, and subject to the conditions listed in the proposed resolution and as discussed during the public hearing.

EXECUTIVE SUMMARY:

The proposed modifications to the wireless facility include installation of three (3) new equipment cabinets that measure approximately 18" x 18" each within the equipment enclosure of the existing wireless communication facility adjacent to the existing water tanks at 257 Essex Way. The purpose of this request is to provide fiber optic cable to enhance service for customers. The Ciena, UAM, and NEMA boxes will be mounted on an H-frame and painted to match the existing equipment.

The Benicia Municipal Code requires a Use Permit for installation of all wireless communication facilities in all zoning districts.

GENERAL PLAN:

Relevant General Plan Policies and Programs:

- Goal 2.43: allow installation of telecommunications equipment and distribution networks that maintain and protect health, safety, and quality of life and avoid visual clutter

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #4: Preserving and Enhancing Infrastructure
 - Strategy #3: Address technology needs

BUDGET INFORMATION:

No budget impacts are anticipated.

ENVIRONMENTAL ANALYSIS:

Staff has determined that this project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 that exempts new construction of small facilities or structures.

BACKGROUND:

Applicant/Owner: Sarah Sutton for T-Mobile/ City of Benicia

General Plan Designation/Zoning: Open Space General

Existing use: Public, City of Benicia water tanks

Adjacent zoning and uses:

North: Single Family Residential (RS)

South: Single Family Residential (RS)

East: Single Family Residential (RS)

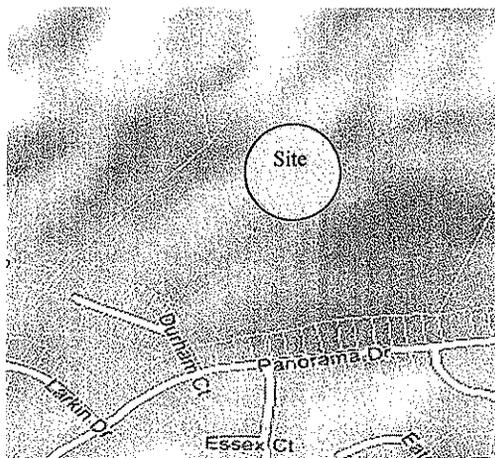
West: Open Space (OS)

SUMMARY:

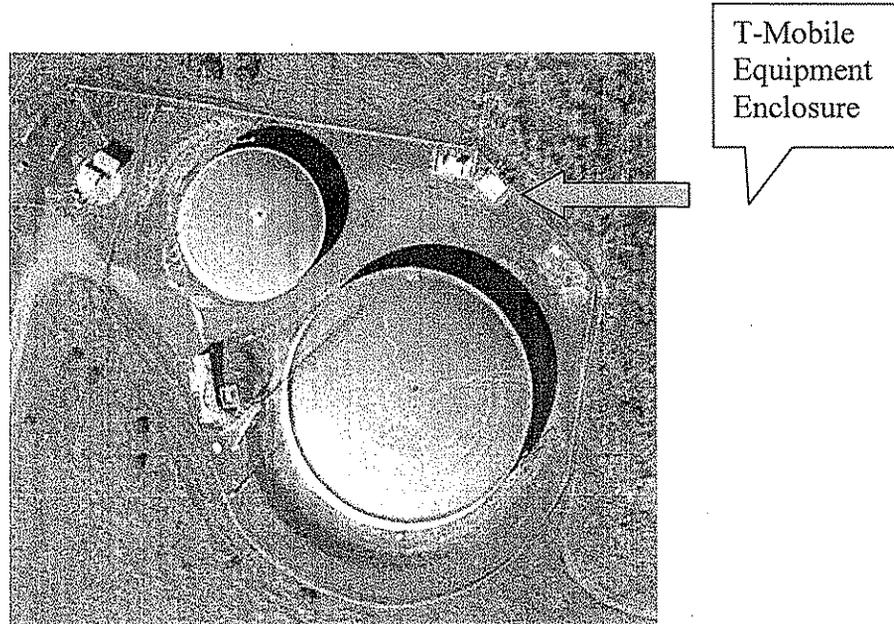
A. Project Description and Location

T-Mobile proposes to install three (3) new equipment cabinets that measure approximately 18" x 18" each within an existing equipment enclosure of a wireless communication facility located next to the water tanks on City-owned property at 257 Essex Way. The cabinets are intended to provide fiber optic cable that will enhance service for customers. The Ciena, UAM, and NEMA boxes will be mounted on an H-frame within T-Mobile's lease area and painted to match the existing equipment.

Access to the facility is via an existing road at the northern terminus of Essex Way.



B. Project Analysis



This site houses two of the City's treated water tanks, which are 20 feet tall and measure 92 feet and 160 feet in diameter. T-Mobile's existing wireless facility is also located at this site. In addition to having several panel antennas around the water tank they also lease a 16' x 12'6" equipment enclosure surrounded by a 6-foot chain link fence.

Zoning Ordinance Consistency:

The site is within the Open Space Zone District. Per Section 17.36.040 of the Benicia Municipal Code, the regulations of the nearest base district shall apply to the use; the nearest zone district is Single-Family Residential (RS), which will serve as the base district for this project.

In addition, wireless communication facilities are regulated under Benicia Municipal Code Section 17.70.250, which sets forth development standards in accordance with federal law and state rules and regulations for antenna and wireless communication transmission.

This project is consistent with the Single-Family Residential development regulations, and is also consistent with the standards for wireless facilities.

General Plan Consistency:

General Plan Goal 2.43 is to "allow installation of telecommunications equipment and distribution networks that maintain and protect health, safety, and quality of life and avoid visual clutter." The installation of the proposed fiber boxes and associated conduit are consistent with this goal because the coverage those customers receive will be expanded and strengthened. In addition, the facility is located adjacent to the existing water tanks in an existing equipment enclosure with T-Mobile's lease area. The facility is also on a site with several other wireless facilities to consolidate the visual clutter.

Public Health and Safety:

The addition of the three (3) new equipment boxes will not increase electromagnetic field levels at this location since there are no changes proposed to the antenna panels. Therefore, the

proposed facility installation will not create any nuisance or be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood.

Findings:

Pursuant to Section 17.104.060, all use permits shall require the following findings:

- a) The Planning Commission finds that the proposed development is consistent with the objectives and provisions of Title 17 of the Benicia Municipal Code and the purposes of the Open Space (OS) zoning district. *The purpose of Open Space is to provide a suitable classification for large public or private sites permanently designated for park or open space use. Utilities are a permitted use in the Open Space zoning district and this site currently houses City water tanks and other wireless communication facilities.*
- b) The proposed location of the wireless communications facility and the proposed conditions of approval will be consistent with the General Plan and with Title 17 of the Benicia Municipal Code and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the proposed use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city. *The proposed facility is in compliance with all FCC regulations and is consistent with the Benicia Municipal Code and the General Plan.*
- c) The proposed use will comply with the provisions of Title 17 (Benicia Zoning Ordinance), including specific conditions required for use in the district in which it will be located. *The proposed wireless communications facility complies with the Benicia Municipal Code, Title 17 and all applicable conditions required in the Open Space (OS) zoning district.*

In addition to the findings listed above, the following five additional wireless communication facility findings are required pursuant to 17.70.250 (H):

- a) The proposed location of the project and the conditions under which it would be operated and maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not be materially injurious to properties or improvements in the vicinity *because the proposed modifications to the wireless facility complies with the prevailing FCC standards and regulations for limiting public exposure to radio frequency energy and is located approximately 700 feet from the closest residence. The proposed equipment boxes will be installed at an existing site that houses City water tanks and several wireless facilities, all of which are surrounded by a fence with a locked gate and not accessible to the general public.*
- b) Development of the proposed facility as conditioned will not significantly affect any designated visual resources, environmentally sensitive resources, community character resources; or, that there are no other environmentally equivalent and/or superior and technically feasible alternatives to the proposed wireless communications facility as conditioned *because this site currently has several existing wireless facilities and the proposed facility would not pose any significant*

impact to surrounding parcels. The proposed equipment boxes will be located inside an existing equipment enclosure within T-Mobile's lease area.

- c) *The proposed facility is in compliance with all FCC regulations because the proposed modifications to the wireless facility complies with the prevailing FCC standards and regulations for limiting public exposure to radio frequency energy.*
- d) *The proposed location and design of the project and the conditions under which it would be operated or maintained will be consistent with all elements of the Benicia General Plan because the use is consistent with the Open Space zoning designation and the City's Zoning Ordinance.*
- e) *The proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be visually compatible with the physical design aspects because the proposed equipment boxes will not be visible because they are inside an existing equipment enclosure, and will not result in visual clutter.*

C. Conclusion

Based on the foregoing analysis, staff recommends that the Planning Commission approve the Use Permit to modify the existing wireless communication facility consisting of installation of three (3) new equipment cabinets that measure approximately 18" x 18" each within an existing equipment enclosure of the wireless communication facility located next to the water tanks at 257 Essex Way, based on the findings, and subject to the conditions listed in the attached resolution and as discussed during the public hearing.

FURTHER ACTION:

The Planning Commission's action will be final unless appealed to the City Council within ten business days.

