

PARK WATCH

A Legal Developments E-Bulletin

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A COURTESY FOR FRIENDS AND CLIENTS

SONOMA COUNTY SUBDIVISION REGS STRUCK DOWN

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● Quick Snapshot:

Sonoma County enacted an ordinance with the professed aim of "implementing" state conversion laws. But it imposed additional obligations to those required by the state. The ordinance also imposed criteria that had to be satisfied by the subdivider before the application would be presumed "bona fide" and thus could be approved.

A park owner seeking to subdivide sued claiming the ordinance was preempted by state requirements.

The Court of Appeal held that the ordinance is expressly pre-empted because state law specifies that the approval of the subdivision application "shall be limited to the issue of compliance" with applicable state code.

This decision makes it clear that the courts will stop further local intrusion into the "particular terrain" of mobilehome subdivisions and not allow local government to impose additional conditions for approval.

● Facts

On May 15, 2007, Sonoma County enacted Ordinance No. 5725. It provided for several additional steps and requirements for subdividing a park which went well beyond the limitations imposed by state law.

For example, the proposed subdivision was required to:

- ▲ be consistent with the County General Plan, any applicable Specific or Area Plan, and the provisions of the County Code;

- ▲ be a "bona-fide" conversion (e.g., where more than 50% of residents support it);

- ▲ have provided for establishment and funding of an entity to ensure proper long-term management and maintenance

- ▲ have no conditions detrimental to public health or safety unless the owner instituted corrective measures to ensure prompt and continuing protection of health and safety.

The park owner was also required to file a tenant impact report that contained the following:

- ▲ the number of spaces and rental rate history over four years prior to the filing;

- ▲ the anticipated method and timetable for compliance with state law and the number of existing households expected to purchase within 4 years;

- ▲ the method for determining and enforcing the controlled rents for non-purchasing households and the number of tenants likely subject to them;

- ▲ the potential for non-purchasing residents to relocate their homes to other parks within the County, including the availability of sites and the estimated cost of home relocation;

- ▲ an engineer's report on the type, size, current condition, adequacy and remaining useful life of common facilities located within the park, including but not limited to water systems, sanitary sewer, fire protection, storm water, streets, lighting, pools, playgrounds, community buildings and the like.

- ▲ a pest report shall be included for all common buildings and structures.

- ▲ a study estimating the cost of replacing such facilities over their useful life, and the subdivider's plan to provide funding if useful life of any common facilities was less than thirty (30) years,

- ▲ an estimate of the annual overhead and operating costs of maintaining the park, its common areas and landscaping, including replacement costs as necessary, over the next thirty (30) years, and the subdivider's plan to provide funding for the same.

- ▲ a maintenance inspection report conducted on site by a qualified inspector within the previous twelve (12) calendar months demonstrating compliance with Title 25.

Sequoia Park Associates desired to subdivide the park and sued, claiming the ordinance was preempted by state law.

● Decision

The trial court denied relief. The judge concluded that the Sonoma law merely complied with and gave effect to the provisions of state law rather than imposing additional requirements. Sequoia appealed.

The appellate court reversed and held that the ordinance was preempted. None of the requirements imposed by the County were permissible.

The Court concluded as follows:

"However commendable or well-intentioned these additions may be, they are improper additions to the exclusive statutory requirements of section 66427.5. The matter of just what constitutes a "bona fide con-version" according to the Ordinance appears to authorize-if not actually invite-a purely subjective inquiry, one which is not truly reduced by reference to the Ordinance's presumptions."

And although the Ordinance employs the mandatory "shall," it does not establish whether the presumptions are conclusive or merely rebuttable. This uncertainty is only compounded when other criteria are scrutinized. What is the financial provision that will be deemed "appropriate" to "ensure proper long-term management and maintenance"? Such imprecision stands in stark contrast with the clear directives in section 66427.5."

Indeed, this opinion is so articulate and well-written its resonance is symphonic. The Court went on to specifically complement the County for its laudable objectives while slinging fatal barbs at its methods.

The court remanded the case back to the trial court for further proceedings consistent with the opinion.

● Comment

The number of challenges to local interference with the subdivision process have been frequent due to the local pressures at odds with the important policy imperatives of the state government.

The state's dominance was clear well before the issue of subdividing was introduced into state law. As the court noted, "[T]his was seven years after the State had declared itself in favor of converting mobilehome parks... and at the same time established the Mobilehome Park Purchase Fund [for] low-income residents and resident organizations to facilitate conversions.

This case represents the first appellate decision after *El Dorado*, also striking down local interference with subdivision rights.

This precedent will control other cases when and if appealed, and it is hoped, ameliorate park owners' high costs for the process of subdivision currently the experience state-wide— and do so without the need for litigation.

The pressures for subdivision result from several causes. Knowledgeable readers know them well enough. This case is one of several exemplifying the frustrations of park owners unable to earn fair returns on their property and the efforts of local government to saddle owners with affordable housing responsibilities they should bear. I hope this case serves as a "wake up call" for the urgent need to ease regulation so subdividing is not the last chance to avoid confiscation of property.

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