



NAME

09-26-2023 Ethical Appeal during City Council Meeting Transcribed

DATE

December 15, 2023

DURATION

1h 4m 2s

16 SPEAKERS

CM Harris-Dawson

Clerk

CM Raman

CM Blumenfield

Blake Lee (Planning)

CM McCosker

Lisa Webber (Planning)

CM Yaroslavsky

Adrian Khorasani (CA)

CP Krekorian

CM Rodriquez

Kevin Keller (Bass Rep)

CM Park

Vince Bertoni (Planning)

CM Padilla

Speaker17

START OF TRANSCRIPT

**[00:00:00] CM Harris-Dawson**

Close the roll. Tabulate the vote.

**[00:00:04] Clerk**

12 "Ayes" one "No".

**[00:00:06] CM Harris-Dawson**

All right. That takes us to item number 23. Ms. Raman, are you going to make comments on this item?

**[00:00:16] CM Raman**

I was going to. Speak last, if that's okay.

**[00:00:17] CM Harris-Dawson**

Okay. Mr. Blumenfield.

**[00:00:21] CM Blumenfield**

I'm on this item I'm going to make a motion to deny the appeal. And I want to explain my position on this. And I want to bring planning to the table as well. But this is it's not a one-off. This is not about a particular project. I have great respect for all of my colleagues and for Miss Raman, whose district this particular project is in. But what I'm worried about is, is precedent. So I want to explain what happened in in as I understand it, have the Planning Department confirm that this is how it is. The mayor put forward executive directive one, which was to streamline the process for affordable housing, something really important, something I support. But in doing that, inadvertently, it included single-family R1 areas and it wasn't intended to do that. As soon as the mayor's office and the administration figured that out, they pulled it back immediately and they changed it and they made it appropriate so that it would not impact single-family, low-density residential R1 units. Unfortunately, though, there were a couple of opportunistic folks who figured out that problem before it was noted by the city and they quickly filed for some several projects. The majority, five of those projects are in my district. One of those projects is before us today. When I'm talking today, it is not about the merits of that project. If my colleague and others want to pursue that project through the normal process, that's great. This is about whether or not "ED 1" would apply to those projects simply because they got in before the mistake was figured out. And I don't think that's the right way to do things. If we have as a city, send somebody a refund check, they're supposed to get \$20 and we accidentally send them \$20 Million. They don't get to cash that and walk away with it. They still that is still owned by the city. And we would go back. This is the same kind of thing. This was not the intent. So when this came forward to planning, they said, "whoa, whoa, this projects, it's not this is not complete" and they did not approve and move forward on this project. It then went to Planning and Land Use committee where we heard arguments and I wasn't on the committee. They heard arguments saying, well, they did all the right paperwork, we should just let them do it. And they moved forward with that. So what comes before us today is this is granting an appeal which would allow all which would allow this particular project, but sets the precedent for all of these projects. Because as I've talked to the city attorney and I can have them come forward, you can't pick and choose. This is one precedent. We're going to decide how this moves forward one way or the other today, It's not about this project. It's about all the projects. And I can't go back to my constituents with five different projects pending in single-family neighborhoods and say to them, someone who lives on a cul de sac or wherever they live, that they're going to have to have a seven-story building next right next door to them for no fault of their own not because the city puts something forward that shouldn't have been put forward and it didn't go through the regular process. They're going to claim the developer is claiming that they're being that they're vested. Well, we as a body, we never approved "ED 1". This was not a land use policy that we as a body approved. This was a emergency powers that the mayor had rightfully so, where they were able to approve something to get it done quickly. But when you do something quickly, sometimes mistakes are made. And we have to be prepared to deal with those mistakes because otherwise, we're going to the consequences, the damage of those mistakes is going to be all of those neighbors, all of those folks who can't necessarily speak for themselves, who live next door, who their property values are going to get cut in half. They're going to have a big shadow over their place, all the rest when that was not the intent of "ED 1". And the planning is here and I want them to clarify this city attorney can clarify this, that that was not the intent. And maybe we'll start with that to ask planning, what what was the intent? Was that the intent of "ED 1"? I guess that's the first question I put out there.

**[00:04:39] Clerk**

Mr. Blumenfield, is there a motion? Is there a second to Mr. Blumenfield's motion to deny the appeal?

**[00:04:48] CM Blumenfield**

Mrs. Rodriguez Seconds.

**[00:04:50] Clerk**

Thank you.

**[00:04:51]**

And I should say, while there's of these seven projects, five are in my district. I believe one is in Mr. Rodriguez, District one, Mr. Padilla's district. But really, it's just luck. It could have been in any of your districts that you would have these projects popping up. It just happens to be luck that the developer who lives in or works in my area seized on this opportunity, was able to come together with five of these projects really quickly before we were able to rectify the wrong intent of the of or the mistake. So to planning department was the intent of ed is the intent of ed one to include single-family low-density residential areas.

**[00:05:32] Blake Lee (Planning)**

Hi, Blake Lee I'm. Principal city planner with the Los Angeles Planning Department. So what's before this body today is regarding the completeness of the project application, not the merits of the actual project itself, but whether or not the application is complete. So the Plum Committee at its meeting did recommend that the appeal be approved and upheld based on the Planning Department's recommendation report and the comments that we made at that Plum Committee hearing, we explained that the point at the point at issue is really a process issue. The department stated that an emergency the emergency order exists for a limited duration and is subject to regular renewal or termination. It is also subject to an explicitly authorized to include modifications to respond to changing parameters. The authority arises from the City Charter and Administrative Code rather than Title seven and standards policies and procedures adopted under municipal code provision or Title seven of the Government Code. So what that basically means is that based on the Department's recommendation, the Department stated that the "ED 1" emergency directive is not a standard policy or procedure under which a project could be vested.

**[00:07:00] CM Blumenfield**

It is not a standard.

