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ZONING & PLANNING - CALIFORNIA

Beames v. City of Visalia

Court of Appeal, Fifth District, California - December 19, 2019 - Cal.Rptr.3d - 2019 WL 69075 - 2019 Cal. Daily Op. Serv. 12, 171

Owner of property that, like other properties on same block, was engaged in nonconforming use under zoning code filed petition for writ of mandate against city, asserting § 1983 claim for zoning dispute hearing officer's alleged violation of his due process rights as well as claim that hearing officer violated municipal code.

After granting property owner's motion for stay of zoning violation fines, trial court issued writ requiring city to vacate hearing officer's ruling and allowing new hearing. Subsequently, the Superior Court denied property owner's motion for attorney fees. Property owner appealed.

The Court of Appeal held that:

- Prevailing on state law due process claim qualified property owner for § 1988 attorney fees;
- Property owner's action resulted in concrete recovery of benefiting public, warranting § 1988 attorney fees; and
- Hearing officer's authority to make zoning decision exposed city to § 1983 liability.

Property owner prevailed on his state law claim for violations of due process in zoning code enforcement proceedings, as necessary for him to be entitled to attorney fees under § 1988 based on his pleading of related § 1983 claim; property owner succeeded on significant common issue of what due process violations occurred and achieved benefits sought under both claims, including reversal of zoning violation fees.

Property owner pleaded substantial § 1983 claim that city violated his procedural due process rights during zoning code enforcement proceedings, as necessary for property owner to recover attorney fees under § 1988 following favorable ruling on closely-related state law claim; property owner pleaded that administrative hearing was unconstitutionally unfair because hearing officer did not make findings of fact, consider whether order was in the interests of justice, or consider other relevant factors such as pending change to zoning code that would resolve dispute in property owner's favor, resulting in harm to property interests, namely, eviction of property owner's tenant, limitation of use of property, and imposition of substantial fines.

Property owner's action against city, in which he prevailed on his arguments that he was not afforded procedural due process in zoning dispute, resulted in property owner's concrete recovery of benefiting public by promoting due process in zoning proceedings and deterring city from employing unfair, costly, and unwarranted litigation tactics, and, thus, property owner was entitled to § 1988 attorney fees; city failed to inform hearing officer that zoning changes would render current use of property legal, which would constitute grounds to deny city's request for daily penalties for nonconforming use, and took unnecessarily aggressive stances without any articulable reason for pursuing enforcement or penalties, and litigation established unlawfulness of proceeding before hearing officer.

Decision by hearing officer in zoning dispute to uphold code enforcement order and impose daily penalties for nonconforming use of property was choice among alternatives made by official with authority to make such choice, and, thus, hearing officer's failure to abide by due process requirements was basis for § 1983 liability, even in the absence of a preexisting municipal policy to decide dispute in such manner; hearing officer was vested with final administrative authority to decide whether to uphold, modify, or vacate code enforcement order, whether to impose penalties, and what amount of penalty would be appropriate, such that his decision effectively constituted city policy for § 1983 purposes.