

PARK WATCH

A Legal Developments E-Bulletin

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A COURTESY FOR FRIENDS AND CLIENTS

COURT OF APPEAL SUSTAINS PALM SPRINGS SUBDIVISION - AGAIN.

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By Terry R. Dowdall, Esq.

● **Upshot:**

*Notwithstanding the self-serving assurances proclaimed in every rent control law affecting mobilehome parks, a reasonable rate of return on property is **not** being attained by park owners. The proof? Parks are increasingly closing, converting to other uses, subdividing. The long term deprivation of a reasonable rate of return, based on real-life expectations for performance of a real estate investment, is to blame.*

It is time for local government to awaken to the realities of park operation and investment and allow owners a fair return, free of the cavalier over-regulation of past decades. Else, the decline will continue.

● **Snapshot:**

In previous litigation, Palm Springs rejected a park owner's efforts to subdivide a park for tenant ownership. The City had claimed, among other things, that the real reason to subdivide was to circumvent rent controls, which are exempted by state subdivision laws. In fact, the local rent laws for low income tenants (the tenants who need assistance) continue in place. Other residents who do not purchase pay market rents established on existing conditions (the conditions everyone else is subject to), but after a 4 year hiatus.

That park owner sued and prevailed. The appellate court affirmed, holding that the City must apply State law and cannot meddle in the rights of the owner to subdivide. The Legislature then amended state law to call for a tenant survey to test the tenant attitudes concerning a subdivision proposal. In this instance, the City used an unfavorable survey to deny a subdivision application. This owner sued, contending that the City could not rely on the unfavorable survey to deny the application.

The court held that the tenant survey could not be relied on to deny the subdivision application. The City appealed. The appellate court, in this unpublished decision released February 19, 2010, rejected the City position and ruled in favor of the owner. *It is hoped that the court will publish this decision so it can be cited as authority.*

● **Facts: A park not unlike any other smaller park under punitive, confiscatory rent controls.**

Palm Springs View Estates is a 184-space seniors park, built about 1970. Ninety-five percent of the residents have month-to-month tenancies, and as of May 2004, seventy-three of the Park's spaces were rented by low-income tenants. All the spaces are (were) subject to a controversial and contentious rent control law.

For several reasons, the park owner sought to subdivide the park and sell off the individual mobilehome spaces.

The owner took a poll of opinion and of the 116 respondents, only 9 stated an interest in purchasing their respective lots. Seventy-seven of the Park residents who responded opposed the conversion, and an additional 30 residents declined to state their position. Later, the tenants organized and submitted a petition claiming over 75 percent opposition.

● **Staff Recommended Approval and then Rejection of the Subdivision**

Initially, City staff recommended approval of the application to subdivide. Several Park residents testified during the public hearing and opposed the application on grounds of concern about the aging infrastructure and financial hardships that might ensue if the infrastructure began to fail. *Of course, predictions and false fears of future catastrophe are speculative and conjectural by nature.*

A month later, City staff had changed its recommendation to denial of the application. The City Council conducted a public hearing on the application. Again, the minority (park owner) was outnumbered by a hostile, bile-filled populous. Tenants again expressed concerns about the potential failure of the aging infrastructure and the financial hardships such failure might create. Succumbing to political pressures instead of adherence to legal responsibility, the City buckled and refused the subdivision application.

● **Park Owner Sues to Protect Property Rights the City Tried to Confiscate**

The owner filed suit challenging the denial of its subdivision application. The trial court conducted a hearing and then issued a statement of decision finding that the City Council had exceeded its jurisdiction. The trial court therefore granted the writ petition.

● **Park Owner Prevails**

The trial court held the City Council had exceeded its jurisdiction for several reasons. One

was relying on the tenant survey to determine that the proposed subdivision was not a bona fide resident conversion. Residents are biased and cannot offer any dispassionate or impartial view, which the law prohibits in any case. Essentially, unless a park owner capitulates to tenant demands related to subdivision, every survey can be expected to be negative. *Why? In some quarters, it is believed that under rent control, "the tenants already own the park."*

● **Analysis: Court Forces City to Follow State Law**

The Court held that State law sets forth the "requirements a subdivider must satisfy before a mobilehome park may be subdivided and converted into a resident-owned park in which the land underlying each mobilehome is independently owned."

The issue before the Court: *did 2002 changes to State Law that prescribed that the park owner is to obtain a survey from the residents constitute a basis on which to annul the application to subdivide?*

Before 2002, State law required a subdivider to demonstrate that the displacement of non-purchasing residents would be avoided by:

▲(1) offering each existing tenant the option to purchase the space or to continue to rent (Government Code § 66427.5, subd. (a));

▲(2) filing "a report on the impact of the conversion upon residents . . ." (§ 66427.5, subd. (b)); and

▲(3) making a copy of the impact report available to each resident of the park at least 15 days before the first public hearing on the subdivision application (§ 66427.5, subd. (c)).

The scope of the hearing shall be limited to the issue of "**compliance with this section.**" (§ 66427.5, former subd. (d).)

In 2002, the Legislature amended the law by adding a requirement that owners must conduct and file a resident survey of support. (§ 66427.5, current subd. (d).)[2] In uncodified language, the Legislature stated that its intent was "to address the conversion of a mobilehome park to resident ownership that is not a bona fide resident conversion, . . ."

But, in adding the 2002 amendments, the Legislature *failed to make any substantive change to the subdivision law: the scope of the local entity's review remains limited to determining compliance with the requirements of the subdivision laws, depriving the City of applying any local prejudices against property owners.*

● **Court Agrees with Sequoia Associates**

Sequoia Park Associates v. County of Sonoma (2009) 176 Cal.App.4th 1270 (Sequoia Park), reached the same conclusion, cited by this Court.

In *Sequoia Park*, the court held that section 66427.5 expressly and impliedly preempted local agencies from imposing additional requirements upon mobilehome park conversion applications beyond those listed in the statute itself.

The Court concluded:

"We agree with the conclusion of the court in Sequoia Park that "[S]ection 66427.5 strictly prohibits localities from deviating from the state-mandated criteria for approving a mobilehome park conversion application." (Sequoia Park, supra, 176 Cal.App.4th at p. 1299.) We therefore conclude the trial court did not err in granting the petition for writ of mandate."

● **Conclusion:**

This case represents another in a long line of victorious legal challenges for park owners exercising clear and certain property rights against an insatiable local hunger to appease voters. Attorneys Richard Close, Tom Casparian, Elliott Bien, and courageous park owners have made major inroads here and continue to do so, as evidenced by this Court decision. They have paved a road for all to follow.

These failed actions of local government, self-deceivingly espoused as laudable and worthy, are bent on squelching entrepreneurial spirit and holding owners hostage for political gain. Seemingly disdainful of legal responsibility, such localities are also bereft of the fiscal responsibility owed to all taxpayers, burning through already-stretched municipal coffers to defend outlandish legal positions. Especially when subdividing simply gives tenants a chance at the American dream of home ownership.

It should be no surprise that owners will act to protect their parks, families, and investors when their rights are usurped. In sum, it is time to follow state law, play fair with park owners under rent controls, and face up to the civic responsibility to treat owners with fairness.

LOCAL GOVERNMENT HAS A CHOICE TO MAKE: ALLOW A REASONABLE RATE OF RETURN, OR CONTINUE LOSING RENTAL MOBILEHOME PARKS.