

**ANTIOCH CITY COUNCIL  
ANTIOCH DEVELOPMENT AGENCY**

Regular Meeting  
7:00 P.M.

October 24, 2006  
Council Chambers

**6:00 P.M. - CLOSED SESSION**

1. **Conference with Legal Counsel – Anticipated Litigation** – Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 (1 potential case)”
2. **Conference with Legal Counsel – Existing Litigation** Administrative Civil Liability Complaint No. R5-2006-0512 issued by the California Regional Water Quality Control Board - Central Valley Region to the City of Antioch and Somersville-Gentry, Inc. and SPPI-Somersville, Inc. et al. v. TRC Companies, Inc. et al, Case No. C04-2648 SI, United States District Court, Northern District of California. This Closed Session is authorized by Government Code §54956.9(a)

Mayor Freitas called the meeting to order at 7:00 P.M., and City Clerk Martin called the roll.

Present: Council Members Simonsen, Davis, Conley, Kalinowski and Mayor Freitas

**PLEDGE OF ALLEGIANCE**

Mayor Pro Tem Kalinowski led the Council and audience in the Pledge of Allegiance.

Mayor Freitas reported the City Council had been in Closed Session and there was no reportable action.

**ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS - None**

**ANNOUNCEMENT OF BOARDS AND COMMISSION OPENINGS**

City Clerk Martin announced the following Commission opening for the City of Antioch:

- One unexpired term on the Economic Development Commission

The filing deadline for all applications is November 30, 2006 at 5:00 P.M. Contact information was given for those interested in applying.

**PUBLIC COMMENTS**

Chief Hyde announced the Police Activities League attended a Raiders game with 57 middle school students from Antioch.

Dick Augusta, Antioch resident, expressed concern the city is considering demolishing the Nick Rodriquez and Antioch Senior Centers and replacing them with a hotel.

Mayor Freitas clarified there was a discussion item at the community forum regarding the possibility of changing the use of the Nick Rodriguez Community Center, however those discussions were preliminary and Council would be very sensitive to the issues.

Ken Lee, Antioch resident, read a letter from Emil Stein questioning why he received a postcard from Councilmember Conley requesting residents attend this meeting.

## **PROCLAMATIONS**

### **NATIONAL ANIMAL SHELTER APPRECIATION WEEK, November 5-11, 2006**

On motion by Councilmember Conley, seconded by Councilmember Davis the Council unanimously approved the proclamation.

Councilmember Kalinowski presented the proclamation proclaiming November 5-11, 2006 as National Animal Shelter Appreciation Week to Barbara Sobalvarro representing Friends of Animal Services and Skip Swanlund representing the Antioch Animal Shelter who thanked the City Council for the proclamation. Ms. Sobalvarro announced they would be hosting a Hospitality Day at the Animal Shelter on November 11, 2005 from 12:00 – 3:00 P.M. and the Black Cat Ball would be held on October 28, 2006.

## **COUNCIL RESPONSE TO PUBLIC COMMENTS**

Councilmember Conley expressed his appreciation for the residents in attendance this evening and clarified he did not send out any request for attendance.

- 1. COUNCIL CONSENT CALENDAR**
  - A. APPROVAL OF COUNCIL MINUTES FOR SEPTEMBER 26, 2006 #301-02**
  - B. APPROVAL OF COUNCIL WARRANTS #401-01**
  - C. APPROVAL OF TREASURER'S REPORT FOR SEPTEMBER 2006 #401-01**
  - D. REJECTION OF CLAIMS #704-07**
    - 1. Robert Dittman, #06/07- 1668A**
    - 2. Cheryl Dittman, #06/07-1668B**
  - E. LEGISLATION AND ADVOCACY #701-04**
  - F. ORDINANCE NO. 1080 C-S AMENDING TITLE 9, CHAPTER 5, ARTICLE 38, AND SECTION 3803, OF THE CITY OF ANTIOCH MUNICIPAL CODE, TABLE OF LAND USE REGULATIONS OF THE ANTIOCH MUNICIPAL CODE #202-06**

- G. **ORDINANCE NO. 1081 C-S AMENDING TITLE 9, CHAPTER 5, ARTICLE 38, SECTION 3831, OF THE CITY OF ANTIOCH MUNICIPAL CODE, LIQUOR ESTABLISHMENTS, DELETING SUBSECTION (C) #202-06**
- H. **RESOLUTION 2006/107 AUTHORIZING REIMBURSEMENT OF TRAFFIC SIGNAL AT DALLAS RANCH ROAD AND CACHE PEAK DRIVE BETWEEN CITY OF ANTIOCH AND SHAMROCK HOLDINGS, LLC (UP-04-06, PW 357-309-04) #1104-02**
- I. **RESOLUTION 2006/108 AUTHORIZING REIMBURSEMENT OF SIERRA VISTA WATER TANK BETWEEN CITY OF ANTIOCH AND SUNCREST HOMES 26, LLC (PW 584-T) #1202-03**
- J. **APPROVE AWARD OF BIDS FOR PURCHASE OF WATER TREATMENT AND PREWETT WATERPARK POOL CHEMICALS #601-02**

On motion by Councilmember Conley, seconded by Councilmember Davis, the Council unanimously approved the Council Consent Calendar.

