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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

CITY OF GOLETA et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SANTA BARBARA COUNTY,

Respondent;

OLY CHADMAR SANDPIPER GENERAL PARTNERSHIP,

Real Party in Interest.

2d Civil No. B175054
(Super. Ct. No. SBSC 1111147)
(Santa Barbara County)

The City of Goleta (City) and City Council of the City of Goleta (City Council) petition for a writ of mandate to reverse a trial court order requiring the City to approve a final subdivision map for a development project. We issued an order to show cause and granted the City's request for a stay of the trial court order pending resolution of the petition. We grant the petition.

FACTS

In this case of first impression, we interpret Government Code section 66413.5,[1] a provision of the Subdivision Map Act (Gov. Code, §§ 66410 et seq.) (Act), relating to review of final subdivision maps by newly incorporated cities.

The material facts are undisputed. In June 1999, Real Party in Interest Oly Chadmar Sandpiper General Partnership (Sandpiper) acquired property in the County of Santa Barbara (County) for a residential development project. A few weeks later, on July 4, 1999, the first signatures were affixed to a petition to incorporate the City. The boundaries of the proposed City included Sandpiper's property.

Sandpiper continued to process its development application with the County while the incorporation petitions were circulating. On November 18, 1999, Sandpiper filed an application with the County for a vesting tentative subdivision map and development plan for a residential project. On October 31, 2001, the County Planning Commission approved the vesting tentative map and development plan.

On November 6, 2001, an election was held and incorporation was approved. After the election, the City Council-elect asked the County Board of Supervisors to defer all pending land use decisions involving properties in the newly incorporated City to the newly elected City Council.

Two citizens groups filed appeals of the Planning Commission's approval of the tentative map to the County Board of Supervisors. On November 28, 2001, the City's mayor-elect submitted a letter to the Board of Supervisors stating the City Council wanted to review Sandpiper's project because of its gateway status and the ecological importance of the site.

On December 4, 2001, the Board of Supervisors held a public hearing on the appeals. At the hearing, the County Counsel advised the Board that section 66413.5 could affect the finality of the Board's decision if it approved the map. On January 15,

[1] All statutory references are to the Government Code.

2002, the Board denied the appeals and approved a vesting tentative map and development plan for a 109-unit project.

The City's incorporation became effective on February 1, 2002. On that date, the County's subdivision ordinance automatically became the law of the City. (§ 57376.) The City retained the services of the County Planning and Development Department and County Surveyor on an interim basis.

On February 11, 2002, the City adopted an ordinance placing a 45-day moratorium on approval of all development proposals, including Sandpiper's project. (§ 65858, subd. (a).) On March 25, 2002, the City extended the moratorium for 10 months and 15 days. (*Ibid*.) The extension did not apply to Sandpiper's project because the project contained some affordable housing units, and the City did not make the findings necessary to make the extension applicable. (*Id.*, subd. (c).)

On April 22 and June 17, 2002, the City readopted the County's municipal code, including the subdivision ordinance.

On May 23, 2002, the County approved a coastal development permit for the project.

On July 7, 2002, the City appealed the issuance of the coastal development permit. The appeal was denied.

On November 27, 2002, the County Engineer, as agent for the City, delivered the final subdivision map for the project to the City indicating that the map was technically correct, consistent with the requirements of the City's subdivision map ordinance and ready for approval by the City Council. At meetings between November 27, 2002, and January 6, 2003, the City Council considered Sandpiper's final subdivision map. At the conclusion of the final meeting, the City Council denied approval of the map.

Sandpiper filed a petition for writ of mandate with the superior court, asserting that the City had no discretion to deny the final map. The City argued that section 66413.5 gave it discretion to do so. The trial court granted the writ and ordered

the City to approve the final map. The court reasoned that section 66413.5, subdivision (f) gives a newly incorporated city discretion to disapprove a final map only when the city acts in some manner to invalidate the previously approved tentative map and requires the developer to resubmit the application to the city for review. As a second and independent reason for granting the writ, the court found that the City was estopped from exercising any discretion given by section 66413.5 because the City acted in a manner that reasonably led Sandpiper to believe that the City would approve the map.

