

**November 16, 2004**

**The Benicia City Council meets the 1st and 3rd Tuesday of each month at 7:30 p.m. in the Council Chambers. Copies of Council Agendas are available in the City Clerk's office on the Friday afternoon before the Council meeting.**

**MINUTES OF THE  
REGULAR MEETING - CITY COUNCIL  
NOVEMBER 16, 2004**

**The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:30 p.m. on Tuesday, November 16, 2004, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.**

**ROLL CALL:**

**Present: Council Members Patterson, Smith, Whitney, and Mayor Messina**

**Absent: Council Member Campbell**

**PLEDGE OF ALLEGIANCE:**

**The Boy Scouts of America led the pledge to the flag.**

**ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:**

**ANNOUNCEMENTS:**

**Closed Session was cancelled.**

**APPOINTMENTS:**

**PRESENTATIONS:**

**PROCLAMATIONS:**

**ADOPTION OF AGENDA:**

**Mayor Messina asked if there were any changes to the Agenda.**

**City Manager Jim Erickson suggested continuing items VII-B and VIII-A to the next meeting.**

**Vice Mayor Patterson stated that she is concerned about continuing item VIII-A. We seem to be taking a long time to process this. She is also concerned that this might get confused with what we need to do ultimately with the DRC. This is a specific Ordinance to address the need for a CLG. We have other issues with the DRC. She is disappointed it may be continued.**

**On motion of Council Member Whitney and seconded by Mayor Messina, the Agenda was adopted as amended on roll call by the following vote:**

**Ayes: Council Members Smith, Whitney, and Mayor Messina**

Noes: Vice Mayor Patterson

Absent: Council Member Campbell

**COMMUNICATIONS:**

**WRITTEN:**

One letter on file from Leann Taagepera.

**PUBLIC COMMENT:**

1. **Kitty Griffin - Ms. Griffin stated that she wanted to address item X-A (Seeno Property). She requested Council consider reconsidering the Land Use out there. She was on the General Plan Committee. At that time, they never got their hands around the size or the implications of this development. We have an opportunity to reconsider the Land Use and embrace more uses than just the two listed. There is a need for land for churches. There are a number of citizens who responded to the last EIR. Why would we want to change the Land Use that seemed so logical at one point? She is concerned about the job/housing equation. Ms. Griffin quoted the General Plan Guidelines with regards to improving the jobs/housing balance. We need to study some planning possibilities.**
2. **Doug Comeau, V.P, and G.M of Valero Benicia Refinery - Mr. Comeau wanted to discuss the accomplishments Valero achieved at their 2004 5-year turnaround. The turnaround ended on 11/13/04 with all units coming back online without any problems. It was a big success. They encountered very few obstacles or unforeseen items during the turnaround. They have been starting the plant up over the past few weeks, with just a little flaring occurring. This is a very big testament to the refinery workers with regards to safety. One of the good neighbor gestures was the letters that went out to the surrounding neighbors. They received favorable press coverage for their efforts. They were intent on having 0 accident occurrence during the turnaround. There were 1 million man-hours involved in the turnaround process. They invested over \$85 million in turnaround costs and \$25 million in capital improvements. It is their commitment to the community to operate the refinery in a safe environment.**
3. **Jim Conlow - Mr. Conlow wanted to clarify the wishes of the DRC are. When they had the joint meeting between the DRC, HPC, and Planning Commission, the DRC voted unanimously that they wanted to retain the design of the commercial buildings as well as the historic preservation design review, and to do this in a merger with the HPC.**
4. **Bob Mutch - Mr. Mutch wanted to reintroduce the public and Council to the Benicia Taxpayers Association. He is the new Executive Director of the Benicia Taxpayers Association (BTA). He described the responsibilities and duties of the BTA. He stated that the BTA would represent all taxpayers.**
5. **Vice Mayor Patterson asked Mr. Mutch if BTA was a 501(c)(3) or 501(c)(4) organization. Mr. Mutch stated that BTA would be a 501C4 organization. She clarified that the BTA is not a taxpayer-funded organization, but a membership funded organization. Her tax dollars do not fund the organization. She stated that he said that BTA represents all taxpayers. She stated that it is not fair and correct to say that they represent all taxpayers. They represent the members and the people who subscribe to their organization.**

