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OPINION	:	No. CV 78-135
of	:	May 25, 1979
GEORGE DEUKMEJIAN Attorney General	:	
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SUBJECT: MERGER AND UNMERGER OF PARCELS—Parcels that were merged under the provisions of Government Code section 66424.2 as originally enacted may be deemed unmerged by local ordinance pursuant to the 1977 amendment of the statute.

The Honorable William A. Craven, Senator for the 38th District, has requested an opinion on the following questions:

1. Did parcels that were eligible for development on January 1, 1977, under the provisions of an existing local ordinance meet the conditions of merger in Government Code section 66424.2 as originally enacted?

2. Do parcels that are eligible for development under the provisions of an existing local ordinance meet the conditions of merger in Government Code section 66424.2 as amended?

3. What kinds of parcels, if any, were unmerged by the 1977 amendment of Government Code section 66424.2?

4. May parcels merged by the original enactment of Government Code section 66424.2 be deemed unmerged by local ordinance pursuant to the 1977 amendment of the statute?

The conclusions are:

1. Parcels that were eligible for development on January 1, 1977, under the provisions of an existing local ordinance did not meet the conditions of merger in Government Code section 66424.2 as originally enacted.

2. Parcels that are eligible for development under the provisions of an existing local ordinance do not meet the conditions of merger in Government Code section 66424.2 as amended.

3. No parcels were expressly unmerged by the provisions of the 1977 amendment of Government Code section 66424.2.

4. Parcels that were merged under the provisions of Government Code section 66424.2 as originally enacted may be deemed unmerged by local ordinance pursuant to the 1977 amendment of the statute.

ANALYSIS

The four questions presented for analysis concern the proper interpretation of Government Code section 66424.2.[1] The statute was enacted effective January 1, 1977, and was amended by the Legislature effective July 7, 1977. It covers the conditions under which contiguous parcels of land held by the same owner are merged or are deemed unmerged for purposes of the Subdivision Map Act. (§§ 66410–66499.37 (hereinafter "Act").)

In general terms, the Act provides for a rational and orderly means by which land can be divided, developed, and improved. It accomplishes this purpose by requiring, with few exceptions, that any division of land be shown on a map approved by the local governing agency. If the division and proposed development will create the need for access, drainage, utilities, and other services, the local agency may condition the approval of the division upon such improvements being made by the subdivider. (See *Bright v. Board of Supervisors* (1977) 66 Cal. App. 3d 191, 193–194; 61 Ops. Cal. Atty. Gen. 299, 300 (1978); 3 Witkin, Summary of Cal. Law (8th ed. 1973) Real Property, §§ 22–24, pp. 1788–1792; 2 Odgen's Revised Cal. Real Property Law (1975) §§ 25.1–25.2, pp. 1204–1206.)

[1] All unidentified section references hereinafter refer to the Government Code.

Procedurally, if the land division results in four or fewer parcels, a "parcel" map is normally required; a 'final" map involving stricter requirements is generally necessary for a division resulting in five or more parcels. (§§ 66426, 66428; *Bright v. Board of Supervisors, supra*, 66 Cal. App. 3d 191, 195; 4 Miller & Start, Current Law of Cal. Real Estate (1977) §§ 24:33–24:35, pp. 60–68; 9 Hagman & Volpert, Cal. Real Estate law Practice (1978) § 290.03, pp. 290:6.2–290:8.)

Within this statutory scheme, the issue of whether certain parcels "merge" under the provisions of section 66424.2 can become significant. For example, a landowner may acquire a parcel next to his and subsequently desire to sell it. If the two parcels have merged for purposes of the Act because of their common ownership, the owner may be required to obtain approval of a parcel map[2] before being allowed to convey the second parcel. The first question concerns the conditions that were necessary for the statutory merging of parcels between January 1, 1977, and July 7, 1977, the period during which section 66424.2 was in effect as originally enacted. Specifically, the issue is whether parcels merged that did not meet the numerical specifications established by local ordinance for a minimum parcel size but did meet an alternative standard unrelated to the parcels' physical dimensions. An example would be a city ordinance for a particular zone of the city that (1) established a 5000 square feet minimum parcel area, but (2) allowed development of a residential dwelling on a parcel regardless of size if the parcel had a separate parcel number on a recorded subdivision map. Under such a city ordinance, the owner of a "substandard" parcel of 4000 square feet could build a residential dwelling if the parcel had a separate subdivision map number. We conclude that if parcels were eligible for development by local ordinance during the period section 66424.2 was in effect as originally enacted, the parcels were not subject to the statute's merger provisions.

