Report to Mayor and City Council

Tuesday, July 07, 2020

Discussion

SUBJECT:

PUBLIC HEARING ON APPEAL OF CARSON PLANNING COMMISSION DECISION ADOPTING PLANNING COMMISSION RESOLUTION NO. 20-2695, APPROVING RIR NO. 05-20 SUBJECT TO SPECIFIED CONDITIONS, RELATED TO THE DETERMINATION OF RELOCATION IMPACT MITIGATION MEASURES TO BE PAID TO THE RESIDENTS OF IMPERIAL AVALON MOBILE ESTATES MOBILEHOME PARK IN CONNECTION WITH THE PARK OWNER'S PROPOSED CLOSURE OF THE MOBILEHOME PARK

I. SUMMARY

This matter is an appeal by Mayor Albert Robles from a decision of the Planning Commission dated May 13, 2020, approving RIR No. 05-20 (subject to specified conditions) related to the determination of relocation impact mitigation measures required to be taken by Imperial Avalon, LLC ("Park Owner") in connection with closure of the Imperial Avalon Mobile Estates mobilehome park ("Park"). The operative appeal was filed by Mayor Albert Robles on May 27, 2020.

The Park Owner is seeking to close the Park for subsequent redevelopment as a mixed-use development which would contain a senior housing component and facilities offering a continuum of care for seniors. However, the subsequent development project is not before the Council at this time.

This appeal relates solely to the determination of what relocation impact mitigation benefits the Park owner must pay to Park residents in closing the Park. Under state law, the Park Owner has a property right to close the Park, and therefore it is important to note that the Council is not deciding whether the Park owner "can" or "can't" close the Park. However, the City's approval of a Relocation Impact Report (RIR) is required pursuant to the City's park closure ordinance, Carson Municipal Code ("CMC") Section 912821, to ensure that the Park Owner takes reasonable measures to mitigate the adverse impact of the closure on the ability of the Park residents to find alternative housing. The City is limited in this role under California State law, specifically Government Code Section 65863.7(e) providing that the relocation impact mitigation measures required to be taken may not collectively exceed

the “reasonable costs of relocation.”

NOTE: THE PARK WILL NOT BE CLOSING UNTIL JANUARY OF 2022 AT THE EARLIEST, IRRESPECTIVE OF THE DECISION ON THIS APPEAL.

The Park Owner completed its application for approval of RIR No. 05-20 in April of 2020 by filing its RIR. The RIR was supported by an appraisal of the on-site investment value of each of the resident-owned homes in the Park conducted by certified appraiser Jim Netzer. The Netzer report was peer-reviewed by certified appraiser Jim Brabant, and the peer review report was also included with the application.

On May 13, 2020, the City’s Planning Commission conducted a public hearing on the RIR. During the hearing, the attorney for the Imperial Avalon Mobile Estates Homeowners’ Association (“HOA”) praised appraiser Brabant and requested five specific adjustments to the RIR, including a request that the Planning Commission adopt the Brabant peer review appraised numbers and not Netzer’s numbers. All such adjustments were approved by the Planning Commission by way of additional conditions imposed on the RIR. With these added additions (together the originally recommended conditions), the Planning Commission approved the RIR by adopting Planning Commission Resolution No. 20-2695 by a vote of 8-0 (the “Planning Commission Decision”). The aggregate appraised values by Netzer was $13,142,820. By adopting the Brabant peer review numbers, the aggregate appraised values adopted by the Planning Commission was $15,308,235.

As noted above, the Planning Commission Decision contains a condition, pursuant to the Park Owner’s voluntary promise, that the Park closure will not occur until January of 2022 at the earliest. This means that irrespective of the action taken by the Council on this appeal, no Park resident will be compelled to vacate the Park until January of 2022 at the earliest.

On May 27, 2020, Mayor Albert Robles timely appealed the Planning Commission Decision pursuant to CMC Sections 9128.21(F) and 9173.4, resulting in this appeal hearing (Exhibit 3). Three other appeals were also filed, but Mayor Robles’ appeal was completed before these other appeals, mooting any need for the City to determine whether such appeals were timely filed and/or completed, despite the fact that the Park Owner objected to the timeliness of filing and/or completion of such appeals. The filers of those appeals will have the opportunity to be heard in connection with this appeal hearing.

Although not intended to be exclusive of any grievances that the filers of the aforementioned appeals or any Park residents may wish to express during the hearing, Mayor Albert Robles and various residents (through communications either through the HOA attorney or on their own) have raised the following issues as concerns:

- Residents Who Purchased in Last Five Years Made Whole.
    - The Mayor has argued that Park residents who acquired their mobilehomes in the recent years should be entitled to receive, as the lump sum payment pursuant to Option B, an amount equal to the full purchase price they paid for their mobilehome *if* the appraised on-site value of their home (as appraised by Netzer and adjusted

pursuant to peer review by Brabant; the "Brabant PC Value") is less than their purchase price. If the Brabant PC Value is greater than the purchase price, they should be entitled to receive the Brabant PC Value.

- By way of example, approximately 40 households have purchased their homes in the Park since 2015. Even under the Brabant PC Value, some of these residents would be receiving less than 100% of the amount they paid for their home in relocation assistance.

- This point has also been raised by residents for consideration on appeal. Attached as Exhibit 4 is email correspondence from resident Brian Lee, Space No. 17 (and other residents' correspondence regarding the Planning Commission Decision, appeals to the City Council or the Park closure issues through June 30, 2020; correspondence received on or after July 1 will be submitted to the Council separately via email prior to the hearing). To this point, Mr. Lee specifically requests to be made whole because his household purchased their home 14 months ago and the appraised value has come in lower. They request that they at least be made whole by receiving their purchase price back.

