

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY**

MINUTE ORDER

DATE: 07/12/2023

TIME: 10:00:00 AM

DEPT: N-29

JUDICIAL OFFICER PRESIDING: Robert P Dahlquist

CLERK: Tina Horak

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2022-00003664-CU-WM-NC** CASE INIT.DATE: 01/28/2022

CASE TITLE: **Encinitas Residents for Responsible Development vs City of Encinitas [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

APPEARANCES

The Court, having taken the above-entitled matter under submission on 06/29/2023 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Petitioner Encinitas Residents for Responsible Development (ERRD)'s petition for writ of mandate is denied. Petitioner's request for declaratory and injunctive relief is denied.

This case arises from City's approval of the Encinitas Boulevard Apartments project, consisting of 250 units, with 50 of those units designated as affordable housing.

The City originally declined to approve the project, when it was presented as containing 277 units, with 41 designated as affordable housing. The developer subsequently modified the project by reducing the total number of units (to 250 units) while increasing the number of units designated as affordable housing (to 50 units). Additional modifications included a reduction in the height of certain portions of the project and other design changes to the roofline. Supp AR 38.

The City was sued by the developer after the City originally declined to approve the 277-unit project. The State threatened to intervene in that lawsuit, informing the City that the City had violated state housing laws by failing to approve the project. The developer and the City reached a settlement whereby the developer would amend its application to reduce the size of the project. The City subsequently approved the application for the modified project. That approval is the subject of this lawsuit.

Petitioner advances three main arguments in this lawsuit: (1) the City's "reconsideration" of the modified project, after declining to approve the original project was unlawful; (2) the lot consolidation approved as part of the project results in an unlawful lot subdivision; and (3) the City "abdicated its duty of public safety by ignoring fire and evacuation considerations" associated with the project. (ROA # 30, at pages 2 – 3)

The City opposes the petition. ROA # 32. Real Party in Interest Encinitas Blvd Apartments 6.95, LP

(Real Party) likewise opposes the petition. ROA # 37.

Requests for Judicial Notice/Objections/Augmentation of the Record

Petitioner's request for judicial notice (ROA # 45) dated May 26, 2023 is granted.

City's request for judicial notice (ROA #'s 33-34) dated May 5, 2023 is granted.

Real Party's request for judicial notice (ROA # 39) is granted. The court takes judicial notice of the existence and legal effects of the attached exhibits but not the truth of statements contained in the exhibits.

Petitioner's objection to the notice of augmentation (ROA # 43) is sustained. Augmenting an administrative record requires a noticed motion. CRC, Rule 3.2225 [noticed motion for augmentation required for CEQA actions]. Further, City has failed to establish due diligence and/or a proper basis for augmenting the record.

City and Real Party's supplemental request for judicial notice (ROA # 58) is denied. The attached exhibits are not necessary to the court's consideration of the merits of the petition.

Standard of Review

The standard of review to be applied by this court is the abuse of discretion standard set forth in CCP § 1094.5. *Save Livermore* (2022) 87 Cal.App.5th 1116, 1125; see also *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 777.

The court's task is to determine if the City followed the required legal procedures, supported its decision with adequate factual findings, and ensured that the findings were backed by substantial evidence. *California Renters Legal Advocacy & Education Fund v. City of San Mateo (California Renters)* (2021) 68 Cal.App.5th 820, 835.

The City Council Had Authority to Consider the Amended Application

Petitioner argues that City did not have the legal authority to reconsider its prior denial of the project and to "reconsider" the amended project application. Petitioner cites to *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405 for the proposition that City may not reconsider or reopen its final administrative decision absent statutory authority. *Id.* at 407.

Although petitioner labels the city's action as a "reconsideration" or "reopening" of the decision to disapprove the original project, the substance of the city's action was to consider, for the first time, an amended application for a modified project. "The law respects form less than substance." Civil Code section 3528. As such, the court is not persuaded that *Heap v. City of Los Angeles* is on-point in this instance.

In any event, the court finds that the City has the authority to: (1) consider an amended application for approval of a project, where the amended application reflects modifications to a previously disapproved

project; and (2) correct prior decisions that are later determined by the decision-maker to be erroneous. See *Helene Curtis, Inc. v. Los Angeles County Assessment Appeals Bd.* (2004) 121 Cal.App.4th 29, 39-40. Both of these principles appear to be applicable here.

In connection with the consideration of this issue, the court notes that the City is entitled to deference in the interpretation of its own rules. *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1091.

Encinitas Municipal Code (EMC) § 2.20.050 provides that the city council may adopt rules of procedures for the conduct of meetings. The city council did adopt rules of procedure. City's RJN (ROA # 34), Exhibit F. Under those rules, the city council elected to use Robert's Rules of Order as a guide to resolve questions of parliamentary procedure with the city attorney serving as parliamentarian. City's RJN (ROA #34), Ex. H, Section II.A.1, p. 3.

Robert's Rules of Order allow for reconsideration of an action. City's RJN (ROA #34), Exhibit E at pp. 152-156 [Robert's Rules Section 36]. The rules require that a motion for reconsideration must be raised by a decision-maker who voted with the prevailing side. *Id.* Here, while the city council had previously voted to deny the original project application, (AR 6-13), at the June 8 meeting it voted unanimously to reconsider the appeal, and to "waive any contrary rules of parliamentary procedure to allow this matter to be heard." Supp. AR 1690:9-1691:13. The motion was made by Mayor Blakespear (Supp AR 1690:9-20), who had previously voted with the prevailing side on the prior motion to disapprove of the original project. AR 13. Further, the city attorney, acting as parliamentarian, stated that the city council had the "authority to hear this matter." Supp AR 1770, ¶¶ 14-16, 20-25.

