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THE HOUSING DEVELOPMENT WAR: THE STATE WINS THE FIRST BATTLE

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On March 12, Alameda County Superior Court Judge Frank Roesch issued a ruling striking down the City of Pleasanton's residential growth cap for failing to accommodate state-mandated housing availability goals. If this ruling stands, it has the potential to impact development state-wide by bolstering the state's influence in what has always been an intensely local process: zoning.

For the most part, planning and zoning take place at the local level. The state and federal government have a limited hand in influencing what cities and counties decide to permit within their domain. Not so with housing, after this ruling.

In California, each local government must adopt a general plan to guide the location and type of future development within its boundaries. State requirements for what these plans must contain are generally high level and lack teeth. The requirements are most specific for housing, mandating that each city and county plan for the number of new housing units assigned to it by the state. California policy states that each city and county must house its fair share of predicted growth in accord with the Regional Housing Needs Allocation (RHNA).

Notwithstanding these specific requirements, no/slow-growth cities have been able to do an elaborate dance with the rules and state regulators for years. The result in these places has been paper intentions for housing growth, but no local zoning realistically permitting new housing. As it stands, the Pleasanton ruling changes that. It proclaims that cities and counties can no longer write laws that obstruct the development of housing required by RHNA.

This case began in 1996, when the voters of Pleasanton adopted a measure mandating that no more than 29,000 housing units could be built within the city. Under RHNA, Pleasanton was then required to accommodate 5,059 housing units for the 1999-2007 planning period, and 3,277 additional housing units by 2014. As early as 2003, the City recognized in its general plan that the number of housing units allowed under the growth cap would fall short of the number required to meet the RHNA need. And by 2009, the city was only about 2,000 units shy of its 29,000 cap. Housing advocates filed suit, joined by the State Attorney General. Siding with them, the court ruled that, with the housing cap in place, Pleasanton was prevented by its own laws from complying with the state-mandated housing requirement.

Pleasanton's housing cap initially allowed for no exceptions to the 29,000 unit limit. The cap was reaffirmed by the voters in 2008, confirming that the City Council had no discretion to deviate from its strict limit. Nonetheless, less than two months prior to the hearing on the petition, the City enacted an exception to the cap based on a showing of "good cause." Although this eleventh-hour ordinance technically could have allowed Pleasanton to meet its regional housing allocation, Judge Roesch didn't buy the fix. He recognized that the "good cause" exception was a vague standard that could "take up a period of time ranging from one year to forever" to satisfy, despite time and money that developers would spend.

Judge Roesch affirmatively ordered Pleasanton to "implement non-illusory zoning changes sufficient to accommodate the unmet RHNA for the 1999-2007 Planning Period." As leverage, he also enjoined the city from issuing any other building permits with limited exceptions) until the city implements the non-illusory zoning.

The story here is twofold. First, Judge Roesch pulled back the curtain of Pleasanton's "good cause exception" attempt to save itself, and saw a rat. This is significant. Nearly all no/slow-growth cities and counties in California have a labyrinth of growth caps, height and density limits, beauty contests, and use permit requirements that must be satisfied to get new housing projects approved. These are all "discretionary"—meaning that cities/counties can simply say "no" if they want to. Calling a spade a spade, Judge Roesch called Pleasanton's version of the labyrinth something that can take from months to forever to satisfy. In so doing, Judge Roesch signaled that the judiciary would not to be hoodwinked.

Second, Judge Roesch essentially stepped into the shoes of the city and demanded that the city implement a particular zoning change, and said that the city could not take any other action until the zoning change was implemented. While this is permitted under state law, it was highly unusual. Again, this signals a judicial willingness to dig a little deeper and take more control to ensure localities comply with state land use laws.

The full impact of this ruling is yet to be seen, of course. Unless soundly rejected on appeal in a published decision, it will likely have impacts throughout the state. The ruling will require those cities and counties that have skirted their housing obligations through growth limits, height and density restrictions or other means to take a hard look at easing these restrictions. This would bring more certainty to the housing development process in those areas.

Perhaps more significantly, this ruling may open the door for advocates of other issues to use state law to influence local land use. In this case already, Attorney General Jerry Brown connected the dots between state mandated housing requirements and the newest climate change regulations by arguing that Pleasanton's failure to meet its housing obligations would result in its workforce commuting from outside the city, thereby increasing vehicle emissions, which could result in Pleasanton working against AB 32's requirement that emissions be reduced to 1990 levels by 2020. If this case provides a hook for advocates to use state law to influence local planning rules, we are likely to see more of these types of connections in areas beyond climate change.

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