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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ARTHUR E. STAHOVICH, as Trustee,
etc.,

Plaintiff and Appellant,

v.

CITY OF ANAHEIM et al.,

Defendants and Respondents;

MELIA HOMES, INC., et al.,

Real Parties in Interest and
Respondents.

G046785

(Super. Ct. No. 30-2010-00431164)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gail Andrea Andler, Judge. Motions to introduce additional evidence. Judgment affirmed. Motions denied.

Johnson & Sedlack, Raymond W. Johnson, Abigail A. Broedling and Kimberly A. Foy for Plaintiff and Appellant.

Cristina L. Talley, City Attorney, and Theodore J. Reynolds, Assistant City Attorney, for Defendants and Respondents.

Gatzke Dillon & Ballance, David P. Hubbard and Rachel C. Cook for Real Parties in Interest and Respondents.

* * *

Defendants City of Anaheim (City) and City Council for the City of Anaheim (Council; collectively defendants) approved a residential infill project of 32 single family homes (Project) to be developed by real parties in interest Melia Homes, Inc. and Donovan Anaheim LLC (collectively real parties). Before approving it, defendants undertook an initial study and, finding the Project would not result in significant environmental effects, adopted a negative declaration. Plaintiff Arthur E. Stahovich, trustee of the Arthur E. and Marjorie L. Stahovich Family Trust (1986) filed a petition for writ of mandate and a complaint for declaratory relief alleging defendants violated the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.; all further statutory references are to this code unless otherwise stated) because they failed to require an environmental impact report (EIR). He also alleged defendants violated the zoning requirements set out in the Anaheim Municipal Code (AMC). The trial court entered judgment in favor of defendants and real parties, and plaintiff appealed.

Plaintiff raises several issues, contending (1) there is substantial evidence supporting a fair argument there may be significant environmental impacts on noise, land use and planning, drainage, and traffic, necessitating an EIR or, alternatively, a mitigated negative declaration; (2) defendants violated zoning laws by failing to require a noise study, exceeding the maximum density, and approving improper lot lines; and (3) the case is not moot. Plaintiff's first two arguments have no merit, eliminating any need to rule on the mootness claim. We affirm.

After the opening brief was filed and simultaneously with the filing of the respondent's brief, real parties filed a motion seeking to introduce additional evidence to support its claim the appeal was moot. They later filed a supplemental motion to introduce additional evidence. We decide the case on the merits, and, having no need for additional evidence, deny the motions.

FACTS AND PROCEDURAL HISTORY

Real parties applied to defendants to develop 32 single-family residences, commonly referred to as an "in-fill" project. The property is located within an already built-out residential neighborhood surrounded on three sides by single-family homes and on the fourth by apartments. The Project is served by one private street dead-ending in a cul-de-sac. Infrastructure, including roads and utilities, was already in place. City's general plan designated the bare ground for "Corridor Residential" use. It was zoned "T" or "Transition," a temporary designation that remains only until the property is to be developed. A developer must apply for a zoning change as part of the development process. (AMC §§18.14.-2-.040, 18.90.050.040.) Real parties sought to have the property rezoned as RS-4, designed to be flexible to "address the challenges of developing homes in a built-out environment" Thus, RS-4 zoning allows for relaxation of some normal development requirements, including setbacks.

Pursuant to an initial study defendants conducted under CEQA, they determined the development would not have any significant environmental impact and issued a negative declaration for the Project. After it was promulgated for review and comment, City's planning commission adopted it and approved the tract map, conditional use permit (CUP), and variance.

Thereafter, plaintiff's son, David Stahovich (David), appealed the approval to the Council. Defendants addressed each claim David raised and issued a revised

negative declaration (Revised Negative Declaration) that was circulated for public review and then approved along with the Project. Defendants then granted David's request for a rehearing. Six weeks later and four days before the scheduled rehearing, defendants received a letter from plaintiff's lawyer in which he set out several purported deficiencies in the Revised Negative Declaration. Defendants granted real parties' request for continuance to respond to the issues raised.

