Lenzi, Chelsea

Subject: FW: Homeowners Rights: RE Nomad Village
Attachments: Gen Ser Mtg.docx; Guggenheim.docx; Allen Let.pdf; Anderle dec.pdf; App Ord.docx; Public Comment - Ballantine Letter dated 2-2-17 (1).pdf

From: Debra Hamrick [mailto:lanmipres@gmail.com]
Sent: Monday, October 16, 2017 9:32 AM
To: Williams, Das; Wolf, Janet; Hartmann, Joan; Adam, Peter; Lavagnino, Steve
Subject: Homeowners Rights: RE Nomad Village

Good Morning - I am attaching documents prepared by our CPA. You will find a document outlining the meeting between homeowners and General Services. You will also find documents to support the homeowners questions and concerns during this meeting.

Of grave concern was the statement that Judge Anderle forbid homeowners from meeting with their Government Officials: Anderles' findings state the following:

Based upon the discussion below with respect to the substantive merits of the writ petition, the court concludes that no prejudice or intentional and heinous misconduct has here occurred by the ex parte communications, and that after an examination of the entire record, it is not reasonably probable that a result more favorable to petitioners would have been reached in the absence of the misconduct (see full document attached)

(at no time instructing the Board of Supervisors to deny homeowners access to them)

Homeowners continue to be charged Attorney Fees for ex-parte meetings between Mr. Ballentine and County Counsel, prior to BOS hearings. **Please see attached example.**

The County of Santa Barbara chose not to inform Homeowners of the BOS Meeting on Oct 17, 2017. To date no courtesy notice has been received by or sent to homeowners, as was done prior to all previous BOS hearings pertaining to Nomad Village. Homeowners were not given the opportunity to arrange for time off from work, or have their voice heard at the hearing on Tues, Oct 17, 2017.

Previously Homeowners Reps were given a Time Certain for the Agenda portion of the BOS hearing which pertained to Nomad Village. Not only was a Time Certain not provided, but a vague confirmation that the BOS would hear this Agenda item was relayed.

Board of Supervisors were not given an option by County Counsel to rule in accordance with the Rules For Hearing:

The homeowners brought up the fact that the decision matrix created by county counsel provides no decision that would be in the homeowners favor. The rules for hearing states "The Board shall affirm or reverse the Arbitrator's decision in whole or in part and may remand the case to the Arbitrator for reconsideration in light of the Board's review or, where appropriate, the Board may make a new decision without remand". The decision matrix has only affirm or remand. The homeowners believe that this is a limitation of their due process rights.

At this time Homeowners question their ability to have confidence in a fair outcome in this matter.

Nomad Village Homeowners Representatives

October 11, 2017 General Services meeting regard Nomad Village

In attendance: Janet Pell, Skip Grey and Ashley Kruzel from the County of Santa Barbara. Debra Hamrick and Tony Allen, CPA as representatives of Nomad Village homeowners.

Items discussed:

Homeowners brought it to the County's attention that various homeowners are receiving eviction letters from management in retaliation for asserting their rights either under the ordinance or because of case 17CV02185 filed against management in May 2017 by approximately 80 homeowners.

It was requested by counsel of the above mentioned homeowners to ask the county for some type of emergency action to stop the December 2017 rent increase. This question is now with County Counsel.

The homeowners requested the point person or department in charge of enforcing the ordinance. The district attorney prosecutes violations however, the homeowners believe that would not be the office of first contact. The homeowners will contact the DA for further guidance but believe there would be another department to contact similar to the enforcement as promulgated in section 11 of the ordinance.

Related to enforcement, the homeowners brought to the county's attention the demand letter (see Response from County re Allen Letter) requiring management to stop charging rents in excess of rent schedule established and to provide the homeowners with written notification of their credit. Because there is no enforcement, management continued collecting amounts above the rent schedule established, now in excess of $250,000. There is no indication that management ever set up the trust account required by §11A-8(b) or separately accounted for disputed increases in any way.

Homeowners brought it to the County's attention Guggenheim v. city of Goleta. After becoming a city, Goleta incorporated ordinance 11A in total, into their municipal code. Therefore, the Supreme Court provided background and rulings on the Santa Barbara County ordinance. According to the Supreme Court "The arbitrator must follow a complicated formula to determine the amount of any increase in excess of the automatic increase." and provides the full text of §11A-5(i) as the formula that must be followed.

