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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LEO RAMPERSAD etc. et al., Plaintiffs and Appellants, v. CITY OF THOUSAND OAKS, Defendant and Respondent.	2d Civil No. B269065 (Super. Ct. No. 56-2011-00408151-CU-WM-SIM) (Ventura County)

In 2011, City of Thousand Oaks (City) adopted Ordinance No. 1559-NS (1559-NS), a mobile home rent control measure to protect tenants from excessive rent increases and provide mobile home park owners a fair and reasonable return on their investments. Because these goals may conflict, 1559-NS was bound to spawn litigation.

Pursuant to 1559-NS, City approved a $191.95 per month fair-return rent increase for the Ranch Mobile Home Park (Ranch), to be phased in over seven years. Ranch requested a rent increase of $620.11 per month and considered 1559-NS to be

"'a slap in the face.'" Ranch nonetheless accepted 1559-NS as a valid rent control measure.

Unhappy about the rent increase, Ranch tenants sued City based on the theory that 1559-NS violated the Fair Housing Act (FHA; 42 U.S.C. § 3604(a)-(b)) and was an unconstitutional taking of their property (i.e., inverse condemnation). The trial court sustained, without leave to amend, City's demurrer to the causes of action for declaratory and injunctive relief on the ground that the action was barred by the 90-day statute of limitations (Gov. Code, § 65009, subd. (c)(1)(E))[1]. Summary judgment was granted on the FHA and inverse condemnation causes of action. Leo Rampersad, deceased, by and through his successor in interest, Karen R. Montana, and Senior Alliance for Empowerment (SAFE)[2] appeal from the rulings. We affirm.

Facts & Procedural History

The Ranch is a 74 unit low-income, senior mobile home park where park tenants own their mobile homes and pay space rent. When the Ranch was developed in 1974, City issued a development permit (TPD 74-6) requiring that it be operated as a low-income mobile home park. Space rents were set at $115 to $125 per month based on a formula designed to give the Ranch owner an 11.5 percent return on his $500,000 investment. Ranch

[1] Unless otherwise stated, all statutory references are to the Government Code.

[2] SAFE is a nonprofit public benefit corporation made up of Ranch tenants who own or make loan payments on their mobile homes.

residents were restricted to seniors or disabled persons with an income of no more than $10,000 a year. Of the eight mobile home parks in the City of Thousand Oaks, Ranch tenants paid the lowest space rent.

In 1980, City enacted a rent stabilization ordinance (RSO) to regulate the maximum rent that could be charged at mobile home parks. All mobile home parks were subject to the RSO except the Ranch which had its own rent formula.

In 1983, the Ranch sought a rent increase of 7 percent, the amount allowed under the RSO. City reevaluated Ranch's rent formula, authorized a 7 percent rent increase for 1984, modified the 11.5 percent return-on-investment formula to include an inflation adjustment, and capped annual rent increases at 4 percent. City adopted Resolution No. 84-037 to implement these changes and modified the residency rules to restrict park residency to seniors only.

In 2000, Ranch applied for and was granted a 4 percent rent increase in accordance with Resolution No. 84-037.[3]

In 2010, Ranch sought a fair-return rent increase of $620.11 a month. City determined that the application should be evaluated pursuant to RSO standards and directed City's Rent Adjustment Commission (RAC) to hear the matter. The RAC

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[3] In 2011, Ranch tenants paid $133 per month space rent, even though the fair rental value averaged $420 per month. By contrast, the average space rent at the other seven parks in City ranged from a low of $324 per month to a high of $543 per month. James Brabant, a mobile home park expert, who had conducted mobile home rent surveys throughout California, could not recall any other mobile home park in the state with rents as low as the Ranch.

conducted a three day hearing and received evidence from an expert, Dr. Kenneth Baar, that a rent increase of $191.95 to $325.58 per month would satisfy Ranch's fair-return requirements. The RAC ultimately approved a rent increase of $191.95 per month, to be phased in over seven years.

