

AIRPORTS

12-19-85

Sky Park trial finishes three-day court stint

By JOAN RAYMOND

Sentinel Staff Writer

SANTA CRUZ — Nitpicking lawyers, a patiently smiling judge, a victimized court reporter, and a civic all-star parade of old-time city councilmen and business leaders Wednesday finished their three-day engagement at Superior Court in the trust case of Santa Cruz Memorial Airport Association versus the City of Santa Cruz.

The trial moved to its conclusion with the speed of a snow-stuck sleigh as Judge Bill Kelsay did his best to shovel away the delays in the face of procedural snowballs hurled at every turn by association lawyer Gary Near and City Attorney Rod Atchison.

Proceedings have been fraught with arguments between the lawyers, unnecessary testimony from witnesses and bulky documentation from the association, much of it either irrelevant or innocuous — including Chamber of Commerce minutes, Sentinel newspaper articles, and a council-accepted report on the "city's commitment to aviation" by a plaintiff's witness, Airport Commission Chairman Dave Landino.

The judge has stated on more than one occasion the lawsuit is actually a "documents case." Nevertheless, the trial has taken up many hours of court time on a crowded calendar. Legal experts agree it probably could have been tried without any testimony from witnesses or lawyers' in-court arguments.

The relevancy of the testimony of several plaintiff's witnesses was unclear. The witnesses, called by Near, included veteran town-movers — former councilmen Ted Foster and Bert Snyder, former Chamber of Commerce President Ernest Dillon and former Sentinel publisher Fred McPherson Jr.

At the end of their testimony, Kelsay commented, "It was nice to see those fellows, but ... this is still a documents' case."

The court learned such things as the fact that it was McPherson's first time on the witness stand in all his 84 years.

"I'm surprised it took so long," commented Kelsay. "I'm flattered." The judge's patience was stretched to its limits at times.

At one point Tuesday, the judge sounded like Alice in Wonderland

telling the Queen of Hearts and her friends: "You're nothing but a pack of cards!"

After surveying a document offered in evidence by Near, Kelsay turned to the association lawyer and said, "What do you think this is? This is nothing but a declaration by somebody!"

At another point — during questioning by Near of former Councilman Ted Foster over the city's obligations to build an airport — Kelsay cut short the testimony, saying, "Mr. Near this is all nice and dandy, but it's just a waste of time."

Kelsay admonished Atchison for Atchison's tendency to object to "everything and anything" put forth by Near.

Kelsay ended this week's proceedings Wednesday afternoon and continued the case to hear legal arguments, if necessary, on Feb. 7, but only after Near spent more precious court time explaining why he could not make a January court date because of to a trip to Washington D.C.

Meanwhile the lawyers were told to submit arguments in writing to decide the two main legal issues. The first is whether the city had created a charitable trust for airport purposes.

If there is indeed a trust, the second and more important issue is what should happen to profits from the sale or development of airport land now that the city has closed down the airport. At issue is whether the city is bound to return all or part of the money to the association.

The association maintains that the city is bound by a trust agreement to either open up another airport or return airport land profits to the original investors who sold parcels to the city for an airport. The airport land at the defunct Sky Park airport site is valued today at \$7 million to \$10 million. The original investment was \$17,000.

Several times throughout the trial, Judge Kelsay has stated his doubts about the association's case, but his skepticism seemed to soften the last day.

At one point the judge remarked, "I'm having a difficult time trying to apply the law of trust to this situation."

At another point he told Near, "I don't want you to lose sight of the fact we have taxpayers' money used to buy the property to develop the airport."

And the judge added, "I've been wrong before, and I know I can be wrong again, but I want to see if you (Near) can, quite frankly, make a trust out of this."

Testimony and documents show the civic leaders about 40 years ago formed a group — eventually to become the Airport Association — to buy land near Natural Bridges for an airport as a way to stimulate local industry. They bought parcels near Natural Bridges for an original investment of \$17,000, then sold parcels to the city. Plans changed and the airport was eventually developed at the site called Sky Park on land near Scotts Valley that was once surrounded by a peat bog, but is not encircled by mobile home parks, shopping centers and fast-food restaurants.

Two years ago city council members, citing health and safety reasons, shut down the airport, much to the dismay of pilots.

To settle arguments between Near and Atchison, the judge has stated for the record association members were "publicly spirited" — and not motivated by greed.

The judge made this statement following testimony by McPherson, one of the original landholders who sold property to the city for airport purposes. He testified his investment was \$500 — "that was a lot of money in those days."

Atchison used a line of questioning to show the city bought property from the landholders for the exact amount they had originally paid.

During McPherson's cross-examination by Atchison, Near vigorously objected to the line of questioning, saying Atchison was "putting words" in McPherson's mouth. The objection was overruled.

Atchison, who has known McPherson for many years, made it clear to the court, "I don't like to be characterized as taking advantage of Mr. McPherson."

McPherson continued his testimony, stating original airport supporters were civic-minded and not "thinking of our own pocketbooks."

Kelsay summed up: "I don't think Mr. Atchison was implying your were trying to line your pocket-book."

McPherson also testified: "We all had a common purpose. We just did it. We shook hands. You don't do it that way today."