



Published August 5th, 2020

Lawsuit win comes with hefty price tag for taxpayers

By Pippa Fisher

The California Supreme Court denied a Petition for Review, brought by a group of neighbors who alleged the city had used biased procedures including an improperly held closed session meeting in violation of the Brown Act, in reaching a land use decision in 2016 in its approval of a neighbor's cabana.

Defending the lawsuit cost the city \$936,319.08.

A city statement July 23 reads, "The Court of Appeal affirmed the trial court's findings that the city council's closed sessions were justified and that the decision was based on a fair, thorough process."

The statement also says, "The Court of Appeal found that the city committed a minor technical violation of the Brown Act but that no prejudice resulted from it and it had no impact on the city council's decision. In its order, the Court found there was no evidence that anyone at the City of Lafayette - councilmembers, staff, or the city attorney - was biased."

"We are very pleased that the Supreme Court has denied the Petition for Review and that our trial court victory stands," said Mayor Mike Anderson, adding, "The unfortunate outcome, frankly, is that the legal fees to defend the city against this lawsuit have cost Lafayette taxpayers so much."

The litigation stems from the application for a now-completed tennis cabana, which went before the planning commission at four meetings between December 2015 and May 2016. Following the planning commission approval the neighbors appealed to the city council, which considered it at four further meetings.

While approval was pending, the applicants' attorney threatened to sue the city if denied. The city attorney notified the council of the litigation threat orally during a July 25, 2016, closed session meeting. Record of this litigation threat was not made public, although notes were kept and could be viewed at the planning department if the public knew to ask for them. The court determined, "This availability is illusory if an interested person would not know the question to ask."

Lafayette resident and plaintiff Lori Fowler says this was not a 'minor technical violation' of the Brown Act. "The city is attempting to whitewash this ruling," she says.

Plaintiff and an attorney in the case Scott Sommer says that the decision states the city did not meet its duty to make the litigation statement available to the public and "violated the Brown Act."

"The court specifically ruled, 'the statutory scheme does not allow an agency to thwart its duty of public disclosure in this manner,'" says Sommer, noting that the city has changed how closed sessions to discuss pending litigation are disclosed since the decision.

"Thanks to this ruling, the city can no longer try to conceal important information from the public by hiding it in closed sessions," says Fowler. She says she feels vindicated explaining that because "even though I can't change the damage that was done to our plaintiff group, others won't be subject to the unfair process that we encountered."

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