Attachment T
Order on Writ of Mandate

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Attorney for Petitioners
LAZY LANDING, LLC;
WATERHOUSE MANAGEMENT, INC.

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA BARBARA

LAZY LANDING, LLC, a California limited liability company, and WATERHOUSE MANAGEMENT INC. Petitioners, vs. THE COUNTY OF SANTA BARBARA; BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA; AND DOES 1 through 100, inclusive, Respondents and Defendants. DEBRA HAMRICK, as Representative of homeowners of Nomad Village Mobile Home Park, as Alleged In Petition Filed under Santa Barbara County Mobilehome Control Ordinance, Real Party in Interest.	Case No. 1403359 NOTICE OF ENTRY OF ORDER ON WRIT OF MANDATE Assigned to the Hon. THOMAS P. ANDERLE DEPT: Three

NOTICE IS HEREBY GIVEN that on November 17, 2014, the Court entered the Order on Writ of Mandate, a true and correct copy of which is attached hereto as Exhibit A.

Dated: November 17, 2014

JAMES P. BALLANTINE
Attorney for Petitioners
LAZY LANDING, LLC;
WATERHOUSE MANAGEMENT, INC.

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 November 17, 2014, I served the foregoing document described as NOTICE OF ENTRY OF ORDER ON WRIT OF MANDATE on the interested parties in this action by placing true and correct copies thereof enclosed in sealed envelopes addressed as follows:

Thomas H. Griffin, Esq.
1758 Calle Cerro
Santa Barbara, California 93101

Jennifer A. Richardson, Esq.
Office of County Counsel
105 East Anapamu Street, Room 201
Santa Barbara, California 93101

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 November 17, 2014, at Santa Barbara, California.

Lisa M. Paik

EXHIBIT "A"

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

LAZY LANDING, LLC, a California limited liability company, and WATERHOUSE MANAGEMENT, INC.

Petitioners and Plaintiffs

vs

THE COUNTY OF SANTA BARBARA BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA, and Does 1 through 100, inclusive

Respondent and Defendant

DEBRA HAMRICK, as Representative of homeowners of Nomad Village Mobile Home Park, as Alleged in Petition Filed under Santa Barbara County Mobilehome Control Ordinance,

Real Party in Interest

Case No. 1403359

ORDER ON WRIT OF MANDATE

Assigned to the Honorable Thomas P. Anderle Department 3

This matter came on for hearing on June 17, 2014. Petitioners Lazy Landing, LLC, and Waterhouse Management, Inc. ("Petitioners") was represented by James P. Ballantine. Respondent the County of Santa Barbara Board of Supervisors of the County of Santa Barbara ("the Board") was represented by Jennifer Richardson. Real Party in Interest Debra Hamrick ("Hamrick") was represented by Thomas Griffin.

GOOD CAUSE APPEARING THE COURT ORDERS:

1. As set forth in the attached decision, which is incorporated herein and made a part hereof, the petition for writ of administrative mandate is granted in part and denied in part.

2. The Court grants the petition as to the Board's determination as to arbitrator award numbers 4, 5, 6, 7, 8, 11, and 12, and otherwise denies the petition.

3. The Board is required to vacate its decision on these awards and, on reconsideration, exercise its discretion in the manner required by law.

4. The Court retains jurisdiction to enforce the terms of this Order.

November 10, 2014

THOMAS P. ANDERLE

Thomas P. Anderle
Judge

THOMAS P. ANDERLE

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

TENTATIVE RULING

Judge Thomas Anderle
Department 3 SB-Anacapa
1100 Anacapa Street P.O. Box 21107 Santa Barbara, CA 93121-1107

CIVIL LAW & MOTION

Lazy Landing LLC et al vs County of Santa Barbara et al	
Case No:	1403359
Hearing Date:	Tue Jun 17, 2014 9:30

Nature of Proceedings: Motion Strike First Amended Complaint; Writ of Mandate; Demurrer First Amended Complaint; Motion Strike Amended Complaint

(1) Motions to Strike "First Amended Complaint" of Real Party in Interest Debra Hamrick

(2) Demurrer to First Amended Cross-Complaint of Real Party in Interest Debra Hamrick

(3) Petition for Writ of Mandate

Ruling:

(1) For the reasons set forth herein, the motions to strike the "First Amended Complaint" of real party in interest Debra Hamrick are granted without leave to amend. Hamrick's "First Amended Complaint" is ordered stricken.

(2) The demurrer to Hamrick's "First Amended Complaint" is ordered off calendar as moot.

(3) As set forth herein, the petition for writ of administrative mandate is granted in part and denied in part. The court grants the petition as to respondent Board's determination as to arbitrator award numbers 4, 5, 6, 7, 8, 11, and 12, and otherwise denies the petition. Respondent Board will be

EXHIBIT A

required to vacate its decision on these awards and, on reconsideration, exercise its discretion in the manner required by law.

Background:

This is a petition for writ of administrative mandate challenging the action of respondent County of Santa Barbara (County) by its Board of Supervisors (Board) affirming in part and reversing in part the decision of a rent-control arbitrator as to the request for certain increases in rent at a mobile home park.

I. Motions to Strike and Demurrer to Cross-Complaint

On August 13, 2012, petitioners and plaintiffs Lazy Landing, LLC, and Waterhouse Management, Inc., (collectively, petitioners) filed their original combined petition for writ of mandate and complaint for declaratory relief, inverse condemnation, and violation of constitutional rights. On November 7, 2012, petitioners filed their operative pleading, the amended and supplemental petition and complaint (FAC).

On February 1, 2013, the court entered an order on the stipulation of the parties bifurcating the issues presented by the FAC. The order provides that the petition for writ of mandate and request for declaratory relief would be heard first and that all matters relating to the non-writ causes of action "including responsive pleadings and discovery" should be stayed until the court's final ruling on the writ causes of action. (Order, filed Feb. 1, 2013, ¶ 3.)

On January 14, 2014, the court entered an order on the stipulation of the parties setting a briefing schedule and setting hearing on the writ petition for April 29, 2014.

On February 20, 2014, Hamrick, without leave of court, filed a complaint (the Hamrick Complaint) in this action asserting four causes of action: (1) declaratory relief; (2) accounting, damages, penalties, and attorney fees; (3) injunctive relief; and (4) constructive trust. Hamrick seeks this relief in varying respects against County, petitioners, and third parties John R. Bell, Randy J. Bell and Robert M. Bell as owners of the land underlying the Park.

County moved to strike the Hamrick Complaint as not having been filed in conformance with law. Petitioners also moved to strike the Hamrick Complaint on the same grounds. In addition, County demurred to the Hamrick Complaint.

On April 21, 2014, Hamrick, again without leave of court, filed a first amended complaint (Hamrick FAC).

On April 22, 2014, the court granted the motions to strike the Hamrick Complaint on the grounds that the Hamrick Complaint was filed without leave of court. The filing of the Hamrick FAC was first brought to the court's attention at the hearing on these motions to strike.

County and petitioners separately move to strike the Hamrick FAC on the grounds that it is not timely and not filed with leave of court. County also demurs to the Hamrick FAC.

Hamrick opposes the motions to strike and the demurrer.

II. Petition for Writ of Mandate

Nomad Village Mobile Home Park (Park) is a 150-space mobile home park in which individual mobile homes are owned by homeowners who rent the spaces upon which the homes are located from the Park. (1 Administrative Record [AR] 253; 2 AR 305.) The Park was developed in the 1950s and was operated from 1958 to July 2008 by Nomad Village, Inc., which leased the land on which the Park is operated (the Property). (2 AR 305-506.) The Park is located at 4326 Calle Real, Santa Barbara, California, within the unincorporated area of Santa Barbara County and is subject to the Santa Barbara County rent control ordinance, Santa Barbara County Code, chapter 11A (the Ordinance). (See 3 AR 727.)

The fee interest in the Property is owned by the Bell Trust. (2 AR 306, 381.) The lease of the Property to Nomad Village, Inc., expired on July 31, 2008. (2 AR 403.) The Bell Trust entered into a new 34-year ground lease (the Ground Lease) for the Property, commencing on August 1, 2008, with petitioner Lazy Landing, LLC, (Lazy Landing) as lessee. (2 AR 381.) The Ground Lease provides for rent consisting of (1) a one-time payment of $500,000 upon commencement of the lease term, (2) an amount equal to 20 percent of all collected rents from the Property, and (3) all real property taxes assessed against the Property and personal property taxes belonging to the lessee and located and used by the lessee in connection with the Property. (2 AR 381-328.)

