

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
DECEMBER 6, 2005

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, December 6, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Girl Scout Troop 311 and Brownie Troop 308 performed the Flag Ceremony and led the Pledge to Allegiance. The following Troop members were present: Madison, Maya, Michaela, Tatum, Sierra-Lynn, Lauren, Abigail, Kayli, Kelsey, and Katelyn.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

None

APPOINTMENTS:

None

PRESENTATIONS:

Mayor Messina presented Certificates of Recognition to the following Urban Water Management Task Force Members: Kathleen Van Velsor, Fred Railsback, Greg Gartrell, Dennis Lund, Brad MacLane, Elizabeth Patterson, and Veronica Stone.

Winnemem Wintu Tribe Presentation on California Water Issues:

Mr. Mark Franco, Headman of the Winnemem Wintu Tribe congratulated the newly elected Council Members. Mr. Franco stated that he had done research prior to attending the Council meeting. He found that the City of Benicia has many reasons to hold its head high. The Tribe's name stands for 'middle water.' They are water people and they are concerned about water issues. Water is not a commodity. The City has done a good job taking care of water. Fish are dying in the Delta because people are not taking care of the water. The water that we drink is from ourselves. We are all made up of water. He was glad to see the Brownies and Girl Scouts present. They will be the ones to take care of the water in the future. The Tribe is concerned that the water being bottled is coming from

their springs. Water needs to be protected. People need to look at ways to protect and preserve water. People have to be careful and respect water.

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

On motion of Vice Mayor Patterson, seconded by Council Member Whitney, the Agenda was adopted as presented, on roll call by the following vote:

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

Noes: None

COMMUNICATIONS:

WRITTEN:

None

PUBLIC COMMENT:

1. Sue Johnson – Ms. Johnson reviewed the Fundamental Rights that are posted at the entrance to Council Chambers. Those rights make her feel good. They make her feel like an empowered human being. She reviewed the proposed changes the Rules of Procedure for Council meetings. The proposed changes make her feel like her rights are being taken away. The Incline Place neighbors have filed eight appeals. They may file more. It is an attempt to get the City to comply with its own codes. They do not want to take this issue to court unless they have to. She condemns the appeal fee increase. It is a process to shut the public out of the appeals process. It is an attempt to shut the public up.
2. Jon Van Landschoot – Mr. Van Landschoot inquired as to whether the names of the five people that are up for the Open Government Commission were noticed properly. Staff and a citizen in the audience verified that the noticing was done properly.
3. Council Member Smith announced the following upcoming events:
 - 12/9/05 – Holiday Concert at the Benicia Public Library
 - 12/10/05 – Christmas Parade and Holiday Market Downtown
 - 12/10/05 – Children’s Victorian Ornament Workshop at the State Capital
 - Santa Clause will make many appearances in town, including a few at the Fisher Hanlon House
 - 12/10/05 - Friends of the Library Book Sale
 - 12/10/05 – Creative Women Symposium at the Arsenal
 - 12/10/05 - Kings of Strings will perform at the Majestic Theatre
 - 12/31/05 - ‘New Years Eve on Broadway’ at the Majestic Theatre
4. Council Member Whitney thanked Council Members Campbell and Smith for their years of service on the City Council. He has enjoyed working with them.

CONSENT CALENDAR:

Council pulled items VII-A.

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

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

Noes: None

RESOLUTION 05-177 - A RESOLUTION ADOPTING THE 2005 URBAN WATER MANAGEMENT PLAN AND DIRECTING STAFF TO SUBMIT THE PLAN BY THE DECEMBER 31, 2005 DEADLINE

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of the Minutes of November 15, 2005:

Council Member Smith pulled this item to request that the minutes reflect that Council Member Campbell was present at the Closed Session held on 11/15/05. He arrived shortly after the Closed Session started.

On motion of Council Member Smith, seconded by Vice Mayor Patterson, the minutes were approved as amended, on roll call by the following vote:

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

Noes: None

Abstain: Council Member Whitney

PUBLIC HEARINGS:

None

UNFINISHED BUSINESS:

None

NEW BUSINESS:

Approval of the results of the General Municipal Election:

Lisa Wolfe, City Clerk, reviewed the Staff report.

RESOLUTION 05-178 - A RESOLUTION APPROVING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION HELD NOVEMBER 8, 2005

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 Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes:

Reevaluation of the recent increase in the appeal fee:

Jim Erickson, City Manager, reviewed the Staff report.

Council Member Smith asked Mr. Erickson why the Staff report references the average cost of appeals as being \$1,000.00 and the verbal report reflects the actual cost of \$3,260.00. Mr. Erickson stated that it was an error made by the person working on the Staff report. The actual cost is approximately \$3,260.00.

Vice Mayor Patterson stated that the discussion of adjusting the fees was addressed when Council was having its priority workshops. Indexing some of the fees and recognizing that some of the fees should not be so onerous on private property owners for single projects were some of the ideas that were discussed. Appeal fees were also discussed. According to the minutes, the discussion was that the City would not charge the full cost of the appeals. No community does that. Part of the appeal process is including the public in the democratic process. It is very expensive for an ordinary person to file an appeal. She cannot abide by charging the proposed amount for appeals. It disgraces the City and she is surprised the City has let it get this far. She hopes Council is able to fix that tonight. The public will understand an increase, but not as much as is being proposed. The City currently charges \$75.00 for appeals. Fairfield charges \$0, Vallejo charges \$211.00, Suisun City charges \$68.15, Vacaville charges \$200.00, and Martinez charges \$100.00. The average of all the above figures is \$121.00. The proposed fee increase puts the City's appeal fee at \$350.00.

Council Member Campbell asked if Staff had Rio Vista or Dixon's appeal costs. Mr. Erickson stated that Staff did not obtain those numbers. Council Member Campbell stated that the proposed cost seemed high. He suggested doubling the average cost which would be approximately \$240.00. The fee needs to be raised, but quadrupling the fee seems excessive.

Council Member Smith stated that increasing the fee to the proposed amount seems undemocratic. He urged the new Council to consider that cost recovery is not the only factor take into account. Democracy is the main factor to consider.