- Long-Time Park Residents Not Penalized.

  - The Mayor has also asked for an analysis that does not penalize the Park residents who acquired their mobilehomes prior to 2007. Under the current appraisals, residents who purchased their homes prior to 2007 do not receive any minimum hold on the "present worth of leasehold value, adjusted for term of tenancy" component of the appraised on-site value. This issue has also been raised by various residents, including Peggy Anderson, the former president of the HOA.

- Affordable Housing Option Available to All Park Residents.

  - The Mayor also raised issues with respect to Option C. He believes all Park residents should be eligible to select Option C, not just those residents who qualify as extremely low, very low, or low-income households as provided in the Planning Commission Decision.

  - With this request comes an analysis point for the Council. If the Council is inclined to adopt this approach, the Council needs to deliberate and decide what rents moderate and above moderate income residents pay once they move back into the Future Housing.

- Extended Time Period for Right to Tenancy in Affordable Housing.

  - Several residents and the Mayor have also raised that the duration of the guaranteed right to tenancy in Future Housing pursuant to Option C should be increased from ten (10) years to at least twenty (20) years.

  - The estimated value of these benefits per household are as shown in the table below based on a 10-year vs. 20-year analysis (note: this information is based on

qualifying maximum income and maximum allowable rent levels which became effective as of July 1, 2020. Although the figures are normally updated each fiscal year, it is believed that the numbers will not be updated for the 2020-2021 fiscal year due to the COVID-19 pandemic):

IMPERIAL AVALON OPTION C: FUTURE HOUSING SUBSIDY CALCULATIONS

	MARKET (Rents per local market reporting)								
	STUDIO	$-PSF	ANNUAL	1 BR	$-PSF	ANNUAL	2 BR	$-PSF	ANNUAL
Unit Size	*530 sf*			*700 sf*			*950 sf*		
Current Rents	$ 1,564	$ 2.95	$ 18,762	$ 1,960	$ 2.80	$ 23,520	$ 2,565	$ 2.70	$ 30,780
	AFFORDABLE (Rents per *LAHCID Income and Rent Limits, Land Use Schedule VII*)								
	Monthly	Annual		Monthly	Annual		Monthly	Annual	
Ext Low	$ 384	$4,608		$ 439	$5,268		$ 493	$5,916	
Very Low	$ 640	$7,680		$ 731	$8,772		$ 822	$9,864	
Low	$ 768	$9,216		$ 877	$10,524		$ 987	$11,844	
Moderate	$ 1,407	$16,884		$ 1,608	$19,296		$ 1,809	$21,708	
SUBSIDIES*	STUDIO SUBSIDY			1 BR SUBSIDY			2 BR SUBSIDY		
	Annual	10 yrs	20 yrs	Annual	10 yrs	20 yrs	Annual	10 yrs	20 yrs
Ext Low	$ (14,154)	$ (141,540)	$ (283,080)	$ (18,252)	$ (182,520)	$ (365,040)	$ (24,864)	$ (248,640)	$ (497,280)
Very Low	$ (11,082)	$ (110,820)	$ (221,640)	$ (14,748)	$ (147,480)	$ (294,960)	$ (20,916)	$ (209,160)	$ (418,320)
Low	$ (9,546)	$ (95,460)	$ (190,920)	$ (12,996)	$ (129,960)	$ (259,920)	$ (18,936)	$ (189,360)	$ (378,720)
Moderate	$ (1,878)	$ (18,780)	$ (37,560)	$ (4,224)	$ (42,240)	$ (84,480)	$ (9,072)	$ (90,720)	$ (181,440)

** Subsidies do not include 30% payments for coaches, averaging $27,000.*

- Increased Lump Sum Payment Percentage for Residents Selecting Option C.

  - Another issue raised by the Mayor is the percentage of the Brabant PC Value to which residents are entitled as a lump sum payment upon selecting Option C. He has requested an analysis of whether the thirty percent (30%) threshold is sufficient to provide a subsidy for these residents while they are awaiting to move back into the Future Housing. As of the date of the posting of this agenda that report is not completed. Staff will provide such analysis to Council at the hearing.

- Increased Protections for Guaranteed Right to Tenancy Under Option C.

  - The HOA attorneys have raised concerns that the RIR condition applicable to Option C (Condition No. 10(c)) be redrafted in a form to ensure that residents' rights cannot be compromised by future conveyances of the Park property. Staff have now modified the condition for Council consideration to provide protections that all future owners be bound by this condition.

  - Pursuant to the HOA attorneys' request, the condition has also been modified by

staff for Council consideration to ensure that all necessary details of the program have been clearly addressed, and now provides that if a Park resident passes away after taking tenancy in Future Housing, his or her estate shall be made whole for the difference between the purchase price the resident paid for the mobilehome and the value of the benefits the resident realized pursuant to Option C. If a resident passes away before taking tenancy in the Future Housing, his or her rights shall revert to Option B, with the lump sum payment being available for the benefit of his or her estate.

Notwithstanding the aforementioned potential additional benefit conditions, the Council has discretion to impose different or additional conditions, subject to the requirements of Government Code Section 65863.7(e).

