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More Cities May Settle Takings Litigation

If the recent experience of other states is any guide, the U.S. Supreme Court's decision in the recent *First English* case is likely to encourage local governments in California to settle strong inverse condemnation claims.

In *First English*, the high court established that landowners may sue governmental agencies for damages if they believe their property has been "taken" by restrictive land-use regulations. Previously, California courts had ruled that landowners could sue to overturn the regulation, but could not seek damages.

But over the last six years, state supreme courts in several other states have anticipated the *First English* ruling and granted landowners the right to sue for damages in those states. And a *California Planning & Development Report* follow-up analysis of seven such cases — plus a similar one from federal courts in California — found the following:

- In five of the eight cases, the governmental agency agreed to a financial settlement with the landowner after higher courts ruled that a trial on damages was proper.
- In two of those five settlements, the governmental agency settled the case by purchasing the disputed land from the property owner.
- In two other cases, the governmental agency did not settle, and was ordered by a court to pay damages to the landowner. At least one of those cases involved damages for a "temporary taking," a concept subsequently sanctioned in *First English*.
- In one case, the city did not settle, but the landowner subsequently *Continued from page 3*

Growth Curbs Prepared In Orange County, S.D.

Even though this November's elections still lie ahead, important growth-control measures are being lined up for the June ballot next year — particularly in Orange County and San Diego.

In September, slow-growthers in Orange County began circulating petitions for the sweeping, much-publicized countywide growth control initiative. And in early October, a petition drive began to place a growth control measure on the ballot in San Diego — despite the fact that the City Council imposed a residential building cap earlier this year.

Like several recent growth initiatives, the Orange County measure would be tied to traffic congestion. Development that would increase highway and intersection congestion beyond certain levels would be prohibited unless new roads are also built to relieve that congestion. Orange County Tomorrow, the citizen group sponsoring the initiative, is hoping to place it simultaneously on the ballot in the county and in some 25 cities in the county.

The Orange County drive has surprised many people who still regard the county as the right-wing bedrock of property rights. In fact, Orange County Tomorrow is an unusual combination of old-line Republicans and newer Democratic residents of the county. For example, the two leaders are Larry Agran, the liberal young mayor *Continued on page 6*

Irwindale Must Delay Raiders Bond Vote

Saddled with legal impediments and other controversies, the tiny city of Irwindale may be fighting an uphill battle in its efforts to bring the Raiders football team to a former rock quarry inside its boundaries.

On Oct. 5, Los Angeles Superior Court Judge Ricardo Torres ruled that the city must postpone a November vote on a $10 million general obligation bond issue because an environmental impact report must be prepared before any action on the stadium is taken. The environmental lawsuit was filed by Los Angeles City Councilman Ernani Bernardi.

Clarifying a ruling he had made on Sept. 28, Torres also said Irwindale cannot negotiate a final agreement with the Raiders, re-sell $90 million in taxable revenue bonds already sold to a Minneapolis bank, or negotiate with Los Angeles County for permission to use county-leased land for parking. In striking a preliminary deal with the Raiders, Irwindale had promised to secure land for parking by Nov. 4.

Furthermore, Irwindale still faces a struggle in securing permission to the county-leased land from the federal government, which owns it, and city officials have come under a cloud from allegations that they profit personally from this and other city deals. The Raiders have been sued by their one-time litigation partner, the Coliseum Commission, for breach of contract. *Continued on page 6*

Development Plans Defeated in Azusa, Del Mar

Development proposals were defeated in two Southern California cities in late September and early October, but a proposal for a trash-burning plant passed narrowly in the San Diego County community of San Marcos.

At the same time, Sacramento Mayor Anne Rudin, who has sometimes been at odds with development- and sports-oriented advocates in the city, was forced into a runoff with lawyer Brian Van Camp.

In Del Mar (San Diego County), a proposal to construct a hotel/commercial complex downtown was defeated by 15 votes on Sept. 22. The vote was required under another ballot measure passed by Del Mar residents last year.

