SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: California Renters Legal Advocacy and Educational Fund vs. City of Huntington Beach

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: **30-2020-01140855-CU-WM-CJC**

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Clerk of the Court, by: Ochelli Valencia , Deputy

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 08/04/2021 TIME: 03:06:00 PM DEPT: C21

JUDICIAL OFFICER PRESIDING: Deborah Servino
CLERK: Schallie Valencia
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2020-01140855-CU-WM-CJC** CASE INIT.DATE: 05/26/2020
CASE TITLE: **California Renters Legal Advocacy and Educational Fund vs. City of Huntington Beach**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 73581866

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matters under submission on June 4, 2021, and having fully considered the arguments of all parties, both written and oral, and the evidence submitted in this case, now rules as follows:

NOTICE OF RULING

Petitioners California Renters Legal Advocacy and Education Fund and THDT Investment, Inc. ("THDT Investment") filed a motion to issue writ of mandate. The motion is denied.

Requests for Judicial Notice

The Court grants Petitioners' request for judicial notice of: (1) an excerpt of Beach and Edinger Corridors Specific Plan, as amended in June 2105 [cover page through Section 2.1 (Development Standards)]; (2) Assembly Committee on Housing and Community Development Report on AB 1515 for April 26, 2017 meeting; (3) Assembly Committee on Housing and Community Development Report on SB 167 for June 28, 2017 meeting; and (4) Senate Committee on Transportation and Housing Committee Report on AB 3194 for June 19, 2018 meeting. (4/5/2021 Request for Judicial Notice, Exhs. A-D; Evid. Code, § 452, subds. (b) & (c).)

The Court grants Respondent's request for judicial notice of: (1) Huntington Beach City Charter; (2) Huntington Beach Zoning and Subdivision Code sections 241, 248, and 250; and (3) Order filed on November 7, 2019 in San Francisco Bay Area Renters Federal, et al. v. City of San Mateo, et al (San Mateo Superior Court case no. 18-CIV-02105). (5/2/2021 Request for Judicial Notice, Exhs. A-C; Evid. Code, §§ 451, 452, subds. (b), (c), & (d).)

The Court grants Petitioners' request for judicial notice of 2019 California Fire Code, California Code of Regulations, title 24, section 1.11.2.4. (5/14/2021 Request for Judicial Notice, Exh. E; Evid. Code, 452,

subd. (b).)

Relevant Background

On November 1, 2017, THDT Investment, through its agent MCG Architecture/Jeff Herbst submitted a planning application (no. 17-205). (Administrative Record ["AR"] at 3061-3063 [ROA 69].) Notifications of filing status that indicated that the application was incomplete because information and/or corrections were requested before the application would be deemed complete. (AR at 3069-3160, 3234-3388 [ROA 69].) In a notification of filing status dated April 1, 2019, the application was deemed complete. However, the notification noted that there were still outstanding items. (AR at 343-3462 [ROA 69].) A public hearing before the planning commission on May 28, 2019 was noticed. (AR at 3465-3507 [ROA 69].) The notice of the hearing indicated that the request for the conditional use permit was "[t]o demolish an existing liquor store, residence, and portion of a former car wash to permit a one-lot subdivision and development of a four-story mixed-use building including 48 new condominium residences with 891 square feet of commercial space and three levels of subterranean parking" at the location of "8041 Ellis Avenue Beach Boulevard (North side of Ellis Ave., between Beach Blvd. and Patterson Ln.)". (AR 3465-3507 [ROA 69].)

The Huntington Beach Planning Commission held a public hearing on the proposed project on May 28, 2019. (AR 3465-3507 [Notice; ROA 69.]; AR 1526-1535 [Minutes; ROA 58]; AR 1536-1653 [Transcript; ROA 58].) The staff report recommended that the Planning Commission find the proposed project exempt from the California Environmental Quality Act and approve Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 with suggested findings and conditions of approval. The staff report also provided two alternative actions: (1) continue Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 and direct staff to return with findings for denial; or (2) continue Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-04 and direct staff accordingly. (AR 1403 [ROA 58].) The Planning Commission voted to direct staff to return to the June 11, 2019 Planning Commission meeting with findings for denial. (AR 1533, 1633-1635 [ROA 58]; AR 3508 [Notice of Action, ROA 69].) At the June 11, 2019 public hearing, the Planning Commission voted to deny the tentative tract map and conditional use permit with modified findings for denial. (AR 1687-1688, 1710-1712 [ROA 58]; AR 1881-1885 [Notice of Action with Findings, ROA 58].)

