TENANT ASSOCIATION BRIEF ON JURISDICTIONAL ISSUES

ORIGINAL

BEFORE THE CITY COUNCIL OF THE CITY OF THOUSAND OAKS

IN RE RANCH MOBILE HOME PARK

RENT ADJUSTMENT COMMISSION • APPLICATION NO. RA-2010-02

APPEAL BRIEF OF ASSOCIATION OF RANCH TENANTS ON JURISDICTIONAL ISSUES

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THE CITY COUNCIL OF THE CITY OF THOUSAND OAKS

IN RE RANCH MOBILE HOME PARK

APPEAL BRIEF OF ASSOCIATION OF RANCH TENANTS ON JURISDICTIONAL ISSUES

INTRODUCTION

This is an appeal to the City Council from a resolution by the Rent Adjustment Commission (RAC) approving a nearly 250 percent rent increase on some of the City's most vulnerable citizens—very low income residents of the Ranch Mobile Home Park (Ranch) who are all elderly and nearly half of whom are disabled. For the reasons explained below, the RAC had no jurisdiction even to consider the rent increase application, much less approve an increase of that magnitude. The RAC's decision is legally void and should be set aside by the City Council.

In the year 2000, the owner of Ranch Mobile Home Park (Ranch) previously applied to the City of Thousand Oaks for a rent increase. The City informed Ranch's owner that Ranch, unlike the City's other mobile home parks, was not governed by the Mobile Home Rent Stabilization Ordinance, but by Resolution 84-037, which the City Council enacted in 1984 to apply exclusively to Ranch. Ranch was further told that it could either accept the maximum annual four percent rent increase permitted by Resolution 84-037, or it could try to seek repeal of the resolution. Presumably concluding there was no basis for repeal of the resolution, Ranch accepted the four percent increase under the resolution.

A decade later, Ranch's owner has ignored the City's earlier warnings and seeks in this proceeding to circumvent Resolution 84-037 by requesting a more than 500 percent rental increase under the Mobile Home Rent Stabilization Ordinance. Finding the Ordinance applicable and then misapplying the Ordinance's "Maintenance of Net Operating Income" methodology, the RAC approved a nearly 250 percent rent increase—an increase that will make it impossible for any tenant meeting Ranch's annual resident income restrictions to afford to actually live in the park.

Throughout the RAC proceedings, the Tenants repeatedly objected that the RAC—whose authority extends only to applying the Mobile Home Rent Stabilization Ordinance or ordinances regulating rents in apartment complexes—has no jurisdiction over Ranch. Just as the City told Ranch's owner a decade ago, rent

increases at Ranch are still governed by Resolution 84-037, and the Ordinance still has no application to the park.

Consequently, when it received the 2010 rent increase application, the City should have responded to Ranch's owner exactly as it did in 2000—telling it to either accept the four percent increase permitted by Resolution 84-037, or to try to seek repeal of the resolution. Instead, the City's staff chose an impermissible third course—it urged the RAC to impose a rent increase on the tenants of Ranch under the Ordinance when the RAC had no jurisdiction to do so. Staff further urged the RAC to not even consider whether it *had* jurisdiction to decide the rent increase application, but instead to leave that determination to the City Council.

For the reasons explained in detail below, the City Council now should vacate the RAC's resolution approving a rent increase at Ranch as null and void for lack of jurisdiction. Ranch's owner should be directed to go back to the drawing board, and either apply for the rent increase permitted by Resolution 84-037, or attempt whatever steps are available (if any) to seek repeal of the resolution and bring Ranch within the scope of the Ordinance. In any event, the RAC's resolution is jurisdictionally defective and cannot stand.

STATEMENT OF THE CASE

A. The parties.

Ranch is a 74-space mobile home park for low-income seniors located at 2193 Los Feliz Drive. (Tab 6, p. 1180; Tab 6.1, p. 1198.)[1] Ranch is currently owned by AVMGH-Five, Limited (Ranch's owner). (Tab 6, p. 1180.)

The Association of Ranch Tenants is an organization consisting of residents whose mobile homes occupy 58 of the 74 spaces in Ranch. (Tab 15.8, p. 1840.) The average age of the residents is 80 years, and their average income is less than $1,000 per month. (*Ibid.*) Nearly half of the residents are disabled. (*Ibid.*)

B. In exchange for rezoning and development fee waivers, Ranch's owner accepts limitations on future rent increases.

In 1974, a prior owner of the property on which Ranch is built applied for a zoning change from "Residential Planned Development" to "Trailer Park Development" (TPD). (Tab 6, p. 1180; Tab. 15.9, pp. 1907-1913.) The Planning Department recommended that the City Council approve the application, provided the owner guaranteed the property would be developed to

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[1] All "Tab ___, p. ___" citations are to the numbered tabs and "CTO" page numbers in the Administrative Record prepared by the City.

provide housing for lower income seniors. (Tab 6, pp. 1181-1182; Tab 15.9, pp. 1909, 1914-1915.) The City Council approved the zoning change (Tab 6, p. 1181), and a condition to the development permit (TPD 74-6) required the park to be "low-income mobile home park rental" (Tab 15.9, p. 1919 [Condition 27]).

In 1976, in connection with his purchase of the Ranch property, Andrew Hohn submitted a request to establish a formula for setting rental rates in the park.[2] (Tab 6, p. 1181.) Mr. Hohn proposed CC&R's that imposed age and income restrictions on tenants and a formula for calculating rents based on a specified return on his investment.[3] (*Ibid.*; Tab 15.9, pp. 1927-1928.) The City Council approved the CC&R's. (Tab 6, p. 1181.)

In addition to previous concessions allowing for the development of a low-income senior park, Mr. Hohn received a waiver from the City of over $100,000 in development fees. (7/19/76 Memorandum from Planning Department to Planning Commission, p. 1 (Attachment A).)

In September 1977, in connection with the City Council's approval of an interim rental rate structure for Ranch, Mr. Hohn executed an "Acceptance Form" stating: "I am aware of, and accept, all of the stated conditions in said Case No. TPD 74-6." (Tab 15.9, p. 1931.)

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[2] Andrew Hohn, along with his son, Bruce, continues to be a part owner of Ranch through AVMGH-Five, Limited. (Tab 2.1, p. 25 [¶1].)

[3] Under the CC&R's, residents must be 62 years of age or older (or be disabled under the Social Security Act), and may not have annual income exceeding $10,000. (Tab 15.9, p. 1927.)

C. The City enacts a rent stabilization program, but after concluding it does not apply to Ranch, enacts Resolution 84-037 to govern future rent increases at the park.

