REQUEST FOR REVIEW

Nomad Village Homeowners ("homeowners," "our," "we") request that the Santa Barbara County Board of Supervisors review Arbitrator David Long's ruling ("ruling") dated June 16, 2017 (and as corrected). The arbitrator's ruling contains rent increase awards that constitute prejudicial abuse of discretion under Rule 23a. The arbitrator's ruling does not comply with the Rules for Hearing ("rules") or the Santa Barbara County Mobilehome Rent Control Ordinance ("ordinance").

Ordinance Purpose and Overview

The overriding principle of the ordinance is to balance the protection of the homeowners with the ability of the park owners to receive a fair return on investment.

The operative sentence in §11A-1 – Purpose: Because of such factors and the high cost of moving mobilehomes, the potential for damage resulting there from, requirements relating to the installation of mobilehomes, including permits, landscaping and site preparation, the lack of alternative homesites for mobilehome residents and the substantial investment of mobilehome owners in such homes, the board of supervisors finds and declares it ***necessary to protect the owners and occupiers of mobilehomes from unreasonable rents*** while at the same time recognizing the need for mobilehome park owners to receive a ***fair return on their investment*** and ***rent increases sufficient to cover their increased costs***.

In Guggenheim vs. City of Goleta the US Court of Appeals addresses the Santa Barbara ordinance as Goleta incorporated and adopted the Santa Barbara County ordinance as their own.

GUGGENHEIM v. CITY OF GOLETA United States Court of Appeals Ninth Circuit,

I. Facts

In 1979, Santa Barbara County, California adopted a rent control ordinance for mobile homes.[1] Mobile homes have the peculiar characteristic of separating ownership of homes that are, as a practical matter, affixed to the land, from the land itself.[2] Because the owner of the mobile home cannot readily move it to get a lower rent, the owner of the land has the owner of the mobile

home over a barrel. The Santa Barbara County rent control ordinance for mobile homes had as its stated purpose relieving "exorbitant rents exploiting" a shortage of housing and the high cost of moving mobile homes.[3] The rent control ordinance was amended in 1987.[4] The ordinance has a complex scheme for setting rents, limiting how fast they rise, and affording landlords a mechanism for disputing the limits.[5]

[5]. The ordinance limits the ability of park owners to increase rent of existing tenants. Park owners may only do so once a year, or at the termination of a lease term. Goleta, Cal., Mun.Code §§ 08.14.070-080. The amount of the increase is determined through arbitration. Goleta, Cal., Mun.Code § 08.14.040. Park owners can automatically raise rent by 75% of the local consumer price index (a measure of inflation), and may seek additional increases for various reasons provided in the ordinance. Id. § 08.14.050. When a tenant sells the mobile home to a new tenant, the park owner may only increase the rent by 10%. Id. § 08.14.140.

It is this "complex scheme for setting rents", "determined through arbitration" that must be followed in order to protect the homeowners and provide the park owner with a fair return on investment.

Return on investment

Fair return on investment is the express standard set out in §11A-1. In order to determine the fairness of management's return, the arbitrator must first determine return on investment. Return on investment (ROI) is a measure used to evaluate the performance of an investment or to compare the performance of a number of different investments, or the same investment in comparative periods, usually year over year. To calculate ROI, the net operating income (NOI) of an investment is divided by the amount of money invested, and the results are expressed as a percentage or ratio.

RETURN ON INVESTMENT = REVENUES – OPERATING EXPENSES (NOI) / INVESTMENT

The numerator will always be net operating income and the denominator will always be investment.

Management did not present their return on investment, nor did the arbitrator request it. The homeowners provided management's return on investment for 2015, going back to August 2008 (exhibit D) Homeowners' exhibit confirms that management's ROI for 2015 was 63.09%. Management did not dispute this number or claim that it was any other number.

Fair Return on Investment

Fair return on investment is the central issue to be determined by the arbitrator. In order to determine the fairness of the return, the arbitrator must, first consider the return on investment, then, after analysis, determine if management is or is not receiving a fair return. This is an essential first step in the "complex scheme for setting rents". "'Fair return is the constitutional measuring stick by which every rent control board decision is evaluated.' " (Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd. (1999) 70 Cal.App.4th 281, 288 [82 Cal.Rptr.2d 569].)) Return on investment has been characterized as the "governing standard" in Massachusetts (Zussman v. Rent Control Bd. of Brookline (1976) 371 Mass. 632, 359 N.E.2d 29, 32.

