

August 7, 1985

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

Security National Limited, Petitioner, v. City of San Diego, et al., Respondent, Writ of Mandamus, Superior Court No. 541879

This lawsuit was brought against the City, the Planning Director and the Building Inspection Department Director by the developer, Security National Limited, Inc., of a proposed 112 unit multi-family residential project in Southeast San Diego. The proposed project is located at Logan Avenue east of 47th Street. The project is known as "Greentree Plaza" and will be hereafter referred to by that name.

Petitioner submitted its building plans to the Building Inspection Department for a preliminary plan check in August, 1984. At about that same time, it received a permit from the Housing Commission to build approximately 16 units in excess of that allowed by the zoning ordinance for that area. The permit

was issued under the Density Bonus Permit Program set forth in San Diego Municipal Code Sections 101.0307, et seq.

Before Petitioner completed its application for the building permit, the City adopted what is known as the "Emergency Ordinance," which established design review standards for Southeast San Diego for a period of ninety (90) days. That ordinance was later extended by an Ordinance No. 0-16370 and was eventually replaced by an Interim Design Review Ordinance adopted on March 18, 1985.

Meanwhile, on March 1, 1985, the Petitioner obtained a Land Development Permit from the Engineering and Development Department. The permit entitled Petitioner to make certain public improvements and grade the Greentree Plaza property. Petitioner began making those public improvements and grading the property shortly after obtaining the permit.

During the months of January through March the Petitioner worked with City planners in an apparent good faith attempt to comply with the design regulations established in the Emergency Ordinance. At some point, however, Petitioner decided that it would no longer try to comply with the Emergency Ordinance and instead attempted to obtain an exemption from the ordinance's requirements from the City Council.

The application for exemption was first scheduled for a public hearing before the Council on March 26, 1985, and was continued to April 9, 1985, at the request of the Petitioner. After taking testimony on April 9, 1985, the Council adopted Resolution R-262892 denying the Petitioner's request for exemption from the ordinance. The Council found that the proposed Greentree Plaza project was inconsistent with the objectives of Project First Class, which necessitated the implementation of the Emergency Ordinance.

On May 22, 1985, Petitioner filed a Petition for Writ of Mandate under California Code of Civil Procedure, Section 1085, requesting the court first to issue a writ requiring the City to waive the requirements of the Emergency and Interim Ordinances, and, second, to require the City to issue all necessary permits, including a building permit, to allow the Greentree Plaza project to proceed in accordance with the building plans originally submitted to the Building Inspection Department in August, 1984.

Petitioner was represented by Donald L. McLean and Gloria McLean. Counsel for both parties submitted their points and authorities in support of their positions and the matter was heard in front of Judge Arthur Jones in Department 35 at 1:30 p.m. on July 25, 1985. Petitioner argued that it was entitled to the building permit because it had a vested right to the building

permit or because the City was estopped from denying the permits.

In support of its position, Petitioner relied on three acts by City Officials and employees: 1) the Land Development Permit issued on March 1, 1985 (which Petitioner represented as being issued in December, 1984); 2) a letter addressed to the Petitioner from a Councilman's aide dated January 11, 1985; and, 3) the issuance of the Density Bonus Permit by the Housing Commission in August, 1984. Relying on the leading case of *Avco Community Developers, Inc. v. Southcoast Regional Commission*, 17 Cal.3d 785 (1976), the City Attorney, on behalf of the Respondents, argued that the Petitioner had no vested right to the building permit. The Respondents also argued that Petitioner failed to establish all of the elements of estoppel and therefore was precluded from prevailing on an estoppel theory.

After oral argument, the Judge took the matter under submission until Monday morning, July 29, 1985, for clarification of one point regarding a sewer line running on the property.

The Judge issued a Minute Order on July 30, 1985, denying the Petition for Writ of Mandate.

Respondents were represented in these proceedings by Deputy City Attorney Cristie C. McGuire.

Respectfully submitted,

JOHN W. WITT

City Attorney

CCM:hk:Lit

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