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Title: PUBLIC HEARING TO RECONSIDER THE CITY COUNCIL'S DENIAL OF TENTATIVE TRACT MAP NO. 071206 PROVIDING FOR CONVERSION TO RESIDENT OWNERSHIP FOR THE 225-SPACE IMPERIAL AVALON MOBILEHOME PARK LOCATED AT 21207 AVALON BOULEVARD

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Attachments: 1. Exhibit No. 1 - Resolution No. 10-053, 2. Exhibit No. 2 - Court of Appeal Opinion in 218 Properties, LLC, et al. v. City of Carson, et al., 3. Exhibit No. 3 - Trial court's writ of mandate issued October 15, 2014, 4. Exhibit No. 4 - Court of Appeal's order denying City's extraordinary writ, 5. Exhibit No. 5 - Declaration of Park Owner, Edward Jong, 6. Exhibit No. 6 - Tenant Impact Report from Park Owner, 7. Exhibit No. 7 - Government Code Section 66427.5, 8. Exhibit No. 8 - Proposed Resolution No. 14-119

Date	Ver.	Action By	Action	Result
12/10/2014	1	City Council		

Report to Mayor and City Council

Wednesday, December 10, 2014

Special Orders of the Day

SUBJECT:

PUBLIC HEARING TO RECONSIDER THE CITY COUNCIL'S DENIAL OF TENTATIVE TRACT MAP NO. 071206 PROVIDING FOR CONVERSION TO RESIDENT OWNERSHIP FOR THE 225-SPACE IMPERIAL AVALON MOBILEHOME PARK LOCATED AT 21207 AVALON BOULEVARD

I. SUMMARY

I.

On May 26, 2010, the City Council adopted Resolution No. 10-053, denying Tentative Tract Map No. 071206 for the conversion of Imperial Avalon Mobilehome Park to resident ownership ("Application") (Exhibit No. 1).

The owner of Imperial Avalon ("Applicant") sued the city on April 6, 2011, claiming that the denial of the conversion was illegal. The trial court agreed with the Applicant and ordered

the City to approve the conversion. The City appealed. On May 14, 2014, the Court of Appeal issued an opinion that affirmed the trial court's decision. (*218 Properties, LLC, et al. v. City of Carson, et al.* (2014) 226 Cal. App. 4th 182.) (Exhibit No. 2.) In the very same opinion, the Court of Appeal upheld the City Council's denial of the Park Granada conversion.

On October 15, 2014, the trial court ordered the City Council to approve the Application by December 12, 2014. (Exhibit No. 3.)

The City filed an extraordinary writ petition to the Court of Appeal, which was denied on November 26, 2014. (Exhibit No. 4.)

At this time, all appeals have been exhausted. The City Council must follow the trial court's order to approve the Application by December 12, 2014. Because the Court of Appeal relied on the park owner's promised incentives in deciding the Application is bona fide, it is the opinion of the City Attorney's Office that those incentives, described below, can legally be imposed as conditions of approval.

II. **RECOMMENDATION**

TAKE the following actions:

- a. OPEN the public hearing, TAKE public testimony, and CLOSE the public hearing;
and
- b. ADOPT Resolution No. 14-119, which will:
 - i. VACATE May 26, 2010 Resolution No. 10-053 as ordered by the trial court;
and

APPROVE Tentative Tract Map No. 071206 as ordered by the trial court, with conditions of approval requiring the park owner to adhere to his promised incentives for park residents.

III. **ALTERNATIVES**

1. CONTINUE the public hearing with the **consent** of the Applicant.
2. Take such other action as the City Council deems appropriate consistent with the requirements of law.

IV. BACKGROUND

The Applicant is proposing Tentative Tract Map No. 071206 to allow the Imperial Avalon Mobilehome Park to be converted from a rental park to a condominium-style resident ownership park. Imperial Avalon is a 225-space mobilehome park located at 21207 S. Avalon Boulevard.

The Planning Commission originally approved the Application on February 23, 2010. The City Manager appealed to the City Council.

On May 26, 2010, the City Council adopted Resolution No. 10-053, denying the Application. (Exhibit No. 1). The City Council found the Application was not “bona fide” because, based on the evidence in the record, the park owner could not expect to sell a significant percentage of the lots. The City Council also found the park owner had not included sufficient information on the impact of the conversion in the Application’s “Tenant Impact Report”.