In 1980, through a series of ordinances, the City enacted a general rent stabilization program. (See generally Tab 6, pp. 1178-1180.) Thereafter, in 1983, when Ranch's owner sent its tenants a notice of increased rent consistent with the requirements of the then existing Rent Stabilization Ordinance, City staff responded that the increase was inconsistent with the TPD 74-6 formula previously approved by the City for calculating rents at Ranch. (Tab 6, p. 1181; Tab 15.9, pp. 1944-1947.)

City staff's conclusion that the Rent Stabilization Ordinance did not apply to Ranch Mobile Home Park led to the City Council's enactment of Resolution 84-037, which set an annual cap of four percent on future rent increases, and new income qualifications for tenancy.[4] (Tab 6, p. 1182; Tab 15.9, pp. 1948-1951.)

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[4] Under Resolution 84-037, tenancy within the park continued to be restricted to persons 62 years of age or older, and the resolution slightly increased the annual income restrictions to $11,000 (one person household), $12,500 (two person household), and $14,000 (three person household). (Tab 15.9, p. 1951.)

D. In 1986 and again in 2000, the City affirms that rent increases at Ranch are governed by Resolution 84-037, not by the Mobile Home Rent Stabilization Ordinance.

In 1986, the City enacted Ordinance 933-NS to establish a separate rent stabilization program specifically governing mobile home parks.[5] Just before the ordinance's enactment, the Rent Committee sent a memorandum to the City Council stating that rent increases at Ranch would continue to be governed by Resolution 84-037, not by the proposed Mobile Home Rent Stabilization Ordinance: "The proposed mobilehome park rent ordinance would apply to all parks within the City with the exception of Ranch Mobilehome Park which is under a separate affordable housing agreement." (Tab 15.9, p. 1955.)

In 2000, the Ranch's owner submitted a rent increase application to the City under Resolution 84-037. (Tab 2.1, pp. 40-41; Tab 15.9, pp. 1958-1960.) In a letter to Ranch's owner, the City confirmed that "Resolution No. 8[4]-037 would govern substantive questions about [rent] increases" at the park. (Tab 15.9, p. 1959.) The City further stated that the options available to Ranch's owner were to (1) "request[ ] a 4% maximum increase base[d] upon Resolution No. 8[4]-037"; or (2) "[r]equest the City to repeal Resolution No. 8[4]-037" so that in the future "Ranch Mobile Home

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[5] The Mobile Home Rent Stabilization Program was extended in July 1994 by Ordinance 1216-NS, and readopted and codified as Chapter 25 (Mobile Home Rent Stabilization Ordinance) of Title 5 of the Thousand Oaks Municipal Code in 1996 by Ordinance 1254-NS. (See Tab 6, p. 1180.)

Park will be included in the City Rent Stabilization Program." (*Ibid.*) The City's notes of a contemporaneous August 30, 2000 meeting with Ranch's owner similarly state that "Resolution 8[4]-037 was created specifically for the 74 units at Ranch MHP . . . giving a formula to calculate rent increase[s]," that "Ranch MHP has never been registered under the Rent Stabilization Program," and that Ranch could be "brought into the Rent Stabilization Program" only by repealing Resolution 84-037. (Tab 15.9, p. 1958.)

In February 2001, apparently after considering these two options, Ranch's owner reaffirmed its request for a four percent rent increase under Resolution 84-037. (Tab 6, p. 1182.) After evaluation by the City's financial consultant and City staff, the four percent rent increase was granted based on the formula provided in Resolution 84-037. (*Ibid.*)

E. Through 2010, the City continues to represent to the public and to the State that Ranch is governed by Resolution 84-037.

In 2008, the City posted a document posted on its website specifically stating that, unlike other mobile home parks in the City, Ranch is governed by Resolution 84-037. (The City of Thousand Oaks Supports Mobile Home Park Residents (June 2008) <http://www.toaks.org/civica/filebank/blobdload.asp?BlobID=12829> [as of Jan. 19, 2011]; Tab 14.2, pp. 1606-1609.) In recounting the history of past City actions "to protect mobile home park residents," the document states, "In 1975, City Council approved the Ranch

Mobile Home Park (located at 2193 Los Feliz) as an income and age restricted park. Resolution No. 84-037 established specific criteria for adjusting rent and income limits for this mobile home park." (Tab 14.2, p. 1606.) Further, "[i]n 1980, City Council adopted the Mobile Home Rent Stabilization Ordinance (Municipal Code 5-25) to restrict and limit annual rent increases on mobile home park tenants who reside inside the City's *other eight* mobile home parks," clarifying that the ninth park—Ranch—was not governed by the Mobile Home Rent Stabilization Ordinance. (*Ibid.*, emphasis added.)

In April 2010, the City published a "2006-2014 Housing Element Update," as required by state law under Government Code section 65302, subdivision (c). (2006-2014 Thousand Oaks General Plan Housing Element Update (April 13, 2010), p. 1 (Attachment B).)[6] In May 2010, the City's Housing Element was reviewed by the State of California Department of Housing and Community Development, and was found to be in compliance with state law. (May 24, 2010 Letter from Cathy E. Creswell to Scott Mitnick <http://www.hcd.ca.gov/hpd/hrc/plan/he/he_review_letters/venthousand_oaks052410.pdf> [as of May 9, 2011].) In the Housing Element Update, the City described Ranch as "Regulated by City Resolution 84-037," and as a "Mobile home park [that] was approved in return for income restrictions in perpetuity." (Attachment B at p. 35 & fn.

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[6] For the convenience of the City Council, Attachment B includes only the cover and cited page from the 150-page document. The full version can be found at <http://www.toaks.org/civica/filebank/blobdload.asp?BlobID= 13167> (as of May 10, 2011).

2.) Consequently, the City represented that Ranch "is not at-risk of conversion to market rate housing." (Attachment B at p. 35, fn. 2.)

F. Ranch's owner applies for a 500 percent rent increase under the Mobile Home Rent Stabilization Ordinance.

In June 2010, unlike 10 years earlier, Ranch's owner submitted a Rent Adjustment Application under the Mobile Home Rent Stabilization Ordinance, rather than under Resolution 84-037. (Tab 2.1, pp. 7-16; Tab 6, p. 1185 [Ranch owner's "application for a Just and Reasonable Return" is based "on the premise that [Ranch] must be evaluated under the City's Rent Stabilization Ordinance"].) The application sought to increase rents at Ranch by $587.45 per space per month, from approximately $130 per space, representing more than a 500 percent rent increase for each tenant. (Tab 6, p. 1185; see also Tab 2.1, pp. 7-13 [original application], 126-131 [amended application].)

