



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 18 - 0 2 3 4

JUL 19 2018

REPORT RE:

**FIX THE CITY, INC. v. CITY OF LOS ANGELES (COLONY HOLDINGS, LLC;
MIKE HAKIM), LASC CASE NO. BS 161800**

**ENVIRONMENTAL JUSTICE COLLABORATIVE v. CITY OF LOS ANGELES
(COLONY HOLDINGS, LLC; MIKE HAKIM), LASC CASE NO. BS 162453**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 15-0455
CPC-2006-8689-GPA-ZC-HD-CU-ZAA-SPR

Honorable Members:

This report is to advise you of the judgment of the trial court in the above-entitled related lawsuits and the peremptory writ of mandate issued by that court directing the City to rescind, revoke and invalidate all approvals issued in support of the Project; rescind and revoke the adoption of the Mitigated Negative Declaration; and refrain from taking any action to further construction of the Project.

Discussion

In these cases, Petitioners Fix the City, Inc., and Environmental Justice Collaborative (hereafter collectively Petitioners) challenge the approval of several legislative and quasi-judicial entitlements for a mixed use project located at 805-823 S. Catalina Street and 806-820 S. Kenmore Avenue in the Koreatown Regional Commercial Center (the Project). Petitioners alleged that an Environmental Impact

Report (EIR) should have been prepared for the Project rather than a Mitigated Negative Declaration (MND).

The trial court agreed with Petitioners and on March 28, 2018, issued a ruling finding that “[t]he record contains substantial evidence of the existence of a fair argument that the Project may have a significant impact on the environment, which was raised as a concern by Petitioner, other members of the public, and the City Planning Commission.” The trial court further held that “[t]he MND contains no discussion of alternatives to the projects or comments from the public or public agencies such as the Los Angeles Fire Department, the Los Angeles Police Department, or the Los Angeles Unified School District and the description of the Project and its impacts [related to traffic and community development guidelines] are cursory when compared to what is required for an EIR.” The trial court concluded that there is a fair argument that the Project may have a significant environmental impact based on substantial evidence in the record due to the impacts on traffic, public services, and land use. A copy of the trial court’s March 28 ruling is attached.

On June 18, 2018, the trial court granted the petition for writ of mandate, issued judgment against the City and in favor of Petitioners, and issued a peremptory writ of mandate (Writ). The Writ commands the City to:

1. Rescind, revoke, and invalidate all approvals issued in support of the Project, including, but not limited to, the Resolution amending the General Plan, the Ordinance establishing the zone and height district change, the approval including conditional use permit, site plan review, and adjustments, and any and all other permits issued in reliance upon the aforementioned permits;
2. Rescind and revoke the adoption of the Mitigated Negative Declaration, and if Respondents again consider approval of the Project, to do so only in full compliance with the requirements of the California Environmental Quality Act; and
3. Refrain from taking any action to further construction of the Project.

The Writ further commands the City and the City Council to file a return on or before August 2, 2018, setting forth what they have done to comply with the Writ. A copy of the Writ is attached.

Recommendation

The Council should comply with the Writ prior to August 2, 2018, and rescind, revoke and invalidate all Project approvals; rescind and revoke the adoption of the MND; and refrain from taking any action to further construction of the Project.

If you have any questions, please contact Senior Assistant City Attorney Terry Kaufmann Macias at (213) 978-8233. She or another member of this Office will be present when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By 
DAVID MICHAELSON
Chief Assistant City Attorney

DM:TKM:zra
Attachments

WRIT ORDER

COPY

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RECEIVED
City Attorney
Land Use/Real Property
JUN 22 2018

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles
JUN 18 2018

Sherril R. Carter, Executive Officer/Clerk
By Nell M. Raya, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FIX THE CITY, INC., a California nonprofit corporation,

Case No. BS 161800

Petitioner and Plaintiff,

~~PROPOSED~~ WRIT OF MANDATE

v.

(Public Resources Code, § 21168;
Code of Civil Procedure, §§ 526, 1085 &
1097; Government Code, § 65300.5; Los
Angeles City Charter, §§ 555, 556 & 558)

CITY OF LOS ANGELES, a municipal corporation;
LOS ANGELES CITY COUNCIL; and DOES 1
through 100, inclusive,

CALIFORNIA ENVIRONMENTAL
QUALITY ACT ("CEQA") ACTION

Respondents/Defendants.

Dept. 28

COLONY HOLDINGS, LLC; MIKE HAKIM,

Real Parties in Interest.

