Attachment CC

Nomad Village Hearing Transcript February 17, 2016

In The Matter Of:

NOMAD VILLAGE MOBILE HOME PARK ARBITRATION

February 17, 2016

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ARBITRATION PROCEEDINGS UNDER THE SANTA BARBARA COUNTY MOBILEHOME RENT CONTROL ORDINANCE

IN RE: NOMAD VILLAGE MOBILE HOME PARK	HEARING BEFORE STEPHEN BIERSMITH, ARBITRATOR

TRANSCRIPT OF PROCEEDINGS, taken in the above-captioned matter, commencing at 9:15 a.m., Wednesday, February 17, 2016, at 105 East Anapamu Street, 4th Floor, Santa Barbara, California, before MARK McCLURE, CSR No. 12203, Certified Shorthand Reporter in the County of Santa Barbara, State of California.

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I N D E X

E X H I B I T S

SANTA BARBARA, CALIFORNIA

9:15 A.M., WEDNESDAY, FEBRUARY 17, 2016

ARBITRATOR: We're on the record. Good morning, everyone. Good to see everyone again.

My name is Steve Biersmith. I'm the arbitrator in this matter, In Re Nomad Village Mobile Home Park.

Please state your appearances for the record.

MR. GRIFFIN: Good morning, your Honor. My name is Tom Griffin, and I'm the attorney for the homeowners and the homeowners representatives, Debra Hamrick, Tony Allen.

ARBITRATOR: Thank you.

MR. BALLANTINE: Good morning, your Honor. I'm James Ballantine. I represent the park management. With me today is Mr. Ken Waterhouse, Mr. Ruben Garcia and Dr. Michael St. John, all three of whom testified the last time around.

ARBITRATOR: Thank you.

And do we have an appearance from the County?

MR. GRADY: Yes, good morning. Don Grady. I'm the real property division manager for the County, acting as clerk of the ordinance, and this is Natalie Dimitrova, from our real property division, acting as my designee.

ARBITRATOR: Thank you.

Let me explain briefly what's going to happen today. We're going to allow the parties to have some oral argument. I have received from each of them a brief last night and I have read those briefs.

There will be no new evidence entered into this hearing. I will allow, if the parties want to move some document, try to move it in, I will allow that to complete the record, and then I'll rule appropriately, but I'm going to define the record as all of those documents, written notices, papers filed prior to the original proceeding, all exhibits admitted and rejected as evidence during the original proceeding, a list of participants present, the reporter's transcript, a statement of all materials officially noticed in the original proceeding, the ruling on each exception or objection during the original proceeding, if any, and all findings and decisions and orders of the original proceeding. So that will be the record.

How we're going to do this today is we'll have opening arguments from each side, and then undoubtedly both sides will hear things they don't like, and I understand that, so what we'll do is we'll take a break and allow the homeowners and the park operators to meet with their counsel and discuss what they want to discuss, and then we come back and we have rebuttal and then we'll

close the hearing.

So with that, let's go off the record just a second.

(Discussion off the record.)

ARBITRATOR: We'll allow the exhibits to be marked, if you have anything.

We'll start with the homeowners first. Do you have any additional documents, sir, beyond your brief?

MR. GRIFFIN: No, not beyond my brief. I was going to ask about that, too. Thank you.

ARBITRATOR: And about what in your brief -- ask about your brief? About what?

MR. GRIFFIN: I'm saying the brief I submitted is being recognized by the arbitrator as part of the record.

ARBITRATOR: Yes, both briefs have been handed to the reporter and they will be part of the record.

Mr. Ballantine, do you have any exhibits, sir, that need to be marked in at this time?

MR. BALLANTINE: Yes, sir.

ARBITRATOR: You may approach.

MR. BALLANTINE: Thank you.

ARBITRATOR: Mr. Ballantine, I believe the next in order is Exhibit U.

MR. BALLANTINE: Yes, your Honor. I marked

them U and V because the last one that I saw that was in the record was T.

ARBITRATOR: Do you want to identify these briefly.

MR. BALLANTINE: Yes, your Honor.

Exhibit U is entitled "Nomad Village Rent Schedule Calculations Pursuant to Arbitration Award." It tracks Exhibit T that was attached to the arbitration award in the initial hearing, and it has some updated figures and I plan to discuss them in my opening statement or argument or whatever. In other words, I'll go through this exhibit, go through the concept of the exhibit, in any event.

ARBITRATOR: All right. And the next?

MR. BALLANTINE: Then the next exhibit is Exhibit V, entitled "Nomad Mobile Home Park, Post-2011 Capital Expenses." The first page is a spreadsheet, the following pages are all numbered, and they constitute the support for those figures. They are invoices and proof of payment and documentation of work done.

ARBITRATOR: We'll mark those two exhibits as noted, U and V, but they will not be admitted into the record.

(Exhibit U and V were marked for identification.)

MR. BALLANTINE: Thank you.

MR. GRIFFIN: Thank you, your Honor.

ARBITRATOR: And I would ask as we go forward in our arguments to stay within the parameters of the evidence I just gave you, so I don't want to talk about anything prospective or what has happened since.

For those who are present, I'm sure things have changed in the last four years, things have happened, but none of that is relevant for today's meeting. This is like a time warp, if you will. This goes back to when the hearing was originally closed some four years ago. Okay?

With that, we will have the arguments, beginning with the homeowner.

ARGUMENT BY MR. GRIFFIN

MR. GRIFFIN: Thank you, your Honor. I'm not going to recite the history of what has happened. That would take, maybe, 20 minutes to half an hour.

