M E M O R A N D U M

City of Thousand Oaks • Thousand Oaks, California

Community Development Department

TO: Scott Mitnick, City Manager

FROM: John C. Prescott, Community Development Director

DATE: May 24, 2011

SUBJECT: **Two Appeals of Rent Adjustment Commission decision granting a "Just and Reasonable Return" rent increase for Ranch Mobile Home Park - Case No. RAA 2010-02. Separate Appeals by:**

(1) A.V.M.G.H. Five, Limited (Park Owner)

(2) The Association of Ranch Tenants (Park Tenants)

RECOMMENDATION:

1. That City Council find that the Rent Adjustment Commission ("RAC") had jurisdiction to consider and decide a "Just and Reasonable Return" rent increase application under Thousand Oaks Municipal Code § 5-25.06(b) for the Ranch Mobile Home Park.

2. That City Council approve a Resolution (to be provided under separate cover before the City Council meeting) denying the two appeals and sustaining RAC's decision on Case No. RA-2010-02 granting a "Just and Reasonable Return" rent increase for Ranch Mobile Home Park in an amount not to exceed $191.95 per space per month, to be phased over a seven-year period, with owner receiving 4% annual interest on the balance of the delayed increase.

FINANCIAL IMPACT:

No Additional Funding Requested. Staff and material costs associated with these requests are included in the approved fiscal year 2010-11 General Fund Budget, which is partially offset by the filing fees paid by the appellants. Per City Council policy, appeal filing fees are set at less than full cost recovery.

BACKGROUND:

Both the Park Owner and the Association of Ranch Tenants ("Tenants") have filed separate appeals of RAC's approval of a "Just and Reasonable Return" rent increase of $191.95 per space per month to be implemented over a seven-year period. Part of the Tenants' appeal makes claims that the Ranch Park is not subject to the City's Mobile Home Rent Stabilization Ordinance ("Ordinance") and therefore RAC had no jurisdiction to consider a "Just and Reasonable Return" application under the Ordinance. The

grounds for appeal relating to the "jurisdictional" objection will be segregated from the other grounds for appeal and considered by City Council first. In the event City Council determines that RAC did not have jurisdiction to consider the Park Owner's application, the remaining grounds of appeal submitted by both the Park Owner and Tenants would be moot. Conversely, if City Council determines that RAC did have jurisdiction, then the remaining grounds for appeal will be considered.

The complete Administrative Record ("AR") for the RAC proceedings, including transcripts was provided to City Council by separate cover on April 28, 2011. The Administrative Record, consisting of Parts A-G, was tabbed and Bates stamped (sequentially numbered in the lower corner of each page) for reference purposes. Material contained in the Administrative Record will be referenced throughout this report.

Ranch Mobile Home Park

Ranch Mobile Home Park ("Park") is a 74-space senior park located at 2193 Los Feliz Drive and comprising approximately 5 acres of land. A location map is included as Attachment #1 to this report. The Park contains 57 single-wide spaces, 16 double-wide spaces, and one space is currently vacant. The Park is owned by AVMGH Five, Limited ("Park Owner").

The Park has a unique development history, which the Tenants claim support their position that RAC did not have jurisdiction to hear the application. The following is a chronology of key actions related to the approval, development and operation of the Park:

July 1974: The Planning Commission recommended approval of a Change of Zone request for the project site from the prior owner, Chet Wyckoff, from RPD-15U (Residential Planned Development, 15 units to the acre) to TPD (Trailer Park Development) to City Council. The proposed Change of Zone did not comply with certain standards related to the Trailer Park Development Zone, including minimum site size of 10 acres, and a reduction in the minimum lot size. In recommending approval, the Planning Department stated that while the request did not comply with some of the TPD standards, such deviations might be warranted because the park is proposed to provide housing for lower-income seniors, provided certain guarantees were obtained from the owner to ensure that the property was developed for its stated purpose.

August 1974: The City Council approved the Change of Zone request reclassifying the site from RPD-15U to TPD.

November 1974: The Planning Commission approved a TPD permit for the property allowing construction of a 74-unit mobile home park with community room and storage area.

January 1975: The applicant appealed certain conditions of the Planning Commission approval to City Council. City Council upheld the Planning Commission decision but deleted a condition requiring redesign of certain lots, and allowed the use of chain-link instead of masonry block on the northerly and easterly sides of the project.

July 19, 1976: The Planning Commission heard a request from a prospective purchaser and now current owner of the park, Andrew Hohn, to establish or conceptually approve the rental rates or the methodology for setting rental rates in the park in order to assess the financial feasibility of developing the mobile home park. The applicant submitted a calculation establishing a 22% net profit, resulting in proposed rents that were $131.00 per space. The Planning Department's position was that the rents were higher than those represented during the original approval, cited as $72.00 to $112.00, and the proposed rental rate structure did not factor in certain fee waivers granted during the development of the park. The Planning Commission referred the matter to City Council.

July 27, 1976: The City Council heard the request to establish a methodology for determining rental rates. The City Council made a motion to conceptually approve a rent level based on an 11.5% return on investment. Subsequently, the Park Owner prepared a document entitled "Addendum" and "CC&R's" establishing the Park as a senior park, and agreeing to calculate rent levels that provide an 11.5% rate of return in accordance with Council's action. There is no evidence that these CC&R's were ever signed or recorded by Park Owner, or formally approved by City.

September 1977: The City Council approved an "interim" rate structure for Ranch; double-wide - $125.00 per month, large lots - $120.00, and regular lots - $115.00. The basis for calculating these initial rental rates was contained in a letter dated August 9, 1977, from Wilson & Hughes, Certified Public Accountants for Mr. Hohn. The rates were termed "interim" because the "gross investment", represented to be $500,000, had not been certified by the developer. These "interim" rental rates appear to have become permanent and remained in effect until a rent adjustment was requested by the applicant in 1983.

September 1983: After consultation with City staff, the Park Owner sent residents a notice of a 7% increase in rental rates, which was consistent with the requirements of the Ordinance in existence at that time. The rental increase was to take effect November 1, 1983.

November 1983: Sometime subsequent to September 1983, City staff became aware of the formula for calculating rents conceptually approved by the City Council in 1976. A report was presented to City Council that indicated that based on the formula the Park Owner appeared to be achieving the 11.5% ($57,500) net profit figure. However, City staff also expressed concern that the formula might not be appropriate for determining the "net profit target" because it did not take into account the effect of inflation. City staff represented that they believed some type of inflation adjustment was appropriate. City Council referred the matter to RAC for review and recommendation.

December 1983: RAC heard the request for rent adjustment. RAC recommended: 1) increasing the $57,500 net profit target by 5.9% (1982 increase in CPI), 2) CPI increases could be applied in future years but not compounded, 3) first year adjustment would be 7%, 4) future adjustment would be based on CPI minus the difference between 7% and the percentage change in CPI, and 5) all future adjustments are subject to City Council approval.

January 1984: The City Council adopted Resolution 84-037 implementing the "Net Profit Target Formula" recommended by RAC and granting a 7% rent increase for Ranch Park. The resolution also set a cap of 4% on future rent increases, and imposed **very low** income and age qualifications for tenancy in the Park. This resolution is discussed in further detail under the "Jurisdiction" section of this report.

February 2001: The Park owners requested a 4% rent increase. After evaluation by City's financial consultant and City staff, City Council granted the 4% rent increase, effective April 1, 2001, based on the formula provided in Resolution 84-037.

City of Thousand Oaks Rent Stabilization Program

Prior to this application, no rent increase for Ranch has been processed under the Ordinance. Instead, the Park Owner received rent increases under the authority of Council Resolution 84-037 in 1984 and 2001 as discussed above. It is important to note that the Ordinance, including all previous versions going back to April, 1980, does not exempt the Ranch Park from its provisions.

The Ordinance is codified in Chapter 25 of Title 5 of the Thousand Oaks Municipal Code ("TOMC"). The purpose of the Ordinance is to "regulate rents so as to safeguard tenants from excessive rent increases and at the same time provide landlords with a just and reasonable return on their rental spaces." (TOMC § 5-25.01)

Rent levels under the Ordinance may be adjusted by any of 3 different means:

- Automatic adjustments: A park owner can raise rents automatically each year not exceeding an amount determined by multiplying the "Index" amount times the "Maximum Base Rent." The "Index" amount is calculated as 75% of CPI change for the previous year, and is capped at 7%. The "Maximum Base Rent" is the space rental amount in 1986. (TOMC § 5-25.05)
- Capital Improvement adjustment: A park owner may apply to the City Manager for a rent adjustment to cover the costs for capital improvements and rehabilitation for a park. (TOMC § 5-25.06(a))
- Just and Reasonable Return adjustment: A park owner may apply to the RAC for a rent adjustment to provide a "just and reasonable rent." (TOMC § 5-25.06(b))

Under the Ordinance, RAC has authority to promulgate guidelines to facilitate its review and determination of "Just and Reasonable Return" applications. In the early 1980's, RAC adopted two resolutions (Resolutions RAC-2 and RAC-5, referred to collectively as the "Guidelines"), which established the "Maintenance of Net Operating Income" ("MNOI") standard as the preferred methodology for reviewing and deciding "Just and Reasonable Return" applications. (See Attachment #4, Guidelines) The details of the MNOI formula will be discussed in the next section.

MNOI Standard

Most, if not all, municipal mobile home rent control ordinances provide for rent increases based on the concept of assuring that the normal operation of the rent control regulations do not wind up depriving a property owner of a "Just and Reasonable Return." This concept stems from a series of United States Supreme Court decisions that have interpreted the 5th and 14th Amendments of the United States Constitution as giving business owners and landlords some protection from governmental regulations that interfere with investment-backed expectations. Regulations that go too far may be deemed a "taking" of private property, and violate due process provisions of the Constitution.

While courts have upheld a local government's ability to regulate rents, those regulations cannot result in a total degradation of the profits of an owner's business. To mitigate potential direct constitutional facial challenges, local ordinances provide a mechanism for owners to request rent adjustments on the basis of just and reasonable return, where it can be demonstrated that the regular rent increases allowed by the local ordinance do not provide a fair return. California courts have further developed and refined these constitutional principles in the context of rent regulations. While not stating that any particular method of calculating a "just and reasonable" return is constitutionally required, California courts have recognized at least one method as passing muster under the Constitution - the MNOI standard.

The theory underlying the MNOI standard is the presumption that a park owner was making an adequate profit (defined as net operating income) immediately prior to rent control becoming effective.[1] The park owner should be able to "maintain" this net operating income notwithstanding the automatic rent increases and capital improvement adjustments allowed under the typical rent control regulation. Because inflation degrades purchasing power over time, the base year net operating income is then adjusted ("maintained") by an inflation factor (usually a percentage of CPI ranging from 40% to 100%) This indexed base year net operating income is then compared to the current year net operating income. To the extent that current year net operating income is less than the indexed base year net operating income, current rents may be adjusted upward to compensate for the difference. For a more detailed description of the MNOI standard, please refer to Dr. Kenneth Baar's Report. (See AR Part C, Tab 6.5: CTO 01287-01290)

[1] Rent regulations were first adopted in Thousand Oaks in April, 1980.

Ranch "Just and Reasonable" Rent Adjustment Application

On June 16, 2010, an application was filed on behalf of the Ranch Park by the Park Owner under §5-25.06(b) of the Ordinance requesting a rent increase of $620.11 per space per month. (See AR Part A, Tab 2.1: CTO 00008) The application included an appraisal, prepared by John Neet, rendering an opinion of market rental value of the Park in 1980 ($240). (See AR Part A, Tab 2.1: CTO 00073) On September 7, 2010, City received an amended application requesting a reduced rent increase of $587.45 per space per month. (See AR Part A, Tab 2.1: CTO 00126) On September 30, 2010, City staff deemed the application complete

At the RAC hearing on December 6, 2010, a public hearing was held be to consider the application. City staff submitted evidence and testimony in support of its analysis of the application. The City's principal expert was Dr. Kenneth Baar, who prepared a report analyzing the application and providing a range of rent adjustment figures meeting the Just and Reasonable Return constitutional standard as applied under the City's Ordinance and Guidelines. (See Baar Report at AR Part C, Tab 6.5: CTO 01272-01330) In addition to providing an analysis using the MNOI standard, for comparative purposes Dr. Baar offered analyses using two alternate methods: comparable controlled rents, and return on investment. (See Baar Report at AR Part C, Tab 6.5: CTO 01311-01315) The City's appraiser, James Brabant, also provided a written opinion of market value for park rent in 1979 ($150) and of comparative rent[2] in the Park in 1999 ($300), and 2009 ($400). (See Brabant Appraisal at AR Part C, Tab 6.6: CTO 01353-01355) In addition, the City's appraiser also reviewed the Park Owner's appraisal. (See Brabant Appraisal at AR Part C, Tab 6.6: CTO 01347-01348)

After City staff's presentation and cross-examination of City's experts, the hearing was continued to January 24, 2011, where the Park Owner, Tenants, and members of the public provided additional evidence and testimony. The Park Owner relied on the expert testimony of Mike McCarthy, a certified public accountant who prepared much of the application, and John Neet, an appraiser who rendered an opinion of market rents at the park in 1980. At this hearing, Mr. Neet submitted a new appraisal lowering market rent for Ranch in 1980 to $200 per space per month (original appraisal was $240), and admitted that he changed his appraisal after reading the City's appraisal prepared by Mr. Brabant. (See Neet Cross-Examination at AR Part F, Tab 28.1: CTO 02494, lines 16-24; and Revised Neet Appraisal at AR Part D, Tab 15.1: CTO 01637-01652) Based on the revised appraisal, the Park Owner reduced his rent adjustment request from $587.45 to $466.12 per space per month. (See Amended Calculation at AR Part D, Tab 15.3: CTO 01689-01690)

Tenants made arguments claiming that RAC did not have jurisdiction to hear the application, and also brought forward written and oral testimony from Ms. Randi

[2] Comparative rent is not market rent, but a value of rent with rent control. In 1986, rent control had been in place in the City for six years making a market rent calculation by appraisal infeasible.