REFERRED TO CITY ATTORNEY
FOR DISPOSITION

JUN 22 2018

7:00am

2018 JUN 21 PM 3:07
CITY CLERK
BY [Signature]
[Signature]

1 TO RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES AND LOS ANGELES CITY
2 COUNCIL:

3 The Court having determined that the Petition for Writ of Mandate should be granted, and
4 having entered Judgment thereon ordering issuance of a writ of mandate as set forth herein,

5 NOW, THEREFORE, RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES
6 AND LOS ANGELES CITY COUNCIL are hereby commanded to:

- 7 1. rescind, revoke, and invalidate all approvals issued in support of the Project, including
- 8 but not limited to the Resolution amending the General Plan, the Ordinance establishing
- 9 the zone and height district change, the approval including conditional use permit, site
- 10 plan review, and adjustments, and any and all other permits issued in reliance upon the
- 11 aforementioned permits;
- 12 2. rescind and revoke the adoption of the Mitigated Negative Declaration, and if
- 13 Respondents again consider approval of the Project, to do so only in full compliance
- 14 with the requirements of the California Environmental Quality Act; and
- 15 3. refrain from taking any action to further the construction of the Project.

16 RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES AND LOS ANGELES
17 CITY COUNCIL ARE FURTHER COMMANDED to make and file a return to this Writ on or before
18 August 7, 2018, setting forth what they have done to comply.

19
20 JUN 18 2018
21 Dated: _____, 2018

Yvette M. Palazuelos

YVETTE M. PALAZUELOS
Hon.
Superior Court Judge

23
24 LET THE WRIT ISSUE.

25 Dated: JUN 18 2018
26 _____

N. RAYA

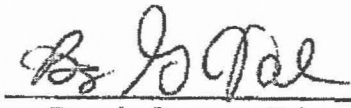
Clerk, Los Angeles County Superior Court
N. RAYA

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SUBMITTED BY:

DATED: May 29, 2018

STRUMWASSER & WOOCHEER LLP
Fredric D. Woocher
Beverly Grossman Palmer
Dale K. Larson

By: 
Beverly Grossman Palmer
Attorneys for Petitioner and Plaintiff
Fix the City, Inc.

TRIAL COURT'S MARCH 28 RULING

Ruling

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 28 2018

Fix the City, Inc. v. City of Los Angeles, et al.
BS161800 (Related to BS162453)
March 28, 2018

Sherril R. Carler, Executive Officer/Clerk
By: Jontae M. Marquez, Deputy

Hearing on the Petitions for Writ of Mandate of Fix the City, Inc.;
Environmental Justice Collaborative and Friends of the Neighborhood
Integrity Initiative

The Verified Petition for Writ of Mandate for violation of CEQA and the failure to issue an Environmental Impact Report is granted.

FTC's requests for judicial notice are granted. Respondents' and RPIs' request for judicial notice in support of their Opposition Brief is granted.

Violation of CEQA and Need for EIR

An MND is only required to contain (1) a description of the project; (2) the location of the project, preferably shown on a map, and the name of the project proponent; (3) a proposed finding the project will not have a significant effect on the environment; (4) an attached copy of the initial study documenting the reasons to support the finding; and (5) mitigation measures, if any, included in the project to avoid potentially significant effects. See 14 CCR § 15071.

An EIR, on the other hand, must meet certain standards of specificity, technical detail, and analysis that do not apply to an MND. See 14 CCR §§ 15146, 15147, 15151. An EIR is required to contain a thorough consideration and discussion of all environmental impacts, a separate consideration and discussion of significant environmental impacts, a thorough discussion of mitigation measures proposed to minimize significant effects, and an analysis of alternatives to the proposed project. See 14 CCR §§ 15126-15126.6. The final EIR must include all comments and recommendations received on the draft EIR and responses of the lead agency to the significant environmental points raised in the review process and such additional requirements, particularly the mitigation and alternatives discussions, are critical to the environmental review. See 14 CCR § 15132; Pub. Res. Code § 21002; In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2008) 43 Cal.4th 1143, 1162 (the mitigation and alternative discussions are the core of the EIR); Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918, 940 (the EIR must identify the areas of controversy known to the lead agency).

The “fair argument” standard of review applies when determining whether to set aside an MND on the basis that the record contains substantial evidence the project may have a significant environmental impact. See Taxpayers for Accountable School Bond Spending v. San Diego Unified School District (2013) 215 Cal.App.4th 1013, 1034 (there is a low threshold under CEQA for the initial preparation of an EIR and there is a preference to resolve doubts in favor of an EIR); Pocket Protectors v. City of Sacramento (2004) 124 Cal.App.4th 903, 928 (whether a “fair argument” exists is a question of law and the courts owe no deference to the lead agency’s determination¹, which is reviewed *de novo* “with a preference for resolving doubts in favor of environmental review”). “May” in such context means a reasonable possibility of a significant impact on the environment. See Pub. Res. Code §§ 21082.2(a), 21100, 21151(a). Expert opinion supported by facts, even if not based on specific observations of the site under review, can qualify as substantial evidence in support of a fair argument. See Friends of the Old Trees v. Department of Forestry & Fire Protection (1997) 52 Cal.App.4th 1383, 1398-99; Pocket Protectors 124 Cal.App.4th at 928 (if expert opinions clash an EIR should be performed). See also Ocean View Estates Homeowner’s Assn., Inc. v. Montecito Water Dist. (2004) 116 Cal.App.4th 396, 402 (personal observations of those familiar with the area regarding non-technical subjects such as aesthetics can qualify as substantial evidence in support of a fair argument); Stanislaus Audubon Society, Inc. v. County of Stanislaus (1995) 33 Cal.App.4th 144, 155 (a planning commissioner’s fact-based opinions can form the basis of substantial evidence of a fair argument).

