



13 of 16 DOCUMENTS

**DAVID ARIAS, as Trustee, etc., Plaintiffs and Appellants, v. CALIFORNIA
COASTAL COMMISSION, Defendant and Respondent; CITY OF MANHATTAN
BEACH et al., Real Parties in Interest and Respondents.**

B174515

**COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT,
DIVISION TWO**

2005 Cal. App. Unpub. LEXIS 7871

August 30, 2005, Filed

NOTICE: [*1] NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 977(a), PROHIBIT COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 977(B). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 977.

PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Los Angeles County, No. BS080384. David P. Yaffe, Judge.

DISPOSITION: Affirmed.

COUNSEL: Sullivan, Workman & Dee and Joseph S. Dzida for Plaintiffs and Appellants.

Bill Lockyer, Attorney General, Thomas J. Greene, Chief Assistant Attorney General, J. Matthew Rodriguez, Senior Assistant Attorney General, and Clara L. Slifkin, Deputy Attorney General, for Defendant and Respondent California Coastal Commission.

Robert V. Wadden, Jr., City Attorney (Manhattan Beach), for Real Party in Interest and Respondent City of Manhattan Beach.

Greenberg Glusker Fields Claman Machtinger & Kinsella and Garrett L. Hanken for Real Party in Interest and Respondent Metlox, LLC.

JUDGES: SUZUKAWA, J.*; BOREN, P.J., ASHAMANN-GERST, J. concurred.

* Judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

[*2]

OPINION BY: SUZUKAWA

OPINION

Appellants David Arias, individually and as trustee of the David Joseph 2000 Trust (Arias), and Marquesa & Co., appeal from a judgment entered by the trial court denying their petition for peremptory writ of mandate in favor of respondent California Coastal Commission (the Commission), real party in interest and respondent City of Manhattan Beach (the City), and real party in interest and respondent Metlox LLC. Appellants contend that the Commission failed to follow the parking requirements in the "Zoning Ordinance of the City of Manhattan Beach Coastal Zone" (zoning ordinance)¹ when it approved the construction of a commercial office and retail development with a subterranean parking garage in the City (the Project). We affirm.

¹ All further section references shall refer to the zoning ordinance.

FACTS AND PROCEDURAL HISTORY

Under the California Coastal Act of 1976 (*Pub. Resources Code, § 30000*), upon the City's certification of its local coastal [*3] program consisting of land use plans, zoning ordinances and other implementing actions, the Commission transferred permitting authority to the City in 1994. The Commission retained appellate authority over certain permits approved by the City.

On July 16, 2002, the Manhattan Beach City Council (the city council) approved a coastal development permit to allow the construction of the Project. The permit authorized construction of a 63,850 square foot commercial development, which would include an inn, retail sales and service uses, two restaurants and approximately 40,000 square feet of public areas, including a town square. A separate master use permit and coastal development permit was approved for 430 subterranean public parking spaces on the Project site. Crain & Associates calculated the parking demand for the Project.

On August 1, 2002, Arias and two other persons submitted separate appeals of the city council's approval of the permits. Arias challenged the shared parking demand estimates used by the City to justify the approval of the Project. He claimed that the Project did not provide an adequate parking supply to meet the demands of the proposed commercial development, thus [*4] violating the parking policies contained in the City's zoning ordinance.

The Commission conducted a hearing on November 5, 2002, and approved the permit. It found that the development would be in conformity with the certified local coastal implementation program and would not have significant adverse effects on the environment.

On December 23, 2002, appellants filed a petition for writ of mandate naming the Commission, the City and Metlox as respondents. Appellants alleged that: the Commission did not apply the proper zoning ordinance, namely section A.64.040; the Commission and the City failed to make the required findings; the Commission's decision was not based on substantial evidence because there was no analysis conducted concerning the parking requirements in connection with the town square, outdoor restaurant use, and other matters; and the Commission improperly deferred analysis and decision on important aspects of the parking issue.

On December 2, 2003, the trial court granted the petition for writ of mandate on the basis that the Commission approved a reduction in the number of required parking spaces without making the required finding that the actual parking demand [*5] will be less than the requirements set forth in section A.64.030 of the zoning ordinance. The trial court ordered the developer to submit an interim parking plan, and remanded the matter to the Commission to vacate its denial of Arias's administrative appeal, and to proceed in compliance with the decision of the trial court. The trial court ordered supplemental briefing on how the Commission calculated the number of parking spaces, and continued the hearing to February 10, 2004.

