



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

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

Department Name: Community Services
Department
Department No.: 057
For Agenda Of: May 1, 2012
Placement: Administrative
Estimated Time: 60 minutes on 5/15/12
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Herman Parker, Community Services Director, (805) 568-2467
Director(s)
Contact Info: Sharon Friedrichsen, Deputy Director, (805) 568-3520
SUBJECT: Set Hearing for Review of Arbitrator's Decision – Nomad Village Mobilehome Park

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

Recommended Actions:

That the Board of Supervisors:

- a) Set May 15, 2012 as the hearing date for a review of the Arbitrator's December 20, 2011 Opinion and Award (Opinion and Award) In the Matter of Arbitration Between Nomad Village Mobile Homeowners and Nomad Village Mobile Home Park pursuant to Rule 23 of the Mobilehome Rent Control Rules for Hearings and Chapter 11A, Section 11A-4 of the Santa Barbara County Code; and
- b) On May 15, 2012, determine that the Board's review of the Arbitrator's Opinion and Award is not the approval of a project that is subject to environmental review under the California Environmental Quality Act (CEQA) and direct staff to file a Notice of Exemption.

Summary Text:

County Code Chapter 11A (Mobilehome Rent Control) creates an arbitration process for rent control disputes in mobilehome parks within the unincorporated area whenever the proposed rent increase exceeds 75% of the Consumer Price Index as described within Chapter 11A. Mobile homeowners residing in the Nomad Village Mobilehome Park (the Nomad Village Mobile Homeowners) filed a petition for arbitration on February 28, 2011, which contested the proposed increase in their maximum rent schedule.

On December 20, 2011, the arbitrator rendered an Opinion and Award following a hearing that occurred on September 19 and 20, 2011. Pursuant to Rule 23 of the Mobilehome Rent Control Rules for Hearing, either party may petition the Board of Supervisors for review of the Arbitrator's Opinion and Award by filing a petition alleging prejudicial abuse of discretion.

The Clerk mailed copies of the Opinion and Award to both parties on December 22, 2011. The Nomad Village Mobile Homeowners ("Homeowners") timely filed a Petition for Review of portions of the Arbitrator's Decision on January 13, 2012, and the Nomad Village Mobile Home Park ("Park Management") timely filed a Petition for Review of portions of the Arbitrator's Decision on January 17, 2012.

Rule 23 of the Mobile Home Rent Control Rules for Hearings specifies that the Board shall review an arbitrator's decision upon filing of a petition alleging prejudicial abuse of discretion. The review may ordinarily be made upon the written record alone; however, your Board may elect to hear oral argument from the parties.

If your Board finds that in rendering his decision the Arbitrator has abused his discretion by: failing to proceed in the manner required by law, by making findings not supported by substantial evidence, or by making a decision not supported by the findings, your Board may:

1. Reverse the arbitrator's decision in whole or in part,
2. Make a new decision without remand, or
3. Remand the case to the arbitrator for reconsideration in light of your Board's review.

If your Board finds that an abuse of discretion is not established, your Board must affirm the decision. Rule 23 also specifies that your Board shall render its final decision within 30 judicial days of the receipt of all pleadings, records, and transcripts; we conservatively calculate that deadline as June 15, 2012.

Background:

On February 28, 2011, the Homeowners, through Homeowners' Representative Tony Allen, submitted a petition for a hearing (arbitration) under Chapter 11A and related Mobilehome Rent Control Rules for Hearings. The Clerk under Chapter 11A verified the petition and notified the parties of the verification on April 6, 2011.

The parties both selected Stephen Biersmith from the existing list of Board-appointed arbitrators.

The Arbitration was noticed for and held on Monday, September 19, 2011 in the Board of Supervisors Hearing Room and on Tuesday, September 20, 2011 in the Planning Commission Hearing Room. Prior to the Arbitration, the parties submitted hearing briefs and various motions and objections, which were forwarded to the Arbitrator in advance of the hearing.

At the September 19 and 20, 2011 hearing, both parties presented their positions. Approximately five (5) homeowners were present in the audience. Both Park Management ("Respondent") and Homeowners ("Petitioner") submitted various exhibits of evidence and information into the record. Witnesses for the Respondent were, Dr. Michael St. John, Ken Waterhouse, and Ruben Garcia. Witnesses for the Petitioner were Kenneth Baar and Dan Waltz.

