

Attachment U
Board Letter Dated January 5, 2016 (without
Attachments)



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: General Services
Department No.: 063
For Agenda Of: January 5, 2016
Placement: Set hearing on 1/5/16
for 1/19/16
Estimated Time: 60 Minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: General Services Matthew P. Pontes, Director (805) 560-1011
Contact Info: Greg Chanis, Assistant Director (805) 568-3096
SUBJECT: Writ of Mandate Regarding Mobile Home Rent Control Arbitrator Award –
Nomad Village Mobilehome Park (003766)

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

On January 5, 2016, set a hearing to review the Arbitrator's December 20, 2011 Opinion and Award in the matter of arbitration between Nomad Village Mobile Home Homeowners and Nomad Village Mobile Home Park pursuant to Rule 23 of the Mobilehome Rent Control Rules for Hearings and Chapter 11A, Section A-4 of the Santa Barbara County Code to consider the following recommendations:

(Set a hearing for January 19. Time Estimate: 60 minutes)

- a) Vacate the Board's May 15, 2012 action, executed by the Chair on June 14, 2012, as it relates to Awards 4, 5, 6, 7, 8, 11, and 12 of the Arbitrator's December 20, 2011 Opinion and Award in the Matter of Arbitration Between Nomad Village Mobile Home Homeowners and Nomad Village Mobile Home Park;
- b) Reconsider the Petitions for Review of Awards 4, 5, 6, 7, 8, 11, and 12 of the Arbitrator's December 20, 2011 Opinion and Award and make the following determinations as supported by the findings in Attachment W;
 - i) Find that the Arbitrator did not abuse his discretion; however, remand Award #4 in light of other remanded Awards;
 - ii) Find that the Arbitrator abused his discretion and remand Award #5 to the Arbitrator for adequate findings on specific items of incurred costs in the amount of \$62,145.55;
 - iii) Find that the Arbitrator abused his discretion and remand Award #6 to the Arbitrator for adequate findings about the nature of the fees;

- iv) Find that the Arbitrator abused his discretion and remand Award #7 to the Arbitrator for adequate findings about the nature of the fees;
 - v) Find that the Arbitrator did not abuse his discretion and affirm Award #8;
 - vi) Find that the Arbitrator did not abuse his discretion and affirm Award #11;
 - vii) Remand Award #12 to the Arbitrator for recalculation in light of other remanded items;
- c) Determine that the proposed action is an administrative activity of the County which will not result in direct or indirect physical changes in the environment and is therefore not a “project” as defined for purposes of the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15378(b)(5).

Summary Text:

On December 20, 2011, the Arbitrator rendered an Opinion and Award in the Matter of Arbitration Between Nomad Village Mobile Home Homeowners and Nomad Village Mobile Home Park. The Homeowners and Park Management filed petitions for review of 10 of the Awards made by the Arbitrator. On May 12, 2012, the Board of Supervisors reviewed the Arbitrator’s Opinion and Award and unanimously took action as detailed in the next section.

On August 13, 2012, Park Management [Lazy Landing, LLC (mobilehome park ground lessee) and Waterhouse Management, Inc. (mobilehome park operator)] filed a Petition and Complaint for Writ of Mandate, Declaratory Relief, Inverse Condemnation, and Violation of Constitutional Rights naming County and Real Party in Interest, Debra Hamrick, a representative of the Homeowners, as respondents. On November 7, 2012, Park Management filed an Amended and Supplemental Petition and Complaint based on the same causes of action. On November 10, 2014, the Superior Court (Judge Anderle) entered the attached Order on Writ of Mandate in the Writ portion of the action, which granted in part and denied in part the relief sought by Park Management.

Often, the Board’s review at hearings held on appeals to the Board of decisions below is “*de novo*”, such as in land use matters. (See e.g., Section 35.102.050.C, Appeals to the Board, of Chapter 35.102, Appeals, of Article 35.10, Land Use and Development Code Administration, of Section 35-1, the Santa Barbara County Land Use & Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code.) *De novo* review means that when the Board hears the appeal:

- The Board is not required to give deference to the decision maker’s findings and decisions below;
- The Board acts as the finder of fact;
- The Board has discretion to reweigh the evidence;
- The Board may disagree with the decision maker’s conclusions drawn from the evidence; and
- The Board may make new findings and decisions.

In contrast, here, under Rule 23 of the Mobilehome Rent Control Rules for Hearings, the Board reviews the Arbitrator’s Opinion and Award under an “abuse of discretion”, which is established only if the Arbitrator:

- Failed to proceed in the manner required by law;
- Made a finding not supported by substantial evidence; or
- Made a decision not supported by the findings.

