IMPERIAL AVALON

Mayor and City Council
City of Carson
701 E Carson Street
Carson, CA 90745
c/o cityclerk@carson.ca.us

Re. Relocation Impact Report 05-20:
Applicant's requested modifications to Planning Commission Conditions of May 13,2020

Dear Mayor Robles and City Councilmembers:

Following our careful review and consideration of the Conditions of Approval assented to at the Planning Commission's May 13, 2020 hearing, we respectfully submit the following response and rationale for our request to remove or modify the conditions described below.

We have provided the relevant language of the Conditions, the justifications of our requests, and look forward to your careful review and consideration.

We remain committed to the fair treatment of our mobilehome owners and residents, as Carson is committed to the fair treatment of its citizens.

Respectfully,

Darren Embry
Imperial Avalon, LLC

IMPERIAL AVALON: Requested Removals/Revisions of Conditions of Approval

Planning Commission Conditions Nos. 10.b. and 10.c.i. – Appraisal Values

10.b. Lump sum payment to the mobile home owner by the Park Owner in the amount of the appraised on-site value of the mobile home (as appraised by James Netzer, MAI, ~~and as adjusted pursuant to peer review by James Brabant, MAI, as set forth in his appraisal review report available at https://tinyurl.com/ya33el49) (pp. 12-15, right-most column, entitled "Adjusted On-Site Value [Rounded]"),~~ in exchange for delivery of mobile home title to the Park Owner without any lien attached. Payments made to residents will be net of sums required to pay off existing liens and encumbrances on the subject mobilehome.

10.c.1 Lump sum payment to the Selecting Household by the Park Owner based upon thirty-percent (30%) of the appraised on-site value of the mobile home (as appraised by James Netzer, MAI~~, and as adjusted pursuant to peer review by James Brabant, MAI, as set forth in his appraisal review report available at https://tinyurl.com/ya33el49) (pp. 12-15, right-most column, entitled "Adjusted On-Site Value [Rounded]"~~) in exchange for (i) delivery of mobile home title to the Park Owner free of any lien or other encumbrance, and (ii) guaranteed future tenancy as described below;

> **Declination:** Following re-evaluation of current market conditions following Planning Commission determinations, Applicant finds that the Netzer appraised values in fact significantly exceed reasonable market values of the coaches and are well above and beyond what State and Local law require be provided to mobilehome owners. *We request that the Netzer values be used to derive the mitigation benefit due to each coach owner.*
>
> The Brabant appraised values are excessive and present an undue burden upon the Applicant, especially when considering that the Applicant will be providing rights to occupancy of brand new, fully-amenitized residences at Affordable Housing rent levels for those coach owners who select Option C and wish to return to the new project. Benefits to residents who select Option C will <u>average approximately $162,000 of subsidy benefit per participating household</u>.

Planning Commission Condition No. 16 – Sixty Days Advance Payment

Unless otherwise expressly provided in the applicable relocation assistance mitigation measure, all relocation impact mitigation measures provided for in the RIR (as approved by City) shall be fully performed as to each Park resident at least 60 days prior to the earlier of (i) the move-out date mutually agreed upon by and between the Park resident and the Park owner in a relocation agreement, and (2) the Park closure date, provided that in either event, all applicable conditions to payment of relocation assistance set forth in the approved RIR shall have been satisfied prior to the resident being entitled to payment.

> **Modification:** The 60-day advance payment of mitigation benefits creates a hardship for Park owner by removing the leverage to ensure the residents' actual vacation of the park. We request that the 60-day advance payment be modified to fifty-percent (50%) of the total amount of benefit due, with the remaining fifty-percent due and payable upon the residents' physical vacation of the park.

Planning Commission Condition No. 17 – Reimbursement of Tatro & Lopez Legal Fees

The Park Owner shall pay the Park residents' attorneys' fees incurred in connection with the RIR approval process up to the amount of $10,000. Specifically, the Park residents retained Tatro & Lopez, LLP for this purpose and incurred up to $10,000 in legal fees, all of which shall be paid by the Park Owner.

IMPERIAL AVALON: Requested Removals/Revisions of Conditions of Approval

Declination: In consideration of events following the May 13, 2020 Planning Commission hearing, Applicant respectfully requests removal of the obligation to fund any Tatro & Lopez legal fees. We have come to understand that residents and members of the now defunct HOA board may not have received clear guidance concerning the options to appeal, nor a full disclosure of settlement terms proposed by City with the assent of park owner.

We have concerns that the firm may intend to take credit for increased benefits they did not negotiate, and accrue to their own coffers a significant portion of the mitigation funds which should IN FULL directly benefit the residents.

To underscore our concerns, following the closure of the DeAnza Mobile Home Park in San Diego, where Tatro was counsel of record for many if not all of the coach owners, there was in fact a legal case brought against Tatro & Lopez per the attached legal summary, where it was asserted that (Tatro, i.e. "Counsel") *"Counsel stipulated to waive the class members' appellate rights in exchange for recovering over $7 million in attorneys' fees. The members were deprived of their due process right to a fairness hearing, deprived of their appellate…rights, deprived of their right to seek additional damages…"* (See *Attachment A*)

In effect, Tatro & Lopez was accused of stopping the process and taking their payment without the explicit knowledge or consent of their client, the Appellant in that case.

Planning Commission Condition No. 18 – Adjusted Appraisals

Park residents who believe that the appraisal relied upon for purposes of the Resolution failed to adequately consider or account for any upgrade or improvement made to their mobile home may submit an application to the Director for an adjusted appraisal of their mobile home within 15 days of the effective date of the Resolution.

Declination: Applicant has already responded to specific coach owner concerns and, in the very few cases where oversight or errors *which impacted the value* were affirmed, adjustments to the values have been made.

Applicant will continue in good faith to address issues or complaints from coach owners who wish to cite specific improvements that were not accounted for in the Netzer appraisal.

Planning Commission Condition No. 19 – Special Master

At the sole expense of the Park Owner, the City shall retain an independent third-party Special Master who shall have final administrative authority to determine, on behalf of the City Council subject to the provisions of the Resolution…

Declination: Applicant objects to the provision of a Special Master. Any potential conflicts related to provision of benefits will be identified and rectified between City and Applicant counsel since the City has means of enforcing Conditions of Approval at various stages.

As was described by HOA counsel at the May 13 Planning Commission hearing, title issues can often arise. However, those should remain the responsibility of the ostensible coach owners to resolve and should *absolutely not* be the responsibility of Applicant to fund potentially lengthy legal battles between parties who assert rights of ownership and control of coach title.

Planning Commission Condition No. 19 – Special Master (continued)

Mitigating benefits payments for the coach can be made into an escrow account until any legal matters are settled. A Special Master is not necessary and will only result in addition legal bills for the Applicant to resolve conflicts they had absolutely no role in creating.

###

2016 WL 6649991 (C.A.9) (Appellate Brief)
United States Court of Appeals, Ninth Circuit.

DJ St. JON, on behalf of herself and all others similarly situated, Plaintiff-Appellant,
v.
Timothy J. TATRO, an individual; et al., Defendants-Appellees.

No. 16-55609.
November 7, 2016.

Appellant's Reply Brief

Eduardo Martorell, State Bar No. 240027, Bordin Martorell LLP, 6100 Center Drive, Suite 1130, Los Angeles, California 90045, T: (323) 457-2110, F: (323) 457-2120, EMartorell@BordinMartorell.com, for plaintiff-appellant DJ St. Jon, on behalf of herself and all others similarly situated.

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Cases

***3 TO THE HONORABLE JUSTICES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT:**

Plaintiff/Appellant, DJ ST. JON, on behalf of herself and all others similarly situated, hereby respectfully submits the present Reply Brief in support of her appeal of the trial court's order ("Order") (ER 002-022) dismissing her Complaint (the "Complaint") (ER 374-404) in this proceeding. By this appeal, Ms. St. Jon seeks a reversal of the order of dismissal, a remand to the District Court for further proceedings under the Complaint, her reasonable attorneys' fees and such other relief as this Court deems necessary and appropriate.

INTRODUCTION

In its simplest terms, class counsel waived the class members' appellate rights in exchange for a stipulation from defense counsel to pay them exactly $7,716,510 in attorneys' fees.

By stipulating to the amount of fees recoverable in a class action lawsuit and seeking to rubberstamp that stipulation, counsel violated the fairness hearing procedures mandated by California Rules of Court, Rule 3.769.[1] *Roos v. Honeywell Int'l, Inc.*, 241 Cal. App. 4th 1472, 1490 (2015) (stating that in a class action, "[t]he court has a duty, independent of any objection, to assure that the amount and mode ***4** of payment of attorney fees are fair and proper, and may not simply act as a rubberstamp for the parties' agreement"). The trial court signed off on the parties' stipulation the very moment it was submitted at an *ex parte* hearing, without reviewing a single piece of evidence justifying the amount of fees. (*See* ER 523-526.)

Class members were injured because they were deprived of their due process right to a fairness hearing, deprived of their appellate rights, deprived of their right to seek additional damages, and suffered eviction from their homes. Under established Ninth Circuit precedent, their rights were affected by this settlement and they have standing to sue, irrespective of whether the attorneys' fees were paid from the common fund. Further, the Rooker-Feldman doctrine is inapplicable because Plaintiff does not complain of injuries ***caused*** by the determinations made within the Original or Amended Judgments, which

preceded the events that led to the filing of the District Court case.

ARGUMENT

The District Court dismissed the underlying action based upon its conclusion that Plaintiff lacked standing and based on the *Rooker-Feldman* doctrine barring consideration of Plaintiff's claim. (ER 12 at 9-12.)

Plaintiff has standing. The class members suffered several injuries-in-fact because they were deprived of their due process right to a fairness hearing, deprived ***5** of their appellate rights, deprived of their right to seek additional damages, and suffered eviction from their homes.

I. Class Members have Article III Standing because they Suffered Deprivation of their Due Process Right to a Fairness Hearing, their Appellate Rights, their Right to Seek Additional Damages, and they Suffered Eviction from their Homes

Recognizing the inherent conflict of interest that arises in the settlement of class action lawsuits, the California Rules of Court mandate that any settlement of a class action lawsuit be approved by the trial court after a hearing, and that any agreement with respect to the payment of attorneys' fees be set forth in any application for approval of the settlement:
(a) A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.

(b) Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.

Cal. Rules of Court, Rule 3.769(a)-(b). If either of these contingencies occurs (i.e. subdivisions (a) or (b) are triggered), the remainder of Rule 3.769 (subdivisions (c) through (h)) must be followed. *See generally* Cal. Rules of Court, Rule 3.769.

