Electronically Filed by Superior Court of California, County of Orange, 07/02/2021 01:08:00 PM.
30-2021-01185991-CU-WM-CXC - ROA # 61 - DAVID H. YAMASAKI, Clerk of the Court By e Clerk, Deputy Clerk.

MATTHEW C. HENDERSON (Bar No. 229259)
KENNETH A. STAHL (Bar No. 326495)
MILLER STARR REGALIA
A Professional Law Corporation
1331 N. California Blvd., Fifth Floor
Walnut Creek, California 94596
Telephone: 925 935 9400
Facsimile: 925 933 4126
Email: matthew.henderson@msrlegal.com
ken.stahl@msrlegal.com

Attorneys for Intervenors YIMBY LAW and PEOPLE FOR HOUSING ORANGE COUNTY (A CHAPTER OF YIMBY ACTION)

CALIFORNIANS FOR HOMEOWNERSHIP, INC.
MATTHEW P. GELFAND (Bar No. 297910)
525 S. Virgil Avenue
Los Angeles, CA 90020
Telephone: 213 739 8206
Facsimile: 213 480 7724
Email: matt@caforhomes.org

Attorneys for Intervenor CALIFORNIANS FOR HOMEOWNERSHIP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - CIVIL COMPLEX

OLEN PROPERTIES CORP., a Florida corporation,

Petitioner,

v.

CITY OF NEWPORT BEACH, and DOES 1-10, inclusive,

Respondents.

TPG (KCN) ACQUISITION, LLC, a Delaware limited liability company, and DOES 11-20, inclusive,

Real Parties in Interest.

Case No. 30-2021-01185991-CU-WM-CXC

ASSIGNED FOR ALL PURPOSES TO:
HON. KIRK H. NAKAMURA
DEPARTMENT CX-103

DECLARATION OF MATTHEW P. GELFAND IN SUPPORT OF YIMBY LAW, PEOPLE FOR HOUSING ORANGE COUNTY (A CHAPTER OF YIMBY ACTION), AND CALIFORNIANS FOR HOMEOWNERSHIP, INC.'S MOTION FOR LEAVE TO INTERVENE AS REAL PARTIES IN INTEREST

Date: August 5, 2021
Time: 2:00 p.m.
Dept.: CX-103

Reservation No.: 73559333

Action Filed: February 25, 2021
Trial Date: None Set.

I, Matthew P. Gelfand, declare the following:

1. I am Counsel at Proposed Intervenor CALIFORNIANS FOR HOMEOWNERSHIP, and represent it in this matter. I have personal knowledge of the matters set forth herein and would and could competently testify thereto if called upon to do so.

2. On June 16, 2021, I sent correspondence to counsel for Petitioner Olen Properties Corporation to inquire whether Petitioner would consent to this intervention motion, asking counsel to respond by June 21, 2021. Counsel has not responded. A true and correct copy of the correspondence is attached hereto as **Exhibit 1**.

3. For decades, California has experienced a significant housing access and affordability crisis. In recent years, this crisis has reached historic proportions. As a result of the housing affordability crisis, younger Californians are being denied the opportunities for housing security and homeownership that were afforded to previous generations. Families across economic strata are being forced to rent rather than experience the wealth-building benefits of homeownership. Many middle and lower income families devote more than half of their take-home pay to rent, leaving little money to pay for transportation, food, healthcare and other necessities. Unable to set aside money for savings, these families are also at risk of losing their housing in the event of a medical issue, car trouble, or other personal emergency.

4. This crisis is driven in significant part by efforts by incumbent residents and property owners in many of California's cities and counties to exclude new housing development. The term "NIMBY"—or "Not in My Backyard"—is used to describe these efforts. NIMBYism is used across California to delay, reject, and downsize housing development projects, especially projects that might increase access to affordable housing. NIMBY efforts are the natural consequence of California's land use system, which disfavors the development of housing and creates outsized opportunities for residents to oppose housing. Whatever the realities, residents often believe that new housing will tax limited city resources, create crowded conditions, and threaten the character of residential neighborhoods. Housing projects with affordable housing components can draw especially strong opposition, driven by residents' perceptions of low-income individuals.

5. The voices of those in need of housing, by contrast, are systematically ignored. Potential future housing occupants—job-seekers from elsewhere in the state or country, the minor children of local residents, and those forced to commute from far-flung parts of the region due to the lack of affordable housing, among others—have no vote in local elections. And landowners who are interested in developing housing are no better off, because owning that land does not entitle them to vote in local elections.

