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DEC 21 2016

DAVID H. YAMASAKI
Clerk of Superior Court
Superior Court of CA County of Santa Clara
BY Wizconde DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

BUENA VISTA MHP RESIDENTS
ASSOCIATION,

Plaintiff/Petitioner,

vs.

CITY OF PALO ALTO,

Defendant/Respondent,

TOUFIC JISSER, AS TRUSTEE OF THE
TOUFIC AND EVA JISSER REVOCABLE
TRUST,

Real Party in Interest.

Case No. 2015-1-CV-284763

ORDER RE: PETITION FOR WRIT OF
MANDATE

The petition for writ of mandate by petitioner Buena Vista MHP Residents Association (“Petitioner”) came on for hearing before the Honorable Brian C. Walsh on December 5 and 7, 2016, in Department 12 of the Santa Clara County Superior Court. Melissa A. Morris and Madeline Howard appeared as counsel for Petitioner. Kevin D. Siegel appeared as counsel for respondent City of Palo Alto (the “City”). Margaret E. Nanda appeared as counsel for real party

1 in interest Toufic Jisser, as trustee of the Toufic and Eva Jisser Revocable Trust (“Park Owner”).
2 Following the hearing, the matter was taken under submission. The Court, having fully
3 considered the record and the parties’ papers and arguments, finds and orders as follows:

4 **Factual and Procedural Background**

5 Buena Vista Mobile Home Park (the “Park”) is the only mobile home park located in
6 Palo Alto, California. The Park contains 12 studio apartments, 1 single family home, and
7 approximately 100 mobile home spaces, 98 of which are occupied by resident families. The
8 residents of the Park are predominately at, or below, the “low” income level as established by the
9 standards issued by the Department of Housing and Urban Development. Approximately one-
10 quarter of the mobile home households reported that at least one member of the household was
11 disabled. The dozens of children who live at the Park attend Palo Alto’s excellent public schools.
12 In addition, the Park is located in close proximity to public transit, medical facilities, parks,
13 libraries, and other amenities.

14 On November 9, 2012, the Park Owner submitted an application to the City to close the
15 Park.¹ Several months later, on May 2, 2013, the Park Owner submitted his first Relocation
16 Impact Report (“RIR”) to the City. After receiving comments on the RIR from Petitioner, the
17 City determined that the original RIR was incomplete. The Park Owner subsequently submitted
18 four amended drafts of the RIR to the City, which were also found to be incomplete.

19 On February 10, 2014, the Park Owner submitted his Fifth Amended RIR to the City. The
20 Fifth Amended RIR addressed the 98 spaces in the Park occupied by mobile homes, travel
21 trailers, and recreational vehicles. It included a summary of the Park’s history; the price at which
22 the Park was purchased; an appraisal of the Park (based on its continued use as a mobile home
23 park, its highest and best use permitted by the zoning for the site, and its highest and best use
24 permitted by the new zoning being requested by the Park Owner); a chronology of events
25 relating to the Park Owner’s attempt to close the Park; a summary of applicable law regarding
26 the closure of mobile home parks; resident questionnaires from the mobile home households;
27 appraisals of the mobile homes conducted between January and April 2013, by the appraiser

28 ¹ The application to close the Park is entitled “Development Review Application.”

1 selected by the Park Owner, Beccaria and Weber, Inc.;² a description of the proposed new use
2 for the site;³ a proposed timetable for conversion of the Park; a description of the size, number of
3 bedrooms, manufacturer, and date of manufacture of each mobile home; demographic
4 information about the residents of the Park; a discussion of the Park's amenities; a discussion of
5 mobile home parks within a 35 mile radius of the Park;⁴ a discussion of condominiums within a
6 35 mile radius of the Park; an estimate from a mover of the cost to break down and move a
7 mobile home; a discussion of apartments in surrounding cities; and a list of apartments in
8 surrounding cities.

9 In addition, the Fifth Amended RIR set forth proposed mitigation measures for (1)
10 residents who were able to relocate their mobile homes to another comparable mobile home park
11 and (2) residents who could not relocate their mobile homes.⁵ For residents relocating their
12 mobile homes to another park, the Park Owner offered to: pay for the cost of relocating and
13 setting up the mobile home within 35 miles of the Park, which was estimated to range between
14 \$4,870 and \$5,250 per household; pay a rent subsidy/differential, the first and last month's rent,
15 and a security deposit, which was estimated to range between \$3,500 and \$5,300 per household;
16 return the residents' deposits for the Park; pay for the cost of moving any personal property,
17 which was estimated to be \$990; pay for the cost of a two night motel stay, which was estimated
18 to be \$288; and, on a case-by-case basis, pay for special equipment or moving assistance
19 required by handicapped or disabled residents. For residents who could not relocate their mobile
20 homes, the Park Owner offered to: pay the on-site, fair market value of each mobile home per the
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22 ² The appraisals took into account any improvements and additions made to the mobile homes, whether permitted or
23 unpermitted. The appraisals set forth the fair market value of the mobile homes assuming that the Park was not
being closed.

