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May 29, 2012

To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

MOTION BY SUPERVISOR YAROSLAVSKY RECOMMENDING THAT THE BOARD OF SUPERVISORS OPPOSE AB 2226 (HUESO) AND INSTRUCT THE COUNTY'S LEGISLATIVE ADVOCATES IN SACRAMENTO TO COMMUNICATE THE COUNTY'S OPPOSITION TO THIS LEGISLATION (ITEM NO. 80-A, SUPPLEMENTAL AGENDA OF MAY 29, 2012)

Item No. 80-A on the May 29, 2012 Board Agenda is a motion by Supervisor Yaroslavsky requesting that the Board of Supervisors oppose AB 2226 (Hueso), and instruct the County's legislative advocates in Sacramento to communicate the County opposition to this legislation.

AB 2226 (Hueso) which as amended on March 22, 2012 would: 1) provide that in a proceedings before a state agency, city, county, or city and county, as specified, if the title to or ownership of a property is in question, the owner of the legal title to the property is presumed to be the owner of the full beneficial title, as specified; and 2) specify that the requirements of the bill apply to all state agencies, even if otherwise exempt from provisions related to administrative adjudication, as specified, or if the governing procedure of the agency is determined by a different statue or regulation.

Background

Traditionally, questions of ownership of property have been addressed by the court. California Evidence Code Section 662 creates a presumption in court proceeding that the title holder will be recognized as the owner of the property, except when there is unequivocal evidence to the contrary. This presumption may be rebutted only by clear and convincing evidence.

The author of AB 2226 indicates that State and local agencies, in considering issues involving ownership of property, have questioned the applicability of Evidence Code Section 662. According to the author, if a State or local agency does not recognize the presumption of ownership specified in Section 662 of the Evidence Code, this creates uncertainty in the real estate economy that Section 662 of the Evidence Code is meant to mitigate against. The proposed legislation would make it clear that Section 662 of the Evidence Code applies in all proceedings before State and local agencies and it would assure that the standards for deciding ownership are applied consistently and uniformly.

The Department of Regional Planning (DPR) has reviewed AB 2226 and supports the motion by Supervisor Yaroslavsky. According to DPR, AB 2226 would make it more difficult for the County to determine underlying ownership interests in a property by requiring that the County use the Evidence Code in its land use proceedings, rather than following the Administrative Procedures Act or the County's own statutes and regulations. The Evidence Code requires a higher level of proof related to evidence, a level which is appropriate for the judicial proceedings but which is not appropriate for the administrative proceedings of the Department of Regional Planning.

AB 2226 passed the Assembly Floor by a vote of 53 to 11 on April 26, 2012 and is currently awaiting a hearing in the Senate Judiciary Committee. The bill is sponsored by California Business Properties Association. There is no opposition on file.

Recommendation

Opposition to AB 2226 is consistent with existing Board-approved policy to oppose legislation that infringes upon county board of supervisors' local land-use decision making authority.

We will continue to keep you advised.

WTF:RA
MR:AO:er

c: Executive Office, Board of Supervisors
County Counsel