Beuth et al vs. City of Half Moon Bay et al
Cases 411245 and 414437.

The petitioners challenge the enactment of Resolution C-96-98 which established an allocation system for building permits as required by Measure A of the City of Half Moon Bay, passed in 1991. Petitioners also challenge the denial of their applications by the Planning Commission; that denial having been appealed to the City Council and that appeal having been denied on 10/19/99.

In Case 411245, the 1st cause of action, a petition for writ of mandamus/mandate and the 2nd cause of action for declaratory relief are before the court. In Case 414437, before the court are the 1st cause of action for a writ of mandamus/mandate and a 2nd cause of action for Injunctive and declaratory relief under Public Resources Code 30803.

Briefly, the electorate of Half Moon Bay passed Measure A in 1991. The initiative amended the previously existing General Plan by adding Section 9.4 which set the limit on the number of new dwelling units that the city could authorize to be built annually at the number necessary for growth of not more than three percent. Section 5 of Measure A required the City to enact a system for allocating permissible dwelling units to implement the requirements of the ordinance. (Administrative Record, Case NO. 411245 Vol. II, page 296(

The required ordinance was Ordinance C-3-94 passed by the City Council on April 19,1994 which replaced Title 17 of the then existing Municipal Code. The new Section 17.06.020 required the City Council to annually establish the maximum number of new dwelling units for which building permits might be issued for the upcoming year and sets for the method for doing so. (Administrative Record, Cases no. 408313 and 408314, pages 94-96, pages 111-113)

Pursuant to the mandate to establish the allocation numbers annually, the City Council on 12/15/98 adopted Resolution No. C-96-98 which established an allocation for 1999 of 114 new units, one-third each infill projects, new residential projects and exiting or vested map projects. (Plaintiffs Exhibit C)

Plaintiffs/Petitioners are owners of various lots of real property located in the Grand View Terrace subdivision in Half Moon Bay. They applied for Measure A allocations for infill projects necessary to obtain building permits for their properties. In 1999, no applications were submitted for allocations under the existing or vested map projects category.

Plaintiffs submitted their applications for Measure A allocations in early 1999, which applications were denied by the City Planning Department. Plaintiffs appealed the denial to the Planning Commission and were again denied. On June 25, 1999, the City Planning Commission adopted a resolution (No. P-17-99) stating that it had no jurisdiction to

review the actions of the City Council in adopting ordinances or resolutions and that it would not overturn the Planning Department's determination of allocation points. (Plaintiffs" Exhibit D, page 44)

Plaintiffs appealed the denial of the Planning Commissions ruling to the City Council and that appeal was denied on 10/19/99.

Plaintiffs argue in support of their 1st cause of action in both cases that the City violated Measure A and the implementing ordinances by reserving one-third of the 1999 allocations for phantom vesting map projects; that the City did not act in the manner required by law in failing to comply with LCP Policy 9-2; and that the City's actions as applied to plaintiffs are inconsistent with the City's housing element. Plaintiff's also complain of the unconstitutionality of City's actions and that they were denied a fair hearing.

The same arguments as set forth in the preceding paragraph apply to the plaintiffs' claims in their 2nd cause of action in both cases. In addition, the 2nd cause of action in Case 414437 challenges the City's enactment of Resolution C-98-99 which was the establishment of allocations for the year 2000. That resolution reallocated the proportional division of allocations to two thirds to infill development and one third to new residential development applications. This re-allocation, done as a result of the Ordinance C-3-94 mandate, reflected the fact that in 1999 no exiting vesting map applications had been submitted and the allocation for that category had not been filled in 1999.

Plaintiffs, in addition to the arguments described above, argue that they should be granted those un-used allocations from 1999. Further, Plaintiff's argue, as to the Public Resource Code cause of action, that the adoption of Resolution C-98-99 constituted a prejudicial abuse of discretion under CCP 1094.5 and violated the California Coastal Act by it's reservation of allocations for unapproved new project and its lack of compliance with Local Coastal Policy 9-2 requiring the monitoring of new permits by category of development and setting 3% as the floor on growth.

