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ZONING & LAND USE - CALIFORNIA

Park At Cross Creek, LLC v. City of Malibu

Court of Appeal, Second District, Division 3, California - June 21, 2017 - Cal.Rptr.3d - 2017 WL 2665935 - 17 Cal. Daily Op. Serv. 6072

Developers petitioned the trial court for a peremptory writ of mandate to have a local initiative declared invalid.

The Superior Court granted petition. City and proponents appealed.

The Court of Appeal held that:

- Ordinance requiring a specific plan for every new commercial development over 20,000 square feet was not a proper exercise of legislative power;
- Zoning ordinance requiring planning commission's approval of specific chain retail establishments illegally restricted transferability of conditional use permits;
- Voter approval requirement for commercial specific plans was not volitionally severable; and
- Zoning ordinance illegally discriminated against chain retail establishments.

A non-charter city's initiative ordinance requiring every proposed commercial or mixed-use development project in excess of 20,000 square feet to be identified in a specific plan approved by the city council was not a valid exercise of legislative power, since the requirements imposed by the ordinance were adjudicative. Even though the ordinance allowed multiple projects to be covered by a single specific plan, and even if the provision requiring voter approval of the specific plan could be severed, the ordinance set no substantive policy or standards for the specific plan, it created a "new power" in requiring the specific plan, and it limited the city's exercise of its police power.

A non-charter city's zoning ordinance imposed an illegal restriction on the transferability of conditional use permits, and thus was invalid, in requiring conditional use permits for "formula retail establishments" to include the planning commission's approval of the specific chain retailer that would operate on the property based on a finding that the establishment would not promote a "predominant sense of familiarity or sameness," even though the permits were transferable, since the permits could not be used to operate chain establishments not approved by the planning commission, and the ordinance's distinction between approved and unapproved chains was "not grounded in the use of the land."

Even assuming that the illegality of a city voter initiative restricting planning approvals for large commercial establishments and retail chains could be cured by severing the provision requiring voter approval for the specific plan covering any new commercial development over 20,000 square feet, that provision was not volitionally severable and thus the initiative was invalid in its entirety, even though the initiative included a severability clause, where the title of the initiative referred to the voter approval provision by including the words "Your Decision," and the initiative's preamble stated that its purpose and intent were to ensure "planning by requiring preparation and voter approval of specific plans for large commercial or mixed-use projects."

A non-charter city's zoning ordinance was invalid because it discriminated against chain retailers in violation of the principles governing conditional use permits in California, in requiring conditional use permits for such "formula retail establishments" to include the planning commission's approval of the specific chain that would operate on the property based on a finding that the establishment would not promote a "predominant sense of familiarity or sameness," even if a provision subjecting subsequent transferees to the same restrictions as the original recipient of the permit could be severed from the ordinance, since the ordinance based eligibility for the permit on the nature of the applicant as a chain rather than on general categories of land use such as "hamburger joints" and "coffee shops."