ZONING AND PLANNING LAW REPORT

Vol. 30, No. 8 August 2007

"THE CITY OF ANAHEIM, CALIFORNIA AND DISNEY: HOW MUCH SAY DOES THE MOUSE GET ON WHAT GETS BUILT?"

Paul Weinberg

Paul Weinberg is a real property attorney practicing in Irvine, California. Since 1979, his Orange County practice has specialized in real estate, title, leasing, and real property development matters. Paul is the only nonarchitect member of the Laguna Beach, California Architectural Guild and acts as their legal counsel. He is a member of the Society of Architectural Historians and the American Institute of Architects. Paul has also served on the faculty at the University of California, Hastings College of Law in San Francisco, where he has taught civil trial practice, as well as teaching real property topics for the University's Continuing Education of the Bar, where he has moderated panels on a wide variety of real property topics statewide since 1988. He also authors articles for the University of California's Continuing Education of the Bar Real Property Law Reporter, and West's National Real Property Law Journal. In 1998, Paul announced the formation and opening of a private mediation service devoted to the resolution of real property disputes.

Traditionally, cities have had the power and ability to control, more or less, the manner and method of growth and planning within their borders. In many states, including California, a mandate requiring that is codified. The central nature of the planning process to the idea of self-determination of a municipality is enshrined in most states' legal processes.

For example, the University of California's Continuing Education of the Bar treatise on Land Use summarizes very well how critical the planning process is to municipal governments and the relative importance of general and specific plans:

> The general plan is at the top of a city or county's land-use regulation hierarchy … It has been referred to as the 'constitution for future development' … Each city and county is required to adopt a comprehensive, long-term general plan under Government Code Section 65300 … Although the general plan sets forth the long range planning vision of a city or county, the plan is intended to periodically updated by amendment and to evolve based on development proposals.[1]

Specific plans are a step in importance, as well as mandate, below general plans. Planners and governmen-

tal agencies give, though, broad discretion to planning agencies as to how specific they need them need to be and how flexible they have to be:

> As their name suggests, specific plans are generally more detailed than general plans, and commonly cover only certain areas of a community … The specific plan statutes are flexible, allowing public agencies to create standards for the development of a wide range of projects and solutions to any type of land-use issues … Specific plans may be very general, setting forth only broad policy concepts and general information, or they may be extremely detailed … Specific plans may cover areas as large as or larger than the 2,800 acres covered in the Ahmanson Ranch specific plan in Ventura County, or they may cover areas as small as a single acre.[2]

Against this regulatory backdrop, Disney and the City of Anaheim are engaged in a knock-down, drag-out battle over a very small piece of real estate; 2.2 acres located not far from Disneyland and on the edge of a region that was the subject of a specific plan by the City in 1992-1994. Disney wants it to remain for hotels and resort-related use; the developer that wants to buy it wants to build low-income housing and residential units on the site, an existing, dilapidated mobile-home park. Disney had previously won the battle at the City Council level. In a series of events marked as much by the polarity of the parties as the polarity of the decision making, Disney then lost the battle with the restoration of one of the members to the voting panel. Both sides have now gathered signatures on petitions for referenda and initiatives to hit the ballot.

The City has, however, once again reversed course, at Disney's request. On Tuesday, August 21st, 2007, it authorized a special election in June of 2008 on the state primary ballot, asking the voters to block the housing project. The decision will prove a costly one for the City; the cost of the placing of the initiative on the ballot is estimated to be $250,000.00. Disney wants the zoning locked; they want it only to be modifiable by a vote of the plebiscite. The developer, Sun Cal, in a competing initiative that has not yet been certified for placement on the ballot, wants the zoning *permanently modified* by initiative to permit residential uses, no matter what the Planning Commission or City Council determine.

