07/06/2011

Lawsuit Update

During the approval of the Hoover High Athletics Facilities Upgrade project SDUSD made a formal decision on January 11, 2011 to approve a MND with only one CEQA mitigation measure and multiple promises to do other things, as project "design features" or "controls," that would mitigate environmental impacts and/or community concerns. During the CEQA process, continual statements and responses to comments were made as part of the CEQA process that (1) the SDUSD actions were exempt from compliance with local zoning codes and general/community plans, and (2) because of such exemption, consistency analysis under CEQA and mitigation were not necessary to address and mitigate, based on such codes and plans being only "advisory."

Taxpayers filed a lawsuit on February 10, 2011 claiming there was no valid exemption for the (1) failure to meet 30-foot height restrictions, (2) failure to meet parking requirements, and (3) that the stadium improvements were non-classroom facilities and therefore were not qualified for an exemption, assuming one had been attempted or made.

Three months after Taxpayers' filing and four months after approving the project and its CEQA decision, on May 10, 2011, without notice to Taxpayers, their attorney or any property owner within "300" of feet of the subject school and project site (and 11 other school sites), whereby SDUSD adopted a resolution exempting Hoover H.S. and 11 other schools' separate projects from compliance with local plans and zoning ordinances.

Taxpayers has initially drafted and proposes to file four (4) new legal claims and arguments regarding both procedural and substantive challenges to the May 10, 2011 exemption action.

a) lack of written notice to affected property owners according to Horn v. County of Ventura, (1979) 24 Cal.3d 605, 617; Scott v. City of Indian Wells, (1972) 6 Cal.3d 541, 548;
b) The entire school-site projects violates Cal. Gov. Code § 53094 which only allows exemption of "classroom facilities." Whereas some of the listed twelve (12) named school projects contain one or more "non-classroom" project elements or features such as administrative buildings, parking lots, storage facilities, and the like, which are not allowed to be exempted, making the challenged decision overboard and not in compliance;
c) The attempted post hoc and retroactive action of SDUSD is an unlawful application of the exemption provisions of Cal. Gov. Code § 53094 in that it is untimely and does not advise persons and local agencies about the relative possible adverse effects arising from the local zoning and plans contemplated to be abandoned;
d) SDUSD did not comply with CEQA by determining whether it was a "project" subject to CEQA, or make, consider, or adopt any determination(s) or finding(s) regarding an exemption under CEQA.

If you have any questions or want to be added to our growing list of supporters, be sure to sign up on the **Take Action** tab of our website – http://tfasbs.org If you have any questions on this subject, please contact Ron or Dawn Anderson at the following e-mail address: **TFASBS@gmail.com**