Sorenson, a CPA and Fraud Examiner, concerning the calculation of the MNOI formula under the Guidelines. The public hearing was continued to February 7, 2011.

The public hearing was closed on February 7, 2011. After deliberation, RAC approved a rent increase in the amount of $191.95 per space per month to be phased-in over a seven year period with a 4% interest component and adopted resolution RAC 09-2011 in accordance with Staff's recommendation, with the exception that City staff had recommended that the rent increase be phased-in over a five year period with a 7% interest component. (See AR Part D, Tab 25: CTO 02075-02082)

The key issues that RAC deliberated in rendering its decision on the Park Owner's application are discussed below. These issues, and their consideration in the sequence outlined below, are paramount to implementing the MNOI methodology. It should be noted that a primary objection raised by the Tenants' attorneys is a jurisdictional issue relating to whether the RAC had authority to hear this matter. City Staff determined that the issue of jurisdiction was beyond RAC's purview, and it should proceed to determine the rent adjustment request as presented under the Ordinance. The matter of jurisdiction is discussed in detail at the beginning of the Discussion/Analysis section of this report. All of the factors outlined below bear directly upon calculating an appropriate rent increase to achieve a "Just and Reasonable Return" under the Ordinance and in accordance with the MNOI methodology outlined in the Guidelines.

- Appropriate Base Year:

In making a decision under the MNOI standard, the starting point is the "base year" for determining net operating income. The base year net operating income is compared to the net operating for the current year (2009) to determine if a rent adjustment is warranted. In ideal circumstances the base year is the year immediately preceding the implementation of rent regulations in the City. The presumption is that a park's rents were at market level, and therefore provided a fair return immediately prior to rent regulations going into effect. Following this logic, the Guidelines presume 1979 to be the base year when financial information for that year is available (See Guidelines, § 3.01, Attachment #4)

The Park Owner requested a 1979 base year. However, the Park Owner did not provide any supporting documentation to establish actual operating expenses in 1979. (See Baar Report at AR Part C, Tab 6.5: CTO 01293-01293) The City's expert, Dr. Baar, opined that the Guidelines allow a base year other than 1979 when financial information for that base year is not provided. (See Baar Report at AR Part C, Tab 6.5: CTO 01292, 01315 & 01316)

The Park Owner did provide aggregate expense data for 1982, although operating expenses were not broken down by category. (See Baar Report at AR Part C, Tab 6.5: CTO 01293) The year 1999 was also considered as a base year since detailed expense information existed for that year that was provided to the City when the Park Owner sought a rent increase in 2000. (See Baar Report at AR Part C, Tab 6.5: CTO 01295)

However, Dr. Baar indicated that in order to compute an income adjustment ("Vega") to the 1999 base year income, over 19 years of "comparable" rent regulation would make it difficult to calculate market rent. (See Baar Report at AR Part C, Tab 6.5: CTO 01295 and 01316) City staff ultimately recommended 1982 as the base year because it was the first year the appellant was able to provide data on expenses and was a more suitable base year to make a "Vega" adjustment than 1999, and was consistent with the intent of Guideline § 3.07. After deliberations, RAC adopted 1982 as the base year based on staff's recommendation. (See Resolution No. RAC 09-2011 at AR Part D, Tab 24: CTO 02078)

- Adjustment to Base Year Rents ("Vega"):

As previously mentioned, one of the presumptions of the MNOI standard is that actual rents levels immediately prior to the introduction of rent control reflected market conditions. In the case of Vega v. City of West Hollywood, the California Court of Appeals ruled that park owners must be provided the opportunity to present evidence that the base year rents being charged did not accurately reflect general market conditions and to adjust base year income accordingly. As previously described, one of the unique aspects of the Ranch Park is that the rent levels were initially set in 1977 by City Council to give the Park Owner an 11.5% rate of return on investment. Actual rents charged in 1979 or 1982 were presumably not at market level. Therefore, some type of "Vega" adjustment was necessary to yield a fair value in the base year

To support the position that a Vega adjustment was warranted for a 1979 base year, the Park Owner submitted an appraisal prepared by Mr. Neet indicating that market rents in the Ranch Park in 1980 were $240 (later revised at the hearing to $200) per space per month as compared to actual average rents of $123 per space per month. The City's appraiser, Mr. Brabant, determined that average market rent in 1979 for Ranch was $150 per space per month. Mr. Brabant described the reasons for the difference in value between the two appraisals. (See Brabant Appraisal at AR Part C, Tab 6.6: CTO 01347-01348)

For the 1982 base year, Dr. Baar determined that there would need to be an adjustment to the base year rents. Because no appraisal of market or comparable rent was done for 1982, Dr. Baar calculated a projected comparable rent figure of $178.65 based on the methodology used by the City's appraiser to determine 1979 market rents. (See Baar Report at AR Part C, Tab 6.5: CTO 01298). A "Vega" adjustment to 1982 base year rent was recommended by City staff and ultimately adopted by RAC. (See Resolution No. RAC 09-2011 at AR Part D, Tab 25: CTO 02078-02079)

- Adjustment of Base Year Expenses

When performing an MNOI calculation a determination and possible adjustment to base year operating expenses may be necessary. The reason an adjustment may be required is due to the fact that expense levels may be exceptionally low or high in the base year as compared to the current year (2009). Without this adjustment, this could

result in an increased net operating income in the base year that creates a windfall to the Park Owner when the MNOI formula is calculated. Further complicating matters was the lack of a detailed delineation of individual expense items in the 1982 data.

Dr. Baar found that operating expenses increased by 183% between the 1982 base year and the 2009 comparison year. (See Baar Report at AR Part C, Tab 6.4: CTO 01294) During that same period the CPI increased by 129%. (See Baar Report at AR Part C, Tab 6.5: CTO 01294) Due to the lack of a breakdown of 1982 operating expenses, it was impossible to precisely quantify the basis for the differences in the rates of increase in operating expenses relative to the CPI from 1982 to 1999. But based on the application, Dr. Baar did attribute a portion of this difference to a transfer of management tasks from the Park Owner in the base year to a paid third party in the current year. This was admitted by the Park Owner in a declaration submitted with the application. (See Baar Report at AR Part C, Tab 6.5: CTO 01294)

Accordingly, Dr. Baar included an alternate calculation that increased the 1982 operating expense level to account for tasks performed by the owner and to an amount which limits the rate of operating cost increases from 1982 to 2009 to the rate of increase in the CPI (i.e, 129%). Under this approach, the 1982 base year operating expenses were adjusted upward to $42,555 from the $34,424 reported in the aggregate in 1982. (See Baar Report at AR Part C, Tab 6.5: CTO 01294) In turn, the base period net operating income was decreased by $8,125 ($42,555 - $34,424) and the monthly rent increase projected pursuant to an MNOI formula was reduced by between $17 and $23 (depending on the rate of indexing net operating income). (See Baar Report at AR Part C, Tab 6.5: CTO 01294-01295) City staff recommended that Dr. Baar's alternate base year expense calculation be utilized. RAC adopted the alternate calculation. (See Resolution No. RAC 09-2011 at AR Part D, Tab 25: CTO 02079-02080)

- Rate of Indexing Base Year Net Operating Income

Once 1982 base year net operating income and expenses have been determined as described above, the next step is to determine what CPI ratio should be used index the base year net operating income.

Dr. Baar noted that many rent stabilization regulations in other jurisdictions set forth CPI index ratios ranging from 40% to 100% of CPI. (See Baar Report at AR Part C, Tab 6.5: CTO 01299-01303) Case law has made clear that a 100% indexing ratio is not constitutionally required and courts have upheld indexing ratios as low as 40%. The City of Ventura's 50% ratio was recently upheld in the case of Stardust v. City of San Buenaventura.

The Ordinance and Guidelines do not specify an indexing ratio. The decision regarding which ratio to use was left as a policy decision for RAC. Accordingly, Dr Baar provided a range of indexing ratios (50%, 75%, and 100%) for purposes of calculating MNOI for this application. (See Baar Report at AR Part C, Tab 6.4: CTO 01307-01310) In Dr. Baar's opinion, any of these ratios would meet the minimum constitutional standard of a

just and reasonable return. City staff recommended the use of the 50% ratio based on the low-risk nature of mobile home investment with steady and consistent income streams, which was consistent with Dr. Baar's analysis. (See Baar Report at AR Part C, Tab 6.5: CTO 01304 - 01307) RAC ultimately adopted the 50% index ratio based on Dr. Baar's rationales. (See Resolution No. RAC 09-2011 at AR Part D, Tab 25: CTO 02080)

The series of steps outlined above and approved by RAC resulted in a $191.95 per space per month increase being appropriate to maintain net operating income at a level that would provide the owner a just and reasonable return.

- Phase-in of Rent Increase

Staff recommended a five-year phase in of the recommended $191.95 per space per month rent increase implemented not less than 12 months apart In addition, to compensate the Park Owner for the phase-in in implementing the full rent increase a 7% annual return on the deferred rent increases was also recommended. Ultimately, RAC adopted a phase-in period of seven years, with a 4% (risk free rate) annual return on the deferred rent increases, which would apply only to spaces that are occupied at the time the initial rent increase becomes effective. (See Resolution No. RAC 09-2011 at AR Part D, Tab 25: CTO 02081-02082) The following table represents the annual rent increase the Park Owner is entitled to charge per space, per month, including the additional interest on deferred rent.

Year	Interest on Deferred Rent	Annual Rent Increase
Initial increase	$6.58 - ($164.53x4%)	$34.00
Second increase	$5.48 - ($137.11x4%)	$32.90
Third increase	$4.39 - ($109.69x4%)	$31.81
Fourth increase	$3.29- ($82.27x4%)	$30.71
Fifth increase	$2.19 - ($54.85x4%)	$29.61
Sixth increase	$1.10 - ($27.43x4%)	$28.52
Seventh increase	$0.00	$27.42

DISCUSSION/ANALYSIS

Standard of Review for Appeal

The hearing on this appeal is not a public hearing. Many appeals to City Council are considered "de novo" public hearings, "de novo" meaning that all parties must present evidence at the appeal hearing, even if they presented the same evidence to the body making the decision being appealed. The regulations governing City Council's consideration of this appeal, however, do not require a public hearing or presentation of evidence. TOMC §§ 1-4.01-1-4.05 were amended in 2006 to make the City Manager the appeal authority for minor regulatory permits, instead of City Council. It was not the intent of that amendment to have the City Manager hear and decide appeals of RAC decisions rendered pursuant to TOMC § 5-25.11. The City Attorney has determined

that the pre-2006 version of TOMC §§1-4.01-1-4.05, which designates City Council as the appeal authority, is the appropriate regulation for appeals under TOMC § 5-25.11. (See Attachment #5)

As previously mentioned, this appeal will consider the jurisdictional issues first. For this part of the appeal only, each side and City staff may present additional documentary evidence outside of the Administrative Record to support arguments on the jurisdiction of RAC to hear a Just and Reasonable Return application for Ranch Park.

For all the remaining appeal points concerning the actions taken by RAC on the application, the evidence is limited to the Administrative Record. Each appellant will be able to present arguments regarding their respective positions. However, these arguments are not evidence, but merely opinions of the attorneys similar to opening/closing statements at a trial. Also, members of the public will have an opportunity to speak as required by the Brown Act; however, City Council must rely on the evidentiary record established in the RAC proceedings to form the basis of its decision. No new evidence will be allowed for this part of appeal hearing.

During the RAC public hearing, the Park Owner, Tenants, City staff, and members of the public presented ample evidence, including expert reports and testimony. All sides were given an opportunity to cross-examine material witnesses. All of this information is contained in the complete administrative record of the RAC proceedings, which was provided to City Council under separate cover on April 28, 2011.

Although staff's recommendation is to affirm RAC's decision, City Council has the discretion as the final reviewing body to reach independent conclusions based on the underlying evidence in the Administrative Record. City's expert, Dr. Baar, in his report provided a range of rent adjustment calculations that in his opinion meet the "just and reasonable" return constitutional standard in accordance with the City's Guidelines. (See Baar Report at AR Part C, Tab 6.5: CTO 01317) This range of calculations is summarized in the following table and includes Park Owner's requested increase.

CALCULATIONS FOR PURPOSE OF DETERMINING JUST AND REASONABLE INCREASE			
MNOI Calculations			
Base Year Using City Appraiser's Values			
Base Year	**Percent of CPI Increase**		
	50%	***75%***	***100%***
1979	$206.30	$262.48	$318.66
1982	*$207.10*	$252.80	$297.47
w/expense adjustment	**$191.95**	$234.16	$276.37
1999	$283.94	$304.76	$325.58
Base Year Using Park Owner Appraiser's Value			
1980	$386.71	$487.08	$587.45[3]
1980 Revised	$305.21	$385.77	$466.12

The range of calculations presented in Dr. Baar's report reflects various considerations of the key decision points available in applying the Guidelines to "Just and Reasonable Return" application. The differences in interpreting the Guidelines also form the basis of the appeal as more fully described in detail below. This range of options was presented to and considered by RAC. Council could use any of these calculations in rendering its decision on this appeal

Jurisdiction to Consider Just and Reasonable Application for Ranch Park under the Ordinance

The first issue that City Council must determine is whether RAC had jurisdiction to hear and make a determination on the "Just and Reasonable Return" rent application for the Ranch Park. During the pendency of the application and the hearing on the application the Tenants maintained that RAC did not have jurisdiction to hear the matter under the Ordinance because rent increases at the Park were governed by City Council Resolution 84-037. (See Resolution 84-037 at AR Part D, Tab 15.9, CTO 01950-01951) Tenants' jurisdictional arguments are contained in sections 3A-3C of their appeal. (See Attachment #3) As explained more fully below, RAC did have jurisdiction, as does City Council, to hear this application under the Ordinance..