The City filed a petition for a writ of mandate and request for stay. We issued an order to show cause and granted the stay. We granted the requests of the Consulting Engineers and Land Surveyors of California to file an amicus curiae brief on behalf of Sandpiper and the City of Laguna Woods to file an amicus curiae brief on behalf of the City.

DISCUSSION

Statutory Framework

The Act requires every local agency to adopt ordinances to regulate and control the design and development of subdivisions. (§ 66411.) The Act requires a subdivider of five or more parcels to submit a tentative map to the local agency for approval showing the design and improvement of the subdivision and a subsequent final map. (§§ 66424, 66426.) The subdivider may elect to file a "vesting tentative map" which requires greater detail and which, upon approval, confers certain vested rights to approval of a final map consistent with the tentative map. (§§ 66498.1-66498.9.) The subdivision of the property is accomplished through the approval and filing of a final map. (§§ 66456 et seq.)

When a tentative map or vesting tentative map is submitted and deemed complete, a local agency must approve, conditionally approve, or disapprove the map within time limits established in the Government Code. (§§ 65950, 65952, 65952.1, 66452.1, 66463.) To be approved, the tentative map must, among other things, be consistent with the local general plan or an existing specific plan. (§§ 66473.5, 66474.)

In considering whether to approve or disapprove a tentative map, a local agency may apply only the ordinances, policies and standards that were in effect at the time the application was determined to be complete. (§ 66474.2, subd. (a).) This provision does not apply if the local agency has initiated proceedings to change its general or any applicable specific plan, or zoning or subdivision ordinances, and has published sufficient notice of the proposed changes. (§ 66474.2, subd. (b)(1) & (2).) In that event the local agency may apply such standards that are in effect when it approves or disapproves the tentative map. (*Id.*, subd. (b).)

Generally, final map approval is ministerial and the local agency has no discretion to disapprove a map if it is in substantial compliance with a previously approved tentative map. (§ 66474.1.) Only those requirements and conditions that were applicable to the subdivision at the time of approval of the tentative map may be considered in reviewing the final map. (§ 66473; *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644, 656.)

In 1998, the Legislature amended the Act, adding section 66413.5. The statute states in relevant part: "(b) When any area in a subdivision or proposed subdivision as to which a vesting tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map and give effect to the vesting tentative map as provided in Chapter 4.5 (commencing with Section 66498.1), if the final map meets all of the conditions of the vesting tentative map and meets the requirements and conditions for approval of final maps as provided in Article 4 (commencing with Section 66456), Chapter 4.5 (commencing with Section 66498.1), and other requirements of this division. [¶] . . . [¶] (f) [T]his section applies to any . . . approved vesting tentative map that meets both of the following requirements: (1) The application for the . . . vesting tentative map is submitted prior to the date that the first signature was affixed to the petition for incorporation pursuant to Section 56704, regardless of the validity of the first signature, or the adoption of the resolution pursuant to Section 56800,

whichever occurs first. [¶] (2) The county approved the . . . vesting tentative map prior to the date of the election on the question of incorporation."

The effect of section 66413.5 is to create an exception to the general rule that approval of a final map is ministerial. Sandpiper acknowledges that its tentative map was not submitted or approved within the time frame of subdivision (f). Sandpiper also acknowledges that section 66413.5 gives a local agency discretion to approve or disapprove a tentative map when the conditions of subdivision (f) are met. Nonetheless, Sandpiper argues that the section does not apply here because the City was required to adopt section 66413.5 or take some other affirmative action before it could apply the statute. The City argues that section 66413.5 is clear on its face and does not require any affirmative action on the part of the City before it is effective.

Statutory Construction of Section 66413.5

We apply familiar principles of statutory construction in construing section 66413.5. Our task in interpreting a statute "is to ascertain and effectuate legislative intent." (*People v. Gardeley* (1996) 14 Cal.4th 605, 621.) "We turn first to the words of the statute themselves, recognizing that 'they generally provide the most reliable indicator of legislative intent.' [Citations.] When the language of a statute is 'clear and unambiguous' and thus not reasonably susceptible of more than one meaning, """there is no need for construction, and courts should not indulge in it."""" [Citations.]" (*Ibid*.) "[I]f a statute is unambiguous, it must be applied according to its terms. Judicial construction is neither necessary nor permitted." (*Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 492-493.)

