

Transcript by Roger Straw, submitted on November 1, 2008

Benicia City Council Meeting Partial Transcript - October 21, 2008

This is a transcript of the Council meeting of October 21, all portions dealing with the Benicia Business Park, taken from the city's DVD of the proceedings. [Note that time stamps here are approximate, and will vary on different DVD players.]

Title 1, Chapter 1

05:13 Call to Order - Special Meeting, including Closed Session

Title 2, Chapter 6

35:46 **Call to Order - Regular Meeting**

46:43 **Adoption of the Agenda**

EP Mr. Erickson

JE Ah, we have no changes to suggest.

AS Ah, move to approve.

EP Um... Alright, before we take action, ha, you're at the podium, Mr. Straw?

47:04 RS Ms Mayor, and Council, I'm Roger Straw, and I'd like to raise a formal objection to the agenda as published, and perhaps, if you'll allow me time, suggest a remedy.

EP Well, let me, um, this is unusual. Let me get clarification from the City Attorney, that, I guess we can do this, right?

HM Well the public can comment on any item before the Council takes action. So, not knowing what he's going to say, I have no idea if what he's going to say is ...

EP It's a ... Ok, but it's directed to the agenda, the adoption of the agenda? Is that alright?

HM [inaudible]

EP Ok. Thank you. Go ahead.

47:34 RS Thank you, Attorney, and Mayor. Unfortunately, and with due respect, I believe that tonight's Action Item IX-A is not in keeping with the record as shown in the minutes of the Council's last meeting, and is also in violation of the Council's Rules and Procedures, V.C.3. (Susan has shared with you copies of a partial transcript from the October 7 Council meeting, and also copies of Council's Rules and Procedures V.C.3.)

My request is that Item IX-A, alternative 2, corresponding to Resolutions #2 and 3 in your staff report, be stricken from tonight's Agenda.

I am also asking that when Council considers Staff's IX-A Recommendation to continue the item until such time that all Council members be present, that Council at that time AMEND THE LANGUAGE OF Staff's recommendation to make no reference at this time to further review of the defeated project.

You will find in the transcript I have provided that both Councilmembers Ioakimedes and Schwartzman on October 7 questioned the City Attorney closely before the final vote as to what would follow a NO VOTE. I think everyone here on the Council, whether they voted yes or no, wants to proceed fairly and honorably. The City Attorney was clear that night, and Council was clear in its feedback to her, that a NO vote would NOT be followed by further consideration of

the proposed project's Rezoning, Master Plan Overlay, and Vesting Tentative Map ... including conditions and new conditions.

Further, the City Attorney openly assured Councilmember Schwartzman that the outcome of a NO vote that night would most likely result in a Council directive to draft a formal Resolution of Denial. And the record will show that this is exactly what she was directed to do and agreed to do, and did, for this meeting.

IF Council were to want to reconsider its October 7 vote, if Council were to want to reconsider, there are established procedures under Procedure V.C.3. And there's nothing in this procedure that permits or suggests reconsidering issuing forth from a staff recommendation apart from formal requests from a Council member who voted with the majority, and no such staff-generated reconsideration could be properly acted upon under the rules at tonight's meeting. Thank you.

50:26 AS I still have a motion open.

50:30 EP Ok, can we have a response from the City Attorney, um, on those points?

50:40 HM So the Council, at the meeting of October 7th, tried to take a ah, motion, tried to take action to pass and adopt the Addendum. That motion failed. So, in staff's mind, there is no need for reconsideration action. That's why we have the three or four options before you. So that you could, if you want to, approve the items. You know, I've spoken to a number of you about it, over and over, and I don't know that I can change anybody's mind on what happened, but is my belief that the staff item before you tonight is legally sufficient. You could take any one of those items if you want to. I don't think you would need to do a motion to reconsider.

51:28 EP Ok, I have a card from Ms. Johnson, who says she wants to talk on the process for tonight's Benicia Business Park.... I assume you want to talk at the item that's listed on the

51:45 [inaudible]

EP Ok. In which case ...

51:47 [inaudible]

EP Ok, well, you can ... you heard, you heard some questions raised by Mr. Straw; you heard a response by the City Attorney. You can also raise process questions for the item itself. Um, I think that we actually have a motion to approve the agenda. Is anyone else wishing to address the issue of the current agenda as posted? ... Ok, I'm ... [reaching for card] got it. Miss Adams?

52:23 JA This afternoon our attorneys, ah, submitted a letter to the Council and to the Mayor, objecting to tonight's item IX-A. The District objects because Council already considered and took action to deny the Addendum. The District believes that the October 7, 2008 vote rejecting the Addendum requires rejecting the Benicia Business Park project that is currently proposed.

The Mayor gave instruction to staff to prepare the required resolutions rejecting the project. However, it appears that staff is approaching the matter in a way that may be read as allowing a reconsideration of the vote rejecting the Addendum. We understand that this matter is likely to be continued from the October 21st meeting. Unless significant changes are made in the Benicia Business Park project configuration, the District urges the Council to act to reject the BBP project at its November 18th meeting if it is not taken off the agenda this evening.

53:23 EP Um, can you give us some guidance? Miss McLaughlin.

53:27 HM Well, again, the motion the Council took was not to reject the Addendum. The motion that Vice Mayor Campbell made was to adopt the Addendum. That motion failed. There was never a motion to reject the Addendum.

53:40 EP Miss Adams?

53:43: JA It was ... it was our understanding, and our counsel was with us, that the, that the motion was to deny the Addendum....

HM You can ... the ...

JA It was the understanding of the District, the ...

JE The ah...

JA And the direction of the Council. That's what we believe.

JE I'd just add, the Minutes of the Council meeting, with all due respect to everybody, do not reflect that there was a motion to reject, ah, the Addendum. It's clearly, ah, not the case, whether you listen to the tape, or you look at the minutes, or you look at the tape, ah, or the DVD: there was not a motion to deny or reject the Addendum. As was stated, there was a motion, ah, to approve. And that failed. And that left a vacuum; basically, a policy. That's at least our view. The Council has the, the benefit of having, ah, any of the three options available to it that are listed in the staff report. The Council can take any one of those they wish. There is a staff recommendation, ah, which, we feel is appropriate, which is to, ah, a continuance, but that's, that'll be talked about later.

54:43 JA Um...I'm not ... I respect Mr. Erickson's point of view. I just don't agree with it. I think if you have a proposition on the ballot and it doesn't, its up for a vote and it doesn't win, then it lost. It's not a matter of you have to vote it down. I ... to me it was, it was clear that ..To our District ... Here's what we want to do: we want to make sure that we are on the record, as a District, as understanding that we thought the Addendum, with the traffic study, and the time you gave us to, to research that and to work on it, was ... ah, was rejected by the Board, and we just want to put our two cents in here, that we are concerned about revisiting something that you already spent 'til 1:30 in the morning visiting. So, we're on the record now. Thank you so much for your time.

55:30 EP Thank you. Um, anybody else wishing to comment on the adoption of the agenda. Yes...

55:37: MB Yes, I'd just like to ... Marilyn Bardet. I'd just like to make a clarification, that I received an email answer from Heather McLaughlin, City Attorney, on either the 16th or the 17th last week when I posed the question, of, whether a request for a reconsideration had to come from a Council, Councilmember, and she replied very succinctly, yes, a request would have to be required at either the night of the vote, when the vote was taken, or at the next meeting. And I wrote that down, and I've got that printed out. Thank you.

56:09 EP Ok, anybody else wishing to address the Council on the, ah, the adoption of the agenda.

56:24 SS Susan Street. I have one question for all the, all of you. If you understood that you, by, if the majority understood that by voting no on the resolution, what did they mean, then, by voting to ask ... or, in ... what did you mean by instructing the City Manager, and the, er, the City Attorney to create a Resolution to Deny? And what was the majority's understanding of those words? Thank you.

57:05 EP Um, our Rules and Procedures can have the Chair ask, ah, other Council members if they want to respond. Um. I'll ask, [addressing loakimedes] you were the other majority voter, so did you want to respond to that question, or would you like to move on?

57:22 MI [pausing] I think we need to move on.

57:28 EP Ok. And ... um, Ms McLaughlin, did you have any response to that observation?

57:32 HM Um, I did respond to Ms. Bardet and some of the other folks who questioned what our rules were for reconsideration, and I restated what the rules were for reconsideration.

57:42 EP Ok. So we have all of that on record, and the motion needs a second.

57:49: MH Second.

57:50 EP Alright. And I would like to explain my vote on this. I'm going to vote no, because I believe that if you vote against the Addendum and direct the preparation of a resolution to carry forth the intent of that, that that's what the action is. So, I do not approve of the way this item has been listed on the agenda. Miss Wolfe, would you call the roll, um, please.

56:33 LW Councilmembers Hughes?

56:38 MH Yes.

56:40 LW loakimedes?

56:42 MI Yes.

56:42 LW Schwartzman?

56:43 AS Yes.

56:44 LW And Mayor Patterson.

