



Department of Regional Planning
 320 West Temple Street
 Los Angeles, California 90012

PROJECT NUMBER **HEARING DATE**

2016-000334-(4) 11/15/2016

REQUESTED ENTITLEMENTS

RCUP RPPL 2016002104
 Parking Deviation-Minor RPPL 2016004305

PROJECT SUMMARY

OWNER / APPLICANT

Rowland Heights Mobile Estates

MAP/EXHIBIT DATE

8/25/2015

PROJECT OVERVIEW

The applicant is requesting a Conditional Use Permit for the continued operation of a 327 space mobilehome park and a Minor Parking Deviation to allow less than the required guest parking spaces.

LOCATION

1441 Paseo Real Ave, Rowland Heights, CA
 91748

ACCESS

Colima Road

ASSESSORS PARCEL NUMBER(S)

8761-011-001

SITE AREA

35.9 ac

GENERAL PLAN / LOCAL PLAN

ROWLAND HEIGHTS COMMUNITY PLAN

ZONED DISTRICT

PUEENTE

LAND USE DESIGNATION

U3 (URBAN 3)

ZONE

R-3-12U (LIMITED DENSITY MULTIPLE
 RESIDENCE ZONE – MAXIMUM DENSITY OF
 12 DU / AC), C-3-BE (GENERAL
 COMMERCIAL – BILLBOARD EXCLUSION)

PROPOSED UNITS

327

MAX DENSITY/UNITS

12 DU / GROSS AC

COMMUNITY STANDARDS DISTRICT

ROWLAND HEIGHTS

ENVIRONMENTAL DETERMINATION (CEQA)

Class 1 Existing Structures

KEY ISSUES

- Consistency with the Rowland Heights Community Plan
- Satisfaction of the following Sections of Title 22 of the Los Angeles County Zoning Code:
 - 22.56.040 (Conditional Use Permit Burden of Proof)
 - 22.20.300-330 (R-3 Zone Development Standards)
 - 22.28.220 (C-3 Zone Development Standards)
 - 22.44.132 (Rowland Heights Community Standards District)

STAFF RECOMMENDATION

Approval

CASE PLANNER:

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MEET ROWLAND HEIGHTS MOBILE ESTATES 2016!

Rowland Heights Mobile Estates (“RHME”) is a mobilehome park, defined in the Mobilehome Residency Law (“MRL”), Civil Code §§ 798, et seq., specifically §798.4 as, “an area of land where two or more mobilehome sites are rented, or held out for rent, to accommodate mobilehomes used for human habitation.”

Starting as a 188-space park in the early 1970's, RHME expanded to 327 rental spaces during its early years in the first half of the 1970's. The zoning history of the park is described in a zoning permit history section of this application narrative. The park has provided housing for anywhere from 1000 to 1500 persons, approximately, for more than thirty-five (35) years.

Typically, the “tenant” in a mobilehome park, referred to as “homeowner” under the MRL, owns the mobilehome, and rents the space on which it sits. The mobilehome ownership has the advantage over apartment renting because the mobilehome owner builds equity in the home, and does not have common walls with other renters. It has the advantage over owning the typical single family home because it does not have the additional costs associated with owning the land. It is thus an affordable alternative to the typical single family residence, but with advantages over renting a house or apartment: not only the equity in the mobilehome, recoverable upon resale, but also a small yard surrounding the home, with no joint walls with co-tenants.

The MRL provides the homeowner the right to sell the mobilehome. Thus, while the mortgage on the mobilehome and the space rent in total are comparable to apartment rents in many cities, unlike an apartment dweller, if the tenant/homeowner moves from the mobilehome park, he or she may sell the mobilehome and walk away with whatever equity was represented in the proceeds after sale.

