

**Attachment J**  
**Closing Post-Hearing Brief by Nomad Village Mobile**  
**Home Park**

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10 ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY  
11 MOBILEHOME RENT CONTROL ORDINANCE  
12

13 )  
14 )  
15 IN RE NOMAD VILLAGE MOBILE HOME PARK ) CLOSING POST ARBITRATION  
16 ) HEARING BRIEF  
17 ) BY NOMAD VILLAGE  
18 ) MOBILE HOME PARK  
19 )  
20 )  
21 ) Before  
22 ) Stephen Biersmith, Esq.  
23 ) Arbitrator  
24 )  
25 ) Date: September 19-20 2011  
26 ) Time: 9:00 A.M.  
27 ) Location: Board of  
28 ) Supervisors Hearing Rm

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1           Nomad Village Mobile Home Park Management hereby submits  
2 its Closing Post Arbitration Hearing Brief submitted in these  
3 arbitration proceedings.

4           As Park management observed in its Opening Brief, the  
5 homeowners have simply adopted a "just say 'no'" approach to any  
6 rent increase whatsoever, despite the fact that the evidence and  
7 the law presented in these proceedings unequivocally  
8 demonstrates that the park management is entitled to a rent  
9 increase to compensate for expenses incurred in connection with  
10 the operation of the Park. The homeowners failed to present any  
11 evidence or analysis of any rent increase amount. In contrast,  
12 Park Management has prepared a detailed analysis outlining all  
13 of the elements of its rent increase, supported by a large  
14 volume of undisputed evidence. Accordingly, the only valid  
15 numbers in these proceedings are submitted by park management.  
16 In the face of utterly no valid competing number, the proposed  
17 rent increase as set forth herein should be accepted.

18           Park management further observes that the homeowners'  
19 Brief, for whatever reason fails to contain a single citation to  
20 the record, despite the fact that a complete transcript of  
21 proceedings has been prepared. As discussed herein, many of the  
22 homeowners' purported citations to the record are inaccurate,  
23 and at best, mischaracterize the record, and at worst, flatly  
24 misstate it. Also as discussed herein, the homeowners base  
25 their opposition on positions at odds with the express terms of  
26 the Ordinance, and reliance upon legal authorities that have  
27 been expressly superseded.

1 In their insistence upon saying "no" to any rent increase  
2 to compensate Park management for increased costs, the  
3 homeowners ignore the clear dictate of the governing legal  
4 proceedings in this case, the Santa Barbara County Rent Control  
5 Ordinance (referred to as "Ordinance" herein). In particular,  
6 the homeowners ignore the express purpose of the Ordinance is  
7 for: "recognizing the need for mobilehome park owners to  
8 receive a fair return on their investment and rent increases  
9 sufficient to cover their increased costs." (Ordinance, section  
10 11A-1.) Instead, the homeowners treat the Ordinance as being  
11 nothing more than a permanent rent subsidy for themselves,  
12 regardless of the costs of operating the park for their benefit.  
13 Unfortunately, the homeowners' ongoing intransigence does  
14 nothing but inflate significantly the costs of these  
15 proceedings.

16  
17 I

18 THE HOMEOWNERS HAVE FAILED TO ESTABLISH THAT THE PERMANENT RENT  
19 INCREASE IS NOT PROPER  
20

21 The homeowners just say "no" to any permanent rent increase  
22 whatsoever, despite the fact that do not dispute that Park  
23 management has incurred significantly increased property tax and  
24 ground lease costs. The homeowners also object to what they  
25 characterize as a "dollar-for-dollar pass through" of the  
26 increased property taxes and ground lease costs incurred by the  
27 Park management. (H.O. Brief, pp. 5-7.) The homeowners blithely  
28 claim that these increased costs cannot be passed through. They

1 further claim that the increased costs may only be supported by  
2 a "standard MNOI analysis" and cite general legal authority  
3 regarding MNOI analysis, despite the fact that the Ordinance  
4 sets forth specific provisions for calculating a rent increase.  
5 The homeowners' misguided claims ignore the legal authority  
6 applicable in this case, and confuse the basis for the costs and  
7 the manner of calculation of the costs. The homeowners ignore  
8 the fact that the Ordinance expressly requires the arbitrator to  
9 consider "all relevant factors" specifically including increases  
10 in management's operating expenses, including increases in  
11 property taxes and other expenses in connection with operating  
12 the park. Accordingly, the arbitration should consider the  
13 amounts and the impacts of these specific increases in operating  
14 expenses (Ordinance, section 11A-5(f).) The homeowners further  
15 ignore the fact that the Ordinance is NOT a standard MNOI  
16 analysis. The only rent-increase calculation of any type in  
17 evidence in these proceedings was the one performed by Dr. St.  
18 John. Dr. St. John made it clear that he made his calculations  
19 in strict compliance with the terms of the Ordinance. (RT1 8:2-  
20 19)

21 Dr. St. John performed rent increase calculations that show  
22 the exact amount by which the increased property tax and ground  
23 lease costs themselves support a rent increase, showing that  
24 these increased costs support a permanent rent increase of  
25 \$58.16. He then compared this increase with an MNOI analysis  
26 performed in strict compliance with the terms of the Ordinance,  
27 and supported this figure with the analysis itself justifying a  
28 permanent rent increase in the amount of \$57.

