

Supervisors still at odds over Wingspread

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SANTA CRUZ — A closed-session, split decision by the county Board of Supervisors on a pending lawsuit by Wingspread developer Ryland Kelley has erupted in public bickering, with the two supervisors on the losing end of the vote accusing the rest of the board of playing into the developer's hands.

At issue is a decision by the board directing County Counsel Dwight Herr to enter into an agreement with Kelley's attorneys under which neither the county nor Kelley will pursue the suit until further notice.

Board Chairman Gary Patton and Fifth District Supervisor Joe Cucchiara Friday charged colleagues Robley Levy, Dan Forbus and E.

Wayne Moore Jr. with "refusing" to allow the county to defend itself in the case. They asserted that the trio had thus put the county "at a significant disadvantage" in current negotiations with the developer over a proposed Wingspread purchase/lease-back deal.

Firing back Friday afternoon, Levy called Patton's and Cucchiara's charges so much "hot air," while Forbus insinuated that the pair were sore losers.

Filed by Kelley last month, the lawsuit in question is aimed at overturning a unanimous decision by the board to reject Wingspread "Plan A."

Commonly regarded as Kelley's fall-back plan for development of the 66-acre Porter-Sesnon property in Aptos, Plan A calls for construction

of a 197-unit hotel-conference center on the property, which Kelley leased from the University of California in 1978 for \$1.75 million.

Supervisors rejected the proposal in January as inconsistent with the county General Plan and Local Coastal Program. Two months later, however, the board voted 3-2, with Patton and Cucchiara opposed, for "conceptual approval" of a larger proposal, known as Wingspread "Plan B."

Under that proposal, as modified by the board, Kelley would be allowed to build a 472-unit condominium-conference center, a three-hall performing arts complex and several athletics fields in the rolling meadow between New Brighton State Beach and Seascape. The General Plan and LCP would be changed to accommo-

date Plan B, which proved attractive to the board majority because of its potential "public benefits."

Last month, supervisors Levy, Forbus and Moore authorized County Administrative Officer George Newell to negotiate a deal with Kelley, under which the county would purchase the Porter-Sesnon lease and then lease the property back to the developer, who would construct and operate the Wingspread project under a concession agreement with the county. Newell believes this arrangement will net the county more revenues.

The vote to enter into negotiations with the developer was taken over Patton's and Cucchiara's bitter opposition.

The vote came on the heels of

news that Kelley had filed suit over Plan A.

Kelley spokesman Tim Welch said at the time that the suit had been prompted by Wingspread opponents' announcement of a ballot initiative — later dropped — aimed at making it more difficult for supervisors to approve the General Plan and LCP changes required for the Wingspread project.

But Welch, who said that the suit was aimed at preserving Kelley's right to go ahead with Plan A in the event the more ambitious Plan B fell through, acknowledged that it would have been filed in any event.

Though the decision to put the lawsuit on indefinite hold was taken April 22, and a stipulation spelling

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out the agreement was filed with the county clerk the next day, no formal announcement of the executive session action was ever made by County Counsel Herr.

Actions taken in closed sessions, which are limited by state law to litigation and personnel matters, are generally not discussed in public by board members.

In a joint press release issued late Friday afternoon, Patton and Cucchiara said they were taking the "unusual step" of announcing their concerns about the decision "so the public can know the truth about what the board is doing with respect to Wingspread."

Calling the stipulation "outrageous," Patton and Cucchiara said that what the board had done was weaken its own hand in negotiations with Kelley.

Levy and Herr countered Friday

that what supervisors had really done was put off spending county taxpayers' money on a potentially meaningless court fight.

Under the terms of the stipulation, the county will not be required to file a brief or other legal documents in response to Kelley's lawsuit, except upon 30 days notice from Kelley's attorneys.

Kelley's lawyers, meanwhile, have agreed not to file writs, points and authorities or "take any action seeking a determination" in the case without first giving the county the same 30-day notice.

The stipulation saves county lawyers work, and Kelley, money.

Kelley attorney Richard Allen said Friday that his client did not want to pursue the Plan A lawsuit now because "we're still hopeful that Plan B will be able to move forward." If Plan B proceeds, Allen said, Plan A — and the suit — will not be needed.

Herr said he had asked the board to agree to the stipulation because "there didn't seem to be significant reasons for pushing it (the lawsuit).

"It may be moot," he said. "It seemed like it might not be a good use of our resources to get into extensive litigation on (a suit) which may not be necessary."

Patton and Cucchiara charged Friday that "the Board of Supervisors (had) refused to defend itself in court," despite assurances by Herr that the board was on solid legal ground in its denial of Plan A.

The refusal of the "board majority" to "proceed with its defense in this case," they continued, had "given (Kelley) additional leverage to use against the county" in negotiations with Newell over the purchase/lease-back deal.

Other than suggesting that the board's decision not to pursue the lawsuit for the time being had somehow given "credence" to Kelley's "claim that (he) has a right to develop Plan A," the pair did not explain how the stipulation would hurt the county in the purchase/lease-back negotiations.

"I think their charges are a bit of hot air," Aptos Supervisor Levy said of Patton's and Cucchiara's accusations Friday.

"The board knows the county's position (on Plan A) is sound and defensible, and if the developer is foolish enough to press his suit, he will learn that, to his chagrin.

"I'm willing to take (the case) to court any day the developer wishes to challenge us," Levy said.

But, the supervisor added, should the board pursue the matter now, "We would have the county spend money on a case that might be moot.

"I don't think that makes sense."

Forbus was critical of Patton and Cucchiara for violating what he saw as the sanctity of a closed-door meeting.

"You don't walk out of a litigation session where a vote has been taken and criticize the decision," he said. "If they're going to walk out and criticize it, why go in there any way?"

Patton and Cucchiara, Forbus said, "just can't handle being on the losing end of a 3-2 vote."