



CITIZENS AGAINST WAL-MART IN MARINA!

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Marina Planning Commission (sent via email)

RE: April 27, 2006 Public Hearing

Dear Planning Commissioner:

I have watched the Oct. 13, 2005 Planning Commission meeting, attended the March 21, 2006 City Council meeting, and have seen public information documents of correspondence between the City of Marina and Tallen & Keshen.

My husband Steve and I are members of Citizens Against Wal-Mart in Marina. It is our personal opinion that Tallen & Keshen did not willfully mislead the Planning Commission at the Oct. 13 meeting. However, we believe Tallen & Keshen may have negligently provided false material information at the Oct. 13 meeting which the Planning Commission used to make their decision to amend the zoning permit.

As a Marina citizen who, like you, cares deeply for our community, I share the vision that was discussed for the Marina Landing Shopping Center at the Oct. 13 meeting. I simply do not understand how after hearing everything Tallen & Keshen said and everything the Planning Commissioners said at the Oct. 13 meeting that we ended up with a Wal-Mart. While a Wal-Mart might be legally permissible thanks to the modification that Tallen & Keshen asked for and received from the Planning Commission, there is NO question that it was NOT what was intended for that site.

Further, I have several questions about what has happened since the Oct. 13 meeting that are relevant to tomorrow's April 27, 2006 Public Hearing at the Planning Commission meeting:

IMPROVEMENTS TO THE SITE

• Oct. 13, 2005 Planning Commission Meeting

“...Once we close on the property we will immediately come in and start spending money. We will spend several hundred thousand dollars. We will improve the parking lot. We will replace the damaged light standards. ... The parking lot needs repair. We're going to repave, reseal, do the parking lot. ... We will clean up the physical plant in all manners. ...”

—Terrence Tallen [approx. 53 minutes into the meeting]

• Oct. 13, 2005 Planning Commission Meeting

“... you asked why we're here. We're here because we submitted the application to request a simple use modification so that you can take a building that is of no value at this point, has not been able to be sold in five years, and that we can start spending money, turning it around and making it something that the community can be proud of, that we can be proud of, in a very short period of time...” —Terrence Tallen [approx. 56 minutes into the meeting]

Q: Did Tallen & Keshen IMMEDIATELY come in and start spending money to improve and clean up the site, as they stated they would do? [If you look at the building today, it certainly doesn't look like any substantial work was done.]

Q: If Tallen & Keshen were going to start work “immediately,” why didn't they apply for any permits? [According to Marina Public Works, up until April 2006, NO permits had been applied for or issued for the site.]

Q: How much time went by between when Tallen & Keshen closed on the property on Oct. 25 and when they began meeting with Wal-Mart?

Q: What work did they actually do, before Wal-Mart approached them, in preparation for soliciting potential tenants?

PERMITS

- March 21, 2006 City Council Meeting

“We obtained the permits, the plans to do the work that we said we would do. We have those permits and plans in hand.”
—Terrence Tallen

Q: What permits is Mr. Tallen talking about? What permits did he have in hand?

[According to Marina Public Works, up until April 2006, NO PERMITS had been applied for or issued for the site.]

REPOSITIONING RETAIL REAL ESTATE

- Oct. 13, 2005 Planning Commission Meeting

“... This city is the gateway to Monterey County and I think we can do some really neat things out there and certainly improve on what is there today. There’s no doubt about it. Once we get it cleaned up, then we’re going to go out to the marketplace and put our best foot forward. A lot of developers when they reposition properties will wait until they have a tenant to start spending money. Our process and our strategy and you’ll see the Gateway retail center in Marin City, Calif, which is a very, very similar project to this one, that we’ve recently turned around over the last two years, we went in, we repaved the parking lot, we painted the buildings ... We bought out tenants that were not of the right caliber. We made our vacancy higher in order to go out and attract the right tenants...” —Terrence Tallen [approx. 54 minutes into the meeting]

- Oct. 13, 2005 Planning Commission Meeting

“... Then when everything’s looking good, we’ll go out to the retail real estate community. We hope to have our work completed by the first of April. At that point in time, there’s ... a very large International Council of Shopping Centers conference here in Monterey every year, and we plan to have a special event at that conference at that time. We’ll invite the retailers out and have a little event on-site and say, ‘Here’s your next big opportunity.’ What we’re doing that’s different than everybody else that’s come to buy this property, everyone else said, ‘I’m not going to close unless I know I have a use, unless I know I have a tenant.’ We’re stepping up now without a tenant to buy the property, spend the money, and then get it done. And that’s how you reposition retail real estate...” —Terrence Tallen [approx. 55 minutes into the meeting]

- Oct. 13, 2005 Planning Commission Meeting

“... before we would talk to a Whole Foods or a Safeway or someone like that, we want to make the place look right or they’re not going to have much of an interest or they’re not going to pay much rent. ...”
—Terrence Tallen [approx. 1 hour 9 minutes into the meeting]

- March 21, 2006 City Council Meeting

“Had we leased the property to a group of tenants we would have made more money. The simple fact is in the period of time that we have been to market a number of tenants have turned the property down.” —Terrence Tallen

Q: Why did Tallen & Keshen go out to the market WITHOUT having cleaned up the property or made the improvements?

