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# PARK WATCH ® A LEGAL DEVELOPMENTS NEWSLETTER

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# To Subdivide or Not to Subdivide: L.A. Continues Assault on Home Ownership; Carson's Move to Kill Subdivisions Struck Down



***By: Terry R. Dowdall, Esq.***

● ***UPSHOT: In order to attain approval for a subdivision of an in-place mobilehome park so residents can own their lots and become homeowners,[1] the Court now holds that it is a permissible requirement to examine the park owner's "state of mind" in a published decision which is a binding precedent. COLONY COVE PROPERTIES, LLC v. CITY OF CARSON (B219352, L.A. County Super. Ct. No. BS114932). Like a journey without a compass, the devilish details remain undefined and unintelligible.***

***In PACIFIC PALISADES BOWL MOBILE ESTATES, LLC v. CITY OF LOS ANGELES (B216515, L.A. County Super. Ct. No. BS112956), the Court now opines that a park conversion in the coastal zone is also subject to approval of the California Coastal Commission and compliance with the Mello Act (a requirement that low cost housing in the "coastal zone" slated for conversion must be replaced with the addition of new alternate housing opportunities). F o r owners contemplating conversion in both inland and coastal locations, the bars to home ownership have just been raised.***

◢ ***COLONY COVE PROPERTIES, LLC v. CITY OF CARSON***

Keen observers all know by now that *Government Code* §66427.5 sets forth a state-required process for subdividing.

In a recent *unpublished* court opinion involving Carson Harbor Village, the court noted that the subdivision procedure requires, among other things, that parties seeking conversion to resident ownership obtain a "survey of support of residents of the mobilehome park" and submit the results of the survey to the local entity or agency "to be considered as part of the subdivision map hearing . . ." The statute also provides that the subdivision map hearing "shall be limited to the issue of compliance with this section." In the unpublished opinion, the court held that a probe of the "*state of mind"* of the park owner was permissible to ascertain *bona fide* conversion purpose: was the owner seeking to subdivide the park or to circumvent rent controls? (*"whether the conversion is or is not bona fide turns on the state of mind of the park owners"*).

In this Issue:


This newsletter railed against that decision (PARKWATCH ® -March, 2010):

> *"It is difficult to believe that subdivision approval is contingent on a probing of the mental state of the park owner. The court seems to be inviting an untethered foray into surrounding circumstances to make a record from which it can be determined whether the subdivision application is legitimate or not. But that excursion is incomplete by nature. For example, the price of lots cannot be considered in the map approval process: no one can ascertain pricing information, which may*



[1] Including all the benefits of home-ownership, *e.g.*, tax benefits, anti-deficiency laws, favorable financing with deductible interest, appreciation in value, transferable fee without codes and standards worries, no more space rent, *etc.*

*be key to discerning some inference of claimed abuse of the statute! And what is the measure of evidence in a non-rent controlled area? Such an evidentiary inquiry is inherently truncated and ultimately standardless. This decision cannot be right."*

*That* case was *not* published. The new Colony Cove decision *is.* The court has now elevated Carson Harbor to a published legal precedent.

**The Colony Cove Case:**

The owner sued claiming that the local subdivision procedure exceeded the limits imposed by the Government Code. The Carson law stated that:

* if the survey of support indicated 50 percent or more of the park residents supported the conversion, it would be presumed *bona fide*;

* if the survey indicated resident support of 35 percent or less, the conversion would be presumed not *bona fide*; and

* if resident support fell between 35 and 50 percent, the owner would be required to demonstrate a plan to convey the majority of the lots to current residents within a reasonable period of time.

Apparently Carson did not recognize, or chose to conveniently ignore, a constitutional bar against delegating land use decisions to competing parties.[2] In other words, it is unconstitutional to allow the residents to take part in decisions concerning others' lands.

The lower court held that the City's responsibilities, when faced with a mobilehome park conversion application, were essentially ministerial -- that the City was merely to determine whether the survey had been received and filed in accordance with the statute, not to evaluate its contents.

However, this appellate court held that the City duty is *not* just limited to compliance with the state law. However, setting forth presumptions about the level of support to define a *bona fide* conversion *went too far*.

> *"The survey ordinance gives residents additional rights not afforded by the statute. It essentially gives them veto power over the conversion by creating a presumption that the conversion is not bona fide if fewer than 35 percent of residents support it. This provision cannot be reconciled with the Assembly Floor's final analysis of the 2002 amendments, which specifically stated that '[t]he fact that a majority of the residents do not support the conversion is not . . . an appropriate means for determining the legitimacy of a conversion,' and that '[t]he law is not intended to allow park residents to block a request to subdivide.' (Sen. Amends. to Assem. Bill 930 (2001-2002 Reg. Sess.). . . . The ordinance also greatly increases the owner's burden if fewer than 50 percent of residents support it, requiring preparation of a 'viable plan' to sell the majority of units to current residents. Moreover, to the extent the requirement of demonstrating a plan to sell to current residents could require the subdivider to offer current residents financial inducements to buy, it potentially provides residents additional financial benefits not conferred by the statute. We thus conclude that Ordinance No. 08-1401, like the similar ordinance invalidated in Sequoia Park, is an 'improper addition[] to the exclusive statutory requirements of section 66427.5.'"*

**Something for Everyone**

The court overturned the Carson effort to kill sub-divisions with tenant vetoes, but amplified the Carson Harbor holding in the previously unpublished case, holding the *"state of mind"* of the park owner was to be scrutinized.