Mayor Messina stated that the principal of the issue is wrong. The cost for charging for an appeal is fair only if the applicant loses. If the applicant is successful, the citizen should not be charged. Anyone on the Council can call up a point for review. If an individual cannot get a Council Member to bring their issue up for review, they have the right to file an appeal. There is no cost to the applicant if they can convince a Council Member to bring their issue up for review. With those safeguards in place, it is appropriate to have the fee set higher. He is comfortable with the process and the safeguards in place.

Council Member Smith stated that Mayor Messina had some good ideas. It concerned him that it is time consuming for a citizen to try and track down Council Members to make their case. He suggested Council consider widening the timeframe allowable for appeals. That would allow the democratic process to take place.

Council Member Campbell suggested raising the fee to \$150.00.

Public Comment:

1. Kitty Griffin – Ms. Griffin stated that the democratic process and open government supersedes any cost recovery issues. She supported the increase to \$150.00.
2. Sue Johnson – Ms. Johnson stated that she was not aware that she could try and get Council Members to call up a project for review. Someone should have informed her of this before. She asked Council to review the project at four meetings. She had conversations with Vice Mayor Patterson and Council Member Smith, and they did not call it up for review. What did she do wrong?

Mayor Messina stated that she did not do anything wrong. Council Members Patterson and Smith chose not to call her project up for review; however, he will let them address that for her.

Council Member Campbell stated that he did not know this possibility existed until about six months ago. He is not sure the public even knew about it until then.

3. Arlin Williams – Mr. Williams stated that the amount of \$150.00 seems reasonable. However, he would prefer it be a percentage of the actual fee.
4. Jeanine Seeds – Ms. Seeds asked for clarification on the process for a Council Member calling an issue up for review. It does not sound like due process. The public has a right to hear what is being appealed. The public has a right to know what Council is doing.

Mayor Messina reviewed the process for a citizen attempting to get a Council Member to call a project up for review.

5. Leann Taagepera – Ms. Taagepera stated that the appeal fees were inadvertently increased by 366% in September. There is no mention of the increase of the appeal fees in the agenda or staff report for that meeting. Looking at the September staff report, there was no staff report on fee increases. The current staff report states that the average amount for appeals is \$121.00. If a project was first approved by the HPRC, it would cost a citizen \$700.00 to enable his appeal be heard by elected officials. The fee increase is a silencing of public participation in the planning approval process. It would ensure that Benicia is out of step with other jurisdictions in allowing its citizens to question planning decisions. This is America. Citizens have a right to appeal planning projects. Increasing the fee to such a level would take that right away. She believes silencing the public is the City's intent. She has not seen how the analysis of the approximately \$3,000 came about. She must believe that Council will return the appeal fee to a level comparable with other jurisdictions.
6. Jerry Hayes – Mr. Hayes thanked Council Members Campbell and Smith for their service to the City. The proposed fee increase is shameful. He is disturbed and concerned about the disconnect between Council, Staff, and citizens of the City. The appeal process belongs to the citizens, not the Council or Staff. The fee should be left at its current amount.

RESOLUTION 05-179 – A RESOLUTION RAISING THE APPEAL FEE TO \$150.00

On motion of Council Member Campbell, seconded by Council Member Smith, Council approved a Resolution reducing the raised fee to \$150.00, on roll call by the following vote:

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

Noes: None

Presentation to outgoing elected officials:

Mayor Messina presented Council Members Campbell and Smith with gifts on behalf of the City of Benicia.

Comments by outgoing Council Members:

Council Member Campbell stated that he had a great time serving the City of Benicia. He thanked his wife (Ms. Kerry Carney) for her support. He thanked all of the citizens that have supported him. He was able to get a lot of projects and programs going. The City has a very good Staff. He discussed the financial status of the City. It is in pretty good shape. The City Staff does an excellent job and he has enjoyed working with them. His only regret was that the Police Station project did not move forward. The police deserve a decent place to work. He hopes the community will give that issue another shot.

Council Member Smith read the following prepared statement:

It's funny, I remember so well sitting in the audience four years ago listening to Steve Gizzi and Carey Corbaley make their closing comments. Councilman Gizzi struck a cautionary tone when he warned of the tens of millions of dollars of infrastructure needs faced by the city in the coming years, which is still true. I remember being reminded of President Eisenhower's departing address, where Ike warned of undue influence by what he called "the military-industrial complex." So, in that great and accurate tradition of Eisenhower and Gizzi, here are my departing remarks.

The new council inherits the most financially healthy city in this part of the Bay Area, and the one with the least crime. I think all the new and continuing council members know this, regardless of what was said in the campaign. The reasons for those strengths are the hard work of our fine city staff and the good judgment of this council and prior city councils.

The number one crisis in Benicia is not a threatened exodus of firefighters or any other employees, or an allegedly imbalanced budget that in fact is ridiculously healthy. The number one crisis in Benicia is the thousands of students in Benicia schools going on their third or fourth year without any school librarians, any counselors, any busses, and not nearly enough nurses, vice principals or variety of elective classes.

As you may know, this has occurred because California school districts get much less money from the state than in past years, and cities with quality schools have all passed bond acts or parcel taxes in recent years to maintain the quality. Benicia has not.

That's what's going to deteriorate public safety in this town, as year after year of Benicia teens suffer from neglect by the school system. That's what's going to stagnate property values as school test scores fall. And that's what I recognized early in my term, so I concentrated a lot of energy on pushing the city to help the school district in every way possible.

This chore takes pushing, because some people look as the city as a totally separate entity from the district just because they have separate boards of directors. It's true, the city and the district are funded by separate and distinct pools of tax revenue and separate budgets. Here's my news flash: They're not separate. They're as connected as one arm to the other. We need the council and school board to push the city and district staff to make institutional changes. That means more than just lip service; it means voting that way and reminding staff how you voted.

If we continue to fuss around politically and delay expansion of the Joint Use Agreement, or the reuse of Mills Elementary, the schools continue to suffer. If we bicker about whether to pass a parcel tax, the students suffer. And on a related note, if Valero and Amports continue to dodge their responsibility to adequately contribute to this community where they make so many millions, we all suffer.

