

Decision S2 07 114 JUL 21 1982**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of ROY E. LOMPA, an individual, )  
for a Certificate of Public )  
Convenience and Necessity to )  
Construct Public Utility Water )  
and Sewer Systems near the City )  
of Hollister in San Benito County )  
and to Establish Rates for Service. )

Application 58763  
(Filed March 23, 1979;  
amended June 21, 1979)

Roy E. Lompa, for himself, applicant.  
Mary Jean Purcell, for the Commission staff.

FINAL OPINION

By interim Decision (D.) 91332 (February 13, 1980) the Commission granted to Roy E. Lompa certificates of public convenience and necessity to operate water and sewer systems as part of a real estate development in San Benito County. The grant of those certificates was subject to certain conditions and further hearings were contemplated to determine if Lompa had fulfilled them. In addition the Commission explicitly reserved jurisdiction to modify or revoke its order granting the certificates if circumstances warranted any changes.

Contacts between Lompa and Administrative Law Judge (ALJ) Robert T. Baer since D.91332 was issued showed that the real estate development was not progressing and that Lompa desired further proceedings to be delayed as much as possible. On August 18, 1981, the ALJ issued a notice to all parties that the application would be dismissed and the certificates canceled unless Lompa requested a public hearing. By letter of September 10, 1981, Lompa requested a hearing, which was duly noticed and held on October 16, 1981. Lompa testified and was cross-examined and the proceeding was submitted on that date, subject to the filing of two exhibits, one of which was received October 30, 1981.

Events Since Close of First Hearing

Lompa testified that following the issuance of D.91332 on February 13, 1980, he bent all his efforts to complete all county conditions precedent to the issuance of a final subdivision map for his development. These efforts failed when his tentative map expired in April of 1980. Lompa could neither fulfill all the county's requirements nor convince the county that it should grant an extension of his tentative map. Believing that state law required the county to grant at least an additional<sup>1</sup> six months extension of the tentative map, Lompa filed suit against the county in Superior Court, but the court ruled against him. Lompa did not have sufficient funds by that time to prosecute an appeal.

Lompa believes that the county's reluctance to expedite his development may be due to its plans to completely rezone the county. In support of his contention he submitted a map containing the land use element of the county's 1980 general plan.<sup>2</sup> It shows that the subject property is now in the "Rural/Urban" zone in which two to eight dwelling units per acre are allowed. Thus, the maximum permissible housing density for the subject property has increased from four to eight units per acre. With this zoning change Lompa proposes to build condominiums rather than single-family dwellings and to double the number of units to be constructed. Instead of 170 units the development now has a potential of 340 units. Since all units would be both water and sewer customers, the proposed water and sewer utility would effectively serve 680 customers.

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<sup>1</sup> Lompa had previously obtained one 18-month extension of his tentative map.

<sup>2</sup> The plan is still subject to state approval.

This new proposal is, however, at the conceptual stage only. Lompa has not filed a new tentative map with the county and does not intend to recommence the costly<sup>3</sup> process of obtaining county approval until the county's general plan has been approved by the State and until the market for housing improves.

Discussion

The relief Lompa seeks is summarized in the following exchange:

"ALJ Baer: So what you're asking the Commission to do is to withhold any action on your certificate for a year or two years or, perhaps even three years until the climate for housing improves and the cost of money comes down and the problems at the local level are resolved."

"The Witness: That's exactly what I'm asking for because we've got a considerable investment already in this and it looks like it's going to take that long for it to come back to us." (Tr.158-159.)

It is understandable that applicant would like to avoid the effort involved in reapplying to the Commission for a certificate if and when his proposed project becomes feasible. However, we must balance this request against our policy on certification of small water companies.

In Resolution M-4708, issued on August 28, 1979, we set forth guidelines for granting new water company certificates.

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3/ It appears obvious that water and sewer systems designed for 170 customers each will not be adequate for 340 customers each; that plots designed for 170 single-family dwellings will not be appropriate for 340 condominiums; and that therefore substantial additional engineering expenses must be incurred before a new proposal can be made to the county.

In demonstrating need for a certificate, applicants would have to show that service could not be provided by another entity and that concrete customer demand for service existed. Applicants would also have to demonstrate that the proposed project would be viable if developed. Because of our original uncertainty over the viability of the instant proposal, we granted Lompa a certificate on an interim basis and ordered him not only to request service of major public utilities serving areas surrounding San Benito County, but also to continue to seek service from the Sunnyslope County Water District (District) adjacent to his proposed service area.

Applicant admitted at the October 1981 hearing that he had not sought service from any of those utilities. As a late-filed exhibit, he was to submit copies of minutes of the District's board meeting which would demonstrate his effort to obtain service from it. Although the copies were filed after the date this matter was submitted, we will take official notice of them. They indicate that Lompa last appeared before the District's Board of Directors in September of 1979, before our interim decision of February 13, 1980 was issued. A copy of the minutes of the Board's March 13, 1980 meeting indicates that the Board stated "nothing should be done until Mr. Lompa makes another application for service." Therefore, it is not clear whether or not the District would be willing to serve applicant's property. If it would be, Lompa's proposed service would not be needed.

