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Referendum On Hold Pending Litigation

By Sophie Braccini

As anticipated, the Town Council certified the signatures verified by the County Elections Department for the referendum petition against Ordinance 252, which adopted zoning code amendments associated with the Moraga Center Homes project on Moraga Way, but took no action to either rescind the ordinance or put it on a ballot for voters' decision due to pending litigation. The property owner, Russel Bruzzone Inc. and developer City Ventures filed a lawsuit against the town clerk and the town, challenging both the procedural and substantive aspects of the referendum. They argue that the town clerk should have rejected a petition that did not include all the referenced documents that were part of the ordinance, the procedural aspect of the argument. On the substantive side, the petition is about an ordinance that aligns the zoning of the Moraga Center Homes' development lot with the Moraga Center Specific Plan that was approved five years ago. The town has the legal obligation to amend its municipal code to match General and Specific Plans when they are approved. That is what ordinance 252 does for the City Ventures lot.

Therefore, the developer's point of view is that rescinding the ordinance would put the town at odds with the law, and it should reject the text of the petition. Charity Wagner, director of development for City Ventures, wrote that this petition comes too late, that it should either have been filed a year ago when the council amended the General Plan to specifically include City Ventures' Town Center Homes project, or in 2010 when the Moraga Center Specific Plan was approved with a 12 to 20 dwelling per acre zoning for that lot.

The town attorney had recommended the council take no action on whether to rescind the zoning ordinance or place the issue on the ballot until a court decides the merits of the legal challenge, which is exactly what the council members did, with not even a word of discussion. In the meantime the project is on hold. The developer's framing of the issue is that a group of wealthy residents is trying to stop somewhat more affordable housing from being built in their backyard. "A small group of wealthy residents can still stop new homes from being built by using fear and NIMBY-ism," wrote Wagner. "The tortured development process in Moraga for this one 36-home, infill, market rate, solar-powered, townhome project is an emblem for why it is so difficult to find a moderately priced place to live in the Bay Area, and even more so in Moraga."

The residents who circulated the petition and got 1,400 valid signatures, indicated that their purpose is to keep Moraga semi-rural. "We think the proposed project is the wrong concept on the wrong piece of property," said Denise Coane, one of the petition's sponsors. The 36 two- and three-story units are proposed within 12 separate townhome buildings on the empty lot along Moraga Way located next to the fire station 41 at 1280 Moraga Way.

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