

**ANTIOCH CITY COUNCIL  
ANTIOCH DEVELOPMENT AGENCY**

**Regular Meeting  
7:00 P.M.**

**Council Chambers  
September 28, 2010**

**5:45 P.M. - CLOSED SESSION**

- 1. CONFERENCE WITH LABOR NEGOTIATOR** . Employee organizations: Public EmployeesqUnion Local No. 1, Operating Engineers Local Union No. 3, Antioch Police Officersq Association, Antioch Police Sworn Management Association, Management Group, Confidential Group, Treatment Plant Employeesq Association. This Closed Session is authorized by California Government Code §54957.6.
- 2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION** . Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9: One potential case.

Mayor Davis called the meeting to order at 7:10 P.M., and City Clerk Martin called the roll.

Present: Council Members Kalinowski, Rocha, Moore, Parsons and Mayor Davis

City Attorney Nerland reported the City Council had been in Closed Session and provided the following report:

**Item #1: CONFERENCE WITH LABOR NEGOTIATOR** . Employee Organizations - no reportable action was taken.

**Item #2 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION** regarding the Council's action on the WalMart Expansion, which could lead to significant exposure to litigation, City Council by a 3/2 vote waived Attorney/Client privilege and released the opinion written by outside Counsel Rick Jarvis. Copies were made available to the public, proponent and opponents.

**PLEDGE OF ALLEGIANCE**

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

**INTRODUCTION**

Supervisor Federal Glover introduced and welcomed New Fire Chief for Contra Costa Fire District Daryl Louder.

Chief Louder thanked Supervisor Glover and the City Council for the introduction this evening and stated he looked forward to being partners with the City in protecting the community. Councilmember Parsons welcomed Chief Louder to the community.

Mayor Davis congratulated Chief Louder on his relocation to California and welcomed his partnership with the City.

## **PROCLAMATIONS**

Domestic Violence Awareness Month, October 2010  
Driftwood Yacht Club Day and Make a Wish Day, October 2, 2010

On motion by Councilmember Moore, seconded by Councilmember Kalinowski, the Council unanimously approved the proclamations.

Councilmember Rocha presented the proclamation proclaiming October 2010 as *Domestic Violence Awareness Month* to Tim Truesdale who reported on the services provided by STAND for Families Free of Violence. He invited the community to attend the Rebuilding Lives fundraising luncheon being held on October 14, 2010 at 12:00 P.M. at the Concord Hilton.

Councilmember Moore presented the proclamation proclaiming October 2, 2010 as *Driftwood Yacht Club Day and Make a Wish Day* to Commodore Greg De La Torre on behalf of the City Council in recognition of the Driftwood's contribution. He invited the community to participate in the Boating Cruise and Bar-B-Que on October 2, 2010 to benefit the children of the Bay Area through the Make-A-Wish Foundation.

## **ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS**

Wendee Williamson, Contra Costa County Fair, invited the community to the Fall Fair on November 13 and 14, 2010 at the Fair Grounds. Contact information was provided.

Chief Hyde announced the 19th Neighborhood Cleanup would be held in the Country Manor Park area on October 2, 2010 from 9:00 . 11:00 A.M.

Julie Haas. Wajdowicz announced the following events:

- " Citywide Garage Sale, October 9-10, 2010.
- " Reuse Roundup, Somersville Towne Center, October 16, 2010, 8:00 . 1:00 P.M...
- " Wacky Container Party, October 19, 2010, Antioch Library
- " Trashy Art for the Tweens on October 20, 2010 Antioch Library
- " Costume Exchange on October 23, 2010 at Prewett Water Park

She reported the Coastal Cleanup Event was very successful and 375 volunteers participated.

Walter Ruehlig, representing the Interfaith Peace Project, reported the International Day of Peace was held on September 18-19, 2010. He thanked those who attended and made donations. He further stated he had attended a County Library Commission meeting in Lafayette, where *Friends of the Library* had made a donation from the state of 13,000 books. Anyone interested in the book donations was encouraged to contact him.