G. The RAC grants a nearly 250 percent rent increase under the Mobile Home Rent Stabilization Ordinance despite Tenants' objections that the RAC has no jurisdiction over Ranch.

At the start of the RAC hearing on the Ranch owner's application, the Tenants objected that the RAC had no jurisdiction to consider a rent increase under the Mobile Home Rent Stabilization Ordinance because rent increases at Ranch are

governed by Resolution 84-037, not by the Ordinance. (Tab 10, p. 1517; Tab 27.1, pp. 2099-2100.) After the hearing was continued to the following month, Tenants supplemented their jurisdictional objections by filing two legal briefs explaining in detail why the RAC had no jurisdiction to consider a rent increase at Ranch. (Tab 14.2, pp. 1581-1632; Tab 22.1, pp. 2044-2061.)

After considering the Tenants' jurisdictional objections, some RAC members expressly questioned whether the RAC had jurisdiction to consider the rent increase application. In response, City staff repeatedly stated that the scope of the RAC's jurisdiction was *not* an issue for the RAC to decide. (Tab 29.2, pp. 3271:12-21 ["the issue on jurisdiction . . . is not something for you to tackle"], 3223:25-3224:2 ["the jurisdictional issue . . . is not for this Commission to decide"], 3264:22-23 ["The jurisdiction that has been addressed is not something for you to consider"], 3281:21-23 ["jurisdiction is not your call"].) Stated differently, the RAC was advised that it had no jurisdiction to determine its own jurisdiction, and that the City Council would decide the jurisdictional issue on appeal. (Tab 29.2, pp. 3267:11-12 ["I do not believe that you can apply [Resolution 84-037] as far as the jurisdictional issue. You do not have jurisdiction under that resolution to decide whether or not you can go forward with it"], 3224:2-3 ["City Council would need to make that decision"].)

By a narrow 3-2 vote, the RAC issued Resolution No. RAC 09-2011 on February 7, 2011, granting Ranch's owner a nearly 250 percent rent increase (over seven years) based on the Mobile Home Rent Stabilization Ordinance, rather than finding that Resolution

84-037 should govern rent increases at Ranch as it has for over 25 years. (Tab 25, pp. 2075-2082; Tab 29.2, p. 3339:2-3.) The RAC neither addressed nor resolved (1) whether it had jurisdiction to determine the rent increase application, or (2) whether Resolution 84-037 should govern rent increases at Ranch rather than the Ordinance. (Tab 25, pp. 2075-2082.)

LEGAL ARGUMENT

I. RESOLUTION NO. RAC 09-2011 IS NULL AND VOID FOR LACK OF JURISDICTION.

A. The RAC had no jurisdiction to determine rent increases at Ranch because such increases are governed exclusively by City Council Resolution 84-037.

It is fundamental that a decision made by an agency or other administrative body that lacks jurisdiction in the matter is void and of no effect. (See, e.g., *City of Lodi v. Randtron* (2004) 118 Cal.App.4th 337, 359 ["An administrative agency has only that authority conferred upon it by statute and any action not authorized is void"]; *Evans v. Department of Motor Vehicles* (1994) 21 Cal.App.4th 958, 967, fn. 1 ["In reviewing an administrative decision made after a hearing, the superior court must determine whether the administrative agency 'has proceeded without, or in

excess of jurisdiction' " (quoting Code Civ. Proc., § 1094.5, subd. (b))].)

Here, the RAC's decision (Resolution No. RAC 09-2011) is void for lack of jurisdiction, for the following reasons:

First, the Rent Adjustment Commission has limited jurisdiction, which is confined to carrying out the provisions of the Mobile Home Rent Stabilization Ordinance or of any ordinance regulating rents in apartment complexes. (Thousand Oaks Mun. Code, § 5-25.03, subd. (c).)

Second, Ranch is not governed by the Mobile Home Rent Stabilization Ordinance, but by Resolution No. 84-037, which was enacted specifically for Ranch and which limits the maximum annual rent increase for tenants at Ranch to four percent. The history of Ranch and Resolution 84-037 detailed above establishes that the Ordinance was never intended to apply and has not been applied to Ranch, and the City has continuously represented—both privately and publicly—that Resolution 84-037 and not the Ordinance governs rent increases at Ranch.

Third, only the City Council can determine the propriety of a proposed rent increase under Resolution 84-037, which has never been revoked and has been continuously applied to Ranch since the City Council passed it in 1984. In contrast to its past conduct, Ranch's owner presently neither sought a rent increase under Resolution 84-037, nor invoked the City Council's jurisdiction to approve such an increase.

In sum, the RAC had jurisdiction to grant a rent increase to Ranch's owner *only* if Ranch is governed by the Mobile Home Rent

Stabilization Ordinance rather than by Resolution 84-037. However, the City has repeatedly affirmed that Resolution 84-037 rather than the Mobile Home Rent Stabilization Ordinance governs. The RAC's resolution granting a rent increase under the Ordinance is therefore null and void.

B. The Rent Stabilization Ordinance does not "trump" Resolution 84-037.

Before the RAC hearings commenced, City staff advised the RAC that the Mobile Home Rent Stabilization Ordinance "trump[s]" Resolution 84-037. (Tab 6, p. 1184.) But that contention is in conflict with the City and Ranch owner's past conduct, and with the Ordinance's history. It is undisputed that the Ordinance has never been applied to Ranch, nor is there anything in the Ordinance's history suggesting the City ever intended the Ordinance to so apply—either when the Ordinance was first enacted or at any time before the present rent increase application.

Indeed, even in connection with the RAC proceedings here, on the very first page of its December 6, 2010 recommendation to the RAC, City staff itself conceded that "Ranch Mobile Home Park . . . was approved as a park for low-income seniors, *and has not previously been regulated under the Rent Stabilization Ordinance.*" (Tab 6, p. 1177, emphasis added.) Staff reiterated that point later in the same memorandum: "It has been established that Ranch has not previously been subject to the City's Rent Stabilization Ordinance." (Tab 6, p. 1183.) City staff has also

conceded that the age and income restrictions in the resolution continue to apply to Ranch. (Tab 29.1, p. 3030:5-9.)

