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September 20, 2021

VIA EMAIL to: cityclerk@cityofmillvalley.org

Kelsey Rogers, City Clerk
City of Mill Valley
Mill Valley City Hall
26 Corte Madera Avenue
Mill Valley, CA 94941

RE: Supplemental Public Comments to Item 4, 1 Hamilton Drive City Council meeting September 20, 2021

Dear Ms. Rogers:

On behalf of Friends of Hauke Park (“FOHP”), this letter provides additional comments regarding Agenda Item 4, identified as “1 Hamilton Drive,” to the City Council meeting on September 20, 2021. Specifically, this letter also addresses a memorandum from the City Attorney dated September 20, 2021 (“Memorandum”) responding to our earlier letter dated September 17, 2021.

With respect to whether the proposed actions constitute “approval” of the underlying affordable housing project¹, we appreciate the City Attorney’s clarification that they are not so intended by the City. The Memorandum would be construed against the City by a reviewing court if the City later attempts to assert a contrary position. That said, the City’s position that CEQA review can occur later contradicts published case law applying CEQA to the Surplus Land Act. (*The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603.)

Further, the Memorandum does not adequately address our concerns regarding the premature timing of the “exempt surplus land” determination. The Memorandum asserts:

As described above, the Surplus Lands Act and HCD Guidelines *clearly require* the City to make the “exempt surplus land” finding before engaging

¹ The Memorandum appears to implicitly acknowledge that the “project” is the proposed affordable housing project and not simply the proposal to designate 1 Hamilton Drive as “exempt surplus land.”

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with a partner to start the work of planning a project for the site and conducting environmental review.

(Memorandum, pp. 3- 4 (emphasis added).)

This is simply not true. The Memorandum cites HCD Guideline section 200(a) for the proposition, which provides in full:

Land must be declared either “surplus land” or “exempt surplus land”, as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency's policies or procedures.

Contrary to the Memorandum’s interpretation, HCD Guidelines section 200 makes no reference whatsoever to negotiations or otherwise “engaging with a partner” as constituting an “action to dispose” of a parcel. Indeed, the Memorandum makes this point with clarity:

[T]he authorization to negotiate an ENA is discretionary but ***does not commit the City to disposing of the land*** or approving a project that would have a direct or reasonably foreseeable indirect impact on the environment. Rather, it is simply authorization to negotiate the terms of a framework for a prospective transfer. The ENA would come back to Council for approval, and any actual disposition in the future would need to be accompanied by a disposition agreement.

(Memorandum, p.2 (emphasis added).)

In other words, Memorandum explains that that declaring 1 Hamilton Drive “exempt surplus land” is not an “action to dispose of the land” pursuant to Government Code section 54221(b)(1). Accordingly, the Memorandum, like the earlier staff report, provides no authority whatsoever demonstrating that this declaration must be made before “engaging with a partner to start the work of planning a project.”

Since the Memorandum fails to support the asserted purpose for making the “exempt surplus land” designation, it is reasonable to conclude the City is taking this action for the impermissible unstated purpose of constraining project alternatives. We again refer the City to *The Flanders Foundation, supra*, 202 Cal.App.4th 603 on this issue.

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Finally, we note that the Memorandum does not address how the City can support with substantial evidence a finding that 1 Hamilton Drive “can be used to provide housing” in light of its General Plan and zoning designations that prohibit all residential uses. The same is true requiring the requirement that “the land is surplus and is not necessary for the agency’s use.” (Gov. Code, § 54221, subd. (a)(2).) Here, the site’s current use is a parking lot, electric vehicle charging station, and restroom facilities. These facilities allow continued use of Hauke Park by the public. This conflicts with the statutory language that the land “is not necessary for the agency’s use.” (*Ibid.*) The City cannot make findings, supported by substantial evidence, that the 1 Hamilton Drive site is presently “not necessary for the agency’s use.”

* * *

We previously explained that designating the 1 Hamilton Drive site as “exempt surplus” land at the present time is unnecessary and even improper and unlawful. Unfortunately, the Memorandum does not dispel these concerns.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By:



Patrick M. Soluri