

**OPPOSITION TO TENTATIVE DECISION IN THE
MATTER OF THE APPLICATION OF TOUFIC JISSER,
AS TRUSTEE OF THE JISSER FAMILY TRUST, FOR
CLOSURE OF THE BUENA VISTA MOBILEHOME
PARK IN PALO ALTO, CA**

Submitted on Behalf of Buena Vista Mobile Home Park Residents Association

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INTRODUCTION

Under the terms of Palo Alto’s Mobilehome Park Conversion Ordinance, the City must not approve a mobilehome park closure unless the mitigation measures proposed by the park owner “are adequate to mitigate the adverse impacts on the displaced residents.”¹ The tentative decision accepts the relocation assistance that the Park Owner proposes in the RIR, and its last-minute amendments, as adequate.² Based on the relocation assistance that the Park Owner is offering, some residents will be compensated as little as \$5,500 for their mobilehomes, and on

¹ Palo Alto Municipal Ordinance, 9.76.040(g).

² Tentative Decision in the Matter of the Application of Toufic Jisser, as Trustee of the Jisser Family Trust, for Closure of the Buena Vista Mobilehome Park in Palo Alto, California.

average, about \$18,000.³ This level of assistance is inadequate to allow residents to relocate to comparable housing as required by the Ordinance, nor will it allow residents to be compensated for their losses. Further, the park closure raises serious due process and fair housing issues, which the tentative decision fails to adequately take into account. For the foregoing reasons, and the arguments submitted in the Residents' Association's closing brief, we respectfully request that the tentative decision be reconsidered.

I. The Relocation Assistance Offered Does Not Comply with the Ordinance.

The Park Owner is required to prove by the preponderance of the evidence that the mitigation measures proposed by the Park Owner are adequate to mitigate the adverse impacts on the displaced residents.⁴ The tentative decision finds that the relocation assistance is adequate because it will be based on a future appraisal and a year-long 100% rent differential.⁵ However, the Park Owner failed to prove—as required by the Ordinance—that residents will be able to relocate within 35 miles of the Park, given the relocation assistance that is offered.

A. The California Relocation Assistance Act's Framework to Define and Calculate Local Relocation Assistance Should Have Been Applied Here.

The tentative decision acknowledges that Palo Alto's Mobile Home Park Conversion Ordinance requires mitigation measures that may not exceed the "reasonable costs of relocation," but found that the "the law does not provide any empirical formula for calculating the appropriate amount of relocation assistance."⁶ This statement is incorrect; the California Relocation Assistance Act (CRAA) provides such a definition and that definition should have been used as a benchmark for the tentative decision's analysis.

³ Tentative Decision, 3.

⁴ Palo Alto Mun. Code, 9.76.040(g).

⁵ Tentative Decision, 3.

⁶ Palo Alto Mun. Code, 9.76.040(g), Tentative Decision, 1.

The CRAA exhaustively defines the “reasonable costs of relocation.”⁷ Under the CRAA, displaced individuals, including those displaced by a private entity as part of an agreement with a public agency, are entitled to a “comparable” home; replacement housing must be affordable to the displaced resident, must be of a similar size and function, and must be in a similar location.⁸ The location of the replacement housing must be in a neighborhood that is “not less desirable than the location of the displaced person’s dwelling with respect to public utilities, facilities, services, and the displaced person’s place of employment.”⁹ Such displaced individuals are entitled to “payment for actual moving and related expenses as the public entity determines to be reasonable and necessary including actual and reasonable expenses in moving and actual direct losses of tangible personal property as a result of moving.”¹⁰

As the CRAA applies to the mobilehome setting, it contemplates using the **in-place** value of a resident’s coach to assess the displaced resident’s loss. In other words, the value of the mobilehome is not just the value of the coach itself, but also the value of occupying a particular space in a particular neighborhood with particular amenities.¹¹

Because the City of Palo Alto is significantly involved with the closure of Buena Vista Mobile Home Park, and because significant benefits will flow to Palo Alto if the property is developed, the residents are entitled to benefits under the CRAA, which is triggered any time displacement is the result of a “project undertaken by a public entity.”¹² A displaced person under the CRAA includes any individual displaced by a private entity for a public use or as part

⁷ *City of Mountain View v. Superior Court*, 54 Cal. App. 3d 72, 78 (1975); Gov’t Code § 7262; 25 CCR § 6112.

