

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

(Fresno County, California)

“MINUTES”

LAFCo MEETING – FEBRUARY 9, 2011

Call to Order: Vice Chairman Susan Anderson called the meeting to order at 1:30 p.m.

Members Present: Commissioners Susan Anderson, Larry Fortune, Henry Perea, Robert Silva, and Alternate Commissioner Dennis Lujan

Members Absent: Commissioner Armando Lopez
Staff Present: Jeff Witte, LAFCo Executive Officer
Joseph Marchini, LAFCo Counsel
Candie Fleming, Commission Clerk
Samantha Hendricks, LAFCo Technician

- 1. Call to Order and Roll Call**
- 2. Pledge of Allegiance**
- 3. Introduction of New Commission Members**

Vice Chairman Anderson introduced Commissioner Silva. Alternate Commissioner Lujan said that Commissioner Armando Lopez was unable to attend this meeting but would be at March’s hearing.

- 4. Select Chairman**

Commissioner Fortune made a motion to continue the item to the April 13th meeting, when all of the Commissioners are anticipated to be present. The motion was seconded by Commissioner Lujan and unanimously approved.

- 5. Minutes from the Regular LAFCo Meeting of February 9, 2011.**

Commissioner Fortune made a motion to approve the January 12th minutes and Commissioner Lujan seconded the motion. The minutes were unanimously approved.

- 6. Potential Conflicts of Interest.**

Regarding Agenda Item No. 13, Commissioner Fortune reported that Fortune and Associates was involved as a brokerage firm when the property was purchased 6 ½ years ago but there was no residual financial interest by himself or his firm. Commissioner Fortune said he also checked with LAFCo’s Counsel, who agreed that there was no conflict.

Joseph Marchini of Baker, Manock & Jensen, sitting in for LAFCo Counsel Kenneth Price, said that his firm represents the Wilson Company, who is a party of interest for Agenda Item No. 13, but said his firm represents them on wholly unrelated matters and feels there is no conflict for him to represent the Commission on this item.

7. COMMENTS FROM THE PUBLIC

There were no comments from the public.

CONSENT AGENDA

8. LAFCO Financial Statement for January, 2011.

9. Requests for a One-Year Extension to Complete Proceedings for the following:

- A. City of Fresno “McKinley-Blythe No. 1 Reorganization” (third request).**
- B. City of Reedley “Reed-Beechwood Reorganization, Annexation 2005-1”.**

There was no discussion on the consent agenda items and Commissioner Perea made a motion to approve the consent agenda and Commissioner Fortune seconded he motion. The motion was unanimously approved.

CLOSED SESSION

10. CONFERENCE WITH LEGAL COUNSEL:

- (A) ANTICIPATED LITIGATION: Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: Number of Cases – 1.**
- (B) EXISTING LITIGATION. Subdivision (a) of Section 54956.9: *City of Fresno v. Fresno Local Agency Formation Commission***

There was nothing to report out of closed session.

PUBLIC HEARING

11. Request by the Fresno County Board of Supervisors for the Commission to Reconsider its actions on the City of Fresno “Belmont-Sunnyside No. 3 Reorganization (Island Annexation)”, LAFCo File No. RO-08-14.

Joseph Marchini, LAFCo Counsel, presented the staff report. Counsel. Marchini reported that after review, staff determined that there were no new or different facts that would allow reconsideration under statue, in addition there was a court order requiring LAFCo to approve the annexation without conditions, and that staff’s recommendation was to deny the request for reconsideration.

Commissioner Lujan asked if this would be a precedent-setting move by the Commission that would affect future island annexation requests by the City of Fresno. Counsel Marchini responded that it was the Commission’s position on the litigation that it has the power to impose conditions; however the Court ruled that the Commission did not have that authority. Counsel Marchini said that it was his opinion that the Court’s decision was limited to the Belmont-Sunnyside No. 3 Reorganization” application and that the matter hasn’t gone up to the Court of Appeals.

Terry Slaven, President of the Kings Canyon-Easterby Home Owners Association, felt the Commission had a “opened” can of worms because they didn’t file an Appeal of the Court’s decision. Mr. Slaven asked the Commission to put in writing that the homeowners would not be taxed, because that is what this issue is all about and that Proposition 218 says that no government entity can impose fees or taxes without the voters’ approval. Mr. Slaven said the City of Fresno was going to tax them and said the Commission “did this and needs to fix it.” Mr. Slaven asked the Commission why they didn’t appeal the Court’s decision. Counsel Marchini responded that a reason why the Commission did or did not make an appeal is the matter of attorney/client privilege.

Commissioner Lujan said that at the last meeting, the representative from Fresno said that they had over 500 calls for service from the area. Mr. Slaven said that the City of Fresno has been lying and said that the Sheriff’s Department hasn’t been getting called.