A second revised negative declaration (Negative Declaration), which is the subject of this action, was prepared and circulated. It included a final drainage report prepared by real parties' engineer. After reviewing the report defendants' public works department concluded "the proposed on-site storm drains and the existing off-site drains would adequately drain storm water from this site and the neighboring properties and that the [P]roject would not result in the flooding of nearby streets."

At the continued hearing, Council heard public comment and continued the hearing to allow real parties and residents to discuss the Project's density and for real parties to consider enlarging the size of the side yards for two of the lots. Real parties subsequently provided revised site plans showing enlarged side yard setbacks. At the continued hearing Council approved the Project, adopting the Negative Declaration.

As approved the Project was rezoned RS-4 and included a Tentative Tract Map approval, a CUP allowing a reduction of setbacks for rear yards, and a variance to reduce the length of some driveways. Defendants imposed 34 conditions for approval, including submission of plans incorporating the drainage system set out in a drainage report and a "right turn in-right turn out" restriction on access to and from the Project's private street. Real parties also granted defendants an exception reducing the standard width requirement for private streets to accommodate landscaped planters that projected out into the street, known as "bulb-outs" or "chicanes."

After defendants denied David's request for another rehearing plaintiff filed his petition for writ of mandate. A trial was conducted and the court ruled in favor of

defendants and real parties. Although plaintiff appealed the judgment as to all parties, only real parties filed a respondents' brief; defendants joined in that brief.

DISCUSSION

1. Exhaustion of Administrative Remedies

To file a CEQA action a party must have first exhausted its administrative remedies. (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535.) This requirement is jurisdictional. (*Ibid.*) The grounds on which the challenge is made must have been presented to the agency during the public comment period or before the public hearing is closed (§ 21177, subd. (a)) and the plaintiff must have objected to the project during that same time frame (§ 21177, subd. (b)).

Under AMC sections 1.12.100.010 and 1.12.100.020, once Council approved the Revised Negative Declaration, plaintiff was required to request a rehearing, including a declaration setting out the basis for the rehearing and facts supporting the requested relief.

Real parties contend plaintiff did not exhaust his administrative remedies because he did not file the request for rehearing; only David did. Given that the record is replete with references that David was acting on plaintiff's behalf, and defendants' apparent knowledge of it, we conclude there was a sufficient exhaustion of plaintiff's remedies by David.

Defendants also argue certain of the issues raised in plaintiff's opening brief were not included in the request for rehearing. We agree with plaintiff his request sufficiently put defendants on notice of his complaints.

2. *Negative Declaration*

a. *Introduction and Applicable Law*

An EIR is required if there is substantial evidence supporting a fair argument that a project may have a significant environmental effect. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927 (*Pocket Protectors*)). If, based on the entire record, there is no substantial evidence the project would significantly affect the environment, the agency must then adopt a negative declaration (§ 21080, subd. (c)), which is what defendants did here. Plaintiff claims this was error.

A significant environmental effect is a substantial or potentially substantial adverse change in the environment. (*Pocket Protectors, supra*, 124 Cal.App.4th at p. 927; § 21068; Cal. Code Regs., tit. 14, § 15382.) Plaintiff must show there is a reasonable possibility of this occurring. (*Pocket Protectors, supra*, 124 Cal.App.4th at p. 927.) A “mere possibility of adverse impact on a few people” is not sufficient. (*Id.* at p. 929.)

The fair argument standard, which is a “‘low threshold’ test,” presents a question of law as to whether environmental review is required and no deference may be given to an agency’s decision. (*Pocket Protectors, supra*, 124 Cal.App.4th at p. 928.) Instead, any doubts are to be resolved in favor of preparation of an EIR. (*Ibid.*)

But our independent review of the record must reveal substantial evidence supporting a fair argument of a significant effect on the environment. (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 890.) “[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact” (§ 21080, subd. (e)(1)) but does not include “argument, speculation, unsubstantiated opinion or narrative, [or] evidence that is clearly inaccurate or erroneous . . .” (§ 21080, subd. (e)(2)). Put another way, substantial evidence is “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even

though other conclusions might also be reached.” (Cal. Code Regs., tit. 14, § 15384, subd. (a).)

