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Vice Mayor to remain engaged in future Terraces decisions

By Pippa Fisher



Susan Candell Photo provided

The city of Lafayette released a carefully worded statement late on Thursday, Sept. 26, in which it is apparent that Vice Mayor Susan Candell intends to remain unrecused in matters pertaining to the proposed Deer Hill Road project, the Terraces, in spite of calls from the applicant claiming that to do so is a conflict of interest.

The statement makes it clear that the city does not consider the other council members are under any obligation to take steps to prevent the situation and that "Ultimately, it is each individual council member's responsibility to make the decision whether or not to recuse herself or himself when faced with a conflict of interest charge of the type that the Terraces project applicant has made."

Candell, who ran for office in 2018 based largely on her involvement opposing both the proposed 315-unit apartments and then the later-modified 44 single-family homes (which, following the defeat of Measure L, led to the developer O'Brien Homes reinstating the initial apartments project), had been

advised by Attorney Robert Hodil of Coblenz, Patch, Duffy and Bass - the outside counsel hired by the city - that she should recuse herself on all matters pertaining to the project. She recused herself on that advice in February this year.

However, at the Aug. 12 city council meeting Candell announced that on advice from her own privately hired attorney, Steve Churchwell of Churchwell, White LLP, she intended to participate in all matters related to the Terraces going forward.

The city's statement comes following three closed session meetings with the city council and its outside counsel. During this time the applicant's attorney, Bryan Wenter of Miller Starr Regalia repeatedly addressed the council, saying that Candell has a legal and ethical obligation to recuse herself.

At the Sept. 23 city council meeting Wenter warned that if Candell does not recuse, it would be imperative that the council take action. "Doing nothing is contrary to your fiduciary duties to the city and its residents. If Ms. Candell does not recuse, then tonight you should authorize Mr. Hodil to take appropriate legal steps to protect the city's legal, financial, and reputational interests."

Hodil says that the city's statement addresses this point. "The applicant has also asserted that the other council members are under an obligation to initiate legal action, or take other steps, in order to prevent Vice Mayor Candell from participating in the city's consideration of the Terraces project application. There is no such obligation, and city council members are not empowered to overrule a fellow council member's judgment with respect to such a matter," the statement reads.

An email statement on Sept. 23 from Wenter on behalf of O'Brien Homes states, "We are extremely disappointed in Councilmember Candell's decision to 'un-recuse' herself with respect to the Terraces

of Lafayette apartment project. But given Councilmember Candell's long and vocal opposition to this important Housing Accountability Act project and the key role the project played in her decision to run for office, we are not surprised by her choice to ignore the well-settled legal standard for when a public official must recuse."

Wenter's statement continues, "Councilmember Candell's personal decision to ignore the advice of the city's attorney remains in direct conflict with my client's constitutional right to due process and is a violation both of her oath of office and her fiduciary duties to the City of Lafayette. Nothing in the law supports Councilmember Candell's decision. Indeed, the facts in this case are far more egregious than those in the leading cases."

A statement from Candell was expected but had not been released as this paper went to press.

The city's statement says that both council and staff "remain committed to ensuring fairness and due process throughout its consideration of the Terraces project, regardless of whether or not the applicant chooses to seek judicial guidance regarding Vice Mayor's participation in the council's possible future consideration of matters concerning the Terraces project."

At press time the applicant's attorney was drafting a response letter to the city, and said that at this point O'Brien is not planning to initiate legal action.

Wenter ends his statement by saying, "My client remains optimistic, however, that the four unbiased members of the Lafayette City Council will ultimately approve the project, as required by the HAA."

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