

CLIENT NEWS BRIEF

Court Confirms That Calculation of Level 1 Developer Fees for Apartment Buildings Includes Interior Common Areas

A California court has confirmed that school districts are authorized to assess Level 1 developer fees against interior common areas of apartment buildings, including hallways and walkways.

School districts have received pushback from developers regarding whether “assessable space” includes interior common areas. With its decision in *1901 First Street Owner, LLC v. Tustin Unified School District*, the court has provided districts with legal authority for imposing fees on such space. The court expressly concluded that its analysis is specific to Level 1 developer fees, and not Level 2 or 3 developer fees, which receive separate statutory treatment in the Government Code.

Developer Fees in California Law

School districts are authorized to levy developer fees against residential construction within their boundaries to fund school facilities. Level 1 fees are charged per square foot of “assessable space,” including “all of the square footage within the perimeter of a residential structure.” (Gov. Code, § 65995.) The building department of the city or county issuing the building permit for residential construction is required to calculate Level 1 fees.

Background

In *1901 First Street Owner, LLC v. Tustin Unified School District*, a developer of a residential apartment building challenged the city’s calculation of Level 1 developer fees to be paid to the Tustin Unified School District. The city excluded interior common areas from its initial fee calculation, but recalculated the fees when the District objected. The developer objected to this later fee calculation and filed suit.

The developer argued that only individual apartment units, and not interior common areas—including hallways, storage rooms, mechanical rooms, fitness centers, and lounges—could constitute “assessable space . . . within the perimeter of a residential structure” within the meaning of Government Code section 65995(b)(1). The developer relied on section 65995’s indication that a city or county should calculate the space within the perimeter of a structure based on the city’s or county’s “standard practice” for calculating perimeters, and claimed that the city was correct in excluding interior common areas in its calculation. Thus, the developer contended that the calculation of Level 1 fees should exclude interior common areas. The district disputed such exclusion, taking the position that the city’s calculation correctly assessed the interior common areas along with the individual apartment units.

The court agreed with the district and confirmed that “assessable space” includes interior common areas. The court noted that the statute explicitly lists examples of exterior areas and notably excludes interior common areas from the list. Aside from walkways, the exterior areas listed were typically located at or near the periphery of a residential structure. Therefore, a “walkway” under

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CLIENT NEWS BRIEF

April 2018
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the statute means an internal walkway and not an interior hallway.

Additionally, the court distinguished the meaning of "standard practice" under Government Code section 65995(b)(1) from the developer's argument that the city's "standard practice" was to exclude interior common areas from the calculation. The court stated that, under the statute, "standard practice" meant the city's calculation of square footage "within the perimeter of a residential structure," including interior common areas.

Takeaways

In an environment where courts have issued several developer-friendly decisions in recent years, this case can be viewed as good news for school districts. The results of *1901 First Street* confirm the position taken by many of our school district clients that interior common areas are properly included in the calculation of Level 1 fees.

As of January 24, 2018, school districts may charge up to \$3.79 per square foot of residential development. School districts should ensure that cities calculate Level 1 fees based on the square footage of both individual apartment units and interior common areas.

Lozano Smith's Developer Fee Handbook addresses imposition of developer fees and related procedures. School districts that have not previously ordered the Handbook or need replacement or additional copies can order the Handbook [here](#) or by contacting Client Services at clientservices@lozanosmith.com or (800) 445-9430.

If you have any questions about the court's ruling or about developer fees in general, please contact the authors of this Client News brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).