

CITY COUNCIL MEETING
AUGUST 20, 1986

CHARGE OF MEASURE A
TASK FORCE

CC-2(j)

Council was reminded that at the December 18, 1985 Council Meeting, following receipt of a report from the City Attorney regarding the L.I.F.E. vs the City of Lodi (Green Belt Initiative) suit and discussion, Council, agreed to proceed with the appeal process and to move forward with the development of a Task Force to seek viable alternatives to Measure A.

The following persons were appointed to serve on the Measure A Task Force and have met on several occasions:

Ann Cerney
Frank Johnson
A. Fred Baker
John Ledbetter
Ron Thomas
Robert Mullen
Jenanne Benjamin
Walter Pruss
Beryl Georguson

Council Member Snider indicated his belief that it is important for the Council to reiterate its charge to the Task Force and requested that this matter be an agenda item for their meeting.

Following Council discussion, Council reaffirmed the charge of the Measure A Task Force and expressed its appreciation to its members for giving of their time and talent to the City of Lodi in this most important matter.

COUNCIL COMMUNICATION

TO: THE CITY COUNCIL
FROM: THE CITY MANAGER'S OFFICE

DATE
AUGUST 20, 1986

NO.
K 1

SUBJECT: CHARGE OF MEASURE A TASK FORCE

Council will recall at the December 18, 1985 Council Meeting, following receipt of a report from the City Attorney regarding the L.I.F.E. vs the City of Iodi (Green Belt Initiative) suit and discussion, Council, on motion of Council Member Snider, Olson second, agreed to proceed with the appeal process and to move forward with the development of a Task Force to seek viable alternatives to Measure A.

The Measure A Task Force consisting of Ann Cerney, Frank Johnson, A. Fred Baker, John Ledbetter, Ron Thomas, Robert Mullen, Jenanne Benjamin, Walter Pruss, and Beryl Georguson, have met on numerous occasions.

Following the most recent meeting of the Task Force, July 24, 1986, Council Member Snider asked that a copy of the minutes of the City Council meeting of December 18, 1985 be forwarded to the Task Force as well as a copy of his letter to the Council dated July 28, 1986.

Council Member Snider feels that it is important for this Council to reiterate its charge to the Task Force and has requested that this matter be placed on the Agenda for the Regular Council Meeting of August 20, 1986.

For your information I have included with this Council Communication the following documents regarding this matter:

- a) Letter from City Attorney Stein dated December 3, 1985
- b) Copy of December 18, 1985 City Council Meeting Minutes
- c) Letter from Council Member Snider dated July 28, 1986
- d) Letter from Council Member Snider to the Measure A Task Force dated August 11, 1986

Alice M. Reimche
ALICE M. REIMCHE
City Clerk

MEMORANDUM

To: Honorable Mayor and Council Members
From: City Attorney
Re: L.I.F.E. vs. City of Lodi (Green Belt Initiative)
Date: December 3, 1985

On November 25, 1985, Superior Court Judge James P. Darrah ruled on a Summary Judgment Motion by the L.I.F.E. Committee (hereinafter referred to as "Petitioner") that Measure A (Green Belt Initiative) was invalid. The ruling has as its basis that the measure interfered with the process of annexation, which is a matter of compelling State interest in which the State has preempted the field, not allowing cities by their councils or voters to prescribe any requirement relating to annexation.

A number of questions have been asked of this office since the decision was rendered, and I feel that it would be very important, in order for this Council to make a decision regarding the appeal process, to have these questions answered. I am sure that these are not the only questions, and obviously I will make myself available to answer any additional questions regarding this matter. I felt that the format to use should be a question and answer type format that would simplify and clarify the issues:

(1) Q. What did the Court decide?

A. Before the Court were two lines of cases which the Court was required to apply to its decision on the constitutionality of Measure A. The first line of cases, in effect, disallowed citizens of a municipality from voting on annexations, discussed in Ferrini v. The City of San Luis Obispo (Ferrini). The second line of cases allowed the citizens of a municipality to vote on zoning matters, including general plans discussed in Associated Home Builders of the Greater Eastbay v. City of Livermore (Livermore).