56:45 EP No. We have an approved agenda, and the next item on that agenda is to ...

.....

Title 2 Chapter 14

1:27:38 **Approval of minutes** EP [offering several minor corrections to the minutes] ...

1:28:01 EP And, um, on page 6, the sentence doesn't read clearly. Uh, I'll read it, and then I have a suggestion. Well, I won't read the whole thing, but ... "Mr. Wolfe discussed the levels of service at East Second Street and Military, new significant impacts, the fact that the public has an opportunity to review and provide a meaningful critique of the analysis." I believe he said, I think he meant, "should have" or, "has not had" an opportunity. And either one works, "should have" or "has not had." That was his statement. Um...

1:28:58 EP ... and it's A-9, and it's the bottom third of the page, and we start with, let me see, this is like a Faulkner sentence. I think its ... it goes for half a par..., it's half a page. Well if you count up, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 10, the tenth line from the bottom, it starts with the word "project." And it reads, "project to conform to the City's General Plan, rearranging the distribution to make a huge impact on traffic." And "distribution" modified "of land uses, retail and commercial." That, so, otherwise it doesn't make sense. So if you insert, um, "distribution of land use," and the further description was retail commercial, you can just leave it "land use," I don't care. "To make a huge impact on the traffic, the need for significant difference in the [site] design." It's not the design of the project. "In order," bla bla bla blah ... and you come down to ah, "project, and economics, the city's [criteria] of masterplan." It wasn't the city's masterplan; it was the *criteria* for the masterplan? Um, and then coming down to ...

1:30:15 AS What was that part again? I'm sorry.

1:30:20 EP That, ok, it's 1, 2, 3 ...

AS No, just the first word.

EP Pardon?

AS Just start with the first word.

EP "Criteria?"

AS No. Just the first word in the sentence...

EP "project"

AS Ok.

EP "and economics, the city's" ... I mean, you can say standards or criteria; criteria's more correct. Um, and then, this could be debated, but it's, go on down and it talks about ... the sentence that starts with "680," referring to I680, "mitigation measures that have been identified not being on the books," um, I think it is referring to MTC funding lists? That might make it more clear. And, that's it.

1:31:04 AS Ah, I have a general question then of that. Ah, because I have not listened word for word to the entire thing. Ok, are these corrections words you actually heard? I'm assuming you went and listened to the DVD. I mean these are actual words, or your interpretation?

1:31:20 EP No, this is not my interpretation. Um, I would, it's certainly, um ... I'm trying to make the sentence make sense. It says, "rearranging the distribution." Distribution of what? And ...

1:31:33: AS No, I understand ...

1:31:33 EP And the discussion was "land use," and I said "land use, retail and commercial" but Ms. Wolfe is summarizing many comments made ...

1:31:40: AS No, I ...

1:31:40 EP made by many people.

1:31:42 AS No, I understand that. I understand that. Ok. I'm ok with all of that.

1:31:45 EP Ok. Do we have a motion to approve? I'm sorry, Councilmember Ioakimedes?

1:31:48 MI Thanks, Mayor, I was going to ask to pull this item, too. I, I know that these are action minutes, but I, I, I would respectfully request that prior to the language where we talk about the adoption of the resolution that we include some of the discussion that happened immediately preceding that. I think we're leaving out a very critical part there.

1:32:12 EP Do you have specific language to ...

MI I would just go back ... I have no reason to doubt the transcripts that were submitted, but, specifically, where, the, I'm asking the City Attorney, "But if there's a vote to deny, then there isn't any subsequent vote, is there?" And, the City Attorney responds, "Right." I think that we need, whatever, whatever was actually said, and again, I don't have any reason to doubt that this is accurate, but that needs to be reflected in here. That was an important part of the meeting.

1:32:50 EP So that's the precise language that you would like included, or do you want to continue this and suggest the language you want included?

1:32:59 MI I, I'm going to say, let's put this language in.

1:33:03 EP Ok, it's ...

1:33:05 MI As long ... does it ... I'm going to ask the City's attorney, is this reflective of, of your memory?

1:33:10 HM Well, I think the better answer I gave was to Councilmember Schwartzman at 28:26 and 28:40 - I think that's a little clearer.

1:33:17 MI I don't mind if we include all of it. I just think, and I don't care if its in a summary form. I just think we need that conversation documented.

1:31:50 EP Um, my feeling is that you, ah, you can suggest some language, and let's continue this item, and, we'll see it in our packet and be able to take action on it at the next meeting. Unless there is, ah, um .. I, well, a couple comments: Councilmember Schwartzman and Councilmember Hughes, comments?

1:33:45: AS Thank you. Well, if we are going to add that, then I would respectfully ask the City Clerk to go back, listen to the DVD, and print verbatim what is in there.

1:33:55: [inaudible]

1:33:56 EP So that's an alternative. Um, Councilmember Hughes.

1:33:59 MH [inaudible]

1:33:59 EP Alright, then, with that being an alternative, do we have a motion?

1:34:00 LW Clarification: at what point do you want the verbatim to kick in? [inaudible]

1:34:08 MI Ah... [addressing Councilmember Schwartzman] I'm ok at 27:01?

1:34:14 AS You know what, I haven't had a chance to review that. Well, I just got that tonight, so I don't know.

1:34:17 EP Councilmember Hughes?

1:34:20 MH Perhaps, following the motion. Because I think that's when the clarification was asked for.

1:34:30 MI Yeah. Right.

1:34:31 AS That's probably true.
1:34:33 LW Ok. 1:34:35 EP Ok, do we have a se... a motion?
1:34:43 AS Ah, [gestures to Councilmember loakimedes]
1:34:46 EP I think it's the motion that we've given you direction, so its approved with that direction and those corrections. ... If that's the motion.
1:34:54 AS Motion to approve, um, ah, the minutes of October 7th with the additional, ah, to... [addressing Mayor Patterson] No, it's not to approve?
1:35:05 EP Yeah, it would be a motion to
1:35:10 AS I was going to come back and
1:35:11 EP Well, I was just suggesting that: if you're not ready to approve then ...
1:35:13 AS No, no, no, no ... That's what I would like. I'd like to see him come back.
1:35:15 EP Ok. Go ahead, and then the motion is to continue with just the edits and bring back for Council approval. And we have a second?
1:35:24 MI Second.
1:35:28 EP Call the roll please.
1:35:28 LW Councilmember Hughes?
1:35:29 MH Yes.
1:35:30 LW Councilmember loakimedes?
1:35:30 MI Yes.
1:35:31 LW Councilmember Schwartzman?
1:35:32 AS Yes.
1:35:32 LW And Mayor Patterson.
1:35:33 EP Yes.

Title 2, Chapter 16

Public Hearing - Lower Arsenal Mixed Use Specific Plan and EIR

(only that portion concerning the continuation, with spoken implications bearing on the Seeno continuation)

1:37:25 EP Ok, um, we now have a public hearing, and that is on the Lower Arsenal Mixed Use Specific Plan and EIR. And Mr. Erickson, I believe you have a process and a procedural comment to make, and some advice to the Council.
1:37:42 JE [addressing Council] Ah, one bit of information is that, this is scheduled for public hearing and that is what we hope will happen. We will have a public hearing tonight. But we're going to have to suggest that you continue the public hearing, ah, because the findings for the, ah, certification of the Environmental Impact Report, ah, were not available, ah, in the packet, and are not available tonight. And I'm sorry about that. Ah, but, because they are not, um, those are a critical part of the, ah, review that you're going to do, and ah, for you to take action, you, you'll need that. So, since you don't have them before you tonight, um, they're not then before you, our rules say, this would be bacifically, we think, anyway, new information that would be coming to you, ah, which would require, ah, maintaining the public hearing in an open way, for whenever it is you set the, the ah, public hearing to continue. So, having said that, um, ah, there, that there will be two hearings, ah, I think we ought to all ask ourselves, um, or ask the audience, perhaps, that might be wanting to comment, um, that there are going to be two hearings, ah, it would probably a good i... probably be a good idea, that comments not be

repeated over both meetings. So people have a choice, of either making their comments tonight, or making their comments at a subsequent meeting so there's not overlap there. So that would be my suggestion, ah, that the public be made aware of that, the they have two opportunities to do this, uh, action will not be taken tonight, and ah, they basically choose which hearing they wish to make their comment.

1:39:25 EP Ok, let me make sure you all understand that, because I heard some talking
[snip]

1:40:30 EP [addressing Don Dean at the podium] You have a point of order?

1:40:33 DonDean A quick point of order: do we know when that, ah, to what meeting this item would be continued to? Do we have a date certain for that?

1:40:40 EP Right. Mr. Erickson?