Unhappy about the decision, the Ranch and Ranch tenants appealed to the City Council. On May 24, 2011, the City council sustained the RAC decision, and pursuant to Resolution No. 2011-025, authorized a "'just and reasonable return'" rent increase not to exceed $191.95 per space per month, to be phased in over a seven year period.[4] City, however, was concerned about the economic plight of mobile home parks and the availability of affordable mobile home housing. Before Ranch filed the application for a fair-return rent adjustment, two mobile home parks sued City. In both cases, the superior court invalidated portions of the RSO because it was too favorable to park tenants. Following the rulings, the owner of the Conejo Mobile Home Park closed its mobile home park, resulting in the loss of 49 mobile home spaces. Vallecito Mobile Estates, which had 303 mobile home spaces, planned to convert the park into subdivided owner-occupied spaces.

City authorized its mayor, Andrew Fox, to conduct a series of closed-door meetings with mobile home owners and tenants to reach a common ground on rent increases and mobile home park subdivisions and conversions. Delegates were chosen to represent Ranch tenants but the delegates refused to sign

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[4] City approved the same rent increase when it adopted 1559-NS on July 19, 2011. 1559-NS rescinded Resolution No. 2011-025.

confidentiality agreements and did not participate in the closed-door meetings. On July 19, 2011, after City reached a mediated agreement with the other mobile home park owners and tenants, it adopted Ordinance 1559-NS. The stated purpose of 1559-NS was to provide long-term stability in mobile home housing, to provide certainty and predictability for future rent increases, to maintain affordable rents and a reasonable rate of return for mobile home park owners, and to avoid contentious and costly rent adjustment applications.

1559-NS eliminated tenant age and income restrictions at the Ranch and authorized a supplemental $191.95 per month rent increase to be phased in over seven years. 1559-NS established a rent deferral program in which a qualified low income tenant could defer payment on the rent increase, without interest, until the tenant's death. In conjunction with 1559-NS, the mobile home park owners recorded covenants promising not to challenge 1559-NS and to forego additional rent increases for 10 years. It was agreed that mobile home park owners would not convert their property for other uses for 10 years without approval of 60 percent of the park residents.

The Lawsuit

Leo Rampersad, a Ranch tenant, sued for declaratory and injunctive relief on December 12, 2011. The complaint alleged that "City undid the [1974] permit conditions on which the Ranch trailer park development permit was approved, no longer reserving the park for low income seniors, and eliminated the restrictions on rent increases that the City and owner agreed upon and that governed the park for more than three decades." It was alleged that 1559-NS "curtail[s] the rights of Ranch residents to realize their investment backed expectations, and

constitute[s] an unlawful taking of property under both the United States and California Constitutions."

After Rampersad passed away on February 6, 2012, Rampersad's daughter and successor in interest, Karen Montana, substituted in as a plaintiff. Appellants filed a first amended writ petition/complaint. The trial court sustained, without leave to amend, City's demurrer on the declaratory and injunctive relief causes of action on the ground that the entire action was barred by the 90-day statute of limitations. (Gov. Code, § 65009, subd. (c)(1)(E).) Granting a motion for new trial, the trial court ruled that appellants could proceed on the FHA and inverse condemnation (state takings) claim.

After appellants filed a third amended writ petition/complaint, City moved for summary judgment on the FHA and state takings claims. Granting the motion, the trial court found no material triable facts of discriminatory intent or disparate impact, and ruled that 1559-NS was not a regulatory taking of appellants' property.

Moot Appeal

City argues that the appeal should be dismissed because the Ranch tenants and owner have entered into a confidential settlement agreement in another action to ignore any declaratory and injunctive relief that may be ordered in this action. (*Sqrow v. A.V.M.G.H. Five, the Ranch Limited Partnership*, Ventura County Sup. Ct., Case No. 56-2013-00437970-CU-BC-VTA.)[5] City contends that appellants no longer have a stake in the outcome of this case and the appeal is moot.

