

CITY OF MERCED
Planning Commission

MINUTES

Merced City Council Chambers
Wednesday, August 19, 2009

Fire Chief MITTEN welcomed everyone to the meeting and reviewed life safety issues and Senior Police Officer CARLIN reviewed the rules regarding the meeting room and the conduct of the meeting.

Chairperson AMEY called the meeting to order at 6:04 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Bob Acheson, Mary Ward, Richard Cervantes, Carole McCoy, Lawrence Zuercher, Tena Williams, and Chairperson Dwight Amey

Commissioners Absent: None

Staff Present: Director of Development Services Gonzalves, Planning Manager Espinosa, Principal Planner King, Senior Engineer Franck, Associate Planner Sterling, Planner Nelson, Planner Hamilton, Engineering Technician Fierro, Planning Technician Nutt, Chief Deputy City Attorney Schechter, Deputy City Attorney Rozell, Secretary II Lane, Secretary I Lee, and Recording Secretary Lucas

1. **APPROVAL OF AGENDA**

M/S WARD-ACHESON, and carried by unanimous voice vote, to approve the Agenda as submitted.

2. **MINUTES**

M/S WARD-MCCOY, and carried by unanimous voice vote, to approve the Minutes of August 5, 2009, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

4.1 General Plan Amendment #06-01; Vacation/Abandonment Application #06-01; Site Plan Review Application #260; and Certification of Environmental Impact Report #06-01, initiated by Carter & Burgess, Inc., agent for Wal-Mart Stores East, LP, property owners. The proposed Wal-Mart Distribution Center includes consideration of a general plan amendment and vacation/abandonment application for a change in the General Plan Circulation Element and the abandonment of the right-of-way for Kibby Road (a designated collector) between Childs and Gerard Avenues; a site plan review application to approve the construction of a regional distribution center (approximately 1.1 million square feet, operating 24 hours per day, and employing approximately 1,200 employees) and associated facilities on approximately 230 acres, generally located at the northwest corner of Gerard Avenue and Tower Road within a Heavy Industrial (I-H) zone; and the certification of an environmental impact report regarding the Project.

Secretary's Note: Prior to the meeting, the Planning Commissioners were provided with several additional letters and e-mails that were received after distribution of the Staff Report (Memo from Planning Manager Espinosa dated August 19, 2009). The Commission also received an Errata Sheet for the Draft Findings of Fact and Statement of Overriding Considerations that addressed some minor substantive revisions to Attachment G of Staff Report #09-18.

Director of Development Services GONZALVES thanked the Commission and the public for their participation. He noted the hard work by City Staff to bring this project before the Commission. He introduced Planning Manager ESPINOSA, the project planner, and staff members assisting to facilitate the meeting. He also noted that there were translators available for those that need them. He asked that the audience remain respectful and courteous during the meeting.

Mr. GONZALVES briefly reviewed the process for the project to this point and complimented all parties on their professionalism during the process.

Planning Manager ESPINOSA welcomed everyone and explained the procedure for the meeting and process for those who wish to speak. Following the staff presentation, the public testimony portion would commence. She specifically noted that because of the number of people who wished to speak, each speaker would be limited to three minutes; they would be allowed to speak only once; and could not yield any portion of their time to another speaker.

Ms. ESPINOSA reviewed the proposed project, a 1.1 million-square-foot regional distribution center on 230 acres zoned Heavy Industrial. Ms. ESPINOSA further noted the employment numbers, operation hours, and trip generation. Also reviewed was the site design, building design, elevations, required entitlements, General Plan and Zoning compliance, traffic and circulation, landscaping, public improvements and City services, neighborhood and school interface, neighborhood impacts, and the required abandonment of the Kibby Road right-of-way between Childs and Gerard Avenues due to the project layout.

Ms. ESPINOSA also noted the project timeline since the application was submitted in 2006. She explained the process to date, including selection of consultants for preparation of the Environmental Impact Report (EIR), Site Plan Review Committee Referral, public correspondence, and public noticing.

Regarding the Draft and Final EIR process, Ms. ESPINOSA noted the milestones beginning with the contract with the consultants approved by Council in May 2006 through the release of the Final EIR in July 2009. She reviewed examples of significant impacts identified in the report, including conversion of prime farmland; generation of short-term (construction) and long-term (operation-related) emissions of air pollutants; generation of greenhouse gases; loss of habitat for Swainson's Hawk and Burrowing Owl; light, glare, and visual impacts; water quality and flooding; construction and traffic noise; and impacts on three nearby residences. She further identified significant impacts related to intersections in the area as well as roadway segment impacts.