Of course, mobilehome parks vary in quality just as any other form of housing. RHME is a very sought-after park, located at 1441 S. Paso Real Avenue, Rowland Heights, CA 91748. In the past, RHME has been rated as a four (4)-star park out of five (5) stars. The desirability of RHME is demonstrated by the fact there are no empty spaces, and homes sell very quickly. The price of homes in RHME currently ranges from approximately \$70,000.00 to \$105,000.00. This is a reflection mainly of the value attributable to the home's being located in RHME. The size, age and condition of the home are secondary factors affecting the value of the home.

RHME boasts many quality amenities. It has a clubhouse with a piano, a community kitchen, a billiard room with two billiard tables, a conference room, a library, free wifi, a pool and spa, a “little tot lot” with swings and a playground, mainly for children ten (10) years and younger, and an RV storage area. There is also a laundry facility with four (4) washing machines and four (4) dryers. There are two (2) onsite managers in the Park Office, and three (3) onsite maintenance persons, who take care of all aspects of Park maintenance, except where the services of an expert are required in a particular area, such as out-of-the-ordinary electrical issues or plumbing repairs. There is plenty of vehicle parking within the park premises. Each rental space can accommodate at least 2-4 vehicles in the carport. Additionally, there are 114 spaces for other parking: 56 RV parking spaces, 14 parking spaces at the clubhouse, 1 stall to accommodate the disabled, and 3 spaces at the laundry facility. The remaining 40 spaces are for guest parking at various places throughout the park.

Once a senior park, RHME has been an “all age” park for years. The resident population of approximately 1000-1500 persons of all ages are mainly of Chinese descent (approximately 90-95%), with the balance being Hispanic and Caucasian. It is a quiet community with a low crime rate compared with the rest of the City of Rowland Heights, which itself also has a low crime rate compared with other cities state-wide and nationally. See the section of this narrative regarding neighborhood demographics.

There are various social activities in the park, including yoga and tai chi every morning conducted by residents in front of the clubhouse, and residents walk around the park every morning and evening. A cookie decorating party was scheduled for the past holiday season in the clubhouse, and there was an ice cream social at the end of last summer. Residents play the piano in the clubhouse, and some residents take lessons on the park piano. Residents also use the billiard tables and other amenities.

There are also many activities and features near the park, such as the Puente Hills mall; many shopping centers with numerous restaurants, ethnic and all-American; Chinese markets; family amusement centers; educational centers, including high quality public schools and private academies; community parks, one with horseback riding; social lounges with karaoke; a state-of-the-art Rowland Heights Civic Center, with banquet rooms, table tennis tournaments, and classes, exercise facilities, trail walking, and other features. There are also theaters and a dance center, as well as the Speedway, just minutes away, for those with a need for speed.

The residents of RHME are a well-behaved group, with very few evictions in the park, only one in the last two (2) years. There have been only approximately four (4) police calls to the park over the last two years, and only a few minor crimes over the last two years. Management never receives complaints from persons outside the park about the residents or the park operations.

All in all, RHME is a high quality park, much in demand. It is definitely and indisputably an asset to the surrounding community.

AN EIR IS NOT REQUIRED UNDER CEQA AND ITS GUIDELINES, AS A CLASS 1 EXEMPTION. TITLE 14, § 15301; A NEGATIVE DECLARATION SHOULD BE ISSUED.

In this case the original grant was a zoning exception in Case No. 9276- (1), wherein the property owner filed an application to construct and maintain a 188-space mobilehome park with appurtenant facilities, approved at the end of 1969. The California Environmental Quality Act (CEQA) was not yet in effect. The CEQA was enacted in 1970, at Cal. Public Resources Code §§21000 et seq. The implementing guidelines are located at Title 14, §§15000.

There were several other grants in the 1970's. The County did not require that the property owner submit an EIR in any of the previous cases, including the grant on November 8, 1972, in variance Case No. 101-(1), wherein the property owner was allowed to add 99 spaces to the park.

