



BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING MINUTES

Thursday, November 12, 2009

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. AGENDA CHANGES AND DISCUSSION

Damon Golubics advised that there will be a change to the Agenda item V(B). Chevron, or the permittee has requested a continuance of the matter.

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN**
None.

B. PUBLIC COMMENT

George Whitney- 540 Military East: States that he lives two doors down from 7-11 and has similar issues as neighbors living near the Chevron Gas Station. He advised that trash from the business blows down the street. He feels that the property is not maintained well by the business owner. He states that he has worked with City of Benicia Community Preservation Officer Roger Core on this issue and it has improved with trash currently being picked up. He states, however, that 7-11 has been an ongoing problem. He requests an ordinance be adopted addressing the issue of trash generating businesses that sell items that produce debris from paper wrappers, receipts, etc that end up flying around the neighborhood. He stated that not all of the trash is from 7-11 as a business and may be trash that blows out of patron's vehicles while opening and closing their doors in the

parking lot. Feels it is a community wide problem for residents that live near all convenience stores and gas stations within the city.

IV. CONSENT CALENDAR

On motion of Commissioner Thomas, seconded by Commissioner Ernst, the Consent Calendar was approved by the following vote with the minutes of October 22, 2009 being pulled due to correspondence being received correcting several pages of the minutes to be amended by the Commission Secretary. Minutes will be continued to the next meeting.

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

Noes: None

Absent: None

Abstain: None

A. Approval of Agenda

B. Approval of Minutes of October 8, 2009

C. Approval of Minutes of October 22, 2009 Joint Meeting with the Historic Preservation Review Commission

V. REGULAR AGENDA ITEMS

A. USE PERMIT - 1100 SOUTHAMPTON ROAD (APN: 086-151-190), VERIZON WIRELESS COMMUNICATION FACILITY (*Continued Public Hearing Item from October 8, 2009*)

09PLN-37 Use Permit

1100 Southampton Road, APN: 086-151-190

PROPOSAL:

The applicant requests approval of a use permit to install three additional wireless communication antennas on top of an existing pole located on the athletic field of Benicia Middle School at 1100 Southampton Road. All associated equipment would be located within the existing equipment shelter along the fence line.

Recommendation: Approve a Use Permit to add three additional antennas to an existing wireless communications facility located on the athletic field of Benicia Middle School at 1100 Southampton Road, based on the Findings and Conditions of Approval set forth in the proposed Resolution.

Sharon Williams gave a presentation on the Verizon Wireless Communication Facility.

Al Fink- Applicant- Stated that Sharon Williams did a great job on this project. He advised the Commission that this project is just an upgrade for 4G coverage.

Commissioner Ernst had questions regarding the use of microwave or radiowave technology, radio megahertz frequency, proximity to the Benicia Middle School playground and concerns about children being so close to the antennas.

The applicant responded that Verizon has purchased a different system that is 700 megahertz, which complies with FCC standards. He advised that most of the antennas are 100 watts, similar to a radio with an amplifier under 200 watts. Regarding health concerns for children playing in the area, the EMF report shows compliance with safety standards.

Damon Golubics advised that it is not in the Commission's purview to discuss this.

Chair Healy asked if the issues have been resolved that warranted a continuance of the item from last month's meeting. Damon Golubics stated that the issue of the possible increase in the lease payment has been resolved. It was determined by the City Parks and Community Services Department that due to language in the original lease agreement, the payment amount could not be increased.

Commissioner Dean requested that the language in the resolution be more specific as it pertains to CEQA section 15301 as 15301(B) under categorical exemptions.

Commissioner Syracuse asked the applicant if there would be landscaping and what would be seen from the freeway. The applicant stated that the view would be grass and a ball field. Damon Golubics advised landscaping was not proposed per the Parks Department.