Tenants Jurisdictional Ground No. 1: Resolution 84-037, not the Ordinance, governs rent increases in Ranch.

In summary Tenants maintain that Resolution No. 84-037 ("Resolution") governs increases at the Park and that City's Ordinance is not applicable. Tenants assert that the Resolution is not "trumped" by the Ordinance, that Ranch has not fallen under the Ordinance in the past and in fact the City has historically treated Ranch differently, and

[3] The Park Owner subsequently reduced this figure to $466.12 based on the revised appraisal

the Park residents' investment-backed expectation requires rent increases to be under the Resolution. Further, Tenants claim that City cannot ignore the Resolution on the grounds that it may be subject to constitutional challenge.

Staff Response to Jurisdictional Ground No. 1.

Brief History of Park

As stated in the Background section, Ranch was originally approved as a trailer park through TPD Permit 74-6. Condition 27 of this permit provides:

> "That prior to issuance of a zone clearance for this project, the developer shall enter into an agreement with the City of Thousand Oaks deed restricting the development for **low-income mobile home park rental**. Said agreement shall establish the City or its duly authorized representative as a housing authority and shall establish conditions of occupancy and rental rates. Said agreement shall be subject to review and approval of the City Attorney and Planning Director and final review and approval by the Planning Commission." (AR Part D, Tab 15.9: CTO 01919, emphasis added.)

When Ranch was approved, there were other mobile home parks in the City but no rent control. The City relied on its police powers to condition the project to be limited to low-income residents, and the actions it subsequently took in furtherance of Condition 27 were also pursuant to its police powers.

City and the developer never entered into an agreement as required by Condition 27. In July 1976 City Council considered an "Interpretation of Condition No. 27 of TPD 74-6 (Rent Schedule) Wycoff Mobile Home Park. (See Attachment #6, Agenda, p.2, Item C. 4.) Formal minutes were never prepared from that meeting (Attachment # 6.) During that time action reports were prepared by recording decisions on the agenda. In the Agenda's margin is a table listed to record approved, denied, referred, continued or filed items. On the second page of the July 27, 1976, agenda, next to Item 7.C.(4) typed in across the table appears "see Addendum." On the last page of this Agenda/Action Report there is a heading entitled "Addendum" listing City Council's action as to Item 7.C.(4). It states that the Council adopted a rent formula for Ranch allowing an 11.5% return on investment. (See Attachment # 6)

Thereafter, it appears that the decision of City Council from that meeting was memorialized in a two page document entitled: "Addendum TPD-74-6 Covenants, Conditions and Restrictions" with the second page marked as Exhibit A. (See AR Part D, Tab 15.9: CTO 01927 – 1928) There are no City records showing that City Council adopted this document. It appears from reading it that the developer simply created the document pursuant to City Council's action, since the second page specifically provides that the rental rate formula is "pursuant to interpretation of condition number 27 of TPD

74-6 as contained in the minutes of the City Council meeting of July 27, 1976." (AR Part D, Tab 15.9: CTO 01928)

On September 20, 1977, City Council set the rental rates for Ranch based on the formula prescribed in July 1976 and the calculations provided by the Park Owner in a letter dated August 9, 1977. (See Attachment # 7) Contrary to the assertions by the Tenants, there is no evidence that City Council amended condition No. 27 of TPD 74-6. Lastly, the developer did execute a written acceptance of TPD 74-6 and its conditions in September 1977. (See AR Part D, Tab 15.9: CTO 01931)

Brief History of Rent Control

City Council in April 1980, adopted the first interim rent control ordinance for both mobile home parks and apartments. Council thereafter extended and modified rent the control ordinances; eventually adopted two separate ordinances for mobile home parks and apartments; and various ordinances were in effect for periods of 3 months to 3 years. In September 1986, City Council adopted another uncodified, although revamped, rent control ordinance for mobile home parks that was to terminate after 5 years. It was during the public hearing process concerning extension of rent control for mobile home parks that a City Council Rent Committee in a report to City Council stated that the proposed ordinance would not apply to Ranch. (See AR Part D, Tab 15.9: CTO 01952 and 01955). The Committee only recommended a 5 year term for this ordinance, and Council adopted the proposed ordinance (No. 933 – NS) with a 5 year term, ending in September 1991. Finally, in January 1996, City Council codified the rent stabilization ordinance and removed any reference of a termination date. The codified ordinance was derived mainly from Ordinance No. 933-NS, although Ordinance No. 1216-NS changed the definition of index, as well as extending the ordinance termination date. (TOMC § 5-25.10.)

Brief History of Rent Control at Ranch

The rents set by City Council in 1977 continued in effect through 1984. In 1983 the Park Owner sought an adjustment to the rents under the interim rent control ordinance existing at that time. Because the City Council adopted a formula for setting rents at Ranch in 1976 and then approved rents based on the formula in 1977, City Council referred the matter to the RAC to consider a rent increase for Ranch. (See AR Part D, Tab 15.9: CTO 01944-1945) Staff then reported RAC's recommendations to City Council in January 1984, at which time the City Council adopted Resolution 84-037. (See AR Part D, Tab 15.9: CTO 01948-01951)

This Resolution contained a new formula for setting rents, but retained the basic concept that the Park Owner was entitled to an 11.5% return on investment. The new formula, however, restricted rental increases "to 4% a year if the park is not achieving the Net Profit Target Figure, as adjusted." (See Resolution at AR Part D, Tab 15.9: CTO 01950-01951) Furthermore, the adjustments were not automatic and needed to be approved by City Council. The Resolution also changed the tenant eligibility

requirements for the Park and specifically tied the income levels of the tenants to Ventura County's median income criteria for "**very low income**" households (See Resolution at AR Part D, Tab 15.9: CTO 01951, emphasis added). As it had done originally in 1974, and again in 1976 and 1977, City Council relied on its police powers in adopting the Resolution.

The Ordinance Applies to Ranch

The Ordinance is made up of various sections having to do with restrictions on rents, as well as administrative adjustments to rent levels. (See TMOC §§ 5-25.01, et. seq.) As outlined above Ranch's rents were restricted prior to implementation of citywide rent control. When City Council first adopted a rent control ordinance in 1980 and the various amendments over the ensuing 16 years, those ordinances all had expiration dates ranging from 3 months to 5 years. The statement in the 1986 City Council Rent Committee Report that the proposed rent control ordinance would not apply to Ranch must be considered within this historical context. At that time, the rent control ordinances were only temporary, whereas Ranch's restrictions were of a long term nature. Therefore, if Ranch had been brought under the Ordinance at that time, then any rent controls on Ranch would have been lost when the rent control ordinance expired, thus jeopardizing the viability of the affordability provisions. Furthermore, City Council had adopted a specific formula for adjusting Ranch's rents just two and a half years prior. These factors explain why the Rent Committee made that statement.

In 1996, however, when City Council codified the Ordinance making it permanent, there was no discussion or mention of Ranch. The Council's adoption and codification of the Ordinance is applicable to Ranch because there is absolutely nothing in the Ordinance excluding Ranch. But this does not mean that the Ordinance negates Resolution 84-037.

In 1974, 1976, 1977 and 1984, when Council exercised its police power to impose rent control on Ranch based on a targeted "return on investment," it was to ensure that it remained affordable. When exercising this police power, Council still had to act within the parameters of the law. Case law is now very clear that rent control regulations must allow a just and reasonable rate of return (Kavanau v. Santa Monica Rent Control Board (1997) 16 Cal.4th 1997)

The City's Ordinance, like many other rent control ordinances, fixes a method for automatic adjustments. (TOMC § 5-25.05) The Ordinance allows for a yearly adjustment based on 75% of CPI times the 1986 base rent. To ensure a just and reasonable rate of return, the Ordinance also provides for an administrative adjustment based on an analysis of just and reasonable return. (TOMC § 5-25.06 (b))

As to Ranch, rather than being permitted automatic yearly rent increases, Resolution 84-037 provides for annual increases approved by Council based on the formula tied to a11.5% rate of return, but restricted to no more than 4% a year. The Ordinance's provision for an automatic increase does not displace the return on investment formula

contained in Resolution 84-037. Rather, the administrative part of the Ordinance pertaining to just and reasonable return is applicable because it does not contradict Resolution 84-037, but rather complements it by providing a mechanism to comply with the Constitutional requirement. It is also within City Council's authority to interpret the Ordinance and Resolution 84-037 harmoniously. (See City of Berkeley v. City of Berkeley Rent Stabilization Board, et al. (1994) 27 Cal.App.4th 951)

Tenants argue that Ranch is only governed by Resolution 84-037, and has never been subjected to the Ordinance. It is technically correct that a Ranch rent increase has never been processed under the provisions of the Ordinance until now. The Park Owner, however, never requested a just and reasonable rent adjustment until this application. There is no reason that the Ordinance's administrative adjustment for just and reasonable return does not apply to Ranch.

The original 1974 entitlement action was an exercise of the City's police power. At no time was the Ranch property deed restricted nor was an agreement entered into with the developer. There is no doubt that that the Park Owner accepted the conditions in the TPD permit, but only after the Council accepted a rent formula allowing an 11.5% return on investment and approved the initial rent rates. (See AR Part D, Tab 15.9: CTO 01931) Park Owner and City both understood that the Park would be rent restricted before there was rent control imposed citywide. .

When Council approved Resolution 84-037, this was not an agreement with the Park Owner or an amendment to the 1974 TPD permit. The Park Owner had requested a rent increase under the interim rent control ordinance. RAC considered the Council's actions in 1974 and 1976, and recommended a new formula for calculating rents in 1984, which Council adopted. The Council though kept the original understanding of the 11.5% return on investment, but limited increases to no more that 4% a year, which at the time was lower than the rate of inflation. Council then went a step further and set the tenant income eligibility to that of "very low income" household compared to the original Condition No. 27's restriction to low-income households.

In 2000, after 16 years had passed, the Park Owner sought a second rent increase pursuant to Resolution 84-037. City staff met with the Park Owner and explained he could proceed under the Resolution or request to come under the City's Ordinance for purposes of automatic increases (See AR Part D, Tab 15.9: CTO 01958-01960). However, even staff's actions in 2000 were not inconsistent with current situation, since the Park Owner then had not requested a just and reasonable return administrative adjustment.

Under Lockyer v. City and County of San Francisco (2004) 33 Cal. 4th1055, Tenants also argue that the City may not ignore Resolution 84-037 by saying it may be unconstitutional. Reliance on this case is misplaced. Lockyer had to do with a City Clerk refusing to enforce a state statute, which did not allow same-sex marriages, because the City believed the state law to be unconstitutional. Lockyer stands for the proposition that an administrative agency' or one charged with ministerial duties to

enforce a law' cannot on its own refuse to enforce it. This is not the case with the City and Resolution 84-037.

City Council is within its police power to make a determination of whether enforcing its own laws would put it at risk of a constitutional violation. There are very clear constitutional mandates related to rent control. Case law is unambiguous that a rent control measure must provide for a reasonable rate of return (Kavanau). According to Dr Baar's report, if the Park Owner had applied for all annual rent increases under the Resolution, the rent at Ranch would have increased by $147.67 per month per space. (See Baar Report at AR Part C, Tab 6.5: CTO 01279) Dr. Baar also reported, however, that to receive an 11.5% return on investment as originally contemplated, the rent level would need to increase by $214.66 per space per month (See Baar Report at AR Part C, Tab 6.55: CTO 01313). A rent control regulation must allow for profit to be adjusted over time, so that the real value of the profit is not substantially eroded due to inflation (Galland v. City of Clovis (2001) 24 Cal.4th 1003 and Berger v. City of Escondido (2005) 127 Cal. App.4th 1). Dr. Baar's report demonstrates that Resolution 84-037 does not provide a return that fell within the range of rent increase alternatives that Dr. Baar determined met the Constitutional minimum.

Furthermore, here we have somewhat of a hybrid situation. The City exercised its police power to ensure affordable rents at a time when there was no rent control. The Park Owner's expectation was to have an 11.5% return on investment, which in July 1976, City Council adopted in interpreting Condition 27. The City then limited the increases in 1984 to a 4% ceiling, which was less than other mobile home parks could receive under the newly instituted citywide rent control ordinance first adopted in 1980. There is no question that a rent control measure must allow a just and reasonable return. Given the understanding of an 11.5% return, arguably that rate of return is the ceiling on what a just and reasonable return could be for this Park.

Lastly, Tenants contend that the Resolution is a "use it or lose it" as to annual rent requests because this was the agreement of the Park Owner. There is no evidence, however, that the Resolution was an agreement. The City adopted the Resolution as an exercise of its police power, not as an agreement. Moreover, Tenants' interpretation of the Resolution would result in a confiscatory taking of the Park Owner's property since his profits would in essence be "frozen" if not diminished and the initial 11.5% rate of return target could never be maintained.

Tenants Jurisdictional Ground No. 2: The Resolution Is Not a Taking of Property.