What I'm going to do is get into briefly discuss each of the items that are in the findings of the County.

Finding 2 is the incurred cost of $62,145.53, and I'm going to have the CPA who lives in the park address those issues that we have outlined in my brief.

And then again, the Finding 3 is the $25,000 award, and Mr. Allen will also address that.

And Award 4, the professional arbitration fees of $40,000, he will do the same there.

With respect to Award 5, roughly $130,000, that is for an increased payment by the homeowners.

In Award 6, No. 11 -- excuse me, Finding 6, Award 11, he'll address the $110,000 fees as being requested there.

And then we'll address -- as you indicated, we will only address things that are in the record already with respect to what he found. Thank you.

ARBITRATOR: Mr. Ballantine, I assume you have something to say right now.

MR. BALLANTINE: Yes. I guess I'm not quite clear what the homeowners are doing at this point. I'm a little confused. I heard the Court's ruling of how we're proceeding and counsel's opening statement. I thought we will were just going to have solely argument from counsel, and counsel's opening statement seems to be that he's presenting a witness and a homeowner.

Regardless of that fact, either the parties are coming to speak or not. My understanding is that this is argument that's being addressed through counsel for the parties. I'm prepared to make the park owner's argument,

but I'm not sure, counsel's opening statement seemed to be that he is going to turn it over to a homeowner to do something.

ARBITRATOR: Before you respond, let me make a comment.

Both parties received a letter, I believe, a copy of the letter from the County, is that correct, letting them know ahead of time that both sides were represented by attorneys, and those attorneys would be the spokespersons. Then if there's no attorney, that the parties could have their representatives speak.

Mr. Ballantine, I would ask, though, sir, if you can, we can have this --

Sir, it's got to be really clear here, whoever the witness is, that it's only going to be argument within the parameters of the written document that I received this morning, no new evidence whatsoever, no comment about any new evidence. If so, I'll cut it off.

MR. BALLANTINE: And moreover, then, if I understand it, the Court is suggesting that the homeowners' representative, this individual could essentially speak as a representative, it would surely be argument, not treated as a witness, and nothing that the homeowner would say would be treated as evidence.

ARBITRATOR: Yes, sir, that's correct.

MR. BALLANTINE: Fair enough.

ARBITRATOR: Can you live with that?

MR. BALLANTINE: Yes.

ARBITRATOR: All right.

MR. GRIFFIN: But insofar as what Mr. Allen is going to speak about, he's going to speak about only things that are in the record, and that's appropriate, is my understanding.

ARBITRATOR: Well, you're probably going to drift into that area and I'll allow some of that, but we're not here to reargue what I heard four years ago.

MR. GRIFFIN: Of course not, but it's a different approach in looking at the same evidence.

ARBITRATOR: All right, here's how we're going to do it. If he wants to speak to the numbers, which is what the issues seem to be, each of your demands, I'll allow that.

MR. GRIFFIN: Yes, your Honor.

ARBITRATOR: Mr. Ballantine, give us some latitude, sir, but if you hear something that's gone too far or if I hear something that's gone too far, I'll cut it off.

MR. BALLANTINE: That's fine.

MR. GRIFFIN: Thank you, your Honor.

Mr. Allen, I'm going to ask you to speak to the

arbitrator, address the arbitrator.

ARBITRATOR: Mr. Allen, you understand, for the record, sir, that we're talking about argument, we're not talking about new evidence -- what's been said, what's happened since then. Anything beyond the record that's already entered is out of line.

MR. ALLEN: Okay.

ARGUMENT BY MR. ALLEN

MR. ALLEN: So start with Finding 2, Award 5, which is $62,000 and change, which was in excess of the original 320 that was on the original rent increase. The rent increase does not contain the $62,145, and the $62,045 does not contain -- hold on a second.

The $62,145 is not capital in nature. It contains items that were well past the rent increase letter going up to the end of July 2011. Contrary to what was stated at the original, the amount, the numbers -- or the documents in evidence show that these were repairs and maintenance, outside services, repairs and maintenance, outside services. Some of them were permits that were -- that -- no evidence as to purchase. These were billed to the Bells regarding the building violation. Same with license and permits.

So none of these were ever coded to a capital

item. They don't relate to any capital items and they weren't treated as capital items.

ARBITRATOR: Okay. Next in order, go ahead.

MR. ALLEN: I think the professional fees that were supposedly attached to a capital item, there's no asset in Award 5 of these fees to attach to. Incurred costs must be a functionally interdependent component of an asset in order to become part of that capital asset. There is no capital asset; there's nothing to attach to.

The fees were treated as an expense by management, Attachment F, Exhibit K. They are in an expense category. They show up in their expenses.

These fees include case 1264917, the homeowners' failure to maintain. The case was settled in favor in the homeowners and a hearing was held on 11/29 on legal fees. This was addressed in the post-closing brief by Mr. Stanton.

No. 4, Award 7, the architecture fees. Again, there's no asset in Award No. 5 for these fees to attach to. The incurred costs be must be a functionally interdependent component of an asset in order to become part of that asset. There's no financial transaction. These documents, it was presented to the homeowners as $90,000 and it's been said that these were purchased apparently at face value, at least that's how they were

represented, but there's no documents in evidence that shows any financial transaction.

ARBITRATOR: Any financial transaction regarding the purchase of the permits?

MR. ALLEN: That's correct.

