

**347 Goldenslopes Court
Benicia, CA 94510
707-745-4675**

Members, City Council
City of Benicia
250 East L Street
Benicia, CA 94510

February 1, 2009

Dear Council Members:

This letter addresses the item on the February 3, 2009 City Council agenda to consider rescinding the Council's vote to deny the Benicia Business Park project. It is unfortunate that the City Council failed to take charge of this process and is instead reacting to Discovery Builders proposal. One could argue that those Council members who want to rescind the City's denial of the project are letting the developer set the terms.

In this circumstance the City Council should add the terms recommended by Mayor Patterson that were included in the agenda packet, and require additional terms to the January 23, 2008 proposal from Discovery Builders as described below.

Section I: Waivers and Extensions

Why doesn't the City Council seek an unconditional waiver of the time limits? Waiving the time limits puts the City in the position of control. There have been several examples with the current application where the Discovery Builders has put the City Council at a disadvantage with these time limits.

Section III: Subsequent EIR

Revise the Health Risk Assessment so it would be prepared to cover the requirements of Education Code 17213.c(2)(c), which states the following:

"For a school site with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils."

Section IV. AB 32 and SB 375

The faith some have put in the Transportation Demand Management (TDM) plan initially suggested in the Supplemental Traffic Study last fall, and again referenced in the letter by Discovery Builders, may be misplaced. We have no track record for the effectiveness of this strategy in Benicia. TDM strategies are not new from the standpoint that these strategies were incorporated into Mitigation Measures TRANS 24 and AIR-2 of the Final EIR for the Benicia Business Park. Unfortunately, these measures had significant shortcomings as indicated in comments I submitted to the City Council on June 3, 2008.

Even with these significant shortcomings, City Staff and two City Council members supported the adequacy of the Final EIR.

If a TDM plan is to be embraced by the City Council, then minimum requirements should be established now so that residents who will be impacted by traffic on East 2nd Street will have some measure of protection. The changes below are necessarily detailed because City staff and two members of the Council believed the TDM measures in the Benicia Business Park Final EIR were adequate. Most of this detail is adapted from similar requirements proposed by City staff for drainage improvements on the project site. The TDM terms in the Discovery Builders letter should be revised as follows:

"A TDM plan will need to be approved for every phase of Project development by the City of Benicia prior to issuance of the first building permit for that Phase. The TDM plan shall include provisions that 1) require the project sponsor to prepare CC&Rs for the project, subject to the approval of the City, to ensure property owners comply with the applicable TDM plan; 2) require the project sponsor to ensure an on-site compliance coordinator is provided in perpetuity to assist all property owners, monitor compliance, prepare annual reports documenting compliance with the applicable state statute and the performance standards of this mitigation measure, and recommend changes to the TDM plan or remedial actions if needed; 3) require the project sponsor to pay the City to retain a consultant with expertise in TDM programs to review the project sponsor's submittals; and 4) require the project sponsor to establish a funding mechanism to fund the on-site TDM services and on-going City oversight.

This TDM will include a free express-shuttle service funded by a Benicia Business Park CFD. ThisThe express-shuttle service funded by the CFD will serve the Project site and Downtown Benicia. The TDM plan will also include designs for a transit center constructed on the Project site with properly planned and located shuttle stops. The TDM plan will also provide guidelines and requirements for shared-use parking, traffic calming mechanisms, bike rack locations, carpool and van-pool ride match programs and requirements for implementation of bike paths and walking paths. This Project will be required to provide capital and operating funds to extend the Benicia Breeze to the Project site. The Project will be required to construct and maintain the transit center. The TDM plan shall require parking and building leases at the project to be "unbundled" (i.e., rents for building space and parking lots shall be separate). Businesses at the Business Park that have 50 or more employees and provide employee parking on a free or subsidized basis shall provide financial compensation to those employees who commute by means other than private automobile, in accordance with CA Health and Safety Code 43845. The TDM plan shall also include other features as determined by mitigations measures in the SubEIR.

The TDM plan shall require submittal of annual monitoring reports to the City, post construction, for implementation of its provisions and resulting commute practices of workers located on the project site. The TDM plan shall include provisions for issuing non-compliance citations for failure to comply with its requirements. The TDM plan shall indicate the penalty or other consequence attached to the citation to compel compliance by the project sponsor or subsequent property owner."

Section V: Specific Plan

Add the following term:

"Discovery Builders shall fund preparation of the Specific Plan. The City shall seek to recover the cost for the Specific Plan pursuant to Government Code Section 65456, and transfer such revenue to Discovery Builders."

Section VI: Additional Terms at Council's Discretion

Add the following additional terms:

"Discovery Builders will fund reasonable City expenses for the services of a Project Manager responsible for managing all consultant contracts used by the City for the Project; advising the City on the Development Agreement; certifying compliance with conditions of approval; staffing the Community Advisory Panel; and developing and adhering to timetables for 1) completing the Specific Plan, 2) certifying the SEIR, 3) adopting the Master Plan Overlay, 4) adopting the Development Agreement, and 5) approval of project entitlements.

If the Discovery Builders/School District Agreement results in the continued operation of the Semple Elementary School after Project approval, the Developer shall fund the installation, operation and reporting of an air quality monitoring station to be located at the southwest corner of the Semple School site. The station shall monitor short term exposure to concentrations of traffic pollutants such as PM 2.5, black carbon, NOx, nitrogen dioxide, and other airborne toxins as specified in the Health Risk Assessment prepared pursuant to HSC Section 44360 or in the SubEIR. The City shall submit annual reports that summarize and evaluate the monitoring station data to the School District and the California Environmental Protection Agency."

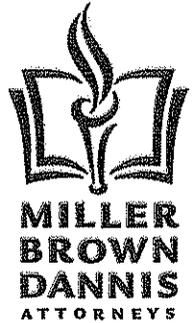
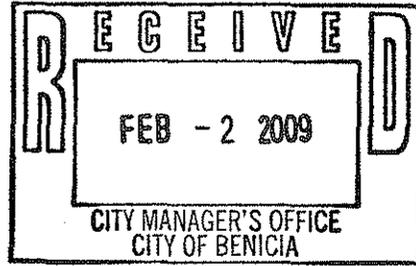
I will close this letter with a question. If the City Council rescinds its denial of the project and the Developer fails to execute a development agreement, what will be the City Council's recourse?

Sincerely,



Steven L. Goetz

Cc: C. Knox, City of Benicia
A. Cardwell, City of Benicia
Trustees, BUSD Board
J. Adams, BUSD



MARK W. KELLEY
ATTORNEY AT LAW
mkelley@mbdlaw.com

SAN FRANCISCO

January 30, 2009

E-MAIL AND MAIL

Elizabeth Patterson, Mayor
Members of the City Council
City of Benicia
250 L Street
Benicia, California 94510

Re: *Benicia Business Park*
City Council meeting of February 3, 2009
Our file: 1375.10308

Dear Mayor and City Council Members:

We thank you for providing the Benicia Unified School District ("District") with a copy of Discovery Builder's January 23, 2009 letter and appreciate the opportunity to respond to it. We are writing on behalf of the Board of Trustees ("Board") of the District.

We urge the City Council to deny Discovery Builder's request to rescind the November 18, 2008 decision to deny its project application to develop the Benicia Business Park. The City Council has made it abundantly clear that the Benicia Business Park ("BBP"), as proposed, was not acceptable and urged Discovery Builders to start again with a new proposal. In the past, Discovery Builders committed to meet with the District regarding the impacts of BBP. To date, there has been no effort by Discovery Builders to meet and discuss the Board's concerns as to BBP's impact on Semple School and the District. The District has not been contacted by Discovery Builders to discuss mitigation of BBP as proposed and rejected, or to discuss a new project in an effort to minimize its impacts on the District. We again provide the City Council with copies of prior correspondence to the City and to Discovery Builder's legal counsel. Each includes documentation of the items that the District believes are necessary to mitigate the impact of the BBP on Semple School as well as on the District.

Additionally, we question the legal authority of a subsequent environmental impact report ("EIR") in this situation. The revisions to the BBP offered by Discovery Builders call into question the appropriateness of subsequent EIR where the previous EIR was certified but whose later amendment was rejected.

SAN FRANCISCO

71 Stevenson Street
Nineteenth Floor
San Francisco, CA 94105
Tel 415.543.4111
Fax 415.543.4384

LONG BEACH

301 East Ocean Boulevard
Suite 1750
Long Beach, CA 90802
Tel 562.366.8500
Fax 562.366.8505

SAN DIEGO

750 B Street
Suite 2310
San Diego, CA 92101
Tel 619.595.0202
Fax 619.702.6202
www.mbdlaw.com

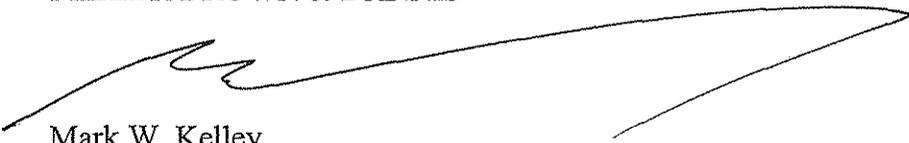
Elizabeth Patterson, Mayor
Members of the City Council
January 30, 2009
Page 2

We believe that it is in everyone's best interest to direct the project sponsor to re-design the project and for the environmental review process to be started over from the beginning. By doing so, we believe that the City, the project sponsor, and the District will end up with a better project and one that is less vulnerable to legal challenge under the California Environmental Quality Act.

Please do not hesitate to contact the undersigned to discuss this correspondence.

Very truly yours,

MILLER BROWN & DANNIS



Mark W. Kelley

Enclosures (2): November 12, 2008 letter to K. Lawson and
December 2, 2008 letter to Mayor Patterson

cc: Board of Trustees, Benicia Unified School District
James Erickson, City Manager, City of Benicia
Janice Adams, Superintendent

LAWRENCE M. SCHOENKE
ATTORNEY AT LAW
lschoenl.e@mbdlaw.com

SAN FRANCISCO

November 12, 2008

E-MAIL AND MAIL

Katrina D. Lawson
Miller Starr Regalia
1331 North California Boulevard, # 5
Walnut Creek, CA 94596

Re: *Benicia Unified School District*
Mitigation Requirements for Robert Semple Elementary School
Our file 1375.10308

Dear Ms. Lawson:

We have received and reviewed Discovery Builders, Inc.'s October 30, 2008 letter to the Benicia Unified School District ("Letter" and "District," respectively). We appreciate Discovery Builders, Inc.'s interest in further discussions and negotiations to resolve the impacts the proposed Benicia Business Park ("BBP") would have on the Robert Semple Elementary School ("Semple School"), if approved by the City of Benicia ("City"). The District's Governing Board ("Board") has reviewed the Letter and has asked us to respond on its behalf.

We believe that Discovery Builders mischaracterizes the health and safety impacts that the BBP would have on Semple School. The mitigation measures, whether required by the City as a condition of its CEQA process or its plan approval process, are not "enhancements" to Semple School or to the District. The construction, installation, or replacement of various physical structures are required specifically to ameliorate the negative environmental effects that the BBP is projected to have on the students and staff at Semple School. We reiterate that the District's proposed mitigation measures for Semple School are required measures to assure the District that its students and staff are safe.

The Semple School campus is comprised mostly of portable classroom buildings. Most of the portable buildings are old and do not meet current State Building codes. Due to the portable nature and age of the existing portable buildings, they cannot be easily upgraded with the appropriate sound attenuation materials that would be necessary to mitigate the impact of the traffic noise. Nor can the portable buildings be retrofitted with adequate ventilation systems to maintain appropriate indoor air quality standards. The existing building would also need to be modernized to an appropriate standard for sound attenuation and to provide appropriate indoor air quality standards. As you are well aware, retrofitting, or modernizing older structures, where feasible would require



SAN FRANCISCO

71 Stevenson Street
Nineteenth Floor
San Francisco, CA 94105
Tel 415.543.4111
Fax 415.543.4384

LONG BEACH

301 East Ocean Boulevard
Suite 1750
Long Beach, CA 90802
Tel 562.366.8500
Fax 562.366.8505

SAN DIEGO

750 B Street
Suite 2310
San Diego, CA 92101
Tel 619.595.0202
Fax 619.702.6202
www.mbdlaw.com

Katrina Lawson
November 12, 2008
Page 2

the construction to meet the current State building standards and specifications. Here, this would include installation of a fully addressable fire alarm system, ADA access and other State mandated structural and life safety improvements.

In some instances, the mitigation measures are proposed to be new construction; however, these measures are not enhancements or "gold-plated" requirements. The cost factors estimated are moderate and consistent with current construction trends in the industry. In the instance of the proposed multipurpose room, it is required for use for indoor recreation for "spare the air" days that are compounded by the excess traffic created by the BBP.

The District believes that the most cost-effective method is the construction of a ten (10) classroom building as compared to attempting to modernize the portables. The estimated costs to construct a ten (10) classroom building, the associated site work, and construction of a multipurpose room and sound attenuation, HVAC and other necessary or required improvements to the existing building is estimated at fourteen million dollars (\$14,000,000) total project cost. We provide, as an enclosure to this letter, a listing of the required components.

