

PARK WATCH

A Legal Developments E-Bulletin

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A COURTESY FOR FRIENDS AND CLIENTS

AB 566 Vetoed!

BUT, IT DOES NOT END HERE

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By Terry R. Dowdall, Esq.

● Quick Snapshot:

The Governor has **vetoed** Pedro Nava's AB566. If the bill had become law, it would have authorized tenant groups to hold park owners and supporting tenants hostage to coercive price demands for their lots. In short, subdivisions would be impossible based on the exercise of *unfettered whim* of tenants elevated to the position of "gatekeepers" of subdivision approval in AB566.

● Subdividing was a Tenant Idea

Marie Malone, past GSMOL President and visionary, advanced "resident ownership" as the centerpiece of her philosophy. The Vista Cascade ground lease was an early manifestation of her vision. From there, residents pressed for and obtained a streamlined resident ownership conversion process. But current leaders are no Marie Malones.

● AB 566 Oversold, Under-Compromised

AB566 proponents told a story rife with hyperbole. They claimed that AB 566 was essential to prevent "unfair schemes" by giving tenants "equal power" by "clarifying" the role of the current law's resident support surveys. **However, they could not identify a single example of abuse.** Still, they urged that giving tenants a say in whether they desire to purchase the lot allows both parties to bargain for a fair price in exchange for the surrendering of a property interest they have lawfully purchased. **But homeownership (aka the "American Dream") provides an estate in fee, not surrender of a mere leasehold.** They claimed that without AB 566, thousands of homeowners will see the investment in their homes evaporate as conversions of parks proceeds undeterred. **However, there was no single example of need.**

The video of the State Senate Housing and Transportation Committee re AB566 is at: <http://www.vimeo.com/5693268>. This video is a bird's eye view of the realities of dealing with the State legislature.

● Representatives Working Hard:

Of course, the industry strongly opposed AB566 and many worked very hard to get out the truth about the measure and what it really intended to accomplish.

Pedro Nava was recently quoted in the *Contra Costa Times*: "If the city or the county wants to deny the application and they refer in any way shape or form to a resident survey they then open themselves up to a lawsuit, so what my bill does is it eliminates that ambiguity," Pedro said.

So, now we know the real reason for AB566 and why Pedro could not both placate his constituents and consider WMA compromise overtures.

Basically, the bill transfers to the tenants a property right, consisting of the manner of property disposition—the very right to sell the park as the owner wishes. The property rights taken by this proposed bill are patently unconstitutional.

● Governor's Response? VETO

The Governor's veto message is as follows: "To the Members of the California State Assembly: I am returning Assembly Bill 566 without my signature. While the intent of this bill is to preserve low-income housing, the fact that a majority of mobilehome park residents do not support a conversion is not an appropriate means for determining the legitimacy of a conversion. The law is not intended to allow park residents to block a request to subdivide. For this reason I am unable to sign this bill. Sincerely,
Arnold Schwarzenegger"

-o000o-

● The Author's Three Fatal Missteps

1. Refusal of Dialogue: All overtures from WMA to work with and deal with compromise language were summarily spurned without comment. This "all or nothing" tactic ruined resident hopes and interests. WMA *could have helped save this bill* with reasonable compromise and mutual support. The resulting exacerbation of the rift between park owners and residents is driven by inflexible resident ideology: while WMA looks to build bridges, tenants hope to demonize and belittle park owners.

2. Neglect to Read Constitution: Pedro Nava's second mistake (or Staff's) was advancing the idea that tenants could lawfully interfere with local land use decisions. A legislature may not delegate its authority to private persons. Cal. Const., Art. XI, § 11(a) "The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions. . . ." In *Washington ex rel. Seattle Trust Co. v. Roberge*, 278 U.S. 116 (1928) the Court struck down a law allowing location of a home only with consent of neighbors (violation of due process). The Court said that the neighbors were "not bound by any official duty, but [we]re free to withhold consent for selfish reasons or arbitrarily and [could] subject [a neighboring landowner] to their will or caprice."

Comment: Ah, this is "Con Law 101." Pedro Nava's legal advisors ignored or failed to recognize this elementary constitutional mandate.

3. Failing to Heed Governor's Admonition: Pedro Nava apparently ignored the Governor's past directive relative to the subdivision law. The Governor vetoed the last effort to restrict subdivision law. Here is an excerpt of his last veto message:

"I am greatly concerned about housing affordability and home ownership for all Californians. . . This need for stability was eloquently expressed by the many seniors throughout California who have written to me on both sides of this bill. . . The intent of current state law is to provide an opportunity for home ownership to those mobilehome owners who desire to own both their home and the land it rests on. The law also offers protections for low-income individuals against unwarranted rent increases. While the bill's intent is to preserve low-income housing, it also extends rent control in certain circumstances to mobilehome owners in much of the state no matter what their income level . . . I urge the Legislature . . . to find a solution that provides true balance for all the stakeholders."
* * *

Pedro Nava's indelible vision of "true balance" is blurred; and, resistant to meaningful dialogue. He set the stage for his own failure. One must question whether it is a disservice to tenants to claim heroic defeat after lack of any effort to even talk about reasonable compromise.

● Comment: Where have all the Vetoes gone?

There will come a day when we miss the current Governor. About 15 months from now.

Once we have a new governor, majority survey requirements may again be introduced, as is often the case with much legislation held back or re-introduced when the Sacramento political climate is more friendly and sympathetic.

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