

City Manager's Comments Regarding Option to Settle Potential Litigation 12-9-13

Mayor Anderson and members of the City Council—

The matter before you now concerns an alternative to the Terraces of Lafayette project application for 315 apartment units along Deer Hill Road and Pleasant Hill Road.

Given the public's dissatisfaction with the application...

Given that the EIR for the project identified 13 significant and unavoidable impacts on the environment...

Given that the Circulation Commission and Design Review Commission have both indicated that they cannot support the project and have requested a significantly scaled-down alternative...

Given that the Developer has indicated that, if the project is denied, it will file a lawsuit against the City...

And given the risks to the City presented by that potential lawsuit, and particularly those associated with California's Housing Accountability Act, which limits the ability of cities to deny an affordable housing development proposals unless that proposal is inconsistent with both the General Plan land use designation and zoning ordinance that existed at the time the application was deemed complete...

About four weeks ago the City Council directed staff to participate in conversations with the developer to determine if there was an alternative plan that would be acceptable to all parties -- the developer, community members, and the city.

Before you tonight is an introduction of such an alternative. It is the result of about a dozen meetings and conference calls held since mid-November between staff and the developer. This is an introduction only; you are not expected to opine or make any decisions about the plan this evening.

Instead, if Council, after its review tonight, believes that the alternative plan has sufficient merit to warrant further public study and comment, the City Council can at the end of this presentation instruct the City Attorney to draft an agreement that would temporarily suspend the Terraces application while the community considers the alternative plan.

That agreement, which would describe the mechanism by which the Terraces application would be suspended and otherwise broadly define the features of the alternative plan, would be made available for the public to review as soon as it is completed. Residents would then have time to study the agreement and the draft alternative land use plan, and to forward written comments about those items to the City Council for its consideration.

In January, the Council would convene two public meetings to gather public comments and opinions about the agreement and the alternate plan. Those meetings would be held on January 13 and January 22 at the Lafayette Veterans Memorial Building.

At the end of the second public hearing, the Council would either approve or reject the agreement. If it approves the agreement, the alternative land use plan for the Deer Hill Road property will then be forwarded to the Circulation Commission, Design Review Commission, Parks Trails and Recreation Commission, and the Planning Commission for review, with all meetings to occur during the first nine months of 2014.

If the Council, in January, rejects the agreement, then the hearings for the 315 unit Terraces of Lafayette project will resume immediately according to an amended schedule.

The Alternative Plan

As you can see on the map, the alternative plan would have two major components. On the central part of the 22-and-a-quarter acre parcel would be a subdivision of 44 to 45 single family detached homes with lot sizes of about 4,500 s.f. each. On the eastern side would be a community park. To the west and south would be open space.

Let me take a moment to describe how we arrived at this plan, and why it is organized this way. After establishing some rapport with the developer, staff indicated that our goals were to, as follows:

1. **First: Significantly reduce the number of units on the property** and, in turn, the traffic that would be generated by those units. This plan, as noted earlier, would reduce the unit count from 315 to 45 units or less. This is an 85% reduction compared to the current application.
2. **Second: Deliver a development that is consistent with the General Plan.** The Lafayette General Plan, drafted in 2002 by the all-volunteer General Plan Advisory Committee, calls this property “the most significant undeveloped property in the community because of its high visibility, its location as an entryway to the community, and its proximity to major thoroughfares as well as regional open space.”

Recognizing the conflict between the community’s intense interest in preserving and enhancing the semi-rural character of the community and the existing zoning for the property, which allows multi-family residential uses up to 35 units per acre, the General Plan calls for the City to “ensure that the Eastern Deer Hill Road area near the intersection of Pleasant Hill Road is developed, where development is appropriate, in a manner consistent with Lafayette’s community identity.”

To achieve that goal, we have insisted on a development of single family homes with an overall density of not more than 2 units per acre.

As a subdivision of single family homes, the plan is also consistent with the City’s pattern of allowing only single family homes north of the freeway and in the neighborhoods, and concentrating our multifamily developments in the downtown area.

Likewise, by limiting the development to 45 homes, the site would have an average density of two-houses-per-acre. This is the same density that the City currently allows in what many people think of as our most semi-rural neighborhoods -- Springhill Valley and Reliez Valley -- and it is half as dense as the City's rules allow for development in many if not most of the City's other neighborhoods, including all of Burton Valley, Acalanes Valley, and in the Bacon Way neighborhoods on Acalanes Ridge.

At an average of one-half acre per home, this is also the same density as the Orindawoods development in Orinda, which is the only other existing neighborhood in Lamorinda that lies between the frontage road and Highway 24.

Finally, we have also insisted that the subdivision comply with the City's strict hillside regulations requiring that all buildings be substantially concealed when viewed from major transportation corridors through the use of berming, grading, and landscaping.

Here are a couple of sections that demonstrate how, through grading and landscaping, the homes can be substantially concealed from the City's major corridors.

