

Williams, Stephanie

From: Griffin, Terri
Sent: Friday, November 07, 2014 3:52 PM
To: Williams, Stephanie
Cc: Griffin, Terri
Subject: FW: Message from KMBT_751/Calistoga Cottages Project-Appeal Reconsideration Hearing November 18, 2014
Attachments: SKMBT_75114110712300.pdf

Stephanie,

Please print and distribute for the November 18th meeting.

Thanks,

Terri

Terri A. Griffin | City Clerk

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From: Lourdes Lopez [mailto:Lourdes@pmg-legal.com]
Sent: Friday, November 07, 2014 2:28 PM
To: Bartley, Scott; Swinth, Robin; Carlstrom, Erin; Combs, Julie; Olivares, Ernesto; Ours, Jake; Wysocky, Gary; Murray, Susie; Griffin, Terri
Subject: FW: Message from KMBT_751/Calistoga Cottages Project-Appeal Reconsideration Hearing November 18, 2014

Honorable Mayor and City Council Members,

Attached is my letter detailing my concerns that you were not given correct and complete information with regard to the proposed General Plan Amendment for the Calistoga Cottages project. We have confirmed that the Developer's Application should have been rejected since it was not complete and no evidence has ever been submitted to the City to support the amendment of the General Plan.

Additionally, City officials have to consider all pertinent General Plan goals and policies. The City Staff was wrong to not raise specific General Plan policies, LUL-E-4 and GM-A-2, before the Planning Commission. Consequently, to the extent you are relying on the Planning Commissioners' recommendations, their Resolutions were based on wrong and incomplete information.

Please review my letter and seek further clarification to your questions to City Staff posed during the September 16, 2014 public hearing for this project. Thank you for your consideration.

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November 7, 2014

To the Honorable Mayor
and Members of the City Council

Re: Public Hearings on the Calistoga Cottages Project
Appeal Reconsideration Hearing November 18, 2014
File No.: GPAM 13-003

Dear Mayor and City Council Members:

I write to express my concern that you were given wrong and incomplete information in response to your questions at the September 16, 2014 City Council Public Hearing for the Calistoga Cottages Project and request that you seek clarification and examine the record since there is no evidence to support a General Plan Amendment to change the land use designation of Very Low Density for 408 Calistoga Road.

Additionally, all pertinent General Plan Goals and Policies need to be raised and considered by City officials, which was not done by the Planning Commissioners. At the June 26, 2014, Planning Commission hearing, City staff selected certain goals in favor of the Developer and ignored specific policies which were violated by the project. This tainted the process and is contrary to the law. (See Staff Report for Planning Commission, June 26, 2014 and Staff Presentation, LUL-E-4, GM-A-2, never considered).

As part of the community, we expect a balanced presentation so that the public interest is protected. For my clients, Paul Bussard and Lynn Denley-Bussard, this will also adversely impact their property.

At the September 16, 2014 Public Hearing, Council Member Carlstrom requested information on the Applicant's failure to meet the three criteria for a General Plan Amendment. The Developer's Application for a General Plan Amendment does not address: (1) why an Amendment is warranted, (2) describe events which have rendered the General Plan inadequate or unattainable, and (3) describe any studies which have brought policies or portions of the Plan into question. (General Plan, page 1-11).

The City Staff's response was that the criteria was part of the Application and not the findings. The City staff failed to inform the Council that the Application should have been rejected since it was not complete and that there was no evidence to support the findings required for a General Plan Amendment.

A mere recital of the information in the Application in the Staff Report is not the standard for analysis. The Application has to be reviewed for accuracy and information has to be provided to support the statements contained in the Application.

Zoning Code §20-64.020 provides that the Application shall be accompanied by the information identified in the Department Handout for Amendment Applications. It is the responsibility of the Applicant to provide evidence in support of the findings required for a General Plan Amendment.

The General Plan may be amended if it is in the public interest (Government Code §65358). The findings for a General Plan Amendment require, in part, that the proposed Amendment ensures and maintains internal consistency with the goals and policies of all elements of the General Plan and is not detrimental to the public interest. (Zoning Code §20-64.050).

The Application requirements must be met in order for the City to conclude that the Amendment is consistent with the General Plan and in the public interest.

