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After marathon session, Orinda council decides on a path forward on housing element

By Sora O'Doherty

By the end of a four-hour meeting where the housing element was the only substantive matter on the agenda, the Orinda City Council on Nov. 1 instructed staff to pull back to a less cautious buffer and reduce some potential housing height and density in the revised housing element to be sent to the California Department of Housing and Community Development (HCD).

Every eight years every town, city, and county in California must prepare a "housing element," a plan for providing for increased housing. The plan must be approved by the HCD on a strict timeline, with significant penalties if the plan is not certified by HCD in time. All over California communities are currently working on the sixth housing element, which will be in force from 2023 through 2031. Communities, including those in Lamorinda, received vastly higher numbers of housing units they must provide for than the previous five housing elements.

Several public comments suggested that the city of Orinda simply refuse to comply with the state requirements, but to do so would impose difficult consequences, and litigation would be arduous and expensive, according to Orinda Director of Planning Drummond Buckley, City Attorney Osa Wolff, and City Manager David Biggs. A compliant housing element is also required for the city to qualify for grants and loans.

After the city submitted its draft housing element to the HCD, the agency responded by rejecting a number of sites that the city had included as suitable for potential new housing. The HCD was particularly dubious about non-vacant sites that the city had included. As a result, where the downtown precise plan (DPP) had initially included 43 sites, 23 of those sites have now been removed and one site, 4 Orinda Way, has been added, resulting in a total of 21 DPP sites in the updated inventory. Council Member Nick Kosla, co-chair of the Downtown Development Subcommittee, said that in his opinion, all of the sites in the original draft would work, despite HCD's doubts.

An additional factor bearing on the housing element is the stream of new legislation from the state of California. Two pieces of recent legislation, Assembly Bill 2097, which limited the ability of local areas to require parking in developments within a half-mile of a BART station, and Senate Bill 6 which allows housing to be built in areas zoned for commercial use, were of particular concern to the council. Vice Mayor Inga Miller pointed out that BART won't get your children to school or you to the supermarket. "The idea that because you live near BART means that you don't need a car just doesn't work," she said. "Maybe it works in San Francisco, but not in Orinda."

Attorney Wolff pointed out that the law contains an opportunity for the city to make a finding for a proposed project that a requirement of no parking would impose a substantial hardship on residents. Such a finding must be supported by a preponderance of evidence and must be submitted within a relatively short time period. For that reason, the council urged staff to begin a parking survey that would provide evidence regarding the various proposed housing sites that could be relied upon in the event of a proposed development coming forward.

Much of the discussion was devoted to two potential housing sites, a piece of land owned by Caltrans off Highway 24 and the BART parking lots. Members of Orinda Watch and Nick Warranoff, who was unable to attend the meeting, suggested that the city rely heavily upon these two sites to meet its quota of potential housing sites, which would allow for lower height buildings and less density in other areas of the city.

However, BART has communicated to the city that, although it recognizes the potential for housing on its sites, it cannot be ready to proceed until the next housing element cycle, eight years from now.

The Caltrans site consists of 10 acres, but the issue is that the property must be decertified. Council Member Darlene Gee declared, "I cannot imagine why Orinda would have to be involved in the decertifying. I hope that staff will push Caltrans to declare this land as surplus property." Biggs agreed, noting that he thought that Gee was right, and he hopes to overcome the obstacle.

Several members of the public suggested that the Caltrans site could accommodate more than the 200 units proposed. Staff explained that if the number were increased, it might cause HCD to start asking a lot of questions and want to see project examples.

Since reliance of the BART site is probably not a possibility for this cycle, and the Caltrans site has issues to be resolved, the city looked to another way to reduce proposed heights and densities for certain sites. It was suggested that one way to do that would be to reduce the buffers that were included in the draft. Buffers are numbers of housing units added to the required amount to protect against failure to meet the HCD requirements in the event of unexpected occurrences. The use of buffers protects the city from negative consequences of not meeting its required quotas.

However, after discussion with staff and with the city's consultants, Placeworks, who attended the meeting and gave a presentation on the revised draft, the city council agreed that the buffers could be reduced, which would allow for the highest heights allowed in some areas, up to 65-70 feet, to be reduced to 45 feet, and the highest density of 65 dwelling units per acre to also be reduced.

Another issue that the city council wanted staff to explain to HCD is the role of Measure J, the original half-cent sales tax that passed in 2004. Measure J incorporated a growth management program for Contra Costa County. Orinda gets half a million dollars back from the tax each year, which is applied to the city's street-paving program. In order to qualify for the money, however, the city must fill out a growth management checklist, which includes elements such as the city's work towards affordable housing, cooperative planning,

traffic mitigation fees for things such as bike paths and local transportation. As explained by longtime city council member Amy Worth, this plan is reviewed every two years. "If the city is not making progress," she said, "the city can't get the money." She further explained, "We need to have our housing element to show that we are making progress, and we've always been successful."

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[back](#)

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