

1 Jay P. Renneisen (Bar No. 173531)  
2 **LAW OFFICES OF JAY P. RENNEISEN**  
3 1931 San Miguel Drive, Suite 210A  
4 Walnut Creek, California 94596  
5 Telephone: (925) 280-8900  
6 Facsimile: (925) 955-1601

7 Heidi K. Whilden (Bar No. 183458)  
8 **LAW OFFICES OF HEIDI K. WHILDEN**  
9 1130 Fremont Blvd. #105, PMB 262  
10 Seaside, CA 93955  
11 Telephone: (831) 869-9584

12 Attorneys for Plaintiff  
13 Benjamin Kaatz

FILED IN COURT  
AUG - 8 2003  
ON \_\_\_\_\_  
SHERRI L. PEDERSEN, CLERK OF THE SUPERIOR COURT  
BY Maria Gonzalez DEPUTY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF MONTEREY

13 BENJAMIN KAATZ, in his capacity as a  
14 taxpayer resident of the City of Seaside,

15 Plaintiff,

16 v.

17 CITY OF SEASIDE, a California municipal  
18 corporation, DANIEL E. KEEN, in his official  
19 capacity as City Manager for the City of Seaside,  
20 K&B BAKEWELL SEASIDE VENTURE, LLC,  
21 a California limited liability company, and DOES  
22 1-20, inclusive,

23 Defendants.

65043  
CASE NO. M65403

**FIRST AMENDED COMPLAINT BY  
TAXPAYER FOR INJUNCTIVE RELIEF  
[CCP §526a]**

24 Plaintiff alleges and complains as follows:

25 **CAPACITY AND VENUE**

26 1. Plaintiff BENJAMIN KAATZ at all times relevant hereto has been assessed, has been liable  
27 to pay, and has paid taxes to the City of Seaside. Plaintiff is a resident of the City of Seaside, and has  
28 within one year before commencement of this action paid real property taxes to the City of Seaside.

1        2.        Plaintiff is informed and believes and thereon alleges that defendant CITY OF SEASIDE is,  
2 and at all times relevant hereto was, a California municipal corporation and political subdivision of the  
3 State of California in the County of Monterey.

4        3.        Plaintiff is informed and believes and thereon alleges that defendant DANIEL E. KEEN is a  
5 public official of the City of Seaside, sued herein in his official capacity as City Manager for the City of  
6 Seaside, charged with the duty of managing City property.

7        4.        Plaintiff is informed and believes and thereon alleges that K&B BAKEWELL SEASIDE  
8 VENTURE, LLC (“K&B/Bakewell”) is a California limited liability company formed and controlled by  
9 Kaufman & Broad Monterey Bay, Inc. and The Bakewell Company of Monterey, LLC. Plaintiff further  
10 alleges, on information and belief, that K&B/Bakewell holds itself out as the record and beneficial owner  
11 of the real property that is the subject of this taxpayer action, which consists of portions of the real  
12 property at the former Fort Ord, including the Hayes Park Housing Area (the “Hayes Park Property”).

13        5.        Plaintiff is informed and believes and thereon alleges that K&B/Bakewell claims interests in  
14 the Hayes Park Property that are adverse to the City of Seaside, as alleged by plaintiff, herein. Plaintiff  
15 further alleges, on information and belief, that the relief sought herein will affect the real property interests  
16 currently asserted and/or claimed to be owned by K&B/Bakewell. Accordingly, by virtue of its interest in  
17 the subject matter of this litigation, and in order that complete justice may be done and a final  
18 determination of the rights of all parties interested in the Hayes Park Property may be accomplished  
19 herein, plaintiff alleges that K&B/Bakewell is, therefore, a necessary party to this action.

20        6.        The true names and capacities of the defendants named herein as DOES 1-20, inclusive,  
21 whether individual, corporate, associate, or otherwise, are unknown to plaintiff who therefore sues such  
22 defendants by fictitious names pursuant to Section 474 of the California Code of Civil Procedure. Plaintiff  
23 is informed and believes and thereon alleges that each of the defendant DOES is a California resident.  
24 Plaintiff will amend this complaint to show such true names and capacities when they have been  
25 ascertained.

26        7.        Plaintiff is informed and believes and thereon alleges that, except as hereinafter alleged, each  
27 of the defendants herein was, at all times relevant hereto, the agent, employee, or representative of the

1 other defendants, and was acting within the course and scope of such relationship, except as hereinafter  
2 alleged.

