

January 5, 2015

TO: Joint Powers Authority Members (County Supervisor Karen Mitchoff, County Supervisor Candace Andersen, BART Board President Joel Keller, BART Board member Gail Murray)

FROM: Donna Gerber, former County Supervisor District 3

RE: Keyser Marston Memo on Block C and Millenium/Avalon Bay Proposal to change Block C

Over the past year, we have had conversations regarding the proposal to radically change Block C in the mixed use Transit Village that the County, BART, Developers and the Community reached consensus on during my tenure in 2002. That plan was entitled in a DDA in 2005. I am concerned that changing the development on Block C from the elegant for sale townhomes originally entitled would be a mistake in terms of achieving a first class, transit oriented development. I'm equally concerned this would fracture the public trust that was achieved by reaching hard fought consensus with all parties. Dan Richard and I, who were in the trenches at the time, knew that Block C was the "icing on the cake" of a mixed use community (residential, local serving retail, civic spaces, and office space) that included a "minimum of 50 for sale" townhomes, civic and commercial space. Block C was the result of an historic public participation process (over 500 people). It was the linchpin for the community's advocacy for the project despite the approximate 4% increase in peak hour traffic caused by the project, the preference for all parking from BART patrons, and a higher housing density. When this consensus proposal went to the Board of Supervisors for approval there was no opposition. As I recall, that was also true when the BART Board approved the agreements. Instead, members of the community who had participated actively in the consensus process came to advocate for the project because their voices had been heard and the RESULT reflected their interests. The Developer/County/BART agreement occurred because the project reflected their interests as well. It seemed like a bit of a miracle given the rancor that existed; but, actually it was the result of a lot of thought, planning, expertise and creativity, and responsible commitment on everyone's part. I, for one, was very proud of how constructive the process became and even prouder of the final product. At the time, I believed BART and the Millenium Partners agreed with this assessment.

Millenium Partners (originally proposing a 24 screen theatre retail complex that had no support, but was the "trend" at the time) is the Master Developer of this transit

village/community and they later brought in Avalon Bay to develop the rental apartments on Blocks A and B; but they have no entitlement to change the project no matter their rationale. If the County and BART keep their commitment to the community and each other as a matter of public policy, Avalon Bay or Millenium must deliver the project or give up their entitlements. Based upon their current proposal, I'm wondering if they are a good choice.

I attended the recent MAC meeting of October, 2014 and the Walden Homeowners Improvement Association meeting of November 8, 2014 to listen to the proposal to change Block C as well as the report of Keyser Marston commissioned by the JPA. I have read the analysis and talked with several of the consultants who designed the original project produced by the charrette process and I have solicited information from the County Planning Department as well as outside construction experts.

In these meetings each time the public has been exposed to both the proposal to change Block C and the Keyser Marston report; they have unanimously opposed the proposed changes. This is not surprising as what's being changed is exactly what they were promised in exchange for benefits to County/BART/Developer. Sadly, when they asked if another charrette could be held to re-evaluate Block C, if necessary to make changes; they were told there were no public funds to do so. Of course, the developers could easily fund a charrette on Block C since they are proposing changes. There is one remaining meeting scheduled for the developers to share their proposal with the public at the MAC meeting on January 20, 2015 (normally attended by few members of the community) but this meeting and the two others are hardly representative of a real community outreach/design process.

There are many reasons I believe the proposal to change Block C is a mistake and a violation of the public trust so I encourage the JPA, Board of Supervisors and BART to abide by the original agreements and reject this modification proposal. For the record, I recognize that you (not I) have the authority to make decisions on this matter; but I think it's undisputed that this project, as designed, is a model TOD Mixed Use Transit Village and was achieved due to the public charrette process. If it can be executed, I know it will benefit both public agencies, the public and the private developers; and it could be replicated wherever transit stations exist or are planned for the future.

Below are comments regarding the rationale and conclusions of the KM report because it is being used by Millenium and Avalon Bay (and perhaps the JPA) to argue that the entitlement they have is not feasible in today's market and therefore they should be given entitlement to 200 apartments on block C. In my opinion, the KM analysis suffers

flaws in what it compares and assumptions it makes to the extent of making the report unresponsive to the issues the JPA/County/BART should rightfully consider in response to developer or BART proposals to change Block C. A few comments are as follows:

1. **The economics of Block C should not be analyzed piecemeal and therefore, the conclusions of the KM report are fundamentally flawed.** Block C is part of the Transit Village; a mixed use, mixed tenure community to be built in the center of the larger transit oriented development of the County Redevelopment Area to provide a “heart” for the other uses (Hotel, Sportsclub, residential, commercial, office and local serving retail). That’s why Millenium Partners is the Master Developer and was awarded entitlements to the entire project. The economics of each piece are different depending on what real estate cycle exists at any given time. That’s the strength of mixed use because as real estate cycles come and go each of pieces contributes to the value of the whole and it is protected from the fickleness of single use cycles. If this were 2004 the market would have favored Block C as condos, but that doesn’t require Blocks A and B to be converted to condos as well; nor does it mean that the remaining unbuilt office building should be 12 stories of apartments.
2. **The Transit Village is a BART/County public project that has benefitted from huge infusions of public tax funding. It is not a private development like the condo projects KM compared it to.** The County RDA provided \$60 million in funding toward the BART parking garage, infrastructure, roads etc. The County sold \$135 million in tax exempt bonds to enable the project. Surely, the surrounding community has a stake in Block C as part of the public return for this investment. Shouldn’t BART keep its’ word to provide for sale residential units on Block C after County RDA largely paid for the expansion of BART’s parking garage?
2. **KM bases their negative economic conclusion regarding condos on the high cost of subterranean parking, however, subterranean parking was never required in the original design and should not be a part of the comparison.** According to KM this is one of two reasons Block C is too expensive to build. However, *subterranean parking was never a requirement on Block C, nor in the Codes governing the design.* Apparently this was done when the developer changed Block C to 100 condos before the 2005 DDA.s Thus, this cost is the direct result of choices by the developer (approved by the County) not the original plan for the transit village and the for sale condos. One could argue the solution is to go back to 50 condos facing the iron horse trail and Block

B, civic space, and the 3 story commercial building facing the BART tracks (with no subterranean parking).

