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REPORT NO. _____

APR 17 2006

OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

REPORT RE:

COURT RULING

LB/L - DS VENTURES PLAYA DEL REY, LLC V. THE CITY OF LOS ANGELES ET AL
SUPERIOR COURT CASE NO. BS 091673

The Honorable City Council
of the City of Los Angeles
200 North Spring Street
Room 395, City Hall
Los Angeles, California 90012

Honorable Councilmembers:

In 2004, the City adopted the Westchester-Playa del Rey Community Plan Update, which included a number of zone changes. One of those zone changes imposed [Q] Conditions on a piece of property partially submerged under the Del Rey Lagoon.

The owner of that property sued the City claiming that the City failed to give proper notice of the zone change and that the zone change constituted discriminatory spot zoning and a regulatory taking. The court has considered the issues involved and recently ruled that the City failed to give the proper notice. Accordingly, the court has sent the matter back to the City to repeal the [Q] Conditions.

Our Office recommends that the City Council comply with the decision of the court and repeal the [Q] Conditions. The City Council would then have the authority to re-impose the [Q] Conditions on the property, this time giving the proper notice.

Background:

On May 11, 2004, this City Council adopted Los Angeles Ordinance No. 175981, which was part of the Westchester-Playa del Rey Community Plan Update ("CPU"). Among other things, the Ordinance imposed ten [Q] Conditions on a piece of property

now owned by LB/L - DS Ventures Playa Del Rey, LLC ("LB/L - DS Ventures"). The [Q] Conditions include setback and height restrictions intended to protect development from intruding on the Del Rey Lagoon which covers much of the property.

On August 4, 2004, LB/L - DS Ventures filed a lawsuit challenging the City's imposition of the [Q] Conditions on the property. The lawsuit was based on both procedural and substantive grounds. The procedural ground was that the City failed to give proper mailed notice to LB/L - DS Ventures due to problems with the mailing labels.

The substantive grounds were that the imposition of the [Q] Conditions treated the property so unfairly as compared to neighboring properties that it amounted to discriminatory "spot zoning" and that the [Q] Conditions were so restrictive that they constituted a regulatory taking of all reasonable use of the property.

The court considered the procedural argument first because if that argument proved to be successful it would not be necessary for the court to consider the substantive arguments. In considering the procedural argument, the court found that the City's mailed notice was defective. For this reason, the court ordered the City to repeal the [Q] Conditions. Copies of the proposed writ and judgment are attached. The court, however, expressly stated that the City retains the power to impose the [Q] Conditions (or any other zoning regulations it wishes) so long as the City this time provides the proper mailed notice.

Recommendation:

We recommend that the City take immediate steps to comply with the court's ruling.

To implement the court's ruling, our Office recommends that the City Council direct the Planning Department to initiate the repeal of the [Q] Conditions currently on the property. In addition, the Council also has the discretion to direct the Planning Department to initiate a re-zoning of the property that will place the [Q] Conditions back on the property (or impose any other lawful zoning regulations desired by the Council).

An oral motion to do this could be worded as follows:

"I move that the City Council direct the Planning Department to initiate the repeal of the [Q] Conditions currently on the real property commonly known as Playa Del Rey Lagoon 2.39 Acres (APN 4116-003-004) or Lot C Del Rey Beach.

[optional]

I also move that the City Council direct the Planning Department to initiate a re-zoning of the property that will place these [Q] Conditions back on the property.”

If it is the Council’s desire to place the [Q] Conditions back on the property, our Office will work with the Planning Department on the staff report and findings to help protect the City from the spot zoning and takings challenges that LB/L - DS Ventures is likely to assert against the new ordinance.

At the time this matter is considered by the City Council, a member of our Office will be available to answer questions you may have concerning this matter.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/30/06

DEPT. 85

HONORABLE Dzintra Janavs

JUDGE S. BARRETT

DEPUTY CLERK

HONORABLE
1

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

A. GODINEZ, C.A.

Deputy Sheriff NONE

Reporter

BS091673

Plaintiff

Counsel

NO APPEARANCES

LB/L-DS VENTURES PLAYA DEL RAY

Defendant

VS

Counsel

CITY OF LOS ANGELES ET AL

NATURE OF PROCEEDINGS:

NON-APPEARANCE;

The Court has read and considered the City's Objections to Petitioner's (Proposed) Judgment and (Proposed) Writ of Mandate filed March 20, 2006 and Petitioner's Response to said objections filed March 24, 2006.

The Court signed the proposed amended judgment submitted by petitioner on March 29, 2006; writ submitted by petitioner is sent to the writ desk.

**CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF JUDGMENT**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 3-30-06 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the judgment original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: March 30, 2006

CITY ATTORNEY
LAND USE/ENVIRONMENT
RECEIVED

MAR 31 2006

<p align="center">MINUTES ENTERED 03/30/06 COUNTY CLERK</p>

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/30/06

DEPT. 85

HONORABLE Dzintra Janavs

JUDGE

S. BARRETT

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

1

A. GODINEZ, C.A.

Deputy Sheriff

NONE

Reporter

BS091673

Plaintiff

Counsel

NO APPEARANCES

LB/L-DS VENTURES PLAYA DEL RAY

Defendant

VS

Counsel

CITY OF LOS ANGELES ET AL

NATURE OF PROCEEDINGS:

John A. Clarke, Executive Officer/Clerk

By:

S. BARRETT

S. Barrett, Judicial Assistant

Charles Jarrell
Allen Matkins Leck Gamble and Mallory
515 So. Figueroa 7th Floor
Los Angeles, CA 90071-3398

Kenneth Fong
Deputy City Attorney
700 City Hall East
200 No. Main Street
Los Angeles, CA 90012

ORIGINAL FILED
MAR 29 2006
LOS ANGELES
SUPERIOR COURT

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
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11 LB/L - DS VENTURES PLAYA DEL REY,
12 LLC, a Delaware limited liability company,

13 Plaintiff and Petitioner,

14 vs.

15 THE CITY OF LOS ANGELES; THE CITY
16 COUNCIL OF THE CITY OF LOS
17 ANGELES; and DOES 1-50, inclusive,

18 Defendants and Respondents.

Case No. BS 091673

Judge: Hon. Dzintra Janavs

SD
~~AMENDED [PROPOSED]~~ JUDGMENT
GRANTING WRIT OF MANDAMUS

Hearing Date: March 7, 2006

Time: 9:30 a.m.

Dept: 85

19 The instant matter came regularly before this Court for hearing at 9:30 a.m. on March 7,
20 2006, in Department 85, the Honorable Dzintra Janavs presiding. Charles D. Jarrell appeared on
21 behalf of Plaintiff and Petitioner LB/L - DS Ventures Playa Del Rey, LLC, a Delaware limited
22 liability company ("Petitioner"). Kenneth T. Fong appeared on behalf of Defendants and
23 Respondents The City of Los Angeles and The City Council of The City of Los Angeles
24 ("Respondents"). The record of the administrative proceedings having been received into
25 evidence and examined by the Court, and additional evidence having been received and examined
26 by the Court, arguments having been presented, and the Court having made a statement of
27 decision, which has been signed and filed,
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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. A peremptory writ of mandamus shall issue from the Court, remanding the proceedings to Respondents and commanding Respondents to, within 40 days of receipt of the writ, vacate and repeal Ordinance Number 175981, as adopted by Respondents on May 11, 2004, and all [Q] conditions imposed thereby, to the extent said ordinance and [Q] conditions pertain to that certain real property located in Playa del Rey, California, referred to in the Ordinance as Subarea 40. Respondents shall reconsider their action in light of this Court's statement of decision, and take any further action specially enjoined on it by law; but nothing in this judgment shall limit or control the discretion legally vested in Respondents. The writ shall further command Respondents to, within 60 days of receipt of the writ, make and file a return setting forth what Respondents have done to comply therewith.

2. The remaining causes of action set forth in the Petition are hereby dismissed as moot, without prejudice.

3. Petitioner shall recover costs in this proceeding, in the amount of \$_____.

Dated: 3-29-06

DZINTRA I. JANAVS

Hon. Dzintra Janavs
Judge of the Superior Court of the State of
California

1 PROOF OF SERVICE BY MAIL

2
3 STATE OF CALIFORNIA)
4 COUNTY OF LOS ANGELES) ss.:

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action. My business address is 515 South Figueroa Street, Seventh
7 Floor, Los Angeles, California 90071-3398.

8 On March 16, 2006, I served on interested parties in said action the within:

9 AMENDED [PROPOSED] JUDGMENT GRANTING WRIT OF MANDAMUS

10 by placing a true copy thereof in sealed envelope(s) addressed as stated below:

11 Kenneth T. Fong, Esq.
12 Deputy City Attorney
13 City of Los Angeles, City Attorney's Office
14 700 City Hall East
200 North Main Street
Los Angeles, CA 90012-4130
Tel: (213) 978-8064 / Fax: (213) 978-8214
Attorneys for Respondent City of Los Angeles

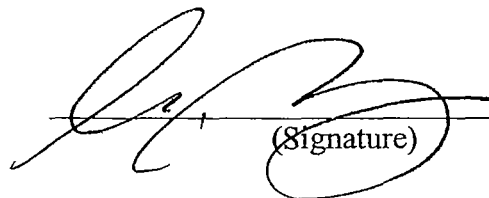
15 and by transmitting a true copy of said document from facsimile machine whose telephone
16 number is (213) 620-8816, pursuant to California Rules of Court, Rule 2005. The
17 facsimile machine I used complied with Rule 2003(3) and no error was reported by the
machine. Pursuant to Rule 2008(e),

18 I am readily familiar with this firm's practice of collection and processing correspondence
19 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
20 day in the ordinary course of business. I am aware that on motion of party served, service is
presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of
deposit for mailing in affidavit.

21 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

22 Executed on March 16, 2006, at Los Angeles, California.

23
24 _____
Monica F. Brandenberg
(Type or print name)

25 _____

(Signature)