



SPECIAL MEETING AGENDA OF THE JURUPA VALLEY CITY COUNCIL

Friday, January 13, 2023

Closed Session: 5:30 p.m.

City Council Chamber

8930 Limonite Avenue, Jurupa Valley, CA 92509

- A. *As a courtesy to those in attendance, we ask that cell phones be turned off or set to their silent mode and that you keep talking to a minimum so that all persons can hear the comments of the public and City Council.*
- B. *A member of the public who wishes to speak under Public Comments must fill out a "Speaker Card" and submit it to the City Clerk **BEFORE** the Mayor calls for Public Comments on an agenda item. Each agenda item up will be open for public comments before taking action. Public comments on subjects that are not on the agenda can be made during the "Public Appearance/Comments" portion of the agenda.*
- C. *If the Meeting is conducted via teleconferencing pursuant to Government Code Section 54953(e), the public may submit comments to the City Council via email or via telephone prior to the Mayor calling the item. Email comment shall be sent to: CityClerk@jurupavalley.org. Telephone comments may be made by calling (951) 332-6464, Ext. 140. Email and telephone comments are subject to the same rules as in-person comments.*
- D. *Members of the public who wish to comment on the **CONSENT CALENDAR** may do so during the Public Comment portion of the Agenda prior to the adoption of the Consent Calendar.*
- E. *As a courtesy to others and to assure that each person wishing to be heard has an opportunity to speak, please limit your comments to 3 minutes.*

1. 5:30 PM - CALL TO ORDER AND ROLL CALL FOR CLOSED SESSION MEETING

- Chris Barajas, Mayor
- Guillermo Silva, Mayor Pro Tem
- Leslie Altamirano, Council Member
- Brian Berkson, Council Member
- Armando Carmona, Council Member

2. CLOSED SESSION

A. PUBLIC COMMENTS PERTAINING TO CLOSED SESSION ITEM

- B. CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION.** The City Council will meet in closed session with the City Attorney pursuant to Government Code Section 54956.9(d)(2) with respect to one matter of potential litigation. A point has been reached where, in the opinion of the City Attorney, based on existing facts and circumstances, there is a significant exposure to litigation involving the City from Century Communities of California, LLC, with respect to its application to construct condominiums at the southwest corner of Limonite Avenue and Beach Street, Lot 7 and Lot 9 of PA 2 of the Paradise Knolls Specific Plan. On file in the Office of the City Clerk and attached to the Agenda is the December 1, 2022 letter from attorney Ryan Leaderman of Holland and Knight representing Century Communities of California objecting to the proposed denial of the Projects and threatening litigation against the City.

3. RECONVENE IN OPEN SESSION

- A. ANNOUNCEMENT OF ANY REPORTABLE ACTIONS IN CLOSED SESSION**

4. ADJOURNMENT

Adjourn to the Regular Meeting of January 19, 2023 at 7:00 p.m. at the City Council Chamber, 8930 Limonite Avenue, Jurupa Valley, CA 92509.

In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if you need special assistance to participate in a meeting of the Jurupa Valley City Council or other services, please contact Jurupa Valley City Hall at (951) 332-6464. Notification at least 48 hours prior to the meeting or time when services are needed will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Agendas of public meetings and any other writings distributed to all, or a majority of, Jurupa Valley City Council Members in connection with a matter subject to discussion or consideration at an open meeting of the City Council are public records. If such writing is distributed less than 72 hours prior to a public meeting, the writing will be made available for public inspection at the City of Jurupa Valley, 8930 Limonite Avenue, Jurupa Valley, CA 92509, at the time the writing is distributed to all, or a majority of, Jurupa Valley City Council Members. The City Council may also post the writing on its Internet website at www.jurupavalley.org.

Agendas and Minutes are posted on the City's website at www.jurupavalley.org.