Commissioner Ernst feels that 4G technology will be a good thing due to his frustration with dropped cellular phone calls. He suggested gray or beige walls for the exterior and galvanized poles for the antennas. He requested several changes made to the resolution, which were noted by staff. Referring to page 3, Commissioner Ernst asked how we are to be sure the antennas are not a nuisance or are detrimental to the health and safety of citizens of the community. Damon Golubics advised commissioners that the issue of health affects have already been addressed and have been found to under the acceptable level allowed by the FCC guidelines He expressed concern that we may be "grandfathering" this in because the poles are already in place and fears setting a precedence. Kat Wellman stated that The Telecommunications Act of 1996 preempts this and sets standards for what can and cannot be reviewed when an application is submitted for approval. Concerns about health standards set by the FCC cannot be used as a reason to deny an application. An application could be turned down due to aesthetics or the number of poles. Each application is looked at individually and is not precedent setting. It also meets the goals of the General Plan.

Commissioner Thomas asked who would tear down the poles when the time comes. Kat Wellman stated that the lease agreement covers that issue.

RESOLUTION NO. 09-03 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT (09PLN-37) FOR INSTALLATION OF THREE ANTENNAS AND ASSOCIATED EQUIPMENT AT 1100 SOUTHAMPTON ROAD

On a motion of Commissioner Sherry, seconded by Commissioner Thomas, the above Resolution was adopted by the Planning Commission of the City of Benicia at the regular meeting of said Commission held on the 12th day of November, 2009, and adopted by the following vote:

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

B. REVIEW OF A PREVIOUSLY APPROVED 2001 USE PERMIT (CONDITIONS OF APPROVAL) FOR THE CHEVRON GAS STATION AND CONVENIENCE MARKET AT 10 SOLANO SQUARE

PLN 2000-1 Use Permit

10 Solano Square, APN: 087-200-100

PROPOSAL:

The Planning Commission will review and consider previously imposed conditions of approval for Use Permit PLN 2000-1, Chevron Gas Station and Convenience Market. Based on Benicia Municipal Code Section 17.128, the Community Development Director shall determine if there are reasonable grounds for reconsideration of a Use Permit and whether the Planning Commission shall take appropriate action to remedy any documented violation of the use permit conditions of approval. Evidence shall be presented by staff at the public hearing suggesting one condition of approval is not being followed or implemented by the permittee.

Recommendation: The Planning Commission should take public testimony, and determine whether there are violations of the original conditions of approval for the Chevron Gas Station and Convenience Market located at 20 Solano Square and consider the proposed amendments to the conditions of approval to remedy any such violation.

Damon Golubics gave a presentation as a discussion item only not presented for a vote by Commissioners at this meeting to be continued to the meeting of December 10, 2009. He suggested encouraging the property owner to enter into a property maintenance agreement prior to approval. Stated that there is a need to find a solution to the matter involving all parties.

Commissioner Sherry asked why a landscaping agreement might be necessary. Damon Golubics advised that this has been an issue since 2003. The volume of complaints has been a continuing issue. He offered this as an option to consider as a possible solution.

Public comment:

George Whitney- 540 Military East-Feels that dealing with Chevron alone will not resolve a citywide issue. Even if the issues at Chevron are resolved, complaints will continue regarding other businesses. Believes a solid ordinance would establish guidelines to be able to monitor trash from convenience stores. Mr. Whitney asked for an

ordinance to be adopted to require such businesses to police the surrounding block near their stores.

Chair Healy made a suggestion to Mr. Whitney to attend sustainability meetings to address these issues.

Mr. Whitney asked for an ordinance to be adopted to police the surrounding block near convenience stores.

Jon Van Landschoot- Stated that the small town feeling of Benicia has two components. Citizens will feel good about the town if they have a good feeling about their neighborhoods. He remembers the deal that was made when the businesses opened, to keep things cleaned up and maintained and that has not happened. He stated "it's the law" and W Second Street needs to be cleaned up. He remembers at least 25-30 complaints over the last few years and feels the issue should be resolved by the Planning Commission.

Commissioner Ernst asked Damon Golubics if there actually have been 25-30 complaints. Damon Golubics advised that there have. Commissioner Ernst asked if there is a need to negotiate and come up with a solution. Damon Golubics said yes that is what is needed. Commissioner Ernst asked if litter laws could be enforced through a City Council ordinance. Damon Golubics stated the larger problem needs to be looked into.