1:40:41 JE Uh, we haven't made any final kinds of ... don't have any final thoughts on that, but, um, ah, [addressing staff] it would need to be I believe, [addressing Council] it could be as early as the 4th, but you already made mention that the 4th is election night. And so that might not be very convenient for people. The next opportunity would be the 18th. Ah, we may have a heavy ... item ... have a heavy agenda for that meeting, particularly if, if, ah, you decide you wish to extend or continue the ah, the Seeno matter. Ah, so perhaps that meeting, or a subsequent meeting. So I think what we need to do is, is decide whether on the 18th, which is really the first opportunity to have a, ah, a decent time, to invite public comment, ah, whether you want both items, or you want the potential of two major items on that agenda, ah, or just one. And if you do end up with two, ah, which is the one that, ah, ought to precede the other.

1:41:43 EP Right. I'd like to actually get a sense of the Council on that. Ah, Councilmember Hughes?

1:41:48 MH Well, we're assuming that some things are going to occur in the Action item. But if the assumption is that we continue the Seeno project, I don't want to have the Seeno project and the Lower Arsenal on the same night. I don't think that's fair to us, and it's not fair to the public, as well. So perhaps we need to get through the action item and then make a decision on what the calendar looks like. Yeah.

1:42:07 JE And just one more thought. Ah, there's an issue of timing, or of ah, ah, ah, not wanting to get into a delay, ah, with the Seeno project. On the other hand, it may be that, so that, that would, that would push us toward thinking that, as early as possible, like say, the 18th, ah, but at the same time, it may ... until we get into that item, it may not be possible to, ah, ah, pin down exactly what is the most appropriate date to do that until we talk about that a little bit more.

1:42:39 EP Councilmember Schwartzman?

1:42:41 AS Yeah, ah, how about, um, that will either be the 18th, or the first meeting in December? And I say that, believing, because, we don't really know what's going to happen in the next hour. Um, but, assumingly, if it goes in that direction, we're not going to want to have this particular matter there on the 18th. But we don't know what's going to happen between, between now and an hour, when we make a decision, nevermind what could happen subsequent to that, which could change that, too. So, if the public could have a little flexibility there: maybe the 18th on the earliest, if not, then it would be the first of December, at least it gives you some certainty.

1:43:17 EP Councilmember Ioakimedes?

1:43:19 MI Well, the only thing I feel strongly about is, not to have both Seeno and this, the Arsenal, on the same agenda. Um, obviously, we've got time constraints with Seeno, so that's probably going to take precedence, calendar-wise. So I think I am agreeing with Councilmember Schwartzman, that we've got to get through the next couple items before we

can set our calendar.

1:43:42 EP Right. So it's quite likely we'll actually have Seeno on the 18th, and so I think that the default date will be - is December 4th?

1:43:50: JE Second.

1:43:52: EP Second. Ok. December 2nd. Alright, um ...

[snip]

Title 2, Chapter 30

Action Item IX-A. ACTION ITEM: A. Benicia Business Park Rezoning, Master Plan Overlay, Vesting Tentative Map and Addendum

3:07:49 EP Um, Mr. Erickson, we have, the Benicia Business Park Rezoning, Master Plan Overlay, Vesting Tentative Map and Addendum. For those who are continuing to have conversations, please step outside of the Council chambers. And, Mr. Erickson, um, staff report?

3:08:08 JE Ah, thank you, Madam Mayor, members of the Council. As, uh, was pointed out earlier in the evening, seems like a long time ago now ...

3:08:18 EP Yeah, actually, can I take a pause, first of all because we can't hear, and then, second of all, I just need to get, so that the public understands, because I was asked a couple of questions during the break, and that is, the process for tonight's action. We closed the public hearing on the Seeno Addendum, and the Seeno project with the rezoning, the master plan, the overlay, and the vesting tentative map. However, there are items in the packet dealing with a resolution and consideration for continuation, that I believe are subject to public comment. So, if you were wondering, yes, you can comment on it. My interpretation of what we can do is based on a past example which I was trying to remember this afternoon when I was meeting with staff. And I did remember it, and the past example was the original, ah, action on the Seeno EIR. And I objected to the language of the resolution, and was advised that we were only talking about the resolution, and not the project. And I believe that is the standard that we use with this. So, it is the nature of the resolution, and not the subject of the adequacy of the Addendum or the project, or the vested tentative map. Council can continue discussing that, but the public comment period has been closed for those substantive comments. But, again, you can comment on the resolution and the action that has been suggested by staff. Now, Mr. Erickson, your staff report, please.

3:10:17 JE Thank you, Madam Mayor, members of the Council. Um, the staff recommendation is, as you know from the staff report, ah, written staff report, is looking toward a continuance.

As has been noted, you closed the public hearing, ah, on October the 7th. Ah, there was a motion, ah, to approve the environmental documentation, ah, for this project, ah, that failed to get three votes.

Um, so, the question is, where are we now? And I know there are differences of opinion about, ah, what is appropriate at this point in the way even just procedurally. Staff's view is that the field is somewhat open, uh, on this, and we talked about that a little bit earlier tonight.

Ah, staff's recommendation, ah, ah, is, notwithstanding anything else, that there be a continuance, to have some sort of a process, ah, by which some of the outstanding issues, or any of the outstanding issues that rise up to a level, ah, of discussion, ah, that there be a process to do that. Um, I would envision a, ah, a facilitated process, um, sometime in the next month. We, we, we've suggested that this come back on November the 18th. I don't know that

we can get that arranged, ah, in between now and that time, but I think we probably can, in fact, we've actually been in contact with um, some folks who do that kind of work. And why do I even talk about facilitation? It's to make sure that if you do have a continued opportunity for the Council to talk, the developer to talk, and the public to have some part in that as well, the best way to manage that, it seems to me, is by somebody outside of the existing, ah, framework, ah, that clearly, ah, has no, ah, ah, particular interest, and has some expertise, ah, in, bringing people together, basically. So that's our suggestion.

Um, you know, I guess one could say, well, why would we want to do that? I mean, to me, ah, there's some apparent reasons.

I think, just from my own perception, I think the staff perception is, that, although we've talked a whole lot about, just, so many issues about this project, that there are, perhaps, in our view, a relatively speaking, a relative few issues that need to continue to be worked out. Now, some would say, well, some of those individual issues are very, very big issues, and are huge. But we think, um, in our view, ah, they're relatively few in number, offering some hope that there might be some resolution for those in some sort of a, ah, public, public, uh, process.

Um, the project has been just a tremendous amount of time invested by so many people: ah, this Council, um, the public, staff, ah, the applicant. Ah, so much of an investment, ah, in time, money and effort to try to bring about some sort of project that could be approved, it would seem a real shame, ah, to set that back if we are fairly close. This is my assumption, that we may be fairly close to bringing together, ah, a project that can be approved.

Um, and as you know, it's staff's view, ah, that this project really fulfills the vision of the General Plan that we have observed or seen. I know there's debate about that. Um, I think that if you look at the Addendum to the EIR, it speaks to that same thing. Ah, if you just look, sort of a layperson's view of the General Plan, it calls for industrial, [cough], [excuse me], light industrial out in that area. That's what this is all about.

Um, and a, and a final reason, in my view, which, you know, rests with some of my responsibilities as a City Manager, working for you [gesturing to Council], is to be concerned about the whole health of the City, including the issues, all of the ones we've talked about, that deal with people's health, um, the, ah, health of the environment that can sustain us, as well as the economic, eh, well-being of the City. This has, has been said many times. This is the last, ah, piece of significant ground in the City that can support, ah, additional economic development of any consequence, in our view. Ah, so, ah, as I said the other day, I see the City's tax base, basically, unless we're going to rely on tax increases, used up, on, um, existing services and projects. In fact, we're just about at the limit. We don't have, as you know, who look at the budget with us – we don't have any discretion, basically, to take on new things. And not that that's our objective, but I would like to create, with you, the opportunity to be able to maintain what we have. And as we look at the future, we need enhancement in our tax base to do that. Or, we're going to be going in the other direction, having to rely on things like tax increases or cutbacks, to deal with sustaining services.

So those are basically the reasons. It seems to me one ought to pause and say, um, ah, before we move on to some other process, or before we go back to the drawing board, so to speak, on this project, we out to just pause, ah, get ourselves together in a facilitated process, and say, ok, let's, let's see where we agree. I think, ah, what I heard, there was fairly close to agreement on the other night, on most of the substantive issues. And I may have heard that wrong, but I think it would be well for this Council, and this community, to take that next step, to do that. That would mean, you wouldn't be adopting, as I understand it, any, ah, motions, resolutions, ah, what-have-you, that would be on, that are on the agenda as optional actions, at this evening, tonight, or meeting tonight. We'd be setting that aside, and you'd be saying, no,

let's sit down and, ah, go through this again, seeing if we might reach, ah, might reach agreement.

So, I, I could go on. I think maybe Charlie's got some things to say about some of the details about, ah, any of these major issues we said we thought, you know, the issues resolved around, revolved around, traffic, ah, air quality, um, project compliance. We had talked about, for example, a Citizens Advisory Committee, something like that, like a CAP, that could insert itself into the process, with your blessing, um, and ah, I, uh, keep the process on track, conditions, compliance, all of that sort of thing. Which we think are, are very good ideas. We think those are sort of the major, those are some of the major issues, the ones that we think are most outstanding, and then there's a lot of sub-issues from those. Ah, but we think it would be well to, ah, test out what I'm saying, and what I think we've heard from you [gesturing to Council], in this kind of a public process, um, because there's so much at stake, in our view, as per the things I've just said.