⁸ §7260(i)(1)(3); 25 CCR § 6008.

⁹ §7260 (i)(6); 25 CCR § 6008 (c)(2).

¹⁰ §7262.

¹¹ See *Adamson v. City of Malibu*, 854 F. Supp. 1476 (C.D. Cal. 1994) (discussing in-place value of mobilehomes in the rent control context).

¹² § 7260(i).

of an agreement with a public agency.¹³ A private entity may be required to pay relocation benefits pursuant to the CRAA when there is some action on the part of a government agency.¹⁴

The City of Palo Alto has been integrally involved with the disposition of Buena Vista Mobile Home Park, first in efforts to preserve it, and now in efforts to close it. In 2000, the City Council enacted an emergency ordinance to stabilize rents at the Park¹⁵ and created a long-term strategy to preserve the Park. The year-long process, which included negotiations between Palo Alto, the owners of Buena Vista Mobile Home Park, and residents, led to the enactment of a municipal ordinance that provided “a procedure and standards for assessing the adverse impacts of a mobilehome park closure or conversion on the displaced mobilehome owners residing in the park that is being closed and to determine appropriate relocation assistance for those residents.”¹⁶ In addition, the City and the Park owners agreed to jointly develop a long-term preservation strategy for the Park. Notably, Buena Vista Mobile Home Park was the only mobilehome park in Palo Alto when the ordinance was adopted.

Now Palo Alto is significantly involved in the current efforts to close and convert the Park. The City has identified the intersection where the Park is located as a desirable area for new mixed-use, transit-oriented development in several of its city planning documents;¹⁷ Palo Alto has served as an intermediary between the owner, the former potential developer

¹³ See 25 CCR § 6008(f)(2); see also *Garcia v. Anthony*, 211 Cal. App. 3d 467, 472 (1989).

¹⁴ See, generally, *Langer v. Redevelopment Agency of City of Santa Cruz*, 72 Cal. App. 4th 998 (1999).

¹⁵ Palo Alto Ordinance 4672 (Dec. 20, 2000).

¹⁶ Palo Alto Municipal Code § 9.76.010.

¹⁷ Both the recently adopted Rail Corridor Study and the Bicycle Pedestrian Plan (adopted as part of the transportation element) recommend that the intersection where Buena Vista Mobile Home Park is located include more transit-oriented development, including the construction of bicycle and pedestrian paths, the narrowing of streets, and the development of a Bus Rapid Transit area at the location. Palo Alto Rail Corridor Study, http://paloaltorail.squarespace.com/storage/PARC_Study_web_120516.pdf, visited Mar. 4, 2013. Also, the El Camino Master Plan Study and the Grand Boulevard Initiative identify the corner as one that should become more bicycle- and pedestrian-friendly. *Id.*

Prometheus and the residents of Buena Vista Mobile Home Park by hosting meetings, providing translation, developing resident questionnaires, helping collect those questionnaires, and assisting the owners and the would-be developer in finding and approving its relocation specialist and appraiser. Palo Alto has estimated that it would have received a benefit of over \$7 million in in-lieu fees from the development that Prometheus was proposing.

Additionally, the California statute that governs the closure of mobilehome parks specifically states that when a zoning change is requested for a mobilehome park closure, “the local government agency is the person proposing the change in use . . . and is required to take steps to mitigate the adverse impact of the change.”¹⁸ Although Prometheus apparently cancelled its purchase agreement with the Park Owner, it is clear that a zoning change would be required for the new in-fill apartment home community that the Park Owner proposes.

Lastly, the City took the adverse action of approving the Park Owner’s Relocation Impact Report on February 20, 2014.¹⁹ Because of the City’s activities listed above, therefore, the tentative decision should have used the CRAA’s definition for the term “reasonable cost of relocation.”

Even should the tentative decision not agree that the CRAA is implicated by the City’s actions to date, the CRAA’s definition of the term “reasonable costs of relocation” should be used because the state law and the case law interpreting this law established the definition of this term long before the City’s ordinance was enacted in 2000, creating a term of art that would have been

¹⁸ § 65863.7(i).