On July, 2, 2020, right before the posting of the Agenda, the Park Owner submitted two letters challenging the Planning Commission's decision demanding the appraised values awarded to be reduced to Netzer's numbers. Attached as Exhibit 5 are the Park Owner letters. The Council will be provided with a response to the Park Owner's allegations at the Council meeting. Given the lateness in getting these letters to the staff, there is not sufficient time to address the letters before the posting of the Agenda. **II. RECOMMENDATION**

1. ADOPT Resolution No. 20-___, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, MODIFYING, PURSUANT TO CARSON MUNICIPAL CODE §9173.4(C)(2)(b), THE DECISION OF THE CARSON PLANNING COMMISSION ADOPTING PLANNING COMMISSION RESOLUTION NO. 20-2695 RELATED TO APPROVAL OF RIR NO. 05-20 FOR THE DETERMINATION OF RELOCATION IMPACT MITIGATION MEASURES REQUIRED TO BE TAKEN IN CONNECTION WITH THE CLOSURE OF IMPERIAL AVALON MOBILE ESTATES MOBILEHOME PARK, BY IMPOSING ADDITIONAL BENEFIT CONDITIONS OF RIR NO. 05-20, AND AFFIRMING THE DECISION IN ALL OTHER RESPECTS (Exhibit 8).

III. ALTERNATIVES

1. TAKE another action the City Council deems appropriate, subject to the requirements of applicable law.

IV. BACKGROUND

A. History; Park Acquisition and Notice of Closure.

The Park is a 225-space mobilehome park located at 21207 S. Avalon Blvd, on the northwest corner of the intersection of E. 213th St. and S. Avalon Blvd, just southwest of the 405 freeway, and it has been in operation as a mobilehome park since 1974. As of the date of this report, there are 201 resident-owned mobilehomes in the Park.

In mid-2019, the property was purchased by the current Park Owner. The Park Owner first notified residents of its intention to close the Park via a letter dated September 20, 2019, and conducted an initial outreach meeting on October 9, 2019. On November 4, 2019, the

City Attorney and staff also hosted a meeting with the residents to discuss Park closure procedures, requirements, the City's Ordinance and to answer questions.

On or about April 4, 2020, the Park Owner sent a further letter to the Park residents providing an update on the status of the Park closure process. The Park Owner then completed its RIR application on April 8, 2020, and a notice of the public hearing before the Commission together with a copy of the RIR and relevant appraisal information was provided to the Park residents and mobilehome owners on April 10, 2020.

B. Proposed Relocation Benefits of RIR

The RIR, as filed with the City, provided three different proposed benefit packages for residents to choose from (subject to applicable eligibility requirements in some cases). A brief summary of the benefit packages, as originally proposed in the RIR, is as follows:

- **Option A**
    - In situations where it is feasible to relocate the mobilehome to a comparable park within a reasonable distance from the Park (generally within 50 miles), the Park Owner will pay the actual costs of moving the mobilehome and accessory structures (including disconnection and reconnection of utilities) and all personal property, a lump sum for first and last month's rent, security deposit, and one year's worth of rent differential at the new park, and up to $1,500 for necessary modifications to the mobilehome to accommodate a disabled person in the new park.
    - Notwithstanding the foregoing, no resident is required to select Option A. Even residents whose homes can feasibly be relocated to a comparable park within a reasonable distance have the choice of selecting Options B or C (discussed below) if they prefer.
- **Option B**
    - The Park Owner will pay residents who select this option a lump sum payment in the amount of the appraised on-site value of their mobilehome, as reflected in the appraisal reports submitted with the RIR, in exchange to title for the mobilehome, free and clear of any existing liens and encumbrances.
    - The Park Owner will also pay the costs of moving all personal property and disposing of the existing mobilehome.
- **Option C**
    - For extremely low, very low, or low income households, the Park Owner will offer a 10-year guaranteed right of tenancy at affordable housing rent levels in a future development owned by an affiliate of the Park Owner, located either on the subject property on which the Park is currently located or nearby (the "Future Housing"), plus a lump sum payment of 30% of the amount of the lump sum payment that would be made pursuant to Option B.

- This serves as a safety net, ensuring access to adequate housing for low income households who feel their lump sum payment pursuant to Option B would not be sufficient to enable them to obtain adequate replacement housing. The 30% lump sum payment (averaging approximately $23,000) is designed to serve as a source of funding to enable such households to lease housing in the interim period (expected not to exceed 2-3 years) until the Future Housing becomes available.

All options also include the services of a relocation specialist paid for by the Park Owner to help all Park residents find suitable replacement housing and make arrangements for the transition.

C. Planning Commission Hearing

The Planning Commission Hearing was conducted on May 13, 2020, via remote teleconferencing using the Zoom electronic software application due to public health concerns related to the declared local emergency regarding COVID-19.

All Park residents and non-resident mobilehome owners, as well as the RIR applicant and the legal counsel and representatives of the HOA (as it then existed; details provided in subsection E, below) were duly notified of the hearing in accordance with CMC §9128.21 (D). All interested persons were given the opportunity to join the Zoom meeting and thereby provide live public comment during the hearing, and the legal counsel for the HOA was permitted to speak at length, beyond the normal time allotted for public comment.

Additionally, all Park residents and members of the public were allowed to submit public comments via email until 3:00 p.m. on the day of the hearing. While many such comments were received and included in the hearing record for the Commission's consideration, a package containing approximately 15 comment letters that a Park resident attempted to submit in physical form on the day of the hearing was not retrieved in time to be included in the hearing record. The letters were handed to a security guard, who dropped them in the City Clerk's inbox, which was not specified as a place for submission of public comments in the public hearing notice. As a result, the package was not retrieved in time for the hearing. Each of these comment letters will be included in the record for this Council appeal hearing (Exhibit 4.A).

