

**ANTIOCH CITY COUNCIL
ANTIOCH DEVELOPMENT AGENCY**

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

**July 27, 2010
Council Chambers**

6:00 P.M. - CLOSED SESSION

1. 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. This Closed Session is authorized by California Government Code §54957.6.

2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION —Onita Tuggles v. City of Antioch et al, Northern District Court Case No. C 08-01914 JCS; Santeya Danyell Williams, Mary Ruth Scott, Karen Latreece Coleman, Priscilla Bunton, Alyce Denise Payne, v. City of Antioch et al., Northern District Court Case No. C08-02301 SBA; and Riaz Patras, Maryam Patras and Mark Patras v. City of Antioch et al., Northern District Court Case No. CV-09-1891. This Closed Session is authorized by California Government Code §54956.9.

3. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION Richardson et al. v. City of Antioch et al., Northern District Federal Court, Case No. CV08-3470-JSW. This Closed Session is authorized pursuant to Subdivision (a) of California Government Code §54956.9:

Mayor Davis called the meeting to order at 7:19 P.M., and City Clerk Martin called the Council/Agency roll.

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

City Attorney Nerland reported the City Council had been in Closed Session and with regards to Conference with Labor Negotiator, direction was given to staff, Conference with Legal Counsel – Existing Litigations, no reportable action.

PLEDGE OF ALLEGIANCE

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

PRESENTATION

Recognition of Gateway Center for Learning Committee

Lonnie Karste, Project Manager, recognized the members of the Gateway Centers for Learning Committee who helped to develop the concept to provide improved library services in the community. He thanked the major sponsors and contact information was given. Mayor Davis presented the Gateway Center for Learning Committee members with certificates of recognition and thanked them for their work in the community.

Recognition of Charities for Mayor's Cup Golf Committee

Lonnie Karste, Project Manager, introduced Ron Parrish who reported the Mayor's Cup Golf Tournament held on June 6, 2010, was a very successful event. He recognized the sponsors and announced the beneficiaries. He presented checks to Antioch Sports Legends, Antioch Police Activities League, Lone Tree Golf Youth Scholarship Tara Nelson and Victoria Leone, and the First Tee Contra Costa Program. He thanked Mr. Karste for assisting in making the event a success.

Mayor Davis thanked everyone involved in the event.

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS - None

PUBLIC COMMENTS

Martin Fernandez, Antioch resident, encouraged the Council to consider a parcel tax to address the projected shortfall for next year's budget. He spoke to the importance of supporting the Antioch Police Department and staffing 125 sworn officers. He suggested taking \$200k out of the Water Fund each month until after the November election and begin scheduling budget meetings for next year and quality of life meetings prior to the election.

Allen Payton, Antioch resident, requested agenda item 1E be removed from the Consent Calendar and the City Council reprioritize spending in the current budget to fill the vacancies in the Antioch Police Department.

Paul Seger, Oakley resident, provided the audience with health impact statistics related to the proposed power plants for the Wilbur/Oakley area of the city. He offered additional information to anyone wishing to receive it.

Linda Locke, Friends of Antioch Library, announced she had a book published which she is selling with the profits going to support services at Friends of the Antioch library.

Claudette Honey, discussed difficulties she had obtaining a card room permit from the Antioch Police Department and requested the Council's assistance.

Mayor Davis stated he would follow up on Ms. Honey's request and would provide her with a response.

Fred Hoskins, Antioch resident, read and presented the Council with a written request to obtain compliance to a promise for the City to receive a real BART extension.

Douglas Tokes stated he is in agreement with Mr. Hoskins requests and expressed concern for the weeds in the median on East 18th Street.

Barbara Sobalvarro, President and Founder of Friends of Animal Services, discussed and provided a brochure to the City Council of their goals and the services they provide to the Antioch Animal Shelter. She expressed her concern the Animal Shelter was referred to as a

luxury and special interest at the last City Council meeting, volunteers are being turned away from the shelter and access to non-public areas was not allowed without an appointment in advance.