1           Notwithstanding the fact that the homeowners claim that the  
2 rent increase must be calculated pursuant to a generic MNOI  
3 analysis, they fail to submit any MNOI analysis themselves. Dr.  
4 St. John's analysis should be accepted.  
5

6           A.    THE HOMEOWNERS' OBJECTIONS BASED UPON THE UNDISPUTED  
7           PROPERTY TAX INCREASES ARE NOT WELL TAKEN  
8

9           Unbelievably, notwithstanding the fact that the homeowners  
10 do not dispute that the property taxes for the property were  
11 tripled effective August 1, 2008, and notwithstanding that the  
12 Ordinance specifically provides that increased property taxes  
13 are a basis for a rent increase, the homeowners just say "no" to  
14 any rent increase based upon this tripling of the property  
15 taxes. The homeowners base this contention on their claim that  
16 the rent increase is "premature" (H.O. Brief, p. 8, line 5)  
17 because the Park (not the homeowners) have raised the point that  
18 the property tax increase may well be subject to challenge.  
19 Despite the fact that the property tax increase is clearly a  
20 cost increase for which the homeowners are responsible under the  
21 Ordinance, the Park has questioned the validity of the tax  
22 increase and indicated a willingness to pursue an appeal for the  
23 benefit of the homeowners. The homeowners cite no legal  
24 authority, and none exists, that they may prevent the park  
25 operator from a rent increase to recover these increased  
26 expenses (which expenses undisputably are the basis for a rent  
27 increase under the Ordinance), based upon speculation about  
28 future events.



1 Now, in order to attempt to escape any responsibility, the  
2 homeowners insist that "the legality issue should be sorted out  
3 first via an assessment appeal, and no amount should be allowed  
4 until any legal challenge is completed..." (H.O. Brief, 7:17-18.)  
5 Yet, a few pages later, the homeowners refuse to agree in any  
6 way to pay for an appeal that they insist be done for their  
7 benefit, and even suggest that the prospects of an appeal may  
8 not be good. (Id., 16:15 - 17:5.) In addition, the homeowners  
9 also object to any rent increase to compensate for the tripled  
10 property taxes already paid by park management prior to the rent  
11 increase (due to regulatory lag), on the grounds that the  
12 increase is too late. (Id., pp. 15-16.) So Park management  
13 should get nothing according to the homeowners, because it is  
14 both too early and too late.

15 Ironically, the homeowners claim that the "Park Owner  
16 cannot have it both ways." (H.O. Brief, 8:3.) In fact, it is  
17 the homeowners who are trying to have it any possible way that  
18 will allow them to avoid any rent increase, by objecting to the  
19 rent increase based upon the ongoing property tax increase as  
20 premature, objecting to the rent increase based upon the  
21 property taxes already paid as being too late, and objecting to  
22 any cost incurred in challenging the property tax as both too  
23 early and too late.

24 The fact of the matter is that the park operator is and has  
25 incurred a tripling of the property taxes, and unless and until  
26 this changes, it clearly is the basis for a rent increase. The  
27 amount that forms the basis for the rent increase is clearly  
28 identified and is undisputed. There is no good reason to go

1 through the time and expense of further rent control  
2 proceedings.

3 The homeowners make much of the fact that if the property  
4 taxes are ever refunded, then the rents would have to be  
5 refunded. That is certainly true, and the rent increase notice  
6 to the homeowners (Exhibit A) made this clear. But the  
7 homeowners confuse the prospect of a prospective challenge to  
8 the property taxes, which would operate for future years, with a  
9 retroactive claim for refund for taxes previously paid. While  
10 there likely is no claim for a refund, the taxes may still  
11 potentially be challenged on a going forward basis. Such a  
12 successful challenge could lead to a future rent reduction, also  
13 clearly stated in the rent increase notice (Exhibit A).

14 Any future property tax reduction, as well as any refund,  
15 may easily be dealt with in the arbitration award issued in this  
16 case. The award may simply order that any future permanent  
17 property tax reduction be credited as a permanent rent reduction  
18 in the amount of the reduction of the property tax, and that any  
19 refund of amounts previously paid, be refunded to the homeowners  
20 as a rent credit with the park operator giving written notice to  
21 the homeowners of the rent reduction and the amount and manner  
22 of calculation.

23 B. THE HOMEOWNERS' OBJECTIONS BASED UPON THE UNDISPUTED GROUND  
24 LEASE RENTINCREASES ARE NOT WELL TAKEN  
25

26 Notwithstanding that the homeowners did not dispute that  
27 the rent for the park under the ground lease doubled commencing  
28 August 1, 2008, as a result of an arms-length transaction

1 between the land owner and the new operator, the homeowners just  
2 say "no" to any resulting rent increase as due to this increased  
3 operating cost.

