

**December 7, 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  
DECEMBER 7, 2004**

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:35 p.m. on Tuesday, December 7, 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 Campbell, Patterson, Whitney, and Mayor Messina

**Absent:** Council Member Smith

**PLEDGE OF ALLEGIANCE:**

Mayor Messina led the pledge to the flag.

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

**ANNOUNCEMENTS:**

Mayor Messina announced that Council Member Smith is on his way and will arrive shortly.

Mayor Messina announced the action taken in the Closed Session meeting on 12/1/04 with regards to Vilarrasa Associates v. City of Benicia. Council gave direction to Staff to reach a settlement in this matter. Council expects more will be forthcoming.

There will be a community meeting about Public Transit Services to solicit ideas about how transit services in Benicia can be improved. The meeting will take place on Tuesday, December 14, 2004 at 7:00 p.m. in the Commission Room, City Hall.

**APPOINTMENTS:**

**RESOLUTION 04-183 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF JIM ERICKSON TO THE SOLANO TRANSPORTATION AUTHORITY PEDESTRIAN ADVISORY COMMITTEE**

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

**Noes:** None

**Absent:** Council Member Smith

**RESOLUTOIN 04-184 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF SHARON TRUEX TO THE CIVIL SERVICE COMMISSION TO A FULL TERM ENDING AUGUST 31, 2007**

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

Noes: None

Absent: Council Member Smith

#### **PRESENTATIONS:**

##### **Update on Pure Committee Activities:**

Mr. Bob Craft reported on the activities of the PURE Committee for the months of October and November 2004. Conceptual design work and studies on the Wastewater Reusage Project involving the City and Valero continue.

Some small-scale pilot testing has occurred at the City facility. More is in the works as is small-scale testing at Valero, now that the turnaround is complete. Some engineering adjustments for the test equipment were required at the treatment plant to accommodate flow through on actual effluent. CDM (our consultant) is proceeding with major component studies:

1. For the disinfection process, they have looked at both chlorination and ultra violet-based systems.
2. For the recycled water conveyance system, CDM has evaluated two basic options:  
Rehabilitation of Valero's existing pipeline as compared to construction of a new pipeline.

In addition to cost estimates of the two alternatives, qualitative factors weigh heavily in CDM's recommendation. In the total rehab option, risk of failure, unknown pipeline conditions and maintenance are key elements in addition to newly discovered conditions that might become apparent once rehab construction begins.

The CDM recommendations noted above were supported by comparative capital costs for each alternative of the major components. The data will allow PURE to closely monitor projected costs as the concept development process matures.

Further, PURE had a discussion on public outreach techniques with Ms. Lois Humphreys of TRG and Associates. The City Attorney gave PURE an outstanding overview of the Brown Act and the proposed Sunshine Ordinance as they relate to PURE's sketch of the Valero Turnaround.

In the quest for public funding for the project, PURE remains in the EPA's queue, should funds become readily available. Additionally, the committee drafted a letter from the Mayor to Congressman Miller requesting his assistance in identifying sources of funding that were released in late September. PURE hopes to have a follow-up meeting with a member of his local staff early in the new year.

The next scheduled meeting for the PURE Committee is 12/14/04.

##### **Award of Ordnance Safety Training Prizes:**

Meegan Nagy, Project Manager, US Army Corps of Engineers, reviewed the recent Safety Training Contest that took place in the Benicia Unified School District. Ms. Nagy and Council Members Campbell and Whitney presented the Safety Awards to the following students:

**Kindergarten and First Grade:**

1st: Mia de Borja (Robert Semple Elementary)

2nd: Ashton Lyle (Matthew Turner Elementary)

**Second and Third Grade:**

1st: John Kyle (Matthew Turner)

2nd: Megan Osterhold (Matthew Turner)

**Fourth and Fifth Grade:**

**1st: Amanda Gonyer (Mills Elementary)**

**2nd: Katherine Park (Matthew Turner)**

**Diamond Foundation:**

**Council Member Whitney briefly described what the Foundation is about and it's goals. Mr. Joel Griffin announced the Diamond Foundation's (a non-profit organization) healthy lifestyle makeover game/contest. Mr. Griffin reviewed the Foundation's mission, summary of process, and a timeline of events. Mr. Griffin reviewed the requirements of the contest/game. Council Member Whitney clarified that there are no surgical procedures involved in the makeover process.**

**PROCLAMATIONS:**

**None.**

**ADOPTION OF AGENDA:**

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

**Mr. Erickson recommended continuing item VI-D to the second meeting in January 2005, as the property owners are out of town.**

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

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

**Noes: None**

**Absent: Council Member Smith**

**COMMUNICATIONS:**

**WRITTEN:**

**PUBLIC COMMENT:**

- 1. Marilyn Bardet - Ms. Bardet discussed the Seeno Project. She stated that the development is planned to be contiguous with a huge 400 home development, for which there are currently no established criteria requiring alternative energy sourcing or energy conservation, let alone the homes have no significant yard space for growing vegetables, etc. Ms. Bardet discussed industrial economy and sustainable growth. She discussed industrial contraction and the fact that we need to manage contraction in order to conserve resources. She discussed 'eco footprints'. She would like discussion on this to begin as of this project. She wants to make sure we have a full discussion of the Seeno project and other projects in town with regards to sustainability and growth. She wants to develop a peak oil awareness campaign.**

**CONSENT CALENDAR:**

**Mayor Messina stated that item VI-D will be continued to the second meeting in January.**

**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 Campbell, Patterson, Whitney, and Mayor Messina

Noes: None

Absent: Council Member Smith

The minutes of November 9, 2004 and November 16, 2004 were approved.

