

Guest Column - October 23, 2008

By Roger Straw

[Note: an edited version of this article appeared in the Benicia Herald on Oct. 29, 2008]

In recent statements before and during the October 21 City Council meeting, I believe that our City's professional staff exercised their authority in a questionable manner.

Prior to the meeting, City Manager Jim Erickson, Community Development Director Charlie Knox and City Attorney Heather McLaughlin submitted a Staff Report that many feel ignored the will of the Council. In bypassing the will of our elected representatives, many feel that staff has thwarted the will of the citizens of Benicia, who elected the Council.

The record will show that on October 7, Council voted 3-2 in a very clear and difficult decision, to not go forward in considering the Benicia Business Park as proposed by Seeno and Discovery Builders.

After the motion and before the vote on October 7, Councilmember Ioakimedes said, "I have a question for the City Attorney: the motion that's on the floor right now is the resolution that is on [page] B45. There will be another motion for B47?"

McLaughlin replied, "No. There'll be another motion if you *approve* B45, to approve the resolution that's on page 183." She went on, "The part that's on 47, and the part that's exhibit B, which is on page 110, will be included as part of the resolutions, so you don't need a separate action on those."

Ioakimedes then said, "But if there's a vote to deny, then there isn't any subsequent vote, is there?"

McLaughlin: "Right."

Ioakimedes: "Ok. That's ... Thank you."

Mayor Patterson then called upon Councilmember Schwartzman.

Schwartzman, addressing the City Attorney, said, "...Ok, so if the one we've got on the table now passes, we can go back to the table, and think about other conditions. If the one that we have on the table now fails, we don't go any further, we're done. Is that the way I understand it?"

McLaughlin: "Well, then I would suggest that we do a Resolution of Denial. You all could direct me to go back, using the model from June 3rd, with the findings or whatever you came up with."

I find this record explicit, and without loopholes. The vote to approve CEQA documentation failed, 3-2, under deadline to pass, and the City Attorney was directed by Mayor Patterson, at the end of the meeting, and agreed, to return to the next meeting with a formal "Resolution to Deny" to conclude the rejection of the Seeno project:

McLaughlin: "Alright, so since you didn't approve ..."

Patterson: "So we give direction to staff to prepare a Resolution of Denial for the "Approving a Vesting Tentative Map, Master Plan Overlay, and Rezoning for the Benicia Business Park Project, with Conditions."

McLaughlin: “Yes, that works.”

Contrary to staff’s suggestion on October 21 that a no vote on a motion to *approve* leaves wiggle room for further consideration, the reason for a formal Resolution to Deny is not to state positively an affirmation which was not yet voted. A Resolution to Deny is merely a formal statement with legal findings to solidify for the record and for legal reasons, a no vote that has been taken.

Benicia needs to sit up and take notice of all this. Not only because of the stakes in approving or denying the current Seeno project, but for reasons of good and trustworthy government. I am hearing cries of anguish from friends and members of the public who are calling for removal of certain members of our city staff.

I do not necessarily share their view. I do believe that our staff acted with the City’s interest in mind, and were not dishonorable in their motives. I reject suggestions that City staff are acting under physical threats or bribes from the Developer, or that the City Manager, specifically, has his own executive agenda that takes precedence over his contractual agreement to work for and under the direction of City Council.

It is my understanding that staff brought forward its controversial recommendation on October 21 based not only on its rather manufactured reading of Council’s action on October 7, but that certain comments were conveyed in writing after the vote by Councilmember Ioakimedes that could have been interpreted – or misinterpreted – as a wish to keep the current proposal open for discussion.

At issue here is not whether City staff should be fired, but how to regain trust after a major blunder. The human heart does not regain trust easily, and the public, having come to a high degree of respect for all five Council members despite their differences, now faces a huge hurdle in understanding the motives and honor of those who serve the Council, and by extension, the public.

Over the course of the next month, we are told that all stakeholders will be invited to sit down in professionally facilitated meetings to discuss the project, in hopes of agreement and approval at Council’s November 18 meeting. One of the outcomes of those meetings is likely to be a regained sense of trust among us all, or a further erosion of trust.

Although members of Benicia’s Green Gateway Group continue to believe that the best way to arrive at a visionary 21st Century business community on Mr. Seeno’s property is to pick up the broken pieces and quickly blend them into a carefully planned and legally binding new application, I am sure there is a slight possibility that talks in the next month will result in a new understanding, and real progress. Hope springs eternal.

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