



---

DATE: August 25, 2010

TO: Honorable Mayor and City Council Members

FROM: Development Services Department/Planning Division

SUBJECT: **CONSIDERATION OF AN APPEAL OF THE PLANNING COMMISSION DENIAL OF VESTING 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. – APPLICANT: CAVALIER MOBILE ESTATES LLC.**

**SYNOPSIS**

Staff recommends that the City Council adopt the resolution denying the Appeal of the Planning Commission decision to deny Vesting Tentative Tract Map (T-1-09) and Regular Coastal Permit (RC-5-09) to not allow the subdivision of the Cavalier Mobile Estates into 348 lots. The Cavalier Mobile Home Park is located south of Oceanside Boulevard, immediately west of Interstate 5, north and significantly down slope of Laguna Street, 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. The site has a General Plan land use designation of Medium Density – A Residential (MDA-R) which permits 6.0-9.9 dwelling units per gross acre and holds two zoning designations. A portion of the subject 44 acre site is located within the boundaries of the Coastal Zone and has a zoning designation of Residential-3 (R3) per the 1986 official zoning map, while the other portion outside of the Coastal Zone holds a Medium Density Residential – A, with a Senior Mobile Home Overlay (RM-A-SMH) zoning designation per the 1992 Oceanside zoning map.

**COMMISSION/COMMITTEE REPORT**

On May 24, 2010, the Planning Commission considered the proposed Vesting Tentative Tract Map and Regular Coastal Permit on the subject 44.0-acre site which houses the existing Cavalier Mobile Estates. Based on staff analysis and public testimony, the Planning Commission denied said application by adopting Resolution No. 2010-P15 with a 7-to-0 vote.

## **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 Mobile Home 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. Judgment was entered in the City's favor on June 29, 2010, and the park owner has until mid-September, 2010 to file an appeal.

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 solely on the basis of 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 own various conditions on the map to mitigate economic displacement of nonpurchasing 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 nonpurchasing residents, as previously described. By establishing a State-prescribed 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 City Council 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 until 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:

Vesting Tentative Tract Map (T-1-09) represents a request for the following:

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:

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/California Coastal Act
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 typographical error.

Upon calculating the survey results, the City determined that only about five 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 by 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. 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. See also comments made by the park owner's representative at the April 2, 2009, hearing on the special adjustment application (Attachment 5, p.34, lines 7-9) and at the April 13, 2009, Manufactured Home Fair Practices Commission meeting when the Commission adopted the resolution denying the rent increase (Attachment 6).

## **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 risks in floodway areas. 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. Approving the subdivision and creating new legal lots would make permanent the use that currently exists without benefit of a current CUP.

### **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 City Council per CEQA Guidelines sections 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.

### **FISCAL IMPACT**

Does not apply.

### **CITY ATTORNEY'S ANALYSIS**

Pursuant to Oceanside Zoning Ordinance, Article 2116 (1986 edition) and Article 4601 (1992 edition), the City Council is authorized to hold a public hearing on the Appeal of the Planning Commission decision to deny the proposed Vesting Tentative Tract Map and Regular Coastal Permit. Consideration of the denial should be based on the record of the decision of the Planning Commission and evidence presented at the public hearing.

After conducting the public hearing, the City Council shall affirm, modify or reject the Planning Commission's decision. A modification not previously considered by the Commission shall be referred to the Commission for review and action as appropriate.

### **SUMMARY**

The proposed Vesting Tentative Map (T-1-09) and Regular Coastal Permit (RC-5-09) are inconsistent with the requirements of Government Code Section 66427.5 and the City's LCP objectives. The project is not a resident-initiated mobile home park conversion and is not supported by the majority of those surveyed; thus, staff cannot find that the proposed project is 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 recommends that the City Council deny the Appeal based upon the findings contained within the attached City Council Resolution, and confirming denial of Tentative Tract Map (T-1-09) and Regular Coastal Permit (RC-5-09).

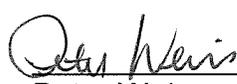
**RECOMMENDATION**

Staff recommends that the City Council adopt the resolution denying the Appeal of the Planning Commission decision to deny Vesting Tentative Tract Map and Regular Coastal Permit (RC-5-09) to not allow the subdivision of the Cavalier Mobile Estates into 348 lots.

PREPARED BY:

  
Jerry Hittleman  
City Planner

SUBMITTED BY:

  
Peter Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

\_\_\_\_\_

George Buell, Development Services Director

  
\_\_\_\_\_

Attachments:

1. City Council Resolution
2. Project Plans - Vesting Tentative Map T-1-09
3. Planning Commission Resolution 2010-P15
4. Planning Commission Staff Report & Associated Attachments
5. Partial Transcript of April 2, 2009, hearing before the Manufactured Home Fair Practices Commission
6. Partial Transcript of April 13, 2009, Manufactured Home Fair Practices Commission meeting



- 1 1. Pursuant to Sections 66473.5 and 66474 of the Subdivision Map Act, the vesting tentative map  
2 as proposed is not consistent with the General Plan because it does not comply with the Local  
3 Coastal Program (appendix B to the General Plan). Specifically, one of the objectives of the  
4 LCP states, "The City shall seek to minimize risks to life and property in areas of high geologic  
5 and flood hazards." A substantial portion of the proposed subdivision is located within the  
6 Coastal Zone and is actually located within the Loma Alta Creek Floodway. Floodway is  
7 defined by the Federal Emergency Management Agency as, "the channel of a river or other  
8 watercourse and the adjacent land areas that must be reserved in order to discharge the base  
9 flood without cumulatively increasing the water surface elevation more than a designated  
10 height." Creating legal lots within these areas does not satisfy the objective to minimize  
11 development in floodway areas, and allowing further intensification of the use of land through  
12 multiple lots with individual ownership in a hazard area would be inconsistent with the intent of  
13 the LCP.
- 14 2. Pursuant to Government Code § 66427.5 at the time of filing a tentative or parcel map for a  
15 subdivision to be created from the conversion of a rental mobile home park to resident  
16 ownership, the subdivider shall avoid the economic displacement of all non purchasing  
17 residents and shall obtain a survey of support of residents of the mobile home park for the  
18 proposed conversion. The results of the survey shall be submitted to the local agency upon  
19 filing of the tentative or parcel map, to be considered as part of the subdivision map hearing.  
20 The survey of support submitted by the applicant illustrates that out of the 339 occupied spaces  
21 within the park, only 19 were in support, and 17 declined to state their opinion. The rest of the  
22 tenants either were not in support of the application or did not participate in the survey.
- 23 3. Government Code § 66427.5 further provides that the subdivider shall be subject to a hearing  
24 by a legislative body or advisory agency, which is authorized by local ordinance to approve,  
25 conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the  
26 issue of compliance with this section. Based upon the fact that 95 percent of the residents  
27 surveyed were not in support of the proposed conversion, the subject survey of support is not  
28 considered a resident initiated survey. Additionally, the timing of the filing of the application  
for conversion, being submitted immediately subsequent to the denial of the special increase to  
base rent requested in 2009, as well as comments by the park owner's representative at the  
hearing on the rent increase application, evidences that this is not a bona fide conversion but

1 rather the applicant's attempt to circumvent the City's mobile home rent control ordinance  
2 (Oceanside City Code Chapter 16B)

3 For Upholding the Denial of Regular Coastal Permit (RC-5-09)

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

18 NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby deny the appeal of  
19 the denial of Vesting Tentative Tract Map (T-1-09) and Regular Coastal Permit (RC-5-09).

20 PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this  
21 25<sup>th</sup> day of August, 2010, by the following vote:

22 AYES:

23 NAYS:

24 ABSENT:

25 ABSTAIN:

26 MAYOR OF THE CITY OF OCEANSIDE

27 ATTEST:

28 APPROVED AS TO FORM:

\_\_\_\_\_  
CITY CLERK

  
CITY ATTORNEY



THE ENGINEERS  
 1001-1003 WEST 10TH AVENUE  
 DENVER, COLORADO 80202  
 PHONE 733-1111  
 TELETYPE 733-1111

PLANNING DIVISION  
 CITY OF DENVER  
 1717 BROADWAY  
 DENVER, COLORADO 80202  
 PHONE 262-3100



A. T. GREEN & ASSOCIATES  
 1717 BROADWAY  
 DENVER, COLORADO 80202  
 PHONE 262-3100

DATE	1/2/60
BY	PLANNING DIVISION
CHECKED BY	
APPROVED BY	
SCALE	AS SHOWN

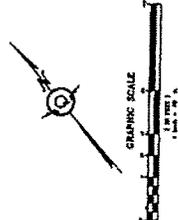
PROJECT NO.	77-49, 81-609
SHEET NO.	3
TITLE	PLANNING DIVISION

LEGEND:  
 1. LOT LINES  
 2. LOT AREA  
 3. LOT NUMBER  
 4. LOT AREA  
 5. LOT NUMBER

ZONE X

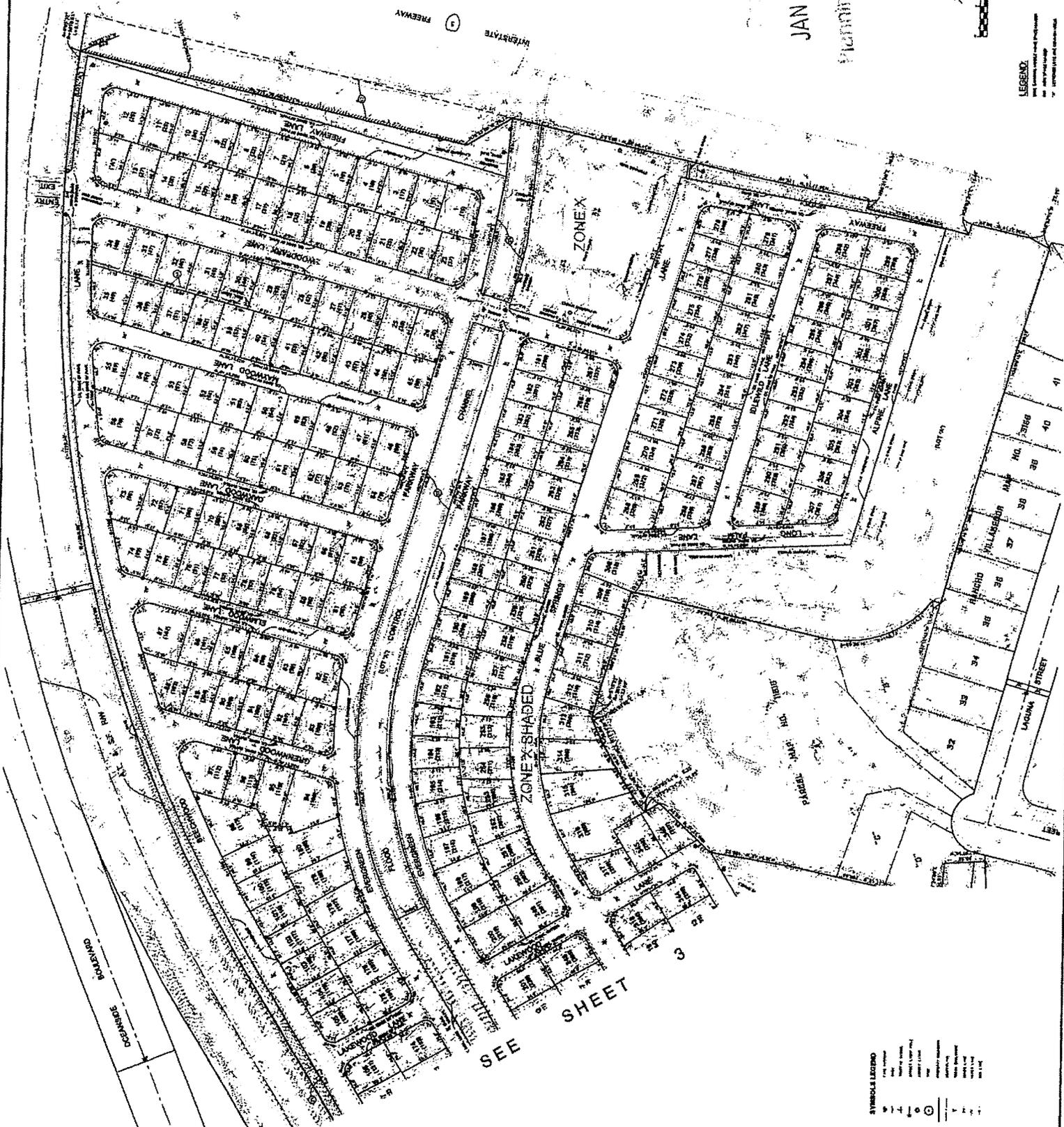
JAN 2 6 2000

Planning Division



LEGEND:  
 1. LOT LINES  
 2. LOT AREA  
 3. LOT NUMBER  
 4. LOT AREA  
 5. LOT NUMBER

DENVER PLANNING DIVISION  
 PRELIMINARY TENTATIVE MAP  
 SHEET NO. 77-49, 81-609



SEE SHEET 3

SYMBOLS LEGEND  
 1. LOT LINES  
 2. LOT AREA  
 3. LOT NUMBER  
 4. LOT AREA  
 5. LOT NUMBER



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

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

9 THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES  
10 RESOLVE AS FOLLOWS:

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

15 subdivision of an approximately 44-acre parcel fully developed as a Mobile Home Park  
16 into 347 individual fee lots and one lettered lot that would encompass all common areas.  
17 The subject proposal would create legal individual lots without any development or  
18 improvement to existing facilities within the Cavalier Mobile Home Park;  
19 on certain real property described in the project description.