Barbara Sobalvarro, representing the Friends of Animal Services, announced October was *National Adopt a Shelter Dog Month* and in celebration Friends of Animal Services would be having an adoption promotion in October. Additionally, a dog celebration would be held on October 2, 2010 from 11:00 - 2:00 P.M. at the Antioch Animal Shelter.

Karen Kops, President of Homeless Animals Response Program, (HARP), announced a meeting would be held to discuss the formation of Commission on Animal Rescue and Education (CARE) on September 29, 2010 from 7:00 - 9:00 P.M. at the Antioch Police Department Community Room.

**PUBLIC COMMENTS** - None

### **CITY COUNCIL SUBCOMMITTEE REPORTS**

Councilmember Parsons announced she would be out of town and unable to attend the Mello Roos meeting on October 4, 2010.

**MAYOR'S COMMENTS** - None

#### **1. COUNCIL CONSENT CALENDAR**

**A. APPROVAL OF COUNCIL MINUTES FOR AUGUST 17, and SEPTEMBER 14, 2010**

**B. APPROVAL OF COUNCIL WARRANTS**

**C. APPROVAL OF TREASURER'S REPORT FOR AUGUST 2010**

**D. RESOLUTION NO. 2010/65 APPROVING AMENDMENT NO. 2 WITH DELTA DIABLO SANITATION DISTRICT FOR THE OPERATION OF THE DELTA HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY**

**E. RESOLUTION NO. 2010/66 AUTHORIZING THE CITY MANAGER TO EXECUTE AN EASEMENT GRANT DEED OVER PORTIONS OF LOT 92, "DRAINAGE EASEMENT" AND LOT "A" OF SUBDIVISION 3904 (126 M 44) TO PACIFIC GAS AND ELECTRIC COMPANY (STATE PARCEL NO. 61129-3) AND A QUITCLAIM DEED FOR A PARCEL LOCATED ON SUNSET DRIVE TO CONTRA COSTA COUNTY (STATE PARCEL NO. 61210)**

On motion by Councilmember Kalinowski, seconded by Councilmember Moore, the Council unanimously approved the Council Consent Calendar.

### **PUBLIC HEARINGS**

#### **2. ADOPTION OF THE 2007-2014 HOUSING ELEMENT**

On motion by Councilmember Kalinowski, seconded by Councilmember Parsons, the City Council unanimously continued the item to October 12, 2010.

**3. APPEAL OF THE FINAL ENVIRONMENTAL IMPACT REPORT CERTIFICATION AND DESIGN REVIEW APPROVAL FOR THE WALMART REMODEL AND EXPANSION PROJECT (AR-04-25) (Continued from 7/27 and 8/17/10)**

Community Development Director Wehrmeister and City Attorney Nerland presented the staff report dated September 21, 2010 recommending: given the action by the City Council on August 17, 2010, staff recommends that the City Council not take further action on the EIR, approve the addendum and design review application, and deny the appeals.

City Attorney Nerland reported there was correspondence on the dais this evening from the following individuals that would become part of the public record:

- " Manny Soliz Jr.
- " Donald Sturke
- " Adams Broadwell Joseph & Cardoza
- " Shute, Mihaly & Weinberger
- " Herum, Crabtree Attorneys
- " M.R. Wolfe and Associates
- " Rick Jarvis, Jarvis, Fay, Deporto and Gibson, (City Council waived attorney-client privilege to release this opinion)

City Attorney Nerland reviewed the protocols for the meeting.

Mayor Davis stated the appellants and proponent would receive 10 minutes for public comment and individual speakers would receive 60 seconds. Any remaining time from the proponent's 10 minutes may be used for rebuttal.

In response to Councilmember Moore, Councilmember Kalinowski stated that allowing the appellant the opportunity for rebuttal would deviate from past practice.

Mayor Davis opened the public hearing.

