

**ANTIOCH CITY COUNCIL  
ANTIOCH DEVELOPMENT AGENCY**

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

**March 8, 2011  
Council Chambers**

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

- 1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** – Rock Dean Allison v. City of Antioch et al., Case MSC09-01846 (Contra Costa County Superior Court). This Closed Session is authorized by California Government Code §54956.9(a)
  
- 2. CONFERENCE WITH LEGAL COUNSEL – LIABILITY CLAIMS** – Claims of Frank Sterling, Robert Barr and Timothy Vierra. This Closed Session is authorized by California Government Code §54956.95
  
- 3. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED OR INITIATING LITIGATION:** Initiation of Litigation Pursuant to California Government Code §54956.9(c): 1 potential case.
  
- 4. CONFERENCE WITH LABOR NEGOTIATOR** – Employee organizations: Public Employees' Union Local No. 1, Operating Engineers Local Union No. 3, Antioch Police Officers' Association, Antioch Police Sworn Management Association, Management Group, Confidential Group, Treatment Plant Employees' Association. Agency designated representatives: Deborah McHenry, Human Resources Director and Glenn Berkheimer, IEDA. This Closed Session is authorized by California Government Code §54957.6.

Mayor Davis called the meeting to order at 7:12 P.M., and City Clerk Martin called the Council/Agency roll.

Present: Council Members Kalinowski, Harper, Rocha, Agopian and Mayor Davis

City Attorney Nerland reported the City Council had been in Closed Session and due to time restraints were unable to discuss items #1 and #2. Time permitting; those items would be discussed in Closed Session following this evening's meeting. With regards to #3 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED OR INITIATING LITIGATION, no action was taken, and #4. CONFERENCE WITH LABOR NEGOTIATOR, direction was given to staff.

**PLEDGE OF ALLEGIANCE**

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

**ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS**

Allen Payton, Antioch resident, requested the City Council assign a liaison to work with him and staff to bring back the fireworks display for the 4th of July.

City Attorney Nerland introduced the urgency item before the City Council this evening "Conveyance of Antioch Development Agency property to the City of Antioch," and noted the item was before the City Council due to the need for immediate action. She further noted the item came to the attention of the Agency after the agenda was posted.

Mayor Davis convened as the Antioch City Council/Antioch Development Agency. City Clerk Martin called the roll with all Council/Agency members present.

On motion by Council/Agency member Rocha, seconded by Council/Agency member Kalinowski, the City Council/Antioch Development Agency unanimously placed the urgency item/action item "Conveyance of Antioch Development Agency property to the City of Antioch" on the agenda as #3A.

### **PUBLIC COMMENTS**

Gil Murillo, Antioch resident, suggested the City Council consider business licenses for rental property as a way to generate revenue to fund code enforcement. He requested the City Council consider sending notifications to businesses that were in violation of laws and implementing a reserve program for the Antioch Police Department.

### **COUNCIL SUBCOMMITTEE REPORTS**

Councilmember Kalinowski reported there had been ongoing discussions through the transportation committees relative to the City of Pittsburg's participation in ECCRAFA. Additionally, he reported State Route 4 bonding had been cancelled by the State and he would provide more information on the issue at a future meeting.

Allen Payton, Antioch resident, added he had been made aware of delays in the State 4 widening project of up to 6-8 months.

### **MAYOR'S COMMENTS - None**

- 1. COUNCIL CONSENT CALENDAR**
  - A. APPROVAL OF COUNCIL MINUTES FOR FEBRUARY 22, 2011**
  - B. APPROVAL OF COUNCIL WARRANTS**
  - C. AUTHORIZE CITY SPONSORED "KEEP ANTIOCH BEAUTIFUL DAY" EVENT**
  - D. RESOLUTION NO. 2011/13 ACCEPTING WORK AND AUTHORIZING CITY ENGINEER TO FILE A NOTICE OF COMPLETION FOR THE PREWETT PARK COMMUNITY FACILITY (P.W. 567-C)**
  - E. FIRST AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT WITH LSA ASSOCIATES, INC., FOR CONSTRUCTION MONITORING FOR THE MARINA BOAT LAUNCH RAMP (P.W. 523-16)**

