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## Hints at litigation in Lowe's talks

By PHILIP RILEY,  
ARGUS-COURIER STAFF

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The Lowe's shopping center project passed through one level of public review on Monday, but a legal battle may be on the horizon as both the developers and opponents of the project have hinted at legal problems with the city's processing of environmental documents.

The Petaluma Neighborhood Association, which received a \$100,000 settlement payment last summer from the developers of the Target shopping center, have hired a San Francisco attorney who sent a 28-page letter to the city on Friday outlining legal problems with the Lowe's project's environmental documents.

While the leaders of the anti-big box group declined to comment extensively, their letter outlines their objections.

"Unless the draft environmental impact report is extensively revised and recirculated, any approvals made on the basis of its environmental analysis will be unlawful," said the letter, prepared by the law firm Shute, Mihaly, & Weinberger.

"We expect the City Council members to have the integrity and good judgment to not allow the project to move forward until all of the impacts are adequately addressed in the EIR, and then can be fully vetted by the community," said Petaluma Neighborhood Association leader Paul Francis in an e-mail statement. "If the council doesn't fulfill its responsibilities, we will be left with no other alternative but to challenge the legitimacy of the CEQA document."

Francis also submitted a public records request to the city in December asking for comprehensive communications records between the developer and various council members and planning commissioners. Petaluma Neighborhood Association leader Matt Maguire did not return calls for comment.

"The most interesting part of this (letter) is that we have a pretty good sense of where that \$100,000 went now," said Councilmember Mike Healy, referring to the controversial settlement that Regency, the Target project's developers, paid to the leaders of the group that sued to change the project.

Under legal guidelines, Merlone Geier, the developers of the shopping center, must pay the city's legal fees if a third party sues over the project approval. A third party would pay its own legal fees.

Last week, Merlone Geier also sent a letter to the city objecting to the earlier delay of a hearing due to the Jewish holiday of Passover. While the developers' letter did not include an explicit hint at possible legal action, it said that the continuance "appears legally suspect." Their claim focuses on the city's allowance of public comments after the April 18 end of the project's official 45-day public comment period.

The developers also highlighted their earlier claims that the city had missed its one-year deadline to act upon the proposal in November 2010, which the city disputes.

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“There are so many jobs at stake that we have to take steps to protect the project from a frivolous lawsuit,” said Marko Mlikotin, a spokesperson for Merlone Geier. “Lawsuit costs are passed on to the consumer. No one can afford frivolous lawsuit costs.”

While the legal scrutiny of the project was a top issue in recent letters, the City Council had its own concerns with the environmental documents at a hearing on Monday. Although the council agreed to move forward with the environmental report, the top issues it raised were over traffic and air quality as well as noise levels, flooding and more. These impacts were identified by city staff as being “significant but unavoidable,” and would require a “statement of overriding considerations” if the project is approved.

“The traffic that is going to be on North McDowell is going to be unbelievably stalled,” said Councilmember Teresa Barrett, adding that “there doesn’t seem to be any attempt” to lessen traffic impacts. She urged city staff to reexamine traffic impacts with an updated list of building planned in the area that could generate additional traffic.

Councilmember Tiffany Renée also said that more mitigation measures should be identified for the significant impacts.

“If the impact is unavoidable, I want information backing that up,” she said.

Others were concerned that the Rainier undercrossing and interchange would be needed to relieve traffic congestion, but would not be completed until after the shopping center is opened. Flood issues were a concern as well, and although the area is not identified as one of the city’s highest risk flood areas, measures were put in place to deal with flooding on site.

Increased greenhouse gas levels generated by car trips to the center were another “significant but unavoidable” impact, but some sought further ways to mitigate these impacts. Barrett said that greenhouse gas levels produced by the site’s buildings themselves should be lessened, and that lack of emphasis on gases from buildings is “a failure of this DEIR.”

Citizens spoke both in support and opposition to the environmental findings.

“All of these things can be worked out,” said Petaluma retiree Greg O’Brien, noting that the impacts can be managed and praising the economic boost provided by the center. The project would bring in about 500 permanent jobs and \$1 million in sales and property tax revenue, according to a study.

“This is one of the most flawed and deficient EIRs I have ever seen,” said former council member David Keller, urging the council to “send it back.”

Responding to critics’ claims that the EIR was inadequate, city planner Heather Hines protested, saying, “we believe we’ve met the legal requirements.”

City planning staff will now incorporate the council’s requests for more information into the final EIR, which is set to be released in May and voted on in July.

(Contact Philip Riley at [philip.riley@arguscourier.com](mailto:philip.riley@arguscourier.com))