

# Decision near in growth-control ordinance suit

By PAUL BEATTY 12-14-86

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**SANTA CRUZ** — Testimony ended Thursday in the Santa Cruz County Builder's Exchange challenge to the county's growth-control ordinance, and Superior Court Judge Chris Cottle said he'll make his decision Monday.

After attorneys finished their closing remarks, Cottle said, "In a case like this, I'm very cautious. We have a legislative process and an administrative process and the court should be very hesitant about stepping in unless duty-bound by the law."

The day of testimony ended with County Planning Director Kris Schenk on the stand. The planner said the county had provided more low-income housing under its growth-control ordinance than was being built prior to the passage of Measure J in June, 1978.

The initiative empowered the county Board of Supervisors to restrict building permits each year to meet a set population goal.

Schenk said that before 1978, only 2.3 percent of the new housing was within range of low-income families. That percentage climbed to 16.9 percent after build-

ing permits were restricted, Schenk said, owing to the county requirement that 15 percent of all new housing be within range of families earning no more than 20 percent more than the median income.

The Builders Exchange went to court to challenge the county's implementation of its growth management, saying it had fallen behind its mandated "fair share" of low-income housing and was facing decertification by the state Housing and Community Development and would thus lose state funds.

The county applies for \$600,000 in such funds each

year from the state, but Schenk told the press the county hasn't gotten any money the past two years because the state is short of money.

Attorney Lee Roy Pierce Jr. of the Pacific Legal Fund, which is carrying the case for the exchange, asked Schenk if the county could meet the low-income housing goal set by the regional Association of Monterey Bay Area Governments. Schenk said no.

Please see back of section

## Decision

Continued from Page A1

AMBAG has told the county that according to regional statistics, the county will have to escalate its 15 percent low-income requirement to 25 percent for very-low-income families and 16 percent for low-income families.

Throughout the hearing, Pierce elicited testimony to support the contention that the county is falling below the AMBAG quota, and also to show that if the county doesn't meet the state demands by 1990, it could lose the state funds.

Further, the attorney said the county's 1.5-percent growth rate, set by the board for this year, violates the county's own Housing Element of the General Plan, which promises the county will assume its "fair share" of the state's housing needs. County Counsel Dwight Herr, assisted by Celia Scott Von der Muhll of the local Resource Defense Fund, argued that AMBAG's quota does not have the force of law and therefore the county can't be tried for failing to meet the quota.

They also elicited from Schenk that much of the quota for low-income housing is filled by conversions of vacation homes to permanent homes and by illegal housing.

A key witness for the Builders Exchange, UCSC Professor Paul Niebanck, testified Wednesday that growth control was an "artificial" restriction on the building industry. It escalates housing prices, he said, driving poor families out and preventing them from moving into this county.

Niebanck said growth management also puts pressure on the community to build illegal units.

The professor was commissioned by the exchange to compile a report on the impact of growth management. He compared the sales of houses that sold in both 1978 and 1983 in Santa Cruz County, south San Jose, Marina and Watsonville.

He said the study proved that houses in the unincorporated part of this county — which is under growth control — increased in cost at a rate than in the areas that had growth control.

Herr challenged Niebanck's analytical method. He pointed out that five of the 11 houses in Santa Cruz County cited in the study had been increased in size, and that Niebanck had not taken that into account.

Herr's witness, Nancy Alexander, a planner hired by the county to do a report on growth management this year, testified that the county has achieved 46 percent of the 10,388 units AMBAG says should be built between 1980-90. The county is second highest in meeting goals among the 18 jurisdictions that compose AMBAG.

Schenk said the county, to meet the 10,388-housing-unit goal, had made available to builders 3,890 permits from 1980-84, and had made available 706 permits in 1985. Of those numbers, 775 were for low-income housing.

Schenk said the unincorporated area "is shouldering an increasing number of the county's housing production," increasing from 57 percent in 1980 to 58.2 percent in 1986.

He also said the gap between family income and housing prices had narrowed. In 1979, the median-income family could afford to buy a \$33,889 home and the average home cost \$93,688. In 1985, the median-income family could afford a \$55,556 house when houses were costing an average \$123,000.

Pierce pointed out that in neither year could the family actually buy a home.

It was brought out that Schenk's department this year has recommended a 1-percent growth rate. However, since the suit was filed on the grounds that the county didn't meet its goal in the five years from 1980-84, the 1-percent rate was not at issue.

The exchange is asking Cottle to decide on a way to force the county to meet the AMBAG goal and maintain its certification with the state.

As the hearing ended, Pierce suggested Cottle appoint "a panel of special masters" to oversee the county's implementation of its growth control program.