

Communication "A" November 5, 2008 Calistoga City Council Meeting
Item # 9: Awarding the Growth Management Allocations for the 2009 Calendar Year



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November 5, 2008

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Via Hand-Delivery

Mayor Gingles and Honorable
Members of the City Council
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Re: **GMA 2009-01** — *November 5, 2008 Growth Management System Allocation
Hearing for the Proposed Cottage Glen Subdivision.*

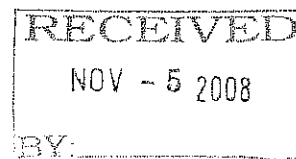
Dear Mayor Gingles and Honorable Members of the City Council:

Our offices continue to represent the Citizens for Responsible Development ("CRD"), who firmly oppose the proposed Cottage Glen subdivision ("proposed project") being proposed by Calistoga Affordable Housing ("CAH"). CRD consists of the neighbors on Money Lane to the north, Michael Way to the east, Grant Street to the South, and Maggie Avenue to the west. In other words, our office represents neighbors surrounding the project site.

We understand that CAH has applied for a Growth Management System Allocation (GMA 2009-01) for its proposed Cottage Glen Subdivision. We also understand that, at this date, CAH has not submitted a final development application, although, earlier this year, CAH applied for Pre-Application Consultation (PA 2008-02) and Conceptual Review (CDR 2008-02).

1. **CAH's Pre-Application Consultation (PA 2008-02)/Conceptual Review (CDR 2008-02).**

On September 10, 2008 and October 8, 2008, the Planning Commission presided over Conceptual Review Hearings, and the Planning Commission and public provided



feedback based on information presented by CAH at those hearings. We understand that the purpose of these hearings was/is to provide an opportunity for the Planning Commission and members of the public to provide feedback on a developer's general proposal for a development project. Members of CRD showed up at both hearings to express their firm opposition to the proposed project based on a variety of issues, including, but not limited to, its drainage impacts (flooding); water allocation; traffic circulation on Grant Street and Maggie Avenue; privacy and density (compatibility with established neighborhoods); and overall reduction in home values. Based on CAH's very general pre-application, we understand that CAH has submitted two conceptual designs to the City for review. These rough design concepts represent general proposals for development on the project site. As stated below, both conceptual designs would require significant deviations from the zoning standards set forth for the "R-1" Zoning District, which is the zoning designation for the project site.

Both CAH and the Planning Commission have indicated a preference for the "clustered design approach," wherein approximately 34% of the site would remain in open space use, which would almost solely serve the internal uses of the Cottage Glen neighborhood. To achieve this amount of interior open space, CAH would require several variances from base zone development standards, including minimum lot size and setback standards. The proposed lots would range from 2,850 to 5,800 square-feet. This range is significantly smaller than lot sizes allowed under the R-1 zoning ordinance. In fact, many of the lots proposed by Cottage Glen would be almost half the size of lots generally allowed under the R-1 zoning district. We understand that, in order to achieve the "clustered design approach," CAH would be required to apply for a rezoning of the project site to a "Planned Development" ("PD") District.

As an alternative approach, CAH has presented a "traditional design approach," which would result in a subdivision pattern that "more closely conforms to current zoning standards," with lot sizes that would range from 5,000 square-feet to 10,910 square-feet. However, it is important to note that even this "traditional design approach" would require variances from minimum lot-width standards, and while it more closely conforms to current zoning standards than, for example, the "clustered design approach," it still is not consistent with the zoning standards given the variances needed for the proposed substandard lot widths. Further, this design approach provides very little room for open space, but instead crams in narrow, long lots throughout the project site, creating a block of dense housing throughout the project site. Again, as stated above, this approach is so dense that it requires a number of lot width variances from the standards of the R-1 zoning district.

2. CAH's Application for Growth Management System Allocation Is Premature.

A. A Rezoning of the Property Needs to Be Secured Prior to a Growth Management System Allocation Application.

The Growth Management System Allocation process allows the City to "meter" or regulate new residential growth in accordance with the City's General Plan, population growth rate, and the City's ability to provide infrastructure, water and sewer services. The City Code does allow for a "[p]reference for residential allocations [that] . . . fulfill the City's remaining regional housing need in the very low-, low- and moderate-income housing categories as defined by the General Plan. City, Code, section 19.02.070. However, the Growth Management System Allocation procedures specify that "[a]ny required General Plan Amendment and rezoning will need to be secured prior to requesting allocations." City Code, section 19.02.060(G)(3) (emphasis added). A proposal to change or "rezone" a property from a given zoning designation to a "PD" zoning designation or a "combined" "PD" zoning designation requires a legislative act and constitutes what is commonly referred to as a "rezoning." (See *Curtin's California Land Use and Planning Law*, 28th edition, Solano Press Books, p. 68-69 (2008).)

