

AGENDA NO. 3

PLANNING COMMISSION



STAFF REPORT

DATE: May 24, 2010

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department/Planning Division

SUBJECT: **CONSIDERATION OF A TENTATIVE MAP (T-1-09) AND REGULAR COASTAL PERMIT (RC-5-09) FOR A 348-LOT RESIDENTIAL SUBDIVISION OF AN EXISTING MOBILE HOME PARK ON AN APPROXIMATELY 44-ACRE SITE LOCATED AT 1225 OCEANSIDE BLVD. – CAVALIER MOBILE ESTATES – APPLICANT: CAVALIER MOBILE ESTATES LLC.**

RECOMMENDATION:

Staff recommends that the Planning Commission by motion:

- (1) Adopt Planning Commission Resolution No. 2010-P15; denying Tentative Map (T-1-09) and Regular Coastal Permit (RC-5-09) with findings of denial enumerated herein and in the attached resolution and project file.

PROJECT DESCRIPTION AND BACKGROUND

Site Review: The proposed project is a request to subdivide an approximately 44-acre parcel fully developed as a Mobile Home Park into 347 individual fee lots and one lettered lot that would encompass all common areas. The subject proposal would essentially create legal individual lots without any development or improvement to existing facilities within the Cavalier Mobile Home Park. The Cavalier Mobile Home Park is located south of Oceanside Boulevard, immediately west of Interstate 5, north and significantly downslope of Laguna Street, and is transected by Loma Alta Creek, which runs east to west through the center of the mobile home park, and is situated within the South Oceanside Neighborhood. Approximately 25 percent of the subject 44-acre site exists within the boundaries of the Coastal Zone and has a zoning designation of Residential-3 (R3) per the 1988 official zoning map, while the other portion outside of the Coastal Zone holds a Medium Density Residential A (RM-A) zoning designation per the 1992 Oceanside zoning map.

Background: On July 9, 1969, the City Council approved Resolution 69-127 granting a Conditional Use Permit to operate a Rental Mobile Home Park on land that is now known as Cavalier Mobile Estates. The Conditional Use Permit had a 35-year life, and expired by its own terms in 2004. No renewal application has been filed to date and the mobile home park continues to operate as a mobile home park without the benefit of a valid conditional use permit. No application for a renewal of the expired or new conditional use permit was received with the subject tentative map and regular coastal permit application.

In 1982, the City adopted the Manufactured Home Fair Practices Act, now codified at Chapter 16B of the Oceanside City Code, which established a Manufactured Home Fair Practices Commission (the MHFP Commission) and sets forth specific methods for setting and adjusting space rent ceilings in mobile home parks within the City. The Ordinance withstood a facial challenge when it was adopted in *Oceanside Mobilehome Park Owners' Ass'n v. City of Oceanside* (1984) 157 Cal.App.3d 887. The Ordinance provides for annual CPI-based increases in space rents, as well as pass-through increases for increases in utility costs and government assessments, and additional "special adjustment" increases through application to the MHFP Commission.

On October 2, 2008, the park owner submitted a "special adjustment" application to the City's Housing Division seeking to increase the space rent ceilings at the park pursuant to the City's rent control ordinance. The MHFP Commission conducted a hearing and denied the application by resolution adopted on April 13, 2009. The park owner appealed the Commission's decision to an independent hearing officer (Retired Judge Kevin Midlam) who denied the appeal in a written decision dated July 7, 2009. The park owner challenged the hearing officer's decision by filing a Petition for Writ of Administrative Mandamus in the San Diego Superior Court on August 7, 2009. That lawsuit is still pending with a hearing to be scheduled sometime in June 2010.

Meanwhile, on September 15, 2009, about five weeks after the park owner filed the Petition for Writ of Administrative Mandamus challenging the denial of the rent increase, the City of Oceanside received an application to subdivide the Cavalier mobile home park from a space rental park into a mobile home park offering resident ownership. Under Government Code § 66427.5(f), when conversion of a rental mobile home park to resident ownership occurs, the space rent for non-purchasing park residents who are not lower-income households may be increased to market levels over a four-year period subsequent to conversion. Conversion occurs on the date that the first subdivided unit is sold. *El Dorado Palm Springs, Ltd. V. City of Palm Springs* (2002) 96 Cal.App.4th 1153. Space rents for non-purchasing residents who qualify as lower-income households may also be increased from pre-conversion rents, but the increases are limited to 100 percent of the increase in the Consumer Price Index and regulated solely by state statutes, not local ordinance.

The process by which a mobile home park conversion occurs is the same as all other subdivisions created by the Subdivision Map Act. However, current California case law provides that to the extent any local ordinance conflicts with the requirements of the Subdivision Map Act or requires consideration of additional authority, it is preempted. Thus, current case law requires local jurisdictions to review applications to subdivide mobile home parks based upon the Map Act and not local ordinances. One significant section of the Subdivision Map Act is Government Code § 66427.5, which provides in pertinent part:

At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobile home 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 mobile home 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 mobile home 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 mobile home 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 mobile home park owner; (3) the survey shall be obtained pursuant to a written ballot; (4) the survey shall be conducted so that each occupied mobile home space has one vote; (5) the results of the survey shall be submitted to the local agency upon filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision;

(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 Sec. 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.

Interpretation of this subsection of the Subdivision Map Act as it relates to conversion of rental mobile home parks to resident ownership remains unclear and continues to be challenged with differing opinions and rulings in the trial and appellate courts. Likewise, City staff and the applicant's attorney have differing opinions on the level of City scrutiny to be applied in this application. City staff has taken the position that Section 66427.5, while prohibiting the City from relying upon local ordinances to process a mobile home park conversion, does not prohibit the City from applying the requirements of other state statutes, or federal regulations, such as CEQA or the federal FEMA flood regulations. The applicant disagrees and to date has not provided the City with requested environmental information to allow the City to make a determination of compliance with CEQA, arguing that a number of exemptions should apply and no further CEQA review should be needed. The applicant has likewise not supplied requested hydrology reports that City staff determined it needed to adequately evaluate the existing and contemplated floodway and floodplain hazards that would be intensified by creating more than 300 new legal lots in a designated flood hazard zone. City staff has thus recommended denial based upon the following factors, and issued a CEQA exemption for projects for which staff is recommending denial.

To further assist the Commission in making a determination on this application, City staff is providing the following synopsis of relevant cases and an historical background for the Commission's use.

Historical Background: Like zoning and use permits, the subdivision map process is a local land use planning tool. Although the original state Subdivision Map Act dates from 1907, the Act was significantly strengthened by the Legislature in the 1970s to regulate, among others, lot-splits and condominium conversions. In 1980, the Legislature enacted a provision specifically giving local governments the power to regulate the subdivision of a mobile home park to another use, including requirements that the displacement of mobile home residents be mitigated (Govt Code § 66427.4) (SB 1722 [Craven]).

Therefore, before individual lots in a space rental park could be sold and converted to a resident-owned subdivision or condominium, the Subdivision Map Act required a subdivision map to be filed and approved by the local jurisdiction,

which could impose its various own conditions on the map to mitigate economic displacement of non-purchasing residents, such as relocation assistance, assurance that a majority of residents supported the conversion, etc. In response to this local control park conversion consultants lobbied the Legislature for respite from these conditions for bona fide resident-initiated conversions, contending that by imposing “unreasonable” conditions on the subdivision map, some local governments were actually hampering resident initiated conversions by making it more expensive for residents to buy and operate the park. Hence, the Legislature enacted Government Code Section 66428.1 in 1991, exempting, with certain exceptions, a park conversion from parcel, tentative or final map requirements where two-thirds of the mobile home owners in a park sign a petition in support of the conversion (AB 1863 [Hauser]).

Due to continuing concerns from some resident groups and conversion consultants, in 1995 the Legislature diluted the power of local governments to regulate the conversion of parks to resident-owned condominiums or subdivisions with the enactment of Government Code Section 66427.5 (SB 310 [Craven]). This provision did not have a homeowner support requirement but still allowed discretionary review by the local agency. It established a minimum standard for mitigation of the economic displacement of non-purchasing residents, as previously described. By establishing a State rent formula for lower income residents, Section 66427.5 thereby preempted a local rent control ordinance from regulating rents in a resident-owned park. This is the provision, however, now being used by park-owner driven resident conversions which is the center of debate on the “park condo” issue.

The following court cases are meant to convey for the Planning Commission the complexity of the issues and to report how Section 66427.5 is being addressed at this time:

El Dorado Palm Springs, Ltd. v. City of Palm Springs (2002) 96 Cal.App.4th 1153.

In this case, the Court of Appeal concluded that the City of Palm Springs lacked authority to impose three conditions on the approval of an application to convert a park to resident-owned condominiums. Those conditions included: 1) maintenance of rent control unit the sale of a certain percentage of lots; 2) determination of sale price by an appraiser at the park owner’s expense; and 3) financial assistance to residents for the purchase of lots. The Appellate court found the City exceeded its authority under former Section 66427.5 in imposing these conditions.

Later in 2002, in response to this case, the Legislature amended Section 66427.5 to require the subdivider to obtain and file with the local agency a survey of support from the residents. The legislative history indicates that the Legislature’s intent was to address the conversion of a mobile home park to resident ownership that is not a *bona fide* conversion, but rather an attempt to circumvent

local rent control ordinances. The Legislature also left intact former subdivision (d) which limits the scope of the hearing to compliance with Section 66427.5.

Sequoia Park Associates v. County of Sonoma (2009) 176 Cal.App.4th 1270

In this case, the Court of Appeal held that State law preempts a county's ordinance regulating the conversion of a mobile home park from rental to resident ownership. Sonoma County's mobile home conversion ordinance set out criteria for approval of park conversions, including compliance with certain provisions of Government Code § 66427.5, a finding of consistency with the General Plan and other land use regulations and adequate assurances that the conversion was a *bona fide* resident conversion. The Court of Appeal held that § 66427.5 expressly and impliedly preempted the local ordinance. The express preemption conclusion was based on § 66427.5 (e) which provides that the scope of a hearing on the conversion application shall be limited to compliance with that section.

This preemption holding described at length the comprehensive statutory and regulatory scheme surrounding subdivisions of mobile home parks. Some of the provisions of the local ordinance were preempted because they duplicated State law, while others fell short because they added requirements that were not contained in the State statutes.

At this point, no published court of Appeal decision has decided the extent to which local governments may rely upon the resident survey of support in deciding whether to approve or deny a tentative map. In an unpublished decision dated March 30, 2010 involving the City of Carson, the Second District Court of Appeal found that a city may determine whether a proposed conversion is *bona fide*. As stated by the court, "it stands to reason that the Legislature did not intend the survey to be an idle exercise but rather meaningful input for the City's review of the application." According to the unpublished decision in the Carson case, the survey of support provides a measure of tenant support; however, the legal test for a *bona fide* conversion must focus on the mobile home park owner's intent to truly provide for tenant ownership and the absence of intent to avoid the local rent control ordinance.

In another unpublished decision involving yet again the City of Palm Springs, the Court of Appeal for the Fourth District reached the opposite conclusion. In that case, the survey of support showed that over 75 percent of park residents opposed converting the park to resident ownership. The City Council, following the Planning Commission's recommendation, denied the application, finding, among other things, that the conversion was not a *bona fide* resident conversion. The trial court held that only a court, and not the local public agency conducting the public hearing, has the authority to determine whether a conversion is a *bona fide* resident conversion; the Court of Appeal agreed. A petition for review of the decision to the California Supreme Court is pending.

Amidst this backdrop, City staff has attempted to process the following application:

Project Description: The project application is comprised of two components, a Vesting Tentative Map, and a Regular Coastal Permit as follows:

Tentative Subdivision Map T-1-09 represents a request for the following:

- (a) To subdivide an approximately 44-acre parcel fully developed as a Mobile Home Park into 347 individual fee lots and one lettered lot that would encompass all common areas. No new development or improvements are proposed as part of the subject request.

Regular Coastal Permit RC-5-09 represents a request for the following:

- (a) To convert a rental mobile home park into an individual ownership park where a portion of the park is located within the boundaries of a Coastal Zone. The portion of the subject 44-acre site that exists within the boundaries of the Coastal Zone has a zoning designation of Residential 3 (R3) per the 1988 official zoning map, while the other portion outside of the Coastal Zone holds a Medium Density Residential A (RM-A) zoning designation per the 1992 Oceanside zoning map.

The project is subject to the following statutes, regulations, ordinances and policies:

1. The Subdivision Map Act
2. The General Plan/Local Coastal Program
3. California Environmental Quality Act
4. Federal FEMA Regulations

ANALYSIS

KEY PLANNING ISSUES

1. Government Code Section 66427.5

In order to approve an application for conversion of a mobile home park to resident ownership, the decision-making body shall make findings that (1) a survey of resident support was conducted and properly filed; and (2) that a tenant impact report was completed and properly filed prior to the survey. State law further requires that the results of the resident survey shall be considered in determining whether to approve, conditionally approve, or deny the application.

On September 15, 2009 the applicant's representative submitted a "Report on Impact of Conversion Upon Residents" to the City and stated that a "Survey of Support of the Residents" was conducted in July of 2009 and the results of the survey calculated in October of 2008 (sic). Staff presumes, but never received confirmation from the applicant, that the October 2008 date is a typo.

Upon calculating the survey results, the City determined that only about 5 percent of the total residents supported the conversion. Thus, staff has determined that the subject request to subdivide an existing Mobile Home Park into 347 individual fee lots and one lettered lot that encompasses all common areas, with no new development or infrastructure improvements is not the result of a resident-initiated conversion and thus subject to the Subdivision Map Act requirements.

Review of all surveys submitted in order to satisfy the requirements established as State law clearly illustrates that the action to convert from a rental to resident owned mobile home park is not supported by a vast majority of the residents who currently reside and rent within the park. The final tally of the survey results was that of the 339 occupied spaces within the park, 127 were not in favor of the conversion, 19 were in support, and 17 declined to state their opinion (the City received no information on the other 176 residents and presumes that they did not participate in the surveys). The overwhelming lack of resident support leads staff to believe that the conversion is not *bona fide*.

Moreover, the timing of the filing of the subdivision map, being submitted immediately following the denial of the park owner's request for a special adjustment of space rents, is evidence of the park owner's desire to eliminate the rent control obligations imposed by Oceanside City Code Chapter 16B.

2. Local Coastal Program

The City has adopted a Local Coastal Program (LCP) which has been certified by the California Coastal Commission. This program outlines goals, policies, and programs to ensure appropriate development and land uses within the designated coastal areas. The Land Use Plan section of the Local Coastal Program is included as General Plan Appendix B.

The LCP states in pertinent part, "Local agencies are required to control risks in areas subject to geologic, flood, and fire hazard." More specifically, the LCP identifies and summarizes major findings for flood hazards and notes in item 15, "The portion of Loma Alta Creek 100-year floodplain lying in the Coastal Zone covers about 50 acres. The creek is contained within a channel, portions of which are concrete and other portions that are soft-bottom with stone revetments. The existing channel can accommodate only 10-year flows." Further, in item 16, "Land within the Loma Alta Creek 100-year floodplain is largely developed. Uses that have been built in the floodplain include two mobile home parks, one of the

City's sewage treatment plants, and a number of industrial and commercial buildings. These uses are subject to inundation during peak storm condition."

One of the objectives of the LCP states, "The City shall seek to minimize risks to life and property in areas of high geologic and flood hazards." Upon review of the proposed subdivision, staff has determined that a substantial portion of the Cavalier Mobile Estates is located within the Coastal Zone and is actually located within the Loma Alta Creek Floodway. Floodway is defined by the Federal Emergency Management Agency as, "the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height." Due to the fact that a majority of the units are situated within the floodway and floodplain, staff has determined that creating legal lots within these areas does not satisfy the objective to minimize floodway areas, and allowing further intensification of the use of land through multiple lots with individual ownership in a hazard area would be inconsistent with the intent of the LCP and cannot be supported by staff.

3. California Environmental Quality Act

Pursuant to the California Environmental Quality Act of 1970 and State Guidelines thereto; the project is exempt from CEQA review at this time because staff is recommending that the project be rejected or disapproved by the Planning Commission. CEQA Guidelines 15061(b) (4) and Section 15270 (b).

ENVIRONMENTAL DETERMINATION

Pursuant to the California Environmental Quality Act of 1970 and State Guidelines thereto; the project is exempt from CEQA review at this time because staff is recommending that the project be rejected or disapproved by the Planning Commission. CEQA Guidelines Section 15061(b) (4) and Section 15270 (b).

PUBLIC NOTIFICATION

Pursuant to Article 41 of the Oceanside Zoning Ordinance, legal notice was published in the North County Times and notices were sent to property owners of record and occupants within a 1,500-foot radius of the subject property, to individuals/organizations requesting notification, and to the applicant.

SUMMARY

The proposed Vesting Tentative Map (T-1-09) and Regular Coastal Permit (RC-5-09) are inconsistent with the requirements of the Government Code Section 66427.5 and the LCP objectives. The project is not a resident-initiated mobile

home park conversion and is not supported by the majority of those surveyed, leading staff to believe that it is not a *bona fide* conversion. Further, the applicant's application followed closely the hearing officer's decision to reject the special increase to base rents requested by the applicant in 2009, and staff believes this is evidence that the purpose of this application is not a bona fide purchase opportunity for residents, but rather a ploy to avoid the continued application of the City's rent control ordinance. The applicant has likewise failed to address the health and safety issues associated with creating legal lots in a designated FEMA floodway and floodplain, and staff cannot support the application on this basis as well.

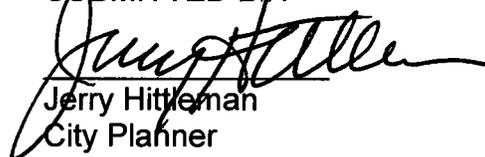
Staff therefore recommends that the Planning Commission deny the project based upon the record on the project, this staff report and the attachments hereto, and the findings contained within the accompanying Planning Commission Resolution. Staff recommends that the Planning Commission:

- Move to deny Tentative Map (T-1-09) and Regular Coastal Permit (RC-5-09) by adopting Planning Commission Resolution 2010-P15 as attached.

