SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Boatworks, LLC, a California limited liability corporation Petitioner and Plaintiff vs. City of Alameda a municipal corporation, and the CITY COUNCIL for the CITY OF ALAMEDA, the governing body for the CITY Respondents and Defendants	Case No.: RG14-746654 **FINAL JUDGMENT GRANTING PEREMPTORY WRIT OF MANDAMUS AGAINST RESPONDENT CITY OF ALAMEDA**

This matter came regularly for trial on November 14, 2016 in Department 24 of the Alameda County Superior Court, Judge Frank Roesch presiding. Thomas D. Roth and Craig M. Collins of the Law Offices of Thomas D. Roth, appeared for Petitioner Boatworks and Rick Jarvis appeared for Respondent City of Alameda

After a bench trial, this Court issued, on December 1, 2016, an Order Re Petition for Writ of Mandate and Request for Additional Briefing. That Order granted Petitioner Boatworks' Petition for a Writ of Mandate against the City of

Alameda, and requested additional briefing on scope of relief and form of writ. Having received and considered the parties supplemental briefing and having entertained argument thereon, JUDGMENT is entered herein as follows:

IT IS ORDERED, ADJUDICATED AND DECREED THAT PETIOTIONER BOATWORKS LLC'S PETITION FOR PEREMPTORY WRIT OF MANDATE IS GRANTED, AS FOLLOWS:

1. A peremptory writ of mandamus shall issue from this Court to the Respondents CITY OF ALAMEDA, a municipal corporation, and the CITY COUNCIL for the CITY OF ALAMEDA, the governing body for the CITY, commanding Respondents to comply with the December 1, 2016 Order of this Court (attached hereto as **Exhibit 1**) by excising and vacating those portions of CITY Ordinance No. 3098 (Citywide Development Impact Fees) that concern or purport to authorize development impact fees for parks and recreations.

2. Petitioner is awarded cost of suit.

3. Within seventy five (75) days after the service of the judgement and writ, Respondents shall make and file with this Court a return to the peremptory writ issued by this Court setting forth its compliance with the judgment and writ.

Date: January 31, 2017

Frank Roesch
Judge of Superior Court

Exhibit 1

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

BOATWORKS, LLC. A California Limited Liability Company, Petitioner and Plaintiff, v. CITY OF ALAMEDA, a municipal corporation and the CITY COUNCIL for the CITY OF ALAMEDA, the governing body for the CITY, Respondents and Defendants.	Case No. RG14-746654 ORDER RE: PETITION FOR WRIT OF MANDATE AND REQUEST FOR ADDITIONAL BRIEFING

Petitioner Boatworks, LLC's Petition for a Writ of Mandate came on regularly for hearing on November 14, 2016, 2016, Judge Frank Roesch presiding. Petitioner appeared by its counsel, Thomas Roth and Craig Collins. Respondents City of Alameda and the Alameda City Council ("the City") appeared by their counsel, Rick Jarvis.

The parties have briefed the issues of the case and have offered the Administrative Record into evidence, have offered evidence outside of the Administrative Record, and have presented their respective arguments. The court has carefully considered the evidence, the briefing of the parties, and their respective arguments.

For the reasons that follow, the court will grant the Petition for Writ of Mandate.

As a preliminary matter, the court concludes that the extra-record evidence makes clear that the respondent did not consider all relevant factors as the record does not show consideration of the relevant fact that the City already owns undeveloped parkland greatly in excess of the needed parkland attributable to housing development projected for the next twenty-five years. Additionally, the extra record evidence makes clear that the City did not consider the relevant factor that City obtained much of the land it intends to develop into city parks at no cost, and that the remainder of the land now owned by the City which it intends to develop into city parks was purchased at a price per acre that is a small fraction of the price per acre calculated by the City in its computation of the mitigation fee exaction.