3 8. The acts which constitute the basis for the causes of action alleged herein occurred  
4 predominantly in the County of Monterey.

5 9. The documents and purported agreements upon which plaintiff complains herein were made  
6 and executed within the State of California, to be performed within the County of Monterey.

7 **GENERAL FACTUAL ALLEGATIONS**

8 10. The City of Seaside, as a public entity of and within the State of California, may only enter  
9 into a binding legal contract or otherwise legally act if, and only if, the City does so as expressly  
10 authorized by statute or by the California Constitution. Any attempt by a California public entity to act in  
11 a manner or for a purpose not expressly authorized by law renders such attempted action void, null and of  
12 no legal force.

13 11. Pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990,  
14 as amended, (Public Law 101-510), the military installation at Fort Ord, within the County of Monterey,  
15 was closed by its owner the United States of America (the "Federal Government") acting through the  
16 Department of Defense and the Army. Thereafter, pursuant to Section 2859 of the National Defense  
17 Authorization Act for Fiscal Year 1996 (Public Law 104-106), the Federal Government was authorized to  
18 sell as surplus property portions of the former Fort Ord, including the Hayes Park Property.

19 12. Plaintiff alleges that in or about 1996, an unsolicited proposal was made to the City of  
20 Seaside by Kaufman & Broad Monterey Bay, Inc. ("K&B Monterey"), a California corporation and The  
21 Bakewell Company of Monterey, LLC ("Bakewell Monterey"), a California limited liability company. The  
22 proposal was purportedly made to assist the City of Seaside in acquiring the Hayes Park Property from the  
23 Federal Government.

24 13. Plaintiff further alleges that on or about May 9, 1997, the City of Seaside, without soliciting  
25 bids or proposals from other potential developers of the Hayes Park Property, entered into an Exclusive  
26 Negotiating Rights Agreement (the "ENRA") with K&B Monterey and Bakewell Monterey. On  
27 information and belief, plaintiff alleges these entities later formed and controlled, and still control,

1 K&B/Bakewell. The terms of the ENRA prohibited the City of Seaside from soliciting bids or proposals  
2 from any other potential developers of the Hayes Park Property during the term of the exclusive  
3 negotiations. A true and correct copy of the ENRA is attached hereto as Exhibit 1.

4 14. On or about April 30, 1998, an agenda for the May 4, 1998 City of Seaside Council Meeting  
5 (the "Agenda") was drafted by Tim Brown, then-City Manager for the City of Seaside. The sole Agenda  
6 item under the heading "Subject" was as follows: "Consider adoption of a resolution of a Land Disposition  
7 Agreement ("LDA") for the 'Hayes Park' housing on the former Fort Ord military base." Under the  
8 heading "Explanation of Item" the Agenda provided the following information: "The City is currently  
9 negotiating to obtain the former Hayes Housing property from the United States Army at the fair market  
10 value, as determined by the Secretary of the Army. Upon successful acquisition, staff is proposing that the  
11 property be sold to Kaufman & Broad (K&B) Bakewell Seaside Venture at the property's 'fair market  
12 value". A true and correct copy of the Agenda is attached hereto as Exhibit 2.

13 15. A document entitled "Land Disposition Agreement Hayes Park Property" (the "LDA") dated  
14 May 4, 1998 was approved by the Seaside City Council following a public hearing on the same day. The  
15 terms and conditions of the LDA were not finalized until the date of said hearing, moreover, final changes  
16 to the LDA were not made available to the public in advance of the hearing. Nevertheless, by Resolution  
17 No. 98-32, entitled "A Resolution of the City Council of the City of Seaside Authorizing Execution of a  
18 Land Disposition Agreement with K&B Bakewell Seaside Venture, LLC, and Making Specified Findings  
19 in the Consideration of the Transfer of Hayes Park" (the "LDA Approval Resolution"), the LDA was  
20 approved by the Seaside City Council. True and correct copies of the LDA, LDA Approval Hearing  
21 Minutes, and LDA Approval Resolution are attached hereto as Exhibits 3, 4, and 5, respectively.

22 16. Article 9, section 9.13 of the LDA governing Legal Actions provides that in any legal action  
23 by a third party challenging the validity of the LDA, "City shall promptly take all action reasonably  
24 necessary to defend the Agreement . . . against such challenges. City and Developer shall cooperate with  
25 one another in any such defense" with costs of defense to be split 50/50. Ex. 3, sec. 9.13.