In our ordinance, and similarly constructed ordinances, the fair return on investment is the ceiling for rent increases (within a reasonable zone). It is the component of the "complex scheme" that affords "landlords a mechanism for disputing the limits", and affords the homeowners protection from unreasonable rent. "Although the term `fair rate of return' borrows from the terminology of economics and finance, it is as used in this context a legal, constitutional term. It refers to a constitutional minimum within a broad zone of reasonableness." (Galland, supra., 24 Cal.4th at p. 1026.)

The formula, or "complex scheme" for achieving fair return is the province of the county. "In determining a just and reasonable return, no particular formula or combination of formulas is mandated; the selection of an administrative standard must be left to local governments, not the courts. (Berger, supra, 127 Cal.App.4th at pp. 8-9; see Carson Mobilehome Park Owners' Assn. v. City of Carson (1983) 35 Cal.3d 184, 191.)"

The ordinance provides the rebuttable assumption that the annual CPI increase provides a fair return on investment. Management did nothing to establish that they were not receiving a fair return. Management's alleged expert, St. John, merely told the arbitrator, that if he does not

award each increase item, management would not receive a fair return on investment. That is impossible to know without calculating ROI, and establishing that it is not a fair return.

In the 2011transcripts (exhibit 16), the homeowner's expert, Dr. Barr testified "As far as the interest rate, typically I've seen 7 percent instead of 9 percent. If somebody goes out and buys a park today, that's the capitalization rate they could expect. That's the rate of return you could get on a real estate investment, which is lower than in the past, but that's because all other types of investments often paid close to zero."

Homeowners presented the arbitrator with the listed ROIs for mobilehomes listed for sale throughout California, for comparison with management's ROI (exhibit C). Homeowner's exhibit presents 45 mobilehome parks that were listed for sale with stated ROI averaging 8.17%, and a high of 16% and low of 2.45%. Management objected to exhibit C, the only comparable information presented in order to determine the fairness of management's return, and the arbitrator did not take it into evidence (it is part of the record). Rules for hearing 17. Relevant Evidence. (a). In determining petitions, 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. The arbitrator does not consider the ROI on comparable investments a relevant factor in determining the fairness of managements ROI.

Ordinance Sec. 11A-4. - Arbitration

Ord. §11A-4(a) *Arbitration shall be used to fix maximum rent increase schedules for mobilehome tenancies under this chapter, following a petition by a homeowner majority. The method of selection, appointment and compensation of an arbitrator, and hearing procedures* ***shall be in accordance with the mobilehome rent control ordinance rules for hearings and amendments*** *thereto as approved by the Santa Barbara County board of supervisors.*

Ord. §11A-2(n) provides the definition of rent schedule. Ord. §11A-5(a) provides the express standards for maximum rent schedule. Ord. §11A-5(f) through (l) provides the express standards to be followed to determine, the relevant factors to be considered, the fairness of the return on investment after the automatic increase, and the formula for amount of increase in excess of the automatic increase.

Ord. §11A-4(b) *The arbitrator shall set and adjust rents in* ***accordance with the standards set out in this chapter.***

The homeowners requested that the arbitrator follow the standards set out in the ordinance.

Homeowners Opening Brief:

"Management's notice of increase proffers a so-called MNOI increase as a permanent increase of $52,752.40 per year. The ordinance makes no mention of any so-called MNOI. To the contrary, the ordinance is explicit in its use of a "fair return on investment.""

Homeowners' Post Opening Brief:

"Management made no attempt to present a prima facie case that 2015 rents do not provide a fair return on investment. It chose not to discuss return on investment, the ordinance standard, at all, nor did it justify the need for an additional $195,498 per year."

The homeowners provided the arbitrator, in their post opening brief, the restrictions the courts have place on statutory interpretation.

"In construing a statute, our fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute. (Day v. City of Fontana (2001) 25 Cal.4th 268, 272, 105 Cal.Rptr.2d 457, 19 P.3d 1196.) We begin with the language of the statute, giving the words their usual and ordinary meaning. (Ibid.) The language must be construed "in the context of the statute as a whole and the overall statutory scheme, and we give 'significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.'" (People v. Canty (2004) 32 Cal.4th 1266, 1276, 14 Cal.Rptr.3d 1, 90 P.3d 1168.) In such circumstances, we choose the construction that comports most closely with the Legislature's apparent intent, endeavoring to promote rather than defeat the statute's general purpose, and avoiding a construction that would lead to absurd consequences."