An alternative mitigation for the BBP's impacts is the relocation of Semple School students and staff to the former Mills school site. You are probably aware that the City has spent approximately 1.4 million dollars rehabilitating the former Mills school site in order to convert it into a community center. Should the District take possession of this site, it would have to reimburse the City for those costs and possibly do additional modernization for re-use as an elementary school, including adding up to six (6) classrooms with a restroom facility and other appurtenant work. Further, we believe that closing the Semple School and re-opening the Mills school site would require the District to form and consult with a community advisory committee generally referred to as a "7-11 committee," whose purpose would be to gather community input on the merits of reopening the Mills school site. The closing and reopening of school campuses is a matter of public concern thus school districts are required to comply with Education Code sections 17387 *et seq.*

The District believes it is providing several methods by which Discovery Builders can mitigate the impacts of the BBP on Semple School and on the District. The District staff and Governing Board members look forward to further negotiations.

Very truly yours,

MILLER BROWN & DANNIS


Lawrence M. Schoenke
LMS/ab

Enclosure

cc: Janice Adams, Superintendent, Benicia Unified School District

SEMPLE SCHOOL MITIGATION REQUIREMENTS

New Classrooms

(10) Classroom Building to replace the oldest portables, including:

- A small Multi-Purpose Room/Gym
- Student Restrooms
- Faculty Restroom
- Janitor, Electrical and Mechanical & Storage rooms

Associated Site and appurtenant work, including:

- Fire and Emergency Vehicle Access
- Fire hydrants and fire sprinkler water
- Power and Utility extensions, required upgrades and fees
- Path of Travel Walkways
- Covered Walks
- Storm Drainage /C-3 Drainage
- Landscape/Outdoor Classroom Area

General Classroom Environment and Common Area, Library, Cafeteria/Multi-Use Room and Administrative Area Upgrades

- Classroom Environment Improvements
- Heating and Ventilation Systems
- Window Replacement – Double Glaze Windows
- Tackable Wall Surfaces (Sound Attenuation)
- Ceiling Repairs/Replacement (Sound Attenuation/HVAC Upgrade)
- Lighting/ Emergency Lighting Upgrades (Code)
- Structural Retrofit, HVAC Mounts and as required by Code (DSA)
- Door and Hardware Upgrades (ADA)
- General Building Repairs/Patch and Paint
- Building envelope-Roo Patch (HVAC)/ Miscellaneous Gutters and Flashings
- Restroom Upgrades
- Electrical and Plumbing Connections (HVAC)
- Asbestos Abatement, as encountered
- New Fully Addressable Fire Alarm System- *required by State regulatory agencies*
- Video Surveillance System @ Tunnel

MASTER BUDGET SUMMARY SHEET

PRELIMINARY
FOR DISCUSSION ONLY

SUMMARY OF ESTIMATED COSTS
District: Benicia Unified School District
Project: Robert Semple Elementary School

DATE: November 3, 2008
PRELIMINARY X
PRE-FINAL
FINAL

A. DISTRICT / ADMINISTRATIVE FEES		
1 SITE ACQUISITION/APPRaisal/TITLE	\$	0
2 SURVEY/TOPO & BOUNDARY STUDY	\$	12,500
3 SITE SUPPORT - BOND FEES	\$	0
4 LEGAL FEES - Allowances	\$	7,500
5 CEQA COMPLIANCE (EIR/Negative Declaration, CATX)	\$	750
6 DTSC/PHASE 1 ESA/PEA	\$	0
7 OTHER	\$	0
SITE SUBTOTAL	\$	20,750
B. PLANS		
1 ARCHITECT'S FEE FOR PLANS	\$	895,344
2 DSA PLAN CHECK FEE	\$	54,202
3 DSA HANDICAPPED PLAN CHECK FEE	\$	3,344
4 HEALTH DEPARTMENT	\$	0
5 ENERGY ANALYSIS FEES	\$	0
6 DEPARTMENT OF EDUCATION - PLAN CHECK FEE	\$	7,308
7 MISC ENGINEERING/CONSULTING SERVICES		
A. SOILS	\$	18,500
B. OPSC & YRE CONSULTANTS	\$	0
C. HAZARDOUS MATERIAL SURVEY/SPI/CS	\$	5,000
D. OTHER	\$	0
8 BIDDING AND ADVERTISEMENT	\$	7,500
9 LABOR COMPLIANCE PROGRAM ADMINISTRATIVE COSTS	\$	0
10 OTHER	\$	0
PLANS SUBTOTAL	\$	991,199
C. CONSTRUCTION		
1 A. UTILITY SERVICE FEES	\$	35,000
B. UTILITY SERVICE IMPROVEMENTS	\$	0
2 OFF-SITE DEVELOPMENT	\$	0
3 SERVICE SITE DEVELOPMENT	\$	0
4 GENERAL SERVICE SITE DEVELOPMENT	\$	624,136
5 MODERNIZATION	\$	3,847,894
6 A. DEMOLITION - Removal of Portables	\$	80,000
B. INTERIM HOUSING	\$	120,000
7 NEW CONSTRUCTION (Classrooms & MP)	\$	5,768,438
8 A. UNCONVENTIONAL ENERGY SOURCES	\$	0
B. SPECIAL ACCESS COMPLIANCE	\$	0
C. TECHNOLOGY ALLOWANCE	\$	Included
9 ENVIRONMENTAL ABATEMENT	\$	Included
10 AIR MONITOR CLEARANCE	\$	25,000
11 PROJECT MANAGEMENT	\$	417,619
12 OTHER (ITEMIZE)		
A. REIMBURSABLES/GENERAL CONDITIONS	\$	25,000
B. MOVING/STORAGE (District Expense)	\$	7,500
C. UNDERGROUND UTILITY SEARCH	\$	2,500
CONSTRUCTION SUBTOTAL	\$	10,953,087
D. TESTS (CONSTRUCTION LAB)	\$	201,118
E. INSPECTION (IOR)	\$	181,460
F. FURNITURE AND EQUIPMENT	\$	346,106
G. CONTINGENCIES	\$	1,305,059
TOTAL ESTIMATED COSTS (ITEMS A THROUGH G)	\$	13,998,778

MASTER BUDGET SUMMARY SHEET

PRELIMINARY
FOR DISCUSSION ONLY

SUMMARY OF ESTIMATED COSTS

District Benicia Unified School District
Project Robert Semple Elementary School

MASTER BUDGET DETAIL SHEET

A. DISTRICT / ADMINISTRATIVE FEES

1 SITE ACQUISITION/APPRaisal/TITLE - ALLOWANCE \$0.00

Include the Cost of Real Property Purchased. Include the Cost of Any Appraisal Fee Escrow/Title Costs Associated with Eligible Projects.

Property	0
Appraisal	0
Title	0
	0

2 SURVEYS -ALLOWANCE \$12,500.00

Include the Cost for General Surveys, Aerial Survey, Lot Line Adjustments & Property Line Establishments, & Utility Surveys.

3 SITE SUPPORT - BOND FEES - Allowance \$0.00

Include the Cost For Any Legal or Professional Fees or Services Associated With Setting Up and Maintaining the Bond. Includes portions of Administrative Salaries/Hourly Wages for District Staff Support Relative to Bond Projects and/or OPSC Funding.

4 LEGAL FEES - ALLOWANCE \$7,500.00

Include the Cost for Legal Consultation or Administrative Assistance as Follows:

- * Document Review
- * Bid Review
- * Contract Review
- * Bond Review
- * Insurance Review
- * Miscellaneous Correspondence/Issue Conference

5 CEQA COMPLIANCE (CATX) \$750.00

6 DTSC/PHASE 1 ESA/PEA \$0.00

7 OTHER \$0.00

MASTER BUDGET SUMMARY SHEET

PRELIMINARY
FOR DISCUSSION ONLY

SUMMARY OF ESTIMATED COSTS

District: Benicia Unified School District
Project: Robert Semple Elementary School

MASTER BUDGET DETAIL SHEET

B. PLANS

1 ARCHITECT'S FEE FOR PLANS (12 1/4)

New Construction \$483,054.44
Modernization \$412,289.40
Total \$895,343.84

New Construction (sliding scale)				Modernization (sliding scale)			
1.	1st \$500 k	@	9%	1.	1st \$500 k	@	12%
2.	Next \$500 k	@	8.5%	2.	Next \$500 k	@	11.5%
3.	Next \$1 m	@	8%	3.	Next \$1 m	@	11%
4.	Next \$4 m	@	7%	4.	Next \$4 m	@	10%
5.	Next \$4 m	@	6%	5.	Next \$4 m	@	9%
6.	Excess of \$10 m	@	5%	6.	Excess of \$10 m	@	8%

(Verify percentages indicated above with specific agreement with project architect.)

a. Estimated Construction Budget:

Utility Service Improvements	\$0
Off-Site Development	\$0
Service Site Development	\$0
General Site Development	\$624,136
New Construction	\$5,768,438
Modernization	\$3,847,894
Demolition	\$80,000
Interim Housing	\$120,000

Total Fee Base \$10,440,468

New Construction

\$ 500,000.00	@	9.0%	\$45,000.00
\$ 600,000.00	@	8.5%	\$42,500.00
\$ 1,000,000.00	@	8.0%	\$80,000.00
\$ 4,000,000.00	@	7.0%	\$280,000.00
\$ 592,574.00	@	6.0%	\$35,554.44
\$ -	@	5.0%	\$0.00

TOTAL ESTIMATED FEE \$483,054.44

Modernization

\$ 500,000.00	@	12.0%	\$60,000.00
\$ 500,000.00	@	11.5%	\$57,500.00
\$ 1,000,000.00	@	11.0%	\$110,000.00
\$ 1,847,894.00	@	10.0%	\$184,789.40
\$ -	@	9.0%	\$0.00
\$ -	@	8.0%	\$0.00

TOTAL ESTIMATED FEE \$412,289.40

2 DSA PLAN CHECK FEE

Estimated Construction Cost \$10,440,468

\$54,202.34

Calculation:	
0.007 of first \$1,000,000	
0.005 of balance	

\$1,000,000 @
\$9,440,468 @

Summary
0.007 \$7,000.00
0.005 \$47,202.34

TOTAL \$54,202.34

MASTER BUDGET SUMMARY SHEET

SUMMARY OF ESTIMATED COSTS

District: Benicia Unified School District
Project: Robert Semple Elementary School

MASTER BUDGET DETAIL SHEET

B. PLANS

3 DSA HANDICAPPED - PLAN CHECK FEE \$3,344.05
Estimated Construction Cost \$10,440,468

Calculation:	
0.002	of first \$500,000
0.001	of next \$1,500,000
0.0001	of balance

		Summary
\$500,000 @	0.002	\$1,000.00
\$1,500,000 @	0.001	\$1,500.00
\$8,440,468 @	0.0001	\$844.05

TOTAL \$3,344.05

4 HEALTH DEPARTMENT - Allowance \$0.00
Food Processing Establishment 0 Trips X \$500 \$0.00

Application Fee
Special Service Fee
Consultation 0 hours @ \$90 per hour = \$0.00

TOTAL \$0.00

5 ENERGY ANALYSIS FEES - ALLOWANCE \$0.00
Include the Cost for Professional Services Associated With Energy Analysis

6 DEPARTMENT OF EDUCATION - PLAN CHECK FEE \$10,440,468 @ 0.0007 \$7,308
Include the Cost for Plan Check Fees for Eligible Projects.

7.A SOILS - ALLOWANCE \$18,500.00
Soil Report
Soil Inspection / Testing
Reimbursables

7.B OPSC & YRE CONSULTANTS - Allowance \$0.00
Include the Cost for Consulting Services Associated With Establishing Eligibility and Pursuing Additional Support Through the State Funding Program.

7.C HAZARDOUS MATERIAL SURVEY/SPECS - Allowance \$5,000.00

7.D OTHERS \$0.00

8 BIDDING & ADVERTISING - Allowance \$7,500.00
Include the Estimated Cost for Printing, Reproduction, and Advertising Costs:

9 ADMINISTRATIVE COSTS - Allowance \$0.00
Include the Estimated Cost for LCP monitoring

10 OTHER \$0.00

MASTER BUDGET SUMMARY SHEET

PRELIMINARY
FOR DISCUSSION ONLY

SUMMARY OF ESTIMATED COSTS

District: Benicia Unified School District
Project: Robert Semple Elementary School

MASTER BUDGET DETAIL SUMMARY C. CONSTRUCTION

1A. UTILITY SERVICE FEES - Allowance \$35,000
List Estimated Costs for Utility Service and Connection Fees.

UTILITY	BUDGET	ACTUAL
Electrical	\$15,000.00	\$
Gas	\$0.00	\$
Water District	\$5,000.00	\$
Telephone	\$0.00	\$
Sanitary Sewer	\$10,000.00	\$
Storm Drain	\$0.00	\$
Cable T.V.	\$5,000.00	\$
City Encroachment	\$0.00	\$
Public Facilities	\$0.00	\$
TOTAL BUDGET	\$35,000.00	\$

Architect should instruct respective engineers to provide plans and relative information to the various agencies to initiate the permit process and ascertain actual costs.

