

Granted or Denied -- It's Still a 90-Day Limitations Period

Does a 90-day deadline for filing of suits challenging a decision "to adopt or amend a zoning ordinance" apply to a decision to *deny* a zoning amendment? Of course, said the appellate court in *General Development Co., L.P. v. City of Santa Maria*, 202 Cal.App.4th 1391 (2012). Government Code section 65009(c)(1) establishes a 90-day statute of limitations for suits to "attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance." General Development filed suit 97 days after a decision to deny a requested zone change on its property. On appeal from dismissal of its suit, the developer argued that denial of a rezoning application was not "a decision" because the City did not "adopt or amend a zoning ordinance" within the meaning of section 65009 (c)(1). It contended that the 90-day limitation period only applies to "decisions" granting a zone change, not "decisions" denying a zone change. The court, focusing on the word "decision," held that the statute applies to decisions to deny as well as to adopt zoning ordinances. It found that the developer's argument was foreclosed by a federal court decision in *Guru Nanak Sikh Society v. County of Sutter*, 326 F.Supp. 1128 (E.D. Cal. 2003). *Guru* held that the word "decision" as used in a different part of the statute – involving a "decision regarding an application for a conditional use permit" -- applied to a decision to deny as well as to grant such an application. The court reasoned that the developer's contention would require the addition of the word "only" to the statute, and delete the word "review" from the statute, which would violate canons of statutory interpretation. The court also found strong policy reasons for its ruling, noting that government entities, land owners, lessees, adjoining land owners, and the public should be able to determine quickly whether there is a theoretical "cloud" hanging over the land. "The alternative," the court said, "a three-year statute of limitations, in theory may inhibit the free alienation and use of land This would be poor land use law."

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