County of Santa Cruz

767

OFFICE OF THE COUNTY COUNSEL

701 OCEAN STREET, SUITE 505, SANTA CRUZ, CA 950604068
(831) 454-2040 FAX: (831) 454-2115

DWIGHT L. HERR, COUNTY COUNSEL
CHIEF ASSISTANTS
Deborah Steen
Samuel Torres, Jr.

Assistants
Harry A. Oberhelman III
Marie Costa
Jane M. Scott
Rahn Garcia
Tamyra Rice
Pamela Fyfe
Ellen Lewis
Kim Baskett
Lee Gulliver
Dana McRae

May 18, 1999

Agenda: May 25, 1999

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Mobilehome Commission; Recommended Amendments to the Rent Adjustment Ordinance

Dear Members of the Board:

Introduction: In the fall of 1997, the Santa Cruz County Mobilehome Commission formed a subcommittee to review Santa Cruz County's Mobilehome Rent Adjustment Ordinance (Santa Cruz County Code sections 13.32 et seq.). The purpose of the Subcommittee's review was to recommend whether any amendments would be appropriate to make the Ordinance more effective and equitable in achieving its stated goals: Protecting mobilehome residents from unreasonable space rent increases while ensuring that park owners receive a just and reasonable return on their property.

The subcommittee was composed of five residents, two park owners and Terry Hancock, an attorney with Santa Cruz Senior Citizens Legal Services, who resided as chairperson. The Subcommittee accepted suggestions from non-members at each of its meetings as a regular part of its agenda. The proposed amendments were then sent to County Counsel who made some recommendations for additional changes. The amendments were then brought to the Mobilehome Commission for discussion and approval prior to forwarding to your Board.

This letter will generally describe each of the amendments proposed by the Commission and its subcommittee, as well as identify the particular issue the amendment sought to address. Finally, this letter will suggest several additional revisions to the recommendations of the Mobilehome Commission that are proposed by this Office for your Board's consideration. The draft ordinance attached as Exhibit "A" with this letter includes each of the amendments proposed by the Commission.

A. General Rent Adjustment Standards; Pass-through of the Cost of Repairs or Replacement of Certain Utility Systems; Section 13.32.030(d)5.M., and N.

The Issue: Some utility providers (PG&E, for example) allow park owners to charge their residents more for their utility usage than the park owners have to pay for such utility service. The purpose of this system is to allow the park owners to accumulate the necessary funds for making future repairs and improvements to the utility infrastructure in the park.

Commission Recommendation: The Commission approved a recommendation that would limit the ability of a park owner to pass on such charges to the residents where the park owner receives a discount or rate differential from a utility company. The Ordinance would prohibit the park owner and his successors, from using the general rent adjustment procedure to pass-through the expenses of owning, operating, repairing, replacing or maintaining such utility distribution services.

B. General Rent Adjustment Standards; Pass-through of Government Required Service Charges; Section 13.32.030(d)6.

The Issue: If a government agency requires a park owner to pay certain charges in order to operate a park, should the Ordinance allow the park owner to pass that cost onto the residents? If so, what limits, if any, should the Ordinance place on this type of pass-through?

Commission Recommendation: The Commission approved a recommendation designed to clarify that a "government required service charge" must actually be billed to the park owner in order to qualify under this section. The Commission also recommends that the provision which excludes expenses for the "safe and healthful use of park facilities" from being passed-through as a permissible pass-through be deleted.

C. General Rent Adjustment Process; Access to Records Which Justify Rent Increase; Section 13.32.030(h).

The Issue: When a park owner issues a notice of a General Rent Adjustment, how soon must a park owner provide the residents with access to the records which support the proposed rent increase?

Commission Recommendation: The Commission approved a recommendation which would require park owners to make supporting records available within five days of a written request by a resident.

D. Special Rent Adjustment Standards; Treatment of Expenses for Payment to Outside Management Companies Controlled by the Park Owner; Section 13.32.040(b)3.E.

The Issue: When a park owner applies for a special rent adjustment, the hearing officer must determine the legitimate "operating expenses" of the park for the most recent ("current") year. The higher the "operating expenses" are in the current year, the more likely it is that the park owner will be granted a special rent adjustment. The question discussed by the Commission is whether the Ordinance should place any limits on the park owners' ability to claim that payments to owner-controlled management companies qualify as "operating expenses" for the purposes of a special rent adjustment proceeding.

Commission Recommendation: The Commission approved a recommendation that owner performed labor be compensated at the current rate multiplied by the index level reported in the San Francisco-Oakland Consumer Price Index-Urban Wage Earners and Clerical Workers Category. An outside management company which is owned or otherwise controlled by the park owner will be compensated at the same rate.

E. Special Rent Adjustment Standards; "Unusual Factors" Which Allow Hearing Officers to Ignore the Presumed Comparable Rate of Return; Section 13.32.040(g)4.

The Issue: What factors should the Hearing Officer be allowed to consider in deciding whether to ignore a presumption stated in the Ordinance about what level of income constitutes a fair ("comparable") rate of return?

Commission Recommendation: The Subcommittee had proposed that the Commission consider a amendment to the Ordinance that would preclude Hearing Officers from considering inflation as an "unusual factor" under 13.32.040(g),4. The Mobilehome Commission did not make a recommendation concerning this proposed amendment however, and based on the advice of this Office, took no position on whether to recommend it to your Board.

The ordinance currently allows a park owner to receive a "special" rent adjustment, over and above the annual "general" rent adjustment they receive, when the owner can prove that such an increase is required to provide him or her with a Net Operating Income (NOI) that is comparable to the NO1 received when the ordinance first went into effect (the base year). The ordinance specifies that an adjustment of 50% of the percentage change in the CPI (Consumer Price Index) from the base year to the present is presumed to provide a comparable NO1 for the owner. This provision provides park owners with a procedure for requesting a rent level that ensures they receive the constitutionally required "just and reasonable return on their property". This Office has examined this provision in depth and has consulted with an rent control ordinance expert to determine whether a change in the ordinance is appropriate. The expert, Kenneth H. Baar, has submitted a memorandum entitled "Considerations in Selecting an Indexing Ratio under Maintenance of Net Operating Income Standards", a copy of which is attached. Mr. Baar's memorandum concludes that adjustment of Net Operating Income by 50% of the change in the CPI is reasonable and adequate to provide mobilehome park owners with a just and reasonable return on their property.

It is the opinion of this office that the provisions of Section 13.32.040(a) should be interpreted to only authorize an NOI with a greater than 50% CPI adjustment, if justified by the factors enumerated in the ordinance', and should not include a consideration of inflation beyond that already provided by the CPI adjustment.

---

[1]The following factors may be considered by a hearing officer when determining the comparability of Net Operating Income: (1) The rental history of the park; (2) The level of services and amenities of the park during the Base Year and during the current year; (3) Any extraordinary capital expenditures necessary to repair or reconstruct a park damaged by natural disaster or required by health, building or fire protection officials not covered by insurance or other disaster insurance; or (4) Other unusual factors affecting comparability of Net Operating Income. County Code Section 13.32.040(g).

This Office would recommend that your Board not act to amend this provision at this time. Instead, it is recommended that your Board accept and approve Mr. Baar's memorandum concluding that a 50% adjustment of the CPI is adequate, and that your Board affirm that inflation should not be treated as an unusual factor justifying a CPI adjustment at a rate greater than 50%.

F. Special Rent Adjustment Hearing Decisions, Binding Nature; Section 13.32.060(b)16, A. and B.

The Issue: How can the Ordinance prevent the re-hearing of matters that have been finally decided in a prior hearing?

Commission Recommendation: The Commission approved a recommendation that the Ordinance be amended to provide that the decisions of a Hearing Officer be binding in future hearings between the same parties where the issues of law and/or fact are substantially the same.

G. Special Rent Adjustment Procedure; Penalty for Park Owners' Failure to Substantially Prevail on Petition; Section 13.32.060(b) 18.

The Issue: Should the Ordinance penalize a party who does not substantially prevail in a petition for a special rent adjustment?

Commission Recommendation: The Commission approved a recommendation that the Hearing Officer be authorized to order a party to pay the reasonable attorney's fees, incurred by the other party as a result of the filing of a frivolous petition as defined in the proposed language of the amendment.

This Office would recommend that your Board consider a modification of the Mobilehome Commission's recommendation by deleting the underlined sentence below:

> A Petition for a Special Rent Adjustment shall be rebuttably presumed to be "totally and completely without merit" if the petitioner recovers less than fifty percent (50%) of the sum total of what was requested in the petition.

Based on recent case law, this Office believes that this provision establishing a

rebuttable presumption could be subject to legal challenge for sanctioning a "non-frivolous" petition. The fact that a petitioner does not obtain a certain percentage of what was requested in a petition is not probative of a frivolous petition. This presumption could be viewed as imposing a burden upon, and therefore a disincentive to a party considering whether to submit a petition. Even if this presumption is eliminated, a Hearing Officer would still be authorized to sanction a party for proposing a frivolous petition if it is found to be completely without merit or for the sole purpose of harassing an opposing party.

H. Hearing Procedures; Pre-hearing Settlement Conference; Section 13.32.060(b)5.

The Issue: Should the Ordinance require the parties to participate with the Hearing Officer in a pre-hearing settlement conference?

Commission Recommendation: The Commission approved a recommendation that the Ordinance be amended to require the parties to attend a pre-hearing conference and that each party submit certain information to be used at the conference.

I. Hearing Procedures; Disqualification of Hearing Officers; Section 13.32.060(b)4.,8.,9. and 12.

The Issue: Should the Ordinance allow the parties to disqualify a Hearing Officer who was initially assigned to hear the case, without cause?

Commission Recommendation: The Commission approved a recommendation that each party be allowed to disqualify one Hearing Officer without cause. The Commission also recommended that the County's panel of Hearing Officers be expanded to be "at least five" in order to deal with the disqualifications.

J. Hearing Procedures; Sanction for Late Submission of Documents by Parties; Section 13.32.060(b)15.E.

The Issue: Should the Ordinance allow the Hearing Officer to penalize parties who do not submit documents in a timely fashion?

Commission Recommendation: The Commission approved a recommendation

that the Ordinance be amended to require that a Hearing Officer generally refuse to admit into evidence documents which were not submitted either according to the time deadlines set forth in the Ordinance or as established by the Hearing Officer.

K. Hearing Procedures; Sanctions for Intentional or Reckless Submission of Inaccurate Information or Documents by Parties; Section 13.32.060(b)15.G.(iii).

The Issue: Should the Ordinance allow the Hearing Officer to penalize parties who intentionally submit information which is inaccurate? If so, what type of penalty is appropriate?

Commission Recommendation: The Commission approved a recommendation that the Ordinance require the Hearing Officer to dismiss a petition which intentionally contains inaccurate or misleading information.

L. Hearing Procedures; County Counsel Opinions on Legal Issues; Section 13.32.075

The Issue: Should residents and park owners be able to obtain legal opinions from the County Counsel about the intent and meaning of the Ordinance? If so, when should such opinions be available and should such opinions have a binding impact on the Hearing Officer's decision.

Commission Recommendation: The Commission approved a recommendation that the Ordinance specifically provide for obtaining opinions from the County Counsel. Such opinions would be limited to questions involving legal issues, would be non-binding and would be issued only before the hearing process begins.

M. General Rent Adjustment Standards: Normal Maintenance and Repair and Qualified Capital Improvements, Section 13.32.030 (d)5., J.

The Issue: Add clarification to what constitutes normal maintenance and repairs as opposed to expenses that qualify as Capital Improvements under the ordinance.

Commission Recommendation: The Commission approved a recommendation

precluding certain plumbing projects, and road repair and maintenance projects from the list of eligible capital improvements.

N. Hearing Procedures: Reconsideration, Section 13.32.060(b) 17

The Issue: Should the County have standing to request reconsideration of a Hearing Officer decision?

Commission Recommendation: The Commission approved a recommendation granting the County standing to request reconsideration of a decision related to a question of law.

O. Recreational Vehicle and Trailer Parks, Section 13.32.102

The Issue: When a recreational vehicle or trailer park rents park spaces in excess of nine months, how should the base rent of those vehicles be established by the Mobilehome Rent Adjustment Ordinance?

Commission Recommendation: Currently, the ordinance defines "mobilehome" broadly to include travel trailers, recreational vehicles, camping trailers, motor homes, slide-in campers and park trailers that have been occupied by residents continually for nine months or more. The Commission approved a recommendation clarifying that the ordinance applies to travel trailers, recreational vehicles, camping trailers, motor homes, slide-in campers and park trailers meeting this definition of a mobilehome, and specifying how the base rent would be established. Base rent would be set at that amount of rent charged when the park owner initially received written notice from the County that the space was subject to the provisions of this Chapter. This amendment reflects the County's current interpretation and application of the ordinance.

Subsequent to receiving the Mobilehome Commission's recommendations, this Office uncovered an inconsistency within the ordinance concerning the definition of "operating expenses" used to establish a mobilehome park's Net Operating Income. Under subsection G. of Section 13.32.040(b), 3., expenses associated with the reasonable rate of return or cost pass-through for an eligible capital improvement are included as allowed operating expenses. However, under subsection (vii) of Section 13.32.040(b),I., capital improvements that are financed by ordinance-approved pass-throughs or insurance reimbursements are not included with the definition of operating expenses. This conflict

stems from prior amendments to the ordinance changing provisions concerning capital improvements. Because the money derived from approved pass&roughs or insurance reimbursements authorized by the ordinance count as income, it is appropriate that it also be counted as an operating expense when determining the park owner's Net Operating Income. It is recommended that your Board delete subsection (vii) of Section 13.32.040(b),I., and clarify that expenses associated with the reasonable rate of return or cost pass-through for an eligible capital improvement are included as allowed operating expenses.

IT IS THEREFORE RECOMMENDED that your Board:

1. Accept the Memorandum from Kenneth K. Baar entitled "Considerations in Selecting an Indexing Ratio under Maintenance of Net Operating Income Standards" and approve his findings concerning the constitutionality of indexing net operating income at 50% of the increase in the Consumer Price Index.

2. Approve the interpretation of the provisions of subdivision (g) of Section **13.32.040,** that inflation should not be considered an unusual factor justifying a CPI adjustment greater than 50%.

3. Approve in concept the amendments to Chapter 13.32 recommended by the County Mobilehome Commission and as revised by County Counsel.

4. Direct that a summary of the ordinance be published by the Clerk of the Board; and

5. Direct that the proposed ordinance be returned to the Board for final consideration on June 8, 1999.

Very truly yours,

DWIGHT L. HERR, COUNTY COUNSEL

By _____
RAHN GARCIA
Assistant County Counsel

RECOMMENDED:

_____
SUSAN A. MAURIELLO
County Administrative Officer

62

BSMHCORD.WPD

Enclosure: Exhibit "A" - Draft Ordinance
Exhibit "B" - Memorandum from Kenneth K. Baar entitled "Considerations in Selecting an Indexing Ratio under Maintenance of Net Operating Income Standards"

cc: Mobilehome Commission

ORDINANCE NO. __

ORDINANCE AMENDING SECTIONS 13.32.020, 13.32.030, 13.32.040 AND 13.32.060, AND ADDING SECTIONS 13.32.075 AND 13.32.102 TO THE SANTA CRUZ COUNTY CODE RELATING TO RENTAL ADJUSTMENT PROCEDURES FOR MOBILEHOME PARKS

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Section 13.32.020 of the Santa Cruz County Code is hereby amended to read as follows:

13.32.020 GENERAL DEFINITIONS. For the purposes of the chapter, the following words are defined as follows:

Anniversary Date. The one day per year designated for the park when each resident's rent may be adjusted by the owner. The resident shall be informed by owner at the time of signing the rental agreement of the anniversary date. Each park shall have no more than one anniversary date. For a park that does not currently have a uniform anniversary date for the entire park, there can be no more than one anniversary date in any year, including the year in which such uniform anniversary date is designated for the entire park.

Base Rent. The monthly rent charge for an existing mobilehome space after adjustment on its anniversary date in 1982; or, for a mobilehome space constructed on or after January 1, 1983, the initial rent charged; provided, however, that the base rent for a park space within a recreational vehicle/trailer park subject to Section 13.32.102 shall be that amount of rent charged when the park owner initially received written notice from the County that the space was subject to the provisions of this Chapter, and provided further that if the level or kind of services provided to residents is reduced or eliminated, then the base rent shall be the net amount of such rent after deduction of an amount equal to the cost savings resulting from such reduction or elimination of services, all as set forth at Section 13.32.050.