4 The homeowners do not base their position upon the  
5 Ordinance or any law.

6 The homeowners base their resistance upon their claim at  
7 the arbitration hearing that rent control ordinances from  
8 certain other jurisdictions expressly provide that increased  
9 ground lease fees may be considered in granting rent increases.  
10 (H.O. Brief, page 8, lines 23-27.) This claim has no  
11 application to the Ordinance at issue here. Other ordinances  
12 are irrelevant, and the homeowners provide no authority that the  
13 Ordinance actually at issue here precludes consideration of  
14 increased ground lease rents as a basis for increasing space  
15 rents.

16 In fact, the homeowners' claim is contrary to the express  
17 terms of the Ordinance, and necessarily assumes that the  
18 Ordinance must explicitly specify each and every increased  
19 operating expense that may form the basis for a rent increase  
20 (and even when it does, such as property taxes, the homeowners  
21 still say "no"). The Ordinance states that "the arbitrator  
22 shall consider **all** relevant factors" in determining the amount  
23 of rent increase, and that: "Such relevant factors may include,  
24 **but are not limited to**, increases in management's ordinary and  
25 necessary maintenance and operating expenses, insurance and  
26 repairs; increases in property taxes and fees and expenses in  
27 connection with operating the park..." (Ordinance, Section 11A-  
28 11A-6(f)(1).) Therefore, the expenses set forth in the

1 Ordinance are by way of example rather than limitation, and in  
2 fact the arbitrator is to consider without limitation all  
3 increases in management's operating expenses incurred in  
4 operating the park. Accordingly, the homeowners' argument is  
5 contrary to the terms of the Ordinance.

6 Moreover, in their misplaced reliance upon other  
7 jurisdictions' rent control ordinances that consider increased  
8 ground lease expenses as a basis for rent increases, the  
9 homeowners contradict their other argument that as a matter of  
10 policy, ground leases expenses are not even appropriately  
11 considered under rent control ordinances. (H.O. Brief, page 8,  
12 lines 7-22.) If ground lease rents are as a matter of policy  
13 not properly considered as expenses justifying rent increases,  
14 then how could numerous ordinances specifically allow  
15 consideration of such expenses?

16 The homeowners also concoct, based upon sheer speculation,  
17 possible future changes to fundamental terms of the 34-year  
18 ground lease. (H.O. Brief, page 9, lines 2-17.) Such  
19 speculation cannot form a basis to deny a rent increase based  
20 upon an undisputed cost being incurred by Park management based  
21 upon what is undisputably an arms length transaction for a  
22 ground lease at an undisputedly market rent. To adopt such an  
23 approach as proffered by the homeowners would turn all rent  
24 control proceedings into exercises of sheer speculation.  
25 Illustrative of the disingenuous nature of their concoction is  
26 their speculation that if there are vacancies in the park then  
27 the ground rent will go down (Id.); but as the homeowners' own  
28 paid consultant acknowledged at the hearing, one of the

1 justifications for mobilehome rent control is the absence of  
2 vacancies in mobilehome parks. (RTI 207:1-8) Indeed, one of the  
3 express purposes for the Ordinance is to address the "low  
4 vacancy rates...in mobilehome parks in Santa Barbara County."  
5 (Ordinance, Section 11A-1.) If the homeowners' own consultant  
6 was available for cross examination on this point, he would no  
7 doubt agree that there typically are no vacancies in mobilehome  
8 parks in rent controlled jurisdictions. (RTI 207: 5-8.)

9 The homeowners again mischaracterize the record by  
10 purporting to quote Dr. St. John (again without any citation to  
11 the record) that ground lease expenses were "rare." (H.O.  
12 Brief, p. 8, line 28 to page 9, line 4.) The homeowners flatly  
13 misrepresent the testimony.

14 To the contrary, Dr. St. John in fact testified  
15 unequivocally that ground lease rents were properly included in  
16 an MNOI analysis and typically and properly considered for the  
17 purpose of a rent increase. What Dr. St. John actually stated  
18 was as follows:

19 "Yeah, it's an expense. Ground expense would  
20 certainly be an expense from a bookkeeping point of  
21 view, it's a cash expenditure, it would be an expense  
22 from an auditing point of view, a tax return would  
23 certainly include it, and it would be allowed in all  
24 those contexts, and it should be allowed in an MNOI  
25 context as well, and has been in my experience, many  
26 times.

27 When I say "many times," I don't say all the time only  
28 because most parks are owned by the operators. There

1 are some parks, like Nomad Village, where the operator  
2 does not own the park, it leases the park, so it's  
3 relatively rare that ground leases appear at all, **but**  
4 **when they exist, they do appear in the MNOI analysis."**

5 (RTI 51:18 - 52:7, emphases added.)

