

Exhibit F

FILED

JUL 14 2025

FRESNO SUPERIOR COURT
By _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

PARK 7, LLC, A CALIFORNIA LIMITED LIABILITY
COMPANY, AND,
LANDVALUE MANAGEMENT, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY
PETITIONERS

V.

CITY OF FRESNO; AND CITY OF FRESNO CITY
COUNCIL,
RESPONDENTS

CASE NOS.: 24CECG04298

DEPT. 97D

DECISION GRANTING THE PETITION AND
REMANDING THE MATTER BACK TO THE CITY OF
FRESNO FOR FURTHER CONSIDERATION

The Petitioners have asked this court, inter alia, for an Order setting aside a denial by the Fresno City Council (Council) of their real estate development project. The Council denied the project for not complying with Fresno Municipal Code (FMC) § 15-5607(B)(1). The Petitioners admit their project was not in compliance with the City's Code, but argue that was not the real reason for the City's denial. They are of the opinion the history of the project, the comments by the citizens in contrast with the position of City staff, all point to bad faith on the part of the Council in making their decision. This court finds no bad faith in the robust public process which has been exhibited in the administrative record.

1 For the reasons stated below the court finds the City of Fresno did not identify the project as being out of
2 compliance with their General Plan or FMC § 15-5607(B)(1) within the 30 days required under
3 California Government Code¹ § 65589.5(j)(2)(A) & (B). As a result, “the housing development project
4 shall be deemed consistent, compliant, and in conformity with the applicable plan...ordinance....” §
5 65589.5(j)(2)(B). To then deny the project for being non-compliant with the General Plan or FMC runs
6 afoul of the law.

7
8 How we got here
9

10 On May 4th, 2021, the Petitioner submitted to the City of Fresno a Development Permit Application
11 (DPA)² for the subject property and updated the application on May 26th, 2021.³ On December 8th,
12 2022, which is 583 days after the original application and 561 days after the update, the City of Fresno
13 informed the Petitioner they were out of compliance with the setback requirements of the Expressway
14 Area Overlay District within which this project lies.⁴ Though not required as a result of the significant
15 delay on the part of the City, the Petitioner applied for a Minor Deviation which would address the non-
16 compliance with the setback requirement consistent with FMC § 15-5607.⁵

17
18 The Planning Director for the City of Fresno is given authority to approve, conditionally approve, deny
19 or refer to the City of Fresno Planning Commission any DPA and accompanying Minor Deviations.⁶ On
20 March 25, 2024⁷ the Planning Director approved the DPA and the Minor Deviation for the Expressway
21

22 ¹ Unless otherwise written all future code references are to the California Government Code.

23 ² Administrative Record (AR) Volume (Vol.) 3, page (p.) 106.

24 ³ *Id.* at p. 107.

25 ⁴ *Id.* at p. 114, 162-221.

26 ⁵ AR Vol. 5 p.621-622.

27 ⁶ FMC § 15-5203.

28 ⁷ AR Vol. 4, p. 294-295; AR Vol. 5, p. 601

1 Overlay setback. Decisions by the Planning Director may be appealed to the Planning Commission.⁸
2 Several appeals were filed.⁹

3
4 The Planning Commission heard the appeal on May 15, 2024¹⁰ and voted unanimously “to uphold the
5 appeal” finding “it doesn’t meet the General Plan”.¹¹ Decisions of the Planning Commission can be
6 appealed to the City Council.¹² Such an appeal was made.

7
8 On July 25th, 2024, the City Council heard the appeal and chose “to deny the appeal and uphold the
9 decision of the Planning Commission to overturn the approval issued by the Director” finding “the
10 project as designed is not consistent with the applicable design guidelines adopted by the City
11 Council.”¹³

12
13 While both parties have written and argued much over the CEQA exemption for infill development to
14 the court, the motion approved by the City Council did not address in any specific way the category 32
15 exemption. Therefore, this court does not address whether this project qualifies for such an exemption
16 or what role the recent decision of *South Fresno Community Alliance v. City of Fresno* 2024 WL
17 3663122 (not officially published) or the recent passage by the Legislature (and signing by the
18 Governor) of AB 130 has on the decision made by the City Council, if any.

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20 For the reasons stated above the court is remanding back to the City of Fresno with the following
21 directives:

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23 ⁸ FMC § 15-5017(A)(1)

24 ⁹ AR Vol. 4, p.304-321

25 ¹⁰ AR Vol. 4, Vol 6

26 ¹¹ AR Vol. 6, p.1149

27 ¹² FMC § 15-5017(A)(2)

28 ¹³ Vol. 7, p. 1309

- 1
2 1. The Petitioner's housing development submitted May 26, 2021, is "deemed consistent, complaint
3 and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or
4 other similar provision"¹⁴ of the City of Fresno and no minor deviation from the Expressway
5 Area Overlay District is required,
- 6 2. Within the next 60 days the City Council is to determine whether a categorical exemption from
7 CEQA applies for this project. This court is expressing no opinion on whether the recent *South*
8 *Fresno Community Alliance v. City of Fresno* decision or the recent enactment of AB 130 is
9 relevant. Nor is it precluding the Council from considering them, should they find them to be
10 relevant.
- 11 3. Should the Council find the project meets the requirements for a categorical exemption from
12 CEQA the City Council is to decide what Conditions of Approval should attach to the project.
13 This last directive is also to be determined within the next 60 days.

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15 Any request for court costs or attorney's fees is to be brought under a separate motion at the appropriate
16 time.

17
18 July 14, 2025

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22 HON. ROBERT MICHAEL WHALEN, JR.

23 Judge of the Superior Court
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¹⁴ Cal. Gov't Code § 65589.5(j)(2)(B).