Developer James Watkins had proposed constructing 125 hotel rooms, 24 time-share units, a restaurant, conference rooms, and a complex of shops. He also promised to provide underground parking, a small park, and $2 million over the next 20 years for a public library.

Under Measure B, approved by Del Mar voters in April 1986, any downtown commercial project on a parcel of 25,000 square feet or more must go to a public vote. On Sept. 22, Del Mar voters turned down Watkins' project 1,114 to 1,099. A recount did not change the voting results.

Having lost the vote, Watkins said he plants to build condominiums on part of the site zoned for residential use and attempt to sell the commercial portion.

This was the second election held under Measure B. Another downtown commercial project was approved by the voters in February.

On Oct. 6, voters in Azusa (San Gabriel Valley) turned down landowner Johnny Johnson's request to rezone a golf course for residential, commercial, and industrial use. Johnson must keep the Azusa Greens golf course open, to serve as a buffer, as long as he also operates a rock mining operation on adjacent land.

However, Johnson said he plans to shut down the rock operation within the next few years and, therefore, would like to redevelop the golf course site. He took the "initiative" in placing Measure A on the ballot, but it was defeated 54-46%. Also defeated was Measure B, which would have approved a $26 million bond issue to allow the city to buy the golf course. It lost 80-20%.

Johnson said he plans to close the golf course down when the rock quarry is shut down, but is unsure of what development plans he will pursue.

In San Marcos, residents voted 52-48% on Sept. 15 to approve Measure A, which will permit construction of a trash-burning plant inside the city limits. Despite a rapidly growing landfill crisis, trash-burning proposals have not fared well in Southern California because environmental opponents fear such plants increase the risk of cancer. The City of San Diego's SANDER proposal went down the tubes earlier this year.

The San Marcos vote was expensive for a special election in a small city, costing both sides close to $100,000. Opponents vowed to continue the battle in court.

'Adult-Only' Mobile Homes Upheld by High Court

In a significant departure from the days of Chief Justice Rose Bird, the California Supreme Court has upheld an "adults only" rule at a Buellton mobile home park.

Noting the court was "not unmindful of the difficulties faced by many citizens of this state in finding adequate affordable housing," Justice Stanley Mosk's opinion ruled that "the solution lies with the legislature, not with the courts."

The case was a sharp contrast to the court's decisions prior to the departure of Bird and two liberal colleagues after an election defeat last year. In recent years, the court had relied on a broad reading of the state's civil rights laws to ban "adults only" provisions in apartment buildings and condominium projects.

The case of *Schmidt v. Superior Court* involved an adult woman who sought to live in the Ranch Club Mobile Estates in Buellton with her 18-year-old sister and her nine-year-old daughter. They were denied because all residents of the park had to be at least 25 years old. A Santa Barbara judge ruled for the mobile home park, but an appellate court in Ventura reversed, finding that the policy was in violation of state civil rights laws prohibiting housing and age discrimination.

Writing for a majority of four in a unanimous 7-0 vote (three others concurred separately), Mosk chose not to place minors into the same judicial category as racial and ethnic minorities, at least so far as discrimination is concerned. He said minors are "not stigmatized" and that they are "if anything, highly valued" under the law. By not placing minors in the same class as other minority groups, the court was able to apply a less rigorous standard to its review of the relevant laws.

The case was argued twice before the Supreme Court, once before Bird and two other justices left and once afterward.

The full text of Schmidt v. Superior Court, Docket No. L.A. 32110, appeared in the Los Angeles Daily Journal Daily Appellate Report on Oct. 2 on page 7182.

BRIEFS

San Francisco supervisors would have final say over which downtown office buildings would be built, under a proposal introduced by Supervisor Carol Ruth Silver.

