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Lawyers battle over Measure L at Lafayette city council meeting

By Nick Marnell



A key tipping point for Lafayette voters on Measure L, an ordinance approving the Homes at Deer Hill development, is whether failure of the measure will automatically trigger approval of the Terraces of Lafayette Apartment Project, a 315-unit affordable housing complex, or if approval of the Terraces project would be subject to a referendum. Lawyers from both the city and Save Lafayette, a community organization favoring limited development, presented their arguments at the May 14 city council meeting, the city stating that the construction of the apartment complex could be resumed without being subject to a referendum, with Save Lafayette asserting an opposite legal interpretation.

Measure L combatants: different messages, different delivery styles. Photos Nick Marnell

When the city and the developer suspended the processing of the Terraces of Lafayette Apartment complex while the council considered the Homes at Deer Hill project, both parties entered into a process

agreement which allowed the developer to terminate the agreement if it so chose for a variety of reasons. Upon termination, the city could immediately resume processing the Terraces project, and according to city attorney Mala Subramanian, the city would need no new application from the developer, as the application for the apartment complex was deemed complete in 2011.

Subramanian said that the only action remaining for the council is to approve the permits sought by the Terraces to complete the project, including land use, hillside development and design review permits, which are considered administrative acts and not legislative acts. "Therefore, they are not subject to referendum," she said.

Subramanian also determined that the resumption of the Terraces complex would not require a general plan amendment or rezoning and as a result, no legislative act that is subject to a referendum is required to develop the project.

"Virtually every item that the city attorney has detailed to you tonight is incorrect," said Gary Garfinkle, attorney for Save Lafayette. Garfinkle asserted that the apartment complex has never been approved, and would face the same obstacles as before if the developer elects to revive the project - including a "devastating 2013 environmental impact report," rejection by two city commissions and the possibility of a referendum.

He insisted that the Terraces cannot be approved without a general plan amendment, because if the apartment complex is resurrected, the project would be inconsistent with the city's general plan, making the development subject to a referendum.

And if the city did approve the apartment complex anyway, the development would be subject to a referendum, "one of the most precious rights of our democratic process," Garfinkle wrote in a letter to the council.

According to Mayor Don Tatzin, the only certainty over the Deer Hill measure is further legal action. "I don't know how Measure L will do," Tatzin said. "I don't know what the developer will do if it fails, whether to negotiate a new project or bring back the apartments. Any decision after that will not be made by this council but made in court, because whoever doesn't win is going to sue."

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