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April 25, 2012

Chair Farr and Supervisors
Santa Barbara County
Board of Supervisors
123 E. Anapamu St.
Santa Barbara, CA 93101

Via E mail

Re: Park Hill Estates v.2
Hearing Date- May 1, 2012

Chair Farr and Supervisors,

This Supplements our appeal letter of February 6, 2012 with an update of changes and efforts on our behalf since then.

Background
This project has been in process in various iterations since 1997. The same owners have owned it since the early 1970's but the Goleta Water Moratorium prevented them from applying to the County until the moratorium ended in 1997, at which time they did apply.

The property has 14.87 acres. The County approved a 12 lot version in 2007 and the mitigated ND became final and uncontested. Per legal precedence that action, including the status of the MND as unchallenged, is a predicate for considering further project changes.

The property did not sell with the 12 lot approval, as conditioned, and the housing market crashed, thus prompting the owners to enter into an agreement with us; re-permitting was mandated by the economy and by the fact that the County affordable housing rules had an affordable housing in-lieu fee escalate from $95,000 in 1997 to $1.1 million in 2012.

We reviewed every action and hearing in 2007 and crafted a project that dealt with the affordable housing requirement with a permitted onsite very low income rental unit on its own lot and a bonus density. The project was 17 market units and 1 affordable. There was considerable neighborhood concern about the affordable and density so we crafted a compromise plan, altering all lots and reducing the project to 15 market units and 1 affordable.

We worked diligently through the County process and satisfied all of the Fire Department and P & D requirements so the project was recommended for approval before the Planning Commission.

In response to substantial neighborhood concern, the Planning Commission avoided taking action on the project itself, instead calling for a focused EIR on area wide fire safety and biology.[1]

The County had amply and specifically addressed these issues in the mitigated ND and the staff confirmed at the Planning Commission hearing that there was no new or substantial evidence to overturn or justify disregard of their conclusions.

We appealed and the matter is to be considered de novo and the "hearings on the appeal shall be De Novo" (County Code 35.102.050C). That means the Supervisors could take any action the Planning Commission could have taken at that hearing.

Our preferred action is that the Supervisors approve the MND and project .[2]

Changes and Actions since the PC hearing
Since the hearing we have done the following:

- **County Mediation.** Requested that the County do a land use mediation on the appeal, as had been requested by the President of the San Antonio Creek Homeowners Association, Danny Vickers. The County denied that request.
- **Private Mediation.** We proposed a private mediation with a land use planner known to neighbors and who is working on a project for an adjacent property. They did not respond to that request.
- **Meeting and Agreement to project concessions with neighbor association representatives.** We met with Danny Vickers on April 18 and asked him what would be ideal project changes to get neighborhood support. The "agreement" on this is attached. It essentially
    - Eliminated 1 more market unit so that it is 14 market units on 14.8 acres, and
    - Sets up a methodology for eliminating the affordable unit in time via payment of an in-lieu fee, if the County makes reasonable changes to the in-lieu fee before the affordable is built. The County has been

[1] In the Tree Farm housing project, a full EIR was done, taking two years, for a 135 unit project but the EIR's contents were not material to PC deliberations on road connection issues, where subjective neighbor input spoke louder to the decision makers than the EIR discussion.

[2] Definition of DE NOVO: "A new; afresh; a second time. A venire de novo is a writ for summoning a jury for the second trial of a case which has been sent back from above for a new trial" (Black's Law Dictionary, 2ND ED.) Endless delays and inaction by the PC is effective denial for the time that exceeds a reasonable consideration time. This project was first slated for PC hearing in **November 2010**, and then delayed until **September 2011**, and here it is April **2012** and the County has still just delayed the project, not approved or denied it. It must make finding if it denies it, and it does not have the confidence that it can make such finding so it has appeased neighbors by just delaying taking action on it.

reviewing in-lieu fees and will be making changes in the foreseeable future.

- Modify the lot and building height on lot 10 to meet the concern of a neighbor to the west (Sheldon).
- Finally, Mr. Vickers asked that we contribute to some greater solution as to the road connection of San Antonio Creek Road and Tuckers Grove, which the County elected to close as an active road in the early 1970's after the current Park hill owners bought the property. We suggested that the project road fees of some $203,000 be first dedicated to improving this as a one-way emergency egress if deemed appropriate by the County.

