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CALIFORNIA PLANNING & DEVELOPMENT REPORT

Cities, Housing Advocates Take Different Approaches To Housing Crisis

BY JOSH STEPHENS

Everybody agrees that something needs to be done to goose California housing production, and this has been a year that the California Legislature has been awash in bills. In fact, the legislature this year considered one housing-related bill for every 13,800 units that need to be built in the state by 2025 to alleviate the state's housing crisis.

Now that the bills are working their way through the process, however, the emerging question is who is going to muscle who in order to get more housing built. Will cities be able to muscle citizen groups with truncated environmental review? Or will the state be able to muscle cities to get affordable housing built? Or both?

Roughly 130 bills related to housing, homelessness, and housing finance were introduced this session, compared roughly 20 - 40 bills in a typical legislative session. Following the June 2 deadline for approval in the bills'

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insight
WILLIAM FULTON

New Supreme Court Ruling Proves Once Again: No Firm Takings Standard

For 30 years now, the U.S. Supreme Court has refused to create a firm standard for takings of property via regulation. Land use situations are all different – they often involve quirky facts about land ownership and some type of diminution of value via regulation, but it's really hard to generalize. And you never know what kind of weird situation will pop up next time around. All you know is that it's likely to be something that never occurred to you. Which drives conservatives crazy.

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inside

CARB Releases Draft 2020 GHG Targets under SB 375

The California Air Resources Board released its Draft Staff Report on the proposed update to the Senate Bill 375 Greenhouse Gas Emission Reduction Targets and the Draft Environmental Analysis prepared for the Proposed Targets Update. CARB's proposed targets would result in an additional reduction of GHG emissions of over 10 million metric tons of CO2 per year in 2035 compared to the current targets. For the 2020 Target, the four big MPOs are divided in their achievement of the adopted goal. MTC/ABAG has a goal of 10 percent reduction but is currently only at 7 percent. SACOG is meeting its 7 percent reduction goal. SANDAG has a goal of 15 percent reduction but in 2010 only had a 7 percent reduction. SCAG has is meeting its 8 percent goal. CARB is looking for comments on the Draft Staff Report and Draft EA until July 28, 2017.

Google Eyes Massive Mixed-Use Development in Downtown San Jose

Google is in talks with the City of San Jose about developing a 245-acre tech campus downtown near the Diridon rail station and SAP Center on city-owned land. The city council will vote today on whether to extend exclusive negotiating rights to the tech giant. The new campus would accommodate up to 20,000 jobs and transform the area into a transit-oriented tech village. The proposed village would build more than 6 million square feet of office and research space. The city currently has about 10 million square feet of offices, so an additional 6 million would be a huge addition. Many local businesses in the area are worried about being displaced by the project. Two groups of property investors have been purchasing properties surrounding Diridon Station and have currently spent a combined $124 million. The city has been long discussed more intensive development around the station, in part because it will serve as a hub for California High Speed Rail. San Jose Mayor Sam Liccardo said in a statement, "Based on our conversations with Google, we share a collective vision for the future of this space, a vision of urban design that will invite the public into the station."

BART Releases Transit-Oriented Development Guidelines

Bay Area Rapid Transit recently released its Transit-Oriented Development Guidelines, which would create greater clarification for BART's expectations about development around its heavy rail stations. This guidelines, developed pursuant to a policy adopted by BART in June 2016 and performance targets adopted in December, are expected to assist partner cities developing transit-supportive station area plans, developers interested in building on BART properties, community-members wanting to understand how they can get involved, and others wondering about future intentions for properties. The goals include complete communities, sustainable communities strategy, increased ridership, value creation and value capture, transportation choice, and development of up to 7,000 affordable housing units by 2040.

