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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

JAMES MOSBY, Plaintiff and Appellant, v. COUNTY OF SANTA BARBARA, Defendant and Respondent.	2d Civil No. B268736 (Super. Ct. No. 1466446) (Santa Barbara County)

James Mosby petitioned for a writ of administrative mandamus when the County of Santa Barbara (County) denied him a permit to operate a sports facility on land zoned for agriculture. We conclude that the denial is supported by substantial evidence, after examining "all relevant evidence in the entire record." (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335). Mosby's small site adjoins agricultural operations that use pesticides, and his project degrades the soil and lacks public services. The County drew a line and refused to approve an urban-type facility hosting up to 780 patrons per

weekend day in a rural area. This was not a prejudicial abuse of discretion. (Code Civ. Proc., § 1094.5, subd. (b).) We affirm.

FACTS AND PROCEDURAL HISTORY[1]

James Mosby owns 19.5 acres of land zoned for agricultural use in an unincorporated rural area of the County, just across the Santa Ynez River from the City of Lompoc. The land was historically farmed, and is suitable for growing grain and other crops, as an orchard, or a vineyard. Mosby leases an adjoining parcel to a tenant who grows flowers and organic vegetables. Mosby's land borders riparian open space/park land and cultivated farm land. Across the highway is a homeless shelter and a County road yard.

Since 2006, Mosby has operated on his land an unpermitted commercial recreational facility with a paintball field, a remote-controlled car track, and soccer fields, in violation of County zoning laws. Mosby also has greenhouses, a residence, a warehouse, aquaculture ponds, and a parking lot for 150 cars.

When the County received a complaint about Mosby's unpermitted operation in 2011, it began enforcement proceedings. Mosby paid a $2,000 fine and applied for a Conditional Use Permit (CUP).

During the application process, the County Planning and Development Department advised Mosby that a CUP could not be granted unless his property was rezoned from General Agricultural (which bars commercial recreational facilities) to "AG-II-40." Mosby agreed to go through the rezoning process. Meanwhile, he continued to operate his recreational facility.

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[1] Additional facts are described in our discussion of the sufficiency of the evidence.

After a hearing in 2014, the Board of Supervisors (Board) denied a rezoning for "an urban type of land use" that is inconsistent with the County's Comprehensive Plan and contrary to community welfare. At the same time, the Board denied Mosby's CUP application, finding that his project (1) is a small site unbuffered from surrounding agricultural land; (2) causes land use conflicts; (3) violates County land use plans and policies and adversely impacts adjacent agricultural operations; and (4) is incompatible with the area's rural character. The Board did not elaborate on the nature of the land use conflict. The County demanded that Mosby remove all unpermitted facilities within 30 days.

Mosby petitioned for a writ of mandate. The trial court stayed the County's abatement demand. In April 2015, the court identified an "analytic gap" between the evidence and the Board's findings. It granted Mosby's petition and ordered the Board to reconsider the matter.

The Board promptly reconsidered Mosby's application, issuing new findings in June 2015. This time, the Board approved a rezoning of Mosby's land to AG-II-40, to conform to the current County Land Use and Development Code (LUDC). The land remains zoned for agricultural use.

The Board again denied Mosby a CUP, finding that his project (1) is an intensive urban-type use with up to 780 visitors per day, leading to soil compaction and human exposure to pesticides drifting from adjacent cultivated fields; (2) has inadequate access to public services; (3) is incompatible with adjacent agricultural operations that use pesticides; (4) conflicts with the County's land use goals and policies; and (5) introduces land use conflicts in a designated "Rural" area.

Mosby renewed his objections to the Board's findings. The trial court determined that the County provided greater detail than before, or new information that bridges the analytic gap between the raw evidence and the ultimate decision, which is supported by substantial evidence. It denied Mosby's petition. The appeal is timely.

