[MS-0398.085.011.011]

STATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, *Governor*

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

MEMORANDUM

February 10, 1993

TO: Commissioners
Management Team

FROM: Ralph Faust, Chief Counsel
Dorothy Dickey, Deputy Chief Counsel DD
Cynthia Cima, Staff Counsel CMC

RE: Landgate, Inc. v. CCC. et al.

Attached is a copy of the Court of Appeal decision in Landgate, Inc. v. California Coastal Commission, et al.. The decision affirms a trial court decision ordering the Commission to reconsider its denial of a permit application for a single family residence off of DeButts Terrace overlooking Escondido Canyon, without considering the lot line adjustment which created the parcel on which the proposed house would be located. The opinion is not certified for publication so it may not be cited as authority outside of the context of the specific case in which it arose. Thus, the decision should not be interpreted to limit the Commission's authority to require a coastal development permit for other lot line adjustments. However, the Commission's request for rehearing was denied and no appeal has been taken by a party. Therefore, unless the case is taken up by the California Supreme Court on its own motion, the Commission is required to abide by the trial court's order which mandates that it review the permit application as if the lot were a legal lot. Please contact us if you would like additional information.

Attachment

2591L

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LANDGATE, INC.,	No. B063485
Plaintiff and Respondent,	(Super. Ct. No. BC 024391)
v.	
CALIFORNIA COASTAL COMMISSION,	
Defendant and Appellant.	

DEC 18 1992
Clerk
Deputy Clerk

APPEAL from an order of the Superior Court of Los Angeles County. Emilie Elias, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Daniel E. Lungren, Attorney General, Roderick E. Walston, Chief Assistant Attorney General, Jan S. Stevens, Assistant Attorney General and Peter H. Kaufman, Deputy Attorneys General, for Defendant and Appellant.

Reznik & Reznik, Benjamin M. Reznik, Fred N. Gaines, and John M. Bowman for Plaintiff and Respondent.

INTRODUCTION

Respondent/defendant California Coastal Commission (hereinafter Commission) appeals from the trial court's order issuing a writ of mandate vacating the Commission's disapproval of a lot reconfiguration and proposed home building project on an unimproved Malibu lot owned by petitioner/plaintiff Landgate, Inc. We affirm the order issuing the writ.[1]

FACTS

Sometime before 1973, a large unimproved Malibu tract which included what is now Landgate's lot and the adjoining parcel was approved for subdivision into approximately two-acre lots, each zoned for a single-family home. After the subdivision, Landgate's predecessor owned both lots, running north and south and containing sloped northern and flat southern sections. One lot contained a single family home on its flat southern portion. Both lots are within the coastal zone in which development is subject to Coastal Act regulation by the Commission.

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1. The order issuing the writ is appealable. (Code Civ. Proc., §§ 1094.5, subd. (g); 1110.) Without objection, the trial court severed consideration of the writ petition from Landgate's causes of action seeking declaratory relief and compensatory damages for unjust taking and civil rights violations. Landgate's remaining causes of action remain pending in the trial court and are not before us.

In the mid-1980's, the County of Los Angeles planned to improve an east-west road through the two parcels. The proposed road divided the lots into sloped northern and flat southern portions. Landgate's predecessor and the county agreed that, in exchange for the owner's dedicating portions of the parcels for the roadway easement, the county would reconfigure the lots into a single sloped lot north of the road and a single flat lot, containing the existing home, south of the road. Each lot remained zoned for one single family home. The county completed the road project and formally approved the lot reconfiguration, which was recorded on July 5, 1989. "The COMMISSION was aware of and approved the contemplated improvement of [the road]." The Commission earlier approved the county's Malibu land use plan (LUP) but at all relevant times had not yet certified a county Malibu local coastal program (LCP.) The previous owner did not seek or receive Commission approval of the lot reconfiguration. The Commission did not challenge the county's reconfiguration approval.

In October 1990, Landgate bought the sloped northern lot and applied for and received county approval for a single family home on the lot. Mr. and Mrs. Peter Bogart own a life estate in Landgate's lot. Landgate then applied to the Commission for approval. The lot overlooks a canyon, portions of which are being converted into a park. Landgate originally

proposed a 9,036 square foot home requiring 8,500 cubic yards of fill. Landgate later modified its proposal, reducing the home to 7,500 square feet requiring 4,300 cubic yards of fill.

The Commission considered Landgate's modified proposal at its December 13, 1990, hearing. On that date, the Commission's staff first questioned whether Landgate's lot was legal under the Coastal Act. The Commission continued the hearing to study that question. On February 7, 1991, the Commission denied Landgate's application, finding that Landgate's lot constituted impermissible "development" under the Coastal Act because it was created without Commission approval, and the proposal would produce excessive soil, grading, and visual degradation. Later, the Commission denied Landgate's reconsideration request which included a newly modified proposal reducing grading to approximately 500 cubic yards, eliminating visible retaining walls, and reducing the building's height, designed to meet Coastal Act requirements. During this process, the Commission approved two other proposed homes on nearby lots in the sloped area north of the road.

Landgate then sued and, among other relief, petitioned for a writ of mandate. Landgate claimed the Commission used the lot reconfiguration disapproval as leverage to force greater concessions on the project, with a ban on any construction as the ultimate threat. On October 24, 1991, the trial

court issued the writ, vacating the Commission's denial of the project and ordering it to reconsider the application assuming the lot reconfiguration valid.