An agency has the discretion to determine whether evidence meets the definition of substantial, and we give that decision deference. (*Pocket Protectors, supra*, 124 Cal.App.4th at pp. 928, 934.) Thus defendants, and we in our de novo review, may weigh all the evidence in the record to determine if it is substantial. (*Id.* at p. 935.) We may not, however, weigh substantial evidence to determine whether an EIR is required. If there is substantial evidence supporting environmental review, review is required.

b. Noise Impacts

Plaintiff posits there is a fair argument that noise from the Project may be environmentally significant because established noise standards will be exceeded and ambient noise will increase over existing levels. He challenges the findings of the Negative Declaration that there will be a “less than significant impact” from the Project resulting in “[e]xposure of persons to or generation of noise levels in excess of standards established in the local general plan” and there would be no impact causing a “substantial permanent increase in ambient noise levels in the [P]roject vicinity above levels existing without the [P]roject.”

City’s exterior noise standard is 65 decibels (dB). Plaintiff argues defendants’ general plan and the EIR supporting it show the Project is near Western Avenue, which is “within a 65 dBA CNEL (community noise equivalent level) noise contour,” so the Project’s added noise “may feasibly” exceed the maximum level. He relies on a statement in the general plan that “[a]ny siting of sensitive land uses within these contours . . . represents a potentially significant impact and would require a separate noise study . . . to determine the level of impacts and required mitigation.” He asserts the EIR states that growth based on increased intensity of land use, “as with the [P]roject,” will lead to increased noise. He concludes that the general plan and EIR contain

substantial evidence that “growth, traffic, and increased land use intensity” from the Project will increase the noise level above 65 dB.

This argument is flawed. First, according to staff reports, the general plan shows noise levels for properties adjacent to Western Avenue as less than 65 dB CNEL once built. None of plaintiff’s record references show anything to the contrary. Further, the environmental checklist supporting the Negative Declaration states additional noise would come from vehicular traffic in and out of the development and “normal operation of mechanical equipment,” which would be “typical” and not increase noise. There are only an estimated “306 daily vehicle trips” in and out of the development. This defeats plaintiff’s unsubstantiated claim that the Negative Declaration somehow states noise will increase to the point where an EIR would be required.

Nor do statements made by plaintiff and other neighboring residents based on their personal observations constitute substantial evidence. Case law does provide personal observations may suffice. In *Oro Fino Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, on which plaintiff relies, several residents had complained to governmental agencies about actual noise from a mining operation and testified to this effect at hearings on a proposal to expand the project. The court stated that “[r]elevant personal observations such as these can constitute substantial evidence. [Citations.]” (*Id.* at p. 882.)

Observations in that case were based on actual knowledge and experience, quite different from the vague, general statements and unsubstantiated opinions made here. For example, regarding the fact two and a half new lots would be backing up to her backyard, one neighbor stated “I can’t even imagine the . . . noise impact”; two or three others made the same speculative comments. These types of statements are specifically excluded from the definition of substantial evidence. (§ 21080, subd. (e)(2).)

The out-of-context statements from a council member and the mayor also fail to meet the definition of substantial evidence. The council member was summarizing

comments made by citizens, including complaints about a possible noise increase, not making a finding there would be a significant impact on the environment caused by noise. Likewise, the mayor was referring to complaints by neighbors and noted that a lot of them were not “significant,” stating he thought the noise would “be handled.”

And defendants cannot be faulted for plaintiff’s lack of evidence, as he contends. They were not required to prepare a noise study just because plaintiff claimed they should.

