SNOWBALL WEST INVESTMENTS, LP v. CITY OF LOS ANGELES
Case Number: 20STCP00771
Hearing Date: March 24 and April 2, 2021

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

Petitioner, Snowball West Investment, L.P. (Snowball), obtained final approvals from Respondent, the City of Los Angeles, for a vesting tentative tract map (Map), site plan review (SPR) and project permit compliance (PPC) for a 215-unit housing development project in the northeastern part of the City (the Project). The City also certified a Final Environmental Impact Report (FEIR) for the Project.

Thereafter, Snowball "sought to begin the ministerial process of obtaining clearances of conditions for its Map" from the City. (Opening Brief 4:25-26) The City did not process the ministerial clearances; instead, the City advised Snowball it needed to obtain a zone change for the Project. (Opening Brief 5:2.)

The City thereafter denied Snowball's vesting zone change application.

Snowball requests the court issue a writ of mandate directing the City to either (1) process Snowball's Map clearances and other Project permits without requiring a zone change, or (2) revoke its December 11, 2019 decision denying Snowball's application for a zone change and approve the zone change.

The City opposes the petition.

Snowball's request for judicial notice (RJN) of Exhibits A, C and D is granted. The request is denied as to Exhibit B as it is irrelevant as a trial court decision in an unrelated matter has no precedential value. Snowball's RJN in support of its reply is granted.

The City's RJN is granted.

The petition is denied.

STATEMENT OF THE CASE[1]

Snowball owns a 58-acre property consisting of eight parcels located at 6433 La Tuna Canyon Road in the City (the Property). (AR 212.) The Property is currently zoned for RA-1 (Residential

[1] Record citations are to the page number only.

Agricultural Zone), A1-1 (Agricultural Zone), and RE40-1 (Residential Estate Zone).[2] (AR 1655, 3017 [maps].) The Property is within the Sunland-Tujunga-Lakeview Terrace-Shadow Hills-East La Tuna Canyon Community Plan (Community Plan) and San Gabriel/Verdugo Mountains Scenic Preservation Specific Plan (Specific Plan). (AR 1654)

In 2007, Snowball applied for land use approvals for the Project. (AR 2431-2458) Snowball's Project required a Map, SPR, PPC and zone change. In 2008, Snowball converted its zone change application to a vesting zone change. (AR 1151-1152)

In February 2019, the City's Deputy Advisory Agency conditionally approved the Map for the Project. (AR 364-499.) A neighborhood organization appealed the Map approval to the City Planning Commission (CPC). (AR 500-725.) On June 19, 2019, the CPC denied the appeal and approved the Map conditioned upon Snowball obtaining a zone change. (AR 787, 801.) The CPC noted if the zone change "is not approved, the number of dwelling units shall be limited to that permitted by the existing A1-1 and RA-1 Zones . . . ." (AR 801.) On July 2, 2019, the CPC approved the SPR, PPC and certified the FEIR. (AR 787-788.) The CPC recommended the City Council approve the requested zone change. (AR 24649.)

At the time it conditionally approved the Map, the CPC found the Map was:

> "consistent with the General Plan and applicable specific plans. The proposed tract map is consistent with the General Plan and applicable specific plans. The proposed tract map is consistent with the General Plan Framework, the [Community Plan]. the [Specific Plan], the Housing Element and the Mobility Plan 2035." (AR 484; see also AR 908-912, 2295.)

The CPC also found when it approved the SPR the Project was "in substantial conformance with the purposes, intent and provisions of the General Plan, applicable Community Plan, and any applicable Specific Plan." (AR 2301.)

No appeal followed the CPC's decision on the SPR, PPC or certification of the FEIR. (164 AR 33734.)

The pending vesting zone change remained as the final land use approval required to allow the Project to proceed.

On December 10, 2019, before the City Council heard and considered Snowball's application for a vesting zone change, the City Council's Planning and Land Use Management (PLUM) Committee conducted a hearing. (AR 24649.) Councilmember Monica Rodriguez submitted a letter to the PLUM Committee for consideration at the hearing. (AR 34870-34872.) At the conclusion of the PLUM Committee hearing, the committee recommended the City Council

[2] The Project involves the RA-1 and A1-1 zones only.

deny the requested zone change. (AR 34911, 2414-2416, 34295-34298.) The City Council later voted and denied the zone change. (AR 34295, 2421.)

