

SANTA BARBARA SANTA MARIA
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ARBITRATION

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NOMAD VILLAGE MOBILE HOME PARK
RENT CONTROL HEARING

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Tuesday, September 20, 2011
105 East Anapamu Street
Santa Barbara, California

OUR FILE NO: 68764

REPORTED BY: MARK McCLURE, CSR #12203

ORIGINAL

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1	I N D E X		
2	WITNESS	EXAMINATION	PAGE
3	MICHAEL ST. JOHN		
4		BY MR. STANTON	3
5		BY MR. BALLANTINE	115
6	KEN WATERHOUSE		
7		BY MR. BALLANTINE	128
8		BY MR. STANTON	147
9		BY MR. BALLANTINE	176
10		BY MR. STANTON	179
11	RUBEN GARCIA		
12		BY MR. BALLANTINE	181
13	DAN WALTZ		
14		BY MR. STANTON	189
15		BY MR. BALLANTINE	195
16			
17			
18			
19			
20	E X H I B I T S		
21	(NO EXHIBITS)		
22			
23			
24			
25			

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1 SANTA BARBARA, CALIFORNIA

2 TUESDAY, SEPTEMBER 20, 2011, 10:12 A.M.

3 --oOo--

4
5 THE ARBITRATOR: Good morning, everyone. My
6 name is Stephen Biersmith. Today is day 2 of the
7 hearing the notice of appeal, and we have Dr. St. John
8 on the stand again.

9 Doctor, you're under oath.

10 THE WITNESS: Yes, I am.

11 THE ARBITRATOR: Thank you.

12 With that, we have some cross-examination, I
13 believe.

14 Mr. Stanton, you may proceed.

15
16 MICHAEL ST. JOHN,
17 having been previously sworn, was examined
18 and testified further as follows:

19
20 CROSS-EXAMINATION (RESUMED)

21 BY MR. STANTON:

22 Q. Good morning.

23 A. Good morning.

24 Q. Dr. St. John, how are you?

25 A. Fine, thank you.

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1 Q. As I'm fond of saying, whenever we might see
2 each other, this must be a fashionable fight, it draws
3 the finest people.

4 Let me ask you some questions first of all
5 about the qualifications or experience that you
6 testified to yesterday. I think you said that you have
7 been retained by a few public agencies directly to
8 render opinions in connection with mobile home rent
9 cases such as this, right?

10 A. Correct.

11 Q. And I think you named, as I recall, Lancaster,
12 Marina and Sonoma County, correct?

13 A. Yes.

14 Q. Is that the complete list, as best as you can
15 remember?

16 A. I think so, to the best of my recollection,
17 that is.

18 Q. How many mobile home fair-return hearings such
19 as this one have you testified in connection with at the
20 administrative level, if you know?

21 A. Well, I don't know exactly. I'm going to
22 guess 20. I mean, many of them are listed in my bio
23 data, which is in the book and we can go through them,
24 but I haven't counted and they're not all there because
25 it's not entirely up to date, but 20, 25, in that range.

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1 Q. All right. In any of those cases were you
2 ever hired by park homeowners?

3 A. Never.

4 Q. So you were always hired by the park operator
5 or the park owner, correct?

6 A. The park operator or the city.

7 Q. And, yeah, fair enough. I meant to segregate
8 out those ones that you have already indicated where you
9 were hired by the jurisdiction. But other than those
10 three, just to make sure we have a clear record, you
11 were always hired by the park operator or the park
12 owner, is that correct?

13 A. That's true.

14 Q. All right. Your CV that we've tabbed as item
15 E talks, on page 2, about publications and reports. My
16 question is, have any of the publications and reports
17 that you have listed actually been published?

18 A. No.

19 Q. Okay. Have you ever been or has any of your
20 work ever been quoted or cited by any court of law that
21 you know of?

22 A. I'm not sure if -- I'm trying to recall. Just
23 the other day I was looking at one "Dr. St. John said
24 this," "Dr. St. John said that," but it may have been an
25 arbitration, not a court of law, and I can't draw it to

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1 mind at this moment. So there may be a time or two, but
2 not often.

3 Q. All right. Now, I think you also testified
4 that you have been hired in litigation matters which
5 also have as their subject matter these types of issues.

6 A. Yes.

7 Q. How many of those can you recall, litigation
8 matters, as opposed to the administrative hearings like
9 this proceeding that we've already discussed?

10 A. It would be easier if I consult my list.

11 Q. Go ahead.

12 A. So going down the list, Harrison versus Ford
13 was litigation, Amberhill versus City of Berkeley was
14 litigation, Floystруп versus Rent Stabilization Board
15 was litigation. Searle versus City of Berkeley was . .
16 .

17 Moving down, Save Affordable Housing was
18 litigation. Berger Foundation became litigation. It's
19 hard for me to recall if I testified at the litigation
20 or at the preceding administrative stage. I can't
21 recall. That was many years ago.

22 Santa Monica Beach was litigation, Valparaiso
23 was litigation. I'm reminding myself -- Salinas City
24 Council -- I'm reminding myself that that's another city
25 that I talked to about rent control issues, that asked

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1 my opinion about rent control issues.

2 And the remainder are administrative hearings.

3 Q. So you have identified several litigation
4 matters.

5 A. Yes.

6 Q. In any of those litigation matters were you
7 hired on behalf of the homeowners or residents of the
8 home park?

9 A. No.

10 Q. So you were always hired in those matters by
11 the park owner or operator, correct?

12 A. That's correct. You know, I'm noticing as we
13 speak that perhaps the most prominent case in which I
14 did testify in a court of law about these matters was
15 the case we know of as the Cotati case. I don't have
16 the citation in mind, but I was prominently involved in
17 that case and certainly quoted in -- I believe I was
18 quoted in the decision.

19 THE ARBITRATOR: Can you spell it for the
20 record.

21 THE WITNESS: C-o-t-a-t-i.

22 BY MR. STANTON:

23 Q. Now, you're being compensated in this matter
24 to give testimony and to render your analysis, correct?

25 A. Correct.

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1 Q. Is the fee that you are being paid part of, if
2 you know, the \$125,000 amount that is itemized in what
3 we've been calling the Exhibit C spreadsheet under item
4 6?

5 A. Yes.

6 Q. Can you tell me what part of that \$125,000 is
7 being paid to you for your services in this matter?

8 A. Well, the figure is an estimate and I have --
9 I don't know how much of that figure would eventually
10 come to me. No one else knows, either, because it
11 hasn't been -- it hasn't happened yet.

12 Q. Well, I guess my question is not whether you
13 know how much of that will come to you based on the
14 hearing officer's award, my question is really what are
15 you charging them in this matter to give testimony and
16 provide your analysis in this administrative hearing
17 that we're in right now?

18 A. What my fee is?

19 Q. Yes.

20 A. \$200 an hour.

21 Q. And do you have an estimate of what the total
22 of your fees are going to be through this administrative
23 hearing process?

24 MR. BALLANTINE: I'll just note that's vague.
25 Do you mean just for the testimony with respect to the

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1 administrative hearing or also consulting with respect
2 to the rent increase notice that was given early this
3 year?

4 MR. STANTON: I'll be happy to clarify. I'm
5 talking about this testimony, the work he's prepared
6 that we've seen, that's been introduced, and consulting.

7 Q. Anything in connection with the lead-up or the
8 actual conduct of this hearing.

9 A. You know, I'd have to ask my bookkeeper. I
10 don't have any reliable way of making such an estimate.

11 Q. Okay. So it's not even possible for you to
12 estimate for us what that might be at this point, right?

13 A. I could estimate, but I can't be very
14 accurate.

15 Q. Okay. So have the fees actually been paid to
16 you?

17 A. Some fees have been paid to us.

18 Q. Have all the fees been paid to you in
19 connection with the testimony that you are giving today?

20 A. No, no, we bill afterwards, based on hours
21 spent.

22 Q. Okay. Can you estimate for me what part, if
23 any, of the \$125,000 amount that you have calculated in
24 the Exhibit C spreadsheet would involve costs or fees to
25 be paid to you or your office as part of this proceeding

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1 for consulting, testimony, preparation of reports, et
2 cetera?

3 A. I don't know how much there will be hereafter,
4 and the \$125,000 is a figure that was estimated to
5 include not only fees that have been incurred to date,
6 legal and consulting fees, but those that are ongoing
7 and fees that may occur in the future, because we don't
8 know the outcome of this hearing.

9 Q. Okay.

10 A. In January we didn't know whether there would
11 be a hearing, so it's a number that will eventually, I
12 assume, be proven to the penny when the bills are in,
13 but I just can't tell you how much more it may take.

14 Q. In hearings that you've been testifying in as
15 an expert and doing analysis like this, have you
16 typically seen these sorts of costs at the time of the
17 hearing not being defined or not being known and being
18 only estimated in the manner that you have just
19 described?

20 A. I actually don't know other ordinances that
21 allow these fees to be done in advance. As we said
22 yesterday, the County of Santa Barbara, the ordinance
23 here is a bit unusual in a few respects, and one of them
24 is that it allows advance -- to charge in advance for
25 things that are happening in the future, and that's the

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1 principle on which was based that estimate.

2 Q. Okay, let's talk more about that. I'm not
3 sure if you have a copy of the ordinance there with you.

4 A. I don't know if it's in the book.

5 MR. BALLANTINE: It's not in the green
6 notebook of our exhibits, but it is a joint exhibit.

7 THE WITNESS: I have it in my binder.

8 BY MR. STANTON:

9 Q. In connection with what you just testified to,
10 Dr. St. John, where you say the ordinance allows these
11 kinds of expenses, can you point out for me where in
12 this ordinance it allows for the park owner or operator
13 to build into the increase anticipated professional fees
14 of this nature?

15 A. No.

16 Q. You just testified, though, that the ordinance
17 allows -- could I call that "prospectively" for items to
18 be charged, what are you referring to there, then?

19 A. The capital improvements.

20 Q. Okay.

21 A. The ordinance explicitly allows capital
22 improvements and is silent on the question of advance
23 professional fees.

24 Q. Agreed. So what's the authority that you just
25 spoke of? When you said the ordinance has this

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1 authority, what are you referring to?

2 A. I'm referring to the fact that the advance
3 payment for capital improvements is allowed and by
4 analogy, we believe -- I believe -- I'm not an attorney,
5 I'm an economist, so this is a legal question, it seems
6 to me.

7 Q. Okay. I thought that's what I heard you say
8 yesterday but I wanted to be sure by this line of
9 questioning, that you're using the analogy to the
10 capital improvement prospective allowance, if we can
11 call it that, which I think appears in section 11 A-6 A,
12 subsection 5?

13 A. Right.

14 Q. And subsections 1 and 4 before that?

15 A. That's right.

16 Q. The analogy that you're talking about is the
17 basis not only for item 6, professional fees, but also
18 for the item 5 professional fees of \$50,000 in
19 connection with the tax appeal, correct, you're using
20 the same analogy for both, correct?

21 A. Correct.

22 Q. Okay. So my question is, as you understand
23 the ordinance, what's the protection for the residents
24 if a capital improvement charge is being prospectively
25 allowed and the improvement never happens? What does

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1 the ordinance say the protection for the residents is?

2 A. The money has to be given back.

3 Q. Okay. And do you see anywhere in the
4 ordinance where it describes the trigger for doing
5 that -- in other words, what's the standard for that?

6 A. In the case of capital improvements, if the
7 work hasn't begun before six months has elapsed.

8 Q. In fact, the language of subsection 5 in that
9 capital improvement section reads: "If management fails
10 to begin construction of a capital improvement within
11 six months," correct?

12 A. Yes.

13 Q. That's what you're referring to?

14 A. Yes.

15 Q. So in that case, we would have a
16 fairly objective way of finding the trigger, wouldn't
17 we? We could just go out to the park and see, hey, do
18 we see any construction yet, right, has anything
19 started?

20 A. Right, uh-huh.

21 Q. Let me ask you. Using your analogy to these
22 fees, would the ordinance contain any similar protection
23 for residents if the fees were never actually expended
24 by the professional parties to whom they were
25 designated?

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1 A. No. I'm assuming that the arbitrator would
2 handle that in his award, that he would tell us how that
3 should be handled.

4 Q. Let me just make sure I understand what you're
5 saying, because I think I do. You're saying that the
6 hearing officer, in your opinion, would have to actually
7 construct within his awards the triggers or the
8 objective findings to protect the residents from being
9 awarded against, if you will, prospective fees that are
10 never used?

11 A. Yes. Later today when the owners, the park
12 manager is testifying, you should ask him if he would,
13 and I believe he'll say he will, so you can get an
14 assurance directly that way. But for the arbitrator to
15 put it in his decision a trigger mechanism, as you say,
16 makes sense to me.

17 Q. All right. I know you're not a lawyer and so
18 I'm not asking for your legal opinion --

19 A. Thank you.

20 Q. -- and I can't do that, but when you talk
21 about the park owner saying he would agree to give it
22 back, I mean, there's no guarantee, though, in the
23 ordinance that would talk about whether or not that
24 would happen, right, that you know of, that you have
25 seen?

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1 A. Yeah.

2 Q. Okay.

3 A. Would you like me to expand just a bit on this
4 topic?

5 Q. Well, let me ask you some more questions about
6 this, if I could.

7 A. Sure.

8 Q. As to the \$125,000 amount, you've testified
9 that your fees and costs that would be paid to your firm
10 in connection with anything that you might do is a part
11 of that, but you don't know how much at this point,
12 correct?

13 A. Right.

14 Q. Okay. Do you know what any of the other parts
15 of that \$125,000 are, by subject matter, in terms of who
16 it's paid to or for what?

17 A. Those fees cover legal and consulting fees,
18 and at this moment, as far as I know, it would be the
19 owner's attorney and myself. At this moment, there's no
20 other consultant that's hired, as far as I know.

21 Q. So in preparing your analysis for this
22 hearing, have you ever been shown anything by anybody,
23 whether it's Mr. Ballantine or the park owner or
24 representatives, that in any way itemizes or describes
25 this \$125,000?

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1 A. I can't recall that it was itemized. It was
2 an estimate, there were discussions, and the number was
3 chosen as an estimate.

4 THE ARBITRATOR: Can I have the attorneys
5 approach for a second.

6 Off the record.

7 (Discussion off the record.)

8 THE ARBITRATOR: We have a stipulation for the
9 record, Mr. Ballantine?

10 MR. BALLANTINE: Your Honor, I think, and I'll
11 ask Mr. Stanton to listen and correct me if I've not
12 stated it accurately, but I think the stipulation would
13 be that as to the item 6 on the -- let's be precise
14 here -- the spreadsheet Exhibit C, the spreadsheet,
15 No. 6 is anticipated professional fees relating to the
16 rent increase, what we've agreed to do is the park owner
17 will submit billing statements showing exactly what the
18 amount that the park says has been incurred by
19 Dr. St. John and myself through the matters related to
20 the rent increase for the arbitrator's consideration,
21 and that way we would liquidate that number.

22 We would waive any claim to, at this point in
23 time through this arbitration award, a claim for fees
24 regarding future proceedings, and again the park owner,
25 I think, is doing this without waiving -- or the park

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1 residents are doing this without -- the stipulation
2 without waiver to argue whether or not we should get
3 them or not, but we agree that we'll to liquidate the
4 number and whatever number we present, the arbitrator
5 will take into consideration as to what the appropriate
6 number would be, subject to those invoices.

7 MR. STANTON: I'm in agreement with that in
8 concept, that apparently the \$125,000 number would now
9 be replaced by an actual numerical number --

10 MR. BALLANTINE: That's correct.

11 MR. STANTON: -- to be submitted along with
12 the park owner's opening post-hearing brief.

13 Is that when it would be submitted?

14 THE ARBITRATOR: That's my preference, an
15 attachment to the brief, and we'll give it a number
16 before we leave today, an exhibit number.

17 MR. STANTON: Okay. And residents would then
18 have a chance to review and -- we haven't talked about
19 the briefing schedule yet, but as long as we would have
20 a chance to comment upon the number once we see it, as
21 to whether we think it's excessive or not --

22 THE ARBITRATOR: Reasonableness is a
23 determination I normally make.

24 MR. BALLANTINE: I agree. It's basically
25 treating it like a motion type of thing, which is

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1 appropriate for professional fees. The only comment I'd
2 say is we'd probably want a chance to reply, as well,
3 which would be standard procedure --

4 THE ARBITRATOR: Sure.

5 MR. BALLANTINE: -- and maybe we'd build in a
6 little something for an estimated reply, but obviously
7 that's going to be a pretty limited estimated number as
8 opposed to a whole proceeding.

9 MR. STANTON: And I might look at it and say
10 that we have nothing to say about it, you know.

11 MR. BALLANTINE: And then if that's the case,
12 we don't do a reply, and the arbitrator knows just to
13 leave that number.

14 MR. STANTON: And just to confirm what counsel
15 said, that in so stipulating, homeowners are not waiving
16 the right to argue whether or not this category is
17 appropriate at all, regardless of whether it's \$125,000
18 or any other amount. We're not waiving that.

19 MR. BALLANTINE: And we reserve the right to
20 argue that you have essentially conceded it through your
21 expert, but that's a matter for argument. I agree that
22 what we're doing now is we're just agreeing that we'll
23 liquidate the number in that respect.

24 THE ARBITRATOR: All right, thank you,
25 gentlemen.

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1 For the audience's sake, what we do sometimes
2 in the interest of time is to remove uncontested items
3 off the table, if you will, is to get stipulations,
4 which we just did, and it allows Dr. St. John to get off
5 this topic and move on, which we'll do right now.

6 MR. STANTON: Thank you, your Honor.

7 Q. I do want to ask a few questions, even though
8 it's a related topic, the way that it's listed, about
9 item 5, not in connection with what we've just talked
10 about but in connection with a more specific subject
11 matter of item 5, which is, as I understand it, the
12 anticipated professional fees relating to the property
13 tax appeal, correct?

14 A. Correct.

15 Q. If we can call it that?

16 A. Yes.

17 Q. I'm not exactly sure what it might be called.

18 Let me ask you, Dr. St. John, what documents
19 did you review, if any, in preparation of your item 5
20 number of \$50,000?

21 A. I didn't review any documents. That was a
22 number, estimated number, I believe, by James
23 Ballantine, not me.

24 Q. So you were just provided that number and you
25 plugged it into the analysis, correct?

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1 A. Exactly.

2 Q. Now, do you know whether or not the park owner
3 would be entitled to a reimbursement of these attorney's
4 fees if the appeal was successful?

5 A. Reimbursement by whom?

6 Q. By a court of law, by the County, by any party
7 in the case.

8 A. No. I have no idea.

9 Q. Do you have an opinion as to what would happen
10 if there was a reimbursement of these fees, whether the
11 residents would gain any benefit of that reimbursement?

12 A. You know, it's a longstanding principle under
13 basically all rent control ordinances that if there's
14 any reimbursement, if the park owner expends money for
15 and then gets it back from insurance proceeds or any
16 other kind of reimbursement, that it cannot be the
17 subject of a rent increase, it gets passed through to
18 the residents. So in this case, I assume that the way
19 it would work is if the fees were reimbursed, for
20 example, by the County, that that item would not be
21 charged to residents.

22 Q. And what you just talked about, which I tend
23 to agree with in terms of reimbursed items, it sounds
24 like the explanation you gave yesterday in the MNOI
25 analysis for what I think we called the Taylor lawsuit.

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1 A. Yes.

2 Q. And in this case, however, the fees that we're
3 talking about are not part of the permanent MNOI
4 increase but they're a separate, temporary pass-through
5 item the way they're being calculated here, correct?

6 A. Yes, in the way they're being calculated here.
7 And the footnote I wanted to make a few minutes ago is
8 to say all of these items that we're speaking about
9 right now could either be handled through MNOI or in
10 this manner, and we're suggesting that they be handled
11 in this manner so they would be amortized to lessen the
12 impact on the residents. If these large, chunky amounts
13 were to be included in the MNOI either for this year or
14 for another year, it would have quite an impact and
15 might make the rent increase higher.

16 Q. Of course, if this fee was to be included in
17 MNOI it would have to have been actually incurred in
18 order to be included there, correct?

19 A. That's true. So I would be in that case
20 talking about a future-year MNOI.

21 Q. That's right. So for purposes of this
22 hearing, these items would almost have to be cast in the
23 way that you did under the prospective charge analogy in
24 order to be part of this at all if they haven't been
25 actually incurred yet, correct?

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1 A. That's true.

2 Q. So I'm going to ask you the same question we
3 talked about with respect to item 6, which is since this
4 is being calculated and included as an analogy, under
5 the capital improvement prospective charge theory, the
6 ordinance doesn't, as far as you know, contain any
7 protection trigger, does it, as to what would happen if
8 these fees are not actually paid, correct?

9 A. Correct.

10 Q. So the hearing officer in this item would have
11 to, apparently according to your prior testimony, would
12 have to also construct some type of protective mechanism
13 in his decision?

14 A. I think that would be a good idea.

15 Q. Okay. Having not actually seen any documents
16 to prepare this number, do you have any opinion as to
17 whether or not the \$50,000 amount is a fair or
18 reasonable forecast of the kind of charge that would be
19 incurred in a case like this that we're talking about,
20 this tax appeal?

21 A. No, I have no experience that would allow me
22 to make an opinion about that.

23 Q. Do you believe that in constructing a category
24 like this by this analogy, whatever the amount is, it
25 should be a reasonable amount, according to the fees

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1 that might be anticipated in such a proceeding?

2 A. Yeah. I mean there's a reasonableness rule
3 that applies to all expenses in rent control
4 adjudications, and it should certainly apply here. I
5 don't remember the exact language of this ordinance, but
6 there certainly should be a reasonableness standard.

7 Q. And in using this \$50,000 number, is it your
8 opinion that that's a reasonable amount?

9 A. I don't know.

10 Q. So you have included it based upon the
11 representation made that this is the amount that we're
12 estimating, but you don't know whether it's reasonable?

13 A. That's true, I personally don't know.

14 Q. Okay. If you were shown any evidence that
15 \$50,000 was not reasonable in some amount, would that
16 modify the schedule that you prepared here that we've
17 identified as Exhibit C?

18 A. Well, as I said, I made no judgment about this
19 number at all. If the number were to be modified, then
20 the schedule would be modified.

21 Q. Now, the park operator does not own the land
22 here, correct?

23 A. That's true.

24 Q. So the park operator is not the taxpayer in a
25 matter like this, correct?

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1 A. Well, the park operator is obligated by
2 contract to pay the taxes. In a sense what you say is
3 true, they're not the taxpayer, I don't believe the park
4 operator is on the tax bill, I think the landowner is on
5 the tax bill, but the park operator is obligated by
6 contract to pay them.

7 Q. To reimburse as part of the ground lease
8 contract provisions, correct?

9 A. I think it isn't reimbursed, I think
10 Waterhouse Management actually writes the check to the
11 Santa Barbara tax collector.

12 Q. Directly?

13 A. Directly, I think.

14 Q. And you anticipated my next question as to
15 whether you had actually seen any tax bills in your
16 review that would show who the taxpayer for the property
17 was?

18 A. They're in this book, but at this moment I
19 can't recall who's on it, but we can look.

20 Q. You just reminded me of that. Which tab are
21 those?

22 MR. BALLANTINE: Tab G.

23 MR. STANTON: G, thank you.

24 Q. So it does appear, if I look at G, the very
25 first page is the 2010-2011 secured tax statement,

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1 correct.

2 A. Yes.

3 Q. And it appears that the assessee is Bell
4 Trust.

5 A. Right, that's what I thought.

6 MR. BALLANTINE: We'll stipulate to that, that
7 the landowner is the Bell Trust and the Bell Trust is
8 deemed the taxpayer, if you're using the term "taxpayer"
9 as to who the assessor is assessing. I would note on
10 the 2008-2009 statement they identify the Bell Trust,
11 care of Lazy Landing Mobile Home Park, LLC.

12 If you're deeming "taxpayer" to mean the
13 person or entity that's actually paying the tax, we
14 don't agree with that, it's Lazy Landing, LLC.

15 MR. STANTON: That's not what I mean.

16 MR. BALLANTINE: And that's what I thought,
17 that's why I clarified that point, because you can take
18 it in two different interpretations.

19 BY MR. STANTON:

20 Q. Do you know whether or not, Dr. St. John, that
21 the park operator would have to obtain the permission of
22 the land owner in order to pursue this tax appeal?

23 A. No.

24 MR. BALLANTINE: You know, I can stipulate on
25 that one, too. Lazy Landing would have to obtain the

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(805) 966-4562

1 permission of the taxpayer to pursue the appeal, and the
2 taxpayer has indicated that they would provide that
3 permission and would probably have to under the
4 contract.

5 MR. STANTON: I can just ask him.

6 Q. Do you know whether or not the land owner,
7 other than what you have just heard here a moment ago
8 from counsel, do you know whether or not the land owner
9 has agreed to --

10 A. No.

11 Q. You haven't talked to the land owner?

12 A. I haven't talked with the land owner, I'm not
13 in that loop.

14 Q. And you haven't investigated those sorts of
15 attorney details?

16 A. No.

17 Q. So you don't know whether the park operator
18 would have standing, legal standing or anything about
19 those arguments?

20 A. No.

21 Q. If the entire \$50,000 amount is not used in
22 prosecuting the appeal, what happens to the amount
23 that's not used, if it's prospectively paid in advance?

24 A. My assumption is that these numbers would be
25 adjusted and the unused amounts wouldn't be charged and

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1 that the excess would be refunded to the residents.

2 Q. You've testified in connection with both item
3 5 and 6, whatever 6 might now turn out to be, that the
4 decision should contain some sort of description of
5 that. Do you have an opinion of how that should be
6 constructed or how that should read or do we leave that
7 to the hearing officer?

8 A. I think we leave that to the lawyers. I can
9 work out some language. I don't think it's very hard.
10 I think it would be two or three sentences to set out a
11 protocol by which by certain dates or at certain
12 junctures the accounting is done and reimbursements are
13 calculated and then paid.

14 MR. BALLANTINE: And, your Honor, I'll be glad
15 to work with Mr. Stanton on a stipulation in that
16 regard, too.

17 THE ARBITRATOR: Thank you. Are you going to
18 work on that over the break and put it on the record?

19 MR. STANTON: I don't know that I'm willing to
20 stipulate to that, your Honor, because our position is
21 really that this -- this is the conceptual problem and
22 why I answered your Honor's question yesterday at the
23 side-bar when you were asking about why -- you know, if
24 I might put this on the record, why the homeowners are
25 objecting to the appeal. And if they want to appeal,

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1 that's fine, everybody would love to see the taxes go
2 down, but the question is whether the ordinance allows a
3 prospective charge for this kind of thing.