The record contains substantial evidence of the existence of a fair argument that the Project may have a significant impact on the environment, which was raised as a concern by Petitioner, other members of the public, and the City Planning Commission. See Administrative Record (“AR”) 003355-46, AR008890-92, AR003618-19, Supplemented Administrative Record (“SAR”) 0033-43. The MND contains no discussion of alternatives to the projects or comments from the public or public agencies such as the Los Angeles Fire Department, the Los Angeles Police Department, or the Los Angeles Unified School District and the description of the Project and its impacts are cursory when compared to what is required for an EIR.

The 2008 traffic study found that the Project would generate 1,935 daily trips and “significantly impact the residential street of Kenmore Street south of 8th Street”

¹ However, the “benefit of the doubt” is given to the lead agency’s determination on legitimate and disputed issues of credibility and the lead agency can determine whether the evidence offered by citizens claiming a “fair argument” exists meets the definition under CEQA of “substantial evidence.”

and that the 28.5% increase in average daily trips was more than double the increase deemed a significant impact under the City's threshold for impacts on residential streets. AR002151, AR002158. The 2014 MND did not take into account residential street segments and only analyzed impacts on intersections notwithstanding that the 2008 analysis showed a significant impact on residential streets and the MND noted a higher average-daily-trips ("ADT") of 2,012 without providing details on traffic volumes utilizing the driveways on Kenmore or Catalina to accurately evaluate impacts. AR000278-82. Professional engineer Tom Brohard analyzed the 2008 traffic study, the 2014 MND, and the 2014 Planning Department Staff report for the Project and concluded that the revised project will generate more daily trips than proposed in 2008 because of the increase in commercial and retail space, estimating 2,023 new daily trips and roughly a 28.5% increase in trips on Kenmore Avenue south of Eighth Street, plus a substantial increase in ADT resulting in a significant impact on Catalina Street south of Eighth Street, but the revised MND did not include mitigation for these impacts. AR 003328-30.

Various government entities and individuals expressed concerns about the traffic impacts. CalTrans noted in an October 01, 2015 email that the Project may have a cumulative traffic impact with other related projects in the nearby freeways (AR009644). Several Planning Commissioners opined about clear evidence of traffic impacts that would need to be analyzed in an EIR and expressing surprise at the lack of an EIR (SAR0033-34). The LAUSD expressed concerns about traffic impacts both during and after construction on the neighboring RFK Community Schools, bus routes, and drop-off areas (AR 009903-04). Further, substantial evidence exists that the project may have a substantial impact on public services. There is no evidence in the MND that the Los Angeles Fire Department or Los Angeles Police Department were consulted as they would be if an EIR were prepared. Moreover, the MND does not adequately analyze response time. AR008893-96, AR003261, AR000275, AR003277.

In addition, there is a fair argument that the Project may have impacts on land use and community development guidelines, in particular the Wilshire Community Plan and Framework Element of the General Plan. See AR000083, AR001166, AR001193-98, AR000056-57, AR003851, AR000765, AR000494-95; Petitioner's Request for Judicial Notice ("PRJN") Exh. 3. The Wilshire Community Plan's land use policy is for a general limitation of residential densities in various neighborhoods to the prevailing existing density of development within such neighborhoods and is to ensure that new development does not outstrip infrastructure at such a rate as to impact the quality of life. The Project places a

high-density, mixed-use project onto residential streets and could have a significant impact on access and spillover traffic. Various Planning Commissioners and members of the City Planning staff also expressed doubt about the consistency of the Project with land use plans. SAR0009:25-0010:15, SAR0035:6-7, SAR0035:10-25, SAR:0037:11-17, SAR0039:15-21, SAR0040:2-8, SAR0040:20-23, AR001166-68, AR001191. There is thus a fair argument that the Project may have a significant environmental impact based on substantial evidence in the record due to the impacts on traffic, public services, and land use.²

² The Court finds that FTC has not met its burden to show that the Project and its entitlements violated the City Charter and the Municipal Code. See Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 781 (an amendment to a General Plan is reviewed under the arbitrary and capricious standard and whether the decision entirely lacks evidentiary support, is unlawful, or procedurally unfair).