Petitioner Waterhouse Management, Inc., (Management) now operates the Park for Lazy Landing. (2 AR 304.)

By written notice dated January 26, 2011, Management gave notice pursuant to the Ordinance of a monthly base rent increase effective May 1, 2011. (2 AR 347.) Management also gave written notice, dated January 26, 2011, of a monthly space rent increase effective May 1, 2011. (2 AR 349.) The particulars of the requested rent increases are discussed below.

Following the notice, Management and representatives of Park homeowners engaged in ultimately unsuccessful discussions to reach an agreement regarding the rent increases. On February 28, 2011,

Park homeowners filed a petition for arbitration contesting the proposed rent increase. (1 AR 77.)

An arbitration hearing was conducted on September 19 and 20, 2011, by arbitrator Stephen Biersmith. (3 AR 724-977; 4 AR 979-1187.) The arbitrator took testimony and heard argument; the parties submitted post-arbitration briefing. The arbitrator prepared and served a draft arbitration award (Draft Award), dated November 22, 2011. (Petitioners' Opening Brief [POB], exhibit C.) The Draft Award left certain calculations and elements for the parties to determine. After further input from the parties, the arbitrator issued his final award (Award), dated December 20, 2011. (1 AR 8-25.) The Award makes 14 particular findings and awards. (1 AR 22-23.)

By letter brief dated January 13, 2012, Park homeowners, with real party in interest Debra Hamrick as the homeowners' representative, petitioned for review of the Award. (1 AR 27-56.) The homeowners' petition challenges eight of the findings and awards. (1 AR 27-37.) On January 17, 2012, Management filed its petition challenging two of the findings and awards. (1 AR 58-74.)

On May 1, 2012, the Board set a hearing on the petitions for review for May 15, 2012. (1 AR 1-6.) Prior to the Board's hearing on May 15, the Board, and certain Supervisors, received emailed comments from the public which were not contemporaneously provided to Management. (5 AR 1349-1429.) At the May 15 hearing, Supervisor Wolf stated that the day prior to the hearing she met with Ann Anderson, Martha Hassenklug, Jim Richards and Hamrick. (5 AR 1437, 1444.)

At the May 15 hearing, the Board listened to public comment and argument from petitioners and real party. (5 AR 1433-1499.) At the conclusion of the hearing, the Board voted to affirm the Award as to two findings and awards, to reverse the decision in whole as to six findings and awards, and to remand to the arbitrator for reconsideration as to two findings and awards. (5 AR 1535.) The particulars of the Board's action are discussed below.

A hearing was held by the arbitrator on remand on July 13, 2012. (POB, exhibit E, p. 2.) The arbitrator issued his award on remand (Remand Award) on August 6. (POB, exhibit E.)

On August 13, 2012, petitioners filed their original petition in this matter. On November 7, 2012, petitioners filed the operative pleading in this matter, their amended and supplemental verified petition and complaint (FAC). The FAC asserts four causes of action: (1) writ of mandate; (2) declaratory relief; (3) inverse condemnation; and (4) violation of constitutional rights. In the FAC, petitioners seek to set aside the May 15, 2011, decision of the Board of Supervisors reversing and remanding the original award of the arbitrator and to obtain a judicial declaration to that effect; petitioners also seek a declaration that the act of the Board of Supervisors is an unconstitutional taking and compensation based on that taking.

On February 1, 2013, the court entered an order on the stipulation of the parties bifurcating the issues presented by the FAC. The order provides that the petition for writ of mandate and request

for declaratory relief would be heard first and that all matters relating to the non-writ causes of action "including responsive pleadings and discovery" should be stayed until the court's final ruling on the writ causes of action. (Order, filed Feb. 1, 2013, ¶ 3.)

Now before the court is the hearing on the petition for writ of mandate.

Analysis:

I. Hamrick FAC

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: [¶] ... [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436, subd. (b).) "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Code Civ. Proc., § 437, subd. (a).)

In support of these motions and demurrer, petitioners request that the court take judicial notice of: (exhibit 1) its written order of May 13, 2014, granting petitioners' motion to strike the Hamrick Complaint; (exhibit 2) the transcript of proceedings of the court in this action on April 22, 2014; and (exhibit 3) the transcript of proceedings of the court in this action on April 29, 2014. These requests for judicial notice are granted. (Evid. Code, § 452, subd. (d)(1).)

Hamrick repeats her argument from the April 22 hearing that her "complaint" may be filed at any time. These arguments were fully addressed in the court's ruling of April 22; the court incorporates its ruling of April 22 herein by this reference. To briefly summarize, Hamrick asserts that the requirements for filing a compulsory cross-complaint set forth in Code of Civil Procedure section 426.30 does not apply because section 426.30 does not apply to special proceedings (Code Civ. Proc., § 426.60, subd. (a)) and a petition for writ of mandate is a special proceeding. While Hamrick is correct that the compulsory cross-complaint statutes do not apply to writ petitions, this reasoning is irrelevant to the only issue presented by the motion to strike, namely, whether the Hamrick Complaint, and now the Hamrick FAC, may be filed without leave of court. Notwithstanding its title, the Hamrick FAC is in substance a complaint in intervention. (See Code Civ. Proc., § 387, subd. (a).) A complaint in intervention generally requires leave of court for filing. (*Ibid.*) A complaint in intervention is in legal effect a cross-complaint. (*Turner v. Citizens National Bank* (1962) 206 Cal.App.2d 193, 202.) Permissive cross-complaints, to be filed without leave of court, must be filed with the answer and prior to the setting of trial. (Code Civ. Proc., § 428.50, subds. (a), (b).)

Hamrick had not requested leave to file the Hamrick Complaint and the court had not granted Hamrick leave to file the Hamrick Complaint. The filing of the Hamrick Complaint was untimely

and required leave of court for its filing. (Code Civ. Proc., § 428.50, subds. (a), (c).) Because leave of court was required and had not been obtained, the court ordered the Hamrick Complaint stricken. Before this order was entered, however, on April 21, Hamrick filed the Hamrick FAC.

"Any pleading may be amended once by the party of course, and without costs, at any time before the answer or demurrer is filed, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, and the time in which the adverse party must respond thereto shall be computed from the date of notice of the amendment." (Code Civ. Proc., § 472.)

Although section 472 permits the filing of an amended pleading, section 472 does not authorize the filing of an amended pleading where the original pleading was not authorized. "But while the section is to be construed liberally as conferring an equal right to amend upon both parties as to all pleadings, still its terms are not to be enlarged by such construction so as to confer greater rights upon one in that respect than are accorded to the other …. " (*Tingley v. Times Mirror Co.* (1907) 151 Cal. 1, 9-10.) A party cannot avoid obtaining the leave to amend as required by section 428.50 by filing, without leave, a first amended cross-complaint immediately after filing, without leave, an untimely original cross-complaint.

The Hamrick FAC was not filed in conformity with the laws of this state for the same reason that the Hamrick Complaint was not filed in conformity with the laws of this state. The motions to strike will be granted and the Hamrick FAC will be ordered stricken. Hamrick shall not file any further complaints or cross-complaints in this action without first obtaining leave of court to do so.

II. Petition for Writ of Mandate

(1) Procedural Objections to Writ Petition

In her opposition, Hamrick asserts that there is a lack of subject matter jurisdiction, that petitioner's original petition was not timely served and that the FAC was not timely filed.

(A) Subject Matter Jurisdiction

Hamrick argues that "the court lacks jurisdiction to provide petitioners with any relief in furtherance of their unlawful and criminal acts" based upon Hamrick's contention that petitioners do not have a legal permit to operate a mobile home park. (Hamrick Opposition, at p. 6.) Absent a valid permit, Hamrick argues that petitioners do not have standing and hence the court does not have subject matter jurisdiction.

"As a general rule, a party must be 'beneficially interested' to seek a writ of mandate. [Citation.] 'The requirement that a petitioner be "beneficially interested" has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. [Citations.]" (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.)

Petitioners here were parties to the administrative proceedings below as the Park operators and managers. "[E]lemental principles of justice require that parties to the administrative proceeding be permitted to retain their status as such throughout the final judicial review by a court of law, for the fundamental issues in litigation remain essentially the same." (*Bodinson Mfg. Co. v. California Employment Com.* (1941) 17 Cal.2d 321, 330.) Consequently, petitioners have standing as persons "beneficially interested" to challenge the Board's action which resulted in the setting of new rental rates for Park homeowners. This court therefore does not lack subject matter jurisdiction over this writ proceeding.