6. **Luis Delgado** - Mr. Delgado asked that when Council discusses combining the DRC and HPC, they make a distinction as to what might be design review as part of the new HPRC, so it does not get mixed up with what the design review is now. He is in favor of merging the DRC and HPC.
7. **Chuck Mang** - Mr. Mang is in favor of combining the DRC and HPC.
8. **Donnell Rubay** - Ms. Rubay wanted to verify that the CLG issue has been continued to the next meeting. She wanted to clarify when the first reading of the Ordinances would take place. Mayor Messina clarified that the first readings would take place at the next meeting. Ms. Rubay asked that Council give more notice to the public when continuing agenda items, as people need to prepare and schedule their attendance at the meetings to hear/discuss the issues.
9. **Karen Burns** - Ms. Burns conducted research regarding CLG requirements. It is not necessary to combine the DRC and HPC. Each of the commissions has a different interest and charge. The level of background, education and qualifications for the commissioners are completely different. She recommended keeping the DRC and HPC in place. Don't break something that is working well and is desperately needed. Council Member Smith clarified that Council direction is to not combine the HPC and DRC. Ms. Burns was delighted to hear this.
10. **Jeanine Seeds** - Ms. Seeds stated that she has concerns with Mr. Mutch being the Executive Director of the Benicia Taxpayers Association. She does not believe that Mr. Mutch understands that he can only represent the people that belong to the BTA. She is not a member of the BTA and he does not represent her.
11. **Council Smith** made the following announcements:
  - **11/17/04** - There are two subcommittees of the Parks, Recreation and Cemetery Commission meeting consecutively at City Hall. One items they will consider by the Health and Well Being Subcommittee is the potential nutrition or healthy lifestyle policies that could be adopted by the Commission and potentially by the City.
  - **11/18/04** - Benicia Chamber of Commerce After Hours event will be held at Studio 41 from 5:30 p.m. to 7:30 p.m.
  - **11/27/04 and 11/28/04** - The Benicia Ballet Theatre will present its annual production of The Nutcracker at Hogan High School in Vallejo.
  - **11/28/04 and 12/5/04** - Camellia Tea Room will host Teddy Bear Parties.
  - **12/2/05 through 12/5/04** - Benicia Glass Studios Open House and Sale will take place.
  - **12/3/04** - Holiday Open House and Tree Lighting will take place at the foot of First Street.
  - **12/3/04** - Open House at the Fisher Hanlon House in the State Capital State Park will take place.

- **12/1/04 - the Metropolitan Transportation Commission will conduct a hearing. Transit riders are invited to speak on Solano County's transit needs. The meeting is in Vacaville at 6:00 p.m.**

**CONSENT CALENDAR:**

**Mayor Messina asked if there were any items to be pulled from the Consent Calendar.**

**Vice Mayor requested item VI-H be pulled. Council Member Smith requested item VI-I be pulled.**

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

**Ayes: Council Members Patterson, Smith, Whitney, and Mayor Messina**

**Noes: None**

**Absent: Council Member Campbell**

**The minutes of November 2, 2004 were approved.**

**Denial of Claim and referral to insurance carrier (Carr) was approved.**

**RESOLUTION 04-171 - A RESOLUTION ACCEPTING THE TRAFFIC SIGNAL INSTALLATION - EAST SECOND STREET AND I-780 WESTBOUND RAMPS PROJECT, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AUTHORIZING THE CITY MANAGER TO ENTER INTO A MAINTENANCE AGREEMENT WITH CALTRANS, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SOLANO COUNTY RECORDER**

**RESOLUTION 04-172 - A RESOLUTION DECLARING THE CITY'S INTENTION TO VACATE A PORTION OF EAST 7TH STREET RIGHT-OF-WAY, EAST OF EAST 7TH STREET, AND SETTING THE PUBLIC HEARING DATE FOR DECEMBER 7, 2004**

**RESOLUTION 04-173 - A RESOLUTION APPROVING A SUMMARY VACATION OF A 5-FOOT WIDE UTILITY EASEMENT WITHIN THE PROPERTY ADJACENT TO 108 INCLINE PLACE**

**RESOLUTION 04-174 - A RESOLUTION AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO FILE AN APPLICATION FOR FEDERAL SURFACE TRANSPORTATION PROGRAM FUNDING FOR THE COLUMBUS PARKWAY REHABILITATION PROJECT**

**RESOLUTION 04-175 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 121 WEST J STREET IN THE CITY OF BENICIA**

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

**(END OF CONSENT CALENDAR)**

**Council took the following actions:**

**Second reading and adoption of an Ordinance changing the zoning from Single-Family Residential to Planned Development for 1422, 1430, and 1440 East Second Street, Lee Planned Development Project:**

**Vice Mayor Patterson stated that she needs to vote against this item because of the failure of a proper CEQA review and also because of the misapplication of a State statute of planned development.**

**ORDINANCE 04-13 - AN ORDINANCE AMENDING CHAPTER 17.04 (TITLE, COMPONENTS, AND PURPOSES), SECTION 17.04.020B (COMPONENTS) OF THE BENICIA MUNICIPAL CODE TO REZONE THREE PARCELS LOCATED AT 1422, 1430 AND 1440 EAST SECOND STREET (APN'S 88-083-030, 88-083-040, 88-083-050) FROM SINGLE FAMILY RESIDENTIAL TO PLANNED DEVELOPMENT**

**On motion of Council Member Whitney, seconded by Council Member Smith, Council approved the second reading and adoption of the above Ordinance, on roll call by the following vote:**

**Ayes: Council Members Smith, Whitney, and Mayor Messina**

**Noes: Vice Mayor Patterson**

**Absent: Council Member Campbell**

**Resolution authorizing the purchase of a large mower through the State of California Multiple Award Schedule (CMAS) program utilizing the Parks Division Equipment Replacement Fund for \$63,897.99:**

**Council Member Smith stated that this is one expensive lawnmower. The Staff report states that it will only be used a couple of times per week. It is his understanding that the School District owns a comparable mower. Since we are engaged in negotiations about joint use with the School District, he is wondering about the timing of this purchase.**

**Mr. Erickson stated that both the School District and the City have a substantial amount of turf to maintain. To share a mower at this time would not be feasible. Conflicting schedules would complicate the sharing of a mower at this time as well.**

**Mr. Alvarez stated that the City is now mowing 55-60 acres. If we add the School District turf, that will add an additional 25 acres of turf. The District's mower is a six-year old mower. It has used up 55-60% of its lifespan at this point. It would be more efficient for the City to have a new mower on our fleet.**