Finally, the Planning Commission hearing was broadcast live on the City's website and on the City's cable television channels, and translators were provided to translate the hearing live into four different languages: Spanish, Korean, Japanese, and Tagolog. Each translator joined the main Zoom meeting room, listened to the proceedings, and translated them live into a satellite Zoom meeting room which could be heard by the residents in need of the translation services for that language. The translators also translated public comments made in other languages into English in the main Zoom hearing for the benefit of the Commission and other hearing participants. There were at times over 100 resident participants via Zoom at the hearing.

D. Planning Commission Decision

The Planning Commission voted 8-0 to approve the RIR as recommended by staff, subject to the following additional RIR conditions requested by the HOA counsel:

- That the adjusted on-site values specified in Brabant's peer review report (the Brabant PC Values) shall be used, in lieu of the on-site values as appraised by Netzer, for purposes of calculating the lump sum payments to be made to residents pursuant to Option B (and the 30% portion of those amounts pursuant to Option C), representing an increase of over $2.1 million in the total appraised on-site value of all mobile homes in the Park, for an average of over $76,000 per mobilehome;

    - This was per staff's recommendation but was also subsequently requested by the HOA counsel.

- That the Park Owner shall pay the attorneys' fees for the services of the HOA's attorney to the then HOA, up to $10,000;

    - This was per the request of Commissioner Valdez made during the hearing, and agreed to by the applicant.

- That the Park Owner shall be required to pay residents their relocation benefits at least 60 days prior to their move-out date, as opposed to 30 days as specified in the staff-recommended conditions;

- That the Park Owner be required to pay for the services of an independent Special Master to adjudicate title disputes and special circumstance claims of Park residents, subject to the terms and conditions of the RIR as approved by the Commission;

- That a condition be added to require select adjusted appraisals of Park mobilehomes to be performed by Mr. Brabant where residents can demonstrate that the Netzer appraisal failed to take into account significant improvements or upgrades that had been made to their mobilehome; and

- That a universal/form early termination agreement, subject to review by the City Attorney's office, be established to ensure Park residents have the option (but not the obligation) to move out of the Park prior to the Park closure date and still receive full and timely payment of their relocation benefits.

The applicant indicated it was agreeable to all of the aforementioned RIR conditions added by the Planning Commission. (Exhibits 1, 2).

E. Appeals

The Planning Commission Decision was subject to appeal to the City Council within 15 days pursuant to CMC Sections 9128.21(F) and 9173.4. CMC Section 9173.4 provides that in the event an appeal is incomplete/deficient as filed, the City Clerk shall provide notice to the appellant of the deficiency, and the appellant shall correct the deficiency within seven

days of that notice or the appeal shall be deemed withdrawn.

Mayor Albert Robles timely submitted his appeal on May 27, 2020. Young Choi, on behalf of Park resident Suk Choi, submitted an appeal on May 26, 2020, but the appeal was not accompanied by the appeal fee required pursuant to CMC §9173.9 (the "Choi Appeal"). On May 28, 2020, two further appeals were received - one from Park residents Tetsuo Kagiwada and Philip Park, attaching a petition signed by 51 other Park residents (the "Kagiwada/Park Appeal"), and one from Tatro & Lopez, LLP, on behalf of the HOA (as it then existed; details provided below).

The Tatro & Lopez Appeal, like the Choi Appeal, did not include the required appeal fee, and neither the Choi appellant nor the Tatro & Lopez appellant subsequently paid the fee, despite being provided with notice and a seven-day period to do so by the City Clerk. The Kagiwada/Park Appeal was originally accompanied by an erroneous appeal fee check that could not be cashed due to internal inconsistencies in the amount stated to be payable, but after notice from the City Clerk provided on June 1, 2020, a corrected check was submitted on June 2, 2020.

The Park Owner objected to all appeals, asserting that Mayor Robles' appeal was deficient due to failure to provide a "statement of grounds," the Choi Appeal was deficient due to failure to pay the required appeal fee, the Park/Kagiwada Appeal was not timely filed, and the Tatro & Lopez Appeal was both incomplete (due to the failure to pay the required fee) and untimely.

The City Attorney and City Clerk collectively determined that Mayor Robles' Appeal was complete as filed, because CMC §9173.4(B)(3)(d) provides that in the event of an appeal filed by a member of the City Council, the statement of grounds need only provide, in substance and effect, a request that a specific decision be reviewed by City Council, and no other grounds for appeal need be stated to perfect such appeal. Mayor Robles' Appeal specified that the Planning Commission Decision was being appealed to the City Council, meeting this standard. As a result, it was not necessary for the City to make a determination as to whether the other appeals were timely filed and/or completed as asserted by the Park Owner, since the matter would proceed on Mayor Robles' Appeal and all other appellants would have an opportunity to be heard in connection therewith. The City Attorney and City Clerk responded to the appellants and Park Owner accordingly on June 16, 2020, and the appeal fee submitted by the Park/Kagiwada appellants is being refunded in full.

It should be reiterated that the Tatro & Lopez Appeal was filed despite the fact that all additional benefits and modifications to the RIR requested by the HOA counsel prior to and during the Planning Commission Hearing were granted as part of the Planning Commission Decision.

Notably, on June 8, 2020, 11 days after the Tatro & Lopez Appeal was filed on behalf of the HOA, the HOA terminated Tatro & Lopez, LLP as its legal counsel; attached as Exhibit 6 is the termination letter from the HOA president Peggy Anderson. However, Tatro & Lopez, LLP has since asserted that the members of the HOA Board that was responsible for terminating the relationship subsequently resigned from their posts, and a new HOA Board

was elected that re-engaged Tatro & Lopez, LLP to represent it in connection with the Park closure moving forward. Therefore, it is unclear whether or not the HOA, as it existed at the time the Tatro & Lopez Appeal was filed, legally constitutes the same entity as the HOA as currently constituted. For purposes of this Appeal, staff have treated Tatro & Lopez as the current HOA's counsel and have worked towards providing them with all requested information and incorporating their requests into the Appeal.

