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Berkeley City Council

Superior Court of California, County of Alameda
Hayward Hall of Justice

San Francisco Bay Area Renter Plaintiff/Petitioner(s) VS. Berkeley City Council, City Defendant/Respondent(s) (Abbreviated Title)	No. <u>RG16834448</u> Order Motion to Enforce Settlement Agreement/Stipulated Order Granted
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The Motion to Enforce Settlement Agreement/Stipulated Order filed for Diego Aguilar-Canabal and Sonja Trauss and California Renters Legal Advocacy and Education Fund and San Francisco Bay Area Renters Federation was set for hearing on 07/20/2017 at 09:00 AM in Department 511 before the Honorable Kimberly E. Colwell. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The Motion of Petitioners San Francisco Bay Area Renters Federation, et al., to Enforce Stipulated Order Granting Petition for Writ of Administrative Mandate is **GRANTED**.

This action challenges the denial of a permit to construct three residential dwellings at 1310 Haskell Street in Berkeley ("the Project"). (Verified Pet'n., paras. 9-18.) The Project required the demolition of an existing single family home on the property. The project was initially submitted the Berkeley Zoning Adjustment Board ("ZAB") for review on April 8, 2015. (Verified Pet'n., para. 12.) On March 10, 2016, ZAB staff determined that the Project complied with all objective general plan and zoning standards and criteria, including design review standards, in effect at the time of the application. The ZAB also determined that the Project would not be detrimental to neighboring properties. (Id. at para. 13-14; RJN, para 2; Ex. B at pp. 10-16.) On March 10, 2016, the ZAB issued a Use Permit authorizing the Project. The approval was appealed, and, on July 12, 2016, the Berkeley City Council voted to overturn the ZAB's decision, and to deny the Use Permit.

In denying approval of the Project, the City Council did not make the findings called for by the Housing Accountability Act ("HAA" or Gov. Code § 65589.5), which requires that when a proposed housing project complies with the applicable, objective general plan and zoning standards, but a local agency proposed to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

(1) The housing development project would have a specific adverse impact on the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density; and

(2) 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. (Gov. Code § 65589.5(j).)

On October 7, 2016, petitioners filed the underlying petition for writ of mandate alleging that City of Berkeley could not lawfully disapprove the Project without making the written findings called for by the HAA. (Verified Pet'n., paras. 9-18.) On October 10, 2016 the parties entered into a settlement and thereafter presented the court with a proposed "Stipulated Order Granting Petitioners' petition for Writ of Administrative Mandamus." ("Order".) The court entered the Order on November 10, 2016.

As set forth in the Order, the parties settled the case on the following terms:

- (1) The resolution authorizing the denial of the Use Permit would be rescinded;
- (2) The City Council would schedule a rehearing of the appeal of the Use Permit to occur within four months;
- (3) In its decision on the rehearing of the Appeal, City would comply with the HAA;
- (4) City agreed to conduct an HAA analysis for all pending and future housing construction, including the Project; and,
- (5) City agreed to reimburse petitioners' attorney fees and costs.

In compliance with the settlement, the rehearing of the appeal took place on February 28, 2017, In advance of the rehearing, City staff submitted a memorandum to the Mayor and City Council, summarizing the issues, referencing the settlement of this case, and making the necessary finding that the Project complied with "all applicable, objective, general plan and zoning standards."

At the rehearing, the City Council complied with the portion of the settlement requiring City to vacate its resolution authorizing the denial of the Use Permit for the Project. The City Council did not, however, comply with its agreement to conduct an analysis under the HAA and make the required findings if the Project was disapproved or scaled back. Instead, the City Council took a different approach, which was to deny the demolition permit needed to construct the Project on the basis that City could not make the required "non-detriment" findings under Berkeley Municipal Code section 23C.08.010.B. (RJN, Ex. 6; Exh. F, reasons 1-5.) Having denied the necessary demolition permit, City concluded that the HAA did not apply (or that the issue of City's HAA compliance for the Project was moot).

Petitioners' motion is granted. In settling this case, City agreed that the HAA applied, as had been alleged in the petition, and that City would reconsider the appeal and conduct the required analysis. Where a proposed housing project complies with a city's general plan and zoning standards, the HAA says City cannot disapprove or condition the project at a lower density unless it provides written findings supported by substantial evidence that the project will have a specific, adverse impact on public health or safety that cannot be mitigated or addressed. It is not a reasonable interpretation of the parties' settlement agreement that City could avoid the HAA analysis it agreed to perform by denying an ancillary demolition permit (for reasons that did not have to do with detriment caused by the demolition of the existing structure, but the construction of the Project).

City describes various scenarios in which it would be undesirable from a policy standpoint to override local demolition controls in favor of the HAA, including in the instance of a project calling for the demolition of an historically or architecturally significant resource to construct a McMansion, or calling for the demolition of 100-unit apartment building in order to construct a 10-unit luxury condominium project. The court need not decide whether the HAA would or should override local demolition controls in hypothetical situations. This project does not implicate the policy concerns raised in City's brief. More importantly, the motion before the court is to enforce the parties settlement agreement. City did more than just agree to rehear or reconsider the appeal. The settlement agreement clearly reflects City's agreement to conduct an HAA analysis for this Project which City must now do.

Dated: 07/21/2017



Judge Kimberly E. Colwell