Ms. ESPINOSA reviewed the process to mitigate these impacts and explained that "significant and unavoidable impacts" would remain

after mitigation and the resulting Draft Findings of Fact and Statement of Overriding Considerations. To ensure compliance with the mitigation measures, a Mitigation Monitoring Program is required for the project and pursuant to the Merced Municipal Code and project conditions, the applicant must pay all costs of the program.

Regarding the Final EIR and response to comments received, she advised that there were 315 comments letters received on the Draft EIR and that a response to each comment letter is contained in the Final EIR. The Final EIR also contains minor modifications to the text and mitigation measures. Prior to the meeting, the Commission was provided an Errata sheet that addressed some minor substantive revisions to Attachment G of Staff Report #09-18.

She also reviewed staff's recommendation to the Commission as outlined in the staff report. For further information regarding the project, staff's recommendations, findings, and conditions, refer to Staff Report #09-18.

Commissioner ACHESON noted for the record that he had previously attended two meetings held by the applicant at the Mainzer Theater, visited the Porterville Wal-Mart Distribution Center, met with River City Communications, and attended a viewing at the local store of a truck from Wal-Mart's hybrid truck fleet.

Public testimony was opened at 6:41 p.m.

AARON J. RIOS, Senior Manager of Public Affairs, Wal-Mart Stores, spokesman for the applicant, spoke in favor of the project. Mr. RIOS thanked Ms. ESPINOSA and the entire staff for their hard work and efforts in preparing this project. Mr. RIOS introduced his team members who were available to answer questions.

Mr. RIOS reviewed a PowerPoint presentation discussing the conceptual plan for the project, the site plan, landscape plan, off-site infrastructure improvements, site access and traffic circulation, zoning, buffer zone, and the facility's sustainability features.

Mr. RIOS explained Wal-Mart's record of being a good neighbor; the economic benefits the project would provide to the community, including the employment figures for this project; local suppliers;

their charitable and outreach programs; disaster relief assistance; and their history in California and the Central Valley.

Mr. RIOS spoke about Wal-Mart's fleet efficiency and the hybrid truck fleet. He also noted their health and wellness programs and employee health coverage.

He noted the over 9,000 Merced area supporters, and survey results showing over 83% of those contacted supported the distribution center.

THOMAS LIPPE of Lippe, Gaffney, Wagner LLP, 329 Bryant Street, San Francisco, CA, attorneys for the citizen group Merced Alliance for Responsible Growth, thanked staff, particularly Ms. ESPINOSA, for their hard work and responsiveness in providing requested documents. City Staff was extremely professional and their hard work was appreciated.

Mr. LIPPE stated that he found the EIR to be defective in a number of ways, the most important being the impact to air quality. Mr. LIPPE also noted deficiencies regarding the assessment of traffic impacts, urban decay, and concerns regarding the City well located near the project site.

Mr. LIPPE said that the way in which the incremental impacts on air and traffic were determined is flawed and in violation of CEQA guidelines because it only took into consideration the project's individual incremental impacts instead of the impacts caused by progressive approvals of individual projects over the course of time. From this methodology, there would never be a finding of significant impact. As a result, the Statement of Overriding Considerations does not address the air quality impacts because they have been defined as not being significant and the public's ability to understand what their elected officials are doing has been significantly compromised since the initial finding of significance was subverted by the methodology used in the report. He questioned the use of the Air District's thresholds of significance and he indicated that the Air District's website did not provide documentation regarding how their thresholds of significance were reached.

Regarding traffic impacts, Mr. LIPPE said that the report used obsolete figures from 2006 which stated that other new developments would occur to contribute their fair share of mitigation funds to traffic improvements to reduce significant traffic impacts to a level of less than significant. By counting on these developments occurring, the project's traffic impacts appear to be less. In order to be accurate, these figures should be updated. He also indicated that the project's traffic impacts should have been compared against the existing baseline and not a projected future condition.

Mr. LIPPE also found fault that Mitigation Measure 4.2-2b, which would have required an enforceable employee trip reduction program, was not included in the Final EIR because it was determined to no longer be enforceable based on a State Health and Safety Code Section that prevents the City from requiring such a program. He contends that the Health and Safety Code Section is only applicable to existing business that would require them to implement a trip reduction program for their employees. He said that it does not apply in this case where an applicant has asked for a permit for a new project. In this regard, the EIR makes a fundamental legal mistake, which is important because employee trips are an important part of the air pollution problem.