24 ³ The Park Owner stated that "the proposed development would replace the [Park] with a new, well-designed infill
25 apartment home community" and "[a]pproximately one-half acre of the original site of the mobilehome park will be
retained by the Park Owner for future development."

26 ⁴ There are thirty-one mobile home parks within ten miles of the Park. Five of those are "senior parks" and twenty-
27 three of those are "family parks." Of the twenty-three "family parks," four parks are comparable to the Park in age
and size, but none are comparable in terms of amenities and condition. Three of the four parks identified are
28 considered "better" parks in terms of condition and amenities and one is, presumably, "worse."

⁵ The Fifth Amended RIR noted that the vast majority of mobile homes at the Park could not be relocated to other
mobile home parks due to their age and condition.

1 appraisals performed by Beccaria & Weber, Inc. in 2013, which was estimated to range between
2 \$5,500 and \$45,000; pay for the cost of moving any personal property, which was estimated to
3 be \$990; pay a partial rent subsidy/differential, the first and last month's rent, and a security
4 deposit, which was estimated to range between \$3,300 and \$4,200 for residents moving to a new
5 mobile home in another mobile home park, between \$12,000 and \$16,200 for residents moving
6 to a one bedroom apartment, between \$16,300 and \$22,500 for residents moving to a two
7 bedroom apartment, and between \$20,000 and \$30,600 for residents moving to a three bedroom
8 apartment; return the residents' deposits for the Park; and, on a case-by-case basis, pay for
9 special equipment or moving assistance required by handicapped or disabled residents.

10 After it deemed the Fifth Amended RIR complete, the City referred the matter to the
11 appointed hearing officer, Craig Labadie ("Hearing Officer"). The Hearing Officer heard
12 argument on, and subsequently implemented, the following procedural framework: there would
13 be a three-day public hearing; the parties could file legal briefs and present evidence; the Hearing
14 Officer would issue a written tentative decision; the parties would have an opportunity to
15 comment on the tentative decision; the Hearing Officer would issue a final decision; and the
16 parties then had the right to appeal the final decision to the City Council.

17 The public hearing was held on May 12, 13, and 14, 2014. At the hearings, Petitioner
18 presented argument from its counsel, written expert reports from Kenneth Baar, PhD. ("Baar"),
19 Amado Padilla, PhD. ("Padilla"), and Joseph Doherty, PhD. ("Doherty"), testimony from Baar
20 and Padilla, and testimony from residents. Petitioner's request to call the Park Owner and his son
21 as witnesses was denied. In addition to relying on the information contained in the Fifth
22 Amended RIR, which included the appraisals by Beccaria & Weber, Inc., the Park Owner
23 presented testimony from its selected relocation specialist, David Richman ("Richman"). Upon
24 questioning by Petitioner's counsel, Richman acknowledged that, on average, the proposed
25 mitigation measures were not enough for the residents to purchase new mobile homes within 35
26 miles of the Park without additional financing in the range of \$20,000 to \$50,000. Additionally,
27 Richman stated that for those residents who were willing to move to an apartment, instead of a
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1 new mobile home in another mobile home park, they could not find an apartment in the Bay
2 Area for the same amount of rent that they paid to live at the Park.

3 At the close of the third day of the hearing, the Park Owner submitted a letter to the
4 Hearing Officer once again amending the RIR. The Park Owner stated that he was amending the
5 RIR in light of the concerns expressed during the hearing about the amount of mitigation
6 assistance being provided to the residents, particularly given the age of the appraisals of the
7 mobile homes and the fact that only a partial rent subsidy/differential was being offered. The
8 Hearing Officer advised the parties that he would consider the amendment to the RIR despite
9 Petitioner's objections. The amendment to the RIR altered the proposed mitigation measures as
10 follows: (1) David Beccaria ("Beccaria") of Beccaria & Weber, Inc. would perform new
11 appraisals of the mobile homes six months prior to the relocation of any resident; (2) residents
12 who could not relocate their mobile homes to a comparable mobile home park would be paid the
13 on-site, fair market value of their mobile homes as reflected in the new appraisals; (3) if the
14 updated appraisal amount was less than the amount of the 2013 appraisal, then the Park Owner
15 would pay the higher of the two amounts; and (4) residents who could not relocate their mobile
16 homes to a comparable mobile home park would be paid a full rent subsidy/differential for 12
17 months.

