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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JURUPA AVENUE LIMITED PARTNERSHIP, Plaintiff and Appellant, v. CITY OF VERNON, Defendant and Respondent.	B263083 (Los Angeles County Super. Ct. No. BC516913)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joanne O'Donnell, Judge. Affirmed.

Guizot & Mouser, Damon Guizot and Marlena J. Mouser for Plaintiff and Appellant.

Hema P. Patel and Zaynah N. Moussa; Colantuono, Highsmith & Whatley, Holly O. Whatley and Ryan T. Dunn for Defendant and Respondent City of Vernon.

No appearance for Respondents Wendy Watanabe, John R. Noguez and Mark J. Saladino.

Under article XIII C of the California Constitution, a local government may not impose, extend or increase any general or special tax unless the tax is submitted to the electorate and approved.[1] The City of Vernon (City) imposes a "special parcel tax" (SPT), approved by the voters, on properties that contain warehouses. In 2013, the city council approved an apportionment of the tax, codified as Vernon Municipal Code section 5.47 (Section 5.47), which provides that a property "whose improvements are in multiple uses" is subject to an apportioned SPT, the amount of which "shall be based only on the land area apportioned to uses that would otherwise trigger the tax."

Jurupa Avenue Limited Partnership (Jurupa) owns property in the City held subject to Section 5.47. In this action, Jurupa filed a petition for writ of mandate seeking to compel the City to submit Section 5.47 to the voters for approval on the ground the law imposes a new special tax or increase in the SPT. The trial court denied the petition, concluding that Section 5.47 merely formalized the method by which the SPT is calculated. We agree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Voters Approve the SPT*

In 1998, the city council approved Ordinance 1057, which proposed to submit the SPT to the voters for approval. The voters were told that the SPT would be levied on parcels containing warehouses "at a maximum rate of $1.00 per 100 square feet of total land area. On a one acre parcel, the annual tax collected at this rate would be about $430 [at $1 per approximately 43,000 square feet]. . . . [T]he City Council would have discretion to collect the tax at a lower rate . . . ."

The purpose of the SPT was to raise funds for right-of-way improvements and street maintenance in recognition of the fact that businesses operating "warehouses . . . and other distribution facilities . . . occupy 40% or more of the City[] and have an impact

[1] A general tax is one imposed for general governmental purposes; a special tax is one imposed for specific purposes. (Gov. Code, § 53721.)

on City streets that is greater than the percentage of territory they occupy. Yet, these businesses account for less than 17% of business license revenue."

The City's voters approved the tax, which was codified as section 5.45 of the Vernon Municipal Code (Section 5.45).

2. *The Voters Approve Amendments to the SPT*

In 1999, the city council approved Ordinance 1076, which proposed to submit to the voters an amended version of Section 5.45 increasing the SPT to "$20.00 for each 100 square foot of gross land area." The proposed amendments also exempted "cold storage" facilities from the definition of "warehouse" because the City received substantial taxes from cold storage facilities based on their electricity usage.

Specifically, the amended statute provided that a " '[w]arehouse' . . . [is] a building or part of a building used or designed primarily for the storage of non-perishable goods or non-refrigerated perishable goods intended for distribution to other locations, or the sale of goods for distribution to other locations for wholesale or retail sale, but does not include . . . cold storage and refrigerated warehouses." (Section 5.45, subd. (b)(11).)

In 1999, the voters approved the amendments to Section 5.45.

3. *The City Imposes the SPT on Jurupa's Property*

In May 2008, Jurupa purchased property located at 4353 Exchange Avenue (Parcel) located in the City. Up through fiscal year 2007–2008, the City imposed the SPT on the entire square footage of the Parcel. In 2009, U.S. Growers Cold Storage, Inc. (U.S. Growers) began leasing the Parcel, using a portion of the property for a cold storage facility and a portion for "dry storage and office space."[2] In fiscal year 2009–2010, the City began imposing the SPT on approximately 60 percent of the Parcel's square footage. The City calculated the SPT for the Parcel by apportioning the property into what it determined were "taxable and nontaxable portions." Specifically, the City calculated the

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[2] Jurupa has requested judicial notice of a certificate of occupancy showing the Parcel contained a cold storage facility prior to U.S. Growers's occupancy of the property. This document was not before the trial court and is not pertinent to our review. The request is denied.

ratio of the square footage of improvements used for "taxable" uses (i.e., warehouses) to the total square footage of improvements, applied that ratio to the entire square footage of the Parcel, and imposed the SPT on the resulting area of land.[3]

