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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**CALIFORNIA HEALTHY
COMMUNITIES NETWORK,**

**Petitioner/Plaintiff and
Respondent,**

v.

CITY OF ANTIOCH,

Respondent,

WAL-MART STORES, INC.,

**Real Party in Interest and
Appellant.**

A134370

**(Contra Costa County
Super. Ct. No. MSN10-1804)**

Wal-Mart Stores, Inc. (Wal-Mart) sought to expand the square footage and operations of its store in the Williamson Ranch shopping center in Antioch. The City of Antioch (the City) approved the expansion without requiring a supplemental environmental review under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.)¹ Relying upon *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924 (*San Diego Navy*), the City concluded the proposed expansion was consistent with a development plan that had

¹ All further statutory references are to the Public Resources Code unless otherwise specified. Regulations implementing CEQA are referred to as “Guidelines,” and are contained in the California Code of Regulations, title 14, Division 6, Chapter 3, starting at section 15000. All Guideline references are to this regulatory scheme.

already been reviewed under CEQA, and was subject only to a design review that did not encompass environmental issues.

The City's decision to forego environmental review was challenged in a petition for writ of administrative mandate filed by California Healthy Communities Network (CHCN), an unincorporated association of environmental, faith-based, civil rights, and labor organizations. (Code Civ. Proc., § 1094.5.) The superior court granted the petition and issued the writ, interpreting the Antioch Municipal Code to grant the City the power to address environmental issues as part of its design review process. We reverse.

I. BACKGROUND

In 1982, the City adopted the "Southeast Antioch Area General Plan/Specific Plan (Plan), governing the residential and commercial development of over 5,000 acres of annexed land, and certified a master environmental impact report (EIR). (§§ 21061, 21100, 21100.1, 21157.) The master EIR for the Plan describes the environmental review necessary for future projects within the Plan's area: "5.5 ENVIRONMENTAL DOCUMENTATION [¶] The Master Environmental Impact Report certified for this Specific Plan is meant to apply to future projects in the area. The following policies will guide the determination of need for additional environmental assessment: [¶] A. An environmental assessment will be required for Specific Plan amendments [¶] B. No additional environmental information will be needed by the City for development projects that are consistent with the adopted plan, consistency to be determined by the Director. [¶] C. If it is determined that a development proposal will have environmental impacts not originally addressed in the Master EIR, then additional environmental study or mitigation may be required."²

In 1998, the City approved the Williamson Ranch shopping center project as a development on about 22.5 acres of land within the Plan area. The project was described as "a commercial shopping center with a gross floor area of up to 245,100 square feet

² We grant Wal-Mart's April 27, 2012 request for judicial notice of documents pertaining to the General Plan/Specific Plan and the accompanying EIR.

intended to serve the retail needs of southeast AntiochThe proposed site plan for the project consists of five separate buildings, including a major retail tenant, a potential supermarket, two buildings with shops, and a pad suitable for a fast food restaurant.” A mitigated negative declaration (MND) evaluated environmental issues specific to the Williamson Ranch shopping center and incorporated the 1982 EIR by reference. The MND was adopted by the City Council, along with a final development plan, a use permit, a parcel map and development standards for the shopping center as a whole.³

The City’s adoption of the final development plan was subject to the following conditions: “58. That all conditions of the use permit and design review approvals for this project be complied with (UP-98-9/A), except as otherwise provided for in the project’s Development Standards. [¶] 59. That separate design review approvals be required for each component of this project, prior to construction. Each of these components shall comply with the master use permit for this project. Any modifications to building footprints shall be considered at the design review stage.”

A Wal-Mart store was built in the shopping center and began operating in 2000. In 2005, Wal-Mart sought to expand the store by over 73,000 square feet (from its existing 141,498 square feet) to accommodate grocery sales in a 24-hour operation. Section 21166 provides, “When an [EIR] has been prepared for a project pursuant to this division, no subsequent or supplemental [EIR] shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

[¶] (a) Substantial changes are proposed in the project which will require major revisions

³ A “negative declaration” is a “written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an [EIR].” (§ 21064.) A “mitigated negative declaration” is “a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (§ 21064.5.)

of the [EIR]. [¶] (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the [EIR]. [¶] (c) New information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available.” The City took the position that this section required a supplemental EIR on the proposed Wal-Mart expansion due to changes in circumstances since the 1998 MND was certified. (See *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1071-1073 (*American Canyon*) [§ 21166 applies to project changes following agency’s adoption of an MND, as well as an EIR, and was triggered by plan to build a 24-hour supercenter that had not been analyzed in the previous MND].)