Attachments:

- Draft Resolution
- Project Plans (Attachment A)
- Photographs (Attachment B)

DRAFT RESOLUTION

RESOLUTION NO. 10- (PC)

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF BENICIA APPROVING A USE PERMIT FOR MODIFICATIONS OF
AN EXISTING WIRELESS COMMUNICATION FACILITY AT 257 ESSEX WAY,
APN: 083-210-210
(USE PERMIT 10PLN-00048)**

WHEREAS, Applied Wireless on behalf of T-Mobile has requested Use Permit approval for modifications to an existing wireless communications facility at 257 Essex Way; and

WHEREAS, the Planning Commission at a regular meeting on October 14, 2010, conducted a public hearing and reviewed the proposed project;

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia hereby approves the wireless communications facility; and

BE IT FURTHER RESOLVED THAT the Planning Commission finds that:

- a) The Planning Commission finds that the proposed development is consistent with the objectives and provisions of Title 17 of the Benicia Municipal Code and the purposes of the Open Space (OS) zoning district. *The purpose of Open Space is to provide a suitable classification for large public or private sites permanently designated for park or open space use. Utilities are a permitted use in the Open Space zoning district and this site currently houses City water tanks and other wireless communication facilities.*
- b) The proposed location of the wireless communications facility and the proposed conditions of approval will be consistent with the General Plan and with Title 17 of the Benicia Municipal Code and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the proposed use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city. *The proposed facility is in compliance with all FCC regulations and is consistent with the Benicia Municipal Code and the General Plan.*
- c) The proposed use will comply with the provisions of Title 17 (Benicia Zoning Ordinance), including specific conditions required for use in the district in which it will be located. *The proposed wireless communications facility complies with the Benicia Municipal Code, Title 17 and all applicable conditions required in the Open Space (OS) zoning district.*
- d) The proposed location of the project and the conditions under which it would be operated and maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not be materially injurious to properties or improvements in the vicinity *because the proposed modifications to the wireless facility complies with the prevailing FCC standards and regulations for limiting public exposure to radio frequency energy and is located approximately 700 feet from the closest residence. The proposed*

- e) *equipment boxes will be installed at an existing site that houses City water tanks and several wireless facilities, all of which are surrounded by a fence with a locked gate and not accessible to the general public.*
- f) *Development of the proposed facility as conditioned will not significantly affect any designated visual resources, environmentally sensitive resources, community character resources; or, that there are no other environmentally equivalent and/or superior and technically feasible alternatives to the proposed wireless communications facility as conditioned because this site currently has several existing wireless facilities and the proposed facility would not pose any significant impact to surrounding parcels. The proposed equipment boxes will be located inside an existing equipment enclosure within T-Mobile's lease area.*
- g) *The proposed facility is in compliance with all FCC regulations because the proposed modifications to the wireless facility complies with the prevailing FCC standards and regulations for limiting public exposure to radio frequency energy.*
- h) *The proposed location and design of the project and the conditions under which it would be operated or maintained will be consistent with all elements of the Benicia General Plan because the use is consistent with the Open Space zoning designation and the City's Zoning Ordinance.*
- i) *The proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be visually compatible with the physical design aspects because the proposed equipment boxes will not be visible since they are inside an existing equipment enclosure, and will not result in visual clutter.*

BE IT FURTHER RESOLVED THAT the Benicia Planning Commission hereby approves the proposed project subject to the following conditions:

1. The plans and maps submitted for approval and development of the site shall be in substantial compliance with the plans dated September 20, 2010, prepared by Peek Site-Com consisting of two sheets on file in the Public Works & Community Development Department.
2. This approval shall expire two years from the date of approval, unless made permanent by the issuance of a building permit and the commencement of work that is diligently pursued to completion. Alternatively, the time period may be extended, by the Public Works & Community Development Director, if the application for time extension is received prior to the end of the initial two year deadline and there has been no change in the City's development policies, which affect the site and there is no change in the physical circumstances nor new information about the project site which would warrant reconsideration of the approval.
3. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.

4. Existing water facilities and appurtenances shall be protected in place. Any damages incurred as a result of this project to City facilities and appurtenances will be immediately repaired at the sole cost and expense of T-Mobile.
5. Antennas, support structures and related equipment shall be removed within 90 calendar days of the discontinuation of the use of a wireless communication facility and the site shall be restored to its previous condition. The applicant shall notify the Public Works & Community Development Department in writing of the intent to remove the facility within 30 days prior to discontinuance.
6. The operator of a wireless communication facility must correct interference problems experienced by any person or entity with respect to equipment such as television, radio, computer, and telephone reception or transmission that are caused by the facility. The operator shall be responsible for all labor and equipment costs for determining the source of the interference and all costs associated with eliminating the interference.
7. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Public Works & Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

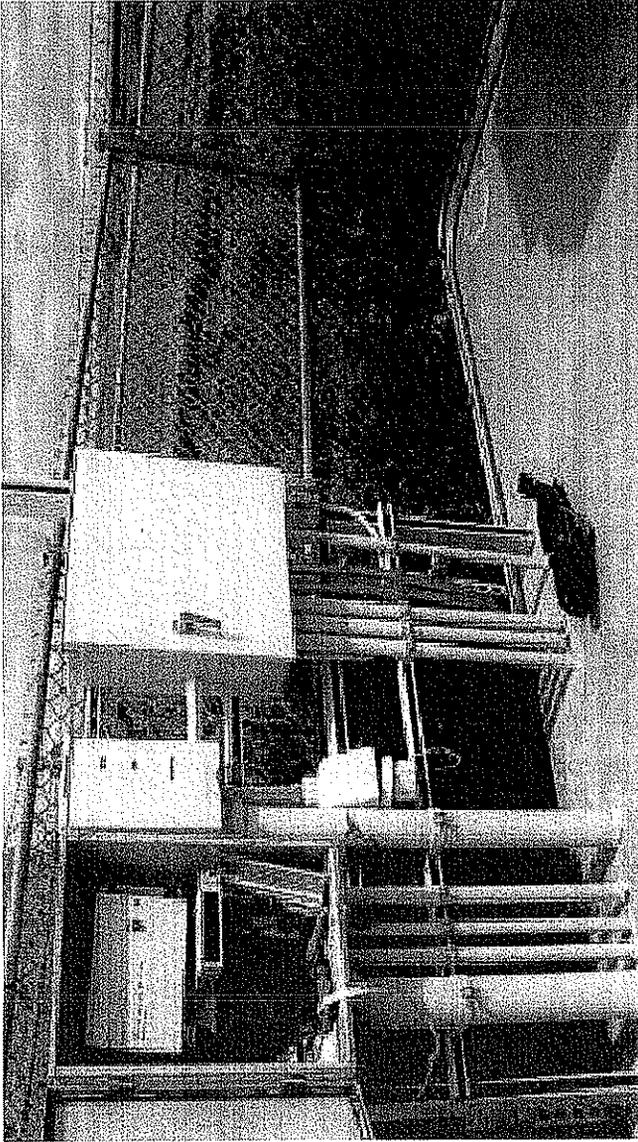
* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on October 14, 2010 by the following vote:

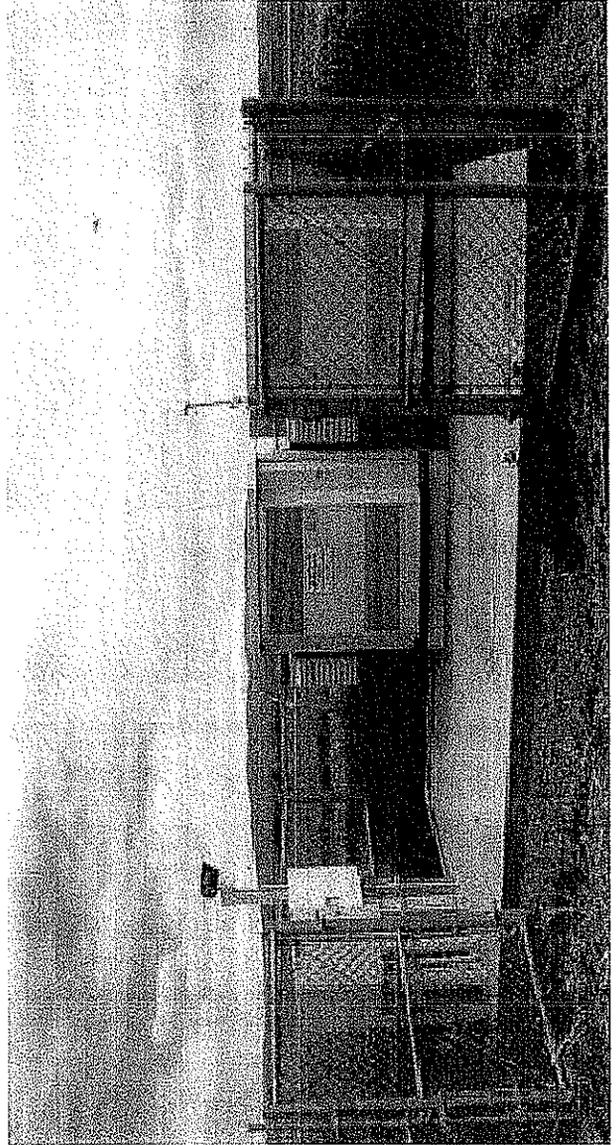
Ayes:
Noes:
Absent:

Dan Healy
Planning Commission Chair

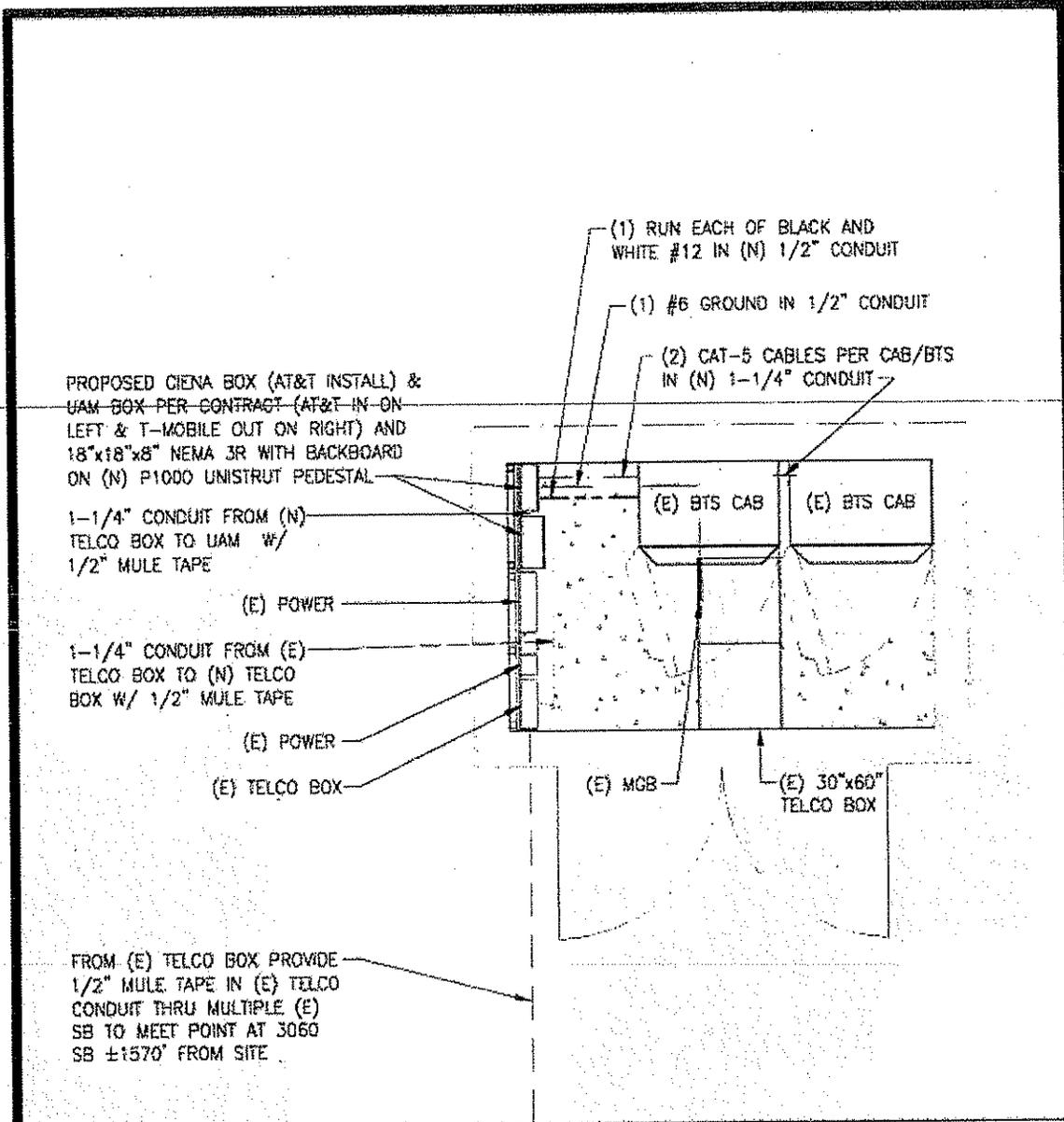
257 Essex Way



T-Mobile Equipment Enclosure - H-Frame and proposed area of new equipment boxes



T-Mobile Equipment Enclosure - Existing equipment enclosure



SCALE: 1/4" = 1'-0"

SITE INFO: SA916 R-13 WATER FACILITY BA00916A 257 ESSEX WAY BENICIA, CA 94510	DRAWN BY: JLEFORD	 1705 CHILDSIDE OAKS DRIVE SUITE 100 SACRAMENTO, CA 95833 PHONE (916) 643-8900 FAX (916) 643-8910
	DATE: 6-8-10	
SITE LAYOUT A-0	REVIEWER BY: MARC HEINTZ	 3700 COMMERCE DR SACRAMENTO, CA 95691 (916) 376-8595
	REVISION:	

P:\1-Mobile Way Proj\2002 Benicia - 211616\HAUGSTEN\BA00916A.dwg, grapp, d8/11/10, 08-09-10

AGENDA ITEM
PLANNING COMMISSION MEETING: OCTOBER 14, 2010
REGULAR AGENDA ITEMS

DATE : October 1, 2010

TO : Planning Commission

FROM : Melissa Morton, Land Use and Engineering Manager/City Engineer

SUBJECT : **APPEAL OF THE DECISION OF RECORD OF THE PUBLIC WORKS AND COMMUNITY DEVELOPMENT DIRECTOR DENYING AN APPEAL OF THE LOCATION OF A SECOND LOADING SPACE AT ROSE CENTER**

RECOMMENDATION:

Adopt a resolution to deny the August 16, 2010 appeal of the Decision of Record of the Public Works and Community Development Director of the City of Benicia denying the July 16, 2010 appeal of the location of a second loading space at Rose Center, located at 2100 - 2158 Columbus Parkway.

EXECUTIVE SUMMARY:

On July 16, 2010, Mary Wika filed an appeal of the approval by Planning Division staff of the location of a second loading space at Rose Center pursuant to Condition #5 of City Council Resolution No. 10-63. Condition #5 of the resolution required that Rose Center maintain a total of 146 parking spaces and add one new loading zone. The appeal was heard on August 11, 2010 by the Public Works and Community Development Director, and the decision of record was made on August 16, 2010 denying the appeal of the location of the second loading space. On August 26, 2010 Mary Wika filed an appeal of the decision of record denying the appeal of a second loading space at Rose Center, 2100 -2158 Columbus Parkway.

ENVIRONMENTAL ANALYSIS:

All potential environmental impacts of the Rose Center project have been covered by the Western Gateway Land Use Plan and Environmental Impact Report (EIR) from 1988/89, and by the subsequent addendum to the EIR prepared for the Use Permit for Parking Reduction in 2010. Additionally, any insubstantial amendment to a project is a ministerial act statutorily exempt from review under California Environmental Quality Act Guidelines Section 15268.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #2: Protecting and Enhancing the Environment
- Strategic Issue #3: Strengthening Economic and Fiscal Conditions

BACKGROUND:

The Western Gateway project and Environmental Impact Report (EIR) was adopted and approved by the City of Benicia in 1989. The proposed project included a request for a 15.3-acre annexation and a 28-acre General Plan amendment and zoning designation for 13 parcels of land. The EIR was prepared to address the potential environmental impacts of proposed land use changes from very low density residential and agriculture to commercial. The proposed land use designations were primarily General Commercial, and the intent of the proposal was to develop retail commercial locations.

The application for Rose Center was first submitted to the City by developer Dirk Fulton in 2002. As initially proposed, it was to consist of two retail office buildings; two restaurants with drive through or take out windows; and a convenience market with a six-pump gas station and car wash. In July 2003, the Planning Commission approved the project, which required four use permits and a zoning variance. One of the use permits was for reduced parking to allow for 144 off street parking spaces, rather than the 237 parking spaces required under Benicia Municipal Code Section 17.74.040. Construction, however, did not begin and the City subsequently granted an extension of time on the use permits and variance through 2006.

In June 2006, the developer requested that the City's Community Development Director approve a modification of the project that would replace the previously approved combination convenience store, gas station and car wash with a drug store. Although the square footage of the drug store was greater than the floor area for the previously approved buildings, its footprint on the site was smaller.

The Community Development Director approved the modifications for Rose Center finding that the site plan changes were "insubstantial" per BMC Section 17.100.050 and in compliance with the conditions required by the 2003 approvals, and that the drug store was a permitted use in the commercial retail zone and did not require a use permit. The Community Development Director also determined that the Planning Commission's use permit for reduced parking would apply to the modified project.

On October 27, 2006, the City issued building permits for the construction of the modified Rose Center. Mary Wika's appeal to the City Council of this action was denied on December 19, 2006. On February 9, 2007, Wika filed a petition for writ of mandate in Superior Court challenging the legality of the land use approvals and issuance of the building permits for the development of Rose Center. Wika alleged that the City failed to comply with CEQA and City planning and zoning laws. However, Wika's attempt to stop the construction with an injunction failed and construction of Rose Center was completed by November 2007.

The court issued a decision in 2008 that agreed with Wika on only one point, which concerned widening Columbus Parkway, the work for which has since been completed at the developer's expense. On July 21, 2008 Wika appealed the trial court's judgment to the Court of Appeal claiming that the modifications to the use and size of the project approved by the Community Development Director required both CEQA review as well as amendments to the use permits approved by the Planning Commission.

In October 2009, the Court of Appeal issued its decision, finding against appellant Wika on all issues except for one: the need for Planning Commission approval of the revised reduced parking permit. The Court of Appeal held that the City's acts in modifying the project and approving the substitution of the drug store for the combination gas station/convenience market and the subsequent issuance of the building permits for the modified project were ministerial, not discretionary. The Court noted that the drug store was a permitted use in the City's zoning code and did not require a new or modified conditional use permit. Consequently, the modification of the project was outside the scope of CEQA.

However, the court held that the modification to the Rose Center project affected the number of parking spaces that would be required under Benicia Municipal Code section 17.104.100 A, and therefore required an amended use permit for reduced parking. This was a decision that needed to go back to the Planning Commission and was outside the authority of the Community Development Director. Consequently, the Court of Appeal remanded this site issue requiring the Planning Commission to determine whether the currently configured shopping center qualifies for a reduced parking permit under BMC Section 17.74.040.

On December 9, 2009, the Planning Commission approved the reduced parking use permit for the Rose Center shopping center. Wika appealed this determination to the City Council, who first reviewed it on January 5, 2010. It was continued to January 19th at the appellant's request. On January 19, 2010 the City Council opened the public hearing on the issue, considered testimony from the public, asked questions of the staff and then directed staff to prepare a more detailed environmental review.

Additional environmental analysis was performed with regard to the reduced parking use permit including parking counts during the busiest part of the holiday season. The appeal was denied, but as part of City Council Resolution 10-63, the applicant was required to maintain 146 parking spaces and add one additional loading zone at the center within 60 days of the effective date of the approval. The loading zone was installed, but the appeal before the planning commission questions whether the turning radius in the vicinity of the loading zone necessary for adequate circulation has been maintained.

SUMMARY:

In the August 26, 2010 Appeal filed by Mary Wika, the first point states that in order to provide the added loading zone, three parking spaces had to be reduced from full sized spaces to compact spaces, which is true. She further states in her appeal that the project had 70 compact spaces already when the code requires that only 43 of the spaces be compact spaces. This issue was addressed in the prior appeal hearing and it was determined that the number of spaces rendered compact spaces as a result of the landscape diamonds was a code enforcement issue. A letter to the property owner (page 13 of 25 of Attachment A) was sent requiring the landscape diamonds to be reduced or a variance requested. The owner chose to reduce the landscape diamonds, and that modification is nearing completion. Consequently, the number of compact spaces created by the landscape diamonds is no longer in question.

The second point made in the appeal states that one of the compact spaces created to accommodate the loading zone is dimensionally non-compliant. Staff measured the spaces in the

field and all three are 9 feet wide, when 7.5 feet is the required width for a compact space; and 15 feet long, which is the required length for a compact space. The appellant also states that the planning director increased the time for the applicant to comply, by granting 30 days to bring the landscape diamonds into compliance. On September 9, 2010, the City received a letter from Dirk Fulton (Attachment C) stating he had hired Fahy Construction to complete the repair work to the landscape diamonds after a competitive bid process had been completed. The construction is nearing completion and the parking lot will be in compliance with the parking requirements in City Council Resolution No. 10-63.