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[5] Appellants filed a petition for writ of mandate/prohibition to stay the trial court's order to produce the *Sqrow* settlement

The settlement agreement is between the Ranch owner and park tenants, some of whom have already sold their mobile homes.[6] It does not resolve City's liability on the FHA and state takings claims. We accordingly deny the motion to dismiss the appeal as moot because material questions remain for the court's determination. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 144.)

90-Day Statute of Limitations

Appellants contend that the trial court erred in ruling that the causes of action for declaratory and injunctive relief were time-barred by section 65009, subdivision (c)(1)(E) which requires that the action be filed and served no later than 90 days after City adopted 1559-NS. Our review is de novo. (*General Development Co., L.P. v. City of Santa Maria* (2012) 202 Cal.App.4th 1391, 1394.)

Section 65009, subdivision (c)(1)(E) imposes a short 90-day statute of limitations for legal challenges to local land use decisions involving general or specific plans, zoning ordinances, development agreements, permits, or permit conditions. (*Urban Habitat Program v. City of Pleasanton* (2008) 164 Cal.App.4th 1561, 1571.) Section 65009, subdivision (c)(1) provides in pertinent part: "[N]o action or proceeding shall be maintained in

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agreement and release of claims. (B265503.) We denied the writ petition and stay request on July 23, 2015.

[6] Appellant Karen Montana sold Rampersad's mobile home in 2012 for $20,000. Rampersad purchased the mobile home for $22,500 and lived in it in for many years before his death.

any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision: [¶] . . . [¶] (E) . . . to determine the reasonableness, legality, or validity of any condition *attached* to a variance, conditional use permit, or any other permit." (Italics added.) Here the action commenced on December 12, 2011, more than 90-days after the adoption of 1559-NS.

Appellants argue that the 90-day limitations period only applied to City's decision to *attach* a condition to the Ranch development permit when the permit issued in 1974. Government Code section 65009, however was enacted in 1983, nine years after the development permit issued. (Stats. 1983, ch. 1138, § 1.) Although a legislative decision to impose conditions is generally made at the time a permit is approved, the legislative decision can be an amendment, modification, or removal of a permit condition. We so held in *General Development Co., L.P. v. City of Santa Maria*, *supra*, 202 Cal.App.4th 1391. There, the City of Santa Maria denied a zone change application, which if granted, would have amended a zoning ordinance. (*Id.* at pp. 1394-1395, fn. 2.) The developer filed suit contesting the denial of his application more than 90 days after City's decision. The trial court ruled that the action was time-barred. On appeal, the developer argued that section 65009, subdivision (c)(1)(B) did not apply because city's refusal to amend the zoning ordinance was not a "'decision'" to adopt or amend a zoning ordinance. (*Id.* at p. 1394.) We held that an action challenging a municipal decision to deny a rezoning request is subject to the 90-day statute of limitations. (*Id.* at p. 1395.) Section 65009 insures that government entities, landowners, lessees, adjoining

landowners, and the public quickly know whether there is a theoretical "'cloud'" hanging over the land. (*Ibid.*)

No one disputes that the low income rent condition which attached to the 1974 development permit, was a land use decision. City's decision to change the condition 30 years later is also a land use decision, subject to the 90-day statute of limitations. This is consistent with section 65009 which was enacted "to alleviate the 'chilling effect on the confidence with which property owners and local governments can proceed with projects' [citation] created by potential legal challenges to local planning and zoning decisions." (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 765 (*Travis*).)[7] Section 65009 is analogous to section 66499.37 which imposes a 90-day statute of limitations to contest any decision pursuant to an ordinance enacted under the authority of the Subdivision Map Act. (See *Aiuto v. City and County of San Francisco* (2011) 201 Cal.App.4th 1347, 1353-1354 [90-day statute of limitations applicable to ordinance changing conditions and adding new provisions to Below Market Rate Condominium Conversion Program].)