This issue of the Tuckers Grove road was specifically declared by the Planning Commission in 2007 to be an area wide issue meriting further attention, "but there is no nexus between that issue and this project". We have not heard back from Mr. Vickers and others as of yet. Indeed to this date, neighbors at large have not been advised by the neighbor communication clearinghouse on these latest project concessions since the PC hearing There is no linear dynamic in dealing with neighbors as demonstrated in our earlier compromise proposal of reducing two units which was met with 6 weeks of silence and then just another community meeting initiated by the neighbors focused on "can you get rid of the affordable unit".

- **Input on In-lieu Fees revisions.** Provided the County with input on its in-lieu fee revisions which are in process, including following up on Mr. Hunt's suggestion of required second units in low density areas such as this (see attached email and letter).
- **Communications with the State.** I communicated with the State Department of Housing and Community Development representative who oversees compliance with Santa Barbara County's housing requirements. I reminded him that I had written to the State repeatedly saying that the County's action on real projects that included affordable housing is more material than their promises, and that I would update him further as needed and challenge the County's compliance with its State housing requirements based on the further County actions on these projects. I discussed how this had to be one of the lowest density projects in the State providing affordable housing at only about 1 unit per acre.
- **Bonus Density Law expert contact.** I consulted with the lawyer/ author of a recent legal article entitled "the density bonus law: has its time finally arrived?" concerning enforcement of this State La**w** requirement and actions that can be taken when agencies try to avoid complying with the law.

Fire Department Follow-up. I spoke with Dwight Pepin of the Fire Department concerning the fire issue. He confirmed that the project met all of the County Fire Department requirements, actually exceeding them by providing two routes of exit for only 16 homes when their threshold for that is 30 homes. He also said that our project fully complied with their standards for

2 exits from the area independent of the San Antonio Creek, Tuckers Road connection. He said that the project and setting were superior in emergency road access to other properties in their jurisdiction including the Mission Canyon area. He confirmed that the Tuckers Grove exit was not required for the Fire Department for this project.

At different times, different Fire Department representatives had said different things as to whether they view Tuckers Grove as functional and usable in an emergency or not. In any case it is an area wide issue not related to the extra three homes from the project over the 2007 approved project. Based on this, it seems that all it takes is for the MND to be changed to reflect that different Fire Dept officials have provided different input on the utility of the Tuckers Grove exit over time, but that that Fire Department has declared this project meets all of the Fire Department standards for exits and regional egress and indeed exceeds the project specific requirement for number of road exists from the property.

Conclusion

This property is pure infill property that has been subject to County process for much of the time since 1997. The affordable housing issue went from quite manageable with a $95,000 in-lieu fee to unmanageable with a 30% inclusionary requirement and vast in-lieu fees as an alternative. If the in-lieu fees had escalated over time at the same rate as Santa Barbara housing median sales prices, the fee would now be $200,000. The in-lieu fee for this property went from $786,000 in 2007 when housing was robust to $1.1 million after a significant market crash. No rational person could justify that. Moreover, during that time frame a case became final questioning the legality of that requirement at all (see original appeal letter). We spoke with an expert on this subject that said in other jurisdictions Statewide you would expect this sort of in-lieu fee on a 350 unit project, not a 14-15 unit project. The County says through its policies that they want the affordable unit. If so, they should just approve the project with that unit. If their priority is that we appease all neighbor voices, they should adopt the alternative offered to the neighbors, which is to delay building the affordable unit.

This project offers a huge public benefit by contributing a 6 acre native grass preserve at the UCSB West Campus Bluffs rather than 2 acres of restored grasslands in the backyards of lots and in the detention basin, the solution in 2007.

We have amply covered in our appeal letter that no EIR is justified for either area wide emergency traffic circulation or biology.

If that is required by the County, more rational alternatives for us are:

1. Seeking damages against the County for having elected to abandon the San Antonio Creek Road connection, thus putting that issue into question such that it has damaged the project[3], and
2. Offering grasslands to UCSB to transplant then disking the property to enhance its fire safety and re-applying with a baseline of a clean biological slate.

The owners have waited much too long, 40 years now, because of governmental restrictions, the last 15 with the County. The experienced and high quality project team has met every single P&D requirement with a high quality addition to the area.[4] At some point, the County has to stand up for good, professional, well intentioned planning by locals that meets all of P&D's and all departments' requirements or they deserve the negative impact on the County resources that may well be the impact of such institutional failure.