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

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

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

29 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."

22 //////////////

23 //////////////

24 //////////////

25 //////////////

26 //////////////

27 //////////////

28 //////////////

29 //////////////

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: Troisi, Neal, Martinek, Balma, Rosales, Bertheaud and Scrivener  
17 NAYS: None  
18 ABSENT: None  
19 ABSTAIN None

20   
\_\_\_\_\_  
21 Claudia Troisi, Chairperson  
22 Oceanside Planning Commission

23 ATTEST:  
  
\_\_\_\_\_  
24 Jerry Hittleman, Secretary

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

27 Dated: May 24, 2010  
28  
29



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.4<sup>th</sup> 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 *bone 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

JH/RG/fil

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

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

Thomas W. 32  
Smith III

CITY ATTORNEY  
704 3RD STREET  
OCEANSIDE, CALIF.  
TELEPHONE 722-8271

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  
32

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 ...

32

1 by the following vote:

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

3 NAYS: NONE

4 ABSENT: NONE

5

6

7

8

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

9

10 ATTEST:

11

12

13

*[Signature]*  
City Clerk

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

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:

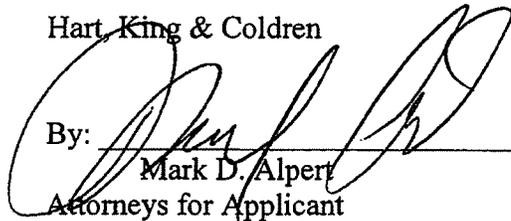
A total of 166 spaces responded to the survey. Of those, 20 supported conversion, 14 declined to state or did not state a preference and 132 opposed conversion.

**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

### Sponsored Links

#### Ask a Lawyer Online

38 lawyers are online now.  
Ask a question, get an answer ASAP.

Type your legal question here

#### Ask a Lawyer Online

38 lawyers are online now.  
Ask a question, get an answer ASAP.

Type your legal question here

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](#)



**Report on Impact of Subdivision to Residents**  
**September 14, 2009**  
**Page 7**

**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.

---

Find Bathroom Remodelers

Get free estimates from top-rated bathroom contractors. No obligation!

<http://thirdpartyoffers.netzero.net/TGL2241/c?cp=Zxre0WW51IBHhZXyXpv-kwAAJ1FKqgJC7fJfVn6 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.

---

<b>PROJECT NUMBER:</b>	<b>T-1-09, RC-5-09</b>
<b>PROJECT NAME:</b>	<b><u>CAVALIER MOBILE ESTATES TENTATIVE MAP</u></b>
<b>CONTACT NAME:</b>	<b>MARK ALPERT/HART, KING &amp; COLDREN (714) 432-8700</b>
<b>NEIGHBORHOOD:</b>	<b>SOUTH OCEANSIDE NEIGHBORHOOD</b>
<b>PROJECT PLANNER:</b>	<b>CHRIS HARRISON, Planning Consultant (760) 435-3537, charrison@ci.oceanside.ca.us</b>

---

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 !!!*

*Chris Harrison*

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

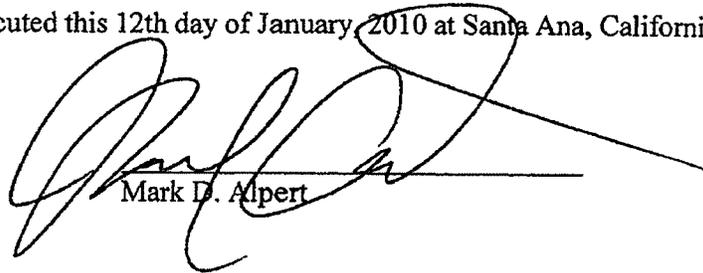
I, Mark Alpert, declare:

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 (Dobbs cell ph #)

**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.

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**

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 #: \_\_\_\_\_

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](mailto:malpert@hkclaw.com)  
blog: [www.capropertyrights.com](http://www.capropertyrights.com)  
ws: [www.hkclaw.com](http://www.hkclaw.com)  
Bus: (714) 432-8700  
Fax: (714) 546-7457

---

**From:** Jerry Hittleman [mailto:[JHittleman@ci.oceanside.ca.us](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](mailto:jhittleman@ci.oceanside.ca.us)**

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.

## **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](mailto:malpert@hkclaw.com)  
blog: [www.caproperyrights.com](http://www.caproperyrights.com)  
ws: [www.hkclaw.com](http://www.hkclaw.com)  
Bus: (714) 432-8700  
Fax: (714) 546-7457

---

**From:** Jerry Hittleman [mailto:[JHittleman@ci.oceanside.ca.us](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](mailto:malpert@hkclaw.com)  
blog: [www.capropertyrights.com](http://www.capropertyrights.com)  
ws: [www.hkclaw.com](http://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)*

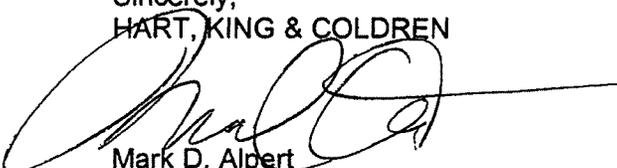
Dear Mr. Greenbauer

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](mailto: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](mailto:malpert@hkclaw.com)  
blog: [www.capropertyrights.com](http://www.capropertyrights.com)  
ws: [www.hkclaw.com](http://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](mailto: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](mailto:malpert@hkclaw.com)  
blog: [www.capropertyrights.com](http://www.capropertyrights.com)  
ws: [www.hkclaw.com](http://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](mailto: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](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](mailto:malpert@hkclaw.com)  
blog: [www.capropertyrights.com](http://www.capropertyrights.com)  
ws: [www.hkclaw.com](http://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](mailto:malpert@hkclaw.com)  
blog: [www.caproperyrights.com](http://www.caproperyrights.com)  
ws: [www.hkclaw.com](http://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](mailto: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) 2<sup>nd</sup> 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](mailto: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](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](mailto:smoore@hkclaw.com)

[www.hkclaw.com](http://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](mailto:malpert@hkclaw.com)  
blog: [www.caproperyrights.com](http://www.caproperyrights.com)  
ws: [www.hkclaw.com](http://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](mailto: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](mailto:malpert@hkclaw.com)  
blog: [www.caproperyrights.com](http://www.caproperyrights.com)  
ws: [www.hkclaw.com](http://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](mailto: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  
200 East Sandpointe, 4th Floor  
Santa Ana, CA 92707  
email: [malpert@hkclaw.com](mailto:malpert@hkclaw.com)  
blog: [www.caproperyrights.com](http://www.caproperyrights.com)  
ws: [www.hkclaw.com](http://www.hkclaw.com)  
Bus:(714) 432-8700  
Fax: (714) 546-7457

---

**From:** Burt Mazelow [mailto:[burt@rtquinn.net](mailto:burt@rtquinn.net)]  
**Sent:** Wednesday, December 23, 2009 3:03 PM  
**To:** [jhittleman@ci.oceanside.ca.us](mailto:jhittleman@ci.oceanside.ca.us); [meslambolchi@ci.oceanside.ca.us](mailto:meslambolchi@ci.oceanside.ca.us); [charrison@ci.oceanside.ca.us](mailto: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 we 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,

A handwritten signature in black ink, appearing to read "Richard Greenbauer".

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](mailto: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  
Hart, King & Coldren, a PLC  
200 East Sandpointe, 4th Floor  
Santa Ana, CA 92707  
email: [malpert@hkclaw.com](mailto:malpert@hkclaw.com)  
blog: [www.capropertyrights.com](http://www.capropertyrights.com)  
ws: [www.hkclaw.com](http://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



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.<sup>1</sup>

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."

---

<sup>1</sup> 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.<sup>2</sup> 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

---

<sup>2</sup> *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.<sup>3</sup>

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.

---

<sup>3</sup> 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

A handwritten signature in black ink, appearing to read 'Mark D. Albert', with a long horizontal line extending to the right.

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,

A handwritten signature in black ink, appearing to read "Richard Greenbauer".

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](mailto:malpert@hkclaw.com)  
blog: [www.caproperyrights.com](http://www.caproperyrights.com)  
ws: [www.hkclaw.com](http://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.



# 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,

A handwritten signature in black ink, appearing to read "Richard Greenbauer".

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 our 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  
Hart, King & Coldren, a PLC  
200 East Sandpointe, 4th Floor  
Santa Ana, CA 92707  
email: [malpert@hkclaw.com](mailto:malpert@hkclaw.com)  
blog: [www.capropertyrights.com](http://www.capropertyrights.com)  
ws: [www.hkclaw.com](http://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.



# 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](mailto:malpert@hkclaw.com)  
blog: [www.caproperyrights.com](http://www.caproperyrights.com)  
ws: [www.hkclaw.com](http://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.



# 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

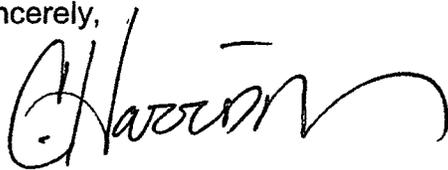
Mr. Mark D. Alpert, Esq.  
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)  
November 30, 2009  
Page 3

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 stylized 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  
200 East Sandpointe, 4th Floor  
Santa Ana, CA 92707  
email: [malpert@hkclaw.com](mailto:malpert@hkclaw.com)  
blog: [www.capropertyrights.com](http://www.capropertyrights.com)  
ws: [www.hkclaw.com](http://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**

**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:** 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  
email: [malpert@hkclaw.com](mailto:malpert@hkclaw.com)  
blog: [www.capropertyrights.com](http://www.capropertyrights.com)  
ws: [www.hkclaw.com](http://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.

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient of this communication, or an employee or agent responsible for delivering this communication to the intended recipient, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents.  
Thank you.



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

3 Received  
NOV 16 2009  
Planning Department

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.



HART, KING & COLDREN

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 & COLOREN

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.

///

///



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

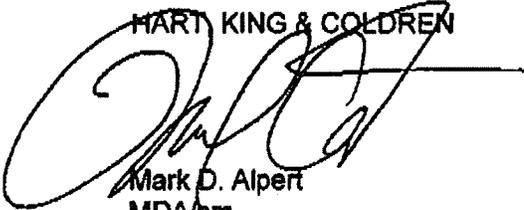
discussing" a possible exemption if we can establish locating homes in a flood way will not have a significant effect on the environment. As you well know, no homes are going to be moved anywhere as a result of the project. CEQA has a categorical exemption under Section 15301 for a project which "involves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



Jerry Hittleman,  
City Planner

# Transmission Report

Date/Time  
Local ID 1  
Local ID 2

23-10-2009  
7607542958

12:06:18 p.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 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 subdiviver 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

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

Total Pages Scanned : 3

Total Pages Confirmed : 3

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	231	7145467457	12:05:00 p.m. 23-10-2009	00:00:51	3/3	1	EC	HS	CP26400

#### 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

Date/Time  
Local ID 1  
Local ID 2

23-10-2009  
7607542958

12:00:53 p.m.

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

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



## 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 subdiviver 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

300 N. COAST HIGHWAY OCEANSIDE, CA 92054 TEL: 760-436-3520 FAX: 760-754-2858 WEB: CI.OCEANSIDE.CA.US

Total Pages Scanned : 3

Total Pages Confirmed : 0

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	229	17145467457	11:59:49 a.m. 23-10-2009	00:00:00	0/3	1	--	HS	FA

#### 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



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



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

A large, stylized handwritten signature in black ink, appearing to read 'Mark D. Alpert'. The signature is written over the printed name and extends to the right with a long horizontal stroke.

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

Mr. Mark D. Alpert, Esq.  
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)  
October 15, 2009  
Page 2

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.

