

Watsonville to appeal Franich ruling

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Tony Franich and the city of Watsonville are going to appeal the decision of the state appellate court that overturned the annexation of Franich's apple orchard to the city.

The court ruled Monday in favor of the Resource Defense Fund on two counts, which was enough to overturn the city's action. In 1982, the Watsonville City Council and the Local Agency Formation Commission approved the annexation of Franich's 72 acres on East Lake Avenue.

The Resource Defense Fund filed suit in Santa Cruz County Superior Court protesting the annexation on several counts. Then-Superior Court Judge Harry Brauer agreed the city had failed to consider an alternative plan — the annexation of only part of the 72 acre parcel. Technically, the city had failed to "adopt findings" as to why it was rejecting a partial annexation.

Brauer issued an "interlocu-

tory judgment" which allowed the city to adopt findings — and thus make the annexation legal — within 60 days. The city did so, then went back to court, and Brauer ruled in the city's favor.

The appellate court ruled this week that Brauer's method was flawed. Brauer should have issued his judgment, then sent it back to the city to make findings, the appellate court ruled.

City Attorney Don Haile said the appellate court was "nit-picking" because it saw nothing wrong with the findings themselves, but overturned the annexation on a technicality about Brauer's procedure.

The appellate court ruling leaves the city and Franich three options, Haile said: to appeal, to take the project through LAFCO again, or to drop the project altogether.

The council, which called a quick litigation session last night, agreed with Haile that the best course is to pursue an appeal, because the current makeup of LAFCO makes it unlikely it would approve the

annexation if it were to return to LAFCO now.

Resource Defense Fund attorney Tom Brown said yesterday that the appellate court decision should be a message to the city that it should be careful about trying to expand onto agricultural lands surrounding the city.

"The lesson in this case is that CEQA (the California Environmental Quality Act) is not just paper work," said Brown. "The environmental considerations raised by the EIR (environmental impact report) process must be part of the decision-making process. This case shows that any decision that ignores these considerations or treats them merely as paper work are defective and will be rejected in a court of law."

Haile said the city does carefully scrutinize such projects. "I think the city of Watsonville does a good job of analyzing all this," he said.

Franich's attorney, Tim Morgan, said this morning he will also be filing an appeal, but said he will focus on the other point on which the case was overturned.

That involves Brauer's determination that LAFCO essentially "adopted findings" by way of its vote in favor of the annexation of the entire 72 acres and through comments made by LAFCO board members. The appellate court ruled

that the vote and remarks do not constitute the adoption of findings.

Franich is extremely disappointed in the appellate court decision, Morgan said, and he is likely to have to wait some time yet before final resolution of his annexation proposal.

"This case is likely to be with us for several more years," Morgan said, based on how long it will take for the case to be heard by the state Supreme Court, if that court agrees to hear it.

The Supreme Court is now short three judges because of the recent recall of Rose Bird, Joseph Grodin and Cruz Reynoso. While those vacancies are being filled, the justices of the appellate court in San Francisco — the same court that heard the Franich appeal — are sitting in as Supreme Court justices pro tem.

Morgan doesn't expect the Franich case to be heard before the new Supreme Court chief justice is confirmed, and perhaps not until the court is completely filled. Gov. George Deukmejian has nominated Malcolm Lucas as chief justice and is still considering his appointments to the other posts.

Morgan sees it as an advantage for the Franich case to be heard by the "reconstituted" Supreme Court, because the governor is hoping to appoint judges who "use common sense," Morgan said.