

PUBLIC INTEREST LAW FIRM  
*Oficina Legal de Interés Público*  
**Law Foundation of Silicon Valley**  
152 North Third Street, 3<sup>rd</sup> Floor  
San Jose, California 95112  
Telephone (408) 293-4790 • Fax (408) 293-0106  
www.lawfoundation.org

May 22, 2015

Palo Alto City Council  
c/o Molly S. Stump  
Office of the City Attorney  
250 Hamilton Avenue  
Palo Alto, CA 94301  
*Emailed to Molly S. Stump*

Re: Response to April 14, 2015, Draft Findings of the City Council Regarding the Closure of Buena Vista Mobile Home Park

Dear Mayor and City Council:

**I. Introduction**

This response is submitted on behalf of the Buena Vista MHP Residents Association.<sup>1</sup> On April 14, 2015, the City Council tentatively approved the closure of Buena Vista conditioned on the Park Owner's providing certain assistance to mobilehome residents.<sup>2</sup> The City Council additionally determined that the future appraisals should reflect the value of Palo Alto's schools and safety and instructed the appraiser, Mr. Beccaria, to change his scope of work to account for these factors. Mr. Beccaria has since declined to adjust the scope of his appraisal, threatening to quit if Council orders him to change the scope of the future appraisals.<sup>3</sup>

On May 14, 2015, the City Attorney circulated draft findings for the City Council to consider. The Buena Vista MHP Residents Association disagrees with those findings because they would have the City Council reverse itself and remove the instruction to the appraiser regarding schools and safety.<sup>4</sup>

On May 21, 2015, the City Attorney sent another letter to the City Council explaining the option of hiring another appraiser to conduct a peer review of Mr. Beccaria's appraisal methodology.<sup>5</sup>

---

<sup>1</sup> This response is submitted by the Law Foundation of Silicon Valley, Western Center on Law and Poverty, and Sidley Austin LLP, attorneys for the Buena Vista MHP Residents Association.

<sup>2</sup> Transcript, Vol. II, p. 372, lines 10-11.

<sup>3</sup> Letter from David F. Beccaria to Karen Holman, Mayor (May 5, 2015).

<sup>4</sup> Staff Report: Adoption of Findings and Final Decision in the Matter of the Appeal by the Buena Vista Mobilehome Park Residents Association of the Hearing Officer's Decision Approving the Application for Closure of the Buena Vista Mobilehome Park and Establishing Mitigation Measures and Additional Conditions of Approval (May 26, 2015), Att. E, 4.

<sup>5</sup> The City Attorney's recommendation to Council that it consider commissioning a peer review of Mr. Beccaria's appraisals is consistent with the City's prior statements that it would conduct such a peer review. In the memorandum in which Council was informed of staff's approval of Mr. Beccaria as the appraiser for the owner, staff stated that it expected that "staff or an outside appraiser for the City will peer review the appraisal." Palo Alto

The Residents Association agrees with the City Council's determination on April 14 that the mobilehome appraisals used to determine mitigation assistance must incorporate the value conferred by the homes' location in Palo Alto—which, in turn, necessarily incorporates the high value of Palo Alto's schools and safety. Accordingly, the Residents Association believes that the best course of action is to relieve Mr. Beccaria of his appraisal duties and hire an appraiser who is willing to comply with the City Council's directive.

Should the City Council decide to commission a peer review of Mr. Beccaria's appraisal methodology, the Residents Association strongly believes that such a review should be of the methodology used by Mr. Beccaria in his 2013 appraisals and the peer review should be done prior to the City Council voting to close the Park.

## **II. Mr. Beccaria should be replaced by an expert, independent appraiser who will explicitly take Palo Alto's schools and safety into account.**

As stated above, the Residents Association agrees with the City Council's determination on April 14 that the mobilehome appraisals used to determine mitigation assistance must incorporate the value conferred by the homes' location in Palo Alto—which, in turn, necessarily incorporates the high value of Palo Alto's schools and safety. City Council should reaffirm its decision to require these factors in the appraisals.