The homeowners brought up the point that the ordinance does not allow management to unilaterally charge interest and pointed out that the Supreme Court made this clear:

"In sum, the RCO mandates that a "just and reasonable return" for the park owners must always be less than or equal to exactly one half of 75 percent of the annual increase of the CPI. The RCO permits park owners to go to arbitration to pass through additional costs, but such costs must be re-captured without any return on investment." "The Park Owners, who are not satisfied with their RCO-prescribed rent increase may seek arbitration for more rent to **cover actual expenses.**"

The 2017 increase includes over $750,000, plus interest, in "future legal fees." This is direct retaliation for the homeowners asserting their rights under the ordinance and/or the case filed in superior court. The Supreme Court made it clear that the ordinance may allow an increase only "to cover actual expenses."

The homeowners believe that county counsel's findings regarding the 2011 increase are at odds with the ordinance itself and the findings and discussion of the Supreme Court. The homeowners' request for review (for 2011) specifically discusses the formula in the ordinance and that it is required to be followed. County counsel's findings make no mention of the formula nor do they burden themselves with a finding on fair return on investment, as required to apply the formula in the ordinance.

The homeowners brought up the fact that the decision matrix created by county counsel provides no decision that would be in the homeowners favor. The rules for hearing states "The Board shall affirm or reverse the Arbitrator's decision in whole or in part and may remand the case to the Arbitrator for reconsideration in light of the Board's review or, where appropriate, the Board may make a new decision without remand". The decision matrix has only affirm or remand. The homeowners believe that this is a limitation of their due process rights.

There was a discussion on whether or not homeowners may even speak to their representatives on the board of supervisors. The county asserted that judge Anderle ruled homeowner contact with their representatives is prohibited. After review, there is nothing in judge Anderle's ruling that could be construed as such. (see excerpt attached) It has been James Ballantine, at every opportunity, misleading readers on the subject.

It is James Ballantine's ex parte communication with county counsel that has violated the due process rights of the homeowners. County counsel's current (2011 arbitration) findings are a thinly veiled rewriting of James Ballantine's 2/6/2017 letter to Jennifer Richardson, Don Grady, Michael Ghizzoni and Rachel Van Mullen. Ballantine's letter documents meetings, phone calls and discussions with county counsel and addresses the "findings" that he demands county counsel to make. The letter is in the record for the board 2/6/2017 hearing.

The homeowners explained that the unlawful rent increases would continue at nomad village and spread to other mobilehome parks if left unchecked by the county. As predicted, there have been three huge unlawful increases at Nomad Village, with Ballantine including $1.8 MILLION dollars in attorney fees (plus interest, that are not on managements financial statements), and he has now expanded his cottage industry to Blue Skies. Who have received a rent increase to include future Attorneys fees, should homeowners exercise their right to arbitration.

The homeowners would prefer to work with the county to stop this expansion, to restore homeowners' quiet enjoyment rights, and to enforce the ordinance as it was written, interpreted by the supreme court, and intended by those that wrote it. However, the homeowners have the apparatus in place to enforce their rights through the court system should the county wish to continue their partnership with James Ballantine.

The homeowners agreed to re-send management's revenue and income history (attached). Analysis of managements financial statements shows an increase of 257.55% in net income from 2009 (first full year of operations) to 2016 (last full year with actual amounts available). It is clear that management is not charging increases "to cover actual expenses" as required by the ordinance and explained by the Supreme Court. In fact, after removing the 20% rent sharing agreement related to increases in revenues, and self-directed management fee increases, unavoidable expenses have remained relatively stable throughout all years.

https://scholar.google.com/scholar_case?case=7702388851948238184&hl=en&as_sdt=6&as_vis=1&oi=scholarr

Guggenheim v. City of Goleta, 582 F. 3d 996 - Court of Appeals, 9th Circuit

I. Facts

In 1979, Santa Barbara County, California adopted a rent control ordinance for mobile homes.1 Mobile homes have the peculiar characteristic of separating ownership of homes that are, as a practical matter, affixed to the land, from the land itself.2 Because the owner of the mobile home cannot readily move it to get a lower rent, the owner of the land has the owner of the mobile home over a barrel. The Santa Barbara County rent control ordinance for mobile homes had as its stated purpose relieving "exorbitant rents exploiting" a shortage of housing and the high cost of moving mobile homes.3 The rent control ordinance was amended in 1987.4 The ordinance has a complex scheme for setting rents, limiting how fast they rise, and affording landlords a mechanism for disputing the limits.5

RCO § 11A-1.[1]