Here, based on Planning Commission feedback and initial review of the CAH pre-application, it appears that CAH must "rezone" the project site to a "PD" District for the proposed project to pursue the "cluster design approach." From the hearings, it appears as though the "clustered design approach" would be the approach favored by the City. However, CAH has not even submitted a formal development application, much less obtained the required "PD" rezoning of the project site. As the Growth Management System Allocation procedures set forth, it would be illegal to grant a Growth Management System Allocation to CAH prior to a rezoning of the project site to a "PD" District.

B. Applications Not In Conformity with the Zoning District at the Date of Submittal Shall Not be Eligible for an Allocation.

The Growth Management System Allocation procedures also state that "[a]pplications that are not in conformity with the adopted General Plan land use designation and zoning district on the date of submittal, or require an amendment to the adopted General Plan or zoning ordinance, . . . and which are not consistent with key General Plan goals, objectives and policies shall not be eligible for an allocation." City Code, section 19.02.060(G)(4) (emphasis added). Thus, if applications are not consistent with the zoning district at the date of submittal, they shall not be eligible for an allocation.

Here, as stated above, neither of CAH's proposed design approaches in its pre-application is in conformity with the R-1 land use designation for the project site. Under the "traditional design approach," the City Staff Report concedes that multiple variances are needed for the lot widths to conform to the R-1 zoning district standards. Alternatively, the "clustered design approach" would allow for lot sizes and setbacks that are well below the standards required under the R-1 zoning designation, so much so that a "PD" rezoning would be required for the proposed project to be considered by the City under that approach.

C. As a Practical Matter, It is Unlikely CAH Will Achieve Final Subdivision Map Approval in the Required 24 Months.

Our reading of the Growth Management System Allocation is clearly supported by the strict time limits set forth by the procedures. The Growth Management System Allocation procedures state that "[o]nce a development has received an allocation, all required discretionary and nondiscretionary approvals and permits necessary to commence construction must be obtained within 12 months of the date of allocation." City Code, section 19.02.060(H). The procedures further state: "[f]ailure to receive the necessary permits to . . . receive approval and recordation of a final subdivision map . . . shall deem the allocation expired." City Code, section 19.02.060(I). While a "one-time extension" of 12 months may be authorized by the Planning and Building Director, an allocation will definitely expire 24 months from the date of the allocation. *Id.* (emphasis added.)

Here, CAH has not yet even submitted a development application to the City. Once CAH finally does have a development application on file and "deemed complete," CAH will be facing an extensive review process, wherein CAH will be required to conduct numerous environmental studies. Further, the proposed project will be subject to CEQA, which we believe will require a full Environmental Impact Report. It has been our office's experience that, given the numerous layers of approvals needed for the proposed project, CAH will not likely be able to meet the 12 month (or 24 month, for that matter) time limit for the approval and recordation of the final subdivision map.

We highlight this point because the intent of the Growth Management System Allocation procedures is clear: "Any required . . . rezoning will need to be secured prior to requesting allocations." City Code, section 19.02.060(G)(3) (emphasis added). As a practical matter, the time limits set forth for approval and recordation of the final map reinforce the clear, express language of the procedures. The procedures intend for such legislative approval to be accomplished before a Growth System Allocation application is presented to the City Council. Otherwise, most development projects attempting a

Mayor Gingles and Honorable Members of the City Council
November 5, 2008
Page 5

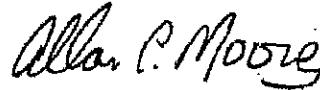
rezoning after an allocation is granted would not meet the streamlined time limit required under the allocation procedures.

3. Conclusion

Given the above, CAH has "put the cart before the horse" by applying for this Growth Management System Allocation when its application is not in conformity with the zoning designation for the project site. Based on CAH's pre-application, both design approaches presented to the City by CAH would require either (1) multiple variances with regard to lot widths (under the "traditional design approach") or (2) a "PD" rezoning of the property (under the "cluster design approach"). At present, both design approaches are inconsistent with the R-1 zoning designation for the project site; thus, as a matter of law, the City must not grant the Growth Management System Allocation to CAH.

We look forward to working with the City on this matter. If you have any questions, please contact our office.

Very truly yours,



Allan C. Moore

ACM:kra

cc: Charlene Gallina
Director of Planning & Building