- F. **RESOLUTION NO. 2011/14 APPROVING LETTER OF UNDERSTANDING FOR THE ANTIOCH POLICE SWORN MANAGEMENT ASSOCIATION**
- G. **RESOLUTION NO. 2011/15 APPROVING LETTER OF UNDERSTANDING FOR THE ANTIOCH POLICE OFFICERS' ASSOCIATION**
- H. **RESOLUTION NO. 2011/16 IN SUPPORT OF THE CITY'S GRANT APPLICATION TO THE METROPOLITAN TRANSPORTATION COMMISSION (MTC) REQUESTING PLANNING GRANT FUNDS FOR THE PRERARATION OF A SPECIFIC PLAN FOR THE DOWNTOWN "RIVERTOWN" AREA LOCATED WITHIN THE CITY OF ANTIOCH**

On motion by Councilmember Harper, seconded by Councilmember Agopian, the Council unanimously approved the Council Consent Calendar with the exception of item #G which was removed for further discussion.

Item G – Art Lucero, Local 1, Todd Northcum, Local 1, Shaun Connelly, Local 1 differed their public speaking time to Rollie Katz, representative for Public Employee Union Local 1, who clarified they were not asking the City Council to not adopt the agreement. He stated they were willing to make concessions provided they were fair and equitable to those made by all other employee groups.

Sergeant Tom Fuhrmann, Antioch Police Department (APD) and President of the Antioch Police Officers Association (APOA) discussed details of the resolution before the City Council this evening. He thanked Mayor Davis and City Manager Jakel for their willingness to discuss the issues and listen to the views of the APD. He requested the City Council approve the resolution.

Rodger McKeon, Vice President of the Antioch Police Officers Association, discussed concessions made by the APOA and urged the City Council to approve the resolution.

Councilmember Agopian thanked everyone who was in attendance and stated he valued the work they perform for the City.

On motion by Councilmember Agopian, seconded by Councilmember Harper, the City Council unanimously approved item G.

### **COUNCIL/AGENCY PUBLIC HEARING**

- 2. **SALE OF CITY PROPERTY TO THE ANTIOCH DEVELOPMENT AGENCY AND A DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT WITH HABITAT FOR HUMANITY EAST BAY FOR PROPERTY LOCATED ALONG THE WEST SIDE OF "L" STREET BETWEEN 4TH AND 10TH STREETS**

Housing Coordinator Kennedy presented the staff report dated March 8, 2011 recommended the following Council action: 1) adopt the resolution of the City Council approving the sale and conveyance of City owned eleven lots totaling approximately 30,000 square feet located

generally along the west side of "L" Street between 4th and 10th Streets in Antioch, to the Antioch Development Agency, and 2) adopt the resolution of the City Council approving a Disposition, Development, and Loan Agreement by and between the Antioch Development Agency and Habitat for Humanity East Bay for the development of up to ten single-family homes located along the west side of "L" Street between 4th and 10th Streets. Ms. Kennedy recommended the following Agency action: 1) adopt the resolution of the Antioch Development Agency approving a purchase and sale agreement with the City of Antioch, and 2) adopt the resolution of the Antioch Development Agency approving a Disposition, Development, and Loan Agreement by and between the Antioch Development Agency and Habitat for Humanity East Bay for the development of up to 10 single-family homes located along the west side of "L" Street between 4th and 10th Streets

Housing Coordinator Kennedy clarified there was an error in the staff report under the financial impact and the actual sum of the gas tax fund to be reimbursed was \$150,000.

City Clerk Martin called the Council/Agency roll with all Council/Agency members present.

