

Applicant Challenging Denial of Use Permit Must Prove It Is Legally Entitled to Permit

In an unsurprising decision, the Second District Court of Appeal upheld Ventura County's decision to deny a use permit that would allow tigers to be kept on property located within a half-mile of a residential area. *Hauser v. Ventura County Board of Supervisors*, 20 Cal.App.5th 572 (2018). **Background.** Plaintiff Irena Hauser applied for a conditional use permit that would allow five tigers to be kept on a 19-acre parcel in an unincorporated area of Ventura County. The proposed project would include several tiger enclosures and an arena within a seven-acre area surrounded by a chain link fence. The plaintiff planned to use the tigers in the entertainment business and transport them for that purpose up to 60 times per year. Neighbors strongly opposed the project and presented a petition to the county which contained roughly 11,000 signatures in opposition. The planning commission denied the permit application, and on appeal, the board of supervisors did the same, finding the plaintiff failed to prove two elements necessary for a use permit: that the project was compatible with the planned uses in the general area, and that it was not detrimental to the public interest, health, safety or welfare. **The Court of Appeal's Decision.** The court of appeal upheld the trial court's decision rejecting the plaintiff's challenge. The court first explained that, as the permit applicant, the plaintiff had the burden to show she was legally entitled to a use permit. She had, however, failed to persuade the board of supervisors that the requirements for a use permit were met. In passing, the court stated that the board's determination that the requirements were not met did not have to be supported by substantial evidence because it is the absence of evidence of sufficient weight and credibility to convince the trier of fact that leads to that conclusion. Nevertheless, the court undertook a thorough review of the record and found that the board's decision was amply supported by substantial evidence. The court noted that it would be appropriate to focus on the evidence that would tend to support the board's decision rather than the evidence that would tend to detract from it. Where the trier of fact has drawn reasonable inferences from the evidence, a reviewing court does not have authority to draw different inferences, even though they might also be reasonable. Applying this standard, the court observed that the property was located in an area that contained a significant number of homes and that it was reasonable for the county to conclude that keeping tigers was not compatible with the area's use. This determination alone was sufficient to deny the permit application. The court rejected the plaintiff's argument that the project was compatible with the area's open space zoning, declaring that a tiger compound surrounded by a chain link fence was not "open space." Nor was the plaintiff entitled to a use permit simply because similar projects had been approved in other residential areas. The court also found ample evidence supporting a finding that the tigers posed a danger to the public. Rejecting the plaintiff's evidence that escaped captive-born tigers pose little risk to the public, the court cited evidence in the administrative record of numerous instances where tigers had escaped, and other instances where they had severely injured or killed people. The court noted that no matter what precautions might be taken to prevent the tigers from escaping, human error was foreseeable, if not inevitable. The plaintiff further contended that the members of the board of supervisors violated board rules when they met outside of the public hearing with residents and representatives who opposed the project and that, as a result, the plaintiff did not receive a fair hearing before the board. However, the court found no violation because the board members disclosed the meetings as required by the board's rules. Furthermore, the court noted that board members have both a right and a duty to discuss issues of concern with their constituents. Moreover, the plaintiff had not shown clear evidence of actual bias or that her application was not denied on its merits.

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