Although appraisals alone are insufficient to determine the cost of relocating Buena Vista residents to comparable housing in a comparable community, fair, accurate, and impartial appraisals are essential to ensuring that Buena Vista residents are adequately compensated for the loss of their current homes. However, as noted in the report by James Brabant—and by many community members that provided public comment—the appraisal methodology employed by Beccaria and Weber in appraising the homes at Buena Vista did not properly account for the homes' location in Palo Alto.<sup>6</sup> Adjusting an appraisal for location necessarily takes into account the value of schools and safety, as well as other community amenities.

When asked by City Council about this critique, Mr. Beccaria argued that a location adjustment was not warranted because Buena Vista, despite its superior location in Palo Alto, was an inferior park to those in other cities: “[B]asically I drew an equal sign, plus or minus, you know, between the locational issue and the park deficiencies, the buyer's acceptance of the park deficiencies.”<sup>7</sup> As discussed in Mr. Brabant's earlier letter, as well as the letter attached, these assumptions do not bear out.<sup>8</sup>

---

City Manager, “Status Update for Buena Vista Mobile Home Park,” Dec. 17, 2012, p. 3. This City-sponsored peer review never took place, although the Residents did provide Mr. Brabant's analysis.

<sup>6</sup> See James Brabant, “Review of Appraisals by Beccaria & Weber, Inc.,” page 6. Note that Council decided to make this report part of the record on appeal. See also Letter from James Brabant to Matthew Dolan (May 21, 2015) pp. 1-2 (attached as Exhibit 1).

<sup>7</sup> Transcript, Vol. II, p. 234, lines 17-21 (attached as Exhibit 2).

<sup>8</sup> Letter from James Brabant to Matthew Dolan (May 21, 2015) pp. 1-2.

Following this discussion, the City Council acknowledged the value of schools and safety in particular in assessing the price of a home in Palo Alto and asked Mr. Beccaria to consider a new scope of work that would expressly take these factors into account. Mr. Beccaria was open to this possibility and suggested that he might be able to compare single family home purchases or apartment prices in Palo Alto versus other cities and apply that percentage differential to mobilehome prices at which he was looking in other cities as comparators; he did express some uncertainty about the exact approach and requested the opportunity to discuss the matter with his colleagues.<sup>9</sup> At the conclusion of the meeting, Mr. Beccaria gave the City Council a roadmap for how to incorporate schools and safety into the scope of work for the future appraisals:

All's we have to do, I think, if you're adding that to it is [say] "the appraiser – the appraiser will revise the scope of work to include safety and schools." And then it's directed toward me.<sup>10</sup>

Twenty-one days later, Mr. Beccaria sang a distinctly different tune. In his May 5 letter, he accused City Council of effectively asking him to commit an unethical act and of violating state law by requesting the expansion in scope to address City Council's concerns about the appraisals.<sup>11</sup>

As made clear in Mr. Brabant's report, Mr. Beccaria's stubborn defense of his scope and methodology and his rigid refusal to consider modifying them only compound the serious flaws in his original report. In his report, Mr. Brabant notes that:

No adjustments are made in the 32 appraisals for differences in Location and/or Site Value. When the comparable sale is from Redwood City, Mountain View or Sunnyvale, the report indicates the location is offset by the rent. It appears that for location, the appraisers are primarily concerned with the quality of the park and all of the comparable parks are rated superior to Buena Vista. However, there does not appear to be any recognition of the superior home prices in Palo Alto compared with those other cities.<sup>12</sup>

Mr. Brabant notes that Mr. Beccaria's use of comparable mobilehome prices from Redwood City, Mountain View, and Sunnyvale without a location adjustment means that "the superior Palo Alto location seems to be lost in this process."<sup>13</sup> This analysis aligns with the Council's motion, which seeks to capture the significant value of the public schools and public safety that a Palo Alto address conveys.

Although Mr. Brabant's critiques are consonant with City Council's direction from April, City staff summarily brushes them off in the draft decision:

---

<sup>9</sup> Transcript, Vol. II 313:15 – 314:19.

<sup>10</sup> Transcript, Vol. II 371:25 – 372:3.

<sup>11</sup> Letter from David F. Beccaria to Karen Holman, Mayor (May 5, 2015).

<sup>12</sup> James Brabant, "Review of Appraisals by Beccaria & Weber, Inc.," page 6. Note that Council decided to make this report part of the record on appeal.

