

ROCKY MOUNTAIN LAND USE INSTITUTE

RECENT LAND USE DECISIONS IN THE ROCKY MOUNTAIN WEST

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ARIZONA CASES

Robson Ranch Quail Creek, LLC v. Pima County, 215 Ariz. 545, 161 P.3d 588 (Ariz. Ct. App. 2007).

This case involved Pima County's (the "County") sewer connection fee ordinance, which was amended in 2005 to replace the two-tiered fee structure with a flat fee (the "Ordinance"). Developer Robson Ranch Quail Creek, LLC ("Robson") challenged the Ordinance on the grounds that, among other things, it violated ARIZ. REV. STAT. § 11-821. ARIZ. REV. STAT. § 11-821(D)(4) requires county comprehensive plans to contain a "component that identifies policies to ensure that any mechanisms that are adopted . . . bear a reasonable relationship to the burden imposed on the county to provide additional necessary public facilities to the development." The Superior Court granted the County's motion for summary judgment and held that the sewer connection fees were not required to bear a reasonable relationship to the burden imposed on the County by a development. On appeal, the Arizona Court of Appeals reversed this holding. The Court found that ARIZ. REV. STAT. § 11-821(D)(4) applied to the sewer connection fees because they were identified as a funding mechanism in the County's comprehensive plan. The sewer connection fees were therefore required to bear a reasonable relationship to the burden imposed on the County by a development. The Court further found that Robson presented sufficient evidence to raise a genuine issue of material fact as to whether the fees bore a reasonable relationship to the burden imposed on the County by Robson's development.

Home Builders Association of Central Arizona v. City of Maricopa, 215 Ariz. 146, 158 P.3d 869 (Ariz. Ct. App. 2007).

Pinal County (the "County") entered into development agreements (the "Development Agreements") with several developers, which exempted the developers from paying any development fees that might be adopted in the future. The Development Agreements also provided that the rights it established would run with the property and would bind the County, the developers, and their respective successors and assigns. In 2003, the City of Maricopa (the "City") was incorporated and its boundaries included property subject to the Development Agreements. Two years later, the City enacted an ordinance which purported to give the City the authority to assess development fees. Pursuant to this ordinance, the City sought to assess development fees of approximately \$5,000 on each lot in the subdivisions subject to the Development Agreements. The Home Builders Association of Central Arizona (the "Home Builders Association") filed a complaint seeking a declaratory judgment requiring the City to acknowledge the validity of the Development Agreements and to stop the assessment of development fees in violation of the Development Agreements. The City argued that it was not bound by the Development Agreements and that the County lacked the statutory authority to waive development fees in a development agreement. The Superior Court disagreed with the City and ruled in favor of the Home Builders Association.

The Arizona Court of Appeals affirmed this ruling on appeal by the City. To support its holding that the waiver of the development fees in the Development Agreements was valid, the Court cited to a statutory provision which allows counties to include in a development agreement "any other matters relating to the

development of the property.” Moreover, as the property subject to the Development Agreements was now under the exclusive control of the City, the Court held that the City was a successor-in-interest to the County and must therefore adhere to the terms of the Development Agreements, including the provision waiving development fees.

MONTANA CASES

Druffel v. Board of Adjustment, 339 Mont. 57, 168 P.3d 640 (Mont. 2007).

The Missoula City Board of Adjustment (the “Board”) granted Glen Moyer’s (“Moyer”) request for a zoning variance, which allowed Moyer to build a residence on less than the required lot size. Dennis and Barbara Druffel (the “Druffels”), who lived in a residence more than two blocks away from Moyer’s property, filed an action challenging the variance, on the grounds that, among other things, the Board’s approval constituted an abuse of discretion. The Druffels alleged no injury other than a deprivation “of their right to orderly development of property zoned as residential.” The District Court granted the Board’s motion to dismiss for failure to state a claim and on grounds that the Druffels lacked standing. On appeal, the Druffels maintained that they possessed standing under MONT. CODE ANN. § 76-2-327, which grants “any taxpayer” the right to petition a court to set forth alleged illegalities in the Board’s decision. The Board argued that the Druffels must allege some type of specific harm regardless of the statute and cites to a number of cases holding that taxpayers generally lack standing to enforce a public right or redress a public wrong absent an allegation of harm. The Supreme Court of Montana affirmed the District Court’s granting of the Board’s motion to dismiss for failure to state a claim, but reversed the ruling on standing. The Court held that the plain meaning of MONT. CODE ANN § 76-2-327 granted the Druffels standing to petition for review of the Board’s decision, as the Druffels are taxpayers of the municipality.

Flathead Citizens for Quality Growth, Inc. v. Flathead County Board of Adjustment, 2008 WL 44598, 2008 MT 1 (Mont. 2008).

