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8 Attorneys for Petitioners
9 San Francisco Bay Area Renters Federation,
10 California Renters Legal Advocacy and
11 Education Fund, Victoria Fierce

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA – UNLIMITED JURISDICTION

14 CALIFORNIA RENTERS LEGAL ADVOCACY
15 EDUCATION FUND, SAN FRANCISCO BAY
16 AREA RENTERS FEDERATION, and
17 VICTORIA FIERCE,

18 Petitioners,

19 vs.

20 CITY OF DUBLIN, a California Municipal
21 Corporation, DUBLIN CITY COUNCIL, the
22 legislative body of the City of Dublin,

23 Respondents,

24 ASHTON AT DUBLIN STATION, LLC,

25 Real Party in Interest.

CASE NO.

PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE

(CCP § 1094.5; Govt. Code § 65589.5)

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1 Petitioners San Francisco Bay Area Renters Federation, California Renters Legal
2 Advocacy and Education Fund, and Victoria Fierce (“Petitioners”) allege as follows:

3 1. Petitioner California Renters Legal Advocacy and Education Fund (“CaRLA”)
4 is a California nonprofit corporation founded, in part, to advocate for, and to ensure
5 compliance with California’s Housing Accountability Act, Government Code § 65589.5 et
6 seq. (“HAA”) and to educate interested persons, including local governments and
7 developers, about the HAA. Participating in, and supporting, litigation of wrongful denials
8 of housing development projects is an important aspect of CaRLA’s mission and is
9 necessary to increase compliance with the HAA.

10 2. Petitioner San Francisco Bay Area Renters Federation (the “Federation”) is an
11 unincorporated association of renters whose mission includes advocating for the
12 construction of housing to meet the needs of California residents, including those in the City
13 of Dublin (“Dublin”), through the HAA. Its members are residents of the State of
14 California and cut across socioeconomic lines, including members with very low, low,
15 moderate, middle, and higher incomes. The Federation has a direct and substantial interest
16 in ensuring that Dublin complies with state laws requiring that it participates in addressing
17 the housing needs of California residents. The Federation actively supports housing
18 development projects and opposes efforts to disapprove or reduce the density of housing
19 development projects. It acts on behalf of its members, though its actions benefit all
20 similarly-situated residents and intended residents. Members of the Federation were, are,
21 will be, and would be eligible to apply for residency in the housing development project at
22 issue in this petition (the “Project”). As potential residents of the Project, members of the
23 Federation are affected by Dublin’s actions challenged herein. The San Francisco Bay Area
24 Renters Federation has a substantial interest in ensuring that Dublin’s decisions are in
25 conformity with the requirements of law, and in having those requirements properly
26 executed and its public duties enforced. Its members, as well as the general public, will be
27 adversely affected by impacts resulting from the acts described herein and are aggrieved by
28 the acts, decisions, and omissions of Dublin as alleged in this petition. The San Francisco

1 Bay Area Renters Federation is suing on its own behalf, on behalf of its members, and on
2 behalf of others affected by Dublin’s acts pertaining to the project at issue defined below, as
3 well as all potential applicants and residents of the Project.

4 3. Petitioner Victoria Fierce is a natural person and a resident of the State of
5 California. Fierce was, is, and will be “a person who would be eligible to apply for
6 residency in the development”, i.e., the Project. As a potential resident of the Project,
7 Fierce is affected by Dublin’s actions challenged herein. Fierce has a substantial interest in
8 ensuring that Dublin’s decisions are in conformity with the requirements of law, that those
9 requirements are properly executed, and that the public duties of Dublin are enforced.

10 4. Respondent City of Dublin (“Dublin”) is a California municipal corporation
11 located within the County of Alameda. Through its legislative body, the Dublin City
12 Council, Dublin wrongfully denied the Project described herein.

13 5. Respondent Dublin City Council is the legislative body of Dublin and is the
14 agency which denied the Project permit referenced herein.

15 6. Real Party in Interest Ashton at Dublin Station, LLC (“Ashton”) is a Delaware
16 limited liability company in good standing in California. As the developer, Ashton has
17 vested development rights for the Project under a development agreement with Dublin.

