



Office of the City Manager

CONSENT CALENDAR  
March 9, 2021

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Farimah Brown, City Attorney  
Subject: *Stahlschmidt v. City of Berkeley*, Case No. RG 20069713

RECOMMENDATION

Adopt a Resolution approving the settlement of the action entitled *Stahlschmidt v. City of Berkeley*, Case No. RG 20069713.

FISCAL IMPACTS OF RECOMMENDATION

The settlement will require a payment of \$75,533 in attorneys' fees and costs of suit to the petitioners. The settlement amount will be paid out of Public Liability Fund account code 678-31-302-000-0000-000-479-682110. Additional appropriations for this account will be requested in the Second Amendment to the FY 2021 Annual Appropriations Ordinance.

BACKGROUND

On March 16, 2018, Petitioners Hans Stahlschmidt and Patricia Stahlschmidt Hart ("Petitioners") filed an application for an administrative use permit ("AUP") seeking approval for the construction of an accessory dwelling unit ("ADU") on their single-family residential property located at 1446 Scenic Avenue. On August 29, 2019, the Zoning Officer granted the AUP.

On September 19, 2019, a neighboring property owner appealed the Zoning Officer's decision. The Planning Department set the appeal to be heard during the January 9, 2020 meeting of the Zoning Adjustments Board ("ZAB").

Before the appeal could be heard, the City Council adopted an urgency ordinance amending BMC Chapter 23C.24, governing the issuance of permits for the construction of ADUs. The urgency ordinance was enacted in response to three related statutes enacted by the state legislature. These state statutes limit local discretion over the permitting of ADUs. Among other things, the legislation requires local governments to ministerially approve a building permit for an ADU that meets certain criteria, and prohibits requiring a use permit or any other discretionary permit approval for the construction of an ADU. (Gov. Code §§ 65852.2(a)(3), 65852.2(b), 65852.2(e)(1).) The legislation took effect on January 1, 2020.

State ADU law further provides that “an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision . . . shall be null and void.” (Gov. Code § 65852.2(a)(4).) This provision deprived the Zoning Adjustments Board of authority to conduct discretionary review of Petitioners’ AUP application.

On August 3, 2020, Petitioners filed an action in Alameda County Superior Court entitled *Hans Stahlschmidt et al. v. City of Berkeley et al.*, Civil Case No. RG20069713 seeking a writ of mandate and declaratory and injunctive relief to compel the City to issue an AUP to authorize the construction of the ADU on Petitioners’ Property. Petitioners also sought attorneys’ fees under the Housing Accountability Act.

The parties to the lawsuit agree that Petitioners’ proposed ADU is eligible for ministerial approval under Government Code section 65852.2. The City Attorney’s Office recommends that the City Council approve the proposed settlement agreement to resolve the remaining disputed issue surrounding Petitioners’ entitlement to attorneys’ fees.

ENVIRONMENTAL SUSTAINABILITY

No significant environmental impacts are anticipated from approving the settlement agreement.

RATIONALE FOR RECOMMENDATION

Approval of the settlement agreement would limit the City’s liability for additional attorneys’ fees that may be incurred if litigation continues.

ALTERNATIVE ACTIONS CONSIDERED

Alternative actions considered include litigating Petitioners’ eligibility for attorneys’ fees under the Housing Accountability Act.

CONTACT PERSON

Farimah Brown, City Attorney, (510) 981-6998

Attachments:  
1: Resolution

RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE CITY ATTORNEY TO SETTLE STAHLSCHMIDT V. CITY OF BERKELEY (ALAMEDA COUNTY CASE NO. RG20069713)

WHEREAS, on August 3, 2020, Petitioners Hans Stahlschmidt and Patricia Stahlschmidt Hart (“Petitioners”) filed an action in Alameda County Superior Court entitled *Hans Stahlschmidt et al. v. City of Berkeley et al.*, Civil Case No. RG20069713 (“Action”) seeking a writ of mandate and declaratory and injunctive relief to compel the City of Berkeley (“City”) to issue an Administrative Use Permit to authorize the construction of the accessory dwelling unit on Petitioners’ property located at 1446 Scenic Avenue.