1B. UTILITY SERVICE IMPROVEMENTS - Budget \$0
List Estimated Costs for Utility Service Installation

2. OFF-SITE DEVELOPMENT - Allowance \$0
List Estimated Off-Site Development Costs.

3. SERVICE SITE DEVELOPMENT - Allowance \$0
List Estimated Service Site Development Costs.

4. GENERAL SITE DEVELOPMENT - Allowance \$624,136
List General Site Development Costs.
Parking lots, plaza, playfields, covered dining, planters

5. MODERNIZATION \$3,847,894

6A. DEMOLITION - (E) Portables \$80,000

6B. INTERIM HOUSING* \$120,000
**List Estimated Cost to Provide, Install and Connect Basic Utilities to Temporarily Portable Housing During Construction Operations.*

MASTER BUDGET SUMMARY SHEET

PRELIMINARY
FOR DISCUSSION ONLY

SUMMARY OF ESTIMATED COSTS

District Benicia Unified School District
Project Robert Semple Elementary School

MASTER BUDGET DETAIL SUMMARY C. CONSTRUCTION

7. CONSTRUCTION	\$5,768,438
8A. UNCONVENTIONAL ENERGY - Allowance	\$0
8B. SPECIAL ACCESS COMPLIANCE - Allowance	\$0
8C. TECHNOLOGY ALLOWANCE - Allowance	Included
9. ENVIRONMENTAL ABATEMENT - Allowance <i>Include Estimated Cost for Hazardous Abatement.</i>	Included
10. AIR MONITOR/CLEARANCE - Allowance <i>Include the Estimated Cost for Professional Services Engaged in Air Monitoring/Surveillance and Administration of Abatement Contracts.</i>	\$25,000
11. PROJECT MANAGEMENT - R.G.M. AND ASSOCIATES (±4%)	\$417,619
12. OTHER	
A. REIMBURSABLES/GENERAL CONDITIONS - Allowance <i>Include the Estimated Cost for Misc. Reimbursables/General Condition Expenditures.</i>	\$25,000
B. MOVING/STORAGE (District Expense) - Allowance <i>List the Estimated Costs for District Maintenance Staff or Outside Moving Company to Remove and Replace Furnishings and Supplies from Major Construction Areas, General Clean-up, Floor Waxing, Etc.</i>	\$7,500
C. UNDERGROUND UTILITY SEARCH - Allowance <i>Estimated Cost for Ultra Sonic Location Service.</i>	\$2,500

MASTER BUDGET SUMMARY SHEET

PRELIMINARY
FOR DISCUSSION ONLY

SUMMARY OF ESTIMATED COSTS

District Benicia Unified School District
Project Robert Semple Elementary School

MASTER DETAIL SUMMARY SHEET

D. TESTS

Tests (Special Inspection/Material Testing) ($\pm 2\%$) \$201,118

Include the Cost for Testing Lab and Special Inspections as may be Required by the Structural Engineer or the Division of the State Architect.

Calculation:

E. INSPECTION

INSPECTOR OF RECORD (IOR) ($\pm 4\%$)

Include the Estimated Cost for Independent Inspector of Record (IOR) Fees.

12mos @ 173hrs (\$85/hr)

\$5,000 Reimbursable Allowance

Allowance

\$181,460

F. FURNITURE AND EQUIPMENT

Include the Cost for the Purchase of Furniture and Equipment. ($\pm 5\%$)

5,768,438 @ 6%

Allowance

\$346,106

G. CONTINGENCIES

Include a Provision for Contingency

\$1,305,059

Calculation:

Design Revisions/Completion \$10,440,468.00 @ 0.02 \$208,809.36

Bid Climate/Escalation \$10,440,468.00 @ 0.035 \$365,416.38

Change Order \$10,440,468.00 @ 0.05 \$522,023.40

District Project Contingency \$10,440,468.00 @ 0.02 \$208,809.36

Total

\$1,305,058.50

LAWRENCE M. SCHOENKE
ATTORNEY AT LAW
lschoenke@mbdlaw.com

SAN FRANCISCO



December 2, 2008

E-MAIL AND MAIL

Elizabeth Patterson, Mayor
Members of the City Council
City of Benicia
250 L Street
Benicia, CA 94510

Re: Benicia Business Park
Council meeting of December 2, 2008
Our file: 1375.10308

Dear Mayor and City Council Members:

We send this letter on behalf of the Board of Trustees ("Board") of the Benicia Unified School District ("District") to state its view on the request for reconsideration of the denial of the Benicia Business Park ("BBP") Project by the City Council on November 18, 2008 to be heard this evening, December 2, 2008.

The District has previously provided communication on the impact of the BBP on the District on three separate occasions and in particular on the students and staff at Robert Semple Elementary School, located at 2015 East Third Street ("Semple School").

We have in our possession a letter from Albert Seeno III to Mike Ioakimedes concerning a number of apparent commitments from Mr. Seeno concerning the BBP. The one matter that, of course, interests the District is section II. B. In that "commitment" Mr. Seeno states that the proposed Development Agreement with the City of Benicia would include a requirement to negotiate an agreement with the District to address the impacts on Semple School and its students.

The limited language of the provision noted above troubles the Board and us as legal counsel to the District. The agreement language is insufficient in the eyes of the District as written.

We request the following language in place of section II. B.:

SAN FRANCISCO

71 Stevenson Street
Nineteenth Floor
San Francisco, CA 94105
Tel 415.543.4111
Fax 415.543.4384

LONG BEACH

301 East Ocean Boulevard
Suite 1750
Long Beach, CA 90802
Tel 562.366.8500
Fax 562.366.8505

SAN DIEGO

750 B Street
Suite 2310
San Diego, CA 92101
Tel 619.595.0202
Fax 619.702.6202
www.mbdlaw.com

Elizabeth Patterson, Mayor
Members of the City Council
City of Benicia
December 2, 2008
Page 2

II. B. The Development Agreement shall include a requirement that Discovery Builders enter into a separate written agreement with the Benicia Unified School District (the BUSD Agreement) to address the Project's impacts on the District that includes at a minimum the necessary mitigation measures as determined by the BUSD Governing Board, which will include, but are not limited to:

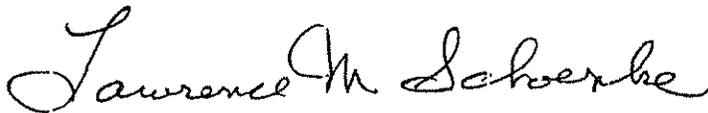
1. Creation of an escrow fund of \$2 million, at a minimum, to fund the implementation of mitigation measures ultimately stated in the mitigation agreement.
2. Creation of an escrow fund to maintain the mitigation measures under the mitigation agreement.
3. Maintain an insurance policy with the District as additional insured insuring against liability due to the Project mitigation measures and impacts from the Project.
4. Reimbursement of attorney's fees paid by BUSD and the cost of BUSD staff resources to date.
5. Creation of an escrow fund to pay for attorney's fees and BUSD staff resources for future negotiations and supervision of the mitigation agreement.

The District Board members and staff are informed that there may be a committee or an ad hoc task force formed to give input on the future planning process for this Project. The District Board asks to have school district representation on any committee or task force the Council may create.

We believe that if the commitments above are made, the District would not object to the request for reconsideration and rescission of the denial of the Project.

Very truly yours,

MILLER BROWN & DANNIS



Lawrence M. Schoenke for
Mark W. Kelley

cc: Board of Trustees, Benicia Unified School District
James Erickson, City Manager, City of Benicia

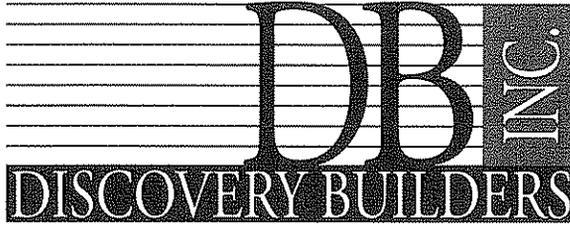
D Simpkins - Email received regarding BBP Agenda Item

From: Anne Cardwell
To: Charlie Knox; Council; Heather McLaughlin; Jim Erickson
Date: 2/3/2009 11:05 AM
Subject: Email received regarding BBP Agenda Item
CC: Anne Cardwell; D Simpkins; Jayne York

To the Benicia City Council:

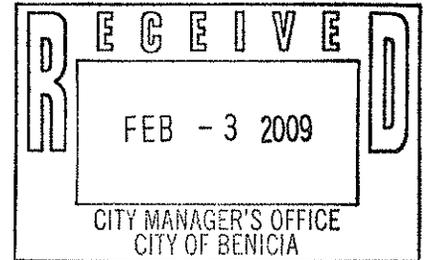
I much prefer Choice 2, and deplore the way Seeno has managed to circumvent the Council's "no" vote last November. The developer apparently is noted for past unsavory dealings, and it is hoped the Benicia City Council and City Staff will see through whatever promises are now being made to induce application approval.

Barbara L. Fugate
280 West J Street
Benicia



4061 Port Chicago Highway, Suite H
Concord, California 94520
(925) 682-6419
Fax (925) 689-7741

February 3, 2009



Honorable Mayor Elizabeth Patterson
and Members of the City Council
City of Benicia
250 East L Street
Benicia, CA 94510

Re: Benicia City Council Meeting; Benicia Business Park Proposal

Dear Mayor Patterson and Members of the Benicia City Council:

As promised, on January 23, 2009 we submitted a revised commitment letter to the City regarding our project. The revisions were based on comments made by members of the City Council and the general public at the January 7, 2009 Community Meeting. Since January 23rd, we have not received one phone call or email from City staff, City Council members or anyone else as it pertains to our revised commitment letter. We were expecting calls or emails with questions or clarifications, but we've received no correspondence whatsoever since we submitted our letter. It was therefore our assumption and hope that the revised commitment letter identified the majority of the key issues that would allow for the Council's rescission of the November 18, 2008 decision. I want it to be clear that we have been available at all times to meet and discuss this commitment letter with any member of the City Council or City staff over these past 11 days, but again there has been no attempt to contact us at all.

Recent local news articles and the City's staff report for tonight's meeting identify a common area of concern with regard to our commitment letter. Of concern is our company's position that any Specific Plan developed for this Project must be consistent with the existing General Plan. It is clear that limiting the development of an acceptable Specific Plan to be consistent with the existing Benicia General Plan for our property is of concern to some. Please be advised that we are flexible and agree that an amendment to the General Plan *may* be required to adopt the Specific Plan that is developed as a result of this process. However, during the development of the Specific Plan, we want the City of Benicia to commit and ensure that we will have an active role in its development. We want to be part of the consultant selection, want to review the scope of work for the Specific Plan, and have an active, participatory role in the Specific Plan development process. It is important that the Specific Plan put before the Council for consideration not only reflect a community-based input for the property but is financially and physically feasible and acceptable to us as the project developer. If,

during the development of a mutually acceptable Specific Plan, it is evident that an amendment to the existing General Plan land use designation is necessary, we are amenable to such an amendment in order to implement the Specific Plan.

Another area of concern with our commitment letter seems to be our use of the word 'reasonable' in describing certain expenses that we have agreed to be responsible for. Our use of the word "reasonable" was to ensure that the expenses we've committed to do not become excessive and remain fair and rationale. This is an area which we feel we can work with staff on by establishing estimated budgets and outlining scope of work parameters. We've worked with staff on various budget augments so far on the Benicia Business Park project and we have always been able to agree upon a reasonable fee for project processing.

Thank you for your time and further consideration of this letter.

Best Regards,

Albert Seeno, III
President

A handwritten signature in black ink, appearing to read 'Albert Seeno, III', with a long horizontal flourish above the name and a vertical line extending downwards from the end.

D Simpkins - Fwd: for all City Council Members and City Attorney, re: Seeno Project

From: Anne Cardwell
To: Charlie Knox; Council; Heather McLaughlin; Jim Erickson
Date: 2/3/2009 4:10 PM
Subject: Fwd: for all City Council Members and City Attorney, re: Seeno Project
CC: D Simpkins; Jayne York

>>> <priswhite@aol.com> 2/3/2009 3:58 PM >>>

Dear Council Members and City Attorney

As a resident of Benicia I want to encourage you, this evening, not to rescind the "no" vote on the Seeno Project. I think the City should proceed with a specific plan, the process that was begun after the November 18 "no" vote. As Mayor Patterson pointed out, it is really up to the City, according the State of California, to do the planning. I would like to see Staff move forward with that idea in mind. I cannot attend the meeting tonight, so I am expressing my concerns via email. Thank you for your consideration.

Sincerely
Priscilla Whitehead
288 W J St
Benicia, CA
748-0877

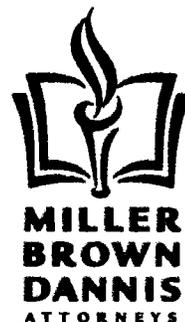
[Great Deals on Dell Laptops. Starting at \\$499.](#)

D Simpkins - Fwd: for all City Council members and City Attorney, re: Seeno Project

From: Anne Cardwell
To: Charlie Knox; Council; Heather McLaughlin; Jim Erickson
Date: 2/3/2009 4:10 PM
Subject: Fwd: for all City Council members and City Attorney, re: Seeno Project
CC: D Simpkins; Jayne York

>>> Jeremy Cantor <giralua@pacbell.net> 2/3/2009 3:10 PM >>>
Do not rescind the "No" vote.