6** Appellees erroneously argue that this Rule does not apply because there was a trial and thus no settlement of the class action. However, both the Original Judgment and Amended Judgment left the amount of attorneys' fees blank. (ER 359-372 at 372 and ER 504-516 at 516.) Subsequently, counsel filed a "Proposed Parties' Stipulation to Award Prevailing Party Attorneys' Fees." (ER 523-526.) In the stipulation, class counsel waived the class's appellate rights in exchange for the recovery of substantial fees. (ER 523-526 at 524-525.) Simply stated, class counsel reached a settlement ***following the bench trial and thereby became obligated to comply with Rule 3.769. To hold otherwise would set a precedent whereby counsel in class action lawsuits could stipulate around the fairness proceedings mandated by the legislature to the detriment of the class members for whose benefit the rules were enacted.

Appellees argue the Original and Amended Judgments specified how notice was to be given and that they gave the requisite notice. However, the Original and Amended Judgments were entered on August 20, 2014, and October 16, 2014, respectively. (ER 359-372 at 372 and ER 504-516 at 516.) The parties subsequently stipulated to settle the class action on November 12, 2014. (ER 523-526.) Therefore, at the time the trial court specified how notice was to be given, the court was not accounting for the fact that the parties would later settle.

***7** After the parties reached the settlement in which they agreed on the amount of fees in exchange for a waiver of appellate rights, the class members became entitled to a fairness hearing. *See* Cal. Rules of Court, Rule 3.769. "To accord with due process, notice provided to class members 'must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members.' " *Litwin v. iRenew Bio Energy Solutions, LLC*, 226 Cal. App. 4th 877, 883 (2014), *quoting Cho v. Seagate Technology Holdings, Inc.*, 177 Cal. App. 4th 734, 746 (2009). The class

members were deprived of their right to that fairness hearing, their right to appeal, and their right to seek additional damages and time to remain in their homes before being evicted. They have thus suffered several injuries-in-fact sufficient to confer Article III standing.

To satisfy Article III, a plaintiff must show (1) an injury in fact that is (a) concrete and particularized and (b) actual or imminent; (2) that the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Covington v. Jefferson County*, 358 F.3d 626, 637--38 (9th Cir. 2004). If the parties had complied with the mandatory fairness hearing procedures, the class members would have been afforded the opportunity to object to the proposed settlement:

> (f) If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow ***8** in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

Cal. Rules of Court, Rule 3.769(f). However, the class members never had the opportunity to object to the proposed settlement. They never had the opportunity to insist upon maintaining their appellate rights. They never had the opportunity to challenge the amount of fees recoverable. They never had the opportunity to validate the trial court's ruling as to the amount of damages they would receive, or the amount of time they could stay in their homes prior to eviction. As members of the class, they were affected by the settlement and they have standing to sue. *See* *Devlin v. Scardelletti*, 536 U.S. 1, 6--7 (2002) ("As a member of the retiree class, petitioner has an interest in the settlement that creates a 'case or controversy' sufficient to satisfy the constitutional requirements of injury, causation, and redressability.")

Appellees argue that the members of the class were not injured by the fee award because it was payable in addition to the class fund. The Ninth Circuit has rejected this contention. In *Lobatz v. U.S. West Cellular of California, Inc.*, 222 F.3d 1142, 1147 (9th Cir. 2000), the Ninth Circuit explained:

> ... Havird argues she and the other class plaintiffs were injured because class counsel allegedly agreed to take excessive attorney fees and costs from the defendants in exchange for entering into an unfair class settlement. If, as Havird suggests, class counsel agreed to accept excessive fees and costs to the detriment of class plaintiffs, then class counsel breached their fiduciary duty to the class. If that were the case, any excessive award could be considered property of the class plaintiffs, and any injury they suffered could be at least partially redressed by allocating to them a portion of that award. *See* ***9** *Zucker* 192 F.3d at 1327. We conclude, therefore, that Havird, as a member of the class, has standing to appeal the attorney fee and cost award, even though that award was payable independent of the class settlement.

The Ninth Circuit has cautioned courts to be particularly vigilant for subtle signs that class counsel have allowed pursuit of their own self-interests to infect negotiations. *See* *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 947 (9th Cir. 2011). One such sign is "when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds, which carries 'the potential of enabling a defendant to pay class counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of the class.' " *Id.* (quoting *Lobatz*, 222 F.3d at 1147). Accordingly, it is irrelevant whether the attorneys' fees were paid from the common fund or in addition to the fund.[2] Either way, the class members were injured by the settlement because they were deprived of their due process right to a fairness hearing, deprived of their appellate rights, deprived of their right to seek additional damages, and were evicted from their homes. Article III standing is clear here, as it is in every similar case cited ***10** wherein the courts

spent little time analyzing standing after parties failed to follow the fairness hearings procedure.

II. The Rooker-Feldman Doctrine Does Not Apply because Plaintiff Does Not Complain of Injuries Caused by the Judgments, which Preceded the Events that Led to the Filing of the District Court Action

The Rooker-Feldman doctrine prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004). It "applies only when the federal plaintiff both asserts as her injury legal error or errors by the state court *and* seeks as her remedy relief from the state court judgment." *Id.* at 1140. The doctrine does not apply where the plaintiff alleges the defendants' wrongful conduct has caused her harm. *Id.; see also* *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003) (Rooker-Feldman does not bar jurisdiction where a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party).

"[T]he Rooker--Feldman doctrine has been applied by [The United States Supreme] Court only twice, *i.e.*, only in the two cases from which the doctrine takes its name: first, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), then 60 years later, ***11** *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)." *Skinner v. Switzer*, 562 U.S. 521, 531 (2011). In both cases, the losing party in state court filed a district court action complaining of an injury caused by the state-court judgment and seeking federal court review and rejection of that judgment. *Id*. In *Rooker*, the appellants sought to have a judgment of a circuit court declared null and void on the ground that it violated the United States Constitution. *Rooker*, 263 U.S. at 414. In *Feldman*, the respondents alleged that the District of Columbia Court of Appeals wrongly denied their petitions for waivers of the court's bar admission rule requiring that applicants have graduated from a law school approved by the American Bar Association. *Feldman*, 460 U.S. at 462. Unlike in *Rooker* and *Feldman*, Plaintiff-Appellant does not seek review of the Original or Amended Judgment, or any rulings made therein. Instead, Plaintiff-Appellant seeks to impose liability on counsel for their actions ***following*** entry of the judgments. (*See* ER 374-404.) For example, Plaintiff-Appellant alleges that "[i]n settling the DE ANZA ACTION and unilaterally setting DE ANZA COUNSEL's entitlement to $7,719,510 in attorneys' fees without Court consideration or approval, DEFENDANTS blatantly violated of California Rules of Court, Rule 3.769." (ER 374-404 at 377-378.) The Complaint also alleges "DE ANZA COUNSEL'S actions led to PLAINTIFFS not receiving faithful and adequate representation." (ER 374-404 at 380.)

***12** The Rooker-Feldman doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005). The doctrine is inapplicable for two reasons.

First, Plaintiff is not a "state court loser." As a class member, she was awarded damages at trial, which are memorialized in the August 20, 2014 Judgment and the October 16, 2014 Amended Judgment. (*See generally* ER 359-372 and ER 504-516.)

Second, Plaintiff does not complain of injuries caused by the Original or Amended Judgments, which preceded the events that led to the filing of the District Court case. The Complaint attributes all wrongdoing to counsel. Specifically, it alleges that counsel wrongfully stipulated to recover fees in exchange for a waiver of appellate rights, in violation of Rule 3.769. (*See* ER 374-404 at 379-380.) The parties executed their stipulation after the Original and Amended Judgments. (*Compare* ER 359-372 and ER 504-516 *with* ER 523-526.) Accordingly, the Rooker-Feldman doctrine does not deprive the lower federal courts of jurisdiction.

Lastly, should this Court find that the Rooker-Feldman doctrine applies, the defendants would benefit from their deceptive conduct. When notice was given that ***13** class counsel would recover over $7 million in fees, they distributed the same "Amended Judgment" that had already been distributed to the class members with the same October 16 date stamp. The only difference was the last two pages, one of which included the amount of attorneys' fees interlineated into the document. (*Compare* ER 504-516 *with* ER 169-182.) The class members only had 60 days to discover what counsel had done and

appeal. *See* Cal. Rules of Court, Rule 8.104. Thus, a finding that the Rooker-Feldman doctrine bars Plaintiff-Appellant's claim here would only encourage class counsel to do exactly what Defendant-Appellee's did here: stipulate to recover their fees to the detriment of the class, bury the notice thereof, and secure safe harbor if they succeed in hiding their actions for a mere 60 days. Simply stated, this Court should not permit counsel to benefit from their own inexcusable conduct by allowing for dismissal of the underlying action at the pleadings stage. If the underlying claims are to suffer dismissal, it should be after trial by jury.

CONCLUSION

The fairness hearing procedures mandated by Rule 3.769 were enacted precisely to prevent the type of wrongful conduct committed by class action counsel. Counsel stipulated to waive the class members' appellate rights in exchange for recovering over $7 million in attorneys' fees. The members were deprived of their due process right to a fairness hearing, deprived of their appellate ***14** rights, deprived of their right to seek additional damages, and suffered eviction from their homes. Under Ninth Circuit authority, the class members were injured by the entirely non-vetted settlement and have standing to maintain their District Court action. The Rooker-Feldman doctrine does not apply because Plaintiff does not complain of injuries caused by the Original or Amended Judgments, which preceded the events that led to the filing of the District Court case. The District Court erred in dismissing the action and Plaintiff respectfully requests that this Court reverse, vacate and remand the District Court's Order.

Dated: November 7, 2016

s/ Eduardo Martorell

Eduardo Martorell

Footnotes

[1] For the sake of efficiency and clarity, all subsequent references to California Rules of Court, Rule 3.769, shall merely refer to "Rule 3.769."

[2] The District Court's Order failed to recognize that the source of the funds is irrelevant in the Ninth Circuit:

> "...Plaintiff cannot establish a vested property interest in the attorneys' fees at issue. As Defendants correctly point out, Class Counsel were not awarded attorneys' fees in the state court action out of a 'common fund' or 'pool' that included Plaintiff's damages. If that were the case, Plaintiff could credibly argue that a higher amount of fees awarded to Class Counsel diminished Plaintiff's own recovery."

(ER 002-022 at 13.)