DISCUSSION

1. Appeal and Review

The judgment denying Mosby's petition is final and appealable. (Code Civ. Proc., § 904.1, subd. (a)(1); *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696-700.) Courts review the denial of a CUP under a substantial evidence standard, as no fundamental, vested right is implicated. (*Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 367.)

"On appeal from the denial of a petition, our role is identical to that of the trial court. [Citations.]" (*McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 922; *Reddell v. California Coastal Com.* (2009) 180 Cal.App.4th 956, 962.) We inquire whether the agency exceeded its jurisdiction, conducted a fair trial, or prejudicially abused its discretion. (Code Civ. Proc., § 1094.5, subd. (b).) "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (*Ibid.*) We determine if the findings are "supported by substantial evidence in the light of the whole record." (*Id.*, subd. (c).)

The findings are presumed to be supported by the record. (*McAllister v. California Coastal Com., supra,* 169 Cal.App.4th at p. 921.) If the evidence conflicts, the agency's

decision is reversible only if a reasonable person could not reach that conclusion. (*Ibid.; Reddell v. California Coastal Com., supra,* 180 Cal.App.4th at p. 962.) In short, "the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision." (*Topanga Assn. For A Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.)

Mosby asserts that heightened scrutiny applies because "the same result [was] imposed without a new and different legal analysis" in both the 2014 and the 2015 denials of his CUP application. He suggests that the Board was so wedded to its result that it did not genuinely reconsider the issues.

The Board's 2015 findings are substantially different from the 2014 findings that the trial court found lacking. They now clarify the intensity of the project's "urban type" use by up to 780 patrons daily; discuss the impact of the heavy use; cite state law on pesticide use; detail conflicts arising from pesticide use on adjacent farms; and highlight the lack of public services (such as toilets). Heightened scrutiny is not required because the new findings are not a barren exercise in futility.

2. The Findings Are Supported By Substantial Evidence

The LUDC requires the Board to make seven findings before granting a CUP.[2] Here, the Board determined that five of

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[2] The seven required findings are (1) adequacy of the site's location, physical characteristics, shape and size; (2) mitigation of environmental impacts; (3) adequacy of roadways for traffic created by the use; (4) adequacy of public services, including fire and police protection, sewage disposal and water supply; (5) compatibility with the surrounding area and lack of detriment to the comfort, convenience, general welfare, health and safety of the neighborhood; (6) compliance with all County codes and plans; and (7) in designated "Rural" areas, projects must be

the seven findings could not be made. This is a discretionary determination. (*Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328-329.)

Mosby relies extensively on interim reports from County agencies and staff members. The Board held a hearing, considered the evidence, and made a final decision on Mosby's application. We review the findings of the Board, as the ultimate decisionmaker. (*BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1221; *Lagrutta v. City Council* (1970) 9 Cal.App.3d 890, 895-896 [the city council makes final decisions, not the planning commission]; see *Russian Hill Improv. Asso. v. Board of Permit Appeals* (1967) 66 Cal.2d 34, 38-39 [interim approvals are not dispositive, only "those permits which have attained finality in the administrative process."].)

a. Inadequacy of the Site's Size or Location

The Board listed the size of the site as a factor in denying a CUP. The Board could reasonably find that Mosby's rural property, at just under 20 acres, is too small to host up to 110 people on weekdays, 780 visitors and 280 car trips per day on weekends, or over 100,000 yearly patrons. Nearby River Park, by comparison, consists of 85.9 developed acres, a far larger space for a similar volume of users.

Mosby has no cogent answer to the Board's finding, other than to point out that nearby La Purisima Mission State Park has 2,000 acres and hosts 200,000 annual visitors. Far from helping Mosby, this datum supports the Board's finding. Mosby's property is one percent of the state park's size, yet he hosts half as many patrons. Whether using River Park or La Purisima for

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compatible with and subordinate to the area's rural and scenic character.

comparison, the Board did not arbitrarily deem Mosby's property too small for a busy sports facility in a rural area.