A draft EIR regarding Wal-Mart’s proposed expansion was prepared and was certified by the City’s Design Review Board, which also approved the final design. CHCN appealed this decision to the City Council, and in 2007, the City denied certification of the EIR for the following reasons: (1) it understated the square footage of the proposed expansion; (2) it did not adequately address the issues of economic impact and urban decay (which could result from the closures of other grocery stores due to competition from Wal-Mart);⁴ (3) it did not reflect that a proposal to operate 24 hours a day was contrary to current zoning requirements; and (4) it did not adequately analyze the project’s impact on traffic.

Later in 2007, Wal-Mart submitted an amended design review application which proposed to add only 33,575 square feet to the store and dropped the proposal for a 24-hour operation. A second draft EIR was prepared and was certified by the City Planning Commission (acting as the Design Review Board),⁵ which voted to approve the

⁴ A reasonably foreseeable indirect environmental impact, such as urban decay or deterioration, is within the scope of CEQA, even though economic and social impacts generally are not. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1182.)

⁵ Antioch Municipal Code section 9-5.2508(C) provides, “The Planning Commission shall assume all responsibilities of the Design Review Board as described in

expansion. CHCN appealed this decision to the City Council, which, on August 17, 2010, voted to deny certification on the ground that the EIR failed to adequately analyze the “significant urban decay impacts of the Project including but not limited to displacing close and convenient shopping near established neighborhoods and resulting traffic, noise and air quality impacts.”

In the resolution denying certification of the EIR, the City Council also directed its staff to consider whether an EIR was required for design review in light of the recent decision in *San Diego Navy*, in which the court held that a supplemental EIR was not required as part of a design review when the agency conducting the review did not have the authority to address environmental concerns that might be raised in such a report. (*San Diego Navy, supra*, 185 Cal.App.4th at p. 933-937.) After receiving briefing on that issue, the City issued an addendum to the 1998 MND, which analyzed the proposed expansion’s aesthetic impacts and determined that no further environmental review was necessary.

In the addendum to the MND, the City concluded that Wal-Mart’s proposed expansion was consistent with the 1998 Development Plan, meaning the only step remaining for the expansion to go forward was design review: “If a proposed use conformed to the Final Development Plan, Use Permit and Development Standards, no other approval is contemplated by these entitlements other than design review approval.” The City also concluded that under the relevant local ordinances, the scope of design review was limited to matters of design and aesthetics: “The City has determined that its discretion in reviewing a Design Review application is limited. Therefore, the scope of the City’s discretion would not extend to other potential Project impacts, such as off-site urban decay. Thus, the City should undertake the level of environmental review consistent with its level of discretionary authority. With this Project, the City has determined that its environmental review should be limited to its authority to address the Project’s aesthetic and design impacts, if any.” Because there were no substantial

Article 26, Chapter 5, Title 9 and all references to the Design Review Board in this Municipal Code shall be deemed to be [to] the Planning Commission.”

changes to the project in terms of aesthetics and design, there was no need for a supplemental EIR or MND to address the project's impact in that regard.

CHCN filed a petition for writ of mandate challenging this decision, arguing that the City violated section 21166 when it failed to prepare and certify a supplemental EIR for the proposed expansion. (§ 21168.) The trial court granted the writ. In a lengthy written ruling, the court concluded that Antioch's design review ordinance gave the Design Review Board the discretion to condition its approval of a design review application on off-site environmental factors that would be presented in an EIR, and not simply on design and aesthetic factors. Wal-Mart appeals.

II. STANDARD OF REVIEW

“Judicial review in an administrative [mandate] proceeding is limited to ascertaining ‘whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.’ (Code Civ. Proc., § 1094.5, subd. (b).) This standard governs our review of the City's compliance with CEQA. . . .” (*American Canyon, supra*, 145 Cal.App.4th at p. 1070.) In an appeal from an administrative mandate proceeding involving CEQA issues, we review the agency's action, not the trial court's decision. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426–427.)

