



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: Community Services  
Department  
Department No.: 057  
For Agenda Of: May 15, 2012  
Placement: Departmental  
Estimated Time: 160 Minutes  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors  
**FROM:** Department Herman Parker, Community Services Director, (805) 568-2467  
Director(s)  
Contact Info: Sharon Friedrichsen, Deputy Director, (805) 568-3520  
**SUBJECT: Petitions for Review of Mobile Home Rent Control Arbitrator Award – Nomad Village**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

That the Board of Supervisors:

- A. Consider the Petitions for Review of the arbitrator's December 20, 2011 Opinion and Award in the Matter of Arbitration Between Nomad Village Mobile Home Park and by Nomad Village Mobile Home Park Management filed by the Homeowners of Nomad Village Mobile Home Park and by Nomad Village Mobile Home Park Management.
- B. Find that the arbitrator did not abuse his discretion and affirm the arbitrator's Opinion and Award and authorize the Chair to sign the final decision of the Board.

OR, in the alternative:

- C. Find that the arbitrator abused his discretion and:
  1. Reverse the arbitrator's decision in whole or in part and authorize the Chair to sign the final decision of the Board;
  2. Make a new decision without remand and authorize the Chair to sign the final decision of the Board; or
  3. Remand the case to the arbitrator for reconsideration and authorize the Chair to sign the final decision of the Board.
    - a. Consider whether to set a rehearing on any matters remanded by the Board.
- D. Determine that the Board's review of the Arbitrator's Opinion and Award is not the approval of a project that is subject to environmental review under the California Environmental Quality Act (CEQA) and direct staff to file a Notice of Exemption.

**Summary Text:**

The Board of Supervisors shall review the Petitions for Review of the Arbitrator’s Opinion and Award filed by both the Homeowners and the Nomad Village Mobile Home Park (“Park Management”) pursuant to Rule 23 of the Mobilehome Rent Control Rules for Hearing and Santa Barbara County Code Chapter 11A (Mobilehome Rent Control). The review may ordinarily be made upon the written record alone; however, your Board may elect to hear oral argument from the parties.

Both parties allege that the Arbitrator abused his discretion in rendering the Opinion and Award. 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 Hearing, the Board reviews the Arbitrator’s Opinion and Award for 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 has 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 R includes a summary of the arbitrator’s decisions or awards, the positions of the parties and the Board 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 June 21, 2012. 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 a hearing that occurred 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, of which 10 are discussed below. The Homeowners disagree with eight findings while Park Management disagrees with 2 findings. Neither the Homeowners nor Park Management is challenging findings #1, #10, #13 and #14. For the findings that are being challenged, a summary is listed below that includes the arbitrator’s award and the positions of the Homeowners and Park Management.

**Arbitrator’s Award #2:** “The Homeowners do not have to pay the additional 10% increase in ground rents.”

- Homeowners: Agree
- Park Management: Disagree: “The evidence is undisputed that the ground lease fees for Nomad Village were doubled and were the market price based on arms length negotiations that park management is entitled under the Ordinance to a rent increase based upon increased operating expenses and that increased ground lease expenses are properly included in an [Maintenance of Net Operating Income] MNOI analysis. Consideration of the language of other ordinances is a legal error. Equating a ground lease to an ownership interest is a legal error.”

**Arbitrator’s Award #3:** “The Homeowners are to pay the Park Owners for all real property taxes assessed by the County.”

- Homeowners: Disagree:
  - “(A) Find that the Arbitrator abused his discretion when he allowed the Park to impose a permanent increase in manner contrary to the requirement of Ordinance (§11A-5)(f) that ‘the arbitrator shall consider all relevant factors’;
  - (B) Find that the Arbitrator abused his discretion when he allowed the Park to impose a permanent increase disregarding the formula set forth in Ordinance (§11A-5)(h) and (§11A-5)(i)(1)-(6);
  - (C) Find that the Arbitrator abused his discretion when he failed to consider all property taxes included in managements financial statements and relied solely on website printouts in exhibit G;
  - (D) Find that the Arbitrator abused his discretion when he ignored the evidence that the property taxes are a financing activity set forth in the terms of the lease agreement and not an operating expense outside the control of management;
  - (E) Reverse the Arbitrator’s decision based on findings (A) through (D).”
- Park Management: Agree

**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.

**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.”

- 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-5(j);
  - (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

**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

**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

**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)(1)-(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.

**Arbitrator’s Award #9:** “The Homeowners do not need to pay for the uncompensated increases associated with the increased lease payments.”

- Homeowners: Agree.
- Park Management: Disagree. “The evidence is undisputed that the ground lease fees for Nomad Village were doubled and were the market price based on arms length negotiations that park management is entitled under the Ordinance to a rent increase based upon increased operating expenses and that increased ground lease expenses are properly included in an MNOI analysis. Consideration of the language of other ordinances is a legal error. Equating a ground lease to an ownership interest is a legal error.”

**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.

**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.

**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.

**Staffing Impacts:**

Existing Community Services Department staff are currently serving as the Clerk under the County Code Chapter 11A (Mobilehome Rent Control). Staff has spent over 180 hours to date on this project.

**Special Instructions:**

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Request the Clerk of the Board to return a copy of the Minute Order to Community Services Department, Housing and Community Development Division, Attn: Margo Wagner, 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 - Notice of Exemption

Attachment R - Matrix of Board Options

**cc:**

Mike Munoz, Deputy County Counsel