6. Over the last five decades, the Legislature has increasingly sought to address the power imbalance at play in local housing policy. The most important state policy addressing the housing crisis is the Regional Housing Needs Allocation ("RHNA") and Housing Element system. The RHNA system is a process for assessing and allocating housing targets on a periodic basis, generally every eight years. Each locality is tasked with developing an action plan (the Housing Element) to enact land use policies that will produce enough housing to meet its RHNA goals. The Housing Element must provide an inventory of sites available for residential development and assess constraints and market realities that affect the likely development activity at those sites. Localities must make changes to their land use rules, including by rezoning land, if needed to enable housing sufficient to meet their RHNA goals.

7. The RHNA and Housing Element laws are effective at eliminating straightforward, explicit efforts to limit housing production. But because local governments control most of the RHNA and Housing Element planning process, the process requires their good faith cooperation to succeed. Instead, many have worked to undermine it. In recent years, the Legislature has responded with an expansive package of housing-related bills. Among these were key enhancements to the Housing Accountability Act. First passed in the 1980s, the Act aims to eliminate local project-specific vetoes by limiting the right of localities to reject zoning-complaint housing development projects. In 2017 the Legislature enhanced the Act by adding additional penalties for non-compliance, changing the burdens and standards of proof, and providing a statutory right of action for nonprofit organizations to sue to enforce the law.

8. Even when cities are willing and able to meet their obligations under state law and provide needed housing, their compliance may still be frustrated if neighboring

homeowners or others can block or delay housing projects by strategically using laws such as the California Environmental Quality Act ("CEQA"). For instance, cities may plan to entitle housing on certain sites to meet their Regional Housing Needs Allocations, only to then face CEQA lawsuits seeking to block housing on those same sites. It is documented that CEQA lawsuits are often used to obstruct housing projects, especially in job centers. These lawsuits threaten to undermine efforts of the state legislature to increase the housing supply generally and to concentrate housing in areas that are job centers.

9. This is such a lawsuit. The Petitioner is a self-interested neighboring property owner seeking to expand its private property rights, not a legitimate environmental group seeking to further a public environmental interest.

10. Californians for Homeownership is a 501(c)(3) non-profit charity that was founded in 2018 to address California's housing crisis by supporting the production and availability of housing affordable to families at all income levels. It does this work on behalf of the Californians who are impacted most by California's affordable housing crisis, including the potential residents of unbuilt developments (for both rental and ownership housing).

11. To advance this mission, Californians' primary activity is impact litigation to enforce state housing laws and to curtail exclusionary and obstructive zoning and land use practices. One critical element of its work is the systematic statewide enforcement of critical housing laws, such the laws regarding RHNA and Housing Elements and the laws streamlining the approval of accessory dwelling units ("ADUs").

12. From 2019 through early 2021, it engaged in pre-litigation correspondence during the ADU ordinance development process in at least 150 cities and counties, obtaining changes to unlawful provisions in over 100 and suing two. Starting in 2021, it has begun a similar statewide enforcement program for the Housing Element laws, which implement the state's RHNA system.

13. In addition to this work, Californians monitors land use decisions statewide, and comments in favor of housing development projects for which state law mandates approval. Californians for Homeownership supported the Residences at 4400 Von Karman project through a

letter to the City Council expressing its support. A true and correct copy of the letter is attached hereto as **Exhibit 2**.

14. Californians has worked extensively in Orange County. For example, in *Californians for Homeownership v. City of Huntington Beach*, Case No. 30-2019-01107760-CU-WM-CJC, it sued under the Housing Accountability Act to overturn the unlawful denial of a mixed-income housing development in the City of Huntington Beach. It has also used the threat of litigation to halt the adoption of an unlawful ADU ordinance in the City of Irvine.

15. Given its mission and activities, Californians for Homeownership has a strong interest in intervention.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of July, 2021 at Los Angeles, California.

By: 

MATTHEW P. GELFAND

EXHIBIT 1

CALIFORNIANS FOR HOMEOWNERSHIP

MATTHEW GELFAND, COUNSEL
MATT@CAFORHOMES.ORG
TEL: (213) 739-8206

June 16, 2021

VIA EMAIL

Geoffrey K. Willis
Law Offices of Geoffrey Willis
9891 Irvine Center Drive, Suite 200
Irvine, CA 92618
Email: gwillis@geoffwillislaw.com

RE: *Olen Properties Corp. v. City of Newport Beach*
O.C.S.C. Case No. 30-2021-01185991-CU-WM-CXC

Dear Mr. Willis:

We are writing on behalf of our respective clients, Californians for Homeownership, YIMBY Law, and People for Housing Orange County, three non-profit organizations that have an interest in the above-captioned litigation. The organizations intend to seek to intervene in the litigation under Code of Civil Procedure Section 387, in support of the Respondent and the Real Party in Interest, on behalf of the critical public interest in the development of housing affordable to households at all income levels.

