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Fix the City, Inc.

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

FIX THE CITY, INC., a California
nonprofit corporation,

Petitioner and Plaintiff,

v.

CITY OF LOS ANGELES, a municipal
corporation; LOS ANGELES CITY
PLANNING COMMISSION;
VINCENT P. BERTONI, in his capacity
as Director of City Planning for the City
of Los Angeles; and DOES 1 through
100, inclusive,

Respondents and Defendants.

530 NORTH FRANCISCA, LLC, a
California limited liability corporation;
BANARSI AGARWAL; and ROES 1
through 100, inclusive,

Real Parties in Interest.

Case No.: 20STCP03529

Assigned to Hon. Mitchell L. Beckloff

**PETITIONER'S OPENING BRIEF IN
SUPPORT OF PETITION FOR WRIT OF
MANDATE**

Action Filed: October 26, 2020
Trial Date: February 25, 2022
Time: 9:30 a.m.
Dept.: 86

1 **INTRODUCTION**

2 At issue in this case, which has been related to Petitioner Fix the City, Inc.’s (“Petitioner’s”)
3 other challenges to Respondents City of Los Angeles and the Los Angeles City Planning Commission’s
4 (“Respondents” or “the City’s”) adoption of the Transit Oriented Communities Guidelines, are multiple
5 violations of a specific plan and a *loss* (rather than gain) of affordable units, in violation of city and state
6 laws. Real Parties in Interest 530 North Francisca, LLC and Banarsi Agarwal’s (“Real Parties”) 10-unit
7 apartment project is located at 10757-10759 West Wilkins Avenue, in the City of Los Angeles (“the
8 Project”).¹ The area in which the Project is located is governed by the Westwood Community Multi-
9 Family Specific Plan (“Specific Plan”), that was designed to comprehensively regulate development in
10 this area of the Westwood neighborhood to ensure that new multi-family development would reflect the
11 scale and development patterns of existing development and transition from the high-rise Wilshire
12 Regional Center and Wilshire Corridor. (See Petitioner’s Request for Judicial Notice, Exh. 1.)

13 The Project received several incentives that allow development in excess of the limitations and
14 requirements of the Specific Plan, even though City law makes clear that the provisions of any specific
15 plan prevail over conflicting requirements in City ordinances. Moreover, the Project provided an
16 insufficient number of affordable units under state laws governing density bonuses that apply where
17 existing Rent-Stabilized housing is being replaced by new market-rate housing. For these reasons, the
18 Project’s entitlements were issued in error and must be rescinded.

19 **STATEMENT OF FACTS**
20 **The 10757-10759 West Wilkins Avenue Project**

21 The Project consists of a 5-story, 10-unit apartment building, including 2 units designated for
22 very low-income households (but not as replacement units under the City’s rent control ordinance) and
23 21 parking spaces. (AR0548.)² It is located on roughly 9,800 square feet of property at 10757-10759

24 _____
25 ¹ The parties have stipulated, and the Court has ordered, that the Court’s August 9, 2020 Order
26 regarding the legal issues associated with the Transit Oriented Communities Guidelines shall apply to
27 this case, so Petitioner will incorporate by reference those arguments solely for the purpose of
28 preserving those issues for a possible appeal.

² A smaller, earlier project was denied by the Westside Area Planning Commission in 2004 (See
AR0322.) Around this time, tenants were displaced. Eventually, new tenants moved into the three units
that were registered with HCID as Rent Stabilized and not exempt.

1 West Wilkins Avenue in the City of Los Angeles, around the corner from both St. Paul the Apostle
2 Church and the Mormon Temple. (AR0556.) On the application, Real Parties reported that the lot
3 contained “three units- apartment complex.” (AR0011.) City records show that these three units were
4 built in 1937 and were subject to the City’s Rent-Stabilization Ordinance (“RSO”) without any
5 exemptions. (AR0039-40, AR0244.) The units were to be demolished as a result of the project.
6 (AR0030-31.)

