

2.
3/22/2012

MINUTES
January 26, 2012

Present: Stephen Tomanelli, **Chair**
Phil Williams, **Vice Chair**
Bob Buster
Terry Henderson
Eugene Montanez
Nancy Wright

Absent: Jeff Stone

Present Staff: George J. Spiliotis, Executive Officer
Crystal Craig, Local Government Analyst II
Adriana Romo, Local Government Analyst II
Elena Medina, Executive Assistant II
Pam Walls, County Counsel

1.1 CALL TO ORDER AND SALUTE TO THE FLAG.

The meeting was called to order by Chair Tomanelli at 9:38 a.m.

1.2 ROLL CALL.

2. APPROVAL OF MINUTES OF DECEMBER 8, 2011.

Moved (Williams) seconded (Henderson) to approve the Minutes of December 8, 2011.

6/0 (Stone absent)

3. CONSENT(NON-HEARING ITEMS):

There were no consent items.

The Commission decided to take Item No. 7 at this time.

7. SB 244 - DISADVANTAGED COMMUNITIES.

Mr. Spiliotis stated that the reason for taking this item out of order was because it related to one of the items on the agenda. Mr. Spiliotis stated that last spring he brought Senate Bill 244 before the Commission. He said that the focus of this bill was on disadvantaged communities. He said that this bill affected both LAFCOs as well as general local government agencies including cities and counties in terms of their land use planning efforts.

He said that the Commission previously had taken an opposed position to SB 244. He said that there were significant unfunded state mandates on local governments relating to additional work that all LAFCO Commissions were going to have to do in regards to the analysis for the municipal service reviews and spheres of influence reviews. He said that SB 244 defined disadvantaged unincorporated communities (DUCs) as an area or areas of a disadvantaged community that included 12 or more registered voters. He said that the disadvantaged community was based solely on a median household income that is less than 80 percent of the statewide annual median household income. He said that the definition was actually in the water code. He said that the legislation impacted LAFCO operations in three areas: 1) The Municipal Service Review (MSR) determinations, 2) Sphere of Influence (SOI) updates on or after July 1, 2012, and 3) Annexation approval restrictions of territory adjacent to the disadvantaged unincorporated communities (DUCs). He said that the way the law read was that the Commission could not approve an annexation over 10 acres if it was adjacent to a disadvantaged community unless an application has been filed within the last five years or there was written evidence presented that the majority of the residents within the affected area were opposed to the annexation. He said that attached to the report was significant code sections related to SB 244 as well as an information sheet that was put out by the League of California Cities which summarized some of the provisions.

Commissioner Buster asked if anyone from the County was working with LAFCO on the demographics to identify the disadvantaged unincorporated areas or if it was only a matter of responsibility of the cities.

Mr. Spiliotis stated that they had been working with the Center for Demographic Research primarily on the annexation that was on the agenda. He said that they had initial discussion with the County generally on how the income data can be acquired on a small geographic area which was proving to be quite difficult. He said that he was checking with other LAFCOs to see how they were going about this issue.

Commissioner Buster stated that one of the principal means of rectifying the infrastructure needs of these areas in the County, it had been with redevelopment.

Commissioner Williams stated that when the City of Menifee incorporated, they acquired the area of Quail Valley and he asked how LAFCO was going to handle situations where areas were previously considered disadvantaged communities. He said that the reality was that the community of Quail Valley had not changed.

Mr. Spiliotis stated that as far as LAFCO's analysis that was required for spheres of influence and municipal service reviews; all LAFCOs were required to look at were the unincorporated areas. He said that the instance that Commissioner Williams was bringing up was one that it was brought to the attention of Senator Wolk's office that simply incorporating these areas did not guarantee that the municipal services were going to be extended to them. He said that money was not going to become readily available just because an area was annexed to a city; but in the case of Quail Valley, it actually, put them at a disadvantage in receiving certain federal funds.

Mr. Spiliotis stated that staff will be bringing to the Commission a policy for identification of those disadvantaged unincorporated communities.

