

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

FEB 29 2012

ALAN CARLSON, Clerk of the Court

1 BRIGGS LAW CORPORATION [FILE: 1479.07]
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2 Mekaela M. Gladden (State Bar no. 253673)
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4 Attorneys for Plaintiffs and Petitioner Orange County Communities
5 Organized for Responsible Development, Amin David, Martin
Lopez, Jose Moreno, and Lorena Moreno
6

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE--CENTRAL JUSTICE CENTER

30-2012

00549175

11 ORANGE COUNTY COMMUNITIES }
ORGANIZED FOR RESPONSIBLE }
12 DEVELOPMENT; AMIN DAVID; MARTIN }
LOPEZ; JOSE MORENO; and LORENA }
13 MORENO, }
14 Plaintiffs and Petitioners, }
15 vs. }
16 CITY OF ANAHEIM; and DOES 1 through 100, }
17 Defendants and Respondents; }
18 GARDENWALK HOTEL I, LLC; and DOES 101 }
through 1,000, }
19 Real Parties in Interest. }

CASE NO. _____

VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT OF
MANDATE UNDER THE ANAHEIM
CITY CHARTER, THE PLANNING AND
ZONING LAW, THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT, AND
OTHER LAWS

JUDGE JAMOAA. MOBERLY
DEPT. 012

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21
22 Plaintiffs and Petitioners Orange County Communities Organized for Responsible Development
23 ("OCCORD"), Amin David, Martin Lopez, Jose Moreno, and Lorena Moreno (collectively,
24 "Petitioners") allege as follows Defendants and Respondents City of Anaheim and DOES 1 through 100
25 (collectively, "Respondents"):

26 **Parties**

27 1. OCCORD is a non-profit, social-advocacy organization formed and operating under the
28 laws of the State of California. OCCORD's members reside in or near the City of Anaheim, California,

1 and have an interest in protecting the region's air quality, minimizing and ameliorating traffic, ensuring
2 informed and responsible growth, protecting the public fisc, and promoting other quality-of-life, fiscal-
3 prudence, good-governance issues.

4 2. Amin David, Martin Lopez, Jose Moreno, and Lorena Moreno are natural persons who
5 reside in, own real property in, and pay property and sales tax in the City of Anaheim.

6 3. Defendant and Respondent CITY OF ANAHEIM ("CITY") is a public agency under
7 Section 21063 of the Public Resources Code. CITY is authorized and required by law to hold public
8 hearings, to determine the adequacy of and certify environmental documents prepared pursuant to the
9 California Environmental Quality Act ("CEQA"), and to take other actions in connection with the
10 approval of projects within its jurisdiction, including action under the Planning and Zoning Law
11 ("PZL").

12 4. Real Party in Interest GardenWalk Hotel I, LLC, is the applicant for the proposed project
13 that is the subject of this proceeding or has some other cognizable interest in the project or subject
14 matter of this lawsuit.

15 5. The true names and capacities of Respondents identified as DOES 1 through 100 and
16 Real Parties in Interest identified as DOES 101 through 1,000 are unknown to Petitioners, who will seek
17 the Court's permission to amend this pleading in order to allege the true names and capacities as soon
18 as they are ascertained. Each of the fictitiously named Respondents 1 through 100 has jurisdiction by
19 law over one or more aspects of the proposed project that is the subject of this proceeding, and each of
20 the fictitiously named Real Parties in Interest 101 through 1,000 either claims an ownership interest in
21 the proposed project or has some other cognizable interest in the proposed project or subject matter of
22 this lawsuit.

23 **Background Information**

24 6. The project (including all associated entitlements) that is the subject of this proceeding
25 is or may have been known as the *Economic Assistance Agreement between the City of Anaheim and*
26 *GardenWalk Hotel I, LLC*, dated January 31, 2012, and *Amended and Restated Economic Assistance*
27 *Agreement between the City of Anaheim and GardenWalk Hotel I, LLC*, dated January 31, 2012
28 (collectively, "Project").

1 7. On or about January 24, 2012, Respondents approved the Project.

2 8. Petitioners oppose the Project and challenge certain actions taken by Respondents. In
3 particular, Petitioner seeks to invalidate Respondents' approval of the Project on the grounds that
4 Respondents violated the California Constitution, CEQA, the PZL, the Anaheim City Charter, the
5 Anaheim Municipal Code, and other laws.