Jeremy Cantor
560 Rose Drive
Benicia



MARK W. KELLEY
ATTORNEY AT LAW
mkelley@mbdlaw.com

SAN FRANCISCO

January 30, 2009
Amended February 3, 2009

E-MAIL AND MAIL

Elizabeth Patterson, Mayor
Members of the City Council
City of Benicia
250 L Street
Benicia, California 94510

Re: *Benicia Business Park*
City Council meeting of February 3, 2009
Our file: 1375.10308

Dear Mayor and City Council Members:

We thank you for providing the Benicia Unified School District (“District”) with a copy of Discovery Builder’s January 23, 2009 letter and appreciate the opportunity to respond to it. We are writing on behalf of the Board of Trustees (“Board”) of the District.

We urge the City Council to assist the District in obtaining an agreement with Discovery Builders to ameliorate the environmental impacts of the Benicia Business Park (BBP) on Robert Semple School. If such an agreement is reached, the District would support this project going forward. Without an agreement, the District would ask the City Council to deny Discovery Builder’s request to rescind the November 18, 2008 decision to deny its project application to develop the BBP.

In the past, Discovery Builders committed to meet with the District regarding the impacts of BBP. To date, there has been no effort by Discovery Builders to meet and discuss the Board’s concerns as to BBP’s impact on Semple School and the District. The District has not been contacted by Discovery Builders to discuss mitigation of BBP as proposed and rejected in an effort to minimize its impacts on the District. We have previously provided correspondence to you on our attempts to engage Discovery Builders.

SAN FRANCISCO

71 Stevenson Street
Nineteenth Floor
San Francisco, CA 94105
Tel 415.543.4111
Fax 415.543.4384

LONG BEACH

301 East Ocean Boulevard
Suite 1750
Long Beach, CA 90802
Tel 562.366.8500
Fax 562.366.8505

SAN DIEGO

750 B Street
Suite 2310
San Diego, CA 92101
Tel 619.595.0202
Fax 619.702.6202
www.mbdlaw.com

Elizabeth Patterson, Mayor
Members of the City Council
January 30, 2009
Amended February 3, 2009
Page 2

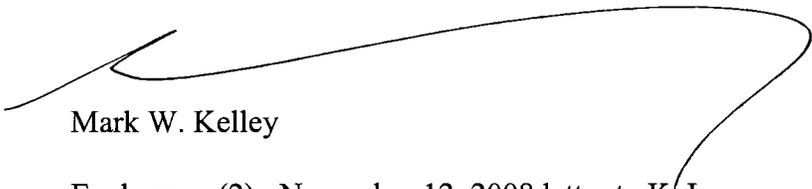
Additionally, we question the legal authority of a subsequent environmental impact report ("EIR") in this situation. The revisions to the BBP offered by Discovery Builders call into question the appropriateness of subsequent EIR where the previous EIR was certified but whose later amendment was rejected.

We believe that it is in everyone's best interest to direct the project sponsor to negotiate an agreement with the District to ensure that Semple School is not overwhelmed by this project and its environmental impacts. By doing so, we believe that the City, the project sponsor, and the District will end up with a better project and one that is less vulnerable to legal challenge under the California Environmental Quality Act.

Please do not hesitate to contact the undersigned to discuss this correspondence.

Very truly yours,

MILLER BROWN & DANNIS



Mark W. Kelley

Enclosures (2): November 12, 2008 letter to K (Lawson and
December 2, 2008 letter to Mayor Patterson

cc: Board of Trustees, Benicia Unified School District
James Erickson, City Manager, City of Benicia
Janice Adams, Superintendent



LAWRENCE M. SCHOENKE
ATTORNEY AT LAW
lschoenk@mbdlaw.com
SAN FRANCISCO

November 12, 2008

E-MAIL AND MAIL

Katrina D. Lawson
Miller Starr Regalia
1331 North California Boulevard, # 5
Walnut Creek, CA 94596

Re: *Benicia Unified School District*
Mitigation Requirements for Robert Semple Elementary School
Our file 1375.10308

Dear Ms. Lawson:

We have received and reviewed Discovery Builders, Inc.'s October 30, 2008 letter to the Benicia Unified School District ("Letter" and "District," respectively). We appreciate Discovery Builders, Inc.'s interest in further discussions and negotiations to resolve the impacts the proposed Benicia Business Park ("BBP") would have on the Robert Semple Elementary School ("Semple School"), if approved by the City of Benicia ("City"). The District's Governing Board ("Board") has reviewed the Letter and has asked us to respond on its behalf.

We believe that Discovery Builders mischaracterizes the health and safety impacts that the BBP would have on Semple School. The mitigation measures, whether required by the City as a condition of its CEQA process or its plan approval process, are not "enhancements" to Semple School or to the District. The construction, installation, or replacement of various physical structures are required specifically to ameliorate the negative environmental effects that the BBP is projected to have on the students and staff at Semple School. We reiterate that the District's proposed mitigation measures for Semple School are required measures to assure the District that its students and staff are safe.

The Semple School campus is comprised mostly of portable classroom buildings. Most of the portable buildings are old and do not meet current State Building codes. Due to the portable nature and age of the existing portable buildings, they cannot be easily upgraded with the appropriate sound attenuation materials that would be necessary to mitigate the impact of the traffic noise. Nor can the portable buildings be retrofitted with adequate ventilation systems to maintain appropriate indoor air quality standards. The existing building would also need to be modernized to an appropriate standard for sound attenuation and to provide appropriate indoor air quality standards. As you are well aware, retrofitting, or modernizing older structures, where feasible would require

SAN FRANCISCO
71 Stevenson Street
Nineteenth Floor
San Francisco, CA 94105
Tel 415.543.4111
Fax 415.543.4384

LONG BEACH
301 East Ocean Boulevard
Suite 1750
Long Beach, CA 90802
Tel 562.366.8500
Fax 562.366.8505

SAN DIEGO
750 B Street
Suite 2310
San Diego, CA 92101
Tel 619.595.0202
Fax 619.702.6202
www.mbdlaw.com

Katrina Lawson
November 12, 2008
Page 2

the construction to meet the current State building standards and specifications. Here, this would include installation of a fully addressable fire alarm system, ADA access and other State mandated structural and life safety improvements.

In some instances, the mitigation measures are proposed to be new construction; however, these measures are not enhancements or "gold-plated" requirements. The cost factors estimated are moderate and consistent with current construction trends in the industry. In the instance of the proposed multipurpose room, it is required for use for indoor recreation for "spare the air" days that are compounded by the excess traffic created by the BBP.

The District believes that the most cost-effective method is the construction of a ten (10) classroom building as compared to attempting to modernize the portables. The estimated costs to construct a ten (10) classroom building, the associated site work, and construction of a multipurpose room and sound attenuation, HVAC and other necessary or required improvements to the existing building is estimated at fourteen million dollars (\$14,000,000) total project cost. We provide, as an enclosure to this letter, a listing of the required components.

An alternative mitigation for the BBP's impacts is the relocation of Semple School students and staff to the former Mills school site. You are probably aware that the City has spent approximately 1.4 million dollars rehabilitating the former Mills school site in order to convert it into a community center. Should the District take possession of this site, it would have to reimburse the City for those costs and possibly do additional modernization for re-use as an elementary school, including adding up to six (6) classrooms with a restroom facility and other appurtenant work. Further, we believe that closing the Semple School and re-opening the Mills school site would require the District to form and consult with a community advisory committee generally referred to as a "7-11 committee," whose purpose would be to gather community input on the merits of reopening the Mills school site. The closing and reopening of school campuses is a matter of public concern thus school districts are required to comply with Education Code sections 17387 *et seq.*

The District believes it is providing several methods by which Discovery Builders can mitigate the impacts of the BBP on Semple School and on the District. The District staff and Governing Board members look forward to further negotiations.

Very truly yours,

MILLER BROWN & DANNIS


Lawrence M. Schoenke
LMS/ab

Enclosure

cc: Janice Adams, Superintendent, Benicia Unified School District

SEMPLE SCHOOL MITIGATION REQUIREMENTS

New Classrooms

(10) Classroom Building to replace the oldest portables, including:

- A small Multi-Purpose Room/Gym
- Student Restrooms
- Faculty Restroom
- Janitor, Electrical and Mechanical & Storage rooms

Associated Site and appurtenant work, including:

- Fire and Emergency Vehicle Access
- Fire hydrants and fire sprinkler water
- Power and Utility extensions, required upgrades and fees
- Path of Travel Walkways
- Covered Walks
- Storm Drainage /C-3 Drainage
- Landscape/Outdoor Classroom Area

General Classroom Environment and Common Area,

Library, Cafeteria/Multi-Use Room and Administrative Area Upgrades

- Classroom Environment Improvements
- Heating and Ventilation Systems
- Window Replacement – Double Glaze Windows
- Tackable Wall Surfaces (Sound Attenuation)
- Ceiling Repairs/Replacement (Sound Attenuation/HVAC Upgrade)
- Lighting/ Emergency Lighting Upgrades (Code)
- Structural Retrofit, HVAC Mounts and as required by Code (DSA)
- Door and Hardware Upgrades (ADA)
- General Building Repairs/Patch and Paint
- Building envelope-Roo Patch (HVAC)/ Miscellaneous Gutters and Flashings
- Restroom Upgrades
- Electrical and Plumbing Connections (HVAC)
- Asbestos Abatement, as encountered
- New Fully Addressable Fire Alarm System- *required by State regulatory agencies*
- Video Surveillance System @ Tunnel

MASTER BUDGET SUMMARY SHEET

PRELIMINARY
FOR DISCUSSION ONLY

SUMMARY OF ESTIMATED COSTS
District: Benicia Unified School District
Project: Robert Semple Elementary School

DATE: November 3, 2008
PRELIMINARY X
PRE-FINAL
FINAL

A. DISTRICT / ADMINISTRATIVE FEES	
1 SITE ACQUISITION/APPRaisal/TITLE	\$ 0
2 SURVEY/TOPO & BOUNDARY STUDY	\$ 12,500
3 SITE SUPPORT - BOND FEES	\$ 0
4 LEGAL FEES - Allowances	\$ 7,500
5 CEQA COMPLIANCE (EIR/Negative Declaration, CATX)	\$ 750
6 DTSC/PHASE 1 ESA/PEA	\$ 0
7 OTHER	\$ 0
SITE SUBTOTAL	\$ 20,750
B. PLANS	
1 ARCHITECT'S FEE FOR PLANS	\$ 895,344
2 DSA PLAN CHECK FEE	\$ 54,202
3 DSA HANDICAPPED PLAN CHECK FEE	\$ 3,344
4 HEALTH DEPARTMENT	\$ 0
5 ENERGY ANALYSIS FEES	\$ 0
6 DEPARTMENT OF EDUCATION - PLAN CHECK FEE	\$ 7,308
7 MISC ENGINEERING/CONSULTING SERVICES	
A. SOILS	\$ 18,500
B. OPSC & YRE CONSULTANTS	\$ 0
C. HAZARDOUS MATERIAL SURVEY/SPI:CS	\$ 5,000
D. OTHER	\$ 0
8 BIDDING AND ADVERTISEMENT	\$ 7,500
9 LABOR COMPLIANCE PROGRAM ADMINISTRATIVE COSTS	\$ 0
10 OTHER	\$ 0
PLANS SUBTOTAL	\$ 991,199
C. CONSTRUCTION	
1 A. UTILITY SERVICE FEES	\$ 35,000
B. UTILITY SERVICE IMPROVEMENTS	\$ 0
2 OFF-SITE DEVELOPMENT	\$ 0
3 SERVICE SITE DEVELOPMENT	\$ 0
4 GENERAL SERVICE SITE DEVELOPMENT	\$ 624,136
5 MODERNIZATION	\$ 3,847,884
6 A. DEMOLITION - Removal of Portables	\$ 80,000
B. INTERIM HOUSING	\$ 120,000
7 NEW CONSTRUCTION (Classrooms & MP)	\$ 5,768,438
8 A. UNCONVENTIONAL ENERGY SOURCES	\$ 0
B. SPECIAL ACCESS COMPLIANCE	\$ 0
C. TECHNOLOGY ALLOWANCE	\$ Included
9 ENVIRONMENTAL ABATEMENT	\$ Included
10 AIR MONITOR CLEARANCE	\$ 25,000
11 PROJECT MANAGEMENT	\$ 417,619
12 OTHER (ITEMIZE)	
A. REIMBURSABLES/GENERAL CONDITIONS	\$ 25,000
B. MOVING/STORAGE (District Expense)	\$ 7,500
C. UNDERGROUND UTILITY SEARCH	\$ 2,500
CONSTRUCTION SUBTOTAL	\$ 10,953,087
D. TESTS (CONSTRUCTION LAB)	\$ 201,118
E. INSPECTION (IOR)	\$ 181,480
F. FURNITURE AND EQUIPMENT	\$ 348,106
G. CONTINGENCIES	\$ 1,305,059
TOTAL ESTIMATED COSTS (ITEMS A THROUGH G)	\$ 13,998,778

MASTER BUDGET SUMMARY SHEET

PRELIMINARY
FOR DISCUSSION ONLY

SUMMARY OF ESTIMATED COSTS

District Benicia Unified School District
Project Robert Semple Elementary School

MASTER BUDGET DETAIL SHEET

A. DISTRICT / ADMINISTRATIVE FEES

1 SITE ACQUISITION/APPRaisal/TITLE - ALLOWANCE **\$0.00**

Include the Cost of Real Property Purchased. Include the Cost of Any Appraisal Fee Escrow/Title Costs Associated with Eligible Projects.

