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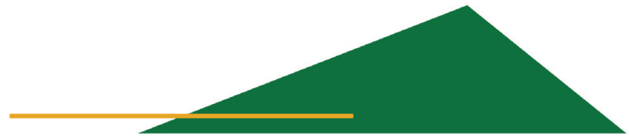

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News for Mobilehome Park Owners

September 2009

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Gilchrist & Rutter provides updates on legal trends as a service to keep our valued clients and friends informed of the latest legal news. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion.

Park Owner Victory! Sequoia Park v. Sonoma

Court Of Appeal Affirms Property Rights; State Authority Supercedes Local "Parochial Interests"

California park owners and local governments have been waiting for over two years for the Court of Appeal decision Sequoia Park Associates v. County of Sonoma. The Decision was recently published and it is an unqualified victory for your property rights. The Court fully reaffirmed that park owners have the right to convert their parks from rental-only to condominium-style ownership of lots if they have complied with State requirements. Local government has no authority to impose additional requirements or conditions.

Conversions to resident ownership allow park owners to offer residents the opportunity to buy the spaces they currently rent. For each lot sold, the park owner obtains the true real estate value of his or her land instead of its current value based on an often-restricted rental income stream.

Residents have the opportunity to build equity instead of merely paying rent, to own their lot, and to make decisions about park ownership and management. Residents have the choice whether to buy or to continue to rent. Rent increases for low-income residents will be less than they were under any local rent control, while rents for moderate- and above- income residents will rise to market rates over four years. In this way, those residents who truly need rent control will continue to be protected, while the park owner will have the opportunity to charge fair rents to those who can afford it.

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This May Be a Perfect Time to Close Your Mobilehome Park

As a mobilehome park owner, perhaps you recognized some time ago that your property's highest and best use was not as a mobilehome park. Thus, you may have decided that within the next three to four years or so you want to be in a position to change the use of your property to another use, say retail, office or mixed use.

Or, maybe you have been approached with a development opportunity involving the use of your property for something other than the rental of mobilehome park spaces. As a potential development partner you would consider contributing the property (after the park has been closed) as part of your contribution to the development in exchange for an interest in the developing entity.

According to mobilehome park consultant Vickie Talley of Talley & Associates, Inc., "If you can obtain a higher and better use for your property by changing its use from a mobilehome park, given the current economic climate, now is the time to start examining your options because of the various lead-time planning issues that need to be resolved before the park can be closed."

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Park Owner Victory!

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In 2007, Gilchrist & Rutter sued the County of Sonoma to invalidate its Ordinance which imposed burdensome requirements on applications for Conversion. In Sequoia Park Associates v. County of Sonoma, a published decision with binding authority for the whole State handed down on August 21, the Court of Appeal held the entire Ordinance was pre-empted by State law and therefore invalid.

In particular, the Court found the County's requirement of resident support for a Conversion was illegal. Additionally, the County's requirement that Conversions be consistent with its housing plan and affordable housing needs offended State law. "[T]he State ha[s] declared itself in favor of converting mobilehome parks to resident ownership," the Court stated.

The Court also held that information and documentation required by the Ordinance was irrelevant and could not be required. The Court stated, "[T]he Legislature, which has established a dominant role for the state in regulating mobilehomes, has indicated its intent to forestall local intrusion into the particular terrain of mobilehome conversions, declining to expand [Government Code] section 66427.5 in ways that would authorize local government to impose additional conditions or requirements for conversion approval."

In fact, the Court's decision is especially noteworthy for its strong recognition and reassertion of State authority over mobilehome parks, often to the complete exclusion of local authority. In this way, Sequoia Park is part of a trend in the Legislature and in the Courts to prevent local "parochial interests" from interfering with State authority over parks, intended to provide statewide uniformity of regulation. The Court surveyed State mobilehome park law, which it said "demonstrates that the State has taken for itself the commanding voice in mobilehome regulation. Localities are allowed little scope to improvise or deviate from the Legislature's script."

