

Lenzi, Chelsea

Subject: Ex parte communication - FW: Stephen Biersmith - Nomad Village - Opinion and Award

From: LindseD@aol.com [<mailto:LindseD@aol.com>]

Sent: Monday, April 4, 2016 12:01 AM

To: Dimitrova, Natalie <ndimitrova@countyofsb.org>

Cc: Supervisor Carbajal <SupervisorCarbajal@co.santa-barbara.ca.us>; Wolf, Janet <jwolf@countyofsb.org>; Farr, Doreen <dfarr@countyofsb.org>; Adam, Peter <peter.adam@countyofsb.org>; Lavagnino, Steve <steve.lavagnino@countyofsb.org>; Libby, Karen <klibby@co.santa-barbara.ca.us>

Subject: Re: Stephen Biersmith - Nomad Village - Opinion and Award

Dear Natalie,

Thank you for your kindness to Jerrie Taylor at Nomad Village in forwarding to her the Stephen Biersmith Nomad Village Opinion and Award, which she has shared with me. Since you've so graciously requested if she has any questions, I am responding on her behalf, as well as for myself and the residents of Nomad Village.

I hope that the March 5, 2015 opinion and award is not Mr. Biersmith's final determination. It seems he has not complied with Judge Anderle's ruling on the following:

Award No. 6, professional fees.

Judge Anderle's ruling: "...where professional fees may be correctly categorized as a cost of either a capital improvement or capital expense, such fees may be passed on. ...In light of the arbitrator's lack of findings in awarding capital improvement and capital expense costs...the arbitrator's findings here may have been influenced by its erroneous determination as to the \$320,000 escrow funds. Remand is appropriate to this award as well."

Mr. Biersmith's March 5 award: "...reduced to \$25,000, which is a reasonable amount associated with the capital expenses and improvements."

Fact: No capital improvements or capital expenses associated with the professional fees included in exhibits K and Q, which Mr. Biersmith used to justify his findings, have been completed, commenced or definitely scheduled. The "permanent electrical feed to space 92" is, in fact, associated with a serious code violation, not a capital improvement. Mr. Biersmith's findings are just as lacking in his March 5 award as in his December 2011 award. Did Mr. Biersmith provide details for this renewed award?

Award No. 7, A&E fees.

Judge Anderle's ruling: "The same analysis applies to Award No. 7...the arbitrator did not identify in his findings how the total sum 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."

Mr. Biersmith's March 5 award: "The Homeowners are to pay \$40,000 for the A&E fees associated with the capital improvements..."

Fact: No capital improvements or capital expenses associated with the A&E fees (exhibit L) have been completed, commenced or definitely scheduled. In fact, Mr. Biersmith's findings are just as insufficient in his March 5 award as in his December 2011 award. Did Mr. Biersmith provide details for this renewed award?

Award No. 11, legal fees associated with the challenge to the rent increase.

Judge Anderle's ruling: "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. ...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. This evidence constitutes substantial evidence to support the factual determination."

Mr. Biersmith's March 5 award: "The Homeowners are to pay \$110,000 for legal fees associated with the challenge to the rent increase."

Fact: Neither Judge Anderle nor Mr. Biersmith addressed section 16 of the rules for hearing that states "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." The Ordinance does not expressly allow or forbid the pass-through of legal fees, but the determination that this extraordinary expense is indeed an "ordinary and necessary maintenance or operating expense" was not established independent of expert opinion nor was any other evidence presented that attorney's fees are eligible to be passed through as an ordinary and necessary expense. Can we ask Judge Anderle's office to explain this part of his ruling so that we may understand it?

Thank you for your time and attention. We at Nomad appreciate it.

Best regards, Lindse Davis