The Arbitrator requested and received argument on the following questions: (1) "Was [Park Management]'s notice of increase dated January 26, 2011, demanding a percentage increase of 2.59% of the current base rent and an additional \$161 per space effective May 1, 2011 ... appropriate?" (2) "If not, what is the appropriate amount of the increase?"

At the end of the hearing, a stipulation was granted to hold the hearing open until November 22, 2011 in order to brief the matters so that the parties could exchange and submit and file mutual opening statements or opening briefs by October 19, 2011, with mutual replies to the respective opening briefs by November 8, 2011. On November 22, 2011, the hearing was deemed closed.

The Arbitrator rendered his final decision on December 20, 2011. The decision includes separate findings and decisions on fourteen (14) issues. (See Pages 14 and 15 on the attached Opinion and Award (Attachment A).) Both Homeowners and Park Management have filed Petitions for Review by the Board of Supervisors pursuant to Rule 23 of the Mobile Home Rent Control Rules for Hearings.

The **Homeowners' Petition for Review** seeks review and reversal or modification of the Arbitrator's decisions regarding the following issues:

Arbitrator's Award #3: "The Homeowners are to pay the Park Owners for all real property taxes assessed by the County." **The Homeowners Petition asks that the Board:**

"(A) Find that the Arbitrator abused his discretion when he allowed the Park to impose a permanent increase in manner contrary to the requirement of Ordinance (§11A-5)(f) that 'the arbitrator shall consider all relevant factors';

(B) Find that the Arbitrator abused his discretion when he allowed the Park to impose a permanent increase disregarding the formula set forth in Ordinance (§11A-5)(h) and (§11A-5)(i)(1)-(6);

(C) Find that the Arbitrator abused his discretion when he failed to consider all property taxes included in managements financial statements and relied solely on website printouts in exhibit G;

(D) Find that the Arbitrator abused his discretion when he ignored the evidence that the property taxes are a financing activity set forth in the terms of the lease agreement and not an operating expense outside the control of management;

(E) Reverse the Arbitrator's decision based on findings (A) through (D)."

Arbitrator's Award #4: "All granted temporary increases are to be amortized at 9% for seven (7) years." **The Homeowners' Petition asks that the Board:**

"(A) Reverse the Arbitrator's decision and amortize the cost of any capital item(s) over the useful life of the item(s) including any reasonable financing costs incurred in acquiring the capital item."

Arbitrator's Award #5: "The Homeowners are to pay the \$320,000. If any of these monies are not spent on eligible items within six (6) months from the date of this award, the residual amounts are to be returned to the Homeowners." The **Homeowners' Petition asks that the Board:**

"(A) Find that the Arbitrator abused his discretion when he classified a reserve account at a bank as a capital improvement contrary to Ord. §11A-2(a);

(B) Find that the Arbitrator abused his discretion when he ignored the requirement to itemize any capital improvement as required by Ord. §11A-5(j);

(C) Find that the Arbitrator abused his discretion allowing cost when the record does not support that these cost meet the requirement of **definite and certain** as required by §11A-5(k);

(D) Find that the Arbitrator abused his discretion in not considering any capital improvement proposed meet the threshold retirements of CPUC 739.5;

(E) Reverse the Arbitrator's decision based on findings (A) through (D)."

Arbitrator's Award #6: "The Homeowners are to pay \$25,000 for professional fees associated with the capital improvements." The **Homeowners' Petition asks that the Board:** : "

"(A) Find that the Arbitrator abused his discretion when he classified attorney's fees as a capital improvement, or in relation to a capital improvement, contrary to Ord. §11A-2(a);

(B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow the Park to pass through the cost of attorney's fees as a capital improvement, or in relation to a capital improvement, to the residents of the park pursuant to Ord. §11A-5(i)(6);

(C) Reverse the Arbitrator's decision based on findings (A) and (B)."