Capital Improvement. A capital improvement is the construction of a new improvement or replacement of an old improvement in the mobilehome park, other

than routine maintenance and repair. To be eligible for a pass-through, a capital improvement shall be subject to the limitations pursuant to 13.32.030(d)5.A through N ~~L~~.

Commission. The Mobilehome Commission established by the Board of Supervisors under Chapter 2.64 of the Santa Cruz County Code.

Consumer Price Index (CPI). The San Francisco-Oakland Consumer Price Index-All Urban Consumer Category as provided by the United States Department of Labor Statistics or its successor.

County Staff. County staff means the staff for the County of Santa Cruz Mobilehome Commission and the staff for the administration of the Hearing Officer Program established by resolution by the Board of Supervisors.

Hearing Officer. A Hearing Officer is a person appointed pursuant to this chapter who makes rental adjustment decisions after hearing of disputes thereon.

Mobilehome. A mobilehome is a structure designed for human habitation and for being moved on a street or highway, whether commonly referred to as a "mobilehome"; or, where occupied by residents who have continually resided in a recreational vehicle park or mobilehome park for nine months or more after January 1, 1980 a residence commonly known as a "travel trailer", "recreational vehicle", "camping trailer", "motor home", or "slide-in camper" and a "park trailer".

Mobilehome Park (also referred to as "park"). A mobilehome park is an area of land where two or more mobilehome sites are rented, or held out for rent, to accommodate a mobilehome used for human habitation.

Mobilehome Space (also referred to as "space"). A mobilehome space is an area bounded, numbered and designated as required by 25 California Administrative Code Section 1104 and occupied by one (and only one) residence deemed to be a mobilehome; or a trailer, or a recreational vehicle, pursuant to the California Civil Code; or any area commonly known to be used as a space for a mobilehome in a park.

Owner. The owner, lessor or sublessor or any other person entitled to receive rent for the use and occupancy of a mobilehome and/or a mobilehome space in any mobilehome park subject to this chapter, or successor in interest to the foregoing; or representative authorized to act on the owner's behalf in connection with

matters relating to a tenancy in the park.

Rent. All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods or services rendered to or for the benefit of the owner under an agreement concerning the use or occupancy of a mobilehome and/or a mobilehome space, including all payment and consideration demanded or paid for parking, pets, furniture, or subletting. Rent includes charges made by the Park Owner for utility services in excess of the actual net costs of the Park Owner -of providing such utility services as provided by Section 13.32.030(d)(9). 779

Resident. Any person or persons entitled to occupy a mobilehome dwelling unit and/or a mobilehome space pursuant to ownership thereof or by a rent or lease agreement. (Ord. 2843, 1/15/80; 2912, 5/6/80; 3027, 12/23/80; 3224, 4/27/82; **3854,** 9/11/87; **3975,** 2/14/89; 4059, 5/1/90; 4404, 2/27/96)

SECTION II

Section 13.32.030 of the Santa Cruz County Code is hereby amended to read as follows:

13.32.030 GENERAL RENT ADJUSTMENTS.

(a) General Rent Adjustments may be made once each calendar year by the owner without notice to the County. A General Rent Adjustment notice, in the form specified in Section 13.32.030(f), shall be mailed to the residents prior to the making of such a General Rent Adjustment.

(b) This annual General Rent Adjustment may only be made on or after the anniversary date of the resident.

(c) The maximum allowable monthly rent increase under this section shall be limited to the amount by which the base rent together with the adjustments hereafter provided varies from the current monthly rent.

(d) The following criteria shall determine the maximum increases allowed the owner in connection with general rent adjustments permitted by this chapter:

1. Reduction or Elimination of Services. An owner shall not reduce or eliminate the level or kind of services provided to residents unless such reduction or elimination of services is otherwise lawful and is accompanied

by a reduction of rent equal to the cost savings resulting from such reduction or elimination of services. The amount determined to be the cost savings shall be subtracted from the base rent.

2. Changes in Property Taxes. The difference between the amount of property taxes payable for the 198 1 calendar year and the amount of property taxes payable for the calendar year preceding the current anniversary date may be pro-rated to each resident on a per space basis.

3. Changes to the Consumer Price Index. An amount equal to or less than fifty percent of the percentage change in the price index level for the San Francisco-Oakland Consumer Price Index-All Urban Consumer Category CPI between July 1, 1981 and the July 1 prior to the year in which the rental increase is to go into effect multiplied by the base rent, may be added to the rent of each unit.

4. Return on Capital Improvements. A reasonable return on capital improvements not financed by pass-throughs to residents or by insurance coverage at a rate determined annually as of July 1, by resolution of the Board of Supervisors may be allowed on capital improvements made at the park prior to the anniversary date and pro-rated to residents on a per-space basis. Entitlement to a reasonable rate of return commences at the time when the capital improvement is operational and available for use by the park residents and terminates at the conclusion of the amortization period set forth in 13.32.030(d)(5)(G). (Ord. 4404, 2/27/96)

5. Costs of Capital Improvements. Fifty percent of capital improvement costs to the park owner for construction of capital improvements to the park may be passed-through to the residents prorated on a per-space basis. Such costs shall be charged to a capital account to be depreciated over the useful life of the asset in a manner similar to an item charged to an expense account under Internal Revenue Service Rules and Regulations; provided, however, that at the end of the amortization period for the capital improvement, the maximum allowable monthly rent shall be decreased by such amount as it was increased pursuant to this provision. Pass-throughs of capital improvement costs shall be subject to the following limitations:

A. The improvement shall primarily benefit the majority of park residents rather than the park owner(s) and be a functional improvement serving primarily the park residents.

B. The improvement shall have a life expectancy of five years or more and must be treated as a capital improvement for Federal and State income tax purposes and may not be deducted for such tax purposes as expenses.

C. Normal routine maintenance and repair do not constitute a capital improvement.

D. The owner has the responsibility to provide and maintain physical improvements in the common facilities in good working order and condition pursuant to California Civil Code Section 798.15. Costs of maintenance and repair (as opposed to replacement) of such improvements shall not be passed-through to residents, nor shall costs of replacement be passed-through if the replacement was necessary because of owners failure to carry out said maintenance responsibility.

E. Insured repairs and replacements do not constitute a capital improvement.

F. The improvement shall be permanently fixed in place or relatively immobile.

G. Subject to the vote requirements and the capital improvement limitations herein described, fifty percent (50%) of the actual net costs of a capital improvement may be passed-through to the park residents upon sixty (60) days written notice upon the following formula: fifty percent (50%) of the principal amount actually paid by the park owner for the capital improvement, divided by the total number of mobilehome spaces in the park affected by the improvement divided by one hundred twenty (120) months (the amortization period for the capital improvement), equals the monthly sum for the capital improvement to be passed-through to the park residents at their first anniversary date after the capital improvement becomes operational and available for use by the park residents. The one hundred twenty (120) month period represents the amount of time required for fully amortizing the cost of capital improvements. If so agreed in writing between the park owner and all current park residents an alternative amortization period may be used.

H. At no time shall the aggregate capital improvement pass-

through of costs exceed ten percent (10%) of the monthly rent (excluding any portion of the rent attributable to capital improvement pass-throughs) unless approved by the residents of fifty percent (50%) plus one of the mobilehome spaces of the park. Pass-through of the cost of any single capital improvement which would exceed five percent of the current monthly rent (excluding capital improvement pass-throughs), shall only be allowed if approved by residents of fifty percent (50%) plus one of the mobilehome spaces of the park. No more than one capital improvement which would result in a pass-through exceeding five percent of the monthly rent may have its costs passed-through in any twelve month period. Fifty percent (50%) of the cost of capital improvement projects mandated by governmental authority shall be included in the calculation of the ten percent of monthly rent limitation described in this section.

I. For the purpose of obtaining the approvals required by subsection 13.32.030(d)(5)(H), elections shall be conducted by the park owner on whether to approve or reject a proposed capital improvement cost pass-through prior to the time the capital improvement becomes operational and available for use by the park residents. Residents shall be entitled to one (1) written ballot vote per affected mobilehome space in said park. Each ballot shall specify the proposed capital improvement to be voted upon and the amount and dates of commencement and expiration of the monthly pass-through resulting from said capital improvement. Each ballot shall be delivered by first class mail to the park residents and the deadline and park location for casting such ballot shall be set forth clearly thereon. Such deadline shall be no less than twenty days (20) from the postmark date of ballot mailing to the resident.

J. Capital improvements include shall meet all of the eligibility criteria contained in subsection 5. of subdivision (d) of Section 13.32.030, and may include (wi thout limitation) construction, installation, or replacement of a clubhouse, laundry facility or other common area facility, swimming pools, sauna or hot tub, or other recreational amenity, street and driveway, security gate, outdoor or common area lighting, retaining wall, sewer, electrical, plumbing unless associated with a non-eligible capital improvement, water, or television reception system, sprinkler system, or any 'similar improvement which represents an addition to or an upgrading of existing improvements which primarily benefits the park residents.

Routine maintenance or repair, including, but not limited to routine maintenance or repair of a street or driveway by means of patching, a seal coat or slurry seal, shall not qualify as a capital improvement.

K. An owner shall separately bill the cost pass-through for each capital improvement only during the period the park owner amortizes such capital improvement.

L. Capital improvement costs otherwise eligible for pass-through are not eligible to the extent that the park owner recovers such costs through charges of a use fee such as where the park resident must deposit coins to use a park-owned washer and dryer.

M. Where a park owner receives a discount or rate differential (including, but not limited to, a "Readiness to Serve Charge") that is intended to subsidize or offset the cost of owning, operating, maintaining and replacing the park's utility distribution system, the repair, maintenance, or replacement of such utility distribution system shall not qualify as a capital improvement.

N. The park owner's responsibility for the cost of owning, operating, maintaining or replacing a utility distribution system as established by subsection 13.32.030(d)5., M., shall transfer to and become the responsibility of any subsequent purchaser of the park, or successor in interest to the park owner..

6. Government Required Service Charges. Government required service charges are those charges which are legally levied and actually billed to a park owner by a governmental agency such as fees, bonds, and assessments: ~~and other charges legally levied by an agency of Federal, State or local government upon the park owner~~ Such charges shall be passed-through to residents. The difference between the amount of government required service charges payable for the 198 1 calendar year, if any, and the amount payable for the calendar year preceding the current anniversary date may be prorated to each resident on a per space basis. Such fees do not include predictable expenses for operation of said park such as common area utility expenses: ~~or expenses which maintain the safe and healthful use of park facilities.~~ The park owner shall pass-through to the residents only those costs for government required service charges which are not reimbursed by insurance or other sources. (Ord. 4404, 2/27/96)

7. Space Fee. The owner may pass-through to the residents of each mobilehome space the space fee established pursuant to this chapter.

8. No debt service costs or interest expenses as a result of the park owner's borrowing or refinancing for any purpose shall be passed-through to the residents.

9. Utility Readiness-To-Serve Charge. No utility readiness-to-serve charge shall be charged by a Park Owner nor in any manner be passed-through to the residents of a mobilehome park except where the charge is set at the same rate established by the utility provider for a similar class of customer, and park residents receive any lifeline rate discount for which they would be eligible if they were direct customers of the utility provider. (Ord. 3916, 6/21/88; 3975, 2/14/89; 4059, 5/1/90)

(e) The following examples illustrate how the maximum allowable General Rent Adjustment shall be calculated. The Notice of General Rent Adjustment shall include dollar figures and calculations used to arrive at the final computation of rent. The sample computation of rent provided below shall serve as an example of the proper form.

NOTICE OF GENERAL RENT ADJUSTMENT:

"In accordance with the provisions of the County of Santa Cruz Mobilehome Rent Adjustment Ordinance, we are providing you with the following information. The General Rent Adjustment allowed is itemized as follows:"

Assume the following facts:

(1) The park has 150 mobilehome spaces.

(2) The 1982 base rent is $175.00 per month. (See Section 13.32.020 for definition of base rent.)

(3) The park owner eliminates the recreation room of the park (upon agreement by written consent by 50 percent plus one of the residents) bringing cost savings to the owner of $9,000. The cost savings resulting from such elimination amounts to $5.00 per space which is subtracted from the base rent.

(4) Property taxes of the park payable for the calendar year preceding the current anniversary date have increased by $3,600 over the taxes payable for the 198 1 calendar year.

(5) The Consumer Price Index has increased 29 percent between the level in existence on July 1, 198 1 and the level in existence on July 1 preceding the current anniversary date. (50 percent of CPI increase = 14.5 percent).

(6) The park owner has installed additional recreational facilities at a cost to park owner of $30,000 for 150 spaces with the reasonable rate of return assumed to be established at 12 percent by resolution of the Board of Supervisors and such addition meets all pass-through criteria for a capital improvement under this chapter.

(7) Government required service charges payable for the calendar year preceding the current anniversary date have increased by $180 over the fees payable for the 198 1 calendar year.

(8) The newly enacted space fee is $.84 per space per month.

(9) Current rent is $190.00 per month prior to adjustment.

The maximum allowable monthly rental adjustment would be computed as shown below and would amount to $9.42 for each mobilehome space:

Sample Computation:

(1)	THE 1982 BASE MONTHLY RENT	$175.00
(2)	ADJUSTMENTS TO BASE MONTHLY RENT	
	(a) Elimination of Recreation Room resulting in a cost savings per space to the owner subtracted from the base monthly rent $9,000 in savings divided by 150 spaces divided by 12 months = $5 ($175.00 - $5.00 = $170.00)	
	ADJUSTED BASE MONTHLY RENT	170.00
	(b) Property tax adjustment	
	1987/88 taxes $4,800	
	Minus 1981/82 taxes $1,200	

	equals $3,600	
	($3,600 ÷ 150 spaces ÷ 12 months)	2.00
(c)	Consumer Price Index adjustment	
	7/1/87 CPI for use in 1988 353.5	
	Minus 7/1/81 CPI for use in 1982 274 0	
	equals 79.5	
	79.5 is an increase of 29% over the 1981 CPI	
	50% of this percentage CPI increase = 14.5%	
	14.5% times $170 = $24.65	
(d)	Capital Improvements	
	Return:	
	($30,000 X 50% X 12 % ÷ 150 units ÷ 12 months)	1.00
	Cost Pass-Through:	
	($30,000 X 50% ÷ 150 units ÷ 120 months)	0.83
(e)	Government Required Service Charge Adjustment ($180 ÷ 150 ÷ 12)	0.10
(f)	Space Fee	.84
		---
(3)	NEW TOTAL MONTHLY RENT	199.42
(4)	CURRENT MONTHLY RENT PRIOR TO ADJUSTMENT	- 190.00
		---
(5)	AMOUNT OF MAXIMUM ALLOWABLE GENERAL MONTHLY RENT ADJUSTMENT	$ 9.42

OTHER EXAMPLES

EXAMPLES OF CAPITAL IMPROVEMENT INCLUDE, BUT ARE NOT LIMITED TO THE FOLLOWING:
Constructing a new swimming pool where none existed

before; installing air conditioning in the clubhouse where none existed before; replacing the old roof on the existing clubhouse; replacing pump and filter for the swimming pool.

EXAMPLES OF NORMAL ROUTINE MAINTENANCE AND REPAIR WHICH ARE EXCLUDED FROM PASS-THROUGH: patch repair of the clubhouse roof; repairing the pool pump and filter; maintaining landscaping; maintenance of septic systems* routine maintenance or repair of a street or driveway by means of patching, a seal coat or slurry seal, and other activities which may be deducted in accordance with IRS Rules and Regulations. These examples are not included by way of limitation. (Ord. 3950, 10/4/88; 4059, 5/1/90)

(f) The owner shall give residents of each mobilehome space a written notice ninety (90) days before the General Rent Adjustment is due to go into effect. Such notice, at a minimum, shall contain the following itemized information:

1. The amount of the base rent;

2. The amount of adjustments to the base rent itemized as follows:

A. Adjustment of Base Rent. Owner's cost savings due to the Reduction or Elimination of Services subtracted from the base rent;

B. Property tax adjustment;

C. Consumer Price Index Adjustment;

D. Capital Improvements. An itemized list of capital improvements for which rent adjustments continue to be made, the cost of the improvements, the date of installation, and the end of the amortization period;

(i) Return on capital improvement;

(ii) Cost pass-through on capital improvements;

(iii) Date capital improvement is operational; and

(iv) Date of the end of the amortization period.