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[7] *Travis*, *supra*, 33 Cal.4th 757 states that section 65009 is "applicable to actions challenging several types of local planning and zoning decisions" and provides examples such as the adoption of a general or specific plan, the adoption of a zoning ordinance, the adoption of a regulation attached to a specific plan, the adoption of a development agreement, and the grant, denial or imposition of conditions on a variance or permit. (*Id.* at p. 765.) As we shall discuss, the list is not exhaustive and includes legislative decisions modifying low rent conditions on a development permit.

Appellants were aware of the 90-day statute of limitations when they appeared at a city council meeting before the adoption of 1559-NS. Appellants' trial counsel stated that if the Ranch owner "didn't like the deal they got in 1984 under the resolution, [Resolution No. 84-037], it had 90 days under the [G]overnment [C]ode to file an objection." The same 90-day limitation period applies to City's adoption of 1559-NS which modifies the 1974 permit condition and Resolution No. 84-037. Applying a different limitation period to lawsuits challenging the modification or removal of a permit condition would create uncertainty and result in poor land use law. (*General Development Co.*, *L.P. v. City of Santa Maria*, *supra*, 202 Cal.App.4th at p. 1395.)

Appellants argue that section 65009, subdivision (c)(1)(E) is limited to zoning matters decided by a planning commission or a zoning board. The third amended writ petition/complaint alleges that City's modification of the 1974 low rent conditions violated the City Municipal Code which requires that the development permit be modified by the City Planning Commission rather than the City Council. It matters not which City official approved the modification.[8] (See, e.g., *Stockton Citizens for Sensible Planning v. City of Stockton* (2012) 210 Cal.App.4th 1484, 1491-1499 [community development

[8] The same $191.95 rent increase was approved by the City Council on May 24, 2011 when it adopted and affirmed the RAC's decision and adopted Resolution No. 2011-025. 1559-NS, which was adopted July 19, 2011, rescinds Resolution No. 2011-025. Even if appellants prevailed on their action to declare 1559-NS void, it would reinstate Resolution No. 2011-025 which authorizes the same rent increase.

department director's letter approving Wal-Mart Supercenter project triggered 90-day limitation period; court rejected argument that the letter was not a permit issued after a decision by a legislative body].) City's adoption of 1559-NS represents City's final decision, right or wrong, that the low income rent conditions in the 1974 development permit and Resolution No. 84-037 must be modified.

Section 65009, subdivision (c)(1)(E) provides that the 90-day limitation period applies to any action "[t]o attack, review, set aside, void, or annul any decision on the matters listed in Section 65901 and 65903, *or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit*." (Italics added.) Government Code sections 65901 and 65903 relate to hearings and decisions, and administrative appeals concerning applications for variances, conditional use permits, and other permits. (*Travis*, *supra*, 33 Cal.4th at p. 766, fn. 2.) An action "to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit" is much broader and governs the present action challenging City's adoption of 1559-NS.

Our courts have held that the 90-day limitation period applies "to a broad range of local zoning and planning decisions" (*Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 526), including "the grant, denial, or imposition of conditions on a variance or permit . . . ." (*Travis*, *supra*, 33 Cal.4th at p. 765.) In *Travis* property owners challenged a local decision to impose rent and occupancy conditions on a permit for a second dwelling unit. The Supreme Court held that "insofar as the action seeks removal of conditions imposed on Travis's

development permit, it was timely brought within 90 days of the final decision imposing the conditions. (Gov. Code, § 65009, subd. (c)(1)(E).)" (*Id.* at p. 762.) The court concluded that section 65009, subdivision (c)(1)(E) "does not purport to restrict the legal theories or claims that may be made in such an action, and we see no justification for reading such a substantive limitation into the clear procedural language of the statute. Subdivision (e) of section 65009 provides that after expiration of the limitations period, 'all persons are barred from *any* further action or proceeding.' (Italics added.) A plaintiff, therefore, may not avoid the short 90-day [limitations period] by claiming that the permit or condition is 'void' and thus subject to challenge at any time. [Citations.]" (*Id.* at pp. 767-768.)