The crux of petitioners argument is that there was no authority or discretion for the City to set aside a percentage of the allocations for vested map projects and that the City ignored its own as well as Coastal Act policies in not giving priority to infill projects.

Petitioners contend, and this Court agrees, that the enacting of Resolution C-98-99 is subject to review as a legislative action under CCP 1085, or the traditional mandamus statute. The "enactment" of C-98-99, of which plaintiffs complain, while termed a "resolution" falls within the definition of a legislative act per Santa Barbara County Taxpayers Association vs. Board of Supervisors of Santa Barbara County, 209 Cal. App.3d 940, 946-947,

"Although a resolution is not ordinarily considered a legislative act, it operates as such when the resolution in substance and effect is an ordinance, and a statute expressly accords the resolution the status of a legislative act." .

In addition, Government Code section 50020 reads "When a statute requires a local agency to take legislative action by resolution and the local agency is required by its charter to take legislative action by ordinance, action by ordinance is compliance with the statute for all purposes." Here, Measure A, an ordinance, required the City to enact an ordinance regarding the allocations, which is, in effect, legislating in this situation.

In this situation, legislative action is subject to review under CCP 1085, that review is "limited to an examination of the proceedings before the agency to determine whether its action has been arbitrary or capricious, or entirely lacking in evidential support, or whether it has failed to follow the procedure and give the notices required by law." Langsam vs.City of Sausalito, 190 Cal. App. 3d 871, 878-879.

In addition, the parties have argued regarding the burden of proof in this situation. The Court believes that Murphy v. City of Alameda, 11 Cal. App.4th 906 supports the proposition that Evidence Code 669.5 applies here. Under 669.5, the burden is on the defendants to prove "that the numerical limitation and reservation is necessary for the protection of public health, safety or welfare of the population of the City." Evidence Code 669.5 applies when any ordinance "directly limits, by number, the building permits that may be issued for residential construction..." Here, the allocations under Resolution C-98-99 were a necessary and required step before a building permit could be issued. Hence the resolution, which was the functional equivalent of an ordinance as discussed above, directly limited the number of building permits and so is subject to the 669.5 burden.

As to the merits of the claim, Measure A implemented by the adoption of Ordinance C-3-94 contains Section 17.06.065 "Priority established for Residential Infill Projects." That section states: "Except as otherwise provided for herein or as a result of the City Council approval of a Development Phasing Plan and Agreement, Residential Infill Projects as defined in Section 17.06.100 shall have a higher priority than new Residential Projects as defined in Section 17.06.200."

In addition, Section 17.06.010 established the following categories of new residential development: "A. Residential Infill projects as defined by Section 17.06.100 and B. New Residential Projects as defined in Section 17.06.200.

The Ordinance did not refer to Exiting Vested Map projects as a separate category, and, in fact, the City agreed that such projects are exempt from Ordinance C-3-94 in comments made at the hearing before this Court.

Despite the language setting forth the categories and the exemptions for the Ordinance, the City, in resolution C-96-98 adopted a third category of allocations – vested map projects. The actions of the City were irrational in light of the declarations in C-3-94 (the

arguments regarding lack of compliance/consistency with the Housing Plan, the LCP and other portions of the Coastal Conservation act are not addressed herein.). The City appears to have established a priority for residential infill and then ignored that priority in terms of allocations. In addition, the creation of a third category not envisioned by the Ordinance further impaired the possibility that the City could comply with the priorities set forth in C-3-94. It has been said that "substantive irrationality is equivalent to "arbitrary, capricious, or entirely lacking in evidential support." Lewin v. St Joseph Hospital of Orange, 82 Cal. App. 3d 368, 385. The reasoning is applicable here. The action taken by the City Council in enacting Resolution No. C-96-98 is substantively irrational given the declarations in Ordinance No. C-3-94, the implementing ordinance to implement Measure A.

Accordingly, judgment is entered for plaintiffs on the 1st Causes of Action in both cases; the case is remanded to the City Council for further proceedings on the petitioners' applications for allotments.