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OAKLAND CITY COUNCIL

RESOLUTION No. 79381 C.M.S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

*Mark P. Wald*

**RESOLUTION UPHOLDING THE APPEAL AND REVERSING THE DECISION OF THE CITY PLANNING COMMISSION IN APPROVING THE APPLICATION FOR A PLANNED UNIT DEVELOPMENT FOR SEVEN SINGLE-FAMILY RESIDENTIAL LOTS ON KENILWORTH ROAD (OFF STRATHMOOR DRIVE, IN THE GENERAL AREA BETWEEN DRURY ROAD AND NORFOLK ROAD) BY REQUIRING FURTHER ENVIRONMENTAL REVIEW**

**WHEREAS**, the property owners, David McDonald and Eva Gero, filed an application on April 28, 2004 for a Planned Unit Development for seven single-family residential lots on Kenilworth Road (Project); and

**WHEREAS**, the application was duly noticed for the City Planning Commission meeting of April 20, 2005 and the Commission took testimony and considered the matter but the matter was continued to the May 4, 2005 Planning Commission meeting; and

**WHEREAS**, the May 4, 2005 City Planning Commission meeting was also duly noticed and the Commission took testimony and considered the matter, closed the public hearing, deliberated and voted to affirm staff's environmental determination and approve the Project (6-0-1); and

**WHEREAS**, on May 13, 2005, an appeal of the Planning Commission's approval and a statement setting forth the basis of the appeal was received; and

**WHEREAS**, after giving due notice to the Appellants, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on July 19, 2005; and

**WHEREAS**, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on July 19, 2005;

**Now, Therefore, Be It**

**RESOLVED:** That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the City Planning Commission's decision, and the Appeal, finds that

- 1) Although the City Planning Commission's decision to approve the project based upon CEQA's In-fill exemption is legally defensible, the Council nevertheless feels that further environmental review should be undertaken because the Appellants have raised some plausible arguments that the Council does not want to see tested in court.
- 2) The Applicant is directed to further study the environmental impacts of the project and prepare either an initial study or a Focused EIR.
- 3) Adoption of this resolution is not meant to, nor does, set City policy on the limitation on the use of exemptions, especially the In-fill exemption. The use of the In-fill exemption is appropriate in Oakland, including certain hillside developments.
- 4) Basically, each development project must be individually evaluated with respect to CEQA compliance to determine whether all the requirements for the use of an exemption can be met.
- 5) Here, further environmental review should be undertaken in these special and unique circumstances because all of the following, taken collectively and not individually, present a degree of litigation risk that is unacceptable:
  - a) The project involves widening, paving and extending (for about 700 linear feet) an unimproved public road;
  - b) The Project site abuts a large (30+ acres) tract of undeveloped land and is also adjacent to a Regional Preserve; and
  - c) The Project site contains an Army Corps of Engineers jurisdictional wetland and a creek that requires a Fish & Game Streambed Alteration Permit.
- 6) The Applicant may submit applications for infrastructure permits (i.e., encroachment permit for Kenilworth Road, grading permit, tree removal permit etc.) and design review applications for the individual residences while the environmental review process is underway to minimize overall delay; however, decisions on permits will not be made until the CEQA process has been completed.

**FURTHER RESOLVED:** That, the record before this Council relating to this application and appeal includes, without limitation, the following:

1. the application, including all accompanying maps and papers;

2. all plans submitted by the Applicant and his representatives;
3. the notice of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation and all related/supporting final materials, and all final notices relating to the application and attendant hearings;
5. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the application and appeal; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal;
6. all matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations.

**FURTHER RESOLVED:** That, the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, 3<sup>rd</sup> Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA.

**FURTHER RESOLVED:** That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

In Council, Oakland, California, JUL 19 2005, 2005

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN, AND  
PRESIDENT DE LA FUENTE - *g*

NOES- *0*

ABSENT- *0*

ABSTENTION- *0*

ATTEST: *LaTonda Simmons*  
LaTonda Simmons  
City Clerk and Clerk of the  
Council of the City of  
Oakland, California