SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY

MINUTE ORDER [X] Amended on 10/09/2023

DATE: 10/09/2023 TIME: 08:30:00 AM DEPT: N-29

JUDICIAL OFFICER PRESIDING: Robert P Dahlquist
CLERK: Tina Horak
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2019-00042954-CU-MC-NC** CASE INIT.DATE: 08/14/2019
CASE TITLE: **North County Advocates vs City of Carlsbad [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 07/05/2023 and have fully considered the arguments of all parties, both oral and written, as well as the evidence presented, now rules as follows:

This case presents the issue of whether the City of Carlsbad is complying with an initiative enacted by its citizens in 1986. The initiative, labeled as "Proposition E," adopted a growth management plan, intended to "put strict limits on development and a cap on [the City's] future growth." (Trial Ex. 1, at page 4)

Proposition E presented Carlsbad voters with the following question: "Shall an ordinance be adopted to provide as part of the 1986 growth management plan that 1) NO DEVELOPMENT SHALL BE APPROVED by the City of Carlsbad unless it is guaranteed that concurrent with need all necessary public facilities be provided as required by said plan with emphasis on ensuring good traffic circulation, schools, parks, libraries, open space and recreational amenities; and 2) the City Council shall not approve residential development which would increase the number of dwelling units beyond the limit in said ordinance WITHOUT AN AFFIRMATIVE VOTE OF THE CITIZENS. The City may add additional public facilities. The City shall not reduce public facilities without a corresponding reduction in the residential dwelling unit limit." (Trial Ex. 1, at page 1) (capitalization in original)

The text of the initiative, consisting of about three single-spaced pages, follows the question quoted above. (Trial Ex. 1, at pages 1 – 3)

In this lawsuit, plaintiff North County Advocates relies heavily (but not exclusively) on one particular paragraph in the initiative. That paragraph provides: "The City Council or the Planning Commission shall not find that all necessary public facilities will be available concurrent with need as required by the Public Facilities Element and the City's 1986 growth management plan unless the provision of such facilities is guaranteed. In guaranteeing that the facilities will be provided emphasis shall be given to ensuring good traffic circulation, schools, parks, libraries, open space and recreational amenities. Public facilities may be added. The City Council shall not materially reduce public facilities without making corresponding reductions in residential densities." (Trial Ex. 1, at page 2)

Proposition E was enacted by the voters in the November 1986 election. The "1986 growth management plan" referenced in Proposition E apparently consists of, at a minimum, an ordinance and two resolutions approved by the city council earlier in 1986, before Proposition E was presented to the voters. The ordinance is Ordinance No. 9808 (Trial Ex. 79) and the two resolutions are Resolution No. 8796 (Trial Ex. 82) and Resolution No. 8797 (Trial Ex. 83).

Ordinance No. 9808 (Trial Ex. 79) adds a new, nearly twenty-page chapter to the city's ordinances. The new chapter is entitled "Growth Management." The chapter contains many detailed provisions concerning the manner in which growth will be managed in the city. A key component of the growth management strategy is the requirement that the city council adopt a "city wide facilities and improvement plan" to establish "performance standards" for ensuring that the city has adequate infrastructure and amenities. (Trial Ex. 79, at pages 9 & 10)

The "performance standards" required by Ordinance No 9808, as adopted by the city council in 1986 as part of the city's growth management plan, are contained in Resolution 8796. (Trial Ex. 82) Some of these performance standards will be addressed in more detail below.

Ordinance No. 9808 (Trial Ex. 79) also requires the city to divide the city into "local facility management zones," and to prepare "local facility management plans" for each zone. (Trial Ex. 79, at pages 11 & 12)

Of critical importance in this lawsuit, Ordinance No. 9808 allows the city council to amend each of the plans mentioned above. In other words, while the 1986 growth management plan required the city to establish various plans and performance standards to ensure that the city would have adequate infrastructure and amenities, the growth management plan also gave the city council the authority to change the plan and related performance standards in the future.

Proposition E and the 1986 growth management plan addressed many aspects of the infrastructure and amenities that were thought to be necessary to preserve the quality and desirability of the city. In this lawsuit, plaintiff North County Advocates has limited its challenge to three key features – traffic circulation, parks and open space. Each of these features will be briefly addressed below.

