

Mercy Cabral

From: Lara DeLaney
Sent: Monday, November 23, 2015 3:29 PM
To: Mercy Cabral
Subject: Fwd: Pine Meadow
Attachments: Pine Meadow Land Use.docx; ATT00001.htm; Proposed Land Use Designation for Pine Meadow on GPU.DOCX; ATT00002.htm

Per PRA

Lara DeLaney
Martinez City Councilmember

Begin forwarded message:

From: Dave Sanson <dsanson@denovahomes.com>
Date: October 20, 2015 at 9:35:01 AM PDT
To: Rob Braulik <rbraulik@cityofmartinez.org>
Cc: Alan Shear <ashear@cityofmartinez.org>, Rob Schroder <rschroder@cityofmartinez.org>, "mross@cityofmartinez.org" <mross@cityofmartinez.org>, "ldelaney@cityofmartinez.org" <ldelaney@cityofmartinez.org>, Anamarie Avila Farias <amafarias@cityofmartinez.org>, "dmckillop@cityofmartinez.org" <dmckillop@cityofmartinez.org>
Subject: Pine Meadow

Rob-

Thank you for meeting with me last week to discuss the proposed land use designation that we thought would be in the draft General Plan Update for Pine Meadow (attached). I wanted to respond to three of the issues you raised during our meeting.

1. Density Permitted under the Land Use Designation

The proposed land use designation was written to allow for an owner or applicant to propose a very wide range of potential projects. I've attached a revised chart to show just two possible scenarios, but the designation allows a near-infinite mix of three types of land uses: open space, residential and commercial/retail/restaurant (collectively, "commercial"). No matter what project is proposed, that project must include a minimum of 2 acres of open space. No matter what project is proposed, that project cannot include more than 7 acres of commercial development. The entire site could be proposed as open space. The entire site could be proposed as residential (subject to a 2 acre open space requirement). The site could be a mix of residential and commercial, with included open space.

If commercial development is not proposed, the maximum number of residential units that can be proposed is 288 and the minimum is 0. If commercial uses are proposed for 7 acres of the site, then the maximum number of residential units is 204 and the minimum is still 0. Of course, there are numerous possibilities that can be proposed within these ranges. The land use designation was drafted to give the greatest possible flexibility; this gives the City the ability to approve a project it feels is appropriate for the site.

The General Plan analysis cannot assume that a potential project will include a 35% density bonus; if this were true, you would need to perform this same for all lands designated for residential use within the General Plan. Putting aside the fact that it is improper for the City to consider density bonuses, if the

City is going to undertake that analysis, it should do so in light of all relevant facts. To obtain a 35% density bonus, numerous factors would need to be met. If moderate units were being proposed, in order to obtain a 35% density bonus at least 40% of those units would need to qualify as moderate income, for-sale condo units. In order to obtain a 35% density bonus when proposing very low or low income units, additional factors would need to be met. These factors simply are not appropriate to consider/require at a General Plan Update level when the City has not been asked to consider a specific project.

Moreover, such an analysis at the General Plan stage would be speculative; speculation of impacts is not allowed under CEQA. See, PRC Sects. 21080(e), 21082.2(c) and 14 Cal Code Regs Sects. 15064(f)(5) and 15384. Speculation is not allowed because to speculate would result in an inaccurate project description which would lead to a misrepresentation of the potential environmental impacts and result in inflated mitigation measures. An analysis under an affordable housing assumption would only occur if and when a specific project proposes affordable housing.

In light of the law that restricts the City from considering density bonuses at this stage in its General Plan Update process, we would ask that the staff present accurate information that provides a clear picture of the scope of projects that can be approved (without density bonuses) under the proposed land use designation.

2. Clarification on Additional Environmental Analysis

We are of the opinion that additional environmental review is not needed to analyze the potential impacts from the proposed land use designation. An Addendum was prepared for the 99 unit project approved earlier this year. This information is still valid and can be used for the proposed land use designation. The same consultant preparing the General Plan EIR prepared the Addendum, and the consultant can simply include this information in the General Plan Update EIR.

If the City believes an analysis is needed to study potential impacts at the higher end of the density range (200 plus units), the consultant can generate those numbers by hand (i.e., traffic counts). For example, if the consultant is required to analyze a scenario that would include 200 plus units, they can double the traffic counts for the 99 unit project. We are more than willing to discuss paying for the costs that may be incurred to address this delta. However, it is more appropriate for the consultant to prepare an analysis under the General Plan on the mid-range density and then identify that a more specific analysis will be required when a specific project is brought forward. We understand that the environmental analysis on the General Plan Update is at a programmatic level and more specific environmental review will be required when a specific project is brought forward. This is typical for all general plan updates.

Also, please let us know if the City is requiring the consultant to analyze the higher end of all land use designations proposed in the General Plan Update, or if this analysis is just being required for Pine Meadow.

3. Indemnification

While we understand the City's desire to have us indemnify it if there is any legal challenge by a third party to the General Plan Update, that request is neither possible nor fair. We have not been involved in the preparation of the General Plan Update or the EIR process. Furthermore, we are limiting potential legal exposure by creating a land use designation that is "substantially different" than the project approved earlier this year. (Also, the City's action on the General Plan Update is a "substantially different" action in that the City is approving a General Plan for the entire the City as

Why is City so worried about suits?

mandated by state law and not approving a specific project.) We cannot be expected to indemnify and defend the City on actions that do not pertain to our property and where we have no involvement.

We generated this land use designation after we met with you, the Mayor, Allen, Veronica and members of our team back on July 17, 2015. The purpose of that meeting was to discuss the handling of the Pine Meadow site in the General Plan Update. We all agreed we would work together in preparing a land use designation that is substantially different than what was approved for the project earlier in the year. Our attorneys worked with the City Attorney and came up with the attached designation. We submitted the final designation to the City in the middle of August and we were very surprised that it was not included in the September 11 draft of the General Plan.

Please call if you have any questions.

Thanks,

Dave Sanson

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