



## Will California Park Owners Begin Heading For the Exits?

BY MARK ALPERT

With the political changes in Sacramento, the tenant advocates are pressing their agenda with new vigor in 2013. Once again, they are pushing to amend the subdivision conversion statute (Government Code § 66427.5). They are advocating for changes, which would allow local governments to deny conversions not supported by a majority of residents and which would give such governments authority to implement their own "conversion" regulations. There are even rumblings for statewide rent control for mobile home parks.

Conversions under Section 66427.5 have been a favored exit strategy for park owners, resulting in related litigation all over the state. Recent decisions applying Section 66427.5 have been a "mixed bag." The decision in *Sequoia Park*

*Associates* in 2009 was the "high water mark" for limiting the interference of local governments in conversions since the Ordinance was amended in 2002 to add the requirement that tenants be surveyed regarding their support. Based on that decision, many local governments and lower courts have approved conversions despite resident opposition. Subsequent reported decisions by different appellate courts have chipped away at and offered different interpretations of Section 66427.5. The 2010 decision in *Colony Cove v. Carson* held that local governments could "consider" the resident survey results, but the Court did not provide any guidance as to how local gov-

ernments could consider or use the surveys. The Court did acknowledge, however, the lack of resident support in and of itself could not block a conversion.

The worst decision for park owners, *Goldstone v. County of Santa Cruz*, was decided in early 2012. *Goldstone* held local governments could deny subdivisions if the subdivision was not supported by a majority of residents. Although not

explicit, the Court seemed to adopt the view that a "bona fide" or "non-sham" conversion is, by definition, one supported by a majority or at least a large percentage of tenants. *Chino MHC v. City Of Chino*, decided in late October 2012, took a decidedly more pro-

park owner view, concluding that a local government was required to approve a subdivision unless there was overwhelming opposition by the tenants. The Court also made clear its view that a bona fide conversion was one in which the park owner truly intended to convert it to tenant ownership. Unfortunately, the *Chino* decision still encourages tenants to attempt to block subdivisions or extort favorable terms in exchange for support for the conversion.

Late last year, the California Supreme Court issued a decision directly relevant to conversions in coastal zones, *Pacific Palisades Bowl v. Los Angeles*. The Court in that case held that local gov-

ernments did have some authority to review conversions for compliance with the Coastal Act requirements (and other state laws). The ultimate impact of this holding is not entirely clear, but it makes clear that local governments can impose conditions relating to the replacement of affordable housing in a coastal zone.

Under the existing statute, which has been relatively favorable to park owners, there still has been substantial resistance to subdivisions in many local communities, in some cases, even where no rent control exists. The processing of a subdivision for Pacific Mobile Home Park in Huntington Beach is a good example.

Pacific initiated a subdivision in 2010 with the support of a majority of the residents in the Park. The City fought Pacific's subdivision Application. Pacific had to file a lawsuit after the City denied the Application. The City not only aggressively defended the lawsuit, but attempted to extort a favorable result by filing a cross-complaint seeking immediate physical removal of homes owned by park tenants who the City claimed were "trespassing" on an unused City right of way for decades.

The City's denial of the subdivision Application was reversed in July 2012, which resulted in the City approving the subdivision in November 2012. However, on December 3, 2012, the newly elected City Council voted to rescind the approval. Pacific then obtained a court order invalidating the vote and barring reconsideration of the subdivision Application by the City. That court order still did not stop the City two weeks later from voting to confirm their illegal December 3 vote. This did not sit well with the Judge who issued the order. The Court granted Pacific's Application to set a trial

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for Contempt of Court for 6 of the 7 Council Members and the City Attorney. Finally, with the threat of a criminal trial hanging over their head, the City Council abandoned its challenge of the subdivision.

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If Section 66427.5 is amended, which seems likely given the current political environment, then park owners can count on more local opposition to subdivision. The sad reality is that while local politicians often talk about how important affordable housing is to them, they often really

do not want to see mobile home park uses become permanent, particularly in coastal or other "upscale" locations. If the door to subdivisions is closed, the final path of escape for park owners trapped in confiscatory rent control is closure. The U.S. Supreme Court has made clear that governments cannot stop closures in *Yee v. Escondido*. *Yee* recognizes that the right to go out of business is one of the crucial "sticks" in the "bundle of property rights." Of course, the crucial issues become the cost of closure and the viability of alternative uses. Government Code 65863.7 limits payments to tenants to the "reasonable cost of relocation." The common sense interpretation of "reasonable cost of relocation" limitation means the cost of physically moving a mobile home and the tenant's belongings. Certain local governments have adopted requirements that exceed this limitation, but we do not have any appellate decisions directly addressing the question. If conversions are made more difficult, it is likely we will get binding authority, hopefully confirming a "common sense" interpretation of Section 65863.7. We can count on the courts for common sense, right?

## Modular Housing Shipments Up in First Quarter 2013

According to the Manufactured Housing Institute (MHI) the National Modular Housing Council recently reported 2,936 homes shipped in January through March this year in its *Quarterly Modular Housing Report*. This is an increase of 3.9 percent over the same quarter in 2012.

According to an analysis by Fred Hallahan of Hallahan Associates, who tracks modular home shipments nationwide, modular activity from January through March 2013 continues a pattern of six consecutive quarterly year to year increases in modular activity that have occurred since the third quarter of 2011.

Relative to 2013 first quarter total home building activity, the 3.9 percent increase in total modular activity lags behind strong increases in conventional residential building permit activity as follows:

- Total 2013 first quarter permit activity for conventional residential housing, representing 203,800 homes, increased 22.3 percent over 2012;
- Single family 2013 first quarter permit activity, representing 133,300 homes, increased 25.9 percent over 2012; and
- Multi-family 2013 first quarter permit activity, representing 70,500 homes, increased 16.3 percent over 2012.

The comparison of modular activity with single and multi-family site built housing, indicates that overall modular production will continue to grow but may continue to lose market share within the total home building sector.

With the notable exceptions of New York State (the most active modular state) and North Dakota (the fourth or fifth most active modular state), 2013 multi-family modular activity is typically not a significant contributor to current modular activity for most states and for most manufacturers.

Based on current information available relative to economic conditions, in 48 states, the 2013 annual modular consumption is projected to exceed 14,000 homes representing an annual increase of more than 5 percent compared to 2012.

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