

NANCY McPeak

From: LARA WEISIGER
Sent: Monday, September 28, 2015 1:44 PM
To: ERIN GARCIA; NANCY McPeak
Subject: FW: Ban Single Family Homes?

Hi,
Do you want to respond to Bill to let him know you will post it to the website as part of the agenda item to make it part of the record or should I?
Thanks!
Lara

From: William Smith [mailto:smithwja@gmail.com]
Sent: Monday, September 28, 2015 12:56 PM
To: City Clerk
Subject: Fwd: Ban Single Family Homes?

Alameda City Clerk and Erin Garcia,

Below is a copy of an e-mail that I sent to 5 members of the planning board this morning. Erin, would appreciate it if you could forward it to the two new members.

I appreciate that both of you make community correspondences, as well as city government documents and correspondence, available to the public.

Thank you!

Bill

William J. Smith
Alameda, CA 94501
(510)522-0390

----- Forwarded message -----

From: William Smith <smithwja@gmail.com>
Date: Mon, Sep 28, 2015 at 9:51 AM
Subject: Fwd: Ban Single Family Homes?
To: John Knox White <jknoxwhite@gmail.com>, "Burton, Greg" <burton29@ltnl.gov>, Kristoffer Koster <kkoster79@gmail.com>, Lorre Zuppan <Zuppan@branes.com>, Michael Henneberry <mhenneberry@sbcglobal.net>
Cc: Dania Alvarez <danial@hbrinfo.com>, Andrew Thomas <athomas@alamedaca.gov>, "Robert T. Sullwold" <RTS@greenstamps.com>, doyle saylor <doylesaylor@me.com>, Laura Thomas <ciaolauretta@comcast.net>, lynette@eastbaynhs.org, Jeffrey Levin <Jeff@ebho.org>

City of Alameda Planning Board Members,

Subject: Ban on single-family homes deserves close scrutiny at Planning Board Hearing on Monday, Sept. 28th

On its surface, the ban on single-family homes for parcels with multi-family overlays appears to address a major problem introduced by the housing cap imposed on the North Housing site. Despite the cap, a ban on single family housing could fulfill one of the purposes of State Housing Laws by enabling multi-family developers to outbid single family developers for the site at the planned Navy auction. Robert Sullwold, though, in his usual thorough analysis (see below) pointed out that the City Charter may invalidate such a ban as state housing law does not explicitly allow the banning of single family housing. Further, it is not clear that simply banning single-family housing at the North Housing site would make the City's housing cap on the North Housing site legally enforceable, which I presume is one of the purposes of the single-family housing ban.

I suggest that you carefully review the legal implications of such a ban before implementing it. There are other, more clearly legal, alternatives for promoting affordable housing within the City.

Bill

Ban single-family homes? You've got to be kidding!

Posted on September 27, 2015 by Robert Sullwold

<https://alamedamgr.wordpress.com/2015/09/27/ban-single-family-homes-youve-got-to-be-kidding/>

William J. Smith
Alameda, CA 94501
[\(510\)522-0390](tel:(510)522-0390)

----- Forwarded message -----

From: **William Smith** <smithwja@gmail.com>
Date: Mon, Sep 28, 2015 at 6:44 AM
Subject: Ban Single Family Homes?
To: William Smith <smithwja@gmail.com>

Ban single-family homes? You've got to be kidding!

Posted on September 27, 2015 by Robert Sullwold

Bring out the cellos. It's time – yet again – to begin playing the dirge for Measure A, the voter-adopted City Charter amendment prohibiting multi-family housing and capping residential density at 21 units per acre.

If the City planners have their way – and the Planning Board and Council sign off – the residential development regime set out in the Charter soon will be pretty much a dead letter.

Not only will multi-family housing be permitted on a host of residential sites throughout the City where the Charter once banned it, single-family homes on those sites actually will be *prohibited*. As a result, don't expect to see any new single-family homes being built in the future along the northern waterfront or on any other prime developable land.

What's more, this evisceration of Measure A – which began only six years ago – is being accomplished without the public ever having voted to repeal the Charter provision. Staff, the Planning Board, and Council have managed to pull it off on their own.

Regardless of what one thinks about the policy underlying Measure A (and we laid out the arguments [pro](#) and [con](#) last year), it's worth reviewing how this has happened – and, more importantly, asking why it did.

The first step was taken back in 2009 when Council adopted an ordinance intended to implement the state density bonus law. The ordinance allowed a developer to apply for, and essentially required the City to grant, a waiver of Measure A for any project that included enough units affordable by very-low, low, or moderate-income households to qualify for a density bonus.

The next step occurred in 2012 when Council amended the zoning law to create a “multi-family overlay” and then applied it to 16 parcels listed in the City's land inventory. The “overlay” entitled a developer, as of right, to build multi-family housing at a density of 30 units per acre. It covered all of the major developable sites in the City (except for Alameda Point).

