

Bond Case Briefs

Municipal Finance Law Since 1971

ZONING & PLANNING - CALIFORNIA

Muskan Food & Fuel, Inc. v. City of Fresno

Court of Appeal, Fifth District, California - September 27, 2021 - Cal.Rptr.3d - 2021 WL 4398417 - 21 Cal. Daily Op. Serv. 10,011

Owner of gas station and convenience store petitioned for writ of mandate seeking to set aside city's approval of a conditional use permit for the development of a neighborhood shopping center across the street from his store.

The Superior Court denied petition, concluding substantial evidence supported city's zoning decision. Owner appealed, and real parties in interest filed cautionary cross appeal.

The Court of Appeal held that:

- Word "petition," as used in municipal code describing the procedures for appealing city's approval of a conditional use permit, was vague; but
- Meaning of "petition" encompassed both oral and written requests;
- Informal dinner with city council member was not a "petition" to the council member to appeal city planning commission's decision approving a conditional use permit; and
- e-mail sent to mayor from the president of city's chapter of convenience store association was not a "petition" to appeal city planning commission's decision approving a conditional use permit.

Word "petition," as used in municipal code describing the procedures for appealing city's approval of a conditional use permit, was vague, requiring court to resolve ambiguity, since it failed to provide the level of formality required to challenge permit; term "petition" could mean making a simple oral request, making a formal written request, or something in between.

Word "petition," as used in municipal code describing the procedures for appealing city's approval of a conditional use permit, encompassed both oral and written requests made to the mayor or council member, since there was no specific language in related code sections requiring it only to be in writing.