Traffic circulation

The 1986 performance standard for traffic circulation is as follows: "No road segment or intersection in the zone nor any road segment or intersection out of the zone which is impacted by development in the zone shall be projected to exceed a service level C during off-peak hours, nor service level D during peak hours. Impacted means where 20% or more of the traffic generated by the local facility management zone will use the road segment or intersection." (Trial Ex. 82, at page 3)

The references to "service level C" and "service level D" are letter grades assigned to road segments and intersections. Various professional organizations in the field of traffic management have created various methodologies by which letter grades can be assigned for road sections and intersections. The letter grades are intended to reflect the relative amount of congestion on a road or at an intersection. Generally speaking, the lower the grade, on a scale of A thru F, the more traffic congestion.

The court finds that the city has failed, and is currently failing, to meet the 1986 performance standard for traffic circulation.

The city doesn't really dispute that it has failed, and is currently failing, to meet the 1986 performance standard for traffic. Instead, the city argues that the 1986 performance standard is not binding on the city because (1) the city council has amended the 1986 performance standard, and (2) the city council has also exempted certain street segments and intersections from meeting any standard.

The city council did in fact amend the 1986 performance standard. The current performance standard is: "Implement a comprehensive livable streets network that serves all users of the system – vehicles, pedestrians, bicycles and public transit. Maintain [level of service] D or better for all modes that are subject to this multi-modal level of service (MMLOS) standard, as identified in Table 3-1 of the General Plan Mobility Element, excluding [level of service] exempt intersections and streets approved by the City Council." (Trial Ex. 244, at page 3)

The court believes that when it became clear that the city could not meet the original performance standard, the city changed the standard to make it more lenient.

In addition, the city council has "exempted" various street segments and intersections from complying with *any* performance standard. (Trial Ex. 244, at page 29) The exempted streets include many of the main roads in the city, such as La Costa Avenue, El Camino Real, Palomar Airport Road, Cannon Road, College Boulevard and Melrose Drive. (Id.)

The city has, in practice, taken the position that if the city's roads and intersections become too congested to meet the original performance standard, then the city can modify the performance standard and/or choose to exempt any roads and intersections that do not meet the standard. The court doubts that this is what the citizens had in mind when they voted to approve Proposition E.

However, it appears that the law allows the city to do this. The city cites to several cases in support of its assertion that the city is permitted to change the 1986 performance standards whenever it sees fit. The cases include: *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 209 – 210, 214; *People v. Cooper* (2002) 27 Cal.4th 38, 43 – 44, fn. 4; and *Vallejo etc. R.R. Co. v. Reed Orchard Co.* (1918) 177 Cal. 249, 255. The court agrees that these cases, particularly the *County of San Diego v. Commission on State Mandates* case, support the city's position.

Proposition E itself does not contain any performance standards. Proposition E recites general growth management goals and aspirations. Proposition E adopted a pre-existing growth management ordinance (Ordinance No. 9808), which delegates to the city council the authority to adopt and amend performance standards.

In hindsight, in order to bind the city to the 1986 performance standards, the citizens should have enacted an initiative that included those standards and also provided that the standards could not be changed except by another vote of the citizens.

Under the appellate case law cited above (which of course this court is required to follow), the court believes that it is required to find in favor of the city on this claim. Since Proposition E does not require the city to adhere to any particular standard pertaining to traffic congestion, the city council is free to change the applicable standard, as it has done here.

<u>Parks</u>

A similar analysis applies to plaintiff's assertion that the city is failing to comply with the portion of Proposition E pertaining to parks.

The 1986 performance standard for parks was as follows: "Three acres of community park or special use park per 1,000 population with the Park District, must be scheduled for construction within a five year period." (Trial Ex. 82, at page 3)

This performance standard was later changed to: "3.0 acres of Community Park or Special Use Area per 1,000 population within the Park District must be scheduled for construction within a five-year period beginning at the time the need is first identified. The five-year period shall not commence prior to August 22, 2017." (Trial Ex. 244, at page 3)

There are four "park districts" within the city. (Trial Ex. 244, at page 17) The city has been divided into four quadrants, with each quadrant constituting a separate "park district." (Id.)

The city claims to be in compliance with the current version of the performance standard. (Trial Ex. 244, at page 17) But the city's "compliance" is achieved, if at all, only through use of questionable definitions used by the city to measure its compliance. For example, the city has defined a "park" to include, among other things, (1) fenced-in school grounds that are generally not accessible to the public; and (2) open fields if the fields have some sort of walking path or trail in them. A reasonable person would not consider these items to be "parks."