So. That's, that's our message, that's our recommendation. Ah, [gesturing to Charlie Knox] I'm not sure if Charlie has anything additional to say.

3:17:23 EP Um, any questions for Mr. Erickson? Any questions for Mr. Knox? Any questions of Ms. McLaughlin?

3:17:30 CK If I may ... I was just going to add a couple of things. It was just my observation at the last meeting, that one of the key components that, ah, was involved in the failure of the motion to adopt the remaining environmental documents, dealt with the Statement of Overriding Considerations. And, we talked a little bit last time about, um, you know, why the Bay Area Air Quality Management District's threshold is so low, ah, for projects. But one of the things that I, I've been trying to get a handle on in the intervening weeks – and I asked the air pollution control official at, at the Bay Area Air Quality Management District about, and I got a response to was, "Are there really any industrial projects out there that, that don't need the Statement of Overriding Considerations?" You know, "What's out there, of any note, um, that's an industrial-type project that, that generates less than 80 pounds per day of, ah, particulate matter, or, or reactive organic gases?" And I got the answer, and, basically, there's one. Um, there's a motor freight terminal at the Port of Oakland that was done in the last couple of years, and its 20,000 square feet. Um, the other two items they forwarded to me, ah – and I asked them afterwards, is this an exhaustive list; is this really all there is? And their answer was yes – is, there's a freight forwarder facility in Brisbane where there's, they're replacing an existing 130,000 square foot office and warehouse with a 90,000 square foot, ah, facility, and that came below the 80 pound per day threshold. The one they pointed out – and I think the Benicia Green Gateway pointed to this same project as an example, ah, for us to look at – it's not industrial, it's office R&D, but it's a good example. And it's 540,000 square feet, which is a little bigger than the estimate that I gave you last time about how, what size this project would have to be, about 400, 450,000, to comply, is the Sierra Point Biotech project in Brisbane. And, so that's a, a project that's going for LEEDS certification, possibly silver and gold, for its buildings. Um, it's ah, you know, using an area that, where there's already existing traffic, and they can draw from traffic that's already coming off the freeway to other areas. But it's 540,000 square feet, it's office R&D, and the retail component is only 2,500 square feet. So, clearly you can see, some of the factors that drive the project as proposed up well above this 80 pounds per day, and I think we looked at a slide last time, that said, with its transportation demand management numbers, we'd still be looking at around 1400 pounds per day. So that's one, one component of this issue of Statement of Overriding Considerations and the, and the requirement to, ah, scrutinize these projects very heavily when you're, when the Bay Area's already at non-attainment.

The other, obviously, is Semple School. And, um, you know, there's a lot of issues

involved. It's an existing situation. A decision was made some years ago about which schools were the, the ones to, to keep open and which to keep closed, or, to, to go, to become closed. Um, there's been a lot of talk, of what's the developer's responsibility if this project is approved, ah, in, ah, in terms of, ah, mitigating impacts that may be, even, you know, existing ones. So, I think, one of the reasons that it's worth considering continuance, if Council feels like, um, the project is close enough to try to work out these remaining issues, is what role this developer could play in terms of trying to mitigate traffic and air quality concerns at Semple School.

But there may be some other ideas, ah, beyond the ones we discussed last time. I can't remember, for example, if we talked about buses, um, but, ah, you know, if, if it's the pleasure of Council to continue, ah, and if you'd like staff to play a role in determine, helping determine, ah, with the school district, ah, with the developer, with the community, ah, what other solutions might be out there, we're happy to participate.

3:21:11 EP Councilmember Schwartzman?

3:21:12 AS Thank you. Um, well, I just want to, to get on record that, of course it was 1 o'clock, and 1:15 in the morning the other day. I was not ready to take a vote. Um, I thought that we were moving pretty close, ah -- this is my personal opinion -- to a set of conditions on this particular project that would mitigate as best as we were going to be -- at least, all the conditions we could think of at the moment, (I've subsequently thought of a couple more) -- um, that, ah, that I think, that would, ah, make the project a viable project. Um, I believe, um, that, as far as this caliber, this type of project, meaning, light industrial, although, ah, um, and, and commercial, that, if you go around the nation, I'm not sure if you'll find anything of this con, consequence, this, um, this approximate size, that would be as green as this particular project. Um, now, I don't know if, if, any, if.... [addressing Mr. Knox] Well, you and I had a discussion, so maybe you have a little bit of input on that part. Then I want to continue.

3:22:12 CK Ah, yeah, if you would like me to respond: I, I researched the LEED database of all the LEED buildings. There are 17,243 in some kind of process with LEED. Only 1826 of those, about 10%, have been certified. Of those 1826, only 46 in the United States are industrial. Um, and, actually, surprisingly, it's a, a relatively small proportion of those that are just certified. Most are silver or gold. Ah, there are 4 in California. Ah, only 1 of them is larger than 30,000 square feet, and I'm trying to get information on it. It's 396,000 square feet, so it's obviously multiple buildings. So there are, there are LEED certified industrial buildings out there. And I have to say from staff's perspective, since we crossed a point some months ago where all buildings were going to be required to be LEED in this project, I had some serious doubts about whether or not the project was feasible at that point. Um, but clearly, there are 46 that have been done, 4 in California. And so I'm, I'm hopeful that, ah, a project on this site, whether it's this one or in a different configuration that's required to be LEED-certified could actually come up to that standard. But the bottom line is, um, there are a lot of projects out there that have been trying to get LEED. 1826 is a lot. Some of those are in the U.K. Um, but it's only, it's only 10% of what's been applied for, so it's not that, that easy to get, and, less than a quarter of a percent of the ones that have been certified are industrial. So this is, we're breaking new ground, and so, at some point when a project emerges out there, that requirement is going to be something that in and of itself makes this a unique model for other communities.

3:23:46 AS Ok, thank you. Um, so anyway, I was just going to reiterate: I wasn't ready to vote. I just, ah, ah, to me, we've come, ah, on this particular project, a long way from where we were some years ago. Um, and I thought that we were moving in a direction to get conditions, um, that would, ah, at least to my mind, satisfy and mitigate the issues. Um, and ah, I was hoping that we were going to be able to continue the discussion, to perhaps work on any other conditions, concerns of mine, all of us up here, that we might be able to work with the developer

to, to get this particular project as close as we can to what, as a consensus would be, would, would feel, would be a good project for this, ah, ah, community, ah, taking all the impacts into consideration.

Um, I, I'm not sure how many people out there in reality and whether they would even own up to it, are absolutely against any project out there at all. I'm sure there's some out there, and I just wonder if some of the people, um, may be jumping on the bandwagon, but in reality don't want to have any project.

Um, I also, um, uh, don't know about the economics. I do know this: that, this particular developer, reputation aside.... (And maybe that's another thing that's here. Maybe there's some people, they don't want any project here because of who the developer is. Okay. That's certainly a possibility. But put that aside.) The developer, this particular developer has owned the property for 27, 28 years. I believe they own it free and clear. They're paying taxes on it. So their costs to develop now, my suspicions are, that one of the reasons why we can get as much as we can, in this particular project, is because of the cost that they have into it. Um, and let, let me back up a second. If we go back some years, the, the original project has changed dramatically. When we certified the EIR, we basically told them, "What you've brought forth isn't going to work. Come back with a project based on the Hillside Upland." They came back, so, now, up until that point, by the way, they were kind of like this [folding arms across chest].... And when we took that action, all of a sudden, [spreading arms wide] their body language, just, just to try to (if you can go along with me), *changed*, and they came back with a project that was better than what we were anticipating, than to start with, meaning, the Hillside Upland, because it took in that, it took in the best of the water ah, um, preservation, to, to.... They came back to us with a markedly different project. The mitigations of which, excuse me, the, the ah, impacts of which were reduced from the project, which, I believe is that's, we can have an argument about the Addendum, but I don't want to get into that part right now.

So, but that wasn't enough for us. We wanted more. And so we asked for some conditions to be included, and we asked for more conditions to be included, and, they said ok. And they came back, after this delay with the traffic study issue, in the interim between June and when they came back last meeting with the initial traffic, the ah, the ah, ah, updated traffic study ... there was more conditions that were involved. So, and they said yes.

So, it seems to me that they've gone from this [folding arms across chest]... to trying to, come along with us, ok, for better for worse, however you feel, they seem to be agreeing to most everything that we are asking them, and now it seems like we're ready to go like this [folding arms across chest]...."Well it still is not enough."