Mr. Mark D. Alpert, Esq.  
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)  
October 15, 2009  
Page 3

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

August 17, 2010

Our File Number: 37989.008/4853-0681-5751v.1

**VIA ELECTRONIC AND U.S. MAIL**

planningstaff@ci.oceanside.ca.us

City of Oceanside Planning Staff  
Jim Wood, Mayor  
Jack Feller, Councilmember  
Jerome M. Kern, Councilmember  
Charles Lowery, Councilmember  
Esther C. Sanchez, Councilmember  
City of Oceanside  
300 N. Coast Highway  
Oceanside, CA

Re: *Cavalier Mobile Estates Subdivision (T-1-09 & RC-5-09) / Coastal Permit*  
Appeal of Planning Commission Resolution 2010-P15

Dear Planning Staff and Councilmembers:

I am writing regarding the appeal of the above-referenced Planning Commission resolution denying the above referenced Application for a tentative tract map to subdivide Cavalier Mobile Estates (the "Park") and related Application for a coastal permit (collectively "Application"). As you may be aware, my office represents the applicant Cavalier Mobile Estates, LLC ("Cavalier"). Cavalier is applying for a tentative tract map to enable the conversion of the Park to resident ownership pursuant to Government Code section 66427.5. The Park will continue to operate as a mobilehome park, with no physical changes or improvements. In other words, the Application is to allow a change in the form of ownership, not use.

The Planning Commission denied the Application on two grounds. This letter focuses on those two grounds and does not reiterate the numerous issues previously addressed in the course of processing the Application. The two grounds asserted in the Planning Commission Resolution are:

1. Failure to address purported flood risk; and
2. The conclusion that Cavalier is pursuing a "sham conversion" based on the absence of majority resident support and Cavalier's litigation with the City over rent control.

Both findings are inconsistent with state law and unsupported by substantial evidence. The Planning Commission decision must be reversed and the Application must be approved as Cavalier has fully complied with the requirements of California Government Code § 66427.5. Under subdivision "e" of that code, the City's review of the Application is limited to compliance with Section 66427.5. Because Cavalier has fully complied with that section, the Application must be approved.

Planning Commission  
City of Oceanside  
August 17, 2010  
Page 2

The Planning Commission decision is fundamentally flawed because it disregards the limitation of Government Code § 66427.5(e) which limits the scope of review of the City to compliance with the requirements of Section 66427.5. There have been four appellate decisions interpreting Government Code Section 66427.5, two reported and two unreported. All four affirm that Government Code Section 66427.5 (e) means what it says: Local governments may only consider compliance with Government Code 66427.5. There is no basis in law for the Planning Commission to do what City staff is recommending.

1. **The City Cannot Deny the Subdivision and Coastal Permit Based on Purported Flood Risks**

A. **The Planning Commission Relied on False Statements By Planning Staff Regarding the Impact of Flood Regulations on the Placement of Homes in the Park on Subdivision**

The Applicant has repeatedly made clear what is already apparent on the face of the Application: The Application only seeks permission to record a subdivision map allowing for the Park to change to resident ownership. The Applicant does not seek permission to place any homes in the Park, including in any flood plains. The Applicant pointed out during the Planning Commission hearing that mobile homes have been placed in the Park on numerous occasions without the City (or any other body) imposing any flood mitigation requirements. (See Transcript, pg. 51) (relevant portions attached as Exhibit 1). The Applicant likewise made clear that whatever rules applied to the placement homes before the subdivision, would apply after the subdivision. (*Id*, pg. 17)

City staff represented to the Planning Commission that the Applicant's representations were not accurate. Staff claimed that after conversion, individual residents would be required to comply with FEMA flood requirements in order to place homes in the Park:

I think Mr. Alpert said that the flood risk is now and the same after development -- after subdivision, I should not say development. There is a big difference because if those units are sold, and somebody decides they would like to replace the unit where it triggers a building permit and they're going to approach the city of Oceanside . . . if they come here and we deny them of a permit, or we ask them, 'Why don't you go and do a flood study?' . . . before we give that to you . . .

Now, the question is how do you get that to somebody whose budget is very limited and needs to spend thousands of dollars to go through the FEMA regulation, therefore, you could issue a building permit, so the notion of saying that the flood risk is the same now and after subdivision when the change of ownership takes place, it's not – it's not—in our view, again, per the federal requirement, it's not accurate. (*Id* pp. 25-26, emphasis added)

Planning Commission  
City of Oceanside  
August 17, 2010  
Page 3

Commissioner Rosales clearly agreed, affirming "I guess that's my point" and elaborated. *Id* at pg. 26. City staff represented "**You must comply with the federal regulations, period. It's expected of us as an agency, and we apply that to all projects without any exception.** It's not a rule that we created, it's a federal requirement, and there is no discussion or argument about that. (*Id.* pg. 27, emphasis added)

Commission Rosales then asked "By changing ownership to each individual parcel owner, they have significant amount of exposure potentially just on the flood issue?" City staff replied "Absolutely sir." (*Id*)

The Applicant made clear its view at the hearing that staff's representations were not correct and that the City had not imposed flood mitigation requirements in the past) (*Id* at 27-28; 1) Finally, the Applicant made clear it was not seeking a permit to place homes in the Park and that whatever rules governed, they would be the same both before and after the subdivision. *Id.*

After the May 24, 2010 hearing, the Applicant repeatedly sought evidence from City staff that it had ever imposed flood mitigation requirements as a condition of placing homes in a mobile home park. On May 25, 2010, Applicant's counsel requested in an email to City staff:

In order to help all parties addressing the flood issues raised at the planning commission hearing in the course of the City Council review, please provide me any evidence the City has required building permits at Cavalier for the placement of homes in the park or that the City has imposed any conditions relating to flooding as a condition of the placement of homes in Cavalier. (See Exh. 2)

Jerry Hittleman responded by email:

Staff is researching your question about imposing conditions on building permits for mobile homes in the floodplain/floodway and will get back to you as soon as this information is available. (See Exh. 3)

When the promised response was not received, the Applicant submitted a public records request on June 17, 2010 to Mr. Hittleman, requesting:

all records relating to the permits for placement of homes in Cavalier since January 1, 2005. In particular, I would like a copy of any records which show the imposition of any conditions or requirements on the placement of homes, including but not limited to conditions relating to the fact that the home was placed in or near a flood zone.

(See Exh. 4) When this request did not yield any records showing the City had imposed flood mitigation requirements, a second public records request was submitted on June 28, 2010, which asked for, among other things, "All documents which refer, relate to the imposition of

Planning Commission  
City of Oceanside  
August 17, 2010  
Page 4

flood or potential flood mitigation measures for the placement of a mobile home in a flood zone since January 1, 2005." (Exh. 5)

Despite these three separate requests, the City never produced any documentation showing it had ever imposed flood mitigation requirements on the placement of a mobile homes in a flood zone, but rather provided evasive responses and requests for clarification. (See, e.g. Exh. 6) Finally, by letter of July 9, 2010, the Applicant threatened to file suit under the Public Records Act if the City did not either produce records showing that the City had imposed flood mitigation requirements or acknowledge in writing that it had no records because no such requirements had ever been imposed. (See Exh. 7) On July 16, 2010, the City Attorney responded, admitting:

Because the issuance of building permits is a ministerial rather than a discretionary function, however, **the City does not have an opportunity to impose any flood mitigation requirement in connection with issuing building permits. As such, the building permits responsive to your PRA request would not show the imposition of any flood mitigation requirements.** (Exh. 8)

Thus, the representations of staff to the Planning Commission that after subdivision, individual home owners would be subjected to flood mitigation requirements were false and the Planning Commission reached its decision based on inaccurate information.

As your City Attorney has finally conceded, the subdivision will have no impact on the process of placing homes in the Park. There will be no imposition of flood mitigation requirements. That process of placing homes in the Park will be governed by the same building permit requirements both before and after subdivision and the City will not impose any flood mitigation requirements.

The disagreement is legally irrelevant because the Applicant does not seek a permit to place homes in the Park. We have provided this information because it illustrates that the Planning Commission rendered its decision based on information that was not accurate. This evidence also demonstrates that staff's recommendations are not reliable and were likely based on intentionally false information. If staff was simply misinformed at the public hearing, it could have easily and quickly discovered, and corrected its error. Yet, despite repeated requests, over a period of months, City staff did not correct its error. It took the threat of a lawsuit in order to obtain confirmation from the City Attorney that staff's representations had not been accurate. This conduct is not consistent with a simple mistake by staff. It is consistent with an organized effort to prevent the truth from being revealed. The actions of the City in this regard cast a shadow over the legitimacy of these proceedings.

The conduct of staff is part of a larger pattern of conduct in processing this Application in which the City has consistently disregarded the limitations of state law and intentionally made the processing of the Application unnecessarily costly and time consuming. The Applicant believes the conduct of staff reflects the City's political opposition to the subdivision of Cavalier. For that

Planning Commission  
City of Oceanside  
August 17, 2010  
Page 5

reason, the Applicant contends the administrative process has been a sham process, with a pre-determined conclusion.

B. The Planning Commission Wrongfully Denied the Applications Based on the Fact that Part of the Park is In a Flood Zone

A review of the City Attorney's letter (Exh. 8) reveals that staff is no longer attempting to argue that either the subdivision sought by this Application or the process of placing homes in the flood zone (which is not the subject of this Application) are subject to mandatory flood mitigation requirements. Rather, the City Attorney argues the City has "authority" to impose such requirements because the subdivision Application is a discretionary hearing. The fundamental problem with this argument is that Government Code § 66427.5(e) prevents the City from considering anything other than compliance with § 66427.5. In addition, the hearing is ministerial in nature, limited only to determining compliance with § 66427.5.

The flood issue is only relevant to the coastal permit, a permit which the Applicant contends cannot be required by the City. Cavalier submitted a coastal permit application as part of its Application to subdivide under protest, as the Applicant believes that the subdivision of an existing mobile home park for the purposes of changing the form of ownership does not require a coastal permit. There is no physical change to the property proposed. There is no change in the density or intensity of use. As the Court of Appeal in *El Dorado Palm Springs, Ltd. v. City of Palm Springs*, 96 Cal.App.4th 1153, 1162 (Cal.App.4th Dist. 2002) recognized, a mobile home conversion is a change in form of ownership is not a change in use. *El Dorado* was decided in the Fourth District Court of Appeal, the same appellate district as the San Diego Superior Courts, and thus is controlling authority.

The factual conclusion of the Planning Commission that this subdivision would allow further intensification of use by allowing creation of multiple lots is false and unsupported. The Application does not seek to increase the number of homes that can be placed on the property. The Application does not seek to change the rules that apply to the kind or dimensions of homes that may be placed in the Park or the number of people who can reside in the homes. The Application does not request permission to place homes in the park and will have no impact on the standards and regulations that apply to the placement of homes in the Park, which are governed by state regulations. The relevant rules and the Park's use will remain exactly the same before and after the subdivision.

The City fails to identify any authority in the municipal code, zoning code or local coastal plan for considering flood risk or imposing conditions relating to flood risk where no new construction is proposed. Based on the staff report, City staff apparently believes that it has authority to impose these requirements, notwithstanding the limitations of Government Code Section 66427.5, based on the claim that state law (CEQA) and federal law (FEMA regulations) provide such authority. However, staff fails to identify any CEQA statute or FEMA regulation which impose any requirements relating to flood risks where there is no construction or new development.

Planning Commission  
City of Oceanside  
August 17, 2010  
Page 6

In *Adolph v. Federal Emergency Management Agency*, 854 F.2d 732, 734 (5th Cir. La. 1988), the Fifth Circuit Court of Appeal rejected a claim that a local governments adoption of land use regulations imposing flood standards was a taking, in large part based on the recognition that the FEMA requirements only applied to new construction:

The program provides that federally-subsidized insurance and other federal benefits are available with respect to existing structures, even if they were constructed below the appropriate flood elevations. **It is only new structures, or substantial improvements (as defined in 44 C.F.R. § 59.1) of existing structures, except those that would not "result in any increase in flood levels within the community during the occurrence of the base flood discharge" ( 44 C.F.R. § 60.3(d)(3) (emphasis added)), that are required to be at the base flood elevations. 44 C.F.R. §§ 60.3(c)(1), (2), (e). Failure to enact and enforce these minimum measures requires that such non-complying communities be "suspended" from the NFIP. 42 U.S.C. §§ 4012(c), 4022, 4102, 4106(a). See Responsible Citizens v. City of Asheville, 308 N.C. 255, 302 S.E.2d 204, 210, n. 4 (1983) (ordinance almost identical to that at issue here). Thus, plaintiffs' repeated suggestion that they will be required to abandon their existing residences and businesses is clearly fallacious. (*Id.*, fn. 4, emphasis added)**

Neither the staff report to the Planning Commission nor the Resolution it adopted identifies any law, whether it be the municipal code, state law or FEMA, which provides authority to deny a subdivision map for non-compliance with flood mitigation requirements for a project which involves no new construction or development. In fact, the Resolution attempts to address the absence of any relevant law by making the plainly false finding that the subdivision will allow the intensification of use. Neither the Resolution nor the staff report provide any explanation of how an application that will simply allow the change of the form of ownership could impact the intensity of use. Whether it is one legal lot or 347 legal lots, the Park will continue to operate as a 347 space mobile home park under exactly the same rules. If the City Council adopts these positions with no legal authority, its members are not just making an incorrect decision, they are intentionally violating the law, which may subject Council Members to individual liability.

