

**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)**

**(Fresno County, California)**

**“MINUTES”**

**REGULAR LAFCo MEETING – JUNE 10, 2009**

**Call to Order:** Chairman Lopez called the meeting to order at 1:30 p.m.

**Members Present:** Commissioners Susan Anderson, Larry Fortune, Victor Lopez, Henry Perea and City Alternate Dennis Lujan

**Members Absent:** Commissioner Trinidad Rodriguez

**Staff Present:** Rick Ballantyne, LAFCo Executive Officer  
Darrel Schmidt, LAFCo Deputy Executive Officer  
Kenneth J. Price, LAFCo Counsel  
Candie Fleming, Clerk to the Commission  
Susan Pool, LAFCo Office Assistant II

1. **Call to Order and Roll Call**
2. **Pledge of Allegiance**
3. **Minutes from the regular LAFCo Meeting of May 13, 2009.**

The minutes were unanimously approved as presented with Commissioner Lujan abstaining.

4. **Potential Conflicts of Interest: Any Commission Member who has a potential conflict of interest may now identify the item and recuse themselves from discussing and voting on the matter.**

There were no conflicts of interest noted.

**PUBLIC HEARINGS**

5. **City of Fresno “Ashlan-Bryan No. 1 Reorganization” (LAFCo File No. RO-09-1).**

Deputy Executive Officer Schmidt presented staff’s report. He noted that City, County and LAFCo staffs had determined at the pre-application meeting that it would be appropriate to add the ten rural residential parcels located within the southeast corner of the affected territory in order to create a more logical boundary. The City also requested that the pre-zoning requirement for thirteen parcels not related to the development site be waived with the understanding that pre-zoning would occur prior to recordation. Chairman Lopez opened the public hearing.

Dirk Poeschel, representing the McCaffrey Group, requested that the Commission remove the ten rural residential properties located within the southeast corner of the proposal due to the opposition to annexation as expressed by these residents.

Dave Johnson, residing at 4033 N. Hayes, spoke in opposition and requested that his property be removed from the annexation area. Paul Shalley also spoke in opposition. Chairman Lopez closed the public hearing.

Commissioner Anderson inquired as to whether one of the ten parcels that appeared as the most westerly parcel could remain within the annexation area in order to better square off the boundary. Dirk Poeschel explained that the owners of that particular parcel were suing McCaffrey Homes over the proposed improvement plans and did not desire to be included within the annexation proposal.

A motion to approve the alternate recommendation that allowed for deletion of the ten parcels as contained in staff's report was made, seconded, and passed unanimously.

## **6. "Glenn-Shaw No. 3B Reorganization" (LAFCo File RO-09-2).**

Deputy Executive Officer Schmidt presented staff's report. He stated that the affected territory is located within the northwesterly portion of the Old Fig Garden Neighborhood. He stated that the proponents as a part of their request were seeking a deferment of the pre-zoning requirement on two of the three parcels. Chairman Lopez opened the public hearing for testimony.

Dirk Poeschel, representing the proponent (Arthur Carlson), spoke in support of the proposal. He stated that this proposal had been discussed numerous times with neighbors, the City Planning Commission, and the City Council. He requested that the pre-zoning requirement be completely waived.

Commissioner Fortune inquired as to if the City were to annex just the office building—could the City maintain the current zoning without pre-zoning the property before annexation. Executive Officer Ballantyne explained that the pre-zoning requirement could be deferred by the Commission prior to recordation; however, State law required the two parcels to be pre-zoned prior to recordation. Executive Officer Ballantyne also stated that the proponent could request that the City waive the pre-zoning fees associated with this action.

Tony Pings, Vice-President of the Fig Garden Homeowners Association stated that the proposed development of the property was not the issue—but rather dealing with any annexation within the Neighborhood and how such annexation would impact residents. He claimed that the Memorandum of Understanding (MOU) between the County and City was amended in 2003 that allowed this annexation to take place. Mr. Pings indicated that while the Home Owners Association had taken a neutral position with respect to annexation, in principal it was opposed to piecemeal annexation of the Old Fig Garden Neighborhood.