4 And the point that I'm trying to make here is
5 that the ordinance has no stated protection on its face
6 which would require us to do just what's now being
7 discussed, create something new, if you will.

8 Unless the hearing officer orders it by way of
9 saying I'm going to allow this conceptually so I want
10 you guys to construct it, then I'm happy to oblige, but
11 I don't want to stipulate to something that I don't
12 agree the ordinance allows, if you understand what I'm
13 saying.

14 THE ARBITRATOR: I do understand. I'm not
15 trying to be indicative of which way I'm going to rule.
16 It seems to me, at this opportunity, to give the parties
17 a chance to respond to that question before me
18 unilaterally doing it one way or the other. It's just
19 an opportunity, you don't have to take it.

20 MR. STANTON: I'm okay with that if your Honor
21 would say, "It would be helpful to me as I'm deciding
22 this issue to see where I might end up," but, again,
23 what I'm saying is the fact that we would have to sit
24 down and do this is my -- sort of proves my point, if
25 you will, I guess, is what I'm trying to say, that it's

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1 not in here and not contemplated because of the problems
2 with it.

3 MR. BALLANTINE: Let me just comment on that.
4 I respectfully disagree with counsel. I think it is
5 there clearly by analogy regarding the capital
6 improvements and it's very clear that you can do two
7 things. One, you can essentially propose a charge,
8 that's the only way you can find out whether or not
9 you're going to actually be able to recover the cost of
10 the charge, is by proposing.

11 And then, secondly, it's very clear that if
12 it's proposed and if it's not incurred that the park
13 owner has an obligation to refund it to the homeowners
14 as a reduction in rent or rent credit. But as a very
15 practical matter, if there's not a dispute, and there
16 wasn't by Dr. Baar, that that's the type of expense that
17 can be essentially passed through to homeowners in a
18 rent-control context, and there's two ways to do it,
19 either through a permanent rent increase or a temporary
20 increase. I would think the homeowners would prefer a
21 temporary increase rather than a permanent one, which is
22 why I propose we stipulate to handle them in a manner
23 that's reasonable and fair to all parties, and that's
24 simply what we're proposing at this point in time.

25 THE ARBITRATOR: Let's do this. I'll leave it

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(805) 966-4562

1 open for now. If you both want to stipulate to it,
2 fine, and if not, if it comes down to it, I'll expect
3 any arguments for both of you address that possibility.

4 MR. BALLANTINE: That's fine.

5 MR. STANTON: Thank you.

6 Q. Last question I want to ask in this area to
7 make sure I confirm what I heard you say yesterday,
8 Dr. St. John, I think you actually testified and I tried
9 to use the exact words, that you weren't sure how to
10 handle No. 5 and 6, correct?

11 A. Correct.

12 Q. And you admit these are not capital
13 improvements or capital items, per se?

14 A. Per se, they are not.

15 Q. Thank you. We have had a lot of testimony
16 between Dr. Baar and yourself yesterday about our
17 beloved MNOI theory. Now, you've given testimony and
18 rendered opinions in other jurisdictions, have you not,
19 with respect to MNOI formulas and calculation?

20 A. Yes.

21 Q. In those other jurisdictions where you've
22 testified, do you take the position that the base year
23 should, wherever possible, the base year that we're
24 using, our base bookend year, should wherever possible
25 precede the enactment of a rent ordinance?

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(805) 966-4562

1 A. Yes. The very best base year, as Dr. Baar
2 said yesterday, is the year preceding the enactment of
3 an ordinance because, in theory, that's the last year of
4 the free market.

5 Q. Right. And it's presumed the park owner was
6 getting a fair return in a free market?

7 A. It's a pretty open-ended presumption, but yes,
8 that's a very standard presumption.

9 Q. And then there are usually, in these
10 ordinances that script out MNOI, a rebutting the
11 presumption section, correct, which allows the park
12 owner to attempt to rebut the presumption if they can
13 show something in the base year was extraordinarily out
14 of whack?

15 A. That's true, too.

16 Q. We call those Vega kind of case, right?

17 A. Yes.

18 Q. After the Vega case.

19 A. Yes.

20 Q. All right. Now, in this case, we don't have
21 information from 1978, apparently, correct?

22 A. Or 1979, yes, that's true.

23 Q. That precedes the enactment of this county
24 ordinance, correct?

25 A. No, to the best of my knowledge, that

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1 information is not available.

2 Q. Now you did say, I believe, that 1994 was the
3 earliest date where we have clean and decipherable
4 recordkeeping and numbers upon which we can rely,
5 correct?

6 A. That's true. And as I'm remembering, we had
7 some fragmentary information from the year or two before
8 that, but 1994 appeared to be the earliest year for
9 which we had complete records.

10 Q. And in fact, is that why you chose '94 in your
11 first analysis preparation prior to the June scheduled
12 hearings as your bookend base year?

13 A. That's right.

14 Q. And is it fair to say that that was your
15 initial instinct, being the expert that you are and
16 given the experience that you have, your initial
17 instinct was to choose '94?

18 A. That's true.

19 Q. And would it be your opinion that wherever
20 possible, even though we don't have pre-ordinance data
21 available, that wherever possible we should use the
22 oldest year available for which we have reliable
23 information in the calculation of MNOI?

24 A. Yes, generally speaking, with the caveat that
25 because of the difficulties of finding the relevant

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1 information, many, many ordinances do allow alternate
2 base years, and, as Dr. Baar said yesterday, when, for
3 example, there are repeated fair-return cases through
4 the years, many ordinances say that you only go back so
5 far as the last fair return, you don't go back before
6 that. I actually don't agree with that part, but
7 nevertheless, it is done.

8 Q. The theory, I guess, there that you don't
9 agree with is that once a hearing sets a level, that
10 that then becomes the new sort of base mark, I guess,
11 right, that we should then draft off of in the future?

12 A. Right. I know the theory of it, I think it's
13 called res judicata among attorneys, but so many of
14 these so called fair-return hearings don't result, in my
15 opinion, in an actual fair return and that's why I
16 really prefer going back as far as one can go.

17 Q. And that's why you did that --

18 A. To get the base year.

19 Q. I'm sorry, I spoke over you.

20 A. No, that's all right.

21 Q. I know you did more recently a companion or
22 parallel analysis using 2007 as the base year that you
23 testified to yesterday, correct?

24 A. Yes, ironically I did it because you
25 questioned the use of the base year in your opening

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1 brief back some months ago, and I took that seriously
2 and I thought more about why we had used that year, and
3 so I thought, again, well, okay, an alternative, a good
4 alternative is the last full year of the prior
5 management.

6 Q. And I did hear that testimony yesterday and I
7 figured I should -- I didn't know I was going to have to
8 be the one to apologize that I made this hearing more
9 complicated because of that, but focusing just on your
10 '94 base year analysis, just setting aside the 2007 for
11 the moment, you're not saying, are you, that your '94
12 analysis, in and of itself, is no good or flawed or
13 anything like that?

14 A. No.

15 Q. Okay. So in its component form it's still a
16 sound analysis, correct?

17 A. It is.

18 Q. By the way, the question that I didn't ask in
19 my brief you capably answered in this hearing when you
20 said '94 is where we have the best information and
21 that's why you picked '94 originally, correct?

22 A. Well, the '94 information isn't any better
23 than the 2007 information, they both are complete
24 information for those years, so far as I know, and,
25 indeed, we had several other years. We had lots of

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1 years, some of which we have put in the record and some
2 of which we didn't because we didn't think there was any
3 need for it. But we actually have the information
4 almost unbroken going all the way back to '94, and we
5 could have used any of those years.

6 Q. But with respect to the '79 to '94 time frame,
7 you thought '94 was the best to use from that time
8 frame, correct, and that's why you used '94 as opposed
9 to 1988 or any other year during that time frame?

10 A. Well, when I first did this I wasn't thinking
11 about any year except 1994. I just thought that's where
12 we'll go, I used it, we did the calculations and we left
13 it at that.

14 Then later, as I described, we used 2007 as
15 the base year and, to my surprise, really, the 100
16 percent indexing part of it comes out almost identically
17 the same, which I don't mean to claim that if we --
18 let's say we did all the other base years some in
19 between, they are not going to come out identical, they
20 are not, because there's some variabilities year to year
21 and it can't be predicted.

22 Q. All right. Well, in performing your 2007
23 analysis, you weren't intending that the 2007 analysis
24 should replace the '94 analysis, right, you rather did
25 it as a parallel?

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1 A. I did it as a parallel. I thought actually --
2 I mean, it's not common to present to such analyses in
3 these kind of proceedings but I thought, well, since we
4 have them and since I had done the work and since they
5 both are credible, we might as well use them both.

6 Q. I was going to ask you about that. Is it
7 common in your work that you would run a parallel
8 analysis like this with two different base years?

9 A. No, because usually the base year is defined
10 ahead of time. Either we have the classic pre-rent
11 control base years or we're demanded by the ordinance in
12 question to use the year of the last increase, and in
13 those cases, using the year as the last increase, it's
14 particularly easy because the base year information has
15 already been adjudicated. It is res judicata; I don't
16 have to repeat it or argue about it. There's no
17 argument about the base year. So it's kind of easier in
18 those cases to just go to the predefined base year. But
19 in this case, it's an open field as to which base year.

20 Q. Have you ever in any analysis you've ever
21 provided for any local jurisdiction or for a park owner
22 previous to this case ever run two calculations with
23 different base years?

24 A. I can't recall. I bet I have, but I certainly
25 have never done multiple base years because the work

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1 involved in creating Table 3-A or 3-B is considerable,
2 and if I was to do a different one with a different base
3 year, that would cost my client more money than he'd be
4 interested in spending. So to do a credible job of
5 doing multiple base year analyses would be more
6 difficult, it would be unreasonably difficult and I
7 wouldn't do it.

8 Q. I think again to use the exact phrase that I
9 recorded from your testimony yesterday, when you were
10 asked about, you know, why use '94 as opposed to why use
11 2007, and I believe you used the phrase "it's kind of a
12 toss-up," if I remember. Do you remember that?

13 A. Yes.

14 Q. I guess my last question in this area is, do
15 you have an opinion as to which of the two calculations
16 is the better one or are they meant to be viewed side by
17 side in parallel?

18 A. In my view, they should be viewed side by
19 side, because if I had come here just with one of them
20 or just the other, I would be telling you that that one
21 was my best shot at this, and as it is, since I have
22 two, I brought them both.

23 Q. Okay. Now, in terms of indexing at less than
24 100 percent, we had some testimony about that yesterday.

25 A. Yes.

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1 Q. There are ordinances that you know of,
2 correct, within California, mobile home rent ordinances,
3 that contain indexing and MNOI formulas at something
4 less than 100 percent?

5 A. Several.

6 Q. Are you familiar with most of the mobile home
7 rent ordinances throughout state, would you say?

8 A. Well, as Dr. Baar said, there are 90, and as
9 he said, I can't keep them all in mind, but I have done
10 many, many cases. And beyond the cases, I have occasion
11 to read Dr. Baar's reports about many, many other cases,
12 so I have had some familiarity with it. Not all, surely
13 not all, but most or many of the jurisdictions in
14 California.

15 Q. Would you say that a fair number of those
16 jurisdictions have indexing below 100 percent?

17 A. A fair number do. Dr. Baar gave us a summary
18 on one page yesterday and, as I recall it, there were a
19 half dozen or so that were 100 percent and then maybe a
20 dozen more that had a range between 40 percent indexing
21 and 75 or 85 percent indexing, and that matches my
22 experience and my sense of how it is out there.

23 Q. Okay. Would you say that 75 percent indexing
24 in an MNOI formula is an uncommon number, based upon the
25 experience that you have had that you just described?

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1 A. Well, you know, there are other ordinances
2 that are at 75 percent and there are ordinances at 100
3 percent, 85, 75, 65, 50 and 40. I mean, I know all of
4 those, so whether they are common or uncommon, I haven't
5 done an analysis of the commonality.

6 Q. So in an ordinance we have two different
7 places where the indexing could become a factor,
8 correct? If we have an annual adjustment provision, for
9 example, like this ordinance does, you have the indexing
10 of how the annual adjustment without a hearing is
11 calculated, correct?

12 A. Right.

13 Q. And in this ordinance it's 75 percent of CPI,
14 we can agree?

15 A. Yes.

16 Q. And then you have, if there's an actual MNOI
17 formula, a pure formula in the ordinance, have a
18 separate indexing component to make that calculation for
19 amounts to be awarded above and beyond the annual
20 adjustment, correct?

21 A. Correct.

22 Q. Now, you've already talked about how you have
23 disagreement with what you called, I think, the politics
24 of indexing below 100 percent. And so am I to presume
25 that you disagree with the way that the County of Santa

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1 Barbara ordinance indexes the annual adjustment at 75?

2 A. As I said yesterday, my view is the view
3 articulated in Fisher versus City of Berkeley, where
4 they said -- the judges said -- it was an appellate
5 case, I believe -- said that the annual adjustment to be
6 at some rate less than 100 percent because it's an
7 estimate only and there are no documentation, there's no
8 expenses recorded, it isn't precise, it's merely an
9 estimate.

10 So it could be less than 100 percent CPI for
11 the annual adjustment, so long as the fair return rule
12 was at 100 percent indexing, and that really summarizes
13 my view. I have a preference for using 100 percent
14 always, because it's sort of a slippery slope and
15 jurisdictions, you know, tend to, if they enact 100
16 percent, then a few years later the politics gets heated
17 and then suddenly they want to downgrade and then they
18 go to 85 or maybe 75, and then a few years after that
19 they go to 50 percent. And this has happened county
20 after county and city after city throughout the state of
21 California and like I say, it's a slippery slope and the
22 politics are -- it's just political.

23 Q. Do you know what year the Fisher case was
24 decided?

25 A. 1983.

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1 Q. All right. Have you reviewed any cases
2 subsequent to Fisher that talk about this indexing issue
3 in forming the opinions that you have just described for
4 us?

5 A. Yes, many of them. I'm not a legal analyst or
6 expert, but yes, surely, I'm very interested in these
7 cases as they come down and I watch them and I do read
8 them.

9 Q. Did you review at all the exhibit that we
10 marked yesterday as Exhibit 2 during Dr. Baar's
11 testimony that talks about the indexing ratios? I think
12 you just referred to it earlier, the chart he had with
13 the different --

14 A. I'm looking here for a page. I recognize that
15 page.

16 Q. Did you recognize any of the cases that are
17 described in that exhibit that are appended on the pages
18 following the cover page list?

19 A. If I had it in front of me I could remind
20 myself.

21 Oh, thank you, sir.

22 Q. There are some cases described in the
23 following pages beginning on page 2, over to -- all the
24 way through to page 6 or the bottom of page 5. My
25 question is just whether or not you reviewed this?

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1 A. No, I actually did not. I had it with me last
2 night but I didn't review it.

3 Q. Are you familiar at all with the Berger versus
4 City of Escondido case decided in 2005?

5 A. I testified in that case.

6 Q. Oh, you did?

7 A. I did.

8 Q. And in that case, you testified in the
9 administrative hearing?

10 A. Well, that's what I said previously. I
11 believe it was probably at the administrative hearing.
12 I don't remember precisely. And it may have been a
13 previous version. I think the Berger Foundation has
14 been litigating rent control matters for many years, and
15 I was not involved in 2005 or -- it would have been
16 earlier than that. My involvement was earlier.

17 Q. Do you recall whether there was any contention
18 in that case in which you testified about the indexing
19 percentage question?

20 A. You know, I don't recall with specificity but
21 I'm sure it was.

22 Q. Okay. And do you recall the holding in that
23 proceeding in which you testified with respect to the
24 indexing issue?

25 A. I can't tell you that I do. I don't recall

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1 that. I'd have to be reminded.

2 Q. Okay. Despite any of what we could call, I
3 guess, political disagreement that you might have with
4 the indexing percentages, the ordinance has to be
5 followed, right, if it allows for indexing at 100
6 percent, you would say the ordinance still has to be
7 followed to that degree, correct?

8 A. You know, the ordinance says that property
9 owners need to be allowed a fair return, and, yes, an
10 ordinance should be followed, but the fair return
11 principle is a constitutional principle. Again I'm not
12 an attorney, but in my understanding it's important that
13 fair return be required, and fair return cannot be
14 allowed through partial indexing. It's a figment of
15 someone's imagination. Partial indexing is not
16 compatible with a fair return.

17 Q. So is it your opinion that in every
18 jurisdiction where indexing at less than 100 percent is
19 allowed in connection with an MNOI standard being
20 applied, that those park owners in all those
21 jurisdictions cannot get a fair return?

22 A. That's right, not if the board or arbitrator
23 or commission sticks with partial indexing.

24 Q. In ordinances that you have seen that have the
25 annual indexing adjustment factor and then the MNOI

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1 indexing factor, do you have any opinion based upon your
2 experience as to whether or not, if the ordinance
3 typically indexes the annual adjustment at less than
4 100, it would index the MNOI also at less than 100?

5 A. Many do. Some don't, but many do. The Fisher
6 principle that I referred to a moment ago is not the
7 most common principle, unfortunately, from my viewpoint.

8 Q. Understood. I understood that you disagree
9 with that.

10 I'd like to ask you a few questions about the
11 actual tables that you prepared in performing your MNOI
12 analysis, and these would be found in tab D, Table 3-A
13 and 3-B. Do you recall those?

14 A. Yes, I do.

15 Q. Now, when you're looking at categories of
16 expenses and comparing the base year to the current
17 year, do you ever -- let me ask the question this way.
18 Do you look for categories where there might be a large
19 difference between those two numbers?

20 A. Yes.

21 Q. And why do you notice those categories, what
22 is it that might concern or interest you about seeing
23 those kinds of wide differences?

24 A. Well, it might mean that there was something
25 unusual in one year or the other. In particular, to

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(805) 966-4562

1 give an example, we see in this body of material right
2 here that there were some legal expenses in both the
3 base year and the comparison year that were unusual and
4 large and call out for special attention.

5 Q. When you see those sorts of situations, how do
6 you analyze those or how significant does that become to
7 your analysis?

8 A. Well, I don't know that there's any typical
9 response, but, for example, Dr. Baar cited an example
10 along these lines yesterday in the case of dues and
11 subscriptions, so last night I went back to the books of
12 record to check and see what it was that created -- he
13 was looking at Table 3-B and the line item that he was
14 focused on was -- it's line 84, and the number in the
15 account books of record is 5750, dues and subscriptions.

16 And the differences that he noticed was
17 between \$294 for the year 1994, and \$13,923 and change
18 for the year 2010.

19 Q. If I can ask you, that same line item also
20 appears in Table 3-A, correct?

21 A. Well, that's true, actually.

22 Q. And can you tell us what the number for 2007
23 was in Table 3-A for that line item?

24 A. \$140.

25 Q. So we have \$140 in 2007, right?

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(805) 966-4562

1 A. Yes.

2 Q. \$294.01 in 1994?

3 A. Yes.

4 Q. And \$13,923.88 in 2010?

5 A. Yes.

6 Q. And I'm glad you mentioned this category
7 because I actually had some questions about this so we
8 have segued in.

9 So is the \$13,923.88 number, looking at the
10 differential between these three years, does that look
11 like an inordinate or unreasonable number to you?

12 A. Well, I don't know about unreasonable, but it
13 certainly warrants looking into the number. So I did
14 last night after the hearing, and I have some notes
15 here. I don't know if it's okay for me to read from my
16 notes from last night, or if you'd like me to --

17 Q. That's fine.

18 MR. BALLANTINE: I don't want to open up his
19 notes to examination, but if you want to let him read
20 from his notes . . .

21 THE WITNESS: I'll do it from memory. I can
22 do it pretty well.

23 There are, maybe, eight line items included in
24 the \$13,000. About \$2,000 out of the \$13,000 are
25 miscellaneous small dues and subscriptions kinds of

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1 things.

2 \$4,500 is a late fee paid to the bank that
3 holds the mortgage.

4 There are three items labeled "Franchise." I
5 don't know really what those are, but I think that they
6 are corporation taxes. One of them is for \$800, one for
7 \$2,500, and the other, again, for \$2,500.

8 If you add up the numbers I just gave you, I
9 think it will come to -- I'm doing this from memory, but
10 I think it will come close to \$13,000.

11 And one more thing. One of the franchise
12 numbers, \$2,500, was labeled 2009. So it would appear
13 that an amount allocatable to 2009 was paid in 2010, and
14 that might, therefore, be subtracted, might
15 appropriately be subtracted.

16 BY MR. STANTON:

17 Q. And that would be a \$2,500 amount?

18 A. That would be a \$2,500 amount. So if I had
19 noticed this, which frankly I did not, prior to
20 preparing this table, I might have done that, I might
21 have taken it out, as I took out numbers of other things
22 in the table.

23 Q. In other words, if we had two \$2,500 payments
24 for the same purpose, one for 2010 and one for 2009, it
25 would be inappropriate to have the same expense twice in

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1 one year?

2 A. It really would, it really would.

3 Q. Okay. What about the \$4,500 late fee to the
4 bank?

5 A. Well, I thought about that. I mean, a late
6 fee -- one might say a late fee shouldn't be charged to
7 the residents in any sense, but on the other hand, I was
8 thinking to myself, late fees are costs of doing
9 business, unfortunate as they are. If they happen, they
10 happen. And I don't know the circumstances, you could
11 ask the park manager later, but if a late fee occurs, it
12 is an operating cost.

13 Q. So you don't know what the late fee was for,
14 in connection with what instrument or what obligation or
15 anything else, right?

16 A. I assume -- no, I really don't know. I'm
17 assuming it was a late payment on the mortgage.

18 Q. So if we were to make any adjustments to the
19 calculations based upon a change in the 2010 number,
20 which would change both of the parallel calculations,
21 correct?

22 A. Correct.

23 Q. If we were to make any adjustment, it would
24 simply reduce the expense total for 2010, which would
25 have the effect of increasing, marginally, the net

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1 operating income for 2010?

2 A. That's true, that's right.

3 Q. And consequently, decreasing the amount of an
4 allowable rent increase --

5 A. That's true.

6 Q. -- bottom line that you would calculate?

7 A. That's true.

8 Q. And that's a calculation that you could do
9 pretty easily, correct, if we identified a specific
10 dollar amount that was being adjusted from that expense
11 category?

12 A. That's true.

13 Q. In reviewing that particular item, did you
14 review any other items last evening from these tables?

15 A. No.

16 Q. All right. Now, I think you were present
17 yesterday when Dr. Baar testified about his opinion that
18 the ground lease expense should be removed from the
19 calculation, correct?

20 A. Correct.

21 Q. And I'm going to ask you a few questions about
22 that in a moment, but first I want to focus on the
23 calculation itself. If we were to remove all or any
24 part of the ground lease expense category from the 2010
25 bookend year in these calculations, it would be pretty

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(805) 966-4562

1 easy, would it not, to actually run a revised
2 calculation as to what the expense total would be, what
3 the net operating income for 2010 would be and what the
4 allowable rent increase would be, correct?

5 A. Correct.

6 Q. And you could do that pretty easily if we were
7 to say we're going to change that one particular item?

8 A. Yes.

9 Q. Okay. Now, one other item that I know you
10 testified to was the property tax bill, and I understand
11 that what Exhibit C has labeled as item 1 has been, I
12 guess I would say, subsumed into the NOI analysis as
13 part of the expenses, correct?

14 A. Correct.

15 Q. And you indicated that if an appeal were
16 successful and that tax amount was reduced, that there
17 would be some sort of reimbursement, I believe you said,
18 that should be factored in somehow to this calculation.
19 I guess I'm just asking you if you could clarify that or
20 how would that work.

21 A. I see. This is a very interesting question.
22 I mean, this is a little bit different from what we were
23 talking about before. Before, we were talking about the
24 amortized amounts and how they might be reduced, if
25 appropriate.

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1 Q. Pass-throughs, in other words, before?

2 A. Pass-throughs. Now we're talking about the
3 actual permanent increase and what would happen in the
4 future if the tax --

5 Q. Yes.

6 A. I haven't really thought this one through, but
7 if you would like, I'll think together with you right
8 now.

9 Q. Well, let me ask you. In note 1, which is
10 attached to Exhibit C in the second page, and I believe
11 your note 1 indexes to item 1, the property tax
12 increase, correct, because your notes over there in
13 column I say "1."

14 And note 1 says "See tax bills. Note:
15 Property tax increase will be challenged, if challenge
16 is successful, this amount will not be passed through to
17 residents."

18 Do you see that note on page 2 of your
19 Schedule C?

20 A. Oh, Schedule C, okay.

21 Q. Yeah, I'm sorry, I went back there.

22 A. Right, right. That note was written in
23 January, so that's why I had to remind myself.

24 Q. You used the words in that note "will not be
25 passed through," but, as we have just been discussing,

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(805) 966-4562

1 this is not a pass-through item, right, this is being
2 calculated into your MNOI natural circumstances,
3 correct?

4 A. You know, Mr. Stanton, I learned in this
5 hearing that you and Dr. Baar use the phrase
6 "pass-through" in a more limited sense than I do, and I
7 have used it in the past to cover any amounts that get
8 passed through, whether on a permanent basis or an
9 amortized basis. I don't mind the nomenclature at all,
10 and I'm willing to go with your way of using the term
11 "pass-through," but here I didn't mean "pass-through" in
12 that sense, I meant pass-through in the other sense, in
13 the permanent rent increase.

14 Q. In the broader sense?

15 A. In the broader sense.

16 Q. Fair enough.

17 A. So what we're talking about here, and your
18 point is well taken, we would have to figure out what to
19 do in the event that the property taxes were -- property
20 tax increase was defeated. And I assume that it would
21 mean that the permanent increase that is allowable here
22 would be reduced and that the amounts paid by the
23 residents on account of that part would be refunded, if
24 and when the County refunds the money to the park
25 manager, park management.

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(805) 966-4562

1 Q. And we'd actually have two issues, right?
2 We'd have the prospective payment going forward that
3 would not be required any longer --

4 A. That's right.

5 Q. -- and then we'd have the refund, potentially,
6 of any amounts paid under the erroneous assessment that
7 have already been out-of-pocket, correct?

