

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/28/10

DEPT. 85

HONORABLE ROBERT H. O'BRIEN

JUDGE

A. FAJARDO

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. DE LUNA, C.A.

Deputy Sheriff

NONE

Reporter

4:00 pm

BS124769

Plaintiff

Counsel

BUILDING A BETTER REDONDO INC E

NO APPEARANCES

Defendant

VS

Counsel

VS

CITY OF REDONDO BEACH ET AL

NATURE OF PROCEEDINGS:

RULING ON PETITION FOR WRIT OF MANDATE

The Court having taken the above stated matter under submission on 7/15/10, now issues a "Decision Re: Petition for Writ of Mandate and Declaratory Relief" which consists of seven(7) pages and is signed and filed this date.

The Petition for Writ of Mandate and Declaratory Relief is granted in its entirety.

Counsel for the Petitioner is to prepare a proposed Judgment and serve it on opposing Counsel to approve as to form. Counsel are to discuss any objections and then submit the agreed upon Judgment to the Court.

The Court overrules Petitioner's objections to the Judicial Notice.

The Administrative Record, Joint Appendix and Trial Notebook are ordered returned to Counsel for the Petitioner to be retained in the same manner pending any further proceedings in this matter. Counsel is directed to retrieve the above stated documents from Department 85 within the next five(5) court days.

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NATURE OF PROCEEDINGS:

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 7/28/10 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 7/28/10

John A. Clarke, Executive Officer/Clerk

By: _____

A. Fajardo
A. Fajardo

FRANK P. ANGEL
JEFF EL-HAJJ
Angel Law
2601 Ocean Park Blvd., Ste 205
Santa Monica, CA 90405

<p align="center">MINUTES ENTERED 07/28/10 COUNTY CLERK</p>

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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NATURE OF PROCEEDINGS:

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FILED
Superior Court of California
County of Los Angeles

JUL 28 2010

John A. Clarke, Executive Officer/Clerk
By *A. Fajardo*, Deputy
ANNETTE FAJARDO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BUILDING A BETTER REDONDO,
INC. and JAMES A. LIGHT,

) Petitioners/Plaintiffs,

) vs.

CITY OF REDONDO BEACH,
CITY COUNCIL OF THE CITY OF
REDONDO BEACH,
ELEANOR MANZANO, City Clerk, and
DOES 1 through 50, Inclusive,

) Respondents/Defendants.)

Case No. BS124769

DECISION RE: PETITION FOR
WRIT OF MANDATE AND
DECLARATORY RELIEF

Petitioners Building A Better Redondo, Inc. and James A. Light ("Petitioners") apply for a writ of traditional mandamus commanding Respondents City of Redondo Beach, City Council of the City of Redondo Beach, and Eleanor Manzano, City Clerk (collectively, "City") to submit an amendment to the City's existing local coast program (LCP) for the Harbor-Pier Area, as approved by the City Council on April 6 and April 20, 2010 (hereafter referred to as the "Area 2 LCP Amendment"), comprised of amendments to both the City's coastal land use plan and its land use plan-implementing Zoning Ordinance for the Coastal Zone (Redondo Beach Mun. Code, § 10-5.100 et seq.), for the voters' approval or

1 rejection, at the November 2, 2010 general election. The court has read and considered
2 the moving papers, opposition and reply, and renders the following decision.

3 Petitioners commenced this proceeding on May 20, 2010, alleging as follows. At
4 the general election of November 4, 2008, the citizens of Redondo Beach enacted Article
5 XXVII into law, as an amendment to the City Charter. The Charter amendment was
6 proposed by an initiative measure sponsored by Petitioner BBR, referred to as "Measure
7 DD."

8 In passing Measure DD, the People of Redondo Beach, among other things, found
9 that "The City's traffic circulation system is already over saturated, and at or near gridlock
10 during rush hours, and, as such, is inadequate to support the City's existing level of
11 development"; and that "These existing traffic and traffic circulation system conditions, and
12 their adverse public safety, public health and quality of life consequences, bear testimony
13 to the fact that the City's existing land use and development review and approval
14 procedures do not carefully or accurately consider, nor adequately weigh, the adverse
15 impacts to the local environment and quality of life caused by increased density and
16 congestion resulting from major changes in allowable land use." Article XXVII, § 27(b), (c).

17 On April 6, 2010, the City Council took final official action approving a major change
18 in allowable land use in the form of an amendment to the City's LCP, but rejected putting
19 the change to a vote on any of the coastal zoning ordinance regulations and portions of the
20 land use policies contained therein. The LCP amendment purports to regulate
21 development on (1) approximately 150 acres of the lands and waters comprising the City's
22 King Harbor and Redondo Beach Pier.