In Zoning Case No. 5896 -(1), a request was filed on May 25, 1972, by the owner of RHME for a change of zoning of the subject property from A-1-6000 to R-3, in the Puente Zoned District No. 76, with a corresponding amendment to Section 387 of Ordinance No. 1494 . The change of zoning was approved by the Board of Supervisors on September 21, 1972. In light of the recently enacted CEQA, on September 26, 1972, the Board referred the case back to the Regional Planning Commission to consider the potential environmental impact of the requested zone change. The Regional Planning Commission found no significant environmental impact and issued a negative declaration. On October 20, 1972, the Commission sent its recommendation to the Board of Supervisors that the ordinance effecting the change of zoning be adopted. The Regional Planning Commission's file indicates its recommendation was adopted, and the zoning change went into effect, but the file does not disclose the date on which that occurred. The zone change was implemented, but to the lower density zoning R-3-12U (limited multiple residence – 12 units per acre) instead of R-3.

With the passage of 55 years since the original CUP was issued, there has been substantial change in the area surrounding the park. However, presumably the County would not have approved something in the area that would so conflict with RHME that an environmental issue would have been created. Even if it had, it would have been incumbent upon those proposing the development or project, not RHME, to alleviate any environmental issues created by the new development.

Under CEQA, the first inquiry is whether the current application is a "project." If not, no further environmental action is required under CEQA. The County of Los Angeles has adopted the CEQA guidelines for enforcement. It would seem that the current application would not be deemed a "project," since the application does not involve the property owner doing anything to the physical park property, However, the definition of a "project" under CEQA and its guidelines, includes "an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." Title 14, 15378 (a)(3). Hence the current application is in fact a project under the CEQA and its guidelines.

Nevertheless, it is clear that the exemption provision under the CEQA is applicable to this application. There are various categories of projects that are automatically exempt from the EIR analysis and requirements. A common categorical exemption used by agencies is Title 24, §15301

for maintenance of existing facilities. This regulation applies to exempt RHME's application herein as a class 1 category exemption for existing facilities. Section §15301 provides:

“Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of “existing facilities” itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.”

If a project is already built, the project usually has no significant new impacts. Agencies do not have to file any CEQA findings for categorically exempt projects. The finding of exemption is sufficient. Section 15301 lists numerous examples of proposed activities or alterations that are exempted, each of which, although involving negligible activity or alteration, nevertheless involves more activity or alteration than the RHME application, *which involves no change or alteration whatsoever to the physical property.*

The lead agency can file a Notice of Exemption (NOE) with a 35-day statute of limitations period for any legal challenge, or a 180-day statute of limitations if the lead agency decides not to file an NOE.

The County of Los Angeles has granted a Class 1 exemption in several recent applications. Some of the cases involve “renewal” of expired CUP's for existing cell towers. One case involved eight (8) Sprint Nextel cell towers, Project Nos. R2013- 00945-(3), 00956, 00957, 00958, 00959, 00960, 00963, and 00964. The cell towers had been in operation for ten (10) years without any record of public complaints or zoning violations for any of the eight (8) project sites. The CUP had expired 1 ½ years earlier. The County found a Class 1 Exemption because there were no changes proposed and no new equipment being added or installed.

Another case was a request for a zoning change in Whittier, Project No. R2009-01269-(4), meeting the criteria for a Class 1 Categorical Exemption, because it was a continuation of an existing use in an existing structure. Another was a new billiard hall, Project No. R2012-01612-(4), to be located within a building in the shopping center to the east of RHME, considered exempt because it was to be located within a newly established, two-story multi-tenant commercial center, and was compatible with the surrounding area. The billiard hall was an application in the first instance, wherein the zoning agent pointed out pivotal factors that also apply to RHME's current application:

“Section 15303 states that ‘the key consideration is whether the project involves negligible or no expansion of an existing use.’ No new construction is being proposed and the only alteration is the change of use from offices to retail space.”

Additionally, in Zoning Change Case No. 6495-(1), filed in 1979 as “Regional Planning Commission Initiative,” for a billboard exclusion overlay for an area that includes RHME, Norman B. Nelson, of the Zone Change Section of the Department of Regional Planning, prepared a Negative

Declaration and Factual Report for hearing date September 19, 1979. Pursuant to the Negative Declaration, the area was already determined *not* to be within a “Significant Ecological Area” or “Resource Management Zone.”

