

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

Date: 02/06/2008 Time: 01:30:00 PM Dept: C-74
Judicial Officer Presiding: Judge Linda B. Quinn
Clerk: Mary Jean Barham

Bailiff/Court Attendant:
ERM:

Case Init. Date: 06/12/2006

Case No: GIC867378

Case Title: TAXPAYERS FOR RESPONSIBLE LAND USE
vs CITY OF SAN DIEGO

Case Category: Civil - Unlimited

Case Type: Writ of Mandate

Event Type: Motion Hearing (Civil)

Moving Party: HILLEL OF SAN DIEGO, City of San Diego, CITY COUNCIL OF THE CITY OF SAN DIEGO

Causal Document & Date Filed: Motion - Other, 11/19/2007

Appearances:

The Court, having taken the above-entitled matter under submission on 01/25/2008 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The tentative ruling is confirmed.

Respondents City of San Diego and City Council of the City of San Diego's Motion to Strike or Tax Petitioners' Memorandum of Costs is granted in part and denied in part.

CCP §1032(a)(4) enumerates the four categories of prevailing party and states:

"Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

The reference to "includes" implies there are other situations where a party may be determined to be the prevailing party. (Sears v. Baccaglio(1998) 60 Cal.App.4th 1136, 1155.) The court has the authority to determine the prevailing party based upon any recovery made by a party who achieve victory via a manner other than net monetary recovery. (Pirkig v. Dennis (1989) 215 Cal.App.3d 1560, 1567.)

In this case, Petitioners achieved their litigation objective and are determined to be prevailing party. The court granted Petitioners' writ of mandate under CEQA. The decision resulted in the City reviewing its

approval of the Project. The review essentially requires a reevaluation of the initial study, the taking of public comments and other CEQA requirements and will likely include an EIR. Thus, Petitioners' obtained their litigation objective which was to force the City to comply with CEQA.

The next issue is the reasonableness of the Administrative Record preparation costs. "Whether a particular cost to prepare an administrative record was necessary and reasonable is an issue for the sound discretion of the trial court." (River Valley Pres. Project v. Metro. Transit Dev. Bd. (1995) 37 Cal. App. 4th 154, 181 (citations omitted).) The court finds the costs associated with preparing the Records reasonable and necessary. Therefore, the motion to tax these costs are denied.

The motion to tax the \$40 filing fee for the Motion for Preliminary Injunction is granted. Petitioners did not prevail on the motion for preliminary injunction.

The motion to tax the \$100.28 fee for service of the deposition subpoena on Dean Oliver is granted. Mr. Oliver was never deposed, therefore the cost is not reasonable or necessary.

The motion to tax \$6,357.54 for copying the Administrative Record is denied. The copying costs consist of two copies of the record: one for the court and one for Petitioners. These costs were actually incurred by Petitioners. (Cardiff Dec. ¶6; Ex. 5.) These costs do not appear to be excessive. Therefore, the court finds the costs are reasonable and necessary and deny the motion to tax.

The motion to tax the \$2,991.08 for the City's certification of the Record is denied. The City originally sought to recover these costs from Petitioners via motion, which was granted by the court. The costs were reasonable and necessary to the litigation and actually incurred by Petitioners.

Petitioners are to recover costs in the amount of \$28,264.52, excluding an award of attorneys' fees, if any.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: TAXPAYERS FOR RESPONSIBLE LAND USE vs CITY OF SAN DIEGO

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
GIC867378

I certify that I am not a party to this cause. I certify that a true copy of the attached was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 02/07/2008.

Clerk of the Court, by: M. Bonham
M. Bonham, Deputy

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