The City rejected Snowball's claim it was entitled to clearance of the zone change condition for its Map under Government Code section 65589.5, subdivision (j)(4). The City explained the Project site was subject to zoning that restricted density to only 19 units. (AR 34995-34999.)

This action ensued.

ANALYSIS

In its petition, Snowball asserts the City may not require a zone change for the Project because, as a matter of law, "no zone change is required for a housing development project that is consistent with the objective general plan standards and criteria." (Opening Brief 5:4-5.) Snowball makes two specific claims before the court: First, the City is required to perform its ministerial duty and process Snowball's Map clearances without a zone change. Second, the City wrongfully, arbitrarily and capriciously denied Snowball's "unnecessary" application for a zone change and did not make the legally required findings to deny the zone change.

Snowball's position before the court is largely grounded upon on the Housing Accountability Act (the HAA), Government Code section 65589.5.

The HAA applies to housing development projects like Snowball's Project.[3]

Where applicable, the HAA limits the City's ability to disapprove a project.

> "The HAA ([Government Code section] 65589.5) known as the 'anti-NIMBY law,' was designed to limit the ability of local governments to reject or render infeasible housing developments based on their density without a thorough analysis of the 'economic, social, and environmental effects of the action . . . .' (§ 65589.5, subd. (b).) When a proposed development complies with objective general plan and zoning standards, including design review standards, a local agency that intends to disapprove the project, or approve it on the condition that it be developed at a lower density, must make written findings based on substantial evidence that the project would have a specific, adverse impact on public health or safety and that there are no feasible methods to mitigate or avoid those impacts other than disapproval of the project. (§ 65589.5, subd. (j)(1) & (2).)" (*Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927, 938-939.)

The Legislature enacted the HAA "to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively

[3] No party disputes the Project is a "housing development" as defined by Government Code section 65589.5, subdivision (h)(2).

curbing the capability of local governments to deny, reduce the density for, or render infeasible development projects . . . ." (Gov. Code § 65589.5, subd. (a)(1)(K).)

The HAA requires:

> "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." (Gov. Code § 65589.5, subd. (j)(1)(A) and (B).)

The City's Refusal to Process the Map Clearances without a Zone Change:

Based upon the HAA, Snowball contends the City is required to perform its ministerial duty and process Snowball's Map clearances without a zone change. That is, the City has no discretion here—it must approve the Project and cannot require Snowball to first obtain a zone change.

Standard of Review:

Under Code of Civil Procedure section 1085, subdivision (a), a writ of mandate shall issue where the agency fails to perform a ministerial act which the law specially enjoins, such as the processing of clearances for a final subdivision map. Traditional mandamus is appropriate where the Snowball has no plain, speedy and adequate alternative remedy.

"Ordinary mandamus may be used to compel the performance of a duty that is purely ministerial in nature or to correct an abuse of discretion." (*American Board of Cosmetic Surgery v. Medical Board of California* (2008) 162 Cal.App.4th 534, 539.) "The trial court's role in a traditional mandamus proceeding is a limited one. It must determine whether the agency's

action was arbitrary, capricious, or without evidentiary support, and/or whether it failed to conform to the law. The trial court may not substitute its judgment for that of the agency or force the agency to exercise its discretion in a certain way." (*Association of Irritated Residents v. San Joaquin Valley Unified Air Pollution Control Dist.* (2008) 168 Cal.App.4th 535, 542.)

Resolution of Snowball's HAA claim necessarily requires the court to interpret the City's zoning ordinance.

" 'Courts interpret municipal ordinances in the same manner and pursuant to the same rules applicable to the interpretation of statutes.' " (*Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 434; see *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1087.)

"[A] city's interpretation of its own ordinance is ' "entitled to deference" in our independent review of the meaning or application of the law." ' " (*Harrington v. City of Davis. supra,* 16 Cal.App.5th at 434; see *City of Monterey v. Carrnshimba, supra,* 215 Cal.App.4th at 1091.)

