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Candell to recuse from Deer Hill project, three others reject call to recuse

By Pippa Fisher

The Feb. 25 city council meeting got off to a somewhat scripted start with four of the five city council members reading statements - one recusing herself and three others stating their intention not to recuse - as advised by legal counsel on any future discussion or decisions on the Terraces project.

The Terraces, the controversial 315-unit apartment project on a 22-acre parcel on Deer Hill Road, is expected to come before the city for approval this spring.

The development was first proposed in March 2011 but its application was suspended in 2014 in favor of alternative plans for a scaled back development of 44 single-family homes, a dog park, a playing field, a playground and tot lot. Local preservationist group Save Lafayette sued the city resulting in a referendum last June on the future of the revised project. With the defeat of Measure L, the developer O'Brien Homes resumed the original application for the apartments.

The council members' statements were read during the report from the closed session meeting and came following a barrage of letters from the developer's attorney Bryan Wenter of Miller Starr Regalia calling for Council Member Susan Candell to recuse herself from all matters concerning the Terraces, citing as a conflict her "long history actively opposing our clients' proposed 315-unit affordable apartment project in Lafayette and even expressing personal hostility to our clients," in a letter to the city's attorney Robert Hodil of Coblenz, Patch, Duffy and Bass dated Dec. 5, 2018.

Candell, whose springboard to running for office was her involvement opposing first the apartments and then the homes, expressed great disappointment as she announced her recusal on the advice of her private attorney but noted that she retained the right to speak as a member of the public.

Candell pointed out after the meeting, "I was the number one vote getter, but yet, I'm now in the position that I am advised that I cannot represent Lafayette residents in a very important land use decision. I cannot express my disappointment enough."

Candell said that she worked hard to try to retain her rights to not recuse. "I believe my positions were and are based on legitimate principles and that I do not have an improper bias or motive towards the project. I also worked equally as hard to retain my rights to participate as a citizen, which they also tried to take away. According to the FPPC, I did retain my private citizen rights similar to those I would have if I had a financial conflict (which I do not have). I will work within these limitations. However, I will also retain my rights to consider and pursue all legal options."

Following Candell's announcement, Vice Mayor Mike Anderson, Council Member Teresa Gerringer and Mayor Cam Burks all read identical statements that during the closed session they gave consideration to claims (made by a letter from Save Lafayette) that they should also recuse themselves and said that after consultation with the city's attorney they do not believe there is any reason to do so.

Save Lafayette contends that, based on the logic given that Candell should recuse, Burks' involvement as chair of the 'Yes on Measure L' campaign and Gerringer's and Anderson's endorsement and support of the campaign should by the same token require their recusals.

In fact, says Candell, "The letter from Save Lafayette argues that this entire process is biased because the three other council members were not also forced to recuse, even though they worked very closely for a long time with the developer on Measure L.

'Letters were written describing residents' dissatisfaction with council in this matter, which has done absolutely nothing to help support their fellow council member, me, during this process," says Candell.

In a follow-up letter from Wenter to Hodil dated Feb. 28 in which the attorneys address what they describe as Candell's 'material animosity' to the developer citing specific posts from social media, the developer's attorney expresses deep concern that Candell intends to retain her right to speak as a private citizen and requests the name of her personal attorney.

The letter states, "We are deeply concerned about the role Council Member Candell apparently believes she can play opposing the project even as a private citizen, notwithstanding her acknowledged conflict of interest affecting our clients' due process rights, and will address that critical issue separately."

Burks said that it would not be appropriate for him to comment on anything related to city council closed session.

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