23 When an administrative decision is reviewed under § 1085, judicial review is limited
24 to an examination of the proceedings before the agency to determine whether its action
25 was arbitrary, capricious, or entirely lacking in evidentiary support, or whether it did not
26 follow the procedure and give the notices required by law. *Pomona Police Officers Assn.*
27 *v. City of Pomona* 58 Cal.App.4th 578, 583-587.

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1 Petitioners seek mandamus and declaratory relief requiring the City to place the
2 entire Area 2 LCP Amendment on the ballot - i.e., both the Land Use Plan and the
3 implementing zoning ordinance, pursuant to Article XXVII of the City Charter.

4 Charter section 27.4(a) (Article XXVII), provides in full: "Each major change in
5 allowable land use shall be put to a vote of the People; provided, however, that no such
6 change shall be submitted to the voters unless the City Council has first approved it. A
7 major change in allowable land use shall become effective only after approval by the City
8 Council and a majority of the voters of the City voting 'YES' on a ballot measure proposing
9 such change at either a regular or special municipal election."

10 Charter section 27.2 defines a "Major Change in Allowable Land Use" as. "any
11 proposed amendment," among other things, to the Zoning Ordinance for the Coastal Zone,
12 meeting any one or more of three listed conditions, including, defined significant increases
13 in traffic, density or intensity of use above specified physical baseline conditions. *Id.*,
14 § 27.2(f) (1), (2), (3) [sic: subparagraphs (1), (2) and (3) following section 27.2, subdivision
15 (g), must be the subparagraphs to subdivision (f), defining the conditions, as there are no
16 subparagraphs to subdivision (f) listing the "conditions";]; *id.*, subds. (c), (b). Where such
17 major change takes the form of an amendment to the City's local coastal program, voter
18 approval is a supplement to, not substitute for, Coastal Commission review and
19 certification. Charter § 27.2(d); § 30514(a).

20 The Area 2 Coastal Zoning Ordinance Amendment constitutes a "Major Change in
21 Allowable Land Use." The Area 2 Coastal Zoning Ordinance Amendment allows 400,000
22 square feet of additional floor area.

23 The City believes that the Coastal Zoning Ordinance Amendment is not subject to
24 popular vote because the amendment's predecessor Ordinance No. 2971-05, and
25 predecessor Ordinance No. 3010-08, both took effect prior to December 16, 2008, the date
26 Article XXVII itself took effect. AR 344-45, 163-64, 158, 76. The City's theory is that it had
27 legally effective coastal zoning ordinances for Area 2 long before December 16, 2008,
28 because the "Effective Date" clauses in Ordinance No. 3013-08 and Ordinance 2971-05

1 purport to give effect to the LCP amendments they contain 30 days after their adoption in
2 the City Council (i.e., September 1, 2005, and June 5, 2008, respectively.) AR 392, 807.

3 The 2005 and 2008 ordinances had not been certified by the Coastal Commission
4 at any time prior to December 16, 2008, as conforming with the (hitherto uncertified) 2005
5 and 2008 precursor amendments to the Area 2 LUP Amendment. Because the 2005 and
6 2008 precursor amendments to the Area 2 LUP Amendment had not been certified by the
7 Coastal Commission, they could not take effect prior to December 16, 2008, and simply
8 amounted to contemplated legislation. There are no magical words that could change the
9 fact that the Coastal Commission had to certify the ordinances. While the ordinances
10 might say that they became effective 30 days after enactment, the fact is they didn't. The
11 City had to wait for the Coastal Commission to act.

12 The Coastal Act, various state administrative regulations and City zoning regulations
13 (part of the Zoning Ordinance for the Coastal Zone that was effectively certified in 2003),
14 prescribe special procedures for passing, approving and putting into effect local coastal
15 programs. Chapter 6 of the Coastal Act (§ 30500 et seq.) establishes the Commission's
16 duty and authority to certify LCP's in order to ensure that coastal land use plans, anywhere
17 in the California coastal zone, "meet . . . the requirements of, and [are] in conformity with
18 the policies of Chapter 3" (§ 30512(c)), and that, in turn, all derivative land use plan
19 implementing coastal zoning ordinances "conform with, [and] are [adequate] to carry out,
20 the provisions of the certified land use plan." § 30513; see § 30200 et seq.; *City of Chula*
21 *Vista v. Superior Court* (1982) 133 Cal.App.3d 472, 481 ["A most important aim (of the
22 Coastal Act) is to insure statewide supervision over coastal zone development, to avoid
23 local pressures having an undue impact upon the planning for this unique and irreplaceable
24 resource; hence, the creation of the statewide agency"]; see *Id.* at 487, 489 & fn. 12.

25 Section 30514, which applies to proposed amendments to local coastal programs,
26 states: "A certified local coastal program and all local implementing ordinances, regulations
27 and other actions may be amended by the appropriate local government, but no such

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1 amendment shall take effect until it has been certified by the commission.” § 30514(a);
2 see *Yost v. Thomas* (1984) 36 Cal.3d 561, 566-567.