Arbitrator's Award #7: "The Homeowners are to pay \$40,000 for the A&E fees associated with the capital improvements." The **Homeowners' Petition asks that the Board:**

"(A) Find that the Arbitrator abused his discretion when he classified A&E fees as a capital improvement, or in relation to a capital improvement, contrary to Ord. §11A-2(a);

(B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow the Park to pass through the cost of A&E as a capital improvement, or in relation to a capital improvement, to the residents of the park pursuant to Ord. §11A-5(i)(6);

(C) Reverse the Arbitrator's decision based on findings (A) through (B)."

Arbitrator's Award #8: "The Homeowners are to pay \$130,531 for the supplemental tax increase payments already paid by the Park Owner." The **Homeowners' Petition asks that the Board:**

"(A) Find that the Arbitrator abused his discretion when he allowed a non-capital item to be capitalized contrary to Ordinance §§11A-5(g) through 11A-5 (i)(1)-(6);

(B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow a retroactive increase contrary to the ordinance;

(C) Find that the Arbitrator abused his discretion when he failed to support his decision with substantial evidence;

(D) Reverse the Arbitrator's decision based on findings (A) through (C)."

Arbitrator's Award #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." The **Homeowners' Petition asks the Board to note that:**

“...[T]his was not an option allowed by management at the February 16, 2011 meeting. The homeowners have been charged for this since May 1, 2011 and the only way to remove this charge was requesting arbitration.”

Arbitrator's Award #11: “The Homeowners are to pay \$110,000 for legal fees associated with the challenge to the rent increase.” The **Homeowners' Petition asks that the Board:**

“(A) Find that the Arbitrator abused his discretion when he failed to base his findings on substantial evidence;

(B) Find that the Arbitrator abused his discretion when he failed to support his decision to allow the Park to pass through the cost of professional fees related to rent increase in any way, and specifically contrary to Ord. §11A-5(k);

(C) Reverse the Arbitrator's decision based on findings (A) and (B).”

Arbitrator's Award #12: “The Permanent Increase is to be \$25.59 and the Temporary Increase \$67.09 as supported by Respondent's Exhibit T.” The **Homeowners' Petition asks that the Board note that:**

“...Any temporary increase calculation incorporate the formula for an annuity due, payments are required at the beginning of each period, rather than the ordinary annuity, payments at the end of the period.”

Park Management's Petition for Review seeks review and remand of the Arbitrator's decision regarding the following issue:

Arbitrator's Award #2: “The Homeowners do not have to pay the additional 10% increase in ground rents.” **The Park Management's Petition asks that the Board find that:**

“Opinion and Finding A.2 “Lease Payment Increase”, and B. “Uncompensated Increases Increased Land Lease”, denying NOMAD VILLAGE MOBILE HOME PARK management a rent increase based upon increased operating costs attributable to an increased ground lease fees, on the grounds of prejudicial abuse of discretion because it is not in accordance with the manner required by law, is not supported by the findings, and not supported by substantial evidence in the record.”

No other issues have been petitioned for review by the Board of Supervisors.

In advance of the Board's hearing on these Petitions for Review, the Clerk under Chapter 11A will compile the official record of the hearing, including the reporter's transcript.

Fiscal and Facilities Impacts:

No. Unanticipated expenses of approximately \$18,000 have been spent by the Department for staffing, legal notices, court transcripts and the payment of an arbitrator. There are no fiscal impacts to the County for the Board's review of the Arbitrator's decision. However, if the Board chooses to remand any portion of the decision back to the Arbitrator, the hourly cost of \$150 for the arbitrator may be incurred for reconsideration and drafting of an amended decision.

Staffing Impacts:

Existing Community Services Department staff are currently serving as the Clerk under County Code Chapter 11A (Mobilehome Rent Control). Staff has spent 179.50 hours to date on this project.

Special Instructions:

Request the Clerk of the Board to return a copy of the Minute Order to Community Services Department, Housing and Community Development Division, Attn: Margo Wagner, Clerk for the Mobile Home Rent Control Ordinance.

Attachments:

Attachment A: Arbitrator's December 20, 2011 Opinion and Award In the Matter of Arbitration Between Nomad Village Mobile Homeowners and Nomad Village Mobile Home Park

Attachment B: Homeowners' Petition dated January 13, 2012

Attachment C: Park Management's Petition dated January 17, 2012

Authored by:

Margo Wagner, Housing Program Specialist II

cc:

Mike Munoz, Deputy County Counsel