MEMORANDUM OF LAW

DATE: October 30, 1989

TO: Councilman Ed Struiksma

FROM: City Attorney

SUBJECT: Linda Vista Village Mobilehome Park

By memorandum dated September 25, 1989, you provided this office with a list of concerns of the tenants of Linda Vista Village Mobilehome Park. Your memorandum asked whether the City's lessee is in violation of the terms of the lease. A copy of the list of tenants concerns is attached hereto as Attachment 1.

By memorandum dated September 29, 1989, from the City's Property Director this office was further requested to address the issue of whether or not the City can, under the present state of the laws, condemn out the lessee's leasehold interest "in order to turn ╒the parkσ over to the tenants." The September 29 memorandum is attached hereto as Attachment 2.

By letter received October 4, 1989, one of the mobilehome park residents expressed additional concerns with regard to "the clearing of canyons of brush and wild growth bordering ╒theσ mobilehome park." A copy of the October 4 letter is attached as Attachment 3.

This memorandum of law will first address the seven complaints listed in Attachment 1.

ISSUES RAISED IN ATTACHMENT 1

"1. Rent increases yearly minimum of 5%-9% maximum are 'economically evicting' some residents. (As of 12/88 rent increased to $278.24/month and $257.37/month for residents qualifying for reduced rent.)"

The rent structure for the park is clearly set out in the lease. There is no indication that any annual rent increase has been in violation of the lease terms. There is also no indication that the present rents exceed reasonable rents or rents charged at similar parks in the City.

The City does have the legal authority under its Charter and under the general laws to provide "for the aid and support of the poor." Charter section 93. Therefore, if the City Council determined to subsidize those residents of the mobilehome park who cannot afford the park rents, such an action would be legal. However, as you know, there are a large number of other City residents in similar circumstances and the City's efforts to help

the needy with their housing costs have, historically, been delegated to the City's Housing Authority and Housing Commission which allocate limited funds on a priority basis approved by the Council and HUD.

"2. Park managers are not available for service. Gene Sampson has reportedly not resided at Linda Vista Park since 1/89. He is said to be operating a park in Tahatchepe, CA., also owned by Mr. Harrison. Marge works . time for Mr. Harrison's park development business and is available only half days on Monday through Thursday for resident complaints. She is reportedly out of town on Friday through Sunday with no one for the residents to contact."

State Health and Safety Code, section 18603, provides as follows:

> There shall be a person available who shall be responsible for the operation and maintenance of the park. In every park with 50 or more units, the person or his or her designee shall reside in the park and shall have knowledge of emergency procedures relative to utility systems and common facilities under the ownership and control of the owner of the park.

The word "park" is defined in section 18214.1 to include mobilehome parks.

Our reading of section 18603 is that a resident manager is required at Linda Vista Village Mobilehome Park and that, while such a resident manager may leave the park premises temporarily from time to time as all park residents do, such resident manager must be generally available. It would appear, if the above observation by the residents is correct and if no other person or persons has been delegated the duty of acting as the manager when the primary manager is absent, that the park owner is not in compliance with section 18603.

"3. Pool will no longer be heated in winter months. Residents were recently notified that the pool will not be heated during 6 months of the year. 6-7 residents use the pool for therapeutic reasons prescribed as medical treatment."

A reading of the lease, and the rental agreement form apparently used at the park, does not indicate an obligation to heat the pool. However, it should be noted that the rental agreement does require the lessee to provide and maintain in good working order and condition a therapy pool, a mens sauna and a womens sauna, in addition to maintaining a swimming pool. While

the rental agreement also allows for the change or deletion of such amenities upon 60 days written notice to the mobilehome owners, if such facilities are in fact being maintained they would appear to minimize the "therapeutic" need for a heated pool.

"4. $100 charge for use of recreation room. Residents claim the manager is now charging $100/use for cleanup. (Note that rules and regulations permit a $100 deposit for use of room.)"