RHME submits that a finding is appropriate that the project (the existing mobilehome park) qualifies as a Categorical Exemption (Class 1– Existing Facilities) and is consistent with the finding by the Secretary of State for Resources, and by the local County guidelines, that this class of projects does not have a significant effect on the environment.

THE HISTORY OF PREVIOUS CASES/ZONING HISTORY OF RHME

Zone Exception Case No. 9276 - (1)

RHME was built in the early 1970's. The original application was for a "zoning exception," filed before the days of "Conditional Use Permits." On September 10, 1969, applicant Tropical Enterprises filed an application on behalf of the property owner, J. A. Rowland, Jr., to construct and maintain a 188-space mobilehome park with appurtenant facilities at its present location, then designated "at the rear of 18800 E. 5th Avenue, between Nogales Street and Greencastle Avenue, in the Puente Zoning District."

At that time the area was zoned light agriculture (A-1-6000) pursuant to Ordinance No. 5565, effective July 18, 1965. The application of Tropical Enterprises for the zoning exception was approved by the Regional Planning Commission on November 25, 1969. There were 25 conditions imposed for the exception. A copy of the list of exceptions is hereto attached as **Exhibit "1."**

The property was master planned as "R-3." Construction was to be completed by November 25, 1974. The zoning exception was set to expire November 25, 1994. The record of inspections conducted between 11/25/1970 and 11/25/94 indicates that at each inspection RHME was found to have complied with all conditions. A copy of that record, from the County file on Case No. 9276-(1), is attached hereto as **Exhibit "2."**

Zone Exception Case No. 9435 - (1)

An application was filed on February 4, 1970, by David Ghent for Tropical Enterprises on behalf of property owner John A. Rowland, Jr., for an exception from Zoning Ordinance No. 1494, which had zoned the area as A-1-6000 and C-3. The application essentially was for expanding the area of the mobilehome park by approximately 5.3 acres, and increasing the number of rental spaces in the park to 234 spaces.

The exception was granted on March 31, 1970, subject to 25 conditions imposed. A copy of the list of conditions is attached hereto as **Exhibit "3."** The exception grant was to be used prior to March 31, 1971. If not, the grant would be null and void. The exception was set to expire March 31, 1995.

The County conducted inspections at the property on 10 occasions between 9/23/1970 and 4/27/1987. A copy of the inspection sheet from County records is attached hereto as **Exhibit "4."** On each inspection, RHME was found to be in compliance, with the exception of the first inspection while construction was still ongoing. After the last inspection on April 27, 1987, no further inspections were to be done unless there was a complaint lodged against the property. The record does not indicate any complaints were lodged.

Zone Exception Case No. 9580 - (1)

On July 17, 1970, Tropical Enterprises filed an application for a zone exception on behalf of the property owner, Rowland Heights Mobile Estates, a Limited Partnership. (Former owner, John A. Rowland, Jr., had conveyed his ownership interest to the partnership by grant deed dated June 23, 1970, recorded June 26, 1970.) The application was for an exception to the A-1-6000 (light agriculture) and C-3 (unlimited commercial) zoning of the area of the mobilehome park in order to add two (2) mobilehome spaces to the park that had been approved in Zoning Exception Case No. 9435-(1), for a total of 236 rental spaces. The exception previously had been advertised as 236 spaces but the two (2) additional spaces had been omitted from the previous plot plan. The property at issue was described as located approximately 1000 feet westerly of So. Nogales St., between Colima Rd. and the Pomona Freeway, in the Puente Zoned District.

The easterly 140 feet of the park property had been zoned C-3 by Ordinance No. 8841, adopted May 11, 1965. The rest of the property had been zoned A-1-6000 by Ordinance 5565, as described above.

The application was approved on September 8, 1970, with seven (7) conditions imposed, in addition to the 25 conditions imposed in Case No. 9435 (1). The expiration date of March 31, 1995 was incorporated. A copy of the list of conditions and factual data bearing on this case is attached hereto as **Exhibit "5."** The exception was to become null and void unless used prior to September 8, 1971.