A somewhat different issue is whether the Award or the Board's action on the Award is legally improper based upon Hamrick's argument that petitioners did not have a valid license to operate the Park. Hamrick's argument in this regard is based upon Hamrick's request for judicial notice of documents not in the administrative record. As noted below, the court will deny the request for judicial notice of these records.

The proceeding that is the subject of the petition is a proceeding to increase the maximum rent schedule pursuant to the Ordinance. While the court agrees with the general proposition that a valid license is necessary to operate the Park, the license issue is not related to the amounts to be included in the maximum rent schedule under the Ordinance. To the extent that licensing was or could have been a defense or an issue in fixing the maximum rent schedule in the arbitration, Hamrick and the homeowners were required to raise that issue in the arbitration. "[I]ssues not presented at an administrative hearing cannot be raised on review." (*Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 787.) Accordingly, the court will not consider the merits of Hamrick's licensing argument in determining the merits of this petition for writ of mandate.

(B) Service and Filing

Hamrick also argues that the court lacks subject matter jurisdiction because the petition for writ of mandate was untimely served and filed.

"Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced. ... If there is a provision for a written decision or written findings, the decision is final for purposes of

this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed." (Code Civ. Proc., § 1094.6, subd. (b).)

As Hamrick points out, the Board's decision was announced on May 15, 2012. (5 AR 1498.) Also as Hamrick points out, the original petition was filed on August 13, 2012, which was the 90th day following the date of that announcement. Moreover, the rules of proceedings relating to the Board's review of the Award provide for a written decision that is "final on the date it is signed." (Mobilehome Rent Control Rules for Hearings, rule 23(e).) The final decision was signed on June 14, 2012. (5 AR 1544, 1546.) The original petition was timely filed as provided by Code of Civil Procedure section 1094.6, subdivision (b).

Hamrick argues that the petition was required to have been immediately served.

An application for a writ of mandate may follow one of two procedural paths. Either the petitioner may request the issuance of an alternative writ or the petitioner may make a noticed motion for the issuance of a peremptory writ. (Code Civ. Proc., § 1087, 1088, 1088.5.) Here, petitioners have not sought an alternative writ, but utilize the motion procedure.

"When an application is filed for the issuance of any prerogative writ, the application shall be accompanied by proof of service of a copy thereof upon the respondent and the real party in interest named in such application. ... However, when a writ of mandate is sought pursuant to the provisions of Section 1088.5 [by noticed motion], the action may be filed and served in the same manner as an ordinary action under Part 2 (commencing with Section 307)." (Code Civ. Proc., § 1107.)

"In a trial court, if no alternative writ is sought, proof of service of a copy of the petition need not accompany the application for a writ at the time of filing, but proof of service of a copy of the filed petition must be lodged with the court prior to a hearing or any action by the court." (Code Civ. Proc., § 1088.5.) Although some statutory schemes require service within a specific time period (e.g., Gov. Code, § 66499.37 [review of actions under Subdivision Map Act]), Hamrick points to no authority requiring service of the petition at any specific time for the review of the decision here at issue.

Petitioners filed their amended and supplemental petition on November 7, 2012.

"An amendment to a complaint is deemed a statement of the facts existing at the commencement of the action, and takes effect as if it had been originally incorporated in the pleading." (*Nungaray v. Pleasant Valley Lima Bean Growers & Warehouse Association* (1956) 142 Cal.App.2d 653, 662.) "'An amended complaint relates back to the original complaint when it (1) is based on the same

general set of facts as the original, (2) seeks relief for the same injuries, and (3) refers to the same incident.' [Citation.]" (*Edwards v. Superior Court* (2001) 93 Cal.App.4th 172, 180.)

"The complaint, whether original or amended, can properly speak only of things which occurred either before or concurrently with the commencement of the action. The office of a supplemental complaint is to bring to the notice of the court and the opposite party things which occurred after the commencement of the action, and which do or may affect the rights asserted and the relief asked in the action as originally instituted." (*California Farm & Fruit Co. v. Schiappa-Pietra* (1907) 151 Cal. 732, 742-743.)

Here, the amended and supplemental petition and complaint realleged the same facts as set forth in the original petition and complaint, but included additional facts relating to the Remand Award. Thus, the issues raised in the FAC relate back to the filing of the original petition and complaint.

The filing and service of the original petition and the FAC are timely and not barred by Code of Civil Procedure section 1096.6, subdivision (b).

(2) Applicable Arbitration Procedures

The Ordinance provides procedures for increasing rents to mobilehome tenancies. The procedure commences with management's notice of an increase in the maximum rent schedule. (S.B. County Code, ch. 11A, § 11A-5(a).) Where the noticed increase is in excess of 75 percent of a particular consumer price index, the notice must "[i]temize amounts for increased operating costs; any capital expenses incurred in the prior year to be undertaken for which reimbursement is sought, hereinafter 'new' capital expenses; any capital expenses allowed in prior years but not fully reimbursed, hereinafter 'old' capital expenses; any offset against new or old capital expenses; and capital improvements." (*Id.*, § 11A-5(a)(3)(A).) The notice must also set a meet and confer session between management and the homeowners. (*Id.*, § 11A-5(a)(3)(B).)

The homeowners may file a petition for an arbitration hearing to contest the proposed increase if the increase is in excess of 75 percent of the increase in the consumer price index. (S.B. County Code, ch. 11A, § 11A-5(b).) A hearing is then set by the real property division manager of Santa Barbara County, acting as clerk. (*Id.*, §§ 11A-4(c), 11A-5(c).) The arbitrator may deny a hearing on various procedural grounds. (*Id.*, § 11A-5(d), (e).) If a hearing is not denied on these grounds, a hearing on the merits is conducted. (*Id.*, § 11A-5(f).)

"[T]he arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the arbitrator.

"(1) Such relevant factors may include, but are not limited to, increases in management's ordinary and necessary maintenance and operating expenses, insurance and repairs; increases in property

taxes and fees and expenses in connection with operating the park; capital improvements; capital expenses; increases in services, furnishings, living space, equipment or other amenities; and expenses incidental to the purchase of the park except that evidence as to the amounts of principal and interest on loans and depreciation shall not be considered." (S.B. County Code, ch. 11A, § 11A-5(f).)

"The arbitrator shall automatically allow a rent increase of seventy-five percent of the CPI increase (hereinafter 'automatic increase'). (S.B. County Code, ch. 11A, § 11A-5(g).) "The arbitrator may allow an increase in excess of the automatic increase for increased costs where increases in expenses and expenditures of management justify such increase." (*Id.*, § 11A-5(h).)

"To determine the amount of any increase in excess of the automatic increase, the arbitrator shall:

"(1) First, grant one-half of the automatic increase to management as a just and reasonable return on investment. The arbitrator shall have no discretion to award additional amounts as a just and reasonable return on investment;

"(2) Next, grant one-half of the automatic increase to management to cover increased operating costs. The arbitrator shall have no discretion to award less than this amount for operating costs.

"(3) Next, add an amount to cover operating costs, if any, in excess of one-half of the automatic increase. The arbitrator shall have discretion to add such amounts as are justified by the evidence and otherwise permitted by this chapter.

"(4) Next, add an amount to cover new capital expenses. Where one-half of the automatic increase is more than the actual increase in operating costs for the year then ending, the arbitrator shall offset the difference against any increases for new capital expenses.

"(5) Next, add an amount to cover old capital expenses. Where one-half of the automatic increase is more than the actual increase in operating costs for the year then ending, the arbitrator shall offset the difference against any increase for old capital expenses unless such difference has already been used to offset an increase for a new capital expense or another old capital expense. The arbitrator shall have discretion to review operating costs and the sufficiency of any offset, but not to redetermine the right of management to reimbursement for an old capital expense.

"(6) Finally, add an amount to cover increased costs for capital improvements, if any. The arbitrator shall have discretion to add such amount as is justified by the evidence and otherwise permitted by this chapter." (S.B. County Code, ch. 11A, § 11A-5(i).) This determination procedure is further refined with respect to capital improvements and capital expenses. (*Id.*, § 11A-6.)

"The total increase shall not exceed the amount in management's notice of rent increase." (S.B. County Code, ch. 11A, § 11A-5(j).) "Evidence as to costs to be incurred prior to the next rent increase may be considered only where such evidence shows that these costs are definite and certain." (*Id.*, § 11A-5(k).) "Increases in the maximum rent schedule set by the arbitrator shall become effective as of the effective date in the notice or rent increase." (*Id.*, § 11A-5(*l*).)

