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A Newsletter for Manufactured Housing Industry Community Owners & Managers

THE COMMUNITY OWNERS' ADVOCATE

Court Invalidates City Limitations on Mobile-home Park Subdivision

By Robert S. Coldren, Esq. & Boyd L. Hill, Esq.

The Ventura County Superior Court recently invalidated portions of a City of Thousand Oaks ordinance requiring certain tenant support levels before the City can approve subdivision of a mobilehome park. This means the clients park can be subdivided without burdensome City requirements. Since cities "trade" ordinances like this to frustrate mobilehome park subdivisions, this decision bodes well for park owners statewide.

The California Legislature enacted Subdivision Map Act provisions that favor mobilehome park subdivisions for converting rental mobilehome parks to resident ownership and that forbid tenant support requirements. The Legislature wants to enable mobilehome owners to purchase their lots and obtain land ownership benefits, including favorable mortgage rates and tax deductions.

The City's ordinance contained two unlawful tenant support requirements. The first would have prevented subdivision if less than twenty percent of the tenants favor subdivision, as shown by tenant survey results. The second would have required the park owner to provide a "plan" for sale of fifty percent of the subdivided lots to existing tenants if only twenty to fifty percent of the tenants favor subdivision.

The City claimed that the tenant support requirements would help prevent a "sham" or fraudulent conversion. A "sham" conversion occurs if the park owner obtains city subdivision approval solely for the purpose of avoiding rent control and then subsequently refuses to sell the lots to willing tenants. The City claimed that the requirement for a tenant survey recently added to the Subdivision Map Act for mobilehome park subdivisions empowered the City to add the tenant support level requirements.

The problem with the City's position is that, even with the tenant survey requirement, the Subdivision Map Act still prevents cities from enacting additional requirements for approval of a mobilehome park subdivision, including tenant support requirements. In addition, the level of tenant support demonstrated by a tenant survey at the time of City determination whether to approve the subdivision does not and cannot predict whether the park owner will actually sell the lots or not.

As of the writing of this article, a bill is currently pending before the California Legislature that would give cities the right to use the tenant support levels in the tenant survey results in determining whether to approve mobilehome park subdivisions. However, the justification for using the tenant support levels in the subdivision approval process, i.e., to prevent "sham" conversions, is flawed and could lead to claims by mobilehome park owners that their property rights to terminate their

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The Eight Most Commonly Asked Questions About Mobilehome Park Subdivision

By Mark D. Alpert, Esq. &
William C. Dahlin, Esq.

Hart, King & Coldren leads the state in successful "soup to nuts" mobilehome park subdivisions. Here are answers to the most commonly asked questions by park owners:

Q: Why subdivide?
A: Homeowners have an opportunity to create lasting equity in their property, and become the owners of an appreciating real property asset that is marketable, easily transferable and can be passed on to future generations. Current state law enables park owners to subdivide the park without the imposition of impact fees, and without requiring any on-site or off-site improvements, with the narrow exception of certain health and safety issues. In fact, with two-thirds resident support, a park owner can subdivide without even filing a subdivision map. Mortgage rates are lower for homeowners who own their lot. The home as well as the lot are considered "real property" for not only income and property tax purpose, but also for mortgage purposes. For the park owner, subdivision is a good way to sell the park at a price equal to the true value of the land.

Q: Do park improvements need to be up to current code?
A: One of the advantages of subdivision is that improvements are "grandfathered" into whatever conditions currently apply to the existing mobilehome park. A city can only impose those conditions that are necessary to address existing, and bona fide, health and safety conditions.

Any conditions associated with the park's operating permit, typically found in a Conditional Use Permit ("CUP"), and any revisions or modifications to that CUP would still apply, even after subdivision.

Q: Will a park need a survey of each lot?
A: If a park has a two-thirds homeowner support level, a park owner may be able to avoid any survey. The owner

will likely have to submit a plot plan showing space lines.

Normally, however, a park will likely need a new survey. The cost of a survey will vary depending on what surveys or other recorded maps currently exist and whether the existing placement of homes is consistent with current recorded documents. Engineers who have done park subdivisions will be able to give a solid cost estimate.