Ben Helber, representing Habitat for Humanity East Bay, provided a breakdown of administrative costs for the project. He presented a handout of the project location and proposed site development and noted as part of the project six lots would be coming from the City and Habitat would be acquiring 4 additional lots, which they were actively looking for at this time. He further noted an appraisal was completed, which came back at \$25,000 for each lot.

Director of Community Development Wehrmeister added part of the project was the applicant would be merging lots to create buildable parcels.

Ms. Kennedy stated habitat was proposing to use the single story Oakley model for the project, as depicted in the handout.

City Attorney Nerland reported at this time staff was unsure if any further land use entitlements were going to be required for the project therefore it was possible the Council/Agency would not be reviewing it again. As the property owners, if there were issues before the City conveyed the property, this may be the only time to have them addressed.

Director of Community Development Wehrmeister added the project would need to comply with the City's' design guidelines.

Speaking to the possibility that in the future the State may take away redevelopment to help balance their budget, City Attorney Nerland stated it was her understanding if the Agency entered into a legally binding obligation such as the Disposition Development and Loan Agreement (DDLA), they would be able to take the steps to effectuate that.

Mr. Helber clarified there was a provision in the DDLA that if Habitat was unable to obtain the four additional parcels they could move forward with the 6 agency parcels, however it required they come back and resubmit a revised budget.

Mayor/Chairperson Davis opened the public hearing.

Martin Fernandez, Antioch resident, questioned if the City marketed the property prior to considering the sale to Habitat for Humanity. He expressed concern the net cost per home would be \$300,000 and suggested the purchase and rehabilitation of foreclosed homes as habitat for humanity units. He requested the City Council/Agency delay action on the matter to study the issue.

Christian Gargaro, Antioch resident and habitat homeowner spoke in support of the request from Habitat for Humanity and discussed the value the program has had in his life. He encouraged the City Council/Agency to approve the resolutions.

Mayor/Chairperson Davis closed the public hearing.

Councilmember Kalinowski stated he supported Habitat for Humanity; however he expressed concern for an overconcentration of the product type housing in one area. He voiced his support for partnering with Habitat for Humanity to rehabilitate existing homes.

Ms. Kennedy reported currently the City had been rehabilitating existing homes through the NSP program; however those costs had been excessive.

Mr. Helber clarified \$300,000 was the total cost to take a lot and develop a home; however the market would drive the price of the home. He noted that based on current market research, they estimated selling the homes for approximately \$190,000.

Councilmember Rocha felt the project would greatly enhance the area and provide homeownership opportunities for those that in need.

Councilmember Agopian voiced his support for Habitat for Humanity and what they had done for blighted properties. He expressed concern for those properties being developed for \$221 per square foot and for the additional concentration of the type of product in downtown. He stated he would support the rehabilitation of existing homes.

Mr. Helber clarified rehabilitations of existing homes in this area were costing approximately \$250,000 and the NSP contribution was quite high. He stated for the City's contribution of \$57,000 per home, they could get a brand new home that will meet their Regional Housing Needs Allocations (RHNA).

Mayor/Chairperson Davis felt the City should improve the existing housing stock and felt it was incumbent upon the City to keep the area as an entry point to showcase the downtown.

Councilmember Rocha stated those homes would improve the entry into downtown and she expressed concern with the possibility for redevelopment being taken by the State, the City may not have the opportunity to act on this in the future.

Councilmember Kalinowski stated the property was held by the City therefore they still retain the property moving forward. He expressed concern the project would not be subject to further approval of the City Council and he does not feel the product type was conducive to an entryway into the marina/downtown area. He stated he would support landscaping the area and

retaining it as open space. He noted the issue was about varying the product model within different areas of the community so there was a balance.