#### **COUNCIL REGULAR AGENDA**

- 8. **APPOINTMENT TO THE PARKS AND RECREATION COMMISSION – 4 full terms/ 1 unexpired term**

Mayor Freitas appointed Mariano Santos to an unexpired term of March 2008 and Gerald Lieder, Gene Davis and Anita Daniels Hayes to the expired terms on the Parks and Recreation Commission.

On motion by Councilmember Conley, seconded by Councilmember Simonsen the City Council unanimously appointed Mariano Santos to an unexpired term until March 2008.

On motion by Councilmember Conley, seconded by Councilmember Simonsen the City Council unanimously appointed Gerald Lieder, Gene Davis, Anita Daniels Hayes and Monica Borrego to the expired terms on the Parks and Recreation Commission.

Mayor Freitas adjourned to the Antioch Development Agency with all Agency Members present.

#### **AGENCY REGULAR AGENDA**

- 6. **RESOLUTION APPROVING THE FINAL LOAN TERMS AND CONDITIONS FOR THE EDEN HOUSING, INC. WEST RIVERTOWN II APARTMENTS AFFORDABLE HOUSING PROJECT LOCATED AT 7TH AND I STREETS #903-01**

City Manager Jakel presented the staff report dated October 24, 2006 recommending the Council/Agency adopt the resolution.

Woody Karp gave a brief background of the funding for the project and reviewed the process for formalizing the final loan terms and conditions.

**RESOLUTION NO. ADA 413**

On motion by Agency member Kalinowski, seconded by Agency member Davis the Agency unanimously adopted the Agency resolution.

**7. AGENCY CONSENT CALENDAR**

**B. APPROVAL OF COUNCIL WARRANTS #401-01**

On motion by Agency member Conley, seconded by Agency member Simonsen the Agency unanimously approved the Agency Warrants.

Chairperson Freitas adjourned to the Antioch City Council.

**COUNCIL REGULAR AGENDA**

**5. RESOLUTION APPROVING THE FINAL LOAN TERMS AND CONDITIONS FOR THE EDEN HOUSING, INC. WEST RIVERTOWN II APARTMENTS AFFORDABLE HOUSING PROJECT LOCATED AT 7TH AND I STREETS #903-01**

**RESOLUTION NO. 2006/109**

On motion by Councilmember Kalinowski, seconded by Councilmember Conley the Agency unanimously approved the resolution.

**3. QUARTERLY FINANCIAL REPORT – FOURTH QUARTER 2005-06 #410-02**

Mayor Freitas announced this item would be held over to November 14, 2006.

**4. DISCUSSION OF VISTA DIABLO MOBILE HOME PARK: ADDRESS ISSUES RAISED BY RESIDENTS INCLUDING PROPOSED CONVERSION TO AN ALL-AGE/FAMILY PARK AND RENTAL INCREASES #802-01**

Mayor Freitas stated he has put this item on the agenda at the request of the Vista Diablo Homeowners Association.

Lola Buck representing the Vista Diablo Mobilehome Park residents requested the City Council's assistance in initiating rent control for mobile home parks, rolling back the rents to reasonable amounts and stop the conversion from senior to family park. She expressed concern regarding no disclosure of the conversion to residents and the terms of the lease agreements. In addition, she noted the owners have not clarified the process used for owners unable to pay the rent.

Allen Ives, Executive Vice President of the Delta Board of Realtors and Vice President of the Vista Diablo Mobilehome Park, gave a brief history of the rent subsidy agreement and reviewed the current rent agreement process. He requested the City Council develop a rent control ordinance, stop the conversion of the park and roll back the rents to a reasonable amount.

In response to Mayor Freitas, Mr. Ives clarified the lease agreements are from 10-20 years with a minimum increase of 6% per year.

Abe Arrigotti president of Sierra Corporate Management representing the ownership of Diablo Vista Mobile Home Park stated they believe rent control and vacancy control are not necessary. He discussed their intent and statutory requirements to convert from a senior to family park and noted at this time they have decided to table the issue. He clarified rent increases are annual and range from a blended CPI to 6%. He availed himself to the city for future discussions of these issues.

