

## **No Harm, No Foul—Petitioners Claiming Procedural Errors Must Prove Prejudice**

It's not enough that litigants challenging planning and zoning actions prove that the city or county committed a procedural error. They also have to show the error was prejudicial, that it led to substantial injury, and that if the error had not occurred, a different result would have been likely.

In [Rialto Citizens for Responsible Growth](#) the court of appeal reminded project opponents of their duty to show that error is prejudicial. Prejudice will not be presumed—even if the challengers are opposing a new Wal-Mart.

The city had approved general plan amendments, a specific plan and a development agreement for a new retail center to be anchored by a Wal-Mart Supercenter. In step with the now-familiar drill for Wal-Mart projects, an organization promptly filed suit to challenge the approvals.

The court agreed with the challenger's claims about about two distinct procedural errors. First, the notice for the city council's hearing did not include the planning commission's recommendations. This, the court found, violated the Government Code requirement that hearing notices contain "a general explanation of the matter to be considered" because, without information about the planning commission's decision, the public would not be able to respond adequately to alternatives, objectives, policies and actions. This ruling is notable because a requirement that a planning commission's recommendations be described is far from obvious from the statute's language calling for a "general explanation of the matter to be considered."

Second, the city council approved the development agreement without making a consistency finding, in violation of the Government Code's requirement that a development agreement not be approved unless the legislative body finds its provisions "consistent with the general plan and any applicable specific plan." There was no indication in the record the city council made such a finding.

Despite these errors, the appellate court refused to invalidate the approvals, concluding prejudicial error had not been shown as required by Government Code section 65010. Under this provision of the Planning and Zoning Law, a court may not set aside a legislative body's actions due to procedural error, including errors as to notices and findings, unless the court finds the error was "prejudicial and that the party complaining suffered substantial injury from the error and that a different result would have been probable if the error had not occurred." There is no presumption that error is prejudicial.

As the party challenging the city's actions, the petitioner had the burden to prove prejudice, substantial injury, and the probability of a different result. It didn't do so, hoping to win by simply pointing to errors in the notice and findings.

As shown by the court's decision, that is not enough.

[Rialto Citizens for Responsible Growth v City of Rialto](#), E052253, 4th. Dist. 2d Div. (July 31, 2012)

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