Sec. 11A-5. - Increases in maximum rent schedule.

§11A-5 provides the detailed steps to use to determine the maximum rent schedule. §11A-2(n) ""Rent schedule" is a statement of the rent charged for each tenancy in a mobilehome park." The 'rent schedule' is an aggregation of each tenancy's notice of increase. The cumulative results

from each category, or column, are essential in the determination of fair return on investment and the application of all of §11A-5 – Increases in maximum **Rent Schedule**.

Management never provided a rent schedule, nor did the arbitrator request one. The homeowners twice requested the rent rolls from management in order to calculate individual and total increase. The clerk of the ordinance, Don Grady, issued two separate subpoenas duces tecum, per the rules for hearing requesting the rent rolls. Homeowners served the subpoenas on management. Management did not respond in any way.

The rent schedule is the subject of the arbitration, and what the arbitrator is to "set and adjust" as expressed in §11A-4. The arbitrator's written decision is required to include the rent schedule imposed, per the rules for hearing, 18. Decision. The arbitrator did not fulfill this requirement.

§11A-5(a) Management's notice of an increase in the maximum rent schedule shall:

(1) Comply with state law; and

(2) Indicate whether or not the percentage of noticed increase in relation to the previous maximum rent schedule, less allowed costs for capital improvements and/or capital expenses, if any, is in excess of seventy-five percent of the percentage by which the most recently published edition of the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles-Long Beach-Anaheim area, all items, Base Index 1967=100, shows that such index has increased during the immediately preceding twelve months for which said index has been published at the time notice of said increase was given or since the last rent increase (**hereinafter called "in excess of seventy-five percent of CPI**"); and

(3) Where the noticed increase is in excess of seventy-five percent of CPI, management **shall**:

Itemize 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.

Management's notice of increase provides no itemization of increased operating cost.

Management's notice of increase provides no capital expenses incurred in the prior year to be undertaken for which reimbursement is sought

Management's notice of increase provides no capital expenses allowed in prior years but not fully reimbursed, hereinafter "old" capital expenses, although they continue to charge old alleged capital expenses.

Management's notice of increase provides no offset against new or old capital expenses, or capital improvements.

§§11A-5(f) through (l) define the hearing, the arbitrator's duties and the manner in which the arbitrator may grant increases.

§11A-5(f) If the hearing and/or increase is not denied pursuant to the foregoing paragraphs, **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.

§11A-5(f) (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.

§11A-5 (g) The arbitrator shall automatically allow a rent increase of seventy-five percent of the CPI increase (hereinafter "automatic increase").

The calculation is straight forward and provides that the CPI defined in §11A-5(a)(2), 2.3% in this instance, multiplied by a factor of .75, or 1.725%, then multiplied by "each tenancy", as provided in the rent notice, shall produce the dollar increase on "each tenancy", as well as the cumulative dollar increase found in the maximum rent schedule.

The homeowners attending the arbitration agreed that their individual CPI increases were mathematically correct, based on their respective notices of increase. However, without a rent

schedule, it is impossible to determine if all individual, as well as, the cumulative increases are correct.

The arbitrator found "The amount per space will vary based upon the rent being charged for each of the respective spaces." without knowing the dollar amount awarded to each space. He also found "Accordingly I will allow the noticed percentage of increased space rent based that [SIC] seventy five percent of the increase in the CPI.", again, without knowing the individual dollar amounts in the increase notices, or the cumulative dollar amounts to apply to a rent schedule, which he is required to produce.

§11A-5 (h) 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.

§11A-5(h) requires the analytical justification that the cumulative addition provided in §11A-5(g), when added to management's current net operating income, does not provide a "fair return on investment", when compared to "increases in expenses and expenditures", based on the arbitrator's consideration of all relevant factors, as §11A-5(f) requires.

The arbitrator is to determine if, management is receiving a fair return on investment after the 11A-5(g) "automatic increase", or have expenses increased to a point that management is no longer receiving a fair return on investment. The arbitrator is required to justify increases above the following calculation:

RETURN ON INVESTMENT = REVENUES + (CUMULATIVE CPI INCREASE) – OPERATING EXPENSES / INVESTMENT

The arbitrator did not consider this calculation or any other ROI calculations in granting increases.

