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July 3, 2018

**VIA E-MAIL AND HAND DELIVERY**

Don Tatzin, Mayor  
City of Lafayette  
3675 Mount Diablo Blvd., #210  
Lafayette, CA 94549  
E-Mail: dtatzin@lovelafayette.org

**Re: Terraces of Lafayette (L03-11)  
3233 Deer Hill Road, Lafayette**

Dear Mayor Tatzin and Honorable Councilmembers:

As you know, this firm, along with Allan Moore, of Wendel, Rosen, Black & Dean LLP, represents O'Brien Land Company, LLC and Anna Maria Dettmer in connection with the above-referenced 315-unit apartment project ("Project").

By way of follow-up to our letter earlier today addressing the City Council's consideration of a response to O'Brien's letter of June 15, 2018 and the possibility of engaging additional legal counsel in connection with the Project, we note that these agenda items were apparently conceived based solely on the actions of Councilmember Samson who has already stated on the record that he desires the City Attorney's legal opinions to conform with his own. The publicly known portion of those actions occurred at the City Council's June 25, 2018 meeting.

Our concerns about this issue are heightened as a result of the fact that the June 25 agenda contained an item 12(A)(1) that briefly described Councilmember Samson's desire to schedule a future agenda regarding the nature and timing of the City's response to O'Brien's June 15 letter terminating the Terraces Project Alternative Process Agreement and requesting the City to immediately resume processing the Project. The June 25 agenda did not say anything about the City possibly hiring additional legal counsel regarding the Project, which is also under consideration this evening, and a thread from Nextdoor (or related social media forum) today contains an item from a local resident stating, in relevant part, as follows: "Our current attorney is not a land use expert, and Ivor Samson has found the perfect person who can jump in after the vote tonight. This will be money well spent! Please support Ivor and his choice! He is the only attorney on Council, and we are very lucky to have him!" (Please see attached).

Don Tatzin, Mayor  
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We reluctantly raise these issues because it appears, and we are concerned, that Councilmember Samson may be a biased decisionmaker actively advocating against the Project. Accordingly, we must remind the City that our clients have due process rights under the federal and state constitutions, and we therefore urge the City Council majority not to become embroiled in efforts to actively thwart the Project.

Sincerely,

MILLER STARR REGALIA

*Bryan W. Wenter*

Bryan W. Wenter, AICP

BWW/kli

cc: Steve Falk, City Manager  
Mala Subramanian, City Attorney  
Niroop Srivatsa, Director, Planning & Building Services Department  
Joanne Robbins, City Clerk  
Dennis O'Brien  
Anna Maria Dettmer  
Allan Moore, Esq.

## Post in General

M

Mike Griffiths, Acalanes Ridge



### TWO IMPORTANT CITY COUNCIL MEETINGS FOR YOU TO ATTEND IF YOU CAN

Tuesday July 3 at 5pm - Public comment to add additional legal expertise to defend city rights and voter wishes and to counter what the developer is proposing for Deer Hill (council will then go into closed session to come up with plan) Monday July 9 at 7pm - Full meeting to review planning commission recommendation rezoning Deer Hill to Low Density, Single Family Residential (R65 zoning, one house per 1.5 acres equals 14 homes) in conformance with the General Plan. Both meetings will serve to strengthen the position of the city and the voters against large developments - Deer Hill could otherwise set a precedent for other developments in Lafayette. PLEASE ATTEND AND SPEAK YOUR MIND - OTHERWISE EMAIL THE CITY CLERK [jrobbins@ci.lafayette.ca.us](mailto:jrobbins@ci.lafayette.ca.us) BEFORE NOON THE DAY OF THE MEETING

3d ago · 39 neighborhoods in General



Keith Jarett

, Acalanes Ridge · 1d ago

Here is my letter to the City Council: I voted Yes on Measure L, but I understand what the No voters want: a vigorous defense of Lafayette's semi-rural character. They want unobtrusive development of prominent hillsides, and they were willing to roll the legal dice to achieve that outcome. So be it. It's in the interest of both the developer and the city to make an agreement out of court, provided that the agreement respects the voters' wishes. If not, then the city needs to spend whatever it takes in court to fight this to the end. Showing that determination as early as possible will set the stage for

the best possible compromise if one is to be had. In my opinion, profitable dense development down low near Pleasant Hill Road can be paired with unobtrusive low-density homes on the hillside. The old Christmas tree lot is not a scenic gem; it can accommodate townhomes as well as the parcels along Mt. Diablo Blvd. have. To reach such an outcome the City Council will need to show the backbone it lacked in 2010. Our City Attorney tries to minimize the risk of losing expensive legal fights. Our City Council is responsible for balancing that risk against their duty to defend the voters' wishes. I believe that the City Council needs to err on the side of defending the voters' wishes, especially after they have voted to take the risk of losing. Hiring top-notch legal counsel in place of the timorous (ultra-cautious, if you prefer) City Attorney would be a good start. Besides, two legal minds are better than one. "Millions for defense, but not one cent for tribute."