But I think we're pretty close. And that's why I'm thinking that this continuance – and I'm actually pretty surprised that they're willing actually to continue this, to con, to have more discussions, but apparently they feel we're pretty close. I think, on an individual level, we're pretty close. So, I would think that, I would argue that we should probably just continue this, um, to, hopefully the 18th. We need to discuss maybe what that means, what are we going to do in the interim. It's already been proposed to have, ah, um, ah, at least one, maybe two meetings, whatever, facilitated, so we can have stakeholders and people in the community, um, talk, because, remember, we closed the public hearing. But this would allow the opportunity for more discussion to come on all the myriad of different impacts that people have in their mind, to try to bring forth a project that we and the community can agree upon. So, I would like to see us continue this.

3:28:07 EP Are there any more questions for staff. Councilmember Hughes?

3:28:12 MH Ah, well, I looked at the, viewed the DVD, of the October 7th meeting, and I, I listened carefully to the words that were said, right after the motion, and I suspect you could

argue both ways that, on, how to interpret the words. Um, what I heard, ah, up here, is that there was a motion to approve the Addendum. And there was a second. I made that, ah, Councilmember, er, Vice-Mayor Campbell, ah, offered up the motion, I seconded it, and it, it failed. It didn't receive the three votes. But a failed motion, um, does not put any closure to the issue. You need to have, my understanding is, you have to have a motion that is approved, one way or the other. So we're kind of at that point right now. Ah, I also heard some of the, ah, Councilmembers talk about their, ah, desire to have a project, up there. So regardless of what some folks might say or not say about whether they want a project or not, I really do believe that the Council, all five of us, want to see a project up there. And I also heard some of the members of the Council saying, "We're close. Ah, I want to, I want to approve this, but I'm not quite there." Um, which, I, I felt was a really good sign. Ah, the issue I think we have before us tonight is, where do we go from here? Options, one option would be, to deny the Addendum, um, and continue discussions. By the way, I think, -- I'm guessing, and I'll find out shortly -- that the four of us are all in favor of continuing discussions with the developer and the community. Ah, so the question is, do we deny the Addendum and continue discussions, or do we just, as Councilmember Schwartzman is saying, do we just continue discussions with them?

My issue with denying the Addendum is, ah, it goes back to the City Manager said, there has been so much time invested by all of you in the audience, others in the community, the staff, the developer, the Council, ah, and as a result, we are, I, I do believe, we're pretty close. There's some issues that, that certainly need to be resolved. And I know some feel stronger than others about them. But the risk we take, as far as I'm concerned, if we deny the Addendum, is, you could start from scratch. You could all, you could go all the way back, and start from scratch. And a lot of that would be dependent on, on what the developer, or what the applicant, wants to do. But we have some conditions in the, in the Addendum that are extremely beneficial for our community. In fact, of the 200 plus, ah, conditions, I think all but one, (maybe two, Mr. Knox?), are benefit of the community, not the applicant. We take the risk of, of taking all of that off the table and starting over again. I think that's a huge mistake for our community. Ah, I think we're, we're close enough where, if we continue discussions, ah, we don't take any action tonight, we just make a... direct staff that we are going to continue discussions with the community and with the applicant, ah, I think we're far better off than taking the risk of starting over again. So that's really where I'm heading, um, tonight.

3:31:30 EP Are there any more questions of staff? Ok. We have, um, some cards: Rosie Switzer?

3:31:40 Rosie Switzer Thank you. Um, our lawyers representing the School District sent a letter to the City Council and to Mayor Patterson late today. And I'm not sure if all of you have read the items in that letter about our concerns still,

..... skipping over public comments for now, hoping for more time to complete later

Title 2, Chapter 41 Council deliberations on the Benicia Business Park

4:17:25 EP Bring it back to Council. Well, let me, um, I guess I'm going to start, ah, making a comment. Um, to say that I'm troubled by the process is an understatement. Um, I've never experienced it, when a vote doesn't count. So, I've been trying to process that. I will tell you that I work in a very similar situation, with government, and if I were to do this, to the people that I report to, I'd be fired. Ah, the intent of the vote was really clear. The discussion that preceded it, plus the discussion on June 3rd, the need to have a resolution, the clarification sought, ah,

from the City Attorney about the need for the resolution, ah, my request to have a res., an alternative resolution, um, I, I'm so troubled by that, because I, I actually, ah, think staff is very capable and very competent, and so I have not understood this. I'm troubled by the comments that have been made by, ah, one of my colleagues here, as well as a few members of the audience who have spoken, saying that his hasn't been a civil process, and that, they've never seen such, ah, uncomely discourse. That is just flat-out wrong. This has been a remarkably civil process. And, there has been remarkable respect, for the applicant and for the citizens. There have been a few occasions when people have gotten out of line, and I've noted that. And I won't tolerate it; I'll protect anybody. So, um, I don't know where that comes from. I actually think it's a distraction. And I think that's what this is about. It's a distraction from what we have to deal with. And what do we have to deal with?

Ah, we've heard asserted that, um, with good cause, that the City needs to have a good tax base. The idea that we have run out of the ability to expand that tax base, and therefore we have to develop this additional acreage... Let's say that, that we go forward, and in 20 years, that's done. It's all completed. I don't think it's going to happen, but let's say that that happens. Then what? Do we go out to Sky Valley to expand our tax base? Of course not. Because, lots and lots of communities know how to grow their economy within their boundaries. They know how to grow their economy without having to take up land.

Now, what else do we have to deal with? We have to deal with, in 11 years, reducing greenhouse gases to 1990 levels. How do you suppose we're going to do that? Business as usual? B.A.U., business as usual. No! We have to do new things. We have to do things that ha., we have been told we can do; we have examples. It's not necessarily examples of industrial development, because I think those are hard to come by, in terms of meeting our standards, but you can look all around and see business parks. You can look all around and see retail. You can look all around and see the kind of development that people are thinking about. Stockton. You want to take a neighbor that doesn't have a huge reputation for wise land use? They've reached an agreement with the Attorney General: they will meet AB32 goals and standards, to the best of their ability, preventing sprawl, and reducing vehicle miles traveled. And they have measurements for those performances of reducing vehicle miles traveled. Now, how can you accomplish that? We've gone over that. There has been leadership on this Council, about exactly how that can be achieved. The fact that we have, it falls on, ah, deaf ears is not the fault of staff or the Council.

So, am I a little angry? Yeah. I'm pretty angry. That's a vote that meant something to me. It meant something to the community. And, I feel that, frankly, it's kind of, diminishing authority of the Council. I don't know how else to look at it. And, I would rather not, ah, live with it. I, it's hard for me to support the idea that we're going to continue this for the three options that have been presented to us in the staff report.

Um, on the other hand, what tempers my anger is some of the – I think only in Benicia can you hear comments about trees, and dying, and re-growing, and comments about Quonset huts, and Eiffel Tower. I thought that was interesting, and made me really think. And then the holes of the roof – and to me, the cou., the counter to that is, of course, the Specific Plan. Getting some understanding. Um, it's that, that, understanding of this community that is far more sophisticated than I have heard in many, many communities, in fact, as in many agencies. And I know, that we are all good people, and that we're going to come together with staff, and with Council. And we will do what Benicia, ah, deserves. We are not going to do business as usual. And, we are going to make every effort to have economic development, but in a manner that's sustainable, which is the overarching goal of the General Plan. That's all I have to say.
4:23:50 AS You want me to say something? Ok, well, we need to do something. Ok., as far as

that's concerned, and I appreciate your comments. Um, and, um, you know, the reality is, even if we just, even if we just took a look at tonight, even if we just took a look at just having the resolution to deny, both the Addendum and the Project, even if we did that, what do you want to do?

4:24:20 EP Well, what we, what sh..., -- ah, thanks for the question – um, the intent on the denial, the resolution to deny the Addendum was then as directed to staff, to prepare the resolution to deny the Project, and it was intended to have the applicant, ah, be denied “without prejudice,” so that they wouldn't have to wait the required amount of time, and that they could come back and submit the Project with a new Site Plan, and I went over the details about that.

Um, I actually tried to reach some accord with staff today, on, ah, meeting them somewhere in what they were trying to do, which I don't disagree, ah, the fact is I asked staff to call, ah, Mr. Evola, and, ah, I believe, Miss Lawson, to... because I was, I was operating on, that, there was a vote to deny the Addendum, and then the subsequent vote, which would be the only choice we had, and that is to deny the Project. So I, I had already passed that. I was past that, and I want, but I wanted immediately to sit down with the developer, and say, um, “The community feels seriously about this, so let's get the Site Plan redone so it reduces vehicle miles traveled. And there, and there are two key ways of doing that...” and you've heard it, and I'm not going to repeat it. And there are other things we can do. And, to honor and respect what the Planning Commission really wanted, which was a development agreement, and, to, ah, put this together in a Specific Plan that allows us to have an adaptable process – because you can amend a Specific Plan any number of times through the life of the Specific Plan. It's not like a General Plan. But, it gives the City the sense, the overall sense of what the project is intended to do, and it helps future decision-makers. That's the proper planning role for us to do. Um, and, so, and I would be comfortable with that. Well, that, obviously, um, was the third alternative, not the first alternative, but the third alternative. So, in discussing with Mr. Erickson today, I said, “ok. Let's go forward with the denial of the Addendum, because it's inadequate for, um, procedural but al., and substantive reasons, but also, it sends that signal about that project.” And, that... take time out, because apparently the developer has agreed in writing, um, and, [leafing through binder], I don't know if all of you have seen that, mmm, I've put a tab on it, um.... And, what the developer says, is that, “Although this project has been discussed at length and the public hearing is closed, we understand that staff believes there is additional opportunity for discussion regarding the Statement of Overriding Considerations and the additional conditions of approval which have been proposed.” Um, so that means there's a window of opportunity, that, if we, ah, did sit down with a facilitated process, that, we wouldn't have to take action on the Project. We could actually take time out, and not take action on the Project, and go forward with this. Um, I'm not as comfortable with that process. Um, I think we just, ah, should deny.

