



MINUTES OF THE
JOINT REGULAR MEETING OF THE
ADELANTO CITY COUNCIL, ADELANTO PUBLIC FINANCING
AUTHORITY, ADELANTO PUBLIC UTILITY AUTHORITY,
ADELANTO COMMUNITY BENEFIT CORPORATION
AND THE SUCCESSOR AGENCY BOARD

May 14, 2014

A. CALL TO ORDER – CLOSED SESSION

The Adelanto City Council held a Closed Session on Wednesday, May 14, 2014, in Conference Room 1 of the Governmental Center located at 11600 Air Expressway, Adelanto, California. Mayor Thomas called the meeting to order at 6:00 p.m.

Council Members present: Camargo, Valvo, Wright, and Mayor Pro Tem Baisden, and Mayor Thomas.

Staff present: City Manager Hart, City Attorney Litfin, and Assistant City Clerk Lopez

B. ANNOUNCEMENT OF CLOSED SESSION ITEMS

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PER GOVERNMENT CODE SECTION 54956.9 (d)(1).

(a) AMBAC Assurance Corporation vs Adelanto Public Utility Authority, Case No. 09CV5087

(b) City of Adelanto V. Liu and Wen San Bernardino County Superior Court, Case No. CIVVS1104631

(c) Adelanto Successor Agency et al. v. Walker et al., Sacramento County Superior Court case No. 34-2013-80001498

2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 SUBDIVISION (d)(2).

ONE CASE(S) WHERE, IN THE OPINION OF THE CITY COUNCIL BASED ON ADVICE OF THE CITY ATTORNEY, BASED ON EXISTING FACTS AND

CIRCUMSTANCES, THERE IS A SIGNIFICANT EXPOSURE TO LITIGATION AGAINST THE CITY.

3. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION, INITIATION OF LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 (d)(4) .

L. PUBLIC HEARING

1. FIRST READING OF ORDINANCE 524, LOCATION AND DEVELOPMENT AGREEMENT PLAN 13-05, CONDITIONAL USE PERMIT 13-04, MITIGATED NEGATIVE DECLARATION 14-01.

RECOMMENDATION: Approve for the first reading Ordinance 524 approving a Development Agreement between the City of Adelanto and Aries Solar Holding LLC, and adopt Resolution 14-18, adopt findings and approve Location and Development Plan 13-05, Conditional Use Permit 13-04, and Mitigated Negative Declaration 14-01.

ORDINANCE 524

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ADELANTO APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ADELANTO AND ARIES SOLAR HOLDING, LLC. FOR DEVELOPMENT OF THE PROPERTY LOCATED AT THE SOUTHEAST CORNER OF RANCHO ROAD AND EMERALD ROAD

AND

RESOLUTION 14-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ADELANTO, COUNTY OF SAN BERNARDINO, CALIFORNIA, MAKING FINDINGS, APPROVING PLANNING COMMISSION'S RECOMMENDATION OF APPROVAL FOR LOCATION AND DEVELOPMENT PLAN 13-05, CONDITIONAL USE PERMIT 13-04, AND MITIGATED NEGATIVE DECLARATION 14-01 TO CONSTRUCT AND OPERATE A 27 MEGAWATT PHOTOVOLTAIC POWER GENERATION FACILITY ON 206 ACRES OF LAND IN TWO PHASES. PHASE ONE CONSISTS OF 155 ACRES AND PRODUCES 20 MEGAWATTS, PHASE TWO CONSISTS OF 51 ACRES AND PRODUCES 7 MEGAWATTS LOCATED ON THE SOUTHEAST CORNER OF RANCHO ROAD AND EMERALD ROAD WITHIN THE CITY OF ADELANTO

Senior Planner de Manincor presented the Council with the Staff report. He explained that the Council should have received some last minute notes from a Law Firm Adams, Broadwell, Joseph & Cardozo (Exhibit A), he wanted to make sure they became part of the record. He stated that as part of the agreement Aries Solar is asking for a reduction in fees. There has been a fiscal analysis done, it is comparable with other solar projects that have been done in the City. The developer will be responsible for paying the fiscal mitigation impact fees prior to the issuance of the building permit in the amount of \$436,737.00 for phase one and \$143,695.00 for phase two. The Developer will also be responsible for fiscal mitigation services fees \$614,400.00 for phase one and \$189,00.00 for phase two it will pay for police and fire for the life of the project for 20 years. There was a Mitigated Negative Declaration filed with the State Clearing House. There was also a 15 day extension given to allow time for comments from Adams, Broadwell, Joseph, and Cardoza which is a Law Firm that represent Labor Unions. There is a representative who will speak, it is there opinion that there needs to be an environmental study done on this project. Senior Planner de Manincor opinion is that there does not need to be further studies, that all of the environmental impacts have been addressed, and that it has been adequately mitigated. Some of the impacts that Adams, Broadwell, Joseph, and Cardoza identified are that he did not adequately described the project, which he feels that he did. They discuss decommissioning; they did not discuss that issue the project could stay there indefinitely. There was a report that was prepared by the developer that upon decommissioning all materials will be recycling. They also had concerns that the soils were contaminated with valley fever; it is an illness that you can get from disturbing the soil. It is a fungus and the spores can be inhaled, everyone has been exposed to it. Some people never know that they have had valley fever because their immune systems have fought it off. At its highest rate in San Bernardino County as many as three (3) people in 100,000 have died from it and those people had immune deficiency problems. Since 2010 that rate has gone down. They had several other issues with the project. There is several mitigation measures put in place by the applicant to deal with such issues. He recommends that the City Council approve for the first reading Ordinance 524 approving a Development Agreement between the City of Adelanto and Aries Solar Holding LLC, and adopt Resolution 14-18, adopt findings and approve Location and Development Plan 13-05, Conditional Use Permit 13-04, and Mitigated Negative Declaration 14-01.