Denial of claims and referral to insurance carrier for the following claims were approved:

1. Prchal
2. Silva
3. Pangelinan
4. Press

**RESOLUTION 04-185 - A RESOLUTION APPROVING THE RESULTS OF THE PRESIDENTIAL GENERAL ELECTION HELD NOVEMBER 2, 2004**

**RESOLUTION 04-186 - A RESOLUTION AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO EXECUTE CONTRACT CHANGE ORDERS AND MODIFICATIONS WITH KAWEAH CONSTRUCTION FOR THE I/I WET WEATHER IMPROVEMENTS PROJECT**

**RESOLUTION 04-187 - A RESOLUTION AUTHORIZING THE PURCHASE OF TWO TRUCK BED UNITS FROM NORTHBAY TRUCK BODY OF CORDELIA**

**RESOLUTION 04-188 - A RESOLUTION AUTHORIZING THE CITY OF BENICIA TO ENTER INTO AN AGREEMENT WITH THE PUBLIC AGENCY RETIREMENT SYSTEM TO PROVIDE AN ALTERNATE RETIREMENT SYSTEM FOR PART-TIME EMPLOYEES**

**RESOLUTION 04-189 - A RESOLUTION APPROVING PAYING EMPLOYER PAID MEMBER CONTRIBUTIONS (EPMC) TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS) FOR PART-TIME EMPLOYEES NOT COVERED BY A BARGAINING GROUP WITH A TIME-IN-GRADE EXCEPTION**

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

**PUBLIC HEARINGS:**

Resolution ordering the vacation of a portion of East K Street right-of-way, east of East 7th Street:

**RESOLUTION 04-190 - A RESOLUTION ORDERING THE VACATION OF A PORTION OF EAST K STREET RIGHT-OF-WAY, EAST OF EAST 7TH STREET**

Dan Schiada, Director of Public Works, reviewed the Staff report. Mr. Schiada reviewed the appraisal process.

Mayor Messina stated that he was initially in favor of this item. He now has some long-term strategic

concerns. There are not very many opportunities for the City to connect with the lower Arsenal. He has serious concerns that this is not in the best interest of the City. He would prefer not to vacate the property, but to give the adjacent property owners easements.

Vice Mayor Patterson stated that she was pleased with Mayor Messina's suggestion. She stated that closing off streets and making cul-de-sacs affects the bicycle and pedestrian accessibility of the City. The problem with the easement is that it is kind of hard to come back at a later date and change it. We might want to reconsider this item and continue it. She supports the Mayor's suggestion, but wants to be careful about how we go about doing it.

Council Member Campbell asked what particular easement is being proposed. Mr. Schiada reviewed the diagram on page VII-A-7. Mr. Schiada reviewed how encroachment agreements are handled. Mr. Schiada stated that the challenge is the 8-foot-wide strip on the south side.

Vice Mayor Patterson asked if we went ahead with the idea of maintaining the right-of-way, what the total width is. Mr. Schiada stated that it would leave us with a 50-foot-wide piece of land. Vice Mayor Patterson stated that by vacating the two parcels, we still have a more than adequate right-of-way. Mr. Schiada confirmed that was a true statement. Vice Mayor Patterson stated that she was of the mind to vacate the two parcels, but preserve the right-of-way (50-foot section in the middle).

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

Ayes: Council Members Campbell, Patterson, and Whitney

Noes: Mayor Messina

Absent: Council Member Smith

#### **UNFINISHED BUSINESS:**

Introduction of Ordinances to amend the Benicia Municipal Code (1) to replace in its entirety Chapter 2.56 to establish the Historic Preservation Review Commission (HPRC) in the City of Benicia and (2) 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:

Mayor Messina stated that he has concerns that Council Member Smith is not here to discuss this. Mr. Erickson stated that he is not sure when Council Member Smith will arrive. Vice Mayor Patterson asked if it was possible to hear the Seeno item before this item, as to give Council Member Smith time to arrive. Mayor Messina stated there were other items that Council Member needed to be present for as well. Mayor Messina suggested moving forward IX-A, followed by X-B, then come back to VIII-A and X-A. Council Member Whitney asked the City Attorney if the Mayor's suggestion was okay. Ms. Wellman stated that the Mayor's suggestions were okay. Ms. Wellman suggested Council make a motion to approve the new order of the Agenda.

On motion of Council Member Whitney, seconded by Vice Mayor Patterson, Council voted to change the order of the Agenda so that Council Member Smith would be present for the items in question, on roll call by the following vote:

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

Noes: None

Absent: Council Member Smith

**NEW BUSINESS:**

Review and approve proposed City of Benicia comments on the Draft Environmental Impact Report for the City of Vallejo Bordonni Ranch Project, a proposed hillside residential development that includes 445 single-family residential lots and 97 acres of open space with access via Columbus Parkway near Regents Park, Devlin and Greenmont Drives in Vallejo. This project site is unincorporated land that lies adjacent to the western edge of the City of Benicia city limits. The City of Vallejo is proposing to annex the land as part of the project approval:

Brenda Gillarde, Principal Planner, and Collette Meunier, Community Development Director, reviewed the Staff report.