The third point made in the appeal states the Community Development Director's finding #2 does not address her appeal, stating the loading space is placed where a fire apparatus is located. The fire apparatus is a hydrant shown on Attachment D located in the landscape island adjacent to the 3 compact spaces across from the loading zone. The hydrant is not in conflict with the loading zone. The appellant further states that a fire department access road shall have a minimum turning radius of 30-foot inside diameter and a 42-foot outside diameter. The turning template for a fire apparatus is shown on Attachment D and lies well within the adjacent drive aisle. In addition, Division Chief Pete Fiori of the Benicia Fire Department inspected the site, and the loading zone in question, and stated "The loading zone is fine as (it) is. (There is) No problem with fire engine access if (a) vehicle is parked inside the marked area." (Attachment E)

In the appellant's fourth point, she states that she disagrees with the Planning Director's determination that consideration of the overall site plan's parking requirements is outside the scope of the July 16, 2010 appeal in determining whether the second loading area complies with the Benicia Municipal code. The appellant further discusses several different exhibits which she believes are in conflict with each other. Attachment D is an as-built drawing that shows clearly the number of compact parking spaces (42), the number of full size parking spaces (96), the number of disabled parking spaces (8), and the needed turning radius requirements in the vicinity of the loading zone. This drawing shows existing conditions and affirms that the parking requirements and loading zone requirements as required in Condition No. 5 of City Council Resolution 10-63 have been met.

In the appellant's fifth point, she states the applicant has not maintained a total of 146 "Code Compliant" spaces and one additional loading zone as required by City Council Resolution 10-63 as of today (8)7/26/10, and the project site should be deemed to be in violation of the Benicia Municipal Code, and subject to all fines and penalties therein. As a matter of code compliance, the applicant received a letter dated August 16, 2010, stating the landscape diamonds exceeded the 2-foot encroachment allowed for landscaped areas adjacent to parking in Benicia Municipal Code Section 17.70.190. On September 9, 2010, the developer informed the City (Attachment C) he had hired Fahy Construction to complete the repair work to the landscape diamonds after a competitive bid process had been completed. The work is nearing completion and staff believes no fines or penalties for non-performance are appropriate at this time.

RECOMMENDATION

Staff recommends the Planning Commission adopt a resolution to deny the August 16, 2010 appeal of the Decision of Record of the Public Works and Community Development Director of

the City of Benicia denying an appeal of the location of a second loading space at Rose Center, located at 2100 - 2158 Columbus Parkway (Attachment D).

FURTHER ACTION:

The Planning Commission's action will be final unless appealed to the City Council within ten business days.

Attachments:

- A. Draft Resolution
- B. August 26, 2010 Appeal filed by Mary Wika which includes:
 - 1. July 16, 2010 Appeal (Page 4 of 25)
 - 2. Decision of Record dated August 16, 2010 (Page 11 of 25)
- C. Letter from Dirk Fulton regarding compliance work
- D. Map showing fire truck turning movement at loading zone
- E. Email from Division Chief Pete Fiori of the Benicia Fire Department

**ATTACHMENT A
DRAFT RESOLUTION**

RESOLUTION NO. 10 -

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA DENYING MARY WIKA'S APPEAL OF THE DECISION OF RECORD OF THE PUBLIC WORKS AND COMMUNITY DEVELOPMENT DIRECTOR OF THE SECOND LOADING SPACE AT ROSE CENTER, 2100 COLUMBUS PARKWAY.

WHEREAS, the Public Works and Community Development Director made a decision of record on August 16, 2010 which stated that:

1. The additional loading area meets the dimensional requirements of the Benicia Municipal Code Section 17.74.030; and
2. Placement of the additional loading area retains adequate turning area and exceeds the minimum 20-foot requirement for fire vehicles set forth in California Fire Code (2007 edition) Section 503.2.1.

WHEREAS, Mary Wika filed a timely appeal on August 26, 2010; and

WHEREAS, the Planning Commission, as provided for in Benicia Municipal Code Section 17.124, may affirm, modify or reverse the original decision of the Public Works and Community Development Director based on findings such as an interpretation not in accord with the Benicia Municipal Code Title 17, an error or abuse of discretion, the record contains inaccurate information or a decision is not supported by the record; and

WHEREAS, the Planning Commission at its regular meeting of October 14, 2010, conducted a public hearing, heard public testimony and considered pertinent information and documents.

NOW, THEREFORE, the Planning Commission of the City of Benicia hereby resolves as follows:

SECTION 1. Based on the Staff report dated October 1, 2010, and its attachments and the evidence presented at the October 14, 2010, hearing the Planning Commission makes the following findings:

- a) The additional loading area meets the dimensional requirements of Benicia Municipal Code Section 17.74.030; and
- b) Placement of the additional loading area retains adequate turning area and exceeds the minimum 20-foot requirement for fire vehicles set forth in California Fire Code (2007 edition) Section 503.2.1

SECTION 2. The Benicia Planning Commission hereby denies the appeal of Mary Wika, dated August 26, 2010, on items 1 through 3 and does not considered the claims made in items 4 & 5 based on the following findings:

- a) The scope of the appeal is limited to consideration of whether the location of the second loading zone complies with the Benicia Municipal Code, and any consideration of the overall site plan for parking is beyond the scope of this appeal; and
- b) The parking issues raised within sections 4 & 5 of the appeal are properly matters of code enforcement and are addressed as such in separate correspondence to the applicant.

* * * * *

This decision is final unless appealed within 10 calendar days to the City Council by filing the completed appeal form and fee in the Community Development Department during normal business hours.

The foregoing motion was made by _____, seconded by _____ and carried by the following vote at a regular meeting of the Planning Commission on October 14, 2010:

Ayes:

Noes:

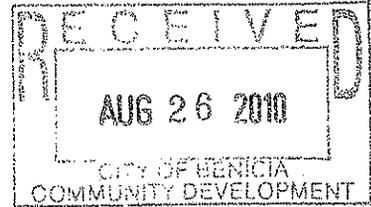
Absent:

Abstain:

Daniel Healy, Chair

Melissa Morton, Secretary

ATTACHMENT B
AUGUST 26, 2010 APPEAL



August 26, 2010

To: City of Benicia Planning Commission

From: Mary Wika

Re: Appeal of "Decision of Record 10-15 of the Public Works & Community Development Director of the City of Benicia denying an appeal of a second loading space at Rose Center"

I am filing this Appeal due to the denial of my appeal that was heard on August 11, 2010 for the following reasons:

1. The Community Development Directors finding #1 that the additional loading area meets the dimensional requirements of Benicia Municipal Code fails to address my appeal in whole or address all code requirements regarding the placement of the loading space.

In order for the applicant to place the loading zone in the current location he had to change three regular parking spaces to compact spaces to make the drive aisle width meet code requirements, thus affecting the overall site plan. The project already had over 70 compact spaces when code requires that only 43 of the spaces be compact spaces, therefore the applicant is not allowed by code to add an additional three compact spaces to achieve the loading space area. The project already failed to be compliant with code requirements of maximum compact spaces allowed.

2. The Planning Director had substantial evidence that the site was not compliant with the maximum compact spaces allowed, in fact one of the non-compliant three compact spaces that was added to achieve the drive aisle width is less than the required size for even a compact space, therefore he erred in his decision in failure to comply with condition #5 of the City Council's Resolution No. 10-63. The Planning Director chose to increase the time that was allowed in Condition #5 by giving the applicant an additional 30 days to comply.

Please see attachment #5, Condition #5. As of 7/19/10 the Planning Director should have started revocation of the "reduced parking use permit" on the grounds that the terms or conditions of approval of the permit have been violated. See Benicia Municipal Code 17.128.060.

3. The Community Development Directors finding #2 does not address my appeal that the loading space is placed in a turning radius where a fire apparatus is located. He

makes his decision based on a 20-foot requirement for the width of a fire road. See California Fire code 503.2.4 Minimum turning radius. A fire department access road shall have a minimum standard turning radius of 30 feet inside and a 42-foot outside diameter. He also does not consider this is a no parking zone because of the fire hydrant. The California Fire Code makes reference to design features which may interfere with emergency responses shall not be installed on fire access roadways. A large delivery vehicle parked in the approved loading zone would create a potentially hazardous situation for all vehicles not only emergency vehicles. See attachment #6 Letter from Smith Engineering & Management.

4. I disagree with the Planning Directors determination that when determining if whether the location of the second loading area complies with the Benicia Municipal Code any consideration of the overall site plan for parking is beyond the scope of my appeal. The City on a consistent basis has provided a variety of site plans which has caused continued problems with the review of this project. Please see attachment #7. (Various site plans provided) The overall site plans submitted do not reflect accurately what is on site.

See attachment #8 email from Mark Rhoades, City of Benicia Planning, he informs me that there is a revised site plan and that the attached site plan replaces the previous that was rescinded. Also as late as late as 8/9/10 the site plan has again been changed with the drive aisle in front of the retail building being reflected as 27' instead of the approved site plan and other plans showing a 30' width. The variability of the drawings and the inconsistencies with what is built and what is shown on plans has created the ongoing problem of being able to review the project.

In order to place the loading zone it has to conform to the overall parking required by the Benicia Municipal Code. You cannot narrow the scope so that all codes that relate to the placement of the loading zone do not apply. In a similar manner the Planning Director states that the size of the landscape diamonds are not within the scope of my appeal, but are a matter of code enforcement. Regardless of how he wants to deal with the code violation of the the landscape diamonds all of these spaces are compact spaces. The site has over 70 compact spaces therefore the loading zone cannot be placed in the current location because there is such a bust on compact spaces. Considering the project has already received nearly a 75% reduction in parking it doesn't seem logical the City would now approve another reduction and allow twice as many compact spaces as the code allows.

5. The applicant has not maintained a total of 146 "Code Compliant " parking spaces and one additional loading zone as required by Resolution 10-63 as of 7/19/10 or as of today 7/26/10. Failure to do so according to Condition #5 to Resolution 10-63 results in the vacation of the use permit and the project site shall be deemed to be in violation of the Benicia Municipal Code, and subject to all fines and penalties therein.

