

NO. A113236

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FRIENDS OF LAGOON VALLEY,

Appellant,

v.

CITY OF VACAVILLE, ET AL.,

Respondents,

TRIAD COMMUNITIES L.P., ET AL.,

Real Parties in Interest.

On Appeal From the Judgment of the Superior Court of the
State of California, County of Solano
(Superior Court Case No. FCS025789)
The Honorable Donald R. Fretz, Judge Presiding

RESPONDENTS' AND REAL PARTIES' OPPOSITION BRIEF

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I. INTRODUCTION

The trial court denied Appellant's Petition for Writ of Mandate and found that the City complied with the State Planning and Zoning Law, including the State Density Bonus Law (Government Code section 65915), in approving the Lower Lagoon Valley Policy Plan Implementation Project ("2005 Project"). Respondent City of Vacaville, and Real Parties in Interest Triad Communities and Lagoon Valley MPC (collectively "Triad") jointly and respectfully urge the Court to affirm the judgment denying the Petition.

The law plainly vests the City with substantial discretion in interpreting its plans and applying them to proposed development projects, including balancing among competing policies and objectives within the plans. Here, the City balanced the massive development allowed under the 1990 Lower Lagoon Valley Policy Plan with a proposal to build a more environmentally sensitive, walkable, sustainable, mixed-use community, that provides for senior and moderate-income households, and produces 70 percent less traffic than anticipated under maximum Policy Plan buildout. The result is a project that is not identical to, but legally consistent with, the Vacaville General Plan and the Policy Plan.

The need for the City to balance among competing goals and objectives is demonstrated by the Policy Plan itself. On one hand, it anticipates up to five million square feet of commercial development. On the other hand, it mandates an 850-foot wide view corridor, environmental protection and sustainable development. The City properly exercised its

authority in interpreting these competing goals and finding the 2005 Project consistent with the General Plan and Policy Plan.

Appellant claims the City violated the law because the 2005 Project is not identical to the development originally anticipated by the General Plan and the Policy Plan. Appellant picks three General Plan policies out of over one hundred, and one aspect of a one-hundred page Policy Plan, and claims that variations between the 2005 Project and these items constitute illegal action by the City. Appellant argues for a rigid standard that would leave the City virtually no discretion to approve projects consistent with, but not identical to, its General Plan. The law does not support Appellant's arguments.

Under Appellant's unduly rigid interpretation of general plan law, the City would have to include a six-lane road where only four lanes are needed, and would have to approve construction of a massive big-box retail development on sensitive wetlands, even though neither the developer, the City, nor the public desires it.

Appellant's main objection is that the 2005 Project includes more residential development and less commercial development than originally envisioned. Appellant's claims fail for three fundamental reasons: (1) these variances reflect the necessary balancing of policies, goals and objectives within a plan that the City has broad discretion to undertake; (2) the Policy Plan itself specifically authorizes the City to approve land uses different than those shown in the plans, and (3) the increased residential density is specifically authorized by the State Density Bonus

Law, which preempts the General Plan and Policy Plan to encourage more affordable and senior housing.

Appellant also weakly claims that the 2005 Project is inconsistent because the City cannot guarantee that Caltrans will widen Interstate 80. Accordingly, it cannot guarantee that the 2005 Project, which contributes a fraction to the existing and projected future traffic deficiencies on Interstate 80, will completely mitigate those deficiencies. This claim fails.

First, substantial record evidence demonstrates that the 2005 Project includes the mitigation the General Plan and Policy Plan require.

Second, Appellant ignores the limits on mitigation that a City may impose, and misstates the requirements of the General Plan and Policy Plan in this regard. Third, as the trial court noted, neither plan has an overriding objective that a project unequivocally remedy all traffic deficiencies on Interstate 80.

Appellant also argues that the City violated the State Density Bonus Law. These claims are unsupported and illogical. Moreover, most of them are barred by Appellant's failure to exhaust administrative remedies.

Appellant's claim regarding administrative record costs also fails. Appellant must show that the trial court abused its discretion in awarding costs to the City (after reducing the City's cost bill by approximately one-third). Appellant cannot meet this burden. Accordingly, the Court should uphold the cost award.

For all of the foregoing reasons, the Court should affirm the judgment denying the Petition.

II. STATEMENT OF FACTS

The Lower Lagoon Valley sits adjacent to Interstate 80 at Vacaville's southern boundary. It is a largely fallow agricultural area containing a major commercial nursery operation, two ranch houses, a motel, and a commercial horse stable. 63 AR 015792.¹ The Valley also contains Lagoon Valley Park and Lagoon Valley Lake. The 2005 Project would not affect the park or lake, except to contribute \$4,500,000 and 70 acres to their improvement and expansion. 1 AR 000008, 37.

A. The City of Vacaville Adopted the Lower Lagoon Valley Policy Plan in 1990.

In 1990, the City of Vacaville annexed the Lower Lagoon Valley and adopted the Policy Plan, along with corresponding General Plan and zoning amendments.² 63 AR 015761-82. The approval of the Policy Plan represented Vacaville's official commitment to support significant development in the Lower Lagoon Valley. 10 AR 002550. The City has never wavered from that commitment.

