

Community Venture Partners, Inc.

A Catalyst for Sustainable Solutions

April 11, 2015

Mill Valley City Council
City of Mill Valley
26 Corte Madera Avenue
Mill Valley, California 94941

Re: Comment on Planning Staff's "Staff Report" and "Housing Element Facts" on the Mill Valley Draft Housing Element 2015-2023

Dear City Council Members:

On March 18, 2015 CVP submitted a detailed comment letter on the Draft Housing Element (the "HE") for 2015-2023. In response to that letter and those of many other comments and letters by members of the community the City issued a series of notices and documents, including the Staff Report and its "Housing Element Facts." This second comment letter is in response to those documents and the statements.

Executive Summary

In our first letter we asked for the consideration of four incremental changes to the Housing Element as it is presently written: changes we still urge you to enact.

1. Insert language into the Housing Element and possibly the Land Use Element of the General Plan to better ensure that development proposals on Miller Avenue, particularly in the Gateway and Main Street rooms, be for mixed-use development because this regulatory deficiency has hampered the Planning Commission's discretion in the past;
2. Reduce the Housing Element Site list inventory "buffer" by adding another layer of "filters" be used to determine eligibility (similar to the ones already employed regarding age, FAR, etc.) in order to eliminate those sites that either (1) conflict with the clear goals and intentions of our General Plan (e.g., Sloats, Goodmans, Car Wash, etc.), or (2) conflict with clearly expressed and demonstrated desires of the community (e.g., Richardson property, etc.). Doing this leaves ample "buffer" to satisfy our RHNA obligation and planning "flexibility" by a wide margin.
3. Remove the Mill Valley Affordable Housing Committee's Supplemental Housing Site List because its inclusion is contrary to the overall GPAC public process rules of fairness;
4. Remove the proposal to create a Housing Advisory Committee for the reasons noted in our April 18th letter.

Those requests were substantiated by well-researched arguments and citations of State Law. Since submitting that letter we have asked City Staff to provide their own researched arguments and citations of State Law to substantiate their claims, but nothing has been offered. Instead, in response Planning Staff appears to have doubled down on the immutability and absoluteness of their positions, even going so far as to take positions that have veered into being nonsensical (State Laws “don’t apply” [“HE Facts”] to Mill Valley?).

I’ll comment on those in the sections below. However, in being so intent on proving “Who is right,” they have entirely missed the whole point of my comments, which is that we all need to consider doing “What is right.”

Our fundamental position is that the GPAC process and the General Plan got it right but the Housing Element has it wrong. And the HE “tail” should not be allowed wag the General Plan “dog.” We should do what is right for our community and what is encoded in our General Plan. So I ask you to once again carefully consider our requests and the comments.

And finally, please consider this. In its response to the community and in its “Housing Element Facts,” Planning Staff makes an enormous effort to say that the HE is a meaningless, toothless, no consequence exercise that doesn't change anything. They say we retain “absolute” local control of everything that happens in our City. So then why is it that when we ask them to reduce the “buffer” to get rid of the sites that conflict with the General Plan or long held community desires, they say, “Oh, no we can't do that because HCD wouldn't like it?”

Does that sound like “absolute” local control to you?

THE HOUSING ELEMENT STAFF REPORT AND “HE FACTS”

The Planning Staff has clearly spent considerable effort creating its Staff Report and HE Facts to dispute our concerns about the HE. Unfortunately, instead of responding to the significant issues we’ve raised, they’ve chosen to produce a one-sided marketing piece that is devoid of substantive details but filled with “straw man” arguments.

The “buffer” provides the City with “tremendous discretion” in planning.