Dave Williams (4969 N. Glenn Avenue) indicated that his parcel was included within the affected territory and that he was opposed to the annexation. He requested that the Commission reject the proposal—and if this was not possible that the Commission continue the item to allow him to meet with staff to discuss his concerns.

Mike Bigelow also spoke in opposition to the annexation and concurred with Mr. Williams' objections. Mr. Bigelow commented that he didn't understand why the project could not be developed within the County. He claimed that the MOU between the City and County was changed in 2003 to remove wording that "any proposals in the Fig Garden area would be denied by the City".

Commissioner Anderson explained that she and the Fig Garden Home Owners Association had come to an agreement with the City of Fresno not to annex any additional property within the Old Fig Garden Neighborhood until there was an opportunity to do some long-range planning for the area. Efforts were made to have the City release the referral and allow the development proposal to take place within the County--but the City had determined to proceed with the annexation.

Area resident Merilee Amos spoke in opposition explaining that she is not against development of the property, but doesn't believe it should be developed within the City of Fresno. She concluded that it would be detrimental to her neighborhood that was developed as a unique neighborhood.

Patty Handly also spoke in opposition to the request based upon the urban type improvements that would be required by the City of Fresno including gutters, sidewalks, curbs and street lights. She also requested that the Commission respect the uniqueness of Fig Garden noting that the Neighborhood would be eligible for historical status in just a few years.

Commissioner Anderson questioned if the proposal could be conditioned to not have the improvements. LAFCo Counsel Price stated that the Cortese-Knox-Hertzberg Act states that LAFCo does not have the power in dealing with land use regulations. It was stated that the improvements have been deferred until other parcels in the area are also developed.

Dave Braun, representing the City of Fresno Planning and Development Department, reported that this property was referred to the City for annexation in 2005 per the MOU, which requires any property within a half-mile distance of the City's boundary be referred by the County for possible annexation. The City chose not to release this proposal back to the County. Mr. Braun indicated that no improvements (i.e. sidewalks, gutter, street lights) would be required until other parcels within the area are developed.

Dirk Poeschel restated that numerous meetings had been held with neighbors, that the proponent followed proper procedures, and that his client was doing everything possible to lessen impacts upon neighbors. Dave Williams and Mike Bigelow made their final comments. Chairman Lopez closed the public hearing.

Commissioner Anderson said that she supported development taking place within the County. Executive Officer Ballantyne suggested that the Commission continue the item to allow the City, County, and staff to meet to discuss possible alternatives prior to the Commission's final action. LAFCo Counsel Price advised the Commission that if they chose to deny the application, the proponent would have to wait a year to submit a new application.

Keith Bergthold representing the City of Fresno supported a continuance in order to meet with County and LAFCo staff. Commissioner Perea suggested that Commissioner Anderson who represents District 2 that includes the Fig Garden Area should be a participant in this meeting.

A motion to continue the matter to the next LAFCo hearing was made, seconded and passed unanimously.

**7. City of Fresno “Belmont-Sunnyside No. 3 Reorganization (Island Annexation)” (LAFCo File No. RO-08-14). (Continued from May 13, 2009)**

Executive Officer Ballantyne presented a brief summary of the prior proceedings concerning this item. He presented a letter received from the City of Fresno dated June 8, 2009, which indicated that the City still desired to annex the Island area even if the City did not collect the property tax override assessment and the Community Sanitation fees.

Chairman Lopez then opened the public hearing. Robert Schmidt, an area resident, spoke in opposition to the proposal.

Dr. Terry Slaven, President of the Easterby Kings Canyon Homeowners Association, requested that the City provide for a Proposition 218 vote within the next ninety days. Shelly Slaven spoke in opposition to the annexation stating that she believed that the pension override tax and sanitation fees were not the only two fees that would be assessed by the City to island residents.

Doug Vagim, representing the San Joaquin Valley Tax Payers Association acting in cooperation with the Howard Jarvis Tax Payers Association, spoke in support of the mandatory Proposition 218 vote.

Bruce Rudd, City of Fresno Assistant City Manager, stated that the City would not be imposing a sanitation fee, nor would they be providing such service. Commissioner Anderson inquired how the City can provide police protection without imposing a fee. Mr. Rudd responded that residents have already been receiving police service and have not been charged for it.

