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Report to Mayor and City Council

Tuesday, May 01, 2018

Consent

SUBJECT:

REPORT ON CITY’S VICTORY IN THE NINTH CIRCUIT COURT OF APPEALS IN THE COLONY COVE PROPERTIES, LLC V. CITY OF CARSON MATTER, ESTABLISHING STATEWIDE IMPORTANT LEGAL PRECEDENT AND SAVING THE CARSON NEARLY \$8 MILLION (CITY COUNCIL)

I. SUMMARY

On April 23, 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. The Ninth Circuit entirely dismissed Mr. Goldstein’s lawsuit and ordered the trial court to enter judgment in favor of Carson.

This landmark court decision all but ends more than a decade of litigation over Mr. Goldstein’s 2007 attempt to charge Colony Cove’s senior citizen residents nearly \$800,000 per year (in the form of over \$600 per month additional rents to the residents) to cover the mortgage interest payments from his 2006 purchase of the park. Mr. Goldstein essentially argued he must be guaranteed a profit by law. The Ninth Circuit rejected that argument and held the City’s Mobilehome Park Rental Review Board acted lawfully in refusing to pass through the mortgage interest expenses to the residents.

This court victory represents yet another in a long line of courageous and successful stands taken by the Carson City Council to protect the City's fixed-income, senior citizen mobilehome park residents from relentless legal attacks on the City's rent control ordinance. The end result is complete vindication and renewed, strong legal precedent to protect rent control not only in Carson, but throughout the state of California and the rest of the Ninth Circuit.

The decision has further state wide implications because it confirms that public agencies have broad leeway to implement rent control and other regulatory programs adopted in the public interest. It confirms that only the most extreme-and therefore unusual-regulation can constitute a 'taking' of private property under the Fifth Amendment.

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 a \$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 has never before seen, all in an attempt to make the park's senior citizens residents pay for his mortgage expenses, and to argue the law *guarantees* him a profit regardless of whether excessive and unreasonable rents would result due to his choice to take out a loan on the park. Mr. Goldstein filed no fewer than three lawsuits.

In his first federal lawsuit, all the way to the United States Supreme Court, he had filed a state court lawsuit. After losing at every level in his state court lawsuit, all the way to the California Supreme Court resulting in a favorable published opinion (*Colony Cove Properties, LLC v. City of Carson* (2013) 220 Cal. App. 4th 840 [petition for review denied]), he filed a second federal lawsuit, the current case. 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” of the City’s 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; in fact, 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 when he purchased the Colony Cove park in 2006.

Despite that evidence, Goldstein misrepresented many issues to the jury. These misrepresentations to the jury were so outrageous that one of the Ninth Circuit Justices during oral argument called Goldstein’s so called evidence at best fraudulent. This was an unprecedented accusation by a United States Court of Appeals Justice. But it speaks to the misrepresentations by Goldstein and his attorneys to the jury into confusing the jury into entering a \$3.3 million verdict against Carson. The trial judge then tacked on \$4 million in attorney fees and interest.

Even in light of proposed enticing settlement by Goldstein, because they knew they are in the right, the City Council unanimously decided to appeal the trial court judgment to set the record straight.

On February 9, 2018, the Ninth Circuit Court of Appeals held oral argument on the appeal. The judges 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. As stated above, one of the Ninth Circuit justices 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. This is the best result because typically these cases are remanded back for a new trial. This Court however ruled for the City as a matter of law saving the City hundreds of the thousands of dollars in yet another trial expense. 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.

V. FISCAL IMPACT

As part of closing the books for FY15-16, the City set-aside \$7,817,334 from its General Fund balance pursuant to judgements filed on August 25, 2016 and October 5, 2016. The City retained the cash, but recorded a liability against it, thereby reducing fund balance. The City posted an appeal bond with the court at a cost of \$33,338 per year for 2 years (total of \$66,676).

With this victory, the City will reverse the liability recorded on the FY15-16 books, and the General Fund balance will increase by \$7.8 million. The City will also recover the cost of the appeal bond, further increasing the General Fund balance.

| | 6/30/2018 |
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| Estimated General Fund Balance (including sale of land for \$4.5 million) | \$22,553,322 |
| Reversal of Liability for Colony Cove Case | 7,817,334 |
| Recovery of Cost of Appeal Bond | 66,676 |
| Revised Estimated General Fund Balance | \$30,437,332 |

VI. EXHIBITS

1. Ninth Circuit Opinion (pp. 5-23)

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