## **2. The Conversion Is Bona Fide**

The second ground for the Planning Commission decision was the finding that the Application was not "bona fide." The Applicant contends neither the Planning Commission nor the City Council has authority to make such a finding and the conclusion is not supported by a shred of competent evidence.

The Planning Commission fundamentally misunderstands what constitutes a "sham" or non bona fide conversion. As the reported decisions in *El Dorado and Sequoia* recognize, a "sham conversion" occurs where the park owner does not intend to change the use, but rather sell one or a few lots to avoid rent control. The question of whether a conversion is a sham goes to the intent of the park owners, not whether the residents support the conversion. It is a

Planning Commission  
City of Oceanside  
August 17, 2010  
Page 7

determination that the City simply does not have the authority to make or even the ability to make.

Staff and the Resolution conclude the survey results are evidence that the subdivision is not "bonafide," but rather simply an effort to avoid rent control. In *El Dorado, supra*, the Court affirmed that resident support is not necessary for a conversion. The Court of Appeal in *Sequoia* invalidated a local "conversion ordinance" including provisions which allowed the local government to determine if the conversion was bonafide based on a resident survey result. \

In addition, an unreported decision in the Fourth District Court of Appeal has rejected the City's conclusion in *Palm Springs Inv. Co., L.P. v. City of Palm Springs*, 2010 Cal.App. Unpub. LEXIS 1193 (Cal.App.4th Dist. Feb. 19, 2010). (See Exh. 9) Like the Court of Appeal in *El Dorado* and *Sequoia*, the Court in *Palm Springs Inv.* concluded the local government's role under Government Code § 66427.5 was limited to determining compliance with that section, which did not give the local government authority to determine whether the conversion was "bona fide."

In *Palm Springs*, 8 residents expressed an interest in subdivision, while seventy-seven of the Park residents who responded opposed the conversion. The City Council denied the conversion based on the conclusion that the lack of support demonstrated the conversion was not bona fide. The City's conclusion was first rejected by the superior court, who found that the City Council had exceeded its jurisdiction and that only a court, and not the local public agency holding the public hearing on a subdivision application, has the authority to determine whether a conversion is a bona fide resident conversion. The Court of Appeal agreed and affirmed the decision. While an unreported decision is not citable in court, the reasoning is persuasive and because it arises out of the same appellate district is obviously indicative of how the court will rule on the issue if it is raised again.

The residents simply do not have the right to veto a change of use for property they do not own. The official Assembly Bill analysis of the latest amendment of Government Code § 66427.5 included the following directly relevant comments:

This Bill seeks to provide a measure of that support for local agencies to determine whether the conversion is truly intended for resident ownership, or if it is an attempt to preempt a local rent control ordinance. The results of the survey would not affect the duty of the local agency to consider the request to subdivide pursuant to Section 66427.5 but merely provide additional information. It is foreseeable that the results of this survey could be used to argue to a court that the conversion is a sham and that the rent formulas in Section should not be applied. The fact that a majority of the residents do not support the conversion is not however an appropriate means for determining the legitimacy of a conversion. **The law is not intended to allow park residents to block a request to subdivide.** Instead, the law is intended to provide some measure of fiscal protection to non-purchasing residents. (emphasis added)

Thus, two reported opinions, an unreported decision, and the legislative history, all reject the basis for the Resolution.

The legislative intent confirms that it is not the role of the City to somehow divine the intent of the park owner in advance. Rather, any challenge based on the claim the conversion is a sham would occur after-the-fact. Subdivision conversions have been repeatedly approved without resident support, including recent applications in Thousand Oaks and Huntington Beach. A denial of the Application will only result in wasting tens of thousands of dollars in tax payer funds.

The Resolution is also misleading in the way it describes the results of the resident survey. It states that 19 supported subdivision and 17 declined to state their opinion "out of the 339 occupied spaces within the park." Staff misleadingly claimed there was "5% support" during the hearing. This staff summary and presentation both decline to mention that most residents did not respond and a total of 127 stated their opposition. Of those stating an opinion, over 13 percent supported conversion. Indeed, staff could have just as accurately stated only 37 percent of the residents have stated opposition to the conversion.

**3. The Planning Commission Erred In Considering Pending Litigation**

The Resolution improperly refers to litigation over rent control as evidence that the conversion is not bonafide. As noted above, the City does not have authority to determine whether the conversion is bona fide. Even if it did, the fact that the park owner has filed a lawsuit challenging a rent control decision is not evidence the conversion is not bona fide. The lawsuit was filed in order to seek a rent increase under the rent control ordinance.

A "sham conversion" occurs where the park owner does not truly intend to convert the park to resident ownership, but, instead, intends to simply sell one or a few lots in order to continue to operate as a rental mobile home park without rent control. There is no evidence that the applicant has such an intent.

The Planning Commission decision, relying on City staff, simply confused or intentionally misstated the nature of the determination of whether a subdivision conversion is bona fide. By definition, any park owner who seeks to subdivide in order to convert the park to resident ownership is seeking an exit strategy from operating a rent controlled mobile home park. The fact that a park owner wants to stop operating a mobile home park under rent control does not make the subdivision Application a "sham conversion."

**4. The Park Owner Has a Constitutional Right To Stop Operating a Rental Mobile Home Park**

Government Code § 66427.5 was not intended to allow local governments to deny a conversion when the park owner genuinely intends to sell all lots over time, regardless of whether that intent is motivated by a desire to avoid operating a rental park under confiscatory rent control.



HART, KING & COLDREN

Planning Commission  
City of Oceanside  
August 17, 2010  
Page 9

The Planning Commission's decision, if not reversed by the City Council, will cause a taking as Cavalier has a constitutional right to stop operating a rental mobile home park. In *Yee*, the U.S. Supreme Court concluded that Escondido's rent control ordinance did not cause a physical taking by forcing the park owner to continue operating a rental mobile home park because the park owner had the option of changing use. If the City were to deny the park owner the right to stop operating a rental mobile home park by denying conversion it will cause the taking contemplated by the Supreme Court's decision in *Yee*.<sup>1</sup>

Unfortunately, it appears the Planning Commission has made a political decision to oppose subdivision, rather than a genuine, honest effort to apply the law and evaluate the merits of the Application and address any legitimate concerns. We hope that the City Council will reverse the Planning Commission decision and approve the Application of Cavalier to subdivide and approve (or determine to be unnecessary) the accompanying coastal permit Application.

Thank you for your attention to these matters.

Sincerely,  
HART, KING & COLDREN

Mark D. Alpert  
MDA/sm

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

---

<sup>1</sup> Based on the City's recent application of its closure ordinance, it would cost at least seven million dollars to close the Park, rendering closure financially infeasible.

EXHIBIT "1"

1 OCEANSIDE PLANNING COMMISSION

2 held on

3 MONDAY, MAY 24, 2010

4 regarding

5 CAVALIER MOBILE HOME PARK

6  
7 **ORIGINAL**

8  
9  
10 Oceanside Council Chambers

11 300 North Coast Highway

12 2nd Floor, City Hall North

1 position has, again, been specifically rejected by the  
2 Fourth District Court of Appeal in El Dorado where the  
3 court said, "We agree with El Dorado. There is simply  
4 no basis for arguing that the subdivider means resident  
5 organization." In other words, you cannot deny this  
6 subdivision application because the idea for it comes  
7 from the park owner.

8 Now, one of the other issues raised by staff  
9 is flooding, the risk of flooding. Again, to look at  
10 this issue, though, you have to go back to what is the  
11 nature of this project. If there is a flood risk for  
12 the residents of this park, that flood risk exists now,  
13 and exactly the same flood risk will exist after the  
14 park is subdivided. This application doesn't affect the  
15 flood risk, it doesn't ask for any project or any  
16 construction in a flood zone, and the staff report  
17 doesn't cite a shred of law, either in FEMA, federal  
18 law, state law or your local municipal code, which  
19 authorizes the city to impose flood zone requirements  
20 where there's no construction, where there's nothing  
21 being built or developed.

22 Now, the last issue is the question of whether  
23 or not this subdivision is a so-called bona fide  
24 subdivision, and staff in this case really fundamentally  
25 misunderstands the issue. We addressed this in our

1 don't think it was there. It wasn't mapped at that  
2 time. So what triggered it now would be somebody going  
3 to have a multi-home installed or a substantial  
4 improvement to the trigger, so if a buyer's buying a lot  
5 and then wants to change the mobile home, manufactured  
6 home, or do a substantial improvement of it, it's going  
7 to trigger a FEMA report.

8 MALE SPEAKER: If I -- Mr. Commissioner, if I  
9 may elaborate a little bit on that one? I think  
10 Mr. Alpert said that the flood risk is now and the same  
11 after development -- after subdivision, I should say not  
12 development. There is a big difference because if those  
13 units are sold, and somebody decides that they would  
14 like to replace the unit where it triggers a building  
15 permit and they're going to approach the city of  
16 Oceanside, come through the Building Department, they're  
17 asking for a building permit, we, as an agency, are  
18 obligated to comply with the federal regulation, and  
19 that federal regulation is that you need to define where  
20 you have your project built, so we are quoting exactly  
21 the Title 44 Code of Federal Regulation Section 60.3,  
22 Section C-6 and 4, and Section D-3 relevant to mobile  
23 home parks and flood basins which clearly defines that  
24 if they come here and we deny them of a permit, or we  
25 ask them, "Why don't you go and do a flood study?,"

1 again, the FEMA clearance before we give that to you,  
2 you give us a FEMA certificate.

3 Now, the question is how do you get that to  
4 somebody whose budget is very limited and needs to spend  
5 thousands of dollars to go through the FEMA regulation,  
6 therefore, you could issue a building permit, so the  
7 notion of saying that the flood risk is the same now and  
8 after subdivision when the change of ownership takes  
9 place, it's not -- it's not -- in our view, again, per  
10 the federal requirement, it's not accurate.

11 COMMISSIONER ROSALES: I guess that's my  
12 point. It doesn't -- I haven't heard whether or not an  
13 assessment was ever done, whether this owner or any  
14 previous owner got certified that there was -- you know,  
15 the flood risk was, you know, X, Y or Z, because the  
16 property might have been there and developed before this  
17 mandate from FEMA was in place.

18 MALE SPEAKER: Absolutely. I think at the  
19 time that the property was built and they built this  
20 mobile home park, it was not the FEMA regulations as we  
21 have today, but what really triggers the issue here is  
22 basically how do we deal with the future resident fires,  
23 and how we treat them as a government agency, and how do  
24 we comply with the FEMA regulations. If you were to get  
25 the building permit today --

1 COMMISSIONER ROSALES: Eight.

2 MALE SPEAKER: You must comply with the  
3 federal regulations, period. It's expected of us as an  
4 agency, and we apply that to all projects without any  
5 exception. It's not a rule that we created, it's a  
6 federal requirement, and there is no discussion or  
7 argument about that.

8 COMMISSIONER ROSALES: By changing ownership  
9 to each individual parcel owner, they have a significant  
10 amount of exposure potentially just on the flood issue?

11 MALE SPEAKER: Absolutely, sir.

12 COMMISSIONER ROSALES: Okay. Thank you.

13 MR. ALPERT: Commissioner, can I address that  
14 question?

15 The reality is right now if someone wants to  
16 move into the park, they follow a process complying with  
17 HCD. They don't get a building permit. That's not the  
18 process. And the process remains the same before and  
19 after conversion. There is nothing about the conversion  
20 itself that asks for any homes to be -- new homes to be  
21 placed on lots, so when people buy homes, they'll be  
22 buying the homes -- buying the lots with the homes in  
23 place. And again, HCD, which the city of Oceanside  
24 itself in this case enforces, has the rules which govern  
25 exclusively for installing new homes in the park.

1           And I think staff is misstating it, but  
2           whether staff is misstating it or not, the same rule  
3           would apply for installing a new home now as installing  
4           a new home after the conversion. This is not an  
5           application to put new homes in the mobile home park,  
6           this is an application to subdivide.

7           CHAIRPERSON TROISI: Commissioner Neal?

8           VICE CHAIR NEAL: Thank you, Madame Chair.

9           I think you stated earlier that if someone --  
10          if this is a successful application -- if this is a  
11          successful application and a person who lives in the  
12          park does not want to buy the property but continue to  
13          rent there, I think you stated that that was going to be  
14          applicable to this situation; is that correct?

15          MR. ALPERT: Say that again, the very last  
16          part.

17          VICE CHAIR NEAL: Well, if you're successful  
18          with your application and the split, and a person that  
19          lives in one of those mobile homes on one of your lots  
20          does not want to buy the lot but wants to continue to  
21          rent, are they going to be able to continue doing that?