WHEREAS, Petitioners and the City wish to resolve the dispute giving rise to the Action.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Attorney to enter into the settlement agreement with Hans Stahlschmidt and Patricia Stahlschmidt Hart in substantially the same form as the Settlement Agreement and Release enclosed herewith as Exhibit A.

Exhibit

A: Settlement Agreement and Release

**SETTLEMENT AGREEMENT AND RELEASE**

This SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”) is made this \_\_\_<sup>th</sup> day of March, 2021, by and between Respondents and Defendants CITY OF BERKELEY and DEE WILLIAMS-RIDLEY, as City Manager of City of Berkeley (collectively, “City”) and Petitioners and Plaintiffs HANS STAHLSCHMIDT and PATRICIA STAHLSCHMIDT HART (collectively, “Petitioners”). The City and Petitioners are collectively referred to herein as the “Parties,” and are each individually referred to as a “Party.”

**RECITALS**

A. On August 29, 2019, the Zoning Officer for the City approved and issued an administrative use permit (“AUP”) authorizing the construction of an accessory dwelling unit (“ADU”) on Petitioners’ property located at 1446 Scenic Avenue, Berkeley (“the Property”) (Application No. #ZP2018-0058).

B. On September 19, 2019, an appeal was filed challenging the Zoning Officer’s approval of the ADU.

C. Following receipt of the appeal, but before the appeal could be heard by the City’s Zoning Adjustments Board, the City determined that Government Code section 65852.2 rendered the City’s ordinance authorizing issuance of the discretionary AUP “null and void.”

D. On August 3, 2020, Petitioners filed an action in Alameda County Superior Court entitled *Hans Stahl Schmidt et al. v. City of Berkeley et al.*, Civil Case No. RG20069713 (“Action”) seeking a writ of mandate and declaratory and injunctive relief to compel the City to issue an AUP authorizing the construction of the ADU on Petitioners’ Property.

D. On October 21, 2020, Petitioners filed an Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief seeking, *inter alia*, attorneys’ fees under the Housing Accountability Act, Government Code section 65589.5.

F. The Parties agree that the ADU as proposed in Application No. #ZP2018-0058 is eligible for ministerial approval under the provisions of Government Code section 65852.2, and now enter into an agreement to allow for the construction of said ADU and to resolve the Parties’ dispute regarding Petitioners’ entitlement to attorneys’ fees and other claims and defenses raised in or related to the Action.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms contained in this Agreement, and good and valuable consideration, and in full and final settlement of the Action and to compromise on the disputed claims contained therein, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The above recitals are incorporated herein by reference.
2. Issuance of Zoning Certificate. Within 14 days of the date of execution of this Settlement Agreement, the City shall issue a Zoning Certificate for construction of the ADU proposed in Application No. #ZP2018-0058. No fees shall be charged the Petitioners for processing or issuance of this certificate.
3. Ministerial Review of Building Permit. The City will complete ministerial review of any building permit application received for construction of the ADU proposed in Application No. #ZP2018-0058 within the time period provided in Government Code section 65852.2. Approval and issuance of a building permit shall be conditioned on compliance with applicable requirements of the California Building Standards Code; provided, however, approval shall not be unreasonably withheld by the City. No fees shall be charged the Petitioners for processing or issuance of this permit.
4. Payment by the City. Within 14 days of the date of execution of this Settlement Agreement, the City shall pay to Petitioners attorneys' fees and costs of suit incurred in the amount of \$75,544. Payment shall be made to Greenfire Law, PC, in trust for Hans Stahlschmidt and Patricia Stahlschmidt Hart, and shall issue a 1099 to Hans and Patricia Stahlschmidt. Counsel will provide social security numbers and/or EIN or complete IRS Form W-9 upon request.
5. Notice of Settlement and Request for Dismissal. Within 14 days of the date of execution of this Settlement Agreement, Petitioners shall file a notice of settlement of entire case in the Action. In the absence of any breach by the City of Paragraphs 1 through 4 of this Settlement Agreement, Petitioners shall file a request for dismissal with prejudice of the entire action as to all parties and all causes of action. The Parties shall promptly meet and confer in the event any breach of the Settlement Agreement is alleged.
6. Mutual Release. Except as otherwise expressly set forth in this Settlement Agreement, Petitioners and the City hereby release and forever discharge each other, together with their agents, representatives, trustees, employees, officers, directors, partners, stockholders, attorneys, successors, assigns, heirs, personal representatives and executors, and all persons, firms, associations, co-partners, co-venturers, insurers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates, or corporations connected therewith, and each of them from any and all claims, debts, liabilities, demands, obligations, costs, expenses, and attorneys' fees relating to the Action or the claims or causes of action set forth therein.