Tenants further argue that Resolution 84-037 must be followed and cannot be deemed a taking of private property under the recent case of Guggenheim v. City of Goleta (Dec. 22, 2010). (Attachment # 3) Tenants argue that the Park Owner acquiesced to the Park being restricted to lower income tenants and therefore, the Park Owner cannot now complain that Resolution 84-037 with "an annual allowable rent increase of 4%" contravenes any investment backed expectations. Tenants claim that their investment

backed expectations will be negatively affected, if the Resolution isn't followed because their expectations were that rents would not be increased more than 4% a year.

Staff Response to Jurisdictional Ground No. 2.

This is a red herring issue. The reality is that the Ordinance's administrative adjustment of rent for just and reasonable return applies to Ranch for all of the reasons outlined above. City agrees that, under relevant case law, the Park Owner cannot make out a cognizant claim for a taking because there is a remedy of future rent adjustments. (Kavanau and Berger.) This does not mean, however, that the Park owner is not entitled to a just and reasonable rate of return. (Kavanau and Galland.)

When the Park Owner agreed to the TPD permit and thus Condition 27, City Council had interpreted this obligation as being based on an 11.5% return on investment and had set the initial rents accordingly. (AR Part D, Tab 15.9: CTO 01931). The Resolution and the reports to City Council recognized the Park Owner's right to an 11.5% return. In exercising its police power, the City took it further by limiting the yearly increases to no more than 4% and mandating that the Park be restricted to very low income residents as opposed to low income residents as referenced in the initial entitlements. (See AR Part D, Tab 15.9: CTO 01948-01951) Even under Guggenheim, the Park Owner's reasonable investment backed expectation is that he is entitled to 11.5% return on investment and at the very least he is entitled to a just and reasonable return. The Park Owner is not now seeking something different, but instead he is making claim to his original expectation of a certain return on investment.

On the other hand, Tenants claim that their reasonable expectations will not be met if the 4% ceiling is not imposed. The problem with this assertion even under Guggenheim, is that it isn't necessarily reasonable given that the Park owner is entitled to a 11.5% return. Furthermore, unlike Guggenheim, neither the City nor Park Owner claims that rent control does not apply to Ranch.

It is well settled the Park Owner, who subject to rent restrictions, is entitled to a just and reasonable return. This refers to a constitutional minimum that falls within a wide zone of reasonableness. Within this zone the City is balancing the interests of the Park Owner with the interests of the residents in order to achieve a rent level that will maintain affordability of the Park and still allow the owner to operate successfully (Kavanau and Galland.) The hearing on Ranch's application is to allow the Park Owner to achieve a just and reasonable return, as well as maintaining the affordability of the park. Nothing herein changes the premise of the Park Owner's original deal that Ranch be affordable to low income households.

Tenants Jurisdictional Ground No. 3: Park Owner Is Bound by Prior Deal.

This argument claims that the Park Owner is bound by the earlier deal based on principles of contracts and equity.

Staff Response to Ground No. 3.

These arguments are misguided since Resolution 84-037 does not constitute an agreement between the Park Owner and City, or between the Park Owner and residents. City agrees that it exercised its police power by imposing Condition 27 as a condition of development, and that this Condition does require that Ranch be restricted to low income households. As articulated above, the Park Owner did agree to the TPD conditions once it was established that he would be entitled to an 11.5% rate of return.

When the City again exercised its police power in 1984 by adopting Resolution 84-037, the City instituted another form of rent control by capping the amount of future increases. City's application of the Ordinance and allowance of a just and reasonable return does not obfuscate the retention of Ranch as an affordable park. In essence rent control results in maintaining the affordability of mobile home parks (Galland).

There is no evidence in the record that the just and reasonable return determined by RAC make the rents not affordable to "very low income" households. Under the criteria for Ventura County a very low income household of one may not earn more than $30,350 a year (Attachment # 8). Unfortunately, the test is not whether the rents are affordable to the current residents, but rather are the rents affordable to a very low income household, whose income can range up to $43,350 for four people.

Staff Conclusion

For all of the reasons stated above, the Ordinance does apply to Ranch., and RAC, as well as City Council, have jurisdiction to hear this application for a reasonable rate of return.

Grounds of Appeal Related to RAC's Determination of Ranch Application

Both the Park Owner and Tenants also objected to various determinations made by RAC on the application.

Park Owner's Grounds for Appeal

The Park Owner has stated five grounds for appeal, all of which are generated from the major decisions made by RAC on the application. The appeal application dated February 15, 2011, is attached to this report as Attachment #2. The particular grounds for the appeal and City staff's responses are provided below.

Ground 1. RAC abused its discretion in selecting 1982 as the base year.

Park Owner claims that the appropriate base year should be 1979 and that RAC abused its discretion because it does not have the discretion to grant another base year under § 4.0 of the Guidelines unless the Park Owner made the request for an alternate base year.

Furthermore, the Park Owner contends that 1979 expense information was "available in the form of 1982 expenses adjusted to 1979 by CPI." Citing the case of MHC Operating Limited Partnership v. City of San Jose (2003) 106 Cal.App.4th 204, Appellant asserts that 1979 base year expense data must be extrapolated by backing out CPI from available expense information from 1982.

Staff Response to Ground 1.

The Guidelines presume that the net operating income (NOI) received by the Park Owner in 1979 (the year prior to rent stabilization regulations first going into effect citywide), provided a just and reasonable return. (See Attachment #4, Guidelines § 1.03) Accordingly, the Guidelines presume that 1979 should be the base year "when financial information for that year is available." (See Attachment #4, Guideline § 3.01) In this case the Park Owner did not have any expense data for 1979. The first year for which the Park Owner could provide any expense data was 1982.

RAC relied on Guideline § 3.07 as authority vesting discretion in RAC to consider a base year other than 1979 for good cause:

> A determination of eligibility for a rent adjustment under this Resolution shall be conducted on the basis of the comparison of two (2) full years of data. The use of a base year other than calendar year 1979 shall only occur upon the showing of good cause as shall be determined within the discretion of the Rent Adjustment Commission. Good cause shall include, but shall not be limited to a showing that calendar year 1979 was not representative of net operating income produced by the complex; that income and/or expenses, where usually high or low during that period, in 1979 was otherwise aberrational." Guideline § 3.07 (Emphasis added.)

Based on the fact that the Park Owner was unable to provide any expense data from 1979, RAC determined that there was good cause to use 1982 as the base year, because it was the first year the owner could provide any information related to expenses.

The case cited by the Park Owner, MHC Operating Limited Partnership v. City of San Jose, applies to a regulation that is entirely different from the City's. San Jose's regulations required the imputation of base year expenses from a subsequent year's data, when data for the base year is not available. The City's Guidelines, on the other hand, specifically allow a substitution of a subsequent base year with data, instead of attempting to "estimate" expenses for a 1979 base year. (See Attachment #4 Guidelines §§ 3.07 and 4)

Dr. Baar further indicated that the use of a base year where financial information is not available is contrary to the City's regulations, and specifically recommended the use of 1982 as the base year. (See Baar Report at AR Part C, Tab 6.5: CTO 01315 and 01316).

City staff concludes that RAC did not abuse its discretion in finding, based on substantial evidence and the policies of the Guidelines, that good cause exists to use 1982 as the base year. Staff recommends that Council affirm RAC's decision to use 1982 as the base year.

Ground No. 2: RAC abused its discretion by imputing 1982 base year rental value at $178.65.

Park Owner argues that the Guidelines require that the base year rents must be adjusted to full market value and that any adjustment must be based on appraisal. (See Attachment 4, Guideline § 2.05) The Park Owner argues that imputing 1982 rents based on 1979 appraisal data is inappropriate. The Park Owner further asserts that the appraisal prepared for the City does not represent market rents for 1979 because it uses average rents and not market data as comparables for establishing rental value.

Staff Response to Ground 2.

Section 2.05 ("Adjusted Income for Below Market Rentals") of the Guidelines articulates the central premise of the Vega v. City of West Hollywood case, that base year rents be adjusted if they are below market level. When the RAC chose 1982 as the base year, the ability to determine what actual "market rents" for Ranch were in 1982 became limited since rent regulations had been in effect citywide for three years. But City's appraiser, Mr. Brabant, did provide a market rent analysis for 1979. (See Brabant Appraisal at AR Part C, Tab 6.6, CTO 01351-01353) Dr. Baar noted that the 1979 market rent ($150) can be used in conjunction with comparable mobile home park information garnered from 1983 citywide mobile home park rental data to compute the comparable rent level in Ranch in 1982 based on Mr. Brabant's methodology:

> "while the appraisal did not include projections of appropriate base rent adjustments for 1982, the methodology of the City's appraiser may be used to determine what the projections for 1982 would have been if that year had been included in his analysis.
>
> The City's appraiser projected that rents in the comparable parks increased by 6% per year from 1979 to 1982. On this basis, the comparable base rent for Ranch would have increased by 6% per year over the projected level of $150 in 1979. In 1982, the projected comparable rent would be $178.65." (Baar Report at AR Part C, Tab 6.5: CTO 01298)

Furthermore, Mr. Brabant is a licensed MIA appraiser who provided expert opinion regarding what market rents were in Ranch in 1979. The fact that Park Owner's appraiser disagrees with Mr. Brabant's conclusions does not create a situation where RAC is prohibited from relying on Mr. Brabant's expert opinion. Therefore, Dr. Baar's imputation of a Vega adjustment to the 1982 base year rents is supported by substantial evidence.

City Staff concludes that RAC did not abuse its discretion in applying a rent adjustment to the 1982 base year relying on the imputation of comparable rent from the City's 1979 market rent appraisal. Staff recommends that Council affirm RAC's decision to adjust 1982 base rents to $178.65 per space per month.

Ground No. 3: RAC abused its discretion in imputing 1982 base year operating expenses

The Park Owner states that it was improper for RAC to adjust 1982 management and operating expenses when actual management and operating expenses were provided. RAC incorrectly reversed the presumption of Guidelines §3.03 and imputed higher expenses simply because RAC did not like the result. Park Owner further asserts that Imputing management and operating expenses in the 1982 base year to match CPI is directly contrary to the fundamental purpose of the MNOI formula which accounts for increased operating expenses and inflation. The Park Owner further contends that the Baar methodology for adjusting expenses is not authorized by the Guidelines, and adjustments for self-operation of the park are only allowed when requested by the Park Owner. The contention relies on Guideline §2.11 which, according to the Park Owner, doesn't mandate the calculation of an expense figure for those services provided by the Park Owner at no expense to the tenants (See Attachment #4, Guideline § 2.11)

The Park Owner further claims that the management services provided by Park Owner in the base year substantially differed from those provided by the management company in the comparison year (2009), therefore justifying the substantially higher management fees in the comparison year. Finally, Park Owner believes that imputing management expenses in the base year would penalize the Park Owner for keeping operating expenses low in a new park.

Staff Response to Ground No. 3.

In his report, Dr. Baar concluded that because the Park Owner did not provide a breakdown of 1982 expenses by category, it was not possible to calculate the various operating cost increases between 1982 and 2009. However, from the information provided by the Park Owner it is known that operating expenses increased at a rate substantially greater than CPI for the period 1982 to 2009, 183% vs. 129.4% respectively. (See Baar Report at AR Tab 6.5, CTO 01294) Dr. Baar also concluded that while it was not possible to quantify the change in operating expenses due the lack

of specific data, it appears that a major portion of the increase is attributable to a transfer of management tasks from the Park Owner to a third party contractor.

When discussing changes in the provision of management tasks the Park Owner responded: "Off-site management was employed in 2006 to carry out many of the bookkeeping and capital improvement functions that had been previously carried out by me since 1979, but which I am no longer able to carry out because of ill health and increasing governmental requirements." (See Hohn Declaration at AR Part A, Tab 2.1: CTO 00115). There was no evidence that the level of management service provided was materially different between 1982 and 2009. Since the performance of tasks by a Park Owner were not recorded as an operating expense, for the purposes of an MNOI analysis there is an "understatement" of base year expenses if compared with a current year in which the same tasks are performed by a third party for compensation and recorded as an operating expense.

Dr. Baar's recommended alternate calculation, which increased the 1982 operating expense level to account for tasks performed by the Park Owner to an amount which limits the rate of operating cost increases from 1982 to 2009 to the rate of increase in the CPI, was appropriate given the limited data provided by Park Owner regarding operating expenses in the 1982 base year. This alternate calculation projected 1982 base year operating expenses to be $42,555 instead of the $34,424 amount reported in 1982.

City Staff concludes that adjustments to the 1982 base year management expenses were warranted as recommended in Dr. Baar's report, and RAC did not abuse its discretion in applying an adjustment to the 1982 base year operating expenses. Staff recommends that Council affirm RAC's decision to increase 1982 base year management expenses from $34,424 to $42,555.

Ground No. 4: RAC abused its discretion in adjusting Base Year NOI by only 50% of CPI.

The Park Owner contends that RAC improperly adjusted base year net operating income by using an inflation indexing factor of 50% CPI. Relying on the case of Berger v. City Escondido, The Park Owner argues that indexing at less than 100% of CPI is only allowed in cases where a City's regulations specify the lower indexing ratio. The City's Ordinance and Guidelines do not provide an indexing factor.

The owner also claims that Dr. Baar's justification for indexing at a rate less than 100% relies on a return on investment formula that is contrary to the City's MNOI formula and there was not sufficient policy rationale for using less than 100% indexing.

Staff Response to Ground No. 4.

