

C090117

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

CIVIL NO. C090117

OLD EAST DAVIS NEIGHBORHOOD ASSOCIATION, *et al.*
Plaintiff, Respondent & Cross-Appellant

v.

CITY OF DAVIS, *et al.*
Defendants, Appellants and Cross-Respondents

TRACKSIDE CNETER
Real Party-in-Interest, Appellant and Cross-Respondent

On Appeal from the Judgment entered by the Superior Court, County of Yolo,
Case No. PT17-2111
The Honorable Samuel T. McAdam, presiding.

**RESPONDENT'S/CROSS-APPELLANT'S ANSWER TO
LEAGUE OF CALIFORNIA CITIES, THE CALIFORNIA
STATE ASSOCIATION OF COUNTIES, AND SACRAMENTO
AREA COUNCIL OF GOVERNMENT'S AMICUS CURIAE BRIEF**

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I.

INTRODUCTION

Respondent/Cross-Appellant Old East Davis Neighborhood Association (“OEDNA”) respectfully submits this Answer to the Amicus Curiae Brief submitted by the League of California Cities, the California State Association of Counties, and Sacramento Area Council of Governments in support of Appellant City of Davis.

II.

LEGAL DISCUSSION

Amicus Curiae’s Brief provides a long recitation of long-standing case law regarding the application of the State Planning and Zoning Law, Government Code section 65000 *et seq.* The applicable caselaw and standard of review has been covered by Appellant/Cross-Respondent City of Davis and Respondent/Cross-Appellant OEDNA. (*See* Opening Brief of Appellants City of Davis and City Counsel of City of Davis at 14-16; Respondent’s Opposition Brief at 19-21.)

While the Amicus Brief discusses the standard, it fails to discuss and disclose that in approving a project an agency cannot ignore General Plan goals, policies and objectives that are by their very terms fundamental, mandatory and clear. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 785-786, 789 [An action must be

consistent with the very specific and mandatory policies of the general plan.]) A project is inconsistent with the General Plan, and thus cannot be approved, where it violates such a policy or policies. (*Id.*)

The Amicus Brief also ignores the principle that while perfection is not required, the “the nature of the policy and the nature of the inconsistency are critical factors to consider.” (*Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisor (“FUTURE”)* (1998) 62 Cal.App.4th 1332, 1336.)

The Amicus Brief’s summary of caselaw also adopts the Appellants’ interpretation and application of the standard of review that deference to the agency is near absolute. This near absolute deference is not consistent with the applicable caselaw. (*See Endangered Habitats League, supra*, 131 Cal.App.4th at 785-786, 789; *Leshar Communications, Inc. v. City of Walnut Creek* (1950) 52 Cal.3d 531, 540.) Amicus ignore the General Plan and Core Area Specific Plan’s goals, policies and objectives that are by their very terms fundamental, mandatory and clear. (*Endangered Habitats League, supra*, 131 Cal.App.4th at 785-786, 789; *see* Respondents’ Opposition Brief at 24-26.)

A. THE AMICUS BRIEF’S DESCRIPTION OF THE PROJECT’S PHYSICAL SETTING CONTAINS FACTUAL ERRORS

The Amicus Brief incorrectly reports a 53-foot distance between the proposed Project building and the nearest residential structure in Old East

Davis. (Amicus Brief at 27.) The correct distance is 32 feet, as stated in the trial court’s Decision. (AA 314; AA 327, fn 1; Respondent’s Opposition Brief and Cross-Appellant’s Opening Brief at 29.)

The Amicus Brief states that the Project site is “...*proximate to* Old East Davis.” (Amicus Brief at 27, emphasis added.) The word “proximate” suggests that the Project’s physical location is “next to”, or “immediately preceding” the Old East Neighborhood, but this is misleading. The Project site is located within the boundaries of the Old East Davis neighborhood as codified by Davis Municipal Code (“DMC”) section 40.13A.020. (AR 6028.)

The City codified the boundaries of Old East Davis as part of its adoption of the Downtown Davis Traditional Residential Neighborhoods Design Guidelines. (DMC § 40.13A.010 *et seq.*) The Design Guidelines were instituted, among other reasons, to: conserve the traditional neighborhood character, fabric and setting while guiding future development, reuse, and reinvestment (DMC, § 40.13A.010(a)); plan for new commercial and residential infill construction that is compatible and complementary to the character of existing neighborhood areas within the district (DMC, § 40.13A.010(c)); provide guidelines to clarify the community’s expectations for the type and quality of development within the district. (DMC, § 40.13A.010(e).)

The Project's compatibility with the character and setting of the Old East Davis neighborhood - in light of the Project's mass and scale, as well as the form and type of development expected by the community at the Project site - is at the core of Petitioner's action. In order to correctly interpret the letter and spirit of the City's policies related to Project compliance, all parties should recognize that the Project site is physically located within, and is a part of, the Old East Davis Neighborhood.