While the park rules and regulations specifically require a $100 deposit for use of the recreation room "for parties, meetings, or other gatherings," the rules also clearly state that the deposit is "refundable" and that "management may ╒onlyσ deduct the cost of any damage or the cost of cleaning from the deposit" in the event the person otherwise responsible does not provide cleanup and any damage repairs. In the event the park owner is keeping all or any portion of the $100 "refundable" deposit in the absence of any reasonable cost incurred for cleaning and repairs, the park owner is in violation of the park rules and also in violation of general laws applicable to refundable deposits.

"5. Late fees for water bill 'hidden' in sewer bill charge to residents. Residents claim that Mr. Harrison was delinquent on one water bill. The City, instead of discontinuing service, charged a penalty fee. Residents claim that the penalty appeared on their sewer bill for two months. (See attached sewer charges.)"

If the park owner passed late charges on water bills on to tenants as part of their sewer bills, such an action would appear to violate the park rental agreements.

"6. Charges for maintenance of utility lines. Residents claim that although the owner is permitted by the California Utilities Commission to withhold $7.15/unit/month for on-property maintenance of utility lines, he continues to pass through the cost of repairs."

This office contacted San Diego Gas & Electric Company regarding the issue of whether a mobilehome park owner can withhold amounts "for on-property maintenance of utility lines." We were referred to Ms. Lee Guidry of the State Department of Weights and Measures who indicated that her department basically monitors the law which does not allow a mobilehome park owner to charge residents a rate above the rate applicable to single family home owners. She indicated that mobilehome park owners do in fact receive the benefit of a multifamily project rate but that there is no legal obstacle to charging park tenants the

somewhat higher rate applicable to single family residents. See Section 739.5, California Public Utilities Code, attached as Attachment 4. Ms. Guidry was not aware of any law allowing park owners to withhold $7.15 per unit per month, or any other amount, for on-property maintenance of utility lines, but she did refer us to Ms. Sherry McRoberts, the customer service representative for the Gas & Electric Company.

Ms. McRoberts also indicated that she is not aware of any regulation which allows mobilehome park owners to withhold any amount for on-property maintenance of utility lines.

This issue was discussed with Mr. Mike Walters, the Lessee's attorney, who indicated that the present differential between single family and multifamily rates is in fact about $7.15 per month and that the historical basis for allowing the different rate is to allow for maintenance and replacement costs for on-property utility lines.

"7. Reimbursement for installation of fire fence. Several residents claim that they installed, at their own expense, a portion of a chain link fence with fire truck access to the canyon area. After pressure from the City, the owner completed the installation but did not reimburse those who began the installation."

The issue of cost relating to construction of a fence around the park would appear to be a civil matter which individual residents can pursue against the park owner on an equitable basis. This office cannot, of course, make any "judicial" decisions involving such issues of equity.

For the purpose of determining whether any lease violations have occurred, the following provisions of the ground lease would appear significant:

Section IV.B.2 entitled "Compliance with Law," which basically requires the lessee to comply with all laws;

Section IV.B.5 "Development," which basically requires the property to be developed and maintained in accordance with the park's approved development plan;

Section IV.B.10 "Maintenance," which basically requires the lessee to properly maintain all the leasehold improvements and further requires the lessee to "assume full responsibility for the maintenance of the open space shown on the Development Plan;"

Section IV.C.4 "Entry and Inspection," which allows the City to enter the premises at any time to ascertain whether the lessee is in full compliance with the lease

terms;

Section IV.D.4 "Compliance with the Law," which specifically requires compliance with all laws relating to mobilehome parks;

Section IV.D.7 "Park Operating Conditions" which requires the lessee to develop proposed rules and regulations to be applicable to all tenants and which further requires City Manager approval of all such regulations.

In addition, the Conditional Use Permit for the park (No. 586-PC) and approved in January, 1980, specifically requires the lessee to install "a six-foot high chain-link fence, with redwood slats . . . around the park."

Copies of the above referenced lease provisions and Conditional Use Permit provision are attached cumulatively as Attachment 5.

