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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MOHAMMAD HALUM,

Plaintiff and Appellant,

v.

CITY OF COACHELLA et al.,

Defendants and Respondents.

E054985

(Super.Ct.No. INC1102054)

OPINION

APPEAL from the Superior Court of Riverside County. Randall Donald White, Judge. Affirmed.

Law Offices of Mohamad Ahmad and Mohamad Ahmad for Plaintiff and Appellant.

Best Best & Krieger and Douglas S. Phillips for Defendants and Respondents.

I. INTRODUCTION

Plaintiff and Appellant Mohammad Halum appeals the judgment denying his petition for a writ of administrative mandamus (Code Civ. Proc., § 1094.5) seeking to compel defendants and respondents City of Coachella (the City) and its City Council (the

Council) to approve his application to allow him to commercially develop land near Avenue 50 in Coachella, California.¹ We affirm.

II. FACTS AND PROCEDURAL BACKGROUND

On July 29, 2010, Halum applied to the City for two conditional use permits (CUP Nos. 245 and 246) and architectural approval (AR No. 10-05) to construct a 2,203-square-foot self-serve car wash with four bays and an equipment room, a recycling facility, a 192-square-foot ice vending kiosk, and a directory sign (the Project). The property is located behind a neighborhood shopping center on Harrison Street near Avenue 50.

On December 7, 2010, the planning commission considered the project at a public hearing. The written staff report to the planning commission recommended that the commission deny the Project because (1) the Project was not consistent with the circulation element of the general plan; (2) the Project was not consistent with the urban design element of the general plan requiring undergrounding of all utilities; and (3) the Project did not provide onsite nuisance water retention. Alternatively, the staff report recommended approval of the Project conditioned upon several requirements, including Halum dedicating an additional “55 feet half width right of way” fronting Avenue 50 and undergrounding utilities. At the hearing, Tony Lucero, the city engineer, explained that a street right-of-way dedication and undergrounding utilities at the time of construction

¹ Mohamad Ahmad joined Halum as a “potential investor,” and participated at the trial level; however, he is not a party to this appeal.

were required to comply with the City's general plan. The city attorney, commissioners and staff discussed eminent domain, compensation for the building frontage for "El Pollo Dieta," undergrounding of utilities, drainage on site, and the dedication and realignment of Avenue 50. Additionally, commissioners expressed concern about the landscaping, whether the lighting would create a glare impacting nearby residents, and signage requirements. The commission approved the project subject to the dedication and undergrounding utilities conditions.

Halum appealed the dedication condition to the Council on December 14, 2010. The Council considered his appeal at a public hearing on February 9, 2011. At the hearing, Ahmad argued the Council should eliminate the dedication condition because it was an uncompensated regulatory taking. Mr. Jonathon Hoy,² the newly hired city engineer, testified that the traffic engineer had reviewed the traffic study and "he didn't have any concerns" with the impact on traffic. Two residents expressed concerns regarding traffic congestion along Avenue 50, aesthetic design, drainage, and safety. The Council identified concerns with public safety hazards, nuisance water, negative impacts on nearby residential neighborhoods, and the planning commission's conditions in order for the Project to comply with the general plan. Mayor Eduardo Garcia moved to approve the Project subject to the three conditions, and a council member seconded. After Halum threatened to sue to remove the dedication requirement, the Mayor moved to

² Tony Lucero introduced Jonathon Hoy as the newly-hired city engineer at the December 7, 2010, planning commission meeting.

deny the Project entirely.³ The Council passed the motion to deny the Project and prepare a resolution for denial with findings at a later date.

On March 23, 2011, the City staff considered Resolution No. 2011-08 to deny the Project based on written findings. The staff report recommended denying the Project based on neighbor testimony and Council deliberations that the Project (1) was inconsistent with the circulation element of the general plan; (2) would increase traffic impacts on Avenue 50 and the additional noise and traffic would negatively impact nearby residential neighborhoods; (3) would create a safety hazard for vehicle ingress and egress from its site; (4) was inconsistent with the urban design element of the general plan; (5) would generate additional noise within close proximity of nearby residential neighborhoods; and (6) was not compatible with neighboring property.