III. DISCUSSION

Once an EIR has been certified or an MND adopted, there is a statutory presumption against requiring further environmental review of the same project. (*Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1049-1050.) Section 21166, previously quoted in full, prohibits an agency from requiring additional environmental review after the certification of an EIR or MND absent new information or changed circumstances. (See *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1397; see also Guidelines, § 15162.)

Changed circumstances do not in and of themselves require the preparation of a supplemental EIR. CEQA review, including the preparation of a supplemental EIR, is required only when an agency is undertaking a “discretionary” approval of a project. (*San Diego Navy, supra*, 185 Cal.App.4th at p. 928; *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479.) A discretionary approval “requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.” (Guidelines, § 15357.)

“ ‘The exercise of some discretion does not automatically qualify an agency action as a project subject [to] CEQA. To trigger CEQA compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to “mitigate . . . environmental damage” to some degree.’ ” (*San Diego Navy, supra*, 185 Cal.App.4th at p. 940.) “In the absence of such discretionary approval, the agency has no jurisdiction to prepare a subsequent or supplemental EIR. [Citation.] This jurisdictional limitation is consistent with the notion that it is nonsensical to require an agency to prepare a subsequent or supplemental EIR unless the agency has the authority to take action that would respond to any concerns that might be raised in the updated EIR.” (*Id.* at pp. 935-936.)

The interplay between design review and the need for a supplemental EIR was discussed at length in *San Diego Navy*, on which the City relied when it concluded no supplemental EIR was required. In that case, the City of San Diego certified an EIR and entered into a development agreement for the Navy Broadway Complex, which included a set of urban design guidelines governing the aesthetics of the project. (*San Diego Navy, supra*, 185 Cal.App.4th at p. 929.) The agreement required the developer to submit its plans to the Centre City Development Corporation (CCDC), a public non-profit corporation, to determine whether those plans were consistent with the design guidelines. (*Ibid.*) When plans were submitted to CCDC, it determined that no further environmental

review was required under CEQA. (*Ibid.*) This decision was challenged by an environmental organization, which argued that section 21166 required the City to prepare an updated EIR to address the project's impacts on numerous environmental issues, including greenhouse-gas emissions and climate change. (*San Diego Navy*, at pp. 930-931.)

The court of appeal disagreed with the environmental group, concluding that under the terms of the development agreement, CCDC's discretion was limited to determining whether the buildings that were part of the project conformed to the urban planning guidelines. (*San Diego Navy, supra*, 185 Cal.App.4th at p. 938, 940.) The discretion to make decisions about aesthetic issues did not give the CCDC the authority to make decisions about the project's potential impact on climate change. (*Ibid.*) Because CCDC lacked the discretion to address the environmental issues that would be raised in a supplemental EIR, the preparation of a supplemental EIR would be a " 'meaningless exercise.' " (*Id.* at p. 934; citing *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117.)

The development plan for the Williamson Ranch shopping center was approved in 1998, establishing the allowable square footage for the shopping center and contemplating a grocery store as one of the permissible uses. The City determined that Wal-Mart's second proposed expansion, which fell within the allowable square footage and called for the addition of grocery sales, was consistent with the plan. The environmental impact of the plan had been analyzed in the 1998 MND, and the expansion was therefore subject only to the design review approval required by Condition No. 59 of the plan. CHCN acknowledges that "the only discretionary approval required for the expansion was design review."

The question, then, is whether the City's Design Review Board (or the Planning Commission acting as the Design Review Board)^(see fn. 4.) had the authority to address environmental concerns that might be raised in a supplemental EIR, such as the issues of traffic congestion and urban decay that were cited in the 2010 draft EIR. If so, a supplemental EIR was required as a part of the design review process due to the changes

in the area surrounding the project; if not, the City properly concluded that no further environmental review was required. When determining the permissible scope of the design review to be conducted on the components of the Williamson Ranch shopping center, we look to the Antioch Municipal Code (AMC), which establishes design review procedures for the City.

“[T]he application of CEQA to a local ordinance is dependent upon the scope and interpretation of the local ordinance rather than vice versa.” (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1014-1015 (*Friends of Davis*), citing Guidelines, § 15002, subd. (i)(2).) The meaning and scope of a local ordinance is committed to the local agency in the first instance, and we give great weight to the agency’s interpretation unless that interpretation is clearly erroneous or unauthorized. (*Friends of Davis, supra*, 83 Cal.App.4th at p. 1015; *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1062 (*Santa Clarita*).) We conclude that the City’s construction of the design review ordinances was not clearly erroneous or unauthorized, and uphold its conclusion that the permissible conditions of design review approval are limited to issues of design and aesthetics. (*Santa Clarita, supra*, 197 Cal.App.4th at p. 1062.)