The Commission, the City, and Metlox filed supplemental briefs in opposition to the petition for writ of mandate on January 13, 2004. The trial court found that the administrative record supported the Commission's finding that the actual parking demand will be less than the requirement set forth in schedule A or B of section A.64.030 of the zoning ordinance. The trial court denied the petition for writ of mandate.

This appeal followed.

DISCUSSION

I. Standard of review

"To the extent that the administrative decision rests on the hearing officer's interpretation or application of the Ordinance, a question of law is presented for our independent review. [Citation.] The interpretation of statutes [*6] and ordinances 'is ultimately a judicial function.' [Citation.] Even so, the hearing officer's interpretation of the Ordinance is entitled to deference. 'The courts, in exercising independent judgment, must give appropriate deference to the agency's interpretation.' [Citations.] 'An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, . . . the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation.' [Citation.] 'To quote the statement of the Law Revision Commission in a recent report, "The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action.'" [Citation; italics added.] 'Unlike quasi-legislative rules, an agency's interpretation does not implicate the exercise of a delegated lawmaking power; instead, it represents the agency's view of the statute's legal meaning [*7] and effect, questions lying within the constitutional domain of the courts. But because the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this 'expertise,' expressed as an interpretation . . . , that is the source of the presumptive value of the agency's views.' [Citation.] [P] To summarize, we review the hearing officer's factual determinations for substantial evidence. [Citation.] We independently review the hearing officer's interpretation of the Ordinance, according that interpretation due deference. (*Ibid.*)" (*MHC Operating Limited Partnership v. City of San Jose (2003) 106 Cal.App.4th 204, 219-220.*)

II. Whether section A.64.040 or section A.64.050 of the coastal ordinance applies

Appellants contend that section A.64.040 rather than section A.64.050 of the zoning ordinance applies. Section A.64.040 allows a reduction in parking not to exceed 15 percent of that normally required; while section A.64.050 allows a reduction in parking based on demand as supported by survey data, a less stringent formula. If section A.64.050 [*8] applies, the Commission and real parties in interest must prevail, since appellants do not contest the trial court's conclusion that substantial evidence supported the Commission's finding that the Project complied with parking reduction allowed under section A.64.050.

We look to the words of the statute, read in context, and keep in mind the nature and obvious purpose of the statute where they appear. (*Pennisi v. Department of Fish and Game Department (1979) 97 Cal. App. 3d 268, 272-273, 158 Cal. Rptr. 683.*)

Section A.64.040, entitled "Collective Provision of Parking," allows a reduction in the number of parking spaces provided in section A.64.030 on a site of 5,000 square feet or more for projects that serve more than one use or site. Section A.64.040 provides that "Notwithstanding the provisions of Section A.64.020(E),² a use permit may be approved for collective provision of parking on a site of 5,000 square feet or more *that serves more than one use or site* and is located in a district in which parking for the uses served is a permitted or conditional use. A use permit for collective off-street parking may reduce the total number of spaces [*9] required by this chapter if the following findings are made: [P] A. The spaces to be provided will be available as long as the uses requiring the spaces are in operation; and [P] B. The adequacy of the quantity and efficiency of parking provided will equal or exceed the level that can be expected if collective parking is not provided. [P] The maximum allowable reduction in the number of spaces to be provided shall not exceed 15 percent of the sum of the number required for each use served." (Italics added.)

² Section A.64.020(E) provides: "Joint Use. Off-street parking and loading facilities required by this chapter for any use shall not be considered as providing parking spaces or loading berths for any other use except where

the provisions of Section A.64.040: Collective provision of parking apply or a joint facility exists. Such a facility shall contain not less than the total number of spaces or loading berth as determined individually, subject to the provisions of subsection (F) below, or fewer spaces may be permitted where adjoining uses on the same site have different hours of operation and the same parking spaces or loading berths can serve both without conflict. A determination of the extent, if any, to which joint use will achieve the purposes of this chapter shall be made by the Community Development Director, who may require submission of survey data necessary to reach a decision."