18 On September 30, 2014, following the submission of post-hearing briefs and
19 supplemental expert reports, the Hearing Officer issued his Final Decision, approving closure of
20 the Park. The Hearing Officer determined that the Park Owner met his burden of proof by
21 proposing a package of mitigation measures that met the criteria set forth in the City's mobile
22 home park conversion ordinance for mandatory approval of the application to close the Park.
23 Because most, if not all, of the residents would be unable to relocate their mobile homes to other
24 mobile home parks, the Hearing Officer began by reviewing and summarizing the mitigation
25 measures proposed for residents who could not relocate their mobile homes to another Park. The
26 Hearing Officer found that the relocation benefits as proposed by the Park Owner included the
27 following payments to park residents: (a) the full, on-site appraised value of each mobile home;
28 (b) a rent subsidy equal to 100 percent of the differential between the average space rent at the

1 park and average market rents for replacement housing; (c) start-up costs equal to three months'
2 rent (first and last months' rent plus security deposit); (d) moving expenses (relocation of all
3 personal property plus temporary lodging during the move); and (e) special assistance for
4 handicapped/disabled residents. He also noted that the services of a housing relocation specialist
5 would be made available to help residents identify available replacement housing options.

6 The Hearing Officer then concluded that it was "necessary and appropriate to supplement
7 the mitigation measures set forth in the RIR in several ways: (a) providing for payments to park
8 residents for the on-site value of their mobilehomes as determined in updated appraisals, (b)
9 increasing the rent subsidy from 40% to 100% of the differential between average space rents in
10 the park and average rents for apartments in surrounding cities for a period of one year, (c)
11 updating average apartment rents so that the rental subsidy and start-up costs will reflect current
12 market conditions, (d) reimbursing residents for actual moving costs, rather than amounts
13 provided in federal guidelines, (e) clarifying the special assistance to be provided to handicapped
14 or disabled residents, and (f) providing that the housing relocation specialist should resolve any
15 disputes over the amount of moving costs and special assistance." The Hearing Officer stated
16 that "[t]aken as a whole, the above mitigation measures substantially lessen the adverse impacts
17 of park closure on residents who are required to relocate. With the assistance of the housing
18 relocation specialist, the relocation benefits to be provided by the park owner will go a long way
19 toward helping individual residents pay the cost of relocating into alternative housing. Neither
20 State law nor the Conversion Ordinance requires the park owner to guarantee the success of this
21 process by such extraordinary measures as paying the full cost of purchasing a replacement
22 mobilehome for each resident." The Hearing Officer also determined that the mobile home
23 appraisal values indirectly accounted for the quality of Palo Alto's schools, even though he
24 found that an analysis of available schools was not required to determine what constitutes
25 comparable replacement housing.

26 Petitioner promptly appealed the Hearing Officer's Final Decision to the City Council.
27 The City Council first addressed the matter in January 2015, and adopted procedures for the
28 appeal hearing. The appeal hearing took place on April 13 and 14, 2015. The City Council

1 received substantial new evidence from the parties, including additional expert reports and
2 testimony.

3 At the close of the appeal hearing, the City Council tentatively adopted the Hearing
4 Officer's Final Decision with the following modifications: (1) updated appraisals of the on-site,
5 fair market value of each mobile home were to be completed within six months of the resident's
6 relocation from the Park, at the Park Owner's expense; (2) the updates were to be prepared by
7 Beccaria & Weber, Inc. according to the methodology utilized in the 2013 reports, except that
8 the appraiser would revise the scope of work to include safety and schools; (3) if for any mobile
9 home the updated appraisal amount was less than the appraisal calculated in the 2013 reports, the
10 Park Owner was to pay the higher of the two appraisals, as modified by the Hearing Officer; (4)
11 within six months of the resident's relocation from the Park, the Park Owner was to complete an
12 updated market survey of average apartment rents in the cities surrounding Palo Alto, using the
13 methodology set forth in the RIR; (5) the survey would be the basis for calculating the 12-month
14 rent differential and start-up costs described in the Hearing Officer's decision; (6) within 30 days
15 of receiving the updates, any resident could submit a written objection, comment, or
16 supplemental data to the Hearing Officer; (7) the Park Owner would have 15 days to rebut any
17 such submissions; (8) the Hearing Officer would then make a determination regarding the
18 appraisal amount and comparable market survey based on the evidence submitted; (9) the
19 Hearing Officer could not award less than the amounts contained in the updated analyses of the
20 Park Owner, or more than the amounts supported by evidence submitted by the mobile home
21 owners; (10) the Hearing Officer's decision would be final and not appealable to the City
22 Council; (11) the final determination of actual moving costs and additional mitigations for
23 disabled mobile home owners would be determined by Richman; and (12) where a one bedroom
24 mobile home unit has more than one bedroom because of unpermitted additions and where the
25 family is greater than three people, the rental compensation would provide for a two bedroom
26 rental unit.

27 A few weeks later, addressing the City Council's request that he modify his appraisals to
28 include safety and schools, Beccaria wrote to the City Council and informed it that he would not

1 make any changes to his “scope of work” or the appraisal methodology. Beccaria advised he
2 previously considered the issue of schools and safety as such issues were inherent in the location
3 and neighborhood data utilized in the 2013 appraisals.

