August 28, 2009

PULTE HOME CORPORATION, PLAINTIFF AND RESPONDENT,
v.
CITY OF MANTECA, DEFENDANT AND APPELLANT.
MORRISON HOMES, INC. ET AL., PLAINTIFFS AND RESPONDENTS,
v.
CITY OF MANTECA, DEFENDANT AND APPELLANT.

(Super. Ct. No. CV032980)(Super. Ct. No. CV033282)

The opinion of the court was delivered by: Robie, J.

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

In these consolidated mandamus actions, several home builders sought relief from an increased "government building facilities" development fee the City of Manteca (the city) was imposing. Following a bifurcated court trial, the trial court determined the builders were entitled to relief because the city was imposing the increased fee in contravention of development agreements between the builders and the city and (in the case of one of the builders) a vesting tentative map.

On the city"?s appeal, we conclude the imposition of the increased development fee did not contravene the development agreements between the parties. We also conclude the other arguments the builders assert for a "vested right" to pay the lesser amount of the original facilities fee are without merit. Accordingly, we will reverse the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 1986, the city adopted an ordinance requiring the assessment of a development fee known as the "Government Building Facilities Fee" (sometimes hereafter, the facilities fee) in the amount of $350. The purpose of the fee was to help pay for the construction and expansion of government facilities necessitated by growth of the city. In the ordinance establishing the fee, the city made no provision for any future adjustments or increases in the amount of the fee.

In 2003, the city adopted two different ordinances that continued to require the assessment of the $350 facilities fee. Under these ordinances, the fee was imposed by section 15.04.060 of the city"?s municipal code (and apparently had been since 2000), and the fee specifically applied to "permits for the erection or construction of a new dwelling unit." Again, the ordinances made no provision for any future adjustments or increases in the amount of the fee.

In January 2005, the city entered into a development agreement with Florsheim Land Co., LLC, relating to a residential development project known as Dutra Estates. In September 2005, the

city entered into a development agreement with Pulte Home Corporation (Pulte) relating to two residential development projects known jointly as Union Ranch. The relevant provisions in the two development agreements are nearly identical; any variances are immaterial for purposes of this appeal. Nevertheless, for accuracy"?s sake, language contained in the Morrison agreement but not in the Pulte agreement is shown below in bracketed, underlined text, and language contained in the Pulte agreement but not in the Morrison agreement is shown below in bracketed, italicized text.

Section 4.01 of each agreement specifies that the "Developer shall have the vested right to develop the Project for the term of this Agreement, subject to all terms and conditions of this Agreement and the Applicable Law." Section 4.02(f) of each agreement addresses the issue of "Impact Fees." As relevant here, subdivisions (1) and (2) of section 4.02(f) of the agreements provide as follows:

"(1) Generally. All City fees relating to new development are collectively referred to in this agreement as "Impact Fees."? Some Impact Fees are assessed on a square footage basis, while others require payment of a set amount (flat fee) regardless of square footage. In addition, the First Tentative Map contains Conditions of Approval requiring the payment of certain Impact Fees. Developer shall pay [only] those [City] Impact Fees that are in force and effect on the Effective Date as well as those [City] Impact Fees set forth in the Conditions of Approval [and the Mitigation Monitoring Program] (collectively "Impact Fees"?) in the amount that is further described in Section 4.02(f)(2) below [and as described in Exhibit F of this Agreement, as well as two additional fees to which this Project may be subject (Fees #19 and #20 on Exhibit F)]. Developer, however, shall not be required to pay the same Impact Fee for the same Project home twice (for example, if the Impact Fee appears as a Condition of Approval as well as in this Agreement). A list of such fees presently in force and effect is set in Exhibit F to this Agreement.

"(2) Fees Payable Prior to Building Permit [Issuance]. Developer shall pay at building permit issuance for each Project home and other structure (unless another time is set forth in the resolution or ordinance establishing the [Impact Fees] [fees] or the Conditions of Approval) the [City] Impact Fees.

Developer shall pay the amount of the particular Impact Fee that is in force and effect at the time of such building permit issuance or at such other time the Impact Fee is required to be paid as set forth in the resolution or ordinance establishing the [Impact Fees] [fees] or the Conditions of Approval."