**Council Member Smith said that cooperation and sharing of equipment seems like it would work at this point.**

**Vice Mayor Patterson stated that the City and the School District have an enormous amount of turf to deal with. It makes sense to have the two good mowers available to get the work done. From her experience, when you are working on these kinds of labor intensive and work intensive services to a community you are better off with the investment that serves the needs of that specific department. This is a reasonable request and it makes a lot of sense.**

**Mr. Alvarez stated that the City's current mower has 180,000 miles on it. The life expectancy is about**

70-80,000. We have well exceeded the life expectancy of that mower. We will be keeping the old mower that we are replacing for back up parts

**RESOLUTION 04-176 - A RESOLUTION AUTHORIZING THE PURCHASE OF ONE 580-D MOWER FOR THE PARKS AND COMMUNITY SERVICES DEPARTMENT THROUGH THE CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) CONTRACT UTILIZING THE PARKS AND RESIDENTIAL LIGHTING AND LANDSCAPE EQUIPMENT REPLACEMENT FUNDS**

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

**Ayes:** Council Members Patterson, Smith, Whitney, and Mayor Messina

**Noes:** None

**Absent:** Council Member Campbell

**PUBLIC HEARINGS:**

**Public Hearing on a Resolution vacating a portion of East 3rd Street and a portion of an unnamed alley to the West of East 3rd Street:**

Dan Schiada, Director of Public Works, reviewed the Staff report on this item.

**RESOLUTION 04-177 - A RESOLUTION ORDERING THE VACATION OF A PORTION OF EAST 3RD STREET SOUTH OF EAST S STREET AND AN UNNAMED ALLEY WEST OF EAST 3RD STREET**

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

**Ayes:** Council Members Patterson, Smith, Whitney, and Mayor Messina

**Noes:** None

**Absent:** Council Member Campbell

**Public Hearing on a Resolution adopting the City of Benicia Municipal Service Review, which is a statement and analysis of the City's ability to provide public services and facilities to anticipated growth within the City's existing Urban Growth Boundary and is required to be submitted to the Solano County Local Agency Formation Commission:**

This item was continued to the 12/7/04 meeting.

**UNFINISHED BUSINESS:**

**Introduction of an Ordinance to replace in its entirety Chapter 2.56 to establish the Historic Preservation Review Commission (HPRC) in the City of Benicia and to amend Chapter 2.84 to change Design Review responsibilities and provide direction to Staff regarding addressing historic homes or resources outside the historic overlay districts:**

This item was continued to the 12/7/04 meeting.

**NEW BUSINESS:**

**Consideration of the adoption of the Waterfront Park Initiative Measure without proceeding to an election:**

**Mayor Messina excused himself due to a conflict of interest. Vice Mayor Patterson chaired this portion of the meeting.**

**Heather McLaughlin, City Attorney, reviewed the Staff report on this item.**

**Council Member Smith asked Ms. McLaughlin about the cost of the election. Ms. McLaughlin stated that the quoted \$37,000 amount was the per voter figure given to her by the Registrar of Voters. Other municipalities putting items on the March ballot would not affect this figure.**

**Public Comment:**

- 1. Jeanine Seeds - Ms. Seeds stated that the decision has been made by the voters. She does not understand why this needs to be discussed further. It is Council's duty to represent what the majority of the people want. We do not need to spend \$37,000 on another election.**
- 2. Susan Street - Ms. Street summarized the chain of events leading up to the current status of the Waterfront Park Ballot Measure. She thanked Vice Mayor Patterson for creating the community conversations in this process. The voters have spoken. She asked Council to pay attention to the wishes that the voters have expressed and adopt this measure as proposed.**
- 3. Marilyn Bardet - Ms. Bardet thanked Council for sponsoring the workshops and dialogue for this item. She sent in 18 pages of comments that came from these workshops to Staff. She submitted criteria that would need to be considered under any plan. She urged Council to adopt the initiative to save taxpayer money and recognize the will of the people.**
- 4. Karen Burns - Ms. Burns stated that the Benicia Taxpayers Association (BTA) does not represent her. She stated that she assisted POW in gathering signatures for their petition. She read a prepared statement (on file) listing her reasons for wanting Council to recognize the voters' wishes and adopt the Waterfront Park Initiative Measure. It is Council's responsibility to adopt this Measure.**
- 5. John Van Landschoot - Mr. Van Landschoot stated that we should save the \$37,000 and adopt the Measure.**
- 6. Mike Ioakimedes - Mr. Ioakimedes congratulated POW and their supporters on their efforts. However, we need to go back to the basic fundamental question of dollars and cents. The bottom line is that we signed, as a community, an obligation when we built the Marina that this was going to be an area that would be a revenue source. How are we going to make this up? Is it legal that we continue to subsidize the Marina fund with General Fund monies? This needs to be discussed. What cuts will have to be made to make up the loss of revenue? He feels that the EDB made some mistakes in this process (Waterfront Park process). We have financial and fiscal obligations that we need to live up to.**