**[00:07:01] Blake Lee (Planning)**

It is it is not. So based on the department's recommendation report to Plum, the department stated that it is not "ED 1" An emergency order is not subject to vesting because it is it derives from the city charter. It does not derive from Title seven, which includes the zoning code. So that's the standards, policies and procedures, rules and regulations under which a project can vest.

**[00:07:27] CM Blumenfield**

So to support the Department's position on this, what the Council would need to do is to deny the appeal. Is that correct?

**[00:07:36] Blake Lee (Planning)**

That's correct.

**[00:07:37] CM Blumenfield**

Okay. Thank you.

**[00:07:42] CM Harris-Dawson**

Mr. McCosker.

**[00:07:46] CM McCosker**

Thank you very much. So just to be clear, I was going to just ask about the vesting rule is my it would be my belief and opinion that an executive directive is not something ever that a person could rely upon, that any entity could rely upon for a vesting. Right? Now, again, not an ordinance, not a policy, not a rule that could create a vesting. Is that what I just heard?

**[00:08:10] Blake Lee (Planning)**

That's correct.

**[00:08:12] CM McCosker**

Now, does that mean that the logical conclusion is that the appeal cannot be granted? Or does that mean on a case-by-case basis, such an appeal could be granted? In other words, I would be of the mind that because of what you said, that as each case comes forward, there are going to be evaluated on their facts, their circumstances, the surrounding community, all of the issues, and not on a rule that a developer is telling us that because they got their application in and complete before the executive directive was modified, that we are then stuck with a vested right.

**[00:08:49] Lisa Webber (Planning)**

This is Lisa Weber with the City Planning Department. I would say that whatever decision is made today by the City Council for any future pending appeals, there are a handful of projects, as Council member Blumenfield indicated, that did come in that did submit applications. We do have two additional pending appeals because this is an issue related to process. We would want to look consistently across all of these projects.

**[00:09:21] CM McCosker**

Well, why wouldn't a consistency be looking at the unique facts and circumstances that surround each project if in fact this project is one where a council member says, I know my district, I know my district better than anybody else, here are the facts and circumstances. Here's the reasons why not because I'm relying on vesting, not because I'm handcuffing handcuffing the rest of the council. I'm relying upon my knowledge and my understanding of the community and what I want to see. And I'm urging you to approve this appeal. Why couldn't the same be true for my colleague, Mr. Blumenfield, who comes forward and says because of the surrounding neighborhoods, because of the pattern of the property, because of the traffic impacts, because of whatever, I'm not putting words in his mouth, Why are you telling me first that there's not a vesting and then you're telling me that for some reason I that each appeal has to be considered the same when the clearest thing in the world is that every single property is unique.

**[00:10:15] Lisa Webber (Planning)**

So Council member McCosker Lisa Weber with City Planning. The matter that's before us is really about the process. It's really about whether or not the application to even move forward through the Planning Department entitlement process. It's really a decision as to whether these processes will be administrative or discretionary in nature. It's really not about the particulars of each individual project or the property or which council district it's located in.

**[00:10:44] CM McCosker**

Well, why wouldn't it be the case then? And I will sit down. I might speak again. Why wouldn't it be the case then, if there's no vested right that we look at the particular property in question and say, he re we got you got your application in. When the mayor's unintended consequence was that an R-1 property could apply for such a right, we are going to let you abide by those rules because we are exercising our discretion. And we're saying that, in fact, your application was complete. You can move forward and in another circumstance, say because you don't have a vested right, the rules changed, the rules have changed and you are not vested. And we are going to apply that set of rules to you. Why couldn't we do that? I want to be very clear. I want to support my colleague and I want to support my colleague. And are you telling me I can't do that?

**[00:11:35] Lisa Webber (Planning)**

I think the council has the discretion to consider appeals as they come before this body.

**[00:11:42] CM McCosker**

And the one thing that constrains us from doing so is the vested right. And we're saying there is no vested right here. One of the things that does that to us is the vested right. And we are saying there is no vested right here.

**[00:11:54] Lisa Webber (Planning)**

That would be the decision of the council today.

**[00:11:56] CM McCosker**

That's really my that will be my selection. Thank you.

**[00:12:01] CM Harris-Dawson**

Council. Council Member Yaroslavsky.

**[00:12:08] CM Yaroslavsky**

Thank you. So just to be clear, my understanding is that the State's Housing Accountability unit issued a letter saying that this appeal met the testing requirements. Can you talk a little bit about that letter and how what sort of whether that controls or how that weighs into the decision on whether or not vesting happened here?

**[00:12:29] Lisa Webber (Planning)**

Yes. This is Lisa Weber with City Planning. We have been in communication. We've had a number of phone conversations and dialogue with the state agency. We've a number of the applicants that have filed appeals have also reached out to the state agency for their technical guidance. They did submit a letter to the Department of City Planning and is their position that the executive directive one, would constitute a mandate? I could read a portion of their letter here that it would be encompassed as any other rules, regulations, requirements, requirements and policies of a local agency that all that one would be captured under the vesting status through the Housing Crisis Act. And so their technical opinion is that 81 does have vesting status. We did consider this. We worked closely with the mayor's office looking at the intent of executive directive one. We also work closely with our city attorney's office, and we've come to a determination that ED 1 does not carry vesting status.

**[00:13:49] CM Yaroslavsky**

And how would the letter issued by the state play into any pending litigation? Would it be persuasive or dispositive? Or.

**[00:13:58] Lisa Webber (Planning)**

That may be a better question for the city attorney, but I would imagine it would be a concern. It was certainly a consideration as part of the Plum Committee meeting last week.

**[00:14:10] CM Yaroslavsky**

Okay. Can we get the city attorney to opine on that?