Regarding Urban Decay, Mr. LIPPE'S consultant found that the project would have a direct impact on the adjacent neighborhood. He said that the project would contribute to the pressure on that neighborhood, which would prevent it from reaching build out; and would contribute to the foreclosure rate because property values would decrease as a result of the project. Strong overall housing demand in the City addressed in the Final EIR would not help this neighborhood.

Mr. LIPPE also noted that their hydrologist found that one drinking water well nearby had failed several years ago due to contamination from an underground tank. This information caused concern regarding the possibility of corrosive soils in the area and the increased risk of contamination to the existing well near the project site. Regarding the comment, the response in the Final EIR stated that this issue would be addressed once the final geotechnical report

is completed and identifies the soil characteristics and whether there is a high risk or not of the municipal well being contaminated. He said from a policy standpoint that makes no sense and from a legal standpoint, it is simply illegal. He said that there is an environmental setting that exists in terms of soils characteristics that would affect the risk of the project's underground tanks breaching and contaminating the City's well. That environmental setting information is absent in the Draft EIR; it's admitted in the Final EIR that it is absent, and that it will be forthcoming at some undefined time in the future. He said that the law requires that environmental setting information be provided now before the entitlements are granted when a situation with that kind of risk exists.

Mr. LIPPE also noted that he found there to be a common thread to the Final EIR of being non-responsive in many respects and evasive in others regarding the comments on the Draft EIR.

The following members of the audience spoke in favor of the project:

LARRY GONZALES, Planada	DON BERGMAN, Merced
NELLIE MCGARRY, Merced	VICKY RAMIREZ, Le Grand
ADAM LUCIO	HENRY XIONG, Merced
JIM ABBATE, Merced	MOUA THAO, Merced
KAY FLANAGAN-SPINELLI, Merced	JEFF PENNINGTON, Merced
DOROTHY KIELTY, Atwater	DOUG FLUETSCH, Merced
JOE RAMIREZ, Merced	DONNA WINCHESTER, Merced
LEE BOESE, JR, Merced	JOHN BLEIMAN, Merced
GAIL FLANAGAN- MCCULLOUGH, Merced	LLOYD STEPP, Atwater
MICHAEL MALONE, Merced	GARY ROOKER, Merced
BARBARA HOFFMAN, Atwater	RON EWING, Atwater
BUD WALLACE, Merced	BILL BAKER, Merced
LINDA PEOPLE, Merced	GE THAO, Merced
CARL POLLARD, Merced	JOHN HARRELL, Merced
LES MCCABE, Merced	GRANT FORD, Merced
DAVID MELIN, Merced	MARY C. JONES, Merced

BOB AYERS, Merced

RENEE DAVENPORT, Merced

DEBI HAMLIN-WATSON,
Merced

TOM CLENDENIN, Merced

JACK MOBLEY, Merced

PATRICK TAYLOR, Merced

The main focus of the Proponents of the project was the need for jobs in Merced, specifically jobs that offer opportunities for a diverse workforce.

The president of the Boys and Girls Club spoke about Wal-Mart's great partnership with the community. Specifically, that they provide back-to-school supplies and gifts for the children at Christmas. It was also noted that the site has been properly zoned for this type of project for some time and has easy access to the freeway.

Another proponent said that this project would stimulate the economy following the closure of Ragu and other local businesses. The spokesperson for the Hispanic Chamber of Commerce and other community leaders said that they visited Wal-Mart Distribution Centers and were impressed by the centers; they were clean, efficient, high tech, and local teachers and businesses were enthusiastic about the distribution centers' partnership with their communities.

Other proponents noted that the accusations by opponents such as the Merced Alliance for Responsible Growth (MARG) were not true and they have not seen the issues raised by MARG at either the McLane or Save Mart Distribution Centers. They further said that if this project is not located in Merced, it would be approved in a surrounding community and Merced would have the impacts, but not the benefits. One speaker said that MARG should have to prove their accusations with facts.

Also noted by proponents was the fact that with the closure of Ragu, Gottschalks, Albertson's, Linens and Things, Malibu Boats, and other businesses, there has been a larger reduction in employee trips and truck traffic than what would be generated by this project if approved. A few speakers who are familiar with, or were a part of, the trucking industry said that Wal-Mart has the greenest fleet in the industry and that trucking and trucks are not the problem.