As enacted effective January 1, 1977, section 66424.2 provided in pertinent part:

> ". . . two or more contiguous parcels or units of land which have been subdivided under the provisions of this division or any prior law regulating the division of land or a local ordinance enacted pursuant thereto shall not merge by virtue of the fact that such contiguous parcels or units are held by the same owner and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease or financing of such contiguous parcels or units, or any of them; except that, *if any one of such contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size to permit use or development under a zoning, subdivision or other ordinance*

[2] Section 66428 allows a local agency to waive the requirement for a parcel map under certain conditions.

> *of the local agency and at least one of such contiguous parcels or units is not developed with a building for which a permit has been issued by the local agency, then such parcels shall be merged for the purpose of this division* (unless a local ordinance specifically exempts such parcels from merger in such circumstances) . . . ." (Emphasis added.)

In construing section 66424.2, we are guided by several principles of statutory construction. The cardinal rule is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials v. Board of Equal*. (1959) 51 Cal. 2d 640, 645; accord, *Cossack v. City of Los Angeles* (1974) 11 Cal. 3d 726, 732.) Legislative intent is determined first by turning to the words used in the statute, giving them effect according to their usual and ordinary meaning. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230; *Steilberg v. Lackner* (1977) 69 Cal. App. 3d 780, 785.) While words should not be added to a statute where its meaning is unambiguous (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155), absurd results should be avoided if possible. (*Nightingale v. State Personnel Board* (1972) 7 Cal. 3d 507, 513; *Rosenthal v. Hansen* (1973)34 Cal. App. 3d 754, 756.) An exception contained in a statute is to be strictly construed in favor of the general rule. (*City of National City v. Fritz* (1949) 33 Cal. 2d 635, 636; *Marrujo v. Hunt* (1977) 71 Cal. App. 3d 972, 977.)

In enacting section 66424.2, the Legislature's apparent general purpose was to make clear that parcels did not merge for purposes of the Act if they had been created in compliance with existing subdivision laws and regulations. In effect, the statute reversed an erroneous conclusion reached in 56 Ops. Cal. Atty. Gen. 509, 512–513 (1973), and codified the conclusion reached in 59 Ops. Cal. Atty. Gen. 239, 241 (1976), where we stated:

> ". . . a construction that any two contiguous parcels properly created under the Map Act are merged into one parcel wherever held under one ownership does not generally further the purposes of the Map Act where the local agency had previously considered and approved the division. Thus, the sale or lease or financing of any parcel or parcels for a subdivision created in compliance with the Map Act is lawful without the necessity of filing a new parcel map because no new division is created. Based on these considerations, the conclusion follows that the Subdivision Map Act does not require a parcel map for the construction of a building toward sale, lease, or financing of a parcel for which a map thereof has already been recorded in accordance with law. Cf. 56 Ops. Cal. Atty. Gen. 496 (1973). A parcel once recorded under the Subdivision Map Act need not be re-recorded so long as it is not further divided."

The legislation, however, also provided for an exception to the general nonmerger rule. It established the following limited conditions for the merger of parcels created in compliance with existing subdivision laws and regulations: (1) the parcels must be contiguous, (2) they must be held by the same owner, (3) one of the parcels must not conform to locally established standards for minimum parcel size to permit use or development, (4) one of the parcels must not be developed with a building for which a building permit was issued, and (5) local ordinances must not exempt the parcels from merger.

The critical words of the statute for purposes of analyzing the first question are: "does not conform to standards for minimum parcel size to permit use or development under a zoning, subdivision or other ordinance of the local agency. In the example given, the minimum parcel size standard in terms of numerical specifications was established by the city at 5000 square feet. Use or development, however, was permitted under certain conditions without regard to this minimum measurement standard.

It may be argued that "exceptions" to established measurement standards for minimum parcel size do not create new "standards" for determining minimum size. On the other hand, it can be argued that the "standards" under section 66424.2 need nor refer only to specific numerical measurements.