ARBITRATOR: All right, go ahead.

MR. ALLEN: Finding 5, the property taxes. The ordinance does not allow ordinary operating expenses to be passed through as 11A-6 capital expenses. That's how these were treated. Judge Anderle stated: "Thus the supplemental assessments reflect an increase in property taxes within the meaning of section 11A-5(f)(1) of the ordinance."

It was clear throughout Judge Anderle's statement that he was talking about the supplemental income taxes. "Management represented to the homeowners that the supplemental taxes were $130,531 when the actual supplemental tax bills equalled $31,533.96. Attachment O.

The ground lease clearly shows that this financial -- that this is a financing activity related to cost of possession. Rent, No. 3, Attachment F, Exhibit H.

According to federal regulations, CFR 1 .162-11 clearly shows that this is rent. Acquisition of a

leasehold taxpayers -- taxes paid by a tenant to or for a landlord for business property are additional rent and constitute deductible item to the tenant and taxable income to the landlord. In this case, Waterhouse is the tenant and the landlord is the Bell Estate.

Finding 6, Award 11, legal fees. The ordinance does not allow ordinary operating expenses to be passed through as 11A-6 capital, Attachment M, page 172, Stanton to Waterhouse:

"Finally, the anticipated professional fees in item 6 that appear on Exhibit C on the schedule of $125,000, you're familiar with that category, correct?

"ANSWER: Yes, I am.

"QUESTION: Can you tell me how much, if any, of that amount has been paid to date by the park operator?

"ANSWER: No, none of it."

So management's basis in this is zero. Management began charging, in May of 2011, interest on these monies not spent.

And finally, I don't see the rent roles in evidence. In order for to you to have followed section 11A-5(i), the calculation to grant a rent increase, you would have had to have needed the rent roles, the actual dollar amounts, not the percentages, so you could have

followed 11A-5(i).

ARBITRATOR: Is that it, sir?

MR. ALLEN: Yes.

ARBITRATOR: Does the homeowners' association have anything else to say at this point in time?

MR. GRIFFIN: No, your Honor.

ARBITRATOR: Thank you.

We'll move now to the operators.

Mr. Ballantine, go ahead, sir.

ARGUMENT BY MR. BALLANTINE

MR. BALLANTINE: Thank you, your Honor. Thank you for the opportunity to address you on this.

I think I'd like to go through the various items that are basically in the arbitration award that are at issue here, potentially at issue today before you on this remand proceeding. Just for clarity, I'm going to go through each item that was in your arbitration order, just so we stay in order.

First of all, the CPI increase was No. 1, and that's not at issue.

No. 2 was the ground lease percentage increase. That's not at issue.

Third was the property tax increase. That's not at issue both because when it was remanded back to

your Honor some years ago, your Honor upheld that and, secondly, that was set forth in the writ of mandate ruling not at issue, so that has not been remanded.

No. 4, the amortization has been remanded, and my comment on that is essentially Judge Anderle found that there was substantial evidence to support the ruling on that. We think that's a good ruling. The remand, he indicated, was solely to the degree that, on consideration of any of the other items, that had to be adjusted for any reason. I'd suggest there's no reason it has to be adjusted, that the court has already ruled substantial evidence supported the arbitration award in that matter and it's not something that needs to be revisited.

Item 5 is capital improvements. Let me talk about that because it's got, as Judge Anderle indicated, two components. First of all, there was a total sum that was noticed in the rent increase notice and request, which was the $320,000. That, of course, was not requested and the arbitrator did not find that the park operator was entitled to that amount simply because it was in an escrow fund, that was just the anchor number.

The reason for that request was there were actual capital items, both expended already and that were anticipated in the future. The ones that were expended

already was the $62,000 and change. That's in evidence before your Honor in Exhibits J and K. They discuss that in the arbitration brief a little bit, but Exhibit J is the itemization to make it a little easier to look at that and track that, and K are the actual invoices that support that.

We had testimony from both Mr. Waterhouse and Mr. Garcia on that, and the testimony was very clear that those were all capital items that were actually incurred by the park operator for the operation of the park. They all fell within the capital improvement definition of the code, either a capital expense or a capital improvement, so those are clearly in evidence and it's the $62,000 and change.

We would also make a proffer that since the time of the arbitration hearing, the $320,000 or the -- what is in evidence is the bids for two types of work, electrical work and roadwork, and those have been done and we proffered an exhibit, Exhibit V, as in Victor, that shows that information with a spreadsheet and the supporting documentation for that.

We believe under the terms of the remand order by the court and the governing law that the arbitrator could accept that evidence because that was relevant to the first proceeding, it was referenced in the first

proceeding. The only issue that Judge Anderle had with those bids was he didn't feel that it was sufficiently definite and certain as to when and whether those would be incurred and how much. We believe that Exhibit V basically answers the evidentiary issue by providing definite and certain numbers. And again, this isn't something that's coming out of the blue, it's something that is the two exact types of work that were put forth in Exhibit M as proposed work that has actually been done.

And one thing I would note about the timing on that is that I don't think there's any dispute by anyone -- by the homeowners, by the park owner, by the court -- that the ordinance allows a prospective rent increase; that is, that it could be noticed and it could be noticed for work that's contemplated in the future, and the requirement is that it's got to be done within -- it's got to be started within six months after the arbitration award becomes final. That was essentially your Honor's ruling. We agreed with that ruling. I would note that the arbitration has never become final, that essentially what happened well before the six-month period elapsed, the homeowners appealed and so the arbitration award has essentially been a moving target.

