



PLEASANT HILL CITIZENS *for* RESPONSIBLE GROWTH

July 20, 2015

The Honorable Ken Carlson, Mayor of Pleasant Hill, and Council Members
City of Pleasant Hill
100 Gregory Lane
Pleasant Hill, CA 94523

Re: July 20, 2015 Hearing on Proposed Zoning Ordinance Amendments

Dear Mayor Carlson and Council Members,

Pleasant Hill Citizens for Responsible Growth (PHCRG) represents residents and resident interests. Our principal focus is land use and community development - ensuring projects are consistent with the community goals and objectives embodied in the General Plan.

PHCRG's view is that residents should be able to look to the General Plan and zoning ordinance to know what kinds of development meet the City's standards and what projects the City is likely to approve. In recent years, and for several recent development applications, that hasn't been the case.

Recent project recommendations by staff, and decisions by our elected and appointed public officials, are fundamentally inconsistent with past interpretations and decisions. Development applications or permits the City would have previously rejected outright (due to inconsistency with the General Plan and zoning ordinance) are suddenly, and inexplicably, approved and the inconsistencies ignored. This sudden shift has benefitted developers at the expense of residents and has compromised public health, safety and welfare; our neighborhoods and our community. Therefore, it is time to revisit and amend the zoning ordinance and, if need be, our 2003 General Plan as well.

Updates or amendments to the General Plan and zoning ordinance should reflect a collaborative effort by all members of the community. The process should welcome and respect public participation – in particular, participation by residents of Pleasant Hill. Collaboration and meaningful, reciprocal dialogue by all members of the community will produce the best result – documents that serve as a meaningful and consistent guide for our City's long-term development.

Regarding this latest round of proposed amendments, PHCRG is concerned with the process and procedures that discouraged meaningful public participation. We are concerned with the recommendations that resulted from that process. And, we are concerned with the lack of attention to pressing topics or issues that call for more thorough and comprehensive review and analysis.

We have summarized our principal areas of concern below and will be pleased to answer questions or provide additional information upon request:

1. No meaningful dialogue and collaboration with/between staff, public officials, and members of the public

The City did not schedule study sessions or establish an ad hoc committee to study and recommend amendments to the zoning ordinance. As a result, public participation was limited to the one hearing before the Planning Commission (PC) on May 26, 2015.

The May 26, 2015 PC meeting was the Tuesday right after the three-day Memorial Day weekend. The City didn't issue the staff report and proposed amendments to the zoning ordinance until about 1:30 in the afternoon on Friday before the Memorial Day weekend.

Several citizens and organizations have complained for years about the rigid procedures the City has established for study sessions and hearings. The format provides little or no opportunity for meaningful dialogue and debate or public participation. If Council will not change the procedures for study sessions and hearings, we recommend that Council either establish PC or Council sub-committees to review and recommend changes to the PC and/or Council; and/or schedule multiple study sessions and hearings so the public has an opportunity to respond to new information and challenge staff's interpretations, findings and recommendations.

2. Inconsistent, inappropriate projects that become the impetus for proposed amendments

On February 23, 2015, Council upheld an appeal of the Planning Commission's approval of the Pahwa Minor Subdivision. PHCRG concurs with Council's decision.

During the appeal hearing, Council and staff immediately began discussing how the proposed subdivision might be approved – either by a more liberal interpretation of the minor exception ordinance or by revisions to the zoning ordinance. As a result, staff proposed that a parcel zoned R-6 or R-7 could apply gross square feet (rather than the current net square feet) to determine whether the parcel meets the minimum square foot requirements in our zoning ordinance. That proposed amendment to the zoning ordinance is before Council this evening and PHCRG disagrees with staff's and the PC's recommendation.

On May 4, 2015, Council denied PHCRG's appeal of the Planning Commission's approval of the Hilton Homewood Suites project. PHCRG identified several significant areas of inconsistency between the proposed project and the General Plan and/or zoning ordinance, as well as the City's commercial design guidelines.

Staff and the PC recommend that Council resolves one of the many inconsistencies by eliminating the portion of the code section that prohibits parking facilities in the required front or corner-side yard setback. That proposed amendment to the zoning ordinance is before Council this evening and PHCRG disagrees with staff's and the PC's recommendation.

PHCRG views these recent proposals as the proverbial "tail wagging the dog." Staff is proposing changes to the zoning ordinance in order to make the zoning ordinance consistent with problem developments and decisions instead of approving, or finding new ways to approve, projects that are inconsistent with the standards.

3. Staff is directing our Legislative Bodies and setting policy and precedent

This is becoming more and more a problem over the last few years. PHCRG mentioned the problem previously when staff (with no direction from the Planning Commission or Council) suddenly proposed the minor exception ordinance.