F. Contentions of Choi, Park/Kagiwada, and Tatro & Lopez Appellants

The Choi Appeal, Park/Kagiwada Appeal, and Tatro & Lopez appeal collectively comprise the following key arguments regarding asserted grounds for appeal of the Planning Commission Decision. Staff's assessment of each argument is included below the respective contentions.

- *Contention: Residents should have been allowed to be physically present at the hearing, or the hearing should not have been conducted during the COVID-19 pandemic or the statewide stay-at-home order. Proceeding without allowing in-person participation deprived residents of their rights to meaningfully participate and violated the Governor's Executive Order suspending provisions of the Brown Act to facilitate remote meetings during the COVID-19 pandemic.*

  Staff's Assessment:

  - The COVID-19 pandemic unfortunately is an extremely protracted public health crisis that led to federal, state and local emergency declarations made in early-to-mid March that remain in effect to date, and that will remain in effect for the foreseeable future. Stay-at-home orders, social distancing requirements, and prohibitions on large gatherings will in all likelihood be a way of life for many months to come as they have been over the past four months, as the United States has been unable to move past the high rates of confirmed cases and deaths that have characterized the pandemic, and that appear to have worsened recently.

  - Despite the catastrophic effects of the pandemic, City business must go on, and the City must treat applicants for City permits and entitlements fairly. To continue operations while protecting public health and safety, the City has adapted its public hearing practices, both at the City Council level and the Planning Commission level, to conduct meetings via electronic remote teleconferencing using the software application known as "Zoom."

  - The Planning Commission hearing was conducted exclusively on Zoom with no public gathering area made available. This approach was sufficient to allow full participatory rights to members of the public and applicants alike, both under the Brown Act and consistent with principles of due process. All residents, their representatives, and the applicant's representatives, were permitted to participate in the Zoom hearing telephonically and/or via video conferencing and thereby provide live public comment, in addition to having an opportunity to submit written public comments in advance. Meeting invite information was available to all interested residents, and many residents participated, as did their legal counsel and the

translators. This remote meeting setup substantially replicated the participatory access and opportunities that would have been available in an in-person meeting while protecting against the spread of COVID-19. At times, over 100 residents participated in the Planning Commission meeting.

- The requirement to "provide at least one publicly accessible location from which members of the public shall have the right to observe and offer public comment at the public meeting," referenced in one of the appeals, was contained in paragraph 11 of Executive Order N-25-20, issued on March 12, 2020. This paragraph was withdrawn and superseded by paragraph 3 of Executive Order N-29-20, dated March 17, 2020. The replacement provision did not contain the requirement. Instead, it provided that "a local legislative body . . . is authorized to hold public meetings via teleconferencing and to make public meeting accessible telephonically or otherwise electronically to all members of the public seeking to address the local legislative body . . . ." The manner in which the Planning Commission hearing was conducted fully complied with Executive Order N-29-20.

- Notwithstanding the fact that the Zoom hearing approach is sufficient to protect the legal rights of all interested parties, the Community Center will be made available as a publicly accessible location from which residents may observe and offer live public comment at the City Council hearing on this appeal. Social distancing requirements and guidelines will be strictly observed, with chairs being spaced six feet apart and no overflow permitted. Facemasks will be required for all attendees. Attendance will be first-come, first-served, and all persons who do not arrive in time to find an empty chair will be required to leave. Those in attendance will be able to observe the hearing on a projector screen and offer public comments live via a microphone and podium.

- *Contention: The Commission violated the Brown Act by failing to consider all public comments due to the package of approximately 15 letters that was not retrieved, and by failing to read all comment letters out loud.*

  Staff's Assessment:

  - The public hearing notice issued for the Commission hearing did not provide for submission of comments in physical form via any comment box or other location. Instead, written comments were to be emailed to the City's Planning Division. This was due to concerns that allowing physical submission would increase the risk of spread of COVID-19, and that the City would not be able to reliably retrieve such comments due to a drastic reduction in staffing that it was experiencing due to personnel actions taken in response to the COVID-19 emergency.

  - Nonetheless, City staff made every effort to regularly check the main comment box outside of City Hall, which remained accessible to members of the public, and to retrieve the comments from that box for inclusion in the hearing record. However, the package at issue was not submitted to the main comment box outside of City Hall. Instead, it was handed to a security guard, who placed it in the City Clerk's comment box, which is located inside City Hall in an area that was not open to the

public due to the COVID-19 restrictions. Because the package was delivered on the day of the hearing, and was submitted to a location that was not expected or anticipated by Planning Division staff as a place where public comments could have been received, it was unrealistic to expect the comments to be included in the Commission hearing record.

- Because the comments were not properly submitted, and because all residents were afforded the opportunity to provide live public comment in addition to submitting advance written comments, the failure to include these comment letters in the Commission hearing record did not violate the Brown Act. As noted above, all of the comment letters will be included in the record for the City Council hearing on this appeal (Exh. 4.A). Nevertheless, these comments received were similar to the other comments that the Planning Commission did get and that are now part of this Appeal as well.

