

Carson Harbor Village, Ltd. v. City of
Carson
BS 112239

Tentative decision on petition for writ of
mandate: granted

Petitioner Carson Harbor Village, Ltd. ("CHV") seeks a writ of mandate to overturn a decision by Respondent City of Carson ("City") to deny CHV's subdivision application for the conversion of a rental mobilehome park to a condominium ownership park. The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioner CHV commenced this writ proceeding on November 30, 2007, seeking to overturn the City's denial of a subdivision application submitted by CHV as part of the process for converting a rental mobilehome park to a condominium ownership-style park. CHV is the owner of Carson Harbor Village Mobile Home Park ("the Park"), a mobilehome park located in the City.

B. Standard of Review

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085.

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15. The pertinent issues under section 1094.5 are (1) whether the respondent has proceed without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP §1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP §1094.5(c).

The agency's decision at the hearing must be based on a preponderance of the evidence. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The hearing officer is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Topanga, 11 Cal.3d at 15.

Section 1094.5 does not in its face specify which cases are subject to independent review. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. Instead, that issue was left to the courts. In cases reviewing decisions which affect a vested, fundamental right the trial court exercises independent judgment on the evidence. Bixby v. Pierno, (1971) 4 Cal.3d 130, 143. *See* CCP §194.5(c). In cases other than those requiring the court to exercise its independent judgment, the substantial evidence test applies. CCP §1094.5(c). "Substantial evidence" is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28. The trial court considers all evidence in the

administrative record, including evidence that detracts from evidence supporting the agency's decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

An agency is presumed to have regularly performed its official duties (Ev. Code §664), and the petitioner seeking administrative mandamus therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137; Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691 (“[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion).

C. Statement of Facts

The Park is a 420 space mobilehome park located at 17701 S. Avalon Blvd. in the City. The Park contains a 17 acre lake or wetland, which is the only open space for preservation of natural resources in the City. AR 4848; AR 803. The Park was created pursuant to a Special Use Permit (“SUP”) issued by the City in 1977, subjecting the operation and maintenance of the park to a number of conditions by the City, including conditions on the wetland. AR 5-14. On June 27, 2001, CHV applied to amend the SUP. AR 218-19. The request was apparently granted.

CHV filed its Application on or about December 30, 2002. AR 411-47. City staff deemed the Application complete on September 7, 2006. AR 2115.

The Application was submitted to the City's Planning Commission (the “Planning Commission”), which held several hearings. The first hearing was held on November 14, 2006. The City Attorney advised the Commission that “the burden is on the applicant to demonstrate that it complied with the statute.” AR 2295. The hearing was continued to enable residents to possess a “clear/basic understanding of their economic future in the event of conversion.” AR 2263-64.

There was also concern that the Survey of Support violated the express terms of section 66427.5 because there was a dispute whether it was conducted pursuant to an agreement between the past owner and the homeowner's association (“HOA”). CHV's representative, Sue Loftin “Loftin”), claimed that the Survey of Support (actually two surveys) was conducted in conjunction with the HOA's board of directors, and the HOA president and attorney were actively involved. She did not say that the survey was conducted pursuant to an agreement between the owner and the HOA. AR 2300. The HOA representative stated that he did not see any written agreement or “empirical evidence of an agreement.” AR 2322-23. Other HOA board members did not remember working with the previous owner on a survey. AR 2328-29. Advice had been given to individual residents not to answer the survey because it sought personal information and they were not sure of the security of the information. AR 2339.

At the continued Planning Commission hearing on November 14, 2006, concerns were also expressed about the deteriorating condition of the park. AR 2366-69. The Planning Commission held several more hearings, which were continued to March 13, 2007. At the March 13, 2007 hearing, discussion continued regarding trash and toxin runoff in the marsh/wetlands, and other issues of graffiti, vandalism, deteriorating curbs, and other public health related issues. AR 2652, 2658-60.

There also was further discussion about the Survey of Support, whether there was a bona fide conversion, whether there was resident support for it, or whether CHV was simply utilizing

the Application to obtain a life-time exemption from the City's rent control statutes. AR 2633-34. There further was discussion whether granting the Application would be inconsistent with the City's general plan as not preserving low and moderate income housing. AR 2690-91.