Under “Request for Capacity Analysis Reduction” Line 361, the Staff Report states that *“the...”buffer” will provide the City with tremendous discretion and flexibility in review and consideration of development requests. For instance, should a property owner or the City desire to have a site develop at a density less than the capacity available, the City can make a finding, supported by the Capacity Analysis that there are sufficient remaining sites in the City to accommodate that City’s housing needs.”*

This is masterful misdirection and it misses the point entirely. While it is true that having some buffer sites helps us not fall below our RHNA requirement (129 units over 8 years), if some sites are found to be unsuitable at a future date (development proposals or not, i.e. sea level rise), this in no way justifies having a 200% buffer. There is not a single instance in Marin cities that can

be cited to substantiate that this level of “insurance” is required. This is a ridiculous “straw man” argument. It sets up a false premise then wins a meaningless argument against it.

Worse, however, is that our problem is *not* that developers come wanting to build “*less than*” the Capacity Analysis, but that they always come wanting to build *more* (simply for profit driven reasons) and in that situation, once on the HE List, we have fewer abilities to make “findings” that can stop them. And having a property on the HE Site List is the first step toward “advertising” to have developers come and develop it.

The problem we far more likely face is that the City has no discretion to deny a particular project on a particular site because we have an overly large buffer. The “findings” a city has to make to deny a particular project approval must be about the unmitigated specific impacts of *that project*. One cannot argue that a project is denied approval because the city wants to see it elsewhere or because we have more “capacity” in our buffer. If that were so, legally, a city could deny a homeowner from adding a family room because the neighborhood has excess zoning capacity for family rooms and the city wanted it to be on other houses instead. Or if I came to the city with a commercial project on Miller Avenue, on a particular lot, the city could deny my project because they can say they have ample zoning capacity for commercial development on Miller, elsewhere? Obviously, we can’t do that.

The Capacity Analysis does not change the basic tenets of property rights law. The fact is being on the HE Site List indicates development potential to the development community and that targets them for proposals. This is beyond argument. Just ask any developer or review our City’s development proposal history.

SB743 and SB628 “don’t apply” to Mill Valley.

For the city to say that SB743 and SB628 or other laws don't apply to Mill Valley is absurd.

SB743

SB743 is legislation that comes on the heels of SB375 and does a number of things. The clear political intention of this legislation is to weaken the California Environmental Quality Act (CEQA) arguments against high density development. It creates a new planning designation called a Transportation Priority Area (TPA) which aligns it with and reinforces the designation created by SB375 called a Transit Priority Project (TPP). Both refer to changes in project evaluation and approval processing that local agencies must adhere to for qualified projects proposed within one half mile of a “major transit hub” (SB743) or a “quality transportation corridor” (SB375).

These State designations (which cities have no control over) are tied to the frequency of bus service (approximately every 15 minutes during peak commute hours). This means a change in bus service could potentially make new locations into TPAs, overnight, without any act of local government. **As it stands, the Goodman’s Lumber site and the Whole Foods Shopping Center site on East Blithedale Avenue are within a half mile of the Highway 101 interchange (a major transit hub) and are arguably TPA sites.** Moreover, theoretically, if in

the future downtown Mill Valley had sufficient bus service to meet the legal threshold, one could argue that it qualified as a TPA. That is just how the law is written (It's a poorly drafted law: most attorneys agree on this). That is the risk. And then designated housing site proposals have one more advantage to gain approval.

Also, if a site is designated as a TPA then it is subject to new (soon to be weakened) rules to evaluate and argue traffic impacts under CEQA. And it is eligible for other CEQA streamlining conditions under SB375 (and other legislation that is in the pipeline in Sacramento). Among other things, under SB743, the new way traffic congestion may be defined eliminates "level of service" arguments against projects (how badly an intersection functions). Although, technically, SB743 itself does not remove Level of Service (LOS) as an argument, it gave local, unelected agencies like the Transportation Authority of Marin¹ (TAM) the authority to write new regulations that will remove LOS as a method / arguments in the future, sometime this year. The new methods being considered are significantly more lenient.

So while it's technically correct for City Staff to argue that the bill itself doesn't remove traffic congestion criteria, they conveniently neglect to mention that the bill set up a process to reduce them in the future. That is the whole purpose of the bill: CEQA streamlining to remove impediments to development of high density housing.