Willie Mims, representing the Black Political Association, spoke to the increase in the crime rate in Antioch and suggested the Council reconsider their decision to reduce the staffing levels at the Antioch Police Department and asked if there is a contingency plan to address crime issues.

COUNCIL SUBCOMMITTEE REPORTS

Councilmember Parsons requested the City Council's permission to use the City's logo on a Shop Antioch project.

City Manager Jakel stated staff would place the item on the Consent Calendar for the next meeting.

MAYOR'S COMMENTS — none

PROCLAMATION

On motion by Councilmember Moore, seconded by Councilmember Rocha, the City Council unanimously added and approved the *Sister City 43rd Anniversary Celebration with Chichibu Japan* proclamation.

The Sister City Delegation from Japan and Gary Reiman, President of the Antioch Sister City organization accepted the proclamation.

Mr. Katsuo Ikeda, President of the Organization in Chichibu Japan on behalf of Mayor Kuki thanked the City Council, Sister City Organization and host families for welcoming them to the City. He wished good health and prosperity to the City of Antioch.

Mayor Davis expressed condolences to Mayor Kuniyasu Kuki and the people of Chichibu, Japan, for their loss of five emergency responders over the weekend. He welcomed the delegation to Antioch and thanked and recognized the host families.

Mayor Davis and Councilmember Rocha presented the proclamation and Sakurai Street sign to the delegates.

- 1. COUNCIL CONSENT CALENDAR**
 - A. APPROVAL OF COUNCIL MINUTES FOR JULY 13, 2010**
 - B. APPROVAL OF COUNCIL WARRANTS**

C. REJECTION OF CLAIM

1. Tyhera Payton 10/11-1966 (property damage) — *Rejected*

D. WAIVER OF THE IRRIGATION WATER BILL AT THE LONE TREE GOLF COURSE

- E. **“ORDINANCE NO. 2041 C-S, RESOLUTION NO. 2010/51 IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION” WHICH WILL ADD ARTICLE 4 OF CHAPTER 5 TO TITLE 3 OF THE ANTIOCH MUNICIPAL CODE ENACTING A ONE-HALF (1/2) CENT TRANSACTIONS AND USE (SALES) TAX FOR MAINTENANCE OF VITAL CITY SERVICES UPON APPROVAL BY THE VOTERS AT THE NOVEMBER 2, 2010, ELECTION**

- F. **RESOLUTION NO. 2010/52 OF INTENTION TO INITIATE MUNICIPAL CODE AMENDMENTS TO TITLE 9, CHAPTER 5 OF THE ANTIOCH MUNICIPAL CODE IN ORDER TO ADOPT THE WATER EFFICIENT LANDSCAPE ORDINANCE (WELO)**

On motion by Councilmember Rocha, seconded by Councilmember Parsons, the Council unanimously approved the Council Consent Calendar with the exception of items D and E which were removed for further discussion.

Item D – Following discussion, the Council agreed to continue the item to later in the agenda to allow staff to bring back the costs of the irrigation water bill.

The City Council took no action on a motion made by Councilmember Kalinowski, seconded by Mayor Davis, to defer payment of the irrigation water bill at the Lone Tree Golf Course until September 2010.

Item E – Allen Payton, Antioch resident, expressed concern he did not receive a copy of the survey and results. He felt the documents should be released to the public. He questioned who helped to develop the questions for the survey.

City Manager Jakel stated he should finalize the funder’s agreement to release the poll questions and responses tomorrow and the information would be available on the City’s website.

Councilmember Moore clarified he based his decision to move forward on the ballot measure on the budget process and the need to increase revenues to provide a level of service the community demanded.

Willie Mims, representing the Black Political Association, questioned why the public was denied access to the survey, why the City spent taxpayer’s money on it if it was not considered in making the decision to approve the ballot measure moving forward and if the increase in sales tax would resolve the City’s financial problems.

Nancy Fernandez, Antioch resident, voiced her opposition for the increase in sales tax and suggested the public be polled to determine their level of interest in a ballot measure.

