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LAND USE - CALIFORNIA

Citizens for Restoration of L Street v. City of Fresno

Court of Appeal, Fifth District, California - August 29, 2014 - Cal.Rptr.3d - 2014 WL 4254492

The City of Fresno approved a residential infill development project in downtown Fresno to build 28 two-story townhouses. The project site contained vacant parcels and two lots with houses built in the early 20th century. A citizens group interested in historical resources in downtown Fresno challenged the City's approval of the townhouse project, particularly its decision to issue demolition permits for the two houses. The trial court decided the City violated certain procedural requirements of the California Environmental Quality Act (CEQA) in approving the project, but applied the correct legal standards in determining the two houses were not "historical resources" protected by CEQA. Both sides appealed.

The Court of Appeals concluded that CEQA allows a local lead agency, such as the City, to delegate the authority to approve a mitigated negative declaration and a project to a nonelected decisionmaking body such as the Preservation Commission. In this case, however, the Fresno Municipal Code did not actually authorize the Preservation Commission to (1) complete the environmental review required by CEQA and (2) approve the mitigated negative declaration. As a result, the Preservation Commission's approval of the mitigated negative declaration did not comply with CEQA.

As to historical resources, the Court concluded that the substantial evidence test, rather than the fair argument standard, applies to a lead agency's discretionary determination of whether a building or district is an historical resource for purposes of CEQA. Therefore, the trial court did not err when it applied the substantial evidence test to the City's determination that no historical resources were impacted by the project.