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The Contempo Marin mobile home park homeowners association is appealing a ruling that would end rent control for residents in 10 years, and immediately for new buyers. *Photo by Paul Jones*

## Residents fight court

**Paul Jones**  
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Residents of the Contempo Marin mobile home park have been fighting to maintain their rent-controlled status for over eight years. But next year may prove most critical.

A little over a month ago, the city of San Rafael went to the 9th Circuit Court of Appeals to overturn a decision by United States Northern District Court Judge Vaughn Walker, which strikes down San Rafael's rent-control ordinance concerning the park. Now the Contempo Marin Homeowners Association has announced that it has filed for a stay of Walker's decision to the 9th Circuit.

Though Vaughn's judgment would have allowed most current park tenants to remain under the protection of rent control for another 10 years (with the exception of new buyers), the homeowners association claims the current decision will harm residents.

"Judge Walker's decision prolongs the agony for people in the park, most of whom are on low and fixed incomes," said Dick Heine, president of the Contempo Marin Homeowners Association. "It effectively cancels any equity they might hope to recover because no one is going to be interested in buying a home saddled with a space rent of up to \$1,900."

The association wants implementation of Walker's decision held off until the city's appeal is decided. It could be as long as 18 to 24 months before the court considers the appeal.

The rent-control battle being fought by the city and homeowners association versus Equity Lifestyle Properties, the owner of the mobile home park, began when the city's rent-control ordinance was modified in 1999, years after a legal battle between the city and a previous owner of the park had settled the original ordinance's legality. The modifications to the park's rent-increase formula reopened the question of the ordinance's legality, and caused owner Equity Lifestyle Properties (then Manufactured

Home Communities), to file a lawsuit against the ordinance, alleging that the city's actions to control rent were unconstitutional restrictions and qualified as a taking of private property. The case went before Judge Walker, who earlier this year ruled in favor of Equity Lifestyle Properties in a decision stating that the city's modified ordinance, not just the 1999 modification, was invalid.

"Without the stay, anyone who buys is looking at something like double rent," Heine said.

According to Keith Meloney, past president of the homeowners association, that means residents looking to sell their houses will see a dramatic reduction in the amount people are willing to pay.

"The stay might not have any bearing on us, but anyone who wants to sell is impacted," he said.

The 9th Circuit has to consider the city's appeal, but in order to get a stay, the homeowners association must show not only that Judge Walker's decision would cause hardship to members of their community, but also that San Rafael's challenge has a chance of success. Heine and Meloney said they're confident it does. They argued that Walker had ignored the previous legal affirmation of the parts of the city ordinance not modified in 1999.

"Some of Walker's conclusions weren't based on the portion of the ordinance being argued, they were based on the entire ordinance," Meloney said. "That's relevant, because the previous ordinance had already withstood a constitutional test."

Heine and Meloney also said Walker's decision cites the intention of San Rafael's ordinance in deciding its constitutionality. Meloney and Heine said another case had established that the intent wasn't relevant in such cases.

"A rent-control decision in Hawaii, the Lingle case, established that a judge shouldn't decide why a city like San Rafael has enacted

these controls, but that it should be a city matter," Meloney said. "Lingle upheld rent control around the time the 9th Circuit was about to judge in favor of the owner of a mobile home park in Cotati, but it froze the case while the Supreme Court was deciding Lingle, and then reversed itself and found in favor of the city. We think the 9th Circuit will apply the same standards and principles here, because our ordinance is next to identical to Cotati's."

A legal document signed by Walker states, "In its findings of fact and conclusions of law, the court determined that the 'public purposes' the City asserted for the Ordinance — protecting homeowner equity, creating affordable housing and protecting fixed-income residents — were 'palpably without reasonable foundation' and were mere 'pretext[s]' that masked a private taking intended to enrich the Contempo Marin residents."

Walker maintains that the central issue is the property rights of the park owner, not the intentions of the city.

"The fact that a city council may rationally have thought the Ordinance advanced its stated objectives should not rescue an enactment that does no such thing," Walker wrote. "The rational basis test does not insulate unsound public policy from attack. The Ordinance creates an inevitable premium attributable to one property interest and transfers that premium to someone else."

The issue of property rights is the heart of the conflict of interest between the park and homeowners. How much the park owner can charge for rent affects both the value of the park owner's property and the worth of houses owned by the park's tenants.

Spokesman for Equity Lifestyle Properties Kiley Russell said Contempo Marin's interest was in being able to operate its property in a free-market climate. Equity Lifestyle Properties concurs with Walker's position that by artificially controlling the price of

rent, the value of the mobile home park was taken by the city and awarded in the form of increased equity to residents. Equity Lifestyle Properties also maintains that Walker's compromise, granting the 10-year phase-out of rent control for current residents, was a fair solution.

Meloney and Heine, however, said Walker's decision reduced residents' equity below that which could provide even a basic return on their investment. Another justification for rent control by residents is a relative scarcity on the free market of competition for rental rates, Meloney said.

"I'm a fairly conservative self-employed business owner," he said. "A free-market system has some essential components, including competitive pricing available to a consumer. In a mobile home park, there isn't anything like that. Availability is nonexistent. Government oversight is necessary, because there isn't market competition. They were targeting tripling our rent."

The appeal for a stay may be heard in a few weeks. As for the outcome of the appeal of Walker's decision, both sides appeared confident their interest would win out.

"We are disappointed that the city has decided to appeal this decision, but we are confident that Judge Walker's ruling that the rent-control ordinance is unconstitutional will stand," Russel said. "We look forward to operating the Contempo Marin property in an open and fair business climate."

Meloney said: "We believe that argument will be victorious. My last five years of this scenario, in the seat in which I sat as former homeowners association president, I have fielded phone calls from many lawyers and politicians throughout the state who've read the decision by the judge. I can say with confidence that 90 percent, even conservatives, have said consistently that this judge has gone out on a limb."