On motion by Council/Agency member Kalinowski, seconded by Council/Agency member Agopian, the City Council/Agency declined the sale of City property to the Antioch Development Agency as the City Council/Agency does not believe it was the appropriate project for the area. The motion carried by the following vote:

Ayes: Kalinowski, Harper, Agopian, Davis

Noes: Rocha

### **COUNCIL PUBLIC HEARING**

#### **3. RESIDENTIAL DEVELOPMENT ALLOCATION (RDA) ORDINANCE EXTENSION (Z-11-01)**

Director of Community Development Wehrmeister presented the staff report dated March 3, 2011 recommending the City Council 1) introduce the ordinance by title only; 2) introduce the ordinance to amend Municipal Code §9-5.4012 in order to extend the sunset date of the Residential Development Allocation Ordinance to May 1, 2012

On motion by Councilmember Kalinowski, seconded by Councilmember Harper, the City Council unanimously 1) introduced the ordinance by title only; 2) introduced the ordinance to amend Municipal Code §9-5.4012 in order to extend the sunset date of the Residential Development Allocation Ordinance to May 1, 2012

Mayor Davis declared a recess at 8:23 PM. The meeting reconvened at 8:43 P.M. with all Council/Agency members present.

#### ***ADDED URGENCY ITEM***

#### **3A. CONVEYANCE OF ANTIOCH DEVELOPMENT AGENCY PROPERTY TO THE CITY OF ANTIOCH**

City Attorney Nerland presented the staff report dated March 8, 2011 recommending the City Council/Agency adopt the resolution of the Antioch Development Agency authorizing the conveyance of certain real property from the Antioch Development Agency to the City of Antioch.

Council/Agency member Harper arrived at 8:46 P.M.

#### **RESOLUTION NO. 2011/17** **ADA - 442**

On motion by Council/Agency member Agopian, seconded by Council/Agency member Rocha, the City Council/Agency unanimously adopted the resolution

Mayor Davis declared a recess at 8:51 PM. The meeting reconvened at 9:04 P.M. with all Council/Agency members present.

Councilmember Harper recused himself from voting on item #4 noting he may have received campaign funds from a company associated with Discovery Builders. He left the Council Chambers.

#### **COUNCIL REGULAR AGENDA**

**4. NOTICE OF DEFAULT: BLACK DIAMOND RANCH PROJECT UNDERTAKEN BY SECON FINANCIAL AND CONSTRUCTION CO., INC. /DISCOVERY BUILDERS/BLACK DIAMOND LAND INVESTORS LLC**

**NOTICE OF BREACH: SETTLEMENT AGREEMENT DATED SEPTEMBER 15, 2009 BETWEEN THE CITY AND SPPI-SOMERSVILLE, INC. AND SOMERSVILLE-GENTRY INC.**

**DEED RESTRICTION ON CITY-OWNED OPEN SPACE LOCATED IMMEDIATELY WEST OF SOMERSVILLE ROAD, IN THE VICINITY OF THE BLACK DIAMOND RANCH SUBDIVISION**

City Manager Jakel, Director of Community Development Wehrmeister, Capital Improvement Director Harrington and City Attorney Nerland presented the staff report dated March 2, 2011.

Due to the continued failure to construct the Markley Creek Culvert Crossing project within one year of all of the environmental permits being obtained on July 31, 2009 and to then proceed with the construction of the Somersville Road widening, a Notice of Default and Breach was sent to Discovery Builders/Seeno Homes on February 24, 2011.

City Attorney Nerland reported that subsequent to the preparation and distribution of the staff report the City received a formal response this afternoon from Farella Braun & Martel LLP, representing Discovery Builders, Inc., Black Diamond Land Investors, LLC, Secon Financial and Construction, Inc., and affiliated entities. She noted the response was on the dais, signed by James Colopy and dated March 8, 2011. The letter indicated they intended to cure any default by not constructing the culvert but rather reimbursing the City all of its costs to construct it. Therefore, certain actions needed to be taken to effectuate the cure and assuming Discovery Builders and Seeno Homes take those actions; they would no longer be in default. Those actions included but are not limited to:

1. Taking any steps necessary to transfer the environmental permits for the Culvert project in its name of Discovery Builders to the City.
2. Providing electronic and hard copies of all design plans and specifications for the Culvert project and assigning the City the right to use them to bid and construct the project.