At present, office space — limited to 475,000 square feet per year — is allocated by the Board of Permit Appeals after a lengthy review and recommendation process conducted by the Planning Department. Last year, no projects were approved; this year, Planning Director Dean Macris is suggesting that three be approved. (*CP&DR*, September 1987.)

Silver argues that the Board of Permit Appeals was never intended to make major land-use decisions, which ought to be reserved for the Board of Supervisors (the City Council), as it is in other jurisdictions. Opponents argue that the supervisors, many of whom rely on developers for contributions, will be unduly influenced by politics.

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failed to prove in court that a taking had occurred, so the city paid no damages.

The survey is by no means comprehensive, and the outcome of these eight cases does not necessarily mean that California localities will roll over and settle every takings lawsuit filed against them. The eight cases mentioned above are probably not typical of future takings litigation. Rather, they are cases frequently mentioned in legal literature discussing takings law.

But the results of the eight cases do suggest that, when confronted with a strong claim that a taking has occurred, government agencies are likely to pursue a settlement — and, frequently, try to buy the land in question from the property owner.

Under the Fifth Amendment of the U.S. Constitution, governmental entities are prohibited from "taking" private property without "just compensation." Traditionally this concept has been applied in eminent domain proceedings. In recent years, however, property rights lawyers have tried to establish the principal that land-use regulations can sometimes be so restrictive that they constitute a taking, and, therefore, the property owners are entitled to just compensation.

The California Supreme Court rejected this reasoning in 1979, ruling the legal remedy for an overly restrictive land-use regulation is invalidation of that regulation, not monetary compensation. (*Agins v. City of Tiburon*, 24 Cal.3d 266 (1979)). In June, however, the U.S. Supreme Court overturned the *Agins* rule and decided that even in California, a property owner who has been robbed of all use of his land by regulation — even temporarily — is entitled to damages. (*First English Evangelical Church v. County of Los Angeles*, No. 85-1199. For a comprehensive report on the ruling, see *CP&DR Special Report: Supreme Court Rulings*, July 1987.)

Such a ruling by the U.S. Supreme Court has appeared likely since 1981, when an influential dissent by Justice William Brennan in another takings case, *San Diego Gas & Electric v. City of San Diego*, suggested that a majority of the court would overturn *Agins*

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Review of Takings Cases From Other States

Here are summaries of the eight lower court cases analyzed by *California Planning & Development Report*:

Zinn v. State

In this case, the courts actually ruled that a temporary taking had occurred, and a governmental entity paid damages.

Rose Zinn owned all the land surrounding a 14-acre lake in Wisconsin. But under Wisconsin law, the state owns all land below the ordinary high-water mark. The state Department of Natural Resources ruled that the high-water mark included 200 acres of dry land Zinn believed she owned. The net effect was to allow a neighboring landowner access to the lake that he would not otherwise have had.

The state rescinded its decision after about 20 months. But the Wisconsin Supreme Court ruled that a temporary taking had occurred. (334 N.W. 2d 67 (Wisc. 1983)). Subsequently, a trial court ordered the state to pay Zinn about $32,000 — the estimated loss of rental of the property.

The state appealed the amount, but, in an unpublished opinion, an intermediate appellate court upheld the amount. With interest, the state paid close to $40,000.

Contacts: Thomas O'Meara Jr., attorney for landowner, (414) 334-2331.
Robert McConnell, attorney for state, (608) 266-3552.

Burrows v. City of Keene

In this 1981 case from New Hampshire, as in many other recent cases, the city settled the dispute by buying the property in question.

Landowners John Burrows and George Whitham sued the City of Keene after their plans for a subdivision were denied. Subsequently, their land was placed into rural and conservation zoning districts.

Explicitly rejecting California's *Agins* rule, the New Hampshire Supreme Court relied instead on Justice William Brennan's famous dissent in *San Diego Gas & Electric v. City of San Diego*, which had been issued only three months before. The state court found that the rezoning had, in fact, constituted a taking. (*Burrows v. City of Keene*, 432 A.2d 15 (New Hampshire 1981)).

