Blogs
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California Land Use & Development Law Report

Coastal Commission Erred In Finding Property Owner Is Stuck With Unconstitutional Dedication Condition

In an opinion on rehearing, the Second District Court of Appeal overturned a California Coastal Commission decision that a condition of a county-issued coastal development permit could not be eliminated by a second coastal development permit the county issued for the same project. Bowman v California Coastal Commission, No. B243015, Oct. 23, 2014. Focusing on the equities of the case, and the unfairness of the condition, the court refused to find that the county was barred from deleting the condition.

California coastBackground

The owner of a 400 acre parcel that included a lengthy stretch of shoreline in San Luis Obispo County applied to the county for a coastal development permit to rehabilitate an existing home on the property. Two years later, the county, acting as the local coastal permitting authority, issued the permit to the applicant's successor, a family trust. The permit was conditioned on the trust dedicating an easement for public access along the shorefront part of the property, even though the house was a mile from the shore. The trust didn't appeal the dedication requirement to the coastal commission.

Nine months later, the trust applied for a second coastal development permit to replace a collapsed barn and to make the same improvements covered by the earlier permit. The application also asked the county to remove the condition to the earlier permit requiring dedication of a coastal access easement. The county approved the application, including removal of the access easement condition, expressly acknowledging that the condition required an unconstitutional taking of property. .

Concerned that the county had eliminated a valid existing coastal access easement, the Sierra Club, Surfrider Foundation, and two coastal commissioners appealed the county's approval of the second coastal development permit to the coastal commission. The commission granted the appeal, determining that the easement was permanent and the applicant was bound by it because it didn't contest the condition after it was imposed.

Decision

The court of appeal overturned the coastal commission's determination. The court rejected the opponents' argument that the trust was stuck with the easement condition because it had not filed a legal challenge to it after the first permit was issued. The opponents relied on the general rule that when an administrative tribunal renders a quasi-judicial decision and an administrative mandamus petition is not filed to contest it, collateral estoppel bars the agency from reconsidering the same issues. The court disagreed, concluding that it would be inequitable to apply collateral estoppel given the facts of the case.

Crucially, the trust did not start any of the improvements covered by the first coastal development permit and had limited its work to repairs authorized by "over-the-counter" permits exempt from coastal development permit requirements. Because the trust had not benefited from the first coastal development permit by performing work under it, it was not bound by its conditions.

The court also found the dedication condition clearly unconstitutional. Stating its conclusion simply but directly, the court noted the Nolan/Dolan "rough proportionality" test for imposing conditions on a permit was not met because "there is no rational nexus, no less rough proportionality, between the work on a private residence a mile from the coast and a lateral public access easement."

Conclusion

The court's opinion is a narrow one, yet it demonstrates that courts will look to the equities of a case when considering application of the collateral estoppel doctrine in the context of a challenge to a permit condition, particularly when the condition is plainly improper.

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