- *Contention: The City violated the Dymally-Alatorre Bilingual Services Act by not allowing translation on written public comments.*

  Staff's Assessment:

  - The Dymally-Alatorre Bilingual Services Act (Gov't Code §§7290 *et seq*.; the "Act"), as it pertains to local agencies, requires local agencies serving a substantial number of non-English-speaking people to employ a sufficient number of qualified bilingual persons in public contact positions or as interpreters to assist those in such positions to ensure provision of information and services in the language of the non-English-speaking person. The Act provides that the determination of what constitutes a substantial number of non-English-speaking people shall be made by the local agency, and not provide any further definition, requirement or guideline on this subject.

  - The Act also provides that any materials explaining services available to the public shall be translated into any non-English language spoken by a substantial number of the public served by the agency. The determination of when these materials are necessary when dealing with local agencies shall be left to the discretion of the local agency.

  - The Act expressly provides that it is required to be implemented only to the extent that local, state or federal funds are available, and to the extent permissible under federal law and the provisions of civil service law governing the local agencies.

  - As indicated by the foregoing, the Act applies only generally to information and services provided by local agencies, and does not contain any requirements specific to public hearings, public comments, or mobilehome park closures. Local agencies are accorded broad discretion in determining whether they serve a substantial number of non-English speaking people, and the determination is made with respect to the full population or constituency of the public agency, not any specific group or subset thereof. Local agencies also have broad discretion in determining when translated materials explaining services available to the public are necessary. Where

a local agency has not made these determinations in the affirmative, the Act does not apply (unless a court has required the agency to reverse a negative determination - there are no known instances of this having occurred). Furthermore, even where the Act applies and these determinations have been made in the affirmative, the agency is required to comply with the Act only to the extent that funding is available.

- In the case of the City of Carson, the determination of whether the City serves a substantial number of non-English speaking people is reserved to the City Council's discretion, and would be made based on assessment of the totality of the City's population, not just the residents of the Park. Additionally, such a determination, or the application or implementation thereof, would be made in a quasi-legislative capacity, as a rule applicable to the City's personnel system and all services and programs the City provides, not in the context of a specific hearing or entitlement process. City staff is not aware of any affirmative determination having been made pursuant to the Act that would apply to the Park or the RIR at issue.

- Notwithstanding inapplicability of the Act's requirements, the City provided translators for four different languages (Spanish, Japanese, Korean and Tagalog) at the Planning Commission hearing for the benefit of the Park's residents. Translation of the hearing's proceedings was therefore available in all languages that have any known representation in the Park in terms of groups of non-English speaking residents. The translators were available to, and did, translate public comments from such languages into English.

- To the extent that there were any written public comments submitted in other languages that were not translated to English, such non-translation was not due to any attempt to prohibit or affirmatively not allow such translation. No request for translation of such comments was made during or prior to the hearing, and such non-translation, although not consistent with the best intentions of City staff in arranging for the services of the translators, does not constitute a violation of the Act.

- *Contention: The appraised value was not fair market value; an appraisal based on fair market value should be conducted*.

  Staff's Assessment

  - We believe Appellants are trying to discuss a "comparable sales" approach. Neither the City's park closure ordinance nor state law requires a straight comparable sales appraisal to be conducted. CMC §9128.21(C)(6) requires the RIR to contain "the appraised on-site value and off-site value of each of the mobile homes in the park." This is to assist the Commission in determining whether an RIR applicant has proposed "reasonable measures . . . in an effort to mitigate the adverse impact of the conversion on the ability of the park residents to be displaced to find alternative housing," which is the operative finding set forth in CMC §9128.21(E) which, if made in the affirmative, requires the Commission to approve the RIR.

  - CMC §9128.21(E) enumerates several different types of relocation impact mitigation

measures that the Commission may impose, but clearly provides that the Commission is not required to consider or impose any or all of these measures, and that the Commission may consider or impose other measures as it sees fit, subject only to the requirement that the Commission shall not approve the RIR unless it can make the required finding in the affirmative, and the limitation that the measures required shall not collectively exceed the "reasonable costs of relocation."

- The City used two appraisers to assess what constitutes "on-site value" under CMC §9128.21(C)(6), and both agreed that the term, which is not defined in the ordinance, is not synonymous with "fair market value" as determined by a comparable sales approach.

- According to Mr. Brabant's peer review report (p.3, "Type and Definition of Value"), Mr. Netzer, in his appraisal report, "concludes that the type of value conclusions required by the City ordinance for 'on-site value' is investment value rather than market value. He cites the definition of investment value from the Appraisal of Real Estate published by the Appraisal Institute (13th Edition): 'The specific value of a property to a particular investor or class of investors based on individual investment requirements; distinguished from market value, which is impersonal and detached.'"

- Mr. Brabant's peer review report goes on to state that in other consultations he has "communicated a methodology of estimating 'on-site value' with a *starting point* being the in-place market value of the homes assuming the park is not going to close *and then making appropriate deductions* for the benefit of below market rents throughout the term of the tenancy. The different deductions and starting points can certainly produce different valuation results, but that is not to say that one or the other is clearly right or wrong, but they represent differences of opinion. Mr. Netzer clearly explains his reasons for utilizing investment value and details the steps involved in the calculations." (*Id*.; emphasis added).

- As reflected by the above, Appraisers Netzer and Brabant both agree that "on-site value," as used in the City's park closure ordinance, does not have the same meaning as fair market value under a comparable sales approach. Instead, it is reasonable to opine either that the term means investment value, or that it involves determining such market value only as a starting point for the analysis, subject to appropriate deductions for the benefit of rent control.