Subsequently, the city settled the case by purchasing the land. Officials in Keene could not remember the exact amount, but Burrows and Whitham had paid $45,000 for the land in 1973. Assistant City Manager Alfred Merrifield said no other landowners in the conservation zone ever complained about the designation. The reason, he said, was simple: Most of the other land was undevelopable, and the owners were just happy to get a lowering of their assessment, which was one of the features of the conservation district.

Contact: Alfred Merrifield, Assistant City Manager, (603) 352-5440.

Sheerr v. Township of Evesham

This case from New Jersey also helped establish the temporary taking as a valid legal concept.

The regulatory taking was established in New Jersey in 1976. (*6th Camden Corp. v. Evesham Tp.*, 420 F.Supp 709 (D.N.J. 1976).) In this case, wooded property in private ownership was zoned for public park and recreational uses and, for a time, placed into an environmental protection zone which permitted no use at all.

A Superior Court judge in Burlington County, N.J., ruled that a taking had occurred and, for damages purposes, the taking would continue so long as either of the two restrictive zoning designations remained in place. (*Sheerr v. Township of Evesham*, 445 A.2d 46 (N.J. 1982).) Subsequently, according to Town Attorney Bennett Bozarth, the township settled by paying the plaintiff the cost of the plaintiff's option on the land and rezoning the land, part commercial and part residential.

Contact: Bennett Bozarth, Evesham Township Attorney, (609) 764-1900.

Suess Builders Co. v. City of Beaverton

In this case, the Oregon Supreme Court established that a regulatory taking could be compensated with damages. But the property owner subsequently lost the trial for damages.

This was a case in which the property owners claimed the city was using zoning to drive down the price of land it hoped to acquire. In the '60s, the city had rejected proposals for residential development. In 1972, the city designated two-thirds of the property as the site of a future park. The landowners alleged that the local park district had offered to purchase the land for below-market value but would not take it via eminent domain.

The Oregon Supreme Court ruled that the property owners were entitled to a trial on the inverse condemnation claim. (*Suess Builders Co. v. City of Beaverton*, 656 P.2d. 306 (Oregon 1982).) But according to Terry Morgan, who represented the landowners but now practices law in Texas, the property owners failed to prove a taking back in the trial court.

Contact: Terry Morgan, (512) 477-7991.

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if the right case could be found. Building on that dissent and on state constitutions, state supreme courts around the country began to establish the principles that the high court eventually sanctioned in *First English*.

Although court opinions and legal articles have often referred to the legal importance of eight cases analyzed by *CP&DR*, few have followed up on the actual cases to discover what happened after the momentous court ruling. Given the eventual outcome of the cases, two of the eight are of particular interest to Californians.

In a case from Arizona, the City of Scottsdale was confronted with the same situation that many California cities are likely to find themselves in during the months and years ahead. Case law in Arizona was the same as in California, with an appellate court having issued an opinion similar to *Agins*. When a property owner sued for damages on a zoning regulation, however, the Arizona Supreme Court overturned the previous ruling, much as the U.S. Supreme Court overruled *Agins*. (*Corrigan v. City of Scottsdale*, 720 P.2d 513 (Ariz. 1986))

According to William Farrell, who until recently served as Scottsdale's city attorney, the city is working on both revising its ordinance and settling the case.

The other case of particular interest is actually a case from California in which a federal appellate court questioned the *Agins* rule. In that case, a property owner in Morgan Hill sued the city and the Santa Clara Valley Water District, claiming that the water district's demand for a large easement constituted a taking. In federal court, the trial judge ruled in favor of the government agencies. But the Ninth U.S. Circuit Court of Appeals, noting Brennan's dissent, sent the case back for trial, suggesting that a taking might have occurred in the case. (*Martino v. Santa Clara Valley Water District*, 703 F.2d 1141 (1983))

Early this year, the case was settled when the city purchased the land from the Martinos (at a cost of about $750,000) and sold part of it to the water district.