Here are the questions and responses in the Application:

- Question 1: Why do you want a General Plan Amendment?
Response: The City's encouraged infill development. It's serviced by transit routes.
- Question 2: What changes or events have occurred or what new evidence has arisen since the General Plan was adopted which now warrant a change?
Response: The need for housing. Infill housing is a method to achieve this.
- Question 3: Have detailed neighborhood plans or other studies revealed the need for a General Plan Amendment?
Response: Not that we're aware of.

Question 4: Describe the effect the proposed change will have on the surrounding uses. Describe how the proposed change will affect achievement of the General Plan in this and the surrounding area.

Response: Impacts to the neighbors are negligible. The site takes its access off Calistoga Road with a minor adjustment to the existing driveway. When compared to surrounding sites by using a current aerial view, this proposal is consistent in terms scope and scale. Infill on this site will provide additional needed housing opportunities.

The failure to analyze and verify the statements in the Application lead to the wrong conclusion that there was a change in the Calistoga area and parcel and a need to change the density designation to provide for housing. The question is not whether there is a need for housing in the abstract but whether there is a need for a change in the land use designation to provide for housing in this particular parcel.

One of the "goals" of the housing element is to meet the housing needs of all Santa Rosa residents. (Goal H-A). "Goals" are defined by the General Plan as broad policy direction; a larger end state the City is hoping to achieve. (General Plan, page 1-10). The City Staff's reference to the goal, H-A in the housing element is not the equivalent of evidence to support a General Plan Amendment. In fact, the evidence shows that there is no need to change the density designation to provide for housing (See July 29, 2014 Housing Element Update, plus City Staff Report).

Further, the evidence shows that nothing has changed in the Calistoga area or the parcel since the 1999 City Council pre-zoned 408 Calistoga Road RR-40 (Rural Residential) and determined that the Very Low Density designation was consistent with the policies contained in the General Plan. (February 2, 1999, Ordinance No. 3405).

The Developer's parcel, 408 Calistoga Road, remains part of the rural pocket created in 1999 when the Monte Verde County Island was annexed to the City, since the same conditions exist today; 1 house on about 1 acre, built in the 1950's, bordering Calistoga Road, providing a buffer for the rural community, with 11 Valley Oak trees on site, and adjacent to an extensive Valley Oak grove.

The same commercial center, public transportation and City services were in existence in 1999. The parcel took its access from Calistoga Road in 1999 when the rural pocket was created by the City.

The Developer makes the bold statement that the project will not impact the rural neighborhood because it takes its access from Calistoga Road. This statement ignores the fact that the Developer's project seeks to cluster three (3) homes, behind the existing home, and onto a part of the Valley Oak grove, which directly impacts the rural community.

I note that Commissioner Stanley emphasized the Commission's view that there had been a change in the area and that the parcel took its access off of Calistoga Road. This was a result of the City's failure to analyze the Application responses and provide the Commissioners accurate information as to the annexation, pre-zoning and creation of the rural pocket.

In particular, Commissioner Stanley believed that the four (4) lots that front Calistoga Road were recently annexed and part of the change in the area. The City's Staff could not answer Commissioner Stanley's specific questions and provide the Commissioners the correct information, which is, the lot at 470 Calistoga Road was forced to split and annexed to the City in 1982 to accommodate an overwhelming public need for a City water pumping station.

As to question number 4 in the Application, "describe how the proposed change will effect achievement of the General Plan", City Staff did not raise all the pertinent General Plan goals and policies for the Planning Commissioners' consideration, emphasized goals that supported the project, and buried a goal and policy the amendment violates in the Staff Report. General Plan "policies" provide more specific direction on how to achieve goals. (General Plan, page 1-10). The following General Plan "policies" were never raised and considered by the Planning Commission:

LUL-E-2:

"Neighborhood Character. Each neighborhood should **maintain a distinct identity**, such as the historic preservation districts featuring Victorian cottages and California bungalows."

LUL-E-4:

"Protect the rural quality of Very Low Density areas within the Urban Growth Boundary through design and development standards in the Zoning Code, and development review."

GM-A-2:

"Clarify to protect applicants that the low-intensity General Plan designations are not "interim" and that the intent of these designations is to accommodate a variety of housing types within the UGB, rather than reserve areas for future development."

This applies specifically to the rural Very Low Density Residential designation, as rural residential pockets will be retained within Santa Rosa's UGB to accommodate all lifestyles."