22          MR. ALPERT: Yes. Every single person in the  
23          park will have the option of either purchasing or  
24          staying as renters --

25          VICE CHAIR NEAL: Okay.

1 points. One of the commissioners, I think, addressed  
2 this. In talking to the owners, there have been quite a  
3 few homes installed in the park in recent years, maybe  
4 25 or so homes installed in the park. Building permits  
5 haven't been required for those homes. Many of the  
6 residents -- one the residents mentioned herself in  
7 giving testimony -- have gotten funds, have gotten a  
8 mortgage and have gotten flood insurance as part of  
9 buying their home, so we know it's financially feasible.

10 And the reality is that financing is -- one of  
11 the big advantages of a subdivision when you have a  
12 traditional sale or a traditional home type transaction,  
13 financing is a lot better. You get much lower financing  
14 rates, you can finance over a longer period of time.  
15 You know, when you finance the purchase of a mobile  
16 home, the rates are high because it's personal property,  
17 it's not real property, and the terms are not your  
18 traditional 30-year terms, so it really is -- aside from  
19 all the tax advantages and other advantages of owning, I  
20 think some of the residents who are not seniors and on  
21 fixed income are going to be surprised that this is a  
22 real opportunity for them. It will be a win-win  
23 situation. I understand that they all think that this  
24 is a bad thing for them, but it really isn't.

25 And the last thing -- the last thing I'll say

EXHIBIT "2"

## Mark Alpert

**From:** Mark Alpert  
**Sent:** Tuesday, May 25, 2010 10:14 AM  
**To:** 'Jerry Hittleman'  
**Cc:** John Mullen; Barbara L. Hamilton  
**Subject:** RE: Cavalier MHP/37989.008  
Mr. Hittleman,

Please provide me with the Planning Commission's signed resolution as soon as it is available.

If there is a city form for initiating an appeal to the City Council, please provide me a copy of it today or let me know how I can obtain a copy. I did not find any such form on the City's web site.

In order to help all parties addressing the flood issues raised at the planning commission hearing in the course of the City Council review, please provide me any evidence the City has required building permits at Cavalier for the placement of homes in the park or that the City has imposed any conditions relating to flooding as a condition of the placement of homes in Cavalier.

Thank you for your prompt attention to this matter.

Regards,  
Mark Alpert

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

---

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

This message's attachments have been archived to NetDocuments. [Retrieve the full message with attachments.](#)

Mark,

Cavalier MHP staff report and resolution for your information.

Thank you,

Jerry

8/12/2010

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](mailto:jhittleman@ci.oceanside.ca.us)

EXHIBIT "3"

**Mark Alpert**

**From:** Jerry Hittleman [JHittleman@ci.oceanside.ca.us]  
**Sent:** Tuesday, May 25, 2010 11:16 AM  
**To:** Mark Alpert  
**Cc:** John Mullen; Barbara L. Hamilton; George Buell; Leslie M. Gallagher  
**Subject:** RE: Cavalier MHP/37989.008

Mr. Alpert,

We will email you a copy of the Planning Commission signed resolution as soon as it is available.

We will also email you a copy of the procedures for appealing a project to the City Council. Basically, you will need to submit a letter to the City Clerk's Office within 10-days of last night's hearing stating the reason(s) for the appeal along with a check in the amount required in the procedure guidance.

Staff is researching your question about imposing conditions on building permits for mobile homes in the floodplain/floodway and will get back to you as soon as this information is available.

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

**From:** Mark Alpert [mailto:malpert@hkclaw.com]  
**Sent:** Tuesday, May 25, 2010 10:14 AM  
**To:** Jerry Hittleman  
**Cc:** John Mullen; Barbara L. Hamilton  
**Subject:** RE: Cavalier MHP/37989.008

Mr. Hittleman,

Please provide me with the Planning Commission's signed resolution as soon as it is available.

If there is a city form for initiating an appeal to the City Council, please provide me a copy of it today or let me know how I can obtain a copy. I did not find any such form on the City's web site.

In order to help all parties addressing the flood issues raised at the planning commission hearing in the course of the City Council review, please provide me any evidence the City has required building permits

8/12/2010

at Cavalier for the placement of homes in the park or that the City has imposed any conditions relating to flooding as a condition of the placement of homes in Cavalier.

Thank you for your prompt attention to this matter.

Regards,  
Mark Alpert

Mark D. Alpert  
Hart, King & Coldren, a PLC  
200 East Sandpointe, 4th Floor  
Santa Ana, CA 92707  
email: [malpert@hkclaw.com](mailto:malpert@hkclaw.com)  
blog: [www.caproperyrights.com](http://www.caproperyrights.com)  
ws: [www.hkclaw.com](http://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

This message's attachments have been archived to NetDocuments. [Retrieve the full message with attachments.](#)

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](mailto:jhittleman@ci.oceanside.ca.us)

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

8/12/2010

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.

\*\*\*

EXHIBIT "4"

## Mark Alpert

**From:** Mark Alpert  
**Sent:** Thursday, June 17, 2010 10:11 AM  
**To:** 'Jerry Hittleman'  
**Cc:** John Mullen; Barbara L. Hamilton; George Buell; Leslie M. Gallagher; Chris Harrison  
**Subject:** RE: Cavalier MHP/37989.008

Thanks. You may recall I asked you last month (In order to help all parties addressing the flood issues raised at the planning commission hearing in the course of the City Council review) to provide me any evidence the City has required building permits at Cavalier for the placement of homes in the park or that the City has imposed any conditions relating to flooding as a condition of the placement of homes in Cavalier. You indicated on May 25th that staff was looking into the issue and would get back to me when information is available. I have yet to hear back. I would think it would be a fairly simple matter for the City to review such information.

Please consider this letter a public records request for all records relating to the permits for placement of homes in Cavalier since January 1, 2005. In particular, I would like a copy of any records which show the imposition of any conditions or requirements on the placement of homes, including but not limited to conditions relating to the fact that the home was placed in or near a flood zone.

Thank you.

Mark Alpert

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

---

**From:** Jerry Hittleman [mailto:[JHittleman@ci.oceanside.ca.us](mailto:JHittleman@ci.oceanside.ca.us)]  
**Sent:** Thursday, June 17, 2010 9:57 AM  
**To:** Mark Alpert  
**Cc:** John Mullen; Barbara L. Hamilton; George Buell; Leslie M. Gallagher; Chris Harrison  
**Subject:** RE: Cavalier MHP/37989.008

Mark,

We have tentatively scheduled this item for an August 25, 2010, 6:00 p.m. City Council Hearing.

Thank you,

Jerry

Jerry Hittleman, City Planner

City of Oceanside

8/12/2010

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](mailto:jhittleman@ci.oceanside.ca.us)

---

**From:** Mark Alpert [mailto:[malpert@hkclaw.com](mailto:malpert@hkclaw.com)]  
**Sent:** Thursday, June 17, 2010 9:43 AM  
**To:** Jerry Hittleman  
**Cc:** John Mullen; Barbara L. Hamilton; George Buell; Leslie M. Gallagher  
**Subject:** RE: Cavalier MHP/37989.008

When will the appeal hearing be scheduled?

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

---

**From:** Jerry Hittleman [mailto:[JHittleman@ci.oceanside.ca.us](mailto:JHittleman@ci.oceanside.ca.us)]  
**Sent:** Tuesday, May 25, 2010 11:16 AM  
**To:** Mark Alpert  
**Cc:** John Mullen; Barbara L. Hamilton; George Buell; Leslie M. Gallagher  
**Subject:** RE: Cavalier MHP/37989.008

Mr. Alpert,

We will email you a copy of the Planning Commission signed resolution as soon as it is available.

We will also email you a copy of the procedures for appealing a project to the City Council. Basically, you will need to submit a letter to the City Clerk's Office within 10-days of last night's hearing stating the reason(s) for the appeal along with a check in the amount required in the procedure guidance.

Staff is researching your question about imposing conditions on building permits for mobile homes in the floodplain/floodway and will get back to you as soon as this information is available.

Thank you,

Jerry

Jerry Hittleman, City Planner

8/12/2010

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](mailto:jhittleman@ci.oceanside.ca.us)

**From:** Mark Alpert [mailto:malpert@hkclaw.com]  
**Sent:** Tuesday, May 25, 2010 10:14 AM  
**To:** Jerry Hittleman  
**Cc:** John Mullen; Barbara L. Hamilton  
**Subject:** RE: Cavalier MHP/37989.008

Mr. Hittleman,

Please provide me with the Planning Commission's signed resolution as soon as it is available.

If there is a city form for initiating an appeal to the City Council, please provide me a copy of it today or let me know how I can obtain a copy. I did not find any such form on the City's web site.

In order to help all parties addressing the flood issues raised at the planning commission hearing in the course of the City Council review, please provide me any evidence the City has required building permits at Cavalier for the placement of homes in the park or that the City has imposed any conditions relating to flooding as a condition of the placement of homes in Cavalier.

Thank you for your prompt attention to this matter.

Regards,  
Mark Alpert

Mark D. Alpert  
Hart, King & Coldren, a PLC  
200 East Sandpointe, 4th Floor  
Santa Ana, CA 92707  
email: [malpert@hkclaw.com](mailto:malpert@hkclaw.com)  
blog: [www.caproperyrights.com](http://www.caproperyrights.com)  
ws: [www.hkclaw.com](http://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

This message's attachments have been archived to NetDocuments. [Retrieve the full message with attachments.](#)

8/12/2010

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](mailto:jhittleman@ci.oceanside.ca.us)

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.

17

EXHIBIT "5"



Mark D. Alpert  
maplert@hkclaw.com

June 28, 2010

Our File Number: 37989.008/4848-2390-5542v.1

**VIA EMAIL AND REGULAR MAIL**

Barbara Riegal Wayne, City Clerk  
City of Oceanside  
City Hall North, 3rd Floor  
300 N. Coast Highway  
Oceanside, CA 92054  
City Clerk

Re: Public Records Act Request of June 28, 2010

Dear Ms. Wayne:

Pursuant to California Government Code Section 6250, *et seq.* ("Act"), request is hereby made for the timely production of public records in the custody, possession, or control of the City of Oceanside and/or the City of Oceanside Manufactured Home Fair Practices Commission ("City"), including their agencies, divisions, and departments, including but not limited to:

1. All documents which refer, relate to the imposition of flood or potential flood mitigation measures for the placement of a mobile home in a flood zone since January 1, 2005.
2. All documents which refer or relate to the imposition of flood or potential flood mitigation measures for any project in the City of Oceanside that does not involve the construction of any physical improvements in a flood zone since January 1, 2005.
3. A complete copy of the City of Oceanside's Local Coastal Plan.

Your cooperation in responding to the records requested in this letter within the time frames set forth in Section 6253 of the Act will be greatly appreciated. We request that the responsive documents be part of the administrative record for Cavalier's Special Adjustment application and that copies be made available in advance of the hearing. Please advise us of the estimated copying costs for which the City would require reimbursement so we can determine if it would be more efficient for the City to copy the documents and provide them, or to simply sequester the documents for our review.

Finally, if the City intends to withhold any documents based on a claimed privilege, please state the privilege being asserted and identify with particularity all documents withheld in order that a determination may be made as to the appropriateness of the claimed privilege.



Barbara Riegal Wayne  
June 28, 2010  
Page 2

Thank you for your cooperation and assistance in this matter.

Sincerely,

HART, KING & COLDREN

A handwritten signature in black ink, appearing to read 'Mark D. Alpert', written in a cursive style.

Mark D. Alpert  
MDAism

cc: Dunex, Inc.

EXHIBIT "6"



# CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

July 8, 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)  
Public Records Request – Placement of Homes in Cavalier Mobile Estates

Dear Mr. Alpert:

**VIA FACSIMILE: 714-546-7457**

This is in response to your Public Records Request (PRR) dated June 28, 2010.

1. All documents which refer [or] relate to the imposition of flood or potential flood mitigation measures for the placement of a mobile home in a flood zone since January 1, 2005.

You have already been provided with all building permits issued to mobile homes within Cavalier Mobile Estates. Building permits are not stored by type of building, thus it would be impossible for the City to locate other responsive building permits based upon the information you have provided. Please provide more specific information, such as street addresses, and the City will be happy to search for further responsive documents.

For general flood control information, you previously were supplied with a link to Chapter 6, Article IX, Section 6.44 of the Oceanside Municipal Code. If you wish to view it again, the City Code is available for free on the City of Oceanside website (<http://www.ci.oceanside.ca.us>).

2. All documents which refer or relate to the imposition of flood or potential flood mitigation measures for any project in the City of Oceanside that does not involve the construction of any physical improvements in a flood zone since January 1, 2005.

