Attachment EE

Park Management's Response to Homeowners' Petition for Review of Arbitrator's Decision on remand.

JAMES P. BALLANTINE
Attorney at Law
329 East Anapamu Street
Santa Barbara, California 93101
(805) 962-2201
State Bar No. 152015

Attorney for PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK

ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY MOBILEHOME RENT CONTROL ORDINANCE

IN RE NOMAD VILLAGE MOBILE HOME PARK	RESPONSE BY PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK TO THE PETITION FOR REVIEW FILED BY HOMEOWNERS OF THE ARBITRATOR'S REMAND OPINION AND AWARD [Stephen Biersmith, Esq., Arbitrator] REMAND ARBITRATION HEARING DATE: February 17, 2016 TIME: 9:00 A.M. LOCATION: Board of Supervisors Hearing Rm

PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK ("Park Management") hereby submits its Response to the Petition for Review by the Homeowners' Representative on behalf of the homeowners of Nomad Village Mobile Home Park collectively ("homeowners") and served on Park Management's counsel on April 14, 2016, appealing the Opinion and Award (Revised on Remand) ("Remand Award") issued by the Arbitrator on March 5, 2016, in the above-referenced Arbitration proceedings, as follows:

I

INTRODUCTION

The homeowners of Nomad Village Mobile Home Park in 2011 filed a petition for arbitration regarding a rent increase issued by Park management resulting from increased operating costs of the Park. Pursuant to the terms of the Santa Barbara County Mobilehome Rent Control Ordinance ("Ordinance") and the Mobilehome Rent Control Rules for Hearing ("Rules") an arbitration hearing was conducted by an Arbitrator appointed by the Board of Supervisors, Stephen Biersmith, Esq., an experienced attorney on the Board's panel of arbitrators.

The Arbitration Hearing was duly noticed and occurred on September 19 and 20, 2011. The homeowners were represented by Attorney Bruce Stanton, and called witnesses and introduced exhibits. Thereafter, the parties stipulated to a briefing schedule and submitted a series of post-hearing briefs. Following the briefing, the Arbitrator prepared a draft award on November 22, 2011, following which time the parties submitted a stipulated series of calculations, which were incorporated into the final Opinion and Award which was issued by the Arbitrator on December 20, 2011 ("Arbitrator's Award"). Thereafter, the homeowners appealed the Arbitrator's Award for review by the Board of Supervisors ("Board").

The Board patently violated the rights of Park Management by engaging improper ex-parte communications with the homeowners. The Santa Barbara Superior Court later found

these communications to be in violation of the law and improper. The Board further acted illegally by vacating in its entirety the rent increases granted by the Arbitrator's Award. Park Management thereafter sued the Board, and after extensive proceedings, which were unnecessarily protracted by the homeowners, the Court ruled in favor of Park Management and against the Board and the homeowners and set aside the Board's illegal order vacating the rent increases, and remanded the matter for further proceedings consistent with the law and the Court's Order. The Arbitrator conducted another hearing upon remand and issued his Remand Award. The homeowners have now filed yet another Petition for Review to the Board.

The homeowners' latest Petition continues to be governed by Rule 23. The Rules (Rule 23(b)) require that the Board make its determination based upon the arbitration "record alone" and may not consider evidence outside of the record. The homeowners' Petition again improperly violates Rule 23, as it is not based solely on the record of proceedings. Moreover, the homeowners' Petition is not based on any legitimate grounds for review, but is an improper attempt by homeowners to reargue their case (based largely on spurious claims not on the Record), and get the Board to improperly substitute their own judgment for that of the Arbitrator, and make a different finding not based on the record, but on the homeowners' unsupported and false claims of alleged matters that do not appear in the Record.

II

FACTUAL AND PROCEDURAL BACKGROUND

Nomad Village Mobile Home Park ("Park") is a 150-space mobile home park, located at 4326 Calle Real, Santa Barbara, CA, 93110, between El Sueño Road and San Marcos Pass. The Park was first developed in the late 1950's and was operated for many years by Nomad Village, Inc., pursuant to a ground lease or series of ground leases, which expired on July 31, 2008, and were not renewed. Commencing August 1, 2008, a new ground lessee, Lazy Landing MHP, LLC ("Lazy Landing"), entered into a 34-year ground lease for the property on which the Park is

located, pursuant to arms-length negotiations with the ground lessor and fee owner of the property, the Bell Trust, at which time Waterhouse Management Corp. ("Waterhouse Management"), became the management company in charge of the operation of the Park. At the Arbitration hearing, Park Management confirmed on the record that they, Lazy Landing MHP, LLC, and Waterhouse Management were indeed "Management" of the Park pursuant to the terms of the Ordinance (RT2 150:21-151:2).

The Park is located in the unincorporated area of Santa Barbara County, and therefore is subject to the jurisdiction of Santa Barbara County ("County"), and is subject to the provisions of the Ordinance and the Rules for Hearing adopted pursuant to the Ordinance. (A copy of the Ordinance and Rules are Arbitration Joint Exhibit 1.) The Park is one of four mobilehome parks located in the area between El Sueño Road and San Marcos Pass on the west and east, respectively, and Calle Real and Cathedral Oaks Road in the south and north respectively, and are located in the second Supervisorial District. The Park is a rental park, in which the mobilehomes are all owned by homeowners who rent their spaces in the Park from Park Management. The tenancies are subject to the terms of the Ordinance. Some homeowners entered into settlement agreements with Park Management and therefore are not subject to those Arbitration proceedings.

Notice of Rent Increase

On January 26, 2011, the Park delivered to all homeowners in the Park notices of rent increases to be effective on May 1, 2011, (Exhibit A) issued pursuant to the terms of the Ordinance and the California Mobilehome Residency Law ("MRL"). The notice covered the standard CPI increase allowed under the Ordinance, which varied slightly by space, plus a proposed $161 per space increase, comprising of a permanent increase of $58.16 per space and proposed temporary increase of $102.84 per space. The Residents were given a detailed breakdown of the rent increase (Exhibit C). The prior space rent increase at the Park was made by Nomad Village, Inc., and was effective May 1, 2008. There had not been any space rent

increases in the Park at all since Park Management had taken over management in 2008. Expenses, on the other hand, had increased significantly, including due to the County tripling the Park's property taxes. There were capital projects planned and some $320,000 had been paid by Park Management into a reserve account to accomplish capital improvements, and the Park Management had incurred other capital or one-time expenses.

Homeowners Petition for Arbitration

In April 2011, Park Management was notified that a Petition challenging the Park's rent increase had been filed with Santa Barbara County. Park Management filed a response. The terms of the Ordinance and the Rules set forth a detailed process for the selection of an arbitrator to hear challenges to rent increases, and for the noticing and conduct of the hearing. Pursuant to the terms of the Ordinance and the Rules for Hearing, the County appointed Stephen Biersmith, Esq., as Arbitrator and noticed an Arbitration Hearing.

Arbitration Hearing

The Arbitration Hearing was held on September 19 and 20, 2011, presided over by Mr. Biersmith, Arbitrator. Prior to the hearing, the Petitioner homeowners and Park Management both submitted arbitration briefs. The homeowners were represented by San Jose Attorney Bruce Stanton, and called witnesses and introduced Petitioner's exhibits, Exhibits 1-8. Witnesses called by the homeowners were: Dr. Kenneth Barr, and Dan Waltz. Respondent Park Management was represented by Santa Barbara Attorney James Ballantine, and also called witnesses and introduced exhibits, Respondent's Exhibits A-T. Witnesses called by Park Management were: Dr. Michael St. John, Ken Waterhouse and Ruben Garcia. There were also exhibits received by Stipulation, Joint Exhibits 1 & 2.

