

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Californians for Homeownership, Inc. vs. City of Huntington Beach

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

CASE NUMBER:
30-2019-01107760-CU-WM-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 10/04/21 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 10/4/21. Following standard court practice the mailing will occur at Santa Ana, California on 10/4/21.

CALIFORNIANS FOR HOMEOWNERSHIP, INC.
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LOS ANGELES, CALIFORNIA 90020

MILLER STARR REGALIA
1331 N. CALIFORNIA BLVD., FIFTH FLOOR
WALNUT CREEK, CALIFORNIA 94596

OFFICE OF THE CITY ATTORNEY OF
HUNTINGTON BEACH
2000 MAIN STREET, P.O. BOX 190
HUNTINGTON BEACH, CA 92648

Clerk of the Court, by: Schallie Valencia, Deputy

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 10/04/21, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on October 4, 2021, at 12:24:49 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 10/04/2021

TIME: 10:40:00 AM

DEPT: C21

JUDICIAL OFFICER PRESIDING: Deborah Servino

CLERK: Schallie Valencia

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2019-01107760-CU-WM-CJC** CASE INIT.DATE: 10/28/2019

CASE TITLE: **Californians for Homeownership, Inc. vs. City of Huntington Beach**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 73620200

EVENT TYPE: Chambers Work


APPEARANCES

There are no appearances by any party.

Proposed Statement of Decision is attached and incorporated herein.

Court orders Clerk to give notice.

OCT 04 2021

DAVID H. YAMASAKI, Clerk of the Court
BY:  DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

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5	Californians for Homeownership, a California)	Case No.: 30-2019-01107760
6	nonprofit public benefit corporation,)	[PROPOSED] STATEMENT OF DECISION
7	Petitioner,)	
8	v.)	
9	City of Huntington Beach,)	
10	Respondent.)	
11	_____)	
12	THDT Investment, Inc.,)	
13	Real Party in Interest.)	
14	_____)	

15 Petitioner Californians for Homeownership, Inc. filed a motion to issue writ of mandate.
16 At the June 4, 2021 hearing on the motion, Petitioner requested a statement of decision. The
17 general rule is that the trial court is not required to issue a written statement of decision
18 following a motion, even if the motion involves extensive evidentiary hearings and the resulting
19 order is appealable. (*Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654, 660.)
20 There are no material factual disputes for this Court to decide. (Code Civ. Proc., § 632; Cal.
21 Rules of Court, rule 3.1590.) The Court's review of an administrative adjudicatory decision
22 under Code of Civil Procedure section 1094.5 is ordinarily confined to the administrative record.
23 (Code Civ. Proc., § 1094.5, subd. (a); see *Moore v. City of Los Angeles* (2007) 156 Cal.App.4th
24 373, 382.) The FAP presents only legal issues. Although exceptions have been judicially-
25 created to this rule, Petitioner has given no authority requiring a written statement of decision in
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1 this situation. Out of an abundance of caution, however, this Court provides this Statement of
2 Decision on the ruling.

3 The Court hereby finds the principal controverted issues on this motion to issue writ of
4 mandate are: (1) whether the Housing Accountability Act ("HAA"; Govt. Code, § 65589.5) is
5 unconstitutional and violates the home rule doctrine; (2) whether Respondent City of Huntington
6 Beach proceeded in a manner required by law in denying approval of the project; (3) whether
7 pursuant to Government Code section 65589.5, subdivision (j)(2)(B), the project was to be
8 deemed consistent, compliant, and in conformity with the applicable plan, program, policy,
9 ordinance, standard, requirement, or other similar provision; (4) whether Respondent required
10 the project to comply with applicable, objective general plan, zoning, and subdivision standards
11 and criteria, including design review standards, in effect at the time that the application was
12 deemed complete; (5) whether there was substantial evidence that would allow a reasonable
13 person to conclude that the project was consistent, compliant, or in conformity with an
14 applicable plan, program, policy, ordinance, standard, requirement or other similar provision; (6)
15 whether Respondent's denial of approval of the project was based upon written findings
16 supported by a preponderance of the evidence on the record that both the project would have a
17 specific, adverse impact upon the public health or safety and there was no feasible method to
18 satisfactorily mitigate or avoid the adverse impact identified other than the disapproval of the
19 project; and (7) whether Respondent acted in bad faith when it disapproved the project.