8 A. That's correct. And if we did item 4, then
9 that would have to be adjusted as well.

10 Q. It's somewhat connected, is it not?

11 A. Oh, indeed, oh, indeed.

12 Q. So basically are you saying then, to summarize
13 so we can wrap this item up here, that the hearing
14 officer award would really need to construct some
15 language to deal with this?

16 A. Well, as he suggested, I think that the two of
17 you could do that quite easily. I would be happy to
18 help. I don't think it's very hard to construct
19 language that would say how to do this. It would have
20 to be done carefully and thoughtfully, but we certainly
21 can do it.

22 Q. Let's move to the ground lease.

23 THE ARBITRATOR: Before we move on, I have a
24 few questions.

25 It seems to me that the real party in interest

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1 in this tax hearing is not the manager, it's the land
2 owner. So what guarantee -- it's an open question -- do
3 you have that the land owner is paid back on a
4 reimbursement that the trust will pass it through to the
5 management?

6 MR. BALLANTINE: Your Honor, I can address it.
7 I've talked to their counsel. I don't think that's
8 ultimately an issue for two reasons. First, we paid
9 those taxes, we're responsible for them, and if there's
10 a credit, then we would get that credit. Secondly, the
11 land owner knows they need to cooperate in a property
12 tax appeal because, obviously, if they don't and we want
13 to appeal it, then we can simply take the position that
14 if they don't want to cooperate, then they're welcome to
15 take the responsibility for paying the taxes. So there
16 would be an agreement to proceed with the tax -- an
17 assessment appeal in which any lowered assessment would
18 go to the benefit of the park.

19 The other thing I would say is that I think
20 it's unlikely there would be a refund. We're really
21 talking prospective, not retrospective at this point in
22 time.

23 THE ARBITRATOR: Okay. I have some experience
24 with that revision, so look at it closely.

25 And let me ask the witness this.

SANTA BARBARA SANTA MARIA
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1 It seems to me that, prospectively, the land
2 owner is also incentivized to appeal. This is a 35-year
3 lease or 33 years, whatever's left. In theory, the
4 lease would expire someday and the property would
5 revert, management and all, back to the original land
6 owner, who then would be paid or stuck with a high tax
7 bill that the trust has to pay. So as you're the
8 economist, you think there's enough incentive built into
9 that possibility that they would indeed move forward?

10 THE WITNESS: I really don't know. But you
11 raise an interesting possibility, and it certainly makes
12 sense, what you just said. I don't know if the land
13 owner has thought that way, but if James brings it to
14 their attention, maybe they will see the logic.

15 MR. BALLANTINE: I would note they haven't
16 appealed and I'm not sure they see it that way entirely.

17 THE ARBITRATOR: It seems like a win-win-win
18 if that happens, but --

19 MR. BALLANTINE: Right. Well, that's what we
20 thought, too.

21 THE ARBITRATOR: Thank you. That's all I
22 have.

23 BY MR. STANTON:

24 Q. One follow-up question to that which just
25 comes to mind here, Dr. St. John. Since we have this

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1 issue with the property tax appeal where we don't know
2 what's going to happen -- it could go one way, could go
3 the other -- and you've been provided, apparently, with
4 information from your client that there's a good-faith
5 basis for, perhaps, pursuing this appeal, with all these
6 unknowns involved, wouldn't it be better to just
7 withhold this entire expense category until we know
8 what's actually going to happen and then address the
9 increase in a future year?

10 A. I think my client would like to know in
11 advance if the fees are going to be covered in the
12 manner that we're asking. It's analogous to the capital
13 improvements. Under the ordinance, the Santa Barbara
14 County ordinance, park owners or managers can know in
15 advance whether -- they can find out in advance of doing
16 the work if it's going to be allowed or not.

17 Q. The capital improvement work?

18 A. The capital improvement work. And by analogy,
19 arguably, the park owner or manager can and should be
20 able to know in advance as well.

21 In this particular case, it gets a little
22 dicey because park management, arguably, isn't going to
23 benefit from the tax appeal. The residents will benefit
24 but the park management won't benefit. So if the park
25 management is going to be asked to go out on a limb,

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(805) 966-4562

1 take the risk that the costs of doing that would be
2 disallowed at some future date, I can imagine that they
3 might be reluctant to do that. They would really prefer
4 to know in advance is this an allowable expense, and the
5 method that this ordinance has for doing that is the
6 method that has been followed.

7 Q. Well, the park owner, obviously, would benefit
8 because the park owner is directly responsible for
9 paying those taxes, correct, so the park owner is going
10 to benefit from a lower assessment?

11 MR. BALLANTINE: Objection. I don't
12 understand what -- vague and ambiguous under the context
13 "park owner." Does he mean the park operator or the
14 land owner?

15 MR. STANTON: Park operator.

16 THE ARBITRATOR: Rephrase your question.

17 MR. STANTON: Yes.

18 Q. The park operator is going to benefit, is it
19 not, from any lower assessment since it is directly
20 responsible for paying the taxes to the County?

21 A. Well, not really, because under this
22 arrangement the park operator will be fully compensated
23 by increased rents.

24 Q. That's if your analogy argument is correct.

25 A. (No audible response.)

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(805) 966-4562

1 Q. But if we -- you're shaking your head up and
2 down for yes, is that correct?

3 A. Yes.

4 Q. But in an NOI calculation, this is but one
5 expense that would fit into the entire fabric of
6 calculating that operating income?

7 A. Well, yes and no. I mean, it is a direct
8 pass-through. It's a direct dollar-for-dollar
9 pass-through, the whole of the property tax increase
10 will be paid for, if this is successful, by increased
11 revenue.

12 Q. Under your theory of analogy, that would be
13 the case, correct?

14 A. Well, under a maintenance of net operating
15 theory it would be.

16 Q. Well, my point is that it's not a
17 dollar-for-dollar pass-through under MNOI, it's part of
18 the entire formula of comparing income to expenses?

19 A. Wait a minute. Let's make sure we're talking
20 about the same thing. Here we're talking about the net
21 operating income calculations. And we're only talking
22 about the property tax increase; right?

23 Q. Yes.

24 A. So the property tax increase --

25 Q. Item 1?

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1 A. Right. So that increase, that amount is in
2 Table 3-A and 3-B. And it causes a dollar-for-dollar
3 compensation, as it should, from the residents because
4 in the end the residents have to pay for allowable
5 increased expenses, so they do.

6 Q. But what I'm saying is, in your Table 3-A and
7 3-B we also are comparing the income to the expenses and
8 doing a calculation that is dependent upon the net
9 operating income for those two years, correct?

10 A. Well, that's true.

11 Q. So it's not just a dollar for dollar, it's not
12 like we're saying regardless of the income, whatever the
13 expense increase is, you get it. Net operating income
14 doesn't exclude the income, is my point. Correct?

15 A. The net operating income that is calculated in
16 Table 3-A and 3-B doesn't include the award, or whatever
17 we call it, the additional rents that are being sought.

18 So, let's say, the property tax amount was
19 half of what it really is, the prospective property tax
20 increase amount is half of what it really is. Well,
21 this would diminish the award significantly.

22 So it does make a difference and it is dollar
23 for dollar. It's what I would call a dollar-for-dollar
24 pass-through, as it should be. Because increased
25 property taxes, in the end, have to be paid for by the

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(805) 966-4562

1 residents, not by the park manager; the park manager is
2 just there to manage the park, and if there's an
3 increased expense, this is -- this is an expense
4 pass-through ordinance that means every penny of
5 increased expenses gets passed through on a
6 dollar-by-dollar basis to the residents.

7 I'm using the word "pass-through" in my sense,
8 not your sense.

9 So I really stick by my dollar-for-dollar
10 statement because that really is how the maintenance of
11 net operating income system works.

12 Q. All right. Let's move on to the ground lease.

13 THE ARBITRATOR: Off the record.

14 (Discussion off the record.)

15 THE ARBITRATOR: Just a general question. We
16 have the appeal, we have a request for reassessment.
17 Have either of those been filed?

18 MR. BALLANTINE: No. You know, and as I
19 indicated before, maybe when we break -- I actually
20 spotted the issue of the appeal. They initially were
21 advised, I won't say by whom, but initially came to the
22 conclusion that they didn't have any recourse on the
23 property tax increase and use that as the basis for a
24 rent increase.

25 When I saw the issue, probably late last year,

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(805) 966-4562

1 around the time of the increase, I looked at it and
2 thought -- well, I don't want to go into a lot of
3 detail, but maybe there's an issue for appeal. We
4 brought it up to the residents. They were pretty
5 adamant that they wouldn't pay for one, so we just left
6 it for these proceedings, which we thought would occur
7 earlier this year, but the bottom line is no, nothing
8 has been filed yet, we're waiting to see what the
9 outcome here is.

10 THE ARBITRATOR: All right. So we have, again
11 the appeal of the assessment and then you have
12 possibility of a reassessment request? Do you see the
13 difference? One is prospective.

14 MR. BALLANTINE: Right, there would be the tax
15 refund claim for the taxes that have already been paid
16 and everything has been paid to date, and, right, the
17 claim for reassessment -- the appeal of the assessment
18 on the basis that this was not a change of ownership,
19 and if in fact it's not a change of ownership there
20 would be no assessment and, right, that would be
21 prospective.

22 THE ARBITRATOR: And let me expand a little
23 further. Again, what's happened, people are approaching
24 and asking them to reassess the property based on the
25 economy, not necessarily what's happened legally in the

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1 transfer change of ownership.

2 MR. BALLANTINE: Oh, I see. That distinction.
3 I didn't catch that. Well, yes, in two ways it would be
4 a reassessment. One is if it's not a change of
5 ownership. But just assuming it is a change of
6 ownership or reassessment based on the economy, yes,
7 there may be an issue there. The reassessment that was
8 done I think was done in 2008 so it's not like we're
9 going back to 2006 or something like that when the
10 market was stronger, but there still may be some basis
11 for that.

12 THE ARBITRATOR: Well, you've anticipated my
13 question. Because it is temporary going forward, I'd
14 like the witness to address that question as well, what
15 would happen -- world changes, everything goes up next
16 year, two years, three years. Am I too confusing?

17 If there's a possibility that the land owner
18 may ask for a reassessment based on the nature of the
19 economy, the macro part of the economy, if that happens,
20 it's a temporary -- if it happens -- reduction that
21 could happen at any time there would be an increase
22 based on how the County feels about it. How would you
23 treat that going forward without having another hearing?

24 THE WITNESS: Extrapolating from the facts of
25 this case to any case? If a park owner were able to get

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1 a property tax decrease by the reassessment method, I
2 suppose that there would be -- well, it would vary by
3 jurisdiction, but I suppose that the residents in this
4 jurisdiction could bring a petition, as they have in
5 this case, and at that time challenging -- but only --
6 I'm really thinking out loud, as you can tell, I haven't
7 thought about this question before -- but only if the
8 rent increase proposed in a future year was greater than
9 75 percent of the CPI, because if it's only 75, then
10 it's automatic. So outside another such proceeding like
11 this one, I can't really see where such a tax adjustment
12 would be taken into account, as far as I can think at
13 this moment on my feet.

14 MR. BALLANTINE: And, your Honor, I'd be glad
15 to propose a stipulation to Mr. Stanton about that
16 issue.

17 One of the benefits of the fact that we're
18 here in this issue presented is that we can consider a
19 couple possibilities of what could happen regarding the
20 property tax and reach some agreement with the residents
21 as to how that would be treated.

22 THE ARBITRATOR: I would appreciate that done
23 no matter how the award goes. That's a possibility that
24 could pop up. So to save you both another hearing --
25 it's your call, but if you want to work on a

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1 stipulation, that's fine.

2 MR. BALLANTINE: That's completely the intent
3 of this is to avoid future hearings, to lay all the
4 issues out on the table and try to resolve it.

5 THE ARBITRATOR: I'll leave it up to you both.

6 MR. STANTON: I'm happy to work on that.

7 Q. With respect to the ground lease payment
8 increase item that is item No. 2 on your Exhibit C
9 spreadsheet --

10 A. Yes.

11 Q. -- Dr. St. John, and also, of course,
12 referring down to item 4 in the regulatory lag part of
13 the calculation, if I can call it that.

14 A. Yes.

15 Q. And I'll ask you about that in a bit, but with
16 respect to the ground lease, do you know whether the new
17 lease that is tabbed as item H was negotiated as part of
18 the purchase or acquisition, I guess I'll say, of the
19 park in this case by the operator? Do you know anything
20 about that?

21 MR. BALLANTINE: Objection. Argumentative,
22 assumes facts not in evidence. He used the term
23 "acquisition of the park." That's vague and ambiguous;
24 the ground lessee did not "acquire" the park.

25 THE ARBITRATOR: Mr. Stanton, rather than

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1 argue do you want to rephrase?

2 MR. STANTON: I'm assuming that the operator
3 acquired something because they're operating a park
4 where a prior operator used to be. So I guess I will
5 withdraw this question and I'll have to ask the park
6 witnesses these questions.

7 THE ARBITRATOR: Do you want to characterize
8 it as a leasehold interest?

9 MR. STANTON: I'll be happy to do that.

10 THE ARBITRATOR: Is that satisfactory?

11 MR. BALLANTINE: That's fine.

12 THE ARBITRATOR: Instead of fee simple.

13 BY MR. STANTON:

14 Q. Dr. St. John, do you know whether or not the
15 leasehold interest that was acquired in this case was
16 part of some negotiation at the time of that
17 acquisition?

18 A. I'm really not the best person to ask that
19 question, because the simple answer is I don't know.

20 Q. Okay.

21 A. And the second answer is, it's not really
22 within my area of expertise.

23 Q. Okay, fair enough. It's your understanding
24 that the lease in question that now applies to this park
25 operator commenced on March 1, 2008, is that correct?

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1 MR. BALLANTINE: I didn't hear you, did you
2 say March 1?

3 MR. STANTON: Yes.

4 MR. BALLANTINE: That's not true. It's August
5 1st, if that helps you.

6 MR. STANTON: I'm sorry, I misspoke. Let me
7 rephrase. I was thinking of the last increase date of
8 March 1.

9 Q. It's your understanding that the lease in
10 question that now provides for the new park operator to
11 pay the 20 percent of collected rents rate went into
12 effect August 1st?

13 MR. BALLANTINE: Actually, can I clarify
14 something? You said that in opening. I apologize for
15 interrupting, but you said that during opening and you
16 just said it again, and I recognize you're relatively
17 new to this, but the last rent increase went into effect
18 on May 1, 2008, and then it went into effect, the most
19 recent one, May 1, 2011, and for a long period of time
20 Nomad Village had a history of May 1 as the anniversary
21 date of rent increases. I don't think it's all that
22 significant, but you said it a couple of times. If it
23 is significant, I'll represent that's the date.

24 MR. STANTON: I stand corrected.

25 THE ARBITRATOR: All right, next question.

SANTA BARBARA SANTA MARIA
(805) 966-4562

1 BY MR. STANTON:

2 Q. I'm trying to remember what my question was.

3 (The requested passage was read back
4 by the reporter as above recorded.)

5 BY MR. STANTON:

6 Q. August 1st, 2008, is that your understanding?

7 A. Well, I'm looking at it on tab H and at the
8 first line it says "Entered into this 31st day of July,
9 2008." And then over on the last page, the signatures
10 appear under the date 8/12/91, so that must be -- well,
11 who knows.

12 Q. When you calculated, in item No. 4, the
13 regulatory lag number of months, Dr. St. John, that
14 34-month period, from when to when is that calculated?

15 A. Well, I believe it should have been including
16 August of 2008 through April of 2011.

17 Q. Through and including April of 2011, correct?

18 A. Through and including, yes.

19 Q. So we would have August through December of
20 2008, correct?

21 A. That's five.

22 Q. That's five. We'd have 12 months for 2009,
23 correct?

24 A. I think so.

25 Q. And we have 12 months for 2010, correct, and

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1 then we'd have four months for 2011, correct?

2 A. Right.

3 Q. That would be 33 months, correct?

4 A. Thank you.

5 Q. I just thought I'd hit that issue now since we
6 were sort of there. At least that was in my mind.

7 So in actuality, item No. 4 contains one
8 additional month of those expenses that it should not
9 contain, isn't that correct?

10 A. Yeah, I think so. I mean, if the property
11 taxes truly became, and I believe they would have been,
12 retroactive to August 1st, I haven't checked that as to
13 the property taxes, but yes, I mean, assuming that they
14 began on that day, which I, for our purposes right here
15 let's assume they did, then we just did the math and it
16 would have been 33, not 34.

17 Q. All right. So in other words, you're not
18 aware that the park owner had any contractual obligation
19 to pay either of these items prior to the effective date
20 of lease document?

21 A. No.

22 Q. You're not aware of that?

23 A. I'm not aware of that.

24 Q. So if we were to reduce 33 months we'd have a
25 different number there, wouldn't we?

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1 A. Yes.

2 Q. And although it may be slight, there still
3 would be a dollars-and-cents impact on the category
4 total for No. 4, correct?

5 A. Yes.

6 Q. Which, according to Table 1, in tab D, is
7 costed out at \$32.74, but it would be, apparently, a
8 little less than that, correct?

9 A. I think yesterday we opined that it might be
10 about a dollar less, something like that.

11 Q. And that's a calculation we could do pretty
12 easily, correct?

13 A. Pretty easily.

14 Q. I should say you could.

15 A. I could do so.

16 Q. Since I'm on the regulatory lag issue I might
17 as well just finish that. Have you ever seen in any
18 other case in which you've given testimony,
19 uncompensated increases such as this awarded in what I
20 would call this retroactive fashion to a park owner
21 dollar for dollar?

22 A. Yes.

23 Q. You've seen that in other cases out of this
24 jurisdiction?

25 A. I have. And I'm sure your next question will

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1 be what cases, and I'm not going to remember which
2 cases, just as Dr. Baar couldn't remember cases with
3 specificity yesterday, but I believe Dr. Baar himself
4 has done this very calculation in other cases.

5 Q. I'm not sure that I'm disagreeing with that,
6 but I'm wondering about the amount of your experience
7 with this kind of calculation it is, in terms of whether
8 you've actually performed it in other cases.

9 A. I believe I have, I believe I have. It's not
10 common, it doesn't happen every time, but it's not
11 uncommon. There are these large expenses, they do
12 occur. If they're allowable then, often, sometimes, it
13 seems appropriate to go back in time and compensate the
14 park owner for having spent that money.

15 Q. And that's really the focus of the questions
16 that I wanted to ask you. When we talk about going back
17 in time, do you have an opinion about how far back in
18 time one should go when identifying or calculating
19 compensation for this regulatory lag?

20 A. You know, last night I went back over the
21 notes of Dr. Baar's testimony and he said no further
22 than one year, but I was thinking about that. I mean,
23 going back only a year would mean that every park owner,
24 generally speaking, had to do a fair-return application
25 or fair-return adjudication every year, because

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1 otherwise, they would lose the entitlement to important
2 amounts. So going back one year doesn't seem feasible.

3 Not only that, in the capital improvements
4 regulations under this ordinance, there's no such limit,
5 no limit at all, actually. One could go back, as I read
6 it, as far as one likes. Dr. Baar pointed out that if
7 you go back too far, then different people will be
8 paying for what was already enjoyed by residents who may
9 have left the park already, and I hear that, it's an
10 interesting comment, it's a valid thought, but I don't
11 know of any jurisdiction that limits capital
12 improvements to some tight deadline. There's no
13 requirement in ordinances that I'm familiar with that
14 you bring these applications or assert a right to these
15 amounts within a year or two years or even five or 10
16 years.

17 Q. Well, if we were in a pure MNOI formula
18 ordinance, under the MNOI formula, of course, you'd only
19 be looking at the two years in question, correct, and
20 you'd be calculating the expenses actually paid from
21 those two years.

22 A. Well, yes and no. Capital improvements are
23 allowed under those ordinances, for example, and capital
24 improvements would be allowable. And then what would
25 happen is that the amortized amount would be put into

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(805) 966-4562

1 the MNOI formula, so the MNOI formula would -- you've
2 seen this, I'm sure -- the MNOI formula itself would
3 incorporate.

4 What's awkward about that is that then the
5 award, if there's an award, has to say, well, the award
6 is -- and I'm just going to make up some numbers here --
7 the award is \$100, total, but \$43.16 falls off after
8 seven years, and another \$22.09 falls off after another
9 two years. It gets very complicated like that.

10 So I thought it would be clearer to everybody
11 in this case if we kept the permanent as permanent and
12 the amortized as amortized, two separate categories,
13 because I think that it would actually be -- I think it
14 will show up on the billing statements that way, so the
15 residents can see -- I think it's required that it show
16 up -- in Santa Barbara County, that it show up on the
17 billing statements that way so that the residents can
18 see what their base rent is and, separately, in another
19 line item, what the amortized amounts are and when they
20 will fall off so that people don't get confused and pay
21 them for more years than they are supposed to pay them.

22 Q. And in fact, isn't it true that state law, if
23 you know, actually provides that any pass-throughs in
24 the more limited sense that I was using the term, that
25 are more temporary in nature, need to be separately

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(805) 966-4562

1 amortized and then would come off the rent statement
2 when paid in full?

3 A. Well, I believe that it's state law. I don't
4 recall it specifically. I'll believe you.

5 Q. Well, do you have an opinion as to whether
6 there's a reasonable limitation on how many years a park
7 operator could go back to recoup these, shall we say,
8 regulatory lag uncompensated increases?

9 A. You know, I don't know about a general rule,
10 but let me say, I don't think it's too long since the
11 park changed hands. After all, the new park operator
12 hasn't asked the residents for any rent increases all
13 during this time period. So the residents have been
14 getting the benefit, one might say, for that reason.

15 So there's been a kind of usual period here
16 which is from 2008 until today while the new operator
17 got his sea legs with the property and the residents
18 haven't had any rent increases, as I just said. So I
19 don't think it's too long to go back for that time
20 period.

21 Q. And this unusual period, as you described it,
22 is at least in part caused by the fact that there's been
23 no rent increase application like this during that
24 three-year period up to now, correct?

25 A. That's right. When I say "unusual time

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(805) 966-4562

1 period," there was -- as I understand it, the history
2 includes a failure-to-maintain lawsuit, another
3 difficult lawsuit that took years to unravel, et cetera.
4 There have been a number of things that have been hard
5 to unravel, and this whole property tax increase has
6 taken a lot of time and attention on the part of the
7 park management and their attorney to try to decide how
8 to handle this, so I'm not surprised that we have come
9 through this period and now we're at a juncture where a
10 lot of things are getting straightened out all at once.

11 Q. Do you know whether the park owner gave any
12 notice of any kind to the residents during this unusual
13 period, if you will, that there could be a payday coming
14 in the future for these uncompensated increases?

15 A. I'm not aware of that.

16 Q. All right. So you agree, do you not, that,
17 the residents' point of view, they are now being faced
18 with paying a bill that was being incurred during the
19 last three years that they didn't really know about in
20 terms of the dollar amount or category?

21 A. I don't know if they knew or didn't know. I
22 mean, it wasn't a secret, I mean, the tax bills are
23 available online.

24 Q. Okay.

25 MR. STANTON: Your Honor, it's 11:55. This

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1 might be a good breaking point because I'm about to
2 switch subject matters again to get back into the ground
3 lease. I have only a couple more areas to talk through.

4 THE ARBITRATOR: All right. I have a couple
5 of questions.

6 The 35 number in the leases, counsel probably
7 recognizes that, the revenue tax code. Was there a
8 reason why the 35 years was selected?

9 MR. BALLANTINE: You mean for the ground
10 lease? It was actually 34 years.

11 THE ARBITRATOR: Thirty-four. Because of the
12 35 parameter?

13 MR. BALLANTINE: Yes, because the rule is that
14 35 years is deemed a change of ownership, or at least
15 that was one reason.

16 THE ARBITRATOR: All right, thank you. That
17 clarifies that.

18 I also noticed on the tax bill -- this is a
19 question for you. This plays into the revenue tax code
20 provision as well. There's an assessment on the last
21 tax bill for, they call it, "improvements," some of us
22 call it personal property, and not in their earlier tax
23 bills. Do you know if that's because an expenditure in
24 that difference in the tax years, was there an
25 expenditure of \$380,000 or is this the County doing its

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1 thing?

2 UNIDENTIFIED SPEAKER: We believe the County
3 was just doing their thing.

4 MR. BALLANTINE: Yeah, I'm not sure of the
5 details, exactly how they came up with the numbers. We
6 started to look into it a little bit.

7 But I think the question is can we point to
8 something and say we did this and this triggered this
9 assessment for the \$389,000, no, it was the County
10 coming to some determination that they made as to doing
11 that allocation.

12 THE ARBITRATOR: So it has nothing to do with
13 the escrow or anything, it's a similar number, but . . .

14 MR. BALLANTINE: That's correct.

15 THE ARBITRATOR: Thank you.

16 MR. STANTON: Just to be clear, are we talking
17 about, on the 2010-2011 secured tax statement, are we
18 talking about total basic property taxes?

19 MR. BALLANTINE: Yeah, I think his question
20 was, if you look in the box on the upper right, there's
21 that item under "Improvements" for \$349,170, whereas if
22 you go to the prior year, there's nothing under it.

23 MR. STANTON: Oh, okay.

24 MR. BALLANTINE: And I don't fully understand
25 why, but the question was, can we point to some specific

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(805) 966-4562

1 thing like the escrow funds that they assessed, and the
2 answer is no, not that I'm aware of.

3 THE ARBITRATOR: Okay. And the last question:
4 When I've seen these arrangements in the past, I would
5 see the lessee would get a tax bill as well for the
6 personal property. Do you know if the mobile homeowners
7 themselves get such a bill?

8 MR. BALLANTINE: The homeowners themselves?
9 Yes, I know what the basic practice is. I'm not sure
10 what the bill looks like in this park, but they get a
11 separate bill for their mobile home based upon a
12 valuation that the County does of the home, and I think
13 it does show as personal property.

14 MR. STANTON: Well, there are actually two
15 systems that could apply here. What we call LPT, local
16 property tax, in very recent time, and I think it was
17 from 1993 forward, every new mobile home that's sited
18 must be on local property tax. Prior to that, going
19 back to the late seventies, mobile homes were titled and
20 registered through DMV. Between that year and 1993,
21 residents can opt out of what's now the Department of
22 Housing annual registration that took over from the DMV,
23 they can choose to opt out of that at the time of sale
24 by foregoing a use tax, if you will, and they can switch
25 over to LPT. There could be some homes in this park, in

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(805) 966-4562

1 other words, that could be LPT and some that could be
2 Department of Housing annual registration. There could
3 be either.