Comment: Interestingly, the court also calls for the Legislature to articulate standards for a "state of mind" excursion, confessing a void of implementing detail in the law itself. But the court may have erred in the first instance. The plain words of the statute control interpretation unless the law is ambiguously cast. If ambiguous, resort to legislative intent only then follows. But legislative intent steering the court toward an unconstitutional interpretation flies in the teeth of the rule that courts endeavor to add interpretive gloss to save constitutionality, not throw it into doubt. No court opines a law ambiguous just to add an interpretation which is unconstitutional. Here, there is no purpose which can be served by a resident survey, yet it must be carried out. The court cannot, certainly, supply an unstated purpose for the survey which runs afoul of constitutional restrictions. So instead, the court asks the legislature to provide the missing links. But the legislature already went as far as it dared.

The plain reality is that the Legislature rebuffed the labor of providing any interstitial refinement. It recognized, *sub silencio*, that any such guidelines could run afoul of the constitutional bar against delegating local power to residents. In the end, the court's interpretation of the law is an unconstitutional one.

> *"The need is usually not for standards but for safeguards. ... When statutes delegate power with inadequate protection against unfairness or favoritism, and when such protection can easily be provided, the reviewing courts may well either insist upon such protection or invalidate the legislation." 1 Davis, Administrative Law Treatise (1958) § 2.15; see Kugler v. Yocum, 69 Cal.2d at 381.*

*Birkenfeld v Berkeley* (1976) 17 Cal.3d at 169.

The opinion states:

> *"It is our hope that the Legislature will recognize the dilemma faced by local agencies illustrated by this case . . . and act to clarify the scope of their authority and*

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[2] 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 U.S. Supreme 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."

*responsibilities."*

The court insisted on nothing, relegating a local administrator to stumble into a bear trap of constitutional violations.

### ▲*PACIFIC PALISADES BOWL MOBILE ESTATES, LLC, v. CITY OF LOS ANGELES ( B216515, L.A. County Super. Ct. No. BS112956)*

*What happens when a subdivision is sought for a park located in the coastal zone?*

Overturning a favorable trial court decision, the same court now holds that a park owner must also seek the blessing of the California Coastal Commission and comply with the Mello Act.

In this case, the City of Los Angeles rejected the application of Pacific Palisades Bowl Mobile Estates for conversion of its mobilehome park. *The wrinkle in this case is that the park is located at the beach* -- which is in the *coastal zone*. The City denied the application to subdivide for among other things, the owner failed to include an application for clearance under the Mello Act and an application for a coastal development permit under the Coastal Act.

The trial court found that the City *abused its discretion* by requiring compliance with the Mello Act and requiring Palisades Bowl to apply to the City for a coastal development permit.

On appeal, the court held that despite the subdivision law, the Mello Act and Coastal Act *all* apply to a mobilehome park conversion within the coastal zone, and the local authority must ensure compliance with all those laws.

*Until now, it was believed that the Mello Act did not apply to a coastal conversion.*

**The Mello Act**

Provides in part:

"The conversion or demolition of existing residential dwelling units occupied by *persons and families of low or moderate income*, . . . shall not be authorized unless provision has been made for the *replacement* of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located *within the same city or county* as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone."

Comment: The Mello Act should not apply to the subdivision of the mobilehome park, because *no one is displaced*. The housing continues to be occupied by the incumbent residents without any change at all. The cost of the housing is not going to change at all, either. The court refers to the fact that eventually, the housing cost will increase. However, the housing cost is *already at market*, due to the exaction of premium value (*i.e.*, selling the leasehold at full market value appurtenant to the purchase of the mobilehome on the lot). If anything at all, a shift between the value-elements of a mobilehome purchase may occur as the adjustment between cost of the mobilehome balanced against space rent takes place. The total cost of housing is not likely to change at all as a result of the factors integral to subdividing.

**The Coastal Act**

"Development" is defined as, among other things, "change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use." (Pub. Resources Code, § 30106.)

A project that involves a subdivision under the Subdivision Map Act is however, caught up in the definition of "development" for the purposes of the Coastal Act:

> "There is no question that the conversion of a mobilehome park to resident ownership is a subdivision under the Subdivision Map Act. Government Code section 66427.5, which governs such conversions, is part of the Subdivision Map Act, and the statute itself refers to the 'subdivision to be created from the conversion of a rental mobilehome park to resident ownership.'"