The Board considered evidence of pesticide drift from adjacent cultivated fields onto Mosby's land. The record includes Mosby's complaints to the County Agricultural Commissioner about pesticides. In July and August 2009, Mosby lodged complaints asserting that toxic pesticides used by a neighboring farmer drifted onto Mosby's fish ponds, "killing a 'major' quantity of his fish." A map shows that Mosby's fish ponds adjoin his recreational facility and the farmed fields.

In May 2014, Mosby complained that his neighbor's application of pesticides on a windy night drifted onto organic vegetables on Mosby's land. Significantly, "Mosby stated that he has a long history with [the grower] and applications that drifted," a point echoed by Mosby's tenant farmer. The grower's employee reported that Mosby appears "every time we spray and stops the application, most times with his truck," causing work delays. Tests confirmed that pesticides drifted onto Mosby's land.

State law requires that growers obtain pesticide permits. Before issuing a permit, the agricultural commissioner must consider "local conditions," such as pesticide use in the "vicinity of . . . recreational areas." (Food & Agr. Code, § 14006.5.) In light of state law limitations, neighboring growers voiced opposition to Mosby's project, citing his complaints to the agricultural commissioner about drifting pesticides. They reasoned that a facility hosting hundreds of people will increase conflicts between Mosby's recreational use and their agricultural use.[3]

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[3] One agriculturist complained that Mosby's patrons discard trash that must be collected by adjacent landowners

Expert testimony is not required to establish land use conflicts. "It is appropriate and even necessary for the [agency] to consider the interest of neighboring property owners in reaching a decision whether to grant or deny a land use entitlement, and the opinions of neighbors may constitute substantial evidence on this issue. [Citations.]" (*Desmond v. County of Contra Costa, supra,* 21 Cal.App.4th at p. 337; *Harris v. City of Costa Mesa* (1994) 25 Cal.App.4th 963, 973; *Dore v. County of Ventura, supra,* 23 Cal.App.4th at p. 330 [the opposition of neighbors is a legitimate factor in legislative decisionmaking].)

The prevailing winds come from the west/northwest, where fields adjacent to Mosby's property are under cultivation. The absence of complaints about pesticides in River Park is irrelevant: River Park is downwind from the Santa Ynez River and urban Lompoc, not from cultivated fields.

In denying a CUP, it is appropriate for an agency to consider "safety, noise and nuisance problems; these clearly represent concerns that are well within the domain of the public interest and public welfare. [Citation.]" (*BreakZone Billiards v. City of Torrance, supra,* 81 Cal.App.4th at p. 1246.) The Board had reason to deny the CUP owing to, in its words, "the potential to expose people to pesticides that are used in the adjacent cultivated fields" and the effect of "restrictions on the types of agricultural commodities that could be planted adjacent to the recreational uses." The two incompatible uses are not buffered, as required by the LUDC, and threaten agricultural productivity on surrounding parcels. The record shows that farmers must

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when it blows onto their land. The mayor of Lompoc referred to Mosby's project as "an eyesore [at] the entrance of our city."

limit pesticide and herbicide applications when local playing fields are in use.

Mosby argues that the Board cannot make a finding based on "a single complaint of an illegal, nighttime pesticide application" in 2014. Illegal conduct affecting a proposed operation may constitute substantial evidence supporting permit denial. (See *BreakZone Billiards v. City of Torrance, supra,* 81 Cal.App.4th at pp. 1210-1213, 1248 [police reports that "illegal and criminal [gang] activity" occurs in a business's parking lot supported the denial of a CUP to serve alcohol, in light of "'the past history of incidents'"].)

The record belies Mosby's claim about a single complaint: it contains his 2009 complaints, his acknowledgement of "a long history" of pesticides drifting onto his property, and similar concerns voiced by his tenant. The record also contains growers' objections to Mosby's project, owing to his repeated complaints about drifting pesticides. Our review discloses ample support for the Board's finding that an outdoor recreational facility cannot be located within feet of agricultural operations that use pesticides, when the site is too small to create a safe buffer between the two uses.