3. Reimbursing the City for costs incurred in obtaining the environmental permits, design and construction of the project.
4. Proceeding with the construction of the Somersville Road Widening project after completion of the Culvert Crossing project.

In addition, staff recommended if Seeno Homes/Discovery Builders were now taking the position that the City construct the Culvert Crossing project, then the City Council should direct staff to bring a status report and any actions to the Council in two weeks and to approve the deed restriction on Black Diamond Ranch open space property located immediately west of Somersville Road that Discovery Builders failed to provide the Department of Fish and Game before deeding the property to the City.

Public comment opened.

James Colopy, on behalf of Discovery Builders and affiliated entities, stated he submitted a letter outlining their position on the issues and clarified the letter requested the matter be deferred for 60 days, as required so the parties could engage in good faith discussions in an effort to resolve the parties' contentions concerning the Markley Creek culvert crossings and Somersville Road widening.

Public comment was closed.

Councilmember Agopian stated after careful review of the facts and agreements as outlined in the staff report, he felt it was prudent of the City Council to rectify the situation this evening. He stated he hoped the parties see immediate movement in the direction of building the culvert and the road at the expense of the developer.

**RESOLUTION NO. 2011/18**

On motion by Councilmember Kalinowski, seconded by Councilmember Agopian, the City Council members adopted the resolution confirming the Notice of Default but including the following:

On March 8, 2011, Discovery had indicated in writing they intended to cure any default by not constructing the culvert but rather reimbursing the City all of its costs to construct it. Certain actions needed to be taken to effectuate that cure and assuming Discovery Builders and Seeno Homes took those actions, then they would no longer be in default. These actions included but are not limited to:

- Taking any steps necessary to transfer the environmental permits for the Culvert project in its name of Discovery Builders to the City.
- Providing electronic and hard copies of all design plans and specifications for the Culvert project and assigning the City the right to use them to bid and construct the project.



- Reimbursing the City for costs incurred in obtaining the environmental permits, design and construction of the project.
- Proceeding with the construction of the Somersville Road Widening project after completion of the Culvert Crossing project.

In addition, the motion included approving the deed restriction on Black Diamond Ranch open space property located immediately west of Somersville Road that Discovery Builders failed to provide the Department of Fish and Game before deeding the property to the City and authorizing the City Manager to execute and record the deed restriction when he deemed appropriate

The motion carried by the following vote:

Ayes: Council Members Kalinowski, Rocha, Agopian and Mayor Davis

Councilmember Harper returned to Council Chambers.

**PUBLIC COMMENTS** - None

### **STAFF COMMUNICATIONS**

City Manager Jakel announced the following:

- First Time Homebuyer Seminar on March 8, 2011 from 9:00 A.M. to 2:00 P.M. in Council Chambers.
- Mayor Davis and Analyst Brian Nunnally would be going to Washington D.C. next week on behalf of Delta Diablo Sanitation District and to seek additional funding for Highway 4 and eBART.
- City Council meeting on March 22, 2011

City Attorney Nerland announced the City Council would be adjourning to Closed Session immediately following this evening's meeting.

### **COUNCIL COMMUNICATIONS**

Councilmember Rocha announced the *United Way Earn It, Keep It, Save It* program was available and Assemblywomen Bonilla would be at Operation Junction from 9:00 A.M. – 5:00 P.M. on March 9, 2011.

Councilmember Harper requested staff place a proclamation on the next agenda recognizing April as Parkinson's Disease Awareness Month and suggested the City Council schedule a retreat to conduct strategic planning for implementing ideas brought forward at the Quality of Life forum.

With no further business, Mayor Davis adjourned the meeting at 9:37 P.M. to the next regular Council meeting on March 22, 2011.

Respectfully submitted:

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L. JOLENE MARTIN, City Clerk