PREPARED BY:


Richard Greenbauer
Senior Planner

SUBMITTED BY:


Jerry Hittleman
City Planner

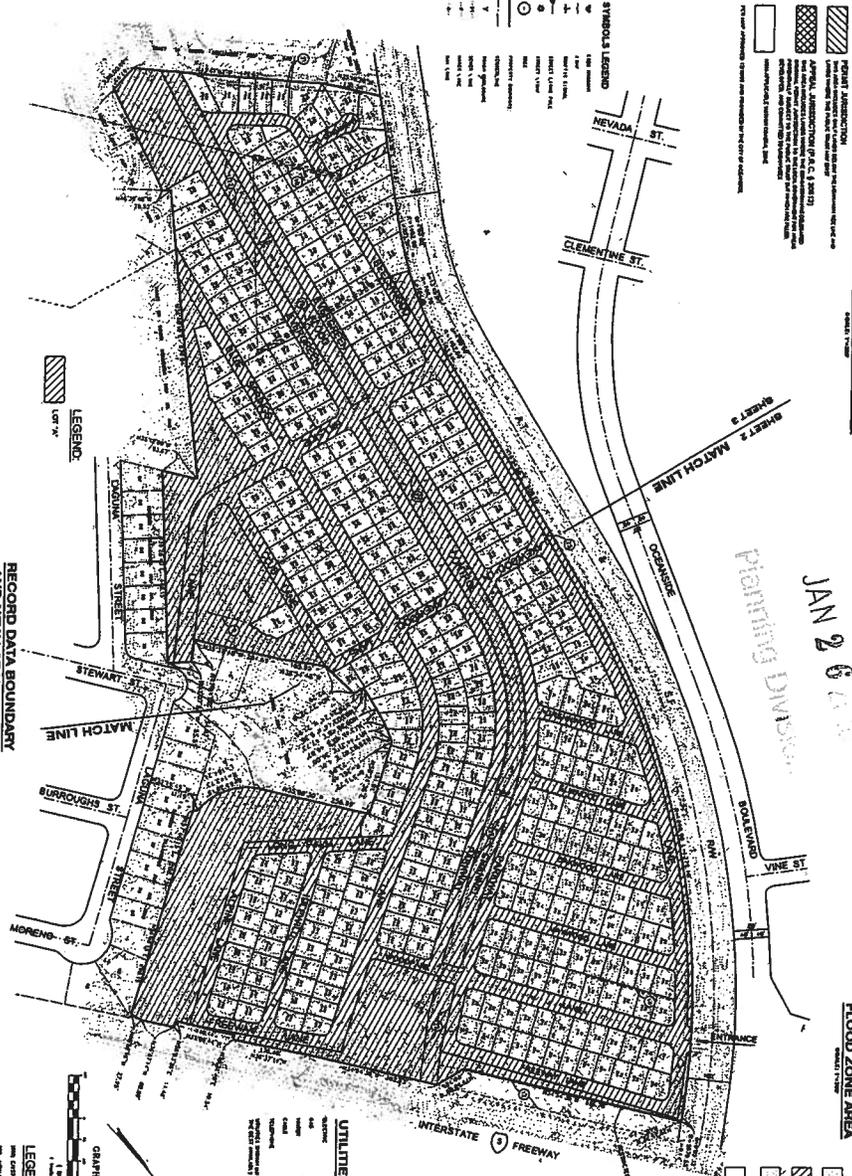
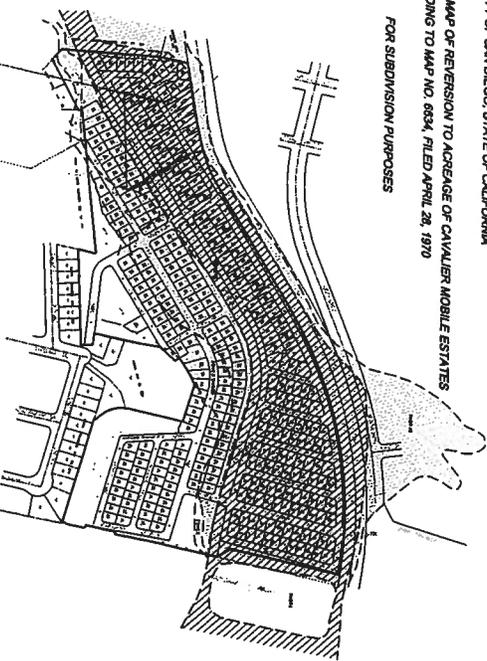
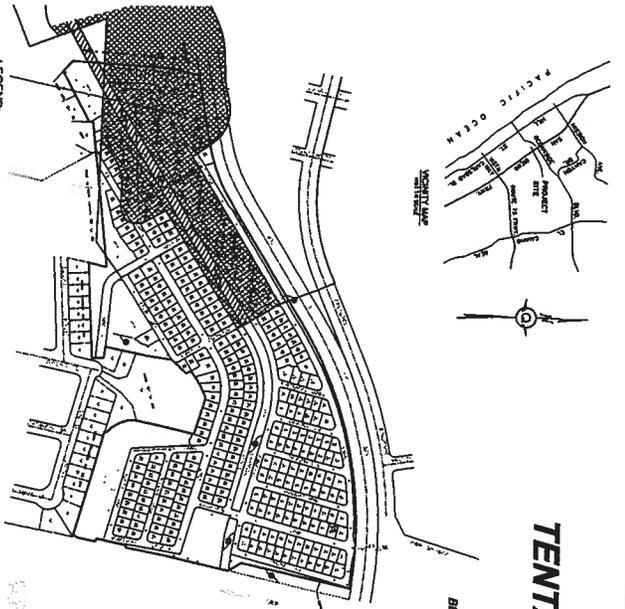
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Attachments:

1. Vesting Tentative Map
2. Planning Commission Resolution No. 2010-P15
3. City Council Resolution No. 69-127
4. Report on Impact of conversion Upon Residents (Dated: 9/14/09)
5. Letters and E-mails of Support and Opposition
6. Declaration of Agreement In Conduct Resident Survey for Cavalier Mobilehome Park
7. Correspondence from Applicant and City responses

VESTING TENTATIVE TRACT MAP NO. T-1-09, RC-5-09

BEING A SUBDIVISION OF THE MAP OF REVISION TO AGRAGE OF CAVALIER MOBILE ESTATES
IN THE CITY OF OCEANSIDE
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA
ACCORDING TO MAP NO. 6834, FILED APRIL 28, 1970
FOR SUBDIVISION PURPOSES



LOT AREA TABLE

LOT NO.	AREA (SQ. FT.)						
1	1,234.56	101	1,234.56	191	1,234.56	281	1,234.56
2	1,234.56	102	1,234.56	192	1,234.56	282	1,234.56
3	1,234.56	103	1,234.56	193	1,234.56	283	1,234.56
4	1,234.56	104	1,234.56	194	1,234.56	284	1,234.56
5	1,234.56	105	1,234.56	195	1,234.56	285	1,234.56
6	1,234.56	106	1,234.56	196	1,234.56	286	1,234.56
7	1,234.56	107	1,234.56	197	1,234.56	287	1,234.56
8	1,234.56	108	1,234.56	198	1,234.56	288	1,234.56
9	1,234.56	109	1,234.56	199	1,234.56	289	1,234.56
10	1,234.56	110	1,234.56	200	1,234.56	290	1,234.56
11	1,234.56	111	1,234.56	201	1,234.56	291	1,234.56
12	1,234.56	112	1,234.56	202	1,234.56	292	1,234.56
13	1,234.56	113	1,234.56	203	1,234.56	293	1,234.56
14	1,234.56	114	1,234.56	204	1,234.56	294	1,234.56
15	1,234.56	115	1,234.56	205	1,234.56	295	1,234.56
16	1,234.56	116	1,234.56	206	1,234.56	296	1,234.56
17	1,234.56	117	1,234.56	207	1,234.56	297	1,234.56
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26	1,234.56	126	1,234.56	216	1,234.56	306	1,234.56
27	1,234.56	127	1,234.56	217	1,234.56	307	1,234.56
28	1,234.56	128	1,234.56	218	1,234.56	308	1,234.56
29	1,234.56	129	1,234.56	219	1,234.56	309	1,234.56
30	1,234.56	130	1,234.56	220	1,234.56	310	1,234.56
31	1,234.56	131	1,234.56	221	1,234.56	311	1,234.56
32	1,234.56	132	1,234.56	222	1,234.56	312	1,234.56
33	1,234.56	133	1,234.56	223	1,234.56	313	1,234.56
34	1,234.56	134	1,234.56	224	1,234.56	314	1,234.56
35	1,234.56	135	1,234.56	225	1,234.56	315	1,234.56
36	1,234.56	136	1,234.56	226	1,234.56	316	1,234.56
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38	1,234.56	138	1,234.56	228	1,234.56	318	1,234.56
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45	1,234.56	145	1,234.56	235	1,234.56	325	1,234.56
46	1,234.56	146	1,234.56	236	1,234.56	326	1,234.56
47	1,234.56	147	1,234.56	237	1,234.56	327	1,234.56
48	1,234.56	148	1,234.56	238	1,234.56	328	1,234.56
49	1,234.56	149	1,234.56	239	1,234.56	329	1,234.56
50	1,234.56	150	1,234.56	240	1,234.56	330	1,234.56
51	1,234.56	151	1,234.56	241	1,234.56	331	1,234.56
52	1,234.56	152	1,234.56	242	1,234.56	332	1,234.56
53	1,234.56	153	1,234.56	243	1,234.56	333	1,234.56
54	1,234.56	154	1,234.56	244	1,234.56	334	1,234.56
55	1,234.56	155	1,234.56	245	1,234.56	335	1,234.56
56	1,234.56	156	1,234.56	246	1,234.56	336	1,234.56
57	1,234.56	157	1,234.56	247	1,234.56	337	1,234.56
58	1,234.56	158	1,234.56	248	1,234.56	338	1,234.56
59	1,234.56	159	1,234.56	249	1,234.56	339	1,234.56
60	1,234.56	160	1,234.56	250	1,234.56	340	1,234.56
61	1,234.56	161	1,234.56	251	1,234.56	341	1,234.56
62	1,234.56	162	1,234.56	252	1,234.56	342	1,234.56
63	1,234.56	163	1,234.56	253	1,234.56	343	1,234.56
64	1,234.56	164	1,234.56	254	1,234.56	344	1,234.56
65	1,234.56	165	1,234.56	255	1,234.56	345	1,234.56
66	1,234.56	166	1,234.56	256	1,234.56	346	1,234.56
67	1,234.56	167	1,234.56	257	1,234.56	347	1,234.56
68	1,234.56	168	1,234.56	258	1,234.56	348	1,234.56
69	1,234.56	169	1,234.56	259	1,234.56	349	1,234.56
70	1,234.56	170	1,234.56	260	1,234.56	350	1,234.56
71	1,234.56	171	1,234.56	261	1,234.56	351	1,234.56
72	1,234.56	172	1,234.56	262	1,234.56	352	1,234.56
73	1,234.56	173	1,234.56	263	1,234.56	353	1,234.56
74	1,234.56	174	1,234.56	264	1,234.56	354	1,234.56
75	1,234.56	175	1,234.56	265	1,234.56	355	1,234.56
76	1,234.56	176	1,234.56	266	1,234.56	356	1,234.56
77	1,234.56	177	1,234.56	267	1,234.56	357	1,234.56
78	1,234.56	178	1,234.56	268	1,234.56	358	1,234.56
79	1,234.56	179	1,234.56	269	1,234.56	359	1,234.56
80	1,234.56	180	1,234.56	270	1,234.56	360	1,234.56
81	1,234.56	181	1,234.56	271	1,234.56	361	1,234.56
82	1,234.56	182	1,234.56	272	1,234.56	362	1,234.56
83	1,234.56	183	1,234.56	273	1,234.56	363	1,234.56
84	1,234.56	184	1,234.56	274	1,234.56	364	1,234.56
85	1,234.56	185	1,234.56	275	1,234.56	365	1,234.56
86	1,234.56	186	1,234.56	276	1,234.56	366	1,234.56
87	1,234.56	187	1,234.56	277	1,234.56	367	1,234.56
88	1,234.56	188	1,234.56	278	1,234.56	368	1,234.56
89	1,234.56	189	1,234.56	279	1,234.56	369	1,234.56
90	1,234.56	190	1,234.56	280	1,234.56	370	1,234.56
91	1,234.56	191	1,234.56	281	1,234.56	371	1,234.56
92	1,234.56	192	1,234.56	282	1,234.56	372	1,234.56
93	1,234.56	193	1,234.56	283	1,234.56	373	1,234.56
94	1,234.56	194	1,234.56	284	1,234.56	374	1,234.56
95	1,234.56	195	1,234.56	285	1,234.56	375	1,234.56
96	1,234.56	196	1,234.56	286	1,234.56	376	1,234.56
97	1,234.56	197	1,234.56	287	1,234.56	377	1,234.56
98	1,234.56	198	1,234.56	288	1,234.56	378	1,234.56
99	1,234.56	199	1,234.56	289	1,234.56	379	1,234.56
100	1,234.56	200	1,234.56	290	1,234.56	380	1,234.56
101	1,234.56	201	1,234.56	291	1,234.56	381	1,234.56
102	1,234.56	202	1,234.56	292	1,234.56	382	1,234.56
103	1,234.56	203	1,234.56	293	1,234.56	383	1,234.56
104	1,234.56	204	1,234.56	294	1,234.56	384	1,234.56
105	1,234.56	205	1,234.56	295	1,234.56	385	1,234.56
106	1,234.56	206	1,234.56	296	1,234.56	386	1,234.56
107	1,234.56	207	1,234.56	297	1,234.56	387	1,234.56
108	1,234.56	208	1,234.56	298	1,234.56	388	1,234.56
109	1,234.56	209	1,234.56	299	1,234.56	389	1,234.56
110	1,234.56	210	1,234.56	300	1,234.56	390	1,234.56
111	1,234.56	211	1,234.56	301	1,234.56	391	1,234.56
112	1,234.56	212	1,234.56	302	1,234.56	392	1,234.56
113	1,234.56	213	1,234.56	303	1,234.56	393	1,234.56
114	1,234.56	214	1,234.56	304	1,234.56	394	1,234.56
115	1,234.56	215	1,234.56	305	1,234.56	395	1,234.56
116	1,234.56	216	1,234.56	306	1,234.56	396	1,234.56
117	1,234.56	217	1,234.56	307	1,234.56	397	1,234.56
118	1,234.56	218	1,234.56	308	1,234.56	398	1,234.56
119	1,234.56	219	1,234.56	309	1,234.56	399	1,234.56
120	1,234.56	220	1,234.56	310	1,234.56	400	1,234.56
121	1,234.56	221	1,234.56	311	1,234.56	401	1,234.56
122	1,234.56	222	1,234.56	312	1,234.56	402	1,234.56
123	1,234.56	223	1,234.56	313	1,234.56	403	1,234.56
124	1,234.56	224	1,234.56	314	1,234.56	404	1,234.56
125	1,234.56	225	1,234.56	315	1,234.56	405	1,234.56
126	1,234.56	226	1,234.56	316	1,234.56	406	1,234.56
127	1,234.56	227	1,234.56	317	1,234.56	407	1,234.56
128	1,234.56	228	1,234.56	318	1,234.56	408	1,234.56
129	1,234.56	229	1,234.56	319	1,234.56	409	1,234.56
130	1,234.56	230	1,234.56	320	1,234.56	410	1,234.56
131	1,234.56	231	1,234.56	321	1,234.56	411	1,234.56
132	1,234.56	232	1,234.56	322	1,234.56	412	1,234.56
133	1,234.56	233	1,234.56	323	1,234.56	413	1,234.56
134	1,2						

1 PLANNING COMMISSION
2 RESOLUTION NO. 2010-P15

3 A RESOLUTION OF THE PLANNING COMMISSION OF THE
4 CITY OF OCEANSIDE, CALIFORNIA DENYING A
5 TENTATIVE MAP AND REGULAR COASTAL PERMIT ON
6 CERTAIN REAL PROPERTY IN THE CITY OF OCEANSIDE

7 APPLICATION NO: T-1-09 and RC-5-09
8 APPLICANT: Cavalier Mobile Estates LLC.
9 LOCATION: South of Oceanside Blvd., immediately west of Interstate 5, north
10 and significantly down slope of Laguna Street.

11 THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES
12 RESOLVE AS FOLLOWS:

13 WHEREAS, there was filed with this Commission a verified petition on the forms
14 prescribed by the Commission requesting a Tentative Map and Regular Coastal Permit under the
15 provisions of Subdivision Map Act, the California Environmental Quality Act, and the Local
16 Coastal Program and the Zoning Ordinance of the City of Oceanside to permit the following:

17 subdivision of an approximately 44-acre parcel fully developed as a Mobile Home Park
18 into 347 individual fee lots and one lettered lot that would encompass all common areas.

19 The subject proposal would create legal individual lots without any development or
20 improvement to existing facilities within the Cavalier Mobile Home Park;

21 on certain real property described in the project description.

22 WHEREAS, the Planning Commission, after giving the required notice, did on the 24th day
23 of May, 2010 conduct a duly advertised public hearing as prescribed by law to consider said
24 application.

25 WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State
26 Guidelines thereto; the project is exempt from CEQA review at this time because staff is
27 recommending that the project be rejected or disapproved by the Planning Commission. CEQA
28 Guidelines Section 15061(b) (4) and Section 15270 (b);

29 WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes
effective 10 days from its adoption in the absence of the filing of an appeal or call for review;

WHEREAS, studies and investigations made by this Commission and in its behalf reveal
the following facts:

1 FINDINGS:

2 For Denial of Tentative Map T-1-09:

- 3 1. Pursuant to Sections 66473.5 and 66474 of the Subdivision Map Act, the tentative map
4 as proposed is not consistent with the General Plan because it does not comply with the
5 Local Coastal Program (appendix B to the General Plan). Specifically, one of the
6 objectives of the LCP states, "The City shall seek to minimize risks to life and property
7 in areas of high geologic and flood hazards." A substantial portion of the proposed
8 subdivision is located within the Coastal Zone and is actually located within the Loma
9 Alta Creek Floodway. Floodway is defined by the Federal Emergency Management
10 Agency as, "the channel of a river or other watercourse and the adjacent land areas that
11 must be reserved in order to discharge the base flood without cumulatively increasing the
12 water surface elevation more than a designated height." Creating legal lots within these
13 areas does not satisfy the objective to minimize development in floodway areas, and
14 allowing further intensification of the use of land through multiple lots with individual
15 ownership in a hazard area would be inconsistent with the intent of the LCP.
- 16 2. Pursuant to Government Code § 66427.5 at the time of filing a tentative or parcel map
17 for a subdivision to be created from the conversion of a rental mobile home park to
18 resident ownership, the subdivider shall avoid the economic displacement of all non
19 purchasing residents and shall obtain a survey of support of residents of the mobile home
20 park for the proposed conversion. The results of the survey shall be submitted to the
21 local agency upon filing of the tentative or parcel map, to be considered as part of the
22 subdivision map hearing. The survey of support submitted by the applicant illustrates
23 that out of the 339 occupied spaces within the park, only 19 were in support, and 17
24 declined to state their opinion. The rest of the tenants either were not in support of the
25 application or did not participate in the survey.
- 26 3. Government Code § 66427.5 further provides that the subdivider shall be subject to a
27 hearing by a legislative body or advisory agency, which is authorized by local ordinance
28 to approve, conditionally approve, or disapprove the map. The scope of the hearing shall
29 be limited to the issue of compliance with this section. Based upon the fact that 95
percent of the residents surveyed were not in support of the proposed conversion, the

1 subject survey of support is not considered a resident initiated survey. Additionally, the
2 timing of the filing of the application for conversion, being submitted immediately
3 subsequent to the denial of the special increase to base rent requested in 2009, evidences
4 that this is not a bona fide conversion but rather the applicant's attempt to circumvent
5 the City's mobile home rent control ordinance (Oceanside City Code Chapter 16B).

6 For Denial of Regular Coastal Permit RC-5-09:

- 7 1. The City has adopted a Local Coastal Program (LCP) which has been certified by the
8 California Coastal Commission. This program outlines goals, policies, and programs to
9 ensure appropriate development and land uses within the designated coastal areas. The
10 Land Use Plan Section of the Local Coastal Program is included as General Plan
11 Appendix B.
- 12 2. The LCP states in pertinent part that, "Local agencies are required to control risks in
13 areas subject to geologic, flood and fire hazard." More specifically, the LCP identifies
14 and summarizes major findings for flood hazards and notes in Item 15, "The portion of
15 Loma Alta Creek 100-year floodplain lying in the coastal zone covers about 50 acres.
16 The creek is contained within a channel, portions of which are concrete and other
17 portions that are soft-bottom with stone revetments. The existing channel can
18 accommodate only 10-year flows." Further, in Item 16, "Land within the Loma Alta
19 Creek 100-year floodplain is largely developed. Uses that have been built in the flood
20 plain include two mobile home parks, one of the City's sewage treatment plants, and a
21 number of industrial and commercial buildings. These uses are subject to inundation
22 during peak storm condition."

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1 3. One of the objectives of the LCP states, "The City shall seek to minimize risks to life
2 and property in areas of high geologic and flood hazards." A substantial portion of the
3 Cavalier Mobile Estates is located within the Coastal Zone and is actually located within
4 the Loma Alta Creek Floodway. Floodway is defined by the Federal Emergency
5 Management Agency as, "the channel of a river or other watercourse and the adjacent
6 land areas that must be reserved in order to discharge the base flood without
7 cumulatively increasing the water surface elevation more than a designated height." Due
8 to the fact that a majority of the units are situated within the floodway and floodplain,
9 creating legal lots within these areas does not satisfy the objective to minimize floodway
10 areas, and allowing further intensification of the use of land through multiple lots with
11 individual ownership in a hazard area would be inconsistent with the intent of the LCP.

12 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby
13 deny Tentative Map (T-1-09) and Regular Coastal Permit (RC-5-09).

14 PASSED and ADOPTED Resolution No. 2010-P15 on May 24, 2010 by the following
15 vote, to wit:

16 AYES:

17 NAYS:

18 ABSENT:

19 ABSTAIN

20 _____
21 Claudia Troisi, Chairperson
22 Oceanside Planning Commission

23 ATTEST:

24 _____
25 Jerry Hittleman, Secretary

26 I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that
27 this is a true and correct copy of Resolution No. 2010-P15.

28 Dated: _____
29 May 24, 2010

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RESOLUTION NO. 69-127

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF OCEANSIDE GRANTING A
CONDITIONAL USE PERMIT TO OPERATE A
MOBILE HOME PARK.

(CAVALIER MOBILE ESTATES, INC.)