There does not seem to be a lot of dispute about what the genesis of the specific plan was or what its goals were. Disney's spokesperson, Rob Doughty, in an August 8, 2007, personal interview, summarized the history:

> Disneyland started out as 'Walt's vision'; in 1955, people didn't understand it. He bought as much land as he could afford; others built motels and fast food restaurants. He tried to get the City interested in central planning, raising the standards of what was built and aesthetics, but got 'no takers.'
>
> In the sixties, Walt had another idea: he could not build a master-planned resort in Anaheim, because he did not own enough of the land—he then wound up with Orlando, FL, where he bought out all of the land.
>
> Anaheim had come to be badly 'blighted' by the eighties; he met with the City and jointly came up with a comprehensive master plan—a 'world class resort'—up to that time, guests would stay only for one day—a limited amount of sales tax was generated.
>
> The result of the meetings was the creation of the Anaheim Resort's specific plan; it's a 2.2 square miles area, less than five percent of the land mass of Anaheim, which comprises fifty-four square miles.
>
> The entire area was designated as resort—no residential; the plan reflected the fact that the residential use was not compatible with resort or retail.
>
> The area and its improvement was created with a combination of public and private monies; Interstate 5 was widened and re-aligned; there were changes and modifications to the on and off ramps, a common color scheme and a deliberate effort to bring signage down to the street level.
>
> This has been a huge success to the City of Anaheim; the businesses now generate fifty-four percent of the City's revenue; hotel taxes have more than doubled.[3]

There is a sub-text though, that underlies this whole fight; the residents of Anaheim resent the depth and extent of Disney's influence over what they believe are purely municipal land-use decisions. Disney sees it differently; for them, it goes to the heart of a very large economic investment they made in the 1980s:

> Funding the transformation of the Anaheim Resort District took some creativity. 'Disney lent its corporate balance sheet to make a $545,000,000.00 (with interest) municipal bond issue more credit worthy', explains Timur Galen, 'which allowed all the improvements to be packaged together, including the convention center. In an indirect way, we are partners in the expansion of the convention center, just as the City is supporting our expansion through its infrastructure improvements.'
>
> The Disney-backed municipal bonds were issued in the fall of 1997 and oversubscribed six or seven times. Of the $545,000,000.00, $305,000,000.00

was used for landscape, transportation and infrastructure improvements. The convention center expansion received $150,000,000.00, and $90,000,000.00 was used to construct the new 10,000-car parking facility.

To help pay back the bonds and to pay for the improvements without increasing Anaheim's residential property taxes or dipping into its general fund, the City increased its transient occupancy tax from thirteen percent to fifteen percent. Local transportation sales tax dollars, along with some Federal and State money, are paying for the I-5 improvements in Anaheim, CA, including the improved access to Disneyland.[4]

Now the picture becomes a little clearer, and Disney's representative can add to it:

Disney guaranteed a portion of those revenue bonds; they've made an investment in the City—they have a vested interest in protecting it.[5]

The fight itself is cast in an emotional light; proponents of the applicant's attempt to get a building permit and cause a change in the specific plan point to the lack of affordable housing within the City. They also point out that the very workers that contribute to the entertainment of the guests are the ones that cannot find a place to live. One of the City Council members expressed it clearly:

The Anaheim Resort's tremendous growth has had unanticipated consequences for our community. The lack of nearby housing opportunities for resort workers causes over crowding in our neighborhoods, a tremendous lack of parking, and puts too much traffic on our streets. Sadly, some resort industry employees have no choice but to live, day-to-day, in motels that were meant to serve visitors and many more families double and triple up in apartments just to make ends meet.

Anaheim does not have a hotel crisis. It has a housing crisis. The hiring of tens of thousands of resort employees, most of whom are low-wage earners, has caused an environmental impact that must be mitigated. The stark realty of Anaheim's housing needs was presented in the 2005 workshop showing an existing need for 27,600 affordable housing rentals. These housing units are prohibited in the resort area, where the majority of need is created; which of our neighborhoods will step up and volunteer to place it in their community? Unless viable housing alternatives are proposed, resort area housing should not be banned.

The 1994 resort plan negotiated between the City of Anaheim and Disney is now antiquated and woefully inadequate. Its only recognition of the housing and over crowding issue was an agreement by Disney to provide 500 affordable housing units to Anaheim, which has never been done. The plan will eventually eliminate the work force housing that currently exists (thousands of rental units) with no plans to replace them … It is time to renegotiate. We must forge a new partnership for growth in the resort, one that addresses the needs of everyone who lives or works in this community and assures that our quality of life is improved—not diminished—by continued, necessary growth in the resort industry.[6]

Not surprisingly, Disney sees it in essentially economic terms. Their Chief Executive Officer, Robert Iger, gave a press conference on May 21, 2007, and responding to a question from a columnist, Iger began his statement:

Disney is probably the best neighbor that Anaheim has ever had. Disneyland and our properties occupy about five percent of the land in Anaheim, but we deliver fifty percent of the revenue, thanks to taxes, to the City and with that has created, or should I say help to create, with the City, some excellent public services, starting with the police department and the

ZONING AND PLANNING LAW REPORT

Editorial Director
William D. Bremer, Esq.