Q: Isn’t that the OPPOSITE of how they said things would be done?

Q: Wouldn’t going out to the market without having fixed up the property make them LESS likely to procure retailers for the site?

MARKET RESPONSE

- March 21, 2006 City Council Meeting

“Had we leased the property to a group of tenants we would have made more money. The simple fact is in the period of time that we have been to market a number of tenants have turned the property down.” —Terrence Tallen

Q: Based on Tallen & Keshen’s experience, wouldn’t they have expected the response to be poor because they had NOT yet made the improvements to the property?

- In a Sept. 5, 2005 email to Jim Felton that copied several Marina city staff members, Mr. Tallen wrote:

“In repositioning the Property, once we close and obtain the zoning, our plan is to immediately submit our plans to the City to clean up the site and garden center, repair, repave, slurry and restripe the parking lot, repair the Pylon Sign and perform cosmetic upgrades to the building including painting the exterior of Premises. We will then go to our national and local retailer relationships with “improved cosmetics” to the physical plant. In our experience by taking the initiative to spend several hundred thousand dollars **prior to having any tenant in hand**, we will be able to procure better retailers for your community. The Tenants want to know that the developer is serious and committed to the repositioning and as we discussed, we have repositioned many retail properties over the last twenty (20) years.” [bold type and underline was part of original email]

Q: The process described in this email is consistent with the process Mr. Tallen explained at the Oct. 13, 2005 Planning Commission meeting (see pages 1-2 for quotes from minutes 53, 54, 55 and 56 of the meeting). Again, why did Tallen & Keshen approach retailers PRIOR to spending several hundred thousand dollars to fix up the property, when they themselves say that's NOT the most effective way to get tenants?

- March 21, 2006 City Council Meeting

“We promised that we would have a tenant, or not promised, we hoped to have a tenant in place by this period of time. And we do. People are trying to spin this and twist this that we didn't do this and we didn't do that. We did what we said and we said what we did.” —Terrence Tallen

Q: That is incorrect. (See pages 1-2 for quotes from minutes 53, 54 and 55 of the meeting.) At the Oct. 13 meeting, Tallen & Keshen said they would make the improvements and clean up the site by April 1; they said AFTER that they would go out to the retail real estate community (for example, the International Council of Shopping Centers conference held April 4-6, 2006). Clearly, they did not do what they said.

LOOKING BEYOND MARINA'S BORDERS

- Oct. 13, 2005 Planning Commission Meeting [approx. 1 hour 10 minutes into the meeting]

Planning Commissioner Nancy Amadeo—“... We would all like some reassurance that whatever comes in, whatever businesses, retailers you try to draw to the Marina Landing site will be businesses that we don't find when we go to Seaside or Monterey or Salinas. That it will not only serve the needs of our community but will draw members of surrounding communities to our town to shop.”

Terrence Tallen—“Oh, exactly.”

Nancy Amadeo—“I hope that that's the kind of thing that you're looking at. ... Are you looking beyond our borders?”

Terrence Tallen—“Yes we are and that's one of the reasons we like SportsMart...”

- At March 21 City Council meeting, however, when Mr. Tallen said that,

“The simple fact is in the period of time that we have been to market a number of tenants have turned the property down,” he stated that some of their reasons were, “... We're in Sand City. We're in Seaside.”

Q: Why would Tallen & Keshen approach retailers in adjacent cities when the Planning Commission asked for reassurance that they would NOT do that?

Q: Also, there's already a Wal-Mart in the adjacent city of Salinas. Why did Tallen & Keshen think Wal-Mart would be a good fit if they were supposed to be looking beyond Marina's borders?

NO WAL-MART

At the Oct. 13 Planning Commission meeting, the Planning Commissioners stated specifically and more than once that they did NOT want a Wal-Mart store or a single major discount store coming in to the building at the Marina Landing Shopping Center.