Review of Takings Cases From Other States

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Corrigan v. City of Scottsdale

This is a current case of considerable interest to Californians. The City of Scottsdale had established a Hillside Conservation Area, which prohibited development in certain hillsides areas but allowed the transfer of development rights to the nearby Hillside Development Area, on which severe development controls also were placed.

Property owner Joyce Corrigan sued, claiming a taking and seeking damages. The Arizona Court of Appeals ruled that a taking had, indeed, occurred, but also decided that Corrigan was not entitled to damages. The appellate court's ruling was based on Arizona's version of California's *Agins* ruling, which was another appellate decision, *Davis v. Pima County*, 590 P.2d 459 (App.1978).

However, the Arizona Supreme Court overturned the *Davis*, concluding that Corrigan was entitled to damages. The court relied heavily not only on Brennan's dissent in *San Diego Gas & Electric*, but also many of the other state court decisions discussed in this article. The high court then sent the case back to the trial level to determine the amount of damages. (*Corrigan v. City of Scottsdale*, 720 P.2d 513 (Ariz. 1986))

According to William Farrell, who until recently served as Scottsdale's city attorney, the city is negotiating a settlement with Corrigan. In addition, the city is revamping its hillside ordinances, so that in addition to the transferrable rights, some amount of development will be allowed in the Hillside Conservation Area.

Contact: William Farrell, former Scottsdale city attorney, (602) 994-2405.

Rippley v. Lincoln

This is another example of a case where a landowner won damages for a temporary taking.

The Rippley family sued the City of Lincoln after the city had rezoned a 20-acre parcel of land from residential to "public use." Building on Justice Brennan's dissent, the North Dakota Supreme Court concluded that a taking had indeed occurred, and that damages should be paid, even if the taking was only a "temporary" one. (*Rippley v. Lincoln*, 330 N.W.2d 505 (N.D. 1983))

Robert Bolinske, attorney for the Rippleys, recalled that a settlement was reached whereby the zoning on the land was changed and the city paid temporary damages in the vicinity of $50,000-60,000. The period of time covered by the temporary taking was four-plus years.

Contact: Fintan Dooley, attorney for City of Lincoln, (701) 258-7531.
Robert Bolinske, attorney for landowners, (701) 223-0711

Ehrlich v. City of Austin

In this case, an appellate court ordered the city to pay a six-figure damages sum after the rezoning of a parcel from industrial to residential.

The principle of awarding damages for a regulatory taking was established early in Texas in *Austin v. Teague*, 570 S.W.2d 389 (1978). Several years later, the city of Austin, responding to neighborhood pressure, rezoning an eight-acre parcel of land from industrial to single-family residential.

The property was located in a mixed neighborhood, with both industrial and low-income residential uses surrounding it. The landowner claimed the rezoning had robbed him of all economic value of the land because, once he put in infrastructure, market conditions would require him to sell the single-family lots at a loss.

In an unpublished opinion, the Texas Supreme Court agreed, and ordered the city to pay $300,000 in damages plus attorneys fees, which it subsequently did. *Ehrlich v. City of Austin*, November 1985.

Martino v. Santa Clara Valley Water District

This is probably the most relevant case to the future course of takings cases in California. In this case, the Ninth U.S. Circuit Court of Appeals questioned the *Agins* rule and anticipated the *First English* ruling. Eventually, however, the case was settled when the City of Morgan Hill purchased the property in question and subsequently sold a share of it to the Santa Clara Valley Water District.

The Martino family owned several acres of land in Morgan Hill. They sued on takings grounds when the water district demanded a substantial portion of their property before it would consent to construction.

