

Lack of Prejudice Barred Relief Despite Defective Hearing Notice

An opponent of a Wal-Mart project was thwarted in his attempts to use an admittedly defective hearing notice as a basis for overturning project approvals. The court ruled that his claims were defeated by his failure to present evidence of prejudice and by a prior appellate decision. *Roberson v. City of Rialto*, No. E058187 (4th Dist. 5/21/14 [ordered published 6/17/14]). The City of Rialto approved a large retail project to be anchored by a Wal-Mart store. The city's notice of the council hearing was defective for failing to include the planning commission's recommendation that the council approve the project.

Two lawsuits followed, both seeking to have the project approvals overturned based on the defective notice. The first was brought by Rialto Citizens for Responsible Growth, a nonprofit corporation. The appellate court in that case cited Government Code section 65010, which states that procedural errors will not render a decision invalid "unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred." Because Rialto Citizens made no showing of prejudice, the appellate court denied relief. (See our report on the Rialto Citizens case [here](#)).

The second lawsuit was brought by another project opponent, Marcus Roberson. He submitted a declaration claiming he did not attend the council hearing but would have done so and shared his views opposing the project had he known the planning commission had recommended approval. The *Roberson* court denied relief, on two grounds.

First, it ruled that Roberson failed to meet his burden to show prejudice. Roberson, who was represented by the same attorney as Rialto Citizens, did not show what evidence he would have submitted other than the evidence his attorneys had already submitted for Rialto Citizens (which had been found insufficient to demonstrate prejudice). The court distinguished cases involving either no notice at all or failure to give notice to an entire class of affected landowners. In those cases the defect was extreme, making it reasonable to presume a different result would have been probable had there been proper notice. Here, in contrast, the defect in the notice was minor and technical, and no prejudice was shown.

Second, the court held that Roberson's claims were barred under the doctrine of res judicata by the decision in the Rialto Citizens case. The defective notice claims in the two cases were identical. Roberson was in privity with Rialto Citizens, meaning the two parties shared the same interest; in that both parties were seeking to vindicate a public interest. Roberson's claim that he was protecting his individual interests was belied by his declaration stating that his opposition to the Wal-Mart store was based upon his view that "it is likely to harm the community," and that he brought suit to vindicate the public's interest in seeing that the city followed the noticed hearing procedures required by law. Because the cases involved the same issue raised by parties pursuing the same interest, the decision in the first case barred re-adjudication in the second.

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