**[00:14:23] Adrian Khorasani (CA)**

Adrian Khorasani City Attorney's Office. So the opinion by HCD would be under case law persuasive at most not binding. There is sufficient case law on that. They are the body who enforces the application of state regulations against municipalities. But the courts would have to consider the context in which their opinion is being considered.

**[00:14:56] CM Yaroslavsky**

So we don't know. It's persuasive.

**[00:14:58] Adrian Khorasani (CA)**

And it could be argued.

**[00:14:59] CM Yaroslavsky**

Our word against the state's letter. Okay. Thank you.

**[00:15:03] CM Harris-Dawson**

Thank you. Council member Rodriguez. Council member Krekorian.

**[00:15:10] CP Krekorian**

Thank you very much, Mr. President. And I am. Very appreciative of Mr. Blumenfield's motion and his concern about what may come in the future in his district. But I just want to reiterate that what's before us today is not that what's before us today is the completeness of an application for a particular project. There may be impacts that come in the future, but that is not before us today. What's before us is a discrete question of whether or not this appeal should be granted and whether or not this file is complete. And so I want us to try to focus on that question. And that's what the Plum Committee focused on, and that's why we have the recommendation that's before us today. But to I don't want this issue of that council member Yaroslavsky just raised to slip past us because according to the California Department of Housing and Community Development interpreting the California law that governs this area, the central question between the city and the applicant is whether an effect an executive directive is is an executive director of one of the rules, regulations, requirements and policies that vest upon submission of a complete preliminary application. According to the Housing Department, the answer is yes. Government Code Section 65941.1 vests the ordinance, policies and standards, in effect, when the application is submitted subsequently, maybe there could be changes made, but the vesting happens when it is submitted. That's according to the government, the California State Housing Department interpreting California state law. Now, if that weren't enough, there was actually a letter issued by planning, was there not, that indicated that this project that there were vesting had taken place?

**[00:17:31] Lisa Webber (Planning)**

Yes, we conducted a pre-application process that's called for by the Housing Crisis Act that does establish vesting status. Okay. We did that for nine projects. Nine applications prior to the clarification of ED 1.

**[00:17:53] CP Krekorian**

Yeah. So I'd be very concerned about the city taking a position where the city planning Department indicates these rights are vested and then later the City Planning Department changes its position and says these rights are not vested. Now, Mr. McCosker raised this point. Does that is vesting necessarily the result of the executive order? And there seems to be a feeling that maybe it isn't. But in this case, that representation was made and that's what we're voting on before us today. So either there is no vesting under an executive directive, which I would be deeply concerned about, the impact that would have on the other 7000 units of affordable housing that have already been moving through this process because of the mayor's executive directive or there is vesting in this case. That's what the Planning Department represented to this particular developer of this 100% affordable project with no government subsidy. So folks, if we really do believe in, you know, the need to develop more affordable housing, if we really do believe that we have a housing crisis in Los Angeles and we are concerned about how expensive it is, this is a 100% affordable project that's 100% privately financed without any subsidy from this city involved. Right. That is the nature of this project. Okay. And in addition to that, if it weren't enough that there were vesting, there was a representation of the city planning Department indicating that this developer is vested with these rights. If it weren't enough that the State Housing Department also says that this developer is vested with these rights, if it weren't enough that the state law alone was enough to, you know, basically make this a by right project, then in addition to that, council member Rahman went to the developer of this 100% affordable housing project and had and secured through negotiation all sorts of concessions from the developer to help to alleviate the impact of this project, none of which the developer was required to give, none of which were the developer was required to give it all. The developer could have said "thanks, council member, but we're building". But because of the work that council member Rahman did, she secured additional mitigations relating to this project. So I just don't see how we can, you know, in good faith, turn our backs on this opportunity to build a 100% affordable project that our planning commission already said was vested, that the state already said is vested. That doesn't cost the city a dime and is entirely consistent with both the state law and the mayor's executive directive. So there may be concerns about things that are coming down the pike. I understand that. Well, maybe there are solutions that we can deal with in the interim, Maybe not. I mean, to Mr. McCosker's point, if there is no vesting, then we deal with each one of these situations differently. If there is vesting, then there's only one vote that we can cast today. So either way, the vote that we cast today, whether there's vesting in which our vote is required or if there's no vesting, in which case we should just look at this project without concern about future projects. Either way, your vote today must be to approve this project moving forward. So I'd respectfully ask and very respectfully, Mr. Blumenfield, very concerned about, you know, the situations that you have raised. But that's not before us. And I'd ask that we support Council member Rahman on this.

**[00:22:14] CM Harris-Dawson**

Thank you so much. Councilmember Rodriguez.

**[00:22:18] CM Rodriquez**

Thank you. So thank you, Mr. Blumenfield. And I think there's been a really wonderful, comprehensive dialogue that's been addressing all of the multitude of concerns here. And while we can appreciate that. There might have been one developer that is making accommodations in good faith. We also know that the discretionary vesting that was provided was based on this ED 1, Correct? And so then by making this discretionary decision to support that, even though that we know you're essentially going to be enabled to continue to go down that path with every future project, whether or not we're able to secure any concessions potentially, if necessary, with any other developer? Correct.

**[00:23:10] Lisa Webber (Planning)**

If the council chooses to uphold the appeal, the process will be administrative in nature.

**[00:23:18] CM Rodriquez**

Correct. So you would act consistently in the same manner that provides all the vesting without whether or not we secure any concessions or anything that makes improvements to the project, correct?

**[00:23:29] Lisa Webber (Planning)**

Yes, we would. Okay. The planning-

**[00:23:31] CM Rodriquez**

So and yes. So the answer is yes. And so I can appreciate that perhaps we can look further down the road to potentially see how we might change that. But the process is going to be delineated here today by this action for all future projects. And I think, you know, again, we understand that that was not the mayor's intention and there was a correction that was made. And I know. Do we want to? Mr. Keller, would you like to come to the table, please? Change your hats for a minute, but.