There's a history to that. It went to the

Board of Supervisors and then went over to writ of mandate, and now we're back here. We don't have the final arbitration award. The time period hasn't started running. Nevertheless, the park went ahead for various reasons and did that work. So that's why we proffer Exhibit V, why we think it's within the parameters of the remand order by the court.

Item No. 6 are professional fees incurred, and let me address two things about that. The arbitration award basically awarded about half of what was requested. About $50,000, almost $51,000 was requested, and there was a detailed invoice that was submitted that documented what that was. And it may be and I think it was the case that perhaps that the argument by which it was submitted by park management, by me, maybe wasn't crystal clear. We talked about the idea that those were for capital expenses, but that wasn't entirely the basis for that request. The request was, and I have cited in the arbitration brief Dr. St. John's testimony, the exhibit, and the code, but really the code allows, I think, for the park operator to recover fees, attorney fees and other fees, professional fees and other items, either as an operating expense or as a capital expense. It's an expense related to the operation of the mobile home park, by either doing capital items and capital improvements or

as ordinary operating expenses.

I think it was perhaps suggested that this solely related to capital items and the reason for the arbitration award of awarding $25,000 out of the $50,000 requested is that your Honor found about $25,000 could be clearly allocated towards capital. I think the exhibit well supports that finding, well supports that finding. Xx xx

But I think it's also the case that the full $51,000 could be awarded under the idea that it's not necessarily just capital, but it could also be operating.

Now let me also talk about the treatment of this because the homeowners have commented on that, using an ordinary expense, treating that as a capital item. There's some confusion on that point. I think the homeowners have confused that point, but they've also conceded the point in the arbitration hearing. The expenses don't have to be capital in nature to be treated analogous to a capital item. The capital treatment of an item is essentially a temporary increase, and we had both Dr. Baar and Dr. St. John at the original hearing talk about that and talk about the fact that actually the treatment of something as a temporary increase, as opposed to a permanent increase, is actually more favorable for the homeowners.

It was agreed by the homeowners that an extraordinary item of expense that's out of the ordinary, perhaps, in one year or even a couple of years -- like, for example, legal fees incurred in this rent control proceedings are appropriately handled as a temporary expense where it's amortized and goes for several years and then it stops. That's similar to how a capital expense is treated, but it's not the same thing. It's for a different purpose, and there's no dispute by the homeowners or the park owners that certain expenses, extraordinary expenses, call them capital, call them operating, can be treated as a temporary rent increase that is passed through, amortized, it starts and then it stops. And that's what we are talking about here with these temporary expenses.

The trial court upheld that treatment and they cited the case, the Carson case, that speaks to that issue and basically says even if an ordinance doesn't specifically say that ordinary expenses can be treated as a temporary expense, that it provides sufficient flexibility to do that. And again we had both experts agreeing that that was appropriate and we had both experts agreeing that that was more favorable for the homeowners. Because the alternative is you have an extraordinary year, you have a bunch of expenses that are

non-recurring and that can form the basis of the significant permanent rent increase, but it's not appropriate to treat it that way, or at least it's more favorable for the homeowners not to treat it that way so that that -- whatever supports the rent increase, you have the rent increase and then it stops after a period of time. So that's really what we're talking about, about the treatment of Item 6 for those professional fees.

And I note that the court upheld the treatment of that. The remand was simply for the findings as to why that number was $25,000. I believe on remand -- your Honor can look at that -- and our argument is that in looking at it, should consider both from the operating and the capital standpoint and we believe that through the invoice that we submitted -- I forget what exhibit number it is but I've referenced it in the brief -- that well supports that the $50,000 and change as being an appropriate matter for rent increase.

No. 7 is the architectural and engineering fees. $90,000 was requested, $40,000 was awarded. And I think I have two types of comments about that, your Honor. The first goes to the number, the second goes to the character of it.

Your Honor found that out of the $90,000,

$40,000 was awarded, because the concern was that there were a number of permit fees that were incorporated into that and your Honor's feeling was that those were stale, that once the permit had expired because it was old and so it was inappropriate to pass through. So the question is the evidence in support of the $40,000. We think that was an appropriate finding and we think the evidence is well in the record to support the $40,000 because there was in evidence about $50,000 in costs for the plans and drawings of the entire park by Penfield & Smith, so that's awarded about 80 percent of that. We had Mr. Waterhouse testify that those were valuable to him as the operator to have those drawings. They included computerized CAD drawings for the entire park, and I think based on that testimony and just a logical review of that testimony, it's obvious that the owner of the mobile home park would find quite valuable having these expensive plans and drawings, especially in the CAD form, for ongoing operations. He also testified that he had an agreement, he made an agreement with the prior operator and paid the $90,000, approximately $90,000 that was itemized in the exhibit. The testimony well supports your Honor's finding for awarding $40,000 for that matter.

Item No. 8, I suppose it's before your Honor,

but I think under the terms of the court's written mandate order it's really not. The court simply found that the Board of Supervisors' action in reversing that award was wrong as a matter of law, that clearly the park was entitled to recover the costs of the increased property taxes, that clearly the park had incurred those based on the evidence presented, and that it was appropriate for the arbitrator, your Honor, to find that the park was entitled to recover those.