Property	0
Appraisal	0
Title	0
	0

2 SURVEYS -ALLOWANCE **\$12,500.00**

Include the Cost for General Surveys, Aerial Survey, Lot Line Adjustments & Property Line Establishments, & Utility Surveys.

3 SITE SUPPORT - BOND FEES - Allowance **\$0.00**

Include the Cost For Any Legal or Professional Fees or Services Associated With Setting Up and Maintaining the Bond. Includes portions of Administrative Salaries/Hourly Wages for District Staff Support Relative to Bond Projects and/or OPSC Funding.

4 LEGAL FEES - ALLOWANCE **\$7,500.00**

Include the Cost for Legal Consultation or Administrative Assistance as Follows:

- * Document Review
- * Bid Review
- * Contract Review
- * Bond Review
- * Insurance Review
- * Miscellaneous Correspondence/Issue Conference

5 CEQA COMPLIANCE (CATX) **\$750.00**

6 DTSC/PHASE 1 ESA/PEA **\$0.00**

7 OTHER **\$0.00**

MASTER BUDGET SUMMARY SHEET

SUMMARY OF ESTIMATED COSTS

District: Benicia Unified School District
Project: Robert Sample Elementary School

MASTER BUDGET DETAIL SHEET B. PLANS

1 ARCHITECT'S FEE FOR PLANS (12 1/4)	New Construction	\$483,054.44
	Modernization	\$412,289.40
	Total	\$895,343.84

New Construction (sliding scale)				Modernization (sliding scale)			
1.	1st \$500 k	@	9%	1.	1st \$500 k	@	12%
2.	Next \$500 k	@	8.5%	2.	Next \$500 k	@	11.5%
3.	Next \$1 m	@	8%	3.	Next \$1 m	@	11%
4.	Next \$4 m	@	7%	4.	Next \$4 m	@	10%
5.	Next \$4 m	@	6%	5.	Next \$4 m	@	9%
6.	Excess of \$10 m	@	5%	6.	Excess of \$10 m	@	8%

(Verify percentages indicated above with specific agreement with project architect.)

a. Estimated Construction Budget:

Utility Service Improvements	\$0
Off-Site Development	\$0
Service Site Development	\$0
General Site Development	\$624,136
New Construction	\$5,788,438
Modernization	\$3,847,894
Demolition	\$80,000
Interim Housing	\$120,000

Total Fee Base \$10,440,468

New Construction

\$	500,000.00	@	9.0%	\$45,000.00
\$	500,000.00	@	8.5%	\$42,500.00
\$	1,000,000.00	@	8.0%	\$80,000.00
\$	4,000,000.00	@	7.0%	\$280,000.00
\$	592,574.00	@	6.0%	\$35,554.44
\$	-	@	5.0%	\$0.00

TOTAL ESTIMATED FEE \$483,054.44

Modernization

\$	500,000.00	@	12.0%	\$60,000.00
\$	500,000.00	@	11.5%	\$57,500.00
\$	1,000,000.00	@	11.0%	\$110,000.00
\$	1,847,894.00	@	10.0%	\$184,789.40
\$	-	@	9.0%	\$0.00
\$	-	@	8.0%	\$0.00

TOTAL ESTIMATED FEE \$412,289.40

2 DSA PLAN CHECK FEE

Estimated Construction Cost **\$10,440,468** **\$54,202.34**

Calculation:			
0.007	of first	\$1,000,000	\$7,000.00
0.005	of balance	\$9,440,468	\$47,202.34

Summary	
0.007	\$7,000.00
0.005	\$47,202.34
TOTAL	\$54,202.34

MASTER BUDGET SUMMARY SHEET

**PRELIMINARY
FOR DISCUSSION ONLY**

SUMMARY OF ESTIMATED COSTS

District: Benicia Unified School District
 Project: Robert Semple Elementary School

MASTER BUDGET DETAIL SHEET

B. PLANS

3 DSA HANDICAPPED - PLAN CHECK FEE **\$3,344.05**
 Estimated Construction Cost **\$10,440,468**

Calculation:	
0.002	of first \$500,000
0.001	of next \$1,500,000
0.0001	of balance

\$500,000 @	0.002	\$1,000.00
\$1,500,000 @	0.001	\$1,500.00
\$8,440,468 @	0.0001	\$844.05

Summary	
0.002	\$1,000.00
0.001	\$1,500.00
0.0001	\$844.05

TOTAL \$3,344.05

4 HEALTH DEPARTMENT - Allowance

Food Processing Establishment	0 Trips	X	\$500	\$0.00
Application Fee				\$0.00
Special Service Fee				
Consultation	0 hours @	-\$90 per hour =		\$0.00
TOTAL				\$0.00

5 ENERGY ANALYSIS FEES - ALLOWANCE **\$0.00**
Include the Cost for Professional Services Associated With Energy Analysis

6 DEPARTMENT OF EDUCATION - PLAN CHECK FEE **\$10,440,468 @** **0.0007** **\$7,308**
Include the Cost for Plan Check Fees for Eligible Projects.

7.A SOILS - ALLOWANCE **\$18,500.00**

- . Soil Report
- . Soil Inspection / Testing
- . Reimbursables

7.B OPSC & YRE CONSULTANTS - Allowance **\$0.00**
Include the Cost for Consulting Services Associated With Establishing Eligibility and Pursuing Additional Support Through the State Funding Program.

7.C HAZARDOUS MATERIAL SURVEY/SPECS - Allowance **\$5,000.00**

7.D OTHERS **\$0.00**

8 BIDDING & ADVERTISING - Allowance **\$7,500.00**
Include the Estimated Cost for Printing, Reproduction, and Advertising Costs:

9 ADMINISTRATIVE COSTS - Allowance **\$0.00**
Include the Estimated Cost for LCP monitoring

10 OTHER **\$0.00**

MASTER BUDGET SUMMARY SHEET

**PRELIMINARY
FOR DISCUSSION ONLY**

SUMMARY OF ESTIMATED COSTS

District: Benicia Unified School District
Project: Robert Sample Elementary School

MASTER BUDGET DETAIL SUMMARY C. CONSTRUCTION

1A. UTILITY SERVICE FEES - Allowance **\$35,000**
List Estimated Costs for Utility Service and Connection Fees.

UTILITY	BUDGET	ACTUAL
Electrical	\$15,000.00	\$
Gas	\$0.00	\$
Water District	\$5,000.00	\$
Telephone	\$0.00	\$
Sanitary Sewer	\$10,000.00	\$
Storm Drain	\$0.00	\$
Cable T.V.	\$5,000.00	\$
City Encroachment	\$0.00	\$
Public Facilities	\$0.00	\$
TOTAL BUDGET	\$35,000.00	\$

Architect should instruct respective engineers to provide plans and relative information to the various agencies to initiate the permit process and ascertain actual costs.

1B. UTILITY SERVICE IMPROVEMENTS - Budget **\$0**
List Estimated Costs for Utility Service Installation

2. OFF-SITE DEVELOPMENT - Allowance **\$0**
List Estimated Off-Site Development Costs.

3. SERVICE SITE DEVELOPMENT - Allowance **\$0**
List Estimated Service Site Development Costs.

4. GENERAL SITE DEVELOPMENT - Allowance **\$624,136**
*List General Site Development Costs.
Parking lots, plaza, playfields, covered dining, planters*

5. MODERNIZATION **\$3,847,894**

6A. DEMOLITION - (E) Portables **\$80,000**

6B. INTERIM HOUSING* **\$120,000**
**List Estimated Cost to Provide, Install and Connect Basic Utilities to Temporarily Portable Housing During Construction Operations.*

MASTER BUDGET SUMMARY SHEET

PRELIMINARY
FOR DISCUSSION ONLY

SUMMARY OF ESTIMATED COSTS

District: Benicia Unified School District
Project: Robert Semple Elementary School

MASTER BUDGET DETAIL SUMMARY C. CONSTRUCTION

7. CONSTRUCTION	\$5,768,438
8A. UNCONVENTIONAL ENERGY - Allowance	\$0
8B. SPECIAL ACCESS COMPLIANCE - Allowance	\$0
8C. TECHNOLOGY ALLOWANCE - Allowance	Included
9. ENVIRONMENTAL ABATEMENT - Allowance <i>Include Estimated Cost for Hazardous Abatement.</i>	Included
10. AIR MONITOR/CLEARANCE - Allowance <i>Include the Estimated Cost for Professional Services Engaged in Air Monitoring/Surveillance and Administration of Abatement Contracts.</i>	\$25,000
11. PROJECT MANAGEMENT - R.G.M. AND ASSOCIATES (±4%)	\$417,818
12. OTHER	
A. REIMBURSABLES/GENERAL CONDITIONS - Allowance <i>Include the Estimated Cost for Misc. Reimbursables/General Condition Expenditures.</i>	\$25,000
B. MOVING/STORAGE (District Expense) - Allowance <i>List the Estimated Costs for District Maintenance Staff or Outside Moving Company to Remove and Replace Furnishings and Supplies from Major Construction Areas, General Clean-up, Floor Waxing, Etc.</i>	\$7,500
C. UNDERGROUND UTILITY SEARCH - Allowance <i>Estimated Cost for Ultra Sonic Location Services.</i>	\$2,500

MASTER BUDGET SUMMARY SHEET

PRELIMINARY
FOR DISCUSSION ONLY

SUMMARY OF ESTIMATED COSTS

District Benicia Unified School District
Project Robert Semple Elementary School

MASTER DETAIL SUMMARY SHEET

D. TESTS

Tests (Special Inspection/Material Testing) ($\pm 2\%$) \$201,118
Include the Cost for Testing Lab and Special Inspections as may be Required by the
Structural Engineer or the Division of the State Architect.
Calculation:

E. INSPECTION

INSPECTOR OF RECORD (IOR) ($\pm 4\%$)
Include the Estimated Cost for Independent Inspector of Record (IOR) Fees.

12mos @ 173hrs (\$85hr)
\$5,000 Reimbursable Allowance
Allowance \$181,480

F. FURNITURE AND EQUIPMENT

Include the Cost for the Purchase of Furniture and Equipment. ($\pm 5\%$)
5,768,438 @ 6%

Allowance \$346,106

G. CONTINGENCIES

Include a Provision for Contingency \$1,305,059

Calculation:

Design Revisions/Completion	\$10,440,468.00 @	0.02	\$208,809.36
Bid Climate/Escalation	\$10,440,468.00 @	0.035	\$365,416.38
Change Order	\$10,440,468.00 @	0.05	\$522,023.40
District Project Contingency	\$10,440,468.00 @	0.02	\$208,809.36
		Total	\$1,305,058.50



LAWRENCE M. SCHOENKE
ATTORNEY AT LAW
lschoenke@mbdlaw.com
SAN FRANCISCO

December 2, 2008

E-MAIL AND MAIL

Elizabeth Patterson, Mayor
Members of the City Council
City of Benicia
250 L Street
Benicia, CA 94510

Re: Benicia Business Park
Council meeting of December 2, 2008
Our file: 1375.10308

Dear Mayor and City Council Members:

We send this letter on behalf of the Board of Trustees ("Board") of the Benicia Unified School District ("District") to state its view on the request for reconsideration of the denial of the Benicia Business Park ("BBP") Project by the City Council on November 18, 2008 to be heard this evening, December 2, 2008.

The District has previously provided communication on the impact of the BBP on the District on three separate occasions and in particular on the students and staff at Robert Semple Elementary School, located at 2015 East Third Street ("Semple School").

We have in our possession a letter from Albert Seeno III to Mike Ioakimedes concerning a number of apparent commitments from Mr. Seeno concerning the BBP. The one matter that, of course, interests the District is section II. B. In that "commitment" Mr. Seeno states that the proposed Development Agreement with the City of Benicia would include a requirement to negotiate an agreement with the District to address the impacts on Semple School and its students.

The limited language of the provision noted above troubles the Board and us as legal counsel to the District. The agreement language is insufficient in the eyes of the District as written.

We request the following language in place of section II. B.:

SAN FRANCISCO
71 Stevenson Street
Nineteenth Floor
San Francisco, CA 94105
Tel 415.543.4111
Fax 415.543.4384

LONG BEACH
301 East Ocean Boulevard
Suite 1750
Long Beach, CA 90802
Tel 562.366.8500
Fax 562.366.8505

SAN DIEGO
750 B Street
Suite 2310
San Diego, CA 92101
Tel 619.595.0202
Fax 619.702.6202
www.mbdlaw.com

Elizabeth Patterson, Mayor
Members of the City Council
City of Benicia
December 2, 2008
Page 2

II. B. The Development Agreement shall include a requirement that Discovery Builders enter into a separate written agreement with the Benicia Unified School District (the BUSD Agreement) to address the Project's impacts on the District that includes at a minimum the necessary mitigation measures as determined by the BUSD Governing Board, which will include, but are not limited to:

1. Creation of an escrow fund of \$2 million, at a minimum, to fund the implementation of mitigation measures ultimately stated in the mitigation agreement.
2. Creation of an escrow fund to maintain the mitigation measures under the mitigation agreement.
3. Maintain an insurance policy with the District as additional insured insuring against liability due to the Project mitigation measures and impacts from the Project.
4. Reimbursement of attorney's fees paid by BUSD and the cost of BUSD staff resources to date.
5. Creation of an escrow fund to pay for attorney's fees and BUSD staff resources for future negotiations and supervision of the mitigation agreement.

