goldfarb lipman attorneys

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Single-Family Homes Are Not Subject to the Housing Accountability Act

The Court of Appeal in *Reznitskiy v. County of Marin* (June 15, 2022, No. A161813) ___Cal.App.5th___ resolved a question that had plagued planners and developers: Does the Housing Accountability Act (HAA) cover a project to build a single-family home? The answer given by the Court of Appeal is "no." The restrictions the HAA imposes on a local government processing an application for a "housing development project" are not triggered by an application to build a single-family home because the latter does not qualify as a housing development project. In reaching this conclusion, the Court was cognizant of the fluctuating state of the law and seemed disinclined to extend the scope of the HAA in light of the Legislature's recent amendments.

The Plaintiffs in the case sought to build a 4,000-square-foot home on a hillside lot in unincorporated San Anselmo. The Marin County Board of Supervisors denied the project application in part because the proposed home was more than twice the size of neighboring houses. The applicants filed a petition for writ of mandate, arguing that whether the house outsized its neighbors could not be a basis for denying the project. Under the HAA, the only basis for denial was noncompliance with "objective general plan and zoning standards and criteria" (Gov. Code § 65589.5(j)), unless the County could find that the project created a "specific adverse impact." (See box.) This requirement applies to an application for a "housing development project." (*Id.*, subds. (h)(2), (j).) The County argued that because a single-family home did not qualify as a "housing development project," the objectivity requirement was inapplicable, and relative size was a valid criterion for denying a project. The trial court agreed and the Plaintiffs appealed.

The Housing Accountability Act

Under Government Code section 65589.5, subdivision (j) (section 65589.5(j)), "[w]hen a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time the application was deemed complete," the local agency cannot "disapprove the project or . . . impose a condition that the project be developed at a lower density" unless it finds that (1) the project "would have a specific, adverse impact upon the public health and safety that cannot be feasibly mitigated." A project must be "deemed consistent, compliant, and in conformity with" applicable standards and criteria "if there is substantial evidence that would allow a reasonable person to [so] conclude." (§ 65589.5, subd. (f)(4).) Thus, under section 65589.5(j) an agency cannot use a "subjective" development policy (like suitability) to avoid making the findings otherwise required to disapprove a housing development project.

The phrase "housing development project" in HAA is ambiguous. The statute defines it as a project that consists of one of three "uses": "residential units only," "mixed-use developments," or transitional housing or supportive housing. (§ 65589.5(h)(2).[1]) The County had contended that the use of the plural in "residential units only" precluded single-family homes–an interpretation HCD shared–but this was not definitive in the Court's eyes. That reasoning, if applied to the similarly plural "mixed use developments" category, would cut out a mixed-use development (singular) even if it had multiple residences, an unreasonable result.

[1] All statutory citations are to sections in the Government Code.

The Court concluded that the phrase meant either a project to develop housing (a housing "development project") or a project to build a housing development (a "housing-development" project). Under the first interpretation, the HAA would encompass a project to build a single home. Under the latter, it would not.

In determining that the Legislature intended for the phrase to mean a project to develop housing (plural), the Court relied on recent legislative history. Changes implemented by Senate Bill 8 amended the definition section within Government Code section 65905.5, a different statute that limits the number of hearings that may be held on a proposed "housing development project." Under section 65905.5, the term "housing development project" "has the same meaning" as it does under the HAA (§ 65598.5(h)(2)). Senate Bill 8 retained this cross-reference, but added that "'[h]ousing development project' includes a proposal to construct a single dwelling unit," and also noted that the section "shall not affect the interpretation of the scope of paragraph (2) of subdivision (h) of Section 65589.5," i.e., the HAA's definition of the phrase. The bill also provided that the changes "do not constitute a change in, but are declaratory of, existing law." (§ 65905.5, subd. (f); Stats. 2021, ch. 161, § 2.)

The Court could not square these amendments. It pointed to a Senate committee report that had admitted that SB 8 created further ambiguity on the matter and also conceded that "legislation providing clarity on the definition of housing development project under the HAA may be beneficial down the line." (Sen. Com. on Governance and Finance, Analysis of Sen. Bill No. 8, Mar. 25, 2021, pp. 3-4.) Discerning from this a "clear legislative intent *not* to decide whether 'housing development project' under the HAA includes a single residential unit," the Court elected to give the term a more restrictive meaning, passing the baton back to the Legislature.

In interpreting the text, the Court gave HCD's interpretation of the term of "little weight." It also ignored as "interpretive gloss" the statute's directive that it be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (§ 65589.5, subd. (a)(2)(L).) Addressing the plaintiffs' concerns that its holding would not encourage more housing, the Court noted the HAA's preference for higher density projects and reasoned that the ruling might incentivize developers to prefer two unit developments to single-family homes.

Some questions remain following *Reznitskiy*. The Court explicitly did not address whether a single-family unit plus an ADU would qualify as a "housing development project." But as to single-family units, the law is now clear.

For more information about the Housing Accountability Act or any other legislation, please contact Barbara Kautz, Rye Murphy, or any other attorney at Goldfarb & Lipman LLP.