



STATE LAW MAKES IT HARDER FOR OPPONENTS OF HOUSING DEVELOPMENT PROJECTS TO SUCCEED IN COURT

(Bankers Hill 150 v. City of San Diego)

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Bankers Hill 150 v. City of San Diego, a recent case from the Fourth Appellate District, provides useful guidance on the limits imposed by state law on an agency’s consideration of a housing development project, particularly one that is a density bonus project.

In *Bankers Hill 150*, the City of San Diego (“City”) approved a 204-unit housing project known as the 6th & Olive Project (the “Project”). The Project included 18 units for very low income households thereby qualifying it for the State Density Bonus Law (“DBL”). Density bonus projects are entitled to increased densities, incentives/concessions or waivers from development standards, and prescribed parking ratios.

Opponents claimed that the Project violated certain local standards, including a setback requirement. The court of appeal rejected that argument, noting that density bonus projects are exempt by state law from such standards, observing that the “City was obligated to waive those standards if they conflicted with the Project’s design . . .” (Slip Opinion, p. 3.) The court also stressed that the DBL provides very limited exceptions to its requirements and places the burden on a local agency to establish that an exception applies. (Slip Opinion, p. 14.) Specifically, an incentive/concession can lawfully be refused only if it would: (1) not result in identifiable and actual cost reductions to provide for affordable housing costs, (2) have “a specific, adverse impact . . . upon public health and safety,” or (3) be contrary to state or federal law (*Id.*) The court upheld the City’s finding that none of these exceptions applied.

Opponents claimed that the developer could have complied with the standards if it eliminated amenities, such as a project courtyard. The court of appeal also rejected that argument, stating “the law provides a developer with broad discretion to design projects with additional amenities even if doing so would conflict with local development standards.” (Slip Opinion, pp. 20-21 citing *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329.) Thus, if a project meets the criteria of the DBL, “a city may not apply any development standard that would physically preclude construction of that project as designed, even if the building includes ‘amenities’ beyond the bare minimum of building components.” (Slip Opinion, p. 21.)

Opponents also claimed that the Project was inconsistent with the City’s General Plan and related planning documents. While courts normally grant a fair amount of deference to an agency’s determination of consistency with its planning documents, the court of appeal stressed that the State Housing Accountability Act (“HAA”) “cabins the discretion of a local agency to reject proposals for new housing.” (Slip Opinion, p. 24 citing *California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820.) Under the HAA, “an agency may deny approval of a housing development project on the basis that it is inconsistent with development standards *only* if those standards are ‘objective.’” (Slip Opinion, p. 25 [further stating that “[a] standard is subjective, rather than objective, if it cannot be applied without personal interpretation or subjective judgment.”].) Accordingly, an agency cannot lawfully deny a housing project on the basis that it is inconsistent with subjective planning policies or development standards.

The court noted that the opponents had relied on several policies that appeared to be entirely subjective in nature, e.g., policies stating that new development should “sensitively and adequately transition to adjacent lower height buildings,” “complement” the natural environment, and include design features that “enhance” views. (Slip Opinion, p. 25.) Ultimately, the court found that it did not need to decide which policies were objective or subjective because it concluded that the City had not erred in finding the Project to be consistent with City planning policies, several of which it found were inapplicable.

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