Contributing Editors
Patricia E. Salkin, Esq.
Lora Lucero, Esq.

Electronic Composition
Specialty Composition/Rochester Desktop Publishing

Zoning and Planning Law Report (USPS# pending) is issued monthly, except in August, 11 times per year; published and copyrighted by Thomson/West, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. Application to mail at Periodical rate is pending at St. Paul, MN.

POSTMASTER: Send address changes to Zoning and Planning Law Report, 610 Opperman Drive, P.O. Box 64526, St. Paul MN 55164-0526.

ISSN 0161-8113

Editorial Offices: 50 Broad Street East, Rochester, NY 14694
Tel.: 585-546-5530 Fax: 585-258-3774
Customer Service: 610 Opperman Drive, Eagan, MN 55123
Tel.: 800-328-4880 Fax: 612-340-9378

> fire department and the like … In addition to that we're the largest employer in this region. We have created a tremendous number of jobs … We believe that there should be affordable housing in this area, that it's an effort that should be a partnership between the local government and a number of businesses … But we don't believe that the property that's being talked about is property that should be developed for housing. We just don't believe it's what's called recreation or business-friendly, nor would it throw off as much in taxes as the businesses that could go into that place.[7]

Many of the residents see themselves as "throwing off the yoke" of the micro-management and dominance that Disney has enjoyed over City land-use decisions. Disney sees it as essentially self-preservation economically as well as economic survival for the City. The entire matter is now headed into both litigation and to the electoral process. While the litigation is an important aspect of the dispute, the effect on the electoral process and its availability is the focus of this article.

The use of initiatives or referenda to modify or nullify a land-use decision made by a municipality is not new, especially in California. The codified authority to do it has existed and been tested with litigation going back to the 1976 case of *Associated Home Builders of the Greater East Bay, Inc. v. City of Livermore*[8] ("despite earlier court decisions to the contrary, courts have determined that zoning can be accomplished by initiative in general law cities").[9]

Initiatives are generally defined as the proposal to enact a law independently of the legislature and to enact it at the polls. California law founds that authority in Election Code, Section 9100 through Section 9126, for counties, and Election Code, Section 9200 through Section 9226 for cities.

Zoning referenda are a little different; the referenda powers embody the constitutional right of the electorate to approve or reject any act or measure that has already been passed by the legislature. That has been extended to cities, too, at least in California. [10]

The right to a referendum to approve or reject an act or measure has been tested by litigation and found valid in California, commencing with the 1960 case of *Crestview Cemetery Association v. Dieden.*[11] Referenda are explicitly available to attack a zoning ordinance, too.[12]

The big issue in whether a referendum can legally challenge an act is whether that act is legislative rather than administrative. Under California law a re-zoning is a legislative act, but variances and conditional use permits are administrative matters, even if the local legislative body hears applications for them.[13]

One of the issues that seems to arise quite frequently in the initiative process is whether the initiative attacks such a small parcel as to constitute "spot zoning." Spot zoning refers to instances when "a small parcel is restricted and given less rights than the surrounding property."[14]

Federal Courts, applying Washington state law, are essentially in accord:

> Buckles contend[s] that they do not seek to expand the substantive due process clause, but to apply the law on 'spot zoning'. A change in the label will not change the result. A spot zoning claim—that an individual piece of property was singled out for zoning incompatible with neighboring property—is variously characterized as a substantive due process violation, a taking, or even an equal protection violation. Spot zoning does not neatly fit into one category …
>
> Washington courts have recognized the claim of 'spot zoning' and define it as follows:
>
> > Spot zoning has come to mean arbitrary and unreasonable zoning action by which a small area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan. Spot zoning is a zoning for private gain designed to favor or benefit a particular individual or a group and not the welfare of the community as a whole.[15]

The 1980 California Supreme Court case, *Arnel v. City of Costa Mesa*, was the seminal case on using the initiative process to circumvent a zoning or land-use decision. The *Arnel* case, both on its facts and in its statement of the law, reaffirmed California's both persistent and vigorous defense of citizens' rights to bring initiative or referenda if they do not like a land-use decision:

> The factual setting of the present case illustrates the problems courts will face if we abandon past precedent and attempted to devise a new test distinguishing legislative and adjudicative decisions. The Court of Appeal, for example, found here that the instant initiative was an adjudicative act because it re-zoned 'a relatively small' parcel of land. It is not, however, self evident that sixty-eight acres is a 'relatively small' parcel; some cities have entire zoning classifications which comprise less than sixty-eight acres. The size of the parcel, moreover, has very little relationship to the theoretical basis of the Court of Appeal holding—the distinction between the making of land-use policy, a legislative act, and the asserted adjudicatory act

of applying established policy. The re-zoning of a 'relatively small' parcel, especially when done by initiative, may well signify a fundamental change in city land-use policy.

Plaintiffs alternatively urged that the present initiative is adjudicatory because it assertedly affects only three land owners. But this is a very myopic view of the matter; the proposed construction of housing for thousands of people affects the prospective tenants, that housing market, the residents living nearby, and the future care of the community. The number of land owners whose property is actually re-zoned is as unsuitable a test as the size of the property re-zoned. Yet, without some test which distinguishes legislative from adjudicative acts with clarity and reasonable certainty, municipal governments and voters will lack adequate guidance in enacting and evaluating land-use decisions.

In summary, past California land-use cases have established generic classifications, viewing zoning ordinances as a legislative act and other decisions, such as variances and subdivision map approvals, as adjudicative. This method of classifying land-use decisions enjoys the obvious advantage of economy; the municipality, the proponents of a proposed measure, and the opponents of the measure can readily determine if notice, hearings, and findings are required, what form of judicial review is appropriate, and whether the measure can be enacted by initiative or overturned by referenda.

To depart from past precedent and embark upon case by case determination, on the other hand, would incur substantial administrative costs. Such a rule would expose the municipality to the uncertainty of whether a proposed measure would be held to be legislative or adjudicative: it would entail costs to the litigants, and it would burden the courts with resolution of these issues.[16] (emphasis added)

In this framework, the Disney case looks more interesting. The proponents of the primary proposed initiative, Disney and its supporters, are dealing with the 2.2 acre parcel of land, quite small. The applicant, Sun Cal Communities, is attempting to obtain a specific plan amendment ("Amendment No. 8") that will, in essence, permit wholly-residential uses on the project site.[17]

Disney's complaint against the City and Sun Cal is relatively simple; the specific plan area allows only resort uses; Sun Cal had previously tried to, and had successfully amended the specific plan:

To require the following: [A] That residential uses be permitted only in conjunction with development of a full-service hotel having at least three hundred hotel rooms; [B] That hotel uses comprise at least half of the site density; [C] That residential uses on the site be fully integrated into the hotel and its operation; and [D] That, adjacent to the public rights-of-way, residential uses be permitted only if they are at least two stories or twenty-five fee about ground level.[18]

Amendment No. 8, the one that Sun Cal is now proposing, however, involved solely residential use, and that's what's drawing Disney's ire and that of quite a few businesses in the area.

Interestingly, not all of the country follows California's warmth and affinity to the initiative process when it's applied to overturn or modify legislative acts of a zoning body. As the American Law Reports put it:

In the following cases wherein provisions for the initiative were set out in a state constitution and/or a state statute, and the power to zone was delegated to municipalities in such state by a separate zoning enabling act or similar statute, the courts concluded that such latter enactment, dealing specially and specifically with zoning and setting up the detailed procedures to be followed and complied with by a municipal legislative body prior to its adoption or passage of any zoning legislation, was intended to be controlling, and that as a consequence the initiative process could not be employed to secure the enactment of a zoning ordinance or an amendment thereto.[19] (Emphasis added)

So, with this conflict and background in mind, how do the facts of the current Disney/Sun Cal dispute stack up? Sun Cal is proposing a use that is completely outside of the current zoning; most likely sufficient legislative history exists to show that both Disney and the City of Anaheim's intent was to either completely preclude residential zoning or, at the very least, insist that it be fully integrated into a hotel/resort type of pre-existing use. As such, the City will probably be within its rights if it upholds the Planning Commission's January 22, 2007, rejection of the plan. The knottier and more interesting problem, though, is whether, if the City elects to overturn the Planning Commission's denial, either an initiative or referenda challenge will be held valid. Interesting facts have come out that, from a political standpoint, may affect the decision.