¹⁹ <http://www.cityofpaloalto.org/civica/filebank/blobdload.asp?BlobID=39148>

known by the City Council when it enacted the Ordinance.²⁰ The tentative decision acknowledges that the City Council was “cognizant” of the CRAA’s terminology.²¹ Departing from this established definition is arbitrary and in conflict with well-established principles of statutory interpretation.

Moreover, the tentative decision failed to define the term at all, making any decision about the reasonable of the assistance offered to residents baseless, arbitrary, and capricious.

B. The Assistance Offered, Based on Low Appraisals, Will Not Allow Residents to Move to Comparable Housing

Despite the Ordinance’s requirements that residents be provided “comparable housing,” the Park Owners have limited their offered compensation to payment of the appraised values of the residents’ mobilehomes, and a lump-sum relocation payment that is intended to cover a rent differential, moving expenses, and start-up costs.²² The tentative decision rejects the residents argument that the terms “comparable mobilehome,” “comparable housing,” or “comparable mobilehome park” mean more than just the appraised value of the mobilehomes.²³ The average appraised value of the mobilehomes is \$18,816, and two thirds of the appraised values are between \$10,000 and \$24,999.²⁴ This formulation of relocation assistance will not adequately mitigate the effects of the Park’s closure on residents whose mobilehomes cannot be moved

²⁰ The purposes behind the CRAA and the Ordinance are similar, and deal with the same subject matter (i.e., mitigating the harm to displaced mobilehome park residents). 58 Cal. Jur. 3d Statutes § 118; *See In re Do Kyung K.*, 88 Cal. App. 4th 583, 586 (2001); *cf.* Gov’t. Code § 7260.5 (“The primary purpose of this chapter is to ensure that [displaced mobilehome park residents] shall not suffer disproportionate injuries . . . and to minimize the hardship of displacement on these persons”) *with* Palo Alto Mun. Code § 9.76.010 (“This chapter is adopted . . . to determine appropriate relocation assistance for [displaced mobilehome park residents]”).

²¹ Tentative Decision, 4.

²² RIR, 70.

²³ Palo Alto Mun. Code, §§ 9.76.020(a), (b)-(c).

²⁴ Baar May 5, 2014, Report at 6.

because it is insufficient to allow them to buy another mobilehome or other comparable housing within 35 miles of the Park.

Additionally, as alluded to above, the regulations accompanying the CRAA contain rules and formulas governing the reasonable costs of relocation specifically for mobilehome residents.²⁵ Under these regulations, a person who owns a mobilehome and rents the land on which the mobilehome is located is entitled to:

(1) The amount required to purchase a “conventional replacement dwelling” if no mobilehomes are available;

(2) The amount necessary to purchase a replacement mobilehome, plus the amount needed to rent a replacement space; or

(3) The amount required to rent both a replacement mobilehome and a replacement space, if the resident chooses to rent rather than own the replacement unit.²⁶

As is clear from subsection (3) above—and contrary to the tentative decision—state regulations do not permit relocation to a *rental* apartment to be appropriate relocation assistance for a mobilehome owner unless he or she chooses this option.²⁷ Rather, in the absence of a decision by the resident to change to a rental tenure, state law clearly defines “assistance” as the purchase of a replacement mobilehome or *dwelling*, including a new single family home if necessary.²⁸ As further defined, relocation assistance includes the difference between the purchase price of the new single family home and the selling price of the mobilehome (25 CCR § 6102(a)(1)), compensation for an increase in interest costs (§ 6102(a)(2)), and reimbursement for the actual costs necessary to complete the purchase of the replacement house (§ 6102(c)(3)).

²⁵ The California Department of Housing and Community Development (HCD) interprets and implements the CRAA. 25 CCR § 6112.

²⁶ *Id.* at § 6112 (c)(5)(A)-(C).

²⁷ Tentative Decision at 12-13.

²⁸ 25 CCR § 6112 (c)(5)(A).

Because of the tentative decision's reliance the low appraisals as well as reliance on in-place appraisals rather than comparable housing, the decision here only allows for relocation assistance to rental housing, in contravention of the CRAA and its accompanying regulations.

