

Barry Cassilly:

Current Standing Rules, pages 3-4, Section 3 LUPC Committee were written in response to the Venice Specific Plan being adopted by the City Council as the binding legal document guiding planning determinations at the City level in the Venice Coastal Zone. The requirement that LUPC send project applications which qualify for ministerial review under provisions of the VSP to the full VNC board as de minimus reflects the fact that the VSP contains concrete metrics defining project compliance in each of the 7 different Venice Sub- Areas. At the City level, there is no discretion involved in determining project compliance for small project which categorically qualify for ministerial review under the VSP.

Ms. Rudisill's motion either mistakes or deliberately misrepresents the timeline of events when she writes, "Standing Rule 3 appears to have been put in place in 2009, before the community understood how the coastal regulations work..." Standing Rule 3 was put in place on September 1, 2020 in direct response to a court ruling in which Ms. Rudisill was involved. Venice Coalition, using Citizens Preserving Venice's longstanding attorney Sabrina Venskus along with Robin Rudisill's active involvement, sued the City seeking to stop the City from certifying that projects were VSP compliant. Ms. Venskus included in her arguments all the points Ms. Rudisill has mentioned in her motion arguing that the Venice Land Use Plan and the Coastal Act permitting requirements precluding the City from using the VSP to determine project compliance AND issue Venice Sign-offs based on the non-discretionary metrics in the VSP.

Unfortunately, for Ms. Rudisill, Ms. Venskus, and Venice Coalition, the courts disagreed, and disagreed strongly. The Superior court ruled against the Venice Coalition after the Coalition then appealed to the Appellate court. The Appellate court then sustained the Superior court decision again refuting Ms. Venskus' arguments. Superior, or lower court decisions, are opinions that may be used provisionally in arguments in other court cases. Appellate court decisions, if published, and the Appellate court decision in this case was published, have the full force of law. That decision was issued in 2019, and the VNC's standing rules were adjusted accordingly to reflect the substance of that ruling. A copy of that ruling is attached.

In the published decision the court stated: "In 2003, the City Planning Commission approved the VSP....The specific plan is an ordinance developed to implement the policies of the Land Use Plan." When Ms. Rudisill argues that "the certified Land Use Plan development standards and policies are to be used to determine a project's conformance with Chapter 3 of the Coastal Act;" she ignores the fact that the City has already approved the VSP as the only interpretation of the Land Use Plan at the City level. At the City level, the VSP has the force of law, and is not subject to reinterpretation by any City agency, City body such as the VNC or by Robin Rudisill herself.

The VSP establishes provisions where small projects, defined by CEQA as projects of 4 units or less, are to be reviewed as part of a ministerial process which exempts them from project compliance review. There are several kinds of projects that are exempt from project compliance review including all single family homes not located on walk streets. On this point the court said, "Once the Director of Planning determines that a project is eligible under one of these categories, he or she must then determine whether it meets certain fixed development requirements applicable to the neighborhood in which the proposed project lies. These requirements include maximum height, maximum density, and minimum yard setback measurements. The Director of Planning uses forms that are essentially checklists requiring only a determination that the proposed project does or does not meet objective measurement criteria."

These criteria are all set forth in black and white in the VSP.

Critically, although City bodies cannot deviate from the concrete objective measurements in the VSP, this does not hold true for the Coastal Commission. The Coastal Commission approved the LUP but did not approve the VSP which is the implementation plan of the LUP. Therefore, despite the fact that the City's planning commission adopted the VSP and thereby certified its use as the implementation of the LUP at the City level, the Coastal Commission retains discretion to set aside project compliance based on the VSP when such City determinations are before the Commission.

The significance of this is that Ms. Rudisill CAN appeal any Venice project at the Coastal Commission level regardless of whether it was determined by the City to qualify for ministerial review based on the VSP and is therefore de minimus at the City level. City determinations that a project is de minimus does not make the project de minimus at the Coastal Commission level. At the Coastal Commission level such projects are still potentially subject to discretionary review.

Ms. Rudisill is attempting to turn this process on its head in arguing that because a project can be subject to discretionary review by the Coastal Commission that it is also subject to discretionary review at the City level by City bodies such as their VNC. This is not the case. The Coastal Commission has the power to find substantial issue and revisit a Venice project even if the City has processed a CDP and even if the project is 4 units or less and categorically qualifies for ministerial review under the terms of the VSP. The VNC has no power to find substantial issue with a project qualifying for ministerial review under the provisions of the VSP.

The Coastal Commission alone has this power. Yet, Ms. Rudisill's motion effectively sets up conditions wherein despite the fact that a project may qualify for ministerial review under provisions of the VSP, LUPC and the VNC set all this aside and subject such projects to discretionary review by committee members. This was the essence of Ms. Venskus' arguments before the court, an argument which was flat out rejected.

To reiterate, the VSP has the force of law at the City level and city bodies such as the VNC do not have the power to set aside that law. As much as Ms. Rudisill and friends would like the discretion to use LUPC and the VNC to arbitrarily weigh in with their personal opinions on the appropriateness of ALL projects in Venice, the courts have ruled that this is not allowed when it comes to small projects which fall into the VSP's categories for ministerial, non-discretionary approval. These are exactly the type of projects for which current Standing Rules, pages 3-4, Section 3 LUPC Committee were written.