4. PUBLIC HEARING ITEMS:

The Commission decided to take Item 4.a. at this time.

CONTINUED:

- a. LAFCO 2009-01-3-Reorganization to Include Annexation 78 (Country Lake/San Jacinto Avenue) to the City of San Jacinto and Concurrent Detachments from the Riverside County waste Resources Management District (Parcels A & B) and Detachment from the City of San Jacinto (Parcel C only) **(Continued from December 8, 2011).**

Ms. Craig presented the proposal as outlined in the staff report and further stated that the original staff recommendation still stands with the exception of the effective date that will change if approved as follows:

- i. April 1, 2012, or
- ii. 30 days after execution of the resolution ordering the change of organization pursuant to Govt. Code Sec. 57075, or
- iii. If an election is required, 30 days after the certification of the election results.

Chair Tomanelli opened the public hearing.

The following persons spoke in favor of the proposal:

Asher Hartel, 595 S. San Jacinto Avenue, San Jacinto, CA 92583. Mr. Hartel stated that the City was in favor of staff's recommendation and asked the Commission to approve the proposal before them.

Commissioner Henderson stated that she would like to have a verbal discussion regarding the rent control issue and the late letter that the Commission had just received referencing the concerns that if a person attempts to sell their mobile home at that point the rent could be raised.

Jeff Balinger, City Attorney for the City of San Jacinto, 595 S. San Jacinto Avenue, San Jacinto, CA 92583. Mr. Ballinger stated that with regard to the rent control agreement, it was design to protect the existing residents. He said that the original agreement was drafted to last 50 years. He said that in the negotiations with the property owners, they requested that the rent control eventually be phased out but that the City will keep the protection for the existing home owners.

Erin Babikian, 348 Tejan Place, Palos Verdes Estates, CA 90274. She stated she was representing the owner and was available for any questions from the Commission.

The following persons spoke in opposition of the proposal:

Marvin H. Jeglin, 22670 San Jacinto Avenue, San Jacinto, CA 92583.

Mr. Jeglin stated that he was representing the Parcel B property owners who were also registered voters. He stated that everyone was in opposition of this proposal and asked the Commission to deny the proposal.

Ivan E. McDermott, Country Lake resident, 21100 State St., Space #122, San Jacinto, Ca 92583. Mr. McDermott expressed his opposition to the annexation proposal.

Legal Counsel, Pam Walls, stated that under LAFCO's Resolution No. 121-06 the time limit for individual speakers was three minutes and there was an exception if there were multiple speakers in an organized presentation.

Legal Counsel, Pam Walls stated that she wanted to let Mr. Jeglin know that all the materials he submitted to the Commission addressing his opposition to the annexation were a part of the administrative record and will be considered by the Commission accordingly.

Commissioner Henderson stated that this might a good time to clarify the noticing requirements by LAFCO and the list that was used to send out those notices.

Legal Counsel, Pam Walls, reviewed Government Code Section 56157. Ms. Walls also stated that in addition to the mailed notices there was a public notice required by through a publication. She also mentioned that the proposal in question if approved, will be going to a protest hearing and at that time people could submit a protest.

Mr. Spiliotis said that LAFCO asked for updated labels prior to the December meeting from both the Riverside County geographic information systems for the landowner labels and Register of Voters for the register voter labels. Mr. Spiliotis felt that LAFCO went the extra mile in updating the labels to capture the most recent registered voter and landowner lists. He also mentioned that if the interested parties or anyone else would like to pursue an update of the register voter list there was a process to go through and they should contact the register of voter's office to obtain that information.

J. Staura, P. O. Box 1032, Hemet, CA 92546. Mr. Staura expressed his opposition to the annexation proposal.

REBUTTAL:

Jeff Balinger, City Attorney, 595 S. San Jacinto Avenue, San Jacinto, Ca 92583. Mr. Balinger stated that the City of San Jacinto was familiar with the tribal lands that were adjacent to the City and the proposal was not within the tribal land boundaries. Mr. Balinger stated that with regard to the statement that the City took down a railroad station, he stated that the City had never owned a railroad station. He said that the railroad yard was owned by Agri-Empire not by the City.