I don't believe that that matter is properly before your Honor, but if your Honor feels that it is, as set forth in our arbitration brief, we think that the evidence and the record well supports the fact of those costs were incurred and it was appropriate to pass those through. The homeowners' objection was solely -- at the original hearing to that item was solely on kind of the regulatory lag issue, saying that, well, you know, you're not supposed to get these property taxes because they went back in time, although, as the evidence showed, that although the liability for the taxes started in August of 2008, when the lease started, the old lease terminated and the new lease started, that the park owner wasn't billed well into the following year for that, and then went through a process of enquiry and investigation about why that had happened and the appropriate of that.

Really, the homeowners position is essentially that we should have a lot of these hearings because the park owner should run and notice a rent increase really quick, at the first hint that they get that there might be some kind of increased cost, and that's really not very workable. There was a practical resolution that the arbitration award provided for that, and it should be upheld. And it was upheld, frankly.

No. 10 is the anticipated professional fees related to the property tax appeal. Your Honor made an appropriate finding on that. It found that park management was entitled to recover that as rent increase, but that the homeowners should have the opportunity to weigh in on that and whether or not they wanted the park management to pursue the appeal or not because ultimately it would inure to their benefit or their expense, the property tax, and that's not before your Honor.

Finally, the legal fees regarding this space rent increase, and I have two types of comment on that. One was what's in the award and secondly, prospectively.

First of all, as to what was in the award, under Judge Anderle's written mandate order was clear that that was upheld. I don't think that's appropriately back before your Honor, based on the written mandate ruling on that. The objection that the homeowners have

apparently raised in their argument now to that is for treating it as capital, essentially, when it's not is the mistaken for the reasons that I explained earlier, and I would note on that particular point, and we've cited the transcript for you in a number of places, the homeowners, through their counsel and their experts, specifically agreed with that treatment, they agreed that it should be a temporary increase, they agreed it should be amortized over a period of time, they didn't disagree with the seven years and 9 percent that it was amortized over for that particular item, so the treatment of that as a temporary amortized increase is agreed to by the homeowners, and Judge Anderle upheld that. I don't think that's properly before your Honor at this point in time and certainly should not be changed.

Now, that's the amount that was awarded, and I would note it's also supported by the invoices that were submitted and in evidence at the time that your Honor looked at it as a basis to make that award.

The second area is the prospective fees, and we put in our brief Dr. Baar's commentary on how he thought this should work, and what he said was that we've got a hearing up until now, we know what the costs and the professional fees would be through the hearing, what should be done is an application for fees, and in fact

there was an agreement that there would be an application for fees and a briefing, schedule, and we followed that. The homeowners had a chance to comment on that.

Dr. Baar also said, look, if anything happens in the future, if there's future proceedings like a writ of mandate proceeding, then what happens is it comes back, or the if the park owner prevails, which we did, it will come back to the arbitrator, and the appropriate time for those fees would be an application to the arbitrator at that point in time. That's what Dr. Baar said.

I think it was very clear and I think what that clearly means is that now is the time for that proceeding, because we're back in front of your Honor, this is the arbitration proceeding, this is exactly what Dr. Baar was talking about, and we would request that your Honor set the exact same procedure that your Honor set before to give the park owner an opportunity to present an application for the fees incurred to date, to give the homeowners an opportunity to review that and respond on some agreed time schedule that works for them, and then your Honor can make a ruling on that point.

I think that that was indicated by the homeowners as the appropriate way to proceed. I think that the basis of why the park owner proceeded the way it

did and the arbitrator proceeded the way your Honor did at the time of the first hearing was based on Dr. Baar's testimony about that, that if there were any other proceedings in the future, that the park owner was entitled to recover the cost of those. There no dispute by the homeowners that the park owner is entitled to recover the cost of the legal proceedings related to their rent increase, and so based upon the homeowners' testimony, through Dr. Baar, and the counsel's agreement, we believe that matter is properly before your Honor and we would request the opportunity to present that.

Then finally, Item 12 is essentially the recalculation to the degree that's necessary. I've presented Exhibit U. Exhibit U has, we think, some updated numbers. It also includes the capital improvement number that we would proffer through Exhibit V. But anyway, it sets forth the scheme of doing this.

Exhibit -- I think it's Exhibit T that's attached to your Honor's arbitration award is a similar spreadsheet and we would make the offer that if your Honor wanted the park management to plug in numbers we'd be glad to do that as we did before, but I think your Honor has all the information on how that was prepared as well to do so yourself, if you wanted to.

With that, I thank you very much for your time

and attention.

ARBITRATOR: Thank you.

Let's take a 20-minute break and give the parties a chance to do what they need to do.

(A short recess was taken.)

ARBITRATOR: We're back on the record.

We'll have some rebuttal argument at this point in time, beginning with the homeowners.

MR. GRIFFIN: Yes, your Honor.

Your Honor, the homeowners would like to add an exhibit and I guess that would be W, and it is a spreadsheet re Finding 5, the taxes. It's already in the record.

MR. BALLANTINE: I didn't hear what counsel said. I apologize.

ARBITRATOR: Something about the taxes. I couldn't hear, either.

MR. GRIFFIN: Sorry. I want to put in another exhibit in addition to those exhibits you already brought in to give to the arbitrator and you had Exhibit V as your last exhibit, and I want to present Exhibit W. Exhibit W is the tax bill spreadsheet re Finding 5, or should I say a tax bill spreadsheet.

ARBITRATOR: Well, again I'll take it into evidence with the same ruling. I'll make it part of the

record, but it will not be considered by me.

MR. GRIFFIN: Unless it's already in the record.

ARBITRATOR: Well, if it's in the record I've seen the document.