For purposes of meeting the Constitutional standard, California courts have repeatedly stated that while rent regulations cannot indefinitely "freeze" net operating income,

index ratios as low as 40% of CPI may suffice to provide a just and reasonable return.[4] Even the Berger case upheld a fair return index ratio of 40%.[5] Furthermore, Park Owner misreads the Berger decision, which involved a just and reasonable return application where no index ratio was stated in Escondido's regulations for an MNOI calculation, which is the same case here. Dr. Baar provided ample rationales for indexing at less than 100%. Dr. Baar explained the benefits of leveraged ownership of real estate in terms of growth in equity. (See Baar Report at AR Part C, Tab 6.5: CTO 01304-01307) Dr. Baar also provided background regarding the "risk free" nature of a mobile home park investment, where rents are steady and consistent. These same rationales were recognized by both the Berger and Stardust courts as justification for indexing at less than 100% of CPI.

City Staff concludes that Park Owner's contentions are both legally and factually incorrect, and that RAC did not abuse its discretion in applying a 50% of CPI indexing ratio as justified in Dr. Baar's report. Staff recommends that Council affirm RAC's decision to use the 50% of CPI index ratio.

Ground No. 5: RAC had no authority to phase-in the rent increase over seven year period.

The Park Owner claims that there is no authority for RAC to phase-in a rent increase and that the Park Owner has the discretion to determine whether to phase in the authorized rent increase. The Park Owner also contends that the evidence does not support a 4% annual return on delayed rent increases because City staff had testified that the park owner would lose money if the phase-in of rent took longer than 5 years, and the City had already established an 11.5% rate of return on the park.

Staff Response to Ground No. 5.

While there is no specific provision in the City's Ordinance or Guidelines regarding the phase-in of a rent increase, City staff believes that there is implied authority and ample rationale to phase in the increase over a reasonable period of time. One of the primary purposes of the Rent Stabilization Ordinance is "to safeguard tenants from excessive rent increases" and to "alleviate hardships" on tenants with limited income" as articulated by Dr. Baar. (See Baar Report at AR Tab 6.5, CTO 01283) In this case, RAC authorized a $191.95 per month per space rent increase over and above current average rent of $133 per space per month. The authorized increase represents a 144% increase in rent which is an excessive increase if implemented all at once in a senior park with many of the residents living on fixed incomes. Implementing a seven year phase-in for the approved rent increase still constitutes an annual rent increase of more than 20% for each year of the phase-in period. This also squares with California

[4] See Oceanside Mobile Home Park Owner's Association v. City Oceanside, 157 Cal.App.3d 887;and Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd. 64 Cal.App.4th 1159

[5] In Berger, Dr Baar served as the expert for the City of Escondido. The court in that case also explicitly stated that what constitutes a fair return is a matter of expert opinion.

Supreme Court cases that have allowed owners who were subject to prior confiscatory rent regulations to be made whole through the implementation of future rent increases over "several years."[6] Accordingly, given the magnitude of the proposed rent increase coupled with the fact that the Park Owner failed to exercise diligence in pursuing annual increases provides sufficient justification for a phase-in of the approved rent increase.

There is also evidence in the record to support RAC's decision to use a 4% interest rate for the deferred rent. In deliberations, RAC determined that the recommended interest component should be tied to the risk free rate. (See AR Part G, Tab 29.1: CTO 03113, lines 14-24.) The risk free rate of return is commonly tied to the 10-year treasury rate. Park Owner's expert, Mr. McCarthy, provided information that the 10-year treasure rate was 3%. (See AR Part D, Tab 15.5: CTO 01733)

Tenants' Grounds for Appeal

In addition to the jurisdictional claim, Tenants have also stated appeal grounds pertaining to the key decisions made by RAC on the application. A copy of the appeal application dated February 15, 2011, is attached to this report as Attachment #3. The particular grounds for the appeal and City staff's responses are provided below.

Ground 1 (D on Tenant Appeal Form): The Rent Stabilization Ordinance and Contract Law do not allow the owner to make up for his failure to take annual rent increase.

Tenants claim that under "well established" canons of statutory construction, the Ordinance does not allow the Park Owner to "catch up" for foregone rent increases. The plain language of Guideline §§ 2.01, 2.05, and 3.03 requires that the calculation of "gross total income" for the current year (2009) must include the Adjusted Income for Below Market Rents, (See Attachment # 4, Guidelines).

Tenants also claim that the "development approvals" and "contracts with the Residents" do not allow catch up of foregone rent.

Staff Response to Ground 1.

Tenants mistakenly apply the Vega provisions of the City's Guidelines. Guideline § 2.05 defines Adjusted Income for Below Market Rents as the difference between actual rent and the rent at "full market value" and is meant to apply low base year rents. (See Supplemental Baar Report at AR Part D, Tab 21.1: CTO 02037) Furthermore, the Guidelines also contain the "Price Level Adjustment" provision which allows the inclusion of automatic rent increases forgone after the base year to be included in the base year rent (and not the current year (2009) rent). (See Supplemental Baar Report at AR Part D, Tab 21.1: CTO 02037) Therefore, the Guidelines on their face contemplate a catch up for forgone automatic rent increases not taken by the Park Owner. RAC correctly applied the Ordinance and Guidelines.

[6] See Kavanau v. Santa Monica Rent Control Board and Galland v. City of Clovis.

As previously discussed in the "Jurisdiction" section of this report, the development approvals for the Ranch Park simply have no bearing on this application and are silent regarding "catch-up" provisions for rent increases. Whether individual tenants have contracts with the Park Owner that may trump the Ordinance cannot be decided by RAC or the Council. California Mobile Home Residency Law allows tenants to enter into long term leases with park owners that bypass the City's rent regulations. But the enforcement of those contracts is legal matter between the individual tenant and Park Owner.

Ground No. 2 (E. on Tenant Appeal Form): The Rent Increase is inconsistent with purposes of the Rent Stabilization Ordinance.

Tenants argue that the purpose of the Ordinance is to "provide affordable housing for low-income residents living on fixed incomes and to provide long-term rent stability for mobile home tenants to avoid displacing them." Based on this purpose, Tenants claim that RAC's approved rent increase is wholly inconsistent with the Ordinance.

Staff Response to Ground 2.

Staff agrees that one purpose of the Ordinance is to "safeguard tenants from excessive rent increases." But Tenants omit the other purpose: to "provide landlords with a just and reasonable return on their rental spaces." RAC is tasked with balancing these two competing priorities. In this case, RAC approved a rent increase, based on expert opinion that was well below what the Park Owner was requesting. In fact, the decision to increase rents by $191.95 per space per month was at the very low end of the range of alternatives that Dr. Baar determined would provide the Park Owner a just and reasonable return. RAC's phase-in of the rent increase over a 7-year period to further ameliorate the impact on Tenants also demonstrates faith to the purpose of the Ordinance.

Ground No. 3 (F on tenant appeal form): Any Rent Increase Should Have Been Based on Resolution 84-037

The tenant's contend that any rent increase must be based on the formula in Resolution 84-037. In particular, that resolution allows a maximum annual increase of 100% of CPI capped at 4%. Therefore the Park Owner is entitled to a rent increase of only 1.85% for 2010.

Staff Response to Ground No. 3.

As discussed in great detail in the Jurisdiction section of this report, the Ordinance and Guidelines govern this type of application. Furthermore, the formula in Resolution No. 84-037 does not provide a return that would meet the constitutional minimum because of the lack of a catch-up provision. Therefore, RAC's decision to use the MNOI methodology was proper.

Ground No. 4 (G(1) on the tenant appeal form): The Base Year should be 2009

Tenants contend that the base year should be 2009 because the Ordinance has not previously been applied to Ranch Park and 2009 is the first year there is complete financial data from the Park.

Staff Response to Ground No. 4

In applying the MNOI formula, there is nothing in the Guidelines that requires the base year to be the first year the Ordinance is applied to a park. In fact, if 2009 were the base year, the MNOI calculation could not be completed because there would be no current year net operating income for comparison.

Dr. Baar concluded that there was enough financial information in 1982 base year to perform a calculation under the MNOI formula. (See Baar Report at AR Part C, Tab 6.5: CTO 01293-01294; and 01316). Therefore, RAC's use of the 1982 base year was proper.

Ground No. 5 (G(2) on the tenant appeal form): There should be no Vega Adjustment

Tenants claim that the Vega rationale should not apply because the Park Owner had a "two-sided" bargain that allowed the Park Owner to set initial rents as the market rent. These initial rents were set according to permit conditions and zoning change approvals, which the Park Owner must abide by.

Staff Response to Ground 5

There is no competent evidence that the rent levels established in Park were at market level in 1979. In fact, both the Park Owner and City appraisers agreed that market rents in 1979 were much higher than the actual rents being charged. Cases interpreting the MNOI method require base year rents should be adjusted to approximate market level. For every base year analyzed by Dr. Baar, he recommended some upward adjustment of base year rent levels under the Vega concept. (See Barr Report at AR Tab 6.5: CTO 01296-01298)

As previously analyzed in the Jurisdiction section of this report, the original entitlements for the Ranch Park do not govern a request for a Just and Reasonable Request application. Accordingly, RAC properly applied a Vega adjustment to the 1982 base year rent in accordance with legal requirements and expert recommendation.

Ground No. 6 (G(3) on the tenant appeal form): RAC incorrectly determined Current Year Net Operating Income.

Tenants claim that RAC did not calculate current year (2009) operating income correctly. The calculation did not include an adjustment to income for below market rentals in accordance with Guideline §2.05.

Staff Response to Ground No. 6:

Tenants misinterpret the Guidelines. Guideline §2.05 represents the "Vega" adjustment concept and is meant to apply to base year rents that are below market level, and not to post-base year forgone rent. (See Baar Report at AR Part D, Tab 21.1: CTO 02037). This Vega provision cannot reasonably be part of the current year (2009) net operating income calculation because it "would turn this provision on its head by adding to the current rental income . . . amounts that could not be charged, rather than allowing the Park Owner to obtain an adjustment to base rents that did not reflect market conditions." (Baar Report at AR Part D, Tab 21.1: CTO 02037)

Furthermore, the provision that does apply to forgone automatic rents, the Price Level Adjustment in Guideline § 3.04, clearly stipulates that forgone automatic rent increases must be added to the base year rent (and not the current year rent). (See Attachment #4, Guideline § 3.04) This provision allows the Park Owner to recover foregone automatic rent increases. (See Baar Report at AR Part D, Tab 21.1: CTO 02037) Therefore, Dr. Baar correctly calculated current year net operating income and it was in RAC's discretion to adopt his methodology.

Ground No. 7 (G(4) on the tenant appeal form): RAC used Inaccurate Data for 1982 Expenses

Tenants take issue that no detailed expense data was provided for 1982 and assert that wrong total expense figures were used. Tenants do not state what the correct total expense figures should have been.

Staff Response to Ground 7:

Aggregate expense data was provided by Park Owner for 1982. Dr. Baar was able to make a meaningful comparison of base year (1982) net operating income to current year (2009) net operating income. (See Baar Report at AR Part C, Tab 6.5: CTO 01294-01295) Any anomalies between the expenses in those two years were reconciled by Dr. Baar's adjustment of 1982 base year expenses to incorporate the Park Owner's performance of management functions. (See Baar Report at AR Part C, Tab 6.5: CTO 01294-1295)

Ground No. 8 (G(5) on the tenant appeal form): Operating Expenses for the Current Year(2009) were overstated.

Tenants claim that 2009 expenses were overstated because (1) they were not permitted by the Guidelines, (2) they were not supported by the general ledger, (3) they were in excess of industry standard, and (4) management expenses were not capped at 8% of income as required by Guideline § 2.11.

Staff Response to Ground 8:

RAC followed the recommendation of Dr. Baar, who did not make any material changes to the current year (2009) expenses. Dr. Baar did not apply the 8% cap for management expenses because of the exceptional circumstances of there being virtually no rent increases in the Park for 30 years. The 8% cap, which is calculated against actual income, would result in a management expense in the current year that likewise would remain virtually frozen for 30 years. Yet, it is not reasonable to expect that the Park Owner did not incur a substantial increase in management expenses during that 30 year timeframe due to inflation. (See Baar Report at AR Part C, Tab 6.5: CTO 01294 and Supplemental Baar Report at AR Part D, Tab 21.1: CTO 02038). Therefore, applying the verbatim text of the Guidelines in this unusual case would lead to an absurd result.

Dr. Barr testified that in his opinion the "overall expense level was reasonable." (Baar Testimony at AR Part E, Tab 27.1: CTO 02217, lines 8-9) Dr. Baar further stated that if there were any overstatement of certain expense items, they would be compensated for by making the upward adjustment to the base year (1982) expenses he recommended as a percentage of the current year (2009), in essence offsetting any overstatement. (See Baar Testimony at AR Part E, Tab 27.1: CTO 02218-02219). Dr. Baar concluded that "under these particular circumstances, this was the best kind of analysis that was possible." (Baar Testimony at AR Part E, Tab 27.1, CTO 02217, lines 10-17 and 02219, lines 4-6)

Summary of City Response to Grounds for Appeal

City staff and its expert consultant, Dr. Baar, evaluated the data, the supplemental information provided as part of the rent adjustment application, the supplemental information provided by the Park Owner and Tenants, and correspondence by their legal representatives, and the City regulations and legal precedents.

As discussed in the response to the grounds of appeal brought by both the Park Owner and Tenants above, there were certain key points and material that City staff relied upon in making its recommendation to RAC. Those points included:

(1) The owner's lack of income and expense data for 1979;
(2) The appraisals submitted by the applicant's appraiser and the City's appraiser;
(3) The need for a "Vega" adjustment in the base year;
(4) The need to make adjustments to operating expenses to make meaningful comparisons of the base and comparison years, and avoid in distortion in the calculation of NOI.
(5) The policy determination of choosing an indexing rate that provides a fair return.
(6) The need to phase-in the rent increase over a period of time to avoid excessive rent increases, which would be contrary to the purpose and intent of the City's Rent Stabilization Ordinance.