The RCO limits any increases in mobile home rents on an annual basis to 75 percent 100/11001 of the increase in the local Consumer Price Index ("CPI"). RCO §§ 11A-5(a)(2), 11A-5(a)(3), 11A-5(g). This increase is referred to as the "automatic increase." Mobile home park owners may also increase the rent by an additional amount to pass through increased operating costs, capital expenses, and capital improvements. This increase is referred to as the "discretionary increase." RCO § 11A-5(f)(1); 11A-6. The RCO sets out an arbitration process by which park owners must work with the mobile home owners and an arbitrator to determine the total amount of the permissible rent increase for each year. RCO §§ 11A-4, 11A-5. **The arbitrator must follow** a complicated formula to determine the amount of any increase in excess of the automatic increase:

(1) First, grant one-half of the automatic increase to management as a just and reasonable return on investment. The arbitrator shall have no discretion to award additional amounts as a just and reasonable return on investment.

(2) Next, grant one-half of the automatic increase to management to cover increased operating costs. The arbitrator shall have no discretion to award less than this amount for operating costs.

(3) Next, add an amount to cover operating costs, if any, in excess of one-half of the automatic increase. The arbitrator shall have discretion to add such amounts as are justified by the evidence and otherwise permitted by this chapter.

(4) Next, add an amount to cover new capital expenses. Where one-half of the automatic increase is more than the actual increase in operating costs for the year then ending, the arbitrator shall offset the difference against any increases for new capital expenses.

(5) Next, add an amount to cover old capital expenses. Where one-half of the automatic increase is more than the actual increase in operating costs for the year then ending, the arbitrator shall offset the difference against any increase for old capital expenses unless such difference has already been used to offset an increase for a new capital expense or another old capital expense....

(6) Finally, add an amount to cover increased costs for capital improvements, if any. The arbitrator shall have discretion to add such amount as is justified by the evidence and otherwise permitted by this ordinance.

RCO § 11A-5(I). .... **In sum, the RCO mandates that a "just and reasonable return" for the park owners must always be less than or equal to exactly one half of 75 percent of the annual increase of the CPI**. The RCO permits park owners to go to arbitration to pass through additional costs, but such costs must be re-captured **without *any* return on investment**.

Section 11A-5 provides that annual rent may be increased by 75 percent of the CPI (the "automatic increase"). The Park Owners, who are not satisfied with their RCO-prescribed rent increase may seek arbitration for more rent to **cover actual expenses**. Such rents are in addition to the automatic increase as a "just and reasonable return on investment." It is plain enough from this scheme that the RCO makes some allowance "for a profit on one's investment" and not "merely [an] offset [for] the cost of those improvements." *Sierra Lake*, 938 F.2d at 958. Although the **RCO may not provide a full return on investment in every case**, we are satisfied that the RCO provides for a reasonable profit in at least some circumstances. We recognize that there may be some imprecision between what the RCO will provide as a return and what the Park Owners might consider a reasonable return, but the Due Process Clause does not demand a perfect fit between the economic regulatory scheme and its purpose. *See Reno v. Flores*, 507 U.S. 292, 305, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993) (holding that the Due Process clause demands no more than a "reasonable fit" between governmental purpose and the means chosen to advance that purpose);

State and local governments have a legitimate interest in increasing the availability of affordable housing for their citizens. Translating that interest into effective public policy, however, has proven difficult. The Supreme Court and our court have addressed regulations like the City's RCO with some regularity; we have consistently questioned their ineffectiveness at increasing the availability of affordable housing, and we have commented on their pernicious side effects. *See, e.g., Yee*, 503 U.S. at 530, 112 S.Ct. 1522; *Sierra Lake*, 938 F.2d at 953-55; *Carson Harbor Village*, 37 F.3d at 472-73; *cf. Richardson*, 124 F.3d 1150 (reviewing a condominium rent control ordinance with similar effects). Nevertheless, so long as these rent control ordinances are "***designed* to accomplish an objective within the government's police power**, and if a rational relationship existed between the provisions and the purpose of the ordinances," the Constitution affords state and local governments the flexibility to experiment to find a workable approach to the problem. *Carson Harbor Village*, 37 F.3d at 472.