Chair Tomanelli closed the public hearing.

Commissioner Williams asked legal counsel if LAFCO had any jurisdiction over rent control matters. Legal Counsel Pam Walls responded in the negative.

Moved (Henderson) seconded (Montanez) to approve LAFCO 2009-01-3-Reorganization to Include Annexation 78 (Country Lake/San Jacinto Avenue) to the City of San Jacinto and Concurrent Detachments from the Riverside County waste Resources Management District (Parcels A & B) and Detachment from the City of San Jacinto (Parcel C only) as recommended by staff with the exception of the effective date as follows:

Establish the effective date of the reorganization as the later of the following:

- i. April 1, 2012, or
 - ii. 30 days after execution of the resolution ordering the change of organization pursuant to Govt. Code Sec. 57075, or
 - iii. If an election is required, 30 days after the certification of the election results.
- 6/0 (Stone absent)

NEW:

- b. LAFCO 2011-08-5-Reorganization to Include Annexation 29 to the City of Desert Hot Springs (New World Lifestyle Communities) and Concurrent Detachment from the Riverside County Waste Resources Management District.

Mr. Spiliotis presented the proposal as outlined in the staff report and stated that staff had received a letter from the Sky Valley Community Council in opposition that was included in their folders for their review. He said that the Sky Valley Community Council was approximately two miles east of the proposed annexation. He said that there was a concern that the annexation area was outside of the recommended fire response times. He said that the current fire services would not change upon annexation to the City. Mr. Spiliotis stated that an additional concern staff had was related to the disadvantaged communities previously discussed. He said that another factor that the Commission must consider before approving the annexation was environmental justice. He said that in this instance the inhabited area was a predominately Hispanic community of low income which staff had discussed; therefore, exclusion of that territory would deny that area of potentially enhanced level of police protection services provided by a local police department. He stated that staff was recommending denial.

Chair Tomanelli opened the public hearing.

The following persons spoke in favor of the proposal:

Yvonne Parks, Mayor, City of Desert Hot Springs, 65-950 Pierson Boulevard, City of Desert Hot Springs, CA 92201. Ms. Parks spoke in favor of the annexation proposal. She spoke regarding SB 244 and asked that the Commission grandfather in the annexation considering the date the application was submitted to LAFCO. She stated she was available for questions.

Martin Magana, Community Development Director, City of Desert Hot Springs, 65-950 Pierson Boulevard, Desert Hot Springs, CA 92201. Mr. Magana addressed the I-10 proposal previously approved by the LAFCO Commission. He said that the development that the developer was proposing was going to provide the extension of infrastructure that was much needed in the area making the area more attractive to other developers to bring other projects to the City. He said that this project will create jobs that were very much needed in the area. Mr. Magana stated that he was respectfully requesting that the Commission consider the comments presented by the Mayor and the comments he presented to them when considering the annexation.

Nicole Criste, Representing New World Life Style, 42-635 Melanie, Palm Desert, CA 92211. Ms. Criste expressed her support for the approval of the annexation.

Mario Gonzalez, 30-675 Date Palm Drive, Cathedral City, CA 92234. Mr. Gonzalez, spoke in favor of the annexation proposal. Mr. Gonzalez stated that this annexation had been in process for a long time and asked the Commission to approve the annexation.

Robin S. Trotochau, President of New World Life Style Communities, Desert Hot Springs, CA. Ms. Trotochau spoke in favor of the annexation proposal.

Doug Wall, there was no address given by the speaker, he lives in the City of Desert of Hot Springs. Mr. Wall spoke in favor of the annexation proposal.

Bob Mainiero, P. O. Box 2410, Palm Springs, Ca 92263. Mr. Mainiero spoke in favor of the annexation proposal.

John Saliba, 22581 Vina Dr., Mission Viejo, CA 92691. Mr. Saliba Spoke in favor of the annexation proposal.