The District Board members and staff are informed that there may be a committee or an ad hoc task force formed to give input on the future planning process for this Project. The District Board asks to have school district representation on any committee or task force the Council may create.

We believe that if the commitments above are made, the District would not object to the request for reconsideration and rescission of the denial of the Project.

Very truly yours,

MILLER BROWN & DANNIS



Lawrence M. Schoenke for
Mark W. Kelley

cc: Board of Trustees, Benicia Unified School District
James Erickson, City Manager, City of Benicia

D Simpkins - Fwd: for all City Council members and City Attorney, re: Seeno Project

From: Anne Cardwell
To: Council
Date: 2/4/2009 6:44 AM
Subject: Fwd: for all City Council members and City Attorney, re: Seeno Project
CC: Charlie Knox; D Simpkins; Heather McLaughlin; Jayne York; Jim Erickson

Sorry, this one came just before the meeting started so didn't see it until now.

>>> Philip Makau <phmakau@sbcglobal.net> 2/3/2009 6:52 PM >>>

I plead with you not to rescind your "NO" vote. Until such time that the developer has satisfied the needs of Benicians, the council should continue hold.

Thanks,

P Makau, PhD

January 3, 2009

Mayor Patterson and Members of the Benicia City Council;

My personal reponse to the January 23, 2009 letter from Discovery Builders (signed by Albert D. Seeno III) to Mayor Patterson and Members of the Benicia City Council raises some questions..

Questions:

1. *Would a Specific Plan and Sub EIR be affected by the approved DEIR? Wouldn't this require a zoning change in our General Plan?*

At the June 3, 2008 City Council meeting I made a statement concerning my worries about the 35 acre commercial development and the possibility of a Big Box tenant if Discovery Builders might not be able to get a "tenant mix" that would make Benicia happy.

Councilmember Alan Schwartzmann questioned Community Development Director, Charlie Knox, whether this would be possible.

Charlie Knox reassured Councilmember Schwartzmann that this would not be possible

In the DEIR: (p.349) – Sec e - *Significant Urban Decay Impacts* – “if the tenant mix changes (specifically if Big Box tenants are incorporated into the project), the project could result in urban decay in Downtown Benicia and other local retail-serving districts and centers. *Impact DECAY-1: . . . If the economic analysis shows that the new tenant mix could contribute to urban decay, the City and project sponsor shall develop a mitigation measure to reduce this impact to a less-than-significant level.*

WOULD IT BE POSSIBLE TO REDUCE THE ACCEPTANCE OF A BIG BOX TENANT TO A LESS-THAN-SIGNIFICANT LEVEL?

2. *Do the citizens of Benicia understand the implications of the Project Traffic Mitigations suggested which will affect downtown property owners and downtown traffic?*

One traffic mitigation proposed is to create a double-left turn from Military East onto 2nd Street East and a free right turn from 2nd East onto Military East. Riverhill Dr., East Seaview Dr., and Hillcrest Ave. will be restricted to Right Turn only onto 2nd Street East.

(New improvements for the East 2nd Street/Military East Street intersection, as approved by the Director of Public Works, are to include reconfiguring the eastbound approach to the intersection to include two left-turn lanes, to (sic) north leg of the intersection would need to be widened to create an additional receiving lane. Signal timing and phasing would need to be updated to allow eastbound/westbound split phasing. Source: Benicia Business Park – Supplemental Transportation Assessment September 30, 2008

Public Works Director, Dan Schiada pointed out at a City Council meeting that there is \$260,000 ± for widening this intersection in the budget for the project. **Can this traffic mitigation of street widening (an additional northbound lane) and the additional traffic signals be found in the City budget – or will the City be required to pay the balance of costs beyond \$260,000 ±?**

3. **Was the application approved** which included a Vesting Tentative Subdivision Map and a request for a Master Plan overlay zoning designation, including adjusting the commercial and industrial zoning designation to be consistent with the Master Plan? **I agree with Mayor Patterson that the Development Agreement should be finalized and recorded prior to recording the tentative map for establishing vested rights.**

WORRIES:

I. – **WAIVER AND EXTENSION OF TIME LIMITS** – “12 month Waiver and Extension of Time Limits – an extension of 6 months might be granted.” **Can or should the project be denied at that time?**

II. – **DEVELOPMENT AGREEMENT** – “but we acknowledge at the outset that the Agreement shall include the following components as well as others:” **(What others?)**

V. – **SPECIFIC PLAN:** . . . “Discovery Builders shall work with the City to *process a Specific Plan for the Project* **consistent with the existing General Plan as part of the Project approval process.**”

VI. – **ADDITIONAL TERMS AT COUNCIL'S DISCRETION** Item E: (“Discovery Builders” agrees to the following:) **Implement the current General Plan which is a consensus based plan for the City of Benicia.**

Sabina Yates
302 Bridgeview Ct.
Benicia CA 94510
707.746.6428 redfoxred@earthlink.net

February 15, 2009

Mayor Elizabeth Patterson
Members of the Benicia City Council

If a **TDM** plan is adopted by the Council, costs should be paid by the project sponsor or the project sponsor should be required to pay the City to retain a consultant with expertise in TDM programs. Minimum requirements should be established now so that residents who will be impacted by traffic on East 2nd Street, as far as Military East intersection will have some measure of protection. **Will the benefits of the project development outweigh the costs to the local taxpayers for the reconfiguration of the East 2nd Street and Military East intersection?**

Item 4A (5A) The Health Risk Assessment to address the potential health risks to the Semple School children, staff and surrounding residents should be assessed within 500 feet of the closest traffic lane of a freeway or other busy traffic corridor to be consistent with Education Codes.

(Why did Seeno strikethrough “pursuant to” and insert consistent with state law? Pursuant means conforming to).

Item 4B (5B) An Independent Economic and Fiscal Impact Review be should be required and paid by a fee assessed to the developer. The mitigation of traffic, municipal services, and health risks have all been performed at City expense prior to this time.

Item 5 (6) A citizen advisory panel including the Mayor, one councilmember, one Planning Commission member, as well as citizens, will be important to to keep the Council involved in oversight of the project from the beginning and should be formed and begin to function immediately! The panel could also assist with the monitoring and implementation of the the project as it is finally approved. This panel could function much like a **Benicia Community Impact Report**.

Petaluma recently approved a Community Impact Report requirement for new Commercial Development. The report is much shorter and simpler than the Environmental Impact Report, the developer pays for it, and a city-designated consultant does the work. A CIR will examine costs of the proposed project to the taxpayer, including necessary infrastructure improvements. A CIR can facilitate a public dialogue between residents, the city council, and the developer at an early stage, resulting in changes to the project and the devising of “win-win” solutions in response to concerns both policymakers and residents raise.

Item 11 (12) Funding must be provided in advance (or a binding commitment to do so) for the Specific Plan and SEIR processes. **The Council and Staff must select the Project Manager and also the Real Estate Economist.**

Sincerely,

Sabina Yates
302 Bridgeview Ct. Benicia redfoxred@earthlink.net 707.746.6428

D Simpkins - Fwd: FW: Seeno comments

From: Anne Cardwell
To: D Simpkins
Date: 2/19/2009 10:50 AM
Subject: Fwd: FW: Seeno comments

One more...

>>> <rogrmail@gmail.com> 2/15/2009 4:36 PM >>>

Dear City Staff - Today I read through Staff's Seeno recommendation of 2/10, the Resolution prepared for the 2/17 Council vote, and Mr. Seeno's response of 2/10. Here are my comments. Please include these observations in the public record:

1. I could go on at length reciting all the improvements in the project as laid out in the staff's recommendation and resolution. Even Mr. Seeno has offered a few improvements. I note that some of the Mayor's and Councilmember's comments have been incorporated into the resolution and recommendation. I wish more of them had made the "final cut." Many thanks again to staff for hearing and facilitating a collaborative process.
2. About the Citizen Advisory Panel .
 - a. I think staff is right in its Executive Summary, that one of the most (if not THE most) significant issues to be decided **before rescinding the 11/18 denial** is the "composition and mission of the citizen advisory panel."
 - b. In staff's Conclusion, they acknowledge that the **timing** of the seating of this panel is at issue as well. I continue to be very edgy, even skeptical, of many of Mr. Seeno's proposed changes in process and project design as evidenced in his letter of 2/10 (more on that below). Council and staff need to hear and acknowledge Benicia citizens' **continuing** concerns, and respond by not only clarifying the composition and mission of a very strong Citizen Advisory Panel before the vote on 2/17, but also by ensuring that the CAP should begin its work BEFORE the issuing of RFPs for the Project Manager and SP/EIR consultants. The naming of these key players, Project Manager and SP/EIR consultants is fundamental to project direction, and critical to the public trust, given all that has gone before and all that is at stake. Concerned citizens like me want representation and a participatory voice early on, during the selection of these absolutely critical project leaders.
 - c. I am no expert as to the *mission* of a CAP. Even the name of the group varies: in the 2/10 staff report, it is variously referred to as a "citizen advisory panel," a "community advisory panel," an "advisory panel" and a "citizen panel." How much input will the panel have, and at what stages in the planning and build out of the project? Can the panel's function be said to include "oversight" and to what degree? Mayor Patterson's input and the experience and wisdom of Marilyn Bardet and Attorney Dana Dean would be very welcome here.
 - d. With regard to *composition* of the CAP, I would be hopeful that the Mayor's expertise and experience would be close at hand, regardless of whether she is a member of the CAP. Some have said the Panel should be only independent citizens, not elected officials, staff or commissioners. However, in this 18-month Seeno process, I would lean in favor of participation of the Mayor and another Councilmember. It also makes sense to me that the Panel would have input and participation from a member of the Planning Commission, the Economic Development Board, the Traffic, Pedestrian and Bicycle Safety Committee, and the BUSD. If the Council disagrees, and wants to appoint an all-citizen Panel, I would favor the Panel being free to consult with all of these entities. (It should be noted that I see absolutely nothing wrong with the composition suggested by the Mayor last November: "the Mayor, another Councilmember, 2 Planning Commissioners, 4 at-large members of the public representing environmental, social and economic interests, and 1 non-voting ex-officio member from the BUSD.")
3. "Project Approval" becomes a very significant completion deadline in item 7 of the Resolution (IX-D-8). For those of us who are neither experts nor planners, it would help to clarify in the staff's recommended Element/Milestone chart (IX-D-4) as to what constitutes "Project Approval" and when that is expected to occur.
4. I appreciate and commend the inclusion of Mayor Patterson's and Councilmember Hughes' call for recognition and opportunities for "local labor" in item 10 of the Resolution (IX-D-8). However, I strongly urge the Council not to drop Mr. Seeno's previous agreement to work out a PLA with local trades workers. The two provisions are in

no way mutually exclusive. A living union wage for local workers - what could be better!?

5. In the "NOW, THEREFORE" paragraph of the Resolution (IX-D-6), Mr. Seeno has greatly improved on staff's weak use of the verb "could," substituting the absolute, "will."
6. However, Mr. Seeno goes on in that same paragraph and muddies everything with the suggested addition of, "is grounded in economic reality." The phrase has no agreed-upon definition, and serves only as a sign of mistrust. The implication seems to be that Mr. Seeno thinks the City capable of requiring other-worldly, impractical, unattainable or perhaps punitive design features. Who decides what is economic reality? I suspect this will all be laid out in the Specific Plan and Development Agreement, and someone who is pretty tough should represent the City when it comes time for negotiating these things.
7. If I read the Resolution right, items 1 and 2, (IX-D-6), include quotes from the appropriate sections of Government Code, and therefore can't really be amended as suggested by Mr. Seeno on IX-D-12.
8. I approve Mr. Seeno's suggested relocation of staff's item 4D (IX-D-7) into a more prominent position of its own, a new item 4 (IX-D-13). The Clean/Greentech Emphasis will thus stand as one of the primary building blocks of the Resolution, alongside the SP, the DA and the SEIR. However, a reference to this item should be retained in its original location, (previous item 4D, new Seeno item 5D), to indicate that the defining details of the Clean/Greentech Emphasis will be worked out through a public process in the SP, SEIR and DA.
9. A number of Mr. Seeno's suggestions get a strong NO!
 - a. Item 5A (IX-D-13) - 200 feet is not adequate as a definition of the Semple neighborhood. If anything, AB32 and SB375 cause us to EXPAND our definition of concern to include those communities downwind of our vehicles and construction. We are WORLD citizens here in Benicia!
 - b. Item 6 (IX-D-13 and 14) - citizen volunteers are fine, I'm sure no one is expecting to be paid if that's what he's thinking (!), however, Mr. Seeno should be prepared to include staffing costs. And again, raising the issue of "reasonable" costs is fudgy. Simpler to just agree to pay all costs associated with the process, and not question the reasonableness of the elected body that is currently in the "drivers seat!"
 - c. Item 10 (IX-D-14) - "science-based" is again a sign of mistrust. Of course the school would base assurances on scientific studies! So what's the point of bringing this into the discussion? ALSO, by striking "factors including, but not limited to," what is being eliminated? Leave this item as it was.
 - d. Item 13 (IX-D-14) - the rewording is either poorly written or intentionally intended to gut the provision. The rewording seems to me to leave decisions about any necessary time extensions in the hands of the Developer. The City needs to retain the "teeth" in this matter.
 - e. Item 14 (IX-D-15) - I can somewhat understand the Developer wanting to remove the reference to "award-winning," but the overall effect of removing that wording and adding "economically and physically feasible" is to weaken the **vision** for this project. There should be a way of lifting up the high hopes shared by both the City and the Developer without adding the unnecessary hedge language.
 - f. In the BE IT FURTHER RESOLVED (IX-D-15), Mr. Seeno should definitely be required to agree in writing.