WHEREAS, application was duly made to the Planning Commission of the City of Oceanside for a Conditional Use Permit authorizing the operation of a mobile home park and appurtenant recreational uses on property described in Planning Commission Resolution No. 69-P40 as located at the Southwest Quadrant of Interstate 5 and Oceanside Boulevard; and,

WHEREAS, the Planning Commission, after holding duly noticed public hearings, did adopt Resolution No. 69-P40, wherein it recommended to the City Council that such Conditional Use Permit be issued; and,

WHEREAS, the City Council pursuant to such recommendation did hold a duly noticed public hearing to consider such application, and the recommendation of the Planning Commission and at said hearing did listen to all persons interested in the granting of such Conditional Use Permit; and,

WHEREAS, the mobile home park to be operated as CAVALIER MOBILE ESTATES, INC., has previously been a mobile home park which was to be converted to an "Own Your Own Lot" mobile home estate location; and,

WHEREAS, the operators of the said mobile home park now desire to revert to a space rental type of mobile home park; and,

WHEREAS, a reversion to acreage proceeding will be commenced within thirty (30) days;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oceanside as follows:

1. That it does find that the issuance of a Conditional Use

1 permit for a mobile home park and related recreational uses on
2 the property described in Resolution No. 69-P40 is compatible with
3 the zoning ordinance and that a Conditional Use Permit should be
4 issued to the applicant.

5 2. Further, that the Conditional Use Permit hereby granted
6 to applicant shall be subject to all the limitations and condi-
7 tions contained in Planning Commission Resolution No. 69-P40, and
8 that the said limitations and conditions are incorporated herein
9 by reference thereto as though set forth in full herein.

10 3. This Conditional Use Permit is granted subject to the
11 following conditions:

12 A. In view of the inadequate access leading from the
13 said trailer park to Stewart Street, a concrete sidewalk shall be
14 constructed along the access road from the park to Stewart Street
15 on the south side of the access road, and a stop sign shall be
16 placed at the exit from the park on Stewart Street.

17 B. Existing damaged sections of the streets in the
18 trailer park shall be repaired and restored to their original
19 condition of construction.

20 C. That landscaping shall be restored to the condition
21 required by the landscaping specifications previously made for
22 landscaping within the trailer park by the Planning Commission of
23 the City of Oceanside. The required planting and restoration shall
24 be accomplished within sixty (60) days of issuance of this permit.

25 D. Prior to any hookup the Building Department shall
26 make an inspection to insure that all of the applicable codes are
27 met before a trailer is moved in.

28 E. That the reversion to acreage procedures shall be
29 instituted within thirty (30) days.

30 F. The applicant CAVALIER MOBILE ESTATES, INC.,
31 covenants that it will join in any Improvement District to

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-2-

1 construct a drainage channel in the area along the railroad
2 tracks on the north side of the park to conduct waters along the
3 said north side to the western edge of the trailer park and then
4 southerly along the western boundary of the said trailer park to
5 join the drainage channel presently existing in the said trailer
6 park.

7 G. The applicant CAVALIER MOBILE ESTATES, INC., shall
8 hold the City of Oceanside, its employees, elected officials and
9 appointed officials harmless from liability resulting from any
10 litigation concerning the drainage of waters in any manner
11 affected by the construction of the said trailer park or the
12 further operation of the said trailer park.

13 4. This permit to operate the mobile home park herein as a
14 rental mobile home park is granted solely to the applicant named,
15 CAVALIER MOBILE ESTATES, INC., and this permit is not transferable
16 without the express consent of the City Council of the City of
17 Oceanside. This permit granted herein shall be for a period of
18 thirty-five (35) years commencing at the time of passage of the
19 resolution granting this permit. At the end of such thirty-five
20 (35) year period, there shall be no right or privileges accruing
21 to the applicant or any successor in interest or assignee by
22 reason of the granting of this Conditional Use Permit. In the
23 event of any further application for a Conditional Use Permit for
24 the same general purpose, at the same or same general location,
25 such shall be judged and considered without regard to the
26 privileges granted herein.

27 PASSED AND ADOPTED by the City Council of the City of
28 Oceanside, California, this 9th day of July, 1969,

29 ...

30 ...

31 ...

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1 by the following vote:

2 AYES: RICHARDSON, FRENZEL, SMITH, STEIGER, WRIGHT

3 NAYS: NONE

4 ABSENT: NONE

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Howard J. Richardson
Mayor of the City of Oceanside,
California

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10 ATTEST:

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[Signature]

City Clerk

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APPLICATION:
CAVALIER MOBILE ESTATES, INC. (APPLICANT)

ADDRESS: c/o 804 Third Street
Oceanside, California

PROPERTY LOCATION: SW Quadrant of Interstate 5
and Oceanside Blvd.

PROPERTY DESCRIPTION: (Attached).

REQUEST: Operation of a mobile park on
a rental basis.

DATE FILED: March 24, 1969

ACTION: Approved with conditions

Moved by Commissioner Jones, seconded
by Commissioner Johner, that the following
resolution be adopted:

RESOLUTION NO. 69-P40

WHEREAS, the Planning Commission of the City of Oceanside,
after given due notice, held a public hearing on the 7th and
21st days of April, 1969, on the above described application,
and as a result of testimony given and studies made, the
Planning Commission finds:

1. The original Conditional Use Permit for a mobile home park was approved in January, 1963 for a rental park after which the property was sold and a subdivision was recorded to sell lot spaces; the new owners now wish to go back to the rental of spaces.
2. Soon after the original permit was granted, the State Housing Department took over the maintenance and inspection of trailer parks and the standards of the State, did not meet the City standards. Although most of the conditions in the original conditional use permit have been complied with, the roads within the park are still substandard but will be the complete responsibility of a private corporation.
3. The applicants have agreed to comply with the requirements of the City of Oceanside, including the reversion to acreage of the property within the park site.

1 NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of
2 the City of Oceanside that said Conditional Use Permit for
3 Cavalier Mobile Estates, Inc. be approved and recommend its
4 approval by the City Council of the City of Oceanside with the
5 following conditions:

- 6 1. In view of the inadequate access leading from the
7 park to Stewart Street, concrete sidewalks be
8 constructed and a stop sign be placed at the exit
9 from the park on Stewart Street.
10 2. Existing damaged sections of the streets shall be
11 repaired in accordance with methods and specifications
12 as approved by the City Engineer.
13 3. That landscaping plans, particularly along the railroad
14 tracks, be submitted to the Planning Commission for
15 approval and that required planting shall be accomplished
16 within 60 days of Council action on this permit.
17 4. Prior to any hookup the Building Department shall make
18 an inspection to insure that all of the applicable
19 codes are met before a trailer is moved in.
20 5. That the reversion to acreage procedures shall be instit-
21 uted within 30 days.

22 PASSED AND ADOPTED this 5th day of May, 1969 by the
23 following vote, to wit:

24 AYES: Commissioners - Gibney, Burgess, Carlisto, Craven,
25 Johner and Jones.

26 NAYES: Commissioners - None.

27 ABSENT: Commissioners - None.

28 ABSTAINED: Commissioners - Garrison.

29 ATTEST: Donald C. Gibney, Chairman

30 Lawrence M. Bagley, Secretary

31 I, LAWRENCE M. BAGLEY, Secretary of the Oceanside Planning
32 Commission hereby certify that this is a true and correct copy
of Resolution No. 69-P40 adopted by said Commission on the 5th
day of May, 1969 by the vote shown.

Dated: May 6, 1969

Lawrence M. Bagley
Lawrence M. Bagley, Secretary



REPORT ON IMPACT OF CONVERSION UPON RESIDENTS

Cavalier Mobile Estates Mobilehome Park

September 14, 2009

SECTION I. SCOPE OF REPORT

This "Report on Impact of Conversion upon Residents" ("**Report**") is submitted by the "**Applicant**" for a Tentative Tract Map subdividing the Cavalier Mobile Estates Mobilehome Park ("**Park**"). The subdivision will be created by the conversion of the Park from rental spaces to resident owned lots. The Park is located at 1225 Oceanside Blvd, City of Oceanside ("**City**"), California. The Report is being filed with the City as part of the Tentative Tract Map Application and will be made available to the Park residents prior to the City's hearing on the Application pursuant to California Government Code Section 66427.5, a copy of which is attached hereto as Exhibit "A." The Report contains the Applicant's assessment of the impact upon the Park residents of conversion to resident ownership.

The Park currently has 347 spaces, 339 of which are rented under rent controlled rental agreements. The remaining spaces are either vacant (3), Park owned (1) or occupied by homes under storage agreements with mobilehome dealers (4).

SECTION II DEFINITIONS

2.1 Conversion Date: The "**Conversion Date**" is the date after the subdivision final map has been approved by the City and after the Department of Real Estate has approved the subdivision for sale and is the date on which the first Lot in the Park is sold.

2.2 Hearing Date: The "**Hearing Date**" is the date on which the subdivision Application is first heard by the City Planning Commission.

2.3 Home: The "**Home**" is the manufactured home that occupies the Space where the Resident is living as of the Hearing Date

2.4 Lot: A "**Lot**" is the land and fixed improvements within the Space on which the Resident's Home is located as of the Hearing Date, plus a 1/347th share of the common area and facilities and one membership in the Homeowners' Association to be formed as part of the subdivision process.

2.5 Resident: A "**Resident**" is a person living in a Home in the Park who meets the requirements for receiving protections afforded by applicable law.

2.6 Space: The "**Space**" is the leased premises on which the Resident's Home is located as of the Hearing Date.

SECTION III **NO ECONOMIC DISPLACEMENT OF RESIDENTS FROM
CONVERSION BECAUSE OF STATUTORY RIGHT TO
PURCHASE OR CONTINUE LEASING**

Upon conversion, all Residents will have the opportunity to either purchase the Lot on which their Home is situated or to continue leasing their Space with statutory protections on rental rates after the Conversion Date. (Govt. Code § 66427.5(a),(f)) Therefore, upon conversion of the Park to resident ownership, the Residents are statutorily protected against economic displacement.

3.1 **No Economic Displacement from Sale of the Lots**

The Residents are protected from economic displacement pertaining to sale of the Lots upon conversion by having both the option purchase their Lots at the eventual sales price and the option to continue leasing their Space. Gov't Code § 66427.5 (a) requires the subdivider to "offer each Resident an option to either purchase his or her ... subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant." Thus, if the Resident cannot purchase his or her Lot upon conversion, the Resident is not required to move and may continue to lease his or her Space following the Conversion Date.

This Report cannot make determinations about impacts to the Residents resulting from the eventual sale price of the Lots under the purchase option. That is because the sale price of the Lots will not be established until some time after the tentative map subdivision approval. The Residents cannot make a rational decision to buy, continue to rent, or move his or her mobilehome until the tenant is given an option purchase price and a proposed rental price. (See *El Dorado Palm Springs Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1179-1180)

After tentative map approval, the subdivider must next follow procedures and obtain approval of the subdivision from the Department of Real Estate under the Subdivided Lands Act. Only after approval by the Department of Real Estate will all of the factors that affect the Lot purchase price be established. The Resident will learn the option price for his or her Lot only after the Department of Real Estate approves the subdivision and issues its public report on the subdivision, when the subdivider offers the lots for sale.

The subdivider is not required to disclose an offer price at the time of filing of the Application and of this Report, and indeed is forbidden by the Subdivided Lands Act from making such a disclosure at that time. The first time that the Resident may become aware of even a tentative offer price for the Lot will be several weeks or months later, just prior to filing a notice of intention to sell with the Department of Real Estate under the Subdivided Lands Act. (See Bus. & Prof. Code § 11010.9 (c); See *El Dorado Palm Springs Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1179-1180)

Report on Impact of Subdivision to Residents
September 14, 2009
Page 3

Nevertheless, because the Resident has the option to either purchase his or her Lot or to continue leasing his or her Space under whatever lease arrangement may be existing on the Conversion Date with the statutory rental rate protections discussed below, the Residents will be protected against economic displacement from sale of the Lots upon conversion.

3.2 No Economic Displacement from Continued Lease of the Spaces

The Residents who do not exercise the option to purchase their Lots and instead exercise the option to continue renting their Spaces are protected from economic displacement by statutory restrictions on rental rates after the "Conversion Date." Government Code § 66427.5 (f) limits the amount of rent increases for Residents that can take place upon conversion, thereby avoiding economic displacement, if any, from any rental increases after the Conversion Date.

For non-purchasing Residents who are not lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may only increase to market levels as determined by appraisal, and then only over a period of four years.

For non-purchasing Residents who are lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may only increase 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. To qualify as a Low Income Household in San Diego County, the following income limits were established for calendar year 2009.

Household Size (# of Persons)	1	2	3	4
Income Must be at or Below:	\$28,900	\$33,050	\$37,150	\$41,306

Thus, under the current statutory scheme, the Legislature has defined the exclusive and preempted scope of "mitigations" respecting any "economic displacement," assuming, without admitting, that increases in rent can be considered an economic displacement.

3.3 Benefits of Conversion

Subdivision provides Residents with a choice to own the Lot on which their Home is located. Lot ownership gives the Residents greater flexibility with regard to financing for their Homes and other credit opportunities. Lot ownership allows the Residents to control their economic future. Residents do not have to be tied to monthly rental payments if they choose. Lot ownership also gives the Residents the freedom to use their Lot without all of the restrictions or costs that a landlord might impose. The Residents will have the opportunity to control the Park amenities that they will enjoy and pay for through the Homeowner's Association.

SECTION IV NO CLOSURE OR CHANGE IN ZONING

4.1 No Change in Zoning or Closure

The Park is currently zoned consistent with a mobile home park use. The Application does not request a zoning change. The Application does not request closure of the Park. The Application seeks merely to convert the existing Spaces to Lots available for purchase. Therefore, the conversion to Resident ownership will not result in economic displacement that might occur with a zoning change or closure of the Park.

4.2 Technical “Conversion” or “Change in Use” Only

The term “conversion” relating to a mobilehome park sometimes is used to describe the closure of the park to enable an alternative use. This is NOT what is occurring as a result of subdivision of the Park. The Park will remain a manufactured housing community, with the existing Residents having the right to either buy their Lot or to remain and rent their Space.

4.3 Relocation Assistance Not Applicable

When a subdivision is created from conversion of a rental mobilehome park to resident ownership, a different type of impact report is required than when a subdivision created from a change of use to a non-mobilehome park use or when the mobilehome park is closed.

Government Code Section 66427.5 governs the type of report that must be prepared for a subdivision which is created from conversion of a rental mobilehome park to resident ownership. This Government Code Section 66427.5 Report, which does not deal with a change in use of the property or closure of the Park, is simply required to explain the options of the Residents regarding their choice to purchase their Lot or to rent their Space.

This Report need not discuss displacement of Residents, replacement housing or mitigation of the reasonable costs of relocation, which issues would be involved in any subdivision resulting from a change of use of a mobilehome park or from closure of a mobilehome park. In fact Government Code Sections 66427.4 and 65863.7, which apply to subdivisions created from change of use to a non-mobilehome park use or to closure of a mobilehome park, expressly exempt from their requirements subdivisions that are created from conversion of a rental mobilehome park to resident ownership. (See Govt. Code §§ 66427.4 (e), 65863.7 (a))

Report on Impact of Subdivision to Residents
September 14, 2009
Page 5

SECTION V Resident Survey (Demographics)

Pursuant to Government Code Section 66427.5(d)(1), the a survey of support of the residents was conducted with the agreement of the Resident Homeowner Association, Robert Lanin. The park owner and the HOA agreed upon the form of the survey. A copy of the Survey form is attached as Exhibit B. The park owner and HOA agreed upon the timing and manner in which the survey was conducted. The survey was completed in July 2009.

The Survey was mailed, or hand delivered, to all Park Residents at their address in the Park and at their second address, if applicable.

Each occupied Space had one (1) vote. At the time of the Survey and vote, there were three hundred thirty nine (339) occupied Spaces. The results of the Survey were calculated in October 2008 and are as follows:

A total of 166 spaces responded to the survey. Of those, 20 supported conversion, 14 declined to state or did not state a preference and 132 opposed conversion.

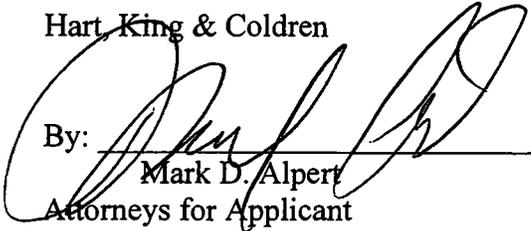
SECTION VI. CONCLUSION

This Report discusses the impacts upon the Residents of conversion to Resident ownership pursuant to subdivision of the Park. Upon conversion, the Residents are statutorily protected from economic displacement by the option to either purchase their Lots or continue leasing their Spaces with statutory restrictions on rent increases. Residents on long-term leases will continue to have their rights under the leases after the Conversion Date.

All of the Resident protections discussed in this Report are based upon the Applicant's assessment of the currently existing statutory scheme, and are not a promise, representation, or warranty on the part of the Applicant or its agents. The operative date for the time frame and protections described above is the Conversion Date as described in Section 2.1 above. Of course, should the law change, the Applicant reserves the right to implement the conversion in accordance with the applicable valid and enforceable laws.

Dated: 9/11/09

Hart, King & Coldren

By: 
Mark D. Alpert
Attorneys for Applicant



**Report on Impact of Subdivision to Residents
September 14, 2009
Page 6**

**Exhibit A
California Government Code Section 66427.5**

onecle

COURT OPINIONS

- US Supreme Court
- US Tax Court
- Board of Patent Appeals

STATE LAWS

- Alabama
- Arizona
- California
- Florida
- Georgia
- Illinois
- Indiana
- Massachusetts
- Michigan
- Nevada
- New Jersey
- New York
- North Carolina
- Oregon
- Pennsylvania
- Texas
- Virginia
- Washington

US CODE

- Copyrights
- Crimes
- Labor
- Patents
- Shipping

US CONSTITUTION

- Preamble

California Government Code Section 66427.5

[Legal Research Home](#) > [California Lawyer](#) > [Government Code](#) > California Government Code Section 66427.5

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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.

Section: [Previous](#) [66425](#) [66426](#) [66426.5](#) [66427](#) [66427.1](#) [66427.2](#)

Communicate,
Collaborate
and Create...
even when
you're not
face-to-face.



Art. I - Legislative [66427.4](#) [66427.5](#) [66428](#) [66428.1](#) [66429](#) [66430](#) [66431](#) [Next](#)

Art. II - Executive *Last modified: January 12, 2009*

Art. III - Judicial

Art. IV - States' Relations

Art. V - Mode of Amendment

Art. VI - Prior Debts

Art. VII - Ratification

[Supreme Court Cases](#) | [Justia Law Firm Web Design](#)

Exhibit B
Sample Survey

**CAVALIER MOBILE ESTATES MOBILEHOME
PARKSURVEY OF COMMUNITY RESIDENTS
BALLOT FORM**

This ballot is provided to you pursuant to the requirements of Government Code § 66427.5. The purpose of the ballot is to show Cavalier Mobile Estates resident support for the proposed conversion of the Park from a rental mobilehome community to a resident owned mobilehome community subdivision. Each occupied space shall have one vote. Please indicate below whether or not you support conversion to a resident owned mobilehome community subdivision and please sign and date where indicated below.

Unfortunately, we cannot provide you with an estimated purchase price.

I support conversion Cavalier Mobile Estates from a rental mobilehome community to a resident-owned manufactured home community subdivision, and intend to purchase my space as follows:

- A. I think I will be able to obtain, and intend to apply for financing
- B. I intend to purchase my space with cash
- C. I think I am a lower-income resident, and may need government assistance in order to purchase my space

I support conversion of Cavalier Mobile Estates from a rental mobilehome community to a resident-owned mobilehome community subdivision, but cannot buy. (For example: I am sub-leasing, I am unable to obtain credit at this time or my resident status prevents me from buying a space.)

I do not support conversion of Cavalier Mobile Estates from a rental mobilehome community to a resident-owned mobilehome community subdivision.

I decline to state my opinion at this time.

This home represents my primary residence

I understand that this form does not constitute an offer to sell at a specific price, nor is it a commitment to purchase an interest in the mobilehome community. It is merely an indication of support/non-support for the community's conversion.

igned: _____

Space #: _____

ame: _____

Date: _____

Chris Harrison

From: Richard Greenbauer
Sent: Monday, November 02, 2009 7:50 AM
To: Margery Pierce; Leslie M. Gallagher; George Buell; Jerry Hittleman
Cc: Chris Harrison
Subject: FW: protest against cavalier proposal

FYI

-----Original Message-----

From: willoughby54@netzero.net [mailto:willoughby54@netzero.net]
Sent: Friday, October 30, 2009 12:26 PM
To: Richard Greenbauer
Subject: protest against cavalier proposal

Dear Mr. Greenbauer,

The Planning Commission CANNOT approve the Cavalier Mobile Home proposal of allowing people to buy the land, thus REMOVING rent control for the rest of us!