Council Member Smith arrived at 8:25 p.m.

Vice Mayor Patterson verified that the annexation was subject to an annexation hearing with Local Agency Formation Commission (LAFCO). She stated that since it is subject to LAFCO, she feels that is the forum for the dialog that Benicia has about some of the broader issues for this kind of development. She stated that we have something to say about LAFCO action, and we should take advantage of that.

Council Member Campbell asked Ms. Gillarde what we could do to express our concerns about being severely impacted about the situation at Columbus Parkway and Rose Drive. Ms. Meunier stated that we do not have veto or control over this project. We can provide written testimony and speak at the hearing. We do not have the ability to require or make changes to the project. The other avenue we have would be if they are not responsive to our documents and we felt there were inadequacies with respect to the EIR, there would be an opportunity to initiate litigation. Ms. Meunier stated that the most constructive way is to enter into discussions with them on what our concerns are and to see if our concerns can be answered by changes in the project or by conditions of project approval.

Mr. Schiada stated that we have \$250,000 in our existing traffic mitigation fee program set aside for improvements to the Columbus/Rose area. That is far short of what will be needed to be spent widening Columbus Parkway to 4 lanes. The other issue is to look at the necessity to widen Rose as it changes into State Park Road. The concern he has is making sure the environmental review looks at the impacts of their project in Vallejo and what their impacts will be to Benicia Road, Columbus Parkway and State Park Road. Vice Mayor Patterson stated that she wants to emphasize the issue of the vesting tentative map on (agenda packet) page IX-A-3, #4. Further public review should take place prior to the adoption of the vesting tentative map. Vice Mayor Patterson asked that her comments (submitted via email to Staff - on file) be included in the letter to Vallejo. Her comments are as follows:

- Additional mitigation measures to consider for Transp. Impacts at Columbus and Springs Road are roundabouts (a perfect intersection for this);

- Add mitigation for bicycle and pedestrian safety, traffic calming measures including landscaping, separate lane and so forth.
- How does Vallejo's STA ped/bicycle "plan" relate to this project?
- Noise impact NOI-2, 3 can be mitigated with traffic calming (slower cars are quieter).
- Biological Resources: it would be helpful to have a matrix of USFWS protocols for surveying and when the surveys were done for which species.
- BIO-3 (and others) can be mitigated with bio swales - should reference start at the source for a list of mitigation measures rather than BMPs.
- Further discussion is needed on impacts to Benicia State Park from use as well as visual and biological.
- There is no discussion of the compliance with the EPA/State of California San Francisco Estuary Comprehensive Conservation Management Plan, EPAs Goals Project and the CalFed ROD.
- There should be a reference to and discussion of the Carquinez Strait Resource Management Plan.
- Expand discussion of smart growth (which this is not) to include walkability - the current proposed street pattern does not meet the walkability test, nor are there commercial and other services included which would make this a more livable community and help mitigate the traffic.
- Page 43, references stormwater pipes and culverts - see above recommendations to design surface drainage and other bio techniques for water quality.
- There should be expanded discussion of water supply and assessment pursuant to SB 601 and SB 221.

Council agreed with the comments made by Vice Mayor Patterson and agreed to include them in the letter to Vallejo.

Council Member Smith stated that Staff had done a good job with the letter to Vallejo. It is interesting that it addresses many environmental concerns that we slighted in our environmental review of our own project on Columbus Parkway and also the Anderson Hotel Project. It is regrettable that we are receiving it so late. He hopes Staff can absorb the work and do it in time. Ms. Meunier stated that the comment period has been extended to 12/17/04. Council Member Smith stated that he gave the City Manager a laundry list of suggestions where he thought the language could be stronger. On page IX-A-3, #3 at the top, he would like another sentence there about preserving contours or whatever we think would be the most constructive criticism. On page IX-A-7, Geology, Soils, and Seismicity, he would like the questions stronger. Maybe we suggest that best practices suggest it should be. He is not sure if the questions posed are strong enough to relate our concerns. On page IX-A-9, he has a question on #3, he asked if the suggestions are already part of the plan, or are they just our suggestions. Ms. Gillarde stated that the City currently maintains a firebreak on that ridge along the

alignment of the buffer zone. We are saying that we will continue to maintain the firebreak and that a similar firebreak will be installed with this project. We might want to propose to look at some sort of a joint effort between the two cities to achieve a broader or better firebreak at a less cost to both cities. Council Member Smith's last issue was on page IX-A-10; it talks about the eucalyptus grove adjacent to Columbus Parkway. He would like this language to be stronger.

Mayor Messina stated that citizens might have concerns. He recommended we provide some form of a letter to the citizens off of Rose Drive in the area, the one's in the impact area. He would like to provide some additional notification on the project, and provide names and addresses of where to submit their concerns. Council agreed to include the comments discussed tonight in the letter to Vallejo.

