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SENT VIA EMAIL & U.S. MAIL

Daniel Barrios
30 Muir Road
Martinez, CA 94553

Re: General Plan / Zone Change of 11.7 Acre Parcel Near Byron Airport

Dear Daniel:

Please feel free to circulate this letter to county staff and members of the Board of Supervisors. As you know, I represent Jay and Carol Wyant who very much appreciate the Board's recent postponement of the proposed general plan and zone change for their above-described 11.7 acre parcel, allowing them to acquire a better understanding of the consequences of these actions on the value and use of that property.

I have advised Jay and Carol that if the Board of Supervisors approves the proposed general plan / zone change, *and* the Byron Airport expansion project moves forward, they are likely to receive more money from the sale of their property than they would with the current A-1 Zoning. However, if the proposed general plan / zone change is approved but the expansion project does not go forward, they will be strait-jacketed with "legal non-conforming use status" which means they will be allowed to continue their current land uses on their 11.7 acre parcel, but may be prohibited from initiating any other A-1 Zone uses, or from expanding, repairing or replacing their existing uses, at least without county approval, which may have a negative effect on the marketability and value of this property.

Accordingly, the Wyants have decided they do not support the proposed general plan or zone change at this time, *unless* they are allowed to continue using their property for any purpose allowed under the current A-1 Zoning, until such time as the expansion project is underway.

That leaves at least two options for the County. The simplest option is to leave the current zoning in place until later, when the expansion project is a sure thing. That option may prove to be a missed opportunity, however, in the long run. Let me explain by reviewing the stated interests of each party.

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Starting with the County, staff explains that this would be a better project overall, if this 11.7 acre parcel was included. Towards that end, while the County has no interest in condemning this parcel, it may wish to acquire this parcel over an extended period of time, by granting a private purchaser / developer who buys the land from my clients, certain land use benefits (rather than cash) in exchange for eventual County ownership of the entire parcel.

Turning to one such potential purchaser / developer, Mr. Mark Scott tells me that while he is interested in buying the 11.7 acre parcel at some point, it is too soon to do so at this stage, due to various uncertainties concerning the expansion project. Rather than leave the zoning the way it is, he would prefer that the proposed general plan / zone change be approved now and would welcome any means of assuring this does not impact my client's use of the 11.7 acre parcel until the expansion project is a certainty.

Finally, Jay and Carol Wyant, simply want to receive fair value for the sale of their 11.7 acre parcel when the time comes. They are not against selling the property; nor do they oppose the airport expansion project. However, they are concerned that their property value not be diminished by approval of the proposed general plan / zone change.

It is my practice whenever possible to see whether all of the various interests (not positions) can be accommodated rather than engage in the zero-sum game of arguing that one position is better than the other. With this in mind, I believe the County can accommodate all of the parties' interests here by adopting zoning which will allow inclusion of this 11.7 acre parcel in the expansion plan, but also allow the Wyants full use of the property under its current zoning, until such time as the project is a certainty and a purchaser / developer is in contract with the Wyants to purchase this parcel.

There are at least two ways this could be accomplished. The first is a development agreement which takes time to implement but which allows the full flexibility afforded cities and counties under their constitutionally based 'police powers' to approve a dual-zoning or alternate-zoning scheme, which would allow the Wyants full use of their 11.7 acre parcel prior to its sale, and assure the purchaser that once he or she acquires the property, it can be developed in accordance with the proposed general plan / zone change, without the need for further county approvals.¹

A second approach would be to include this dual-zoning or alternate-zoning in the development plan which will comprise the actual zoning once the County approves the proposed P-1 (Planned Unit District) Zoning. This could require less time and effort to implement than a development agreement.

In either case, the Wyants have expressed concern about locking up the property in a dual-zoning or alternate-zoning scheme indefinitely. This concern can be accommodated in a development agreement by including a set term which can be extended by agreement of the parties.

¹ As City Attorney for Milpitas in the 1990's I drafted a development agreement which afforded the developer a choice of four different development plans to constitute the planned development zoning, depending on the need for more residential or less commercial, for example.

Similarly, the P-1 Zoning already provides that if construction of the development plan which constitutes the planned development zoning is not commenced within twelve months after its approval, the zoning will automatically revert back to the previous zoning.

Finally, when we discussed this type of approach with staff initially, a number of concerns were raised including the idea that the County should not be expected to take responsibility for implementing a dual-zoning or alternate zoning scheme, as it basically benefits two private parties rather than the County. But upon serious reflection, it is clear that the County will benefit by having a better project if it is able to include this 11.7 acre parcel, which is why it has developed a possible mechanism to acquire ownership of the parcel over time, *supra*, and why it has brought this proposed general plan / zone change to you as an action item to begin with. Simply put, in a public / private partnership, as with any other arrangement, the interests of all of the parties need to be considered.

In summary, the Wyants have decided they do not support the proposed general plan or zone change at this time, *unless* they are allowed to continue using their property for any purpose allowed under the A-1 Zoning, until such time as the expansion project is under way. That leaves at least two options for the Board of Supervisors to consider. First, it can simply leave the current general plan and zoning designation in place for this 11.7 acre parcel and move forward with the airport expansion without including this parcel at this time. Second, it can also direct staff to explore with County Counsel the possibility of an out-of-the-envelope proposal such as those outlined above, which would allow a better public project without adversely affecting the Wyant's use of their property in the meantime. The down-side to this second approach is that it may require a little more time to implement, and will require a 'can-do' out-of-the-box attitude, rather than a litany of reasons why it is too late, or too complicated, or is not something we do here at the County.

Given the options, we suggest you at least pass these ideas through the County Counsel's Office to see whether all of the various interests can be accommodated. We very much appreciate this opportunity to address the Board of Supervisors.

Regards,

Dave Larsen