Attachments:

- #1 (7/16/2010 Appeal of "Rose Center Loading Space and Shortage of Regular Parking Spaces Provided")
- #2 (8/11/10 "Appeal of Planning Actions")
- #3 (Decision of Record No. 10-15)
- #4 (8/16/10 Letter to Applicant, Dirk Fulton, from Community Development Director, Charlie Knox)
- #5 (Condition #5 of 5/18/10 Resolution No. 10-63.)
- #6 (Letter from Smith Engineering & Management)
- #7 (Various Site Plans Provided)
- #8 (Email from Mark Rhoades, City of Benicia Planning)

Attachment # 1

July 16, 2010

To: City of Benicia

From: Mary Wika

Re: Appeal of "Rose Center Loading Space and Shortage of Regular Parking Spaces Provided"

I am filing my Appeal due to the July 8th approval of the Loading Zone and the number of regular and compact spaces provided on site for the following reasons:

1. The recent Approved Loading Space is not to City Code Specifications. The site prior to the recent changes far exceeds the maximum compact parking spaces allowed therefore the additional three regular spaces that were changed to compact spaces to provide the driving aisle width are not allowed to be changed to compact thereby leaving the drive aisle over two feet short of the required width. The Loading Space is also placed in a turning radius where a fire apparatus is within the aisle space needed.
2. The project was required to provide 146 parking spaces with a maximum of 43 compact spaces. The current site has over (75) seventy-five compact spaces which is not allowed by City Code Specifications.

Please see the following attachments:

- A. Email from Mark Rhoades of Benicia City Planning to Mary Wika 7/8/10
- B. Email to Mark Rhoades from Mary Wika 7/16/10

(4) of (25)

June 15, 2010

Dear Mark,

I am following up on the email I received from you July 8, 2010 regarding Rose Center. I am unable to withdraw my June 18th appeal. I will also be filing an appeal on the new site plan that was attached to your July 8th email.

I am not sure if you are aware of the differences in the approved plans in 2003 and the changes approved by the Community Development Director in 2006 regarding the placement of the Drive Thru's. The 2003 Plan had the Drive Thru's placed on opposite sides of the site with the exits near the two different driveways where the cars would naturally be more inclined to use the nearest ingress and egress. The changed plan, that was not studied regarding change in building placement, has placed these drive thru's side by side which causes the driveway at the West end of the project to be the one that is used much more often. Cars are maneuvering through parking stalls and such. If you go on any given morning you will observe vehicles veering in and out of the parking stalls around the parked vehicles that are stacked in the line.

The loading zone is located in close proximity to the driveway where the ingress and egress are quite compacted due to the two drive-thru's. It is also located in the turning radius directly adjacent to the fire hydrant, which protrudes out over two feet into the aisle beyond the shortened new compact spaces. I believe the fire code makes reference to a minimum standard turning radius of 30' inside and 42' outside near any fire apparatus access.

You reference in your email section 17.74.110 that you made the three adjacent parking spaces compact and that you believe this is consistent with the code. One problem I find with this is that 17.74.110 states that aisle widths adjoining small car spaces having a base width of 7.5 feet, except where increased by adjoining obstructions shall be 20'. The adjoining obstruction is the planting structure that holds the fire hydrant, which protrudes out in the aisle an additional 2+ ft. The next problem I have with this change is that the project prior to these additional added compact spaces far exceeds the number of compact spaces allowed therefore you cannot add an additional three spaces.

The project is required to provide 146 parking spaces with a maximum of 43 compact spaces. The latest approved site plan which you emailed to me on 7/8/10 depicts 42 compact spaces but in actuality prior to the latest three compact spaces being added there were already over (75) seventy-five compact spaces on site, which all have not been marked as compact spaces.

There are six diamond-shaped planting structures on site. Each structure affects four parking spaces. Each structure protrudes in to the lanes making the tire stop at about 13.5', if you allow

a 2' overhang the spaces are still approximately 2.5' short of the required 18' length of the regular parking space requirements. This adds up to 24 compact parking spaces.

There are six light pole concrete bases placed in parking spaces affecting two parking spaces per light pole base. These bases are approximately three feet high. BMC 17.74.100 states that each parking space adjoining a wall, column, or other obstruction higher than 0.5 feet shall be increased by one foot on each obstructed side. These light poles affect approximately twelve regular parking spaces. I believe one of the poles is next to a diamond planter that I have already counted as compact. So this would add an additional ten compact spaces.

There are three diagonal spaces on the 780 side of CVS which are not marked compact but are compact spaces. The drive aisle width behind CVS is also not wide enough to have two thru lanes.

There are an additional three to four compact spaces throughout the rest of the project that are not marked compact. There are also three to four of the compact spaces that do not even qualify in width for compact spaces.

You mentioned in the email that you hope the information you provided me was satisfactory. No Mark as you can see from the above it was not satisfactory. I believe that you have rescinded two or three other plans for this loading zone prior to this latest approval and evidently no City Inspector has seen it necessary to go out and do some checking themselves. This is why the site plan should have been submitted, inspected and approved before it was allowed to be part of a condition of approval to this project.

The Applicant has not fulfilled the requirements of condition #5, which as of Monday July 19th as stated in the condition the failure to do so shall result in the vacation of the use permit and the project shall be deemed to be in violation of the Benicia Zoning Ordinance and Municipal Code, and subject to all fines and penalties.

I am requesting that you please set the hearing dates for my Appeals.

Sincerely,

Mary Wika

August 11, 2010

Re: **APPEAL OF PLANNING ACTIONS / 2100 COLUMBUS PARKWAY**

On June 14, 2010 I requested information from the planning department regarding Condition of Approval #5 of resolution No. 10-63 of the City Council. I was informed that Mark Rhoades was out of the office and he would be the only one that could answer my questions on this matter. I did not hear back from Mr. Rhoades until I emailed the City Manager and told him that Mr Rhoades did not get in touch with me. I received the attached email on June 17th from Mr Rhoades, which is a letter to Dirk Futon informing him that Rose Center had satisfied Condition of Approval #5 of the parking reduction use permit stating that the restriped spaces and second loading zone were approved. He also stated that this approval superseded a previous approval provided on May 24th that provided only a 10' wide space instead of the required 12' wide space. Attached was an incomplete site plan showing only the second approved loading space as of 6/3/10 and not showing any restriping or total parking spaces.

The following day I filed an appeal because the second space that Mr Rhoades had approved was only 11'2" wide and the drive aisle was over two feet short of the required 24' width. I also not being provided a detail went on the site and found that the 146 spaces required by Condition #5 were not to code.

There was 30 days remaining at this point to bring the site in to compliance.

On July 8th I received an email from Mark Rhoades informing me that he believes that the attached revised site plan meets the zoning requirements and that the attached site plan replaced the previous that was rescinded.

On July 15th I wrote Mark a letter because in his previous email he asked me to let him know what elements of the issue I believed were still inconsistent with the zoning ordinance. In this

letter I pointed out that the new site plan had an additional (3) compact spaces added and the project already far exceeded the number of compact spaces allowed by code. I explained all of the compact spaces on site that I found that were not marked compact which was over 75 and by code was not to exceed 43 compact spaces. There are 24 parking spaces effected by the diamond shaped planters which are all compact spaces. In addition the light pole standards were placed in parking spaces and there were additional unmarked compact spaces on site. I mentioned my concerns with the impacted ingress and egress and that the loading zone is placed in such a close proximity to the fire hydrant and tight turn radius questioning if this works within the code. I reminded him that as of 7/19 the project would be in violation of Condition #5. I appealed the third approved site plan on 7/16. This appeal was based on the site already exceeding the compact spaces allowed therefore they could not add an additional three compact spaces in order to make the drive aisle work with the placement of the new loading space. This again would leave the drive aisle over two feet short of the required width. Even here one of the three compact spaces does not even fit the compact specifications being effected by a diamond planter makes the length of the spaces only 10' 8".

August 2nd I received an email from Mr. Rhoades stating that the applicant for the Rose Shopping Center is in compliance with the use permit issued on 5/18 relevant to the required parking spaces required (146) and the loading space. He then mentions that any appeal at this point is limited to the decision that the Director makes relevant to the layout / location of the loading space. He states that my appeal only pertains to the loading space and not the balance of the parking area that the submittal and approval were completed in the 60 day deadline required of the Conditions of Approval and my appeal of that decision does not put the project out of compliance. That my appeal may require additional site plan modifications, subject to this hearing. He states that the council's approval on 5/18 contains a fairly detailed site plan that appears to show all of the landscape planters, light standards and other items mentioned in the appeal.

First the council's approval was based on a very fuzzy sight plan that did not show the light standards. It does show the landscape planters however they are not to scale they appear to be 2' when they are actually 6'. Next and more importantly condition of approval #5 maintained that the applicant shall provide a total of 146 parking spaces and the additional loading zone. Failure to do so shall result in the vacation of the use permit and the project shall be deemed to be in violation to code and be subject to all fines and penalties.

I would think at this point after all the litigation we have gone through for the past four years and again here on enforcement of a conditions of approval that the City would inspect the project for compliance.

You rescinded the first two site plans and for the third approval were required to add three additional compact spaces but the project already far exceeded what was allowed in the way of compact spaces.

Mr. Rhoades states that because the submittal land approval were completed within the 60 day deadline required my appeal of that decision does not make the project out of compliance. I agree with Mr. Rhoades my appeal does not make the project out of compliance. The City code combined with the condition of approval is what makes the project out of compliance. BMC 1.08.010 states that no person shall violate any provision or fail to comply with any requirement of this code. A person violating a provision or failing to comply with any of the mandatory requirements of this code is guilty of a misdemeanor. It then goes on to mention that each person is guilty of a separate offense for each and every day during the violation.

The project has been in violation of condition of approval #5 since 7/19/2010.

I have brought different site plans that have been supplied to the planning commission, the council and to myself for this matter and they all differ. Even the latest site plan emailed to me by Charlie Knox has included different measurements. This changes the site plan yet again. The drive aisle

on the other site plans between the building with the cleaners and Quiznos has been decreased by three feet in width from 30' to 27'. You already have granted this project an approximate 75% deduction in required parking. I don't believe that in addition by any standards would it now be acceptable to double up on compact spaces.

I have attached a letter from Mr. Smith of Smith Engineering & Management explaining the hazards and safety issues with the latest placement of the loading zone and his comments on the fire truck and other large trucks maneuvering through this tight and compacted area where the second loading zone is located.

On the opposite side of the project you encounter another huge safety issue. When I found the three diagonal spaces behind CVS were also compact and not regular spaces I discovered that no parking would be allowed there by code because the aisle actually is not even wide enough for two way traffic.