The degree of deference is "situational" and the courts give greater deference to an agency's interpretation where " 'the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.' " (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12; see *Citizens for Beach Rights v. City of San Diego* (2017) 17 Cal.App.5th 230, 241.)

Moreover, the courts presume the agency's interpretation is "likely to be correct" where there are "indications of careful consideration by senior agency officials" or "the agency 'has consistently maintained the interpretation in question.' " (*Yamaha Corp. of America v. State Bd. of Equalization, supra,* at 19 Cal.4th at 13; see *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2010) 184 Cal.App.4th 1032, 1041-1042.) " '[A]n agency's view of the meaning and scope of its own [zoning] ordinance is entitled to great weight unless it is clearly erroneous or unauthorized.' " (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193.) However, "[w]hatever the force of administrative construction [] final responsibility for the interpretation of the law rests with the courts." (*San Francisco Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 668.)

General Plans:

A city must adopt a "comprehensive, long-term general plan" for its physical development. (Gov. Code § 65300.) The general plan serves as a " 'charter for future development' " and contains the city's fundamental policy decisions about such development. (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1194.)

"General plans ordinarily do not state specific mandates or prohibitions. Rather, they state 'policies,' and set forth 'goals.' " (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 378.) "These policies 'typically reflect a range of competing interests.' [Citation.] Nevertheless, a city's land use decisions must be consistent

with the policies expressed in the general plan." (*Friends of Lagcon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 815; Gov. Code § 65860.) " '[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.' " (*Citizens of Goleta Valley v. Board of Supervisors, supra*, 52 Cal.3d at p. 570.)

In the City,

> "[t]he [Sunland-Tujunga Community Plan] is one of 35 community plans established for different areas of the City to implement the policies of the General Plan Framework Element. The [c]ommunity [p]lans are intended to promote an arrangement of land uses, streets and services which will encourage and contribute to the economic, social physical health, safety, and welfare of the people who live and work in the Community." (AR 1657.)

The Government Code requires a city's zoning ordinances to be consistent with its general plan. (Gov. Code § 65860, subc. (a).)

Snowball's HAA Claim:

The CPC approved Snowball's Map, the SPR and PFR. In so doing, the CPC found the Map was:

> "consistent with the General Plan and applicable specific plans. The proposed tract map is consistent with the General Plan and applicable specific plans. The proposed tract map is consistent with the General Plan Framework, the [Community Plan], the [Specific Plan], the Housing Element and the Mobility Plan 2035." (AR 484; see also AR 2295.)

The CPC also found (when it approved the SPR) the Project was "in substantial conformance with the purposes, intent and provisions of the General Plan, applicable Community Plan, and any applicable Specific Plan." (AR 2301.)

Relying on the HAA, Snowball asserts it is entitled to the City performing its ministerial duties of issuing Snowball's Map clearances *without conditioning such performance on a zone change*.

Government Code section 65589.5, subdivision (j)(4), provides:

> "a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan,

> however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project."[4] (Emphasis added.)

Accordingly, in the language of the HAA, Snowball contends the Project is "not inconsistent with the applicable zoning standards and criteria," and the City "shall not require a rezoning." Snowball argues "the housing development project is consistent with the objective general plan standards but the zoning for the project site is inconsistent with the general plan." (*Ibid.*)

There can be no dispute the CPC found the Project consistent with general plan standards. (AR 484, 2301; see also AR 2295.) Of course, as noted by the City during argument, the City Council did not have to consider Project's consistency with general plan standards. Nonetheless, throughout the 13-year-entitlement process, the CPC consistently noted Snowball's requested zone change would bring the zoning into conformance with the existing general plan land use designation. (AR 909 ["zone change would bring the zoning into conformance with the residential land use designation of Low Medium I"], 913 ["bring the zoning into conformance with the existing General Plan land use designation"], 915 ["zone change will bring the Project into consistency with the land use designation as required by law"], AR 2300 ["would create consistency with the respective land use designations of Low Medium I and Low Residential"], AR 10178 ["bring the zoning into conformance with the existing General Plan land use designation"].)