**Public Comment:**

1. Russell Hughes - Mr. Hughes discussed some letters that he and others have submitted to Council tonight (on file). He stated that the City of Vallejo did not contact any Benicia citizens. He stated that the letter suggested by the Mayor would be a good idea. He discussed how the annexation approval process should work. He discussed Mr. Fulton's development off of Columbus Parkway and Rose Drive. The traffic concerns are not adequately addressed in the EIR. He stated that Ms. McNeill's letter written on December 8, 2003 to Bill Tuikka requested visual simulations from Bolton Circle. That was completely ignored in the EIR. Mr. Hughes offered to give all Council Members a copy of the EIR. Council Member Smith asked Staff if Mr. Hughes' comment regarding the visual simulation was correct. Ms. Meunier verified that was correct. Council Member Smith stated that it would be wise to add that to our letter to Vallejo as well.
2. Steve Goetz - Mr. Goetz stated that we should consider that the only other services in the vicinity are at Rose Drive/Columbus Parkway in Benicia. We should make sure the project is oriented to those services. He discussed the 500-foot buffer mentioned in the MOU. He discussed the trail impacts. He suggested that we identify the impacts to the Bay Ridge Trail. Council Member Smith agreed that we should include the reference to the Bay Ridge Trail in the letter.
3. Marilyn Bardet - Ms. Bardet discussed the impacts of this project to Raley's Supermarket. This will have a big impact on the traffic in that shopping plaza.
4. Dana Dean - Ms. Dean supports Vice Member Patterson and Council Member Smith's comments. Regarding the section of the EIR that deals with wildlife fires, the language needs to be more specific. This is a project of community interest. The project should be posted on the City's website. It will impact every single one of us. It would be critical to let the citizens know that there are these other entities that will review the project, so that they can voice their concerns to them. Council Member Smith agreed that Ms. Dean's comments about the wildfires should be incorporated into the language. Council Member Smith concurred that we should start noticing as well.

Vice Mayor Patterson stated that she concurs with all of the comments that have been made and gave direction to Staff to incorporate them into the letter. She would also like to see this posted. Mayor

Messina asked Staff to make sure that all Council Members receive copies of the letter to Vallejo.

**UNFINISHED BUSINESS:**

Introduction of Ordinances to amend the Benicia Municipal Code (1) to replace in its entirety Chapter 2.56 to establish the Historic Preservation Review Commission (HPRC) in the City of Benicia and (2) 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:

Eric Angstadt, Associate Planner, reviewed the Staff report.

Council discussed the various methods of appointing commissioners to the new Commission. Ms. Wellman stated that if we are developing the new Commission, we could appoint the same members from the old Commissions, but they would have to go through the appointment process.

**Public Comment:**

1. Karen Burns - Ms. Burns discussed the process of becoming a CLG. She said that she had done some research and found that it is not necessary to combine the HPC and DRC. Combining the commissions could be detrimental. Each of the commissions has a different interest and charge. She stated that numerous people who have the expertise necessary to serve on the HPC have been excluded when appointments were made. She recommended keeping both commissions. The HPC needs to have some real authority beyond the Mills Act to guarantee that all types of construction have the best oversight possible.

Kat Wellman (Acting City Attorney) reminded Council that only half of the Staff report was given. Mr. Angstadt continued with the review of the Staff report.

Mr. Erickson discussed the concept of overlapping membership (from HPC and DRC) for the new HPRC. This would retain continuity.

**Public Comment:**

1. Mark Appel - Mr. Appel noted that today was the anniversary of Pearl Harbor. He stated that we need a stronger and more independent HPC, and certainly more effective DRC with more expertise than we have had thus far. He talked about how the Mayor discussed historic preservation in his campaign. He stated that we currently have no law, code, or infrastructure to truly protect our unique historic structures. We merely have 'guidelines.' The only historic building that is truly protected in this city is the Old Capital building, and that is because it is owned by the State of California. The DRC is lacking the expertise, often in the extreme. He does not believe the duties should be overlapping. He has personally witnessed the DRC engage in behavior that is often inept and shameful, such as the occasion when they harassed the owner of an ongoing restoration. The second way the Mayor could prove the voracity of his campaign claims would be to reach deep in the expertise of our citizenry for particular commission appointments. His greatest mistake as mayor is his failure to consistently seek out the best and brightest for the Planning Commission, DRC and HPC.

**Donna Shehan - Ms. Shehan stated that combining the DRC and HPC could be disastrous. She discussed the project at 195 East F Street. She urged Council to keep the commissions (DRC and HPC) separate.**

**Pat Donahue - Mr. Donahue urged Council to combine the Commissions. It would lead to clearer more consistent design. It will help City Staff. It should be a competitive selection process. Let the new HPRC do design review for Benicia. Mr. Donahue discussed various projects he has worked on that dealt with preserving historic buildings in other cities. When he hears people say that he does not understand historic buildings, it upsets him.**

**Marilyn Bardet - Ms. Bardet stated that she has overriding concerns over how this will be handled. She wants to make sure that everyone understands the Secretary of Interior Standards are wide open for interpretation. She wanted to back up Mr. Donahue by saying that she respects many of the judgments made by the DRC. It is not the commissions that are important; it is the rules they follow.**

**Reg Page - Mr. Page stated that he supports having a single commission rather than having separate DRC and HPC. The same people would be making the same judgments with respect to projects outside the district. He was disappointed to hear Mr. Appel's comments. The statements made about the qualifications and the values added with respect to those commissions are false.**