Devi Lanphere, Antioch Chamber of Commerce, felt a sales tax increase was a regressive tax impacting the poorest residents first. She felt it would not solve the financial problems and not all the revenues would go to Police Services. She suggested putting two choices on the ballot. Responding to comments from a previous meeting, she reported she meets regularly with her peers and was aware of how other cities are attempting to address their financial challenges. She advocated for pressuring the State to return revenues they have unfairly taken from the cities.

Arne Simonsen, Antioch resident, suggested the City develop a new tax proposal to fund adequate Police services, noting the sales tax increase would not produce the projected revenues and it would not be approved by the voters.

Joseph Adebayo, Antioch resident, representing the East County NAACP, felt a poll of 400 residents does not produce meaningful results. He suggested the Council conduct public outreach and noted he felt it was a regressive tax which would harm the low income residents. He requested the City Council reconsider a sales tax increase.

Douglas Tokes, Antioch resident, spoke in opposition to a sales tax increase and suggested the City consider a 4-5% sales tax for the non-profits that run retail establishments.

City Manager Jakel clarified the poll was paid for privately and the results indicate the only measure that had a chance of being passed by the voters was a sales tax. He noted the Council was determined there was a financial crisis and in order to not erode public safety further, they needed to seek additional money, which could only be approved by the voters in November. Additionally, he noted a sales tax increase could only go on the ballot at a regular election and the next opportunity would be in two years.

Councilmember Kalinowski discussed the financial implications of a parcel tax. He noted the Council needed to address the budget shortfalls as he felt it was unacceptable to allow a further deterioration of staffing of the Antioch Police Department and other critical services. He stated the City Council had elected to ask the residents if they were willing to support a ½ cent sales tax. He discussed concessions the employees and Council had made to help balance the budget. He discussed the results of the survey and noted the burden of a sales tax increase would be shared equally among all residents in Antioch. He clarified the poll was conducted by experts and included specific scientific questions that drove the responses based on those who vote.

On motion by Councilmember Kalinowski, seconded by Councilmember Rocha, the City Council unanimously approved item 1E.

Mayor Davis declared a recess at 8:40 PM. The meeting reconvened at 8:58 PM. with all Councilmembers present.

PUBLIC HEARINGS

2. APPEAL OF THE FINAL ENVIRONMENTAL IMPACT REPORT CERTIFICATION AND DESIGN REVIEW APPROVAL FOR THE WALMART REMODEL AND EXPANSION PROJECT LOCATED AT 4893 LONE TREE WAY (AR-04-25)

City Attorney Nerland reviewed the protocols for the meeting this evening. She noted due to the high volume of speaker cards submitted, staff recommended the City Council hold public comments on the item to 2 minutes.

Following discussion, the City Council agreed to hold public comments to 2 minutes.

Senior Planner Morris presented the staff report dated July 22, 2010, recommending the City Council: 1) Adopt the resolution denying the appeals and upholding the decision of the Planning Commission to certify the Walmart Expansion Project Final Environmental Impact Report (EIR); and 2) Adopt the resolution denying the appeals and upholding the Planning Commission design review approval of the design of the Walmart Expansion Project (AR-04-25).

PROPONANT

Angie Stoner Public Affairs Manager representing Walmart, thanked staff for their expertise during the process of bringing the project forward and the 6,600 local residents who signed cards in support of the expansion. She presented the City Council with 1200 petitions in support of the Walmart expansion project and gave a brief history of the project. She noted with no significant impacts, she believed the project meet the requirements set forth by the City and therefore she requested the City Council deny the appeal before them this evening.

Miriam Montesinos, Land Use Counsel, reported it is the second EIR prepared by the City to address the original concerns of the City Council. She noted the potential of other retail stores closing does not constitute urban decay and the project was in harmony and was consistent with the General Plan as it fell within the Williamson Ranch approvals.

OPPONANT

Bret Jolly, on behalf of Antioch Citizens for Smart Growth, thanked the City Council for the time and effort they had put into the project. He reviewed the issues in the letter he presented to the City Council and presented a packet of background materials supporting the draft resolution for Council consideration. He discussed the authority the Council had in considering the adequacy of the EIR and Design Review for the project. He stated he believed the project would be injurious to the public health and welfare and should not be approved.