20 I. Requests for Judicial Notice

21 The Court grants Petitioner's request for judicial notice of: (1) an excerpt of Beach and
22 Edinger Corridors Specific Plan, as amended in June 2105 [cover page through Section 2.1
23 (Development Standards)]; (2) Assembly Committee on Housing and Community Development
24 Report on AB 1515 for April 26, 2017 meeting; (3) Assembly Committee on Housing and
25 Community Development Report on SB 167 for June 28, 2017 meeting; and (4) Senate
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1 Committee on Transportation and Housing Committee Report on AB 3194 for June 19, 2018
2 meeting. (4/5/2021 Request for Judicial Notice, Exhs. A-D; Evid. Code, § 452, subds. (b) & (c).)

3 The Court grants Respondent's request for judicial notice of: (1) Huntington Beach City
4 Charter; and (2) Huntington Beach Zoning and Subdivision Code sections 241, 248, and 250.

5 The Court denies Respondent's request for judicial notice of the Order filed on November 7,
6 2019 in San Francisco Bay Area Renters Federal, et al. v. City of San Mateo, et al. (San Mateo
7 Superior Court case no. 18-CIV-02105) as irrelevant. (5/2/2021 Request for Judicial Notice,
8 Exhs. A-C; Evid. Code, §§ 451, 452, subds. (b), (c), & (d); *Mangini v. R.J. Reynolds Tobacco*
9 *Co.* (1994) 7 Cal.4th 1057, 1063.)

10 The Court grants Petitioner's request for judicial notice of 2019 California Fire Code,
11 California Code of Regulations, title 24, section 1.11.2.4. (5/14/2021 Request for Judicial
12 Notice, Exh. E; Evid. Code, 452, subd. (b).)

13 II. Relevant Background

14 On November 1, 2017, THDT Investment, Inc. ("THDT Investment"), through its agent
15 MCG Architecture/Jeff Herbst submitted a planning application (no. 17-205). (Administrative
16 Record ["AR"] at 3061-3063 [ROA 81].) Notifications of filing status that indicated that the
17 application was incomplete because information and/or corrections were requested before the
18 application would be deemed complete. (AR at 3069-3160, 3234-3388 [ROA 81].) In a
19 notification of filing status dated April 1, 2019, the application was deemed complete. However,
20 the notification noted that there were still outstanding items. (AR at 343-3462 [ROA 81].) A
21 public hearing before the planning commission on May 28, 2019 was noticed. (AR at 3465-
22 3507 [ROA 81].) The notice of the hearing indicated that the request for the conditional use
23 permit was "[t]o demolish an existing liquor store, residence, and portion of a former car wash to
24 permit a one-lot subdivision and development of a four-story mixed-use building including 48
25 new condominium residences with 891 square feet of commercial space and three levels of
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1 subterranean parking" at the location of "8041 Ellis Avenue Beach Boulevard (North side of Ellis
2 Ave., between Beach Blvd. and Patterson Ln.)". (AR 3465-3507 [ROA 81].)

3 The Huntington Beach Planning Commission held a public hearing on the proposed
4 project on May 28, 2019. (AR 3465-3507 [Notice; ROA 81.]; AR 1526-1535 [Minutes; ROA 70];
5 AR 1536-1653 [Transcript; ROA 70].) The staff report recommended that the Planning
6 Commission find the proposed project exempt from the California Environmental Quality Act and
7 approve Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 with suggested
8 findings and conditions of approval. The staff report also provided two alternative actions: (1)
9 continue Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 and direct staff
10 to return with findings for denial; or (2) continue Tentative Tract Map No. 18157 and Conditional
11 Use Permit No. 17-04 and direct staff accordingly. (AR 1403 [ROA 70].) The Planning
12 Commission voted to direct staff to return to the June 11, 2019 Planning Commission meeting
13 with findings for denial. (AR 1533, 1633-1635 [ROA 70]; AR 3508 [Notice of Action, ROA 81].)
14 At the June 11, 2019 public hearing, the Planning Commission voted to deny the tentative tract
15 map and conditional use permit with modified findings for denial. (AR 1687-1688, 1710-1712
16 [ROA 70]; AR 1881-1885 [Notice of Action with Findings, ROA 70].)

17 THDT Investment filed a notice of appeal with the Huntington Beach City Council. (AR
18 1886-1913 [ROA 70].) The City Council continued hearing the appeal from August 19, 2019 to
19 September 3, 2019. But, on August 19, 2019, the City Council held a public hearing on August
20 19, 2019 to hear comments. (AR 1968-1994 [ROA 72].) At the September 3, 2019 hearing, the
21 City Council upheld the Planning Commission's denial. (AR 2288-2289, 2346-2347 [ROA 73].)