So there's my message. Benicia is in many ways a wonderful place, and I am proud and grateful to have served it. But when we get to strutting around feeling good about how beautiful and healthy this place is, please remember: There is a crisis in our schools that could start to erode all our assets in a few short years, with more crime, more drugs, more graffiti and less successful, less healthy young people, all because we kept our city government fiscally strong, but neglected the schools.

I'd like to thank my wife and family for their support these past four years, and thank you for listening.”

Public Comment:

1. Kitty Griffin – Ms. Griffin thanked Council Members Campbell and Smith for their service. She admires them for their sincerity and standing up for what they believe in. Council Member Smith set a precedent by emailing out citizens who he thought would be interested in the agenda items for upcoming meetings and telling them his thoughts on those items. The Council Members should consider emailing their constituents in the same manner.

REPORTS FROM CITY MANAGER:

None

REPORTS FROM CITY COUNCIL COMMITTEES:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 8:42 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
DECEMBER 6, 2005

The second regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 8:50 p.m. on Tuesday, December 6, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

OATH OF OFFICE:

Lisa Wolfe, City Clerk, administered the Oath of Office to Council Members Hughes and Schwartzman.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

REMARKS BY ELECTED OFFICIALS:

Council Member Schwartzman stated that he would do his best to serve the City of Benicia to the best of his abilities.

Council Member Hughes thanked Mr. Tom Campbell and Mr. Dan Smith for their service to the City. He thanked his family and friends for their support during his campaign. He stated that during his campaign, he promised to not bring any hidden agendas or personal agendas to Council. He will stand by that promise. He will do his best to take some of the politics out of City Hall and replace it with integrity. He will cast his votes on what he believes is for the best interest for Benicia. He will vote with his conscience and heart. He thanked everyone who voted for him. He hopes he will earn the trust and respect of the citizens that did not vote for him. He looks forward to establishing an effective and productive relationship with all Council Members.

FUNDAMENTAL RIGHTS:

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

NOMINATION AND ELECTION OF MAYOR PRO TEM:

On motion of Council Member Whitney, seconded by Vice Mayor Patterson, Council Member Schwartzman was elected as Mayor Pro Tem, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Openings on Boards and Commissions:

- Parks, Recreation & Cemetery Commission: One un-expired term
- Planning Commission: One un-expired term

APPOINTMENTS:

Vice Mayor Schwartzman suggested that as the newly elected Vice Mayor, taking into account the current procedures in place for reviewing the applications for the appointments, he would like to continue the appointments to the next meeting so that he could have ample time to review the applications.

Council Member Patterson asked Staff under what Rules of Procedure the appointments are being made. Ms. McLaughlin reviewed the section of the Rules of Procedures (Resolution 05-149) that pertain to appointments. Vice Mayor Patterson stated that she had to take time off of work to do the interviews for the proposed appointments, all of whom applied within one week. She had already interviewed the nine other candidates who applied as long as three months ago. In this case, with the new appointments, it was impossible to do all the interviews in the week's time that was given. Some applicants were not available. Council Member Patterson stated that proceeding with the appointments would not be following the letter or intent of the Rules of Procedure.

Council Member Whitney stated that he interviewed all five applicants in question. Any and all of the Council Members can interview applicants. It is the Mayor's right to make appointments.

Council Member Hughes stated that he had the chance to talk with all five of the applicants. He asked them if they truly supported open government and if they would be a true advocate of open government in Benicia. He is ready to vote on the appointments tonight.

Vice Mayor Schwartzman stated that the reason he would like the appointments continued is so that he can follow the rules and interview the applicants. He was specific that he did not know which rules Council was going by. Later on in the agenda, Council would be discussing the rules. He thought it would appropriate to wait until afterwards. He was not trying to usurp the Mayor's power.

RESOLUTION 05-180 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF SANDY TANNER TO THE OPEN GOVERNMENT COMMISSION TO A TERM ENDING NOVEMBER 30, 2006

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Whitney, and Mayor Messina

Noes: Council Members Patterson and Schwartzman

RESOLUTION 05-181 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF JANET GROTHE TO THE OPEN GOVERNMENT COMMISSION TO A TERM ENDING NOVEMBER 30, 2007

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Whitney, and Mayor Messina

Noes: Council Members Patterson and Schwartzman

RESOLUTION 05-182 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF PIERRE BIDOU TO THE OPEN GOVERNMENT COMMISSION TO A TERM ENDING NOVEMBER 30, 2008

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Whitney, and Mayor Messina

Noes: Council Members Patterson and Schwartzman

RESOLUTION 05-183 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF PATRICIA MOREIRA TO THE OPEN GOVERNMENT COMMISSION TO A TERM ENDING NOVEMBER 30, 2009

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Whitney, and Mayor Messina

Noes: Council Members Patterson and Schwartzman

RESOLUTION 05-184 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF JOHN WOODS TO THE OPEN GOVERNMENT COMMISSION TO A TERM ENDING NOVEMBER 30, 2009

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Whitney, and Mayor Messina

Noes: Council Members Patterson and Schwartzman

RESOLUTION 05-185 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF CAROLE NAIL TO THE LIBRARY BOARD OF TRUSTEES TO A TERM ENDING DECEMBER 31, 2008

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 05-186 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF RUTH WORKMAN O THE LIBRARY BOARD OF TRUSTEES TO A TERM ENDING DECEMBER 31, 2008

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 05-187 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENTS OF MEMBERS OF THE CITY COUNCIL TO COMMITTEES

Council Member Patterson stated that she would vote 'no' because she is being taken off of a number of committees that she feels her interest and experience best serve.

The above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina

Noes: Council Member Patterson

RESOLUTION 05-188 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF THE CITY ATTORNEY AS THE CITY'S REPRESENTATIVE TO THE ARSENAL RESTORATION ADVISORY BOARD ("RAB")

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

PRESENTATIONS:

Overview of Brown Act by City Attorney

Heather McLaughlin, City Attorney, reviewed the Brown Act.

Mayor Messina urged Ms. McLaughlin to investigate on-line ethics programs or videos that would benefit the Council Members. He asked that she bring that information back to Council in the future. Ms. McLaughlin stated that there is a new law that requires Staff to bring ethics training to Council. This could be done various ways.