California Cities Join Movement to Uphold Paris Accords

Following President Trump's vow to pull out of the Paris climate accord, dozens of states and hundreds of cities across the country have vowed to fulfill the U.S. commitment without Washington. Fifty California cities — out of 292 nationwide -- have joined the effort known as #ClimateMayors, which is led by Los Angeles Mayor Eric Garcetti. They include Alameda, Arcata, Berkeley, Chula Vista, Culver City, Cupertino, Davis, El Cerrito, Encinitas, Fremont, Hayward, Healdsburg, Long Beach, Los Angeles, Los Altos, Los Altos Hills, Los Gatos, Malibu, Menlo Park,

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Milbrae, Morro Bay, Mountain View, Napa, Oakland, Palo Alto, Petaluma, Rancho Cordova, Redwood City, Richmond, Sacramento, St. Helena, San Diego, San Francisco, San Jose, San Leandro, San Luis Obispo, Santa Ana, Santa Barbara, Santa Clara, Santa Monica, Santa Rosa, Stockton, Sunnyvale, Torrance, Watsonville, West Hollywood, West Sacramento, Windsor, and Woodland. The states and cities would need to meet 26 percent below 2005 levels by 2025. According to some estimates, federal withdrawal from the Paris Accords may have limited impact because 70 to 80 percent of the work on reducing emissions happens at the state and local level, regardless of federal policy. Bloomberg, has pledged to personally cover the $15 million the U.S. is reneging on for operations fund of the U.N. agency overseeing the Paris accord. These cities have agreed to intensify efforts to meet the current climate goals for the city, but also push to meet the 1.5 degrees Celsius target, and work together to create a clean energy economy. In California, the most significant climate change policies related to land use relate to Senate Bill 375, which encourages compact, transit oriented development.

Pro-Development Group Sues City of Berkeley

The San Francisco Bay Area Renters Federation (SF-BARF) is suing the City of Berkeley City Council over allegations that the council has repeatedly violated California's Housing Accountability Act (HAA). The HAA, from 1982, compels municipalities to "not reject or make infeasible" housing developments that help meet housing needs. SF-BARF, along with California Renters Legal Advocacy and Education Fund (CaRLA), allege the city has violated HAA by rejecting a recently submitted application for a new three-unit development. The project was in compliance with "all applicable, objective general plan and zoning standards and criteria, including design review standards" and problems arose when neighbors were unhappy with the project and appealed. The City Council argues because the project required demolition permits to remove the existing residence, HAA did not apply. This is the second city that SF-BARF has sued to comply with HAA; the pervious case against the City of Lafayette, was settled in the city's favor last month.

Trump Budget Proposal Would Eliminate Much City-Related Funding

According to analysis by the League of California Cities, President Trump's Fiscal Year 2018 budget proposes significant cuts to programs that generally serve cities, either directly or indirectly. The budget would eliminate Community Development Block Grants, HOME Investment Partnerships, Choice Neighborhoods, and Self-Help Homeownership Opportunity Programs. Other changes include eliminating funding for Transportation Security Administration Law Enforcement Grants, Flood Hazard Mapping and Risk Analysis Program, and five components of existing FEMA Programs, while requiring a 25 percent local match on others. This is only a short list of the proposed eliminated and reduced programs. However, this is only an initial proposal and Congress must ratify the budget. Many Congressional members have expressed concerns for the major cuts proposed by the administration. The administration justifies the cuts on the "state and local governments are better positioned to address local community and economic development needs".

San Francisco Adopts Density Bonus Ordinance

The San Francisco Board of Supervisors approved, 10-1, a housing density law that has been in discussion for two years. The ordinance allows developers to build taller residential structures in exchange for 30 percent of units made affordable. The only dissenting vote, Supervisor Norman Yee, asked for a special exemption for the Ocean Avenue corridor in his district. The ordinance, known as Home-SF, will bring more housing units into an increasingly expensive market and is critical in keeping working and middle-class residents in the city. The supervisors also unanimously approved a settlement with short-term rental services such as Airbnb and HomeAway that ensures all local hosts are registered with the city.

Federal Funding Restored for Caltrain Upgrades

The Federal Transit Administration abruptly reversed course to approve a $647 million grant to electrify Caltrain tracks. Several months ago, newly confirmed Transportation Secretary Elaine Chao abruptly said it would not disburse the funds to the Bay Area commuter railroad, even though they had already been promised

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under the Obama administration. The electrification project, which will cost a total of $2 billion, will mean faster and more reliable trains on a 51-mile stretch, offering more than 110,000 rides per idea instead of the current 60,000. Electrification is also a crucial step towards readying the Peninsula corridor for high speed rail. The first electric trains will be in service by 2021, and construction will begin in 60 to 90 days. The electrification will replace the current fleet of diesel trains. "We are very thankful to U.S. Secretary of Transportation Elaine Chao and the Trump Administration for recognizing the value that Caltrain Electrification will create for the Bay Area and the nation by easing congestion in one of the country's most economically productive regions and creating almost 10,000 American jobs in the process," said Jim Hartnett, General Manager and CEO of Caltrain, in a statement.