Jackson Tidus
A LAW CORPORATION

July 1, 2020

Direct Dial: 949.851.7491
Email: bhill@jacksontidus.law
Reply to: Irvine Office
File No: 9729.126829

VIA EMAIL

Mayor and City Council
City of Carson
701 E Carson Street
Carson, CA 90745
c/o Donesia Gause-Aldana, MMC
City Clerk--cityclerk@carson.ca.us

Re: ***July 7, 2020 City Council Meeting***
Appeal of Planning Commission Approval ("Approval") of
Relocation Impact Report No. 05-20 ("Report")
(May 13, 2020 Planning Commission Agenda Item No. 6B)

Dear Mayor and Members of the City Council:

Imperial Avalon, LLC ("Park Owner") requests that you deny the Appeal and remove unlawful conditions contained in the Planning Commission Approval. To summarize:

- The maximum mitigation under State law is the reasonable cost of relocation, which the Report suggests should be at most approximately $8 million. (Govt. Code, § 65863.7(e).)

- The City exceeded State law by requiring that on-site investment values for the mobile homes be used as mitigation, increasing the mitigation to approximately $13.8 million.

- The Planning Commission erroneously increased the on-site investment values provided by City-approved appraiser, James Netzer, relying on unsupported assumptions of City-retained appraiser James Brabant to increase the mitigation to $15.3 million.

The above illustrates the means by which the City has compelled the Park Owner to go above and beyond State and local requirements in order to protect its residents.

Relevant legal principles and other pertinent information are set forth below. A separate letter by the Park Owner identifies the unlawful conditions to be stricken from the Approval.

1. Non-Market Regulatory Value. The Carson rent control ordinance, by not allowing vacancy de-control, creates a non-market regulatory benefit for existing California mobile home park tenants, enabling existing residents to charge a non-market premium **(a price higher than the value of the coach itself)** when selling their homes located in a rent-controlled park to a new tenant. (*Yee v. City of Escondido* (1992) 503 U.S. 519, 526-527; see also Hirsch & Hirsch, Legal–Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrol, 35 UCLA L.Rev. 399, 425-431 (1988).—see Attachment A.)

2. Non-Market Regulatory Benefit Ceases Upon Closure. Upon proper notice and closure of a mobile home park, the non-market premium ceases; otherwise, there is an unconstitutional taking of park owner property. (*Yee v. City of Escondido, supra*, 503 U.S. 519, 527-528.)

3. Preemptive State Law Does Not Allow a Closure Non-Market Premium. The Ellis Act expressly allows mobile home park closure subject only to requirements under the California Mobile Home Residency Law ("MRL"). (Govt. Code, § 7060.7(f).) The MRL expressly limits "the steps required . . . to mitigate" upon park closure to the "reasonable costs of relocation." (Govt. Code, § 65863.7(e).) The MRL preempts any contrary local government ordinance. (*Keh v. Walters* (1997) 55 Cal.App.4th 1522, 1535, 1538; *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270, 1279.) **Thus, the value of the coaches that included the non-market premium while the park is open does not continue with the home following notice of the park's closure**.

4. Courts Have Interpreted the MRL to Not Allow a Closure Non-Market Premium. After a comprehensive review of the legislative history of Government Code section 65863.7, the Ventura County Superior Court held that "reasonable costs of relocation" does not include the non-market premium. (Statement of Decision in *City of Thousand Oaks v. 1200 Newbury LLC* (2010) 2010 WL 10128799, p. 7—see Attachment B.)

5. The City's Ordinance Follows State Law in Not Allowing a Closure Non-Market Premium. Although the City's Ordinance allows for appraisal computation of "market" on-site value, it expressly recognizes that relocation benefits upon park closure cannot exceed "reasonable costs of relocation". The City's Ordinance does not anywhere provide for computation of the non-market premium. (City Code, § 9128.21(E).) While Park Owner has provided both market on-site value and computation of a discretionary non-market premium value pursuant to City direction, it is clear under State Law that such non-market premium cannot be required. **Park Owner has in fact proposed an additional $4.5 million in discretionary non-market premium at City direction, above and beyond the State law and above and beyond even the City Ordinance requirements**.

6. On Site Market Value Does Not Help Residents. Market value includes all relevant factors, including the Park Owner's announcement of sale of the Park and the limitations of Government Code Section 65863.7. (Netzer Report, p. 9.) Per direction of City staff, Netzer used the accepted appraisal concept of investment value to capture the "subjective relationship" between the tenant and the non-market re-sale premium by means of extraordinary assumptions--*i.e.*, that the non-market re-sale premium adds rather than takes away value of the home under rent control—(see p. 431 of Hirsch analysis suggesting that rent control takes away value) and hypothetical conditions--*i.e.*, that the Park is not being sold. (Netzer Report, p. 9.) On site "market" value on the other hand only includes the coach value and the value of the home set-up on the park property.

7. Tenant Benefits Under the Report are Much More Economically Beneficial than Alternatives, Such as Park Conversion. Should the Report not be approved by the City Council, or increased unconstitutional and unlawful burdens be placed upon Park Owner, not only will the City be subject to potential liability for potential takings and writ claims, but the Park Owner would still be able to move forward **with the conversion to resident ownership upheld by the Court of Appeal in 2014**. On conversion, the cost of purchasing land will be at market value for those tenants who wish to purchase the land, and those tenants who wish to continue renting will have their rents increased to market levels within a short period of years, subject to certain conditions, with limited State Law rent control. (Govt. Code, § 66427.5(f).)

8. Certain Provisions of the Planning Commission Resolution Are Unlawful and in Excess of Authority. The Planning Commission Authority under Government Code section 65863.7 is ministerial in nature and simply extends to determining the extent of mitigation measures, not to exceed "reasonable costs of relocation." It does not extend to allow the Planning Commission or the City Council to defer decision to a non-administrative special master or to allow a special master to interfere with Park Owner administration of the relocation benefits approved. It does not allow the Planning Commission or special master to second guess or exceed the expert appraisal opinions, or to require reappraisals, in the absence of a contrary expert appraisal opinion.

9. There are Unanswered Questions About HOA Counsel Representation. Attachment C sets forth a colloquy between HOA counsel and Park Owner counsel. Numerous unanswered questions were raised by Park Owner counsel about HOA counsel representation. The current position of HOA counsel on appeal seems to be at odds with the position of the same counsel at the Planning Commission, despite achieving all of the HOA demands at the Planning Commission. The HOA counsel stated affirmatively on the record the HOA's approval of the Brabant appraisal review, which the HOA counsel now challenges on Appeal.

In conclusion, the Park Owner asks the City Council to deny the Appeal and revise accordingly the Planning Commission Approval as set forth in the concurrent Park Owner letter.

Sincerely,

Boyd L. Hill

cc: Imperial Avalon, LLC
City Attorney

Attachments A-C

1491641.2

35 UCLA L. Rev. 399

UCLA Law Review
February, 1988
Werner Z. Hirsch[a] Joel G. Hirsch[aa]

*425 V. TRANSFER OF WEALTH - THE TENANT'S SIDE

Mobile home coaches, as with most items of personal property, suffer economic depreciation with age. That is, an unused 1960 model mobile home coach in a dealer's showroom is almost always worth less than a 1988 model. However, a coach with a right to remain in a mobile home park may retain its value and frequently, due to the rising value of the landlord's property, may even appreciate with time.

The most significant aspect of rent controls in mobile home parks is that when rent controls are imposed, the value of coaches owned by sitting tenants increases.[86] This increase results from the capitalization of the rent control ordinance which has reduced pad rents for the foreseeable future. Thus, additional wealth transfers to tenants occur when rent control is imposed on mobile home parks. Apartment renters typically do not receive this kind of transfer of wealth, because apartment renters typically do not combine an ownership component with a rental component in their residency.[87]

Pad and park quality are unlikely to decline rapidly enough to neutralize the effects of lower rents for two reasons.[88] First, park quality is determined to a large extent by investments made in the past and rent control is seldom foreseen. Second, much of the quality of the rented area is controlled by the coach owner-tenant himself.

*426 A. *The "Placement Value" Concept*

Mobile home dealers,[89] appraisers and mobile home park owners and managers have long recognized what on first blush appears to be an unusual phenomenon which they refer to as "placement value." Placement value is the excess of the sales price of a coach on a pad over the combined costs of an equivalent coach in a showroom plus transportation and hook-up charges.[90]

Assume that there is a new double-wide coach located in the showroom of a mobile home dealer. This coach is worth $20,000 as indicated in the *Kelley Blue Book*.[91] If this coach is taken and placed in a mobile home park, the coach is worth $44,000.[92] Why is this the case? Why should the exact same coach be worth $24,000 more if placed on a pad in a park? The reason is that under certain pad demand and supply conditions there is a value associated with having the coach in the park, particularly in a park with rent control.[93] More specifically, positive placement values occur when an excess demand for pads is coupled with rent control which has fixed pad rents below the market clearing price.[94] Since pad rents cannot rise to equalize supply and demand, a shortage results, making the few mobile homes on pads worth more than those still in the showroom. Conversely, we would expect to find negative placement values in communities where pad supply exceeds demand and there is no rent control.[95]

There are a number of interesting aspects to the placement value concept.

*427 B. *Below or Above Fair Market Rent Affects the Placement Value*

First, it should be noted that the magnitude of placement value is linked to the discrepancy between rent charged for the pad and the pad's fair rental or market rental value.[96] For purposes of this Article, we assume that a pad's fair rental value is the market rental of a similar pad in a jurisdiction without rent controls.

It should also be noted that placement value is not due to, though it may vary with, the physical qualities of the park in which the coach is placed. That is, the value of amenities or housing services supplied by the landlord does not necessarily have a direct and positive relationship to the magnitude of the placement value. The reason is that, conceptually at least, the value of

the amenities and other housing services supplied by the landlord is reflected in the rent. [97] The real determinant of placement value is the discrepancy, if any, between the pad rent charged and the true market value. [98]

Under neoclassical economic theory there should be zero value given to the placement of a coach on the landlord's mobile home park, if the mobile home park market is perfectly competitive. [99] In such a market, pad rents reflect only the level of services provided and thus the value of a mobile home is not changed by the mere fact that it is placed on a particular pad. Since the landlord has the freedom to

***428 CHART I - PLACEMENT VALUE**

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

charge market rent for the pad, there should be no value to the placement of the coach. [100]

However, to the extent that the landlord does not have unfettered freedom to set rents, the discrepancy between contract rent and theoretical fair value rent will create a value to the coach being placed in a particular park. This increment of value, which is not attributable to the physical attributes of the coach, is the placement value. Conceptually, to the extent rent controls keep rents below their fair rental level, the value of the coach will be increased. [101]

***429** C. *Placement Value Is Not a Function of Relocation Costs*

It would be a mistake to believe that placement value is a reflection of the costs of moving the coach. Whatever the transaction costs involved in physically moving a coach, they are (a) already conceptually included in the purchase price of the coach and (b) not reflected in the increased value of the coach. [102] Quasi-rent is based upon these transportation costs but is a distinct concept from that of placement value. [103]

D. *Placement Value is Not Equity*

It is also important to realize that the theoretical construct of placement value is different from the notion of equity. Equity is the value of property which belongs to someone. [104] Thus, for example, the mobile home coach owner's equity would be the value of the coach less encumbrances on the coach. If a coach is worth $40,000, and a bank or other lender has a lien against the coach of $35,000, the owner can only claim $5,000 as his equity. This $5,000 may represent the coach owner's cash down-payment when he purchased the coach plus the accumulation of mortgage payments that are attributable to principal. If we assume that the coach owner pays down the mortgage and that the ***430** fair market value of his coach stays the same or increases, his equity increases. [105]

By contrast, the concept of placement value is quite unrelated to the acts or qualities of the tenant. [106] For example, the placement value of long-term residents' coaches is not necessarily more than the placement value of short-term tenants. Once again, the existence and magnitude of the placement value is only a function of the discrepancy between the rent charged and the fair market rental.