6 The homeowners further severely mischaracterize the record  
7 by attempting to make an evidentiary argument that the  
8 appropriate ground lease rent in 2008 is in fact a higher number  
9 than the sole number actually in evidence at the hearing, and  
10 then purport to calculate a different rent increase number based  
11 upon what they claim should be a lower differential between the  
12 old rent amount and the new rent amount; i.e., the homeowners  
13 compare their revised rent number for 2008 with the rent number  
14 for 2009. (H.O. Brief, page 9, lines 18-23.) It is  
15 inappropriate for the homeowners to purport to introduce wholly  
16 new evidence during the briefing, and this escapade illustrates  
17 why. The homeowners mischaracterize the facts and attempt to  
18 mislead these proceedings. The homeowners blatantly ignore one  
19 of the fundamental facts of these proceedings—that the ground  
20 rent doubled effective August 1, 2008, (i.e. in the middle of  
21 2008) therefore it would be patently inappropriate to consider  
22 all of the ground lease rents in 2008 for the purposes of  
23 determining the rent differential arising from the rent  
24 increase, but only the rents at the rate before the increase  
25 went into effect. Dr. St. John properly calculated the rent  
26 increase based upon this ground lease increase actually incurred  
27 as part of the permanent rent increase. (Exhibit D, Tables 3A &  
28 B.)

1 C. APPLICATION OF MNOI ANALYSIS

2 The homeowners also purport in their brief to determine  
3 their own MNOI numbers. (H.O. Brief, page 11.) The homeowners  
4 did not present any MNOI analysis at the hearing, let alone any  
5 analysis that complied with the Ordinance. The homeowners  
6 should not be able now in post-hearing briefing attempt to  
7 introduce new purported evidence or calculations. Accordingly,  
8 the homeowners' purported calculation of adjustments to the rent  
9 increase should be disregarded as being without evidentiary  
10 foundation. Similarly, the homeowners' arguments regarding the  
11 base year and the indexing should be disregarded.

12 The fact of the matter is, as the homeowners have to admit,  
13 the result of Dr. St. John's analysis performed according to the  
14 terms of the Ordinance supports an increase of \$55 to \$57 per  
15 space using either 1994 or 2007 as a base year; the only  
16 variation of this result is if 75%, as opposed to 100%, indexing  
17 is applied to the 1994 numbers. Under the Ordinance, 2007 is  
18 the appropriate base year to employ, as it is the last year  
19 under the prior operator and the year by which the costs can  
20 most accurately be compared with the new increased costs. If  
21 1994 is used as a base year, then under the Ordinance 100%  
22 indexing is the most appropriate indexing to employ.

23  
24 i. 1994 IS THE APPROPRIATE BASE YEAR

25 Curiously, in their pre-hearing brief, the homeowners  
26 criticized Dr. St. John's use of 1994 as the base year. After  
27 learning that using 1994 as a base year yields a more favorable  
28 result for them (if less than 100% indexing is employed), the

1 homeowners have now become huge fans of using 1994 as the base  
2 year. Their paid consultant has supported using 1994; however,  
3 his opinion supporting 1994 as the appropriate base year should  
4 be disregarded as it was based upon the false premise that 1994  
5 was when the Ordinance was enacted. (RT1 194: 19-3.)

6 The homeowners ignore that ultimately their own consultant  
7 had to concede that he had no knowledge of any factors that  
8 would make 1994 a better base year than 2007 for an MNOI  
9 analysis. (RT1 201:4-8.)

10 With 2007 used as a base year, Dr. St. John's analysis  
11 supports a rent increase of \$55.53 at 75% indexing and \$57.04 at  
12 100% indexing, strongly supporting the \$58.16 noticed amount.

13  
14 ii. INDEXING

15 The homeowners say that 75% indexing should be utilized,  
16 but provide no citations to the record, nor do they cite any  
17 legal authority. No wonder. In fact, their consultant admitted  
18 that the Ordinance did not require any such 75% indexing. (RT1  
19 201: 9-16.) Dr. St. John testified at length as to the problems  
20 that arise when less than 100% indexing is employed over a long  
21 period of time. (RT1 107-109.)

22 Accordingly, to the degree that 1994 is employed as a base  
23 year, 100% indexing should be employed, which supports a  
24 permanent rent increase of over \$57.

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II

THE HOMEOWNERS HAVE FAILED TO ESTABLISH THAT THE TEMPORARY RENT  
INCREASE IS NOT PROPER

A. THE HOMEOWNERS' OBJECTIONS TO THE CAPITAL IMPROVEMENTS ARE  
BASED UPON INAPPLICABLE LEGAL CLAIMS

The homeowners say "no" to any rent increase based upon any  
expenditures made for capital improvements for the Park. (H.O.  
Brief, pp. 13 - 16.)

The homeowners claim it is unclear how the \$50,000 entry  
for professional fees is determined. (H.O. Brief, page 13,  
lines 16-21.) These are discussed in the professional fees  
section below.

