

Turlock wins one against Wal-Mart

Appellate court says ordinance against 'big box' stores legal

By Michael Mello – Bee Staff Writer

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TURLOCK - A state appellate court ruled Wednesday that the city's ordinance designed to keep discount "big box" businesses from operating grocery stores is legal.

The Wal-Mart corporation sued Turlock soon after the City Council passed the ordinance with a 5-0 vote in 2004. Council members said then that the 225,000-square-foot-supercenter the Wal-Mart corporation wanted to build in the city would cause substantial traffic congestion and resulting environmental harm.

Wal-Mart lost in Stanislaus County Superior Court in 2004 and took the case to the 5th Circuit Court of Appeal in Fresno, which ruled against the corporation Wednesday.

City Attorney Dick Burton said he received e-mail notification of the verdict at 10 a.m. and immediately called members of the council.

"We're very pleased with the result," he said.

"It's a good day for Turlock," Mayor Curt Andre said. "I'm very delighted with the appellate court decision, and I'm feeling very vindicated. I never doubted we were doing the right thing for our community, but it's been a long and grueling process."

Burton said he expects this will be the end of the line for the state lawsuit.

"I predict they will file a petition for hearing in the state Supreme Court. But the court hears only about one in every 100 petitions."

Wal-Mart spokesman John Simley said the company is "disappointed" by the ruling. Wal-Mart is reviewing the decision and hasn't yet decided whether to appeal, he said.

"Our feeling is that it was an incorrect interpretation and it weakens the state's environmental statutes. We have quite a few of these things," Simley said, referring to the chain's supercenters. "The experience indicates that customers make fewer trips of a shorter distance over time. That's a significant reduction in road miles. They're going to one place instead of 14 places to get what they need. We think that's relevant."

Residents react

Renee Anderson, a 15-year Turlock resident, said Wednesday she was happy to hear about the city's victory.

"I love it," she said of the big-box ordinance. "I don't want (Wal-Mart) to build it. It's too much. I moved from Modesto to get away from too much."

However, Maxine Giffin said she couldn't understand why Turlock doesn't have a supercenter.

"I think they should be allowed to bring it in," she said, noting that she doesn't see massive traffic problems at the Costco off Monte Vista Avenue.

"I think a lot of it is they're afraid the smaller stores would go out of business," Giffin said. She added that she didn't think that would happen because people would continue to shop at their favorite stores.

The city's ordinance bans new or growing stores bigger than 100,000 square feet that devote at least 5 percent of that floor space to groceries and similar goods.

That would include WalMart's proposed store at Countryside Drive and West Tuolumne Road, just east of Highway 99.

In its lawsuit, Wal-Mart claimed it was being singled out as a retailer and that the ordinance violated state law by using zoning powers to regulate business competition.

Stanislaus County Judge Roger Beauchesne disagreed, saying officials had "a legitimate concern for blight, traffic congestion and its resulting air pollution."

Wednesday's appellate court opinion affirmed Beauchesne's ruling.

Appellate justices said "a city may exercise its police power to control and organize development within its boundaries as a means of serving the general welfare," and that the "city made a legitimate policy choice."

City Attorney Burton said the city has spent more than \$300,000 defending the lawsuit and a similar one Wal-Mart filed in federal court that is going through the system.

Barring help from the Legislature, the bill for fighting the lawsuit will fall to taxpayers because public entities are not allowed to recoup lawyers' fees from lawsuits, Burton said.

"We get nothing. It's the taxpayers who have to pay," he said. "It doesn't seem fair when you have the largest retail corporation in the world ... this is nothing to them."

But, Mayor Andre said, "The money has been well-spent if we can avoid spending \$7 million to fix a traffic problem. I'm always reminded of the huge cost - how Modesto is spending millions of dollars to widen Pelandale (Avenue)."

A supercenter on Countryside Drive would have overwhelmed Tuolumne Road and Monte Vista Avenue with thousands more cars than the roads could handle, Andre said.

"The vast majority of citizens support our efforts here. They see the potential problems. We don't doubt that there will be a supercenter somewhere, but it has to be where the traffic can handle it."

