Case Number: 20STCP00771 **Hearing Date:** March 24, 2021 **Dept:** 86

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

[Tentative] ORDER _____ PETITION FOR WRIT OF MANDAMUS

The court does not intend to conclude the proceedings on the writ petition today. The court intends to focus solely on the HAA claim. The following suggests the court's thoughts after review of the briefs and record. The issues for the parties to address at argument should be clear. The court intends to bring the parties back for further argument on revisions to the tentative decision on the HAA and the remaining zone change issue.

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, Petitioner sought to obtain clearances of conditions for its final map approval from the City. The City, however, refused to process any clearances; the City required a zone change before it would process the required clearances. The City thereafter denied Petitioner's application for a vesting zone change.

Petitioner requests 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.

Petitioner'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. Petitioner's RJN in support of its reply is granted.

The City's RJN is granted.

The petition is _____.

STATEMENT OF THE CASE1[1]

Snowball owns a 58-acre property consisting of eight parcels located at 6433 La Tuna Canyon Road in the City (the Property). (1 AR 212) The Property is currently zoned for RA-1 (Residential Agricultural Zone), A1-1 (Agricultural Zone), and RE40-1 (Residential Estate Zone). (10 AR 1655; 16 AR 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). (10 AR 1654.)

In 2007, Snowball applied for land use approvals for the Project.2[2] (13 AR 2431-2458) Snowball's application included a Map, SPR, PPC and zone change.

In February 2019, the City's Deputy Advisory Agency conditionally approved the Map for the Project. (3 AR 364-499.) A neighborhood organization appealed the Map approval to the City Planning Commission (CPC). (4 AR 500-725.) On June 19, 2019, the CPC denied the appeal and approved the Map. (5 AR 787.) On July 2, 2019, the CPC approved the SPR, PPC and certified the FEIR. (5 AR 787-788.) The CPC recommended the City Council approve the requested zone change. (168 AR 24649.)

At the time it 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." (3 AR 484; see also 13 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." (13 AR 2301.)

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

The pending 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 zone change, the City Council's Planning and Land Use Management (PLUM) Committee conducted a hearing. (168 AR 24649.) Councilmember Monica Rodriguez submitted a letter to the PLUM Committee for consideration at the hearing. (170 AR 34870-34872.) At the

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1[1] The citation to the record is specified as (Volume Number AR Page number).
2[2] As originally proposed, the Project consisted of 229 housing units. (10 AR 1661.)

conclusion of the PLUM Committee hearing, the committee recommended the City Council deny the requested zone change. (170 AR 34911, 13 AR 2414-2416, 166 AR 34295-98.) The City Council later voted and denied the zone change. (166 AR 34295; 13 AR 2421.)

The City rejected Petitioner'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 19 units. (171 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.

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

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

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3[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 further provides:

> "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

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, and where the petitioner 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 will necessarily require 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 Lagoon 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 [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." (10 AR 1657.)

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

Snowball's Claim:

The CPC approved Snowball's Map, the SPR and PPR. 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." (3 AR 484; see also 13 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." (13 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." (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" because "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 City found the Project is consistent with general plan standards. (3 AR 484; 13 AR 2301; see also 13 AR 2295.)

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." (10 AR 1657.)

Snowball argues the Property's zoning of RA-1, A1-1 or RE40-1 is not zoning designated within the Community Plan—it is inconsistent with the Community Plan. Therefore, 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. The court is inclined to agree with Snowball.

The City contends the HAA is inapplicable to the Project for four different 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.

In addition, the City contends Snowball's attack on the zone change condition to the Map is barred by the statute of limitations.

The City argues the Property's zoning "is entirely consistent with the General Plan." (Opposition 9:25-26.) 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." (171 AR 34998.)

Footnote 23 does not broadly indicate more restrictive zones are included if permitted by the municipal code as suggested by the City. The language of Footnote 23—"as well as those zones referenced in the Los Angeles Municipal Code (LAMC) as permitted by such zones"—does not suggest, as argued by the City, more restrictive zones are permitted. (Opposition 10:2-5.) Instead, the language of Footnote 23 requires review of the municipal code to determine whether other zones are "referenced" "as permitted by such zones . . . ." (Footnote 23.)

The City's broad citation to various sections of the municipal code is not helpful on the issue. For example, without the City's specific reference, the court cannot locate in Los Angeles Municipal Code (LAMC) section 12.08's description of R1 uses any broad incorporation of LAMC section 12.05 description of A1 uses. The court does note LAMC 12.08 does specifically refer to and approve uses in LAMC 12.05 A.16 for "Home Occupations." (LAMC § 12.08 A. 8.) Without more direction, the court cannot determine where RA-1, A1-1 or RE40-1 are "zones referenced in the Los Angeles Municipal Code (LAMC) as permitted by such zones . . . ." (Footnote 23.)