There are almost 400 homes in the Cavalier Mobile Home Park and MOST of us are low/fixed income, and/or disabled/elderly. Personally, I am disabled and low/fixed income. I cannot afford losing rent control.

The owners of Cavalier Mobile Home Park were NOT entirely truthful with us. They lead us to believe that we could still rent with rent control. They did NOT tell us that if one person buys the land, it could cause us to LOSE rent control. Because the majority of the park are low/fixed income, and cannot afford big rent increases (which is what the owners want), we COULD ALL LOSE ARE HOMES because we can't afford the increase! If that happens with this mobile home park, the other mobile home parks will do the same thing.

Does the Planning Commission favor having a few thousand people becoming HOMELESS due to the greed of a couple of mobile home park owners?! That is potentially what could happen! And the people on the Planning Commission would be GUILTY of making so many people HOMELESS! The economy is bad enough right now. We're all trying to make ends meet. But we would be evicted and lose our homes if they raised their rents...and believe me they will raise them high! So, is this a "legal" way of allowing the park owners to STEAL OUR HOMES?!!

I've been trying to sell my house for 2 1/2 years, but with the way the economy is, I haven't been able to sell yet. And if they do away with rent control, it will be even harder to sell! The Planning Commission CANNOT APPROVE Cavalier's proposal!! PLEASE HELP US!
Wendyl P.

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<http://thirdpartyoffers.netzero.net/TGL2241/c?cp=Zxre0WW51IBHhZXyXpv-kwAAJ1FKqJC7fJfVn6 mpFjh3dJAAQAAAAFAAAAAHJL-j4AAAMIAAAAAAAAAAAAAAAAAABIIYOQAAAAA=>



CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

Received

OCT - 5 2009

NOTICE OF APPLICATION Planning Division

As a property owner or tenant within 1,500 feet of the exterior boundary of the project site or person who has requested notice, you should know that an application has been filed with the City of Oceanside for a Tentative Map (T-1-09) and a Regular Coastal Permit (RC-5-09) to subdivide an existing mobile home park into a 348 resident owned mobile home park, with no physical changes to the property, located at 1225 Oceanside Boulevard.

PROJECT NUMBER: T-1-09, RC-5-09

PROJECT NAME: CAVALIER MOBILE ESTATES TENTATIVE MAP

CONTACT NAME: MARK ALPERT/HART, KING & COLDREN
(714) 432-8700

NEIGHBORHOOD: SOUTH OCEANSIDE NEIGHBORHOOD

PROJECT PLANNER: CHRIS HARRISON, Planning Consultant
(760) 435-3537, charrison@ci.oceanside.ca.us

The decision to approve or deny this application will be made at a public hearing by the Planning Commission. You will receive another notice informing you of the Planning Commission's date, time, and location of the public hearing.

You may review the file relating to this project at the Planning Division, 300 North Coast Hwy., during regular weekday office hours of 7:30 a.m. to 5:00 p.m. (Monday – Thursday), 7:30 a.m. to 4:00 p.m. (alternate Friday).

If you have any questions regarding this application after reviewing this information, please contact the City of Oceanside Planner listed above.

This mobil home park should stay as it has been. You do not need to move children near seniors, who bought there home because it was, or is, a senior area. You are trying to improve Oceanside Blvd, not tear it down. The city better hire a new project planner !!!

Declaration of Mark D. Alpert Re Agreement In Conduct
Resident Survey for Cavalier Mobilehome Park

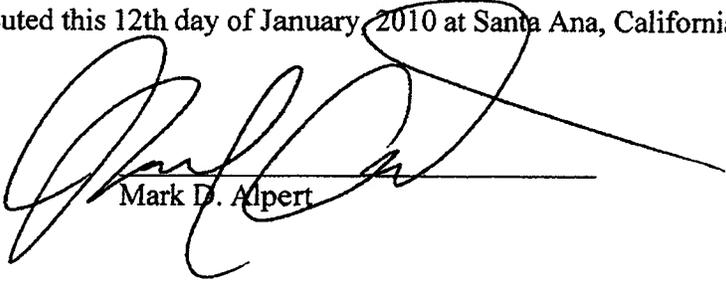
I, Mark Alpert, declare:

1. I am an individual over the age of 18 and one of the attorneys primarily responsible for representation the owners of Cavalier Mobilehome Park regarding its application to subdivide the Park. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called upon at time of trial.

2. In June 2008, I had a series of phone conversations with Robert Lanin, the President of the Homeowner's Association for Cavalier. In the course of several conversations, we reached agreements regarding the form of the tenant survey, the timing of the survey, and the manner in which the survey was to be conducted. In particular, we agreed that the park owner would distribute the agreed upon survey form to be returned in a sealed envelope and placed in a ballot box. The surveys were to be opened and counted at the agreed date with a representative of the park owner and the HOA President. It was agreed that the HOA President would maintain the original survey responses.

3. The survey was completed in July 2008 as agreed. The Tenant Impact Report submitted to the City has a copy of the survey form used.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 12th day of January, 2010 at Santa Ana, California.


Mark D. Alpert

567-0187 (Bob's cell ph #)

RECEIVED
JUL 1 8 2009
COMMERCIAL DEPT

HK&C

HART, KING & COLDREN

Mark D. Alpert
malpert@hkclaw.com

June 23, 2009

Our File Number: 37989.009/4812-0541-4659v.1

VIA OVERNIGHT EXPRESS

Michael A. Normandin,
Resident Representative
259 Blue Springs Lane
Oceanside, CA 92054

Bob Lanin
President Homeowners Association
253 Blue Springs Lane
Oceanside, CA 92054

Re: Cavalier Mobile Estates

Gentlemen:

As I mentioned to Mr. Normandin on the phone, the owners of Cavalier have decided to convert the park to a mobile home park with resident owned lots. This is a procedure that, in most respects, is governed by California state law, in particular California Government Code Section 66427.5. One of the requirements of the Government Code is for a resident survey, which is generally to be conducted by or with the agreement of the homeowner's association. The purpose of this letter is to initiate this process.

Enclosed is a proposed survey form. We have used this or a variation of this form in several other subdivision matters. While we are open to suggested revisions, it is our view the survey should remain simple and straightforward. You will have the opportunity to have a resident meeting or circulate written materials providing residents any information you think will help them in making their decision. It is important to understand that the response to the survey is not any kind of commitment by the residents, one way or another. Indeed, we would suggest that the survey responses be kept confidential and that only the results of the vote be publicly disclosed.

We propose that the park owner distribute the surveys, one per household, but that the surveys be returned to one of you to remain sealed until they are opened at an agreed upon time and location so that the park owner can have someone present to confirm the results of the survey. We request your agreement that the survey responses be maintained by you and not destroyed.

We intend to include with our survey a short explanatory letter explaining subdivision from the park owner's perspective, just for informational purposes. As I mentioned to Michael on the phone, it is our view, confirmed recently by several courts, that the public agencies can only require that a survey be conducted, that the public agency, in this case the City of Oceanside, may not consider the result of the vote in considering the park owner's application to subdivide the park.

It is our intention to distribute the surveys on June 30, 2009 and provide for a return deadline of not later than July 13, 2009. We propose that the surveys be tallied at the park's offices on July 15, 2009.

7/9/09

If you will agree to conduct the survey in this fashion, generally along this timeline, the park owner will agree to undertake all of the costs associated with conducting the survey, including



Michael Normandin
Bob Lanin
June 23, 2009
Page 2

copying and distributing the survey and any written materials you wish to be distributed with the survey, with a limit of 5 pages. Of course, you will have available the park's common areas to meet to discuss the proposed conversion.

If we cannot reach agreement regarding the manner of conducting the survey, the park owner will conduct the survey itself, again providing you an opportunity to confirm the accuracy of the count.

I realize that we are operating under a rather short timeline, but, again, the survey is an administrative requirement under state law which creates no obligation to buy. It is a survey of the general interest of the residents in buying their spaces (and an undivided interest in the common areas). Residents will be provided far more detailed and in depth information prior to the time they could commit to purchasing a lot.

Please call me to discuss this matter after you have had a chance to review the survey.

Sincerely,

HART, KING & COLDREN



Mark D. Alpert

MDA/sm
Enclosure

cc: Dunex, Inc.

**CAVALIER MOBILE ESTATES MOBILEHOME
PARKSURVEY OF COMMUNITY RESIDENTS
BALLOT FORM**

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Unfortunately, we cannot provide you with an estimated purchase price.

I support conversion Cavalier Mobile Estates from a rental mobilehome community to a resident-owned manufactured home community subdivision, and intend to purchase my space as follows:

- A. I think I will be able to obtain, and intend to apply for financing
- B. I intend to purchase my space with cash
- C. I think I am a lower-income resident, and may need government assistance in order to purchase my space

I support conversion of Cavalier Mobile Estates from a rental mobilehome community to a resident-owned mobilehome community subdivision, but cannot buy. (For example: I am sub-leasing, I am unable to obtain credit at this time or my resident status prevents me from buying a space.)

I do not support conversion of Cavalier Mobile Estates from a rental mobilehome community to a resident-owned mobilehome community subdivision.

I decline to state my opinion at this time.

This home represents my primary residence

I understand that this form does not constitute an offer to sell at a specific price, nor is it a commitment to purchase an interest in the mobilehome community. It is merely an indication of support/non-support for the community's conversion.

igned: _____

Space #: _____

ime: _____

Date: _____

Jerry Hittleman

From: Mark Alpert <malpert@hkclaw.com>
Sent: Thursday, May 20, 2010 8:11 AM
To: Jerry Hittleman
Subject: RE: Cavalier MHP/

In light of the staff report, I see no purpose in attending the meeting as the issues involve legal disputes and issues, which, in any event, could not be addressed in advance of the May 24th meeting. I will prepare a letter to the Planning Commission that addresses staff recommendations.

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
blog: www.caproperyrights.com
ws: www.hkclaw.com
Bus: (714) 432-8700
Fax: (714) 546-7457

From: Jerry Hittleman [<mailto:JHittleman@ci.oceanside.ca.us>]
Sent: Thursday, May 20, 2010 8:00 AM
To: Mark Alpert
Subject: Cavalier MHP

Mark,

Cavalier MHP staff report and resolution for your information.

Thank you,

Jerry

Jerry Hittleman, City Planner

**City of Oceanside
Development Services Department
Planning Division
300 North Coast Highway
Oceanside, CA 92054
(760) 435-3535 phone
(760) 754-2958 fax
jhittleman@ci.oceanside.ca.us**

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electronic mail being received from or sent to any employee of the Firm using the Firm's e-mail system may be monitored by someone other than the recipient and that each employee of the Firm has acknowledged a "no confidentiality and privacy" waiver for such e-mail in this regard.

Leslie M. Gallagher

From: Mark Alpert <malpert@hkclaw.com>
Sent: Tuesday, May 18, 2010 4:23 PM
To: Jerry Hittleman
Cc: John Mullen; Barbara L. Hamilton; Marty Eslambolchi; George Buell; Jim Zicaro; Sandy Moore
Subject: RE: Cavalier Subdivision /37989.008

Thank you for getting back to me. Thursday May 20, at 2:15 will be fine. Please advise where the meeting will take place and who will attend.

Thanks
Mark

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
blog: www.capropertyrights.com
ws: www.hkclaw.com
Bus:(714) 432-8700
Fax: (714) 546-7457

From: Jerry Hittleman [<mailto:JHittleman@ci.oceanside.ca.us>]
Sent: Tuesday, May 18, 2010 4:12 PM
To: Mark Alpert
Cc: John Mullen; Barbara L. Hamilton; Marty Eslambolchi; George Buell; Jim Zicaro
Subject: RE: Cavalier Subdivision /37989.008

Dear Mark,

Richard Greenbauer is in the Coast Guard Reserve and has been called up for active duty in the Gulf of Mexico for at least 60 days. During his temporary absence, please use me as a point of contact. I am available for a Project Specific Review Committee (PSRC) meeting anytime after 2:00 p.m. on Thursday, May 20, 2010 or Friday morning, May 21, 2010, at 9:00 a.m.

Please let me know your availability for this meeting, or if you have any questions. I will forward a copy of the staff report and resolution to you before the meeting for your information and review.

Thank you,

Jerry

Jerry Hittleman, City Planner

**City of Oceanside
Development Services Department
Planning Division
300 North Coast Highway
Oceanside, CA 92054
(760) 435-3535 phone
(760) 754-2958 fax**

Jerry Hittleman

From: Mark Alpert <malpert@hkclaw.com>
Sent: Tuesday, May 18, 2010 2:29 PM
To: Richard Greenbauer; Jerry Hittleman
Cc: John Mullen; Barbara L. Hamilton
Subject: Cavalier Subdivision /37989.008

Following up on my letter of yesterday, and previous emails. I have yet to be contacted by anyone from staff to discuss staff recommendations prior to the public hearing for the project. I reviewed the City's policies from the City's web site and the "Development Processing Guide." Both make reference to a "project specific review committee." For example, I found the following on the web site:

"Project-Specific Review Committee

Once the application is deemed complete, a final environmental determination has been made, and the applicant has addressed all the issues identified by the ARC, the project is then scheduled for a Project Specific Review Committee (PSRC) meeting. The PSRC meeting is where an applicant can discuss staff recommendations and specific project conditions prior to a public hearing. The PSRC is comprised of staff members who also participated in initial ARC meetings."

The Planning Commission meeting is now 6 days prior to the public hearing. I have yet to receive any offer from City staff to meet regarding the Cavalier application, much less proposed dates and times. I have yet to receive a staff report and request a copy by electronic mail as soon as it is available. I hope and expect the staff report will reflect the fact that staff repeatedly refused offers by Applicant's counsel to meet in advance or otherwise discuss staff recommendations regarding the project.

Thank you for your attention to this matter.

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
blog: www.capropertyrights.com
ws: www.hkclaw.com
Bus: (714) 432-8700
Fax: (714) 546-7457

This message is intended for the person to whom it was addressed. If you have received this message in error please return it to sender. In addition, please beware that this message is from an employee of the law firm of Hart King & Coldren ("the Firm") sent using the Firm's e-mail system and computer equipment. You are hereby advised that all such e-mail belong to the Firm and that the Firm's e-mail and internet policy states that any electronic mail being received from or sent to any employee of the Firm using the Firm's e-mail system may be monitored by someone other than the recipient and that each employee of the Firm has acknowledged a "no confidentiality and privacy" waiver for such e-mail in this regard.

HK&C
HART, KING & COLDREN

Mark D. Alpert
malpert@hkclaw.com

May 17, 2010

Our File Number: 37989.008/4821-4574-7974v.1

VIA ELECTRONIC AND U.S. MAIL

Mr. Richard Greenbauer
Senior Planner
City of Oceanside
300 N. Coast Highway
Oceanside, CA

Received
MAY 18 2010
Planning Division

Re: *Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)*

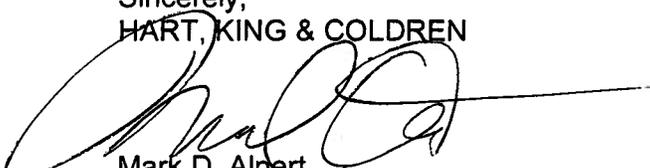
Dear Mr. Greenbauer

I am writing to follow up multiple requests by electronic mail to meet with staff in advance of staff issuing its report and recommendations regarding the subdivision application for Cavalier Mobile Home Park. Staff has disregarded my offer and, instead, prefers to issue a staff report and recommendations immediately before the Planning Commission meets, denying the applicant any opportunity to address any issues or concerns in advance of issuance of the staff report.

Staff's decision to decline the opportunity to meet with the applicant is not an isolated event. It has been clear throughout this process that staff has received direction to take whatever steps it can to make processing the subdivision as time consuming and expensive as possible. It is apparent that staff has reached a pre-determined conclusion regarding its recommendation to the Planning Commission and City Council and is likely concerned that providing an opportunity to address any purported concerns could undercut that recommendation.

I hope that staff will reconsider its position and provide the applicant information regarding any issues to be raised in the staff report so that the applicant may have a fair opportunity to address those concerns in advance of the Planning Commission meeting.

Sincerely,
HART, KING & COLDREN


Mark D. Alpert
MDA/sm

cc: Dunex, Inc
Robert S. Coldren, Esq.
John P. Mullen, Esq.
Barbara L. Hamilton, Esq.

Leslie M. Gallagher

From: Richard Greenbauer
Sent: Monday, May 03, 2010 11:57 AM
To: 'Mark Alpert'; Jerry Hittleman; Marty Eslambolchi
Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Mr. Alpert,

Upon completion of the Planning Commission Staff Report, I will schedule a meeting to discuss staff's position. I anticipate having the report done the week of May 17, 2010. Please let me know what works with your schedule, and I will coordinate a meeting.

Richard Greenbauer, Senior Planner
City of Oceanside
Planning Division
300 North Coast Highway
Oceanside, CA 92054
Phone: 760-435-3519
Fax: 760-754-2958
rgreenbauer@ci.oceanside.ca.us

Please be advised that all e-mails and phone messages are maintained on the City's server for 90 days and are considered public information when requested.

From: Mark Alpert [mailto:malpert@hkclaw.com]
Sent: Monday, May 03, 2010 11:48 AM
To: Richard Greenbauer; Jerry Hittleman; Marty Eslambolchi
Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Thank you.

I would appreciate an opportunity to discuss staff's position regarding the applications. Please advise who I should contact to discuss the staff position.

Regards,
Mark Alpert

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
blog: www.capropertyrights.com
ws: www.hkclaw.com
Bus: (714) 432-8700
Fax: (714) 546-7457

From: Richard Greenbauer [mailto:RGreenbauer@ci.oceanside.ca.us]
Sent: Monday, May 03, 2010 11:43 AM
To: Mark Alpert; Jerry Hittleman; Marty Eslambolchi

Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Mr. Alpert,

You have two applications on file as follows: (1) Vesting Tentative Tract Map T-1-09 and (2) Regular Coastal Permit RC-5-09. Both applications will be acted upon by the Planning Commission on May 24, 2010 at 7:00 P.M. in the City Council Chambers located at 300 N. Coast Highway 92054, Second Floor on the North Building.

Richard Greenbauer, Senior Planner
City of Oceanside
Planning Division
300 North Coast Highway
Oceanside, CA 92054
Phone: 760-435-3519
Fax: 760-754-2958
rgreenbauer@ci.oceanside.ca.us

Please be advised that all e-mails and phone messages are maintained on the City's server for 90 days and are considered public information when requested.

From: Mark Alpert [mailto:malpert@hkclaw.com]
Sent: Monday, May 03, 2010 11:36 AM
To: Richard Greenbauer; Jerry Hittleman; Marty Eslambolchi
Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Just to confirm, the entire hearing, including any related permits will be on May 24th, correct?
Thanks
Mark Alpert

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
blog: www.capropertyrights.com
ws: www.hkclaw.com
Bus:(714) 432-8700
Fax: (714) 546-7457

From: Richard Greenbauer [mailto:RGreenbauer@ci.oceanside.ca.us]
Sent: Monday, May 03, 2010 8:54 AM
To: Mark Alpert; Jerry Hittleman; Marty Eslambolchi
Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Mr. Alpert,

Please note that the subject application will be heard by the Planning Commission on May 24, 2010 at 7:00 P.M. in the City Council Chambers located at 300 N. Coast Highway 92054, Second Floor on the North Building.

Richard Greenbauer, Senior Planner
City of Oceanside
Planning Division
300 North Coast Highway
Oceanside, CA 92054
Phone: 760-435-3519
Fax: 760-754-2958

rgreenbauer@ci.oceanside.ca.us

Please be advised that all e-mails and phone messages are maintained on the City's server for 90 days and are considered public information when requested.

From: Mark Alpert [mailto:malpert@hkclaw.com]
Sent: Thursday, April 29, 2010 3:55 PM
To: Richard Greenbauer; Jerry Hittleman; Marty Eslambolchi; Chris Harrison
Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

I'm just following up because it is Thursday and I'm not sure if the City will be open tomorrow. Please advise how you propose to move forward on the hearing before the Planning Commission.