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

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

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

Noes: None

COMMUNICATIONS:

WRITTEN:

None

PUBLIC COMMENT:

1. Kitty Griffin – Ms. Griffin stated that although she did not vote for the new Council Members, she is optimistic and is prepared to be pleased with their service. She finds the proposed changes to the Rules of Procedure alarming. She will be disappointed if the Mayor's intent with the proposed procedures is to close Council Member Patterson down. She wants to see open government, open

- process, and fairness. She could not review the redline copy of the proposed changes on-line. She hopes that was simply something that was overlooked.
2. Bob Craft – Mr. Craft stated that it brought him no joy to speak regarding the proposed changes to the Rules of Procedure for Council meetings. There seems to be a commonality in the proposed changes, which is that the public good is not being served. Perhaps the Mayor, Council, and Staff are being served, but who works for whom? The proposed 6:30 start time is onerous unless someone works in Benicia. It is an outright invasion of the dinner hour for most people. The change would inhibit the ability of many to participate in the governing process. Given the situational context, the strange timing of the proposed changes, and the aggregation of the changes, the first three listed ‘whereas’ to the revisions are nearly an assault on the public’s intelligence. Does anyone believe this resolution will enable fuller citizen participation at Council proceedings, permit public discussion to the important public issues, and give more adequate consideration and public discussion in matters affecting the City? All of this while effectively cutting public comment to 30 minutes. Most people will not stay until the proposed later session. Regarding the term elimination – four years should be four years, unless there are extenuating circumstances. Regarding the 10:30 p.m. limit, Council knew what was involved when they took the job. They were not drafted. The public good is not being served by the changes. The changes are self-serving. The changes are being made only because they can be made. In public policy, this is termed the ‘arrogance of power.’ He suggested Council set up public participation workshops to discuss the ideas. He assumed Council has not discussed the changes. How can they possibly make a good decision based on one night’s discussion? If they have discussed them, even if a couple of the Council Members were not sworn in, the spirit, if not the letter of the Brown Act has been violated. He urged Council not to take action on these items. The best action would be to vote no on the items.

Council Member Whitney stated that the reason behind the meeting time ending by 10:30 was to allow the community to be able to watch and participate in the meetings. When the meetings go to such a late hour, it is difficult for those that have to get up early for work. He discussed the issue of the Mayor’s appointment power.

3. Tim Winfield – Mr. Winfield welcomed Council Members Hughes and Schwartzman to the Council. He discussed the fact that the Firefighters have still not been able to reach an agreement with the City. He discussed an article in the Wall Street Journal relating to employee agreements and morale. The Firefighters have still not received the information regarding training costs that they were told they could have at a prior Council meeting. He encouraged the new Council to give Staff direction to go back to the negotiating table and work out an agreement.

Vice Mayor Schwartzman asked if any Firefighters had left the employment of the City of Benicia in the past few months. Mr. Winfield stated that none had left, but there were some that were in the process of interviewing. Vice Mayor

Schwartzman suggested Council set up a Closed Session to update the new Council Members on the details of this issue.

4. Jeff Davidson - Mr. Davidson discussed the issue of limiting the public comment time to 30 minutes. He asked for more information on the issue. Mayor Messina stated that would be discussed when the agenda item is discussed later in the Agenda.
5. Jim Farr – Mr. Farr stated that the proposed meeting start time of 6:30 is not fair. People who commute would not be able to get to the meetings. He requested that the 153 West D Street project be brought up for discussion at the next Council meeting. He put this request into the City Manager and his request was declined.
6. Bridget McCarthy – Ms. McCarthy stated that a 6:30 start time for meetings is not appropriate. She requested the Anderson Hotel (153 West D Street) project be brought up for discussion at the next Council meeting.

Mr. Erickson stated that the Anderson Hotel project was on the last Council agenda. Council directed Staff to do an analysis of compliance. Staff has completed the analysis. He urged Council to review the analysis.

7. Jon Van Landschoot – Mr. Van Landschoot stated that he too is optimistic about the new Council. He asked if any of the Council Members interviewed all of the candidates for the Open Government Commission, or if they just interviewed the candidates selected by the Mayor. If not, the process was not inclusive. He hopes that in the future, all applicants are interviewed.

CONSENT CALENDAR:

Council pulled item VII-D

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

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

Noes: None

Council approved denial of claim by George and Lorraine Brigham against the City and referral to insurance carrier:

RESOLUTION 05-189 - A RESOLUTION ACCEPTING A GRANT DEED OF EASEMENT FOR A WATERLINE AT 5180 FULTON DRIVE IN FAIRFIELD (APN 0180-140-050) AND AUTHORIZING THE CITY CLERK TO RECORD THE GRANT DEED OF EASEMENT

RESOLUTION 05-190 - A RESOLUTION ACCEPTING THE 2005 STREET RESURFACING PROJECT, APPROVING CONTRACT CHANGE ORDER NUMBERS 1 THROUGH 5, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SOLANO COUNTY RECORDER

The monthly investment reports for July – September 2005 were approved.

RESOLUTION 05-191 - A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE METROPOLITAN TRANSPORTATION COMMISSION FOR ALLOCATION OF TRANSPORTATION DEVELOPMENT ACT FUNDS/STATE TRANSIT ASSISTANCE FUNDS FOR FISCAL YEAR 2005-06

RESOLUTION 05-192 - A RESOLUTION ADOPTING THE CITY OF BENICIA CAFETERIA PLAN

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Award of contract for East I Street Sewer Main Relocation Project:

Council Member Hughes asked Staff why only one of the residences was going to connect to the sewer. He also asked if there would be any additional costs to the City when the other five residences decide to connect. Mr. Schiada stated that the intent of the project is to install a public main within the street where the existing is located in the backyards of six homes. The remaining five homes are not doing any improvements at this time and therefore do not need to connect into the main. They have the option to connect to the main in the future. The cost would be the property owner's responsibility.

RESOLUTION 05-193 - A RESOLUTION ACCEPTING THE BIDS, AWARDING THE CONSTRUCTION CONTRACT, INCLUDING THE BID ALTERNATE, IN THE AMOUNT OF \$75,780 TO PACIFIC UNDERGROUND SERVICES OF MARTINEZ, CA, FOR THE EAST I STREET SANITARY SEWER MAIN RELOCATION PROJECT AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

PUBLIC HEARINGS:

Appeals regarding the issuance of a building permit for 120 Incline Place:

Vice Mayor Schwartzman stated that he would excuse himself from participating in discussions on this agenda item, as he has already voted on this item at a Planning Commission meeting.