The Council adopted Resolution No. 2011-08, which denied the Project based on findings that the Project (1) was “not consistent with the . . . Circulation Element of the General Plan that indicates Avenue 50 [was] to be improved to 110’ foot [*sic*] as a Primary Arterial. . . .”; (2) would have “an undesirable effect on the neighborhood character due to increased traffic congestion and the noise . . .”; (3) would “exacerbate existing traffic concerns along Avenue 50 [and would] . . . create a vehicle safety hazard for vehicle ingress and egress from the project site”; (4) was “not consistent with the Urban Design Element of the General Plan policy of the undergrounding of all utilities

³ While the transcript from the February meeting identified the speaker only as “Unmicrophoned Audience Voice,” appellant’s brief acknowledges the voice was Halum’s.

wherever possible”; (5) would “generate additional sources of noise”; and (6) was “not compatible with neighboring property due to inconsistent application of architectural design guidelines relative to the adjoining shopping centers, pursuant to Section 17.72.010(F)2 of the Coachella Municipal Code.”

Halum filed a petition for a writ of administrative mandamus on May 3, 2011, requesting the trial court to order the City and the Council to approve the Project without the dedication requirement and only require Halum pay for undergrounding of utilities that abut the lot. Following a hearing on August 24, 2011, the trial court denied the writ and entered judgment on September 15.

III. STANDARD OF REVIEW

“The exclusive remedy for judicial review of administrative action affecting land use is a proceeding under Code of Civil Procedure section 1094.5. [Citations.] A trial court’s review of an administrative decision is subject to two possible standards depending on the nature of the right involved. [Citation.]

“If the administrative decision involved or substantially affected a ‘fundamental vested right,’ the superior court exercises its independent judgment upon the evidence disclosed in a limited trial de novo in which the court must examine the administrative record for errors of law and exercise its independent judgment upon the evidence. [Citations.]

“Where no fundamental vested right is involved, the trial court’s review is limited to examining the administrative record to determine whether the agency’s decision and its findings are supported by substantial evidence in light of the whole record. [Citation.]

“Regardless of the nature of the right involved or the standard of judicial review applied in the trial court, an appellate court reviewing a trial court’s ruling on administrative mandamus applies a substantial evidence standard. [Citation.]

“Under the substantial evidence test, the agency’s findings are presumed to be supported by the administrative record and the appellant challenging them has the burden to show they are not. [Citations.] ‘When more than one inference can be reasonably deduced from the facts, the appellate court cannot substitute its deductions for those of the superior court.’ [Citation.]” (*SP Star Enterprises, Inc. v. City of Los Angeles* (2009) 173 Cal.App.4th 459, 468-469.)

IV. DISCUSSION

A. “Post Hoc Rationalization for a Decision Already Made”

Halum contends the City’s and Council’s findings in Resolution No. 2011-08 are insufficient to support denying the Project because they are “a post hoc rationalization for a decision already made.” (Capitalization omitted.)

A public agency must make findings before rendering its decision. (See *Bam, Inc. v. Board of Police Comrs.* (1992) 7 Cal.App.4th 1343, 1349 and fn. 4 (*Bam*).) The reviewing court will review formal written findings as well as scrutinize transcripts of public hearings for oral findings. (See *City of Carmel-By-The-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84, 91.) “Findings are not supposed to be a post hoc rationalization for a decision already made. To the contrary, they are supposed to ‘conduce the administrative body to draw legally relevant sub-conclusions supportive of [the Board’s] ultimate decision; the intended effect is to facilitate orderly analysis and

minimize the likelihood that the agency will randomly leap from evidence to conclusions.’ [Citation.]” (*Bam, supra*, at p. 1346.)

