

## **ATTACHMENT 1, EXHIBIT J - FINDINGS**

### **Finding for Award No. 5 (previously 4) - Amortization Period and Rate**

The Arbitrator's decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision on this Award. The findings must expose the mode of analysis between the raw evidence in the record and the conclusion that the appropriate amortization is 9% for seven (7) years. County Code Section 11A-6(b)(2) provides "Any notice of a rent increase which is in excess of seventy-five percent of CPI and includes costs for capital expenses shall contain a payment plan which shows the amount needed per month to amortize the cost of the capital item(s) over the useful life of the item(s)." Based on the County Code language, the finding regarding amortization must point to the relevant evidence that supports that the costs to be subject to amortization are for capital improvements and/or expenses as well as what the useful life of the capital improvements and/or expenses are. Based on that information, the Arbitrator's conclusion should amortize the costs of the capital expenses over the useful life of the capital improvements and/or expenses that are part of the temporary increase.

The record shows that there is substantial evidence to support the arbitrator's decision of seven years and nine percent. However, the Board of Supervisors determines that the Arbitrator abused his discretion because amortization is based upon the useful life of capital improvements and capital expenses (County Code § 11A-6(a)(2); (b)(2)) and the Arbitrator's finding and conclusion contain no information about the useful lives of the items subject to amortization to support the decision. Moreover, the seven years and nine percent amortization schedule is predicated upon temporary increases (Awards #7 and #8) which are subject to remand as discussed in other findings. Additionally, the Arbitrator cites to Exhibit C, which is outdated as it shows the original increase requested by Park Management, not the amount previously reduced by any of the Arbitrator's previous decisions or this decision.

On Remand, the Board requests that the Arbitrator's decision include the following:

- Point to the relevant evidence that supports that the costs to be subject to amortization are for capital improvements and/or expenses as permitted to be passed through by the Ordinance.
- Point to the relevant evidence that supports what is the useful life of the capital improvements and/or expenses.
- Arbitrator's conclusion should amortize the costs of the capital expenses over the useful life of the capital improvements and/or expenses that are part of the temporary increase; therefore, adjust the seven years at nine percent if the useful life of the capital improvements and/or expenses requires a different amortization period and rate.
- If the amortization period and rate is changed, point to the relevant evidence that supports the changed period and rate.

### **Finding for Award No. 6 (previously 5) - Escrow Account and Costs Expended**

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall include the findings of fact on which the decision is based. (Rule 18.) Abuse of discretion is

established where the Arbitrator's decision is not supported by findings. (Rule 23(a).) The Arbitrator had before him evidence of specific items of incurred costs in the amount of \$62,145.55 and made a finding specific to the \$62,145.55. The Arbitrator made a finding that Exhibit J and the invoices presented in Exhibit K showed that \$62,145.55, as confirmed as paid by Ruben Garcia, were definitive and represented the amount spent for capital improvements prior to the commencement of the arbitration. The \$320,000 held in escrow at the time of the hearing were not definite and certain expenditures made prior to the commencement of the arbitration" and thus concluded that "The Homeowners are to pay the \$62,145.55 which were capital improvement expenses incurred prior to the commencement of the arbitration. The Homeowner [sic] are not required to pay the \$320,000 held in escrow at the time of the hearing in that they were not definite and certain prior to commencement of the arbitration."

The costs of capital improvements and capital expenses incurred or proposed, including reasonable financing costs, may be passed on to the homeowners at the time of an annual increase. (Section 11A-6(a)(1); 11A-5(k).) 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 Arbitrator had before him evidence of specific items of incurred costs in the amount of \$62,145.55 for capital improvements and capital expenses eligible to be passed through to homeowners. Previously, the Arbitrator treated all of the expenses together without making findings specific to the \$62,145.55 claimed under Section 11A-6 of the Ordinance. On remand, the Arbitrator made a finding specific to the \$62,145.55 amount in claimed costs are related to capital improvements and/or capital expenses and thus eligible to be passed on to homeowners that is supported by substantial evidence in the record.

The Arbitrator included findings of fact and was supported by substantial evidence in the record. The Board of Supervisors determines that the Arbitrator did not abuse his discretion and affirms the \$62,145.55 portion of Award 6.

### **Finding for Award No. 7 (previously 6) - Professional Fees**

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall include the findings of fact on which the decision is based. (Rule 18.) Abuse of discretion is established where the Arbitrator's decision is not supported by findings. (Rule 23(a).) For this Award, the Arbitrator's decision merely concluded that "Per the testimony presented by Waterhouse, \$50,973 in professional fees were incurred and paid by the Respondent. A good portion of the line items in Exhibits K & Q itemizing the same do not appear to be relevant to any capital improvements and a reduction is appropriate. Exhibits K & Q do support a finding that at least \$25,000 of those fees were related to capital items."

Section 11A-6, subdivisions (a)(1) and (b)(1) provide for the passing through the "costs 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. The Arbitrator did not identify in his findings how the total was reduced to \$25,000, as for example, whether particular items were disallowed or whether the total was simply adjusted. Additionally, the

Arbitrator's findings are insufficient to determine whether the allowed Professional Fees are or are not "costs" of capital improvements or capital expenses as permitted by the Ordinance. Therefore, the Board of Supervisors determines that the Arbitrator abused his discretion.