In July of 2014, the City of Alameda adopted Ordinance No. 3098 which amended Alameda Municipal Code Chapter XXVII, Section 27-3 (Citywide Development Fees) to impose an "updated" development impact fee ("DIF") on new residential development to pay for the public infrastructure required to serve that development (hereafter "DIF Ordinance"). (Administrative Record ("AR") 0001.) In preparing to adopt the DIF Ordinance, the City retained a consultant to conduct a development fee impact study and to prepare a report entitled "Nexus Study". The City then based its determinations underpinning the DIF Ordinance exclusively on the findings in the Nexus Study. The Nexus Study posits an analysis of development impact fees needed to support future development in the City of Alameda through 2040, explaining that "it is the City's intent that the costs representing future development's share of public facilities and capital improvements be borne by development in the form of a development impact fee, also known as a facilities fee." (AR 0041.)

The Nexus Study applied an "existing inventory" or "standard-based" approach to the calculation of the Parks and Recreation component of the DIF. This approach identifies a city's existing level of service to current residents based on the existing facilities and identifies a "per capita cost" based on the ratio of the value of existing facilities divided by the current population. The fee is then set to ensure that new development pays the same cost for such facilities on a per capita basis, with the proceeds of such fees then used to fund additional facilities to maintain the same overall standard of service. (AR 0046-0047.)

The Nexus Study includes estimates of current population in the City as well as projections of future growth within the City using figures from both Plan Bay Area[1] and the U.S. Census Bureau. (AR 0049.) Plan Bay Area also projects that the number of dwelling units within the city will increase during that time by 2,400 single family homes and 2,200 multi family homes. (*Id.*) The U.S. Census Bureau derives an existing population density at 2.66 residents per single-family unit and 1.9 residents per multi-family unit.

The Nexus Study finds that the City currently provides the equivalent standard of 175.14 acres of improved parkland for its 2013 population of 73,100 residents, resulting in a "service standard" of 2.40 acres of improved parkland per 1,000 residents. (AR 0073.)

The Nexus Study concludes that new development must provide funding sufficient to match this 2.40-acres-per-1,000-residents standard. Based on projected residential growth of 8,260 people, this results in the equivalent of 19.82 improved park acres, for a total value of $38,962,340, or $4,721 per capita. (AR 0074.) Applying the U.S. Census Bureau estimate of projected housing density through 2040 (and adding an administrative charge) the Nexus Study calculates the share of the cost to new residential development at $12,809 per single-family unit and $9,149 per multi-family unit. (*Id.*) The Nexus Study states that the City plans to use the fee revenue to "purchase parkland or construct improvements" and provides a list of "preliminary planned park facilities" which the City intends to fund with the proceeds, including development of the Jean Sweeney Open Space Park and the Estuary Park. (AR 0074-75.)[2]

On November 3, 2014 Petitioner Boatworks, LLC ("Boatworks") filed a Petition for Writ of Mandate challenging the DIF Ordinance as being facially invalid under the Mitigation Fee Act (Gov. Code, § 66000, et seq.)

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[1] Plan Bay Area is a long-range transportation, land-use and housing plan for the San Francisco Bay Area through 2040 authored by the Association of Bay Area Governments. (See AR 0049.)

[2] It is worthy to note that the Nexus Study identifies the DIF to include approximately $28.5 million to buy the necessary 19.2 acres of park land and approximately $10.5 million to improve the 19.2 acres of parkland (Table 6.7 at AR 0074) and that, on the same page of the study it states that the DIF will "fully fund" approximately $26.5 million to improve the list of parks in table 6.9. (AR 0075.) While this inconsistency suggests that the City had to have been aware that it would not be spending the portion of the DIF charged for the purchase of park land on the purchase of park land, it highlights the lack of rational connection between the fee imposed and the fee needed to pay for the infrastructure attributable to the new development that will be charged the fee.

I. DISCUSSION

The Mitigation Fee Act (Gov.Code, § 66000 et seq.) "sets forth procedures for protesting the imposition of fees and other monetary exactions imposed on a development by a local agency.... [T]he Act was passed by the Legislature 'in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects.' [Citations.] [¶] ... [¶] Although for the most part procedural in nature, the [Mitigation Fee] Act also embodies a statutory standard against which monetary exactions by local governments subject to its provisions are measured." (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 864-865.)