The Arbitration Hearing was transcribed by a court reporter who prepared a Reporter's Transcript (referred to herein as RT1 for the September 19, 2011 hearing and RT2 for the September 20, 2011 hearing).

At the conclusion of the Arbitration hearing, the parties stipulated to a briefing schedule, including submission of billing statements in support of Park Management's claim for reimbursement of professional fees (RT2 206:20 – 207:25) and submitted a series of post-hearing briefs, and pursuant to the Stipulation, Park Management submitted exhibits documenting its professional fees incurred (Exhibits Q, R & S). Following the post-hearing briefing, the Arbitrator prepared a draft award on November 22, 2011, and then Park Management submitted revised rent calculations pursuant to the Arbitrator's directions, which were incorporated into the final Opinion and Award which was issued by the Arbitrator on December 20, 2011 ("Arbitration Award").

The Arbitration Award found that Park Management was entitled to a space rent increase under the terms of the Ordinance, finding: The Permanent increase is to be $25.59 and the Temporary Increase $67.09, for a total increase of $92.68, as supported by Respondent's Exhibit T. The Arbitrator expressly maintained jurisdiction until March 1, 2012, to oversee the effectuation of the award.

Appeal to Board of Supervisors

Notwithstanding the Arbitrator's reservation of jurisdiction, in January 2012, Deborah Hamrick, as homeowners' representative of the homeowners of Nomad Village Mobile Home Park, filed a Petition for Review of the Arbitration Award to the Board. As a result of the homeowners' appeal, Park Management elected to appeal a limited issue of the Award, solely the denial of a rent increase due to the doubling of the costs of the ground lease.

The Board held a hearing on the appeal on May 15, 2012.

Despite the fact that the Rules clearly provide that the Board's determination must be upon the "**record alone,**" the Board considered matters far outside the record of proceeding. Despite the fact that the standard for the Board's review of the Arbitrator's decision is to be "prejudicial abuse of discretion," which is defined as "where the Arbitrator has failed to proceed in the manner required by law, the decision is not supported by findings, or the findings are not

supported by substantial evidence," (Rule 23) the Board proceeded in a manner in which it substituted its own political judgment based upon its ex-parte communications with homeowners, rather than simply reviewing the record of proceedings.

It has since been revealed that prior to the hearing, members of the Board received improper ex-parte communications in opposition to the rent increase awarded by the Arbitrator, including the Second District Supervisor prior to the hearing having met with the Debra Hamrick, the homeowner representative, as well as other homeowners from other parks.

These ex-parte communications were later held by the Santa Barbara Superior Court to have been "improper" and "inappropriate" and in violation of governing law.

At the Board hearing, the Second District Supervisor, in front of her many constituents present, made a motion, which the Board approved, to reverse every single rent increase granted by the Arbitrator, and to remand the Arbitrator's approval of the rent increase based on the property tax increase back to the Arbitrator for reconsideration, and for recalculation.

The Board remanded the question of the portion of the rent increase based upon the County's property tax increase of the Park, even though the Board admitted that the law clearly provides for a rent increase based upon a property tax increase. In accordance with this action by the Board, the Arbitrator conducted a remand hearing on the property tax issue, on July 13, 2012, at which time Park Management and the homeowners appeared through representatives, and thereafter, on August 6, 2012, issued an Opinion and Award on Remand ("Property Tax Remand Award"). The Property Tax Remand Award upheld the full amount of permanent rent increase based upon the increased property taxes as set forth in the Arbitration Award, the sole discretionary matter remanded to the Arbitrator. The remaining aspect of the Property Tax Remand Award was a ministerial calculation based upon the changes set forth in the decision by the Board.

///

///

///

Writ of Mandate Litigation

On August 13, 2012, Park Management filed a Petition and Complaint for writ of mandate and for substantial monetary damages for illegally taking Park Management's property and denying it a fair return on its investment in the Park, naming County of Santa Barbara and the Board as Respondents and Debra Hamrick, as representative of the homeowners, as Real Party in Interest as to the Writ action, on the grounds that the Board's Order reversing the Arbitration Award was improper. The case was assigned to the Honorable Superior Court Judge Thomas P. Anderle. The case was bifurcated so that the Writ of Mandate action ("Writ Action") would be adjudicated first to a conclusion, before Park Management's takings lawsuit against the County and the Board would proceed, so that the nature and extent of Park Management's damages caused by the County and the Board would be ascertained first.

The Writ Action proceeded in the Court. The County filed its Administrative Record of Proceedings. The homeowners actively participated in the Writ Action, hiring legal counsel, Thomas Griffin. Resolution of the Writ Action was delayed by over a year while the homeowners actively litigated the case, filing numerous motions, all of which were denied by the Court, and engaging in unauthorized discovery (the Court ruled that the homeowners' were not entitled to discovery since an administrative writ proceeding is determined solely on the administrative record). The writ petition issues were extensively briefed for Judge Anderle.

On November 10, 2014, Judge Anderle entered his Order on Writ of Mandate ("Order"), which attached a detailed 31-page decision ("Decision") by which Judge Anderle thoroughly discussed the basis of the Order.

In the Order, Judge Anderle granted virtually all of the relief Park Management sought, ordering that the Board **vacate** its order reversing the Arbitration Award as to Awards numbered 4, 5, 6, 7, 8, 11, and 12, and remanded for further findings Arbitration Awards numbered 4, 5, 6, 7, and 12 (these award numbers follow the numbering set forth in the Arbitration Award).

Thereafter, the homeowners, through Deborah Hamrick again as homeowner representative, and again represented by Thomas Griffin, filed a separate writ proceeding,

naming the County as Respondent and Park Management as well as the land owners, the Bells, as real parties in interest. In this writ proceeding, the homeowners claimed that Park Management was not entitled to any rent increase or even to collect any rent at all since 2008. The homeowners disqualified Judge Anderle, so the matter was assigned to Judge Colleen K. Sterne. That action was resolved entirely against the homeowners on summary judgment, and Judge Sterne entered Judgment against the homeowners on December 18, 2015, which judgment is now final.

Board of Supervisors Remand Hearing

On January 19, 2016, the Board held a remand hearing, as ordered by Judge Anderle. At that time the Board voted to remand to the Arbitrator for further hearing to consider Awards numbered 4, 5, 6, 7, 8, 11, and 12. The remand of Awards numbered 8 and 11 was contrary to the Court order and contrary to the Board's own legal counsel's direction, since the Board was simply ordered to set aside its order vacating those awards so that the Arbitrator's Award was reinstated.

Remand Arbitration Hearing

On February 19, 2016, the Arbitrator, Steven Biersmith, Esq., held a Remand Arbitration Hearing, at which Park Management and the homeowners appeared through counsel and through representatives of both Park Management and the homeowners. The Arbitrator declined to take any new evidence at the Remand Arbitration Hearing, and determined to render a decision based upon the existing evidentiary record of proceedings. The Remand Arbitration Hearing was transcribed by a Court reporter. On March 5, 2016, the Arbitrator issued his Remand Award, awarding Park Management a permanent space rent increase of $25.59 and temporary increase of $39.44, as itemized in the Remand Award.