**Kitty Griffin - Ms. Griffin initially supported having a single commission rather than having separate DRC and HPC. She proposed keeping them separate and making the DRC deal only with non-historic buildings. She suggested sunseting the commissions so they can be reviewed and changed if they are not working.**

**John Van Landschoot - Mr. Van Landschoot stated that the policy should not be driven by people, but by an idea. This is a very important issue to those who deal with historic preservation. He liked the idea of sunseting the commissions. If we are going to have a commission, we should give it real power. Don't fold in a group that has made mistakes. We should let everyone apply that wants to. The historic area is very different from the non-historic area. He made a reference to the Marsh Report, in which Planning Commission and DRC members made mistakes. Do we want to fold those folks automatically come in? The Zucker Report mentions 'expertise'. We need expertise.**

**Donnell Rubay - Ms. Rubay discussed how and why the DRC and HPC were first created. If we go to having one commission do everything, we will be taking a giant step backwards. If we do go forward with just one commission, she would prefer it be a 9-member commission. These commission members will need to be qualified. The r'sum''s for the commissioners will need to be sent to the State. She would like to say that if we go to the 9-member commission, three of the members should be historic property owners. Finally, she previously submitted to Council some information on the Historic District. She discussed the information she submitted to Council. We don't have a plan for single-family non-historic homes. She asked that Council put the wheels in motion to start this plan.**

**Chuck Mang - Mr. Mang discussed the DRC activities. He supports combining the commissions. He discussed the Fifth Street hotel project and how the DRC dealt with the project.**

Luis Delgado - Mr. Delgado was unhappy about some of the comments that were made against the DRC. For somebody to come up and berate the DRC is very wrong. He does not remember seeing Mr. Appel at any of the DRC meetings. The most important thing that needs to happen is the historic survey. The survey that the City has now is inadequate. He discussed the Lido project. It is a gorgeous building. The DRC was involved with that project. He discussed his qualifications for the DRC.

Mayor Messina reviewed how the City initially got involved in the CLG process and how we got to this point. He would like to see where the other Council Members are with regards to combining the commissions.

Vice Mayor Patterson stated that where she and the Mayor disagree is on having a separate DRC from the HPRC. She feels strongly that the reason for separating the DRC is because the expertise that is suitable for historic preservation, modern buildings, and possible single-family review is very different.

Mayor Messina called for a 5-minute break at 10:05 p.m.  
The meeting resumed at 10:12 p.m.

Council Member Smith thanked everyone who testified tonight. The survey of the historic properties is critical. He would agree that we would need to consider adding design review of single-family homes. He is pleased with the option of keeping the two separate commissions. Both jobs require a very specific expertise. The General Plan and the Zucker Report make the direction we need to take pretty clear. We cannot bow to efficiency and consolidate the commissions.

Council Member Whitney thanked the public speakers. We need to continue to make things better. He is afraid that if the commissions are kept separate the DRC will not have enough to do. If we combine the commissions he would support a 9-member commission. He is also open to discussing having two or three of the members living in the Historic District.

Council Member Campbell supports combining the DRC and HPC to make one commission (HPRC).

Vice Mayor Patterson stated that the reason for having the HPRC developed is for getting the expertise we need to have for reviewing. However, we can preserve an option, because we don't know when we might want to increase the duties for the DRC outside the Historic District. The idea is that we could spend a year developing our priority process, to look at what are the increased duties. If we don't keep the DRC and we did tackle the issue of having more design review, we would then have to recreate the DRC. It is riskier. We have a history in the City of not having the good design review we need to have. Take, for example St. Catherine's Wood. We could take a look in a year to see if we want to continue the DRC, which is truncated, do we want to expand its duties, or do we want to collapse that to a design administrator. The goal for the HPRC was to qualify for CLG, to bring the expertise necessary for that qualification, and to consider what we want to do with the design review. It discourages her greatly to throw away the opportunity to do it the right way, a deliberate way and a thoughtful way.

Council Member Smith stated that the DRC would have enough work if it were kept separate.

Council Member Campbell stated that he wants a commission capable of multiple tasks. He wants a 9-member commission. He wants to follow the qualifications we are asking them to have. He wants to be capable of sending subcommittees to shepherd various projects from the beginning of the concept of a project until it goes before the entire commission. Subcommittees give you a lot more options and expertise.

On motion of Mayor Messina, seconded by Council Member Whitney, Council voted to combine the DRC and HPC and have one commission, the HPRC, on roll call by the following vote:

Ayes: Council Members Campbell, Whitney, and Mayor Messina

Noes: Council Members Smith and Patterson

On motion of Council Member Whitney, seconded by Council Member Campbell, Council did not approve a 9-member HPRC commission on roll call by the following vote:

Ayes: Council Members Campbell and Whitney

Noes: Council Members Patterson, Smith, and Mayor Messina

Mayor Messina stated that he would prefer a smaller commission.

Council Member Smith stated that a 7-member commission was plenty. He would support sunsetting on 7 members after a year to reconsider the issue.

Vice Mayor Patterson agreed that having a 9-member commission is burdensome to Staff. She prefers a 7-member commission, but likes the idea of sunsetting after one year to reconsider the issue.