Commissioner Bortolazzo had questions about whether or not all convenience stores and gas stations operate under Use Permit Conditions of approval. Damon Golubics said that we need to research conditions of approval for each station and that conditions of approval may be different for each gas station or convenience market. Commissioner Bortolazzo stated that 7-11 is a mess and that the landscaping is consistently not watered. He suggested that before we address just one station, we need to address each business in a uniform manner.

Chair Healy expressed a preference to work things out with staff as an alternative.

Damon Golubics advised he will take a personal interest in this citywide issue. He stated that the only real issue with Chevron is on the W Second Street side of the site and in general, is well maintained.

On a motion of Commissioner Ernst, seconded by Commissioner Thomas the item was continued to the meeting of December 10, 2009 by the following vote:

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

C. **AMENDMENT OF THE DEVELOPMENT AGREEMENT ORDINANCE**

Zoning Text Amendment

City Wide

PROPOSAL:

The zoning text amendment would update and amend Title 17 (Zoning), specifically Section 17.116.020 establishing new application requirements for any development agreement the City may enter into with a developer, applicant or permittee.

Recommendation: Review and consider proposed revisions to the development agreement ordinance with a recommendation to the City Council regarding potential changes.

Damon Golubics gave a presentation.

Commissioner Dean asked if the agreement applies to parcels that are 40 acres or more and asked how many parcels in town are that large. Damon Golubics stated that it basically applies to the Discovery Builders Benicia Business Park proposal.

Commissioner Sherry asked if we looked at any other properties or is this just directed toward the Benicia Business Park. Damon Golubics advised that there are not many properties that are 40 acres or larger.

Commissioner Bortolazzo stated that Amports is larger than 40 acres and wanted to know what would happen if they divided the property into smaller parcels. Damon Golubics clarified that if they do that it could possibly be a 5 phase project. Commissioner Bortolazzo suggested if the property is more than 40 acres, if they divide it into piece meal projects we should address it.

Commissioner Ernst asked if samples from other cities were considered when writing other city ordinances. Damon Golubics said that everything was considered and the best of all were incorporated the City's Draft Ordinance. The Commission may address these issues if they so choose. He stated that other cities have conducted pre-application workshops or meetings to get a developers vision. He suggested community involvement be part of the process. He asked if this should be included in the Development Agreement. In reference to Item 17.16.040 MC, feels the language (upon receipt of complete application) is unclear.

Commissioner Dean asked if there are advantages to applicants to have a development agreement with the city. Damon Golubics stated that the City Council wants to see a better development agreement ordinance. Commissioner Dean asked if a development agreement would provide another level of certainty for enforcement.

Kat Wellman advised the Commission that the agreement allows for more negotiation for infrastructure and compliance that would provide assurances on both sides.

Commissioner Thomas expressed the feeling that we are walking a fine line regarding things being mandatory or not mandatory. He feels legal research of the ordinance should be done. Damon Golubics advised Commissioners that Benicia is trying to do something different by making it mandatory. He stated that City/County Government can merge parcels. If parcels are required to be merged, if they are smaller than 40 acres, it may be one way to trigger the agreement to apply to smaller areas. He agrees that language in section B is too loose.

Commissioners suggested changes to some of the wording in the agreement. Damon Golubics advised that the changes would be incorporated and forwarded to Council.

Damon Golubics advised that this issue may be breaking new legal ground.

Commissioners had questions about whether or not a development agreement would not be necessary if two smaller parcels exist side by side. Suggestions were made to investigate and discuss the matter further. Questions were raised about whether or not the city could require property owners to enter into a development agreement if parcels are divided into smaller parcels that add up to a total of 40 acres.

Public Comment opened.

Dana Dean- 835 First Street- Asked what the intention of the agreement is and is an ordinance going to be crafted. She suggested that it leans toward being really hard to interpret. In regard to 17.116, feels some of the "loose" language needs to be examined and gave a number of examples of language she feels should be changed. 17.116.020 (C)1e the words "where appropriate" are too open. She requests specificity on any proposed agreement between the city and a developer. Could it possibly be available at the application level?