3. **KM bases their negative economic conclusion regarding condos on the cost of “prevailing wage” but rental units will also require prevailing wage as did the apartments built on Blocks A and B so this is at best confusing and at worst manipulative.** In every meeting with members of the public thus far, this assertion by the KM report has fostered a predictable anti union reaction because the public is being led to believe that it’s higher paid “union” workers who might build the condos that are making them too expensive. The KM consultant argues that he’s just pointing out that the privately owned condos built in Walnut Creek that he’s comparing didn’t use prevailing wage and therefore this is a disadvantage on Block C. I’m surprised that the JPA would foster this debate; but in any event it’s irrelevant economically and makes the KM conclusion off point.
4. **The KM analysis doesn’t appropriately account for the cyclical nature of real estate development. It concludes that the condo market isn’t high enough right now based upon a simple comparison with other single use condo projects in the area.** At best this project won’t be completed for three years. KM does not know what the market will be in 3 years. Urban Land Institute Trends 2015 (ULI the think tank for the real estate development industry) finds that *“Developers’ preferences for upper-end apartments notwithstanding, the depth of demand for luxury rental units goes only so far. Wealthy households prefer to own their homes- and most already do. The bulk of pent up and emerging demand comes from the battered middle income and lower middle income sector, predominantly renters.”* Again, the beauty of a mixed use project is that the whole is worth more than the individual parts so it weathers the cycles well. Wouldn’t the County, the Community and BART benefit more if Block C is built as condos which arrive just about the time that the rental market is saturated, detached homes have reached former highs and the condo market kicks in again? Alternatively, one could build the project as the high quality condo units and rent them profitably (just what KM points out the other condo builders are doing) until the value of condos reach their pre 2007 highs?
5. **The KM analysis is not based upon construction cost pro forma specific to Block C; rather it is a compilation of costs from other KM projects by private developers.** This is speculative and generalized, and not useful in this case.
6. **The KM analysis doesn’t give proper attention to the unique qualities that would attribute to the value of Block C within the transit village and therefore it’s not apples to apples.** The “ULI Trends 2015” discusses urban

mixed use as a 3.87 out of 4.0 good opportunity for development. Avalon Bay has had immense success with its Block A and B apartments. Professionals with families from SF are moving to these units due to the good schools and then commuting to SF to work. Anyone who lives in SF can understand the unique choice both rentals and condos provides. For people who are already transit friendly in SF; the rents and even condos at \$700,000 would be much less expensive than the comparable in SF. And Block C condos will be very competitive because they are closer to the station than anywhere else in the BART system. This is illustrative of the dynamic nature of mixed use that makes this Transit Village unique.

- 7. The KM analysis puts all future mixed use transit developments in question because if followed by the JPA it devalues the unique consensus achieved for this transit village.** How does BART continue to get support in Contra Costa or any other County for TOD if its word is not kept at Pleasant Hill BART. The nature of this analysis, if followed, pulls on the thread that can unravel future community consensus at Concord, Antioch, Brentwood etc. The community members at Pleasant Hill BART now believe that it is BART Directors that are pulling back their agreement to provide for sale condos on Block C. BART's implied concern, per the KM analysis, that it must control land around its stations is on first blush a fair one, but then why did they agree to the condos at this station until 2011 when the sales agreement was allowed to expire? And, if the BART board has changed its policy, why apply it here and damage its credibility?
- 8. There are also indications of overestimation of costs in the KM pro forma that cause pause re: condo economic feasibility conclusions.** Some of them are: \$150 per square foot for land is high and is based upon a single Berkeley sale in 2013; the projected cost per stall of parking for the condo project at \$37,500 per stall may be 20% high (other bay area structured/subterranean \$20-30K per stall) and as previously stated, the costs associated with the prevailing wage requirement are used to increase costs by \$4.5 million which should not be considered a factor. These and other possible overestimates might make ANY project infeasible on paper.

Given the issues above, one wonders what is really going on. Why is Millenium bailing now by converting the condos to apartments for Avalon Bay to develop? Is it any surprise that Avalon Bay would propose changing Block C to rental apartments, or that it would double the number of units when converting from for sale to rental? Or is this

BART and the County also looking to double the units for ground lease revenue increases? Increasing unit count to generate ground lease revenue while providing a developer with twice the rental profits in a hot rental market is an all too common scenario; but is it worth the price of the public trust and/or undermining a world class model of TOD development?

Currently, Avalon Bay and Millenium are in an exclusive negotiating agreement with the JPA regarding Block C. I urge you to consider the issues I've raised and instruct your negotiators to negotiate for the existing entitlements on Block C; or alternatively, for the original Block C designed in the charrette. The KM report does not adequately inform economic feasibility; and you have nothing to lose by putting out a bid for other developers if Millenium and Avalon Bay aren't the right developers for the project (including the 12 story office building remaining).

I would be happy to answer any questions or further clarify these points.

Thank you for your ongoing service to the County/BART and your dedication to public service and in advance for your consideration.

cc:

Millenium Partners, Mark Ferrar

Avalon Bay Communities, Jeff White

Keyser Marston

Maureen Toms, County Planning

MAC

Walden Homeowners Improvement Association

not a complete list