In the Judge's decision, he determined that Measure A was in effect, an initiative which would allow the citizens to vote on annexations, an area which has been preempted by State law (Ferrini). The Judge looked at the initiative itself and determined that the language of the initiative, the arguments in favor thereof, and the impartial analysis by the City Attorney, all referred to annexations. The Judge was of the opinion that the initiative was in effect to allow a vote on annexations by the citizens (a precondition to annexation); and therefore was invalid.

(2) Q. What is the cost to date of defending Measure A?

A. Approximately \$32,000.

(3) Q. What would be the cost of an appeal?

A. Approximately \$10,000 - \$15,000. Most of the work has already been done Superior Court. The cost of briefing and arguing will be somewhat limited.

(4) Q. What would be the issues on appeal?

A. On appeal, the Third Appellate Court would have to decide whether Judge Darrah's decision should in fact be sustained. It would be my understanding that the City would be arguing that the second line of cases allowing the citizens of the City to vote on general plans (Livermore), is in fact the cases that the Judge in the lower Court should have applied. What we would be arguing would be that the Court should have looked at the way the City interpreted Measure A, i.e., in our Measure A elections over the years, rather than the initiative language itself.

(5) Q. What is the time frame for appealing the decision?

A. Within 60 days of the issuance of the final Judgment and Order of the Court. Attorney Steve Herum who represents the Petitioners in the case, is in the process of preparing the Order at this time.

(6) Q. What if we don't appeal? Can others appeal?

A. Yes, another party could attempt to intervene on behalf of the citizens of the City of Lodi to pursue the appeal.

(7) Q. What options does the City Council have as it relates to the Measure A litigation?

A. The City Council may:

1. Appeal the decision.
2. Do nothing and assume that some other person may or may not appeal.

(8) Q. What happens if we go on appeal and Petitioner is successful on appeal? What can the City Council then do?

A. If the Petitioner is successful on appeal, the City Council can at that time ask for a hearing before the California State Supreme Court.

(9) Q. What if the City wins on appeal and Measure A is sustained?

A. At that time, Petitioners can ask for a hearing before the Supreme Court. Further, in the lower Court, there were two issues

that were not resolved, because Judge Darrah felt that the major issue was whether or not the measure was valid as it relates to the aforementioned lines of cases. The two other issues were not resolved and it is possible that the Petitioners can go back to the Superior Court and have those two issues resolved. Both issues were on a summary judgment motion and the City's defense to that was that there were facts in dispute and therefore they were issues that should be tried. The two issues were:

- a) Whether or not Measure S was unconstitutional in that it limited the City's ability to take its regional share of housing for low and moderate income people; and
- b) Whether Measure A was invalid because it made the other elements of our General Plan inconsistent.

It should be noted that even if the City were to win on the above-mentioned issues in the Superior Court, this would not stop the Petitioner from appealing those issues or from going to trial and then having those issues decided after a trial in an Appellate Court.

(10) Q. Are annexation requests stayed pending appeal?

A. Yes. Until the Order of the Court is final, Measure A is still in effect and once the order of Court is final and if the City Council chooses to appeal or if someone else chooses to appeal, Measure A would still be in effect pending the outcome of appeals.

(11) Q. Can the Petitioner make a motion for the City to pay Petitioner's attorney's fees since Petitioner is the successful party?

A. Yes they can according to Code of Civil Procedure Section 1021.5.

(12) Q. If the City Council should choose not to appeal the Judge's decision, at what point and time could the City resume accepting applications for annexations?

A. The City Council could again accept applications for annexation 60 days from the date of the issuance of the final Judgment and Order of the Superior Court.

(13) Q. Assuming the Judge's decision is not appealed, what effect does the Judge's decision have on the City's General Plan?

A. It places the areas between the Lodi City Limits and the former growth limits back into the City's land use element of the City's General Plan.

I hope that these few questions and answers give you some insight into the Court's decision, and some of the questions that have been brought

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up regarding this matter. If you have any other questions or comments,
please feel free to contact me.

Ron Stein
RONALD M. STEIN
CITY ATTORNEY

RMS:vc

Public Works Director Ronsko asked that the record show that he recommended against the establishing of a mid-block crossing in the subject area.