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Connecting People to Opportunities

January 27, 2012

James Ballantine, Esq
Attorney for Waterhouse Management Corporation
329 East Anapamu Street
Santa Barbara, CA 93101

RE: Nomad Village Mobilehome Park Arbitration

Dear Mr. Ballantine:

On January 25, 2012 the County received a letter ("Allen Letter") from Tony Allen, a resident of Nomad Village Mobilehome Park ("Nomad Village") regarding a letter dated January 17, 2012 ("Waterhouse Letter") to Nomad Village homeowners from your client, Waterhouse Management Corporation("Waterhouse Management"). The Waterhouse Letter concerned the arbitrator's award in the Mobilehome rent control arbitration for Nomad Village that is currently on appeal to the County Board of Supervisors pursuant to the County's Mobilehome Rent Control Ordinance (the "Ordinance"). The Arbitrator's award was appealed to the Board of Supervisors by both the Nomad Village homeowners and Waterhouse Management.

The last sentence in the third paragraph of the Waterhouse Letter states that Waterhouse Management "will begin charging your space rent plus the original $161 rent increase amount . . ." The Allen Letter questioned whether that increase is allowed.

Section 11A-8 of the Ordinance provides that: "Where a homeowner majority has petitioned for a hearing on an increase and the hearing is to be held after the effective date of the increase, management may collect the increase pending the arbitrator's decision".

This provision allows the requested increase to be charged only during the pendency of the arbitrator's decision. Once the arbitrator renders his decision, the rents must be in accord with his decision pending review by the Board of Supervisors. (Ordinance 11A-4(b); Santa Barbara Mobile Home Rent Control Rules for Hearings Sec. 23). Since the arbitrator has now rendered his decision, there is no basis for Waterhouse Management to charge rents in excess of those set forth in the award subject to the adjustments set forth in Ordinance Section 11A-8 (b)(2).

The Allen Letter also states that Waterhouse Management has not notified Nomad Village homeowners in writing of the amount of credit that they are entitled to under Ordinance Section 11A-8. That section also requires each homeowner to be provided with written notification of their credit amount.

Based upon the above, the County demands that Waterhouse Management cease charging rents in excess of the rent schedule established by the arbitrator and provide written notification to each homeowner of their credit amount under Ordinance Section 11A-8.

Failure of Waterhouse Management to comply with the requirements of the Ordinance may subject Waterhouse Management to the penalties set forth in Ordinance Section 11A-12.

Sincerely,

S Friedrichsen

Sharon Friedrichsen
Deputy Director
cc:
Tony Allen/Homeowners' Representative/Nomad Village Mobilehome Park
Ruben Garcia, Vice-President/Waterhouse Management Corporation

Board to act commences from "its receipt" of the record. Under rule 23(d) the Board receives the record from the Clerk. The final decision is therefore timely under the express language of the Hearing Rules. Moreover, as County points out, the Board's deadline is directory only and the Board does not lose jurisdiction to decide the review after the deadline passes. (*Anderson v. Pittenger* (1961) 197 Cal.App.2d 188, 193-194.)

The timing of the rendering of the decision by the Board does not affect the validity of the decision in any way.

(ii) Ex Parte Communications

Petitioners assert in their moving papers that County violated petitioners' due process rights by the Board's ex parte communications with homeowner representatives.

"Just as in a judicial proceeding, due process in an administrative hearing also demands an appearance of fairness and the absence of even a probability of outside influence on the adjudication. In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor assuring that such hearings are fair." (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90.)

With respect to ex parte communication, "[t]he basic standard is stated several different ways, e.g., 'regarding any issue in the proceeding,' 'upon the merits of a contested matter,' 'concerning a pending or impending proceeding.' We do not assign significance to the varying terminology. 'It is, in essence, a rule of fairness meant to insure that all interested sides will be heard on an issue.' [Citation.] It extends to communication of information in which counsel knows or should know the opponents would be interested. [Citation.] Construed in aid of its purpose, we conclude the standard generally bars any ex parte communication by counsel to the decisionmaker of information relevant to issues in the adjudication." (*Mathew Zaheri Corp. v. New Motor Vehicle Board* (1997) 55 Cal.App.4th 1305, 1317.)

There is no substantial dispute that ex parte communications occurred between members of the Board and members of the public. (5 AR 1436-1437, 1444.) The ex parte communications consisted of emails (5 AR 1358-1429) and a meeting between Supervisor Wolf with individuals including real party Hamrick (5 AR 1444). The ex parte communications were disclosed in general terms at the May 15, 2014, Board meeting but were not disclosed in specific terms, as in the contents of the emails, until after the Board's decision.

In the context of the Board acting in a quasi-judicial capacity, the ex parte communications were improper. As discussed below, the Board treated public comments as additional argument. The ex parte communications were arguments in favor of the homeowners which, as a general matter, petitioners would have reason to want to know prior to the hearing.

