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Developer Fees Calculated By Per Capita Cost Of Expected Future Growth Resulting From The Development Are Legal Under The Mitigation Fee Act

In *Homebuilders Association of Tulare/Kings Counties, Inc. v. City of Lemoore*, (--- Cal.Rptr.3d ---, Cal.App. 5 Dist., June 9, 2010), a court of appeal considered whether a city's development impact fees, calculated by the per capita costs of city services based on the city's expected future growth, were legal under the terms of the Mitigation Fee Act ("Act"). The court ruled that the Act requires cities to provide only a reasonable relationship between the fees and addressing the burden resulting from the new development, and does not require specific construction plans in advance. As such, the city's fees were legal.

Facts

In 2006 and 2007, the City of Lemoore City Council ("City") adopted a series of development impact fees on developers of new housing in the City. The City calculated the amount of the fees by calculating its current per capita costs of providing municipal services, estimating future population growth resulting from the development, and multiplying the per capita cost by the future population growth, to estimate future costs resulting from the development.

The Homebuilders Association of Tulare/Kings Counties, Inc. ("HBA"), filed suit challenging the legality of seven of the fees: law enforcement, park land acquisition and improvement, refuse vehicles and containers, fire protection, general municipal facilities, and community/recreational facilities. HBA alleged that because the City had not specified actual expenditures that would result from the development, but merely estimated future costs, the fees were illegal under the terms of the Act.

The trial court ruled the City's fees were legal and HBA appealed.

Decision

The court of appeal reviewed the language of the Act, codified at Government Code Section 66000 et seq, which provides the terms under which local governments may impose fees upon developers. The Act requires the local agency to identify the purpose of the fee and the use to which it will be put. It further requires the agency to determine that the fee's use and the need for it are reasonably related to the development upon which the fee is imposed. The local agency must also determine that there is a "reasonable relationship" to the amount of the fee and the cost of the new public facilities made necessary by the development.

The court ruled that the City, in all of its fees except one, met those tests. The City's per capita and expected growth calculations reflected a "reasonable relationship" between the fees and the burden posed by the development. "The fact that specific construction plans are not in place does not render the fee unreasonable," the court held. Requiring a concrete showing of all projected construction, which could occur over a span of decades, would be unreasonable, the court added. Thus, the fees for law enforcement, park land acquisition and improvement, refuse vehicles and containers, general municipal facilities, and community/recreational facilities were all in compliance with the Act.

However, the City was out of compliance in imposing the fire protection fees because the City allowed revenue from those fees to help offset fire protection costs in existing areas of the City, rather than costs resulting from the growth caused by the development. The court found the facilities in the existing areas were already adequate and were not burdened by the new development. Therefore, those fees did not comply with the Act.

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The trial court's ruling was reversed with respect to the fire impact fees and affirmed with respect to all the others.

Questions

If you have any questions concerning the content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

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