It is understood and agreed that this is a full and final mutual release of the Action. The Parties agree, as further consideration and inducement for this Agreement, to waive the provisions of California Civil Code §1542 which provides as follows:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

7. Cooperation on Additional Documents. Each of the Parties agrees to execute and deliver to each of the other Parties all additional documents, instruments, and agreements required to take such additional actions as are required to implement the terms and conditions of this Settlement Agreement.

8. Authorization to Execute. Each Party represents that the individual signing this Settlement Agreement is authorized to bind the Party on whose behalf he or she signs.

9. Entire Agreement. As to the matters set forth herein, this Settlement Agreement is the entire, integrated agreement and understanding of the Parties.

10. Waiver, Modification, and Amendment. No breach of this Settlement Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified, or otherwise changed in any respect or particular only by a writing duly executed by the Parties or their authorized representatives.

11. Notice. Any notice, demand, request, or other communication required or permitted to be given under this Agreement, (a) shall be made in writing; (b) shall be delivered by one of the following methods: (i) by personal delivery (with notice deemed given when delivered personally); (ii) by overnight courier (with notice deemed given upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (with notice deemed given upon verification of receipt); and (c) shall be addressed as provided in this Section or such other address as such Party may request by notice in accordance with the terms of this Section.

Notice to Petitioners shall be provided as follows:

Greenfire Law, PC  
2001 Addison Street, Suite 300  
Berkeley, CA 94704  
rdoughty@greenfirelaw.com

Notice to the City shall be provided as follows:

City Attorney  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704  
attorney@cityofberkeley.info

12. Severability. If any part of this Settlement Agreement is found to be void, invalid or unenforceable, the remainder shall remain in full force and effect and shall be interpreted to carry out the Parties' intent with respect to their obligations and rights.

13. Drafting of Agreement. The Parties and/or their respective counsel have participated in the drafting and negotiation of this Settlement Agreement and, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by all Parties.

14. Successors and Representatives. This Settlement Agreement shall be binding on and shall inure to the benefit of the successors and assigns of each Party.

15. Informed Consent. Each Party declares that prior to the execution of this Settlement Agreement, it and/or its duly authorized representatives have apprised themselves of sufficient relevant data, either through attorneys, experts or other sources of their own selection, in order to intelligently exercise their judgment in deciding whether to execute, and in deciding the contents of, this Settlement Agreement. Each Party states that this Settlement Agreement is entered into freely and voluntarily, upon the advice and with the approval of its counsel.

16. Applicable Law. This Settlement Agreement shall be interpreted in accordance with California law, without reference to its choice of law provisions.

17. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which may be deemed an original, and all of which together shall constitute a single instrument, notwithstanding that all the Parties are not signatories to the original or same counterpart. Photocopies or facsimiles shall constitute good evidence of such execution.

Dated: \_\_\_\_\_, 2021

HANS STAHLSCHMIDT

By: \_\_\_\_\_

Name: Hans Stahlschmidt

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2021

PATRICIA STAHLSCHMIDT HART

By: \_\_\_\_\_

Name: Patricia Stahlschmidt Hart

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2021

CITY OF BERKELEY

By: \_\_\_\_\_

Name: Farimah Brown

Title: City Attorney

Dated: \_\_\_\_\_, 2021

DEE WILLIAMS-RIDLEY

By: \_\_\_\_\_

Name: Dee Williams-Ridley

Title: City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher D. Jensen  
Assistant City Attorney