RAC's decisions on all of these key issues were support by the evidence and in accordance with legal precedents and local regulation. Therefore, staff recommends that City Council deny the appeals and sustain the decision of RAC in its entirety.

Submitted by:

John C. Prescott
Community Development Director

Prepared by:

Bill Hatcher
Senior Planner

Christopher G. Norman
Assistant City Attorney

Attachments:

#1 Location Map
#2 Park Owner's Appeal Application
#3 Association of Ranch Tenants' Appeal
#4 Guidelines - Merged Text of Resolutions RAC-2 and RAC-5
#5 Pre-2006 TOMC §§ 1-4.01-1-4.05
#6 July 27, 1976 City Council Action Report
#7 City Council Minutes dated September 20, 1977 & Letter from Wilson Hughes dated August 9, 1977
#8 2010 Ventura County Income Limits

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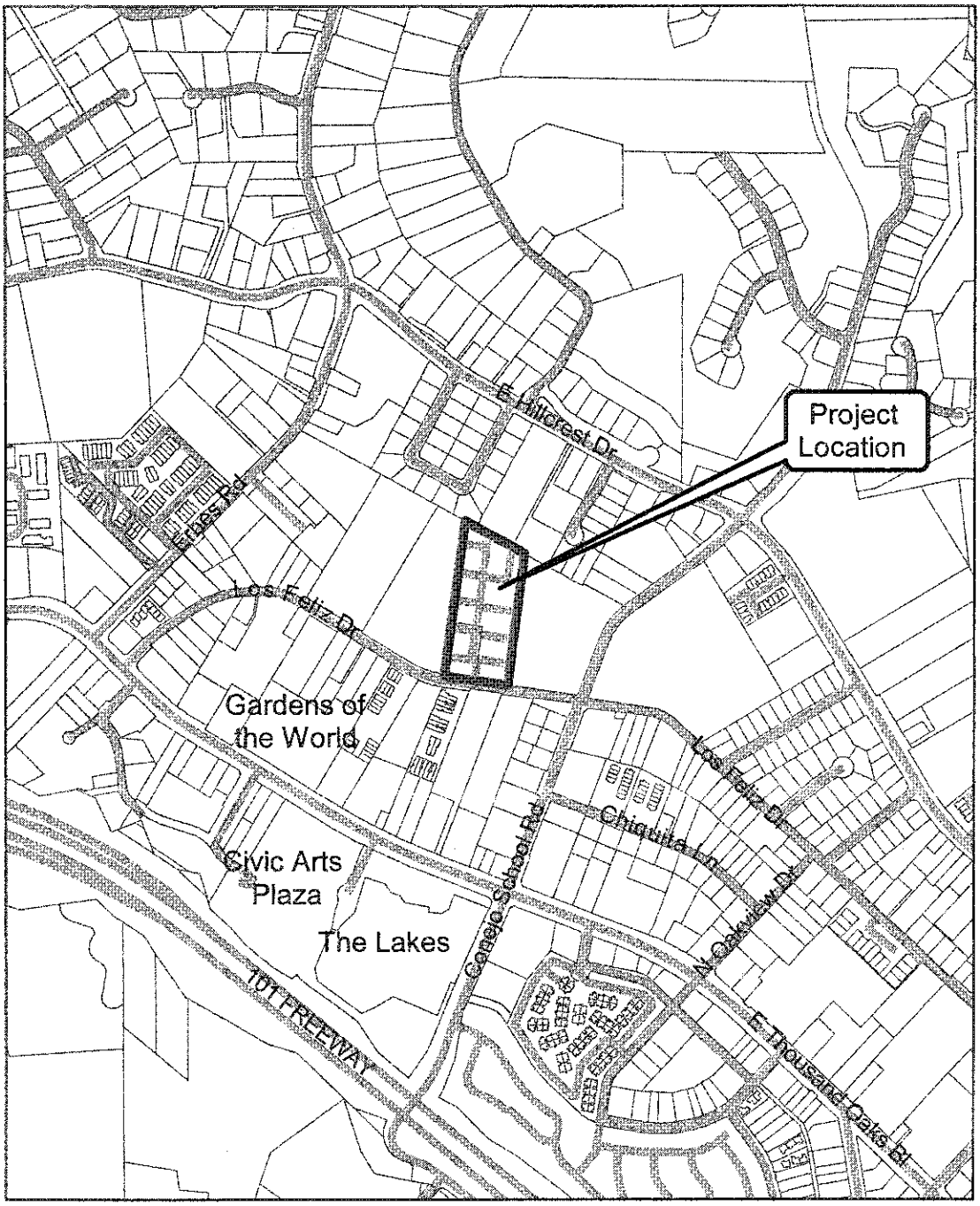
Ranch Mobile Home Park
Location Map



City of Thousand Oaks
Community Development Department

u:cdcjansen\staff report maps\
housing\Ranch MHP-location

ATTACHMENT #2

City of Thousand Oaks

COMMUNITY DEVELOPMENT DEPARTMENT
BUILDING DIVISION (805) 449-2500
PLANNING DIVISION (805) 449-2323
HOUSING/REDEVELOPMENT DIVISION (805) 449-2393

2011 FEB 16 AM 10: 13

CITY CLERK DEPARTMENT
CITY OF THOUSAND OAKS

APPLICATION FOR APPEAL TO CITY COUNCIL OF A RENT ADJUSTMENT COMMISSION DECISION

TO: City Clerk
City of Thousand Oaks
2100 Thousand Oaks Blvd.
Thousand Oaks, CA 91362

RE: Rent Adjustment for:

Ranch
(Name of Mobilehome Park)

APPELLANT INFORMATION*:

Name: A.V.M.G.H. Five, Ltd.

Contact: Boyd Hill at Hart, King & Coldren (attorney)

Address: 200 Sandpoint, Fourth Floor

City/State/Zip: Santa Ana, CA 92707

Home Phone: (_____) Fax: (_____)

Work Phone: (714) 432-8700 Fax: (714) 546-7457

Email: bhill@hkclaw.com

If the appellant is not the applicant, state whether the appellant is a tenant in the affected Mobile Home Park.

*NOTE: IF THE APPELLANT is a Corporation, the name, address and title of all Officers shall accompany this application. If the appellant is a General Partner, the name and address of all General Partners shall accompany this application.

RENT ADJUSTMENT COMMISSION DECISION BEING APPEALED:

Case #: RAC- 09-2011

Date of Rent Adjustment Commission Decision: February 7, 2011

The Rent Adjustment Commission Decision was to *(check only one)*:

☐ Approve the rent adjustment as requested by the applicant

☒ Approve a different rent adjustment than requested by the applicant

☐ Deny the application

I REQUEST THAT THE CITY COUNCIL TAKE THE FOLLOWING ACTION:

(Check only one.)

☒ Approve the rent adjustment request that was submitted by the applicant to the Rent Adjustment Commission. in the amount of $322.52 per space.

☐ Approve a different rent adjustment than the rent adjustment approved by the Rent Adjustment Commission (other than the request submitted by the applicant). Please attach a description of the rent adjustment you wish the City Council to allow.

☐ Deny the rent adjustment application.

THE GROUNDS FOR APPEAL ARE:

(State grounds for appeal below. Attach additional pages if necessary.)

1. Base Year should be 1979.
2. Base Year rent should be at market value as appraised by John Neet.
3. Base Year operating expenses should not be adjusted.
4. The Base Year NOI should be adjusted to present value by full CPI.
5. The rent increase should apply in full for the present year.

(See attached letter for details on each ground.)

SIGNATURE OF APPELLANT:

Signature of Appellant
A.V.M.G.H. Five, Ltd. Managing Member

February 15, 2011
Date

CERTIFICATION
(For Department Use Only)

The City Clerk Department hereby certifies that the appeal and filing fee have been received as follow:

At City Clerk Dept 10:13 (a.m./p.m.), on February 16, 2011.

By (Staff Accepting Appeal) Leslie Terrell & Melissa L'Engle Filing Fee $ 1215.00

ANDREW V. HOHN 03-91
MARY GRACE HOHN
12139 PARAMOUNT BLVD.
DOWNEY, CA 90242

90-3820/1222 2035

DATE Feb. 10, 2011

PAY TO THE ORDER OF City of Thousand Oaks $ 1215 ^00/xx

Twelve-hundred- fifteen ^00/xx DOLLARS

PACIFIC WESTERN BANK
10245 Paramount Blvd.
Downey, CA 90241

Parish MHP Appeal

Gene C. Hohn

⑈122238200⑈2035 09230272 5⑈

HK&C
HART, KING & COLDREN

2011 FEB 16 AM 10: 13

CITY CLERK DEPARTMENT
CITY OF THOUSAND OAKS

Boyd L. Hill
bhill@hkclaw.com
File No. 38277.001/4823-7436-1352v.1

February 15, 2011

VIA Hand Delivery

City Council
c/o Linda Lawrence, City Clerk
City of Thousand Oaks ("City")
2100 East Thousand Oaks Boulevard
Thousand Oaks, CA 91362

Re: Appeal to City Council from RAC 09-2011

Dear Mayor and City Council Members:

This letter is filed on behalf of AVMGH, Ltd, the owner of the Ranch Mobilehome Park located at 2501 Thunderbird, Thousand Oaks, CA. This letter accompanies the Park Owner's "Application for Appeal to City Council" filed with the City Clerk's office on this date appealing Rent Adjustment Commission Decision No. 09-2011. A check for the appeal fee of $1,215 is also enclosed herewith.

The purpose of this letter is to more fully set forth the grounds for appeal contained in the Application. The organization of this letter tracks the categories of findings contained in the Commission Resolution No. RAC 09-2011.

1. **Finding That 1982 Should be the Base Year.**

a. **Abuse of Discretion.**

The Commission abused its discretion in selecting on its own a base year (1982) other than 1979. The Park Owner did not request a different base year.

The Guidelines do not vest the Commission with discretion to select another base year on its own, but instead require that the Park Owner request another base year before the Commission can consider a different base year:

- In the event that the 1979 financial information is not available, and where the loss of such records can be substantiated by clear and convincing evidence, the landlord of record in 1979 **may** substitute as a base year the first year following 1979 for which records are available. RAC-2, Sec. 4.0)

Here, the Park Owner did not request another base year.

The type of showing that the Park Owner would need to make to justify a different base year would be that 1979 net operating income was aberrational:

- The use of a base year other than calendar year 1979 shall only occur upon the showing of good cause as shall be determined within the discretion of the Rent Adjustment Commission. Good cause shall include, but shall not be limited to a showing that calendar year 1979 was not representative of net operating income produced by the complex; that income and/or expenses were unusually high or low during that period, in that 1979 was otherwise aberrational.

Here the Park Owner did not make a showing that 1979 NOI was aberrational. Neither did the City or any other party make such a showing.

There was 1979 income and expense information available in the form of a 1979 market rent appraisal for income and in the form of 1982 expenses already accepted and adopted by the City, which expenses were adjusted to 1979 by CPI. The use of a CPI adjustment to post base year expenses to determine base year expenses is a court approved methodology championed by Dr. Baar, the City's expert, which methodology must be accepted by the City:

- "With respect to expenses, Dr. Baar testified that 1986 real estate tax data is available from the tax collector's office, he also opined that prior ground lease expenses could be extrapolated by using current data and adjusting for inflation. Given the available information concerning expenses, Dr. Baar concluded that about eighty percent of it you can estimate pretty precisely." (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 225)

Use of a base year other than 1979 would not be consistent with the City's adopted MNOI formula:

- "In general, the maintenance of net operating income formula is based on **pre-rent control**, fair market assumptions." (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 223)

The City Rent Adjustment Ordinance is premised on a 1979 base year:

- "'Maximum rent' the highest legal monthly rate of rent which was in effect for the rental space during any portion of the month of June 1980. If a rental space is not rented during said month, then it shall be the highest legal monthly rate of the rent in effect between June 1, 1979 and May 31, 1980." (City Code, Section 5-25.02 (k))

Therefore, the Commission abused its discretion in adopting 1986 rather than 1979 as the base year.

b. Finding Not Supported by Evidence

The evidence in the form of Dr. Baar's testimony supports a finding that 1979 may be used as a base year with imputation of 1979 expense data from actual 1982 expense data:

- **Hill**: Mr. Bahr, didn't you, in fact, testify in trial [a] few years ago that similar type expense information is sufficient financial information from which to establish base year net operating income?
  Next slide please. With respect to expenses, Dr. Bahr testified that expenses could be extrapolated by using current data and adjusting for inflation.
  Bahr: Yes, I did testify to that, but that was not in the context of this type of regulation, but under other ordinances, I have extrapolated backwards, but this particular regulation is very specific in requiring something different. (Reporter's Transcript, pp. 82-83)

Note that while Dr. Baar states that imputation of base year expenses is not authorized by City regulations, he does **not** state that it is prohibited under the regulations. The *MHC* case cited to above clearly authorizes use of imputation in a just such situation where imputation is not expressly authorized by a City's regulations.

2. Finding of 1982 Rental Value at $178.65

a. Abuse of Discretion

As noted above, the use of 1982 as a base year is an abuse of discretion and not supported by the evidence. To the extent 1982 is used as a base year, the Commission further abused its discretion by imputing 1982 rent without a qualified appraisal and by using appraisal data that does not represent market value.

