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June 2, 2020

VIA E-MAIL

Kristina Sturm
Chair, Lafayette Planning Commission
3675 Mount Diablo Blvd., #210
Lafayette, CA 94549
c/o Greg Wolff, Planning & Building Services
Director (gwolff@lovelafayette.org)

Greg Wolff
Planning Director
3675 Mount Diablo Blvd., #210
Lafayette, CA 94549
(gwolff@lovelafayette.org)

Re: Terraces of Lafayette (L03-11) Affordable Apartments Pursuant to the Housing Accountability Act; Planning Commission Continuance

Dear Chair Sturm and Mr. Wolff:

This firm represents O'Brien Land Company ("O'Brien) in connection with the Terraces of Lafayette apartment project at 3233 Deer Hill Road in Lafayette ("Project Site"). We are grateful that the 315-unit apartment project ("Project") is finally being considered for a decision under the requirements of the Housing Accountability Act (Gov. Code § 65589.5; "HAA"). At the same time we must take note of the Planning Commission's decision at its May 18, 2020 hearing to continue the Project to the June 15 regular meeting for yet more study.

As is obviously the case and the City certainly knows, Save Lafayette and its supporters continue to search for any possible reason to convince the City to further delay the Project and eventually disapprove it, including with last minute document dumps (despite unusually early publication of the agenda and its supporting documents a full 11 days earlier than required by law) disfavored by CEQA and specious assertions on multiple subjects. But there is literally nothing the City can evaluate differently or in additional detail that would furnish a lawful basis to disapprove the Project, not even on the subjects of wildfire hazards or traffic. The addendum evaluated both subjects thoroughly and there is no evidence—much less substantial evidence—the Project will create significant negative effects with respect to either. City staff have done an admirable job explaining these issues.

The HAA prohibits disapproval of any housing development project for reasons of a “specific, adverse impact” to public health or safety unless the City can prove, based on a preponderance of the evidence, the Project would have a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions *as they existed on the date the application was deemed complete*. § 65589.5(d)(2).

This is an extraordinarily high standard and no one has ever identified—or even claimed they could identify—such a document. And there plainly isn’t one.

While the Project will thus indeed be approved and built regardless of the roadblocks Save Lafayette and other Project opponents may continue to erect, O’Brien is committed to delivering a great Project to Lafayette and not exacerbating the public safety concerns that exist today even without the Project, and thus has no objection to the Contra Costa County Fire Protection District providing further explanation of its perspective regarding the Project’s relative risk—or lack thereof—to wildfire hazards. But to be absolutely clear, there is literally nothing the District could say and no information it can provide that would allow the City to lawfully disapprove the Project under the HAA, which completely eliminates the City’s discretion here. There is quite simply no objective, identified written public health or safety standard or policy that was in existence when the Project application was deemed complete against which the City could find by a preponderance of the evidence that the Project would have a specific, adverse impact to public health or safety. Because the HAA’s disapproval findings cannot be made, the Project must be approved, regardless of any opposition.

Although sufficient information has already been provided, we understand the Commission’s desire for TJKM to provide additional information regarding its Traffic Impact Study (“TIS”) and the data the TIS relied on, all of which confirm the results of the 2013 Project EIR and lead to the same level of service (“LOS”) impacts previously disclosed or reduced LOS impacts.¹ Moreover, as the City has correctly stated and confirmed, the Project is benign from a traffic impact standpoint. It will improve existing AM peak southbound traffic deficiencies along Pleasant Hill Road and negligibly contribute to existing PM peak deficiencies.

There is no document that meets the stringent standard mandated in the HAA against which the HAA’s disapproval findings could possibly be made—on any subject—and the concerns some have articulated regarding wildfire hazards and traffic impacts are the definition of speculative and have no bearing on the requirement that the City approve the Project under the HAA.

¹ Such delay/congestion based measures of traffic impacts are no longer considered to be environmental impacts under CEQA. *Citizens for Positive Growth & Preservation v. City of Sacramento*, 43 Cal.App.5th 609 (2019) (holding that “[u]pon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any.”); Pub. Resources Code, section 21099(b)(2).

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We again encourage you to be on the right side of history in approving this important Project. The HAA commands broad interpretation favorable to the provision of new housing, preempts any provisions of the Lafayette Municipal Code to the contrary, and compels approval here. See, e.g., § 65589.5(a)(3) (“It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.”).

Beyond the law, however, there is no evidence the Project will bring about the parade of horrors its opponents continue to insinuate without any basis in logic or fact. The evidence shows that when constructed the Project will improve existing traffic deficiencies and wildfire safety, increase pedestrian connections, and provide affordable housing that Lafayette desperately needs and has struggled to provide. We thus hope that you will do the right thing on June 15 and regardless of the meritless pressures placed on you by one small vocal segment of the community who rejected the reasonable compromise O’Brien spent years and millions trying to deliver and who don’t know or care to know what the law requires of the City.

Sincerely,

MILLER STARR REGALIA

Bryan W. Wenter

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