Legal News

Housing cap violates California law

In March, a superior court judge issued an opinion that requires Pleasanton, California, to stop implementing Measure GG, the housing cap provision that city voters approved in 1996. Measure GG prohibits city officials from issuing residential permits for more than 29,000 housing units from 1996 "until the end of time." The city's general plan and municipal code were amended to incorporate the cap, but the regional housing needs allocation prepared by the Association of Bay Area Governments (as required by the state's Housing Element Law) indicated that the city needed more than the cap allowed—8,336 new units between 1999 and 2014.

Attorney General Jerry Brown joined a suit filed by the nonprofit group Urban Habitat Program and a schoolteacher seeking affordable housing. "Pleasanton's housing limits added to urban sprawl and led to increased vehicle use, air pollution, and greenhouse gas emissions," Brown told the *San Francisco Chronicle*.

The superior court judge ruled that state law preempts local laws whenever they contradict state law. He ordered the city to remove regulatory barriers that would prevent the construction of about 4,000 new housing units in Pleasanton by 2014, adding that at least three-quarters of the new houses must be affordable. *Urban Habitat Program v. City of Pleasanton, March 12, 2010, No. RG06-293831 (Cal. Sup. Ct.)*

Maryland's highest court declines to adopt zoning estoppel doctrine

A 20-year battle to prevent a rubble landfill from operating on a 68-acre site next to the Gravel Hill and St. James communities in Maryland's Harford County culminated in March with a win for the neighbors and the county. The state's highest court ruled that county officials had properly denied variances requested by Maryland Reclamation Associates. The company had purchased the property in February 1990 after receiving a Phase I permit from the Maryland Department of the Environment three months earlier. The site was also included in Harford County's Solid Waste Management Plan as a rubble landfill.

Only four days after closing on the property, newly elected county councilors introduced a resolution to remove it from the Solid Waste Management Plan. Then they passed an emergency bill to amend the requirements for a rubble landfill (increasing the minimum acreage requirements and buffer requirements, for instance). The amendment essentially made the company's landfill impossible unless it obtained a number of variances. Four months later, the county council enacted another measure to remove specific sites, including the MRA site, from the waste management plan if they did not comply with county zoning.

MRA requested the variances, which were denied. Litigation ensued. A church pastor testified that the machinery and noise would interfere with activities at the church nearby. An expert in the preservation of historic African American sites pointed out the historical significance of the church and noted that the landfill would conflict with the "cultural legitimacy" of the 150-year-old community. Neighbors said they feared the expected addition of 50 trucks per day along Gravel Hill Road would endanger schoolchildren getting on and off buses.

The state's highest court concluded that there was substantial evidence to support the county's decision to deny the variances. The court declined to adopt the doctrine of zoning estoppel—the legal theory that a government is prohibited from changing zoning rules that property owners have substantially relied on. It noted that local governments frequently struggle to balance the rights of landowners against "equally legitimate environmental and community concerns." The court added that "land developers must understand that, to a limited extent, the local government will meander, and before they incur significant expense without final permitting, they must carefully assess the risk that the government will shift course." *Maryland Reclamation Associates, Inc. v. Harford County, March 11, 2010, No. 143 Sept. Term, 2008 (Md.)*

Boy Scouts lose in Michigan

The oldest Boy Scout camp in America, Camp Owasippe, is located on nearly 5,000 acres in Blue Lake Township, Michigan. The Chicago Area Council has operated the camp since 1911. The township first adopted a zoning ordinance in 1981, zoning the camp property "Forestry-Recreation," which permitted special uses such as campgrounds and recreational trails, but prohibited single-family dwellings. After adopting its comprehensive plan in 1996, the township amended the zoning ordinance, adding the classification "Forestry-Recreation: Institutional" in 2002. Nearly half of the township—more than 9,000 acres, including Camp Owasippe—was rezoned to FR-I to "preserve the unique camp-like characteristics of the township."

The Boy Scouts council, which wanted to sell part of the camp land for residential development, requested a rezoning. The planning commission and township board unanimously rejected the proposal. After losing at trial, the Boy Scouts sought relief in the court of appeals, where they claimed that the new FR-I zone, which was unique in the state, was inconsistent with the master plan. They also alleged a facial substantive due process violation, an "as applied" due process violation, a procedural due process violation, an inverse condemnation, and an equal protection violation, but they struck out on all counts. Among other things, the court observed that property owners are not guaranteed a certain minimum economic profit from the use of their land, adding that Blue Lake Township "had the discretion to allow development that was in harmony with all of its public interest goals, while limiting development that was not." *Chicago Area Council, Inc. v. Blue Lake Township, March 18, 2010, No. 285691 (Mich. App.)*

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