The Planning Commission voted to deny the Application subject to a resolution with appropriate findings. AR 2701. On June 12, 2007, the Planning Commission adopted Resolution No. 07-2141 denying Petitioner's Application and making supporting findings. AR 4100-4106. CHV appealed this denial to the City Council on June 20, 2007.

CHV and the HOA subsequently engaged in discussions in an attempt to reach a consensus that would result in the residents support for the conversion Application. CHV negotiated a Memorandum of Understanding ("MOU") to provide incentives to the residents to purchase their lots. The prospect of conversion under the MOU was put to a vote of all of the residents. AR 4408, 4427. Of 418 eligible votes, 356 were cast. Some votes were uncounted as spoiled. The unspoiled votes showed that 35% (101) supported conversion, while 65% (187) did not. AR 4427.

CHV subsequently reached a tentative settlement essentially mirroring the MOU, and adding Agency and CHV funding as sources of loans to facilitate resident purchases of the post-conversion lots. AR 4648, 4653-59. This settlement was subject to the City Council's approval.

The City Council conducted public hearings on July 17, July 30, and September 4, 2007. The same concerns previously raised before at the Planning Commission were raised in staff reports, discussed at length during public testimony on the Application, and considered during the City Council hearings.

On September 4, 2007, the City Council, based on its consideration of the administrative record, denied the Application for the reasons set forth in Resolution No. 07-106. AR 4846-4854. These included the following: (1) the legal inadequacy of the Survey of Support and its failure to comply with the plain text of section 66427.5; (AR 4427, 4430); the legal inadequacy of the TIR, (2) the inconsistency with the City's General Plan requirement of preserving affordable housing in the City, and of preserving the wetlands as open space because unreasonable maintenance and liability responsibilities could be imposed on residents owning units, and (3) the failure of the Tenant Impact Report ("TIR") submitted by CHV to satisfy the requirements of Govt. Code section 66427.4 in that it fails to report on the impact of conversion on displaced residents. AR 4846-4852.

D. Applicable Law

The Subdivision Map Act (Govt. Code §66410 *et seq.*) applies to mobilehome park conversions.¹

¹The Mobilehome Residency Law (Civ. Code §798 *et seq.*) governs tenancies in mobilehome parks, but many other statutes regulate or affect mobilehome parks, their tenancies, and their sale or conversion. El Dorado, 96 Cal.App.4th at 1159. *See* Mobilehomes--Manufactured Housing Act of 1980 (H&S Code §18000 *et seq.*); Mobilehome Parks Act (H&S Code §18200 *et seq.*); Mobilehome Park Purchase Fund (H&S Code §50780 *et seq.*), and general provisions relating to sale of subdivided property. B&P Code §11000 *et seq.*

Section 66427.5, concerning the conversion of mobilehome parks to resident ownership, is part of a general article (Govt. Code §66425 *et seq.*) relating to subdivision maps. El Dorado, 96 Cal.App.4th at 1159. Sections 66427.1 and 66427.2 deal with the general subject of conversion of residential real property into condominiums. Section 66427.4 concerns the conversion of mobilehome parks to other uses. Section 66428 provides for the waiver of the requirement of filing tentative and parcel maps in certain situations. Section 66428.1 provides that, in the case of conversion of a mobilehome park, the requirement for a parcel map or a tentative and final map may be waived when two-thirds of the owners of mobilehomes in the park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to residential ownership.

After a mobilehome park subdivision is approved by local government, the Department of Real Estate regulates the marketing and sale of the individual units in the park. Bus. & Prof. Code §11010 *et seq.* It is illegal to sell subdivided property before obtaining a public report from the Real Estate Commissioner. Bus. & Prof. Code §11018.2.

In its current, applicable form, section 66427.5 reads as follows: "At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner: (a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant. (b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest. (c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body. (d) (1) The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion. (2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner. (3) The survey shall be obtained pursuant to a written ballot. (4) The survey shall be conducted so that each occupied mobilehome space has one vote. (5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e). (e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section. (f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following: (1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period. (2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the

average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.”

