SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

UPHOLD OUR HERITAGE,

Petitioner,

vs.

TOWN OF WOODSIDE,

Respondent.

_____/

STEVEN JOBS and Does 1 to 10,

Real Parties in Interest.

_____/

Civil No. 444270

Assigned CEQA Judge
Hon. Marie S. Weiner, Dept. 2
Pursuant to Public Resources Code Section 21167.1(b)

ORDER OVERRULING OBJECTIONS TO RETURN

Procedural Background:

On February 17, 2006, this Court issued a Judgment ordering the issuance of a peremptory writ requiring Respondent to set aside the approval of the demolition permit issued to Real Party in Interest and to set aside Respondent's statement of overriding considerations for the demolition permit. Further, the Judgment ordered Respondent "to suspend all activity at the project site that could result in an adverse change or alteration

to the mansion home" unless and until Respondent "ensured the approval of a demolition permit is consistent with the requirements of CEQA."

Consistent with the Judgment, on February 17, 2006, the Clerk of the Court issued a Writ of Mandate to Respondent Town of Woodside stating:

> "YOU ARE A HEREBY COMMANDED immediately on receipt of this writ to set aside your decision in proceedings of December 14, 2004; Approval of the Statement of Overriding Considerations and issuance of a demolition permit for the mansion home at 460 Mountain Home Road; These proceedings are hereby remanded to you, to reconsider your action in light of this court's ruling, and to take any further action specially enjoined on you by law; but nothing in this writ shall limit or control the discretion legally vested in you. YOU ARE FURTHER COMMANDED to make and file a return to this writ on or before April 3, 2006, setting forth what you have done to comply."

After appeal by Respondent and Real Party in Interest, this Court's decision was upheld by the Court of Appeal. Uphold Our Heritage v. Town of Woodside (2007) 147 Cal.App.4th 587. Remittitur was issued on April 27, 2007.

The parties then proceeded with adjudication of Petitioner's motion for award of attorneys' fees and costs as the prevailing party. After stipulated briefing schedule and extensions, this Court issued its Order on Award of Attorneys' Fees and Costs to Prevailing Petitioner on January 8, 2008. That fee decision was then the subject of a new appeal by Respondent and Real Party in Interest. On November 12, 2008, the Court of Appeal upheld the trial court's decision. Remittitur was issued on February 23, 2009.

On May 12, 2009, Respondent filed a Return to Peremptory Writ of Mandamus, indicating that on February 10, 2009 Respondent Town of Woodside had formally set aside its approval of the subject demolition permit and set aside its prior statement of overriding considerations, both from December 14, 2004.

On May 26, 2009, Petitioner's Objections to Return to Writ of Mandate was filed, indicating that on May 12, 2009, the same date as filing the Return, Respondent Town of Woodside re-issued the demolition permit to Real Party in Interest, and that further hearing or approve of findings was set by Respondent for June 9, 2009. The Court set this action for a case management conference, which counsel for Real Party in Interest requested be continued to July 2009.

As its "Case Management Statement", Respondent and Real Party in Interest presented documents reflecting new evidence presented to Respondent Town of Woodside regarding its re-issuance of the demolition permit. This included:

(1) expert reports on cost comparisons of the specifications requested by Real Party in Interest for construction of a new smaller residence on the site compared with the costs of renovating, remodeling, and repairing the existing Jackling House;

(2) Addendum to the Final Environmental Impact Report;

(3) the efforts of Real Party in Interest to find someone who would accept a donation of the Jackling Estate residence and relocate it and/or restore it,

(4) revisions made to the Historic Preservation Element of the Town's General Plan adopted on March 10, 2009; and

(5) an expert report on the continued deterioration of the Jackling House (since the time of the original report five years previous) due to water intrusion, wild animal intrusion, lack of heating, lack of ventilation, lack of care, and lack of maintenance by Real Party in Interest, such that it opines: "It has become clear to all who have shown interest in its restoration over the past several years, that this is a reconstruction project rather than a restoration"; and that any renovation would not be an actual restoration: "The end product would be quite different than the original house."

