

Good Evening,

August 28, 2008

I am Catherine Barkett, Westlake resident. Thank you for the opportunity to address the Sacramento Planning Commission tonight. I have a concern about due process.

The Public Notice for this item appears to be incorrect. It is written in such a way that **you can't make a recommendation on this item**. It ties your hands so that you cannot do your job. **The Government Code requires you to make a recommendation on this project**. Code sections supporting my position and e-mail correspondence with your staff are included on the subsequent pages, but basically **the law says that your role as a Commission is to make recommendations**. This public notice only allows you to "review and comment" – and doing anything else would be a violation of the Brown Act, which requires you to issue a public notice when you are going to make a recommendation.

If you look at today's agenda, you are making recommendations on every item except this one. And I looked back in your previous agendas for about 3 months. You are always making recommendations on projects like this. The only time you are reviewing and commenting is when you are receiving a presentation like a discussion of CEQA, discussing your own policies and procedures, or when the applicant asks for review and comment, intending to bring a proposal to you for a recommendation at a later time.

Your City Attorney told us, and may tell you, that the Government Code does not apply to Charter Cities, but then:

- Why were you asked for a recommendation on Item 3, which also included a rezone, and not this one?
- Why were you asked for a recommendation on the rezone of the Natomas Landing property on May 8, and not now?
- Does your May 8 recommendation of denial on this project still stand, since you are not allowed to change it?
- Why the inconsistency in terms of when you are, and when you are not, asked for a recommendation?
- What does the City Code require you to do?
- Even if your attorney is right, and you are not required to make a recommendation, shouldn't you make one anyway? Isn't that what you do in every other case?

In my review of your agendas this appears to be the only time that a substantive issue like this has been brought to you for "review and comment" only. It appears to me that either:

- 1) A decision has already been made, either by staff, Commission members or City Council members, to approve the project, and staff has been directed to prevent the Commission from making a recommendation which might be inconsistent with approval. If this is in fact the case, the decision, since it was not made in a public meeting, is in violation of the Brown Act;
- 2) Your recommendation is **denial** (taken at the May 8 Planning Commission meeting) and you are not allowed to change it; or,
- 3) An error was made. The Public Notice for this meeting is wrong, in which case the meeting will need to be held again, with a proper public notice which notifies the public that action will be taken.

I urge you not to ever let anyone or anything limit your role and responsibility as a Commissioner. We the public depend on you to thoroughly review these proposals and make recommendations – that is the purpose of the Commission. **Please direct your staff – if for no reason other than to avoid the appearance of impropriety - to issue a public notice that allows you to make a recommendation on this project – the public and the City Council need your guidance.** Thank you.

1/6/6

According to the Government Code:

Government Code Section 65857 provides that:

“The legislative body may approve, modify or disapprove the recommendation of the planning commission; provided that any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, **shall first be referred to the planning commission for report and recommendation**, but the planning commission shall not be required to hold a public hearing thereon. Failure of the planning commission to report within forty (40) days after the reference, or such longer period as may be designated by the legislative body, shall be deemed to be approval of the proposed modification.”

Government Code Section 65356 provides that:

“The legislative body shall adopt or amend a general plan by resolution, which resolution shall be adopted by the affirmative vote of not less than a majority of the total membership of the legislative body. The legislative body may approve, modify, or disapprove the recommendation of the planning commission, if any. However, **any substantial modification proposed by the legislative body not previously considered by the commission during its hearings, shall first be referred to the planning commission for its recommendation**. The failure of the commission to report within 45 calendar days after the reference, or within the time set by the legislative body, shall be deemed a recommendation for approval.”

-----Original Message-----

From: Sheryl Patterson <SPatterson@cityofsacramento.org>
To: cathybarkett@aol.com
Cc: David Kwong <DKwong@cityofsacramento.org>; Gregory Bitter <GBitter@cityofsacramento.org>
Sent: Thu, 28 Aug 2008 2:00 pm
Subject: Re: Fwd: FW: Re: Natomas Landing - Need for PC Recommendation

Whatever questions you may ask of the Commission at the meeting, the Commission then may ask me to respond. The Zoning Code is part of the City Code. I am not going to further respond to your e-mails and provide code interpretations.

>>> <cathybarkett@aol.com> 8/28/2008 1:55 PM >>>

Dear Sheryl -

Thanks. The e-mail would be a printed attachment collection of codes on the issue. Another question - is there a City Code which then goes into effect if the Planning Code does not apply? If so, which one?

Catherine Barkett

-----Original Message-----

From: Sheryl Patterson <SPatterson@cityofsacramento.org>
To: cathybarkett@aol.com
Cc: David Kwong <DKwong@cityofsacramento.org>; Gregory Bitter <GBitter@cityofsacramento.org>
Sent: Thu, 28 Aug 2008 1:43 pm

Subject: Fwd: FW: Re: Natomas Landing - Need for PC Recommendation

I'd prefer to answer the question if the commission desires a response, but my e-mail is a public record. Ms. Leisy was satisfied with my response and so there may no longer be an issue regarding the review and comment process. Its my understanding that the neighbors are satisfied that the project change is being brought before the commission for comment. So I'd prefer not to raise an issue by circulating the e-mail regarding the required review process if that issue no longer exists.