El Dorado

The court in El Dorado Palm Springs Ltd. v. City of Palm Springs, (“El Dorado”) (2002) 96 Cal.App.4th 1153, addressed the city of Palm Springs’ effort to impose conditions on a mobilehome park ownerseeking to subdivide the units within the mobilehome park over the opposition of its residents as the requisite first step in converting the park to a resident-owned park. Although approving the conversion, the city imposed three conditions: (1) a date by which at least 120 of the units must close escrow, (2) a sale price for units established by an appraisal firm, and (3) financial assistance to park residents to facilitate their purchase of lots. The city relied on Govt. Code section 66427.4(c), which authorized a city to require the subdivider to mitigate impacts on displacement of residents. The park owner relied on section 66427.5(d), which provides that the scope of a city’s hearing is limited to the issues of compliance with that section.

The court concluded that the issue was whether section 66427.4 or 66427.5 is applicable to the conversion of a mobilehome park from a rental park to a resident-owned park. Id. at 1158. The concluded that section 66427.4(e)’s plain language meant that it only applied when a mobilehome park was converted to another land use, and a change in ownership is not a change in land use. Id. at 1162-63.

The court also concluded that, by its plain language and in harmony with section 66427.4, section 66427.5 applies to subdivisions created to convert a rental mobilehome park to a resident-owned park. Section 66427.5(d) provided: “The scope of the hearing shall be limited to the issue of compliance with this section. The court held that section 66427.5(d) only gave the city power to determine if the owner had complied with that provisions requirements and it had no power to impose the mitigating conditions. Id. at 1163-64.

The addressed concerns created by this plain meaning interpretation. The provision permits the increase of rent for nonpurchasing residents over a four year period in amounts depending on whether the resident meets the definition of low income household. Yet, it does not state when the rent control phaseout becomes applicable, and provides no time limits for the completion of the conversion. The court expressed concern about the use of section 66427.5 to avoid local rent control. Id. at 1165.

The city argued that its conditions would prevent an abuse of the conversion process by a developer who was engaged in a sham or fraudulent transaction intended to avoid rent control. The court held that, because of section 66427.5(e)’s limitation, the city lacked authority to investigate or impose additional conditions to prevent sham or fraudulent transactions at the time it approves the tentative or parcel map. Although the lack of such authority may be a legislative oversight, and although it might be desirable for the Legislature to broaden the City’s authority, it had not done so. In any event, the courts will not apply section 66427.5 to sham or failed transactions, or to avoid a local rent control ordinance. Id. at 1165.

Although it found section 66427.5 had a plain meaning, the court considered its legislative history as it buttressed its plain meaning interpretation. Id. at 1167. Section 66427.5 was added in 1991 to, among other things, provide economic displacement protections to

nonpurchasing tenants when a condominium conversion was made pursuant to the mobilehome park purchase program. At the time, section 66427.5 referred only to mobilehome park conversions made by residents or nonprofit organizations. In 1995, section 66427.5 was amended to all mobilehome park subdivisions, thereby making the law uniform and eliminating the previous distinctions between tenant-sponsored and owner-sponsored conversions. *Id.* at 1169-70. The addition of section 66426.5(e) made clear that section 66427.4 permitted local government mitigation requirements, but section 66427.5 did not. *Id.* at 1171. Moreover, the legislative intent was, in part, to encourage conversions. *Id.* at 1173. Thus, the legislative history supported a conclusion that section 66427.5 applies to all subdivisions created from the conversion of a rental mobilehome park to resident ownership, whether owner or resident initiated. *Id.* at 1174.

The 2002 Amendment

In 2002, the Legislature amended section 66427.5. It added section 66427.5(d), which provides:

“The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion. (2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner. (3) The survey shall be obtained pursuant to a written ballot. (4) The survey shall be conducted so that each occupied mobilehome space has one vote. (5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).”

The 2002 amendment states that it was intended to address the prospect of a non bona fide resident conversion as described in El Dorado. The Legislature noted that the subdivision map approval process in section 66427.5 “may not provide local agencies with the authority to prevent nonbona fide (*sic*) resident conversions.” In enacting the amendment, the Legislature intended that “conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions.” City’s RJN, Ex.C at 385-87.

The history also states in a legislative analysis in a document entitled “Concurrence in Senate Amendments” that the amendment seeks to provide a measure of support for local agencies to determine whether the conversion is truly intended for resident ownership, or if it is an attempt to preempt a local rent control ordinance. The results of the survey would not affect the duty of the local agency to consider the request to subdivide pursuant to Section 66427.5 but merely provide additional information. It is foreseeable that the results of this survey could be used to argue to a court that the conversion is a sham....” City’s RJN, Ex. C at 657.

