

Board of Supervisors Decision on CUP Invalid for Failure to Act Within Time Limits Set by County Code

The Second District Court of Appeal held that a Board of Supervisors decision on the appeal of a conditional use permit from the Planning Commission was untimely under the County Code and hence that the Planning Commission's decision was deemed affirmed. *Tran v. County of Los Angeles*, No. B309226 (2nd Dist., Jan. 21, 2022). The owner of a liquor store applied for renewal of the store's conditional use permit for the sale of beer, wine, and spirits. The County Regional Planning Commission approved the conditional use permit. A member of



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March 20, 2018, on its consent calendar, the Board adopted the findings and conditions prepared by county counsel and approved the CUP. The owner filed suit to reinstate the Planning Commission decision, contending that the Board decision was void because it had not been rendered within 30 days after the public hearing as required under the Los Angeles County Code. The County Code provided that decisions by the Board "on appeals or reviews shall be rendered within 30 days of the close of the hearing." The County argued that the 30-day requirement was directory, not mandatory; i.e., that the failure to take action within the 30-day period did not render the decision invalid. The appellate court disagreed, noting that the determination whether a procedural

requirement is mandatory or directory is determined largely by its effect: If the failure to comply does not invalidate the action, the requirement is deemed directory; if, on the other hand, noncompliance does invalidate the action, the requirement is deemed mandatory. Here, the 30-day decision requirement in the Code was mandatory, not directory, because another provision of the Code stated that if the "Appeal Body fails to act upon an appeal within the time limits prescribed . . . the decision from which the appeal was taken shall be deemed affirmed." The court also rejected the County's argument that the Board rendered its "decision" when it adopted its "intent-to-approve" resolution at the close of the public hearing in August 2017, not when it took the subsequent actions on its consent calendar in March 2018. The court reasoned that approval of a CUP is an adjudicatory determination for which the agency is required to make findings sufficient to enable the parties to determine whether and on what basis they should seek review. A resolution simply indicating "intent to approve" a CUP, with no accompanying findings, did not accord with the requirements for an adjudicatory decision. The court also observed that issuing an "intent-to-approve" determination was a common procedural device for local agencies, serving to provide notice to parties and the public of the agency's intended decision in advance of finalizing the necessary findings or conditions, but not, in itself, an operative decision as commonly understood. Here, the Board's "decision" in the context of the relevant Code provisions occurred when it adopted the findings and approved the CUP in March 2018, not when it adopted its earlier "intent-to-approve" resolution. Because the Board failed to render its decision within 30 days of the close of the public hearing, the decision of the Planning Commission was deemed affirmed.

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