<sup>13</sup> *Ibid.*

Mr. Brabant suggests that the existing appraisals may be lower than appropriate, but does not propose alternative valuations. The Council finds Mr. Beccaria's responses to Mr. Brabant's comments to be persuasive and adequate. In addition, without alternative valuations, the Council lacks an evidentiary basis for reaching a contrary conclusion on appraised value.<sup>14</sup>

This change is startling and inappropriate, particularly in light of the fact that on April 22 the City Attorney represented to the parties that this instruction would be part of the draft findings and decision.<sup>15</sup> The proposed elimination of the City Council's direction regarding schools and safety is arbitrary, capricious, and lacks evidentiary support. The City Council had Beccaria's March 25 responses to Mr. Brabant's critique before it when it considered this matter at the April hearings, yet it still instructed Mr. Beccaria to include the value of the safety and schools in his scope, implicitly rejecting his responses to Mr. Brabant's critique.<sup>16</sup> The City Council's concern regarding the limited scope was evinced, not only in the final motion, but in the substantial and probing questions that a number of councilmembers directed at Mr. Beccaria. The only change between the Council's motion and the draft written findings is the fact that Mr. Beccaria threatened to resign as appraiser. Moreover, this change flouts notions of due process, as it is based on a letter submitted outside of the context of a hearing, thus preventing the City Council or the Residents Association from probing the reasoning for Mr. Beccaria's changed position.<sup>17</sup>

Staff's statement is also untenable as it improperly places the burden of proof regarding the appraisals on the Residents Association. As stated in the procedures memo that the City Council adopted:

[t]he applicant [i.e., Park Owner] bears the burden of proving by a preponderance of the evidence that the criteria for approval of the application, as set forth in Municipal Code section 9.76.040(g), have been met.<sup>18</sup>

By proposing that the City Council ignore Mr. Brabant's critique based on his failure to propose alternative valuations, staff is effectively putting the burden on the Residents to pay thousands of dollars to hire an appraiser to conduct alternative appraisals and to prove the value of the mobile homes. Per the Ordinance, this is Owner's job,<sup>19</sup> and it is to be performed by a "qualified appraiser" who is "chosen by the Park Owner from a list supplied by the City."<sup>20</sup>

Notably, this does not appear to be the process by which Mr. Beccaria was selected as the Park Owner's appraiser. Rather, Nathan Tuttle from Prometheus Real Estate Group suggested Mr. Beccaria to City staff as "the appraiser that seems to have the most **complex park closure experience**

---

<sup>14</sup> Staff Report: Adoption of Findings, p.4.

<sup>15</sup> Email from Molly Stump to James Zahrada, et al. (April 22, 2015) attached hereto as Exhibit 3.

<sup>16</sup> Mr. Beccaria's May 5 letter consisted of a summary refusal to follow Council's direction and added nothing substantive to the analysis.

<sup>17</sup> *Manufactured Home Communities, Inc. v. Cnty. of San Luis Obispo*, 167 Cal. App. 4th 705, 711 (2008)(finding failure to allow cross-examination violated due process where hearing decision based on material facts alleged by those witnesses).

<sup>18</sup> Appeal Procedures § 2(c) (Jan. 12, 2015).

<sup>19</sup> Palo Alto Mun. Code, § 9.76.040(g)(2)(a) (referencing "loss of investment in the mobilehome that cannot be relocated").

<sup>20</sup> Palo Alto Mobilehome Conversion Ordinance, § 9.76.030(d)(iv).

in the Bay Area.”<sup>21</sup> Rather than the Park Owner selecting the appraiser from a City-generated list, the developer with whom the Park Owner was in contract to sell the Park hand-picked an appraiser with an eye to getting to a result that would facilitate closure. Beccaria’s letter and the dramatic change in tone and outlook also raise serious questions about Mr. Beccaria’s impartiality.<sup>22</sup>

And although Mr. Brabant did not himself perform alternate appraisals, he certainly gave the City Council enough information about the errors in Mr. Beccaria’s methods to give the City Council an idea of the order of magnitude of what those errors will cost Buena Vista residents. In Mr. Brabant’s most recent letter, he compares the negative offset of rent that Mr. Beccaria imposed versus what would be a positive offset of higher Palo Alto housing prices.