Market rent must be used to determine base year rental income under the MNOI approach:

- While the City's ordinance properly seeks to maintain the same rate of return which property owners experienced prior to the enactment of rent control with adjustments for inflation, a property owner **must** be permitted to start rent calculations with a **base date rent similar to comparable properties**. (See *Concord Communities, L.P. v. City of Concord* (2001) 91 Cal.App.4th 1407, 1419-1420 [emphasis added])

The City Guidelines concur that any rent adjustment must be to "full market value:"

- Adjusted income for below market rentals is an amount representing the

difference between the actual rent collected and what the landlord could have collected if the units had been rented at their **full market value**. (RAC-2, Sec. 2.05)

The Baar use of a 6% post-Ordinance rent adjustment factor to impute 1982 rents does not represent full market value, but instead represents stagnated rent levels under the City Ordinance restrictions on rent increases. Furthermore, the Baar computations are tiered off a 1979 Brabant appraisal that uses average and not market rents as comparables. Therefore the Commission adoption of $178.50 as market rent for 1982 is in error.

b. Finding Not Supported by Evidence

The Commission finding of imputed 1982 "market" rent of $178.50 per space is not supported by the evidence. Baar testified that he is not an appraiser and that he did not use appraisal methodology in determining 1982 imputed "market" rent. Brabant did not determine market rent for 1982.

Furthermore, Baar's use of Brabant 1979 numbers and methodology is not supported by the evidence. Neet testified that Brabant did not calculate full market value, but instead erroneously used average rent of comparable properties to appraise 1979 rent. Neet further testified that market rent cannot be obtained by average rent increases of comparable mobilehome parks under the Ordinance, but instead by maximum rent charged for vacant decontrolled spaces.

To the extent that 1979 is used as a base year upon reconsideration by the City Council, the only full market value appraisal is that provided by Neet in the amount of $200 per space per month.

3. Imputation of 1982 Base Year Operating Expense

a. Abuse of Discretion

To the extent that 1982 is used as a base year, the Commission abused its discretion in imputing 1982 base year administrative and management operating expenses when there is actual 1982 administrative and management operating expense information available.

The Guidelines contain a strong presumption that actual base year NOI, including operating expenses, is accurate:

- The Commission presumes that the net operating income received up to April, 1980 provided landlords with a Just and Reasonable Return on their rental units,

unless there is clear and convincing evidence to the contrary." (RAC-2, Section 1.03)

Accordingly, the Guidelines do not call for adjustment to base year net operating income:

- "Determine the 1979 Net Operating Income." (RAC-2, Section 3.02)

Distinguish for current year NOI:

- "Determine the current year Net Operating Income in accordance with the provisions of Sec. 2-2.17 ...." (RAC-2, Section 3.03)

The Commission reversed the above Guideline presumption in favor of Park Owner actual base year NOI and instead imputed higher base year expenses simply because it did not like the result, a clear admission of Commission bias:

- Management and administrative expenses should be imputed to the base year in order to avoid exceptionally low expenses in the base year, which would result on an unjustified overstatement of the NOI for the base year. (RAC 09-2011, p. 5, ¶ 3(e))

The Baar methodology adopted by the Commission of imputing 1982 administrative and management operating expenses by downward CPI adjusting the current year administrative and management expense is expressly contrary to the fundamental purpose of the MNOI formula, which is to provide a fair and reasonable return by adjusting current rents to account for increased operating expenses **and** inflation, not just for inflation:

- In order to maintain this net operating income at a constant level, the law permits rent increases that will enable the landlord to recoup increases in ongoing operating expenses. (*Kavanaugh v. Santa Monica Rent Control Bd.* (2001) 16 Cal.4th 761, 769)

The Baar methodology adopted by the Commission is not authorized by the Guidelines. Adjustments to base year management and administrative operating expenses are allowed only upon request by the Park Owner and only in the situation in which the Park Owner is seeking to recover increased expenses in the current year that include self-operation of the Park:

- In addition to the actual Management and Administrative Expenses listed in Sec. 2.10 above, where the landlord performs such services, the landlord **may** calculate an expense figure representing the value of such unpaid management and administrative services. (RAC-2, Sec. 2.11)

Baar's contention that management and administrative expenses must be calculated at the same percentage of actual income in both 1986 and current year is premised on a misreading of Section 2.11. As testified by Baar, and as Section 2.11 expressly provides, Section 2.11 applies only when the Park Owner chooses to calculate an expense amount for unpaid management and administrative services, and the same percentage analysis applies only when the Park Owner provides substantially the same level of services in both the base and current year:

- [A]nd where the landlord has performed substantially similar services in both the base year and the current year, the foregoing adjusted expenses must be calculated for both the base year and the current year at the same percentage of actual rental income. RAC-2, Sec. 2.11)

Here, the Park Owner presented evidence that it provided a different level of services in 1982 and 2009, and the Park Owner did not seek to include costs for unpaid management and administrative services.

The Baar methodology of a downward adjustment from current year CPI to impute 1982 operating expenses when actual 1982 operating expenses are available is nowhere found in the Guidelines and has never been authorized by any California court under the MNOI formula.

The position taken by the Commission would penalize the Park Owner for keeping operating expenses low for a new park. The tenants have benefitted for 30 years because the park owner was able to keep operating expenses low. The fact that increasing regulations and upkeep of the aging Park now justify higher administrative and management expenses means that Park operating costs have gone up and that rents must increse commensurate with those costs under the MNOI formula.

b. <u>Finding Not Supported by Evidence</u>

There is no evidence that 1982 park expenses were or should have been any higher than $34,424, as conceded by the City's own 1983 memorandum. The Park Owner is not here seeking to include or recover expenses for unpaid administrative and management services performed. There was no evidence presented that the current level of management and administrative expenses is unreasonable or significantly in excess of industry standards, to the extent there are any such industry standards.

4. Adjustment of Base Year NOI to Current Year Using Only 50% CPI

a. Abuse of Discretion

The Commission abused its discretion in applying an adjustment of only 50% of CPI. The only instances in which California courts have allowed cities to apply less than full CPI adjustment to base year net operating income are cases in which the applicable City ordinance or regulation specifies a percentage less than full CPI.

For example in the *Berger* case cited to by Dr. Baar, there was a regulation requiring use of less than 60% CPI adjustment to base year net operating income:

- Dr. Baar noted that under the Board's written guidelines it shall take into account no more than 60 percent of increases in the CPI. He also noted, however, that the Board had an approach of granting 75 [percent] CPI increases pursuant to short form petitions. (*Berger v. City of Escondido* (2005) 127 Cal.App.4th 1, 10-11)

Here, as admitted by Dr. Baar, there is no City ordinance or regulation allowing less than full CPI adjustment to base year net operating income:

- The regulations adopted pursuant to the prior Thousand Oaks ordinance in 1981, which are still in effect, provide for the maintenance of net operting income, but do not provide any specification as to the rate at which net operating income shall be indexed. (Baar Report, p. 25, City Record, p. 582)

The justification proffered by Dr. Baar for using less than full CPI is his application of different return on investment formula rather than the MNOI formula adopted by the City, the use of which is prohibited unless the applicant or tenant proposes an alternative formula:

- Applicants or tenants may propose the use of such [alternative] approaches, but must fully explain, in writing, the methodology and the reasons supporting use of the methodology, and must provide information and documentation adequate to use the suggested approach. (RAC-2, sec. 1.04)

Therefore, there is simply no justification for applying less than a full CPI adjustment to base year NOI to determine the amount of any applicable rent increase.

b. Finding Not Supported by Evidence

Here, the tenants did not advocate a ROI approach, and neither did Dr. Baar. Instead,

the evidence presented by Dr. Baar was that it would be unreasonable to adjust base year NOI with anything but a 100% CPI:

- While this discussion sets forth rationale for indexing at less than 100% of the rate of increase in the CPI, it also should be noted that **there are rationale for 100% indexing principally based on the view that profits should be permitted to grow at the same rate as the CPI increases and that such growth in net operating income would not result in excessive rent increases**. (Baar Report, p. 29; City Record, p. 129)

5. Phase-In of Rent Increase

There is no authority in the Rent Adjustment Ordinance or the Guidelines for phasing in allowable rent increases. The Park Owner must be allowed to use its own discretion on how quickly to impose the rent increase and on whether to phase in the rent increase. The Park Owner is motivated by its own interests to keep existing tenants. It does not need the Commission to dictate terms that the Park Owner and tenants can work out individually. The Commission abused its discretion by phasing in what should be an immediate constitutionally required rent increase.

Furthermore, the evidence does not support the Commission's seven year phase-in and 4% annual return on delayed rent increases. City Staff testified that the Park Owner would lose money if there were more than a five year phase-in and that such an extended phase-in was not constitutionally supportable. Baar does not support a 4% rate of return, and the City has already established an 11.5% rate of return on the Park.

We look forward to discussing these matters with you at a future City Council meeting and resolving this matter at that time.

Very truly yours,

HART, KING & COLDREN

Boyd J. Hill

Boyd J. Hill

Enclosures: Appeal and Appeal Fee

cc:	Amy Albano	(via e-mail only)
	Russ Watson	(via e-mail only)
	John Prescott	(via e-mail only)
	Christopher Norman	(via e-mail only)
	Patrick Hehir	(via e-mail only)
	Bruce Hohn	(via e-mail only)
	Robert Coldren	(via e-mail only)

City of Thousand Oaks

2011 FEB 28 PM 4:54

CITY CLERK DEPARTMENT
CITY OF THOUSAND OAKS

COMMUNITY DEVELOPMENT DEPARTMENT

BUILDING DIVISION (805) 449-2500
PLANNING DIVISION (805) 449-2323
HOUSING/REDEVELOPMENT DIVISION (805) 449-2393

APPLICATION FOR APPEAL TO CITY COUNCIL OF A RENT ADJUSTMENT COMMISSION DECISION

TO: City Clerk
City of Thousand Oaks
2100 Thousand Oaks Blvd.
Thousand Oaks, CA 91362

RE: Rent Adjustment for:
Ranch Mobilehome Park
(Name of Mobilehome Park)

APPELLANT INFORMATION:

Name: The Association of Ranch Tenants
Contact: Chandra Gehri Spencer
Address: 445 S. Figueroa St, #2700
City/State/Zip: Los Angeles, CA 90071
Cell ~~Home~~ Phone: (213) 595-5450 Fax: (818) 597-3288
Work Phone: (213) 489-6826 Fax: ( )
Email: cgs@cgslaw.com

If the appellant is not the applicant, state whether the appellant is a tenant in the affected Mobile Home Park.

Appellant is an Association of residents at the Ranch Mobile Home Park

***NOTE: IF THE APPELLANT** is a Corporation, the name, address and title of all Officers shall accompany this application. If the appellant is a General Partner, the name and address of all General Partners shall accompany this application.

RENT ADJUSTMENT COMMISSION DECISION BEING APPEALED:

Case #: RAC-

Date of Rent Adjustment Commission Decision: 2/7/11 (mailed 2/9/11)

The Rent Adjustment Commission Decision was to *(check only one)*:

☐ Approve the rent adjustment as requested by the applicant

☒ Approve a different rent adjustment than requested by the applicant

☒ Deny the application

I REQUEST THAT THE CITY COUNCIL TAKE THE FOLLOWING ACTION:

(Check only one.)

☐ Approve the rent adjustment request that was submitted by the applicant to the Rent Adjustment Commission.

☐ Approve a different rent adjustment than the rent adjustment approved by the Rent Adjustment Commission (other than the request submitted by the applicant). Please attach a description of the rent adjustment you wish the City Council to allow.

☒ Deny the rent adjustment application.

THE GROUNDS FOR APPEAL ARE:

(State grounds for appeal below. Attach additional pages if necessary.)

See attached

SIGNATURE OF APPELLANT

Signature of Appellant — Date: 2/28/11

Attorney for Association of Rental Tenants

CERTIFICATION
(For Department Use Only)

The City Clerk Department hereby certifies that the appeal and filing fee have been received as follow:

At 4:53 (a.m./p.m.) on February 28, 20 11.

By (Staff Accepting Appeal) [signature] Filing Fee $ waived per CC Resolution 2/22/11

APPEAL OF RENT ADJUSTMENT COMMISSION RESOLUTION NO. RAC 09-2011 BY THE ASSOCIATION OF RANCH TENANTS

1. BACKGROUND INFORMATION

This appeal is brought by The Association of Ranch Tenants ("the Association"), an unincorporated association comprised entirely of residents of the Ranch Mobile Home Park ("the Ranch") challenging the decision of the City of Thousand Oaks Rent Adjustment Commission to approve a rent increase at the Ranch pursuant to Resolution No. RAC 09-2011.

The Ranch is a very low-income, senior mobile home park located on Los Feliz Drive in the City of Thousand Oaks. The Ranch is a 74-unit park, with mostly single pads designed to accommodate 10' wide coaches and a few 20' wide coaches. One space is occupied by the resident manager. The remaining spaces accommodate owner-occupied mobile homes. Each space is designed to be occupied by 1 to 2 very low-income, senior citizens.

Development of the Ranch was conditioned on it remaining a low-income, senior park. The average age of the Ranch Residents is approximately 80 years old. The average income of the Ranch Residents is less than $1,000 per month. Most Residents are on fixed incomes, primarily Social Security. Nearly half of the Ranch Residents are disabled. The current space rents are between $126.37 and $139.36 monthly.

In 2010, the owner of the Ranch made an application for a rent increase based on the "just and reasonable return" provisions of the Rent Stabilization Ordinance ("RSO") of the City of Thousand Oaks ("the City"). A series of hearings (December 6, 2011; January 24, 2011 and February 7, 2011) were held before the City's appointed Rent Adjustment Commission ("RAC") regarding the owner's application. The City, the owner, the Association, some of the Ranch Residents and members of the community presented information and evidence at those hearings.