The homeowners also complain about the \$90,000 already paid  
by the Park operator for detailed plans for the park for capital  
improvements. (H.O. Brief, page 13, lines 22-26.) The  
homeowners do not dispute that these funds were actually paid  
for the benefit of the Park. Mr. Waterhouse testified that he  
made an agreement with the prior operator to pay their expenses  
for the plans in order to obtain the plans for capital  
improvements to the park, and confirmed that these plans were  
very valuable to the current operator. (RT2 144:1-142:5.) The  
homeowners cite nothing in the Ordinance, or any other legal  
authority, that precludes these expenses from serving as a basis  
for a rent increase. Each element of these \$90,000 in costs is  
detailed in spreadsheet fashion in Exhibit J and invoices for  
these costs are submitted in Exhibit L. It appears that the  
homeowners mistakenly claim that Exhibit J only supports

1 \$62,145.55 for this item and not \$90,000. (H.O. Brief, page 13,  
2 lines 22.) The homeowners confuse the amounts paid to the prior  
3 operator, Nomad Village, Inc., for planning and engineering,  
4 which is separately itemized in the group on the lower half of  
5 Exhibit J and total nearly \$90,000, with the group of expenses  
6 incurred by Waterhouse Management, Inc., for a variety of  
7 capital improvement items, which are itemized on the top half of  
8 Exhibit J and total \$62,145.55, and, which are supported by the  
9 invoices set forth in Exhibit L.

10 The homeowners complain about the \$320,000 in capital  
11 improvement funds, on the misguided grounds that the expenses  
12 have not been entirely spent and that they relate in part to  
13 electrical infrastructure improvements. The homeowners' claims  
14 run contrary to the law in both regards.

15 The homeowners misstate the record yet again when they  
16 claim (again without any citation whatsoever to the record) that  
17 the Park owners testified that "they were not yet sure what they  
18 were going to spend the capital improvement funds on." (H.O.  
19 Brief, page 14, lines 24-25.) To the contrary, Mr. Waterhouse  
20 testified that \$320,000 had in fact been paid into an escrow  
21 fund, that all such funds are dedicated to be spent and will be  
22 spent on capital improvements to the Park, and that the funds  
23 expended will exceed that amount. (Exhibit K; RT2 145:15-147:1,  
24 166:7-22, 179:1-13.)

25 The homeowners ignore the undisputed evidence that the Park  
26 operator has actually paid \$320,000 into a reserve fund to be  
27 used for capital improvements to the Park. The Park has  
28 unequivocally demonstrated that it has already incurred

1 \$62,145.55 in costs relating to the capital improvements of the  
2 Park. (Exhibits J & K; RT2 189:2-14.) Moreover, the Park has  
3 demonstrated that it has a number of projects planned, which are  
4 supported by a number of proposals. (Exhibits M, P.)

5 The homeowners further utterly ignore the clear provisions  
6 of the Ordinance that makes clear that the capital expenses that  
7 form the basis for a present rent increase may include those  
8 costs to be incurred in the future.

9 Section 11A-6(b)(1) states:

10 (b) Capital Expenses.

11 (1) The cost of capital Expenses **incurred or**  
12 **proposed**, including reasonable financing costs, may be  
13 passed on to homeowners at the time of an annual  
14 increase.

15 Further, the Park then has a six-month window to **begin**  
16 **construction** with the money after the rent increase is approved,  
17 and that if they do not do so the homeowners have a clear remedy  
18 by way of a rent credit, which remedy the homeowners may  
19 enforce:

20 (5) If management fails to begin construction of  
21 a capital expense item within six months after  
22 approval of the cost of the capital expense, then  
23 management shall discontinue the increase for the  
24 capital expense and shall credit any amount collected  
25 to each homeowner. If management fails to  
26 automatically discontinue such increase, then such  
27 increase shall be considered an increase in the  
28 maximum rent schedule and shall be subject to all the  
provisions of this chapter, including, but not limited  
to, amount and frequency of increase.

The homeowners also make the erroneous claim that any costs  
whatsoever incurred by the park that relate to the electrical  
system cannot form the basis of a rent increase, objecting to  
any "any portion" of any expenses that "appear to bear some

1 relationship to electrical system." (H.O. Brief, page 13, line  
2 26 to page 14, line 22.) The sole legal authority on which the  
3 homeowners base this claim is the 1998 case, *Rainbow Disposal*  
4 *Company, Inc. v. Escondido Mobilehome Rent Review Board* (1994)  
5 64 Cal.App.4<sup>th</sup> 1159, which decision, as they observe, "was based  
6 upon the authority of a 1995 Public Utilities Commission  
7 Ruling." (Id., page 14, lines 1-5.) This sole legal authority  
8 relied upon by the homeowners is entirely ineffective. In fact,  
9 this 16-year-old authority, to whatever extent it may have  
10 applied, is out of date, and entirely superseded by subsequent  
11 rulings by the Public Utilities Commission ("PUC").

12 The homeowners fail to disclose what is widely known among  
13 mobilehome park management and homeowner advocates: In 2001 the  
14 PUC determined that the 1995 Ruling did not properly consider  
15 utility costs incurred by mobilehome parks that could be passed  
16 through as rent increases and stayed any further decisions based  
17 upon the 1995 ruling; In 2004, the PUC changed their rules  
18 expressly to allow park owners to increase rents to compensate  
19 for costs of improvements to mobilehomepark gas and electrical  
20 systems.