Los Angeles Metro Considers Overhaul of Bus System

In response to falling bus ridership, the Los Angeles Metropolitan Transportation Authority has embarked on a study to "re-imagine" the agency's bus network, which is the largest in California. The study, expected to take over a year, will analyze the system's 170 lines and 15,000 bus stops. The current system has been in place for over 25 years without major changes. In that time, Metro has opened multiple rail lines, which have influenced rider behavior. Annual bus ridership on the system has fell 16 percent from 2013 to 2016, or 59 million trips. After months of preliminary research, Metro officials acknowledged the bus system is not working as well for riders as it once did. A recent survey of 2,000 former riders say the buses don't go where they want them to go or don't come often enough or stop running too early. Of those surveyed, 79 percent now primarily drive alone. Metro's Conan Cheung told the Los Angeles Times, "we're misaligned with current travel demands."

TCC Draft Scoping Guidelines Available for Comment

The third revision of the Draft Scoping Guidelines for the Transformative Climate Communities (TCC) Program is being made available for public comment. This new draft does not represent the full proposed guidelines for the program. In February, the SGC convened a Stakeholder Summit on the TCC Program in Sacramento to launch the public process for receiving input on the second revision of the Draft Scoping Guidelines. Written public comments were submitted to the SGC by March 13. Revisions have been made to provide greater clarity on the SGC's vision for the program and to reflect public comments that were received. This June 2017 release presents a revised draft program framework that includes updated eligibility requirements, redefined strategies and other requirements applicants must meet for implementation and planning grants. Updates have been made to the proposed application process, and sections have been added to reflect scoring criteria, grant administration, and technical assistance and support. (See prior CP&DR coverage.) ■

Fort Ord Design Guidelines Draw National Attention

BY LARRY SOKOLOFF

Fort Ord was once one of California's largest army bases, and an important part of Monterey County's economy. About 1.5 million service men and women attended Basic Training there during the Korean and Vietnam Wars. After the base closed in 1994, its size and prime location on the California coast made it a strong candidate for something big to happen.

Because of its exurban location and rugged topography, Fort Ord does not lend itself to a massive residential redevelopment, such as those underway at Hunters Point in San Francisco or at the former Concord Naval Weapons Station. Like most of coastal Monterey County, it's grown slowly. Today it's part ghost town, part college town, full of a little bit of suburban sprawl and lots of open space on prime exurban piece of coastal California.

The Fort Ord Regional Urban Design Guidelines, adopted last year by the Ford Ord Base Reuse Authority, attempts to usher in appropriate development for the 28,000-acre site. While it has yet to be implemented, the American Planning Association recognized the guidelines with a Silver National Planning Achievement Award this year.

Much of the former Fort Ord property must be decontaminated before development can proceed.

Contaminated old buildings are waiting to be demolished or restored, and unexploded ordnance needs to be cleared. Five jurisdictions border the former army base—the cities of Marina, Seaside, Monterey, Del Rey Oaks, and the county of Monterey.

The Reuse Authority, made up of representatives of local governments and other stakeholders, spent two years

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crafting the guidelines, working with local citizens and leaders to lay out guidelines for developers to follow as they consider new uses for the area.

The guidelines were developed per requirements in the 1997 base reuse plan. That plan calls for full-build out by 2037, with buildable parts of the base divided among the adjacent municipalities, which will, in turn, sell parcels to developers. The base reuse authority is preparing 3,300 acres of the property for transfer to the municipalities. The design guidelines will thus provide uniform development standards across jurisdictions.

The guidelines are to provide "a sense of community, a sense of place across the

cities that have the former Fort Ord property," said FORA principal planner Jonathan Brinkmann. The APA cited the process of drafting "as a best practice model for large area, complex public planning processes anywhere."

