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July 16, 2015

Via E-Mail Only

Marin County Board of Supervisors
County of Marin
3501 Civic Center Drive, Room #329
San Rafael, CA 94903

Re: Removal of the Affordable Housing Combining District from the Seminary Property

Dear Board of Supervisors:

Our office continues to represent the Seminary Neighborhood Association in connection with land use issues on and around the Seminary Property. This letter is regarding the upcoming hearing regarding proposed changes to the Affordable Housing (AH) Combining District.

The purpose of this letter is to request that the Board **remove the Seminary Property from the Affordable Housing Combining District entirely**. This request is made for the following reasons:

1. The Seminary Property is no longer an identified site in the County's Housing Element.
2. Inclusion of the Seminary Property in the AH District is not needed for Housing Element certification by the State.
3. Inclusion of the Seminary Property in the AH District is not needed to permit "clustered" development.

The Seminary Property is no longer an identified site

The most compelling reason that the Seminary Property should not remain in the AH District is that the Property is no longer an identified site in the County's Housing Element ("HE"). It is important to remember that the entire "default density" concept is



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merely an available shortcut to ensure that HCD counts a particular number of units on an **identified site** in the HE. Because the Seminary Property has been removed from the HE as an identified site, there is absolutely no requirement for the Property to remain at any particular density, default or otherwise, because the site counts for zero RHNA units.

Furthermore, an honest reading of the administrative record for the creation of the AH District makes it clear that the zone was intended only for identified sites in the HE, not as a standalone program. At the final hearing on the HE, the Seminary Property was removed from the sites list, an action not contemplated by the staff report. It would appear that it was simply an oversight that the Seminary was not also then slated for removal from the AH District.

Ordinance No. 3602, adopted by the Board of Supervisors on September 24, 2013, created the AH District. Subsection B of Section 22.14.090 of the Zoning Code was added to state, "The AH zone shall apply to **those eligible sites named in the Housing Element** of the Countywide Plan." When the Board concurrently adopted Ordinance No. 2013-3603 placing the Seminary, St. Vincents/Silviera, and Drake Avenue sites in the AH District, those sites had just also been listed in the Housing Element Sites Inventory. This was clearly what was being referenced by the phrase "those eligible sites named in the Housing Element." Those present at the hearing even more clearly understood this correlation from the context of the discussions. This correlation no longer exists, as the Seminary has been removed from the Sites List.

Keeping the Seminary Property in the AH District is not needed for Housing Element Certification

In the last cycle, the County elected to identify two-times the required number of RHNA units in the HE. Of this 100% buffer, the Seminary Property accounts for none of the counted units. Therefore, removal of the Property from the AH District will not implicate certification. The March 20, 2015, letter from HCD certifying the HE references the "No Net Loss Law," which requires the County to maintain adequate sites at appropriate densities throughout the cycle. Importantly, this law applies only to identified sites, thereby leaving the County free to change zoning on non-identified sites, like the Seminary Property. There is no evidence to support an argument that HCD treats the AH District as a critical standalone program in the HE, or that removal of the Seminary Property from the AH District will somehow affect certification.



Inclusion of the Seminary Property in the AH District is not needed to permit “clustered” development

The Seminary Property is zoned “Residential, Multiple Planned,” a designation that requires a Master Plan for multifamily development. (22.10.020.) One of the primary purposes of Master Plans is to “**promote clustering of structures** to preserve open land areas and avoid environmentally sensitive areas.” (22.44.010(C).) **The AH District is not needed to permit clustering at the Seminary Property, because clustering is already allowed.**

The Planning Commission hearings on this matter identified an important zoning distinction for properties that are zoned RMP (such as the Seminary). This distinction centered on the difference between “gross” and “net” density. For example, the Seminary property is zoned RMP-2.47. The “2.47” designation refers to 2.47 units per acre, however, this number is only used to calculate the total number of units allowed on the site. It does not mean only 2.47 units on any given acre. In light of this distinction, what is the purpose of the AH on a non-designated site? As noted, the RMP zoning already allows clustering, and a 20 or 30 unit per acre development could be approved without the AH. This question is even more relevant in light of the fact that the AH Overlay does not create a per acre net density **as a matter of right**. In other words, the AH overlay is unnecessary for the Seminary Property, particularly as opposed to the other AH properties that remain as identified sites in the HE and therefore need the default densities to be easily counted.

Planning Commission’s Recommendation

The two recent PC hearings on this subject were somewhat difficult to watch. Multiple members of the Commission, on multiple occasions, stated that they did not understand how the AH District really worked. Furthermore, the PC serves at the will of the Board, and the Board was very clear in its direction regarding lowering the AH District density, which the PC did not ultimately recommend. We ask that the Board stand by its direction.

Conclusion

We have written to the Board multiple times in the past explaining why the Seminary Property is not an appropriate site for high density affordable housing. At this point, there is no reason, state-mandated or otherwise, to keep the Seminary Property in the AH District, and we would ask that you remove the overlay entirely.



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Thank you for your attention to this important matter.

Very Truly Yours,

A handwritten signature in blue ink that reads "Riley F. Hurd III". The signature is written in a cursive style.

Riley F. Hurd III

CC: Seminary Neighborhood Association
Scott Hochstrasser
Supervisor Kathrin Sears
Brian Crawford
Leelee Thomas