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SAN MATEO COUNTY

NOV 07 2019

Clerk of the Superior Court
Blaine Borsel
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

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| San Francisco Bay Area Renters Federation, California Renters Legal Advocacy and Education Fund, Victoria Fierce and John Moon |) | Case No.: 18-CIV-02105 |
| Petitioners |) | Order Denying Petition for Writ of Administrative Mandate |
| v. |) | Date: October 24, 2019 |
| City of San Mateo and City of San Mateo Planning Commission |) | Time: 2:00 P.M. |
| Respondents |) | Dept: 28 |
| |) | Hon. George A. Miram |

The Petition for Writ of Administrative Mandate brought by San Francisco Bay Area Renters Federation, California Renters Legal Advocacy and Education Fund, Victoria Fierce and John Moon came on regularly for hearing at 2:00 P.M. on October 24, 2019 in Department 28 of the San Mateo Superior Court, the Hon. George A. Miram presiding.

Ryan J. Patterson, Esq. and James B. Kraus, Esq. of Zacks, Freedman & Patterson, PC appeared on behalf of Petitioners. Barbara E. Kautz, Esq. and Dolores Bastian Dalton, Esq. appeared on behalf of the City of San Mateo City Council and the City of San Mateo Planning Commission.

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1 After receiving the papers filed by the parties, hearing the oral arguments of
2 counsel, and after the court granted all requests for judicial notice, the matter was
3 submitted.

4 The City of San Mateo bases its opposition to the Petition for Writ of
5 Mandate on two grounds: (1) a finding that the project violated the City's Multi-
6 Family Design Guidelines requiring upper floors of a project that exceeds the
7 height of neighboring structures be stepped back to avoid changes in building
8 height greater than one story, a finding that was expressly included in the City's
9 denial resolution; and (2) the failure of the project to comply with City's parking
10 standards, a grounds for denial that was not addressed in the denial resolution.
11 Since the denial resolution did not include any findings concerning the alleged
12 failure to comply with parking standards, the matter must be remanded to the City
13 so that such findings can be made *unless* this court finds that the findings that the
14 project violated the City's Multi-Family Design Guidelines comply with the
15 enforceable provisions of the Housing Accountability Act, Government Code §
16 65589.5 et seq. (hereafter "HAA"), and is, by itself, an appropriate grounds for
17 Denial of the project by the San Mateo Planning Commission, Denial of the
18 Appeal of such denial by the City of San Mateo City Council, and Denial of this
19 Petition for Writ of Administrative Mandate by this court.

20 Thus, the issue before this court is whether the finding that the project
21 violated the City's Multi-Family Design Guidelines requiring upper floors of a
22 project that exceeds the height of neighboring structures be stepped back to avoid
23 changes in building height greater than one story satisfies the HAA, and if not,
24 whether any provisions of the HAA that are not satisfied are enforceable.

25 Petitioner contends that "the City bears the burden of proving that the
26 Project failed to comply with "applicable, objective general plan and zoning
27 standards and criteria, including design review standards, in effect at the time that
28 the housing development project's application was determined to be complete."

1 (Petitioner’s Opening Brief at 6:11-14 [quoting *Honchariw v. County of Stanislaus*
2 (2011) 200 Cal.App.4th 1066, 1081.]) Petitioner contends that the Multi-Family
3 Design Guidelines (hereafter “MFDGs”) are not applicable objective general plan,
4 zoning or subdivision standards or criteria, and therefore denial of a project due to
5 any failure of the project to satisfy the guidelines violates the HAA. (Petitioner’s
6 Opening Brief at 10:18-11:14.) Respondent contends that “The City Council
7 interpreted the standard to mean that all floors of a proposed building that
8 exceeded the height of a neighboring structure needed to be stepped back” and
9 “Because the project did not comply, the Council denied the project.”
10 (Respondent’s Supplemental Brief at 13:2-4 [citing Administrative Record at 28-
11 31].) Respondent contends that the interpretation of MFDGs standard is an issue
12 of pure law and that the city’s interpretation of its own ordinance is entitled to
13 great weight. (Respondent’s Supplemental Brief at 13:5-8 [quoting *Harrington v.*
14 *City of Davis* (2017) 16 Cal.App.5th 420, 434 and citing *Ocean Park Associates v.*
15 *Santa Monica Rent Control Bd.* (2004) 114 Cal.App.4th 1050, 1062; *Yamaha Corp.*
16 *v. State Bd. Of Equilzation* (1998) 19 Cal.4th 1].) Respondent contends that such
17 threshold legal issues should be decided by this court under the independent
18 judgment standard. (Respondent’s Supplemental Brief at 11:9-10.)