Exhibit F to each agreement is entitled "Current City Fees" and provides in relevant part as follows:

"The following list gives general references to the types of fees that are assessed to residential development as of [January 19], 2005, the effective date of this [Dutra Estates] [Union Ranch] Development Agreement. Some of the fees are assessed based on square footage of the particular residential unit, while others are standard (flat fee) regardless of the size of the dwelling. All of these fees may be adjusted by City (increased or decreased) from time to time during the life of the Project and the Development Agreement, pursuant to the enabling ordinance or resolution, and as provided for in Section 4.02([f]) of the Agreement. Developer shall pay the amount of the particular fee in force and effect at the time of such building permit issuance, unless otherwise

provided for in the enabling resolutions or ordinances." Following this text is a list of fees; the facilities fee appears as No. 13 in both lists as "Government Building Facilities Fee."

In September 2006, after it had entered into both development agreements, the city adopted an ordinance amending section 15.04.060 of its municipal code to provide for a government buildings facilities fee in an amount ranging from $3,530 to $4,000 per unit in 2007, $3,838 to $4,350 per unit in 2008, and $4,149 to $4,702 per unit in 2009. The amendment also provided for the amount of the facilities fee to be updated annually thereafter based on the change in a specific index and specified that "Developer shall pay those fees in place at time payment is due."

Sometime thereafter, the city began requiring the builders to pay the increased facilities fee required by the September 2006 amendment to section 15.04.060 of the city"?s municipal code, rather than the $350 fee in place at the time the development agreements took effect. In June 2007, Pulte sued the city, seeking a judicial determination that the increased facilities fee was not applicable to the Union Ranch project and a refund of the increased fees Pulte had paid under protest. In August 2007, Morrison filed a similar action relating to the Dutra Estates project.

In February 2008, the two actions were consolidated for limited purposes, including a bifurcated court trial on the builders"? claims that the increased facilities fee could not be enforced against them based on their "vested rights." That trial was conducted on briefs, documentary evidence, and oral argument. The builders argued enforcement of the increased fee was barred by: (1) the terms of the development agreements; (2) Government Code section 65691; and (3) estoppel. As to Pulte in particular, the builders also argued enforcement of the increased fee was barred by a previously approved vesting tentative map.

In April 2008, the trial court entered judgment in favor of the builders. The trial court concluded that under the development agreements (and, in the case of Pulte, the vesting tentative map), the builders could be required to pay only the original $350 facilities fee for their projects, and not the increased fee instituted in 2006. The court directed the issuance of a writ of mandate commanding the city to stop collecting the increased fee from the builders and to refund all amounts collected in excess of the original $350 fee.

The city filed a timely notice of appeal.

DISCUSSION

I. The Development Agreements

The primary issue on appeal is whether the trial court erred in concluding the city was barred by the terms of its development agreements with the builders from imposing the increased facilities fee the city instituted in 2006 on residential units built in the Union Ranch and Dutra Estates developments. We conclude the trial court erred.

A. The Increased Facilities Fee Implemented In 2006 Was Not A New And Different Fee

Where (as here) the evidence is not in conflict, we interpret written contracts like the

development agreements independently of the trial court. (See, e.g., Rael v. Davis (2008) 166 Cal.App.4th 1608, 1617.) "A contract entered into by a governmental body and an individual is to be construed by the same rules which apply to the construction of contracts between private persons. [Citations.] In construing a contract, the primary object is to ascertain and give effect to the intention of the parties as it existed at the time of contracting. [Citations.] In accord with section 1638 of the Civil Code, the language of the contract, if clear and explicit and not conducive to an absurd result, must govern its interpretation. "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."?" (Oberg v. City of Los Angeles (1955) 132 Cal.App.2d 151, 158.)

We begin with section 4.02(f)(1) of the development agreement. In the Pulte agreement, that section provides that Pulte "shall pay only those Impact Fees that are in force and effect on the Effective Date of the Agreement." The Morrison agreement adds the word "City" and omits the word "only," but neither of those variances makes a difference. The thrust of this part of both agreements is to require the developers to pay all city fees relating to new development that were in force and effect on the effective dates of the agreements.

The effective date of the Morrison agreement was January 19, 2005 -- the effective date of the city ordinance approving the agreement. The effective date of the Pulte agreement was September 14, 2005 -- the effective date of the city ordinance approving that agreement. On those dates, section 15.04.060 of the city"?s municipal code required the assessment of a "Government building facilities use" permit fee on every permit for the erection or construction of a new dwelling unit. Thus, under section 4.02(f)(1) of the development agreement, the builders were required to pay this facilities fee.