E. Itemized list of government required service charges; and

F. ~~Change in s~~ Space fee.

3. Total monthly rent after adjustments;

4. Current monthly rent; and

5. The maximum allowable monthly rent adjustment obtained by subtracting current monthly rent from total monthly rent after adjustments.

(g) The owner shall not adjust rents in excess of the amount permitted pursuant to this General Rent Adjustment procedure, except as expressly provided elsewhere in this chapter.

(h) For purposes of this section, the ~~The~~ owner shall make available for examination ~~to~~ within 5 business days of the written request, of any resident, ~~upon request~~ copies of bills for property taxes, government required service charges, copies of insurance policies and records of insurance payments, the books and records of the owner which relate to the original and depreciated cost of capital improvements, and all relevant portions of Federal and State Income Tax Returns relating to capital improvements to verify any increases or decreases sought by the owner under this section, shall also be made available to residents. The owner has the option of providing income tax information either in a declaration filled out under penalty of perjury, or by producing copies of the relevant portions of the actual Federal and State Income Tax Return themselves. (Ord. 2843, 1/15/80; 2912, 5/6/80; 3027, 12/23/80; 3224, 4/27/82; 3854, 8/11/87; 3916, 6/21/88; 4059, 5/1/90; 4404 2/27/96)

SECTION III

Section 13.32.040 of the Santa Cruz County Code is hereby amended to read as follows:

13.32.040 SPECIAL RENT ADJUSTMENTS.

(a) Purpose. The purpose of this section is to allow an owner to petition a Hearing Officer to allow the owner to increase the rents for all residents on their respective anniversary dates in excess of that amount provided for under the General Rent Adjustment provisions, when the owner believes that the General Rent Adjustment provisions do not allow a just and reasonable return on the

owner's property.

(b) Special Rent Adiustment Definitions. For the purposes of Special Rent Adjustment proceedings, the following definitions shall be used:

1. Net Operating Income equals Gross Income less Operational Expenses.

2. Gross Income equals the following:

A. Gross rents computed as gross rental income at 100 percent paid occupancy; plus

B. Interest from rental deposits, unless directly paid by the owner to residents (interest shall be computed at the actual interest rate earned but in no event less than five percent); plus

C. Income from laundry facilities, cleaning fees or services, garage and parking fees; plus

D. All other income or consideration received or receivable for or in connection with use or occupancy of mobilehomes and/or mobilehome spaces and related services; minus

E. Uncollected rents due to vacancy and bad debts to the extent that same are beyond the owner's control. Uncollected rents in excess of three percent of gross rents shall be presumed to be unreasonable unless proven otherwise. Where uncollected rents must be estimated, the average of the preceding three years experience shall be used or some other comparable method.

3. Operating Expenses shall include the following:

A. Real property taxes and Government Required Service Charges.

B. Utility costs.

C. Management expenses (contracted or owner performed), including necessary and reasonable advertising, accounting, insurance and other managerial expenses, and allowable legal

expenses. Management expenses are presumed to be five percent of Gross Income, unless proven otherwise.

D. Normal repair and maintenance expenses, including painting, normal cleaning, fumigation, landscaping, and repair of all standard services, including electrical, plumbing, carpentry, furnished appliances, drapes, carpets, and furniture.

E. Owner-performed labor which shall be compensated at the following hourly rates upon documentation being provided showing the date, time and nature of the work performed multiplied by the index level reported in the San Francisco-Oakland-San Jose Consumer Price Index-Urban Wage Earners And Clerical Workers Category for the first reported month of the year in which the labor was completed:

General Maintenance	$7/hour
Skilled Labor:	$13/hour

Notwithstanding the above, an owner may receive greater or lesser compensation for owner performed labor if it can be shown that the amounts set forth above are substantially unfair in a given case. There shall be a maximum allowable operating expense under this subsection of five percent of Gross Income unless the owner shows greater services for the benefit of residents. An outside management company will be compensated at the same rate, and governed by the same requirements as owner performed labor (Subsection E) if the park owner has any ownership interest in or otherwise controls an outside management company which provides services in the park.

F. License and registration fees required by law to the extent same are not otherwise paid by residents; and

G. Reasonable rate of return and cost pass-through for capital improvements as allowed under 13.32.030(d).

H. Filing fees for petitions and appeals pursuant to this chapter shall be included as operating expenses if the Hearing Officer determines that the owner has prevailed in such proceedings.

I. Operating Expenses shall not include:

(i) Avoidable and unnecessary expense increases since the Base Year.

(ii) Mortgage principal and interest payments.

(iii) Any penalties, fees or interest assessed or awarded for violation of this or any other law.

(iv) Legal fees except as follows. Allowable legal expenses shall include: attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing and successful good faith unlawful detainer actions not in derogation of applicable law, to the extent such expenses are not recovered from residents. Attorneys' fees and costs incurred related to proceedings under this chapter are not allowable as Operating Expenses.

(v) Depreciation of park property or improvements, fixtures, or personal property thereon.

(vi) Any expense for which the owner has been reimbursed by any security deposit, insurance settlement, judgment for damages, settlement or any other method.

~~(vii) Any portion of capital improvements which are financed by pass-throughs to residents or by insurance reimbursements~~.

4. Base Year for purposes of the special rent adjustment provisions shall mean the 1979 calendar year.

(c) Presumption of Fair Base Year Net Operating Income. It shall be rebuttably presumed that the Net Operating Income produced by a park during the Base Year provided a just and reasonable return on the owner's property.

(d) Rebutting the Presumption. It may be determined that the Base Year Net Operating Income yielded other than a just and reasonable return on property, in which case, the Base Year Net Operating Income may be adjusted accordingly. In order to make such determination, the Hearing

Officer shall make at least one of the following findings:

1. The owner's operating and maintenance expenses in the Base Year were unusually high or low in comparison to other years.

In such instances, adjustments may be made in calculating such expenses so the Base Year of Operating Expenses reflects average expenses for the property over a reasonable period of time. The Hearing Officer shall consider the following factors in making this decision:

A. Whether the owner made substantial capital improvements during 1979 which were not reflected in the rent levels;

B. Whether substantial repairs not covered by insurance or other disaster reimbursement were made due to damage caused by natural disaster or vandalism;

C. Whether maintenance and repair was below accepted standards so as to cause significant deterioration in the quality of park services;

D. Whether other expenses were unreasonably high or low notwithstanding the following of prudent business practice. In making this determination, the fact that property taxes prior to 1979 may have been higher than in the Base Year shall not be considered.

2. The Gross Income during the Base Year was disproportionate due to one of the enumerated factors below. In such instances, adjustments may be made in calculating Gross Income consistent with the purposes of this chapter.

A. The Gross Income during the Base Year was lowered because some residents were charged reduced rent because of sentimental, personal or emotional relationships with the owner.

B. The Gross Income during the Base Year was significantly lower than normal because of destruction of the

premises and/or temporary eviction for construction or repairs.

(e) Determination of Base Year Net Operating Income.

1. To determine the Net Operating Income during the Base Year, there shall be deducted from the Gross Income realized during calendar year 1979, a sum equal to the actual Operating Expenses for 1979, unless the owner demonstrates to the satisfaction of the Hearing Officer that some other twelve consecutive month period is justified. In all cases, April, 1979 shall fall within the twelve month period utilized herein except as provided in Subsection 2. below.

2. In the event that the owner did not own the subject property on January 1, 1979, the Operating Expenses for 1979 shall be determined in one of the following manners, whichever the Hearing Officer determines to be more reliable in the particular case:

(i) The previous owner's actual Operating Expenses as defined in Section 13.32.040(b)3.; or

(ii) Actual Operating Expenses for the first calendar year of ownership discounted to 1979 by the schedule in Section 13.32.040(f).

(f) Schedule of Adiustments in Operating Expenses. Where scheduling of rent adjustments, or other calculations, require projections of income and expenses, it shall be presumed that Operating Expenses (exclusive of Property Taxes and Management Expenses) increased at ten percent per year; that Property Taxes increased at two percent per year; and that Management Expenses are five percent of Gross Income.

(g) Allowable Rent Adjustment. A Special Rent Adjustment petition for a rent adjustment over and above the adjustment provided for by the General Rent Adjustment provisions shall only be approved if necessary to provide the owner with net operating income, after adjustment for inflation, comparable to the net operating income realized from the park during the Base Year. There shall be a rebuttable presumption that an adjustment of the owner's Net Operating Income at the rate of fifty percent (50%) of the percentage change in the CPI from the Base Year will provide a comparable Net Operating Income. The burden shall be on any party seeking to demonstrate that a different percentage of the CPI change is

appropriate. The change in the CPI shall be calculated by dividing the difference between the most recently reported monthly figure at the time of filing of the petition and the monthly figure in effect on January 1, 1979, by the monthly figure in effect on January 1, 1979. In determining comparability of Net Operating Income, the following factors may be considered by the Hearing Officer:

1. The rental history of the park;

2. The level of services and amenities of the park during the Base Year and during the current year; and

3. Any extraordinary capital expenditures necessary to repair or reconstruct a park damaged by natural disaster or required by health, building or fire protection officials not covered by insurance or other disaster insurance; and

4. Other unusual factors affecting comparability of Net Operating Income.

(h) Relationship to General Rent Adjustment. Any Special Rent Adjustment permitted pursuant to this chapter shall take into account the extent of any General Rent Adjustment the owner may be implementing or otherwise entitled to, and during the time the special adjustment is to be implemented, and the special adjustment may be limited or conditioned accordingly.

(i) Retroactive Effect. In no event shall rent adjustments be authorized retroactive of the date of decision by the Hearing Officer by application of the Special Rent Adjustment provisions. (Ord. **2843,** 1/15/80; **2912,** 5/6/80; 3027, 12/23/80; 3224, 4/27/82; 3854, 8/11/87; 4059, 5/1/90)

SECTION IV

Section 13.32.060 of the Santa Cruz County Code is hereby amended to read as follows:

13.32.060 HEARING OF DISPUTES. A hearing shall be provided as to disputes regarding General Rent Adjustment, Special Rent Adjustment, and reduction or elimination of services, and for no other purposes.

(a) Types of Hearings:

1. General Rent Adjustment Hearing. A General Rent Adjustment hearing shall be limited to determining whether the owner conformed to the provisions of Section 13.32.030 in adjusting rents.

2. Special Rent Adjustment Hearing. A Special Rent Adjustment hearing shall be held to determine whether the owner shall be allowed to make rent adjustments in excess of those provided under the General Rent Adjustment provisions set forth at Section 13.32.030. In making this decision, the Hearing Officer shall apply the provisions of Section 13.32.040.

3. Reduction or Elimination of Services Hearing. Hearings on the reduction or elimination of services shall determine whether the owner conformed to the provisions of Section 13.32.050.

(b) Hearing Procedure. The Office of the County Counsel of the County of Santa Cruz shall provide Independent Contractor Hearing Officers to carry out the provisions of this section. The Hearing Officer presiding at any hearing pursuant to this section shall require compliance with the following hearing procedure and shall provide adequate clerical support for such purpose.

1. Meet and Confer. The park owner and residents shall make a good faith effort to meet and confer prior to the filing of a petition by either. Within 15 days of the postmark on a notice of a General Rent Adjustment, residents either individually, collectively, or with representatives of a group of residents who have signed a request to be so represented, shall by written request require the park owner, or his or her representative, to meet and confer about the proposed rent adjustment. Hearing Officers are not required to attend the meeting. The required meeting shall be held within 20 days of the postmark on the written request. Failure to request the meeting in writing will not affect the residents' right to a hearing. (Ord. 4044, 2/27/96)

2. Petitions.

A. General Rent Adiustment Hearing. Within 45 calendar days of the postmark on a notice of a General Rent Adjustment, residents representing at least 25 percent of the spaces within the park affected by the General Rent Adjustment, must file a petition if they wish to dispute compliance by the owner with the General Rent Adjustment provisions of Section 13.32.030. If the 45th day falls on a Saturday,

Sunday or holiday, the time to file a petition is extended to the next working day: January 1; the third Monday in January (Martin Luther King Jr.'s Birthday), the third Monday in February (President's Day), the last Monday in May (Memorial Day), July 4 (Independence Day), the first Monday in September (Labor Day), the second Monday in October (Columbus Day), November 11 (Veterans' Day), Thanksgiving, and the following Friday, Christmas Eve and Christmas. The petition shall clearly state the residents' basis for disputing compliance by the owner with the provisions of this chapter. A copy of the postmarked envelope shall be attached to the petition.

(i) Any notice of General Rent Adjustment which does not have a postmark shall be considered invalid. (Ord. 4044, 2/27/96)

B. Special Rent Adjustment Hearing. Any owner may file a petition for a Special Rent Adjustment under the provisions of Section 13.32.040.]A petition for a Special Rent Adjustment shall be on the form provided for by County staff, and a list of the names and addresses of all residents of the park shall be attached to the petition. The Hearing Officer shall set a hearing on such petition only after determining that the petitioner has provided all of the information requested in that form. The owner shall file a completed petition at least 90 days in advance of the next anniversary date so that any rent adjustment ultimately approved by the Hearing Officer can be combined with any General Rent Adjustment for all the park residents for that year. No Special Rent Adjustment may be implemented prior to final granting of a petition. A Hearing Fee shall be charged only to a petition in a Special Rent Adjustment Proceeding. Such fee shall not be passed through or otherwise collected from residents. The Space Fee hereinafter established shall be set at a rate sufficient to pay the cost of all other Hearings.

(i) The amount of the Hearing Fee shall be set by resolution by the Board of Supervisors.

(ii) The Hearing Fee shall be paid at the time of filing the Special Rent Adjustment Petition in the form of a personal check, bank check, or money order payable to "County of Santa Cruz".

(iii) Fifty percent (50%) of the Hearing Fee shall be refunded provided that County staff is notified no less than seventy-two (72) hours prior to the hearing that a settlement has been reached.

C. Reduction or Elimination of Services Hearing. Residents representing at least 25 percent of the park affected by a reduction or elimination of services may file a petition disputing compliance by the owner with the provisions of Section 13.32.050. The petition shall clearly state the basis for disputing compliance by the owner with the provisions of said Section and shall be filed within one year of the date the service or services are reduced or eliminated.

3. Filing of Petition. Any petition regarding a General Rent Adjustment or a Special Rent Adjustment, or the Reduction or Elimination of Services shall be filed with County staff and shall set forth the name, address, and telephone number of petitioner's counsel or designated representative.

4. Scheduling of Hearings. County staff shall file stamp the petition. Once a hearing officer has been selected, County staff and shall transmit such petition to the Hearing Officer who shall schedule a hearing no sooner than 30 days and no later than 60 days after ~~filing of~~ receiving the petition.

5. Pre-hearing Settlement Conferences. Parties are required to attend a pre-hearing settlement conference with the hearing officer at least seven (7) calendar days in advance of the hearing. Unless expressly excused by the Hearing Officer in advance of the settlement conference, the designated representative of each party authorized to effect a binding settlement shall be present at the settlement conference. Each party shall submit to the Hearing Officer at least five (5) calendar days prior to the pre-hearing conference, a statement containing the following information:

A. The names of the party(ies) involved with the matter and on whose behalf the statements are filed. Both party's shall designate one person who shall represent the interests of, and be authorized to act on all matters considered at the settlement conference.

B. A plain and concise statement of the facts. A listing of all relevant facts that are not in dispute, and a listing of all

relevant facts that are in dispute .

C. A statement of the legal issues (claims or disputes) and any defenses (explanations or justifications), to be considered by the Hearing Officer at the hearing.

D. A list of witnesses to be called by the party at the hearing, along with an estimate of the time required for each witness's testimony. The witness list may be revised at any time up until two (2) calendar days prior to the hearing.

E. A statement of the remedy the party is seeking from the Hearing Officer.

F. A copy of each witness statement signed under penalty of perjury, to be presented at the hearing. The witness statement shall include an explanation of why the witness is unavailable to testify at the hearing. No witness statement shall be admitted into evidence at the hearing unless it is included with the pre-hearing statement or is offered by a witness whose name appears on a witness list provided to the opposing party at least two (2) days prior to the hearing, unless admission is justified by good cause shown.

G. A copy of each item of documentary evidence to be presented at the hearing.

H. An estimate of the time required for presentation of each party's case.

~~5~~6. Consolidation. All petitions pertaining to a General Rent Adjustment and, where possible, to a Special Rent Adjustment in one park for the same year, shall be consolidated for hearing, unless there is a showing of good cause not to consolidate such petitions.

~~6~~7. Continuances. Reasonable continuances of the hearing may be granted at the discretion of the Hearing Officer if exceptional circumstances are shown.