Thanks for your work on this, and for listening! See you Tuesday.

Roger Straw

707.748.7350 (home office)

707.373.6826 (cell)

From: Anne Cardwell
To: D Simpkins
Date: 2/19/2009 10:50:39 AM
Subject: Fwd: Council Resolution:my comments for 3-17-09, re BBP

Another one...

>>> Marilyn Bardet <mjbardet@sbcglobal.net> 2/16/2009 3:15 PM >>>

Dear Charlie and Anne,

I would appreciate it if you would circulate my comments to Mayor Patterson, councilmembers, and the applicant Albert Seeno III. I have now read over Roger Straw's comments, as well as Norma's, and I see how much confusion has been sown by the staff report's incomplete account of all the comments that have been submitted by councilmembers and community members, and certainly, we should be able to chuckle at some of the confusion, surprise and suspicion conveyed in comments pertaining to the applicant's re-drafted version of the original resolution. I will explain as best I can below.

For the record, I want to clarify that on Saturday, Feb 7th, Jerry Page, Don Dean, Steve Goetz and I met with Councilmember Mike Ioakimedes, at his specific request, in order to go over "Draft Resolution 09- " as originally offered by our city attorney at the Feb. 3 council meeting. We spent about 2-1/2 hours discussing its substance, specific wording and organization, line by line, word by word--not only for its substance, but for how it signaled the importance and priority of various elements.

I made notes of our discussion points of agreement, as did Mike, and I know that Don and Steve took notes as well. By the end, we had come up with a a revised resolution with text edits agreed to by all present. We assumed that our efforts would be only a contribution to a larger discussion, and fully expected that there would be further deliberations on all points by the public and council during the hearing on Feb. 17th, based on all comments submitted and/or made during the upcoming council hearing. We felt that our comments, worked on collaboratively, helped to clarify points made at the community workshop and that our suggested revisions could serve as a point of departure for further finessing by others.

Although I was not aware of the exact form in which our comments would be submitted to staff by Mike, it's clear that he'd copied his submittal to Albert Seeno III, since the redrafted version submitted by the applicant which was included in the staff report reflect this fact. Besides the key provisions recommended by Benicia First and Greengateway that had been incorporated to date as per the original draft Letter of Agreement (Specific Plan; D.A.; agreement with BUSD; etc.) it appears that the applicant is now further recognizing our proposed new language emphasizing the importance of sustainability as the guiding GP goal for the project [see GP, page 22]; provision for clean tech business recruitment; avoidance and minimization of air quality and traffic impacts with adherence to AB32 and SB375 through improved project design; and for oversight and management of the project as a whole.

So, it happens that the revised resolution drafted by the applicant

essentially stands as a response to suggested revisions submitted by members of Benicia First that were fully incorporated into the comments submitted to staff by Councilmember Ioakimedes. For example: For example, in the draft resolution's important "NOW, THEREFORE, BE IT RESOLVED..." paragraph, we rewrote the text to emphasize the General Plan's overarching goal of sustainability [page 22 of the General Plan specifically calls for "sustainable development"]; and, under the "BE IT FURTHER RESOLVED.." under the section on the Specific Plan, we inserted language to specify that the Plan [for a new project design] will incorporate and fulfill the target goals for reducing vehicle miles traveled [VMT] as required by AB32 and implementation guidelines set by SB375. Thus, we agreed that certain "items of particular interest", found on page 2, should be given greater emphasis, and therefore that they should be included under the text explicating terms and guidelines for the Specific Plan. The letter signed by Albert Seeno appears to capture most of our intent, but there are changes in qualifiers that the applicant made that should be highlighted and addressed during the council hearing.

Obviously, it would have been greatly helpful to everyone concerned if those comments submitted by Mike had been included in the council packet, along with any others that had been rec'd by the deadline for packet submittals. Norma Fox and Roger Straw point to their "surprise" at the applicant's new appraisals and recognition of community concerns, but also point out their worries over several qualifying phrases they considered "fuzzy" or loop-hole-like, which they consider need tightening. I at least can acknowledge those criticisms, with a chuckle, having been the originator of the qualifier "science-based"; and, after much haggling over language, Don Dean, with echoes from Steve Goetz, supplied "...grounded in economic reality", deciding that we'd made our points elsewhere in the resolution. [requirement for updated economic report and clean tech recruitment; requirement for on-site air monitoring [as opposed to reliance on BAAQMD regional monitoring data for ozone, etc.] Certainly, the finessing of language is important, but we should be able to negotiate appropriate terms efficiently, now that that cat's out of the bag, so to speak.

While it's gratifying to see how many of our actual revisions that the applicant could agree to, it's still very important to note that the applicant has made a few changes to our requested edits. So far, I've read comments submitted by Mayor Patterson, Roger and Norma, and I see little evidence of any problem that can't be resolved. I'm assuming that more subsidiary details can be worked out in drafting the D.A. and through specific plan process. It would seem that if we could get agreement from the applicant to agree to allow for such potential differences to be determined through these more elaborated negotiations and processes, then we could go forward with maybe even general unanimous consensus on Tuesday nite. That would be one of the most significant achievements in Benicia's history since the drafting and adoption of the General Plan.

In order to make intelligent commentary at the Council meeting in an efficient manner, I suggest that a revised draft resolution be created by our city attorney that includes all comments to date, including those of the applicant, so that council and the public can review all suggestions at one time, in one document. This would put the City in

the drivers seat with regard to the origin of a revised resolution.

I salute everyone's efforts to work together and with highest goals in mind as we all do our part at this critical juncture. Thank you!

Marilyn

>>> Marilyn Bardet <mjbardet@sbcglobal.net> 2/17/2009 5:00 PM >>>

Charlie and/or Anne,

I hope you rec'd the message I sent yesterday, but was apparently undeliverable for "past 4 hours" at the time I noticed very early this a.m. I'd like to have my letter on the table tonite for the public; I've already circulated it to the council... I'm hoping, as well, that Heather rec'd it, since I'd suggested that a new revised draft resolution be created with all the additions and edits contributed by everybody, so that councilmembers could more easily decide what they would want in a final edited version, to be voted on, presumably tonite.

If you can, let me know if you rec'd this--

Thanks!

Marilyn

D Simpkins - Fwd: First Street Merchants in Seeno Citizen Advisory Group

From: Anne Cardwell
To: D Simpkins
Date: 2/19/2009 10:51 AM
Subject: Fwd: First Street Merchants in Seeno Citizen Advisory Group

>>> Allan Shore <allanshore@msn.com> 2/18/2009 12:33:46 PM >>>

Dear Council Members:

President Obama did many people a great service by connecting his vision of change to America's Main Street business sector. Unfortunately, that message has not yet begun to register with other decision-makers since it is an unusual perspective that requires a different type of participatory thinking.

When I watched the City Council meeting last evening I was reminded of this as I noticed that there was little discussion of the role that First Street merchants can (and want) to play in helping to develop a truly innovative business/community partnership with the advancement of the Seeno proposal. While various other stakeholder groups and interests were included in the proposed Citizen's Advisory Board document, there was no consideration of directly including the voices of us smaller businesses in the process-even though we have clear bottom line interests in the project and have already offered a written argument in favor of what we can do.

Benicia Main Street was not mentioned as a party to represent our interests. Nor was there an acknowledgement in the final discussion of the ideas we previously included on ways that whatever businesses are selected for the new development blend well with our ideas and strategies. (I've attached another copy of that document.)

The only real business advocacy entity that was included was Benicia Chamber of Commerce, though we all know that small, First Street merchants and services are not the heart of their mission. In fact, the Chamber represents industrial interests who arguably already have a noticeable place at the table given that the development is in their immediate neighborhood.

Most plans for whatever gets developed by Seeno or another developer literally end at Military, as if First Street did not even exist. In writing this I hope that the City Council and the other community stakeholders will feel freer to step up and offer a hand to those of us who believe First Street's creative new merchants care about our community's commercial future. If that happens, the City and the developer will be miles ahead of the numerous other projects around the Bay Area that will be fighting to show that they are really on the cutting edge of innovation.

I would very much appreciate an acknowledgment of this letter before the Citizen's Committee memo advances. I hope to be at the next meeting to discuss it but would like to hear your thoughts first.

Allan Shore
Shiroco's
622 First Street
Benicia, CA 94510
AllanShore@msn.com
916-730-2801

Green Gateway Retail Partnership Possibilities: Benicia First Street Merchants step up to the future

As local Benicia merchants we are extremely excited about the possible benefits of partnering with the Green Gateway or other visions for land development within our community given the Seeno reconsiderations. We believe such collaboration will directly contribute to including us “Mom & Pop” local commercial stakeholders into the very intimate decisions about how the project will benefit the community as a whole. Small town stores are the heart and soul of American commercialism. Benicia’s residents continue to assert this fact. Putting this desire into practice requires that many of us stop our silo thinking in favor of perspective that are more collectively good for the economic, social and environmental values that undergird a sustainable future.

Doing this would also help put Benicia on the map as a model Gateway community. To ensure that this happens, several of us have drafted these thoughts and suggestions about the role of retail in whatever development project evolves. This includes an initial comment on the tone of the Green Gateway initiative, which we believe could set the tone for an across-the-board enhancement of our regional business environment—one founded on openness, inclusivity, cooperation and collaboration. Secondly, we have outlined some thoughts on the Green Gateway’s specifics components and offer some suggestions for whatever retail elements are added.

These ideas are still in the drafting process. Learning to think and utilize Clean Tech, Green Tech ideas is new to most of us, and requires time to digest. There are good and bad implications on many levels, all of which are impacted by the economic meltdown, the need for us to thrive during these tough times, and other obligations (such as the growing interest in increasing tourism) that already demand much of our time and money. With some practice and patience, however, I believe most existing Benicia merchants will become convinced of the hope and potential this type of new partnership suggests for all our bottom lines.

COMMUNITY ENTERPRISE INNOVATION

We love the fact that the Green Gateway Group’s vision incorporates a desire to include the local business community into its design, development and even wishful-thinking processes. The notes provided by Roger and Norma Fox show this without a doubt. This alone is a giant leap forward. And we appreciate it very much.

We have a good degree of faith that this inclusivity by itself will result in critical design improvements and cutting-edge ideas. Successful endeavors from other localities around the nation and the world suggest that small and medium-size businesses can benefit well from the “double” (economic and social) and “triple” (environmental) bottom line approaches to being profitable and thoughtful at the same time.

The following quotation from a publication that offers an **Introduction to Corporate Social Responsibility** for SME (Small and Medium Enterprises) captures well the potential of this type of progressive, forward-looking mentality. Assume that the “responsible entrepreneurship” being discussed is in fact the entire Green Gateway enterprise, and that its customers are its tenant business and the community as a whole, including other businesses who feed off of its success:

Responsible entrepreneurship is essentially about maintaining economic success and achieving commercial advantage by building a reputation and gaining the trust of people that work with or live around your company. Your customers want a reliable supplier with a good reputation for quality products and services. Your suppliers want to sell to a customer that will return for repeat purchases and will make payments in a timely manner. The community around you wants to be confident that your business operates in a socially and environmentally responsible way. And lastly, your employees want to work for a company of which they are proud, and that they know values their contribution.(See: http://ec.europa.eu/enterprise/csr/campaign/documentation/download/introduction_en.pdf)

The rationale behind why we would want to be helpful in developing such an outcome is pretty obvious: we trust that by working together the end results will be profitable and empowering for everyone. But this is really not just a pipedream. A variety of business metrics have shown that when commercial market elements work in unison instead of within isolated silos of selfish profit-taking the resultant bottom lines grow stronger and stay healthier longer. As the quote suggests, products and services are rated better, customer return more often, employees like and respect their employers more consistently, and businesses find that they are perceived as being better overall citizens of the community.

The best website I am aware of that discusses this concept in general is www.BlendedValue.org. But others have written about this phenomenon, too. There are ongoing discussions about its potential on the www.SocialEdge.org, a blog that has real business people discussing social innovations. It is the basic reason why many large corporations and venture capitalists are focusing their attention on socially responsible enterprise development, and why other, non-traditional organizations (such as nonprofit agencies) want to be part of this movement. We would love to see Benicia be a true gateway to this universe of possibilities. (For a great overview of this concept, see a recent PDF book entitled www.JustAnotherEmperor.org.)

RETAIL GUIDELINES AND SPECIFICS

Once the tone of corporate and retail trust, reliability and responsibility is established, it becomes easier as well for all of us to get down to the brass tacks. What tangible benefits occur for us as established retailers? And can these benefits come about while continuing to support the spirit of the Clean Tech, Green Tech vision?

First of all, we want to start by stating an issue of critical importance: We know that we cannot and should not be able to dictate exactly which new business opportunities become tenants in the Green Gateway Community of Possibilities. Nor should we be able to require excessive control over where the retail square footage is located or how it may be connected to other industrial aspects of the project.

But even given these limitations, we believe we can still play an important role in augmenting what the final results are. One way to do this is to help the developer ensure the comprehensive benefits being promised are looked at as starting points to an expanding future. And to do that we need to make sure that we retain a voice to be heard, introduce new ideas, etc.

