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LINDA G. ASHCRAFT

By *Linda G. Ashcraft*
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SOLANO

FRIENDS OF LAGOON VALLEY

Petitioner and Plaintiff

vs

CITY OF VACAVILLE, et. al.
Respondents and Defendants

No. FSC 025789
RULING ON PETITION FOR
WRIT OF MANDATE
AND FOR INJUNCTIVE RELIEF

Respondent Real Party in Interest seeks to build 1,025 residences and commercial developments, including a golf course in Lagoon Valley, in the southern part of Vacaville adjacent to Interstate 80. The Respondent City approved the development Specific Plan and took other steps in approving the development. Petitioners challenge the development, basically alleging that the plans approved by the City violate the General Plan and the Policy Plan by impermissibly changing the location of uses, allowing too many residential units and causing traffic problems. Petitioners ask for a Writ mandating the City to reverse its approval and for injunctive relief..

Arguments on the Petition were made by:

STUART M. FLASHMAN for Petitioners.

Assistant City Attorney MELINDA STEWART for Respondents CITY OF
VACAVILLE AND VACAVILLE CITY COUNCIL.

ANDREW B. SABEY for Real Party in Interest TRIAD COMMUNITIES, L.P.
and LAGOON VALLEY MPC LLP.

Arguments were made August 25. The transcript of the hearing was
furnished to the Court September 23. Additional arguments were made October 27.

I. THE BACKGROUND

A. In 1990 the City of Vacaville annexed the Lower Lagoon Valley and adopted the
Lower Lagoon Valley Policy Plan, and corresponding General Plan and zoning
amendments. The Policy Plan was amended in 1991 and not since. A CEQA
challenge by a different Petitioner was resolved in December, 2004.

II. THE STANDARD OF REVIEW

The law presumes that the City acted properly in determining questions of fact
that the 2005 Project is consistent with the Vacaville General Plan and the 1990 Policy
Plan. The challenge to such approval is governed by Code of Civil Procedure section
1094.5. The standard of review under the section is whether the City abused its
discretion in approving those questions of factual consistency.

An abuse of discretion occurs if:

- A. the City did not proceed in the manner required by law, or
- B. the decision was not supported by the findings, or
- C. the findings were not supported by substantial evidence.

As to questions of law, the Court exercises its independent judgment.

III. JUDICIAL NOTICE

The Court has taken judicial notice of the documents presented by Petitioner as requested.

IV. THE CONTENTIONS OF PETITIONER

A. THAT THE CITY'S DETERMINATION THAT THE APPROVALS WERE CONSISTENT WITH THE GENERAL PLAN WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

1. The approvals were required to be consistent with the General Plan
2. Consistency requires that the project further not obstruct attainment of the General Plan's objectives, goals and policies.
3. The approvals were inconsistent with General Plan Policies and with the General Plan Land Use and Circulation Map

B. THE CITY'S DETERMINATION THAT THE APPROVALS WERE CONSISTENT WITH THE LOWER LAGOON VALLEY POLICY PLAN WAS NOT SUPPORTED BY SUSTANTIAL EVIDENCE.

1. The approvals were inconsistent with numerous aspects of the Policy Plan.

C. THE APPROVALS VIOLATED BOTH STATE AND CITY DENSITY BONUS LAWS

1. Government Code Section 65915 and its purpose.
2. The 2004 amendment to Section 65915.
3. The City misconstrued Section 65915.

4. The City's approved density bonus was not allowable under the City's own density bonus ordinance. Section 65915(n) allows amendment of the City density bonus ordinance but does not overrule the present ordinance.

V. THE CONTENTIONS OF RESPONDENTS CITY AND THE REAL PARTY IN INTEREST

A. THE CITY FULLY COMPLIED WITH STATE PLANNING AND ZONING LAW INCLUDING STATE DENSITY BONUS LAW IN APPROVING THE 2005 PROJECT.

1. The Project is not required to be identical to the General Plan.
 - a. The City has discretion under the law to balance competing policies and objectives to protect the environment and implement the most current thinking and innovations in land use planning.
 - b. An exact match between a project and a policy plan is not legally required.
2. Petitioners' claims that City violated the State Density Bonus Law are barred by Petitioner's failure to exhaust administrative remedies.
3. If the claims are not barred, Government Code Sec. 5915(n) permits density bonuses above 20% and up to any amount at the discretion of the approving jurisdiction.

B. THE 2005 PROJECT ACHIEVES THE MAJOR POLICY GOALS AND

OBJECTIVES OF THE VACAVILLE GENERAL PLAN AND THE 1990
POLICY PLAN.