We agree with the City that the plain language of section 66413.5 gives the City discretion to deny Sandpiper's final map. There is nothing in section 66413.5 requiring the City to adopt legislation to implement the statute. It is not the court's prerogative to add what the Legislature has omitted. (See *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698 ["'If the words of the

statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on [its] face . . . or from its legislative history'"].)

Another well-established rule of statutory construction requires the court to construe a statute with reference to the whole system of law of which it is a part. (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 992.) The Legislature has generally occupied the statutory field related to subdivision maps, although the Act does contemplate supplemental local regulations that are not inconsistent. (*B & P Development Corp. v. City of Saratoga* (1986) 185 Cal.App.3d 949, 962-963.)

The Act vests regulation and control of the design and improvement of subdivisions in local government and mandates that each local agency develop standards and adopt ordinances to implement this grant of authority in the exercise of its police power. (§ 66411.) However, a local agency has no such discretion with respect to the procedural aspects of subdivision approval. Section 66451 states: "The procedures set forth in this chapter shall govern the processing, approval, conditional approval or disapproval and filing of tentative, final and parcel maps and the modification thereof. Local ordinances may modify such procedures to the extent authorized by this chapter." In *Griffis v. County of Mono* (1985) 163 Cal.App.3d 414, 425, the court construed section 66451 and concluded that local ordinances could not modify procedural provisions of the Act unless "the Legislature has said so in no uncertain terms." (See also *Building Industry Legal Defense Foundation v. Superior Court* (1999) 72 Cal.App.4th 1410, 1416 ["The power to establish uses does not include the power to fix procedures for processing development applications"].) Section 66413.5 is a procedural statute. As such, it is not subject to modification by a local agency and requires no implementing legislation to be effective.

Equitable Estoppel

Sandpiper's second argument is that the doctrine of equitable estoppel prevents the City from exercising discretion to deny the final map. "The government may be bound by an equitable estoppel in the same manner as a private party when the

elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497.) The requisite elements for equitable estoppel against a private party are: (1) the party to be estopped was apprised of the facts, (2) the party to be estopped intended by its conduct to induce reliance by the other party, or acted so as to cause the other party reasonably to believe reliance was intended, (3) the party asserting estoppel was ignorant of the facts, and (4) the party asserting estoppel suffered injury in reliance on the conduct. (*Id*. at p. 489.)

Sandpiper contends that by continuing to process its development application after the incorporation election, the City induced Sandpiper to reasonably believe that the City would approve the final map. In reliance on this belief, Sandpiper spent $90,000 after incorporation in processing its application.

Sandpiper's reliance was not reasonable as a matter of law. It is now firmly established in California that neither a promise made nor a permit issued that is contrary to law will support an estoppel against the government. "'No government, whether state or local, is bound to any extent by an officer's acts in excess of his [or her] authority.' [Citation.] 'One who deals with the public officer stands presumptively charged with a full knowledge of that officer's powers, and is bound at his [or her] peril to ascertain the extent of his [or her] powers to bind the government for which he [or she] is an officer, and any act of an officer to be valid must find express authority in the law or be necessarily incidental to a power expressly granted.'" (*Burchett v. City of Newport Beach* (1995) 33 Cal.App.4th 1472, 1479, quoting *Horesmen's Benevolent & Protective Assn. v. Valley Racing Assn.* (1992) 4 Cal.App.4th 1538, 1563-1564; see also *County of Sonoma v. Rex* (1991) 231 Cal.App.3d 1289 [statements of county employees that bed and breakfast inn was permitted use and expenditure of $95,000 in improvements did not give rise to an equitable estoppel or vested right]; and see *Strong v. County of Santa Cruz*

(1975) 15 Cal.3d 720; see also *Consaul v. City of San Diego* (1992) 6 Cal.App.4th 1781, 1799 [developer's good faith subjective belief that he had a vested right to proceed with particular development plans is not enough to create a vested right which is otherwise unsupported by the land use regulations and facts of the particular situation].)