Heather McLaughlin, City Attorney, and Bob Brown, Interim Community Development Director, reviewed the Staff report.

Council Member Hughes asked Mr. Brown to review the notification procedures (to the neighbors) that must be followed if a resident builds a structure or addition on their

house. Mr. Brown stated that there are no City requirements that the neighbors be notified. Council Member Hughes asked how neighbors that might have issues with such structure/addition go about appealing it in a timely manner if they do not know a building permit had been issued. Mr. Brown stated that the building permit process was set up not anticipating appeals. Essentially, it is a test to find out if the project meets the building and zoning codes. The system is not set up to accept appeals. Council Member Hughes asked if Benicia was unique in this process. Mr. Brown stated that none of the seven or eight cities that he has worked for have had such a notification process. Council Member Hughes stated that this is a frustrating issue for the property owner and the neighbors. He hopes that this is a policy or procedure that the City can look at refining in the future.

Council Member Patterson stated that in terms of a new structure, there are several communities (including Marin County) that require public notice of the affected properties within 300 feet of a proposed new structure. Substantial improvement requires a notice as well. Substantial improvement would be 50% of the assessed valuation of the structure. She asked Ms. McLaughlin if the meeting referred to in the Staff report was the meeting that she (Council Member Patterson), the residents, Mr. and Mrs. Lobdell, and the City Manager attended. Ms. McLaughlin stated that it was that meeting, and Mr. Golick was there as well. Vice Mayor Patterson stated that she had been contacted by the applicants about this issue. Early on, she advised Ms. Johnson and Ms. Reavis that it was fundamentally important that whatever the appeal period that existed, they must file an appeal in a timely manner. If they miss that opportunity, there is no recourse. When she was at the meeting in question, she heard Staff say that all permits had been pulled and the appeal period had run out. She knew at that point that Ms. Johnson and Ms. Rivas were 'cooked' and that they were not going to be able to appeal. She remembers that statement by Staff very clearly. That same week, she received a memo from the City Manager stating that the lot line had to be recorded at the County and that the appeal period for the lot line would not begin until it was recorded at the County. She noticed that the email did not go to the neighbors at Incline Place. She brought that to the City Manager's attention and suggested that he let them know that there was an appeal period left. It is important to understand the applicants' confusion.

Appellant:

Ms. Sue Johnson read the following prepared statement:

“Mayor Messina and members of the City Council:

My appeal may seem confusing, but I hope to quickly outline the appeal and then give you a new time frame for the timeliness of this appeal.

On August 25, I appealed the 2-story height of the proposed garage at 120 Incline Place, citing building code regulations that detached garages are limited to a 15' height. I've included a copy of this appeal for you. On August 26, I received a letter from David Golick denying my appeal, stating it was untimely. On September 1, I appealed David Golick's denial, citing "abuse of discretion by the decision-making body.”

I contend that both of my appeals were timely and tonight, I will give you two time-lines that support this contention.

Time-line #1: July 8 signing of the building permit. August 4 meeting where the Incline neighbors were told, "all permits have been issued, and no appeals are possible." Due to this statement from City Manager Erickson, I did not look for any avenues to appeal the building permit, although it was obvious that I had questions about the legality of the garage height when I questioned Mr. Golick for that measurement and he replied that he didn't have a scale with him.

Consequences of staff actions in time-line #1: under BMC 1.04.100, I have 30 days to appeal the signing of the building permit. July 8- August 4 is 27 days. If I had not been told: "All permits have been issued, no appeals are possible" I would have had time to file within the 30 days required by BMC 1.04.100. The City staff's actions effectively blocked my ability to appeal in a timely fashion under BMC 1.04.100. Therefore, City staff is responsible for my "un-timeliness," and should accept responsibility for this "un-timeliness," and then allow my original appeal to be heard.

Time-line #2: The building permit was signed on July 8, but the lot-line certificate of compliance wasn't signed until Sept 21. The building permit isn't valid until this certificate of compliance is recorded, giving a legal description of the land, per 106.3.1 of the Uniform Building Code, on which the Benicia Building Code is based. Simply stated: "Before obtaining a building permit on a project with a lot-line adjustment, a builder must have a recorded certificate of compliance for that lot-line adjustment." Therefore, the building permit was not valid on July 8 when it was signed. For time-line #2: September 21 is the earliest date that the building permit could be considered valid.

Time-line #3: 1. From the first day that work was begun on the 120 Incline Place project without consideration of the CC&R's, Mark Lobdell broke an agreement, the CC&R's, with the Sunny Acres homeowners. A legal contract has been broken.

The appeal that you are hearing tonight was filed on October 11, well within the 30-day appeal period from Sept 21, and it is a legal, timely appeal.

So, how do we go forward tonight? I contend that, under the previous time-line, I have the right for my original "building permit appeal" to be heard without an automatic denial of my appeal for its being "untimely". The main issue of that August 25 appeal was the permitting of a two-story detached garage. As of my appeal date, the permit stated, "detached garage" and the plans showed a two-story garage. This is in violation of the Benicia zoning code. I'm including a letter to the City on October 12, stating that the 120 Incline building permit violates the BMC. In fact, this violation continued from July 8, until the revised permit was issued on November 21. I contend that Mark Lobdell, as owner/builder of the 120 Incline Place project was in violation of the BMC from July 8 - November 21 and that the City was equally in violation by allowing the work to continue, despite my October 12 letter notifying them of this BMC violation. What are the consequences of violating the BMC? BMC 1.08.010 states: "Violation Declared misdemeanor. No person shall violate any provision or fail to comply with any requirement of this code. A person violating o provision or failing to comply with any of the mandatory requirements of this code is guilty of a misdemeanor." The penalties for

violating the BMC are stated in BMC 1.08.020 and 1.08.030. These codes state that each day of code violation is a separate offense.

This sounds pretty serious, doesn't it? Well, Mr. Mayor and city council members, the Incline Place neighbors take BMC violations seriously. What about you?

