



Litigation Backgrounder

Held Up: Federal Lawsuit Challenges Palo Alto's Unconstitutional Demand on Family-Owned Mobilehome Park to Pay Millions for Right to Close Business.

(Jisser v. City of Palo Alto)

Should retiring rental property owners be forced to give up more than a decade of their property's income simply for the right to close their business and withdraw their property from the rental market?

That is what the City of Palo Alto ("City") is demanding in this case, which dramatically illustrates an increasingly common property rights abuse by government: predatory attacks on property owners by cities grasping for money to solve a housing crisis that government officials are in fact responsible for creating.

The Jisser family has owned and operated the Buena Vista Mobilehome Park in Palo Alto, Calif., for the past three decades. During that time, they have provided the lowest-cost housing available to residents in the city. When they decided to close the park, Palo Alto shockingly demanded that they pay their tenants more than \$8 million dollars or be forced to forever run the business they want to close.

In effect, the Jissers are being forced to remain landlords unless they provide their tenants with enough money to acquire new housing at inflated values reflecting the acute lack of affordable housing in Palo Alto. It is the City, however, and not the Jisser family that has created the housing shortage that makes it all but impossible for young families, retirees, and people of modest means to live here. Shamefully, the City is scapegoating the Jissers for its own failure.

The Supreme Court has repeatedly said that individual property owners should not be forced to pay for public benefits that, in fairness, should be borne by the public as a whole. Forcing the Jisser family to bear the cost of providing affordable housing in Palo Alto is not only wrong, it's unconstitutional.

Property rights are among the most important rights protected by our Constitution. The right to decide for oneself how best to responsibly and

productively use one's own property is a basic civil right that is increasingly under attack in America. That is why the Jissers have joined with Pacific Legal Foundation to file a federal constitutional lawsuit against the City. By vindicating their own rights, the Jissers hope also to establish a precedent that protects the property rights of entrepreneurs everywhere.

The Jisser Family's American Dream

Toufic ("Tim") and Eva Jisser moved to the United States from Israel in search of a good life for their family in 1973. Tim worked for a police department in Israel but went into the restaurant and grocery business on arrival in America, moving between California and Alabama to pursue opportunity. The family ultimately made their home in Silicon Valley, where they leased a small grocery store in Menlo Park in 1977.

The grocery business required long hours and difficult work, but it flourished and they expanded. The Jissers soon opened a second store in a leased building on El Camino Real in Palo Alto: the All American Market. Tim, Eva, and their children ran the store, adjacent to the Buena Vista Mobilehome Park.

In 1986, the owner of their store's building decided to sell his property, which included both the grocery-store and the mobilehome park next door. The Jissers decided to take a leap as entrepreneurs: They poured in their life savings, borrowed yet more, and arranged partners to purchase the entire property. And for the past 30 years the Jisser family has owned and operated the Buena Vista Mobilehome Park, providing the lowest-cost housing available in the city during that period.

The All American Market was closed in 1998 due to health issues that made it untenable for Tim to continue the long hours required. Tim and Eva's son, Joe, refurbished the old grocery store building for new tenants and soon took over management of the mobilehome park, which he continues to run today.

The Jissers' experience has been the quintessential American Dream: a hard-working immigrant family makes good in two businesses; they took on big risks, passed their ambitions on to their children, and the family has prospered. That dream turned into a nightmare, however, when the Jissers decided that closing the park and doing something different with the land best served their family's future.

A Nightmare Begins: Palo Alto Holds the Jissers' Mobilehome Park Hostage

In 2001, soon after taking over operations of the park, Joe faced a substantial property tax increase and asked tenants for a small rent increase to cover the cost. The Palo Alto City Council held hearings about the proposed increase at the behest of tenants and quickly enacted a rent control ordinance that included provisions for

how and when a mobilehome park could be closed in the City. Notably, Buena Vista was and remains the only mobilehome park in Palo Alto.

The Jissers never did go forward with their proposed rent increase in 2001. In fact, they have raised rents infrequently and never as high as that allowed per year under the city's rent control ordinance until the present dispute began to fester. But during the 2001 hearings, Joe noted that the park was showing signs of its nearly six decades of operation. Despite making substantial investments to replace sewer, electric, and other infrastructure, he explained, the park's economic life was not likely longer than 10 years. In 2012, the Jisser family finally filed a Development Review Application with the City, indicating their desire to close the park.