It is likewise undisputed that the City has never required Ranch's owner to register under the Ordinance, nor has the Ranch's owner been required to pay any registration fees under the Ordinance at any time during the three decades the park has been in operation.[7] (See Tab 15.9, p. 1958 ["Ranch MHP has never been registered under the Rent Stabilization Program"]; Tab 29.2, pp. 3240:25-3241:3 ["COMMISSIONER FELDMAN: Did the owner of Ranch ever pay its required $10 per year per unit to the City as required by the rent ordinance and did they pay in 2009 and 2010? [¶] MR. NORMAN: I believe the answer is no"].)

Thus, on the two past occasions when Ranch's owner has sought a rent increase, the City has not applied the Rent Stabilization Ordinance. In connection with Ranch owner's first attempted rent increase, in 1983, the City concluded that restrictions in TPD 74-6, rather than the Ordinance, controlled rent increases at Ranch. (Tab 6, p. 1181; Tab 15.9, pp. 1944-1947.) That conclusion led to the enactment of Resolution 84-037, setting a more generous annual cap of four percent on future increases. (Tab 6, p.

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[7] Landlords of mobile homes governed by the Mobile Home Rent Stabilization Ordinance are required to pay an annual "registration fee in the amount of Ten and no/100ths ($10.00) Dollars for each controlled rental space in the City of Thousand Oaks" and to "furnish to the City Manager, upon a form approved by the City Manager, information indicating the maximum base rent and maximum adjusted rent for each rental space in the complex as of October 1 of that year." (Thousand Oaks Mun. Code, § 5-25.12, subds. (b), (c).)

1182; Tab 15.9, pp. 1948-1951.) In 2000, when Ranch's owner sought another rent increase, it was expressly informed by the City that absent repeal of Resolution 84-037—which Ranch's owner has never sought, and which has never occurred—the Ordinance does not and cannot apply to Ranch. (Tab 15.9, pp. 1958-1959; see also Tab 29.2, p. 3241:15-17 ["COMMISSIONER FELDMAN: So in 2001, they were—you were all following 84-037, is that correct? [¶] MR NORMAN: At that time, yes"].)

Finally, for the past 25 years, the City's position that Resolution 84-037 governs Ranch (rather than the general Rent Stabilization Ordinance) has been consistently communicated not only to Ranch, but also to the City Council, to the public generally, and to the State of California:

- Before the enactment of a separate Rent Stabilization Program for mobile home parks in 1986, an internal memorandum to the City Council stated that the new Mobile Home Rent Stabilization Ordinance "would apply to all parks within the City *with the exception of Ranch Mobilehome Park which is under a separate affordable housing agreement.*" (Tab 15.9, p. 1955, emphasis added.)
- A 2008 document—*currently posted on the City's website*—states that, unlike other mobile home parks, Ranch is governed by Resolution No. 84-037. (See Tab 14.2, p. 1606 [Resolution 84-037 governs rent and income limits at Ranch, while the Mobile Home Rent Stabilization Ordinance applies "to restrict and limit annual rent increases on mobile home

park tenants who reside inside the City's *other eight* mobile home parks" (emphasis added)].)

- Just last year, the City's "Housing Element Update"—a document required by state law—described Ranch as "Regulated by City Resolution 84-037," and as a "Mobile home park [that] was approved in return for income restrictions in perpetuity." (Attachment B, p. 35 & fn. 2.)

In short, there is simply no support for the notion that the general Rent Stabilization Ordinance was ever intended to or has "trumped" Resolution 84-037, which was enacted specially to govern rent increases at Ranch. Rather, the resolution's history and the conduct of the City and Ranch's owner establish just the opposite. Because of the age and income restrictions for its tenants, Ranch is and always has been treated by the City as different from the City's other mobile home parks, and there has never been any question that it is exempt from the Ordinance.

C. The City is estopped from applying the Ordinance to Ranch rather than Resolution 84-037.

Under California law, the equitable doctrine of estoppel has been codified as follows: "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it." (Evid. Code, § 623.) ' " 'The vital principle is that he who by his language or conduct leads another to do what he

would not otherwise have done shall no[t] subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden. It involves fraud and falsehood, and the law abhors both.' " ' (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488 (*Mansell*).

As noted, the histories of Ranch, Resolution 84-037, and the Mobile Home Rent Stabilization Ordinance all make clear that the City never intended Ranch to be included within the scope of the Ordinance. Moreover, the City could not, at this late date, extend the Ordinance to include Ranch (e.g., by purporting to find that, as City staff has suggested, the Ordinance "trumps" Resolution 84-037). The City is equitably estopped from doing so as a result of its past private and public representations, and by the reliance of Ranch's tenants in purchasing their mobile homes based on the assumption that annual rent increases would be capped at four percent so long as Resolution 84-037 remained in effect.

In *Mansell, supra,* 3 Cal.3d at page 493, the California Supreme Court held that " '(t)he doctrine of equitable estoppel may be applied against the government where justice and right require it.' " (See 13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 199, p. 540 ["Subject to recognized exceptions . . . , the estoppel doctrine is now applied freely against the state, its subdivisions, and other governmental agencies"]; see also *id.* at § 200, pp. 541-543 [illustrative cases upholding estoppel against governmental entities].) The Supreme Court held further that the government may be estopped (1) "when the elements requisite to such an estoppel against a private party are present" and (2) when "the

injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*Mansell*, at p. 496.)

Regarding the first prong, the four elements for applying estoppel against a private party are:

> "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury."

(*Mansell, supra*, 3 Cal.3d at p. 489.) These elements are all easily met here:

(1) The City has been "apprised of the facts," because over the past 25 years the City has been consistently representing to the public, to Ranch, and to the State of California that Resolution 84-037 rather than the Rent Stabilization Ordinance governs rent increases at Ranch.

(2) The City "intend[ed] that [its] conduct shall be acted upon" because in 1984 and 2000, in connection with past increases, it communicated that intent to Ranch's owner, who *did* act upon the City's position that Resolution 84-037 governed rent increases at Ranch, and the City did not correct that action. Further, by virtue of the representations on the City's website and in its "Housing Element Update," the City has acted in a manner that Tenants and other members of the public had a

right to believe Resolution 84-037 governed rent increases at Ranch rather than the Ordinance.

(3) If the City's position now is that the Ordinance "trumps" Resolution 84-037, the Tenants have obviously been "ignorant of the true state of facts," because nobody could have anticipated that, after more than two decades of consistently representing that Ranch was governed by Resolution 84-037 rather than the Ordinance, the City would reverse its position.

(4) In investing substantial sums (often their life savings) in purchasing their mobile homes, the Tenants have relied upon the cap on annual rent increases provided by Resolution 84-037.[8] (See *Mansell, supra*, 3 Cal.3d at p. 500 [governmental estoppel applied where "through the long continuing conduct of the government entities involved, [homeowners] have been led to believe and have acted upon the belief that the lands upon which they reside are their own private properties"].)