With California's greenhouse gas emission laws in mind, the guidelines emphasize pedestrian-oriented planning for future development, Brinkmann explained.

"This is a smart way to design a community in order to have more walkability," he said.

The plan focuses on street connectivity, well-oriented buildings, public spaces and a mix of building types.

The guidelines "help us define the urban characteristics for our developments," said Kurt Overmeyer, economic development director for the city of Seaside. Overmeyer said the plan allows for high density development, but also allows for lesser density.

"It gives us enough flexibility so we can adjust to market conditions," he said.

The guidelines were developed per requirements in the 1997 base reuse plan. That plan calls for full-build out by 2037, with buildable parts of the base divided among the adjacent municipalities, which will, in turn, sell parcels to developers

The APA judges noted that the plan engaged local residents in the planning process. More than 1,200 people participated in the regional planning process.

"The high level of community engagement that went into the RUDG's development is the aspect I valued the most from the nomination," said APA juror Miguel Vazquez, a planner with the Healthy Riverside County Initiative. "While the final product's content and format meet industry standards, its web-presence makes it stand out—it make the information engaging and accessible to the general public.

The former military base encompasses 45 square miles, enough land to create a city the size of San Francisco. Thus far, the focus of base reuse has been on other uses. Two-thirds of the land is supposed to be open space, according to the 1997 plan.

Much of the former base's inland territory is now part of a 14,000-acre national monument, designated by President Obama in 2012. The federal Bureau of Land Management oversees the national monument, which is covered with miles of trails for public use.

On the coast, the 1,000-acre, four-mile-long Fort Ord Dunes State Park opened in 2009.

Brinkmann ticked off a list of other projects that have been built in the past decade, totaling less than 800 acres. Commercial and residential development has primarily clustered next to the cities of Marina and Seaside, whose economies heavily depended on the base while it was open. Both cities lost thousands of residents when the base closed.

Overmeyer of Seaside noted that his city is still down 10,000 residents. Affordable housing will be part of whatever development comes next, he said. The city is expected to get 600 additional acres of former base land

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in 2019.

Both Marina and Seaside have attempted to develop former base land that they can annex. The two cities divided 5,280 acres of former base land. They sold some of the land they received for free from the federal government to housing developers (see CP&DR Jan. 2006).

At one point, Seaside's plans called for a lifestyle center similar to Irvine's Spectrum project. But with changes in retail that's not a viable business model, Overmeyer said.

Near Seaside, a proposed large development on former base land went through the planning process for six years, only to fall apart several months ago. Called Monterey Downs, it would have included a horse racing track, a 6,500-seat indoor arena, 1,280 housing units, two hotels, and retail and commercial buildings on 710 acres.

The plan was rescinded by the Seaside City Council in December 2016 after the developer pulled out of the deal and local environmentalists sued over the project.

One of the more successful projects on the site of the former base has been the creation of a California State University campus there.

CSU Monterey Bay opened in 1995, and the university continues to open new buildings and student residences. The school's enrollment has nearly doubled in the past decade from 4, 000 to 7,600 students. The university plans to grow to 12,500 students by 2025, according to Brinkmann.

Lagging behind are plans by the University of California, which was given 1,000 acres of Fort Ord land for use as a future tech research and development center. A headquarters building opened in 2001, but not much has happened in the interim, according to the Monterey County Herald. ■

Contacts and Resources

Ft. Ord Base Reuse Plan

Regional Urban Design Guidelines

APA National Planning Achievement Awards 2017

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houses of origin, many of the 130 remain alive. While plenty of urban renters, frustrated developers, and distraught planners have known about the housing crisis firsthand for years, the legislature is only now seems to be addressing it with urgency.

"Legislators got a lot of contact from their districts about how the affordable housing crisis was hitting moderate income people," said Tyrone Buckley of Housing California. "They were learning that the problem that we had been telling them about for years was impacting almost everyone in their districts."

In many ways, the failure of Gov. Jerry Brown's housing proposal last year gave new urgency to legislators and has led to both a more creative array of bills and a new sense of solidarity not just among traditional housing advocates but even to organizations that had previously been skeptical of efforts to "force" housing on cities.

