

FILED

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY SEP 05 2007

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
P. Conder DEPUTY

P. Conder

H-Y-H CORPORATION,

Petitioner,

Case No. M85082

vs.

Intended Decision

COUNTY OF MONTEREY,

Respondent.

LANDWATCH MONTEREY COUNTY,
and RANCHO SAN JUAN OPPOSITION
COALITION,

Real Parties in Interest In Intervention.

This matter came on for court trial on August 9, 2007. All sides were represented through their respective attorneys. The matter was argued and taken under submission. This intended decision resolves factual and legal disputes, and shall suffice as a statement of decision as to all matters contained herein.

Background

H-Y-H Corporation (HYH) filed suit against respondent County of Monterey (County) in November 1999. (Monterey Superior Court M46616.) HYH was frustrated with the pace of HYH's application for development, and in part, sought a writ of mandate "requiring the County, within a reasonable time, to expeditiously complete preparation, processing and adoption of its Specific Plan and EIR [Environmental Impact Report] and to adopt effective and constitutional zoning for the Rancho San Juan ADC [Area of Development Concentration] consistent with the GSAP [Greater Salinas Area Plan]." (M46616, HYH Petition 7:19-23.)

In February 2001, this Court ordered the County to “continue to process the EIR, Specific Plan and zoning for the Rancho San Juan Area of Development Concentration forthwith, consistent with statutory requirements for public notice, and to diligently complete the certification of said EIR, the adoption of said Specific Plan, and zoning for the ADC within a reasonable time period in accordance with the law. Nothing in this writ shall limit or control the discretion legally vested in respondent, shall compel any particular result, nor prevent respondent from specifically finding that the General Plan is inadequate and/or taking appropriate action under Government Code Section 65858.” (M46616, Judgment Granting Peremptory Writ of Mandate 2:1-7.)

HYH and County entered into a Stipulation in September 2002 that provided in pertinent part: 1) “That the County will continue to expeditiously process the Specific Plan and EIR for the Rancho San Juan Area of Development Concentration (‘Specific Plan’),” (M46616, Stipulation Following Report of Mediator To Presiding Judge 2:11-12 (Stipulation)); 2) “That the Specific Plan to be ultimately considered is subject to the County Board of Supervisors’ legislative discretion as to amendment and ultimate approval or disapproval, and that the discretion of the County Board of Supervisors is in no way affected by this stipulation[;]” (Stipulation 2:23-25); and 3) “That HYH shall dismiss this case, with prejudice ... in the event that: (a) the Specific Plan, other legislative actions and the development applications are ultimately and timely approved ...; and (d) such approval has become final and not subject to judicial challenge, initiative or referendum” (Stipulation 8:17-26.)

In November 2005, the Monterey County Board of Supervisors (Board) adopted Resolution No. 05-305 for a Revised Rancho San Juan Specific Plan with corresponding

General Plan amendments. LandWatch and Rancho San Juan Opposition Coalition (collectively LandWatch) gathered sufficient voter signatures to challenge the Board's approval by referendum at the June 6, 2006 election. The Board removed the referendum from the June 2006 election pending decisions of the Federal Court. Following a decision by the U.S. District Court, the referendum (Measure D), was submitted to the voters at the June 5, 2007 election. (HYH Request for Judicial Notice, Exhibit Y.)

The voters adopted Measure D on June 5, 2007, thereby repealing Board Resolution No. 05-305. (HYH Request for Judicial Notice, Exhibit Z.)

Requests for Judicial Notice

HYH's and County's requests for Judicial Notice are granted.

Discussion

HYH seeks to set aside the June 5, 2007 adoption of Measure D which rejected the County's plan for development of the Rancho San Juan area.. HYH advances three arguments challenging the voters' adoption of Measure D. Firstly, HYH argues that Measure D contravenes this Court's February 2001 Judgment. Secondly, Measure D creates an inconsistency between the County's General and Specific Plans which is a violation of the State Planning and Zoning Law. Thirdly, HYH argues that the February 2001 Judgment changed the County's adoption of a general plan amendment from a legislative to a ministerial (administrative) act and the repeal of those amendments are not proper by referendum.