Management did not include an itemization of increased operating cost in their notice of increase to compare to the return on investment after the CPI increase. The arbitrator made no findings of increased expenses or expenditures.

He found "Further Increases: The Ordinance specifically circumscribes those "return on investment" increases that are shown in the documents served on the homeowners at the time of service of the current Notice of Increase in Rents that can be allowed. Section 11A-5 (i) (1) thru (4) [(4) is temporary "new" capital expenses"] set forth an addition to an allowable permanent rent increase above and beyond the automatic increase of "75% of CPI covered above."

The circumscription in his finding requires that he compare any additional §11A-5(i) increases that may be allowed to the return on investment after accounting for the cumulative CPI increase in §11A-5(h). §11A-5(h) is the basis on which any increases above the CPI increase must be justified.

The arbitrator found "In the first session of this arbitration proceeding Dr. St. John testified at length as to the methodology he utilized in calculating return on investment and capital expenditures and other improvement issues that the Ordinance allows to be passed on to the homeowners as a rent increase and their amortizations, where appropriate as required under Section llA-6, et seq. of the Ordinance."

"He principally used what is known as an MNOI method (**Maintenance Net of Operating Costs** to determine what a Return on Investment (ROI) calculation is, substantively, Petitioners challenged that method in cross examination as not specifically listed or contained in the Ordinance. Dr. St. John testified, in essence, that the method used was appropriate for the calculations and the end result. He testified that although the "MNOI" method was not mentioned per se in the Ordinance it was a standard method of evaluation and calculation in his profession.

The homeowners) challenge the substitution of the express standard of, and justification required in §11A-5(h), with "Maintenance Net of Operating Costs".

Metzenbaum v. City of Carmel-By-The-Sea, 234 Cal. App. 2d 62, Cal: Court of Appeal, 1965 "Although the board is given the power to interpret the ordinance, it is fundamental that this grants only the power to ascertain what is in the ordinance itself, not to insert what has been omitted or to omit what has been inserted."

Long's finding regarding "Maintenance Net of Operating Cost", its relation to return on investment, or that it is St. John's "standard method of evaluation and calculation in his profession", is not only incorrect, it is irrelevant. The ordinance requires the correct application of §11A-5(h) determination and the §11A-5(i) formula.

People v. Beaumont Inv., Ltd., California Court of Appeals, 2003 "We interpret ordinances by the same rules applicable to statutes. Based on our analysis of the Ordinance's language, structure, and purpose. Defendants' evidence does not convince us otherwise. Additionally, we find further support for our determination in state statutory law."

The arbitrator provided no justification, made no findings, or alluded to any consideration of §11A-5(h). His ruling makes no mention of fair return. The word "fair", central to the purpose of the ordinance, is not found in the arbitrator's ruling.

The Arbitrator has failed to proceed in the manner required by law. He failed to consider the return on investment after the CPI increase as the basis for any justification for any further increases. The Board must find prejudicial abuse of discretion and reverse the Arbitrator's decision, per rule for hearing #23.

§11A-5 (i) To determine the amount of any increase in excess of the automatic increase, the arbitrator shall:

§11A-5 (i)(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;

Multiply the result of §11A-5(g) by ½. The calculation is straight forward and unambiguous. It is difficult to construe a different meaning. (see *People v. Canty, supra.*)

However, the arbitrator found "The arbitrator notes that no "specific method" of such calculations are required or even mentioned in the Ordinance." He found "Dr. St. John testified, in essence, that the method used was appropriate for the calculations and the end result." and based his award, #6, on exhibit 4, as follows:

(Exhibit 4) The calculation begins by (1) adding rental income, sewer income, water income, laundry income, clubhouse & event fees, returned check charges and late charges from 2010, a year chosen by management, for a total of $656,585.76. That amount is then multiplied by a "CPI increase" of 8.3%, chosen by management, and indexed at 100%, chosen by management, for what is labeled "CPI-justified space rent increase" of $54,739.78.

This amount is divided in half. The resulting quotient is, according to management, "One-half CPI-justified increase = fair return on investment" or $27,369.89.

