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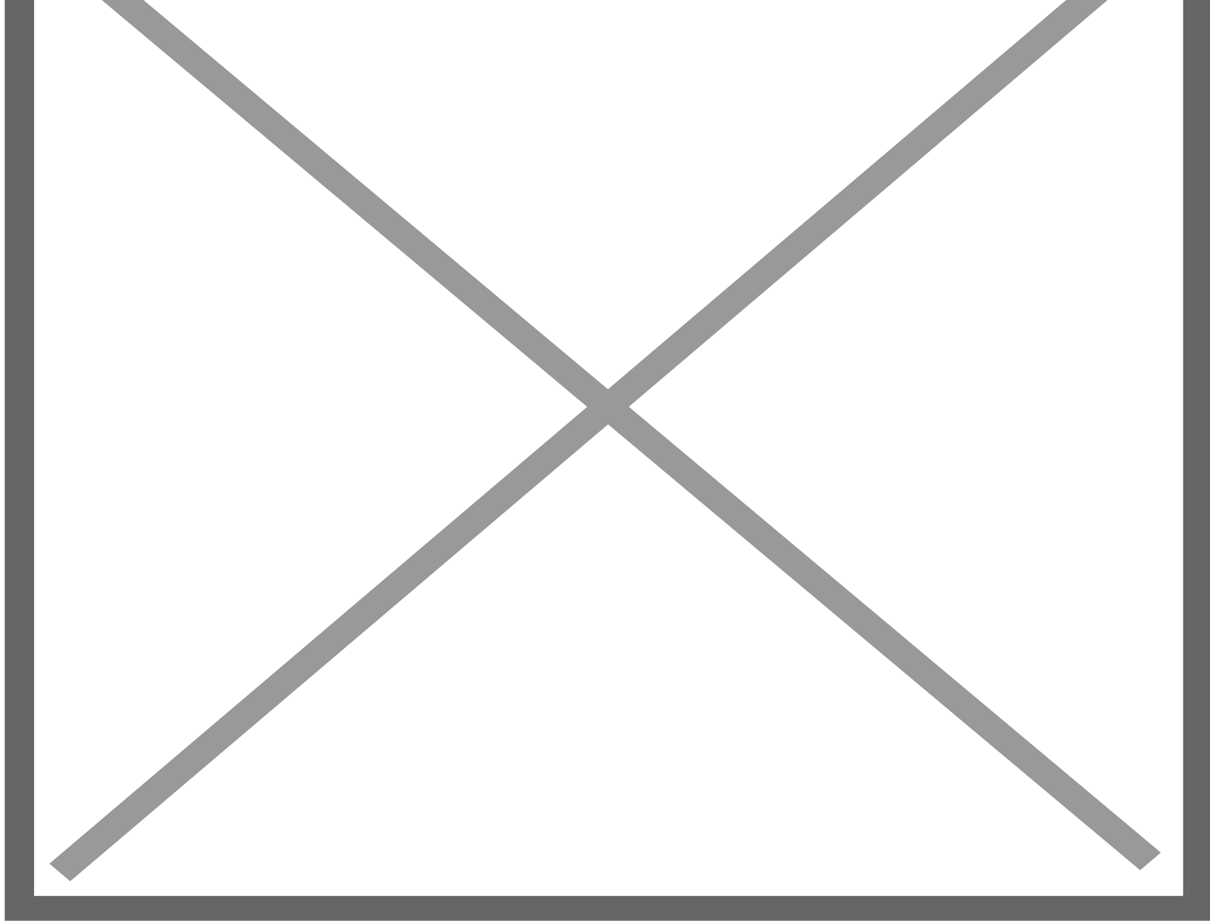
California Land Use & Development Law Report

Park and Recreation Fees Violated Mitigation Fee Act

The court of appeal held that the City of Alameda's development fee for parks and recreation was invalid and unenforceable because there was no reasonable relationship between the fee charged and the burden from new development. *Boatworks, LLC v. City of Alameda*, 35 Cal. App. 5th 290 (2019). The City improperly inflated mitigation fees by considering the value of procuring parkland the City had acquired at no cost and by including unopened parks as "existing parks" when calculating fees. However, the court also held that the City could treat certain areas originally designated as open space as parkland in the cost analysis because they included park-like improvements. In 2014, the City of Alameda passed an ordinance under the Mitigation Fee Act (Govt. Code § 66000 *et seq*.) that imposed fees on developers to account for the increased need for public facilities caused by additional development. The City based the parks and recreation portion of the fee on the amount it would cost to maintain the current ratio of park facilities to residents. This fee included the cost to acquire new parkland, improve existing facilities, and obtain new open space land. Along with the ordinance, the City released information about park facilities that it planned to develop with the proceeds from the fee. This list included facilities sited on land that the City already owned. The trial court granted the plaintiff's petition and held that the fees were excessive for three reasons: (1) the fees accounted for the cost of paying for land that the City acquired for free; (2) unopened parks were classified as existing parks when establishing the current parkland-to-development ratio; and (3) areas classified as open space could not be considered parkland for the study. It directed the City Council to rescind the invalid portions of the fee ordinance.



The City

challenged all three grounds on appeal. As to the first, the City argued that it was justified in collecting fees based on the existing ratio of asset value of recreational facilities to population under the holding in *Home Builders Association of Tulare/Kings Counties, Inc. v. City of Lemoore*, 185 Cal. App. 4th 554, 561 (2010). The court rejected this argument because a substantial portion of the fee was based on the value of land that the City *had received at no cost* from the Navy and therefore could not be related to the increased cost of public facilities caused by new development. By contrast, the fee in *Lemoore* was based on the amount the city had *invested* in existing recreational facilities. The court therefore concluded that the fee was not justified by the burden posed by new development. The court also rejected the City's argument that unopened parks should be included in the inventory of current parks because it was unreasonable to include them as *existing* assets while planning to use the fee for construction of improvements to this land. The appellate court reversed the trial court's holding that the City erroneously counted areas classified as open space as parkland during the study. When calculating the current ratio, the City classified four areas originally classified as open space as parkland because the City had constructed facilities on these areas similar to those on improved parkland. The court held that this was not an arbitrary and capricious action and that those areas had a higher value than typical open space land. The court also held, however, that the trial court's remedy was inappropriate because it lacked the authority to require the City to perform the legislative act of rescinding portions of an ordinance. Instead, the court ordered the trial court on remand to declare the ordinance void to the extent it set the parks and recreation portion of the development impact fee.

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