In his appraisals Mr. Beccaria writes “offset rent” in the column for a location adjustment for those cities. In his testimony at the appeal hearing he explained that the lower space rent at Buena Vista reflects the lower quality and condition of the park and that offsets the superior location in Palo Alto. Using his appraisal of Space 112 as an example, the comparables from Sunnyvale and Mountain View had monthly space rents about \$135 to \$140 higher than the rent at Buena Vista. However, the rent for the comparable from Redwood City was almost identical, only \$13 higher than Buena Vista (\$708 for Redwood City and \$695 for Buena Vista). That slight difference would certainly not be an offset for the substantial difference in housing prices in those two cities. The average home price in January 2013 in Redwood City, reported by Zillow, was \$816,000 while in Palo Alto it was almost double at \$1,500,000. Even for Sunnyvale and Mountain View, the differences in space rent were only about 19 to 20 percent, while the average home price in Palo Alto was 61 to 72 percent higher. So, offsetting the location with space rent does not appear to be a fair analysis.<sup>23</sup>

This analysis demonstrates the way in which Mr. Beccaria’s failure to account for location artificially lowered the appraised values of mobile homes at Buena Vista. It also suggests that if Mr. Beccaria modified his scope as he initially suggested—adding a multiplier for the price of single family homes in Palo Alto—the initial appraisals might have been higher by as much as 72 percent.

Thus, for the City Council’s directive to be followed, a different appraiser will need to be appointed, and new appraisals will have to be conducted employing a correct methodology and scope.

At the May 26, 2015, hearing, the City Council should direct staff to supply a list of independent appraisers to the City Council and inform the Park Owner that if he wants to pursue his closure application, he will need to select a new appraiser.<sup>24</sup>

---

<sup>21</sup> See Email to Jason Nortz from Nathan Tuttle (Oct. 26, 2012) (attached as Exhibit 2)(emphasis added).

<sup>22</sup> Indeed, the mere fact that Mr. Beccaria appeared as a witness for the Park Owner throws his impartiality and credibility into serious question, another reason he should be replaced. Did the Park Owner pay him for his testimony? This payment would be relevant to “the credibility of the witness and the weight of his testimony.” Cal. Evid. Code, § 722(b). Council should ask the Park Owner to provide this information before it makes its final decision.

<sup>23</sup> Letter from James Brabant to Matthew Dolan (May 21, 2015) pp. 1-2.

<sup>24</sup> The list of two appraisers in the City Attorney’s May 21, 2015, letter should be expanded to three options. The list may need to exclude Valbridge Property Advisors, who may have a conflict of interest.

**III. If a peer review of Mr. Beccaria's appraisal methodology is commissioned, the City Council should commission and consider the peer review of the 2013 appraisal methodology before it closes the Park.**

Assuming that Council agrees to commission a peer review of Mr. Beccaria's appraisal methodology rather than hire a new appraiser, this peer review should be conducted of the methodology used by Mr. Beccaria in his 2013 appraisals, rather than any new set of appraisals done by Mr. Beccaria. First, it does not make sense for Mr. Beccaria to update his appraisal prior to a peer review because the City Council has already rejected his methodology. What does make sense is for the peer reviewer to review Mr. Beccaria's 2013 appraisals as well as the parties' arguments, expert submissions and public testimony, and the City Council's dialogue regarding the same. The peer reviewer should develop a scope and methodology for a new appraisal based on that information and his or her own market analysis. There is no reason to ask a peer review to look at new appraisals by Mr. Beccaria since the only difference should be the differential to reflect the changed market conditions between 2013 and the present, independent of the safety and schools issues identified by the City Council.

Second, should the peer reviewer determine that Mr. Beccaria's methodology was inadequate, it would be a waste of time and resources to ask Mr. Beccaria to apply that methodology to determine alternative values for residents' homes.