I have attached pictures of this area. These parking spaces will have to be removed. The two ballords behind CVS's loading area are 1'6" offset into the drive aisle which 100% of the time they are surrounded by pallets that stick an additional 2' in to the aisle. Also the distance between the trash enclosure and the loading space is only 20' 2", which does not take in to account the ballords. This is not an acceptable aisle by code for two way traffic.

See Attachments:

1. June 18, 2010 Appeal
2. July 16, 2010 Appeal
3. August 10, 2010 Letter from Smith Engineering & Management
4. Pictures behind CVS
5. Rose Center Site plans provided from 12/09 - 8/10

DECISION OF RECORD NO. 10-15

A DECISION OF RECORD OF THE PUBLIC WORKS & COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BENICIA DENYING AN APPEAL OF THE LOCATION OF A SECOND LOADING SPACE AT ROSE CENTER

WHEREAS, on July 16, 2010, Mary Wika filed an appeal of approval by Planning Division staff of the location of a second loading space at Rose Center pursuant to Condition #5 of City Council Resolution No. 10-63; and

WHEREAS, the City Council made specific findings in Resolution No. 10-63 that "the existing shopping center parking arrangement based on the current mix of uses meets the purpose and intent of the parking code detailed in Chapter 17.74 of the Benicia Municipal Code" (Finding #1), and that "the existing parking configuration for the Rose Center shopping center has been more than adequate for the current mix of uses since the shopping center opened in November of 2007" (Finding #2); and

WHEREAS, the City Council in Resolution No. 10-63 imposed, among other conditions, Condition #5, which required Rose Center to maintain a total of 146 parking spaces and add one new loading zone; and

WHEREAS, on August 11, 2010, pursuant to Benicia Municipal Code Section 1.44, the Public Works & Community Development Director held a hearing on the appeal and considered pertinent testimony, information and documents; and

WHEREAS, this Decision of Record may be appealed to the Planning Commission within 10 days of its effective date.

NOW, THEREFORE, BE IT RESOLVED that the Public Works & Community Development Director of the City of Benicia hereby denies the appeal and upholds the approval of the second loading space, finding that:

1. The additional loading area meets the dimensional requirements of Benicia Municipal Code Section 17.74.030; and
2. Placement of the additional loading area retains adequate turning area and exceeds the minimum 20-foot requirement for fire vehicles set forth in California Fire Code (2007 edition) Section 503.2.1.

BE IT FURTHER RESOLVED that the Public Works & Community Development Director hereby determines that:

1. The scope of the appeal is limited to a consideration of whether the location of the second loading area complies with the Benicia Municipal

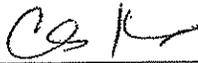
Code and the California Fire Code, and any consideration of the overall site plan for parking is beyond the scope of this appeal; and

2. The appellant has raised additional issues that are not within the scope of the appeal but are properly matters of code enforcement, including whether parking lot landscape diamonds are properly sized.

* * * * *

The foregoing decision was made by the Public Works & Community Development Director on August 16, 2010.

Signed:



Charlie Knox
Public Works & Community Development Director



Attachment # 4

August 16, 2010

Dirk Fulton
2158 Columbus Parkway
Benicia, CA 94510

Dear Dirk,

During the recent appeal proceedings regarding the location of a second loading zone at Rose Center, it was brought to my attention that the six landscape diamonds in the Rose Center parking lot exceed the 2-foot encroachment into parking spaces allowed by Benicia Municipal Code Section 17.70.190.

Accordingly, within 30 days of the issuance of this letter, the diamonds either need to be reduced from 6 feet per side to 4 feet, or application for a variance must be made to the Planning Commission.

Given that this issue might well have been discovered during construction, I am prepared to reduce the standard \$1750 fee for a variance by 50% to \$875, as authorized by the City's Master Fee Schedule.

Sincerely,

Charlie Knox
Public Works & Community Development Director

^ Attachment # 5

Condition #5 of Resolution No. 10-63

2. Any alteration of the approved plans, including substitution of materials, shall be requested in writing and approved by the Public Works and Community Development Department prior to changes being made in the field.
3. All prior conditions of approval for the Rose Center project shall remain in effect. Conditions of approval related to parking shall be addressed by the conditions contained in this resolution approving the project.
4. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Historic Preservation Review Commission, Planning Commission, City Council, Public Works and Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.
5. The applicant shall maintain a total of 146 parking spaces and one additional loading zone within 60 days of the effective date of this approval. Failure to do so shall result in the vacation of this use permit and the project site shall be deemed to be in violation of the Benicia Zoning Ordinance and Municipal Code, and subject to all fines and penalties therein.
6. The applicant shall install a "U" bike rack with a minimum capacity of four bicycles at the Rose Center in an area that is readily visible to potential users and is located in the eastern half portion of the project site, subject to the approval of the Community Development and Public Works Director.
7. Pursuant to CEQA Section 21089(a), the applicant shall reimburse the City \$14,250 for staff time required to prepare the addendum. This fee shall be paid prior to the City filing any notice of CEQA determination for this use permit.
8. The project must at all times comply with the representations provided by the applicant. If at any time the project is shown to be in violation of this use permit, its conditions (or as modified), or if the project has become detrimental to the surrounding area the Planning Commission may review the project and consider the application of additional conditions.
9. The Planning Commission must review and approve any change of use classification at the Rose Center if the new use classification, or aggregate of uses results in a net increase in parking demand of more than 40 parking spaces at any point in time. The analysis of parking demand will be based on the use table in the Zoning Ordinance, BMC section



August 10, 2010

Ms. Mary Wika
2672 Enlow Ct.
Pinole, CA 94564.

Subject: Parking Matter at Rose Commercial Center, Benicia

P09006

Dear Ms. Wika:

Per your request, I have reviewed the most recent parking striping plan for the Rose Commercial Center dated 8-09-10. As you know, I have previously commented on Rose Center parking matters in several letters through your legal counsel, Mr. William D. Kopper.

I believe this design is another unfortunate attempt by the applicant and the City of Benicia (hereinafter the "City") to cover by means of additional deficient design their previous failures to present (in the case of the applicant) and to reasonably require (in the case of the City) a parking, loading and circulation plan that conforms to relevant codes.

The drawing described above purports to show that a fire truck moving through the Center in either direction can successfully pass by a truck parked in the proposed loading zone. However, what the drawing actually discloses is that a fire truck entering the Center must use the opposite direction driving aisle while passing, approaching and departing the area of the proposed truck loading zone. This is needlessly unsafe since the truck loading zone could easily be recessed into the present sidewalk area. It is also unsafe because of the curve in the access aisle immediately to the south of the truck loading zone with a trash enclosure on the island at the inside of the curve. The curve and sight line complications caused by the trash enclosure may result in hazardous conflicts due to "outbound" motorists failing to realize the need to vacate the "outbound lane" to an "inbound" emergency vehicle. Even if collisions are avoided, presence of "outbound" vehicles could significantly slow emergency vehicle response and necessitate complicated maneuvering.

Also, since the turning characteristics of the fire vehicle represented on the drawing is similar to that of a typical SU 30 truck, it can be expected that if any

Ms. Mary Wika
August 10, 2010
Page 2

other truck arrives while the proposed loading zone is occupied, it too will need to use the outbound lane to maneuver through the vicinity of the loading zone. Hence, the need to operate "wrong-way" in the outbound lane will not be confined to emergency situations; it will be a common occurrence whenever more than one truck is in the Center or any time a large recreation vehicle (RV) attempts to enter when a truck is in the loading zone.

We also note that the drawing fails to analyze the implications of the proposed loading zone on large tractor-trailer rigs, which will likely need to make complicated maneuvers to negotiate passage.

Finally, the drawing indicates that an exiting fire truck will need to encroach on the "inbound" lane when departing the Center past the loading zone. By implication, so will SU 30 trucks, large RVs and tractor trailer rigs. Furthermore, the drawing suggests that the drivers of large vehicles will have to take a nearly perfect line through the curve and past the loading zone or else a sideswipe or need for compound maneuvering will occur.

As noted above, all of this potentially hazardous opposed lane encroachment is needless as recessing the loading zone into the sidewalk area would avoid the problem.

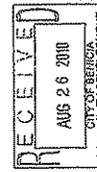
Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President

A Hochmut #17 pg (1) of (17)



City supplemented this plan to the court in 107

S 000639

(17) of (75)