7. **Bob Mutch - Mr. Mutch said there have been opportunities in the past to cover the revenue needed to pay for the Marina. For some reasons, the condominium complexes were let off the hook. What is this City Council going to do to make the General Fund whole? \$50,000 is being taken away from the Fund that could be used for City services. This should have been part of the discussion for the vote.**
8. **Kitty Griffin - Ms. Griffin stated that she did everything she could to have a different result in the election. However, she fully respects the voters' wishes. We should not spend \$37,000 on another election. We need to move forward with this.**
9. **Tony Haughey - Ms Haughey stated that we need to let go of the waterfront as a revenue source. We have made this the center of everything. We need to look elsewhere in the community for a revenue source. We don't have to have buildings on the waterfront to enjoy the area. There are other areas that can be developed such as Yuba. We need some improvements to downtown to attract people there. We should save the \$37,000 on the election and use it towards the lawnmower.**
10. **James Milburn - Mr. Milburn stated that the Council should be able to get the drift by this time. We have already had over 70% of the voters say what they want. Mr. Milburn talked about what the downtown area was like when he first arrived in town in 1941. He talked about a recent trip he took to Switzerland. He discussed a beautiful lake area where the buildings were set way back. That is the way it should be in Benicia. We should leave the Spit alone. We can look just like Switzerland.**

**Council Member Whitney stated that the citizens have spoken, loud and clear. Their vision is for a Waterfront Park. It makes no sense to spend \$37,000 on another election. However, we need to hold to the agreements that we made in the past. When you look back to the beginning of this process, there were people that had a vision for the Marina. There were four pieces to the Marina puzzle: 1) the marina, 2-3) two condo parcels, and 4) the commercial parcel. The Marina is an Enterprise Fund. This Enterprise Fund is upside-down. It behooves us as a Council and Community to face this consequence that we are now dealt with. He had hoped the commercial component would come to fruition, but it hasn't. The advisory vote had made it clear what direction the community will head when it comes to the commercial piece of the puzzle. The projected structural deficit is  $\frac{3}{4}$  of a million dollars. It makes sense to get a hold of this thing quickly. The General Fund should not subsidize an Enterprise Fund. We are out of compliance with the Cal Boating agreement that we have. We have looked the other way in the hopes that we would be able to put this commercial piece together. That is not going to happen. We are still out of compliance. What we have to do is set the task to Council, agendaize this soon, and address it. It is Council's duty to resolve this quickly. We may want to look at forming a citizen type committee. He suggested having Susan Street and Bob Mutch sit on the committee. Some other suggestions he had were: revisiting the Cal Boating loan, earmark the income off of the East Second Street lot, or have the Benicia Harbor Corporation take over the dredging. Mr. Schiada stated that Benicia Harbor Corporation may be able to do the dredging in the future, but there are some legal issues that we will need to face. We will have to comply with certain public contract and wage payment requirements. There may not be the savings that we envision by having them do all the work. Also, the problem with the vacuum method is finding a site to put the vacuum material. The land surrounding the Marina is either wetlands or is under private ownership.**

Mr. Schiada stated that we are still looking at these issues.

Vice Mayor Patterson stated that it seems that we are getting far away from the agenda item, although it has been a worthwhile discussion. Council Member Whitney stated that these items are related to the parcel and he does not see how we can disconnect them. Ms. McLaughlin stated that listing the items is fine but it is the discussion about the dredging that is too in depth.

Council Member Whitney stated that creating an assessment district could be done. We could also create an assessment district for the entire City that deals with dredging. He had said that we could sell the Marina. It will take some political will and the will of the community to come together and decide how we are going to deal with this. There is clearly an imbalance in the Enterprise Fund.

Council Member Smith stated that he too enjoyed the community conversations on this issue. He hopes some of the ideas expressed will come to fruition such as a marsh walk or art in public places, etc. He was one of the volunteers that built the Marina Green and he is totally in favor of rezoning it as a park. He does not feel that way about the land East of the Green on B Street. He does not feel the voters were totally educated about that. It would be a waste of City money to have another election with another one-sided campaign.

Vice Mayor Patterson stated that the best part of the dialogue was that it gave us a chance to listen. The vote was fair. It gives us an opportunity to look forward to a Waterfront Park that will be the best on the Carquinez Straight.

**RESOLUTION 04-178 - A RESOLUTION ADOPTING THE WATERFRONT PARK INITIATIVE MEASURE SUBMITTED BY THE VOTERS IN LIEU OF SUBMITTING THE MEASURE TO THE VOTERS LIMITING THE USE OF THE CITY-OWNED PROPERTY AT EAST B AND FIRST STREET TO A PARK INCLUDING LOW IMPACT RECREATIONAL ACTIVITIES, COMMUNITY EVENTS AND FESTIVALS**

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

**Ayes: Council Members Patterson, Smith and Whitney**

**Noes: None**

**Abstain: Mayor Messina**

**Absent: Council Member Campbell**

Vice Mayor Patterson then gave Staff direction to consider a couple of approaches we could take and bring it back to a future Council meeting. First of all we need to get whatever we do on our priorities list. The second thing that we want to do is look at the planning process and consider forming a planning committee that would be a mix of stakeholders. The planning committee would be specifically for the park development. It would look at the planning concepts, come up with a conceptual plan and also look at the funding. There are a myriad of approaches we could take, as discussed by Council Member Whitney. We want to continue the progress on the alternative way of doing dredging. We probably need to put this on a regular basis to update Council with regards to the progress. We probably need to get somebody from the outside to put a package together. Staff needs

to keep Council informed on that. The issue with Yuba needs to be on our list of priorities. It is on our list, but did not make the top 40 priorities. We also need to look at the other opportunities downtown as well.

Council Member Whitney stated that he would like to see a component added to this where we have citizen input on this (the ongoing issue of the Enterprise Fund).

Vice Mayor Patterson called for a 5-minute recess at 9:11 p.m.  
The meeting resumed at 9:19 p.m.

