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Litigation may be brewing over Patrick Lane lot split

By Sora O'Doherty

A complicated set of facts have led the Orinda City Council on Sept. 19 in closed session to consider whether the city will be sued if it authorizes a lot split under a state law known as SB 9. It appears that the city might also be sued if they refuse to grant the applicant's request for a lot split of lot 6 on Patrick Lane. Ellis Raskin, an attorney representing the existing residents of Patrick Lane, submitted a letter to the city attorney dated Sept. 7, threatening litigation if the urban lot split is approved. Linda Klein, an attorney representing the applicant, submitted an email to the city attorney dated Sept. 13, threatening litigation if the urban lot split is not approved. This correspondence has been made available for public inspection. SB 9 was adopted by California as a way of increasing housing in the state. The law provides for lot splits with only ministerial approval, meaning that cities and towns have little discretion in granting requests for lot split, provided the property meets certain basic requirements. The bill summary suggests that the following conditions could make a parcel unqualified for a lot split: examples of conditions that may disqualify a project from using SB 9 include the presence of farmland, wetlands, fire hazard areas, earthquake hazard areas, flood risk areas, conservation areas, wildlife habitat areas, or conservation easements.

The complication in the Patrick Lane application is that some of the residents of the street allege that a scenic easement governs the lots and means that the lot cannot meet the basic requirements. However, the scenic easements were not actually recorded, and it is unknown if that is because of an oversight or because they were not accepted at the time of their creation. The other residents of Patrick Lane argue that lands subject to conservation easements are not eligible for SB 9 splits, and that the scenic easements are essentially conservation easements.

According to Orinda Planning Director Drummond Buckley, lot splits have two phases, the tentative parcel map and the (final) parcel map. For SB 9 lot splits, the tentative map is reviewed and, if compliant, approved ministerially by staff and the final map is reviewed and, if compliant, approved by the city council. For an SB 9 lot split, neither staff nor the city council have discretion to deny the application if the map complies with all objective standards. The final map needs to be consistent with the tentative map. While the tentative parcel map for 6 Patrick Lane has been approved, the final parcel map has-not-been acted upon by the city council yet.

The property in question consists of 1.21 acres of undeveloped land at 6 Patrick Lane, sold in June 2021 for \$949,000. Owner Randy Miller, contacted by the Lamorinda Weekly, said that he is a real estate developer, and bought the land before SB 9 was passed.

His intention was to build a house for his family and an accessory dwelling unit (ADU). But in the two and half years since he bought, costs rose 20 to 25% he said, and interest rates effectively doubled. He has proposed the lot split to allow him to build a house for his family and another house to sell to another family.

Miller, who is currently renting a home in Orinda, believes that there is no scenic easement, and, even if there were, that the law exempts conservation easements but not scenic easements. "It's super unfortunate and uncomfortable," Miller concluded, "but I don't know what to do. We bought a really beautiful lot and I'd like to build a home for my family."

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