In 2012, U.S. Growers filed an application with the City seeking an adjustment of the SPT owed on the Parcel for the fiscal years 2008–2009, 2009–2010, 2010–2011, and 2011–2012. U.S. Growers argued that the Parcel was exempt from the SPT because a cold storage facility was located on the property. The City denied the application on the following grounds: "Ordinance No. 1076 defines cold storage and refrigerated warehouse[s] as, 'a building **or part of a building** used primarily to store non-durable, perishable goods under refrigeration including services for processing, preparing or packaging goods for storage.' Therefore, only the portion of the building that is refrigerated is considered a cold storage use and exempt from the parcel tax. Based on this definition, the square footage used for cold storage is proportioned out of the calculation and the tax is applied to the portion of the parcel that is used for storage of non-perishable goods or non-refrigerated perishable goods."[4]

U.S. Growers and Jurupa submitted an administrative appeal of the denial of the application. In December 2012, Jurupa filed an application for an adjustment of the SPT on the Parcel for fiscal years 2008–2009 through 2012–2013. It appears the City denied that application and Jurupa appealed again. The City did not hear the appeals and claims they were, thus, "constructively denied."

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[3] The facts recited in this paragraph were stipulated to by the parties in the trial court.

[4] The City also concluded the application was untimely as to the fiscal years 2008–2009, 2009–2010, and the first installment of 2010–2011.

4. *The City Council Enacts Ordinance 1206*

In May 2013, the city council enacted Ordinance 1206, codified as Section 5.47. Section 5.47, titled "Apportionment of Special Tax," provides that as to parcels "whose improvements are in multiple uses . . . the amount of the [SPT] against the parcel shall be based only on the land area apportioned to uses that would otherwise trigger the tax." The ordinance noted that "it has been the practice of City staff, in administering the [SPT], to make such an apportionment."

The City's staff report regarding Ordinance 1206 provided that "Section 5.45 . . . governs the administration of the [SPT] and includes detailed definitions of the types of improvements that trigger the tax. Read literally, Section 5.45 appears to require that, if any such improvement is present on a parcel, the entire gross land area of the parcel is subject to the tax. However, that literal reading can result in an unfairly high tax for parcels that are improved with multiple uses."

In August 2013, Jurupa sued the City for declaratory relief, injunctive relief, and a writ of mandate.[5] The complaint alleged that the City had levied an apportioned SPT on the Parcel in violation of Code provisions making properties with cold storage facilities entirely exempt from the SPT. "Nothing in either Ordinance 1057 or 1076 notified the CITY electorate that the [SPT] would be assessed on any other basis than 'per parcel[.]' . . . [¶] The CITY never asked the voters for permission and was, therefore, never granted authority to tax *exempt* parcels if they were partially used for some disfavored purpose."

The complaint sought declaratory relief as to whether Section 5.47 was unconstitutional because the voters had not approved a special tax on parcels that contain cold storage facilities. With respect to the injunctive relief cause of action, the complaint

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[5] The Los Angeles County Auditor-Controller, Assessor, and Treasurer were also named as defendants to the injunctive relief cause of action and successfully demurred. Although the trial court granted Jurupa leave to amend, Jurupa did not amend the complaint, and judgment was thereafter entered for those defendants. Jurupa has not challenged on appeal the order sustaining the demurrer.

sought a permanent injunction barring the City from imposing the SPT on the Parcel. The third cause of action for "Petition for Writ of Mandate" alleged that "until voters approve a 'mixed-use' 'apportioned' special parcel tax that alters the previously exempt status of [the Parcel], the CITY is without authority to impose the tax on JURUPA's property." Jurupa sought a writ compelling the City to refund the SPT "illegally" collected on the Parcel and to submit the special tax to the voters for approval.[6]

The City demurred to the first two causes of action for declaratory and injunctive relief and the court sustained the demurrer with leave to amend. Jurupa did not amend the complaint.

The court thereafter denied the petition for writ of mandate: "[T]he petition alleges that Section 5.45 excludes cold storage or refrigerated warehouse facilities from the special tax. This is not the case. The plain language of the Municipal Code does not actually exempt a parcel of real property from the [SPT] because of the presence of a cold storage facility. . . . [I]t merely excludes cold storage facilities from the statutorily specified uses by definition."