Soil impacts are a factor cited by the Board. The Environmental Defense Center wrote that Mosby's project "has dramatically altered the onsite soils from grading and compaction due to parking, new structures, and paintball detritus." This has a permanent and direct "impact on the future potential for the land to be utilized for agriculture;" conflicts with the County General Plan, and sets a bad precedent for County agricultural land. A farmer on the County Agricultural Committee wrote that one cannot "underestimate how much compacting (from

trampling and parking) can degrade soil, making it less suitable for long-term agricultural sustainability." The Board's findings regarding soil compaction and degradation are supported by reasonable, credible, and uncontradicted evidence.[4]

b. Inadequacy of Public Services

The absence of restrooms, drinking water, and a public road is not mentioned in the Board's 2014 denial of a CUP, but is crucial to the Board's 2015 findings. The County informed Mosby in December 2011 that he cannot use portable toilets, and instructed him to "provide a contractual agreement with the City of Lompoc" verifying his right to use city restrooms. In 2012, Lompoc's city administrator wrote to say that the city would have to reach an agreement with Mosby regarding use of its restrooms and drinking water, which could require additional maintenance. Mosby was again advised in 2013 that his project was conditioned on a formal agreement with Lompoc authorizing his use, for the life of the project, of (1) an access road and (2) restrooms at River Park.

The 2014 Board hearing underscored that Mosby "is proposing" to use restrooms and a road belonging to Lompoc, and approval of a CUP is conditioned on Lompoc's agreement. Board members commented that his site lacks water taps or restrooms, and that a nearby campground has toilets and shower facilities, but the next restroom "is quite a ways up the road," which is not safe or appropriate. Mosby was aware of the Board's concerns.

Lompoc's city administrator advised the County that the campground facility is "only accessible to paid campers."

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[4] Mosby states, incorrectly, that the trial court rejected soil compaction and degradation evidence. Instead, the court questioned evidence on another subject.

Further, Lompoc "would need to confirm via a public meeting at the City Council level that there is a financial commitment and willingness to serve the proposed project *in perpetuity as an off-site provider*." Public comments questioned Lompoc's ability to provide restrooms, daily from 7:00 a.m. to dusk, for up to 780 people.

The record bears out the Board's conclusion that Mosby failed to demonstrate the availability of public services. No agreement between Mosby and Lompoc was recorded, though Mosby was repeatedly warned of the requirement since 2011. Even if an agreement were reached, patrons must walk a mile, round trip, to use the River Park restrooms, which the Board deemed "an unreasonable distance for people, and particularly children, to travel to obtain water and use the restroom."

The Board properly assessed that the distance is untenable. The problem is compounded by the small size of the facility (two stalls for women and two for men) for up to 780 people on a weekend. This does not even account for visitors to River Park vying with Mosby's patrons to use the restrooms. The evidence supports a finding that Mosby's land lacks drinking fountains and toilets: a CUP cannot be predicated on a distant, uncertain public facility in River Park that is too small for large crowds.

Access to Mosby's facility is from River Park Road. In August 2013, Lompoc's city administrator informed the County that River Park Road is "property owned in fee by the City of Lompoc and not a public road." Lompoc signaled its willingness "to grant temporary right of entry to support [Mosby's] Project and is in negotiations with the owner to that

end." Mosby produced no evidence at the hearing to prove that the road is public, not private.

Mosby knew, by September 2013, that the County required proof of a road access agreement with Lompoc. Despite the notice, there is no evidence that an official agreement was ever reached, though Mosby had years to accomplish the task. The Board could reasonably conclude that public access to the site from River Park Road cannot be assured throughout the life of the project.

c. Detriment to the Comfort, Convenience, General Welfare, Health and Safety of the Neighborhood and Incompatibility with the Surrounding Area.