///

///

The Homeowners' Expert Has Admitted Park Management is Entitled to Recover its Costs

Park Management has incurred over $500,000 to date in costs, and is continuing to incur additional costs, in defending against the homeowners' proceedings attempting to deprive Park Management of recovering the rents to which it is legally entitled under the law. Park Management will recover these costs through rent increases, as the homeowners' expert has admitted Park Management is entitled to do. In the event that Park Management is deprived of this right, which the homeowners expert has admitted Park Management has, to recover its costs through a rent increase, then Park Management will recover these costs through its civil lawsuit for damages against the County and the Board.

III

REVIEW BY THE BOARD OF SUPERVISORS MUST BE BASED UPON THE EXISTING RECORD ALONE AND NOT ANY EVIDENCE OUTSIDE OF THE EXISTING RECORD

The Rules (Rule 23(b)) require that the Board make its determination based upon the arbitration "record alone" and may also "elect to hear oral argument by the parties, their representatives, and/or their attorneys."

The Record of the Arbitration Proceedings consists of the following:

- The Arbitrator's Award (revised) dated December 20, 2011, including attached Rent Schedule, along with the prior draft Award
- Arbitration Hearing Transcript for September 19-20, 2011
- Park Management's Exhibits A-T, referenced in the Arbitrator's Award
- Homeowner's exhibits 1-8, referenced in the Arbitrator's Award
- Joint exhibits 1-2, referenced in the Arbitrator's Award
- Post Arbitration Hearing Briefing by the Parties:

1. Opening Post-Hearing Arbitration Brief by Nomad Village Mobile Home Park
2. Submission of Updated Acount Statement by Nomad Village Mobile Home Park for Professional Services
3. Homeowners' Post-Hearing Opening Brief
4. Closing Post Arbitration Hearing Brief by Nomad Village Mobile Home Park
5. Submission of PUC Orders by Nomad Village Mobile Home Park
6. Homeowners' Post-Hearing Closing Brief

- Property Tax Remand Award, dated August 6, 2012
- Property Tax Remand Arbitration Hearing Transcript for July 13, 2012
- Order on Writ of Mandate, entered by Santa Barbara Superior Court on November 10, 2014
- Remand Arbitration Exhibits U, V & W proffered by Park Management
- Remand Hearing Brief by Park Management
- Real Party In Interest Debra Hamrick's Arbitration Brief on Remand for Revised Findings
- Remand Arbitration Hearing Transcript for February 19, 2016
- Remand Award dated March 5, 2016

This will constitute Park Management's request that the Record to be reviewed by the Board in connection with this Arbitration Proceeding include the above documents, including the Remand Arbitration Hearing Transcript for February 19, 2016.

The Board has been warned by the Court that its consideration of matters outside of the record, including its illegal ex-parte communications with the homeowners or homeowners of other Parks, is improper. To the degree that the Board persists in such conduct in the face of this

admonishment by the Court, then Park Management will consider the Board's conduct to be intentional conduct to violate Park Management's legal rights and will seek the appropriate damages in its civil action against the Board for this violation.

IV

THE HOMEOWNERS' PETITION SHOULD BE REJECTED AS IT IMPROPERLY RELIES ON MATTERS OUTSIDE OF THE RECORD AND FAILS TO ESTABLISH A PREJUDICIAL ABUSE OF DISCRETION

The Rules clearly provide that the Board's determination must be upon the "**record alone.**" (Rule 23(b).) Accordingly, it is utterly improper for the homeowners to attempt to proffer any new purported evidence or exhibits, nor may they rely on any claims not appearing in the record. The homeowners refer in their Petition for Review to several documents, variously labeled "exhibits" or "attachments" to which they refer in their Petition and on which they purport to base their appeal, **but which are not attached to the Petition that the homeowners served on Park Management**. None of the purported "attachments" appear to be contained in the record. These "attachments" appear to not be part of the record, were not served on Park Management, and the Rules preclude the homeowners from submitting them, and the Board from considering them. These purported "attachments" appear to be new documents that are entirely irrelevant and improper, that the homeowners, now that their legal counsel has again ceased representing them, have chosen to attempt to submit in an effort to reargue their case. **Any and all "attachments" to the Petition (none of which have been provided to Park Management) must be disregarded by the Board.**

It should also be noted that the Rules do not provide for the homeowners to submit any further documents or any other written or oral communication to the Board or anyone acting for the Board, in support of their appeal.

The Rules provide that the Board may "elect to hear oral argument by the parties, their

representatives, and/or their attorneys." Clearly, any such oral argument may only be after reasonable notice to all parties, and **only on the record at a public hearing, at which both parties have an opportunity to be present**.

Accordingly, it would be entirely improper for any of the homeowners of Nomad Village or other mobilehome park to engage in any written or oral communications with the Board outside of any oral arguments at an open meeting that the Board may choose to schedule. Park Management raises this issue again because it became aware, after the fact, of improper secret ex-parte communications by homeowners with persons associated with the Arbitration Proceedings.

Moreover, the homeowners' Petition to the Board repeatedly refers to alleged "evidence presented by the homeowners," without ever actually identifying any of such alleged evidence.

The Petition is premised on the claim that homeowners submitted at the February 17, 2016 remand arbitration hearing "evidence and legal citations" without identifying any such evidence or legal citations, and ignoring the fact that no such evidence was presented by the homeowners or admitted.

The Petition is replete with claims that the "homeowners presented evidence" without identifying any such evidence. The Petition is further replete with various purported assertions of alleged facts with no citation to the record, and when in reality the alleged "facts" asserted by the homeowners in their Petition are not in evidence, and in fact are false. The Petition is further replete with purported legal arguments, again without citation to the record, and when in fact no such arguments were ever made in the Arbitration Proceedings and such purported arguments are meritless and without any evidentiary foundation on which the arguments purport to be made. A particularly egregious example of this is the homeowners' repeated references, without any citation to the record, to alleged code "violations and the associated penalties" and references to alleged "violations of California Civil Code section 798.39.5." These reckless and irresponsible claims have no foundation in fact or law; there is no such evidence of any such alleged "violations and associated penalties" in the record of proceedings, nor was there any argument

by the homeowners as to Civil Code section 798.39.5. These patently false and improper statements made repeatedly by the homeowners taint their entire Petition for review and must be disregarded.

Essentially, the homeowners' Petition is not a petition for review, but an improper attempt by the homeowners to have the case reheard based upon their own false claims of matters not in evidence, in violation of Rule 23.

The homeowners challenge the Arbitrator's findings as being insufficient, but inappropriately and illegally seek to have the Board hear the matter and reach a different outcome than determined by the Arbitrator. As set forth in Judge Anderle's Ruling, to the extent that findings are not adequate, the appropriate remedy is to remand the matter so that findings can be made. (Ruling, page 27, citing *Glendale Memorial Hospital & Health Center v. State Department of Mental Health* (2001) 91 Cal.App.4th 129, 140.) To the degree that the homeowners claim that the Remand Arbitration Award does not contain adequate findings, then the sole remedy is for the matter to be remanded to the Arbitrator to make yet additional findings, not for the homeowners to obtain different determinations and findings by a party other than the Arbitrator.

V

DISCUSSION OF AWARDS REMANDED TO ARBITRATOR

The homeowners appear to attempt to go through portions of the Arbitrator's Award on a numerical basis. As noted above, the homeowners fail in all cases to establish or even address the applicable legal standard. In addition, the homeowners' discussion is riddled with improper references outside the record. As such, their entire discussion must be disregarded. However, Park Management will respond to some of the points raised, in the same numerical order set forth by the homeowners.

