Court of Appeal Case No.: B336042

IN THE COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION THREE

NEW COMMUNE DTLA LLC, a California limited liability company, and LEONID PUSTILNIKOV, an individual,

Petitioners and Appellants,

v.

CITY OF REDONDO BEACH, a California charter city; and CITY COUNCIL OF THE CITY OF REDONDO BEACH,

Respondents.

LOS ANGELES COUNTY SUPERIOR COURT
HONORABLE RONALD F. FRANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 22TRCP00203

RESPONSE TO AMICUS CURIAE BRIEF OF YES IN MY BACK YARD

RICHARDS, WATSON & GERSHON
A Professional Corporation
Lisa Bond (Bar No. 172342)
lbond@rwglaw.com
*Ginetta L. Giovinco (Bar No. 227140)
ggiovinco@rwglaw.com
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071-3101
Telephone: 213.626.8484
Facsimile: 213.626.0078

OFFICE OF THE CITY ATTORNEY
Michael W. Webb,
City Attorney (Bar No. 133414)
michael.webb@redondo.org
415 Diamond Street
Redondo Beach, California 90277
Telephone: (310) 318-0655
Facsimile: (310) 372-3886

Attorneys for Respondents
CITY OF REDONDO BEACH and CITY COUNCIL
OF THE CITY OF REDONDO BEACH

Document received by the CA 2nd District Court of Appeal.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The brief filed by Amicus Curiae Yes In My Back Yard ("YIMBY") engages in hyperbole while repeating several of the flawed arguments advanced by Petitioners and Appellants New Commune DTLA, LLC and Leonid Pustilnikov (collectively, "Appellants"), which Respondents City of Redondo Beach and its City Council (collectively, "City") rebutted in their Respondents' Brief. To avoid duplication, the City does not repeat the majority of those arguments here. The City instead submits this Response to emphasize the following points, discussed more fully below:

- YIMBY mischaracterizes the City's arguments to advance YIMBY's unsupported belief that affirming the trial court ruling in favor of the City would "eviscerate" the Legislature's statewide actions and "exacerbate anti-housing sentiment" (YIMBY Brief at 10). On the contrary, the issues in this case are specific to the City's housing element and upholding the judgment in favor of the City would simply confirm what the California Department of Housing and Community Development ("HCD") found – namely, that the City's adopted housing element was in "full compliance with State Housing Element Law (Article 10.6 of the Gov. Code)." (AR 11402.)

- YIMBY's (and Appellants') contention that the City was required to place its adopted housing element before the voters pursuant to Article XXVII of the City's Charter is not only

Document received by the CA 2nd District Court of Appeal.

incorrect, it is now moot. On November 5, 2024, the City's voters passed Measure RB, which in relevant part amended the City Charter sections relating to "Major Changes in Allowable Land Use" to declare that the voter approval requirement of the City Charter shall not apply to an amendment to, or update of, the housing element, among other things.[1] As a result, the unequivocal will of the voters confirms that the City was not required to place the housing element before the voters prior to it taking effect.

- YIMBY tries, but fails, to revive an argument that Appellants conceded at the writ hearing was not germane here. Appellants admitted that the date on which the City's housing element was in compliance was not relevant to the issues in this lawsuit. YIMBY's efforts to force this Court to offer an advisory opinion are misguided, and YIMBY's position on the merits is unpersuasive.

- YIMBY rehashes Appellants' flawed arguments challenging the City housing element's compliance with low-income housing requirements, offering nothing new or more persuasive. The overlay included in the City's housing element, which contemplates residential uses on selected sites currently

---

[1] The City has filed and served a Notice of Significant New Authority which includes the City Council Resolution certifying the election results and passage of Measure RB by 63.4% (20,733 votes) to 36.6% (11,968 votes).

Document received by the CA 2nd District Court of Appeal.

zoned for commercial or industrial uses in order to foster development of low income housing, complies with both HCD's own guidance and with statutory requirements.

In sum, YIMBY's brief offers no new or different perspective to assist this Court, or any basis upon which to overturn the judgment in favor of the City.