AMC section 9-5.2601 states, “The purpose of design review is to promote the orderly and harmonious development of the city, the stability of land values and investments, and the general welfare and to encourage and promote the highest quality of design and site planning to delight the user and others who come in contact with uses and structures in the city.” In *Friends of Davis*, the court concluded that similar language was “too imprecise and standardless” to delegate to the planning commission the power to reject a particular tenant as part of the design review process. (*Friends of Davis, supra*, 83 Cal.App.4th at p. 1014; see also p. 1012 & fn. 4.) We likewise conclude that AMC section 9-5.2601 is not sufficiently precise to give the Design Review Board the power to broadly condition a design approval on offsite environmental issues such as traffic congestion and urban decay due to the possible closures of competing businesses. To the contrary, AMC section 9-5.2601’s reference to the promotion of “the highest

quality of design and site planning” supports the City’s determination that design review is limited to design and aesthetics.

CHCN argues that more specific guidance can be found in AMC section 9-5.2704, which provides, “In approving a design review, use permit, administrative use permit or variance, the Planning Commission, Design Review Board, or the Zoning Administrator may impose reasonable conditions necessary to: [¶] (A) Achieve the general purposes of this chapter and/or the specific purposes of the zoning district in which the site is located, and/or to make it consistent with the General Plan; [¶] (B) Protect the public health, safety, and general welfare; and/or [¶] (C) Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties and/or in the surrounding area.” CHCN submits that this ordinance gives the Design Review Board the authority to require environmental remediation as a condition of its approval of a design review application.

The rules of statutory construction apply to the interpretation of local ordinances. (*Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 305.) We “begin by examining the statutory language, giving it a plain and commonsense meaning. [Citation.] We do not, however, consider the statutory language in isolation; rather, we look to the statute’s entire substance in order to determine its scope and purposes. [Citation.] That is, we construe the words in question in context, keeping in mind the statute’s nature and obvious purposes. [Citation.] We must harmonize the statute’s various parts by considering it in the context of the statutory framework as a whole. [Citation.]” (*Los Angeles County Metropolitan Transportation Authority v. Alameda Produce Market, LLC* (2011) 52 Cal.4th 1100, 1106-1107.)

AMC section 9-5.2704 applies to use permits, administrative use permits and variances in addition to design review. These processes are not interchangeable, and are handled by different divisions of the local government, so we must construe the ordinance with an eye toward the nature of the approval sought in a particular case. Section 9-5.2704 does not purport to expand the definition of design review, use permits,

administrative use permits, or variances, and a condition of approval is reasonable only to the extent that it relates to the function of the approval that is being sought.

AMC section 9-5.2704(A) authorizes any reasonable condition that ensures a project is consistent with the zoning and general plan applicable to an area. Thus, the Design Review Board could, for example, impose a height restriction as a condition of design review approval to insure that a building conforms to the relevant zoning laws and general plan. On the other hand, when a developer applies for a use permit or variance, the conditions imposed by the Planning Commission or Zoning Administrator might include restrictions on a business's hours of operation, even though such a condition does not pertain to a building's design, site planning, or landscaping and would not be a proper subject of design review. Nothing in subdivision (A) authorizes the Design Review Board to impose conditions beyond the scope of its design review function, simply because those conditions might be "reasonable" in the abstract or in connection with a different type of approval.

Nor do the other provisions of AMC section 9-5.2704 assist CHCN. Subdivision (B) of that ordinance states that the agency may issue a reasonable condition to "[p]rotect the public health, safety, and general welfare." This provision, though broad, must be read in connection with the particular approval being sought. Subdivision (B) is not sufficiently precise to grant the Design Review Board the authority to address environmental issues not pertaining to design and aesthetics. (See *Friends of Davis, supra*, 83 Cal.App.4th at pp. 1012 & fn. 4, 1014.)