A. Court's February 2001 Judgment and Measure D

The legal issue presented here concerns the intersection of a Court Judgment and the People's right of referendum.

Article II, section 11, subdivision (a) of the California Constitution provides: “Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide.”

The thrust of HYH’s argument, in which the County concurs, is that the electorate’s power of referendum is co-extensive with the Board’s legislative power, and as the Board is bound by the Judgment, so is the electorate. (*City of Half Moon Bay v. Superior Court* (2003) 106 Cal.App.4th 795 (*City of Half Moon Bay*); *Mandal v. Myers* (1981) 29 Cal.3d 531 (*Mandal*); *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 775.)

LandWatch argues that the right of Referendum is reserved for the voters and that courts generally preserve this right. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 695.)

LandWatch cites *Chandris Securities Co. v. City of Dana Point* (1996) 52 Cal.App.4th 475 (*Chandris*), for the proposition that the electorate can reject a proposed specific plan via the power of referendum. Otherwise, the power of referendum would be rendered meaningless. (*Chandris*, at pp. 481-482.)

LandWatch argues that *City of Half Moon Bay* and *Mandal* do not support HYH’s position that the separation of powers doctrine requires the legislative branch, whether acting through the Board or the voters, to respect this Court’s Judgment. Rather, Measure D does not contravene this Court’s Judgment because the Judgment did not direct the County to adopt a particular Specific Plan or prohibit the County or the voters from denying HYH’s application.

In *Mandel* the California Supreme Court discussed at length the separation of powers doctrine in regards to a Legislative Analyst’s recommendation that the Legislature not pay attorney fees ordered from a judgment. The Court found that this was

an attempt by the Legislature to readjudicate the fee matter, a violation of the doctrine, and affirmed the power of a lower court to order expenditure of funds to pay the fees after the Legislature had appropriated general funds.

In *City of Half Moon Bay*, the California Coastal Commission, as a party to a writ proceeding, was bound by the ruling and could not readjudicate the merits by appealing the ruling to itself.

Here, the electorates' use of the reserved power of referendum was not a readjudication of the Judgment.

The fact that the voters turned down this Specific Plan does not foreclose the development of some other Specific Plan that comports with the 2001 Judgment. Petitioner expressed concerns that LandWatch and the Rancho San Juan Opposition Coalition will mount another referendum challenge to any future plan that involves development, and such challenge would be tantamount to negation of the court Judgment.

But that concern has not materialized. Special interest organizations do not vote. People vote. Petitioner claims that two referendums have now been held, and both have turned down efforts to develop the property. In actuality, Petitioner withdrew a much larger project that was the subject of the first vote prior to the date of that referendum. The action was well publicized, and consequently, the referendum was rendered meaningless, and the proportion of yes to no votes is not determinative of how people will vote in the future. The adoption of measure D, although presenting a further delay for Petitioner, is not a direct and conclusive challenge to the Court's Judgment.

This Court's Judgment simply ordered the County to "continue to process the EIR, Specific Plan and zoning ... and to diligently complete the certification of said EIR,

the adoption of said Specific Plan, and zoning for the ADC within a reasonable time period in accordance with the law.” The Judgment also provided that “Nothing in this writ shall limit or control the discretion legally vested in [County], shall compel any particular result, nor prevent [County] from specifically finding that the General Plan is inadequate and/or taking appropriate action under Government Code Section 65858.”

Measure D does not violate the separation of powers doctrine.

B. State Planning and Zoning law issue

HYH argues that if LandWatch’s interpretation that Measure D invalidates the Revised Specific Plan and its zoning, a vertical inconsistency with the General Plan is created. Measure D is invalid as a matter of law because the General Plan calls for a specific plan for the property and Measure D perpetuates the pre-existing inconsistency that was remedied by the rezoning that accompanied the Specific Plan. (Government Code §65860; *Devita, supra*, 9 Cal.4th p 772-773; *deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1213 (*deBottari*).