Thanks
Mark Alpert

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
blog: www.capropertyrights.com
ws: www.hkclaw.com
Bus:(714) 432-8700
Fax: (714) 546-7457

From: Mark Alpert
Sent: Tuesday, April 27, 2010 4:38 PM
To: 'Richard Greenbauer'; Jerry Hittleman; Marty Eslambolchi; Chris Harrison
Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Mr. Greenbauer,

The emails do not confirm the hearing date. The letter of May 25th stated that "staff has tentatively scheduled" the hearing for May 10th. My assumption in receiving a letter of that nature is that the date will subsequently be confirmed. Your email of April 6th makes the generic statement that Planning Commission meetings start at 7:00 p.m. and says nothing about whether the tentative May 10 hearing was confirmed. We don't send out notices to hundreds of residents (which have to attach the relocation impact report) without a confirmed date. I find it interesting that you claim that all dates are tentative until the public hearing notice is published 10 days before the hearing, but your email earlier today--13 days before the hearing--does not say anything about the hearing date being "tentative."

My suggestion is that the hearing be scheduled for the next Planning Commission meeting, which I believe is May 24th, or that a special meeting be noticed. Please let me know asap so we can give timely notice to the residents.

Thanks
Mark Alpert

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
blog: www.capropertyrights.com
ws: www.hkclaw.com
Bus: (714) 432-8700
Fax: (714) 546-7457

From: Richard Greenbauer [mailto:RGreenbauer@ci.oceanside.ca.us]
Sent: Tuesday, April 27, 2010 4:23 PM
To: Mark Alpert; Jerry Hittleman; Marty Eslambolchi; Chris Harrison
Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Mr. Alpert,

Please review the following e-mail string to your Assistant Sandy Moore on April 6, 2010:

Your office was provided with the public hearing information in a letter dated 3/25/10 and again on April 6, 2010. All dates are tentative until the required Public Hearing Notice is published, which is approximately 10 days before the Hearing. I will consult with City Staff to see if we can accommodate your request.

Richard Greenbauer, Senior Planner

**City of Oceanside
Planning Division
300 North Coast Highway
Oceanside, CA 92054
Phone: 760-435-3519
Fax: 760-754-2958**

rgreenbauer@ci.oceanside.ca.us

Please be advised that all e-mails and phone messages are maintained on the City's server for two years and are considered public information when requested.

From: Richard Greenbauer [mailto:RGreenbauer@ci.oceanside.ca.us]
Sent: Tuesday, April 06, 2010 9:41 AM
To: Sandy Moore
Subject: RE: Cavalier Mobile Estates Subdivision

Ms. Moore,

Planning Commission meetings begin at 7:00 P.M. in the City Council Chambers located at 300 N. Coast Highway (North Building) 2nd Floor.

Richard Greenbauer, Senior Planner

City of Oceanside

Planning Division

300 North Coast Highway

Oceanside, CA 92054

Phone: 760-435-3519

Fax: 760-754-2958

rgreenbauer@ci.oceanside.ca.us

Please be advised that all e-mails and phone messages are maintained on the City's server for two years and are considered public information when requested.

From: Sandy Moore [mailto:smoore@hkclaw.com]

Sent: Tuesday, April 06, 2010 9:31 AM

To: Richard Greenbauer

Subject: Cavalier Mobile Estates Subdivision

Mr. Greenbauer,

On March 25, 2010, this office received a letter from you giving us a tentative date for the subject project for formal review by the Planning Commission on May 10, 2010. However, your letter did not give us a time for the meeting and I have not been able to find that information on the Oceanside website. Can you please let me know what time the meeting will start on May 10, 2010.

Thank you.

Sandy Moore

Assistant to

C. William Dahlin, Mark D. Alpert

and Beau M. Chung

Hart, King & Coldren, a PLC

200 Sandpointe, 4th Floor

Santa Ana, CA 92707

smoore@hkclaw.com

www.hkclaw.com

Bus: (714) 432-8700 Ext. 337

Fax: (714) 546-7457

This message is intended for the person to whom it was addressed. If you have received this message in error please return it to sender. In addition, please beware that this message is from an employee of the law firm of Hart King & Coldren ("the Firm") sent using the Firm's e-mail system and computer equipment. You are hereby advised that all such e-mail belong to the Firm and that the Firm's e-mail and internet policy states that any electronic mail being received from or sent to any employee of the Firm using the Firm's e-mail system may be monitored by someone other than the recipient and that each employee of the Firm has acknowledged a "no confidentiality and privacy" waiver for such e-mail in this regard.

From: Mark Alpert [mailto:malpert@hkclaw.com]
Sent: Tuesday, April 27, 2010 1:56 PM
To: Richard Greenbauer; Jerry Hittleman; Marty Eslambolchi; Chris Harrison
Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Unfortunately, because I did not receive notice of the date and time until today, I have a problem with the May 10th date. The MRL (CCP Section 798.56(g)(1)) requires the park owner to give notice to the residents 15 days before the hearing. I believe we will need to schedule the hearing for the next available date. Please advise asap.

Thanks
Mark Alpert

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
blog: www.capropertyrights.com
ws: www.hkclaw.com
Bus:(714) 432-8700
Fax: (714) 546-7457

From: Richard Greenbauer [mailto:RGreenbauer@ci.oceanside.ca.us]
Sent: Tuesday, April 27, 2010 1:48 PM
To: Mark Alpert; Jerry Hittleman; Marty Eslambolchi; Chris Harrison
Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Mr. Alpert,

Cavalier Tentative map is scheduled for hearing on May 10, 2010 at 7:00 P.M. in the City Council Chambers located at 300 N. Coast Highway (North Building) second floor.

Richard Greenbauer, Senior Planner
City of Oceanside
Planning Division
300 North Coast Highway
Oceanside, CA 92054
Phone: 760-435-3519
Fax: 760-754-2958

rgreenbauer@ci.oceanside.ca.us

Please be advised that all e-mails and phone messages are maintained on the City's server for two years and are considered public information when requested.

From: Mark Alpert [mailto:malpert@hkclaw.com]
Sent: Tuesday, April 27, 2010 1:35 PM
To: Richard Greenbauer; Jerry Hittleman; Marty Eslambolchi; Chris Harrison
Cc: Barbara L. Hamilton; John Mullen
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Do we have a confirmed date and time on the hearing on the subdivision application of Dunex at this point? Please advise as soon as possible
Thanks
Mark Alpert

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
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ws: www.hkclaw.com
Bus:(714) 432-8700
Fax: (714) 546-7457

From: Richard Greenbauer [mailto:RGreenbauer@ci.oceanside.ca.us]
Sent: Monday, January 04, 2010 11:03 AM
To: Mark Alpert; Jerry Hittleman; Marty Eslambolchi; Chris Harrison
Cc: Burt Mazelow; Barbara L. Hamilton
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Mr. Alpert,

The revised map was not delivered to the above addresses. Please reduce file sizes and resend.

Richard Greenbauer, Senior Planner
City of Oceanside
Planning Division
300 North Coast Highway
Oceanside, CA 92054
Phone: 760-435-3519
Fax: 760-754-2958

rgreenbauer@ci.oceanside.ca.us

Please be advised that all e-mails and phone messages are maintained on the City's server for two years and are considered public information when requested.

From: Mark Alpert [mailto:malpert@hkclaw.com]
Sent: Monday, January 04, 2010 9:12 AM
To: Jerry Hittleman; Marty Eslambolchi; Chris Harrison; Richard Greenbauer
Cc: Burt Mazelow; Barbara L. Hamilton
Subject: RE: Cavalier Subdivision (Tentative Tract T-1-09)/subdivision/37989.008

Good Morning and Happy New Year to All

Per Burt's email below, you received a revised map reflecting all prior comments on the map on December 23, 2009. City staff agreed to provide any additional comments or requests by January 1, 2010. I haven't received any inquiries/comments. Thus, I hope, for the purposes of the map, I believe the City should be prepared to deem the application complete.

Regarding the resident survey, hopefully, the HOA president brought in copies last week as he agreed. Please confirm you have received. I will send you my declaration regarding the agreement to conduct the survey later today. With those items, I hope the application can be deemed complete.

Please advise me if you disagree with any of the above. Thanks.

Mark Alpert

Mark D. Alpert
Hart, King & Coldren, a PLC
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email: malpert@hkclaw.com
blog: www.capropertyrights.com
ws: www.hkclaw.com
Bus:(714) 432-8700
Fax: (714) 546-7457

From: Burt Mazelow [mailto:burt@rtquinn.net]
Sent: Wednesday, December 23, 2009 3:03 PM
To: jhittleman@ci.oceanside.ca.us; meslambolchi@ci.oceanside.ca.us; charrison@ci.oceanside.ca.us
Cc: Mark Alpert
Subject: Cavalier Subdivision (Tentative Tract T-1-09)

12/23/09

Chris;

Pursuant to our meeting at the city last Friday we have revised our Tentative Map as discussed to clear up the items discussed.

In the letter dated November 30, 2009 from Chris Harrison there were some issues regarding the map to be clarified. The attached PDF for your review now includes the following:

Item 1: (comment 12) The Coastal Zone Boundary has been added to sheet 1 of the Tentative Map as an insert.

Item 3: (comment 7) You have accepted the present sheet size.

Item 3: (comment 8) Project number has been added to the heading on sheet 1, and added to the lower right corner of the sheet.

Item 3: (comment 9) The engineer and owner information are now shown on all sheets. The signature of the engineer is on the plan, the owners signature will be added.

Item 6: (comment 19) The flood zones were shown on the tentative map, we have now added a separate insert on sheet 1 showing the flood zones.

Item 7: (comment 22) There is no lot "B" this was a typo.

Item 7: (comment 23) The clubhouse is not a separate lot, everything except the new residential lots will be part of lot "A" a common lot. We have shown this on sheet 1 in the index map with the common area being hatched.

Item 7: (comment 24) See 23 above.

Item 7: (comment 25) See 23 above.

Item 7: (comment 28) This was addressed in a letter to Chris Harrison from Mark Alpert of Hart, King & Coldren dated November 11, 2009.



CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

March 25, 2010

Cavalier Mobile Estates, LLC
C/O: Mr. Mark D. Alpert, Esq.
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

Subject: Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)
Environmental Determination Letter

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

The City of Oceanside's Environmental Resource Officer has conducted a review of the environmental information form submitted on September 15, 2009 as part of your project's application submittal. The purpose of the review was to determine the appropriate level of environmental review required for the subject project.

In accordance with CEQA Article 5 Section 15060 (b) the City of Oceanside serving as the lead agency has accepted the subject discretionary application as complete for the purpose of processing the listed entitlements to a public hearing. Initially the City acting as Lead Agency determined that the project is subject to CEQA, and a determination that an Initial Study shall be prepared was conveyed in the Application Review Committee (ARC) Notice of Completeness letter dated February 25, 2010. The purpose of the Initial Study request was to determine if there is substantial evidence that the project either individually or cumulatively will cause a significant effect on the environment. To date, the Initial Study has not been completed by the applicant. The City Environmental Resource Officer has determined that the subject applications for a Vesting Tentative Map (T-1-09) and Regular Coastal Permit (RC-5-09) are exempt from CEQA pursuant to Article 5 Section 15061 (b) (4). (See Section 15270(b))

If you have any questions or would like to meet with the Environmental Resource Officer to discuss this letter, please contact me at 760-435-3519. Staff has tentatively scheduled the subject project for formal review by the Planning Commission on May 10, 2010.

Sincerely,

Richard Greenbauer, Senior Planner
Development Services Department, Planning Division

Richard Greenbauer

From: John Mullen
Sent: Wednesday, March 10, 2010 5:26 PM
To: Jerry Hittleman; Richard Greenbauer
Cc: George Buell; Barbara L. Hamilton
Subject: FW: 37989.008/Cavalier/Subdivision

Please see the attached email I received this afternoon from Mark Alpert. It correctly tracks my conversation with him.

Jerry

I understand that you will make a determination about the required level of environmental review during the 30 day period from the date the application was deemed complete. Is that correct?

John Mullen
City Attorney
City of Oceanside
Phone (760) 435-3979
Fax (760) 439-3877
email Jmullen@ci.oceanside.ca.us

From: Mark Alpert [<mailto:malpert@hkclaw.com>]
Sent: Wednesday, March 10, 2010 4:54 PM
To: John Mullen
Subject: 37989.008/Cavalier/Subdivision

Mr. Mullen,

I am following up to confirm our conversation of this afternoon. First, you advised me that the letter advising of the determination that the application was complete of February 25, 2010 did not include any determination regarding whether CEQA applied or whether the subdivision project was exempt from CEQA. There is no decision of the Planning Director that could be appealed. Second, you indicated a determination will be made within the timeline required by CEQA, 30 days from the date the application was deemed complete. Thus, my request to appeal the decision was effectively a nullity because there was no decision to appeal. Please advise me immediately if the City's position differs from how I have described it in this letter in any respect.

Thanks.
Mark Alpert

Mark D. Alpert
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HK&C

HART, KING & GOLDREN

Mark D. Alpert
malpert@hkclaw.com

February 26, 2010

Our File Number: 37989.008/4826-6364-1861v.1

VIA ELECTRONIC AND U.S. MAIL

Mr. Richard Greenbauer
Senior Planner
City of Oceanside
300 N. Coast Highway
Oceanside, CA

Re: *Cavalier Mobile Estates Subdivision* (T-1-09 & RC-5-09)

Dear Mr. Greenbauer

I received your letter of February 25, 2010 with substantial disappointment, but I cannot say with surprise. Once again, the City of Oceanside has demonstrated its goal is to delay and increase the expense of the subdivision process.

The City's determination that the conversion is a "project" and that the "project" is not exempt from CEQA review is not just wrong; it is an intentional misinterpretation of the relevant law. The very notion that conversion of a rental mobilehome park to resident ownership that involves no construction, no direct or foreseeable indirect change to the physical environment and the continuation of a use that has existed for decades is a "project" subject to environmental review is ridiculous.¹

To constitute a "project" under CEQA, the activity must be one that might result in a physical change in the environment. (Public Res. Code § 21605; CEQA Guidelines § 15060(c)(2), providing that an activity is not subject to CEQA if "[t]he activity will not result in a direct or foreseeable indirect physical change in the environment.") For purposes of CEQA review, an activity is considered a "project" only if "the whole of an action . . . has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (*Id.* at subd. (c)(3) and § 15378 defining "project")

As the City is well aware from the plethora of information contained in the Application and otherwise provided to the City, the "whole of the action" is conversion from a rental mobilehome park to resident ownership without a scintilla—the City has identified none—of potential for a direct or reasonably foreseeable indirect change in the environment. As a matter of law, this conversion is simply not a "project."

¹ Creation of a subdivision through conversion of Cavalier from a rental mobilehome park to resident ownership under state law does not change Cavalier's underlying legal character as a "mobilehome park" nor does it change its use as a mobilehome park (Health & Safety Code § 18214(a); Government Code § 65852.7; *El Dorado* (2002) 96 Cal.App 4th 1153, 1162, "[A] change in the form of ownership is not a change in use. After the change of ownership, the mobilehome park will remain a mobilehome park.")



Mr. Richard Greenbauer
Senior Planner
City of Oceanside
February 26, 2010
Page 2

Even if the City continues to erroneously consider the conversion a "project," the "project" is exempt on at least four independent grounds.

First, CEQA, "does not apply to a conversion of an existing rental mobilehome park to a resident initiated subdivision . . . if the conversion will not result in an expansion of or a change in existing use of the property." (Cal. Pub. Res. Code § 21080.8 (West); CEQA Guidelines § 15282(e)) This exemption applies to Cavalier, notwithstanding that it is an "owner initiated" rather than "resident initiated" conversion. The Court held in the *El Dorado* case, after enactment of Cal. Pub. Res. Code § 21080.8, that there is no meaningful distinction between "park owner" and "resident initiated" conversions.² This is even more apparent under CEQA because the fact of the matter is that there is simply no difference between the (non) environmental impact of an owner initiated conversion as opposed to a resident initiated conversion.

Second, CEQA provides for an exemption where, as here, it is certain the project will not have *significant* effect on the environment. (Guidelines § 15061(b)(3)). Thus, even if the City could identify—which it cannot—some effect the conversion would have on the environment, it must establish—which it could not—that the effect would be *significant*.

Third, CEQA Guidelines section 15301 provides an exemption for the "existing facilities" under which, "[t]he key consideration is whether the project involves negligible or no expansion of an existing use." *County of Amador v. El Dorado County Water Agency*, 76 Cal.App.4th 931, 966-967 (Cal.App.3d Dist. 1999) See also, *Bloom v. McGurk*, 26 Cal.App.4th 1307, 1315 (Cal.App.1st Dist. 1994) As you well know, this project involves no change of the existing use which has continued for decades. (See fn. 1, *supra*.)

Fourth, CEQA exempts ministerial projects. (Guidelines § 15060(c)(1), "an activity is not subject to CEQA if: [¶] . . . (1) the activity does not involve the exercise of discretionary powers by a public agency . . ."; see also Cal. Pub. Res. Code § 21080(a) (West)). The conversion of Cavalier is a mere change in ownership, and not a change in use of the property. (See fn. 1, *supra*.) Under California law, the City is strictly limited to determining if an applicant for mobilehome park conversion, "has complied with the requirements of section [66427.5 of the Govt. Code]." (*El Dorado, supra*, 96 Cal.App.4th 1163-1164). The severe state limitations on the City's power to review Cavalier's Application is the equivalent of the City's approval or

² *El Dorado Palm Springs, Ltd., supra*, 96 Cal. App. 4th 1153 – decided in 2002 – after adoption of Res. Code Cal. Pub. Res. Code § 21080.8, holds among other things, that, both statutes [66427.4 (governing mobilehome park conversion to another use), and 66427.5 (governing as here, mobilehome park conversions to resident ownership)] use the term "subdivider" and that term is specifically defined by the Subdivision Map Act to mean the person or entity 'who proposes to divide . . . real property into a subdivision for himself or for others . . .' (§ 66432) . . . there is simply no basis for arguing that "subdivider" means "resident organization" in § 66427.5 and "park owner" in § 66427.4." (*El Dorado, supra*, 96 Cal.App.4th at 1162)



Mr. Richard Greenbauer
Senior Planner
City of Oceanside
February 26, 2010
Page 3

disapproval of the Application being a ministerial function, not discretionary as in the typical land use approval process.³

The determination also raises several material questions. Your letter indicates the determination was made by the Application Review Committee ("ARC"). Under your zoning ordinance (Sections 4001A(1) & (2)), it appears the responsibility for making the determination is with the Planning Director, not the ARC. Decisions of the Planning Director appear to be subject to a discretionary appeal to the Planning Commission which must be initiated within 10 days. The failure of the Planning Director to make a timely determination bars any CEQA review. In any event, please clarify the City's position on this matter and whether there is an administrative appeal process.

Your letter indicates that it is your expectation that the Applicant will prepare the initial study. Your zoning code indicates that the Planning Director will conduct such a study. (See Section 4001A(3). (See also CEQA Guidelines Sections 15063, 15365) The City needs no further information to conduct an initial study. We submitted the environmental information form with the application--an application you just deemed complete. The instructions for that form make clear that it will be the basis for any initial study. Please clarify why you apparently believe it is the Applicant's obligation to prepare an initial study and why the City needs any additional information in light of the environmental information form submitted as part of the completed application.

The very notion that the City would have the Applicant go through the meaningless charade of preparing an initial study simply emphasizes the extent to which this involves only gamesmanship by the City. If the purpose of the initial study is to evaluate the impact of the "project," it is quite clear that there is no actual or potential environmental impact. If it is the City's position that the Applicant must treat the Application as though it were a project to construct a new mobile home park—which it is not—the City should simply require an Environmental Impact Report.

Staff has previously suggested it would be "open to discussing" a possible exemption if the Applicant can establish locating homes in a flood way will not have a significant effect on the environment. This assertion suggests the basis for the City's position is the erroneous view that it can treat the application as though it were for the construction of a new mobile home park. As your office well knows, the Application does not seek permission to place homes anywhere in the Park.

³ See *Sequoia Park Associates v. County of Sonoma* (2009)176 Cal.App.4th 1270, 1285, following *EI Dorado*, supra, 96 Cal.App.4th at 1163–1164, invalidating County ordinance that attempted to extend the County's power beyond Govt. Code section 66427.5 to review and approve a mobilehome park conversion application.



HART, KING & COLDREN

Mr. Richard Greenbauer
Senior Planner
City of Oceanside
February 26, 2010
Page 4

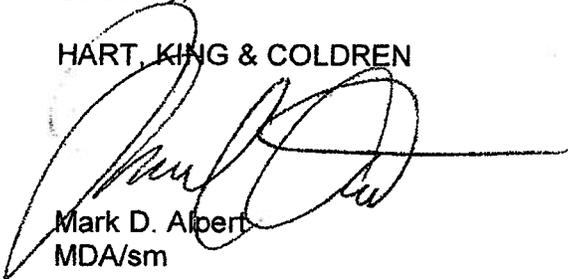
The reality is the City is aware it cannot require an EIR and it is choosing the path it believes will allow it to delay processing the Application as much as it can. The Applicant's patience with these games has run out.