Moreover, the City Council should not make a decision about the park closure until the peer review is conducted. Because of the efficiency reasons listed above, the City Council should approve one appraiser's methodology or the other's; that appraiser should then conduct the actual appraisals of homes rather than having both appraisers perform the considerable work of appraising all 117 mobile homes. More importantly, the City Council cannot make a reasoned decision with support in the record regarding the closure and a mitigation package that is based on an appraisal scope/methodology that has not been determined.

The proper course of action on Tuesday—should the City Council decide to commission a peer review—is for the City Council to:

- (1) Instruct staff to retain a second appraiser—who will include consideration of the Park's location in Palo Alto, thereby including schools and safety in his or her analysis—to perform a peer review,
- (2) Instruct the second appraiser to perform that review on Mr. Beccaria's 2013 appraisals, and
- (3) Set a date for the second appraiser to submit a report to the City Council and appear at a hearing and answer any questions from the City Council and the parties, and for the City Council action to select an appraiser, and approve or deny the application based on this new information.

**IV. The rent differential should be based on the size of the home the family will need and should not be limited to the cost of a one-bedroom apartment.**

The City Council's tentative findings improved upon the decision of the Hearing Officer in that the City Council found that, for resident households of 3 or more people whose mobilehomes have additions, the rent differential should be based on the cost of a 2-bedroom unit rather than a 1-bedroom unit, even if the addition to the original 1-bedroom mobilehome was unpermitted.

Guaranteeing that large families whose mobilehomes have additions get relocation assistance that is sufficient to move them to homes larger than one bedroom is appropriate; and, contrary to the statements of both the hearing officer<sup>25</sup> and counsel for the park owner, does not provide a windfall to these residents. Many residents purchased their mobilehomes with additions already in place; the park owner had allowed previous owners to build the additions and had allowed those owners to sell the homes with the additions intact. As Mr. Beccaria noted in his testimony on April 14 "the issue of permitting is largely ignored by market participants,"<sup>26</sup> meaning that purchasers pay more for larger homes, regardless of whether the additions to those homes are permitted or not. Residents either paid more for their homes because of additions, or they increased the value of their homes by investing in additions.

As discussed in our earlier briefing and at the hearing on April 14, landlords are generally unwilling to rent 1-bedroom apartments to families of 3 or more. For mitigation assistance to provide residents with realistic options for alternative housing, it needs to be sufficient to allow them to rent a home that is the appropriate size for their family, regardless of the size or appearance of their current home. The City Council was correct in its tentative findings not to limit the rent differential based on the cost of a 1-bedroom apartment for larger families whose homes have additions. The City Council should go further and base the cost differential on the actual family size for families of 3 or more, using the 2+1 standard outlined in HUD's Keating Memorandum.<sup>27</sup>

**V. A process that allows individual residents to appeal the amount of their relocation assistance is necessary and appropriate.**

Consistent with the earlier requests of *both* the Park Owner *and* the Residents Association,<sup>28</sup> and the advice of the City Attorney, the City Council voted on April 14 to establish a process for individual residents to appeal their mitigation assistance. Although the process tentatively approved by City Council falls short of the hearing process recommended by the Residents Association,<sup>29</sup> it at least provides a mechanism for individual residents to seek review of their relocation benefits. Having such a procedure in place is especially important in light of the fact

---

<sup>25</sup> See *Final Decision in the Matter of Toufic Jisser, as Trustee of the Jisser Family Trust, for Closure of the Buena Vista Mobilehome Park in Palo Alto, California* (Sept. 30, 2014) 15.

<sup>26</sup> Transcript Vol II, p. 158, lines 18-19.

<sup>27</sup> Fed. Reg. vol. 63, p. 70,255.

<sup>28</sup> See *Post-Hearing Brief Submitted on Behalf of Buena Vista MHP Residents Association to Hearing Officer Craig Labadie* (July 16, 2014) pp. 50-51; *Park Owner's Closing Brief* (July 16, 2014) pp. 30-32.

<sup>29</sup> See *Post-Hearing Brief Submitted on Behalf of Buena Vista MHP Residents Association to Hearing Officer Craig Labadie* (July 16, 2014) pp. 50-51.

that the City Council has tentatively approved a mitigation assistance package where the primary determinant of individual relocation benefits—appraisals of current homes—has yet to be performed. Additional moving assistance for seniors and people with disabilities will also be assessed on an individualized basis after this appeal has ended; it is essential for those residents to have some means of challenging any inaccurate or unfair amount that is awarded to them.