MR. GRIFFIN: All right. I think this is to help you to see where we might be going with this.

ARBITRATOR: Show it to counsel first.

MR. BALLANTINE: Just one total housekeeping or administrative comment. To mark it -- I want to be clear about this, to mark it as W wouldn't be appropriate. I think we get the letters. It's not our exhibit. Ours would be -- our next one may be W but his is not. I can check to see what his would be.

ARBITRATOR: If you would. So you have next in order from the homeowners would be, I think, a number, if I recall.

MR. BALLANTINE: Yeah, let's see.

Your Honor's final arbitration award for the first proceeding very clearly identified all of the exhibits by everyone. For petitioners it indicated there were Exhibits 1 through 8, so I guess it would be Exhibit No. 9, Petitioner's 9.

ARBITRATOR: We'll mark Exhibit 9 as previously identified by counsel.

(Exhibit 9 was marked for identification.)

ARBITRATOR: If you would give opposing counsel a copy as well myself, I'd appreciate it.

MR. GRIFFIN: Yes, your Honor.

ARBITRATOR: And before we leave, get the reporter a copy as well.

MR. GRIFFIN: Sure.

ARBITRATOR: With that, sir, you may proceed.

REBUTTAL ARGUMENT BY MR. GRIFFIN

MR. GRIFFIN: Let me start with beginning with respect to the meet and confer. Ten days after the notice of the meet and confer, the park owners are required to present a detailed statement of income and expenses. And as we go down the road with these things, all of a sudden it comes out is that there are literally hundreds of pages more in documentation than what was presented to the homeowners required by the ten-day meet and confer -- excuse me, by the ten-day requirement of presentation of the detailed list of income and expense. I say a couple hundred. It's probably about 250 that were presented that were presented to, I believe, you at the time of the arbitration, and I think the majority of them literally had been seen prior to that by the homeowner.

MR. BALLANTINE: Your Honor, I'm sorry, I have to object to this. A, it sounds like testimony that he's attempting to proffer which I think is inappropriate. That's not in the record. In fact, one of my concerns is that -- and I'll try to find the citation for this, but when there was a little bit of discussion at the original hearing about a meet and confer, there was a stipulation between Mr. Stanton and myself that the meet and confer had proceeded, and properly. There were no issues regarding the meet and confer and that's a stipulation in the record that I'd be glad to hunt down and find. But I think it's inappropriate of counsel to start claiming new evidence of what he claims was and was not given at the meet and confer.

ARBITRATOR: Your response?

MR. GRIFFIN: Your Honor, the administrative record speaks for itself. If you look at the administrative record in Volume II, it sets out the documents that were presented at the arbitration and those are the numbers that I'm using and I've discussed with you.

MR. BALLANTINE: Again --

MR. GRIFFIN: You can literally pick out the pages, is what you can do.

ARBITRATOR: Let me comment. I can check the

record as well, but I do recall how I start these things out procedurally, get some stipulations. If I recall, the parties had agreed that notice had been adhered to, the notice requirements.

MR. GRIFFIN: I understand. My predecessor apparently -- looks to me like he agreed to let that happen, but what I'm trying to say is this, that this is something that's -- here we're looking at, now, going into possibly another hearing on these things, and today -- you know, last night I got a 28-page brief, as you probably did, and there was simply no time to prepare for that, and I'm objecting to this last-minute stuff that seems to happen in these arbitration situations.

ARBITRATOR: Well, that's an objection and I'm going to rule. That's why this morning when I saw the closing arguments come last night from Mr. Ballantine, and yours I received this morning, that I thought it would be appropriate and make the process fair to both sides to allow some extended oral argument this morning, and so that's partly why we're going through this process.

Going head.

MR. GRIFFIN: Thank you, your Honor.

I think what you're required to do is follow the -- in giving an award, you're required to follow

1185-1, and I ask you to review that in your consideration.

Let's go straight to the findings of Award 5. The $62,145.53 are expenses for repairs and maintenance and not are be capital improvements or capital expenses that can be passed on, pursuant to the ordinance. Irrespective of what the experts have said, the ordinance just doesn't say that.

No. 2, argument 2, of the $62,000 number, some of the expense included in the $62,145.53 are expenses that were not incurred until after the meet and confer on February 16, 2011. I suggest you see the Board of Supervisors letter for January 5, 2016, referencing Attachment F, Exhibit J, referencing Exhibit K.

MR. BALLANTINE: I have a concern about, I think, counsel referencing things that are in the Board of Supervisors record, my understanding are not necessarily in this record, so I don't think that's an appropriate reference to the exhibits or the evidence in this proceeding.

ARBITRATOR: Well, let's do this. Counsel, I'm just starting to follow your argument. I'm following your argument as we go, and I notice the two items that you just mentioned are in your written brief. I have that before me and it's well written, so you can move

along and get past that.

MR. GRIFFIN: All right. The arguments I set out in my brief are the ones I'm following now.

So then with respect to the $25,000, that is in reference to Attachment F, Exhibit Q, and what seems to me that the round numbers that are thrown out in these situations are not definite and certain. I think we need more specificity.

With respect to the architectural and engineering fees of $40,000, given the age of the supporting documents, and some of these appear to be prior to 2008, these items have little or no value as of the arbitration date of 2011. Again, they were not identified as the cost of capital improvement, a capital expense so as to be passed on to the homeowners.

These professional fees are not identified as to which capital asset they attach to, together with any other information upon which an increase is based.

