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Lafayette Housing Element Still Not in Compliance

By Cathy Tyson

In a letter dated September 7, 2010, the City of Lafayette was notified that its Housing Element, which has been revised three times, is still not in compliance with state law. Administrators with the Department of Housing and Community Development (HCD) stated that a number of revisions are still necessary to comply with State Housing Element law.

Lafayette, like all California municipalities, is mandated to have a plan to accommodate its fair share of low income housing; 361 units for the current planning period. The City submitted its Housing Element in December of 2009, and received comments back from HCD.

The City is required to not have barriers to development through zoning and show that there is sufficient land in place to allow low income housing units. Planners prefer to locate affordable housing in the downtown, to preserve open hillside spaces, and locate housing closer to transit to reduce traffic impacts.

"We are pleased to note that unlike previous comment letters, this letter does not question the adequacy of our housing inventory," said Nirop Srivatsa, Planning and Building Services Manager, who is already working on a response. "Rather, it requires the City to provide an assessment of our land use controls and strengthen our commitment to facilitate the development of housing in the downtown. We hope to submit our revisions to HCD very soon. Lafayette's previous housing element was certified by HCD, and I am therefore confident that we'll resolve any concerns they might have."

Fair housing proponents have concerns that a portion of the twenty-two sites the City submitted to HCD are composed of a number of smaller parcels that would require all the property owners to decide to sell within the next five years - most have existing businesses. For example, at the corner of First Street and Mount Diablo the Taco Bell, the office building next door; the Great Wall restaurant and Hamlin Cleaners on Golden Gate way are together considered site twelve. While it's possible this may happen, many consider it highly unlikely.

"Lafayette's sham strategy of pretending that commercially zoned and used and unconsolidated sites will magically become affordable housing was not found acceptable," said Mike Henn, former Planning Services Manager. "I suspect that the most convincing final argument was the receipt of letters from property owners saying: We're Not Interested. It is also revealing that the City was trying to fly the inventory under the radar, by not properly notifying property owners that their properties were being listed by the City as available for low income housing."

Attorney Allan Moore, representing The Dettmer Family Trust which owns approximately 80 acres near Pleasant Hill Road and Deer Hill Road, including the area known as the Christmas tree lot, is skeptical. "The city's response of July 2010 is wholly inadequate, unresponsive to the HCD letter and legally insufficient under the state housing laws," he said in a letter to HCD and the City of Lafayette.

Noting great respect for staff and City Council, Moore said, "Property owners have rights as well - this parcel was originally zoned APO (Administrative Professional Office) 35/units per acre - that's what the City decided. Then the City changed its mind to downzone to open space use - it seems unfair. We really hope the City Council will listen to us, but we are exploring all options," said Moore.

He explained that the City has offered potential sites within existing commercial zones that are already developed with significant structures and ongoing businesses to satisfy Housing Element requirements. Concurrently the city is recommending downzoning the Christmas tree lot to an open space designation of Rural Residential on the 22-acre parcel. If developed, Moore suggests the vacant, undeveloped parcel that was originally zoned for multi-family housing would address a significant portion of the affordable housing requirement.

"The City's actions would constitute a 'taking' of all reasonable economic use of the Dettmer property and violate the Dettmer family's constitutional rights for due process and equal protection," said Moore.

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