7 The zoning for the Project is RD1.5-1. (AR0556.) Under that zoning, a maximum density of 6
8 residential units is permitted. (AR0557 [base density is 6.55 but under TOC program, rounds up to 7].)
9 The Project abuts R1-1 zoned properties to the north and northeast which are developed with single
10 family homes (AR0042, AR0556) and properties abutting the Project that are zoned RD1.5-1, and
11 developed with two-story multi-family apartment complexes. (AR0042, AR0045-46, AR0556.)
12 Properties across the street and to the west are zoned RD1.5-1 and developed with single-family
13 residences and single, two, and three-story multi-family residences. (*Ibid.*)

14 The Project is located in an area of the City subject to a specific plan, adopted as an ordinance by
15 the City Council pursuant to Los Angeles Municipal Code section 11.5.7. (AR0556.) The Westwood
16 Community Multi-Family Specific Plan (“Specific Plan”) was developed in order to create a transition
17 between the high-rise Westwood Regional Center and the Wilshire Corridor, and the adjacent single-
18 family neighborhood. The Specific Plan states among its purposes that the plan will “establish[]
19 coordinated and comprehensible standards for parking, height, design, building massing, open space and
20 landscaping for new projects in the area;” and “to enhance the aesthetic qualities of multiple-family
21 residential development so that it is more harmonious with adjacent single-family neighborhoods,” and
22 “to adequately buffer single-family residential uses from adjacent multiple-family residential
23 development to the greatest extent feasible.”

24 Because the Project site contained a zoning condition requiring review by the Westwood
25 Community Design Review Board (DRB), the approval of the Project commenced with a hearing by the
26 DRB on August 21, 2019. (AR0566, AR0092.) Fix the City provided written comments to the assigned
27 Planner and requested their distribution to the members of the DRB. (AR0097-100.) Fix the City’s
28 comments pointed out, among other things, that the Project did not conform to the Westwood Multi-

1 Family Specific Plan’s height limits, parking, open space, and yard requirements. (AR0097-99.) Fix the
2 City also objected to the failure to replace all three units being demolished with affordable units.
3 (AR0099.) Other community members provided written comments objecting to the Project’s lack of
4 compatibility with the scale of existing buildings in the neighborhood. (AR0101-103, AR0133-138.)
5 Local residents also attended the hearing to provide comments in support or opposition. (AR0113-125.)
6 A second hearing of the DRB was held on October 2, 2019, at which Real Parties and neighborhood
7 residents again appeared to speak for or against the Project. (AR0154-163.) Real Parties extended time
8 to November 6, 2019 for consideration (AR0164) and further comments were submitted by residents
9 (AR0169-171.) Residents and Real Parties again presented comments for and against the Project on
10 November 6, 2019. (AR0188-212.) On November 6, 2019, the DRB approved the project subject to
11 some aesthetic modifications to colors, materials, and landscaping, as well as the concealment of certain
12 equipment. (AR0213.) On January 13, 2020, a “Director’s Determination” was issued to approve the
13 Project, including Transit Oriented Communities Compliance Review and Project Permit Compliance
14 Findings for the Specific Plan. (AR0238-260.) The Director’s Determination approved a 22-foot height
15 increase over the maximum 33 feet allowed under the Westwood Community Multi-Family Specific
16 Plan, for a total height of 55 feet. (AR0238.) It also reduced the requested yard on the west side of the
17 property from 8 feet to 5.6 feet, and reduced the open space by 25 percent. (AR0238-239.) These
18 incentives were based on the TOC Guidelines and the provision of 2 units for very low-income
19 households, out of the 10 proposed units. The issuance of the Director’s Determination triggered a 15-
20 day appeal period for property owners and tenants within 100 feet. (AR0259.)

21 Carl Shusterman, Helena Freeman, John Gaustad, and Cecelia Evans, neighboring property
22 owners or renters, filed an appeal of the Director’s Determination. (AR0320-345.) The appeal objected
23 to the non-compliance with the standards of the Specific Plan, and non-compliance with state density
24 bonus law.³ (AR0323-329.) A staff report responded to the appeal, contending that it was permissible
25 for the TOC incentives to violate the Specific Plan and thus the findings of consistency with the Specific
26 Plan were therefore supportable. (AR0365-368.)

27 _____
28 ³ Fix the City also filed comments at the time of the appeal, incorporating the appeal by reference
and attaching it. (AR0319.)

1 The appeal was heard by the City Planning Commission on May 14, 2020. (AR0883.) The
2 Commissioners heard a presentation from the City Planner describing the project and rejecting the
3 arguments made in the appeal. (AR0905-912.) Appellants presented a summary of their appeal points,
4 primarily focusing on the issue of non-compliance with the Specific Plan. (AR0913-915.) A
5 representative of Real Parties' spoke in favor of the project and explained the changes made to the
6 design to accommodate design concerns. (AR0916-919.) During the public comment portion of the
7 item, neighbor John Gaustad noted that city records showed three pre-existing units that are subject to
8 rent control, while the Project was only providing two rent- controlled units, and asked that the appeal
9 be continued while this issue was investigated. (AR0921-922.) Staff responded that the issue had been
10 addressed and that the Housing and Community Investment Department determined that there were no
11 units subject to replacement. (AR0927.) Other neighbors raised concerns regarding the scale of the
12 Project and its potential traffic generation. (AR0920, 922, 923, 925.) The Commission voted to deny
13 the appeal and approve the Project. (AR0929.)

