Older Subdivision Maps Under Attack Again

Court of Appeal Again Determines that the Lawful Recording of an Older Subdivision Map (1909) Alone Did Not Create the Parcels Shown on the Map

Under the modern-day Subdivision Map Act, a "parcel" is "created" when the map depicting the lot is recorded (Gov. Code § 66412.7). An issue bubbling for some time in the Map Act world was whether or not that modern-day rule applied to maps recorded in the late 1800s and early 1900s. As we discussed in previous Alerts, California courts first addressed this issue by ruling that any recorded maps before 1893 (the year the Map Act was first enacted) could not create parcels without a separate conveyance. (*Gardner v. County of Sonoma,* 29 Cal.4th 990 (2003).)

Next, the courts took up the issue of whether or not maps properly recorded between 1893 and 1929 could establish parcels by mere recordation of the map (as allowed by modern Section 66412.7). In August 2008, Division One of the First District Court of Appeal determined that a map recorded in 1915 did not itself (by mere recording) establish ("create") parcels. (*Witt Home Ranch, Inc. v. County of Sonoma*, 165 Cal.App.4th 543 (2008).)

On April 17, 2009, Division Five of the First District Court of Appeal came to the same conclusion in a case involving a map recorded in 1909. (*Abernathy Valley, Inc. v. County of Solano*, 09 Cal. Daily Op. Serv. 4684 (2009).) Relying primarily on the *Witt Home* decision, the *Abernathy* court determined that the Subdivision Map Act's grandfather clause (Gov. Code § 66499.30) did not apply to the 1909 map. The key issue in *Witt Home* and *Abernathy* was whether or not the laws in effect at the time the original maps were recorded (1909 and 1915) regulated the "design and improvement" of subdivisions.

Section 66499.30(d) provides that the modern rules of the Map Act "do not apply to any parcel or lots of a subdivision ... sold ... in compliance with or exempt from any law (including a local ordinance), regulating the *design and improvement of*

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subdivisions in effect at the time the subdivision was established." (Gov. Code § 66499.30(d) (emphasis a---- n other words, if we conclude that maps recorded between 1893 and 1929 were properly recorded pursuant to a law "regulating the design and improvement of subdivisions," then it necessarily follows that any parcels shown on those maps are legal parcels today and can be leased, sold or financed under the Map Act.

The courts in *Witt Home* and *Abernathy* concluded that the laws in effect in 1909 and 1915 regulated *maps*, but not the design and improvement of subdivisions. The authors of this Alert respectfully disagree. Section 66418 defines "design" as no more than street alignments, lot sizes, configuration and the like, while Section 66419 defines "improvement" as any street work and utilities to be installed, etc. Beginning in 1893, the Map Act required recorded maps to describe all land intended for avenues, streets, lanes, alleys, courts, commons, or other public uses and all lots intended for sale, either by number or letter, and their precise length and width, and that all land proposed for dedication as a public highway be shown. These requirements, as defined, are design and improvement requirements. The authors of this Alert therefore disagree with the rulings in *Witt Home* and *Abernathy*.

The authors of this Alert further believe that the "real fear" is not whether or not a parcel is recognized as legal, but rather the fear held by certain land use practitioners that the recognition of lots created by subdivision maps recorded prior to 1929 will lead to rampant unregulated development. However, such fears are unfounded. The reality is that local governments have numerous tools (beyond the Map Act) to regulate the development of property, regardless of whether or not older maps created legal lots. Local general plans, specific plans, zoning codes, and other local regulations control the use and development of lots. Cities and counties should rely on these planning tools, rather than misinterpretations of the Subdivision Map Act, to effectuate their policy goals.

For a more detailed discussion of the controversy over maps recorded between 1893 and 1929, please click on this link. Also, please feel free to contact the of authors of this Alert directly; they will be happy to discuss this further with you and arrange to provide you with the assistance you need.