4 THE ARBITRATOR: Okay.

5 MR. BALLANTINE: I know there are some. I'm
6 going to guess that most are under the LPT, that they're
7 locally assessed, but there may be some under the DMV
8 transfer to HCD. But whatever it is, I think we'd agree
9 that's not an issue at this proceeding in the sense that
10 we're not asking for any number for those and the
11 residents don't claim that that's somehow a factor.

12 THE ARBITRATOR: So they're subrogated and you
13 both accept that?

14 MR. BALLANTINE: Yes.

15 MR. STANTON: Yes.

16 THE ARBITRATOR: Okay, let's break for lunch.
17 Let's come back at 1:00 o'clock.

18 (The lunch recess was taken.)

19 THE ARBITRATOR: We're back on the record.

20 Mr. Stanton, you have some few questions more
21 with this witness?

22 MR. STANTON: I only have a couple more areas,
23 your Honor. I'll try to make them go as rapidly as
24 possible.

25 Q. I'm going to get back to the ground lease rent

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1 issue, Dr. St. John, that I was sort of dancing around
2 before. I think we can summarize your testimony, and
3 correct me if I'm wrong, but the summary of your
4 testimony is that you obviously believe the lease
5 payment increase stemming from the ground lease rent, if
6 you will, is an appropriate item to include in the rent
7 application analysis?

8 A. Yes.

9 Q. Now, I believe that you said yesterday that
10 ground lease rent is typically included in an NMOI
11 analysis, as an expense, correct, that's typical?

12 A. That's true, in my experience.

13 Q. I think you also said that it has been, quote,
14 "allowed many times but not all the time." Is that a
15 correct recitation of what you said yesterday?

16 A. You know, Dr. Baar gave us examples of cases
17 in which the ground leases were allowed, he didn't give
18 us any examples where they weren't allowed, and I can't
19 remember any that weren't allowed, either. There may
20 well be some out there, and he certainly suggested that
21 there were, but I'm not aware of any explicit ordinances
22 that don't allow the consideration of ground lease.

23 Q. Are you aware of any ordinances that are
24 simply silent on the subject in terms of not saying
25 explicitly in the language one way or another whether

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(805) 966-4562

1 they are allowed?

2 A. This one, Santa Barbara, for example.

3 Q. Are there others?

4 A. I bet there are, but I can't cite chapter and
5 verse.

6 Q. Okay. I think you also said that in your
7 experience it was relatively rare that a ground lease
8 would appear at all in the factual mix of the case?

9 A. Right. Most parks are owned and operated by
10 the same organization.

11 Q. So I would ask you, how many hearings have you
12 testified in or provided services in connection with
13 where ground leases have been involved in the factual
14 setting of the case?

15 A. You know, I cannot tell you that. I don't
16 recall the number of other cases.

17 And anticipating your next question, I don't
18 remember with specificity any cases in which ground
19 leases have been -- I know I've seen ground leases in
20 cases but I don't recall which ones.

21 Q. So perhaps your recollection is correct, that
22 you may not have actually been involved in this scenario
23 previously with ground leases. What was your authority,
24 without that lack of experience, for including them
25 here?

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1 A. Well, there would have to be a pretty strong
2 reason for leaving anything out. The books of record
3 are the books of record, and in all cases, in all
4 ordinances, everything should be in unless there's a
5 particular reason to take it out. And sometimes those
6 reasons are articulated in the ordinance, and when they
7 are, that should be followed or at least considered
8 carefully. But in other cases, generally speaking,
9 everything should be left in. There might be an
10 exemption and then it should be considered carefully.

11 Q. Okay. I take it since you can't recall
12 working in any other case where there was a ground
13 lease, that you also would say you can't recall working
14 in any other case where there was a lease with a
15 percentage of gross rent provision like this one, is
16 that correct?

17 A. That would be true.

18 Q. Do you believe that that
19 percentage-of-gross-rent provision has any significance
20 to the determination of whether the lease payment should
21 or should not be included?

22 A. Well, yes. In this sense. I mean, it's my
23 understanding that the percentages range from about 10
24 percent to about 20 percent, but that's kind of the
25 normal range. There are other people --

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1 Q. Are you talking about the industry?

2 A. Yes, the industry, the practice. There are
3 other people in the room who could testify with more
4 knowledge specifically than I on that topic, but it's my
5 understanding that a range of about 10 percent, about 20
6 percent is common.

7 Q. Did you investigate those ranges at all when
8 you were preparing your opinion for this case?

9 A. No, I have done no research on that issue.

10 Q. Let me ask you a hypothetical, if you're able
11 to answer it. If the lease in this case had provided
12 for 30 percent of gross rents, do you believe that would
13 be fairly included in this calculation?

14 A. I personally don't think so. Actually, in my
15 understanding, that would be outside the range, and that
16 would be really odd, and a park owner who had such an
17 arrangement or manager who had such an arrangement would
18 have to make a really strong argument, they'd have to
19 explain why and how that came about and why it should be
20 allowed and all that. Any land lease in the normal
21 range, in my mind, should be allowed, and I think the
22 range is roughly between 10 percent and 20 percent.

23 Q. And just to make sure I understand, what's
24 that understanding based upon in terms of how you
25 understand that to be between 10 and 20 being the range?

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1 A. Based on my impression over many years of
2 seeing these kinds of things, and I can't be any more
3 specific than that.

4 Q. Okay. Now if I can try to summarize this
5 issue, you heard Dr. Baar talk yesterday, did you not,
6 about a circularity problem that he saw in this?

7 A. Yes.

8 Q. And you understand what he meant by that --

9 A. I do.

10 Q. -- in terms of how one increase begets another
11 increase so I don't need to go through that again,
12 correct?

13 A. Correct.

14 Q. Do you have a response to that? I mean, isn't
15 there a circularity problem here that would place
16 residents at risk given this kind of percentage-of-rents
17 provision that's present in this particular lease?

18 A. Yeah. I thought about that last night when I
19 was going over my notes of Dr. Baar's testimony, and I
20 gave it some thought, and I think Dr. Baar's position
21 goes like this: In theory, if this increase is allowed,
22 that would allow -- well, the rents would get increased
23 and the park owner could make an amendment to the lease,
24 or the park manager, I should say, the park manager
25 could pass the project on to some other manager who

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1 would then raise the lease fee, and they could go from
2 10 to 20, as you're positing.

3 That does not seem feasible to me. That
4 hypothetical, in my opinion, just is not likely to
5 happen. This is a 34-year lease, it's in place, it's
6 signed. True, it conceivably could get amended, but
7 it's not likely that it would be, and if it was, and if
8 the park owner then came back to the residents with a
9 request for a further rent increase, which is what the
10 circularity argument claims, then we'd be back here and
11 the arbitrator would be looking at it and these facts
12 would be on the table and we could see such a
13 circularity, but this hasn't happened. This lease rate,
14 to my knowledge, hasn't increased in 30, 40 years, long
15 time.

16 Q. Well, isn't there circularity even without the
17 amendment scenario? And I think Dr. Baar mentioned the
18 amendment scenario, but let me ask it this way.

19 I'll preface the question by saying, this is
20 what I think Dr. Baar meant by "circularity." Even
21 without an amendment, if a percentage of gross rents is
22 the measure of the rent, you come into the hearing and
23 say, "We need more money because the percentage has
24 increased," right, so then more money is paid and that
25 money then goes to the percentage of rents collected,

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(805) 966-4562

1 which in turn will increase the rents next year, which
2 in turn could beget another increase petition next year
3 because now you have more rents increasing which means
4 they have to pay more ground lease. It seems to me
5 there's a circularity involved in this without ever
6 having to amend the document. Do you see -- let me ask
7 you, do you see that same circularity?

8 MR. BALLANTINE: I'm sorry, before he answers,
9 I have to object. I mean, other than tacking on a
10 sentence at the end, it's really not a proper question,
11 for two reasons. One, it's a statement of counsel that
12 says, "Then do you agree," and, secondly, and really
13 more seriously, I think we're wasting a lot of time
14 because it's really assuming a hypothetical that's
15 absolutely not existed here, he's speculating as to
16 potential future rent increase requests that aren't here
17 and there's no intent to have them here, but the fact of
18 the matter is they're not here.

19 MR. STANTON: Well, they are here. They're
20 inherent in what I asked, absolutely inherent in what I
21 asked.

22 MR. BALLANTINE: But they're not. The whole
23 point of the question was, well, then next year you
24 could come back and say this. Well, this isn't next
25 year and we haven't come back and said this. So again I

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1 object on the grounds that, A, it was an improper
2 question, but, B, this line of questioning is a
3 hypothetical that's irrelevant because it's not the fact
4 pattern before this arbitration.

5 MR. STANTON: Well, counsel misunderstands
6 completely the issue. What I didn't say was that you
7 could say this next year, what I said was it will affect
8 the net operating income by increasing the rent
9 obligation. As more money is received it's absolutely
10 circular, and what I'm saying is by increasing the net
11 operating income for all future years, whether you come
12 back with an application or not, there's an effect.
13 That's the point of my question.

14 MR. BALLANTINE: Well, again, I stand on the
15 objection. The question, as phrased before the witness,
16 is an improper question, it's premised upon future rent
17 increase applications, and that's irrelevant.

18 THE ARBITRATOR: Okay, I've been waiting a day
19 and a half for an objection like this.

20 The questions have been too long and need to
21 be more direct, okay, and not so much argument.

22 And the witnesses, too, are going off on
23 tangents and not answering the question with
24 specificity, moving into opinions and other issues.

25 MR. STANTON: I'll withdraw and ask a very

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1 concise question.

2 THE ARBITRATOR: Okay, but my admonition still
3 stands. Please try to get the witnesses to answer the
4 question as asked.

5 You have a pretty good counsel here, he'll do
6 the follow-up and we'll get done sooner.

7 BY MR. STANTON:

8 Q. Let me ask you this question, Dr. St. John.
9 Ignore my previous question.

10 Do you see any problem of circularity in
11 connection with the lease and this rent increase formula
12 as a percentage of rents, even if the lease itself is
13 never amended or changed?

14 A. No. I mean, I could explain.

15 Q. That's really --

16 MR. BALLANTINE: I think you followed the
17 arbitrator's admonition perfectly.

18 BY MR. STANTON:

19 Q. You answered my question.

20 Now, this ordinance prohibits debt service or
21 interest, loan interest costs, does it not, from being
22 considered as an expense item?

23 A. It does.

24 Q. And is it true that it's a typical practice of
25 rent ordinances to prohibit such expenses?

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(805) 966-4562

1 A. In MNOI ordinances, yes.

2 Q. Do you have an opinion as to why those
3 expenses are excluded?

4 A. Sure.

5 Q. What is that opinion?

6 MR. BALLANTINE: I'd object on the same
7 grounds. Now he's asking for -- we're not including
8 debt service and so he's asking why on something that we
9 haven't put in.

10 THE ARBITRATOR: Mr. Stanton, your response?

11 MR. STANTON: Well, it's analogous. As
12 Dr. Baar opined yesterday, your Honor, it's analogous
13 because it's an acquisition cost, whether it's a land
14 acquisition, a lease acquisition, whatever you want to
15 call it, our argument -- I think your Honor can sort of
16 tell where we're heading -- is that it's an analogous
17 cost, and I think under the same theory that debt
18 service is excluded, this should be excluded as well.
19 That's our argument.

20 I'm just asking the witness to give me a brief
21 understanding, if he can, of why ordinances typically
22 exclude debt service costs. We are not saying it's
23 included here as a way of analogy to what I'm about to
24 ask.

25 THE ARBITRATOR: Anything else?

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1 MR. BALLANTINE: No.

2 THE ARBITRATOR: Something else I need to
3 comment on: We spend a lot of time on other ordinances.
4 If this ordinance speaks to the subject, that's it,
5 unless it's vague and ambiguous. So again, if it's
6 addressed in the ordinance, please don't go there with
7 other representations and other ordinances.

8 MR. STANTON: But I understood that this
9 ordinance doesn't speak to ground lease one way or the
10 other, so that's kind of why we're in this discussion,
11 because it doesn't.

12 THE ARBITRATOR: I allowed questions in that
13 regard, but not if it says 75 percent or something,
14 don't say, "Well, why does this one say 100?" That one
15 doesn't matter to me. It is what it is and we have to
16 live within the bounds of the agreement.

17 Rephrase your question.

18 MR. STANTON: My question is whether the
19 witness has an opinion as to why debt service costs are
20 typically not allowed in a rent ordinance.

21 THE ARBITRATOR: I'll allow the question and
22 then move on.

23 The reason why I'm allowing the question, I
24 might have a line of questioning on the late expense. I
25 didn't understand what that was.

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(805) 966-4562

1 MR. BALLANTINE: I'll represent we're going to
2 have a witness who will tell you what happened.

3 THE ARBITRATOR: Okay. That's the only reason
4 why I'm allowing the question.

5 Go ahead.

6 THE WITNESS: It's not easy to be really brief
7 with that question because it's a very big question,
8 much debated in the literature.

9 MR. BALLANTINE: I can make a follow-up
10 comment for the arbitrator on that point. The testimony
11 will be that that late charge wasn't an interest
12 expense. In fact, I'll just tell you what it is, maybe
13 it makes things go faster, the late fee was because when
14 the County billed for the property tax increase
15 initially they refused to pay it. They said, wait a
16 minute, we need some justification here. But the lender
17 went ahead and paid it without the knowledge of
18 Waterhouse Management and then billed them for a late
19 fee for having to pay it. They didn't have the money to
20 pay it right away because it was a \$60,000 figure, so
21 the late fee wasn't an interest payment all. He'll tell
22 you more about the circumstances, but I'll make that
23 offer of proof.

24 THE ARBITRATOR: Mr. Stanton, is that okay to
25 address that later?

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1 MR. STANTON: Yes. I'll withdraw this last
2 question.

3 THE ARBITRATOR: Thank you.

4 BY MR. STANTON:

5 Q. I'd like to ask you this hypothetical,
6 Dr. St. John, and I'm asking it in, I think, conformance
7 with the discussion we've had earlier this morning about
8 the property tax increase. It's possible that this park
9 operator could purchase the entire park land and
10 operations tomorrow, right, it's possible?

11 A. It could be.

12 Q. And in fact, most park owners or operators own
13 the underlying land upon which the park sits, correct?

14 A. Correct.

15 Q. Which is why we don't see these leases often,
16 as you said?

17 A. Correct.

18 Q. If that were to happen, hypothetically, then
19 what would happen to this permanent lease payment
20 increase that we're building in to this rent
21 calculation, what would happen to that?

22 MR. BALLANTINE: Objection. Your Honor, he's
23 asking for a hypothetical about some speculation of what
24 would happen in the future that hasn't happened.

25 THE ARBITRATOR: I think I see where you're

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(805) 966-4562

1 headed. You have a roundabout way of getting to the
2 magic question.

3 MR. STANTON: Well, it's the same issue as the
4 property tax increase that we just discussed, the
5 hearing officer invited potential stipulation on which
6 is -- what if this, you know -- well, go ahead.

7 THE ARBITRATOR: I'll allow the question
8 because he has, in another subject area, taken legal
9 expenses in the capital area, which I thought was a
10 little off-color, but I'll allow that as well. It's the
11 same rationale he's being allowed to ask this question.

12 Go ahead.

13 THE WITNESS: If the park were to be
14 purchased, if the land were to be purchased by a park
15 owner, this park owner or another park owner, the lease
16 would go away. And in an MNOI analysis thereafter,
17 there would be no lease fee at all in the right-hand
18 column, which would be the comparison year column, and
19 there would be a lease fee in the base year. When that
20 happens, it is appropriate to not consider the category
21 at all, because otherwise you have a skewed result, you
22 have a fee on one side, one of the two bookends, to use
23 your phrase, and nothing at all on the other, so it
24 would be appropriate to simply eliminate the category.

25 BY MR. STANTON:

SANTA BARBARA SANTA MARIA
(805) 966-4562

1 Q. So as long as the permanent increase items 1
2 and 2 are not dollar-for-dollar items but are part of
3 the whole MNOI analysis, then what you just said was it
4 would correct itself, the MNOI analysis in future years
5 would correct itself by removing that expense, correct?

6 A. It wouldn't correct itself, but Dr. Baar or I
7 would remove the imbalancing feature before we
8 presented, and it wouldn't appear in the results.

9 Q. So as long as we base this permanent increase
10 item on the MNOI analysis that you have done, the
11 corroborating calculation, then my hypothetical really
12 becomes moot, correct?

13 A. I think so.

14 Q. Okay. Very briefly on the subject of energy
15 expenses, it's your understanding, is it not, that this
16 park is a park that has a sub-metered system for gas and
17 electric where the meters are read separately by the
18 park owner?

19 A. Yes.

20 Q. And the residents reimburse the park owner for
21 the energy expense?

22 A. Yes.

23 Q. And you're familiar, because I think you
24 talked yesterday about the differential discount and all
25 those issues, correct?

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1 A. Yes.

2 Q. Is it your experience when you're testifying
3 in these hearings that in sub-metered parks the gas and
4 electric expenses of any kind are included in the
5 expenses that are used to calculate the rent increases?
6 And I'm first talking about any kind, talking about a
7 broad category.

8 A. In my experience, most often the income and
9 expenses having to do with gas and electric are deleted
10 in their entirety --

11 Q. So typically --

12 A. -- from the net operating income calculations.

13 Q. So typically, as you're constructing your
14 calculation, you're not including line items for any gas
15 or electric repair, rehabilitation, and related
16 expenses, correct?

17 A. That is correct. I mean what I meant was the
18 actual cost of the gas and the cost of the electricity
19 is deleted but, yes, in addition to that, the cost of
20 gas and electric repairs are deleted as well, and they
21 are, in Table 3-A and 3-B I did exactly that.

22 Q. Agreed. Therefore, when we look at the
23 temporary increases, and I'm now focusing on category 3
24 for capital improvements, it is your opinion that it
25 would also be appropriate to not include in the capital

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(805) 966-4562

1 improvement category any expenses related to sub-metered
2 gas or electric repair, rehabilitation, or improvements?

3 MR. BALLANTINE: I'm sorry, objection.
4 Argumentative. He just asked the question -- the
5 witness about performing an MNOI analysis and that's
6 part of a permanent rent increase. Then he segued from
7 that and said therefore as a result you would move it
8 from a capital expense and, of course, a capital expense
9 analysis is not pursuant to the MNOI, it's different.

10 MR. STANTON: I agree. I asked him the
11 question. I didn't say he would, I asked him -- that's
12 why I'm asking the question. Counsel has just phrased
13 the issue as to why I asked the question, we've
14 confirmed how he would do with an MNOI, and now I'm
15 simply asking him wouldn't the same principle apply to
16 the temporary increase? That's my question.

17 THE ARBITRATOR: I'll allow the question.

18 MR. BALLANTINE: I think it was asked
19 differently, so that's clarified.

20 THE ARBITRATOR: That's clear to me.

21 THE WITNESS: Okay. In my understanding,
22 there's a clear distinction between maintenance of the
23 electric or gas system and replacement of the
24 maintenance or the gas system, and that is a bright-line
25 distinction, and the maintenance costs should be

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(805) 966-4562

1 deleted, as they were in my analysis, and the
2 replacement cost should not be deleted, and that's why
3 it appears in item 3 on Exhibit C.

4 BY MR. STANTON:

5 Q. So if I understand your testimony, if you can
6 look at category 3 of Exhibit C, Dr. St. John, if there
7 are, as I understand your testimony -- let me ask you,
8 you see the category A&E fees, \$90,000?

9 A. Yes.

10 Q. Is it your testimony that if within that
11 \$90,000 there are any items related to the maintenance
12 or repair of the existing systems, that those should be
13 deleted out of there?

14 A. That's right.

15 Q. Okay. And is it your testimony, then, that if
16 any part of the infrastructure item, the \$320,000,
17 includes the complete replacement of the system, that
18 should be allowed?

19 A. It should be allowed.

20 Q. Okay. Can you tell me as you sit here today
21 what your authority is for making this distinction
22 between maintenance and repair on the one hand or
23 replacement on the other -- being treated differently,
24 in other words?

25 A. You know, I'm speaking as an economist. There

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(805) 966-4562

1 are a lot of arguments about this at law, and I'm not
2 intimately familiar with much of that case law.

3 Q. I was asking for authority, not arguments,
4 though. Just to try to keep your answer narrow.

5 A. When you say "authority," you mean where do I
6 get it?

7 Q. Yes.

8 A. I thought you meant legal authority.

9 Q. I know you are not an attorney, but you seem
10 to have a real clear opinion of that and I'm asking
11 where did you derive that from.

12 A. No, no, I'm speaking as an economist, and I'm
13 speaking here -- it is not feasible for the discount to
14 cover the costs of replacement, and, therefore it would
15 not make sense.

16 Now, I know perfectly well the laws sometimes
17 do say things that don't make sense, so that's a
18 different topic. But it would not make sense, it does
19 not make sense for us to expect that the discount, which
20 in the case of the electric in 2010, is -- I did the
21 calculation last night, I think it's between \$9,000 and
22 \$10,000 -- that's an amount that can comfortably cover
23 repair and maintenance of the electric system, but it
24 cannot touch the -- I've heard a variety of figures --
25 \$200,000, \$300,000 that may be required to do the

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1 replacements for the electric system. It wouldn't come
2 anywhere near, so it's just not feasible to -- for us to
3 assume that it would cover it not a logical assumption.

4 Q. Have you ever reviewed any of the actual
5 Public Utilities Commission's decisions on this topic in
6 forming your opinion?

7 A. You know, I gave an opinion in Hillsborough,
8 but that was years ago and I'm sure in that context I
9 did review, but I can't recall it and I have not kept up
10 with that line of argument, the cases that cover that.
11 I think there are others who know better than I.

12 Q. Let me ask you, the middle category under
13 "Capital Improvements," item 3 that says "Professional
14 Fees, \$50,000"?

15 A. Yes.

16 Q. Would it be your opinion if any of those
17 professional fees related to maintenance or repair of
18 sub-metered gas or electric systems, would it also be
19 your opinion that they should be deleted from that
20 category?

21 A. Yes.

22 Q. In other words, not talking about the
23 replacement again but only repair or maintenance?

24 A. That's right.

25 MR. BALLANTINE: Objection. Vague and

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1 ambiguous as to what that means by "related to."

2 THE ARBITRATOR: You'll have narrow the
3 question.

4 MR. STANTON: I can rephrase.

5 Q. If the professional fees were incurred in
6 connection with the maintenance or repair of sub-metered
7 gas or electric systems, is it your opinion that they
8 should also be removed?

9 MR. BALLANTINE: I'm sorry, vague and
10 ambiguous. I'm not sure about "in connection with."
11 He's already testified that the professional fees -- I
12 mean, that suggests it's a professional fee for
13 maintenance. The professional fee, we've already
14 established, are legal fees, so we know what those were
15 based on the testimony. I'm not sure what the phrasing
16 of the question means by "related to" the maintenance.

17 THE ARBITRATOR: Unless you're going to
18 challenge his original statement that the \$50,000 was
19 mischaracterized . . .

20 MR. STANTON: Well, the issue, your Honor, is
21 in connection with the capital improvement category
22 where we have A&E fees included, and maybe this is an
23 issue where I've confused it, either within the \$50,000
24 of professional fees or perhaps it's actually included
25 in the \$90,000, maybe I misspoke, there are some legal

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1 fees for Mr. Ballantine that have been summarized on a
2 one-page sheet and that appears to include
3 representation in connection with gas and electric
4 system issues.

5 MR. BALLANTINE: At least as to the numbers, I
6 can help clarify. The professional fees, the \$50,000,
7 that is that statement that you've got the itemization
8 for that, it was \$50,000 and change, and it says what it
9 says, and that's true, and that's what the \$50,000 is,
10 and if you want to ask him about it, that's fine.

11 The \$90,000 is an on a separate spreadsheet,
12 and we went through this before, but it was the
13 engineering and other planning fees incurred by the
14 prior operator, and we have an itemization, and that
15 tops out at \$89,000 and change.

16 MR. STANTON: And I've asked him about that.

17 MR. BALLANTINE: Yeah.

18 BY MR. STANTON:

19 Q. So the only purpose for my question was,
20 looking at your one-sheet summary, which is just about
21 \$50,000 as you indicate --

22 And I was actually going to ask the other park
23 witnesses if they knew more because I don't think
24 Dr. St. John would know a lot about the content, but I
25 was simply asking:

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1 If we were to establish that your fees in
2 connection with anything on this page related to, in any
3 way, issues regarding the repair or maintenance of
4 sub-metered systems, wouldn't those professional fees be
5 excluded as well as the actual repair costs themselves?

6 MR. BALLANTINE: That's an exotic theory.
7 They're legal fees, but to the degree there's some
8 argument that it somehow related to repair and
9 maintenance . . .

10 MR. STANTON: Well, I'm assuming that my
11 position would be that if the Public Utilities
12 Commission prohibits the actual costs of repair or
13 maintenance, if we assume that what Dr. St. John says is
14 correct, from being passed through, then certainly legal
15 fees incurred in connection with disputes about those
16 maintenance or repair items would also not be allowed.

17 MR. BALLANTINE: Well, if you can show me
18 where there's anything that suggests it's repair and
19 maintenance, because -- this is my statement. I will
20 indicate there's nothing under repair and maintenance.

21 MR. STANTON: Well, that's coming later. I
22 was just asking him if there were while he was on the
23 stand, I just wanted to ask him the question, if there
24 were, would it, in his opinion, also be excluded.

25 MR. BALLANTINE: I've already said that it's

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1 irrelevant, it's a hypothetical that's irrelevant. It
2 has no relevance in this proceeding.

3 THE ARBITRATOR: Where is a copy of the
4 invoice?

5 MR. BALLANTINE: I was just looking at it. I
6 think it's in Exhibit -- it's K, here it is, second page
7 of K. And it's actually an invoice summary, not the
8 invoice itself. The invoice is about 10 pages.

9 THE ARBITRATOR: So that's the only document
10 that we have that itemizes out those professional fees?

11 MR. BALLANTINE: Yes, that's in evidence.

12 MR. STANTON: I was under the impression from
13 what I had reviewed that there was some sort of
14 challenge brought by County with respect to the
15 condition of the energy systems. Am I wrong about that?