As noted earlier, the Property, is zoned either: RA-1, A1-1 or RE40-1.

The Property is within the Community Plan which

> "designates the project site with multiple land use designations, including Low Medium I, with corresponding zones of R2, RD3, RD4, RD5, RD6, RZ3, RZ4, RU, and RW1, Low Residential, with corresponding zones of RE9, RS, R1, and RU, and Very Low II, with corresponding zones of RE15, RE11, and Minimum Residential, with corresponding zones of OS A1, A2, and RE40. Further, Footnotes 20 and 4 apply to the project site restricting the development of the Low Medium I to RD5, density and implementation of the slope density formula as applicable." (AR 1657.)

[4] The second sentence of the statute is not relevant here. By its terms, the second sentence is applicable only where the City has given notice of inconsistency with "applicable plan, program, policy, ordinance, standard requirement, or other similar provision . . . ." (Gov. Code § 65539.5, subd. (j)(2)(A).) The legislature expressly made the second sentence of Government Code section 65589.5, subdivision (j)(4) applicable only where the City has complied with Government Code section 65589.5, subdivision (j)(2). The parties agreed during argument the legislature adopted Government Code section 65589.5, subdivision (j)(2) well after Snowball submitted it application for the Project.

Snowball argues the Property's zoning of RA-1, A1-1 or RE4C-1 is not zoning designated w thin the Community Plan—rendering it inconsistent with the Community Plan. As the Property's zoning is inconsistent with the general plan and the Project is consistent with the City's general plan, the City cannot require rezoning under the HAA.

In response, the City argues Snowball is not entitled to relief on its petition. The City asserts the HAA is inapplicable to the Project for four related reasons. First, Footnote 23 to the Land Use Map demonstrates consistency between zoning for the Property and the Community Plan. Second, the City's interpretation of Footnote 23 is entitled to deference. Third, the Property's zoning is compatible with its land use designations. Fourth. Snowball has not established zone-plan inconsistency. Additionally, the City contends Snowball's attack on the zone change condition required by the Map approval is barred by the statute of limitations.

In opposition to Snowbal 's linchpin argument, the City asserts the Property's zoning "is entirely consistent with the General Plan." (Opposition 9:25-26.) Such consistency undermines Snowball's claim. The City explains the Community Plan incorporates within it the General Plan's Land Use Map. Relying on Footnote 23 to the Land Use Map, the City asserts:

> "a land use category's full range of corresponding zones are those zones listed in the . . . Land Use Map legend . . . 'as well as' those more restrictive zones (*i.e.*, less intensive uses) permitted by the municipal code but not listed in the Map Legend." (Opposition 10:2-5.)

Footnote 23 of the Land Use Map states in its entirety:

> "Each Plan category permits all indicated corresponding zones as well as those zones referenced in the Los Angeles Municipal Code (LAMC) as permitted by such zones unless further restricted by adopted Specific Plans, specific conditions and/or limitations of project approval, Plan footnotes or other Plan map or text notations.
>
> Zones established in the LAMC subsequent to the adoption of the Plan shall not be deemed corresponding to any particular plan category unless the Plan is amended to so indicate.
>
> It is the intent of the Plan that the entitlements granted shall be one of the zone designations within the corresponding zones shown on the Plan, unless accompanied by a concurrent Plan amendment." (AR 34998.)

The history of Footnote 23 bolsters the City's interpretation. On July 11, 1990, the City Council passed a motion requiring that:

> "a plan amendment footnote be added to all community plans stating in effect that: The plan categories permit all zoning that is more restrictive (as set forth in

> Section 12.23 of the L.A.M.C.) than those indicated unless otherwise restricted by the Zoning Code, specific conditions of approval or other provision of the community plan."[5] (AR 35044.)

The City Council then referred the matter to staff to draft the footnote. Staff "modified the language contained in the motion to be more precise." (AR 35023.) Staff used the motion language to discern "the intent of the Council" to "redraft[] it to read more accurately and to take into account various nuances contained in the Zoning Code." (AR 35023.) Footnote 23 is the result of staff's efforts. Staff explained the footnote would "provide in the written record what has been unwritten past and present administrative practice and public policy." (AR 35024.)