We will advise our client to immediately file suit unless two things happen in the next seven (7) days. First, the City must withdraw its determination the conversion is a "project" or if it is, it is exempt from CEQA review and the Director must find that the Application is complete. Second, the City must set the Application for hearing at the earliest available date, consistent with the notice requirements applicable to the City and Applicant.

We hope the City will proceed to process the application in good faith. We look forward to hearing from you.

Sincerely,

HART, KING & COLDREN



Mark D. Albert
MDA/sm

cc: Dunex, Inc
Brian Alex
Robert S. Coldren, Esq.
John P. Mullen, Esq.
Barbara L. Hamilton, Esq.



CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

February 25, 2010

Cavalier Mobile Estates, LLC
C/O: Mr. Mark D. Alpert, Esq.
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

Subject: Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)
Application Review Committee (ARC), Notice Completeness

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

The City of Oceanside Application Review Committee (ARC) has conducted a second formal review of your project plans consisting of the following planning applications:

Tentative Subdivision Map (T-1-09) & Regular Coastal Permit (RC-5-09)

As part of the Committees review, the members evaluated the application for completeness pursuant to Government Code Section 65943 to determine whether any additional information needs to be submitted in order to determine your projects compliance with State and Federal law, the City's General Plan, Zoning Ordinance(s), Local Coastal Program and other regulatory documents. At this time, the Committee has determined that the project is substantially complete.

In accordance with CEQA Article 5 Section 15060 (b) the City of Oceanside serving as the lead agency has accepted the subject discretionary application as complete and has determined that the project is subject to CEQA. It is the determination of the Lead Agency that an Initial Study shall be prepared to determine if there is substantial evidence that the project either individually or cumulatively will cause a significant effect on the environment. Staff in deeming the application complete, has made no representations on staff's position regarding a recommendation of approval or denial of the project. Please contact me once you have prepared the required Initial Study and all technical studies necessary to address answers disclosed within the required Initial Study.

If you have any questions or would like to meet with the Application Review Committee to discuss this letter, please contact me at 760-435-3519. When you are ready to submit, please contact me to schedule a time to meet and go over the submittal.

Sincerely,

Richard Greenbauer, Senior Planner
Development Services Department, Planning Division

To: Richard Greenbauer; Jerry Hittleman; Chris Harrison
Cc: John Mullen; Barbara L. Hamilton
Subject: Cavalier Subdivision/37989.008

Mr. Greenbauer,

I received your letter of January 25th indicating with the submission of 15 copies of the map he anticipates the application will be deemed complete. I am following up on a message to Mr. Greenbauer because I was concerned about the reference to a "re-submittal" of the application and the request for an appointment to submit. The City did not return the application and application fees. The City has accepted additional submissions without a submittal appointment. Since the only item left to complete the application is the submission of 15 copies of a map City staff has already reviewed, I see no reason for the delay of an appointment to "resubmit" the application. I certainly hope you are not suggesting the previously submitted application forms need to be re-submitted.

The Applicant will be submitting the requested copies of the maps via overnight mail today to the attention of Mr. Greenbauer. I understand it is the City's position that it will have 30 days to review these materials under the permit streamlining act. We disagree with that view. It is our view the application as originally submitted was complete. In addition, the City has already had a copy of the revised relevant map in its possession since at least January 5th, 2010.

From a practical standpoint, the City does not need a "resubmittal" and 30 days to review materials it has already reviewed. Let's move on with the process of setting the application for hearing. I noted your comments regarding staff support of the application. Please let us know staff's position regarding the application, i.e. support or non-support and the basis for the position, so we can hopefully gain the support of staff.

Mark Alpert

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
blog: www.caproperyrights.com
ws: www.hkclaw.com
Bus:(714) 432-8700
Fax: (714) 546-7457

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CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

January 25, 2010

Cavalier Mobile Estates, LLC
C/O: Mr. Mark D. Alpert, Esq.
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

Subject: Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)
Courtesy Review of Plan Set

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

The City has conducted a courtesy review of the plan set submitted by the project engineer dated 12/23/09. The plan set revisions meet the concessions agreed to at the meeting held on 12/18/09. We received the resident surveys today. The next step in the process will be for you to formally resubmit the project for official review per current City standards and the Permit Streamlining Act. Assuming the plan hasn't changed in the interim, we anticipate being able to deem the application complete in terms of the minimum required to take the project to a Public Hearing.

In deeming the application complete, the City makes no representations on staff's position regarding a recommendation of approval or denial of the project. Please contact me for a re-submittal appointment once you have the plan sets required for submittal. You will need to submit 15 full size plan sets, stapled and folded and 1, 8.5" x 11" reduction of each plan sheet (preferably bond).

If you have questions in the interim, you can reach me at 760-435-3519.

Sincerely,

Richard Greenbauer, Senior Planner
Development Services Department

Chris Harrison

From: Mark Alpert [malpert@hkclaw.com]
Sent: Thursday, December 10, 2009 10:11 AM
To: Chris Harrison; John Mullen; Jerry Hittleman; Barbara L. Hamilton
Cc: Burt Mazelow
Subject: Dunex/Subdivision/Cavalier/37989.008

Mr. Hittleman (et al)

I received Mr. Hittleman's letter of yesterday, December 9, 2009 "clarifying" that the City is seeking information regarding compliance with Title 25. I won't belabor the point, but this is a change in the City's position. However, the City's position still is at odds with its limited scope of review under Government Code Section 66427.5, which does not allow consideration of compliance with Title 25 by local governments as a condition of approving the subdivision map, whether or not the local government has chosen to undertake Title 25 enforcement.

Of course, I knew that the City had undertaken the role of Title 25 enforcement. In fact, the City conducted a Title 25 inspection in January, 2009, prior to Cavalier's rent increase application and no violations were found. The City will continue to have Title 25 enforcement rights after the conversion. Thus, I am at a loss as to why the City would even need to consider imposing conditions to give it authority it already has. Given the fact that the City has recently conducted inspections and has had continued authority to permit home installations and police compliance with Title 25, I don't understand the need for this demand or why the City would be looking to the park owner as opposed to its own records for determining Title 25 compliance.

Given the progress we have apparently made, however, we are willing to meet with the City next week, in a final effort to iron out our differences over the remaining issues, but I suggest that staff be prepared in advance to address these issues in detail so that an agreement can be reached. In particular, the City should have available the inspection records for the park and the person(s) charged with the inspection duties. Please be prepared to explain, given the City's continuing Title 25 authority, why it needs any additional information as it relates to the conversion. In addition, the City should have available the responsible staff person and information necessary to update the flood map and provide the information needed to include the coastal boundary. Indeed, I think it would be a far better use of everyone's time to address as much of these issues as possible in phone conversations in advance of the meeting.

Both Mr. Mazelow and myself are available either Monday or Thursday of next week in the afternoon. We look forward to hearing from you.

Mark Alpert

Mark D. Alpert
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CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

December 9, 2009

Cavalier Mobile Estates, LLC
C/O: Mr. Mark D. Alpert, Esq.
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

Subject: Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)

Dear Mr. Alpert:

The purpose of this letter is to respond to your two e-mail messages dated December 2 and 3, 2009 regarding the subdivision application for Cavalier Mobile Estates. It appears that there are two remaining issues to be clarified regarding what the City requires in order to deem Cavalier's application complete: information related to compliance with the California Environmental Quality Act (CEQA) and information related to Title 25 compliance.

CEQA

You have correctly noted that the determination of whether an Initial Study is required is made *after* a complete application is submitted. In an effort to expedite your client's application process, City staff advised in the initial comment letter—before the application was complete, thus, earlier than necessary—that, at a minimum, an Initial Study and Mitigated Negative Declaration (MND) would be required to process your client's project and that the applicant should be prepared to pay an additional fee for an MND. At this time, nothing further is needed for CEQA purposes to complete the application. However, as noted in the initial comment letter, additional environmental review may be required to comply with CEQA.

Title 25

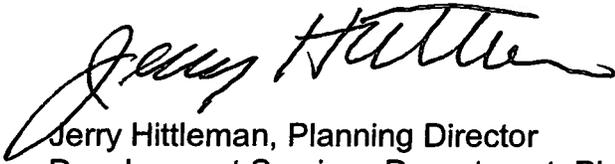
The City's Application Review Committee requested information concerning the park's current compliance with issues such as lot size, setbacks, open space and parking. As has been explained previously, this information is requested in order to establish and document any legal nonconforming use with respect to the new legal lots to be created by this project. In your e-mail of December 2, 2009, you contend that the City's request for this information is "illegal" and that under *Sequoia Park Associates v. County of Sonoma*, the City is precluded from considering consistency with the City's zoning or other local land use regulations, which are preempted by Title 25. Please note that the City of Oceanside has assumed responsibility for enforcement of Title 25 requirements, pursuant to 25 CCR § 1004. As such, the information requested concerns compliance

Mr. Mark D. Alpert, Esq.
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)
December 9, 2009
Page 2

with the state Mobile Home Parks Act and regulations; as stated previously, the City is not attempting to apply its zoning requirements in seeking this information.

Staff remains prepared to work through the submittal process with the applicant. Please contact the Planning staff to schedule a resubmittal meeting when you are ready with the requested information identified in prior correspondence. If you have questions regarding this letter, please call me at 760-435-3537.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Hittleman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jerry Hittleman, Planning Director
Development Services Department, Planning Division

Chris Harrison

From: Mark Alpert [malpert@hkclaw.com]
Sent: Wednesday, December 02, 2009 3:17 PM
To: John Mullen
Cc: Barbara L. Hamilton; Chris Harrison
Subject: Cavalier Subdivision/37989.008

Mr. Mullen,

We received the City's letter of December 1, 2009 with substantial disappointment. It seems the City insists upon the park owner submitting evidence of the consistency of the subdivision with the City's existing zoning standards for the purposes of proposed conditions to the subdivision, even though the City's zoning ordinances are preempted by Title 25 and consideration of these factors is preempted by Government Code Section 66427.5. Indeed, the Court of Appeal in *Sequoia* held in no uncertain terms that the City could not consider consistency with the City's zoning or other local land use regulations:

"A local ordinance is impliedly preempted if it mandates what state law forbids. (Big Creek, supra, 38 Cal.4th 1139, 1161; Great Western Shows, Inc. v. County of Los Angeles, supra, 27 Cal.4th 853, 866.) **As already established, section 66427.5 strictly prohibits localities from deviating from the state-mandated criteria for approving a mobilehome park conversion application.** Yet the Ordinance directs that the application shall be approved "only if the decision maker finds that," in addition to satisfying the survey and tenant impact report requirements imposed by section 66427.5, the application (1) **"is consistent with the general plan" and other local land and zoning use regulations;** (2) demonstrates that "appropriate" financial provision has been made to underwrite and "ensure proper long-term management and maintenance of all common facilities and infrastructure"; (3) the applicant shows that there are "no conditions existing in the mobile home park that are detrimental to public health or safety"; and (4) the proposed conversion "is a bona-fide resident conversion" as measured against the percentage-based presumptions established by the Ordinance. . . . **However commendable or well intentioned these additions may be, they are improper additions to the exclusive statutory requirements of section 66427.5.**"

Sequoia Park Associates v. County of Sonoma, 176 Cal. App. 4th 1270, 1299 (Cal. App. 1st Dist. 2009) (emphasis added)

In light of the great expense and delay associated with the City's illegal demands, Cavalier has no choice but to move forward with litigation against the City. In addition, Cavalier will take the lead in a public relations campaign designed to inform the community as a whole of the City's wasteful expenditure of resources in defense of a position that clearly violates state law and the City's exposure to damages in the range of 25 million dollars for wrongfully interfering with Cavalier's property rights. In a final effort to reach an accord on this matter, the park owner will allow the City seven days from the date of this letter to reverse its position.

Thank you for your attention to this matter.

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
email: malpert@hkclaw.com
blog: www.caproperyrights.com
ws: www.hkclaw.com
Bus:(714) 432-8700
Fax: (714) 546-7457

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CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

November 30, 2009

Cavalier Mobile Estates, LLC
C/O: Mr. Mark D. Alpert, Esq.
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

Subject: Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)
Application Review Committee (ARC), Notice of Incompleteness

Dear Mr. Alpert:

This letter responds to your proposal of November 12, 2009 regarding the seven categories of information the City requires in order to deem your client's subdivision application complete.

1. Comments 4 and 12. The Application Review Committee has requested that the Coastal Zone boundary be included on the map. You have stated that the applicant will comply with this requirement, provided that the City makes the necessary information available. The information can be made available and this issue can be resolved through a meeting with the applicant's engineer prior to resubmittal.

You have stated that a Conditional Use Permit (CUP) application and a Development Plan exceed the limitations of Government Code section 66427.5, positing that the City cannot impose any new conditions on the operation. The CUP is not a new requirement; the park is currently required to have a CUP pursuant to the City's Local Coastal Program. The previously issued CUP for the park is expired. Nevertheless, the Committee will not require that the CUP be renewed in order to deem the application complete.

The Development Plan application is required only because the applicant has chosen to submit a Vesting Tentative Map, rather than a Tentative Map. As noted in my letter of November 6, 2009, as well as Jerry Hittleman's letter of October 23, 2009, the Committee will not require that a Development Plan be processed if the applicant amends its application to submit a Tentative Map rather than a Vesting Tentative Map. In the interest of processing the application to a public hearing, the

Mr. Mark D. Alpert, Esq.
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)
November 30, 2009
Page 2

Committee will not require a Development Plan in order to consider the application complete, even if the applicant chooses not to amend its application to provide a Tentative Map instead of a Vesting Tentative Map.

Please note, however, that accepting the application as complete will not bar the City from requiring a Development Plan or renewal of the CUP in accordance with applicable laws.

2. Comment 6. It appears from your letter that this issue is not in dispute and that the applicant will prepare an Initial Study in accordance with CEQA. This will confirm that the \$408 fee for staff review of the Initial Study has been paid.
3. Comments 7, 8 and 9. The Committee requested plan sheets that comply with the specifications in the Development Processing Guide. You have requested that the Committee reconsider this requirement in light of communications between City staff and the applicant's engineer on this topic. In the spirit of cooperation, the Committee will accept the plan size submitted, despite the lack of strict compliance with the administrative guideline criteria.
4. Comment 10. It appears from your letter that this issue is not in dispute and that the applicant will provide copies of the survey responses as well as evidence of the agreement with the homeowners' association.
5. Comment 13. Comment 13 requested information concerning the park's compliance with zoning standards such as lot size, setbacks, open space and parking for the portions of the park both within and outside the Coastal Zone. Any zoning irregularities may constitute a legal nonconforming use. However, as explained in my November 6, 2009 letter, the information requested in Comment 13 is necessary to determine the nature and extent of any non-conformities, to establish a baseline with respect to any legal nonconforming status of the newly created lots.

You have insisted that the City withdraw this request, contending that the City cannot require compliance with current zoning requirements and that the City's zoning regulations are irrelevant in light of state regulation of mobile home park standards (Title 25). The City is not attempting to apply its zoning requirements, but the Committee nevertheless requires this information in order to develop a recommendation to the Planning Commission regarding possible conditions of approval of the map.

6. Comment 19. The City has asked the applicant to provide an overlay showing the applicable Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs) on the site plan to depict all flood zones, the floodway and the

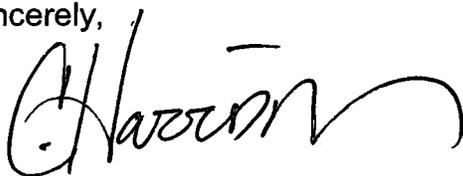
Mr. Mark D. Alpert, Esq.
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)
November 30, 2009
Page 3

floodplain. Your questions regarding the specifics of this request can be answered and this issue can be resolved through a meeting with the applicant's engineer prior to resubmittal.

7. Comments 22, 23, 24, 25 and 28. It appears from your letter that these comments, involving miscellaneous technical map issues, have been or can be addressed and resolved through a meeting with the applicant's engineer prior to resubmittal.

Staff remains prepared to work through the submittal process with the applicant. If you have questions regarding this letter or would like to meet with the Committee, please call me at 760-435-3537. When you are ready to provide the additional information, please contact me or Jerry Hittleman to schedule a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Harrison", with a large, sweeping flourish at the end.

Christopher J. Harrison, Planning Consultant
Development Services Department, Planning Division

Cc: Leslie M. Gallagher; Barbara L. Hamilton; Robert Coldren
Subject: RE: 37989.008/Cavalier Subdivision/My letter of November 12

Mr. Harrison,

Following up on my phone message to John, just yesterday I received an email from John indicating a response was expected today. Now, the response is supposed to come "following the Thanksgiving holiday"--at least 10 days later. Our letter addressed only seven items, and only two are three which remain in significant dispute. I see no valid reason for this delay and thus no reason why we should advise our client to continue waiting for a response.

Mark Alpert

Mark D. Alpert
Hart, King & Coldren, a PLC
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ws: www.hkclaw.com
Bus:(714) 432-8700
Fax: (714) 546-7457

From: Chris Harrison [mailto:CHarrison@ci.oceanside.ca.us]
Sent: Friday, November 20, 2009 3:25 PM
To: Mark Alpert; John Mullen
Cc: Leslie M. Gallagher; Barbara L. Hamilton
Subject: RE: 37989.008/Cavalier Subdivision/My letter of November 12

Mr. Alpert,

The purpose of this e-mail is to provide you with a status update on the City's review of your last letter request dated November 12, 2009. The City is still considering the issues raised in your letter at this time, and we expect to provide a response following the Thanksgiving holiday (the City is closed Wednesday – Friday next week).

We thank you for your time and understanding in this matter.

Chris Harrison
Planning Consultant
City of Oceanside
Planning Division
300 North Coast Highway
Oceanside, CA 92054
P - 760-435-3537
F - 760-754-2958
charrison@ci.oceanside.ca.us

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From: Mark Alpert [mailto:malpert@hkclaw.com]
Sent: Thursday, November 19, 2009 3:30 PM
To: John Mullen
Cc: Chris Harrison; Barbara L. Hamilton
Subject: 37989.008/Cavalier Subdivision/My letter of November 12

Mr. Mullen,

I am writing to follow up on my letter of November 12, 2009. I had requested a response from the City by today and I understand that Friday is not a business day. In the spirit of avoiding unnecessary litigation, I thought it prudent to inquire whether or not we can expect a response in the very near future so I can advise my client accordingly.

Thank you.
Mark Alpert

Mark D. Alpert
Hart, King & Coldren, a PLC
200 East Sandpointe, 4th Floor
Santa Ana, CA 92707
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blog: www.capropertyrights.com
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HK&C

HART, KING & GOLDREN

Mark D. Alpert
malpert@hkclaw.com

November 12, 2009

Our File Number: 37989.008/4843-2318-6693v.1

VIA ELECTRONIC AND U.S. MAIL

Mr. Christopher J. Harrison
Planning Consultant
Planning Decision
City of Oceanside
300 N. Coast Highway
Oceanside, CA

Received
NOV 16 2009
Planning Decision

Re: *Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)*

Dear Mr. Harrison

This letter is drafted in response to your letter of November 6, 2009. We appreciate the narrowing of scope of demands by the City and are hopeful that we can avoid litigation at this time. However, there are still several problematic requests which exceed the scope of the City's review under Government Code § 66427.5 and which, more importantly, significantly increase the burden of proceeding with the subdivision.

We propose the following regarding the seven categories of demands identified in your November 6, 2009 letter:

1. **Items 4 & 12 from the 10/15 letter**

The request to include information regarding the location of the coastal boundary on the map should be reasonable provided the City has available the requisite information. While we do not believe the City can impose this requirement as a condition of completing the application, the Applicant will comply provided the City makes the necessary information available.

The request for a CUP application and development plan application clearly exceeds the limitations of Government Code § 66427.5 and involve considerable additional expense. The subdivision involves continuing of the existing use. The City cannot impose any new conditions on the operation. No purpose would be served by submitting these separate applications other than to provide money for the City. Indeed, given the limited scope of the City's review, the fees would significantly exceed the City's actual expense. The City has already received an enormous amount of money, under protest, for the City's subdivision processing fees. Fundamentally, we see no purpose in proceeding with these applications as the scope of the review of the subdivision is determined by the government code.