YIMBY Law and Californians for Homeownership are impact litigation organizations that work across the state to enforce laws that enable the development of housing. People for Housing Orange County is an advocacy organization that supports the development of housing throughout Orange County. All three organizations are dedicated to increasing the supply of market-rate and deed-restricted affordable housing in cities like Newport Beach, and all three organizations provided comments in support of the project at issue in this litigation when it was being considered by the City Council.

Our clients are particularly interested in ensuring the effectiveness of California's multi-part system for addressing its affordable housing crisis. At the core of this system is a requirement that cities adequately plan for housing, including through the Regional Housing Needs Assessment (RHNA) and Housing Element system. State law requires cities like Newport Beach to plan for housing and to follow through with those plans when a housing development project is proposed. And that is exactly what happened here; Newport Beach identified an area for the development of housing, a developer proposed a high-quality mixed-income project, and the City approved it.

Housing opponents have seized upon litigation under the California Environmental Quality Act (CEQA) as a last-ditch tool to interfere with this state law system and fight the development

525 S. Virgil Avenue
Los Angeles, CA 90020

of housing.[1] Although couched in environmental terms, these CEQA lawsuits are often brought by self-interested parties, such as trade unions and neighboring property owners, for self-interested reasons. These lawsuits interfere with both the state's housing goals and its environmental goals by delaying and increasing the expense of developing critically needed infill housing development projects that otherwise comply with long-established local policies for housing development.

Our clients are seeking to intervene to advance three important interests in this case:

First, the Petitioner has signaled that it intends to use this case to challenge the use of CEQA addendums to enable the development of residential projects consistent with long-established housing plans adopted by local governments. At the very core of California's housing law system is the idea that cities and counties must plan for the development of housing, and that developers can in turn rely on those plans to build the housing our state so desperately needs. Forcing plan-compliant housing development projects through a long and costly second CEQA process would upend this state law system. The implications of this approach go far beyond this case, and are not adequately represented by the City or the applicant here.

Second, this case would further the disturbing use of CEQA by property owners to advance private property interests that are outside of the scope of their property rights. CEQA litigation abuse is a leading cause of delays, unit count reductions, and increased costs for housing development projects statewide. This abuse is particularly concerning when it impacts mixed-income housing near job centers, like the project at issue here. Information about CEQA abuse and its impact on housing is critical context that the Court needs as it considers this case.

Third, our clients seek to represent the bona fide public interest in preventing environmental harm. In many CEQA cases, the Petitioner at least nominally purports to be a group or individual dedicated to representing the public interest in the environment. Not so here. The Petitioner is a self-interested neighboring property owner. Even if the Petitioner's interest could be construed as "environmental," it is a private "environmental" interest, not a public one. In the absence of our clients, there will be no party in this case with a genuine interest in advancing the critical environmental issues CEQA is intended to address. The environment is served—not harmed—by the development of higher-density housing close to job centers like this project.

Finally, we note that although we are seeking to intervene in support of the City and the applicant, our clients' interests differ sharply from their interests and will not be adequately represented by any of the parties in this case today. The affordable housing crisis is a statewide and regional crisis, and has resulted in state legislation that places significant burdens and limits on cities. The City is ill-suited to defend those state laws from attack. And while the applicant in this case has shown a genuine commitment to developing a high-quality mixed-income project, its interest is principally an economic one. Our clients' intervention would offer the Court a critical additional perspective as it considers the Petitioner's request to overturn the approval of 312 vitally needed homes.

[1] *See* https://issuu.com/hollandknight/docs/ceqa_litigation_abuseissuu?e=16627326/14197714.

Our clients are entitled to intervene under Code of Civil Procedure Section 387(d)(2). Trial courts in California routinely allow organizations and associations with similar interests to intervene to protect those interests. *See California Bldg. Indus. Assn. v. City of San Jose*, 216 Cal. App. 4th 1373, 1380-82 (2013) (superseded); *Home Builders Assn. of N. California v. City of Napa*, 90 Cal. App. 4th 188, 193 & n.4 (2001); *Simpson Redwood Co. v. State of California*, 196 Cal. App. 3d 1192, 1204 (1987).

Please let us know by close of business on Monday, June 21, 2021, whether your client will consent to our clients' intervention in this matter.

