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CITY OF SACRAMENTO

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY

LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON

WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

DEPARTMENT OF LAW
812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

January 14, 1981

City Council
City Hall
Sacramento, California 95814

RE: RECENT APPELLATE COURT DECISIONS

Honorable Members in Session:

I attach a summary of three recent California Appellate Court decisions of interest to the City. The Arnel Development Company case holds that rezonings are legislative actions, not adjudicatory actions, and can, therefore, be enacted by initiative. No findings of fact are required at the time of Council action on a rezoning. The Music Plus Four case upholds a drug paraphernalia ordinance excluding minors from any room where drug paraphernalia is sold or displayed. The Trent Meredith case approved the imposition by a city of school impact fees imposed after Proposition 13.

This communication is for Council information only.

Very truly yours,

James P. Jackson
JAMES P. JACKSON
City Attorney

JPJ:KMF

Attachment.

JAN 20 1981

ARNEL DEVELOPMENT COMPANY vs. CITY OF COSTA MESA

SUMMARY

The California Supreme Court recently decided Arnel Development Company vs. City of Costa Mesa 80 Daily Journal D.A.R. 3304 (Cal. Sup. Ct., December 18, 1980) in which it held that the rezoning of property, regardless of the size of the property involved or the number of owners, is a legislative act and can, therefore, be enacted by initiative. This report contains a summary of the facts and the decision in this case.

BACKGROUND INFORMATION

1. Facts.

Plaintiff Arnel Development Company planned to develop a 50 acre tract into 127 single family dwellings and 539 apartment units. The project was intended primarily for moderate income housing. The tract was zoned for low and medium density planned residential development, consistent with plaintiff's proposal.

Plaintiff received approval of the development and a tentative subdivision map on July 18, 1977. Shortly thereafter, however, a neighborhood association circulated an initiative petition to rezone the property to R-1; the initiative was adopted March 7, 1978. Based on this initiative rezoning the property, the city refused to issue building permits for the project. Plaintiff then filed suit to compel issuance of the building permits.

2. Legal Arguments.

Plaintiff argued that the rezoning of its parcel of land was not a legislative act but an adjudicatory act. As such, the rezoning could not be accomplished by initiative. Plaintiff attempted to characterize the rezoning as adjudicative on the grounds of its relatively small size and the limited impact of the rezoning. Plaintiff also argued the rezoning specifically affected its property rights and that due process required that a noticed hearing be held and the decision be based on findings.

1.

Legislative acts are typically described as acts of general or city-wide application which establish rules or regulations directed at the public in general. Legislative acts can be enacted by initiative. Adjudicatory acts, on the other hand, are typically described as acts which apply specific rules or regulations to individuals or individual situations. Decisions which apply rules or regulations to individuals implicate property rights and, therefore, due process procedures must be followed. Adjudicatory decisions cannot be made by initiative.

3. Holding

The court rejected plaintiff's arguments and held that rezonings are legislative acts, regardless of the size of the parcel in question or the number of owners. The court relied on lengthy legal precedent in California and federal law that has characterized rezonings as legislative. The court's rationale was based on the legislative nature of a city's comprehensive zoning scheme and the idea that only amendments to that zoning scheme would likewise have to be legislative. The court rejected the idea that a rezoning of a small parcel had limited impact. On the contrary, even a small rezoning changes the comprehensive zoning scheme and, in effect, results in a new comprehensive zoning ordinance.

4. Implications

The implications of this decision characterizing rezonings as legislative are as follows:

(a) Rezoning may be enacted by initiative and are subject to referendum.

(b) Rezoning are reviewable in court by ordinary mandamus; that is, a court is limited in its review of a rezoning to whether there is substantial evidence to support the decision.

(c) Rezoning do not require explicit findings.

(d) Rezoning are valid if they reasonably relate to the public welfare, are not arbitrary or capricious or discriminatory, and do not deprive the property owner of substantially all use of the land.

