

Planning
1976-1985

Judge Brauer upholds Franich annexation

By DAN YOUNG

The city has a little unfinished business to clear up, but the annexation of the 72-acre Tony Franich apple orchard near the East Lake Village shopping center will stand.

That's the gist of Santa Cruz County Superior Court Judge Harry Brauer's decision — handed down Monday afternoon — on the lawsuit brought against the city by the environmentalist Resource Defense Fund.

The court battle may be long from over, however.

The Fund contends that the City Council and the Local Agency Formation Commission (LAFCO) did not follow the recommendations of the environmental impact report on the then-proposed Franich annexation, and that the public was not given a proper opportunity to challenge the city's findings in adopting the EIR.

Environmentalists behind the lawsuit hope to keep the prime agricultural land, or at least a portion of it, from falling to developers — despite the fact that the annexation has already been certified by the state.

The land when it was accepted for annexation was zoned for partial commercial and partial residential use (with parks included).

In his decision, Judge Brauer said the city and LAFCO had indeed erred in several minor ways while accepting the EIR and approving the annexation, but that the Fund and other protesters had plenty of opportunities to make specific complaints to proper authorities — rather than bringing the case to court.

The Fund's argument that it did not have a chance to protest certain specific procedures by the city and LAFCO "is not appealing," the judge said. The protesters, including Gary Patton, a county supervisor and LAFCO commissioner, should have been more specific when making criticisms before the city and LAFCO, Brauer ruled.

"...Anybody who can do work as exhaustive and competent as plaintiffs have done here (in court) could be asked to direct a fraction of that energy to persuading the initial decision makers," Brauer said.

"The deficiencies I find to be of substance could readily have been corrected by LAFCO and the City at a cost of minor delay. Under those circumstances, I do not consider public policy to be served by invalidation of a project in which the agencies having jurisdiction carefully weighed the environmental impact against other values, such as the need to protect 900 existing homes against potential flood danger. Not a single voice from Watsonville or its environs was raised in opposition to this project before the Watsonville City Council or the Watsonville Planning Commission."

The judge did rule, however, that the city did not — and must now — properly explain why it rejected the alternative of partial annexation discussed in the EIR. By law, a governing body annexing land must explain why it rejects partial- or no-annexation alternatives.

"The petition does complain...that the city had failed to make a finding as to considerations making partial annexation infeasible," Brauer's decision reads. "This matter will therefore be remanded to the Watsonville City Council for the promulgation of an appropriate finding, if the council is so advised. Any such action is to be taken within 60 days. That limited remedy...is appropriate in this case, as a clear majority of councilmen who voted for this annexation after a public hearing are still in office today."

In other words, City Attorney Don Haile said this morning, the City Council must officially state why it rejected a partial annexation of the Franich property.

Haile said he hopes to have the necessary paperwork to do just that ready to present to the council at its April 10 meeting.

After the city issues its formal statement, Haile explained, final judgment finding in favor of the city will be issued — and the case will be closed.

"The judge found there was a defect in the procedure which is curable," Haile said.

Tom Brown, lawyer for the Resource Defense Fund, had a different interpretation of Brauer's decision.

"What the judge said was the annexation was improperly approved" because the city did not address the question of partial annexation, Brown said this morning.

"What he (Brauer) is suggesting is that the city take a look at it again," Brown said. "I'm very hopeful the city realizes

the judge is saying take another look, and they'll scratch their heads and say they'll go for partial annexation.

"If they elect to do that, I'm sure my clients will be satisfied."

But, he added, if the city goes ahead with its current full-annexation plans, his group will "absolutely" appeal. "The Court of Appeal will reverse this annexation, and you can quote me on that," he said.

City Manager John Radin said this morning he was quite pleased with Brauer's decision.

"I think it is a really positive thing for the city," he said.

Franich, a lawyer himself, reserved comment this morning, saying he would have to see the decision in writing before discussing it.

Supervisor Patton was unavailable for comment.