Government • Land Use • Environment • Energy

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Development Rights

Eldercare Housing Crisis Looming

by Benjamin M. Reznik

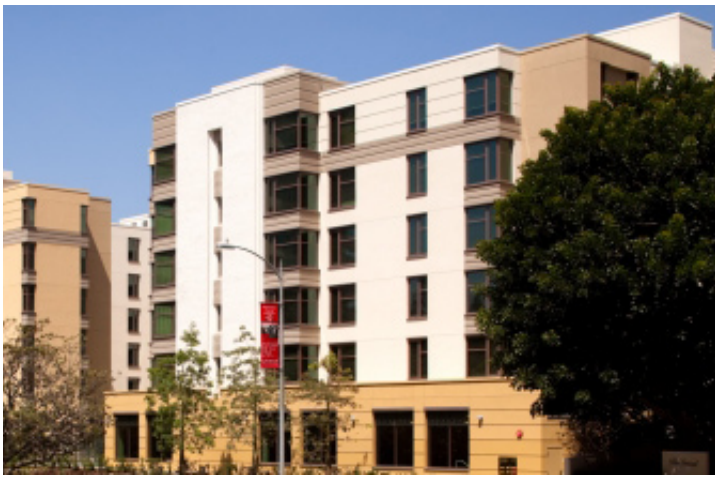

Photo of Belmont Village Senior Living of Westwood on Wilshire Blvd.

We are getting older and living longer. The statistics for the growth of the elderly are compelling. In the past few years we have seen several types of new private eldercare facilities, such as independent living and assisted living pop up in the LA area, mostly in more affluent neighborhoods. But make no mistake: neither LA nor the rest of the nation is prepared to properly care for and house the emerging elderly population.

When I speak with people who now must find some level of assisted housing for their elderly parents, their frustration is all too common and similar: there are too few choices and none that are located in their neighborhood. What an interesting concept – siting eldercare facilities "in our neighborhood." This notion is not just for the convenience of the adult child, who wants to remain close enough to the parent for visitation purposes, it is also important for the elder parent, who should not be relegated to living out the rest of his/her life in institutional facilities along major commercial corridors. There must be a way to integrate eldercare housing into residential neighborhoods, including single-family areas.

In 2006, the City of Los Angeles adopted an Eldercare Ordinance (178,063) which tackled this issue head on. It specifically provides for the siting of such facilities in virtually all zones, including single-family zones, through a process that enables a public hearing and the imposition of conditions. One of the biggest issues confronting eldercare facilities in the past has been the amount of parking that should be required. This ordinance modified the parking requirement to more closely reflect the actual parking need, thereby eliminating the need for complicated variance hearings. This ordinance would not have passed but for the tireless work of then Chief Zoning Administrator Robert Janovici, who realized its importance and shepherded it through the legislative process.

Now comes implementation. Will the city approve such facilities if faced with local neighborhood opposition? There have only been a couple of applications utilizing the Eldercare Ordinance so the answer is yet unknown. However, recently the Tarzana Neighborhood Council demonstrated strong leadership on this issue when it voted to recommend approval of an assisted living facility in one of its residential neighborhoods. Many of the Neighborhood Council members pointed out that it is our responsibility as a society to house the elderly in the very same neighborhoods in which they had lived for many years, rather than succumb to the pressure of forcing them to live in commercial areas. In a sense, what the Tarzana neighborhood Council is saying is that while the care of the elderly may be a business, the housing is residential in character.