**[00:24:11] Kevin Keller (Bass Rep)**

Thank you. Kevin Keller, Senior Advisor to Mayor Bass.

**[00:24:14] CM Rodriquez**

So can you please provide some guidance on this process in one and the discovery that was made subsequent to its initial introduction?

**[00:24:25] Kevin Keller (Bass Rep)**

Sure. And I want to thank the Planning Department. This is a very unique set of facts in front of us. So appreciate everyone's work on this. Just some high-level overview. The mayor did issue executive directive one in December of last year. There was a state law change in January that is being utilized here, which is understandable. The intent of ED 1 was to streamline development on parcels already zoned for multifamily development. Parcels that would comply with the zoning. There were regulations saying no zone changes, no general plan amendments, no variances. These qualifying projects that would be 100% affordable would not require hearings. Not require environmental analysis. Not be subject to appeal. And I think we have some numbers on those. The success of that program as a whole. In June, the mayor did issue a revision and a clarification that single-family properties were not eligible. And I think that's been understood. So we have a limited subset of materials here that started their application prior. It is the although the mayor does believe this project is ineligible for Ed one, the City Planning Department has stated that there are pathways forward for this project and other projects here via applications for density bonus entitlements to be heard by the City Planning Commission. So.

**[00:25:42] CM Rodriguez**

So then to clarify, it could still potentially move forward irrespective of our decision today.

**[00:25:49] Kevin Keller (Bass Rep)**

Yes, the state laws are in place for projects such as this. The question today is really a procedural one, correct? Does it go through the administrative process under executive directive one or would it go through our standard review process, which is normally entails a hearing before the City Planning Commission?

**[00:26:05] CM Rodriguez**

Okay. Thank you. And so thank you for that. Thank you for that. Again, I don't believe anybody here on this around this horseshoe is looking to slow progress when it comes to affordable housing. I can speak very specifically to my district and the number of units I know, Mr. Harris Dawson. There are a number of us that go through great lengths to accelerate that process and have and exercise that in our ten years. But this is about our procedural approach to how we do that unilaterally and whether or not we enable the exploitation of this moment in time before this correction was made. And so the decision that we're making today is more about whether or not we actually retain that, because they've already told you the decision that we make today gives them the clear instruction about how they were perceived going forward. So and there's nothing that will essentially obstruct if Ms. Rahman wants to continue to full throttle on this, there's nothing that stops her for that. If that's what she chooses. But for the balance of this city and what we want to do with respect to our own districts, I think it's important for us to retain that process in the procedure as we're exercising land use decisions with respect to with respect to ED 1. And so thank you, Mr. Keller. I appreciate that. Colleagues, I ask that you support Mr. Blumenfield's amendment. And and I want to make sure that we are going in this clear-eyed that we don't enable the exploitation on a case-by-case basis for those that actually got in under this window. Thank you very much.

**[00:27:44] CM Harris-Dawson**

Council Member Park.

**[00:27:47] CM Park**

Thank you, Council President. And thank you to my colleagues for the questions and the debate and to everyone at the table who's been willing to help guide us in this decision. At the end of the day here, I agree with our mayor and my colleagues. What is before us is not a disagreement over whether to support or oppose new housing. Rather, this is a disagreement over the process that was used to achieve that under a very unique set of circumstances. Councilwoman Raman, I support you in your efforts to bring more housing online. And as the council member for your district, I trust that you understand where density is most appropriate and what your constituents need and expect from you. My constituents in CD 11 also support the development of good, affordable housing. But with that said, I also hear the concerns of Council member Blumenfield and Councilwoman Rodriguez about the precedent that today's action would have on their own ability to involve the local community and shape similar proposals in their districts. Those concerns about local community engagement and the ability to have a seat at the table in discussions about densification and developer concessions are concerns that I share personally and that I know matter to my constituents in CD 11. Building a seven-story building without adequate parking in an R1 single-family neighborhood without any community process is an absolute non-starter for me and my constituents, and it's not a precedent that I am willing to set here today. And for anyone who may be willing to criticize this vote or claim that it's anti-housing, let me be clear opposing this appeal doesn't stop the project. It just places it on an alternate course for approval. That would give the community an opportunity to be heard and the council members a seat at the table. In discussing those potential concessions. We aren't turning our backs on housing and we aren't saying no to good, affordable development. But with all due respect to planning, mistakes are made and we need the ability to correct them in real time when that happens. So for that reason and many more, I support denial of the appeal.

**[00:30:29] CM Harris-Dawson**

Councilmember Yaroslavsky.



**[00:30:32] CM Yaroslavsky**

Thank you. So I'm going to be voting yes today in support of the appeal. And I want to say why. My vote is largely centered on the fact that if we deny this appeal today, we are very likely going to lose in court on this project and the other projects that are in a similar position. And it's going to cost taxpayers millions of dollars we cannot afford to lose. As we discussed earlier, the state of California Housing and Community Development Housing Accountability Unit has made their position clear on this matter that Ed one does constitute a policy under which these projects are vested and our own planning department initially said so as well. I want to be clear, though, that my vote isn't a tacit agreement that this is an appropriate use of ed1 and how it was intended to be used. I think that the mayor has made that clear. But while this project might not have been the intent of ed1, I don't think denying this appeal is a risk that we as a city should be taking, considering the massive legal exposure that we're going to be putting the city in by doing so. So I don't like that we're in this position, but I also think that we're very likely to lose in court. It's going to cost us a lot of money. And in the meantime, we're slow walking hundreds of affordable housing units at a time when we desperately need it. Is this the right place for it? I leave that up to my colleague whose district it's in, but I don't know how we can deny the appeal given what we've gotten from the state of California. And I think that it's going to end up being problematic for us financially and otherwise. Thank you.

**[00:32:05] CM Harris-Dawson**

Council member Blumenfield.

