



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

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

Department Name: General Services  
Department No.: 063  
For Agenda Of: 10/3/17  
Placement: Set Hearing  
Estimated Time: 1 hour on 10/17/17  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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

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**County Counsel Concurrence**

As to form: Yes  
Other Concurrence: N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

On October 3, 2017, set a hearing to review the Arbitrator's Opinion and Award (Revised on Remand) dated March 13, 2017 **as to Awards 5, 7, 8, and 13** (previously known as Awards 4, 6, 7, and 12) in the matter of arbitration between Nomad Village Mobile Home Homeowners and Nomad Village Mobile Home Park, pursuant to Rule 23 of the Mobilehome Rent Control Rules for Hearings and Chapter 11A, Section A-4 of the Santa Barbara County Code.

(Set a hearing for October 17, 2017: 1 Hour)

On October 17, 2017, Staff recommends that your Board take the following actions:

- a) Make the following determinations as supported by the findings (Attachment 1, Exhibit G):
  - i) Find that the Arbitrator did not abuse his discretion and affirm Award #5 related to amortization over the useful life of the capital expense;
  - ii) Find that the Arbitrator did not abuse his discretion and affirm Award #7 related to professional fees for services associated with the capital expenses and improvements;
  - iii) Find that the Arbitrator did not abuse his discretion and affirm Award #8 related to professional fees for services associated with capital improvements; and
  - iv) Find that the Arbitrator did not abuse his discretion and affirm Award #13 related to the permanent rent increase of \$25.59 and the temporary rent increase of \$39.44;
  
- b) Determine that the proposed action is an administrative activity of the County which will not result in direct or indirect physical changes in the environment and is therefore not a "project" as defined for purposes of the California Environmental Quality Act (CEQA) under State CEQA

Guidelines Section 15378(b)(5), approve and direct staff to file and post the attached Notice of Exemption (Attachment 1, Exhibit I) on that basis; and

- c) Refer back to Staff if Board wishes to take any action other than the recommended action for a revised motion and findings.

**Summary Text:**

The Board Letters dated May 1, 2012 (Attachment 5, Exhibit T), January 5, 2016 (Attachment 4, Exhibit B), July 12, 2016 (Attachment 3, Exhibit J), and January 24, 2017 (Attachment 2, Exhibit I) include a detailed summary of previous arbitrations and the Board's prior actions related to Nomad Village Mobilehome Park.

Most recently, on March 2, 2017, the Arbitrator held a hearing on remand. The Arbitrator's Opinion and Award (Revised on Remand) dated March 13, 2017, was received by the County on March 15, 2017, emailed to both parties on April 4, 2017, and served via mail postmarked on April 10, 2017. The Arbitrator's Opinion and Award (Revised on Remand) considered Awards 5, 7, 8, and 13, as remanded by the Board of Supervisors at the departmental hearing on February 7, 2017. Rule 23 of the Mobilehome Rent Control Rules for Hearings provides for Board review of the decision of the Arbitrator upon the filing of a petition for review. On April 22, 2017, the Homeowners filed a petition for review of what was identified in the petition as Awards 4, 5, 6, 7, 8, 11, and 12. Based on the substance of the Petition for Review, the Homeowners' petition for review is interpreted to be an appeal of Awards 5, 6, 7, 8, 9, 12, and 13. However, on February 7, 2017, the Board affirmed Awards 6, 9, and 12; therefore, only Awards 5, 7, 8, and 13 were considered by the Arbitrator in the Arbitration under review and only Awards 5, 7, 8, and 13 subject to review by your Board. Awards 6, 9, and 12 are not currently subject to the Board's review. On May 15, 2017, Park Management filed a response to the Homeowners' petition for review.

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

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

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

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

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

- If your Board finds the Arbitrator did not abuse his discretion, then your Board must affirm the award(s).
- However, if your Board finds that in rendering his Opinion and Award, the Arbitrator abused his discretion, the Board must then remand the matter so that the Arbitrator may proceed in the manner required by law, make adequate findings, or support findings with substantial evidence.