This means that the Board's inquiry is limited to whether the Arbitrator's findings and decisions were arbitrary, capricious, devoid of any rational basis, or entirely unsupported by evidence in light of the whole record.

If your Board finds that an abuse of discretion is not established, your Board must affirm the decision. However, if your Board finds that in rendering his Opinion and Award, the Arbitrator abused his discretion, the Board may then:

- Reverse the Arbitrator's decision in whole or in part;
- Make a new decision without remand; or
- Remand the case to the Arbitrator for reconsideration in light of your Board's review.
 - Your Board may, but is not required to, rehear any matter remanded to the Arbitrator.

Attachment U [Matrix of Board Options] includes a summary of the Arbitrator's decisions or awards, the positions of the parties and the Board's options for consideration. Since Rule 23 of the Mobilehome Rent Control Rules for Hearings provides that the Board of Supervisors is an appeal authority for the Arbitrator's decision, staff recommends that Supervisors provide ex parte disclosures of their communications and site visits involving this appeal. Rule 23 also specifies that your Board shall render its final decision within 30 judicial days of the receipt of all pleadings, records, and transcripts; we conservatively calculate that deadline as February 5th, 2016. Pursuant to Rule 24, if the Board exercises its discretion to rehear any matters remanded by the Board, the Clerk shall set a rehearing within twenty (20) judicial days following the date on which the Board's decision becomes final.

Background:

County Code Chapter 11A (Mobilehome Rent Control) creates an arbitration process for rent control disputes in mobilehome parks within the unincorporated area whenever the proposed rent increase exceeds 75% of the Consumer Price Index as described within Chapter 11A. Mobile homeowners residing in the Nomad Village Mobilehome Park (the "Homeowners") filed a petition for arbitration on February 28, 2011, which contested the proposed increase in their maximum rent schedule.

On December 20, 2011, the Arbitrator rendered an Opinion and Award following hearings on September 19 and 20, 2011. The Arbitrator requested and received argument on the following questions: (1) "Was [Nomad Village Mobile Home Park]'s notice of increase dated January 26, 2011, demanding a percentage increase of 2.59% of the current base rent and an additional \$161 per space effective May 1, 2011 ... appropriate?" (2) "If not, what is the appropriate amount of the increase?"

The Arbitrator's Opinion and Award includes findings and decisions on 14 issues. The Homeowners' Petition for Review disagreed with eight findings while Park Management's Petition for Review disagreed with two findings. On May 15, 2012, the Board of Supervisors reviewed the Arbitrator's Opinion and Award. On May 15, 2012, the Board of Supervisors unanimously took the following action on the ten awards under review:

- Award No. 2) Affirmed the Arbitrator's decision.
- Award No. 3) Remanded back to the Arbitrator.
- Award No. 4) Found that the Arbitrator abused his discretion and reversed the decision in whole.
- Award No. 5) Found that the Arbitrator abused his discretion and reversed the decision in whole.
- Award No. 6) Found that the Arbitrator abused his discretion and reversed the decision in whole.

- Award No. 7) Found that the Arbitrator abused his discretion and reversed the decision in whole.
- Award No. 8) Found that the Arbitrator abused his discretion and reversed the decision in whole.
- Award No. 9) Affirmed the Arbitrator's decision.
- Award No. 11) Found that the Arbitrator abused his discretion and reversed the decision in whole.
- Award No. 12) Remanded back to the Arbitrator for recalculation based on the remand of Award #3.

On June 17, 2014, the Superior Court held a hearing on the petition brought by Park Management against the County and Real Party in Interest Debra Hamrick. On November 10, 2014, Judge Anderle entered the attached Order on Writ of Mandate, which granted in part and denied in part the relief Petitioners sought. Of the 10 awards reviewed, the Superior Court completely upheld the Board's action on two awards; partially upheld the Board's action on one other award; determined the challenge to one award was moot; and remanded part or all of seven awards to the Board for reconsideration based on a determination that the Board prejudicially abused its discretion. In summary:

- Award No. 2) Upheld the Board's action.
- Award No. 3) Determined was moot in light of the Arbitrator's Award on remand.
- Award No. 4) Remanded to your Board to be vacated and reconsidered.
- Award No. 5) Remanded the portion consisting of \$62,145.55 on specific items of incurred costs to your Board to be vacated and reconsidered.
- Award No. 6) Remanded to your Board to be vacated and reconsidered.
- Award No. 7) Remanded to your Board to be vacated and reconsidered.
- Award No. 8) Remanded to your Board to be vacated and reconsidered.
- Award No. 9) Upheld the Board's action.
- Award No. 11) Remanded to your Board to be vacated and reconsidered.
- Award No. 12) Remanded to your Board to be recalculated after remand proceedings.

