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Avienda San Juan Partnership vs. the City of San Clemente

In this installment of Footsteps we review a recent court case that involved “spot zoning” of a 2.85 acre parcel in the City of San Clemente, California. A review of this case will help us become more familiar with the principles of land zoning in the United States. The case also has important lessons both for agency staff that make land zoning decisions and land surveyors that deal with these agencies when working on land development projects.

We begin our review with an examination of the timeline for events related to the court case. We will then examine the decisions by both the trial and appeals court in this case. To conclude, we'll consider some of the lessons we can take from the case.

Timeline

1980: Avienda San Juan Partnership (ASJP) purchases the subject parcel in this case. The subject parcel is a 2.85 acre parcel in the City of San Clemente, California that abuts the public road named Avienda San Juan. At the time of the ASJP purchase, the subject parcel is zoned for 6 dwellings per acre.

Early 1980's: The City of San Clemente (City) approves plans, including a tentative parcel map, for ASJP to subdivide the subject parcel into four (4) single family lots. Opposition to the subdivision arises in the neighborhood.

1983: A landslide occurs near the subject parcel, but does not impact it. A group of

neighbors of the subject parcel petition the City to make the subject parcel open space. The City attorney determined rezoning the property would be a government “taking” that would require compensation be provided to ASJP. The City Engineer did not see a need to reconsider the approval of the tentative parcel map for the subdivision of the subject parcel.

1993: The City amends its general plan to impose zoning that allows 1 home per 20 acres on several parcels, including the subject parcels. Surrounding parcels remained zoned to allow four (4) homes per acre.

1996: In an effort to formally rezone the subject parcel and several other parcels, the City approves zoning changes to comply with the 1993 general plan.

2004: ASJP hires a civil engineer to assist with the development of the subject parcel and learns the zoning of the subject parcel has been changed.

9/2006: ASJP submits a development application to build four (4) homes on the subject parcel.

2/2007: The City Planning Commission recommends denial of the ASJP development application.

TIMELINE

1980	ASJP purchases the subject parcel.
Early 1980's	City approves subdivision of subject parcel. Opposition arises.
1983	Landslide occurs near subject parcel.
1993	City amends its general plan.
1996	City rezones the subject parcel.
2004	ASJP hires civil engineer to develop the subject parcel.
9/2006	ASJP submits development application.
2/2007	City Planning Commission recommends denial of subject parcel development.
7/2007	City Council adopts resolution denying ASJP land development application for the subject parcel.

7/2007: The City Council adopts a resolution denying the ASJP development application for the subject parcel.

Trial Court Decision–Part 1

The trial court trial was split into two (2) parts. In the both parts the judges of the trail ruled in favor of ASJP. In the first part decision, the trial court found the following:

1. The City did not give adequate notice to ASJP of the zoning change to the subject parcel. No direct notice (such as a letter) was provided to the owners, and neither the published newspaper notices nor the general plan amendment contained a map that would have allowed ASJP to understand their parcel was being rezoned.
2. The zoning change on the subject parcel was “arbitrary and capricious”. It was not based on reasonable causes, especially compared to the zoning of the surrounding parcels.

The trial court struck down the City’s decision regarding the development of the subject parcel.

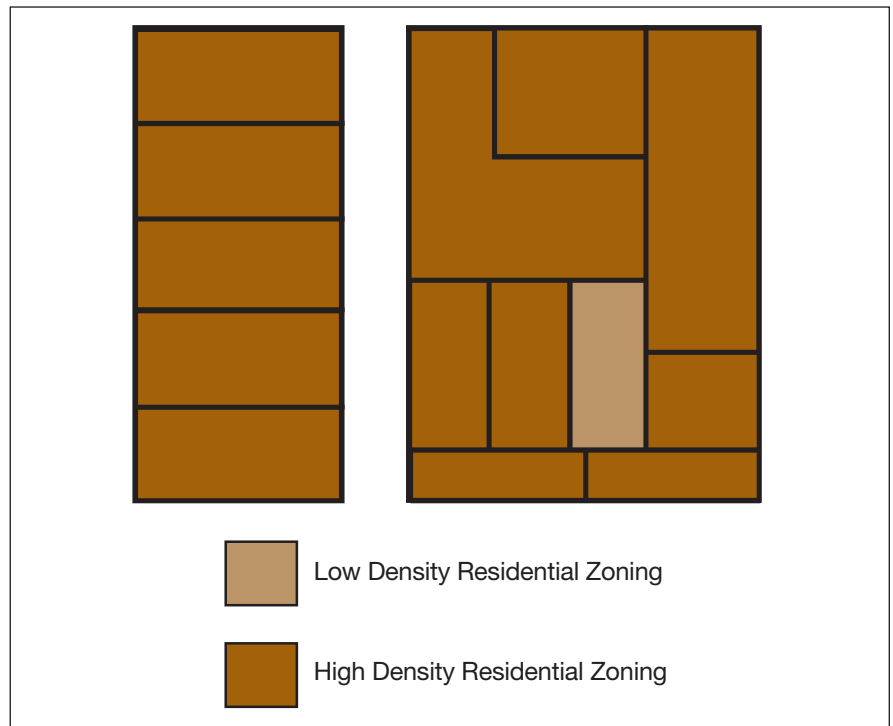
Trial Court Decision–Part 2

In the second part of the trial, the court also ruled in favor of ASJP and chastised the City. It found the following:

1. The City had deprived ASJP “of all economically viable use of the parcel”.
2. The City’s reasons for the zoning change were not valid. The real reason the court changed the zoning was it wanted the parcel to be preserved as open space.
3. The City did not seriously consider ASJP development application, as it was obligated to do.
4. The City ignored its own ordinances when it made the zoning changes.
5. The “City targeted the property for the state purpose of protecting open space, thus forcing the plaintiff to bear a burden which should be borne by the public as a whole”.

The Appeals Court Decision

The appeals court agreed with the trial court’s decision, and went further to criticize the City for engaging in the practice of “spot zoning”. It also found the city zoning change did not have to deny ASJP all use of the subject parcel for a government “taking” worthy of



A example of spot zoning.

compensation to take place. It didn’t matter that the City made no “physical invasion” of the subject parcel. The regulation only had to go “too far” to qualify as a government taking. In this case, the appeals court found, the regulation did go too far. ASJP was entitled to have the parcel zoning revert, or to be compensated for the regulatory taking.

The appeals court also agreed the City’s stated reasons for rezoning the subject parcel were not valid. In this determination the appeals court used practical reasoning about the development of the parcel and compared the subject parcel to other similar parcels in the City. For example: The City claimed the zoning change was to protect areas in “canyons”, but the appeals court noted the subject parcel was not in a canyon, but merely on a slope, like most of the topography in the City.

In its decision the appeals court describes “spot zoning” in detail. I’d like to repeat the court’s definition here because I believe this is an important concept in land planning. The definition in this case was taken from another case cited by the appeals court, *Arcadia Development Company Versus City of Morgan Hill*.

“Spot zoning occurs where a small parcel is restricted and given lesser rights than the surrounding property, as where a lot in the center of a business or commercial district is limited to uses

for residential purposes thereby creating an ‘island’ in the middle of a larger area devoted to other uses.”

In a future installment of Footsteps I’d like to take a closer look at *Arcadia Development Company Versus City of Morgan Hill* so we can have a more detailed discussion of “spot zoning”.

Important Lessons

What important lessons can we take away from this case? There are several. Let’s separate our lessons into two (2) groups. The first group will be lessons for land surveyors that work for a public agency and may be involved in the land planning/land zoning process. The second group of lessons will be for land surveyors in private practice that are guiding clients through the land development process.

Lessons for Land Planners

1. Exercise caution when using land zoning regulations as a tool to acquire or preserve open space. Although this may be allowed by law, recognize that specific steps must be followed or a government taking may result. For example: Were land owners impacted by the zoning change provided with adequate notice and afforded due process? This case provides an

example of what the courts may require for “adequate notice”.

2. Consider each land development application by a land owner carefully. Document your evaluation of the application and its results.
3. Be fair. Ask these questions: Are you depriving land owners of economic value of their property? If so, are you allowed by the law to do so? Even if you have the legal authority to do so, will your actions build a stronger community and respect for your institution or agency?

Lessons for Land Developers

1. Be aware of land zoning changes in your area of practice. Ask yourself these questions: Who are going to be impacted by these changes? What are the consequences? Are any of my current, or potential, clients going to be impacted?
2. Be on the look out for practices of spot zoning. If you think spot zoning has occurred, talk to your client about it and encourage them to seek qualified legal counsel. Nobody likes confrontation with a public agency, but this case clearly shows the City was out of line. Do your best to prevent a public agency from trampling on your clients private property rights. You can often use your existing relationship with agency staff to prevent or resolve conflicts.
3. Document all submittals and correspondence with the public agency on a land development project. This information can be important in later legal disputes. If a land planning decision is made that is detrimental to your client, ask the reviewing agency for the reasons behind the decision, and get these in writing. Review them with your client.

The City of San Clemente was clearly behaving badly in this case. It may have been an admirable goal to preserve the subject parcel as open space, but there were much better ways to accomplish this goal. The citizens of the City should have shared the burden of this open space preservation; it should not have been solely born by ASJP. The City should have acted fairly, instead of giving into pressure from neighbors opposed to development, neighbors that had likely already developed their own parcels. *AS*

TRIAL COURT DECISION

1. The City did not give ASJP adequate notice of zoning change.
2. The zoning change was not based on valid reasons.
3. The zoning change was a government taking.
4. The City didn't seriously consider the ASJP development application.
5. The City unfairly targeted the subject parcel as open space.



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