2. **CEQA initial study fee**

I believe we already submitted a fee for an initial CEQA study, but if we have not, the applicant will submit a \$408 fee. As you know, it is the Applicant's position that the project is CEQA exempt.



Mr. Christopher J. Harrison
City of Oceanside
November 12, 2009
Page 2

3. **Comments 7, 8, & 9 Revisions to plan sizes**

We are frankly mystified by the City's position on this matter. Our engineer, Burt Mazelow specifically inquired with the City regarding whether the map size was a problem and was told by the City Engineer it was not. In fact, Mazelow advises me that the engineer was highly complimentary regarding the map size. Because of the size of the property, the larger maps actually make review easier. Revising the map to the requested sizes would involve significant engineering expense, an expense which would result in a less useful product. Placing signatures on the map and project numbers is not a problem. Of course, we did not have this information when the map was submitted, which is why blanks were left to allow the information to be filled in later. Again, planning staff had no concern regarding this issue. We would suggest you reconsider this demand in light of the comments of your own staff and advance approval of the map size.

4. **Responses to Survey and evidence of agreement**

We can provide copies of the survey responses and I can provide evidence of an agreement regarding the conduct of the survey in the form of my declaration. However, you already have evidence of the agreement. It is described in the Tenant Impact Report. You can independently confirm the agreement with HOA president, Mr. Lannen.

5. **Inconsistency with existing zoning, set backs and regulations.**

This demand is a complete non-starter. The City cannot require compliance with current zoning requirements so no purpose would be served by this requirement. In any event, the City's zoning regulations are largely irrelevant as state law (Title 25) largely governs these issues. You should be well aware of this fact as the City of Oceanside has undertaken Title 25 enforcement and the *Sequoia* case addresses this issue. The City has recently inspected the property for compliance with Title 25 as it requires compliance as a condition of proceeding with rent increase applications. Because the City has been the exclusive agency for permitting the placement of homes within the park, the City should already have the information it is seeking.

In summary, the City is demanding an enormous effort to determine compliance with a zoning code that does not apply, to gather information it already has, which is irrelevant to the regulation of the park before and after conversion, and which cannot be the basis for the imposition of any conditions on the subdivision. The City must withdraw this request.

6. **Flood Zone Map Overlay**

The subdivision map already includes flood zone information. I spoke to our engineer about this item specifically. We have no idea what additional information you may be seeking.

Mr. Christopher J. Harrison
City of Oceanside
November 12, 2009
Page 3

7. **Misc. Map Issues**

Regarding incorporated comments 22-25, they all essentially address the same issue. There is one common area lot which covers the entire property. In essence, everything on the map which is not a mobile home lot is part of the common area lot A. It was impractical to indicate an "A" for every common area. The map really does not need to be revised to address these issues. It would be more confusing to add a shaded overlay on the map because we already have a shaded overlay for the flood zones. However, if this is a major issue to planning staff, we could create a separate map with a shaded overlay just to show the common area lot.

Regarding comment 28, which inquires about an encroachment of the home located on space 165 onto space 164, there is indeed an encroachment. The owner of the home on lot 165 did not properly place the home. This is an enforcement issue within the park and the park owner is taking action against the owner of space 165 to relocate the home. In other words, it does not implicate any planning or map issues.

Based on the progress of our discussions thus far, the park owner will withhold taking legal action for a period of seven days. In that time, we request that the City reconsider its position on these matters and provide a written response stating its position on these matters. We look forward to hearing from you.

Sincerely,

HART, KING & COLDREN



Mark D. Alpert
MDA/sm

cc: Dunex, Inc. (via email)
Brian Alex (via email)
Robert S. Coldren, Esq. (via email)
Margery Pierce (via email)
Barbara Hamilton, Esq. (via email)
John Mullen, Esq. (via email)



CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

November 6, 2009

Cavalier Mobile Estates, LLC
C/O: Mr. Mark D. Alpert, Esq.
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

Subject: Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)
Application Review Committee (ARC), Notice of Incompleteness

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

The purpose of this letter is to supplement the letters previously sent to you dated October 15, 2009 and October 23, 2009. The two prior letters identified additional information needed to determine whether the application for the proposed Vesting Tentative Subdivision Map (T-1-09) and Regular Coastal Permit (RC-5-09) is complete pursuant to Government Code Section §65943. The Application Review Committee (Committee) submits this modified list of information required for the limited purpose of deeming the application complete. Nothing in this letter should be construed to waive any of the substantive comments provided by the Committee in the prior letters sent to you. The comments in those letters that do not specifically ask for additional information will not be discussed in this letter.

The applicant and the Committee appear to disagree about the scope of review governing this application. This letter is not intended to address substantive legal disputes but instead represents an attempt by the Committee to obtain the bare minimum information needed to deem the application complete and process the application to a public hearing.

The Committee has determined that the project remains incomplete until the following information is submitted:

ARC Letter Dated October 15, 2009

1. Comments 4 and 12. The applicant is required to include an application for a Conditional Use Permit (CUP). This is a requirement of the City's Local Coastal Program and the park owner's CUP is expired. The application fee for the CUP is \$ 2,856. In addition, the application must include the Coastal Zone boundary on the map. If the application for a Vesting Tentative Map is amended to submit a Tentative Map, the Committee will not require the processing of a Development Plan application under Article 7 of the Subdivision Ordinance, nor will the Committee require information necessary to process a Development Plan application. The remaining comments in this letter assume the applicant will choose to process a Tentative Map pursuant to Article 4 of the Subdivision Ordinance, and not a Vesting Tentative Map.

Mr. Mark D. Alpert, Esq.
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)
November 6, 2009
Page 2

2. Comment 6. The applicant is required to prepare an Initial Study in accordance with the California Environmental Quality Act (CEQA). Following the completion of the Initial Study, a determination will be made whether the project is exempt from CEQA or whether additional review is required under CEQA.
3. Comments 7, 8 and 9. The Committee has asked that the applicant provide plan sheets in accordance with the Development Processing Guide, Appendix B, Required Plans and Information. The Committee continues to need the technical information identified in comments 8 and 9.
4. Comment 10. The responses to the survey of support have yet to be provided. In addition, according to Government Code Section §66427.5, "[t]he 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." Please provide evidence of the required agreement.
5. Comment 13. The Committee has not determined the extent to which your project is consistent or inconsistent with applicable zoning regulations both within and outside the Coastal Zone. In the event, the project has a legal non-conforming status, the information requested in Comment 13 is essential to determine the nature and extent of the non-conformities.
6. Comment 19. This comment indicated that an overlay be provided showing the applicable Federal Emergency Management Agency Flood Insurance Rate Map on the site plan to show all zones, the floodway and the floodplain. This information is necessary to determine compliance with floodplain management regulations promulgated under the authority of the National Flood Insurance Program.
7. Comments 22, 23, 24, 25 and 28. These comments are technical comments related to errors on the map that can be easily corrected or clarified.

If you have questions or would like to meet with the Committee to discuss this letter, please call me at 760-435-3537. When you are ready to resubmit, please contact me to schedule a resubmittal meeting. Staff remains willing to assist the applicant work through the process.

Sincerely,



Christopher J. Harrison, Planning Consultant
Development Services Department, Planning Division

HK&C

HART, KING & COLDREN

Mark D. Alpert
malpert@hkclaw.com

October 23, 2009

Our File Number: 37989.008/4836-9704-1157v.1

VIA ELECTRONIC AND U.S. MAIL

Mr. Jerry Hittleman
City Planner
City of Oceanside
300 N. Coast Highway
Oceanside, CA

Re: *Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)*

Dear Mr. Hittleman

I received your letter of today. In that letter, you offer a "defense" of the City's October 20, 2009 letter deeming the Cavalier application incomplete. You attempt to explain or justify a few of the numerous incomplete items, ignoring many others, and ignoring the fundamental thrust of the October 20, 2009 letter, which treated the subdivision of Cavalier as a new project and boldly claimed that Government Code Section 66427.5 did not limit the scope of the City's review.

In a rather feeble effort to explain the letter, you offer the explanation that it is the "... City's policy to initially respond to all Applicants with all potential issues Staff can identify ..." and suggest I reread the letter with an eye toward reaching some kind of understanding with the City. The explanation is ludicrous. We met with your planning staff, including counsel, in advance of the meeting. The nature of the project was explained in detail. Planning staff and counsel was fully aware of the state law imposed limitations on this project and chose to ignore it, explicitly rejecting the limitations. The City cannot willfully disregard its obligations, offer ten pages of unreasonable, illegal demands and then expect the applicant to undertake the burdensome process of negotiating page by page through dozens of these illegal conditions.

We are not going to pursue an appeal based on the City's letter of October 20, 2009. That would be futile and an enormous waste of resources. Indeed, it appears it was calculated to delay and impede the processing of the application. Your letter identifies several issues which you apparently believe are defensible. While we disagree, at least the letter identifies a smaller number of issues. We will consider pursuing the administrative appeal process suggested in your letter if the City submits a modified letter that is limited to matters within the scope of the City's review under state law. We must receive a modified letter no later than close of business October 28, 2009. Otherwise we will simply file suit. We will not undertake a sham administrative process. In that regard, I will briefly address some of the issues you raise in your letter of October 23, 2009.

///

///



HART, KING & COLDREN

Mr. Jerry Hittleman
City of Oceanside
October 23, 2009
Page 2

Copies of the Surveys

You request copies of the surveys based on language in Government Code Section 66427.5(d)(1) which requires that the local agency be provided the "results of the survey." The City was provided with the results and was also provided an exemplar of the ballot used. There is no requirement to provide copies of the surveys. There are privacy concerns. This element is complete.

Lot coverage, set backs, etc..

Your letter suggests the map should be modified to show how "each new lot configuration will comply with current zoning regulations . . ." There are no new lot configurations. This application is the continuation of an existing, approved use of the park. The applicant does not have to comply with current zoning. In addition, state law, not the city's zoning ordinances are controlling. These issues are outside the scope of the hearing allowed under Government Code Section 66427.5 as the Court *Sequoia* held.

FEMA Requirements

The City will not be issuing a permit for structures within a floodway. The structures already exist and were permitted decades ago. The subdivision application is not discretionary in this case. The City's role is purely ministerial. Once again, the City ignores the fundamental nature of this conversion as simply a change in the form of ownership of the property.

Development Permit

Your letter explains that this City requires a development permit because the Applicant submitted a vesting map. Of course, that misses the point. The Development Permit requirement derives from the City's subdivision ordinance. That ordinance is preempted by state law. As previously noted, the City Attorney conceded that point, which was the direct holding of the *Sequoia* decision.

The Use Permit/Coastal Permit

No new use permit is required. The Applicant is continuing an existing use. Government Code Section 66427.5 is explicit and direct in limiting the scope of review. The City has no authority to impose a use permit requirement, regardless of whether the property is located, in part, in a coastal zone. As an aside, I have previously requested a copy of relevant portions of the City's Local Coastal Plan, but never received that information.

CEQA Review

There are no environmental impacts as no construction is contemplated or planned which will have any impact on flooding issues. You facetiously suggest you would be "open to

HK&C

HART, KING & COLDREN

Mr. Jerry Hittleman
City of Oceanside
October 23, 2009
Page 3

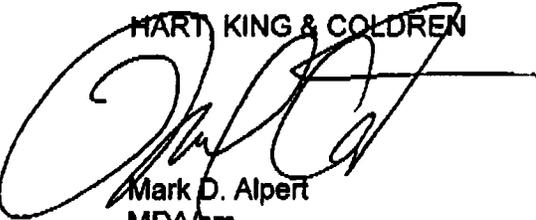
discussing" a possible exemption if we can establish locating homes in a flood way will not have a significant effect on the environment. As you well know, no homes are going to be moved anywhere as a result of the project. CEQA has a categorical exemption under Section 15301 for a project which "involves negligible or no expansion of an existing use."

In our view, the City has been presented a complete application. However, as noted, we will allow the City to prepare a modified incomplete letter by October 28, 2009. If the letter represents a serious effort to comply with the limitations of state law and appears to be a genuine effort to move the planning process forward, my client will consider utilizing the City's appeal process. By undertaking this effort to avoid litigation, the Applicant is not waiving the right to assert the City's October 20, 2009 letter did not comply with the Permit Streamlining Act and thus waives any incompleteness claims.

We hope the City will proceed to process the application in good faith. We look forward to hearing from you.

Sincerely,

HART, KING & COLDREN



Mark D. Alpert
MDA/sm

cc: Dunex, Inc
Brian Alex
Robert S. Coldren, Esq.
Margery Pierce
Barbara Hamilton, Esq.



CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

October 23, 2009

Cavalier Mobile Estates, LLC
C/O: Mr. Mark D. Alpert, Esq.
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

Subject: Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)
Notice of Incompleteness/Appellate Process

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

The City is in receipt of your letter dated October 20, 2009. In the first sentence of your letter you reference "conditions" that have been placed on your project. Please note that no conditions have been placed on your project at this time. The purpose of the City's ARC letter was to comply with the provisions of the Permit Streamlining Act (Act), specifically, Section 65943(a). As you know, if the City determines that an application is incomplete, pursuant to the Act, the City, "[m]ust specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

Among other things, the City requested that the Applicant provide proof that it had conducted the survey of resident support required by Govt. Code section 66427.5. Specifically, the City requested copies of the responses to the survey that was conducted for inclusion in the record for the hearing, as well as evidence that the survey of support had been conducted in accordance with an agreement between the subdivider and the HOA. This information had not been provided with the original application and as you know, Section 66427.5(d)(1) requires the Applicant to submit the results of the survey to the local agency upon the filing of the tentative map to be considered as part of the hearing on the map.

Additional requests for clarification or additional information included a request that the Applicant submit plan sheets of an adequate size in accordance with the City's Development Processing Guide, Appendix B, that the Applicant/Owner and Engineer sign the cover sheet, that the Applicant prepare a table for each proposed new lot to be created showing how each new lot configuration will comply with current zoning regulations regarding lot coverage, setbacks, etc. This information will also be needed

Mr. Mark D. Alpert, Esq.
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)
October 23, 2009
Page 2

to determine if any of the newly created lots will include "legal/nonconforming" structures.

The City also advised the Applicant that the proposed subdivision was located in a designated FEMA floodway. Federal regulations prohibit a local agency from issuing permits for structures within a floodway. The City appreciates the argument that this development is a "paper change" only, however, the FEMA regulations define "project" to include any development that requires a discretionary process. As the City pointed out, this application will need to be accompanied by a CLOMR or other FEMA-mandated mitigation. The decision of what mitigation is appropriate will be decided by a federal agency (FEMA) and not City, so it is imperative that the Applicant make contact with the federal agency and obtain direction on how to proceed.

Many of the other requests for information or clarification should be relatively simple to provide and are necessary to ensure the completed map is comprehensive and legible. Please re-read the ARC letter with an eye toward working through these relatively minor issues in order to move this application to a point where Staff can deem it complete and make a recommendation to the Planning Commission.

Please also note, it is the City's policy to initially respond to all Applicants with all of the potential issues Staff can identify in order to avoid costly and unnecessary repeated resubmissions. Sometimes, as is apparent in this case, the Applicant may be discouraged by the long list of issues, but it has been the City's experience that, with a little cooperation on all sides, they can be negotiated to a point satisfactory to the Applicant and acceptable by the City.

Another issue that was identified in the ARC letter was with regard to the requirement for a development plan. Please note: when an applicant applies for a Vesting Tentative Map, Article VII of the City's Subdivision Ordinance requires the applicant to also file a development plan. This requirement does not exist in IV (Tentative Maps – Five or More Parcels). If the Applicant objects to the development plan requirement, a Tentative Map may be a more palatable alternative.

The need for a Use Permit was also noted. This is due to the fact that portions of this parcel are in the Coastal Zone. The City's Local Coastal Plan requires all property in the Coastal Zone to utilize the 1986 Zoning Ordinance (the ordinance in effect at the time the LCP was adopted). Thus, it is the City's position, that a Use Permit is required for that portion of the project that will lie in the Coastal Zone. Coincidentally, this is another reason why an accurate map must be submitted that shows the Coastal Zone Boundary, so that the purchasers of the newly created lots will be able to ascertain whether their lots are located in the Coastal Zone or not. The Map must create legal parcels, and the City is attempting to assist the Applicant to reach that goal.

Mr. Mark D. Alpert, Esq.
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)
October 23, 2009
Page 3

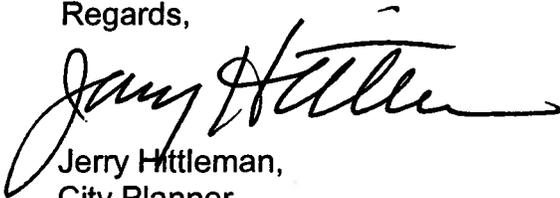
With regard to the CEQA analysis, as Resource Officer for the City, I determined that there are potentially significant impacts from this project due to the fact that the subdivision is located in a floodway. I am open to discussing a possible exemption if the Applicant can provide a credible argument that the homes in the floodway will not have a significant effect on the environment. Again, there are options we can discuss, but the Applicant must first engage in the process in order to come to an agreement on how to proceed.

At this point, the City will accept your October 20 correspondence as an appeal of Staff's decision of incompleteness of submission, and pursuant to the Permit Streamlining Act, will be happy to process your appeal. Under Article 46 of the current Zoning Ordinance the Applicant has the right to appeal any determination of the Planning Director to the Planning Commission. The appeal hearing has tentatively been scheduled for December 14, 2009, at 7:00 PM and will take place at a regular Planning Commission Meeting in Council Chambers, 300 N. Coast Hwy., Oceanside.

In the interim, if the Applicant wishes to continue processing this application, City staff remains ready and willing to assist in that process. In any event, please confirm at your earliest convenience if you wish to have your appeal heard on the date and time reserved above or if a date in 2010 would be more convenient.

I, or a member of my staff, look forward to hearing from you soon.

Regards,

A handwritten signature in black ink, appearing to read "Jerry Littleman", written in a cursive style.

Jerry Littleman,
City Planner

Transmission Report

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Local ID 2

23-10-2009
7607542958

12:06:18 p.m.

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CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

October 23, 2009

Cavaller Mobile Estates, LLC
C/O: Mr. Mark D. Alpert, Esq.
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

Subject: Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)
Notice of Incompleteness/Appellate Process

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

The City is in receipt of your letter dated October 20, 2009. In the first sentence of your letter you reference "conditions" that have been placed on your project. Please note that no conditions have been placed on your project at this time. The purpose of the City's ARC letter was to comply with the provisions of the Permit Streamlining Act (Act), specifically, Section 65943(a). As you know, if the City determines that an application is incomplete, pursuant to the Act, the City, "[m]ust specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

Among other things, the City requested that the Applicant provide proof that it had conducted the survey of resident support required by Govt. Code section 66427.5. Specifically, the City requested copies of the responses to the survey that was conducted for inclusion in the record for the hearing, as well as evidence that the survey of support had been conducted in accordance with an agreement between the subdivider and the HOA. This information had not been provided with the original application and as you know, Section 66427.5(d)(1) requires the Applicant to submit the results of the survey to the local agency upon the filing of the tentative map to be considered as part of the hearing on the map.

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300 N. COAST HIGHWAY OCEANSIDE, CA 92054 TEL: 760-435-3520 FAX: 760-754-2958 WEB: CI.OCEANSIDE.CA.US

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Abbreviations:

HS: Host send
HR: Host receive
WS: Waiting send

PL: Polled local
PR: Polled remote
MS: Mailbox save

MP: Mailbox print
CP: Completed
FA: Fail

TU: Terminated by user
TS: Terminated by system
RP: Report

G3: Group 3
EC: Error Correct

Transmission Report

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CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

October 23, 2009

Cavalier Mobile Estates, LLC
 C/O: Mr. Mark D. Alpert, Esq.
 200 Sandpointe, Fourth Floor
 Santa Ana, CA 92707

Subject: Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)
 Notice of Incompleteness/Appellate Process

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

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300 N. COAST HIGHWAY OCEANSIDE, CA 92054 TEL: 760-435-3520 FAX: 760-754-2958 WEB: CI.OCEANSIDE.CA.US

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Abbreviations:

HS: Host send
 HR: Host receive
 WS: Waiting send

PL: Polled local
 PR: Polled remote
 MS: Mailbox save

MP: Mailbox print
 CP: Completed
 FA: Fail

TU: Terminated by user
 TS: Terminated by system
 RP: Report

G3: Group 3
 EC: Error Correct

HK&C
HART, KING & COLDREN

Mark D. Alpert
malpert@hkclaw.com

October 20, 2009

Our File Number: 37989.008/4818-3214-5157v.1

VIA ELECTRONIC AND U.S. MAIL

Mr. Christopher J. Harrison
Planning Consultant
Planning Decision
City of Oceanside
300 N. Coast Highway
Oceanside, CA

Received
OCT 21 2009
Planning Division

Re: *Cavalier Mobile Estates Subdivision* (T-1-09 & RC-5-09)

Dear Mr. Harrison

I reviewed your letter of October 15, 2009, deeming the subdivision application incomplete and attaching approximately 10 pages of conditions claimed necessary to complete the application. No purpose would be served by addressing these conditions individual. The City's requirements all appear to be predicated on the assumption that California Government Code § 66427.5 does not limit the scope of the City of Oceanside's review and treats the application to convert the park to a subdivision as though it were a completely new use, rather than a simple change of the form of ownership.

