

Mayor Jeff Wan
Vice Mayor Jim Diaz
Councilmember Tillman
Councilmember Cloven
Councilmember Trupiano
Clayton City Hall
6000 Heritage Trail
Clayton, CA 94517

September 7th, 2023

RE: Special Meeting to Discuss Threat of Litigation related to the Olivia Project

Dear Mayor Wan, Vice Mayor Diaz and Esteemed Councilmembers,

My name is Amy Hines-Shaikh and my husband and I have owned our home in the Regency Meadows neighborhood of Clayton since 2012. Recently, I was a planning commissioner for the City of Clayton, and I remember our charge to “Affirmatively Further Fair Housing.” I believe that it is my duty to inform you, as a Clayton resident who loves our community very much, that if you capitulate to Mr. Hood and Mr. Walcutt’s threat of litigation and attempt to halt the Olivia Project, it may expose the City to a law suit of another variety.

In the Pioneer coverage three years ago of a very similarly situated lawsuit brought by the same group of “Not In My Back Yard” activists against the Olivia Project, Tamara Steiner reports in her Article *Judge Says Clayton was Right to Approve High-Density Project:*

“Clayton residents sued the city and the developer hoping to stop the three-building, three-story Olivia project in downtown Clayton. In his decision rendered Oct. 30, Superior Court judge Edward Weil denied the petitioners and ruled 100 percent in the city’s favor.

... A lawsuit by residents opposed to an 81-unit downtown apartment complex hit the rocks last week when Contra Costa Superior Court judge Edward Weil ruled the city acted properly in approving the project...

... under California’s Density Bonus Law, Jordan was allowed to increase the number of units from 60 to 81 in exchange for designating seven units “affordable.” Jordan was further entitled to several concessions that opponents said would create hazardous traffic and parking issues...

... The City Council was faced with approving a project that none “liked” but was in full compliance with the law – amid vehement community opposition. Mayor Julie Pierce and council members Tuija Catalano and CW Wolfe could find no legal grounds to deny the application. They followed the advice of the city attorney and voted to approve the Olivia. Council members Jeff Wan and Jim Diaz voted no...

... Catalano, planning commissioner Peter Cloven and Holly Tillman ran their campaigns essentially as a “trio” bound to keep Clayton in compliance with state laws and protected from expensive lawsuits it was sure to lose. According to city attorney Mala Subramanian, other cities that have dug in their heels either settled or lost, costing thousands in legal fees...

... “Clayton is a very small city with a small budget,” Catalano said in a statement following the ruling. “We are going to be faced with even more state mandates, especially in housing. We have to be smart. We can’t spend money we don’t have.”

... The city dodged the bullet on legal fees for this lawsuit because Jordan indemnified the city against legal costs associated with defending what he calls the “NIMBY (not in my backyard) suit.”

Lawsuits are designed to enforce the laws on the books, and no laws have been broken here. The law has not changed, but the people in the City Council have changed. I cannot help but notice that Councilmembers Wan and Diaz voted against the Olivia Project initially, even though there was no possible legal angle to deny it. Now that the Councilmembers seem to have a majority of the vote, they seem to think that they can have a second bite at the apple, but the law does not work that way.

Historically under-represented and marginalized communities have been shut out of places like Clayton, and those places were able to get away with their racist zoning laws that discouraged inclusive practices like embedding affordable units into market rate developments. This type of discrimination is no longer legal, and there are enforcement mechanisms in place to make sure that inclusive developments can get built, regardless of NIMBY opposition.

The Housing Accountability Unit at the Housing and Community Development Department has a guidance first approach. You can reach out to them and ask them for guidance about how to navigate this situation. They can guide you about how to comply with your charge to affirmatively further fair housing.

Please do not capitulate to NIMBY claims that will only cost our city money in the end. It was reported by Ms. Steiner that Mr. Jordan has an indemnification clause with the City that helps defend the Olivia Project from the types of lawsuits that Mr. Hood and Mr. Walcutt threaten. Do not give in to this type of posturing, especially when doing so could bankrupt the city.

Thank you in advance for your consideration to this important matter,

Amy Hines-Shaikh

Regency Meadows

Clayton, CA 94517