

LOCAL AGENCY FORMATION COMMISSION OF FRESNO COUNTY (LAFCo)

MINUTES

FEBRUARY 26, 2003 REGULAR MEETING

Call to Order: Chairman Larry Fortune called the meeting to order at 1:30 p.m.

Members Present: Commissioners Susan Anderson, Larry Fortune, Victor Lopez, Trinidad Rodriguez, and Bob Waterston

Members Absent: None

Staff Present: Mike Waiczis, Executive Officer
Bruce Barnes, Assistant Executive Officer
Brian Melikian, LAFCo Counsel
Candie Fleming, Clerk to the Commission

Approval of Minutes

The minutes for the January 29, 2003 regular meeting were approved.

CONSENT AGENDA

“Dinuba-Buttonwillow No. 3 Reorganization”
“Coalinga Youth Sports Complex Annexation”
“Willow-Alluvial Northeast Reorganization”

The consent agenda was unanimously approved.

PUBLIC HEARING AGENDA

“Alluvial-Willow No. 4E Reorganization” (City of Fresno)

Assistant Executive Officer Barnes gave the report and revised recommendation. He reported that all of the property owners had signed consent forms to annex their property and that the Fire District Chief indicated he was going to withdraw his protest and consent to the proposal. Therefore, staff was recommended that the Commission approve the proposal with conditions and waive the protest proceedings.

Assistant Executive Officer Barnes reported that the City of Fresno did not have a transition agreement with the Fresno County Fire Protection District, but the developer and the fire district have come to an agreement.

Executive Officer Waiczis added a fourth recommendation that would read “the City of Fresno shall submit to the Executive Officer verification that a final map has been filed and accepted by the City of Fresno.”

John Bonadelli, the developer, reported that they agreed to pay the fire district an amount similar to what would have been required by the transition agreement that was recently signed by the fire district and the City of Clovis.

Steve Sunderland, Chief, Fresno County Fire Protection District, said they were in agreement with the offer made by John Bonadelli and formally withdrew his protest.

Commissioner Waterston asked what the district would have received if an agreement weren't worked out with the developer.

Chief Sunderland replied they wouldn't have received anything due to the lack of a transition agreement.

The Commission unanimously approved the proposal as recommended by staff.

Amendment to LAFCo Policies, Standards and Procedures (Continued from November 6, 2002)

Executive Officer Waiczis gave the staff report and said he was not making any changes to his recommendation he originally made on November 6. He said that he previously recommended that the Commission consider adoption of new policies and standards that would encourage transition agreements rather than require them and recommended changes that would remove text that was obsolete or no longer applicable. He also recommended that their be language in the policies that require the cities to state whether there is a transition agreement in place and provide verification of that agreement when applications are filed. He said the process that staff would be responsible for would include requesting comments from all agencies including fire districts regarding potential impacts that a detachment might have on the district or agency. Staff would also list a number of questions that would be used as a guideline by the districts to provide information for the Commission to make an informed decision on the actual fiscal impact, or other negative impacts, that may occur when territory is annexed to a city and detached from a fire district.

Executive Officer Waiczis said the issue really is “is there still a desire for an amendment to the policies, standards and procedures document to change the language in some way regarding transition agreements to either accept staff's recommendation or direct staff to come back with different language that occurred at this meeting.”

Lee Daugherty, Chief of the North Central Fire Protection District said the district sent a letter to the Commission saying that they felt the Commission should retain the language as it is to require a transition agreement between the cities and districts and felt that if there wasn't some requirements, then there would be no reason for a city to

come to the table to discuss an agreement with the fire district. Again, the North Central Fire Protection District requested the Commission to retain the current language.

Commissioner Anderson asked Chief Daugherty if North Central Fire Protection District only interfaced with the City of Fresno, or were there other cities that would be affected by a transition agreement.

Chief Daugherty said the City of Kerman is within their district boundaries and the district already provides service to the citizens of Kerman for which they pay fire taxes for that service.

Commissioner Fortune asked for example, "if they were losing \$1,000 in property taxes, wouldn't they also be giving up that area of responsibility for fire protection?"

Chief Daugherty said that small annexations would only affect them over time and has a cumulative effect, but if the City annexes a significant area such as the Bullard area, which is less than 1/3 of the district, it would be over 40% of their revenue. So, if a fire station was closed down in that area, they would probably have to also close down another area's fire station because of loss of revenue. They presently have five fire stations, but if that area were detached from the district, they would only be able to staff three fire stations.

Commissioner Fortune said "doesn't that mean that some areas of your district subsidize other areas?"

Chief Daugherty said that was correct. He said the closure of a fire station would result in increased response time and a reduction in services to the remainder of the citizens in the district.

