
Fund, Victoria Fierce and John Moon is CONTINUED TO Thursday October 24, 2019 for further briefing on the matters listed below. Petitioner's Supplemental Brief due by September 19, 2019, Respondent's Brief due by October 17- 2019. No Reply.

Issue 1: The Burden of Proof on a Petition for Writ of Administrative Mandate seeking to overturn a City Council Decision Denying An Appeal on a Residential Housing Development Project Permit on the Grounds that Such Decision violates the California Housing Accountability Act, Government Code § 65589.5 et seq.

California Code of Civil Procedure § 1094.5(c) provides:

"Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that findings is not supported findings by substantial e evidence in light of the whole record."

Government Code § 65589.5(f)(4) provides:

"For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, or 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."

In its Reply Brief, Petitioners state:

"In non-HAA cases, the substantial evidence test usually favors public agencies whose decisions are challenged. If there is any substantial evidence in the record supporting an agency's decision, it must be upheld. The HAA reverses this, so that project applicants must be afforded the benefit of the doubt. If there is *any* substantial evidence supporting approval of the housing project, it must be approved." (Reply Brief at 3:18-22 [*italics in original*].)

The parties are ordered to provide their respective contentions concerning the burden of proof applicable to this matter and to provide all authority, including case law, statutes, legislative history, rules of construction, and treatises relevant to the extent, if any, that the above quoted provision of Government Code § 65589.5(f)(4) should be deemed to modify or replace the above quoted provision of California Code of Civil Procedure § 1094.5(c).

If either party contends that some aspect of Government Code § 65589.5(f)(4) is or is not enforceable or is or is not applicable to

this action, the parties are ordered to provide all authority supporting that contention.

If either party contends that Government Code § 65589.5(f)(4) eliminates the power of a government entity to exercise discretion in determining which "plan, program, policy, ordinance, standard, requirement, or other similar provision" is applicable or eliminates the power of a government entity to exercise discretion to deny a project if there is some substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity, the parties are ordered to provide all authority supporting that contention.

If either party contends that a Superior Court ruling on a Petition for Writ of Mandate alleging a violation of Government Code § 65589.5(f)(4) by a government entity must or must not give any deference to the Government entities' findings, the parties are ordered to provide all authority supporting that contention.

Issue 2: The Extent to Which the HAA precludes the use of discretionary guidelines.

The parties are ordered to provide their respective contentions concerning whether the HAA precludes the use of discretionary guidelines in evaluating Residential Housing Development Project Permits and to provide all authority, including case law, statutes, legislative history, rules of construction, and treatises that supports such contention.

Issue 3: The Appropriate Remedy if A Writ of Mandate Should Issue

The parties are ordered to provide their respective contentions concerning the appropriate remedy where a court finds that a government entities' actions failed to comply with the HAA; e.g. whether the appropriate remedy is an order commanding the government entity to approve the project in question or an order remanding the matter to the government entity for further consideration, including but not limited to considerations not addressed in the original hearings, and to provide all authority, including case law, statutes, legislative history, rules of construction, and treatises that supports such contention.