Moreover, Lompa's entire project is presently dormant, providing us no way of ascertaining concrete present or future customer demand for service. We also have no way of presently determining the viability of the proposed utility services. Lompa established his proposed rates based on a results of operations study in 1979. In our 1980 interim decision we noted the inadequacy of these rates, and ordered Lompa to work with

the staff on an alternate proposal. This outdated study clearly does not reflect Lompa's more recently stated intention to develop condominiums rather than single-family residences.

We must further state that we do not consider it to be sound policy to leave utility certificates outstanding when there appears little or no likelihood that they will be exercised within a reasonable period of time. Two years have passed since Lompa was granted this certificate. Despite his representations that his problems can be worked out in two or three years, we have no firm basis on which to reach that conclusion. We believe it would not be in the public interest to allow him to continue to hold this certificate when there may be other entities or individuals who would be willing to provide service to his property.

Therefore, we will revoke the certificate previously granted to Lompa, but without prejudice to subsequent renewal of his application. At such time as Lompa has a firm proposal in concrete form; has taken the necessary steps to obtain other required permits; and can demonstrate that he has sought service, by written request, from surrounding water utilities and from the District, and has been unsuccessful in securing commitments for such service; he may file another application with us.

Findings of Fact

1. San Benito County revised its general plan in 1980. The subject property is now zoned Rural/Urban, permitting the construction of two to eight dwelling units per acre.

2. Lompa plans to convert his proposed Scenic Southside subdivision from single-family residences to condominiums, thereby doubling the density and increasing sewer and water services from 170 each to 340 each.

3. Lompa failed to complete all county conditions precedent to issuance of a final subdivision map. His tentative map expired in April 1980, and his efforts to secure an extension failed.

4. Lompa has taken no concrete actions to obtain county approval of his revised plan to develop condominiums.

5. Lompa has submitted no evidence of any efforts by him, subsequent to issuance of D.91332, to secure water and sewer service to his subdivision from other public utilities.

6. Lompa has failed to show that other public utilities and the District would be unwilling to provide water and sewer service to his subdivision.

7. The only results of operations study and rate proposal prepared by Lompa was inadequate and is now outdated and inapplicable to his revised development plan.

8. It appears unlikely that Lompa will be in a position to exercise the certificates granted to him by D.91332 within a reasonable period of time.

9. It is the policy of the California Regional Water Quality Control Board - Central Coast Region (WQCB-CCR) to require public ownership of sewage treatment and disposal systems, but it is not known whether WQCB-CCR would grant exceptions to that policy in individual cases nor whether that policy will change in the future.

#### Conclusions of Law

1. D.91332 granted Lompa certificates of public convenience and necessity subject to terms and conditions specified in the Conclusions of Law included in that decision.

2. Lompa has failed to comply with the requirements of Conclusions of Law 2 and 3 of D.91332 (see Appendix A).

3. By Conclusion of Law 6 of D.91332 the Commission retained jurisdiction to modify or revoke the certificates granted to Lompa.

4. Unexercised certificates of public convenience and necessity should not be left outstanding where there appears little or no likelihood of their being exercised within a reasonable period of time.

5. The certificates granted to Lompa by D.91332 should be revoked.

6. The public ownership policy of WQCB-CCR should not affect this certification proceeding.

FINAL ORDER

IT IS ORDERED that:

1. The certificates of public convenience and necessity granted to Roy E. Lompa by D.91332 are revoked.

2. This certificate revocation shall create no prejudice against Lompa subsequently filing a new application for authority to provide a public utility service.

This order becomes effective 30 days from today.

Dated JUL 21 1982, at San Francisco, California.

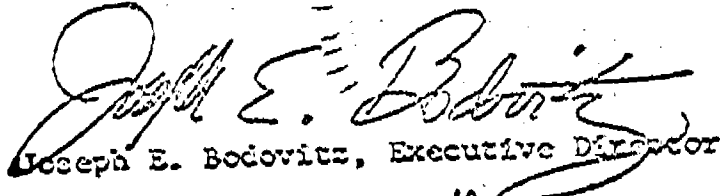
JOHN E. BRYSON  
President  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

I dissent.

RICHARD D. GRAVELLE Commissioner

Commissioner Leonard M. Grimes, Jr.,  
being necessarily absent, did not  
participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director

APPENDIX

Conclusions of Law 2 and 3  
of Decision 91332

"2. Lompa should formally request in writing that major public utilities in Santa Clara, Santa Cruz, and Monterey Counties consider operating and maintaining the development's water and sewer systems. Copies of the letters making such requests, and replies thereto, should be introduced into evidence during further hearings in this proceeding.

"3. Lompa should continue to appear before and to contact the members of the Board of Directors of the [Sunnyslope County Water] District regarding his request to annex his subdivision to the District. Lompa should introduce into evidence at future hearings a detailed written report of both past and future contacts and appearances."

(END OF APPENDIX)