4 On May 26, 2015, the City Council issued its Final Decision, denying Petitioner’s appeal
5 and approving closure of the Park. The City Council adopted the Hearing Officer’s Final
6 Decision and its tentative decision with the following modifications: the updated appraisals of
7 the on-site fair market value of each mobile home were to be completed no more than six months
8 prior to the expiration of the six-month notice of termination of tenancy; the updated appraisals
9 were to be prepared by Beccaria & Weber, Inc. according to the methodology utilized in the
10 2013 reports; the updated appraisals would then be reviewed by an independent appraiser
11 selected by the City in order to ensure that the appraisals were “adequately supported and
12 reasonable, and that they appropriately reflect the Palo Alto location of the assessed mobile
13 units”; if the peer reviewer identified flaws in one or more of the appraisals, the peer reviewer
14 was to provide an alternative opinion of value, using standards and methods appropriate to the
15 appraisal profession; the Hearing Officer would then conduct a limited supplemental review of
16 the updated appraisals, the peer reviewer’s report/appraisal, and any comments or objections
17 thereto; and the Hearing Officer would subsequently make a final determination as to the amount
18 of relocation assistance to be provided in light of the updated appraisals and new market survey.

19 On August 24, 2015, Petitioner filed the instant petition for writ of mandate, seeking an
20 order reversing the Final Decision of the City Council and directing the City to condition closure
21 of the Park upon the provision of adequate mitigation measures.

22 **Discussion**

23 Petitioner argues that the Court should grant its petition because it was denied its right to
24 a fair hearing, it was denied due process, the City Council’s Final Decision is not supported by
25 the findings, the City Council’s findings are not supported by the evidence, the City failed to
26 affirmatively further fair housing, and the City Council’s Final Decision is inconsistent with Palo
27 Alto’s Housing Element.

28 **I. Standard of Review**

1 As an initial matter, the parties dispute the applicable standard of review. Petitioner
2 contends that the Court should apply the “independent judgment” standard under Code of Civil
3 Procedure section 1094.5, subdivision (c). The City asserts that the Court should apply the
4 “substantial evidence” standard under Code of Civil Procedure section 1094.5, subdivision (c).
5 Finally, the Park Owner contends that the Court should apply the “abuse of discretion” standard
6 under Code of Civil Procedure section 1085.

7 The Court concludes that the City Council’s administrative findings are subject to review
8 under the independent judgment standard set forth in Code of Civil Procedure section 1094.5,
9 subdivision (c).

10 Under Code of Civil Procedure section 1094.5, a party may file a petition for writ of
11 administrative mandamus “for the purpose of inquiring into the validity of any final
12 administrative order or decision made as the result of a proceeding in which by law a hearing is
13 required to be given, evidence is required to be taken, and discretion in the determination of facts
14 is vested in the inferior tribunal, corporation, board, or officer.” (Code Civ. Proc., § 1094.5,
15 subd. (a).) Where the decision occurs as a result of a proceeding in which a hearing is required,
16 evidence must be taken, and the administrative tribunal is vested with discretion to determine the
17 facts, administrative mandamus under section 1094.5 is the exclusive remedy for judicial review
18 of the quasi-adjudicatory action of administrative agencies. (*People v. Tulare County* (1955) 45
19 Cal.2d 317, 319.)

20 Here, the City Council’s decision was the result of a lengthy proceeding in which a
21 hearing was required, evidence was required to be taken, and discretion in the determination of
22 facts was vested in the inferior tribunal. (See Gov. Code, § 65863.7, subds. (c)-(e); see also
23 PAMC, §§ 9.76.010, 9.76.040.) The City Council was acting in a quasi-judicial capacity, as
24 opposed to a quasi-legislative capacity, when it approved closure of the Park. (See *Joint Council*
25 *of Interns & Residents v. Board of Supervisors* (1989) 210 Cal.App.3d 1202, 1210-1211; see also
26 Admin. Rec., pp. 1517, 1608.) Notably, Palo Alto’s mobile home park conversion ordinance,
27 which is codified in Chapter 9.76 of the Palo Alto Municipal Code (“Conversion Ordinance”),
28 itself suggests that any action challenging a decision regarding closure of the Park must be made

1 pursuant to Code of Civil Procedure Section 1094.5. (See PAMC, § 9.76.140 [stating that any
2 action challenging a decision made pursuant to the Conversion Ordinance must be brought
3 within the 90-day time period set forth in Code of Civil Procedure section 1094.6, which pertains
4 to the filing time for petitions for administrative mandamus].)