This year's bills approach the crisis from a variety of perspectives. Some follow Brown's lead by seeking to streamline local approvals. Others raise funds for subsidized housing. Still others promote inclusionary development or refine existing laws meant to promote the development of market rate and/or subsidized housing.

Notably absent are proposals to dedicate general fund monies to subsidized housing. Backing down from a proposed $400 million fund that was in his housing package last year, Brown has indicated that he does not want to spend public funds on housing when local regulations have made the cost of development is, according to him, inordinately high in many cities.

"The governor was pretty quick in his January budget to say, 'Hey, don't look at me for any dough'," said Jason Rhine of the League of California Cities. "He's not interested in signing bills with new sources of funding if reforms aren't in place. He's not interested in throwing good money after bad."

Rhine added that the governor is saying, somewhat unfairly, "local government, you're the problem."

From a planning perspective, the clash is likely to be between AB 540 – which would give cities more power to streamline environmental review -- and SB 35 – which would create an state override system similar to Massachusetts – could have the greatest impact. They represent two dramatically different approaches. Both have passed their house of origin and are now making their way through the opposite house.

"We have very clear marching orders from our membership that addressing the supply and affordability crisis in the state: We need to do it," said the League of California Cities' Rhine

SB 540: Streamlined environmental review at the neighborhood level

Rhine said that the League of Cities considers SB 540 to be a "cornerstone bill." It would streamline environmental review by bundling entire neighborhoods into a single environmental impact report. Then, individual projects that conform to the EIR would receive permits with no further review, for up to five years following certification of the EIR.

"Instead of not doing environmental review, we do it at the beginning; you don't have to do that project-by-project analysis," said Rhine. "Whoever hates this can come to of the woodwork and complain at the beginning. But once we finish that environmental review, there will be no additional project-by-project review for five years."

The organization seems a bit chastened by what many had seen as obstructionism in the past. The League is sponsoring SB 540 and the two bond measures as part of

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its "Blueprint for More Housing."

"We have very clear marching orders from our membership that addressing the supply and affordability crisis in the state: We need to do it," said Rhine.

SB 35: State override of local power

However, the League is not chastened enough to support SB 35, a variation variation on Gov. Brown's streamlining bill from last year, which would have compelled cities to grant approvals to projects that comforted to existing zoning and, therefore, deserved permits "by right." The League of Cities objected to that bill in part because, it claimed, it would have imposed on cities' right of local control. SB 35 imposes streaming only on cities above 200,000 and only when cities are not approving enough units to meet their Regional Housing Needs Allocation numbers.

Rhine said that the League remains unconvinced.

"RHNA is a planning and zoning tool," said Rhine. "Cities don't build homes. It's holding us accountable for things we do not control."

Buckley said that these cities can keep their approvals low, thus making something like SB 35 is necessary, because RHNA essentially has no enforcement mechanism.

"These statewide housing laws that don't really have much enforcement, short of a developer suing, because it's hard to sue whom you're doing business with," said Buckley.

"Often they don't have the resources to sue every city that's recalcitrant on housing element law or the Housing Accountability Act," said Buckley.

Despite its concerns about SB 35, Rhine said that the League is committed to solving the housing crisis and accepts that state legislation must play a role. Indeed,

"We're not just going to say no. That's the most common theme for us this year," said Rhine. Regarding bills like SB 35, he said, "We are trying desperately to find a path forward, make some improvements….at the same time retaining essential local control."

Unsurprisingly, dedicated housing advocates are taking a more aggressive position, especially on subsidies for low-income residents.

"I don't think the market alone is going to solve this," said Michael Lane of the Nonprofit Housing Association of Northern California. "There are many people that the market will never serve, particularly the homeless or seniors where the profit motive simply won't reach."

Affordable housing funding bills

Housing California and other affordable housing groups support SB 2 and SB 3, as well as AB 71, which would eliminate the state mortgage tax deduction on second homes. Because they concern state funds, these bills all require two-thirds votes in the legislature.

Buckley remains frustrated, though, by Brown's reluctance to commit state funds to developing subsidized units.