6 **Notice Requirements and Time Limitations**

7 9. This proceeding is being commenced not more than 35 days after the notice authorized
8 by Public Resources Code Section 21108(b) or 21152(b) was filed, as required by Public Resources
9 Code Section 21167(d), if there was a filing; and within the period of time otherwise prescribed for
10 commencement of the proceeding if there was no such filing.

11 10. Petitioners have caused a Notice of Commencement of Action to be served on
12 Respondents, as required by Public Resources Code Section 21167.5. A true and correct copy of the
13 Notice of Commencement of Action is attached to this pleading as Exhibit "A."

14 11. Petitioners will have caused a copy of this pleading to be served on the Attorney General
15 not more than ten days after the commencement of this proceeding, as required by Public Resources
16 Code Section 21167.7 and Code of Civil Procedure Section 388.

17 **Jurisdiction and Exhaustion of Administrative Remedies**

18 12. Petitioners seek review by and relief from this Court under Public Resources Code
19 Section 21168 or 21168.5, as applicable; and Code of Civil Procedure Sections 526a, 1060 *et seq.*, and
20 1084 *et seq.*, among other provisions of law.

21 13. Petitioners have satisfied each and every exhaustion-of-remedies requirement that must
22 be satisfied in order to maintain this proceeding. In particular:

23 A. The violations of law alleged in this proceeding were identified for Respondents
24 orally or in writing by Petitioners or by one or more other persons (if not by both) prior to the close of
25 the public hearing on the Project, as required by Public Resources Code Section 21177(a) and
26 Government Code Section 65009(b)(1).

1 B. Petitioners objected to the Project's approval prior to the close of the public
2 hearing on the Project, as required by Public Resources Code Section 21177(b) and Government Code
3 Section 65009(b)(1).

4 C. Any and all available appeals of the Project's approval were pursued, and
5 Respondents' approval of the Project is now final.

6 14. Alternatively and additionally, neither Public Resources Code Section 21177(a)-(b),
7 Government Code Section 65009(b)(1), nor any other exhaustion-of-remedies requirement may be
8 applied to Petitioner.

9 15. Respondents' conduct in approving the Project without complying with CEQA
10 constitutes a prejudicial abuse of discretion because, as alleged in this pleading, they failed to proceed
11 in the manner required by law and made findings not supported by substantial evidence. Furthermore,
12 Respondents' approval of the Project does not substantially comply with the PZL. Respondents'
13 approval of the Project also violates the California Constitution's prohibition against the gift of public
14 funds, the Anaheim City Charter, and the Anaheim Municipal Code, among other laws.

15 16. Petitioners have no plain, speedy, adequate remedy in the ordinary course of law, since
16 they and other members of the public will suffer irreparable harm as a result of Respondents' violations
17 of CEQA, the PZL, the California Constitution, and other laws. Respondents' approval of the Project
18 also rests on the failure to satisfy a clear, present, ministerial duty to act in accordance with those laws.
19 Even when Respondents are permitted or required by law to exercise their discretion in approving
20 projects under those laws, they remain under a clear, present, ministerial duty to exercise their discretion
21 within the limits of and in a manner consistent with those laws. Respondents have had and continue
22 to have the capacity and ability to approve the Project within the limits of and in a manner consistent
23 with those laws, but Respondents have failed and refuse to do so and have exercised their discretion
24 beyond the limits of and in a manner that is not consistent with those laws.

25 17. Petitioners have a beneficial right and interest in Respondents' fulfillment of all their
26 legal duties, as alleged in this pleading.

1 **FIRST CAUSE OF ACTION:**
2 **Violation of Anaheim City Charter--Illegal Gift of Public Funds/Property**
3 **(Against All Respondents and Real Parties in Interest)**

4 18. Paragraphs 1 through 17 are fully incorporated into this paragraph.

5 19. Section 1222 of the Anaheim City Charter prohibits the conveyance of any municipal
6 property with a market value in excess of \$50,000.00 except (i) by sale to the highest bidder or (ii)
7 except by the city council after it determines and finds that the conveyance is in the best interests of the
8 City and authorizes the conveyance by a two-thirds vote of the entire city council.

9 20. The Project involves the conveyance of municipal property--defined in each written
10 agreement comprising the Project as the "Feasibility Gap Amount"--currently valued at \$81,125,906.00
11 under the *Economic Assistance Agreement* and at \$76,875,087.00 under the *Amended and Restated*
12 *Economic Assistance Agreement*.

