

Bond Case Briefs

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ANNEXATION - CALIFORNIA

Award Homes, Inc. v. County of San Benito

**Court of Appeal, Sixth District, California - November 1, 2021 - Cal.Rptr.3d - 72
Cal.App.5th 290 - 2021 WL 5631443**

Residential developer brought action against city and county seeking a declaration that developer was not obligated under development and annexation agreements with city to pay city annexation-related fees for which city was responsible under city-county tax sharing agreements concerning new single-family construction on land that city annexed from county.

After bench trials, the Superior Court entered judgment against developer. Developer appealed.

The Court of Appeal held that:

- Developer's action was timely as to whether it was required to pay fees;
- Developer had standing;
- Statute providing for property tax transfer agreements between a county and a local agency authorized fees under tax sharing agreements;
- Tax sharing agreement required city to pay fees to county; and
- Development and annexation agreements required developer to pay fees to city.

Developer's action for declaratory relief was timely as to whether development and annexation agreements compelled developer to pay a fixed fee set forth in city-county tax sharing agreements for each residential unit constructed on land that was annexed into city from county, where developer promptly sought a declaration of its rights and duties under development and annexation agreements after learning that city would attempt to collect annexation-related fees for those projects.

Developer had standing to seek a declaration of its rights and duties under development and annexation agreements as to whether developer was required to pay a fixed fee set forth in city-county tax sharing agreements for each residential unit constructed on land that was annexed into city from county, where developer was a party to development and annexation agreements.

Residential developer's action for declaratory relief against city and county, seeking to invalidate annexation-related fees under city-county tax sharing agreement as not having been legally established when agreements were signed, was untimely under even the most generous statute of limitations, that being the four-year limitations period for actions on a contract, that arguably might have governed a challenge to amount of fees, which city sought to pass on to developer pursuant to city's development and annexations agreement with developer, where first tax sharing agreement was signed more than ten years earlier and second agreement also fall outside the four-year period.

Fixed fee that city was to pay county under tax sharing agreements for each residential unit constructed on land that was annexed into city from county was within county's authority under tax statute authorizing county to develop and adopt a master property tax transfer agreement with a local agency like city; there was nothing so fatally defective in fee obligations under tax sharing

agreements to render their very creation void.

City's obligation under tax sharing agreements to pay county annexation-related fees, which city sought to impose on residential developer pursuant to development agreement, did not cease to exist merely because developer did not seek building permits until after expiration of tax sharing agreement, which was in effect at time property was annexed by city; nothing in tax sharing agreement suggested that obligations created by it would cease to exist merely because a project annexed during its effective period was not constructed until after agreement expired, and fiscal neutrality goal of agreement would not have been served by such an interpretation.

Phrase "developer's obligations" in residential development agreement included obligation on part of developer to pay city the fixed fee, for which city was responsible to pay county under city-county tax sharing agreement, for each residential unit constructed on land that was annexed into city from county, despite argument that tax sharing agreement only required city to impose capital improvement and drainage impact fees on developers; tax sharing agreement required all three fees to be imposed on new development, development agreement did not provide explicit language excluding annexation-related fees from developer's obligations, and developer agreed as a condition of tentative map approval that fees required under tax sharing agreement were to be paid with each building permit.

Failure of city-county tax sharing agreement to use explicit term "fee" in referring to fixed fee that city was required to pay county for each single family dwelling unit constructed on land that was annexed into city from county did not preclude the annexation-related fee from being treated the same as capital improvement and drainage fees under development agreement with city, to allow city to require developer to pay city the amount of annexation-related fee pursuant to terms of development agreement, where development agreement also did not use the term "fees" and instead required developer to satisfy "developer's obligations."

County's status as non-party to residential development agreement between city and developer did not absolve developer of its obligation under agreement to pay city the amount of annexation-related fees for which city was responsible under city-county tax sharing agreement concerning new single-family construction on land that city annexed from county; any lack of obligation of developer to pay fees directly to county did not absolve developer of obligation to pay fees to city.

Residential developer's annexation agreement with city, requiring developer to hold and use the property in compliance with all "applicable provisions" of city-county tax sharing agreement, included provisions of tax sharing agreement relating to annexation-related fees that city was required to pay county and not just capital improvement and drainage impact fees to be imposed on new development, and thus city could require developer to pay city the amount of annexation-related fees, where all three fees were similar, and developer promised in annexation agreement to ensure that the proposed development paid its own way and eliminated or minimized the financial burden on city.