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December 1, 2022

Via E-mail (CityClerk@jurupavalley.org)

Mayor Barajas
Mayor Pro Tem Altamirano
Councilmember Bisbee
Councilmember Berkson
Councilmember Silva
City Council of the City of Jurupa Valley
8930 Limonite Avenue
Jurupa Valley, CA 92509

Re: **Request for Continuance of Item No. 13.F/Housing Accountability Act Prohibits the City of Jurupa Valley from Denying Master Application NO. 22051: Vesting Tentative Tract No. 38257 for 118 Condominiums on Approximately 7.94 Acres Located at the Southwest Corner of Limonite Avenue and Beach Street; (APN 162-230-012)**

Dear Mayor and Honorable Councilmembers:

This firm represents Century Communities of California, LLC (the "Applicant") in connection with its application to construct 118 condominiums (the "Project") on 7.94 acres at the southwest corner of Limonite Avenue and Beach Street (the "Project Site"). This is Lot 7 of the Paradise Knolls Specific Plan (the "PKSP") in the City of Jurupa Valley (the "City"). As a matter of law, pursuant to the Housing Accountability Act (the "HAA"), **the City cannot deny the Project, because it has not and cannot make the legal findings for denial.** Therefore, the Applicant respectfully requests that the City Council continue the Project to a date certain, so as to give the City an opportunity to comply with the law without litigation to compel compliance.

I. The HAA Mandates That City Council Not Deny the Project

A. *Our Housing Crisis*

California, and Southern California in particular, are undergoing a housing crisis of historic proportions. “California has the most severe housing underproduction in the nation, reaching a deficit of nearly 980,000 homes, according to a new report released” in July, 2022.¹ Recognizing the magnitude of California's housing crisis, our Legislature declared in the HAA that: "California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing."² Further, "[i]t is the policy of the state that [the HAA] be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing."³

B. *The HAA Prohibits the Denial of the Project*

The HAA limits the City's ability to deny, reduce the density of, or otherwise render infeasible the Project, because, as explained in the Planning Commission staff report,⁴ the Project complies with all of the City's objective, applicable development standards that existed at the time its application was deemed complete, including in the General Plan, PKSP, and Zoning Code.⁵ The Council may only overturn the Planning Commission's approval if it can make findings, supported by a preponderance of the evidence, that the Project would cause a "specific, adverse impact upon the public health or safety" that is "quantifiable, direct, and unavoidable," based on "objective, identified public health or safety standards, policies, or conditions," and that cannot be mitigated.⁶

There is no evidence, let alone a preponderance of the evidence, that the Project would cause such impacts, which the Legislature has specifically indicated will arise "infrequently."⁷

Instead, contrary to the requirements of the HAA, in Draft Resolution No. 2022-113 (“Draft Resolution”) the City proposes to deny the Project on the basis that the Project is allegedly inconsistent with the General Plan and the Specific Plan. The Applicant disagrees with this proposed determination. Moreover, by operation of law, the City is precluded from now making a determination that the Project is inconsistent with the General Plan and/or Specific Plan, because it did not raise any such inconsistency previously.

¹ “Report: California has most severe housing deficit in the nation,” Madison Hirneisen, The Center Square, Washington Examiner Jul 15, 2022 [Report: California has most severe housing deficit in the nation | U.S. & World | denvergazette.com](https://www.washingtonexaminer.com/report-california-has-most-severe-housing-deficit-in-the-nation-u-s-amp-world-denvergazette-com), accessed October 24, 2022.

² Govt. Code § 65589.5(a)(1)(B).

³ Govt. Code § 65589.5(a)(1)(L).

⁴ Planning Commission Staff Report, pages available at:

<https://www.jurupavalley.org/AgendaCenter/ViewFile/Item/1151?fileID=787>, accessed October 25, 2022.

⁵ Govt. Code § 65589.5(f)(1), (j)(1).

⁶ Govt. Code § 65589.5 (j)(1).

⁷ Govt. Code § 65589.5 (a)(3).

Under the HAA, if the City considers the Project inconsistent with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision, “it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity... (i) [w]ithin 30 days that the application for the housing development is determined to be complete, if the housing development contains 150 or fewer housing units.”⁸ If the City fails to give such required documentation, “the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.”⁹ The Project was deemed complete on September 1, 2022. Until the Draft Resolution was presented in the December 1, 2022 City Council package, the City has not previously given any notice of inconsistency to the Applicant. The only claim of such inconsistency was provided in the Draft Resolution, significantly more than 30 days after the Project’s application was deemed complete. As such, as a matter of law, the Project is deemed consistent with the General Plan and Specific Plan.

