

December 4, 1991

REPORT TO PLANNING COMMISSION

MOBILE HOME OVERLAY ZONE - APPLICABILITY TO DE ANZA MOBILE HOME PARK

On October 10, 1991, the Planning Commission briefly reviewed proposed amendments to Section 101.1001 et seq. of the Municipal Code relating to the mobile home park overlay zone. On that date, numerous residents from the De Anza Mobile Home Park were present and generally expressed an objection to the proposed inclusion of the following sentence in Section 101.1001 B.1.:

The Mobile Home Park Overlay Zone does not apply to mobile home parks located in dedicated public parks or public tidelands.

The Planning Commission continued the matter of the proposed amendment and other amendments to the sections to the Planning Commission meeting of December 12, 1991, and requested this office to address the purpose behind the inclusion of the above proposed language.

BACKGROUND

The Mission Bay tidelands were conveyed to the City in 1945 to be used and held in trust for park and tidelands purposes. Permanent, private residences are not a legal use of tidelands.

In 1949, the original lessee of the De Anza Mobile Home Park area approached the City with a proposal to lease the property and construct facilities to be used as a "travel trailer and tourist area." Negotiations for the lease were not completed and the lease was not executed until November 1953. The lease term is fifty years and expires in November 2003. The lease specifies that the property must be developed and used as a "tourist and trailer park area." The leasehold area is mostly on filled tidelands and is subject to the tidelands trust.

Subsequent to 1953, "trailers" became less and less "mobile" and by the late 1960s and mid-1970s it became apparent that the mobile homes occupying the leasehold were in fact permanent, private residences creating a potential problem under the tidelands grant.

The problem was increased in 1962 when the Council by ordinance officially dedicated the Mission Bay Park lands to park and recreation use. Private residences are not a valid use of dedicated park land.

In the late 1970s, one of the City Council members raised the issue of the legality of the mobile home park use in Mission Bay and this office wrote an opinion concluding that the mobile home park use was in fact a violation of the tidelands trust and also that no such private residential use could legally be allowed on dedicated park land.

The residents of the mobile home park at that time were obviously concerned with our conclusion and in early 1982 the City Council, after several public meetings, determined to allow the De Anza park to continue in operation until 2003 or until a redevelopment plan, including potential relocation provisions, is approved by the Council prior to 2003.

The legality of the mobile home park use was addressed for the period ending in 2003 by state legislation sponsored by then Assemblyman Larry Kapiloff, which legislation acknowledged the present improper use of the tidelands, authorized the continued use until 2003. The legislation recognized the hardships which would have resulted to the tenants and allowed continued use based upon a finding that the property was not needed for tidelands purposes during the period ending 2003. A copy of the Kapiloff bill is attached as Attachment 1.

The bill specifies that the property must be utilized for park and recreation purposes at the end of the present lease.

This office concluded that, in light of the legislative authorization regarding the tidelands, the nonpark use of the dedicated park lands is allowable on the basis that the lease was entered into in 1953 and the property was not officially dedicated to park purposes until 1962. Our conclusion was, therefore, that the lease was "grandfathered" until its expiration date.

Much of the discussion at the Council meetings which led up to the City's approval of the continued mobile home park use involved the economic hardship to the numerous tenants in the event they were forced to relocate. It was felt that giving some limited assurance of a continued right to utilize the property until redevelopment occurs, or if no redevelopment occurs, until the expiration of the lease, would provide the tenants the opportunity to either sell their units for significant prices or continue to occupy their units knowing approximately 22 years in advance that the use would end in 2003.

Subsequent to the 1982 Council action, the lessee has proceeded with various efforts towards obtaining City Council approval to a redevelopment plan which would convert the mobile home park use to a hotel and related park facilities use prior to the 2003 expiration date. In conjunction with such activities, the lessee has reportedly obtained agreement with approximately ninety-six percent of the mobile home park residents with regard to a relocation plan which would be totally funded by the lessee in the event the lessee is successful in obtaining rights for redevelopment. It should be noted that the hotel is a legal use of both dedicated park land and public tidelands if a finding is made by the City Council that such a hotel is needed to accommodate the visitors to the park and tidelands.