The draft findings would have the City Council circumscribe the Hearing Officer's role in these future appeals to "making a determination regarding the appraisal amount and comparable market survey."<sup>30</sup> This language would prevent the hearing officer from making a determination regarding other aspects of the individual assistance—such as moving expenses or supplemental payments for seniors and people with disabilities—and runs contrary to the spirit of having such a process. The City Council should use broader language to ensure that individual residents' ability to appeal their own relocation packages is comprehensive and meaningful.

**VI. Meaningful mitigation assistance would neither exceed the "reasonable cost(s) of relocation" nor effect a taking.**

Mitigation assistance that takes into account the value of Buena Vista's location in Palo Alto would not exceed the "reasonable cost of relocation." The requirements in state and local law prohibiting park closure conditions that exceed the reasonable cost of relocation prevent local jurisdictions from conditioning park closures on requirements that are in no way related to the park closure or the relocation of the displaced residents. It does not give the Park Owner the right to reject out of hand any requirement that it finds to be burdensome and, therefore, subjectively unreasonable.

Furthermore, despite the Park Owner's attorney's threats of litigation and allusions to the City Council's actions modifying the mitigation package being a "taking," the City Council should not shy away from adopting what it finds is an adequate relocation package. The Ordinance contains a provision for the Park Owner to obtain an exemption if the relocation benefits would effect a taking:

9.76.080: Exceptions to requirement to provide relocation assistance.

(c) An applicant may seek a partial exemption on the ground that the imposition of a particular relocation obligation would eliminate substantially all reasonable use or economic value of the park for alternate uses. The application must specify the particular obligation that would cause this result and provide evidence to demonstrate that this result would occur.

If the Park Owner believes that the relocation assistance that the City Council orders is excessive, he can seek this exception, and prove this claim with sufficient evidence.

---

<sup>30</sup> Staff Report: Adoption of Findings, p. 5.

## VII. Conclusion

The Residents Association continues to believe that mitigation assistance that is based on appraised values alone—and that does not reflect the cost of relocating to comparable housing—violates the Ordinance, as well as state and local laws. The Resident Association reasserts this argument by reference here. Likewise, the Residents Association does not waive any claims related to legal issues previously articulated, including due process concerns regarding the conduct of hearings and the City’s obligations under the Federal Fair Housing Act,<sup>31</sup> the state Housing Element Law,<sup>32</sup> and other laws.

The City Council is not only permitted to reject a mitigation package that fails to comply with the Ordinance; it is *required* to do so. If the City Council chooses to continue in the direction it took in its April 14 tentative findings—to base mitigation assistance on the appraised values of Buena Vista residents’ homes without attention to the cost of comparable housing, it will need to take these steps to ensure that residents are fairly compensated and have a meaningful opportunity to find new housing elsewhere:

- The City Council should accept the resignation of Mr. Beccaria and require the appointment of a new appraiser via the procedure set forth in the Ordinance. The City should compile a list of appraisers and set forth a scope of work that explicitly requires the new appraisal to account for the value of Buena Vista’s location in Palo Alto, including the value of schools and safety. Since the process of selecting a new appraiser and conducting the new appraisals may take several months, the Park Owner should not be allowed to issue a 6 month closure notice until *after* these new appraisals are performed;
- Should the City Council decide to commission a peer review of Mr. Beccaria’s appraisals, it should wait until the peer review report is produced before deciding which appraiser should create individual valuations and before it approves or denies closure of the park;
- Park residents should be allowed to appeal all of their individual relocation benefits; and
- The rent differential for families of 3 or more should be based on a 2+1 standard and not limited to the size of their existing home to increase the likelihood of their finding adequate long-term housing.

We look forward to answering the City Council’s questions about these comments on May 26, 2015.

Sincerely,  
/S

Kyra Kazantzis  
Directing Attorney

---

<sup>31</sup> Specifically, 42 U.S.C. § 3608 requires recipients of CDBG and other federal funds to “affirmatively further fair housing.”

<sup>32</sup> Gov. Code, § 65580-65589.8.