Chief Sunderland said that the one thing that the transition agreements that are in place do is cause a balanced negotiation to occur, which causes the cities to come to the table and nothing more. Chief Sunderland suggested that the existing policy could be enhanced by asking the agency proposing annexation to produce the document that they were referencing.

Commissioner Waterston asked if there was an agreement with the City of Fresno and Chief Sunderland replied that there is an agreement for a very specific area only, but other than that, the agreement had been rescinded and that it was their opinion that there is no agreement, however, the City disagrees.

Commissioner Waterston said he would vote to retain the current policies.

Steven Lempel, representing the Fresno County Fire Protection District said that annexations are incremental, and the reduction in revenue is incremental. However the expense for a fire station remains 100%.

Commissioner Fortune asked "how does the Commission compel cities to sit down with

the fire departments to negotiate as long as the Commission allows annexation to incrementally take place and allow a developer to negotiate a payment to the fire department in lieu of a transition agreement? On the other hand if the Commission says they will sustain the fire district's protests and say the cities cannot annex until they come to an agreement, why would the fire districts want to negotiate? The district could request an unrealistic amount."

Commissioner Waterston said that unless the Commission stands up for the fire departments and insist that negotiations take place, then there will be no annexations. That would very much encourage a city to negotiate with the fire districts. He said that as far as he was concerned there should be no more annexations until the affected city has an agreement with the affected fire district.

Steve Lempel, representing the fire districts, said the fire districts had been willing to enter into reasonable agreements and have done so with the City of Clovis. He said the City of Fresno's position is not that the fire district is being unreasonable in the terms of the amounts it is seeking, but doesn't want to negotiate at all.

Commissioner Fortune asked why the Commission couldn't impose an agreement on a city such as the one the City of Clovis and the Fresno County Fire Protection District has as a condition of annexation.

Executive Officer Waiczis replied that what the Commission presently does impose a standard condition that says verification of a transition agreement must be in full force. He said that the Commission could either disapprove a request for annexation based on the fact that staff could not verify that a transition agreement is in place, or leave the condition as it is and not look for any other remedy for the problem and when LAFCo has verification of a transition agreement, then that annexation can be completed.

Commissioner Rodriguez said that a transition agreement gives the district continued revenue to provide the district time to adjust to its revised delivery of service. Commissioner Rodriguez said he felt the Commission has a policy in place and needs to institute that policy and not deviate from that. He said cities need to have an agreement in place before it comes to the Commission so that a developer does not have to make any agreement on the side with the fire districts. He said the cities have an obligation under the Commission's policy to abide by.

Commissioner Anderson asked Commissioner Rodriguez if he thought the developers should not be allowed to negotiate and Commissioner Rodriguez responded that that's the dilemma that the Commission has. He said the Commission should have Executive Officer Waiczis go to the City and say we have a policy in place and we need something in writing that proves that there is a transition agreement in place.

Commissioner Anderson agreed that would be better than having the developer pay off the fire districts, that that was bad government. She felt that if the Commission has a policy that requires an agreement between the City and District and shouldn't let a third party come and pay off the party who has lodged their objection.

Don Pauley, City Manager of Kingsburg, offered a perspective from one of the small cities in Fresno County. He said the City of Kingsburg currently has a transition agreement and said they have made overtures to the district to revise it because the City finds it unacceptable and has begun those discussions. He said that even though the fire districts are being hurt by annexations, that annexations are not the bread and butter of local government either. He said sales tax generating businesses is the bread and butter of local government. He said cities are annexing because they have mandates by the State of California on their housing element aspects and are required to provide housing. He said that every time he sees a house annexed to their city he watches the City's dollars get spread thinner.

Mr. Pauley said that he did not think that good government was mandating that two groups get together and come to an agreement, but good government is encouraging them and making them responsible for negotiating and holding them accountable for negotiating. He said it was not the Commission's role, that the Commission has neither legal mandate nor the legal authority to require a transition agreement but has a moral obligation to encourage the cities and districts to negotiate transition agreements.

Commissioner Anderson said the Commission's past attempts to encourage the City of Fresno to negotiate have failed.

Mr. Pauley said the Commission shouldn't hold the 13 small cities hostage because of problems with the City of Fresno. He said the Commission should not allow the City of Fresno cause the Commission to form the standard for the rest of the County and hold the other cities hostage with respect that they have to have an agreement before they can get an annexation.

Commissioner Waterston asked how many cities have an agreement with the fire districts.

Chief Sunderland said they have valid agreements with four cities, which are Clovis, Kingsburg, Reedley, and Sanger. He said they have an expired agreement with Coalinga.

Chief Sunderland said the district does not hold cities hostage over the lack of an agreement. He said the district had protested before and withdrawn that protest on every occasion, allowing it to go through. He said the Cities of Kerman and Orange Cove are not served by the Fresno County Fire Protection District except through mutual aid requests for help.

