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Title:	REPORT ON CITY'S FINAL VICTORY IN THE COLONY COVE PROPERTIES, LLC V. CITY OF CARSON MATTER, ESTABLISHING IMPORTANT LEGAL PRECEDENT AND SAVING THE CITY NEARLY $8 MILLION AND RESULTING IN ANOTHER VICTORY FOR THE CITY IN THE COLONY COVE YEAR 2012 MATTER SAVING THE CITY ANOTHER NEARLY $5 MILLION EXPOSURE (CITY COUNCIL)				
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Report to Mayor and City Council

Tuesday, January 22, 2019

Consent

SUBJECT:

REPORT ON CITY'S FINAL VICTORY IN THE COLONY COVE PROPERTIES, LLC V. CITY OF CARSON MATTER, ESTABLISHING IMPORTANT LEGAL PRECEDENT AND SAVING THE CITY NEARLY $8 MILLION AND RESULTING IN ANOTHER VICTORY FOR THE CITY IN THE COLONY COVE YEAR 2012 MATTER SAVING THE CITY ANOTHER NEARLY $5 MILLION EXPOSURE (CITY COUNCIL)

I. SUMMARY

As was reported to the Council in May 2018, the Ninth Circuit Court of Appeals reversed the nearly $8 million judgment that James Goldstein, the owner of Colony Cove Mobile Estates, obtained against the City of Carson in 2016 in a jury trial. Goldstein had appealed the Ninth Circuit decision to the United States Supreme Court. Staff had therefore advised the City Council to keep $8 Million set aside for this potential liability payment pending a decision by the United States Supreme Court.

On January 14, 2019, the United States Supreme Court ruled in favor of the City of Carson by refusing to review the Ninth Circuit decision. The Ninth Circuit reversal is now final and secure. The $8 Million can be returned to the City's reserves. This twelve

year battle to preserve mobilehome park rent control in Carson is finally at an end in favor of the City and its residents.

While this federal court lawsuit was focused only on rents charged in 2007 and 2008, the outcome of this case has had the ripple of effect of another important victory for the City. Mr. Goldstein had also sued the City challenging the City's 2012 rent control decision on Colony Cove as a prelude to seeking close to $2 Million in damages and attorneys' fees. Upon the City's victory in the Colony Cove Properties case and the City Attorney offices' demand that he dismiss his now frivolous lawsuit,. he dismissed that state court case representing the avoidance of potentially as much as $4.8 million in damages and attorneys in future litigation against the City.

II. RECOMMENDATION

TAKE the following actions:

1. RECEIVE AND FILE the City Attorney's staff report.

III. ALTERNATIVES

IV. BACKGROUND

Mr. Goldstein purchased Colony Cove Mobile Estates in April 2006, at the apex of the real estate bubble. He paid $23,050,000 for the park, financed with an $18,000,000 purchase mortgage loan. The annual interest payments on Mr. Goldstein's loan were $1.2 million, far more than the prior owner's total annual profit of $718,000.

In September 2007, Mr. Goldstein applied to the Rental Review Board for a $618 rent increase, later amended to seek "only" $200 - a 50% rent increase in the park. Over 80% of the requested rent increase was solely to cover Mr. Goldstein's purchase mortgage interest expenses.

In June 2008, the Rental Review Board heard resident testimony and presentations from several experts and appraisers, and granted Mr. Goldstein a $36.74 rent increase, refusing to pass through the mortgage interest expenses.

Mr. Goldstein launched a legal attack the likes of which the City of Carson had never before seen, all in an attempt to make the park's senior citizen residents pay for his mortgage expenses, and to argue the law *guarantees* him a profit regardless of whether excessive and unreasonable rents were the result of his choice to take out a loan on the park.

Mr. Goldstein filed no fewer than three lawsuits. After losing at every level in state court, resulting in a favorable state court published opinion approving the use of the MNOI method of analysis of rent increase application (*Colony Cove Properties, LLC v. City of Carson* (2013) 220 Cal. App. 4th 840 [petition for review denied]), and a Ninth Circuit opinion dismissing his first federal lawsuit (*Colony Cove Properties, LLC v. City of Carson* (2011) 640 F.3d 948), which the United States Supreme Court also declined to review, he filed a state court lawsuit challenging the Board's rent increase decision. After losing at

every level in his state court lawsuit, all the way to the California Supreme Court, he filed a second federal lawsuit. The trial court in the second federal lawsuit dismissed every single one of his claims, except one - a single "as-applied" regulatory taking claim alleging that the Board's decision was a "taking" of his property.