The Flathead County Board of Adjustment (the “Board”) issued a conditional use permit to allow a gravel extraction and crushing business (the “CUP”). The Flathead Citizens for Quality Growth, Inc. (“Flathead Citizens”) argued that the Board unlawfully issued the CUP because the business constituted an extractive industry, which was not allowed under applicable zoning regulations. The District Court found that the Board did not abuse its discretion in granting the CUP and granted summary judgment to the Board. Flathead Citizens appealed and the Supreme Court of Montana reversed, holding that the approval of the CUP constituted an abuse of discretion because the record did not contain a sufficient factual basis to support the Board’s determination. The Court remanded the case to the District Court to have the Board come forward with findings of fact and conclusions to support the Board’s decision.

Fielder v. Board of County Commissioners, 337 Mont. 256, 162 P.3d 67 (Mont. 2007).

Sanders County (the “County”) residents filed a complaint challenging the Board of County Commissioners’ (the “Board”) approval of a developer’s preliminary plat for a subdivision on the grounds that (1) the

Department of Environmental Quality (the “DEQ”) did not review and approve of the water and sanitation issues before the approval was granted; (2) the subdivision lacked proper access; and (3) the Board allowed the developer to make a cash-in-lieu of land donation to satisfy the parks dedication requirement. Even though the District Court held that the complaint was not timely filed, it decided the issues on the merits and granted summary judgment in favor of the Board. On appeal, the Supreme Court of Montana affirmed, finding that the District Court (1) correctly determined that the Board did not act arbitrarily in its decision to request a cash-in-lieu of land donation as the proposed land was not suitable for use as a park; (2) correctly determined that the Board did not act arbitrarily in finding that legal access exists for the subdivision; and (3) correctly determined that the DEQ’s review and approval was not necessary prior to the approval of the plat as the final plat approval was contingent on satisfying conditions required by the Board, including compliance with the DEQ and local regulations regarding sanitation and water issues. However, the Court reversed the District Court’s finding that the complaint was not timely filed, stating that pleadings are considered filed when they are placed in the possession of the clerk of court. Although the complaint in this case was not stamped “filed” until after the filing deadline, it was in the possession of the clerk prior to the deadline.

Ballas v. Missoula City Board of Adjustment, 340 Mont. 56, 172 P.3d 1232 (Mont. 2007).

The Terzo family (the “Terzos”) owned a house that straddled two adjacent residential lots owned by the Terzos. The Missoula City Board of Adjustment approved the Terzos’ request to reconfigure the lots’ boundary line so that the house would exist entirely within one lot. The Missoula Office of Planning and Grants then approved the Terzos’ application for a building permit to construct a house on the other lot. Jerrel and Michele Ballas (collectively, “Ballas”), who are the Terzos’ next-door neighbors, appealed the approval of the building permit, on grounds that the lot was less than the minimum lot size required for a residential structure. The Terzos filed a motion for judgment on the pleadings for lack of subject matter jurisdiction. The District Court denied the motion and the Terzos appealed, arguing that the District Court lacked subject matter jurisdiction because Ballas lacked standing. The Supreme Court of Montana held that subject matter jurisdiction and standing requirements are not interdependent. That is, a party’s lack of standing does not deprive a court of subject matter jurisdiction. Accordingly, the Court affirmed the District Court’s denial of the Terzos’ motion. The Court further held that the Terzos’ appeal from the District Court’s determination that Ballas had standing was premature because the Montana Rules of Appellate Procedure did not allow for interlocutory appeals from a court’s ruling on standing.

Arkell v. Middle Cottonwood Board of Zoning Adjustment, 338 Mont. 77, 162 P.3d 856 (Mont. 2007).

Vince and Debbie Arkell (the “Arkells”) purchased a house that was constructed prior to the adoption of zoning regulations. The Arkells, not knowing that the house was subject to zoning regulations, constructed an addition which did not conform to applicable setback requirements. After they became aware of the setback requirements, the Arkells applied for a variance to approve the non-conforming addition. The Gallatin County Planning Director denied the variance. The Arkells appealed to the Middle Cottonwood Board of Adjustment (the “Board”). However, because there was a tie vote on the motion to reverse the

Planning Director's decision, the motion failed and the Board denied the Arkells' appeal. The Arkells then appealed the Board's decision to the District Court, which reversed the Board's denial and granted the variance. The Board appealed the District Court's ruling. The Supreme Court of Montana held that the District Court did not abuse its discretion by granting the variance to the Arkells as the Court found that there was sufficient evidence in the record to support the District Court's determination that the criteria for granting a variance had been met, namely that the Arkells satisfied the required showing of "unnecessary hardship." The "unnecessary hardship" in this case was the need for a full living area on the ground floor to accommodate a disabled family member and the inability to build the addition in any direction but toward the road.

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