SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 86

BS172990 June 27, 2019
UNITED HOMEOWNERS ASSOCIATION II VS COUNTY OF LA ET AL 9:00 AM

Judge: Honorable Mitchell L. Beckloff
Judicial Assistant: F. Becerra
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter - Hearing on Petition for Writ of Mandate

The Court, having taken the matter under submission on 06/14/2019, now rules as follows:

This matter concerns an 88-unit, five story luxury condominium development proposed for 5101 South Overhill Drive, a vacant 1.84 acre parcel (the Project).

On June 14, 2019, the court conducted a lengthy hearing on United Homeowners Association's petition for writ of mandate pursuant to Code of Civil Procedure section 1085 and 1094.5. At the beginning of the hearing, the court announced its tentative decision to grant the petition and the reasons supporting the decision.

More specifically, the court stated it was inclined to find the Initial Study and Mitigated Negative Declaration (MND) did not satisfy the requirements of the California Environmental Quality Act (CEQA) thereby requiring the Project's entitlements (a conditional use permit and a vesting tentative tract map) issued by the County of Los Angeles to be set aside. The court noted if such a finding were made, the Project could not proceed on the MND and would require the preparation of an Environmental Impact Report. The court tentatively found there was substantial evidence to support a fair argument the Project may have a significant unmitigated environmental impact as to traffic and circulation.

The court now adopts its tentative decision as the decision of the court. Petitioners shall prepare a judgment.

The court's oral tentative decision set forth the reasoning with regard to every claim made and defense raised by the parties. (Petitioner affirmed at the hearing it had abandoned its greenhouse gas claims.) This minute order summarizes the oral tentative decision.

Traffic and Circulation:

Court agrees with Real Parties in Interest (Peak Capital Investments, LLC and The Bedford Group) and Respondent County the Brohard letter (AR 5369) largely does not offer an opinion contrary to that of the Project's traffic engineers. The evidence does not create a conflict amongst experts; instead, the Brohard letter mostly opines the Project's traffic study suffers from defects.

There is, however, an opinion in the Brohard letter at item 8. (AR 5372.) Brohard concludes based on evidence "there will be a significant cumulative traffic impact in the PM peak hour at the intersection of LaBrea and Slauson."

The Project's traffic study did not include the Baldwin Hills Crenshaw Plaza Redevelopment Project. (AR 173, 5373.)

The Project's traffic study calculated cumulative traffic volumes at Level of Service D at PM hour peak. Level of Service D is typically recognized as the minimum acceptable level of service in urban areas. (AR 169.)

Traffic engineers for the Project elected to not consider the Baldwin Hills Crenshaw Plaza Redevelopment Project in its traffic study even though they were aware of it and knew that project was proceeding. The Project's traffic engineers elected not to consider the Baldwin Hills Crenshaw Plaza Redevelopment Project on the basis that the Project's projected occupancy date was 2016 and the Baldwin Hills Crenshaw Plaza Redevelopment Project occupancy date was 2020. Additionally, the County did not list the Baldwin Hills Crenshaw Plaza Redevelopment Project on its cumulative project listing. (AR 11655.)

The court recognizes the Project's traffic engineers relied on the County's Department of Public Works (LACDPW) Traffic Impact Analysis Report Guidelines to determine what they were required to study. One of the guideline's provisions states related projects need only be considered if they are within 1.5 miles of the project being considered and the related project would "reasonably be expected to be in place by Project's build out year." (AR 11654.)

Therefore, based on the Project's build out year of 2016, Baldwin Hills Crenshaw Plaza Redevelopment Project's occupancy date of 2020 and the LACDPW guidelines, the traffic engineers did not analyze the intersection of LaBrea and Slauson Avenues. There is simply no discussion of cumulative impacts vis-à-vis Baldwin Hills Crenshaw Plaza Redevelopment

Project in the study. The Project's traffic engineers ignored it.

The Project is within 1.5 miles of Baldwin Hills Crenshaw Plaza Redevelopment Project because the traffic study for Baldwin Hills Crenshaw Plaza Redevelopment Project included the Project in its study. The Project's traffic engineers referenced the LACDPW guidelines, relied on the build out date and did not remark the Project was more than 1.5 miles from Baldwin Hills Crenshaw Plaza Redevelopment Project.

The Project's traffic engineers report they complied with CEQA Guideline section 15130, subdivision (b)(1)(A). That section provides in part: "The following elements are necessary to an adequate discussion of significant cumulative impacts: (A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency." This analysis is governed by standards of practicality and reasonableness. (Id. at subd. (b).)

LACDPW guidelines cannot overrule state law. Nothing in CEQA appears to support LACDPW guidelines as to a limitation on build out year. (At best, perhaps the LACDPW guideline reflects what might be practical or reasonable under certain situations.)

CEQA Guideline section 15130 requires a discussion of the cumulative effects of "past, present, and probable future projects" that is practical and reasonable. The Project traffic engineers do not dispute the Baldwin Hills Crenshaw Plaza Redevelopment Project is a present and probable future project. That they ignored it altogether precludes an argument it was practical and reasonable not to evaluate it.

