The Court of Appeal Decision in Plain Language

(March 26, 2013)

First, we prevailed on our appeal. The District must prepare an EIR, and cannot use Prop. S (and probably Prop. Z) money on stadium lights. The scope and breadth of a final court order on the EIR and use of Prop. S funds will be issued from the Superior Court in approximately the next 30 to 60 days.

On Prop. S, the court agreed with us that the projects listed on the second to last page of the Prop. S, must be "incidental and necessary for completion of" the listed projects. Because stadium lights are not "incidental and necessary to" bleacher improvements, press box remodeling or ADA accessibility, use of Prop. S funds for field lighting is not authorized by what voters approved in the Prop S bond measure. Thus expenditures in that regard are illegal.

On CEQA, the court found fault with the District's failure to establish a baseline attendance. In addition, it found fault with the methodology of determining average attendance (the 1/3 seating capacity of 1,444 attendees). The Court specifically found that the District must analyze both average and peak attendance (ie. homecoming games). The court also found that the traffic study was incomplete and that PARKING was a significant environmental impact both directly and indirectly. (Major CEQA win here.)

Unfortunately, the court found that it was appropriate to describe the project as "approximately 15 nighttime events", which means "15 to 19 events", but that any exceedance of 15 or 19 would have to undergo further CEQA review and approval. The court also rejected the aesthetic impacts of the lights based on the infrequent number of events and the lighting study. It found that the fact that the lights exceeded the threshold of significance in the near term was not significant because it only affected 7-9 people. (We know better.) In addition, the court found that there was not sufficient evidence or proof submitted that the Talmadge District and Talmadge Historic corridor were officially listed by the City of San Diego. Nevertheless, even if it were, there was no substantial evidence showing that the stadium lights would materially affect the historic resource.

The court found that our argument about the conflict with land use to be moot because it is already requiring an EIR. (They simply avoided an embarrassing issue for the District). In addition, the court did not address the issue of cumulative impacts and community character argument…because it is ordering the District to prepare an EIR.

On the subsequent exemption action, the District got a questionable pass from the court. The court found that (1) the exemption action is quasi-legislative and did not need direct landowner notice and hearing, and (2) that the exemption was neither a project in itself, or an initial step toward any of the projects requiring CEQA review.

An EIR will be developed on a new (or second record), where new information, facts, and evidence can be raised in support of potential impacts. For example, when it comes to the lights, it will be important to bring up the fact that the District is not following its landscaping plan and instead planting palm trees. In addition, it can be shown that the lighting impacts are different from what was estimated and planned by the initial project and its lighting study. Because the District must respond intelligently to comments in an EIR, questions can be raised about current and prospective uses such as the minimum and maximum number of night the lights can go on.