Attachment 1, Exhibit H (Matrix of Board Options) includes a summary of the Arbitrator's decisions or awards, the positions of the parties and the Board's options for consideration. Since Rule 23 of the Mobilehome Rent Control Rules for Hearings provides that the Board of Supervisors is an appeal authority for the Arbitrator's decision, staff recommends that Supervisors provide ex parte disclosures of their communications and site visits involving this appeal. Rule 23 also specifies that your Board shall render its final decision within thirty (30) judicial days of the receipt of all pleadings, records, and transcripts; we conservatively calculate that deadline as November 23, 2017. Pursuant to Rule 24, if the Board exercises its discretion to remand any matters, the Clerk shall set a rehearing with the Arbitrator within twenty (20) judicial days following the date on which the Board's decision becomes final.

**Background:**

County Code Chapter 11A (Mobilehome Rent Control) creates an arbitration process for rent control disputes in mobilehome parks within the unincorporated area of the County of Santa Barbara whenever the proposed rent increase exceeds 75% of the Consumer Price Index as described within Chapter 11A. Mobile homeowners residing in the Nomad Village Mobilehome Park (the "Homeowners") filed a petition for arbitration on February 28, 2011, which contested the proposed increase in their maximum rent schedule. After a complex procedural history, most recently on February 7, 2017, the Board of Supervisors heard the Homeowners' petition for review and remanded Awards 5, 7, 8, and 13 to the Arbitrator to make adequate findings and recalculate the total award. The Board affirmed Awards 6, 9, and 12.

On March 2, 2017, the remanded arbitration was held and on March 13, 2017, the Arbitrator rendered an Opinion and Award (Revised on Remand). The Homeowners' Petition for Review disagreed with the Arbitrator's action on seven awards which are currently designated as Awards 5, 6, 7, 8, 9, 12, and 13 (previously identified as Awards 4, 5, 6, 7, 8, 11, and 12). However, the Board had affirmed Awards 6, 9, and 12, therefore, only Awards 5, 7, 8, and 13 were considered by the Arbitrator. Awards 6, 9, and 12 are not subject to the Board's review.

For the Awards made by the Arbitrator on Remand that are before your Board for review, a summary is listed below that includes the Arbitrator's Award on Remand, the positions of the Homeowners and Park Management, and Staff's recommendation. The findings supporting the Arbitrator's Awards are set forth in the Arbitrator's Opinion and Award (Revised on Remand) dated March 13, 2017 (Attachment 1, Exhibit C). The arguments supporting the positions of the Homeowners, and of Park Management, are set forth in the Homeowner's Petition for Review of Arbitrator's Decision on Remand (Attachment 1, Exhibit E), and the Park Management's Response to Homeowners' Petition for Review of Arbitrator's Decision on Remand (Attachment 1, Exhibit F), respectively.

**Arbitrator's Award #5 (previously Award #4) on Remand:** "All of the granted temporary increases are to be amortized at 9% for seven (7) years."

**Arbitrator's Finding for Award #5:** "Line 18 of Exhibit C and the expert testimony of Michael St. John regarding the same supported a finding that all temporary increases noted in the document should be amortized at 9% for seven (7) years. The reduction in temporary expenses in these various line items both in this award or in earlier finding were to the amounts only and did not change their original characterization as capital expense and improvement items."

- **Homeowners:** Disagree. The homeowners request that the Board of Supervisors deny management's request and find that the Arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the County remand and the ordinance. The Board should reverse the Award in whole.
- **Park Management:** Agree. There are sufficient findings to support the Arbitrator's decision as set forth in the Remand Award.
- **Staff's Recommendation:** Find that the Arbitrator did not abuse his discretion. The Arbitrator's findings were sufficient to support this Award.

**Arbitrator's Award #7 (previously Award #6) on Remand:** "The original request of \$50,973 in professional fees for payment by the Homeowners is reduced to \$25,000, which is a reasonable amount for services associated with the capital expenses and improvements."

**Arbitrator's Finding for Award #7:** "Per Waterhouse's testimony, the \$50,973 itemized in Exhibit Q represented professional fees and expenses incurred and paid by the Respondent. As correctly acknowledged by a further itemization in the Respondent's last brief, not all of charges noted in Exhibit Q were related to capital items making a reduction to \$25,000 reasonable and appropriate." And "The homeowner's own consultant agreed that professional fees could be amortized and that they were analogous to a capital expense item."