Mayor Messina stated that he wanted to chastise his colleagues and the City Attorney. He watched the previous discussion on television in the City Manager's office. There was considerable discussion on direction about what we need to do about the Marina. He reminded his colleagues that he could participate in those discussions. He was offended they used the opportunity of an item he could not participate in to discuss that. He should have participated in that discussion. He stated that he was chastising his colleagues and the City Attorney for not pulling the leash sooner than she did. Vice Mayor Patterson apologized and asked if there was any reason why he could not add to the discussion at this point. Mayor Messina stated that at this point, it should be agendaized so he can have the opportunity to discuss it further.

Resolution approving the preliminary plan for the neighborhood park in the D-7 subdivision (northeast portion of the Southampton development).

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

Anika Carpenter, Ripley Design Group - Ms. Carpenter reviewed the design for the park.

Vice Mayor Patterson asked if the restroom at the park was permanent. Mr. Alvarez confirmed that the restroom would be permanent.

Council Member Smith stated that he understood that Centex Homes is willing to make changes to the park if they are appropriate. He stated that Benicia is tennis court deficient on the North end of town. There is also another recreation need that is not met at that end of town. He stated that the proposed half-court basketball should be changed to a full-court basketball court. It would not alter the plan greatly. This would serve the basketball players in town much better. Mayor Messina asked Mr. Alvarez if a full-court basketball court would be consistent with the needs of the area. Mr. Alvarez confirmed that it would be consistent with the needs of the area.

Alex Berry, Centex Homes, stated that they are open to the idea of a full-court basketball court. They want this to be a nice neighborhood park. They are certainly willing to make the change.

Council Member Smith stated that he would make a motion to approve the design of the park with the change from a half-court to a full-court basketball court.

**RESOLUTION 04-179 - A RESOLUTION APPROVING THE DESIGN OF THE D-7 PARK**

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

Ayes: Council Members Patterson, Smith, Whitney, and Mayor Messina

Noes: None

Absent: Council Member Campbell

Resolutions regarding Water Treatment Plant Improvement Project:

Dan Schiada, Director of Public Works, reviewed the Staff report on this item.

Mayor Messina asked Mr. Erickson to briefly describe why we reached the conclusions we did.

Mr. Erickson stated that essentially the flaw in the low bid was the failure to provide the required bid documents. The missing documents dealt with subcontractors and State Revolving Loan Fund. Ultimately we came to the conclusions that the omissions were material. They were not minor irregularities. The prudent thing to do, with the legality of the situation, is to award the contract to the second low bidder.

Council Member Whitney asked Mr. Erickson if Staff conferred with the City Attorney when they made this decision. Ms. McLaughlin stated that Staff did confer with her and she used one of our contract attorneys to advise the City Manager on this issue. They all agree with the results and recommendations.

Mr. Schiada stated that the City has received authorization from the Department of Health Services, who is providing the \$13.6 million in loan money, to award the contract to Monterey Mechanical Co.

Public Comment:

1. Bruce Rowan, President, CW Rowan Construction Co. - Mr. Rowan stated that his company was the low bidder on this project. He stated that the controversy with their bid principally had to do with their oversight to submit three standard forms with their bid. They have since provided the information to City Staff. They are still not clear if these documents are required to be submitted with the bid or before the contract is signed. He hopes that common sense prevails tonight. None of these things afforded them any advantage over the competition, compromised the public bid process, or gave them any advantage. There was a memo from Mr. Schiada to Mr. Erickson confirming these facts. \$71,000 is a lot of money. The City should not spend this money unnecessarily on the higher bid. The job should be awarded on price. The omissions have been corrected. He is requesting we award the contract to his company. Anything else is a waste of money.

Vice Mayor Patterson asked Ms. McLaughlin what the scope of Council's review is on the bid process, referring to page IX-C-11. Ms. McLaughlin stated that it is a matter of law, not discretion.

Council Member Smith asked Mr. Schiada if the State recommended or agreed with the decision to award the contract to Monterey Co. Mr. Schiada stated that they received an authorization to award

the contract. The decision is left up to the City, however, if the City does not have authorization to award the contract we would be jeopardizing the State Revolving Loan. Council Member Smith asked Ms. McLaughlin if an award to Rowan would leave the City vulnerable. Ms. McLaughlin stated that awarding the bid to Rowan would leave the City more vulnerable.

Vice Mayor Patterson asked for clarification on whether it is a matter of law or discretion. Ms. McLaughlin reviewed case law that pertained to this issue. In this particular case, with regards to the form, the column discussing percentages was not filled out at all. There are portions in the wording specification indicating that you need to provide percentages. On the form, that column was left blank.

Council Member Smith asked Mr. Schiada if we could go back to the State and ask for authorization on another bid. Mr. Schiada stated that the deadline to award the contract is 11/17/04 at midnight. If the contract is not awarded by that time, we may face going out for bids all over again, which could create a 3-6 month delay. We are facing a dilemma where we need to make a decision or jeopardize funding.

Vice Mayor Patterson stated that this is not a decision for Council to make. The facts are establishing that it is a matter of law. It is not a matter of discretion. Council Member Smith stated that it could be a matter of interpretation of the law. Ms. McLaughlin stated that on item #4 (on the form) it is not interpretation. It was clear that column was not filled out. It is a fact that it was not done. Item #5 is also a matter of law.