~~7~~8. Notice to Parties. County Counsel will notify the respondent that a petition has been filed and provide the parties with a list of potential

hearing officers.

A. General Rent Adjustment Hearing. After scheduling a hearing, the Hearing Officer shall notify the park owner, the counsel or designated representative of the petitioning residents of the park, and County staff, of the time, date and place of the hearing by letter. Such letters shall be mailed first class at least fourteen days prior to the hearing date scheduled. County staff shall assist in securing a room for the hearing and shall have the necessary recording devices available to the Hearing Officer.

B. Special Rent Adjustment Hearing. After scheduling a hearing, the Hearing Officer shall notify the park owner and all park residents (or their counsel or representative if one has been designated in writing) of the time, date and place of the hearing by letter. Such letters shall be mailed first class at least fourteen days prior to the hearing date scheduled.

C. Reduction or Elimination of Services Hearing. After scheduling a hearing, the Hearing Officer shall notify the park owner and the counsel or the designated representative of the petitioning residents of the park of the time, date and place of the hearing by letter. Such letters shall be mailed first class at least fourteen days prior to the hearing date scheduled.

D. The notice to the parties shall be in substantially the following form, but may include other information:

> "You are hereby notified that a hearing on the petition for _____ will be held on the _____ day of _____, 19____, at the hour of _____. The Hearing Officer will be _____ whose address is _____ and telephone number is _____ You may be present at the hearing; may (but need not be) represented by counsel; may present any relevant evidence (subject to provisions requiring the advance production of testimonial and documentary evidence); and will be given full opportunity to cross-examine all witnesses. You are entitled to request the Hearing

Officer to issue subpoenas to compel the attendance of witnesses and the production of books, documents, or other sources of evidence by applying to the Hearing Officer. The Hearing Officer has the authority to issue subpoenas. You will be responsible for paying any mileage or attendance fees in connection with subpoenas so issued."

The Hearing Officer shall also give any public notice required by law.

E. A statement of facts contained in the petition or summary thereof shall be sent with such notice to the respondent(s).

9. Disqualification of Hearing Officer. Within 5 business days of receiving a Notice of Hearing each party may in writing reject one of the hearing officers named on the list.

~~8~~10. Respondent's Objections and ~~Response~~ to Defective Petition.

~~A. Objections to Defective Petition.~~ Any owner or resident desiring to object to a petition may file objections with the Hearing Officer (and if filed, shall concurrently serve by first class mail on petitioner(s) or the counsel or designated representative thereof). Objections to the petition may be made on the following grounds: that the petition was not timely filed; that the petition does not contain material information required by the applicable rules and ordinance(s); and/or that the petition is procedurally defective. The objections shall set forth the name, address, and telephone number of respondent's counsel or designated representative. If such objections are not made within **14** days of the mailing of the notice of hearing, they shall be deemed waived. In the event that the petition is objected to as procedurally defective other than as to time of filing, the petitioner shall have 10 days from the date of mailing of such objections to cure same.

~~B. Responses to Petitions. Respondent(s) shall file with the Hearing Officer and serve on petitioner(s) (or the counsel or designated representative thereof) a response to the petition at least ten working days prior to the hearing. This response shall consist of relevant facts, argument and law in support of the proposed adjustment or the reduction or elimination of services. Where the~~

~~owner is the respondent, such response shall contain as an exhibit a detailed list of expenses and income for the prior four years including (without limitation) utility costs and charges. The response shall set forth the name, address and telephone number of respondent's counsel or designated representative.~~

~~9. Petitioners' Counter-Response. Petitioners may file with the Hearing Officer and serve on respondent(s) (or the counsel or designated representative thereof) a counter-response no later than two working days before the scheduled hearing date.~~

~~10~~ 11 Subpoenas.

A. Before and during a hearing, the Hearing Officer may issue subpoenas and subpoenas duces tecum at the request of either party or on his/her own motion in accordance with the provisions of Section 1985, et seq. of the Code of Civil Procedure, subject to the Hearing Officer's discretion.

B. Such process shall extend to all parts of the state and be served in accordance with the provisions of Sections 1987 and 1988 of the Code of Civil Procedure. No witness shall be obliged to attend at a place out of the county in which he resides unless the distance is less than 150 miles from his place of residence, except that, upon affidavit of either party showing that the testimony of such witness is material and necessary, the Hearing Officer may endorse on the subpoena an order requiring the attendance of such witness from such distance or beyond.

C. All witnesses appearing pursuant to subpoena, other than the parties (or officers thereof), shall be paid fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in Superior Court. Witnesses appearing pursuant to subpoena, except the parties, who attend hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled (in addition to fees and mileage) to a reasonable per diem compensation for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

~~11~~12. Appointment, Selection, and Payment of Hearing Officers. A Hearing Officer shall preside at all hearings regarding rent adjustments scheduled under the Mobilehome Rent Adjustment Ordinance and shall make findings and decisions in accordance with the provisions of such Ordinance.

A. Qualifications. Hearing Officers shall have no financial interest in mobilehomes, mobilehome spaces, or mobilehome parks.

B. Establishment of Panel. The Office of the County Counsel of the County of Santa Cruz shall select ~~no less than two (2) and no mo~~and make all reasonable efforts to ensure that there are at least five (5) qualified candidates to form a panel of prospective Hearing Officers.

C. Selection of a Hearing Officer for a Hearing. After each party has had the opportunity to exercise their right to disqualify a hearing officer, staff will appoint the hearing officer from those remaining on the list. ~~After the petition has been filed County staff shall select and notify the Hearing Officer next in order from available panelists on the list that he/she shall act as Hearing Officer as to the matter which is the subject of the petition.~~ A Hearing Officer shall disqualify himself or herself from serving as Hearing Officer in a particular matter where he/she has a conflict of interest.

D. Payment. Hearing Officers shall be paid for hearings at an hourly rate as determined by resolution of the Board of Supervisors of the County of Santa Cruz.

~~12~~13. Failure of Parties to Appear. In the event that either the residents or the park owner or their counsel or designated representatives should fail to appear at the hearing at the specified time and place, the Hearing Officer may hear and review such evidence as may be presented and make such decision as if both parties had been present.

~~13~~14. Official Record. The official record of a hearing, which shall constitute the exclusive record for decision of the issues and any judicial review, shall include: all written notices; all petitions, responses, motions and objections filed or made prior to or during the proceedings; all exhibits admitted and rejected as evidence during the proceedings; a list of participants present; the hearing transcript; a statement of all materials

officially noticed; the ruling on each exception or objection, if any; and all findings, decisions and orders. The Hearing Officer shall provide a copy of the Official Record, or portion thereof, including a transcript of the hearing, to any party or member of the public upon written request and payment of actual cost (advance deposit of the estimated cost of which may be required). The official record shall be retained by County staff for three (3) years.

~~14~~15. Conduct of Hearings.

A. All hearings held before a Hearing Officer shall be open to the public, except as provided herein, and notice thereof given as required by law.

(i) All participation by the parties shall be channeled through the respective counsel or designated representative for residents and park owners. The respective counsel or designated representative for each party shall determine the manner and extent of participation in the hearing by residents and owners subject to the ruling of the Hearing Officer.

(ii) Public Hearing Exception. A party may request the Hearing Officer to close to the public a portion of the hearing by filing a declaration under penalty of perjury that evidence is to be presented which relates to confidential financial data the disclosure of which will be detrimental to the business interests of the owner. If the Hearing Officer grants the request, only evidence relating to the confidential financial data may be presented during the time the hearing is closed.

(iii) The Hearing Officer may exclude persons present for conduct which is unruly or disorderly and which disrupts or threatens to disrupt the proceedings.

B. Each party to a hearing may be represented by counsel or other representative of the party's choice.

C. ~~E~~ Subject to the provisions requiring the advance production of testimonial and documentary evidence, each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine witnesses on any matter relevant to the issues even though

that matter was not covered in the direct examination; to impeach any witness, regardless of which party first called him/her to testify; and to rebut me evidence presented.

D. Hearings shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

E. Irrelevant and unduly repetitious evidence may be excluded by the Hearing Officer. The Hearing Officer shall refuse to admit any documentary evidence not filed in a timely fashion as required by this chapter, unless the Hearing Officer finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced.

F. Evidence Required by the Hearing Officer. The Hearing Officer may request either party to provide relevant books, records and papers. However, either party may respond by providing an affidavit by a certified public accountant, as long as the affidavit contains the information sought from such books, records and papers, and as long as such certified public accountant is available for cross-examination at the hearing concerning such statement. Failure or refusal of a party to produce material requested may be considered by the Hearing Officer as evidence that such material, if produced, would be adverse to such party.

G. Relevant Evidence.

(i) In determining petitions, the Hearing Officer shall consider all relevant factors to the extent evidence thereof is introduced by either party or produced by either party on request of the Hearing Officer.

(ii) Such relevant factors include all matters set forth in this Ordinance relating to the type of hearing being conducted.

(iii) The Hearing Officer shall dismiss any petition upon a finding that the petitioner has failed to provide information required by this Chapter, or has either intentionally or recklessly provided false and misleading information.

H. Official Notice. In reaching a decision the Hearing Officer may take official notice of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Either party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of legal authority, the manner of such refutation to be determined by the Hearing Officer.

I. Oaths. In any proceeding before a Hearing Officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the Hearing Officer, his/her Clerk, or other designee have the power to administer oaths and affirmations and to certify to official acts. Oaths of witnesses may be given individually or en masse. Witnesses shall be asked to raise their right hands and to swear or affirm that the testimony they shall give will be the truth, the whole truth, and nothing but the truth.

J. Motions. All motions by the parties shall be in writing, unless made on the record during hearing, and shall clearly state the action requested and the grounds relied on.

K. Quantum and Burden of Proof. If resolution of the petition could require the rent to be raised, the owner shall have the burden of proof. If resolution of the petition could require the rent to be decreased, the residents shall have the burden of proof. The required quantum of proof shall be by a preponderance of the evidence.

L. Communications with Hearing Officer. All substantive oral communications with the hearing officer shall be held in the presence of all parties. The Hearing Officer shall maintain a written

log of any oral communications with any party, and shall disclose the contents of the log during the hearing as set forth in paragraph 0. (vi) below. All written communications shall be served on all parties.

M. Disclosure & Disqualification. A hearing officer shall disclose to both parties any circumstances likely to affect impartiality, including bias or any financial or personal interest in the results of the hearing or any past or present relationship with the parties or their counsel. Either party may raise objections for the record and request that the Hearing Officer disqualify him or herself. The Hearing Officer shall make the decision whether to grant or deny the request for disqualification.

N. Continuances. Each party may request, and, if exceptional circumstances are shown, the hearing officer may approve on continuance. No additional continuances shall be approved unless agreed upon by both parties, or unless the hearing officer finds that a continuance is required to ensure that both parties receive a full and equal opportunity for a fair hearing.

0. Order of Proceeding. The following order of proceeding shall be applied at all hearings. The officer shall:

(i) Review all petitions and responses submitted prior to the hearing.

(ii) Begin tape recording of the hearing.

(iii) Assemble hearing participants.

(iv) Identify the hearing.

(v) Request that the parties introduce themselves.

(vi) Disclose the content of the written log of any oral communications with any party.

(vii) Explain how the hearing will proceed including specific notification of the provisions contained in subparagraphs vii through xvii.

(viii) Hear any preliminary motions or objections.

(ix) Review any request for witnesses.

(x) Exclude potential witnesses until testimony is required, except that one person acting as the representative for a party may remain even though they may also be a witness.

(xi) Allow parties to make opening statements. (i.e. petitioner followed by respondent.)

(xii) Allow Petitioning party to present evidence and witnesses who shall submit to questions and other examination.

(xiii) Allow responding party to present evidence and witnesses who shall submit to questions and other examination.

(xiv) Allow both parties to confront adverse testimony.

(xv) Allow both parties to make closing statements. (i.e. petitioner followed by respondent closing with rebuttal by petitioner.)

(xvi) Explain appeals procedure.

(xvii) Close hearing. Terminate tape recording.

(xviii) The hearing officer shall follow the above procedure unless the officer determines and explains that there are special circumstances which justify a variance or modification in the order of proceeding. The hearing officer shall also have the discretion to grant a brief recess during the hearing if good cause is shown. (Ord. 4252, 5/11/93)

~~15~~16. Decision. The Hearing Officer shall consider the evidence and arguments of the parties and shall prepare a written decision, which shall include a statement of the issues, the findings of facts on which the decision is based, and an identification of the approved adjustment, if any, resulting from the decision to the particular item

on the Rental Notice. If the decision concerns an adjustment which is limited in duration or otherwise conditioned in any respect, the Hearing Officer shall also set forth in decision the duration or condition approved. The decision shall be subject to judicial review under Code of Civil Procedure Section 1094.5 and shall state the time for seeking judicial review as provided Section 1094.6 of the Code of Civil Procedure. The decision shall be signed by the Hearing Officer and filed as a public record with the County staff no later than thirty (30) days following the conclusion of the hearing.

The Hearing Officer shall serve a copy of the decision on each party or such party's counsel or designated representative. The decision shall include notice of the right of the judicial review and the time limits therefor set forth above. The decision of the Hearing Officer shall be final and binding upon the parties.

A. A final decision of a Hearing Officer issued after January 1, 1999, shall be binding on all future hearing decisions between the same parties subject to the Hearing Officers determination that the issues of law and/or fact are substantially the same.

B. Legal *conclusions reached* in previous hearings involving other parks, may be given substantial weight to the extent that the legal and factual issues are the same.

(Ord. 2843, 1/15/80; 3224, 4/27/82; 3356, 1/4/83; 3854, 8/11/87; 4059, 5/1/90; 4252, 5/11/93; 4044, 2/27/96)

17. Reconsideration. The Hearing Officer may order reconsideration of all or part of the case on his or her own motion or on petition of any party. The County shall have standing to request reconsideration of any matter concerning a Hearing Officer finding, related to a question of law. The power to order a reconsideration shall expire after forty-five (45) days after the delivery or mailing of a decision. The Hearing Officer shall act on a petition within the forty-five (45) day period, provided that if additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of the 45 days, the Hearing Officer may grant a stay of the expiration period for no more than 10 days, solely for the purpose of considering the petition. If the Hearing Officer is incapacitated to

act on the petition within the time allowed for ordering reconsideration, the petition shall be deemed denied. The Hearing Officer's decision becomes final and binding upon the parties on the date that reconsideration is denied. If the Hearing Officer orders that reconsideration be granted or denied, he or she shall give reasons for this order but need not make findings. The original decision is automatically vacated at the time of the order granting reconsideration. The Hearing Officer may readopt the original decision upon reconsideration.

The right to petition for judicial review under Code of Civil Procedure Section 1094.5 shall not be affected by the failure to seek reconsideration. If reconsideration is denied, only the Hearing Officer's original decision and not his or her decision to deny a reconsideration, is reviewable under Code of Civil Procedure Section 1094.5. (Ord. 4044, 2/27/95)

18. Frivolous Petitions. The Hearing Officer shall have the power to order a party to pay the reasonable attorney's fees, incurred by another party as a result of the filing of a frivolous petition.

A. For the purposes of this section, a "frivolous petition" is one that is (i) totally and completely without merit or (ii) for the sole purpose of harassing an opposing party.

B. Expenses pursuant to this section shall not be imposed until after the Hearing Officer has provided notice to, and an opportunity to be heard from, the party filing the petition. An order imposing expenses shall be in writing and shall recite in detail the circumstances justifying the order. The Hearing Officer shall fashion the order to ensure that the appropriate party receives reimbursement within a reasonable time after the order is issued.

SECTION V

Section 13.32.075 of the Santa Cruz County Code is hereby added to read as follows:

13.32.075 ADVISORY OPINIONS. County Counsel may issue non-binding opinions on legal issues when asked to do so, by either party, before the hearing process begins.

SECTION VI

Section 13.32.102 of the Santa Cruz County Code is hereby added to read as follows:

13.32.102 Recreational Vehicle/Trailer Park Spaces. Any park space, including, but not limited to those located within a recreational vehicle or trailer park, shall be subject to the provisions of this Chapter if the space has been occupied by a mobilehome as herein defined, in which the mobilehome's residents have continually resided for nine months or more after January 1, 1980. The Base Rent for the space shall be that amount of rent charged when the park owner initially received written notice from the County that the space was subject to the provisions of this Chapter.

SECTION VII

This ordinance shall take effect on the 3 1st day after the date of final passage.

