Walnut Taxpayer Litigation MPA
12/23/2015

Bill and Mike,

We filed our motion to dismiss today and I have attached our Memorandum of Points and Authorities. It's styled a motion to dismiss but operates as a motion for judgment on the pleadings. The standard for review is the court only examines the allegations in the complaint and takes into consideration facts that may be judicially noticed to find the Plaintiff is not entitled to any relief. Through Mike's declaration, we have asked the court to take judicial notice of various Mt. SAC official actions to support the following three main theories:

1. Plaintiff's complaint seeks to invalidate Measure RR projects and expenditures; hence, Plaintiff is required to file the action as a "reverse validation" action and Plaintiff failed to do so. We argue reverse validation applies regardless of the grounds upon which Plaintiff seeks invalidation; i.e., violation of Measure RR project list, City of Walnut zoning ordinances or CEQA. If the court accepts this argument, the entire case would be dismissed, subject to Plaintiff asking for permission to belatedly comply with the reverse validation procedures. The standard for relief is "good cause."
2. Irrespective of the above argument, we argue the Parking Structure Project was "passively" validated on one of three dates, all of which result in the Plaintiff's challenge to the Parking Structure Project being untimely. Measure RR was passed in November 2008; any challenge to the sufficiency of the language used to describe the parking projects should have been brought within 60 days of passage of Measure RR. The second time period is February 2013 when the Board authorized the Parking Structure Project as part of the 2012 FMP and approved $2.77 million in design and engineering services. We consider this action to be Mt. SAC's Board "ordering" the Parking Structure Project to move forward as a Measure RR funded project. We argue the validation statute does not allow piecemeal challenges to components of a bond project. Therefore, any challenge to the Parking Structure Project should have been brought within 60 days of the February 2013 Board action approving the design and engineering services. Finally, the Board certified and approved the 2012 Final FMP supplemental EIR at the December 11, 2013 Board meeting. A challenge to the projects approved in the 2012 Final FMP supplemental EIR, which includes the Parking Structure Project, needed to be brought within 60 days of the Board action. Plaintiff did not do so as its complaint was filed on March 24, 2015.

3. Plaintiff's challenge to the 2012 Final FMP supplemental EIR as approved by the Board on December 11, 2015 is untimely under CEQA.

Based on the above arguments, we have also asked the court to dissolve the preliminary injunction.

These arguments are all supported by case law and statutes. Taking the easy way out, I'd say our chances are 50-50, but the point is to start the process of educating Judge Chalfant about the serious problems with Plaintiff's case. It may be that Judge Chalfant will want to hear the matter more fully as a writ hearing, but it helps to get these points out now.

I expect Mr. Sherman will file a motion to amend the complaint next week to expand his attacks against the Solar Project and to invalidate the Tilden-Coil lease-leaseback contract. If Mr. Sherman is given permission to file an amended complaint, we will file a new motion to dismiss, again raising arguments similar to those in our motion to dismiss.

Please do not hesitate to contact me if you have any questions.

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