[*10] According to the parties, the applicability of section A.64.040 turns on the phrase "a site of 5,000 square feet or more *that serves more than one use or site.*" (Italics added.) Appellants contend that a plain reading of the zoning ordinance dictates that the section applies to sites with multiple uses or multiple sites. They urge that here, the Project contemplates multiple uses: an inn; retail sales and service uses (including food sales); two restaurants; office space and personal service uses. They also urge that the sites are multiple, because the parking will serve nearby business and properties. The Commission and real parties, on the other hand, cite the Commission's conclusion that section A.64.040 does not apply because "the proposed development is one project on one site. Section A.64.040 is for parking that is set up to serve multiple uses that are not on the same site."

We first turn to section A.64.030, which sets forth the parking requirements in accordance with the zoning ordinance. It provides schedules for off-street parking and loading spaces computed on the basis of buildable floor area. Importantly, for our purposes, the schedule separates the use classifications [*11] into three categories: "residential," "public and semipublic," and "commercial." The "commercial" use classification includes eating and drinking establishments; food and beverage sales; offices; personal services; retail sales and visitor accommodations. Here, the contemplated uses fall within the commercial use classification and, as previously mentioned, include an inn; retail sales and service uses; two restaurants; office space and personal service uses, compelling us to conclude that, even if we were to accept appellants' interpretation of section A.64.040 to mean that the site cannot serve more than one use, only one use is relevant here, i.e., a commercial, as opposed to a residential, or other use. Appellants do not proffer authority to support their argument that the uses within the classification of a commercial use are to be considered separate or multiple uses for the purpose of section A.64.040. We conclude that the Commission properly applied section A.64.050, and that section A.64.040 is inapplicable.

A reading of section A.64.050 in conjunction with section A.64.040 supports our conclusion. Section A.64.050B, entitled "Reduced Parking for Certain Districts and Uses, [*12]" references a "CD District" and notes that the parking requirements shall apply to nonresidential uses, as contemplated in the instant case. We first note that the designation "CD District" refers to the downtown commercial district, which is the district at issue here.³ Section A.64.050A applies to building sites equal to or less than 10,000 square feet, stating: "If the FAF⁴ is less than 1:1, no parking is required; if the FAF exceeds 1:1, only the excess floor area over the 1:1 ratio shall be considered in determining the required parking prescribed by Section A.64.030." For building sites greater than 10,000 square feet, "The amount of required parking shall be determined by first excluding 5,000 square feet from the buildable floor area and then calculating the number of spaces prescribed by Section A.64.030."

³ The zoning ordinance refers to a local commercial district (CL); a downtown commercial district (CD); and a north end commercial district (CNE).

⁴ FAF refers to floor area factor, the factor utilized in determining buildable floor area.

[*13] Section A.64.050B further provides: "A use permit may be approved reducing the number of spaces to less than the number specified in the schedules in Section A.64.030, provided that the following findings are made: [P] 1. The parking demand will be less than the requirement in Schedule A or B; and [P] 2. The probable long-term occupancy of the building or structure, based on its design, will not generate additional parking demand."

Reading the two sections in conjunction, we conclude that section A.64.050 applies to commercial downtown projects, as here, while section A.64.040 applies to multiuse or multisite projects. Moreover, if the drafters of the zoning

ordinance had intended that the maximum 15 percent reduction in parking of section A.64.040 apply to commercial development, they would have included that requirement in section A.64.050.

Our review of the zoning ordinance as a whole supports our conclusion the commercial use is considered one use for the purposes of section A.64.040. Chapter A.08 of the ordinance sets forth "use classifications," which are defined as "one or more uses having similar characteristics." Commercial use classifications are defined at section [*14] A.08.050 and include the uses at issue here, namely, eating and drinking establishments; offices; personal services; retail sales; and visitor accommodations. Finally, under section A.04.020, rules for construction of language, the word "'or' indicates that the connected words or provisions may apply singly or in any combination." The phrase of which appellants complain in section A.64.040, "that serves more than one use or site," may therefore be applied, as the Commission and real parties assert, in conjunction. Accordingly, the Commission's construction that section A.64.040 applies to multiple uses that are not on the same site, is tenable.

We conclude that the trial court properly denied the writ of mandate.

DISCUSSION

The judgment is affirmed. Respondents shall receive costs of appeal.

SUZUKAWA, J.*

* Judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to *article VI, section 6 of the California Constitution*.

We concur:

BOREN, P.J.

ASHMANN-GERST, J.