**RESOLUTION 04-180 - A RESOLUTION ACCEPTING THE BIDS FOR THE WATER TREATMENT PLANT IMPROVEMENT PROJECT, AFFIRMING THE CITY MANAGER'S DECISION ON THE BID PROTEST, AWARDING THE CONSTRUCTION CONTRACT TO MONTEREY MECHANICAL CO. OF OAKLAND, CALIFORNIA, IN THE AMOUNT OF \$9,177,000, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY**

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

**Ayes: Council Members Patterson, Smith, Whitney, and Mayor Messina**

**Noes: None**

**Absent: Council Member Campbell**

Council Member Whitney asked Mr. Schiada where we draw the line on what projects Staff manages. Mr. Schiada stated that Staff generally manages routine projects. Any project over \$1 million you get into the need for a comprehensive team where you need the specialty knowledge. At the Water Treatment Plant we are dealing with very technical work. We need to rely on a team of experts to come in and assist us.

**RESOLUTION 04-181 - A RESOLUTION APPROVING TASK ORDER NO. 40 FOR CONSTRUCTION MANAGEMENT/ENGINEERING SUPPORT SERVICES FOR THE WATER TREATMENT PLANT IMPROVEMENT PROJECT WITH CAMP DRESSER & MCKEE, INC. FOR A NOT-TO-EXCEED COST OF \$1,707,784**

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

**Ayes: Council Members Patterson, Smith, Whitney, and Mayor Messina**

**Noes: None**

**Absent: Council Member Campbell**

**Resolution authorizing the City Manager to execute Contract Change Order No. 13 with Ranger Pipeline for the I/I Wet Weather Improvements Project and confirming the Contract Change Order Nos. 1 through 12:**

**Dan Schiada, Director of Public Works, reviewed the Staff report on this item.**

**Vice Mayor Patterson asked Mr. Schiada at what point we get into the repair of the damaged sidewalks, curbs, clean up of dust, etc. Mr. Schiada stated that we should be starting to see that soon. The completion of the project is anticipated in March 2005. The contractor is ahead of schedule. There is not an existing punch list of what needs to be repaired. We do have a list, but it has not been finalized. Vice Mayor Patterson discussed the area around the City Park that particularly needs attention. We are not able to say that we will not pay for materials until the repairs are completed. However, we are withholding 10% of each payment, which will not be paid until the job is completed, including the repairs.**

**Council Member Whitney asked if we have reached out to the residents along the pipeline to get their input as to what has been damaged. Mr. Schiada stated that we have been taking note of the concerns raised by residents. We have not reached out to the residents yet. Council Member Whitney stated we should contact all residents affected by this. He stated that the dollar amount of the change order seems low. Mr. Schiada confirmed that we are doing well on the project. We are way under our anticipated cost on this project. Mr. Schiada stated that we have been holding monthly neighborhood meetings where all affected residents were notified. We may be able to work Council Member Whitney's suggestion into the neighborhood meetings to solicit residents' comments on final repair work. Council Member Whitney stated that was a great idea.**

**Mayor Messina asked for clarification on Mr. Schiada's prior statement that all sections of streets and sidewalks will be left in equal or better condition than they were in prior to the project. Mr. Schiada confirmed that he still holds firm to that promise.**

**RESOLUTION 04-182 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT CHANGE ORDER NO. 13 WITH RANGER PIPELINES FOR THE I/I WET WEATHER IMPROVEMENTS PROJECT AND CONFIRMING CONTRACT CHANGE ORDER NOS. 1 THROUGH 12**

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

**Ayes: Council Members Patterson, Smith, Whitney, and Mayor Messina**

**Noes: None**

**Absent: Council Member Campbell**

**REPORTS FROM CITY MANAGER:**

**Seeno Project (Discovery Builders: Report of outcomes from November 4, 2004 Joint City Council/Planning Commission Meeting and discussion of public participation opportunities.)  
Jim Erickson, City Manager, reviewed the Staff report on this item.**

**Mayor Messina asked Council if, since Council Member Campbell is absent, they should put this item off, since we will be taking votes on it. Vice Mayor Patterson stated that she would prefer to hear the item earlier in the evening so that the public could participate in the discussion. Mr. Erickson stated that the next agenda is getting to be very full and heavy. Vice Mayor Patterson stated that she is willing to have a discussion on it tonight, but she would still like to have it on the agenda early on.**

**Council Member Smith stated that he is salivating at the potential tax revenue this development could create and add to our town. However, his bottom line is he wants it to be a benefit for the people that live in the town already. One benefit he sees is the potential jobs. He is concerned about the impact on our transportation system. That is the main argument in his view for adding other types of land uses. He is not sure how you could make this a smart growth, transit oriented development unless you put homes near it. If the developer can come up with ways, possibly funding of our intermodal station and future ferry terminal, that would have the potential to mitigate any traffic impacts. The developer was not inclined to make an estimate on how many jobs this is adding. There are spectacular views from this property. This town could benefit from a restaurant that has the view Eastward of Suisun Bay. He really needs to see how this is a smart growth project.**