- **Homeowners:** Disagree. The homeowners request that the Board of Supervisors deny management's request and find that the Arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the County remand and the ordinance. The Board should reverse the award in whole.
- **Park Management:** Agree. The Arbitrator has made sufficient findings to support this Award, there are no grounds for the Board to alter this award.
- **Staff's Recommendation:** Find that the Arbitrator did not abuse his discretion and affirm Award #7.

**Arbitrator's Award #8 (previously Award #7) on Remand:** "The Homeowners are to pay \$40,000 for A&E fees associated with the capital improvements."

**Arbitrator's Finding for Award #8:** "All the Architecture and Engineering fees for services provided by Penfield & Smith, Mechanical engineering Consultants, JMPE, plan review, and permit fees, as listed in Exhibit J, were properly categorized as capital improvement expenses. Waterhouse testified those plans and drawings purchased by the Respondents had value in evaluating and moving forward with capital improvements for the park. Given the amount of time that has passed since their purchase, some of this work, such as the permits, are most likely stale and now have less utility. A more reasonable amount for the total of such items would be \$40,000." And "The homeowner's own consultant agreed that professional fees could be amortized and that they were analogous to a capital expense item."

- **Homeowners:** Disagree. The homeowners request that the Board of Supervisors deny management's request and find that the Arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the County remand and the ordinance. The Board should reverse the Award in whole.
- **Park Management:** Agree. The Arbitrator has made sufficient findings to support this Award, there are no grounds for the Board to alter this Award.
- **Staff's Recommendation:** Find that the Arbitrator did not abuse his discretion and affirm Award #8.

**Arbitrator's Award #13 (previously Award #12) on Remand:** "The Permanent increase is to be \$25.59 and the temporary increase \$39.44 as supported by the attached."

- **Homeowners:** Disagree. The homeowners request that the Board of Supervisors deny management's request and find that the Arbitrator abused his discretion when he failed to proceed in a manner required by law by ignoring the express requirements of the County remand and the ordinance. The Board should reverse the Award in whole.
- **Park Management:** Agree. The Arbitrator has made sufficient findings to support this Award, there are no grounds for the Board to alter this Award.
- **Staff's Recommendation:** Find that the Arbitrator did not abuse his discretion and affirm Award #13.

**Performance Measure:** N/A

**Fiscal and Facilities Impacts:**

If the Board determines to remand any portion of the decision to the Arbitrator, the hourly cost of \$160 for the arbitrator may be incurred for reconsideration and drafting of an amended decision.

**Key Contract Risks:** N/A

**Staffing Impacts:**

Existing General Services Department, Real Property Division staff are currently serving as the Clerk of the Ordinance under the County Code Chapter 11A (Mobilehome Rent Control). County staff has spent over 650 hours to date on this project.

**Special Instructions:**

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

**Attachments:**

Attachment 1: Documents regarding the Arbitrator's March 13, 2017 decision and Board's proposed October 17, 2017 decision;

Exhibit A – Homeowners' Arbitration Brief on Remand

Exhibit B – Park Management's Arbitration Brief on Remand

Exhibit C – Arbitrator's Opinion and Award (Revised on Remand) dated March 13, 2017

Exhibit D – Nomad Village Mobile Home Park Rent Control Hearing Transcripts 3-2-17

Exhibit E – Homeowner's Petition for Review of Arbitrator's Decision on Remand\*\*

Exhibit F – Park Management’s Response to Homeowners’ Petition for Review of Arbitrator’s Decision on Remand\*\*

Exhibit G – Findings

Exhibit H – Matrix of Board Options

Exhibit I – CEQA Notice of Exception

Attachment 2: Documents regarding the Arbitrator’s August 28, 2016 decision and Board’s February 7, 2017 decision;

Exhibit A – Remand Arbitration Brief by Park Management of Nomad Village Mobile Home Park

Exhibit B – Homeowners Remand Arbitration Brief

Exhibit C – Nomad Village Mobilehome Park Homeowners’ Post-Hearing Brief

Exhibit D – Post Remand Arbitration Hearing Brief by Park Management of Nomad Village Mobile Home Park

Exhibit E – Arbitration Opinion and Award (Revised on Remand) dated August 28, 2016

Exhibit F – Nomad Village Mobile Home Park Rent Control Hearing Transcripts 8-10-16