We believe that this is an extremely close question. A "standard" is commonly defined as a rule used to determine a quantity or quality for a specific purpose. (See Webster's New Internat. Dict. (3d ed. 1966) p. 2223.) Generally, no requirement is made that the standard establish a specific numerical criterion. We can find no expression of legislative intent to support a restrictive interpretation of the word "standards" in section 66424.2.

Moreover, it would appear anomalous for the Legislature to act contrary to the general purpose of the statute when parcels are initially created with the approval of the local agency and may otherwise be used and developed under existing local regulations. We do not believe that the Legislature would purposely take control from the local agency in such circumstances without expressly so providing.

In addition, as previously noted, we must strictly construe the merger exception language of section 66424.2 in favor of the general nonmerger rule. Consequently, a liberal interpretation of the phrase "standards for minimum parcel size" is appropriate.

Accordingly, a city ordinance may provide that a parcel is of minimum parcel size to permit use or development if it (a) contains a total area of 5000 square feet or (b) has a separate number on a recorded subdivision map. The latter alternative is a standard "for

minimum parcel size" although not specified in terms of the physical dimensions of the parcel. Given that a parcel with a subdivision map number must necessarily have some "size," the alternative standard establishes a size criterion that is flexible in terms of actual dimensions but specific in terms of the test to be applied.

Consequently, we believe that between January 1, 1977, and July 7, 1977, a local ordinance could have established "standards for minimum parcel size to permit use or development" under section 66424.2 by referring to factors other than numerical measurements. Allowing use or development of any parcel that has been duly subdivided and recorded would have been such a "standard" for minimum parcel size.

The conclusion to the first question, therefore, is that parcels did not meet the conditions for merger under section 66424.2 as enacted effective January 1, 1977, if they were then eligible for use or development pursuant to an existing local ordinance.

The second question restates the first question except that it refers solely to the 1977 amendment of section 66424.2. Hence, we must determine whether the statute was changed concerning the conditions specified for merger, particularly with regard to the issue of possible use or development of "substandard" parcels. We conclude that no changes were made that would require a different conclusion.

The amendment continued the general provisions as to when parcels were not merged for purposes of the Act. The major change in the statute was to shift complete control over the merger of substandard parcels to the local agencies. Although the statute specified the conditions under which merger could occur, it no longer merged the parcels under its own terms; rather, it authorized local agencies to merge by ordinance those parcels meeting the given requirements.

Although minor changes were made in the conditions under which merger could occur, the requirement that one of the parcels "not conform to standards for minimum parcel size to permit use or development under a zoning, subdivision or other ordinance of the local agency" remained the same. Our analysis of the first question is thus applicable to the second question.

The conclusion to the second question, therefore, is that parcels do not meet the conditions of merger in section 66424.2 as amended effective July 7, 1977, if they are eligible for use or development under an existing local ordinance.

The third question concerns the types of parcels, if any, that were unmerged by the 1977 amendment of section 66424.2. We conclude that no parcels were unmerged by the amendment.

As previously mentioned, the 1977 amendment continued the general language of the enactment concerning when parcels did not merge for purposes of the Act. It also provided additional circumstances under which merger would not occur for purposes of the Act. We do not view these general provisions as a change in the statutory scheme so as to cause the unmerging of previously merged parcels. Instead, the plain language of the statutory amendment indicates only a legislative intent to clarify existing law and to shift complete control over the merger of substandard parcels to the local agencies.

The conclusion to the third question, therefore, is that the 1977 amendment of section 66424.2 did not specifically unmerge any particular parcels of property.

The fourth question concerns whether, under the 1977 amendment of section 66424.2, local agencies may unmerge parcels that were merged by the Legislature in enacting the statute in its original form. We conclude that they may.

The statute now provides by amendment: "A local agency may, by ordinance, deem any or all parcels or units of land which merged prior to the effective date of the 1977 amendments to this section, unmerged and separate parcels." We believe this language to be unambiguous as to legislative intent. The Legislature recognized that it had merged certain parcels by the original enactment of section 66424.2 and determined that local agencies should be able to reverse the process after the effective date of the statutory amendment.

The conclusion to the fourth question, therefore, is that for purposes of the Act, any parcels that were merged by the original enactment of section 66424.2 may be deemed unmerged by ordinance of a local agency pursuant to the 1977 amendment of the statute.

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