**Vice Mayor Patterson wanted to back up to the overarching General Plan goal, which is sustainable development for which we have developed no standards, criteria or direction. It can be argued that the General Plan goals and policies provide that. If that were true, we would not be looking at the kind of proposal we looked at last week. The State General Plan Guidelines has direction of how you can have sustainable development and the things to consider. Those should be criteria that would be used. Backing up even further is to look at the landform. Any self-respecting planner goes through the process of looking at the landform and seeing what the constraints are, as well as the existing uses around. By the time you go through this process you then have some opportunities. You should use the landform as an asset. The landform is giving us some opportunities to continue to make this town special. We miss this opportunity at our peril. Our economic development is very dependant on being distinct and different. We need to be extremely cautious on how we go about dealing with this. If in the final analysis we wind up with something similar to something we have seen twice now, then so be it. The process last week was flawed. There were extensive comments on the previous EIR (view coming across the bridge, water supply landform, land use, and the 5 drainages). The orientation from reservoir road is critical. All of these things were said in one way or another in the comments on the last EIR. Apparently, no notices were sent to the people who made the comments on the EIR. For three reasons she would like to have a process that does service to the General Plan intent as well as the needs for the economic development: 1) we have had this flawed process, 2) we have not done the kind of envisioning process that should occur with a large piece of property like this, in developing constraints, looking at the assets of the landform and looking at the opportunities, and 3) for the economic development we have to be careful in how we develop this. It needs to last, it needs to**

have enough diversity that we can ride out the economic cycles, it needs not to detract from out downtown, and it needs to be an asset for the residents in the area. She would like to see a proper process. She would like Staff to come back with a few different approaches. She quoted the General Plan by stating 'rather than just reacting to specific development proposals the planning should be proactive and master planning in nature.' There is the rub. She would like to get ahead of this.

Council Member Whitney stated this could be a huge economic engine for the community. He agrees that there are troubling questions about traffic. He is not persuaded that this is a mixed-use environment or that we want housing in the area. If we start putting houses out there on an island, we start creating separate communities that we worked hard not to create. He does not see how mixed-use and residential will work out there. If we don't have a dialogue we are going to have serious issues. If we try to jam it down the community's throat, we will struggle. He is open to discussion, but he does not want it to drag on.

Mayor Messina stated that he is comfortable with the General Plan designation as light industrial. Housing is inappropriate. He would not be in favor of spending Staff time exploring avenues that the majority of the Council does not wish pursue. He would also question the value in asking the developer to spend dollars on these issues if we already know the outcome. He would rather see the developer spend dollars on other issues where we could get some benefit for the community.

Vice Mayor Patterson asked for clarification on the Mayor's statement that 'the majority of the council does not support the idea of exploring the appropriate land uses for the 500 acres.' She asked if it was predetermined as to what the majority of the Council wants. Mayor Messina stated that at the workshop the majority of the Council was not in favor of residential uses. Vice Mayor Patterson stated that was not what we are talking about. We are talking about what are the appropriate land uses and what is the appropriate way to deal with the landform. Those are the kinds of issues that ought to come out of a process and ought to come out of some professionals taking a look at that and allowing the citizens to see what the constraints are. It just has not happened with this yet.

Mayor Messina questioned whether considering land use forms is conducive. In terms of the landform and how the project interacts with the geography and topography, he thinks that will be covered by CEQA. As they go through an EIR a lot of these issues will be addressed. That is a sufficient form. He is concerned that we will now ask Staff and the applicant to go outside that and create additional work, which creates additional cost and time.

Vice Mayor Patterson stated that the difficulties with relying on CEQA is that when you look at an alternative it is not at the same level as the proposed project. The public never gets a full viewing of what that alternative really looks like. That is not the way it is done at the Federal level. It is the way it is done at the State level. The comments on the first EIR were very specific about the alternatives that should be considered. To date, there has not been a response on the comments that were made. The difficulty with putting this on CEQA is that it is a very formalized process. What happens is that the developer gets delayed even further. What some of us are suggesting is that we get these items aired and get a fair discussion on them. If we don't do it at the front, we won't have 'insurance' to avoid delay. We need to examine these issues and these questions. It is not a healthy path to go down to

say that CEQA is going to answer all the questions we need answered because CEQA does not have an equal evaluation of alternatives.

Mayor Messina stated he is comfortable with the process we follow in the City in terms of the public hearings we will have at the Planning Commission and the City Council, CEQA requirements and the public meetings and outreach. In terms of alternative uses, he is comfortable to have that discussion at the next Council meeting. He sees specific uses as being acceptable. His take on it is that the Council should provide specific direction. He would rather focus it and narrow the uses in terms of what fits in the General Plan, and the direction that the majority of the Council wants to go. He would like to expedite the process. We will discuss this further at the next Council meeting.

Vice Mayor Patterson stated that she is very uncomfortable with the Mayor's continued use of the word 'majority'. She would prefer we not use that because a vote has not been taken. It is not fair to set it up as if there is a majority. There is not a majority. That needs to be really clear.

Mayor Messina stated that he disagreed with the Vice Mayor. He thinks they will take votes on specific discussions. The votes will show whether there is a majority or not. There will either be a vote of 4-1, 5-0 or 3-2. Those are the ways it will come out. If the majority of the Council feels we should go in one direction that is the way we will go. He does not want to leave it nebulously. We need to provide guidance.

Council Member Smith stated that he wants to reiterate that there are some real shortcomings in allowing CEQA to do the work and provide the direction that we need to provide beforehand. If they do CEQA on a plan that does not have support of Council then it is a big waste of money. The Mayor did seem to use the term 'majority' in the present tense. The majority has not been established yet.

