

Proposed Changes to Housing Element Goals, Policies and Programs

Program 9.7: Adopt Development Standards and Design Guidelines to facilitate the development of high quality multifamily housing and to create more certainty for residential development on Sites 25 through 33 in Appendix B Housing Sites Inventory. These standards are intended to be substantially similar to those developed for the Hacienda TOD (sites 22, 23 and 24) and would at a minimum include affordability consistent with the City's inclusionary Zoning Ordinance and the acceptance of Section 8 Rental Assistance Vouchers as set forth in the City's standard affordable housing agreement ~~provide more certainty for multifamily developers during the PUD process.~~

Responsible Agency: Planning Division, Planning Commission, City Council

Time Period: By end of September 2012

Funding Source: Planning Division, Housing Division budgets

Policy 37: ~~Disperse housing units affordable to extremely low-, low-, and very-low income households through new residential development consistent with City Resolution No. 10-390, a Resolution of the City Council of the City of Pleasanton Approving Enhancements to Existing Non-Discrimination Housing Policies.~~ For phased residential developments, ensure that the majority of units affordable to low- and very-low-income households are not postponed until the final stages of development.

All other Goals, Policies and Programs remain.

CITY COUNCIL AGENDA REPORT

May 1, 2012
Community Development
City Attorney

TITLE: APPROVE AND AUTHORIZE CITY MANAGER TO ENTER INTO WITH URBAN HABITAT *ET AL.* AN AGREEMENT REGARDING FEBRUARY 15, 2012 MEET AND CONFER LETTER

SUMMARY

After the City Council approved the updated Housing Element on February 13, 2012, Urban Habitat, one of the Plaintiffs in the *Urban Habitat et al. v. City of Pleasanton* litigation, sent a letter dated February 15, 2012 (copy attached) requesting that the parties meet and confer regarding the City's obligations under that Settlement Agreement.

Over the last couple of months the parties have met and conferred and tentatively arrived at a mutually satisfactory resolution of this matter. The terms of that understanding are set forth in the attached Agreement Regarding February 15, 2012 Meet and Confer Letter. They involve two further modifications to the recently adopted housing element. These modifications will be considered and acted upon by the Planning Commission and the City Council in the very near future.


RECOMMENDATION

Approve and authorize the City Manager to enter into with Urban Habitat *et al.* the Agreement Regarding February 15, 2012 Meet and Confer Letter.

FINANCIAL STATEMENT

No financial impact.

Submitted by:



Jonathan P. Lowell
City Attorney



Brian Dolan
Director of Community
Development

Approved by:



Nelson Fialho
City Manager

Attachments

1. Agreement Regarding February 15, 2012 Meet and Confer Letter
2. February 15, 2012 Meet and Confer Letter

This Agreement Regarding February 15, 2012 Meet and Confer Letter is entered into by and among Plaintiffs URBAN HABITAT PROGRAM and SANDRA DE GREGORIO, and Defendants CITY OF PLEASANTON and CITY COUNCIL OF PLEASANTON.

1. RECITALS

- 1.1 On or about October 17, 2006, Plaintiffs Urban Habitat Program and Sandra De Gregorio filed an action in Alameda Superior Court known as *Urban Habitat Program, et al. v. City of Pleasanton, et al.*, Case No. RG 06 293831 (“Urban Habitat Litigation”).
- 1.2 In August 2010, the Parties formalized their resolution of the disputed claims and fully settled and resolved the merits of the Urban Habitat Litigation by entering into a Settlement Agreement, which was incorporated into the judgment of the Court, entered on August 19, 2010.
- 1.3 On February 13, 2012, the City adopted its updated Housing Element.
- 1.4 On February 15, 2012, Plaintiffs sent the City a meet and confer letter pursuant to Section 12.3 of the Settlement Agreement asserting that the City had failed to timely complete the re-zoning required under Section 6.6 of the Settlement Agreement, and had violated Sections 5.1 and 6.5 and Exhibit C by virtue of the inclusion of certain language in Policy 37 of the adopted Housing Element. Plaintiffs asserted that, absent a prompt negotiated resolution of these issues, they would seek a Court order (a) enforcing those terms of the Settlement Agreement, (b) re-imposing its injunction on the City’s authority to issue land-use permits and approvals, and (c) awarding of further attorneys’ fees covering the period since August 2012.
- 1.5 The City disputes the assertions in Plaintiffs’ meet and confer letter.
- 1.6 The Plaintiffs and the City desire to fully settle and resolve the merits of the issues asserted in Plaintiffs’ February 15 meet and confer letter, without further litigation, on the terms set forth herein.

2. AGREEMENT

The above Recitals are incorporated herein by reference.

- 2.1 No later than July 18, 2012, the City Council shall amend the Pleasanton General Plan’s Housing Element as set forth below, without making any other substantive changes to the Element:
 - 2.1.1 Amending the Housing Element’s Program 9.7 so that it reads in its entirety:

“Adopt Development Standards and Design Guidelines to facilitate the development of high quality multifamily housing and to create more certainty for multifamily developers during the project review and approval process on Sites 25 through 33 in Appendix B Housing Sites Inventory. These standards and guidelines are intended to be substantially similar to those developed for the Hacienda TOD (sites 22, 23, and 24) and would at a minimum include affordability consistent with the City’s Inclusionary Zoning Ordinance and the acceptance of Section 8 Rental Assistance Vouchers as set forth in the City’s standard affordable housing agreement.