21 In 2001, the PUC issued its Order Instituting Rulemaking  
22 And Investigation, in which it acknowledged that P.U. Code  
23 section 739.5 only bars from further recovery those capital  
24 improvement costs that relate to the submetered system and that  
25 are costs factored into the master meter discount. The PUC  
26 determined that it would engage in a proceeding to identify all  
27 of those costs incurred by mobilehome parks in operating their  
28

1 gas and electrical systems that park operators are entitled to  
2 pass through to their tenants in the form of rent increases:

3 "The first and central issue of this proceeding (Phase 1)  
4 is to identify, among all utility-related costs of operating an  
5 MHP, those costs, not already identified in prior Commission  
6 decisions that are avoided by a utility serving an MHP when the  
7 MHP submeters its tenants. **Costs identified and defined as not**  
8 **being incurred by the utility in MHPs that it meters directly,**  
9 **will emerge as costs that MHP operators will be legally entitled**  
10 **to pass through to their tenants,** subject to the oversight and  
11 discretion of local rent control boards, where applicable.  
12 Examples of cost categories that we will address include: meter  
13 reading and billing, capital improvement and associated  
14 maintenance, repair and replacement for common areas, lighting,  
15 appliance energy, pedestals, and service drops. In Phase 1 we  
16 will define cost components and categories as a matter of  
17 policy."

18 In 2004, the PUC issued its Order Instituting Rulemaking  
19 and Investigation in which it concluded that there were a  
20 variety of costs incurred by mobilehome parks costs related to  
21 electric or natural gas utility service that are either not  
22 incurred by the utility when it directly served MHP tenants, or  
23 are not reflected in utility rates for direct service, but are  
24 incurred by sub-metered MHP owners, and that these are costs may  
25 be separately charged to tenants by way of a rent increase.

26 Park management will submit a request for judicial notice  
27 of these PUC rulings, made necessary as a result of the  
28 homeowners' misstatement of the law.

1           These PUC rulings expressly supersede the 1995 authority  
2           relied upon by the homeowners. Notwithstanding the homeowners'  
3           zeal to just say "no" to everything, it is surprising that  
4           experienced representatives of the homeowners would attempt to  
5           have any ruling in this arbitration proceeding based upon  
6           outdated and inapplicable legal authority.

7           Accordingly, the homeowners are flatly wrong in their  
8           sweeping statement that no expense related to the electrical  
9           system can form the basis of a rent increase. In fact, the  
10          expenses to the electrical system involved in this action are  
11          those types of expenses that are not incurred by a utility in  
12          serving their customers, and include expenses related to the  
13          Park common area.

14          In sum, any objections by the homeowners to the rent  
15          increase to compensate for capital expenses are addressed by the  
16          Ordinance, in the event that all funds are not spent on capital  
17          improvements; moreover, Park management has no objection to the  
18          arbitrator retaining jurisdiction to enforce the terms of the  
19          arbitration award and review any and all future expenditures.  
20          Such an approach maximizes the efficiency of the rent control  
21          process.

22  
23          B.    THE HOMEOWNERS' OBJECTIONS TO REGULATORY LAG FOR INCREASED  
24               PROPERTY TAX AND GROUND LEASE COSTS ARE NOT BASED UPON ANY  
25               LEGAL OR FACTUAL PRINCIPLE

26  
27               Incredibly, the homeowners also say "no" to any increase  
28               that allows the Park owner to recover for the increased expenses

1 that it undisputedly incurred prior to the effective date of the  
2 rent increase, as a result of the tripled property taxes and  
3 doubled ground lease rents. (H.O. Brief, pp. 15-16.) Dr. St.  
4 John explained that this period was commonly known as  
5 "regulatory lag." (RT1 75:14-22.) Notwithstanding that they do  
6 not dispute that Park management incurred these increased  
7 expenses, the homeowners object to any rent increase based upon  
8 them. When it suits the homeowners' attempts to escape any  
9 responsibility for any rent increase, they claim that an expense  
10 is either premature or too late. In the case of the regulatory  
11 lag category, the homeowners claim that the rent increase comes  
12 too late. In their Brief, the homeowners state that their own  
13 consultant testified that no more than 12 months of regulatory  
14 lag should be charged to homeowners (H.O. Brief, page 15, lines  
15 18-19), although they, of course, do not cite the record. In  
16 fact, their consultant was not quite so definitive. He  
17 acknowledged that there were "no absolute lines" as to when a  
18 park operator had to notice a rent increase for expenses  
19 incurred in the past. (RT1 223:16.) He acknowledged that there  
20 was no legal authority setting forth any limitation period.

21 The homeowners cite no legal authority for their objection,  
22 they merely claim that "there is no precedent in the Ordinance"  
23 for this increase for regulatory lag. (H.O. Brief, p. 15, line  
24 27.) The homeowners ignore that the Ordinance not only does not  
25 prohibit collection for regulatory lag, it necessarily allows  
26 such an increase. For example, Section 11A-8 of the Ordinance  
27 is labeled "collection and frequency of increases" and provides:  
28 "(a) Management may increase the maximum rent increase schedule

1 no more than once a year..." Accordingly, the Ordinance makes  
2 clear that a rent increase may not be issued more than one time  
3 a year, but the County expressly declined to put any other limit  
4 on the frequency of a rent increase or any time limit on  
5 regulatory lag. Instead it must be reasonable.

