

TO: The California Coastal Commission
Central Coast District Office
Dan Carl, District Manager
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

From: Alfredo Magallanes and Lourdes Magallanes
12726 Oakthorn Lane
La Mirada, CA 90638
(562)947-1247

October 14, 2009

Re: Appeal from San Luis Obispo County's Supervisors decision concerning:
County File No: DRC2008-00103
Heard on September 29, 2009 at 9:00 a.m. Involving Los Osos Sewer.

Dear California Coastal Commission:

I. Introduction.

This is an appeal from the San Luis Obispo County Supervisor's decision at which hearing we filed a timely protest regarding the above referenced matter. Our intent is not merely to exhaust our administrative remedies with your offices for purposes of perfecting an appeal to Superior Court, if necessary, but to seek actual relief as unimproved property owners in Los Osos, California. A primary position is that we wish to enjoy, use, and benefit from by being allowed to build on our properties. Therefore by necessity we must connect to any proposed sewer which should be a reasonable fee without further government interference which to date has confiscated our use of the properties. The present history of the Los Osos sewer chronicle has unfairly taken without due process of law our property interest in violation of the state constitution, common law, statute, and justice which has been perpetuated through a series of administrative decisions. During the moratorium of many years the local authorities have assessed levies and taxes for the sewer on our property without benefit in violation of due process. Apparently, a so-called plan which seeks to impose, we have been told, a \$75,000.00 fee on unimproved property is the most recent example of the violations of due process we have endured. Although we have never altered from the above position, we divide our arguments in parts for ease of reading.

II. Denial of Procedural Due Process and F.W.S. *Brookes v City of Oakland*.

The unimproved property lot owners have repeatedly been denied procedural due process and lack of notice in the processing of the Los Osos sewer project from its inception to the present date. Government units that have acted without providing the safeguards of due process involving sewers have had their actions declared unconstitutional. See Supreme Court decision in F.W.S. *Brookes v City of Oakland*, 160 Cal. 423 (1911). Proper notice is fundamental to due process compliance. *Londoner v Denver*, 210 U.S. 385, 28 Sup. Ct. 714

Alfredo & Lourdes Magallanes

For example, we only received a few days prior notice of the San Luis Obispo Supervisors' hearing, without sufficient time to arrange for the opportunity to attend or in the alternative to place a more detailed written argument in the official record.

Another example, is this very appeal to the California Coastal Commission which was possible because of a kind gesture by a good neighbor that advised us today of the October 19, 2009 deadline to submit our appeal. Although clearly, the authorities are presumably required to give notice, the notices to date have been perfunctory, insufficient or none existent. The above deprived the unimproved property owners of proper notice as required by law.

III. The prior decision was held without sufficient information on whether our property would benefit and by how much.

To date, unimproved property owners have not been afforded a hearing to be informed how their property will be benefited and by how much. "...if the determination is committed to commissioners, the landowners "may be entitled to notice and hearing upon the question whether their lands are benefited and how much" See *Parsons v District of Columbia*, 170 U.S. 52, 18 Sup. Ct. 524.

The appealed from decision which makes vague, ambiguous and non-committal references to speculative provisions for eventual relief to unimproved property owners' ability to be serviced by the proposed sewer project is insufficient. The decision is a veiled attempt to circumnavigate the government's actual responsibilities toward us owners of unimproved property in Los Osos to inform us how our lands will benefit and by how much.

The eventual decision no doubt will be to place an unwarranted and prohibited assessment on these properties which for all practical purposes will take our property without due process of law. We have been advised by a private citizen that the so-called plan seeks to impose a \$75,000.00 fee or assessment on unimproved property.

The above course has been the action of the majority of the government units and boards for the past years in Los Osos, which action is unconscionable, inequitable, and unsound. The California Coastal Commission has the authority to place conditions on the prior decision which will grant some relief to the unimproved property owners. It should require the units to inform us on whether our property would benefit and by how much. The relief sought is to permit immediate access to the sewer upon its completion upon payment of a reasonable fee and not a levy that confiscates.

IV. A Special Assessment without benefit is a denial of due process.

It was an abuse of discretion for the prior decision to prohibit unimproved property owners equal access to the Los Osos sewer, since as unimproved property owners we have paid a special assessment for the sewer project without benefit.

It has long been the law of this state, as illustrated in the *City of Plymouth v The Superior Court of Amador County*, 8 Cal. App. 3d 454 (1970) that any special assessment without benefits is a denial of due process. Over the years, our lots (assessment No 038,411,017 and 038,172,003) have been levied special assessments for the "LOCSD Waste Treatment" without any benefit. For example, in the property located at 1287 18th Street, Los Osos, California during the 2008 through 2009 tax roll we were assessed \$451.64. If you multiply this proportionately, since the inception of the assessment, you begin to understand the enormous tax burden this has been on us without any benefit.

To permit the authorities to levy special assessments or taxes on an unimproved lot so that another in a different street or lot may use the sewer is unlawful and prohibited in this state. See *City of Madera v Alex Black*, 181, Cal. 306 (1919). "If any was used for extensions to the sewer system, such use was unlawful, for it cannot be doubted that the city has no power to lay taxes or tolls on those who may use the sewer, in order to obtain money to build sewers in other streets for the special benefit of other persons."

Special assessment without benefits is a denial of due process. (*Kansas City Southern R. Co. v. Road Improvement Dist. No. 3* (1924) 266 U.S. 379, 386 [69 L.Ed. 335, 341, 45 S.Ct. 136]; *Municipal Improv. Co. v. Thompson* (1927) 201 Cal. 629, 638 [258 P. 955]; *Miller & Lux Inc. v. Sacramento & San Joaquin Drainage District* (1920) 182 Cal. 252, 265 [187 P. 1041]; *Spring Street Co. v. City of Los Angeles, supra*, 170 Cal. at pp. 30-32; *Howard Park Co. v. City of Los Angeles, supra*, 119 Cal.App.2d at pp. 521-522; *Hutchinson Co. v. Coughlin* (1919) 42 Cal.App. 664, 669 [184 P. 435]. A taking of property without due process is considered a jurisdictional defect. (*Hannon v. Madden* (1931) 214 Cal. 251, 256 [5 P.2d 4]; *Southlands Co. v. City of San Diego* (1931) 211 Cal. 646, 656 [297 P. 521].)

Without rectifying this significant point, the California Coastal Commission's action is subject to attack at Superior Court. Therefore in order to avoid the allegation that no benefits were received despite payments of special assessments, it is reasonable for the California Coastal Commission to modify the prior decision and permit unimproved property owners to be beneficiaries to the project they have paid for, by allowing them access upon the sewer project's completion.

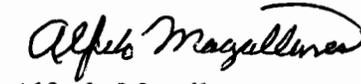
V. Conclusion.

Sadly, the California Coastal Commission though with the best intentions and high aspirations, imposed a moratorium which no one could have predicted would have frozen property rights of unimproved lots for so many years. This action did not resolve the issue but only permitted those that had already built to ignore the California Coastal Commission mandates. The time has come for the California Coastal Commission to lift its moratorium and grant relief by permitting the unimproved property owners rightful use of their land. Your action has addressed not the polluters, but the innocent, and has prohibited our use of our properties without due process of law. The time is upon us to correct the above circumstances.

We thank you for your kind attention to this matter.

Sincerely,


Lourdes Magallanes


Alfredo Magallanes