At the same time as enacting section 66427.5(d), the Legislature rejected an amendment which would have expanded the scope of local review in section 66427.5(e): “The scope of the hearing shall be limited to the issue of compliance with this section *and any additional conditions of approval that the local legislative body or advisory agency determines are necessary to preserve affordability or to protect nonpurchasing residents from economic displacement.*” Compare City’s RJN, Ex. C, at 377, 379 (Emphasis in original).

The effect of the 2002 amendment as contained in both its plain language and history is as stated by CHV. El Dorado stated that the authority of a city is limited by section 66427.5(d)

to ensuring the owner's compliance with section 66427.5 and it has no power to impose additional mitigating conditions. The 2002 amendment requires a resident survey to ensure the bona fides of conversion, but does not purport to modify El Dorado's holding. If the residents do not support conversion and the conversion is a sham to avoid rent control, this issue must be addressed by a court and not the city. See El Dorado, 96 Cal.App.4th at 1165-66; Donohue v. Santa Paula West Mobile Home Park, (1996) 47 Cal.App.4th 1168, 1173. The survey could be admissible evidence in such a proceeding.

For this reason, any additional conditions or limitations imposed by a city beyond those permitted by section 66427.5 are preempted. The Legislature has fully occupied the area of law by prohibiting further local legislation. See Tosi v. County of Fresno, (2008) 161 Cal.App.4th 799, 805.

The City argues that the Subdivision Map Act expressly requires local agencies to ensure that each subdivision is consistent with the local general plan and specific plans. Govt. Code §66473.5, 66474. The City argues that section 66427.5 does not purport to occupy the field of mobilehome park conversions; it only concerns the displacement of non-purchasing residents. This argument is inconsistent with El Dorado and the language of section 66427.5(e), which provides that "[t]he scope of the hearing [for the map] shall be limited to the issue of compliance with [section 66427.5]." This language precludes a city from requiring consistency with a general or specific plan under sections 66473.5 and 66474.

E. Analysis

Applying this law, CVH contends that the City failed to proceed in a manner required by law and its decision lacks substantial evidence in the record.

1. Issues Outside a Permissible Compliance Hearing

The City purported to deny the Application based on reasons of lack of showing that the conversion is a *bona fide* resident conversion and general plan inconsistency. As stated above, the City's review is expressly limited to the issues set forth in section 66427.5(e). The City only had the power to determine if CHV had complied with the requirements of section 66427.5; it had no power to impose any additional conditions. It had no authority to determine the *bona fides* of the conversion.

The City argues that section 66427.5(d)(5) provides that the results of the survey "shall be considered" as part of the subdivision map compliance hearing. How can the City consider the "Survey of Support" if it can not use the results? The answer is that the City is to consider the Survey of Support to ensure it has been prepared as required. It may not use the results to deny the Application based on lack of a *bona fide* conversion. That is an issue for presentation in court.

CHV also is correct, and the City does not dispute, that the overwhelming evidence in the record is that the conversion is *bona fide* in that CHV wants to convert ownership to residents and is not seeking a means of permanently avoiding rent control. The City's argument that a *bona fide* conversion requires the support of a majority of the residents is unsupported by the

plain language of section 66427.5, its legislative history,² and the El Dorado opinion.

Under the plain language of section 66427.5, the City also may not use its zoning and police powers to impose conditions on a conversion of consistency with General Plan goals of affordable housing and open space. To do so would be inconsistent with the legislative intent of encouraging conversions. El Dorado, *supra*, 96 Cal.App.4th at 1173.

In any event, the record does not contain substantial evidence that conversion of CVH's mobilehome park will impact affordable housing in the City. The City merely notes that 60% of the Park's residents are low income. Assuming that mobilehome units are affordable housing (CHV suggest otherwise, but sufficient evidence supports the City on this issue), the City Council made no finding that affordable housing would be impacted by conversion of the Park.

