Self-Certification of Housing Elements Called Into Question By Judge

By William Fulton on July 16, 2023

In a case that could eventually have significant implications for legal questions about the builder's remedy, a Los Angeles judge has ruled that La Canada-Flintridge should not have claimed that its housing element was compliant even though the state had not approved it. The judge said he would also have ruled that the city could not exempt itself from the builder's remedy except that the plaintiff – a public-interest law firm that's an arm of the California Association of Realtors – was not a developer with a pending project in front of the city.

The case revolved around the question of how the city treated the likely redevelopment of non-vacant parcels with existing uses in its housing element. More than half of the sites in the city's site inventory are non-vacant and the city claimed that all of those parcels – many of which are older commercial properties – would be redeveloped by end of the current housing element cycle in 2029. But the plaintiff, Californians For Homeownership, produced evidence from several property owners that their retail tenants had long-term leases and/or they had no intention of redevelopment their property with housing in the near future.

"The 2023 draft element's sites inventory fails to account for the impediment created by the existing uses, including the possibility that a site will be maintained in its current use rather than redeveloped during the planning period," Judge James Chalfant wrote in a 31-page ruling. "The 2023 housing element also does not identify any basis for the City's assumptions as to the realistic capacity of the listed sites for residential development. The City fails to demonstrate that it will affirmatively further fair housing….The City also fails to assess the relationship between that goal and the sites identified for housing."

He also faulted the city's methodology for identifying sites likely to be redeveloped. While he acknowledged that the city used well-established methodology for identifying parcels that are *underutilized*, he said the city did not provide a "causal link" to the likelihood that they would be *redeveloped*.

Chalfant said a subsequent lawsuit by a developer with a project in front of the city, alleging the same facts, would be successful. And he seemed to suggest that approval from the Department of Housing and Community Development is required to get out from under the builder's remedy by saying La Canada Flintridge "failed to pass a substantially compliant housing element certified by HCD" by the deadline of October 15, 2022.

It seems likely that the city will appeal the ruling, which could set up an important, precedent-setting case in the higher courts. Ever since the builder's remedy became a live issue in California last fall, one question has loomed: To be exempt from the builder's remedy, does a city have to have HCD certification of its housing element or can it "self-certify"?

The builder's remedy requires cities without a compliant housing element to approve virtually any project a developer proposes so long as it 20% of its units are affordable. (You can find *CP&DR*'s full explanation here.) The builder's remedy has been on the books since 1990 but no developer attempted to use it for more than until last fall, when WS Development proposed using it for more than a dozen projects in Santa Monica. (The city subsequently settled with the developer on virtually all the projects.) Since then, dozens of builder's remedy applications around the state have been filed and Huntington Beach has claimed it is exempt, drawing a lawsuit from the Attorney General's Office.

A affluent, mostly built-out city along the 210 Freeway in the hills north of Glendale and Pasadena, La Canada Flintridge has been a flashpoint in California's recent housing wars. More than 80% of current housing units are single family. As the October 15, 2022, deadline for compliant housing elements in the Los Angeles region loomed, the city went back and forth with HCD over changes to its housing element. The city adopted a housing element that it claimed is compliant on October 4, 2022, 11 days before the deadline.

Critical to those negotiations – and to the city's subsequent position in the Californians For Homeownership case – was a meeting between the city and HCD on January 12 of this year. The city claims that the changes proposed at that meeting were not substantial, meaning the housing element was compliant even though HCD had not approved it. But according to a declaration in the court case by Melinda Coy, HCD's Proactive Housing Accountability Chief, this was not the case. In fact, she claimed, HCD gave the city substantive advice about how to beef up its analysis of nonvacant sites and proposed additional policy and program changes. Critical to the ruling in the case was the fact that Chalfant accepted Coy's version of the meeting, not ht city's.

After the deadline passed, the developers of a 1.3-acre parcel along Foothill Boulevard filed a builder's remedy application with the city for a five-story, 80- unit mixed-use project. The developers had been seeking approval of a project on the site for close to a decade. The city rejected the application on the grounds that the housing element passed in October 2022 was compliant with state law. Citizens For Homeownership subsequently sued.

In his ruling Chalfant noted that the city claimed that the plaintiffs wanted to impose an "impossible" standard by requiring evidence that the non-vacant properties on the sites inventory will be discontinued during the eight-year period covered by the housing element. But Chalfant disagreed. "If the City cannot obtain appropriate evidence about a particular parcel, it should be removed from the non-vacant sites relied on to accommodate the housing need for lower income households," he wrote. "If this results in the elimination of needed sites, the City must rezone to increase the density on more plausible sites to account for the lost units. Nothing about this is impossible."

The Case:

Californians For Homeownership v. City of La Canada Flintridge, L.A. County Superior Court No. 23STCP00699 (filed July 11, 2023)

The Lawyers:

For Californians For Homeownership: Matthew Gelfand, matt@caforhomes.org

For City of La Canada Flintridge: Michelle L. Villareale, Aleshire & Wynder, mvillarreal@awattorneys.com

Search the Site

Search

Search

Job Announcements

Position Available,
Citrus Heights, CA

Position Available,
Oxnard, CA

Four Positions Available,
County of Santa Cruz

Principal Planner & Senior Planner,
City of Rancho Cucamonga

Two Positions Available,
Rand Paster Nelson

(Place your job ad on CP&DR.com)

Connect with CP&DR

Follow us on Facebook and Twitter

Subscribe to our Free Weekly Enewsletter