- There is nothing in the City's park closure ordinance nor in state law which provides that "on-site value" means "comparable sales fair market value," nor that residents displaced by a mobilehome park closure must be paid the fair market value of their mobilehomes. By requiring Mr. Netzer's appraisal to be peer reviewed by Mr. Brabant, the City ensured that proper appraisal standards, methods and opinions were used, and as discussed in the next contention below, the peer review approach also serves the best financial interests of Park residents.

- The average appraised "on-site value" of the mobilehomes in the Park ($76,160, inclusive of the adjustments made pursuant to the Brabant peer review report) compares favorably with the relocation benefits paid in other park closures across

the state, as shown in the following table:

Park (City)	Year	Benefits
Audiss RVP (El Cerrito)	2016	Costs of relocation and some rent waived ($8,110 to $10,610).
Ebb Tide MHP (Newport Beach)	2015	Fixed Amount - $9,000, $14,500, or $15,700 based on MH size.
Bayshore MHP and Bayair MHP (Mountain View)	2014	Off-site fair market value plus $2,000 relocation costs. Average value paid = $19,171.
Magnolia (Glendora)	2014	90% of the costs of relocation or off-site value ($12,500 to $15,300).
Anchor MHP (Costa Mesa)	2012	In-place appraised value (amount not determined/disclosed) and relocation expenses.
Catalina MHP (Oceanside)	2008	Costs of relocation or 7 months free rent or MHP in Hemet owned by park owner ($1,009 - $1,321 RV's; $8,695 - $10,255 MH's).
Bel Abbey (Carson)	2008	Payment of the appraised off-site values, ranging from $2,650 to 11,500, as well as moving/relocation costs ranging from $1,500-$5,100
Wagon Wheel (Oxnard)	2006	85% of cost of relocation (85% of $14,983 to $19,331) and six months free rent.
Snug Harbor - El Nino (Costa Mesa)	2004	Mobilehomes made available at no cost to the homeowner (at the park owner's discretion), or new Cavco one-bedroom MHs at affordable financing or the costs of relocating ($3,000 - $6,300 + $1,000 to seniors), but no payment for the value of the lost mobilehomes.

- The average appraised on-site value of the mobilehomes in the Park, as adjusted pursuant to Mr. Brabant's peer review and approved by the Commission for use as the Option B lump sum payment available to all Park residents, is $76,160. This amount, even taken on its own and exclusive of the value of the other benefits provided pursuant to Option B, also exceeds the average amount paid in the De Anza Cove mobilehome park closure in San Diego. The average payout in that case, which was not determined or paid until many years after the closure due to protracted litigation, and which Tatro & Lopez, LLP on its firm website claims as a "notable" victory by them in a mobilehome park closure case, was approximately $75,000 per home. (Attached as Exhibit 7 is the page from Tatro & Lopez website). In that case, the City had originally awarded merely $4,000 per home. Staff have also been informed that Tatro & Lopez used Mr. Brabant as an expert in that case.

- Furthermore, the value of the benefits provided to residents who select Option C is estimated to greatly exceed that of Option B.

- *Contention: The appraisal should have been conducted by Jim Brabant; having Jim Netzer conduct the appraisal and Jim Brabant peer review the Netzer appraisal report violated CMC §9128.21(C)(6).*

  Staff's Assessment:

  - CMC Section 9128.21(C)(6) provides that an RIR, in order to be complete for application purposes, must contain, among other things, "[t]he appraised on-site value and off-site value of each of the mobile homes in the park. The appraiser is to be selected by the City and the cost is to be borne by the applicant."

  - The RIR contained the appraised on-site and off-site value of each mobilehome in the Park as required by CMC §9128.21(C)(6). The original appraisal was conducted by Jim Netzer, and Mr. Netzer's appraisal was then peer-reviewed by Jim Brabant. By approving of this arrangement, including both the use of Jim Netzer for the original appraisal and Jim Brabant for the peer review, the City "selected" both and each of these appraisers for purposes of subsection (C)(6). There is no specific requirement that Mr. Netzer be *retained* by the City in order to be "selected" by the City, nor is there any requirement for the City to "select" Jim Brabant to perform the original appraisal. Therefore, there is no violation of subsection (C)(6).

  - The City approved of the foregoing approach believing it would serve the best interests of the Park residents. On or about June 11, 2020, the HOA attorneys demanded from the City Attorney's office that Mr. Brabant conduct a sampling of 10 homes using his own independent methodology instead of conducting a peer review of the Netzer appraisal. Although not legally required to take this step, staff honored this request and requested Mr. Brabant to conduct the requested sampling. Mr. Brabant has conducted a sampling of 20 representative homes in the Park based on the City Attorney's instruction to appraise the on-site value of the homes under CMC §9128.21(C)(6) using his own independent methodology (and no others) as though he was conducting an original appraisal, unrestrained by the role of a peer reviewer. Mr. Brabant has verbally provided information that the aggregate numbers are similar to those of his peer review numbers. On July 1, 2020, in a phone call with the City Attorneys' office, Mr. Tatro requested that the City Attorney's office confirm the following: 1) that in this sampling, Mr. Brabant has used his own independent methodology, 2) discussing the methodology used, and 3) whether the results are or are not influenced by any COVID-19 considerations. The City Attorney's office felt it was important to obtain this information directly from Mr. Brabant and in writing so there is no ambiguity or questions regarding whether staff or the City Attorney are misinterpreting and/or misrepresenting any of this information. As of the date of the posting of this Agenda, which is only one day after the discussion/request, the report is not completed. But staff have requested a written report from Mr. Brabant addressing Mr. Tatro's questions, and this report will be provided to the Council and will be shared with the residents as soon as it is available and at the latest at the Council hearing.