Award No. 4. Amortization Rate

Award No. 4 is that "[a]ll granted temporary increases are to be amortized at 9% for seven (7) years."

The Ordinance provides for amortization over the useful life of a capital expense. (S.B. County Code, ch. 11A, § 11A-6(b)(2).) The Ordinance otherwise provides no guidance as to either the time span for amortization or the interest rate.

The Court affirmed the Arbitration Award as to the amortization: "The record shows that there was substantial evidence to support the arbitrator's decision of seven years and nine percent. Petitioners presented this amortization schedule [Exhibit C] and Dr. St. John testified that these numbers were the result of his professional judgment." (Decision, p. 30.)

The Court further found that since certain other matters were being remanded back for further proceedings and findings, that the "items subject to amortization may change as a result of the further proceedings" so that Award No. 4 must be subject to potential reconsideration. (*Id.*)

Accordingly, the amortization potentially could have been changed, but need not have been changed, under the terms of the Court's ruling. Since the Court has already affirmed the amortization as being supported by substantial evidence, based upon Dr. St. John's professional judgment, already in the record, the Court has already determined that substantial evidence supports the Arbitrator's decision, it continues to support the Arbitrator's decision as set forth in the Remand Award. Similarly, the Court has found that the Arbitrator's findings were sufficient to support the award. Accordingly, there are no grounds for review of this award.

Award # 5. Capital Items.

Award No. 5 is that the "homeowners are to pay the $320,000. If any of these monies are not spent on eligible items with six months from the date of this award, the residual amounts are to be returned to the homeowners."

Park Management's rent increase notice sought a rent increase for capital items in the total amount of $320,000, for the purpose of the rent increase notice. The $320,000 figure was based upon an escrow fund that Park Management had paid into that was specifically designated for capital improvement expenditures for the Park, and which Park Management had committed to pay for capital items relating to the Park. Park Management did not seek, and the Arbitration

Award did not grant, the rent increase because of the $320,000 payment; the payment was simply the basis of the amount requested.

The capital items in evidence at the Arbitration Hearing, were of two components, capital items that had been incurred at the time of the Hearing, and those items that were prospective in nature.

At the time of the Arbitration Hearing, Park Management had already incurred $62,145.55 in capital improvement expenses for the Park. These expenses are itemized in Exhibit J, and the invoices for these expenses are set forth in Arbitration Exhibit K. Waterhouse Management Vice President Ruben Garcia, who oversees the day-to-day operation and financial management of the Park, **testified that these expenses itemized in Exhibit J, backed up by the invoices in Exhibit K, were all expenses actually incurred by Park Management for capital items improving the Park, as set forth in the documents**. (RT2 182:13-183:23; 188:18-189:14.)

Park Management also planned to incur significant capital expenditures for repaving the roads and for work on the replacement of components of the common area electrical system. Bids and proposals for both types of work were received into evidence. (Exhibit M.) Dr. St. John testified that the road work and electrical system work proposed by Park Management is properly treated as a capital expense under the Ordinance. (RT1 130:9-17.)

Waterhouse Management President Ken Waterhouse confirmed that the $320,000 was for funds that he caused to be paid into an escrow account, and that it was funds solely dedicated for capital improvements for the Park. (Exhibit K; RT2 145:15-147:1.) He confirmed that these funds would all in fact be spent on capital improvements to the Park. (RT2 166:7-22.) He further confirmed that the amounts to be spent on capital improvements to the Park will certainly exceed $320,000. (RT2 179:1-13.) He pointed out that one of the challenges in determining the exact scope of work to be done was Park Management's ongoing dialogue with the County and their ever-shifting positions regarding work that they claimed needed to be done at the Park.

(RT2 166:11-22.) Regardless, he confirmed with certainty that work far in excess of $320,000 had to, and would, be done at the Park: "We know the dollars will be spent." (*Id.*)

The Ordinance provides for capital improvements and capital expenses as follows: "'Capital Improvement' is any addition or betterment made to a mobilehome park which consists of more than mere repairs or replacement of existing facilities or improvements and which has a useful life of five or more years." (S.B. County Code, ch. 11A, § 11A-2(a).) "'Capital expense' is a repair or replacement of existing facilities or improvements which has an expected life of more than one year." (Id., § 11A-2(b).) "The cost of capital improvements incurred or proposed, including reasonable financing costs, may be passed on to homeowners at the time of an annual increase …." (S.B. County Code, ch. 11A, §11A-6(a)(1).) "If management fails to begin construction of a capital improvement within six months after approval of the cost of the capital improvement, then management shall discontinue the increase for the capital improvement and shall credit any amounts collected to each homeowner." (*Id.*, § 11A-6(a)(5).) Similar provisions apply for capital expenses. (*Id.* § 11A-6(b).) Accordingly, the Ordinance permits the pass through of the costs of capital improvements and expenses, whether those costs have already been incurred or are merely proposed.

The homeowners conceded that the Ordinance allows Park Management to notice a rent increase prospectively for expenses not yet incurred. Their expert, Dr. Baar, agreed:

> Q. The ordinance -- I think, we can agree that the ordinance does allow the park owner to recover prospectively, right?
>
> A. Yes.
>
> Q. And then do the work within six months?
>
> A. Right.
>
> Q. You've seen that part of the ordinance, correct?
>
> A. Correct.

(RT1: 166:1-9.)

The homeowners' Petition is based upon their misguided claim that some of the capital items were not incurred by the Park prior to the notice of rent increase. That claim is patently contradicted by the clear terms of the Ordinance, the finding of the Court, and the admissions of the homeowners' own expert.

The Court found that the evidence of proposed prospective capital improvements and capital expenses was not sufficiently "definite and certain" and that the Arbitration Award contained no findings that any proposal was definite and certain so that the finding "to include collection of $320,000 was not supported by substantial evidence." (Decision, p. 26.) However, the Court did find that there was evidence of $62,145.55 of specific items of costs incurred by Park Management for capital improvements and expenses (Exhibits J and K), but the Arbitration Award did not make specific findings allowing these expenses, and the Board improperly overturned this award and in doing so "the Board has not proceeded in the manner required by law." (Decision, pp. 26-27.) The Court reversed the Board's order disallowing Award No. 5 and remanded it for appropriate action and appropriate findings, and the Board remanded the matter back to the Arbitrator.

In the Remand Award, the Arbitrator made a clear finding that the $62,145.55 awarded were for capital improvement expenses incurred by Park Management prior to the commencement of the Arbitration Hearing. The Court's Ruling had simply found that the Arbitrator did not make a specific finding as to the $62,145.55, separate and apart from the $320,000 awarded for all capital items. The Arbitrator has now done so in the Remand Award, having specified that Park Management is entitled to the $62,145.55 separate and apart from the $320,000 which expressly was not awarded. At the Remand Arbitration hearing, these findings were properly made that the $62,145.55 of specific items of costs incurred by Park Management for capital improvements and expenses (Exhibits J and K) are for capital items provided for under the Ordinance, based upon the evidence in the record, cited above. Accordingly, there are no grounds under Rule 23 for the Board to alter this award.

///

Award # 6. Professional Fees.

Award No. 6 is that the homeowners are to pay $25,000 for professional fees associated with the capital improvements.

The Arbitration Award states as follows:

> "The professional fees spent on capital improvement item should not be treated as a one shot expense, but rather amortized (Ex. K & Q). After considering the objections raised by the Homeowners, a good portion of the line items submitted by the Park Owner do not appear to be relevant to any capital improvements, therefore, a reduction of $25,000 from the original request is warranted. The remaining $25,000 is to be charged to the Homeowners."