County responds to this issue by point out that under the California Constitution, "[t]he people have the right to instruct their representatives ...." (Cal. Const., art. I, § 3, subd. (a).) This right, however, has not been construed to permit unrestrained ex parte communications. Procedural due process

rights of the parties to the adjudication must also be considered. The procedural due process right involved is the right to a fair and unbiased hearing. (*Mathew Zaheri Corp. v. New Motor Vehicle Board*, *supra*, 55 Cal.App.4th at p. 1319.) Ex parte communications have the potential to violate due process because "[w]hen an administrative adjudicator uses 'evidence' outside the record there is a denial of a fair hearing because, as to that 'evidence,' there has been no hearing at all, for the disadvantaged party has not been heard." (*Ibid.*)

The court is mindful of the difficulty that exists for members of the Board sitting in a quasi-judicial capacity. Adjudicatory issues before the Board may be closely related to legislative and policy issues about which communication from constituents would be both expected and appropriate. Issues of written communications may be resolved by prompt disclosure and an opportunity to respond. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1, 17.) Nonetheless, the ex parte communications here, in particular, Supervisor Wolf's meeting with Hamrick and others, was inappropriate where the subject of the meeting was apparently the subject of the May 15 hearing and came only one day prior to the hearing.

The fact of ex parte communications does not by itself require reversal of a decision under review. "If the trial court appropriately concludes that the agency did not rely upon the information provided in the ex parte communication, and that the decisionmaker was not guilty of actual misconduct giving rise to a presumption of bias, there is no deprivation of a fair hearing and no denial of due process." (*Mathew Zaheri Corp. v. New Motor Vehicle Board*, *supra*, 55 Cal.App.4th 1305, 1319-1320.) "[T]o warrant reversal such misconduct must be shown prejudicial or intentional and heinous." (*Id.* at p. 1318.) "'Prejudice' connotes that the Board's decision stemmed, at least in part, from the asserted misconduct." (*Ibid.*) "Alternatively, one might use the test of *People v. Watson* (1956) 46 Cal. 2d 818, 836 ... [after an examination of the entire cause, including the evidence, it is reasonably probable that a result more favorable to defendant would have been reached in the absence of the misconduct]." (*Id.* at p. 1318, fn. 11.)

Based upon the discussion below with respect to the substantive merits of the writ petition, the court concludes that no prejudice or intentional and heinous misconduct has here occurred by the ex parte communications, and that after an examination of the entire record, it is not reasonably probable that a result more favorable to petitioners would have been reached in the absence of the misconduct.

(iii) Extra-Record Evidence

Petitioners also assert that the Board improperly violated its own rules by considering evidence outside of the record in permitting participation at the hearing of members of the public. "This review shall ordinarily be made on the record alone; however, the Board may elect to hear oral argument from the parties, their representatives, and/or their attorneys." (Hearing Rules, rule 23(b).)

County responds that its obligations under the Brown Act (Gov. Code, § 54950 et seq.) require the Board to permit public input:

"Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the

APPLICATION OF THE ORDINANCE INCREASE FORMULA §11A-5(I)(1) – (6)

There is considerable confusion and misinformation about the application of the §11A-5 section of the ordinance and the formula used to calculate rent increases. This primer is intended to clarify the application of the rent increase formula. In order to correctly calculate a rent increase per the formula, the factors described throughout the ordinance must be present. The formula relies on the ordinance overall being understood and, critically, followed.

The factors needed to calculate an increase are as follows:

- "Rent schedule" as defined in §11A-2(n) and the title subject of §11A-5 - Increases in maximum rent schedule. The cumulative "rent charged" is the amount on which any additions will be calculated. The final "rent schedule imposed" must be supported by the formula.
- A return on investment (ROI) factor that has been determined to be the "fair return on investment" (FROI). This serves as the ceiling on increase and provides the percentage to compare to actual ROI.
- A statement of revenues and expenses (income statement) from the year prior, to determine fair, or add amounts per the formula. The rules for hearing require the four previous years for fair return comparison and analysis. The income statement provides the revenue, the expenses, and revenue less expenses or net operating income (NOI).
- Original investment amount is required to calculate actual ROI. ROI = original investment divided by the prior year NOI.
- Any capital expense incurred in the prior year, and the useful life of that capital expense. The capital expense divided by its useful life determine the amount to be recouped annually.
- The change in the CPI (consumer price index) in order to calculate the "automatic increase"

If any of the above factors are not present, it is impossible for the formula to be calculated. (Note: Old capital expenses, their offsets, and capital improvements are omitted for ease of presentation. The same principles apply to old capital expense or improvement.)