The court concluded that the apportionment scheme codified in Section 5.47 "does not impose a new tax, but merely formalizes the method by which the [SPT] previously approved by the electors will be assessed and collected. . . . In addition, assessment and levy by apportionment is a reasonable construction of the taxing statute that effectively balances the goals of increasing revenue from the targeted uses while not overburdening less damaging uses with increased taxation, thereby achieving the stated objects of the legislation the electors passed." Judgment was entered in the City's favor, and Jurupa timely appealed.

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[6] Jurupa does not dispute that the petition for writ of mandate is properly considered under Code of Civil Procedure section 1085, subdivision (a) because it seeks a writ commanding the City to submit the apportionment scheme to the voters. (See *Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 835 [mandamus is the proper remedy to compel a public body to submit a tax ordinance to voters].)

CONTENTIONS

Jurupa contends that properties that contain cold storage facilities are exempt from the SPT and, therefore, Section 5.47's apportionment scheme constitutes a new special tax imposed by the City without the required voter approval. In the alternative, Jurupa contends the SPT may only be imposed on parcels "primarily" used for taxable warehouse purposes and, therefore, Section 5.47's apportionment scheme constitutes a new special tax to the extent it is imposed on properties primarily used for non-taxable cold-storage purposes.[7]

DISCUSSION

1. *Standard of Review*

Code of Civil Procedure section 1085, subdivision (a) provides that "[a] writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person."

"Pursuant to Code of Civil Procedure section 1085, review of quasi-legislative actions ' " ' " 'is limited to an inquiry into whether the action was arbitrary, capricious or entirely lacking in evidentiary support, . . .' " . . . [and] [t]he petitioner has the burden of proof to show that the decision is unreasonable or invalid as a matter of law.' " ' "

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[7] Jurupa also contends the trial court erred in not addressing "two distinct but related issues" presented by its writ of mandate, citing to the complaint's request for (1) a declaration "that a square footage parcel tax imposed by the . . . City . . . is illegal," and (2) an injunction preventing the City "from enforcing its parcel tax." Jurupa is conflating its first two causes of action for declaratory and injunctive relief with its third cause of action for writ of mandate. After the trial court sustained the demurrer to the first and second causes of action with leave to amend, Jurupa chose not to amend the complaint. The trial court's subsequent order was properly limited to the remaining cause of action for writ of mandate. On appeal, Jurupa has not challenged the court's order sustaining the demurrer as to the first two causes of action. Therefore, we address only the court's order denying the petition for writ of mandate.

(*California Correctional Peace Officers' Assn. v. State of California* (2010) 181 Cal.App.4th 1454, 1459.) "[W]hen the agency's action depends solely upon the correct interpretation of a statute, a question of law, we exercise our independent judgment. [Citations.] In doing so, 'we are guided by the principle that an " 'administrative [agency's] interpretation [of controlling statutes] . . . will be accorded great respect by the courts and will be followed if not clearly erroneous.' " ' [Citations.]" (*Id*. at p. 1460.)

2. *Special Taxes Imposed by a Local Government Must Be Approved by the Voters*

"All taxes are either special taxes or general taxes. General taxes are taxes imposed for general governmental purposes. Special taxes are taxes imposed for specific purposes." (Gov. Code, § 53721.) "Pursuant to California Constitution article XIII C, no local government [i]s permitted to impose, extend or increase any general or special tax unless it [i]s submitted to the electorate and approved. . . . [Government Code] section 53750, subdivision (h)(1)(B)[] provide[s] that a tax increase occurs when a decision by an agency revises the methodology by which a tax is calculated and the revision results in increased taxes being levied on any person or parcel." (*AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747, 755.)

3. *Vernon Municipal Code Sections 5.45 and 5.47*

Section 5.45 provides that "there is hereby levied and assessed a special tax by the City of Vernon on each parcel of property improved with a 'warehouse,' a 'truck terminal,' a 'freight terminal,' a 'railroad facility,' or a 'distribution facility,' as hereinafter defined." (Section 5.45, subd. (a).) "Warehouse" is defined by Section 5.45 to "mean a *building or part of a building* used or designed primarily for the storage of non-perishable goods or non-refrigerated perishable goods intended for distribution to other locations, or the sale of goods for distribution to other locations for wholesale or retail sale, but does not include: (i) an accessory warehouse building that is an integral part of a manufacturing business located in the City of Vernon used for storage of goods or materials produced in that operation, (ii) any wholesale, distribution and wholesale

uses which pay at least .20¢ per square foot in sales tax to the City . . . during the subject fiscal year, and (iii) *cold storage and refrigerated warehouses*." (Section 5.45, subd. (b)(11), italics added.)