19 Exercising its independent judgment, and giving difference to the city’s
20 interpretation of its own Multi-Family Design Guidelines, this court finds that the
21 Multi-Family Design Guidelines qualify as “applicable, objective general plan and
22 zoning standards and criteria, including design review standards, in effect at the
23 time that the housing development project’s application was determined to be
24 complete.” (*Honchariw v. County of Sanislaus* (2011) 200 Cal.App.4th 1066,
25 1081.) This court finds this issue to be an issue of pure law and that the
26 reasonable interpretation/substantial evidence standard provided in Government
27 Code § 65589.5(f)(4) does not apply to this court’s determination of this specific
28 legal issue.

1 Accordingly, the Petition for Writ of Mandate is DENIED because the city
2 did not violate the HAA when it denied approval of the project because the project
3 failed to satisfy the Multi-Family Design Guidelines, as interpreted by the city and
4 confirmed by this court in the exercise of its independent judgment.

5 Petitioners contend that the HAA effectively precludes the use of
6 discretionary guidelines to deny residential housing development project permits,
7 because such guidelines are not objective standards. (Petitioners Supplemental
8 Brief at page 2:24-26 [citing Government Code § 65589.5(j)(1); *Honchariw v.*
9 *County of Sanislaus* (2011) 200 Cal.App.4th 1066, 1076 [HAA takes “away an
10 agencies ability to use what might be called a ‘subjective’ development ‘policy’
11 (for example ‘suitability’ to exempt a proposed housing project from the reach of
12 subdivision (j)”].]) Petitioners note that in January 2000, subdivision (j) was
13 changed from “[w]hen a proposed housing development project complies with the
14 applicable general plan, zoning and development polices in effect” to include
15 “objective...standards and criteria.” (Petitioners Supplemental brief at 11: 16-22.)

16 Petitioners contend that the MFDGs are not applicable objective general
17 plan, zoning or subdivision standards. First, Petitioners contend that a design
18 review standard can only be used to deny a project if it is included in an applicable
19 General Plan, zoning code or subdivision code and the MFDGs are not
20 incorporated into San Mateo’s General Plan or Codes, but were adopted as separate
21 guidelines. (Petitioners Opening Brief at page 10:23-11:03.) Second, Petitioners
22 contend that the MFDGs are discretionary, and as discussed above, argue that
23 discretionary guidelines may not be used to deny a project to which the HAA
24 applies. (Id. at 11:04-07.) Petitioners note that the City’s Urban Design Policy
25 simply recommends that projects “substantially conform” to the MFDGS; they are
26 not a mandatory checklist. (Id. at 11:09-14 [citing U.D. 2.1].)

27 Respondents contend that such a sweeping negation of local agency
28 discretion interferes with core municipal decision-making ability and violates the

1 home rule doctrine contained in Article XI. § 5(a) of the California Constitution.
2 (Respondent's Supplemental Brief at page 14:25-27.) While *Honchariw v. County*
3 *of Sanislaus* (2011) 200 Cal.App.4th 1066, 1076 held that the HAA takes "away an
4 agency's ability to use what might be called a 'subjective' development 'policy,'
5 that court did not address the argument raised here that the HAA is a legislative
6 attempt to interfere with core municipal decision-making ability that violates the
7 California Constitution.