Commissioner Fortune injected that he believes that the City is better able to serve the residents in that area—but believed that the residents had the right to vote under a Proposition 218 initiative.

Bruce Barnes, representing the City of Fresno, stated that area residents, on average, will save \$73.00 per year by annexing to the City. Commissioners Fortune and Anderson responded that the County of Fresno does not mandate garbage collection service and that imposing garbage service requirements may be a new tax unto itself. Chairman Lopez then closed the public hearing.

Commissioner Perea made a motion to approve. LAFCo Counsel Price clarified the motion saying: “the annexation shall not be recorded until verification has been provided to the satisfaction of the Executive Officer acknowledging that the City has provided evidence that the City has complied with the applicable procedures contained in Article XIII(C) of the California Constitution (Proposition 218 and its implementing statutes and regulations) and may impose, extend or increase taxes, fees or assessments in the subject territory”. The motion was seconded and passed unanimously.

## **OTHER ITEMS**

### **8. LAFCo Counsel's Report:**

**Legislative Update:** Report on Proposed Legislation Affecting Local Agency Formation Commissions.

LAFCo Counsel Price reviewed three different bills that could affect LAFCo's.

The first bill (AB528) applied to the California Political Reform Act. A motion to direct LAFCo Chairman to draft a letter of support in favor of the bill was made, seconded, and passed unanimously.

The second bill (AB1109) would allow the Commission to conduct a study of non-performing Districts. A motion for the Chairman to draft a letter supporting that concept was made. In addition, the letter is to request that LAFCo Commissions be involved in drafting the Bill. The motion was seconded and passed unanimously.

The last bill (AB853) would require cities to annex unincorporated "fringe communities" located within a mile and a half of a city which are in need of city services. Such annexations, if enacted as drafted, would not allow the Commission to consider the costs of such annexation when making its decision. Counsel reported that certain aspects of the bill were identified as being very ambiguous. A motion was made to send a letter opposing the bill unless modifications are made. The motion was seconded and passed unanimously.

### **9. Executive Officer's Reports:**

**A. LAFCo Independence:** Report from LAFCo Independence Subcommittee

Executive Officer Ballantyne presented his report outlining the specific steps and associated costs that are necessary in order to transition its staff from County to LAFCo employment. In order to provide a seamless transfer to occur and meet all requirements, it was pointed out that the full transition was expected to be in place by January 10, 2010.

LAFCo Counsel Price explained that the agency is considered independent, but that the County of Fresno leases employees to LAFCo under the present services contract. It was suggested that the item be continued to the next LAFCo hearing since it is an action item.

Commissioner Perea stated that LAFCo should have a full discussion about the issues involving a change of employees before going ahead and increasing the cost to the taxpayers. Chairman Lopez made a motion for LAFCo to become independent from the County of Fresno. A second to the motion was made.

Commissioner Perea inquired if costs of being fully independent would be more or less than current costs. Executive Officer Ballantyne replied that there would be additional costs required—mainly the one-time transfer costs of approximately \$40,000. Commissioner Anderson commented that the Commission could reduce its staff size to decrease costs—but she didn't recommend such action.

The motion to approve was then clarified by LAFCo Counsel Price to approve LAFCo Independence based upon the four recommended actions included within the Executive Officer's Report. The motion to approve was passed on a vote of three to two with Commissioners Anderson and Perea voting no.

**B. CALAFCO Conference Update:** Report Host and Program Committee Progress

Executive Officer Ballantyne gave a very brief update stating that good progress is being made on the 2009, CALAFCO Conference up in Yosemite. Furthermore, he thanked Commissioners Anderson and Lopez for their commitment and support and for helping by serving on the CALAFCO Host Committee.

**COMMENTS FROM THE PUBLIC**

Any person wishing to address the Commission on a subject not listed on the agenda may do so at this time. (State your name and address and please keep your comments to 5 minutes.)

No public comments were offered.

**ADJOURNMENT**

**THE NEXT LAFCO MEETING** will be held on July 8, 2009, at 1:30 p.m. in the Board of Supervisors' Chamber - Hall of Records, Room 301, Fresno, California.