On Remand, the Board requests that the Arbitrator's decision include the following:

- Findings that specifically identify which Professional Fees were awarded out of the requested \$50,000.
- Point to the relevant evidence that supports how the awarded Professional Fees are properly categorized as a cost of capital improvements and/or expenses as permitted to be passed through by the Ordinance.

### **Finding for Award No. 8 (previously 7) - Architecture and Engineering Fees**

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall include the findings of fact on which the decision is based. (Rule 18.) Abuse of discretion is established where the Arbitrator's decision is not supported by findings. (Rule 23(a).) For this Award, the Arbitrator's decision merely concluded that "The testimony presented by Waterhouse supported a finding that the plans and drawings purchased by the Respondents in Exhibits J & L have value as to operation and capital improvements for the park. Given the amount of time that has passed since their purchase, some of this work appears to be stale and would now have less utility. A more reasonable amount for such items would be \$40,000"

Section 11A-6, subdivisions (a)(1) and (b)(1) provide for the passing through the "costs of" capital improvements and capital expenses. "Costs" are not defined specifically to include or to exclude professional fees. Thus, where Architecture and Engineering Fees may be correctly categorized as a cost of either a capital improvement or capital expense, such fees may be passed on. 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. Additionally, the Arbitrator's findings are insufficient to determine whether the allowed Architecture and Engineering Fees are or are not "costs" of capital improvements or capital expenses as permitted by the Ordinance. Therefore, the Board of Supervisors determines that the Arbitrator abused his discretion. The Board of Supervisors remands Award 8 to the Arbitrator for adequate findings that identify which specific Architecture and Engineering Fees were awarded out of the total amount of Architecture and Engineering Fees requested by Park Management and findings supported by substantial evidence that support how the awarded professional fees are properly categorized as a cost of capital improvements or capital expenses.

On Remand, the Board requests that the Arbitrator's decision include the following:

- Findings that specifically identify which Architecture and Engineering Fees were awarded out of the requested \$90,000.
- Point to the relevant evidence that supports how the awarded Architecture and Engineering Fees are properly categorized as a cost of capital improvements and/or expenses as permitted to be passed through by the Ordinance.

### **Finding for Award No. 9 (previously 8) - Past Payments by Park Owners for Increased Real Property Taxes**

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall include the findings of fact on which the decision is based and that the decision be supported by the evidence. (Rule 18.) For this Award, the Arbitrator's decision included the finding "As supported by Exhibit G, the Respondent paid \$130,531 for supplemental tax increase payments" and concluded that "The Homeowners are to pay \$130,531 for the supplemental tax increase payments."

County Code Section 11A-5(f)(1) says "the arbitrator shall consider all relevant factors to the extent evidence thereof is introduced by either part 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..." Thus, the Arbitrator was entitled under the Ordinance to consider the supplemental property tax assessments in determining the rate increase.

At the original Arbitration, two experts testified on this issue: Kenneth K. Baar and Michael St. John. The Arbitrator weighed the conflicting evidence and accepted St. John's opinion to conclude the supplemental tax increase payments were reasonable. St. John testified that "the 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." St. John also stated "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 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."

The Arbitrator included findings of fact and was supported by substantial evidence in the record. The Board of Supervisors determines that the Arbitrator did not abuse his discretion and affirms Award 9.

### **Finding for Award No. 12 (previously 11) - Legal Fees Associated with the Challenge to the Rent Increase**

The Mobilehome Rent Control Rules for Hearings require that the Arbitrator's decision shall include the findings of fact on which the decision is based and that the decision be supported by the evidence. (Rule 18.) For this Award, the Arbitrator's decision included findings of fact on which the Arbitrator's decision was based: "The homeowner's expert conceded that legal fees incurred by the Respondent could be the basis for a rent increase. Exhibits R & S support a finding that \$110,000 in legal fees incurred by the Respondent were associated with the challenge to the rent increase."

The Ordinance does not expressly include or exclude legal fees incurred in connection with rent increase notices and proceedings. The Ordinance provides: "the 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..." (County Code § 11A-5(f)(1).) Kenneth K. Baar, the homeowners' expert testified during the original Arbitration that he did not quarrel with the idea that the Park Owner is entitled to recover professional fees relating to the rent increase, nor did he argue with the methodology employed, but that his sole quarrel is with the amount requested. 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 ordinance and necessary operating expense. Park Owners submitted itemized statements of fees and Baar testified that in his opinion the amount of the fees requested was out of line for a typical rent increase application. The Arbitrator resolved this factual dispute as to the reasonable amount of the fees by determining the reasonable fees to be \$110,000 of the requested \$125,000.

The Arbitrator included findings of fact and was supported by substantial evidence in the record. The Board of Supervisors determines that the Arbitrator did not abuse his discretion and affirms Award 12.

### **Finding for Award No. 13 (previously 12) - Total Permanent and Temporary Increase**

The Board finds that the Arbitrator did not abuse his discretion in calculating the total Permanent and Temporary increases. However, because the total rent increase is based upon the temporary increases included in Awards 7 and 8, which may be adjusted upon remand, the Board of Supervisors also remands Award 13 to the Arbitrator for reconsideration in light of the reconsideration of Awards 7 and 8. Moreover, Award 13 states that the total increase is supported by the attached, but no calculation sheet was attached by the Arbitrator.

On Remand, the Board requests that the Arbitrator's decision include the following:

- The adjusted total based on any changes made on remand.
- Include a relevant calculations sheet supporting the total permanent and temporary increase.