VENTURA
SUPERIOR COURT
FILED
JAN 31 2020
MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____, Deputy
NINA LEMOS

RYAN J. PATTERSON (SBN 277971)
SARAH M. K. HOFFMAN (SBN 308568)
ZACKS, FREEDMAN & PATTERSON, PC
235 Montgomery Street, Suite 400
San Francisco, CA 94104
Tel: (415) 956-8100
Fax: (415) 288-9755
Email: ryan@zfplaw.com

Attorneys for Petitioner
Yes In My Back Yard, a California Nonprofit Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA – UNLIMITED JURISDICTION

YES IN MY BACK YARD, a California Nonprofit Corporation

Petitioner,

vs.

CITY OF SIMI VALLEY, SIMI VALLEY PLANNING COMMISSION, and SIMI VALLEY CITY COUNCIL,

Respondents,

JM SQUARED DEVELOPMENT, LLC, a California Limited Liability Company,

Real Party in Interest.

CASE NO. 56-2020-00539590-CU-WM-VTA

PETITION FOR WRIT OF ADMINISTRATIVE MANDATE

(CCP § 1094.5; Govt. Code § 65589.5)

By FAX

ZACKS, FREEDMAN & PATTERSON, PC
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

Petitioner Yes In My Back Yard alleges as follows:

INTRODUCTION

1. The supply of housing in California has "reached a crisis of historic proportions." (Gov. Code § 65589.5(a)(2)(J).) The housing crisis impacts all California residents, but its impacts are most acutely felt by the most vulnerable populations, including senior and disabled citizens in need of assisted living services.

2. Despite the present and urgent need for new housing, in November 2019 Respondent City of Simi Valley rejected a proposal to build 108 housing units for senior citizens (the "Project") in violation of state housing laws, including California's Housing Accountability Act, Government Code § 65589.5 et seq. ("HAA"). The Project satisfies all applicable objective standards and criteria, but the City unlawfully denied it on the basis of wholly subjective criteria. The HAA compels approval of the Project.

PARTIES

3. Petitioner Yes In My Back Yard ("YIMBY" or "Petitioner") is a § 501(c)(3) nonprofit corporation and a "housing organization" as defined by the HAA. (Gov't Code § 65589.5(k)(1)(A)(i) and (ii)(C)(2).) YIMBY's mission is to increase the accessibility and affordability of housing in California by enforcing state housing laws, including the HAA, and by advocating for increased access to housing for households of all income levels, including low-income households. YIMBY has a direct and substantial interest in ensuring that Respondents' decisions are in conformity with the requirements of law, that those requirements are properly executed, and that Respondents' duties are enforced.

4. Respondent City of Simi Valley ("Simi Valley") is a California municipal agency located within the County of Ventura. Through its governing body, the Simi Valley City Council ("City Council"), Simi Valley wrongfully denied Real Party's appeal of the Planning Commission's denial of the Project application, described below.

5. Respondent Planning Commission of Simi Valley ("Planning Commission") is a municipal agency of Simi Valley that exercises review authority for the final decision on CUP

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235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

applications pursuant to Simi Valley Municipal Code ("SVMC") § 9-50.020, and is the agency that denied the Project permit referenced herein.

6. Respondent City Council is the governing body of Simi Valley and the appellate review body of the Planning Commission's final decision on a CUP. (SVMC, ch. 9-76.)

7. Real Party in Interest JM Squared Development, LLC ("Real Party") is a California limited liability company. Real Party applied for entitlements to construct a senior assisted living facility known as Melrose West Senior Living Community, a housing development project ("Project") pursuant to HAA Gov. Code § 65589.5(h)(2).

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over Respondents (Code Civ. Proc. § 410.10) and subject matter jurisdiction over each of the state law claims asserted herein (Code Civ. Proc. § 1094.5 and Gov. Code § 65589.5).

9. Venue is proper in this Court because the entire controversy occurred here and Respondents are situated in Ventura County. (Code Civ. Proc. §§ 392, 393(b), 394 & 395.)

10. This action is timely because it has been filed within 90 days of the City Council's final denial of the Project. Gov. Code (§ 65589.5(m).)