The figures below demonstrate how the formula will calculate rent increase under 3 different scenarios. The scenarios are, increase in operating costs, new capital expense, and increase in operating expense and new capital expense. All examples use the same investment, ROI required, revenue and CPI factor for ease of comparison.

Figure 1 provides an example of increased operating expenses causing an actual NOI below the fair return calculated target NOI, or a ROI below the fair ROI.

Ordinance 11A-5 Calculation (Figure 1)												
Investment amount:			$1,000.00		Capital Expense			CPI:	2015	688.513		
Rate of Return required:			10.00%		Useful Life (in years):	3			2016	704.136		
Target NOI:			$ 100.00		Annual Return	0			Change:	2.3%		
Revenue:			$ 500.00									
Expenses:			$ 450.00									
Actual NOI:			$ 50.00									
Itemized Increase Item:	**Current Rental NOI:**	**Automatic CPI**	**§11A-5(i)(1) Automatic Increase *.5**	**§11A-5(i)(2) Automatic Increase *.5**	**§11A-5(i)(3) Increased operating costs**	**§11A-5(i)(4) New capital expenses**	**§11A-5(i)(4) Offsets (new)**	**§11A-5(i)(5) Old capital expenses**	**§11A-5(i)(5) Offsets (old)**	**§11A-5(i)(6) Capital Improvements**	**Total:**	
		1.725%	0.863%	0.863%								
Notice of Increase	$50.00				$ 50.00	$ -					$100.00	
Total Increase:		$ 8.63	$ 4.31	$ 4.31	$ 32.75	$ -	$ -				$ 50.00	
Running Total:	$50.00	$ 58.63	$ 62.94	$ 67.25	$ 100.00	$ 100.00	$ 100.00					

As demonstrated, the formula provides the required addition of $50 to bring NOI up to $100 and ROI up to the required 10%. The language "add an amount to cover" throughout §11A-5(i) is the incremental amount, when added to the previous step accumulation, will provide the needed increase and achieve the required rate of return.

Notice that the categories in the calculation are the categories required in management's notice of increase as outlined in §11A-5(a)(3)(A). The cumulative notices, or the "rent schedule" is what an arbitrator must "set and adjust" in order to present their "rent schedule imposed."

Figure 2 provides an example of a new capital expense and no increased operating expenses. NOI is already providing a fair return however, the capital expense must be considered in order to provide a fair return over its useful life.

Ordinance 11A-5 Calculation (Figure 2)												
Investment amount:			$1,000.00		Capital Expense	150		CPI:	2015	688.513		
Rate of Return required:			10.00%		Useful Life (in years):	3			2016	704.136		
Target NOI:			$ 100.00		Annual Return	50			Change:	2.3%		
Revenue:			$ 500.00									
Expenses:			$ 400.00									
Actual NOI:			$ 100.00									
Itemized Increase Item:	**Current Rental NOI:**	**Automatic CPI**	**§11A-5(i)(1) Automatic Increase *.5**	**§11A-5(i)(2) Automatic Increase *.5**	**§11A-5(i)(3) Increased operating costs**	**§11A-5(i)(4) New capital expenses**	**§11A-5(i)(4) Offsets (new)**	**§11A-5(i)(5) Old capital expenses**	**§11A-5(i)(5) Offsets (old)**	**§11A-5(i)(6) Capital Improvements**	**Total:**	
		1.725%	0.863%	0.863%								
Notice of Increase	$100.00				$ -	$ 50.00					$150.00	
Total Increase:		$ 8.63	$ 4.31	$ 4.31	$ -	$ 37.06	$ (4.31)				$ 50.00	
Running Total:	$100.00	$ 108.63	$ 112.94	$117.25	$ 117.25	$ 154.31	$ 150.00					

Figure 2 demonstrates that the formula provides for the total capital expense to be passed through while retaining a 10% return on investment. Moreover, while $32.75 is passed through for 3 years, $17.25 becomes a permanent increase subject to all future increases. Adding the total amount without regard to prior allowed increases will provide a return above the fair return and defeat the calculation and the stated purpose of the ordinance. In circumstances where actual

ROI is above fair ROI, less or no additions for capital expense may be necessary depending on the difference in ROIs.

Figure 3 provides an example of a new capital expense and increased operating expenses.