SB628

The Staff report dismisses SB628 because we currently don't have any bonds on the books that apply. But this is another clever side step of facts. SB628 was only signed into law in *September of 2014*. NO CITIES IN MARIN have any of these kinds of bonds yet! But that doesn't mean the "law doesn't apply" to us.

SB628 was passed to remedy the void left by the California Supreme Court decision in 2013 that disbanded Redevelopment Agencies. But SB628 also made fundamental changes to a long standing financing instrument called Infrastructure Financing Districts (IFD). An IFD is when a city asks voters to approve a bond measure to pay for infrastructure improvements, typically road improvements and such, to enhance or enable development. Importantly, SB628 added "affordable housing" as a new item that a city can use an IFD to pay for (though it failed to define the term "affordable housing" – another poorly written law) and it lowered the voter approval threshold from a 2/3rds majority to a 55 percent voter approval majority.

These are significant changes and they were intentionally designed to appease housing development interests in Sacramento.

Other State Laws that apply.

The Staff Report and Fact Sheet completely avoided addressing the most important legal issue we raised: that of the "horizontal inconsistency" in our General Plan created by the proposed Housing Element. Is Staff really prepared to argue that Mill Valley is not bound by State Law

¹ The staff and executives that run TAM (e.g., Diane Steinhauser) cannot even be fired by the TAM Board but are hired and fired by a separate, unelected agency in Southern California, per their contract.

requirements to have our HE and the rest of our General Plan be "horizontally consistent?"

The designation of important local serving business locations in our core commercial zones, as potential housing sites, creates significant horizontal "inconsistency" in our General Plan. This is unarguable. Such inconsistencies are not only disallowed but by definition create legal ambiguities that are open to legal challenge. The Staff Report avoids addressing this key error in the HE, but the City Council cannot. This must be resolved because it is potentially actionable against the City. This issue is fundamental to our requests to remove important local serving business sites from the HE Site List.

However, all legalese aside, and circling back to doing what's right versus who is right, on a more common sense basis we are again arguing that the General Plan got it right and the HE should align with its terms and goals and support the viability of our local serving businesses.

The reason we have so much traffic is that we have too many single family homes?

Another nonsensical argument that is fashionable at the moment is that the reason we have so much traffic is because we have so many single family homes. It's just not true. First of all, there is not a single credible study to substantiate the claim that multifamily housing decreases auto congestion *unless* that study is done in a highly dense metropolitan area such as New York or San Francisco. Secondly, the number of single family homes in Mill Valley has not increased appreciably in decades.

In addition let's bring some reliable analysis to bear: Math. I live on a typical 50 by 125 lot in Sycamore Park. If zoning were changed to allow more "infill density," I could easily design and build a duplex without any changes to current code (height, FAR, setbacks, lot coverage, etc.). As it stands, by our Code, I have to provide two parking spaces for cars for my single family home. If it becomes a duplex, I have to provide space for 4 cars. Same lot, double the density, double the cars. If my lot were 70 by 100, I could build a triplex and go from 2 cars to 6 cars.

Replacing single family homes with multifamily development adds cars. Even if you build five stories in a suburban environment like Mill Valley, everyone needs a car. It's just math. But even without doing that, traffic is still increasing dramatically. Why?

There are four logical reasons that are adding to our traffic.

Size of families. Mill Valley has been seeing the turnover of homes from elderly residents living alone (who rarely drive) to young families with kids. Just about every house on my block that has sold in the past 20 years fits this profile. Families with kids drive more.

Echo boom is now driving. The Baby Boom generation has spawned the Echo Boom. These young adults are now between 16 and 24 and they are all driving and many have their own cars and trucks. This demographic echo boom is a big part of our new traffic. Think about it: how many neighbors just on your own block now have teenagers and young adults driving?

