



Analysis
As of: Jul 09, 2013

DANIEL McCLUNG; ANDREA McCLUNG, individually and as a marital community, Plaintiffs-Appellants, and TAPPS BREWING, INC., a Washington corporation, Plaintiff, v. CITY OF SUMNER, Defendant-Appellee.

No. 07-35231

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

548 F.3d 1219; 2008 U.S. App. LEXIS 27848

December 1, 2008, Decided

SUBSEQUENT HISTORY: US Supreme Court certiorari denied by *McClung v. City of Sumner*, 129 S. Ct. 2765, 174 L. Ed. 2d 270, 2009 U.S. LEXIS 4267 (U.S., 2009)

PRIOR HISTORY: [**1]

Appeal from the United States District Court for the Western District of Washington. D.C. No. CV-06-05006-RBL. Ronald B. Leighton, District Judge, Presiding.

McClung v. City of Sumner, 545 F.3d 803, 2008 U.S. App. LEXIS 20314 (9th Cir. Wash., 2008)

McClung v. City of Sumner, 548 F.3d 1219, 2008 U.S. App. LEXIS 27849 (9th Cir. Wash., 2008)

JUDGES: Before: Richard R. Clifton and N. Randy Smith, Circuit Judges, and J. Michael Seabright, * District Judge.

* The Honorable J. Michael Seabright, United States District Judge for the District of Hawaii, sitting by designation.

OPINION

[*1221] ORDER AMENDING OPINION AND DENYING REHEARING

ORDER

The opinion filed on September 25, 2008, is amended as follows:

On slip Opinion page 13750, insert a new footnote 3 at the bottom of the page after the sentence that ends ". . . applies to Ordinance 1603." (and renumber the subsequent footnotes):

We observe that the ordinance before us concerns a permit condition designed to mitigate the adverse effects of the new development. New construction increases the burden on the City's sewer system and increases the loss that might result from flooding. After experiencing considerable flooding, the City enacted Ordinance 1603 to require most new developments to include specified storm pipes. We are not confronted, therefore, with a legislative

development condition designed to advance a wholly unrelated interest. We do not [**2] address whether *Penn Central* or *Nollan/Dolan* would apply to such legislation.

With the opinion as amended, Judge Clifton and Judge N.R. Smith voted to [*1222] deny the petition for rehearing en banc and Judge Seabright so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *Fed. R. App. P.* 35.

The petition for rehearing en banc, filed October 9, 2008, is DENIED.

No further petitions for rehearing or rehearing en banc may be filed by the parties.