PASSED AND ADOPTED this ____ day of _____, 1999, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

_____
Chairperson of the
Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:

Dwight L. Herr
DWIGHT L. HERR, County Counsel

Considerations in Selecting an Indexing Ratio under Maintenance of Net Operating Income Standards

Kenneth K. Baar

This memorandum was prepared at the request of the Santa Cruz County Counsel. The views expressed herein are those of this author and do not necessarily represent the views of the Counsel.

About the Author

The author is an attorney and urban planner. He has published extensively on issues related to housing and land use policy and rent regulations and he has served as a consultant to'numerous California jurisdictions fair return issues.

Court Opinions Citing Articles of the author include the following:

Westchester West No.2 Limited Partnership v. Montgomery County,
348 A.2d. 856 (1975) Maryland Court of Appeals [highest Civil Court in the state]

Helmsley v. Borough of Fort Lee,
78 N.J. 200; 394 A.2d. 65 (1978) New Jersey Supreme Court

Fisher v. City of Berkeley,
37 Cal.3d. 644; 209 Cal.Rptr. 682 (1984) California Supreme Court; affirmed, 475 U.S. 260, 106 S.Ct. 1045, 89 L.Ed.2d. 206 (1986)

Oceanside Mobile Home Park Owners Association v. City of Oceanside,
157 Cal.App.3d. 887; 204 Cal.Rptr. 239 (1984) California Court of Appeals

Mayes v. Jackson Townshin,
103 N.J. 362; 511 A.2d. 589 (1986) New Jersey Supreme Court; cert. denied, 479 U.S. 1090, 107 S.Ct. 1300, 94 L.Ed. 2d. 155 (1987).

Yee v. Mobilehome Park Rental Review Board,
17 Cal. App. 4th 1097, 23 Cal.Rptr.2nd. 1 (1993) California Court of Appeals

Palomar Mobilehome Park v. City of San Marcos
16 Cal.App.4th 481, 20 Cal.Rptr.2d. 371 (1993) California Court of Appeals

Guimont v. Clarke,
121 Wash. 2d. 586; 854 P.2d.l (1993) Washington Supreme Court; cert. denied, 510 U.S. 1176, 114 S.Ct. 1216, 127 L.Ed.2d. 563 (1994)

Kavanau v. Santa Monica Rent Control Board,
16 Cal.4th. 761; 66 Cal.Rptr. 2d. 672 (1997) California Supreme Court); cert. denied, __ U.S. ___, 118 S.Ct. 856, 139 L.Ed. 2d. 755 (1998)

440 Co. v. Borough of Fort Lee, 950 F.Supp. 105 (D.N.J. 1996); aff'd without opinion, 129 F.3d. 1254 (3rd. Cir. 1997); cert denied, ___ U.S. ___, 188 S.Ct. 130, 140 L.E.2d 467 (1998)

Rainbow Disposal Co., Inc. v. Mobilehome Park Rental Review Board, 64 Cal.App.4th. 746, 75 Cal. Rptr.2d. 1159 (1998)

I. Introduction

Under the fair return standard contained in Santa Cruz County's mobilehome rent ordinance, park owners are entitled to maintain their pre-rent control level of net operating income' adjusted by 50% of the increase in the Consumer Price Index (CPI) (Sec. 13.32.040(g). Standards of this type, known as "maintenance of net operating income" (MNOI) standards, guarantee the right to cover increases in operating expenses and obtain growth in net operating income at a portion of the rate of increase in the CPI. They are common among California mobilehome rent ordinances. Under most rent ordinances, individual park rent adjustments pursuant to fair return standards are "supplements" to annual across-the-board rent increase allowances for all parks which are tied to the CPI.

The purpose of this memo is to discuss the rationale for and the constitutionality of "indexing" net operating income at less than the full rate of increase in the CPI.

II. Indexing of Net Operating Income - Standards under Other Rent Control Ordinances

About one hundred jurisdictions in California have adopted some form of mobilehome space rent regulations. Approximately 20 of these ordinances include maintenance of net operating income standards.[2] Indexing ratios under these MNOI standards in rent controlled jurisdictions vary from 40% to 100% of the percentage increase in the CPI. As the chart below demonstrates, about half of MNOI standards in ordinances index NOI by 50% and 75% of the increase in the CPI.

---

[1] "Net operating income" is equal to gross income minus operating expenses. Debt service interest and depreciation are not considered in calculating net operating income.

[2] Other jurisdictions apply a maintenance of net operating income standard, in cases where the ordinance does not contain a specific standard.

(Table 1)
INDEXING RATIOS
UNDER MAINTENANCE OF NET OPERATING INCOME STANDARDS
IN CALIFORNIA MOBILEHOME SPACE RENT ORDINANCES*

Calistoga	75%
Hollister	40%
Lompoc	100%
Milpitas	50%
Morgan Hill	40%
Oceanside	40%
Oxnard	75%
Pacifica	**100%**
Palm Desert	**50%**
Palm Springs	50%
Pleasonton	**100%**
Riverside County	**100%**
Rohnert Park	60%
Salinas	75%
San Jose	85%
Santa Cruz County	50%
Santa Paula	75%
Santee	
Sonoma	**80%**
Scotts Valley	60%
Ventura	50%

*The information in this chart has been collected over the last four years. It may not reflect recent changes in some of the ordinances.

HI. Background

Background discussion about fair return issues under rent controls is a critical prerequisite to placing the debates over indexing net operating income in perspective. Since the first time rent controls were introduced into the U.S. after World War I there has been continual judicial discussion and dispute over what rent increase standards provide a fair return and/or have a rationale basis.[3] During the era of post World War I rent controls, the courts took the position that a fair return on the "value" of a property was constitutionally required. However, during World War II, the courts rejected the

[3] The discussion in this paragraph is based on this author's discussion in Baar, "Guidelines for Drafting Rent Control Laws: Lessons of a Decade", 35 Rutgers Law Review, 723, 781-816 (1983).

view that such an approach was required on the basis that it is circular. In the 1970's and 1980's the return on value debates were repeated in the courts with some initial decisions that a return on value was required and ultimate rejection of this theory by state supreme courts.

In 1984, in Fisher v. City of Berkeley, the California Supreme Court ruled that rent boards are not required to use any particular type of formula:

> For more than a decade, rent control agencies throughout this state and the nation have employed a veritable smorgasbord of administrative standards by which to determine rent ceilings. (Carson, supra, 35 Cal.3d. 184, 188 ["just, fair and reasonable"]; Cotati Alliance, supra, 148 Cal.App.3d at p. 286 ["fair and reasonable return on investment"]; Palos Verdes Shores Mobile Estates, Ltd. v. City of Los Angeles (1983), 142 Cal.App.3d. 362, 371 [190 Cal.Rptr. 866] ["just and reasonable return" based on the "maintenance of profit" approach]; Gregory v. City of San Juan Capistrano (1983), 142 Cal.App.3d. 72, 86 [191 Cal.Rptr. 47] [interpreting "return on investment" as requiring a "just and reasonable return on the fair market value of [landlords'] property"];... As we recently stressed in Carson, "[r]ent control agencies are not obliged by either the state or federal Constitution to fix rents by application of any particular method or formula." (35 Cal.3d. at p. 191, citing Power Comm'n v. Pipeline Co. (1942) 315 U.S. 575, 586 [86 L.Ed. 1037, 1049-1050, 62 S.Ct. 736]; Power Comm'n v. Hope Gas Co. (1944) 320 U.S. 591, 601-602 [88 L.Ed. 333, 344, 64 S.Ct. 281].)
>
> In view of this oft-quoted and oft-followed principle, we are not persuaded by plaintiffs' and amici's apparent contention that the much criticized return on value standard. (fn.33) or any of its variations (fn.34) is required to be employed by the Board in the present case. We reiterate that selection of an administrative standard by which to set rent ceilings is a task for local governments in this case the voters themselves and not the courts.'

In the last few decades four types of fair return formulas have been commonly used under rent controls - 1) return on value, 2) return on investment, 3) percentage net operating income, and 4) maintenance of net operating income. With the exception of the maintenance of net operating income standards, these standards have not considered whether net operating income has increased or decreased. Instead, under these standards, fair return is measured by rate of return on investment or value, independent of any consideration of whether the rent permitted under such a standard would result in an increase or decrease in NO1 compared to pre-rent control levels. New York used a return on assessed value standard. New Jersey municipalities commonly used cash flow or return on investment standards.[5] Whether or not net operating income was maintained was not an issue.

---

[4] 37 Cal.3d. 644, 679-681.

[5] Starting in the early 1970's, most of the urban municipalities in New Jersey adopted rent control ordinances.

IV. MNOI Standards and their Indexing Ratios - Judicial Responses

Prior to the 1980's, rent controls were subject to the criticism by policy makers that they did not permit rent increases which were adequate to cover increases in apartment owners' operating expenses. In other words, they were criticized for failing to maintain net operating income. The issue was not whether NO1 was permitted to increase at a sufficient rate but rather whether it was being reduced.[6]

When MNOI standards were used, they only provided for the right to maintain base period net operating income levels, without any adjustment for inflation. World War II rent regulations used an MNOI standard without an inflation adjustment.[7] The Boston and Brookline, Massachusetts MNOI standards of the 1970's, did not provide for any indexing. However, the Cambridge, Massachusetts regulation indexed NO1 at the full rate of increase in the CPI.[8]

Judicial consideration of fair return issues related to maintaining net operating income emerged in the context of ordinances which reduced or froze net operating income. As the following discussion explains, the judicial responses have been that NO1 cannot be reduced and cannot be "frozen". The concept that fair return standards must permit owners to maintain their net operating income was first introduced by the New Jersey Supreme Court in 1978 in Helmslev v. Borough of Fort Lee.[9] In that case, the Court considered the constitutionality of a regulatory scheme which limited annual general adjustments to 2 1/2% per year and had a slow and burdensome individual rent adjustment process. At the time of the case, there was substantial inflation and landlords were incurring substantial increases in operating costs.

---

[6] For example, one widely used real estate text comments:

> High rates of inflation made millionaires of many property owners in the late 1970's and early 1980's, and low rates of inflation and overbuilding bankrupted many in the middle 1980s. . . . This is of little consolation, however, to an owner of rent-controlled apartments in New York or Boston (or scores of other communities) when inflation raises operating costs by 9 percent a year and local authorities either refuse or are slow to permit a pass-through of expenses to the tenant. (Pyhrr, Cooper, Wofford, Kapplin, and Lapides, Real Estate Investment, p. 15 (1989).

In an evaluation of the impacts of rent control in a 1978 article in the Appraisal Journal, the hypothetical projection for the rent controlled building was based on the assumption that net operating income (in absolute dollars) was reduced by 2 1% over a nine year period. Davidson, "The Impact of Rent Control on Apartment Investment", 46 Appraisal Journal 570,577 (Table 8) (October 1978). (The projection for the non-rent controlled building assumed that in seven of the nine years rents increase by 6%, compared to a 7% annual increase in expenses for the same period. Id. at 572 (Table 2).

[7] 24 C.F.R. 825.5(a)(12) (1944).

[8] Boston, Rent Regulation 6,Sec.5(b)(1974); Cambridge, Rent Control Board Regulation 72(1972). (Regulations cited in Baar, "Guidelines for Drafting Rent Control Laws: Lessons of a Decade", 35 Rutgers Law Review, 723, 811, fn. 341 & 343.

[9] 394 A.2d. 65 (1978).

The Court found that, as a result of this scheme, "the 'average' landlord can expect profits to fall for the indefinite future."[10] It held that "[a]t some point steady erosion of NO1 becomes confiscatory.'" However, it did not hold that freezing NOI is confiscatory. Instead, in a footnote, the Court noted that: "We do not hold that keeping NO1 constant (in current dollars) indefinitely is not confiscatory. The effect of such long-term stagnation of profits is not before us."[12]

In the early 1980's, as California cities started to adopt MNOI standards, the issue of what rate of growth in NOI should be permitted became the subject of discussion. In Oceanside Mobilehome Park Owners' Ass'n v. City Oceanside (1983)[13], the Court of Appeal found that a fair return standard, which provided for an indexing at 40% of the rate of increase in the CPI was reasonable because it allowed an owner to maintain prior levels of profit.[14]

In Baker v. City of Santa Monica (1986), the Court of Appeal upheld a rent regulation providing for growth in NO1 at 40% of the rate of increase in the CPI.[15] In the Baker trial, the indexing ratio was the subject of lengthy debate among experts. The expert for the plaintiff contended that in an unregulated market apartment investors would expect that rents would increase at the same rate as the CPI and, therefore, less than 100% indexing was inadequate to meet reasonable investment expectations. Experts for the defendant testified that historically rents had increased at a slower rate than the CPI, that 40% indexing would provide a reasonable return and that it was reasonable to index at 40% of CPI, because on the average, the other 60% of NO1 covered debt service payments, which were a fixed cost rather than a cost that increased with inflation.[16]

Subsequently, in Fisher v. City of Berkeley (1984), the California Supreme Court held that "indefinitely" freezing net operating income is confiscatory. The Court stated:

> . . although defendants' ordinance may properly restrict landlords' profits on their rental investments, it may not indefinitely freeze the dollar amount of these profits without eventually causing confiscatory results."

---

[10] 394 A.2d. at 76.

[11] Id.

[12] Id., Il. 15.

[13] 157 Cal.App.3d. 887; 204 Cal.Rptr.239 (1984).

[14] Id., 157 Cal.App.3d. at 902-905; 204 Cal.Rptr. at 249-251.

[15] 181 Cal.App.3d. 972, 988.

[16] This author was an expert witness on behalf of the City in Baker, but did not testify on the reasonability of the indexing ratio.

[17] 37 Cal.3d. at 683.

While the Court did not consider the issue of what rate of growth in net operating income must be permitted, it did indicate that rent controls may "reduce" the value of property, without violating constitutional safeguards.

> Any price-setting regulation, like most other police power regulations of property rights, has the inevitable effect of reducing the value of regulated properties. But it has long been held that such reduction in property value does not by itself render a regulation unconstitutional. [18]

An outcome of this concept is the conclusion that NO1 may increase at less than rate of increase in the CPI. Furthermore, although the Court expressed disapproval of "indefinitely" freezing net operating income, it did not express any disapproval of formulas which permitted less than 100% indexing.

In a depublished opinion, Searle v. City of Berkelev, the Court of Appeal ruled that there was no rational basis in the administrative record for Berkeley's selection of a 40% indexing ratio. [19] However, it did not rule that this ratio denied property owners a fair return and it did not adopt the landlord's position that 100% indexing was constitutionally required. The Court found that neither Fisher nor Cotati Alliance for Better Housing. v. City of Cotati, "specifies any constitutionally required level of indexing."[20] At another point, the Court commented that "indexing by less than 100 percent could conceivably be justified, since additional relief would remain available through individual petition for a fair return under revised regulation 1275."[21]

The next legal challenge to Berkeley's indexing standard came in 1992. While most legal challenges to rent regulations have been brought by landlords claiming that permitted rent increases are insufficient, in this case the City and a tenants group challenged the Rent Board's adoption of 100% indexing as being in excess of its authority. In City of Berkeley v. Berkelev Rent Stabilization Board,[22] the Court concluded that Berkeley's rent control ordinance granted the Board the discretion to adopt a 100% indexing formula and that the Board had a substantial basis for its conclusion that 100% indexing was necessary to avoid longstanding confiscation.

However, the Court also declared that "we are not called upon to actually decide whether the Board could have legally decided to exclude debt service; we need only observe that it acted legally when it

---

[18] Id., 37 C.3d. at 686.

[19] 222 Cal.App.3d. 13 1 (depublished Oct. 25, 1990)

[20] Id.

[21] Id. at 142.

[22] 27 Cal.App.4th 951; 33 Cal.Rptr.2d.3 17 (1994).

decided to *include it."*[23] Such exclusion signifies indexing at less than 100% of CPI.

In 1995, the California Supreme Court denied a petition for review of an unpublished Court of Appeal decision which rejected a challenge to a 50% indexing standard in Ventura's mobilehome rent control ordinance.[24] However, neither the decision nor the denial of review have any precedential weight.

V. Reasonable Expectations

Ordinances commonly indicate that one of their purposes is to permit a fair return on investment and courts have repeatedly adopted or approved the return on investment concept. However, they have not been able to define a fair return on investment except in theoretical terms.