I attended every meeting of the Housing, Neighborhoods and Planning Sub-committee (HNP). HNP members, in particular former council member Terri Williamson, were very concerned about minor exceptions that exceed 10%. However, after the PC and Council approved the minor exception ordinance, staff came back and asked for up to 20% in some instances.

More recently, PHCRG has noticed staff providing incorrect and misleading information in staff reports, "FAQs," other documents, and in responding to questions by public officials at Commission (PC and Architectural Review) and Council meetings. Public officials have not challenged the incorrect information or direction provided by staff.

Public officials appear to not be aware of, or understand, the standards in our General Plan and zoning ordinance; or do not appear to know or care how the City has historically interpreted and applied those standards. Some public officials appear confused, distracted, or unprepared – as if they have not read (or carefully read) appeals, public comments, staff reports and recommendations, or the resolutions our public officials will be voting on. Questions and answers during meetings and hearings appear rehearsed and public officials appear to have been "coached" by staff. Several members of the public have commented to that effect, including members of the public who regularly tune into the television broadcast of the Council meetings.

PHCRG and the public value public officials who understand the General Plan and zoning ordinance as well as the intent behind those ordinances. Staff recently suggested that Council may take a more liberal interpretation of the zoning ordinance (the minor exception ordinance for example) if Council decides to do so. However, PHCRG believes that Council must instead focus on the intent behind the code sections and the zoning ordinances that created those code sections.

To do that, Council must understand how the City has historically interpreted and applied the standards in our General Plan and zoning ordinance.¹

PHCRG recommends that Council carefully consider each of the proposed staff and PC recommendations before approving any amendments to the zoning ordinance. Please make sure you understand how the City has historically interpreted and applied any code sections that staff is asking you to amend or eliminate. Ask the tough questions, think about the precedent you are setting, and, above all, ensure that you are the ones setting policy and giving direction to staff instead of the other way around.

4. Planned Unit Developments

Recently, staff, the PC and Council have used the Planned Unit Development “option” to circumvent the standards in our General Plan and zoning ordinance. The rezoning to PUD for the Hilton Homewood Suites project appears to be a classic case of “illegal spot zoning” – preferential treatment to a commercial project or developer with no requisite public good or benefit in exchange.²

PHCRG recommends Council directs staff to locate the City’s guides on planned unit developments. Staff appear to have lost, misplaced, or destroyed those guides sometime between 2007 and the present. Council should direct staff to research how other cities are handling planned unit developments.³ Council should also direct the City Attorney to research cases of illegal spot zoning to ensure that our City complies with the law. And, finally, Council should direct staff to proposed amendments to the zoning ordinance to provide further clarification and direction on the appropriate use of planned unit developments.

¹ Appeal hearings, for example, are quasi-judicial proceedings. Just as competent judges look to the intent of the law when deciding court cases, PHCRG believes it is necessary for Council to interpret and apply the General Plan and zoning ordinance based on the intent at the time those documents were updated or amended (and not by what subsequently may or may not “offend” a current council member. Otherwise, interpretations and decisions appear arbitrary and capricious (at best) and deliberately crafted to benefit developers or other special interests at the expense of residents (at worst).

² Staff and Council asserted during the May 4, 2015 Hilton Homewood Suites appeal hearing that a public sidewalk qualifies as a public good and justifies more than doubling the maximum allowed density or intensity in our General Plan and zoning ordinance. That clearly is inconsistent with our General Plan and zoning ordinance and in PHCRG’s view, an abuse of the PUD mechanism to get around the standards in our General Plan and zoning ordinance.

³ I have already performed extensive research and haven’t found any cities that have created PUDs for one commercial project on one parcel of land. PUDs were historically intended to accommodate higher-density residential projects, and then mixed-use projects. More recently, some cities have used the PUD mechanism to accommodate multiple commercial projects. However, again, I haven’t found any PUDs created to accommodate one commercial project on one parcel of land.

5. Subdivisions and Infill Developments

The City is likely to be processing more requests for subdivisions and infill developments. These requests or proposals are complex and, in many cases, cannot conform to the standards in the zoning ordinance.

Council should not allow a single, non-conforming infill project to introduce universal changes to the zoning ordinance (universal at least where our R-6 and R-7 zoning districts are concerned). It is more prudent to direct staff to conduct a detailed review of the City's current infill developments, standards applied to those developments, potential existing infill development sites, so that staff can return with a comprehensive study and appropriate recommendations for future infill development across the entire City and all zoning districts.

6. Preservation of Historical/Cultural Resources

The 2003 General Plan and related environmental impact report included programs to mitigate the otherwise significant risk of losing significant historical or cultural resources. Those documents included options such as establishing a Historical and Cultural Resources Commission, or assigning the responsibilities to the Architectural Review Commission.