The question, however, is whether the increased facilities fee the city instituted in 2006 is the same facilities fee that was in force and effect on the effective dates of the agreements. The builders contend the increased facilities fee implemented in 2006 was a "new" fee, different from the facilities fee that was in effect when they entered into the development agreements, rather than simply an "adjustment" or "increase" to the existing facilities fee. The city, on the other hand, contends it did not enact a new fee, it merely increased the amount of the existing fee.

We agree with the city. The evidence shows the facilities fee was created to help pay for the expansion of government facilities necessitated by growth of the city and was used for that purpose. Based on a "nexus study" completed in 2006 that concluded "the current fee of $350 . . . is insufficient to fund the level of general government capital facilities needed to meet the future demand for services," the city enacted the ordinance that amended section 15.04.060 of the city"?s municipal code, altering the amount of the fee and providing for annual adjustments to that fee. This amendment did not create a "new" fee; it merely altered the amount of the existing fee and provided for future increases in the fee.

The builders"? arguments to the contrary are not persuasive. They contend the increased facilities fee implemented in 2006 was a "new" fee because it was based on a nexus study that "itself was a substantial, and significant, change in the City"?s method of calculating and justifying fees for "government building facilities."?" They also contend it was a new fee because it was imposed to fund "an entirely new program of government buildings and

facilities." (Underlining omitted.) In support of the latter point, the builders assert the original facilities fee was adopted in 1986 for the specific purpose of financing an expansion of the existing civic center/police administration building and for no other. In their view, "[t]he only similarity between the existing [facilities fee] described in the Development Agreements and the completely new [facilities fee] enacted [in 2006] is the label of the charge." (Underlining omitted.)

We disagree. Although it does appear from the record surrounding the adoption of the facilities fee in 1986 that the fee was to be used, at least initially, for debt service related to the expansion of the civic center, the record does not support the builders"? argument that this was the only purpose of the fee. Rather, the documents in the record speak to the general problem created by residential development and the corresponding "substantial increase in population" -- namely, the need for "proper capital improvements . . . and adequate levels of City services." Thus, the purpose of the fee was to fund "the expansion of government center facilities" in general, and not just the civic center in particular.

Moreover, just because the increased fee was based on a more thorough determination of what additional government buildings and facilities would be necessitated by the continuing growth of the city and how much those buildings and facilities would cost does not mean the increased fee was a new and different fee. The facilities fee provided for under the 2006 amendment to the city"?s municipal code did not simply have the same "label" as the facilities fee already in existence at that time; its purpose was also the same -- to fund new and improved government facilities and buildings necessitated by new development. That the city now required different buildings than it had in the past and had become more sophisticated in its determination of the amount of the fee needed to fund those buildings did not make the increased fee fundamentally different from the one already in existence.

The builders are correct in one respect: the law does "respect[] form less than substance." (Civ. Code, §§ 3528.) But here (contrary to their argument) the substance of the facilities fee remained the same -- it remained an impact fee imposed on each unit of new residential construction that was to be used to fund new and improved government facilities and buildings required by the new development; it was only the amount of the fee, and the basis for determining that amount, that changed.

B. The Development Agreements Required Payment Of The Amount Of The Fee In Effect At Building Permit Issuance And Did Not Preclude The City From Increasing The Amount Of The Fee After The Development Agreements Took Effect

Having determined that the facilities fee from the 2006 ordinance was the same facilities fee that was in force and effect on the effective dates of the development agreements, we turn to the question of whether the amount of the fee the city sought to impose on the builders was consistent with the terms of the agreements. To answer that question, we turn back to section 4.02(f)(1)of the development agreement. That provision requires the developers to pay the facilities fee "in the amount that is further described in Section 4.02(f)(2) below." The Pulte agreement also adds a reference to exhibit F. Accordingly, we turn to those provisions.

Section 4.02(f)(2) of the development agreement provides for payment at the time of "building

permit issuance" and specifies that the developer "shall pay the amount . . . that is force and effect at the time of . . . building permit issuance." Exhibit F goes on to specify that the various impact fees "may be adjusted by City (increased or decreased) from time to time during the life of the Project and the Development Agreement, pursuant to the enabling ordinance or resolution, and as provided for in Section 4.02([f]) of the Agreement" and specifies (like section 4.02(f)(2) of the development agreement) that the developer "shall pay the amount of the particular fee in force and effect at the time of such building permit issuance, unless otherwise provided for in the enabling resolutions or ordinances."