In finding that the project is incompatible with the surrounding area, the Board reiterated the evidence regarding Mosby's complaints of drifting pesticides from neighboring agricultural operations. The Board reasoned that these pesticides "could drift into the recreational areas at the project site," because prevailing winds come from the direction of adjoining farmland. As discussed in section a, *ante,* the record supports this finding. The record also bears out a planning and development department recommendation that the Board deny Mosby's application because Lompoc has 13 suitably-located parks, totaling 420 acres, offering soccer, baseball and football fields, skate parks, and other recreational amenities, making Mosby's facility redundant and unnecessary in an active agricultural area outside urban limits.

d. Inconsistency with the County Comprehensive Plan

The Board found that Mosby's project is inconsistent with the County Comprehensive Plan, the County's "'constitution for all future developments.'" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570.) Its preamble

recognizes the County's need to "provide for the conservation of its agriculture."

The Comprehensive Plan requires that agricultural land be protected from adverse urban influence. The County's "Goal 1" is to assure continued agricultural use, which "shall not be violated by recreational or other non-compatible uses." Agriculture is the County's major industry, valued at over $1 billion: it creates jobs, food, and economic value, provides valuable open space and maintains the County's rural character.

The record supports a finding that Mosby's facility, on land zoned for agriculture, would introduce up to 780 patrons per day into a rural area, an overly intensive use that conflicts with Comprehensive Plan intentions to preserve land for long-term agricultural use. The project threatens the County's goal of disallowing recreational uses that interfere with agricultural operations. Mosby's neighbors use pesticides on their crops. There is no buffer between the neighbors' agricultural activities and Mosby's recreational activities, creating land use conflicts.[5]

3. Equitable Estoppel

Mosby argues that the County is estopped from relying on the lack of public facilities, while acknowledging that the courts disfavor estoppel against a public entity. (See *City of*

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[5] We do not address all the Board's findings because we have found sufficient evidence to deny Mosby's CUP application. "'[I]t is not necessary to determine that *each* finding by the Board was supported by substantial evidence. So long as the Board made a finding that any one of the necessary elements enumerated in the ordinance[] was lacking, and this finding was itself supported by substantial evidence, the Board's denial of appellant's application must be upheld.' [Citation.]" (*Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1213-1214.)

Goleta v. Superior Court (2006) 40 Cal.4th 270, 279 [equitable estoppel does not apply against the government except to avoid grave injustice, if the result will not defeat public policy].) An estoppel may arise if the agency knew the facts and intended that its conduct be acted upon; and if the applicant was ignorant of the true facts and detrimentally relied upon the agency's conduct, to his injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.) In land use cases, estoppel applies "only in the most extraordinary case where the injustice is great and the precedent set by the estoppel is narrow." (*Smith v. County of Santa Barbara* (1992) 7 Cal.App.4th 770, 775.)

"[T]he existence of an estoppel is generally a question of fact for the trier of fact" that is binding on appeal unless only one conclusion can be reasonably drawn from the facts. (*Alberts v. County of Los Angeles* (1965) 62 Cal.2d 250, 266.) Mosby did not assert estoppel below, but asks us to apply it on appeal as a new legal argument.

We cannot treat estoppel as a legal issue. First, it is not clear that the Board is bound by planning department comments. Second, Mosby makes scant effort to show reliance or actual injury. The fact is, he built his facility in 2006 and has operated it for years without a permit, regardless of any implied promises. (See *Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 254, 256-262 [a landowner that built 28 homes without a permit cannot rely on a county's 30 years of inaction or representations that the construction complied with land use laws].)

This is not an instance in which estoppel can be decided as a matter of law on undisputed facts. (*Platt Pacific,*

Inc. v. Andelson (1993) 6 Cal.4th 307, 319.) Mosby has forfeited the issue.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to the County.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Donna D. Geck, Judge
Superior Court County of Santa Barbara

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