E. *Placement Value is a Benefit to Tenants in Addition to Lower, Stabilized Rents*

It should also be noted that the increased value to a tenant in the form of placement value is related to, but in addition to, the benefit of lower, stabilized rents for the tenants. In essence, existing mobile home tenants get a double benefit from rent controls. Not only do they pay lower, stabilized rents, but they also get increased values of their coaches. [107]

F. *Rent Control-Induced Increases in Placement Value Tend to Hurt Subsequent Tenants*

It is important to recognize that the placement values that result from rent control are likely to be liquidated and alienated. [108] That is, the beneficiary of increased coach values ***431** created by rent controls is likely to be the tenant who is in possession of the pad at the time rent controls are imposed. [109] The benefit is likely be to realized when the coach owner sells his coach or refinances the mortgage on his coach. [110] The benefit is unlikely to be transferred to subsequent tenants. [111]

Thus, there will be only one group of mobile home tenants who will receive the benefit of increased coach value. Only the tenant in possession at the time rent control is imposed will benefit from the transfer of wealth. The subsequent tenant may get the benefit of stabilized lower rents, but he pays for this benefit in the form of a higher purchase price and, therefore, higher mortgage payments. Indeed, the possibility exists that after rent control subsequent mobile home tenants may be paying the same amount or more for precisely the same housing after rent control. [112]

TABLE III. TOTAL HOUSING COSTS [113]

Monthly Rent - Not Under Rent Control	Monthly Mortgage Payment Based on 80% of $15,000 Purchase Price	Total Housing Cost
$105	$100	$205
Monthly Rent - Under Rent Control	Monthly Mortgage Payment Based on 80% of Increased Purchase Price of $15,750	
$100	$105	$205

In short, rent control tends to raise the housing cost of all mobile home owners, other than those who were renting at the time the rent control ordinance was enacted.

There is a further reason why rent control is likely to hurt subsequent tenants. As rent control reduces the profitability of mobile home parks, park owners will attempt to compensate for the lower rents by reducing investments in the parks, or even converting the parks to more profitable land uses, should the zoning laws permit such changes. [114] Moreover, fewer new parks will be built. [115] The result will likely be a decrease in the quality as well as the quantity of mobile home pads. [116] Only if post-rent control park profits ***433** remain higher than the best alternative use of the land, will the enactment of rent control not significantly affect the availability of coach sites.

VI. ECONOMIC ANALYSIS

We will next construct an economic model which incorporates the ideas developed in the preceding pages and then seek to implement this model empirically with the aid of econometric techniques.

A. *The Economic Model*

The number of mobile home pads at any given point in time is relatively fixed. Therefore, the supply of mobile home units for which a pad is available is fairly inelastic in the short run.

We assume that consumers of mobile homes have a negative cross-price elasticity of demand for coach services with respect to services of pads, i.e., the services of coaches and pads are complementary. If rents for comparable mobile home pads (meaning not merely the size and quality of the lot, but also the locational and institutional qualities of the mobile home park in which it is located) are higher in one community than in another, then mobile home coaches will have a lower value and price in the community where rents are higher.

One important characteristic of mobile homes that strengthens the influence of pad prices on the cost of mobile homes is the immobility of mobile home coaches. [117] Since most mobile homes are seldom moved from the pad on which they are originally placed, buyers pay much attention to characteristics, including amenities, of the park into which they intend to move the newly purchased mobile home.

2010 WL 10128799 (Cal.Super.) (Trial Order)
Superior Court of California.
Ventura County

CITY OF THOUSAND OAKS, a California Municipal Corporation, by and through its elected City Council; and Does 1-50, Inclusive, Plaintiff,
v.
1200 NEWBURY LLC, a California Limited Liability Company, Defendants.
1200 NEWBURY LLC, a California Limited Liability Company, Plaintiff,
v.
CITY OF THOUSAND OAKS, a California Municipal Corporation, by and through its elected City Council; and Does 1-50, Inclusive, Defendants.

No. 56200900337441.
January 8, 2010.

Statement of Decision

Glen M. Reiser, Judge.

FACTS

A. Pre-Litigation Administrative Proceedings

The Conejo Mobile Home Park was built approximately 50 years ago. (AR 4.) By March 10, 2005, the current park owner, petitioner 1200 Newbury LLC ("Park Owner"), decided to close the park in favor of an assisted living facility. (*Id.*) The Park Owner surveyed its residents and received a closure "impact report" from its consultant (AR 1-323.)[1] Among other things, the impact report considered the availability of "replacement" mobile home park space at other facilities; the availability of other types of low cost and senior housing; the hard costs of moving an "accessorized" mobile home to another site; other moving expenses; and the scope of "mitigation" payments to residents required to relocate. (*Id.*)[2]

In direct response to Park Owner's proposal to convert the facility to another use, on January 2006, the City of Thousand Oaks ("the City") issued a "temporary" moratorium on mobile home park conversions and closures. (AR 1400.) On March 14, 2006, despite the moratorium, Park Owner paid $3305 to the City for "pre-application review", requesting park closure. (AR 295-296.) Park Owner attached a more expanded closure impact report to its application. (AR 297-792.)

On March 21, 2006, the City passed a comprehensive ordinance affecting various aspects of mobile home park ownership. (Verified pet, at ex. 4; AR 1400.) In the portion of the 2006 ordinance affecting "change of use" applicable to Park Owner, the City expanded significantly upon the stated requirements of Government Code § 65893.7. Among other things, the 2006 ordinance required the impact report to contain detailed information as to each owner and resident, each mobile home, and each tenancy rental history. (Verified pet, at ex. 4, at p. 15.) The 2006 ordinance required detailed scrutiny of "replacement" mobile home housing within 20 miles and detailed specifics of each applicable replacement park in terms of facilities and costs. (*Id.*) The 2006 ordinance required detailed itemized estimates of the cost to move each mobile home. (*Id.*, at pp.15-16.)

***2** Relative to mitigation, the City's 2006 ordinance mandated that conditions of change of use approval shall include required payment of "any combination of relocation costs to another mobile home park within 20 miles"; "**a lump sum equal to the in-place market value each mobile home in its current location**"; a lump sum equal to the cost of moving to

alternative housing; a lump sum equal to first and last month's rent elsewhere; and a lump sum equal to rent differential for one year. (Verified pet, at ex. 4, pp.16-17.) The 2006 ordinance allowed an applicant to seek relief from the City's mitigation payment conditions, which request *must* include, *inter alia*, "[a] report prepared by an expert… substantiating why the relocation assistance obligations would result in a take of property in violation of the United States or California Constitutions and, if so, the minimum extent that such obligations would have to be adjusted to prevent a taking of property." (*Id.*, at 17.)

By letter dated June 8, 2006, the City advised Park Owner that while the City's moratorium had prohibited approval of any mobile home closure, in any event, Park Owner's 496-page impact report was not compliant with the City's *new* ordinance requirements for such a report. (AR 793-796.)

On December 21, 2006, Park Owner paid the City an additional $12,430 to process Park Owner's plans for the development of an assisted living facility and medical building on the mobile home park site; including submission of its revised park closure "impact report". (AR 79-801.) The City once again advised Park Owner that its application was incomplete, demanding a further exhaustive and detailed list of additional items the City asserted would be required under its 2006 park closure ordinance, or the application would be "deemed withdrawn". (AR 802-806.)

Park Owner submitted a "supplemental" impact report in an attempt to satisfy the City's additional requirements. By letter dated June 15, 2007, the City rejected Park Owner's supplemented application as Once again incomplete, demanding further information that the City asserted was required its 2006 ordinance. (AR 809-810.)

Park Owner submitted a second "supplemental" impact report in an attempt to satisfy the City's requirements. By letter dated November 14, 2007, the City rejected Park Owner's second supplemental application as yet again incomplete, demanding further information that the City asserted was required under its 2006 ordinance. (AR 815-816.)

The City-imposed moratorium on mobile home park closures expired by operation of law in January 2008. (Govt. C. § 65858; see generally *Martin v. Superior Court* (1991) 234 Cal. App. 3d 1765.) At that time, the City adopted a General Plan amendment mandating that Park Owner replace the mobile home park with high-density residential dwellings in the event the park closure application was approved by the City. (Verified pet., at ¶ 21.) Park Owner provided the further information requested by the City by mid-March 2008. (AR 822.)

On July 8, 2008, while holding Park Owner's supplemented application, the City adopted a mobile park resident-sponsored initiative as a new city ordinance[3] , once again substantially modifying the requirements of mobile home park closures within the City and even further significantly expanding upon the stated requirements of Government Code § 65893.7. (AR 826-851.)

By letter dated August 6, 2008, the City advised Park Owner that while its park closure application was now deemed "complete" under the old 2006 ordinance, Park Owner would now be subject to the requirements of the new 2008 ordinance. (AR 824-825.) Highlights of the comprehensive 2008 ordinance include:
• Amending the City's General Plan by rezoning of all mobile home parks, including the residential portion of Park Owner's complex, to be "Mobile Home Exclusive" (AR 828-832);

***3** • Payment of "just compensation" to the owner of any mobile home being relocated (AR 827);

• Detailed analyses in the impact report of adequate replacement housing at mobile home parks **within 20 miles**; specific itemized relocation costs for each unit; and **analyses of "in place market value" for each mobile home "in its current location"** (AR 832-834);

• Defining "reasonable cost of relocation" (as set forth in Government Code § 65893.7) to include "a combined total of the cost of relocating the mobile home to another park within 20 miles; **plus the "a lump sum equal to the in-place market value of each mobile home in its current location**; plus lump sum moving costs; plus first and last months' rent plus security deposit at another location. (AR 834-835);

• Requiring that **"[i]n no case"** may the relocation costs be less than-displacement benefits payable under Government

Code § 7260 et seq. for those displaced by condemnation and other forms of state action (AR 835); and

• Permitting an "adjustment" to such payment obligation if, among other things, the impact report contains "[a] report prepared by an expert… substantiating why the relocation assistance. obligations would result in a take of property in violation of the United States or California Constitutions and, if so, the minimum extent that such obligations would have to be adjusted to prevent a taking of property". (AR 836-837.)