13 21. The Project did not involve a sale to the highest bidder (there was no bidding process)
14 or an approval by two-thirds of the entire city council after the requisite determination and findings were
15 made (only three of the five members voted in favor of the Project, with no supporting findings).

16 22. Petitioners and other members of the public have been harmed as a result of
17 Respondents' violation of the Anaheim City Charter because they have been denied the benefits and
18 protections provided by compliance with the Charter. By way of example and without limitation,
19 Petitioners and the public did not receive the highest possible value in exchange for the Feasibility Gap
20 Amount, and there has been no determination and finding that the Project is in the best interests of
21 Respondent.

22 **SECOND CAUSE OF ACTION:**
23 **Failure to Subject Project to California Environmental Quality Act**
24 **(Against All Respondents and Real Parties in Interest)**

25 23. Paragraphs 1 through 22 are fully incorporated into this paragraph.

26 24. CEQA applies to every discretionary project proposed to be carried out or approved by
27 a public agency, unless the project is exempt from CEQA. Generally speaking, the public agency must
28 review the potentially significant environmental impacts of every discretionary project subject to CEQA
that the agency proposes to carry out or approve. Such review involves determining whether the

1 proposal is exempt, should be the subject of a negative declaration, or should be the subject of an
2 environmental impact report.

3 25. The Project approved by Respondents is a “discretionary project” within the meaning
4 of CEQA.

5 26. Respondents failed to perform any environmental review of the Project under CEQA.
6 Such failure violated CEQA.

7 27. Petitioners and other members of the public have been harmed as a result of
8 Respondents’ violation of CEQA because they have been denied the benefits and protections provided
9 by compliance with CEQA. By way of example and without limitation, Petitioners, the public, and the
10 decision-makers who approved the Project were not fully informed about the potential impacts of,
11 mitigation measures for, and alternatives to the Project prior to its approval.

12 **THIRD CAUSE OF ACTION:**
13 **Violation of the Planning and Zoning Law--Government Code Section 65864 *et seq.***
(Against All Respondents and Real Parties in Interest)

14 28. Paragraphs 1 through 27 are fully incorporated into this paragraph.

15 29. Each of the written agreements comprising the Project, and therefore the Project itself,
16 is a “development agreement” within the meaning of Government Code Section 65864 *et seq.*

17 30. The Project was approved by Respondents without a public hearing by Respondents’
18 planning agency or their legislative body.

19 31. In approving the Project, Respondents were legally obligated to hold public hearings
20 before the planning agency and the legislative body under Government Code Section 65867.

21 32. The Project was approved by Respondents without a finding by their legislative body
22 that the provisions of the development agreement associated with the Project are consistent with the
23 general plan and any applicable specific plan under Government Code Section 65867.5(b).
24 Alternatively, Respondents approved the development agreement associated with the Project based on
25 a finding that the agreements provisions are consistent with the general plan and any applicable specific
26 plan under Section 65867.5(b), but the finding was not supported by sufficient evidence in the record.

27 33. In approving the Project, Respondents were legally obligated to make the finding
28 described in Government Code Section 65867.5(b) and to support the finding with sufficient evidence
in the record.

1 34. Respondents' failed to make the finding described in Government Code Section
2 65867.5(b). Alternatively, Respondents made that finding but failed to support it with sufficient
3 evidence in the record.

4 34. Petitioners and other members of the public have been harmed as a result of
5 Respondents' violations of Government Code Section 65864 *et seq.* because they have been denied the
6 benefits and protections provided by compliance with this statutory scheme.

7 **Prayer**

8 FOR ALL THESE REASONS, Petitioner respectfully prays for the following relief against
9 Respondents and Real Parties in Interest (and any and all other parties who may oppose Petitioner in
10 this proceeding):

11 A. *On the First Cause of Action:*

12 1. A judgment determining or declaring that Respondents failed to comply fully
13 with the Anaheim City Charter as it relates to the Project and that its approval (including any and all
14 actions thereunder) was illegal in at least some respect, rendering the approval null and void;

15 2. Injunctive relief prohibiting Respondents and Real Parties in Interest (and any
16 and all persons acting at the request of, in concert with, or for the benefit of one or more of them) from
17 taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until
18 Respondents fully comply with all applicable provisions of the Anaheim City Charter, as determined
19 by the Court; and

20 3. Any and all other relief that may be authorized by the Anaheim City Charter but
21 is not explicitly or specifically requested elsewhere in this Prayer.