A recent court of appeals opinion contains an oft-repeated summary of this guidance:

> Constitutionally valid rent control schemes must allow park owners to earn a "just and reasonable" or "fair" return on their investment. (*Apartment Assn. of Greater Los Angeles v. Santa Monica Rent Control Bd.* (1994) 24 Cal.App.4th 1730, 1737; Cole *v. City of Oakland Residential Arbitration Bd.* (1992) 3 Cal.App.4th 693, 700). The term "fair return" is incapable of precise definition *(City of Berkeley v. City of Berkeley Rent Stabilization Bd.* (1994) 27 Cal.App.4th 951,984) but is generally considered to include returns that are "commensurate with returns on investments in other enterprises having comparable risks[,]" *(Fisher v. City of Berkeley, supra,* 37 Cal.3d. at p. 683), or "high enough to encourage good management, discourage the flight of capital, and enable operators to maintain their credit." *Cole v. City of Oakland Residential Arbitration Bd., supra,* 3 Cal.App.4th at p.700.)[25]

In the context of MNOI standards, arguments have been made for the proposition that only one hundred percent indexing is reasonable because otherwise investors will realize a loss in the "real" value of their net operating income and that the expectation that NO1 will increase at the same rate as the CPI is a reasonable expectation.

However, in the world of business and real investment, growth in profit at less than the rate of increase in the CPI has not been considered as a "loss". One would not read in the Wall Street Journal that General Motors suffered a loss last year because its profits only went up 4% compared to a 6% increase in the CPI. Likewise, real estate investment is not seen as a loss when value increases at less than CPI.

---

[23] Id., 27 Cal.App.4th at 977; 33 Cal.Rptr.2d.at 333.

[24] Pinnacle Holdings v. City of San Buenaventura, 2d Civil No. B083047 (Feb. 1995, Second Appellate District, Division Six.).

[25] Donahue v. Santa Paula West Mobile Home Park, 47 Cal.App.4th 1168, 1177 (1996)

Instead of comparing growth in NOI with the CPI, real estate investors look at their rate of return on the cash they have invested. These returns may be well above the rate of inflation even when properties appreciate at less than the full rate of inflation due to the leveraged nature of real estate investments.

One measure of "reasonable investment backed expectations" may be historical trends in NO1 in unregulated rental housing markets. However, statistics on trends in net operating income in the nation or even particular regions have been very limited in time and scope. While there is an index of rents in the Consumer Price Index there is no index of trends in NOI.

A review of historical trends in the Residential Rent Index of the Consumer Price Index reveals that there is no standard relationship (ratio) between increases in the CPI-all items and the Residential Rent Index and that there is no long term historical basis for the expectation that rents will, and, therefore, NOI, will increase at the same rate as the CPI.

From 1913 (when the rent index was first established) through 1980 rents increased by two-thirds of the all-items index on the average. However, the ratios varied drastically from decade to decade. During some decades the increase in rents was about half or less the increase in the CPI. In others it was well above the increase in the CPI. In the 1960's and 1970's, the rent index increased by about two-thirds of the increase in the CPI.[26] In the 1980's, the rent index increased by more than the CPI.[27] In the 1990's, the increases in the rent index have equaled the increases in the CPI. Also, there have been great variations in the rate of rent increases among metropolitan areas.

Some inferences about trends in NO1 may be drawn from trends in rents. During periods when rents increase at a slower rate than the CPI-all items and operating expenses increase at the same rate as the CPI, NOI will increase at a slower rate than rents. The following hypotheticals illustrate this relationship.

If it is assumed that expenses have increased at the same rate as the CPI and that they have equalled half of gross income," then in years in which rents increased at half the rate of increase in the CPI, there have been years during which NO1 did not increase (as illustrated by the following hypothetical).

---

[26] From 1960 to 1970, the U.S. rent index for all urban consumers increased by 20% (from 91.7 to 110.1), compared to an increase in the all-items index by 3 1% (from 88.7 to 116.3) . From 1970 to 1980, the U.S. rent index for all urban consumers increased by 74% (from 110.1 to 19 1.6), compared to an increase in the all-items index by 112% (from 116.3 to 246.8) (1967=100).

[27] From 1980 to 1990, the U.S. rent index for all urban consumers increased by 71.6% (from 80.9 to 138.4), compared to an increase in the all-items index by 58.6% (from 82.4 to 130.7). (1982-84 = 100)

[28] Nationwide operating expenses for apartments typically averaged about half of gross income. See e.g. annual apartment income/expense reports of the Institute of Real Estate Management (Chicago).

(T a b l e 2)
Rents Increasing at 50% Rate of Increase in CPI
Impact on Net Operating Income

	Base Year	Current Year	Pct.Inc.
CPI	100	150	50%
Gross Income	100,000	125,000	25%
Operating Exp.	50,000	75,000	50%
Net Oper. Inc.	50,000	50,000	0%

Increases in rents at two-thirds of the rate of increase in the CPI, the approximate historical average up to 1980, results in net operating income increasing at about 33% of the rate of increase in the CPI, when operating expenses increase at the same rate as the CPI. The table below sets forth the basis for this estimate.

(Table 3)
Rents Increasing at 2/3's of
the rate of increase in the CPI
Impact on NO1

	Base Year	Current Year	Pct.Inc.
CPI	100	150	50%
Rent Index	100	133	33%
Gross Income	$100,000	$133,333	33%
Expenses	$ 50,000	$ 75,000	50%
NO1	$ 50,000	$58,333	16%

When rents increase at three-quarters of the rate of increase in the CPI, NOI increases at 50% of the rate of increase in the CPI.

(Table 4)
Rents Increasing at 3/4's of
the rate of increase in the CPI
Impact on NO1

	Base Year	Current Year	Pct.Inc.
CPI	100	150	50%
Rent Index	100	133	37.5%
Gross Income	$100,000	$137,500	37.5%
Expenses	$ 50,000	$ 75,000	50%
NO1	$ 50,000	$ 58,333	25%

Other evidence also supports the conclusion that on a national level NO1 has not typically increased at the same rate as the CPI. Reports of the Institute of Real Estate Management (IREM), the most extensive source on apartment income and expenses in the U.S., indicate that net operating income/gross income ratios decrease as buildings become older. Alternatively stated, operating expenses consume greater shares of gross income as buildings age.

For example, 1993 IREM data indicates that the median NO1 ratio for garden type buildings constructed before 1978 was approximately 45%, while the median ratio for buildings constructed 1978 or later was 5 1%.[29] Low-rise buildings with over 24 units experienced similar differences in ratios between buildings constructed before and after 1978. Data from IREM's 198 1 report indicated that NO1 ratios were 15 to 20% lower for pre-1946 buildings than for buildings built since 1968.[30]

Apparently, the City of Boston recognized that older buildings have lower NOI/Gross Income ratios. Under Boston fair return regulations which designated a particular net operating income ratio as fair, a higher ratio was used for newer buildings.[31]

An analysis of net operating income trends in Los Angeles, based on Franchise Tax Board data, concluded that "real NOI", i.e. NO1 adjusted for inflation, fell by 4.8% between 1984 and 1992.[32] During the first half of that period, from 1984 to 1988, "real" NO1 increased. From 1988 through 1992, "real" NO1 fell by 16%.[33] The analysis stated that "... the striking shifts in vacancy rates, real rent levels and construction of new multi-family units suggest the possibility of similarly dramatic shifts in the financial performance of stabilized rental housing." It attributed a downturn in "real" NO1 from 1988 through 1992 to ". . the onset of the recession and generally weakening rental market."[34]

Observations of the authors of one widely used real estate text would tend to support the conclusion that NO1 does not increase at the same rate as the CPI. In their text, the authors comment that; "...

---

[29] Institute of Real Estate Management, Income/Expense Analysis, 1993. Conventional Aaartments (Chicago), pp. 208,210,212,&214. (1,661 buildings in the sample were constructed between 1946 and 1977, of which 1,355 were constructed between 1965 and 1977. 1,741 buildings were constructed 1978 or later.)

[30] IREM, Income/Expense Analysis: Apartments (1981), p.34.

[31] Boston, Mass. Rent Regulation ch. 842 Sec.5(b) (1974).

[32] Hamilton, Rabinovitz, & Alschuler, Rental Housing Study 1994 (Los Angeles Housing Department Rent Stabilization Division). This calculation was made by the author using the data contained in the H.R.& A. report. The chart indicates that "Real" NO1 levels were $3,057 in 1984; $3,480 in 1988; and $2,910 in 1992.

[33] Id.

[34] IREM data for the same period showed that NO1 kept up with the CPI from 1988 through 1992. Id. at 101 (Chart 3 1). The differences in results between the two data sources were attributed to differences in the samples from each source. IREM obtained its data from large professionally managed buildings, while the FTB sample was limited to individual property owners (excluding partnership and corporate returns.) Id. at 184-185.

as a property ages and has higher functional obsolescence, revenues are adversely affected. . . . both age and inflation work to increase operating expenses. . Consequently, it is generally true that operating expenses tend to rise at a more rapid rate than revenues over the holding period."[35]

While the foregoing discussion sets forth evidence that NO1 does not typically increase at the same rate as the CPI, information from selected time periods and/or alternate data sets may support varying conclusions about trends in NO1 relative to the CPI. During some periods, the increase in rents has substantially exceeded the increase in the CPI. However, what is very notable is that a review of the available information and of real estate literature clearly reveals that there is no general investor or market expectation that NO1 will increase at the same rate as the CPI.

VI. Selecting an Indexing Ratio - Providing a Fair Return

The formulation of public policy typically involves competing considerations rather than discovery of one truth. As in other fields of price regulation, there is no single answer as to what constitutes a fair return or what rate of return is reasonable.[36]

As opposed to setting a fair rate of return, the MNOI approach regulates the rate of growth in the return.[37] The rate of return is determined by a combination of the investor's investment decisions e

---

[35] Wurtzebach and Miles, Modem Real Estate, 569 (1994).

[36] In other fields of property regulation, "windfall" and "wipeout" situations often rest on the selection of a number, such as a minimum lot size for a particular type of use or density. Those who fall under the minimum lot size or just outside of a permitted use zone may discover that their permitted use is worth fifty or ninety percent less than those of neighboring property owners who have a lot that is 2% bigger or 100 feet away. Fortunately, the selection of an indexing ratio does not create a line of windfalls and wipeouts.

[37] There are strong policy reasons for not using return on investment formulas. They allow the investor to control the rent by controlling the magnitude of the investment. See Baar, supra note __ at 790-96 for a discussion of fair return on investment formulas.

In 1984 in a New York case involving land use regulation a federal court explained the conceptual shortcomings of a return on investment approach. The court commented:

> . In addition to being inconsistent with the case law, appellants' [return on investment] approach could lead to unfair results. For example, a focus on reasonable return would distinguish between property owners on the amount of their investments in similar properties (assuming an equal restriction upon the properties under the regulations) favoring those who paid more over those who paid less for their investments. Moreover in certain circumstances, appellants theory "would merely encourage property owners to transfer their property each time its value rose, in order to secure . . that appreciation which could otherwise be taken by the government without compensation.. ." (Park Avenue Tower Associates v. City of New York, 746 F.2d. 135, 140 (1984)

In a subsequent case, the District Court found that the reasoning of Park Avenue Tower applied equally in the context of rent regulation and that "neither the case law nor common sense supports the reasonable return

purchase price and financing arrangements) and the rate of growth in return that is permitted. As previously indicated, regulation of the rate of return on investment would operate in a circular manner. Furthermore, specification of a particular rate as reasonable would suffer from fundamental shortcomings. Rates of return on original investment vary substantially depending on the length of ownership. Long term owners typically obtain high rates of return, relative to the original investment, while recent purchasers have low or even negative rates of return.

As an alternative to calculating what rate of return would be permitted under particular maintenance of net operating income indexing ratios, projections may be made of the growth in equity that would occur under alternate MNOI standards with specified financing arrangements.

The "leveraged" nature of real estate investments allows investors to receive a reasonable return on their investments when increases in NO1 are well below the rate of increase in the CPI. As a result of the leveraging factor, the increase in equity may be a multiple of the rate of increase in the net operating income and value of the property.

The following hypothetical is designed to illustrate this reality. If a house is purchased for $100,000 with a $20,000 downpayment (original equity), a 20% increase in value will result in a 100% increase in the owner's equity (from $20,000 to $40,000).

For the purposes of this analysis, it is assumed that investors obtain 70% financing for mobilehome park purchases. This ratio is obtainable by the typical mobilehome park investor.[38]

As the hypothetical below illustrates, if an investor purchases a mobilehome park for $1 ,OOO,OOO with a 30% ($300,000) downpayment, a 20% increase in the NO1 leads to a 20% -$200,000 - increase in the value of the property[39] which in turn leads to a 66% increase in equity. In this case the investor's equity has increased from $300,000 to $500,000. (However, some of the increase in equity may be consumed by sale costs. For example, the increase in equity may be reduced from $200,000 to about $128,000, as a consequence of sale costs equal to 6% of the sale price. As a result, the increase in the equity net of sale costs may be 43% (in this case a $128,000 increase in equity is compared with a $300,000 investment).

---

definition of economic viability." (Rent Stabilization Association v. Dinkins, 805 F.Supp. 159, 163 (1992)

[38] This conclusion is based this author's reviews of reports on mobilehome park sales.

[39] In the case of a property that is purchased for income producing purposes, the value of the property is a function of its net operating income. The standard formula for valuing income properties is V= NOI/CapitalizationRate.

Factors other than changes in NOI, may cause a property to increase in value at a faster or slower rate than the NOI, including expectations about future growth in NOI, changes in the capitalization rate, and other potential uses of the property.

(Table 5)
NO1 INCREASING AT 40% OF THE RATE OF INCREASE IN THE CPI
INCREASES IN CPI, NOI, VALUE, AND EQUITY COMPARED

	Base Year	Current Year	Pct. Increase
CPI	100	150	50%
NO1	$ 90,000	$ 108,000	20%
Value	$1,000,000	$1,200,000	20%
Mortgage	$ 700,000	$ 700,000	0%
Equity	$ 300,000	$ 500,000	66%
Equity Adjusted	$ 300,000	$ 428,000	43%

One may debate about each aspect of the "average" cases presented here. Sale costs may reduce returns. Greater leveraging may raise the rate of growth in equity. Conversely, larger downpayments reduce the rate of growth in equity, relative to the rate of increase in the NOT. Properties have appreciated at varying rates. The critical concept is that, due to leveraging, equity may increase at a multiple of the rate of increase in value. In terms of an indexing ratio, the reality of leveraging may result in equity increasing at a rate that approximates or exceeds the rate of increase in the CPI, even though NO1 is increasing at a rate well below the rate of increase in the CPI.

As the following hypothetical illustrates, if the financing assumptions remain the same and the indexing ratio is increased to 50%, the rate of increase in equity equal the rate of increase in the CPI.

(Table 6)
NO1 INCREASING AT 50% OF THE BATE OF INCREASE IN THE CPI
INCREASES IN CPI, NOI, VALUE, AND EQUITY COMPARED

	Base Year	Current Year	Pct. Increase
CPI	100	150	50%
NO1	$ 90,000	$ 112,500	25%
Value	$1,000,000	$1,250,000	25%
Mortgage	$ 700,000	$ 700,000	0%
Equity	$ 300,000	$ 550,000	83%
Equity Adjusted	$ 300,000	$ 450,000	50%

When, the indexing ratio is 60% (and the financing assumptions remain the same), the rate of increase in equity exceeds the increase in the CPI.

(Table 7)
NOI INCREASING AT 60% OF THE RATE OF INCREASE IN THE CPI
INCREASES IN CPI, NOI, VALUE, AND EQUITY COMPARED

CPI	**100**	**150**	**50%**
NOI	**$ 90,000**	**$ 117,000**	**30%**
Value	**$1,000,000**	**$1,300,000**	**30%**
Mortgage	**$ 700,000**	**$ 700,000**	**0%**
Equity	**$ 300,000**	**$ 600,000**	**100%**
Equity Adjusted	**$ 300,000**	**$ 522,000**	**74%**

A Reasonable Indexing Ratio

As indicated in the table of indexing ratios of mobilehome ordinances, there are wide variations among the indexing ratios of the maintenance of net operating standards of different cities and counties. The historical evidence on trends in the rent index of the CPI indicates that rents commonly increase at less than the full rate of increase in the CPI and that in the case of apartment investments, it is common that NO1 increases at a slower rate than the CPI.

As indicated in Table 4 increasing rents by 75% of the increase in the CPI results in NOI increasing at 50% of the rate of increase in the CPI. As indicated, in Table 6, due to the leveraging factors associated with real estate investments this rate of increase in the CPI leads to growth in equity at rates approximating the rate of increase in the CPI.