Jon Van Landschoot- Agrees with Commissioner Bortolazzo's statements. His reason for showing up at the meeting is concern for segmented projects. He asked if this would have an affect on the current Seeno project. Damon Golubics stated that the existing Benicia Business Park application is still valid and has been continued due to economic reasons and will not apply to Seeno. They will determine if they are going to go through with the project in January of 2010. Jon Van Landschoot stated that he doesn't like making a condition mandatory but asking for an agreement doesn't always work either. He asked if there are 2 years left on the Seeno application. He was advised by Damon Golubics that there is a 2 year limit from the time of project approval. The conditions are crafted for each particular phase. Five phases could be spread over 10 years.

Chair Healy asked if the Planning Commission is still free to ask for an agreement of certain conditions. He stated that as the political tide changes, it could affect developers. He feels the agreement provides certainty and enforceability. He feels the City of

Vallejo's example is very broad and may be an effective ordinance and is an interesting alternative way to deal with the issue. He suggested some changes to the language. He states that the process not be so burdensome that it would discourage developers. Suggested it may be addressed in phases. Regarding section C, this may need to include a timetable for mediation or binding arbitration. He feels that the language regarding periodic review in the Rohnert Park example is good. He stated that passing an ordinance with language stating the City can think about it doesn't help. Prevents game playing. He doesn't believe that there needs to be a limit of 40 acres.

Commissioner Dean felt that provisions allowing for more creativity may be incorporated in section 3. He feels that additional entities may need to enter into the process other than just the Planning Department and the City Attorney's Office. He stated that the Rohnert Park example contains nice language in paragraph B.

Commissioner Ernst questioned if the acreage limit is lowered from 20-40 acres, would City Council have the option to waive the requirement. He doesn't want to deter developers from coming to town. He stated there are 50 acres near W Channel Road and is concerned about development of separate smaller parcels.

Commissioner Sherry asked what the process would be for Development Agreements? How it would begin? Would an applicant meet with staff to discuss and negotiate issues? Damon Golubics advised that he believes that would be the procedure. Commissioner Sherry asked if each division would weigh in on specific conditions. Kat Wellman stated that by the time the agreement gets to the Planning Commission, the details would already be ironed out. She doesn't see why it would be a bad thing as it is not making the process difficult or costing the developer money.

Damon Golubics stated that the ordinance needs to be re-crafted and staff will make revisions per the Planning Commissions's suggestions. The item will then be presented to the City Council.

VI. COMMUNICATIONS FROM STAFF

A. MODEL WATER EFFICIENT LANDSCAPE ORDINANCE – Commission Discussion

Staff will briefly discuss the Water Conservation Act of 2006 (Assembly Bill 1881) that requires cities and counties to adopt landscape water conservation ordinances by January 1, 2010. Local jurisdictions have a choice to either adopt their own modified version of the Department of Water Resources (DWR) landscape water conservation ordinance or a local agency (cities, counties, cities and counties, charter cities and charter counties) can administer the state-prepared Model Water Efficient Landscape Ordinance (MWELo) which will automatically apply within the jurisdiction of that local agency as of January 1, 2010.

Damon Golubics gave a presentation to Commissioners.

Commissioner Bortolazzo stated that it seems like a massive project and questioned how we, the City of Benicia, will deal with this on such a large scale. Damon Golubics advised that it is necessary to comply with the ordinance.

Commissioner Sherry asked if there are any City staff members that are certified to put the plan together. Damon Golubics stated that he is unaware of anyone on staff that is certified but we will be able to consult outside experts and find someone who is certified to help City Staff out. Commissioner Sherry also asked who will cover the costs. Damon Golubics said that the City will absorb the fees in the short run for a certified expert to review landscape plans.

Commissioner Dean asked if recycled water would be used in connection with the Wastewater Treatment Plant. Damon Golubics advised that the Climate Action Plan may address those issues.

Chair Healy asked if it is possible to adopt a form-based code to opt out if conditions are met. Damon Golubics felt that it is a great idea.

Commissioner Ernst asked what the timing of this would be to simplify the ordinance. Damon Golubics stated that the ordinance goes into affect on January 1, 2010. City Staff will be using the standard model ordinance recommended by the State.

VII. COMMUNICATIONS FROM COMMISSIONERS

None.

Kat Wellman advised that she will not be at the next meeting because she and her husband will be on a trip to India.

VIII. ADJOURNMENT

Meeting adjourned at 8:55 pm.