I would hope that you would be concerned that there has been a breakdown in the City's processes. A building project that violates the Benicia Municipal Code has been allowed to proceed for at least 18 weeks, and no one in the City has taken the responsibility to stop this project and then get it into compliance with the BMC. The Incline neighbors, through court action, have caused the plan revisions that were permitted on November 21. The City has done nothing to get this project to comply with the BMC.

As to date, The City has allowed this project to proceed, in spite of the aforementioned violation. This is not the only violation of the BMC that the 120 Incline Place project commits. I've included my October 13 letter to the City officials which states: "the Mark Lobdell building permit for 120 Incline Place should not be in effect during my appeal of this building permit. In support of this declaration, I cite BMC 17.124.040C: 'Effect on decisions. Decisions that are appealed or called up for review shall not become effective until the appeal is resolved'. By allowing the 120 Incline Place project to continue, while my appeal is still active, violates BMC 17.124.040. In clarification of the applicability of this Title 17 code, I quote again from my October 13 letter: "In support of my citing BMC 17.124.040, I state that Title 17 covers Zoning; and my appeal of a building permit, which allows a 0' high detached garage, is covered under Title 17, Zoning, as well".

Tonight, I have provided a time-line supporting the timeliness for my appeal; I could not have appealed the building permit before September 21 because it was not valid before September 1. I've also included documentation of at least two violations of the BMC by the 120 Incline Place building permit. The timeliness of my appeal and these BMC violations should call for a review of the 120 Incline Place project by the City Council and that review is what I'm requesting.

There is a much larger issue concerning the building permit that I'd like to explore with you in my last minutes: Let's call it "Time-line #3": July 8, building permit was signed without consideration of the CC&R's governing 108 Incline Place. Aug. 15, lot-line adjustment was signed, without consideration of the CC&R's governing 108 Incline Place. November 21, revised building permit was signed, without consideration of the CC&R's governing 108 Incline Place. All three of these actions are in violation of BMC 17.08.020H, which states: "This title shall not interfere with or annul any easement, covenant, or other agreement now in effect."

It seems clear that specific Zoning provisions, including lot-line adjustments, since title 16 must comply with title 17[BMC 16.04.030], specific Zoning provisions may not be applied until AFTER it is determined that no private agreement is interfered with. On the 120 Incline Place project, the determination that no private agreement would be interfered with was not done. What are the consequences for not determining if private agreements would be interfered with on the 120 Incline Place project? The consequences

are there are no dates where the lot line adjustment and building permit have been valid, per BMC 17.08.020H, and the whole 120 Incline Place project is in violation of the Benicia Municipal Codes. These codes also cite penalties for every day of code violations. The City has warned Mark Lobdell that he is proceeding at his own risk. His project has been in violation of the Benicia Municipal Code from the first day he started. The City may also be at risk of code violations, under BMC 1.08.010, unless they stop this project at 120 Incline Place, review it and get it into compliance with the BMC. I implore you to do the right thing and review this project.”

Council Member Patterson asked Ms. Johnson if there was debate on whether or not it is a detached garage. Ms. Johnson stated that there was initially a debate on that; however, she is not sure if there still is. There was a song and dance about a wooden structure that attached the garage to the building. In the plans that were revised as of 11/21/05 there is a definite attachment of the garage to the building. To her (Ms. Johnson) it is definitely a detached garage.

Council Member Hughes asked Ms. Johnson if her appeal on 8/4 was focused on the garage and the height of the garage. Ms. Johnson stated that the appeal was that the building plans and the permits did not match up. Council Member Hughes asked if there would be an appeal if the garage at that time had been single story. Ms. Johnson stated that her appeal is that the lot line adjustment was not done. The building permit is not valid.

Council Member Whitney asked Ms. McLaughlin if in Ms. Johnson’s timeline #3 (in the handout that Ms. Johnson passed out – on file) it was her opinion that if there is a CC & R, it is the City’s obligation to be aware of that and not be in conflict with that when a permit is issued. Ms. McLaughlin stated that the City does not enforce CC&R’s or review them when it is issuing permits. The City could issue a permit to allow the homeowner to do something, but if the CC&R’s don’t allow it, you would have to work it out with them. It would be a neighborhood issues between the neighbors. If it could not be dealt with amicably between the neighbors, they would need to take it to court. In her opinion, the timeline #3 is not valid. The building permit issuance and the lot line adjustment are ministerial acts. If they comply with the rules, Staff has to issue the permit or lot line adjustment. The standards are very basic. Regarding the building permit issue, the building code does not require the lot line adjustment be recorded. The City could issue a permit even if the lot line has not been recorded with the County. It does not invalidate the building permit. Building permits do not have conditions. Once the building permit is issued it is valid.

Vice Mayor Patterson asked Ms. McLaughlin if, regarding BMC 17.08.020H, the CC& R’s is part of a covenant. The homeowners CC& R would qualify under this. From that alone, isn’t there a flaw in having issued a building permit because the CC&R’s were not considered? Ms. McLaughlin stated that in this particular case, the permit is valid because of the types of decisions that were involved. Ms. McLaughlin reviewed section 106.3.1 of the 2001 California Building Code (Uniform Building Code) and how it applies to this issue. Council Member Patterson asked what the CC & R provides that is

the disputed issue with the garage. Ms. McLaughlin reviewed section 17.08.020H of the BMC. It does not prevent the City from issuing permits that are in conflict with private agreements. The City's permit would allow a property owner to do something in conflict with some agreement that they would have with their neighbors. The City can issue a permit, but they would not be able to do the work if it was in conflict with the CC&R's.

Mayor Messina stated that it appears to him that the City's BMC does not have the right to interfere or annul the CC&R's. The City is not governed by the CC&R's. Council Member Patterson stated that it is a question of whether it is direct or indirect interference.

Ms. McLaughlin stated that the City has 'past practice' to go on. The City has not reviewed CC&R's and the issuance of building permits. If the City were to require people to submit their CC&R's for each project, the Community Development and City Attorney Staff would need to be increased to accommodate reviewing that information.

Council Member Patterson stated that there are a few possible avenues. On the sale of the property and on the business code, you have to reveal all aspects about the property. Clearly, the purchaser needs to be aware of the CC&R's. That is governed by State Law. Local governments have the opportunity to say as conditions of approval for permits, (she believes it may apply to building permits, but was not absolutely sure) that they would have to be consistent with CC&R's. The City's system is not clear.

