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State Density Bonus Law Does Not Require Applicants to Demonstrate Economic Feasibility of Project When Requesting Incentives

A Court of Appeal held that the state's density bonus law (Gov't Code § 65915) does not require applicants to demonstrate economic feasibility of a project without the



The Los

Angeles City Planning Commission approved a mixed-used development that qualified for increased building density under the density bonus law due to its inclusion of low-income housing. The Commission also granted the developers various incentives and waivers under the city ordinance implementing the state density bonus law. The ordinance required the applicant to submit a pro forma or other financial documentation to show that the requested incentives would make the project "economically feasible," but the Commission granted the incentives without this documentation. Appellants filed a petition for writ of mandamus, challenging the Commission's approval of the project. The trial court denied the petition. On appeal, the key issue was the appellants' contention that the state density bonus law required applicants to submit certain financial information to support a request for incentives and waivers. The court concluded that it did not. The court explained that the density bonus law does not require applicants to establish that the grant of incentives or waivers would result in cost savings. Instead, the burden of proof is on the city, not the applicants, to overcome the presumption that incentives or waivers will result in cost reductions. The city was required to grant the incentive or waiver unless it made a specific written finding that the incentive or waiver would (a) not result in identifiable and actual cost savings, (b) have a specific adverse impact upon public health or safety, or (c) be contrary to state or federal law. While a city or county may require that an applicant provide "reasonable documentation" regarding cost reductions, it may not require information demonstrating that an incentive is necessary to make a project "economically feasible." Thus, to the extent that the city ordinance required financial documentation from the applicant to show that a project is "economically feasible," it conflicted with the density bonus law and was preempted.

Authors