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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

PALM SPRINGS INVESTMENT COMPANY, L.P.,

Plaintiff and Respondent,

v.

CITY OF PALM SPRINGS,

Defendant and Appellant.

E047460

(Super.Ct.No. INC070631)

OPINION

APPEAL from the Superior Court of Riverside County. James A. Cox, Judge. Affirmed.

Woodruff, Spradlin & Smart and M. Lois Bobak for Defendant and Appellant.

Gilchrist & 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.

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[1] section 66427.5. We disagree, and we affirm.

II. FACTS AND PROCEDURAL BACKGROUND

PSI owns the Palm Springs View Estates Mobile Home Park (Park) 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

[1] All further statutory citations are to the Government Code unless otherwise indicated.

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. 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. 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 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 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 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).)[2] 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 not provide local agencies

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[2] "(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)." (§ 66427.5, subd. (d).)

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.)[3] 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).

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* that the scope of the local entity's review is to determine compliance with the requirements of the section.

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[3] 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.

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 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.

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HOLLENHORST
Acting P. J.

We concur:

RICHLI
J.

GAUT
J.