Mariam Montesinos, representing Sheppard Mullin on behalf of WalMart Stores Incorporated, stated they believed the San Diego Navy case could be applied based on the principles established and Council was not reconsidering their decision on the EIR, they were taking a different approach based on that case. Additionally she noted staff had indicated the City Council's discretion was limited to Design Review of the project. She further noted the General Plan did not require consistency with each and every goal and policy and staff had provided direction on conditions that were reasonable to apply to the project. She stated WalMart's architects and engineers were available to address the project design.

Mark Wolfe, representing M. R. Wolfe & Associates, and speaking on behalf of appellants California Healthy Communities Network and Antioch residents Johnny Ray and Audrey Caughron, urged the City Council to adopt Attachment B+. In reference to his letter dated September 28, 2010, he made the following conclusions:

- “ The Council should deny the project outright because it was inconsistent with the General Plan
- “ The San Diego Navy case actually supported the position that an EIR was required for the Design Review Application

Brent Jolley, representing appellants Antioch Citizens for Smart Growth, stated he was in agreement with statements made by Mr. Wolfe this evening. In referencing his letter dated September 28, 2010, he made the following conclusions:

- “ Reconsideration was unavailable and therefore so was resolution C.
- “ Resolution A as proposed addendum should be rejected
- “ The action reflected in resolution B was the appropriate course of action

The following additional speakers spoke.

Richard Mota, Antioch resident, speaking on behalf of himself and his wife, voiced their support of the WalMart expansion project and the convenience of shopping in one location. Mayor Davis gave his regards to Mrs. Mota and wished her better health.

Mel Teigen, Antioch resident, voiced his support of the expansion of WalMart and noted other grocery retailers within Antioch had expanded without opposition.

Allen Payton spoke in support of the WalMart expansion project, and noted the building had rights to expand, which were given in 1998.

John Vagenas, Rhonda Foreman, and Ashleigh and Mitch Fernandez submitted speaker cards indicating they were opposed to the WalMart expansion project.

George Van Hasselt, representing Antioch Citizens for Smart Growth and East County Democrats for Action, spoke in opposition to the WalMart expansion project, stating that those he represented felt approval of the project would cause people to lose their jobs, health benefits and possibly their homes.

Timothy Riley, Antioch resident, spoke in opposition to the WalMart expansion project and discussed the negative impacts approval of the project would have on local businesses. He stated if WalMart did not keep their original promises, the City Council should not support the expansion.

Lupe Sanchez, Brentwood resident, spoke in opposition to the WalMart expansion project noting she felt that approval would result in the closure of several grocery stores in the area.

Richard Mossman, President of the Antioch Democratic Club, requested the Council support the citizens of Antioch and deny the expansion of WalMart. He suggested modifying the entitlement to the current WalMart store.

Angel Luevano, on behalf of League of United Latin American Citizens (LULAC), spoke in opposition to the WalMart expansion project and urged the City Council to approve resolution # which would deny the project expansion.

Brad Cope, Oakley resident, stated he felt the majority of the community did not support the WalMart expansion project.

Ralph Hernandez, Antioch resident, Citizens for Democracy, submitted for the record a recording of the June 23, 1998 City Council meeting and annotated agenda, noting he felt it proved the City had distorted the facts regarding the previous approval for the shopping center.

Tony Tescareno spoke in opposition to the WalMart expansion project and urged the City Council to vote against the approval this evening.

Phil Tucker, California Healthy Communities Network, recommended the City Council vote to approve resolution #.

Mayor Davis reported he was in receipt of written comments from the following:

- " 187 individuals who did not wish to speak and indicated they were opposed to the project
- " 11 individuals who did not wish to speak indicating they were in support of the project
- " 6 individuals who did not wish to speak indicating they were neither for nor against the project and did not respond when names were called

Mayor Davis declared a recess at 8:22 P.M. The meeting reconvened at 8:38 P.M. with all Councilmembers present.