14 On May 19, 2020, the City Planning Commission's Letter of Decision was mailed. (AR0548.)
15 The decision states what took place at the May 14, 2020 hearing and attaches the Director's
16 Determination. (AR0548-572.) The letter states that "[t]he decision of the Los Angeles City Planning
17 Commission is final and effective upon the mailing of this determination letter and not further
18 appealable." (AR0549.)

19 **Transit Oriented Communities Guidelines and Voter Initiative Measure JJJ**

20 As set forth in the November 10, 2021 Order Regarding First Amended Petition, Procedure
21 Regarding Specific Claim, Briefing Dates, Petitioner will not set forth the facts regarding the City's
22 adoption of the Transit Oriented Communities Guidelines, but will incorporate by reference the
23 Statement of Facts on this issue contained at pages 4-9 of Petitioner's Opening Brief on Issues Related
24 to Transit Oriented Communities Program, dated March 18, 2021. (See RJN, Exh. 2.)

25 **ARGUMENT**

26 **I. THE PROJECT AND THE INCENTIVES AWARDED UNDER THE TOC GUIDELINES 27 FATALLY CONFLICT WITH ORDINANCE INITIATIVE MEASURE JJJ**

28 As set forth in the November 10, 2021 Order Regarding First Amended Petition, Procedure
Regarding Specific Claim, Briefing Dates, Petitioner will not set forth the facts regarding the City's

1 adoption of the Transit Oriented Communities Guidelines, but will incorporate by reference the
2 Arguments on this issue contained at pages 10-17 of Petitioner’s Opening Brief on Issues Related to
3 Transit Oriented Communities Program, dated March 18, 2021, and Reply Arguments at pages 5-18 of
4 Petitioner’s Reply Brief on Issues Related to the Transit Oriented Communities Program, dated June 7,
5 2021. (See RJN, Exhs. 2 & 3.) The Project’s entitlements depend on the following incentives from the
6 Transit Oriented Communities Guidelines: a 22-foot increase in building height to allow 55 feet in lieu
7 of the maximum 33 feet allowed under the Specific Plan, a reduction in west side yard from 8 feet to 5.6
8 feet, and a 25 percent reduction in open space from the requirements of the Specific Plan. (AR0550-
9 551.) These deviations from the Specific Plan and generally applicable requirements in the RD1.5 zone
10 were not approved by the City Council as legislative entitlements, nor as modifications to the Specific
11 Plan, but granted as incentives pursuant to the TOC Guidelines. No application was submitted to the
12 City for a specific plan exception, adjustment, or amendment.

13 **II. THE WESTWOOD COMMUNITY MULTI-FAMILY SPECIFIC PLAN**
14 **REQUIREMENTS CANNOT BE OVERRIDEN BY THE TRANSIT ORIENTED**
15 **COMMUNITIES GUIDELINES**

16 The Project does not conform to the requirements of the Westwood Community Multi-Family
17 Specific Plan. The Specific Plan applies to very specifically identified properties around the Westwood
18 neighborhood. (RJN, Exh. 1, pp. 2-8.) The purpose of the plan is to “enhance the future development of
19 the area by establishing coordinated and comprehensible standards for parking, height, design, building
20 massing, open space and landscaping for new projects in the area;” and to “promote orderly, attractive
21 and harmonious multiple-family residential development in the Westwood community which takes into
22 consideration the architectural character and environmental setting of the community.” (*Id.*, p. 9.) In
23 addition, the Specific Plan directly addresses the scale and intensity of multiple family development near
24 single family homes by “enhance[ing] the aesthetic qualities of multiple-family residential development
25 so that it is more harmonious with adjacent single-family neighborhoods;” and “buffer[ing] single-
26 family residential uses from adjacent multiple-family residential development to the greatest extent
feasible.” (*Ibid.*)

27 The Specific Plan requirements are intended to prevail over other requirements of the Municipal
28 Code. “Whenever this Specific Plan contains provisions which differ from the provisions contained in

1 Chapter I of the Los Angeles Municipal Code, *the Specific Plan shall prevail and supersede the*
2 *applicable provisions of that Code.*” (RJN, Exh. 1, p. 10 [emphasis added].) The Specific Plan may be
3 amended in accordance with the procedure of Los Angeles Municipal Code section 11.5.7, which also
4 provides for granted adjustments or modification to the requirements of the Specific Plan on a project-
5 by-project basis. (See RJN, Exh. 4, pp. 3-5.)