**[00:32:08] CM Blumenfield**

Thank you and appreciate all the discussion from my colleagues. Although our city Attorney, I'd like to bring our city attorney up because my understanding from our city attorney is that we can deny this appeal and that we are in good legal standing to do that. So I'd like us to understand that question, because I think it's a very dangerous precedent to allow a mistake like this to create a vesting. Right. But the reality is that this will be tested in court one way or the other. If we deny the appeal, the developer will likely sue. And if we don't deny the appeal, then the homeowners are going to sue. And the and I don't just mean the homeowners of this project. I mean all of all of the projects. And I'd rather I'd rather have that, you know, that legal issue with the developer and not with the homeowners. In terms of just a couple of quick points. I mean, talking about the mitigation, I'm glad that there was some concessions that were made, but none of that's guaranteed. It didn't go through our process. So a voluntary mitigation, I hope that and that they're all going to be given, but there's no guarantee of that. And then certainly, as Ms. Rodriguez pointed out, on the five projects that are in my district, I have once we make this move and this becomes a procedural issue, I have no leverage to get any concessions at all. They're going to be able to just build a seven-story building in a single-family area. And I wish, as Mr. McCosker said, that we could treat them differently. But as I understand it, the facts, we don't get to talk about the facts on the ground of the project. What's before us, as Mr. Krikorian said, is the completeness of the application. So it's really the question before us is a process issue. It's not about the project. If it was about the project, then I would feel like I'd have more leverage to to go after those other ones that are in my district, or at least work with them to make them good. But my fear is that this is a procedural. What I'm hearing too, is this is a procedural question. And once we make once we make that decision, how would we treat other ones differently? Because then we'd be in the position of saying, well, this project, we like it, so we're going to give you this procedure. But this project, we don't like it, so we're going to give you a different procedure and you can't do it based on what's on the ground. So my concern with that is and maybe I'll get planning our city attorney to confirm that, because if there was a way to do it, I'd be open to what Mr. Mcosker was suggesting. But I don't know if the department can speak on that. Do you see any way that we could have different procedures for different projects moving forward?

**[00:34:48] Vince Bertoni (Planning)**

Thank you. Councilmember Blumenfield Vince Bertoni Director of Planning. I do not. So whatever I think that these were all similarly situated applications. And so because it's actually may seem nuanced, but it's a simple, simple decision you're making. It's under executive directive one. Understanding was based upon an emergency order. Does it vest or not? And that's just a simple one. So whatever you decide today, we'll I don't see any other way but applying to all the other similarly situated applications and there's around 8 or 9 of those.

**[00:35:19] CM Blumenfield**

So so but we are making that vest. I know the state has some letter, but the city attorney says that letter doesn't doesn't mean that it's vested. So I'm hearing differences. I'm hearing the city attorney say you're not vested. I heard the planning department say we're not vested. It's going to go to court to determine this vesting thing. I don't want to give that. I don't want to give the boost to that vesting decision that our mistakes make that. And if we make this decision today and we don't deny the appeal, we are going to basically give up on that vesting question as it moves to court.

**[00:35:53] Vince Bertoni (Planning)**

I think for our standpoint, as the department, that decision will be made by the city. If that's because I think it's under your authority.

**[00:35:59] CM Blumenfield**

That's the decision we're making today.

**[00:36:01] Vince Bertoni (Planning)**

Right.

**[00:36:03] CM Blumenfield**

Okay. So the decision that what is on the table before us, to be clear, is whether or not we want to grant a vested right simply because we made a mistake. And think about what that precedent means moving forward for other planning decisions or other other changes that we might make that creates the vesting, the vested interest. I don't think that's something we can afford or should make that concession. If the courts go down that road, let the chips fall where they may. But I urge an aye vote on the denial.

**[00:36:35] CM Harris-Dawson**

Thank you. Mr. Blumenfield. Very quick question for the Planning Department, following up on Mr. Blumenfield's comments. And I appreciate everybody's participation in this conversation and rich discussion. Is it your contention that if you treat the rest of these projects as if they are vested because of this one vote today if you as a department decide to do that, those projects move into a place where they cannot be appealed for any reason?

**[00:37:11] Lisa Webber (Planning)**

If those projects would be processed administratively. And an administrative process means that the Department of City Planning would be conducting a compliance review based on objective zoning standards. There would be no CEQA analysis and there would be no ability for an appeal. There would also be no public hearing before the City Planning Commission.

**[00:37:33] CM Harris-Dawson**

Got it. Thank you so much, Ms. Raman.

**[00:37:37] CM Raman**

I had a question. How would this impact all of the other 81 projects, not the ones that are under the?

**[00:37:44] Vince Bertoni (Planning)**

I don't believe there would be. So the only ones that would be impacted were the ones that have similarly situated, and that's the ones that have been detailed.

**[00:37:51] CM Raman**

But why would the why would this particular piece of ED 1.. So ED 1 was the rule then. ED 1 changed slightly. And you're saying that under that period of Ed one, the projects approved under that period, which because you did send out a letter approving this under that period because it's ED 1, they don't have vesting rights. Why wouldn't all of the projects that are under ED 1 also not have vesting rights? I'm kind of confused. Like wouldn't every project approved under ED 1 now be subject to appeals challenges?

**[00:38:27] Vince Bertoni (Planning)**

Now this this is the other ones that are similarly situated are regarding the change in ED 1 which is the single family.

**[00:38:33] CM Raman**

No, I understand. But when this was initially submitted, ED 1 included single R-1 and then it changed.

**[00:38:43] Vince Bertoni (Planning)**

All right.

**[00:38:44] CM Raman**

And so you're saying because it changed suddenly the capacity of ED 1 at that time to confer vesting rights cannot be upheld? I'm it just doesn't make any sense to me.

**[00:39:00] Lisa Webber (Planning)**

An executive directive one was clarified by the mayor's office, it spoke specifically to this issue of the single-family zoning.