Plaintiff’s reliance on an AMC provision for a noise study is equally inapt. This study is not CEQA requirement; it is a municipal code provision and by its terms is required only to measure the impact of existing noise on future residents of the homes being built. (AMC § 18.40.090.020 [“A noise level analysis shall be performed for any new residential development . . . to determine the projected . . . noise levels within the development”].)

As a related argument plaintiff asserts there was no evidence to support defendants’ conclusion there would not be a “substantial permanent increase in ambient noise levels.” But plaintiff cites solely to the environmental checklist, where only a brief explanation is required. (Cal. Code Regs., tit. 14, § 15063, subd. (d)(3).) And defendants referred to the general plan, which shows noise levels for built out property adjacent to Western Avenue as under 65 dB CNEL.

Finally, plaintiff maintains defendants improperly deferred mitigation of noise impacts. But as defendants point out, mitigation measures are required only when there are significant environmental effects. (Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(3).) Plaintiff’s argument defendants violated the AMC by failing to require a study be submitted with the development application has nothing to do with CEQA, as noted above.

Plaintiff failed to establish there is a fair argument noise from the Project may be environmentally significant.

c. Land Use and Planning Impacts

Plaintiff rather conclusorily contends the Project may have significant impacts on land use and planning because it conflicts with City's general plan and zoning. He lists seven conflicts to support his argument.

The record shows six of the seven claimed impacts were covered by a zoning change, CUP, or variance as provided by the AMC and one is consistent with the AMC. As defendants note, the point of those processes is to avoid conflicts with the general plan or zoning requirements. None of the seven items about which plaintiff complains might have a significant impact on land use or planning.

First, plaintiff attacks the variance allowing 18 of the driveways to be two feet shorter than what is normally required. His only support is reference to neighbors' comments the shorter driveways would not accommodate larger vehicles. But plaintiff completely fails to make any reasoned legal argument or cite to any authority in support of the claim. This forfeits the issue. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) And even on the merits, neighbors' comments about problems with parking larger vehicles do not constitute substantial evidence.

Second, plaintiff complains about defendants' issuance of a CUP to reduce setbacks for several of the backyards from 15 feet to 13.5 feet. He again points solely, and only generally, to residents' comments about the shorter setbacks, and "related issues of noise, privacy, visibility and light, enjoyment, etc." As with the variance claim, this abbreviated argument is insufficient and waived.

But also, again, on the merits it fails. As noted above, the purpose of a CUP is to allow for deviations from zone code requirements. And the AMC specifically allows for this decrease in length in projects zoned RS-4. (AMC § 18.04.160.040 ["minimum setbacks . . . may be modified . . . to achieve a high quality project design"].) Real parties sought this modification to make the Project more aesthetically pleasing, thus fulfilling the code requirements. Without citing authority, plaintiff argues "mere

compliance with the law” does not eliminate the possibility of a significant impact on the environment. Even if that is correct, plaintiff has not met his burden to point to substantial evidence of such a possible impact.

Plaintiff’s third argument deals with drawing of lot lines for four lots that abut the cul-de-sac. Without citation to any authority, he asserts the lots were not situated radially to the cul-de-sac as required but were instead tangential, causing a reduction in setbacks on two of the lots. He concludes with a one-sentence statement that he and other residents objected to this. Again, this argument is waived for lack of proper briefing. It likewise fails on the merits. The record shows, in reliance on the AMC, defendants routinely treat cul-de-sacs as “straight” and not “curved” streets, requiring lot lines to be at approximate “right angles to the street centerline.” (AMC § 18.40.020.030.) Plaintiff has not shown this interpretation is incorrect.

