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City of Lafayette pays legal fees award following Brown Act violation

By Jennifer Wake

Following a Dec. 4, 2020 order by Contra Costa Superior Court Judge Edward Weil, the city of Lafayette on April 5 paid an award of attorneys fees totaling \$133,118 (minus credit for costs) to a group of seven Lafayette residents who challenged three closed sessions of the City Council in 2016 involving a land use application for a tennis court cabana on Las Trampas Road.

Last March, the First Appellate District ruled the city council violated the Brown Act Open Meeting Law by holding closed sessions before

three public hearings without identifying the matter and disclosing information on the agenda. The applicant's attorney had told city planning department staff that he would sue the city if the city continued its refusal to allow the cabana project to move forward. The city planner alerted the city attorney, who discussed the litigation threat with the council in closed session on July 25, 2016, but did not provide the council with the city planner's note of the communicated threat, and the note wasn't placed in the meeting agenda packet.

The Court of Appeal agreed with the plaintiffs that

the city violated the Brown Act and ruled the city was not allowed "to thwart its duty of public disclosure in this manner." The Court held that a record of a litigation threat to be discussed in closed session must be included in the agenda packet made available to the public before a meeting.

The Brown Act generally requires that governing bodies, such as a city council, conduct their business in open session allowing for public participation, according to an April 2020 client brief written about the case by Lozano Smith Attorneys at Law. "Under certain excep-

tions, governing boards may conduct business in 'closed session,' out of the view and participation of the public," it stated. "One such exception allows governing boards to discuss pending or threatened litigation in closed session, provided that the closed session discussion is properly noticed and any action taken during closed session is 'reported out' once the board returns to open session."

While the court upheld the issue that a record of a litigation threat should have been included in the agenda packet, the court rejected the plaintiff's argument that the cabana project was null and

void under Government Code 54960.1, which authorizes a court to find null and void an action taken in violation of the Brown Act.

The California League of Cities sought to depublish the opinion on the grounds that "the standard practice of public agencies statewide does not conform to the Court of Appeal's opinion."

Had the opinion been unpublished, Weil wrote, "the Court would find this a case in which a fee award would be unjust," but the award is appropriate since published opinion require changes in the operating procedures of local state governments.

Orchard Nursery celebrates 75 years of community involvement



Photos provided

Current owner Tom Courtright and Kathy Courtright Rondini

By John T. Miller

A longtime fixture on the western edge of Lafayette, Orchard Nursery recently celebrated its 75th anniversary on March 14.

The celebration was a reminder of the many regular community events hosted by the nursery, including Sunday

socials, an annual Christmas show, and a Harvest Festival with live music, barn animals – goats, sheep, bunnies, etc. – children's storytellers, food vendors, crafters, corn stalks, pumpkins and gourds.

The land originally belonged to the Kergan family, who purchased it in 1935. The Kergans built their ranch on

the frontage of the only main road from Oakland and Berkeley through Lafayette and on to Walnut Creek – a dirt road cutting through open fields.

The Kergan ranch featured cattle with a 'Rocking K' brand, a pear orchard, and fruit stand. The land was purchased by Jack Schneider and his partner Stewart Wade in 1946 who established Orchard Nursery on the site.

The nursery was conceived and designed by internationally famed landscape architect Ernest Wertheim, who helped reinvent the nursery business as something more than just a place that sold plants. Wertheim knew that a full-service garden center was the future of the industry, so he created just that.

In 1955, Schneider and Wade were notified by the state of California that the nursery was right in the middle of the proposed construction of Highway 24



The Orchard Nursery fountain was a focal point for many community events.

and would have to move. After a frantic year of extensions and petitions, the nursery was relocated, but only slightly.

The intersection of Happy Valley Road and Mt. Diablo Boulevard was the former entrance to the nursery, but

with the construction of the new highway, customers would now enter from the back of the nursery on Acalanes Road. Dirt removed to make way for the freeway forms the mound that borders the entrance

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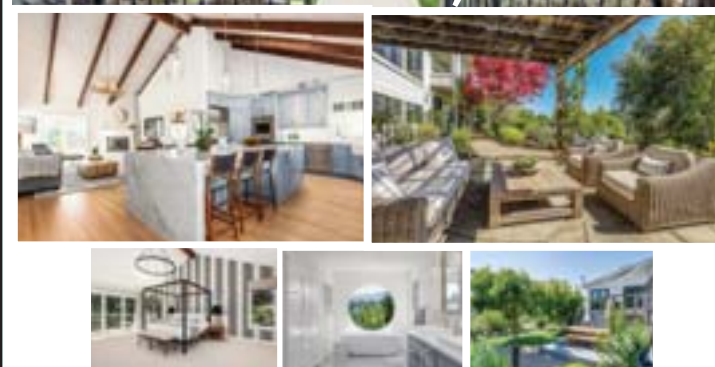
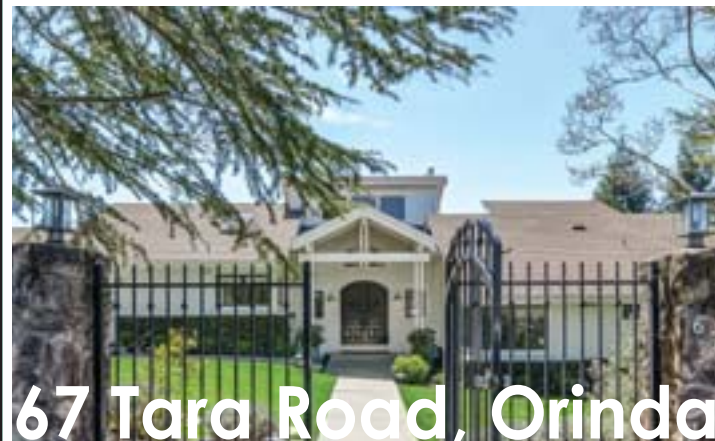
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