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3. All the staff at the Merced County Mental Health, including part-time employees, need to understand the organizational chart, so that if they feel they have an issue they will know who to report the issue to and can follow up with the status of the issue.

In response to this recommendation, the Department will post and make copies available to employees, the current organizational chart at each of its facilities. In addition, in-service training will be done for each team within the Department on reporting channels, chain of command, and an update on the reporting requirements and complaint procedures outlined in the Department's Compliance and Integrated Ethics Plan.

Complaint 06-07-06: City of Merced Planning Department, City Attorney, and other unnamed city officials' Misconduct

Introduction

The complainants, of which there are six, allege that there was misconduct, including violations of the Brown Act, on the part of Merced City Planners, Merced City Attorney and other unnamed city officials with respect to an application for annexation and development of a parcel of inhabited land contiguous to the Merced city limits. The complaint is comprised of two parts, illegal approval of the request for annexation and improper development plans for a portion of the parcel to be annexed. The Grand Jury decided to proceed with the investigation because of the allegations of misconduct and law violations on the part of public officials.

Method of Investigation

The County Administration/County Services Committee of the Grand Jury interviewed each of the complainants, as well as an individual who volunteered to provide the committee with some information germane to the complaint, of which he did not believe the committee was aware. All of the complainants stated that their primary complaint was that the Merced City Council's approval of the resolution to the Merced County Local Agency Formation Commission (LAFCO) to approve the annexation was not done in accordance with the law and/or proper procedures. Most complainants also objected to the development proposal as well, citing, primarily, its high density and detrimental environmental effects.

The committee also interviewed city planning department officials, the city attorney and a LAFCO official. Each of these provided the committee with documents describing their requisite procedures and outlining the steps taken from the initial request for annexation and development through to the final city council and LAFCO approvals of the proposals.

The committee also reviewed the applicable provisions of the Brown Act, Merced Municipal Code and LAFCO Application Processing Procedures, as well as all of the application documentation in the city's files.

Findings

The initial application for this annexation and development proposal, dubbed "Oleander 2", included annexation of approximately 34 acres along Oleander Avenue and to establish a 7.81-acre residential planned development on two separate sites within the annexation area. Opposition immediately arose within the proposed annexation area due to several reasons, including mandatory sewer hookups, possible higher taxes, etc. The development portion of the proposal also generated opposition due to housing density, design, environmental impacts and other factors. Despite several public workshops and hearings, opposition to the annexation and development remained strong. Developers then made changes to their proposal, including changing the proposal from a townhouse project to a detached single-family project, reduction in the number of units adjacent to Harris Acres properties, proposal of a high wall around the site. Other changes included relocation of the pool and open space area away from adjacent properties and increasing rear yard setbacks. After adoption of nine mitigation measures that reduced environmental impacts, the city planning commission recommended, on April 3, 2006, to the city council, approval of a resolution to LAFCO to approve the application. At that council session, the city attorney advised the council to bring the matter back to the planning department due to the substantial number of changes that had been made to the proposal from its original form. The council agreed, and the proposal was returned to the planning department. It was this version of the proposal that was brought back and briefed to the council at the June 5 session. Since there were no changes from the version briefed at the April 3rd session, the planning department presented the proposal again, emphasizing that there were "no changes" from the previous presentation. While technically true, the planners were aware that the developers were going to reduce the scope of the proposal to include for annexation only that portion of the application on which the development would be done. They chose, however, to not include that fact in their presentation, but defer to the developers to make that announcement. In fact, the city staff had prepared for council approval, a revised version of the proposal, which paralleled what would become the developers', reduced annexation proposal. The developers then did present their reduced proposal, which the council later in the session approved for submission to LAFCO. Although this change could be considered major in scope, it did not require resubmission to the planning department because it was not in reality a "change", but merely a reduction in scope. Thus, all aspects of it had already been published and available to interested parties for inspection and comment. Additionally, the Brown Act, paragraph 54954.3 states in part, "However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered, ...unless the item has been substantially changed ... as determined by the legislative body." Clearly, the council determined that there had been no substantial change to the proposal.

2. The Merced City staff was aware of the developers' reduction in scope of the annexation proposal prior to the June 5 council session and had prepared a resolution for the council's approval reflecting that reduction, but chose not to brief it for the public's edification prior to the council vote. This gave the impression that they were trying to hide something or avoid explaining to the public.