Angie Stoner, Public Affairs Manager for WaMart, thanked the City Council and staff for the time they had spent on the project. She noted WalMart had met all the legal requirements to move forward on the expansion and they had shown through the process they were a good neighbor and employer. She further noted the project would provide the community with an increase in sales tax revenue and new employment opportunities. She stated she hoped WalMart could continue to be a partner in the community and she would appreciate the Council's vote on the expansion and Design Review. She stated WalMart's architects and engineers were available to address the project design.

Mayor Davis closed the public hearing.

In response to Councilmember Moore, Ms. Stoner clarified if the expansion were approved Walmart planned to move forward with discussing a formal agreement with the Contra Costa Building and Construction Trades Council and the Carpenters' Union to work on the project.

In response to Councilmember Moore, Mayor Davis indicated the CD presented to the City Council from Mr. Hernandez would be entered into the public record.

Councilmember Moore expressed concern Mr. Hernandez was not given additional time to present the information he brought forward this evening.

Councilmember Rocha stated during the original application for the Williamson Ranch Plaza many residents stated they supported the project, provided it did not have any negative impacts on existing local businesses. She stated she could not support the expansion project, as she felt the economy would not support an additional grocery retailer.

Councilmember Moore agreed with Councilmember Rocha and stated based on the information received, he felt it was in the best interest of the community to deny the project and uphold the appeals.

A motion was made by Councilmember Rocha, seconded by Councilmember Moore, to approve the resolution upholding the appeals, overturning the decision of the Planning Commission and denying the WalMart expansion project. They included the completion of the last sentence of page 2, paragraph b. to read: %b .and therefore is subject to further discretionary review.+

The motion failed by the following vote:

Ayes: Rocha, Moore

Noes: Davis, Kalinowski and Parsons

In response to Councilmember Kalinowski, Ms. Stoner stated they had worked closely with Captain Cantando and had increased security in the parking lots and they would be upgrading their security system and continuing dialog with the Antioch Police Department in the future.

Community Development Director Wehrmeister clarified security features were part of the project description and would be required to be implemented.

City Attorney Nerland clarified, with the following motion to approve the resolution (attachment A), the City Council was not taking any action to certify the Environmental Impact Report.

**RESOLUTION NO. 2010/67**

On motion by Councilmember Moore, seconded by Councilmember Parsons, the City Council approved the resolution denying the appeals, approving the Addendum and approving the WalMart expansion project (attachment A), with project specific condition #46 revised to read:

#46 - That trash receptacles shall be placed in the parking lot at every cart corral. The receptacle shall be made of a durable material such as aluminum or stainless steel and designed for high use areas. The Community Development Department shall approve the specification with the building permit plans.

The motion carried the following vote:

Ayes: Kalinowski, Davis, Moore, Parsons

Noes: Rocha

Mayor Davis declared a recess at 8:57 P.M. The meeting reconvened at 9:03 P.M. with all Council/Agency Members present.

**4. AGENCY REGULAR AGENDA**  
**A. APPROVAL OF AGENCY WARRANTS**

On motion by Agency Member Parsons, seconded by Agency Member Kalinowski, the Agency unanimously approved the Agency Warrants.

**PUBLIC COMMENTS** - None

**STAFF COMMUNICATIONS**

City Manager Jakel announced the following City Council meeting schedule; October 12 and 26, 2010 and November 9 and 23, 2010. He noted Councilmember Kalinowski would not be attending the October 12, 2010 City Council meeting.

City Manager Jakel discussed a recent report from Washington DC, regarding Antioch road conditions. He noted the study was not through MTC, which does not agree with the conclusions. He stated they would not be changing the methodology used for measuring road conditions in Antioch.

Mayor Davis requested a full report regarding road conditions be presented to the City Council in January or February 2011.

**COUNCIL COMMUNICATIONS** - None

With no further business, Mayor Davis adjourned the meeting at 9:06 P.M. to the next regular Council meeting on October 12, 2010.

Respectfully Submitted:

---

L. JOLENE MARTIN, CMC  
City Clerk