

ADVISORY OPINION

TORTUOUS JOURNEY TO JUSTICE

by Timothy Lynch

Timothy Lynch is associate director of the Cato Institute's Center for Constitutional Studies.

The Supreme Court recently accepted for review the case of *Del Monte Dunes v. Monterey*. While seeming to deal with arcane legal issues, the case in fact reveals in shocking detail how haughty government officials today wield arbitrary power over property owners.

The controversy began in 1981, when owners applied to the planning commission in Monterey, California to develop 37.6 ocean-front acres into 344 residential units, all in accordance with the city's existing zoning and general plan requirements. The planners rejected the proposal for Del Monte Dunes but told property owners that a development plan for 264 units would be received favorably. Revised proposals for 264 units and then 224 units were both rejected.

Responding to owner complaints, the Monterey City Council ordered the planners to consider a 190 unit proposal, which, in July 1984, the planners pondered and rejected as well. In September 1984, the City Council overturned the planners and approved the 190 unit proposal in principle, but required that a revised plan meet fifteen specific conditions. Over a twenty month period, the owners worked with the planning commission's technical staff to meet the Council's concerns. But in January 1986, the commission ignored the recommendation of its own staff and rejected the new 190 unit plan.

The owners took their revised plan to the City Council but, six

months later, the Council changed its previous ruling and backed the planners. Thus followed the owners' lawsuit against the City of Monterey, claiming the City's denial of the revised plan was arbitrary, capricious, and unreasonable. The City's stated reasons for denying the proposal included alleged dangers to the environment and inadequate access to and from the property. But the owners maintained that it was the City's "wish, scheme, and intent to preserve and devote the [dunes] as public space or quasi-open space" without having to compensate the owners. The owners invoked a federal civil rights law (42 U.S.C. §1983), that prohibits state and local governments from depriving persons of "any rights, privileges, or immunities secured by the Constitution." In essence, the owners claimed that Monterey was skirting the Fifth Amendment to the U.S. Constitution, which says private property cannot be "taken" for public use without "just compensation."

The City of Monterey countered that the federal district court should throw the lawsuit out as "unripe." Remarkably, the City argued that the owners had not submitted enough proposals to enable it to identify all of the acceptable and unacceptable features of the proposed Del Monte development. It was, therefore, premature for a federal court to intervene and declare that the City had violated federal law. Even more remarkably, the presiding federal judge actually agreed with Monterey and threw the lawsuit out.

The owners of the dunes appealed the case to federal appellate court and they eventually prevailed. In December, 1990 the Ninth Circuit Court of Appeals acknowledged the "significant resources" that the landowners had expended revising one development proposal after another and ruled that the Fifth Amendment takings claim was "ripe for trial."

The owners had their day in court and a jury awarded them \$1,450,000. But Monterey kept fighting. The City asked the trial judge to overturn the jury's verdict and to enter a judgment in its favor—an extraordinary legal motion that is rarely granted—or to grant a new trial. The judge rejected both motions. Apparently taking the view that it had little to lose, Monterey made a similar request of a federal appellate court, which the appellate court rejected.

Still not ready to concede defeat or to cut a check to the property owners, Monterey asked and the U.S. Supreme Court agreed to review the case, but the Court will not hear arguments until its next term. Like a pit bull with its teeth sunk into the leg of an innocent bystander, the holders of power in Monterey will not leave the property owners in peace. Justice, it seems, has been postponed for yet another year. Is this any way to run a legal system?