THDT Investment filed a notice of appeal with the Huntington Beach City Council. (AR 1886-1913 [ROA 58].) The City Council continued hearing the appeal from August 19, 2019 to September 3, 2019. But, on August 19, 2019, the City Council held a public hearing on August 19, 2019 to hear comments. (AR 1968-1994 [ROA 60].) At the September 3, 2019 hearing, the City Council upheld the Planning Commission's denial. (AR 2288-2289, 2346-2347 [ROA 61].)

On October 28, 2019, Californians for Homeownership filed a verified petition for writ of mandate, in the related case (Orange County Superior Court case no. 30-2019-01107760). In a letter dated November 14, 2019, THDT Investment requested the Huntington Beach City Council reconsider its decision. (AR 2403-2404 [ROA 63].) THDT Investment requested a rehearing, which was scheduled for February 18, 2020. (See AR 2365-2366, 2368 [ROA 61].) At the February 18, 2020 hearing, the City Council voted to deny the Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 with findings. (AR 3016-3017, 3049-3051 [ROA 67].) A notice of action was issued with findings. (AR 2774-2780 [ROA 64].)

On May 26, 2020, Petitioners filed the Verified Petition for Writ of Mandate, pursuant to Code of Civil Procedure section 1094.5 and Government Code section 65589.5. (ROA 2; see Govt. Code, § 65589.5, subd. (m) [requires an action to enforce the HAA to be brought as a petition for writ of administrative mandate, pursuant to Code of Civil Procedure section 1094.5].) On August 12, 2020, they filed a First Amended Verified Petition for Writ of Mandate ("FAP"). (ROA 21.) Respondent filed an Answer to the FAP. (ROA 31.) Respondent also filed the administrative record. (ROA 52, 53, 55, 56, 58, 60, 61, 63, 64,

66, 67, 69.) After a notice of related case was filed, the Court took notice that the instant matter was related to Californians for Homeownership of City of Huntington Beach (Orange County Superior Court case no. 30-2019-01107760). (7/8/2020 Minute Order.) At the February 26, 2021 status conference, the Court instructed the parties to proceed by way of a motion for issuance of writ of mandate and gave a briefing schedule. Because counsel had agreed to avoid duplication, the Court permitted the parties to use the same joint briefs in the related cases. (2/26/2021 Minute Order.)

Merits

The FAP alleged that Respondent's findings of denial did not meet its burden of proof under the Housing Accountability Act ("HAA"; Govt. Code, § 65589.5). (FAP, at pp. 12-13.) The FAP seeks a writ of mandate directing the City to approve the 8041 Ellis Avenue project, or in the alternative a writ of mandate voiding the city's decision of February 18, 2020 to reject the project and directing Respondent to reconsider the project in a manner that conforms to the requirements of the HAA. (FAP, at p. 14.)

The HAA

The HAA is one of the measures that the Legislature adopted to address the housing crisis in the state. The Legislature found that the lack of housing “is a critical problem that threatens the economic, environmental, and social quality of life in California.” (Govt. Code, § 65589.5, subd. (a)(1)(A).) It is the State’s policy that a local government “not reject or make infeasible housing development projects . . . without a thorough analysis of the economic, social, and environmental effects of the action . . . .” (Govt. Code, § 65589.5, subd. (b).) By amending and expanding the HAA several times since its enactment in 1982, the Legislature intended “to significantly increase the approval and construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.” (Govt. Code, §65589.5, subd. (a)(2)(K).)

Generally, statutes operate prospectively only. (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 475.) Because Respondent’s findings were issued in February 2020, all references to the HAA are to the version that was in effect at that time. Amendments to the HAA, have since been enacted and effective as of September 24, 2020. (Stats. 2020, ch. 165, §5.) Subdivision (j) of the statute provides in relevant part:

(j)(1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, 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.