Notwithstanding the fact that the Project has been deemed consistent with the General and Specific Plans as a matter of law pursuant to the HAA, the Project is also consistent with these plans as a matter of fact. Draft Resolution Denial of Vesting Tentative Tract Map Finding 1 states that the “target” density of the Specific Plan for the Project site is 20 dwelling units per acre. But a target is only a subjective goal, and not an objective requirement. Moreover, the Specific Plan states that the target densities “... may be allowed to vary and be transferred from one residential planning area to another...”¹⁰ As such, the “target” density is not an objective requirement and cannot form a basis for denial. The only objective standard is the “Units Permitted by General Plan Range” which allows 146-312 dwelling units on 10.4 acres in Planning Area 2 (the Project site is within this area). This means that the minimum density is 14 dwelling units per acre. The Project provides 14.9 dwelling units per acre, above the minimum unit range. As such, there is no inconsistency with this objective development standard. For these reasons, Draft Resolution Denial of Vesting Tentative Tract Map Finding 3 fails. The sole purported inconsistency relates to a “target” density; but the target density is not an objective, required standard.

Similarly, Draft Resolution Denial of Vesting Tentative Tract Map Finding 2 does not state that there are any legal inconsistencies with the Specific Plan. Instead, the City’s quoted language recites a portion of the Specific Plan with no analysis, reasoning, or actual finding. As such, there is no inconsistency.

With respect to Draft Resolution Denial of Vesting Tentative Tract Map 4, the City seems to indicate that even though the City has not conducted any environmental review or analysis of greater density impacts, the City feels the Project could potentially develop at a higher density. Any alleged inconsistency with a potential, hypothetical higher target - as explained above the

⁸ Govt. Code § 65589.5(j)(2)(A).

⁹ Govt. Code § 65589.5(j)(2)(B).

¹⁰ Paradise Knolls Specific Plan, p. II-4.

Project is consistent with permitted density - is nonsensical. The fact that the Applicant did not propose more density does not in any way create a Specific Plan inconsistency.

Draft Resolution Denial of Vesting Tentative Tract Map Findings 5 and 6 maintain that there is a General Plan inconsistency since the Project would develop fewer dwelling units than assumed in the General Plan Housing Element's Site Inventory. However, there is no legal obligation for an applicant to develop the number of units assumed in a Housing Element. Rather, the General Plan Land Use designation, Specific Plan, and/or Zoning Code contain a range of permitted densities, and an applicant is free to design a project that fits within those permitted densities. The City's Housing Element makes an educated *assumption* as to a site's *potential*, but this assumption is not a development standard that mandates a certain density. To the extent that the Project proposes fewer dwelling units than assumed in the Housing Element's Site Inventory, for the reasons provided in the next section of this letter, it is the City's legal obligation to assure no net loss, not the developer's responsibility.¹¹ The City's failure to even try to find additional housing sites within 180 days following the Project approval is not a valid basis to deny this housing project, and the law clearly prohibits such a denial, based on Govt. Code § 65863(c)(2) and the HAA.

A broad range of plaintiffs can sue to enforce the HAA, and the City would bear the burden of proof in any challenge.¹² As reformed in the 2017 legislative session, the HAA makes attorneys' fees and costs of suit presumptively available to prevailing plaintiffs, requires a minimum fine of \$10,000 per housing unit for jurisdictions that fail to comply with the HAA within 60 days, and authorizes fines to be multiplied by five times if a court concludes that a local jurisdiction acted in bad faith when rejecting a housing development. As noted herein, the City costs for disapproval of this housing development project that complies with objective standards can be severe.