Accordingly, the Court permitted Petitioner to file an Amended Objection to the Return, and set a briefing schedule for any "opposition" and "reply". Petitioner's Supplemental Objections to Return to Writ of Mandate was filed on August 3, 2009. Petitioner included the Resolution adopting the Addendum[1] to the EIR on June 23, 2009, the Resolution approving the demolition permit subject to conditions on June 23, 2009, an Approval of Agreement regarding those condition of approval of demolition and related documents dated July 2009.

In response, Respondent and Real Party in Interest requested that this Court take judicial notice of subsequent events and records as to the re-issuance of the demolition permit and addendum to the EIR, which basically supplement the administrative record as to subsequent events. These reflect that Town Council meetings on the subject were held on April 28, 2009, May 12, 2009 June 23, 2009, and July 12, 2009.

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[1] There is no statutory authority for an addendum to an EIR, rather the procedure is established through CEQA Guideline 15164. The law does not require that an addendum be circulated for public review or comment prior to its inclusion in the Final EIR.

In its Resolution No. 2009-6755 approving the new demolition permit, and adopting the Statement of Findings under CEQA and Statement of Overriding Considerations, Conditions of Approval, and Mitigation Monitoring and Reporting Program (which is Request for Judicial Notice D4), Respondent explicitly states that the "substantial evidence in the record of proceedings supports the findings and statement of overriding considerations set forth in Attachment A, which are attached hereto and incorporated herein by reference".

The Court permitted oral argument on the objections on September 8, 2009.

Counsel for the parties agreed that no demolition or other change to the residence has occurred or would occur until after this Court's decision on the objections.

The Court issued an Order on December 7, 2009 indicating that the supplemental record was deficient as the parties had not submitted the Minutes nor the transcripts of proceedings of the May 12, 2009, June 23, 2009, or July 12, 2009 Town Council meetings, and ordered that these be added to the documents for Request for Judicial Notice. This was not completed and filed with the Court until January 15, 2010.

Legal Standards

Pursuant to Public Resources Code Section 21168 and Code of Civil Procedure Section 1094.5, in deciding a writ under CEQA, "the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.

This Court does not have the authority to decide whether the decision of Respondent to re-issue a demolition permit with conditions to Real Party in Interest is a

good decision or a bad decision. Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1196. "If the substantive and procedural requirements of CEQA are satisfied, a project may be approved even if it would create significant and unmitigable impacts on the environment." Id., at p. 1197. "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination is not supported by substantial evidence. [Citation.]" Id. The Court is not at liberty to decide whether the conclusion of the administrative body is correct. Id.; Lincoln Place Tenants Assn. v. City of Los Angeles (2005) 130 Cal.App.4th 1491, 1503. "We may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. . . . We may not, in sum, substitute out judgment for that of the people and their local representatives." Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564; Preservation Action Council v. City of San Jose (2006) 141 Cal.App.4th 1336, 1350.

Analysis

In its decision in this case, the Court of Appeal held that Respondent's finding that EIR alternatives 2 and 3 were not economically feasible was not supported by substantial evidence, because there was no cost comparison or analysis to determine economic infeasibility in the context of this project – since Real Party in Interest refused to provide any designs, plans or specifications for the new residence. Uphold Our Heritage, 147 Cal.App.4th at pp. 598-599. "Without some information concerning the cost of constructing a new residence on the property, it is not possible to determine whether the cost of renovating the existing historic structure is reasonable or feasible. . . . If the cost

of renovation exceeds the cost of new construction, it is the magnitude of the difference that will determine the feasibility of this alternative." Id., at p. 599. "While the feasibility of constructing a single-family home for personal use involves a certain degree of subjectivity, some context is nonetheless necessary. It may be sufficient to show that the cost of rehabilitating the existing house would be significantly more than the cost of building a new home of a quality appropriate to the area . . ." Id., at p. 600.

