

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/22/09

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE
3.

JUDGE PRO TEM

B. JAUREGUI, COURT ASSISTANT

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR# 9095

Reporter

9:30 am

BS115661

Plaintiff

BENJAMIN M. REZNIK (X)

Counsel

ELLIA THOMPSON (X)

GH CAPITAL LLC

Defendant

ADRIENNE KHORASANEE (X)

VS

Counsel

TERRY P. K. MACIAS (X)

CITY OF LOS ANGELES ET AL

THOMAS R. FREEMAN (X)

NATURE OF PROCEEDINGS:

HEARING ON PETITION FOR WRIT OF MANDATE;

Matter comes on for trial, is argued and taken under submission.

Later, the court rules as follows:

The Petition for Writ of Mandate is denied.

The Administrative Record (consisting of 32 volumes) is admitted into evidence as Petitioner's Exhibit 1.

Petitioner, the owner of a 16 story hotel near the intersection of Sunset Boulevard and the 405 freeway in the City of Los Angeles, challenges a final administrative decision by the West Los Angeles Area Planning Commission dated May 14, 2008, denying petitioner's administrative appeal from an Order to Comply issued by the Department of Building & Safety of the City of Los Angeles dated December 6, 2006, ordering petitioner to demolish all of the lighting installed under three electrical permits issued to petitioner by the Department of Building & Safety because they were issued in violation of zoning requirements pertaining to petitioner's property.

An administrative record consisting of 32 volumes was

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lodged by petitioner on June 15, 2009, and is received in evidence.

Pursuant to said electrical permits petitioner replaced an existing exterior lighting system for the hotel in 2006. After the new lighting system was installed and put into operation, complaints from surrounding homeowners caused the Zoning Administrator to request the Department of Building & Safety to further investigate its issuance of the electrical permits. The Department did so and effectively revoked the permits after the permitted work was completed, on the ground that the permits were erroneously issued because the lighting system, although it apparently satisfied building & safety requirements, violated zoning requirements that limited the exterior lighting that could be used to illuminate the hotel at night.

The hotel operates as a nonconforming use because the area in which it was built was down-zoned after the hotel was built. Restaurants and bars open to the public are prohibited in hotels located within the zone.

Petitioner frames the central issue presented by the case in its opening brief (7:27-28) as follows: "This case involves a very narrow question of law. Does the hotel's exterior lighting violate any zoning laws or conditions of operation previously imposed?" The answer to that question is yes. The hotel's exterior

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lighting violates LAMC 12.24M because plans showing the exterior lighting were not submitted to and approved by the Zoning Administrator before the new lighting system was installed.

A zoning variance was granted to petitioner in 2005, authorizing petitioner to open the restaruant on the 16th floor of the hotel to the public but that variance did not approve or even mention a new exterior lighting system. In fact Condition No. 3 to the variance reserved to the Zoning Administrator the authority, "to impose additional corrective conditions, if, in the Administrator's opinion, such conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property."

Petitioner argues that the lighting system was approved by the electrical permits issued to petitioner by the Department of Building & Safety. That contention is also without merit. The Department of Building & Safety issues electrical permits on a ministerial basis if the electrical plans show that the electrical installation will comply with building and safety laws. The Department of Building & Safety has no jurisdiction over zoning regulations and no authority to modify zoning variances granted by the Department of Planning.

Petitioner also contends that its lighting system to illuminate the building is protected by the free

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speech provisions of the federal and state consti-
tutions. That contention also has no merit, the
lights installed by petitioner to illuminate its hotel
send no message, in Morse code or otherwise, and its
first amendment rights, if any, are not implicated by
the challenged administrative decision.

The administrative decision is supported by substantial
evidence contained in the administrative record. Such
evidence includes evidence that, in addition to the
sixteenth floor horizontal lighting, the new vertical
lighting installed on the second floor of the hotel
that shines upward and illuminates the hotel building
itself, is more intense and is multicolored, and
therefore overburdens the grandfathered nonconforming
use. The vertical lighting is prohibited to the
extent, and only to the extent, that it exceeds, in
intensity, color, or otherwise, the prior vertical
lighting that it replaced.

Other contentions made by petitioner are also without
merit.

The Administrative Record lodged in this action is
ordered forthwith returned to the party who lodged it,
to be preserved without alteration until the Judgment
herein is final, and to be forwarded to the Court of
Appeal in the event of an appeal.

Counsel for respondent is to submit a proposed
judgment to this department within ten days with a

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proof of service showing that copies have been served upon all other counsel by hand delivery or facsimile. The court will hold it for ten days before signing and filing it.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 6/22/09 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: June 22, 2009

John A. Clarke, Executive Officer/Clerk

By: _____

Connie L. Hudson
Connie L. Hudson

Benjamin M. Reznik
Ellia Thompson
1900 Avenue of the Stars, 7th Floor

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Los Angeles, CA 90067-4308

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