In 1990, in a report addressing the potential adoption of Footnote 23, CPC staff explained the proposed plan amendment was consistent with the City's practice over the prior 20 years:

> "For the past 20 years, the [community plans'] Legend has including a listing of one or more corresponding zones for each Plan category. The corresponding zones section has not included all more restrictive zones although the plans have been interpreted consistently over the years to mean generally that the more restrictive zones are consistent with the applicable plan category. . . .
>
> The proposed amendment takes into account plan footnotes which may . . . restrict density more narrowly in specific locations than the plan category does overall." (AR 35023.)

During argument on the petition, the City conceded Footnote 23 is not a model of clarity. Nonetheless, the City explained it has consistently interpreted Footnote 23 as it has here since its adoption on January 10, 1991. (AR 35013-35019.) The legislative history suggests that the City's practice—codified in Footnote 23—has existed for over 50 years. Applicable community plan categories include corresponding zones as well as all more restrictive zones under the City's municipal code.[6]

The City's interpretation of its zoning laws is entitled to deference. As noted earlier, " '[A]n agency's view of the meaning and scope of its own [zoning] ordinance is entitled to great weight unless it is clearly erroneous or unauthorized.' " (*Anderson First Coalition v. City of Anderson, supra*, 130 Cal.App.4th at 1193.) "[E]vidence that the agency 'has consistently maintained the interpretation in question, especially if [it] is long-standing' [citation], and 'indications that the agency's interpretation was contemporaneous with legislative enactment

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[5] Then Mayor Bradley advised the City Council prior to the adoption of Footnote 23: "The subject amendment was initiated by City Council in order to clarify that zones more restrictive than those shown in the legend are consistent with the plan." (AR 35015.)

[6] The parties do not dispute zones A1 and RA are more restrictive than R1 and RD. (City RJN, Ex. A.)

of the statute being interpreted,' " warrant increased deference." (*Don't Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 350 [quoting *Yamaha Corp. of America v. State Bd. of Equalization, supra,* at 1⁹ Cal.4th at 13.)

Snowball takes issue with the City's reliance on Footnote 23 to avoid inconsistency between the Community Plan and the zoning for the Project site. (Reply Brief 10:15 [magical consistency].) Snowball also suggests Footnote 23 is exactly what the legislature attempted to address with amendments to the HAA in 2018 "to close the exact 'loophole' that the City claims exempts it from HAA compliance in this case."[7] (Reply Brief 8:12-13.)

While Snowball takes issue with Footnote 23 and Community Plan consistency, Snowball does not provide any legal justification supporting any authority for the court to disregard Footnote 23. Instead, Snowball argues the last sentence of Footnote 23 "destroys the City's argument," contending Footnote 23 actually supports its argument under the HAA. (Reply Brief 10:22, 10:27.)

The final sentence of Footnote 23 provides:

> "It is the intent of the Plan that the entitlements granted shall be one of the zone designations within the corresponding zones shown on the Plan, unless accompanied by a concurrent Plan amendment." (AR 34998.)

During argument, the City explained the final sentence in Footnote 23 is looking forward or prospective instruction. That is, if and when the City grants discretionary entitlements, the entitlements "shall be one of the zone designations within the corresponding zones shown on the Plan . . . ." (AR 34998.) The legislative history supports the City's argument that the City adopted the final sentence of Footnote 23 to "establish greater certainty about future zoning."[8] (AR 35018. Compare AR 35025 with 35018.)

Based on the foregoing, the court finds Snowball has not demonstrated zoning inconsistency within the City's Community Plan. As such, the HAA does not preclude the City from requiring Snowball to obtain a zone change as a condition of its approval of the Project.[9]

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[7] There is no claimed ambiguity in Government Code section 55589.5, subdivision (j)(4). Thus, extrinsic evidence is unwarranted to interpret the statute. (*People v. Goodliffe* (2009) 177 Cal.App.4th 723, 729. ["It is only when the language to be construed is ambiguous that the courts may look to legislative intent to resolve the ambiguity."])