5 Under subdivision (c) of Code of Civil Procedure section 1094.5, the Legislature has
6 identified two different standards by which the trial court determines whether administrative
7 findings are supported by the evidence—the independent judgment and substantial evidence
8 standards—without stating which standard applies in a given case.⁶ But the California Supreme
9 Court has explained that in the case of “administrative decisions which substantially affect
10 vested, fundamental rights,” the trial court “exercises its independent judgment upon the
11 evidence disclosed in a limited trial de novo.” (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143, fn.
12 omitted.) In other cases in which the decision does not substantially affect vested fundamental
13 rights, the trial court “must still review the entire administrative record to determine whether the
14 findings are supported by substantial evidence.” (*Id.*, at p. 144.) Even where the independent
15 judgment standard is applicable, the trial court still affords the agency’s decision considerable
16 weight: “[A] trial court must afford a strong presumption of correctness concerning the
17 administrative findings, and the party challenging the administrative decision bears the burden of
18 convincing the court that the administrative findings are contrary to the weight of the
19 evidence.” (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.)

20 “Whether an administrative decision substantially affects a fundamental vested right must
21 be determined on a case-by-case basis. A right may be deemed fundamental ‘on either or both of
22 two bases: (1) the character and quality of its economic aspect; [or] (2) the character and quality
23 of its human aspect.’ ‘The ultimate question in each case is whether the affected right is deemed
24 to be of sufficient significance to preclude its extinction or abridgement by a body lacking
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26 ⁶ “Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized
27 by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court
28 determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is
established if the court determines that the findings are not supported by substantial evidence in the light of the
whole record.” (Code Civ. Proc., § 1094.5, subd. (c).)

1 *judicial power.* ‘In determining whether the right is fundamental the courts do not alone weigh
2 the economic aspect of it, but the effect of it in human terms and the importance of it to the
3 individual in the life situation.’ ” (*Wences v. City of Los Angeles* (2009) 177 Cal.App.4th 305,
4 313–14 (“*Wences*”), internal citations omitted; see also *Kerrigan v. Fair Employment Practice*
5 *Com.* (1979) 91 Cal.App.3d 43, 51 [“Courts have interpreted fundamental vested rights to
6 include individual rights guaranteed under the due process and equal protection clauses of the
7 state and federal Constitutions. [Citation.] A fundamental right may also be vested by statute.”].)

8 Here, this case substantially affects a fundamental vested right as it affects the Park
9 Owner’s right to go out of business and change the use of his property. (See *Keh v. Walters*
10 (1997) 55 Cal.App.4th 1522, 1533; see also Gov. Code, § 7060, subd. (a).) Furthermore, the
11 residents have a fundamental vested right in receiving adequate relocation assistance that does
12 not exceed the costs of relocation. (Gov. Code, § 65863.7, subds. (e), (i); PAMC, §§ 9.76.010,
13 9.76.040, subd. (g).) The residents’ right to these relocation benefits is vested by statute. (*Ibid.*)
14 Moreover, their right to adequate mitigation measures is of a fundamental nature from the
15 standpoint of its effect in human terms as the residents stand to lose their homes and the
16 adequacy of the proposed mitigation measures will affect where they live and their ability to
17 afford housing. Consequently, the Court applies an independent judgment standard to its review
18 of the City Council’s Final Decision and reviews the administrative record to determine whether
19 the weight of evidence supports the City Council’s findings.⁷ (See *Wences, supra*, 177
20 Cal.App.4th at p. 313.)

21 The Court also notes that questions of law are always reviewed de novo. (*Duncan v.*
22 *Department of Personnel Admin.* (2000) 77 Cal.App.4th 1166, 1174.) Pure legal questions
23 include the interpretation of statutes (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24
24 Cal.4th 415, 432) and municipal laws (*Woo v. Super. Ct.* (2000) 83 Cal.App.4th 967, 974).
25 Although the agency’s interpretation of a statute or ordinance is given deference by the Court
26 (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 219) and
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28 ⁷ In any event, even if the Court applied a lower standard of review, such as substantial evidence or abuse of discretion, the outcome would be the same for the reasons articulated below.

1 “an administrative agency’s interpretation of its own regulation . . . deserves great weight”
2 (*Carmona v. Division of Industrial Safety* (1975) 13 Cal.3d 303, 310), it is ultimately “for the
3 courts, not for administrative agencies, to lay down the governing principles of law.”
4 (*Garamendi v. Mission Ins. Co.* (2005) 131 Cal.App.4th 30, 41.)

5 **II. Law Governing Closure of Mobile Home Parks**

6 State law sets forth a comprehensive statutory scheme governing the rights and
7 obligations of mobile home park landlords and tenants. The Mobilehome Residency Law, Civil
8 Code section 798.55, et seq., contains the following legislative declaration of its overall purpose:
9 “The Legislature finds and declares that, because of the high cost of moving mobilehomes, the
10 potential for damage resulting therefrom, the requirements relating to the installation of
11 mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of
12 mobilehomes occupied within mobilehome parks be provided with the unique protection from
13 actual or constructive eviction afforded by the provisions of this chapter.” (Civ. Code, § 798.55,
14 subd. (a).) The Legislature also provided that tenancies in mobile home parks may not be
15 terminated, except for specified reasons and following the giving of certain notices. (*Id.*, subd.
16 (b).) One of the permissible reasons for terminating a mobile home park tenancy is the “change
17 of use of the park, or any portion thereof.” In this situation, management must provide the
18 mobile home owners with at least six months’ notice of the termination of tenancy after all
19 required permits requesting a change of use have been approved by the applicable local
20 government body. (*Id.*, subd. (g).)