LandWatch argues that 1) the repeal of a specific plan simply reinstates the status quo (*Chandis, supra*, 52 Cal.App.4th at 485); 2) that Measure D set aside general plan amendments, not the Specific Plan or zoning amendments; and 3) *deBottari* and the other cases cited by HYH are inapt because those cases dealt with referenda of zoning amendments which provided for inconsistency with a general plan.

This Court is not persuaded by HYH’s arguments.

The cases cited by HYH, *deBottari* (referendum and zoning), *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868 (referendum and zoning), and *Leshar Communications, Inc v. City of Walnut Creek* (1990) 52 Cal.3d 531

(initiative and zoning), do not support HYH’s argument that the rejection of the General Plan amendments by the Monterey County electorate resulted in an inconsistency under the Planning and Zoning law. These cases dealt with zoning laws that were inconsistent with a general plan under Government Code §65860(a.) (*Chandis, supra*, 52 Cal.App4th at 484-485.)

Additionally, although *Chandis* deals with a referendum of a specific plan, the return to the status quo in that case does suggest that Measure D maintained the status quo here and no inconsistency with the Planning and Zoning Law is created. Resolution No. 05-305, Amendments to the Monterey General Plan and the Greater Salinas Area Plan, never went into effect because of the Referendum. (Election Code §9241.) (Exhibit U, HYH Request for Judicial Notice.)

The Court finds that Measure D does not create any inconsistency with the Planning and Zoning law.

C. Legislative or administrative act issue

“[A] fundamental principle of referendum law is that a referendum may be used to review only legislative acts and not executive or administrative acts of a local government. (*Devita, supra*, 9 Cal.4th at p. 775.)

When a local government's discretion is “largely preempted” by statutory mandate, its action is administrative and not subject to referendum. (*Devita, supra*, 9 Cal.4th at p. 776.)

HYH argues that Measure D interferes with an administrative duty and is outside the power of referendum because the 2001 Judgment changed the adoption of the general

plan amendments from a legislative to a ministerial act. (*Southwest Diversified, Inc. v. City of Brisbane* (1991) 229 Cal.App.3d 1548 (*Southwest Diversified*).

LandWatch states that the general plan amendments are legislative in nature. The 2001 Judgment and Stipulation retained the County's discretion over the General Plan amendments. *Southwest Diversified* differs in that it involved a referendum challenging a zoning decision whereby the City of Brisbane adopted a zoning ordinance that by its terms provided a boundary adjustment that rendered a subsequent act of adjusting the boundaries administrative.

Here, the County was directed by the Court to continue to process an EIR, Specific Plan and zoning within a reasonable time. The County clearly exercised its discretion in formulating the requisite development for the Rancho San Juan Area of Development Concentration. The Court did not preempt the County's discretion and the County's actions were clearly legislative in nature and subject to referendum.

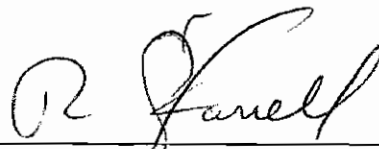
(*Worthington v. City Council of Rohnert Park* (2005) 130 Cal.App.4th 1132, 1140-1141.)

Disposition

Petitioner's writ of mandate is denied as set forth above.

The court directs the attorney for the County to prepare an appropriate judgment consistent with this ruling, present it to all counsel for approval as to form, and return it to this court for signature.

Dated: September 5, 2007



HON. ROBERT A. O'FARRELL
Judge of the Superior Court

CERTIFICATE OF MAILING

C.C.P. SEC. 1013A

I do hereby certify that I am not a party to the within stated cause and that on

SEP 05 2007 I deposited true and correct copies of the following documents:

ORDER AFTER SUBMISSION in sealed envelopes with postage thereon

fully prepaid, in the mail at Salinas, California, directed to each of the following named

persons at their respective addresses, as hereinafter set forth:

Mark Blum
499 Van Buren Street
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49 Geary St. Suite 200
San Francisco, CA 94108

Dated: **SEP 05 2007**

LISA M. GALDOS, Clerk of the
Monterey County Superior Court

By P. Conder
P. Conder, Deputy