The same principal applies here. Appellants claim that 1559-NS is void and is not a zoning ordinance. 1559-NS, however, requires that the Ranch be operated as a low income mobile home park, that it provide a rent deferral program, and that the mobile home park not be converted to another use for ten years without approval of 60 percent of the residents. "That the regulations imposed include a restriction on rental levels does not convert the Ordinance from a zoning regulation to a rent control law, for the two are not mutually exclusive. [Citation] . . . ." (*Travis*, *supra*, 33 Cal.4th at p. 772, fn 8.) "'*Rent control is a restriction on property as certainly as a zoning ordinance is a restriction, and it must be recognized.*' [Citation.]" (*Cat Partnership v. County of Santa Cruz* (1998) 63 Cal.App.4th 1071, 1085.)

Section 65009, subdivision (c)(1)(B) provides that the 90-day statute of limitations applies to actions "[t]o attack, review, set aside, void, or annual the decision of a legislative body

to adopt or amend a zoning ordinance." 1559-NS is such a zoning ordinance and regulates mobile home park rents and Ranch's future change of use. Section 65009, subdivision (c)(1)(B) applies to a wide variety of zoning regulations. (See, e.g., *Buena Park Motel Assn. v. City of Buena Park* (2003) 109 Cal.App.4th 302, 307-309 [§ 65009, subd. (c)(1)(B) applied to ordinance regulating length of stay in motel rooms]; *616 Croft Ave. v. City of West Hollywood* (2016) 3 Cal.App.5th 621, 627-628 [§ 65009, subd. (c)(1)(B)-(C) applicable to affordable housing ordinance imposing in-lieu housing fee].) Where the regulatory taking claim is based on a zoning ordinance that does not effect a physical invasion of land or impair title to property, the 90-day statute of limitations set forth in section 65009, subdivision (c)(1)(E) controls. (*Travis*, *supra*, 33 Cal.4th at p. 775.) "The express and manifest intent of section 65009 is to provide local governments with certainty, after a short 90-day period for facial challenges, in the validity of their zoning enactments and decisions." (*Id.* at p. 774.) Appellants' characterization of 1559-NS as a rent control law does not exempt the action from the 90-day statute of limitations.

Appellants claim their due process rights were violated because Ranch tenants were excluded from the closed-door meetings before the adoption of 1559-NS. Calling it a due process violation does not overcome the statute of limitations bar. Regardless of how the decision was made, the lawsuit had to be filed no later than 90 days after City's adoption of 1559-NS.

Appellants argue that the low income rent condition was never implemented because the Ranch owner failed to record CC&Rs as promised in 1974. That does not revive a time-barred claim. Appellants "may not avoid the short 90-day limit of section 65009 by claiming that the permit or condition is 'void'

and thus subject to challenge at any time. [Citations.] By the same token, an action is not removed from the purview of section 65009, subdivision (c)(1)(E) merely because the plaintiff claims the permit or condition was imposed under a facially unconstitutional or preempted law." (*Travis*, *supra*, 33 Cal.4th at p. 768.) The trial court did not abuse its discretion in sustaining the demurrer without leave to amend on the causes of action for declaratory and injunctive relief. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Granting appellants leave to amend would be a futile act. "The law neither does nor requires idle acts." (Civ. Code, § 3532.) We cannot rewrite section 65009 or turn back the clock.

Summary Judgment

Summary judgment was granted on the FHA and state takings claims because there are no material triable facts that 1559-NS is discriminatory, has a disparate impact on appellants, or is a regulatory taking. Citing *Guggenheim v. City of Goleta* (9th Cir. 2010) 638 F.3d 1111, 1122, fn. 49, the trial court found that diminution in value of a mobile home due to a change in rent control policy is not a taking. It ruled that appellants' expectation of a fixed rent based on a past City policy or permit condition did not give rise to a constitutional taking because no cognizable property right was taken. (*Madera Irrigation Dist. v. Hancock* (9th Cir. 1993) 985 F.2d 1397, 1403.) We review the grant of summary judgment de novo. (*Guz v. Bechtel National*, *Inc.* (2000) 24 Cal.4th 317, 334.)