"I'm all for fighting climate change, but no one thinks that cap and trade is going to completely solve climate change," said Buckley, referring to one of Gov. Brown's major issues. "The idea that, for some reason, that the only way we work towards solving the housing crisis is if we can solve it all with one fell-swoop is, I think, a pretty specious argument."

As legislators revise the bills that are still alive, Buckley said that the legislature must capture the moment, own up to the housing crisis, and, with so many bills to vote on, proclaim their stances.

"Housing California wants to see all housing legislation brought up for a vote," said Buckley. "We think momentum in the state and in the public sentiment....when we don't have a vote on major housing bills, we don't get to see who's ready to exercise their political will." ■

Contacts & Resources

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insight WILLIAM FULTON

>>> New Supreme Court Ruling Proves Once Again: No Firm Takings Standard

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Last week's U.S. Supreme Court ruling in *Murr v. Wisconsin* was a pretty good case in point. As usual, the conservatives had a pretty black-and-white view properties rights, but in this case – thanks to Justice Anthony Kennedy – they lost out to more liberal justices who decided that things aren't so simple after all.

The basic issue in the case was whether two contiguous properties owned by the Murr family should be treated as one parcel or two for the purposes of a takings analysis. The conservatives on the court, led by Chief Justice John Roberts, said they should be treated as two parcels – which would have opened the door for a strong takings claim on one of them. But the court majority, led by Justice Anthony Kennedy, went the other way. Attempting to fight his way through a typically dense land-use regulatory thicket, Kennedy said the two properties should be considered one parcel for the purposes o f the takings claim. And, he added, appraisals suggested that the property was more valuable as one parcel than two anyway.

The key legal question was whether the two properties should be considered as one for the purposes of the takings analysis, no matter whether they were still considered two in real life for other purposes.

The key legal question was whether the two properties should be considered as one for the purposes of the takings analysis, no matter whether they were still considered two in real life for other purposes. In his dissent, Chief Justice Roberts said: "State law defines the boundaries of distinct parcels of land, and those boundaries should determing the 'private property' at issue in regulatory takings cases. Whether a regulation effects a taking is a separate question."

But Kennedy, a Californian, disagreed and therefore won the day. "Like the question of whether a regulation has gone etoo far, the question of the proper parcel in regulatory takings cases cannot be solved by any simple test," he wrote. He added that "treating the lot in question as a single parcel is legitimate for purposes of this takings inquiry" – a line Roberts attacked as creating a "malleable" takings standard that considers property ownership and parcel creation differently depending on the legal question at hand.

The underlying facts are so convoluted that any California land use planner would be comfortable reciting them. Decades ago, the Murr family purchased two adjacent lots along the Lower St. Croix River in Troy, Wisconsin, just across the St. Croix from the Minnesota state line. Their property is subject to regulations Wisconsin put into place in response to the designation of the St. Croix as a wild and scenic river under federal law. These regulations are included, as required by Wisconsin law, in local zoning ordinances in St. Croix County.

The rules prohibit building on lots that have less than one acre of developable land, which was the case for both the Murrs' lots. A grandfather clause applied to adjacent lots in separate ownership as of 1976, and also stated that adjacent lots under common ownership had to be considered one lot for the purposes of complying with the rules.

Both the Murr lots are 1.25 acres in sizde but because of topography the buildable area on each one is less than one acre. Both were bought in the 1960s but were held in technically separate ownership; the lot with the cabin was

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held in the name of the family plumbing company and the other lot was held in the name of the Murr parents. The lots were transferred to the four Murr children – who brought the lawsuit – separately, in 1994 and 1995, long after the 1976 cutoff date to be grandfathered in.

The county denied a variance request, which was subsequently upheld in state court. Then the Murrs filed a takings claim in state court, arguing that the state and county regulations resulted in a taking of property on the lot without the house because it robbed that lot of virtually all economic value since it was rendered unbuildable. Both sides submitted appraisals. The state's appraisal said the two properties together were worth $698,000 as is and would be worth $771,000 if both were buildable, whereas the lot with the house on it was separately worth $373,000. The Murrs' appraisal said the lot without the house was worth $40,000, assuming it could be sold separately. The Murrs lost in all state courts in Wisconsin and then appealed to the U.S. Supreme Court.

