

Annex marks the spot

By Bruce Robinson

If affordable housing is the most active segment of the construction industry right now, it would seem to follow that litigation over such projects is on an upward curve. Certainly that seems to be the case in Sebastopol, where thinly veiled threats to seek judicial redress were being appended to the record even before the Planning Commission voted on its motion to recommend denial of the long-debated Palm Terrace project last week.

The ultimate angle and peak of that aforementioned curve—in Sonoma County and elsewhere—may be shaped by the outcome of a rare trial held this week to contest the denial of another Sebastopol project. Yet it is the subtext of Richard Gardner's legal effort to overturn Sebastopol's rejection of his proposed subdivision that makes the case most noteworthy, an ulterior intent that has nothing to do with the details of tentative maps or alternative financing methods but instead targets the essence of the political process: how decisions get made.

A brief recap: Gardner's proposed Orchard Estates subdivision was to feature 48 units on 7.8 acres just outside the northern edge of Sebastopol, with 11 of those as market-rate (read expensive) homes and the remainder an attractive mix of moderate- and low-income cottages, duplexes, and apartments. The project won the endorsement of the city's Planning Commission, but was shot down by the City Council, which on a 4-1 vote declined to annex the land on which it was to be built, saying the cost of providing sewer, water, and other services exceeded the tax gains and other positives the city would get if Orchard Estates were built.

Turning to the courts, Gardner demanded that a judge order the City Council to approve his project and pay him \$400,000 in damages. And, in an unusual wrinkle, he also enlisted two local residents as co-plaintiffs in a claim that the council action discriminated against low-income residents, by denying them a potential housing opportunity. **That claim led to the court trial this week, after other portions of the suit had been previously dismissed.**

The initiation of the trial proceeding came less than a week after the Gardner camp proposed a settlement in a closed session with the City Council. My sources say that settlement included an offer of up to half a million dollars in exchange for agreement to approve the development with twice as many market-rate homes in it; the offer was refused.

But getting to trial is a long and costly process, which in and of itself appears to have been a key component of the anti-Sebastopol strategy. City Attorney Larry McLaughlin pegs the pretrial costs of the Gardner suit at over \$38,000, with the trial expected to cost another \$20,000-25,000 (it is being handled by specialized outside counsel). And that is without the substantial additional costs that would have resulted had the Gardner camp succeeded in its bid to require depositions from all five council members and numerous city staff members, a request that Sebastopol successfully opposed (only Planning Director Richard Spittler was

deposed; he also testified at the trial).

McLaughlin contends that the law precluding such a request is "absolutely crystal clear. There was no legal authority to take council depositions in this case," adding that he "presumes" that Gardner's lawyer, Martin McOmber, must have been "well aware of that obvious legal fact." However, another aspect of this case, obvious to the legal minds involved, is that the city has no recourse to recover its costs in defending itself, even if all the charges are successfully refuted.

"I can't even begin to speculate how much money they have spent on their side" to pursue this case this far, McLaughlin told me, but there is widespread speculation about who is picking up that hefty tab, particularly in light of the legal action he is facing on another front, for allegedly missing payments he owed on the Orchard Park property. "No attorney would have brought this case with any realistic chance of success," McLaughlin said. "So

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you have to ask yourself: Who's paying? We read in the paper that Gardner's being sued for debts of his own. He wouldn't be unbusinesslike enough to be financing all this himself, would he?"

Gardner is not independently wealthy, but he is well connected politically. Those with their ears to the ground and their noses to the wind in Sebastopol have caught whispers and whiffs of some ominous power brokers behind the scenes in this sordid legal drama, among them the Building Industry Association, the California Realtors Association, and/or their political action committees.

Now, let's just guess why these guys might be interested in a case that, if successful, could set a precedent for forcing cities to accept unwanted annexations to build affordable housing. Where better to concentrate their considerable resources than against a small and financially strapped defendant such as Sebastopol?

Gardner's suit rests on a claim that Sebastopol conspired to keep out lower-income housing. Yet one of the primary complaints lodged against the latest Palm Terrace proposal was that it did not contain enough truly affordable housing. I wonder what Gardner and his friends with deep pockets will make of that.

THE SONOMA COUNTY INDEPENDENT • FEBRUARY 17-MARCH 2, 1994 7

February 17 - March 2
1994

Planners reject Laguna project

It wasn't as close as the vote. In their summary comments shortly before taking action on a motion to recommend denial of the proposed Palm Terrace subdivision, all seven members of the Sebastopol Planning Commission expressed reservations about the project. So their subsequent 4-3 vote to carry that motion appeared to hinge on whether or not each commissioner felt the project could be modified into a form they could support.

As it is now proposed, Palm Terrace would cluster 19 homes, six of them with smaller second units above detached garages, on just over seven acres overlooking the Laguna de Santa Rosa at the eastern end of Palm Drive, a little beyond Palm Drive Hospital. A strip of the property closest to the Laguna and an overlook at the southern end would be dedicated to public use, and the six "granny units" could be used as rental units to provide some affordable-housing stock, according to the developers.

That claim was disputed by several commissioners, who openly doubted that the units would ever be placed on the rental market, but other questions were equally troublesome. The subdivision's close proximity to the hospital places it beneath the flight path for emergency helicopters, exposing the homes to both noise and the risk of an accident, it was noted, while its position overlooking the Laguna creates an unmitigable visual impact from the waterway. Commissioners also expressed concerns about the extent to which the land would be paved, the impacts that pets, pesticides, and other aspects of human presence would have on wildlife in the Laguna, as well as the lack of public support for the project.

The entire matter now goes before the City Council, which will hold its own hearing on the project. That date has not yet been announced.

—Bruce Robinson