The reason the Addendum doesn't work is because you need to adopt overriding findings. And, if you've got an Addendum that requires overriding findings, it means you don't have an Addendum. And, it means you have something that is a Supplemental EIR, what they call it.

So. That's what I would do. I would go forward and fulfill the intent of the vote, which to, was, ah, to, deny, is to deny the Addendum. Adopt the resolution that we still, yet, don't have in this packet, regardless of the vote. And then, and then continue, um, the item, ah, beyond the 18th, because I don't believe we can have this facilitated discussion before that time, and embrace, ah, wholeheartedly, the idea that we have, um, a redesign on the project.

Um, and then, what you do at that point, is you take all the body of material that exists, the certified EIR, the Addendum that was done, and you come back with a supplemental,

supplemental EIR, recirculate, and it's a done deal. We would've actually had this done, from June until now, this could've been done. We could've had that Specific Plan. We could've had that recirculation. All of this would've been done.

Sorry for the long-winded answer, but, ah, that's the answer.

4:29:07 AS Ok, I'm ready to listen to some other...[looking to Mr. Ioakimedes]

4:29:12 EP Ah, Councilmember Ioakimedes, and then Councilmember Hughes.

4:29:18 MI Thanks, Mayor. Um, I just want to get my ex-parte out of the way. Um, if I can try to remember everybody I spoke with. I try to speak with a, a wide variety of people, so I have spoken with former Councilmember Bill Whitney, Dana Dean, Marilyn Bardet, ah, some fire union officials, Brian Hawkins, Norm Hattich. Um, if I've forgotten anybody... none of these conversations had anything that, included anything that hasn't been included tonight, or any of the other meetings. But, um, in the past I haven't identified people, and I want to make sure that, tonight, that I do do that.

I, I keep by my desk at work some of my campaign literature, just so I don't forget what I've promised to do. And, one of the things that I, I spoke about in the campaign was that I wanted to focus the conversation on what we were hopeful for, rather than what we're frightened of. And so when somebody comes up to me and says, you know what Seeno just might pack, pick up their pieces and walk away, they might not do anything, or we might get sued, and we might get sued by the school district, we might get sued by the citizens, we might get sued by the developer, I, I, I real.., I take that into consideration, but, it's not part of my final analysis. Because I don't want to react to what the threats are. I still want to focus on what I want.

And I believe that we do need this project. I think that it's going to make things a lot easier for our community if we have, um, if we diversify our economic base, if we take advantage of emerging markets and changing technology.

But I also believe that this is an ongoing project that requires to a certain extent a partnership between the developer and the community. Now, we don't know what it's going to look like 5 years from now. We certainly don't know what it's going to look like 10 years from now. And so, in most partnerships, you have a partnership agreement.

What we've done with these conditions in the way we've structured this deal is, we've said we're, "Yeah, we're going to be partners with you, but every time I leave the office, I'm going to lock my drawers, because I don't trust you." And frankly, I don't understand why the developer isn't demanding a development agreement. Because we are a community that likes to revisit issues. We've got a very active community. And if I had 200 plus conditions, I would want them in some sort of a legal document that provided that type of protection, on both sides. A partnership agreement protects both partners. I think a development agreement could protect both.

But I think the fundamental problem that I have with this, is that, when have a finite project, if you were building a building, and it was just one building, and you knew exactly what it was going to be when you were done, then you want to focus on the details. But when you have a project like this that goes on for a long period of time, I think you have to focus on, for a lack of a better term, the spirit of the agreement.

This agreement, the spirit of the way this agreement has been presented, is that it's a revenue-based agreement. We are doing all these things because we need the money, or because we think we need the money. I mean, there's some mention about "social value," but I'm not sure what the social value's going to, about the positive social aspects of it. I understand the economics of it. I can tell you that I will never, ever, accept the Overriding Considerations if they are presented in a way that I have to choose between public health and

profit. I don't care if it's just, the, the possibility of one kid getting sick, versus a hundred million dollars in revenue, I just can't go there. So, that's a problem for me.

If we have a, if we looked at this project, if we looked at the spirit of this project as not so much as a revenue-enhancing project, but as an opportunity to reposition our community, and to meet not only the demands of AB32, but to **take advantage of emerging markets**, then that gives us a lot of reasons why we need to be flexible. And it gives us a lot of reasons why we have to have a broad discretion of how we move forward. It just doesn't make sense to me if we do it for dollars. It makes all the sense in the world to me, if we do it because we're going to end up with a better community.

4:33:40 I'm, I'm frustrated because we, because we get information on a piecemeal basis. I don't want to be dependent upon the public to do a lot of the research. And frankly, a lot of the research that I have been presented, has not come from the EIR, and has not come from staff, but has come from the public. And I don't have the technical expertise to be able to properly assimilate and analyze that type of data. I mean, Charlie's brought up some very interesting things tonight, and I wish I had heard some of this information earlier. But I also know that 80 pounds, which is the threshold that... Bay Area Air Quality Management, equals about 46,000 square feet of retail. Now, that's about a quarter of our downtown. I mean, we can say it's insignificant, but in context of our community, it really isn't. It's half of the commercial project that they're -- half of the commercial portion of this project -- that they're presenting. So, we can argue back and forth: is it a tiny amount? Is it a big amount? I think it's somewhere in between.

I, I think that there's, you know, I'm trying to look at my notes, to, to try and make sense of all of this: it kind of goes back to what the Planning Commission did. I mean, the Planning Commission said, very specifically, you need to get the public's confidence, and the way you do that is a development agreement. I don't, and I, and I agree wholeheartedly with that, and it isn't public consensus; I am not looking for everybody to agree on this. But the one thing, that everybody has to agree, is that we've gone through a process, and whether you agree with the result at the end of the day or not, at least you know that we, we did it the correct way, that people had their chance for their say, and everybody took a fair and reasonable approach when doing their deliberations.

It seems like at every time that we have an opportunity to tap dance around legal issues, we do. Every single time that this project has come forward, it's never been straight up one way or the other. There's all these different angles, different nuances. Did you make this motion? What was the wording in the motion? How did we do that? Frankly, I, I can't keep up with it. Was this, you know, Addendum CEQA? Was it not CEQA? And I, I've told some people, at one point I was reading, a, um, a, an opinion, I think it was from the applicant's attorney, about what the school district attorneys was threatening us, or something, and I thought, what do I care, about what one attorney says to the other? Can we talk about the project? Can we talk about the merits of the project?

I firmly believe that to meet the mandates of AB32 requires action. And that means that, we need to do something, not business as usual, but we need to do something. And I think this project gives us that opportunity, potentially, to do that.

I, I don't want to take any action without Vice-Mayor Campbell here. I thought that it would be redundant, that once we, once we took the vote that we did the other night, I didn't think that we needed to take another vote, to say that we're denying or rejecting the Addendum. I thought that by not approving it, inherent in not approving it, it means that we don't accept it. I, ah, I guess I was naive. So, if we need to go through another step... And I thought that once we didn't accept the Addendum, then we're not going to go any further with anything else. But

apparently, we could go forward. And that's, and there's good in that. There is good if we can keep talking. But I think that what we need, to, to, to do, is, is to talk. And I think we need to figure out a way to, to try and make this work. But we also have to realize that at some point, we have to come up with a, of a way to come to a, a final answer. Um, the, unfortunately, what's, the wording in the, in the, in the staff report has eroded whatever public confidence I think was left. I think everybody is suspicious. Nobody is sure of, of what's going on. And that hasn't been helpful. If we can somehow move forward, collectively, um, and I would, I would not support taking any action without Vice-Mayor Campbell here, but that doesn't mean that I wasn't very clear about what I voted on, two weeks ago. It was a difficult decision for me, and it's not going to be any easier if we revisit it.

That said, and I'll take full responsibility if I'm the cause of any misunderstanding, but I made it real clear to staff: please make sure in your staff report that you give us latitude to talk about more than just denying the Project. We need to keep talking.

I do believe we're close. But I also agree with the City Manager, it's that, we're close in that we've gotten through a number of issues. Unfortunately, the issues that we have left are going to be the most difficult to resolve. So we're close because we got through a lot of the, the, the minutia, but we really haven't tackled what really is, is confronting us.