On motion of Vice Mayor Patterson, seconded by Council Member Smith, Council approved the 7-member HPRC on roll call by the following vote:

Ayes: Council Members Patterson, Smith, and Mayor Messina

Noes: Council Members Campbell and Whitney

Mayor Messina suggested taking the ordinances in the Agenda packet and tweaking them.

Vice Mayor Patterson stated that delaying this is not an option. She stated that she attended the most recent HPC meeting. She stated that it is not fair to the applicant, public, or Staff. They are having a very hard time functioning. They have been waiting in the wings to have the proper powers, duties and authority to do what they need to do. Staff cannot maintain their professional edge with what is going on. They are handicapped because they do not have a good ordinance.

Council Member Campbell stated that he voted yes on the prior vote based on the ordinance in the agenda packet. If the ordinance changes, he would want to change his vote.

Ms. Wellman clarified what ordinances and decisions Council has to consider.

Council Member Smith offered a motion to approve the first reading of the ordinance, with option on page VIII-A-9, 'BY LOT FOR SEVEN MEMBERS.' He stated that everyone that is currently on the HPC or DRC could reapply. Vice Mayor Patterson seconded the motion.

Council Member Campbell stated that was fine with him. The bottom line is that qualified commissions can handle just about anything you throw at them.

Mayor Messina stated that it would be disruptive to the process, to take all the people we have and start all over again. The last time we had openings on the DRC only one architect applied. He is afraid to lose the expertise we have.

Vice Mayor Patterson stated that we have been training the current commissioners that we have. When they reapply, they will have the strength of their experience and knowledge of the process. That is part of the resume. She is surprised the Mayor is selling them short on their qualifications.

Mayor Messina asked what we should do while we are waiting for the new members to be appointed. Ms. Meunier stated that was the reason Staff suggested picking a time in the future to make the appointments effective. Ms. Wellman stated that on page VIII-A-12, there is a place to insert an effective date into the ordinance.

Council Member Smith stated that he would amend his motion to make the ordinance take effective on March 1, 2005.

Mayor Messina stated that he would prefer the appointments to be via Mayoral appointment as opposed to 'by lot.'

Council Member Smith stated that he wanted to leave the motion as it is.

**ORDINANCE 04 - AN ORDINANCE AMENDING IN ITS ENTIRETY CHAPTER 2.56 (HISTORIC PRESERVATION COMMISSION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE TO ESTABLISH THE HISTORIC PRESERVATION REVIEW COMMISSION**

On motion of Council Member Smith, seconded by Vice Mayor Patterson, Council approved the introduction and first reading of the above Ordinance on roll call by the following vote:

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

**Noes: Council Member Whitney and Mayor Messina**

**ORDINANCE 04- - AN ORDINANCE AMENDING SECTIONS 2.84.010 (CREATION), 2.84.060 (QUORUM) AND 2.84.120 (POWERS AND DUTIES) OF CHAPTER 2.84 (DESIGN REVIEW COMMISSION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE**

On motion of Council Member Whitney, seconded by Mayor Messina, Council approved the introduction and first reading of the above Ordinance on roll call by the following vote:

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

Noes: Council Members Patterson and Smith

No action was taken on the third draft Ordinance on page VIII-A-17

**REPORTS FROM CITY MANAGER:**

**Benicia Business Park (Discovery Builder (formerly Seeno)):** Continued from the November 16, 2004 meeting to allow for notification of individuals who spoke at the earlier EIR meeting.

Continued discussion of the Benicia Business Park Project. The Benicia Business Park site consists of a total of 521.2 acres of undeveloped land located south of Lake Herman Road and bounded on the south and east by East Second Street. The proposed project would create 29.3 commercially zoned acres and 285.9 industrially zoned acres. The remainder of the site would remain open space:

Karen Majors, Assistant City Manager, reviewed the Staff report.

**Public Comment:**

1. **Kitty Griffin - Ms. Griffin discussed the 1981 plan. She discussed the jobs/housing balance. Her ideal solution would be to do infill housing on a small scale with the land we have inside the Southamptton area, but this would be politically impossible. She discussed the proposed tremendous obliteration of the hills. She would like to have at least one meeting in which the issues could be discussed. She asked that the issue of churches be considered. She said it could be one or three public meetings, as long as the issues are addressed.**
2. **Gary Kalian - Mr. Kalian stated that he works in the Industrial Park. He is Chairman of BIPA. When the General Plan was discussed a few years ago, Seeno was part of that plan. There have been several attempts to subvert it. He is frustrated that people in the community cite the General Plan when it suits them and abandon it when it does not. The Industrial Park is the economic engine for the City. The Seeno project is a way to expand its role as the economic engine. BIPA does not support any changes to the General Plan. Seeno is not starting anew with this project. They are continuing a process that started three years ago.**
3. **Ron Askham - Mr. Askham stated that we need to recall the Rice Warehouse project. There were issues with views, noise, late operations, etc. On the jobs/housing balance, maybe we should bring back Sky Valley. This project is large and it's phased. We need to have a developer that is willing to go through the peaks and valleys. We need somebody with financial strength. Seeno has those abilities.**
4. **Bob Mutch - Mr. Mutch discussed General Plan specifics and how they relate to the project.**
5. **Steve Goetz - Mr. Goetz stated that he was surprised about the statement in the Staff report with regards to BIPA. He is not sure what is driving the question on whether or not to follow the General Plan or not. With regards to land-use designation, he hopes we will get that straight from the outset and not rely on mitigation measures.**
6. **Marilyn Bardet - Ms. Bardet stated that she is concerned about the scale of the project and its design. She does not support housing in Light Industrial/commercial areas. After reading the EIR, it looks like we will have a plan that puts a 4-lane boulevard on Industrial Way up to Lake**

Herman Way. It will change the character of the whole area. Her basic issue is about sustainability. Energy conservation has to be part of this project.