City Attorney Litfin stated that the City received a Letter today from Adams Broadwell, Joseph and Cardozo that has two Arguments there first argument is that Development Agreement violates the City's Municipal Code, because it reduces Development Impact Fees. All Development Impact Fees are governed by the Nolan Dolan test they can only be related to the actual impacts of the project. Solar projects are different they do not have the same impacts as residential or commercial projects. That is why they go off of the Stan Hoffman report and they are allowed to deviate from the Municipal Code. In regards to the Valley Fever the City has complied with the Air Quality District dust mitigation issues, there are multiple conditions within the conditions of approval that deal with that.

1. *Jim Shandalov (Nextera Energy)*: Mr. Shandalov thanked the Council for their time. He stated that it has been a pleasure working with the City for the last three years. They operate solar plants throughout the Country. In San Bernardino County they operate 310 megawatts of solar thermal technology up in the Kramer Junction and Hopper Lake area. They have been operating responsibly for over 25 years now. They also have solar projects in Riverside County. He explained that they proposed to have 27 Megawatts on 206 acres and employ 100 people for approximately eight (8) or nine (9) months. They hope to have everything online by the end of 2015.

The Chair opened the Public Hearing at 7:50 p.m.

2. *Rachael Koss (Coalition for Responsible Solar)*: Ms. Koss stated that they have provided extensive comments on a few occasions regarding this projects significant impact. Despite the evidence presented, the City has not addressed these issues adequately. One of the issues is in the Development Agreement they feel that it violates the City's Municipal Code there is nothing that says they can give a reduction. There are ways to allow a reduction the City would have to amend their Ordinances. Without amending the Ordinances the current Development Agreement is in violation of its Ordinances and Codes. The second thing she wanted to address was Valley Fever; she did educate the Planning Commission. It is very serious it can affect construction workers and the general public; cases have skyrocketed the last few years. Valley Fever has been related to large scale projects such as this one. This is very concerning they represent construction workers throughout California. Unfortunately; the standard dust control measures or guidelines for the Air Quality District are not sufficient. She recommends they take a step back. That they amend the Development Agreement to deal with the comments that have been brought up. Prepare an Environmental Impact Report (EIR) that adequately analyzes impacts for Valley Fever, as well as the other potential impacts that were mentioned in their comment letters.

There were no further comments from the public the Chair closed the Public Hearing at 7:54 p.m.

Council Member Wright asked staff if the mitigation of fees that were being charged were comparable to projects that have been done in the past.

Senior Planner de Manincor stated that this project is comparable to projects that have been done in the past most comparable to Victor Phelan Solar one. In fact the impact fees that the City is requesting for the project are slightly higher.

Council Member Wright had a question for Ms Koss. He wanted to know if this wasn't a solar project and it was a housing project and they used union workers would she still be at the meeting.

City Council Minutes
Regular Meeting
May 14, 2014

Ms. Koss stated that she represents unions who construct solar projects, mixed use projects throughout the state. They participate in the permitting process throughout the state. She stated that they do participate in housing projects as well.

There was further discussion between Council Member Wright and Ms. Koss regarding the mitigation process and Valley Fever. They also discussed the possibility of the law firm backing off if they developer would sign a union contracts. Ms. Koss stated that was not the case.

Mayor Thomas wanted to address a couple of issues; she stated that the information that was provided to the Council by Adams, Broadwell, Joseph, and Cardoza was given to them at such a late hour. It states that the project is next to the Adelanto Federal Prison; she informed Ms. Koss that Adelanto does not have a Federal Prison. The letter also states that it is next to West Creek Elementary school which is Victorville. There are a lot of faults in the reports. She feels that Council Member Wright is correct that Ms. Koss is there representing Unions.

Council Member Wright thanked Ms. Koss coming. He further stated that it is dirt in the middle of the desert. They are worried about kicking up dirt this is the desert and that is going to happen. He feels that if the applicant were to sign an agreement with the union then they would never see the law firm again. He feels that City staff has put out a report and the City Attorney has backed what staff has said. The Planning Commission has approved the project. If this was a problem with the residents they would be in the meeting complaining that they would get sick. The people of Adelanto need the work this project can bring and they have been dealing with the dirt and dust for years and decades.