The hearing is held in conformance with the Rules for Hearings (Hearing Rules) adopted by Santa Barbara County. (1 AR 91-111.) The Hearing Rules provide for review of the arbitrator's decision by the Board:

"The decision of the Arbitrator shall be reviewed by the Board of Supervisors upon a petition alleging prejudicial abuse of discretion. Abuse of discretion is established 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." (Hearing Rules, rule 23(a).)

"This review shall ordinarily be made on the record alone; however, the Board may elect to hear oral argument from the parties, their representatives, and/or their attorneys. The Board shall affirm or reverse the Arbitrator's decision in whole or in part and may remand the case to the Arbitrator for reconsideration in light of the Board's review or, where appropriate, the Board may make a new decision without remand." (Hearing Rules, rule 23(b).)

"The Board shall render its decision no later than thirty (30) judicial days following its receipt of all pleadings, records and transcripts, as covered in subparagraphs c and d above. The decision of the Board is final on the date signed, and there shall be no further review or appeal except as specifically provided by Rules 24 and 25." (Hearing Rules, rule 23 (e).)

"Rehearings are available only on matters remanded by the Board of Supervisors." (Hearing Rules, rule 24.) "Code of Civil Procedure sections 1094.5 and 1094.6 are applicable to judicial review of Arbitrators' decisions under the Santa Barbara County Mobilehome Rent Control Ordinance and Rules." (Hearing Rules, rule 25.)

(3) Board Hearing

(A) Procedural Issues

(i) Timeliness of Board Decision

Petitioners assert that Board's action was untimely under the Hearing Rules. The final pleading for the Board's review was filed with County on February 10, 2012. (5 AR 1311.) On May 1, 2012, the Board set a hearing date for the review of May 15, 2012.

"The Board shall render its decision no later than thirty (30) judicial days following its receipt of all pleadings, records and transcripts, as covered in subparagraphs c and d above. The decision of the Board is final on the date signed, and there shall be no further review or appeal except as specifically provided by Rules 24 and 25." (Hearing Rules, rule 23 (e).)

Petitioners argue that the decision was then due 30 judicial days after February 10, 2012. However, the Board did not conduct the hearing until May 15, 2012, and did not enter its final determination until June 12, 2012, more than 30 judicial days after February 10.

County argues that the record was given to the Board on May 10, 2012. (County Opposition, p. 16; 5 AR 1443.) The hearing and final decision were thus within 30 judicial days.

Hearing Rules, rule 23 carefully distinguishes between actions of the Clerk of the Ordinance and the Board. "The petition for review shall be filed by a party or his representative with the Clerk of the Ordinance no later than the fifteenth judicial day following the date the Clerk mailed the Arbitrator's decision to the parties." (Hearing Rules, rule 23(c).) "The Clerk shall furnish the Board with the official record of the hearing ...." (Hearing Rules, rule 23(d).) The 30 day deadline for the Board to act commences from "its receipt" of the record. Under rule 23(d) the Board receives the record from the Clerk. The final decision is therefore timely under the express language of the Hearing Rules. Moreover, as County points out, the Board's deadline is directory only and the Board does not lose jurisdiction to decide the review after the deadline passes. (*Anderson v. Pittenger* (1961) 197 Cal.App.2d 188, 193-194.)

The timing of the rendering of the decision by the Board does not affect the validity of the decision in any way.

(ii) Ex Parte Communications

Petitioners assert in their moving papers that County violated petitioners' due process rights by the Board's ex parte communications with homeowner representatives.

"Just as in a judicial proceeding, due process in an administrative hearing also demands an appearance of fairness and the absence of even a probability of outside influence on the adjudication. In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor assuring that such hearings are fair." (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90.)

With respect to ex parte communication, "[t]he basic standard is stated several different ways, e.g., 'regarding any issue in the proceeding,' 'upon the merits of a contested matter,' 'concerning a pending or impending proceeding.' We do not assign significance to the varying terminology. 'It is, in essence, a rule of fairness meant to insure that all interested sides will be heard on an issue.' [Citation.] It extends to communication of information in which counsel knows or should know the opponents would be interested. [Citation.] Construed in aid of its purpose, we conclude the standard

generally bars any ex parte communication by counsel to the decisionmaker of information relevant to issues in the adjudication." (*Mathew Zaheri Corp. v. New Motor Vehicle Board* (1997) 55 Cal.App.4th 1305, 1317.)

There is no substantial dispute that ex parte communications occurred between members of the Board and members of the public. (5 AR 1436-1437, 1444.) The ex parte communications consisted of emails (5 AR 1358-1429) and a meeting between Supervisor Wolf with individuals including real party Hamrick (5 AR 1444). The ex parte communications were disclosed in general terms at the May 15, 2014, Board meeting but were not disclosed in specific terms, as in the contents of the emails, until after the Board's decision.

In the context of the Board acting in a quasi-judicial capacity, the ex parte communications were improper. As discussed below, the Board treated public comments as additional argument. The ex parte communications were arguments in favor of the homeowners which, as a general matter, petitioners would have reason to want to know prior to the hearing.

County responds to this issue by point out that under the California Constitution, "[t]he people have the right to instruct their representatives ...." (Cal. Const., art. I, § 3, subd. (a).) This right, however, has not been construed to permit unrestrained ex parte communications. Procedural due process rights of the parties to the adjudication must also be considered. The procedural due process right involved is the right to a fair and unbiased hearing. (*Mathew Zaheri Corp. v. New Motor Vehicle Board, supra*, 55 Cal.App.4th at p. 1319.) Ex parte communications have the potential to violate due process because "[w]hen an administrative adjudicator uses 'evidence' outside the record there is a denial of a fair hearing because, as to that 'evidence,' there has been no hearing at all, for the disadvantaged party has not been heard." (*Ibid.*)

The court is mindful of the difficulty that exists for members of the Board sitting in a quasi-judicial capacity. Adjudicatory issues before the Board may be closely related to legislative and policy issues about which communication from constituents would be both expected and appropriate. Issues of written communications may be resolved by prompt disclosure and an opportunity to respond. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1, 17.) Nonetheless, the ex parte communications here, in particular, Supervisor Wolf's meeting with Hamrick and others, was inappropriate where the subject of the meeting was apparently the subject of the May 15 hearing and came only one day prior to the hearing.

The fact of ex parte communications does not by itself require reversal of a decision under review. "If the trial court appropriately concludes that the agency did not rely upon the information provided in the ex parte communication, and that the decisionmaker was not guilty of actual misconduct giving rise to a presumption of bias, there is no deprivation of a fair hearing and no denial of due process." (*Mathew Zaheri Corp. v. New Motor Vehicle Board, supra*, 55 Cal.App.4th 1305, 1319-1320.) "[T]o warrant reversal such misconduct must be shown prejudicial or intentional and heinous." (*Id.* at p. 1318.) "'Prejudice' connotes that the Board's decision stemmed, at least in

part, from the asserted misconduct." (*Ibid.*) "Alternatively, one might use the test of *People v. Watson* (1956) 46 Cal. 2d 818, 836 ... [after an examination of the entire cause, including the evidence, it is reasonably probable that a result more favorable to defendant would have been reached in the absence of the misconduct]." (*Id.* at p. 1318, fn. 11.)

Based upon the discussion below with respect to the substantive merits of the writ petition, the court concludes that no prejudice or intentional and heinous misconduct has here occurred by the ex parte communications, and that after an examination of the entire record, it is not reasonably probable that a result more favorable to petitioners would have been reached in the absence of the misconduct.

(iii) Extra-Record Evidence

Petitioners also assert that the Board improperly violated its own rules by considering evidence outside of the record in permitting participation at the hearing of members of the public. "This review shall ordinarily be made on the record alone; however, the Board may elect to hear oral argument from the parties, their representatives, and/or their attorneys." (Hearing Rules, rule 23(b).)

County responds that its obligations under the Brown Act (Gov. Code, § 54950 et seq.) require the Board to permit public input:

"Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2." (Gov. Code, § 54954.3, subd. (a).)

The Board harmonized these two obligations by passing the following motions:

"In accordance with Rule 23(b) of the Mobile Home Rent Controls Rules for Hearings, the Board should limit [its] review of the Arbitrator's decision to the paper record alone, which consists of Attachments A through P to the Board Agenda Letter. The Board will not consider any new evidence, and should receive Brown Act public comment as argument that focuses on evidence that is already contained in the record, rather than as new evidence." (5 AR 1534.)