Council Member Hughes stated that it sounds like the City could issue a building permit to a homeowner, but it is incumbent to find out if the building permit is in conflict with the CC&R's. Maybe the City needs to take a more active role in making sure the homeowner understands they need to make sure there is not a conflict between the two.

Council Member Whitney referred to the issue of Staff stating at a prior meeting that Ms. Johnson was out of time for an appeal clearly when they were still within the appeal timeframe. He asked Ms. McLaughlin how this could be remedied. Ms. McLaughlin stated that it was up to Council to determine that. She recollected that the statements were not made that clearly.

Mr. Erickson stated that at that meeting, they were discussing the lot line adjustment and building permit. At the time, in his mind, he thought the 30-day period had expired. He would not quarrel with someone who made an interpretation of what he did say that made them conclude that the appeal period had expired.

Opponent:

Mr. Gary Heppell, Attorney for the Lobdell's, asked if he could withhold his remarks until the second appellant has had a chance to speak.

Ms. Johnson stated that she would prefer the appeals be ruled and commented on separately.

Mr. Heppell stated that Ms. Johnson's appeal was denied because it was untimely. He discussed specifics of the timeline and when the appeals were filed. The appeal period began running on 7/8/05. The appellants are asking Council to reverse decisions of City Staff and Commissions to rule that the building permit was not issued correctly. The only issue tonight is the timeliness of Ms. Johnson's appeal. When this project became controversial for the neighbors, the Lobdell's modified their plans. Ms. Johnson told the Planning Commission on 10/6/05 that a one-story garage would eliminate the major issue in her appeal. This never was a detached garage. Staff made a determination that the garage was attached. The Lobdell's submitted their application for a lot line adjustment and it just sat in the Community Development Department. That could have something to do with the Staff turnover in the department, but it is not the Lobdell's fault. A zoning change cannot invalidate private CC&R's. There was no zoning change with this project.

Council Member Patterson asked for clarification on the zoning standards vs. the private CC&R's. She asked what the purpose was for the amended plans in November. Mr. Heppell stated that the Lobdell's, in an attempt to eliminate the second story on the garage, expanded the living space on the ground level of the house. That additional living area is in an angle between the garage and the main part of the house. Mr. Heppell stated that he and the Lobdell's believe the changes are within the rules of the CC&R's. Council Member Patterson clarified that she could not remember if it was Mr. Golick or Mr. Erickson that made the statement at a prior meeting regarding the appeal window being closed.

Public Comment:

1. Dr. Judy Reavis - Dr. Reavis wanted to address a statement made regarding precedence with regard to review of CC&R's. She stated that Staff has made statements regarding CC&R's directly to her. She discussed some possible renovations of her property with Staff in 1/05. Staff told her that she could build a second story as part of her renovations. She told Staff at that time that she had to comply with CC&R's. Staff told her that if that is the case, she should go and discuss her renovations with her neighbors. This particular conversation occurred during the same time that Mr. Lobdell was submitting his plans. Dr. Judy Reavis stated that in addition Staff gave her updates on Mr. Lobdell's project. One of the pending issues was that Mr. Lobdell still needed to get the lot line adjustment recorded.
2. Susan Street – Ms. Street asked how long Mr. Lobdell was on the Planning Commission. He was on the Planning Commission for four years. Ms. Street stated that it is inconceivable to her that Mr. Lobdell would not double check, cross all t's, etc. given his experience on the Planning Commission. It does not smell right to her.

Rebuttal:

Ms. Johnson reviewed her appeal timelines. Her first appeal was for the attached garage. Her second appeal was for the denial of her appeal by Mr. Golick. Nothing is okay with this project. The lot line adjustment and building permit are not valid. Council has the responsibility to review the project. Let's straighten it out and make it right. She quoted

the Mayor's 'zero tolerance' policy for errors. The Incline Place neighbors have pointed out many errors with this project. They want the project to comply with the BMC. If it does not, they are prepared to take the next step.

Mayor Messina asked if Ms. Johnson felt the project complied with the CC&R's. She does not think it does. He asked Mr. Brown if the project was reviewed today under the current standards, if it would comply. Mr. Brown verified it would.

Council Member Patterson asked Ms. Johnson what her expectations of a review would be. Ms. Johnson stated that she wants the City to understand its responsibility under Title 17. She wants the noticing process followed. She wants the City to follow its rules and regulations. Give the neighbors a chance to review the plans. She wants the City to acknowledge that the neighbors did not get a chance to review the plans. Council Member Patterson asked if the appeal was upheld and there was a review, what would cure the situation. Ms. Johnson stated that she wanted to have Title 17 of the BMC followed.

Mayor Messina stated that he does not believe it is Council's role to interfere with the CC&R's. The next appropriate action may be for them (appellants) to take this issue to court.

Council Member Patterson stated that it might be possible that the City can't meet what Ms. Johnson is looking for.

Council Member Whitney stated that in neighborhood squabbles, no one wins. Issues like this fracture neighborhoods. The CC&R's is a separate agreement. He agrees with Staff and the Planning Commission that the appeal should be denied.

Council Member Hughes stated that the primary issue of the appeal was the height of the garage. Mr. Lobdell changed the design to fix that. There is not enough compelling evidence to uphold the appeal.

Council Member Patterson stated that the way the Resolution is written is denying some facts that were stated tonight. She would like to see a Resolution that is factual.

Ms. McLaughlin stated that the fifth 'whereas' takes the agenda item, testimonial, etc. into account.

Council Member Patterson stated that it not right for the City to state that the appeal was not timely.

Council Member Hughes stated that the timeliness of the appeal is questionable. There is also an issue of jurisdiction.

RESOLUTION 05- A RESOLUTION DENYING SUE JOHNSON'S APPEAL OF THE ISSUANCE OF A BUILDING PERMIT (04 BLD-1211) AT 120 INCLINE PLACE

Council Member Whitney made a motion to adopt the Resolution denying Sue Johnson's appeal as written. Mayor Messina seconded the motion. The above Resolution was not adopted, on roll call by the following vote:

Ayes: Council Member Whitney and Mayor Messina

Noes: Council Members Hughes and Patterson

Abstain: Vice Mayor Schwartzman

Mayor Messina clarified that if Council does not take action on the Resolution tonight, the denial of the appeal by the Planning Commission stands.