Mark R Wolfe, representing the California Healthy Communities Network and Antioch residents Johnny Ray and Audrey Caughron, discussed the City Council's authority in determination of the analysis in the EIR. He stated they believed the EIR failed to acknowledge the potential risk of urban decay, noise and air quality impacts and failed to provide mitigation where

necessary, therefore the City Council had the duty to decline to certify the EIR and deny the project.

Eric Thorn, Oakley resident; Judy Bresciani, Antioch resident; Marie Moulton, Antioch resident; Eve Diamond, Oakley resident; Connie Villagran, Antioch resident; Angel Luevano representing the League of United Latin American Citizens (LULAC); Nancy Mattingly, Oakley resident; Steve Summers, Oakley resident; Deborah Nix, Oakley resident; Donnice Donaldson Pleasant Hill resident; Jo Daniels, Oakley resident; Debbie Schneider, Antioch resident; Mary Ann Messer, Pittsburg resident; Nancy Van Meter, Pittsburg resident; Dick Augusta, Antioch resident; Phil Tucker, Martinez resident; John Nunez Livermore resident; Kathy Summers, Oakley resident; Lupe Sanchez, Brentwood resident, and Ron Servin, Antioch resident expressed concern the economy would not support an additional grocery retailer and therefore some existing businesses would be forced to close should the expansion be approved. They urged the City Council to deny the project.

Mayor Davis reported he received written comment from the following residents indicating they are opposed to the project:

Shirley Sasahara, Concord resident; Nancy Kelly, Antioch resident; Brad Cope, Oakley resident; Kim Goulark, Oakley resident; Quanah Sala, Brentwood resident; Steven Burke, Antioch resident; Renee Easten, Antioch resident; Jonathan Lee, Oakley resident; Ingrid Garcia, Brentwood resident; Laurie Lear, Oakley resident; Jason Arnold, Brentwood resident; Jakki Ong-Maxwell, Antioch resident; Juliet Beltran, UFCW Local #5; George Economou, Antioch resident; Ray Robertson, Antioch resident; Heather Beard, Brentwood resident; Melanie Wamsley, Antioch resident; Lionel Chin, San Ramon resident; Cynthia Basterrechea, Antioch resident; Argentina Davila-Luevano, Antioch resident; Cynthia Gorman, Antioch resident; Tony Meadows, Concord resident; Alice Bristol, Antioch resident.

Paul Sager, Oakley resident, felt the EIR does not adequately address the impacts from the project and suggested the City look into adopting a big box ordinance.

Roger Burton, Antioch resident, stated tax revenue would not increase from the sale of groceries nor is there a guarantee Walmart would hire Antioch residents.

George Van Hasselt, President of the East County Democrats for Action, expressed concern Walmart does not pay their employees a living wage.

Ed McIntyre, Antioch resident, felt the expansion would increase crime and blight in the neighborhood.

Ed Bristol, Antioch resident, spoke in opposition to the expansion of Walmart and the value of supporting local businesses.

Richard Mossman, Antioch resident, spoke in opposition to the Walmart expansion.

Willie Mims, representing the Black Political Association felt the EIR was flawed if it did not study the negative impacts the expansion would have on exciting grocers in Antioch.

PROPONENTS

Melvin Chappel, Antioch resident, spoke in support of the expansion and urged the City Council to certify the EIR and approve the project.

Tom Quinn, Business representative for the Carpenters Union, spoke in support of the project and reported they had reached an agreement with Walmart to use their union labor for the construction work.

Rich Mota, speaking on behalf of Janelle Mota, spoke in support of the expansion of the Walmart store.

Devi Lanphere, representing the Chamber of Commerce, spoke in support of the expansion of the Walmart and urged the City Council to support the project. She discussed ways in which Walmart has supported the community.

Manny Soliz, Antioch resident, expressed concern, denial of the project would expose the City to litigation noting they had met the conditions requested by the City.

Allen Payton, Antioch resident, gave a brief history of the project and noted sales loss from Winco opening in Brentwood and Pittsburg would be brought back to Antioch with the approval of the expansion.