Now Real Party in Interest has presented certain specifications for his anticipated new residence construction, and has presented cost comparisons between modern renovation of the existing historic residence versus a new modern and ornate home in the wealthy community of Woodside. According to Real Party in Interest, the cost difference is multi-millions of dollars. Respondent has found that none of the alternatives are feasible. (JN D4.) As stated in its Resolution and Findings: "As described above, after implementation of all feasible mitigation measures, the Project will have a significant unavoidable impact to an [sic] historic resource through the demolition of the Residence. There are no feasible mitigation measures or alternatives to avoid or reduce this impact to a less than significant level. (D4 at pp. 15-16.)

If there are no feasible alternatives and if after mitigation measures there remains significant impact to the environment, the project may then be approved only with a statement of overriding considerations, which must in turn be supported by substantial evidence in the record of its public proceedings. Sierra Club v. County of Contra Costa (1992) 10 Cal.App.4th 1212.

The Court of Appeal found that the previous statement of overriding considerations was invalid because the preceding determination of infeasibility was an

abuse of discretion. Uphold Our Heritage, at p. 603. This Court, in its Statement of Decision, went further and held that Respondent's "finding" that granting the demolition permit would be a public benefit implementing the Town's General Plan (because it would provide "open space") was not supported by a review of its General Plan. This time, as part of the analysis of benefits and detriments, for purposes of the statement of overriding considerations, Respondent was presented with those portions of the General Plan (some of which were previously cited by this Court in its Decision) supporting preservation and supporting denial of the permit, for lack of compelling benefits – as well as considering portions of the General Plan encouraging smaller buildings, which would support granting of the permit. (Request for Judicial Notice A2; D4.)

Respondent's Town Council discussed and considered Real Party's efforts and general publicity seeking someone willing to relocate and renovate the Jackling House, but no concrete and financially viable proposal came to fruition after four more years.

Respondent discussed and considered that even if the Jackling House was restored at its present location, it would not likely provide any direct public benefit because it is located on private property, is not to be open to the public, and is not easily visible to the public. Thus the opportunity for the public to see and enjoy this historic resource does not particularly exist nor is expected to exist in the future.

As a part of the benefits weighing in favor of allowing demolition and new building of a residence, Respondent cited and considered public health and safety issues. Evidence was presented and considered by Respondent that the existing residence was built in 1925 – prior to the Building Code and the Fire Code – that it is located close (approximately

160 feet) to an earthquake fault scarp of the San Andreas Fault[2], that it is in a serious state of disrepair and decay, and that denial of the demolition permit will not save the house because Real Party In Interest intends not to fix it and not to sell it. (See also, D4 statement of overriding considerations at B3.)

The crux of the problem is well-summarized by Councilmember Hodges, at the meeting of May 12, 2009:

> [T]he older I get the more interested in history I become. I have acquired over the years a very decided interest in preservation of historic structures and an appreciation of history and historic structures. But no brilliant insight has befallen me in the last several weeks. I simply have concluded, I concluded some time ago that it's the ownership of this parcel is in one respect unfortunate. It's unfortunate that someone didn't come along to purchase it who really bought it to preserve it. (F1 at p. 109.)
>
> And again, I say I think it's unfortunate that someone didn't buy the property who really bought it in order to preserve the mansion, but that's what happened. (F1 at p. 112.)