In response to Mayor Freitas, Mr. Arrigotti stated they are opposed to giving up their property rights through zoning or a conditional use permit and suggested the possibility of a memorandum of understanding to memorialize tabling of the conversion. He added he feels this issue can be resolved quickly through future discussions with the city.

Mayor Freitas stated he is willing to support rent control if necessary and voiced his support for a ten-year moratorium in which no discussion could take place regarding the conversion of the park to an all age facility. He noted that after the 10-year period changes could take place under a conditional use permit process.

City Attorney Nerland stated the city could draft an agreement that is recorded on the property or require a conditional use permit for conversion.

Mr. Arrigotti stated he would have to discuss the moratorium with the partnership.

Councilmember Simonsen suggested the possibility of the property owner bringing in a proposal for additional plots in exchange for changing the zoning of the property to senior housing. He encouraged Mr. Arrigotti to meet with the residents to discuss upgrading of the community room and suggested lowering the rents to at least the amount equal to the water, sewer and garbage rates.

In response to Councilmember Kalinowski, Mr. Arrigotti clarified that all fees homeowners are responsible for are fully disclosed at the time of move in. He noted rents are market driven with a direct nexus between the price of the home and rent.

Councilmember Kalinowski voiced concern regarding conversion of the park to a family facility as well as excessive rents and rate increases. He stated he would be willing to consider the city purchasing the park from the property owners and noted he would also support a 10 year moratorium with a sunset followed by a requirement for a conditional use permit to pursue the conversion.

Councilmember Conley suggested the sunset of the senior park be until the last current lease expires with future agreements disclosing that at that date the conversion may be considered. He stated he feels the property owner has an unfair business practice and leases should be rolled back to the amount at the date of expiration. He suggested future rate increases be based on half of the social security increases. He stated he would support staff review of the Concord model for the rent control ordinance. He spoke to a repossession that occurred and questioned why the owner did not receive the net equity after all expenses.

Mayor Freitas reported the City Council has received letters from Freida Hargrove and Erma Casteen.

Following discussion the City Council agreed to place on the November 28, 2006 agenda the following:

- A proposal to be entered into between the city and the business to guarantee no conversion signed by November 22, 2006. If this action is unsuccessful, legal council will substitute a rent control agreement as an urgency ordinance for November 28, 2006.
- Address the issue of rent increases
- Upgrades for the community center
- Address issues outlined in correspondence from Freda Hargrove and Erma Casteen

Mayor Freitas suggested Mr. Arrigotti contact City Attorney Nerland, begin the process immediately, and noted he would continue to work with the Board of Directors at Vista Diablo Mobilehome Park.

Mayor Freitas declared a recess at 8:33 P.M. The meeting reconvened at 8:48 P.M. with all Councilmembers present.

## **PUBLIC HEARINGS**

### **2. APPEAL OF THE WAL-MART FINAL ENVIRONMENTAL IMPACT REPORT AND DESIGN REVIEW APPROVAL TO LOCATE IN THE WILLIAMSON RANCH PLAZA #202-03**

Senior Planner Oshinsky presented the staff report dated October 12, 2006 recommending the City Council deny the appeals and uphold the decision of the Design Review Board certifying the Final Environmental Impact Report and Design Review approval.

Mayor Freitas opened the Public Hearing.

Mark Wolfe representing Kent McGibney and the California Healthy Communities Network provided the City Council with an analysis for air quality. He noted they feel

the EIR lacks the proper analysis and mitigation for air quality, noise and traffic impacts. He expressed concern the expansion will exceed the gross square footage limits set in the 1998 final development plan. He urged the City Council to deny certification of the EIR and Design Review approval and direct Wal-mart to modify the final development plan to become within the existing entitlements and correct the defects in the EIR.

Natalie Weber representing Antioch Citizens for Smart Growth, stated she has provided the City Council with copies of written comments which she requested be included as part of the record. She noted they do not feel a 24-hour Supercenter is permitted under the 1998 final development plan and suggested a 14-hour operation to be consistent with similar uses in the area. With regards to the EIR, she noted they feel analysis of the impacts on air quality and energy should be conducted and mitigated. She requested the City Council deny certification of the EIR.

Mayor Freitas reported the Council has received and will make part of the record correspondence signed by Mark Wolfe dated October 24, 2006 addressed to Mayor Freitas and members of the Council regarding the appeals, Design Review Board and Planning Commission action approving the Wal-Mart expansion project #AR-04-25 and correspondence dated October 24, 2006 signed by Natalie Weber to the Antioch City Council regarding the Antioch Wal-Mart Supercenter.