Defendant next attacks the exception to the width of the private road where the six “bulb-outs” are built, reducing it from 32 to 24 feet. He makes another abbreviated argument, merely that this violates the zoning code, making the potential impacts to planning and land use “evident.” To repeat, this argument is forfeited for lack of proper briefing, and again, it fails on the merits. Reduction in width is allowed by code. (AMC 18.40.060.) Contrary to plaintiff’s claim, it is not evident why reduction may have a significant environmental effect and he has the burden to demonstrate to us that it does. Rather, the record shows several positive effects, including better drainage, enhanced aesthetic neighborhood quality, “[t]raffic [c]alming,” better traffic circulation and safety, and compliance with defendants’ traffic management plan.

The fifth challenge is a claim that rezoning the property to RS-4 conflicts with the general plan and zoning requirements, and specifically Goal 4.1 of the general plan, due to excessive density. Plaintiff again notes generalized citizen statements to this effect and that the density is inconsistent with surrounding developments. But these

comments do not rise to the level of substantial evidence and plaintiff fails to cite to Goal 4.1 in the record.

Next, plaintiff challenges the determination of actual density, claiming defendants incorrectly calculated it in violation of the AMC. He argues that, based on the 11 units per acre maximum density (AMC § 18.04.160.020) , the maximum number of houses should be 28, not 32.

Defendants lay out their method of calculation: The number of net acres is calculated and then multiplied by 11. “Net Acre” is defined as “[t]he overall acreage of an area, excluding public and private streets and alleys.” (AMC § 18.04.020.) From the total 3.39 acres of the Project, defendants subtracted streets and alleys and arrived at 2.9 net acres allowing for 31.9 homes. This was rounded to 32.

Plaintiff argues this calculation is incorrect because it does not factor in the definition of density set out in the AMC, i.e., “[t]he number of dwelling units per acre of land . . . excluding public and private streets, public and private easements for ingress and egress and any area used for non-residential purposes.” (AMC 18.92.070.) He asserts defendants’ calculations did not exclude areas for ingress and egress easements or property used for non-residential purposes. The conclusory comments by David and a lawyer that the density was incorrect are not substantial evidence. Further, the opinion of plaintiff’s expert that the maximum number of units should be 28 is based on his interpretation of the definition of “streets” in the AMC. But defendants’ “view of the meaning and scope of its own ordinance is entitled to great weight ‘unless it is clearly erroneous or unauthorized.’ [Citation.]” (*Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1062.) Plaintiff has not shown either of those situations.

Finally, plaintiff again asserts a noise study was required to comply with a goal of the general plan to protect “sensitive land uses from excessive noise through

diligent planning.”” As noted above the record shows the noise impacts from the Project will be minimal and will not exceed the maximum decibel level.

In sum, there is no substantial evidence of a negative impact on planning or land use.

d. Drainage Impacts

The final drainage report, dated January 13, 2011, along with the Water Quality Management Plan, were incorporated into the Negative Declaration. The Negative Declaration stated “site-generated surface water runoff from 10, 25, and 100 year storm events would be safely conveyed by a new on-site underground storm drain system that connects to the existing storm drain system in Western Avenue.” It found that drainage would cause a less than significant impact. Plaintiff claims this is error because defendants recognized off-site ponding could have a significant effect and included mitigation conditions in the final approval of the Project. The final drainage report states “the Project is expected to increase gross storm flows by approximately 4%, which is not significant.” This is correct within the definition of “significant,” which requires that the adverse effect be “substantial, or potentially substantial.” (§ 21068; Cal. Code Regs, tit. 14, § 15382.)

Plaintiff argues that runoff from four existing homes adjacent to the Project will be blocked leading to ponding in their back yards. But according to the final drainage report, the Project’s drainage system will handle the runoff. There will be four 6-inch underground drains that will carry the water from adjoining property and the site out to the existing sewer system. In addition, maintenance of the system is facilitated by “cleanouts” on the Project property. These and other elements of the drainage system make “the Project’s impacts on hydrological conditions at and near the site . . . less than significant. In fact, the new underground system will improve existing drainage

conditions by . . . accommodating off-site runoff from the homes north of the Project”

When the Project was approved defendants imposed conditions to make certain the drainage system would be built according to the drainage plan. Real parties were required to record an agreement reserving easement for drainage on lots within the Project that would accept drainage from adjoining property; maintain the storm drain and use best management practices as spelled out in the Water Quality Management Plan; and submit plans for the drainage as set forth in the drainage report.