The provision in section 4.02(f)(2) of the development agreement and the last part of the provision in exhibit F strongly support the city"?s position that the development agreements required the developers to pay the amount of the facilities fee "in force and effect at the time of . . . building permit issuance" -- that is, the increased fee implemented in 2006 -- rather than the amount of the fee ($350) in force and effect on the effective dates of the agreements.

In challenging this conclusion, the builders argue that "the second sentence in Section 4.02(f)[(2)] . . . clearly refers only to the time of payment of fees." They are wrong. The first sentence of section 4.02(f)(2) of the development agreement refers to the time of payment ("Developer shall pay at building permit issuance"), while the second sentence plainly refers to the amount of the payment ("Developer shall pay the amount . . . in force and effect at the time of . . . building permit issuance").

The only provision in either section 4.02(f)(2) of the development agreement or exhibit F that arguably supports the builders"? position regarding the amount of the facilities fee to which they were subject is the third sentence in exhibit F, which immediately precedes the sentence providing (for the second time) that the developers will "pay the amount of the particular fee in force and effect at the time of . . . building permit issuance." That sentence reads as follows: "All of these fees may be adjusted by City (increased or decreased) from time to time during the life of the Project and the Development Agreement, pursuant to the enabling ordinance or resolution, and as provided for in Section 4.02([f]) of the Agreement."

The first part of that sentence, if read in isolation, actually further supports the city"?s position, in that it acknowledges the city"?s power to increase all of the impact fees, including the facilities fee, during the life of the projects and the development agreements. The builders, however, stress the middle part of the sentence, "pursuant to the enabling ordinance or resolution." As they note, "pursuant to" means ""in the course of carrying out; in conformance to or agreement with; according to."?" (Jordan v. Department of Motor Vehicles (1999) 75 Cal.App.4th 449, 465.) In their view, this provision means that "if the existing enabling ordinance for a particular City fee provided a mechanism for periodically adjusting the fee (such as for inflation), and if the existing [facilities] fee had been increased "pursuant to"? that provision or mechanism, then the developers were deemed to be subject to such already-provided for, and foreseeable, fee adjustments or increases." Stated another way, in the builders"? view, they could be subjected to an increase in the amount of an impact fee over the amount in effect when they entered into the development agreement only if the increase was already provided for in the enabling ordinance or resolution that created the fee in the first place, because only then would the upward adjustment be "pursuant to the enabling ordinance or

resolution." Based on this reasoning, the builders argue that because the enabling ordinance for the facilities fee did not provide for any future adjustments when they entered into the development agreements, the city was precluded from imposing the increased facilities fee.

The city offers an alternate interpretation of the phrase, "pursuant to the enabling ordinance or resolution." In the city"?s view, that phrase means "that a fee may not be adjusted if the enabling ordinance or resolution expressly prohibits an adjustment." This would leave the city free to adjust its impact fees upwards (or downwards), and to subject the builders to those adjusted fees, unless the enabling ordinance or resolution creating the fee expressly prohibited the city from doing so. Since there was no such prohibition in the enabling ordinance for the facilities fee, the city contends it was free to adjust that fee upwards and impose the adjusted fee on the builders without violating the development agreements.

Although both interpretations of the phrase are arguably reasonable, we agree with the city"?s. The main reason we do is that the builders"? interpretation of the phrase is based on a faulty premise. Specifically, all of their interpretive arguments are based on the premise that the city had no authority to increase the facilities fee imposed on the projects unless some specific provision in the agreements gave the city that authority. The builders suggest that "the main purpose of a development agreement is to freeze existing regulations" (Neighbors in Support of Appropriate Land Use v. County of Tuolumne (2007) 157 Cal.App.4th 997, 1013), and, thus, that such an agreement automatically freezes the amount of any impact fees to which the development project is subject, unless the agreement specifies otherwise. As we will explain, however, we find no basis in the law for this premise.

As the builders note at the outset of their brief, our Supreme Court has stated that "development agreements . . . between a developer and a local government limit the power of that government to apply newly enacted ordinances to ongoing developments." (City of West Hollywood v. Beverly Towers, Inc. (1991) 52 Cal.3d 1184, 1193, fn. 6.) What the builders fail to acknowledge, however, is that this statement was made in specific reference to Government Code section 65866. (City of West Hollywood, at p. 1193, fn. 6.) That statute provides as follows: "Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies." (Gov. Code, §§ 65866.)

