From: Joe Baranowski
To: Rich Constantine; Yvonne Martinez Beltran; Rene Spring; John McKay; Gino Borgioli
Cc: Donald Larkin; Christina Turner; Michelle Bigelow
Subject: [EXTERNAL] Bridges
Date: Thursday, February 10, 2022 2:18:47 PM

Hello City Council members,

Our unique City has a precedent of honoring the important principle of community of interest. I have never experienced what it is like to have my vote marginalized by a government entity, but I have heard and listened to the voices in our community that have. I understand why the ongoing redistricting outcome is so important to everyone who knows from firsthand experience that a community of interest can be marginalized by splintering its voters among several districts, thereby diluting its impact and I strongly support honoring the precedent our City has established to stop that from happening. **If you want to begin building bridges to the Morgan Hill community, I hope that you will support and defend the principle and precedent that is embodied in Map 103.**

The non-contiguous regions of District-D in Map 103, have many bridges connecting them. Because the bridges are built over county land instead of over a body of water, they just happen to be called streets, roads, or avenues.

Our City Attorney has recognized that ‘islands’ of voters can be created by land as well as water barriers but nonetheless has essentially asked you to believe that the difference between a ‘real’ bridge and a street/road/avenue would have the State Attorney General or some ‘ambulance chasing' attorney jumping at the chance to sue Morgan Hill, and that with near certainty the hypothetical plaintiff would find a California court that would view our City's Good Faith attempt to follow all provisions of the law while recognizing our geographical uniqueness and desire to keep intact a precedent that protects the principle of community of interest an 'easy loser' over a never ruled on meaning of the ambiguous words "to the extent practicable".

Mr. Borgioli’s claim that all anyone must do to convince themselves that Mr. Larkin is right is to spend a few minutes Googling is false and should be summarily dismissed.

Mr. McKay defends Mr. Larkin’s advice and his designation of Map 103 as “illegal” because he reached out to other attorneys who told him that the City Attorney has an excellent reputation and other cities seek his advice.

I believe that the more relevant context for deciding how to weigh what you have been told is to ask whether “*the City Attorney has an obligation to render opinions that are fair, objective, and impartial”*, as Mr. Benavides has suggested in a letter to you. Unfortunately, based on another recent opinion [1] and the misleading way he attempted to justify that opinion, I believe Mr. Larkin has failed to uphold that obligation. You may feel that nothing that Mr. Larkin has done in some other matter is

relevant to the present issue and that even mentioning an 'unrelated' case represents an 'attack' on Mr. Larkin. I respectfully disagree. The actions and opinions Mr. Larkin rendered in supporting Trammel Crow's position are a matter of public record. They have already had significant consequences to the residents of Morgan Hill and, if left standing, will almost certainly continue to negatively impact the community. The City Attorney has had more than eight months to explain his actions and position but has declined to do so.

I do not believe that what you were told during the decision-making City Council meeting on June 23 was a fair and reasonable interpretation of the Morgan Hill Zoning Code and a developer's claim that you must ignore key provisions within it. I hope something similar does not happen again, and I fully support Mr. Benavides request that Mayor Constantine *ensure that the City Attorney provides proper instructions to the Council regarding its oversight role and responsibility to fairly consider all reasonable interpretations as to the plain meaning of the words in the statute offered by the public and to fairly consider all maps submitted, including Public Map 103.*

Regards,

Joe Baranowski

[1] In supporting Trammell Crow's assertion [2] that the Morgan Hill Design Review process must be turned upside down and be considered as ministerial for CEQA purposes, Mr. Larkin responded to a letter from Mr. Benavides by referencing the *McCorkle* case [3] which Trammel Crow's lawyer had cited. In that case the California appellate court wrote (emphasis added):

""*We do not believe that our Legislature in enacting CEQA intended to require an EIR* ***where the sole environmental impact is the aesthetic merit*** *of a building in a highly developed area. To rule otherwise would mean that an EIR would be required for every urban building project that is not exempt under CEQA if enough people could be marshaled to complain about how it will look"*

In his reply [4] which was supplemented to the June 23 meeting, Mr. Larkin wrote (emphasis added):

*"Courts have held that site and design review****, which involves aesthetic regulation*** *do not give an agency authority to consider the project's environmental consequences."* And then goes on to quote the part of the ruling, *"to rule otherwise ……".*

I believe that asking how an experienced attorney could consider *"where the sole environmental impact is the aesthetic merit"* to mean the same thing as *"which involves aesthetic regulation*" - which completely misrepresents what the McCorkle ruling really means, is a legitimate question that should be explained and that the 'instructions' given to the Planning Commission and the City Council regarding how the Design Permit process is to be interpreted should be fully reviewed in a Public Hearing.

[2] http://morganhillca.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=8117&MeetingID=2033

[3] McCorkle Eastside Neighborhood Group v. City of St. Helena (2018) 31 Cal.App.5th 80, 89–90, as modified (Jan. 25, 2019).

[4]]http://morganhillca.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=8330&MeetingID=2071