II. YIMBY MISCHARACTERIZES THE CITY'S ARGUMENTS

YIMBY mischaracterizes the City's arguments to support its misguided claims of dire consequences should the judgment in favor of the City be upheld. YIMBY claims that the City's sweeping position is "that a housing element is nothing more than a 'policy document'…." (YIMBY Br. at 10) and asserts that the "City's position appears to be that compliance with its housing element is optional." (YIMBY Br. at 21.) YIMBY furthers its hyperbolic claims by falsely contending that the City believes "an adopted housing element is merely 'hypothetical'" and using this erroneous assertion to conclude that "[i]f this Court were to adopt the City's rationale, housing elements would be reduced to nothing more than a dead letter." (YIMBY Br. at 22.)

YIMBY is incorrect. The City has never stated, let alone suggested, that compliance with housing element laws are optional or that a housing element can be disregarded at will. On the contrary, the City worked diligently to demonstrate that it

Document received by the CA 2nd District Court of Appeal.

took its housing element obligations seriously, resulting in HCD's determination that the City's housing element was in "full compliance" with housing element law. (AR 11402.)

YIMBY intentionally ignores that the City's discussion of the housing element as a policy document was entirely *in the context of the City Charter* and the City's explanation that the housing element does not effectuate a "major change in allowable land use" as was required under the City Charter to trigger a vote. (RB at 27-29.) YIMBY further ignores the City's emphasis of scheduled programs required to implement the housing element (RB at 28-29), thereby undercutting YIMBY's claims that the City is "signaling to potential developers that housing element commitments may be ignored." (YIMBY Br. at 10.)

The Court should reject YIMBY's efforts to gain traction through inaccurate claims as to the City's position.

III. YIMBY'S CLAIM THAT THE CITY WAS REQUIRED TO SUBMIT THE HOUSING ELEMENT TO THE VOTERS IS MOOT

The City's Respondents' Brief demonstrated in detail why the housing element did not require voter approval under Article XXVII of the City Charter. (RB at 26-35.) YIMBY repeats Appellants' same arguments in a misguided effort to show that it understands the City's Charter better than the City does. (YIMBY Br. at 12-22.) YIMBY then turns to the trial court's

Document received by the CA 2nd District Court of Appeal.

finding that state law preempts Article XXVII of the City Charter in the context of the housing element and related actions, arguing that there is no preemption and "this voter restriction [Article XXVII of the Charter] should be lifted by the community itself, not by judicial fiat." (YIMBY Br. at 32.) The voters have done exactly that. In November 2024, the City's voters overwhelmingly determined, by a vote of 63% to 36%, to amend the City Charter to make it clear that Article XXVII of the City Charter does not apply to updates to the City's housing element or its implementing actions. (*See* City's Notice of Significant New Authority, dated January 13, 2025.) As a result, the entirety of YIMBY's – and Appellants' – flawed arguments that the City was required to place the housing element to a vote of the electorate, are moot.

IV. YIMBY CANNOT REVIVE APPELLANTS' CONCESSION THAT THE DATE OF THE HOUSING ELEMENT BEING IN SUBSTANTIAL COMPLIANCE IS NOT RELEVANT HERE

As the City demonstrated in its Respondents' Brief, Appellants conceded during the writ hearing that the timing of the City's housing element being in substantial compliance with state law is not relevant to this lawsuit. (8/21/23 RT, p. 84, lines 15-28.) Despite this, YIMBY seeks to have this Court wade into the issue. YIMBY, as amicus curiae, presents no basis to

Document received by the CA 2nd District Court of Appeal.

overcome Appellants' concession that the issue is not relevant here.

Even if YIMBY could resurrect this argument, which it cannot, the City previously recognized that under new legislation, (Assembly Bill 1886), a housing element will be deemed to be in substantial compliance as of the date HCD or a court of competent jurisdiction makes such a determination. (RB at 63-65.) But the City also explained that Section 1 of AB 1886 does not state that newly-added Government Code section 65585.03 is declaratory of existing law; only Section 3 of the bill states that, and it applies to circumstances that are factually distinct from the situation here. (*Ibid*.) YIMBY fails to rebut this point, instead relying on an HCD memorandum – not the text of AB 1886 – to opine otherwise.

V. YIMBY REPEATS APPELLANTS' UNPERSUASIVE ARGUMENTS CHALLENGING THE HOUSING ELEMENT'S COMPLIANCE WITH LOW-INCOME HOUSING REQUIREMENTS

The trial court correctly found that the City's housing element complies with statutory requirements relating to low income housing. YIMBY simply repeats Appellants' arguments to the contrary, even introducing arguments by stating, "As Appellants adeptly explain…" followed by a rehash of Appellants' arguments. (YIMBY Br. at 36.) The City already responded to all

Document received by the CA 2nd District Court of Appeal.

of these arguments in its Respondents' Brief. (RB at 42-51.) YIMBY offers nothing further beyond its own opinions on land use policy choices (see YIMBY Br. at 37-39), which provide no legal basis to depart from HCD's and the trial court's conclusion that the City's housing element complies with state law.