The Ninth U.S. Circuit Court of Appeals in San Francisco called for a new trial, and, in doing so, questioned the California Supreme Court's reasoning in *Agins*. The Ninth Circuit said *Agins* had been "substantially undercut" by Brennan's dissent in the San Diego case. (*Martino v. Santa Clara Valley Water District*, 703 F.2d 1141 (1983).)

Early this year, however, a settlement was reached. The City of Morgan Hill paid the Martinos in the neighborhood of $750,000 for the land, and then sold part of that land to the water district.

When Does a Taking Occur? No One Knows for Sure

Although the *First English* ruling last June established that landowners are entitled to damages in a "regulatory taking" case, the U.S. Supreme Court did not provide much guidance about just how restrictive a land-use regulation must be in order to constitute a taking.

In his opinion in *First English*, Chief Justice William Rehnquist did state that a regulatory taking occurs when a property owner is robbed of "all use" of his land. To be sure, this means that a simple downzoning of property — from 10 units per acre to eight, for example — is not a taking. But just how much economic value must a property owner lose in a downzoning before a taking has occurred?

The Supreme Court provided a little guidance this term with its decision in another taking case, *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 107 S.Ct. 1232. In this case, the court ruled that a Pennsylvania law requiring that owners of coal reserves leave 50% of the coal in the ground beneath certain structures to prevent subsidence. But this is far from a clear-cut guideline. The overall percentage of coal left in the ground was low; the legal thinking was somewhat complicated; and the ruling came on a 5-4 vote.

Some discussion of a regulatory taking came in a somewhat different context in *Nollan v. Coastal Commission*, 86-133, decided less than three weeks later. The high court ruled that a taking can occur if a condition attached to a development permit is not directly related to the problems created by the development.

Property rights lawyers hope to build on *Nollan* this term in the U.S. Supreme Court appeal of *Pennell v. City of San Jose*, 42 Cal.3d 365, a rent control case. San Jose's rent control law allows a hearing officer to confer lower rent increases on low-income residents living in private quarters. Property lawyers hope to persuade the Supreme Court that the ordinance is a taking under *Nollan* because a tenant's inability to pay a rent increase is not closely related to the landlord's right to that increase.

But the definition of what constitutes a taking under *First English* will apparently be left up to the state courts — at least for now. At the same time that the high court was deciding *First English* and *Nollan*, the justices also chose not to review two lower court rulings dealing with that question.

On June 1, the court denied "certiorari" in *Pace Resources Inc. v. Shrewsbury Township*, a federal case from Pennsylvania in which the property owner alleged a taking because his land was rezoned from industrial to agricultural use. The Third U.S. Circuit Court of Appeals had ruled that since agricultural land had some value, no taking had occurred. *Pace Resources v. Shrewsbury Township*, 808 F.2d 1023.

On June 23, the court dismissed an appeal from Colorado involving protection of views in *Harsh Investment Corp. v. City and County of Denver*, No. 86-1528. In that case, a developer who had sought to build a 21-story office building claimed his property had been taken by an amendment to the city's Mountain View Ordinance blocking construction of such a tall building. The Colorado Supreme Court had ruled that, although the value of the developer's property was substantially diminished, it was not a taking. *Landmark Land Co. v. City and County of Denver*, 728 P.2d 1218.

Virginia County Swaps Land for Construction of New Buildings

Fairfax County, Virginia, has struck an innovative deal with private developers to pay for new county government center — but the deal has come under heated criticism from some local citizens who believe a simple bond issue would suffice.

Two Washington-area developers, Charles E. Smith Cos. and the Artery Organization, will construct the $80 million government center for the fast-growing county in suburban Washington, D.C. In return, the county is giving the developers $24 million in cash, $16 million other considerations, and 116 acres of county-owned land, zoned for commercial and residential development, located adjacent to the site for the government center and valued at about $40 million.