A copy of the record of inspections on Case No. 9580 for the period 3/18/1971 through 4/27/1987 is attached hereto as **Exhibit "6."** This record indicates that RHME was found to be in compliance at each of 8 inspections, except for some changes that were allowed and approved in a revised plot plan in December of 1971. After the last inspection on April 27, 1987, no further inspections were to be done unless there was a complaint lodged against the property. The record does not indicate any complaints were lodged.

Zoning Case No. 5896 -(1) to Change Zoning From A-1-6000 to R-3

Zoning Case 5896 -(1), was a request filed on May 25, 1972, by Tropical Enterprises for a change of zoning of the subject property, in the Puente Zoned District No. 76, from A-1-6000 to R-3, with a corresponding amendment to Section 387 of Ordinance No. 1494. The change of zoning was approved by the Board of Supervisors on September 21, 1972, but on September 26, 1972, the case was referred back to the Regional Planning Commission to consider the potential environmental impact of the requested zone change.

The Regional Planning Commission found no significant environmental impact and issued a negative declaration and on October 20, 1972, the Commission sent its recommendation to the Board of Supervisors that the ordinance effecting the change of zoning be adopted. The Regional Planning Commission's file indicates its recommendation was adopted and the zoning change went into effect, but the file does not disclose the date on which that occurred. The zone change was implemented, but to the lower density zoning R-3-12U (limited multiple residence – 12 units per acre) instead of R-3.

Conditional Use Permit Case No. 172- (1) and Variance Case No. 101 - (1)

The property owner filed an application for a conditional use permit (CUP) and a variance, in the above-referenced zoning cases, on August 11, 1972, requesting to extend the time limit to complete the construction of the park, to expand the park to add 99 spaces to the south of, and adjacent to, the existing 236-space park; and to modify the development standards, as follows: allowing less than a 15-foot front yard setback based on there being no street frontage along the “front” of the property site; a wall modification to the front wall; to expand the clubhouse; to add parking spaces and to relocate a boat and camper storage area.

On October 3, 1972, the Regional Planning Commission ruled that the proposed project would not significantly affect the human or natural environment.

The application was granted on November 8, 1972, imposing 9 conditions, a copy of which is attached hereto as **Exhibit “7.”** The permit and variance were to become null and void if not used prior to November 8, 1973, unless the property owner were to submit a written request for extension to the County prior to November 8, 1973.

Condition number 9 provided that Zone Exception Cases 9435 and 9580, and the CUP and variance grants were all set to expire on October 24, 1997, so there would be a new, single, 25-year grant period for all grants for the entire property.

County inspections for compliance with the conditions were performed on 3/22/73, 4/2/74, 3/30/76, July of 1979, 1/19/83, and January of 1985. For each inspection, the report noted that the property owner was complying with the conditions. The County records do not reflect any inspections performed after 1985. See **Exhibit “8”** attached hereto.

Zone Change Case No. 6495-(1)

On or about November 9, 1979, the Los Angeles County Regional Planning Commission submitted its resolution to the Board of Supervisors recommending a change of zone for five (5) parcels located on the south, east, and north sides of the Pomona Freeway, Nogales Street, and Colima Road, to change the zoning from C-2 (Neighborhood Commercial) and C-3 Unlimited Commercial) to C-2-BE (Neighborhood Commercial – Billboard Exclusion) and C-3-BE (Unlimited Commercial – Billboard Exclusion). The land included the property on which RHME is located. A copy of the zoning history and list of environmental factors is attached hereto as **Exhibit “9.”**

The Board of Supervisors approved the change of zone in the latter part of 1979.

Zone Exception Case No. 9459

In the records received from the County on Case No. 5896-(1), there is also reference made to a Case No. 9459, which is described as a request for a vacation trailer and rental yard. It is not clear from

the reference whether it applies to RHME, but it appears to have been approved 6/70, expires 6/80. There was no separate file provided to applicant by the County on a Case No. 9459.