Tim and Eva Jisser have retired and, as predicted, the park is deteriorating and will soon again require yet additional substantial investment. At the same time, the neighborhood has gone through tremendous change and there is demand for higher density development. The family's hope has been to keep the land for the next generation by partnering with a developer for a new, larger housing development.

In their quest to close their business and make room for a new use, the Jissers have endured years of administrative bureaucracy ending with the present lawsuit. Between 2012 and 2014, they filed five separate "Relocation Impact Reports" required by the city, in which they were instructed to explain what they would give to tenants in exchange for the right to close the mobilehome park and take back possession of their own land. With each filing, the City sent them back to the drawing board with a demand to give yet more. These relocation reports, revisions, and subsequent hearings required the hiring of expensive consultants, appraisers, and attorneys at the costs of hundreds of thousands of dollars to date. Ultimately, on May 26, 2015, the City issued a final decision allowing the park to be closed but only on the payment of approximately \$8 million dollars to Buena Vista's tenants.¹

In effect, Palo Alto has put a modern twist on the highway robber's creed: instead of "your money or your life," the city council has told the Jissers they must pay what amounts to nearly all of their earnings from the past decade of work and ownership of the property, or be forced to forever run the business they simply want to close.

¹ The final sum may grow, as the City's conditions include a requirement to reappraise the value of each mobilehome and calculate rent subsidies based on the date of the actual close of the park. The \$8 million figure is based on appraisals and rent calculations done in 2014 and considered by the City Council.

Individual Property Owners Should Not Be Forced to Bear The Cost of Public Benefits That Are the Responsibility of the Public as a Whole

The City of Palo Alto's demands are not only wrong, they are unconstitutional. The payment represents full moving costs for all tenants, but also massive rent subsidies and the outright purchase of all of the mobilehomes on the property for inflated values reflecting the acute housing shortage in Palo Alto.

The city is essentially forcing the Jissers to become permanent landlords by making it financially oppressive to withdraw their land from the rental market. Moreover, the money taken from the Jissers is misleadingly termed "relocation" assistance: in fact, the money they are required to pay doesn't have to be used by tenants for relocation at all.

At worst, the City's demand is out-and-out extortion; at best, it is a thinly veiled attempt to hold the Jissers alone responsible for mitigating the city's notorious lack of affordable housing — a problem that, in fairness, should be solved by all of Palo Alto's taxpayers and residents.

The Supreme Court has repeatedly held that the Takings Clause of the Fifth Amendment to the U.S. Constitution "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."²

In some circumstances, governments may impose special costs — called "exactions" — on individual property owners; fees that are meant to offset public expenditures directly caused by a property owner's use of his property. For instance, as a condition of receiving approval to build homes or a shopping center, a city may demand that a developer provide land or money to the city to offset public costs associated with the new development — such as roads, or schools, or the development of a city park. It is unconstitutional, however, for a city to leverage its permit power by conditioning approval of a new use on a property owner's payment of money to provide general public benefits or mitigate social problems not caused by the use of the property.

Pacific Legal Foundation won the landmark "unconstitutional conditions" case establishing this principle, *Nollan v. California Coastal Commission*,³ at the U.S. Supreme Court in 1987; PLF reaffirmed the principle in a follow-on U.S. Supreme Court case in 2013, *Koontz v. St. Johns Water Management District*.⁴ The principle has been applied in scores of federal and state cases across the nation in the years between the two High Court victories.

² *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

³ *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

⁴ *Koontz v. St. Johns Water Management District*, 133 S. Ct. 2586 (2013).

Most recently, the United States District Court for the District of Northern California (the same court in which the Jisser family's case has been filed) struck down a San Francisco ordinance late last year that imposed oppressive fees on small landlords seeking to withdraw their homes from the rental market in that city.⁵

In this case, the city is in effect demanding that the Jisser family give their tenants enough money to afford alternative housing in overpriced Palo Alto as a condition of withdrawing their land from the rental market. But it is not the Jissers that have caused the high cost of housing in Palo Alto; in fact, they have been instrumental in supplying low-cost housing for 30 years. Rather, it is the city itself that has created a housing shortage that makes it all but impossible for people of modest means — including the current residents of Buena Vista — to live in the City.