11. Petitioner performed any and all conditions precedent to filing this action and has exhausted any and all available administrative remedies to the extent required by law. Petitioner filed a written comment with Respondents prior to the City Council's denial of the Project, via a letter dated October 24, 2019.

12. Petitioner has a beneficial interest in compelling Simi Valley's duties as described herein. Petitioner exhausted the administrative remedies available to it to the extent they were required. Petitioner has no plain, speedy, or adequate remedy to challenge Respondents' acts described herein other than the relief sought in this Petition, and therefore writ relief is necessary in order to compel Simi Valley to perform its duty to approve code-compliant housing development projects.

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FACTUAL BACKGROUND

13. The proposed development site is a 19.2 acre parcel of undeveloped land that backs up to Freeway 118 in Simi Valley, California. The parcel, located off the intersection of Welcome Court and Cochrane Street, is a hilly parcel with steep grading, though a small portion of the parcel is developable. That portion remains undeveloped not due to lack of interest, but because of efforts in the community to prevent anything from being built on the site. A previous owner of the parcel applied for approval to subdivide the developable portion of this property into four single family lots, but withdrew that request, due to "a lack of public support."

14. On November 3, 2017, Real Party began the Preliminary Review process for a proposed housing development project at the site. The Project calls for a 108-unit residential care facility for senior citizens, which includes 40 memory care units and 68 assisted living units, to be known as the Melrose West Senior Living Community. The development would occupy 1.6 acres of the parcel, leaving nearly 18 acres undeveloped.

15. The Project site is located in a Residential Medium ("RM") zoning district, which conditionally permits residential care facilities serving more than six persons (City's General Plan Housing Element at p. 4-55). Accordingly, the Project required a Conditional Use Permit ("CUP") pursuant to SVMC §9-52.070.

16. Real Party spent the next 16 months working with the City planning staff to satisfy City requirements, including fire department access, grading, drainage and sewerage requirements. The Project also underwent a traffic study, a noise study, and environmental review.

17. Although the HAA does not require compliance with subjective criteria, in an effort to comply with subjective neighborhood concerns Real Party reduced the two-story building massing of the Project. Real Party also proposed using stone veneer, wood-like siding, and stucco to fit in with the characteristics of the neighborhood, along with neutral colors to blend in with the hillside. In addition, the Project proposed to put 42 of the 54 parking spaces on site below grade to minimize visual impacts and drainage concerns.

18. Real Party formally submitted its permit application on March 1, 2018. The Project application was deemed complete on May 29, 2019. By June 30, 2019, the City had provided no

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written documentation identifying any Code provision with which it considered the Project was non-compliant. (Gov't Code, § 65589.5(j)(2)(A).)

19. Real Party continued to work with City staff and the community on the Project design, making painstaking efforts to assuage all possible neighborhood objections.

20. A public hearing of the CUP was held by the Planning Commission on September 4, 2019.

21. The Planning Commission Staff Report, prepared by the city's experts in land use, environmental, and development regulations, unequivocally recommended that the Planning Commission approve the Project.

22. Per SVMC §9-52.070(g), a project applying for a CUP must satisfy five findings:

> 1. The proposed use is allowed with a Conditional Use Permit within the applicable zoning district or with an Administrative Use Permit as identified in Subsection E (Administrative Use Permits), above, and complies with all applicable provisions of this Development Code;
>
> 2. The proposed use is consistent with the purpose, intent, goals, policies, programs, and land use designations of the General Plan and any applicable specific plan;
>
> 3. The proposed site plan and design would ensure consistency with applicable design guidelines;
>
> 4. The design, location, operating characteristics, and size of the proposed use would be compatible with the existing and future land uses in the vicinity, in terms of aesthetics, character, scale and view protection; and
>
> 5. The proper standards and conditions have been imposed which protect the public safety, health, and welfare.