18 7. “The Legislature’s intent in enacting [the Housing Accountability Act
19 (“HAA”)] in 1982 and in expanding its provisions since then was to significantly increase
20 the approval and construction of new housing for all economic segments of California’s
21 communities by meaningfully and effectively curbing the capability of local governments to
22 deny, reduce the density for, or render infeasible housing development projects and
23 emergency shelters. That intent has not been fulfilled.” (Gov’t Code § 65589.5(a)(2)(K))

24 8. The HAA requires, inter alia:

25 When a proposed housing development project complies with
26 applicable, objective general plan and zoning standards and
27 criteria, including design review standards, in effect at the time
28 that the housing development project’s application is determined
to be complete, but the local agency proposes to disapprove the
project or to approve it upon the condition that the project be

1 developed at a lower density, the local agency shall base its
2 decision regarding the proposed housing development project
3 upon written findings supported by substantial evidence on the
record that both of the following conditions exist:

4 (1) The housing development project would have a specific,
5 adverse impact upon the public health or safety unless the project
6 is disapproved or approved upon the condition that the project be
7 developed at a lower density. As used in this paragraph, a
8 “specific, adverse impact” means a significant, quantifiable,
9 direct, and unavoidable impact, based on objective, identified
written public health or safety standards, policies, or conditions
as they existed on the date the application was deemed complete.

10 (2) There is no feasible method to satisfactorily mitigate or avoid
11 the adverse impact identified pursuant to paragraph (1), other
12 than the disapproval of the housing development project or the
13 approval of the project upon the condition that it be developed at
a lower density.

14 (Gov. Code § 65589.5(j))

15 9. The HAA provides that a housing development project shall be:

16 deemed consistent, compliant, and in conformity with an
17 applicable plan, program, policy, ordinance, standard,
18 requirement, or other similar provision if there is substantial
19 evidence that would allow a reasonable person to conclude that
the housing development project . . . is consistent, compliant, or
in conformity.

20 (Gov’t Code § 65889.5(f)(4))

21 10. Further, the HAA must be construed broadly and “consistent with, and in
22 promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs
23 of all Californians.” (Gov’t Code § 65589(d))

24 11. In order to deny a housing development project, Dublin has the burden of
25 either proving that the “proposed project in some manner fails to comply with ‘applicable,
26 objective general plan and zoning standards and criteria, including design review standards.
27 . . .’”, or making the findings required by the HAA. (Honchariw v. County of Stanislaus
28 (2011) 200 Cal.App.4th 1066, 1081)

1 12. The Project referred to herein consists of 220 residential apartment units
2 (including 22 units designated for moderate income households) and related amenities under
3 application # PLPA 2017-00036. It is located in Transit Center Site A-3, a 2.36 acre parcel
4 located in Dublin’s Transit Center, the last remaining undeveloped site zoned for residential
5 development in the Eastern Dublin Specific Plan. The Transit Center is bounded on the
6 north by Dublin Blvd., on the south by Interstate 580 and the existing Dublin/Pleasanton
7 BART station, on the east by Arnold Road, and on the west by Iron Horse Trail.

8 13. The Project constitutes a “housing development project” under the Housing
9 Accountability Act (Gov’t Code § 65589.5).

10 14. Dublin allows Planned Development Zoning Districts to be created by a two-
11 stage process, with Stage 2 approval granted concurrently with Stage 1 or as a later action.
12 Stage 1 involves legislative-level zoning and land-use approvals, such as general- and
13 specific-plan consistency, required to enable the developer to undertake the intended
14 project. Stage 2 concerns site-level details, the types of details common for a use permit or
15 similar project approval, not a traditional legislative zoning amendment.

16 15. In 2002 and 2003, Dublin took the initial steps to enable the land in question to
17 be developed as would be proposed by Ashton.

18 16. In December 2002, the Dublin City Council adopted entitlements establishing
19 the Transit Center. This included General Plan and Eastern Dublin Specific Plan
20 Amendments (Resolution 216-02) to incorporate this area into the Eastern Dublin Specific
21 Plan area and establishing land uses. As later applied to the Project, this included Planned
22 Development Zoning with a Stage 1 Development Plan (Ordinance 21-02) which
23 established the permitted uses; site areas and proposed densities; maximum number of
24 residential units and non-residential square footage; and a Master Landscaping Plan. The
25 approval also included a Master Development Agreement (Ordinance 5-03) approved in
26 May 2003.