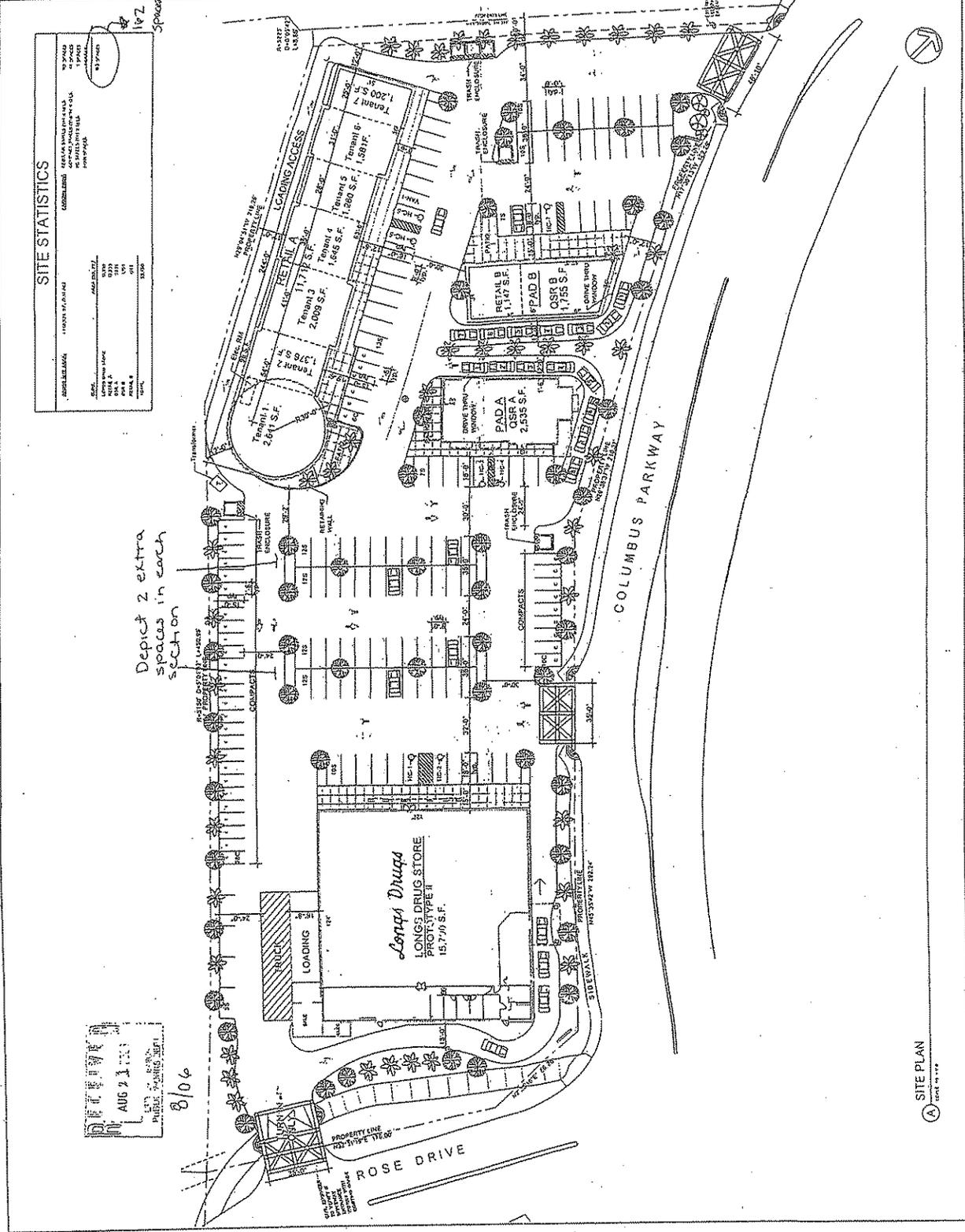
BOE ARCHITECTS ARCHITECTS 1500 COMMERCIAL BLVD SUITE 200 OAKLAND, CA 94612 TEL: (415) 778-1100 FAX: (415) 778-1101 WWW.BOEARCHITECTS.COM	THE CARQUINEZ COMPANY 1000 BAY STREET SUITE 200 OAKLAND, CA 94612	ROSE CENTER PAD A 1500 BAY STREET OAKLAND, CA 94612	DATE: _____ REVISION: _____ NO: _____
			ARCHITECT'S STAMP PROJECT NO. _____ SHEET NO. _____

SITE STATISTICS	
APPROXIMATE AREA	1,000,000 S.F.
APPROXIMATE PERCENTAGE OF COVER	10%
APPROXIMATE PERCENTAGE OF OPEN SPACE	90%
APPROXIMATE PERCENTAGE OF PAVED AREA	10%
APPROXIMATE PERCENTAGE OF UNPAVED AREA	90%
APPROXIMATE PERCENTAGE OF OPEN SPACE	90%
APPROXIMATE PERCENTAGE OF PAVED AREA	10%
APPROXIMATE PERCENTAGE OF UNPAVED AREA	90%
APPROXIMATE PERCENTAGE OF OPEN SPACE	90%
APPROXIMATE PERCENTAGE OF PAVED AREA	10%
APPROXIMATE PERCENTAGE OF UNPAVED AREA	90%

Depict 2 extra spaces in each section



8/06



A SITE PLAN
Scale 1/8" = 1'-0"

This was supplied to #7 pg 2 of
planning commission

12/09

ROSE CENTER

ROSE DRIVE & COLUMBUS PARKWAY

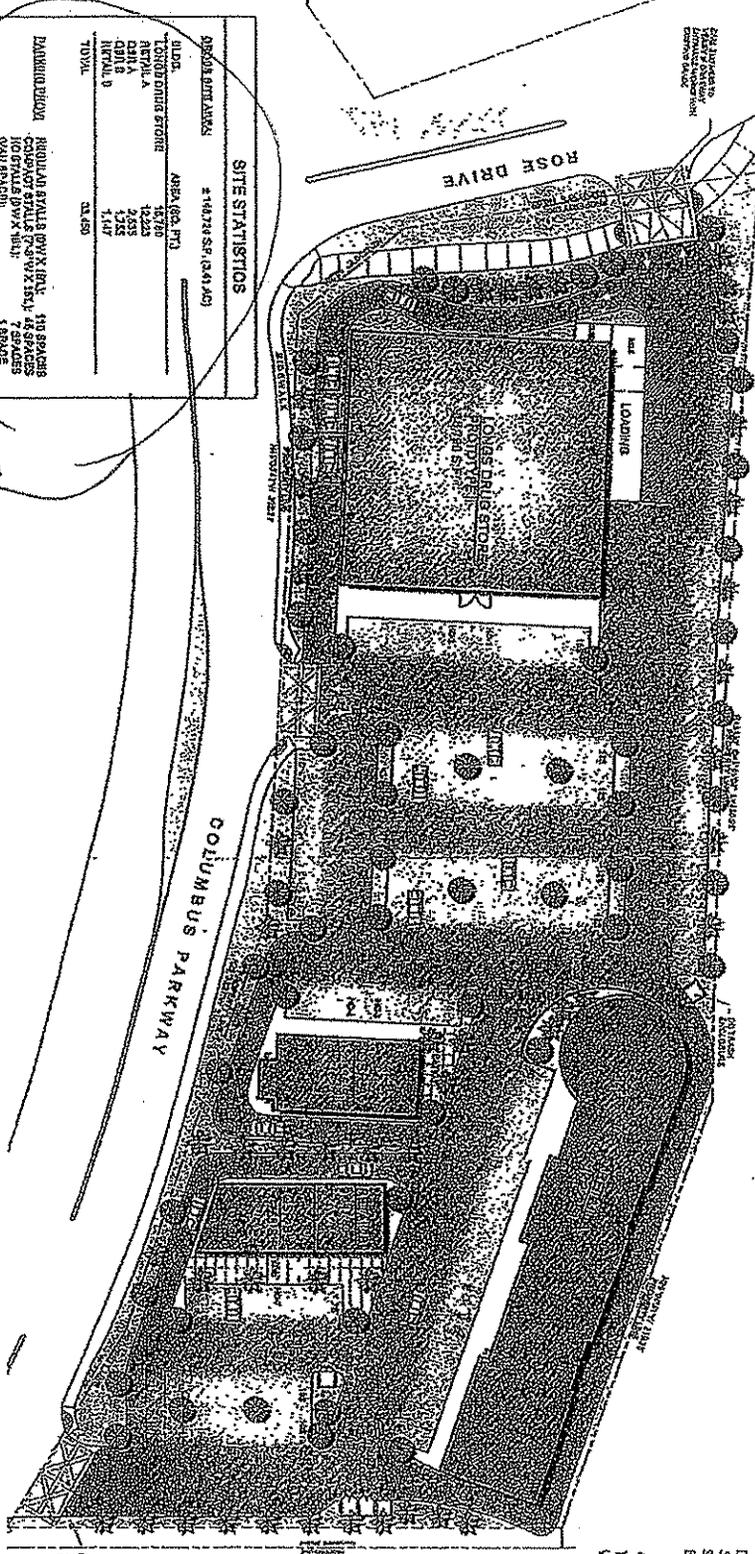
BOE ARCHITECTS
29 VALLEY STREET PASADENA, CA 91105
TEL: 626/409-2112 FAX: 626/410-9121
info@boearchitects.com



SITE STATISTICS

AREA (SQ. FT.)	2,160,338 SF (0.41 AC)
LOT AREA	10,500
TOTAL DRIVE STORAGE	10,500
DRIVE A	2,250
DRIVE B	525
DRIVE C	1,147
TOTAL	23,450

REGULATORY REQUIREMENTS:
REGULATORY STALLS (BY X 10 FT.) 140 SPACES
COUNCILOR STALLS (7.5' X 15 FT.) 42 SPACES
NON-COUNCILOR STALLS (10' X 15 FT.) 1 SPACES
183 SPACES



BOE ARCHITECTS 29 VALLEY STREET PASADENA, CA 91105 TEL: 626/409-2112 FAX: 626/410-9121 info@boearchitects.com

PROJECT NO.: DR003

ROSE CENTER

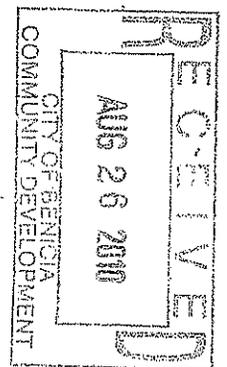
BENICIA, CALIFORNIA

PROJECT FOR:

