RIDGELINE GOES TO THE STATE SUPREME COURT

Planning Law and Voter Rights at issue

The developer spent nearly $1,300,000, not counting legal fees, trying to stop Orange citizens from voting on Ridgeline. The community fought back with dedicated volunteers determined to protect their neighborhood and voting rights. Their grass roots effort cost $53,000. The California Supreme Court will now decide the matter.

CALIFORNIA SUPREME COURT TO TAKE UP CHALLENGE TO END-RUN AROUND ESTABLISHED PLANNING LAW IN CITY OF ORANGE

San Francisco – October 31, 2013. The California Supreme Court agreed to hear *Orange Citizens for Parks and Recreation, et al., v. Superior Court.* The case could have significant implications for California planning law and for the right of voters to use the referendum process to challenge local land use decisions.

"We are pleased that the Supreme Court recognized that this case deserves another look," said attorney Robert "Perl" Perlmutter of Shute, Mihaly & Weinberger LLP, who represents the community group Orange Citizens for Parks and Recreation and Orange Park Association in the case. "The appellate court's decision went against both the letter and the spirit of well-established planning law. It would have created tremendous uncertainty within the legal community and for property owners, public officials, and the public alike."

The California Fourth District Court of Appeal issued a controversial decision in the case in July of this year. The decision called into question a bedrock notion in state planning law: namely, that a city's most recently-adopted General Plan serves as its local "constitution" and determines the permissible land uses for all property within the jurisdiction. The decision also undermined the integrity of the referendum process by dismissing the results of a referendum that showed clear public intent to overturn a land use decision made by the Orange City Council.

The case stemmed from a proposal to develop one of the last remaining open spaces in "Orange Park Acres", a rural area of the City of Orange. The developer applied for – and the City Council approved – a General Plan amendment to change the property's long-standing open space designation to allow residential development. When a community group took the issue to the voters, Orange residents voted overwhelmingly to reject the Council's approval.

In the meantime, the developer sued the City and Orange Citizens, trying to force the referendum off the ballot. When that tactic failed, the developer argued in court that the referendum was irrelevant based on a 40-year old document it had "discovered" in the City's files. This document, the developer claimed, showed that the City had decided to allow residential development on the property back in 1973, that the City's General Plan amendment was unnecessary, and that the referendum was thus meaningless.

Despite the fact that the current General Plan stated that no development was allowed on the property in question, the developer argued that its project could nevertheless go forward. The City ultimately sided with the developer, and so did the Court of Appeal.

The Court of Appeal's decision was both surprising and disturbing to Orange Citizens because it conflicted with long-standing Supreme Court precedent regarding general plans and the voters' referendum power.

"California planning law would have been set back to square one if the appellate court's decision had been allowed to stand," said Orange Park Association board member Don Bradley. "General plans would have become meaningless because the public and developers would no longer be able to accept them at face value and would always be wondering whether a document might mysteriously appear at the last moment. Zoning would become a moving target, which would be problematic both for developers and for concerned residents."

In recognition of the importance of the outcome of the case, some of the state's top environmental and environmental justice organizations filed friend of the court briefs urging the Supreme Court to overturn the Court of Appeal's decision. Three California cities also filed a joint *amicus curiae* brief asking the Supreme Court to bring the decision in line with well-established legal precedents.

Orange Citizens for Parks and Recreation *is a broad-based bipartisan coalition with members from all parts of Orange. The group's central goal is to protect recreational open space within the City.*

Orange Park Association *is a non-profit organization, formed in 1960 to protect the rural-equestrian area that was established in 1928 known as Orange Park Acres.*

Shute, Mihaly & Weinberger LLP *is a law firm specializing in land use, natural resource, environmental, and governmental law. Since 1980, the firm has provided public agencies and community groups with the highest quality legal representation, offering an array of litigation, counseling and planning services.*

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