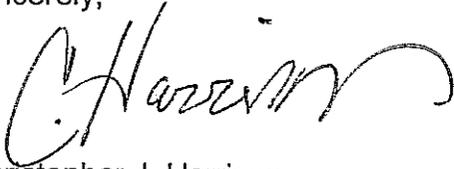
The City does not store documents based upon the imposition of flood mitigation measures, and thus, has no way to ascertain whether there are documents responsive to this request. Please provide more specific information, such as street addresses or Assessor Parcel Numbers for particular properties, and the City will be happy to search for responsive documents. For general information on the imposition of flood control measures, please above.

Mr. Mark D. Alpert, Esq.  
Re: Cavalier Mobile Estates (T-1-09; RC-5-09)  
July 8, 2010  
Page 2

3. A complete copy of the City of Oceanside Local Coastal Plan.

The LCP is available on the City's website at the following address:  
[http://www.ci.oceanside.ca.us/pdf/planning\\_LCP.pdf](http://www.ci.oceanside.ca.us/pdf/planning_LCP.pdf).

Sincerely,

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

Christopher J. Harrison  
Professional Assistant  
Development Services Department  
Planning Division

EXHIBIT "7"

1-13-2010

July 9, 2010

Mark D. Alpert  
malpert@hkclaw.com

Our File Number: 37989.008/4838-6026-9574v.1

**VIA ELECTRONIC AND U.S. MAIL**

Christopher Harrison  
Professional Services Assistant  
Planning Division  
City of Oceanside  
300 N. Coast Highway  
Oceanside, CA 92054

Re: Public Records Request

Dear Mr. Harrison:

I received your letter of July 8, 2010 purporting to respond to my January 28, 2010 public records request. Your response does not comply with the City's obligations under state law. It appears the City is attempting to avoid public disclosure of facts damaging to the City's efforts to prevent the subdivision of Cavalier. Your response violates the letter and spirit of the California Public Records Act ("PRA").

The requests submitted to the City made clear that I wanted to obtain information regarding any past impositions of flood mitigation requirements in relation to the placement of mobile homes in a flood zone. Of course, you are aware that this is an issue of particular concern as City staff represented at a public hearing regarding Cavalier's subdivision application that such requirements have been imposed. In fact, after the public hearing before the Planning Commission, I followed up with a letter to staff asking for any documentation of such impositions.

On May 25, 2010, I received an email from Jerry Hittleman representing that "Staff is researching your question about imposing conditions on building permits for mobile homes in the floodplain/floodway and will get back to you as soon as this information is available." When that information was not forthcoming, I followed up with the first public records request via a June 17, 2010 email which explained:

You may recall I asked you last month (In order to help all parties addressing the flood issues raised at the planning commission hearing in the course of the City Council review) to provide me any evidence the City has required building permits at Cavalier for the placement of homes in the park or that the City has imposed any conditions relating to flooding as a condition of the placement of homes in Cavalier. You indicated on May 25th that staff was looking into the issue and would get back to me when information is available. I have yet to hear back. I would think it would be a fairly simple matter for the City to review such information.

Please consider this letter a public records request for all records relating to the permits for placement of homes in Cavalier since January 1, 2005. In particular, I

Mr. Christopher Harrison  
City of Oceanside  
July 9, 2010  
Page 2

would like a copy of any records which show the imposition of any conditions or requirements on the placement of homes, including but not limited to conditions relating to the fact that the home was placed in or near a flood zone.

In response to this request, the only thing I received was a set of permits for placement of homes in Cavalier which made no reference to the imposition of requirements relating to mitigation of flood hazards and no explanation regarding whether such documents existed or could not be found.

As a result, I submitted a second public records request on June 28, 2010, which sought, in part:

1. All documents which refer, relate to the imposition of flood or potential flood mitigation measures for the placement of a mobile home in a flood zone since January 1, 2005.
2. All documents which refer or relate to the imposition of flood or potential flood mitigation measures for any project in the City of Oceanside that does not involve the construction of any physical improvements in a flood zone since January 1, 2005.

After submitting this request I had several conversations with City staff and the clerk's office in which I further made clear I was interested in any documentation showing the City imposed flood mitigation requirements relating placement of mobile homes or in other circumstances where no construction was involved. In one such conversation, I was advised that the City does not impose FEMA related requirements where there is no building—which is consistent my understanding of FEMA requirements. I explained to staff that if that was the case, the City could then simply respond that no documents exist because FEMA requirements do not apply.

The PRA, in Government Code § 6253.1., mandates that the City "Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated." Under this section, the City must:

- (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
- (2) Describe the information technology and physical location in which the records exist.
- (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

The City's obligation to assist may be satisfied ". . . if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records." (*Id*)

Mr. Christopher Harrison  
City of Oceanside  
July 9, 2010  
Page 3

The thrust of the information we are seeking is straightforward. City staff represented at a public hearing that mobile homes placed in flood zones must comply with flood related mitigation requirements. If the City has, in fact, imposed such requirements in the past, it should be able to find some records supporting that claim or provide enough information to me so that I can clarify the request. Instead, in your letter of July 8, 2010, you state

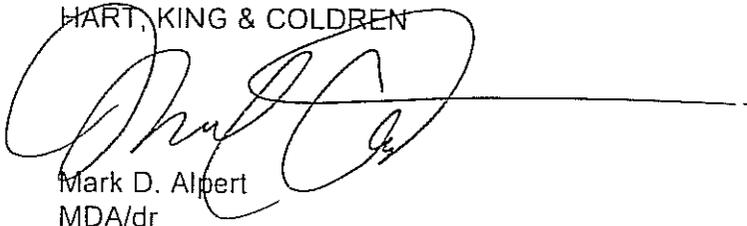
"Please provide more specific information, such as street addresses, and the City will be happy to search for further responsive documents."

It is obvious to me and I believe will be obvious to any court reviewing this matter that the City is not merely violating its obligations under the PRA, but it also is doing so as part of a calculated effort to prevent public disclosure of information which it believes will be damaging. It is our belief that the City has never imposed flood mitigation requirements for the placement of mobile homes in mobile home parks (or other non-building activity) and your letter is an effort to avoid disclosing that no records exist. The City's actions are inconsistent with the purpose of the PRA and undermine any findings and recommendations the City has made (or will make) concerning the application to subdivide Cavalier.

I request that the City provide a supplemental response to the requests within seven days of this letter. That supplemental response should either (1) provide copies of records showing the City has imposed flood mitigation requirements for placement of homes in mobile homes and for other non-building activities or (2) acknowledge that no such records exist. If we do not receive a response in that form, we will recommend that a lawsuit be filed under the PRA.

Sincerely,

HART, KING & COLDREN



Mark D. Alpert  
MDA/dr

cc: Dunex, Inc  
Brian Alex  
Barbara Hamilton  
Jerry Hittleman  
Robert S. Coldren, Esq.  
John P. Mullen, Esq.  
Barbara L. Hamilton, Esq.  
Barbara Riegal Wayne, City Clerk

EXHIBIT "8"



# CITY OF OCEANSIDE

## OFFICE OF THE CITY ATTORNEY

JOHN P. MULLEN  
City Attorney  
(760) 435-3979

BARBARA L. HAMILTON  
Assistant City Attorney  
(760) 435-3986

TARQUIN PREZIOSI  
Senior Deputy City Attorney  
(760) 435-3977

LESLIE M. GALLAGHER  
Deputy City Attorney  
(760) 435-3975

ANNIE M. PERRIGO  
Deputy City Attorney  
(760) 435-3972

DEBORAH NASH  
Deputy City Attorney  
(760) 435-3991

July 16, 2010

Mark D. Alpert, Esq.  
Hart, King & Coldren  
200 Sandpointe, Fourth Floor  
Santa Ana, CA 92707

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

Dear Mr. Alpert:

This letter is in response to your letter to Chris Harrison, dated July 9, 2010, regarding your June 28, 2010 Public Records Act (PRA) request. As you have acknowledged, your June 28 request is a follow up to a previous request dated June 17, 2010, as to which the City has provided responsive records. The June 28 follow-up request seeks:

“1. All documents which refer [or] relate to the imposition of flood or potential flood mitigation measures for the placement of a mobile home in a flood zone since January 1, 2005;

“2. All documents which refer or relate to the imposition of flood or potential flood mitigation measures for any project in the City of Oceanside that does not involve the construction of any physical improvements in a flood zone since January 1, 2005; and

“3. A complete copy of the City of Oceanside Local Coastal Plan.”

In response to your requests, the City has provided all building permits issued to mobile homes in Cavalier Mobile Estates from January 1, 2005 to the present, and has directed you to general flood control information set forth in Chapter 6 of the Oceanside City Code, as well as the website address to retrieve the City's Local Coastal Plan.

Mark D. Alpert, Esq.  
Re: Cavalier Mobile Estates Subdivision  
July 16, 2010  
Page 2

To the extent that the City has additional responsive records, the City is happy to make those records available; however, City staff was unable to identify any additional documents based on the descriptions you provided. In this regard, as noted in your letter, City staff had several conversations with you in an effort to assist you to identify any such additional records. Although additional City records may exist that “refer or relate to the imposition of flood or potential flood mitigation measures” for mobile homes or other projects, City staff members were unable to locate other documents without more specific information.

Building permits and project files are the most likely source of the information you are seeking, but, as Mr. Harrison explained in his July 9 letter, the City does not store building permits or other documents according to the imposition of flood mitigation measures. Those files are organized by address/location of the particular property involved.

Based on your correspondence and on input from City staff, it appears that your PRA request is focused on documents reflecting flood mitigation measures imposed in or on mobile home parks. In addition to having provided copies of the building permits issued for homes in Cavalier Mobile Estates, the City is prepared to provide copies of building permits issued for mobile homes in other mobile home parks within the City that are located in flood zones or floodways.

Because the issuance of building permits is a ministerial rather than a discretionary function, however, the City does not have an opportunity to impose any flood mitigation requirements in connection with issuing building permits. As such, the building permits responsive to your PRA request would not show the imposition of any flood mitigation requirements. On the other hand, the approval of a new mobile home park, or the conversion of an existing mobile home park to resident ownership, does require discretionary action, providing an opportunity for the imposition of flood mitigation requirements that may be applicable.

It is my understanding that, except for your client’s pending subdivision application, there have been no mobile home park project applications—either for new parks or conversions to resident ownership—in the City of Oceanside since the time that the FEMA flood regulations were established. Therefore, no project files would exist that would show the imposition of flood mitigation measures in any of the mobile home parks in the City.

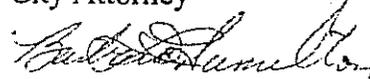
Mark D. Alpert, Esq.  
Re: Cavalier Mobile Estates Subdivision  
July 16, 2010  
Page 3

Your accusation that the City is “attempting to avoid public disclosure of facts damaging to the City’s efforts to prevent the subdivision of Cavalier” is baseless and not well taken. The City has provided responsive records and has attempted to assist you in refining your request so that any additional records can also be identified and made available.

Please let me know if you would like City staff to make available additional building permits for homes in other Oceanside mobile home parks located in flood zones or floodways. Also, please let me know if you are interested in viewing other project files (i.e., other than mobile home park projects) for projects located in flood zones or floodways.

Sincerely,

JOHN P. MULLEN  
City Attorney



By: BARBARA L. HAMILTON  
Assistant City Attorney

BLH/jp

cc: John Mullen, City Attorney  
Jerry Hittleman, City Planner  
Chris Harrison, Planning Dept.

G:\Word Documents\Litigation Files\CAVALIER MOBILE ESTATES\Alpert Letter 7-16-10

EXHIBIT "9"

FOCUS™ Terms "Palm Springs" and subdivision and 66427.5

Search Within Original Results (1 - 4)

Go Advanced...

Source: [Legal](#) > [States Legal - U.S.](#) > [California](#) > [Find Cases](#) > [CA State Cases, Combined](#)Terms: "Palm Springs" and subdivision and 66427.5 ([Edit Search](#) | [Suggest Terms for My Search](#) | [Feedback on Your Search](#)) Select for FOCUS™ or Delivery

2010 Cal. App. Unpub. LEXIS 1193, \*

[View Available Briefs and Other Documents Related to this Case](#)**PALM SPRINGS** INVESTMENT COMPANY, L.P., Plaintiff and Respondent, v. CITY OF **PALM SPRINGS**, Defendant and Appellant.

E047460

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION TWO

2010 Cal. App. Unpub. LEXIS 1193

February 19, 2010, Filed

**NOTICE:** NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 8.1115(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 8.1115(b). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 8.1115.

**PRIOR HISTORY:** [\*1]

APPEAL from the Superior Court of Riverside County. Super.Ct.No. INC070631. James A. Cox, Judge.