Notwithstanding the above, an agency may support its decision with written findings adopted after the decision that were considered in rendering the decision. (See *La Costa Beach Homeowners’ Assn. v. California Coastal Com.* (2002) 101 Cal.App.4th 804, 819 (*La Costa*)). In *La Costa*, three Malibu homeowners applied for permits to demolish six houses and build three in their place. (*Id.* at p.807). The California Coastal Commission approved the permits, subject to conditions that each homeowner provide “no less than 20% of the lineal frontage of the project site” for a public view corridor, finding it furthered the Coastal Act’s goals of maximizing public access to coastal areas. (*Id.* at p. 808.) The view corridor condition on two of the homeowners’ permits specified they could seek an amendment for an offsite public view corridor. (*Ibid.*)

All three homeowners sought amendments removing the conditions by instead granting one land parcel equal in size to the three view corridors to the California Coastal Conservancy for public views and beach access. (*La Costa, supra*, 101 Cal.App.4th at pp. 808-809.) After a public hearing, the commission voted to approve removing the conditions. (*Id.* at p. 811.) The following month, it adopted revised written findings in support of its decision. (*Id.* at p. 812.) Neighbors La Costa Homeowners’ Association and individual members challenged the commission’s revised findings as aggrieved persons under Public Resources Code section 30801, arguing the revised findings were “post hoc rationalizations” for a decision already made because they were adopted after the commission made its decision. (*LaCosta, supra*, at pp. 818-819.) The appellate court

held the findings were not post hoc rationalizations because the revised findings “did nothing more than reflect in writing the rationale that the Commissioners and staff articulated on the record at the April 12, 2000 public hearing.” (*Id.* at p. 819.)

In *Bam*, Bam, Inc. was a corporation that held a police permit to operate an adult motion picture arcade. (*Bam, supra*, 7 Cal.App.4th at p. 1345.) The police department filed accusations with the board of commissioners that Bam operated its arcade in a way that violated the city’s municipal code. (*Ibid.*) The police department requested that the board revoke Bam’s police permit. (*Id.* at p. 1345.) After holding a hearing, the board-appointed examiner recommended denying the request to revoke the permit, finding insufficient evidence to support the charges. (*Ibid.*) The board rejected the examiner’s findings and recommended suspending Bam’s permit for 30 days. (*Ibid.*) The board did not explain why it rejected the examiner’s findings. (*Id.* at pp. 1348-1349.) At Bam’s request, the board sent Bam’s counsel proposed findings but never adopted them. (*Id.* at pp. 1345-1346.)

On appeal, the court held the board did not make the required findings, explaining, “it is in this context—where the decision of the hearing examiner is rejected—that findings by the Board are critical. Had the Board simply adopted the examiner’s recommendation, we would have no problem deeming the examiner’s findings to be those of the Board. But where, as here, the Board rejects those findings, notwithstanding that it did not hear or see the witnesses, the reviewing court has to be told why that was done; so it can ‘trace and examine the agency’s mode of analysis.’ [Citation.]” (*Bam, supra*, 7 Cal.App.4th at p. 1346.)

Based on the above case law, we conclude the City's and Council's findings were sufficient, and not a "post hoc realization for a decision already made."

Like the findings in *La Costa*, the City's and Council's findings in Resolution No. 2011-08 do no more than reflect findings the council members considered before voting. Findings (1) and (4) of Resolution No. 2011-08 reflect the planning commission's findings that the Project was inconsistent with the general plan. First, the written staff report to the planning commission stated the Project's inconsistencies with the circulation element and urban design element of the general plan. Additionally, City Engineer Tony Lucero had testified at the December 2010 planning commission meeting that the Project would need to include a street right-of-way dedication and underground utilities in order to be consistent with the general plan.⁴

