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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STAR NORTHWEST INC., a Washington corporation doing business as Kenmore Lanes and 11th Frame Casino,

Plaintiff - Appellant,

v.

CITY OF KENMORE, a Washington municipal corporation; et al.,

Defendants - Appellees.

No. 06-35801

D.C. No. CV-05-02133-MJP
Western District of Washington,
Seattle

ORDER

STAR NORTHWEST INC., a Washington corporation doing business as Kenmore Lanes and 11th Frame Casino,

Plaintiff - Appellant,

v.

CITY OF KENMORE, a Washington municipal corporation; et al.,

Defendants - Appellees.

No. 06-36029

D.C. No. CV-05-02133-MJP
Western District of Washington,
Seattle

Before: B. FLETCHER, PAEZ and N.R. SMITH, Circuit Judges.

The memorandum filed on May 28, 2008 is amended as follows:

On pages 4 through 5, delete Section 2 and replace it with the following paragraph:

2. Kenmore Lanes argues that the City violated its Fourteenth Amendment right to substantive due process by failing to provide a reasonable amortization period for nonconforming uses banned by the Ordinance. We disagree. A plaintiff challenging land use regulation under a federal substantive due process theory must demonstrate that the regulation “fails to serve any legitimate governmental objective,” rendering it “arbitrary or irrational.” *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542 (2005); *see also Shanks v. Dressel*, 540 F.3d 1082, 1088 (9th Cir. 2008) (“[T]he ‘irreducible minimum’ of a substantive due process claim challenging land use action is failure to advance any legitimate government purpose.” (citation omitted)). Kenmore Lanes has not met this “exceedingly high burden” here, and dismissal of this claim was therefore proper. *See Shanks*, 540 F.3d at 1088.

With the above amendment, the panel has voted to deny the petition for rehearing. The petition for panel rehearing is therefore DENIED. No further petitions for rehearing shall be filed.