Blogs
May 04, 2018
California Land Use & Development Law Report

School Fees for Apartment Buildings Not Limited to Square Footage of Individual Units

School impact fees for an apartment complex must be calculated based on the square footage of both the individual units and other space within the interior of the buildings, such as hallways and elevator shafts. *1901 First Street Owner v. Tustin Unified School District*, 21 Cal. App. 5th 1186 (2018). School impact fees under Government Code section 65995 are based on "assessable space," defined as "all of the square footage within the perimeter of a residential structure, not including any carport, covered or uncovered walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area." (§ 65995(b)(1).) This square footage is to be "calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters." (*Id*.) The City of Tustin calculated the square footage of an apartment building owned by 1901 First Street using a "net rentable" method -- the City's standard practice at that time -- which included the square footage of the individual apartment units but excluded everything else in the building. The school district objected to this method, contending that the statute required all space within the perimeter of the building to be included. The City then revised its square footage calculation based on the perimeter of the building, which resulted in an increase in the fee of over $238,000. First Street sued to recover the difference. First Street's principal argument was that, in the case of apartment buildings, the area of a "residential structure" was limited to the apartments themselves, pointing to the

exclusions in section 65995(b)(1) for "any carport, covered or uncovered walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area." The court found that none of these exclusions applied to areas within the interior of apartment structures, such as lounge areas, recreation rooms, indoor pools, elevator shafts, mechanical rooms and the like. The only potentially applicable exclusion, the court said, was for walkways. It concluded, however, that the statute used the term walkway "in the sense of an external walking path" not in the sense of an internal hallway, reasoning that the other items in the list—such as carports, garages and patios—were typically located at or near the periphery of a residential structure, and that the Legislature had specified these exceptions to make it clear that these peripheral areas were not intended to be included as assessable space. First Street also argued that the City's standard practice of calculating net rentable space should govern, relying on the provision in section 65995(b)(1) that "the square footage within the perimeter of a residential structure shall be calculated by the building department of the city . . . *in accordance with the standard practice of that city . . . in calculating structural perimeters*." (Emphasis added.) The court disagreed, concluding that the "standard practice" referred to in the statute was specifically the standard practice of calculating the square footage "within the perimeter of a residential structure," which had to comply with section 65995(b)(1). First Street's final argument was that the City's decision to change its method of calculating assessable space violated First Street's vested rights to proceed in accordance with the rules, regulations and ordinances in effect at the time of the approval of its vesting tentative map. The court rejected this argument, citing Government Code section 66498.6(b), which states that approval of a vesting tentative map "does not grant local agencies the option to disregard any state or federal laws, regulations, or policies." The City's standard practice, the court stated, was not in compliance with state law; hence the City could adopt a new rule implementing the statutory mandate without violating any vested rights.

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