C. The Reliance on the Relocation Specialist is Misguided.

Among the testimony and reports received from various witnesses and experts, the tentative decision gives particular credence to housing relocation specialist David Richman. However, Mr. Richman's own testimony highlighted the inadequacy of the assistance that has been offered. Mr. Richman testified that the only way residents would be able to purchase another mobilehome would be if they "finance some sort of balance as part of that acquisition" – a balance between \$20,000 and \$50,000.²⁹ He was unable to identify any mobilehomes that could be purchased for those prices, and could only generally state that in the past he has found mobilehomes that are for sale but not officially listed.³⁰ Similarly, Mr. Richman's testimony confirmed that he would not be able to find any rental units in the entire Bay Area for the same per month rent that residents currently pay.³¹ The Park Owner's revised assistance, submitted at the 11th hour of the hearing, does not alter this conclusion. While Mr. Richman's reaction to these revisions was that they would provide "a great many more tools to secure replacement housing," he provided no specific explanation of how this increased assistance would make a difference.³² Indeed, these revisions are highly unlikely to permit Park residents to cover the expense of purchasing a new mobilehome in another park free and clear nor provides guidance

²⁹ Hearing transcript 23:24-24:3.

³⁰ Id.

³¹ Hearing transcript 25:10-14.

³² Exhibit 4 to Park Owner's Closing Brief.

about how the Park’s low-income residents will obtaining financing for purchasing a new mobilehome.

Further, the rent offset is inadequate as it is not based on the size of the household, but rather the size of the unit that is to be vacated.³³ The tentative decision finds that the vast majority of residents will get a rent offset based on a one-bedroom, although the household sizes may be much larger.³⁴ The tentative decision should reconsider the rent offset and require the Park Owner to calibrate it based on household size rather than unit size.

II. Studio Tenants Are Entitled to Relocation Assistance

The Tentative Decision incorrectly finds that the studio tenants are ineligible for relocation assistance.³⁵ The Ordinance specifically references “tenants” regarding the parties who are to complete resident questionnaires for the purposes of determining relocation assistance.³⁶ The Ordinance does not specify that these tenants must live in mobilehomes. Thus, a reasonable interpretation of the Ordinance is that all tenants in Buena Vista—whether living in mobilehomes or other forms of housing—are included. The Ordinance is intended to protect the health and welfare of mobilehome park residents. Such statutes are generally broadly or liberally applied in favor of that protective purpose.³⁷

Further, the Ordinance was enacted with the view that the Park is an important source of affordable housing, and precluding tenants from relocation assistance undermines the purposes of the Ordinance and will leave the thirteen current tenants, many of them long-term tenants, without any means to relocate within the City, or the County.

³³ 25 CCR § 6104.

³⁴ Tentative Decision, 15.

³⁵ Tentative Decision, 17.

³⁶ Palo Alto Mun. Code §§ 9.76.030(a), (c)(7).

³⁷ *Southern California Gas Co. v. South Coast Air Quality Management Dist.*, 200 Cal. App. 4th 251, 268 (2011).

III. The Description of the Future Use of the Property is Inadequate

The tentative decision finds that the park owner's future investment is not related to the adequacy of mitigation measures.³⁸ This is contradicted by Palo Alto's Mobilehome Park Conversion Ordinance that explicitly makes the future use of the Park an issue in its proposed closure by requiring the RIR to include "[a] description of any proposed new use for the site."³⁹ The RIR, which only states that a "new, well-designed infill apartment home community" would replace the Park is not an adequate description of the proposed new use for the site.⁴⁰ Indeed, until recently, public records indicated that Prometheus Real Estate Group would purchase and develop the property. The Park Owner's plan to create an apartment home community will undoubtedly mean that the Park Owners will benefit a great deal financially from the park closure and its redevelopment.

IV. Park Residents' Due Process Rights are Violated as They Have No Means to Contest Future Appraisals

The tentative decision fails to set out a process for residents to challenge the proposed updated appraisals that will form the basis for relocation benefits.⁴¹ Without a process, residents would not be entitled to any notion of fair hearing or due process. The in-place value of the mobilehomes is one of the most crucial facts to determining the adequacy of the park's mitigation measures. Indeed, the tentative ruling discusses the April 2013 appraisals at length and concludes that the RIR's approval is subject to supplemental changes including "providing

³⁸Tentative Decision, 19.

³⁹ Palo Alto Mun. Code §9.76.030 (d)(1).

⁴⁰RIR, 26.

