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## Trouble with the Terraces

*Drama as accusations fly*

By Cathy Tyson

Two attorneys representing the landowner and developer of the proposed Terraces of Lafayette project came out with heated accusations toward the way the city of Lafayette has handled the project.

The attorneys, Allan Moore and David Bowie, filed an appeal to the City Council for a de novo hearing, appealing the certification of the Final Environmental Impact Report (FEIR) made by the Planning Commission on March 4. They are taking issue with the Final EIR, disagreeing with what the document spells out as significant and unavoidable impacts, and the timing of an attempt to down-zone the property.

In introductory remarks to the city council at its April 29 meeting, senior planner Greg Wolff reviewed the situation and recommended that the Final EIR makes a good faith effort at full disclosure and complies with the regulations of the California Environmental Quality Act. "It's staff's opinion that you should deny the appeal and certify the Final EIR," he said.

Moore questioned the city's consideration of down-zoning the property just shortly after they had filed an application for the Terraces project. "You can't do both," he said, "it's illegal - case law is clear."

What he described as 10 times worse than the down-zoning timing were several conclusions in the EIR that were methodically changed by staff from "less than significant impacts" to "significant impacts." Moore called the changes, "not appropriate, not right and not legal." Later in the evening he pointed out that an EIR is all about objective evidence and said that changes were made without evidence; he demonstrated this with an earlier version of the Draft EIR that had entire sentences struck out and replaced with different language that came to different conclusions. Ultimately Moore claimed that the applicant's constitutional rights were violated.

Fellow attorney Bowie agreed, claiming the city is "effectively throwing out expert's analysis," adding that it is, "irresponsible to certify the EIR the way it's written."

In a letter to the city council Bowie stated, "The Final EIR has rejected the information supplied by the Project consultants. The interesting issue, however, is that the available data coupled with matters of non-expert judicial notice confirm that the conclusions regarding significant unavoidable impacts are not the result of a careful weighing of expert opinion and data; they instead are simply conclusions reached without apparent factual basis."

What followed was a verbal volley from both sides discussing issues ranging from ridgeline to rye grass to traffic impacts, to consistency with the General Plan and beyond.

Council member Brandt Andersson responded to Moore's claim about rights being violated, calling the accusation "beyond the pale" and "a step too far."

Because it was so late in the evening, nearly 11 p.m., Mayor Mike Anderson recapped a laundry list of specific information from the appellant, the EIR consultants and city staff that the city council needs in order to move forward regarding the matter when the meeting is continued - tentatively set for May 29. Items ranged from an analysis of the site and a three dimensional representation of the substantial grading that is proposed, effect of the potential loss of a pick-up and drop-off location for students on Pleasant Hill Road and much more.

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[back](#)

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