Eric Schmidt, President of the Fresno Deputies’ Association, said that when a resident of a County Island calls 911, the calls go to the Sheriff’s Department Dispatch and the Sheriff’s Department answers the call, not the City of Fresno.

Doug Vagim said that perhaps it is true that there was no new data to reconsider, but the County Counsel asked the City of Fresno to “in a spirit of cooperation” come forward and ask for a validation action. Mr. Vagim said the City was using the enforcement of a contempt violation if the Commission doesn’t just rubber stamp this. Mr. Vagim said it was disturbing to him as a citizen that instead of the City giving the citizens a right to vote, the City went to their right to go to court. Mr. Vagim asked the Commission to file a statement with the County Clerk that no override taxes shall be assessed by the City.

Commissioner Lujan said the Commission was told that they would be in contempt of Court if they didn’t deny this request and moved to deny the request. Commissioner Silva seconded the motion.

Commissioner Perea spoke against the motion and said he would rather be in contempt of court than take away the right of the people to vote. Mr. Perea acknowledged that the Commission made an error by choosing not to file an appeal because of the cost of an appeal. Commissioner Perea also said that the issue is a problem because it will be used as guidance in any future island annexations and said he hopes the City of Fresno will work with the Commission.

Commissioner Anderson said she was not going to support the motion either for many of the same reasons that Commissioner Perea had stated. Commissioner Anderson said she was disappointed that the City is not willing to try and work through this because it is just the beginning of a big battle between the County and the City and she didn’t think it’ is healthy for the community and was disappointed that no appeal was filed.

Commissioner Fortune said he truly believed in Proposition 218 and that a person should not be taxed unless people had an opportunity to vote on it. Commissioner Fortune also said he felt island annexations were contrary to Proposition 218, but noted that the Commission must abide by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, that says if eight findings can be made, certain city islands must be annexed and that LAFCo is compelled by law to annex them. Commissioner Fortune said the eight findings were easily and unequivocally made so the Commission voted unanimously to approve the annexation with conditions whereby LAFCo was then sued by the City of Fresno regarding the conditions and the Court then ruled that LAFCo did not have the right to place conditions on island annexations. Commissioner Fortune said the Commission unanimously voted not to appeal the Court’s decision and then approved the annexation with recommendations instead of conditions. Commissioner Fortune said that the Commission received a

request for reconsideration from the County, but State law says the Commission cannot reconsider an item unless there is new evidence that was not available at the time of the hearing. Commissioner Fortune said the request for reconsideration did not obtain any new evidence, and therefore the Commission couldn't support the request. Commissioner Fortune offered his assistance to the citizens within the island to sue the City of Fresno, if they chose to do so, but said in all good conscious he couldn't vote to break the law; and therefore, was going to support the motion for denial,

A roll call vote was called and Commissioners Lujan, Silva, and Fortune voted yes to deny the reconsideration, while Commissioners Perea and Anderson voted no. The request for reconsideration was denied on a 3-2 vote.

12. Request by the Executive Officer to Waive a Portion of the Filing Fee and Waive Government Code Section 56884(1) to allow for the Re-submittal of the "City of Parlier 06-02 Reorganization".

Executive Officer Witte reported that this application was previously submitted to LAFCo and had been continued numerous times. Because there was no agreement between the Consolidated Irrigation District (CID) and the City of Parlier, the City decided to pull its support for the annexation and the application to no fault of the developer, was then denied by the Commission. Executive Officer Witte reported that the City and CID now have an agreement and both the applicant and the City wish to resubmit the application. Executive Officer Witte justified his support of a 50% reduction in the fee because it is basically the same application as before and that most of the staff analysis has been adequately done and felt the analysis would be appropriate for the new application.

Commissioner Lujan moved to approve the motion and Commissioner Fortune seconded the motion. The motion was unanimously approved.

13. City of Clovis, "Ashlan-Leonard Southeast Reorganization". (LAFCo File No. RO-10-5).

Executive Officer Witte presented the staff report and said that this application is consistent with LAFCo's Policies and guidelines and would have been placed on the Consent Agenda; however, there is a disagreement between the Fresno County Fire Protection District and the City of Clovis. Executive Officer Witte pointed out that LAFCo requires an agreement between a fire district and a city, but LAFCo is not an arbitrator of those agreements. Executive Officer Witte said that LAFCO only requires that there be a fire transition agreement and that any disagreement over the fire transition agreement is a matter between the parties or the judge.

Dwight Kroll, Director of Planning and Development Services for the City of Clovis, said that John Holt, Assistant City Manager, and David Wolf, the City attorney were both present and that they have reviewed the application and concur with staff's recommendations.

Dirk Poeschel. Representing Leo Wilson and Wilson Homes, said they have read the staff report and are in concurrence with the findings and recommendations.

Commissioner Fortune moved to approve the proposal and Commissioner Silva seconded the motion which was unanimously approved.

