

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **ZONING - CALIFORNIA**

### **Contasti v. City of Solana Beach**

**United States District Court, S.D. California - October 22, 2013 - Slip Copy - 2013 WL 5727409**

Plaintiffs brought due process and equal protection claims against City of Solana Beach based upon the decision of the City Council to deny Plaintiffs' application for a development review permit for their property.

City contended that, as a matter of law, Plaintiffs were not deprived of a constitutionally protected property interest when the City Council denied their application for a development review permit, which is a special discretionary permit. Defendant contended that the denial of the discretionary development review permit based upon discretionary considerations cannot form the basis for a property interest. Because Plaintiffs cannot establish that they had a property interest in the special discretionary permit, Defendant contends that Plaintiffs cannot establish a constitutional violation.

The District Court agreed. The undisputed facts of this case establish that the decision challenged by Plaintiffs was limited to the decision to deny the development review permit. There was no facial challenge to the municipal code establishing the development review provisions or to the application of the development review permit to the property. The express provisions of the municipal code accord significant discretion to the City Council in approving certain classes of development projects.

Under California law, "no protected property interest exists when there is significant discretion accorded the agency by law, regardless of whether or to what degree that discretion is actually exercised." In this case, the municipal code provided the City Council with significant discretion in deciding whether to grant a development review permit.

No language in the municipal code conferred a right to a permit. To the extent that the municipal code required notice and hearing, the undisputed facts of this case show that the City Council complied with all requirements of the code and rendered a decision which was not favorable to the Plaintiffs based upon criteria set forth in the code. Under the undisputed facts of this case, Plaintiffs would have a federal jury second guess the City Council's lawful exercise of discretion. Applying the law to the undisputed facts of this case, the Court concludes that the Solana Beach Municipal Code provisions for a development review permit do not create "the sort of entitlement out of which a property interest is created." The undisputed facts and the applicable law establish that Plaintiffs have not established a protected property interest required in order to prevail on the claim for deprivation of substantive due process.