

November 8, 2024

By Email

Robert F. Epstein, City Attorney
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901
City.attorney@cityofsanrafael.org

**Re: Appeal of Completeness Determination
File No: PLAN23-081; PLAN24-048; TS23-001; and ED 23-62 /
Development Application for Dominican Valley Housing
Development including Density Bonus, Environmental and
Design Review, and Tentative Subdivision Map Application
(APN 015-163-03)**

Dear Mr. Epstein:

Thank you for your letter dated October 29, 2024, in which you state that Save Dominican Valley (SDV)'s October 14, 2024 appeal of the above-referenced action by the Planning Department is not appealable pursuant to the San Rafael Municipal Code (SRMC), including section 14.28.010, because no final determination or action has been made on any project. For the following reasons, we would respectfully disagree and ask that you reconsider your interpretation of the SRMC in this regard.

Chapter 14.28 of the SRMC governs appeals of actions taken by the City's planning director, zoning administrator, or planning commission. Section 14.28.10, "Purpose and authorization for appeals," provides:

In the event that an applicant or others affected wish to contest an action made by the planning director, zoning administrator or planning commission

relevant to the administration of this title, they may file an appeal as described below.

A. Administrative Decision. Appeals **based on decisions made by the planning director** (or the planning director's designated appointee) may be filed by **any aggrieved party** with the planning commission. (Boldface added.)

Nothing in this language would appear to limit appeals only to a “final determination or action . . . on a project,” as your letter suggests. Moreover, there is some precedent for interpreting this section as providing for appeals of planning application completeness determinations. In or shortly before 2003, a neighborhood organization called the Save Gold Hill Committee, appealed the Planning Department’s completeness determination for an application for a six-lot master plan subdivision on two parcels on the lower part of Gold Hill Grade. After planning staff initially declined to accept the appeal, the Planning Department and then-City Attorney Gary Raghianti found that the Save Gold Hill Committee did have the right to appeal the completeness determination under the City’s Municipal Code.

There is no reason to depart from this precedent with respect to the Project here. As you are aware, the planning director’s designee three times found the above-referenced development applications to be incomplete, on January 4, April 26, and August 23, 2024. Among the stated grounds for incompleteness in each instance was the omission of information necessary to process a Zoning Amendment and General Plan Amendment, which were required because the Project “does not meet the applicable maximum height and density limit set by the General Plan.” (*See, e.g.*, Aug. 23, 2024 incompleteness letter, p. 6.) However, on October 8, 2024, following an appeal of the August 23 incompleteness determination by the applicant, the planning director’s designee notified the applicant that the application was actually complete

By making this completeness determination notwithstanding the application’s continued omission of information necessary for a Rezoning and General Plan Amendment, the planning director has implicitly determined that the Project qualifies for processing under the so-called Builder’s Remedy. As SDV has explained

repeatedly in correspondence to the City,¹ the Project is decidedly not subject to the Builder's Remedy, because the City had adopted a Housing Element substantially compliant with the requirements of the State Housing Element Law before the applicant submitted a preliminary application for the Project under SB 330.

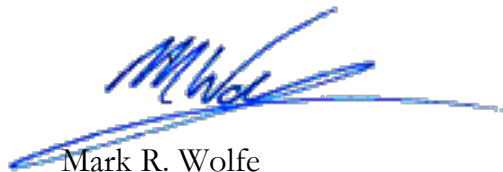
SDV is concerned that the planning director's apparent conclusion to the contrary may commit the planning department to an improperly cursory or truncated review of the Project application, bypassing the safeguards otherwise required by the General Plan and Zoning Code. This in turn would cause direct harm to SDV's members living near the Project site. SDV therefore is an "aggrieved party" entitled to appeal the planning director's designee's action finding that the Project application is now complete. For all the reasons, SDV asks that you reconsider the position stated in your October 29 letter the application is not appealable.

In the alternative, if the planning department in fact has not determined that the Project application qualifies for processing under the Builder's Remedy, please so confirm.

Thank you for your continued consideration.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C



Mark R. Wolfe

On behalf of Save Dominican Valley

cc: Members of the City Council
Margaret Kavanaugh-Lynch, Planning Manager

¹ See SDV letters dated January 24 and May 30, 2024, as well as SDV's October 14, 2024 letter of appeal.