While extended discussion of the nature of mobilehome space rentals is beyond the scope of this memorandum, in order to place the foregoing returns in perspective, it should be noted that competition in the park space rental business is severely limited. As a consequence, mobilehome park ownership is a low-risk business. Once mobilehomes are moved onto spaces, moving them to other spaces in other parks is economically and practically infeasible.[40] Public regulations severely curb the construction of new parks, giving owners of existing parks in urban areas virtually exclusive licences. The peculiar nature of the mobilehome space landlord-tenant relationship and/or its monopoly like characteristics have been repeatedly noted in state and local legislation and court decisions."[41]

---

[40] See e.g. California Civil Code Sec. 798.55(a).

[41] E.g. Adamson Companies v. City of Malibu, 854 F.Supp. 1476, 1481 (1994, U.S.D.C., Central Dist. Cal.); Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., 541 So.2d. 1121, 1124 (198_, Florida Supreme Court); Cider Barrel1 Mobilehome Court v. Eader, 414 A.2d.,1246,1248 (1980, Md.). For additional discussion of the immobility issue and land use controls on the supply of parks see Baar, "The Right to Sell the "Im"mobile Manufactured Home in Its Rent Controlled Space in the "Im"mobile Home Park: Valid Regulation or Unconstitutional Taking?", 24 Urban Lawver 157, 170-180 (1992).

Western Mobilehome Association
871 38th Avenue OFFICE
Santa Cruz, CA 95062

827

May 18, 1999

The Honorable Jeff Almquist, President
Santa Cruz County Supervisors
701 Ocean Street, Room 500
Santa Cruz, CA 95062

RE: Revisions to Rent Control

Dear Mr. Almquist:

On Tuesday May 25, 1999, your court will hear public comments on the revisions to the rent control ordinance. Enclosed are copies of previous correspondence for your reference.

Thank you for your attention to this matter.

Sincerely,

Penny Lopez

Penny Lopez
WMA President

62

THE LAW FIRM
of
SPANGENBERG & ASSOCIATES

David Spangenberg, Esq.
Lark L. Ritson, Esq.
Robert R. Powell, Esq.

Susan Crockett, Paralegal

375 Forest Avenue
Palo Alto, California 94301
Tel: (650) 325-4491
Fax: (650) 325-4494

C&E 828

RECEIVED
APR 14 1999
EMS

April 9, 1999

Facsimile & Mail (831) 454-2115

Dwight Herr, Esq., County Counsel
County Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Re: April 13, 1999 Hearing on Proposed Amendments to County of Santa Cruz Rent Control Ordinance and Request to Make Further Amendments in Response to the Recent Case of *Richardson v. City and County of Honolulu*

Dear Mr. Herr and Members of the Board:

Thank you for the opportunity to write to you about the April 13, 1999 hearing to amend the County of Santa Cruz Mobilehome Rent Control Ordinance. Please incorporate this letter into the administrative record. Our firm represents many of the mobilehome parkowners in the County of Santa Cruz and is acting to protect their rights under local rent control. I want to address recent developments in the law, particularly the Ninth Circuit decision in *Richardson v. City and County of Honolulu,* (9th Cir. 1997) 124 F.3d 1150 and its relevancy to changes in the County of Santa Cruz Mobilehome Rent Control Ordinance. In light of the *Richardson* decision, vacancy control by the County is not in compliance with Federal law. I understand that the Board is in the process of drafting revisions to the ordinance; I wanted to write separately to underscore the necessity for full vacancy decontrol as a necessary requirement to maintain compliance with Federal law.

In the wake of the United States Supreme Court decision *Yee v. City* of *Escondido* (1992) 503 U.S. 519, distinguishing regulatory and physical takings, *Richardson* is the most important clarification of the law as to unconstitutional regulatory takings to date. Specifically, *the Richardson* decision is important because it stands for the fact that a local ordinance which imposes vacancy control on rental prices results in an unconstitutional taking of property when a tenant is able to sell his property to an incoming tenant. This occurs because, the court notes, such an ordinance cannot sufficiently advance a legitimate State interest.

In Yee v. City of Escondido, supra, at page 530, the court held:

> "Petitioners are correct in citing the existence of this premium as a difference between the alleged effect of the Escondido ordinance and that of an ordinary apartment rent control statute. Most apartment tenants do not sell anything to their successors (and are often prohibited from charging 'key money'), so a typical rent control statute will transfer wealth from the landlord to the incumbent tenant and all future tenants. By contrast, petitioners contend that the Escondido ordinance transfers wealth only to the incumbent mobile home owner. This effect might have some bearing on whether the ordinance causes a *regulatory* taking, as it may shed some light on whether there is a sufficient nexus between the effect of the ordinance and the objectives it is supposed to advance."

The United States Supreme Court ruling that vacancy control may cause a regulatory taking validates the *Richardson* court's decision. Following the guidance of the Supreme Court in this matter, the *Richardson* court found that the ordinance in question:

> "[R]egulates the use of lessor's property interest in a manner that does not substantially further the goal of creating affordable housing. The absence of a mechanism that prevents lessees from capturing the net present value of the reduced land rent in the form of a premium, means that the ordinance will not substantially further its goal of creating affordable owner-occupied housing in Honolulu. Incumbent owner-occupants who sell to those who intend to occupy the apartment will charge a premium for the benefit of living in a rent controlled condominium. The price of housing ultimately will remain the same. The ordinance thus effects a regulatory taking."

In *Richardson*, the owners of land under condominiums challenged a rent control ordinance enacted in Honolulu, Hawaii. The section of the ordinance at issue states that "the owner-occupant of a condominium is free to convey his or her leasehold interest in the underlying land to a person intending to occupy the condominium and the transferee will receive the benefit of the renegotiated land lease." The land owners argued that this was unconstitutional. The Ninth Circuit agreed. Land owners who could demonstrate lease rents were not keeping pace with resale prices in condominium units on their leased land were acknowledged to suffer a regulatory taking of their property, and were afforded the opportunity to renegotiate the leases to market rates upon resale. To allow otherwise, the 9th Circuit Court of Appeals determined, would be to allow condominium owners, who were also renters of the land leasehold, to profit from the sale of the right to occupy a unit on a below market land lease. In that case, it was determined that the rights of the land owner were being unlawfully transferred and sold by the condominium owner/lessee.

Richardson describes this pattern in detail stating:

> "Land use regulations do influence the value of property, but to be constitutional, they must do so in a manner that substantially furthers a legitimate government interest. *Nollan vs. California Coastal Commission,* ((1987) 483 U.S. 825, at 834). Ordinance 91-96 [the Honolulu Ordinance at issue] does not do this. It regulates the use of lessor's property interest in 'a manner that does not substantially further the goal of creating affordable housing. The absence of a mechanism that prevents lessees from capturing the net present value of the reduced land rent in the form of a premium, means that the ordinance will not substantially further its goal of creating affordable owner-occupied housing in Honolulu. Incumbent owner-occupants who sell to those who intend to occupy the apartment will charge a premium for the benefit of living in a rent controlled condominium. The price of housing ultimately will remain the same. The ordinance thus effects a regulatory taking. See, *Id.* (Regulation must substantially advance a legitimate state interest); see also, *Pennell v. San Jose*,((1988) 485 U.S. 1, 20, 99 L.Ed. 2d 1, 108 S.Ct. 849) "traditional land-use regulation (short of that which totally destroys the economic value of property) does not violate [the principal that one should not be forced to bear the burden which belongs to the public as a whole] because there is a cause-and-effect relationship between the property use restricted by the regulation and the social evil that the regulation seeks to remedy.") (Scalia, J., concurring). We accordingly hold that ordinance 91-96 violates the fifth amendment to the Constitution of the United States. *(Richardson v. City and County of Honolulu, supra*, 124 F.3d 1150, at 1165 - 1166.)"

The Richardson case shows that ordinances with vacancy control effect regulatory takings in that they do not substantially advance a legitimate government interest. Advancing a legitimate government interest is critical as it is part of the two-prong test outlined in *Dolan v. City of Tigard* ((1994) 512 U.S. 374; 114 5. Ct. 2309). There, the U.S. Supreme Court stated: "a land use regulation does not effect a taking, for purposes of the takings clause of the federal constitution's fifth amendment, if the regulation substantially advances a legitimate state interest and does not deny an owner of economically viable use of the owner's land." (*Dolan*, 512 U.S.374, at 385). You will note, the two prongs of this test are conjunctive only to hold when a land use regulation does not effect a taking. However, if either is not met, there is a taking. The issue for the County is that the lack of vacancy decontrol on mobilehome spaces under rent control is exactly the same problem determined to be a taking of landowners' rights as in the *Richardson* case.

Attempting to draft a provision with a "different purpose" than the Honolulu Ordinance would not make vacancy control constitutional. Arguing that there are critical differences in the wording of the ordinances would not be enough to avoid the *Richardson* holding of unconstitutionality for an ordinance which includes vacancy control. Specifically, some may attempt to argue that an ordinance whose purpose is to protect "low rents" is not the same as Honolulu's purpose which was to protect "affordable housing." As all understand, the underlying motive of the governing body is to protect citizens from spending all of their income on housing costs. The argument of low rental rates being the intent of a city rather than affordable housing is, in reality, an illustration of form over substance. The issue of creative terminology was addressed by the United States Supreme Court in *Lucas v. South Carolina Coastal Council;* "since such a justification can be formulated in practically every case, this amounts to a test of whether the legislature has a stupid staff. We think the takings clause requires Courts to do more than insist upon artful harm preventing characterizations. " ((1992) 505 U.S. 1003, at 1025). Therefore, when considering your revisions to the Ordinance, I would request that you do more than create "artful harm preventing characterization" and simply avoid vacancy control entirely.

Others may argue that the purported legitimate state interest being protected in an ordinance with vacancy control is the preservation of a mobilehome owner's "investment" by keeping rents low. The justification is simply a verbal reworking of the exact same state interest at issue in *Richardson.* Additionally, the justification ignores the reality that mobilehomes are personal property which decline in value over time (see the Kelley Blue Book on mobilehome value). Mobilehomes do not appreciate in value. Rather, a mobilehome depreciates (just like a car, van or other personal property) unless the personal property is a unique collector's item. A mobilehome has no value other than its depreciated value, except that due to the very location and situs of the mobilehome i.e, a mobilehome park such as those in the County of Santa Cruz.

Additionally, the *Nollan* and *Dolan* decisions cause a heightened standard of judicial scrutiny to be applied to all mobilehome park taking decisions. Also, remember that the revised ordinance in the County will be required to advance a legitimate state interest. The California *Courts* solidify this view in *152 Valparaiso Associates vs City* of *Cotati,* stating "under the more recent Federal Supreme Court cases, general land use regulations will be held to have effected a regulatory taking if the results produced by the regulatory scheme do not advance a legitimate state interest. [Citing *Nollan,* and *Dolan"]* (56 Cal.App. 4th *378,* at 384, *65 Cal.* Rptr. 2d 551, at 555.)

To impose vacancy control would reveal an underlying fear of the County of Santa Cruz. The County would have to believe that without vacancy control, citizens would be forced to spend too much of their income on housing. Ironically, vacancy control in no way alleviates this problem. Because vacancy control does not regulate the price which an outgoing homeowner may charge an incoming homeowner, a premium will obviously be placed on the purchase price. *Richardson* accurately describes this phenomenon. All a vacancy control ordinance does is keep rent low while letting housing prices move upward to match the market. While income spent on rent is low, overall housing expenses do not change.

Therefore, the County would not advance its interest of protecting low housing costs. Where new tenants have to pay a huge cost for a mobilehome, even though their rent may be below market rates, their ability to have affordable housing is not advanced. Thus, in sum, new tenants are out of pocket the same amount of income but they pay the seller up front rather than a park owner over time. Proportionately, however, the outgoing tenant receives more than he deserves.

The Golden State Mobilehome Owners League ("GSMOL") - the statewide organization representing residents - has recently decided to change its position (in conformity with Federal law) and now supports limited vacancy decontrol. Maurice Priest, general counsel for GSMOL, has recommended in letters to cities that they provide limited vacancy decontrol of 5 to 10 percent.

In a June 18, 1998 letter to the City of Thousand Oaks, Priest writes:

> "While the park owners' request for decontrol at time of resale to what the park owner determines to be the market rate cannot be supported by GSMOL, case decisions following the *Yee* vs. *Escondido* case do indicate that some reasonable adjustment of the rents should be permitted at time of resale even when a unit is not being removed from the space. Many cities have modified this portion of their ordinances to allow an additional increase in rent at time of resale of the unit which will remain in the park. I would encourage the City to adopt an amendment to the ordinance which would allow a 5 % to 10% increase in the existing rent on the space at the time a unit is resold."

Also, the noted law firm of Best, Best & *Krieger,* which provides legal representation for many municipalities in California, has taken a position supporting vacancy decontrol. The City of Colton's city council, following the advice of Best, Best & Krieger, voted on June 16, 1998 to amend its ordinance to provide for unlimited vacancy decontrol.

The County of Ventura, perhaps because of the *Richardson* decision, and perhaps in part in a sense of fairness, has opted to keep a 15 percent vacancy decontrol provision in its rent control ordinance. Subsequent to the *Richardson* decision, the cities of Colton, Oxnard, Ontario, Scotts Valley and Sonoma have opted to keep or institute'vacancy decontrol in their ordinances.

A strong majority of cities/counties in the state have opted for either full or partial vacancy decontrol for legal and fairness reasons.

> 21 Cities/counties in the state have FULL vacancy decontrol in their ordinances
>
> 35 cities/counties in the state have partial vacancy decontrol.

The most compelling reason to reinstate vacancy decontrol is that it is the fair thing to do. Residents have vast protections under rent control, while community owners see their investments steadily eroded away. In no other segment of American commerce does a business person know that no matter how well he or she runs the business, the very best that can be hoped for is to be able to increase prices by only inflation.

The argument is often made that residents cannot move without severe financial impact, thus they are a captive audience and therefore deserve rent control protection. Yet the fact of the matter is that there is much movement in the communities. Vacancy decontrol would, in effect, act much like Proposition 13. So long as people stay put, they would maintain their rents at a lower level. The rent would be allowed to go up as home sales occur, just as is the case with property taxes under Proposition 13.

Persons who move to Santa Cruz and decide to buy a mobilehome in one of these communities have complete freedom of choice. If the community or the rent is unacceptable, they are free to look at other homes in other communities, or at apartments, or at condominiums or at stick-built homes for sale. The old "captive" tenant argument cannot possibly apply to them.

Because they have complete freedom of choice in their housing decision - and because Santa Cruz County mobilehome communities are highly desirable and represent a housing bargain - it is only fair that community owners have some freedom to raise rents for new
residents.

Santa Cruz County community owners and industry- representatives seek an ordinance which would provide them some relief and one that would be fair and workable for both sides. The glaring omission in the Santa Cruz County ordinance is that it does not provide for full vacancy decontrol. We would prefer not to take a legal course in this matter, and are trying to engage in a reasonable and cooperative approach.

A number of jurisdictions have already agreed to full vacancy decontrol in their mobilehome rent control ordinances, included among them the County of Los Angeles several years ago. Most of those were probably the result of the fairness issue raised by the business people who own the mobilehome communities. Regarding the fairness issue, there is no evidence that new residents need to be protected from fair market rents, and owners of these communities should not be required to subsidize below market space rents for newcomers.

In the past few months, approximately a half dozen new jurisdictions joined the vacancy decontrol movement likely motivated by the possibility of litigation in light of the *Richardson* decision. That number is sure to grow.

Vacancy decontrol would not have a negative impact on existing residents and future residents would be under the full protection of rent control. It would merely offer some fair and reasonable relief to community owners who have carried the full burden of rent control, without any of the benefits experienced by the residents. New residents will know well in advance of their home purchase decision what the rent will be, and they will have time to negotiate a rental agreement that best suits them.

It is our goal to continue to work with the County in operating clean, efficient and desirable rental communities, that attract higher income residents and the type of home resale prices that speak well for the County of Santa Cruz. We want to ensure that mobilehome communities will continue to upgrade appearances to attract new residents at higher rents avoiding the cycle of deterioration that befell the trailer parks of the 50's and 60's.