Wealth of residents. It is now fashionable to blame everything on the rich (and no doubt some is well deserved) but all the “evidence” is anecdotal. Yes, people have more gardeners, maids, contractors and services than ever, but that’s become true of all working families in the Bay Area. This is not unique to Mill Valley. It’s a working middle class phenomenon. We also are eating out more and shopping online and using home delivery more.

What the Housing Element Missed. A more obvious reason why we are seeing such growth in traffic in Mill Valley is because we are seeing the most significant rate of conversion of older smaller homes to larger “family” homes in the history of the City (and County and Bay Area). This explains a lot about our gridlock traffic. These homes have more inhabitants, more cars and need more services. And like it or not, this is our biggest growth driver. As it stands right now, Mill Valley probably has at least 1,000 existing homes that are prime targets for tear down and replacement or substantial renovation. The Capacity Analysis omits this growth driver, entirely.

Bottom line: We have to address our roads and infrastructure needs and we have to ensure that growth stays within reasonable limits or we are literally courting disaster in the event of the inevitable earthquake, canyon fire or other major flood.

Straw Man arguments.

The Staff’s “Housing Element Facts” asks “*Are sites identified in the Housing Element Approved for Development?*” Then triumphantly states “**NO!**” The problem is no one ever said that they were. What people are legitimately asking is why are we advertising sites on a list that even the State Agencies don’t require us to show? Staff has never addressed that very simple question, except for the superfluous “tremendous discretion” argument made above.

The Staff’s “Housing Element Facts” states “*The Capacity Analysis does not pre-approve or propose that properties develop, nor does it provide any advantage or development entitlement to a property included on the list.*” Again, no one ever said it did pre-approve anything. But to say it doesn’t “propose” is again, a bit too clever. Of course, the City is not creating housing proposals, but it is undeniably a designation of “capacity,” which a developer can reasonably rely on. And as our original letter argued, there are legal issues, which the Staff Report avoids addressing, entirely.

If I say it enough, it will be true.

Staff’s response to community comments is what is called “making an argument” when legally *and morally* you don’t “have an argument.” They have yet to produce a single fact or citation or case or common sense argument to refute anything in our comment letter. So they fall back on absolute statements, as if saying it with more force makes it so.

The Staff’s “Housing Element Facts” asks and concludes, “*What will happen to existing businesses & residences on sites identified in the Housing Element? Absolutely nothing.*” Nothing? Really? So the Von der Werth project, 505 Miller Avenue, the Richardson project, the La Goma project, all of which were spurred on by being on past Housing Element capacity lists,

are their definition of “nothing?” This statement insults decades of community efforts to “get it right” regarding development proposals that have been submitted, and is simply false.

Under “Local Control,” The Staff’s “Housing Element Facts” states, “*Still, and most importantly, the discretion to review and approve (or deny) development projects rests solely with the City of Mill Valley.* Again, really? This completely avoids addressing or responding to our legitimate concerns and questions. Is this the way our City wants to treat public comment and criticism?

Other cities have used the same Capacity Analysis method we used.

To argue that other cities have done similar things is meaningless. This is the default defense of every corporation and government agency in history that has ever done the wrong thing.

CONCLUSION

Staff has put a lot of time and effort into crafting defensive bullet points while refusing to address the very legitimate concerns we face, together. It misses the forest for the trees. **We need to do what’s right for Mill Valley.** The General Plan got it right and the Housing Element should align with its goals to preserve our small town character, reflect community values and desires, and support local serving businesses. Traffic congestion has reached levels that can no longer be ignored. It potentially impacts the health, safety, and welfare of our residents in the event of a major emergency (flood, fire, earthquake evacuation).

Our four requests for changes to the HE are both fair and reasonable.

Finally, contrary to all claims by City Staff and Officials over the last 10 years of community opposition to over-development in Mill Valley, no “silent majority” has ever shown up in support of such development. It’s past time to accept that your community is not in favor of anything that invites over-development or threatens our small town character, environment and quality of life.

Thank you for your time and consideration.

Best regards,



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