- Oct. 13, 2005 Planning Commission Meeting, the following exchange took place approx. 1 hour 12 minutes into the meeting as Planning Commissioner Niraj Dangoria addressed Terrence Tallen and Anne Keshen:

Planning Commissioner Niraj Dangoria—“... And the second thing I just want to say is thank you. As much as it pains you to get into the specifics I think it's really important for us and the people in this room to hear some of that because it gives us a sense, it gives us a little bit of insight into your thinking and I think that's **really important for us as we make this decision.** So thank you to both of you.” [bold type and underline added for emphasis]

Planning Commission Chairperson Bob Drake—“Thank you, Commissioner Dangoria. We're definitely hearing we don't want to sell to Wal-Mart and take the whole building... You would certainly get far better rent cutting the property up into 3 or 4 healthy size stores. Your rent per foot would be far better than if you could rent it to anybody and take the whole space. And the city will probably benefit by having multiple stores with a variety of services and then throw in your restaurant on the end or whatever you might want to do there. It certainly would be better for the city...”

- Oct. 13, 2005 Planning Commission Meeting, Planning Commission Chairperson Bob Drake stated in reference to a question from a Marina citizen about whether the zoning would permit a single tenant to occupy the whole building:

“It might be legally okay. But as was decided, it wouldn't be okay if it turns out to be a major discounter...”
—Bob Drake [approx. 1 hour 21 minutes into the meeting]

• Yet at the March 21, 2006 City Council Meeting, Mr. Tallen stated that:

“It is incontrovertible that retenanting a vacant Kmart with a new state-of-the-art Wal-Mart is a perfect fit. It is the right thing to do.” —Terrance Tallen

“... Also I want to make a point that we were never prohibited from leasing this building to a single tenant nor were we prohibited from leasing this building to Wal-Mart.” —Terrance Tallen

Q: How in the world could Tallen & Keshen think that Wal-Mart be “a perfect fit” and “the right thing to do” when the Planning Commission specifically stated they did NOT want a Wal-Mart? Further, how could they think it would be “a perfect fit” and “the right thing to do” when the Planning Commission specifically stated they did NOT want any single major discount store occupying the whole building?

Q: If Tallen & Keshen really thought that retenanting the Kmart with Wal-Mart is “a perfect fit” and “the right thing to do,” why didn’t they tell the Planning Commission or City Council about the opportunity BEFORE they signed the lease with Wal-Mart?

Q: Plus, Tallen & Keshen signed the lease with Wal-Mart on Feb. 23 but did not have a meeting scheduled with Marina’s Mayor until March 6. If they truly believed Wal-Mart was “a perfect fit” and “the right thing to do,” wouldn’t they have been excited to tell the City about it before it was “a done deal”?

Q: There was a steady stream of emails from Tallen & Keshen to the City of Marina about their plans for the site until January 18, 2006. In a letter that my husband and I received from Tallen & Keshen’s attorney on April 10, 2006, the attorney stated: “In mid-January of 2006, the Wal-Mart real estate committee approved the Property.” Again, if Wal-Mart is “a perfect fit” and “the right thing to do,” why cease email communications with the City about plans for the site around the same time Wal-Mart came into the picture?

• Oct. 13, 2005 Planning Commission Meeting

“... I think we can put together a tenant mix and I would love to meet with you and the commission to talk about tenant mix but what we need to do now is be able to get the approvals in place... —Terrence Tallen [approx. 1 hour into the meeting]

Q: Again, if Tallen & Keshen truly believed Wal-Mart was “a perfect fit” and “the right thing to do,” why didn’t they tell you, the Planning Commission, as they said they “would love to meet with you and the commission to talk about tenant mix.”

CONCLUSION

At the Oct. 13, 2005 Planning Commission meeting, Tallen & Keshen expressed very clearly what they would do and what they intended to do with the Marina Landing Shopping Center. **The use of the phrases “we will” and “we are going to”, for example, are definitive statements, not conceptual ideas, which constitutes material information.** The Planning Commissioners also expressed very clearly what they wanted and did NOT want at the Marina Landing Shopping Center.

On October 13, Tallen & Keshen asked the Planning Commission for a modification to the zoning permit so they could go out and do what they said they would do. The Planning Commission granted the modification in good faith. Did Tallen & Keshen do what they said they would do?

I simply do not understand how after hearing everything Tallen & Keshen said and everything the Planning Commission said at the October 13, 2005 meeting that we ended up with a Wal-Mart. While it might be legally permissible thanks to the modification Tallen & Keshen asked for and received, there is NO question that that was NOT what was intended for and discussed for that site.

When the Planning Commission held the Oct. 13 meeting, they were representing all Marina citizens. The Planning Commission provided clear direction as to what the City of Marina did and did NOT want at Marina Landing.

I think this document demonstrates that Tallen & Keshen may have negligently provided false material information at the Oct. 13, 2005 Planning Commission meeting which the commission used to make their decision to amend the zoning permit.

As a Marina citizen, I respectfully ask you, the Planning Commission, to ask these questions of Tallen & Keshen in a public hearing so we can all find out how we ended up with a Wal-Mart when that’s the one thing you said Marina didn’t want.

Sincerely,



Tina Zmak