8 While this court expressly ordered the parties to brief the enforceability of
9 the HAA and specifically Government Code § 65589.5(f)(4), Petitioners provided
10 no such briefing and provided no argument or citation to authority during oral
11 argument. Thus, the contentions concerning the enforceability of the HAA in
12 general and Government Code § 65589.5(f)(4) in particular proffered by
13 Respondent City of San Mateo are uncontroverted.

14 This court finds that the City of San Mateo is a charter city whose charter
15 fully incorporates the home rule doctrine and that the approval of the instant
16 residential housing project is an appropriate exercise of municipal affairs.
17 Furthermore, this court finds that the HAA is unenforceable to the extent the
18 HAA conflicts with or purports to disregard otherwise enforceable portions of the
19 city's Municipal Code regarding review of housing development projects. (See
20 *State Building & Construction Trades Council of California v. City of Vista* (2012)
21 54 Cal.4th 547, 555 ["charter cities are specifically authorized by our state
22 Constitution to govern themselves, free of state legislative intrusion, as to those
23 matters deemed municipal affairs"].)

24 This court finds that planning and zoning activities of local government are a
25 classic municipal affair. "Land use regulation in California has historically been a
26 function of local government under the grant of police power contained in
27 California Constitution article XI, section 7." *DeVita v. County of Napa* (1995) 9
28 Cal.4th 763, 782 [quoting *Bownds v. City of Glendale* (1980) 113 Cal.App.3d 875,

1 879].) “We have recognized that a city’s or county’s power to control its own land
2 use decisions derives from this inherent police power, not from the delegation of
3 authority by the state.” (*Id.* [*Candid Enterprises, Inc. v. Grossmont Union High*
4 *Dist.* (1985) 39 Cal.3d 878, 885-886].)

5 Although the HAA states in Government Code § 65589.5(g) that it applies to
6 charter cities, the Legislature’s view of whether its enactment should apply to
7 charter cities does not control. *State Building & Construction Trades Council of*
8 *California v. City of Vista* (2012) 54 Cal.4th 547, 565 [citing *Bishop v. City of San*
9 *Jose* (1969) 1 Cal.3d 56, 63 [“The legislature is empowered neither to determine
10 what constitutes a municipal affair nor to change such an affair into a matter of
11 statewide concern”].)

12 Petitioner contends that “In an HAA case, the Petitioners are afforded the
13 benefit of the doubt, and the Court cannot independently weigh the evidence or
14 engage in a balancing exercise. Rather any conflicts must be resolved in favor of
15 the Petitioners and if there is *any* substantial evidence in the record that would
16 enable a reasonable person to conclude the Project is code compliant, it must be
17 deemed compliant and approved. Substantial evidence can and must include the
18 findings of the City’s expert consultants, the reports prepared by City staff, and the
19 evidence submitted by the project applicant.” (Petitioner’s Reply Brief at 4:12-17.)
20 Petitioner contends: “it is absurd for the City to suggest that the City Council is the
21 final arbiter of code compliance and that nothing that occurred before the City’s
22 final decision can be cited in an HAA action.” (*Id.* at 4:20-24.)

23 Assuming without finding that the above quoted language correctly
24 interprets the plain language of the HAA, this court finds that, in addition to
25 violating the home rule doctrine discussed above, such interpretation would effect
26 an unlawful delegation of municipal functions to private parties in violation of
27 California Constitution Article XI, § 11(a) [“Legislature may not delegate to a
28 private person or body power...to perform municipal functions”] and, therefore,

1 that the interpretation of the HAA proffered by Petitioner would be unenforceable.
2 Here, Petitioners argue that the opinions of the City’s design consultant and City
3 Staff—prepared and submitted prior to any public hearing by persons not
4 designated by the Municipal to make decisions—constitute “substantial evidence”
5 and compels approval of the project regardless of the views of the City Council to
6 the contrary. Petitioners suggest that the comments by one Councilmember may
7 compel the entire Council to approve the project thereby nullifying the idea of
8 majority decision making. (See Petitioner’s Opening Brief at page 8:19-24.) This
9 court finds that such limitations on the ability of a Charter City Council to approve
10 or deny an action by majority vote constitutes an unlawful delegation of authority
11 and is, therefore, unenforceable.