Plaintiff relies on analysis from his engineering consultant, James Bolton, who stated that his review of the drainage plan showed water would pond on the adjoining properties to the north of the Project because the water would “concentrated at the grated[]openings of the inlets before it will flow into the draining facility.” And, silt or debris in the system would increase ponding, requiring a maintenance system, which he claimed was not properly discussed in the plan.

We agree with defendants that this does not constitute substantial evidence in support of a fair argument drainage may have a significant effect on the environment. As they point out, Bolton failed to explain the duration of the ponding, i.e., a matter of minutes or longer or its severity, and thus did not support the claim it may be significant. Rather, he stated the ponding would be at the inlets, thus presumably for a short period in a limited area.

Moreover, real parties’ civil engineer responded to Bolton’s claims, noting there could possibly be two to three inches of “temporary ponding” during a major rainfall, but it would not be significant for several reasons. The number and placement of inlets were designed “to mimic the exiting sheet flow characteristics” and were sufficient to handle runoff; any development would require a wall between the new construction and existing property and the same type of plan to include outlets handling water from yards of existing homes; major storms occur only every 25 and 100 years; and any

ponding would not affect any structures, the principal criterion for designing a drainage system.

Contrary to plaintiff's argument, this is not a battle of experts, requiring an EIR. For expert opinion to rise to the level of substantial evidence it cannot be "unsubstantiated opinion . . . [or] evidence that is clearly inaccurate or erroneous" (§ 21080, subd. (e)(2)) but must be "supported by fact" (§ 21080, subd. (e)(1)). Bolton's opinion does not satisfy this requirement.

Plaintiff's reference to his and other neighbors "ongoing concerns" also is insufficient. Of the record references, most are not citizen comments and those that are predate the final drainage plan.

Attacking from a different angle, plaintiff contends the conditions approving the Project are mitigation measures and suggest drainage may result in significant impacts.

The CUP imposed a condition requiring real parties to "submit project improvement plans that incorporate the drainage improvements required, and the mechanisms proposed, in the site specific Drainage Report dated 1/13/2011" before defendants would issue a grading permit. Plaintiff points to language in the final drainage report that, based on the specific design of the proposed drainage system, states: "With these design features in place, the Project's impacts . . . will be less than significant." He concludes this is a deferred mitigation measure that is vague and unenforceable.

Again, we agree with defendants that the condition is not a mitigation measure imposed to remedy a significant impact. The record reflects the drainage system was part of the Project design from the beginning, before CEQA review.

Plaintiff complains about another condition, a maintenance covenant, which he claims was enacted in response to his concern about maintaining the drainage system. This argument has no merit. Plaintiff points to nothing in the record to support his

conclusion about why it was imposed. The condition is not specific to the drainage system but includes landscaping, sewer, and the private street.

Plaintiff has not met his burden to point to substantial evidence supporting a fair argument drainage may have a significant environmental impact.

e. Traffic Impacts

Plaintiff challenges the Negative Declaration's finding there would be no traffic impact because the Project would not "[s]ubstantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses." He points to the "right turn in, right turn out" condition imposed by defendants, claiming this demonstrates traffic would have a significant impact requiring an EIR. He attacks the finding in the Negative Declaration that this was not a measure imposed "to mitigate a potentially hazardous situation"

But the evidence on which he relies is not sufficient to support his argument. Comments of neighbors and David do not provide substantial evidence. David stated that, because there had been no right-of-way dedication, there was a line of sight problem. Most of the neighbors merely voiced complaints about existing traffic, in part due to nearby schools. Another speculated there would be increased jaywalking, which would block the views of cars leaving a neighboring street. This is all unsubstantiated opinion. (§ 21080, subd. (e)(2).)