[8] The legislative history also reflects the City's view in 1991 that "zones contemplated by plan may not be appropriate for many years . . . ." (AR 35018.)

[9] In addition, the City argues Snowball's challenge to the Map condition was subject to Government Code section 66499.37 and is now time barred. The Map approval specified "approval of a zone change to RD5-1 Zone and R1-1 Zone . . . prior to obtaining clearance from Zoning Section." (AR 372; see also AR 801.) Government Code section 66499.37 provides: "Any action . . . to attack . . . the decision of an advisory agency . . . shall not be maintained . . . unless

The City's Denial of Snowball's Vesting Zoning Change:

Standard of Review:

Snowball contends the City prejudicially abused its discretion when it denied its application for a zone change. More specifically, Snowball argues the City failed to proceed as required by law because the City violated the HAA when it denied the zone change. Snowball challenges the City's denial pursuant to Code of Civil Procedure section 1085. (Pet., ¶¶ 131-137.) Snowball also contends the City's action violated Government Code section 65860 requiring zoning to be consistent with a city's general plan.

A zone change involves a legislative act by a municipality. Accordingly, it is reviewable only under ordinary mandamus. (*Tandy v. City of Oakland* (1962) 208 Cal.App.2d 609, 611. ["It is

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the action . . . is commenced . . . within 90 days after the date of the decision." The section applies to:

> "the decision of an advisory agency . . . or any of the proceedings, acts, or determinations taken, done, or made prior to the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, including, but not limited to, the approval of a tentative map or final map." (*Ibid.*)

As noted by the City, the City imposed the zone change condition of the Map approval on June 19, 2019—at the time the CPC issued a written letter of determination approving the tract Map and denying the appeal. The CPC conditioned the Map approval upon Snowball obtaining a zone change. (AR 787, 801.) The CPC noted if the zone change "is not approved, the number of dwelling units shall be limited to that permitted by the existing A1-1 and RA-1 Zones . . . ." (AR 801.)

Snowball did not file this action, however, until February 24, 2020—more than 90 days later. Thus, Government Code section 66499.37 would bar its claim and provide a separate basis for denying Snowball relief on this petition.

In its Reply Brief, Snowball did not respond to and was silent about the City's statute of limitations argument on the zoning change as a Map condition. During argument, however, Snowball asserted the City failed to specifically allege as an affirmative defense in its answer the time bar of Government Code section 66499.37. As to the statute of limitations, failure to specify the statute relied upon raises no issue and presents no defense. (*Davenport v. Stratton* (1944) 24 Cal.2d 232, 246-247.)

Between the two dates when the court heard the trial in this matter, the City brought an ex parte application to amend its answer. The court denied the application given the timing and the apparent lack of need to add the defense.

long settled law that the enactment of a zoning ordinance is purely a legislative act and a governmental function."; *Toso v. City of Santa Barbara* (1980) 101 Cal.App.3d 934, 942.)[10]

Courts lack the power to order a legislative body to pass a particular legislative act because of separation of powers principles. (*Mandel v. Myers* (1981) 29 Cal.3d 531, 551, fn. 9.) Thus, a "legislative body cannot be forced to enact or amend a zoning ordinance. The courts can declare an action of the Legislature unconstitutional where such action exceeds the limits of the Constitution, but the courts have no means and no power to avoid the effects of non-action." (*Banville v. County of Los Angeles* (1960) 180 Cal.App.2d 563, 570.)

"The sole issue on review of a zoning ordinance is whether or not there is any reasonable basis to support the legislative determination of the governing body." (*Toso v. City of Santa Barbara, supra*, 101 Cal.App.3d 934, 943.) "Denial of rezoning will be held valid unless there is no reasonable relation to the public welfare; and, before the courts will interfere with a zoning ordinance, the plan must be arbitrary." (*Ibid.*)

Review of legislative action under traditional mandamus " 'is limited to an examination of the proceedings before the agency to determine whether its action has been arbitrary or capricious, or entirely lacking in evidentiary support, or whether it has failed to follow the procedure and give the notices required by law.' " (*Joint Council of Interns & Residents v. Board of Supervisors* (1989) 210 Cal.App.3d 1202, 1209.) "The inquiry into arbitrariness or capriciousness is like substantial evidence review in that both require a *reasonable basis* for the decision." (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 328.)