Petitioners argue that the Brown Act does not apply here because this appeal is not a matter of public interest and that the procedure adopted violates the terms of rule 23(b). Petitioners point out that rule 23(b) permits oral argument from the parties, their representatives, and/or their attorneys, but not from the general public. Permitting and considering argument by the general public violates

the express terms of rule 23(b). Moreover, petitioners argue, rule 23(b)'s limitation on the persons entitled to argue makes this a matter of private, not public interest.

Petitioners cite no authority for the proposition that a decision by the Board is not an item of interest to the public within the meaning of the Brown Act. The law is contrary:

"Section 54954.3, subdivision (a), provides: 'Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body ... .' This language has been construed to mean that for each agenda of a regular meeting, there must be a period of time provided for general public comment on *any* matter within the subject matter jurisdiction of the legislative body, as well as an opportunity for public comment on each specific agenda item as it is taken up by the body." (*Galbiso v. Orosi Public Utility District* (2008) 167 Cal.App.4th 1063, 1079.)

The May 15 hearing was an agenda item of the Board. (1 AR 75.) The Brown Act provides the public a right to comment on the agenda items of the Board.

There is a conflict between the language of rule 23(b) and the requirements of the Brown Act. The Hearing Rules do not discuss public input at the Board. This discrepancy may be the result of respective effective dates of the Hearing Rules and the public comment provision of the Brown Act. (Compare 1 AR 111 ["9/25/86"] with Stats. 1986, ch. 641, § 6.) In any case, the Brown Act applies to counties. (Gov. Code, § 54951.) To the extent that rule 23(b) could be interpreted to conflict with the Brown Act, the requirements of the Brown Act, as state legislation on a matter of statewide concern, applies notwithstanding rule 23(b). (See *San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 958.)

The record demonstrates that the Board relied solely upon the record before the Board in reaching its determinations on review of the arbitrator's decision. Accordingly, petitioners' challenge to the Board's determinations by its permitting public comment is rejected.

Petitioners also argue that limiting petitioners' counsel's rebuttal time to less than the total of time allowed for public comments created an unfair hearing. Petitioners have failed to specify what rebuttal was precluded by this limitation or to identify how the limitation caused any prejudice to petitioners. As a result, the court does not find that limitations imposed on petitioners' counsel resulted in an unfair hearing.

(iv) Standard of Review

"The inquiry in such a case shall extend to the questions whether the respondent has proceeded

without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).) "Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." (Code Civ. Proc., § 1094.5, subd. (c).)

The parties dispute the standard applicable to this court in determining this petition for writ of mandate. Petitioners assert that this court reviews the arbitrator's final decision, not the Board's decision: "To summarize, we review the hearing officer's factual determinations for substantial evidence. [Citation.] We independently review the hearing officer's interpretation of the Ordinance, according that interpretation due deference." (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 220.)

County argues that this writ seeks to overturn the decision of the Board, not the decision of the arbitrator, and thus this court reviews the Board's decision for substantial evidence, not the decision of the arbitrator. (See *McMillan v. American General Finance Corp.* (1976) 60 Cal.App.3d 175, 181-182 [review of city council appeal of planning commission decision].)

As is noted below, the standard of review depends upon the specific decision that is at issue.

(iv) Findings

An issue related to the standard of review is the issue of the sufficiency of the Board's findings. The arbitrator issued a detailed opinion and award setting forth the arbitrator's findings. (1 AR 8-25.) The Board conducted a hearing in which members of the Board made comments concerning the specific arbitration awards under consideration and issued a brief written order setting forth the Board's orders on review.

The parties dispute the sufficiency of the Board's findings. As County points out, the Hearing Rules do not expressly require that the Board make written findings. In reply, petitioners argue that Hearing Rules, rule 23(e) requires written findings by the Board. Rule 23(e) states only that the "decision of the Board is final on the date signed," implying that there must be a written decision. The written decision by the Board provides certainty as to what was decided and a date certain for finality. The text of the Hearing Rules does not imply that the Board is obligated to provide findings in writing or in any detail not required by other law.

The parties agree that some findings are required by *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 (*Topanga*):

"[I]mplicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. If the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's action. By focusing, instead, upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated that the agency would reveal this route." (*Topanga, supra,* 11 Cal.3d at p. 515.)

"Administrative findings are substantively sufficient under the foregoing authorities if they (1) inform the parties of the bases on which to seek review [citation], and (2) permit the courts to determine whether the decision is based on lawful principles [citation]." (*McMillan v. American General Finance Corp.* (1976) 60 Cal.App.3d 175, 185.)

Written findings of fact, labeled as such, are not the only findings sufficient to comply with the requirements of *Topanga.* (*City of Carmel-By-The-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84, 91.) A reviewing court may look to the record to determine the findings upon which the decision is based. (*Ibid.*) Under some circumstances oral remarks made at a public hearing and for which a transcript is prepared may be reviewed in determining the sufficiency of the findings. (*Id.* at p. 92; see also *Harris v. City of Costa Mesa* (1994) 25 Cal.App.4th 963, 971.)

In order to determine the sufficiency of the findings, it is necessary to consider each finding separately.

(B) Rulings of Arbitrator

The arbitrator made 14 itemized awards as follows:

"1.The CPI increase as calculated and proposed by the Park Owners in its letter dated January 26, 2011 can be charged to the Homeowners.

"2.The Homeowners do not have to pay the additional 10% increase in ground rents.

"3.The Homeowners are to pay the Park Owners for all real property taxes assessed by the County.

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

"5.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.

"6.The Homeowners are to pay $25,000 for professional fees associated with the capital improvements.

"7.The Homeowners are to pay $40,000 for the A&E fees associated with the capital improvements.

"8.The Homeowners are to pay $130,531 for the supplemental tax increase payments already paid by the Park Owner.

"9.The Homeowners do not need to pay for the uncompensated increases associated with the lease payments.

"10.The Homeowners have elected not to proceed with a property tax appeal or reassessment and should not be charged with professional fees associated with the same.

"11.The Homeowners are to pay $110,000 for legal fees associated with the challenge to the rent increase.

"12.The Permanent Increase is to be $25.59 and the Temporary Increase $67.09 as supported by Respondent's Exhibit T.

"13.The Parties are to work towards agreement and payment of any overpayments by the Homeowners as a result of this award by March 1, 2012.

"14.The Arbitrator will maintain jurisdiction until the expiration of the time line noted in #13 above." (1 AR 22-23.)

Following the hearing on May 15, 2012, the Board adopted the following decisions:

Award Nos. 1 and 10 were not challenged and not subject to Board action. Award Nos. 2 and 9 were affirmed. As to Award Nos. 4, 5, 6, 7, 8, and 11, the Board found that the arbitrator abused his discretion and reversed the decision in whole. As to Award Nos. 3 and 12, the Board remanded the award back to the arbitrator. (5 AR 1546.)

Petitioners here challenge the decision of the Board as to Award Nos. 3 through 8 and 12 in reversing or remanding the arbitrator's decision and the decision of the arbitrator, affirmed by the Board, as to Award Nos. 2 and 9.

(i) Ground Lease

The issue addressed by the arbitrator in making Award Nos. 2 and 9 arises from a change in the ground lease for the Property. Prior to the present Ground Lease, the lease provided for ground rent to be paid by the operator of the Park to the owner of the Property of 10 percent of the gross rents received from homeowners by the operator of the Park. (2 AR 404.) The arbitrator found that historically, this 10 percent had been passed through and paid by the homeowners or their predecessors in interest without challenge. (1 AR 18.) The new Ground Lease increases the ground

rent percentage to 20 percent. (1 AR 18.) The issue presented was whether the additional 10 percent in the new Ground Lease would properly be passed through to the homeowners as an operating expense as sought by petitioners or the additional 10 percent was a cost of acquisition that would not be passed through to the homeowners. (*Ibid.*)

The arbitrator found that the additional 10 percent was not an operating cost as a basis for a rent increase under the Ordinance. The arbitrator stated that expert testimony characterized this ground rent increase as a cost of acquisition. The arbitrator reasoned that to allow a pass through of such cost would take away the incentive of a future operator to keep this percentage down. (1 AR 18.) Here, the arbitrator noted, the Ground Lease included a provision for a $500,000 one-time payment which could not be recouped as an operating cost. If the rule were to allow this additional percentage rent to be passed through, the one-time payment could easily be lowered to an equally valuable higher percentage rent, thus converting the same payment from a non-recoupable acquisition cost to a recoupable operating cost. (*Ibid.*) The arbitrator noted that the Ordinance does not address this issue expressly. By comparing the Ordinance to ordinances in other jurisdictions, the arbitrator reasoned that the omission makes it more likely that the Ordinance did not intend to permit the additional percentage rent to be passed through to the homeowners.