ANALYSIS

In view of the above background information, the Property Department and this office concluded that any amendments to the Mobile Home Park

Overlay Zone ordinance should continue to specifically exempt the De Anza Mobile Home Park.

The Overlay Zone has been inapplicable to the De Anza Park since it was enacted in 1981. Section 101.1001 B. specifies "The Mobile Home Park Overlay Zone may be applied in any zone in which residential uses are permitted . . ." The De Anza area is not and could not legally be zoned for residential use. Also, section 101.1002 A.1. of the Overlay Zone ordinance has, since 1981, excepted "land within a dedicated public park." One reason that we feel that the Mobile Home Park Overlay Zone should continue to not be applicable to the De Anza property is that there is no choice but to terminate the residential use in 2003. In addition, the City Council has absolute control over any proposed redevelopment of the property and the lessee has, in fact, already entered into agreements, including relocation provisions in the event of redevelopment prior to 2003, with about 96% of the mobile home park tenants. An excerpt of pertinent provisions of the standard form agreement with tenants is attached as Attachment 2. The agreement basically guarantees the tenants a right to occupy spaces until 2003, subject to relocation prior to that date in the event the City Council approves a redevelopment plan for the lease area. Any proposed redevelopment of the De Anza site will be subject to substantial public hearings and discussion with any redevelopment being subject to Council approval after such hearings and discussion.

The most important reason for including the proposed language is that the mobile home park tenants should be reminded that they are in a special and unique situation. Since the property has been officially dedicated to public park and recreation purposes by ordinance of the City Council, City Charter section 55 precludes the City Council from allowing any extension of the lease or any continued private residential use of the property after November 2003, without the prior approval of a two-thirds vote of the electorate. A copy of Charter section 55 is attached as Attachment 3.

In 1981, the tenants were informed that no mobile home park use could continue after 2003. The Kapiloff bill requires that all new tenants be likewise informed of such fact and receive a written statement of such legal fact. A copy of the notification form is attached as Attachment 4. The tenants should be informed for their own benefit that, in the absence of a two-thirds vote of the electorate, the mobile home park can not continue to operate after 2003. While the state legislature could perhaps adopt new legislation allowing continued use of the tidelands after 2003 for mobile home park purposes, the Charter requirement of the two-thirds vote would nevertheless apply and neither the state legislature nor the City Council has the legal power to avoid the requirements of the City Charter.

A discussion with a real estate agent who specializes in resales of De Anza Park mobile homes, indicates that the present selling prices of

units in the park range from approximately \$30,000 to approximately \$225,000, with the lower values being older, single-wide units in the northerly portion of the park, and the higher priced units being in the "Bay Club" along the shoreline. The present space rentals were represented to be from \$400 to about \$1,000 per month. Based upon such substantial prices it appears that present residents and residents who have sold since the 1981 Council action have been, and may presently be, able to obtain significant equity value upon sale of their units.

As noted above, it is important that the present mobile home park tenants be reminded that the values of the mobile homes in place will probably diminish as the lease expiration date approaches and that they should make a conscious decision to either sell for the higher values achievable now, or face the fact that reduced sales prices and limited, if any, financial relocation aid will be available if the lease runs its course and expires by its terms in November 2003.

SUMMARY

In summary, in the absence of a two-thirds vote of the electorate pursuant to City Charter section 55, neither the City Council nor the state legislature can allow the De Anza Mobile Home Park private residential use to continue beyond 2003. Because of the unique circumstances of the De Anza Park situation, it is not appropriate that that property be subject to application of the Mobile Home Park Overlay Zone. In the absence of a two-thirds vote of approval by the electorate, the discontinuance of the use will be automatic and mandatory upon expiration of the lease in 2003. Any redevelopment of the site prior to 2003 will be the subject of public hearings by the City Council, and the vast majority of the residents and the City's lessee have already entered into agreements relating to relocation rights in the event the City Council approves a redevelopment of the site before 2003.

Respectfully submitted,
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Attachments 4
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