Exhibit G – Homeowners’ Petition for Review of Arbitrator’s Decision on Remand \*\*

Exhibit H – Park Management’s Response to Homeowners’ Petition for Review of Arbitrator’s Decision on Remand \*\*

Exhibit I – Board Letter Dated July 12, 2016 (without Attachments)\*

Exhibit J – Matrix of Board Options

Exhibit K – Findings

Exhibit L – Notice of Exemption

Exhibit M – Minute Order of Board’s February 7, 2017 Decision\*

Attachment 3: Documents regarding the Arbitrator’s March 5, 2016 decision and Board’s July 19, 2016 decision;

Exhibit A – Homeowners’ Arbitration Brief on Remand

Exhibit B – Park Management’s Arbitration Brief on Remand

Exhibit C – Homeowners’ Exhibit 9 (not admitted by Arbitrator)\*

Exhibit D – Park Management’s Exhibit U (not admitted by Arbitrator)\*

Exhibit E – Park Management’s Exhibit V (not admitted by Arbitrator)\*

Exhibit F – Arbitrator’s Opinion and Award (Revised on Remand) dated March 5, 2016

Exhibit G – Nomad Village Mobile Home Park Rent Control Hearing Transcripts 2-17-16

Exhibit H – Homeowners’ Petition for Review of Arbitrator’s Decision on Remand \*\*

Exhibit I – Park Management’s Response to Homeowners’ Petition for Review of Arbitrator’s Decision on Remand \*\*

Exhibit J – Board Letter Dated July 12, 2016 (without Attachments) \*

Exhibit K – Minute Order of Board’s July 19, 2016 Decision \*

Attachment 4: Documents regarding the Superior Court’s November 10, 2014 decision and Board’s January 19, 2016 decision;

Exhibit A – Order on Writ of Mandate \*

Exhibit B – Board Letter Dated January 5, 2016 (without Attachments) \*

Exhibit C – Minute Order of Board’s January 19, 2016 Decision \*

Attachment 5: Documents regarding the Arbitrator’s December 20, 2011 decision and Board’s May 15, 2012 decision;

Exhibit A – Statement of Facts and Exhibits Attached

Exhibit B – Response Letter to County from James Ballantine

Exhibit C – Homeowners’ Arbitration Pre-Hearing Brief

- Exhibit D – Objection and Response by Nomad Village Mobile Home Park to Petition for Arbitration and Exhibits Attached
- Exhibit E – Arbitration Hearing Brief by Nomad Village Mobile Home Park
- Exhibit F – List of Arbitration Exhibits Presented at Arbitration
- Exhibit G – Homeowners’ Post-Hearing Opening Brief
- Exhibit H – Opening Post-Hearing Arbitration Brief by Nomad Village Mobile Home Park
- Exhibit I – Homeowners’ Post-Hearing Closing Brief
- Exhibit J – Closing Post Arbitration Hearing Brief by Nomad Village Mobile Home Park
- Exhibit K – Submission of PUC Orders by Nomad Village Mobile Home Park
- Exhibit L – Nomad Village Mobile Home Park Rent Control Hearing Transcripts 9-19-11
- Exhibit M – Nomad Village Mobile Home Park Rent Control Hearing Transcripts 9-20-11
- Exhibit N – Arbitrator’s Opinion and Award dated December 20, 2011
- Exhibit O – Homeowners’ Petition \*\*
- Exhibit P – Park Management’s Petition \*\*
- Exhibit Q – Park Management’s Response to Homeowners’ Petition for Review \*\*
- Exhibit R – Homeowners’ Response to Park Management’s Petition for Review \*\*
- Exhibit S – Park Management’s Objection to Homeowner’s Response to Park Management’s Petition for Review \*\*
- Exhibit T – Board Letter Dated May 1, 2012 (without Attachments) \*
- Exhibit U – Minute Order of Board’s May 15, 2012 Decision \*

*\* = Not part of the official record for the hearing in accordance with Rule 13 and Rule 23(b) of the Mobilehome Rent Control Rules for Hearings, but is included for the Board’s information and to provide context to the Board’s action.*

*\*\* = Not part of the official record for the hearing in accordance with Rule 13 and Rule 23(b) of the Mobilehome Rent Control Rules for Hearings, but is included because such documents give the Board jurisdiction to hear the matter.*