



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

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

**Department Name:** General Services  
**Department No.:** 063  
**For Agenda Of:** July 12, 2016  
**Placement:** Set hearing on 7/12/16  
for 7/19/16  
**Estimated Time:** 60 Minutes  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

---

**TO:** Board of Supervisors  
**FROM:** General Services Matthew P. Pontes, Director (805) 560-1011  
Contact Info: Skip Grey, Assistant Director (805) 568-3083  
**SUBJECT:** Petition for Review of the Mobile Home Rent Control Arbitration Opinion and Award on Remand – Nomad Village Mobilehome Park, Second Supervisorial District

---

**County Counsel Concurrence**

As to form: Yes

**Other Concurrence:** N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

On July 12, 2016, set a hearing to review the Arbitrator's March 5, 2016 Opinion and Award (Revised on Remand) **as to Awards 4, 5, 6, 7, 8, 11, and 12** in the matter of arbitration between Nomad Village Mobilehome Homeowners and Nomad Village Mobilehome Park pursuant to Rule 23 of the Mobilehome Rent Control Rules for Hearings and Chapter 11A, Section A-4 of the Santa Barbara County Code. Staff recommends that your Board take the following actions:

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

- a) Make the following determinations as supported by the findings (Attachment GG);
  - i) Find that the Arbitrator did not abuse his discretion; however, remand Award #4 in light of other remanded Awards;
  - ii) Find that the Arbitrator abused his discretion and remand Award #5 to the Arbitrator for adequate findings on specific items of incurred costs in the amount of \$62,145.55;
  - iii) Find that the Arbitrator abused his discretion and remand Award #6 to the Arbitrator for adequate findings about the nature of the fees;
  - iv) Find that the Arbitrator abused his discretion and remand Award #7 to the Arbitrator for adequate findings about the nature of the fees;
  - v) Find that the Arbitrator abused his discretion and remand Award #8 to the Arbitrator for adequate findings about the nature of the payment;

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

**Summary Text:**

On December 20, 2011, the Arbitrator rendered an Opinion and Award in the Matter of Arbitration between Nomad Village Mobilehome Homeowners and Nomad Village Mobilehome Park. The Homeowners and Park Management filed petitions for review by the Board of Supervisors of 10 of the Awards made by the Arbitrator. On May 12, 2012, the Board of Supervisors reviewed the Arbitrator’s Opinion and Award and unanimously took action as detailed in Attachment U, the Board Agenda Letter dated January 5, 2016.

On August 13, 2012, Park Management [Lazy Landing, LLC (mobilehome park ground lessee) and Waterhouse Management, Inc. (mobilehome park operator)] filed a Petition and Complaint for Writ of Mandate, Declaratory Relief, Inverse Condemnation, and Violation of Constitutional Rights naming County and Real Party in Interest, Debra Hamrick, a representative of the Homeowners, as respondents. On November 7, 2012, Park Management filed an Amended and Supplemental Petition and Complaint based on the same causes of action. On November 10, 2014, the Superior Court (Judge Anderle) entered the attached Order on Writ of Mandate in the Writ portion of the action, which granted in part and denied in part the relief sought by Park Management. In compliance with the Order on Writ of Mandate, on January 19, 2016, the Board of Supervisors vacated its May 15, 2012 action (executed by the Chair on June 14, 2012) as it relates to Awards 4, 5, 6, 7, 8, 11, and 12 of the Arbitrator’s December 20, 2011 Opinion and Award in the Matter of Arbitration Between Nomad Village Mobilehome Homeowners and Nomad Village Mobilehome Park and remanded Awards 4, 5, 6, 7, 8, 11, and 12 to the Arbitrator to make adequate findings.

On February 17, 2016, the Arbitrator held a hearing on remand. The Arbitrator executed his Opinion and Award (Revised on Remand) on March 5, 2016, which was received by the County on March 9, 2016 and served on both parties on March 25, 2016. On April 14, 2016, the Homeowners filed a petition for review of Awards 4, 5, 6, 7, 8, 11, and 12 made by the Arbitrator in his March 5, 2016 decision. On May 5, 2016, Park Management filed a response to the Homeowners’ petition for review.

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

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

- The Board may make new findings and decisions.

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

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

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

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

- Reverse the Arbitrator's decision in whole or in part; or
- Remand the case to the Arbitrator for reconsideration in light of your Board's review.