Council Member Camargo inquired why there is such a large reduction in impact fees.

Senior Planner de Manincor stated that in order to charge impact fees the City has to have a nexus. The one they use is put together by Stanley Hoffman he is an economist who prepared the reports for the first five projects. The results of the projects are on the table in the report. It shows that Solar Projects have fewer impacts to the City's roads, drainage systems, and Fire Departments. A typical development such as commercial or industrial would have more impacts.

There was further discussion between Staff and Council regarding the Development Impact Fees.

City Attorney Litfin believes that the concept of a reduction is appropriate he thinks that California and National Constitutions trump Municipal Codes. Where this exact number is appropriate it is up to the City Council.

Mayor Thomas asked if it was a common practice in other cities have other cities done this nexus study.

There was further discussion between Staff, City Attorney and the City Council on how other cities come up with their fees for Solar Projects.

3. Chris Waggener (Planning Commissioner): Mr. Waggener stated that solar projects are here to make a profit. When the City was charging 100% it was obvious that no project could afford to come in. The City would not have any projects if it would have stayed at 100%.

Council Member Wright asked if this project would be a point of sale.

Senior Planner de Manincor stated the developer has the option to operate the project as a point of sale and generate sales tax. If they choose that option it would reduce the amount of the fiscal mitigated service fee

Council asked why the point of sale would reduce the fiscal mitigated service fee.

Senior Planner de Manincor stated that it is an option that has been given to all solar projects in the past by the Stanley Hoffman report. The Victor Phelan Project has that option they can either pay the fee or they can use it as a point of sale and generate sales tax. The theory behind it is the sales tax generated can be put into an account and earn 1.5% interest and that money would provide services for the life of the project. This applicant has asked to have a similar agreement.

There was further discussion between Council and staff regarding the point of sale option. Council did not see any reason why the City could not get both the point of sale and the fiscal mitigation service fee.

Council Member Camargo stated the he feels solar projects come into the city to make money, and he understands that. He just does not understand the reasoning behind a 90% reduction.

Mayor Thomas feels that if the City could get the fiscal mitigation service fee as well as the point of sale fee that would work.

Jim Shandalov (Nextra Energy) addressed the Council's concerns he stated that their tax department has talked about how cumbersome it would be to have it as a point of sale. The broader issue he wanted to point out was that there was roughly 65 million in capital left to spend on the project; some are materials that are taxable. One percent of that would be less than what they already agreed to pay.

There was further discussion between the applicant and Council regarding the difference between point of sale and what they have already agreed to pay.

City Attorney Litfin stated that with other Development Agreements the City has signed there have been a point of sale component, and it reduce the fees if there were sales tax collected. If there is a concern about the amount he would suggest a revision to the Development Agreement that takes away any reduction to the fee amount paid to potential sales tax. If they still do not feel comfortable with the amount of the fee they should increase the amount accordingly to what they have received from other agreements.

There was further discussion between Staff and Council regarding past projects and the fees received though point of sale.

Mayor Thomas stated that she feels that she has not had enough time, and would like to pull the item and continue it to the next meeting. Council Member Camargo agreed he needed more time to look over the project.

MOTION: Moved by Thomas, seconded by Camargo to move the first reading Ordinance 524 approving a Development Agreement between the City of Adelanto and Aries Solar Holding LLC, and adopt Resolution 14-18, adopt findings and approve Location and Development Plan 13-05, Conditional Use Permit 13-04, and Mitigated Negative Declaration 14-01 to the next meeting which is May 28, 2014.

Motion carried 5-0 - (Camargo, Valvo, Wright, Mayor Pro Tem Baisden, and Mayor Thomas voting yes)

Senior Planner de Manincor asked for direction on what to bring back for Council approval.

Mayor Thomas stated that the mitigation fee and point of sales tax needs to be hammered out. She would like to see if there could be a ballpark figure of what the sales tax could be.

Mayor Pro Tem Baisden stated that one thing that needs to be looked into is what other cities or counties have done as far as reducing their fees; He feels a reduction is in order. He would like to know what their fees are to make sure the City is inline.

Council Member Camargo also wanted to see the one 1% sales tax added in.

2. FIRST READING OF ORDINANCE 525, LOCATION AND DEVELOPMENT AGREEMENT PLAN 13-06, CONDITIONAL USE PERMIT 13-05, MITIGATED NEGATIVE DECLARATION 14-02.

RECOMMENDATION: Approve for the first reading Ordinance 524 approving a Development Agreement between the City of Adelanto and EPD Solutions Inc., and adopt Resolution 14-19, adopt findings and approve Location and Development Plan 13-06, Conditional Use Permit 13-05, and Mitigated Negative Declaration 14-02.