(2) "One-half CPI-justified increase against cost increases" of $27,369.89 is added to number (1)

(3) "Increase in Operating Costs" is then calculated using management 'adjusted' 2010 and 2015 amounts, for unknown reasons, resulting in a difference of $92,343.64, almost three times higher the actual difference of $33,823.14. Number (2) is subtracted from number (3) and the remainder of $64973.75 is then added to numbers (1) and (2).

(4) First, take the annual returns from the 15 year temporary capital expense category, consisting of expenses from 2013 and 1014, already separately stated on "Nomad Village – Space Rent Increase – Effective July 1, 2016 (exhibit 3)", of $41,418.00, and add this to the permanent increase. Next, take the annual returns from the 7 year temporary capital expense category, ordinary expenses 2011 – 2017, not incurred by management, already separately stated on "Nomad Village – Space Rent Increase – Effective July 1, 2016 (exhibit 3)", of $101,322.00, and add this to the permanent increase.

(5) "Old Capital Expenses (see chart)" marked as NA, even though old capital expenses are still charged.

(6) "New Capital Improvements" marked as NA.

(7) "Justified Rent Increase (Sum 1, 2, 3, 4, 5)" from the prior steps is $262,453.53. The amount of $209,701.13 is then subtracted for what is titled "Increased Already Taken", a term not known if finance or accounting, not included in any ordinance or appearing in any court case on the subject. The final result is $52,752.40, or $29.31 per space per month.

§11A-5 (i)(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.

Multiply the result of §11A-5(g) by ½.

The arbitrator's Award #6 combines §§11A-5(i)(1) and (2) and grants "$29.31 as set forth in the Notice of Increase in Monthly Rent served March 31, 2016 is granted. This award is "per space" not "pro rata" and is retroactive to July 1, 2016." based on the Maintenance Net of Operating Costs calculation outlined above.

The arbitrator's award states "This award is "per space" not "pro rata"". The arbitrator found "Only the Automatic CPI increase permitted under the Ordinance can be added pro rata based upon space rental component of each of the homeowners' rental/lease agreements." Multiplying the result of §11A-5(g), the pro rata Automatic CPI increase, by ½, requires the result to be pro rata.

"Multiply the result of §11A-5(g) by ½" is specific to the penny and expressed in the first sentence of both, §§11A-5(i)(1) and (2).

The "method used" that is "appropriate for the calculations and the end result" materially misrepresents §§11A-5(i)(1) and (2), and materially misstates the monetary result.

The Arbitrator has failed to proceed in the manner required by law. He disregarded the express language and calculation of §§11A-5(i)(1) and (2), and substituted, "Maintenance Net of Operating Costs". The Board must find prejudicial abuse of discretion and reverse the Arbitrator's decision, per rule for hearing #23.

§11A-5 (i)(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.

The arbitrator made no award in connection with 11A-5(i)(3)

§11A-5 (i)(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.

§11A-5(a)(3)(A) defines new capital expenses as "capital expenses incurred in the prior year to be undertaken for which reimbursement is sought, hereinafter "new" capital expenses"

Management had no new capital expenses. Management presented expenses from 2013 (electric) and 2014 (streets) in addition to, not as a part of, their 2015 return on investment. The ROI formula requires a net operating income that is a discrete period of time, and the ordinance acknowledges this. The 12 month period is consistent with the rest of the ordinance, including the second sentence in this section, 11A-5(i)(4), "for the year then ending."

The ordinance provides the rebuttable assumption that the annual CPI increase provides a fair return on investment. Management noticed increases in 2013 and 2014 and did not request an "increase in excess of seventy-five percent of CPI". The assumption, under the ordinance, is management received a fair return on those expenses in the year incurred. Homeowners' exhibit D presents management's actual returns for both years.

The arbitrator disregarded the offset provisions of the ordinance. While he cannot know what the ordinance provided one-half of the automatic increase, §11A-5(i)(2) is, he did make an award allegedly on §11A-5(i)(2) and he could have calculated the offset based on that amount. Instead, he substituted "Maintenance Net of Operating Costs" which does not require the offset.

"Maintenance Net of Operating Costs" provides for $621,270 (23.01 * 15 Year * 12 months * 150 spaces, exhibit 3) plus $41,418 in perpetuity (exhibit 4, p.4, line 148). This is management's requested return on an alleged expenditure of $333,790 (exhibit 15). "Maintenance Net of Operating Costs" requires that capital expenses be reimbursed twice. First, $41,418 a year for 15 years and then $41,418 forever as a component of "justified rent increase". The ordinance does not have such a provision.