Section 66001 of the Mitigation Fee Act sets forth a two-part standard for assessing the reasonableness of a monetary exaction. Subdivision (a) of the statute "applies to an initial, quasi-legislative adoption of development fees." (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 336.) It provides in relevant part: "In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following: [¶] (1) Identify the purpose of the fee. [¶] (2) Identify the use to which the fee is to be put.... [¶] (3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed. [¶] (4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed." (Cal. Gov. Code, § 66001, subd. (a).)

An agency's quasi-legislative actions are reviewed by ordinary mandamus (Code Civ. Proc., § 1085; *Homebuilders Ass'n of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554 ("*City of Lemoore*").) Judicial review is limited to determining whether the local agency's action "'was arbitrary, capricious or entirely lacking in evidentiary support, or whether it failed to conform to procedures required by law.' " (*City of Lemoore*, at p. 561.) "The action will be upheld if the [agency] adequately considered all relevant factors and demonstrated a rational connection between those factors, the choice made, and the purposes of the [Mitigation Fee Act]. [Citation.] (*Id.*)

II. MITIGATION FEE ACT VIOLATIONS ASSERTED BY BOATWORKS

Boatworks asserts a list of eight alleged "violations" of the Mitigation Fee Act, arguing that each violation requires that that the City's DIF Ordinance be overturned. (Boatworks' Opening Brf., at pp. 28-62.) Not surprisingly, the City has responded that none of these arguments as to violations of the Mitigation Fee Act have merit. The court addresses the asserted violations in the order presented by Boatworks.

a. Alleged Violation 1

The first issue raised by Boatworks is the argument that the City relied on a population projection to calculate the per capita cost of new development park needs (table 6.7 of the Nexus Study) then applied the derived cost to a dwelling units projection of more units than would be needed to house the projected population, thus resulting in a windfall in favor of the City of over 11 million dollars.

That is: if the city intended to rely on any particular population projection, it cannot then use an inconsistent housing projection that results in a collection of in excess of 25% more funds than are needed to satisfy the new development parkland needs based on the initial population projection.

Boatworks is not correct in its assertion that such inconsistency demonstrates a lack of "reasonable relationship" between the impact fee and the projected needs. First, the projections of population growth and dwelling unit growth appear to have been taken from the same ABAG study, and a divergence, if any, results only because of the application of the U.S. Census Bureau's evaluation of current housing density.

Further, it is reasonable for the City to rely on the ABAG population projections to calculate the cost of either the current parkland inventory or new development parkland needs. The City has discretion to base its decisions on such population projections.

Alleged Violations 2 and 3

Boatworks' Violations 2 and 3 are based on the argument that the City's cost determinations were made by calculating the need to purchase 19.82 acres of land to develop into parks, whereas the City will not actually purchase any new parkland.

In calculating the $38.9 million in new funds that must be collected for parks, the Nexus Study concludes that new development must fund the purchase and improvement of 19.82 acres of land to develop into parks. (AR 0074.) Boatworks is correct that the Nexus Study calculations clearly premise the cost of the new development park needs on the acquisition of 19.82 acres of land for those parks.

The Nexus Study, at page 34 (AR 0072), cites the reader to table 6.4 as the underpinning of its park facilities cost, and such costs include "Land Acquisition" at a "Cost per Acre" of "$1,437,000." Elsewhere, at page 36 of the Nexus Study (AR 0074), the City's rationale shows a "Park Costs per Capita" in table 6.8 showing the necessary "investment" for park facilities is inclusive of the acquisition of the needed acreage at the rate of $1,437,000 per acre, and the total exaction for parks is seen in Table 6.7 showing totals of $28,481,340 for the purchase of land and $10,501,000 for improvements.