Next, EMC § 2.20.015.B provides that the city council has the exclusive jurisdiction to interpret all city legal matters, including procedural questions. City's RJN (ROA # 34), Exhibit G.

The court is satisfied that the city acted within its lawful authority when it considered and approved the amended application for project approval.

Nevertheless, assuming hypothetically that the city erred in the manner in which it considered and approved the amended project application, that error would not require the court to grant the current petition. Under Government Code § 65010(b), the court is not permitted to set aside the city's action "unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred."

Here, petitioner has not established that a different result would have been probable if the error had not occurred.

The City's Approval of a Lot Consolidation Did Not Result in an Unlawful Subdivision

Petitioner asserts that the City's approval of a lot consolidation in connection with the project resulted in an unlawful subdivision of land. This argument is based on the premise that Lots 2-A and 2-B comprised a single parcel prior to the approval of the lot consolidation, and the lot consolidation left Lot 2-B as a stand-alone, unlawful parcel.

The court is not persuaded.

While the court is not bound by the city's analysis of this legal issue, the court believes that the city's development service director correctly summarized the facts and law in connection with the city's consideration of the project. In particular, the city's development service director, Roy Sapa'u, stated in a memorandum that Parcel Map 1268 created Lot 2-A as a separate legal parcel. AR 7522. Mr. Sapa'u goes on to state: "There is no evidence (i.e., Lot Merger, Boundary Adjustment, Parcel Map, etc.) to verify the claim that Parcel 2A has been merged with Parcel 2B consistent with the Subdivision Map Act. The fact that Parcel 2A is a separate legal lot provides the legal authority to bifurcate it from Parcel 2B." AR 7522. Lot 2-A was created as a separate legal lot in 1973 by Parcel Map 1268. AR 7523. That Parcel Map also shows Lot 2-B as a separate parcel. *Id.*

Mr. Sapa'u's memorandum also notes that as recently as December 24, 2020, a record of survey was approved and recorded in the Office of the County Recorder delineating Lot 2-A and Lot 2-B as separate parcels. AR 7522, referencing Record of Survey No. 23766, found at AR 7529.

Contrary to petitioner's arguments, the fact that Lots 2-A and 2-B were assigned a single assessor's parcel number does not establish that the two lots constitute a single lawful lot. Assessor's parcel numbers are used for convenience by the tax assessor and do not necessarily correspond to legal lots recognized under the Subdivision Map Act. *Cafferkey v City & County of San Francisco* (2015) 236 Cal.App.4th 858, 869. Similarly, title reports and grant deeds are not dispositive of what constitutes a legal parcel under the Subdivision Map Act. A single grant deed can convey multiple legal parcels. *Crescent Trust v. City of Oakland* (2023) 91 Cal.App.5th 850, 861 [conveyance of multiple lots by a single grant deed does not effect a merger].

Having carefully considered the evidence and arguments presented by all parties, the court is satisfied that the City's approval of a lot consolidation in connection with the project was not unlawful or improper.

The City Did Not Abdicate its Duty of Maintaining Public Safety by Ignoring Fire and Evacuation Considerations

The administrative record contains considerable evidence concerning the fire and evacuation risks associated with the project. The evidence includes input from the City's Fire Chief, the City's Fire Marshall and outside consultants. It is not the court's role to re-weigh the evidence or to replace the elected city leaders as decision-makers. The court's role is limited to determining if substantial evidence supports the City's findings and to ensuring that the City followed the law in its consideration of the project.

The City's Fire Chief testified that the project does not create an unacceptable fire evacuation risk. AR 12305-12309; AR 7520; Supp AR 7270-7284; Supp AR 2358; Supp AR 2693; Supp AR 7112; Supp AR 7281-7282.

The City's Fire Marshall indicated that no objective standards exist for wildfire evacuation timing (AR 12317-12318 and 12089).

The administrative record reflects that the city's decision-makers: (1) considered petitioner's arguments and concerns about fire and evacuation risks, and (2) after weighing the conflicting evidence, concluded that, on balance, the project did not create unacceptable risks.

Under these circumstances, the court may not set aside the City's decision to approve the project.

Any Other Alleged Procedural Error in the Processing of the Amended Application was not Prejudicial

Petitioner argues that EMC Sections 23.08.040 and 23.08.060 required that the application for approval of the modified project should have been heard by the planning commission, subject to possible appeal and review by the city council.

However, as noted above, even if city made an error, Government Code § 65010 provides that the court shall not set aside any action by a public agency "unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred."

The court is not persuaded that any alleged error, including the failure of the planning commission to consider the application for approval of the modified project, was prejudicial. The court is not persuaded that a different result would have been probable if the error had not occurred. The city council is the final decision-maker for the city. The court is satisfied that the city council would have reached the same result – approval of the modified project – regardless of any additional input from the planning commission.

Claims for declaratory and injunctive relief

At the June 29, 2023 hearing, the parties agreed that petitioner's claims for declaratory and injunctive relief would be adjudicated on the administrative record.

Petitioner's claims for declaratory and injunctive relief are largely, if not entirely, duplicative of petitioner's request for a writ of mandate. To the extent that those claims are not duplicative, petitioner has abandoned the claims by failing to present reasoned argument in support of the claims in its trial brief and at the hearing conducted on June 28, 2023.

Conclusion

The court denies petitioner's request for a writ of mandate and denies petitioner's request for declaratory and injunctive relief.

The court invites the City's counsel to submit a proposed judgment.

IT IS SO ORDERED.

Robert P. Dahlquist

Judge Robert P Dahlquist