KENNETH C. TUREK
HENRY E. HEATER
DAVID SEMELSBERGER
JAMES C. ALLEN
GEORGE H. KAELIN III
LINDA B. REICH
DAVID M. DAFTARY

DONALD R. LINCOLN
OF COUNSEL

RONALD L. ENDEMAN
RETIRED

ENDEMAN, LINCOLN, TUREK & HEATER LLP
ATTORNEYS AT LAW
600 "B" STREET, SUITE 2400
SAN DIEGO, CA 92101-4582

TELEPHONE
(619) 544-0123

FACSIMILE
(619) 544-1251

www.elthlaw.com

hheater@elthlaw.com

December 26, 2012

The Honorable Chief Justice Tani G. Cantil-Sakauye
and Honorable Associates Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Chino MHC, LP v. City of Chino*
210 Cal. App. 4th 1049 (2012)
Petition for Review filed, Cal. Sup. No. S206855

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, Rule 8.1125(a), the League of California Cities (the "League") hereby requests depublication of the opinion in the above-referenced case (the "Opinion").

A. Nature of the League's Interest

The League is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, composed of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

B. Reasons Compelling Depublication

The Opinion arises from the City's denial of a mobilehome parkowner's application to convert its park to resident ownership. California Government Code section 66427.5[1] gives a city

[1]Unless otherwise noted, all statutory citations will be to the Government Code.

the discretion to consider conversion survey results as a factor in the city's ultimate decision to approve, conditionally approve, or disapprove a mobilehome park conversion application. Such discretion includes the authority to deny an application where a survey of resident support suggests the proposed conversion may be a "sham" to avoid rent control. *Goldstone v. County of Santa Cruz,* 207 Cal. App. 4th 1038, 1053-54 (2012). Here, in a depressed real estate market only 14 of the parks' 260 spaces (6.2%) returned surveys providing qualified support for the proposed conversion. Notwithstanding such meager support, the Court of Appeal held the city abused its discretion in denying the application.

1. The decision unreasonably usurps a city's discretion to make land use decisions, including as provided under Section 66427.5.

When a mobilehome parkowner converts its park to resident ownership, the park becomes exempt from local rent control. Cal. Gov't Code § 66427.5(f)(2). During the past decade, concern has arisen that some parkowners were purporting to convert their parks to resident ownership, merely to escape rent control, even though there was no real potential for a successful conversion. *See, e.g., El Dorado Palm Springs, Ltd. V. City of Palm Springs,* ("*El Dorado*") 96 Cal. App. 4th 1153 (2002). In *El Dorado, supra*, the court found that the prior version of section 66427.5 did not give a city discretion to deny an application to convert a mobilehome park, even where the city believed the conversion was a sham to avoid rental control. The court suggested that the solution to the "sham conversion" problem was a legislative one. The Legislature accordingly amended section 66427.5 to permit a city to consider the results of a survey of resident support for the conversion, in determining whether to permit any conversion. *Goldstone, supra,* 207 Cal. App. 4th at 1048-49.

As amended and noted above, section 66427.5 does not delimit a city's discretion in any way with respect to the survey's use. The amended statute contains no binding percentages or presumptions as to the required level of support.

Here, in a 260-space park, only 36 spaces returned surveys. Of those, only 14 spaces indicated some support for a conversion. Moreover, eight of the supporting spaces indicated only qualified support, depending on the availability of financial assistance to help them purchase their spaces. All supporting residents qualified their support as being predicated on an affordable purchase price. *Chino, supra,* 210 Cal. App. 4th at 757-58. Under the circumstances it is difficult to understand how the court could find the City abused its discretion.

The primary market for a proposed mobilehome park conversion is its existing residents. Here, in a depressed real estate market only 6.2% of the residents expressed some support for the conversion. Clearly, the City's decision was not beyond the bounds of reason, it was not an abuse of discretion.

The Court analyzed the level of support while noting that the vast majority of park residents were not interested in the conversion enough to even respond to the survey. The Court simply concluded that the non-responses could be spun either way in terms of supporting or not supporting the conversion. The Court overlooked the fact that the City is entitled to reconcile any conflicts in the evidence before it, and draw any reasonable inferences from it. Here, the most reasonable inference from the non-responsive spaces may have been that the mobilehome residents were not interested in buying their spaces. There was no basis in any event for the Court to step in and substitute its judgment for that of the fact-finder. As a result, the Opinion should be depublished.

2. The decision provides cities with confusing and unclear guidance.

The Court is unclear as to what standard of review it employed. The Court appears at one point to apply an "abuse-of-discretion" standard of review by holding; "City abused its discretion by denying the application based on the results of the survey." Id. at 772. The Court, however, never clearly explains how the city abused its discretion. Abuse of discretion generally could have occurred in one of two ways: City could have acted beyond the bounds of all reason; or, City could have acted contrary to law. Given the extremely poor showing of resident support for the conversion, it is difficult to understand how the Court could state the City "acted" beyond the bounds of all reason. Alternatively, given that section 66427.5 does not have any required percentage showing of resident support, it cannot be said that the City's finding that 6.2% was inadequate somehow was contrary to the law. Finally, however, an abuse of discretion can be established where a decision is not supported by substantial evidence. See Cal. Civ. Proc. Code § 1094.5(c).