VI. DISCUSSION

A. THE VACAVILLE GENERAL PLAN (Adopted August, 1990)

Among its many provisions, the General Plan contains the following provision:

“The City has no obligation to approve projects at the maximum permitted density for any category. Text policies may limit development on particular sites in ways not apparent from the Plan diagram. For example, Plan policies protecting natural habitat or preventing flooding may prevent designated densities or intensities from being reached on some parcels. Likewise, policies requiring maintenance of traffic levels of service or elevation limits on water service will affect development potential. Determination on questions such as these will be influenced by the actions of special districts, and state and federal agencies as well as by the City.

B. RE FINDINGS BY THE CITY COUNCIL

1. A city enjoys its greatest discretion and is owed the highest level of deference when it is interpreting its own policy documents and plans. A court must uphold an agency’s determination that a project is consistent with the agency’s plans and policies unless “a reasonable person could not have reached the same conclusion”. *No Oil, Inc., v. City of Los Angeles* (1987) 196 Cal.App.3d 223,243. “When we

review an agency's decision for consistency with its own general plan, we accord great deference to the agency's determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity." *Save Our Peninsula Comm. v. County of Monterey* (2001) 87 Cal.App.4th 99, 142.

"Deference is particularly appropriate where, as here, the agency is interpreting its own language, drafted to suit a particular circumstance." *Bello v. ABA Energy Corp.* (2004) 121 Cal. App.4th, 301,318. In considering general plan consistency, "it is, emphatically, not the role of the courts to micro-manage these ...decisions."

Sequoyah Hills Homeowners Ass'n. v. City of Oakland (1993) 23Cal.App.4th 704.

2. A project is consistent with a plan so long as it does not fundamentally undermine or disable the achievement of the plan's basic objectives. "The question is not whether there is a direct conflict between some mandatory provision of a general plan and some aspect of a project, but whether the project is compatible with, and does not frustrate, the general plan's goals and policies," *Napa Citizens for Honest Gov't v. Napa County Bd. Of Supervisors* (2001) 91 Cal.App.4th 342,379; *Corona-Norco*, 17 Cal. App.4th at 994 ("an action, program, or project is consistent with the general plan if,

considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment”); *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777,782 (“perfect conformity is not required, but a project must be compatible with the objectives and policies of the general plan”). Put another way, a legal inconsistency is something that undermines the achievement or implementation of the plan overall. *Sequoyah Hills*, 23 Cal.App.4th at 718-20 (finding a project consistent with a general plan despite clear and direct inconsistencies with a number of policies). “General plans ordinarily do not state specific mandates or prohibitions. Rather, they state ‘policies’, and set forth ‘goals’.” *Napa Citizens*, 91 Cal.App.4th at Those policies and goals only become specific, quantitative mandates, if the plan itself so provides. Absent such a mandate, a conflict with a policy or goal, or even a number of policies or goals, does not automatically equate to legal inconsistency with a plan. *Id.*

In fact, the law expressly permits general plans to contain competing objectives, and encourages local jurisdictions to “balance among those competing objectives as necessary when determining consistency for a particular project. See Gov. Code Section 65300.9 (allowing a city “to establish its own appropriate balance in the context of the local situation”); *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App. 4th656,678

(because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes"); *Corona-Norco*, 17 Cal.App.4th at 996 (upholding a consistency determination on the basis that "the General Plan is not...specific...and does not contain mandatory provisions"); compare *Endangered Habitats League*, 131 Cal.App.4th at 785-86 (finding a project inconsistent with a plan that expressly prohibited balancing).

3. Balancing is permitted by state law (Gov. Code Section 65300.9), and is expressly encouraged by the Vacaville General Plan and the Lower Lagoon Valley Policy Plan. For example, the Policy Plan states that "both sets of policies allow for flexibility and require interpretation by staff and the City's decision makers." Likewise, "a primary objective of this Policy Plan is to create a land use plan and development standards for the valley that will satisfy the overall goals of the City", as opposed to meeting every point on an inflexible checklist. 63 AR 015789.
4. Resolution No. 2005-24 approved the VESTING TENTATIVE MAP and PLANNED DEVELOPMENT PERMIT (AR 000132 et. seq). As a part of that resolution the City Council rejected certain alternatives contained in its solution 2004-49; and made specific findings regarding the PROPOSED VESTING

TENTATIVE MAP and the PROPOSED PLANNED DEVELOPMENT, finding that each was “in accordance with the goals, objectives, and policies of the Lower Lagoon Valley Policy Plan, the General Plan and the Development Code”. The Council also made findings regarding the DENSITY BONUS REQUEST, approving it as in conformance with California Planning and Zoning Law and consistent with the General Plan Housing Element.