Simley said the company agrees with Andre that a supercenter is more likely than not - and changing the proposed location may not be out of the question.

"We're always willing to talk and listen. We welcome a dialogue. But he's right. It is inevitable," Simley said. "We do a marketing analysis before we open a store, and that analysis said there's a strong demand (for a supercenter) in Turlock."

Councilman pushes compromise

Councilman Kurt Vander Weide recently voted against the city spending more money defending the Wal-Mart lawsuits.

"For me, it's not about Wal-Mart. It's about how we treat businesses in this town, whether it is a mom-and-pop or a big box," he said, adding that he wasn't surprised with Wednesday's decision but thought that the federal lawsuit could be troublesome.

Vander Weide, who joined the council after the ordinance was approved, said problems with a supercenter could have been solved.

"I think that Wal-Mart should have been held to standards that would have mitigated those impacts, and I think those impacts could have been mitigated," he said. "Turlock is such a sweet plum, I don't think Wal-Mart will ever go away. I think we will have a supercenter ... and realize the sales tax revenue benefits. We'll get more jobs and more shopping opportunities."

Nonprofit encourages residents to get on bikes

Brian Keegan, Contributing writer

Bakersfield Californian, Thursday, April 6, 2006

Bike Bakersfield is a new nonprofit in town that promotes bicycling for everyday transportation. On March 31, the organization had a news conference to announce its grand opening. In attendance were Mayor Harvey Hall, City Councilwoman Sue Benham, Recreation and Parks Director Dianne Hoover, Bike Bakersfield board members and staff, and a sizable group of passionate volunteers.

Hall opened the event by stating that it was exciting to see people gathered for a positive cause in our community.

"Bicycling makes for healthier and happier people in Bakersfield," he said. "We all want clean air and bicycling helps us to achieve it."

Benham emphasized the "Bicycle Friendly Workplace Program" Bike Bakersfield is promoting.

"We would like to encourage employers to provide showers, indoor bike parking and incentives for their employees to bicycle," Benham said.

Bike Bakersfield founder Bob Smith then spoke about his vision for the organization.

"By bicycling, for transportation, you are allowing yourself the freedom to have more fun and enjoy life more everyday," he said.

Smith also mentioned the upcoming events Bike Bakersfield plans to put on during National Bike Month in May.

"We are very excited about hosting the Downtown Bike Race, in conjunction with the Downtown Street Fair, on May 18, and also about the Kern River Parkway Ride on May 27," he said.

Brian Keegan, executive director of Bike Bakersfield, finished with some closing remarks and then gave away the first two "Recycle-a-Bicycles," a program in which Bike Bakersfield takes in donated bikes, volunteers repair them, and then the bikes are given to people in need of bikes who cannot afford them.

Brian Keegan is the executive director of Bike Bakersfield.

EPA joins beef producers in criticizing air study

In the S.F. Chronicle, Wednesday, April 5, 2006, and Tracy Press, Thursday, April 6, 2006

Los Angeles (AP) -- The Environmental Protection Agency has joined a beef producers' group in criticizing a 10-year study by California health officials that found more people died in the Coachella Valley on dusty days than clear ones.

The federal government cited the research last year among evidence for possible new limits on dust, soot, and other pollution. But the EPA now proposes giving agriculture, mining, and natural sources of "coarse particulate pollution" an exemption from the rules.

The National Cattleman's Beef Association took credit on its Web site for protecting farmers and ranchers from having to enact expensive dust controls, stating, "Thanks to NCBA efforts, EPA has agreed to exclude dust from agriculture sources."

Environmentalists said the agency had been overly influenced by the beef producers.

"There is the appearance the cattlemen got a special deal politically, and breathers can suffer as a result," said Frank O'Donnell, president of Clean Air Watch.

Bill Wehrum, the EPA's top air quality official, said the beef producers did not get special treatment. He said their views were reflected in the EPA's 90-page proposal for new national health standards, but that the proposal reflects other views as well.

He said the EPA issued the proposal in the hopes of spurring debate before a final ruling is made. EPA Administrator Stephen Johnson is to set the final standards by September.