- *Contention: The mitigation measures proposed in the RIR and considered by the Commission did not include the full panoply of mitigation options that the Commission is supposed to evaluate under CMC §9128.21(E), and therefore did not adequately address all adverse impacts of Park closure as required by the Mobilehome Residency Law.*

  Staff's Assessment:

  - CMC §9128.21(E) specifies eight different types of mitigation options that the Commission "may" impose to mitigate adverse impacts created by the closure, and states that the mitigation option(s) imposed by the Commission "may include, but [are not] limited to" those eight enumerated options. There is no requirement that the Commission consider or impose all eight options or any one of them, and failure to do so does not equate to failure to evaluate or address the adverse impacts of the Park's closure consistent with the requirements of CMC §9128.21(E) or other applicable law.

  - CMC §9128.21(E) does require the Commission, in order to approve an RIR, to make an affirmative finding that reasonable measures have been provided in an effort to mitigate the adverse impact of the conversion on the ability of the park residents to be displaced to find alternative housing. The Commission made this finding, citing to the benefit package options proposed by the RIR (Options A, B and C), as discussed above. As part of this finding, the Commission determined that the RIR adequately analyzed the adverse impacts of closure of the ability of the park on the residents (all of whom are being displaced) to find alternative housing. The Commission noted that the RIR addressed the potential for mobilehomes in the Park to be relocated to other Parks within a reasonable distance, the availability and cost of replacement housing within a reasonable distance of the Park, both in other mobilehome parks (available spaces and mobilehomes) and in apartments and condominiums, and the estimated costs of moving. Based on this data, the Commission found that the proposed measures encompassed in the relocation benefit packages as approved by the Planning Commission Decision constituted reasonable measures to mitigate the adverse impacts of the Park closure on the ability of the residents to find alternative housing.

- *Contention: The relocation distance defined in the RIR (50 miles) is too far*.

  Staff's Assessment:

  - The relocation distance of 50 miles is only relevant in the context of Option A, which can be selected where it is feasible for a mobilehome to be relocated to a comparable park within a reasonable distance (set at 50 miles by default). Even then, it is only used as a standard for determining what mobilehome parks can be considered in determining availability of spaces and eligibility for Option A.

  - There are very few available spaces in mobilehome parks within 50 miles of the Park, and industry standards dictate that a mobilehome park with an available space

will only accept a mobilehome to be relocated into that space if the mobilehome is no more than 5-10 years old and in good condition. Based on those standards, the Park Owner's relocation specialist anticipates that fewer than 10 mobilehomes in the Park will qualify for this option.

- More importantly, even those residents who qualify for Option A will not be required to select it; instead, they will remain eligible to select Option B if they prefer, which would result in payment of a lump sum allowing them to find housing in the City of Carson or nearby. Additionally, Option C, which is available to low, very low, and extremely low income households (and which Mayor Robles has suggested should be available to all Park households), provides for affordable replacement housing to be provided nearby the Park, in the City of Carson. Therefore, no resident will be required to relocate 50 miles away from the Park based on this specified relocation distance.

G. Other Resident Concerns

Although not asserted in any appeal, some Park residents have also expressed concerns regarding the terms of Option C. These concerns, and staff's responses, are set forth below.

- *Concern: What if a Park resident selects Option C and subsequently changes their mind and wants to select Option B?*

  - Staff's Response: Under the proposed "Increased Protections for Guaranteed Right to Tenancy Under Option C" (p.4)), Residents who select Option C will have the right to revert to Option B, and thereby receive the full 100% lump sum payment of the Brabant PC Value, any time until they take possession of their unit in the future housing provided by the Park Owner pursuant to their guaranteed right of tenancy at affordable housing rates.

- *Concern: What happens to a Park resident's Option C rights if the Park Owner sells the Park property?*

  - Staff's Response: Under the aforementioned proposed increased protections pursuant to Option C, the Park Owner will be required to agree to have a covenant recorded on the land that is the subject of the Future Housing in which Park residents will have their guaranteed right to tenancy at affordable housing rates. The covenant will ensure that even if the Park Owner sells the subject property, the subsequent owner will be required to honor the residents' guaranteed right to tenancy in the subject property.

- *Concern: What happens if a Park resident who selects Option C passes away before the end of his or her guaranteed right to tenancy in the future housing unit?*

  - Staff's Response: Under the aforementioned proposed increased protections

pursuant to Option C, if a Park resident passes away before taking possession of the Future Housing unit, his or her Option C selection will automatically revert to Option B, with the lump sum payment being available for the benefit of his or her heirs or beneficiaries. If a Park resident passes away after taking possession of the Future Housing unit but before the guaranteed tenancy period has expired, then if the total value of the Option C benefits received the resident prior to his or her passing (i.e., the amount of rent subsidy realized plus the partial lump sum payment received) is less than the purchase price he or she paid for his or her mobilehome in the Park, his or her estate will be entitled to payment for the difference.

V. FISCAL IMPACT

None.

VI. EXHIBITS

1. Planning Commission Staff Report and Minutes (pgs. 20-70)
2. Planning Commission Resolution No. 20-2695 (pgs. 71-85)
   A. Legal Description of Property
   B. RIR No. 05-20
   C. Conditions of RIR No. 05-20 (as approved by Commission)
3. Mayor Robles Appeal (pg. 86)
4. Residents' Correspondence (pgs. 87- 307)
   A. Planning Commission Comment Letters
5. Park Owner Letters dated July 2, 2020 (pgs. 308-345)
6. HOA Counsel Termination Letter (pgs. 346)
7. Page from Tatro & Lopez Website (pg. 347)
8. Proposed Resolution No. 20-113 (pgs. 348-354)

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