The City relies on a General Plan Housing Element Goal that "the City should limit the conversion of affordable rental units to ownership units, but this General Plan goal is inconsistent with section 66427.5's intent of encouraging conversions. It also is unsupported by any facts. Does the City want to prevent all mobilehome conversions (which would be unlawful) or only those which impact affordable housing? If the latter, there is no evidence that conversion of the Park would affect affordable housing in the City.

Nor is there evidence that conversion will affect the open space within the Park or generally impact the General Plan goals of public health and safety. The City's opposition does not even support the City Council's finding on this issue with any evidence.

2. Compliance with Section 66427.5

This leaves two issues for the Application's compliance with section 66427.5: the Survey of Support and the Tenant Impact Report ("TIR").

a. The Survey of Support

CHV points to CHV's representative, Loftin, who claimed that a Survey of Support (actually two surveys) was conducted in conjunction with the HOA's board of directors, and that the president of the HOA board at the time (Cindy McGregor) "was actively involved" in actually disseminating the surveys to residents of the park., and the HOA attorney, David Semelsberger, also was involved in approving the form. She did not say that the survey was conducted pursuant to an agreement between the owner and the HOA. AR 2300-01.

This evidence is flimsy. "In conjunction with" is vague, and the City is correct that "in conjunction with" does not necessarily mean that the survey was "conducted in accordance with

²This is true even for the legislative history cited by the City, the first portion of which is miscited. AB 930 itself states that the intent is to ensure that conversions are *bona fide* conversions. City RJN, Ex. C at 386-87. It does not state that the Legislature wanted to ensure that conversion did not occur without resident support as the City states. Opp. at 12.

As for the City's other legislative history cite (RJN, Ex. C at 611), the Senate Rules Committee third reading states that "[t]his bills (*sic.*) adds legislative intent language concerning the need for resident support to assure that the conversion of a park to resident ownership...are bona fide." This is a reference to AB 930's express legislative intent and the statement is inaccurate.

an agreement between” the owner and the HOA.

The City’s counter evidence also is weak. The current HOA representative stated that he did not see any written agreement or “empirical evidence of an agreement.” AR 2322-23. Other HOA board members did not remember working with the previous owner on a survey. AR 2328-29.

Section 66427.5 does not require a formal, written agreement. It only requires an “agreement” with respect to conducting the survey. There is evidence in the record that the surveys were done with the HOA’s participation, which necessarily implies that it at least acquiesced to the Survey of Support. However, one resident stated that the HOA advised not to answer the first survey because it demanded too much personal information. This suggests that the HOA did not agree to the survey or its contents. Although the HOA may have helped distribute the surveys, it is difficult to believe that its board would have advised residents not to complete a survey performed pursuant to an agreement.

In any event, there is overwhelming evidence that a second Survey of Support was performed in July 2007 (the “second Survey of Support”) through an agreement between the CHV and the HOA. AR 4407-08, 4409-10.

The City’s opposition argues that the second Survey of Support is of no consequence because it was not done “at the time of filing of a tentative or parcel map” as required by section 66427.5.

The second Survey of Support was conducted in July 2007 (AR 4409), well after the Planning Commission had denied the Application on March 13, 2007. Thus, the Planning Commission never even had a chance to review the second Survey of Support in ruling on the Application.

Section 66427.5(d)(5) provides that “[t]he results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).” This means that the survey must be submitted to the city either when the tentative map is submitted, or in time for the compliance hearing under section 66427.5(e).

The second Survey of Support was not submitted in time for the Planning Commission hearing under section 66427.5(e). Nonetheless, the City Council did not purport to deny the Application based on a failure to timely present the second Survey of Support. Instead, it determined that “there is no evidence in the record that the survey of support was conducted in accordance with an agreement between” the owner and the HOA. AR 4850. This finding is completely unsupported. The staff report to the City Council plainly shows otherwise. AR 4427. Yet, the City Council findings do not even mention the second Survey of Support.³

Therefore, the City has waived any objection to the second Survey of Support as timely presented. The City Council abused its discretion in finding that no survey was conducted by agreement between the owner and the HOA.

b. The TIR

³As the City Council took evidence, CHV’s “appeal” was clearly a *de novo* proceeding in which the second Survey of Support could be considered.

Section 66427.5 requires that “[t]he subdivider shall prepare a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.”