Plaintiff also misconstrues a comment by a member of City's public works department that a concern would be visibility of pedestrians. The staff member went on to say the landscaping plan would take care of this. Moreover, his additional statement a right turn in, right turn out condition would be ideal means nothing more than that. And, contrary to plaintiff's claim, he did not state the main reason for this condition was for safety; he was paraphrasing a comment from a resident. Nor does a planning

commissioner's statement that this condition would "mitigate the traffic . . . or mitigate the concern of the neighbors" rise to the level of a finding of mitigation.

Again, plaintiff failed to meet his burden.

f. Mitigated Negative Declaration

As an alternative argument, plaintiff asserts that even if an EIR was not required defendants abused their discretion by not requiring a mitigated negative declaration. 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) Plaintiff claims a mitigated negative declaration is necessary because mitigation measures were included in the Negative Declaration. But as the record contains no substantial evidence supporting a fair argument the Project may have a significant effect on the environment, mitigation was not required. And, as discussed above, the conditions of approval were not mitigation measures.

3. Zoning

a. Introduction and Standard of Review

Plaintiff contends defendants violated their zoning code in three ways: 1) failing to require real parties to submit a noise study with the initial application for the Project; 2) approving construction of 32 homes when the limit was 28; and 3) allowing two lots to be built tangentially to the cul-de-sac rather than radially, causing a reduction in setbacks of those two lots. None of these arguments has merit.

We review plaintiff's claims under an abuse of discretion standard. (Code Civ. Proc., § 1094.5, subd. (b).) Plaintiff has the burden to show defendants did "not proceed[] 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." (*Ibid.*) In our review we use our "independent judgment on legal issues, such as the interpretation of statutes." (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2010) 184 Cal.App.4th 1032, 1040-1041.)

b. Noise Study

AMC 18.40.090.020 states: "A noise level analysis shall be performed for any new residential development . . . to determine the projected interior and exterior noise levels within the development. The study shall include mitigation measures that would be required to comply with applicable City noise standards The study shall be provided by the applicant . . . to the City at the time of application for development of the residential development" This requirement applies to any residential development of two or more homes located within 600 feet of a secondary arterial, in this case Western Avenue. (AMC § 18.40.090.010.)

Here defendants did not require the filing of a noise analysis when real parties filed the application; it was filed later in the process. A City planner explained the reason for the analysis is to make sure the Project complies with City's noise regulations. It is not to evaluate the impact of the development's noise on the surrounding area. Thus, circulation is not required under CEQA. (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 905 [EIR required to evaluate impacts of project on environment, not reverse].)

The planner further stated that if the development is in an area where exterior noise is not expected to exceed 65 dB, as in this case, the noise analysis was not

necessary for defendants to determine the Project's exterior noise levels would not exceed City's maximum level.

As for interior noise levels, where a project is outside the 65 dB CNEL contour, the "practice is to require this [noise] analysis when applications for building permits are submitted. [¶] This allows [defendants] to better evaluate interior noise levels based upon the actual construction drawings"

Plaintiff concludes defendants' failure to require noise analysis until later in the development process was a prejudicial abuse of discretion. Even assuming defendants did violate the regulation, plaintiff has not demonstrated any prejudice. His assertion the study would have been available to the public or to guide defendants early in the process does not suffice. Further his claim that, because CEQA does call for analysis of cumulative impacts, the study "presumably would have evaluated [it]" is pure speculation and far afield from the argument.

c. Density

Plaintiff again argues defendants should have approved only 28 units, not 32, this time in the context of an alleged zoning violation. He disagrees with how defendants calculated the maximum number of units. As noted above, for property zoned RS-4, the maximum number of units per acre is 11. (AMC 18.04.160.020.) "Net Acre" is defined as "[t]he overall acreage of an area, excluding public and private streets and alleys." (AMC 18.92.040.) A staff report explained that in calculating the maximum number of units defendants subtracted the area of streets and alleys from the 3.39 acreage of the Project, arriving at 2.9 net acres, which, multiplied by 11, results in 31.9 units. The report further explained that the street serving the Project is private, defined as "[a] road or street that is not owned and maintained by the City and that is used or set aside to provide vehicular access and circulation within a development." (AMC 18.92.190.)