First, one of the City Council's voting members, Lucille Kring, was originally required to remove herself from deciding the point after complaints from one of the Disney supporters because, as the local newspaper, the *Orange County Register* put it:

At the last minute Tuesday, Councilwoman Lucille Kring learned that she had to abstain because of

a conflict of interest. Kring has a lease to open a wine bar in the nearby Garden Walk mall which is under construction in the resort. In the case of council tie, the City must revert to the decision of a lower panel. The Planning Commission rejected the plan last month, so that vote is sticking as the final decision.[20]

Subsequently, Councilwoman Kring found out from the California Fair Political Practices Commission that she did not have to be removed because of the conflict. That issue came up because Anaheim City Attorney, Jack White, asked the Fair Political Practices Commission to advise him on whether she could vote on the project. Their letter to attorney White clarified and resolved the dispute, but probably not to Disney's liking:

> In our telephone discussion on March 16, 2007, you clarify that Council member Kring does not have an option to lease the property where she is considering locating the wine bar and that no consideration has changed hands relating to this property. You also sent, via facsimile, a copy of the document you described above as the non-binding letter of intent. The last paragraph of that document provides, in part:
>
> > This proposal does not constitute an offer to lease the premises. No legal obligation or warranties and/or representations are being created by this letter or any other written or oral communications until an agreement, if any, is signed by both landlord and tenant.
>
> Council member Kring and her husband currently intend to open a wine bar in the proposed Garden Walk location. They may seek additional investors in the business and the financial and capital structure of the business has yet to be determined. The proposed wine bar would require a license from the Alcoholic Beverage Control Board and, if approved, it is anticipated that the wine bar would sell wine by the glass and bottle, wine and gourmet gift baskets, food items, and other accessory items as yet to be determined. A portion of the 2,000 square feet of space would be available for meeting and catered events for small groups … On January 22, 2007, the Anaheim Planning Commission held a public hearing concerning the project decision and, as a result, approve the addendum to the mitigated negative declaration but denied the general plan amendment and amendment to the Anaheim Resort's specific plan amendment and Anaheim residential overlay relating to the Sun Cal property.
>
> On February 13, 2007, following a request for review of the Planning Commission decision, the City Council held a de novo public hearing regarding the matter. Shortly before the hearing, council member Kring was made aware of Crabb's advice letter No. A-00-66 issued by the Commission on March 30, 2001. Based on the contents of the Crabb letter, and due to the limited time available to review the issues raised by the letter, prior to the commencement of the scheduled public hearing including, but not limited to, determining the materiality of any financial effect the project decision could have upon any of council member Kring's economic interests, council member Kring, following consultation with the City Attorney, declared a potential conflict of interest and refrained from participating in the project decision.[21]

Kring turned out not to have a conflict, and the letter got to the point as to why:

> A public official has a financial interest in a decision within the meaning of Section 87103 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on anyone of five enumerated economic interests, including: … an economic interest in real property in which he or she has a direct or indirect interest of $2,000.00 or more … Section 82033 defines real property as '… any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official …' Accordingly, if council member Kring has an option to lease property in the Garden Walk, and that option is valued at $2,000.00 or more, she has an economic interest in real property. However, you have indicated that council member [Kring] does not have an option on the property, but rather has signed a non-binding letter of intent to enter into an agreement, and that no consideration has been paid, or promised, by her pursuant to any agreement to lease the property … Under the facts presented, council member Kring is not currently operating, nor does she have any investment in or hold any position with, the wine bar. At this point, the wine bar exists only in thought as a potential future enterprise. Accordingly, under the facts presented, council member Kring does not have an economic interest in the business entity …[22]

Not surprisingly, on April 26, 2007, Council member Kring voted against Disney:

> Anaheim: Disney protested for months, slapped a lawsuit against the City and unleashed a ballot

initiative to strip the City Council's power over development.

None of that stopped the City Council from voting early Wednesday, 3-2, to approve a residential zoning plan that the county's largest employer so aggressively fought. Some of the sixty speakers who testified at the public hearing talked about the need for 225 affordable apartments that the development would include. But two council members, Bob Hernandez and Lucille Kring, backed the matter mainly as a property-rights issue.

Kring was the swing vote. The Council chose to reconsider the zoning change after deadlocking in February. Kring abstained at the time because of a possible conflict of interest, but State cleared her to vote.