T.R.M 1193

This case also is referred to in the records from the County on Case No. 5896-(1). It is described as "divided property to south into two parcels Recorded 3-30-71." There also was no separate file provided by the County on this case.

CONCLUSION

From all appearances, RHME has complied with all conditions (and exceptions) imposed by the various grants throughout the years and has remained in compliance to date. There is no reason not to approve the current application for a CUP.

**RHME OWNER HAS A FUNDAMENTAL VESTED RIGHT TO THE
GRANT/RENEWAL OF THE CUP
UNDER STATE LAW.**

The owner of RHME has operated the mobilehome park continuously since the 1970's, in compliance with all conditions imposed by the County in the various zoning, variance and CUP grants.

For all those years, the owner has rented the mobilehome spaces to tenants, who typically own the mobilehome in which they live on the rental space. The owner has also operated the park under the comprehensive body of state law that governs all aspects of mobilehome park operation.

The state law governing the owner and park management's relationship with the park tenants is contained in the "Mobilehome Residency Law," California Civil Code §§ 798, *et seq.*, known in the industry as the "MRL." The MRL provides rights to the park operator and limits on its power as a landlord, to account for the unique situation of renting spaces to tenants who typically purchase, and therefore have an investment in, the mobilehome in which they live. The MRL provides a special protection for tenants because of this unique landlord-tenant relationship. Basically a tenant is allowed a lifetime tenancy if he or she complies with all tenancy obligations, and can be evicted only for cause. In fact, this lifetime tenancy can be passed to the tenant's survivors, if they qualify for tenancy.

Additional state law governs other aspects of mobilehome park operation. The "Mobilehome Parks Act," California Health and Safety Code, §§18200 *et seq.*, and the regulations promulgated thereunder, establish many of the requirements for the physical park property, including permits, fees, and responsibilities of park operators and enforcement agencies, mainly, the California Department of Housing and Community Development, commonly referred to in the industry as "HCD."

The Health and Safety Code directed HCD to establish regulations to implement the Health and Safety Code, and to enforce those regulations. The regulations are contained in the California Code of Regulations, Title 25, Division I, Chapter 2, §§1000, *et seq.*, and include specific requirements for park construction, maintenance, use, occupancy, and design. They also include requirements for items such as lot identification, lighting, roadway width, plan and permit requirements, as well as specific requirements for mobilehome installation, accessory structures and buildings, such as sheds, carports, and garages, earthquake resistant bracing systems, application procedures, fees, enforcement, and appeal procedures.¹

¹Even when the city or county assumes enforcement responsibility on behalf of HCD, the city/county cannot impose more restrictive local regulations than state law and state-promulgated regulations with respect to the construction or operation of mobilehome parks. California Health and Safety Code §18300 ("(a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part."); *People v. Dept. of Housing and Community Development*, 45 Cal. App. 3d 185 (1975).

Thus, a park operator is heavily regulated in all aspects of the mobilehome park business. The owner of RHME has constantly worked to comply with these bodies of law as they have developed through the years, and has worked to keep abreast of new developments and changes in these laws, as they are supplemented and amended each year.

As is no doubt obvious from the above description of the various bodies of law, the compliance with them is not only a tremendous amount of work, but is also costly. What started as an industry of simple trailer parks in the mid 1900's has developed into a much more sophisticated rental housing option. Mobilehome park living has also become a recognized affordable alternative to the single family residence, and an alternative to renting a house or an apartment, since the total cost of mortgage and rent is comparable to rent for a house or apartment, yet the mobilehome park tenant, as owner of the mobilehome, is building equity in the mobilehome throughout the tenancy.

Based on the sustained successful operation of RHME throughout the last 40 years under the strict and elaborate network of state laws, and the owner's compliance with the conditions imposed by the County in the various historical grants, and based on RHME's legal mandate to provide tenants a continued lifetime tenancy under state law, a fundamental vested right to continued operation exists, as explained by the court in the seminal case, *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App 4th, 8 Cal. Rptr. 2d 385 (1992).