Because this definition does not include sidewalks and parkways, defendants do not deduct those areas from the gross Project area.

Plaintiff asserts sidewalks, parkways, and ingress and egress easements should have been excluded. He relies on the definition of “density,” which is “[t]he number of dwelling units per acre of land, including the area used for open space, recreational uses, and accessory uses associated with the residential use, but excluding public and private streets, public and private easements for ingress and egress, and any area used for non-residential purposes.” (AMC § 18.92.070.)

Plaintiff also challenges defendants’ definition of “street,” claiming they should include the right-of-way area and not just measure from curb to curb. He claims defendants’ interpretation of these provisions violates the rules of statutory interpretation of multiple applicable sections because it fails to harmonize them.

We disagree. As stated above, “an agency’s view of the meaning and scope of its own ordinance is entitled to great weight ‘unless it is clearly erroneous or unauthorized.’ [Citation.]” (*Santa Clarita Organization for Planning the Environment v. City of Santa Clarita, supra*, 197 Cal.App.4th at p. 1062.) We defer to an agency’s interpretation of its ordinances where “‘the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.’” (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.) When an “‘agency[] interpret[s] . . . its own regulation . . . the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.’” (*Ibid.*) Greater deference is accorded when there are “‘indications of careful consideration by senior agency officials.’” (*Id.* at p. 13.)

Plaintiff has not persuaded us defendants’ construction and application of its ordinances is “clearly erroneous or unauthorized.” Rather, the record reflects they

considered the meaning and practical application of the sections and applied them in a reasonable fashion. As such, we defer to their interpretation.

Further, plaintiff's position is not supported by the fact the drawings originally submitted calculated acreage the way he thinks is proper and later changed them to support the greater density. Defendants explained those drawings had incorrectly deducted certain property from the gross acreage and were subsequently corrected. This is a reasonable explanation and we see nothing sinister or untoward about it.

d. Side Yard Property Lines

As his final claim, plaintiff again argues the property lines of the sides of four homes on the cul-de-sac portion of the street should have intersected radially, not tangentially. They rely on AMC section 18.40.020.030, which states that “[t]he side property lines of lots shall be at approximately at right angles to the street centerline on straight streets, or approximately radial on curved streets.” Plaintiff asserts that defendants’ failure to require the homes be situated radially resulted in an insufficient setback between the side yards of two of the new homes and the back yards of existing homes. This, he argues, requires that the cul-de-sac must be treated as if it were a curved street.

Defendants referred to historic interpretation of the section to support their current interpretation. A staff member explained defendants treated the cul-de-sac as straight because there was no bend in the center line of the street. Plaintiff claims there is evidence in the record showing defendants have interpreted the section differently in the past, thus defeating any basis to defer to defendants’ interpretation of the ordinance.

We note that when plaintiff first brought this to the attention of defendants and real parties, real parties revised the drawings so the side yard setbacks went from five feet to 14 feet, four inches for one and 14 feet, seven inches for the other, and this is what defendants ultimately approved. Plaintiff maintains that had the lots been situated

properly the setback would have been 15 feet. The 14-plus foot setbacks fall well within the flexible development requirements for the RS-4 zoning of the Project. We find no abuse of discretion.

4. Motion to Take Additional Evidence and Mootness

Because we decide the appeal on the merits, we have no need to take additional evidence and therefore deny the motion. For the same reason, there is no reason for us to decide defendants' argument the case is moot.

DISPOSITION

The motions to introduce additional evidence are denied. The judgment is affirmed. Respondents are entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.