

Watsonville

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# Annexation decision will be appealed

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WATSONVILLE — Stung by the appellate court decision earlier this week that overturned Watsonville's annexation of 72 acres of agricultural land, attorneys for both the city and a private property owner are vowing to take the issue to the state Supreme Court.

"It's extremely important to give a newly constituted Supreme Court a chance to review this case," said attorney Tim Morgan, who represented property owner Tony Franich in the unsuccessful annexation bid.

Franich owns 72 acres of once-productive apple orchard off East Lake Avenue which he wanted to annex to the city for residential development. After the City Council and Local Agency Formation Commission approved the annexation, the Resource Defense Fund — a small environmentally active group — filed suit in 1982 to block the move.

The Resource Defense Fund lost in the trial court before then-Superior Court Judge Harry Brauer, but took the case up to the First District Court of Appeal and prevailed.

At a hastily called litigation session Tuesday night, the City Council authorized City Attorney Don Haile to appeal the decision.

Both Haile and Morgan think their chances of winning are better at the Supreme Court than in front of the currently constituted LAFCO.

"I think that's why it's so vital for the city and Mr. Franich to pursue this issue," said Morgan. "The stakes for the city of Watsonville are enormous."

Morgan believes the case may take another three years to resolve.

Although attorneys could ask for a rehearing, the fact that the decision was unanimous against the city

makes it unlikely a rehearing would be granted.

And with three vacancies on the Supreme Court, it will be a while before that court can consider the appeal. Chief Justice Rose Bird and fellow justices Cruz Reynoso and Joseph Grodin were ousted by voters in November.

Currently, the three justices of the First District Court of Appeal, which ruled in the Resource Defense Fund case, are sitting as Supreme Court justices pro tem, said Morgan, which again dooms the city's chances of prevailing at that level.

Morgan said he wasn't surprised by the outcome, given the case was heard by the liberal justices of the First District Court of Appeal.

"Judge Brauer was very outspokenly critical of Justice Bird and she had some of her most ardent supporters in the First District Court of Appeal," said Morgan. "That division hasn't missed an opportunity to hammer him."

The same court overturned Brauer's ruling on the challenge to UCSC voters in the Santa Cruz City Council election.

Tom Brown, the attorney who successfully argued the case for the Resource Defense Fund, said neither the city nor LAFCO had "given adequate attention to the environmental issues. They looked upon CEQA (California Environmental Quality Act) as just a lot of paperwork, and I think this decision proves that opinion is contrary to state law."

City attorney Haile said he thinks the city does a good job analyzing the environmental issues.

He wants to appeal the issue of the city's consideration of a partial annexation. Haile maintains that in looking at the entire project, the city implicitly considered the question of a partial annexation.

Morgan said he thinks the best issue to appeal involves the court's ruling that LAFCO's decision on a partial annexation did not constitute legal "findings."

"LAFCO specifically looked at that alternative and the commissioners made some comments, which the district court said was not the equivalent of findings," said Morgan.

He noted Brauer and the appellate court cited two different cases in reaching different conclusions as to whether the commissioners' comments were sufficient to be classified as findings. He said the Supreme Court would be interested in resolving the disparity between the two cases.

"The question is: Are we going to be hypertechnical or take a common sense approach to land-use issues?" asked Morgan.