C. BUSINESS PARK

One of the goals of the 1990 General and Policy Plans was “a regionally significant business park”. The City found the Project met that goal. Petitioner says the Project far misses that goal, and compares the Policy Plan which contemplated 4,000,000 square feet, and contemplated 12,000 employees with The Project which proposes 700,000 square feet and 2,000 employees. The City Council says the Project met the goal, that the nature of the project makes the business park significantly different from any other business park in the region.

D. CIRCULATION (ROAD PLAN)

Petitioner argues that the reduction of the number of lanes and the relocation of major arterial streets within the Project conflict with the General Plan. It is true that there is a lane reduction and a relocation. The City found those consistent with the 70% reduction to anticipated traffic.

Petitioner also points out that the wording of the Master Plan included interchanges as part of the circulation plan. The levels of service (LOS) at the

interchanges have been predicted as D, E or even F. Under City standards anything below D is unacceptable.

Vacaville General Plan Policy 6.1 G-1 provides only that the City shall “strive” for LOS C. Nowhere is LOS C mandated. Moreover, there are a number of circumstances whereby the Vacaville General Plan permits LOS other than C. Also the Project approval included measures designed to mitigate the project’s impacts to LOS C, except at two intersections that are predicted to fall to LOS D in the future cumulative condition. 1 AR 000060, 91-92. Given the inherent flexibility in the plan, and the express exceptions to the policy regarding striving for LOS C, the Project is consistent with Policy 6.1 G-1.

Also, unlike the situation in *Endangered Habitats League*, avoiding traffic congestion on Interstate 80 is not a fundamental purpose of the Policy Plan or the Project. Rather, the Policy Plan is designed to result in the creation of a high-end housing community surrounding a golf course and a regionally-significant business park, all in a manner that acknowledges the Valley’s environmental and aesthetic attributes and is compatible with Lagoon Valley Park. See Opp’n Br. At 9-12 and cites therein. Indeed the Policy Plan expressly recognizes the fact of congestion on Interstate 80 and the Project’s potential to contribute to that congestion, and responds with specific policies and mitigation measures, which the Project incorporates. 63 AR 015791. As shown in Respondents’ Opposition Brief, the Project plainly satisfies the

Plan's fundamental objectives, and implements the Plan's traffic reduction measures. Opp'n Br. at 9-12.

Finally, *Napa Citizens* is also distinguishable, and comparing it to this case demonstrates that the Project is consistent with the Vacaville General Plan and Policy Plan. The *Napa Citizens* court found a specific plan inconsistent with the General Plan because the specific plan would conflict with the General Plan's policies to improve roadways. 91 Cal.App.4th at 380. Like the Vacaville General Plan, the Napa County General Plan required that traffic issues be addressed by mitigation plans and proposals. In *Napa Citizens*, however, the project contained no "affirmative commitments" to mitigate those impacts, which was fundamentally inconsistent with the General Plan. *Id.* The court noted that even a requirement to prepare a study of impacts and potential mitigation could have rendered the project consistent, but there was no such requirement. *Id.*

Vacaville General Plan requires the Project to mitigate its potential traffic impacts both through direct construction of major infrastructure and the payment of fees into a specified impact fee program that is tied to specific improvements. While there may be a lower level of service than C while mitigation is being accomplished, the City found that the Project was contributing to an acceptable mitigation program. The cooperation of the State will be required to fully accomplish mitigation, but the City will have a fund from which it can aid in that.

THE COURT FINDS THE PROJECT PLAN, INCLUDING LOCATION OF
BUSINESS CENTER, HOUSING, GOLF COURSE AND OTHER ELEMENTS PLUS

THE CIRCULATION PLAN ARE CONSISTENT WITH AND CONFORM TO THE GOALS, OBJECTIVES AND PURPOSES OF THE GENERAL PLAN AND POLICY PLAN AND ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

D. DENSITY BONUS

1. Failure to Exhaust Administrative Remedies

Respondents say Petitioner failed to exhaust its administrative remedies, that it appeared at a Planning Commission hearing and in response to discussion of a 40% bonus said only that the limit was 35%. No other argument or statement was made at that or any other hearing. Petitioner says no explanation was given and that it was unclear why 40% was used.

Respondents say a Power Point presentation was made which explained the mathematics.

Even if the computation was not explained, Petitioner could have requested it.

The Court finds Petitioner did not exhaust its administrative remedies.

2. Even if the Petitioner did exhaust its administrative remedies there are other reasons to find that Petitioner's claim on this point is not viable.