The arbitrator's award on this issue was appealed by petitioners to the Board. (1 AR 59.) The Board affirmed the arbitrator's award on this issue. The court reviews this affirmation by reviewing the arbitrator's award itself for reversible error under the standards of Code of Civil Procedure section 1094.5. (See *MHC Operating Limited Partnership v. City of San Jose*, *supra*, 106 Cal.App.4th at p. 220.)

The Ordinance provides: "[T]he arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the arbitrator. [¶] (1) Such relevant factors may include, but are not limited to, increases in management's ordinary and necessary maintenance and operating expenses, insurance and repairs; increases in property taxes and fees and expenses in connection with operating the park; capital improvements; capital expenses; increases in services, furnishings, living space, equipment or other amenities; and expenses incidental to the purchase of the park except that evidence as to the amounts of principal and interest on loans and depreciation shall not be considered." (S.B. County Code, ch. 11A, § 11A-5(f).)

"To determine the amount of any increase in excess of the automatic increase, the arbitrator shall: [¶] ... [¶] (2) Next, grant one-half of the automatic increase to management to cover increased operating costs. The arbitrator shall have no discretion to award less than this amount for operating costs. [¶] (3) Next, add an amount to cover operating costs, if any, in excess of one-half of the automatic increase. The arbitrator shall have discretion to add such amounts as are justified by the evidence and otherwise permitted by this chapter." (S.B. County Code, ch. 11A, § 11A-5(i)(2), (3).)

The Ordinance expressly gives the arbitrator discretion to add operating costs as are justified by the evidence. The issue here is whether the arbitrator abused his discretion by not including the

additional percentage rent as an amount in excess of the automatic increase.

Petitioners assert that the arbitrator committed legal error by considering the language of other ordinances and by equating a ground lease interest with n ownership interest in the Property. The arbitrator considered two analytically separate issues in making his award. The arbitrator considered whether the additional percentage rent was in the nature of "ordinary and necessary maintenance and operating expenses" and, having concluded that it was instead "in the line of acquisition costs," whether such acquisition costs should nonetheless be included as "operating costs."

At the arbitration hearing, the arbitrator received conflicting expert testimony as to whether the additional percentage rent should be included as an operating cost. Petitioners' expert testified that inclusion of ground lease expense would be an appropriate expense to consider under the methodology of the Ordinance. (3 AR 777.) The homeowners' expert testified that the ground lease expense was in effect an acquisition cost similar to mortgage or interest expenses that are expressly excluded from consideration by the Ordinance. (3 AR 879-884.)

As explained in his award, the arbitrator did not rely upon the language of other ordinances as determinative of whether or not ground lease payments are necessarily deemed "operating expenses" under the Ordinance. In the absence of a statutory definition or controlling precedent, the arbitrator reasonably considered whether ground lease payments would ordinarily be included within "operating expenses" in the mobile home rent control context. As petitioners point out, the other ordinances demonstrate that there is no general rule precluding the inclusion of ground lease expenses within operating expenses.

Ultimately, the arbitrator exercised his discretion not to pass through the additional percentage rent based upon the arbitrator's conclusion that this additional percentage rent was not a true operating expense and that the policies indicated by the Ordinance did not favor inclusion of the additional percentage rent. Petitioners argue that the arbitrator erred by equating the ground lease interest with an ownership interest. The arbitrator did not equate these interests so much as analogize these interests in the context of the language of the Ordinance and the policies implied by the Ordinance. This type of analogy is hardly unusual:

"A tenant entering into a ground lease views itself as taking ownership of the land for a term of years. The tenant wants to ensure its ability to recoup the value of improvements it makes to the leased premises, particularly if the tenant is entering into the lease expressly to construct improvements on the leased land. ... For the tenant, the ground lease is, in essence, a form of financing, with rent payments treated as a portion of its debt service for the overall project. The landlord, in the eyes of the tenant, is a passive recipient of an income stream." (Ground Lease Practice (Cont.Ed.Bar 2d ed. 2009) § 12.2.)

The court agrees that the Ordinance does not expressly include or exclude ground lease payments as "operating expenses." The Ordinance does expressly provide the arbitrator with discretion to make

determinations based upon the evidence presented. Petitioners have not shown that the arbitrator abused his discretion in including the historically approved ground rent and in excluding the additional percentage rent from the "operating expenses." There is substantial evidence supporting the arbitrator's award in this regard. Correspondingly, petitioners have not shown that the Board abused its discretion in affirming Award Nos. 2 and 9 or that the Board improperly or prejudicially relied upon any ex parte communication or extra-record evidence in affirming these arbitrator's awards.

(ii) Real Property Taxes

Award No. 3 is that the "Homeowners are to pay the Park Owners for all real property taxes assessed by the County." The Board remanded this award back to the arbitrator.

Petitioners note that on remand, the arbitrator reviewed the evidence in light of the Board's decision and, reaching the same conclusion, reentered the award that the Homeowners are to pay the Park Owners for all real property taxes assessed by the County. (Petitioners' Exhibits, exhibit E.) The arbitrator's awards on remand are not substantively before the court in this proceeding. However, the court considers the Remand Award for the purpose of determining that the petition is moot to the extent it challenges the Board's decision to remand. Granting the petition to command the Board to affirm the arbitrator's Award No. 3 would result in the same award that now exists after remand. The petition is moot as to Award No. 3.

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

"[T]he arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the arbitrator. [¶] (1) Such relevant factors may include, but are not limited to, ... increases in property taxes and fees and expenses in connection with operating the park ...." (S.B. County Code, ch. 11A, § 11A-5(f)(1).)

At its hearing, the Board's comments regarding property taxes focused upon (1) the text of the Ordinance and (2) the evidence before the arbitrator. The following interchange occurred at the Board Hearing:

"[Supervisor Farr:] ... Now I just want verification, I think that this was something that Supervisor Wolf asked. It seems to me when I read the ordinance that it does say very clearly that property taxes are something that can be considered. Is that correct?

"Supervisor Wolf: Okay.

"[Senior Deputy County Counsel Munoz]: Madam Chair, the ordinance section 11(a) (-5), subdivision (f), subdivision (1) says that such following factors may include increases in property

taxes.

"[Supervisor Farr:] So that would affect not only Arbitrator's Award for No. 3, but also for No. 8, which is a supplemental tax increase. [¶] ... [¶]

"Supervisor Wolf: Because supplemental tax is not delineated in the ordinance as are some of the other fees and that was why I came to some of the decisions that I did. But Counsel may be able to answer that specifically on the supplemental tax. I didn't – I did not find it in the ordinance.

"Mr. Munoz: Madam Chair, Supervisor Wolf. That same subdivision f (1) does not delineate between supplemental or non-supplemental tax. It just specifies increase in property taxes. It would be within your Board's discretion to interpret the meaning of that 11 a-5 subdivision f1." (5 AR 1485-1486, capitalization altered.) (Note: The Supervisor Farr is the Board Chair. The title of "Chair" was used at the Board hearing. Supervisor Farr's title as "Supervisor" is used herein to avoid confusion.)

Later, the Board again took up the issue of Award No. 8:

"[Supervisor Wolf:] ... And I'm inclined to state that No. 8 is the abuse of discretion. There was the expert witness, [Baar], talked about the break in time and that it was not equitable to people who moved into [or] out of the Park, it was a timing issue. So I was inclined to agree with that expert on the supplemental and to say that that was an abuse of discretion and that it not be included. [¶] ... [¶]

"[Supervisor Farr:] You know, I have to say that my reading of the ordinance seems pretty clear that it can be included. And so the supplemental may be one thing but the regular property tax I think is something that's in the ordinance. But if there's some clarification or not of that? Supervisor Gray?

"Supervisor Gray: My reading of the evidence and it seems to be that they can include property taxes. And so that I would think that that should be. I would agree with the Arbitrator." (5 AR 1491-1492.)

The first point raised by the Board is that supplemental assessments are not included in the Ordinance for consideration by the arbitrator.

"'The standard of judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.' '[T]he binding power of an agency's interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation.'" (*McCormick v. County of Alameda* (2011) 193 Cal.App.4th 201, 207-208, internal quotation marks and citations omitted.)