Since 2009, the Planning Board has signed off on five multi-family development projects that took advantage of a density bonus ordinance waiver or the multi-family overlay or both: Boatworks, Alameda Landing, Marina Shores, the Del Monte warehouse, and, most recently, the old Hangstrom property at 2100 Clement Avenue. In addition, both the Planning Board and Council approved the Site A project at Alameda Point that relied on a Measure A waiver.

The actions taken by Council in 2009 and 2012 weakened the rules established by Measure A, but neither eliminated them altogether. A developer, if she wanted to, still could include single-family homes or duplexes in a project designed for a site subject to the multi-family overlay. But, perhaps, not for much longer.

At the September 14 Planning Board meeting, City Planner Andrew Thomas presented the first annual update on the 2015-2023 Housing Element. The staff report suggested a handful of “improvements” to the City's housing law – one of which was to amend the zoning ordinance to *prohibit* construction of single-family homes on any site covered by the multi-family overlay.

The prohibition would apply, the report stated, to the Alameda Landing waterfront site (10 acres), the Encinal Terminals site located behind the Del Monte warehouse (13 acres), the Shipways property on Marina Village Parkway (a total of 8.1 acres), and – keep this one in mind – the two North Housing parcels (37.36 acres). Mr. Thomas confirmed to us that, if adopted, the amendment would also ban single-family homes on the Alameda Marina, Chevys, and College of Alameda sites).

Not surprisingly, two members of the Planning Board – we'll let you guess who they were; oh, all right, it was John Knox White and David Burton – greeted this suggestion enthusiastically. "Absolutely," Mr. Burton said. "The whole idea of the multi-family overlay is to provide opportunities for more dense housing and opportunities for more affordable housing, and single-family housing is anathema to all that." At the Board's meeting tomorrow, Mr. Thomas will seek a formal recommendation from the Board to Council.

Although the staff report doesn't identify any legal issue, this proposal is more problematic than the steps taken by Council in 2009 and 2012.

For both the density bonus ordinance and the multi-family overlay, staff argued that it was simply asking Council to follow requirements imposed by state law. In each case, that argument carried a patina of plausibility: the density bonus statute *did* require municipalities to enact implementing ordinances with waiver provisions, and the housing element statute *did* require municipalities to re-zone sites if necessary to meet its RHNA quotas. And to the extent that state law imposed these requirements, it trumped – the formal word is "pre-empted" – the prohibitions established by Measure A.

But this time around, staff isn't contending – at least not yet – that state law requires that single-family housing be prohibited on sites on which multi-family housing is allowed, and we're not aware of any state statute to that effect. So it can't be argued that the proposed ban is necessary to comply with a requirement imposed by state law. And if not, the basis for the pre-emption doctrine disappears.

Yet if the pre-emption argument isn't available, we'd like to know how Council can pass an ordinance prohibiting what the City Charter not only permits but commands. Maybe City Attorney Janet Kern can tell members of the Planning Board and Council (in closed session, of course) how that works.

Legal issues to one side, we're not sure we understand the goal staff is trying to achieve by proposing a ban on single-family homes on sites covered by the multi-family overlay. The staff report itself offers scant insight. The only reasons it offers for the recommendation are that "multi-family housing can be more affordable than single-family housing" and "multi-family housing has been shown to generate fewer automobile trips per unit." Those reasons don't stand up under scrutiny.

Start with the argument about affordability. The key words used by staff are “more affordable.” We suppose that it’s generally true that apartments and condos can be *less expensive* than single-family homes, and, to that extent, they can be said to be “more affordable.” But “affordable” by whom? For the developments likely to occur on the sites on which single-family housing will be banned, the group of potential buyers isn’t likely to include the vast majority of Alamedans.

We’ll use Alameda Landing as an example of the current market for new housing. The developer, Tri-Pointe Homes, is advertising [single-family homes starting in the “low \\$1 Millions”](#) and [condos starting in the “mid \\$700,000s.”](#) So at Alameda Landing a condo can be labelled “more affordable” than a single-family home – to buyers with the ability to pay those kind of prices. But that universe doesn’t include many low- or moderate-income households – i.e., those earning 80%-to-120% of the median household income (\$74,606 in Alameda). Those folks simply aren’t going to be able to live at Alameda Landing – in whatever type of housing.

Maybe the selling prices at the other developments on staff’s list will turn out to be lower than Alameda Landing’s. But even so, don’t count on a ban on single-family homes to solve Alameda’s housing “crisis” – or even to make much of a difference.

There’s another side to this coin as well. If a housing unit is less expensive to buy, it probably will be less profitable to sell. Of course, all good progressives agree that corporate profits, if they are allowed at all, should be kept as low as possible. But what if a developer needs the profits she earns from the sale of single-family homes to make the development as a whole economically feasible? If single-family homes are banned, and she cannot generate a sufficient rate of return on the sale of multi-family units, she might decide not to undertake the project at all. In that case, there would be no increase in the supply of “affordable” housing whatsoever.