The Nexus Study then states that "City plans to use park facilities fee revenue to purchase land or construct improvements..." and refers the reader to Table 6.9 which displays a list of the City's "preliminarily-planned" park facilities stating that "new development will fully fund all these improvements through the impact fee." (AR 0074-75.)[3]

In short, while the fee is calculated with the premise that parkland will be purchased with the development impact fees, it is clear that, notwithstanding the disjunctive statement that the City plans to use the fee revenue to "purchase parkland *or* construct improvements," there is no intent to purchase any new parkland.

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[3] Assuming the projection of the Nexus Study that 4600 units will be constructed in the next 25 years and that the City Collects $28,481,340 for the purpose of purchasing parkland to develop into City Parks in order to address the increase in population attributed to the newly constructed housing units, and also assuming that the City follows through on the development of the Parks identified as "new" in Table 6.9 of the Nexus Study, the City will have collected $28,481,340 and will not have spent any money whatever to purchase parkland to develop in order to address the increase in population attributable to the newly developed housing.

The Nexus Report does not inform the reader that the City has no need to purchase park land in order to provide the needed parks and does not inform the reader of any intent to redirect the parkland purchase fees into any different use or into any other City account such as the General Fund.

The City argued, for the first time at the hearing that, with a very small exception, there are no plans to use the fees extracted from developers to purchase land to be used as parks, but rather to use that money to construct improvements to existing parks and to develop new parks on land that the City already owns.

The City argues that the mitigation impact fee may use the standard based method and that the use of that methodology permits the City to impose the entire abstract cost of purchase and development of 2.4 acres of park per 1,000 residents irrespective of the actual cost to the City.

The Nexus Study evaluated neither a "buy into existing facilities" amount nor the "what do we actually have to spend to increase our parks by approximately 20 acres" amount. While either of those calculations would arguably satisfy the reasonable relationship requirement of section 66001(a) of the Mitigation Fee Act, the calculation of the DIF fee based on the purchase of approximately 20 acres of land that do not, in fact, need to be purchased, is a violation of the Mitigation Fee Act. (See *City of Lemoore*, *supra*, 185 Cal.App.4th at 572.)

In *City of Lemoore*, the court ruled that the existing previously improved east side fire service facilities were already owned and operated by the City of Lemoore, that no additional facilities were needed there on account of projected development, and that the City of Lemoore could not recoup the abstract cost back into the General Fund which had originally paid for the improvements to east side fire service facilities. The court ruled that the exaction for the east side fire service facilities was "invalid in that it was not reasonably related to the burden created by the development project." (*Id.* a p. 559.)

Here, like the existing east side fire service facilities in *City of Lemoore*, the burden on the City created by the projected development does not require the City to purchase any parkland at all in order to develop 19.82 additional acres of park, and thus the portion of the DIF based on the purchase of parkland is an invalid exaction as a violation of the Mitigation Fee Act..

b. Alleged Violation 4

As Violation No. 4, Boatworks asserts that the Nexus Study is further flawed as it is clear on the face of the study that the City included in the existing park inventory a number of parks that do not yet exist. The consequence of inclusion of those not yet existent parks is that the ratio

of parks to current residents is increased to the 2.4 acres per 1000 residents standard used by the City to calculate the need attributable to new development.

The City responds that it is true that two parks included in the inventory are not yet open or "existing," but are both on land already owned by the City and were expected, in July of 2014, to be opened in the near future. The City argues that it is reasonable to include those facilities in the inventory, and the court agrees that it may be reasonable to do so if they are, as a matter of fact, on the cusp of opening. However, the court does not agree that a park may be part of the existing inventory in order to establish the ratio standard on which a fee is based, and also to use the fee imposed to develop the same park if, as it appears, the park will not be placed into service until developed with the use of the DIF.[4]

This improper calculation is a violation of the Mitigation Fee Act because it invalidates the calculations of the amount the new development needs for parks and violates the "existing inventory" methodology by including parks in the inventory that do not, in fact, exist.

c. Alleged Violation 5

As its alleged violation No. 5, Boatworks argues that the "existing inventory" of parks is further improperly impacted by the mischaracterization of "open space" as "park" when the General Plan categorizes "open space" or "community open space" as only .73 of the area of a park, and the General Plan identifies, for example, Shoreline Park as "community open space" which is then mischaracterized in the Nexus Study as "Park."