The "substantial evidence" standard of review is the appropriate one here; however, the Court does not expressly discuss it. As noted *in Carson Harbor Village, Ltd. v. City of Carson* ("*Carson Harbor*") 70 Cal. App. 4th 281, 287 (1999):

> The substantial evidence test requires the Court begin with the presumption that record contains evidence to sustain the board's findings of fact. [Citation.] . . . . The burden is on the appellant to prove the board's decision is neither reasonable nor lawful. [Citation.]

Under the substantial evidence standard, a reviewing Court also determines if the "findings" support the City's decision. *Topanga Ass'n for Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 514-15 (1974). However, all reasonable doubts should be resolved in favor of the administrative findings and decision, and the administrative determination should be set aside only if, based on the evidence before the City, a reasonable person could not have reached the conclusion reached by the City. *Harris v. City of Costa Mesa,* 25 Cal. App. 4th 963, 969 (1994); *Carson Harbor, supra,* 70 Cal. App. 4th at 294 ("A Court should not substitute its judgment for that

of a local mobilehome rent control board even though the court may arrive at difference findings of fact after hearing the case on its merits.") It is the City, rather than the Court, that has the responsibility for resolving any conflicts in the evidence. *Pescosolido v. Smith* 142 Cal. App. 3d 964, 970-71 (1983).

Certainly, the Court here either did not use the "substantial evidence" standard of review, or misapplied it. The Court did not presume the City's decision was supported by the evidence. It did not resolve all reasonable doubts in favor of the decision. It did not defer to the City's resolution of conflicting evidence. And, ultimately, the Court simply usurped the City's decision-making authority and impermissibly substituted its own judgment for that of the City. As a result, the Opinion should be depublished.

3. The decision impermissibly conflates a finding that an application is deemed complete under the Permit Streamlining Act with the findings necessary to approve the application.

The Permit Streaming Act requires cities to compile lists detailing requirements for a development project. Cal. Gov't Code § 65940. Here, the City had deemed the parkowner's conversion application substantially complete. Thereafter, the City denied the parkowner's application on the grounds, inter alia, that the parkowner had failed to produce evidence that there was no homeowners' association. Had there been an association, the parkowner's survey would have been invalid under section 66427.5(d)(2), because the survey had not been conducted in accordance with an agreement with such an association. The Court held that by deeming the parkowner's application substantially complete, the City could not require additional evidence from the parkowner of the absence of any homeowners' association. In so holding, the Court: misinterpreted what is meant by "substantially complete"; and, created a loophole whereby development projects may not be approved on their merits by the legislative body, but inadvertently by staff who deem an application complete.

The Court relied on the first sentence of section 65944(a), which states: "after a public agency accepts an application as complete, the agency shall not subsequently request of the applicant any new or additional information which was not specified in the list pursuant to § 65940." Here, the parkowner did submit a resident survey that purportedly satisfied the requirements of § 66427.5. The City did not require the parkowner to produce an additional survey; instead, it required the parkowner to prove the survey was valid. Contrary to the Court's opinion, this was not an impermissible request for additional information under section 65944(a); this was a decision on the adequacy of the survey provided.

Under the circumstances the Court's decision creates the possibility that city's staff, by deeming an application complete as to the information provided, could prevent the ultimate decision-

maker from determining whether that information is adequate --thereby limiting the full exercise of the decision-maker's discretionary authority. To avoid that result, cities would have to vest the substantial completion determination with the ultimate decision-maker. This would conflate the determination of procedural requirements with the ultimate determination of an application on the merits.

4. Conclusion

The Opinion is a confusing decision based on ambiguous facts. The decision leaves cities unclear on how they may use resident survey results and improperly erodes the discretionary authority cities have under section 66427.5 to consider those results in approving, conditionally approving, or disapproving a mobilehome park conversion application. As a result, we respectfully request that this Court depublish the Opinion.

Sincerely,

Henry E. Heater

HEH/asg
Cc: See attached list

Service List

Richard Pech
Attorney at Law
171 Pier Avenue, Suite 327
Santa Monica, CA 90405-5311
Attorney for Chino MHC, LP

Thomas W. Casparian
Gilchrist & Rutter
1299 Ocean Avenue, Suite 900
Santa Monica, CA 90401-1038
Attorneys for Chino MHC, LP

Jeffrey M. Malawy
Aleshire & Wynder LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612-6533
Attorneys for City of Chino

Sanaz K. Soltani
Aleshire & Wynder LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612-6533
Attorneys for City of Chino

William J. Constantine
Law Offices of William J. Constantine
303 Potrero Street, Suite 29-106
Santa Cruz, CA 95060-2759
Attorney for Chino HOA