

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 03/08/2012

TIME: 04:43:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: Gail A. Andler

CLERK: Mary White

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: 30-2011-00467132-CU-WM-CXCCASE INIT.DATE: 04/14/2011

CASE TITLE: Foothill Communities Coalition vs. County of Orange

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 71433896

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken this matter under submission, now rules as follows.

The Petition for Writ of Mandate is granted. The passing of the new zoning ordinance for SRH and applying it to one property was improper spot zoning. In light of this ruling, the Court finds it unnecessary to rule on the CEQA issues.

As stated, the concern is not with the passing of the new zone by itself. The problem is in the application to one property. The amendment of the NTSP creating a new zoning category for senior residential housing may have been proper, but its application to one property was illegal spot zoning.

Although not binding, the authorities cited in the sur reply and the cases of Wilkins, and Rubin show that spot zoning includes the grant of greater rights to a small property than those granted to the surrounding properties, where there is no rational reason for the difference in treatment.

Here, the subject ordinances were passed and the new zone was only applied to one project. The project encompassed a relatively small aggregate acreage of 7.25 acres. It was inconsistent with the surrounding property, because it allowed a greater density than that which exists for the surrounding properties and there is evidence that the main building, as currently proposed, may not be consistent with the residential character of the surrounding properties. There was no characteristic of the property that made use under the original zoning impractical. The SRH zone is not consistent with the NTSP, which sought to keep the subject area in the NTSP as low medium density residential. The preexisting NTSP zoning did not allow for increased densities provided for in the subject project. The County's argument that the SRH amendment is consistent, because it amended the NTSP to allow the SRH zone

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Page 1  
Calendar No.

is circular. It fails to adequately address the issue of whether the amendment was discriminatory as to the surrounding properties.

As to whether the project was for the public good, it appears the reason for the zoning was driven merely by the mere fact that the property owner was willing to donate the land to the RPI for said purpose. Additionally, the SRH zone was not part of a comprehensive plan to address senior housing needs. The County only cited to express concerns in the general plan for senior housing, but there was no citation to a comprehensive plan to address the current or future needs for such housing and no showing how that comprehensive plan was furthered by this proposed project. The Court appreciates the efforts of the County to provide for senior housing and notes the generosity of the Prescott family to donate the land for such purpose, and also notes the good intentions of The Roman Catholic Diocese of Orange and Kisco Senior Living for seeking to provide that type of housing/service, but such purposes and intentions alone do not warrant circumvention of proper zoning procedure. The court finds that the passage of the ordinance providing for the new zoning was arbitrary and/or capricious.

Petitioner is directed to file a proposed order vacating the ordinance amending the NTSP to the extent it applied the new zoning category [SRH] to the one property and vacate all related project approvals. The ruling on the CEQA issues raised by petitioner is unnecessary given the ruling on the zoning issue. The proposed order shall specifically identify the ordinance and related "project approvals" that are affected by the court's ruling.

Notwithstanding this ruling, the Court encourages the parties to return to the table to continue to pursue settlement discussions in an effort to avoid prolonged and costly litigation.

Clerk to give notice to Petitioner and Petitioner to give notice to all other parties.

It is so ordered.



Hon. Gail Andler

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 08-FEB-2012, at Santa Ana, California. ALAN CARLSON /EXECUTIVE OFFICER & CLERK OF THE SUPERIOR COURT, BY: M.WHITE deputy.

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