3. **Our third objective was to insist on relatively smaller homes, and to cluster them to preserve open space and create parkland.** While it is true that the overall densities are the same as those allowed in Reliez Valley and Springhill Valley, rather than spread monster homes all over the hill as has been done up and down the 680 corridor, we are proposing to cluster smaller homes to the greatest extent possible, thus preserving open space, delivering a more attractive neighborhood when viewed from afar, and creating opportunities for public and recreational spaces. The result, as you can see, is an enclave of homes, each with a height limit of 30', placed on lots averaging about 4,500 square feet each, and gathered together to create a relatively smaller and more sustainable footprint.
4. **Fourth, we seek to direct, to the greatest extent possible, the traffic to the west.** The majority of the negative public comments that the City has received about the Terraces application are related to the traffic impacts of that project, and anybody who has sat in the southbound Pleasant Hill Road morning peak commute can relate. For this reason, we have not only reduced the number of units by 85%, but also located the project's ingress/egress on the far western edge of the parcel, thus encouraging west-bound commuters that live in the new neighborhood to use the central Lafayette freeway ramps, and not Pleasant Hill Road.
5. **Fifth and finally, we have worked with the developer to deliver a project that creates significant public benefit.** At this point please turn your attention to the eastern side of the parcel. As we drew up this alternative plan, our conversations with the developer were intensively guided by the Parks and Recreation Facilities Master Plan that was approved by the City Council in 2009. The result of several years of work by the Lafayette Parks, Trails, and Recreation Commission, that plan calls for the City, among other tasks, to acquire up to 44 acres

of new parkland; to develop a new neighborhood park with a tot-lot north of Highway 24; to build a new soccer and lacrosse field; and to deliver for the community a dog park with separate areas for large and small dogs.

This alternative would achieve all of those goals. Features in this plan include:

- a. **First: an all weather dedicated Soccer and Lacrosse field.** The City's 2009 master park facilities plan says that a new sports field to accommodate soccer and lacrosse is "the City's highest priority." Likewise, earlier this year, the Joint City Council / School Board Fields Use Task Force also identified an all-weather lacrosse field as a pressing need, noting that the growing popularity that sport in Lamorinda has led to a crunch in field time and space. The 2009 Master plan, however, goes on to say that "this facility is potentially the most difficult (of all the goals) to achieve, given the scarcity of large, undeveloped, relatively flat sites." We are therefore very pleased to include this soccer / field as part of this proposal.
- b. **Second: a new tot-lot / playground.** Lafayette, with its great schools, low crime, and good living, has always been a magnet for families with young children, and that's the demographic that is most likely to seek out a neighborhood tot-lot. However, because the City was not master planned from the start, Lafayette has had a rough time finding good locations for tot-lots. Thus, while it is true that the City does operate and maintain three tot-lot facilities, all of them are located south of the freeway. In fact, it is the case that it's not just the tot-lots but all of the City's park facilities – all 91 acres – are currently located south of the freeway. The 2009 Master Plan is very specific in its goal to deliver additional parks north of Highway 24, and have therefore added this family recreational facility here. We note further that the developer believes this will be a significant asset that will help to market and sell the homes.
- c. **Third: a dog park.** Dog parks have become increasingly common in California, and there has been demand for one in Lafayette since at least 2001. As I noted earlier, the 2009 Master Plan calls for a dog park with separate areas for large and small dogs, and this area, centrally located in the community and sited underneath this magnificent oak, one of the three oldest trees in Lafayette, would be an ideal spot.
- d. **Fourth: a large parking lot.** This public parking lot, with 75 spaces, would serve multiple purposes. During weekdays, the crescent road would provide a convenient and safer pick-up and drop-off area for high school students. It would also provide overflow parking for high schoolers when the Acalanes lot is filled, and it could provide spaces for commuters looking for a carpool gathering spot as well. During afternoons, the lot would provide parking for people using the park facilities, and on the weekends park users would populate the parking lot as they attend soccer games and visit the various recreation facilities. Finally, during summertime the parking lot would provide much

needed capacity for the annual all-city and all-county swim meets that occur at Acalanes High School.

- e. **Fifth: the Deer Hill Bypass Bike Path.** Last but certainly not least, the developer has agreed to build a 10-foot wide public path that would project around the perimeter of the project thus allowing bicycle riders to bypass the steep hill on Deer Hill Road. Anyone who has tried to ride their bike westbound on that road from the high school toward the BART station knows that it is an unpleasant, unsafe, and almost impossible task. As such, the current conditions discourage riding their to school, thus adding to the traffic congestion. This path that we're proposing, almost a half mile long and very expensive, would allow bikers to bypass the steepest parts of that hill.

Those are the five main categories of public benefit. Now I will move on to describe the basic mechanics of the deal.

The Basic Deal Point Mechanics

Broadly speaking, the alternative proposal would work as follows:

1. The lot would be split into two parcels, Parcel A and Parcel B.
2. The developer would complete all engineering, architecture, and landscape architecture for both parcels. The developer would be responsible for grading both parcels, for installing all underground utilities on both parcels, for landscaping both parcels, and for building the multi-use bike path.
3. Parcel A, at 8.7 acres, would be rezoned to allow a subdivision of between 44 and 45 detached single family homes.
4. Lafayette would purchase Parcel B from the developer for \$1.8M which is, not coincidentally, equal to the amount that the City has accumulated in its parkland acquisition fund.
5. The developer would then turn around and use that \$1.8M to build the above-ground public amenities, including the soccer field, the dog park, the tot-lot, and the parking lot. If costs for those amenities exceed \$1.8M, the first \$300,000 in overruns would be split by the parties. For costs beyond that, the City would be entirely responsible. The deal was structured in this way to incentivize both parties to be economical and efficient.

The Public Process from Here

That pretty much sums up the alternative proposal, its public benefits, and its mechanics.

Now, as I noted at the beginning of this presentation, if the City Council agrees that this alternative plan has sufficient merit to warrant further public study and comment, the City Council can instruct the City

Attorney to draft an agreement that would temporarily suspend the Terraces application while the community considers the merits of the alternative plan.

That agreement, which would describe the mechanism by which the Terraces application would be suspended and otherwise define the features of the alternative plan, would be made available for the public to review as soon as it is completed. Residents would then have time to study the agreement and the draft alternative land use plan, and to forward written comments about those items to the City Council for its consideration.

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That concludes my staff report. Staff is available to answer any questions you might have.