22 On October 28, 2019, Petitioner filed the Verified Petition for Writ of Mandate pursuant to
23 Code of Civil Procedure section 1094.5 and Government Code section 65589.5. (ROA 2; see
24 Govt. Code, § 65589.5, subd. (m) [requires an action to enforce the HAA to be brought as a
25 petition for writ of administrative mandate, pursuant to Code of Civil Procedure section 1094.5].)

1 In a letter dated November 14, 2019, THDT Investment requested the Huntington Beach City
2 Council reconsider its decision. (AR 2403-2404 [ROA 75].) THDT Investment requested a
3 rehearing, which was scheduled for February 18, 2020. (See AR 2365-2366, 2368 [ROA 73].)
4 At the February 18, 2020 hearing, the City Council voted to deny the Tentative Tract Map No.
5 18157 and Conditional Use Permit No. 17-042 with findings. (AR 3016-3017, 3049-3051 [ROA
6 79].) A notice of action was issued with findings. (AR 2774-2780 [ROA 76].) On April 6, 2020,
7 Petitioner filed a Verified Amended Petition for Writ of Mandate ("FAP"). (ROA 37.)
8 Respondent filed an Answer to the FAP. (ROA 44.) Respondent also filed the administrative
9 record. (ROA 64, 65, 67, 68, 70, 72, 73, 75, 76, 78, 79, 81.)

10 On May 26, 2020, California Renters Legal Advocacy and Education Fund and THDT
11 Investment filed a verified petition for writ of mandate, in the related case (Orange County
12 Superior Court case no. 30-2020-01140855). On August 12, 2020, they filed a first amended
13 verified petition for writ of mandate. After a notice of related case was filed, the Court took
14 notice that the instant matter was related to California Renters Legal Advocacy and Education
15 Fund, et al. v. City of Huntington Beach (Orange County Superior Court case no. 30-2020-
16 01140855). (See 2/26/2021 Minute Order.) At the February 26, 2021 status conference, the
17 Court instructed the parties to proceed by way of a motion for issuance of writ of mandate and
18 gave a briefing schedule. Because counsel had agreed to avoid duplication, the Court
19 permitted the parties to use the same joint briefs in the related cases. (2/26/2021 Minute Order.)

20 On August 4, 2021, the Court denied the motion to issue writ of mandate. Judgment
21 was filed on August 10, 2021. An amended judgment was filed on August 12, 2021. On August
22 19, 2021, Petitioner filed notice of intention to move to vacate judgment and to move for new
23 trial. On October 4, 2021, the Court granted the motion to vacate judgment.

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1 III. Merits

2 The FAP alleged that Respondent's findings of denial did not meet its burden of proof
3 under the Housing Accountability Act ("HAA"; Govt. Code, § 65589.5). (FAP, at pp. 10-11.)

4 The FAP seeks a writ of mandate directing the City to approve the 8041 Ellis Avenue project, or
5 in the alternative a writ of mandate voiding the city's decision of February 18, 2020 to reject the
6 project and directing Respondent to reconsider the project in a manner that conforms to the
7 requirements of the HAA. (FAP, at p. 12.)

8 IV. Applicable Law for Administrative Mandamus

9 Code of Civil Procedure section 1094.5 makes administrative mandamus available for
10 review of "the validity of any final administrative order or decision made as the result of a
11 proceeding in which by law a hearing is required to be given, evidence is required to be taken,
12 and discretion in the determination of facts is vested in the inferior tribunal, corporation, board,
13 or officer." (Code Civ. Proc., § 1094.5, subd. (a).)

14 "In reviewing an agency's decision under Code of Civil Procedure section 1094.5, the
15 trial court determines whether (1) the agency proceeded without, or in excess of, jurisdiction; (2)
16 there was a fair hearing; and (3) the agency abused its discretion.' " (*West Chandler Boulevard*
17 *Neighborhood Assn. v. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1517-1518 [quoting
18 *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921]; see Code Civ. Proc., §
19 1094.5, subd. (b).) "Abuse of discretion is established if the respondent has not proceeded in
20 the manner required by law, the order or decision is not supported by the findings, or the
21 findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).) The public
22 entity that disapproved the project bears the burden of proof that its decision conformed to the
23 HAA. (Govt. Code, § 65589.6.)

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