

R. Jean Taylor

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September 24, 2008

Contra Costa County LAFCO

C/O Lou Ann Texeira

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RE: Request for Reconsideration of Decision Made at LAFCO Hearing on September 18, 2008 at Creekside Church in Alamo

To Whom It May Concern:

This is a Request for Reconsideration of the LAFCO decision on September 18, 2008, regarding the decision to allow Alamo residents to vote on the incorporation of Alamo. The processing fee of \$2,500 is enclosed.

A modification is being sought of the decision to approve the vote for incorporation of Alamo. The decision to allow Alamo residents to vote on incorporation should either have been continued or denied based on the information provided to LAFCO Commissioners and the public as of September 18, 2008.

Reconsideration is required to correct several procedural defects in LAFCO's actions at the September 18, 2008 hearing because there was insufficient information at that time to make a decision. In addition, the method in which the vote was taken, and the reasons why the vote had to be made on that evening, made the voting process arbitrary and unfair. The reasons for modifying the approval of the measure to allow a vote on the incorporation of Alamo are listed below.

1. **There were several concerns expressed by speakers at the hearing that**

continue to remain unaddressed:

- **The overly optimistic Comprehensive Fiscal Analysis (CFA):**
The fiscal study does not reflect a basis for costs or projected cost increases for contract services caused by Contra Costa County's budget issues. The CFA as a whole appears to be overly optimistic as to revenues, and it appears to underestimate the costs. This combination presents a far brighter picture of incorporated Alamo than might really be possible. Almost every speaker opposed to incorporation expressed different reasons for revisiting the validity of the CFA. These concerns, though valid, were not adequately addressed.
- **Lack of resident involvement in the application process:**
Residents were not included in the application for incorporation process, the definition of the government proposed, or any approval of the application for incorporation.
- **The misleading petition for the application to incorporate:**
Residents were misled by petition volunteers about the purpose of the petition, and were only told they were authorizing feasibility studies to see if Alamo could function as a city. Residents were not shown the entire petition and its incorporation proposal during the petition drive and were only provided review of the signature sheets.
- **The true cost of police services:** Multiple speakers expressed doubts that the numbers in the CFA addressing the costs of police services were accurate. In fact, speakers with backgrounds in law enforcement explained the true costs of maintaining a police force, and the true costs are far greater than predicted by the CFA. It is agreed that the greatest cost to a city is the maintenance of its police force; therefore, it is vital that the numbers be accurate when predicting this cost.
- **Resolution of having two fire protection districts serve Alamo:**
A representative from the San Ramon Valley Fire Protection District presented questions as to emergency response if two fire protection

districts serve Alamo. LAFCO Staff did not provide an adequate response to this concern, but only explained that this sometimes happens. It remains unclear why Alamo would structure its fire protection services in this potentially problematic way.

- **The cost of hiring and maintaining city officials:** Multiple speakers had done research to determine what the salaries of city officials from nearby cities really are, and had determined that the numbers in the CFA are once again too low for the true cost of paying future Alamo city officials. If Alamo were to offer the salaries provided in the CFA, it would likely have problems hiring qualified city staff and officials.

- **The cost of potential litigation:** As an incorporated city, Alamo would be liable for any lawsuits against the city. The cost of this liability was not addressed. Liability could potentially be an enormous cost to the city, and it is unclear how it would deal with the cost of this liability given that the CFA underestimates all the costs associated with running a city government. According to LAFCO Staff, incorporated Alamo could carry liability insurance to deal with litigation liability; however, the cost of insurance was not explained, and it is unclear whether it is built in to the CFA.

- **The 16% redevelopment fees as revenue:** 16% of incorporated Alamo's revenue is supposed to come from redevelopment fees. Multiple speakers expressed doubts that this number was accurate given that Alamo is mostly built out and there would not be much development in Alamo. If this revenue stream is overly optimistic, and the costs are underestimated, Alamo could be in serious financial trouble by relying on the numbers in the CFA.

- **The inadequacy of the boundary maps:** At least one speaker voiced concerns over the lack of clarity in the boundary maps provided by LAFCO Staff, and asked for better maps showing the new boundaries of incorporated Alamo. The questions regarding the maps were never addressed.

- **The requirement for low-income housing:** Under current law, an incorporated Alamo would have to provide a certain amount of low-income housing. It has not been determined how much low-income housing would be required, where this low-income housing would be, and who would pay for the low-income housing. Multiple speakers addressed concerns about this issue; however, no answers have been provided. This is a critical issue in determining whether incorporation is in the best interests of Alamo residents, and should be addressed with particularity before a decision regarding incorporation is made.

2. The financial information is outdated. LAFCO is relying on financial information from 2006 to approve a 2009 incorporation vote:

LAFCO is authorized to use the most current full year financial information available at the time of the study, and the 2006/2007 fiscal year is the most recent available. This means half of the numbers used to make the model are from 2006. Of course, there has been enormous change since 2006. The LAFCO Staff explained that "financial studies can be off" and "the picture over time will always change." Even the company that did the study said, "the city will have to be managed very carefully." The newest numbers, however, are going to be available in October, and there should be a new CFA done including these most recent numbers.

As it is, the CFA is far too optimistic and relies on potentially erroneous information to conclude that an incorporated Alamo is fiscally feasible. To think that one can use the outdated numbers in the fiscal study to draw relevant conclusions as to the feasibility of Alamo to incorporate and remain functional in the years to come is irresponsible and unrealistic.