Section 5.47 provides that "[i]n calculating the tax imposed pursuant to Section 5.45 upon a parcel whose improvements are in multiple uses, the gross land area of the parcel shall be apportioned between the various uses of the parcel, and the amount of the tax against the parcel shall be based only on the land area apportioned to uses that would otherwise trigger the tax. The gross land area shall be apportioned proportionally to the use of the square footage of improvements on the parcel, with improved common space areas (such as break rooms, restrooms, hallways and loading docks that are shared by the occupants, tenants or uses of a building) allocated proportionally to the improved square footage of the uses." (Section 5.47, subd. (a).)

4. *Section 5.47 Does Not Constitute a New Special Tax*

Jurupa contends that Section 5.47 constitutes a new special tax because (1) parcels improved with cold storage facilities are exempt from the SPT, thus, any "apportionment" of the SPT as to those properties is not permitted under Section 5.45, and (2) Section 5.45 provides that the SPT is imposed per parcel "based on the parcel's primary use" and, therefore, does not permit the "apportionment" of the SPT on mixed-use properties, the primary use of which is for cold storage facilities. We disagree with Jurupa's interpretation of Section 5.45 and conclude that Section 5.47 does not constitute a new special tax requiring voter approval.

"The goal in interpreting a statute enacted by voter initiative is to determine and effectuate voter intent. [Citations.] To determine that intent, however, we must first look to the *words* of the statute, 'giving them their usual and ordinary meaning.' [Citations.] Courts may look to extrinsic evidence to construe a statute *only* when the statutory language is susceptible of more than one reasonable interpretation. [Citation.] 'If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the . . . voters.' [Citation.]" (*People v. Salazar-Merino* (2001) 89 Cal.App.4th 590, 596-597.)

a. *Section 5.45 Does Not Prohibit a Levy of the SPT on All Properties that Contain Cold Storage Facilities*

Section 5.45 authorizes the City to impose the SPT on any parcel that has a qualifying facility on it, whether or not non-qualifying facilities are also present on the property. The statute provides: "[T]here is hereby levied and assessed a special tax by the City . . . on each parcel of property *improved with a 'warehouse' . . . or a 'distribution facility*,' as hereinafter defined." (Section 5.45, subd. (a), italics added.) The term "[w]arehouse" is defined by the statute as "a building or part of a building used or designed primarily for the storage of non-perishable goods or non-refrigerated goods intended for distribution to other locations . . . but does not include . . . cold storage and refrigerated warehouses." (Section 5.45, subd. (b)(11).)

According to the usual and ordinary meaning of those words, if a parcel is improved *only* with a warehouse as defined by Section 5.45, then the City may impose the SPT on the parcel because "there is hereby levied and assessed a special tax by the City . . . on each parcel of property improved with a 'warehouse' . . . ." (Section 5.45, subd. (a).) If, on the other hand, the parcel is improved *only* with a cold storage facility, then the City may *not* impose the SPT on the parcel because that property is not improved with a "warehouse" as defined by the statute: the term "warehouse" "does not include . . . cold storage and refrigerated warehouses." (Section 5.45, subd. (b)(11).)

If the parcel is improved with both a qualifying facility (i.e., a "warehouse") and a non-qualifying facility (i.e., a cold storage facility), then Section 5.45 authorizes the City to impose the SPT on the entire parcel because the "parcel of property [is] improved with a 'warehouse.' " (Section 5.45, subd. (a).) That the parcel is *also* improved with other facilities does not exempt the parcel from the SPT because such a parcel is still "improved with a 'warehouse' " as provided for by Section 5.45. Although Jurupa contends that parcels that contain cold storage facilities are exempt from the SPT, this conclusion is not supported by a plain reading of the statute. Section 5.45 does not prohibit a levy of the SPT on properties that contain cold storage facilities, but only excludes cold storage facilities from the definition of "warehouse."

b. *Section 5.45 Does Not Provide that the SPT Is Limited to Parcels "Primarily" Used for Warehouse Purposes*