Following additional discussion Council directed Staff to review the various locations suggested for a Turner Road mid-block crossing and to bring back a report regarding the matter to Council at the earliest possible date.

REPORT FROM CITY
ATTORNEY REGARDING
LIFE VS CITY OF
LODI (GREEN BELT
INITIATIVE) SUIT

cc-6
cc-30

Following receipt of a report from the City Attorney regarding the L.I.F.E. vs the City of Lodi (Green Belt Initiative) suit and discussion, Council, on motion of Council Member Snider, Olson second, agreed to proceed with the appeal process and to move forward with the development of a Task Force to seek viable alternatives to Measure A.

ERNST AND WHINNEY
CITY OF LODI AUDIT
AND MANAGEMENT LETTER

cc-21

Following introduction of the matter by City Manager Peterson Finance Director Robert Holm presented, for Council's perusal, the 1984-85 Annual Audit and Management Letter as submitted by the audit firm of Ernst and Whinney. Comments regarding the Management Letter were provided by Librarian Leonard Lachendro and Finance Director Holm.

Following discussion, with questions being directed to Mr. Holm, Council, on motion of Mayor Pro Tempore Reid, Hinchman second, received for filing the 1984-85 Annual Audit and Management Letter as submitted by the audit firm of Ernst and Whinney.

LIEBIG STREET
STREET LIGHTING
DISTRICT

cc-10(a)

City Clerk Reimche apprised the Council that on November 18, 1985 property owners on Liebig Street, located between Poplar Street and Acacia Street, presented a petition requesting the installation of street lighting facilities including lamp standards, conduits, poles, transformers, cables and necessary appurtenant structures on Liebig Street. The City Clerk advised that pursuant to State Statute she had examined and checked the signatures on the subject petition requesting street lighting and has certified that said petition contains the signatures of the owners of more than 60% of the front footage in area of the property described in the petition.

An assessment diagram of the subject area, as prepared by the Electric Utility Department, was presented for Council's

CITY COUNCIL

FRED M. REID, Mayor
EVELYN M. OLSON
Mayor Pro Tempore
DAVID M. HINCHMAN
JAMES W. PINKERTON, Jr.
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST FINE STREET
CALL BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634

THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

August 11, 1986

Dear

Enclosed please find a copy of my July 28, 1986 Memorandum to the other Members of the Lodi City Council regarding Measure A and the charge of the Task Force to seek viable alternatives to Measure A.

I have requested that this matter be placed on the Agenda for the Regular Council Meeting of August 20, 1986 at which time I will ask for a clarification of the charge and duties of the Task Force.

Your attendance at this Council Meeting would be most welcomed.

Very truly yours,

John "Randy" Snider
Member
Lodi City Council

by:

Alice M. Reimche
City Clerk

The above letter was sent to all Measure A Task Force Members: James Schroeder, Ann Cerney, Frank Johnson, A. Fred Baker, John Ledbetter, Ron Thomas, Robert Mullen, Jenanne Benjamin, Walter Pruss, and Beryl Georguson

MEMORANDUM

To: Honorable Mayor and Council Members
From: Councilman John "Randy" Snider
Date: July 28, 1986
Re: Measure A

I am sure that the Council has heard accounts regarding the Measure A Task Force meeting of July 24, 1986. I was present at that meeting, and frankly, do not necessarily agree with the perception regarding confusion, or lack of consensus on the part of the Task Force. However, I think that it is important for this Council to reiterate its charge to the Task Force. I have taken the liberty of sending to each Task Force member, a copy of the City Council minutes of December 18, 1985, at which meeting I made the motion which was seconded by Councilwoman Olson, to proceed with the appeal in the L.I.F.E. v. City of Lodi suit, however, but to also develop a Task Force to seek viable alternatives to Measure A.

It was my understanding of the Council's charge that the Task Force could recommend that the City could do the following, although certainly not limited to only the following:

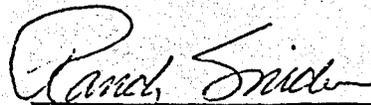
- (1) Recommend to the City Council that we continue with the appeal and not worry about any alternative to Measure A until the final Court decision on the constitutionality of Measure A was rendered.
- (2) Develop an alternative to Measure A which could include a general plan update which would have a growth management element thereto.
- (3) Come up with a growth management ordinance similar to Measure A.