Palo Alto is Ground Zero for California's Housing Crisis

One can hardly understand the current conflict without considering the role of restrictive land use regulations in causing Palo Alto's astronomical housing costs. According to Zillow, Palo Alto's median home price is a blistering \$2.46 million dollars.⁶ That price will typically buy an older, single family home less than 1800 square feet. A home of nearly the same profile in Dallas, Texas will run \$128k⁷; the national median is about \$180k.⁸ By comparison, the median home value in California as a whole is \$448k.⁹ The most basic cause of Silicon Valley and California's lack of affordable housing relative to other locations is their land use policies.

The booming technology sector no doubt contributes to the problem,¹⁰ but a serious discussion of Palo Alto's lack of affordable housing must begin with the recognition that a government-imposed housing shortage is the major, persistent cause. Simply put: Palo Alto's City Council has refused for decades to permit enough housing to be built to meet the skyrocketing demand; it is now shamefully scapegoating the Jissers for its own failure.

Harvard economist Edward Glaeser has observed that the perverse effects of restrictive land use regulation is an issue on which "libertarianism and

⁵ Opinion & Order, *Levin, et al. v. City and County of San Francisco*, No. 3:14-cv-03352-CRB (N.D. Cal. Filed Nov. 21, 2014), available at <http://www.pacificlegal.org/document.doc?id=1692>

⁶ <http://www.zillow.com/palo-alto-ca/home-values/>

⁷ <http://www.zillow.com/dallas-tx/home-values/>

⁸ <http://www.zillow.com/home-values/>

⁹ <http://www.zillow.com/ca/home-values/>

¹⁰ Laura Kusisto, *Apple Pay – One Reason for High Home Prices* [in San Francisco and Silicon Valley], WSJ, October 25, 2015, available at <http://www.wsj.com/articles/apple-pay-one-reason-for-high-home-prices-1445801810>).

egalitarianism are on the same side,” concluding that “the surest way to a more equitable housing market is to reduce the barriers to building.”¹¹ It should not be a partisan issue: Left-leaning economist Paul Krugman similarly points out that California’s high housing prices “owe a lot to policies that sharply limit construction.”¹² Wharton economist Joseph Gyourko’s major study on the subject suggests that prohibitive local land use regulations amount to an effective tax on housing prices “in many coastal markets, sometimes reaching over 50 percent” of the price of the homes; he singles out California’s coastal regions.¹³

Whatever one’s opinion, the empirical literature documents the fact that California coastal cities, and particularly in the Silicon Valley area, have a new-housing-permit rate that has continuously failed to meet the demand for housing by existing and immigrating residents during the past 40 years. It is the refusal of municipal governments to permit homes to be built that has driven the lack of affordable housing in the region.¹⁴ Recent research even pins the lion’s share of America’s intensely debated growing income inequality on the striking barriers to affordable housing produced by “land-use regulations in rich states.”¹⁵

An authoritative report put out in March 2015 by California’s Legislative Analyst’s Office (a non-partisan governmental agency tasked with studying California legislative policies), *California’s High Housing Costs, Causes and Consequences*, flatly concludes: “First and foremost, far less housing has been built in California’s coastal areas than people demand.”¹⁶ The basic cause of the lack of affordable housing? Local government’s abuse of “land use authority to slow or stop

¹¹ Edward L. Glaeser, *How to Make San Francisco’s Housing More Affordable*, BloombergView, December 13, 2013, available at <http://www.bloombergtview.com/articles/2013-12-13/how-to-make-san-francisco-s-housing-more-affordable>.

¹² Paul Krugman, *Wrong Way Nation*, N.Y. Times, August 24, 2014, available at <http://www.nytimes.com/2014/08/25/opinion/paul-krugman-wrong-way-nation.html>.

¹³ Joseph Gyourko, National Bureau of Economic Research: NBER Reporter, *The Supply Side of Housing Markets*, 2009 No. 2, available at <http://www.nber.org/reporter/2009number2/gyourko.html>.

¹⁴ See, e.g., Mathew E. Kahn, *Do Liberal Cities Limit New Housing Development? Evidence from California*, 69 J. Urb. Econ. 223 (2010); Derek Thompson, *Why Middle-Class Americans Can’t Afford to Live in Liberal Cities*, The Atlantic, Oct. 29, 2014, available at <http://www.theatlantic.com/business/archive/2014/10/why-are-liberal-cities-so-unaffordable/382045/>.

