

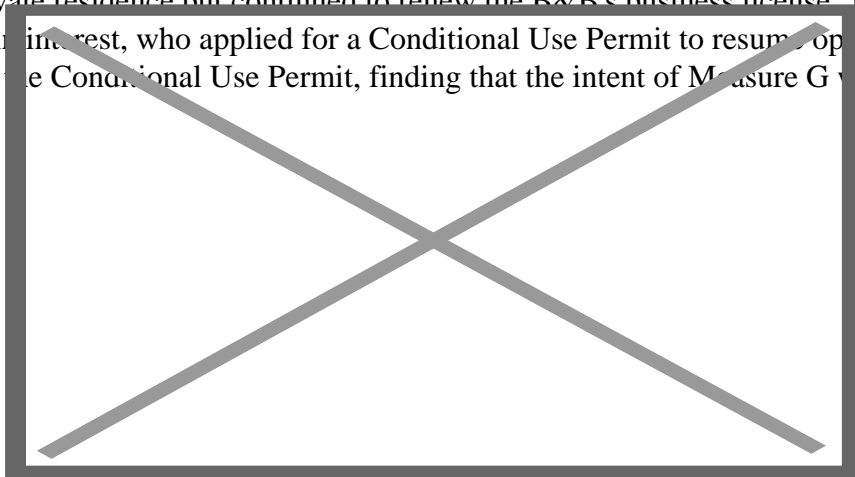
[Blogs](#)

October 09, 2019

Award of Attorney's Fees Warranted Where Plaintiff Lost on Most Claims But Achieved Primary Litigation Objective

A plaintiff challenging a city council's interpretation of a local ballot measure was entitled to recover costs and attorney fees when successful on only one cause of action because the primary relief sought was granted. *Friends of Spring Street v. Nevada City*, 33 Cal.App.5th 1092 (2019). In 1991, the Kendalls received a Conditional Use Permit to operate a bed and breakfast in a residential neighborhood. In 1994, Nevada City voters passed Measure G, which repealed the zoning code provision that allowed for B&Bs in residential zones. The Kendalls continued to operate the B&B for several years and then sold it to a couple who used the property as a private residence but continued to renew the B&B's business license. The property was later sold to the real parties in interest, who applied for a Conditional Use Permit to resume operating the B&B. The City Council granted the Conditional Use Permit, finding that the intent of Measure G was to limit *new* B&Bs, not existing

B&Bs.



Plaintiff challenged the Council's

decision on multiple grounds, including the claim that the Council incorrectly interpreted Measure G. The court upheld the latter claim, concluding that Measure G rendered existing B&B's nonconforming uses and thus the owners were not entitled to resume operating the B&B as a matter of right. It rejected plaintiff's remaining claims. The trial court also denied plaintiff's request for costs and attorney fees, reasoning that there was no prevailing party because plaintiff prevailed on only one of five causes of action and did not enforce an important right and public interest sufficient to justify fees under Code of Civil Procedure § 1021.5 (the private attorney general doctrine). The appellate court reversed the prevailing party determination, concluding that plaintiff achieved its primary litigation objective when the court ordered the City to set aside its determination regarding the intent and effect of Measure G. The court held that plaintiff's failure to succeed on the other causes of action was not a sufficient reason to deny fees and costs. The court also disagreed with the trial court's determination that plaintiff's action had not enforced an important right and public interest, noting that correct interpretation of zoning laws is a "vital public interest" necessary to preserve the integrity of a general plan. Finally, the court rejected the City's argument that plaintiff could not recover fees under the private attorney general doctrine because it had a personal economic interest, finding plaintiff's personal motivation irrelevant.