

90-Day Limitations Period Under Government Code § 65009 Applies to Zoning Administrator Decisions.

Round two of a citizen group's challenge to approval of a WalMart ended with a decisive knock-out by the City of Stockton. The appellate court ruled that the petitioners' planning and zoning law claims were barred by the 90-day statute of limitations in Government Code § 65009, rejecting petitioners' argument that the statute did not apply to decisions of a zoning administrator. The first round of the lawsuit (discussed in our [October 18 post](#)) involved the statute of limitations governing petitioners' CEQA claims. The California Supreme Court ruled the claims untimely because they were filed more than 35 days after the posting of a notice of exemption for the project under CEQA. The court refused to look behind the notice of exemption, holding that the 35-day limitations period applied irrespective of the validity of the underlying decision. Petitioners had no better luck with their planning and zoning claims. Petitioners argued that the 90-day statute of limitations under Government Code § 65009 was inapplicable because it included only variances and permits issued by a "legislative body." Here, they contended, the approval was by a zoning administrator, in the form of a letter, which could not be equated with approval by a legislative body after a public hearing. The court of appeal acknowledged that Section 65009 states that the 90-day limitations period runs from "the legislative body's decision." However, Section 65009 expressly applies to "any decision on the matters listed in [Government Code] Section 65901," which includes decisions of a zoning administrator exercising powers granted by local ordinance. The court harmonized the two parts of the statute, finding that the Legislature had necessarily intended that decisions by a zoning administrator, under authority delegated by the legislative body, constituted decisions by a "legislative body" under Section 65009(c)(1)(E). Petitioners' interpretation, the court pointed out, would render the statutory provisions regarding decisions of a zoning administrator "meaningless." The decision provides important clarification regarding an apparent internal inconsistency in the principal statute of limitations governing land use disputes. [Stockton Citizens for Sensible Planning v. City of Stockton](#), 210 Cal. App. 4th 1484 (2012).

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