The Arbitrator has failed to proceed in the manner required by law. He disregarded the express language and calculation of §§11A-5(i)(4), and substituted, "Maintenance Net of Operating Costs". The arbitrator did not justify this increase as required by §11A-5(h), considered matters not included in 2015 ROI, and disregarded the required offset provisions. The Board must find prejudicial abuse of discretion and reverse the Arbitrator's decision, per rule for hearing #23.

Attorney Fees and Costs

The arbitrator never states which section of the ordinance he is using in awarding the $400,000 in attorney fees, nor does he justify them as required by §11A-5(h). Management has them under the category "#4 new capital expenses", purportedly to agree with numbering system in §11A-5(i).

The arbitrator's knowledge of the subject matter is framed as "In our case the seeking of fees arises from the allegedly obstreperous and obstructive litigation conduct of the HOA in the litigation of this and the 2011 case caused significant capital cost expenditures that need to be recouped, at least in part, as an ROI issue, as testified to by Dr. St. John.".

The homeowners dispute the characterization by management and the arbitrator however, it is irrelevant to the ordinance as these alleged fees are not part of the ROI, the NOI, or considered in any way relating to 11A-5(h) or 11A-5(i).

The arbitrator concludes that Galland v. City of Clovis applies. "Although the Galland case dealt with a mobilehome park owner's rights against the City of Clovis, a municipal entity, the Supreme Court went on to say, as indicated in the Owner's brief, " ...the .substantial legal and administrative costs attributable to the rent review process should be properly included as expenses when calculating the proper rent readjustment..., (Galland, supra, @pages 1027-1028)."

The arbitrator omitted a section of the citation. The citation reads "...the substantial legal and administrative costs attributable to the rent review process, discussed at greater length in the next part of this opinion, should be properly included as [24 Cal. 4th 1028] expenses when calculating the proper rent readjustment." Management's post arbitration hearing brief includes the next sentence in the citation "**Under the fair ROI method** used in practice by Clovis, it may not arbitrarily exclude the reasonable expenses of seeking legitimate rent increases. Gallant later concluded "Moreover, the costs associated with such a rent adjustment procedure are one of the **operating expenses** that the regulatory agency must take into consideration when determining fair return. (Maj. opn., ante, at pp. 1027-1028, 1040.)"

The homeowners do not disagree with the court's determination. The court determined that legal fees "are one of the operating expenses" that must be considered to determine fair return on investment, which is analogous to the consideration of operating expenses that must be considered under §11A-5(f)(1) and the determination of fair return in §11A-5(h).

The arbitrator has conflated the consideration of operating expenses in determining fair return (the court required that they be a component of the ROI calculation), with treating operating expenses as capital expenses, plus interest, and awarding them without regard to fair return.

The arbitrator also discusses the testimony of Dr. Barr, in the 2011 arbitration hearing as applying to this hearing. His only finding throughout his ruling is in regard to Dr. Barr. "I find that the right to such fees was acknowledged by the HOA's [HOA does not exist] expert in the

earlier case as an appropriate capital expense that required consideration, capitalization and amortization repayment."

What the arbitrator overlooked was that the questioning and answers of Dr. Barr was about the hypothetical treatment of attorney fees as a **capital expense**.

Q: ...I guess my question is, isn't it the case that the capital expense provisions in the ordinance – those are the provisions that analytically apply to all of the types of expenses we're talking about here under the temporary increases because they're all amortized over a period of time?

A: Well, I think this is a good analytical argument for that, but you know. It's not what the ordinance says...

What the ordinance does say is that ""Capital expense" is a repair or replacement of existing facilities or improvements which has an expected life of more than one year." §11A-2(b). The homeowners' position, which "attorney's fees or any professional fees" may under appropriate circumstances be considered as operating expenses in the ROI calculation, is in agreement with the ordinance. This position is also in agreement with Gallant and every other case on the subject and Judge Anderle's 2014 ruling.

The arbitrator's award #8 includes "the arbitrator finds in favor of the Respondent and against the Petitioner" in granting attorney fees, a power not provided by the ordinance or the rules for hearing. §11A-4(c) provides that his duty is to "set and adjust rents in accordance with the standards set out in this chapter". It is already clear to anyone reading his ruling who he is favor of and who he is against.