The State Density Bonus Law adds a dimension of flexibility by allowing a project that includes a density bonus to be approved, even though it may not be consistent with general plan and zoning requirements. Section 65915(g)(1), and Section 65915(k) (providing that

the granting of a density bonus or concession “shall not be interpreted, in and of itself, to require a general plan amendment..., zoning change, or other discretionary approval). In other words, the Legislature determined that the provision of housing may take precedence over other land use regulations, where that housing includes a specified senior or affordable component. Here, the Project includes both a substantial senior component and a substantial affordable component. It is also legally consistent with the Policy Plan, as this aspect of the Density Bonus Law further confirms.

Section 65915(n) gives the City broad leeway to grant a requested density bonus of any amount, if it finds that doing so would achieve the statutory objectives of facilitating the production of housing, including affordable or senior housing. The City’s exercise of that broad discretion, however, was conditioned and constrained in two meaningful ways: first by the analysis if performed and the findings it made, and second by the public process to which the Project approval, including the density bonus, was subject. See, e.g., V.M.C. Section 14.09.116.110; 1 AR 000137-38; Sections 65915(d) and 55915(f). Notably, Vacaville Municipal Code Section 14.09.116.080 specifically allowed, even under the prior statute, a density bonus of up to 50 percent, and provided that the amount of any density bonus was within the exclusive purview of the City Council on a case-by-case basis.

Vacaville Municipal Code Sections 14.09.116.090 and 14.09.116.100 require both the Planning Commission and the City Council to conduct public hearings on a density bonus request. That process itself provided oversight and constraint on the City's exercise of its discretion. Significantly, Petitioner never provided any evidence during that process that the density bonus was not justified or necessary to support the Project. Petitioner's only objection was that the Density Bonus Law set an absolute maximum density bonus of 35 percent, which the Project exceeded. 41 AR 010209-10. The plain language of Section 65915(n) demonstrates that this contention is wrong.

In this open, public process, the City specifically considered whether the Project, with the density bonus, would overburden public infrastructure or the City's ability to provide public services. 1 AR 000264. Because the Project is required to construct all required infrastructure and to pay for all necessary police and fire services and construct a new fire station, along with providing many other public benefits such as a \$4.5 million contribution to Lagoon Valley Park improvements and \$250,000 annually toward park maintenance (which is currently funded out of the City's general fund), the City determined that granting the density bonus would not overburden public infrastructure or the City's ability to provide services. 1 AR 000007-18, 137, 264-65, 267-68. In fact, the Project will enhance the City's overall capabilities in a

number of critical areas such as firefighting, parks maintenance and management, and storm water detention and flood control.

Likewise, the City specifically considered whether the proposed 40 percent density bonus was necessary to make the project economically feasible. 1 AR 000138; see also Sections 65915(d) and 65915(f). The Policy Plan (63 AR 015790) and the City's 17 criteria for development in Lagoon Valley (1 AR 000267-68) require the entire Project to include an unprecedented level of design, amenity and public benefits, including a tournament-level golf course and clubhouse complex, to construct significant infrastructure such as a fire station, freeway on-and off- ramps, public parks, and to make substantial dedications of public open space. These are extremely expensive features and must be spread across far more than 730 dwelling units for the Project to be economically feasible. AR 000010-13,16. Accordingly, the City determined, based on the substantial record evidence, that a 40% percent density bonus is necessary and justified. 1 AR 000138.

Not only was the City able to preserve that list of public benefits, it also obtained 100 units of senior housing, 75 units of affordable housing, and more than 70 acres of additional public parkland at no cost to the City. All these considerations supported and guided the City's exercise of its discretion in determining that a 40 percent density bonus was appropriate.

As required by ordinance, the City also considered whether granting the proposed 40 percent density bonus would negatively impact or be incompatible with surrounding areas. 1 AR 000137,264. The City determined that the Project with the requested density bonus would be compatible with surrounding areas because Lagoon Valley is buffeted from other developed areas and is sufficiently large that it can easily accommodate the total number of units proposed without negative effects on the land such as encroaching onto steep hillsides or into areas set aside for the view corridor. 1 AR 000137-38.

THE COURT FINDS THE DECISION OF RESPONDENT CITY WITH REGARD TO THE DENSITY BONUS TO BE PROPER UNDER STATE LAW AND CITY ORDINANCE.

III. DECISION

THE PETITION FOR WRIT OF MANDATE AND THE REQUEST FOR INJUNCTIVE RELIEF ARE DENIED.

RESPONDENTS, WITHIN TEN DAYS, SHALL PREPARE THE FORMAL FINDINGS AND ORDER FOR SIGNATURE OF THE COURT.

November 14, 2005

DONALD R. ERETZ
Judge Assigned