Very Truly Yours,

Jeffrey C. Nelson

Cc: Dr. Glenn Russell, P& D
Alex Tuttle, P & D
Dwight Pepin, Fire Department
County CEO's office

[3] Every day the project has been delayed to this point because of concern about the County limiting access through San Antonio Creek- Tuckers Grove, is a day that it has impaired this project by the County's own actions. Our appeal letter makes reference to the case against Half Moon Bay where that jurisdiction was bankrupted by a judgment in which the "planning problem" the project faced was indeed created by the jurisdiction itself. Indeed the grasslands have also flourished there from required annual mowing to meet Fire Department requirements and because unreasonable affordable requirements have stymied development to date. Endless delays and inaction by the PC is effective denial for the time that exceeds a reasonable consideration time. This project was first slated for PC hearing in **November 2010**, and then delayed until **September 2011**, and here it is April **2012** and the County has still just delayed the project, not approved or denied it. It must make finding if it denies it, and it does not have the confidence that it can make such finding so it has appeased neighbors by just delaying taking action on it.

[4] Ironically, the Oak Creek Company's last project, *Vintage Ranch* was publically criticized upon completion, by P&D representatives then, as being too exclusive. This project will be even more exclusive, yet neighbors fear it will not be exclusive enough. Vintage Ranch like other projects of that era exist because of successful litigation against the County

From: Jeff Nelson [mailto:jeff@jeffnelsonlaw.com]
Sent: Wednesday, April 18, 2012 1:19 PM
To: 'Tuttle, Alex'
Cc: 'Jason Nelson'; 'Danny Vickers'; 'Almy, Anne'; 'McCurdy, Alice'
Subject: Park Hill

Alex,
We met with Danny Vickers who represented the San Antonio Creek neighbors today to discuss possible final project modifications for Park Hill and we let him take the lead on proposing changes. The purpose of this email is to ask you what the process would be to have those reviewed if indeed they are supported by neighbors and staff and thus worth us doing.

Changes:

- Reduce the number of market units from 15 to 14. Do this by taking existing lots 7, 8, an 9 and making them two lots by dividing those into two essentially equal lots. (The two lots become .95 acres)
- Revise the affordable housing condition essentially as follows:
    - 42.1- "The County will not issue final building inspection clearance for more than 10 of the market rate units until final building inspection clearance is issued for the affordable rate unit".
    - 42.7- "As the County is currently reviewing and revising the in-lieu fees at this time, prior to the construction of the affordable unit the applicant may pay the applicable in-lieu fee for a 14 lot project as an alternative to satisfy the affordable requirement for the project. Additionally the applicant may consolidate lots 3 and 4 into one legal lot to merge lot 3 which was to be an affordable lot into lot 4 which is a market rate lot". (The merged lot becomes 1.03 acres)
- The building pad on lot 10 shall be reduced 4 ft. in height (and the County confirms that this is acceptable to EHS and GSD), and the maximum building height of the structure within 100 ft. of the Sheldon lot line to the west shall be no higher than 18 ft.
- The applicant proposes that the road fees for the project of approximately $203,000 be earmarked for first addressing improvements to San Antonio Creek Road where it goes through Tuckers Grove.

We believe a project can be found acceptable to neighbor input with these changes and we are amenable to that while still believing our appeal is well taken for all the reasons previously stated. One issue on making project changes is what the process implications would be and we are not committing to make any project changes until we can assess the project implications. The appeal to the Supervisors is De Novo and just as they could require changes when the plan is before them they could accept changes in the plan before them, particularly if supported by the various interests.

As to use of road fees, the PC in 2007 stated that there was no nexus between that road and the Park Hill project, our road fees offer assumes that improvement would be dealt with after project approval, as those funds would only be available by approving the project.

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September 2, 2011

Santa Barbara County
Planning Commission
123 E. Anapamu St.
Santa Barbara, CA 93101

Re: September 7 hearing agenda item 1-
Inclusionary Housing Status Report

Dear Chairman Valencia and Commissioners,

While staff will give you an update on the inclusionary housing program from the Staff's perspective, here is one from the trenches of someone trying to get new local housing approved.

I have represented many local projects over the last 25 years including many of the projects that provided some affordable housing.

Before the housing market collapsed, the inclusionary component seemed to be a necessary evil where you hoped the market rate units would subsidize that obligation.