FHA Discrimination Claim

Appellants' FHA claim is premised on the theory that 1559-NS discriminates against disabled, low-income seniors. 1559-NS, however, was enacted to preserve the stock of

affordable mobile home housing and assure that mobile home park owners receive a fair return on their property. "'[O]rdinary rent control statutes are generally constitutionally permissible exercises of governmental authority.' [Citation.]" (*Hillsboro Properties v. City of Rohnert Park* (2006) 138 Cal.App.4th 379, 391.) No Ranch resident has lost his or her housing because of 1559-NS. Even with a $191.95 per month rent modification, the Ranch remains the most affordable mobile home park in the city.

The record further indicates that 1559-NS was adopted for a benign, non-discriminatory purpose. Appellants admitted in discovery that "City never truly understood or considered the discriminatory impact of 1559-NS on Ranch, and did not care." That is fatal to the FHA claim which requires intentional discrimination or a discriminatory motive. (*Pac. Shores Props., LLC v. City of Newport Beach* (9th Cir. 2013) 730 F.3d 1142, 1156-1157; *Gamble v. City of Escondido* (9th Cir. 1997) 104 F.3d 300, 306 [record devoid of evidence of intent or motive to discriminate].) If there is no evidence of intentional discrimination, the court assumes that the challenged action was not based on discrimination and determines whether City's action was rationally related to a legitimate governmental interest. (*Comm. Concerning Cmty. Improvement v. City of Modesto* (9th Cir. 2009) 583 F.3d 690, 703.) Here, the stated purpose of 1559-NS is rational and nondiscriminatory -- to provide long term stability in low income mobile home housing by providing certainty and predictability for future rent increases, maintaining affordable rents, and by providing mobile home park owners a fair and reasonable rate of return on their investment.

Disparate Impact

Appellants argue that 1559-NS violates the FHA because it has a disparate impact on disabled senior citizens. A disparate impact claim challenges practices "that have a 'disproportionately adverse effect on minorities' and are otherwise unjustified by a legitimate rationale. [Citation.]" (*Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S.Ct. 2507, 2513 (*Texas*).) Appellants must show that 1559-NS caused a significantly adverse or disproportionate impact on Ranch tenants. (*Gamble v. City of Escondido*, *supra*, 104 F.3d at p. 306; *Mt. Holly Gardens Citizens in Action, Inc. v. Twp. of Mt. Holly* (3rd Cir. 2011) 658 F.3d 375, 381 [causal link must be shown].) It is a rare case where impact alone is sufficient to invalidate a challenged governmental action. (*Comm. Concerning Cmty. Improvement v. City of Modesto*, *supra*, 583 F.3d at p. 703.) "A disparate-impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity." (*Texas*, *supra*, 135 S.Ct. at p. 2512.)

Joseph Doherty, a political science statistics expert, opined that 1559-NS is "likely" to have a disparate impact on disabled seniors in Thousand Oaks. Doherty estimated the total number of disabled seniors living in Thousand Oak are below the federal poverty level (between 344 and 586 persons) and opined that "removal of . . . 74 units at Ranch from the affordable housing stock reduces the housing available to this group from 13%-22%."[9]

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[9] Doherty declared that disabled seniors are three times more likely to rent than non-disabled seniors, that disabled

The trial court excluded Doherty's expert declaration as speculative and lacking foundation. It did not err. (See, e.g., *Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 123; *Jennings v. Palomar Pomerado Health Systems*, *Inc.* (2003) 114 Cal.App.4th 1108, 1117 [expert opinion based on assumption of fact lacking evidentiary support, or based on speculative or conjectural facts may be excluded].) "In adjudicating summary judgment motions, courts are 'not bound by expert opinion that is speculative or conjectural. [Citations.] . . .' 'The evidence must be of sufficient quality to allow the trier of fact to find the underlying fact in favor of the party opposing the motion for summary judgment. [Citation.]' [Citation.]" (*Nardizzi v. Harbor Chrysler Plymouth Sales*, *Inc.* (2006) 136 Cal.App.4th 1409, 1415.) In a FHA case, the trial court must "examine with care" whether a plaintiff has made out a prima facie case of disparate impact. (*Texas*, *supra*, 135 S.Ct. at p. 2523.)