PHCRG is concerned that the Architectural Review Commission (ARC) may not be qualified to make decisions regarding potentially significant historical or cultural resources. Commissioners are probably very knowledgeable about architectural history and architectural significance. However, they may not be knowledgeable about sites or objects that are historically, culturally or archaeologically significant – particularly where Native American cultural resources are concerned.

Furthermore, the ARC may not have the time or interest to accept the additional responsibility associated with creating an inventory of historical or cultural resources or potential historical or cultural resources.

Finally, with recent changes in the government code and the California Quality Act Guidelines associated with Assembly Bill 52, the City should take a proactive approach to implementing processes and procedures to ensure compliance. Again, the ARC may not be qualified or interested to taking on this additional responsibility.

Before Council assigns additional responsibility to the ARC, we recommend that the City schedule a joint meeting (with the PC and the ARC or with Council and the ARC) to evaluate assigning historical and cultural resources responsibilities to the ARC.

7. Tighter standards necessary to limit “discretion”

Staff and public officials frequently attempt to explain away significant departures from the zoning ordinance as “discretionary.” PHCRG agrees that general plans allow some room for flexibility or discretion. In some cases, however, public officials appear to ignore words such as “must,” or “shall” that appear in various sections of our General Plan and/or zoning ordinance.

For example, the Community Development Element that starts on page 9 of our General Plan states, “All development and redevelopment must be consistent with these categories,” referring to Table CD1 Development Potential. Since the General Plan did not include any goals, policies or programs that provided options for exceeding the maximum allowed density or intensity for the Hilton Homewood Suites rezoning and project (more than doubling the maximum allowed density in Table CD1 for the approved rezoning to PUD), PHCRG does not believe the General Plan afforded Council the discretion or flexibility Council claimed when Council found the rezoning and project to be consistent with the General Plan.

Council also approved significantly more compact spaces as a percentage of total parking spaces than the zoning ordinance allows. Municipal code section 18.55.090 A states, “For nonresidential use up to 50% of the required spaces may be small car spaces.” That indicates to us that no more than 50% may be small car spaces, not that Council “may” approve more than 50%.

The Hilton Homewood Suites development project included several other deviations from the zoning ordinance – principally where parking standards and dimensions are concerned. Most of those deviations were not consistent with the Concept Plan for the proposed PUD rezoning. Instead, the zoning standards for the PUD became more of an “anything goes” and “no rules apply” in the case of the Hilton Homewood Suites. In instances where the proposed project deviated from the zoning ordinance, the municipal code section included the word “shall,” which means, “That which is obligatory or necessary” according to the definitions in our General Plan.

These and several other deviations from the zoning ordinance suggest Council is exerting more discretion or flexibility than the public, or Council, intended when updating or amending the General Plan and zoning ordinance. Therefore, PHCRG asks that Council direct staff to take a closer look at the General Plan, and zoning ordinance (including definitions and measures), and recommend changes in wording or introduce new wording that will enable members of the public to know Council’s limits where discretion and flexibility are concerned.

Council should revisit definitions in the General Plan and compare and contrast definitions between the General Plan and the zoning ordinance when Council is ready to consider changes to the zoning ordinance definitions.

8. Title 18, Chapter 18.140 Definitions and 18.145 Measurements require revision and clarification

As mentioned in other items above, PHCRG believes it is necessary to revisit definitions and measurements to clarify the intent and purpose of various sections in the municipal code and to ensure staff, public officials, and residents (and developers, architects, etc.) are able to correctly interpret (and in some cases apply) the zoning regulations.

PHCRG has noticed several definitions that could be clarified and made more consistent with related definitions (FAR, lot, lot area, site, etc.). Many of the confusing definitions become more apparent when dealing with subdivisions, infill developments, and planned unit developments. And, it may make sense to tackle those definitions at the same time staff studies and evaluates issues involving PUDs, and subdivision and infill developments (as described in more detail in items 4 and 5 above).

Council should review and clarify or amend definitions in the General Plan concurrent with Council's review, clarification and amendment of definitions in the zoning ordinance.

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PHCRG supports amendments to the zoning ordinance that are consistent with the community's vision for long-term development, and the corresponding goals, objectives, policies and programs in our General Plan. We do not support some of the staff recommendations which the Planning Commission approved on May 26, 2015. And, we urge Council to direct staff to perform a more comprehensive review and evaluation of the various issues, and create a sub-committee to study those recommendations and report back to the Planning Commission and Council.

We also urge Council to look back at past zoning ordinance amendments and opportunities for public participation (sub-committees, number of study sessions, number of public hearings before the Planning Commission and Council). This latest round of amendments has effectively excluded the public from the process and from meaningful participation.

Thank you for your attention to these issues, and we are happy to answer questions or provide more information or examples upon request.

Best regards,

Dorothy Englund
Vice President
Pleasant Hill Citizens for Responsible Growth