The reality is that the forced inclusionary requirement is even worse than a "something for nothing" scheme. This inclusionary obligation serves as an active detriment to getting neighborhood buy-in to a project and creating a financially viable project. An example of this ironically is a project we are working on now that was supposed to be before your Commission today, Sept. 7, but is not because of endless dialog we are having with concerned neighbors (Park Hill Estates v.2).

This project on 14.95 acres started processing in 1997 at the end of the water moratorium. The owners were thwarted from 1972 by that. In-lieu fees for affordable were $97,000 in 1997. Various iterations have been proposed over time including one in 2007 for 12 homes with an in-lieu fee at that time of $784,000. Even though market values have dropped substantially since 2007, the in-lieu fee for this same project, if the map recorded now, is now calculated at $1.1 million for 12 homes and $1.3 million for 14 homes.

Alternatively, the inclusionary requirement for the property is building 6 affordable units in this area where property values are near and above $2 million per house. Both of those options are frankly absurd. The remaining option is the state bonus density program, with one very low income rental and extra compensating market units.

The neighbors know nothing of inclusionary requirements when they gather emotional momentum, convinced that a new project like this being proposed is inconsistent with their neighborhood.

We have done extremely high quality projects before, but that does not overcome the neighbor belief that what is being proposed is a "Brazilian shanty town" not just the affordable unit, the whole project.

The County has told the California State Housing Agency that it is advancing affordable housing through its various programs. The truth is that it stands back and does nothing to defend or even process in a timely fashion actual projects that meet its affordable requirements. Staff merely stays free from the fray, delays action as long as possible while the dynamic between developer and neighbors takes place, then sticks its hand out at the end of the process and says "give me subsidized units or a million dollars for failing to build affordable units".

In 2004, the County substantially increased its inclusionary requirement from one where projects had to provide one of a range of affordable components to providing all 4 levels of affordable housing. The premise was that the marketplace would never provide these opportunities.

A point of reference as to the affordable percentage required is for that of redevelopment agencies. The extremely high County 30% affordable requirement (20% north county) contrasts markedly with those agencies, whose very existence is related to that objective; redevelopment agencies are required to build 15% of the units at affordable rates, and this does not apply to each project, but to the whole area.

In fact the market correction and very low interest rates have made housing affordability a reality. Moreover, new rentals and a lessened consumer imperative that "everyone must own a home" have created much more affordability than the County's policies ever would have.

People will not buy re-sale controlled homes at the bottom of the market when they have other opportunities that would give them the real upside if the market improves. Yet the County is charging about $560,000 for each workforce or moderate unit that the County requires that a project does build and give away at a subsidized price. That is laughably unreal in the context of good faith private enterprise efforts to create new housing opportunities in an extremely challenging market.

Inclusionary housing requirements, those that are all *stick* and no *carrot*, may be soon a thing of the past. A case came out determining that an inclusionary fee was unlawful as new housing opportunities are not what cause the need for affordable housing; the fee is unrelated to the impact of the project on that public objective.. (BIA v. City of Patterson (2009) 171 Cal. App. 4th 886, See also California Mitigation Fee Act Gov. Code 66000 et seq.

Also a recent case from Santa Monica states that any challenge to an affordable requirement has to come on a project by project basis, not at the outset when a policy is adopted.

Looking beyond this jurisdiction, what is happening elsewhere in the housing world? First there is a resurgence of rental housing being proposed, funded and developed at high enough densities to justify it. This is a fundamental change in the housing world as *for- sale* housing attracted all the capital for a long period; that is reversing. Secondly, jurisdictions like the City of Santa Barbara are looking at much higher densities to create workforce priced housing, assuming it is density and unit size that lead to these affordable attributes, not inclusionary requirements.

The County has neither a factual or legal basis for imposing these inclusionary requirements on projects. While the County did a justification study before, it does not come close to withstanding scrutiny (2010 Housing Element Input)

At a recent California State Bar Real Estate Section conference on "Affordable Housing programs after the crash: What Next?" the consensus was that any inclusionary requirements were being worked out, project by project, on an ad hoc basis as public agencies are avoiding the definitive legal showdown that could end inclusionary housing statewide.

The inclusionary housing policy puts developers in a no-win situation politically and economically. You must understand this as you assess the future of this program and as you see actual housing projects emerge from its challenges to finally get to the Planning Commission.

Very truly yours,

Jeffrey C. Nelson

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