Further, I believe that whatever the recommendation of the Task Force, that the City Council, at the very earliest possible time, should permit the citizenry of the City of Lodi, to take an active part in advising the City Council, through an advisory election, whether this alternative is viable. For example:

If the Task Force were to recommend as an alternative to Measure A, a general plan update which would include a growth management element limiting the growth in the City of Lodi to a certain percentage each year, it would be my recommendation that the Council would then place on the ballot, an advisory measure, seeking from the citizenry, a positive or negative vote on whether we should pursue that plan.

Honorable Mayor and Council Members
Re: Measure A
Page Two

It is my understanding that it has never been Council's intent that the Task Force should go about the business of updating the general plan without an affirmative vote of the citizenry on this matter.

A handwritten signature in cursive script, appearing to read "Randy Snider". The signature is written in dark ink and is positioned above a horizontal line.

John "Randy" Snider
City Councilman

3. Determined that a Zoning Hardship existed and approved the request of Delores Becker for a Zoning Variance to reduce the required rear yard setback from 10 feet to 6 feet to permit the erection of a dwelling with an attached garage at 110 North Hutchins Street (formerly 429 West Elm Street) in an area zoned R-HD, High Density Multiple-Family Residential
4. Conditionally approved the request of Carey Development Company for a Use Permit to develop Woodlake Plaza, a 49,510 square foot shopping and retail center at 2401 West Turner Road in an area zoned C-S, Commercial Shopping.

In a related matter the Planning Commission certified the filing of a Negative Declaration by the Community Development Director as adequate environmental documentation on this request.

COMMUNICATIONS
(CITY CLERK)

PUBLIC HEARINGS
ON "C" AND "E"
BASINS ANNOUNCED

CC-27(a)

City Clerk Reimche announced that on Wednesday, June 25, 1986 at 7:30 pm at St. Peter's Hall, a Public Hearing is being conducted to review the Park Master Plan Concept for E Basin. A like Public Hearing is also scheduled on Thursday, June 26, 1986 at 7:30 pm at the Lodi Recreation and Parks Office regarding C Basin.

CLAIMS

CC-4(c)

On recommendation of the City Attorney and L. J. Russo Insurance Services, Inc., the City's Contract Administrator, Council, on motion of Council Member Hinchman, Olson second, denied the following Claims and referred them back to L. J. Russo Insurance Services, Inc.:

- a) Joseph Rodezno, DOL 4/16/86
- b) Walter Nuss, DOL 1/22/86
- c) William Bechthold, DOL 3/18/86

ABC LICENSES

CC-7(f)

City Clerk Reimche presented the following applications that had been received for alcoholic beverage licenses:

- a) Adkins, Ethelyn L./Melvin H.
Mel's, Fine Wines, 8 North Main Street, Lodi
Off Sale Beer and Wine
- b) Norton, Jimmy Wayne
El Rancho Bar and Grill
621 North Cherokee Lane, Lodi
On sale general eating place and caterers permit
- c) Jacques, Caroline R. and Ernest E., Jr.
Top Value Food
429 West Lockeford Street, Lodi
Off sale general

PUC APPLICATIONS

CC-7(f)

City Clerk Reimche presented to the Council a notice of Public Hearings on proposed rate changes and amendment to application to be held by the California Public Utilities Commission on June 23, 25, and July 26, 1986.

MEMORANDUM

Date: July 31, 1986

To: Honorable Mayor and
Members of the Lodi City Council

From: Alice M. Reinche
City Clerk

Subject: Letter from Robert H. Mullen Regarding Measure A Task Force Charge

Attached please find letter from Robert H. Mullen addressed to the Task Force Committee Members which include his thoughts regarding the responsibility and charge of that committee.

Mr. Mullen's letter is being forwarded to you at his request.

