

Bond Case Briefs

Municipal Finance Law Since 1971

DEVELOPMENT FEES - CALIFORNIA

616 Croft Ave., LLC v. City of West Hollywood

Court of Appeal, Second District, Division 1, California - September 23, 2016 - Cal.Rptr.3d - 2016 WL 5335511

Developers petitioned for writ of administrative mandate to compel city to return fees the city collected when developer applied for building permits.

The Superior Court denied petition. Developers appealed.

The Court of Appeal held that:

- Developer could not challenge fee ordinance's facial constitutionality more than 90 days after establishment of fee schedule;
- In-lieu housing fees were not an "exaction" under the Mitigation Fee Act;
- In-lieu housing fees were not governed by the Right to Vote on Taxes Act;
- Developer could not argue an "absence of a reasonable relationship" between the development project and the demand for affordable housing more than 90 days after establishment of the fee schedule.

Under the statute providing that an action to "attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance" must be brought within 90 days of the legislative body's decision, a developer was barred from arguing in an administrative mandamus action that the ordinance authorizing in-lieu housing fees the city collected from the developer violated Fifth Amendment takings principles on its face, where the developer filed its protest letter challenging the ordinance more than 90 days after the city council resolution establishing the schedule of in-lieu housing fees, and the developer paid the in-lieu fee voluntarily as an alternative to setting aside affordable housing units.

In-lieu housing fees paid by developer voluntarily as an alternative to setting aside affordable housing units under city ordinance were not an "exaction" under the Mitigation Fee Act, and thus were not governed by the provision of the Act authorizing parties to protest the imposition of exactions, even if the city would have had a "right of first refusal" to buy any set-aside units.

In-lieu housing fees paid by developer voluntarily as an alternative to setting aside affordable housing units under city ordinance were not governed by the Right to Vote on Taxes Act, and thus the city did not have the burden to prove the reasonableness of the fees to establish the fees were not "special taxes" under the Act.

Under city ordinance providing that any person subject to an in-lieu housing fee may apply to the city council for an adjustment, reduction, postponement, or waiver of that fee "based upon the absence of a reasonable relationship between the impact of that person's commercial or residential development project on the demand for affordable housing," the reasonableness inquiry relates to the creation of the city council resolution establishing the schedule of in-lieu housing fees, and does not relate to the reasonableness of the individual calculation of fees related to a development's

impact on affordable housing, and thus a challenge under the “reasonable relationship” standard is barred by the Mitigation Fee Act if it is brought more than 90 days after the creation of the fee schedule.