II. No-Net-Loss Requirements

Because the Project proposes a lower density and fewer affordable units than assumed for the Project Site in the City's Housing Element, the City must comply with SB 166, also known as the "no net loss" law. The no net loss provisions require the City to maintain adequate sites to accommodate its Regional Housing Needs Allocation ("RHNA"), and within six months of approving the Project, it must either: (1) make findings that the Housing Element's remaining sites have sufficient capacity to accommodate the remaining unmet RHNA, or (2) identify and make available new replacement site(s) for the units.¹³

As explained in the Draft Resolution, upon City approval of the Project, the City would have a deficit of only 24 units for the low income category. The City would have to re-designate not even one acre of vacant, undeveloped land at HHDR – 25 dwelling units per acre for its Housing Element to remain in compliance, within six months of the Project's approval. We understand that

¹¹ Govt. Code § 65863(c)(2) ("Nothing in this section shall authorize a city ... to disapprove a housing development project on the basis that approval of the housing project would require compliance with this paragraph.").

¹² Govt. Code § 65589.5(k).

¹³ Govt. Code § 65863(b),(c).

prior to the Draft Resolution, the City was already in the process of identifying potential sites for re-designation, and we encourage the City to continue this required process, instead of unlawfully denying the Project.

The City Council is *not* permitted to overturn the Planning Commission's approval on the basis that the Project would trigger the requirement for the City to find a replacement site.¹⁴ Neither is the City Council permitted to impose conditions that would make the Project infeasible, such as imposing a higher density requirement or imposing an affordability requirement, because as described above, the HAA forbids this. Further, the City does not have an adopted inclusionary housing requirement. Rather, the Applicant will be paying the City's inclusionary housing fee to ensure that affordable housing is constructed pursuant to the City's code.

Finally, while the City can seek assistance from the Applicant in complying with No-Net-Loss requirements, there are important limits to that assistance (the California Department of Housing and Community Development has explained that overly burdensome requests for assistance could make a project financially infeasible and constitute a violation of the HAA)¹⁵, and it is ultimately the City's responsibility to maintain adequate and realistic RHNA sites. Nevertheless, the Applicant is willing to assist the City in finding alternative sites. For example, Planning Area 4 of the PKSP only projects a minimal density of six dwelling units for 4.4 acres. Instead of estate size lots here, the City can easily identify this site as able to accommodate additional dwelling units to assure no net loss. Second, as stated earlier, the PKSP allows density transfers within the Specific Plan from one area to another. The PKSP allows such a transfer of density to assure no net loss, and the Applicant is pleased to provide this assistance to the City so that it understands it already has the existing tools to identify a nearby site that can accommodate density, so that there is no net loss of potential RHNA units.

For all of the reasons explained above, the HAA prohibits the City from denying the Project, and the Applicant therefore urges the City Council to deny the appeal. Given that the law is extraordinarily clear that there is no legal basis to deny the Project based on the evidence in the record, in the event the Council does disapprove the Project, the Applicant reserves all rights to pursue litigation. However, **because the Applicant does not wish to engage in litigation unless necessary and so as to give the City time to consider the legality - or the lack thereof - of its**

¹⁴ Govt. Code § 65863(c)(2) (“Nothing in this section shall authorize a city ... to disapprove a housing development project on the basis that approval of the housing project would require compliance with this paragraph.”).

¹⁵ " Requests [for assistance] can be made if an applicant’s initial development application requests a residential density that results in the remaining sites in the sites inventory being insufficient to accommodate it remaining RHNA. A jurisdiction cannot require developer assistance if the subsequent approval process results in a reduction of units. Types of assistance required could include help with the identification of additional sites for potential rezones or community outreach. However, requests should be balanced with the potential impact on the overall viability of the project. Overly burdensome requirements may make a development project financially infeasible and could, in effect, constitute a denial of the project or may violate the Housing Accountability Act (Government Code section 65589.5)." California Department of Housing and Community Development SB 166 guidance, page 10, available at: <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb-166-final.pdf>.

actions, if the City is not willing to deny the appeal, the Applicant respectfully requests a continuance.

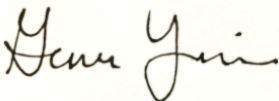
Thank you for your attention to this matter. We look forward to continuing to work with the City to bring this Project to fruition.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in blue ink, appearing to read "Ryan Leaderman".

Ryan M. Leaderman

A handwritten signature in black ink, appearing to read "Genna Yarkin".

Genna Yarkin

cc: Peter Thorson, Esq.