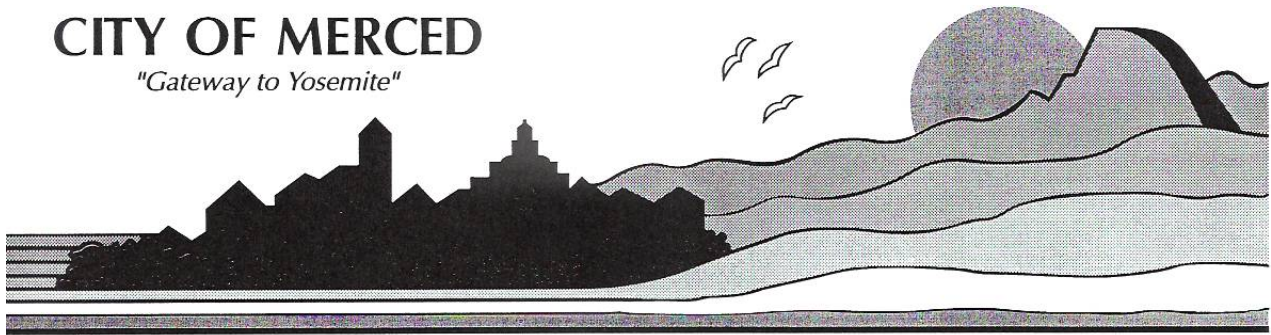
3. The Merced City Planning Department, City Attorney and City Council violated no laws or ordinances in approving this proposal, as revised by the developers. Meetings among developers, planners and other officials during the approval process are not only legal, but also imperative to ensure that all laws and regulations are met and that appropriate efforts to address objections are made.
4. A greater effort could have been made to ensure all interested parties knew what was being recommended for change, as well as why.

Recommendations

1. City staff, including the Planning Department staff, should be forthcoming with the public and Council when briefing annexation and/or development proposals. This is especially true when they are aware of proposal changes not yet presented to the public.
2. If reductions in annexation or development proposals, which were a part of a larger proposal, are recommended, the public should be told why they do not need to be rescheduled for public comment and rehearing by the council.

CITY OF MERCED

"Gateway to Yosemite"



January 11, 2007

The Honorable Frank Dougherty
Presiding Judge
Merced County Superior Court
2222 M Street
Merced, California 95340

Subject: **Response to Grand Jury Investigation Report 06-07-06**

Dear Judge Dougherty;

Pursuant to Penal Code Sections 933 and 933.05¹, the attached response is intended to complete the investigation into complaint 06-07-06 in the 2006-2007 Grand Jury Report regarding the City of Merced:

The City appreciates the investigation, findings and recommendations made by the Grand Jury.

Finding 1. The City concurs and agrees with the findings. Specifically, no laws or ordinances were violated by the City in its consideration of the Oleander Avenue II Annexation application.

This matter was brought before the Planning Commission on two separate occasions for public input and review. Although not required, City Staff sponsored and invited all interested individuals to an "informational fair" where questions could be answered and additional concerns and ideas from the community could be voiced. It was further brought before the City Council on two separate occasions for public input and review. Because this was an inhabited annexation (the land to be annexed contained more than twelve registered voters), and because not all of the landowners consented to the annexation, a protest proceeding was conducted by the Local Agency Formation

¹ The City is curious as to why the provisions regarding advance notice in Penal Code Section 933.05(f) were not followed by the Grand Jury in this case.

Commission (LAFCO) on the application, after a hearing before LAFCO. Clearly, there was significant opportunity for those in support or opposition to the annexation (in its various amended forms) to appear publicly and be heard.

Finding 2. The City agrees in part and disagrees in part. Staff was aware of a developer option and prepared a Resolution to accomplish this option. The City disagrees it was hidden or that it was staff's role to present a developer alternative.

The City staff and City Council take seriously our respective roles in the application review process. As staff, it is our responsibility to make professional recommendations; and, transmit the findings and recommendations of the Boards and Commissions advisory to the City Council. It is not the role of staff to present (as proponents for an application) a developer's proposed amendment. Oftentimes, developers change their position – even during the dynamics of the hearing process. In this particular case, both proponents and opponents had voiced preferences for a “reduced annexation area.” Staff had prepared a resolution for City Council consideration reflecting this change in advance of the meeting. This was intended to be efficient and expedient, not secretive.

Finding 3. The City agrees with this Finding.

Finding 4. The City agrees in part and disagrees in part for the reasons noted in Findings 1 and 2. Regardless, it is always our intent to keep the City Council and citizenry informed, as recommended in the Grand Jury report. We will endeavor to keep all interested parties informed of potential changes in the application process as the dynamics of the process go forward.

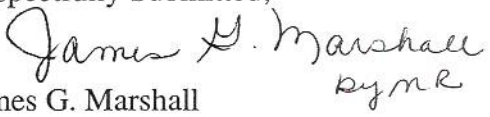
Recommendation 1. Applicants have an absolute right (as do proponents or opponents of a project) to request changes or modifications to a project. Even in those instances where staff is aware of potential changes, staff's role is to present the staff and Planning Commission recommendation. This allows whomever is proposing a change to present this change to the decision-maker (or not to request the change if they have reconsidered it since meeting with staff but before the public hearing). This recommendation is unlikely to be implemented because it directly conflicts with the roles and responsibilities of staff while unduly restricting project proponents (or opponents as the case may be) from reconsidering a potential change to the project.

Recommendation 2. While this was done in the case at issue, it can always be done better and will be should a similar circumstance ever occur.

The Honorable Frank Dougherty
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January 11, 2007
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The City Council, at its regularly scheduled meeting of February 5, 2007 reviewed and authorized transmittal of the response.

Respectfully Submitted;


James G. Marshall
City Manager

Attachments

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cc: Van Vanderzyde, Foreman