>>> <cathybarkett@aol.com> 8/28/2008 1:35 PM >>> Dear Ms. Patterson,

I am requesting permission to share this e-mail with the Planning Commission tonight.
Thank you,
Catherine Barkett

-----Original Message-----

From: Sheryl Patterson [mailto:SPatterson@cityofsacramento.org]
Sent: Thursday, August 28, 2008 8:40 AM
To: Andee Leisy
Cc: David Kwong; Gregory Bitter
Subject: Fwd: Re: Natomas Landing - Need for PC Recommendation

In response to your inquiry:

Section 2.112.040 of the City Code states that Gov. Code section 65356 (referral of changes back to Planning Commission) is not applicable to the City. Gov. Code section 65803 states that the State Zoning Law does not apply to charter cities unless expressly made applicable. Gov. Code section 65857 is not made applicable to charter cities.

In regards to compliance with the City Code, staff will be submitting to the Council for its consideration the original project and the Planning Commission recommendation, as well as the applicant's proposed change in the project and the Planning Commission's comments regarding such change that will be made at their meeting this evening. As you may know, it is not unusual for a development project to undergo changes during the public review process and the staff's processing of the Natomas Landing project is consistent with the City's past practices.

Sheryl N. Patterson
Senior Deputy City Attorney
Sacramento City Attorney's Office
915 I Street, Ste 4010
Office (916) 808-5346
Fax (916) 808-7455
e-mail: spatterson@cityofsacramento.org

This e-mail contains material that is confidential and attorney-client privileged under work product materials and is intended for the sole use of the recipient. This means that this message should be maintained in a confidential manner and shared only with City staff or consultants who have a need to know this information and should not be sent to outside parties. Forwarding this message without express permission is strictly prohibited.

>>> Gregory Bitter 8/28/2008 8:22 AM >>>

>>> "Andee Leisy" <ALEisy@rtmmlaw.com> 08/27/2008 7:26 PM >>>

Greg - note subdivision (C) below....I do not read this City Code section as allowing the City to disregard the Planning and Zoning Law (e.g. Gov. Code Section 65857) because it is a Charter City. I still think the City needs to obtain a recommendation for the Planning Commission on the revised project. Please provide me with the authority Sabina referenced to you specifically. Thanks

17.208.020 Rezoning of property.

A. How Initiated. A rezoning may be initiated by the planning commission, the city council, or an application by the property owner.

B. Procedures-Planning Commission. The procedural requirements for a rezoning hearing before the planning commission and the contents of the hearing

4/6

notice shall be governed by the provisions of Chapter 17.200 of this title. Notice of the hearing shall be given by publication and by mail pursuant to subsections (C)(2)(a) and (c) of Section 17.200.010, except that the notice by mail required by subsection (C)(2)(c)(i) of Section 17.200.010 shall be given to the owners of real property located within five hundred (500) feet of the subject real property. After completion of notice and public hearing, the planning commission may recommend approval, denial, or modification of a rezoning and forward to the city council for action.

C. Procedures-City Council. Upon receipt of a recommendation on a rezoning from the planning commission, the city council shall set the matter for hearing. The procedural requirements for the hearing before the city council and the contents of the hearing notice shall be governed by the provisions of Chapter 17.200 of this title. Notice of the hearing shall be given by publication and by mail pursuant to subsections (C)(2)(a) and (c) of Section 17.200.010, except that the notice by mail required by subsection (C)(2)(c)(i) of Section 17.200.010 shall be given to the owners of real property located within five hundred (500) feet of the subject real property. After completion of notice and public hearing, the city council may approve or modify a rezoning by adoption of an ordinance or disapprove the rezoning. The provisions of this paragraph relating to the receipt of a recommendation on a rezoning from the planning commission, notice, and hearing shall not apply to rezonings adopted by emergency ordinance by the city council pursuant to Section 32(g)(2) of the City Charter.

D. Development Plan Material Factor in Approval of Rezoning. Whenever a proposed development plan or a representation concerning development made by the applicant, or a stipulation concerning site plan review, is a material factor in the decision of the city council to approve the rezoning of property, that rezoning shall be subject to and the ordinance of rezoning shall so provide for, the following:

1. The ordinance shall contain a statement of reference to the proposed development plan or a statement of the representation made by the applicant which is the material factor to the action of rezoning.

2. If an application for a building permit or other construction permit is filed for a development which is not in substantial conformity with the proposed development plan or representation referred to in the ordinance or rezoning, the matter shall be referred to the city planning commission for review and such action as it may deem warranted, including action to initiate the rezoning of the subject property back to its original zoning classification or to some other classification it may deem appropriate, and no building permit shall be issued pending these proceedings.

E. Rezones with Plan Review (-R) Designation. In a rezoning proceeding where a proposed development plan is not provided by the applicant or in any other circumstance at the discretion of the planning commission or city council, a plan review (-R) designation may be attached to the approved zone to ensure that future development will relate to characteristics of the site and surrounding area and that no building permit or other construction permit shall be issued for any development of the property rezoned until there has first been a plan review approved by the planning commission or zoning administrator, as applicable, pursuant to Chapter 17.220 of this title.

F. Permits May Not Be Issued. No building permit, license or other permit shall be issued while a rezoning procedure or appeal therefrom is pending.

G. Fee. A property owner's application for a rezoning shall be subject to and accompanied by a filing and investigation fee as established in the fee and charge report.

H. Withdrawal of Application. The planning commission or city council may permit the withdrawal of a rezoning application, provided such request is made in writing; further, any hearing for which public notice is given shall be held.

I. Resubmittal of Application. If a rezoning is denied, another petition for the same rezoning shall not be accepted by the city within a one-year period unless specific approval for such filing is given by the planning commission or the city council. (Ord. 2007-049 § 11; Ord. 99-015 § 7-4-B)