A condo conversion, with air space lines as opposed to lot lines, usually have survey requirements which are less onerous and less costly. However, most residents would prefer traditional subdivisions, where they "own the dirt". Moreover, reverse mortgages, for example, may be more difficult to obtain in a "condo" project.

Q: What is the required level of legal compliance?
A: A city's authority is limited to confirming that the park owner has complied with state law requirements, i.e. that the park has completed a tenant survey concerning support and a tenant impact report. The law specifies that the local agency cannot impose on-site or off-site design or improvement requirements unless they are necessary to mitigate an "existing health or safety condition".

A city is required to process any application for a subdivision map as it would any other subdivision application, subject to the state statutory limitations. Before the lots can be sold, the park must also comply with the regulations of the Department of Real Estate.

Q: What about utilities and lot sizes?
A: Utility upkeep and concerns should not substantially change due to a subdivision except that the HOA, created as part of the subdivision process, will be responsible for maintaining the park's infrastructure and paying common area utilities.

Lot requirements, such as set backs, are governed by HCD regulations,

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which are controlling over city codes (sometimes to the chagrin of local governments). However, as a general rule, the park will (very likely) be grandfathered to the existing conditions.

Q: Are state and local money resources available for the residents?

A: HCD has a funding program to assist homeowners in the purchase of homes. In addition, redevelopment funds may be available. There are specialized consultants who can advise you regarding the availability of public funds. These consultants also work with cities to assist them in developing funding sources. Many cities have available resources dedicated to providing affordable housing.

Q: What happens to rent if the park subdivides?

A: The Health and Safety Code contains certain definitions of low income that are relevant in establishing the extent to which rents can be raised after a subdivision. Low income residents are rent protected and can have rents increased by no more than the CPI. Residents who are not low income can have their space rents raised to market over a four year period of time. Many park owners offer long term leases to give residents even more options and flexibility.

Q: How does a park determine the price for a subdivided lot?

A: A park owner in conjunction with the DRE process, hires experts to complete appraisals to determine the initial lot price. After the initial sale, the person that owns the lot would decide the selling price, unless the park owner established an agreement or conditions which establish a pricing mechanism that can impact future sales.

Hart, King & Coldren has extensive experience in assisting mobilehome park owners in successfully subdividing their parks. For more information please call Rob Coldren at 714-432-8700 or email rcoldren @hkclaw.com.

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Rent Control Success for Park Owner

Windmill Mobilehome Park, located in Morgan Hill, CA won the second round of a two part rent increase application process. Last year, Windmill also prevailed in round one with a rent increase of $71.00 per month per space. Round two resulted in an additional rent increase of $19.00 per month per space. The additional rent increase should have been, in all fairness, granted as part of the initial round one rent increase. However, the politics of rent control prevailed and necessitated a second application to obtain the second rent increase.

The two part rent increase will assist the park owner to recover the cost of increased property taxes and significant capital expenses. The City of Morgan Hill has one of the more repressive rent control ordinances located in the state of California. The park's principal, Peter Wang, expressed it this way:

"I would like to thank Hart, King & Coldren on a job well done. I am extremely pleased with the results I have received from the professionals at HK&C. With their skilled representation and extensive experience in the manufactured housing industry, HK&C was successful in helping me to obtain substantial rent increases for two of the mobilehome parks I own in Northern California. With HK&C's assistance, along with the help of economist, Richard S. Fabrikant, who prepared a fair return analysis, the park's rent will increase by $129 in one park and $71 in the other park."

-Peter Wang, P.W. Properties, Invs, LLC

"Court Invalidates..." Continued from first page

tenancies have been taken without just compensation. Mobilehome park owners will need to remain vigilant to protect their valuable property rights

The case is Vallecito Mobile Estates, Ltd. v. City of Thousand Oaks, Ventura Superior Court Case No. 56-2008-00328552. Vallecito Mobile Estates, Ltd., is managed by Vedder Community Management and was represented by Mr. Coldren and Mr. Hill

Robert S. Coldren is a Senior Partner of Hart, King and Coldren. He has thirty plus years of experience representing mobilehome park owners. Boyd L. Hill is an Associate at Hart, King and Coldren with twenty years of land use experience. Both may be reached at 714-432-8700 or at rcoldren@hkclaw.com or bhill@hkclaw.com.

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