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Editorial

Legal costs were avoidable

by John B. Burns

As we reported last week, one of the major factors driving Sebastopol's unprecedented fiscal crisis is litigation, and despite official statements to the contrary, the city's crippling legal costs are a direct result of poor decision-making by the Sebastopol City Council.

Last week's finger pointing by City Council members Howard Levy and Lynn Hamilton, who simplistically blame disgruntled developers for the city's increased litigation costs, is a transparent attempt to obscure their own shameful role in the legal/fiscal crisis which is threatening critical city services.

The costly Orchard Park lawsuit, filed by developers Rich and Nancy Gardner over the council's unjustified rejection of their popular, sensitively-designed affordable housing project last year, was easily avoidable. The council had only to accept the wise recommendation of the city's planning commission and adhere to the sentiments of a vast majority of people who supported the project.

Orchard Park was approved by the planning commission after more than a year of public hearings and neighborhood meetings which resulted in dozens of special conditions aimed at satisfying city planning and neighbors' concerns. It had a broad mix of housing types, was beautifully designed, had an innovative financing mechanism for first-time home buyers, and would have provided 37 homes priced between \$90,000 and \$135,000.

Had the council approved the project, the city would have saved itself \$130,000 in unnecessary legal costs and we would have a unique project providing homes to dozens of current Sebastopol renters—people like police officers, nurses, and teachers—who were all on a waiting list to buy an affordable home.

The city would also have tens of thousands of dollars in sewer and water hook-up fees, one of the city's revenue categories that is—coincidentally—lagging way behind budget projections.

Instead, and due exclusively to the city council's error in judgement, we have a costly lawsuit from a couple who understandably feel they've been wronged; an ongoing lack of affordable housing; and the unwanted attention of the state's Housing and Community Development Department which—largely due to the city's rejection of this well-planned project—has prevented the city from gaining certification of its housing element, thus placing Sebastopol in further jeopardy of being sued by the same low-income housing advocacy group which successfully sued Healdsburg two years ago when that city failed to promote affordable housing.

As if the Orchard Park mistake were not enough, a majority of City Council members stumbled again by rejecting, with poor justification, a 13-unit housing development which, like Orchard Park, had undergone numerous city-mandated revisions and was in total compliance with the general plan.

The \$2 million lawsuit against the city by developers of the Palm Terrace subdivision will undoubtedly focus on injudicious public statements made by City Council members who said they'd prefer to see the property remain undeveloped, this in direct contradiction to the city's new and old general plans. Such ill-advised statements could be construed by the courts as an illegal "taking" of property by the city without compensation, for which there is no legitimate defense.

While Councilman Levy is correct in saying that land use decisions "cannot be based on threats of a lawsuit," it is still the better part of discretion for elected officials to carefully consider the legal and fiscal ramifications of their decisions.

Since the costs of fighting the Orchard Park and Palm Terrace lawsuits cannot be covered by insurance, the money to defend the council's bad decisions is taken directly away from city services like police and fire protection and programs serving the elderly, youth, and disabled.

So long as a majority of city residents are content to sacrifice public safety and other vital city services to thwart housing development, council members are right in tune with their constituents' desires.

If not, then council members should quickly begin reevaluating the art of compromise for the good of the entire community.

Fee for 'litigation reserve'

Editor:

I was pleasantly surprised by Andrew Jowers substantive, factual and well-balanced article on the costly lawsuits facing the citizen of Sebastopol. Hope you can continue such worthy reporting, though, I expect that you will revert back to your usual style the closer we get to November's city council election.

Maybe we need to start discussing a new development mitigation fee that funds a litigation reserve. Without the means to defend ourselves, we are at the mercy of these very powerful and deep-pocketed special interest groups.

There is one minor mistake in Mr. Jower's article, however. I did not say that without annexations the land outside of town would be "worthless" but rather that they would be "worth less." Rural and ag land may be lower in value if it is kept in its current use. But no where near "worthless."

Howard Levy
Sebastopol City Councilman