3 The City also fails to appreciate that section 30513, which specifies certification
4 procedures for coastal land use plan implementing zoning ordinances, provides that if the
5 Coastal Commission rejects a coastal zoning ordinance as submitted, as it has done here,
6 it “may suggest modifications in the rejected zoning ordinances . . . which, if adopted by
7 the local government and transmitted to the commission, shall be deemed approved upon
8 confirmation by the executive director.” Emphasis added. This procedure equally applies
9 to any proposed amendment to a coastal zoning ordinance that is subject to Coastal
10 Commission suggested modifications (in this case, the Commission did indeed suggest
11 modifications, and did not approve the zoning ordinance as submitted by the City), and a
12 similar procedure applies before a local government may obtain effective certification of
13 an amendment to its land use plan. See *id.*; § 30512(b). It logically follows, then, that
14 pending City adoption and transmittal to the Coastal Commission of the Commission’s
15 suggested modifications to Ordinance No. 3013-08, the Coastal Zoning Ordinance
16 Amendment cannot be “deemed approved.” It cannot be deemed approved because
17 without approval of the Commission’s suggested modifications it was found to be
18 inconsistent with several chapter 3 policies and CEQA. By the express terms of section
19 30514(a) and (b), the August 2005 and May 2008 zoning ordinances cannot have been in
20 effect prior to December 16, 2008, when Article XXVII took effect, because (a) they were
21 never certified in any shape or form before December 16, 2008, (b) were ultimately
22 rejected by the Coastal Commission, and (c) the City did not accept and formally approve
23 the suggested modifications from the Coastal Commission until April 20, 2010, long after
24 Article XXVII had taken effect. Article XXVII was law prior to the effective date of the
25 Coastal Zoning Ordinance Amendment. Accordingly, the City must submit the Coastal
26 Zoning Ordinance Amendment to public vote. The City must place the entire Area 2 LCP
27 Amendment (including Coastal Commission’s suggested modifications, which the City
28 accepted).

1 City suggests that section 30514 does not apply to the LCP amendments because
2 no coastal zoning ordinance has ever been certified for LCP Area 2. Thus Ordinance No.
3 3013-08 is not an amendment to an already certified LCP, or any portion of one. This
4 suggestion is spurious. The City has consistently treated Ordinance 3013-08 as an
5 amendment to the Zoning Ordinance for the Coastal Zone. AR 370, 372, 391, 392, 455,
6 835. Moreover, by September 2003, the City had an effectively certified LUP for the entire
7 Coastal Zone, and an effectively certified Zoning Ordinance for the Coastal Zone which
8 contained development standards for Area 1, along with definitions and procedural
9 provisions applicable to both Area 1 and Area 2. AR 858-859, 998-1016, 1021-1048.

10 There is no doubting that Ordinances 2971-05 and 3013-08 purported to amend the
11 city's certified LCP, including its certified zoning ordinance, and thus their effective dates
12 are determined by reference to § 30514(a). Neither ordinance was certified by the
13 Commission prior to the December 16, 2008 effective date of Article XXVII.

14 This also disposes of the City's statute of limitations defense, pursuant to Govt.
15 Code § 65009. The statute of limitations did not, indeed could not, begin to run until the
16 City council adopted the modifications recommended by the Commission.

17 The City argues that even if the Area 2 LUP Amendments and Zoning Ordinance
18 amendments are subject to popular vote, the City can decide in piecemeal fashion which
19 particular provisions do not constitute "Major Changes," or are not "integrally related"
20 thereto, and can be withheld from the ballot. This theory is contrary to the express
21 language of Article XXVII. See Charter, § 27.2(c): "dividing a major change in allowable
22 land use that would otherwise require their approval into partial changes that would not by
23 themselves require their approval, frustrates their intent to have control over major changes
24 in allowable land use and is contrary to the purposes of this article."

25 The City must submit the entire Area 2 LCP Amendment to popular vote, as
26 mandated by City law. The petition for writ of mandate and declaratory relief is granted,
27 in its entirety.

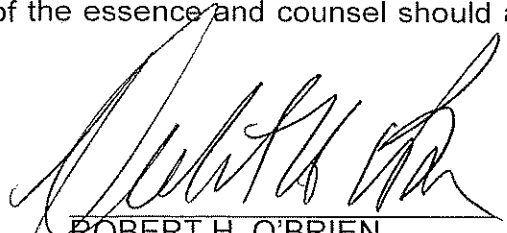
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Counsel for petitioners\plaintiffs shall forthwith prepare, personally serve and file in Department 85 judgment and writ. Respondents/Defendants shall immediately review and discuss with petitioners' counsel any objections. Both sides shall then file in Department 85 the agreed to judgment and writ.

The court understands that time may be of the essence and counsel should act accordingly.

Dated: **JUL 28 2010**



ROBERT H. O'BRIEN
Judge of the Superior Court

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7/19/10