**[00:39:09] CM Raman**

I know, but that was that was afterwards, right?

**[00:39:11] Lisa Webber (Planning)**

So that was it was a very narrow clarification that was made. And as a result of that, those projects that came in that were R-1 zoned or more restrictively zoned no longer fully complied with ED 1.

**[00:39:28] CM Raman**

But it did comply with ED 1 as it was written initially.

**[00:39:31] Lisa Webber (Planning)**

At the time. That's correct. So but it was it was the with the guidance of the mayor's office, it was never their intent to capture that level of zoning.

**[00:39:44] CM Raman**

So I understand that it wasn't their intent, but that was the rule as it was written, right? Like the developers are not exploiting a loophole. They were following the rules as they were written at that time in order to submit a project that they felt met the guidelines and the planning Department also responded to them and said that they met the guidelines at the time, right?

**[00:40:05] Lisa Webber (Planning)**

That's correct. I would say that ED 1 was really silent to this issue of a single-family residential zoning. And because it was silent to it, it needed that clarification. And for that reason, these projects did come in. They did go through the SP 330 Housing Crisis Act Pre-application vesting review process and did secure vesting status prior to that clarification taking place.

**[00:40:36] CM Raman**

Okay. Mr. McCosker, did you have an additional question?



**[00:40:39] CM Harris-Dawson**

We got a few more speakers on the queue. Ms. Raman, we'll come back to you before we close. Councilmember Padilla.

**[00:40:48] CM Padilla**

You know, I just wanted to say that one of I'm hearing two different things. One thing from the planning department, and it feels like it's a different thing from the city attorney. And I think that's the biggest frustration with decisions related to planning. I wanted to make sure that if I supported this out of planning, it would not affect how I can interact with the project that's coming to my district. But from what I'm hearing today, I'm getting the impression that if we support it, it will reduce the ability for me to truly engage with the developer for the project coming to my district. Therefore, I would rather much rather support the affordable housing plan that's coming to my district through the traditional process than this. I just wanted to say that.

**[00:41:38] CM Harris-Dawson**

Councilmember McCosker.

**[00:41:43] CM McCosker**

So I too am sort of troubled and confused about the different opinions I'm hearing just today, but also what appears to be the different opinions and advice over time. My report says the Planning Department argued at the appeal that the appeal should be denied. And for this reason, the executive directive issued by the mayor pursuant to a declared emergency is not an ordinance, policy or standard in which a project application can vest. That this is a policy and it is not something that can create under the law a vesting. What I'm hearing now, in part, although I'm hearing a lot of different things. What I'm hearing is that if we grant the appeal, suddenly we have changed all that and that if we grant the appeal, it's creating a vesting and it's creating a vesting across all of the mayor's executive directives and colleagues, I might be arguing at counter purposes with some of your arguments, but think about the significance of that. That a mayor's executive directive can create a vesting on land use. If that is the case, we're out of the land use business. We are out of the land use business. I want to grant this appeal, and I know the folks won't like that because I do not believe there is a vesting. I believe the council member understands her district and knows where we are at. And I also believe I do not believe that granting the appeal creates the vesting. It doesn't spring. This feels like Blazing Saddles where, you know, nobody move where the sheriff gets it. Why do we always do this to ourselves? Why do we do this to ourselves? We are not creating a vesting. We're granting an appeal. And I believe that we can consider, should there be an appeal in another district, we can consider the facts and circumstances then. Tell me whether I'm wrong, and I don't want and, by the way, I don't generally give away my vote because somebody, somebody on staff tells me I have to vote one way or the other. But tell me why I'm wrong.

**[00:43:53] Lisa Webber (Planning)**

That's something for the city attorney to address.

**[00:43:55] Vince Bertoni (Planning)**

Yeah, we can. Would you like to address?

**[00:44:08] Adrian Khorasani (CA)**

Adrian Khorasani, City Attorney's Office. So with regard to the vesting and the idea of precedent, I would say this. And I also just as a reminder, I'm in open session. We understand that there's litigation on either side, so I'll speak as openly as I can.

**[00:44:25] CM McCosker**

Okay.

**[00:44:27] Adrian Khorasani (CA)**

The Housing Accountability Act provides a right of action under government code 10904.5. So any decision that is made on subsequent appeals that may come before the council with similar facts, we'll need to have a record that each decision is not arbitrary and capricious, and it's based on substantial evidence. So because this is a procedural issue, I think what the Planning Department has expressed is in their view, the facts are similar based on that procedure. So it would be incumbent upon the Council in considering future appeals to be able to meet that legal standard.

**[00:45:20] CM McCosker**

Yeah. So it is what is the standard?

**[00:45:24] Adrian Khorasani (CA)**

Arbitrary and capricious and lacking in substantial.

**[00:45:26] CM McCosker**

So they would have to so if I were to say if I were to say in the CD 4 case that I felt that their application was complete and they can move forward, there might be a lawsuit, it might not be a lawsuit. If I were to say that their application was not complete and they were, they would have to argue that that was arbitrary and capricious on the part of the city council.

**[00:45:45] Adrian Khorasani (CA)**

Right. And I would hope that the city council would, in their deliberation, provide facts and evidence.

**[00:45:51] CM McCosker**

Or going back to Councilmember Raman's question, if we deny the appeal today, and presumably that would be because there is no vested right, then there is no vested right in any part of the mayor's executive directive. I get your argument that there are some similarities situated, but for the thousands and thousands of units, should there be any modification before the project has a CFO? No vested right. Those projects would exist without a vested right. We are. We are. I don't think it's I don't think it's entirely complete to say that we are only making a decision about seven similarly situated cases. We are making a decision or you are trying to put us in a position, you collectively that we are making a decision about every single project that's relied upon any executive directive by the mayor. Because there's no vested right or there is a vested right. And I'm just not buying that. I'm not buying that we are establishing a vested right by granting the appeal. Thank you.