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

(2)(A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard,

requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i)Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(Govt. Code, § 65589.5, subd. (j).)

The HAA defines "objective" as "involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official."

Application of the HAA to Respondent

The HAA states: "This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem." (Govt. Code, § 65589.5, subd. (g).) Legislative declarations of intent to preempt local law are not determinative. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 783.) Respondent's fifth affirmative defense was the HAA does not apply to charter cities, like Respondent. (Answer, at p. 5.) Respondent contends the HAA is unconstitutional and violates the home rule doctrine. (Opp. at pp. 16-25.)

Article XI, section 5, subdivision (a) of the California Constitution provides that a city governed by charter "may make and enforce all ordinances and regulations in respect to municipal affairs, . . . and in respect to other matters they shall be subject to general laws. City charters . . . with respect to municipal affairs shall supersede all laws inconsistent therewith." The home rule doctrine "represents an 'affirmative constitutional grant to charter cities of 'all powers appropriate for a municipality to possess . . ' and [includes] the important corollary that 'so far as "municipal affairs" are concerned,' charter cities are 'supreme and beyond the reach of legislative enactment.'"' (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556.) "The home rule doctrine enshrines charter cities' sovereignty over 'municipal affairs.'" (*Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683, 698.) The doctrine "also implicitly recognizes state legislative supremacy over matters not within the ambit of that phrase [municipal affairs]." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 13.) Home rule authority "does not mean charter cities can never be subject to state laws that concern or regulate municipal affairs." (*City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 254.)

The California Supreme Court has developed a four-part analytical framework to determine whether a state law unconstitutionally infringes the home rule authority of charter cities granted by article XI, section 5 of the California Constitution. First, the court determines whether the local law at issue regulates an activity that can be characterized as a municipal affair. Second, the court determines whether there is an actual conflict between state law and the local law. If no conflict exists, the analysis is complete and there is no need to go to the next step. Third, the court decides whether the state law addresses a matter of statewide concern. Finally, the court determines whether the state law is reasonably related to resolution of the identified statewide concern and is narrowly tailored to avoid unnecessary interference in local governance. (*Construction Trades Council of California v. City of Vista, supra*, 54 Cal.4th at p. 556.)

Here, as to the first part, planning and zoning laws have been recognized to be a local matter. (*DeVita v. County of Napa, supra,* 9 Cal.4th at p. 774; *Center for Community Action & Environmental Justice of City of Moreno Valley* (2018) 26 Cal.App.5th 689, 704-705.)

As to the second part, there is an actual conflict in the HAA and Respondent's planning and zoning laws. In certain circumstances, such as when a local agency fails to provide required documentation, the HAA deems a housing development project "consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision," even though a local agency has found the proposed housing development project to be inconsistent, not in compliance, or not in conformity. (See, e.g., Govt. Code, § 65589.5, subd. (j)(2)(B).)

As to the third part, the HAA expressly found that the lack of is a critical statewide problem. (Govt. Code, § 65589.5, subd. (g).) While not determinative, courts give great weight to the Legislature's evaluation of what constitutes a matter of statewide concern. (*Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 312.) Furthermore, judicial decisions have long recognized the statewide dimension of the affordable housing shortage in relation to various impositions by the state into the realm of local affairs. (*Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683, 709-710 [listing cases]; *Ruegg v. Ellsworth v. City of Berkeley, supra,* 63 Cal.App.5th at p. 312.)

Finally, to the extent the HAA interferes with local planning and zoning, it appears to be narrowly-tailored to address the housing issue and to be reasonably related to resolving the statewide interest in alleviating delays and obstacles to development of housing projects. In order to qualify for the HAA's protections, a development must be consistent with the local agency's general plan and zoning standards in effect at the time that the application was deemed complete or the local agency fails to provide written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity. The HAA also imposes reasonable requirements if the local agency proposes to disapprove a project or to impose a condition. (See Govt. Code, § 65589.5, subds. (j).)