You should also be aware of extremely recent developments in the City of Ontario. On the evening of February 2, 1999, the City Council completely repealed rent control on a unanimous 5-O vote. This turn of events came about as a result of their counsel's advice regarding vacancy control. Their attorney, Jamie Raymond, from Best, Best & Krieger properly informed the Mobilehome Task Force of the state of the law regarding vacancy decontrol. The City's attorney adamantly asserted to the Task Force that there was no room for creative legislative maneuvering on this issue. She concluded that

any form of vacancy control is unconstitutional. Subsequent negotiations on the issue with owners and renters ended up in a repeal of rent control entirely. We believe it is important that you understand how seriously other prominent rent control jurisdictions are taking this issue. Further, they are not doing so whimsically. Rather, they have received solid legal advice from some of the best rent control attorneys in the field leading up to their implementation of full vacancy decontrol. We believe the County must take the same, well reasoned approach.

As stated in *Richardson, the* law clearly does not allow a vacancy control provision to an ordinance to exist as it will not substantially advance any legitimate government interest contained within the ambit of rent control. In light of the fact that the County of Santa Cruz Ordinance will be revised, I would like to know what county counsel's recommendations to the County will be as to how the County should eliminate vacancy control so as to comply with federal law. Those I represent would like to be assured that the County will not continue to effect takings from mobilehome park owners by implementing an unconstitutional provision. I am very eager to hear your opinion on this matter and would like to hear from County Counsel as soon as possible on this issue.

Should you have any questions regarding this matter, please do not hesitate to contact me at (650) 3254491.

Very truly yours,

DAVID SPANGENBERG

DCS/jsc

cc: 39 Santa Cruz County Parkowners

D:\X\9740L\BOARD.001

ANTHONY C. RODRIGUEZ
ATTORNEY AT LAW
1300 CLAY STREET
SUITE 600
OAKLAND. CALIFORNIA 94612
TELEPHONE (510) 464-8022

836

RECEIVED
APR 14 1999
EMS

April 13, 1999

VIA FACSIMILE AND U. S. MAIL
(83 1) 454-3262

The Honorable Jeff Almquist, President
Santa Cruz County Board of Supervisors
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Proposed Amendments to Santa Cruz County Mobilehome Rent Adjustment Ordinance

Dear Mr. Almquist,

This office represents the owners of several mobilehome parks in Santa Cruz County. I have specialized in legal issues involving mobilehome parks for approximately 14 years. I have been asked to comment on the proposed amendments to the Santa Cruz County Rent Adjustment Ordinance.

Although my clients reserve the right to challenge all aspects of both the current ordinance and the proposed ordinance, this letter is primarily concerned with the proposed amendment that could require a parkowner to pay the tenants' attorneys fees if a parkowner does not recover at least 50 % of a proposed rent increase. This proposed amendment is contrary to federal law and state law, and therefore unconstitutional. Accordingly, the Board is respectfully requested to reject the proposed amendment. Below is a more detailed analysis of this request.

A. THE PROPOSED AMENDMENT IS CONTRARY TO FEDERAL LAW

Rent control disputes almost always involve an alleged violation of constitutional rights, under either the due process or the takings clause. Kavanau v. Citv of Santa Monica, (1997) 16 Cal. 4th 761, 770-771. As a result, rent control disputes also almost always involve the violation of rights protectedunder 42 U.S.C. § 1983. Under 42'U.S.C. § 1988 a party is entitled to recover its attorneys fees and costs if it establishes a violation of its constitutional rights under 42 U.S.C. § 1983.

62

It is well settled that a local government may be held liable for the violation of constitutional rights under 42 U.S.C. § 1983. Monnel v. New York City Dent. of Social Services, (1980) 436 U. S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 673; Williams v. Alioto, (9th Cir. 1980) 625 F. 2d 845, 848, N. 2. An award of attorneys fees under 42 U.S .C. § 1988 is appropriate in ***all*** types of actions involving the violation of constitutional rights, not merely those involving invidious discrimination. Maine v. Thiboutot, (1980) 448 U. S. 1, 10; 100 S. Ct. 2502, 2507; 65 L. Ed. 2d 555. In fact, the courts have specifically held that a party may recover attorneys fees from a City if the party successfully challenges the unconstitutional application of a municipal ordinance. Aware Woman Clinic v. Citv of Cocoa Beach, (5th Cir. 1980) 629 F. 2d 1146, 1148-1149.'

It is equally well settled that a party is entitled to attorneys fees under 42 U.S.C. § 1988 if the judgment is entered in his or her favor, even though the party does not prevail on his or her entire claim. Bly v. McLeod, (4th Cir. 1979) 605 F. 2d 134, 137. All that is required is that the party obtain "some" of the relief sought. Farrar v. Hobby, (1992) 113 S. Ct. 566, 572. Thus, if a party has established a violation of its constitutional rights, the court has little discretion to deny an award. As stated by the United States Supreme Court in New York Gaslight Club v. Carey, (1980) 447 U. S. 54, 68:

> "... the court's discretion to deny a fee award to a prevailing Plaintiff is narrow. Absent 'special circumstances' fees should be awarded. "[2]

Perhaps more important than the broad standards under which a prevailing "plaintiff" may recover attorneys fees in civil rights litigation are the strict standards under which a prevailing "defendant" may recover such an award. In addition to prevailing on ***all*** claims against it, a prevailing "defendant" must establish that the entire claim was "frivolous, unreasonable or

---

1 Of course, there is no need to specifically plead a violation of 42 U.S.C. § 1983, or any other statute, in order to receive an award of attorneys fees under 42 U.S.C. § 1988. See Kreutzer v. County of San Diego, (1984) 153 Cal. App. 3d 62, 69-70. See also Fenton v. Groveland Community Services Dist., (1982) 135 Cal. App. 3d 797, 810. All that is required is that the government be on notice that the constitutionality of its conduct is at issue. Americans United For Seuaration of Church and State v. School Dist. of Grand Rapids (6" Cir. 1987) 835 F. 2d 627, 631.

2 See also North Carolina Dept. of Transportation v. Crest Street Community Council, (1986) 107 S. Ct. 336, 341; 479 U. S. 6, 15; 93 L. Ed. 2d 188 [party who sues for violation of constitutional rights is entitled to recover attorneys fees incurred in ***underlying*** administrative proceedings].

groundless". Hughes v. Rowe, (1980) 101 S. Ct. 173, 178-179. Of course, the reason for applying this stricter standard for prevailing "defendants" is to prevent the chilling of constitutional claims by plaintiffs. Arnold v. Burger King, (4th Cir. 1983) 719 F. 2d 63, 65.

In short, a parkowner cannot be required to pay attorneys fees in litigation involving constitutional rights unless the parkowner's claim is wholly without merit. In this case, however, the County of Santa Cruz proposes to award attorneys fees to tenants, even where the parkowner has prevailed on "some" of his or her claims. Because the County's proposed amendment is so clearly unconstitutional, it must be rejected by the Board.

B. THE PROPOSED AMENDMENT IS CONTRARY TO STATE LAW

Government Code Section 800 enables a party in administrative mandamus cases to recover up to $7,500 of its attorneys fees, if the Government's conduct is arbitrary or capricious. The courts have defined arbitrary and capricious conduct to include a variety of situations. As stated by the court in American President Lines, Ltd. v. Zolin, (1995) 38 Cal. App. 4th 910, 934:

> "The award of attorney's fees under Government Code Section 800 is allowed...if the actions of a public entity or official were wholly arbitrary or capricious. The phrase "arbitrary or capricious" encompasses conduct not supported by a fair or substantial reason, a stubborn insistence on following unauthorized conduct, or a bad faith legal dispute."

At least one court has specifically found that a rent control board's refusal to consider certain evidence constitutes a basis for an award of attorneys fees under Government Code Section 800. See Campbell v. Director of Residential Rent Stabilization Board of San Francisco, (1983) 142 Cal. App. 3d 123, 129-130. Thus, even where a landlord recovers no money at all, the landlord may be entitled to attorneys fees under both 42 U. S .C. § 1988 and Government Code Section 800. Because the County's proposed amendment would turn both federal and state law upside down, the County's proposed amendment must be rejected.

C. CONCLUSION

This office was recently awarded more than $45,000 in attorneys fees from the City of Capitola under 42 U. S. C. § 1988, even though the parkowners received no rent increase at all with respect to an $88.00 application (see enclosure). This office was also recently awarded more than $85,000 in attorneys fees from the City of Palm Desert, even though a $64 rent increase

application was rejected out of hand four times at the administrative level. Thus, it is obvious that the right to attorneys fees in rent control proceedings involving constitutional rights cannot be based on whether the parkowner recovers more than 50% of a requested rent increase from an administrative hearing officer. Because the proposed amendments to **the Santa** Cruz ordinance are in direct conflict with state and federal law regarding attorneys fees, the Board is again respectfully requested to reject the proposed amendments. Because the proposed amendments may result in litigation, the County is specifically requested to make this letter part of the official record with respect to the proposed amendments.

Very truly yours,

Anthony C. Rodriguez

cc: Dwight Herr, Esq.
David Spangenberg, Esq.
Skip Green
Peggy Matsuda
Greg Evans

72/NILES/ALMQUIST.LTR

ANTHONY C. RODRIGUEZ (State Bar No. 122479)
1300 CLAY STREET, SUITE 600
OAKLAND, CALIFORNIA 94612
Telephone (510) 464-8022
Attorney for Petitioner' Wharf Road Manor

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

The Saia Family Partnership, a California Limited Partnership, dba Wharf Road Manor, Petitioner, vs. The City of Capitola, and Does 1-10 inclusive, Respondents, The Tenants Residing at Wharf Road Manor Mobilehome Park, and Does 11-50, Real Parties in Interest.	Case No. 131054 [PROPOSED] ORDER GRANTING PETITIONER'S MOTION FOR ATTORNEYS FEES AND COSTS Date: October 23, 1998 Time: 8:30 a.m. Dept.: 9

The Petitioner's motion for attorneys fees and costs came on regularly for hearing on October 23, 1998 at 8:30 a.m. in Department 9 of the above-referenced court, the Honorable Robert B. Yonts presiding. Anthony C. Rodriguez appeared for the Petitioner, the Saia Family Partnership. Richard Manning appeared for the Respondent, the City of Capitola. Gerald Bowden appeared for the Real Parties In Interest, the tenants at Wharf Road Manor Mobilehome Park. The court having reviewed the papers for and against the motion, and having heard the arguments of counsel, rules as follows:

The City of Capitola has violated the Petitioner's rights to due process of law. The Petitioner is therefore entitled to an award of attorneys fees and costs under 42 U.S.C. § 1988.

62

The City has also demonstrated a stubborn insistence on following an unauthorized course of conduct. The Petitioner is therefore also entitled to an award of attorneys fees under Government Code Section 800. The court finds that the Petitioner has not pled a cause of action against the Real Parties In Interest, but only against the City of Capitola. For that reason, and for each of the other reasons set forth by the court at the October 23, 1998 hearing, the Petitioner is not entitled to attorney fees from the Real Parties In Interest.

The Petitioner's notice of motion requested attorneys fees of $44,60 1.07. The Petitioner has incurred an additional $3,824 in fees since the filing of its motion, for a total request of $48,425.07. The court finds that $2,832 of said $48,425.07 was incurred solely as a result of the participation of the tenants, and that amount is not properly chargeable against the City. As a result, the total amount of attorneys fees to be paid to the Petitioner by the City of Capitola is $45,593.07. For purposes of clarification, it should be noted that all $45,593.07 is recoverable under 42 U.S.C. § 1988, while only $7,500 is recoverable under Government Code Section 800. The Petitioner is also awarded costs to be paid by the City of Capitola in the sum of $8,088.51, for a total award of attorneys fees and costs of $53,681.58.

The Clerk of the Court shall forthwith enter on the judgment an award of attorneys fees in the sum of $45,593.07 and an award of costs in the sum of $8,088.51 to be paid by the City of Capitola to the Saia Family Partnership.

IT IS SO ORDERED 11-4-98

Robert B. Yonts
Judge of the Superior Court

APPROVED AS TO FORM:

Dated: Oct. 27

Anthony C. Rodriguez
Attorney for Petitioner

62

ANTHONY C. RODRIGUEZ (State Bar No. 122479)
1300 CLAY STREET, SUITE 600
OAKLAND, CALIFORNIA 946 12
Telephone (5 10) 464-8022

Attorney for Petitioner Silver Spur Reserve'

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE/INDIO BRANCH

SILVER SPUR RESERVE, A California General Partnership, dba Silver Spur Mobile Manor, Petitioner, vs. The City of Palm Desert, et. al., Respondents, The Tenants Residing at Silver Spur Mobilehome Park, George Gutierrez, Catherine Britt, et. al., Real Parties in Interest.	Case No. 80790 ~~[PROPOSED]~~ ORDER GRANTING PETITIONER'S MOTION FOR ATTORNEYS FEES AND COSTS IN PART AND GRANTING RESPONDENTS' MOTION TO TAX COSTS IN PART Date: December 22, 1998 Time: 8:30 a.m. Dept.: 2J ASSIGNED FOR ALL PURPOSES TO THE HONORABLE LAWRENCE W. FRY

The Petitioner's motion for attorneys fees and costs.and the Respondents' motion to tax costs came on regularly for hearing on December 22, 1998 at 8:30 a.m. in Department 2J of the above-referenced court, the Honorable Lawrence W. Fry presiding. Anthony C. Rodriguez appeared for the Petitioner, Silver Spur Reserve. Douglas S. Phillips appeared for the Respondents, the City of Palm Desert and the Palm Desert Rent Review Board. The court having

62

reviewed the papers for and against the motion, and having heard the arguments of counsel, rules as follows:

The Petitioner is the prevailing party in this action, having established a violation of its constitutional right to a fair return on investment. The Petitioner is entitled to recover its filing fees in the sum of $250 pursuant to Code of Civil Procedure Section 1033.5(a)(l). The Petitioner is also entitled to recover the cost of the administrative record in the sum of $ 1,169, pursuant to Code of Civil Procedure Section 1094.5(a). The Petitioner is also entitled to recover its attorneys fees in the sum of $85,501, pursuant to 42 U. S. C. § 1988. The Petitioner is not entitled to recover the additional $25,215.33 requested for expert witness fees and other costs.

The Clerk of the Court shall forthwith enter on the judgment an award of attorneys fees in the sum of $85,501 and an award of costs in the sum of $1,419, to be paid by Respondent City 0f Palm Desert to Petitioner Silver Spur Reserve.

Lawrence W. Fry

IT IS SO ORDERED JAN 13 1999

1/13/99

Lawrence W. Fry
Judge of the Superior Court

APPROVED AS TO FORM:

Dated: Dec 23, 1998

Anthony C. Rodriguez, Esq.
Attorney for Petitioner

Dated: Dec 29, 1998

Douglas S. Phillips, Esq.
Attorney for Respondents

70/SILVSPUR/80790/PROPORDR.101

62

EVANS & WATKINS, INC., d.b.a.
EVANS MANAGEMENT SERVICES

E M S

871 - 38th AVENUE
SANTA CRUZ, CA 95062

PHONE (831) 4750335 • FAX (831) 475-0557

May 19, 1999

VIA FACSIMILE AND U.S. Mail
(831) 454-3262

The Honorable Jell' Almquist, Chairman
Santa Cruz County Board of Supervisors
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Proposed Amendments to the County Mobilehome Rent Adjustment Ordinance

Dear Mr. Almquist and Members of the Board:

My family has built, owned and operated ntobilehome parks in Santa Cruz County since 1961. Rent control was first proposed in 1978 and provided park owners with an increase equal to the CPI, plus a direct pass-through of specifically defined and unavoidable costs (government mandated services and capital improvcmcnts). Within two years the Board amended the ordinance by reducing the allowable increase to 75% of CPI. The Board again revisited the issue in 1982 and removed the provision for government mandated services and reduced the CPI index to SO% of the base year (1982).

Presently, I may only adjust rents by one-half the inflation applied to my rents as they were seventeen years ago. Recently, thc intlarion rate was so low, the allowable increase on the annual rent adjustment was exceed by thc value of the stamp on envelope! !

Now the Board has been presented with yet another proposal to further restrict thc park owners ability *to* operatc. You are no doubt aware that the proposal is thc product of a subcommittee of the Mobilehome Commission. A both groups are heavily stacked with residents and every "park owner" suggestion was rejected. These proposals, if adopted, will leave park owners in a corner with over-reaching restrictions and administrative burdens.

We have been responsible providers of housing in this County for over 38 years. It would be refreshing change to receive a hand rather than the back of your hand, again.

Sincerely,

Greg Evans
Opal Cliffs and Bay Mobilehome Parks-Owner

#62