Deputy County Executive Patrick McDonald said the Smith/Artery deal was struck because the county Board of Supervisors wanted to avoid a general obligation bond issue, which would have required a referendum. But the deal has been called a "giveaway" by civic groups in Fairfax County, who say the adjacent land is likely to skyrocket in value after the government center is open.

"To give it away at this point makes no sense," said Maya Hubert, an aide to Audrey Moore, the only supervisor who voted against the deal.

Other private developers have also criticized the deal, saying the county bent its planning regulations to accommodate the Smith/Artery private development because the fate of its own government buildings hung in the balance.

Planning for the new government center began in 1979, when the city paid $4 million for the 216-acre site. In 1985, the county asked for proposals on the site, and late last year the Smith/Artery partnership was selected as preferred developer. The Board of Supervisors approved the deal with Smith/Artery in August.

Particularly in California, local governments seeking private development on surplus public land have used lease deals so they could share the long-term profits. But McDonald said Fairfax County did not consider leasing the balance of the land to the private developers, rather than conveying title as part of the deal.

"The deal from Smith/Artery was so simple and so cost effective, we felt no need to go any further," he said.

The Smith/Artery partnership will use its 116 acres to construct more than $300 million in private development, including 1.3 million square feet of office space, a 250-room hotel, and 600 housing units. Under the terms of the deal, 66 acres containing the office space and the hotel will be returned to the county in the year 2062.

Other local developers claimed the county favored Smith/Artery by allowing higher densities on the private project than the county's general plan allows. They say the densities conform with the plan only when considered in combination with the government center itself.

Contacts: Patrick McDonald, deputy CAO, (703) 691-3491.
Maya Hubert, aide to Supervisor Audrey Moore, (703) 425-9300.

BRIEFS

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George Deukmejian can build a study above his garage, thanks to the Sacramento County Board of Supervisors.

The governor lives in a 3,200-square-foot home in suburban Sacramento, but he hasn't had a suitable study, according to the Governor's Residence Foundation. That's why the governor was requested the 572-square-foot addition.

According to county planners, the original zoning code in the Lake Wilhaggin area did not permit two-story structures. But on Sept. 9, however, supervisors granted permission for Deukmejian to build the addition.

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of Irvine, and Tom Rogers, a San Juan Capistrano rancher who is a former real estate developer and county Republican chairman.

The initiative's backers had several meetings with the development community in an attempt to mute the opposition. While developers say the current version is more workable than the initial proposal, they still are expected to oppose it.

Underlying the Orange County initiative is a long-running dispute about who should pay for the cost of new highways in the county. The Orange County Building Industry Association has repeatedly pointed out that while the county has the same population as San Diego County (2.2 million), it has far fewer freeway miles (165 as opposed to 265). Three new highways are planned for the southern part of the county, but gathering political consensus for the funding — and, indeed, for the highways themselves — is a problem.

The BIA claims that developers are committed to paying for almost half of the cost of these new highways. In June 1984, voters rejected Proposition A, a measure that would have increased the county sales tax by one cent to pay for new freeways. Subsequently, a citizen group in Irvine sought to place a measure on the ballot giving voters there a say in placement and funding of new highways going through the city. (The Court of Appeal in Los Angeles ruled that because the freeways were a matter of statewide concern, Irvine citizens did not have the right to vote; the case is now before the state Supreme Court. *Committee of Seven Thousand v. Superior Court*, 176 Cal.App.3d 275.) Most recently, Gov. George Deukmejian signed a bill that would allow Orange County to charge tolls on the new highways as a means of paying for them.

To the citizen advocates such as Rogers, the question is not so much whether the highways should be built, but what purpose they would serve. They claim that the new highways would not clean out existing congestion, but, rather, would facilitate the development of new areas at the public's expense.

Meanwhile, slow-growthers in San Diego have begun circulating petitions on an initiative that would restrict housing construction beyond the levels permitted by the city council's interim development ordinance.