Proponents also felt that the City would be sending the wrong message to other prospective businesses if this project was not approved. It was noted that the City should find ways to attract responsible employers to Merced. This project will create necessary jobs and those employees would be spending their money in Merced.

Several speakers said that Merced should be honored that Wal-Mart, one of the largest retailers in the world, had chosen Merced for this project and had been patient throughout the long process.

A former employee of Merced County Environmental Health said that although there are still pollution problems in the area, there has been progress made. He said that regulations make it difficult and expensive to get projects completed and a lot of "environmentalism" is over done.

One 16-year employee of the local Wal-Mart store said that her job provides her a good salary, benefits, and opportunities she did not have at her previous employment. She said she thought it was important for her to stand up and say Wal-Mart is a good employer, helpful, and like a family.

The following members of the audience spoke in opposition to the project:

SOPHIA CURIEL, Merced

ROD WEBSTER, Merced

JOEL J. KNOX, Merced

JOANNE CLARKE, Merced

KYLE STOCKARD, Merced

MARK OSBORNE, Merced

TOM GRAVE, Merced

PHIL TUCKER, Napa

KARA MIDDLEBROOKS,
Merced

CHARLES BOLIN, Merced

AUDREY ALORRO, Merced

DOUG FLEMING, Merced

CRAIG BLAKE, Merced

RITA MURPHY, Merced

CARLOS SEIJAS, Merced

HARRIET LAWLOR, Merced

DALE LANDIS, Merced

PAM ROUSSOS, Merced

RITO RAMIREZ, Merced

NICHOLAS ROBINSON, Merced

The main focus of the opposition was the impact to the health of the community from traffic and pollution. Opponents noted that the project was too close to schools and would adversely affect the health

of the children attending those schools. Noting the high rate of asthma in the area, opponents said that rate would only increase as a result of this project.

The president of a nearby neighborhood association said that the response to the Draft EIR by CalTrans noted that the studies regarding traffic are incomplete and should be redone. The noise, light, and traffic impacts on the surrounding neighborhoods would affect the residents' quality of life. Speakers said that there should be more of a buffer around the project to lessen the impacts.

Also noted was the fact that only 40% of the trucks would be from the Wal-Mart fleet and that the remaining independent trucks would not be held to the same standards as Wal-Mart.

Regarding the jobs resulting from the project, speakers said that Wal-Mart has a poor labor record, and that their low wages equal working poor. One former employee said that Wal-Mart was not a good employer. Others said Wal-Mart should be required to show how many of the jobs would go to Merced residents and provide a job guarantee for Merced citizens.

A labor representative said that Wal-Mart has a history of misleading municipalities. He said this project would prove to be an economic nightmare and the environmental cost would be born by the City. He said that the community could not afford lousy jobs and most won't go to Merced residents.

Also noted by the opposition was the fact that the community needs jobs that do not jeopardize the health of its citizens and that it's about sustainability and the health of the community.

The final speaker noted that much was missing in the testimony. He acknowledged the benefits of the project, but said there was a disproportionate impact on the Southeast Merced neighborhood, including the children who attend Pioneer School. He said that if Wal-Mart comes to Merced, it should not be on the backs of the southeast area residents and alternatives should be considered.

The following items were submitted by speakers for the Commission's information:

- *The Grapes of Rathke*, Wall Street Journal, November 8, 2006.
- *Merced: Ghost Town, USA*, Business Week, June 29, 2009.
- Letter from the Citizens for the Betterment of Merced County dated August 19, 2009.
- Letter from Henry Xiong dated April 23, 2009, with Petition.

Public testimony was closed at 10:25 p.m.

Secretary's Note: During the public comment period, the Commission recessed the meeting at the following times:

7:30 p.m. to 7:45 p.m.

9:05 p.m. to 9:13 p.m.

9:47 p.m. to 10:00 p.m.

Ken ROZELL, Deputy City Attorney, recommended that the matter be continued to Monday night to allow the rebuttal testimony by Wal-Mart and then deliberation by the Commission.

Commissioner ZUERCHER asked if there were others who signed up to speak that did not. Staff advised that there were several that did not speak, but had completed cards. Commissioner ZUERCHER said that if someone signed up to speak they should be allowed the opportunity to speak. He said that this was an issue discussed at the last meeting, and it was decided that only those who signed up at the first meeting would be allowed to speak and he didn't think that should be changed. He said that those who had signed up, but gone home before speaking tonight should be given the opportunity to speak Monday.

