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Zoning Concerns Complicate Potential Development

By Cathy Tyson



Corner of Deer Hill Rd. and Pleasant Hill Rd. Photo
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Christmas tree lot is diagonally across from Acalanes High School. Since 1976 it's been zoned APO - Administrative Professional Office - up to 35 units per acre; the City proposes to change that to Low Density Residential District 5 - one dwelling per five acres. The fallout of the proposed zoning change would reduce the potential density for the roughly 22 acre parcel from 770 units to four.

The Dettmer family has owned that parcel along with two others on Deer Hill Road for over fifty years.

On March 21, 2011 it submitted a development application for a 315 unit multi-family development. The City accepted the application and associated fees, requested additional documentation, which was provided, and on July 5 sent a letter noting the application has been "deemed complete."

"Our law offices in thirty years of practice have never encountered a more punitive and illogical action taken by a City against a family and a proposed application," said Moore. He calls the City's actions "utterly inconsistent," specifically accepting the application and just weeks later initiating down-zoning which would preempt processing the Dettmer application.

According to Senior Planner Christine Sinnette, it's possible to change the rules after accepting a development application and deeming it complete.

"The ordinances, regulations and laws in effect at the time a decision is made on a development application are applicable," said Sinnette. "The exception is for a subdivision. The ordinances, regulations and laws in effect at the time a subdivision application is deemed complete are applicable unless notice has been published that the City is proposing changes, then the regulations at the time a decision is made are applicable."

The matter is a long way from finalized. The task for Planning Commissioners at a recent meeting was deciding whether to recommend to the City Council changes to the General Plan Map reclassifying five properties on Deer Hill Road, along with associated re-zoning.

"I'm very troubled by this," said Commissioner Karen Maggio. "I recall specifically that we asked for a study. I can't support the re-zoning as it is now." Maggio and Patricia Curtain-Tinley were in the minority. Although only five of the seven Planning Commissioners were in attendance, on a three in favor, two against vote, the matter will move forward to the City Council.

Moore describes the project as less than half of the maximum density allowed and conforming to all the zoning standards of the site. He says it's an issue of "fundamental fairness," the family has owned the parcel for over fifty years, and after waiting for the past ten years for the City to do something, the family submitted a project application.

Call it a chicken and egg situation; is the property owner pursuing development because the zoning may change? Or is the City attempting a zoning change because of possibility of development? Only time will tell.

Although a city-initiated zoning change has been discussed for years now, actual re-zoning of five properties on eastern Deer Hill Road has never been formally adopted. As reported on April 13, 2011, after months of well attended meetings, the City Council directed staff to down-zone the properties. Until now however, staff had been busy with other projects, but is currently moving forward to officially change the zoning designations. The attorney representing the landowner sees this as more than just coincidence.

"The City's sole reason for proposing the down-zoning is to ensure the denial of the Dettmer/O'Brien application," said attorney for Christmas tree lot owner, the Anna Maria Dettmer Trust and the O'Brien Land Company (Dettmer/O'Brien) in a letter to the Lafayette's Planning Services Division.

Attorney David Bowie also represents Dettmer/O'Brien, he spoke up at a Planning Commission meeting about prior actions: "There were hearings - but it was a popularity contest. I didn't hear any analysis or see a study that would support re-zoning. Why are we being singled out?"

Located at the corner of Deer Hill Road and Pleasant Hill Road, the

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