16 MR. BALLANTINE: No, that's true.

17 MR. STANTON: And you did some work in
18 connection with that?

19 MR. BALLANTINE: That's true.

20 MR. STANTON: And that had to do whether the
21 conditions were improper maintenance or repair?

22 MR. BALLANTINE: No, I wouldn't say that.
23 Whether the regulations required a replacement of the
24 system or not.

25 I mean, maybe I can help short-circuit this a

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1 little bit. If you're trying to make a distinction
2 between repair and maintenance and replacement of energy
3 systems, as the witness has, I would say that any issues
4 regarding any utility or other infrastructure systems
5 would clearly be on the replacement side, not having to
6 do with, quote, "repair and maintenance on a daily
7 basis." We can get into the other issues, but to what
8 degree some of the work related to claims by the County
9 relating to the electrical system is subject to that PUC
10 regulation, because I don't think there's any authority
11 that it would be.

12 MR. STANTON: We can brief that.

13 THE ARBITRATOR: Let's do that. Save it for
14 argument.

15 MR. STANTON: I'll move on. I think we have
16 the issue out there.

17 THE ARBITRATOR: Go ahead.

18 BY MR. STANTON:

19 Q. With respect to the \$90,000 category of
20 capital improvement items there, Dr. St. John, is it
21 your recollection that that included a number of
22 invoices billed by an engineering firm called Penfield &
23 Smith?

24 MR. BALLANTINE: Are you referring to the
25 exhibit tab L?

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1 MR. STANTON: I was actually referring to tab
2 J, I think.

3 MR. BALLANTINE: Are you talking about part of
4 the \$90,000?

5 MR. STANTON: Yes. I was referring to this
6 page that seems to itemize the \$90,000, tab J.

7 MR. BALLANTINE: I see. The invoices
8 themselves are tab L, but you're just looking at the
9 spreadsheet?

10 MR. STANTON: Yeah, I was just looking at the
11 summary.

12 MR. BALLANTINE: All right. The one-page
13 spreadsheet is J.

14 THE ARBITRATOR: Let's work off the summary.
15 BY MR. STANTON:

16 Q. Do you recall reviewing any engineering bills
17 as part of that category, Dr. St. John?

18 A. You know, my part of the work here was to do
19 the MNOI analysis and the economics, but this is really
20 a matter of accounting and I haven't reviewed these at
21 all, I have only participated in summarizing them on one
22 page.

23 The invoices came from the management company.
24 I helped summarize them in this manner and that's really
25 all the investigation I've done. There are others here

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1 who could explain more than I can about these documents.

2 Q. I understand. I'm just going to make sure I
3 understand, then, you didn't actually review the
4 invoices themselves for Penfield & Smith --

5 A. Correct.

6 Q. -- before you inputted the numbers into this
7 calculation?

8 A. Right, exactly. All I did was I transcribed
9 them on to one page so we'd all be able to take a look,
10 and I have no knowledge about what they are.

11 Q. If you knew, and I'll represent to you that
12 the invoices in question appeared to span a time frame
13 from October 12, 2004, to, roughly, February of 2006 --
14 I will not try to represent that's exact or precise, but
15 it appears to be the time period -- if you had known
16 that -- actually, I guess, April 2006 is the more back
17 end.

18 If you had known that the invoices were
19 generated during that period of time, which preceded
20 this park operator's time of operation, would that have
21 any effect on whether you would include those items in
22 this analysis?

23 A. I certainly did notice it. I was aware that
24 they were from that time period and no, it wouldn't,
25 because in my view there's no bar on bringing capital

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(805) 966-4562

1 improvements on from long ago. Park owners who bring
2 them more quickly can get reimbursed more quickly, but
3 it doesn't harm residents to delay; in fact, it helps
4 them because everybody likes a delay in imposition of
5 rent increase.

6 Q. Who actually incurred the expenses that were
7 paid to this Penfield & Smith office, do you know?

8 A. I believe that these amounts were paid to
9 Penfield & Smith by the prior operator.

10 Q. Not the current operator?

11 A. Not the current operator, and that they were
12 purchased by -- these plans that are represented by this
13 work, the engineering and survey, were purchased by the
14 current operator. That's what I've been told.

15 Q. Purchased by the current operator?

16 A. Purchased by the current operator from the old
17 operator.

18 Q. Were you told what the price of that purchase
19 was?

20 A. You know, you're going to have to ask others
21 that question.

22 Q. Okay. Well, do you know whether any rent
23 increases were implemented by the prior park owner in
24 the years 2005, 2006, or 2007?

25 A. It's my impression that there's never been a

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(805) 966-4562

1 rent increase for this park other than the annual
2 increases. I would be shocked to learn because I've
3 been told and it's my impression that there's never
4 before been such a proceeding as this one, before, for
5 this park.

6 Q. Okay. If you had been asked to perform MNOI
7 analysis for the years 2005, 2006, 2007, you would
8 routinely include expenses like these, if they had been
9 incurred, in those analyses, wouldn't you?

10 MR. BALLANTINE: Objection. Improbable
11 hypothetical. He's asking him if he had done something
12 years ago that hasn't been done, that is not before this
13 tribunal.

14 THE ARBITRATOR: Your response, Mr. Stanton?

15 MR. STANTON: Well, I'm trying to get at the
16 point that you have expenses paid by a prior owner for
17 prior years. We don't know whether or not they were
18 ever -- we haven't had any evidence as to what increases
19 were given, but if we were preparing fair return
20 analyses during those years, my point is, these expenses
21 would be included in those years. The question is, how
22 far back do we go and do we include expenses in the --
23 in other words, he didn't include them in this analysis,
24 right, he didn't include them in a 2010 analysis because
25 they weren't incurred in 2010.

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1 MR. BALLANTINE: But they're capital, they're
2 removed from the MNOI analysis, they're not part of the
3 MNOI analysis. I mean, that would be the point to
4 the -- to the latter point.

5 As to the former point, we don't know if there
6 were expense pass-throughs previously or not. With due
7 respect, you represent the homeowners of the park, I
8 mean, they ought to know if they were billed or not, and
9 the fact of the matter is that none of these expenses
10 were ever passed through to the homeowners by the prior
11 operator.

12 I would clarify something Dr. St. John said.
13 There was a rent control arbitration proceeding under
14 the prior operator in 2004 that related to some expenses
15 that are not related to this, to a recycle fee, but
16 these were not subject to that. So he's speculating on
17 things that are not factually the basis and that are
18 outside the parameters of what's reported to the board
19 or arbitration.

20 MR. STANTON: There's been so much argument in
21 these give and takes I'm just getting lost in all this,
22 your Honor. We're hearing all sorts of new evidence
23 from counsel.

24 I'll just withdraw the question. I don't want
25 to overburden us unnecessarily.

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1 Can I ask the question a different way?

2 THE ARBITRATOR: Was this ever booked as
3 pre-engineering costs for accounting purposes? Was it
4 ever booked as an engineering cost, prepaid?

5 MR. BALLANTINE: No.

6 THE ARBITRATOR: I did notice in the lease
7 there was a referral to buying the engineering, is that
8 correct? I thought I saw something about that.

9 MR. STANTON: I don't know that.

10 MR. BALLANTINE: I don't recall. This wasn't
11 booked in anything, at least any books that we're using
12 here. I can't testify as to books we haven't seen, but
13 nothing in this proceeding.

14 THE ARBITRATOR: And the last question: Did
15 the previous lease allow such an expense to be paid by
16 the mobile home park operator?

17 MR. BALLANTINE: It required the mobile home
18 operator to take care of any capital improvements or
19 expenses, maintenance, et cetera, to the park, all those
20 things.

21 THE ARBITRATOR: All right. Next question.

22 BY MR. STANTON:

23 Q. Let me just ask this question, Dr. St. John.
24 I think you testified that you believe the ordinance
25 allows the pass-through of these capital items. In your

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1 opinion, is there some period of time beyond which the
2 park owner couldn't go back to get old items and, if
3 so -- well, let me ask you that question first: Is
4 there some period of time?

5 A. No, not to my knowledge, not in my
6 understanding.

7 Q. So it would be your testimony that this park
8 owner could go back to 1980, if it wanted to, to recoup
9 capital improvement costs?

10 A. I know of no rule about a deadline or too far
11 back. 1980 is a very long time ago and I would imagine
12 that in such a case there would be lots of argument
13 saying that they shouldn't be allowed, but we're not
14 going back anywhere near that far.

15 Q. We're going back, apparently, six years or so,
16 according to these invoices, correct?

17 A. Correct.

18 Q. Lastly, the infrastructure item of \$320,000,
19 there's been testimony that this payment was required
20 somehow and that it existed in an escrow account, is
21 that your understanding?

22 A. Yes, it is.

23 Q. Do you know, based upon anything you've been
24 told by the client whether this payment was required as
25 a condition of the acquisition of the lease?

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1 A. I don't know that. You'll have to ask the
2 park operator.

3 Q. All right. Would the answer to that question
4 make any difference in your analysis, if you did know
5 the answer to it?

6 A. I can't see why at this moment. My
7 understanding is that the money has actually been paid,
8 it's actually been placed in an escrow account and it's
9 irretrievable, that it can't be used for any other
10 purpose than infrastructure in the park.

11 Q. Do you have an understanding as to what this
12 \$320,000 is to be used for, specifically, in connection
13 with the park infrastructure?

14 A. Well, the two most major infrastructure items
15 that I have heard about, and I haven't done any
16 particular analysis, I'm just telling you what I've
17 heard, is the replacements having to do with the
18 electric system, which has been a topic of considerable
19 debate with the County as to what is required and what
20 might not be required, and then, on the other hand, the
21 streets need work, and I think in this packet there's a
22 bid somewhere for a large number, a large sum to replace
23 or repair the streets.

24 Q. When choosing the appropriate amortization
25 period for a capital item like this, is it helpful to

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1 know what the capital item is?

2 A. Yes.

3 Q. And in this case, when you chose the
4 amortization period that you did, did you make an
5 assumption as to what the capital items would be that
6 the \$320,000 would be paid for?

7 A. Good question. Not really. Not really. I
8 was really attempting to -- I mean we put together
9 disparate items here. After all, we're talking about
10 professional fees in several different categories, we're
11 talking about A&E fees, capital items, and then this
12 uncompensated increase category. These are disparate,
13 and arguably the time periods might be differentiated as
14 between those. And in addition, as you point out, the
15 capital improvements, in many ordinances it says the
16 capital improvements should have their own amortization
17 period individually.

18 I would have no objection to any of that, and
19 all of this could be done, the clarifications or
20 modifications could be made. It seemed to me since at
21 this moment we don't know yet how the \$320,000 is going
22 to be spent, on which capital improvements it will be
23 spent, it seemed to me that -- it was useful for me to
24 set out an amortization process and then it could be
25 adjusted or amended as appropriate, subject to proof.

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1 So Dr. Baar suggested yesterday, for example, that we
2 might use more reasonably a 15-year period. I would say
3 no contest.

4 THE ARBITRATOR: Doctor, I have to cut you
5 off. You're starting to drift again. Just answer the
6 question and let the counsel pick up on the
7 follow-through.

8 THE WITNESS: Got it.

9 THE ARBITRATOR: You're a smart man, but it's
10 for another day.

11 THE WITNESS: Got it. Thank you.

12 THE ARBITRATOR: I have a question. I have a
13 little trouble on the accounting side with this. If a
14 capital expense is spent by the management company, then
15 it's billed to the mobile home people who pay. Is there
16 any depreciation involved, does any depreciation go to
17 the benefit to the operator? Don't they get a double
18 benefit, if you will?

19 THE WITNESS: I'm not sure.

20 THE ARBITRATOR: Capital items depreciated,
21 right, eventually?

22 MR. BALLANTINE: I take it you mean -- I take
23 it you mean for tax purposes?

24 THE ARBITRATOR: Yes, tax purposes. I guess
25 I'm not sure, do the mobile homeowners ever get a

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1 benefit of the depreciation? Capital improvement is
2 paid for, there's an asset, it's paid for by them, okay,
3 then later they get to take a depreciation as well?
4 Isn't it a double benefit?

5 MR. BALLANTINE: That's a good question.
6 Dr. St. John could probably talk about that issue a
7 little more. I think one of the issues on that is it's
8 mixing the MNOI approach, which is looking at operating
9 income, with kind of a valuation approach, because
10 although the park owner may get a tax benefit for a
11 short-term period of time, but when they sell the
12 property, then they have to do the recapture.

13 THE ARBITRATOR: And that's the answer, thank
14 you. I got it. That's the other part of the ledger.

15 MR. BALLANTINE: Right.

16 THE ARBITRATOR: Okay.

17 MR. STANTON: I may have no other questions.
18 Let me just check briefly.

19 I have nothing further.

20 THE ARBITRATOR: Mr. Ballantine, any further
21 questions of your witness?

22 MR. BALLANTINE: I do. I'd like to do this as
23 redirect. I know I have a couple of issues that I
24 wanted to cover that, based on what Dr. Baar said
25 yesterday, that might better be characterized as

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1 rebuttal evidence.

2 THE ARBITRATOR: Proceed.

3 MR. BALLANTINE: I'll raise them all rather
4 than parsing it out.

5 MR. STANTON: I have no objection.
6

7 RE-DIRECT EXAMINATION

8 BY MR. BALLANTINE:

9 Q. Dr. St. John, I'm just going to go back
10 through my notes from your testimony today and then ask
11 you a few other things.

12 Just very briefly on your background, you
13 mentioned working for several municipalities, one of
14 which was Marina. Is that the case that you and
15 Dr. Baar both have been retained by the City of Marina?

16 A. Yes.

17 Q. There was a fair amount of time spent
18 regarding your treatment of the items 5 and 6 on the
19 Exhibit C spreadsheet, the professional fees, and you
20 talked about analogizing them to, essentially, capital
21 improvements.

22 A. Yes.

23 Q. Is it the case that the only other way to
24 treat them would be to consider them under the MNOI
25 analysis?

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(805) 966-4562

1 A. Yes, as far as I know, the only other way
2 would be to put them into the MNOI equation.

3 Q. And would it be the case, in that case, it
4 would essentially result an inflated number for a
5 present year and lead to a permanent rent increase
6 that's essentially an inflated permanent rent increase,
7 if you treated it that way?

8 A. It might very well. Some of these expenses
9 span more than one year, so only a portion would be in
10 any particular year, when you do MNOI you only include
11 those years, so we'd have to see how it would come out.
12 But this way, the beauty of doing it this way is we take
13 all of the expenses in one category, no matter which
14 year they appear in, we sum them, we then amortize them,
15 and we then apply them.

16 Q. And is that pretty favorable for homeowners,
17 making it temporary versus permanent?

18 A. I believe it is.

19 Q. Let me ask you about the indexing and about
20 the base year. The indexing becomes relevant to your
21 MNOI analysis when you're considering a base year, is
22 that correct?

23 A. I'm sorry, I don't understand the question.

24 Q. Maybe it wasn't very clear.

25 I want to ask you the CPI indexing, and we

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1 were talking about that, that where it really has the
2 application, essentially, is in comparison of the base
3 year with the present year that's in question?

4 A. Right, right.

5 Q. And, I mean, there's also an indexing issue
6 for an annual rent increase, but --

7 A. But leaving that aside --

8 Q. -- leaving that aside --

9 A. -- the indexing might make a difference in the
10 MNOI -- in the way the MNOI equation works out, and it
11 makes the most difference when there's an earlier base
12 year because there's been more inflation between an
13 earlier base year and a more recent base year and the
14 current year.

15 Q. All right. And you've said that in your
16 experience some ordinances specify what base year to
17 use?

18 A. That's true.

19 Q. But Santa Barbara County does not?

20 A. Correct.

21 Q. You've shown us 1994 and you have shown us
22 2007?

23 A. That's right.

24 Q. And in your opinion, are both appropriate
25 years under the Santa Barbara County Rent Control

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1 Ordinance to consider?

2 A. They're both appropriate, in my opinion.

3 Q. And tell us a little bit about the 100 percent
4 indexing. You have done the both years at 100 percent
5 indexing, correct?

6 A. I've done both years both ways.

7 Q. All right. Both ways, great. Why did you
8 include the 100 percent?

9 A. Well, I included the 100 percent because I
10 believe in it so firmly, that 75 percent may be required
11 by the ordinance, but the 100 percent is more
12 appropriate.

13 Q. And you also would conclude that the ordinance
14 would allow you to use the 2007 as a comparison year?

15 A. I beg your pardon?

16 Q. You also believe that the ordinance allows you
17 to use 2007 as a comparison year?

18 A. Yes. I don't think there's anything in the
19 ordinance that would prevent us from using any year,
20 2007, 2006, 2005, all the way back to '94 or earlier if
21 we had it.

22 Q. I guess there was some sort of suggestion by
23 Dr. Baar yesterday that 75 percent is somehow recognized
24 universally.

25 A. Yes.

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1 Q. What's your comment on that?

2 A. Well, it's not universally recognized. There
3 are jurisdictions that use -- different jurisdictions
4 use different percentages. Many jurisdictions, as one
5 of his exhibits showed, do use 100 percent, and at the
6 conclusion of the hearing yesterday he commented to me
7 about the -- well, I'm not answering your question.
8 Perhaps I should wait for a question.

9 Q. That's okay. Have you had any conversations
10 recently with Dr. Baar about the issue of 100 percent
11 indexing?

12 A. Well, on our way out of the hearing yesterday,
13 he happened to -- we were together consulting with the
14 City of Marina, we were both hired to help the City of
15 Marina to figure out what to do about rent control, and
16 he told me yesterday that he's now been asked to advise
17 the City on the actual language for rent control
18 ordinance, and he said he is advising 100 percent
19 indexing.

20 Q. So you're both working for the City of Marina
21 right now?

22 A. Well, my part of the contract is complete. I
23 submitted my report more than a year ago, and Dr. Baar
24 is now hired because he's an attorney and he's the one
25 that can actually help them draft a rent control

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1 ordinance.

2 Q. You're both working for them as part of the
3 same process in developing a rent control ordinance?

4 A. We were both hired simultaneously in order to
5 have two, possibly, different opinions about what the
6 City of Marina should do about rent control.

7 Q. And Dr. Baar told you that he was recommending
8 they use 100 percent indexing?

9 A. Yes.

10 Q. Have you read his report of September 15, this
11 year?

12 A. You showed it to me an hour ago and I scanned
13 it very briefly, and it does appear to be true that he
14 is recommending 100 percent indexing, at least in a
15 qualified way.

16 Q. Did he make this statement, and I'll read the
17 sentence: "However, the basis for concluding that less
18 than 100 percent of CPI increases are adequate, are not
19 supported by universal consensus"?

20 A. Yes, I remember that.

21 Q. All right. And do you agree with that
22 statement?

23 A. I would have to agree with that statement.
24 It's kind of a backwards way of saying that not everyone
25 would agree, and it's true, not everyone would agree.

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1 Q. And at the end of the day he suggested that a
2 100 percent increase was more beneficial for the City?

3 MR. STANTON: Objection. Has he reviewed the
4 report? It's not clear that he has.

5 THE WITNESS: I kind of asked and answered it,
6 haven't I? I don't know that I should say I reviewed
7 the report, but I scanned it.

8 BY MR. BALLANTINE:

9 Q. In that report did he recommend 100 percent
10 indexing?

11 A. He did recommend 100 percent indexing, or he
12 had told me.

13 Q. We'll follow up with this more with the park
14 owners, but I think you were asked a little bit about
15 the dues and subscription numbers, and I think you said
16 yesterday that you went through and checked the general
17 ledger and essentially found out what all of the various
18 components were of that category, correct?

19 A. That's right.

20 Q. All right.

21 A. I found out insofar as I could tell, it's very
22 cryptic in the general ledger so Ken can explain those
23 items better than I can. I didn't know what the word
24 "Franchise" meant, for example.

25 Q. If that's a fee to the Franchise Tax Board,

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1 would that be something that's appropriately used as an
2 operating expense, considered as an operating expense
3 for an MNOI analysis?

4 A. It would be appropriate, as far as I know, but
5 one of the two, there were two identical for \$2,500, and
6 one of the two was labeled 2009. If it's true that that
7 was an amount that was allocatable to the earlier year,
8 then it should be deducted from the MNOI for 2010.

9 Q. If in fact they were billed the year that they
10 paid it, would it then be appropriately have been
11 expensed in the year they paid it?

12 A. I still think an adjustment should be made.

13 Q. All right. And you also said if there was a
14 late fee to the lender that was not interest, is that
15 something that is appropriately categorized as an
16 expense for MNOI analyses purposes?

17 A. Well, yes, because it's an operating expense.
18 Fee or no fee, late or not late, it's an operating
19 expense.

20 Q. All right.

21 A. If that's what it is, and I don't really know
22 that's what it is.

23 Q. We'll have testimony from Mr. Waterhouse about
24 that.

25 A. Right.

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1 Q. Now, if the one expense of \$2,000, or whatever
2 it was, was in the wrong year, how much of a difference
3 would that make on the MNOI analysis, if you took that
4 out?

5 A. A very small difference. I can't tell you,
6 but under a dollar. It would be pennies.

7 Q. Pennies.

8 A. We can actually do it in our heads. You would
9 divide \$2,500 by 12 and by 150. I guess I can't quite
10 do that in my head, but we can do it easily enough.

11 THE ARBITRATOR: Pennies.

12 THE WITNESS: Pennies.

13 BY MR. BALLANTINE:

14 Q. Pennies, that's fair enough. You were
15 starting to go into some discussion about the
16 amortization period, and I think you were starting to
17 say if it went up to 15 years you didn't think that that
18 would be inappropriate either?

19 A. Not inappropriate, right. In fact, 15 years
20 for streets or electric replacements it would probably
21 be more appropriate than seven.

22 Q. All right.

23 A. For the professional fee items, however, I
24 don't think 15 would be appropriate, some smaller
25 amount.

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1 Q. Would you recommend breaking them up or having
2 the same amount, the same numbers so that you have
3 consistency?

4 A. I did it for the ease of computation and used
5 a kind of average number of years. I don't think it
6 makes a big difference. I think the attorneys could
7 stipulate to how this might be handled.

8 Q. Fair enough. Dr. Baar said something to the
9 effect of there's little or no risk to mobile home park
10 owners, is one of his bases for not having 100 percent
11 indexing. Do you recall that testimony?

12 A. Yes.

13 Q. Do you have a response to that?

14 A. I do, actually. He's speaking about risk in
15 the narrow sense that there's not a high vacancy rate in
16 mobile home parks, often, and that's true enough, but
17 that's not the only component of risk.

18 Q. What else is there?

19 A. The manager could speak about financial risk
20 or other types of management risk, but I can speak
21 knowledgeably about what I would call regulatory risk,
22 and it's huge. There's an enormous regulatory risk
23 because proceedings like this go one way or the other
24 way and it makes a big difference to the profitability
25 of a park, and it's sometimes quite fickle. I don't

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1 mean to say this procedure will be, but many such
2 procedures in rent control contexts are quite fickle.

3 Q. You don't know going into it --

4 A. You don't know going in how it comes out. I
5 mean, a lot of this is dealing with the government, and
6 we know that the government has been exceedingly
7 difficult -- I've been told the government has been
8 difficult on these questions like the electric
9 infrastructure, the government has not made the park
10 owners' life easy, and that's part of the risk.

11 Q. And it's your opinion, as an economist, that
12 that creates risk?

13 A. It does.

14 Q. Did you hear Dr. Baar also say the other basis
15 for why the less than 100 percent indexing is okay in
16 this case is because the owner's equity increases?

17 A. Yes.

18 Q. Do you agree with that in this case?

19 A. No, because he's thinking about equity in the
20 sense that the park owner owns the land and the park
21 owner in this case doesn't own the land.

22 THE ARBITRATOR: The park lessor?

23 THE WITNESS: The park lessor. Thank you.

24 BY MR. BALLANTINE:

25 Q. I think we talked about this, but I want to

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1 make sure. With respect to the uncompensated increases,
2 Dr. Baar suggested that too much time had passed about
3 the increases. Have you ever heard a standard before?

4 A. No.

5 Q. Have you ever heard of a specific standard --
6 well, Dr. Baar also opined that there should be
7 essentially, a one-year standard, almost a one-year
8 statute of limitations.

9 A. I think I spoke to this before. I think it's
10 unworkable. It would require that park owners bring
11 rent increase notices often and immediately, and there's
12 no point in it. It makes much better sense for a park
13 owner to accumulate a number of different reasons for
14 rent increase, as has happened in this case -- again, I
15 said park owners, but in this case the park
16 management -- and not to do it every year. It's
17 burdensome on the residents, it's burdensome on the
18 City, it's burdensome on the park manager.

19 Q. Would you say that all parties concerned are
20 better off with fewer rather than more rent increase
21 notices and rent control proceedings?

22 A. Absolutely.

23 Q. There was question raised about, and the point
24 made that the \$90,000 figure under the capital expense
25 improvements were in fact initially incurred by the

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1 prior operator. Are you aware of anything in rent
2 control analyses that would prevent recovery for an
3 expense, assuming it's an expense legitimately incurred
4 for the benefit of the park, that would prevent recovery
5 in a proceeding by the subsequent operator?

6 A. No.

7 MR. BALLANTINE: Thank you, your Honor. I
8 have nothing further for Dr. St. John.

9 THE ARBITRATOR: Thank you.

10 Any further questions.

11 MR. STANTON: Nothing further.

12 THE ARBITRATOR: Can the witness be excused?

13 MR. BALLANTINE: Yes.

14 MR. STANTON: He can.

15 THE ARBITRATOR: Thank you, sir.

16 Do we have another witness?

17 MR. BALLANTINE: I do. Can I have a couple
18 minutes? I have two more, Mr. Garcia and
19 Mr. Waterhouse. I'm not sure the order I'll call them
20 but they will both be brief.

21 THE ARBITRATOR: Sure, I'll give you five to
22 save 10.

23 (A brief recess was taken.)

24 MR. BALLANTINE: We're going to call
25 Mr. Waterhouse.

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1 THE ARBITRATOR: Mr. Waterhouse, please take
2 the stand.