Milton Swimmer, 76-252 Via Grant, Indian Wells, CA 92210. Mr. Swimmer spoke in favor of the annexation proposal.

Kieron Foley, representing Robin T. New World, 9663 Santa Monica, Beverly Hills, CA 90210. Mr. Foley spoke in support of the annexation proposal.

The following persons spoke in opposition to the proposal:

Sandy Rauen, 4128 Aguilar Way, Los Angeles, CA 90065. Ms. Rauen spoke in opposition to the annexation proposal.

Norman Smith, 68-115 Marion Way, Desert Hot Springs, CA 92240. Mr. Smith spoke in opposition to the annexation proposal.

Guy Rosefort, 14950 Mt. View Road, Desert Hot Springs, CA 92240. Mr. Rosefort spoke in opposition to the annexation proposal.

Robert Hersh, 68100 Louisan Road, Desert Hot Springs, CA 92240. Mr. Hersh spoke in opposition to the annexation proposal.

REBUTTAL:

Martin Magana, 65-950 Pierson Boulevard, Desert Hot Springs, CA 92201. Mr. Magana stated that the proposed development was going to provide the infrastructure needed to help the area and make it more attractive to new developers. He said that this project will create jobs that the area very much needed.

Mr. Montanez asked Mr. Spiliotis if there was a concern expressed when the application was submitted regarding the island that will be created. Mr. Spiliotis responded that fairly early in the process, he had general conversations with the consultant and later on with city staff regarding the boundaries and amount of vacant land.

Commissioner Henderson said that if SB 244 had not happened, the Commission would still be having serious discussions about that island area.

Chair Tomanelli closed the public hearing.

Legal Counsel, Pam Walls, addressed SB 244. She said that the staff report included a number of reasons in support of their recommendation. Ms. Walls stated that SB 244 applies to the annexation proposal. Ms. Walls stated that regarding grandfathering the annexation as requested by the Mayor of Desert Hot Springs, generally grandfathering rights do not accrue on an application process. She stated that SB 244 was effective on January 1, 2012 therefore, it became a law. She said that under Government Code Section 56375(8) (A), stated that the Commission is prohibited from approving an annexation greater than 10 acres where there exists a disadvantaged unincorporated community that is contiguous to the area of the proposed annexation, unless an application to annex the disadvantaged unincorporated community to the subject city has been filed with the executive officer. She said that there had been no application to annex the disadvantaged unincorporated community. She said that additionally, the contiguous area is a disadvantaged community because it has a population with less than a 60% annual state medium income. She said that the threshold in the legislation is 80% therefore this was below that. She said that the area was an inhabited territory because it had more than 12 registered voters. She said that there were a couple of exceptions; one was that if a prior application has been made to annex the contiguous disadvantaged unincorporated community within the preceding five years. She said that this exception did not apply to the proposal. She said that the second exception was if there was written evidence submitted that a majority of residents within the affected territory were opposed to the annexation and the Commission made findings on that, but in this case there was no evidence that the majority of the residents were opposed to annexation. She said that those findings were made by the Commission. She said that because there had been no application that has been submitted to annex the contiguous disadvantaged unincorporated community and no exceptions apply, it appeared that the Government Code Section 56375(8) (A) may preclude the Commission from approving the annexation proposal.

Mr. Spiliotis stated that he had just been informed that the city may wish to consider requesting a continuance for two months to the March meeting to evaluate whether an annexation application might be appropriate for the pocket area.

Mr. Spiliotis responded to the timing of bringing the application to Commission. He stated that staff did not intend to delay the proposal to bring it before the Commission until SB 244 was effective. He said it was continued because there were significant revisions to the map and legal description needed. He stated that as a result, the earlier map was used to request the voter labels when the labels came back, they were incorrect and new labels needed to be requested. He said that the revised labels were not received until December, 2011. Mr. Spiliotis said that upon review of the application, it was discovered that there was incorrect information on the plan of services and revisions were requested. He said that the revised plan of services was received by LAFCO earlier that month. Mr. Spiliotis stated that staff did not arbitrarily delay this proposal to January and wanted the Commission to know this information.

