

LOUIS A. deBOTTARI, Plaintiff and Appellant,  
v.  
CITY COUNCIL OF THE CITY OF NORCO et al., Defendants and Respondents; HOWARD  
HANZLIK, Real Party in Interest and Respondent.  
No. E001608.  
Court of Appeal, Fourth District, Division 2, California.  
Sep 6, 1985.

#### SUMMARY

After defendant city council refused to submit a properly certified referendum petition to the voters on the ground that repeal of a recently-enacted zoning ordinance would result in a legally invalid zoning scheme (because the resulting zoning would be inconsistent with the general plan), plaintiff petitioned the superior court for a writ of mandate to compel defendant either to repeal the ordinance or submit its substance to the voters. The trial court denied the petition. (Superior Court of Riverside County, No. 166246, J. David Hennigan, Judge.)

The Court of Appeal affirmed, holding that the general plan was in the nature of a constitution (upon which valid ordinances must be based), that only limited amendments to a general plan were allowed, and that the plain inconsistency of the proposed zoning with the general plan justified defendant's refusal to submit to the voters a measure certain to produce an invalid result. (Opinion by Rickles, J., with Morris, P. J., and Kaufman, J., concurring.)

#### Facts

Howard Hanzlik (real party in interest) applied for a general plan amendment and zone change for certain property located in the City of Norco. The general plan amendment was requested for a parcel of property approximately 30 to 40 acres in size, and sought to change the land use designation from residential/agricultural (0-2 units per acre) to residential-low density (3-4 units per acre).

Mr. Hanzlik also requested that the same property be rezoned from "R-1-18" to "R-1-10." The object of the general plan amendment and zone change was to allow construction of single family homes on 10,000 square-foot lots (approximately 4 per acre); the existing zoning for the property required a minimum of 18,000 square feet for each lot (approximately 2 units per acre).  
\*1208

On June 20, 1984, the council approved the general plan amendment requested by Mr. Hanzlik. Two weeks later, on July 5, 1984, the council adopted ordinance Nos. 517 and 518 which approved the requested zone changes.

Following the council's July 5 action, plaintiff and other qualified voters and residents of Norco prepared and circulated petitions protesting the enactment of the two rezoning ordinances and calling for their repeal or, alternatively, a referendum. The petitions were submitted in a timely fashion to the city clerk (see [Elec. Code, § 4051](#)), who examined the petitions and certified they were in proper form and contained the requisite number of signatures of registered Norco voters. (See [Elec. Code, §§ 4051, 4053- 4054](#).)

The referendum petitions were then presented to the council pursuant to [Elections Code section 4055](#), which provides that the legislative body of a city must either repeal the challenged

ordinances or submit the referendum to the voters. After obtaining advice from the city attorney, the council refused to do either on the grounds that repeal of the ordinances would result in the subject property being zoned inconsistently with the amended general plan, contrary to [Government Code section 65860](#), subdivision (a).

Plaintiff's petition for a writ of mandate to compel the council either to repeal the ordinance or submit the issue to the voters was denied and this appeal followed.

#### Discussion

##### I

##### III

Validity of the Referendum(3)State law prohibits enactment of a zoning ordinance that is not consistent with the general plan. ([Gov. Code, § 65860](#).) Were the voters to repeal the zoning amendment at issue here, the result unquestionably would be a zoning ordinance inconsistent with the amended general plan. Hence the council contends that it has made the requisite "compelling showing that the substantive provisions of the [referendum] are clearly invalid." (*American Federation of Labor v. Eu*, supra., [36 Cal.3d at p. 696](#), fn. 11.) We agree.

State law requires that the legislative body of every county and city "adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning." ([Gov. Code, § 65300](#).) Proposed subdivisions, together with the provisions for their design and improvements must be "consistent with the general plan." ([Gov. Code, § 66473.5](#).) County and city zoning ordinances must be "consistent with the general plan," as well. ([Gov. Code, § 65860](#), subd. (a).)

The impact of the legislation (Stats. 1971, ch. 1446, pp. 2852, 2858) which imposed the requirement that subdivisions and zoning ordinances be consistent with the general plan has been widely noted. As this court, in [City of Santa Ana v. City of Garden Grove \(1979\) 100 Cal.App.3d 521, 532 \[160 Cal.Rptr. 907\]](#), stated: "In 1971 the Legislature enacted [[Gov. Code, §§ 66473.5, 65860](#)] which transformed the general plan from just an 'interesting study' to the basic land use charter governing the direction of future land use in the local jurisdiction .... As a result, general plans now embody fundamental land use decisions that guide the future growth and development of cities and counties. The adoption or amendment of general plans perform have a potential for resulting in ultimate physical changes in the environment ...." (Italics supplied.)