In *Goat Hill Tavern*, the tavern had been in operation for over 35 years as a legal nonconforming use. The owner had invested substantial money in adding an expansion containing a game room, and other improvements to the existing building. A temporary conditional use permit for the game room expansion was sought and granted, after-the-fact. When the permit expired, the owner sought renewal of the permit. The City at first imposed additional restrictive conditions to the granting of a renewal, and ultimately denied the renewal.

Goat Hill Tavern sought a writ of administrative mandamus (Code Civ. Proc., § 1094.5) compelling the City to renew the conditional use permit. The trial court applied the independent judgment test, concluding that the City's decision to deny renewal of the permit was not supported by the evidence and granted the writ. The court specifically concluded that the owner had a vested property right and, to terminate the use, the City must establish that Goat Hill Tavern was a public nuisance or otherwise demonstrate a compelling public necessity for its decision. The City appealed, contending the trial court applied an incorrect standard of review. It argued that the tavern owner had no fundamental vested right in Goat Hill Tavern and, therefore, the trial court was limited to a determination of whether substantial evidence supported the City's decision.

The appellate court pointed out that the grant or denial of a conditional use permit is an administrative or quasi-judicial act, citing, *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 517 [113 Cal. Rptr. 836, 522 P.2d 12] and *Smith v. County of Los Angeles* (1989) 211 Cal. App.3d 188, 198 [259 Cal. Rptr. 231]). Judicial review therefore must be in accordance with Code of Civil Procedure section 1094.5.

The threshold issue on the appeal was whether the tavern owner had any vested fundamental right to continue operation of the tavern. The court distinguished the term 'vested' in the sense of

'fundamental vested rights' when determining the scope of judicial review in an administrative mandamus proceeding, from use of the term 'vested rights' in the doctrine relating to land use and development. (*Whaler's Village Club v. California Coastal Com.*, supra, 173 Cal.App.3d at p. 252.) The court stated:

. . . When an administrative decision affects a right which has been legitimately acquired or is otherwise vested, and when that right is of a fundamental nature from the standpoint of its economic aspect or its effect . . . in human terms and the importance . . . to the individual in the life situation, then a full and independent judicial review of that decision is indicated because the abrogation of the right is too important to the individual to relegate it to exclusive administrative extinction." (*San Marcos Mobilehome Park Owners' Assn. v. City of San Marcos* (1987) 192 Cal. App.3d 1492, 1499 [238 Cal. Rptr. 290], internal quotation marks omitted.)

"Whether an administrative decision substantially affects a fundamental vested right must be decided on a case-by-case basis. [Citation.] Although no exact formula exists by which to make this determination [citation] courts are less sensitive to the preservation of purely economic interests. [Citation.] In deciding whether a right is 'fundamental' and 'vested,' the issue in each case is whether the 'affected right is deemed to be of sufficient significance to preclude its extinction or abridgment by a body lacking judicial power." [Citation.] " (*301 Ocean Ave. Corp. v. Santa Monica Rent Control Bd.* (1991) 228 Cal. App.3d 1548, 1556 [279 Cal. Rptr. 636].)

Goat Hill Tavern v. City of Costa Mesa, supra, 6 Cal. App. 4th 1519 at 1526.

Goat Hill Tavern had been in operation for over 35 years as a legal nonconforming use. The owner had invested over \$1.75 million in its refurbishment, including substantial exterior facade improvements undertaken at the City's behest. He then sought a conditional use permit to allow the addition of a game room, which was granted on a temporary basis. When the permit expired, the City argued he had lost all right to continue in business.

The appellate court concluded that the tavern owner's right to continued operation of his business was a fundamental vested right, and not, as the City so strongly urged, a "purely economic privilege." It was the right to continue operating an established business in which the owner had made a substantial investment. The court further explained:

Interference with the right to continue an established business is far more serious than the interference a property owner experiences when denied a conditional use permit in the first instance. Certainly, this right is sufficiently personal, vested and important to preclude its extinction by a nonjudicial body.

