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Public Forum

Lafayette Councilmember Candell can vote on Deer Hill Apartments Project

Lafayette voters have watched in recent months as lawyers for Deer Hill developer O'Brien Land challenged the right of Lafayette Councilmember Susan Candell to deliberate and vote on the controversial 315 apartments project O'Brien resubmitted last year after defeat of Measure L. The project proposes 315 apartments at the gridlocked Pleasant Hill and Deer Hill intersection by Acalanes High School.

Councilmember Candell took public positions on traffic and air quality issues on the application in 2012, and during the Measure L and City Council campaigns. She received the most votes in the November 2018 election.

O'Brien Land claims that the Councilmember's positions impact the developer's right to a fair and impartial hearing before the city. To be sure, all applicants and opponents of land use projects have a Due Process right to fair and impartial decisionmakers. But do positions taken by elected officials prior to or during campaigns disqualify them from voting on the very issues the voters chose them to decide?

The California Supreme Court resolved this issue in a 1975 case involving the City of Fairfield and councilmembers elected after campaigning against a commercial development with traffic and pollution issues. The developer filed suit charging bias and denial of a fair hearing after the new councilmembers declined to disqualify themselves.

Dealing with a discovery issue, the California Supreme Court rejected the challenge. Agreeing with the high courts of other states, the Court ruled:

"A councilman has not only a right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of public importance.. Campaign statements, however, do not disqualify the candidate from voting on matters which come before him after his election.[1]It would be contrary to the basic principles of a free society to disqualify from service in the popular assembly those who had made pre-election commitments of policy on issues involved in the performance of their sworn duties. Such is not the bias or prejudice on which the law looks askance."

The Supreme Court stated further: "No member of the city council was disqualified because he had expressed an opinion or taken sides on the merits of the [development] whether during an election campaign or at any other time.the voters were entitled to know the views of the candidates, who had a right, and perhaps a duty, to state their positions."

The Court disapproved a lower court's contrary ruling which "effectively thwarted representative government by depriving the voters of the power to elect councilmen whose views on this important issue of civic policy corresponded to those of the electorate."

In 2018, the First Appellate District ruled "The City Improperly Interfered with the Referendum Process" involving Deer Hill, a position the 2016 city council took with O'Brien Land's support. Now O'Brien Land is attempting to silence any Councilmember that disagrees with it, even challenging Councilmember Candell's right to speak as a private citizen.

City Council should support Councilmember Candell's right to vote. The California Supreme Court has decided the issue.

Scott Sommer is a Lafayette citizen, environmental attorney, and former member and president of the Lafayette School Board. The City of Fairfield decision can be found at 14 Cal.3d 768, quotes from pp. 780-782.

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