Ted Vomacka, Antioch resident, spoke in support of the expansion of Walmart noting he shops where he can get the best value. He further noted he does not feel a project of this size will cause three grocery stores to close; he urged approval of the project.

Ralph Garrow Jr., Antioch resident, agreed with the previous speaker and noted free competition for business was good for Antioch. He noted Walmart's application had responded to the input from the City and deserved the City's support.

Bonni Bergstrom, Antioch resident, spoke in support of the Walmart expansion and noted the participation of Walmart in community events.

Arne Simonsen, Antioch resident, stated the appeals did not direct any questions toward the Design Review approval and Walmart had accommodated all concerns the City requested in the previous submittal. He voiced his support for increasing the sales tax base in Antioch and urged the City Council to deny both appeals.

Rich Matoskh, Walmart Store Manager, stated he was proud to work for Walmart and supported their efforts to give back to the community and employees. He urged the City Council to approve the renovation and expansion of the store to help residents save money and time while increase tax revenue and while creating jobs.

Linda Neilson, Antioch resident, stated as a retired person on a limited income she shopped for the best value and stated she felt the expansion would bring tax revenue back into the City

from neighboring communities. She acknowledged Walmart had contributed to the Mayor's Golf Tournament and urged the City Council to support the expansion.

Gloria Barrett, Antioch resident, spoke in support of Walmart expansion to stimulate the local economy and emplacement opportunities, convenience and low-priced products.

Hans Ho, Antioch resident, stated the residents deserved the right to exercise their choice of lower prices and suggested competitors look at their business model to stay competitive. He urged the City Council to accept the findings of the Planning Commission and allow the Walmart project to go forward.

Ed Basaldua, representing the Hispanic Chamber of Commerce of Contra Costa County, spoke in support of the Walmart expansion noting they believed there would be no detrimental effect to small businesses in the area. He urged approval of the project.

Eric Maldonado, representing the Hispanic Chamber of Commerce of Contra Costa County, urged the City Council to approve the Walmart expansion noting it had met all the concerns of the previous Council and EIR. He noted the project would provide jobs, sales revenue, and a redevelopment of the current shopping center.

Rosemary Carver, Antioch resident, thanked the City Council for their dedication to the community. She noted the project would generate additional revenue for the City and there was room for free-open enterprise. She urged approval of the project.

Jessica Williams, Oakley resident, spoke in support of Walmart and discussed their contributions to the community. She urged the City Council to approve the expansion.

Mayor Davis reported he received written comment from the following residents indicating they supported the project;

Jeff Unbehaun, Oakley resident; Martha Taylor; Diane Jacobs, Antioch resident; Lois Tokashiki, Antioch resident; John Wheeler, Antioch resident; Alison Karnes, Antioch resident; Devyn Lindquist, Antioch resident; Minoo Ghassemi, Antioch resident; Keanouph Almoudeh, Antioch resident; Hedyeh Alvandeour, Antioch resident; Linda Pace, Oakley resident; Phillip Prince, Antioch resident; Kay Powers, Antioch resident; Ashley Williams, Antioch resident; Amy Hughes, Knightsen resident; Susan Hargrove, Antioch resident; Kianoujh Azmoudeh, Antioch resident; Kim Barbadillo, Antioch resident; Denise Thompson, Brentwood resident; Donna Page, Antioch resident; Bret Jackson, Antioch resident; Donna Fuentes, Pittsburg resident; Benjamin Sherwood, Bethel Island resident; Jeff Diotte, Antioch resident; Gabrielle Willson, Antioch resident; Tammie Turner, Oakley resident; Maryann McMenemy, Antioch resident; Tina Nguyen, Antioch resident; Mark Staggs, Antioch resident; Terry Staggs, Antioch resident; Florentine Tentuco, Antioch resident; Elsa Whitney, Antioch resident; John Rittart, Antioch resident; Abbey, Antioch resident; Judy Stutzman, Rio Vista resident; Eualina Teves, Antioch resident; Isabora Samar, Antioch resident; Wenona, Mitchler; Virginia Cox, Oakley resident; Ermelinda Whitney, Antioch resident; Maria Flores, Oakley resident; AJ Jose; Joseph Oyedeji; Bisi Rusewe.