Under this statute, the application of certain "rules, regulations, and official policies" to a project that is the subject of a development agreement is fixed at the time the agreement is executed "[u]nless otherwise provided by the development agreement." The "rules, regulations, and official policies" that fall under this provision, however, are limited to those "governing

permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications." By its terms, the "freezing" effect of this statute does not extend to "rules, regulations, and official policies" governing impact fees -- such as the ordinances and municipal code provision at issue here.

Because the application of ordinances and code provisions governing impact fees is not frozen by the first sentence of Government Code section 65866, such ordinances and code provisions fall under the second sentence of the statute. Thus, under section Government Code section 65866, a local government entity is not prevented by the mere existence of a development agreement "from applying new rules, regulations, and policies" governing impact fees "in subsequent actions applicable to the property."

What that means here is that the mere existence of the development agreements between the builders and the city did not entitle the builders to pay only the $350 facilities fee that was in force when the development agreements with the city took effect. Rather, under its general authority to impose impact fees in the first place, the city had the authority to change the amount of the facilities fee to which the builders were subject unless there was something in the development agreements that limited the city"?s authority in that regard.

With the fundamental premise underlying the builders"? arguments turned upside down, none of those arguments is persuasive. For example, in criticizing the city"?s argument (with which we have agreed already) that the second sentence in section 4.02(f)(2) of the development agreement refers to the amount to be paid, rather than merely to the time of payment, the builders contend "[t]his [provision] is NOT an independent contractual "authorization"? for the City to increase its existing fees." But, for the reasons set forth above, no such authorization was necessary. Under its general authority to impose impact fees in the first place, the city had the authority to change prior to the time of building permit issuance, the amount of the facilities fee to which the builders were subject unless something in the development agreements prevented the city from doing so.

Indirectly, the builders suggest such a provision may be found in section 4.01 of the development agreements, which specifies that the "Developer shall have the vested right to develop the Project for the term of this Agreement." According to the builders, their vested right to develop under this provision is subject only to "Applicable Law," which "is defined as the City"?s rules and regulations "in force"? at the time the [agreements] become "effective."?"

In making this argument, however, the builders have misread the development agreements. As we have previously noted, section 4.01 of each agreement specifies that the "Developer shall have the vested right to develop the Project for the term of this Agreement, subject to all terms and conditions of this Agreement and the Applicable Law." (Italics added.) To the extent the development agreements required the builders to pay the impact fees "in force and effect at the time of . . . building permit issuance" and did not prohibit the city from increasing its impact fees after the development agreements took effect (but before the building permits were issued), then whatever "vested rights" the builders have under the agreements do not include the right to pay only the $350 facilities fee that was in effect when the development agreements took effect but was no longer in effect when the builders sought building permits for their projects.

In the end, we find nothing in the development agreements that purports to limit the authority of the city to increase, prior to building permit issuance, the amount of the impact fees that were in effect when the agreements took effect, including the facilities fee at issue here. Indeed, as we have noted, exhibit F of the agreements specifically acknowledges the city"?s right to adjust the amount of these fees "from time to time during the life of the Project and the Development Agreement." The qualifying phrase, "pursuant to the enabling ordinance or resolution," is not, by itself, enough to suggest that any increase in an impact fee could be accomplished only if that increase was already provided for in the ordinance or resolution that created the fee, particularly in light of the fact that the agreements twice state that the builders will pay the amount of the impact fee "in force and effect at the time of . . . building permit issuance." If the parties had intended to "freeze" the amount of the applicable impact fees to those amounts in force and effect when the development agreements took effect, they could have easily stated this intent, but they did not do so. Accordingly, we conclude the more reasonable interpretation of the development agreements is the one advanced by the city. The trial court erred in construing them otherwise.

II. The Builders' Other Arguments

As alternate bases for affirming the judgment in their favor, the builders contend Government Code section 65961 and "equity and estoppel" precluded the city from enforcing the increased facilities fee against them. The builders also contend the Pulte project was "protected by vesting rights under a vesting tentative map." We disagree.

A. Government Code Section 65961

Subject to certain exceptions not applicable here, Government Code section 65961 provides as follows: "Notwithstanding any other provision of law, upon approval or conditional approval of a tentative map for a subdivision of single- or multiple-family residential units, or upon recordation of a parcel map for such a subdivision for which no tentative map was required, during the five year period following recordation of the final map or parcel map for the subdivision, a city, county, or city and county shall not require as a condition to the issuance of any building permit or equivalent permit for such single- or multiple-family residential units, conformance with or the performance of any conditions that the city or county could have lawfully imposed as a condition to the previously approved tentative or parcel map. Nor shall a city, county, or city and county withhold or refuse to issue a building permit or equivalent permit for failure to conform with or perform any conditions that the city, county, or city and county could have lawfully imposed as a condition to the previously approved tentative or parcel map."