**Public Comment:**

1. Kitty Griffin - Ms. Griffin stated that she too is uncomfortable with the Mayor's use of the term 'majority.' They have not had a chance to do the research yet. If she had known on 11/4/04 to be prepared with all of the necessary information, she would have been ready. She did not know it was coming up. Before you can have a majority, you have to listen to arguments about it. She feels like the issue is being shut off. Those of us who want to argue in favor need a chance to air it out. She wants to believe there is still an open mind on this.
2. Council Member Smith stated that this item would be discussed at the 12/7/04 meeting. One error that Staff made was that the commentors on the prior EIR were not contacted before the last meeting. He asked that all 25 commentors be contacted well in advance to the 12/7 meeting so they have a chance to attend.
3. Bob Craft - Mr. Craft stated that due deliberation is in order. He is not sure how he feels about this issue. No substantial details have been provided yet. As part of the review process, we should insist that a scale model be done so we can have a better idea of the project and what it entails.

4. **Bob Mutch - Mr. Mutch stated that he wonders how and when we decide to set aside or not set aside the General Plan. There needs to be an open discussion from both sides.**
5. **Salvatore Avila - Mr. Avila spoke on behalf of the developer. He wanted to remind Council that it was a reintroduction that took place last week, not a scoping session. This is a process they have been working on since 1998. They have spent hundreds of thousands of dollars trying to address the concerns that put the project on hold before. They have properly gone through the CEQA process. He wanted to raise his concern and opposition to further charrettes, scoping sessions or any type of input aside from the CEQA process. They have been working diligently on this project. They want to have an open mind through this process. They do not want to close the door to it but he feels that they can be properly addressed through the alternatives analysis. The original EIR did have mixed-use as an alternative. At this point in time it looks like we are trying to reinvent the wheel. They want to address all the concerns about traffic, and all impacts. They are confident that the updated revised EIR will address those concerns. This is the project that is being brought forward. They are complying with the General Plan. If it does become a point of contention to where the whole thing gets derailed, they may just pull back and hold off for several years until everything gets back on track. He is looking forward to gaining closure at the next meeting. He wants to keep an open mind.**

#### **REPORTS FROM CITY COUNCIL COMMITTEES:**

1. **Mayors' Committee Meeting - Mayor Messina - Next meeting date: 11/17/04 - Council Member Smith asked Mayor Messina if he had any details on the City of Dixon creating a partnership with its school district to construct a high school. The Mayor stated that he would ask for details and get back to Council on this.**
2. **Arsenal Restoration Advisory Board - Council Member Campbell - Next meeting date: 11/17/04**
3. **Association of Bay Area Governments (ABAG) - Vice Mayor Patterson - Next meeting date 4/28/05**
4. **Audit & Finance Committee - Council Member Campbell and Vice Mayor Patterson - Next meeting date: 12/17/04**
5. **Carquinez Strait Preservation Trust - Council Member Smith - Committee is currently inactive.**
6. **City Employee Compensation Committee - Council Members Campbell and Whitney - Next meeting date: Not scheduled**
7. **First Street Revitalization Committee - Council Members Smith and Campbell - Next meeting date: 12/9/04 - Interesting presentation from BPAF with regards to a performing arts center. Vice Mayor would like the purpose of this committee revisited in the future.**
8. **League of California Cities - Council Member Smith - Next meeting date: Not scheduled.**
9. **Police Station and Civic Center Restoration Committee - Council Member Smith and Mayor Messina - Next meeting date: Not scheduled - There is a tentative meeting set for 12/2/04.**

10. School District Liaison - Council Members Smith and Whitney - Next meeting date: 12/2/04, time changed to 7:00 p.m. Mayor Messina stated that he heard the School District is expecting this to be a joint meeting with Council to discuss the City taking over the maintenance of the district fields. Mr. Erickson will look into this and let Council know what the district is expecting.
11. Sky Valley Area Open Space - Vice Mayor Patterson and Council Member Smith - Next meeting date: 1/19/05 - They have been collecting information. They are looking forward to the Mayor and Council Member Whitney coming to the next meeting.
12. Solano EDC Board of Directors - Vice Mayor Patterson - Next meeting date: 11/23/04 - Vice Mayor Patterson stated that she has been having difficulty attending the meetings due to her work schedule. She encouraged other Council Members to attend if they are able.
13. Solano Transportation Authority (STA) - Mayor Messina - Next meeting date: 12/8/04
14. Solano Water Authority/Solano County Water Agency - Mayor Messina - Next meeting date: 12/9/04
15. Sunshine Committee - Council Member Campbell and Vice Mayor Patterson - Next meeting date: No further meetings.
16. Traffic, Pedestrian and Bicycle Safety Committee - Vice Mayor Patterson and Council Member Campbell - Next meeting date: 1/20/05 - Vice Mayor Patterson stated that they had a hearing on the parking situation and recommendation with regards to angled parking vs. parallel parking. They recommended taking the next step in terms of doing engineering design for angled parking, but with some restrictions. That will be coming back to Council soon. They are going to reschedule the topic of traffic noise so that the public can hear and participate in the discussion.
17. Tri-City and County Regional Parks and Open Space - Council Member Whitney - Next meeting date: 12/13/04
18. Valero Citizens Advisory Panel (CAP) - Council Member Whitney - Next meeting date: Not scheduled - They are close to a report coming out on the review that is being done.
19. Youth Action Task Force - Council Members Whitney and Smith - Next meeting date 12/1/04. There will be consideration of a possible lifestyle or nutrition policy at City facilities discussed at this meeting.

**ADJOURNMENT:**

Mayor Messina adjourned the meeting at 11:01 p.m.

Lisa Wolfe, City Clerk