23. The Planning Commission Staff Report found that all of these criteria were readily met, stating, "the proposed use is allowed with a Conditional Use Permit within the applicable zoning district and complies with all applicable provisions of this Development Code." The report went on to positively comment on the density, usage, architectural style and color, tree retention, the location, traffic effects, sewerage, water pollution, and lack of noise pollution. The staff report also noted Real Party's agreement to hire a Tribal Cultural Resource Monitor as selected by the Fernandeño Tataviam Band of Mission Indians to monitor all ground disturbing activities within the

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project site for any potential funerary or cultural heritage items that might be discovered during the excavation.

24. It is undisputed that the Project met *every* objective standard and criteria imposed by the City. Indeed, the City's Deputy Environmental Services Director "stressed that the project meets all zoning and Development Code requirements."

25. Numerous members of the public opposed the Project on the basis of subjective and conjectural concerns such as traffic, aesthetics, and neighborhood compatibility. Despite the fact the Project is fully code-compliant, the Planning Commission deferred to this public pressure and denied the CUP application.

26. Planning Commission Resolution No. SVPC 14-2019, in which the Planning Commission denied the CUP, cited patently subjective criteria as the basis for denial, namely:

- "The proposed development would not blend in with the natural environment due to the large scale of the proposed building."
- "The proposed development is not consistent with the General Plan in regards to housing type and bulk of the proposed building being out of scale."
- The commission went on to state that the proposed development did not comport with local standards for "aesthetics, character, scale, and view protection."

27. In denying the Project, the Planning Commission acted arbitrarily, capriciously, and in bad faith. The comments of the members of the Planning Commission at the September 4 hearing are telling of Respondents' bad faith efforts to deny the development. Planning Commissioner John Casselberry Jr., though acknowledging the need for this type of housing, stated he felt "the site would be better suited to single family detached housing" at the Planning Commission's September 4, 2019 meeting, according to the minutes for that meeting. Planning Commissioner Alan Mann stated it was the "right project in the wrong location," and also raised nebulous concerns about design, character, and scale. Planning Commission Chairperson Tim Hodge stated he was concerned about future use of the remaining 17.6 acres of the parcel, despite the fact that the Planning Commission would continue to have purview over any subsequent development of the Project site.

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28. Real Party exercised its right to appeal the decision to the City Council. A public hearing was held on November 4, 2019 meeting —two years and a day after the Project was first proposed.

29. As at the Planning Commission hearing, the City Council deferred to neighborhood opposition and denied the Project. In its draft denial resolution No. 2019-46 (the "Denial Resolution"), the City Council cited only three bases for denial:

- First, the Project is not "architecturally integrated into the terrain and [does not] blend in with the natural environment."
- Second, the Project "is not consistent with the purpose and intent of the General Plan in regards to housing type and bulk of the proposed building being out of scale."
- Finally, the City Council found that the Project "is not compatible… in terms of aesthetics, character, scale, and view protection," because "the building scale is not softened by having a one-story portion of the building since the one-story portion is only a small portion of the building." (The City Council made this finding notwithstanding staff advice that view protection requirements *do not apply* to Project site.)

30. In its oral discussions, the City Council purported to amend the draft Denial Resolution to find that a traffic issues could arise should a fire occur at the proposed Project. City Council members cited fears that people would attempt to drive to the Project if a wildfire threatened the area.

31. The City Council did *not* find that this hypothetical risk would constitute "a specific, adverse impact upon the public health or safety" that could not be mitigated, other than by disapproving the Project. (Gov't Code § 65589.5(j)(1).) It was not open to the City Council to make such a finding. There is ample evidence in the record that the Project design mitigated risks associated with wildfire and is compliant with all applicable, objective life safety standards.

32. A key factor in the City Council's denial decision was the Simi Valley City Attorney's erroneous opinion that the HAA is not applicable to the Project. The City Council Staff

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report acknowledged that the HAA would limit the City Council's discretion "because of the strict requirements of that law." However, the City Attorney opined that "developments where residents live or eat with other people are group quarters that are not 'housing units,'" in a flagrantly sophistic attempt to claim that this development project to build housing for the elderly is not a "housing development project" for purposes of the HAA. The City Council made no written findings regarding the applicability of the HAA to the Project.

33. Rather than memorializing the denial decision by formally adopting the Denial Resolution or written findings, Respondents sent a denial letter to Real party on November 14, 2019, confirming: "On November 4, 2019, the City Council upheld the denial of the Planning Commission on the subject property."