VI. CONCLUSION

As the City argued in its Respondents' Brief, Appellants' arguments reflect a thinly-veiled attempt to invalidate the City's housing element to gain traction in another dispute between the parties. (RB at 35.) YIMBY responds that this is not so, and this case rather is "about upholding the integrity of housing elements to ensure that all parties – local governments, citizens, the state, and, of course, housing developers – can rely on the commitments made within an adopted and certified housing element." (YIMBY Br. at 21.) But all of these groups already have spoken here to support the City's actions – the duly-elected City Council adopted the housing element; the citizens voted to affirm the trial court's conclusion that the voter approval requirement in the Charter does not apply to the housing element; HCD confirmed that the City's housing element fully complies with state law; and as noted in the housing element itself, developers expressed interest in developing residential units on sites identified in the City's housing inventory. Rather than supporting efforts to unravel the housing element, YIMBY should be pleased that the housing

Document received by the CA 2nd District Court of Appeal.

element process has resulted in increased opportunities to develop housing in the City.

YIMBY's brief adds nothing new to the underlying briefing. Instead, YIMBY seeks only to promote wild claims of unsupported consequences entirely untethered to the facts of this case. As the Respondents' Brief demonstrates, the City's housing element complies with all applicable law. The trial court properly denied the writ petition, and this Court should affirm the judgment in favor of the City.

Dated: January 13, 2025 RICHARDS, WATSON & GERSHON
A Professional Corporation

By: 

Ginetta L. Giovinco
Attorneys for Respondents
CITY OF REDONDO BEACH and
CITY COUNCIL OF THE CITY
OF REDONDO BEACH

Document received by the CA 2nd District Court of Appeal.

CERTIFICATE OF CONFORMITY

I certify under penalty of perjury under the laws of the State of California that the foregoing Response to Amicus Curiae Brief of Yes in My Back Yard is proportionately spaced, has a typeface of 13-point, proportionately-spaced font, and contains 1,564 words (excluding the title page), according to the word count function on the word processing program used to generate this brief.

Executed on January 13, 2025.



Ginetta L. Giovinco

Document received by the CA 2nd District Court of Appeal.

CERTIFICATE OF SERVICE

New Commune DTLA LLC et al. v. City of Redondo Beach et al.

LASC Case No: 22TRCP00203
California Court of Appeal - Case No. B336042

I, Audrey J. Powell, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within action. My business address is 350 South Grand Avenue, 37th Floor, Los Angeles, California 90071. On January 13, 2025, I served the within document(s) described as:

RESPONSE TO AMICUS CURIAE BRIEF OF YES IN MY BACK YARD

on the interested parties in this action as stated on the attached mailing list.

☒ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ (BY ELECTRONIC SERVICE) On the date state above, I caused the document(s) described above to be served electronically via True Filing on the recipients listed on the attached service list. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 13, 2025, at Los Angeles, California.

/s/ Audrey J. Powell
(Signature)

Document received by the CA 2nd District Court of Appeal.

SERVICE LIST

Via TrueFiling Electronic Service

Peter J. Howell
RUTAN & TUCKER, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Telephone: (714) 641-5100
Facsimile: (714) 546-9035
Email: ddennington@rutan.com;
phowell@rutan.com; eleggio@rutan.com

Attorneys for Petitioners
NEW COMMUNE DTLA LLC AND
LEONID PUSTILNIKOV

Via U.S. Mail

Los Angeles Superior Court
Inglewood Courthouse
Honorable Ronald F. Frank
Department 8
One Regent Street
Inglewood, CA 90301
Tel: (310) 419-1308

LASC Case No: 22TRCP00203

Via TrueFiling Electronic Service

Ryan J. Patterson
Brian O'Neill
Ephraim S. Margolin
PATTERSON & O'NEILL, PC
235 Montgomery St., Ste. 900
San Francisco, CA 94104
Telephone: (415) 907-9110
Email: ryan@pattersononeill.com
brian@pattersononeill.com
emargolin@pattersononeill.com

Attorneys for Amicus Curiae
Yes In My Back Yard

Document received by the CA 2nd District Court of Appeal.