21 The Legislature provided further protections for mobile home park residents in
22 Government Code section 65863.7. That statute requires that prior to conversion of a mobile
23 home park to another use, closure of the mobile home park, or cessation of use of the land as a
24 mobile home park, the person proposing the change in use shall file an RIR. The RIR must
25 address the availability of adequate replacement housing in mobile home parks and relocation
26 costs. (Gov. Code, § 65863.7, subd. (a).) In addition to other procedural steps, the statute
27 requires: “The local legislative body, or its delegated advisory agency, shall review the report,
28 prior to any change of use, and may require, as a condition of the change, the person or entity to

1 take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the
2 ability of displaced mobile home park residents to find adequate housing in a mobile home park.
3 The steps to be taken to mitigate shall not exceed the reasonable costs of relocation.” (*Id.*, subd.
4 (e).) The term “reasonable costs of relocation” is not defined in the statute or in any published
5 court decisions.

6 In light of the laws cited above, Palo Alto adopted the Conversion Ordinance, which
7 recognizes the unique circumstances presented by mobile home parks:

8 The mobilehome owners who rent spaces for their homes in mobilehome parks
9 make a considerable investment in purchasing, maintaining and improving their
10 homes and in maintaining the rented space for their homes. If a park closes or is
11 converted to a new use, the mobilehome owners may lose their homes and the
12 investment in them due to the high cost and risk of injury involved in moving a
13 mobilehome, the fact that improvements to a home may not be movable and lack
14 of vacant mobilehome spaces in parks within a reasonable distance from the
15 closing park that will accept relocating homes. In recognition of the unique
16 situation and vulnerability of mobilehome owners, the State Legislature adopted
17 the Mobilehome Residency Law, Civil Code Section 798, et seq., which protects
18 them from eviction except for specified and limited causes, and Government
19 Sections 65863.7 and 66427.43, which authorize the city to require park owners
20 who want to close a park or convert it to another use to provide reasonable
21 relocation assistance as a condition of closing and converting a park.

22 (PAMC, § 9.76.010.)

23 The Conversion Ordinance was expressly adopted pursuant to Government Code
24 Section 65863.7 and the City’s police power “to provide a procedure and standards for assessing
25 the adverse impacts of a mobilehome park closure or conversion on the displaced mobilehome
26 owners residing in the park that is being closed and to determine appropriate relocation
27 assistance for those residents.” (PAMC, § 9.76.010.) The Conversion Ordinance states that it
28 shall be interpreted so as to be consistent with the Mobilehome Residency Law and Government

1 Code section 65863.7. (PAMC, § 9.76.130.)

2 Prior to conversion of the Park, the Park Owner must file with the City an application to
3 convert the Park, resident questionnaires, and an RIR. (PAMC, § 9.76.030, subd. (a).) The term
4 “conversion” is defined to include both closure with cessation rentals and conversion to another
5 use. (PAMC, § 9.76.020, subd. (d).) Of particular importance, the RIR must include proposed
6 measures to mitigate the adverse impacts of the conversion on park residents. (PAMC, §
7 9.76.030.)

8 Following completion of the conversion application, a hearing on the application is to be
9 conducted by a hearing officer selected by the City. (PAMC, § 9.76.040.) The criteria for
10 approval or denial of the conversion application are detailed in section 9.76.040, subdivision (g).
11 Under that provision, the Hearing Officer is required to approve the application on the condition
12 that the mitigation measures proposed by the Park Owner are “adequate to mitigate the adverse
13 impacts on the displaced residents” and may condition the approval on additional conditions,
14 subject to the overall limitation that the conditions of approval cannot exceed the reasonable
15 costs of relocation. Specific lists of possible mitigation measures are set forth, depending upon
16 whether or not the residents’ mobile homes can or cannot be relocated to a space in a comparable
17 mobile home park.⁸