In April and May 2016, the trial court held a jury trial on the regulatory taking claim. Mr. Goldstein's attorneys incessantly argued the City had acted unfairly and "changed the rules" on rent control after Goldstein purchased the park. Of course, this was deliberately deceptive. The Ninth Circuit had already held in the first federal lawsuit in 2011 that Carson's rent control rules were never changed. The rules were exactly the same both before and at all times after Goldstein purchased the park.

At all times, Carson's ordinance allowed the Board to apply any methodology and consider any relevant factors in determining what rent increase would be "fair, just, and reasonable", and clearly stated that park owners are not entitled to any particular rent increase. It was therefore entirely *unreasonable* for Mr. Goldstein to expect that the Board would approve a 50% rent increase solely to cover his mortgage interest (which he could refinance and reduce the very next day after the Board approved the rent increase; he did in fact refinance a few years after purchasing the park). Mr. Goldstein's requested rent increase would have been more than double the largest increase ever awarded by the Board. What's more, in Mr. Goldstein's first rent application after purchasing Carson Harbor Village in 1983, the Board denied nearly all of his purchase mortgage interest expense. Mr. Goldstein was fully aware of the Board's wide discretion and prior position on mortgage interest expense when he purchased the Colony Cove park in 2006.

Despite that evidence, the jury at trial rendered a $3.3 million verdict against Carson. The trial judge then tacked on $4 million in attorney fees and interest.

The City Council unanimously decided to appeal the trial court judgment.

The Ninth Circuit Court of Appeals correctly recognized that simply the loss of a subjectively expected income stream cannot amount to a regulatory taking. The economic impact on the fair market value of the *entire* property must be *severe*. In addition, there could be no taking here because it was entirely unreasonable for Mr. Goldstein to expect a huge rent increase to cover his enormous mortgage interest expenses. One Ninth Circuit judge noted Mr. Goldstein was relying on evidence that Goldstein's own attorneys admitted was "fraudulent".

The Ninth Circuit's opinion reversed the trial court judgment and ordered the trial court to enter judgment in favor of Carson. The opinion vindicates the City's position over the last decade. It settles the question that a profit is not required to avoid a regulatory taking of property, and provides a landmark precedent protecting rent control and other regulatory programs from taking claims.

Judgment after appeal has been entered in the City's favor, which entitled the City to recover $89,127.41 in costs, including the cost of the appeal bond. The City received payment of the costs from Colony Cove in September 2018.

The Ninth Circuit litigation involved only the "Year 1" and "Year 2" cases. The "Year 3", "Year 4" and "Year 5" lawsuits were left "waiting in the wings" in the trial court for Mr.

Goldstein to pursue if he prevailed in the Ninth Circuit.

Given the jury verdict in the Year 1 and Year 2 cases was nearly $8 million, the additional Years 3, 4, and 5 cases could have added more damages and been economically disastrous for the City.

However, likely realizing his long odds in light of the City's victory as to Years 1 and 2, and based on his long string of litigation losses against the City of Carson, Mr. Goldstein voluntarily dismissed the Year 5 case with prejudice in November 2018. We anticipate the remaining cases will be dismissed in the future.

The Year 5 case, had it followed the same path as the Year 1 case, could have resulted in a judgment against the City of as much as $1.65 million and an award of attorneys' fees in Mr. Goldstein's favor of as much as $3.3 million, in addition to the City having to pay its own litigation fees and costs. Thus, the U.S. Supreme Court's decision not to review the Ninth Circuit decision regarding Year 1 and the City Attorney's demand for dismissal of further frivolous actions against the City resulted in Mr. Goldstein dismissing the Year 5 case, saving the City potentially more than $4.8 million.

V. FISCAL IMPACT

Nearly $8 million in favor of the City and avoidance of potentially another nearly $5 Million of liability against the City for the Colony Cove year 2012 (Year 5) application.

VI. EXHIBITS

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