3
4 KEN WATERHOUSE,
5 having been sworn, was examined
6 and testified as follows:
7

8 THE ARBITRATOR: Would you state and spell
9 your name for the record.

10 THE WITNESS: Ken Waterhouse, K-e-n
11 W-a-t-e-r-h-o-u-s-e.

12 THE ARBITRATOR: Mr. Ballantine, you may
13 proceed with your witness.
14

15 DIRECT EXAMINATION

16 BY MR. BALLANTINE:

17 Q. Mr. Waterhouse, what's your relationship to
18 Nomad Village Mobile Home Park?

19 A. We purchased a land lease from the Bells, the
20 lessor.

21 Q. And who is "we"?

22 A. Myself and my partner, Ronald Ubaldi. That's
23 R-o-n-a-l-d U-b-a-l-d-i.

24 Q. And did you do so as members of Lazy Landing,
25 LLC?

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1 A. Yes, we did.

2 Q. And are you involved in Waterhouse Management
3 Corporation?

4 A. Yes, I am. I'm the owner of Waterhouse
5 Management Corporation.

6 Q. What's its relationship to the Nomad Village
7 Mobile Home Park?

8 A. We have the management team. We manage the
9 property for a fee.

10 Q. And do you have some experience in managing
11 mobile home parks?

12 A. Yes, I do.

13 Q. Tell us about it.

14 A. I've been managing mobile home parks since
15 approximately 1990. I've been dealing with mobile home
16 parks. I've worked for several companies, specifically
17 that dealt only with mobile home parks throughout the
18 nation and primarily in California.

19 Q. So you're pretty experienced managing mobile
20 home parks, then?

21 A. That's all I've done for the last 14 years,
22 only mobile home parks.

23 Q. Let me ask you about, we've seen some
24 financial statements from Waterhouse Management. Are
25 those financial statements kept in the normal course of

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1 business?

2 A. Yes.

3 Q. Do you have an office staff for Waterhouse
4 Management?

5 A. Yes.

6 Q. Does that include a chief financial officer?

7 A. Yes, I do.

8 Q. And would those financial statements, are your
9 books initially kept in-house at Waterhouse Management?

10 A. Yes.

11 Q. And do you also have an outside accountant?

12 A. Yes.

13 Q. Are the books reviewed by the accountant?

14 A. Yes.

15 Q. And are the books used as the basis for filing
16 tax returns?

17 A. Yes.

18 Q. Let me go right to the detail. There was some
19 talk earlier today about the dues and subscriptions
20 entry and Dr. St. John talked about a few of the items
21 in there. Do you recall that?

22 A. Yes, I do.

23 Q. Let me just ask you about a few of those
24 items. The franchise tax fees, what were those for?

25 A. Franchise tax fees are for the State of

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1 California as a tax that goes by our gross income of the
2 property for each specific property.

3 Q. Do you know why there was an entry in 2009 and
4 2010, both in the 2010 books?

5 A. Yes. They billed two years for the one time
6 because the legislation was running out of money so they
7 billed us for 2010 and then they billed us for -- that
8 made us estimate for the next year, and they made us pay
9 it in 2010.

10 Q. Oh, okay.

11 A. So they made an estimation, and so they kind
12 of double billed us in the same year because they needed
13 the money, so they made us give an estimate of what we
14 thought it would be, so that's why it's the same number,
15 \$2,500 and \$2,500.

16 Q. Oh, okay. And were those both bills you got
17 in 2010?

18 A. Yes.

19 Q. And then the late charges from Berkadia Bank,
20 did you hear about that, Dr. St. John mentioned that?

21 A. Yes.

22 Q. Tell us about that, what happened.

23 A. We received notice of a tax increase. I
24 called the County and told them that we wanted to appeal
25 it and we didn't believe this was true, is there

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1 something wrong because we have a 34-year ground lease.
2 And the person I spoke to at the time, the assessor's
3 office couldn't explain to me or give me a reason about
4 how it was assessed or what was going on. So I said we
5 weren't going to pay for it.

6 Then I called Berkadia and told them not to
7 pay it either. Unfortunately, what happened is Berkadia
8 paid it without our knowledge, somebody in another
9 department, and then came to us and said, "You need to
10 pay us now or you'll be in default of our loan," and I
11 said, "We told you not to pay it." And they go, "Well,
12 we don't care." And then on top of that, then they
13 said, "Well, you paid it, but now you owe us a late fee,
14 also," and we paid them back plus the late fee.

15 Q. Who is Berkadia, by the way?

16 A. That's the lender.

17 Q. On this property?

18 A. Yes.

19 Q. And the taxes, that was the property tax
20 increase that we've heard about?

21 A. Yes.

22 Q. And the bill that they told you to pay right
23 away that they sent you the bill for, approximately how
24 much was that?

25 A. It was over \$60,000.

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1 Q. All right. And did the park have the money to
2 pay it at the time that you got billed for it?

3 A. No, we did not.

4 Q. Is that why you weren't able to pay Berkadia
5 upon demand?

6 A. Yes.

7 Q. So that fee, then, was a late fee, it was not
8 for interest on the loan?

9 A. Correct.

10 Q. Now let's talk about the ground lease a little
11 bit. Were you involved in the negotiation of the ground
12 lease?

13 A. Yes, I was.

14 Q. And when did those negotiations take place?

15 A. Say, in July of 2008.

16 Q. Were they over relatively short period of time
17 in July of 2008 before the commencement of the lease?

18 A. Yes, approximately three to four weeks, it was
19 very short.

20 Q. Did you attempt to negotiate the rent amount?

21 A. Yes, we did.

22 Q. Tell us about that.

23 A. We first tried, actually, to purchase the
24 property, the property as a whole, and they said no.
25 And then they said, "We'll do a land lease." We said,

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1 "We will accept that, that's fine." Then we said,
2 "We'll accept 10 percent," same as it was, and they
3 said, "No, we want 20 percent." Then we came back at we
4 think 10 percent is fair, and they said no, and we said
5 15 percent and then ended up at 20 percent.

6 Q. Okay. Before entering into those lease
7 negotiations in July of 2008, did you have any
8 relationship to the Bell Family Trust or the Bell family
9 in any way?

10 A. No.

11 Q. Did you have any knowledge of them at all?

12 A. No.

13 Q. Did you have any connection whatsoever with
14 the landowner prior to entering into the lease
15 negotiations with them?

16 A. No.

17 Q. And has the lessee paid that 20 percent rent
18 ever since the lease started?

19 A. Yes.

20 Q. Are you familiar with operating mobile home
21 parks in rent-controlled jurisdictions?

22 A. Yes, too well.

23 Q. And have you had experiences where you've
24 operated a park as a ground lease?

25 A. Yes.

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1 Q. Can you tell us, based on your knowledge in
2 the industry, what types of rents are typical rents we
3 see for mobile home parks operating on long-term ground
4 leases?

5 A. Anywhere again between 10 percent and 20
6 percent.

7 Q. Have you had occasion in the past to pass
8 through increased ground lease costs in rent-controlled
9 jurisdictions?

10 A. Yes.

11 Q. Where was that?

12 A. It was in the City of Alviso, but it was City
13 of San Jose jurisdiction. It was in 2001. We had a
14 fair rate of return process, much like this one, and in
15 that ordinance it was not specifically stated that you
16 could pass through the ground lease, and they allowed it
17 as an operating expense. Mr. Stanton, actually, was the
18 attorney at the time for the residents during that time,
19 we worked with him on that case.

20 Q. Mr. Stanton was?

21 A. Yes, Mr. Bruce Stanton before us.

22 Q. All right. Did you hear Dr. Baar testify
23 regarding his justification for 100 percent, the 100
24 percent -- or factoring a CPI index of less than 100
25 percent?

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1 A. Yes.

2 Q. And one of his rationales was building equity.
3 In this particular case, are you building any equity in
4 this property?

5 A. No.

6 Q. Is it a depleting asset?

7 A. It's a diminishing asset. It's a land lease;
8 at the end of 34 years we have nothing.

9 Q. He also said there's no risk. What's your
10 reaction to that?

11 A. There's lots of risk.

12 Q. Tell us about that.

13 A. There's risk in financial. For example, when
14 you go to refinance a park and if you are on
15 fractional -- 75 percent, 50 percent CPI -- and CPI is
16 low, you're not getting rent increases, and by the time
17 you go to refinance a park you're so upside down on the
18 park that if you don't have several million dollars of
19 your own money, capital, to put in, you can't refinance
20 a park and it will be foreclosed on. That's one.

21 Two, there are vacancies, vacancy issues,
22 vacancies if rents go up too high. No matter what
23 people think, they say we have a captive audience, but
24 if rents go too high, I can have all the homes in the
25 world sitting on a mobile home park and if I can't sell

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1 the homes because the rents are too high and people
2 can't afford it, I can't pay a mortgage. Again, it
3 would be taken away from me.

4 Q. And how about casualty losses, is that a risk?

5 A. Pardon?

6 Q. Casualty losses like from damage to the park.

7 A. Yes, fire. We had a fire in San Diego where
8 we lost half our park.

9 Q. And what happened there?

10 A. We ended up going into a two-year battle
11 against the City of San Diego in which we won the
12 lawsuit against them. They thought they had
13 jurisdiction over HCD on codes and they wanted us to
14 upgrade the park to their codes, which would have been
15 several million dollars, and we felt we just had to
16 replace it. It was a freak fire that destroyed 60 of
17 120 places, but it devastated the mobile home park and
18 the financial resources in the park where it actually
19 went back to the lender and we ended up buying it back
20 from the new lender. We purchased the note for \$600,000
21 and we had to pay 1.6 million dollars to buy it back so
22 as it wouldn't affect our credit in the future, so it
23 was a big risk.

24 Q. Let's talk about the property taxes. You
25 talked about getting the property tax increase bill.

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1 Was that a surprise?

2 A. Very much so.

3 Q. When you went into the ground lease, was it
4 your belief that the transaction was not going to be
5 subject to a property tax increase?

6 A. Yes. The original offer was 50 years, a land
7 lease of 50 years, and I specifically asked for 34 years
8 because I did not want to have a tax increase.

9 Q. After you got the indication from the County
10 that they were going to increase the property taxes,
11 what did you do?

12 A. I called the County, spoke with them about it.
13 Then I called my CPA and spoke with him about
14 it and asked if they could do what they said they could
15 do, and what they said was that when the long-term lease
16 ended between the lessee and lessor, then they would
17 basically do a reassessment of the taxes, and I didn't
18 have a chance, basically, to an appeal process. He
19 didn't think -- the gentleman's name was Jason Cardinet,
20 C-a-r-d-i-n-e-t, our CPA who researched it, and he said
21 we really didn't have a chance.

22 And then I spoke with you in regards to this
23 and you thought we might have a chance.

24 Q. Let's not talk about our communications. We
25 don't want to waive any privileges.

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1 Let me ask you this way. Would it be fair to
2 say initially you looked into it and you came to the
3 conclusion that you were probably stuck with the
4 property tax increase?

5 A. Yes.

6 Q. And when you looked into it further, had it
7 looked into further, did you come to the conclusion that
8 there may be actually some basis for possibly
9 challenging it?

10 A. Yes.

11 Q. And since the time that the property taxes
12 were assessed, has Waterhouse Management, directly or
13 indirectly through your lender, have you paid all of the
14 increased property taxes since they have accrued as of
15 August 1st, 2008?

16 A. Yes, all taxes and supplemental taxes have
17 been paid.

18 Q. Okay. And have you contemplated filing an
19 appeal of the taxes?

20 A. Yes.

21 Q. Is that something you're looking to the
22 residents -- well, is that something that would benefit
23 the residents?

24 A. Yes.

25 Q. And is it something you've asked the residents

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1 to participate in the payment of?

2 A. Yes.

3 Q. Did you have a meet-and-confer session with
4 the homeowners pursuant to the terms of the ordinance?

5 A. Yes.

6 Q. And let me ask you about that a little bit.
7 Did you also have a meeting with all of the homeowners
8 to explain the rent increase?

9 A. Yes.

10 Q. Tell us about that meeting with the homeowners
11 a little bit. Did you talk to them about the basis of
12 the rent increase?

13 A. Yes, we did.

14 Q. Describe those proceedings a little bit.

15 A. We tried to go over everything and give them
16 all the information they needed in regards to what we
17 were doing. We talked about the taxes, we talked about
18 the appeal, did they want to participate in the appeal
19 process with us, for the financial part of it, by them,
20 you know, by them paying for it. We talked about
21 capital improvements, we talked about the Santa Barbara
22 Rent Control Ordinance and how we had to follow it.

23 Q. Did you tell the residents during the meet and
24 confer that if the property tax appeal was successful
25 that you would decrease the rents by anything, any

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1 amounts that the taxes were saved?

2 A. Yes, we did.

3 Q. Did you tell them that in the event -- well,
4 let me ask you about the numbers now. Please flip to
5 Exhibit C in the notebook. Do you see that?

6 A. Yes.

7 Q. Let me ask you about it. Dr. St. John has
8 gone through the preparation of this document and the
9 numbers at some length. I'm not going to go through it
10 again, but I just want to direct your attention to a few
11 of the numbers and then ask you about some of the
12 details relating to some of the numbers.

13 We've been talking about the property tax
14 appeal. Item No. 5 references anticipated professional
15 fees relating to property taxes. Do you see that?

16 A. Yes.

17 Q. Was that a figure that you were quoted as to
18 what Waterhouse Management was likely to be charged for
19 that appeal?

20 A. Yes.

21 Q. Based on your experience as an experienced
22 operator, did that appear to be a legitimate number?

23 A. Yes, very legitimate number.

24 Q. And on that one, during the meet-and-confer
25 process did you tell the homeowners that in the event

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1 that it didn't cost Waterhouse Management that much that
2 they would receive a rent credit for anything not
3 charged or paid?

4 A. Yes.

5 Q. And let's go to item No. 6, also. We've heard
6 a lot about that. It's the anticipated professional
7 fees relating to the rent increase, but I'll ask a
8 similar question: Was that the amount of money you were
9 told it was likely to cost to go through full rent
10 control proceedings?

11 A. Yes.

12 Q. And again, in your experience as an
13 experienced operator, did that appear to be a legitimate
14 number?

15 A. Yes.

16 Q. Did you have a conversation with the residents
17 about whether or not they would get a credit if you
18 didn't spend that kind of money?

19 A. Yes.

20 Q. What did you tell them?

21 A. We told them again we'd give them a credit if
22 we did not spend those amounts.

23 Q. What was their response to any of that?

24 A. They didn't want anything to do with it.

25 Q. Let me draw your attention, under 3, to

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1 capital improvements, A&E, the \$9,000. I think we've
2 established that that was -- we have another spreadsheet
3 that itemizes it, but that was essentially money paid by
4 the prior operator for engineering and so forth?

5 A. Yes.

6 Q. Did you make an agreement with the prior
7 operator regarding their plans and permits that they had
8 obtained?

9 A. Yes, I did.

10 Q. Tell us about that.

11 A. I told them I would pay for all of his plans
12 and the expenses that he had, to get all of his plans,
13 engineering plans for ourselves.

14 Q. Now, were you provided by the prior operator
15 with all the plans?

16 A. Yes.

17 Q. And tell us about that, what did they
18 constitute?

19 A. Numerous plans, numerous CAD drawings,
20 numerous reports that were going over the system of the
21 park itself -- water, sewer, gas, electric -- and went
22 as far as replacing everything all the way down to
23 replacing the electric.

24 Q. Did that include a complete diagram of the
25 entire park?

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1 A. Yes, like a CAD drawing, complete diagram of
2 the park.

3 Q. And were those plans that you purchased, were
4 those valuable to you as the current operator?

5 A. Yes, they were.

6 Q. And then the \$50,000 in professional fees,
7 essentially to my office, was that a bill incurred by
8 your office and paid?

9 A. Yes.

10 Q. And again, as an experienced mobile home park
11 operator, did you review that bill?

12 A. Yes.

13 Q. And did that appear to be legitimate to you?

14 A. Very legitimate.

15 Q. And moving down, let's talk about the
16 infrastructure, the \$320,000. Does that track the money
17 that you paid to the escrow account with Berkadia?

18 A. Yes.

19 Q. And look at Exhibit K.

20 A. Yes.

21 Q. Do you recognize that Berkadia statement?

22 A. Yes, I do.

23 Q. And tell us, what is that?

24 A. Each month is our mortgage payment. It's a
25 bill that we get each month that breaks down the

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1 principal, the interest, property insurance, reserves,
2 and then it shows the interest paid year-to-date, shows
3 the tax escrow balance, reserve balance, and any late
4 charges, when things are due and a breakdown of the
5 principal and interest.

6 Q. Do you see towards the top where it says
7 "Reserve balance" and there's kind of an asterisk next
8 to the number?

9 A. Yes.

10 Q. \$327,000 and change?

11 A. Yes.

12 Q. Is that money that you paid into a fund at the
13 request of Berkadia?

14 A. Yes, it is.

15 Q. Are you obligated to -- "you" meaning,
16 perhaps, through your entities -- but are you obligated
17 to pay that money?

18 A. Yes, we are, every penny.

19 Q. How has that been designated as an escrow
20 account?

21 A. As capital improvements or replacements.

22 Q. For Nomad Village?

23 A. For Nomad Village, yes.

24 Q. And this loan is specifically on Nomad
25 Village, correct?

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1 A. Yes, it is.

2 Q. Now, Exhibit C proposes an amortization period
3 of seven years. Do you recall that?

4 A. Yes.

5 Q. We can turn to it, but --

6 A. Yes.

7 Q. Did you think at the time that was a
8 reasonable period?

9 A. I did, yes.

10 Q. If that number were to be changed, do you have
11 any objection to that number being changed?

12 A. No.

13 Q. Tell us about that.

14 A. Seven years saves the interest to the
15 residents, 15 years increases the interest that they
16 pay. I thought with seven they'd be paying less over
17 time versus 15 years, so we thought seven was an
18 appropriate number to use.

19 Q. If you use 15 years, do you have any objection
20 at all?

21 A. No, I don't.

22 Q. All right.

23 MR. BALLANTINE: Thank you, Mr. Waterhouse, I
24 have nothing further.

25 THE ARBITRATOR: Cross-examination?

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1 MR. STANTON: Thank you. I will be brief.

2

3

CROSS-EXAMINATION

4

BY MR. STANTON:

5

Q. Hi, Mr. Waterhouse.

6

A. Hello, Mr. Stanton.

7

Q. Now, I want to first ask you about that Alviso
8 case that you mentioned. I do recall that we had a case
9 together back in the early part of that decade. Is that
10 the Summerset case?

11

A. Yes, it is.

12

Q. You're saying that your recollection is that
13 in that case the matter went to hearing and at the
14 hearing the hearing officer allowed as an operating
15 expense the ground lease payments?

16

A. I don't remember necessarily if it went to
17 hearing or we negotiated it with the hearing officer.
18 Each jurisdiction is a little different than, for
19 example, I think this one versus Santa Cruz. I know we
20 don't want to go into every jurisdiction, but -- I don't
21 recall -- that the ground lease was included as an
22 operating expense.

23

Q. Let me ask it this way. Is your recollection
24 that in your application or your petition you included
25 that as an expense, is that your recollection?

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1 A. Yes.

2 Q. But isn't it true that we resolved that matter
3 short of hearing, and no award was ever made on the
4 issue?

5 A. We received a rent increase.

6 Q. Isn't it true that the rent increase that you
7 got was the result of a negotiated resolution and that
8 it didn't go to a hearing where the hearing officer made
9 an award?

10 A. Correct.

11 Q. All right. So what you were saying is you
12 included that as an expense item on what you submitted
13 in support of your increase?

14 A. Correct. And at that time you had no problems
15 with it, you never brought it up to us at that point, it
16 wasn't an issue to you. That's what strikes me so
17 differently today. I mean, after that many years you
18 change your mind?

19 Q. But we never had a hearing, correct?

20 A. We met with the hearing officer and the
21 hearing officer -- it was not like this. We sat down at
22 a table and we hashed it out, talked over everything.
23 It wasn't as formal as this, it was a much more informal
24 basis than this jurisdiction is.

25 Q. Well, there are formal hearings in San Jose, I

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1 can tell you, because I've been part of many of them,
2 but my recollection is we didn't go to a full hearing
3 like this because we were engaging in a resolution of
4 the issues. Is that --

5 A. Correct.

6 Q. All right. Let me go back to this ownership
7 issue. Who owns Nomad Village Mobile Home Park?

8 MR. BALLANTINE: Objection. Vague and
9 ambiguous. You mean the land?

10 MR. STANTON: I'm not specifying. I'm reading
11 a definition in the ordinance that says management is
12 the owner of a mobile home park or an agent authorized
13 to act on his behalf. So the ordinance uses the word
14 "owner," and I'm simple asking, do you have an
15 understanding.

16 Q. Do you consider yourself to be the management
17 of Nomad Village Mobile Home Park?

18 A. Waterhouse Management is the management. I
19 would say we are the agent. We are the lessee for the
20 ground lease.

21 MR. BALLANTINE: Just so there's no question,
22 we'll stipulate that Waterhouse Management and Lazy
23 Landing, my clients appearing in this proceeding, we are
24 the owner as defined by the ordinance and we are subject
25 to the provision of the ordinance as to, quote, "owner,"

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1 as that term is defined.

2 MR. STANTON: Thank you.

3 Q. Is there a current permit to operate filed
4 with the State of California for the park?

5 A. Yes.

6 Q. Who's the owner listed on the permit to
7 operate, do you know?

8 A. No, I do not.

9 Q. Would it surprise you if Nomad Village, Inc.,
10 was still being shown as the owner under the permit to
11 operate?

12 A. Knowing the budget deficit that HCD has and
13 the major lag, I would assume they may have not changed
14 it. It's a possibility. They're way under budget and
15 understaffed, and they may not have made that change
16 yet.

17 Q. When you acquired the lease rights in 2008, do
18 you recall if a new permit to operate was filed with the
19 Department of Housing?

20 A. Yes.

21 Q. And that new permit to operate listed who as
22 the owner, do you remember?

23 A. Lazy Wheel MHP, LLC.

24 MR. BALLANTINE: Do you mean Lazy Landing?

25 THE WITNESS: I'm sorry, Lazy Landing. I'm

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1 sorry, we have a Lazy Wheel, also.

2 BY MR. STANTON:

3 Q. All right. As I understand on the dues and
4 subscriptions questions that you've answered,
5 Mr. Waterhouse, is it fair to say that the reason there
6 were two \$2,500, approximate, payments made to the
7 Franchise Tax Board in 2010, is because they were asking
8 you to prepay for 2011, is that pretty much why you had
9 to pay the second payment?

10 A. Yes.

11 Q. But they only charged you one for 2010, the
12 second one was a pre-payment for 2011?

13 A. Correct.

14 Q. All right. Now, this late charge for Berkadia
15 Bank, are you essentially saying by your testimony that
16 this was an unavoidable late charge?

17 A. Absolutely.

18 Q. And if that was your position, did you
19 communicate it to Berkadia at that time?

20 A. Yes, we did.

21 Q. Ask them, "Why are you charging us this?"

22 A. Yes, we did.

23 Q. And did you make any attempt to get it waived?

24 A. Yes.

25 Q. And what kind of response did you get?

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1 A. We contacted the lender, Damon Reid, who was
2 working with Berkadia, who was the lender on this loan
3 itself, and he went to the servicing group in Berkadia
4 on our request and they denied it.

5 Q. Okay. Did you make any kind of formal
6 petition or request to them or was it more verbal?

7 A. It was all verbal.

8 Q. I'm not sure that I heard you say this, and I
9 apologize if you did and I just didn't hear it, but can
10 you tell us when you actually received notice from the
11 County that they were reassessing based upon the new
12 lease?

13 A. I cannot give you the date. It was
14 approximately, I think -- I'd be guessing, but I would
15 think probably a year later, nine months later. It was
16 quite a while afterwards. I just remember coming to the
17 office and my CFO, Sharon Jennings, telling me that we
18 got this increase.

19 Q. When you say months later, later than what?

20 A. Than when we purchased the property.

21 Q. What date would that be?

22 A. Approximately August 1st, 2008.

23 Q. Or the commencement date of the new rental
24 agreement?

25 A. Correct.

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1 Q. So you believe you might have heard about
2 eight or nine months after August of 2008?

3 A. It would be. It could have been less or could
4 have been longer.

5 Q. Now, to your knowledge, has the park operator,
6 if I can call your entity that, filed any formal
7 documentation with the county assessor regarding this?

8 A. No, only verbal communication.

9 Q. All right. Have you had any discussion with
10 the landowner, Bell Trust, about this issue?

11 A. Yes.

12 Q. And what kind of discussions were those?

13 A. We just asked if they would cooperate because
14 we couldn't appeal because we were not technically
15 owners of the land itself and would they participate
16 with us, and they said yes.

17 Q. And have they given you that assurance in
18 writing or has that also been just verbal?

19 A. Verbal, through their attorney, Mr. Van Dolan.

20 Q. All right. So is it your understanding they
21 are just sort of waiting for you -- and when I say
22 "you," the park operator -- to make the call as to
23 whether the appeal would go forward, and that once you
24 tell them you want to proceed, that they will cooperate?

25 A. Yes. Yes, we are having our attorney go

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1 through everything and strategize to figure when we
2 could do this and how and put all the information
3 together with our CPA.

4 Q. Do you have an understanding as to whether or
5 not the land owner's attorney is also going to have to
6 be engaged and present during this appeal process?

7 A. My understanding is because we are not the
8 owners they would have to have legal representation
9 there if they wanted it.

10 Q. Is any part of the \$50,000 estimate in item 5
11 on the Exhibit C spreadsheet, do you know, allocated to
12 the cost for their attorney, i.e., the landowner's
13 attorney in this process?

14 A. No.

15 Q. That would all be just the cost for your own
16 counsel, is that what you understand?

17 A. Yes.

18 Q. Okay. Do you have any understanding as to
19 what the period of time is within which you might need
20 to bring this appeal?

21 A. No.

22 Q. You haven't undertaken any independent
23 investigation of that yourself?

24 A. No, we just continue been continually working
25 on it.

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1 Q. When you say working on it, what does that
2 involve?

3 A. That involves our attorney, Mr. Ballantine,
4 working with the County, talking with them still, and
5 our CPA looking at case law and reviewing additional
6 case law for us.

7 Q. You said that when you had a meet and confer
8 with the residents you raised this issue but they did
9 not want to participate?

10 A. Didn't want to participate when we talked
11 about the cost part of it.

12 Q. The cost part.

13 A. Right, about reimbursing us for the costs. We
14 told them if we can get the rent increase, then we would
15 want to be reimbursed for the cost, and they said no.