14. Municipal Service Review and Sphere of Influence Update for Waterworks District No.'s 18, 37, 38, 40, 41 and 42.

Executive Officer Witte reported that staff grouped these MSR's together because they provided the same types of services. Executive Officer Witte pointed out that the Board Members of Waterworks District #18 are appointed for indefinite terms and that practice should be reviewed. Executive Officer Witte also reported that since the Friant Ranch project has recently been approved, it is likely that the Commission will be reviewing Waterworks District #18 again soon.

Radley Reap, a citizen, pointed out that in both the July 7, 2007 and February 9, 2011 MSR, there was a statement that the Fresno County Public Works and Planning Department would like to explore consolidations or reorganizations among service providers in the area and place them under a single-service provider (Waterworks District #18) and wanted to know what the benefit might be.

Executive Officer Witte said that generally LAFCo would like to consolidate districts that have similar functions. Mr. Witte asked Mr. Reap to go over his questions and then he would ask Darryl Schmidt, Fresno County Resources to answer his questions.

Mr. Reap said the Waterworks District #18 MSR reported that the District currently has engineering designs for the wastewater treatment facility that will serve Friant Ranch. Mr. Reap wanted to know the extent of the designs and if the public could review them. Mr. Reap also wanted to know if WWD #18 was or is providing any services to the Table Mountain Rancheria, and if so, what is the nature of the services. Staff responded that WWD #18 was not providing services to the Table Mountain Rancheria.

Commissioner Anderson asked Darryl Schmidt, Fresno County Resources Division, what was the purpose for the recommendation of consolidation. Mr. Schmidt responded that at the time the reports were originally put out, the County was interested in looking to see if there were any ways to better serve the public, as well as to save funds, if a consolidation were to take place. Mr. Schmidt said that to his knowledge, nothing has gone any further than the recommendation and there have not been any discussions specifically related to any consolidations with CSAs and with Waterworks District #18.

Jeff Roberts, spoke on behalf of Granville Homes and as a resident of Waterworks District #18. Mr. Roberts said they are the owner of most of the unsold lots in CSA #34B. Mr. Roberts urged the Commission's support of LAFCo's recommendations and would like to be invited to any meetings that might occur regarding consolidation of any of these districts in the future.

Commissioner Fortune made a motion and Commissioner Silva seconded the motion to adopt the Municipal Service Reviews, their determinations, and recommendations. The motion was unanimously approved.

EXECUTIVE OFFICER REPORT

15. Mid-Year Financial Report.

Executive Office Witte said that this is the first mid-year financial report for LAFCo which he hopes to make a tradition to give the Commission the opportunity to look at where we are at financially during the half-way point. Executive Office Witte reported that LAFCo needs to re-establish reserve funds so the funds are not all in one checking account for business reasons. Executive Officer Witte also had the opinion that LAFCo needed to establish a separate legal reserve fund where money could be deposited and then carried over from year to year, that would be available for times when LAFCo gets involved in larger litigation.

Executive Officer Witte reported that the budget is pretty much on target and LAFCo is doing reasonably well by spending money conservatively and staff will be presenting a preliminary budget to the Commission at the March hearing. Executive Officer Witte pointed out that the Auditor's Office had suggested that LAFCo maintain a reserve of about 25% to 30% , and that this money should be held in a separate account, because if LAFCo's money is all in one checking account, it gives the impression that LAFCo has more money to spend than it does.

Commissioner Lujan asked if the Commission was up to date on their fees for services. Executive Officer Witte responded that last summer staff conducted a fee study and updated it using the CPI. Executive Officer Witte said that the updated fee schedule was scheduled to take affect July 1, 2011, which gave the districts and cities almost a year to include any new anticipated costs in their budgets.

Commissioner Lujan made a motion to authorize the Executive Officer to establish some new reserve accounts and Commissioner Perea seconded the motion. The motion was unanimously approved.

Commissioner Anderson said that there was a letter on Item No. 13 from the Fresno County Fire Protection District that they asked to be made part of the public comment.

Executive Officer Witte said the letter that dealt with the issue between the City of Clovis and the Fresno County Fire Protection District was passed out to the Commission. Executive Officer Witte said this issue will also likely be an issue between the City of Fresno and the Fire District. Staff reported that the letter was included with the comments section of the staff report which is also on the LAFCo's website at www.fresnolafco.org.

Commissioner Lujan asked if staff could request the City of Fresno to provide documentation regarding a previous comment that they had responded to over 500 calls in the Belmont-Sunnyside area. Executive Officer Witte responded that staff will be preparing an MSR for the fire district and will have lots of data to discuss on their service issues at that time.

ADJOURNMENT

Commissioner Fortune moved to adjourn the meeting and Commissioner Lujan seconded the motion. The meeting was adjourned at 2:35 p.m.