SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - September 18, 2013

EVENT DATE: 09/20/2013 EVENT TIME: 01:30:00 PM DEPT.: C-72

JUDICIAL OFFICER: Timothy Taylor

CASE NO.: 37-2011-00085714-CU-WM-CTL

CASE TITLE: TAXPAYERS FOR ACCOUNTABLE SCHOOL BOND SPENDING VS. SAN DIEGO UNIFIED SCHOOL DISTRICT

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

Tentative Ruling on Plaintiff/Petitioner's Application for Additional Injunctive Relief

Taxpayers for Accountable School Bond Spending v. SDUSD, Case No. 2011-0085714

Sept. 20, 2013, 1:30 p.m., Dept. 72

1. Overview and Procedural Posture.

Following retransfer of the case from Judge Dato following an improvident challenge under CCP §170.6 (ROA 115, 117), this matter was heard in Dept. 72 on the morning of September 12, 2013. Both sides appeared through counsel. The purpose of the hearing was to spread the mandate of the Fourth District Court of Appeal, Div. 1 following a partial reversal of rulings made in 2011 by this court. ROA 61, 75.

The parties disputed the form of Judgment and the Writ of Mandate, and also disputed the extent of the injunctive relief required by the Court of Appeal. The court heard argument, and then took the matter under submission so it could study the parties' competing submissions. Following that review, the court found that neither sides' proposed Judgment and Writ (*e.g.* ROA 102, 103, 131-133) was entirely satisfactory. The court therefore prepared its own. Those have now been filed and entered. ROA 122-123. The court also concluded that, based on the Court of Appeal's learned opinion, plaintiff is entitled to some immediate injunctive relief. The court signed an order to that effect. ROA 124.

Plaintiff /Petitioner apparently seeks additional injunctive relief while the EIR is being prepared. The court was uncertain whether this additional injunctive relief is within the ambit of the declaratory relief sought in the first and second causes of action of the operative pleading (which is the FAC filed 7/7/11 – ROA 27). The court treated the *ex parte* application filed Sept. 4, 2013 (ROA 106) as the moving papers, and treated the response filed Sept. 5, 2013 as the opposition. The court permitted plaintiff/petitioner to file reply not later than Sept. 17, 2013 at noon, and set a further hearing on the further injunctive relief sought by plaintiff/petitioner for Sept. 20, 2013. ROA 125. Plaintiff/petitioner filed the reply brief on Sept. 17 (ROA 134), which the court has considered.

2. Discussion and Ruling.

The Court of Appeal affirmed this court as to counts three and four, but reversed as to counts one and

two. Count one, brought under CCP sections 526 and 1060, alleged waste and misuse of public money and sought a "declaratory judgment and the issuance of an injunction to enjoin and prevent ...the District [from] proceeding with the project or spending Prop S money for construction or building of ...athletic field lights." Count two, brought under CEQA, sought the setting aside of project approvals and the MND.

Turning to count two first: The Court of Appeal ordered this court to enter a judgment and writ requiring SDUSD to "vacate its approval of the [field lighting] Project and the [MND] and to cause an EIR to be prepared." The court has done precisely that. ROA 122, 123. The court considers that it has fully carried out the mandate of the Court of Appeal in this regard. SDUSD asked the court to defer entry of the judgment for 120 days pending preparation of the EIR. Finding no support for this in the Court of Appeal's opinion (which the Supreme Court refused to take up despite the requests of SDUSD and *amici* and their observation that there is now a split among the appellate districts as relates to parking impacts under CEQA), the court declined SDUSD's request.

Turning to count 1: The Court of Appeal ordered this court to enjoin SDUSD from "using Proposition S bond proceeds to pay for planning, design, study, construction, implementation, **or use** of field lighting at Hoover's athletic stadium and any other high school stadiums for which Proposition S did not specifically list field lighting as part of their projects in the Proposition S measure." (Bold type added.) The court has done precisely this. ROA 124. However, it is the **use** of the stadium lights which now creates controversy. Plaintiff/petitioner wants the court to take the extra step of enjoining the continued use of the field lights at Hoover High (which were built while the case was on appeal), even though the operation and maintenance of the lights are not now being paid for with Prop S moneys. This would shut down (or at least significantly disrupt) the remainder of the Hoover 2013 home football schedule (and likely affect other sports as well).

Plaintiff/petitioner contends this additional relief is appropriate in light of the Court of Appeal's language whereby the court was directed to grant injunctive and declaratory relief "including but not limited to" the relief it specifically ordered.

The last thing this court wants to do is disrupt the lives of the student athletes at Hoover, or those of their coaches, families, and student body supporters. However, the court's hands are tied. The shutting down of nighttime sporting events is precisely the result sought by plaintiff/petitioner, and this is the result mandated by the Court of Appeal. The relevant "status quo" is that which existed in 2011, not the one which existed after the stadium lights were built while the case was on appeal (as argued by the District). The law is clear that in this setting, the proponent of the project (here, the SDUSD) bears the risk of an adverse judicial determination. Pub. Res. Code section 21167.3; *Kriebel v. City of San Diego*, 112 Cal. App. 3d 693, 704 (1980). The Court of Appeal found that the stadium lights were illegally approved; it is incumbent upon this court to order that they not be used until such time as they are the subject of a valid EIR and valid approvals.

In the setting presented by this case, the trial court retains discretion to fashion an appropriate remedy. *Woodward Park HOA v. Garreks, Inc*., 77 Cal. App. 4th 880, 888-89 (2000). The court exercises its discretion as follows:

A. The game against Kearney, scheduled for tonight, Sept. 20, 2013 at 6:30 p.m., may proceed as planned. The court makes this order (which was foreshadowed in the court's September 12 Order, ROA 125) because it finds there is not enough time to make alternative arrangements given that the court set this matter on calendar on the earliest practicable date.

B. Starting at 12:01 a.m. on Sept. 21, 2013, the further use of the stadium lights at Hoover High School for any purpose is enjoined pending further order of the court. The court hopes the fact that the next home football game is not set until October 11 will give the District adequate time to re-set the schedule (or seek review in the Court of Appeal if desired). The court apologizes to the students, particularly the seniors, for the disruption this will likely cause to the homecoming game on October 11. Had this court

not relied on what was (for this court) binding precedent (*SFUDP*, 102 Cal. App. 4th at 697), this whole problem might have been avoided and the lights never constructed.

C. The court further orders SDUSD to submit to the court and to plaintiff's counsel, within 30 days, a detailed accounting of how Proposition S bond proceeds were used to pay for planning, design, study, construction, implementation, or use of field lighting at Hoover's athletic stadium and any other high school stadiums for which Proposition S did not specifically list field lighting as part of their projects in the Proposition S measure. This accounting will enable the court to consider, upon later motion by plaintiff/petitioner, further declaratory and injunctive relief consistent with the mandate of the Court of Appeal.

D. The court declines to order the removal of the stadium lights as prayed by plaintiff/petitioner. Granting this request would threaten an unwarranted intrusion by the court in affairs best left to the SDUSD. Demolition activities while school is in session may be inimical to the best interests of students and teachers, and may create unforeseen parking and other problems in the neighborhood plaintiff/petitioner claims to represent.

E. The court denies plaintiff/petitioner's request that it order the "restitution of unauthorized expenditures" at this time, pending receipt of the accounting ordered in paragraph 2C above and further proceedings.