Responsible Agency: Planning Division, Planning Commission, City Council

Time Period: By end of September 2012

Funding Source: Planning Division, Housing Division budgets”

2.1.2 Amending the Housing Element’s Policy 37 so that it reads in its entirety:

“For phased residential developments, ensure that the majority of units affordable to low- and very-low-income households are not postponed until the final stages of development.”

2.2 Plaintiffs shall not bring any motion or seek any judicial remedy pursuant to their February 15, 2012 meet and confer letter before July 19, 2012.

2.3 Plaintiffs agree that, upon the City’s full and timely compliance with the provisions of Section 2.1 by amending its adopted Housing Element in the respects set forth in Sections 2.1.1 and 2.1.2, above, Plaintiffs shall:

2.3.1 Deem the issues, claims and assertions made in their February 15, 2012 meet and confer letter to be fully resolved.

2.3.2 Waive any right to seek any judicial remedy for any and all issues, claims and assertions made in their February 15, 2012 meet and confer letter, including any right to seek attorneys’ fees based on any of those issues, claims and assertions.

2.3.3 Acknowledge that the re-zoning required by Section 6.6 of the Settlement Agreement will be timely if completed by the end of September 2012.

2.3.4 Acknowledge that, as amended, Policy 37 of the Housing Element does not violate Sections 5.1 and 6.5 or Exhibit C of the Settlement Agreement.

2.4 The Parties understand that the execution of this agreement is not and shall not be deemed to constitute evidence of, or an admission of liability for, or otherwise to affect the merits of any claim, cause of action, or defense, except with respect to the issues and claims raised in the February 15, 2012 meet and confer letter, and agree that this agreement shall not be submitted as evidence for any other purpose.

IN WITNESS WHEREOF, the undersigned agree and stipulate to the terms and conditions stated above:

DATED: _____

CITY OF PLEASANTON and CITY COUNCIL
OF PLEASANTON

By: _____
NELSON FIALHO, CITY MANAGER

DATED: _____

URBAN HABITAT PROGRAM

By: _____

Its: _____

DATED: _____

SANDRA DE GREGORIO

By: _____

APPROVED AS TO FORM:

DATED: _____

By: _____
RICHARD A. MARCANTONIO

Attorneys for Petitioners and Plaintiffs
URBAN HABITAT PROGRAM and
SANDRA DE GREGORIO

DATED: _____

By: _____
MICHAEL RAWSON

Attorneys for Petitioners and Plaintiffs
URBAN HABITAT PROGRAM and
SANDRA DE GREGORIO

DATED: _____

By: _____
THOMAS B. BROWN

Attorneys for Respondents and Defendants
CITY OF PLEASANTON and CITY COUNCIL
OF PLEASANTON

DATED: _____

By: _____
JONATHAN LOWELL, CITY ATTORNEY

Attorneys for Respondents and Defendants
CITY OF PLEASANTON and CITY COUNCIL
OF PLEASANTON



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February 15, 2012

VIA ELECTRONIC MAIL: jlowell@ci.pleasanton.ca.us

Jonathan P. Lowell, Esq.
City Attorney
City of Pleasanton
123 Main Street
P.O. Box 520
Pleasanton, California 94566

Re: *Urban Habitat v. City of Pleasanton*

Dear Mr. Lowell:

As we discussed with you on February 13, the City is now in breach of its obligations under the court-ordered Settlement Agreement in the above-referenced action. Among other things, the City has failed to complete the re-zoning required under Section 6.6, and has violated Sections 5.1 and 6.5 and Exhibit C, relating to the City's commitment to affirmatively promote affordable housing development.

Accordingly, we write now pursuant to Section 12.3 to initiate a meet and confer process prior to seeking enforcement of the settlement terms by the Court.

A. Rezoning.

Section 6.6 provides that "The City will complete any and all rezonings and General Plan amendments necessary to accommodate in full its RHNA at each income level for the Current Planning Period prior to or concurrent with its adoption of the updated Housing Element." At your request, we agreed to extend that deadline to February 13.

On or about January 4, the Council adopted a resolution that amended the Land-Use Element of the Pleasanton General Plan with respect to 11 sites and a set of ordinances with respect to the density of development on those sites. None of these actions effected any change in the zoning of any of those sites, which was, and remains, "PUD."

PUD zoning requires substantial discretionary approvals to specify development standards before any development can be approved. The City has not yet adopted development standards for any of those sites. Instead, it unilaterally chose to grant itself an unspecified period of time, until

“mid-2012,” to implement Housing Element Program 9.7. That Program provides that it will:

Adopt Development Standards and Design Guidelines to facilitate the development of high quality multifamily housing and to create more certainty for residential development on Sites 25 through 33 in Appendix B Housing Sites Inventory. These standards are intended to be substantially similar to those developed for the Hacienda TOD (sites 22, 23 and 24), and would provide more certainty for multifamily developers during the PUD review process.