26 17. The LDA Approval Resolution includes specific findings which constitute the basis for the  
27 City of Seaside's approval of the LDA, including Paragraph 3 which states: "The City Council hereby

1 finds that the consideration to be given by the Developer under the LDA is not less than the value of the  
2 property that the City will convey to the Developer under the LDA. This finding is based on the facts and  
3 analysis set forth in the Staff Report.” The Staff Report was made part of the Agenda, and clearly states  
4 that the Hayes Park Property would be sold by the City of Seaside to K&B/Bakewell for “fair market  
5 value”.

6 18. California’s Surplus Land Act (Govt. Code sec. 54220, et seq.) prohibits a city from selling  
7 or otherwise disposing of surplus land acquired from the Federal Government prior to making written  
8 offers to specified local public entities for the sale or lease of such land “for the purpose of developing  
9 low- and moderate-income housing.” Gov. Code sec. 54222(a). This government limitation on the sale  
10 of surplus public property is for the purpose of promoting the development of affordable housing.  
11 Introductory language of the Surplus Land Act cites the shortage of available sites for such housing, and  
12 declares that “provision of a decent home and a suitable living environment for every Californian is a  
13 priority of the highest order.” Gov. Code sec. 54220. The Surplus Land Act becomes effective upon the  
14 date such surplus federal land is actually acquired from the Federal Government.

15 19. Pursuant to the terms of the LDA, the City of Seaside was required to convey the Hayes  
16 Park Property to K&B/Bakewell on the same date as the City acquired the property from the Federal  
17 Government, thus requiring the City to violate its legal obligations under the Surplus Land Act. Ex. 3,  
18 sec. 4.2

19 20. According to the LDA Approval Minutes, K&B/Bakewell made the following  
20 representations at the LDA Public Hearing regarding the proposed residential development of the Hayes  
21 Park Property: “The houses range from about 1500 to about 4000 feet [sic], from three to eight  
22 bedrooms, which would sell from below \$200,000 to in excess of \$500,000. This is in keeping with the  
23 City’s direction to provide mixed housing types for first-time as well as luxury buyers. They were also to  
24 provide quality housing and enhance the existing community. What is being proposed will meet all those  
25 goals.” Ex.4, p.5.

26 21. On or about July 25, 2002, the Federal Government, acting by and through the Secretary of  
27 the Army, granted by Quitclaim Deed (the “Army Deed”) to the City of Seaside the Hayes Park Property

1 for the purchase price of \$5.1 million. A true and correct copy of the "Army Deed" is attached hereto as  
2 Exhibit 6.

3 22. The Army Deed states that pursuant to section 120(h)(4) of the Comprehensive  
4 Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sec. 9601, et seq.  
5 ("CERCLA"), a Finding of Suitability to Transfer (the "FOST") was made concerning the existing  
6 environmental condition of the Hayes Park Property. "Based on the FOST, the Property has been  
7 assigned Department of Defense Environmental Condition Category 1 (areas where no release or disposal  
8 of hazardous substances or petroleum products has occurred)." Exhibit 6, sec. VII(B). It further stated  
9 that searches conducted during compilation of the Fort Ord Comprehensive Environmental Response  
10 Facilitation Act Report found no evidence of ordnance and/or explosives within the Property. Exhibit 6,  
11 sec. XII.

12 23. On information and belief, on or about July 25, 2002, the City of Seaside, acting by and  
13 through its representatives in direct contravention of Resolution No. 98-32 approving the LDA on the  
14 specific condition that the Hayes Park Property not be sold for other than "fair market value", without  
15 meeting its statutory duty to make the surplus property available for affordable housing, without ever  
16 considering any other bid, proposal, or offer for the Hayes Park Property, and in violation of the  
17 constitutional and statutory prohibition against cities giving away public property, executed a document  
18 purporting to transfer all of the City of Seaside's fee interest in the Property to K&B/Bakewell for the  
19 purchase price of \$5.95 million (the "City Deed"). A true and correct copy of the City Deed is attached  
20 hereto as Exhibit 7.