Alice M. Reinche
Alice M. Reinche
City Clerk

AMR:jj

ROBERT H. MULLEN
C. M. "BUD" SULLIVAN
THOMAS J. NEWTON
CRAIG RASMUSSEN
THOMAS J. DRISCOLL, JR.
STEPHEN C. SNIDER
GAEL A. GISVOLD

MULLEN, SULLIVAN & NEWTON
ATTORNEYS AT LAW
1111 WEST TOKAY STREET
P. O. BOX 560
LODI, CALIFORNIA 95241-0560
(209) 334-5144

OF COUNSEL
ANTHONY N. PEROVICH
ROBERT C. LITTS

July 30, 1986

Dear Task Force Committee Member:

I am sorry that I was unable to attend the last meeting of the Committee as I was out of town.

I read of the meeting in the paper and have read Alice's July 25th letter which enclosed a copy of the Council meeting minutes of 12/18/85. These are my thoughts:

The City Council should place the responsibility of coming up with recommendations on our Committee and our Committee in turn should be chaired by one of our members. I believe that Ann Cerney has the mutual respect of all of us and I would propose her for chairperson of our group.

I think that our Committee should meet more often than once a month so that we may complete our assignment.

I think that the Committee should recommend to the Council that:

1. The City Attorney and legal staff be instructed to proceed as rapidly as possible to obtain a decision from the Appellate Court to determine the constitutionality of Proposition A. If this recommendation is adopted by the Council, then if Proposition A is held constitutional, that will be the end of it. If it is held unconstitutional, our Committee could then be reactivated to come up with a proposed ordinance or initiative ordinance concerning the future growth of the City.

OR:

2. Ask the Council to delay the appeal for a one year period in order to permit technical advice and

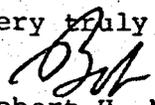
Task Force Committee Members
July 30, 1986
Page Two

information to be given to the Committee by way of an amended General Plan which would include reasonable growth restrictions and limitations.

In my opinion, one or the other of the above proposals should be adopted by the Committee and recommended to the Council at this time.

I am enclosing a copy of the Newsletter published by the California Association of Realtors on 6/24/86 and call your attention to the article on "Court Rules on No-Growth Ballots". Measure A was adopted after the statute in question and, therefore, the burden is on the proponents of Measure A to establish that "the ordinance is reasonably related to the protection of the public health, safety or welfare of the affected population."

Very truly yours,


Robert H. Mullen

RHM:sw
Enclosure

News à la C.A.R.

A Business Newsletter Published by the CALIFORNIA ASSOCIATION OF REALTORS®

Vol. 2, No. 6/June 24, 1986

Inside This Issue . . .

- JUNE ELECTION, page 2
- COASTAL CASE, page 2
- "MARKET VALUE," page 3

B.I.A. v. City of Camarillo

Court Rules on No-Growth Ballots

In a long-awaited decision late last month, the state Supreme Court reversed two lower courts and ruled that, while ballot measures are a legitimate vehicle for no-growth initiatives, proponents must be prepared to defend the measure if challenged in court.

The case, *Building Industry Association v. City of Camarillo*, originated from the passage of an initiative in June 1981 that limited the number of new condominium units built in the city to 400 a year. *B.I.A.* sued *Camarillo* to have the measure declared invalid, but lost in Superior Court and the state Court of Appeal.

In his opinion for the court, Justice Malcolm Lucas wrote that, in exercising its power of initiative, "the local government must bear the burden of showing that the ordinance is reasonably related to the protection of the public health, safety or welfare of the affected population."

As a result of the ruling, lawyers for the city of Camarillo and backers of the initiative must return to a Ventura County Superior Court to prove that the ballot measure is necessary to protect "public welfare" and alleviate such problems as traffic congestion and

(Continued on page four)

President Rosenthal Alerts Senators on Tax Concerns

C.A.R. President Richard Rosenthal recently sent a forceful message to California Sens. Alan Cranston and Pete Wilson reiterating the Association's deep concern over a number of provisions in the tax revision bill recently passed by the Senate Finance Committee.

One of these provisions, the so-called "loss disallowance" proposal, would prevent a taxpayer from deducting real estate incurred losses from most other forms of income. Intended to limit deductions by passive investors, this proposal would hurt middle-income owners who actively manage small-scale rental property.