The Court found that the Ordinance clearly allowed Park Management to recover for professional fees related to a capital item: "where professional fees may be correctly categorized as a cost of either a capital improvement or capital expense, such fees may be passed on." (Decision, pp. 27-28.) The Court reversed the County Board of Supervisors' Order vacating the Arbitration Award No. 6, and remanded back to the Arbitrator for further findings as which professional fees are awarded based upon being related to capital expenses.

Park Management sought to recover for $50,973 in legal fees incurred in December, 2010 for legal matters related to the operation of the Park. This work is itemized in detail in the statement in evidence as Exhibit Q, and the areas of work are summarized in single page exhibit in Exhibit K. The billing statement was reviewed by Mr. Waterhouse and the fees were incurred and paid by Park Management as a normal and legitimate operating expense. (RT2 145: 6-14.)

The Arbitration Award was a reasonable award as stated. The itemized statement (Exhibit Q) clearly has entries supporting $25,000 in legal time spent on issues related to the capital items of the Park.

Moreover, Park Management is entitled to recover professional fees incurred by Park Management, both as fees related to capital expenses and as fees incurred as ordinary and necessary operating expenses in operating the mobilehome park. The evidence in these proceedings would support awarding the full $50,973 sought by Park Management, not just for legal fees related to capital expenses, but also for matters constituting ordinary and necessary

operating expenses, provided for in the Ordinance.

As noted by the Court, Park Management is entitled to recover its costs for legal services in connection with capital expenses and improvements under section § Section 11A-6, subdivisions (a)(1) and (b)(1) of the Ordinance. In addition, Park Management is also entitled to recover its costs for legal services incurred in the operation of the Park as an ordinary and necessary operating expense under section § 11A-5(f)(1) of the Ordinance, as found by the Court in allowing Park Management to recover its professional fees incurred in these rent control proceedings (see discussion under Award #11).

The professional services performed was set forth in the detailed billing statement (Exhibit Q) and the one page summary of work (included in Exhibit K).

Dr. St. John noted that Park Management was entitled to recover the full $50,973 in legal fees, either through a permanent rent increase by including it the MNOI analysis, or through a temporary rent increase as proposed.

> Q. .... With respect to professional fees, such as legal fees and for professional consultants, is it related to dealings with regulatory agencies and the like, is that something that's typically an expense that's included in an expense calculation, either through MNOI or through another kind of amortized pass-through?
>
> A. In my experience it is.

(RT1 135:1-8.)

Dr. St. John further commented on the subject:

> That's the judgment that was made because a $51,000 legal expense is not the kind of expense that occurs every single year, so if it was to be left in the budget, it would make a big difference in the outcome.
> If on the other hand you take it out here, delete it completely from the MNOI, it means that the rent increase from the MNOI is significantly lower than it would otherwise be. But if that amount is appropriately amortized and allowed over some number of years at some rate of interest, then that is an

> alternative way to account for these particular legal fees and, in my judgment, it's a way that is more fair.
>
> ... ...
>
> .....It's not an element in the MNOI. It is included elsewhere, because this was an amount that truly was paid in connection with expenses and has to be accounted for one way or another.

(RT1 95:3-15, 96:1-4.)

The proposition that the Arbitrator may properly consider legal fees incurred by Park Management as an ordinary and necessary operating expense under section § 11A-5(f)(1) of the Ordinance, as well as a capital item to the extent that the fees deal with capital expenses and improvements under section § Section 11A-6, subdivisions (a)(1) and (b)(1) of the Ordinance, is apparent under the terms of the Ordinance, the Court's Decision, and existing law. Indeed, the Court and the homeowners expressly acknowledged that Park Management was entitled to recover its legal fees incurred as an operating expense for the purpose of these rent control proceedings (see discussion regarding Award No. 11, below). In *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, 294, cited by the Court, the Court of Appeal noted that attorneys fees related to mobilehome park operations, such as determining compliance with regulations affecting the Park and dealing with regulatory agencies, as well as for such matters as evictions and responding to lawsuits by homeowners, were properly recoverable through a rent increase. The Court of Appeal also found that these fees could also be treated as a temporary rent increase. In the case before the Arbitrator, several matters were proposed and upheld by the Court to be treated as amortized, temporary expenses, and this treatment is discussed in a separate section herein, *infra*.

The Court's Ruling had simply found that the Arbitrator's ruling on this item may have been influenced by the $320,000 awarded for all capital items. The Arbitrator in the Remand Award has clearly addressed the capital items, as discussed above, and has made a finding that $25,000 of professional fees is a reasonable amount relating to capital expenses and improvements. This finding is supported by substantial evidence in the record at the Arbitration Hearing, as noted above. Accordingly, there are no grounds under Rule 23 for the Board to alter

this award.

Award # 7: Architecture and Engineering Fees

Award No. 7 is that the homeowners are to pay $40,000 for fees incurred by Park Management in purchasing plans and drawings and permits from the prior operator, in order to proceed with capital improvements of the Park.

The Court found as follows: "The same analysis [as with Award No. 6] applies to Award No. 7 for architecture and engineering (A&E) fees. As with other professional fees, the Ordinance provides for passing on such fees to the extent such fees are properly categorized as "costs" of capital improvements and expenses.

The Arbitration Award states as follows:

"Waterhouse testified he purchased certain plans to facilitate evaluating and then moving forward on certain capital improvements for the Park. Given the age on some of the supporting documentation, some of this work appears stale. Although the Park Owner represented that the County will work with them with such things as expired permits, some of this work may have little or no value as of this date. A more reasonable amount to be charged would [be] $40k."

The components of the A&E fees are itemized in the spreadsheet in evidence, Exhibit J. The invoices supporting these individual entries are in evidence in Exhibit L, and these invoices summarize the work or other basis for the expense. These include costs for the preparation of plans and drawings of the entire Park. They also include costs paid to the County for permits for work at the Park.

Mr. Waterhouse testified that these items were purchased from the prior operator, and included a number of plans and CAD drawings for the entire Park, and were and remained valuable to Park Management as the current operator in moving forward with capital improvements for the Park. (RT2 144:6-145:5.) He also testified that these items include, in addition to the plans and drawings prepared by the Engineering Firm Penfield and Smith, fees paid to the County of Santa Barbara Planning and Development for permits for work related to various aspects of the Park. (166:23-167:3.) There was also discussion at the hearing between

the Arbitrator and Park Management that although these permits had expired, the County had indicated that they will work with Park Management and extend the timelines for the permits so that there was perceived value in the permits. (RT2 179:18-180:11; 181:8-17.)

The Arbitrator's findings with respect to this item were reasonable and well taken. Plans and diagrams for the entire Park, particularly those which are computerized CAD drawings, are obviously something of enduring value to the Park operator on an ongoing basis far into the future for a variety of different purposes related to the improvements to and operations of the Park. The $40,000 awarded reflects compensation for a large portion of the expense of the Plans and drawings. (Exhibits J and L.) Limiting the award to compensation for the expense of these drawings was a reasonable resolution, and well supported by the record.

The Court's Ruling had simply found that the Arbitrator's ruling on this item may have been influenced by the $320,000 awarded for all capital items. The Arbitrator in the Remand Award has clearly addressed the capital items, as discussed above, and has made a finding that $40,000 is a reasonable amount relating to these A&E fees associated with capital expenses and improvements. This finding is supported by substantial evidence in the record at the Arbitration Hearing, as noted above. Accordingly, there are no grounds under Rule 23 for the Board to alter this award.

