

[KB Home suit back on track; Appellate court sends it back for trial](#)

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Body

An appellate court Wednesday breathed new life into a taxpayer lawsuit that challenged the \$6 million paid by KB Home/Bakewell for the 107-acre plot on which the Seaside Highlands subdivision stands.

The 6th District Court of Appeals decision means the case will be sent back to Monterey County Superior Court for trial, reopening a controversial chapter in the city's past. Attorneys for Seaside resident Benjamin Kaatz are seeking to force KB Home/Bakewell to pay the city more than \$100 million for the property.

Kaatz had sued the city and developers KB Home/Bakewell in May 2003 alleging the city had violated numerous statutes. The lawsuit alleged that the property was not made available for affordable housing and that it was sold for far below its market value. Kaatz alleged the property was worth between \$94 million and \$115 million.

The 380-home neighborhood was built without any affordable housing and some homes sold for more than \$1 million.

In dismissing the case in March 2004, Monterey County Superior Court Judge Kay Kingsley ruled Kaatz had failed to raise a legal objection within legal deadlines.

But the three-justice panel that issued Wednesday's ruling disagreed, ruling that the law requiring challenges to meet certain deadlines does not apply in this case. KB Home/Bakewell contended the clock started ticking on May 4, 1998, the day the city agreed to sell the Hayes Park property. The sale was not concluded until July 2002.

"It is unreasonable to assume that the members of such a large and amorphous group are likely to have prompt notice of each agency action affecting them," wrote Justice Wendy Clark Duffy, with Acting Presiding Judge Nathan Mihara and Justice Richard McAdams concurring.

In siding with Kaatz, the justices borrowed from an earlier Supreme Court decision when it wrote, "In an age of increasingly complex government, this seems a heavy burden to impose on the vigilant taxpayer."

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Ed Dudensing of Sacramento, one of the lawyers representing Kaatz, said the decision is a victory for the entire city.

"We look forward to continuing this fight to reclaim from KB Bakewell, for the benefit of all residents of the city of Seaside, millions of dollars of proceeds that can be used by the city for affordable housing and other projects that benefit this community," Dudensing said.

City officials have said the price was negotiated between the Army and the developers and that the city had no role. But Dudensing said he doesn't buy that argument, adding that his legal team will prove otherwise during a trial.

"There was basically a sea change where the government decided to give away the property," Dudensing said. "What should have happened is that the city should have come up with bidders. But a deal was already in place, and influence was exerted by KB Home/Bakewell."

Calls to attorneys for KB Home were not returned.

Councilman Steve Bloomer said he had no comment and Mayor Ralph Rubio could not be reached.

Originally, Kaatz had wanted to purchase one of the new Seaside Highland homes and had entered his name for the lottery established for interested bidders. Kaatz's name wasn't drawn but he said his impression of the project changed when he realized starting prices had topped \$535,000, well above the prices that had been discussed for the homes years earlier. That's when he decided to sue.

Developers attributed the hike in prices to inflation.

Kingsley had granted Kaatz a short-lived victory when she ordered a temporary halt to the construction of homes in August 2003. Within days, however, lawyers for the city and KB Home/Bakewell prevailed.

Emboldened by their victory, the lawyers then tried to force Kaatz to cough up attorney fees. But Kingsley ruled against them, saying such a requirement would have a lasting, chilling effect on anyone trying to raise an objection to government actions.

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