While cases applying the independent judgment test in land use matters are few, we uphold its application here because of the unique facts presented. We might conclude differently were this, as the city attempts to suggest, a simple case of a property owner seeking a conditional use permit to begin a use of property. But it is not. Rather, Goat Hill Tavern is an existing business and a legal nonconforming use.

The circumstances presented are more like the revocation of a conditional use permit than the mere issuance of one. The city has a practice, common in many cities, of issuing limited conditional use permits. When the conditional use permit "expires" the property owner must renew the conditional use permit.

* * *

Costa Mesa's practice is to do nothing about "expired" conditional use permits and to allow businesses to continue. When a complaint about a business arises, as here, months after the conditional use permit expires, the city demands an application for renewal. In the meantime, the property owner has been continuing to invest in the property and the business, but faces the possible loss of his conditional use permit for reasons other than failure to comply with its original conditions.

Denial of an application to renew a permit merits a heightened judicial review. "Once a use permit has been properly issued the power of a municipality to revoke it is limited. [Citation.] Of course, if the permittee does nothing beyond obtaining the permit it may be revoked. [Citation.] Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled. [Citations.] *When a permittee has acquired such a vested right it may be revoked if the permittee fails to comply with reasonable terms or conditions expressed in the permit granted [citations] or if there is a compelling public necessity. [Citations.] A compelling public necessity warranting the revocation of a use permit for a lawful business may exist where the conduct of that business constitutes a nuisance.*" (*O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal. App.3d 151, 158 [96 Cal. Rptr. 484]; *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal. App.2d 776 [194 P.2d 148]; see also *Upton v. Gray* (1969) 269 Cal. App.2d 352 [74 Cal. Rptr. 783]; *Community Development Com. v. City of Fort Bragg* (1988) 204 Cal. App.3d 1124 [251 Cal. Rptr. 709].) By simply denying renewal of its conditional use permit, the city destroyed a business which has operated legally for 35 years. The action

implicates a fundamental vested right of the property owner, and the trial court was correct in applying the independent judgment test.

Goat Hill Tavern v. City of Costa Mesa, supra, 6 Cal. App. 4th 1519 at 1529-1531 (emphasis added).

RHME submits that the rights involved in its application are even far more deserving of consideration than the tavern owner's rights in the Goat Hill Tavern case. RHME is an attractive, well-managed and well-maintained mobilehome park providing much-needed affordable housing to hundreds of families, thousands of individuals in Rowland Heights. Provision of affordable housing is a major concern addressed in the Rowland Heights Community General Plan, adopted by the Board of Supervisors on September 1, 1981, after RHME was already fully built and operational. There are no objectionable features about the park or its existence in the neighborhood. RHME knows of no complaints about the park. There are no allegations of nuisance, public or private.

The owner of RHME has a fundamental vested right that cannot be taken away absent a compelling reason. There is no compelling reason for the County to deny the CUP and thereby deprive the owner of RHME of its fundamental vested right, or to otherwise impose onerous conditions that would interfere with the continued enjoyment of that fundamental vested right.

RHME submits that the only correct result on this application is for the County to find (1) that the project is consistent with the County General Plan and the Rowland Heights Community Plan; (2) that the park operation has not and will not adversely affect the health, safety, peace, comfort, or welfare of the persons residing or working in the surrounding area; (3) that the park has not and will not be materially detrimental to the use, enjoyment, or valuation of property located in the vicinity of the park; (4) that the park has not and will not jeopardize, endanger or otherwise constitute a nuisance or menace to the public health, safety, or general welfare; (5) that the project is adequate in size and shape to accommodate its walls, yards, fences, parking, landscaping, and other development features so as to continue to be suitable within the surrounding area; and (6) that the project is adequately served by highways or streets of sufficient width, and improved as necessary to carry the kind and quantity of traffic that the use as a mobilehome park has generated and will continue to generate, and by other public or private service facilities as are necessary.