Award No. 8 Property Taxes

Award No. 8 is that the "Homeowners are to pay $130,531 for the supplemental tax increase payments already paid by the Park Owner."

The Court found that the "increases in property taxes" were properly considered by the Arbitrator as a basis for a rent increase under the Ordinance, section 11A-5(f)(1), and that the Board's purported reading of the Ordinance to exclude supplemental property taxes was in violation of the clear law on the subject. (Decision pp. 22-23.) The Court further found that the Arbitrator properly weighed the evidence and followed Dr. St. John's opinion that the supplemental property taxes should properly be charged to the Homeowners in the form of a rent

increase. (*Id.*, pp. 23-24.) The Court upheld the Arbitration Award:

> There is substantial evidence to support the arbitrator's decision. Consequently, under the standard of review to be used by the Board under the Hearing Rules, the arbitrator did not abuse his discretion by making a determination supported by substantial evidence, notwithstanding the Board's view that it would have reached a different result reweighing the evidence. Thus, the Board has not proceeded in the manner required by law by reversing Award No. 8 on the basis of either an erroneous interpretation of the Ordinance or a reweighing of the evidence not permitted by Hearing Rules, rule 23(a)."

(Decision, p. 24.)

On this basis, the Court ordered that the Board vacate its order reversing Arbitration Award No. 8. **The Court did <u>not</u> order the matter reconsidered for further findings or any other action.**

County Counsel presented the following Findings to the Board for adoption at the Board's remand hearing, which it prepared in adherence to the Court's Order:

> The Arbitrator included findings of fact and was supported by substantial evidence. The Board of Supervisors determines that the Arbitrator did not abuse his discretion and affirms Award 8.

Instead of following the Court's Order and their own Counsel, the Board made the following revised findings, improperly finding that the "Arbitrator abused his discretion," despite the fact that the Court found that the Arbitrator's award was proper, and remanded the matter back to the Arbitrator:

> The Arbitrator did not make findings to bridge the analytic gap between the evidence presented and the ultimate decision made by the Arbitrator. The Arbitrator did not identify whether the supplemental tax increase was categorized as an increase in operating costs, cost of a capital improvement, or capital expense so as to be passed through to the homeowners; thus, the Board of Supervisors determines that the Arbitrator abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence.

The Board's reference to "capital improvement, or capital expense" is non-sensical. The increased property taxes are clearly an operating expense properly considered by the Arbitrator as the basis for a rent increase under the express terms of the Ordinance, as already held by the Court. To the extent that the Board's reference to capital items meant to refer to the treatment of

the supplemental property taxes as an amortized temporary increase, similar to how a capital item is treated, that treatment has been expressly found by the Court to be proper, and the homeowners conceded that treatment was proper, as discussed herein in the section on temporary increases, *infra*.

Clearly under the express terms of the Ordinance, increased property taxes are a basis for a rent increase, as section 11A-5(f)(1) of the ordinance specifically provides that "increases in property taxes" are the type of increased operating expense that the Arbitrator "shall consider" in determining a rent increase.

The homeowners' own consultant conceded that property taxes are a proper basis for a rent increase in any rent controlled jurisdiction, and did not dispute that a property tax increase is properly a basis for a rent increase under the Ordinance. (See, e.g. RT1 221:5-8.)

There can be no dispute that Park Management incurred the expense of the supplemental property taxes. Dr. St. John testified that Park Management did incur some $130,000 in property tax increases that were not recovered by the permanent rent increase, and that the most reasonable means by which to recover them was through the temporary increase, amortized as he prepared it.

> A. It was. And just to state it again for clarity, this $130,531 tax increase is the amount that the park owner really did pay, I mean that's actual out-of-pocket, $130,000 and change without being compensated at all, whereas under the system we're using here, park owners deserve compensation for cost increases.
>
> Q. And actually, it's fair to say that that is -- even more specifically to say, that's the amount of increase that the park owner is out-of-pocket. In fact, the park owner is out-of-pocket more than that in the total property taxes, that $130,000 is just the increase number for the period of time in question?
>
> A. Yes. I mean, I would only say the rest of the property tax amount was covered by the income, by the space rents, but this amount is not covered by space rents and should be.

(RT1 77:19-78:10.)

The homeowners never disputed at the Arbitration hearing that these supplemental property taxes were not paid or that they could not be recovered through a temporary award, amortized for a limited period of time. This methodology, undisputed by the homeowners, was upheld by the Court.

The only objection by the homeowners was as to the "regulatory lag" or the delay from the time that the Park Management incurred the expense (which was long after the transfer date) to the time that it was the subject of the rent increase. This "regulatory lag" objection was dispelled by Dr. St. John. The Court found that the issue was properly decided by the Arbitrator.

The Court noted that the testimony of Dr. St. John supported the Arbitration Award:

> "[T]he County isn't quick, usually, in changing the tax rates, they wait a while and then they eventually change the taxes and then they send our supplemental tax bills. … Then the question is, how long will it be before the park owner begins being compensated for that tax increase? And the answer is, until May 2011. The increases that were imposed, effective May 1, 2011, covered that amount, so from then forward the park owner is whole, but for the period from August 2008 to May 2011 the park owner was obligated to pay these amounts but the residents were not obligated – before this proceeding, or otherwise, wouldn't be obligated to pay it. But in my view, these are amounts that residents, in the end, have to pay. This is an increase, it's a legitimate increase, it's government imposed, it's not within the park owner's discretion, it is an extra cost."
>
> St. John continued: "So I think [homeowners' counsel] might tell us … you should have petitioned right away. Well, okay, but that would imply that we have to petition kind of for every year, every single time an increase comes up we're going to have to petition, petition, petition, and these petition processes are quite time consuming, if you don't know. And so to my mind, it simply does not make good sense to, in effect, command the park owners do an entire NOI fair return petition every year. That doesn't make good sense, and the way to not do that is to allow park owners to do this kind of a fair return hearing periodically, when appropriate, when it feels appropriate, and then to be compensated for – to be compensated after the arbitrator has decided on the justification for the increases in question, to be compensated for the past."

(Decision, pp. 23-24.)

The Arbitrator properly complied with the terms of the Court's order by reaffirming Park Management's legal right to recover these property tax costs through the rent increase.

There is nothing properly before the Board in these proceedings that would give rise to any basis for any change to Arbitration Award No. 8. Indeed, under the terms of the Court's ruling, the Board has no authority whatsoever to take any action to change Arbitration Award No. 8.

Award # 11 Expert and Legal Fees Incurred In Rent Control Proceedings

Award No. 11 is that the "Homeowners are to pay $110,000 for legal fees associated with the challenge to the rent increase." The Arbitration Award states as follows: "After reviewing the itemizations submitted by the Park Owner for expert and legal services expended in this matter (Ex. R & S) and the Homeowners' response, a reasonable amount to be paid by the [latter] would be $110,000."

The Court found that these fees could properly be charged to the homeowners under the terms of the Ordinance, and that the Arbitration Award properly awarded the fees as part of the rent increase. The Court noted that the homeowners conceded that these fees could properly be the basis for a rent increase. The Court further found that the Arbitrator proceeded properly, allowing Park Management to submit an itemized statement of fees, and the homeowners to respond, and making an award based upon these submissions. "This evidence constitutes substantial evidence to support the factual determination. Thus, the arbitrator did not abuse his discretion in making this award." (Decision, p. 29.)

