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## City Council Declines Application for Phair's Site

By Laurie Snyder

Procedure became the story at the Nov. 5 Orinda City Council meeting as council members were excused (Glazer), recused (Severson), and briefed on policy prior to the hearing of a proposal to replace the Phair's building with a Montessori preschool.

"At the first hearing, the Planning Commission considered a threshold question - that is, whether or not the code, as it is currently written, even allows this type of a use, a preschool, in the downtown commercial district," said Emmanuel Ursu, planning director. If codes did allow, then the City Council could consider use permit standards. If not, no further analysis was required and the Montessori application would be denied.

"We have spent three years and hundreds of thousands of dollars to get to this point," said Shandy Cole, Fountainhead's executive director. "The Planning Commission, after hundreds of hours of staff time, approved our project with a 5-2 vote." Fountainhead's land use attorney and long-time Walnut Creek planning commissioner, Allan Moore, cited Orinda's General Plan and said it was the City Council's prerogative to determine what services could be offered.

During its examination the City Council was reassured that former site contaminants were resolved and lasered in on parking and traffic. Councilmember Victoria Smith questioned whether parents would or even could adhere to Fountainhead's plan for staggered drop-off times with Cole stating that, "certainly if you're working in San Francisco, you're probably coming at 7 a.m." As Smith illuminated the likely path of vehicle travel, it became clear that, of the 18 parking spaces allocated, up to 10 might be used for staff - and that most parents' cars would be moving west on Orinda Way with the majority turning left onto Avenida de Orinda. Traffic would impact area business owners and patrons.

"Childcare is allowed in almost all of the zoning districts subject to a general use permit. It's allowed in residential and all of its classifications. It's allowed in downtown office," said appellant Terry J. Murphy. "But it isn't allowed in the downtown commercial district." Planning commissioners, he said, "rewrote our General Plan and the code. And that's not their job. It's yours."

Two-year Orinda resident Shelly Rose said a drop-off loop would make life easier. "Having come, like many of the other young families in the area, from San Francisco and Oakland, the one thing that we miss coming from those other areas is the walkability." Joanne McKinley said, "Young families bring wealth, vitality, and economic long-term commitment to a community." Orinda should design "a downtown which maintains all of its natural beauty and small town charm while introducing sophisticated and modern living solutions for its residents with world class schools, high end retail, entertainment, restaurants, and wellness practitioners - very much like Mill Valley and Marin have been able to do."

In contrast, one architect and city planner residing in Orinda for more than 50 years said that, while it would please him if his great-grandchildren could attend, he wouldn't want them in a preschool "squeezed into a downtown commercial area, sharing space with commercial uses, on a major city thoroughfare, across the street from a busy automobile garage."

During the deliberations Smith said, "I want to underscore that what is before us tonight is one actual project. We heard some speakers talk about, 'If this doesn't go in, then affordable housing's going to go in' ... or 'luxury condos are going to go in.' And various things in between. And none of that is accurate. There is no other project before us tonight."

Examples of personal development services in city policy - dance, music, martial arts studios, fitness centers, dry cleaners, travel, beauty - "have one thing in common which I think we do not find here in this preschool use, and that is a constant amount of customers coming and going in smaller increments, which tends to lead to foot traffic, which tends to increase the vibrancy and the commercial use of this downtown commercial district, which I think is what the General Plan calls for." Plus, the applicant "told us that over 80 percent of [parents] are going to use the drive through. So, they're not going to be parking and shopping and walking around and utilizing the other businesses, which is really what you look for in a downtown commercial district," Smith said.

Councilmember Dean Orr concurred. "I do not believe that a school or a daycare facility is like minded to any of those." Osa Wolff, city attorney, observed, "If you conclude that the zoning code does not permit this use, then there is no further analysis. The project is denied." The City Council unanimously declined Fountainhead's application (Glazer excused; Severson recused).

Councilmember Sue Severson's Recusal Statement, Nov. 5

"Mayor, with your pleasure, I would like to make a statement if that's okay. It's about the most important to me that the public have full faith in the City Council decision makers, and also trust in the city processes - that are fair. It's come to my attention that certain members of the public question my ability to be fair and open minded in considering tonight's land use appeal. This concern seems to be based on a couple of email messages produced by the city in response to the California Public Records Act request from Orinda Watch. Over the years in my role as City Council member, I have had meetings, phone conversations, email exchanges, etc. with both proponents and opponents of the Montessori project. During those communications, I have stated my preliminary opinions regarding the proposal, and conveyed my thoughts regarding land use policies for the city of Orinda's downtown. Although I

feel that I could consider tonight's appeal in a fair and unbiased way, I also recognize that some members of the public may reasonably have a different perception. When it comes to ethics, perception is very important. So, out of an abundance of caution and to safeguard the due process, I have herefore, therefore, decided to recuse myself. The only other topic on tonight's agenda is the Orinda Mini-Park renovation project - Item I-1 - that involves consideration of an Orinda Community Foundation funding proposal. I have decided to also recuse myself on this item because I am a current member of the Orinda Community Foundation board. In reaching these decisions, I have consulted with the city attorney, and I am making these disclosures consistent with her advice. I will depart from this meeting before discussions begin on the public hearings and policy matter agenda items."

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