7. Bob Craft - Mr. Craft stated that this project is important to the City's tax base. It will affect how the City presents itself. It will be an important gateway. We need to carefully consider every significant detail of the process. He stated that over 8 million cubic yards of soil would have to be moved. He wants to see a tabletop scale model be made available for the public to view. This should be made available to the public at the same time the draft EIR is made available.

Mayor Messina stated that the goal is to bring the developer to the point where they actually start the CEQA process. It is important that Council give them specific direction.

Council Member Smith stated that the developers did not have enough answers to the questions posed at the workshop. We need another community meeting where the applicant comes and addresses the main issues that were raised: jobs/housing mix, burden on our transportation system, the threat to Lake Herman Road, and the disregard for the natural contours of the land. He doubts that housing is appropriate. He supports having a community meeting next month. He likes the suggestion of reserving land for one or two churches.

Council Member Whitney stated that this project started a long time ago. He does not see having mixed-use out there. He endorses the idea of having a visual model. He is interested in hearing what the developer has to say about the large amount of soil that needs to be moved.

Vice Mayor Patterson stated it is a 20-year project. She asked what is the impact of the cost of two to three months for looking at this land-use designation and General Plan policies in light of the 20-year time frame. She noted that it is currently mixed-use: Light Industrial and commercial. There is no argument. Some of the debate is the arrangement of those uses. She referenced the comments made by the City of Benicia to the City of Vallejo about the planning process for the Bordoni property. The developer disappoints her. There were extensive comments made at the prior EIR. There was no response from the developer. We have mixed-use, a basic philosophy and a 20-year project. She is asking for two to three months where we can take the time to have three meetings. Staff is suggesting \$15,000 for a facilitated discussion, which is necessary. Lets look at the General Plan and figure out the best arrangements of the mixed-use that is currently designated at this site. CEQA is procedural. It is not a planning device. She wants to look at some other projects done by Seeno. She would like to look at Emeryville and Berkeley and see how they do their mixed-use out there. Lets see how we can do this in a manner that it is consistent with the General Plan. The project that was presented at the workshop is not sensitive to the walkability, circulation, etc. We have time to get this right. She would like to have Council agree to facilitated community conversation as Staff has proposed.

Council Member Campbell stated that mixed use does not work for him out there. He has a problem with the amount of dirt that would be moved. He would like to see some sort of 3-D picture of what will take place out there.

Council Member Smith stated that it is pretty clear that the majority of the Council does not think this project is ready for Environmental Review. We are willing to consider adjusting the placement of the

land-use designation. We are sending a pretty clear message that we need some more community input. He did not hear the developer addressing the concerns at the last community meeting. He is not in favor of a process that would last three months. That is too long.

Vice Mayor Patterson stated that the community needs to weigh in. If they are shut out of this, they will react. She is suggesting frontloading this process and involve the community now. She would be okay with doing it in two months.

Council Member Campbell stated that he would like to see more of a tangible project before we get too carried away with this.

Council Member Whitney stated that he is comfortable with the land-use designation. We are in alignment with the General Plan. He agrees the community needs to be involved.

**Applicant:**

Salvatore Avila, Discovery Builders - Mr. Avila stated that he appreciates all the comments and concerns that were raised tonight. He stated that the community meeting that the Vice Mayor referred to was a reintroduction to a process that was started in 1998. It was not to address comments in the EIR. They still have the same position today as they had at the last Council meeting. They are opposed to continued facilitated discussions outside of the CEQA process. In the formal scoping sessions that will take place, they will get comments from the public. They will address the comments. They will look at pedestrian-oriented walkways, sidewalks and maybe moving some things around. Out of the scoping sessions alternatives will come about that are in the EIR. They have been working on this since 1998. He would like the project to continue through the formal process. He stated that they are committed to engaging the community on an informal basis. They do not have a commitment that there is a project at this time. He is confident that the environmental document they are working on with Staff will be something the City can be proud of and something that will address the concerns that were addressed in the past EIR and throughout the past few months.

Council Member Smith asked Mr. Avila if he is concerned about spending money on an environmental review that might not have the support of this body. Mr. Avila stated that they were always concerned about spending money, but they feel confident with what they have been doing with Staff. They have hired an independent project planner that they feel is very competent. They are ready to sign a contract with LSA. He would like to be on track and have a certainty that they have a project. They are opposed to the stopping of the CEQA process and what they have been working on with Staff.

Council Member Smith stated that Council's direction to Staff is clear. We want to start community discussion about this piece of land. We want to restart it at some public hearing (informal) or meeting of the Council where it is noticed that this is what we are going to talk about.

Mr. Avila stated that what they were looking for tonight was closure to a couple of issues: 1) the General Plan designation and 2) the continued facilitated discussion that he feels the City is wasting money on that will come as a result of the money that they are spending on the consultant to look at

the alternatives.