⁴¹ Tentative Decision, 19-20.

for payments to park residents for the on-site value of their mobilehomes as determined in updated appraisals.”⁴²

Case law supports the argument that this failure deprives residents of a fair hearing. “A hearing requires that the party be apprised of the evidence against him so that he may have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced. . . .”⁴³ The tentative decision is based on evidence that does not yet exist and therefore could not have been contested to this point. Furthermore, the lack of any means by which residents can contest new appraisals cuts into the “fundamental requirement of due process” that a person have “the opportunity to be heard.”⁴⁴

V. The Tentative Decision Must Consider the City of Palo Alto’s Obligations under Fair Housing Laws

The tentative decision improperly gives little the probative value to expert reports prepared by Professors Donald Barr, Amado Padilla, and Joseph Doherty on the demographics of the the residents of the Park.⁴⁵ First, this information is crucial to determining what a comparable community to the Park would be, as required by the Ordinance. Second, this information is directly relevant to the issue of whether the closure of the Park will have a disparate impact on racial minorities and other protected classes in Palo Alto. The City’s actions must be consistent with fair housing requirements, and utilize the least discriminatory means possible to effectuate its ordinances.

⁴² Id. at 12-13, 15.

⁴³ *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1172 (1996), as modified on denial of reh'g)(discussing the requirements of a fair hearing).

⁴⁴ *Stanson v. San Diego Coast Reg'l Com.*, 101 Cal. App. 3d 38, 45, 161 Cal. Rptr. 392, 397 (Ct. App. 1980).

⁴⁵ Tentative Decision, 16.

Nearly all of the park residents are Latino. In contrast, only 6.2 percent of the population of Palo Alto is Latino.⁴⁶ As noted above, many of the residents are seniors, people with disabilities, and/or families with children. Federal and state fair housing laws recognize that actions which have a disparate impact on protected groups of people may constitute illegal discrimination even when they do not overtly target those groups.⁴⁷ The closure of Buena Vista Mobile Home Park would certainly have a discriminatory effect on Latinos in Palo Alto and would likely also have a discriminatory effect on people with disabilities and families with children. Accordingly, any relocation assistance must ensure that the residents can access housing in communities that have opportunities similar to those in Palo Alto.

Moreover, Palo Alto has an obligation under the Fair Housing Act to affirmatively further fair housing or to take affirmative steps to promote fair housing.⁴⁸ The preservation of the Park and keeping the residents in Park is a step towards affirmatively furthering fair housing.⁴⁹ In fact, in its 2000 Analysis of Impediments to Fair Housing Choice, Palo Alto recognized the preservation of the Park “as a program that would support Palo Alto’s fair housing goals.”⁵⁰ As such, Palo Alto’s approval of that closure would be inconsistent with its fair housing obligations.

CONCLUSION

⁴⁶ 2010 Census Data, <http://www.bayareacensus.ca.gov/cities/PaloAlto.htm>

⁴⁷ *Plaff v. United States HUD*, 88 F.3d 739, 745 (9th Cir. 1996); *Oti Kaga v. South Dakota Housing Dev. Auth.*, 342 F.3d 871, 883 (8th Cir. 2003).

⁴⁸ 42 U.S.C. 3608(e)(5).

⁴⁹ The Tentative Decision rejected the Resident’s Association’s argument that Palo Alto’s failure to take any action to preserve Buena Vista violates Palo Alto’s Housing Element. The tentative decision takes the position that the program to preserve the Park in the Housing Element is a general policy statement and is not a legal basis for denying the closure application. The action to close the Park is inconsistent with the City’s Housing Element. The closure of the Park will lead to the loss of over 117 units of affordable housing. The City has no plan for the replacement of those units, which is inconsistent with both the current and prior Housing Element.

⁵⁰ City of Palo Alto, Analysis of Impediments to Fair Housing Choice, 2000-2005, available at <http://www.cityofpaloalto.org/civicax/filebank/documents/13325>.

The current decision, as it stands, does not comport with the Ordinance as it will not allow residents to relocate to comparable housing nor will it adequately compensate residents for the loss of their home. Moreover, the City of Palo Alto will lose an important source of affordable housing with the Park closure and will face the displacement of over 300 residents, with no adequate relocation assistance. Therefore, we respectfully request that the tentative decision be reconsidered.

Respectfully submitted,



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