In light of the "paramount concern" for protecting coastal resources by regulating development as expressed in the Coastal Act, the court concluded that state law does not preclude the City from imposing conditions and requirements mandated by the Coastal Act on a park subdivider.

Comment: Approval from the Coastal Commission is required when there is development in the coastal zone. *Is a change in the nature of ownership a "development"?* Does the renter, as homeowner, change any aspect of the manner in which the existing park or its environment is impacted? Of course not. Clearly, this contention is an exaltation of 'distinctions without differences' to inconceivable heights.

### ● *Conclusion*

Home ownership was once the center-focus of the Golden State Mobilehome Owner's League–to morph mere renters into a collective ownership of the park.

In some cases, a mutual effort by owners and residents produces positive results: the park converts, the homeowners can purchase their spaces and finance at conventional rates, and never again worry about park closures, rent increases, or the array of other assorted anxieties claimed to be faced by

residents who rent. Incumbent residents are protected under state controls on rent; and low income residents remain insulated from unregulated rents[3].

But, *ah*, the familiar kerfuffle of class warfare between the land owner and the "land-less" emerges when the residents diverge from the owner's view of things. The fracture occurs where residents cannot either extract or coerce a satisfactory and acceptable lot price. Paradoxically, while the landowner offers the hope of home ownership, the landless struggle to remain landless, while being mollycoddled by a city council.

*Where are subdivision applications filed*? In areas subject to confiscatory rent controls. While municipalities drone on about the fairness of rent controls, that disingenuous platitude has worn through. In the real world, rent controls are killing the industry, driving down housing opportunity, stultifying development of new parks, and strangling the manufactured housing industry.

*Why are subdivision applications filed*? Park owners subject to decades of rent controls are sick of the confiscation of their properties. They want out. In the real world, parks are disappearing. And rent control is the fuel driving owners out. And this is why subdivision applications flourish. Efforts to subdivide represent an effort to achieve a fair, real world, return. The kind of return on property *not* subject to rent controls.

In cities with draconian rent laws, it is little wonder that the park owners, *en masse*, have sought to subdivide.

## SAVE A TREE: DON'T PASS OUT THAT MRL!

* * *

Effective January 1, 2011, the MRL is not required to be provided to the park residents by February 1, 2011 if notice of availability is provided instead.

By February 1st of each year beginning in 2011, and assuming that the MRL was significantly changed by legislation enacted in the prior year, park management has two options:

1. Give the homeowners a copy of the MRL; OR

2. Give notice that there has been a change to the MRL and that they may obtain a copy of the updated MRL. Obviously, management may not charge for providing a copy of the MRL.

We must provide a copy of the MRL within seven (7) days of the request.

This welcome development promoted by WMA will save money and millions of pages of wasted paper.

Park owners may order the MRL from a variety of vendors, such as WMA, the MHET in Orange County, or may obtain copies of the MRL from government web sites. We also keep a copy on file at www.dowdalllaw.com [4] and will have a copy of the 2011 law posted in short time. Park owners may wish to keep a digital copy and print it for residents as needed.

## LEASE RENEWALS: 1 PAGE SOLUTION FOR THE SKEPTICAL

*Do not let anyone tell you a new lease is required when it comes time to "re-up" your residents!*

* * *

When considering the wise and prudent action of renewing leases, one concern is the resistance of existing residents to a new, long, complicated lease document. Owners may be dissuaded from moving forward for fear of a negative reaction from the residents. Yet, the residents may be fully enjoying the benefits of lease and would not really consider any other option but for the approaching expiration date. The concern for many may be that a new lease in the year 2011 will be met with resistance from the sheer size, weight and bulk of it.

Take Note. There is *no need* to start over with a new lease for the existing resident. *Management may renew or extend the existing long term lease very simply and easily.*

Instead, consider extending the term with an amendment to the lease. The extension agreement may consist of a simple statement which extends the term of the lease, with a modicum, if any, of additional language required for the update to current usage. Sometimes, only a small number of updates are required to square with current law.

Lease extensions can be drawn and limited to just *one or two pages.* There is no need for the pomp and circumstance of an original lease offer. Too, the formalities and procedure for the offer of a new lease do not apply to the extension agreement.

It is best to approach the issue of extensions before the expiration date is imminent; resident resistance and anxiety may increase as the term end nears. Up to two years before expiration is the best time to begin preparation of leasing renewals.

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***Please feel free to contact Terry R. Dowdall, Esq. for further information and questions.***

[3] In the case of low-income residents who chose not to purchase, "the monthly rent . . . may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period." *Government Code* §66427.5, subd. (f)(1) and (2).)

[4] http://www.dowdalllaw.com/DOWDALL-TERRY_MRL_2010-large.pdf