

Posted on Sun, May. 28, 2006

EDITORIAL

Misuse of eminent domain in Hercules

IF HERCULES DOES NOT want a huge retail outlet such as Wal-Mart at the future Bayside Marketplace, it need not have one. City officials can easily deny a permit for a store larger than 64,000 square feet. That size limit was part of the development agreement with the Lewis Group, which owned the 17.5-acre site before Wal-Mart.

But Hercules has made a major mistake in preparing to use the power of eminent domain to oust Wal-Mart. Instead, the city should work with the giant retailer to see if an agreement can be made on a smaller store.

Wal-Mart already has cut back on its request for a 142,000-square-foot store and is seeking a 99,000-square-foot retail outlet that would include grocery sales.

If that is too large for Hercules' plans, then Wal-Mart could make an offer to build a smaller store or decide not to build at all.

Ultimately, the size of stores at Bayside Marketplace should be up to the people of Hercules. The use of eminent domain, however, is ill-advised and unnecessary.

It also could prove costly if Wal-Mart chooses to challenge Hercules in court. Not only would the city be forced to spend money on extensive litigation, but it likely would lose in the end.

While it is true that the U.S. Supreme Court has broadened the use of eminent domain, there are limitations on its use in California. This state confines the use of eminent domain to blighted areas.

In 1993, the Legislature passed AB 1290 by former Assemblyman Phil Isenberg, D-Sacramento. The measure was designed to more clearly define blight and constrain redevelopment agencies from designating just about any area as blighted.

The law said that to name an area blighted, both physical and economic conditions must be met.

Physical blight must include one of the following: unsafe or unhealthy buildings, or factors that hinder economically viable use of buildings or land, or incompatible lots, or odd subdivision of lots.

Economic blight must include: stagnant or falling property values, or high rates of business vacancies, or lack of commercial facilities, or residential crowding of adult stores, or high crime rates.

Clearly, none of the above applies to Bayside Marketplace, which is an area designated for retail development. That is what Wal-Mart intends to do.

The area is hardly blighted, and Wal-Mart would bring considerable value to the area by providing low-cost products for consumers and tax revenue for Hercules.

Unfortunately, many people have been misinformed by unfair and inaccurate criticisms of Wal-Mart, not the least

of which is that its pay scales are inordinately low.

The fact is that retail salaries and benefits are modest throughout the industry. Wal-Mart's pay and benefits are at least average among large retailers.

The argument that Wal-Mart is costly to local governments because its employees do not have adequate health benefits and thus use county health services is disingenuous.

Employees of retail stores in general are in the same economic situation as Wal-Mart workers and place similar burdens on government social services.

While it is true that smaller retailers with similar products often lose out to Wal-Mart, it is not true that Wal-Mart stifles commercial development.

Stores that do not directly compete with Wal-Mart often benefit from proximity to the huge retail outlet, which attracts large numbers of people to the area.

In recent years, Wal-Mart has come under considerable fire in large part from union activists who are upset that the retailers' employees are non-union.

Union interests also dislike Wal-Mart's expansion into the grocery business. They fear that Wal-Mart will harm supermarkets, which often have unionized workers. That is what much, if not most, of the controversy concerning Wal-Mart is about.

We believe that Hercules, Antioch or any other city where Wal-Mart wants to build or expand, should seek considerable public input.

Perhaps a survey or even a nonbinding referendum could be used before a city takes final action.

If after careful consideration, Hercules does not want Wal-Mart or any other big-box retail store at Bayside Marketplace, so be it.

The final decision should be based on the will of the people, not scare tactics or inappropriate legal action.

It is dishonest for the city to play upon misinformed criticisms of Wal-Mart and even worse to use the power of eminent domain against the retailer.