The City argues that the City has the discretion to apply (or to ignore) the General Plan characterizations in its consideration of the DIF and that it chose to evaluate some General Plan categorized open space as parks because they conclude that they should be categorized as full parks for DIF purposes. The City further argues that there is no language in the General Plan that prevents the City from treating such open space as a full park.

The court is unable to find, and the City has not cited the court to any place in the Administrative Record to support the conclusion that the City intended, based on a factual

[4] The court notes that it appears to be factually inaccurate that the Jean Sweeney or Estuary parks were on the cusp of opening, as the court was advised at the merits hearing that neither park has opened during the more than two years since the City passed the DIF Ordinance.

determination, to ignore the General Plan in its characterization that, for example, Shoreline Park is "community open space."

This accounting sleight of hand, while not a large dollar item, nonetheless is a violation of the Mitigation Fee Act because it creates a false parks to population basis which leads to a false conclusions regarding the amount of parks attributable to the projected growth of population.

d. Alleged Violation 6

Boatworks' "Violation 6" is that the use of the DIF revenue to remedy "pre-existing deficiencies in the park facilities" by expending it on a "sports complex" is improper. Boatworks' argument is not correct as the use of DIF funds to improve land owned by the City into a sports complex would be a permissible use of DIF revenue if the sports complex is part of the 19.82 acres of new parks. "Sports Complex" falls into the same category as "parks and recreational facilities" and there appears to be no proscription to the reasonable use of the DIF revenues to expand recreational opportunities. (*City of Lemoore*, *supra*, 185 Cal.App.4th at 565.)

e. Alleged Violation 7

Boatworks next argues as its "Violation 7" that the 2001 Nexus Study underpinning the DIF established that year projected an 8% responsibility on new development for the development of the Sports Complex. Boatworks argues that there is no justification in the 2014 Nexus Study to project a 100% responsibility for the development of the existing sports complex land into a sports complex on to new development.

The analysis of "Violation 6" applies to this argument as well. The City may devote DIF revenue to the improvement of the sports complex so long as the DIF does not otherwise violate the Mitigation Fee Act. (*City of Lemoore*, *supra*, 185 Cal.App.4th at 565.)

f. Alleged Violation 8

Boatworks final argument, its "Violation 8," is that the Nexus Study has no support for the development cost per acre used. The City pointed out, rightly, that there is exists sufficient support for the number used in Table C-10 of the Nexus Study. (See AR 0107.)

III. FURTHER BRIEFING AND SUBMISSION OF PROPOSED WRITS

In light of the court's foregoing conclusions, the Petition for Writ of Mandate must, and will be, GRANTED. However, because the court is uncertain of the scope of the writ relief that should be granted, the parties are requested to submit supplemental briefing on the issue of an appropriate scope of relief, and a proposed form of writ, in light of this order. Petitioner's supplemental brief and proposed writ shall be filed and served by January 3, 2017. Respondents' supplemental brief and proposed writ shall be filed and served by January 13, 2017. The parties' supplemental briefs shall not exceed 10 pages in length. The Department 24 clerk is instructed to set this matter for a hearing on January 20, 2017 at 2:00 p.m., at which time the parties may argue their respective positions.

Dated 12/1/2016

Frank Roesch

FRANK ROESCH
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number : RG14-746654
Case name: Boatworks LLC vs City of Alameda

FINAL JUDGMENT

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party tc this cause and that a true and correct copy of the foregoing document, FINAL **JUDGMENT** was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 31, 2017

Executive Officer/Clerk of the Superior Court
By Param Bir, Deputy Clerk

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