22 B. *On the Second Cause of Action:*

23 1. A judgment determining or declaring that Respondents failed to comply fully
24 with CEQA as it relates to the Project and that its approval (including any and all actions thereunder)
25 was illegal in at least some respect, rendering the approval null and void;

26 2. A judgment determining or declaring that Respondents must subject the Project
27 to CEQA before final approval of the Project may be granted;

28 3. Injunctive relief prohibiting Respondents and Real Parties in Interest (and any
and all persons acting at the request of, in concert with, or for the benefit of one or more of them) from

1 taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until
2 Respondents comply with all applicable provisions of CEQA, as determined by the Court; and

3 4. Any and all other relief that may be authorized by CEQA but is not explicitly or
4 specifically requested elsewhere in this Prayer.

5 C. *On the Third Cause of Action:*

6 1. A judgment determining or declaring that Respondents failed to comply fully
7 with the PZL as it relates to the Project and that its approval (including any and all actions thereunder)
8 was illegal in at least some respect, rendering the approval null and void;

9 2. Injunctive relief prohibiting Respondents and Real Parties in Interest (and any
10 and all persons acting at the request of, in concert with, or for the benefit of one or more of them) from
11 taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until
12 Respondents fully comply with all applicable provisions of the PZL, as determined by the Court; and

13 3. Any and all other relief that may be authorized by the PZL but is not explicitly
14 or specifically requested elsewhere in this Prayer.

15 D. All legal fees and other expenses incurred in connection with this proceeding, including
16 but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure and the
17 Government Code; and


18 E. Any and all further relief that this Court may deem appropriate.

19 Date: February 28, 2012.

Respectfully submitted,

BRIGGS LAW CORPORATION

20
21
22 By:


Cory J. Briggs

23 Attorneys for Plaintiffs and Petitioner Orange County
24 Communities Organized for Responsible Development,
25 Amin David, Martin Lopez, Jose Moreno, and
26 Lorena Moreno
27
28

Notice of Commencement of Action

EXHIBIT "A"

BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 619-515-6410

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1479.07

27 February 2012

Mayor and City Council
City of Anaheim
c/o City Clerk Linda N. Andal
200 South Anaheim Boulevard, #217
Anaheim, CA 92805

Via Facsimile Only to 714-765-4105

Re: Notice of Commencement of Action

Dear Mayor and City Council:

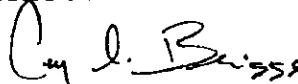
I represent Amin David, Martin Lopez, Jose Moreno, Lorena Moreno, and Orange County Communities Organized for Responsible Development and am sending this Notice of Commencement of Action on my clients' behalf.

Please be advised that an action is to be commenced by my clients in Orange County Superior Court against your agency. The action will challenge your agency's approval of the project that was the subject of Item 23 (GardenWalk Hotel Project) on the City Council's agenda for January 24, 2012, on the grounds that the approval violated the California Environmental Quality Act (PUB. RES. CODE § 21000 *et seq.*). The action may also challenge your agency's approval of the project based on one or more violations of other laws.

If you have any questions, please feel free to contact me.

Sincerely,

BRIGGS LAW CORPORATION



Cory J. Briggs

BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

Telephone: 619-497-0021
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Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

FACSIMILE COVER SHEET

Recipient: Mayor and City Council - City Clerk Linda Andal

Recipient's fax number: 714-765-4105

Date: 2/27/12 BLC File: 1479.07

Total Pages (including cover sheet): 2

Sender: Cory J. Briggs

Sender's fax number: 619-515-6410 909-949-7121

Message: Please see attached correspondence.

Original Document to Follow? Yes No

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BRIGGS LAW CORPORATION

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Total Pages (including cover sheet): 2

Sender: Cory J. Briggs

Sender's fax number: 619-515-6410 X 909-949-7121

Message: Please see attached correspondence.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Bernardino

I have read the foregoing Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate etc. Contractor's Indemnity Company and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a managing member of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for Orange County Communities Organized for Responsible Development a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on February 29, 20 12, at Upland, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Cory J. Briggs
Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of, State of California. I am over the age of 18 and not a party to the within action; my business address is,

On, 20, I served the foregoing document described as

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL
I deposited such envelope in the mail at, California.
The envelope was mailed with postage thereon fully prepaid.

As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, 20, at, California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, 20, at, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)