"Sequoia Park is therefore not only a vindication of park owners' rights in the field of Conversions, but it also provides legal grounds for use in future disputes with local governments regarding their often-narrow or nonexistent authority."

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In a related case, oral argument in Carson Harbor Village, Ltd. v. City of Carson is scheduled before the Court of Appeal on September 29, 2009. The Court will hear the City's Appeal of a Writ obtained by Gilchrist & Rutter for Park Owner James Goldstein which overturned that City's denial of a Conversion application.

The Sequoia Park ruling also provides strong support for the multimillion dollar damages actions that have been filed against various cities and counties for their wrongful efforts to burden, delay and block Conversions. Last year, the City of Palm Springs agreed to pay $937,000 to avoid going to trial in such a lawsuit. Any future interference of Conversions by local governments after the Sequoia Park ruling would provide further grounds for large damages claims.

Ask the Experts!

Mildred from Orange County asks:

The rules in my park are very old and I would like to update them. I am not sure if the residents will agree to the new rules I am considering. Do I need their consent?

Answer:

Pursuant to Mobilehome Residency Law, park rules may be changed with or without the consent of current homeowners.

If the amended rules are presented to the homeowners and they agree to them, they may be implemented immediately. However, if your residents do not consent to the proposed new rules you must wait six months before the new rules go into effect. The procedural steps are:

1. Notify the homeowners in writing of the proposed rule change;
2. Meet with the homeowners to discuss what the new rules are and why you are proposing them;
3. Request the homeowners' consent of the new rules;
4. Send a second written notice telling the homeowners when the new rules will be effective.

Please be aware that there are a few exceptions to this law. Please call if you have any questions.

* * *

If you have industry-related questions that you would like to see covered in future Newsletters, please e-mail us at:

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City of Los Angeles to Consider Increasing Tenant Rental Protections

Roused by a group of disgruntled residents, the City of Los Angeles has agreed to conduct a study of the feasibility of changing the existing City Rent Control Ordinance to increase the rental protections for mobilehome park tenants.

Gilchrist & Rutter, in conjunction with the WMA, has been retained by a group of Los Angeles park owners to work with the L.A. City Housing Department and the City Attorney as they determine if the City rent control should be changed.

"...studies have indicated that in fact the value of the homes have increased substantially over time."

There are 62 mobilehome parks in the Los Angeles and, as in most localities, the City considers them as a critical source of affordable housing. L.A. tenants have convinced City officials that they face a significant hardship when selling their homes because the City Code allows a 10% rent increase upon turnover. Tenants claim that this rent increase upon change of tenancy forces them to sell their homes for a fraction of their value.

Los Angeles park owners disagree that the Rent Ordinance is depressing the values of homes in their parks. To the contrary, studies have indicated that in fact the value of the homes have increased substantially over time.

Gilchrist & Rutter will also be working on behalf of Los Angeles park owners to explain to the City that if they ultimately decide to change the existing Ordinance they risk possible invalidation of rent control in Los Angeles.

Recent case law, *MHC Financing, Ltd. v City Of San Rafael*,determined that rent control on mobilehome parks which affectively transfers the value of the space to the mobilehome constitutes an illegal taking of property. If Los Angeles amends its City Code it will start a new statute of limitations period subjecting the City Rent Control Ordinance to legal challenge.

After the Department of Housing and the City Attorney complete their study they will make recommendations to the City Council Housing Committee, which is composed of Council Members Wesson, Alarcon, Cardeñas, Perry, and Reyes. The Committee will hold public Hearings on the matter and then make a recommendation to the full City Council.

The City Council will consider the recommendations from the Committee and decide if changes are needed and whether the legal risk outweighs any benefits to the tenants of the proposed changes. Action is anticipated by the Los Angeles City Council prior to the end of the year.

Should You Change Your Park From Senior to Family?

When mobilehome parks were first built, they were primarily senior parks. The concept was that the parks would be outside of the main metropolitan areas and would be geared toward retired seniors.

