

State appeals court upholds \$100,000 fine against Belvedere couple

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The California Court of Appeal has upheld a \$100,000 municipal fine levied on a Belvedere couple for taking too long tearing down their old house and building a new one.

In September 2002, the city gave Wendell and Claire Laidley 18 months to finish their \$2.5 million project at 12 Leeward Road, but the couple ran into problems with defective zinc roof tiles, said Ronald Zumbrun, the Sacramento attorney who presented their appeal.

The project ran over the limit by more than four months, and the city imposed a \$100,000 fine.

Wendell Laidley, who co-founded Realm Cellars winery in St. Helena in 2001, could not be reached for comment.

Although the court found in Belvedere's favor, it specified that its decision may not be cited as a precedent in future cases, Zumbrun said.

The Laidleys are not the first to run afoul of the Belvedere ordinance that levies stiff fines on those who take too long completing construction projects. Since it was adopted in 1999, the law has resulted in the collection of more than \$927,000 in fines.

"It's obvious to me what the motivation is, and it's revenue motivation," Zumbrun said. "No other city in the state, or maybe even the country, has any constraint of this nature."

The Howard Jarvis Taxpayers Association filed a brief in support of the Laidleys' suit. The association's lawyers argued that the fine constitutes a prohibited "special tax" in disguise.

Belvedere City Attorney Robert Epstein noted the Court of Appeal "roundly rejected the theories that were advanced that this is a special tax rather than simply a penalty."

Epstein said one of the justices likened the fine to a parking ticket "where the rules say you can only park your car in a place for a particular period of time."

When the ordinance was created, there had been a stream of large construction projects on private properties in Belvedere for many years. The projects had become a nuisance, causing excessive noise, parking shortages and frequent closures of the city's narrow streets.

The time limits allotted by the ordinance vary depending on the projects' costs. Projects that cost \$100,000 or less are given six months. Projects that cost \$100,000 to \$500,000 get 12 months. And projects that cost more than \$500,000 get 18 months.

Fines begin at \$400 a day for the first 60 days past the deadline, go up to \$600 a day for the next 60 days, and rise to \$800 a day past that with a maximum fine of \$100,000.

In their suit, the Laidleys contended they should not have been fined because the work stoppage that resulted due to the defective tile was beyond their control. Zumbrun said that the work stoppage did not produce any of the problems cited in the ordinance - noise, loss of parking, blocked streets.

"We feel no one was damaged in this case," Zumbrun said.

But City Attorney Epstein said the ordinance explicitly states that exceptions will not be made if delays are caused by "the use of custom and/or imported materials." Epstein said the zinc tiles the Laidleys used fit into that category.

The ordinance does lay out a number of legitimate causes for a delay. They include: administrative appeals of the project filed by third parties; delays required by the unforeseen discovery of archaeological remains on the building site; labor stoppages; acts of war or terrorism; and natural disasters.

Zumbrun said the Laidleys can ask the Court of Appeal to reconsider its decision or appeal to the California Supreme Court. No decision has been made.

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