21 24. On or about April 14, 2003, K&B/Bakewell announced to the public that the base price for  
22 certain houses to be built in the 380-unit single family subdivision on the Hayes Park Property would start  
23 at \$475,000, others would have a base price of \$550,000, and that there would be no upper limit on the  
24 remaining houses. On or about May 11, 2003, it was publicly announced that the housing prices had risen,  
25 with the new base starting price ranging from \$495,000 to \$734,990. On or about May 26, 2003, it was  
26 publicly announced that housing prices had again risen substantially with base starting prices now  
27 beginning at \$505,990, with options and additional charges raising the total price. On June 23, 2003, it

1 was publicly announced that prices were soaring by \$5,000 a week, with the base starting price ranging  
2 that week from \$522,990 to \$741,990, plus options adding an additional \$30,000 to the purchase price.  
3 K&B/Bakewell stated its intent to and has begun to commence the immediate construction and sale of  
4 houses on the Hayes Park Property.

5 25. Plaintiff alleges that at the reported sales prices, K&B/Bakewell is expected to gross well  
6 over \$200 million from the sale of houses situated on the 380 individual lots of the Hayes Park Property.  
7 Of that amount, on information and belief, K&B/Bakewell will pocket, in addition to the standard profit  
8 on the housing construction, an approximately \$115 million pure cash windfall representing the value of  
9 the Hayes Park Property purportedly purchased from the City of Seaside for a fraction of its fair market  
10 value.

11 26. Plaintiff is informed and believes and thereon alleges that the City of Seaside is the rightful  
12 owner of the Hayes Park Property, in that, inter alia, the LDA and the documents purporting to transfer  
13 the Property from the City of Seaside to K&B/Bakewell are void, null, and of no legal force.

14 27. Defendant City of Seaside, by and through its City Manager, has engaged in, participated in,  
15 and/or caused the illegal expenditure of, waste of, and injury to the estate, funds and property of the City  
16 of Seaside by permitting K&B/Bakewell to proceed with the development of the Hayes Park Property, and  
17 by failing to assert the City of Seaside's lawful and rightful ownership over the Property. Defendants, and  
18 each of them, threaten to, and will continue to so act, resulting in a significant loss of property and  
19 revenue to the City of Seaside, unless and until defendants are enjoined from such wrongful conduct.

20  
21 First Cause of Action  
22 (Against Defendant City of Seaside)

23 **INVALID TRANSFER OF PUBLIC PROPERTY WITHOUT AUTHORITY**  
24 **[Code Civ. Proc., Sec. 526a]**

25 28. Plaintiff hereby incorporates by reference Paragraphs 1-27 of the First Amended Complaint  
26 as if fully set forth herein.  
27

1 29. As set forth more fully within, the LDA concerning the Hayes Park Property was approved  
2 by the Seaside City Council and adopted as City of Seaside Resolution No. 98-32, which made “Specified  
3 Findings in the Consideration of the Transfer of Hayes Park.” Exhibit 5.

4 30. The City of Seaside Staff Report concerning the potential transfer of the Hayes Park  
5 Property and made part of the LDA Public Hearing Agenda, provides: “The City is currently negotiating  
6 to obtain the former Hayes Housing property from the United States Army.... Upon successful  
7 acquisition, staff is proposing that the property be sold to Kaufman & Broad (K&B) Bakewell Seaside  
8 Venture at the property’s fair market value.” Exhibit 2, “Explanation of Item”.

9 31. Finding No. 3 of the LDA Approval Resolution provides: “The City Council hereby finds  
10 that the consideration to be given by the Developer under the LDA is not less than the value of the  
11 property that the City will convey to the Developer under the LDA. This finding is based on the facts and  
12 analysis set forth in the Staff Report.” Exhibit 5, part 3.

13 32. The attempt by the City of Seaside to sell the Hayes Park Property to K&B/Bakewell for  
14 1/20th of its fair market value must fail, in that, inter alia, the LDA, as approved by the City Council,  
15 required the Property be sold at fair market value. Accordingly, the Quitclaim Deed to K&B/Bakewell  
16 from the City of Seaside is void, null, and of no legal force, as such a transfer of valuable property from  
17 the City of Seaside to K&B/Bakewell for a price well below market value was never authorized by the  
18 Seaside City Council.

19  
20 Second Cause of Action  
(Against Defendant City of Seaside)

21 **INVALID TRANSFER OF SURPLUS PROPERTY FOR FAILURE TO MAKE PROPERTY**  
22 **AVAILABLE FOR AFFORDABLE HOUSING [Code Civ. Proc., Sec. 526a]**

23 33. Plaintiff herein incorporated by reference paragraphs 1 through 32 of the First Amended  
24 Complaint as if fully set forth herein.