**[00:46:57] CM Harris-Dawson**

Council Member Krekorian.

**[00:47:00] CP Krekorian**

Thank you, Mr. President. And thank you, Mr. McCosker. I think you've clarified the issue considerably. Members There's there's only two choices that are possible in this. Either the executive director created a vested right, in which case we have no alternative but to grant this appeal or it did not grant a vested right, in which case everything that Mr. Mcosker just said is true, and we can deal with each project independently. So to me, this this becomes a very easy call because if there is a vested right and the state agency in charge of enforcing the Housing Accountability Act is correct in in their interpretation of state law, and we're wrong about that. And we deny this appeal despite that vested right. Then the city is going to be exposed, as council member Yaroslavsky said, to considerable not only damages but actual state fines. In the hundreds of thousands of dollars. In fact, under the Housing Accountability Act, the city could be subject up to a fine of up to \$50,000 per unit. So if we're wrong about that vesting and we say we know better than the state agency that deals with this in interpreting state law. That's the risk that we face. But if we're if the position is correct, that No, no, an executive director, an executive directive does not create a vested right, then we can move forward today and we can take other actions with other projects. Or the mayor could further change her executive directive, or we could as a council take actions that govern the process by which those, you know, developments with non-vested rights will be approved. So to me, this is this is really a simple question. There is an appeal before us. If those rights are vested, we do not have the discretion to deny that appeal. We do not have that discretion as much as we might think it's a great idea. We don't have the legal discretion to do that. Conversely, if there isn't a vested right, then we don't have any of the concerns that have been expressed about precedential effect. We can deal with that as it comes. So again, I'd ask that you support the appeal and respectfully that we vote no on the amendment and yes on the underlying matter.

**[00:49:59] CM Harris-Dawson**

Councilmember Yaroslavsky.

**[00:50:01] CM Yaroslavsky**

Thank you. Just real quick. The city attorney's office. I have a question. Can we pass a motion in the future that requires that future projects, these eight other projects be appealable to provide Council member Blumenfield and others with the space to negotiate with the developers and have a more robust conversation going forward because we don't know whether or not vesting occurred, as council President Krekorian just said. But either way, it would be nice for the council members in whose districts these projects are located to be able to have the space to have that opportunity. And this might give us a chance to bring a motion that would allow for that.

**[00:50:41] Adrian Khorasani (CA)**

Well, Adrian Khorasani, city attorney's office, how the applications are going to be processed hereafter is within the discretion of the planning department. The council can make its intent and desire to establish that whatever happens today is not a commentary on vesting and is based on other factors. I mean that that can all be made clear in the record and that can be expressed to the director of planning. But the procedure in terms of the application is within the jurisdiction of the planning department.

**[00:51:31] CM Yaroslavsky**

Of which ordinance adopted by this body could change.

**[00:51:35] Adrian Khorasani (CA)**

Well, the process is under state law. Under the HRA and the Permit Streamlining Streamlining Act. And that's what's providing the course of things now for these applications. That's the distinction.

**[00:51:48] CM Yaroslavsky**

Okay. Thank you.

**[00:51:52] CM Harris-Dawson**

Council member Rodriguez.

**[00:51:54] CM Rodriguez**

Thank you. I just wanted to. Mr. Krekorian You indicated that, you know that with the mayor's executive directive, that she can amend it, right? So that we would have the ability to engage or amend as necessary? She did. And what we're grappling with right now is the fact that these handful of cases actually got in during a time which is exploitive of the opportunity before it was corrected, before it was more, you know, the guidelines were made more specific and clear. And so for that reason, I think it's really important that we continue to retain our ability to have these conversations and not and to engage in this process procedurally. There's not. I could you help me understand what further delays by if we were to deny what further delays would be caused if Ms. Raman chose to continue to support this project in the manner that it is? And Planning department. Could you give me a terms of a timeline? Because, you know, when people are making they're making decisions based on their fear in some respects that they think they're going to slow down affordable housing that has already been approved for. You know, what we're trying to do is retain procedural and some authority within our own discretion in these in this conversation. So my question is, given whatever stage this project and Miss Raman's district is in, what would what further delays would it cause to this project?

**[00:53:44] Lisa Webber (Planning)**

This is Lisa Webber with City Planning. So converting this case to a discretionary application that would go before the City Planning Commission and it's the final decision maker would also involve filing an environmental case. A CEQA required clearance would be necessary. We'd have to look at that as an infill project. What level of CEQA clearance would be appropriate? We would work with the applicant team and their consultants to do the technical studies. We would conduct a staff-level hearing, also advance this to the City Planning Commission for a hearing, and then the decision of the City Planning Commission, the CEQA for that would be appealable to the City Council through plum and full council. And so the process generally would take anywhere from nine, 9 to 12 months.

**[00:54:40] CM Rodriguez**

Okay.

**[00:54:41] Lisa Webber (Planning)**

Assuming an appeal would be filed on this and assuming that the applicant team would need time to do the environmental technical studies.

**[00:54:49] CM Rodriguez**

And where are the other projects in the queue? Just generally speaking.

**[00:54:54] Lisa Webber (Planning)**

The other projects, the other eight that do have vesting status that are on single-family or more restrictive zones are in a similar status. They all came in at about the same time. We do have two additional pending permit streamlining Act appeals that will be advanced through plum and full council.