6 The homeowners' reasons for objecting are contrary to the  
7 actual facts in the record. The homeowners complain that they  
8 are "hit with a cumulative sum all at once, now including  
9 interest..." (H.O. Brief, page 15, lines 17-18.) In fact, the  
10 rent increase is amortized, so the residents pay a small monthly  
11 sum, \$32.74 (Exhibit D - table 1), and they are not charged  
12 interest for any of the regulatory lag period. The homeowners  
13 claim that the regulatory lag expenses may be "difficult to  
14 track or prove" (H.O. Brief, page 16, line 6), but in fact the  
15 expenses are very clear and well documented, and, in fact, the  
16 factual basis for the rent increase (i.e. the existence and the  
17 amounts of the property tax and ground lease rent increases) are  
18 absolutely undisputed.

19 The homeowners' position is contradictory and impractical,  
20 and also, in the long run, self defeating. As may be seen by  
21 these proceedings, rent control litigation is time consuming and  
22 expensive. It is in all parties' interests (including the  
23 County's and the public's) that there be fewer rather than more  
24 proceedings.

25 Dr. St. John pointed out that it did not make good sense  
26 effectively to require the park operator to be subject to  
27 frequent fair return proceedings. (RT1 73:3-20.)  
28



1 In sum, the homeowners newly concocted limitation period of  
2 one year for recovering expenses appears neither in the  
3 Ordinance or any other provision of law. The plain fact is that  
4 these categories are reimbursable, that they haven't been  
5 reimbursed, and that they will not ever be reimbursed if this  
6 item is disallowed. Treating these amounts as reimbursable as  
7 amortized makes good sense. It is simply a way of ensuring that  
8 residents pay for all cost increases that they should pay for  
9 under the cost-recapture system.

10  
11 C. THE HOMEOWNERS' OBJECTIONS TO PROFESSIONAL FEES CONTRADICT  
12 THEIR OWN ADMISSIONS AT THE HEARING  
13

14 The rent increase also includes a factor for extraordinary  
15 costs incurred by the Park operator for professional fees for:  
16 matters relating to regulatory and infrastructure improvement  
17 issues, a proposed potential property tax appeal, and rent  
18 control proceedings.

19 Not surprisingly, the homeowners say "no" to any rent  
20 increase of any type based upon any of these fees. (H.O. Brief,  
21 pp. 16-17.) The homeowners ignore the simple fact that these  
22 fees have actually been incurred by park management, that they  
23 relate to the operation of the park, but that Park management is  
24 not compensated for them absent a rent increase based upon them.

25 An element of the temporary rent increase is for \$50,000 of  
26 extraordinary professional fees. Mr. Waterhouse confirmed that  
27 the \$50,000 in professional fees were amounts actually paid.  
28 (RT2 145: 6-15.) As discussed herein, the homeowners'

1 representative agreed that the treatment of professional fees as  
2 a temporary expense is a legitimate approach and favorable for  
3 the homeowners, instead of making it the basis for a permanent  
4 rent increase. Pursuant to stipulation between counsel, the  
5 Park owner has submitted the detailed billing statement summary  
6 (with the content of attorney-client privileged communications  
7 redacted) to demonstrate the basis of these costs.

8 Another element of the temporary rent increase is for the  
9 retainer amount in the event that the park operator goes forward  
10 with a property tax appeal, for the benefit of the homeowners.  
11 Unbelievably, the homeowners still say "no" to this expense,  
12 despite the fact that their own consultant conceded that he did  
13 not disagree that a park operator was entitled to recover the  
14 costs of challenging a property tax increase through a rent  
15 increase. (RT1 225:16-226:1) and acknowledged that the cost  
16 "looks like it's reasonable". (RT1 227:2-22.) The fact of the  
17 matter is that if the park operator challenges the property tax  
18 increase, then it will necessarily incur costs in doing so. The  
19 park operator should properly recover these costs in the form of  
20 a rent increase, rather than being put in the position of having  
21 to incur expenses for the benefit of the homeowners, without any  
22 guarantee of recovering any of these expenses. Moreover, the  
23 Park operator should know whether or not he will be able to  
24 recover these fees via a rent increase, rather than be forced to  
25 incur these fees knowing that when he asks the homeowners for a  
26 rent increase to cover these costs, their response will  
27 undoubtedly be "NO."  
28

1           The homeowners' concern that it is unknown to what extent  
2 all of the retainer fees will be consumed in the appeal is  
3 easily addressed. An arbitration award can include the order  
4 that fees begin being incurred within a particular time-frame  
5 and that any fees not consumed during the course of an appeal  
6 (or if the appeal is settled or abandoned or otherwise  
7 discontinued) be refunded to the homeowners and that the  
8 homeowners be provided with an accounting of all fees consumed  
9 within a reasonable period of time.