In [Bownds v. City of Glendale \(1980\) 113 Cal.App.3d 875, 880 \[170 Cal.Rptr. 342\]](#), the court noted the "combined effect" of the State Planning and Zoning Law, "which is to require that cities and counties adopt a general plan for the future development, configuration and character of the city or county and require that future land use decisions be made in harmony with the general plan." (See also [City of Los Angeles v. State of California \(1982\) 138 Cal.App.3d 526, 533 \[187 Cal.Rptr. 893\]](#).) One commentator has gone so far as to conclude: "The focus of the legislative scheme in California's modern statutes ... seems to be the requirement that the exercise of the police power in the zoning and land-use permit area be consistent with the

general plan." (Note, General Plan (1974) 26 Hastings L.J. 614, 622; italics supplied.)

The general plan is tremendously significant in shaping future development because land use decisions must be consistent therewith. "The immutable effect of the [general] plan with respect to individual landowners and the community in general is a result of the new requirement that city or county zoning ordinances be consistent with the general plan." (Note, General Plan, supra., at p. 627.) The consistency requirement has elevated the general plan from an "exhortation" to a "commandment." (Ibid.; see also Comment, "Zoning Shall Be Consistent with the General Plan"-A Help or a Hindrance to Planning?" (1973) 10 San Diego L.Rev. 901.)

In [section 65860](#), subdivision (a), the Legislature mandated that all zoning shall be consistent with the general plan. In [section 65860](#), subdivision (c), the Legislature added muscle to the provision by requiring that any ordinance which becomes inconsistent with a general plan must be brought into conformity. Subdivision (c) provides: "In the event that a zoning ordinance becomes inconsistent with the general plan by reason of amendment to such a plan, or to any element of such a plan, such zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended." To further ensure consistency in land use decisions, the Legislature provided in [section 65860](#), subdivision (b), that "[a]ny resident or property owner within a city or a county, as the case may be, may bring an action in the superior court to enforce compliance with the provisions of subdivision (a)." (See *City of Los Angeles v. State of California*, supra., [138 Cal.App.3d at p. 531](#).)

A zoning ordinance inconsistent with the general plan at the time of its enactment is "invalid when passed." ( [Sierra Club v. Board of Supervisors \(1981\) 126 Cal.App.3d 698, 704 \[179 Cal.Rptr. 261\]](#).)

In view of the foregoing, we conclude that the invalidity of the proposed referendum has been clearly and compellingly demonstrated. Repeal of the zoning ordinance in question would result in the subject property being zoned for the low density residential use while the amended plan calls for a higher residential density. Notwithstanding this fact, plaintiff urges that the voters should be permitted to enact an inconsistent zoning ordinance because [section 65860](#), subdivision (c), provides for a "reasonable time" within which an inconsistent zoning ordinance may be brought into conformity with an amended general plan. Thus, plaintiff points out, even if the referendum were approved the council would have a "reasonable time" within which to rectify the inconsistency.

Plaintiff readily concedes some remedial action by the council would then be required. Plaintiff suggests that the council would have three options: (1) reenact the zoning amendment that the voters had overturned; (2) enact some alternative zoning scheme which is consistent with the general plan; and (3) amend the amended general plan to conform to the zoning ordinance preferred by the voters.

Unfortunately, all of the options offered by plaintiff beg the question of whether the voters, ab initio, have the right to enact an invalid zoning ordinance. Clearly, [section 65860](#), subdivision (c), was enacted to provide the legislative body with a "reasonable time" to bring zoning into conformity with an amended general plan. It would clearly distort the purpose of that provision were we to construe it as affirmatively sanctioning the enactment of an inconsistent zoning

ordinance.

An even greater distortion of legislation would result were we to approve the referendum on the ground that the council could subsequently amend the general plan to conform with the zoning approved by the voters. As is often noted, the general plan serves as the "constitution for all future developments within the City." ( [O'Loane v. O'Rourke \(1965\) 231 Cal.App.2d 774, 782 \[42 Cal.Rptr. 283\]](#).) Unrestricted amendments of the general plan to conform to zoning changes would destroy the general plan as a tool for the comprehensive development of the community as a whole. (See Comment, \*1213 "Zoning Shall Be Consistent with the General Plan"-A Help or a Hindrance to Planning?, *supra.*, at p. 906; Williams, Cal. Zoning Practice (Cont.Ed.Bar 1984 Supp.) § 2.29, p. 21. Indeed it was precisely to control such evasions, that the Legislature limited the number of amendments to the general plan which may be passed during any calendar year. ([Gov. Code, § 65361](#); see Williams, Cal. Zoning Practice, *supra.*, at p. 21.)

(6)In sum, we conclude that the referendum, if successful, would enact a clearly invalid zoning ordinance. Judicial deference to the electoral process does not compel judicial apathy towards patently invalid legislative acts. Nor are we persuaded that a zoning ordinance inconsistent with the general plan constitutes little more than a mere technical infirmity. On the contrary, the requirement of consistency is the linchpin of California's land use and development laws; it is the principle which infused the concept of planned growth with the force of law. We are not persuaded that this principle must now be sacrificed on the altar of an invalid referendum.

Disposition

The judgment is affirmed.

Morris, P. J., and Kaufman, J., concurred.

Appellant's petition for review by the Supreme Court was denied December 19, 1985. Bird, C. J., was of the opinion that the petition should be granted. \*1214  
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