As such, we believe the local First Street merchants are willing to:

- Take seriously the opportunities you offer to have us be directly involved in the fleshing-out and detailing of any new plans.
- Do what we can to try to secure resources to keep a healthy vision on track.
- Willingly offer new ideas and new perspectives, even as we retain the right to admit that we too have priorities and prejudices that reflect our business agendas (just as do all other stakeholders).
- Be true partners in generating the support of the public once we see the ideas come into focus.

An exceptional way to start is to acknowledge what is already in place to see how these ideas can be fertilized. We are very pleased to see, for example, that the initial project vision includes what Norma Fox calls the "mutually supportive" elements of a comprehensive commitment to green innovation. Thus, we would like to start by having a meeting to help flesh out just what types of benefits can accrue to us local merchants and to the community as a whole in regards to these five core components:

- Education and Research Commons--A conference center and educational campus... interdisciplinary gathering place for academic, business, technical and policy makers... offering specialized education and training programs, from green-collar job training to post grad.
- Green Innovation Test Bed--Shared facilities, equipment, and simulation environments for development and testing of new technologies and products.
- Green Business Launching Pad--Venture capital-backed early-stage enterprises... on-site assistance and support services, collaboration, idea exchange, etc.
- Anchor Innovator Businesses--Large established businesses that are generation new technologies and products.
- Green Exposition Center--An Exposition Center offering demonstrations of new models, products and processes. (Could be a possible tourist destination.)

Some potential benefits seem obvious—such as the convention and conference mechanisms, which will bring new visitors to the area—while others would need to be discussed in greater detail. As noted in our previous letter to the City Council, we do believe that it could well be possible for these new businesses to want to utilize our stores as “testing grounds” for some of the product or service enhancements, thereby making us part of a neighborhood laboratory of opportunities.

But what other prospects exist, and how can these prospects be used to see the idea in a positive way?

We believe a discussion around these points would be a great first step.

RETAIL TENANT GUIDELINES

Another area of importance is the role we as merchants can play in offering advice or establishing mutually supportive ideas for selecting the tenants who will occupy the development. It seems fair that a set of guidelines be developed collectively to give the developer a direction to take in determining what kinds of tenants would fit well within the Benicia environment.

We have come up with the following parameters. These guidelines will require some refinement. And, of course, they are merely offered as a place to start to ensure that Benicia’s family of businesses remains at the table. Once these ideas have evolved, it would seem fair that viable candidates for the Green Gateway would be those that

- **Emphasize the value of having customers stay in and continue to explore the local economic market; pass-thru “convenience” stores or fast food outlets do little to achieve this, especially when they are located near the freeway.** The healthiest customers are those who have a different consideration of “convenience” than the quick and dirty conceptualizations of the past. Technology is helping to redefine this term.
- **Sell products or services that could not easily be made available on First Street by small-town retail locations.** This could include industrial support products or technology services, or it could include new low-impact living ideas that may inspire a mixed use development and sales environment. For some ideas, see www.lowimpactliving.com.
- **Use healthier inventory, storage and production concepts.** Drop-ship or on-demand businesses or business exchange models do not require the maintenance of static inventories that cost resources to make and may never be used. As local merchants, we may well be able to utilize these services too as we expand our reach with online merchandising.
- **Showcase recycle, reuse or reclamation perspectives.** A recognized nonprofit agency in the Richmond area (see www.RubiconPrograms.org) is currently seeking to start-up a national mattress disassembly project, where the component parts are sold or used to make other products. These types of businesses often have companion vocational elements that might help local residents or even offer some affordable employee pools.
- **Willing share access to their connections with other members of their fair trade or global networks.** If the selected tenant businesses are multi-national, for example, they might be able to assist those of us on First Street gain access to indigenous resources from other countries. Large corporations often have charitable policies that seek to help Mom & Pop enterprises in the emerging nations that host their companies. Main Street American enterprises could easily connect with these small enterprises to allow for a cross-cultural bridge to creative products.
- **Strive to comply with the newly emerging LEED in Retail standards.** (See US Green Building Council pilot page, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1734>.) Perhaps we can be a living model for this innovative idea as it comes online?
- **Generate technologies and access geared toward small and medium size businesses.** These anchor businesses could well produce new electronic communication, display, etc., products that could well be showcased, beta-tested and ultimately sold by our local businesses.

- **From the beginning strive to partner with other businesses in town to demonstrate that the Green Gateway management values this kind of thinking.**
- **Sign operational agreements establishing expectations about how every new business will value the transportation, artistic, historical and accessibility elements of the Green Gateway concept.** A key element of any new industrial/retail infrastructure should be that it can be successful while helping to reinforce the character of the community. Buses and signage that directs people to First Street, historical, artistic, etc. areas of Benicia need to be affirmatively agreed up by tenants, not simply seen as an add-on expectation that may or may not actually occur.

There are undoubtedly other suggestions as well. We believe this is a great place to start and would love to see how it can unfold from here.

Please feel free to contact me if you would like any clarification or to advance on these suggestions.

Allan Shore
916-730-2801
Allan@AllanShore.com

From: "Sue" <swgeo@sbcglobal.net>
To: <epatterson@ci.benicia.ca.us>
Date: 2/18/2009 9:12:32 PM
Subject: please send to all councilmen

Dear Mayor and City Council:

Thank you for going through this long and frustrating process with the Seeno development proposal. The citizens of Benicia appreciate your efforts.

I'd like to ask that a few assurances be added to the proposed Specific Plan

1) The Specific Plan is guided by and consistent with the General Plan's overarching goal of sustainable development. The word sustainable is over-used and miss-used today. Be sure it is defined for what we want. Environment first priority : Air quality, traffic, green jobs, quality construction all important.

2) Oversight by a citizen's advisory committee. Be sure the folks at fought for this better development have a seat: Benicia First, Green Gateway, and BUSD. I'd like to see one person on this committee looking at overall sustainability of the project. The new sustainability commission for Benicia should branch out and include a sustainability member on each committee and commission.

3) My own personal beef with the project is the lack of planning involved with Sulphur Springs Creek. We have an opportunity to make the creek floodplain and area of riparian influence good habitat and possible public access trail connecting existing trails that end at Industrial to Lake Herman. The last project footprint eliminated this possibility. Once the area is built on-it's gone forever. Please consider some language about our last unculverted waterway that is a significant stream regionally in the specific plan and the future environmental review that will be required.

Thank you again for listening to the citizens and your efforts.

Sue Wickham

411 Duvall Court

Benicia, CA 94510

707-747-5815

From: <rogrmail@gmail.com>
To: <Jim.Erickson@ci.benicia.ca.us>, <Charlie.Knox@ci.benicia.ca.us>, <Heather.McLaughlin@ci.benicia.ca.us>
Date: 2/19/2009 12:19:43 AM
Subject: FW: Seeno comments

Dear City Staff - Today I read through Staff's Seeno recommendation of 2/10, the Resolution prepared for the 2/17 Council vote, and Mr. Seeno's response of 2/10. Here are my comments. Please include these observations in the public record:

1. I could go on at length reciting all the improvements in the project as laid out in the staff's recommendation and resolution. Even Mr. Seeno has offered a few improvements. I note that some of the Mayor's and Councilmember's comments have been incorporated into the resolution and recommendation. I wish more of them had made the "final cut." Many thanks again to staff for hearing and facilitating a collaborative process.

2. About the Citizen Advisory Panel .

a. I think staff is right in its Executive Summary, that one of the most (if not THE most) significant issues to be decided before rescinding the 11/18 denial is the "composition and mission of the citizen advisory panel."

b. In staff's Conclusion, they acknowledge that the timing of the seating of this panel is at issue as well. I continue to be very edgy, even skeptical, of many of Mr. Seeno's proposed changes in process and project design as evidenced in his letter of 2/10 (more on that below). Council and staff need to hear and acknowledge Benicia citizens' continuing concerns, and respond by not only clarifying the composition and mission of a very strong Citizen Advisory Panel before the vote on 2/17, but also by ensuring that the CAP should begin its work BEFORE the issuing of RFPs for the Project Manager and SP/EIR consultants. The naming of these key players, Project Manager and SP/EIR consultants is fundamental to project direction, and critical to the public trust, given all that has gone before and all that is at stake. Concerned citizens like me want representation and a participatory voice early on, during the selection of these absolutely critical project leaders.

c. I am no expert as to the mission of a CAP. Even the name of the group varies: in the 2/10 staff report, it is variously referred to as a "citizen advisory panel," a "community advisory panel," an "advisory panel" and a "citizen panel." How much input will the panel have, and at what stages in the planning and build out of the project? Can the panel's function be said to include "oversight" and to what degree? Mayor Patterson's input and the experience and wisdom of Marilyn Bardet and Attorney Dana Dean would be very welcome here.

d. With regard to composition of the CAP, I would be hopeful that the Mayor's expertise and experience would be close at hand, regardless of whether she is a member of the CAP. Some have said the Panel should be only independent citizens, not elected officials, staff or commissioners. However, in this 18-month Seeno process, I would lean in favor of participation of the Mayor and another Councilmember. It also makes sense to me that the Panel would have input and participation from a member of the Planning Commission, the Economic Development Board, the Traffic, Pedestrian and Bicycle Safety Committee, and the BUSD. If the Council disagrees, and

wants to appoint an all-citizen Panel, I would favor the Panel being free to consult with all of these entities. (It should be noted that I see absolutely nothing wrong with the composition suggested by the Mayor last November: "the Mayor, another Councilmember, 2 Planning Commissioners, 4 at-large members of the public representing environmental, social and economic interests, and 1 non-voting ex-officio member from the BUSD.")

3. "Project Approval" becomes a very significant completion deadline in item 7 of the Resolution (IX-D-8). For those of us who are neither experts nor planners, it would help to clarify in the staff's recommended Element/Milestone chart (IX-D-4) as to what constitutes "Project Approval" and when that is expected to occur.

4. I appreciate and commend the inclusion of Mayor Patterson's and Councilmember Hughes' call for recognition and opportunities for "local labor" in item 10 of the Resolution (IX-D-8). However, I strongly urge the Council not to drop Mr. Seeno's previous agreement to work out a PLA with local trades workers. The two provisions are in no way mutually exclusive. A living union wage for local workers - what could be better!?

5. In the "NOW, THEREFORE" paragraph of the Resolution (IX-D-6), Mr. Seeno has greatly improved on staff's weak use of the verb "could," substituting the absolute, "will."

6. However, Mr. Seeno goes on in that same paragraph and muddies everything with the suggested addition of, "is grounded in economic reality." The phrase has no agreed-upon definition, and serves only as a sign of mistrust. The implication seems to be that Mr. Seeno thinks the City capable of requiring other-worldly, impractical, unattainable or perhaps punitive design features. Who decides what is economic reality? I suspect this will all be laid out in the Specific Plan and Development Agreement, and someone who is pretty tough should represent the City when it comes time for negotiating these things.

7. If I read the Resolution right, items 1 and 2, (IX-D-6), include quotes from the appropriate sections of Government Code, and therefore can't really be amended as suggested by Mr. Seeno on IX-D-12.

8. I approve Mr. Seeno's suggested relocation of staff's item 4D (IX-D-7) into a more prominent position of its own, a new item 4 (IX-D-13). The Clean/Greentech Emphasis will thus stand as one of the primary building blocks of the Resolution, alongside the SP, the DA and the SEIR. However, a reference to this item should be retained in its original location, (previous item 4D, new Seeno item 5D), to indicate that the defining details of the Clean/Greentech Emphasis will be worked out through a public process in the SP, SEIR and DA.

9. A number of Mr. Seeno's suggestions get a strong NO!

a. Item 5A (IX-D-13) - 200 feet is not adequate as a definition of the Semple neighborhood. If anything, AB32 and SB375 cause us to EXPAND our definition of concern to include those communities downwind of our vehicles and construction. We are WORLD citizens here in Benicia!

b. Item 6 (IX-D-13 and 14) - citizen volunteers are fine, I'm sure no one is expecting to be paid if that's what he's thinking (!), however, Mr. Seeno should be prepared to include staffing costs. And again, raising the issue of "reasonable" costs is fudgy. Simpler to just agree to pay all costs associated with the process, and not question the reasonableness of the elected body that is currently in the "drivers seat!"

c. Item 10 (IX-D-14) - "science-based" is again a sign of mistrust. Of course the school would base assurances on scientific studies! So what's the point of bringing this into the discussion? ALSO, by striking "factors

including, but not limited to," what is being eliminated? Leave this item as it was.

d. Item 13 (IX-D-14) - the rewording is either poorly written or intentionally intended to gut the provision. The rewording seems to me to leave decisions about any necessary time extensions in the hands of the Developer. The City needs to retain the "teeth" in this matter.

e. Item 14 (IX-D-15) - I can somewhat understand the Developer wanting to remove the reference to "award-winning," but the overall effect of removing that wording and adding "economically and physically feasible" is to weaken the vision for this project. There should be a way of lifting up the high hopes shared by both the City and the Developer without adding the unnecessary hedge language.

f. In the BE IT FURTHER RESOLVED (IX-D-15), Mr. Seeno should definitely be required to agree in writing.

Thanks for your work on this, and for listening! See you Tuesday.

Roger Straw

707.748.7350 (home office)

707.373.6826 (cell)

CC: <Anne.Cardwell@ci.benicia.ca.us>