

Judge Tosses City's Density Bonus Law: Here's What Happened

Insight

By Noel Weiss

On Monday, April 13th, Judge Thomas McKnew, Jr. invalidated selected portions of the SB 1818 implementation ordinance passed in February, 2008, by the City of Los Angeles, while leaving intact other portions of the ordinance. The Judge's ruling was identical in both of the companion actions which were before him – One filed by Noel Weiss (Sandy Hubbard vs. City of Los Angeles – Case No. BS 114091) and another filed by Doug Carstens (Environment and Housing Coalition Los Angeles vs. City of Los Angeles – Case No. BS 114338). Both cases were related for trial; were briefed together and were argued together.

The Judge did not invalidate the entire implementing ordinance, only selected portions where the City Council chose to provide greater density bonuses than those contemplated in SB 1818 with regard to (a) senior citizen sale or rental involving low or very low income housing, (b) moderate income for sale housing, (c) land donations for housing, and (d) certain condo conversions to Low, Very Low, or Moderate Income units.

([See Environment and Housing Coalition LA account here.](#))

For example, under SB 1818, the lowest percentage density bonus for senior citizen sale or rental housing, or moderate income for sale housing was 5%; yet under the City's implementation ordinance, the minimum percentage density bonus was set at 15%, or three times the statutory minimum.

The Court also completely invalidated the City's minimum 25% density bonus on condo conversions. The Judge found that the City Council was precluded from enacting any such Density Bonuses in excess of the statutory minimums in the absence of environmental review.

The Judge did not rule specifically on the claim set out in the Hubbard litigation that the City must first enforce AB 283 as part of the SB 1818 implementation protocol.

The Judge found adequate the due process protocol set out in the implementation ordinance, and further found that the State has the authority to override local zoning and land use laws in pursuit of the stated goals of promoting the construction of affordable housing.

The Judge also did not address the question of how the state objectives are furthered by a law which in the case of Rent Stabilized Housing destroys more affordable housing than it creates; nor did the Judge address the question of whether the implementation ordinance should have provided for a specific protocol by which the City must evaluate (a) whether the economics of a project justify the density bonus or concessions which the developer

seeks, or (b) whether the project will have an objective, specific, quantifiable adverse impact on the health, safety, or physical environment.

This becomes relevant in those instances where speculators go into neighborhoods and seek a density level clearly at odds with, and in excess of, what the current infrastructure can support. This is particularly true with regard to properties where the current zoning (usually R-3) creates a development ‘envelope’ far in excess of the current use (in some cases a single family residence; in others, multiple dwelling units slated for demolition, only to be replaced with fewer affordable units than are being destroyed).

Assuming the City does not appeal, if it wants to revise the law, the hope is that these issues can and will be revisited in the context of the City Council’s consideration of a new implementation ordinance. That would be the responsible thing to do. Whether this limited ruling creates a wedge for a more thorough consideration of these issues remains to be seen.

Like the billboards, what the public needs first is for the Planning Department to produce an inventory of every SB 1818 project in the pipeline so an evaluation can be made of what needs to be done to meet the thrust of the Court’s ruling.

The next thing is for Neighborhood Councils to embark on a project to identify every R-3 property in their jurisdiction and determine whether it is over-zoned and should be down-zoned in accordance with the state law mandate of AB 283 which directs that a property’s zoning must be consistent with its Community Plan.

In those areas where the Community Plan is under review, if and to the extent the people entertain any desire to maintain the character and scale of their community, they would be well advised to take steps to review how the proposed Community Plan deals with this issue.

Four ultimate remedies remain for neighborhoods and their Neighborhood Councils to combat the scourge of SB 1818 projects:

1. Down-zone selected properties;
2. Insist on an ‘AB 283’ review of to see whether the property’s current zoning comports with the mandate of AB 283;
3. Begin to insist that the Planning Department institute and administer a protocol by which proposed SB 1818 projects are properly evaluated from both an environmental and economic standpoint;
4. Develop strategies to preserve existing buildings by promoting ideas like TOPA (Tenant Opportunity to Purchase Act) where instead of buildings being sold to speculators who will demolish them and replace them with out of scale SB 1818 projects (with less affordable housing), they are purchased by tenants or investors who would own or rent them, making due provision for future affordable pricing covenants.

The Judge’s rulings in both cases can be read here. [Hubbard Ruling](#). [EAHCLA Ruling](#) .

(Noel Weiss is an attorney and a long-time community advocate. Weiss is an occasional contributor to CityWatch.) ■

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