Ordinance 11A-5 Calculation (Figure 3)												
Investment amount:			$1,000.00		Capital Expense		150		CPI:	2015	688.513
Rate of Return required:			10.00%		Useful Life (in years):		3			2016	704.136
Target NOI:			$ 100.00		Annual Return		50			Change:	2.3%
Revenue:			$ 500.00								
Expenses:			$ 450.00								
Actual NOI:			$ 50.00								

Itemized Increase Item:	Current Rental NOI:	Automatic CPI	§11A-5(i)(1) Automatic Increase *.5	§11A-5(i)(2) Automatic Increase *.5	§11A-5(i)(3) Increased operating costs	§11A-5(i)(4) New capital expenses	§11A-5(i)(4) Offsets (new)	§11A-5(i)(5) Old capital expenses	§11A-5(i)(5) Offsets (old)	§11A-5(i)(6) Capital Improvements	Total:
		1.725%	0.863%	0.863%							
Notice of Increase	$ 50.00				$ 50.00	$ 50.00					$ 150.00
Total Increase:		$ 8.63	$ 4.31	$ 4.31	$ 32.75	$ 50.00	$ -				$ 100.00
Running Total:	$ 50.00	$ 58.63	$ 62.94	$ 67.25	$ 100.00	$ 150.00	$ 150.00				

Figure 3 demonstrates that the formula provides $50 to cover operating expenses as it does in figure 1. It also provide $50 to cover the capital expense as it does in figure 2. The formula will always "add an amount to cover" the next category. It will always allow "an amount to cover operating expenses" and "an amount to cover new capital expenses", when needed to provide a "fair return on investment."

The arbitrator is required to deny the increase in maximum rent schedule, including the automatic increase, under circumstances set forth in the ordinance. If the increase is not denied by the ordinance, then the formula is applied stepwise.

The first step is to "consider all relevant factors." The ordinance provides a non-exhaustive list of factors to consider and expressly excludes certain possessory costs. The ordinance gives the arbitrator some discretion in considering operating costs however, the rules for hearing expressly includes the last four years of income statements. The four years of income statements are the only specifically included documents, and anything else falls under "any other information upon which an increase is based." We can conclude that the arbitrator must give significant weight to generally increasing, non-avoidable expenses, and their impact on NOI, over those four years.

Next, the arbitrator must allow the automatic increase. The cumulative automatic increase when added to NOI becomes the basis for every step of the formula that follows.

The next step reads "The arbitrator may allow an increase in excess of the automatic increase for increased costs where increases in expenses and expenditures of management justify such increase." The arbitrator must consider NOI with the addition of the automatic increase in relation to the required ROI. Figure one demonstrated the need to continue through the formula as the required ROI had not yet been achieved. However, if expenses were $405 and $5 was needed to achieve FROI, the arbitrator could clearly see that $8.63 provided a FROI and no additional increases would be justified. Likewise, had the annual return on capital expenses been $5 in

figure 2, the $8.63 would provide a FROI and no further increases would be justified. Alternatively, had actual NOI been $145 in figure 2, or 14.5% ROI, the addition of $8.63 would provide the FROI and no further increase would be justified.

It is clear that FROI is the ceiling on which the formula is structured. It is also clear that the ordinance provides little guidance on the determination of what FROI is. The ordinance and the rules for hearing provide a correlation between increased operating expenses and FROI however, as previously demonstrated, if ROI is above FROI, no additional increases "in excess of the automatic increase" can be justified. The courts have ruled that "fair rate of return" as applied to mobilehome rent control "refers to a constitutional minimum within a broad zone of reasonableness." It is within this zone of reasonableness that the balance of protecting the homeowners and allowing "rent increases sufficient to cover [park owner's] increased costs."

CONCLUSION

It is the ordinance that provides the framework, and formula, for rent increases. It is the "regulator", either through the arbitrator, or the county itself that must determine a reasonable fair return on investment. The FROI is required in order to calculate the formula contained in the ordinance. The "rent schedule" is required, to determine the addition of the automatic increase, to analyze the addition of the automatic increase in terms of FROI, and to apply to the formula, if needed.

The formula assumes that the arbitrator has analyzed the required information. It is within the constraints of the ordinance and FROI that the arbitrator is tasked with setting and adjusting the rent schedule and presenting the "rent schedule imposed." As demonstrated, the formula will provide the desired result in the context of the purpose of the ordinance, given adherence to the overall limitations, structure, and formula of the ordinance and the rules for hearing.