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⁸ “(1) For residents whose mobilehomes can be relocated to a space in a comparable mobilehome park: (a) The cost of physically relocating the mobilehome, as defined above, within thirty-five miles of the park that is closing. (b) The cost of moving the personal property in the mobilehome. (c) The cost of staying overnight in a motel for the number of nights required to move and set up the mobilehome in the new park. (d) Costs incurred to move into the new park, such as first and last months rent and security deposits. (e) For those residents who qualify as low or very low income persons or families, as defined by HUD or are receiving supplemental social security, a lump sum based on consideration of the difference between higher rent at the new park for one year and the park that is closing. (f) For those residents who are handicapped or disabled, a lump sum based on consideration of the cost of obtaining any assistance necessary to move, such as help with packing or other physical tasks that the resident cannot do without assistance and to offset the cost of replacing any special equipment that cannot be moved and is used because of the resident's disability. [(¶)] (2) For residents whose mobilehomes cannot be relocated to a space in a comparable park: (a) A lump sum based on consideration of the cost of moving to and purchasing or renting comparable housing, including, but not limited to, the cost of purchasing a comparable mobilehome in a comparable mobilehome park, the cost of moving personal property from the mobilehome in the closing park to comparable housing, payment of first and last month's rent and any security deposit at the comparable housing, the loss of investment in the mobilehome that cannot be relocated and any remaining loan payments that must be made even though the resident cannot continue to live in the mobilehome. (b) If the resident is disabled or handicapped, an additional sum toward the cost of obtaining any assistance needed to enable the resident to move. (c) If the residents are low income persons or a low income family, as defined by HUD, or are receiving supplemental social security, an additional sum to partially offset any higher rent at the comparable housing during the first year at the new location.”

1 Certain limited total or partial exemptions to the relocation assistance requirement are
2 provided if the Park Owner demonstrates that the imposition of relocation obligations would
3 eliminate substantially all reasonable use or economic value of the park for alternative uses.
4 (PAMC, § 9.76.080.)

5 In summary, state law permits the owner of a mobile home park to close the park, and
6 terminate the tenancies of the mobile home owners who rent spaces in the park, for the purpose
7 of converting it to another use. This right is conditioned on the obligation to prepare an RIR
8 analyzing the adverse impacts of closure on park residents and to mitigate those impacts by
9 paying for relocation assistance in an amount not to exceed the reasonable costs of relocation.
10 The Conversion Ordinance implements state law by detailing the required contents of the RIR,
11 listing potential supplemental measures, and prescribing an administrative process for reviewing
12 the adequacy of the park owner's proposed mitigation measures before the park closure
13 application can be approved.

14 **IV. Analysis**

15 The primary issue to be decided by this Court is whether the weight of the evidence
16 supports the City Council's findings that the mitigation measures set forth in its Final Decision
17 are adequate to mitigate the adverse impacts of the Park closure on Park residents and that those
18 measures do not exceed the reasonable costs of relocation.

19 Based on the record here, the Court is compelled to conclude that the City Council lacked
20 sufficient evidence to find that the mitigation measures are adequate to mitigate the adverse
21 impacts of Park closure on the residents and do not exceed the reasonable costs of relocation.

22 As indicated above, the City Council's Final Decision provided for the following
23 mitigation measures: (1) payments to residents for the on-site value of their mobile homes based
24 on updated appraisals conducted by Beccaria & Weber, Inc. and subject to a peer review
25 conducted by an independent appraiser, comments from the parties, and subsequent review and
26 approval by the Hearing Officer; (2) payments of start-up costs and a rent subsidy/differential for
27 a period of one year based on an updated market survey; and (3) payments of actual moving
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1 costs and unspecified special assistance to be provided to handicapped or disabled residents, with
2 any disputes regarding the same to be resolved by Richman.

3 As is readily apparent, the evidence upon which the relocation assistance is to be based,
4 i.e., the updated appraisals and market survey, does not even exist.⁹ Thus, the City Council
5 approved the closure of the Park relying on the mitigation measures which are based on
6 appraisals that have not been conducted, a market survey that has not been performed, actual
7 moving costs that are unknown, and assistance for disabled and handicapped residents that is
8 unspecified. Consequently, the City Council acted even though the actual amount of relocation
9 assistance that would be provided to the residents was unknown and the calculation of whether
10 the cost of the mitigation measures exceeds the reasonable costs of relocation could not yet be
11 made.

12 Because the City Council did not have any evidence showing the amount of relocation
13 assistance that would actually be provided to the residents, it did not—as a matter of law—have
14 sufficient evidence to determine that the mitigation measures were adequate to mitigate the
15 adverse impacts on the residents and did not exceed the costs of relocation. In fact, the City
16 Council abdicated its duty to make such a determination by delegating its purview to the Hearing
17 Officer and Richman to make determinations, at some future point in time, that (1) the updated
18 appraisals are “adequately supported and reasonable, and that they appropriately reflect the Palo
19 Alto location of the assessed mobile units,” (2) the rental subsidy and start-up costs “reflect
20 current market conditions,” and (3) the amount of moving costs and special assistance for
21 disabled/handicapped residents are appropriate. The City Council’s provision for further review
22 by the Hearing Officer and Richman of the adequacy of the updated appraisals, the amount to be
23 provided for the start-up costs and the rent subsidy/differential, the amount to be provided for
24 actual moving costs, and the amount to be provided to disabled/handicapped residents highlights
25 the fact that it failed to determine, and lacked evidence to conclude, at the time it approved the
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28 ⁹ Notably, the City stated at oral argument that the updated appraisals were required in order to ensure that the appraisals were not stale and that enough money was provided to the residents. Similarly, counsel for the Park Owner stated at oral argument that the appraisals needed to be updated because it would be unfair for the amount of relocation assistance to be based on the 2013 appraisals.

