

Court of Appeal Overturns City Council's Permit Denial Based on Council Member's Behind-The-Scenes Advocacy

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A city council member's behind-the-scenes advocacy against a conditional use permit application resulted in the denial of a fair hearing.

In *Petrovich Development Company, LLC v. City of Sacramento*, the California Court of Appeal considered a challenge to the Sacramento City Council's denial of a conditional use permit ("CUP") for a gas station in the shopping center zone of a residential development. The planning commission had approved the permit, and a neighborhood association president appealed that approval to the city council.

Text messages and other evidence established that the council member who represented that neighborhood advocated against the CUP behind-the-scenes. Prior to the appeal hearing, he contacted several colleagues to secure votes against the gas station and informed the mayor he had the votes necessary to deny the permit. He also communicated with the appellant about the hearing process, including the order of speakers and the arguments to be presented at the hearing. In addition, he distributed talking points about the gas station to the mayor and the appellant. Finally, at the hearing, he was the one to propose the motion that the CUP be denied.

The court ruled that the developer did not receive a fair hearing because the council member entered deliberations on a "quasi-judicial" matter with his mind already made up. The court concluded that the council member "acted as an advocate, not a neutral and impartial decision maker, and should have recused himself from voting on appeal." Accordingly, the court ordered the city council to hold a new hearing without the participation of that council member.

For more information about the *Petrovich Development Company, LLC v. City of Sacramento* case or any land use matter, please contact **Darrelle Field** or any of the members of the Firm's **Public Law Department**.