

THURSDAY, FEBRUARY 3, 2022

PERSPECTIVE

Developer sues Encinitas over effort to block development

By Federico Lo Giudice

Daily Journal Staff Writer

A developer has filed a lawsuit after the city of Encinitas denied approval for a proposed mixed-income housing project. The lawsuit is being backed by the California Department of Housing and Community Development.

Timothy M. Hutter and Rebecca H. Williams of Allen Matkins Leck Gamble Mallory & Natsis LLP represent Encinitas Blvd Apartments, the developer attempting to build in Encinitas. The developer has clashed before with local authorities, who have resisted state law requirements for permitting more multi-family and low-income housing developments.

“The City has a checkered history of paltry housing production and repeated violations of state law, requiring multiple lawsuits over the past decade to compel the City to comply with its legal obligations. It is the poster child for the problems enumerated by the Legislature,” reads the lawsuit.

Leslie E. Devaney, interim city attorney for Encinitas, said she would not comment on pending litigation.

“Encinitas is proud of its record of approval of proposed housing in the City, including the approval of 37 density bonus housing projects resulting in multiple units built over several years,” she added.

The city has been accused in previous lawsuits of failing to comply with California’s Housing Accountability Act. HAA, passed in 1982 to address a housing crunch, was updated in 2017 as the state again grapples with a lack of affordable housing. The law limits the authority of local governments to oppose construction projects.

In its lawsuit filed Jan. 28, Encinitas Blvd Apartments said it wanted to build 236 market-rate units and 41 units for lower income households on a site the city designated in 2019 after losing a separate lawsuit filed by the Building Industry Association of San Diego County, which was also represented by Allen Matkins.

Last year, the California Department of Housing and Community Development warned city officials

against rejecting the current plan. The agency followed up on Jan. 20 with another letter giving the city 30 days to respond.

“We are aided by the concurrence of the responsible state agency, the Department of Housing and Community Development, which has weighed in repeatedly and instructed the City to approve the project,” Hutter said. “Set against a documented history of noncompliance with state housing laws by the City, we believe there is precedent in our favor, particularly with regard to the denial of requested waivers under density bonus law.”

On January 7, 2022, California’s Fourth District Court of Appeal issued a decision in Bankers Hill 150 et al. v. City of San Diego et al. D0077963 (Cal. App. 4th Dist., Jan. 7, 2022), affirming that, under state density bonus law, qualifying projects are entitled to a waiver of all local development standards which would physically preclude the proposed development. The Court of Appeal ordered the decision published on February 2, 2022.”

federico_giudice@dailyjournal.com