Kring was swayed by a City-Commission report indicating that hotels won't be needed on the site for up to fifty-five years, so she supported zoning that could bring in a project sooner to replace older mobile home parks … Mayor Curt Pringle and Councilman Harry Sidhu said they believe new housing belongs away from the resort. Pringle said the City was breaking its promise with Disney and resort businesses to reserve the area for tourism uses as outlined in a 1994 long-term plan.[23]

And so we are now left with a highly volatile and fluid situation; the major corporate powerhouse in the town wants to control land-use decisions and a vocal citizens group, expressing frustration with what they see as the dominance of that corporate power house, wants to weaken it.

Both sides have turned to the initiative process, too. On July 11th, the latest round in this series of initiatives/referenda battles was announced:

A developer-backed group is pushing for a ballot initiative to fight back at a Disney-lead coalition that is trying to halt the developer's housing plan.

The initiative would require voter approval of any project on 52.9 acres of Disney property, mostly a strawberry field, near the site, of Sun Cal's proposed residential complex, the group announced Wednesday. The pro-housing group plans to ask the City Council to put the item on the ballot, a way to avoid collecting signatures. 'It should go on the ballot for everybody, not just the small guy' said Diane Singer, chairwoman of the Coalition to Protect and Defend Anaheim. 'Its just about making it even, leveling it all out. Everybody plays by the same rules.'

A Disney spokesman declined to comment. The Disney funded group is behind two groups ballot measures opposing developer Sun Cal's housing plan … The Disney-baked group, Save Our Anaheim Resort, is pushing for a referendum that would overturn the Council's zoning vote and an initiative to require voter approval of housing in the resort. SOAR collected enough signatures for the referendum. Tuesday; the Council is expected to set an election date. It's unclear if the Council would support the Sun Cal - backed measure.

Councilwoman Lori Galloway backs the initiative, Mayor Curt Pringle opposes it, and Councilwoman Lucille Kring said she was undecided. The other two council members could not be reached for comment Wednesday.

'They want to retaliate against Disney, and it's just absurd,' said Pringle, who opposes resort housing. Kring, who voted for residential zoning, said Wednesday, that she had yet to see the initiative wording, but she generally opposes ballot measures. Galloway, who supports resort housing, said 'If owners want to make a decision on projects in the resort area, they absolutely should include Disney.' A source statement said that both initiatives include Disney properties … Disney and resort business leaders are fighting the housing plan because they say tourism businesses, including hotels, generate the bulk of the City's revenue. Housing advocates back Sun Cal's development because it includes about 225 affordable-housing units.

'A developer seeking to build 1,500 high density residential units within the resort district <u>is proposing an initiative that would dismantle Anaheim's most important economic engine</u>', the SOAR statement says.[24] (Emphasis added.)

In a funny way, though, local control of the land-use decision *<u>is</u>* going to be preserved, but perhaps not by the people that were elected to make that decision. Whether the voters who elected them have the patience, the diligence and the reflection to carefully examine all of the sides of this issue and make an informed decision is a result that may strongly influence land-use decisions, not only in California, but nationwide, in the future. Disney is the catalyst, but the evolution of the initiative and the referenda process is the real cause. The soap opera that is surrounding the political process in Anaheim is really a microcosm for the country; is a "company town" rebelling against its employer or is this a matter of economic survival for a town now grown dependent on healthy revenue from a nonpolluting employer that has partnered with the citizenry to create a better place to live?

The issues at stake here are more complex in some respects than the current controversy surrounding the behemoth Wal-Mart and its invasion into small towns and subsequent damage and evisceration of small-town economies. There, Wal-Mart is accused of unilaterally ruining a local economy. Here, Disney has partnered with the City to create an aesthetic and use that it determines will assist it in raising the most revenue, thereby benefiting both it and the City. Whether that aim remains one that the City's residents want to continue to pursue is the real issue that will be decided ultimately at the polls.[25]