UD-F-2:

"Protect natural topographical features such as hillsides, ridgelines and **mature trees and stands of trees.**"

H-A-3:

"Promote conservation and rehabilitation of the existing housing stock and **discourage intrusion of incompatible uses into residential neighborhoods which would erode the character of established neighborhoods or lead to use conflicts.**"

OSC-H-1:

Preserve trees and other vegetation, including wildflowers, both as individual specimens and as parts of larger plant communities."

OSC-H-2:

"Preserve and regenerate native oak trees."

The following General Plan Goal, UD-F, and Policy H-A-2 were raised in the Planning Commission and City Council Staff Report but were not discussed or analyzed in the Staff Report:

UD-F:

"Maintain and enhance the diverse character of Santa Rosa's neighborhoods. Promote the creation of neighborhoods - not subdivisions, in areas of new development"

H-A-2:

"Pursue the goal of meeting Santa Rosa's housing needs to fill increased densities, **when consistent with preservation of existing neighborhoods**".

The project violates UD-F and H-A-2.

At the Planning Commission hearing, the City emphasized that the project met four General Plan "goals" but ignored specific General Plan "policies", LUL-E-4 and GM-A-2, which prevent an Amendment to the General Plan.

I note that LUL-E-4 was added to the Staff Report to the City Council but was not discussed. Instead, similar to the Planning Commission hearing, the City Staff chose to emphasize three goals of the General Plan and ignored goals and specific policies which would not allow the Amendment to the General Plan.

At the September 16, 2014 Public Hearing, Mayor Scott Bartley asked whether the City needed to comply with all the policies and elements in the General Plan. In response, City staff informed the Council that there were competing policies, that the City did not need to comply with all the policies, and that the City did not need to comply with all the elements of the General Plan.

This response was wrong and misleading. City officials have to consider all the pertinent General Plan goals and policies. The record clearly shows that this was not done by the Planning Commissioners.

The Santa Rosa General Plan has thirteen (13) elements, including land use and livability, urban design, housing, growth management and open space and conservation. (General Plan, pages 1-8, 1-9). The General Plan must contain certain mandatory elements, but it may contain other elements within the discretion of the local agency. (Government Code §65301, 65302, and 65303). All adopted portions of the General Plan, whether required by State law or not, have equal legal weight. (General Plan, page 1-4).

Government Code §65300.5 provides that the legislature intends that the General Plan and elements and parts thereof comprise an integrated, internally consistent compatible statement of policies for the adopting agency. It is true that a given project need not be in perfect conformity with each and every General Plan policy, and that no project can completely satisfy each policy stated in the General Plan. (Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors (1998) 62 Cal.App.4th 1332). But the nature of the policy and the nature of the inconsistency are critical factors to consider. The City relies on broad "goals" to support an Amendment to the General Plan. However, as indicated by case law, these "goals" can not overcome the specific policies, LUL-E-4 and GM-A-2, that prevent the Amendment to the General Plan.

To the Honorable Mayor
and Members of the City Council
November 7, 2014
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SUMMARY

City Staff was wrong to brush aside the importance of the Application criteria and evidence needed to support the findings for a General Plan Amendment. Based on the Application responses and the record, the General Plan Amendment must be denied since it is not in the public interest and is not consistent with "policies" in the General Plan.

The Amendment is not in the public interest since there is no need to change a density designation to provide for housing and no changes to the Calistoga parcel area have occurred which warrant an Amendment to the General Plan. The Developer cannot show that the 408 Calistoga Road parcel has changed since the 1999 pre-zoning and annexation, when the City Council included it in the rural pocket. (I note that without the pre-zoning and promises to retain the rural character of the neighborhood, the neighborhood would never have voted for annexation to the City).

The Developer's General Plan Amendment, besides violating ten (10) General Plan policies and goals, violates two (2) specific policies, LUL-E-4 and GM-A-2. The City Staff was wrong to not raise the specific policies, LUL-E-4 and GM-A-2, before the Planning Commission.

Please request further information and clarification to your questions and examine the record since there is no evidence to support a General Plan Amendment to change the land use designation of Very Low Density for 408 Calistoga Road.

Very truly yours,

**PASSALACQUA, MAZZONI, GLADDEN,
LOPEZ & MARAVIGLIA, LLP**



LOURDES LOPEZ

LL/dm