Attachment FF [Matrix of Board Options] includes a summary of the Arbitrator's decisions or awards, the positions of the parties and the Board's options for consideration. Since Rule 23 of the Mobilehome Rent Control Rules for Hearings provides that the Board of Supervisors is an appeal authority for the Arbitrator's decision, staff recommends that Supervisors provide ex parte disclosures of their communications and site visits involving this appeal. Rule 23 also specifies that your Board shall render its final decision within 30 judicial days of the receipt of all pleadings, records, and transcripts; we conservatively calculate that deadline as August 17, 2016. Pursuant to Rule 24, if the Board exercises its discretion to remand any matters, 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. After a complex procedural history as detailed in Attachment U, the Board Agenda Letter dated January 5, 2016, your Board vacated its May 15, 2012 action (executed by the Chair on June 14, 2012) as it relates to Awards 4, 5, 6, 7, 8, 11, and 12 and unanimously took the following action on January 19, 2016 on the seven awards under review:

- Award No. 4) Remanded to the Arbitrator in light of the reconsideration of other Awards.
- Award No. 5) Found that the Arbitrator abused his discretion and remanded to the Arbitrator for adequate findings.
- Award No. 6) Found that the Arbitrator abused his discretion and remanded to the Arbitrator for adequate findings.

- Award No. 7) Found that the Arbitrator abused his discretion and remanded to the Arbitrator for adequate findings.
- Award No. 8) Found that the Arbitrator abused his discretion and remanded to the Arbitrator for adequate findings.
- Award No. 11) Found that the Arbitrator abused his discretion and remanded to the Arbitrator for adequate findings.
- Award No. 12) Remanded back to the Arbitrator for recalculation based on the remand of other Awards.

On March 5, 2016, the Arbitrator rendered an Opinion and Award following a hearing on February 17, 2016. The Arbitrator's Opinion and Award on Remand includes decisions on the seven remanded awards. The Homeowners' Petition for Review disagreed with the Arbitrator's action on seven awards (Awards 4, 5, 6, 7, 8, 11, 12). For the Awards made by the Arbitrator on Remand that the Homeowners have petitioned your Board for review, a summary is listed below that includes the Arbitrator's Award on Remand, the positions of the Homeowners and Park Management, and Staff's recommendation.

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

- **Homeowners:** Disagree. The Arbitrator made no findings and provided no analysis. He did not address any of the evidence provided by the Homeowner. The Board must find that the Arbitrator abused his discretion on each award by not supporting his award with findings.
- **Park Management:** Agree. Substantial evidence supports the Arbitrator's decision as set forth in the Remand Award. Accordingly, there are no grounds for review of this award.
- **Staff's Recommendation:** Find that the Arbitrator did not abuse his discretion; however, remand Award #4 in light of other remanded items because amortization is based on the useful life of improvements to be amortized.

**Arbitrator's Award #5 on Remand:** "The Homeowners are to pay the \$62,145.55 which were capital improvement expenses incurred prior to the commencement of the arbitration. The Homeowner [sic] are not required to pay the \$320,000 held in escrow at the time of the hearing in that they were not definite and certain prior to commencement of the arbitration."

- **Homeowners:** Disagree. The Arbitrator made no findings and provided no analysis. He did not address any of the evidence provided by the Homeowner. The Board must find that the Arbitrator abused his discretion on each award by not supporting his award with findings.
- **Park Management:** Agree. 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, accordingly there are no grounds under Rule 23 for the Board to alter this award.
- **Staff's Recommendation:** Find that the Arbitrator abused his discretion and remand Award #5 to the Arbitrator for adequate findings on specific items of incurred costs in the amount of \$62,145.55;

**Arbitrator's Award #6 on Remand:** "The original request of \$50,973 in professional fees for payment by the Homeowners is reduced to \$25,000, which is a reasonable amount for services associated with the capital expenses and improvements."

- **Homeowners:** Disagree. The Arbitrator made no findings and provided no analysis. He did not address any of the evidence provided by the Homeowner. The Board must find that the Arbitrator abused his discretion on each award by not supporting his award with findings.
- **Park Management:** Agree. The finding is supported by substantial evidence in the record and there are no grounds under Rule 23 for the Board to alter this award.
- **Staff's Recommendation:** Find that the Arbitrator abused his discretion and remand Award #6 to the Arbitrator for adequate findings about the nature of the fees.