Although declarations in opposition to a motion for summary judgment should be liberally construed, it does not excuse Doherty's failure to explain why 1559-NS, which has been in operation for four years, has not caused a single Ranch tenant to lose his or her housing. No mobile home park has closed since the adoption of 1559-NS, and the Ranch - even with a $191.85 per month rent increase - is still the most affordable mobile home park in the city. Disparate impact claims may not be based on statistically insignificant disparities. (*Kim v. Commandant*,

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seniors are more likely to live in mobile home parks as non-disabled seniors (6% vs 3%) and that disabled seniors are twice as likely as non-disabled seniors to have income below the federal poverty level (8% vs. 4%).

Defense Language Institute, Foreign Language Center (9th Cir. 1985) 772 F.2d 521, 523-524.) "'Under the disparate impact theory, a plaintiff must prove actual discriminatory effect, and cannot rely on inference.' [Citation.]" (*Gamble v. City of Escondido*, *supra*, 104 F.3d at p. 306.) Here the statistical disparities, even if true, are not significant enough to show causation or discriminatory intent. (See *ibid.*, [prima facie case of disparate impact requires evidence of significantly adverse or disproportionate impact].) "If a statistical discrepancy is caused by factors other than the defendant's policy, a plaintiff cannot establish a prima facie case, and there is no liability." (*Texas*, *supra*, 135 S.Ct. at p. 2514.)

City's moving papers show that 1559-NS is required to maintain affordable rents, provide mobile home park owners a fair and reasonable return on their investments, and to establish consistent rent control regulations. Appellants enjoy the lowest rents in the area, with all the benefits of a rent control ordinance.[10] There is no housing discrimination or equal protection violation because disabled Ranch tenants are treated the same as non-disabled tenants. There are no material triable facts that 1559-NS targets low-income, disabled seniors living at the Ranch. (Compare *Pac. Shores Props., LLC v. City of Newport*

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[10] In a July 12, 2011 memo, City's Community Development Director reported that, pursuant to 1559-NS, the average monthly rent at the Ranch was projected to be $387 by 2018 and would be the lowest rent in Ventura County. 1559-NS "also is consistent with the adopted Housing Element of the City's General Plan, which identifies Ranch Mobile Home Park on the list of affordable housing at risk of conversion to market rate housing."

Beach (9th Cir. 2013) 730 F.3d 1142, 1147-1148 [express intent and effect of city ordinance was to shut down addiction recovery group homes].)

State Takings Claim

Appellants assert that 1559-NS is a regulatory taking because Ranch tenants have a contractual right to low rent based on the 1974 development permit. The state takings (inverse condemnation) claim is premised on the theory that 1559-NS is null and void and does not modify the 1974 development permit or Resolution No. 84-037. But even if that was true, the action is time-barred by section 65009. (*Travis*, *supra*, 33 Cal.4th at pp. 767-768; see *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 24-26 [discussing section 66499.37 90-day statute of limitations].)

Assuming that appellants are third party beneficiaries to a contract prohibiting rent increases, the breach of contract claim lies against the Ranch but not the City. (*Doe I v. Wal-Mart Stores*, *Inc.* (9th Cir. 2009) 572 F.3d 677, 682.) City did not agree that the low-rent condition would run in perpetuity. Nor did City contract away its police powers to regulate or modify rent control restrictions. "Land use regulations . . . involve the exercise of the state's police power . . . and it is settled that the government may not contract away its right to exercise the police power in the future. [Citations.]" (*Avco Community Developers*, *Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 800.)

