

## \* The Complicated Referendum Process and our Lawyer's Letter to the Council

Some Councilmembers appeared to misinterpret our referendum and its impact on their decision to take away the November Public Vote, as well as its impact on possible future housing projects.

Our referendum challenged the Council's January, 2015 General Plan Amendment resolution that took away the designation of Pine Meadow as Permanent Open Space/Recreation and replaced it with housing. The referendum was successful, and immediately kept this Council resolution from going into effect.

On Wednesday, the Council could have rescinded the project-specific resolutions/ordinances, and left this General Plan Amendment resolution in place.

This would have allowed the Public Vote to occur, and would not have affected any housing project plans of the developer. Our lawyer states: "They (Friends of Pine Meadow)... urge that you allow the election to go forward, even if you rescind the project-specific approvals."

At this point, it is most important that the Council and the City understand the limitations that rescinding the General Plan Amendment resolution puts in place, so that no one makes errors in proposing new projects, or in giving advice to the owner/developer.

Our lawyer clarifies (emphasis added):

"When a referended action is rescinded, Whether by a referendum election or by council vote, no substantially similar measure may be enacted by the City for at least a year.

The developer apparently feels that once the City has

rescinded the prior general plan amendment, it can re-enact a similar general plan amendment changing the land use of the project area, so long as the associated project is substantially different from the prior project.

However, the developer is wrong. In considering whether a subsequently enacted measure violates this prohibition, courts generally consider the intent of the referendum petition's signers.

In deciding whether a new measure is "essentially the same" or "essentially different," we focus on the features that gave rise to popular objection. *Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1110.)

In this case, the referended general plan amendment changed the land use designation from open space and recreation, permanent to residential. The question is what motivated the objections to that change. It could have been one of two things: either the removal of the open space land use or the imposition in its place of a residential land use.

In either case, re-enacting a residential land use, or even a mixed use or planned development designation that would provide for residential use, would both eliminate the open space use and replace it with residential use. Those are the very things that made the prior general plan amendment objectionable. Thus such a general plan amendment is prohibited under Elections Code §9241.

The courts generally will bend over backwards to reserve the voters' powers of initiative and referendum."

The complete letter is posted on our website, and was sent to the Mayor and Councilmembers and the City Attorney before the Wednesday meeting. It was also read to the Council during the Public Comment period.