B. THE TRIAL COURT CORRECTLY APPLIED THE STANDARD OF REVIEW.

The trial court's decision properly concerned whether or not the City's approvals were supported by substantial evidence in the Project's administrative record, in light of fundamental policies requiring a scale and land-use transition as well as compatibility with the existing neighborhood. (AR 5803 [General Plan Policy UD 2.3]; AR 5700 [General Plan Land Use Principle 4]; AR 6264 [Core Area Specific Plan Policy 7B]; AR 6085 [Design Guidelines for Mixed Use Mass and Scale]; AR 6101 [Design Guidelines for Core Transition East].)

The trial court's review of the Project's planning process and written record was neither a *de novo* consistency analysis nor an independent interpretation of the City's land-use policies, as implied by the Amicus Brief. (Amicus Brief at 28 *et seq.*) On the contrary, examining the evidence for the City's consistency findings was a necessary part of the court's task:

to systematically assess whether the rendered decision was reasonable and supported by substantial evidence.

Ultimately, the trial court found that the materials employed by the City as evidence for project approval did not provide a rational basis for the approval. The trial court's Decision was properly formulated, as shown by the court's statement of a key finding: "The features relied upon by the City to justify the Project, like the step-back design, do not really address the larger issue of the mass and scale of the project. Nothing in the Staff Report or record rationally explained how a 47,900 square foot building constituted a transition project." (AA 343.) Thus, the court found that the City *did not* "...bridge the analytic gap between the raw evidence and ultimate decision or order." (Amicus Brief at 16, *quoting Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) "By focusing . . . upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated that the agency would reveal this route." (*Id.*)

The deference owed to local governments described in the Amicus Brief (*e.g.*, Amicus Brief at 13) is not unlimited, and community members affected by a local government's decisions must have recourse to challenge

decisions that are improper. In documents presented to the trial court (Petitioner’s Memorandum of Points and Authorities In Support of Petition for Writ of Mandate (JA 79, 110-114); Petitioner’s Reply Brief In Support of Petition for Writ of Mandate (JA 230, 233-239); Petitioner’s Response to Request for Statement of Decision, at 11 *et seq.* (JA 308, 318), Petitioner “...met its burden to show that no reasonable person could have reached the same conclusion reached by the agency on the evidence before it.” (*Contra* Amicus Brief at 13.)

Thus, the trial court acted within its purview to examine whether or not “...city officials considered the applicable policies and the extent to which the proposed project conforms with those policies, whether the city officials made appropriate findings on the issue, and whether those findings are supported by substantial evidence.” (Amicus Brief at 24, *quoting Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719-720.)

C. IN MAKING PROJECT APPROVALS, THE CITY ABUSED ITS DISCRETION AND THEREFORE DOES NOT ENJOY ABSOLUTE DEFERENCE FROM THE COURT.

In approving the Project, the City considered land use policies that are general, broadly-worded and permissive, but failed to appropriately consider policies that are prohibitive and that apply specifically to the Project. (AA 318.) In the Project’s SCEA/IS, the City failed to disclose or

analyze land use policies from the Davis Municipal Zoning Code and DDTRN Design Guidelines that arguably obviate Project approval. (Respondent's Opposition Brief and Cross-Appellant's Opening Brief at 55; AR 6638-6640; 6687-6689.)

The City's planning documents and findings for the Project incorrectly used images and references from policies applicable only to specific, bounded areas near 3rd and B Streets in the downtown core - but not applicable to the Project site - in some cases omitting text explicitly identifying the policy's correct locus of application. (Respondent's Opposition Brief and Cross-Appellant's Opening Brief at 55; AR 122-136; 3207-3210; 6638-6640; 6588-6597.)

In each case, the omission or inapposite reference removes a barrier to Project approval, or worse wrongly justifies the Project's consistency with the City's land use policies. The City failed to consider its land use policies "...in a reasoned, supported way..." (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193), and therefore does not enjoy the expected deference from the court.

III.

CONCLUSION

Based upon the foregoing, OEDNA respectfully requests that this Court reverse the trial court's Judgment with respect to the Third Cause of

Action, and if the Court disagrees with the trial court's ruling on the Second Cause of Action, then either address the remaining issues in the Second Cause of Action as set forth in OEDNA's Opening Brief and this Reply Brief. Alternatively, those issue could be remanded back to the trial court.

DATED: February 5, 2021

Respectfully Submitted,

LAW OFFICE OF
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By _____ /s/
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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.204(c))

The text of this brief consists of 1,525 words as counted by the Microsoft Word word-processing program used to generate the brief.

DATED: February 5, 2021

/s/
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PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 417 Mace Boulevard, Suite J-334, Davis, California; I am over the age of 18 years and not a party to the foregoing action. On February 5, 2021, I served a true and correct copy of

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X (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in the City of Davis, California.

Clerk of the Court
Yolo County Superior Court
1000 Main Street
Woodland, CA 95695

I declare under penalty of perjury that the foregoing is true and correct.
Executed on February 5, 2021, at Davis, California.

/s/
Donald B. Mooney