¹⁵ Binyamin Applebaum, *Housing Prices and Income Inequality*, N.Y. Times, October 17, 2012, available at <http://economix.blogs.nytimes.com/2012/10/17/housing-prices-and-income-inequality/>.

¹⁶ CA Legislative Analyst’s Office, *California’s High Housing Costs, Causes and Consequences* at 10, published March 17, 2015, available at <http://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>

housing from being built or requir[ing] it to be built at lower densities.”¹⁷ The report highlights the San Jose metro area, which includes Palo Alto, as a particular example of the problem.

Palo Alto has a tragic and outrageous housing crisis. But it is the City’s policies — sadly shared by too many of California’s coastal cities — that are the primary cause of its high cost of housing. The truth is that Palo Alto’s City Council has all the power it needs to permit more homes to be built and provide affordable housing if it wants to do so; what it may not lawfully do is hold the Jisser family’s property hostage on the condition that they mitigate a lack of affordable housing that they in no way created.

The Legal Challenge: Defending the Right to Private Property

This is a federal civil rights action filed in the United States District Court for the Northern District of California (San Jose Division). The Jisser family has raised two federal constitutional claims and a California state-law challenge.

First, the millions of dollars in payments to tenants demanded by Palo Alto is an “unconstitutional condition” on the Jisser’s right to close their mobilehome park. The City has determined that either the Jissers pay the money demanded or be forced to continue operating a business they want to close, including the unwanted, permanent occupation of their land by tenants. That demand has nothing to do with any public costs caused by the Jisser’s closure of the park; rather, the City is attempting to make the Jissers pay to mitigate the City’s acute lack of affordable housing — costs that, in fairness, should be borne by the whole public of Palo Alto. The condition violates the Takings Clause of the Fifth Amendment to the U.S. Constitution.

Second, the money taken from the Jissers will go not to the City, but directly to tenants who may use the funds for any purpose at all, anywhere they choose. This is not a “public use,” but a command by the City for a direct transfer of money from the Jissers to other private individuals for their own personal use. This violates the Public Use Clause of the Fifth Amendment to the U.S. Constitution, which permits the taking of private property with just compensation for genuinely public uses but forbids the forced transfer of property from one private party to another, politically favored private party.

Finally, the City’s Mobilehome Park Conversion Ordinance requires mobilehome park owners who wish to withdraw their property from the rental market to provide “reasonable relocation assistance as a condition of closing and converting a park.”¹⁸ As applied to the Jissers, the money demanded from them to exercise their right to close their park far exceeds any notion of “reasonable relocation assistance,” thereby violating the terms of the City’s own ordinance.

¹⁷ *Id.* at 15.

¹⁸ Palo Alto Municipal Code, Section 9.76.130.

Further, the City's application of its ordinance violates California state law, which unequivocally declares that conditions imposed on property owners who wish to close a mobilehome park "shall not exceed the reasonable costs of relocation" of a park's tenants.¹⁹

The Jissers are not seeking compensation or monetary damages; they seek only a declaration that the conditions imposed on their right to withdraw their property from the rental market are unlawful, and an injunction prohibiting the City from enforcing those conditions.

The Parties to the Lawsuit

The Plaintiffs are Tim and Eva Jisser, and their family trust that holds title to the Buena Vista Mobilehome Park. Their son, Joe Jisser, who has managed day-to-day operations of the park for the past decade, is a spokesman for the family. The Defendant is the City of Palo Alto.

The Litigation Team

Pacific Legal Foundation Attorney Larry Salzman²⁰ is lead counsel, working with PLF Principal Attorney J. David Breemer.²¹ Mr. Breemer successfully defended the Levin family in their lawsuit last year against the City of San Francisco,²² in which San Francisco was enjoined from imposing unconstitutional fees on landlords who wished to withdraw property from the rental market. PLF's attorneys are assisted by local counsel Margaret Nanda, of Los Gatos, Calif., who also represented the Jisser family in the administrative process preceding this lawsuit.

Since 1973, PLF has been the most frequent and successful public-interest champion in the nation's courts for individuals and small businesses whose property rights are violated by government. It represents the Jissers without charge.

Media Contact

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¹⁹ CA Government Code, Section 65863.7.

²⁰ <http://www.pacificlegal.org/bio-salzman>

²¹ <http://www.pacificlegal.org/staff/J-David-Breemer>

²² <https://www.pacificlegal.org/cases/levin-4-1528>