It will be interesting to see how the City deals with this case as it makes its way through the process. ■

As Chairman of the Firm's GLUEE Department, Ben Reznik's practice emphasizes real estate development entitlements, zoning and environment issues, including frequent appearances before city planning commissions, city councils and other governmental boards and agencies on behalf of real estate development firms and various industries. For more information, contact Ben at 310. 201. 3572 or BMR@jmbm.com

JMBM Proposes Amendments to CEQA

by Sheri L. Bonstelle

JMBM's land use attorneys partnered with the Hollywood Chamber of Commerce, including its developer members, to draft amendments to the California Environmental Quality Act ("CEQA") (Public Resources Code, Division 13, Sections 21000 et al) that will provide developers more certainty and protection from frivolous lawsuits that have threatened Hollywood development in a time of economic turmoil. Hollywood Chamber president, Leron Gubler, stated that thousands of construction and permanent jobs were lost in Hollywood, because CEQA lawsuits against eight key projects delayed the developments for one year to eighteen months. As a

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result, owners decided to put their projects on hold or abandon construction, because either the project lost financing backing or the onset of the recession eliminated the anticipated market. JMBM and the Hollywood Chamber met with State Senator Curren Price in January 2011 to discuss the serious implications of the lawsuits that threaten Hollywood's growth, even when the developer ultimately prevails. Senator Price lauded these amendments as changes that would strengthen CEQA, and agreed to sponsor the bill in the 2011 Senate term.

CEQA is the foundation for environmental law in California, and its primary objective is to require disclosure of any significant environmental effects of proposed projects and mitigation of these effects to the extent feasible. CEQA also provides strict timelines and expedited litigation schedules for cases involving a challenge to such environmental reviews. However, the law allows for lenient extensions by judges, and the one-year time limit to proceed to hearing is often extended to over two years. In recent years the State legislature considered numerous amendments to CEQA to further expedite the litigation schedule and eliminate frivolous claims to allow more certainty for owners and developers in the process. However, the amendments did not ultimately provide a timely resolution of pending lawsuits.

As a result, owners decided to put their projects on hold or abandon construction, because either the project lost financing backing or the onset of the recession eliminated the anticipated market.

The amendments suggested by JMBM and the Hollywood Chamber provide three key objectives. First, the proposed language creates a strict schedule for the public agency to complete the administrative record in a timely manner by eliminating lenient extensions of the 60-day limit that often exceed six months. Second, the proposed language reduces the time for a case to proceed to a hearing from one year to nine months, and limits extensions of time periods for tasks prior to the hearing to ensure that this time frame is feasible. Finally, the proposed language allows the real-party-in-interest, who is often the property owner or developer, to participate in the mediation process, and to terminate mediation and proceed to litigation if the mediation is not producing timely results. The existing language allows the local agency or petitioner to continue mediation without results indefinitely. These amendments are currently under consideration by the State Senate in Senate Bill Number 735.■

Sheri Bonstelle is a Partner in the Firm's GLUEE Department. Sheri's practice focuses on land use and construction matters. Sheri is both a lawyer and an architect. For more information, contact Sheri at 310.712.6847 or SBonstelle@jmbm.com

Court Decision Changes CEQA Related Traffic Impact Analyses *by Neill E. Brower*

A recent court decision has already changed the way many public agencies evaluate traffic impacts in analysis reports prepared to satisfy the California Environmental Quality Act ("CEQA"). On December 16, 2010, the Sixth District of the California Court of Appeal issued its decision in *Sunnyvale West Neighborhood Association v. City of Sunnyvale*, invalidating an environmental impact report (EIR) for a major roadway extension project. *Sunnyvale* should be considered as a logical extension of case law regarding the proper baseline for CEQA analysis and the end of the future baseline scenario as the only basis of a traffic impact analysis.

Prior to *Sunnyvale*, an accepted practice of traffic impact analysis involved crafting a future baseline scenario, usually based on the anticipated year of project build-out, and evaluating project impacts based on the difference between future with and without the project. This approach makes intuitive sense, as under very few circumstances would traffic levels and street configurations plus project traffic represent an accurate picture of the project's ultimate effect on local and regional roadways. The *Sunnyvale* decision even recognized this.

However, CEQA Guidelines require an evaluation of the effects of a project on "the environment." Generally, "the environment" means the physical conditions that exist in an area during publication of the Notice of Preparation (NOP) or, if no NOP is published, the time that environmental review began.

Exceptions to this general rule are uncommon, but can occur when: (1) the physical conditions that existed at the time of NOP publication somehow did

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