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COURTS CLARIFY LOCAL AGENCY ROLE IN MOBILE HOME PARK OWNERSHIP CONVERSIONS

Colony Cove Properties, LLC v. City of Carson, No. B219352, (2nd Dist., Div. 4, August 31, 2010)

Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, No. B216515 (2nd Dist., Div. 4, August 31, 2010)

By Aaron J. Sobaski

On August 31, 2010, the Second District of the California Court of Appeals (the "Appellate Court" or "Court") issued two separate rulings in the above described matters ("*Colony Cove*" and "*Palisades Bowl*") addressing the conversion of a rental mobile home park to resident ownership under the Subdivision Map Act (Gov. Code §66410 et seq.). The two decisions clarified to the role of a local legislative body or advisory agency ("Local Agency") with respect to its approval, conditional approval, or disapproval of a tentative map or parcel map for the conversion of a rental mobile home park to resident ownership under Government Code §66427.5. They also highlighted some potential issues that Local Agencies may face in implementing the statute as currently written.

Background - §66427.5

Section 66427.5 sets forth the requirements which a subdivider must satisfy in order to convert a rental mobile home park to resident ownership, and in particular what actions the subdivider must take to avoid negative economic ramifications to any non-purchasing residents. Subdivision (e) of the statute provides:

> *"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."*

Colony Cove and *Palisades Bowl* deal with the issue of defining the scope of the Local Agency's role in approving conversion applications under such subdivision. In particular, (i) *Colony Cove* addressed whether such role was expanded by the Legislature's addition of §66427.5(d) to the Statute as part of the 2002 amendments thereto, and (ii) *Palisades Bowl* addressed whether such role changes when the mobile home park in question is located within a "coastal zone" which is subject to the California Coastal Act of 1976 (Public Resources Code, §30000 et. seq.) (the "Coastal Act") and the Mello Act, Government Code §65590 and §65590.1 ("Mello Act").

Colony Cove

In *Colony Cove* the Appellate Court was asked to review Ordinance No. 08-1401 (the "Survey Ordinance") adopted by the City of Carson ("Carson") in March of 2008. The Survey Ordinance was intended by Carson to clarify the factors that Carson would consider in reviewing a conversion application pursuant to §66427.5(e), with respect to the resident survey required to be provided to Carson by the subdivider pursuant to §66427.5(d). Subdivision (d) of the Statute requires that a subdivider conduct a resident survey to gauge the residents' support of the proposed conversion, and also requires that the results of such survey be submitted to the Local Agency *"... to be considered as part of the subdivision map hearing prescribed by subdivision (e)."* The Survey Ordinance sets forth percentage based parameters that Carson would use in determining whether the resident survey evidenced that the residents supported the conversion. On May 19, 2008, Colony Cove Properties, LLC ("Colony Cove"), which planned to convert a mobile home park in Carson from rental to resident ownership, filed a verified writ of petition seeking a writ of mandate directing Carson to vacate the Survey Ordinance.

The trial court granted Colony Cove's petition at a hearing on June 19, 2009, and entered judgment thereon, holding that under §66427.5(e) Carson is limited to deciding only whether the subdivider has complied with the requirements of §66427.5, and nothing else, and thus Carson does not have the power to exercise any discretion with respect to the resident survey and the results thereof, thereby invalidating the Survey Ordinance. Carson appealed.

The Appellate Court reviewed the trial court determination de novo to determine whether, as a matter of law, the Survey Ordinance was preempted by §66427.5. In doing so, it delved into a statutory interpretation of the current iteration of §66427.5, and the legislative history of the initial version of the statute and the 1995 and 2002 amendments thereto, and also discussed the only (at that time) published opinion interpreting the current version of the statute, *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270 ("*Sequoia Park*").

The Appellate Court noted that the plain language of §66427.5(e) did not grant Local Agencies the right to expand on any of the requirements of §66427.5, but instead expressly stated that the scope of the hearing conducted by Local Agencies' pursuant to §66427.5(e) was limited to whether the proposed conversion complied with §66427.5. It also noted that according to the legislative history, when making previous amendments to the statute, although §66427.5(d) was added by the Legislature to address whether the proposed conversion was bona fide or merely a tool to benefit an ulterior motive of the subdivider (such as circumvention of a local rent control ordinance), the Legislature rejected proposals to expand the language of §66427.5(e) to give Local Agencies more discretion over the approval process. The decision in *Sequoia Park* noted the same, and as a result held that a Local Agency does not have the authority under §66427.5(e) to enact percentage tests with respect to the resident survey required under §66427.5(d), in particular because the State has "taken for itself the commanding voice in mobile home regulation" (*Sequoia Park*, 176 Cal.App.4th 1279).

As a result, the Appellate Court held that although the Survey Ordinance was intended by Carson to give meaning to the resident survey requirement of §66427.5(d), the Legislature has clearly reserved for itself total discretionary control over the requirements for the approval of a conversion of a mobile home park from rental to resident ownership under the Subdivision Map Act, and thus the Survey Ordinance was invalid because it added an additional local requirement that a subdivider in Carson demonstrate that a conversion is bona fide, via the required resident survey, by showing there is a sufficient percentage of residents supporting the conversion.