In their one-page argument, the builders argue that "[s]ince the City had an ordinance . . . authorizing the imposition of a fee called a "GBF fee"? in effect at the time of approval of these projects -- at the rate of $350 per home -- Section 65961 applies, and the imposition of these new fees is thereby barred as a matter of law." What they mean by this argument is not clear. If they are arguing that the city could have lawfully imposed as a condition to the approved tentative maps for the projects the payment of the facilities fee, but did not do so, and therefore cannot require the payment of a facilities fee as a condition to the issuance of any building permit for

the projects, then their argument proves too much, because that conclusion would preclude the city from imposing any facilities fee, not simply the increased facilities fee implemented by the 2006 ordinance.

In any event -- whether the builders invoke Government Code section 65961 to avoid payment of any facilities fee whatsoever or only the increased facilities fee -- the builders‟? reliance on that statute is unavailing because of the terms of the development agreements they signed. As we have explained, the development agreements gave the builders the "vested right" to develop their projects "subject to all terms and conditions" of those agreements. As we have concluded already, under the agreements, (1) the builders agreed to pay the amount of the facilities fee "in force and effect at the time of . . . building permit issuance"; (2) the builders acknowledged that the city could adjust the amount of its impact fees from time to time during the lives of the projects and the development agreements; and (3) nothing in the development agreements precluded the city from exercising its pre-existing authority to increase its impact fees between the time the development agreements took effect and the time the builders sought the building permits for their projects. The builders cannot invoke the protections of Government Code section 65961 to avoid paying impact fees they agreed to pay. Accordingly, this argument fails.

B. Estoppel

The builders contend "the judgment should also be affirmed on the grounds of equity and estoppel." They contend that because they have "obtained all necessary discretionary approvals from the City and other agencies involved in the approval of the [projects]," "[t]he City is estopped . . . from now seeking to impose additional charges on these projects."

We have concluded already that the city had the right under its development agreements with the builders to increase the amount of the facilities fee and to impose that increased fee on the builders at the time of building permit issuance. In their brief estoppel argument (which amounts to a single paragraph), the builders offer no persuasive reason why the city should be estopped from enforcing its contractual rights. Notwithstanding the fact that the builders may have obtained all the discretionary approvals they needed for their projects, they agreed to pay the city the facilities fee that was in force and effect at the time of building permit issuance, and the city‟?s increase in the amount of that fee after the development agreements took effect did not violate any provision in those agreements. Neither estoppel nor equity justifies allowing the builders to escape the terms of the agreements they made.

C. Vesting Tentative Map

Finally, the builders argue that "[t]he Pulte project is also protected by vesting rights under a vesting tentative map." Again, we disagree.

Under case law, "the due process notice requirements implicit in the vesting tentative map statutes limit increases in developer‟?s fees to those for which adequate standards for determining the scope and extent of the fee increases are in place at the time the vesting tentative map is deemed complete." (Kaufman & Broad Central Valley, Inc. v. City of Modesto (1994) 25 Cal.App.4th 1577, 1579-1580.)

Even assuming Pulte has a vesting tentative map, however, the foregoing principle is of no greater assistance to Pulte than Government Code section 65961 is to the builders because of the development agreement Pulte signed. As we have explained, Pulte essentially agreed to pay the city the increased facilities fee that was in force and effect at the time of building permit issuance. The builders argue that Pulte"?s development agreement "does not purport to supersede any rights conferred under the approved vesting map," but we cannot agree. By agreeing to pay the amount of the facilities fee in force and effect at the time of building permit issuance, by acknowledging that the city could adjust the amount of its impact fees from time to time during the life of the project and the development agreement, and by entering into an agreement that contained no provision precluding the city from exercising its pre-existing authority to increase its impact fees between the time the development agreement took effect and the time it sought the building permits for the Union Ranch project, Pulte -- for all intents and purposes -- gave up any right it may have had under a vesting tentative map to pay only the amount of the facilities fee that was in effect when the development agreement took effect. Accordingly, this argument provides no basis for affirming the judgment in favor of the builders.

DISPOSITION

The judgment is reversed. The city shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

We concur: SCOTLAND, P. J., RAYE, J.