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## Citizen Group Legal Challenge to Deer Hill Project Found Invalid

*By Cathy Tyson*

The legal challenge orchestrated by Save Lafayette - a group of Lafayette citizens who petitioned to repeal Ordinance 641, affecting the Homes at Deer Hill project near Acalanes High School - was found to be legally invalid by the Lafayette city attorney.

The grassroots group sought to slow down growth in the city, asserting that the city's roads, schools and public transportation capacities are already strained and that the town's semi-rural character is suffering from excessive development.

Although a sufficient number of signatures were collected - over 1,800 registered voters signed the petition, which met the statutory requirement - it wasn't enough to change the overriding legal situation. Proponents were seeking to put the legality of multi-faceted Ordinance 641, which amends Lafayette's zoning ordinance to be consistent with the city's General Plan, on the ballot for the voters to decide on the issue.

Ordinance 641, adopted on Sept. 14, 2015, includes a number of items: a zoning amendment, a planned unit development, a development agreement, a land use permit and a hillside development permit for the Deer Hill project. The referendum petition could have repealed all of the acts in Ordinance 641.

"If the legislative act of Ordinance 641 were suspended or repealed, the City's zoning ordinance would be inconsistent with its General Plan," wrote city attorney Mala Subramanian. "Courts have consistently held that a referendum seeking to repeal a zoning amendment which would result in a zoning ordinance that is inconsistent with a General Plan is a legally invalid referendum."

She points out that the California Supreme Court agrees; initiatives that create inconsistencies between a general plan and zoning are invalid.

The inconsistency that would have been created was the crux of the matter, Subramanian explained, citing a court case that described it as "not merely a technical infirmity ... but as the linchpin of California's land use and development laws."

Attorney for the land owner, Allan Moore, as well as the developer, O'Brien Homes, also agreed: "We concur with the city attorney's analysis."

The current General Plan designation for the parcel in question is "Low Density Single Family Residential;" the referendum would have resulted in a zoning designation of "Administrative Profession Office."

Faced with compelling reasoning by the city attorney, city council members unanimously opted to determine that the Save Lafayette Referendum is invalid and refused to repeal Ordinance 641, an action that is consistent with what the court recently determined in Moraga in the David Bruzzone and City Ventures, LLC against the Moraga Town Clerk and Town Council and also the deBottari versus City Council case.

Two speakers questioned the decision, asking about other options including perhaps changing the General Plan, and also respecting the point of view of the many residents who signed the petition. Outgoing mayor Brandt Andersson, who is an attorney in his day job, rephrased the question. "Can this be fixed by a general plan amendment? The answer is no. The legal situation is clear: you can't 'after the fact' change the General Plan," he said. "Anything we would do would simply lose in court. There's no question about it."

Arguing against opponents' claim of lack of leadership, council members countered that the project has changed significantly from 315 apartments to 44 single family homes with a great deal of amenities to the community; there has been a real effort made to improve the project.

Save Lafayette organizer Michael Griffiths, commenting on the decision, said the group is "weighing its options."

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