25 34. Every city in the State of California is required by statute to make surplus public land  
26 acquired from the Federal Government available for affordable housing prior to selling the land. Gov.  
27 Code sec. 54220, et seq. (the “Surplus Land Act”). To achieve that end, cities are required to send



1 written offers for the sale or lease of surplus property to specified public agencies prior to selling or  
2 otherwise disposing of the surplus land, and to negotiate terms of a sale with any such interested agencies.

3 35. In or about February, 1998, the City of Seaside purportedly notified “third parties entitled  
4 to notification under the Surplus Land Act” of an opportunity to submit offers to purchase the Hayes Park  
5 Property, which the City did not then own. Ex. 3, sec. 2.5. In fact, at the time of such notice, it was  
6 entirely unknown whether the City and the United States Army would ever reach favorable terms for the  
7 purchase of the Hayes Park Property, as no terms had been finalized. Ex. 3, sec. 2.4. In fact, the City did  
8 not own and could not properly enter into negotiations for the sale or lease of the Hayes Park Property  
9 under the Surplus Land Act until on or about July 25, 2002, nearly 4-1/2 years later.

10 36. Pursuant to the Army Deed executed on or about July 25, 2002 by and between the City of  
11 Seaside and the United States Army, the City of Seaside became the owner in fee simple of the Hayes Park  
12 Property.

13 37. The Surplus Land Act expressly requires that the above-described statutory notice to public  
14 agencies be made after the offering agency owns the property. The intent of the Legislature was that  
15 public agencies should not be required to negotiate land purchases on a mere contingency that the offering  
16 agency might, one day, own the property. Accordingly, the City of Seaside became obligated to provide  
17 such notice and enter into negotiations with interested public agencies on or after July 25, 2002, when it  
18 became the owner of the Hayes Park Property.

19 38. On information and belief, the City of Seaside failed to meet its statutory obligations, as the  
20 owner of surplus land acquired from the Federal Government, to offer the Property to public agencies  
21 interested in generating affordable housing. Rather, the City, upon becoming the owner of the Hayes Park  
22 Property, a large, valuable tract of land ideal for housing development, improperly attempted to give the  
23 Property to K&B/Bakewell for a sum well below market value, without satisfying the statutory  
24 requirements.

25 39. The LDA, by its terms, required the City of Seaside to violate the Surplus Land Act. The  
26 City, contrary to the express public policy of making surplus land available for affordable housing, failed to  
27 comply with the requirements of the Act. As a result, the LDA is void, null and of no legal effect.

1  
2 Third Cause of Action  
3 (Against Defendant City of Seaside)

4 **SALE OF PUBLIC LANDS AT BELOW-FAIR MARKET VALUE PERMITTED ONLY**  
5 **FOR AFFORDABLE HOUSING [Code Civ. Proc., sec. 526a]**

6 40. Plaintiff hereby incorporates by reference paragraphs 1-39 of the First Amended  
7 Complaint as if fully set forth herein.

8 41. The only time the Legislature has recognized an exception whereby a city may sell  
9 land below fair market value is for the specific purpose of developing affordable housing for low  
10 and moderate income families. Government Code section 37363 allows a city to adopt an  
11 ordinance permitting a below-fair market value sale of its land if the specific purpose of the sale is  
12 to create affordable housing. Section 37364 provides that a city may sell below-fair market value  
13 properties to low and moderate income families.

14 42. The underlying purpose for the below-fair market value exception is clearly stated:  
15 “The Legislature reaffirms its finding that the provision of housing for all Californians is a concern  
16 of vital statewide importance. The Legislature recognizes that real property of cities can be utilized,  
17 in accordance with a city’s best interests, to provide housing affordable to persons and families of  
18 low or moderate income.” Gov. Code sec. 37364.

19 43. On information and belief, the fair market value of the Hayes Park Property on July  
20 25, 2002 was approximately \$115 million.

21 44. On or about July 25, 2002, the City of Seaside, through its representatives, executed  
22 the City Deed purporting to sell the Hayes Park Property to K&B/Bakewell for \$5.95 million.