**DISPOSITION:** Affirmed.

**CORE TERMS:** resident, conversion, mobilehome park, public hearing, former subd, map, bona fide resident, local agency, subdivider, mobilehome, writ of mandate, approve, tenant, staff, ownership, tentative, exceeded, infrastructure, predecessor-in-interest, resident-owned, displacement, redesignated, subdivided, responded, occupants, sentences, parcel, amend, rent, financial hardships

**Available Briefs and Other Documents Related to this Case:**[CA Court of Appeal Brief\(s\)](#)**COUNSEL:** Woodruff, Spradlin & Smart and M. Lois Bobak for Defendant and Appellant.

Gilchrist &amp; Rutter, Richard H. Close, Thomas W. Casparian and Yen N. Hope; The Loftin Firm and L. Sue Loftin for Plaintiff and Respondent.

Bien & Summers and Elliot L. Bien, for Western Manufactured Housing Communities Association as Amicus Curiae on behalf of Plaintiff and Respondent **Palm Springs** Investment Company, L.P.**JUDGES:** HOLLENHORST, Acting P. J. We concur: RICHLI, J., GAUT, J.**OPINION BY:** HOLLENHORST**OPINION**

## I. INTRODUCTION

Defendant City of **Palm Springs** (City) appeals from the trial court's issuance of a writ of mandate commanding the City Council to set aside its decision to deny the application of plaintiff **Palm Springs** Investment Company, L.P. (PSI) to convert a mobilehome park from rental to residential ownership. The City contends the trial court improperly interpreted and applied [Government Code](#)<sup>1</sup> section **66427.5**. We disagree, and we affirm.

**FOOTNOTES**

<sup>1</sup> All further statutory citations are to the Government Code unless otherwise indicated.

## II. FACTS AND PROCEDURAL BACKGROUND

PSI owns the **Palm Springs** View Estates Mobile Home Park (Park) <sup>2</sup> located within the City. The 184-space Park, built in approximately 1970, is restricted to senior citizens. Ninety-five percent of the residents have month-to-month tenancies, and as of May 2004, seventy-three of the Park's spaces were rented by low-income tenants.

In June 2006, PSI's predecessor-in-interest submitted an application for a tentative tract map to subdivide the Park so as to create individual parcels that could be purchased by the mobilehome occupants. Concurrent with the **subdivision** application, PSI's predecessor-in-interest submitted a survey of the Park residents under section 66427.5, subdivision (d). Occupants of 116 of the Park's 184 units responded to the survey; only nine stated an interest in purchasing their respective lots. Seventy-seven of the Park residents who responded opposed the conversion, and an additional 30 residents declined to state their position. Later in the application process, the Park residents submitted a petition to the City demonstrating that over 75 percent of all Park residents opposed the conversion.

The City's Planning Commission first considered the **subdivision** application in April 2007, and City staff recommended approval of the application. <sup>3</sup> Several Park residents testified during the public hearing and expressed concerns about, among other things, the aging infrastructure in the Park and the financial hardships that might ensue if the infrastructure began to fail. Park residents submitted similar concerns in writing before the public hearing.

The Planning Commission conducted a second public hearing about a month later. City staff had by then changed its recommendation from approval to denial. Park residents again testified in opposition to the application. At the conclusion of the hearing, the Planning Commission adopted Resolution No. 6099 recommending that the City Council deny the application.

The City Council conducted a public hearing on the application in June 2007. City staff reported that the resident survey demonstrated that Park residents did not support the conversion. City staff recommended that the City Council deny the application. Park residents opposed the application at the public hearing, again expressing concern about the potential failure of the aging infrastructure and the financial hardships such failure might create. Park residents also submitted an opposition in writing expressing similar concerns. <sup>4</sup> After the hearing, the City Council adopted Resolution No. 21941 denying the application. The City Council found that PSI's tenant impact report failed to properly disclose and analyze all of the impacts of the conversion on Park residents and that the conversion, which was overwhelmingly opposed by Park residents, was not a bona fide resident conversion.

PSI filed a petition for writ of mandate challenging the denial of its **subdivision** application. The trial court conducted a hearing and then issued a statement of decision finding that the City Council had exceeded its jurisdiction. The trial court held that only a court, and not the local public agency holding the public hearing on a **subdivision** application, has the authority to determine whether a conversion is a bona fide resident conversion. The trial court therefore granted the writ petition.

## III. DISCUSSION

### A. Standard of Review

The trial court held the City Council had exceeded its jurisdiction in denying approval of the **subdivision** application by relying on the tenant survey to determine that the proposed **subdivision** was not a bona fide resident conversion. The issue therefore involves the interpretation and application of a statute. <sup>5</sup> to undisputed facts, a question of law, which we review de novo. (*California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 1528, 1534.)

### B. Analysis

Section 66427.5 sets forth the requirements a subdivider must satisfy before a mobilehome park may be subdivided and converted into a resident-owned park in which the land underlying each mobilehome is independently owned. (*El Dorado Palm Springs Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1163-1166 (*El Dorado*) [Fourth Dist., Div. Two].) The issue before us is whether 2002 amendments to section 66427.5 authorized a local agency to determine whether a proposed conversion is a bona fide resident conversion.

Before 2002, section 66427.5 required a subdivider to demonstrate that the displacement of nonpurchasing residents would be avoided by (1) offering each existing tenant the option to purchase the subdivided land under his or her mobilehome or to continue to rent (§ 66427.5, subd. (a)); (2) filing "a report on the impact of the conversion upon residents of the mobilehome park . . ." (§ 66427.5, subd. (b)); and (3) making a copy of the impact report available to each resident of the park at least 15 <sup>6</sup> days before the first public hearing on the **subdivision** application (§ 66427.5, subd. (c)). Former **subdivision (d)** provided: "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." (§ 66427.5, former subd. (d).)

In *El Dorado*, the owner of a mobilehome park applied for a **subdivision** map to facilitate the conversion of the park to resident-owned condominiums. The city council approved the application, but imposed three conditions: (1) maintenance

of rent control for residents until sale of a certain percentage of the lots was completed; (2) determination of the lot sale price by an appraisal firm at the owner's expense; and (3) financial assistance to residents for the purchase of lots. (*El Dorado, supra*, 96 Cal.App.4th at p. 1157.) The owner filed a petition for writ of mandate to compel the city to approve the application without conditions, but the trial court denied the petition. (*Ibid.*) On appeal, this court reversed, holding that the city council had exceeded its authority [\*7] under section 66427.5. We held that "the City Council, in acting on El Dorado's application for approval of the tentative **subdivision** map, only had the power to determine if El Dorado had complied with the requirements of [former section 66427.5, subd. (d), now subd. (e)]" and "therefore had no power to impose the three further mitigating conditions on El Dorado." (*El Dorado, supra*, at pp. 1163-1164.) We further stated that, "[a]lthough the lack of such authority may be a legislative oversight, and although it might be desirable for the Legislature to broaden the City's authority, it has not done so." (*Id.* at p. 1165.)

In 2002, in response to *El Dorado*, the Legislature amended section 66427.5 by adding a requirement that applicants for conversion conduct and file a resident survey of support. (§ 66427.5, current subd. (d).)<sup>2</sup> In uncodified language, the Legislature stated that its intent was "to address the conversion of a mobilehome park to resident ownership that is not a bona fide resident conversion, as described by the Court of Appeal [in *El Dorado*]. The court in this case concluded that the **subdivision** map approval process specified in Section 66427.5 of the Government Code may [\*8] not provide local agencies with the authority to prevent nonbona fide resident conversions. The court explained how a conversion of a mobilehome park to resident ownership could occur without the support of the residents and result in economic displacement. It is, therefore, the intent of the Legislature in enacting this act to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions." (Stats. 2002, ch. 1143, § 2.)<sup>3</sup> In addition, the Legislature redesignated the first two sentences of former **subdivision (d)** as new **subdivision (e)**, and the remainder of former **subdivision (d)** as new **subdivision (f)**.

#### FOOTNOTES

<sup>2</sup> "(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 [\*9] agency upon the filing of the tentative or parcel map, to be considered as part of the **subdivision** map hearing prescribed by **subdivision (e)**." (§ 66427.5, subd. (d).)

<sup>3</sup> The City relies largely on the statement of intent to support its position that the 2002 amendments authorized local agencies to make findings as to whether a proposed conversion was bona fide. However, as we discuss below, the 2002 amendments did not alter the controlling language in section 66427.5, which, as we held in *El Dorado*, limits the scope of the local agency's hearing to the issue of compliance with the application requirements of section 66427.5.

As noted above, in *El Dorado*, this court held that section 66427.5, former **subdivision (d)**, by its terms, limited the scope of the hearing to the issue of compliance with the section. (*El Dorado, supra*, 96 Cal.App.4th at p. 1163-1164, 1166.) In amending section 66427.5, the Legislature left the language of former **subdivision (d)** unchanged but redesignated the first two sentences of former **subdivision (d)** as new **subdivision (e)**. By failing to amend the language of former **subdivision (d)**, the Legislature apparently agreed with our interpretation of that language in *El Dorado* [\*10] that the scope of the local entity's review is to determine compliance with the requirements of the section.

In a recent decision, the court in *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270 (*Sequoia Park*), reached the same conclusion in a different factual context. In *Sequoia Park*, the court held that section 66427.5 expressly and impliedly preempted local agencies from imposing additional requirements upon mobilehome park conversion applications beyond those listed in the statute itself. (*Sequoia Park, supra*, at pp. 1293-1300.) The *Sequoia Park* court relied extensively on our decision in *El Dorado*, noting that we had "expressly read section 66427.5 as not permitting a local authority to inject any other consideration into its decision whether to approve a **subdivision** conversion. [Citation.] And when it amended section 66427.5, the Legislature did nothing to overturn the *El Dorado* court's reading of the extent of local power to step beyond the four corners of that statute. This is particularly telling: "[W]hen the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is [\*11] presumed to have been aware [of] and to have acquiesced in the previous judicial construction. Accordingly, reenacted portions of the statute are given the same construction they received before the amendment." [Citations.]" (*Sequoia Park, supra*, at pp. 1296-1297, fn. omitted.)

We agree with the conclusion of the court in *Sequoia Park* that "[S]ection 66427.5 strictly prohibits localities from deviating from the state-mandated criteria for approving a mobilehome park conversion application." (*Sequoia Park, supra*, 176 Cal.App.4th at p. 1299.) We therefore conclude the trial court did not err in granting the petition for writ of mandate.

## IV. DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

GAUT

J.

Source: [Legal](#) > [States Legal - U.S.](#) > [California](#) > [Find Cases](#) > [CA State Cases, Combined](#) (1)

Terms: "Palm Springs" and subdivision and 66427.5 ([Edit Search](#) | [Suggest Terms for My Search](#) | [Feedback on Your Search](#))

View: Full

Date/Time: Friday, August 13, 2010 - 3:29 PM EDT

\* Signal Legend:

 - Warning: Negative treatment is indicated

 - Questioned: Validity questioned by citing refs

 - Caution: Possible negative treatment

 - Positive treatment is indicated

 - Citing Refs. With Analysis Available

 - Citation information available

\* Click on any *Shepard's* signal to *Shepardize* that case.

[Search](#) | [Research Tasks](#) | [Get a Document](#) | [Shepard's®](#) | [Alerts](#) | [Total Litigator](#) | [Transactional Advisor](#) | [Counsel Selector](#)  
[History](#) | [Delivery Manager](#) | [Dossier](#) | [Switch Client](#) | [Preferences](#) | [Sign Out](#) | [Help](#)



LexisNexis

[About LexisNexis](#) | [Terms & Conditions](#) | [Contact Us](#)

Copyright © 2010 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

PUBLIC HEARING  
SPECIAL ADJUSTMENT APPLICATION  
CAVALIER MOBILE ESTATES

APRIL 2, 2009  
OCEANSIDE, CALIFORNIA

REPORTED BY: LAURA MAES-DUNNE, CSR 9836

KNIGHT COURT REPORTERS, INC.