We wonder what Lennar Homes, the developer of the Marina Shores (aka Marina Cove II) project, would say on this topic. That project consists of 52 single-family homes, 10 of them along the waterfront, and 37 condos. We don’t know whether Lennar included so many single-family homes in order to make the development “pencil out” (to use the phrase *du jour*). But we do know that, if the proposed ban had been in effect, Council would not have been able to approve the project, since the site is one of those covered by the multi-family overlay. How many other developers might decide to take a pass if the ban took effect in the future?

The other reason advanced by staff for the proposed ban is built upon the familiar dichotomy between the relative impact on traffic of multi-family as opposed to single-family housing. Here, the key words used by staff are “per unit.” It may indeed be true that multi-family units generate fewer trips per unit than single-family homes. But this does not mean that a multi-family project necessarily will produce less traffic than a single-family development *on the same size parcel of land*.

Do the math: Suppose you have a 10-acre parcel on which you can build either 390 multi-family units (based on the 30 units per acre permitted under the multi-family overlay, plus a 30% density bonus) or 210 single-family homes (based on the Measure A maximum of 21 units per acre). Now take the

report published by California State University San Bernadino stating that apartments generate 6.72 trips per day, condos 5.86 trips per day, and single-family homes 9.57 trips per day. Based on these figures – which are consistent with staff’s per-unit argument – both multi-family projects will produce more traffic than the single-family project: 2,621 trips per day for 360 apartments or 2,285 trips for 360 condos compared to 2,010 trips for the 210 single-family homes.

Even if the actual trips generated by the developments on staff’s list don’t conform exactly to the Cal State-San Bernadino report, don’t count on a ban on single-family homes to reduce overall traffic impacts by any significant extent – if at all.

So what else could staff have up its sleeve? We can’t resist venturing into the realm of speculation.

Mr. Burton picked an interesting word to refer to single-family homes: anathema. He might not have been using the term in the strict ecclesiastical sense – i.e., a “thing accursed” – but, to the ideologues on the Planning Board, the very idea of single-family homes may indeed be worthy of condemnation. And if a practice is so contemptible, why not ban it altogether? We certainly hope that Mr. Thomas isn’t proposing the ban on single-family homes simply to elicit encomiums from the enlightened. Tell us it ain’t so, Andrew!

There is another possibility. Just a few months ago, in a move widely thought to be intended to placate Vice Mayor Frank Matarrese, planning staff proposed limiting the number of housing units permitted on the North Housing site to a maximum of 435 rather than its “realistic capacity” (806 units, according to the 2008-23 Housing Element). Under staff’s plan, the site would retain its designation under the multi-family overlay, but single-family homes would be permitted.

When this proposal surfaced, Bill Smith of Renewed Hope stood up at the Planning Board to object. He argued – logically enough – that if single-family homes were more profitable than apartments or condos, and both were subject to the same cap, a developer would choose to build single-family rather multi-family housing on the North Housing site. Although Mr. Smith didn’t use the word “anathema,” he made it clear that this prospect was unacceptable to Renewed Hope.

The Planning Board and Council passed the zoning amendment over Mr. Smith’s objection, but Renewed Hope hasn’t given up. It delivered a letter to the Planning Board – and, we understand, a similar letter to the Mayor and Council – stating that the ordinance capping the number of units on the North Housing site “is inconsistent with the Housing Element of the City’s General Plan and, consequently, void and unenforceable.”

But what if the Planning Board and Council now adopted the ban proposed by staff on single-family homes on sites covered by the multi-family overlay? Wouldn’t that take care of Mr. Smith’s

concern? It wouldn't be the first time staff and the politicians have taken an action for the purpose of accommodating demands by Renewed Hope.

As for us, we don't hold out much hope, renewed or otherwise, that the issues we've raised will influence any vote taken by the Planning Board on the proposed ban. But we would be interested to hear what the two new Board members – David Mitchell and Sandy Sullivan – have to say. Maybe it will take more than proclamations by the enlightened about what “everyone knows” to make them into true believers.

Finally, we're left to ask, as we have before: Whither Measure A? As recently as 2012, candidates for Council were being advised that they risked alienating a significant bloc of voters if they failed to pledge their fealty to the Charter provision. Nowadays, it seems like no one – or at least no one the politicians deem worth worrying about – cares. And, unless the Planning Board or Council decides that repealing a Charter provision *sub rosa* isn't really such a great idea after all, Measure A is one step closer to the grave.

Sources:

Measure A: [Article XXVI of Alameda City Charter](#)

Density bonus ordinance: [30 17 DENSITY BONUS ORDINANCE](#)

2007-2014 Housing Element: [2007-14 Housing Element Final](#)

Cal State-San Bernadino housing report: [CSUSB, Travel Characteristics of Residents of M-F Housing](#)

Staff reports re prohibiting single-family homes: [2015-09-14 staff report to PB re annual H.E. report](#); [2015-09-28 staff report to P.B. re zoning amendments](#)

Share this:

William J. Smith
Alameda, CA 94501
[\(510\)522-0390](tel:(510)522-0390)