With respect to Finding 5, Award 8, the findings of the fact by the arbitrator for past payments by park owners for increased taxes are conclusionary in stating the, quote, "$130,531 spent by the park owners can be included in the temporary increase."

The parties were unsure whether or not such fees could be awarded as part of any favorable tax

appeal. If there is such an award, judgment or settlement in the future, those amounts should be credited to homeowners.

Findings of fact must be made that are supported by preponderance of the evidence. The nature of the payments does not include a breakdown of the amounts owed by homeowners upon change of ownership of mobile homes as to amounts owed by past owners and amounts owed by the new owners that purchased the property, and it should be broken down. The amounts to each homeowners, old or new, are not definite and certain.

The supplemental tax increase was treated as an ordinary expense under 1185, it passed through under 1186, which is strictly not allowed by the ordinance but which appears that the experts indicated that that's what they wanted to do.

The nature of the payment through the ground lease wherein the petitioners agreed to pay real property taxes, in the revised remand the Board used the phrase "nature," and in addressing the phrase "nature," I'm saying the nature of the payment was through the ground lease wherein the petitioners agreed to pay the real taxes. In other words, it was a cost of the lease, it wasn't a charge that should be allowed, it was a

negotiation for the lease.

With respect to the last award, Finding 6, Award 11, the attorney's fees, for this award the arbitrator's decision, your decision, and I'm quoting from the Board here, don't take this personally, "The arbitrator's decision concluded that, after reviewing the itemization submitted by the park owners for legal services expended in this matter, Exhibits R and S" -- I think "R" is for the perhaps Mr. St. John, and the "S" is probably for Mr. Ballantine -- "the homeowners' response to a reasonable amount to be paid by the latter would be $110,000." That sentence is a little funny. What it really means is that the homeowners are not agreeing to the $110,000, but it almost could be read that way if you read the Board of Supervisors finding.

Findings for this award are especially important because legal fees are not expressly identified in the ordinance as an allowable operating expense. These legal fees were treated as an operating expense under 1185 but passed through as though a capital improvement or capital expense under 11A-6(a)2, amortization of improvements and capital expenses in which there is no provision for passing through operating expenses. The Board remands this award to the arbitrator to make findings of fact on which the arbitrator's

decision is based.

And the argument here is that there are no documents showing the $110,000 in attorney's fees is related to rent increase. The documentation actually shows that these attorney's fees are largely related to Health and Safety Code violations and other items. And my reference there is to see Board of Supervisors agenda letter for agenda dated January 5, Attachment F, Schedule S.

These fees were never paid, and that should have shown that these attorneys fees were never paid, and that's shown at Attachment M of the arbitration transcript, page 172. I think that was Mr. Waterhouse's testimony. Interest is being paid by the homeowners on these attorneys fees that were never paid by the park owners, if that's the case. See Board of Supervisors agenda letter for agenda dated January 5, 2016, Attachment F, Exhibit C.

Legal fees should not be allowed. Legal fees associated with the challenge to the rent increase in the sum of $110,000 are treated as an ordinary expense under ordinance 11A-5 but cannot be expended under 11A-6(a)(2) as a pass-through, and thus legal fees should not be allowed.

I think the ordinance, in essence, your Honor,

leaves some gaps in how to treat these items and how they are paid for.

Thank you.

ARBITRATOR: Thank you, sir.

Mr. Ballantine?

MR. BALLANTINE: Thank you, your Honor.

REBUTTAL ARGUMENT BY MR. BALLANTINE

MR. BALLANTINE: A brief rebuttal to a few points, your Honor. With the first point, pursuant to my objection regarding the meet and confer, I found the stipulation and, your Honor, I would cite the transcript, the second transcript -- that is, the second day of the hearing because they both started with 1, page 1, page 188, line 2, and I'll actually just read it.

It was Mr. Stanton, the homeowners' attorney, said: "I'll object to all of this."

And I'll note for the transcript there was a question about the meet and confer process and homeowners' objection was "I'll object to all of this. I don't know how it's relevant. The meet and confer issue had never been made a subject of the hearing and it's hearsay."

And then there's a little bit of dialog, but starting on line 10, same page, your Honor said "But with

that, do we have a stipulation for the due process in this matter and get past all this?

"MR. STANTON: We'll stipulate to that."

Mr. Ballantine stipulated as well.

I think there was a clear stipulation that meet and confer wasn't going to be an issue, otherwise -- we're relying on that stipulation. Otherwise, there could have been other evidence. So I think counsel's argument about something not being subject to the meet and confer presented at a meet and confer is covered by that stipulation and the park owner is prejudiced by being subjected to that at this point in time, having already stipulated that the meet and confer wasn't an issue here.

To comment on a few of the comments made by counsel, it sounds like the homeowners are still trying to argue the property tax issue, and that's simply not at issue in this hearing. That's already been adjudicated.

With respect to Exhibit 9, counsel indicates it's in evidence. I don't know whether it's in evidence, I don't recognize it, I don't see it in evidence. Maybe some of the information is in evidence, but the one thing I would note that may be in evidence is that references after August 2008, the next property tax payment was December 8, 2009, and it showed a $60,000 payment.

That's actually consistent with the evidence in the record, that it was well over a year after the August transfer date, new lease date, that the park found out about and then paid the supplemental property tax issue.