The owner of Imperial Avalon (“Applicant”) sued the city on April 6, 2011, claiming that the denial of the conversion was illegal. The trial court agreed with the Applicant and ordered the City to approve the conversion. The City appealed. On May 14, 2014, the Court of Appeal issued an opinion that affirmed the trial court’s decision. (*218 Properties, LLC, et al. v. City of Carson, et al.* (2014) 226 Cal. App. 4th 182.) (Exhibit No. 2.)

The Court of Appeal held the evidence did not support the City Council’s finding that the conversion is not bona fide, for two reasons:

- (a) Because only 83 of the park’s 225 households voted in the park owner’s survey of resident support, and 18 of the 83, or 22%, indicated their support for the conversion. The Court held the low response rate and 22% support is not evidence that the conversion is a sham.
- (b) Because the park owner, Edward Jong, promised to allow Carson rent control to remain in effect for non-low-income households until 45 lots are sold, to require new residents to buy a lot, and to offer a 15% discount from fair market value as determined by an MAI appraiser to current residents who buy within the first 90 days after lots are available for sale, and a 10% discount to current residents who buy within the second 90 days.

With regard to the Tenant Impact Report, the Court of Appeal held (1) the City Council could not find the Tenant Impact Report incomplete when City staff and the Planning Commission had already found it to be complete, (2) that the City never gave the Applicant the opportunity to supplement the Tenant Impact Report with the missing information, and (3) that the form filed to appeal the Planning Commission’s decision to the City Council did not mention the Tenant Impact Report.

Note that the Court of Appeal specifically held the new conversion law, SB 510, could not be applied in this case because the new law was not effective in May 2010 when the City Council denied the Application.

The Court of Appeal remanded the Imperial Avalon Application back to the trial court to

enter a new judgment “reversing the disapproval” of the Application. On October 15, 2014, the trial court entered a new judgment ordering the City Council to approve the Application by December 12, 2014. (Exhibit No. 3.)

The City filed an extraordinary writ petition to the Court of Appeal, requesting to clarify its order and that a new evidentiary hearing before the City Council is required under the law. The Court of Appeal denied the City’s writ petition on November 26, 2014. (Exhibit No. 4.)

At this time, all appeals have been exhausted. The City Council must follow the trial court’s order to approve the Application by December 12, 2014.

Park Granada

In the very same opinion, the Court of Appeal upheld the City Council’s denial of the Park Granada conversion from May 2010. The crucial difference in evidence was the survey of support. Both park owners submitted substantially similar declarations with evidence of bona fides, but the Park Granada resident survey demonstrated zero percent (0%) resident support, which the Court found was evidence of a sham. The Imperial Avalon survey demonstrated 22% support, which the Court of Appeal found, along with Mr. Jong’s declaration, was evidence of a bona fide conversion.

ANALYSIS:

A. Government Code Section 66427.5 Requires That Residents Have The Option To Purchase Or Remain Renting, And Governs Monthly Rents After The Sale Of The First Lot.

When a park is converted from a rental mobilehome park to resident ownership, existing residents have the option to purchase a subdivided unit in the park or remain as renters for as long as they wish. If a household is determined to be lower income as defined in the State Health & Safety Code, and the resident elects to remain as a renter, then upon the sale of the first lot in the park, the resident’s monthly rent may increase from the pre-conversion rent by an amount equal to the average monthly increase in rent in the previous four years, or by an amount equal to the average monthly percentage increase in the Consumer Price Index, whichever is lower. (Gov. Code 66427.5(f)(2).) (Exhibit No. 7)

The park owner’s Tenant Impact Report distributed in September 2014 (Exhibit No. 6) includes low-income qualification level information for Los Angeles County, which are as follows:

Household Size	Lower Income Category Maximum
1	\$47,850
2	\$54,650
3	\$61,500
4	\$68,300

If a resident is not lower-income and chooses to remain as a renter, their monthly rent may increase from pre-conversion rent to market level in equal annual increases over a four-year period. Market rent level must be determined by an appraisal conducted in accordance with nationally recognized professional appraisal standards. (Gov. Code 66427.5(f)(1).)