NOTES

1. CA Land-Use Practice, Cont. Ed. Of the Bar, Univ. Of CA, CAL CEB 2006, Section 2.1.
2. CA Land-Use Practice, cont. Edu of the Bar, Univ. Of CA, CAL CEB 2006, Section 4.45.
3. Telephone interview with Robert Doughty, VP of Communications, Disneyland Resort.
4. "Anaheim's Excellent Adventure"; Charles Lockwood; *Planning Magazine*, Dec., 2000, page 4.
5. August 8, 2007, telephone interview with Robert Doughty, VP of Comm. for the Disneyland Resort.
6. Anaheim Resort—Letter of Lorri Galloway, member of the Anaheim City Council to *OC Register* newspaper, Sunday, April 15, 2007, page 1.
7. Disney's Iger speaks about Anaheim housing dispute by Andrew Galvin, *OC Register*, Tuesday, May 22, 2007.
8. *Associated Home Builders etc., Inc. v. City of Livermore*, 18 Cal. 3d 582, 596, 135 Cal. Rptr. 41, 557 P.2d 473, 7 Envtl. L. Rep. 20155, 92 A.L.R.3d 1038 (1976).
9. *Associated Home Builders etc., Inc. v. City of Livermore*, 18 Cal. 3d 582, 596, 135 Cal. Rptr. 41, 557 P.2d 473, 7 Envtl. L. Rep. 20155, 92 A.L.R.3d 1038 (1976).
10. See C.A. Election Code, §§ 9235 to 9247.
11. *Crestview Cemetery Ass'n v. Dieden*, 54 Cal. 2d 744, 756, 8 Cal. Rptr. 427, 356 P.2d 171 (1960).
12. See *Johnston v. City of Claremont*, 49 Cal. 2d 826, 837, 323 P.2d 71 (1958). (disapproved of by, *Associated Home Builders etc., Inc. v. City of Livermore*, 18 Cal. 3d 582, 135 Cal. Rptr. 41, 557 P.2d 473, 7 Envtl. L. Rep. 20155, 92 A.L.R.3d 1038 (1976)).
13. See *Allen v. Humboldt County Bd. of Sup'rs*, 241 Cal. App. 2d 158, 50 Cal. Rptr. 444 (1st Dist. 1966).
14. See *Wilkins v. City of San Bernardino*, 29 Cal. 2d 332, 340, 175 P.2d 542 (1946).
15. *Smith v. Skagit County*, 75 Wash. 2d 715, 453 P.2d 832, 848 (1969) (holding modified by, *State v. Post*, 118 Wash. 2d 596, 826 P.2d 172 (1992)) as cited in *Buckles v. King County*, 191 F.3d 1127 (9th Cir. 1999).
16. *Arnel Development Co. v. City of Costa Mesa*, 28 Cal. 3d 511, 169 Cal. Rptr. 904, 620 P.2d 565 (1980).
17. See Verified Petition for Writ of Administrative Mandate; Verified Complaint for Declaratory and Injunctive Relief; *Walt Disney World Co. v. City of Anaheim, City Council of the City of Anaheim and Does 1-20, inclusive*, Superior Court for the State of CA, County of Orange, Case No. 07-CC-01210, page 7, lines 21-26.
18. See Verified Petition, supra, page 5, lines 2-7.
19. Adoption of zoning ordinance or amendment thereto through initiative process, 72 A.L.R.3d 991. States prohibiting the use of initiatives or referenda to alter or modify the enactment of a zoning ordinance or amendment to it included Michigan, New Jersey, Nevada, Utah, South Carolina, and Wisconsin.
20. Anaheim Nixes Resort Plan; Sarah Tulley, *OC Register*, Tuesday, February 13, 2007.
21. Letter of March 19, 2007, from Scott J. Hallabrin, General Counsel, State of CA Fair Political Practices Commission to Jack L. White, Office of the City Attorney, pages 3 and 4.
22. Letter of March 19, 2007, from Scott J. Hallabrin, General Counsel, State of CA Fair Political Practices Commission to Jack L. White, Office of the City Attorney, at page 6.
23. "Disney and City Move Beyond Vote—The county's largest employer says it will continue its relationship with the city, despite the City Council voting for a residential zoning plan that Disney opposes" Sarah Tully, Orange County Register, Thursday, April 26th, 2007.
24. Housing Supporters Start Ballot Campaign—A Developer-Funded Group is Pushing for a Ballot Measure that would go against a Disney-backed item. Sarah Tulley, OC Register, Wednesday, July 11, 2007.
25. For The Daily Show's Jon Stewart's take on the controversy, go to http://www.tubearoo.com/articles/86793/The_Daily_Show_Callous_in_Wonderland.html.