The Board's interpretation of section 11A-5(f)(1) of the Ordinance as not including supplemental assessments is erroneous. "The supplemental assessment provision imposes a new timing

mechanism for valuation and collection. It does not alter the tax rate or impose new taxes. ... Rather, property owners are simply paying taxes based on the value closer to the time of a change in ownership or the completion of new construction." (*Shafer v. State Board of Equalization* (1985) 174 Cal.App.3d 423, 427-428) "Taxes on the supplemental roll become a lien against the real property on the date of the change in ownership or completion of new construction. [Citation.] Thus, these taxes accrue at the time of the events triggering reassessment. 'The subsequent assessment and levy are necessary in order to fix the amount of the tax due, but they do not result in the creation of a new obligation; they simply are administrative steps necessary to the enforcement of the right which accrued on the lien date.' [Citation.]" (*Id.* at p. 428.)

Thus, the supplemental assessment reflects an increase in property taxes within the meaning of section 11A-5(f)(1) of the Ordinance. To the extent that the Board's reversal of Award No. 8 was based a determination that the arbitrator abused his discretion by considering the supplemental property tax assessments because supplemental property tax assessments were not proper subjects of consideration under section 11A-5(f)(1), the Board's findings to that extent do not support its reversal of Award No. 8.

The arbitrator was entitled under the Ordinance to consider the supplemental property tax assessments in determining the rate increase. The Board's second basis for reversal as set forth in the above comments is a disagreement as to the arbitrator's result.

At the arbitration, as commented upon by Supervisor Wolf, the Homeowners' expert, Kenneth K. Baar, testified that the supplemental tax increase was a past property tax increase. (3 AR 892.) Baar testified:

"[T]here's no perfect system in regards to past expenses, but this seems, I don't know, in some ways extreme because basically what is going to happen is if these expenses are allowed, they are not going to be paid by the residents who are – many of the residents are the same, but there are some residents who have replaced the residents who were there three years ago and they will be paying this cost increase that, you know, was incurred three years earlier and usually you can't – there's no clear boundary between cumulative past increases, as opposed to regulatory lag where you couldn't have come in sooner to get the increase. And this, to me, more looks like accumulating past increases. I mean, subject to that qualification. You know, I don't think it's reasonable but I'd say it's not a black-and-white issue, but it doesn't look reasonable to me." (3 AR 892-893.)

Baar's testimony is contrasted with petitioners' expert, Michael St. John, who testified:

"[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." (3 AR 794-795.)

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." (3 AR 795.)

St. John effectively agreed with Baar that whether or how to include these expenses is a "judgment call." (3 AR 796.)

As a judgment call, the arbitrator could have followed Baar's opinion that inclusion of the supplemental property tax payments at that time was unreasonable. Instead, the arbitrator weighed the evidence and followed St. John's opinion to include those payments as reasonable. 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).

(iii) Capital Expenses

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." The $320,000 refers to the amount that is in an escrow account for use as capital improvement or replacements at the Property. (2 AR 419 [exhibit K]; 4 AR 146.)

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).) "Evidence as to costs to be incurred prior to the next rent increase may be considered only where such evidence shows that these costs are definite and certain." (*Id.*, § 11A-5(k).)

At the arbitration hearing, petitioners made two claims for an increase in rent based upon capital improvements and capital expenses. Petitioners sought an increase in rent based upon $62,145.55 in capital improvement expenses previous incurred. (2 AR 418 [exhibit J]; 4 AR 1168.) Petitioners also sought an increase in rent based upon the $320,000 in the escrow account and for which petitioners had received proposals. (2 AR 499-504 [exhibit M]; 4 AR 1125, 1145, 1158.) Ken Waterhouse of Management explained, "we don't know where it's going to end up at this point in time, what work we're actually going to perform." (4 AR 1145.) Nonetheless, the funds in the escrow account are obligated to be spent and the total amount spent will exceed $320,000. (4 AR 1145, 1158.)

In discussing this item, the arbitrator first commented that the homeowners are not required to pay the $320,000 simply because it was put in escrow as a condition of Lazy Landing's acquisition of the Park. (1 AR 19-20.) However, the arbitrator noted that the Ordinance permits the collection of funds for prospective capital improvements and expenses, with the restriction that those monies must be spent on eligible items within six months or returned. (1 AR 20.) The arbitrator decided the $320,000 can be collected by a temporary increase, "but any amounts which are not itemized as being eligible and/or spent by from six months of the date of this award, including for the capital replacement of the meters, must be returned and no longer charged to the Homeowners." (*Ibid.*)

The Board reversed the arbitrator's award in full. The comments in support of this reversal are few. Supervisor Farr stated:

"And I would say that the Arbitrator abused his discretion and I would not include that. This amount of money that was paid—well, it was paid into as part of escrow; it was not a subsequent capital expense. And actually the Arbitrator said initially that it should not be allowed because the owner was not sure what it should be spent on. Now capital is noted in the ordinance, it's specified in the ordinance but it's not—I don't have clear and convincing evidence that this is something that should be passed on to the mobile park [home]owners." (5 AR 1488.)

"It seems pretty clear that capital expenses are supposed to be itemized and fit whatever the criteria is, and I never saw an itemized list and I think that was also mentioned. So, you know, there may be capital expenses that are charged later, but there's no specific list here as to what this $320,000 is to be spent on. And I think that was where the issue of electrical upgrades came in as well, whether that was included or not." (5 AR 1489.)

As quoted above, 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 Ordinance qualifies that proposed costs may be considered only where they are "definite and certain." The Ordinance does not provide or otherwise permit the pass through of capital improvements or expenses merely because the funds for such capital improvements or expenses have generically been set aside. Thus, the Ordinance does not, as a matter of law, permit the pass through of the $320,000 escrow funds or any part thereof absent a showing that the proposed capital improvement or capital expense is "definite and certain."

The evidence of proposed capital improvements and capital expenses consists of proposals to Management for certain construction items. Waterhouse in his testimony was clear that none of these proposals were definite or certain and it was uncertain what work was actually going to be performed. Petitioners presented no substantial evidence that any of the proposed capital improvements or capital expenses were "definite and certain." The arbitrator made no findings that any proposal was definite or certain and impliedly found to the contrary by qualifying Award No. 5 that "[i]f 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." The absence of any "eligible items" in evidence or in the Award demonstrates the arbitrator's expectation that what is "eligible" would be determined after the effectiveness of Award No. 5. The requirement that such items be "definite and certain" necessarily incorporates a determination that such item be at that time "eligible" for collection.

Because the finding of the arbitrator to include collection of $320,000 was not supported by substantial evidence, the Board correctly determined that this finding, insofar as it related solely to the $320,000 funds in escrow, was a prejudicial abuse of discretion. This is essentially the point discussed by Supervisor Farr at the May 15 hearing. The record does not show that this determination was prejudicially affected by ex parte communications.

However, the arbitrator also had before him evidence of specific items of incurred costs in the amount of $62,145.55, assertedly for capital improvements and capital expenses eligible to be passed through to the homeowners. The arbitrator treated all of the expenses together, without making findings specific to the $62,145.55 claimed under section 11-6 of the Ordinance. Consequently, the decision of the arbitrator is not supported by findings as to the $62,145.55 in claimed costs. The lack of findings on this issue constitutes prejudicial abuse of discretion by the arbitrator.

The Board did not address the $62,145.55 claim in reversing Award No. 5. This failure makes the

Board's decision an abuse of the Board's discretion in two regards. First, the Board has not proceeded in the manner required by law by reversing Award No. 5 in its entirety rather than by remanding Award No. 5 to the arbitrator to make findings as to the $62,145.55 claim. The $62,145.55 claim was properly raised before the arbitrator and the arbitrator was required to make a written decision including the findings upon which the decision is based. (Hearing Rules, rule 18.) "When the administrative agency's findings are not adequate, an appropriate remedy is to remand the matter so that proper findings can be made." (*Glendale Memorial Hospital & Health Center v. State Department of Mental Health* (2001) 91 Cal.App.4th 129, 140.)

Second, to the extent the Board's reversal of Award No. 5 was intended to overturn the arbitrator's ruling even as to the $62,145.55 claim, the Board's limited discussion provides no basis upon which this court can meaningfully review the propriety of the Board's action. Although the Board need not make elaborate findings and the Board may adopt as its findings the reasoning set forth in a staff report or otherwise, findings solely in the language of the applicable legislation are improper. (*Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328.)