The Commission scheduled the matter for its November 14, 1991, San Diego meeting. Although Landgate prepared for and traveled to the meeting, the Commission continued the matter until its December meeting without conducting a hearing. On November 21, 1991, the Commission filed a return stating the parties were exploring a settlement involving approval of a smaller project on Landgate's lot. Landgate claimed that, during the continuing negotiations, the Commission told Landgate that, unless Landgate agreed in advance to waive its damage and attorney's fees claims, the Commission likely would appeal the order and conduct no hearing. Landgate refused. At its December 10, 1991, meeting, the Commission announced it would appeal the order and conducted no hearing.

ISSUE

The Commission contends, and Landgate disputes, that the Coastal Act gave it jurisdiction over the lot reconfiguration despite its approval of the county's LUP and failure to challenge the county's approval of the lot reconfiguration.[2/]

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2. Because we reject the Commission's contention and affirm the order, we need not address Landgate's alternative arguments supporting the order that the Commission is estopped

DISCUSSION

Two aspects of "development" are involved here. First, Landgate's proposed project requires building new structures. Second, the lot reconfiguration may constitute "development" if it permits building where it otherwise would not occur. The parties correctly agree that the Coastal Act empowers the Commission to control "development" in the coastal zone, and that Landgate's proposed project, i.e., the home and its related grading, retaining walls, etc., is "development" subject to such control.

Regarding the second type of development, the Commission concedes that the lot reconfiguration caused no increase in the number of lots or homes, but argues it had a negative qualitative impact on the coastal zone by permitting building where it otherwise would not have occurred. Thus, the Commission concludes, it properly could reject the reconfiguration as new "development" inconsistent with the Act.

On this record, we disagree. The Commission's argument contains three serious false assumptions: 1) Landgate chose to build on the sloped northern, with negative environmental

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2. (Continued)

from disapproving the lot reconfiguration and that it abused its discretion in denying Landgate's application. Moreover, because the issue is not before us and the City of Malibu is not a party, we decline Landgate's request to retroactively exempt the project from Malibu's building moratorium. We deny Landgate's sanctions request.

impact, rather than flat southern, without negative environmental impact, side of the road; 2) Landgate, not the Commission, is responsible for and should bear the consequences of the lot reconfiguration; and 3) any development on Landgate's lot is inconsistent with the Coastal Act.

First, Landgate was not involved in the decisions to build the road and reconfigure the lots. Landgate purchased a properly recorded single sloped lot north of the road which was zoned for a single-family home. Landgate cannot build south of the road, in an environmentally less sensitive area, because it owns no property south of the road.

Second, after the subdivision, Landgate's predecessor owned two valid, properly recorded lots, each zoned for, and one already containing, a single-family home. The Commission essentially concedes it would approve in principle construction on the flat area south of the road. However, the Commission approved both the county's Malibu LUP and the road. It was the road, not any decision by Landgate, that rendered the existing lot configuration impractical and created the potential for "development" on what is now Landgate's lot. The previous owner might not have granted the road easements if the result was two lots, each split by the road. Rejecting the lot reconfiguration results in Landgate's being denied any use of its property. The reconfigured lot resulted from action approved by the Commission in which Landgate played no part.

Moreover, we find unpersuasive the Commission's related point that, although its action leaves Landgate with a useless lot, Landgate has not been treated unfairly because it may pursue remedies against the previous owner. Absent the unlikely scenario that the previous owner expressly told Landgate that the Commission expressly approved the lot reconfiguration, we think the Commission's suggested "remedy" for its essentially depriving Landgate of its property without compensation illusory. While the parties presumably knew that the Commission would regulate and had to approve any proposed building on the reconfigured lot, they would not reasonably have assumed that express Commission approval was required for the reconfiguration itself where, as here, it was approved and recorded by the county as part of the road development and LUP approved by the Commission.

Third, the Commission assumes that any building on Landgate's lot is inconsistent with the Coastal Act. The Act is designed to "[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources" (Pub. Res. Code, § 30001.5, subd. (a)), while recognizing that "future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal

zone." (Pub. Res. Code, § 30001, subd. (d).) The Act is designed to assure protection of the zone's scenic and visual qualities, minimize natural landform alteration, and avoid erosion and degradation of parks and recreation areas. (Pub. Res. Code, §§ 30251, 30253, subd. (2), 30240, subd. (b).) However, the Act "is not intended, and shall not be construed as authorizing . . . the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor," and "is not intended to increase or decrease the rights of any owner of property under the Constitution of . . . California of the United States." (Pub. Res. Code, § 30010.) However, the Commission negotiated with Landgate before and after it questioned the lot's legality. Thus, the Commission contemplated some building on the lot. Moreover, the Commission approved proposed homes on nearby lots in the sloped area. While we recognize that each lot has unique topography and impact on surrounding areas, the Commission's approval of two nearby projects in the sloped area rebuts its claim that building on Landgate's lot would appreciably degrade the area. In fact, this record demonstrates that the Commission used the "illegal lot reconfiguration" issue as leverage to extract greater concessions from Landgate.

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ATTORNEY GENERAL
SAN DIEGO

Feb 24 2 30 PM '92

We stress that the Commission retains its ability to regulate and approve any proposed building on the lot. Moreover, we limit our analysis to the peculiar facts before us. We do not address whether under other circumstances the Commission properly could reject a lot reconfiguration. On this record, the trial court properly issued the writ.

DISPOSITION

We affirm the judgment (order issuing writ of mandate). Landgate is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

ORTEGA, J.

We concur:

SPENCER, P. J.

ARANDA, J.*

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* Assigned by the Chairperson of the Judicial Council.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 1 DATE: 12/18/92

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RE: Landgate, Inc.
vs.
California Coastal Commission
2 Civil B063485
Los Angeles NO. BC024391