27 17. In 2003, Ashton’s predecessor-in-interest entered into a development
28 agreement with Dublin for the Project. Ashton succeeded to this agreement.

1 18. Ashton submitted its application for the Project on May 24, 2017. The
2 application sought a Planned Development Rezone with a related Stage 2 Development Plan
3 and a Site Development Review Permit, as well as a Tentative Map for condominium
4 purposes.

5 19. Dublin's Planning Commission staff recommended approval.

6 20. Certain members of the public then began to agitate for the Project to be denied
7 regardless of the validity of denial.

8 21. At the December 5, 2017 public hearing, the City Attorney, John Bakker,
9 explained to the City Council that because of Ashton's development agreement with Dublin,
10 it has vested rights to develop consistent with the General Plan and Stage 1 zoning for the
11 property. In response to Councilmember Gupta's question regarding whether "we can say
12 no to this project", the City Attorney explained that while Dublin potentially may make a
13 finding that the Stage 2 Development Plan requested is inconsistent with the previously
14 approved Stage 1 development plan, Planning Staff had concluded that the Project's
15 proposed Stage 2 is consistent with Stage 1.

16 22. At City Council meetings between December 5, 2017 and March 6, 2018,
17 various City Council members, succumbing to political pressure, voiced their disapproval
18 based on purely subjective, and, in one instance, unarticulated factors.

19 23. On March 6, 2018, the Dublin City Council voted 4-0 to adopt Resolution 23-
20 18 denying the Project. The Resolution states that the proposed Stage 2 is denied as
21 "inconsistent and incompatible" with Stage 1 even though Planning staff had recommended
22 approval and the denial resolution concedes that "the density on Site A as a whole would
23 remain less than the maximum density allowed in the aggregate." The Dublin City Council
24 sua sponte, and with neither legal authority nor any basis in the actual language of Stage 1,
25 misconstrued the density limitations so that the applied to each subparcel (such as A-3)
26 rather than the entire A parcel as the plain language of Stage 1 calls for. In effect,
27 Respondents arbitrarily contrived an ostensibly objective standard to mask their original
28 subjective reasons for denying the Project, which, in turn, masked the fact that each member

1 of the Dublin City Council caved in to the kind of political pressure (NIMBYism) that the
2 HAA was enacted to overcome.

3 24. Dublin’s findings in denying the Project are legally deficient. First, under the
4 HAA, Dublin may not deny the Project based on the Council’s subjective opinions
5 regarding density, massing, height, and architectural design if the Project complies with
6 applicable, objective general plan and zoning standards and criteria, including design review
7 standards, in effect at the time that the housing development project’s application is
8 determined to be complete.

9 25. Moreover, the record contains overwhelming evidence demonstrating that the
10 Project complies with all applicable objective density requirements under Stage 1, which
11 was the “applicable” zoning that existed at the time the Project’s application was deemed
12 complete. Dublin was required to approve the Project pursuant to HAA section 65589.5(f)
13 which provides that Dublin’s development standards “shall be applied to facilitate and
14 accommodate development at the density permitted on the site and proposed by the
15 development.”

16 26. Dublin’s Planning Staff, environmental consultant, Planning Commission, and
17 City Attorney repeatedly confirmed that the Project complied with all applicable, objective
18 general plan and zoning standards and criteria, design review standards, and permitted
19 density level for residential units. Although Dublin’s Municipal Code requires that the
20 Project obtain Project-level approval through what it calls “rezoning” (essentially the same
21 as a typical use permit or similar process) that fact does not wipe out the existence of the
22 Stage 1 Plan which, among other things, established the applicable density and all other
23 HAA-related criteria for the Project. Nor does it mean the Project, by definition, was not in
24 conformance with the applicable zoning requirements that existed at the time the Project’s
25 application was deemed complete. To the contrary, Dublin’s Planning Staff and City
26 Attorney explained to the City Council that under Dublin’s Municipal Code, the Project’s
27 applicable zoning, including density limits, was established by Stage 1, which existed at the
28 time the Project’s application was deemed complete. Additionally, because the Project’s

1 proposed Stage 2 requested no changes to existing zoning, Stage 2 “mainly just follows
2 through on the original Stage 1 zoning that was established previously.” (City Attorney
3 Bakker at the December 5, 2017 City Council meeting.) The City Attorney further
4 explained to the City Council that Dublin had never before denied a Stage 2 approval that,
5 like the Project, sought no zoning changes because Dublin’s requirement for a Stage 2
6 approval “is more like architectural review of the project.” That is, Stage 2 approval is pro
7 forma if Stage 1 is complete.