Analysis:

In 2007, Snowball filed its application with the City seeking a zone change. (AR 2437-2458; AR 3048.) In 2008, Snowball revised its application to a vesting zone change request. (AR 1151-1152.) The City Council ultimately denied Snowball's application seeking a zone change for the Project.

Snowball argues the City acted arbitrarily and capriciously when it denied its vesting zone change request. Snowball contends the City's action violated both the HAA and the Los Angeles Municipal Code (LAMC).

According to Snowball, as the HAA applies to the Project, the HAA required the City to approve its zone change request unless it made two findings by a preponderance of the evidence: "(1) that the project would have an unavoidable impact on public health or safety unless the project

[10] The *Tandy* Court specifically distinguished a zone change from "the granting or denial of a variance, a conditional use permit or an exception to use" which it described as "administrative action[s]." (*Tandy v. City of Oakland*, supra, 208 Cal.App.2d at 611.)

is disapproved; and (2) that there is no feasible method to satisfactorily mitigate or avoid the adverse impact other than the disapproval of the project. (Gov. Code § 65589.5, subd. (j)(1)(A) and (B); see also *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1081.)

Despite the City's statutory obligation, Snowball argues the City failed to make either finding required by the HAA. (See AR 34277-34279; AR 34297-34298.) Instead, the City adopted the findings made by its PLUM Committee when the PLUM Committee recommended the City Council deny the zone change. The PLUM Committee's findings were reflected in a letter dated December 10, 2019 from Councilmember Monica Rodriguez of Council District 7. (AR 34297-34298; AR 34911.) The findings, according to Snowball, do not comply with Government Code section 65589.5, subdivision (j)(1)(A) and (B). Moreover, the findings are not supported by substantial evidence.

The City contends the HAA does not apply to the Project because there is no inconsistency between the Community Plan and zoning. Therefore, the City was not required to make any findings pursuant to Government Code section 65589.5, subdivision (j)(1)(A) and (B). The City does not contend the City's zone change denial somehow complied with the HAA. (Opposition 18:7-9.)

Rather, the City argues its action denying the zone change was not arbitrary and capricious; the City's decision is entitled to deference. Moreover, the City argues its decision is supported by written findings about public safety.

The court finds Government Code section 65589.5 of the HAA does not apply to the Project for the reasons addressed above. Further, the court agrees with the City's position that Snowball must demonstrate the City acted arbitrarily and capriciously in denying the zone change under LAMC Section 12.32 Q(3)(a)(2) to prevail on this issue. Snowball would meet its burden by demonstrating the City's actions were unreasonable. (*Garrick Development Co. v. Hayward Unified School Dist.*, supra, 3 Cal.App.4th at 328.)

LAMC section 12.32 sets forth the process for the City's land use legislative actions. Subdivision Q concerns zone change vesting applications. LAMC section 12.32 Q(2)(a) provides in part that the:

> "approval of a vesting application shall confer a vested right to proceed with a development in substantial compliance with the rules, regulations, ordinances, zones . . . in force on the date the application is deemed complete . . . ."

LAMC Section 12.32 Q(3)(a)(2) states in pertinent part:

> "(2) Notwithstanding Subdivision 2.(a) of this subsection, a vesting zone change may be conditioned or denied if the City Planning Commission or the City Council determines:
>
> . . .

(ii) the zone change is denied because it is not in substantial conformance with the purposes, intent or provisions of the General Plan **or** is not in conformance with public necessity, convenience, general welfare and good zoning practice and the reason for not conforming with the plan."

(Snowball's RJN Ex. C [LAMC § 12.32 Q(3)(a)(2)(ii)][emphasis added].)

Snowball contends the relevant provisions of LAMC section 12.32 requires the City to make the zone change as requested in the vesting zone change application unless the City makes the findings required by LAMC section 12.32 Q(3)(a)(2)(ii). Snowball argues to the extent the City relies on the Councilmember Rodriguez's December 10, 2019 letter (AR 34277-34279), the findings are inadequate to satisfy the requirements of LAMC section 12.32.Q(3)(a)(2)(ii).