**Arbitrator's Award #7 on Remand:** "The Homeowners are to pay \$40,000 for the A&E fees associated with the capital improvements, a smaller number than petitioned for due to the reduced utility of those items since their purchase."

- **Homeowners:** Disagree. The Arbitrator made no findings and provided no analysis. He did not address any of the evidence provided by the Homeowner. The Board must find that the Arbitrator abused his discretion on each award by not supporting his award with findings.
- **Park Management:** Agree. The Arbitrator's findings with respect to this item were reasonable and well taken and supported by substantial evidence in the record. Accordingly there are no grounds under Rule 23 for the Board to alter this award.
- **Staff's Recommendation:** Find that the Arbitrator abused his discretion and remand Award #6 to the Arbitrator for adequate findings about the nature of the fees.

**Arbitrator's Award #8 on Remand:** "The Homeowners are to pay \$130,531 for the supplemental tax increase payments."

- **Homeowners:** Disagree. The Arbitrator made no findings and provided no analysis. He did not address any of the evidence provided by the Homeowner. The Board must find that the Arbitrator abused his discretion on each award by not supporting his award with findings.
- **Park Management:** Agree. There is nothing properly before the Board in these proceedings that would give rise to any basis for any change to this Award. Indeed, under the terms of the Court's ruling, the Board has no authority whatsoever to take any action to change this Award.
- **Staff's Recommendation:** Find that the Arbitrator abused his discretion and remand Award #8 to the Arbitrator for adequate findings about the nature of the payment.

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

- **Homeowners:** Disagree. The Arbitrator made no findings and provided no analysis. He did not address any of the evidence provided by the Homeowner. The Board must find that the Arbitrator abused his discretion on each award by not supporting his award with findings.
- **Park Management:** Agree. There is nothing properly before the Board in these proceedings that would give rise to any basis for any change to this Award. Indeed, under the terms of the Court's ruling, the Board has no authority whatsoever to take any action to change this Award.
- **Staff's Recommendation:** Find that the Arbitrator abused his discretion and remand Award #11 to the Arbitrator for adequate findings about the nature of the fees.

**Arbitrator's Award #12 on Remand:** "The Permanent increase is to be \$25.29 and the temporary increase \$39.44 as supported by the attached."

- **Homeowners:** Disagree. The Arbitrator made no findings and provided no analysis. He did not address any of the evidence provided by the Homeowner. The Board must find that the Arbitrator abused his discretion on each award by not supporting his award with findings.
- **Park Management:** Agree. 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. Accordingly, there are no grounds under Rule 23 for the Board to alter this award.
- **Staff's Recommendation:** Remand Award #12 to the Arbitrator for recalculation in light of other remanded items.

**Performance Measure:** N/A

**Fiscal and Facilities Impacts:**

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

**Key Contract Risks:** N/A

**Staffing Impacts:**

Existing General Services Department, Real Property Division staff are currently serving as the Clerk under the County Code Chapter 11A (Mobilehome Rent Control). County staff has spent over 500 hours to date on this project.

**Special Instructions:**

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

**Attachments:**

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

- P. Park Management's Petition
- Q. Park Management's Response to Homeowners' Petition for Review
- R. Homeowners' Response to Park Management's Petition for Review
- S. Park Management's Objection to Homeowner's Response to Park Management's Petition for Review
- T. Order on Writ of Mandate
- U. Board Letter Dated January 5, 2016 (without Attachments)
- V. Minute Order of Board's January 19, 2016 Decision
- W. Homeowners' Arbitration Brief on Remand
- X. Park Management's Arbitration Brief on Remand
- Y. Homeowners' Exhibit 9 (not admitted by Arbitrator)
- Z. Park Management's Exhibit U (not admitted by Arbitrator)
- AA. Park Management's Exhibit V (not admitted by Arbitrator)
- BB. Arbitrator's Opinion and Award (Revised on Remand)
- CC. Nomad Village Hearing Transcript February 17, 2016
- DD. Homeowners' Petition for Review of Arbitrator's Decision on Remand
- EE. Park Management's Response to Homeowners' Petition for Review of Arbitrator's Decision on remand.
- FF. Decision Matrix of Board Options
- GG. Findings
- HH. Notice of Exemption

**cc:** Jenna Richardson, Deputy County Counsel

**Author:** Natalie Dimitrova, Real Property Division 560-1079