34. In denying the Project the City Council abused its discretion and failed to proceed in the manner required by law. Most notably, the City Council willfully disregarded its state law obligations under the HAA, which *is* applicable to the Project and compels its approval.

HOUSING ACCOUNTABILITY ACT

35. "The Legislature's intent in enacting [the HAA] in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled." (Gov't Code § 65589.5(a)(2)(K).)

36. The HAA must be construed broadly and "consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians." (Gov't Code § 65589(d).)

37. The HAA requires, inter alia:

> 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

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> 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(j)(1).)

38. The HAA provides that a housing development project shall be:

> deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project . . . is consistent, compliant, or in conformity.
>
> (Gov't Code § 65889.5(f)(4))

39. Moreover, if a local agency "considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision," it must provide the applicant with "written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity" within thirty days of the date the application is determined to be complete (for projects containing 150 or fewer housing units). (Gov't Code § 65589.5(j)(2)(A).) If the local agency fails to provide such documentation, "the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision." (Gov't Code § 65589.5(j)(2)(B).)

40. In order to deny a housing development project, Simi Valley has the burden of either proving that the "proposed project in some manner fails to comply with 'applicable, objective

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SAN FRANCISCO, CALIFORNIA 94104

general plan and zoning standards and criteria, including design review standards. . .'", or making the health and safety findings required by the HAA. (Honchariw v. County of Stanislaus (2011) 200 Cal.App.4th 1066, 1081.)

The Project is a Housing Development Project, as Defined by the HAA

41. The Project constitutes a "housing development project" under the HAA because it proposes a use consisting of "residential units" and "supportive housing." (Gov't Code § 65589.5(h)(2).)

42. In a baseless attempt to avoid the HAA's application to the Project, the City Attorney asserted that the Project is not a "housing development project" because the residential units at the Project do not contain kitchens or kitchenettes.

43. Importantly, the HAA does *not* require that residential units include a kitchen in order to qualify for approval under the HAA. Although "residential unit" is not defined in the HAA itself, there is simply no basis for the City's narrow and erroneous interpretation. To the contrary, the HAA broadly defines a residential "use" to encompass a range of different types of housing.

44. In the context of senior housing such as the Project, Civil Code §§ 51.3(b)(4) and (5) provides further guidance, specifically defining a senior housing "dwelling unit" as "any residential accommodation (other than a mobilehome)."

45. Respondents' own Code defines a "Residential Care Facility" such as the Project as:

> A single-dwelling unit or multiple-unit facility licensed or supervised by any Federal, State, or local health/welfare agency that provides 24-hour non-medical care of unrelated persons who are in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual in a family-like environments, including group homes.

46. That is, the SVMC clearly states that a "residential care facility" development consists of "dwelling units." When defining the same term for purposes of HAA analysis, the City cobbles together a patchwork of laws, regulations, and administrative guidance promulgations at the state and federal level to arrive at the opposite conclusion, so that the Project would fall outside the purview of the HAA.

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47. In any event, the Project also qualifies as "supportive housing" because it includes assisted living and memory care units that could accommodate "target populations" with disabling conditions, and who would be eligible for services provided pursuant to the Lanterman Developmental Disabilities Act. (Gov. Code § 65582(i); Welfare and Institutions § 4512(a).)

48. Even if there were any ambiguity regarding the applicability of the HAA to the Project, the HAA directs that it must be construed broadly and "consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians." (Gov't Code § 65589(d).) A broad interpretation of the HAA inexorably leads to the conclusion that it applies to the Project.

49. Finally, the City Council Staff Report engages in an outright falsehood by stating, "The City's Municipal Code does not define this project as including residential or dwelling units." This squarely contradicts the SVMC's definition of a "Residential Care Facility". As a result, there is no denying that the city's tortuous efforts to define this project to be outside of the purview of the HAA were made in bad faith.

The HAA Compels Approval of the Project

50. The Project complies with all applicable objective general plan and zoning standards and criteria, including design review standards. There is substantial evidence that "would allow a reasonable person to conclude that the [Project] . . . is consistent, compliant, or in conformity" with all applicable objective standards.