⁴ Even if appellant's argument could be construed to challenge the sufficiency of the findings, we need not address the sufficiency of all of the findings when one is sufficient to support the decision. (See *Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1213-1214. In *Saad*, the appellate court reversed the trial court's judgment granting a writ of mandamus "on the ground that one of three findings made by [the city] in support of the permit denial was 'inherently ambiguous' and not supported by substantial evidence." (*Id.* at p. 1208.) The city ordinance conditioned the grant of a use permit upon a finding that the project would not "be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.'" (*Id.* p. 1213.) The findings were sufficient because the city made three specific findings supporting its conclusion that the project would be detrimental to neighbors. (*Id.* at pp. 1214-1215). The court explained, "where the grant of the permit requires satisfaction of each and every statutory requisite, the *denial* of the same permit may be sustained where a single statutory requirement is not met. [Citation.]" (*Id.* at p. 1214.)

[footnote continued on next page]

Halum errs in relying on *Bam*. First, in *Bam* the board rejected the examiner's recommendation and findings; however, in this case, the City and Council adopted the recommendation of the planning commission's staff report to deny the Project and the findings that the Project conflicted with the circulation and urban design elements of the general plan. Second, the board in *Bam* did not adopt any findings, while the City and Council in this case made oral findings at a public hearing and adopted written findings after the decision. Further, in *Bam*, the board rejected the examiner's recommendations without hearing or seeing the witnesses. In contrast, in this case the City and Council members listened as neighbors and Council members discussed concerns at the public hearing before voting.

Though the City and Council did not adopt findings to support denying the Project until after they had voted, the findings are not a "post hoc rationalization for a decision already made," because they do nothing more than reflect the findings the Council members adopted from the planning commission's staff report.

[footnote continued from previous page]

Here, Coachella Municipal Code section 17.74.020 states the planning commission "shall" make five findings, including that "[t]he proposed use will not be in conflict with, but will be in harmony with and in accordance with the objectives of the general plan." Therefore, we need not address the sufficiency of the other findings because the findings (1) and (4) that the Project is inconsistent with the general plan are each sufficient alone to deny the Project.

B. The Constitutionality of Conditions

Halum contends “the Dedication [requirement] is unlawful because it violates the Takings Clause of the United States Constitution.”

“A writ of mandate will not issue to enforce an abstract right, when the occurrence of an event subsequent to the commencement of the proceeding makes the issuance of the writ of no practical benefit to the petitioner.” [Citations.] (*Clementine v. Board of Civ. Ser. Commrs.* (1941) 47 Cal.App.2d 112, 114 (*Clementine*).

In *Clementine*, police officers appealed from a trial court order denying their petition for a writ of administrative mandamus to compel the board of civil service commissioners to certify their names from a list of eligibles for certain police positions. (*Clementine, supra*, 47 Cal.App.2d at p. 113.) The appellate court affirmed, holding the point was moot because the list had expired at the time of the trial, and therefore, the writ “would be of no value to them, because they would not be eligible for the positions which they now seek.” (*Id.* at p. 115.)

The constitutionality of conditions discussed before the Project was denied is moot. After Halum appealed the conditions tied to his approved Project, the City denied the Project entirely. Like the appellants in *Clementine*, Halum cannot benefit from a judgment which holds that the conditions were unconstitutional because the City has already denied his Project in full.

Halum errs in relying on *Dolan v. City of Tigard* (1994) 512 U.S. 374 (*Dolan*). In *Dolan*, the City of Tigard approved the landowner’s building permit on the condition that the landowner dedicate a portion of her property for improvement of a storm drainage

system to prevent flooding. (*Id.* at p. 380.) The U.S. Supreme Court held the city’s findings were insufficient to support the condition. (*Id.* at pp. 394-395.) This case is unlike *Dolan*, however, because in *Dolan*, the city approved the project subject to the conditions, but in this case, the City’s denial of the Project means there are no conditions.

Because Halum’s permit was denied by the City and Council, the constitutionality of proposed conditions considered before the denial are moot.

V. DISPOSITION

The judgment is affirmed. The City and Council are awarded costs on appeal.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

MILLER

J.