		2
1	INDEX	
2		
3		PAGE
4	STAFF REPORT: MARGERY PIERCE	6
5	APPLICANT'S PRESENTATION: MARK ALPERT	15
6		
7	APPLICANT'S WITNESSES	PAGE
8	BRIAN ALEX	30
	GORDON MICHIE	35
9	JOHN NEET	48
10		
11	CROSS-EXAMINATION OF GORDON MICHIE	PAGE
12	ROCHELLE BROWNE	67
	MIKE NORMANDIN	74
13		
14	REBUTTAL OF GORDON MICHIE	PAGE
15	MARK ALPERT	75
16		
17	FURTHER CROSS-EXAMINATION OF GORDON MICHIE	PAGE
18	ROCHELLE BROWNE	76
	MIKE NORMANDIN	79
19		
20	STAFF WITNESSES	PAGE
21	JAMES BRABANT	81
	JAMES GIBSON	91
22		
23	RESIDENTS' REPRESENTATIVE	PAGE
24	MICHAEL NORMANDIN	104
25		

		3
1	PUBLIC TESTIMONY	PAGE
2	CALLIE BORESKI	119
	TIFFANY KETCHAM	119
3	DORIS SHERK	122
	CHARLOTTE WILSON	124
4	TY FRANKE	127
	JOYCE HARESTAD	128
5	RANDALL VAN DERIET	134
	JIMMY KNOTT	136
6	JOSE VEGA	139
	ERIC LEPO	141
7		
8	CROSS-EXAMINATION OF JAMES GIBSON	PAGE
9	MARK ALPERT	144
10		
11	CROSS-EXAMINATION OF JAMES BRABANT	PAGE
12	MARK ALPERT	165
13		
14	CROSS-EXAMINATION OF JOHN NEET	PAGE
15	ROCHELLE BROWNE	167
	MIKE NORMANDIN	171
16		
17	REBUTTAL	PAGE
18	JOHN NEET	181
	MARK ALPERT	182
19	ROCHELLE BROWNE	188
20		
21	PUBLIC HEARING CLOSED	PAGE
22		197
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES

COMMISSION

- GEORGE MCNEIL - CHAIRMAN
- MARY LOU ELLIOT - COMMISSIONER
- SHARON DOYLE - COMMISSIONER
- RITA KOOR - COMMISSIONER

FOR STAFF:

- BARBARA HAMILTON - ASSISTANT CITY ATTORNEY
- ROCHELLE BROWNE - STAFF COUNSEL
- MARGERY PIERCE - DIRECTOR
- HOLLY TROBAUGH - ASSISTANT CITY CLERK
- JAMES BRABANT - WITNESS
- JAMES GIBSON - WITNESS

FOR APPLICANT:

- MARK D. ALPERT - APPLICANT COUNSEL
- JOHN NEET - WITNESS
- BRIAN ALEX - WITNESS
- GORDON MICHIE - WITNESS

RESIDENTS' REPRESENTATIVE

- MICHAEL NORMANDIN

1 APPLICANT WITNESSES

2 BRIAN ALEX

3 MR. BRIAN ALEX: Chairman, and fellow Council  
4 Members, thank you for having me here this evening.

5 Mark, thank you very much.

6 He basically said everything I was going to,  
7 but I will give you a different perspective.

8 Oh, I would like to acknowledge Mike Normandin,  
9 great guy. I am glad he has taken over the position of  
10 the President of Homeowners Association. He's a good  
11 representative. Very fair. So my compliments that he  
12 is he working at doing that.

13 We have talked and had private conversations  
14 with Mike and a few other members of our park. And in  
15 going over the situation and working with 75 percent of  
16 CPI, I have tried to save hundreds of thousands of  
17 dollars in maintaining this project. I have to answer  
18 to investors. I have to answer to the City inspectors  
19 to make sure the park is maintained. I have to deal  
20 with emergencies. I have to deal with everything.

21 And when you offer me 75 percent of CPI, you  
22 are limiting me the scope of what work I can do. So I  
23 have to piecemeal work. I have to decide, I will do  
24 this, but I can't really afford to do that.

25 Now, oddly enough, I want to take care of the

1 residents, I want them to have a good place to live. I  
2 enjoy the business I am in. But you can't grab my  
3 ankles and say, "You can't have the same dollars that  
4 you had last year."

5 I mean, if you had a soldier going into battle  
6 one year and going into battle next year and you say,  
7 "You know what, we are going to give you less  
8 ammunition, less fuel, less power, but we want you to do  
9 the same job." How does he do that?

10 You're asking me to do something that  
11 physically impossible.

12 Now, I understand that some of these people are  
13 saying, "You know what, we are on limited budgets." And  
14 I can appreciate that. I can appreciate that some are  
15 on fixed incomes.

16 The reality is, we all have to be responsible  
17 to realize what's the (unintelligible) all about. It's  
18 having one dollar having the same buying power as the  
19 next year that it had the year before.

20 We're not asking for anything more than what is  
21 right and reasonable.

22 I would like to do my job. I would like to  
23 provide a good environment for these people to live in.  
24 How do I do it? If somebody here knows how you can do  
25 that, because I have not (unintelligible) control with

1 my other contractors and tell them I can't pay them the  
2 same value dollar for dollar. They are expecting, as  
3 things cement cost goes up, everything else goes up,  
4 they pass those costs to me.

5 I have only been able to finish half off the  
6 streets in my park. I would like to finish off the  
7 whole thing. I can't. I only have so much money.

8 I have got hit with \$250,000 in a sewer project  
9 that I just had to fix because otherwise what do I do?  
10 It's just the nature of the park, it's getting old.

11 You guys understand what that is like, right  
12 outside my park on the hill, you guys have an emergency  
13 project that you are spending hundreds of thousands of  
14 dollars to fix, I am sure of it.

15 So it's a normal course of doing business.

16 One of the things that I personally resent, is  
17 that you, by having this Rent Control, you make it sound  
18 like I am not on the same side of my residents. I am on  
19 the same side, but I being punished for trying to do a  
20 good job. How do I do that? How do I operate? How do  
21 I feel good about it? How do I do those things when I  
22 am being punished to try to help people that I care  
23 about, when I want to do this job?

24 Because you are leaving me the option of  
25 saying, okay -- and specifically when it comes to, I

1 have to say either one, I will restrict myself and just  
2 take it and just realize that 75 percent of the CPI is  
3 what I am entitled to or what I am going to get. Or I  
4 can say, you know what, my investors should, because I  
5 am in a fiduciary position with them, they should really  
6 have the benefit of what the park should bring to them.  
7 So I should probably sell it.

8 Now if I sell the park for 16, \$17 million, I  
9 got news for you, using your calculations with your  
10 people, they are going to be paying \$800, \$900 a month  
11 rent. I am not trying to go there. What do I do? You  
12 are forcing me into a position I don't want to be in.

13 I don't want to be against anybody. I want to  
14 be with people. I want to work with people. I like  
15 what I do. I actually become good at it.

16 But when I feel like I am being cast in this  
17 role "Oh, he's a bad guy." It's like how? I didn't put  
18 this restriction on me. I'm not the one that forced the  
19 issue. I am trying to be someone that takes care of  
20 people.

21 So my question is, where is the answer in this  
22 thing? What is fair? CPI minimally is fair, not 75  
23 percent of it. And that is notwithstanding emergency  
24 things that go on.

25 You guys all have personal people that you take

1 care of, responsibilities that you have. CPI is just a  
2 simple number.

3 So I guess it's like, how do I do my job while  
4 you guys are restricting me? I don't want to do that.  
5 I don't want to be forced to sell, because then they are  
6 really going to get it. You know it and I know it.

7 And the other thing is, I can spend the money  
8 and subdivide it, and that will change the whole nature  
9 of it too.

10 Those are the options I have. Because this  
11 procedure just doesn't work. This 75 percent of CPI  
12 doesn't work. It's just a reality thing.

13 I like the people that live in my park. And I  
14 will be honest with you, I love 97 percent of them.  
15 There is 3 percent, I'm sorry, that drive me crazy. But  
16 97 percent of them, I really like them. I like working  
17 with them. I like doing stuff with the residents. I  
18 like being involved in making things better and nicer.

19 I am just telling you, please, can you help me  
20 keep them where they are by being reasonable? That's  
21 all I'm asking.

22 Because if you don't, then I have to  
23 unreasonable. And I feel it's in my fiduciary  
24 responsibility to the investors, and then I have to make  
25 a move which I would rather not do.

1 So there you go.

2 Thank you very much for your time.

3 CHAIRMAN MCNEIL: Thank you, Mr. Alex.

4

5 GORDON MICHIE

6 MR. GORDON MICHIE: I'm Gordon Michie. I'm  
7 with Smith, Linden and Basso in Newport Beach,  
8 California.

9

10 ASSISTANT CITY CLERK TROBAUGH: Spell your last  
11 name.

12 MR. GORDON MICHIE: M-i-c-h-i-e.

13 I am not a mobile home park guy. I am not  
14 invested in the industry or this process at all.

15 I was asked to take a look at the process and  
16 the formulations and reports that have been used in the  
17 past, and based on my experience in the real estate  
18 industry and within my practice, to just provide  
19 alternative points of view and other issues that perhaps  
20 should be considered in this process.

21 As background again, not involved in the  
22 industry, don't have a vested interest in the process,  
23 other than providing additional information here.

24 We go through -- when I talk about statistical  
25 and financial analysis with my clients and with my

1 Transcript of April 13, 2009 Oceanside MHFPC Meeting, Item 2

2  
3 **Chairman:** Okay the next thing is a staff, um, is the resolution denying a special adjustment  
4 for Cavalier Mobile Estates.  
5

6 **Margery Pierce:** Thank you Mr. Chairman, Margery Pierce, Director of Neighborhood  
7 Services. Tonight before you is the resolution that, from the special adjustment application that  
8 you considered at your April 2nd meeting and you've had it, it came in your agenda packet. I  
9 assume that you have all had a chance to review it and having said that, staff recommends that  
10 the commission adopt the resolution denying the special adjustment to Cavalier Mobile Estates  
11 and authorize the Chair to sign it.  
12

13 **Chairman:** Thank you. Do we have any speakers on this issue?  
14

15 **Clerk:** We have two speakers. Jimmy Knott followed by Brian Alex.  
16

17 **Knott:** Chairman, commissioners, one thing I lacked saying at the last meeting that I wanted to  
18 take on the record on and that is to just publicly say you all stood through all that hours and  
19 hours of hearing and very few people had the chance to say thank you and I wanted to publicly  
20 say thank you very much for your diligence and you came forward you took the time out of your  
21 lives, you didn't have to do it but you did it and someone needs to come forward and to say  
22 thank you for you taking that time out of your lives to come forward and make a decision and  
23 whether it was on one side or the other you made a decision and I wanted to say out of respect  
24 thank you.  
25

26 **Chairman:** Thank you. Thank you Mr. Knott. Mr. Alex.  
27  
28

1 **Alex:** Chairman and commissions. Um, first of all I would like to say that I am horribly  
2 disappointed. I'm disappointed that the talks with myself and the residents did not come to  
3 fruition. I'm disappointed by the reaction and what I saw here and what happened and there  
4 comes a time where I see what you guys are doing for your own best interest as in a situation  
5 that is going to be here shortly, the next thing on the agenda, and I am just aghast that there is  
6 not an even-handedness that goes on. It seems that you have decidedly decided that the park  
7 owners have to be mean and the residents have to be good, or the City has to have a position  
8 that somehow what they do is right as their increase today, what they're going for is going to  
9 come up and it's just like there is no fairness, there is no reasonableness. I desire to be  
10 reasonable. So, I will only leave you very clearly with the thought that I'm disappointed.  
11 Secondly, what I will do in the next three or four years is going to be a direct action of you guys  
12 being unreasonable. So, when things develop, as they will, and when I invest those large sums  
13 of money I'm going to, you guys will have to take and bear the responsibility of what happens  
14 to the residents because of your lack of being reasonable. I have told the residents I want to be  
15 reasonable. If you decide that being reasonable is punishable by saying absolutely no to being  
16 reasonable, then there will be consequences that stance. It's not mature, it's not realistic.  
17 You're entitled to have it but you're also entitled to have the fruits of it. So, I'm just saying I  
18 wanted more. I wanted to work in cooperation with my residents, I didn't get it. I wanted to  
19 work in cooperation with you and I didn't get it and now the residents are going to pay the little  
20 price, and according to your rules, and according to your experts. So, as this plays out, when  
21 the residents end up getting the fruit of all this, it won't be because of me because I wanted to  
22 be fair and reasonable, and you guys still have a choice to change it if you decide to. I don't  
23 think you're going to, and I'm really sad about that because being fair should be all of our  
24 points. There isn't a good person or a bad person, it's being reasonable with that because  
25 you're asking people after this to be reasonable with the expenses the City has. How does that  
26 play out? The City has expenses that are real but I don't when I try to improve a park? You  
27 know, somewhere someone has it wrong and I'm just sorry for that. Thank you.

28

1 **Chairman:** Thank you Mr. Alex. Any of the commissioners have any comments on the staff  
2 recommendation or any of the speakers? Can I have a motion then on staff recommendation?

3

4 **Commissioner Elliott:** I move that we accept the recommendation from the City about the  
5 resolution denying a special adjustment for Cavalier Mobile Home Park and authorizing George  
6 to sign it.

7

8 **Commissioner Koor:** Second.

9

10 **Chairman:** Any further discussion? All those in favor please say "Aye".

11 (Response: "Aye".)

12

13 **Chairman:** Anyone opposed?

14 (No response)

15

16 **Chairman:** Thank you.

17

18 **Clerk:** Just to let the record show, Commissioner Handley had abstained.

19

20 **Chairman:** Right.

21

22

23

24

25

26

27

28