

Another article from Comstock Hills re SB1818 and its implementation in the City of Los Angeles:

The Los Angeles City Council passed an ordinance exempting certain SB 1818 developments from environmental review processes (CEQA), Usher not only opposed the city and its planning department, but she suggested that neighborhood groups sue the city. With insiders wondering whether she would be removed from her position, Tibby Rothman sat down to talk to her about the state of planning in Los Angeles.

The Architect's Newspaper: Given the events of the last few months, is the era of "Do Real Planning" over before it has begun?

Jane Ellison Usher: There are some foundational activities occurring in the city of Los Angeles that keep "Do Real Planning" alive certainly for me, and hopefully into perpetuity for the rest of the city. But here's what we're facing:

One, a planning department that culturally has not been as excited and aggressive as they needed to be to do real planning. There's a lot of leadership now at the top that's encouraging them to be more aggressive, to think out of the box, to behave and act differently, but I don't think there's a magic bullet.

I would add to that that there's quite a legacy of absence of planning in Los Angeles. There is some sense of entitlement on the part of the development community to live in a city where planning principals are secondary or perhaps tertiary. It will take us more time than we've had to turn that thinking around.

COURTESY J.E. USHER

The third piece is the regular practice of the city council to defer to the home district whenever a planning issue is on the table. This practice has caused the city council to forget to think holistically about the city and about a vision that can be achieved if we're focusing on all the moving pieces at the same time.

You openly invited neighborhood groups to sue the city over its implementation of SB 1818.

I did.

What's wrong with it?

Part of my dissatisfaction was that my commission wasn't updated until the day the ordinance took effect. And on that score, I have to say that the planning department did its commission a disservice. But the other part of my dissatisfaction was when I read the final ordinance that day, I saw such departures from all of the "Do Real Planning" conversations that the commission had been having for the last two-and-a-half years. I was taken by surprise by the final product.

An awful lot of work went into [the ordinance] on the council floor and I will confess to you that I don't think that that's the optimal place for that volume of change to occur.

Then my eye falls, almost immediately, on language that I had never seen discussed and it does this because I'm a lawyer. I saw a word in the ordinance that means an awful lot to a land-use lawyer and that word is "ministerial." To a land-use lawyer, anything that is ministerial, by definition, doesn't require CEQA [environmental impact] review. The ultimate payday for a developer is something that is ministerial, and the ordinance was defining a large set of projects as ministerial. That surprised me.

I went back and looked at the CEQA clearance for the ordinance itself. In January, the planning director

had offered the council CEQA: a categorical exemption for the ordinance. And the basis for its being exempt from CEQA was her description of how the ordinance would work, namely, every project using the ordinance's provision would have its own independent, individualized CEQA clearance.

So here you find an ordinance that's categorizing a large class of projects as ministerial and exempt from CEQA and the ordinance saying: Each project will have its own CEQA clearance. The two are inconsistent.

I took it a step further. In a brochure that the California APA had written for cities as they worked on implementing SB 1818 ordinances, the California APA said that implementing ordinances must have an environmental clearance; they must go through CEQA.

So I stitched all of those pieces together and came to my own conclusion, which was that the city's implementing ordinance insufficiently attended to CEQA. Whether a court would agree with me remains to be seen, and may never be known. But it absolutely did bother me.

In your opinion, which group hinders Los Angeles from being a great city: those developers who don't respect the envelope or use mandates, or NIMBYs who fight structures in their neighborhood that could alleviate chronic problems such as affordable housing or mass transit projects?

Well, it's funny. I don't think of anybody as being a NIMBY. Somebody coined that less-than-gracious phrase and it stuck. I was thinking about this, and I like to call these people WIMBYs in the city of LA. It's not "Not In My Backyard." I've met with countless members of residents and homeowners and neighborhood associations and neighborhood councils. Their question is: "What's In My Backyard?" I find them to be largely very responsible. They simply want to know: What's going to be in their backyard and have we provided the support and the infrastructure for whatever it is that is going to be located near them?

Those questions are smart questions, the right questions. So if I'm supportive and in league with those kinds of questions, what is it that I have to say to developers? Well, there again, I find the developers to be largely very reasonable. They just want to know what the rules are. So I don't blame the developers and I don't blame the homeowners. I find that the most blameworthy place is the department of city planning, which I think has let down both sides of the equation by not defining for them with sufficient specificity what our vision is for land use.

But doesn't that go to the city council and not the planning department?

I think we should delineate—if you have a department that's insufficiently staffed and not directed to do real planning, you're going to have an unhappy outcome. Here we are at a crossroads, where we're asking the right questions, we're staffing up the department, we're focusing on rewriting all of the community plans with an eye to do real planning. If these plans arrive at the city council and as a consensus-building matter become adopted, we should see a different kind of city in the future, one with lots of predictability and much less uncertainty. If these plans arrive at the city council a year, two years, three years from now and are eviscerated—then you'll have your answer.

The word on the street is that the mayor will quietly remove you because of the email you sent out on SB 1818. What's your response?

I work in my role as the president of the commission at the pleasure of the mayor and on any day, at any time, it is absolutely his prerogative to remove me and that's a power unique to him and he should exercise it whenever he thinks the time is right.

Tibby Rothman