At the hearing on the summary judgment motion, appellants argued that "we . . . have cognizable property rights," because "this park was created by entitlement." Appellants claimed that the Ranch is "an affordable housing development where rents are limited . . . 'in perpetuity.'" The argument that City, in approving the 1974 development permit, promised that

rents would never change has no legal or factual basis. "We pay particular attention to [appellants'] distinct investment-backed expectations. This principle 'implies reasonable probability, like expecting rent to be paid, not starry eye hope of winning the jackpot.' [Citation.]" (*Rancho de Calistoga v. City of Calistoga* (9th Cir. 2015) 800 F.3d 1083, 1090 (*Rancho de Calistoga*).)

Before 1559-NS was adopted, the Ranch owner agreed that rents would not exceed an 11.5 percent return on its investment. It is undisputed that the maximum rent increase ($191.95 a month) authorized by 1559-NS is $20 less than the 11.5 percent cap ($214.66). 1559-NS is more protective of rent increases and spreads the rent increase out over seven years. It provides for an interest-free deferral of any rent increase if a Ranch tenant cannot afford to pay the rent increase. That is not a regulatory taking.

Appellants argue that 1559-NS has caused the market value of their mobile homes to drop. James Brabant, an expert on mobile home valuation, reported that 1559-NS had no impact on home values at the Ranch. Appellants offered no evidence to the contrary and abandoned the claim that they have suffered financial harm. At the hearing on the motion for summary judgment, appellants' trial counsel stated that the case is not about diminution in value and "[e]veryone is focusing on dollars and cents. It's not about dollars and cents."[11]

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[11] Appellants' trial counsel argued that appellants were claiming a loss of affordability rather than diminution in value. "They no longer own a home in an income-restricted park, and they can no longer afford to live there unless they give a lien to the [park] owner." Counsel also argued that City had a duty to record CC&Rs on the 1974 development permit which would have

Appellants also failed to show there is an available alternative that has less disparate impact and serves the City's legitimate needs. (See *Texas*, *supra*, 135 S.Ct. at p. 2518.) "[D]isparate-impact liability must be limited so . . . regulated entities are able to make the practical business choices and profit-related decisions that sustain a vibrant and dynamic free-enterprise system. And before rejecting a business justification - or, in the case of a governmental entity, an analogous public interest - a court must determine that a plaintiff has shown that there is 'an available alternative . . . practice that has less disparate impact and serves the [entity's] legitimate needs.' [Citation.]" (*Ibid*.) Appellants have not told us what the rent control alternative is other than to say that City should pay appellants a subsidy or grant to offset any rent increase.

Appellants claim that they have an investment-backed expectation that the low-rent condition will be forever. "[W]hen buying a piece of property, one cannot reasonably expect that property to be free of government regulation such as zoning, tax assessments, or, as here, rent control. [Appellants'] argument is tantamount to saying that a homeowner can reasonably expect that the tax assessment or [rental rate] on [his or] her [mobile] home will not increase from the time of purchase." (*Rancho de Calistoga*, *supra*, 800 F.3d at p. 1091.)

Appellants remaining arguments have been considered and merit no further discussion.

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made the low-rent provision an entitlement that would run in perpetuity. The trial court correctly found that a rent ceiling in perpetuity was inconsistent with the 1984 modification of the development permit conditions (Resolution 84-037), which authorized a seven percent rent increase for 1984.

The judgment is affirmed. City is awarded costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, Acting P.J.

We concur:

PERREN, J.

TANGEMAN, J.

Kent M. Kellegrew, Judge

Superior Court County of Ventura

Horvitz & Levy, Joshua C. McDaniel, John A. Taylor, Jr.; Perkins Cole, Lester O. Brown, Thomas M. McMahon, Amir Gamliel; Western Center on Law & Poverty, Richard Rothschild, S. Lynn Martinez; Bet Tzedek Legal Services, Dipti Singh; California Rural Legal Assistance, Monica I. De La Hoya, Ilene J. Jacobs, for Plaintiffs and Appellants.

Ferguson Case Orr Paterson, James Q. McDermott, John A. Hribar; City of Thousand Oaks, Tracy M. Noonan, David S. Womack, for Defendant and Respondent.