The arbitrator again disregarded the offset provisions of the ordinance, and awards the "Maintenance Net of Operating Costs" calculation that allows management to be reimbursed twice. First, $141,740 a year for 7 years and then $141,740 forever as a component of "justified rent increase".

The Arbitrator has failed to proceed in the manner required by law. He disregarded the express language and calculation of §§11A-5(i)(4), and substituted, "Maintenance Net of Operating Costs". He misinterpreted Gallant, Dr. Bell, and the ordinance express definition of capital expense. The arbitrator did not justify this increase as required by §11A-5(h), considered matters not included in 2015 ROI, and disregarded the required offset provisions. The Board must find prejudicial abuse of discretion and reverse the Arbitrator's decision and award #8, per rule for hearing #23.

After Hearing

The arbitrator awarded $127,799.83 in "attorney fees & costs" "as a post hearing matter..." He concludes "The attorney fees and costs awarded are also to be capitalized and amortized over the same 7 year time frame." at 9% interest. The ordinance and the rules for hearing have no provision for "post hearing" awarding of anything and the ordinance has no provision for awarding interest.

The arbitrator basis for awarding these fees is that management is seeking them. He does not mention the ordinance, the rules, return on investment or any other basis except that management seeks these fees.

The arbitrator cannot decree that these ordinary expenses be capitalized (accumulated over 6 plus years) and amortized over 7 years at 9% [actually higher due to "unorthodox calculation method] interest.

This award, as with all of his awards, disregards the purpose of the ordinance, his duty as arbitrator, and the technical formula for setting and adjusting rents. As with considering past years capital costs in the current year's return on investment, adding amounts never incurred disrupts the return on investment calculation. Had management actually incurred these expenses, they would be a component of that year's ROI. They are a component of NOI in the year they are consumed. Here these fees are outside of the ROI calculation (as is award #8 discussed above) and therefor, outside the determination of fair return on investment.

Management's theory that they can accumulate years of ordinary operating expenses outside of their financial statements, and therefor ROI, and present them at a rent increase arbitration as some sort of quasi-capital expense to be fully reimbursed with interest is novel. It is however, not in the ordinance.

§11A-5 (j) The total increase shall not exceed the amount in management's notice of rent increase.

Management's rent increase spreadsheet (exhibit 2) presents a per space increase of $108.61 plus the CPI percentage increase. The arbitrator awarded $122.72 per space plus the CPI increase as provided in figure 1.

Figure 1.

Award Number	Ordinance §§	Amount	Amount	ROI
5.	§11A-5(g) CPI increase:	Per space / Month	Annual (150 spaces)	$500,000.00
6.	§11A-5(i)(1) & (2)	$29.31	$52,758.00	10.55%
7.	§11A-5(i)(4)	$23.01	$41,418.00	8.28%
8.	Attorney fees & costs	$56.30	$101,340.00	20.27%
9.	Attorney fees & costs	$12.14	$21,852.00	4.37%
9.	Per MGMT "comment"	$1.96	$3,528.00	0.71%
	Total:	**$122.72**	**$220,896.00**	**44.18%**
	Total per Notice:	$108.61	$195,498.00	39.10%
	Amount Over / (Under)	**$14.11**	**$25,398.00**	5.08%

The Arbitrator has failed to proceed in the manner required by law. He disregarded the express language of §11A-5(j) in awarding more than the amount in management's notice of rent increase. The Board must find prejudicial abuse of discretion and reverse the Arbitrator's decision, per rule for hearing #23.

Conclusion

The Court in Guggenheim concluded in its facts regarding Santa Barbara's ordinance that "The ordinance has a complex scheme for setting rents, limiting how fast they rise, and affording landlords a mechanism for disputing the limits." The arbitrator determined "The arbitrator notes that no "specific method" of such calculations are required or even mentioned in the Ordinance. That leads to my conclusion that the evidentiary value, if any, of whatever method an expert uses in making his calculations and reaching his opinions is a matter of the arbitrator's sound discretion based on the testimony and evidence received. I do not conclude that the Ordinance's lack of specifically approved or prohibited methods of calculation excludes or requires a particular such method." They cannot both be correct.