The loss disallowance rule would also prevent both active and passive rental property owners

from deducting losses against other income such as salary, dividends and interest—even up to the amount of cash invested—effectively taxing investors on their cash losses. A \$25,000 partial exemption for taxpayers "actively participating" in a rental real estate activity would be allowed for the deductibility of losses.

This allowance, however, is phased out as adjusted income increases from \$100,000 to \$150,000. "Active participation" requires that the taxpayer own at least 10 percent of all interests in the activity and that he/she participate in a significant and bonafide service.

The rule would apply retroactively to real estate

(Continued on page three)

More Than 100,000 Affected

FHA Extension Remains at Impasse

On June 17, Rep. Chalmers Wylie (R-Ohio) introduced House Joint Resolution 656 to extend the Federal Housing Administration's operating authority through September 30, 1987, and to increase FHA credit authority to \$132 billion for fiscal 1986 and to \$100 billion for 1987.

As of this writing, this is the latest of many attempts to reinstate FHA operating authority, which was suspended, for the sixth and longest time this fiscal year, on June 5. It is also anticipated that FHA credit authority could expire within the next day or so, at which point the agency will stop accepting or processing all

applications, even those received prior to the suspension.

Congress, meanwhile, has been debating several other vehicles which would attempt to resolve the issue of FHA operating and credit authority. Unfortunately, many of these measures have fallen victim to other political manipulations, and their passage does not appear promising.

C.A.R. recently wrote to the California members on the House Banking, Finance and Urban Affairs Committee and to the California Congressional Delegation urging them to "actively support specific legislation that will immediately and fully restore FHA mortgage

(Continued on page four)

Stout v. Edmonds

Some Fraud Recoveries Barred

The California Court of Appeal, First District, recently reversed a trial court ruling and held that sellers defrauded by a broker-buyer were not entitled to real estate recovery fund compensation because the broker-buyer was acting on her own behalf and not performing acts requiring a real estate license.

The case, *Stout v. Edmonds*, involved a real estate broker who purchased a parcel of property from the sellers and defaulted after collecting property rents and making the first two installments on three trust deeds, resulting in foreclosure and reacquisition of the property by the sellers.

The sellers then filed suit for

fraud and obtained a default judgment against the buyer and applied for payment from the Real Estate Recovery Fund. When the trial court ruled that the sellers were entitled to recovery, the Real Estate Commissioner appealed.

The Recovery Fund, which has long been supported by C.A.R., was established as a means of compensating people defrauded by real estate licensees. The fraud, however, must arise "directly out of any transaction when the judgment debtor performed acts for which a license is required."

State law, in fact, specifies that anyone who directly performs the acts with reference to his/her own property does not require a license.

No-Growth Ballots

(Continued from page one)
overcrowded schools.

The issue at hand arises out of 1980 legislation which shifted the burden of proof from developers to governments in cases involving city or county ordinances that affect the housing supply.

In passing the law, the Legislature declared that "an adequate supply of housing is necessary for the health, safety and public welfare of all Californians" and that initiatives prohibiting expansion might lead to a shortage of affordable housing.

The court noted that, since 1980, voter-approved initiatives have amounted to almost one-half of the growth limitation ordinances passed in California. It was unclear until the recent ruling whether the statute also applied to such initiatives.

Five-Year High

Resale Rate Jumps 27.8 Percent in April

Sales of existing single-family homes in California rose by a remarkable 27.8 percent in April from the previous month, the highest level of sales activity since October 1980. With a sales pace 14.6 percent higher than that of April 1985, this marked the tenth consecutive month in which sales were higher than the year before.

Although spring is traditionally a

strong homebuying season, fixed interest rates in the 10 percent range have resulted in even greater sales activity. Nationwide, April resales reached their highest level in more than six years.

The median price of an existing single-family home in California in April rose to a record \$130,648, 14 percent above the April 1985 median price of \$114,648.

FHA Extension

(Continued from page one)
lending activity."

In addition, all C.A.R. members and their clients who have been adversely affected by the FHA program suspension are encouraged to communicate their concerns to their congressional representatives as soon as possible.

News à la C.A.R.

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