Steve Lempel said that if the fire districts do start asking for unreasonable agreements the Commission at that point could change their policy.

Commissioner Fortune said he would rather encourage agreements rather than require them and asked for suggestions for dealing with cities that won't negotiate.

Commissioner Waterston asked staff if the Commission could force the issue and require transition agreements.

Brian Melikian, LAFCo Counsel, said that County Counsel issued a written confidential opinion to the Commission on this subject. He said his recommendation would be not to publicly state that opinion, but he would comment on it if he were so directed by consensus of the Commission. He said the reason for not discussing the issue publicly is that the cities and the district are divided on this issue, and whatever he said would strengthen one of those side's hand, to the detriment of the Commission, depending on what the Commission would do. He offered to reissue the opinion and asked the Commission if it wanted to continue this matter so that it could review the opinion before taking action.

The Commission did not ask for Mr. Melikian to publicly state any opinion on this issue.

Richard Warne, City Manager for the City of Coalinga, said the cities did not want to have to live with a one-size fits-all solution because of a problem between the City of Fresno and the fire districts. He said that their agreement with the fire district had just expired and he said his staff was handed the City of Clovis' agreement and told that we either agree to this or we would never do another annexation again. He said that is not negotiation. He said they need a level playing field, that they can't have the fire districts either stop annexations or impose onerous requirements upon the municipalities. He said in the last 18 months that he has been City Manager for the City of Coalinga, they lost 25 positions which is about 20% of their workforce. He said that as they acquire the responsibility of property they also need to acquire revenue streams for that property. He said they are struggling as much as the fire districts.

Mr. Warne said the Coalinga City Council strongly recommends that transition agreements be encouraged and not required.

Luis Patlan, Development Services Director for the City of Sanger, said the City of Sanger has a transition agreement with the fire district but feels requiring a transition agreement would be onerous on cities particularly when they have to provide fire service upon annexation. He said the City of Sanger feels transition agreements should be encouraged and not required. He said he didn't think LAFCo should be in the position of arbitrator between cities and fire districts.

Commissioner Lopez asked Mr. Patlan if he agreed with the amendments that staff has recommended and he replied that they do agree with staff's amendments.

Chief Sunderland said that by leaving the policy as it is does nothing more than require the two entities to negotiate and creates no advantage to either the city or district in that negotiation.

Commissioner Anderson asked staff “if the Commission no longer required a transition agreement and instead just encouraged them, how would they encourage them?” she said that to her “to encourage” mean no agreement was required.

Executive Officer Waiczis responded that as part of the application process, staff would seek information from both the city and the district as to what the potential impacts would be and then the Commission could base their decision on that evidence.

Chief Daugherty said that if there were no requirement for an agreement then the edge would then go to the cities.

Chief Sunerland said that if LAFCo no longer requires an agreement, the agreement that was just signed between the District and the City of Clovis would be terminated.

Don Pauley said that the need for a transition agreement, as seen in the past, is simply a financial issue. He asked that the small cities not be held hostage by requiring a transition agreement. He suggested that maybe the Commission would only have to require the City of Fresno to have a transition agreement.

Commissioner Rodriguez said he didn't think the cities or districts are trying to take advantage of each other but thinks the two parties owe it to the public to come to a consensus.

Commissioner Waterston made a motion that LAFCo make a mandate that would require all cities to come back with a plan with the County in six months time that will be a minimum of a five-year transition agreement, and later rescinded that motion.

Commissioner Anderson said she would rather see the Commission continue their current policy and have staff come back with wording added that would require both parties to provide written confirmation that there is a transition agreement and that if a copy is not on file with LAFCo, the city has to provide a copy of the transition agreement. She also wanted wording added that would give LAFCo the ability to waive the requirement on individual annexations. Commissioner Rodriguez seconded the motion.

The motion was unanimously approved.

Adopt LAFCo standard claim form and filing procedure for any claims against LAFCo, as provided in Government Code section 910.4.

The item was unanimously approved.

EXECUTIVE OFFICER'S REPORT

Report on progress of Revenue Neutrality Negotiations for the proposed Malaga City Incorporation.

Executive Officer Waiczis said that after scheduling other meetings, one or both parties have asked for more time to review the Comprehensive Fiscal Analysis. He said they had a conference call and everybody agreed to slow the process down. He also said Scott Browne, special counsel for Malaga was going to present a letter to Mike Noland outlining his concerns about the CFA.

Executive Officer Waiczis said he received an administrative draft EIR and agreed that they would allow the County and Malaga 10 days to review the document.

COMMENTS FROM THE PUBLIC

There were no comments from the public.

The meeting was adjourned at 3:15 p.m.

A tape recording of the hearing is available at the Commission office, 2100 Tulare Street, Suite 502, Fresno.

REVIEWED AND SUBMITTED BY:

Michael R. Waiczis, AICP
Executive Officer