It... I can only put it in again, into context about, when we talk about air quality, is there anything that could be more precious than air? We can go days without water. We can only go minutes without air.

And yet we seem pretty cavalier about how we do that. I don't think the Chief, here, [gesturing to Chief Spagnoli], would allow me to be 20 times over the drinking limit, and if I said I'll give you fifty bucks, would you let me to continue to drive?

When the fire union officials came and talked to me, I asked them, I said, show me anything in the fire code that you would allow to be twenty times over the safety level.

What, why is it about air? In this very chamber, I watched on tv while the planning commission talked about, told the kids from Cal Poly, "Look under every rock, look in every corner, we want you guys to come back with a real, definite idea of what, how will, what we can do. And if you have any problems at all, you come and see us." And I laughed, and I said, well, yeah, but you're going to tell the City Council, because we're perfectly willing to say, eh, one big project? 20 times over the limit? Who cares? Eh, ah, I don't get it. We're, we're going to tell our citizens that they can't use their fireplace ... but we're going to let a, one project be 20 times over.

I, I ... I, I, ... I, I'm agreeing about, about school buses, I've said it for a long time that we need to revisit that, but there's also a message that comes from this City as an entity, and we sat here, and we talked for over an hour about whether or not we were going to let a business across the street have music for one extra hour on one day, actually, the last day they were in business, and the fundamental reason that we said that we weren't going to let them do that is because Council had said, no, or a previous Council had said, you know what, when we say no, we mean no, and that's it, and we're not going to cut you any more slack.

And I can tell you as a small business owner, I can tell you that, you try and hang a flag outside of your, your, your business, you try and plant a tree five feet from the sidewalk, we're going to come on down on you like a ton of bricks. But if you've got a big enough project, and you've got enough money to dangle in front of us, then we'll sacrifice the very air we breathe. And, I don't understand that, and I'm just, and I'm trying to be as honest as we possibly can: if you frame this project in dollars and cents, I will never support it. If you frame this project as a way to move this community forward, I will advocate for it until my last breath.

4:41:23 EP ... of clean air.

4:41:25 MI Of clean air.

4:41:25 [audience applause]

4:41:32 EP Uh, Councilmember Hughes.

4:41:34 MH Ah, thanks, Mayor. I think the beauty of this process is that we can, um, agree, ah, to disagree, certainly up here, but we can maintain respect and professionalism, and I think we really have done that, the five of us, and I know Tom's not here tonight, but we've done that, and I think we've done that through some very spirited discussion. Um, and I don't think we've questioned each other's motives. We, we, we might have a different vote, but I think our motives are all the same, what's best for the community. So I, and I hope you all look at that, regardless what our vote is, that you believe that we believe that it's the right thing, even though it doesn't, ah, ah, match up with what you're opinions are.

Um, what I heard, ah, Councilmember Schwartzman say earlier in the meeting in the discussion, was that he wasn't ready to vote, which was kind of interesting. I mean, and I respect that. But he wasn't ready to vote because he felt that there was more discussion that we should have, and possibly more things that we can, ah get from the applicant. I don't know if others felt the same. Obviously, the Vice-Mayor was ready to vote. I was ready to vote. Um, I don't know where my other two colleagues were.

I do know that, and this kind of goes back to the process, and, and the confusion on, you know, what no really means, and I'm not trying to play games on words. Ah, but my understanding is that after the vote that we took, that we said, we don't approve the motion, any one of us could've offered up another motion, to approve the Addendum, to approve it with, um, additional conditions. I mean, so we, we, there, there was no, there was never a time that we said we want to deny it; we just weren't satisfied with the way it was written at the time. So there was still that option, and again, I'm not trying to play games with, ah, with words, but I left the meeting, I honestly left the meeting that night very, very frustrated as maybe some others did, but I did believe that we still were going to have to come back and take action, because denial of a, ah, failure of a motion, I don't believe, was formal action on our part.

Ah, so that's kind of where I was, and I think it still goes back to what I said earlier this evening, that, um, everyone – in fact I think every, just about everybody that came to the podium tonight, and I think I heard it from all my colleagues – wants to continue the discussion. So the only question is, how do you continue discussion? Do you, do you continue it by saying we're going to deny the Addendum, we're going to deny the Project, um, which took us a long time to get to, or, do we say, we want to continue discussion, and, we don't take anything off the table right now.

My, ah, ah, I start to think about what the risks are, with denying the Addendum and, and ah, and that versus just moving on with the discussion, and I said it earlier, that I am concerned, ah – and it's not a, [gesturing to Mr. Ioakimedes] it's not a fear that I have, Mike, but it, but it is, a concern that I have – that all of the things that we worked towards, we moved forward with, ah, over a long period of time, that those could be removed. There's nothing that says the applicant, ah, needs to, ah, to, ah, comply with any agreement that he had before. There's nothing that says that the applicant can't walk away from the property, never to be seen again. Nothing to say the applicant can't sell the property, and if the applicant sells the property, somebody pays a lot of money for that, you can be sure we're not going to get the same type of project that we have on the table right now. It's going to be, they're not going to be able to afford to do that. Ah, so, ah, I, I, I'm looking after what I believe is, ah, the best thing for the community, which is continuing discussions, but I, I, I don't favor denial of the Addendum or denial of the, of the Project. What I support is continuing discussions to see if we can, ah, get to a point where we, we do, get, you know, whether it's a 5-0 vote or a 3 vote, that we get to a

project that, that, um, more people feel comfortable with, ah, can lead us into the future. But I, I'm concerned that -- ah, time is not on our side. You know, this is, now, twenty -- what is it? 27 years? -- ah, that, that we've had, ah, projects of, ah, different, ah, I guess different flavors, that have come forward, and we haven't been able to make a decision, and I think we need to make that decision, and try to mitigate all the risks that we can, um, at the time.

So, ah, my position has been pretty clear from, ah, the last meeting. It hasn't really changed. It doesn't mean I don't value the input -- I really, really do. But I think, ah, we need to move forward, and continue discussions, but not throw the Project out.

4:46:18 EP What I would like to do is two things. One is to just correct something for the record, and that um, is, last year I was hoping that a developer would actually form a partnership with Seeno, ah, who, um, a developer who understood and was more responsive to what we wanted. And there was actually discussion, apparently, between the developer and Seenos, and there was, ah, um, the possibility of even buying. And they were more than willing to do that, and they would be more than happy to do so and make money. So, to say that, if a, a developer bought it at current value or entitlement value, I think, ah, some of the discussion was even saying, "ok, you got your entitlements," -- when they didn't -- that they would still be able to do a project and make money. Um, so let's put that bogeyman aside, because it doesn't exist. Um, but what does exist.

4:47:05 MH Excuse me. I, I'm sorry to interrupt, Mayor. But, it does exist in my mind. It may not ... we can agree to disagree....

4:47:11 EP [addressing Mr. Hughes] Well, you know, I didn't recognize you, and so...

4:47:15 MH I'm sorry.

4:47:16 EP ... so, that's, that's fine. You, you've had your say twice now.

Um, what I'd like to do. This, I think, would work. This would give a sense of restoring, um, that sense of community confidence in what we're doing, but it would also, um, get us moving along. And what I would like to do is have a motion tonight, that, um, um, reaffirms the no vote on the Addendum, and makes sure that we have a resolution for action on November 18th to deny the Addendum. But, that we also recognize that there may be continuation of the Project for a negotiated conversation, or a facilitated conversation. So, I think in one motion, we could maintain the confidence of the community, that a vote matters, and, but, and a next idea is to embrace the concept that maybe we could, ah, get closer to the, ah, what, we use the clean air approach. Um, it means the same thing to me, in many other different ways, but it's um, a shortcut. So, that's a possible motion. Do we have a consideration of, of such a motion?

4:48:26 AS I would like to ah, make some comments.

4:48:32 EP Ok, I'm ah, hoping that it's not another long speech. If I may be so ...

4:48:33 AS I'll try to not make it too long, but I think I need to do it.

4:48:35 EP Um, I really, I presume, you had a, you had a really nice long speech, and I think that everybody has a ...

4:48:37 AS And I would like to respond to some comments that I heard.

4:48:43 EP Could we move this along with a decision?

4:48:47 AS I'll go as quickly as I can

4:48:52 EP Ok....

4:48:56 AS Ah, I just want to make some comments, ah, to Councilmember loakimedes, and I, I heard everything you said. And, um, there's two things that came out. One, you're talking about, you know, your stand on the air quality and the kids and all that. Believe me, I understand and respect that. But, you keep on using the 20 times the limit, the 20 times over the limit. Do you in your heart of hearts think that we could do a viable project and stay within the 80 pounds?

4:49:20 MI You want me...

4:49:21 AS I would like the answer.

4:49:25 MI Ask me the question again...

4:49:30 AS Do you in your heart of hearts think that we can have a viable project out there, ok, and stay within the 80 pounds, the air quality threshold?

4:49:38 MI Probably not.