Commissioner Williams stated that it was unfortunate that the folks in Sacramento did not understand the needs of the people of Southern California. He said that if the Commission attempted to grandfather in the proposal, the Commission will open themselves up for challenges.

Legal Counsel, Pam Walls clarified that the City was the lead agency for the preparation of the CEQA documents and LAFCO only review it and consider it. She further stated that LAFCO had a requirement of being deferential to that.

Mr. Spiliotis stated that if the Commission wished to continue the proposal for two months it would be for the March 22nd meeting.

Commissioner Wright asked Legal Counsel what type of proof of verification she was talking about. Legal Counsel, Pam Walls, responded that it was not spelled out in the legislation; it just said that there was an exception.

Mr. Spiliotis added that the term "residents" was an unusual term within Cortese-Knox-Hertzberg. He said that typically statues preferred to say registered voters in the Act. Mr. Spiliotis stated that this was also a concern that was being discussed at the CALAFCO Legislative Committee Meeting. He said that they may seek a minor amendment to substitute the term register voters for residents.

Commissioner Buster stated that even if there was no SB 244, the County's tax base change and expectation of recovery which were the main sources for servicing these areas, property taxes were very low at this time. He said that there had to be a new approach towards these types of concerns which he had advocated. He said that the developers need to work more closely with the businesses and residents to attempt to try to come up with a solution beneficial to all.

Commissioner Wright commented that the disadvantaged unincorporated community in question had mostly sewer services which could be a plus for that area as well.

Moved (Henderson) seconded (Williams) to deny LAFCO 2011-08-5-Reorganization to Include Annexation 29 to the City of Desert Hot Springs (New World Lifestyle Communities) and Concurrent Detachment from the Riverside County Waste Resources Management District as recommended by staff.

4/2 (Wright and Montanez voted No) (Stone absent)

Commissioner Montanez left at 11:50 a.m.

5. PUBLIC COMMENTS.

There were no public comments.

6. RECEIVE AND FILE:

a. Information Items: Proposals Received (Government Code Section 56857, 56751):

i. LAFCO 2012-01-4-Reorganization to Include Annexation 91 to the City of Indio (Boe Del Heights II-County Island Area) and Concurrent Detachment from the Riverside County Waste Resources Management District.

b. LAFCO Monthly Expenditure Review.

Moved (Henderson) seconded (Williams) to receive and file 6.a. Information Items and 6.b. LAFCO Monthly Expenditure Review.
5/0 (Stone and Montanez absent)

8. FISCAL YEAR 2011-12 MID YEAR BUDGET STATUS.

Mr. Spiliotis stated that generally LAFCO was not in bad shape as far as this fiscal year. He stated that there was a higher carry over than anticipated. He said that costs had been under control and revenues were close to what it was expected. He said that it looked like the budget will end with a positive balance. He said that things were going as well as could be expected. He said that staff will be bringing more information to the Commission in the next few months. He said that he had an initial meeting with the Administrative Review Committee to discuss the current budget status and the outlook for next year.

9. COMMISSION POSITION ON PROPOSED CHANGES TO GOVERNMENT CODE SECTION 56133-EXTRA TERRITORIAL SERVICE AUTHORIZATION.

Mr. Spiliotis briefed the Commission on a CALAFCO Legislative proposal to give LAFCOs more discretion in approving requests for extra territorial services. Mr. Spiliotis requested the Commission to take a position in support of those efforts.

10. MISCELLANEOUS REPORTS.

There were no miscellaneous reports.

11. COMMISSIONER COMMENTS/FUTURE AGENDA ITEMS.

There were no Commissioner comments.

12. ADJOURNMENT.

Moved (Williams) seconded (Henderson) to adjourn the meeting at 12:07 p.m. to the next meeting, March 22, 2012.
5/0 (Stone and Montanez absent)

Respectfully submitted,

George J. Spiliotis
Executive Officer