EMINENT DOMAIN ISSUE

With regard to the issue of whether or not the City can exercise its power of eminent domain to condemn out the lease and sell or lease the property directly to the tenants, there is no present law which would allow the City to condemn under the present circumstance.

The general rule with regard to condemnation is that the power of eminent domain can only be exercised in the furtherance of "a public purpose." Section 1240.010, California Code of Civil Procedure.

The City may not generally condemn private property for the purpose of turning the property over to another individual for private use. The exceptions to the general rule, to our knowledge, are only two. First, in the case of a redevelopment project where property has been determined to be "blighted" and a redevelopment plan has been approved, a city or its redevelopment agency may exercise the power of eminent domain to acquire property from one private owner so that it can be turned over to another private owner for redevelopment of private facilities.

The other exception is evidenced in the case of Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 81 L.Ed.2 186, 104 S.Ct. 2321, a 1984 case which upheld the right of the State of Hawaii to condemn housing development tracts and resell them to lessees of the property. The case involved a widespread problem in Hawaii which had resulted from substantial tracts of property being available only for lease and not for sale since 47% of the state's lands was owned by 72 private land owners. As 49% of the state's lands was owned by the state and federal governments,

only 4% was remaining and in the hands of small private owners. The state determined that a public purpose would be served in condemning some of the land owned by the 72 private owners and the United States Supreme Court upheld "the public purpose" by such condemnation.

No similar situation exists, of course, in San Diego and we have found no authority outside of redevelopment law which would allow a city to condemn a mobilehome park for the purpose of selling the park to the resident tenants. The only possible theory to support such a taking would appear to be a situation where all or a very large portion of a mobilehome park's tenants are low-income persons and families, and where a private owner (or lessee) is proceeding to change the park to eliminate the low-income housing opportunities. Under the state's housing authorities law, Health and Safety Code section 34315, the Housing Authority of the City of San Diego could exercise the power of eminent domain to condemn property needed for low-income housing. However, assuming that some of the tenants at the Linda Vista Village Mobilehome Park do not qualify under federal and state guidelines as "low-income persons and families," if the City, through its Housing Authority, were to proceed with any such action, it would have to presumably require the replacement of all such tenants with low-income tenants.

In addition, it must be noted that the property upon which the Linda Vista Mobilehome Park is built belongs to the City's Water Utility and, therefore, the Water Utility must be fairly compensated for the property if it is to be sold or leased to anyone.

While we have raised the possibility of condemnation under the Housing Authorities Law, if it is actually proposed that the Housing Authority condemn the leasehold, substantial additional review would be necessary before the Authority could seek to exercise such power with regard to a private mobilehome park.

ISSUE REGARDING CLEARING BRUSH IN CANYONS - ATTACHMENT 3

Attachment 3 is a handwritten letter from Mabel Preddy, a park resident, and relates to actions taken by Mrs. Preddy and other park residents several years ago to clear brush in the canyons adjacent to their mobilehome spaces. It also relates to the installation of fire access gates in the park. The laws, for various reasons, require prompt action to be taken by persons claiming a right to repayment from other persons. Since the brush removal apparently took place several years ago, as a legal matter, the time has long since passed to pursue claims for reimbursement. With regard to the installation of gates, it

appears that the $20 paid by each of several tenants also took place several years ago and it is too late to be pursuing legal avenues for reimbursement.

The Property Department was also contacted by this office to discuss the general performance of the Linda Vista Village Mobilehome Park lessee. We are informed that the Property Department has been "repeatedly impressed" by the physical condition of the park and has concluded that the park is, in fact, "very well managed." Therefore, it appears possible that some of the complaints from the residents may be overstated or inaccurate. It is recommended that the lessee be given the opportunity to review and perhaps dispute and provide additional information regarding any of the above complaints which you may wish to pursue.

JOHN W. WITT, City Attorney
By
Harold O. Valderhaug
Deputy City Attorney

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Attachments 5
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