51. There is ample evidence that "would enable a reasonable person to conclude" that the Project is code-compliant, including reports prepared by the City's own experts. (Gov't Code § 65589.5(f)(4)).) A staff report acknowledged that if the HAA applied to this Project, the City Council's discretion would be significantly limited. Because the HAA *does* apply, the City Council cannot escape a finding that the Project is complies with all applicable, objective standards and criteria, and must be deemed compliant as a matter of law.

52. Moreover, the City's letter of May 29, 2019 determining that Real Party's application was complete identified no adverse impact to public health or safety, nor any inconsistency, noncompliance or nonconformity with an applicable plan, program, policy, ordinance, standard,

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SAN FRANCISCO, CALIFORNIA 94104

requirement, or other similar provision. (Gov. Code §§ 65589.5(j).)Because the City provided no written documentation to Real Party identifying any areas of alleged code-noncompliance within thirty days of the application being deemed complete, the Project is "deemed consistent and compliant" with all applicable code requirements, pursuant to Gov't Code § 65589.5(j)(2)(B).

53. The City Council made no finding that the Project was inconsistent with any applicable, objective standard or criterion found in the City's codes. Nor did it make the required health and safety findings.

54. To the extent the City Council purported to make health and safety findings in its oral discussion of the Denial Resolution, such "findings" fall far short of the threshold set out in the HAA. Members of the City Council conjectured that, should a wildfire occur, evacuation would be difficult and traffic issues might arise. However, the HAA requires *written* findings, supported by a preponderance of the evidence on the record, of a "specific, adverse impact upon the public health or safety unless the project is disapproved" in order for this concern to be used as a basis for denial. (Gov. Code § 65589.5(j)(1).)

55. In the context of the HAA, "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.

56. The City Council failed to make any such finding, much less one based on "objective, identified written public health or safety standards" or supported by the preponderance of the evidence. Even if such a finding could be made, it would only justify denial of the Project if an agency also finds there is "no feasible method to satisfactorily mitigate or avoid the adverse impact . . . other than the disapproval of the housing development." (Gov. Code § 65589.5(j)(1)(B).) The City Council made no such finding, and nor could it.

57. The HAA compels approval of the Project. Respondents wrongfully denied the Project based on subjective criteria such as neighborhood compatibility, which is prohibited by the HAA. In caving to populist opposition to much-needed housing and denying the Project for pretextual and impermissible reasons, Respondents acted in bad faith.

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58. Respondents bear the burden of proving that their actions complied with the HAA in all respects. (Gov't Code § 65589.6.) Respondents cannot satisfy this burden.

59. Respondents failed to proceed in the manner required by law and abused their discretion. Their decision was not supported by the findings, and their findings were not supported by the evidence.

WHEREFORE, Petitioner prays for relief as follows:

1. For an order overturning the Simi Valley City Council's November 4, 2019 vote denying the appeal of the Planning Commission's denial of the Project;

2. For an order commanding Simi Valley to approve the Project;

3. For costs as allowed by law, including attorney's fees under CCP § 1021.5 and the HAA;

4. For fines and penalties to be assessed pursuant to Gov. Code § 65589.5; and

5. For such other and further relief as the Court deems warranted based on the facts established at trial or other judicial resolution of this petition.

Date: January 31, 2020

ZACKS, FREEDMAN & PATTERSON, PC

By: Sarah M. K. Hoffman
Attorneys for Petitioner YIMBY

ZACKS, FREEDMAN & PATTERSON, PC
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

ZACKS, FREEDMAN & PATTERSON, PC
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

VERIFICATION

I, Sonja Trauss, declare as follows:

1. I am a natural person and a resident of the State of California. I am the director of Yes In My Back Yard. I am authorized to verify this Petition for Writ of Administrative Mandate on behalf of this entity.

2. I have read the foregoing Petition for Writ of Administrative Mandate and know its contents. The matters stated in the Petition for Writ of Administrative Mandate are true of my own knowledge from having reviewed the administrative history of the Project.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 01. 31, 2020

Sonja Trauss