There is no evidence in the record that any official, employee or agent of the City made any express representation that the City would approve the map. To the contrary, the undisputed evidence shows that City officials publicly voiced their concerns about the project both before and after the incorporation became effective. The City was required by law to continue processing Sandpiper's application after incorporation. (*Building Industry Legal Defense Foundation v. Superior Court*, *supra*, 72 Cal.App.4th at pp. 1417-1418.) Certainly, if an express representation or issued permit is insufficient to support an estoppel against the government, the mere act of continuing to process an application as required by state law cannot do so.

Toigo v. Town of Ross (1998) 70 Cal.App.4th 309 and *Penn-Co v. Board of Supervisors* (1984) 158 Cal.App.3d 1072 are instructive. In *Toigo,* a developer argued the town was estopped from finding a subdivision application inconsistent with various planning standards. Central to the argument was the contention that, in denying the developer's previous application, the town made findings encouraging the developer to redesign the project in a certain manner. The developer claimed it "'acted in good faith reliance upon the express direction provided by the Town.'" (*Toigo*, at p. 319.) The appellate court rejected the argument stating, "the Town's general endorsement of a 'clustered alternative' could not be viewed as the functional equivalent of a building permit establishing a vested right to proceed with the project, nor could it serve to deprive a future governmental entity of its regulatory discretion. Consequently, we find as a matter of law that Toigo could not reasonably believe that by designing the project in conformance with this recommended approach, it would effectively be immunized from further discretionary review necessary to construct the planned subdivision." (*Id.* at pp. 323-324.)

In *Penn-Co v. Board of Supervisors*, *supra*, 158 Cal.App.3d 1072, the appellate court rejected an estoppel argument based on a county's initial determination that a development plan was consistent with the general plan. The developer argued the county should be estopped from denying the permit because it expended substantial funds in reliance on the earlier determination of consistency. The court found no reasonable reliance to support an estoppel because the developer knew that the original "consistency finding was merely one step along the road to obtaining a permit. . . . When Penn-Co purchased the property relying on the initial finding of consistency by the Board, before a final decision . . . on the use permit application, it was taking a business risk. Penn-Co could not reasonably have assumed that that finding was absolute assurance that its application would not falter at another step along the way." (*Id.* at p. 1081.)

Sandpiper asserts that the City's adoption and readoption of the County's subdivision ordinance and the City's failure to make findings to apply the moratorium extension to its project amounted to an implied promise that the City would not apply section 66413.5 and would approve the final map. Any reliance on such actions was not reasonable. The City was required by law to adopt the County's municipal code, including its subdivision regulations. (§ 57376.) Readoption of the County's ordinance a few months after incorporation indicates nothing more than that the City had not yet completed drafting its own subdivision regulations. The exemption of Sandpiper's project from the moratorium extension was required by law.

Sandpiper's expenditure of $90,000 in additional processing costs also is insufficient to support an estoppel as a matter of law because these expenses were so-called "soft costs." (See *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 793 [work undertaken pursuant to governmental approvals preparatory to construction of buildings cannot form the basis of a vested right]; *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1269-1270 [predevelopment expenditures do not establish vested rights]; *Consaul v. City of San Diego, supra,* 6 Cal.App.4th at p. 1797 [same]).)

As Sandpiper has not met its burden to support an estoppel against a private party, it is unnecessary for us to engage in a lengthy discussion weighing private benefit against public harm. What we said in *Smith v. County of Santa Barbara* (1992) 7 Cal.App.4th 770, 775-776, suffices: "It is not enough to say that public policy will not be adversely affected by the application of estoppel because [a proposed development] creates no health or environmental hazard. The point is that public policy may be adversely affected by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits. . . . [¶] . . . In this case the precedent established by applying estoppel would be so broad that no court of equity could justify the harmful effect of its application on the public interest."

Our interpretation of section 66413.5 and resolution of the estoppel issue make it unnecessary to discuss Sandpiper's remaining contentions.

We grant the writ petition and dissolve the temporary stay. Petitioners shall recover costs.

CERTIFIED FOR PUBLICATION.

COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

J. William McLafferty, Judge

Superior Court County of Santa Barbara

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No appearance for Respondent.

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