B. Park Owner's Lawsuit

On February 17, 2009, after further months of delay by the City (verified pet., at ¶ 33), Park Owner filed the instant petition for writ of mandate and complaint for damages and equitable relief.

The verified petition contends, *inter alia*, that the "in place" premium allocable to each of the mobile home park spaces varies between $50,000 and $215,000 per space; or a total of between $2.5 million and $10.5 million for the 3.5 acre property. (Verified pet., at ¶ 28.) According to the record, the City estimated the total "in place" values to be paid under the 2008 ordinance to be between $2.25 million and $9,675 million. (AR 1287.)[4]

***4** According to Park Owner, by mandating "mitigation" closure costs far in excess of the fair market value (and all potential development value) of the property, the City by design *de facto* forecloses Park Owner from ever closing the mobile home park and in the process violates Government Code § 65893. (Verified pet, at ¶¶ 14, 28, 45, 55, 62.)

In addition to claims related to the City's alleged abuses referenced above, Park Owner also asserted in its petition that the City violated the California Environmental Quality Act ("CEQA"), as the City was long past the 30-day period mandated to complete an initial study and determine the scope of environmental review on a completed application. (14 Cal.Code Regs. § 15102.)

C. The Impact Report

On March 12, 2009, with-the lawsuit in hand, the City advised Park Owner that it was "making progress" on Park Owner's three-year-old application, subject to an additional $3600 environmental fee. (AR 855-856.) An updated closure impact report, seeking to comply with all of the requirements of the City under the 2008 ordinance, was prepared on May 1, 2009 and submitted to the City. (AR 869-1286.) The city commenced environmental review, presumably to moot Park Owner's CEQA count. (AR 861.)

The impact report examined each of the units (AR 931-1025.) Tenancy and rent roll data was provided for each unit. (AR 1027-1030.) Southern California mobile home dealers were identified (AR 1040-1080) and sales listing data within 20 miles was provided. (AR 1081-1108.) Available mobile home rental information was made available for parks throughout Southern California (AR 1110), with additional contact information as to resident-owned parks (AR 1112.) Alternate types of affordable, subsidized and senior housing were examined. (AR1113-1142.) Mobile home moving relocation bids were obtained (AR 1143-1151); storage shed costs were examined (AR 1152-1158); motel prices were surveyed (AR 1160); and personalty movers were quoted (AR1162-1171.) Per diem travel costs were scrutinized (AR 1172-1176.) Each of the mobile home units was individually appraised. (AR 1196-1278.)

The report determined that *all* 90 mobile home parks within the City-mandated 20-mile radius either had no vacancy or would not accommodate any of the older mobile homes currently on site at the Conejo Mobile Home Park. (AR 889.) Accordingly, none of the mobile homes currently within the park could be physically moved to accommodate the City's 20-mile radius limitations. (*Id.*) Physical transport of a used mobile home, in addition, is rendered far more problematic by the "accessorization" process that evolves over decades. (AR 891-892.) To the extent mobile homes *can* be moved according

to the impact report, presumably beyond the 20-mile radius imposed by the City, the average cost of moving these mobile homes, with an added storage shed and landscaping allowance, is $15,401.33 (double wide) and $13,275 (single wide). (AR 892-893.)

The report calculates additional home personalty moving costs to be between $617.50 (two bedrooms) and $846.08 (three bedrooms) (AR 894); per diem meals to be $51 per person per day; and lodging to be $100 per night for an approximate 7-10 day displacement. (AR 893-894.) Adding up all the aforementioned calculations, depending upon the size of the unit/family moving and the contractor(s) selected, the impact report estimates that the statutory mitigation "relocation" costs for resident owners could vary between $14,983 (low) and $19,331.33 (high) per unit. (AR 897-898.) The report calculates reasonable relocation costs to those who rent from mobile home owners to be $1500 to cover moving expenses and increased rent variances; and $2000 to each nonresident owner who saves the Park Owner from having to remove the units upon closure. (AR 902.)

D. *Pendente Lite* Administrative Proceedings.

***5** In response to Park Owner's petition, the City demurred, *inter alia*, on grounds that park owner did not exhaust administrative remedies by seeking a "adjustment" to the multi-million dollar relocation costs calculated by City staff. (Demurrer filed 3/18/09.) At the demurrer hearing on April 29, 2009, the Court pointed out that that the City ordinance provision mandating that the Park Owner's expert calculate an unconstitutional taking, and essentially "subtract one cent" from that calculation as a prerequisite to an "adjustment" (AR 836), is a far different standard than the statutory provision limiting displaced resident compensation to "the reasonable costs of relocation" (Govt. Code § 65893.7(e)).

At that hearing, the deputy city attorney advised the Court that despite the language of its ordinance, the City was administratively limited to calculation of "reasonable relocation cost" because that is the state law limitation. (AR 1477-1480.) Upon further confirmation of the express representation by the City that it would be only looking to reasonable relocation costs and not to constitutional "taking" calculations (AR 1482-1489), the Court stayed the demurrer hearing to allow Park Owner to request an "adjustment" in compliance with state law. (*Id.*)

The same day, after the hearing, Park Owner requested "adjustment" in the City's calculations to reflect reasonable costs of relocation. (Ex. "4" to Park Owner's *ex parte* application for temporary restraining order filed May 20, 2009.)[5] The City responded by requesting an additional administrative fee from park owner of $2900. (AR 868.) The city attorney's office confirmed in writing that the City would not rely upon the "taking" requirement in its ordinance. (Ex. "5" to Park Owner's *ex parte* application for temporary restraining order filed May 20, 2009.)[6]

On May 13, 2009, in direct contravention of the express representations of its city attorney's office to this Court, the City found Park Owner's application for relocation adjustment "not complete" because Park Owner had not submitted an expert report "substantiating why the relocation assistance obligations would result in a take of property in violation of the United States or California Constitutions and, if so, the minimum extent that such obligations would have to be adjusted to prevent a taking of property." (AR 1291.) Even with such expert report, the City advised Park Owner that no adjustment would be given, *inter alia*, absent demonstration that "the continued use of the property as a mobile home park is not a reasonable economic use of the property". (AR 1292.) In other words, regardless of the express language of Government Code § 65893.7, the City would not even consider limiting Park Owner's closure payment obligations to the statutory maximum of "reasonable cost of relocation" absent proof of economic factors extraneous to § 65893.7. The City's demurrer was overruled by this Court on June 11, 2009.

On June 22, 2009, the City's planning commission considered Park Owner's closure impact report. (AR 1393-1539, 1540-1570, 1298-1392.) City staff proposed approval of Park Owner's impact report as "adequate as conditioned"; and proposed denying Park Owner's request for compensation adjustment as "incomplete" .and "untimely", by failing to "include a report prepared by an expert substantiating why the relocation assistance obligations would result in a take of property, or the minimum extent such obligation would have to be adjusted to prevent a taking of property...." (AR 1399.)

***6** To the extent a mobile home could not be moved within 20 miles to a new park (and they cannot because the age of the

mobile homes here forecloses such a possibility—AR 889, 1588-1589), the City staff proposed having Park Owner close the park, **subject to Park Owner's payment to displaced residents of a total of $1,649,824 - 89.97% of which is characterized by City staff as reimbursement of "in place market value".** (AR1418-1419.)

The City's planning commission, characterizing Park Owner's litigation as an "attempt… to eliminate the locational value" component of its municipal code (AR 1658), opined, *inter alia*, that the Park Owner's impact report as supplemented was no longer current (AR 1665; *cf.*, AR 1688 [city staff]); that City staff's calculated "in place values" were too low (AR 1666-1671); that City staff's understated "in place values" "invalidates" the proposed negative declaration (AR 1671); that both Park Owner and City staff's calculations are "totally inadequate" and should be. "considerably higher"(AR 1672-1673); that "state law" calls for a home appraisal which has not been accomplished (AR 1665-1666, 1674; *cf.*, AR 932-1025, 1197-1278, 1688, 1701 [city attorney]) — the common theme being one commissioner's declaration that "I want the residents to get the maximum value… for their units." (AR 1687.)

The City's planning commission rejected City's staff's recommendation that Park Owner's impact report be approved; further rejected City staff's recommended adoption of a negative declaration for the closure; and rejected Park Owner's request for a compensation "adjustment". (AR 1707, 1726.) In its resolution denying Park Owner's application for closure, the City's planning commission found, *inter alia*, that" [t]he proposed payments for in-place market value are inadequate" ; that Park Owner's moving cost estimates were by that point "outdated" and did not comply with City ordinance "with regard to required information such as the in-place market value of each mobile home"; that proposed relocation benefits do not include "first and last month's rent and security deposit" (*cf.*, AR 1418-1419); and that Park Owner's impact report "does not contain a sample of independent appraisals to augment staffs analysis of the in-place market value mobile homes." (AR 1783-1785.)

The City's planning commission formally denied Park Owner's mitigation payment "adjustment" request for failure to "include a report prepared by an expert… substantiating why the relocation assistance obligations would result in a take of property in violations of the U.S. or California Constitutions and, if so, the minimum extent that such obligation would have to be adjusted to prevent a taking of property...." (AR 1784-1785.) The City's planning commission further formally rejected staffs recommendation for the issuance of a negative declaration, on the grounds that inadequate relocation benefits paid for existing alternate housing could force the construction of affordable replacement housing that could have a significant effect on the environment. (AR 1785.)

On July 2, 2009, Park Owner appealed the decision of the City's planning commission to the city council. (AR 1748-1749.) The City set Park Owner's appeal for hearing on September 8, 2009. (AR 1786, 1789.)

E. The City's Cross-Complaint and the City Council's Continuance "to a Date Uncertain".

***7** On August 4, 2009, the City sued Park Owner in a separate lawsuit, seeking declaratory relief as to whether "in place value" under the City's 2008 ordinance constitutes a "reasonable cost of relocation" under Government Code § 65863.7. The City also seeks declaratory relief as to the legality of its 2008 ordinance provision mandating that the "reasonable cost of relocation" on mobile home park closure must be greater than or equal to the statutory relocation benefits payable by government agencies under Government Code § 7260 *et seq.* for purposes of displacement for public use.

Using the case number of its new action, city staff then recommended to its city council that the public, hearing on Park Owner's closure application be continued to a "date uncertain" pending "resolution" of the City's action. (AR 1796.) On September 8, 2009, the city council voted unanimously to continue Park Owner's application for park closure to a "date uncertain". (AR 1797.)