Judy Davidoff, Steefel Levitt and Weiss representing Wal-Mart stated this project is a vested approved project and as presented falls within the approval for Williamson Ranch Plaza in 1998. She reviewed the enhanced project and measures taken to address the concerns of staff and residents. She clarified the EIR addresses all impacts and identifies mitigation required. She noted filing of significant information at the last minute is an effort to delay the project and inappropriate. She urged the City Council to deny the appeals, approve the projects and certify the EIR.

Devi Lanphere representing the Antioch Chamber of Commerce stated this project is consistent with zoning, meets the community needs and provide needed jobs in the community. She noted Wal-Mart has agreed to all mitigation and she urged the City Council to approve the project as presented this evening.

Janelle Mota, Antioch resident, spoke in support of the Wal-Mart expansion noting a 24 hour Superstore is needed and will provide job opportunities and tax generation for the city.

George Van Hassert President of Antioch Concerned Citizens for Smart Growth presented the City Council with a petition signed by over 600 residents urging the City Council to reject the expansion of Wal-Mart to a 24-hour Supercenter. He noted increased crime and traffic are a concern and not adequately addressed in the EIR. He questioned if the City Councilmembers would vote for the expansion if it were in their neighborhoods.

Mayor Freitas stated the petitions would become part of the record.

Monte Parmenter, Antioch Citizens for Smart Growth expressed concern regarding the traffic and noise impacts caused by the expansion of Wal-Mart and urged the City Council to uphold the appeal.

Ken Lee, Antioch resident, stated there needs to be consistency with regards to rules and conditions placed on all projects. He expressed concern regarding noise impacts from the refrigerator trucks parked in front of the store and requested the stacked pallets be fenced off for safety.

Susan Fleeger, Antioch resident, representing her neighbors spoke in support of denying the expansion and expressed concern regarding increased crime and pollution. She noted denying the expansion would improve the quality of life for residents in Antioch.

Johnny Ray questioned if Wal-Mart employees could support a family on their wages and provide health and retirement benefits. He discussed the need for quality neighborhood stores and the negative impact of Wal-Mart on current businesses.

Mayor Freitas announced the City Council has received a letter from Antioch residents, Ray Robertson and Mr. and Mrs. Joseph Trujillo opposing Wal-Mart, which will become a part of the record.

Kevin Loscotoff Public Affairs Manager for Wal-Mart Northern California, thanked staff, the Design Review Board and Planning Commission for their input and consideration of the expansion. He provided cards signed by area residents in support of the Supercenter and requested the City Council uphold the decisions made by the Design Review Board and Planning Commission and approve the project this evening. He clarified the relevant calls for service between Wal-Mart and K-Mart are a difference in the volume of business, and was identified in the EIR. He noted Wal-Mart provides quality jobs with benefits for the community.

Mayor Freitas announced the two boxes of cards would become part of the public record.

Steven Koistinen stated Wal-Mart would provide a convenience for the residents to shop 24-hours and help the community by providing lower prices and local jobs.

Mary Woods, Antioch resident expressed concern regarding crime, air quality and lighting impacts from the Wal-Mart expansion. She stated many employees of Wal-Mart can not afford healthcare, which causes a burden to the community.

Bob Miller, Antioch resident, reported Wal-Mart has allowed the use of their parking lot for safety fairs.

Allen Payton, Antioch resident, stated this project would keep sales tax in Antioch to pay for city services. He suggested with an increase in traffic generated by the expansion it



may be appropriate to restripe Lone Tree Way to six lanes. He suggested allowing for the expansion without a 24-hour operation.

Rich Matasich, Wal-Mart Store Manager clarified many of their calls to the police department are due to their zero tolerance for crime and all their associates receive benefits. He discussed the contributions Wal-Mart has made through donations.

Rick Houle, Antioch resident, spoke in support of the expansion of Wal-Mart to a 24-hour retailer.

Tammie Turner, Antioch Wal-Mart Personnel Manager stated she is proud of the store and she supports all the associates. She noted Walmart provide donations to the community and has benefits available to all employees.

*REBUTTAL:*

Mark Wolfe stated Wal-Mart does not have the entitlement for the expansion under the city's definition of gross square footage. He questioned why staff recommended denial of a daycare center due to noise impacts however they are recommending approval of the Wal-Mart expansion.

Natalie Weber urged the City Council to consider the air quality impacts to the Central Valley area as well as the cumulative impacts for the proposed Supercenter in Oakley.

Mayor Freitas closed the public hearing and declared a recess at 10:41 P.M. The meeting reconvened at 10:53 P.M. with all Councilmembers present.