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February 6, 2017

BY E-MAIL: jrichardson@co.santa-barbara.ca.us
Jennifer Richardson, Esq.
Deputy County Counsel
County of Santa Barbara

Re: February 7, 2017 Board of Supervisors Hearing
Agenda Item #2017 - 00067
Homeowners' Appeal of Arbitration Award
Nomad Village Mobilehome Park

Dear Ms. Richardson:

As you know, this office represents Park Management of Nomad Village Mobilehome Park in the above-referenced matter, which is an appeal filed by the Park residents to the Arbitration Award issued by the Arbitrator appointed by the County pursuant to its Mobilehome Rent Control Ordinance.

As I discussed with you last Thursday, I have reviewed the Board letter for the above-referenced hearing and I find its recommendation to remand Award numbers 5, 7, 8 (Award numbers are per the Arbitrator's August 28, 2016 Remand Award "Remand Award")) to be troubling.

First, as you know, these proceedings are already six years old. The County has engaged in conduct which has substantially delayed the resolution of this matter, including not even addressing Judge Anderle's Writ Order for over one year after it was entered. The California Supreme Court in *Galland v. Clovis* (2001) 24 Cal.4th 1003, 1027-1028, has made it clear that municipal administrative mobilehome rent control proceedings that subject Park Management to undue delay and expense are confiscatory and violate Park Management's constitutional rights, and can give rise to a claim for damages by Park Management.

Second, the suggestion that the Award Number 5, dealing with amortization be remanded for further consideration ignores both the Court order and this Board's prior ruling. The Court affirmed the Arbitration Award as to the amortization as being supported by substantial evidence. Staff's suggestion that the schedule referenced by the Court, Exhibit 3, is outdated is incorrect; the schedule remains fully applicable, since all

of the items currently subject to the schedule were part of the proceedings at the time of the schedule. Moreover, the Board has already specifically upheld the amortization schedule in its July 12, 2016 Order.

Third, the suggestion in the Board letter that Award Numbers 7 and 8 contain insufficient findings ignores the idea that the rent control arbitration proceedings afford a relatively prompt and informal resolution of rent issues in a mobilehome park, and ignores the standards governing findings already acknowledged by the County.

In both cases, the Arbitrator's findings referenced testimony and evidence in the record supporting his conclusions. These matters were expressly remanded by the Court for the Arbitrator to consider in the context of his consideration of Award Number 6, which he has done. As to Award Number 7, the Arbitrator specifically referenced the costs of plans which the evidence in the record shows costs in excess of the amount awarded. (Exhibits J &L) As to Award Number 6, the Arbitrator specifically referenced two exhibits, one of which summarizes work related to capital items, the other which shows the costs of work for these items. (Exhibit K, second page, Exhibit Q.) The law does not require the Arbitrator to articulate further detail, if the information can be referenced in the record, which it can, and particularly considering the nature of these Arbitration proceedings.

The County's "Opposition to Petition for Writ of Administrative Mandamus," filed in the pending case, Santa Barbara Superior Court Case No. 11403358, on March 10, 2014, set forth a standard for findings that would require that the Remand Award be upheld.

> "However, findings need not be stated with the precision required in judicial proceedings, may be formal or informal, must simply 'expose the mode of analysis, not expose every minutia', and are 'sufficient if the apprise interested parties and the courts of the bases for the administrative action.'"
> (p. 17, line 26 - p. 18, line 3, quoting *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506; and *Mountain Defense League v. Board of Supervisors* (1977) 65 Cal.App.3d 723.)

> "The need for the Board to make findings 'does not preclude a reviewing court from looking to the record to determine the findings upon which the decision is based.' (*Lindborg-Dahl, supra*, 179 Cal.App.3d at 963.) The Board may properly incorporate matters by reference and even omissions may sometimes be filled by such relevant references as are available in the record. (*McMillan supra*, 60 Cal.App.3d at 183-184.) Under the substantial evidence test, it is presumed that the findings and actions of the administrative agency were supported by substantial evidence." *(Desmond, supra*, 21 Cal.App.4th at 335.)
> (p. 18, line 23 – p. 19, line 7.)

Here the Arbitrator (hearing officer) "articulated findings sufficient to bridge the gap between the record and final decision that were supported by substantial evidence in the record."

Sincerely yours,

JAMES P. BALLANTINE

JPB/lp

cc: Clerk, Santa Barbara Mobilehome Rent Control Ordinance
Michael C. Ghizzoni, County Counsel
Rachel Van Mullem, Chief Deputy County Counsel