Respondent argues that application of Government Code section 65589.5, subdivision (f)(4) violates the California Constitution. (Opp., at pp. 20-26.) The Legislature added subdivision (f)(4) to the HAA in 2017, effective January 1, 2018. (Stats 2017, ch. 378, §1.5.) It provides:

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(Govt. Code, § 65589.5, subd. (f)(4).) The standard set forth in subdivision (f)(4) is consistent with the applicable standard of review for an administrative mandamus case such as in the instant case. That standard is a substantial evidence standard. (See *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32; see also Assem. Com. on Housing and Community Development Rep. on Assem. Bill No. 1515 (2017-2018 Reg. Sess.) as amended Apr. 17, 2017, p. 5 [recommending changing bill's standard from "sufficient evidence" to "substantial evidence" to "better conform with the existing standard as it applies to local governments."].) Substantial evidence has been defined as evidence of " 'ponderable legal significance . . . reasonable in nature, credible, and of solid value [, and] . . . relevant evidence that a reasonable mind might accept as adequate to support a conclusion . . . .' " (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 225 [quoting *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335].) Accordingly, the HAA does not unconstitutionally infringe on the home rule authority of Respondent.

Applicable Law for Administrative Mandamus

Code of Civil Procedure section 1094.5 makes administrative mandamus available for review of "the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer." (Code Civ. Proc., § 1094.5, subd. (a).)

" 'In reviewing an agency's decision under Code of Civil Procedure section 1094.5, the trial court determines whether (1) the agency proceeded without, or in excess of, jurisdiction; (2) there was a fair hearing; and (3) the agency abused its discretion.' " (*West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1517-1518 [quoting *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921]; see Code Civ. Proc., § 1094.5, subd. (b).) "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).)

Respondent Did Not Abuse Its Discretion

Petitioners argue that because Respondent did not timely make written findings under subdivision (j)(2), the project was deemed consistent with all applicable standards on May 2, 2019. (Mot. at p. 24.) The court does not agree with Petitioners' interpretation of subdivision (j)(2). Subdivision (j)(2)(B) provides that if the local agency "fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision." (Govt. Code, § 65589.5, subd. (j)(2)(B).) The documentation required in subparagraph (A) is: "written documentation identifying the provision or provisions [to which the project is inconsistent, not in compliance, or not in conformity], and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity". (Govt. Code, § 65589.5, subd. (j)(2)(A).) Subdivision (j)(2)(B) does not make reference to the timing set forth in subdivisions (j)(2)(A)(i) or (j)(2)(A)(ii).

Here, the planning application was deemed complete on April 1, 2019. (AR 3430-3462 [ROA 60].) With its denial of the application, Respondent provided its findings. (AR 2774-2780 [ROA 64].) The findings identified the applicable provisions from the Fire Department access standards and specifications, goals and policies of the General Plan and Beach and Edison Corridors specific Plan to which the project was inconsistent, not in compliance, or not in conformity, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity. These findings were based upon the reports of Traffic Expert Mark Miller and Fire Code/Life Safety Expert James McMullen. (AR 2774-2780 [ROA 64].) As a result, the project did not qualify for HAA protections. Respondent proceeded as required by law. Its decision was supported by its findings. Substantial evidence supported Respondent's findings, as the evidence was reasonable in nature, credible, and adequate to support the conclusions. The court neither reassesses the credibility of witnesses and other evidence nor weighs the supporting and contrary evidence. (See e.g., *Duncan v. Department of Personnel Admin.* (2000) 77 Cal.App.4th 1166, 1174 fn. 6.) Accordingly, the motion to issue writ of mandate is denied.

Statement of Decision

At the hearing which lasted less than one day, Petitioners requested a statement of decision. There are not material factual disputes for this court to decide. (Code Civ. Proc., § 632; Cal. Rules of Court, rule 3.1590.) The Court's review of an administrative adjudicatory decision under Code of Civil Procedure section 1094.5 is ordinarily confined to the administrative record. (Code Civ. Proc., § 1094.5, subd. (a);

see *Moore v. City of Los Angeles* (2007) 156 Cal.App.4th 373, 382.) The FAP presents only legal issues. The parties are not entitled to a statement of decision.

Within 15 days of the notice of ruling, Respondent shall submit electronically and serve a proposed judgment.

The Clerk is ordered to give notice of this ruling.