Residents may choose to remain as a renter under the aforementioned rents for as long as they wish. Additionally, it is important to remember that Carson rent control will remain in effect in the entire park until the park owner completes the state Bureau of Real Estate approval process and completes the sale of the first lot in the park.

B. The Park Owner Has Promised To Provide Certain Additional Benefits For Residents Above The Requirements Of State Law. In The Opinion Of The City Attorney's Office, These Promised Benefits Can Be Imposed On The Application As Conditions Of Approval.

In a sworn declaration presented at the City Council hearing in May 2010, and in the Tenant Impact Report, the park owner, Edward Jong, promised (1) to allow Carson rent control to remain in effect for non-low-income households until 45 lots are sold, (2) to require new residents to buy a lot, and (3) to offer a 15% discount from fair market value as determined by an MAI appraiser to current residents who buy within the first 90 days after lots are available for sale, and a 10% discount to current residents who buy within the second 90 days. (Exhibit Nos. 5 & 6)

The Court of Appeal relied on these promises as evidence the conversion is bona fide. The Court stated it "must affirm Carson's decisions unless the evidence against Carson's decisions is so overwhelming that it can be said that no substantial evidence supports them." It then described the Mr. Jong's promises and expectations in his sworn declaration, and stated the declaration is evidence that Mr. Jong truly expects "a gradual purchase of plots would enable the residents to own a majority of the park within a reasonable time, and that the park eventually and inevitably would be entirely resident owned." The Court then stated, "The only evidence against Imperial Avalon's bona fide intent to alienate the plots in its park is the survey of residents." But it found the survey of residents "was insufficient to show the conversion was a sham." (218 *Properties*, 226 Cal. App. 4th at 195-196.)

Because the Court of Appeal relied on Mr. Jong's promises to rule in his favor, we feel the City Council has the authority to impose his promises as conditions of approval on the conversion. In addition, the Court of Appeal focused on sales to "residents" as evidence of bona fides, noting Jong's declaration "showed that a gradual purchase of plots would enable the residents to own a majority of the park within a reasonable time, and that the park eventually and inevitably would be entirely resident owned." We therefore feel it is appropriate to exclude lot purchases by park-owner-controlled entities from counting toward the 45 lot sales before which Carson rent control will remain in effect (condition c below).

The proposed conditions therefore are as follows:

- (a) The purchase price for lots shall be set at fair market value as determined by a neutral and unbiased

certified general licensed MAI appraiser, the cost of which will be paid by the park owner;

- (b) Park owner shall provide a 15% discount from fair market value as determined by the MAI appraiser to current residents who buy within the first 90 days after lots are available for sale, and a 10% discount to current residents who buy within the second 90 days;
- (c) Carson rent control shall remain in effect for non-low-income households until 45 lots are sold. Lot sales to the park owner or to entities owned or controlled by the park owner do not count toward the 45 lots.;
- (d) Once lots are available for sale, all new coach owners shall be required to purchase the lot in addition to the mobilehome they purchase from the current resident.

C. Environmental Review

Pursuant to CEQA Guidelines section 15301 (Existing Facilities), the project is exempt from CEQA because it involves negligible or no expansion of an existing use. In addition, the project is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

V. FISCAL IMPACT

Denial of the application will very likely result in court sanctions against the City, and legal fees associated with the same, for violating the court's order to approve the Application. Approval of the application may result in a lawsuit from any party unhappy with the approval, resulting in attorney's fees for defense of the lawsuit.

VI. EXHIBITS

1. Resolution No. 10-053, adopted May 26, 2010. (pgs.8-22)
2. Court of Appeal Opinion in *218 Properties, LLC, et al. v. City of Carson, et al.* (2014) 226 Cal. App. 4th 182. (pgs. 23-35)
3. Trial court's writ of mandate issued October 15, 2014. (pgs. 36-38)

4. Court of Appeal's order denying City's extraordinary writ. (pgs. 39-40)
5. Declaration of Park Owner, Edward Jong. (pgs. 41-44)
6. Tenant Impact Report from Park Owner, dated September 2014. (pgs. 45-53)
7. Government Code section 66427.5 (as of 2010 Council hearing) (pg. 54-55)
8. Proposed Resolution No. 14-119 (pgs. 56-67)

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