AMC section 9-5.2704(C) authorizes conditions of approval that "[e]nsure [the] operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties and/or in the surrounding area." CHCN posits that conditions pertaining to the "operation" and "maintenance" of an underlying "land use" go beyond mere design and aesthetics, and could extend to off-site environmental issues such as traffic congestion and urban decay. Again, AMC section 9-5.2704 does not apply solely to design review, and must be construed according to the nature of the approval being sought. Ensuring that a property is operated and maintained in a manner that is

compatible with the uses of other properties is a consideration when issuing a use permit, administrative use permit, or variance, functions that are also governed by AMC section 9-5.2704. But that consideration does not logically extend to design review.

In short, AMC section 9-5.2704 can be reasonably construed as allowing only those conditions of design review approval that are logically related to design review. The City's conclusion that the Design Review Board has only limited discretion in this regard was not clearly erroneous or unauthorized. (*Friends of Davis, supra*, 83 Cal.App.4th at p. 1015.) We therefore uphold the City's decision that no supplemental EIR was required for Wal-Mart's second proposed expansion.

CHCN suggests that the City has "repeatedly interpreted [AMC section 9-5.2704] as giving it broad authority to condition design review approvals in response to information in EIRs." Not so. Though the City initially required the preparation of a supplemental EIR for the expansion initially proposed by Wal-Mart, the certification of this EIR was a first for the Design Review Board. In 2005, in connection with the initial expansion request, the City Attorney prepared a memorandum to the Design Review Board and Planning Commission stating, "As some of you may know, Wal-Mart has submitted an application to expand its existing store on Lone Tree Way to include a grocery component. Because a grocery store was included in the master entitlements granted to the shopping center several years ago, no Use Permit or Site Development approval is required. However, the new addition will require issuance of a permit from the Design Review Board. [¶] An Environmental Impact Report ("EIR") is being prepared for this project. *The Design Review Board has never before conducted a public hearing regarding an EIR, nor has it had the occasion to deal with issues raised by the California Environmental Quality Act ("CEQA"). Such issues are usually handled by the Planning Commission.*" (Italics added.)

It appears the City simply assumed that section 21166 required a supplemental environmental review, without regard to whether the Design Review Board possessed the necessary discretion to act on the information in such reports. The *San Diego Navy*

decision, while not stating a new rule of law, clarified the nature of the inquiry to be made when deciding whether a supplemental EIR may be required as a condition of design review. The City's preparation of two draft EIRs does not demonstrate that the City abused its discretion in ultimately concluding that conditions responsive to the draft EIR were outside the scope of design review. (*American Canyon, supra*, 145 Cal.App.4th at p. 1070.)

The City's determination that design review is limited to design and aesthetic issues is also consistent with language used in the 1998 development standards for the Williamson Ranch shopping center: "All development must comply with applicable City of Antioch Zoning Ordinances unless otherwise noted within this document. *The City of Antioch's Design Review Board shall approve the design of all structures and landscaping.* If a supplemental Use Permit is required, such permits will be considered by either the Zoning Administrator or Planning Commission as appropriate. *Other than as stated above, all City approvals required by this document shall be approved by the City of Antioch's Planning Department and all approvals required by this document must be in writing.* To the extent that this document may require more restrictive controls over the project's design, this document will control. . . ." (Italics original.) The gist of this paragraph is that the Design Review Board must review the design of the structures and landscaping of the shopping center, consistent with the development standards; the Planning Commission and Zoning Administrator would handle any necessary supplemental use permits; and the Planning Commission would consider any additional approvals—in other words, the Design Review Board would address only issues pertaining to the project's design.

In light of our conclusion that no supplemental EIR was necessary for the second proposed Wal-Mart expansion due to the limited scope of design review, it is unnecessary

to resolve the parties' dispute about whether the 1982 master EIR and 1998 MND were part of a "tiered" environmental review. (See §§ 21068.5, 21093.)⁶

IV. *DISPOSITION*

The judgment (order granting petition for writ of mandate) is reversed. Costs are awarded to appellant.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.

⁶ On July 27, 2012, Wal-Mart filed a supplemental motion requesting judicial notice of certain provisions of the Antioch Municipal Code and various permit application forms. Because it has been unnecessary for us to consult these documents in deciding this case, we deny judicial notice on the ground of irrelevance. (See *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4; *Field v. Bowen* (2011) 199 Cal.App.4th 346, 370, fn. 5.)