8 27. After deciding to deny the Project for political reasons, Dublin made a post-
9 hoc argument to justify denial of the Project that the HAA does not apply because Dublin
10 required a Stage 2 zoning approval and thus, by definition, the Project was not in
11 compliance with its zoning at the time the application was deemed complete. This is plainly
12 refuted by the City Planning Staff’s and City Attorney’s multiple statements to the City
13 Council describing Dublin’s previous interpretation of the nature and purposes of Dublin’s
14 Stage 1 and Stage 2 Development Plan approval requirements (described in the foregoing
15 paragraph).

16 28. Moreover, Dublin’s argument would lead to absurd results by eviscerating the
17 HAA. If Dublin’s position were correct, every local agency could, and would, promptly
18 amend its zoning code to require a site-level zoning approval for any housing development
19 project in order to circumvent the HAA’s mandatory approval requirements. California
20 law, however, proscribes this result.

21 29. Under the HAA, Dublin did not, and cannot, justify denial of the Project
22 because substantial evidence exists that would allow a reasonable person to conclude that
23 the Project complies with all applicable, objective planning and zoning standards. In fact,
24 overwhelming evidence demonstrates that at all times, Stage 1 solely imposes aggregate
25 density limits for each Transit Center site, and for the Transit Center as a whole. There is
26 no dispute that the Project fully complies with these aggregate density limits. Moreover,
27 even if Stage 1 imposes an objective limit on density based on units per net-acre, Dublin
28 nonetheless was required to approve the Project as consistent with one or both of the Stage

1 1 additional aggregate density limits for Site A and/or for the Transit Center pursuant to
2 HAA section 65589.5(f), which provides that Dublin’s development standards “shall be
3 applied to facilitate and accommodate development at the density permitted on the site and
4 proposed by the development.”

5 30. Under HAA section 65589.6, Dublin bears the burden of proving that its denial
6 of the Project complied with the requirements of the HAA. Dublin cannot satisfy this
7 burden of proof because it had a mandatory duty to approve the Project, as set forth above.
8 Additionally, and/or alternatively, Dublin failed to proceed in the manner required by law in
9 denying the Project because its determination was arbitrary and capricious, unsupported and
10 unsupportable by substantial evidence. Petitioners, therefore, are entitled to a writ of
11 mandate directing Dublin to comply with its mandatory duty under the HAA by approving
12 the Project application and reversing its vote adopting Resolution 23-18 denying the Project.

13 WHEREFORE: Petitioners pray for relief as follows:

- 14 1. For an order overturning the Dublin City Council’s March 6, 2018 vote
- 15 2. For an order commanding the Dublin City Council to approve the Project
16 (PLPA 2017-00036);
- 17 3. For costs as allowed by law, including attorney’s fees under CCP § 1021.5 and
18 the HAA; and
- 19 4. For such other and further relief as the Court deems warranted based on the
20 facts established at trial or other judicial resolution of this petition.

21 Date: June 4, 2018

ZACKS, FREDMAN & PATTERSON, PC

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23 By: Ryan J. Patterson
24 Attorneys for petitioners San Francisco Bay
25 Area Renters Federation, California Renters
26 Legal Advocacy and Education Fund, Victoria
27 Fierce
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VERIFICATION

I, Victoria Fierce, declare as follows:

1. I am a natural person and a resident of the State of California. I am a Petitioner and am also the co-executive director of the California Renters Legal Advocacy and Education Fund. I am authorized to verify this Petition for Writ of Administrative Mandate on behalf of this entity.

2. I have read the foregoing Petition for Writ of Administrative Mandate and know its contents. The matters stated in the Petition for Writ of Administrative Mandate are true of my own knowledge from having reviewed records regarding the administrative history of the Project.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June _____, 2018

Victoria Fierce