CLIENT NEWS BRIEF

Significant New Developer Fee Cases

October 2019
Number 44


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As part of an uptick of cases in recent years regarding school impact fees, two recent cases argued by Lozano Smith on behalf of school districts have been decided by the California Sixth District Court of Appeal, with mixed results. The court ruled in relation to an "adults only" agricultural worker housing project that, when imposing prospective developer fees on development projects, school districts need not establish a reasonable relationship between the fee and the *specific* project in question. Instead, districts are merely required to establish a nexus between the fee and the *general* type of project that is at issue (e.g. residential, commercial, industrial). This favorable outcome came after the same appellate court, straying from prior precedent that supported deference to local agencies, issued a published decision invalidating a school district's developer fee justification study. The court held that the study in question was invalid because it did not provide sufficient analysis to demonstrate that the school district would have to house new students generated from development in new facilities. Both cases are part of a trend toward greater judicial scrutiny of school districts' imposition of developer fees.

School districts in California are authorized by law to impose fees on development projects, referred to as "developer fees" or "school impact fees." There are three separate levels of fees that can be charged, each of which are subject to different legal requirements. The first case below addresses whether a school district must analyze the potential residential population of a particular development, as projected by the developer, before imposing fees on that particular development. The second case addresses the legal requirements for preparing a Level I fee justification study.

The *Tanimura* Case

Tanimura & Antle Fresh Foods v. Salinas Union High School District, 34 Cal.App.5th 775, addressed a dispute regarding Level 2 developer fees. The Salinas Union High School District (Salinas) had imposed a developer fee on a 100-unit agricultural employee housing complex commissioned by Tanimura & Antle Fresh Foods, Inc. (Tanimura) within Salinas. The complex, per the terms of its development permit issued by the Monterey County Board of Supervisors, was designed to house only agricultural workers, without dependents.

In recent years, many school districts have contended with developers who argue that fees should not be imposed on their projects because the developers expect that few or no potential school age students will live in the finished project. These arguments have been made, for instance, regarding housing intended for agricultural workers, college students, or young professionals. This case affirms that a school district need not consider the developer's intended residents for a particular project, and can instead analyze the impact of residential housing projects across the district when imposing developer fees on residential projects.

In relation to its agricultural worker housing project, Tanimura sued for a refund of its fees, alleging that the developer fees imposed by Salinas were not

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reasonably related to a need for school facilities, as required by statute. Tanimura cited the project's prohibition on dependents, arguing that, as no children would reside in the complex, its construction would not generate an increased burden on the district's facilities. The Government Code requires a public agency, before imposing prospective developer fees, to establish the purpose of the fee, the agency's use for the funds, a reasonable relationship between the fee's use and the type of development project on which it will be imposed, and a reasonable relationship between the need for public facilities and the type of development project on which the fee is imposed. The trial court held in favor of Tanimura, reasoning that "case law—and common sense—preclude the application of an overbroad label in a fee study that does not account for a project's actual impact." The court opined that Salinas was required to account for the fact that no children would be permitted to live at the complex, and in failing to do so had not met the nexus requirement of the Government Code.

In a victory for school districts, and following argument by Lozano Smith (acting as co-counsel in this matter), the Court of Appeal reversed. The court held that, when establishing a nexus between developer fees and a development project, a public agency need not consider the specific project in question; its calculus is limited to the general type of project at issue (e.g., residential, commercial, or industrial). As applied here, Salinas was not required to consider the complex's prohibition on dependents in its fee analysis. The district's treatment of the complex as a generic, residential development was lawful.

The court asserted that its interpretation was the only "commonsense" reading of the statute that avoided practical absurdities. To adopt Tanimura's position, the court held, "would have the practical effect of requiring a school district to expand its needs analysis to address the projected impact on school facilities of undefined, variant subtypes of residential construction not contemplated in the statute." The court found such an effect to be contrary with the purpose of the statutes. Further**,** the law contains exceptions from developer fees for certain types of developments, including government-financed agricultural migrant worker housing. However, the Legislature has created no such exception for privately-financed farmworker housing. This indicates that the Legislature did not intend for projects such as the complex to be exempted from developer fees.