Now park owners are asking themselves whether they should change their properties from senior parks to family parks. The locations that were once "out in the country" are now in the middle of employment markets. There are a lot of families that want to move into manufactured housing communities.

"The locations that were once "out in the country" are now in the middle of employment markets. There are a lot of families that want to move into manufactured housing communities."

With the bad economic climate, many lots and homes are vacant and the seniors are unable or unwilling to pay the rent. It is common for the family of the senior to not want to continue making rental payments once the parent(s) leave the park. Park owners are now evaluating whether it makes economic sense to change the park from a senior park to a family park.

In many areas, there is greater demand for spaces in a family park than a senior park. Family parks often have multiple wage earners who can better afford to pay higher rents than seniors on a fixed income.

Some residents may be in favor of the change because there is greater demand and more qualified buyers for their homes when they decide to sell.

You have a right to change your park from senior to family. It is a rule change and as long as you comply with Section 798.25 of the California Civil Code, you do not need to obtain permission for the change. It can become effective in six (6) months after compliance with the California State Statute.

Maybe this is the right time and the right economy to analyze the benefits of changing your park to a family community.

This May Be a Perfect Time to Close Your Mobilehome Park

(Continued from page 1)

Any change of use from a mobilehome park to another use involves closure of the mobilehome park. Closure of mobilehome parks is governed by California law and in certain instances local ordinances.

In most cases, legal, political and economic issues are perhaps the most significant lead-time planning concerns that the park owner will need to address before being in a position to close his or her park. As early as possible, the park owner will want to start examining the legal, political and economic options associated with closing the park.

For example, on the legal side, there are special park closure notice requirements under California law. In some instances 12-months prior notice is required to be given, and in others 6-months prior notice is required after a permit to close the park has first been obtained. The normal 60-day notice to terminate tenancies is insufficient to terminate mobilehome park tenancies due to a closure of the park.

> *"If you can obtain a higher and better use for your property by changing its use from a mobilehome park...now is the time…"*

An additional legal requirement pertaining to closure of the park is the park owner's preparation, filing and delivery of an impact report detailing the effect of the closure on displaced residents.

To the extent there are local ordinances regarding mobilehome park closure, such ordinances will need to be analyzed by the park owner's legal counsel. Some of these local ordinances may be in violation of California law and will need to be closely reviewed. Many cities enact invalid rules to discourage park owners from closing their parks.

Depending upon the terms of the local closure ordinances, negotiations between the park owner's legal counsel and the local governing body's legal counsel may be necessary in order to work through acceptable closure terms.

Political issues associated with the closure of a park will vary from location to location. Depending upon the perceived benefits (or detriments) of the mobilehome park to the community and the proposed new use, closure of some parks may be welcomed by local officials and the wider community.

In other instances, closure of a park may be strongly opposed by the community and thus by local officials. In those situations where the local governing body has the power to disapprove the closure of a mobilehome park, an assessment of the likely political impact and its effect upon the closure of the park would be helpful in determining the viability and cost effectiveness of the closure. Legal counsel and other experts, experienced in park closure matters, can be helpful in assessing these political concerns and in developing a strategy to minimize political difficulties.

Getting started as early as possible might also payoff economically for a park owner with plans to close his or her park in the near future. Currently, there is a down-market for homeowners seeking to sell their mobilehomes. Buying out homeowners in a down-market could save park owners considerable sums in those jurisdictions requiring the payment of relocation fees and costs and/or in-place values for the homes, or even in those jurisdictions that do not currently have such ordinances but may adopt them in the near future.

In summary, as a result of the depressed economy this may be the perfect time to analyze the potential profit of a change of use.

Representing mobilehome park owners for over 25 years,

Gilchrist & Rutter

has been providing legal services to the manufactured housing industry, including:

closure | financing | regulatory | acquisition & sale | subdivision

conversion | rent control application & litigation | failure to maintain claims & prevention

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