In the Supreme Court ruling last week, the Murrs lost 5-3, with the court's opinion written by Justice Kennedy, who emphasized that a key aspect of takings jurisprudence is "flexibility". The critical question, of course, was whether – for the purposes of the takings analysis – the Murrs' property should be viewed as one parcel or two.

In ruling against the Murrs, Kennedy laid out two concepts from previous takings cases. The first is that "the court has declined to limit the parcel in an artificial manner to the portion of the property targeted by the challenged regulation." For example, Kennedy noted that in the famous *Penn Central* case – which upheld a transfer of development rights system, the Supreme Court refused to separate the Grand Central Terminal parcel from the air rights that could be transferred. [*Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).] The court also referred to the fact that in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002) – a case in which now-Chief Justice Roberts represented the Tahoe Regional Planning Agency against a taking claim by a property owner – the court refused to several the 32 months during which a parcel was subject to a moratorium from the remainder of time when the parcel was buildable.

By the same token, Kennedy quoted *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), in laying out the concept that takings jurisprudence must be "coextensive" with state law.

Based on these two concepts – you can't define parcel narrowly for the purposes of a takings evaluation and you can't separate takings from the rest of state law – Kennedy concluded that the a taking had not occurred. In fact, he said, by asking the court to consider the second parcel separately, the Murrs "ask this Court to credit the aspect of state law that favors their preferred result (lot lines) and ignores that which does not (merger provision)." He said adopting this approach would cast many merger provisions around the country into doubt.

In any event, he concluded, the combined effect of all the appraisals from both sides suggests that the property with the prohibition on a second home is much more valuable as one parcel than as two. (This ignores, of course, the possible increase in value that would result from the ability to build a second home.)

In his dissent, Chief Justice Roberts simply stated he would separate the question of the merger provision from the taking and therefore reach the opposite result in the case. "State law defines the boundaries of distinct parels of land, and those boundaries should determine the 'private property' at issue in regulatory takings cases," he wrote. "Whether a regulation effects a taking of that property is a separate question, one in which common ownership of adjacent property may be taken into account." ■

Radical Left Burns Bridges in Quest To Build Housing

Planners who tend to keep their heads down politically might have missed the firestorm that erupted a few weeks ago over a column about the "YIMBY" movement on the left-wing site *Truthout*. The grassroots, pro-development movement got savaged in a quasi-article by Toshio Meronek and Andrew Szeto originally entitled "YIMBYs: The 'Alt-Right' Darlings of the Real Estate Industry."

The headline was eventually changed to omit "alt-right" to seem less inflammatory, if still inaccurate. When "alt-right" gets thrown around in land-use circles, you know something is up.

For the uninitiated, the "Y" stands for "yes," and the "yes" refers to development — mainly to housing. By filing comments, testifying at hearings, and otherwise inserting themselves into public discourse, YIMBYs try to provide a counterweight to anti-development forces. They generally support market-rate and affordable housing developments alike.

The unofficial leader of the YIMBY movement – and prime target of Meronek and Szeto – is Oakland-based Sonja Trauss, who founded the San Francisco Bay Area Renters Federation, delightfully abbreviated SF-BARF. They accuse her of being the powerful leader of "an army with soldiers around the world, from Boulder to Bratislava, while dominating the dialogue on how to deal with the very real problem of housing inequality." I think any planner would be surprised to find that pro-development activists are "dominating" much of anything.

In reality, Trauss considers SF-BARF an open-source grassroots organization, replete with a wiki website that irreverently uses Comic Sans font. ULI it is not. Trauss provides information and does her own rabble-rousing, but any concerned citizen can take up the cause at any time.

Trauss describes herself as an anarchist, with no love for political ideologies. Short of burning the whole place down, she has contented herself with supporting The Man (real estate developers) so as to stick it to The (other) Man (homeowners associations and other anti-development forces). It's a compromise, to be sure. But even anarchists need someplace to live.

Meronek and Szeto have decided that Trauss and her colleagues are "pro-gentrification," in league with "greedy" real estate developers. They equate support for market-rate housing with support for "luxury" housing. They also equate it with not just tolerance for but, it seems, approval of displacement. YIMBYism, they claim, is "rooted in the same classist, racist ideologies it supposedly seeks to disrupt," in line with redlining, slum clearance, urban renewal, and other explicitly discriminatory practices of decades past.