In addition, the city asserts that it is allowed treat planned future parks toward the performance standard if it has "scheduled" the future parks for construction, even though the parks do not exist now, and the scheduled completion date is far off into the future. From the court's perspective, this also appears to be a questionable manipulation of the performance standard, designed to excuse the city from timely completion of the community parks contemplated by citizens when enacting Proposition E.

Nevertheless, as discussed above in connection with the traffic circulation issues, the city appears to be within its legal rights to adopt and modify performance standards for parks and to determine how to measure compliance with the performance standard. Proposition E allows the city council to make those determinations. It is not the court's role to replace the city council in making those determinations.

The court believes that the city is not adhering to the spirit of Proposition E with respect to parks. But, under the appellate cases cited above, the city is within its legal rights to act in the manner in which it has.

Open space

The 1986 performance standard for open space provides: "Fifteen percent of the total land area in the zone exclusive of environmentally constrained non-developable land must be set aside for permanent open space and must be available concurrent with development." (Trial Ex. 82, at page 3)

The current version of the performance standard is: "Fifteen percent of the total land area in the Local Facility Management Zone (LFMZ) exclusive of environmentally constrained non-developable land must be set aside for permanent open space and must be available concurrent with development." (Trial Ex. 244, at page 36)

The city is divided into 25 zones. The performance standard for open space is applied separately for each zone.

The city claims to be meeting the performance standard for open space. (Trial Ex. 244, at page 36)

But, similar to the traffic circulation issue discussed above, the city can claim compliance only because it has exempted 17 of the 25 zones from the performance standard. The city has chosen to exclude those zones that were "already developed" in 1986 from compliance with *any* performance standard pertaining to open space. The court doubts that this is what the voters had in mind when they enacted Proposition E.

Nevertheless, as discussed above, the city appears to have acted within its legal rights under the appellate cases cited above.

Adjudication of plaintiff's first cause of action for violations of Proposition E and the Growth Management Plan

Although the city is not complying with the performance standards established by the 1986 growth management plan, the city has acted within its legal rights in (1) changing the standards; and (2) exempting itself from complying with the modified standards.

From the court's perspective, the city has implemented a purported growth management plan that is largely illusory because the city simply changes the plan or exempts itself from compliance whenever it cannot comply with the previous version of the plan. But applicable appellate case law appears to allow the city to do this.

The court finds that, under applicable appellate case law, plaintiff is not entitled to any relief on its first cause of action.

Adjudication of plaintiff's second cause of action for declaratory relief

Plaintiff seeks "declaratory relief stating that the City is not in compliance with and is violating Proposition E, the Growth Management Plan, and applicable requirements." (Complaint, ROA # 1, at page 9)

The court finds that, under applicable appellate case law, plaintiff is not entitled to the declaratory relief it has requested in its complaint.

In plaintiff's post-trial brief (ROA # 274), plaintiff requests certain declaratory relief that is different from the relief identified in plaintiff's complaint. Setting aside the issue of whether the court may properly grant declaratory relief that is different from the relief identified in plaintiff's complaint, the court is not persuaded that it should grant the declaratory relief identified in plaintiff's post-trial brief.

Adjudication of plaintiff's third cause of action for injunctive relief

Plaintiff seeks an "injunction enjoining Defendants from approving any further development in violation of

Proposition E and the Growth Management Plan until Defendants come into compliance with Proposition E, the Growth Management Plan, and applicable requirements." (Complaint, ROA # 1, at page 9)

The court finds that, under applicable appellate case law, plaintiff is not entitled to the injunctive relief it has requested in its complaint.

In plaintiff's post-trial brief (ROA # 274), plaintiff requests certain injunctive relief that is different from the relief identified in plaintiff's complaint. Setting aside the issue of whether the court may properly grant injunctive relief that is different from the relief identified in plaintiff's complaint, the court is not persuaded that it should grant the injunctive relief identified in plaintiff's post-trial brief.

Conclusion

The court will enter a judgment stating that (1) plaintiff shall obtain no relief on its complaint; (2) the city is the prevailing party; and (3) the city shall recover its costs of suit from plaintiff.

IT IS SO ORDERED.