16 Q. You had some meetings just with the resident
17 representatives, correct?

18 A. We had both meetings, correct.

19 Q. Okay. And how many people were there
20 representing the residents at those meetings, do you
21 recall?

22 A. I think there were four.

23 Q. Is there anybody in the room here that was in
24 that meeting, do you recognize?

25 A. I do not.

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1 Q. Did the residents ever tell you, the resident
2 representatives ever tell you in those meetings that
3 they did not want the park to pursue the appeal?

4 A. They did not tell us that, no.

5 Q. Did the resident representatives ever offer to
6 assist the park in any way, non-financial, perhaps?

7 A. I do not recall if they did that or not.

8 Q. Did they ever ask whether or not they could
9 participate in the process and be involved in the
10 process in any way?

11 A. Not to my recollection, but there were several
12 other meetings held that Mr. Garcia was at and maybe he
13 can answer those questions better than I can, if there
14 are any additional comments.

15 Q. Did the residents say specifically, the
16 resident representatives say specifically why they
17 didn't want to be involved financially?

18 A. They didn't believe in the rent increase
19 itself. They didn't believe in -- they thought it was a
20 burden for them and that they didn't want to
21 participate.

22 Q. Did they express any concern about not having
23 any control over the cost of the project?

24 A. No.

25 Q. Did they express any concern about not being

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1 able to see any billings or invoices or statements
2 related to the cost of the appeal?

3 A. Not that I recall, not at all. But again,
4 there were several meetings that Mr. Garcia was at where
5 that may have come up, but the meetings I had, no.

6 Q. You have indicated that in two different
7 areas, first in connection with item 5 and, secondly, in
8 connection with item 6, you told the residents that they
9 would get some sort of a refund or rebate or credit if
10 all the fees were not used for those professional
11 expenditures that have been itemized, correct?

12 A. Yes.

13 Q. And you said that verbally to them, correct?

14 A. Yes.

15 Q. Has it ever been memorialized in writing any
16 place?

17 A. Not that I recall.

18 Q. With respect to the \$90,000 under the capital
19 improvement item No. 3, that has been designated as A&E
20 fees, a portion of that is the Penfield & Smith
21 engineering cost, correct?

22 A. Yes.

23 Q. And just to make sure I understood your
24 testimony, the engineering work that they did, what
25 percentage of that is related to the replacement of the

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1 utility systems, the sub-metered gas and electric trims?

2 A. There are different plans. Originally he was
3 looking at doing the entire infrastructure because it
4 sometimes makes sense to open the ground and basically
5 do one ditch and you can build the levels up, called
6 stair-down or step-up, some people call it, where you
7 can put the gas, the electric, water and sewer,
8 basically in one hole, and so it's less expensive and
9 it's a better way to do it, so he had looked at doing
10 everything at one time.

11 Q. Well, is any part of the engineering cost to
12 Penfield & Smith not related to the utility replacement
13 project?

14 A. You say utilities. It would be gas, electric,
15 water, sewer?

16 Q. That's a bad way to phrase it. I guess what
17 I'm trying to ask you is -- let me ask it this way.

18 Is the work that they did related to those
19 four utility categories that you just mentioned to me,
20 sewer, water, gas and electric?

21 A. Yes.

22 Q. And out of those four, can you estimate how
23 much of the fees relate just to the gas and electric?

24 A. I could not.

25 Q. Is there any way you can just ball park a

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1 percentage for us?

2 A. I don't guess.

3 Q. All right. Do you have any understanding as
4 to whether or not you are able to charge residents in
5 any fashion as an expense for sub-metered gas or
6 electric replacement of the system?

7 A. I've been told by David Spangenberg, an
8 attorney --

9 MR. BALLANTINE: Wait a minute. I'll caution
10 the witness that's attorney-client privilege.

11 MR. STANTON: That wasn't the question I
12 asked.

13 MR. BALLANTINE: Well, it was in a way because
14 you said did he have an understanding of what, legally,
15 he could do.

16 MR. STANTON: But I specifically asked him if
17 he had an understanding, I didn't ask him where he got
18 it from.

19 THE ARBITRATOR: Let's rephrase and do it
20 again.

21 BY MR. STANTON:

22 Q. I'm just asking, do you have --

23 I'm trying to avoid that very carefully.

24 MR. BALLANTINE: No, I understand, and I'm not
25 criticizing you, but I think if you're asking somebody

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1 for their legal understanding or their understanding of
2 what they can legally do, that almost necessarily
3 implicates an attorney-client privilege.

4 MR. STANTON: Not at all. The first question
5 is do you have an understanding.

6 THE ARBITRATOR: Let's rephrase it.

7 What's your understanding?

8 BY MR. STANTON:

9 Q. Do you have an understanding "yes" or "no"?

10 A. Yes.

11 Q. And so you have an understanding that you can
12 pass through, or you could charge as an expense those
13 items for replacements of the system, correct?

14 A. Yes, based on current law that's in place now.

15 Q. And my question is, outside of anything an
16 attorney has ever told you, have you independently
17 researched the issue to gain the understanding that you
18 have?

19 A. No.

20 Q. Okay, so that answers my question.

21 MR. BALLANTINE: Fair enough.

22 MR. STANTON: Just want to make sure he's not
23 some sort of industry expert in sub-metering.

24 Q. Can you tell us, Mr. Waterhouse, what the
25 \$320,000 infrastructure amount that is shown on Exhibit

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1 C is going to be used for?

2 A. It can be used for any capital improvement
3 within the park, meaning water, gas, electric, sewer, a
4 roof, roads.

5 Q. Well, you've said it can be. My question to
6 you is this: Do you know yet what it's going to be used
7 for?

8 A. Not all of this, no.

9 Q. Not all of it. Do you know what any of it is
10 going to be used for?

11 A. We know we have \$400,000 in roads and then we
12 are still dealing with the County in regards to the
13 upgrade of the electrical system. We have been dealing
14 with them since early on trying to get a concrete answer
15 from them and they have swayed back and forth several
16 times on what they want us to do. We have looked at the
17 sewer, we've looked at the water, and we looked at what
18 would be -- what -- we'd have to find out what we'd have
19 to do from the City first, or the County first and then
20 go back in from there, but right now we know the roads
21 are \$400,000, and we don't want to do the roads right
22 now because if we have to do the -- obviously, any
23 infrastructure under the roads, it would defeat the
24 purpose of putting in brand-new roads and then cutting
25 them up and trenching down the middle of them to put

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1 infrastructure in. But there's \$400,000 right there.
2 And \$320,000, if we spent that, that's \$720,000.

3 Q. I'm trying to understand this. You don't want
4 to do the roads now for the probably logical reason you
5 just mentioned, correct? So that what you're saying is,
6 I guess, that the \$320,000 would be used for other items
7 before the roads would be done?

8 A. It could be used for any items that are
9 capital improvements, it just has to be used for capital
10 improvement issues. That's part of the loan
11 documentation and agreement we have with Berkadia.

12 Q. The estimate that you received for the
13 replacement of the electrical system, is that the
14 estimate that we have here in this binder?

15 A. I'd have to see which one we have.

16 MR. BALLANTINE: You mean the exhibit binder,
17 I take it? It would be the binder you have there.

18 MR. STANTON: I'm looking for the estimate to
19 replace the utilities, gas and electrical system.

20 MR. BALLANTINE: Yeah, it's M. M is all the
21 estimates.

22 MR. STANTON: Okay.

23 MR. BALLANTINE: What are you specifically
24 looking for?

25 MR. STANTON: Let me just look at it.

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1 Q. If you can look at the tab in the binder in
2 front of you there, Mr. Waterhouse, tab M, about, I
3 think it is, the fifth sheet back is what appears to be
4 an estimate from Taft Electric Company?

5 A. Yes.

6 Q. It's dated March 2, 2011. I'm going to just
7 round it up to \$271,000. Do you see that?

8 A. Yes.

9 Q. Does that represent an estimate of what you've
10 been given to actually do a replacement of one of the
11 park utility systems?

12 A. It would be based on the scope of the work
13 here and what they have.

14 Q. In other words, is this -- I guess let me ask
15 you this.

16 Is this an invoice generated in connection
17 with repairs or maintenance to a system or in connection
18 with replacement of a system?

19 A. It would be replacement of a system.

20 Q. Would this just be for the electrical system,
21 do you know, or would this be for both electric and gas?

22 A. My understanding it would be electric only.

23 Q. And the very next page, sheet, from Imperial
24 Electric Company dated March 11, 2011, in the amount of,
25 rounding down, \$230,000, is this a similar bid, if you

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1 will, for the same work?

2 A. This one is for new pedestals and replacing
3 existing transformers.

4 Q. So would this be, in your opinion, categorized
5 as repair and maintenance or replacement?

6 A. Replacement.

7 Q. So both the invoices would be replacement?

8 A. That's my understanding they both would be,
9 yes.

10 Q. So as you sit here, are you of the opinion
11 that if the \$320,000 in this escrow account was approved
12 as part of this rent increase, if you will, that the
13 electrical replacement work would be part of that
14 \$320,000 to that you had that you would perform?

15 A. It could be part of the \$320,000 or the roads
16 could be part of that \$320,000.

17 Q. Which would be done first, the electrical or
18 the roads?

19 A. The electrical could be done first, but we
20 could pay that first ourselves, if we had to, and then
21 use the excess funds to do the roads. We would request
22 that from Berkadia, also.

23 Q. Would the roads be done within six months of
24 the award?

25 A. Yes. We are bound by the Santa Barbara rent

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1 control ordinance, upon approval, to begin and complete
2 within six months.

3 Q. So even if the electrical had to be done
4 first, you're confident that that could be completed and
5 the roads done within the same six-month period?

6 A. Yes.

7 Q. But you haven't made a final decision, I
8 guess. If I can ask this last, sort of wrap-up question
9 to this, it sounds like you really haven't made a final
10 decision as to how those dollars would be spent.

11 A. We know the dollars will be spent.
12 Specifically, we know we need new roads and we are going
13 to do new roads. We are waiting again for the County.
14 The County, for example, has -- it's very political.
15 The County had given a certificate of occupancy for the
16 last 15 years, they have been basically under ACD but
17 they have been under their own jurisdiction, and at the
18 same time they're saying it wasn't under capacity but
19 they're the ones who signed off on all the permits, so
20 we're going back and forth with them and so we don't
21 know exactly where it's going to end up at this point in
22 time, what work we're actually going to perform.

23 Q. Okay. The A&E fees that are listed in item 3
24 with the \$90,000 amount, in addition to the Penfield &
25 Smith invoices, these also include payments made to the

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1 County of Santa Barbara, specifically to the Planning &
2 Development department. Do you recall those?

3 A. I do.

4 Q. And I think you provided those in this binder,
5 in one of sections we haven't really looked at these
6 specifically, and I should probably find them. I think
7 it's tab L, the detail of the \$90,000.

8 MR. BALLANTINE: Yes, tab L. There's actually
9 a summary sheet on the first page that breaks it down
10 from the prior operator.

11 MR. STANTON: Right.

12 Q. If we go back in tab L past the Penfield &
13 Smith invoices, I believe we come to a six-page section
14 that has Department of Planning & Development letterhead
15 and County seals, permit pages. Do you see those,
16 Mr. Waterhouse? I'm not sure how many pages in but
17 probably a good 20 pages in or more.

18 A. Yes, I see some of them here.

19 Q. I guess my question is: Were those paid in
20 connection with electric repairs or maintenance that was
21 done at the park?

22 MR. BALLANTINE: Can I hear the question
23 again?

24 BY MR. STANTON:

25 Q. Were these payments that were made to the

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1 Planning & Development Department for these permits made
2 in connection with any electrical repairs or maintenance
3 done at the park?

4 MR. BALLANTINE: It's compound. The documents
5 say what they are for.

6 MR. STANTON: They really don't.

7 THE WITNESS: They do, they do on top. One
8 will say the contact will be R. J. Carroll Plumbing,
9 that was one. The next one is from Donovan Electric for
10 a plan review, permit for service, the next one for
11 sewer extension, another one is for Transportation
12 Department, Public Works for water --

13 THE ARBITRATOR: Sustained. Objection is
14 sustained. Next question.

15 MR. STANTON: Okay --

16 THE ARBITRATOR: There was an objection and I
17 just ruled on it.

18 MR. STANTON: You sustained his objection?

19 THE ARBITRATOR: Yes.

20 MR. STANTON: Okay. What is the ground, I'm
21 sorry?

22 THE ARBITRATOR: It speaks for itself, the
23 document speaks for itself.

24 MR. STANTON: Okay.

25 THE ARBITRATOR: I took it as an objection.

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1 MR. STANTON: So I can't ask him if he knows
2 what the payments were generated for?

3 MR. BALLANTINE: I don't understand your use
4 of the term "payment." There are documents here.

5 MR. STANTON: There were payments made to the
6 Department of Planning & Development. On the summary
7 sheet it indicates that we have payments made, \$3,125,
8 \$1,700, \$320, and that appears to be for the road.

9 There are a number of payments -- that's at
10 the bottom. There are a number of payments above, as
11 well, to County planning and development. I'm just
12 trying to find out -- I'll withdraw the question if the
13 documents speak for themselves, but I'd like to, at
14 least, independently ask him if any of these payments
15 made to the County as part of the \$90,000 bracket, if
16 you will, relate to repair or maintenance of electric
17 systems. We have had the expert testify those shouldn't
18 be included.

19 THE ARBITRATOR: Go ahead, you can ask that
20 question.

21 BY MR. STANTON:

22 Q. Did you understand that question,
23 Mr. Waterhouse?

24 A. Yes, I did.

25 Q. If you can answer that.

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1 A. By looking at the documents, it is my opinion
2 that they are -- I see one for electrical, the other for
3 plumbing. The one under electrical was \$1,700, and that
4 was for a plan review, and the plan review would be for
5 replacement of the system, not repair and maintenance.

6 Q. Thank you. And that's why I'm asking you the
7 question. I'm trying to delineate between those.

8 Are there any others that were for payment
9 related to electrical that would be related to the
10 replacement of the system as opposed to repair or
11 maintenance?

12 A. No. You said, \$3,100, on the first page,
13 County of Santa Barbara, all the way to mechanical
14 engineering consultants, and this between those are
15 several pages -- again, there's only one for electrical
16 and that's Donovan Electric, and that's basically it
17 says "Additional electric plan and inspection of work,
18 nonspecific electric."

19 Q. Okay. Going to the mechanical engineering
20 invoices, and actually, let me make sure of it. Looking
21 at the same thing here, mechanical engineering
22 consultants, there are a number of invoices indicating
23 the work done for the park by mechanical engineering
24 consultants, correct?

25 A. Correct.

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1 Q. Now, is this work that was done in connection
2 with either the gas or electric systems?

3 A. I see one that talks about gas, the second one
4 talks about gas and water.

5 Q. To try to speed this through, it appears that
6 a number of them talk about gas. My question is, is
7 this in connection with replacement of the gas system or
8 a repair or maintenance of the gas system?

9 A. My understanding, it was replacement of the
10 system, trying to get the plans done and approved by the
11 County. Because they speak -- for example, they speak
12 of, on the first one they talk of, the last sentence,
13 ". . . Fisher wants to see wet sig." If you're talking
14 about a wet sig, you're talking about plans, meaning a
15 wet signature from an engineer. So obviously, an
16 engineer puts a wet sig on plans, proposed plans that
17 are submitted to the County, they put a wet sig on
18 repair/maintenance.

19 Q. So as part of the infrastructure work that
20 you're contemplating, you're also contemplating a
21 replacement of the gas system, is that correct?

22 A. Yes, we are.

23 Q. Is that going to be separate and apart from
24 the invoices we've looked at or the proposals that we
25 have looked at -- excuse me, the proposals that we've

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1 looked at from the two electric companies?

2 A. Yes.

3 Q. So that would be an additional charge?

4 A. It may be. Again, like we said, we're still
5 investigating what we need to do based on the County's
6 recommendations and what they do. We wanted to, again,
7 try to use the money to do as much as we possibly can
8 and do as many things as we possibly can with the
9 dollars we have.

10 Q. Have you actually gotten any bids for that
11 work?

12 A. No.

13 Q. Finally, the anticipated professional fees in
14 item 6 that appear on Exhibit C, on the rent schedule of
15 \$125,000, you're familiar with that category, correct?

16 A. Yes, I am.

17 Q. Can you tell us how much, if any, of that
18 amount has been paid to date by the park operator?

19 A. No, none of it.

20 Q. None of that has been paid to date?

21 A. I don't know. No, I think there has.

22 MR. BALLANTINE: Which item, I'm sorry?

23 MR. STANTON: The \$125,000 item.

24 MR. BALLANTINE: Let me see.

25 MR. STANTON: Item No. 6.

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1 MR. BALLANTINE: Are we back to C --

2 MR. STANTON: Yes.

3 MR. BALLANTINE: The anticipated professional
4 fees relating to the rent increase?

5 MR. STANTON: That's where we are.

6 MR. BALLANTINE: Okay.

7 BY MR. STANTON:

8 Q. I think you said in answer to counsel's
9 question that that was going to be the cost for, quote,
10 "full rent control proceedings."

11 Do you recall his question being phrased that
12 way?

13 A. I don't recall that but . . .

14 Q. Is that your understanding, that that amount
15 would relate to everything from the beginning of the
16 consulting all the way through whatever kind of hearings
17 or court matters or anything that would be required?

18 A. Yes.

19 Q. Now, you've been in the rent hearings like
20 this before, correct?

21 A. Yes.

22 Q. For example, the San Jose hearing that we were
23 both involved in.

24 A. Yes.

25 Q. Do you remember how much you paid professional

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1 advisors, representatives or consultants in that
2 San Jose matter with Summerset Mobile Home Park?

3 MR. BALLANTINE: Is the Summerset matter the
4 one that was about ten years ago?

5 MR. STANTON: Yes, he testified it was 2001 in
6 Alviso.

7 MR. BALLANTINE: Okay.

8 BY MR. STANTON:

9 Q. Prior to this hearing, what's the most recent
10 hearing you've been involved in, administratively, for
11 rent control?

12 A. Rent control, I would say we dealt with
13 Santa Cruz, the City of Santa Cruz, both the County and
14 the City.

15 Q. With an administrative hearing like this?

16 A. Yes.

17 Q. And do you remember how long the hearing took?

18 A. It took several days, and then it went on from
19 there.

20 Q. Do you remember how much you paid for the
21 administrative hearing part of the process?

22 A. With MHC, when I was with MHC at the time, it
23 was one of the older ones, but it was over \$400,000.

24 Q. You're talking about the De Anza case with MHC
25 that involved all the litigation and appellate court?

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1 A. It was part of the rent control.

2 Q. A very famous litigation.

3 A. Yes.

4 Q. What about any other hearings that have only
5 involved an administrative level like this, can you
6 recall when matters didn't go to the court?

7 A. Usually we have not had to go to court all the
8 way through. Most of the time we've been able to
9 negotiate and settle or we've been able to get a
10 decision that we were happy with.

11 Q. But again, you thought the \$125,000 estimate
12 was a reasonable estimate in this case?

13 A. I just got done spending \$500,000 with David
14 Spangenberg in the City of American Canyon, so I think
15 \$125,000 right now, with attorney fees and the amount of
16 government -- when you're dealing with a government
17 entity, as an individual, I would say \$125,000 would be
18 a lot, but when you're dealing with a government and how
19 long the government has, because they have -- their bank
20 is open 24 hours a day, mine isn't, so they have lots of
21 funds to go on, and then I've got to keep fighting and
22 fighting and fighting as far as I can go, depending on
23 how far we go.

24 Q. So that number is anticipating a long fight,
25 is that correct?

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1 A. Actually that is not anticipating a long
2 fight. That's basically a fight. A long fight would be
3 more like Mr. Guggenheim's fight, which he spent over a
4 million dollars so far, and Mr. Reed, in Capitola, who
5 spent over a million and a half dollars, which, as
6 you're well aware of, everybody in the park received
7 \$475 in rent increase, and the whole entire park
8 received that much.

9 Q. And just to wrap up my questioning, just to be
10 sure, the Guggenheim matter, you're talking about the
11 case that went to the Supreme Court involving the
12 constitutionality of the ordinance, correct?

13 A. It started off with a rent increase, yes, then
14 and it went to the constitutionality.

15 Q. But there was no actual rent hearing like
16 this, it was --

17 A. It was an original first increase, and then
18 when it didn't work there, then it went further up the
19 ladder.

20 MR. STANTON: No further questions, your
21 Honor.

22 THE ARBITRATOR: Mr. Ballantine, any more
23 questions of your witness?

24 MR. BALLANTINE: Yes, let me just ask a little
25 redirect, just clarification.

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RE-DIRECT EXAMINATION

BY MR. BALLANTINE:

Q. Mr. Waterhouse, with respect to professional fees relating to the rent increase, have you incurred these costs to Dr. St. John in connection with his preparing the notice of rent increase or, at least, the spreadsheet related to it and in preparing the MNOI analysis and stuff like that for this hearing?

A. Yes.

Q. You have incurred those?

A. We have incurred those.

Q. Have you incurred expenses to my office in connection with those matters as well?

A. Yes.

Q. Now, the \$125,000, you didn't necessarily mean for that to be a maximum limit depending on how far the proceedings went, did you?

A. No. I think it could go higher, possibly.

Q. And the Alviso matter, the Summerset case you mentioned, you mentioned Mr. Stanton was the attorney for the homeowners in that a while ago?

A. Yes.

Q. And the San Jose rent ordinance was similar to Santa Barbara's in that it was silent as to whether ground lease costs could be passed through?

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1 A. Yes.

2 Q. And did you testify that Mr. Stanton --
3 although it was settled, Mr. Stanton never, to your
4 knowledge, raised an objection or complaint with the
5 ground lease payments as being a basis for the rent
6 increase?

7 MR. STANTON: Well, I'm going to object to
8 that because it never went to a hearing. It was only a
9 settlement proceeding. I'm not aware that we even
10 briefed the matter, so I'm going to object to that and
11 I'll deny that statement as well.

12 MR. BALLANTINE: Fair enough, Mr. Stanton, but
13 I'm not asking you the question, I'm asking
14 Mr. Waterhouse.

15 MR. STANTON: Yeah, but it's not relevant in
16 any way.

17 THE ARBITRATOR: When I heard the word
18 "settlement" earlier today, I just turned the radio off.

19 MR. STANTON: Yeah.

20 THE ARBITRATOR: Settlement discussion, in my
21 mind, should not be entertained post-transaction, unless
22 both parties agree.

23 MR. BALLANTINE: Fair enough. That's fine, I
24 won't go there. I have nothing further. Thank you.

25 THE ARBITRATOR: I have a couple questions.

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1 The money that's in escrow with the finance
2 company, are those fees earmarked for any special
3 project?

4 THE WITNESS: They're earmarked for capital
5 improvements, and they know that we were looking into
6 replacing the gas, electric, sewer, water, roads, so as
7 long as the capital expenses are kept at replacement, we
8 can use those funds. So we have \$320,000 that they
9 have, and then we know we're going to use additional
10 funds ourselves, most likely out of our own pocket. It
11 will be more than \$320,000, obviously, with just the
12 roads, so there are additional funds that we'll have to
13 put out ourselves.

14 THE ARBITRATOR: Do you have to replenish that
15 amount as a condition of the loan?

16 THE WITNESS: No, once they're used, they're
17 used.

18 THE ARBITRATOR: Last question. I notice that
19 a couple of the permits that your predecessor paid for
20 have expired. Going forward, will you have to get new
21 permits and pay for them again?

22 THE WITNESS: Yes, and the problem again is
23 the County has gone back and forth as to what they say,
24 okay, we'll do this, this is good, and then in fact we
25 had something with some transformers where they agreed

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1 on two transformers, and then they came back after the
2 stipulated agreement and said, "Now we want three
3 transformers," after they had an agreement with us for
4 two.

5 So sometimes we don't know what they're going
6 to do the next day, and we get a phone call from
7 Mr. Ballantine that they're changing their mind again,
8 so we're just trying to get it all down in concrete
9 before we make a decision as to where we can go, which
10 is confusing for us, as owners. We haven't run into
11 this very often.

12 THE ARBITRATOR: That's all I have. Any
13 further questions?

14 MR. STANTON: If I can just ask a follow-up to
15 one of counsel's questions.

16
17 RECROSS-EXAMINATION

18 BY MR. STANTON:

19 Q. You indicated you have incurred expenses to
20 Dr. St. John and Mr. Ballantine. Do you know how much?

21 A. The last invoice I saw, one was \$20,000 and
22 one was for \$12,000. I think it was more, but that's
23 the last two I recall signing off on at my office,
24 Mr. Ballantine was approximately \$20,000 and
25 Dr. St. John was approximately, I think, \$12,000.

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1 MR. STANTON: Thank you. No further
2 questions.

3 THE ARBITRATOR: Is the witness excused?

4 MR. BALLANTINE: Yes, your Honor.

5 THE ARBITRATOR: Thank you. You may step
6 down.

7 Is there another witness to be called?

8 MR. BALLANTINE: There is. Let me comment to
9 your Honor. If this is helpful, I'll just make an offer
10 and represent that you observed correctly that some of
11 the permits had expired. I will, in talking to some of
12 the regulatory agencies, because they want work done,
13 they've shown some flexibility in extending those time
14 lines for us and so we are hopeful that we won't have to
15 re-incur the permit expenses.

16 THE ARBITRATOR: So there's some perceived
17 value in those permits then?

18 MR. BALLANTINE: Yes.

19 THE ARBITRATOR: Thank you.

20 Next witness, please.

21 MR. BALLANTINE: Mr. Reuben Garcia.

22 THE ARBITRATOR: Mr. Garcia, please come up.

23

24 RUBEN GARCIA,

25 having been sworn, was examined

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1 and testified as follows:

2

3 THE ARBITRATOR: Thank you, sir. Would you
4 state and spell your name for the record, please.

5 THE WITNESS: Ruben Garcia, R-u-b-e-n
6 G-a-r-c-i-a, vice president for Waterhouse Management
7 Corporation.

8 THE ARBITRATOR: Thank you.

9 Mr. Ballantine, you may proceed.

10

11 DIRECT EXAMINATION

12 BY MR. BALLANTINE:

13 Q. Mr. Garcia, what is your profession?

14 A. I work for Waterhouse Management Corporation
15 as a vice president. I handle the operations for all
16 the mobile home parks that we fee manage for.