12 As noted above, California court have “recognized that a city’s or county’s
13 power to control its own land use decisions derives from this inherent police
14 power, not from the delegation of authority by the state.” (*Id.* [*Candid Enterprises,*
15 *Inc. v. Grossmont Union High Dist.* (1985) 39 Cal.3d 878, 885-886].) Thus, while
16 authority delegated by statute can be revoked by statute, limitations on the inherent
17 police power of a city narrowly tailored to avoid unnecessary interference in
18 municipal governance. (*Johnson v. Bradley* (1992) 4 Cal.4th 389, 476-477;
19 *Lippman v. City of Oakland* (2017) 19 Cal.App.5th 750, 765; *Jauregui v. City of*
20 *Palmdale* (2014) 226 Cal.App.4th 781, 802.)

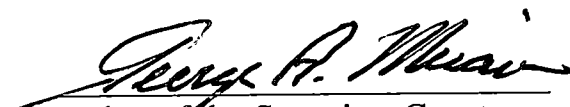
21 Respondent contends that even assuming *arguendo* that Government Code §
22 65589.5(f)(4) addresses a matter of statewide concern, nothing about the HAA is
23 “narrowly tailored” to avoid unnecessary interference in municipal governance.
24 The HAA is not limited to cities and counties that have a history of denying
25 housing developments. The HAA does not apply to larger projects that may have a
26 significant effect on housing availability but instead applies to any housing
27 development projected containing two units or more and even applies to projects
28 having a substantial commercial component. (Respondent’s Supplemental Brief at

1 19:1-6 [citing Government Code § 65589.5(h)(2).] Respondents contend that the
2 HAA effectively replaces all findings related to housing development approvals
3 with one related to consistency with objective standards. (*Id.*) As noted above, this
4 court expressly ordered the parties to brief the enforceability of the HAA and
5 specifically Government Code § 65589.5(f)(4), Petitioners provided no such
6 briefing and provided no argument or citation to authority concerning this issue
7 during oral argument. Thus, the concerning the failure of Government Code §
8 65589.5(f)(4) to qualify as a narrowly tailored to avoid unnecessary interference in
9 municipal governance proffered by Respondent City of San Mateo are
10 uncontroverted.

11 This court finds that the HAA in general and Government Code §
12 65589.5(f)(4) in particular constitute a significant and unnecessary interference in
13 municipal governance and that cannot possibly be construed as “narrowly tailored”
14 and, therefore, is unenforceable. For example, a narrowly tailored version of the
15 HAA would limit the statute’s application to cases in which the administrative
16 record contained objective evidence of bad faith by the municipal authority. Here,
17 there is no evidence that the City of San Mateo has ever acted in bad faith and the
18 fact that city employees and city council members recognized the positive aspects
19 of a project, as well as its defects, does not mean that their ultimate decision to
20 deny the application was made in bad faith.

21 Project criteria contained in city ordinances enacted when the exercise of
22 discretion was permitted must necessarily be reevaluated and modified if sweeping
23 changes to the law that prohibit all discretion are enacted and become enforceable.
24 It is not bad faith for a city to attempt to retain the standards it has applied in the
25 past if there is no evidence of prior bad faith. Accordingly, the Petition for Writ of
26 Mandate is DENIED.

27 Dated: NOV 07 2019

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Judge of the Superior Court