23 45. The purported sale of the Hayes Park Property by the City of Seaside does not fall  
24 within the statutory exception allowing sales of city property below fair market value because the  
25 City failed to comply with the requirements of Government Code sections 37363 and/or 37364, i.e.,  
26 the sale in no way provided for affordable housing. Accordingly, the City Deed (and underlying  
27 LDA) are void as contrary to statute, contrary to the express Legislative intent that affordable

1 housing be developed on properties purchased below-fair market value, and contrary to public  
2 policy that public entities refrain from making gifts of public property to private for-profit  
3 developers.

4  
5 Fourth Cause of Action  
6 (Against Defendant City of Seaside)

7 **FAILURE TO BID CONTRACT FOR PUBLIC WORKS [Code Civ. Proc., sec. 526a]**

8 46. Plaintiff hereby incorporates by reference paragraphs 1-45 of the First Amended  
9 Complaint as if fully set forth herein.

10 47. On information and belief, and pursuant to the terms of the LDA, K&B/Bakewell  
11 acquired development rights for the property in conjunction with the acquisition of the property,  
12 and in so doing agreed in the LDA to construct two public works projects for the City of Seaside:  
13 (1) a 4000 square foot City building, to be built on City-owned land other than the Hayes Park  
14 Property, and (2) ten housing units for homeless persons, also to be built on City-owned land other  
15 than the Hayes Park Property. Ex. 3, Recital I, secs. 2.2, 2.3, 2.6, 2.7.

16 48. Although the LDA identifies itself as a land sale agreement in substance, the City of  
17 Seaside purportedly contracted for construction of two public works projects for City of Seaside  
18 purposes and on City of Seaside-owned land.

19 49. Public Contract Code section 20162 requires that all public works contracts greater  
20 than \$5000 in value be put out to bid and awarded to the lowest bidder.

21 50. On information and belief, the City Seaside negotiated with only one contractor,  
22 K&B/Bakewell. At no time were bids solicited for construction of the City building and/or the ten  
23 homeless housing units.

24 51. Because the City of Seaside failed to properly solicit bids for a public works  
25 construction contract pertaining to those buildings identified in the LDA, and failed to award the  
26 contract to the lowest bidder, the LDA is void, null and of no legal force.

1 Fifth Cause of Action  
2 (Against Defendant City of Seaside)

3 **INADEQUATE PUBLIC HEARING [Code Civ. Proc., sec. 526a]**

4 52. Plaintiff hereby incorporates by reference paragraphs 1-51 of the First Amended  
5 Complaint as if fully set forth, herein.

6 53. The LDA states that the LDA was approved by the City Council of the City of  
7 Seaside on May 4, 1998, after a “duly noticed public hearing”. Ex. 3, Recital K.

8 54. The LDA Approval Resolution states that the “City Council has conducted a duly  
9 noticed public hearing on the LDA”. Ex. 5, Recital G.

10 55. On information and belief, the LDA Public Hearing did not constitute a valid, duly  
11 noticed public hearing in that, inter alia, the terms and conditions of the LDA were modified on the  
12 very day the LDA Public Hearing was held. Consequently, the public was not provided with  
13 adequate notice of the final terms and conditions of the LDA.

14 56. On information and belief, the LDA Public Hearing did not constitute a valid, duly  
15 noticed public hearing in that, inter alia, it was stated in the Agenda that the Hayes Park Property  
16 would be sold for fair market value to K&B/Bakewell, when, in truth, the property was purportedly  
17 sold for a sum well below fair market value.

18 57. The LDA Public Hearing failed to provide sufficient notice to the public regarding the  
19 terms and conditions of the LDA and/or materially misled the public. Accordingly, the LDA  
20 purportedly approved at the LDA Public Hearing is void, null and of no legal force.  
21

22 Sixth Cause of Action  
23 (Against Defendant City of Seaside)

24 **GIFTS OF PUBLIC PROPERTY PROHIBITED**

25 58. Plaintiff hereby incorporates by reference paragraphs 1-57 of the First Amended  
26 Complaint as if fully set forth, herein.  
27

1 59. California Constitution Article 16, Sec. 6 prohibits public entities from giving away  
2 public property.

3 60. Plaintiff alleges that the LDA and the City Deed purporting to convey the Hayes Park  
4 Property to K&B/Bakewell for 1/20th of its fair market value are void, null and of no legal force in  
5 that, inter alia, the attempted giveaway of public property by the City of Seaside is unconstitutional.