(i) Wetlands Information

The City argues that the reference to “residents” means that CHV was obligated to prepare a TIR for the conversion’s impact, not just to those residents who would not purchase, but also to those residents who would purchase, ownership of their units. For those who would purchase, the City argues that the TIR failed to include information on the wetlands, including the remediation costs should the Park be responsible for groundwater or other contamination, and the possible displacement of residents should there be potential increases in assessments to cover cleanup or other wetlands costs. AR 4850. The City argues that purchasing residents are entitled to this information on the impact of conversion.

CHV argues that this information, which it calls the Wetlands Information, is expressly forbidden under section 66427.5.

There is some support for this position. The City Council findings are that the TIR fails to properly disclose “the extraordinary measures needed” and fails to acknowledge the “unreasonable liability and maintenance responsibilities that will be borne by resident owners.” It also fails to address “the significant remediation costs should the park be determined responsible for contamination within the wetlands and concludes, without evidentiary support, that there will be no displacement of residents due to potential increases in assessments to cover unusual and unexpected costs.” AR 4850.

The use of loaded terms like “extraordinary,” “unreasonable” and “significant” are not within the scope of the City’s authority in requiring an informational document. It is not free to disagree with CHV’s conclusions in the document as long as there is evidence to support the conclusions.

On the other hand, the City is entitled to require this information. CHV contends that the City Council’s reference is merely to the cost of maintaining the wetlands, which costs have been accounted for in the draft budget. Maintenance cost is not all that the finding requires. Stripped of its loaded terminology, the finding is that the TIR does not disclose information on the potential liability for environmental cleanup, the assessments that would have to be imposed, and the displacement of resident that would occur for such costs. This is legitimate information required for purchasing residents. It also should be provided at the time of conversion and not simply in marketing the units as regulated by the Department of Real Estate.

(ii) Displacement Information

The City Council also denied the Application for failure to include information on displacement of tenants displaced by the Park, the impact of rent increases on renters who remain in the Park but do not purchase, and the availability of adequate replacement space in mobilehome parks. CHV calls this “Displacement Information.” Just as with the wetlands information, the Park residents were entitled to know what the rent increases will be like, how many will likely be forced out from rent increases, and the availability of space in nearby mobilehome parks. Again, the City could require this information because section 66427.5 requires that “[t]he subdivider shall prepare a report on the impact of the conversion upon

residents. Certainly, the displacement information is a resident impact.

(iii) Waiver When the Application Was Deemed Complete

CHV contends that these defects were waived when the City's staff deemed the Application complete on September 7, 2006. According to CHV, the City is bound by that determination and cannot deny the Application for the failure to include information on the wetlands impact or the displacement of tenants.

Govt. Code section 65943 requires that an agency deem a development application complete within a specified time. This requirement applies to subdivision map applications. *See* Govt. Code §66474.2. The purpose of section 65943 is to recognize that delay can by itself constitute denial. Therefore, the statute creates a penalty of approval by operation of law where an agency does not approve or disapprove the application after it is complete. *See Orsi v. City Council*, (1990) 219 Cal.App.3d 1576, 1584-85. After the agency accepts an application as complete, the agency shall not subsequently request any new or additional information which has not been specified. The agency may request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application. Govt. Code §65944.

The information concerning wetlands was not requested before the Application was deemed complete. This information is new and not part of a request to clarify previously submitted information. As a result, the City Council's denial of the Application for failure to include wetlands information in the TIR was an abuse of discretion.

The information on tenant displacement is on a slightly different footing. The TIR included information on the impact of conversion on residents who elect not to purchase. AR 440. As such, the impact on non-purchasing resident is not a new subject like the wetlands information. Nonetheless, the City Council was not entitled to require new or additional information once its staff decided the Application was complete. Such a request would have to be made before the hearing. Govt. Code §65944.

The City argues that this rule means that the City Council is merely a rubber-stamp for its staff's approval of the TIR. Unfortunately for the City, that is the result of the combination of a statute that requires information (§66427.5) and a statute which says the agency may not require new information when the application is deemed complete. Govt. Code §65944. The City Council had no discretion but to accept the TIR as complete and could not require new information.

F. Conclusion

The Petition for writ of mandate is granted. CHV's counsel is ordered to prepare a proposed judgment and writ of mandate, serve them on the City's counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for August 29, 2008.