6 The Specific Plan contains detailed height and setback regulations and requirements. In the area
7 governed by the Specific Plan, if the average height of the single-family houses within 100 feet of the
8 subject property is less than 34 feet, the building height shall be limited to a maximum of 33 feet in
9 height. If the average height is between 34 and 45 feet, the building height is limited to a maximum of
10 45 feet. (RJN, Exh. 1, pp. 10-11.) Projects that are across the street and within 200 feet of an R1 zone
11 must provide additional setbacks on the front elevation of the property. Each level above the first
12 habitable level must be set back 10 feet from the level below it. Setbacks are not required for structures
13 with a height of 33 feet or less. (*Id.*, p. 12.) The Specific Plan prescribes 350 feet of open space per unit
14 in RD zoned properties. (*Id.*, p. 11.)

15 Under the Specific Plan and the zoning code, the Project is limited to 33 feet in height and is
16 required to provide 3,500 square feet of open space. (AR0558.) The City approved the Project allowing
17 a 55-foot high structure and only 2,627 square feet of open space, roughly a 25 percent reduction.
18 (*Ibid.*) The Municipal Code contains specific processes for adjustments, which are required to be
19 adhered to by the Specific Plan. (RJN, Exh. 1, p. 10; Exh. 4, pp. 3-4.) *Adjustments are limited to 10*
20 *percent of the designated height limit, or 20 percent of open space requirements.* (RJN, Exh. 4, p. 3.)
21 There are also provisions that allow exceptions to specific plan standards. (*Id.*, p. 4.) None of these
22 provisions were applied here; the City treated the TOC Incentive program as if it superseded the
23 requirements of the Specific Plan.

24 The Project exceeds these limitations in spite of the clear statement in the Specific Plan that its
25 provisions are to be applied in the face of contrary provisions in the Municipal Code. The TOC program
26 provisions in the Municipal Code does not contain any provision allowing its incentives to supersede the
27 requirements of a specific plan. The Specific Plan requirements should govern the development of the
28 Project here.

1 **III. THE PROJECT’S APPROVAL DID NOT INCLUDE SUFFICIENT AFFORDABLE**
2 **UNITS UNDER STATE LAW**

3 The current building at the Project site provided three rental units that are regulated by the Rent
4 Stabilization Ordinance, yet replacement units for these rent-controlled properties was not required as
5 provided by state law. (AR0040.) Assembly Bill (AB) 2556 amended section 65915 of the Government
6 Code in 2016, effective on January 1, 2017. (RJN, Exh. 5.) AB 2556 requires that housing
7 developments seeking density bonuses must replace any dwelling units that are “subject to any . . . form
8 of rent or price control through a public entity’s valid exercise of its police power.” (Gov. Code, §
9 65915, subd. (c)(3)(A).) Housing developments are only eligible for TOC Incentives if they “meet[] any
10 applicable replacement requirements of California Government Code section 65915(c)(3).” (RJN, Exh.
11 6, p. 1 [LAMC 12.22 A.31 (b)(1)].)

12 The purpose of the Rent Stabilization Ordinance is to “regulate rents so as to safeguard tenants
13 from excessive rent increases, while at the same time providing landlords with just and reasonable
14 returns from their rental units.” (RJN, Exh. 7, p. 2.) The law applies to rental housing constructed prior
15 to October 1, 1978. (*Id.* at p. 4.) Such units are required to register with the City. (*Id.* at p. 7.) The
16 RSO regulates withdrawal from the rental market under the Ellis Act (Government Code section 7060 et
17 seq.). (RJN, Exh. 7, pp. 29-34.) “If a landlord desires to offer for rent or lease a rental unit that was the
18 subject of a Notice of Intent to Withdraw . . .” the landlord must file a “Notice of Intention to Re-Rent
19 Withdrawn Accommodations.” (*Id.* at p. 31.) The RSO regulates the amount of rent that may be
20 charged for such re-rented accommodation that had been removed from the market under the Ellis Act.
21 (*Id.* at p. 32.)