Becky Gonzales, Oakley resident spoke in support of Walmart and discussed the value of shopping in their pharmacy.

Harold Ketchum, Antioch resident, spoke in support of Walmart and discussed the value in their business model for the residents of Antioch.

Terry Ramus, Antioch resident, stated he felt Walmart had exceeded the requirements of the City and had a right to compete for business and be treated fairly by the City.

James Kyle, Antioch resident, felt the economics of the project does not have any bearing on the EIR.

Cynthia Anderson, Antioch employee spoke to the value of the Walmart pharmacy and competitive pricing in the industry.

REBUTTAL

Miriam Montesinos, Land Use Counsel, requested the City Council weigh the evidence by the experts. She noted CEQA was not a statute to prevent competition as it was to insure all the environmental impacts had been analyzed. She noted the approval before the City Council was on the Environmental Impacts and she noted there were no impacts that had not been mitigated to less than significant. She in addition noted, the project has abided by all development standards approved by the City Council.

City Attorney Nerland requested a recess to prepare comments in response to public comments.

Mayor Davis declared a recess at 11:13 PM. The meeting reconvened at 11:34 PM. with all Councilmembers present.

Senior Planner Morris clarified the project application was the certification of the EIR and Design Review of the expansion project and noted the project had approval to develop under the Williamson Ranch Plaza Planned Development and the General Plan consistencies findings were made at the time the project was approved and they were not challenged at that time.

Bert Verrips, EIR consultant responding to new comments brought before the City Council reported they do not present any new evidence that would prompt altering the conclusions of the EIR. He clarified the noise disturbance coordinator handled complaints that occur as a result of contractors not complying with mitigations, and it applies only to construction. He submitted to the City Council, a detailed rebuttal from the Air Quality Consultant.

Rich Rodkin, Illingworth and Rodkin, added that they prepared the Noise Study and it was focused and directed towards identifying impacts from any of the new or increased sources of noise individually and cumulatively. Where a particular impact was identified, mitigation measures were either incorporated or added to the project. He further noted the commenter's

discussion of substantial cumulative impacts resulting from traffic noise and inconsistencies with the Zoning Ordinance were incorrect.

Mr. Verrrips, clarified the EIR was not subject to the guidelines/protocols of the Bay Area Quality Management District due to the fact the DEIR for the project was circulated in December 2009, and it reflected the legal and practice requirements at the time.

City Attorney Nerland stated the City Council now deliberated on the matters before them and based their decision on oral and written testimony presented during this evening. She noted if there were prior contacts in which relevant information was shared that forms the basis of their decision, now was the time to bring that information forward.

Councilmember Moore stated the emails and phone calls he received regarding the project were overwhelmingly against the expansion. He spoke to the importance of good-paying, benefitted jobs. He stated as a City Council member, he hoped they show the leadership to improve the quality of life by attracting the best jobs and quality commercial and retail environment for the community.

Councilmember Parsons stated she felt there was validity in the concerns raised regarding the impacts the Walmart expansion would have on the demise of neighborhood grocery stores. She noted with that belief, she disagreed with the conclusion regarding the cumulative urban decay impacts. She noted the calls and emails she received were 3-1 against the expansion.

Councilmember Kalinowski reported Walmart had addressed the issues raised regarding the hours of operation and the square footage therefore he felt it would be responsible to support the project. He expressed concern the land use decision was made in 1998, and not done so in the best interest of the community. He noted the EIR was created by professionals and it was thoroughly analyzed. He further noted Walmart had met the standard for the EIR document. He noted Target recently made the same modifications with no opposition.

Councilmember Rocha questioned how Target was able to expand their grocery department with no opposition. She stated she feels this project will negatively affect other stores and displace people making a living wage. She stated she will be voting in the best interest of families and the community.

