

94.17

Palm Terrace lawsuit may go to mediation

by John H.K. Riley

The owners of an eight-acre site of a proposed residential subdivision said this week they are willing to consider mediation to settle their \$2 million lawsuit against the city of Sebastopol, according to their attorney.

"Mediation is a process that can be very productive sometimes. It just depends on what the parties have in mind and the skill of the mediator," said attorney Clay Clement, who filed suit on May 27 on behalf of two investment partnerships whose application to build 19 homes was rejected by the city in April.

City councilwoman Lynn Ha-

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milton, one of the four council members who voted 4-1 to deny a use permit for the Palm Terrace subdivision, said she favors mediation as a way to settle the legal dispute while also protecting what she views as a critical "upland" habitat adjacent to the Laguna de Santa Rosa which borders the pro-

posed development to the east.

"My hope is that we can mediate this in a way that we can protect that upland area," she said.

To do that, Hamilton believes the 19-unit subdivision, located behind Palm Drive Hospital, would have to be (Please see *Mediate* page A12)

Mediate

(Continued from front page)

scaled down and redesigned as a "cluster" development. Also, Hamilton hopes Sonoma County's Agriculture and Open Space Preservation District can be utilized to buy a portion of the property's development rights or preserve it through a conservation easement.

"I'd really like to see a negotiated settlement," said Hamilton.

The plaintiffs in the lawsuit include Yolanda Ghilotti, her three children, and George and

94.17

Diane Young. Young retained a 35 percent ownership in the property, which he sold to the late Dino Ghilotti in 1988.

The plaintiffs are asking for \$2 million in general and compensatory damages and that the council be ordered to set aside their use permit denial and review their project because the council failed to proceed in a manner required by law and failed to make adequate findings supported by the evidence.

They allege the city council, in denying their project, did so in an "arbitrary and capricious manner."

"It is a question of whether or not the project that we proposed complies with the (city's General Plan), complies with the policies—particularly the policies relating to the Laguna—that the city has followed on other projects, and whether (the council) carved out special rules for us and used the special rules to deny us. We think they did," said Clement.

Sebastopol City Attorney Larry McLaughlin disagreed.

He said denial of the use permit was based on the planned community development (PC)

not being consistent with the city's zoning and subdivision ordinances and due to its cumulative and visual impacts on the Laguna which could not be mitigated.

Project consultant Charles Evans believes the very nature of a PC zoning permits a city to grant exemptions automatically, but McLaughlin believes it is incumbent upon the developer to demonstrate his/her project is so beneficial to warrant the exemptions, especially if an impact can't be mitigated.

And even then, a city would have to adopt a resolution of over-riding concern, which, McLaughlin said, could leave the city open to an environmental legal challenge.

Evans doubts that Palm Terrace will have any impact on future development in Sebastopol, especially near the Laguna, because he doubts the council would ever approve projects in the Laguna floodplain. And he wonders why previous projects built in or near the Laguna floodplain, among them the city's Police Station and some of the businesses on Morris Street, were granted exemptions.

McLaughlin said Evans is comparing "apples and oranges," that those projects had different types of impacts and are not relevant to Palm Terrace.

The City Council, by a 4-1 vote, denied the planned com-

munity subdivision, which has been redesigned and downsized several times since it was first proposed in 1987.

The 7.2-acre development called for 19 two-story, market-rate homes and six granny units to be built just east of the Laguna behind Palm Drive Hospital. The owners also would dedicate 1.8 acres for a public park. Although Palm Terrace originally surfaced in 1987, several other projects for that site actually were proposed as early as 1981.

The first, known as The Palms, was an 80-unit development on 4.3 acres. A year later, the project was reduced to 50 units and renamed the Laguna Vista Gardens.

Both projects were denied. In 1983, Laguna Vista Gardens was further reduced to 38 units. It was approved by the council, and the property was subsequently annexed to the city, but the use permit was allowed to lapse in 1986.

In 1987, Young applied for a use permit for 35 single-family homes to be built on eight acres; this was the birth of Palm Terrace. The council approved the

use permit in June, 1988, after the project was reduced by six units and one office building was added.

Two months later, though, a citizen's group, Laguna Today and Tomorrow, successfully sued to require an Environmental Impact Report.

In between council approval of the subdivision and the lawsuit, Young sold the project to Ghilotti.

Over the next six years, the project was combined with and then separated from an adjacent development (Saddleburr) and ultimately reduced to its final reincarnation of 19 homes.

This is the second time in a year the city has been sued by a developer.

Richard and Nancy Gardner of Santa Rosa sued over the city's decision not to annex their site (Orchard Park) which is located just outside the city's northern boundary.

A judge recently ruled in favor of the city which had mounted a \$135,000 defense.

Unlike that suit, McLaughlin said there is room for a negotiated settlement with Ghilotti.