Program 9.7 indicates vaguely that “These standards are intended to be substantially similar to those developed for the Hacienda TOD,” but does not commit to core standards that will comply with the requirements of the Housing Element Law. It does not address whether, or how, the City will meet the requirement of Gov. Code § 65583.2(h), that half the shortfall of affordable units under the RHNA be accommodated on sites that permit residential-only use. It includes no commitment that the sites will ultimately require “only design review approval without any discretionary review.” And it will not be completed for more than seven months past the Settlement Agreement’s extended deadline.

Judge Roesch (who, as you know, has been assigned to this case for all purposes) ruled in his Order of March 10, 2010 that the adoption of similar General Plan amendments and densities on PUD-zoned sites does not constitute the required rezoning, as it requires “future discretionary approvals”:

The City Council did, a month and a half before the hearing on the present Petition, pass Pleasanton Ordinance 1998 approving the rezoning of a portion of the land located in the “Hacienda Business Park.” However, a careful reading of the ordinance discloses that the status quo was not changed. The ordinance requires that the approval of any development plan for residential development “shall not be granted until the completion of a PUD Major Modification for the entire Hacienda Business Park.” . . . The City still has not accommodated the RHNA allocated to it in 2001. The City’s enactment of Ordinance 1998 a month and a half before the hearing on this petition *may start a process to cure the City's failure in this matter, but is wholly inadequate to be considered a cure. Its requirement of further necessary acts before any development plan can be approved vitiates any actual remedial effect of the Ordinance.* (Emphasis added)

Finding that the rezoning required by law had not yet occurred, the Court accordingly ordered the City to “implement non-illusory zoning changes sufficient to accommodate the unmet RHNA for the 1999-2007 Planning Period. That is, *the zoning and land-use changes need be implemented such that they are without condition or need of future discretionary approval.*” (Emphasis added.)

We are confident that the Court will find that the mere adoption of General Plan amendments and density standards, with Program 9.7’s vague promise of future action, falls equally short of the completion of the rezoning the settlement requires, and is in breach of the requirement to implement those zoning changes by the February 13 date to which the parties stipulated.

B. Commitment to Promote Affordable Housing.

Exhibit C to the Settlement Agreement is Resolution 10-390, which the Council adopted as part of the Settlement. Section 1 of the Resolution states that

City staff and the City Council will act affirmatively to promote the development of well-designed affordable housing for families with children in Pleasanton. The City Manager will report regularly to the City Council on the City's efforts to fulfill this policy, the success of those efforts, and plans and proposals to attract well-designed affordable housing for families with children in the future.

The Resolution is incorporated into the Settlement Agreement (§ 5.1), which goes on to provide that the City will implement provisions of the Resolution in connection with its Housing Element update. (§ 6.5.) These obligations, including the obligation to permit stand-alone affordable housing development, are consistent with the provision of California law that prohibits cities from discriminating against affordable housing development. (Gov. Code § 65008(d)(1).)

Policy 37 of Pleasanton's updated Housing Element is in violation of these provisions. It sets out the City's intention to "Disperse housing units affordable to extremely-low-, low- and very-low-income households throughout new residential developments." Although it goes on to state that this should be done "consistent with City Resolution No. 10-390," the actual policy language does not comply with the City's settlement obligations. As we brought to the City's attention over a year ago (*see* Letter from Christopher Mooney to Jonathan Lowell, dated November 10, 2012), the requirement to "disperse" affordable units can be (and has been) interpreted to discourage or even prohibit stand-alone affordable development in violation of Gov. Code § 65008(d), especially when incorporated as a binding Policy of the City's Housing Element. Policy 37 must be revised to reflect the City's commitment in Resolution No. 10-390 to promote affordable housing development and not to discriminate against any affordable housing development regardless of the mix of incomes in the development.

C. Remedies.

As you know, we have made repeated efforts to resolve these and other issues since the draft Housing Element was issued last August.¹ The Council's failure to complete the site rezoning by the February 13 deadline, and to amend portions of the Housing Element to meet the city's legal obligations, now requires us to invoke Section 12.3 of the Agreement. That Section provides:

In the event that any Party believes that another Party is in breach of any of the terms set forth in this Settlement Agreement, that Party asserting a breach shall give written notice to the other Party of the breach and the Parties shall meet and confer within fourteen (14) business days of such notice before any party seeks judicial enforcement.

If these issues are not promptly resolved through negotiation, and the intervention of the Court becomes necessary, we will ask the Court to re-impose its injunction on the City's authority to

¹ We first spoke with you about these issues on September 16, and continued discussing these issues with you in person or by phone on at least five subsequent occasions, including November 10 and 23, December 19, January 11, and February 13.

Jonathan Lowell, Esq.
February 15, 2012

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issue land-use permits and approvals (as contemplated in § 12.4), and will seek an award of further attorneys' fees covering the period since August 2012.

We remain willing to work with you over the next couple of weeks to resolve these issues out of court, and look forward to your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Marcantonio", followed by a period.

Richard A. Marcantonio
Managing Attorney