Mayor Freitas closed the public hearing.

Bert Fericks the city's EIR consultant stated he has reviewed the documents presented by the proponents this evening and they do not comport with professional practice or legal requirements for preparing EIRs. He clarified they have complied Bay Area Air Quality District guidelines and standard mitigation has been imposed on the project. He reported a discount store trip generation rate was used to measure traffic impacts, which is higher than the Supercenter store or a blended trip generation rate. He noted cumulative economic impacts have been considered and the market would be split therefore not resulting in urban decay. He further noted energy impacts were considered and deemed to be not significant due to energy conservation measures incorporated into the project.

Senior Planner Oshinsky stated that staff agrees with the consultant that all issues have been identified and appropriately addressed in CEQA, making the document certifiable.

Councilmember Kalinowski expressed concern the calculations for gross square footage as it relates to the Orchard Supply Hardware and Wal-Mart is not consistent.

Director of Community Development Brandt reported the gross square footage analysis took place in 2002 by Deputy Director of Community Development Carniglia.

City Attorney Nerland stated the determination not to include the nursery in the Wal-Mart calculation is consistent with prior determination in the Williamson Ranch project.

Following discussion, Todd Anderson representing Wal-Mart agreed to mitigate off-site dust.

Councilmember Simonsen discussed the importance of being consistent with mitigation measures for all projects.

Mayor Freitas requested the items be addressed by the applicant:

- Legal requirements for the exhaust filtration systems as a condition of approval.
- Pre-construction and mid-construction surveys as a condition of approval.
- All vehicles shall be prohibited from entering the expanded parking area on the east side of the expanded Wal-Mart store as a condition of approval.
- Leaf blowers and store cleaning operations shall be prohibited north of the retail building within the project boundary between the hours of 8:00 P.M. and 9:00 A.M.
- Compliance with C3 requirements as it pertains to the storage of cargo pallets and paper products
- 300-foot radius mailing notification to all property owners identifying the telephone number of the Supercenter and construction noise disturbance coordinators.

In response to Mayor Freitas, Mr. Anderson clarified no storage containers shall be kept on-site.

In response to Councilmember Conley, Mr. Anderson clarified the noise disturbance coordinator would be a 24 hour position.

Mayor Freitas suggested the applicant respond to complaints within 24 hours and report back to the individuals with any determination that is made.

Councilmember Conley requested the applicant instruct the construction manager utility trucks abide by the construction timetable.

In response to Mayor Freitas, Ms. Davidoff discussed the importance of Wal-Mart's 24-hour operation, noting it is consistent with other 24-hour retailers, and the mitigations were designed to address 24-hour operations.

Senior Planner Oshinsky reported the conditions of approval are contained within the staff report and the Mitigation Monitoring and Reporting Program has been provided this evening.

Mayor Freitas requested this matter be held over to allow the applicant and staff to amend the document based on the discussion this evening. Mayor Freitas and Councilmember Conley expressed concern regarding the design of the project.

Councilmember Conley stated he requested Wal-Mart make a community benefit contribution of \$1M and he has received no response. He questioned the approval of a 24-hour operation.

A motion by Councilmember Kalinowski, seconded by Councilmember Conley to table the resolutions was pulled by Councilmember Kalinowski and agreed to by Councilmember Conley.

Councilmember Simonsen stated he could support continuing the design issues however he feels consideration of the final EIR should not be continued. He expressed concern that issues raised this evening are not consistent with other projects in Antioch.

Councilmember Kalinowski stated the following motion would allow sufficient time for the applicant and staff to address all the issues raised this evening.

Councilmember Conley discussed the historical contributions made by Wal-Mart to various other communities and requested Antioch be treated similarly.

On motion by Councilmember Kalinowski, seconded by Councilmember Conley the City Council continued this item to January 9, 2007. The motion carried the following vote:

Ayes: Freitas, Kalinowski, Conley

Noes: Davis, Simonsen

**PUBLIC COMMENTS** - None

### **STAFF COMMUNICATIONS**

City Manager Jakel reminded the City Council and community a Quality of Life Forum is scheduled on November 18, 2006 and city staff would be meeting with the Housing Authority on October 25, 2006 to discuss issues raised at the last community forum.

Councilmember Kalinowski requested the city's website reflect the Quality of Life Forum date.

**COUNCIL COMMUNICATIONS** - None

### **ADJOURNMENT**

With no further business, Mayor Freitas adjourned the meeting at 12:40 A.M. to the next regular Council meeting on November 14, 2006.

Respectfully submitted:

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L. JOLENE MARTIN,  
CMC, City Clerk