

## REPORT TO THE CITY COUNCIL

NACAR v. AVCO, ET AL.

In April, 1985 the City, along with various affiliates and assignees of AVCO (developers of Rancho Bernardo) were sued in both Federal and State Courts by National Cash Register (NCR) and its subsidiary NACAR. The controversy arose from out of a 1968 sale of 113 acres of the Rancho Bernardo Industrial park to NCR by Rancho Bernardo, Inc. (predecessor to AVCO). NCR alleged that AVCO and the City conspired to deny NCR sufficient sewage treatment capacity to develop its property to its fullest use. The dispute is and has been primarily between AVCO and NCR, but because AVCO contracted with the City in the early 1970's to provide sewage treatment capacity through Escondido's Hale Avenue treatment plant, the City has been a party to all the discussions and named in the litigation.

NCR has offered to settle the matter by paying the sum of \$479,780 to the City for a guaranteed sewage capacity of 2500

gallons per day (average flow) per acre for a total of 282,500 gallons per day (average flow). For its 113 acre site, AVCO has agreed to this sum, and this proposal has no adverse economic effect upon the City. In order to accomplish the allocation, however, the City will allow a certain portion of the AVCO properties to be sewerred to the South into the Penasquitos-Metropolitan Sewerage System to the extent of 596 equivalent dwelling units (edu). (282,500 gallons per day) The end result then is that the City in effect is selling 596 equivalent dwelling units of sewage capacity to AVCO's assignees to sewer an agreed upon portion of the development which is already zoned and mapped for development for \$805 per equivalent dwelling unit. This is the regular price currently charged to developers in the Penasquitos Sewer District. The City's agreement to allow the 596 equivalent dwelling units to connect to the Penasquitos System will in no way commit the City to any specific density pattern in the AVCO properties.

These allocations of sewage capacity also have no effect on current zoning or development densities in the Rancho Bernardo Industrial Park. AVCO has always allocated a 2,500 gallons per day per acre sewage capacity to all of its buyers in the Industrial Park since it entered into the sewerage agreements

with the City in 1972. (The 1968 sale by Rancho Bernardo, Inc. to NCR was considered originally by AVCO to be outside of its commitments to additional sewage allocations, thus resulting in the litigation.) NCR may be processing an application to split its building sites into smaller parcels in the near future in order to more productively utilize its land, but this proposed sale and allocation of sewage capacity to it does not relieve it of meeting all regulatory and statutory standards currently in effect, if it chooses to proceed in this fashion. The City Council unanimously approved this settlement in closed session on July 23, 1985.

Respectfully submitted,

JOHN W. WITT

City Attorney

JWW:CMF:js:457(x043.1)

RC-85-17