5 Thanks



Susan Candell

, Springhill Area · 1d ago

Thank you Keith. I believe that many who voted Yes on L also feel the same way about the property. These next 15 days are CRITICAL. The city must immediately retain legal counsel experienced in land use law, municipal law, and litigation to properly handle the re-zoning and the resubmitted 315 Apartments.



1 Thank



Keith Jarett

, Acalanes Ridge · 18h ago

Here's my follow-up letter. I have more specific suggestions for the City Council on the issue of legal council for issues related to the Deer Hill property. Ideally the City Council would interview attorneys who claim specific expertise in zoning and housing accountability act litigation and who would not need time to learn anything more than the facts of this case. Then the Council should choose one or more of them based on its evaluation of their grasp of the law and of the judicial climate, which can depart from the text of the law. Fingers, including mine, have been pointed at the City Attorney somewhat unfairly. So allow me to clarify. I don't think anyone in this whole situation has done a great job. There have been mistakes on all sides. However the City Attorney is not tasked with accommodating voters' wishes: The City Council is. The City Council's instructions to the City Attorney should include something to the effect of "Unless the litigation risks are unacceptably high, the City Council would like you to find a way to accomplish what the voters clearly want. Low-risk choices which break faith with the voters are disfavored." If such an instruction was not given in the past, then I fault the City Council for not asking her the right questions. The City Attorney's past recommendations look consistent with an understanding that her task was to minimize the financial

exposure of the City. That's incorrect, as I explained in my previous letter. The City Council needs to;

1. Give the City Attorney correct instructions which put a higher priority on complying with voters' wishes than minimizing financial exposure,
2. Interview experts in the Housing Accountability Act, zoning, and related areas,
3. Hire one or more of these experts as additional counsel for Deer Hill property issues,
4. Decide on a legal strategy,
5. Demonstrate resolve to stay the course on that strategy, including by having hired additional counsel,
6. Then and only then, if the developer is willing, negotiate project alternatives with the developer,
7. Present to the public for feedback any negotiated alternatives which are acceptable to the developer, and
8. Choose one of the alternatives or choose to litigate the dispute.

I don't have faith that our courts will uphold the law rather than choosing a preferred result. That's why I voted Yes on Measure L. The majority of voters disagreed. They are willing to fight this in court. The City Council and the City Attorney need to get with the program. It doesn't matter if you or I agree with that judgment or if we think it will be expensive. The voters should get what they chose. Show that resolve and you will also have the best chance to work out a mutually acceptable compromise down the road.



2 Thanks

D



dennis krentz

, Acalanes Ridge · 18h ago

During the yes/no on L campaign, we were assured by the "no" folks that the city would incur minimal costs, if any costs at all, should L fail. In addition, claims were made that it was highly unlikely that courts would side with the developer. Now some are arguing that the city should hire outside legal help, at hundreds of dollars per hour, to defend the city against the developer. What has changed to warrant this proposal?



2 Thanks



Keith Jarett

, Acalanes Ridge · 18h ago

Dennis, I don't recall reading anyone's assurances that a legal victory would be cheap or that the developer would give up without a fight. I thought everyone expected a court fight, which costs serious money.



3 Thanks

G



George Rafal

, North Lafayette · 16h ago

Here's a novel idea: Consider that apartments near an on ramp might not cause the parade of horrors posed by the obstructionist camp. Rather than squandering public treasure to thwart others' economic liberty, simply allow the owner develop her land and rid our community of the fallow defunct quarry site once and for all. Now, put down your torches and pitchforks and take some deep breaths....



1 Thank

S



Susan Candell

, Springhill Area · 2h ago

The rezone in 2010 was legal, but not implemented because of failed legal advice. The citizens set back the clock, and this time the rezone by Planning Commission is R65, or 14 Homes, up from the R5 in 2010, or 5 Homes. The vote on that comes back next week. Everything the city is doing this time so far is legal and defensible, but two very important documents need to be produced, the first on by July 15 in response to the developers resubmission of the 315 apartments, and the other to defend the new rezone. These documents must be perfect and they must be quick. An independent counsel with land use expertise can create these. Written well and lawsuits could be averted. Written poorly and lawsuits will fly. Our current attorney is not a land use expert, and Ivor Samson has found the perfect person who can jump in after the vote tonight. This will be money well spent! Please support Ivor and his choice! He is the only attorney on Council, and we are very lucky to have him!



3 Thanks