That goes to the regulatory lag issue. Payment was actually made in December of 2009 and the rent increase notice asking for the supplemental repayment of the supplemental property taxes was January of 2011. That was a year later, so it was really only a year after the expense was incurred that it was paid, so the degree that Award No. 8, the supplemental property tax issue is at issue, I note that even from what's been proffered and what's in evidence, that it was really about a year later that the notice came up.

Counsel argued that certain items that appear -- I guess he's referencing Exhibit J, that are capital expenses were somehow not booked as a capital item or as an expense, and I would point out that -- he didn't cite what books were so I don't know what the reference is, but that's kind of apples and oranges whether or not what books and records may show as to whether or not something was capitalized or expensed really is irrelevant to -- or at least not dispositive as to what the ordinance says is treated as a capital item or expense.

In order to determine a capital item, we look at what the ordinance says. And we look at what the ordinance says, and I think if we track the ordinance back to Exhibit J and then Exhibit K, all of those items, the $62,000 and change items clearly fall within capital items and were actually paid. The testimony is that they were paid.

With respect to the -- counsel argued, if I understood correctly, with respect to the attorney's fees, I think he's confusing a couple of points. First of all, he argued there was no documentation to support the arbitrator's award of $110,000 in attorney and professional fees related to the rent control proceedings, and that's just inaccurate. There is documentation. There's Exhibits R and S, which are detailed statements from Dr. St. John and from my office that show the work that was done that add up to more than that.

He also argued that there's no evidence that it was ever paid, and that's not true, there is evidence it was paid, and in fact all of those items were in fact paid. To whatever degree that things may have been paid after the billing, because generally you pay bills after you get them, as the court has indicated, the record closed on October 19, so it's unfair to argue that if

there were payments made after the billing statement went out in October of 2011, that somehow there's evidence that they weren't paid. In any event, they were, but regardless, that's not the appropriate standard for this proceeding.

He also said is that the work shows things like dealing with regulatory agencies and other things. Counsel is confusing a different exhibit, Exhibit Q. Exhibit Q in evidence was the statement that backs up the $50,000, approximately $50,000 bill, and it indeed does show legal work related to dealing with regulatory agencies and dealing with the land owner and other things that you would expect a mobile home park to have legal issues to have to address, and that was Exhibit Q, and that's a totally different line item than Exhibits R and S, which relate to the rent control proceedings.

And again, I won't reiterate what I've said, but just observed that counsel has again argued that attorney's fees should be operating expenses but instead they're being treated as capital, and that's just absolutely contradicted by their opening statement and -- that is, in the initial proceeding, and their agreement that the fees should be in fact treated as a temporary expense.

Counsel indicates the ordinance leaves a gap,

and I think that's exactly the point that the Carson case talks about, says these rent control ordinances such as this have sufficient flexibility for the arbitrator, as this arbitrator found and as Judge Anderle found, to treat certain items like this as a temporary rent increase, and it was again appropriately treated and Item 11 really is not back before this Board -- or this arbitrator by virtue of Judge Anderle's ruling and the written mandate proceeding.

The final point that I make is with respect to Item 12, the calculations. I would note that one thing that your Honor did in your initial arbitration award that we appreciated was the retained jurisdiction to essentially kind of enforce the -- effectuate the terms of the order because the rents may be a moving target. There may be -- depending on how the numbers come out, there may be adjustments to the rents and those will have to be handled in some way. I would note that as it stands now, some residents have paid the rent increases ordered by the arbitrator previously, some have not.

The park has forborne on doing anything about those who haven't out of courtesy to them, but at some point I think when you redo calculation 12 or redo the calculation pursuant to Award No. 12, some thought should be given to if there's -- if there's an adjustment, how

that is treated and might suggest that I think it was a good idea to reserve jurisdiction to address that because, as I said and I think Mr. Stanton said at the last arbitration hearing, we're hoping to get a complete resolution of all the issues before this arbitration. And because of that, that's one of the reasons, the basis for our request that the arbitrator consider the capital expenses actually incurred are Exhibit V, to try to get a complete resolution, because the alternative is that the park essentially noticed the new rent increase based upon those, and hopefully not, but potentially start another lengthy process like this.

We think it's in everyone's interest to get this resolved now in this proceeding rather than in another proceeding, and the same would go for the reason for our request to, as the park owners had suggested, address the issue of legal fees and professional fees incurred in connection with these proceedings now by way of, essentially, a noticed motion proceeding so that this arbitration addresses those and we try to work towards a complete resolution of all of the issues that are really before the arbitrator.

So anyway, I thank again for your time and attention to all of this.

ARBITRATOR: Thank you.

A couple more comments. You know, I always encourage parties -- my decision is going to be due 30 days from today. I think that's per the ordinance. The court reporter will have a transcript available within ten business days. No additional briefing will be required or will be accepted.

So we will close this hearing today.

I want to thank both sides for being very professional. Again I would ask that because, you know, I have 30 days to get this back, I always encourage parties that once they've heard the other side of the story, to talk things over, and if you reach an agreement, that's great. If you do, let me know. It'll save me some work.

With that, thank you all and this hearing is closed.

(The proceedings concluded at 10:41 a.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA BARBARA)

I, MARK McCLURE, CSR NO. 12203, a Certified Shorthand Reporter for the County of Santa Barbara, State of California, do hereby certify:

That said proceedings were taken down by me in stenotype at the time and place therein named, and thereafter reduced to typewriting by computer-aided transcription under my direction.

I further certify that I am not interested in the event of the action.

WITNESS my hand this 25th day of February, 2016.

Mark McClure

Certified Shorthand Reporter
State of California
CSR No. 12203

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