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[8] The Tenants presented undisputed testimony that their purchases of mobile homes in Ranch were based on the understanding—consistent with Resolution 84-037—that any future rent increases would be modest. (See, e.g., Tab 28.2, pp. 2948:10-16 [tenant Hendrix invested all his savings in Ranch mobile home based on understanding that "the monthly rent would stay at a low rent amount"]; Tab 29.2, p. 3173:7-16 [tenant Brown purchased a coach in Ranch following representations by the manager "that the park had had only a couple of modest increases ever"]; Tab 29.1, p. 3175:2-13 [tenant Packman bought mobile home in Ranch with sons' assistance after being told regarding rent increases "that 'Hey, it's not going to go up very much' "].)

The second prong for governmental estoppel stated by the Supreme Court—whether an estoppel would undermine a strong rule of policy adopted for the benefit of the public—also firmly supports application of the doctrine here. Not only would estoppel not undermine public policy, it would bolster it, including the policy underlying the Mobile Home Rent Stabilization Ordinance. That Ordinance reflects the policies of (1) providing affordable housing for low-income residents living on fixed incomes, and (2) providing long-term rent stability for mobile home tenants to avoid displacing them due to the inability to pay increased rents. (See Thousand Oaks Mun. Code, § 5-25.01 ["There is a shortage of vacant and available mobile home spaces in the City of Thousand Oaks" that "has had a detrimental effect on substantial numbers of renters in the City, especially creating hardships on senior citizens on fixed incomes, and low- and moderate- income households"; "it is necessary and reasonable to continue to regulate rents so as to safeguard tenants from excessive rent increases"].) Likewise, on its website, the City has explained that the policy of the Rent Stabilization Ordinance is "to restrict and limit annual rent increases on mobile home park tenants who reside inside the City's other eight mobile home parks." (Tab 14.2, p. 1606.) Applying Resolution 84-037 to Ranch would not undermine that policy, but rather would *promote* the City's stated goal of "limit[ing] annual rent increases on mobile home park tenants."

Nor would the continuing application of Resolution 84-037 to Ranch undermine the policy of "provid[ing] landlords with a just and reasonable return on their rental spaces." (Thousand Oaks

Mun. Code, § 5-25.01.) Resolution 84-037 has permitted Ranch's owner to seek an annual rent increase of up to four percent, but it has chosen to exercise that right only twice in more than 30 years of ownership. Since Resolution 84-037 *did* permit Ranch owner to achieve a "just and reasonable" return by exercising its rights under the resolution (but it chose not to do so), merely applying the resolution as enacted would further *all* the aims of the Mobile Home Rent Stabilization Ordinance, not undermine them.[9]

To sum up, even if there were some reason the City wanted to change course after its consistent and decades-long application of Resolution 84-037 (rather than the Rent Stabilization Ordinance) to rent increases at Ranch, its repeated assurances to the parties, the public, and to the State on that topic would prevent it from changing that position under the doctrine of equitable estoppel.

D. The RAC could not disregard Resolution 84-037 based on staff's representation that the resolution might theoretically be subject to constitutional challenge.

Following the Tenants' submission to the RAC of briefing on the jurisdiction issue, City staff retreated from the assertion that Resolution 84-037 was trumped by the Mobile Home Rent

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[9] Ranch's owner gave up any right to charge full market-rate rents when it received zoning and development fee concessions from the City in exchange for annual rent increase limitations. In addition, for more than two decades it has not had to pay the annual registration fees owed by the City's other mobile home park owners under the Ordinance.

Stabilization Ordinance. Instead, when asked directly by a Commissioner whether Resolution 84-037 applied to Ranch, City staff declined to answer. (Tab 29.2, pp. 3233:18-3234:9 ["MR. SILACCI: . . . I need to understand just from the staff's perspective, when did Resolution 84-037 cease to apply to Ranch in your opinion? [¶] MR. NORMAN: That's a difficult question because this is the first time there's been a request outside of that resolution. . . . *We're not saying that it does, but we're not saying that it doesn't.* So I hope that answers your question" (emphasis added)], 3240:19-21 ["COMMISSIONER FELDMAN: Okay, I understand then that 84-037 is still in effect? [¶] MR. NORMAN: Possibly. It—possibly"].)

Shifting from the position that Resolution 84-037 was trumped by the Ordinance, City staff advised the RAC to ignore the resolution's rent increase restrictions because "*the constitutional requirement of fair return* trumps Resolution 84-037." (Tab 29.2, p. CT 3235:14-16, emphasis added.)

In advising the RAC to ignore Resolution 84-037's rent increase limitations for constitutional reasons, City staff led the RAC astray. Even if staff's speculation that Resolution 84-037 *could* be found constitutionally unsound were correct (it is not, as recently explained by the United States Court of Appeals for the Ninth Circuit in *Guggenheim v. City of Goleta* (9th Cir. Dec. 22, 2010, No. 06-56306) __ F.3d __ [2010 WL 5174984] (*Guggenheim*) and in *Colony Cove Properties, LLC v. City of Carson* (9th Cir. Mar.

28, 2011, No. 09-57039) __ F.3d __ [2011 WL 1108226]), the RAC could not determine Resolution 84-037's unconstitutionality.[10]

Indeed, a very similar situation presented itself to the California Supreme Court in *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055 (*Lockyer*), where city officials ignored a state statute prohibiting the granting of marriage licenses to same-sex couples because they believed the statute was unconstitutional. The court explained that "a local public official, charged with the ministerial duty of enforcing a statute, generally does not have the authority, in the absence of a *judicial determination* of unconstitutionality, to refuse to enforce the statute on the basis of the official's view that it is unconstitutional." (*Id.* at p. 1082, emphasis added.) Directly on point here, the court observed, "the same legal issue would be presented if the statute were one of the environmental measures that impose restrictions

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[10] In *Guggenheim*, a recent en banc Ninth Circuit decision, the court rejected an argument that a rent control ordinance governing mobile homes was an unconstitutional taking of property without compensation. Because the mobile home park owner had purchased the park knowing it was burdened by rent control, it had no "investment-backed expectations" that were impaired by the rent control ordinance, and therefore could not assert any unconstitutional taking had occurred. Here, where Ranch's owner expressly agreed to rent increase limitations in exchange for rezoning and development fee waivers, where Ranch has been subject to rent increase limitations from the time it was purchased, and where Ranch's owner has never paid any registration fees under the Ordinance, Ranch's owner could not have had any "concrete reason to believe they would get something much more valuable, because of hoped-for legal changes, than what they had." (*Guggenheim, supra*, __ F.3d __ [2010 WL 5174984 at *5].)

upon a property owner's ability to obtain a building permit for a development that interferes with the public's access to the California coastline, and a local official, charged with the ministerial duty of issuing building permits, refused to apply the statutory limitations because of his or her belief that they effect an uncompensated 'taking' of property in violation of the just compensation clause of the state or federal Constitution." (*Id.* at p. 1067.)