On September 30, 2009, the Court consolidated both actions. The City's declaratory relief action was then bifurcated from Park Owner's causes of action for purposes of trial.

The city's declaratory relief action was heard as a court trial on December 18, 2009, after briefing by all sides, including

amicus on behalf of the park residents, and lengthy oral argument. The matter was taken under submission.

This Statement of Decision follows.

I

THERE IS NO SUPPORT FOR THE CITY'S POSITION THAT THE LEGISLATURE INTENDED TO INCLUDE "IN PLACE VALUE" DAMAGES AS A COMPONENT OF "REASONABLE COSTS OF RELOCATION"

Beginning in 1980, an entity or person proposing to convert a mobile home park to another use was obligated to file an impact report with respect to displaced residents: (Stats. 1980, c. 879, p.2760, § 2.) The impact report was required to address "the availability of adequate replacement space in mobilehome parks." (*Id.*) As a condition of such change, the 1980 law allowed the local agency to compel the applicant "to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park." (*Id.*)

Perhaps most importantly, the 1980 version simply established a "minimum standard" for local regulation, "and shall not prevent a local agency from enacting more stringent measures." (Stats. 1980, c. 879, p.2760, § 2.) The statute was rewritten in 1985, and for the 1985 revision, Park Owner provides a legislative history through Legislative Intent Service. At least as to legislative committee reports and testimony considered by the Legislature, this Court judicially notices such material. (See *Quelimane Co. v. Stewart Title Guaranty Co.*, 19 Cal. 4th 26, 46 [fn.9].)

"When statutory language is reasonably subject to more than one interpretation… we may consider 'extrinsic aids, such as legislative history'." *Hughes v. Pair* (2009) 46 Cal. 4th 1035, 1046. "[0]ur task is to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results." *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal. 4th 381, 388.

The 1985 version of Government Code § 65863.7 deleted the "minimum standard" language of the 1980 version, and no longer authorized a local agency to enact "more stringent measures" than statutory requirements. (Stats. 1985, c.1260, § 1.) This, according to the legislative history, implies that "local agencies cannot do more than what the state requires." (Legisl. Hist., at AP-1.) Further, the 1985 amendment made clear that **"[t]he steps required [by a local agency] to mitigate shall not exceed the reasonable costs of relocation."** (*Id.*)[7] According to bill's author, Sen. Craven: "**The bill thus sets a state standard in which local governments cannot exceed in requiring mitigation of the closure or conversion**." (Legisl. Hist, at PE-8.)

***8** Upon passage of the 1980 urgency legislation, surveys were taken and it was calculated that the number of proposed *new* mobile home spaces in California (22, 172) was approximately *ten times* the number of existing non-mobile home spaces proposed for conversion to "non-mobilehome uses" (2253.). (Legisl. Hist., at SP-12.) Accordingly, at the time of the 1985 amendment, it was determined that "park conversions do not appear to be a statistically significant threat to the mobilehome housing stock." (*Id.*, at SP-19.)

Moreover, the 1980 law left room for considerable disparity "from community to community" as to the extent of mitigation which could be compelled from a park owner. (Senate Select Committee on Mobilehomes, Background Paper, August 17, 1984, pp. 6-7.) According to Senator Craven, the bill's author, some communities had been requiring "*dis*location allowances". (*Id.*, at testimony, p.l.)

The stated goal of a park owner's mitigation requirement was "the guarantee of *adequate replacement housing* for dislocated residents." (Legisl. Hist, at PE-10.) Even at that time, it was noted that in certain areas, that there "are no spaces, very few, that will accept a mobilehome over two years old. (Senate Select Committee on Mobilehomes, August 17, 1984 hearing, testimony at pp. 8-9.)

In discussing impact of park closure upon displaced residents, state senate history notes that "the cost to a mobilehome owner of moving a mobilehome averages $5000." (Legisl. Hist., at AF-2 and PE-5; Senate Select Committee on Mobilehomes, August 17, 1984 hearing, testimony at pp. 8-9; "conclusion, p. 1 ["$3000 to $5000 or more"].) At the same time, concern was expressed for park owners with older parks for which the cost of necessary capital improvements exceeded the value of the park "when the land can in the long run be used for more productive purposes." (Senate Select Committee on Mobilehomes, August 17, 1984 hearing, at "conclusion, p. 2.)

In this light, the first question presented is whether the City's ordinance requirement that a park owner pay "in place" value in additional to other costs is a "reasonable cost of relocation" within the meaning of Government Code § 65863.7. Clearly, it is not.

The 1985 legislation, slightly changed from in the 1980 statutory language, allows a local agency to condition closure of a mobile home park upon mitigation of "any adverse impact of the conversion, closure or cessation of use on the ability' of the mobilehome park residents to find adequate *housing* in a mobilehome park." The 1985 legislation, in addition to adding "closure or cessation of use" to the 1980 language, deletes the term "adequate *space*" in favor of "adequate housing". (See Stats. 1980, c. 879, p.2760, § 2.) Though this change can be attributed to a clarification of intent to provide relocation costs for resident owners and tenants, as opposed to non-resident owners, it also suggests that it is alternate *housing* in another mobile home park, as opposed to availability of alternate space for the mobile home, is the revised focus of the statute.

Though loss of "in place" value to a mobile home owner (z. *e.*, space renter) is certainly a concrete and calculable "adverse impact" of park closure in the broadest sense, such a liberal reading disregards the balance of the same statutory clause that such adverse impacts be upon "the ability of the mobilehome park residents *to find* adequate housing in a mobilehome park". (Government Code § 65893.7(e).) While arguably a mobile home owner could not afford to move into an analogous park facility without receiving "in place" value for loss of the existing space, such focus, borrowing words from Senator Craven, would be upon "*dis*location" damages and not upon "relocation costs". And in the 1985 statute, the Legislature made it clear that the maximum sum of such "adverse impacts" upon the ability to find alternate mobile home housing, whatever its constituent parts, may not exceed "**the reasonable *costs* of relocation**"; not consequential damages arising from dislocation. (Government Code § 65893.7(e).)

***9** While it seems intuitively obvious that a third party "tenant" of a mobile home (*i.e.*, subtenant of a "space" renter) would *not* be entitled to relocation benefits including the out-of-pocket cost of physically relocating a mobile home, the 1985 legislation is completely unclear as to how "adverse impact" costs are to be calculated as to such a tenant. Here, it is equally unclear how a mobile home owner (*i.e.*, space renter) could likewise be entitled to the reasonable cost of physically moving their mobile home to a different park, when everyone agrees that there is no other park within a reasonable distance that will take the mobile home. (See, *e.g.*, AR 889.)

This Court has not been asked at this juncture to render such advisory opinions, the issue now being whether dislocation damages including loss of "in place" value at the closing park falls within the definition of "reasonable costs of relocation". There is absolutely nothing in Government Code § 65893.7 suggesting such an interpretation, despite the obvious hardship the Legislature has placed upon a mobile home owner/space tenant who must forfeit any investment in and/or expectation of return of "location value" "equity".[8]

To the extent there are constitutional property rights of a mobile home owner adversely implicated by such legislation; our Legislature has not placed of the burden of compensating "locational loss" damages upon the mobile home park owner. It is not the function of the judicial system to question the wisdom of the Legislature.

II

THERE IS NO SUPPORT FOR THE CITY'S POSITION THAT THE LEGISLATURE INTENDED TO MAKE

GOVERNMENT CODE § 7260 RELOCATION ASSISTANCE BENEFITS THE "STARTING POINT" FOR CALCULATING § 65893.7(e) "REASONABLE COSTS OF RELOCATION"

When the State of California, or a subordinate public agency or special district, displace people and/or businesses due to "public action" deriving from some form of property acquisition, including condemnation, there is a comprehensive statutory scheme through which to compensate those who are displaced. (Govt. C. § 7260 *et seq.*)

"The primary purpose of the California Relocation Assistance Act ("Act") is to ensure that displaced persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on these persons. (Gov. Code, § 7260.5.) Pursuant to the Act, public entities must adopt rules and regulations to implement payments and administer relocation assistance. (Gov. Code, § 7267.8; see Cal. Code Regs., tit. 25, § 6000 et seq.)" *Bi-Rite Meat & Provisions Co. v. City of Hawaiian Gardens* (2007) 156 Cal. App. 4th 1419, 1426.

According to 25 Cal.Code Regs. § 6090, in pertinent part:
"(a) General. A public entity shall make a payment to a displaced person who satisfies the pertinent eligibility requirements of section 6084 and the requirements of this section, for actual reasonable expenses specified below and subject to the limitations set forth in subsection (c) of this section for moving himself, his family, business, farm operation or other personal property. In all cases the amount of a payment shall not exceed the reasonable cost of accomplishing the activity in connection with which a claim has been filed.

***10** "The moving and related expenses for which claims may be filed shall include:
(1) Transportation of persons and property not to exceed a distance of 50 miles from the site from which displaced, except where relocation beyond such distance of 50 miles is justified;

(2) Packing, crating, unpacking and uncrating personal property;

(3) Such storage of personal property, for a period generally not to exceed 12 months, as determined by the public entity to be necessary in connection with relocation;

(4) Insurance of personal property while in storage or transit; and

(5) The reasonable replacement value of property lost, stolen or damaged (not through the fault or negligence of the displaced person, his agent, or employee) in the process of moving, where insurance covering such loss, theft or damage is not reasonably available.

(6) The cost of disconnecting, dismantling, removing, reassembling, reconnecting and reinstalling machinery, equipment or other personal property (including goods and inventory kept for sale) not acquired by the public entity, including connection charges imposed by public utilities for starting utility service."

In addition to Government Code § 7262 moving expenses, Government Code § 7263 requires payment up to $22,500 to displaced homeowners of acquisition costs of a replacement dwelling; increased interest costs on the financing of a replacement dwelling; and title, recording and closing fees on a replacement dwelling. Government Code § 7264 requires payment of up to $5250 to any displaced tenant to accommodate a new lease or part of a down payment on a dwelling. Government Code § 7267.2 requires the acquiring agency to provide an appraisal, calculation and offer to the displaced owner of just compensation for the real property being taken for public use.

In its 2008 ordinance (AR 835), the City incorporates this complex statutory scheme into mobile home conversions and closures as a baseline *minimum* of compensation, by mandating: "In no case shall any cost of relocation be less than that which would be required under the California Relocation Assistance Law, California Government Code § 7260, et seq., as if the project were [sic] deemed caused by state action."