The arbitrator had available the language of the ordinance and the rules for hearing (exhibit 12) to construe the context of the statute as a whole and the overall statutory scheme, and give 'significance to every word, phrase, sentence, and part of the act in pursuance of the legislative purpose. He concluded that "Maintenance Net of Operating Costs" (exhibit 4) "...was appropriate for the calculations and the end result". Exhibit 4, Page 4, Line 124 states as the heading for the section: "Rent Increase Following Method Set out in the Ordinance @ 100% Indexing:" Other than emulating the numbering system from §11A-5(i), it has no relation to the ordinance. Exhibit #4 is an intentional misapplication, or non-application of the principles, financial analysis and rationale that is the core of the ordinance. It does not provide a faithful representation of the economic phenomena that it purports to represent. Exhibit #4 is a deliberate misrepresentation of the financial condition of management accomplished through the intentional misstatement and/or insertion of amounts in the financial information to deceive financial information users.

Rules for hearing #18 requires "The Arbitrator shall prepare the written decision, which shall include a statement of the issues, the findings of facts on which the decision is based, and the rent schedule imposed." He does not clearly state the issues however, it appears that he followed management's contention that they present the homeowners with a list of rent increases and it is the homeowner's burden to prove that they are not entitled to them. The homeowners contend the ordinance affords "landlords a mechanism for disputing the limits" and "limits the ability of park owners to increase rent of existing tenants" and that "Park owners... may seek additional

increases for various reasons provided in the ordinance." It is management that has the burden to rebut the assumption that the CPI increase provides them with a fair return on investment. He only makes one finding regarding attorney fees, his mistaken understanding of Dr. Barr's testimony, and that "the right to such fees was acknowledged by the HOA's [HOA does not exist] expert" supersedes the ordinance. The arbitrator has not provided the required "rent schedule" defined in §11A-2(n) and the centerpiece of "Sec. 11A-5. - Increases in maximum **rent schedule**." He was never provided with a rent schedule to "set and adjust", never went about doing so and, therefore has and cannot possibly fulfilled his obligation and duty to provide the rent schedule imposed.

The arbitrator never establish the constitutional minimum discussed in *Galland.* He never considered legal fees and costs as "operating expenses" and "Under the fair ROI method" discussed in *Galland.* Management's profit and loss statement for 2015 (exhibit 5) confirms there were no legal expenses in 2015 and therefore, nothing to consider "Under the fair ROI method". He did not give significance to every word, phrase, and sentence in §11A-5(a)(3)(A) "...any capital expenses incurred in the prior year to be undertaken for which reimbursement is sought, hereinafter "new" capital expenses..." when awarding capital expenses from 2013 and 2014. The ordinance is consistent in its use of the word "year" as a restraint. ROI is calculated based on distinct NOI year which aligns with the restraints in the ordnance and sets the perimeter for the year under review. To do otherwise would lead to absurd results (like awarding a 44.18% a year increase (figure 1) to a 63.09% ROI (exhibit D) to provide a "constitutional minimum" ROI of 107.27% a year).

All of the arbitrator's monetary awards rely on "Maintenance Net of Operating Costs" (exhibit 4) conforming to the ordinance. In order to conclude that the arbitrator did not abuse his discretion, the board would need to defend the arbitrator's reliance on exhibit 4 as proceeding in the manner required by law, the ordinance. We believe that the arbitrator did not as proceed in the manner required by law and ask that the board find that the arbitrator abused his discretion as outlined in this request.

Nomad Village Homeowners Representatives

Rep. Tony Allen

DECLARATION OF SERVICE

I, DEBRA HAMRICK, declare that I am, and was at the time of service, over the age of 18 years and am a party to the action mentioned within. My mailing address is 813 E. Mason St, Santa Barbara CA 93103 in Santa Barbara County.

On August 1, 2017, I served the foregoing document entitled NOMAD VILLAGE HOMEOWNERS' OBJECTION TO PARK MANAGEMENT'S COMMENT ON ARBITRATION AWARD to the interested parties in this action by mailing and e-mailing a true and correct copy as follows:

James P. Ballantine
Attorney for park management
329 E. Anapamu Street
Santa Barbara CA 93101
email: jpb@ballantinelaw.com

Don Grady
County of Santa Barbara Real Property Division
1105 Santa Barbara Street
Santa Barbara CA 93101
email: dgrady@countyofsb.org
mwagner@co.santa-barbara.ca.us

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on August 1, 2017, at Santa Barbara, California

Debra Hamrick