Sincerely,



Matthew Gelfand, on behalf of
Californians for Homeownership



Kenneth Stahl, on behalf of
YIMBY Law and People for
Housing Orange County

cc: Gregory E. Woodard, Esq. (by email to gw@woodardlegal.com)
Jennifer Hernandez, Esq. (by email to jennifer.hernandez@hklaw.com)
Jessica Laughlin, Esq. (by email to jessica.laughlin@hklaw.com)
Ginetta L. Giovinco, Esq. (by email to ggiovinco@rwglaw.com)
Aaron Harp, Esq. (by email to aharp@newportbeachca.gov)
Yolanda Summerhill, Esq. (by email to ysummerhill@newportbeachca.gov)

EXHIBIT 2

CALIFORNIANS FOR HOMEOWNERSHIP

MATTHEW GELFAND, COUNSEL
MATT@CAFORHOMES.ORG
TEL: (213) 739-8206

January 6, 2021

VIA EMAIL

Mayor Brad Avery & Members of the City Council
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Email: citycouncil@newportbeachca.gov

RE: Residences at 4400 Von Karman Project (PA2020-061)

Mayor Brad Avery and Members of the City Council:

Californians for Homeownership is a 501(c)(3) organization devoted to using legal tools to address California's housing crisis. We are writing in support of the City's efforts to address the housing crisis by facilitating the development of housing within its borders—an effort that will be furthered by its approval of the Residences at 4400 Von Karman Project, a 312-unit mixed-income residential project.

For several decades, California has experienced a significant housing access and affordability crisis. In recent years, this crisis has reached historic proportions. As a result of the crisis, younger Californians are being denied the opportunities for homeownership and housing security that were afforded to previous generations. Many middle and lower income families devote more than half of their take-home pay to rent, leaving little money to pay for transportation, food, healthcare, and other necessities. Unable to set aside money for savings, these families are denied the opportunity to become homeowners, and are at grave risk of losing their housing in the event of a medical issue, car trouble, or other personal emergency. Indeed, housing insecurity in California has led to a mounting homelessness crisis. And the crisis has had a disproportionately harmful effect on historically disadvantaged communities, including individuals with physical and developmental disabilities and communities of color. The COVID-19 crisis has only reinforced the need for high-quality, stable housing available to California families at all income levels.

At the core of California's housing crisis is its failure to build enough new housing to meet the needs of its growing population. The Legislative Analyst's Office estimates that, from 1980 to 2010, the state should have been building approximately 210,000 units a year in major metropolitan areas to meet housing demand. Instead, it built approximately 120,000 units per year. Today, California ranks 49th out of the 50 states in existing housing units per capita. The Legislature has recognized that the housing crisis is an emergency that requires proactive solutions: "The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling

525 S. Virgil Avenue
Los Angeles, CA 90020

economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives." Gov. Code § 65589.5(a)(2)(A).

Our organization's sole purpose is to participate in litigation to support the critical public interest in the development of new housing. This project would provide 312 vitally needed housing units in the City, including units set aside for very low income families. Approval of the project is well-supported by the record, and the project's environmental review has met the requirements of the California Environmental Quality Act (CEQA). If the City faces a lawsuit challenging the project's approval, we may seek to intervene in the litigation in support of the City's critical efforts to address the region's housing crisis. And we may seek reimbursement for our attorneys' fees from the plaintiff in such a lawsuit.

Indeed, we have reviewed the small number of comments the Planning Commission received in opposition to the project, and they lack any legal merit. No one can claim to be surprised by the development of the project site as multifamily housing; this project is part of the City's established Integrated Conceptual Development Plan for the area. The applicant has gone above and beyond in addressing concerns over the availability of parking, accommodating parking need both during and after construction through a phased development approach. And the concerns over impacts to views from existing offices are quintessential "NIMBY" complaints by occupants of developed properties, who (of course) would rather see adjacent undeveloped property remain undeveloped; it is precisely this sort of "NIMBYism" that has precipitated the state's affordable housing crisis. In any event, parking impacts and the private views of office-dwellers simply do not qualify as significant environmental impacts under CEQA, nor do they render approval of the project impermissible under any other state or local policy.

At bottom, the comments from neighbors reflect a desire for the area to remain dedicated to office uses. That is precisely the problem. For too long, California's cities have separated centers of commerce from homes. The result has been economic and environmental harm. The City is leading the way toward a solution to the region's housing crisis by supporting the development of this project. You have our support.

Sincerely,



Matthew Gelfand

cc: City Clerk's Office (by email to cityclerk@newportbeachca.gov)