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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

URBAN HABITAT PROGRAM AND SANDRA DE GREGORIO, Petitioners & Plaintiffs, PEOPLE OF THE STATE OF CALIFORNIA, ex rel. EDMUND G. BROWN, JR., ATTORNEY GENERAL, et al., Plaintiff-Intervenor, v. CITY OF PLEASANTON, A MUNICIPAL CORPORATION AND THE CITY COUNCIL OF PLEASANTON Respondents & Defendants.	Case no. RG06-293831 ORDER GRANTING PETITION FOR WRIT OF MANDATE

The hearing on the First Amended Verified Petition of Petitioners and Plaintiffs Urban Habitat Program and Sandra De Gregorio (collectively,

"Petitioners") for Writ of Mandate came regularly before the court on December 18, 2009, Judge Frank Roesch presiding.

Appearing for the Petitioners were Richard Marcantonio, Esq. of Public Advocates, Inc., Michael Rawson, Esq. of California Affordable Housing Project, and Christopher Moody, Esq. of Paul, Hastings, Janofsky & Walker LLP. Appearing for the Respondents were Thomas Brown, Esq. and Adam Hofmann, Esq. of Hansen Bridgett LLC and Michael Roush, Esq., Interim City Attorney. Appearing for Intervenor was Clifford Rechtschaffen, Esq. of the Office of the Attorney General.

The matter was argued and submitted.

The court has carefully considered the papers and pleadings filed herein and has considered the argument of counsel. Good cause appearing therefore, the court HEREBY GRANTS the Petition for Writ of Mandate. The reasoning follows.

BACKGROUND

This lawsuit concerns allegations relating to Respondent's city planning process, and the adequacy or inadequacy of its planning documents.

Policy 15 of the Land Use Element of the City's 1996 General Plan and Policies 24 et seq. of the Land Use Element of the City's 2005 general plan codify measure GG, a housing cap. Measure GG was an initiative measure passed by the voters in 1996. It (and the Land Use Element's policy codifications) restrict and

place limits on the Pleasanton City Council and City government, prohibiting them from permitting the construction of more than 29,000 housing units from 1996 until the end of time. The only exception permitted by the Measure is that it may be amended, but only by a vote of the people.[1] It is the continuing validity of this housing cap that is one of the subjects of this action.

Pleasanton Municipal Code Chapter 17.36, entitled Growth Management Program, includes section 17.36.060, which places annual limits on building permits for the construction of new housing units. This provision of the Pleasanton Municipal Code was modified about a month and a half before the hearing of the present Petition to allow an exception to the maximum number of building permits rule allowing an increase to the maximum amount, but only if the City is obligated to do so in order to meet its Regional Housing Needs Allocation ("RHNA").

In 2003 the City of Pleasanton adopted its current Housing Element of the General Plan. Within that plan was an acknowledgment that "the amount of units projected from [all of] the City's residentially owned land would be short of the number required require to meet the city's aggregate share of regional needs…." (Housing Element, p. 35.) Also in that Housing Element is a plan to study (within

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[1] The measure was amended by Measures PP and QQ in 2008 by public vote. Those measures reaffirmed the 29,000 units housing cap, reaffirmed that the City Council had no discretion to allow any waiver to the housing cap, and excluded in-law units and extended-stay motel rooms from the housing cap.

one year of 2003) which other vacant land in this City ought be rezoned to "residential" to accomplish the City's obligation to accommodate its RHNA.

The City did not conduct its study within that year and has not yet completed a complete land-use change/zoning change necessary for it to accommodate the shortfall of RHNA existing in 2003.

The City Council did, a month and a half before the hearing on the present Petition, pass Pleasanton Ordinance 1998 approving the rezoning of a portion of the land located in the "Hacienda Business Park." However, a careful reading of the ordinance discloses that the status quo was not changed. The ordinance requires that the approval of any development plan for residential development "shall not be granted until the completion of a PUD Major Modification for the entire Hacienda Business Park." This is a process that could take up a period of time ranging from one year to forever.

Local governments such as the City of Pleasanton are delegated the authority over land-use decisions and planning within their borders, and "have a responsibility to use the powers vested in them to facilitate" new housing construction that "make(s) adequate provision for the housing needs of all economic segments of the community." (Govt. Code § 65580, subd. (d).) The scope of that responsibility is spelled out in detail in the Housing Element Law. (Govt. Code §§ 65580-65589.8.) It was the intent of the Legislature by the enactment of the Housing Element Law to assure that counties and cities recognize

their responsibilities in contributing to the attainment of the state housing goal, and to assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal. (Govt. Code § 65581.)

In order to attain state housing goals, the Legislature prescribed that cities, including Pleasanton, maintain an inventory of land available for residential development (see Govt. Code § 65583.2), and that cities must make available for residential development sufficient suitable land to accommodate its share of regional housing needs. (See, e.g., Govt. Code § 65584.) Existing and projected regional housing needs are determined in the manner detailed in Government Code sections 65584.01 and 65584.02, and those regional needs are allocated within the various regions of the State by the council of local governments in each respective region. (See Govt. Code §§ 65584.04, 65584.05 and 65584.06.) Here that council of governments is the Association of Bay Area Governments (ABAG).