What Meronek and Szeto don't seem to understand that there's a difference between intention and consequences.

As a factual matter their accusations are nonsense for all sorts of reasons. SF-BARF has routinely lobbied for projects with affordable units, with just as much enthusiasm as it has for projects with all market-rate units. Trauss famously "sued the suburbs" — or rather *a* suburb, Lafayette — to get them to meet their Regional Housing Needs Allocation obligations. The SFBARF mission statement reads, in part, "without an increase in overall yearly production of housing in the Bay Area, we will continue to suffer from displacement, crowding and exploitation from landlords." See, they don't like displacement, or exploitation.

Meronek and Szeto can't quite believe that anyone would want more housing, so they accuse Trauss of being in the pocket of just about everyone. This includes Jeremy Stoppelman, CEO of Yelp, and, presumably, an uncaring fan of "luxury" housing. Never mind the fact that no capitalist — other than a real estate developer — would ever want his or her employees to live in expensive housing.

Meronek and Szeto write of collaboration: "When asked about her organization's alliance with SPUR and realtors, she responds that the groups have 'a shared goal ... so we work together.'" And they accuse Trauss of "aligning" with tech billionaire (and Trump supporter) Peter Thiel simply for having breakfast with him – at his invitation.

Come on. They had *breakfast*. It's not like they shared a room at Davos.

Even after their story roused a slew of thoughtful, and

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Radical Left Burns Bridges in Quest To Build Housing

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frustrated, online chatter, Meronek and Szeto doubled down on many of their claims in an opinion piece in the *San Francisco Examiner*. They write that YIMBYs have

co-opted social justice movements against gentrification toward a capitalist, pro-gentrification agenda. YIMBYism's long standing affiliation with right-wing free-market, or neoclassical/neoliberal, economics is precisely what our article illuminated....their politics are rooted in racist and anti-poor conservative neoliberal ideologies.

Allrightee then.

Notwithstanding the fact that it's pretty hard for a three-year-old movement to be "long standing," tirades like this make it almost impossible to assign much credibility to the radical left. That's a shame. Many progressive mainstream planners and, I reckon, the majority of YIMBYs share 90 percent of the values of people like Meronek and Szeto. They might have different priorities and favor different tactics, but I think we're all on the same team.

(That team is scoring points. Last year, San Francisco voted for all sorts of funding for affordable housing, and the city is developing complementary ordinances.)

And yet, like children who've been so badly bullied that they won't let anyone be their friend, Meronek and Szeto make no attempt to persuade and instead seem like they're spouting off only for personal satisfaction. They support social justice and yet call fellow progressives "alt-right." If that's not otherization – which is, rightly, one of progressives' major bugbears -- I don't know what is.

Enough, already.

I get it. I get resentment. I get fear. I get the fraught history surrounding the urban poor. But I don't get the vitriol, and I don't respect the dishonesty.

I submit that honesty and compromise remain admirable values and effective political tools — especially on the local level where policymakers, community members, and activists are literally rubbing elbows with each other.

Does YIMBYism have problems? Sure. No movement is perfect. But slander and willful misrepresentations are bigger problems. They create bitterness and fragmentation when there ought to be unity, cooperation, and respectful disagreement.

They may treat mainstream housing advocates like enemies, but, fortunately, we don't have to treat them in kind.

My best advice for YIMBYs and anyone else interested in building prosperous, inclusive cities is to embrace their causes – of social justice and affordable housing – more enthusiastically than ever. The equitable city depends on protections from displacement, social justice, and affordable (subsidized) housing just as much as it depends on market-rate development, place-making, and urban amenities. YIMBYs can wage those battles whether the far left likes it or not.

As for the planners quietly slaving over applications and zoning code rewrites: this debate is coming your way whether you like it or not. There's never been a better time to get fired up about housing, equity, density, and all the other fundamental challenges that make good planning — and good mediation — so important. I can't fathom who benefit from getting worked up over the 10 percent of disagreement rather than excited about the 90 percent of common ground.

That's not alt-right. That's just *right*.

– JOSH STEPHENS | JUNE 26, 2017 ■