For the Awards remanded to your Board for reconsideration (Awards 4, 5, 6, 7, 8, 11, and 12), a summary is listed below that includes the Arbitrator's award, the positions of the Homeowners and Park Management, your Board's prior action, the Superior Court's decision, and Staff's recommendation.

Arbitrator's Award #4: "All granted temporary increases are to be amortized at 9% for seven (7) years."

- **Homeowners:** Disagree: "Reverse the Arbitrator's decision and amortize the cost of any capital item(s) over the useful life of the item(s) including any reasonable financing costs incurred in acquiring the capital item."
 - **Park Management:** Agree.
 - **Board's Prior Action:** Found that the Arbitrator abused his discretion and reversed the Arbitrator's decision in whole.
 - **Superior Court:** Remanded to your Board to be vacated and reconsidered.
1. **Staff's Recommendation:** Find that the Arbitrator did not abuse his discretion; however, remand Award #4 in light of other remanded items because amortization is based on the useful life of improvements to be amortized.

Arbitrator's Award #5: "The Homeowners are to pay the \$320,000. If any of these monies are not spent on eligible items within six (6) months from the date of this award, the residual amounts are to be returned to the homeowners." The Court remanded consideration of the portion of the \$320,000 consisting of specific items of incurred costs in the amount of \$62,145.55.

- **Homeowners:** Disagree:
 - "(A) Find that the Arbitrator abused his discretion when he classified a reserve account at a bank as a capital improvement contrary to Ord. § 11A-2(a);
 - (B) Find that the Arbitrator abused his discretion when he ignored the requirement to itemize any capital improvement as required by Ord. § 11A-50);
 - (C) Find that the Arbitrator abused his discretion allowing cost when the record does not support that these cost meet the requirement of definite and certain as required by § 11A-5(k);
 - (D) Find that the Arbitrator abused his discretion in not considering any capital improvement proposed meet the threshold retirements of CPUC 739.5;
 - (E) Reverse the Arbitrator's decision based on findings (A) through (D)."
 - **Park Management:** Agree.
 - **Board's Prior Action:** Found that the Arbitrator abused his discretion and reversed the Arbitrator's decision in whole.
 - **Superior Court:** Remanded the portion consisting of \$62,145.55 on specific items of incurred costs to your Board to be vacated and reconsidered.
2. **Staff's Recommendation:** Find that the Arbitrator abused his discretion and remand Award #5 to the Arbitrator for adequate findings on specific items of incurred costs in the amount of \$62,145.55;

Arbitrator's Award #6: "The Homeowners are to pay \$25,000 for professional fees associated with the capital improvements."

- **Homeowners:** Disagree:
 - "(A) Find that the Arbitrator abused his discretion when he classified attorney's fees as a capital improvement, or in relation to a capital improvement, contrary to Ord. § 11A-2(a);
 - (B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow the Park to pass through the cost of attorney's fees as a capital improvement, or in relation to a capital improvement, to the residents of the park pursuant to Ord. § 11A-5(i)(6);
 - (C) Reverse the Arbitrator's decision based on findings (A) and (B)."
 - **Park Management:** Agree.
 - **Board's Prior Action:** Found that the Arbitrator abused his discretion and reversed the Arbitrator's decision in whole.
 - **Superior Court:** Remanded to your Board to be vacated and reconsidered.
3. **Staff's Recommendation:** Find that the Arbitrator abused his discretion and remand Award #6 to the Arbitrator for adequate findings about the nature of the fees.

Arbitrator's Award #7: "The Homeowners are to pay \$40,000 for the A&E fees associated with the capital improvements."

- **Homeowners:** Disagree:
 - "(A) Find that the Arbitrator abused his discretion when he classified A&E fees as a capital improvement, or in relation to a capital improvement, contrary to Ord. § 11A-2(a);

(B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow the Park to pass through the cost of A&E fees as a capital improvement, or in relation to a capital improvement, to the residents of the park pursuant to Ord. § 11A-5(i)(6);

(C) Reverse the Arbitrator's decision based on findings (A) and (B)."

- **Park Management:** Agree.
- **Board's Prior Action:** Found that the Arbitrator abused his discretion and reversed the Arbitrator's decision in whole.
- **Superior Court:** Remanded to your Board to be vacated and reconsidered.
- 4. **Staff's Recommendation:** Find that the Arbitrator abused his discretion and remand Award #6 to the Arbitrator for adequate findings about the nature of the fees.

Arbitrator's Award #8: "The Homeowners are to pay \$130,531 for the supplemental tax increase payments already paid by the Park Owner."