A city's obligations under the Housing Element Law require it to implement programs to zone or rezone land to establish adequate sites to accommodate its Regional Housing Needs Allocation (RHNA) and must timely adopt a housing element with an inventory of sites which can accommodate a city's share of the regional housing need. (See, e.g., Govt. Code §§ 65583, 65584.09, and 65588.)

The RHNA allocated by ABAG to the City of Pleasanton in 2001 relating to the 1999-2007 planning period is 5,059 units of housing. The RHNA allocated by

ABAG to the city of Pleasanton in 2007 relating to the 2007-2014 planning period is an additional 3277 housing units.

THE HOUSING CAP

There is a difference of opinion regarding the number of housing units built since the imposition of the housing cap, but the difference is not material. The parties do not disagree that the number of units allowable under the Measure GG housing cap is less than the City's RHNA obligation.

It is self-evident that the City cannot comply with the State statue requiring the City to accommodate its RHNA when the city is not permitted by its local law, Measure GG, to allow the number of housing units to be built that would satisfy the RHNA.

The question of which law prevails is elementary. State law preempts whenever local laws contradict state law. (See Cal. Const. article XI, § 7.)

The Supreme Court has stated it succinctly :

> "The general principles governing state statutory preemption of local land use regulation are well settled." "The Legislature has specified certain minimum standards for local zoning regulations (Govt. Code §65850 et seq.)" even though it also "has carefully expressed its intent to retain the maximum degree of local control (see, e.g., id., §§ 65800, 65802)." (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89.) "A county or city may make and enforce within its limits all local police, sanitary, and other ordinances and regulations *not in conflict with general laws.*" (Cal. Const., art. XI, § 7, italics added.) "Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters in an area fully occupied by general law, either expressly or by legislative implication [citations]. (*People ex rel. Deukmejian v. County of Mendocino* (1986) 36 Cal.3d 476,

484, quoting *Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 807-808; accord, *Sherman-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.)"

Morehart v County of Santa Barbara (1994) 7 Cal.4th 725, 747.

Here Measure GG, with the passage of time and the promulgation of a RHNA obligation that is contradicted by the provisions of Measured GG, has become pre-empted by the Housing Element Law, rendering it void.[2] (See also *Building Industry Association of San Diego v. City of Oceanside* (1994) 27 Cal.App.4th 744).

THE GROWTH MANAGEMENT PROGRAM

At the eleventh hour, the city has avoided the invalidation of its annual limitation on new housing units, which conflicts with the RHNA, by promulgating an exception to the program. The change cures the facial invalidity of the program and there is no as-applied challenge presented here.

COMPLIANCE WITH THE 1999-2007 RHNA OBLIGATION

The City is in clear violation of the Housing Element Law, the Least Cost Zoning Law, and its obligations to complete its 2003 Housing Element program designed to satisfy its RHNA for the 1999-2007 planning period.

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[2] This lawsuit is about the City's obligation to plan and to accommodate its RHNA in its plans. It matters not that the City planners have a belief that the State's RHNA requirements are unlikely to be satisfied because of the current economic climate. First and foremost, the City does not have the discretion to ignore the specific mandates of State law and second, the City planners' current beliefs are subject to change based on economic events beyond the control of either the City or the State.

The City still has not accommodated the RHNA allocated to it in 2001.

The City's enactment of Ordinance 1998 a month and a half before the hearing on this petition may start a process to cure the City's failure in this matter, but is wholly inadequate to be considered a cure. Its requirement of further necessary acts before any development plan can be approved vitiates any actual remedial effect of the Ordinance. Moreover, the "good cause" exception in the Ordinance is illusory because it is not defined and because it is an obvious disincentive to developers. The requirement that a developer might have to spend a great deal of money just to reach the point where a discretionary determination of whether "good cause" exists to allow a developer to continue with a project will inhibit any developer from proposing any residential development.

For the above stated reasons, the Writ of Mandate is GRANTED.

Respondents City of Pleasanton and City Council of the City of Pleasanton must cease and desist from the enforcement, administration, and/or implementation of the provisions of Measures GG, PP, and QQ, which limit the number of housing units permitted in Pleasanton, and must remove those provisions from all of Pleasanton's planning documents including the General Plan and any element of the General Plan. This includes Policy 24 and Programs 24.1, 24.2, and 24.3 of the Land Use Element of the General Plan.

Respondents must implement non-illusory zoning changes sufficient to accommodate the unmet RHNA for the 1999-2007 Planning Period. That is, the zoning

and land-use changes need be implemented such that they are without condition or need of future discretionary approval.

Respondents must cease issuing non-residential building permits and all related building permits for any construction or development except as provided in Government Code sections 65755, subdivisions (a)(1) and (b) and 65760 until the City brings its General Plan into compliance with the requirements of State Law.

Petitioners are to prepare a form of Writ returnable in 120 days and a form of judgment for the Courts review and consideration and submit them to the court within ten days.

EVIDENTIARY DETERMINATIONS

1. Petitioners' and Intervenor's Objections filed 12/7/09.

STERN DECLARATION

1. overruled – goes to weight and credibility.
2. sustained on all three grounds asserted.
3. sustained on all three grounds asserted.
4. overruled.
5. sustained – relevance.
6. sustained – legal conclusion.
7. sustained – legal conclusion.
8. sustained – speculation.
9. overruled – goes to weight.