10           Counsel for park management already did some legal research  
11 regarding the matter following the arbitration hearing, to get a  
12 better handle on potential legal approaches to challenge the  
13 property tax increase.

14           Ensuring that their "just say no" approach to any rent  
15 increase whatsoever is complete, the homeowners continue to  
16 object to any rent increase based upon the costs that park  
17 management has been forced to incur through rent control  
18 proceedings. (H.O. Brief, p. 17) The homeowners' ongoing  
19 refusal is made in the face of the testimony by their own  
20 consultant who agreed that the Park operator was entitled to  
21 recover professional fees relating to the rent control  
22 proceedings, and that he agreed with the methodology employed  
23 here by making it the basis of a temporary rent increase  
24 amortized over a period of years. (RT1 235:19-236:8.) By  
25 stipulation between counsel, park management provided a summary  
26 statement of professional fees incurred through the opening  
27 brief in this matter, and will update the summary through the  
28 reply briefing. The detailed summaries support the rent

1 increase. Of course, the total amount incurred in connection  
2 with the rent control proceedings will not be known until the  
3 proceedings are final. For example, surely there will be  
4 additional steps taken to review and comply with the terms of  
5 the resulting arbitration award. It is not known what steps, if  
6 any, the homeowners might take, such as appealing an award,  
7 which would require further action on the part of the park  
8 operator.

9 To the extent that the park operator does not incur the  
10 amount of professional fees on which the rent increase is based,  
11 then they are easily subject to being refunded to the homeowners  
12 in the form of a rent credit, just as the Ordinance provides  
13 with respect to future capital improvement expenses that do not  
14 wind up being incurred.

15  
16 D. THE HOMEOWNERS' HAVE ACKNOWLEDGED THAT THE ARBITRATOR HAS  
17 THE FLEXIBILITY TO AMORTIZE PROFESSIONAL FEES  
18

19 Again, in their zeal to "just say no," the homeowners are  
20 attempting to have it both ways. In their Brief, they object to  
21 the park operator's proposed treatment of the professional fees  
22 by amortizing them in a manner analogous to a capital expense  
23 item, yet their consultant acknowledged that this was a valid  
24 approach; the homeowners further ignore that if the professional  
25 fees are not amortized as a temporary rent increase, then they  
26 necessarily would be included in the park's expenses for a  
27 permanent rent increase. Moreover, the homeowners concede that  
28

1 the arbitrator has flexibility in the treatment of amortized  
2 expenses.

3 The homeowners' consultant agreed that professional fees  
4 could properly be amortized as proposed by the park operator)  
5 and that this benefits the homeowners (conceding the  
6 applicability of the treatment of such fees as analogous to a  
7 capital expense item. (RT1 174:21-175:4.)

8 Accordingly, the homeowners opposition to this manner of  
9 treatment set forth in their brief is at odds with the evidence  
10 in these proceedings.

11 Moreover, the homeowners also want flexibility in the  
12 amortization period. The homeowners request that "the hearing  
13 officer should construct a parallel calculation which amortizes  
14 the amount [of all temporary rent increases] at both 7 and 15  
15 years, so that each resident can choose the option" that each  
16 resident prefers. (H.O. Brief, page 13, lines 8-9.) Management  
17 agrees with the homeowners' proposal. It is a reasonable, and  
18 practical approach.

19 The homeowners cite nothing in the Ordinance that  
20 specifically authorizes this type of treatment of temporary rent  
21 increases. However, nothing in the Ordinance prohibits such an  
22 approach, and therefore as homeowners clearly recognize and  
23 concede, the Ordinance should be given a reasonable construction  
24 that accomplishes its stated purpose of protecting the  
25 homeowners from unreasonable rent increases while at the same  
26 time ensuring that mobilehome park owners receive a fair return  
27 on their investment and rent increases sufficient to cover their  
28 increased costs. (Ordinance, Section 11A-1.)



1           4. Any decrease in the property taxes should lead to a  
2 dollar-for-dollar rent decrease to the homeowners, promptly upon  
3 the property tax reduction being finalized.


4           5. Any increased property taxes refunded to park  
5 management should be refunded to the homeowners in the form of a  
6 rent credit, promptly upon the refund being received by park  
7 management.

8           6. Any professional fees not incurred by park management  
9 in connection with the property tax issue should be promptly  
10 refunded to the homeowners upon termination of the proceedings,  
11 or upon park management's failure to file a formal appeal within  
12 6 months of the arbitration decision being final.

13           7. Any funds awarded by the arbitrator for capital  
14 improvements and not expended on capital improvements should be  
15 refunded to the homeowners in the form of a rent credit.

16           8. The arbitrator could maintain jurisdiction to enforce  
17 the terms of the award.

18  
19 Dated:       November 8, 2011

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22 \_\_\_\_\_  
23 JAMES P. BALLANTINE  
24 Attorney for NOMAD VILLAGE  
25 MOBILE HOME PARK  
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