Ms. McLaughlin stated that if no action were taken on the Resolution tonight, the denial of the Planning Commission appeal would be upheld.

Council Member Hughes attempted to draft an alternate Resolution addressing the timeliness of the appeal as well as the jurisdictional issues.

Council Member Patterson stated that she thought that Council is almost better off doing nothing at this point. She would prefer to uphold the appeal. She would make a motion if she felt there was support for it. But, if Council is trying to provide a Resolution explaining why the City screwed up, it would not be helpful.

After considerable discussion, Council agreed not to vote on an amended resolution.

Second Appeal

Appellant:

Mr. William Jabas discussed the issue of the permit application. He reviewed the building permits. He provided Council with a handout (on file) showing a map of the area. He discussed the California Subdivision Map Act. A developer has to comply with the California Subdivision Map Act, except if it violates anything such as CC&R's. The permit is not valid because the lot line adjustment was not recorded when the permit was issued. You can't do a lot line adjustment if it violates the CC&R's. He does not have a problem with the design of the house, just the garage.

Council Member Patterson clarified that the intent of placing the easements where the easements were was part of fulfilling the protection of the view corridor. By the City allowing the lot line adjustment and easement changes, Mr. Jabbas is saying that the code should prevent the City from doing that. Mr. Jabbas stated that may be correct, but there is so much information it is a little confusing.

Council Member Whitney asked if Mr. Jabas felt any garage would be unacceptable. Mr. Jabas confirmed that was correct. Mr. Jabas believes something in the Uniform Building Code invalidates the permit that was issued. He hoped to get the garage moved over to O Street and then the project could continue. The part of the CC&R's that is being violated is the garage.

Opponent:

Mr. Hubbell stated that the appeal is even more untimely than the first one. Council should deny the appeal based on that. Mr. Jabas discussed issues such as lot line adjustment that were not part of his appeal. Council does not have jurisdiction to address CC&R's. The easements were not put there to protect the view.

Rebuttal:

Mr. Jabas stated that the easements were not there to protect the view; they were put there because the view was there, and it was the logical place to put the easement. Mr. Jabas confirmed that his appeal was out of time.

Public Comment:

1. Dr. Judy Reavis – Dr. Reavis addressed the issue of the timeliness of the appeals. She and Ms. Johnson were making requests for filing the appeals at the Planning Commission. They were told that they could not submit the appeal. Her appeal was accepted then rejected. There was confusion whether the time limit was ten days or thirty days. She sent letters to Mr. Golick addressing the confusion. The Planning Staff should be able to count to thirty. Mr. Lobdell's project is now working under an amended permit. The CC&R's clearly state that three houses on the block must remain one-story buildings. She is sure Mr. Lobdell was aware of that. There was supposed to be seventeen lots, not eighteen like there is now with the 120 Incline Place address added.
2. Sue Johnson – Ms. Johnson stated that she was frustrated that Council is not counting her points as valid. Council is ignoring code 17.08.020H.

Mayor Messina stated that nothing the City is doing is superseding, nullifying, or voiding the CC&R's. The Council can't take on the responsibility of enforcing the CC&R's, as they are private contracts. Her remedy is to deal with Mr. Lobdell through the courts or other means.

Ms. Johnson stated that the City is interfering with the CC&R's by allowing the project to go forward without notifying the neighbors. The City is also ignoring the California Building code 106.3.1.

Council Member Patterson discussed the Uniform Building Code. She hopes the City will develop some ordinances that will fix the problems with our current code. She would support the appeal.

RESOLUTION 05-194 - A RESOLUTION DENYING WILLIAM JABAS' APPEAL OF THE ISSUANCE OF A BUILDING PERMIT (04 BLD-1211) AT 120 INCLINE PLACE

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

Ayes: Council Members Hughes, Whitney, and Mayor Messina

Noes: Council Member Patterson

Abstain: Vice Mayor Schwartzman

At 12:25 a.m., Council Member Whitney made a motion to continue the remaining agenda items and adjourn. Mayor Messina stated that Council either had to make a motion to continue hearing the remaining agenda items, adjourn and schedule a special meeting to hear the remaining items or, adjourn and continue the remaining agenda items to the regular scheduled Council meeting on 12/20/05.

Ms. McLaughlin reviewed the noticing procedures for scheduling a meeting. Vice Mayor Patterson stated that the remaining agenda items are very important issues and deserve ample time for discussion. She suggested continuing the items to the 12/20 Council meeting. She stated that this is the holiday season and people are busy. Council should stick to the scheduled meeting.

Vice Mayor Schwartzman stated that the issues remaining will be time consuming and should not be rushed through tonight. He suggested continuing them to the 12/20 meeting.

After Council discussion, there was no motion to proceed with the meeting. Council tentatively agreed to hold a special meeting on 12/13/05 to hear the remaining agenda items.

UNFINISHED BUSINESS:

Approval of modification to the application for Regional Measure 2 Funding for the Park/Industrial Intersection and Park-and-Rice Facility Project:

Continued to a Special City Council meeting on 12/13/05

NEW BUSINESS:

Revisions to Rules of Procedure for the Conduct of City Council Meetings:

Continued to a Special City Council meeting on 12/13/05

First Reading of an ordinance amending Section 2.040.010 (Meeting Time and Place) of Chapter 2.04 (City Council) of Title 2 (Administration and Personnel) of the Benicia Municipal Code:

Continued to a Special City Council meeting on 12/13/05

First reading of an ordinance amending Section 2.52.030 (Members – Term of Office) of Chapter 2.52 (Planning Commission) of Title 2 (Administration of Personnel) of the Benicia Municipal Code:

Continued to a Special City Council meeting on 12/13/05

Authorization of a six month extension of the Letter Agreement with the Valero Refining Company pertaining to the Utility Users Tax:

Continued to a Special City Council meeting on 12/13/05

REPORTS FROM CITY MANAGER:

None

REPORTS FROM CITY COUNCIL COMMITTEES:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 12:33 a.m. on 12/7/05

Lisa Wolfe, City Clerk