Thus, until Resolution 84-037 has either been repealed by the City Council, or has been declared unconstitutional by a court, neither the RAC nor the City Council may "refuse to enforce the [resolution] on the basis of [their] view that it is unconstitutional." (*Lockyer, supra,* 33 Cal.4th at p. 1082.) Resolution No. RAC 09-2011, which is in conflict with the rent increase restrictions imposed on Ranch by City Resolution No. 87-034, is void because the RAC had no jurisdiction to issue it in the first instance.

II. RANCH'S OWNER HAS GIVEN NO VALID BASIS FOR IGNORING RESOLUTION 84-037.

A. Ranch owner's challenge to the validity of Resolution 84-037 is both untimely and substantively without merit.

In a memorandum attached to its application for a rent increase, Ranch's owner argued that Resolution 84-037 cannot be enforced because state law requires "legislative zoning provisions

regulating the use of land be adopted by ordinance rather than resolution," and that, "[b]ecause the practical effect of Resolution 84-037 was to rezone the Ranch, it was invalid for failure to proceed by way of ordinance as required by State law." (Tab 2.1, p. 111, citing *City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 566 (*City of Sausalito*).)

"[T]he right to question the validity of a statute must be urged at the earliest opportunity or it will be considered as waived." (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 236.) Specifically with respect to zoning ordinances, conditional use permits, or other developmental use permits or conditions, any challenge "must be filed and served on the public agency *within 90 days* after the decision adopting, amending or granting the challenged plan, provision, or permit." (9 Miller & Starr, Cal. Real Estate (3d ed. 2007) § 25:9, p. 25-37, citing Gov. Code, § 65009, subd. (c), emphasis added.) Ranch owner's challenge to the validity of Resolution 84-037 is more than two decades too late.[11]

Apart from being waived by years of delay in asserting it, the argument urged by Ranch's owner is simply wrong. As noted in

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[11] Even in the absence of Government Code section 65009's 90-day limitations period, Ranch owner's challenge to the validity of section 84-037 would be barred by laches. (See *Concerned Citizens of Palm Desert, Inc. v. Board of Supervisors* (1974) 38 Cal.App.3d 257, 265 [action to set aside conditional use permit and variance was barred by laches where during nine-month interval between granting of permit and variance and commencement of proceeding the real party in interest had incurred financial liabilities in reliance on permit and variance].)

City of Sausalito—the very case on which Ranch's owner relies—"a conditional use permit . . . ordinarily does *not* require legislative action amending an underlying zoning ordinance because the act of granting such permit is administrative in character and does not involve a change in the ordinance." (*City of Sausalito, supra,* 12 Cal.App.3d at p. 564, emphasis added; see also *Hawkins v. County of Marin* (1976) 54 Cal.App.3d 586, 591 ["it is a widely accepted rule that the issuance of a conditional use permit does not amount to a zoning change, and hence need not be effected in compliance with rezoning procedures"]; *Essick v. City of Los Angeles* (1950) 34 Cal.2d 614, 622-623 [rejecting contention that issuance of a conditional use permit authorizing the location of a cemetery in an R-1 zone constituted a zoning change]; *Case v. City of Los Angeles* (1963) 218 Cal.App.2d 36, 40 [validating permit that allowed the construction of an apartment complex in an R-1 zone].) That is precisely the situation here. The original rent increase restrictions at the park were implemented in 1974 when the City approved a TPD permit for the property (TPD 74-6) and thereby allowed construction of the mobile home park.[12] (Tab 15.9, p. 1919 [Condition 27]; Tab 6, p. 1181.) Resolution 84-037, subsequently adopted by the City Council in 1984, did not change the zoning for the property, but merely

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[12] Ranch rightly does not challenge the validity of the TPD permit that made development of Ranch possible in the first instance. (See *Scrutton v. County of Sacramento* (1969) 275 Cal.App.2d 412, 419 [approval of landowner's application to rezone property from agricultural to multiple family residential "represented 'spot zoning' of an individual parcel" that "is valid when long-term changes in the neighborhood have created conditions compatible with the proposed new use"].)

implemented a new formula that was more favorable to the owners than the original use permit.

Nor does the *City of Sausalito* decision provide any support for Ranch owner's contention that "the practical effect of Resolution 84-037 was to rezone the Ranch," requiring an ordinance rather than a resolution. In that case, the County board of supervisors adopted by resolution a master plan that "amounted to a full-scale rezoning" of a piece of land exceeding 2,000 acres in size. (*City of Sausalito, supra,* 12 Cal.App.3d at p. 562.) The master plan "excluded agricultural uses from the tract where the interim classification had permitted them"; "provided for 800 acres of apartments . . . where the interim classification had permitted single-family residential structures only"; "supplanted the limited commercial uses permitted by the interim classification with intensive and varied commercial uses of 529.8 acres"; and "permitted industrial use of 175 acres . . . where the interim classification had not permitted industrial use at all." (*Id.* at p. 563.) The court concluded an ordinance rather than a resolution was required because "[t]he board's adoption of these proposals in the master plan brought the situation within the rule . . . that such 'change or alteration in the actual physical characteristics of the district and its configuration amount to a rezoning of the district and may only be accomplished pursuant to the provisions of the state statutes and the local ordinances consistent therewith providing for zoning and rezoning.' " (*Ibid.*)

Here, by contrast, Resolution 84-037 merely implemented a new rent increase formula (one that was *more favorable* to Ranch's

owner than the formula it had originally agreed upon), and did not change the underlying zoning for the property, or alter its physical characteristics or its configuration. No legislative action was therefore required.

Finally, even if Ranch's owner were correct that Resolution 84-037 is invalid because it was not enacted as an ordinance, that would merely mean that any rent increase would be limited to the 11 percent "return on investment" formula in condition 27 of TPD 74-6. (See Tab 15.9, p. 1919.) As noted, that formula is far less favorable to the landlord than the annual four percent maximum increase subsequently permitted by Resolution 84-037. If Ranch's owner wishes to stipulate that condition 27 governs rent increases at the park rather than the more favorable (to Ranch's owner) resolution, Tenants obviously would not object to that approach. However, even such a stipulation would not give the RAC any jurisdiction in this matter, since TPD 74-6, and not the Rent Stabilization Ordinance, would govern rent increases at the park.