Vice Mayor Patterson stated that on the walkability, there might be some other opportunities. On the further definitions of Light Industrial, she asked for clarification on what qualifies as Light Industrial. She asked Staff if we are doing multi-story office buildings and hotels/motels in Light Industrial or is it limited to commercial. Ms. Meunier stated that pure office use is not permitted in Light Industrial. She would have to check on the hotel/motel issue. Going through the overall master planning process may lead us to include other kinds of non-residential activities of a commercial nature in there. Or, there may be parts of the park that are appropriate for office and we may want to allow that. We may end up tailoring Land Use controls for this major project through a development agreement, through changes in design district or those kinds of things.

Vice Mayor Patterson stated that the question of the carrying capacity of the 500 acres pursuant to the policies of the General Plan has not been answered. Part of the facilitated discussion is to help the community say what they see as the carrying capacity for the 500 acres pursuant to the General Plan. She is not ready to commit to this project.

Council Member Smith is not ready to commit. He thinks there is little chance of us introducing other land-uses into this site. The most likely land-use change would be decentralizing the commercial area.

Mayor Messina is comfortable with the land-use designation of Light Industrial. He concurs with Council Member Smith that the commercial area might shrink a little. There might be some sprinkling of some commercial areas that would be appropriate.

Council Member Whitney is comfortable with the land-use designation. He agrees that the only change he sees out there is how we view the commercial. There is an opportunity to decentralize it.

Council Member Campbell is okay with limited use. Ultimately facilitated workshops are in the developer's best interest because they will need to convince the community to go along with the project.

Council Member Smith clarified the direction to Staff to hire a facilitator and begin the community discussion.

On motion of Council Member Smith, seconded by Vice Mayor Patterson, Council gave direction to Staff to hire a facilitator and come back to Council the first meeting in January with a proposal, on roll call by the following vote:

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

**Noes:** Council Member Whitney and Mayor Messina

Mr. Erickson asked for clarification on the direction to Staff. Council Member Campbell suggested that the developer proceed with the EIR, start to line up for scoping, and at the same time start the facilitated discussion. Vice Mayor Patterson stated that it should be done at the same time. Council could take action on the facilitated discussion the first meeting in January. Mayor Messina asked who

would be responsible for the cost of the facilitator. Council Member Campbell stated that the City would have to bite the bullet and pay for it.

On motion of Council Member Smith, seconded by Council Member Campbell, Council agreed to continue the meeting at 12:35 a.m. to hear items XB and VI-D, on roll call by the following vote:

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

Noes: Council Member Whitney

Mayors request to review project conditions pertaining to Street Improvements for 660 and 670 East N Street (Blankenhorn Investments):

Mayor Messina explained why he requested this item be reviewed.

Mr. Schiada reviewed the Staff report.

Council and Staff discussed various ways to solve this issue amicably. Vice Mayor Patterson asked if the City could enter into some sort of deferred payment agreement with the Blankenhorn's, which would allow them to make payments over time. Mr. Schiada explained some options that the City could take into consideration with regards to deferred payments.

Public Comment:

1. Bruce Blankenhorn - Mr. Blankenhorn stated that all of the issues were exposed in the Staff report. He feels this is an issue of inequity and double standards. He liked the suggestion of spreading the costs over impounded taxes. It seems to be an equitable solution.
2. Betty Russell - Ms. Russell stated that she wanted to address the open window policy. She stated that the Blankenhorns have been very considerate developers. She does not want to lose them as neighboring developers. She hopes the City can make this right for them. We should make it fair for them.
3. Mr. Russell- Mr. Russell offered an alternate agreement for the Blankenhorns and the City. He thanked the City for helping him out with his tree.

To address Mr. Blankenhorn's concerns about the cost impacts on installing the required street improvements for N Street, Council directed staff to enter into a deferred payment agreement with Mr. Blankenhorn which would allow him to make payments on his sewer connection and water connection fees for the 5 new residential units over a 10-year period.

On motion of Vice Mayor Patterson, seconded by Council Member Smith, and unanimously approved, Council directed staff to enter into a deferred payment agreement with Mr. Blankenhorn, which would allow him to make payments on his sewer connection, and water connection fees for the 5 new residential units over a 10-year period, on roll call by the following vote:

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

Noes: None

CONSENT CALENDAR:

**Mayor Messina and Council Member Campbell excused themselves from this portion of the meeting due to a conflict of interest.**

**Resolution directing the Sidewalk Administrator to take steps to complete the replacement of the sidewalk at 733-739 First Street:**

**Ms. Wellman clarified that the action Council is taking is to adopt the Resolution, but change the opportunity to appear before Council on the notice to the 1/18/05 meeting date.**

**RESOLUTION 04-191- A RESOLUTION DIRECTING THE SIDEWALK ADMINISTRATOR TO TAKE STEPS TO COMPLETE THE REPLACEMENT OF THE SIDEWALKS AT 733-739 FIRST 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 and Whitney**

**Noes: None**

**Abstain: Council Member Campbell and Mayor Messina**

**REPORTS FROM CITY COUNCIL COMMITTEES:**

**None**

**ADJOURNMENT:**

**Vice Mayor Patterson adjourned the meeting at 1:16 a.m. on 12/8/04**

**Lisa Wolfe, City Clerk**