LAMC section 12.32 Q(3)(a)(2) expressly provides "[n]otwithstanding Section 2.(a) of this subsection . . . ." Thus, under the plain language of the provision, despite the vested nature of the right conferred by a vested zone change application, the LAMC expressly provides the City may nonetheless deny the zone change.

The City contends the findings contained in Councilmember Rodriguez's letter sufficiently demonstrate the City's vested zone change denial was reasonable and not arbitrary and capricious. The City argues this is true even though the letter does not cite LAMC section 12.32, subdivision Q and instead cites LAMC section 12.32, subdivision C.

Councilmember Rodriquez's letter asserts the zone change would not be consistent with the City's general welfare, public health and safety or good zoning practice. (AR 2414. ["What should not change however, is the City's commitment to good land use practices and its responsibility to protect the health and safety of the community and its residents."]) Specifically, Councilmember Rodriguez reports Snowball's requested zoning change would "increase the density of the area" in manner that is "not to scale and is incompatible with the existing environment." (AR 2415.) The letter concludes the proposed zone change is "not consistent with good zoning practice." (AR 2415.)

Councilmember Rodriguez also contends the proposed zone change would have an adverse effect on public health and safety or general welfare because the Project has only two points for ingress and egress. With such limited access, Councilmember Rodriguez suggested the Project constituted a fire hazard given wildfire risks, recent fire history and the areas status as a Very High Fire Hazard Severity Zone. (13 AR 2415.)

The record supports the findings set forth in the letter and adopted by the City Council.

First, the Project's surrounding areas are zoned only for low-density single-family homes under RE-11-H zoning (Residential Estate allowing a single-family dwelling with a minimum area of 11,000 square feet per lot). Snowball's proposed zoning change to RD-5 zoning adds density

and allows multifamily dwellings, such apartment buildings. (AR 1092; City's RJN, Ex. E [LAMC § 12.09.1].)

Second, the record reflects public comments expressing concern regarding the fire safety and risk posed by the high-density Project. (AR 34209-34249) One commenter attached a Los Angeles Times newspaper opinion article suggesting "a tight link between housing developments hammered into the wildland-urban interface – the fire zones – and the highway and energy infrastructures" which will necessarily cause these residents "to flee every time a fast-moving fire, like the Saddle Ridge . . ." arises. (AR 34245-34247.)

Thus, even assuming the LAMC section 12.32Q(3)(a)(2)(ii) required the City to make certain findings, the City contends the evidence demonstrates a reasonable relationship between the City's action and the public welfare. (See *Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 461. ["The courts will, of course, inquire as to whether the scheme of classification and districting is arbitrary or unreasonable, but the decision of the zoning authorities as to matters of opinion and policy will not be set aside or disregarded by the courts unless the regulations have no reasonable relation to the public welfare or unless the physical facts show that there has been an unreasonable, oppressive, or unwarranted interference with property rights in the exercise of the police power."])

Based on the evidence before the City Council, the court finds Snowball has not demonstrated the City's denial of its vested zone change was arbitrary or capricious. The court agrees with the City; there is a reasonable relationship between the decision denying the zone change and public necessity, convenience, general welfare and good zoning practice.

Finally, as the HAA does not apply, Snowball's argument based on Government Code section 65860 fails.

Bad Faith Argument:

As the court found the HAA does not apply to the Project, Snowball's bad faith argument is moot.

CONCLUSION

Based on the foregoing, the petition is denied. The stay imposed by the court on the fourth and fifth causes of action is lifted. The matter is transferred to Department 1 for reassignment on the fourth and fifth causes of action only. Should Petitioner elect to dismiss those remaining

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causes of action such that no other court need make a substantive decision on the claims, this court will sign a judgment. Of course, this court cannot sign a judgment as to the writ matters because Petitioner has civil causes of action outstanding.

IT IS SO ORDERED.

June 24, 2021

Hon. Mitchell Beckloff
Judge of the Superior Court