The Policy Plan anticipated the eventual buildout of 730 homes on about 255 acres, a "tournament-level" golf course, up to four million square feet of office space in a "landscaped campus-like" setting, and up to one

¹ "AR" refers to the Administrative Record. "JA" refers to the Joint Appendix. The number preceding the abbreviation represents the volume, while the number following represents the page(s) within the volume.

² A "policy plan" is similar to a specific plan, as described in Government Code sections 65450 through 65457. It is specifically recognized in the Vacaville Municipal Code (section 14.09.112.040) and is required for certain areas, including the Lower Lagoon Valley.

million square feet of “big-box” retail along Interstate 80.

63 AR 015800, 15818. “The mix of uses is intended to contribute to the overall employment, commercial and residential components of the City of Vacaville, while providing additional recreation opportunities as well as enhancing the existing regional park.” 63 AR 015802; *see also* 63 AR 015790-96, 15802, 15837, 15854-59.

The Policy Plan calls for a large open space buffer to help protect and separate development from Interstate 80, for the protection of ridges and slopes of 25 percent or more, and for an 850-foot wide view corridor connecting Interstate 80 to the lake and hills beyond.

Id.; 63 AR 015796-802, 15854-60. The Policy Plan also contains generalized layouts for land uses, internal arterial streets, and open space pathways and trails. 63 AR 015804-10. At the same time, however, the Policy Plan also includes express authorization to modify these attributes. 63 AR 015789 (plans “allow for flexibility and require interpretation by staff and the City’s decision makers”), 15819 (Planning Director may allow “any other uses . . . consistent with the purposes of the Policy Plan”). The Policy Plan does not contain any requirement that all of the anticipated development occur. 63 AR 015799.

Vacaville General Plan Policies 2.3-I 4 and 2.3-I 8 guided the Policy Plan at the time of its adoption.³ 56 AR 014167, 63 AR 015790-91. Policy 2.3-I 4 required “upper-end” housing in the Lower Lagoon Valley,

³ Policy 2.3-I 4 and Policy 2.3-I 8 are now combined into Policy 2.3-I 14. 56 AR 014167.

with high standards for community and building design, streetscaping, landscaping and public amenities. 56 AR 014167. It also required commercial areas to be of the highest quality design, and required the protection of view corridors from Interstate 80 and retention of the open space feel of the northern end of the valley (where Lagoon Valley Park is located). *Id.*; 63 AR 015790-92, 15804, 15821. Policy 2.3-I 8, which the Policy Plan incorporates nearly verbatim, contains a list of additional key goals and objectives for development in Lagoon Valley. 63 AR 015789-90.

The Policy Plan allows broad flexibility in its implementation. First, it expressly recognizes that its policies, and those of the General Plan, are subject to further refinement and interpretation. 63 AR 015789.

Second, it authorizes the Planning Director to permit uses other than those conceptually targeted for various areas upon finding that doing so is consistent with the Policy Plan's purposes and that the use is compatible with surrounding uses. 63 AR 015819; *see also* 56 AR 014144 (General Plan provides basis for City to judge whether specific proposals are "in harmony" with Plan policies).

Third, it anticipates a Planned Development permit will be proposed and adopted concurrent with a specific development project, and that in that process, the City will substantially refine and update the Policy Plan by adopting – in an open public process – a set of regulations and development specifications to "update and adjust" the standards for development in the Plan area. The City's code provides that the Planned Development permit:

is the proper mechanism in this case to clarify and update[] some of the standards in the Policy Plan,

to adjust some of the development standards based on the proposal, and for the density bonus request. . . . [It] is the proper vehicle to implement these various aspects into a development that is consistent with the overarching goals, policies and objectives of the Policy Plan.

3 AR 000688, 692; Vacaville Municipal Code (“V.M.C.”) § 14.09.111.010; 6 AR 001459–7 AR 001803 (nearly 350-page Planned Development submittal).⁴

B. Triad Proposed a High Quality Mixed-Use Community Pursuant to a New Specific Plan for Lagoon Valley.

In 1999, Triad acquired property interests in the Lagoon Valley.

Triad subsequently proposed to construct 1,325 homes, approximately one million square feet of commercial space and a tournament-level golf course in the area governed by the Policy Plan (the “2004 Project”).

10 AR 002550-53. This proposal built upon and carried forward the fundamental policies, goals and objectives of the Policy Plan, and substantially resembled that plan. 10 AR 002550. Triad’s proposal was also consistent with General Plan Policy 2.3-I 14, and a list of seventeen “Expectations of Public Benefits” adopted by the City Council in 2003 to

⁴ Appellant states that a Planned Development permit is not required for the commercial areas. App.Br. at 24, n.33. While the Policy Plan states that a Planned Development permit is only required for the residential areas, in considering the 2005 Project, the City required Triad to submit a Planned Development proposal covering the entire project in order to apply the design standards for the residential portion to the Business Village, Town Center and golf course (clubhouse and other buildings). Thus, the Planned Development submittal, and the additional refinement and updating of the Policy Plan the Planned Development process, covers the entire 2005 Project. 6 AR 001459–7 AR 001803.