**[00:55:16] CM Rodriguez**

I think, you know, for my district, for some of the others that are going to have the detrimental impacts and to have no ability to negotiate or engage. Again, there is one particular example where you have an individual that perhaps came to the table in good faith that has not been historically the case in places like my district, where I have many examples, where there has been exploitive development opportunities and this feels like another green light and fast track to doing that for those that got in under the wire. And we will be making a precedent-setting and directive to you by allowing this to happen or not. And so for the areas I can appreciate, for the areas that have historically failed to deliver on affordable housing, why I know I understand it's important, but unfortunately, what it does, it saddles the rest of us with an inability to have the discretion over some of these some of the developments in our own districts. And I think you've made that very clear by what we would obligate ourselves today based on the vote that we're taking. And so, again, colleagues, I'm asking that we support Mr. Blumenfield's amendment. I think it's really important. You know, there's a history of being consistently inconsistent when it comes to whether or not we exercise land use discretion. But the reality is that is the job of members of the city council and we have to make sure that we are making decisions that are in that make sense in the neighborhoods that we were elected to represent and that we retain that authority to do so. And so, colleagues, I ask that you support Mr. Blumenfield's amendment. Thank you.

**[00:57:11] CM Harris-Dawson**

Ms. Raman to close.

**[00:57:15] CM Raman**

Thank you all for this robust discussion. You know, I think I've been a very open and vocal supporter of ED 1 from the beginning. It's dramatically cut approval times for 100% affordable housing from more than six months to 47 days. And in nine months, more than 7000 units are in the pipeline across the city. ED 1 is what's known as a by-right process, meaning it doesn't need approval from any one council member or full council or from the planning commission. That's why it's able to cut down timelines. Taking discretion out of the process is why ED 1 has been so effective. And in my district we've seen projects that initially came in as for-profit projects, seeing the predictability that comes from ED 1 have actually re-filed as 100% affordable. That's how much predictability is valued by developers and I think really matters to us being able to increase affordable housing in the city. ED 1 did not initially include specific language about which zones and later was revised to exclude single-family or R-1 zones. Before that happened, a few projects filed because they met the terms of ED 1 at the time. This project also filed paperwork with the Planning Department in March to be vested under the state's Housing Crisis Act and among other things, the Housing Crisis Act locks in local planning and zoning rules at the time that a complete vesting preliminary application is submitted and that's exactly what this project did. I want to also explain another land use oddity here, which I know is frustrating for the residents who are here, but explains the size of this project. Pursuant to state density bonus laws, if a project is proposed to be 100% affordable development and it's located within a half mile of a major transit stop or is designated in a very low vehicle mile travel area, and in this case, the project actually meets both of those standards, it can qualify for greater density. The additional nuance here is that the underlying general plan land use adopted in the applicable community plan area allows for more base density than just one unit. And so this base density allows for more than five units. And then that then triggered state and local incentive programs around bonuses and density. I want to be clear borrowing language from Council President Krekorian on what we're voting on today. We are not voting on whether R-1 areas should have these projects on an ongoing basis. We're not voting on whether we think that this is the right process. We are just voting on whether the rules were followed when this project was initially submitted and whether or not a denial of this approval would withstand legal action. And the Department of Housing and Community Development Housing Accountability Unit did issue a determination that the application was complete and that the project is therefore vested. At my office's request, in addition to committing the City of Los Angeles enforceable, good neighbor construction practices, a commitment has been made publicly and on the record by the developers to make adjustments to the project in response to the neighbors. Righteous concerns, including moving locations of balconies to be internal to the site, providing publicly accessible open space, providing a clear means of communicating concerns to the developer and they've also committed to attending neighborhood council meetings to update the community on the progress of the projects and taking feedback, as with any project of this nature. The project will also have to complete a traffic construction plan that will consider circulation on site and ingress egress that will allow another opportunity for community concerns to be addressed. I understand that approving this appeal may set a precedent for other projects that were filed under ED 1 before its revision and are also being appealed. But moving to deny projects that have followed the law also sets a really bad precedent, a dangerous one for the city of Los Angeles. If we put out a message that not only are we going to deny 100% affordable projects that followed the rules that we are so committed to doing so that we will retroactively go back on our planning regulations, take projects that followed the law and deny them, and in doing so, expose ourselves to significant legal liabilities. That message will take our already disastrous housing crisis and deepen it further. Working with or in the city of LA requires that people can trust us. We lay out the rules and if you follow them, you can expect a reliable process. Recent corruption scandals that have rocked the city may seem unrelated to this, but they are very much related. Those scandals happened because we set a standard here that that said that the rules we lay out as a city planning rules, contracting rules, ethics rules don't actually mean anything. As electeds, we are saying all we have to do is talk to me and win me over, either with political threats or political favors or with cash under the table. I don't believe that we honestly can continue to perpetuate this environment and expect to solve our housing crisis. We can't stand in front of our constituents and tell them honestly that we're doing everything we can to address this crisis. And so I would strongly recommend that we uphold the Plum Committee's decision in the Plum Committee and respectfully deny Councilmember Blumenfield's amendment. Thank you.

**[01:02:47] CM Harris-Dawson**

All right. Thank you so much. Madam Clerk, what's before us?

**[01:02:55] Speaker17**

The first vote should be on motion Blumenfield-Rodriguez to deny the appeal, sir.

**[01:03:03] CM Harris-Dawson**

All right. So Blumenfield-Rodriguez is before us. Mr. Blumenfield is asking for an aye vote. Ms. Raman is asking for a no-vote. Open the roll. Close the roll. Tabulate the vote.

**[01:03:23] Clerk**

Five ayes. Eight noes.

**[01:03:25] Clerk**

This motion fails.

**[01:03:28] CM Harris-Dawson**

All right. What's before us?

**[01:03:29] Clerk**

The next vote is on the Plum Committee committee report, and that is to grant the appeal, sir.

**[01:03:38] CM Harris-Dawson**

All right. This item is before us. Let's open the roll. Close the roll. Tabulate the vote.

**[01:03:49] Clerk**

Eight ayes, five no's.

**[01:03:53] Clerk**

The plum. The plum report is adopted, sir.

**[01:03:57] CM Harris-Dawson**

All right. Thank you. What's next on our agenda?

**[01:04:00] Clerk**

Next is item 39.

END OF TRANSCRIPT



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