In making its decision in *Colony Cove*, the Appellate Court, recognized that while the Legislature may not have given Local

Agencies the authority to supplement the express requirements of §66427.5, it also has not provided any guidance as to how a Local Agency should use the results of the resident survey required pursuant to §66427.5(d) to determine whether the proposed conversion is bona fide. Thus, it remains unclear (i) to what extent the Legislature has delegated to the Local Agency the determination of whether a conversion is bona fide, and (ii) assuming such determination has been delegated in at least some respect, whether there are any objective criteria which a Local Agency in permissibly entitled to apply in connection with its duties under §66427.5(e).

Palisades Bowl

In *Palisades Bowl*, the Appellate Court faced different issue with regard to the scope of a Local Agency's role under §66427.5. In particular, the Court was asked to decide whether a Local Agency, in this case the City of Los Angeles' Division of Land ("LADL"), was entitled to reject a conversion application for a mobile home park in a coastal zone when the subdivider has failed to show that the proposed conversion complies with the Coastal Act and the Mello Act, but has otherwise complied with the requirements of §66427.5.

In June 2007 Pacific Palisades Bowl Mobile Estates, LLC attempted to file an application with the LADL to convert its mobile home park across the Pacific Coast Highway from Will Rogers State Beach from rental to residential ownership. LADL refused to accept the application, in part because it was viewed as incomplete since it did not demonstrate that the subdivider had obtained the required approvals under the Coastal Act and Mello Act. After unsuccessful attempts to resolve their differences in opinion as to what was required to be submitted as part of the conversion application, the subdivider filed a petition for writ of mandate, claiming, in part, that LADL lacked any discretion to impose upon a subdivider any requirements other than those expressly set forth in §66427.5.

The trial court granted the subdivider's petition and entered judgment thereon, holding that under §66427.5(e) LADL was limited to determining whether the subdivider has complied with §66427.5, which does not require that a subdivider show compliance with other State laws which may be applicable, such as the Mello Act and Coastal Act. The City appealed, arguing that §66427.5 did not preclude a Local Agency from requiring that a subdivider show compliance with other State statutes which may be applicable to the property in question, and which do not expressly contradict the intent of §66427.5. In effect, the City asserted that a mobile home park conversion in a coastal zone must still satisfy the Mello Act and the Coastal Act even if it otherwise satisfies §66427.5.

In reviewing the trial court decision de novo, the Appellate Court engaged in statutory interpretation and made a detailed analysis of the plain text and meaning of §66427.5, the Coastal Act, and the Mello Act, as well as the legislative histories of all three statutes. In doing so, the Court determined that the limited mandate given to Local Agencies under §66427.5(e) could not be clearly reconciled with the mandates given to Local Agencies under the Mello Act and Coastal Act and, further, that the legislative histories of the statutes were not sufficient to reconcile such discrepancies.

Relying on the Supreme Court's decision in *Mejia v. Reed* (2003) 31 Cal.4th 657, 668 ("*Mejia*"), the Appellate Court went on to analyze the "relevant policy considerations" of the three statutes "as they bear on the question of legislative intent." In doing so, the Court noted that (i) the policy considerations of §66427.5 are limited to encouraging conversion of mobile home parks to residential ownership while protecting non-purchasing residents of the park, (ii) the policy considerations of the Mello Act focus more broadly on the continued availability of affordable low-income housing within the coastal zones of the

State, and (iii) the policy considerations of the Coastal Act are to make it clear that State policies with respect to any development in the coastal zone take precedent over local policies.

The Appellate Court then compared the policy considerations of §66427.5 with those of the Mello Act and the Coastal Act to determine whether §66427.5 should be the controlling statute. The Court noted that the general rule of interpretation is that the more specific controls over the more general, but determined that three statutes were both specific in part as well as general in part. Section 66427.5 is specific as to the type of development that it applies to (mobile home parks), but is general with respect to ***where*** such development is located. By contrast, the Coastal Act and Mello Act are general with respect to the types of developments which they apply to, but are very specific with regard to where such developments must be located (the coastal zones) in order for such statutes to be applicable. The Court also noted that the Mello Act's genesis was the Coastal Act, and that the Legislature stated in enacting the Coastal Act that the protection of the States coastal resources for all residents is of "paramount concern".

Thus, since the Coastal Act and Mello Act address a "paramount concern" and are more specifically applicable to coastal zone developments than the developments governed by §66427.5, and because §66427.5 does not expressly preclude a Local Agency from reviewing a subdivider's compliance with other State-mandated criteria, the Appellate Court held that LADL was within its mandated rights to require that an application for mobile home park conversions from rental to residential ownership include proof of compliance with the requirements of the Mello Act and Coastal Act if the park in question is located within a coastal zone.

Conclusions

The two decisions illustrate both a general rule and an exception regarding the conversion of a mobile home park from rental to resident ownership. The Court in *Colony Cove* set forth the general rule that Local Agencies cannot expand on the requirements of §66427.5. *Palisades Bowl* provides the exception—in the absence of an express preclusion from the Legislature, Local Agencies can go beyond the requirements of §66427.5 in coastal zones due to the "paramount concern" of protecting coastal resources. Under this narrow exception, Local Agencies can require that subdividers also demonstrate compliance with the Coastal Act and Mello Act.

Authored By:

Aaron J. Sobaski
(714) 424-2848
ASobaski@sheppardmullin.com