6  
7 Seventh Cause of Action  
8 (Against Defendant City of Seaside)

9 **COMMON LAW COUNT: WASTE OF PUBLIC ESTATE, PROPERTY OR FUNDS**

10 61. Plaintiff hereby incorporates by reference paragraphs 1-60 of the First Amended  
11 Complaint as if fully set forth, herein.

12 62. As set forth more fully above, the conduct of Defendant in the purported transfer and  
13 sale of the Hayes Park Property to K&B/Bakewell constitutes waste of public estate, property and  
14 funds. Thus, the LDA and City Deed are void, null and of no legal force.

15  
16 Eighth Cause of Action  
17 (Against All Defendants)

18 **DECLARATORY RELIEF [ [Code Civ. Proc., sec. 1060]**

19 63. Plaintiff hereby incorporates by reference paragraphs 1-62 of the First Amended  
20 Complaint as if fully set forth, herein.

21 64. A present and actual controversy exists between plaintiff and each defendant  
22 regarding their respective rights and duties with respect to the LDA and City Deed purporting to  
23 transfer City of Seaside's Hayes Park Property to K&B/Bakewell for a price well below fair market  
24 value. A declaration by the Court concerning the respective rights of the parties is therefore  
25 desired.

26 **WHEREFORE, Plaintiff BENJAMIN KAATZ** prays for judgment against the defendants,  
27 and each of them, as follows:

1 As To The First, Third, Fourth, Fifth, Sixth and Seventh Causes of Action

2 (1) That the City of Seaside be enjoined from performing any acts which would  
3 acknowledge, recognize or otherwise be consistent with ownership of the Hayes Park Property by  
4 K&B/Bakewell, including, without limitation, granting any permits or approvals for any  
5 construction or other activities on the Hayes Park Property;

6 (2) That an order issue from the Court confirming the present ownership in fee simple of  
7 the Hayes Park Property by the City of Seaside;

8 (3) That the City of Seaside be ordered to protect and preserve the City of Seaside's  
9 Hayes Park Property by removing any and all trespassers from the Property, including  
10 K&B/Bakewell, and any and all of its employees, agents, officers, licensees, consultants and  
11 subcontractors;

12 (4) For costs of suit and attorneys' fees pursuant to the common fund doctrine, and/or  
13 any other standard common law right to attorneys' fees; and

14 (5) For such other and further equitable relief as the Court deems just and proper.  
15

16 As to the Second Cause of Action

17 (1) That the City of Seaside be enjoined from performing any acts which would  
18 acknowledge, recognize or otherwise be consistent with ownership of the Hayes Park Property by  
19 K&B/Bakewell, including, without limitation, granting any permits or approvals for any  
20 construction or other activities on the Hayes Park Property;

21 (2) That an order issue from the Court confirming the present ownership in fee simple of  
22 the Hayes Park Property by the City of Seaside;

23 (3) That the City of Seaside be ordered to protect and preserve the City of Seaside's  
24 Hayes Park Property by removing any and all trespassers from the Property, including  
25 K&B/Bakewell, and any and all of its employees, agents, officers, licensees, consultants and  
26 subcontractors;  
27

1 (4) That, alternatively, an order issue from the Court for the recording of an equitable lien  
2 in favor of the City of Seaside on each of the 380 individual lots situated on the Hayes Park  
3 Property in the amount of the fair market value of each lot, as determined for a developable lot with  
4 water rights but without improvements;

5 (5) For costs of suit and attorneys' fees pursuant to the common fund doctrine and/or any  
6 other statutory or common law right to attorneys' fees; and

7 (6) For such other and further equitable relief as the Court deems just and proper.

8

9 As to the Eighth Cause of Action

10 (1) That the Court declare that the City of Seaside is the sole and lawful owner in fee  
11 simple of the Hayes Park Property;

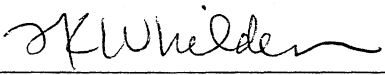
12 (2) For costs of suit and attorneys' fees pursuant to the common fund doctrine and/or any  
13 other statutory or common law right to attorneys' fees; and

14 (3) For such other and further equitable relief as the Court deems just and proper.

15 Dated: July 9, 2003

LAW OFFICES OF HEIDI K. WHILDEN

16



17  
18 HEIDI K. WHILDEN  
Attorneys for Plaintiff

19

20

21

22

23

24

25

26

27

28