17 Q. Does the scope of your job responsibilities
18 include Nomad Village Mobile Home Park?

19 A. Yes, it does.

20 Q. And tell us about that, what types of things
21 do you do regarding Nomad?

22 A. For Nomad, in particular, I, obviously, see
23 the day-to-day operations, deal with on-site management,
24 naturally deal with you, Mr. Ballantine, and resident
25 issues, anything that pertains to some of the items that

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1 have come up today as far as infrastructure and so
2 forth, basically the day-to-day operations.

3 Q. Are you familiar with the books and records of
4 Waterhouse Management Corporation?

5 A. Yes.

6 Q. Does Waterhouse Management keep accounting
7 records its operation of Nomad Village Mobile Home Park?

8 A. Yes.

9 Q. Let me ask you to turn in the exhibit book to
10 tab N, as in "Nancy."

11 A. Okay.

12 Q. Just flip through that and tell me, are these
13 the Waterhouse Management copies of books, some of them,
14 relating to Nomad Village?

15 A. Yes.

16 Q. And does that include the general ledger?

17 A. Yes.

18 Q. And are these records kept in the normal
19 course of business?

20 A. Yes, for all the properties that we manage.

21 Q. Do they accurately reflect monies spent by
22 Waterhouse Management in the operation of the park?

23 A. Yes.

24 Q. Let me just cut to the chase here, if you
25 would flip to tab C, the spreadsheet we've been talking

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1 about regarding this space rent increase. Are you
2 familiar with this document?

3 A. Yes, I've seen it before.

4 Q. Are you familiar with the notice of rent
5 increase that was sent to you the to the homeowners --

6 A. Yes.

7 Q. -- for Nomad?

8 A. Yes.

9 Q. Was there a meet-and-confer process that took
10 place?

11 A. Yes, there was.

12 Q. Were you involved in that process?

13 A. Yes, I was.

14 Q. Tell us about that a little bit.

15 A. Well, we went ahead and obviously sent out the
16 notice, and this one was a little different than the
17 usual ones that I participate in or attend. We had
18 Mr. Waterhouse present, who we thought would be
19 beneficial to cover some of the items that were there
20 that we figured that the residents would want to put a
21 face to Mr. Waterhouse. Obviously, you were present, I
22 was present. And with the meet and confer, one of the
23 items that was a sticking point for myself was that we
24 didn't want to just limit it to, basically, the rent
25 control ordinance that we had to meet with designated

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(805) 966-4562

1 members of the community, and, obviously, they designate
2 their own members, but we wanted to meet with all the
3 residents and give them the same opportunity and same
4 information so that everybody was on the same page, so
5 that way Mr. Waterhouse had an opportunity to cover some
6 of the items that have already been discussed.

7 Q. And was that meeting held in which all the
8 residents of the park were invited?

9 A. Yes, all the residents were invited via a memo
10 along with the information that we gave about the rent
11 increase, and that was held at the park clubhouse.

12 Q. And did you arrange to have that notice of
13 that meeting handed out to the entire park?

14 A. Yes, we did.

15 Q. Were you there?

16 A. Yes, I was.

17 Q. Did you speak to the residents?

18 A. I believe -- I forget the order we spoke, but
19 I know Mr. Waterhouse spoke and I spoke as well.

20 Q. Did you have a meet-and-confer session with
21 the homeowner representatives as well?

22 A. Yes, to my recollection we had two, the
23 initial one where Mr. Waterhouse was present, and then
24 we had an additional one where just you and I were
25 present, and I believe there was one meeting after that,

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1 as well.

2 Q. All right. Now with respect to the first
3 two -- that is, the park-wide meeting and the one with
4 the homeowners -- was that conducted on the same
5 evening?

6 A. Yes, it was.

7 Q. With respect to the property tax increase, was
8 it discussed by management that in the event the park
9 was successful at making that property tax increase go
10 away or reducing it, that the rent would be
11 correspondingly reduced?

12 A. Yes, it was.

13 Q. With respect to the anticipated professional
14 fees reflected here regarding professional taxes and
15 relating to the rent increase, was it made clear to the
16 residents that to whatever degree the park didn't incur
17 those expenses that the rent would be reduced
18 correspondingly as well?

19 A. Yes, it was.

20 Q. Did you have discussions with the homeowner
21 representatives about pursuing a property tax appeal?

22 A. Yes.

23 Q. What was their response?

24 A. Their response was no.

25 Q. Tell us about that "no."

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1 A. It was a very definitive "no." We explained
2 how the process, if we were to have pursued it and the
3 costs associated with it, and we said, obviously, we
4 were going to need their participation, and they pretty
5 much said no, they did not have any interest in paying
6 for it.

7 Q. Okay. With respect to subsequent meetings,
8 did you have a subsequent informational meeting that you
9 made available to the residents of the park?

10 A. Yes, I did.

11 Q. And what happened at the beginning of that
12 meeting?

13 A. Are we referring to the third meeting?

14 Q. Yes.

15 A. There were members of the resident -- I don't
16 know what the official term is, the designated
17 residents, is what I call them, that they were dealing
18 with in the meet and confer that turned residents away
19 from that meeting.

20 Q. What do you mean?

21 A. They were told not to attend.

22 Q. The rep- --

23 MR. STANTON: Objection. We have hearsay.

24 THE ARBITRATOR: Okay.

25 THE WITNESS: No one was allowed in the

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1 building.

2 MR. STANTON: I'll object to all this. I
3 don't know how it's relevant. The meet-and-confer issue
4 has never been made a subject of the hearing, and it's
5 hearsay.

6 THE ARBITRATOR: Let's try this.

7 First of all, don't answer questions when you
8 hear an objection.

9 THE WITNESS: Okay.

10 THE ARBITRATOR: But with that, do we have a
11 stipulation for the due process in this matter and get
12 past all this?

13 MR. STANTON: We'll stipulate to that.

14 MR. BALLANTINE: That's fine.

15 THE ARBITRATOR: Let's move on, then. Thank
16 you.

17 BY MR. BALLANTINE:

18 Q. Mr. Garcia, let me ask you to turn to tab J.

19 A. Okay.

20 Q. And this is a capital expenses incurred
21 spreadsheet. Let me draw your attention to the first
22 group of documents -- the first group of entries,
23 "Capital improvement expenses incurred by Waterhouse
24 Management, Inc." There are several entries that come
25 down to a total of about \$62,000. Do you see that?

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1 A. Yes.

2 Q. And there's some backup invoices for these on
3 Exhibit K, I'll indicate, but just looking at these, are
4 you familiar with these expenses that are listed here?

5 A. Yes, I am.

6 Q. And were these all incurred by Waterhouse
7 Management?

8 A. Yes, they were.

9 Q. And did they all relate to Nomad Village
10 Mobile Home Park?

11 A. Yes.

12 Q. And do they all relate to capital items
13 relating to the park?

14 A. Yes.

15 MR. BALLANTINE: Thank you. That's all I
16 have.

17 THE ARBITRATOR: Thank you.

18 MR. STANTON: No questions.

19 THE ARBITRATOR: You're excused.

20 THE WITNESS: Thank you.

21 THE ARBITRATOR: Any more witnesses?

22 MR. BALLANTINE: No, that's it.

23 MR. STANTON: I have one resident witness, if
24 we are going to rotate to sort of my case. If I can
25 confer just for a few minutes. I may have very brief

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1 testimony from one resident.

2 THE ARBITRATOR: Sure. When you get done
3 talking to your client, come back up and we'll go off
4 the record and I'll talk to you both.

5 (A brief recess was taken.)

6 THE ARBITRATOR: We are back on the record.
7 Do you have another witness?

8 MR. STANTON: I have one witness remaining,
9 your Honor.

10 THE ARBITRATOR: Good afternoon, sir.

11

12 DAN WALTZ,
13 having been sworn, was examined
14 and testified as follows:

15

16 THE ARBITRATOR: Please state and spell your
17 name for the record.

18 THE WITNESS: My name Dan Waltz, D-a-n
19 W-a-l-t-z.

20

21 DIRECT EXAMINATION

22 BY MR. STANTON:

23 Q. Mr. Waltz, do you reside at Nomad Village
24 Mobile Home Park?

25 A. Yes.

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1 Q. How long have you resided in the park?

2 A. Oh, about 10 years.

3 Q. Now, at some point as this particular process
4 began did the park residents designate park
5 representatives of some kind?

6 A. Yes. When we received the material from
7 Mr. Waterhouse, we called a meeting and elected -- and
8 it was a majority the mobile home park residents, we had
9 probably over a hundred people there, and we simply had
10 some people come forward who we thought would be good
11 representatives and selected six representatives.

12 Q. Were you one of the elected representatives?

13 A. Yes, I was.

14 Q. Thereafter, were you present at meetings that
15 occurred between the park representatives or the park
16 residents and the management team, if you will?

17 A. Yes, we had two meetings that I was a part of.

18 Q. So you were at two meetings where the
19 representatives met with the management team?

20 A. Yes. They met first with the whole park and
21 then with the six representatives.

22 Q. During those meetings, was there any
23 discussion about the park management taking an appeal or
24 appealing the assessment of increased property taxes
25 against the property?

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1 A. Yes, there was.

2 Q. So you recall there was discussion about that?

3 A. Yes.

4 Q. At any point during those discussions did the
5 park representatives participate in the discussions?

6 A. In the second part of the first meeting it was
7 brought out about the added taxes.

8 Q. So were you under the impression that the park
9 representatives were, in essence, meeting with the
10 management team as representatives of the entire
11 community and that you were speaking for the entire
12 community?

13 A. Yes, definitely.

14 Q. In the meet-and-confer process, correct?

15 A. Yes.

16 Q. And during the discussions about the property
17 tax appeal, did the park representatives ever say to the
18 management team that they did not want the park owner to
19 go forward with an appeal?

20 A. No.

21 Q. Did the park representatives ever say that
22 they would not participate in any way with the appeal?

23 A. No. As a matter of fact, in the second part
24 of the first meeting when we met together, I was the one
25 who voiced, because we have discussed this all together,

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1 the other representatives, and I voiced the question,
2 particularly sitting across from Mr. Ballantine and Ken
3 Waterhouse, and I asked, can we be a part of this thing
4 and what part can we do in it.

5 Q. What was the response?

6 A. It was no, just no.

7 Q. When you asked about being a part of it, what
8 did you mean by that?

9 A. Anything. We particularly thought, of course,
10 that we would be able to have a better effect with the
11 County because we are coming from a different area. We
12 felt, to begin with, an added tax is kind of defeating
13 their purpose of rent control is because as even Mr. Ken
14 Waterhouse expressed in a meeting, this is going to
15 affect us more than anybody else. We are the ones -- we
16 are the payers of rent, that's where it comes down to in
17 the end, so it's going to affect us the most.

18 Q. So is it fair to say the residents had no
19 objection in concept to the park going forward with the
20 appeal?

21 A. Oh, no, no objection.

22 Q. And in fact, the residents would applaud and
23 support it in any way they could?

24 MR. BALLANTINE: Objection, your Honor.
25 Leading.

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1 THE WITNESS: I think it is leading. I think
2 you can ask the question with a negative. Why don't you
3 rephrase.

4 BY MR. STANTON:

5 Q. Would the residents' representatives intend to
6 support it in any way that they could?

7 A. Well, we did make that offer. We made that
8 offer to them, the representatives, saying we'd like to
9 be a part of this because we feel we could -- you know,
10 we would get the attention more of the County than the
11 owners because we are directly being affected. As
12 they're saying, they're trying to make us pay the tax in
13 the end anyway.

14 As a matter of fact, Mr. Waterhouse made that
15 statement. He said, "We're doing this as a courtesy
16 because it's more to your benefit than it is to ours to
17 fight this thing."

18 Q. Now, in specific connection to the financial
19 participation, what was expressed to you by the
20 management team about the financial participation of the
21 residents in this appeal process?

22 A. Well, we just had the list of the original
23 costs and expenses that were entering in. When we sat
24 down in the meeting they didn't say for -- like one
25 thing, we were looking at the over \$125,000 in legal

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1 expenses and we didn't know what this was for, we didn't
2 know where this was going, so they didn't say, "This is
3 exactly what we're going to spend," or, "This is how
4 we're going to do it." I just offered and they said no.

5 Q. When you say you offered, what do you mean by
6 that?

7 A. We offered to help in the appeal process.

8 Q. Well, let's look at the anticipated expenses,
9 professional fees related to the property taxes, which
10 has been on this Exhibit C spreadsheet indicated to be
11 \$50,000. Did they discuss the \$50,000 number at the
12 meeting?

13 A. They talked in general terms. They didn't
14 discuss exactly this amount is going for this, this
15 amount is going for that. We saw the sheets -- I don't
16 know if you have the same sheet we have. We originally
17 got one sheet that they sent us in the mail and then we
18 got another one subsequently, I don't think a lot of the
19 material we're dealing with has any pertinence to the
20 ones we originally got.

21 Q. Okay. At some point was it specifically asked
22 by the management team, will the residents agree to fund
23 this appeal, or words to that effect?

24 A. No, no.

25 MR. STANTON: No further questions.

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1 THE ARBITRATOR: Mr. Ballantine, your turn,
2 sir.

3
4 CROSS-EXAMINATION

5 BY MR. BALLANTINE:

6 Q. Mr. Waltz, do you have the green notebook
7 there in front of you?

8 A. Yes.

9 Q. Starting at the beginning, please turn to
10 Exhibit A.

11 A. Yes.

12 Q. And that's addressed to the Homeowners of
13 Nomad Village Mobile Home Park, dated January 26, 2011,
14 and it says: "Re notice of increase in monthly rent
15 effective May 1, 2011." And it goes on: "Dear
16 Homeowner," and then it goes on, and then it's signed by
17 "Nomad Village Management."

18 Do you see that document?

19 A. Yes, I see the document. It's not signed at
20 the bottom, though.

21 Q. All right.

22 A. Okay, next page.

23 Q. Yeah, it's two pages. And on the second page
24 references a meet-and-confer session?

25 A. Yes.

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1 Q. All right. Did you get this document?

2 A. Yes, I did.

3 Q. And you understood this was sent out to all
4 homeowners of the park?

5 A. Yes.

6 Q. And you understood that this was essentially a
7 notice of, well, the increase in the rent?

8 A. Yes.

9 Q. This is what it told you, rent was going up
10 and it told you a little about it, right?

11 A. Yes.

12 Q. And this is what led to the meeting that you
13 have been discussing?

14 A. Yeah.

15 Q. All right. And there were two meetings that
16 evening, one was an informational meeting about the rent
17 increase and the other one was the meet-and-confer
18 session which is kind of a technical term or a term
19 defined in the ordinance, but the one you talked about
20 between the homeowner representatives and the park
21 representatives?

22 A. Yes.

23 Q. And then turning to Exhibit B, let me ask you
24 if you recognize this type of document. Did you get one
25 of these space specific for your space?

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1 A. Yes.

2 Q. And this told you exactly what your rent
3 increase was going to be?

4 A. Yes.

5 Q. And as far as you know, everyone else in the
6 park got one of these, too?

7 A. As far as I know.

8 Q. Let me go to Exhibit C, then. Do you recall
9 getting Exhibit C as part of Exhibits A and B in the
10 rent increase package?

11 A. Yes.

12 Q. And you understood this was kind of a
13 breakdown telling you how the park, at least, was saying
14 that the \$161 rent increase was calculated?

15 A. Yes.

16 Q. And do you recall having these documents
17 available at the meeting that we've been discussing, the
18 meet and confer?

19 A. Yes, we did.

20 Q. Did you read them?

21 A. Yes.

22 Q. And you're a homeowner rep so you were as up
23 to speed as anyone, at least you would hope, right?

24 A. Well, maybe.

25 Q. Well, starting with Exhibit A here, I want to

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1 invite your attention to this. Now, looking at the last
2 paragraph, kind of a big paragraph, I'm going to read a
3 little into the record so we're on the same page here.

4 It says: "This increase is in accordance with
5 the terms of ordinance," et cetera. It goes on and says
6 why. It says: "The permanent increase is for increased
7 operating expenses by park management, for increased
8 property taxes, and for increased lease payments,"
9 correct?

10 A. Correct.

11 Q. And so would it be fair to say you understood
12 that one of the big bases of the rent increase was for
13 increased property taxes and increased lease payments?

14 A. Yes.

15 Q. And it went on to say: "The Santa Barbara
16 County Assessor has recently tripled the property tax
17 assessment of Nomad Village."

18 A. I don't think we entirely agreed with the way
19 they broke out the taxes. A certain portion of it was
20 true, but not in its entirety. It needed to be broken
21 down.

22 Q. Well, okay. What I'm trying to do now is,
23 you've agreed with me that at the time you got the
24 notice, you got these documents in about January of
25 2011, this year, and in February when we had the meet

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1 and confer you had these documents, A, B and C, right?

2 A. Yes.

3 Q. That's all I'm asking you. I'm not asking you
4 to agree with the content, just that you had them.

5 A. Yes.

6 Q. And they said what they said. And these
7 documents were -- well, you got them before our
8 discussion so let me just go on with this letter because
9 I think it's important.

10 It said: "Management has evaluated this
11 increase and believes it's not legal and plans to
12 challenge the increase, and if the challenge is
13 ultimately successful at reducing the taxes, then the
14 homeowners will receive a reduction in the amount of the
15 net reduction received by the park." Correct?

16 A. That's what was said.

17 Q. So you understood the park was telling you
18 that if they could reduce the taxes, they were planning
19 on reducing the rents accordingly?

20 A. Well, we've told you already there was a trust
21 problem because we didn't feel like we could necessarily
22 trust anything that was told to us by the management.

23 Q. Well, sir, rather than going into that issue
24 I'd like to just try to stay on the question and the
25 answer.

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1 So it would be fair to say that you received a
2 letter in which you were told that the park was thinking
3 about challenging the property tax increase and, if
4 successful, they were planning on refunding any rents?

5 MR. STANTON: The document speaks for itself.
6 He's read it into the record, so what's -- I'm not sure
7 what the question is.

8 BY MR. BALLANTINE:

9 Q. Well, the park told you they would do that
10 prior to that meeting, correct?

11 MR. STANTON: "Told you"? I don't understand
12 it. We have a document. Are you asking whether he was
13 orally told as well?

14 MR. BALLANTINE: No, in this letter.

15 Going into this meeting, you were told in this
16 letter if the park could reduce the property taxes that
17 they planned to reduce the rents accordingly?

18 THE WITNESS: Yes. But --

19 THE ARBITRATOR: All right. Let me ask the
20 witness, let him finish with his questions and he'll ask
21 you on redirect, if he wishes.

22 THE WITNESS: I received the letter.

23 BY MR. BALLANTINE:

24 Q. Okay. Looking at Exhibit C, which you said
25 you received before this letter, perhaps this will

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1 refresh your recollection regarding counsel's question.
2 This did specifically break out on item 1 the amount
3 that the park said there was a property tax increase,
4 correct?

5 A. Yes.

6 Q. And then if you go down here to item 5, you
7 were provided with an anticipated professional fees
8 relating to the property taxes, and the amount is
9 \$50,000. Do you see that?

10 A. Yeah.

11 Q. Does that refresh your recollection, you were
12 told that there was an estimated cost of possibly
13 \$50,000 in professional fees to challenge the property
14 taxes?

15 A. Yes, which is -- yes.

16 Q. And to your recollection, at the time of the
17 meeting, did the homeowner representatives agree to a
18 rent increase to cover that cost?

19 A. That wasn't directly discussed.

20 Q. Well, it wasn't directly discussed. Did the
21 homeowners agree to this rent increase on Exhibit C, the
22 homeowner representatives at that meeting?

23 A. We didn't agree or disagree.

24 Q. Did you agree to any part of this?

25 A. To the fees?

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1 Q. To any part of the rent increase as set forth
2 in Exhibit C, this breakdown.

3 MR. STANTON: Perhaps the witness is confused
4 by the word "agree." Are you asking whether there was
5 an actual settlement reached or are you asking whether
6 they agreed in concept?

7 BY MR. BALLANTINE:

8 Q. Did any homeowner representative state an
9 agreement -- that is, that they agreed that this rent
10 increase was appropriate and acceptable?

11 A. Maybe certain parts of it. We never got into
12 taking it apart. We were kind of asked to accept it in
13 its entirety or not.

14 Q. What part did the homeowner representatives,
15 what part of this Exhibit C did the homeowners represent
16 that they agreed with?

17 A. Well, we might have agreed with a couple of
18 the capital improvements. We have known in particular
19 the roads are one thing that --

20 Q. Sir, I didn't ask you what you might have
21 agreed with. I'm asking you what your testimony is, as
22 you sit here today, what you say that the homeowner
23 representatives agreed to as a rent increase as broken
24 down by this Exhibit C.

25 MR. STANTON: I'm concerned about this line of

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1 questioning now. We're now into the depth of the meet
2 and confer, asking about agreements being made, and I'm
3 concerned that we're now crossing into privileged and
4 confidentiality settlement discussions.

5 MR. BALLANTINE: Then why are we hearing from
6 this witness? The whole point of the witness's
7 testimony --

8 MR. STANTON: Well, my direct, which you've
9 far exceeded, Counsel, my direct was only with respect
10 to the issue of whether he was rebutting the specific
11 testimony of your witness that both witnesses testified,
12 "We asked them if they wanted to participate and they
13 said no." My witness rebutted that testimony.

14 You're now asking whether there was agreement
15 on anything in here. It goes far beyond direct, and it
16 invades, in my opinion, the confidentiality. You might
17 say that was waived with respect to the testimony of
18 your two witnesses and my rebuttal witness with respect
19 to whether they participated in the property tax part,
20 but that's all that he testified to on direct.

21 THE ARBITRATOR: Can you approach, both of
22 you, please.

23 Please step down.

24 (Side-bar conference off the record.)

25 THE ARBITRATOR: Mr. Ballantine, would you

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1 rephrase your last question or change it.

2 MR. BALLANTINE: Yes, your Honor.

3 Q. Mr. Waltz, let's me just ask you to focus on
4 item 5, anticipated professional fees relating to
5 property taxes. Do you see that?

6 A. Yes.

7 Q. And that was on this sheet -- well, we had the
8 sheet at the meet and confer, and my question to you,
9 sir, is this: Did the homeowner representatives agree
10 to pay the rent increase based upon that specific
11 charge, item 5?

12 A. That wasn't the basis of any agreement or
13 nonagreement.

14 Q. So you can't sit here today and say that the
15 homeowners agreed to pay that particular expense?

16 A. No, we didn't agree or disagree to pay
17 anything.

18 MR. BALLANTINE: Thank you.

19 I have nothing further.

20 MR. STANTON: Nothing further, your Honor.

21 THE ARBITRATOR: Please stand down. Thank
22 you, sir.

23 MR. STANTON: I have no further witnesses.

24 THE ARBITRATOR: Is your case closed?

25 MR. STANTON: Subject to discussions we've had

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1 about the briefing, yes.

2 THE ARBITRATOR: Mr. Ballantine, same?

3 MR. BALLANTINE: Yes.

4 THE ARBITRATOR: With that, let's go off the
5 record.

6 (Discussion off the record.)

7 THE ARBITRATOR: We are back on the record.

8 Both sides have rested.

9 First of all, I want to thank everyone,
10 management for coming down, the homeowners. Your
11 professionalism and courtesy has been appreciated. The
12 attorneys are always out of line.

13 MR. STANTON: That's what we get paid for.

14 THE ARBITRATOR: Is there a motion to strike?

15 But thank you all, it's been a pleasure and
16 we'll get into the closing talk about time tables.

17 Mr. Ballantine, do you have a stipulation,
18 sir?

19 MR. BALLANTINE: Yes.

20 I'll propose the stipulation regarding closing
21 briefing. We'd like to, rather than having oral
22 argument at this time, hold the hearing open until
23 November 22nd in order to brief the matters as follows:

24 We understand transcript should be available
25 to us in about two weeks, which would be about October

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1 4. We have agreed that the parties will exchange and
2 submit and file with the County mutual opening
3 statements or opening briefs on October 19. We will
4 submit replies, mutual replies to each other's opening
5 briefs on November 8, with the park owners or the park
6 management's opening statement, for October 19.

7 We will also include, as we discussed before,
8 our billing statements or billing summaries that shows
9 the amount of fees incurred to date in the rent control
10 proceedings by Dr. St. John and myself. Mine may be
11 redacted somewhat to deal with attorney-client privilege
12 issues, but I don't think they will be substantial. I
13 have indicated to Mr. Stanton that I would also, along
14 with that, provide the billing statement backup for --
15 the backup -- the one-page summary of the work that I
16 submitted before for the \$50,000, that you'd be free to
17 comment on.

18 Mr. Stanton, in his reply, could comment and
19 object or raise comments if he wanted to on the billing
20 statements in his November 8 reply. I would then have
21 until November 22nd to reply to those comments, and at
22 that point the hearing would be deemed closed on
23 November 22.

24 THE ARBITRATOR: Mr. Stanton?

25 MR. STANTON: So stipulated.

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1 Could we have guidance as to whether or not
2 the filing could be accomplished electronically as
3 opposed to hard copies being somewhere by those dates?

4 THE ARBITRATOR: Yes. I will go off the
5 electronic transmittal date.

6 MR. STANTON: Yes. In other words, if we just
7 e-mailed to the County and to opposing counsel by those
8 dates, will that be sufficient service?

9 THE ARBITRATOR: It'll work for me.
10 Anything else?

11 MR. STANTON: The only other thing I wanted to
12 do is compliment Mr. Ballantine in allowing my witness
13 to go out of order yesterday. I appreciate that. Not
14 everybody would have done that so I do appreciate it.

15 MR. BALLANTINE: My pleasure. I'd thank
16 counsel as well.

17 THE ARBITRATOR: Okay, sounds good.
18 Anything else?

19 With that, the hearing for today is closed.
20 The record remains open per Mr. Ballantine's stipulation
21 and agreed to by Mr. Stanton.

22 Thank you all and take care.

23 (The deposition concluded at 4:15 p.m.)

24 --oOo--

25

REPORTER'S CERTIFICATE

I, MARK McCLURE, CSR NO. 12203, a Certified Shorthand Reporter for the County of Santa Barbara, State of California, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting by computer-aided transcription under my direction.

I further certify that I am not interested in the event of the action.

WITNESS my hand this 4th day of

October, 2011.

J. M. McClure

Certified Shorthand Reporter in and for the County of Santa Barbara, State of California