3. The recent crash of the financial market is evidence that current financial information should be used when determining whether an incorporated Alamo is fiscally feasible:

The current financial crisis is further proof that the financial climate is unstable. The financial crisis affects the federal government, and trickles down to state governments, county governments, and finally to local governments. Contra Costa County already has budget issues, and there should be greater

concern as to the ability of an incorporated Alamo to stay fiscally sound in the face of such extreme financial crisis. To incorporate in today's financial market based on financial information from 2006 is dangerous and could lead to enormous financial issues for the newly incorporated Alamo in 2009.

The financial crisis is just one more reason to make the decision to incorporate on a newer, and more realistic CFA.

4. Three of the present LAFCO commissioners expressed a desire for more time and more information:

Three of the five attending LAFCO committee members expressed interest in holding off the vote in order to respond to the legitimate questions and financial concerns raised by some of the resident speakers. To hold off the vote, however, would possibly delay the process for the March 2009 vote for Alamo residents, and LAFCO did not want to "stand in the way of the democratic process." It was unclear, however, why an additional hearing could not be held. If the residents and Commissioners wanted more time to evaluate the information provided before moving forward with the vote on incorporation, more time should have been given.

Given LAFCO's mandate, and the numerous legitimate questions and concerns that were raised at the hearing, there should at least have been a continuance and postponement of the decision to allow to vote to go forward.

The only consistent view amongst a few of the Commissioners appeared to be that more time was necessary to make an adequate decision.

5. After the votes had been cast, it was determined there were not enough votes to approve the measure; however, one of the Commissioners changed his vote, thereby creating the necessary quorum for approval:

According to LAFCO policies, four members of the Commission shall constitute a quorum for the transaction of business. In addition, four affirmative votes are required to approve any proposal or other action. A tie vote, or any failure to act by at least four affirmative votes shall constitute a denial. An abstention shall not be counted as an affirmative vote.

At the beginning of the hearing, six of the LAFCO Commissioners were present. Halfway through the meeting, the Chair left, leaving five Commissioners to make the decision. At the end, there were three affirmative votes and two negative votes. At this time, LAFCO Staff interjected that three affirmative votes did not satisfy the necessary quorum requirements to approve a proposal before the Commission. At this point, one Commissioner changed his vote, thereby satisfying the requirement for four affirmative votes to approve a measure. It is unclear how or why this was done, considering votes had already been cast.

6. There is nothing in the LAFCO policies and procedures or Commissioner Handbook that addresses whether a LAFCO Commissioner may change his vote once it has been cast, and what the process for such a change is:

If the Commissioner had been unable to change his vote, the proposal for voting on an incorporation of Alamo would have failed. This would be a widely different result than what actually transpired. The fluctuation in the opinions of the Commissioners at the end of the meeting, and the switching of votes, demonstrates the arbitrary nature of the decision making process. At the least, the decision should have been to continue.

7. There were no alternate members present at the meeting:

Alternate members can vote if regular members are disqualified or absent. Although one Commissioner was absent from the proceedings, and the Chair left in the middle, no alternates participated in the hearing. The residents present, LAFCO Staff, and the Commissioners would certainly have benefited from having the full presence of seven LAFCO Commissioners at the meeting. It was never addressed why the alternate Commissioners were not present to participate in the discussion and voting.

8. LAFCO Staff claimed that continuing the hearing to a later date was impossible under the scheduling constraints of the March 2009 vote. It was, however, unclear why LAFCO Commissioners were forced to decide at that moment:

The end of the meeting was extremely rushed, with LAFCO Staff pushing the

Commissioners to make a decision rather than hold-off the decision making to a later date. Deadlines and dates were discussed without any explanations. It was unclear why the decision could not be postponed. It was unclear why there could not be an additional hearing. It was unclear why more current financial information could not be used. It was just stated that the Commissioners had to decide there and then or Alamo would not have the opportunity to incorporate, which appears to be a drastic reason to make the decision.

9. LAFCO Staff explained that if the incorporation vote did not go forward for March 2009, then the same CFA that deemed an incorporated Alamo fiscally feasible would determine that incorporation is infeasible. It was not, however, explained why:

If incorporating a few months later means an incorporated Alamo would not be fiscally feasible, why is it feasible if incorporated in March 2009? This fact was stated at the very end of the meeting, with no follow through. If this is true, it is hugely problematic because it implies that the fiscal feasibility of an incorporated Alamo is so dependent on the assumptions in the current CFA that even the slightest variation would deem it infeasible.

10. The public is entitled to better information and a fair hearing:

There were so many speakers who presented doubts, and even the Commissioners wanted more time to assess the information before making a decision regarding the vote for incorporation. The deliberations were rushed, and the Commission voted prematurely. Before Alamo residents vote on whether to incorporate, they should be given a fair opportunity to assess more accurate information regarding the future of their town.

The most recent financial information should be used to obtain a new CFA. This information is certainly relevant to the Commission's decision, and will be available next month. At the hearing, the LAFCO Commission could have approved, denied, or continued the matter. The decision to approve was hastily made, and there should either have been a denial or a continuance of the matter to a later date.

Sincerely,

R. Jean Taylor

Editor

Alamo Spotlight

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