1 application to close the Park that the mitigation measures were adequate to mitigate the adverse
2 impacts to the residents.

3 Despite the frequent references in their papers to the “amount” of relocation assistance to
4 be provided to the residents, the City and the Park Owner asserted during oral argument that the
5 City Council did not need to know the “amount” of relocation assistance that would be provided
6 to the residents in order to determine whether the mitigation measures were adequate. Rather,
7 they contended that the City Council only needed to know the “categories” of relocation
8 assistance that were to be provided in order to determine that the assistance was adequate to
9 mitigate the adverse impact to the residents.

10 This interpretation is unsupportable and belied by the plain language of Government
11 Code section 65863.7 and the Conversion Ordinance. As previously stated, Government Code
12 section 65863.7, subdivision (e) states that “[t]he local legislative body, or its delegated advisory
13 agency, shall review the report, prior to any change of use, and may require, as a condition of the
14 change, the person or entity to take steps to any adverse impact of the conversion, closure, or
15 cessation of use on the ability of displaced mobile home park residents to find adequate housing
16 in a mobile home park. *The steps to be taken to mitigate shall not exceed the reasonable costs of*
17 *relocation.*” (Gov. Code, § 65863.1, subd. (e), emphasis added.) Similarly, the Conversion
18 Ordinance provides that the hearing officer is required to approve the application on the
19 condition that the mitigation measures proposed by the Park Owner are “adequate to mitigate the
20 adverse impacts on the displaced residents” subject to the limitation that the conditions of
21 approval “*do not exceed the reasonable costs of relocation.*” (PAMC, § 9.76.040, subd. (d),
22 emphasis added.) Furthermore, the Conversion Ordinance lists several conditions that are based
23 on “a lump sum,” “costs,” or “cost.”¹⁰ Thus, in order to determine that the mitigation measures
24 are adequate and do not exceed the amounts to be paid for relocation, the City must necessarily
25 know, and make a determination as to, the amount of relocation assistance to be provided to the
26 residents.

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¹⁰ “Costs” is defined as “an amount that has to be paid or spent to buy or obtain something.” (See Oxford
Dictionaries, <https://en.oxforddictionaries.com/definition/cost>.)

1 This interpretation is also supported by section 9.76.080 of the Conversion Ordinance,
2 which pertains to exceptions to the requirement to provide relocation assistance. That provision
3 states that “[a]n applicant may seek a total exemption on the ground that *imposition of any*
4 *relocation assistance would eliminate substantially all* reasonable use or *economic value of the*
5 *property* for alternate uses” and “[a]n applicant may seek a partial exemption on the ground that
6 the *imposition of a particular relocation obligation would eliminate substantially all* reasonable
7 use or *economic value of the park* for alternate uses.” (PAMC, § 9.76.080 subs., (b), (c).) This
8 language further suggests that the City Council is required to know and determine the *amount* of
9 relocation assistance to be provided to the residents, as opposed to mere categories of assistance.

10 Because the City Council based its Final Decision on evidence that does not yet exist and
11 the City Council lacked evidence regarding the actual amount of relocation assistance that will
12 eventually be provided to the residents, the Court finds that the Final Decision was not supported
13 by the evidence.¹¹

14 **V. Conclusion**

15 In light of the foregoing, the petition for writ of mandate is GRANTED. The City
16 Council’s Final Decision approving the closure of the Park is reversed. The matter is remanded.

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19 December 21, 2016

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21 Brian C. Walsh
22 Judge of the Superior Court
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28 ¹¹ Given this finding, the Court need not reach Petitioner’s other arguments regarding its right to a fair hearing and due process, the City’s duty to affirmatively further fair housing, and the City’s alleged noncompliance with Palo Alto’s Housing Element.



**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SANTA CLARA
 DOWNTOWN COURTHOUSE
 191 NORTH FIRST STREET
 SAN JOSÉ, CALIFORNIA 95113
 CIVIL DIVISION**

FILED

DEC 21 2016

DAVID H. YAMASAKI
 Chief Executive Officer/Clerk
 Superior Court of CA County of Santa Clara
 BY: Ann Vizconde, DEPUTY

December 21, 2016

FILE COPY

RE: **Buena Vista MHP Residents Association vs City Of Palo Alto**
 Case Number: **2015-1-CV-284763**

PROOF OF SERVICE

ORDER RE: PETITION FOR WRIT OF MANDATE was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on December 21, 2016. CLERK OF THE COURT, by Ann Vizconde, Deputy.

- cc: Kevin Siegel 1901 Harrison St 9th Floor Oakland CA 94612
 Margaret E Nanda PO Box 1469 SAN JOSE CA 95109
 Madeline Howard 3701 Wilshire Blvd #208 Los Angeles CA 90010
 Melissa A Morris 152 N 3rd St 3rd Fl San Jose CA 95112