



Planning Commission

Item 1: Study Session on *Petrovich v. Sacramento*

June 15, 2020



Due Process Refresher...

- “No person shall be ... deprived of life, liberty, or property, without due process of law”

U.S. Constitution, amendments V, XIV
California Constitution, art. I § 7

- City will “extend equal opportunities and due process to all parties in matters under consideration”

CSC Code of Ethics & Values § 1.e



Quasi-Judicial Decisions

- Due Process is implicated for quasi-judicial decisions:
 - Conditional use permits
 - Variances
 - Subdivision Maps
 - Revocations
 - Architectural Appeals



Legislative Matters

- Amending the General Plan
- Amending the Zoning Code
- Rezoning a property, including *PD* rezones
- Adopting or amending a Development Agreement

For legislative matters, due process is satisfied at the ballot box



What is due process?

- Reasonable notice &
- A reasonable opportunity to be heard
- Before an impartial decisionmaker





An impartial decisionmaker

- Pre-existing views on the general policy issues related to a matter do not create disqualifying bias
- Due process does not require that the decisionmaker have no views or opinions at all



An impartial decisionmaker

Disqualifying bias requires:

- Evidence of specific prejudice against project or person, sufficient to impair decisionmaking
- Evidence establishes a *probability* of bias, that is “too high” to be constitutionally tolerable



Petrovich v. Sacramento

- Developer seeks CUP for gas station at Safeway
- PC approves CUP, 8-3
- Members of “Sierra Curtis Neighborhood Association” appeal to City Council



Petrovich v. Sacramento

Prior to Council meeting, Councilmember...

- Appears at Sierra Curtis association meeting
- Sends “talking points” to association president
- Also sends them to the Mayor
- Sends emails to other councilmembers
- Texts that he is “confident” he “has the votes”



Petrovich v. Sacramento

At the public hearing...

- Mayor reads from the “talking points”
- Council votes 7-2 to deny the CUP

Court finds “unacceptable probability” of bias;
orders City to reconsider decision.



Insufficient to show bias

- Membership in neighborhood association
- Statement in association newsletter
- Councilmember's proximity to project site



Evidence of bias

- Contact with community members, to help them lobby other Councilmembers
- Councilmember made motion to overturn the PC
- Script given to Mayor, which Mayor read at meeting
- *Ex parte* contacts with other Councilmembers



Takeaways

- Be careful with statements that you make...
 - in public – town halls & other forums
 - in newspapers, newsletters, blogs, websites, facebook, emails
 - to developers, residents, and even City staff



Takeaways

- **Be careful with statements that you make...**
 - at meetings of other City boards
 - at PC meetings before the close of public hearings



Takeaways

- Remember distinction between legislative & quasi-judicial
- Continue to disclose *ex parte* communications



City of Santa Clara

The Center of What's Possible