22 The City’s records for 10757 West Wilkins show that the property contained three units subject
23 to the City’s Rent Stabilization Ordinance (RSO), which is the rent control program of the City of Los
24 Angeles and that there were no exemptions for those units. (AR0040.) Nor do the City records reflect a
25 withdrawal of the unit under the Ellis Act. (*Ibid.*) Additionally, the City of Los Angeles’s text-based
26 service confirmed on December 18, 2021, that 10757 West Wilkins Avenue is subject to the RSO
27 ordinance. (Declaration of Beverly Grossman Palmer, ¶¶ 2-4.) During the approval process, the Los
28 Angeles Housing & Community Investment Department (HCIDLA) determined that no replacement
units were required because “Per the Rent Stabilization Ordinance (RSO) Unit, the property received an

1 exemption from the RSO because it was Ellis'd in 2003.” (AR0061-63.) Based on the statement that
2 units were “Ellis'd,” or removed from the rental market, “HCIDLA has determined that there were no
3 residential units built or demolished on the properties within the last five (5) years. No AB 2556
4 replacement affordable units are required.” (AR0062.)

5 No further investigation was undertaken, in spite of the fact the units were still listed as RSO
6 units, were not listed as Ellis units, and even if the units had been removed from the rental market nearly
7 20 years earlier, would still be subject to the RSO if they were re-rented after removal from the rental
8 market. Even if the units were never re-rented, the RSO requires that RSO units removed under the Ellis
9 Act be replaced and be subject to the RSO. (RJN, Exh. 7, p. 33 [LAMC, § 151.28, “if rental units
10 subject to the [RSO] were demolished subsequent to September 29, 2006, the effective date of these
11 provisions, without complying with the requirements of section 151.22 through 151.28, then all
12 replacement units constructed on the same property shall be deemed subject to the [RSO]”].) The
13 Housing Department’s comment that the units were Ellis'd and therefore not subject to the RSO or
14 needing to be replaced is factually and legally inaccurate.

15 Neighbors requested an investigation whether these units were, in fact, being re-rented, as the
16 property appeared to be inhabited. The City’s cursory conclusion, which is not supported by the
17 evidence before it, does not support the City’s determination not to require the appropriate number of
18 replacement units.

19 No replacement units were required by the Planning Director or CPC, despite the request by Fix
20 the City and other neighboring residents. Instead of three very low-income units, the approved project is
21 only providing two very low-income units, and these will not be regulated as replacement units under
22 the RSO.

23 Government Code section 65915, subdivision (c) establishes the requirement for replacement
24 units under the TOC program, as set forth in Los Angeles Municipal Code section 12.22. A 31(b)(1).
25 Under state law, if the income of the household that occupies the unit is not known, it is to be rebuttably
26 presumed that lower-income renter households occupied these units in the same proportion of lower-
27 income renter households within the jurisdiction, according to the most recent data from United States
28 Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy

1 database. (Gov. Code, § 65915, subd. (c)(3)(B)(i).) Any fractional result must be rounded up. (*Ibid.*)
2 The three RSO units that were rented at 10757 West Wilkins were subject to rent control and thus all
3 must be replaced. Pursuant to the rebuttable presumption, because 73 percent of renters in Los Angeles
4 are low-income households, according to the most recent HUD database, ***all 3 units were required to be***
5 ***replaced.*** (See RJN, Exh. 8, p. 1.) In addition, under the Municipal Code, displaced tenants must be
6 offered the opportunity to re-rent the replacement units. (RJN, Exh. 7, p. 32.) Replacement units are
7 also generally subject to regulation under the RSO. (*Id.* at p. 33.)

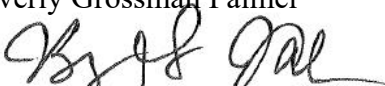
8 The Project has only two units set aside for very low-income housing, so does not satisfy the
9 applicable replacement requirement or the right of return to the replacement units. The Project must
10 fully satisfy the replacement requirements or it does not qualify for incentives under the TOC program
11 or any density bonus program. For this reason, the entire approval is invalid.

12 CONCLUSION

13 The City abused its discretion by approving the Project at 10757 West Wilkins, because it
14 allowed significant departures from the requirements of the Specific Plan without compliance with the
15 Plan's procedure for adjustment or exception. In addition, the approval was invalid because the Project
16 did not satisfy the applicable replacement unit requirements. The entitlement must be rescinded.

17 DATED: December 21, 2021

18 Respectfully Submitted,
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21 Beverly Grossman Palmer

22 By 
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24 *Attorneys for Petitioner and Plaintiff Fix the City, Inc.*