Finally, the City does not explain the final sentence of Footnote 23 suggesting any entitlement shall be consistent with zones shown on the Community Plan unless "accompanied by a concurrent Plan amendment." (171 AR 34998.) The sentence appears to undermine the City's defense. The City is silent about the sentence, and how to harmonize it with the other parts of Footnote 23.

Moreover, throughout the 13-year-entitlement process, the City consistent noted Snowball's requested zone change would bring the zoning into conformance with the existing general plan

land use designation. (5 AR 909 ["zone change would bring the zoning into conformance with the residential land use designation of Low Medium I"], 5 AR 913 ["bring the zoning into conformance with the existing General Plan land use designation"], 5 AR 915 ["zone change will bring the Project into consistency with the land use designation as required by law"], 13 AR 2300 ["would create consistency with the respective land use designations of Low Medium I and Low Residential"], 51 AR 10178 ["bring the zoning into conformance with the existing General Plan land use designation"].)

The City's regular recognition of the Property's zoning inconsistency with the Community Plan belies the City's claim before the court that the Property's RA-1, A1-1 or RE40-1 zoning is "consistent" with the General Plan.

The court acknowledges 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.) Despite the deference, the City is still required to explain how its interpretation of Footnote 23 (all of Footnote 23) is not clearly erroneous or unauthorized. This it has not done.4[4]

The court also does not find persuasive—in the context of the HAA—the City's argument "consistency" means "compatibility" and does not require an exact match to the Community Plan. (Opposition 25:3-4.) In the City's view, any zoning designation that is more restrictive than those zones listed in a community plan is consistent with the community plan's land use designation. The City's interpretation of Footnote 23 appears to avoid any of the protections provided to developers under the HAA.

It is undisputed the City (through the CPC) found the Project consistent with the Community Plan and Specific Plan. (3 AR 484; 13 AR 2301 [Project "in substantial conformance with the

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4[4] The City cites evidence its interpretation of Footnote 23 has been in place since 1991. In a 1991 City staff report, staff explained:

> "It has been standard procedure in the City's community plans to provide a Legend which indicates the corresponding land use categories permitted by the plan map. For the past 20 years, the Legend has included a listing of one or more corresponding zones for each Plan category. The corresponding zone sections 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 consistent with the applicable plan category." (171 AR 35023 [emphasis in original], 171 AR 35047.)

Snowball does not respond to the City's view its interpretation of Footnote 23 has been long held.

purposes, intent and provisions of the General Plan, applicable Community Plan, and any applicable Specific Plan"].) Thus, the City's suggestion otherwise is inconsistent with its prior findings. (Opposition 26:12-18.)

The RA-1, A1-1 or RE40-1 zoning on the Property allows only 19 homes. The Community Plan's land use designations and zoning would allow 215 homes. Thus, RA-1, A1-1 or RE40-1 zoning is inconsistent with the Community Plan's objectives and policies.

Snowball, however, does not respond to the City's statute of limitations argument on the zoning change as a Map condition. The Map approval specified "approval of a zone change to **RD5-1 Zone and R1-1 Zone** . . . prior to obtaining clearance from Zoning Section." (3 AR 372; see also 5 AR 801.) The City argues Snowball's challenge to the Map condition was subject to Government Code section 66499.37 and is now time barred.

Government Code section 66499.37 provides: "Any action . . . to attack . . . the decision of an advisory agency . . . shall not be maintained . . . unless 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 zone change condition of the Map approval was imposed on June 19, 2019—at the time the CPC issued a written letter of determination approving the tract Map and denying the appeal. Snowball did not file this action, however, until February 24, 2020—more than 90 days later.

It appears Snowball's challenge under traditional mandate is a collateral attack on the CPC's determination the Project required a zone change. Snowball's failure to file its claim against the City within 90 days of that decision appears time barred.

[DENIAL OF ZONE CHANGE]

CONCLUSION

Based on the foregoing, the petition is _____.

5[1] The citation to the record is specified as (Volume Number AR Page number).
6[2] As originally proposed, the Project consisted of 229 housing units. (10 AR 1661.)
7[3] No party disputes the Project is a "housing development" as defined by Government Code section 65589.5, subdivision (h)(2).
8[4] The City cites evidence its interpretation of Footnote 23 has been in place since 1991. In a 1991 City staff report, staff explained:

> "It has been standard procedure in the City's community plans to provide a Legend which indicates the corresponding land use categories permitted by the plan map. For the past 20 years, the Legend has included a listing of one or more corresponding zones for each Plan category. The corresponding zone sections 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 consistent with the applicable plan category." (171 AR 35023 [emphasis in original], 171 AR 35047.)

Snowball does not respond to the City's view its interpretation of Footnote 23 has been long held.