As noted by the Court, there was no disagreement that Park Management is entitled to recover its professional fees incurred in these proceedings, nor the treatment of it in amortizing these costs over seven years. The Court quoted the following admission in this regard by Dr. Baar:

> "[Q.] Now, with respect to the anticipated professional fees relating to the rent increase, as I understand your position there, you don't necessarily quarrel with the idea that the park owner is entitled to recover professional fees relating to the rent increase?
>
> "A. That's right.

"Q. Nor do you argue with the methodology employed here, which is to do it as a temporary as opposed to the base for a permanent rent increase?
"A. Right, that's correct. [¶] … [¶]

"Q. … So, your sole quarrel is with the number?

"A. That's correct."

(Decision, p.29.)

The Court concluded that "Baar's testimony is substantial evidence that legal fees, if reasonable in amount, are appropriately included as a basis for a rent increase as an ordinary and necessary operating expense."

The Court found that the Board of Supervisors acted improperly: "The Board did not proceed in the manner required by law by reversing Award No. 11 on the grounds that these legal fees were not to be considered by the arbitrator under the terms of the Ordinance." (Decision, pp. 29-31.) The Court ordered that the Board vacate its order reversing Arbitration Award 11.

The Court did not order the matter to be remanded for further consideration by the Arbitrator; indeed, it made clear that there was nothing further to consider. County Counsel understood this fact. The findings that County Counsel prepared for the Board, which it expressly stated at the Board's remand hearing, were carefully drafted to be consistent with the Court Ruling.

County Counsel presented the following Findings to the Board for adoption, which it prepared in adherence to the Court's order:

The Arbitrator included findings of fact and was supported by substantial evidence. The Board of Supervisors determines that the Arbitrator did not abuse his discretion and affirms Award 11.

Instead of following the Court's Order and their own Counsel, the Board made the following revised findings, improperly finding that the "Arbitrator abused his discretion," despite the fact that the Court found that the Arbitrator's Award was proper, and remanding the matter back to the Arbitrator:

> The Arbitrator did not make findings to bridge the analytic gap between the evidence presented and the ultimate decision made by the Arbitrator. Findings for this Award are especially important because legal fees are not expressly identified in the Ordinance as an allowable operating expense. The Arbitrator did not make findings regarding the final calculation of the legal fees awarded nor did the Arbitrator identify whether the legal fees were categorized as an increase in operating costs, cost of a capital improvement, or capital expense so as to be passed through to the homeowners. Thus, the Board of Supervisors determines that the Arbitrator abused his discretion. The Board of Supervisors remands this Award to the Arbitrator to make findings of fact on which the Arbitrator's decision is based that are supported by a preponderance of the evidence.

Pursuant to the Court's Order, Arbitration Award No. 11, awarding Park Management a rent increase based upon $110,000 in professional fees incurred through the date of the application made by Park Management during the initial arbitration, is not at issue in this Remand Arbitration proceeding.

There is nothing properly before the Board in these proceedings that would give rise to any basis for any change to Arbitration Award No. 11. Indeed, under the terms of the Court's ruling, the Board has no authority whatsoever to take any action to change Arbitration Award No. 11.

Amortization of Professional Expenses

To the degree that the homeowners are now objecting to the treatment of professional fees (and the supplemental property taxes although they are not properly involved in these remand proceedings) as an amortized temporary rent increase, similar to the treatment of a capital expense, the homeowners ignore that this treatment has already been adjudicated to be proper and that the homeowners have already conceded that this treatment is appropriate. Moreover, the homeowners conflate the treatment of temporary expenses in general with capital expenses, which are also temporary expenses. Both are amortized and passed through as a rent increase of a limited duration. The homeowners' claims are not only contrary to the overwhelming facts and law to the contrary, but also contracted by the homeowners' own evidence in the Arbitration Hearing.

The homeowners repeatedly throughout the Arbitration Hearing conceded that the treatment of professional fees as an amortized temporary expense, or as a "pass through," in the same manner in which a capital item is treated, is the appropriate treatment for the professional fees at issue in these proceedings.

The homeowners' attorney expressly conceded:

> And finally, the anticipated professional fees relating to the rent increase itself of $125,000, the homeowners do not disagree that it is beneficial for the homeowners to have any such fees passed through so that they are paid once and then they drop off of the rent statement. We don't disagree with those remarks that counsel made, so we are not here to say that those should become operating expenses.

(RT1 41:1-8.)

Dr. St. John explained that the treatment of large essentially one-time or non-recurring expenses, including professional expenses, could be analogized as a capital expense, not because they are capital expenses, but because they are large essentially one-time expenses:

> They're not capital improvements, that's true, but they are large expenses that shouldn't be treated simply as an annual -- an annual cost item.

(RT1 84:15-17.)

Dr. St. John gave a detailed explanation of the basis for amortizing the expenses, and treating them as a temporary expense, and why it is favorable for the homeowners:

> Q. Essentially, you made a distinction between either treating it as a normal operating expense, treating these expenses as a normal operating expense for the purposes of calculating a permanent rent increase under MNOI or pulling it out and making it something separate, essentially. Is that correct, a fair distinction?
>
> A. It is a fair distinction.
>
> Q. And let me ask before we go on with the analysis, in your professional opinion is it appropriate to include in some manner for the purposes of rent

increase under a mobile home rent control ordinance, expenses of this type that a park operator would incur -- for example, legal and appraiser and other professional fees relating to property tax litigation and to rent increase hearings and litigation?

A. Yeah, I do, I think that it's appropriate.

Q. So to start off as a basis, you think the type of expense we're talking about is an appropriate expense to be included in some way in a rent control space rent increase?

A. Oh, completely, I do think it is. And parenthetically, if I can just say, if these amounts were to be included in the MNOI and if the arbitrator were to ask me or Dr. Baar to compute it that way, it would come out less advantageous to the residents. So --

Q. And the reason for that would be because if you included it as a MNOI analysis, or a similar type of operating income analysis for the purposes of a permanent increase of rent, you'd essentially have an extraordinary expense being deemed to being a normal operating expense and it would essentially be forever, become a permanent rent increase that would go on forever for the residents and would be based on what arguably would be a fiction -- that is, that this extraordinary expense is really a regular recurring expense?

A. Correct.

Q. So what you're saying is by treating it this way as a temporary increase, it's more fair to the homeowners?

A. That's right.

(RT1 84:24-86:16.)

Dr. St. John went on to state:

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

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

(RT2 22:2-15.)

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

A. Yes.

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

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

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

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

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

A. I believe it is.

(RT2 116:17-117:18.)

Dr. Baar unequivocally agreed with Dr. St. John that the professional fees incurred in connection with the rent control proceedings are recoverable by Park Management, and are properly amortized as a temporary expense.

> Q. So it's your experience that an application such as this may properly charge residents for the professional fees generated in connection with this application process, correct?
>
> A. For the rent increase application, yes. Yes, That's -- if you have a cost in getting a fair return, that's a reasonable cost.
>
> Q. And typically, it would be done, structurally speaking, the way this exhibit shows, which is rather than make it an operating cost and put it in the NOI formula and roll it into the base rent that never goes away, it's a separate line item pass-through, if you will, correct?
>
> A. Yes. And typically it's amortized because it's not the kind of expense that occurs frequently.
>
> Q. Okay. So you're in agreement with what Dr. St. John was saying about how doing it this way is better for the tenants?
>
> A. Yes. Well, it's an amortized expense so it should end.
>
> Q. So you're in agreement with him on that?
>
> A. Yes.