There is substantial evidence that had an analysis of the cumulative effect of the Baldwin Hills Crenshaw Plaza Redevelopment Project at LaBrea and Slauson Avenues been included with the Project, the PM peak traffic Level of Service would drop to an F. The Level of Service would be impacted such that it would drop from a Level of Service D (typically recognized as the minimum acceptable level of service in urban areas), skip Level of Service E and result in a Level of Service F.

The Initial Study and the MND are fatally flawed because the County failed to consider the cumulative effects of traffic and circulation in violation of CEQA Guidelines section 15130.

Air Quality:

Petitioner did not meet its burden under the fair argument standard. SWAPE opinions are premised entirely on faulty data.

First, it is not disputed SWAPE misunderstood and did not seek clarification from the County as to whether the Project would import 28,000 cubic yards of earth material. Thus, SWAPE's calculations based on this mistaken belief are irrelevant.

Second, SWAPE elected to rely on default numbers instead of actual data it had for its diesel particulate emissions opinions. (AR 5384 fn. 19.) SWAPE could have recalculated and prepared an assessment based on all the detail about the Project provided in Appendix A. (AR 465-505.) SWAPE chose, however, not to do so. Thus, SWAPE's health risk assessment, based on numbers unrelated to the Project, is irrelevant as it is not based on actual facts. SWAPE did not challenge the actual air quality calculations or foundation for them.

Land Use:

There is no evidence in the administrative record cited by Petitioner that the 35-foot height restriction was a land-use plan, policy or regulation adopted for the purposes of avoiding or mitigating an environmental impact. The court agrees with Real Parties that Petitioner makes such an assertion but provides no authority for the statement. Further, Petitioner's argument made in reply that the government's zoning regulations are supported by its broad police powers is not relevant to the issue.

Petitioner did not meet its burden under the fair argument standard.

Aesthetics:

Real Parties' request for judicial notice that the parcel in question is in a transit priority area is denied. (Western States Petroleum Assn. v. Superior Court (1995) 9 Cal.4th 559, 573 fn. 4.) Even if the court did take judicial notice of the document, the court agrees with Petitioner's footnote 2 in its opposition to the request for judicial notice as to the evidentiary issues based on the quality of the map and lack of clarity.

As a preliminary matter, the court notes "aesthetic judgments are inherently subjective." (Protect Niles v. City of Fremont (2018) 25 Cal.App.5th 1129, 1147; Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist. (2004) 116 Cal.App.4th 396, 402

["overall aesthetic impact . . . by its very nature is subjective. Opinions that [the project] will not be aesthetically pleasing is not the special purview of experts. Personal observation on these nontechnical issues can constitute substantial evidence"].)

As argued by Real Parties, "obstruction of a few private views in a projects immediate vicinity is not generally regarded as a significant environmental impact." (Bowman v. City of Berkeley (2004) 122 Cal.App.4th 572, 586.) "Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons." (Mira Mar Mobile Community v. City of Oceanside (2004) 119 Cal.App.4th 477, 492-493.)

Petitioner's arguments are based on the size of the Project which abuts six single-family residences and is directly across the street from four others. (AR 5271.)

The area, however, is a densely populated urban area adjacent to a multi-pronged intersection of highways where the hill crests. (AR 880-881.) There is a neighboring active oil field, high tension powerlines and at least one billboard. (AR 1031-1039, 3095.) Petitioner has noted no evidence suggesting a "substantial adverse effect on a scenic vista." (CEQA Guidelines, Appendix G, § I (a) and (c).)

Further, given the Project's location on the edge of the residential area, and surrounding commercial and industrial properties, the court further finds any aesthetic impact—to the environment of persons in general—is minimal. (See Protect Niles v. City of Fremont (2018) 25 Cal.App.5th 1129, 1147 [internal quotations omitted] [rejecting the edge property argument but on grounds that "[t]he significance of an environmental impact is not based on its size but is instead measured in light of the context where it occurs"].)

At argument, Petitioner referred the court to Citizens For Responsible & Open Government v. City of Grand Terrace (2008) 160 Cal.App.4th 1323, 1337. The court is not persuaded Grand Terrace is helpful to Petitioner. There the court found a project created "a change in the aesthetic environment and interfere[d] with scenic views of the public in general . . . ." Those same facts are not true here. There is no scenic vista and the aesthetic environment is not changed as to the public in general.

According, Petitioner did not meet its burden under the fair argument standard.

Based on the foregoing, as well as those for those reasons stated during oral argument, the petition is granted. The court finds there is substantial evidence to support a fair argument the

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Project may have a significant unmitigated environmental impact as to traffic and circulation.

Petitioner's exhibit 1 is ordered to be preserved unaltered until a final judgment is rendered in this case and is to be forwarded to the court of appeal in the event of an appeal. Joint appendix is ordered returned forthwith to the party who lodged it, to be preserved unaltered until a final judgment is rendered in this case and is to be forwarded to the court of appeal in the event of an appeal. (Copy of administrative record and joint appendix was lodged on a single thumb drive.)

Joint appendix is to be picked up directly from Department 86 within 10 days from this order.

Counsel for Petitioner is to prepare and serve a proposed judgment on opposing counsel for approval as to form and content. After ten days, counsel is to lodge, not eFile, the proposed judgment directly in Department 86 and eFile a declaration stating the nature and extent of any objections received.

The clerk shall give notice.

Certificate of Mailing is attached.