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Published June 24th, 2009

City Sued by Property Owner

By Cathy Tyson

"It must be perfectly clear that this matter is not going away," said attorney David Bowie about the struggle to build on a very constrained lot at the corner of Sessions Road and Sierra Vista Way (in the February 18, 2008 edition of the Lamorinda Weekly.) Now he has filed a lawsuit against the City of Lafayette on behalf of his client, former Planning Commissioner Dick Holt, Managing Member of Lamorinda Properties LLC, after the final denial of his building application.

Just last month Bowie filed documents suing the City of Lafayette for a Writ of Mandamus and Complaint for Declaratory Relief and for Damages. For readers not familiar with a Writ of Mandamus, according to Wikipedia - it may be a command to do an administrative action or not to take a particular action, and it is supplemented by legal rights. In a nutshell, the court can overrule the City's decision, but the City can appeal.

At issue is the house that Holt would like to build on Lot 66 at the corner of Sessions Road and Sierra Vista Way.

The steep, narrow lot is bisected by Sessions Road - the only access out for all uphill residents. An informal coalition of neighbors has been very vocal about their opposition to developing this lot from the beginning.

In February of this year the City Council denied with prejudice Lamorinda Properties' application for a Hillside Development Permit and for a Variance. Their reasoning was threefold: the Council decided that granting both would be a special privilege, and that protected trees would have to be removed to build on the only area suitable for construction, and finally that the 2,639 square foot proposed building is "deemed incompatible with surrounding features and other development within the Sierra Vista Way neighborhood," states the Complaint. Concerns regarding unclear easements on the property have plagued this application from the start. City attorney Mala Subramanian decided that the easement issue was a private matter between the neighbors and Holt. Uphill neighbors assert they have a deeded property easement over under around and through the subject property that render it undevelopable.

"By completely disregarding the existence of the easements, which are clearly documented in all our deeds, we believe the City Attorney made a grave error in her judgment in directing the City officials in the manner she did. If we look for the root cause of the situation that led to the current law suit, it is this error in the City Attorney's decision that clearly conflicted with the physical reality of the lot," said uphill neighbor Lakshman Watawala in a letter to the Mayor. "I am unsure as to what the neighbors can or should do with respect to the lawsuit to safeguard our rights on the lot. Again, we hope the City will aggressively defend the decisions made by the Planning Commission and the City Council."

In the Complaint, Bowie claims, "The City has abused its discretion and acted in excess of its authority with respect to the denial of the Lamorinda's Application for Hillside Development Permit and Variance. The actions of the City have deprived Lamorinda of fundamental vested rights and the City's decision is contrary to the weight of the evidence presented."

As of press time, City Attorney Subramanian had no comment. A response from Lafayette is expected before the July 5 filing deadline.

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