According to the evidence presented, Real Party in Interest has left the Jackling House vacant since 2000, and the property was basically abandoned. The record reflects

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[2] The Chairman of the Geologic Safety Committee of Portola Valley, a PhD in geophysics in the area of earthquake prediction, volunteered testimony at the hearing on May 12, 2009. (JN Exs. E1, F1.) He summarized: "I would predict there will be severe damage to that house, which is now in a state of disrepair. As I say, it was not built under a special building code. And I would strongly recommend that you, and urge you to consider whatever the solution that that house not remain there. Whether you preserve it or not, I don't care." (F1 at p. 40.) As remarked by Councilmember Hodges: "I hope we get this issue before us settled before the earthquake comes and takes it out of our hands. (F1 at pp. 112-113.)

there has been no use of heat or ventilation, no maintenance, no repairs, and no up-keep for the past ten years. According to Respondent's own General Plan, it had the authority and obligation to take action and avoid this situation, as set forth in G5 of the General Plan: "To maintain the character and quality of existing housing which is in good condition, and to improve the quality and character of housing wherever substandard structures are found." (Woodside General Plan, Section G5 "Housing", Adm. Record 1546.) Apparently nothing was done to stop the abandonment of this house. Consequently, according to the evidence presented (and upon which Respondent relied in making its decision to issue the demolition permit), over the past 10 years the Jackling House has been prey to animal infestation, bird nesting, human trespassing and vandalism, rot, mold, peeling, warping, and decay – to the point that supposedly only reconstruction, not restoration, is possible.

After discussion and consideration of these factors, a majority of the Town Council voted to adopt the Addendum to the Final EIR, to approve the demolition permit subject to conditions and mitigation, and to adopt the Statement of Findings and the Statement of Overriding Considerations.

Conclusion

The conclusion of this saga is best expressed by Mayor Mason:

> I think it's an unfortunate thing that Mr. Jobs doesn't like the house, hasn't liked the house. I think it's an unfortunate thing that he's let it deteriorate for the last 10 to 12 years. . . . And I think it's really sad that we're going to continue to tear down historic resources in this town because they're old and they don't fit within the constraints of the current thing and I think

that's really sad for the long term historic heritage of our town. (F1 at pp. 119-120.)

Upon due consideration of the briefs and evidence presented, and the oral argument of counsel for the parties, and having taken the matter under submission,

THE COURT FINDS AND IT IS HEREBY ORDERED as follows:

1. The requests for judicial notice are GRANTED.

2. Petitioner's Objections and Supplemental Objections to the Return filed by Respondent and Real Party in Interest to the Writ are OVERRULED. The Return reflects compliance with the Writ, in that Respondent set aside its approval of the subject demolition permit and setting aside its prior statement of overriding consideration from December 14, 2004. The CEQA defects identified in the original permit and EIR approval, namely lack of cost comparison to support a finding of economic infeasibility, have been addressed and rectified by Respondent and Real Party in Interest. Further, under CEQA standards of review by this Court, substantial evidence exists in the record supporting the latest decision by Respondent to adopt the Addendum to the Final EIR, to approve the demolition permit subject to conditions and mitigation, and to adopt the Statement of Findings and the Statement of Overriding Considerations. Thus there is an adequate showing that Respondent "ensured the approval of a demolition permit is consistent with the requirements of CEQA."

DATED: March 5, 2010

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

ENDORSED FILED
SAN MATEO COUNTY

MAR 0 8 2010

Clerk of the Superior Court
By TERRI MARAGOULAS
DEPUTY CLERK

AFFIDAVIT OF MAILING

CASE NUMBER: CIV 444270

UPHOLD OUR HERITAGE vs TOWN OF WOODSIDE/STEVEN JOBS and DOES 1 to 10

ORDER OVERRULING OBJECTIONS TO RETURN

I declare, under penalty of perjury, that on the following date I deposited in the United State Post Office Mail Box at San Mateo, California a true copy of the foregoing document, enclosed in an envelope, with the proper and necessary postage prepaid thereon, and addressed to the following:

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Executed on: March 8, 2010
at San Mateo, California

JOHN FITTON
CLERK OF THE SUPERIOR COURT

By: TERRI MARAGOULAS
Terri Maragoulas, Deputy Clerk