In June and July, the council decided to limit housing construction between April 1987 and April 1988 to 8,000 units. (*CP&DR*, July 1987.) The initiative sponsored by Citizens for Limited Growth, slated for the June 1988 ballot, would cut that figure to 6,000-8,000 next year, 5,000-7,000 the following year, and then 4,000-6,000 each year until 2010. The restrictions would be altered or removed if the city can meet certain standards related to air quality, sewage treatment, solid waste disposal, and traffic.

Citizens for Limited Growth is not the same group that sponsored San Diego's 1985 "Managed Growth Initiative," Proposition A. That group, San Diegans for Managed Growth, has expressed concern about placing a measure on the ballot that contains numerical caps on development. San Diegans for Managed Growth is, however, considering sponsoring an initiative for next June that would protect environmentally sensitive lands.

Slow-growth advocates in San Diego County are also challenging a sales-tax proposal to pay for new roads. A coalition of slow-growthers from northern San Diego County are actively opposing a November ballot measure that would increase sales tax by a half-cent to pay for transportation improvements.

Contacts: Larry Agran, Irvine mayor, (714) 660-3600.
Tom Rogers, Orange County Tomorrow, (714) 364-2446.
John Erskine, Orange County BIA, (714) 547-3042.

Irwindale Faces Uphill Battle in Raiders Deal

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The small but tax-rich city in the San Gabriel Valley stunned the nation in late August by reaching an agreement with the Raiders, who have grown dissatisfied with the Los Angeles Memorial Coliseum since moving there from Oakland in 1982. The city agreed to provide $115 million in financing for the stadium, which would be owned by the Raiders, and even gave the team $10 million in up-front cash to secure the deal. (*CP&DR*, August & September 1987.)

But the deal raised the ire of local officials in Los Angeles, who felt the team had been "stolen," and of good-government advocates, who feared that the $10 million cash payment may be a misuse of public funds.

To make matters worse for the city, in September the *Los Angeles Times* reported that top city officials have profited handsomely from Irwindale's financial dealings in the past, though a city spokesman insisted nothing illegal has transpired.

In particular, the *Times* reported that:

- The city's redevelopment consultant, Fred Lyte, stands to earn $2 million in commissions on the Raider bonds, though he may have to forfeit the money because he advocated city council approval of the deal. Lyte has earned more than $4 million in fees from the city since 1978.
- Charles Martin, Irwindale's city manager, city attorney, acting city clerk, and redevelopment agency chief, has made more than $900,000, in addition to his $113,000-a-year salary, as project coordinator on bond issues since 1979.
- Abraham DeDios, who makes $42,000 a year as the city's financial adviser, has made more than $1 million in consulting fees on bond projects since 1979. He is listed as a vice president of a construction company, owned by his brother, which has received millions of dollars in contracts from the city. In addition, another brother works for the Miller & Schroeder underwriting firm, which has made more than $7 million from Irwindale bond issues. (That brother, however, has not been involved in the bond issues.)

City officials did not deny all these allegations. But they did say there was nothing illegal about the consulting fees.

In addition to those revelations, a number of other factors have clouded or affected the Raiders' prospects of moving to Irwindale. Among them:

- The Army Corps of Engineers said Irwindale could not use eminent domain to acquire the county's lease on a parcel of land, owned by the Corps, which is needed for stadium parking. But Richard Dixon, chief administrative officer for Los Angeles County, said a mutual agreement might be worked out for the land — if the county could share in the revenue.
- The Coliseum Commission sued the Raiders for $57 million, claiming a breach of their 1984 contract, which called for the Raiders to build luxury boxes in the stadium. The commission asked the courts to place Irwindale's $10 million payment, and the Coliseum's initial $7 million advance to the Raiders before the move to L.A., into a trust fund.
- James Iverson, executive vice president of Miller & Schroeder, acknowledged at a state legislative hearing that if stadium proceeds are insufficient to pay back the bonds, the money will have to come from Irwindale tax proceeds — not from the Raiders' coffers.