(RT1 174:8-175:4.)

The Court in its Decision affirmed the treatment of these various items as temporary rent increases. Notably, in *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, 293, cited by the Court, the Court of Appeal held that although the ordinance in question did not specifically provide for allocation of an operating expense over an extended period of time, the hearing officer (in that case a rent control board) had sufficient flexibility to do so and amortizing it to treat it as a temporary rent increase. That

was also the Court's ruling in this case in upholding the propriety of the temporary rent increases in this case.

Moreover, the homeowners have expressly agreed that Park Management is entitled to recover its fees and expenses incurred in the writ proceedings and through remand.

The homeowners' expert, Dr. Baar testified to this upon the homeowners' attorney's questioning:

> Q. ....My questions to you are, when an administrative hearing decision such as this is appealed to the courts, do the courts typically, if they find something wrong with that decision, remand it back to the administrative body for further or additional hearings?
>
> A. Yes, that's the standard procedure.
>
> Q. Do you have any knowledge as to whether or not, as part of that remand process, and **at that time of the remand, that the park owner would then be able to claim additional expenses as they're then being incurred?**
>
> A. You can say that would be an additional clarification to make. In these cases, park owner claims expenses as to they've incurred as legal expenses for the application, and then **if it goes to court and gets remanded back, then a second, additional claim is made at that time**.
>
> Q. **So on remand, the park owner is able to calculate the additional expenses that are now being incurred, because of the litigation, correct, the appeal?**
>
> A. **Right.**
>
> Q. And typically, the litigation in this case would be a writ of mandamus that would name the City [sic-County] as a party defendant, correct?
>
> A. Yes.
>
> Q. Because the hearing officer is employed [sic-appointed] by the City [sic-County] and --

A. Right.

Q. -- the residents are real parties in interest?

A. Right. See, the park owner, their expense to date was $35,000. **If they end up going to court and prevailing in a writ of mandate action, they are not boxed in, they can come back again.**

(RT1 243:23-245:7., emphasis added.)

Award # 12 Total Permanent and Temporary Increase

The Court noted in its Decision: "the arbitrator's final calculation is again subject to recalculation after further proceedings mandated by this disposition." (Decision, p. 30.)

The Board's order states as follows: "Because the total rent increase is based upon the final adjustment of Awards 5, 6, 7, 8, and 11 which may be adjusted upon remand, the Board of Supervisors also remands Award 12 to the Arbitrator for reconsideration in light of the reconsideration of Awards 5, 6, 7, 8 and 11."

The Arbitrator properly determined the total amount of permanent and temporary increases, consistent with the Court's order and supported by substantial evidence in the record.

The Arbitrator in the Remand Award has clearly addressed the items on which the award is based, supported by substantial evidence in the record at the Arbitration Hearing, as noted above. Accordingly, there are no grounds under Rule 23 for the Board to alter this award.

CONCLUSION

In accordance with the foregoing, the Arbitrator properly took the following action with respect to the following Awards:

4. Continued to employ the amortization calculations set forth in the Arbitration Award, and ordered as follows:

All granted temporary increases are to be amortized at 9% for seven (7) years.

5. Ordered that the homeowners are to pay the $62,145.55 for capital improvements and expenses already in evidence, in Exhibits J and K, finding that they were capital expenses incurred before the commencement of the Arbitration.

6. Ordered that the homeowners are to pay $25,000 for legal fees associated with capital improvements and as ordinary and necessary operating expenses of the Park, pursuant to Exhibit Q, finding that was a reasonable amount for services associated with the capital expenses and improvements.

7. Ordered that the homeowners are to pay $40,000 for the A&E fees associated with the capital improvements, as partial reimbursement for the plans and drawings for the entire Park, pursuant to Exhibits J and L, finding that amount was warranted and the fees were associated with capital expenses and improvements.

8. No action was directed by the Court. However, since the matter was remanded by the Board, the Arbitrator properly ordered as before that the homeowners are to pay $130,531 for the supplemental tax increase payments already paid by Park Management.

11. No action was directed by the Court. However, since the matter was remanded by the Board, the Arbitrator properly ordered as before that the homeowners are to pay $110,000 for legal and professional fees associated with the challenge to the rent increase through the initial arbitration hearing.

12. Prepared final calculations in accordance with the Arbitrator's rulings.

To the degree that the homeowners claim that the Remand Arbitration Award does not contain adequate findings, then the sole remedy is for the matter to be remanded to the Arbitrator to make yet additional findings, not for the homeowners to obtain different determinations and findings by a party other than the Arbitrator. However, as set forth herein, the Remand Award does properly set forth findings in accordance with the law and the Court's Order.

The homeowners' petition for review improperly relies on alleged claims not in the Arbitration record, and apparently on "attachments" never served on Park Management, and therefore should be disregarded in their entirety.

Regardless, as is clear from an examination of the Remand Award and the Arbitration Award, and the actual record of Arbitration proceedings, the homeowners have not and cannot establish that the Remand Award constituted a prejudicial abuse of discretion on any of the points that the homeowners raise. The homeowners' appeal should be rejected in its entirety for failure to establish any prejudicial abuse of discretion.

The arbitrator did a commendable job in this proceeding. Park Management accepts each and every discretionary determination made by the Arbitrator.

Accordingly, the homeowners' Petition for Review should be denied.

Dated: May 5, 2016

JAMES P. BALLANTINE
Attorney for Park Management
LAZY LANDING MHP, LLC;
WATERHOUSE MANAGEMENT, INC.

DECLARATION OF SERVICE BY PERSONAL DELIVERY
[CCP §§ 1011, 2015.5]

State of California)
)
County of Santa Barbara)

I, LISA M. PAIK, declare:

I am a resident of the State of California and am employed in the County of Santa Barbara. I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, CA 93101.

On May 5, 2016, I served: RESPONSE BY PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK TO THE PETITION FOR REVIEW FILED BY HOMEOWNERS OF THE ARBITRATOR'S REMAND OPINION AND AWARD on the interested parties in this action by causing to be delivered the original thereof addressed as follows:

General Services Department
Attn: Don Grady
Clerk of the Ordinance
Real Property Manager
Courthouse East Wing, Second Floor
1105 Santa Barbara Street
Santa Barbara, CA 93101

I caused to be delivered said document to the addressee.

X (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

___ (Federal) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 5, 2016, in Santa Barbara, California

Lisa M Paik

DECLARATION OF SERVICE BY U.S. MAIL

I, LISA M. PAIK, declare:

I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the within action. My business address is 329 East Anapamu Street, Santa Barbara, California 93101, and I am a resident of Santa Barbara County, California.

On May 5, 2016, I served the foregoing document described as RESPONSE BY PARK MANAGEMENT OF NOMAD VILLAGE MOBILE HOME PARK TO THE PETITION FOR REVIEW FILED BY HOMEOWNERS OF THE ARBITRATOR'S REMAND OPINION AND AWARD on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Debra Hamrick
Nomad Village Homeowners Representative
833 E. Mason Street
Santa Barbara, California 93103

I caused such document to be mailed in a sealed envelope, by first-class mail, postage fully prepaid. I am readily familiar with the firm's business practices with respect to the collection and the processing of correspondence, pleadings, and other notices for mailing with the United States Postal Service. In accordance with that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Santa Barbara, California in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 5, 2016, at Santa Barbara, California.

Lisa M Paik