California's relocation assistance law for state action, including condemnation, was drafted in 1969 (Stats. 1969, c.1489, p.3043, § 1), long before the creation of Government Code § 65893,7 or any of its amendments. In enacting the 1985 amendment to Government Code § 65893.7, which *maximized* relocation payments by the park owner with reference to "the reasonable costs of relocation", the Legislature was expressly cognizant of the relocation assistance law (see, *e.g.*, Senate Select Committee on Mobilehomes, August 17, 1984 hearing, testimony at pp. 8), yet elected not to reference Government Code § 7260 *et seq.* as the statutory standard for § 65893.7.[9]Stated another way, nowhere did the Legislature say or even infer in § 65893.7(e) that" [t]he steps required to mitigate shall not exceed the reasonable costs of relocation *as defined in* *Government Code § 7260 et seq.*"[10]

***11** While one might logically assume that the State would not mandate relocation benefits as to its own condemnation activities unless such costs were objectively "reasonable", there is absolutely nothing in § 65893.7 which imports those standards. Moreover, the 2008 City ordinance does not try to equate the Government Code § 7260 *et seq.* relocation benefits with "reasonable costs of relocation" under § 65893.7. In light of the fact that the City adopted Government Code § 7260 *et seq.* relocation benefits as a "rock bottom" starting point, implementing a statute for which "reasonable relocation costs" is the statutory ceiling, one can only infer that then City ordinance deems Government Code § 7260 *et seq.* relocation benefits to be simply a *partial* list of "reasonable relocation costs" under § 65893.7.

Government Code § 7260 *et seq.*, uses the terms "relocation benefits" (§ 7260(c)(2)), "relocation plan" (§ 7260(i)(3)(F)-(H)), "relocation assistance" (§§ 7260.5, 7261, 7261.5, 7262, 7269), "temporary relocation" (§ 7260.7), and "relocation appeals" (§ 7260.6). When discussing statutory payments, the state condemnation scheme utilizes the terms "relocation assistance payments" (§§ 7267.8, 7272.3, 7273) and "relocation benefits payments" (§ 7269.1). Nowhere does Government Code § 7260 *et seq.* appear to utilize the term "relocation *costs*", so fundamental to § 65893.7(e). Where the Legislature uses particular language in a statute, the omission of such language in a similar statute tends to show a different legislative intent. *Gans v. Smull* (2003) 111 Cal.App.4th 985, 990.

The City acted in excess of its statutory authority by mandating payment of "locational loss" ("in place" value) damages within its municipal ordinance defining "reasonable costs of relocation" under Government Code § 65893.7. The City further acted in excess of its authority by mandating a minimum payment of those "reasonable costs of relocation" premised upon the public agency condemnation requirements of Government Code § 7260 *et seq.*[11]

To some degree, this ruling also effectively resolves that portion of Park Owner's petition asserting that the City's utilization of "in place' values to compute "reasonable costs of relocation" is "invalid and unenforceable"; not because such computation "takes [Park Owner's] property without just compensation" as alleged in the petition (¶ 60), but because such computation exceeds the scope of the City's authority under Government Code § 65893.7. To the extent the City is seeking guidance from this Court's ruling as to opposed to providing excuse to further delay Park Owner's 2006 application, it appears that the City staff's project approval recommendations of June 22, 2009 (AR 1393-1424) would, upon backing out the $1,484,332 in improperly mandated "in place market value" payments, fairly reflect "reasonable costs of relocation" within the meaning of Government Code § 65893.7(e).

***12** This Court consolidated Park Owner's petition and the City's declaratory relief action with the understanding and belief that the two actions would be heard simultaneously. Because that did not happen, this Court *sua sponte* severs the City's declaratory relief action and this ruling from Park Owner's petition for all purposes; returning the City's declaratory relief action and this ruling to its former court number, 56-2009-00354680-CU-MC-VTA. In this manner, upon a form of judgment which Park Owner shall prepare forthwith, the City may, if it wishes, obtain timely and direct review upon the determinations of law now adjudicated in its declaratory relief action.

Costs in 56-2009-00354680-CU-MC-VTA to Park Owner upon itemized cost bill.

Dated: January *8*, 2010

<<signature>>

Glen M. Reiser

Judge of the Superior Court

Footnotes

[1] The Government Code mandates that prior to conversion, closure or cessation of use of a mobile home park, the applicant is to submit an impact report addressing "the availability of adequate replacement housing in mobilehome parks and relocation costs" as to proposed displaced *residents.* Govt. Code § 65893.7(a). The applicable agency, upon review of the impact report, may condition the change of use upon "mitigation" of the adverse impacts of the change in use upon "the ability of displaced mobilehome park *residents* to find adequate housing in a mobilehome park". Govt. Code § 65893.7(e). As a limitation upon the local power to condition such change "**[t]he steps required to mitigate shall not exceed the reasonable costs of relocation.**" (*Id.*) (Emphasis added.)

[2] The Conejo Mobile Home Park has 49 rentable spaces. (AR 1399.) Of those, five contain mobile homes owned by Park Owner; 32 are owner-occupied primary-homes; two are owner-occupied second homes; and 11 are renter-: occupied. (AR 1406.) Nearly half of the mobile homes of known age are more than 40 years of age; none are less than 10 years old. (*Id.*) Space rents vary between **$326.18 and S342.ll per month**, with one exception at a higher rental. (AR 1648.)

[3] The ordinance was self-designated "Erickson's Law" (AR 827), presumably in recognition of Rich Erickson, president of the Conejo Mobile Park Residents Association (AR 1034).

[4] Nowhere do the City's 2006 and 2008 ordinances define "in place" value; nor does "in place" value appear to be a term of art utilized in statutory or case law. Nor was the City's counsel or *amicus* counsel particularly helpful when asked for a definition at oral argument; nor does the record reflect how these "forecast" numbers were calculated. As best the Court can decipher, the "in place" value is effectively the "equity" that a willing mobile home park space buyer is willing to pay a willing mobile home park space seller for the privilege of renting a particular space; with its concomitant rent control benefits, park facility appurtenances, and location. Stated another way, the dozens of MLS listings identified in impact report (AR 1082-1083 [summary]) have listing prices between $35,000 and $699,000, which amounts all would clearly seem to be far in excess of the personalty value of the mobile home itself. That differential is presumably the "in place" value.
City staff defines "in place" value as the sum of "physical value" and "locational value" of the mobile home. (AR 1412.) City staff defines "locational value" as "the right to a space in a mobile home park… with below market rents." (AR 1411-1412.)

[5] The City does not include this correspondence in its administrative record.

[6] Again, the City does not include this correspondence in its administrative record.

[7] According to the legislative history, these ameliorative provisions were designed "to prevent the more extreme hardships on park owners". (Legisl. Hist., at PE-3.)

[8] A more difficult question, not presented here, is whether the "reasonable costs of relocation" for a mobile home owner under Government Code § 65893.7 (e) could include the "in place" ("location") value premium to purchase a comparable unit at *another* mobile home park. The City's ordinance here compensates only for loss of "locational" value at the closing park; not the costs of "buy-in" at another facility. Nowhere in the legislative history are such "buy-in" costs contemplated.

[9] Even absent such express reference in the legislative history, it is assumed that the Legislature has in mind existing laws when it passes a statute. *In re Eddie L.* (2009) 175 Cal.App.4th 809, 815.

[10] "In the construction of a statute … the office of the judge is simply to ascertain and declare what is … contained

therein, not to insert what has been omitted, or to omit what has been inserted....." *California School Employees Assn. v. Kern Community College Dist.* (1996) 41 Cal.App.4th 1003, 1011.

[11] In addition to a constitutional mandate, part of the statutory relocation "benefits" scheme of Government Code § 7260 *et seq.* requires the public agency to pay "just compensation" to a proposed condemnee (Govt. C. 7267.2), a requirement which the City also places upon any closing park owner under its 2008 ordinance. (AR 827.) While "reasonable costs of relocation" under § 65893.7 might conceivably be a *de facto* subset of "just compensation", it is clearly not the entirety of just compensation in the condemnation context. Though the City is hopefully not preserving this issue for a subsequent declaratory relief action against Park Owner, it should be intuitively obvious that Park Owner is not a condemnor and cannot be held to such a standard which, among other things, violates the limitations of Government Code 665893.7(e).

End of Document

From: **Boyd Hill** BHill@jacksontidus.law
Subject: FW: Imperial Avalon MHP Update
Date: July 1, 2020 at 4:33 PM

BH

From: Boyd Hill
Sent: Tuesday, June 16, 2020 3:56 PM
To: 'Tim Tatro'
Cc: Julie Thorpe-Lopez
Subject: RE: Imperial Avalon MHP Update

Tim

Please see my comments/questions below in blue font.

Boyd Hill
Attorney
bhill@jacksontidus.law
D: 949.851.7491
O: 949.752.8585
F: 949.752.0597
www.www.jacksontidus.law

Jackson Tidus
A LAW CORPORATION
Jackson Tidus
2030 Main
Street, 12th Floor
Irvine, CA 92614

From: Tim Tatro [mailto:tim@tatrolopez.com]
Sent: Friday, June 12, 2020 7:41 PM
To: Boyd Hill
Cc: Julie Thorpe-Lopez
Subject: Imperial Avalon MHP Update

Hi Boyd,

It's been awhile since we last spoke,

Are you trying to imply that we are not communicating? We communicated just a week prior to your email regarding your then most recent demand, which was to hold a meeting in the park on one day's notice, which untimely demand the park owner graciously

accommodated.

there has been some confusion in the park lately,

What confusion are you talking about? Who or what caused the confusion?

and I wanted to touch base and clear up a few things.

What information does this email provide to clear up any such confusion?

The Imperial Avalon Mobile Estates HOA recently held elections,

Civil Code section 798.53 requires the park owner to communicate with HOA representatives on behalf of requesting members. In order to effectively communicate with HOA members, it is important to know what members the HOA represents and to have confidence that the representatives speak on behalf of the members. California Corporations Code section 18330 requires that a quorum of the members take part in any election, and that prior to an election there be a written notice to all members. A quorum is defined as one-third of the members. The park owner is aware that a meeting took place on June 7 at which the park owner understands that only about two dozen tenants were present. Thereafter, a tenant represented herself to be a president of an HOA, but subsequently informed park management that she was resigning. Thus, if you want to clear up things, please provide a copy of the written notice and a list of the tenants to whom the notice was sent and a summary of the vote tally so that park management can confirm the validity of the elections and representatives and the composition of the members.

voted in a new board,

See above, please provide names of board members so that the park owner may effectively communicate with the HOA.

and is beginning to be in a position to better communicate with the rest of the park

Please explain how and in what manner communication with the rest of the park was not previously effective by the prior board. Please explain how the new board is in a position to better communicate with the rest of the park. Please explain who you mean by the "rest of the park". Does that mean the members of the HOA or those who are not members of the HOA?

as social distancing requirements have begun to relax a little bit.