- **Homeowners:** Disagree:
 - "(A) Find that the Arbitrator abused his discretion when he allowed non capital item to be capitalized contrary to Ordinance §§11A-5(g) through 11A-5(i)(l)-(6);
 - (B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow a retroactive increase contrary to the ordinance;
 - (C) Find that the Arbitrator abused his discretion when he failed to support his decision with substantial evidence;
 - (D) Reverse the Arbitrator's decision based on findings (A) through (C)."
- **Park Management:** Agree.
- **Board's Prior Action:** Found that the Arbitrator abused his discretion and reversed the Arbitrator's decision in whole.
- **Superior Court:** Remanded to your Board to be vacated and reconsidered.
- **Staff's Recommendation:** Find that the Arbitrator did not abuse his discretion and affirm Award #8.

Arbitrator's Award #11: "The Homeowners are to pay \$110,000 for the legal fees associated with the challenge to the rent increase."

- **Homeowners:** Disagree:
 - "(A) Find that the Arbitrator abused his discretion when he failed to base his findings on substantial evidence;
 - (B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow the Park to pass through the cost of professional fees related to rent increase in any way, and specifically contrary to Ord. §11A-5(k);
 - (C) Reverse the Arbitrator's decision based on findings (A) and (B)."
- **Park Management:** Agree.
- **Board's Prior Action:** Found that the Arbitrator abused his discretion and reversed the Arbitrator's decision in whole.
- **Superior Court:** Remanded to your Board to be vacated and reconsidered.
- **Staff's Recommendation:** Find that the Arbitrator did not abuse his discretion and affirm Award #11.

Arbitrator's Award #12: "The Permanent increase is to be \$25.29 and the temporary increase \$67.09 as supported by Respondent's Exhibit T."

- **Homeowners:** Disagree: "Any temporary increase calculation incorporate the formula for an annuity due, payments are required at the beginning of each period, rather than the ordinary annuity, payments at the end of the period."
- **Park Management:** Agree.
- **Board's Prior Action:** Remanded to the Arbitrator for recalculation based on the remand of Award #3.
- **Superior Court:** Remanded to your Board to be recalculated after remand proceedings.
- **Staff's Recommendation:** Remand Award #12 to the Arbitrator for recalculation in light of other remanded items.

Performance Measure: N/A

Fiscal and Facilities Impacts:

If the Board chooses to remand any portion of the decision to the Arbitrator, the hourly cost of \$150 for the arbitrator may be incurred for reconsideration and drafting of an amended decision.

Key Contract Risks: N/A

Staffing Impacts:

Existing General Services Department, Real Property Division staff are currently serving as the Clerk under the County Code Chapter 11A (Mobilehome Rent Control). County staff has spent over 200 hours to date on this project.

Special Instructions:

General Services Department will provide notice to the Landowner, Management Company, Homeowners at Nomad Village Home Park and counsel for both parties. Request the Clerk of the Board to return a copy of the Minute Order to General Services Department, Real Property Division, Attn: Don Grady, Clerk under County Code Chapter 11A (Mobilehome Rent Control).

Attachments:

- Attachment A – Statement of Facts and Exhibits Attached
- Attachment B – Response Letter to County from James Ballantine
- Attachment C – Homeowners' Arbitration Pre-Hearing Brief
- Attachment D – Objection and Response by Nomad Village Mobile Home Park to Petition for Arbitration and Exhibits Attached
- Attachment E – Arbitration Hearing Brief by Nomad Village Mobile Home Park
- Attachment F – List of Arbitration Exhibits Presented at Arbitration
- Attachment G – Homeowners' Post-Hearing Opening Brief
- Attachment H – Opening Post-Hearing Arbitration Brief by Nomad Village Mobile Home Park
- Attachment I – Homeowners' Post-Hearing Closing Brief
- Attachment J – Closing Post Arbitration Hearing Brief by Nomad Village Mobile Home Park
- Attachment K – Submission of PUC Orders by Nomad Village Mobile Home Park
- Attachment L – Nomad Village Mobile Home Park Rent Control Hearing Transcripts 9-19-11
- Attachment M – Nomad Village Mobile Home Park Rent Control Hearing Transcripts 9-20-11
- Attachment N – Arbitrator's Opinion and Award
- Attachment O – Homeowners' Petition
- Attachment P – Park Management's Petition
- Attachment Q - Park Management's Response to Homeowners' Petition for Review

Attachment R - Homeowners' Response to Park Management's Petition for Review

Attachment S - Park Management's Objection to Homeowner's Response to Park Management's
Petition for Review

Attachment T – Notice of Exemption

Attachment U – Matrix of Board Options

Attachment V – Order on Writ of Mandate

Attachment W – Findings

cc: Jenna Richardson, Deputy County Counsel