The Board has not proceeded in the manner required by law. The court will remand Award No. 5 to the Board so that the Board may expressly address the $62,145.55 claim, take appropriate action, and make appropriate findings.

Award No. 6 is that the homeowners are to pay $25,000 for professional fees associated with the capital improvements. The arbitrator found 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 Board's limited comment from Supervisor Wolf was: "No. 6 is professional fees; No. 7 is A&E fees; No. 11 is legal fees. None of those are noted in the ordinance. That's one reason I would state that there was abuse of discretion and going back to the record, from the expert witness testimony and the comments by the Arbitrator. So for those items, No. 6, No. 7 and 11, I say that there was an abuse of discretion and that they not be reconsidered." (5 AR 1489-1490.)

Section 11A-6, subdivisions (a)(1) and (b)(1), provides for passing through the "cost of" capital improvements and capital expenses. "Costs" are not defined specifically to include or to exclude professional fees. Thus, where professional fees may be correctly categorized as a cost of either a capital improvement or capital expense, such fees may be passed on. To the extent that the Board bases its reversal of Award No. 6 on a categorical exclusion of such fees, the reversal is based upon an erroneous interpretation of the Ordinance and the Board fails to proceed in the manner required by law. However, the arbitrator does not identify which professional fees are awarded and which

professional fees are not except by the total amount awarded. In light of the arbitrator's lack of findings in awarding capital improvement and capital expense costs, discussed above, which will be the subject of further proceedings, the arbitrator's findings here may have been influenced by its erroneous determination as to the $320,000 escrow funds. Remand is appropriate as to this award as well. (See *American Funeral Concepts v. Board of Funeral Directors & Embalmers* (1982) 136 Cal.App.3d 303, 311.)

The same analysis 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 arbitrator's findings are 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." (1 AR 20.)

As County points out, the arbitrator did not identify in his findings how the total was reduced to $40,000, as for example, whether particular items were disallowed or whether the total was simply adjusted. Especially in light of the above discussion regarding the lack of findings as to permissible capital improvements and capital expenses, the arbitrator's findings are insufficient to determine whether the allowed fees are or are not "costs" of capital improvements or capital expenses as permitted by the Ordinance. In addition, the arbitrator's findings here may have been influenced by its erroneous determination as to the $320,000 escrow funds. Remand is appropriate as to this award, too.

(iv) Legal Fees

Award No. 11 is that the "Homeowners are to pay $110,000 for legal fees associated with the challenge to the rent increase." The arbitrator found 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." (1 AR 21.)

The Ordinance does not expressly include or exclude legal fees incurred in connection with rent increase notices and proceedings. The Ordinance provides: "[T]he arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the arbitrator. [¶] (1) Such relevant factors may include, but are not limited to, increases in management's ordinary and necessary maintenance and operating expenses, insurance

and repairs ...." (S.B. County Code, ch. 11A, § 11A-5(f)(1).)

The above quotation of the comments of the Board for Award No. 6 was also directed to Award No. 11. By this comment, the basis for the Board reversing Award No. 11 was the absence of an express inclusion of legal fees in the list of relevant factors. Legal fees may under appropriate circumstances be considered as operating expenses. Some mobilehome rent control ordinances expressly include attorney's fees as allowable operating expenses (see *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, 293); some ordinances expressly exclude attorney's fees as allowable operating expenses (see *Oceanside Mobilehome Park Owners' Association v. City of Oceanside* (1984) 157 Cal.App.3d 887, 895). The categorization of legal fees for rent increase applications as generally within the ambit of operating expenses and the absence of any textual basis for categorically excluding attorney's fees leads to the conclusion that inclusion of attorney's fees as operating expenses is a matter to be considered by the arbitrator as a relevant factor subject to the other requirements of the Ordinance.

The arbitrator was presented with evidence as to legal fees by both the homeowners and petitioners at the arbitration hearing. Baar, the homeowners' expert, testified on examination:

"[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." (3 AR 957-958.)

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.

Petitioners submitted itemized statements of fees. (2 AR 569-585 [exhibits R, S].) Baar testified that in his opinion the amount of the fees requested was out of line for a typical rent increase application. (3 AR 958-959.) The arbitrator resolved this factual dispute as to the reasonable amount of the fees by determining the reasonable fees to be $110,000. This evidence constitutes substantial evidence to support the factual determination. Thus, the arbitrator did not abuse his discretion in making this award.

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.

(v) Amortization

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 arbitrator provided no findings or analysis to support this award apart from the award itself. (1 AR 17-23.) The Board, by Supervisor Wolf, commented that arbitrator abused his discretion: "Why? Because the expert witnesses, one Mr. [Baar], and a seven percent amortization rate was a possibility but he wasn't sure. ... Mr. Waterhouse, on the nine percent in seven years, he thought 15 years was okay. Mr. St. [John] said, would not contest a longer period like 15 years for streets and electrical replacements. So in my mind it's very, very discretionary and an abuse of discretion and it's not, and again, the most important thing is that it's not noted in the ordinance."

Supervisor Farr responded: "And I would agree with that. I think that this was picked right out of what the financing terms were in another agreement. So I thin – I would agree with you, Supervisor Wolf, and disagree with this finding." (5 AR 1487-1488.)

The Board's consideration of Award No. 4 was incomplete. Award No. 4 addressed all temporary increases; the Board's disposition was to reverse all temporary increases. As it stood at the conclusion of the May 15 hearing, Award No. 4 was superfluous.

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 (2 AR 327 [exhibit C]) and St. John testified that these numbers were the result of his professional judgment (3 AR 792). As Supervisor Wolf noted at the Board's hearing, there would also be an evidentiary basis for other amortization schedules.

However, the evidence supporting the seven years and nine percent amortization schedule also indicates that this schedule for a uniform amortization is predicated upon temporary increases including the $320,000 escrow funds and other capital expenses which are subject to further proceedings as discussed above. Because amortization is based upon useful life of the items and the items subject to amortization may change as a result of the further proceedings, Award No. 4 must also be subject to reconsideration. (See *American Funeral Concepts v. Board of Funeral Directors & Embalmers*, *supra*, 136 Cal.App.3d at p. 311.)

While the Board did not err in remanding Award No. 12 for recalculation, the arbitrator's final

calculation is again subject to recalculation after further proceedings mandated by this disposition. This Award will therefore be subject to reconsideration by the Board. (See *American Funeral Concepts v. Board of Funeral Directors & Embalmers*, *supra*, 136 Cal.App.3d at p. 311.)

(4) Disposition

Award Nos. 1, 10, 13 and 14 are not at issue in this petition. As discussed above, the challenge to the Board's ruling on Award No. 3 is moot. The court will deny the petition as to Award Nos. 2 and 9, finding no abuse of discretion. Based upon the foregoing, the court concludes that the Board has prejudicially abused its discretion by not proceeding in the manner required by law as to Award Nos. 4, 5, 6, 7, 8, 11, and 12. The court will grant the petition as to these Awards, and mandate that the Board vacate its reversal of these Awards, and, on reconsideration, exercise its discretion in the manner required by law.

(5) Request for Judicial Notice

In support of her arguments, Hamrick requests that the court take judicial notice of: (exhibit A) the Ordinance; (exhibit B) California Health and Safety Code sections 18500 et seq. and California Code of Regulations, title 25 et seq.; (exhibit C) permits issued for the Park by County; (exhibit D) business entity detail from the California Secretary of State; (exhibit E) a mortgage profit and loss statement for Lazy Landing; and (exhibit F) Treasury Regulations section 1.162-11.

As a general rule, the court determines a petition for administrative writ by reference solely to the administrative record and not by reference to evidence outside of the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578.) With respect to exhibits C and D, judicial notice of these items is requested in order to assert arguments that could have been, but were not, asserted in the arbitration. These exhibits are otherwise irrelevant to the writ petition. Because the court does not consider these arguments because they were not raised in the arbitration, the court denies these requests for judicial notice as irrelevant. (See *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.) Exhibit E is not a document that is properly the subject of judicial notice, but confusingly consists of excerpts from the administrative record. The court deems the request for judicial notice as a citation to the administrative record.

Exhibits A, B, and F are to California law and regulations and to federal regulations. The court will grant these requests (Evid. Code, § 451, subds. (a), (b)), but notes that a simple citation would have sufficed. (*Mangini v. R. J. Reynolds Tobacco Co.*, *supra*, 7 Cal.4th at p. 1064.)