The City's position is not consistent with state law. City staff is fully aware of the recent Court of Appeal decision in *Sequoia Park Associates v. County of Sonoma*, 176 Cal. App. 4th 1270, Cal.App.1st Dist. 2009) which held that local conversion ordinances are expressly preempted by Section 66427.5. Indeed, the Court of Appeal in *Sequoia* reversed the decision of the only state court which had reached a different conclusion. At the pre-submission meeting, staff, including staff counsel, indicated they were aware of the *Sequoia* decision and in no case did staff indicate any disagreement with the Applicant's position.

Dunex did not submit fees for a development application or a conditional use permit based on representations of city staff and the city attorney, that such permits on would not be necessary in light of the preemption of the City's conversion ordinance based on *Sequoia*. Yet, your letter claims the application is incomplete for failing to submit fees for these permits. Staff has likewise changed its position regarding environmental review, now indicating it will not process an exemption, but, at the very least, with process a negative declaration.

It is obvious that political concerns have overridden the requirements of the law and the City's position is designed to prevent a lawful subdivision. It is unfortunate these political concerns have spurred city staff to openly flaunt the law. The City is undertaking considerable risk in engaging in this conduct. You are likely aware of the recent Ninth Circuit decision in *Guggenheim v. City of Goleta*, 2009 U.S. App. LEXIS 21313 (9th Cir. Cal. Sept. 28, 2009). The City is applying its rent control in precisely the same manner as the City of Goleta, to force

HK&C

HART, KING & COLDREN

Mr. Christopher J. Harrison
City of Oceanside
October 20, 2009
Page 2

park owners to bear the burden of a huge below market rent subsidy. The City's conduct in processing the subdivision application is a transparent effort to make it impossible or impractical for the park owners to get out of the business of operating a rent controlled mobile home park. The City's shifting, baseless legal positions also raise significant due process and equal protection concerns.

On behalf of the Applicant, we are authorized to allow the City until close of business Friday October 23rd, 2009 to withdraw its letter of October 15, 2009 and deem the application complete. If the City fails to take such action, we are authorized by the Applicant to file suit against the City. We are currently reviewing whether city staff, counsel and other city agents may be held personally responsible for intentionally flaunting the law in this manner.

We certainly hope the City will reconsider its position and process the subdivision of Cavalier in accordance with the law.

Sincerely,

HART, KING & COLDREN



Mark D. Alpert
MDA/sm

cc: Dunex, Inc
Brian Alex
Rob Coldren
Margery Pierce
Barbara Hamilton, Esq.



CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

October 15, 2009

Cavalier Mobile Estates, LLC
C/O: Mr. Mark D. Alpert, Esq.
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

Subject: Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)
Application Review Committee (ARC), Notice of Incompleteness

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

The City of Oceanside Application Review Committee (ARC) has conducted a preliminary review of your project plans consisting of the following planning application:

Tentative Subdivision Map (T-1-09) & Regular Coastal Permit (RC-5-09)

As part of the Committees review, the members evaluated the application for completeness pursuant to Government Code Section 65943 to determine whether any additional information needs to be submitted in order to determine your projects compliance with State and Federal law, the City's General Plan, Zoning Ordinance(s), Local Coastal Program and other regulatory documents. At this time, the Committee has determined that the project remains incomplete. Additional information regarding the proposed use is needed in order to continue processing the subject application. Staff has listed the comments below, or has enclosed them as attachments, for your consideration and incorporation into revised project plans.

PLANNING:

1. After review of the project submittal materials and other applicable regulatory documents, City staff disagrees with the assertion that the project is exempt from any and all regulations except for Government Code Section § 66427.5.
2. The project is subject to review and approval based on the following documents: The California Constitution, California statutes, including but not limited to Government Code Sections 66410-66499.58 (Subdivision Map Act), Public Resources Code Sections 21000 – 21178 (CEQA), and Health & Safety Code Sections 18200 – 700 (Mobilehome Parks Act), 25 CCR § 1000 – 1758, City of

Oceanside Municipal Code, City of Oceanside General Plan, City of Oceanside Zoning Ordinance (current and January 1986 versions), City of Oceanside Local Coastal Program, City of Oceanside Landscape Design Manual, City of Oceanside Engineers Design and Processing Manual, City of Oceanside Subdivision Ordinance, City of Oceanside Water, Sewer and Reclaimed Water Design and Construction Manual, City of Oceanside Development Processing Guide, the California State Uniform Plumbing Code, California State Uniform Building Code, California State Storm Water requirements, Federal Storm Water requirements, and requirements of the Federal Emergency Management Agency. Please note, the project may be subject to review and approval based on other regulatory documents as determined during the course of the projects review as needed to protect the health, safety, and welfare of the general public.

3. Per City Code, this new subdivision shall be subject to all applicable Development Impact fees.
4. The project is required to include a Development Plan Application per Article 7 of the Zoning Code and a Conditional Use Permit Application per Article 15 of the Zoning Code (1986 Edition). When you are ready to re-submit the project after the requested revisions are made, please be prepared to pay the following fees: Development Plan Review - \$6,033.00; Conditional Use Permit - \$2,856.00.
5. A Conceptual Landscape Plan is required with every Development Plan. Please provide a Conceptual Landscape Plan (CLP) with the next submittal that meets the design standards of the City of Oceanside Landscape Design Manual.
6. At the time of application, the California Environmental Quality Act (CEQA) environmental review fee paid was for a Certificate of Exemption (\$408.00). After review of the application materials and applicable local, state and federal regulations, staff has determined that an Initial Study and Mitigated Negative Declaration will be the minimum CEQA review required to process your project. When you are ready to re-submit the project after the requested revisions are made, please be prepared to pay the following fee: \$2,250.00 (MND \$2,658.00 – COE \$408.00 previously paid). Please note, that once the Initial Study has been completed and the findings reviewed, there is a possibility that a full Environmental Impact Report (EIR) could be required.
7. The plan sheets don't comply with the City of Oceanside Development Processing Guide, Appendix B, Required Plans and Information, which establishes the format size for plan sets at either 18" x 24" or 24" x 36". Please note, that whenever the minimum scale would require a sheet larger than 24" x 36", multiple sheets should be used. A composite map showing the entire project at a larger scale is also required.

8. Please add all project numbers, including a "place holder" for the new application numbers, to each sheet of the plan set (i.e. D-##-09 and C-##-09).
9. Please list the property owner and the representative (name, address, phone number for each) separately on the TM cover sheet per the City of Oceanside Development Processing Guide. The owner and the engineer are required to sign the cover sheet.
10. In the "Report on Impact of Conversion Upon Residents, Cavalier Mobile Estates Mobilehome Park" dated September 14, 2009 reference was made to the "Survey of Support" pursuant to Government Code Section §66427.5(d)(1). It is noted that the majority of the responders were not in support of the conversion (132 opposed to conversion, 20 supported conversion, 14 declined to state). Please submit a copy of all of the responses to the survey so that they may be properly included in the Public Record. That document also contained information about the applicants work with the Mobilehome Parks Homeowners Association prior to the survey. Please also provide a copy of the HOA Board Meeting Notice where the subject survey and methodology were to be discussed and the meeting minutes of the subject Homeowners Association Meeting where the Board of Directors agreed to the format of the survey and to the time and administrative method of the survey for inclusion in the public record. If no such meeting took place, alternative evidence of format agreement will be considered.
11. The project site is located within the South Oceanside Neighborhood Planning Area and it abuts the Townsite Neighborhood Planning Area. This project will be of great interest to residents within both Neighborhood Planning Areas and the local grass roots neighborhood groups within each. It is highly recommended that the applicant prepare a public outreach and information program to insure all interested members of the public are educated on the project and have the opportunity to participate in the process to the fullest extent possible.
12. The site is bifurcated by the Coastal Zone Boundary line and as such is subject to the January 1986 Zoning Code for the portion of the site in the Coastal Zone and the current zoning regulations for the remainder of the site. Please plot the Coastal Zone Boundary Line on the map and provide the additional area calculations for each zone. The revised plan shall have area calculations for the coastal zone area, the non-coastal zone area, and the total area (gross and net for each).
13. It appears that the proposed subdivision does not meet many of the zoning standards applicable to the project including, but not necessarily limited to, lot size, front yard set backs, rear yard setbacks, side yard setback, corner side yard

setbacks, encroachment into set backs, total open space, total usable open space, common usable open space, private usable open space, required parking, required guest parking, and required handicapped parking. Please prepare a table of these requirements which includes the "required minimums" and the "proposed minimums" to demonstrate compliance with all the applicable standards for the area within the Coastal Zone and the area outside of the Coastal Zone. Please also include a "typical detail" for each site area that demonstrates compliance with the setbacks.

14. Please note, should a redesign of the subdivision map to comply with all applicable regulations result in the loss of units on-site, the project may be subject to the Coastal Zone Replacement Housing requirement.
15. Please provide cross sections for Oceanside Boulevard and each of the private streets within the subdivision, including any right-of-way dedication that is required.
16. Please provide the overall sites gross and net acreage and a density calculation, as well as the same for the coastal zone area and the non-coastal zone area.
17. Please provide a guest parking space detail with dimensions to demonstrate compliance with the codes.
18. Please list all utility companies and agencies that will serve the site (solid waste, school district, etc.).
19. Please overlay the applicable Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map(s) (FIRMs) on the site plan to show all zones, the floodway, and the floodplain.
20. Please provide finish pad and finish floor elevations for each unit in the subdivision.
21. Please note, if any habitable structures are located in the floodway, a Conditional Letter of Map Revision (CLOMR) or other mitigation deemed appropriate by the City of Oceanside and FEMA, may be required to comply with FEMA Regulations.
22. The project plans call out "lot A" and "lot B", however, lot B is not accounted for in the "Lot Area Table", please clarify.

23. On sheet 2 of 3 of the Map, the Clubhouse facility located between Blue Springs Lane and the flood control channel appears to be a separate lot, however, there is not designator for it. Please clarify.
24. Several non-contiguous areas are labeled "Lot A". Please demonstrate compliance with the Subdivision Map Act. If necessary, re-label the map to comply with the Subdivision Map Act and update the "Lot Area Table" as necessary.
25. There is a long linear strip of property along the northern property line, between unit 131 (147) and the main entry drive, that has no lot designator on it. Please clarify and update the "Lot Area Table", as necessary.
26. The two bridge crossings over the flood control channel do not meet current standards for 2-way traffic (24 feet wide minimum, 28 feet wide minimum for emergency vehicle access). Please revise.
27. There are overhead utility lines that cross the western side of the site, and specifically cross over units 135 (151), 126 (141), 154 (173), 220 (239), and 229 (248). Please provide a copy of the encroachment agreement, or other document as may be applicable, between the Mobilehome Park owner and the easement holder allowing habitable structures within the easement.
28. Please provide a detail of the structural encroachments into setbacks and over the proposed property line at lot 148 (165) and 147 (164).
29. Please provide easement information for Hillside Lane at Stewart Street.
30. Please provide a cross section of Stewart Street and Laguna Street.
31. The project will be subject to the City's Undergrounding Ordinance for all overhead utility lines.
32. The project does not appear to meet the requirements for refuse storage in the number and locations of refuse and recycling containers for multiple-family residential development. Please demonstrate compliance with Section 1730 and Section 3022 of the Zoning Codes, as applicable.
33. Please update the project Description and Justification to include any changes that result from requested revisions, if necessary.

Mr. Mark D. Alpert, Esq.
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)
October 15, 2009
Page 6

In addition to the items identified above that are necessary in order to deem the subject application complete, staff has attached comments from the various city departments engaged in the review of the project. Once you have completed the necessary revisions, please re-submit a letter referencing the revisions and how each of the above comments have been addressed along with the following items:

- 20-full size Development Plan/Tentative Subdivision Map Sets (24" x 36", folded).
- 20-full size Conceptual Landscape Plan sets (24" x 36", folded).
- 1- 8.5" x 11" reduced set of every submitted plan sheet.
- 1-copy, updated Description and Justification (D&J), as necessary.
- 3 - Storm Water Management Plan (SWMP).

If you have any questions or would like to meet with the Application Review Committee to discuss this letter, please contact me at 760-435-3537. When you are ready to resubmit, please contact me to schedule a time to meet and go over the re-submittal.

Sincerely,



Christopher J. Harrison, Planning Consultant
Development Services Department, Planning Division

Attachments:

1. Engineering Division Memo 10/12/09.
2. Water Utilities Division Memo 10/13/09.
3. Fire Department, Planning Division Memo 10/14/09.

Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09)
October 12, 2009

Engineering Comments:

1. A Conceptual Landscape Plan is required with every Development Plan. Please provide a Conceptual Landscape Plan (CLP) with the next submittal that meets the design standards of the City of Oceanside Landscape Design Manual.
2. Please provide cross sections for Oceanside Boulevard and each of the private streets within the subdivision, including any right-of-way dedication that is required.
3. Please overlay the applicable FEMA Flood Insurance Rate Map(s) on the site plan to show all zones, the floodway, and the floodplain.
4. Please provide finish pad and finish floor elevations for each unit in the subdivision.
5. Please note, if any habitable structures are located in the flood plain and floodway, a Conditional Letter of Map Revision (CLOMR) or other mitigation deemed appropriate by the City of Oceanside and FEMA, may be required to comply with FEMA Regulations.
6. Please address compliance with title 44, section 60.3, section (c) (6) and (12); and section (d) (3) relative to mobile home parks and floodways.
7. Several non-contiguous areas are labeled "Lot A". Please demonstrate compliance with the Subdivision Map Act. If necessary, re-label the map to comply with the Subdivision Map Act and update the "Lot Area Table" as necessary.
8. The two bridge crossings over the flood control channel do not meet current standards for 2-way traffic (24 feet wide minimum, 28 feet wide minimum for emergency vehicle access). Please revise.

9. There are overhead utility lines that cross the western side of the site, and specifically cross over units 135 (151), 126 (141), 154 (173), 220 (239), and 229 (248). Please provide a copy of the encroachment agreement, or other document as may be applicable, between the Mobile home Park owner and the easement holder allowing habitable structures within the easement.
10. Please provide easement information for Hillside Lane at Stewart Street.
11. Please provide a cross section of Stewart Street and Laguna Street.
12. Approval of this development project is conditioned upon payment of all applicable impact fees and connection fees in the manner provided in chapter 32B of the Oceanside City Code. All traffic signal fees and contributions, highway thoroughfare fees, drainage impact fees, reimbursements, and other applicable charges, fees and deposits shall be paid prior to recordation of the map. Approval of the tentative map shall constitute the owner/developer's approval of such payments, and his agreement to pay for any other similar assessments or charges in effect when any increment is submitted for final map or building permit approval, and to join, contribute, and/or participate in such districts.
13. A geotechnical report needs to be submitted covering all potential soil and geologic conditions which may affect the proposed subdivision and their mitigation.
14. The project is required to submit a Storm Water Mitigation Plan (SWMP).
15. The project is located in a Zone AE flood zone according to FIRM Map Number 06073C0753.
16. The Regional Water Quality Control Board (RWQCB) Order No. R9-2007-0001, Attachment C defines development projects as "new development or redevelopment with land disturbing activities; structural development, including construction or installation of a building or structure, the creation of impervious surfaces, public agency projects, and land subdivision."

Water Utilities Project Comments & Conditions

Date: October 13, 2009
To: Chris Harrison
From: Sabrina Dolezal
RE: Cavalier Mobile Estates Tentative Map T-1-09

The following comment(s) will need to be addressed to deem the application complete.

1. Please revise the submitted tentative map to include the water main easements that have been dedicated on this parcel. The water main easements are #92047, #201804 and #201805. All additional easements shall be included on the tentative map.
2. From discussion with the water field crew, the 12-inch AC water main is located underneath proposed lots 24-34, through lots 181-182 and 266-267 and 309-310. This water main will need to be relocated to Woodpark Lane or the current water main easement shall be widened to 20-feet to comply with current standards with no trees, structures or building overhangs located within the perimeter of the easement
3. **The tentative map/development/project shall reflect all requested changes and those changes shall be resubmitted for review and approval by the Water Utilities Department prior to the Planning Commission's consideration.**

General conditions:

4. Any relocation of public water and/or public sewer utilities is the responsibility of the developer and shall be done by an approved licensed contractor at the developer's expense.
5. The property owner shall maintain private water and wastewater utilities located on private property.
6. Water services and sewer laterals constructed in existing right-of-way locations are to be constructed by approved and licensed contractors at developer's expense.
7. All Water and Wastewater construction shall conform to the most recent edition of the Water, Sewer, and Reclaimed Water Design and Construction Manual or as approved by the Water Utilities Director.

The following conditions shall be met prior to the approval of engineering design plans.

8. All public water and/or sewer facilities not located within the public right-of-way shall be provided with easements sized according to the Water, Sewer, and Reclaimed Water Design and Construction Manual. Easements shall be constructed for all weather access.
9. No trees, structures or building overhang shall be located within any water or wastewater utility easement.

**Oceanside Fire Requirements
Community Development Department
Planning Division**

To: Chris Harrison, Project planner
From: Tom Fitzgerald, Plans examiner @ (760)435-4101
Date: October 14, 2009
Subject: Cavalier Mobile Estates Tentative Map
T-1-09, RC-5-09

Fire Prevention Requirements:

Cavalier Mobile Estates shall comply with California Code of Regulations, Title 25, Department of Housing & Community Development regarding Mobile Home Parks & Installation Regulations.

Transmission Report

Date/Time
Local ID 1
Local ID 2

15-10-2009
7607542958

11:58:57 a.m.

Transmit Header Text
Local Name 1 Planning
Local Name 2 Line 2

This document : Confirmed
(reduced sample and details below)
Document size : 8.5"x11"



CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

October 15, 2009

Cavaller Mobile Estates, LLC
C/O: Mr. Mark D. Alpert, Esq.
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

Subject: Cavaller Mobile Estates Subdivision (T-1-09 & RC-5-09)
Application Review Committee (ARC), Notice of Incompleteness

Dear Mr. Alpert:

VIA FACSIMILIE: 714-546-7457

The City of Oceanside Application Review Committee (ARC) has conducted a preliminary review of your project plans consisting of the following planning application:

Tentative Subdivision Map (T-1-09) & Regular Coastal Permit (RC-5-09)

As part of the Committees review, the members evaluated the application for completeness pursuant to Government Code Section 65943 to determine whether any additional information needs to be submitted in order to determine your projects compliance with State and Federal law, the City's General Plan, Zoning Ordinance(s), Local Coastal Program and other regulatory documents. At this time, the Committee has determined that the project remains incomplete. Additional information regarding the proposed use is needed in order to continue processing the subject application. Staff has listed the comments below, or has enclosed them as attachments, for your consideration and incorporation into revised project plans.

PLANNING:

1. After review of the project submittal materials and other applicable regulatory documents, City staff disagrees with the assertion that the project is exempt from any and all regulations except for Government Code Section § 66427.5.
2. The project is subject to review and approval based on the following documents: The California Constitution, California statutes, including but not limited to Government Code Sections 66410-66499.58 (Subdivision Map Act), Public Resources Code Sections 21000 – 21178 (CEQA), and Health & Safety Code Sections 18200 – 700 (Mobilehome Parks Act), 25 CCR § 1000 – 1758, City of

300 N. COAST HIGHWAY OCEANSIDE, CA 92054 TEL: 760-435-3520 FAX: 760-754-2958 WEB: CI.OCEANSIDE.CA.US

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Abbreviations:

HS: Host send
HR: Host receive
WS: Waiting send

PL: Polled local
PR: Polled remote
MS: Mailbox save

MP: Mailbox print
CP: Completed
FA: Fall

TU: Terminated by user
TS: Terminated by system
RP: Report

G3: Group 3
EC: Error Correct