Councilmember Moore stated vacant stores can be the start of urban decay and he needs to give that strong consideration. Additionally, he noted he needs to look at the amount of grocery that exists and the addition of another business in the marketplace. He expressed concern urban decay is a strong possibility. In addition, he noted public safety and the economic impacts of the project have not been adequately mitigated to his satisfaction to support additional retail and grocery at this time.

Mayor Davis stated that in these economic times it is prudent to increase the sales tax rate in the city. He noted this will employ union jobs with the construction of the project. He expressed concern that with Walmart addressing all outstanding issues related to downsizing the expansion and public safety a denial of the project will expose the city to litigations it cannot afford to defend. He stated the project meets his findings for approval.

City Attorney Nerland stated the staff and Planning Commission recommendation is to approve the project so before the City Council is a resolution to find the EIR adequate and certify the EIR with those findings and approve the project with conditions of approval. She noted staff is not prepared tonight if the City Council's direction is to deny the project. Therefore, they would ask that the matter be continued so the appropriate resolutions could be brought forward with the findings based on the testimony tonight.

Councilmember Kalinowski stated the City of Antioch has no capacity to take on a lawsuit and the process used in applications and environmental documents and the laws written meet the standard. He stated he agrees with Mayor Davis' statements.

Councilmember Parsons reiterated that she disagrees with the conclusion regarding the cumulative urban decay impacts and she feels there is no benefit to having another grocery store that will put one out of business, creating more blight in a redevelopment area. She questioned the city's exposure to a lawsuit should she vote against the expansion.

City Attorney Nerland responded that under CEQA, an EIR needs to look at physical impacts to the environment and there is no new information that has lead staff or the consultants to reach a different conclusion then the recommendation in the staff report. She noted it is ultimately the City Council's decision whether there is substantial evidence to reach a different conclusion or whether the matter needs to be looked into further; however, ultimately it is about physical impacts to the environment.

Councilmember Moore stated he has taken under consideration the DEIR, FEIR, and staff report as well as testimony heard this evening and he feels the report is not adequate.

Mayor Davis discussed the importance of making a decision that is best for the community and based on the facts.

Councilmember Kalinowski stated that if the motion were to include a continuance, he will not be attending the August 10, 2010, meeting and therefore requests this item be continued to August 17, 2010.

In response to City Attorney Nerland, Councilmember Moore indicated that there is no information staff can bring forward that would reach a different conclusion on the adequacy of the EIR.

On motion by Councilmember Moore, seconded by Councilmember Rocha the City Council upheld the appeal, denied certification of the EIR, and directed staff to bring back findings and resolution of denial on August 17, 2010.

The motion carried by the following vote:

Ayes: Rocha, Moore, Parsons

Noes: Kalinowski, Davis

Mayor Davis declared a recess at 12:53 A.M. The meeting reconvened at 12:59 A.M. with all Councilmembers present.

1. **CONSENT CALENDAR** - *Continued*

D. **WAIVER OF THE IRRIGATION WATER BILL AT THE LONE TREE GOLF COURSE**

On motion by Councilmember Moore, seconded by Councilmember Rocha, the City Council unanimously approved item 1D.

3. **AGENCY REGULAR AGENDA**

A. **APPROVAL OF AGENCY WARRANTS**

On motion by Agency Member Rocha, seconded by Agency Member Kalinowski, the Antioch Development Agency unanimously approved the Agency Warrants.

PUBLIC COMMENTS - None

STAFF COMMUNICATIONS

City Manager Jakel reported the City Council will meet on August 10 and August 17, 2010, for regular meetings and National Night Out will be August 3, 2010. He requested the City Council hold open November 13 and 20, 2010, for the dedication of the new community center. He noted if there is interest in scheduling a Quality of Life Forum, to let staff know. Mayor Davis requested the Quality of Life Forum be held at Deer Valley High School auditorium and an invitation be extended to the Antioch Unified School District.

COUNCIL COMMUNICATIONS - None

ADJOURNMENT

With no further business, Mayor Davis adjourned the meeting at 1:03 A.M. to the next regular Council meeting on August 10 2010.

Respectfully submitted:

L. Jolene Martin, CMC

L. JOLENE MARTIN, Antioch City Clerk