4:49:39 AS Ok. So this then, would lead me to believe, that somewhere between our 20 times, and our 80 pounds, ok, is some... is air quality that is going to be ok with you. I mean, that, that... I have to read into it that.

4:49:50 MI No. Because we haven't talked about cumulative air path... air quality.

4:49:55 AS Ahhhh, ok, so there are other things that might actually do that. Well, that's why we need to continue the conversation, ok?

Number two: you're talking about, the difference about, you know, if we come with the spirit of, ah, of the community – I don't remember exactly how you said it, but you know what I'm talking about –

4:50:10 MI Mmm-hmm [affirmation].

4:50:13 AS -- versus the economics, you could get all behind it.

4:50:15 MI Right.

4:50:17 AS But it won't happen without economics. It's not going to happen unless it's economically viable. So with that in mind ...

4:50:20 EP Ah, Councilmember Schwartzman, we had a, we have adopted rules of conduct

4:50:24 AS With that in mind ...

4:50:25 EP Let me finish. Ok, We have to ...

4:50:25 AS Maybe I want to finish.

4:50:27 EP We have adopted rules of conduct, which I am, ah, reminding you, is to be not argumentative with your colleagues or the public. I am asking you to avoid being argumentative.

4:50:40 AS I am done with that. Now I have a suggestion. I would like to make a motion, that we deny the Project.

4:50:50 EP Um, we have a resolution, I guess, that would support that? So, we have a motion to deny the Project. Ah, you do need to finish the action on the Addendum.

4:51:00 AS Well, then, ok. Then, let's do that. Then, I would like to move ... hang on, Madam City Attorney is trying to raise her hand.

4:51:05 HM Well, you don't need to do anything further on the Addendum if you deny the Project. If you deny the Project, you don't need further environmental review. So, if you deny the Project, then we can be done with it.

4:51:13 EP We have to have the findings, for why we did not use the Addendum, er, for why, right, why we did not find the Addendum satisfactory. We need findings to support the action. Um, you have drilled that through our heads, so we do need, ah, to adopt a resolution that sets forth the findings on the inadequacy of the Addendum, and then set forth the findings for the denial of the Project. And I believe you have, um, one of the options for resolution is the last one(?), which is, "A resolution of the City Council of the City of Benicia rejecting the Addendum to the Benicia Business Park Final Environmental Impact Report, proposed findings related to the project, Statement of Overriding Considerations, and the mitigation monitoring and reporting program and denying the Vesting Tentative Map, Master Plan Overlay, and rezoning for the Benicia Business Park project." That's a resolution that you would support with your motion?

4:52:17 AS Yeah. I will, I can, I will make that motion. Ok, exactly the ah, on page IX-A-227, "A resolution," (let me repeat it, so we're clear), "A resolution of the City Council of the City of

Benicia rejecting the Addendum to the Benicia Business Park Final Environmental Impact Report (EIR), proposed findings related to the project, Statement of Overriding Considerations, and the mitigation monitoring and reporting program and denying the Vesting Tentative Map, Master Plan Overlay, and rezoning for the Benicia Business Park project.”

4:52:46 EP Ok, do we have a second? Just give a second, so we can take a vote on it?

4:52:58 MI [inaudible]

4:53:04 AS IX-A-227

4:53:09 Susan Street [from the audience] Point of order.

4:53:10 EP Yes, ma'am.

4:53:12 [inaudible, having to do with clarification regarding possible 2-2 tie vote]

4:53:22 EP Madam City Attorney.

4:53:24 HM The Council needs majority action. You need three people to agree to take action.

4:53:28 Susan Street Thank you.

4:53:30 EP You're welcome.

4:53:42 MI Once again, I, I'm not sure why we're doing what we're doing, when we're doing it.

4:53:50 AS There, there's a move, ok, and it's, I, if I hear you correctly, you want to do a denial. So I'm putting that on the table.

4:53:58 EP Well, I will say, you didn't hear me correctly.

4:54:03 AS Well then ...

4:54:03 EP In fact, um, what I said, and I'll restate, and this is for purposes of discussion, is that I would support a resolution, um, placed, ah, we could actually do it tonight, because we could extract some of the language here and still have the findings. The resolution to deny the Addendum, and then we would continue the meeting to a future date, without taking any action on the Vested Tentative Map, the Master Plan, and the rezoning. That's what I said.

4:54:40 MI [to Mayor Patterson] You're saying deny the Addendum.

4:54:46 EP Correct.

4:54:47 MI [to Mr. Schwartzman] You're saying deny the Project.

4:54:48 AS Um-hm [affirmation].

4:54:50 MI And I'm saying, I, I think that this needs all five of us up here. And, can I ask the City Attorney a question?

4:54:56 EP Certainly.

4:54:59 MI A 2-2vote, a tie, 2-2 vote on this, is the same as a no vote.

4:55:05 HM A 2-2 gets us nowhere. We need 3 votes of Council to adopt a resolution.

4:55:12 MI So, a ...

4:55:13 HM So three of you have to say yes to one of these resolutions, or some other alternative.

4:55:20 MI Ok.

4:55:22: EP [Addressing Mr. Schwartzman] So, do you still want to proceed with your motion?

4:55:25 AS Um, let me ask the City Attorney a question. So if it comes down to, if it turns out to be 2-2, it's the same as no, then what? What does that mean? What are the implications?

4:55:40 HM We could be here all night, and beyond.

4:55:43 AS No, what... Ok, but what does that mean ...

4:55:45 HM Well, hopefully you would try some other alternative, so that you could actually come up with 3 of you who could agree to one of the alternatives we've listed in the staff report or some other alternative. But perhaps since we've heard that, um, some of you would like all the Councilmembers to be here, perhaps the next motion could be, to continue it to November 18th.

4:56:05 EP One thing you could do ... we have a motion on the, ah, floor, so I guess this is, um,

a substitute motion for what has been proposed, although as I understand our adopted procedures, we don't actually have such a creature, but, we could take this resolution that's on page 227, and have it read, "A resolution of the City Council of the City of Benicia rejecting the Addendum to the Benicia Business Park Final Environmental Impact Report, um, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting program," and end it there. And then, it's ah, substantial in here, in that it sets forth the reasons for that rejection of the, of the Addendum. It's actually more oriented to the environmental process. And that's all that would be done. That would support the vote of October 7th, if we did that. So just strike the language that refers to the Project, and just utilize the language that refers to the Addendum, the Overriding Considerations and the Mitigation Monitoring Plan.

4:57:13 AS Ok, now, I'm going to make another statement. Ok? I want to retract my motion.

4:57:20 EP I don't know why you can't do that, but I will seek advice from the City Attorney?

4:57:27 HM You want to retract your motion?

4:57:28 AS Can I retract my motion?

4:57:31 HM I'm sure you can. Our rules are not Robert's Rules of Order. We allow the possibility.

4:57:33 AS I can, I believe that, that, as the maker of the motion, and as, [addressing Mayor Patterson] you seconded it, am I correct Mayor?

4:57:37 EP I, I – and I do believe you can retract it, I just wanted to confer with the ...

4:57:44 AS And you agreed to it, so let's find out, and then I'm going to comment on what is the reason why I want to do this.

4:57:48 HM I do not see in our rules, anything that would prohibit you from retracting your motion.

4:57:54 EP Excellent, so the motion is withdrawn ...

4:57:55 Ok. And the reason why is because I wanted to get to a point that we all know that we really don't want to do this right now tonight. We don't want to take action on the project tonight. So what I would really like to do is, to make a different motion. And I would like to make a motion that we not take action on anything tonight, and we continue this to the 18th, and so we can keep the dialog open with the developer, get the community involved with the developer, and see if we can hammer out those last details, yes, I know they're big issues, I understand that, and maybe a development agreement's a part of it, maybe it isn't, I don't know. But those are discussions that we can have with the developer. Maybe changing it to a grid pattern is a part of the discussion; maybe it'll go, maybe it won't. Maybe dispersion of commercial throughout the project will go, maybe it won't. Ok, maybe ah, not having, um, cul-de-sacs, well, we can have the discussion, and maybe it'll go, and maybe it won't. And I think, and with the air quality, and maybe we should swap Semple for Mills, and maybe we shouldn't. But maybe all of that should be on the table. And that's what I think that we should do. So I would like to make a motion that we continue this meeting to the 18th, follow the, ah, recommendation of the City Manager, to have a, a facilitated discussion, ok, where we can get all the stuff out on the table, with the developer, and have an opportunity to see if we can actually reach a final conclusion that's going to make the bulk of the community, the bulk of the community, comfortable.

4:59:28 EP Do we have a second?

4:59:31 MH Second.

4:59:33 EP Is there any further discussion? Councilman Ioakimedes. No. Call the roll please.

4:59:42 LW Councilmember Hughes?

4:59:45 MH Yes.

4:59:48 LW Ioakimedes?

4:59:49 MI Yes.

4:59:50 LW Schwartzman?

4:59:51 AS Yes.

4:59:42 LW And Patterson.

4:59:54 EP Yes.

... remainder of the meeting not transcribed ...