The *Summerhill* Case

In *Summerhill Winchester, LLC, v. Campbell Union School District* 30 Cal.App.5th 545, the Appellate Court invalidated the Level 1 developer fees adopted by Campbell Union School District (Campbell). In doing so, the court applied the rule laid out in a prior case, *Shapell Industries, Inc. v. Governing Board of the Milpitas Unified School District* (1991) 1 Cal.App.4th 218, that a Level 1 fee study must include an analysis of the following three factors: (1) the projection of the total amount of housing to be constructed within the school district; (2) estimation of the number of new students that are expected to result from the new development; and (3) estimation of what it will cost to provide the necessary school facilities for that approximate number of new students.

Regarding the first *Shapell* element, Campbell's fee study stated that there were "in excess of 133" residential units that could be constructed over the next five years. The court took issue with the fact that these projections were not based on data from all of the planning departments within Campbell's boundaries. The court also held that the study's projection was too vague to support the imposition of fees. According to the court, a projection based on consultation with only some of the local jurisdictions within Campbell's boundaries and using a phrase such as "in excess of" is "little better than saying that 'some' development is anticipated." This was found to be inadequate because the study did not provide sufficient guidance for Campbell's Board to determine whether or not new school facilities would be needed due to anticipated development. The court found it irrelevant that the district was already over capacity at all of its schools, and essentially rejected Campbell's argument that new facilities would be needed to house students generated from development, regardless of the number of such students.

The court also found that the fee study was invalid because it did not provide sufficient evidence for the district's Board to determine what type of school facilities would be needed to accommodate students generated by development, if any. The court based its decision on a narrow reading of the applicable statutes.

Developers may argue that the court's decision means that a fee study must now establish what "type" of facilities a school district will construct to house students generated by development. However, prior case law, including *Garrick Development Co. v. Hayward Unified School District* (1992) 3 Cal.App.4th 320, held that specific improvement plans or building proposals were not necessary. The court acknowledged that, under *Garrick*, "the Board did not have to identify specific facilities that would be built or make concrete construction plans." At the same time, however, the court concluded that "the key missing element in the fee study was what new facilities would be necessary for the new students generated by new development." These two statements are difficult to reconcile, and create a challenge when school districts decide how specifically their fee studies must describe student housing needs. However, it remains clear that specific school construction projects need not be identified.

The court's opinion is likely to cause confusion and possibly to disrupt established law. As a result, school districts may wish to review the adequacy of their fee justification studies.
Lozano Smith represented the school district in the litigation and appeal, and requested, on behalf of the district, that the California Supreme Court depublish the case. The request for depublication was supported by CASBO, CASH, and CSBA, and not opposed, but the request was nevertheless denied by the Supreme Court.

Takeaways

Tanimura clarifies that public agencies, when imposing *prospective* developer fees, need not consider the specific development project, but only the type of development project at issue. The case should also help school districts resist the claims of developers who assert that they should be relieved of fees because few or no students will allegedly be generated by a specific project.

While some may argue for a broader application, the *Summerhill* decision can be viewed as the court's application of the three-factor *Shapell* test to a particular fee study. In this regard, the case simply calls for a fact-specific analysis based on already-established precedent. The following are some best practices following the *Summerhill* case:

- Avoid use of imprecise language like "at least" when describing projected development.
- If at all possible, consult with all planning departments within the school district's jurisdiction.
- If at all possible, identify the general types of school facility projects that may be constructed to accommodate students (e.g., new school construction, portable additions, a mix of both, etc.). We note that such identification in the fee study is not necessarily binding on the school district when it later implements its facilities plans.

If you have any questions about the *Tanimura* or *Summerhill* cases or about developer fees in general, please contact the authors of this Client News Brief or an attorney at one of our eight offices located statewide. Copies of Lozano Smith's Developer Fee Handbook are available for purchase from Lozano Smith's Client Services Department; you can submit your request to clientservices@lozanosmith.com. You can also subscribe to our podcast, follow us on Facebook, Twitter, and LinkedIn or download our mobile app.