B. The Government Code does not impose any 30-year "sunset" on Resolution 84-037.

Before the RAC, Ranch owner's counsel reiterated an argument previously asserted in the memorandum attached to its application for a rent increase—that "Government Code Section 65915 expressly limits continued affordability conditions for properties receiving density bonuses (*i.e.*, the fee and improvement waivers) to a 30 year term," and that "[t]herefore the City's low-

income-residence and rent-restriction conditions expired by operation of law in 2007, 30 years after they were adopted in 1977." (Tab 2.1, p. 111; accord, Tab 28.1, pp. 2479:21-2480:8.) Ranch's argument has no merit for four independent reasons.

First, the statutory 30-year period for "continued affordability" applies only when the city has awarded a "density bonus" in return for constructing low-income housing[13] and that did not happen with Ranch. " '[D]ensity bonus' means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county." (Gov. Code, § 65915, subd. (f); accord, 9 Miller & Starr, Cal. Real Estate, *supra*, § 25:37, p. 25-158.) Here, the City's development permit did not grant any density bonus, but did exactly the opposite—it decreased the applicable density requirements to allow the construction of a trailer park that was *less* dense than the zoning classification for the property. (Tab 22.1, p. 2056 ["The proposed zoning would be of a consistent (or even lower) density with the Land Use Element, which recommends 'high density residential' "], 2057 ["the zone change, if approved, would

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[13] The sole reference to any 30-year period in section 65915 is found in subdivision (c)(1), which provides in pertinent part:

> An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

reduce the traffic generation potential of the subject property"].) Therefore, even if section 65915 did impose a 30-year time limit on rent increase restrictions where a "density bonus" has been granted, it would have no application to Ranch.

Second, Resolution 84-037 was adopted in 1984. Even if section 65915 does contain an applicable 30-year "sunset" provision (it does not), the resolution would remain valid through 2014.

Third, section 65915 actually does not contain any 30-year cut-off on all "affordability conditions," as Ranch's owner contends. The statutory language (see *ante*, fn. 13) merely sets a floor, not a ceiling, on the duration of certain affordability conditions. It ensures a *minimum* 30-year period for such conditions where the statute applies, but does not mandate any expiration of such conditions after 30 years as Ranch contends.

Here, the City's Density Bonus Program, which "implements the requirements placed upon the City by California Government Code Section 65915 et seq." (Thousand Oaks Mun. Code, § 9-10.501), provides that "[r]ental and ownership [of] very low-income and lower-income affordable units that qualify a residential development for a density bonus shall remain affordable to the designated income group for a *minimum* period of thirty (30) years" (Thousand Oaks Mun. Code, § 9-10.508, subd. (a), emphasis added). Since the Density Bonus ordinance was enacted only in 2008, it is obvious that Ranch does not fall under the Program. But even if the ordinance did apply, the City did not require Ranch to agree to just a minimum 30-year period, but instead, as stated in the Housing Element Update submitted to the State, considers the income

restrictions in Resolution 84-037 to apply *in perpetuity*. (See Attachment B, p. 35, fn. 2 [Ranch is a "[m]obile home park [that] was approved in return for income restrictions in perpetuity"].)

Finally, had the California Legislature intended what Ranch's owner wishes, the Legislature would have said so, such as by providing that "after the expiration of 30 years, an applicant is no longer required to ensure the affordability of all low- and very low income units that qualified for the award of the density bonus." Indeed, Ranch's owner does not cite a single authority interpreting section 65915, subdivision (c)(1), as providing a sword for landlords to wield against tenants of low income housing. If the Legislature had provided landlords with such a powerful weapon, allowing them to recapture low-income units after 30 years in order to begin charging market rents, one would reasonably expect to see extensive use of that provision, and extensive discussion by commentators and in reported decisions regarding its intended reach. But as far as we can determine, no case or treatise has ever interpreted section 65915, subdivision (c)(1), in the manner proposed by Ranch's owner.

CONCLUSION

For all the foregoing reasons, the City Council should determine that the RAC had no jurisdiction to approve Ranch owner's application for a rent increase, and that Resolution No. RAC 09-2011 must therefore be set aside and vacated as null and void.

May 11, 2011

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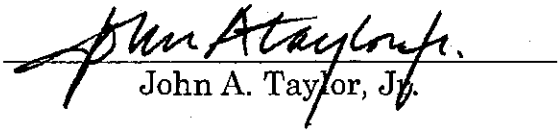
By: 
John A. Taylor, Jr.

Attorneys for
ASSOCIATION OF RANCH TENANTS

ATTACHMENT A

M E M O

TO: Planning Commission

FROM: Planning Department

SUBJECT: Planning Director's Referral on Condition 27
TPD-74-6 - Andrew Hohn for Chet Wyckoff

DATE: July 19, 1976

The attached correspondence has been submitted in accordance with Condition No. 27 of Resolution 267-74 PC in order to establish a rental schedule for the Ranch Mobile Home Park. Condition No. 27 of TPD-74-6 requires the following:

> "That prior to the issuance of a zone clearance for this project, the developer shall enter into an agreement with the City of Thousand Oaks, deed restricting the development for low income mobile home park rental. Said agreement shall establish the City or its duly authorized representative as a housing authority and shall establish conditions of occupancy and rental rates. Said agreement shall be subject to review and approval of the City Attorney and the Planning Director with the final review and approval by the Planning Commission."

Background

This TPD application was filed by Mr. Chet Wyckoff in the early part of 1974. At that time, Mr. Wyckoff petitioned the City by filing both a zone change application and the trailer park permit in order to establish a "low income" mobile home park development on a parcel of property located at the north side of Los Feliz Drive, approximately 500 feet westerly of Conejo School Road. During the zone change consideration, the Planning Commission and the City Council waived the minimum park size area from 10 to 5 acres and reduced the pad size requirements to allow development of the 74 units (15 units/acre) on the subject site. See attached Staff Report and Resolutions for the zone change.

During the public hearings on this development, the applicant submitted extensive testimony as to the proposed rental rates and qualifications of residency within the mobile home park. Based on construction costs in 1974, the applicants projected that the minimum rental rate would be approximately $72.50 for a single width space and $110.00 for a double width space mobile home pad. In order to maintain the low rental rates and minimize development costs, the applicant further requested the City Council, under an appeal, to waive the normal City development fees. Based on this request, the City Council amended the City's standard development fees consisting of the park dedication, sewer and water service costs. These fees to date have been estimated at approximately $100,000 for the project.