Commissioner WILLIAMS said that she is also in favor of leaving the public hearing open to those individuals who have submitted a card. The Commission decided that the meeting on Monday and the following Wednesday would be "as needed" and the Commission should stay consistent. She said that if they were to hear the rebuttal from Wal-Mart tonight, then the item would be discussed, a vote taken, and no one would have another opportunity to speak.

Commissioner WARD said that she did not have an objection to leaving the public hearing open and that she is not in favor of rushing to judgment and discussion at this late hour and said that it is a

disservice to have conversation back and forth from the audience because it is not in the record. She said that although leaving was their prerogative, she has no objection to leaving the public hearing open until Monday night in case there are people who still wish to speak.

Commissioner WILLIAMS asked how the remaining people would know they would be allowed to speak. Planning Manager ESPINOSA said that there is a spot on the speaker card for their phone number and staff would attempt to contact them. She said that the public hearing notice specified that the meeting would be continued to Monday, if necessary, and that with the press in attendance there would probably be something in the paper.

Commissioner CERVANTES said that he too had no objection to leaving it open, at least to those that had completed cards to speak. He said that he would have an objection to allowing someone to speak more than once. He added that he did not want to rush into a decision tonight, and has no objection to coming back on Monday. Commissioner CERVANTES also said that the Commission is only making a recommendation to City Council, and no matter what the outcome this meeting is not the end of the road and the public would have another opportunity to speak during the City Council meetings.

Commissioner MCCOY agreed that only those here tonight that had completed a card and wanted to speak should be able to come forward Monday evening to speak. She agreed with the other Commissioners that they should not rush to judgment, and the meeting should be continued to Monday night.

Commissioner ACHESON said that only those who had a card completed and had not yet spoken should have the opportunity to speak on Monday. His concern was that people would try to come in and speak twice. Commissioner ACHESON said that he is sympathetic to those that left, but the Commission stayed, as well as other audience members, and if a person was that interested in the process, they should have stayed.

Commissioner WARD disagreed only with the restriction. She agreed that it should be one person, one speaking opportunity. Since

it was in the paper that it would be more than one night, if someone planned to attend Monday night to speak they should have that opportunity. She said that it was not a good idea to deny those who read in the paper that they would have an opportunity on more than one evening to speak. She said that in all fairness she did not see the harm in allowing the public hearing to remain open and allow speakers one opportunity to speak during the whole process.

Chairperson AMEY asked how many spoke and staff advised that 83 cards were submitted and 25 did not speak. He said that he was not in favor of opening it up further on Monday. Chairperson AMEY said that he did not mind coming back Monday to allow those who had filled out a card to speak, but not allow new cards to be completed.

Commissioner ZUERCHER concurred and stated that everyone had the opportunity to speak. He is not opposed to calling 25 people and the Commission should err on the side of caution.

Ms. ESPINOSA said that if they left a phone number staff could call them, but if they did not then staff may not be able to contact them, but would make the effort to do so.

M/S CERVANTES-WILLIAMS, and carried by the following vote, to continue the public hearing to Monday, August 24, 2009, at 6:00 p.m., in the Council Chambers of the Merced Civic Center, 678 W. 18th Street, Merced, CA, to allow the remaining 25 audience members who submitted Speaker Request Cards to speak before the Commission and allow rebuttal by Wal-Mart before closing public testimony and deliberating.

AYES: Commissioners Acheson, Cervantes, McCoy, Zuercher, Williams, and Chairperson Amey

NOES: Commissioner Ward

ABSENT: None

5. INFORMATION ITEMS

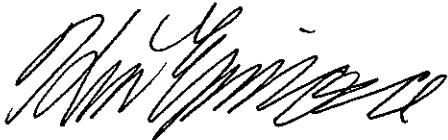
5.1 Calendar of Meetings/Events

There was no discussion regarding the calendar of meetings/events.

6. **ADJOURNMENT**


Chairperson AMEY adjourned the meeting at 10:37 p.m., to the continued public hearing on Monday, August 24, 2009, at 6:00 p.m., in the City Council Chambers, regarding the Wal-Mart Distribution Center project (Item 4.1).

Respectfully submitted,



KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:



DWIGHT AMEY, Chairperson
Merced City Planning Commission