THE CARQUINEZ COMPANY

DIRK & BECKY FULTON
555 FIRST STREET
SUITE 303
BENICIA, CA 94510

John D. Diller
141 NORTH CIVIC DRIVE
WALNUT CREEK, CA 94596

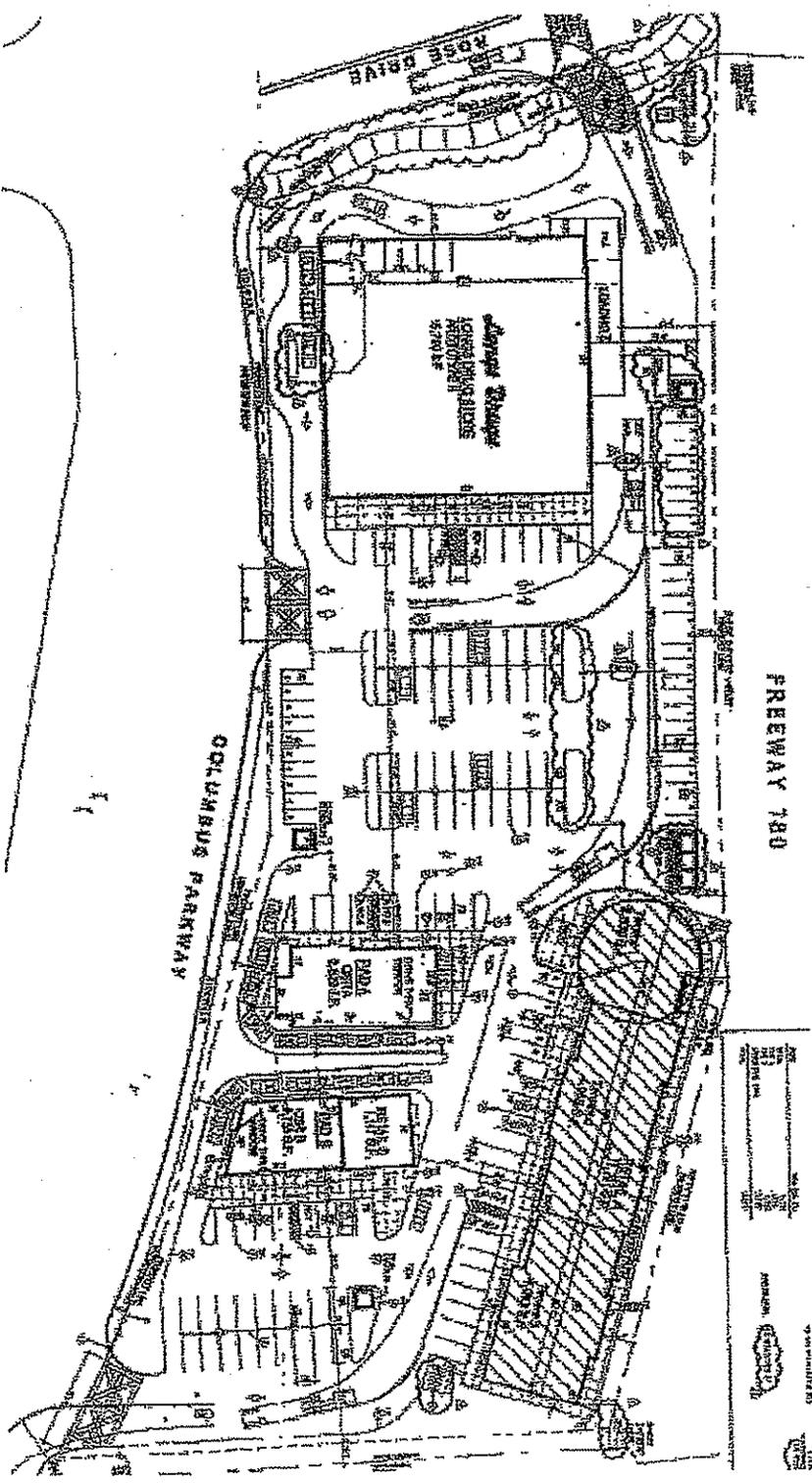


VIII-A Attachment K-3

(18) of (25)

6/06





Approved Site Plan for Rose Center - 2006

RECEIVED
 AUG 26 2010
 CITY OF BENTONIA
 COMMUNITY DEVELOPMENT

B-3

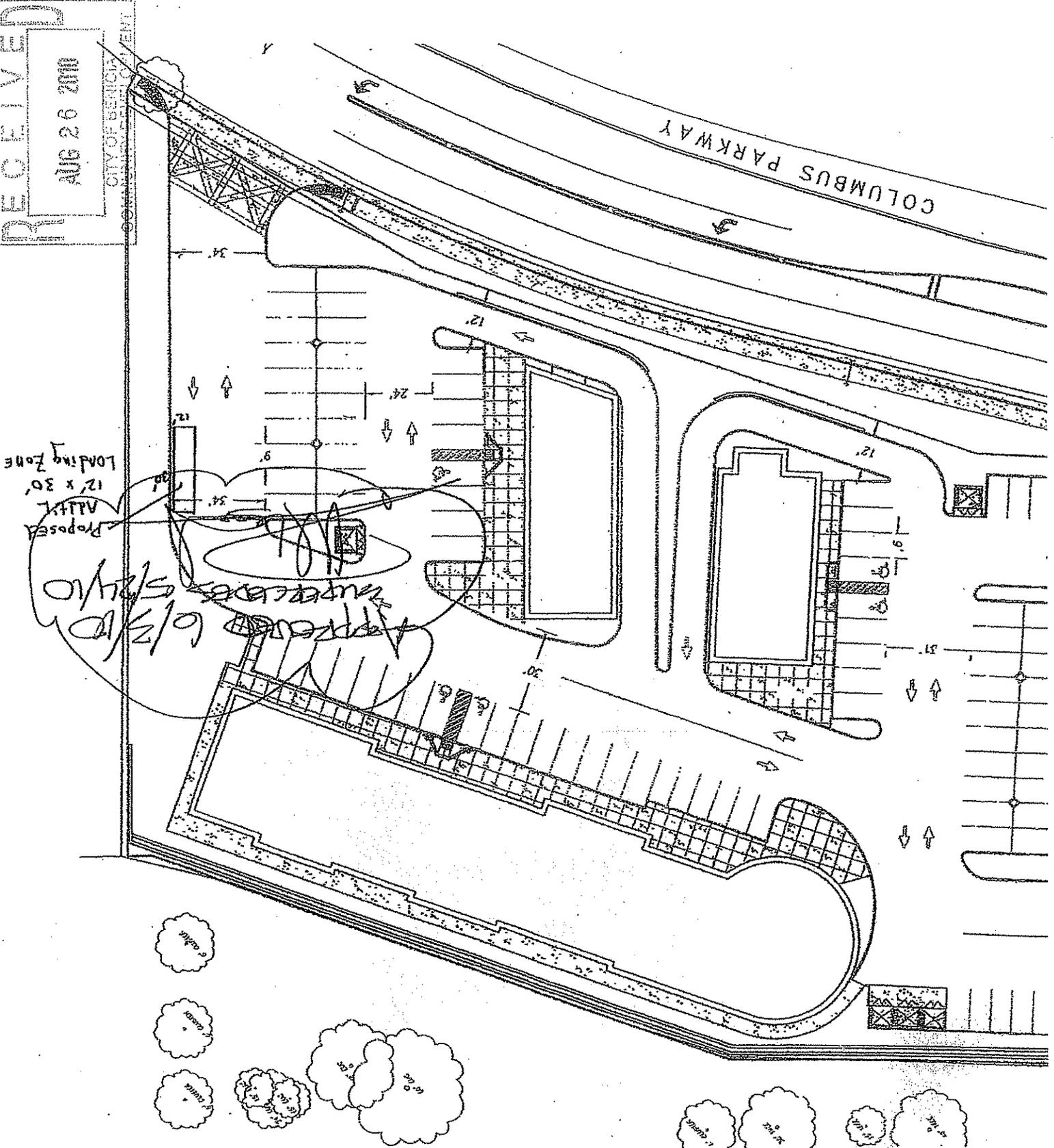
6-1-10

(21) of (25)

- ROSE CENTER -

RECEIVED
AUG 26 2010
CITY OF BERKLEY

COLUMBUS PARKWAY



#7 pg 5 of 7

From: Mark Rhoades <Mark.Rhoades@ci.benicia.ca.us>

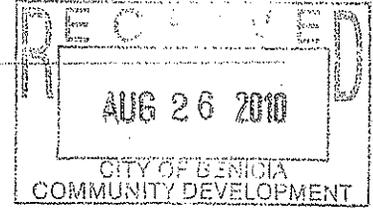
To: afabespresso@aol.com

Cc: Charlie Knox <Charlie.Knox@ci.benicia.ca.us>; Melissa Morton <Melissa.Morton@ci.benicia.ca.us>; <Colette Meunier <Colette.Meunier@mindspring.com>

Subject: Rose Center

Date: Thu, Jul 8, 2010 4:49 pm

Attachments: Rose_Center_2nd>Loading_Space.pdf (173K)



Dear Ms. Wika,

First I want to thank you for bringing the Rose Center loading space issue to the City's attention. The loading space implements condition of approval #6 of the City Council's May 18, 2010 decision. I believe that the attached revised site plan meets the ZO requirements and the balance of this email provides the relevant data. The attached site plan replaces the previous that was rescinded.

The loading space shown on the plan is 12' x 30', consistent with the table in section 17.74.030 of the Zoning Ordinance. The drive aisle adjacent to the loading space is 25' wide, but is only required to be 20' wide because the parking spaces adjacent are "small car" or compact spaces (7.5' wide by 16' deep minimum), consistent with section 17.74.110. The tail ends of those three spaces will be painted so that they are only 16' deep and they will be marked as "compact". The width will remain 9' but the ordinance only states a minimum (and not a maximum) size. The project was allowed 43 compact spaces to be provided on site.

I hope this information is satisfactory. If you would like to withdraw your appeal of this issue the City of Benicia will provide you with a full refund. If the information is not satisfactory please let me know what elements of this issue you believe are still inconsistent with the Zoning Ordinance.

Thank You,

Mark Rhoades, AICP
City of Benicia

(24) of (25)

ATTACHMENT C
CORRESPONDENCE FROM THE APPLICANT
REGARDING CODE COMPLIANCE WORK

Carquinez



Companies

2158 Columbus Parkway
Benicia, CA 94510
(707) 747-9003
Fax (707) 747-0604

Charles Knox, Public Works & Comm. Dev. Director

September 9, 2010

City of Benicia

By Fax (747-1637)

250 East L Street

Benicia, CA 94510

Re: Rose Center Diamonds—Your Letter dated 8/16/2010—

Dear Mr. Knox,

In response to your letter of August 16, 2010 to myself regarding the six landscape diamonds in the Rose Center parking lot, please be advised that we initiated the compliance process today by entering into a construction agreement with Fahy Construction for the indicated repair work after a competitive bid process.

Please feel free to call me with any questions or comments.

Sincerely,

Dirk W. Fulton, CEO

Gas City Fuels LLC

The Carquinez Companies

ATTACHMENT D
MAP SHOWING PARKING, LOADING ZONE AND
FIRE APPARATUS TURNING MOVEMENT

ATTACHMENT E
EMAIL FROM DIVISION CHIEF PETE FIORI,
OF THE BENICIA FIRE DEPARTMENT

From: Pete Fiori
To: Knox, Charlie
Date: 7/29/2010 2:43:33 PM
Subject: Re: Fwd: drive aisle width issue

Loading zone is fine as is. No problem with fire engine access if vehicle is parked inside the marked area.

Pete

>>> Charlie Knox 7/29/2010 9:22 AM >>>

>>> Charlie Knox 7/27/2010 4:43 PM >>>
Hi Ray-

Could you please look at the top left (southeast) corner of the new loading space on the right (west) side of the attached site plan and call to discuss if you see any issues regarding the width or turning radius?

Thanks.

Charlie

CC: Core, Roger; Iverson, Ray