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## Future of Wilder development discussed after receipt of surprising attorney letter

By Sora O'Doherty

Decades into the development of Wilder, at a time when all of the home lots have been sold and all but 10 homes have been built and occupied, the city of Orinda received a letter from an attorney saying that the developer "has no remaining resources or funds and that it is forced to halt further activities and initiate exiting the property." However, at the city council meeting on Aug. 16 representatives of Brooks Street, now the sole owner of Orinda Gate LLC (OGLLC), said that the letter was sent in error and that the company would still be working with the city on completing its responsibilities under the development agreement (DA). Then, apparently for the first time ever, the council voted unanimously to declare that OGLLC is not in compliance with the DA at the required annual review of the Wilder project.

The matter will, however, return to the city council on Sept. 27, with Brooks Street promising to get more information to the council by Sept. 6. The council took the unusual step of finding OGLLC to have not complied in good faith with the DA following a number of revelations coming to the council's attention shortly before the Aug. 16 meeting after the regular agenda had already been published.

The resolution, which serves as the city's notice of default, lays out the history of the relationship between the city and OGLLC from the time that both parties entered into the Second Amendment and Restatement of the Development and Pre-Annexation Agreement for Gateway Valley, now known as the Development Agreement. Since 2005, there have been six amendments to the DA.

The city found that, although OGLLC had been given a number of extensions to provide its annual review report to the city, OGLLC failed to comply by not providing its report to the city manager before he was required to prepare the staff report for the Aug. 16 meeting. OGLLC did provide its draft report on Aug. 12, backdated to July 29. The report does not, according to the resolution, "fully address all the areas of concern detailed in the August 5, 2022 staff report and leaves open questions regarding OGLLC's intent/ability to comply fully with its obligations under the DA."

The resolution notes other areas of concern, including that OGLLC appears to have, without notice to or approval by the city, unilaterally reduced insurance coverage required by the city, and allowed a transfer to Brookside Land Company LLC of the interests of Farallon Capital Partners, Greenfield Partners, and Cherokee Investment Partners, leaving Brookside as the sole member of OGLLC.

A letter sent to Fran Layton, the Orinda city attorney who has been dealing with the Wilder development, said that OGLLC had incurred "staggering financial losses," and that "overall, ownership entities have lost over \$250 million in developing Wilder." The letter, sent by Ira Lebovic of Plante Lebovic LLP, who represent OGLLC, also cited the 2021 death of Scott Goldie, a longtime business partner and principal in charge of the Wilder project, as further stressing OGLLC's limited resources. The letter stated that OGLLC has no remaining resources and is unable to secure additional loans in light of current economic conditions. The letter sought a meeting with the city to discuss OGLLC's immediate exit from the Wilder development with no further activity, exoneration of outstanding performance bonds and conveyance of applicable parcels to the East Bay Regional Park District (EBRPD), the East Bay Municipal Utilities District (EBMUD), and the Geologic Hazard Abatement District (GHAD).

In the supplemental staff report to the council submitted by City Manager David Biggs, the council was told that staff was and is understandably concerned the OGLLC is out of funds without having completed all of its obligations under the DA, including the completion of the red tail hawk staging area, and closure of the soil disposal area. Staff was also concerned about OGLLC's failure to comply with the requirements of the DA regarding insurance and reimbursement of the city, and failure to comply with the DA requirements for transferring entities.

Michael Olsen addressed the council on behalf of OGLLC. He said that OGLLC has begun working with city staff and the city attorney and will report back to the city council on Sept. 6. Bruce Yamamoto of Brooks Street, now the sole OGLLC entity, said that OGLLC had also been caught by surprise. While committed to finishing the project, Yamamoto acknowledged that there are financial constraints.

Olsen told the council, "The letter was a mistake, frankly. We didn't intend to draw a line in the sand, but that's what it did and we are sorry about that and we are trying to correct the purpose of that letter and work with the staff and the agencies." He added, "The letter was a knee jerk reaction and we are working diligently to try to rectify that."

Michael Mohler of Brooks Street told the council, "I want to back up Michael Olsen and Bruce Yamamoto. We did run out of money. The letter was mistimed. I deserve most of the blame for that and I accept that." He said that they could have done better and committed to working with city staff to come back with some positive steps by Sept. 6. "Will everybody walk away feeling like they got 110%? I don't think so," he added, explaining, "The loss of Scott Goldie last year threw our northern California operations into a tailspin."

Council Member Darlene Gee spoke first during council discussion, and the other council members agreed with her. "I would like to say to everyone in the Wilder community that this is important and we will see it through," she began, adding, "I want to see this resolved well for both Wilder residents and for the community at large."

Council Member Amy Worth added that she appreciated comments from residents and the representatives of the developer; "It is such a high priority to us to complete the commitments to the residents," she said. Vice Mayor Inga Miller added, "Our commitments in Wilder are very important. I look forward to people

coming to the table."

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