WESTMINISTER DRUG PARAPHERNALIA CASE

SUMMARY

In Music Plus Four vs. Robert Barnett, etal (Dec. 29, 1980), the Court of Appeal (4th District) upheld Westminister's "minors only" drug paraphernalia ordinance.

Westminister's Ordinance requires the exclusion of minors from any room wherein drug paraphernalia, as defined, are sold or displayed. Music Plus Four stores are retail record/tape establishments which displayed and sold the usual paraphernalia items.

Music Plus Four sued Westminister, asking for an injunction against enforcement of the ordinance, which provided criminal penalties and civil remedies for violations. At trial the court issued the injunction; the city appealed and the Court of Appeal reversed. The following are the key points decided by the court:

(1) Preemption: The ordinance is not preempted by state law even as it existed prior to January 1, 1981.

(2) Vagueness: The ordinance is limited to those who knowingly display paraphernalia for sale for purpose of drug use, and is therefore not vague.

(3) Commercial Speech: The ordinance does regulate commercial speech, but protection of children from exploitation is a "compelling state interest" and there is no less intrusive method of accomplishing that purpose.

(4) Due Process: The ordinance does regulate the right to engage in business, but that right is subject to reasonable regulation to protect children, and the method adopted is rationally related to that purpose.

(5) Equal Protection. The ordinance does target specific businesses, but the classification is inherently reasonable.

Although the court did not have before it a "total ban" ordinance, it did appear to comment on such ordinances in its discussion of the preemption issue. The court placed great importance on the fact that the ordinance did not purport to regulate sale or use of paraphernalia; rather the ordinance merely regulates display for purposes of sale. This language implies that a "total ban" ordinance such as that enacted by the County may run afoul of California case law on preemption.

TRENT MEREDITH v. OXNARD (school impact fees)

SUMMARY

The Second District Court of Appeal on January 6, 1981 decided in Trent Meredith Inc. v. City of Oxnard 2 Civ 4 59339 that school impaction fees are not special taxes under Proposition 13. The fees involved in the Trent Meredith case are the same type of fees as those imposed for the Elk Grove School District, and are also the same as the fees in issue in the Winberry case currently before the Third District Court of Appeal in Sacramento.

DISCUSSION

The Trent Meredith case involved school impaction fees provided for by an ordinance enacted after the effective date of Proposition 13. A subdivider challenged the validity of the fees on the basis that they were special taxes under Proposition 13.

The subdivider argued that the fees were special taxes because a special tax is one earmarked for a special purpose, includes now or increased exactions for revenue purposes and is not a special assessment.

The Court rejected the subdividers' arguments. First, a special tax cannot be defined only in terms of where the money will be deposited because then "...it could easily be avoided by depositing the exactions in the general fund." Neither party contended that the fees were special assessments.

Finally, the Court rejected as being overly broad, the argument that "special tax" means any new or additional tax imposed for revenue purposes.

Rather, the Court, while refusing to define "special tax," said that the fee was not a special tax, but was a reasonable police power exaction on the land development process. The Court's reasoning seemed to be that:

(1) The fees were not ad valorem property taxes because they were imposed not upon the land, but upon "...the privilege of subdividing land which causes the overcrowding of local school facilities."

(2) The payment of the fee is voluntary in nature in the sense that the developer voluntarily decides whether or not to develop.

(3) The Court went on to say:

It is undisputed that a subdivider must pay for the streets, sewers, lights, and parks which are reasonable conditions for dedication so as to conform to the welfare of the lot owners and the general public. Surely, it cannot be argued that any of these requirements are more important to the welfare of the lot owners and the general public than the education of children.

(4) Finally, the Court held that the imposition of the school impaction fee was "...consistent with the mandate of the voters...(namely) effective real property relief."

As the Council knows, the same issue is currently before the Third District Court of Appeal in the case of Winberry v. Shasta County. The Winberry case will be binding in the Third District area (including Sacramento). Of course, if the California Supreme Court grants a hearing in either case, then that Court's decision will control.