A 2003 study led by Bart Ostro, chief of air pollution epidemiology at California's Office of Environmental Health Hazard Assessment, found that days with elevated levels of coarse particles in the air could increase deaths from heart attacks and other cardiac problems by 10 percent. The study said reducing pollution by one-third could save up to 20 lives a year.

Coarse particles are airborne specks between 2.5 and 10 microns in diameter; 10 microns are about one-seventh the diameter of a human hair.

The study helped prompt the South Coast Air Quality Management District and community leaders to reduce dust by paving dirt roads, sweeping streets more often, and allowing less crop tilling in high winds.

Beef producers went to the EPA with concerns about several aspects of the study, citing work by Yale University epidemiologist Jonathan Borak, who consulting company analyzes research for industry clients.

He concluded that the research was not reliable, specifically taking issue with Ostro's coarse-particle estimates.

Ostro said his study had previously passed muster in three peer reviews.

[Modesto Bee, Editorial, Thursday, April 6, 2006](#)

California should get fuel-standards waiver

EPA Administrator Stephen Johnson is well aware that California's environmental laws have helped clean up cars and motor fuels nationwide, providing benefits for the entire country. Johnson now has a chance to let California lead again. Whether he will -- or will be allowed to -- is another matter.

To fight global warming, California approved rules two years ago requiring auto manufacturers to significantly reduce their vehicles' greenhouse gas emissions. Under the rule, pollution from cars and light trucks would have to drop 25 percent by 2009. Emissions from heavier trucks and sport utility vehicles would have to drop 18 percent.

With the federal government refusing to act on global warming, 10 other states have adopted California's standards. Auto manufacturers have sued in response. No surprise there. Nor is it surprising the Bush administration is giving them plenty of cover.

This week, Transportation Secretary Norman Mineta issued what he called "ambitious" new fuel standards for cars and trucks. What he didn't mention is that his 371-page rule includes a section to override any fuel standards set by individual states.

The Bush administration contends that California's emission rules represent the equivalent of new fuel economy standards. It's an artful interpretation, which parrots the legal arguments of the automakers.

Here's where Johnson comes in.

Because California began regulating air pollution before the federal government, it has special authority to set its own vehicle pollution standards. To do so, it needs a waiver from the Environmental Protection Agency.

Johnson could quickly issue such a waiver, and he is being urged to do so by 21 U.S. senators -- including Barbara Boxer and Dianne Feinstein.

Johnson is in a tough spot. News reports suggest he was left out of the loop while Mineta's National Highway Traffic Safety Administration came up with its rule. Now Johnson must make a decision that will either anger his bosses or undermine a group of states trying to address a serious environmental threat.

We have little hope Johnson will make the heroic choice. But he might if there is enough pressure coming from wings of the Republican Party, such as that occupied by Gov. Schwarzenegger. The governor should use some of his clout in Washington to get that waiver.

Ideally, states wouldn't need to set their own rules on greenhouse gases. Ideally, the Bush administration would realize this is a serious issue and would be doing everything necessary to lead a worldwide effort to reduce emissions. Sadly, Bush is not the ideal president to confront this issue.

[Letter to the Fresno Bee, Thursday, April 6, 2006:](#)

Statistics on air pollution's cost mask real damage

The only thing I hate more than filthy air is false statistics. The story in The Bee March 30 noted a cost of San Joaquin Valley pollution at \$3.2 billion per year. It included the value of lives shortened at \$6.7 million for 460 people per year, for a total of almost \$3.1 billion, or the major portion of the grand total.

Yet the bulk of the people involved will be like me: retired. The finest thing economically that could happen to society would be early death for me and for others like me. I draw Social Security, and lean heavily on Medicare and the new Medicare drug benefit.

My wife spent 24 hours in an emergency room and intensive care unit recently, and alone expended more government money than we will contribute in the remainder of our lives in income tax, sales tax, vehicle tax and the rest.

Of course, we want to live. But pollution shouldn't be justified on that economic basis, but on the basis that it causes my lungs to explode in agony with my asthma. I need help, but not phony numbers.

Phil Fullerton, Fresno