A plain reading of Section 5.45 also does not support Jurupa's contention that Section 5.45 provides for the levy of the SPT "based on [a] parcel's primary use." Section 5.45 authorizes the City to levy the SPT on "each parcel of property improved with a 'warehouse,' " without any qualification as to the parcel's primary use. (Section 5.45, subd. (a).) Although Jurupa points to the definition of a "warehouse" as "a building or part of a building used or designed *primarily* for the storage of non-perishable goods," this definition addresses the primary use of the *improvements* on a parcel, not the uses of the parcel. (Section 5.45, subd. (a), italics added.) Accordingly, a parcel may have multiple improvements devoted to different uses, but if at least one of those improvements constitutes a "warehouse" as defined in Section 5.45, the parcel is still subject to the SPT whether or not that warehouse is responsible for the primary activity on the parcel or just a small portion of the activity on the parcel. Therefore, while a parcel is subject to the SPT if it contains at least one "building or part of a building used or designed primarily for the storage of non-perishable goods"—i.e., a warehouse—Section 5.45 simply does not address the *parcel's* "primary" use.

c. *Section 5.47's Apportionment Scheme Does Not Constitute a New Tax*

Jurupa is correct that Section 5.45 does not expressly provide for an apportionment of the SPT with respect to mixed-use properties. Indeed, Section 5.45 does not reference mixed-use properties or apportionment at all. Section 5.45 does authorize the City to impose the SPT on the *entirety* of each parcel that contains a warehouse, whether or not the property also contains other improvements. As Section 5.47's apportionment scheme imposes *less* than the maximum tax authorized by Section 5.45, it does not constitute a new tax requiring voter approval.

Section 5.45 provides that "[t]he maximum special tax commencing in fiscal year 1999, shall be $20.00[8] per 100 square feet of *gross area of land*."[9] (Section 5.45, subd. (c), italics added.) By contrast, Section 5.47 provides that, with respect to parcels "whose improvements are in multiple uses," the SPT "shall be based *only* on the land area apportioned to uses that would otherwise trigger the tax." (Section 5.47, subd. (a), italics added.) In other words, under Section 5.47, the City will charge mixed-use properties *less* than the "maximum special tax" "per 100 square feet of gross area of land"; the City will impose the maximum special tax *only* on the square footage of the property apportioned to "taxable" uses, *not* the entire square footage of the parcel.[10] (Section 5.45, subd. (c); Section 5.47, subd. (a).)

In conclusion, Section 5.45 authorizes the City to impose the SPT on each parcel that contains a qualifying facility and to calculate the SPT by applying the maximum special rate for that year to the gross area of the entire parcel. Section 5.47, by contrast, provides that, as to mixed-use parcels, the SPT will be calculated "based *only* on the land

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[8] The $20.00 rate may be "revised annually based upon changes in the Consumer Price Index for All Urban Consumers . . . ." (Section 5.45, subd. (d)(2).)

[9] Jurupa agrees that Section 5.45's reference to "gross area of land" refers to the gross area of the entire parcel.

[10] For example, where a parcel is improved with a building that occupies 2/3 of the property and 60 percent of the building is used as a warehouse, 30 percent is used for a cold storage facility, and 10 percent is common spaces shared by both facilities, the SPT will be applied to 2/3 of the entire parcel. (See Section 5.47, subd. (a) ["The gross land area shall be apportioned proportionally to the use of the square footage of improvements on the parcel, with improved common space areas . . . allocated proportionally to the improved square footage of the uses. For example, if a 150,000 square foot parcel is improved with a single 100,000 square foot structure, 60,000 square feet of which is used for the storage of non-perishable goods, 30,000 square feet of which is used for the storage of non-durable perishable goods under refrigeration, and 10,000 square feet of which is common spaces shared by both the non-perishable and refrigerated storage uses, the tax upon the parcel pursuant to Section 5.45 would be calculated as if the parcel were a 100,000 square foot parcel improved and used entirely for the storage of non-perishable goods."].)

area apportioned to uses that would otherwise trigger the tax," not the entire parcel. (Section 5.47, subd. (a), italics added.) Accordingly, as Section 5.47 provides a method by which the City may impose *less* than the maximum SPT on certain properties, Section 5.47 does not constitute an increase in the SPT.[11]

DISPOSITION

The judgment is affirmed. Jurupa's request for judicial notice is denied. The City shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

ALDRICH, J.

LAVIN, J.

[11] Because we conclude that a plain reading of the statutes reveals the voters' intent, we do not address the parties' arguments regarding extrinsic evidence. (See *People v. Salazar-Merino, supra*, 89 Cal.App.4th at pp. 596-597.)