Please explain how social distancing rules prevented the board from communicating with the rest of the park. Was the previous board prevented from calling, writing, emailing or personally meeting with the rest of the park in any manner?

The prior board wanted to tie up loose ends, so those that were left resigned, closed out accounts, and ended their relationship with us.

Far from clearing up things, your email and the above attached letter have created a great deal of confusion. From the attached letter that was provided to the park owner, it appears that the pre-existing HOA board was still intact and operating on June 8, one day after the purported elections on June 7. According to your above statement, the accounts for the HOA were closed out, evidencing that the HOA was disbanded and not merely tying up loose ends.

1. Please provide information confirming that your firm ceased work for the HOA as then constituted as of June 8.
2. Please provide information on what date after June 8 the HOA was reconstituted and accounts were reopened.
3. Please advise whether the HOA membership is the same or different following June 8.
4. Please advise on what date elections were held after June 8 and provide details regarding the election, quorum and notice, as requested above.
5. The above attached letter confirms the HOA position that the HOA intends to act according to the City's May 13 approval of the Relocation Impact Report. Please advise whether your firm sought and obtained conflict waiver letters from the prior board members and prior HOA members regarding your new representation and regarding any new positions you intend to assert different from the HOA position as of June 8.

Immediately thereafter, the new board retained us, so Tatro & Lopez is still counsel of record for the HOA.

Immediately after what event? On what date? By whom? We have no information as per the above questions to support your assertion that you have been properly retained by the same HOA entity with the same members, whether the HOA entity has been duly reconstituted, whether the HOA has property elected a new board, and whether conflict waivers have been obtained following your termination on June 8. Please respond to the above requests for information.

We remain committed to working with you, Faring, and the City of Carson towards a mutually acceptable outcome.

This is perhaps the most confusing statement in your email. You made last minute demands to the City that demonstrated a lack of collaboration with park management. Despite that, the City met all of your demands and incorporated them into the Planning Commission approval. In addition, the Planning Commission added nearly $2 million more in benefits under Brabant's review appraisal and the park owner payment of $10,000 of your fees. Was that not a mutually acceptable outcome? Did you not state on the record before the Planning Commission that the park owner offer was generous? Thereafter the park owner entered into negotiations with the City in an attempt to avoid appeals by those tenants who were seeking a different outcome, and put on the table approximately $2 million more towards settlement, which negotiations you were aware of through the City's facilitation thereof. At that point, the HOA board apparently decided it no longer needed your services. What then do you consider to be a mutually acceptable outcome? Am I to understand that what you mean by a mutually acceptable outcome is for your firm to receive as a contingency a significant portion of the pending or any similar settlement offer, rather than the tenants, despite having a limited if any role in negotiating the settlement, and previously being retained on an hourly basis? If that is what you mean by mutually acceptable outcome, how does that square with the interests of the clients you purport to represent? Have you communicated the pending settlement terms to those tenants you purport to represent, both prior and existing?

But recent events highlight the need to formalize the lines of communication a little more.

I am perplexed by this statement. Please explain what recent events you are referring to? I can only recall speaking with one tenant, and that was in regards to a separate matter involving sale of that tenant's sale of a coach to a proposed new tenant more than 6 months ago. Are you asserting that park management is forbidden from speaking with tenants? Please provide evidence that there has been any attempt by me to interfere with your relationship with your clients.

You've asked, appropriately, that we communicate with Darren Embry and other Faring representatives through your office.

Why is it that I had to even ask you to cease communicating directly with my client? Have I ever communicated with your clients?

We have respected that.

If you respected that, I would not have had to ask you to cease communicating with my client. If you respected that, you would not send me emails asserting an unsubstantiated narrative that glosses over serious legal and factual issues pertaining to authorized HOA voting and actions, conflicts of interest, and ongoing settlement negotiations, in an apparent attempt to brow beat my client into not effectively exercising authorized and open political speech on a pending matter before the City.

Likewise, we must insist that Darren (and any other park owner representative) refrain from communicating with park residents directly about any of the legal issues related to park closure.

The Rules of Professional Conduct do not prevent represented persons from communicating directly with each other regarding the subject of the representation. (*San Francisco Unified School Dist. Ex rel. Contreras v. First Student, Inc.* (2013) 213 Cal.App.4th 1212, 1233-1234.) Since the beginning of the park closure process, the park owner has openly communicated with park tenants about factual and legal issues related to park closure. This is a political process and all participants have the right to effectively, respectfully and openly communicate regarding the issues before the City. The City insisted that this open line of communication take place. This open line of

that this open line of communication take place. This open line of communication has been crucial in the process, and continued right on through the Planning Commission hearing, with your firm's involvement. Please provide me with legal authorities to support your demand to stifle the political process and client to client communication. If there are those you represent who have expressed to you their wish to have no contact with park management regarding the closure process, please provide me with their names so that park management can avoid communicating with them. I trust you will agree that those tenants who filed appeals separate from the appeal your firm filed or who contact park management and provide a statement that they are not represented by your firm are not represented by your firm.

We appreciate your assistance in making sure these boundaries are respected.

I certainly have not and will continue to not have contact with your clients, but I cannot tell park management to not communicate with their tenants or to not exercise their political rights. What I am not sure about is whether your firm is respecting boundaries regarding conflicting representation, association formation and elections, and solicitation, given the lack of information and conflicting information about reinstatement of the HOA and its elections and conflict waivers. Given the lack of information and conflicting information regarding these matters, it is hard for me to understand who you represent or if you validly can represent anyone going forward. I doubt whether you have informed tenants of the pending settlement negotiations, given that you are not communicating about those terms with me and instead trying to shut down lines of communication. Perhaps you don't want to inform tenants of those existing settlement negotiations because it may not fit a later narrative in which you might claim you are entitled to contingency fees upon eventual settlement or other resolution.

Anytime a landlord is also potentially an adverse party, there is a risk of these lines getting blurred.

There can be no blurring of lines regarding the park owner if there is no requirement to refrain from communication with tenants. There may be a significant blurring of the lines regarding who is your client, whether the HOA has been validly reconstituted and valid elections

whether the HOA has been validly reconstituted and valid elections held, and whether you have obtained proper conflict of interest consents.

There is obviously the need to be able to run the park, so management personnel can certainly converse with residents about day to day issues like payment of rent, maintenance requests, reserving facilities for special events and meetings, etc.

Are you trying to tell me how to advise my client? Are you not violating the very non-interference principles you are purporting to espouse?

But there should be no discussions about home valuations, relocation benefits, appraisers, or the administrative appeals on file.

Are you trying to coerce my client to not communicate with tenants about these matters that are the subject of a political hearing before the City?

Those are legal issues and neither park management nor Darren should be discussing them with park residents.

I am having a hard time understanding what legal issues are contained in the factual issues you are stating above. The City has a ministerial duty under the law to determine if the benefits contained in the Relocation Impact Report are sufficient, but do not exceed the reasonable cost of relocation. These are factual issues pertaining to a political process. Are you saying that I must prevent my client's (or anyone else's) political speech as a participant in the political process?

As I'm sure you would agree, there should be no pressure from Faring personnel put on park residents to accept a particular proposal, nor threats made as to what will happen if the residents decline a particular offer.

What pressure or threats are you talking about? This kind of lawyer narrative that insinuates things as if they are happening is beneath you. The only pressure and coercion I am aware of is contained in your email that I am responding to and your prior email about the June 5 meeting. Regarding offers, please communicate with me on behalf of those you purport to represent regarding the pending settlement proposal.

My office is easily reachable and we are happy to convey to park residents updates on any relocation issues.

Park management is quite capable of and under ongoing obligation to communicate any updates regarding relocation matters. See the above request regarding the pending settlement proposal.

We know that Faring is eager to move forward with this project and we are trying to complete our due diligence as quickly as possible.

We were under the impression that you completed your due diligence and that the position you represented to the Planning Commission was the position of your client. We previously provided or had the City provide all information you requested and you never indicated to the Planning Commission that your position was without adequate review or without consent of your clients. Please advise if you now contend that you did not have client consent to make your proposals before the Planning Commission. Regarding your due diligence, it has come to my attention that all of the Brabant appraisal summaries ("Summary of Netzer's Conclusions and Special Calculations") for each individual tenant that were provided to you confidentially during settlement negotiations based upon your promise that your use of the summaries was for attorneys' eyes only are now circulating among tenants. Please explain how this happened.

But, as you know, communication within the park has been extremely difficult. The HOA meeting we attended last week was our first opportunity to speak with residents directly since the pandemic began several months ago.

Please explain this statement. Please explain how and in what manner you were unable communicate with tenants you claim to represent by internet, mail, telephone or personal visit.

And the fact that we ended up having to conduct the meeting in a parking lot, while broadcasting sensitive information over a public address system, was hardly ideal. I'm sure you have the ability to communicate with your client in a far more discrete fashion with much greater frequency. So please understand that everything is taking longer than it would otherwise because of the logistical difficulties that we are navigating.

The more I read this email, the more confused I become. I understood that the purpose of the June 5 meeting at the park was for you to have

individual one on one communications with your existing clients in a place away from park management offices, which is why you insisted on having the meeting outside and declined park management's suggestion to use a table and chairs set up just inside the recreational room patio window. I was confused at the time why you did not just go door to door and meet with your clients outside their homes if that was your intent. Now, I understand from your email, if I am not mistaken, that instead the purpose of this meeting was to solicit tenants to rehire your firm following your impending/anticipated termination. Contrary to what was represented to me, instead of having one on one communication with represented clients, you apparently held an open meeting and used a loudspeaker to solicit tenants, apparently contrary to the wish of your then existing client. Your admitted use of a loudspeaker in an open and public place would seem to negate any claimed client confidentiality arising from the meeting. Please advise whether the meeting was instead a solicitation meeting and please advise what steps were taken to avoid waiver of confidentiality on the part of your clients, assuming those attending were your clients at the time.

We are working with the City Attorney on our remaining concerns and look forward to more substantive discussions with you down the road.

I had hoped that your firm could do a great service to help facilitate tenant communication and not seek to siphon away park owner relocation benefits under the proposed settlement terms. After reading your email, I am concerned that what is going on is an attempt to insert your firm back into the process under a contingency arrangement. The concern of the park owner and City in this matter has been to comply with the law and provide relocation benefits directly to the tenants, not to shell out money to benefit lawyers (including my firm) by contentious process and polarized positions. Please provide information as requested above that will help reassure the participants in this process that you share those objectives.

Sincerely,

Tim Tatro
Tatro & Lopez, LLP
12760 High Bluff Drive, Suite 240

San Diego, CA 92130-2018
E-mail: Tim@TatroLopez.com
Web: https://www.tatrolopez.com
Tel: 858.244.5032 Fax: 858.847.0032

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