Request

Since the approval of the permit, the applicant, Chet Wyckoff, has attempted to proceed with construction of the mobile home park. Because of health conditions and financial limitations of the applicant, he has been unable to pursue development of the mobile home park, thus he is attempting to sell the project. Mr. Andrew Hohn, developer of the Thunderbird Oaks Mobile Home Park, has indicated a willingness to pursue construction of the park as per the City's conditional approval of TPD-74-6. In order to assess the financial feasibility of the project, however, Mr. Hohn has requested, in light of the City's rental rate controls, that the rate or at least the method of establishing the rate, be reviewed and conceptually approved prior to development of the park.

For the Commission's consideration, Mr. Gene Pierce, attorney representing Andrew Hohn, has submitted a tentative rental schedule. This rate schedule is based on anticipated construction costs, land values, contingencies, loan fees and other developmental expenses. The anticipated monthly rental rate is $131.00 per lot. This represents a $19.00 a lot monthly rental rate fee reduction that, according to the applicant, can be passed on to the tenants as a result of the City's exemption of development fees. According to the applicant, the $131.00 rental fee is based upon a preliminary development cost estimate and is subject to numerous changes, depending upon actual construction cost. This expenditure can be confirmed after construction of the park by the submittal of a certified accounting analysis for the project.

In addition to construction costs, the $131.00 rental fee also includes a minimum 22% return (profit) on the gross investment of the project. This return is an average percentage of profit presently experienced by the proposed developer on other mobile home parks, as illustrated on Exhibits A and B of the attachments.

Evaluation

The Staff in evaluating this request, concurs with the applicant that the development cost plus profit is the most equitable way of establishing the rental rate. Accordingly, we would suggest that this approach be approved subject to the submittal of a Certified Accounting of development costs from the builder. The main issue concerning this request, in the Staff's opinion is the appropriate profit or percentage of return on the gross investment for the mobile home park. Considering the low risk factor for this park, the 22% profit appears to be excessive.

In further evaluating this request, the Staff is of the opinion that the $131.00 rate is a significant departure from the initial rent schedule of $72.00 to $112.00 previously indicated by the applicant. Furthermore, the proposed rental rate is high in light of the numerous waivers of City development standards and fees, thus the original intent of the City's decision to provide a "low-cost" mobile home park is not fulfilled.

Recommendation

It is the position of the Planning Department in evaluating the information submitted that the initial purpose in approving this project in conjunction with the reduction of standards and waiver of fees has not been accomplished. The Staff has reached its position based on the following:

1. The applicant has not quantified the cost reductions derived from the City's waiver of development standards for this mobile home park, i.e., elimination of block wall requirements, reduction in average pad and minimum pad sizes, etc.

2. The City has demonstrated a willingness to sacrifice fees in order to provide low cost housing and any developer of such a park should also accept a reduction in the profit margin realized from the project.

3. The proposed rental fee structure does not reflect the reductions that were presented to the Planning Commission and the City Council in 1974. It is found that this rental fee is similar to fees charged to residents within standard mobile home parks and it is higher than fees charged to residents in the older trailer parks within the Community.

The Planning Commission should receive testimony from the applicant during the Public Hearing to determine if the proposed rate, including the method for deriving the rental structure and percentage of profit margin complies with the Planning Commission's previous intent in imposing Condition No. 27.

Prepared by:

George Elias
George Elias
Associate Planner

Submitted by:

Philip E. Gatch
Philip E. Gatch
Planning Director

PEG:GE:jm
Attachments

ATTACHMENT B

2006-2014 HOUSING ELEMENT

THOUSAND OAKS GENERAL PLAN

April 13, 2010

TABLE II-26
ASSISTED AFFORDABLE HOUSING DEVELOPMENTS IN THOUSAND OAKS

No.	Project	Year Income Restricted	No. of Units	Description	Covenant Expires
18	Royal Oaks	1995	5	Owner: Area Housing Authority; Family housing for low income	N/A[1]
19	Florence Janss	1988	64	Owner: Area Housing Authority; Senior housing for low income, disabled	N/A[1]
20	Glenn Oaks	1997	45	Owner: Area Housing Authority; Senior housing for low income	N/A[1]
21	Ranch Mobile Home Park	1984	74	Owner: Private: Restricted to very low income seniors; Regulated by City Resolution 84-037	N/A[2]
22	Hillcrest	1993	10	Owner: United Cerebral Palsy/ Spastic Children's Foundation; 15 beds for severely disabled persons; 10 beds for income eligible residents	N/A[3]
23	Belair	1993	10	Owner: United Cerebral Palsy/ Spastic Children's Foundation; 15 beds for severely disabled persons; 10 beds for income eligible residents	N/A[3]
Total			**368**	**23 developments: 13 family, 5 senior, 1 transitional, 2 supportive, 2 for severely disabled**	

[1] Units are owned by a joint powers authority of local governments whose mission is to provide affordable housing. As such, these units are not at-risk of conversion to market rate housing.
[2] Mobile home park was approved in return for income restrictions in perpetuity. It is not at-risk of conversion to market rate housing.
[3] Facility is owned by national charitable organization dedicated to serving the needs of persons with disabilities. The facility is not at-risk of conversion to market rate housing.

1. Units at Risk

Conejo Futures Apartment was financed by a HUD Section 221 (D) (4) program. The project is owned by Conejo Future Apartments, a limited partnership. The project has 90 senior units restricted for Low Income residents. Affordability restrictions imposed by HUD ended September 2004, however the project continues to receive Project-Based Section 8 Housing Assistance Payments from HUD based on a 5-year renewable HAP contract. The current contract expires September 9, 2009; however, the property is governed by a Declaration of Restrictions recorded on March 6, 1974, limiting use of the property to the development of subsidized housing for senior citizens. Moreover, the owners have stated their intent to seek renewal of the Section 8 HAP contract. The project is considered to be at a low risk of converting to market rate during the Housing Element term.

The Housing Action Plan (Table VI-1) contains a program (Program 26) to develop a strategy for preserving the Conejo Future Apartments as affordable housing, contact the

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

On May 11, 2011, I served true copies of the following document(s) described as **APPEAL BRIEF OF ASSOCIATION OF RANCH TENANTS ON JURISDICTIONAL ISSUES** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mgandola@horvitzlevy.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 11, 2011, at Encino, California.

Millie Gandola

Millie Gandola

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