On February 9, 2011, the RAC approved an increase in space rent by adoption of Resolution No. RAC 09-2011. RAC 09-2011 provides for an increase in space rent of $191.95 per month for all spaces, which would put space rent at between $318.32 and $331.31 per month. This is a 137% to 151% increase. The rent increases are to be phased in over a period of seven years, but the Ranch Residents are required to pay 4% interest on the increases that have not yet been implemented. This timely appeal by the Association follows.

Most of the Ranch Residents do not have sufficient income to pay these space rent increases. The Ranch Residents will also lose their own investment-backed expectations in their coaches, and the improvements to their coaches, if they cannot pay the increased rent. They will likely be forced to sell and relocate. The impact of these repercussions is severe.

2. TIMELINE OF SIGNIFICANT EVENTS

May 24, 1974: The former owner of the parcel on which the Ranch is built applied for Zone Change from RPD-15 to TPD, with the justification that is for "development of a much needed low income mobile home park site"

June 24, 1974: The City Staff issued its report on the Zone Change application, stating: "The subject property only complies with some of the City criteria for trailer park location; however, since the proposed zoning and the corresponding permit are submitted to provide for lower income housing for Senior Citizens, these deviations might be appropriate based upon the specific set of circumstances and providing the property owner guarantees, in an appropriate manner, to the City that this park will be used for this stated purpose."

September 3, 1974: The City approved the Zone Change.

November 18, 1974: The City's Planning Commission approved the development permit (TPD 74-6) for the Ranch, with Condition No. 27 requiring the park to be "low-income mobile home park rental." The former owner appealed some conditions, but did not appeal this condition.

January 21, 1975: The City Council approved the appeal and modification of Conditions No. 17 and 25, to eliminate a block wall requirement and instead only require a chain link fence and a requirement that pads be "more imaginative" on the westerly side of the park.

1976: The City waived $110,280 in development fees in addition to other concessions made through land use approvals to allow for the development of a low-income senior park.

July 27, 1976: The City Council interpreted Condition No. 27 related to the low-income provisions.

1977: Amendment to TPD 74-6, which set rents based on 11.5% net profit percentage as return on investment formula is adopted, and sets tenancy qualification of 62 years old and income of no more than $10,000 per year.

August 9, 1977: The Owner's request was approved. The Ranch rents were set at $125.00 per month for double-wides, $120.00 per month for two large lot single-wides, and $115.00 per month for regular lot single-wides.

September 11, 1977: Ranch Park's owner, Andrew Hohn, executed acceptance of the TPD 74-6 conditions.

1980: The City adopted the Rent Stabilization Ordinance, but did not apply it to the Ranch.

1983: The Owner of the Ranch made a rent increase application to the City Council, separate from the Rent Stabilization Ordinance. The City Council referred the issue to the RAC for evaluation.

August 9, 1983: The City's Rent Committee issued a memo to the City Council recommending extension of the RSO. The Rent Committee pointed out that an increase in rents and total vacancy decontrol has a detrimental impact on the marketability of coaches.

December 8, 1983: City Staff issued a memo to the RAC regarding the Ranch proposed rent increase. Staff stated that rents at the Ranch are limited by TPD 74-6, not by the RSO.

January 24, 1984: City Staff issued a memo to the City Council regarding RAC recommendations for the Ranch proposed rent increase and modification of TPD 74-6. These recommendations formed the basis for Resolution 84-037.

February 7, 1984: Resolution 84-037 was adopted, allowing rent increases for the Ranch to be based on set formula. An increase for 1984 was allowed at 7%. All subsequent years were allowed at up to 4% based on 100% of percentage change of CPI on a yearly basis. No recapture was permitted.

September 9, 1986: The Rent Committee issued a memo to the City Council regarding proposed changes to the RSO and the adoption of a permanent RSO for mobile home parks. The memo notes that the new RSO "would apply to all parks within the City, with the exception of the Ranch Mobilehome Park which is under a separate affordable housing agreement."

2000: The Owner of the Ranch made a rent increase application to the City, based on the formula set forth in Resolution 84-037.

August 30, 2000: City Staff met with the Owner of the Ranch and sent a letter following meeting regarding the proposed rent increase application. Staff noted and a letter indicated that Resolution No. 84-037 would have to be repealed and other action taken in order to bring the Ranch under the jurisdiction of the RSO. The Ranch Owner was given the option of going forward with a public hearing to try to do so, or take a rent increase of 4% allowed by Resolution 84-037. The Ranch Owner selected the latter.

June 2008: The City issued a document (still posted on its website) indicating that Resolution 84-037 provides the formula for establishing rents in the Ranch.

July 15, 2008: The City Council adopted an ordinance following an initiative submitted by the voters recognizing that "mobile home parks provide affordable and necessary housing for senior citizens" and "minimizing the impact of displacement of seniors and others from their homes is essential to maintaining the economic and social well-being of communities."

February 9, 2011: The RAC approves a rent increase for the Ranch of $191.95 per month by adopting Resolution No. RAC 09-2011.

3. GROUNDS FOR APPEAL

The Association hereby appeals the decision of the Rent Adjustment Commission, Resolution No. RAC 09-2011, for all of the reasons stated at the hearings before the Rent Adjustment Commission, including, but not limited to, the following reasons:

A. RESOLUTION NO. RAC 09-2011 IS NULL AND VOID FOR LACK OF JURISDICTION

The Rent Adjustment Commission's jurisdiction is confined to carrying out the provisions of the Mobile Home Rent Stabilization Ordinance, and rent increases at the Ranch are governed not by the Ordinance, but by City Council Resolution 84-037.

(1) The Association's jurisdictional objections must be independently reviewed by the City Council.

At the start of the initial hearing before the RAC on December 6, 2010, the Association objected that the RAC had no jurisdiction to consider a rent increase under the RSO because rent increases for the Ranch are governed by Resolution 84-037, not by the RSO. (*See* Minutes of the Rent Adjustment Commission, Meeting of Dec. 6, 2010, p. 2 ["Resident's attorney Spencer . . . stated that based on her review of the application and unique circumstances related to this rent adjustment application that the Rent Adjustment Commission lacks jurisdiction over this matter"].)

The Association supplemented its jurisdictional objections by filing two legal briefs explaining in detail why the RAC had no jurisdiction in this matter: (1) "Brief Of Tenants' Association In Support Of Jurisdictional Objections To Determination Of Rent Increase Application By Rent Adjustment Commission" (filed in connection with January 24, 2011 hearing); and (2) "Supplemental Brief Of Tenants' Association In Support Of Jurisdictional Objections To Determination Of Rent Increase Application By Rent Adjustment Commission" (filed in connection with February 7, 2011 hearing).

After considering the Association's jurisdictional objections, some members of the RAC expressly questioned whether the RAC had jurisdiction to consider the rent increase application. In response, Deputy City Attorney Patrick Hehir repeatedly stated that the scope of the RAC's jurisdiction was not an issue for the RAC to decide, but that the question of the RAC's jurisdiction would instead be decided exclusively by the City Council. (2/7/11 RT 104:12-21 ["MR. SILACCI: . . . Can this Commission decide not to make a decision on this application because we believe . . . that the ordinance doesn't apply to the application? [¶] MR HEHIR: . . . My recommendation is that the ordinance does apply and the issue on jurisdiction . . . is not

something for you to tackle"]; 2/7/11 RT 56:25-57:3 ["the jurisdictional issue, if such an issue needs to be addressed, is not for this Commission to decide, is not within its power. City Council would need to make that decision" (emphasis added)]; 2/7/11 RT 97:22-23 ["The jurisdiction that has been addressed is not something for you to consider"]; 2/7/11 RT 114:21-23 ["My recommendation would be that you do not use 84-037. The reason why is because I believe . . . jurisdiction is not your call"]; 2/17/11 RT 103:2-9 [responding "that's correct" when asked "when the advice you're giving the Commission is we can't decide jurisdiction, does that mean we can't decide . . . this application under anything other than the [O]rdinance?"].) Stated differently, Mr. Hehir advised the RAC that it had no jurisdiction to determine its own jurisdiction, and that the City Council would decide the jurisdictional issue on appeal. (2/78/11 RT 100:11-12 ["I do not believe that you can apply the resolution as far as the jurisdictional issue. You do not have jurisdiction under that resolution to decide whether or not you can go forward with it"].)

The RAC followed this advice and made no finding regarding its jurisdiction to determine the rent increase under the RSO—much less one that requires any deference by the City Council. Therefore, the City Council must independently decide the Association's jurisdictional objections based on a de novo review of those objections and the evidence supporting them.

(2) The RAC has no jurisdiction to determine rent increases at the Ranch because such increases are governed exclusively by City Council Resolution 84-037.

It is fundamental that a decision made by an agency or other administrative body that lacks jurisdiction in the matter is void and of no effect. *See, e.g.*, City of Lodi v. Randtron, 118 Cal. App. 4th 337, 359 (2004) ("An administrative agency has only that authority conferred upon it by statute and any action not authorized is void"); Evans v. Department of Motor Vehicles, 21 Cal. App. 4th 958, 980 (1994) ("In reviewing an administrative decision made after a hearing, the superior court must determine whether the administrative agency 'has proceeded without, or in excess of jurisdiction'" [*quoting* Code Civ. Proc. § 1094.5, subd. (b))]).

Here, the RAC's decision (Resolution No. RAC 09-2011) is void for lack of jurisdiction, for the following reasons:

- The RAC has limited jurisdiction, which is confined to carrying out the provisions of the RSO or of any ordinance regulating rents in apartment complexes. *See* Thousand Oaks Mun. Code § 5-25.03, subd. (c).

- The Ranch is not governed by the RSO, but by Resolution No. 84-037, which limits the maximum annual rent increase for the Ranch Residents to four percent.

- Only the City Council can determine the propriety of a proposed rent increase under Resolution 84-037, which has never been revoked and has been continuously applied to the Ranch since the City Council passed it in 1984.

(3) <u>The Rent Stabilization Ordinance does not "trump" Resolution 84-037.</u>

Before the RAC hearings commenced, the City Attorney's office incorrectly advised the RAC that the RSO "trumps" Resolution 84-037. (*See* 12/6/10 Memorandum from Community Development Department to Rent Adjustment Commission (Staff memo), 8.) That contention is in conflict with the past conduct of the City and the Ranch's owners, with the Ordinance's legislative history, and with the investment-based expectations of the Ranch Residents, many of whom purchased their mobile homes based on the assumption that annual rent increases would be capped at four percent under Resolution 84-037:

- In connection with these proceedings, the City Attorney has conceded that "[it] has been established that Ranch has not previously been subject to the City's Rent Stabilization Ordinance." (Staff memo, 7, emphasis added.)

- The City has never required the Ranch to register under the Ordinance, nor has the park been required to pay any registration fees under the Ordinance at any time during the three decades the park has been in operation. (*See* 2/7/11 RT 73:22-["COMMISSIONER FELDMAN: Did the owner of Ranch ever pay its required $10 per year per unit to the City as required by the rent ordinance and did they pay in 2009 and 2010? [¶] MR. NORMAN: I believe the answer is no"].)

- In 1983, when the Owner sent a notice of increased rent "consistent with the requirements of the Rent Stabilization Ordinance at that time," City Staff responded that the proposed rent increase was inconsistent with the formula previously approved by the City for calculating rents at the Ranch. (Staff memo, 5.) City Staff's apparent conclusion that the RSO did not apply to the Ranch led to the enactment of Resolution 84-037, applicable specifically to the Ranch, setting an annual cap of four percent on future increases, and new income qualifications for tenancy. (Staff memo, 6.)

- In August 2000, in connection with a prior rent increase request, the City informed the Owner of the Ranch that absent repeal of Resolution 84-037 by the City Council—which the owners of Ranch Mobile Home Park have never sought, and which has never occurred—the RSO does not and cannot apply to the Ranch.

- The City stated that "Resolution No. 8[4]-037 would govern substantive questions about [rent] increases" at the park. (8/30/00 Letter from Lynn Oshita to Richard D. Faulkner, 1.)

- The City further stated that the Owner's two available options were to (1) "request[ ] a 4% maximum increase base[d] upon Resolution No. 8[4]-037"; or (2) "[r]equest the City to repeal Resolution No. 8[4]-037" so that in the future "Ranch Mobile Home Park will be included in the City Rent Stabilization Program." (8/30/00 Letter, 1.)

- In February 2001, after considering these options, the Owner requested a four percent increase under Resolution 84-037, reflecting the continuing understanding of both the Owner and the City that the Ranch is governed by Resolution 84-037 rather than by the RSO. (See Staff memo, 6, ["After evaluation by City's financial consultant and City staff the 4% rent increase [was] granted, effective April 1, 2001, based on the formula provided in Resolution 84-037" (emphasis added)]; see also 2/7/10 RT 74 ["COMMISSIONER FELDMAN: So in 2001, they were—you were all following 84-037, is that correct? [¶] MR NORMAN: At that time, yes"].)

The RSO's legislative history further confirms the City did not intend the RSO to apply to the Ranch:

- In 1986, just before Ordinance 933-NS was enacted to establish a separate Rent Stabilization Program for mobile home parks, a memorandum from the Rent Committee to the City Council stated: "The proposed mobilehome park rent ordinance would apply to all parks within the City with the exception of Ranch Mobilehome Park which is under a separate affordable housing agreement." (9/9/86 Memorandum from Rent Committee to City Council, 4, emphasis added.)

- A 2008 document posted on the City's website continues to state specifically that, unlike other mobile home parks, the Ranch is governed by Resolution No. 84-037. (*The City of Thousand Oaks Supports Mobile Home Park Residents* (June 2008) http://www.toaks.org/civica/filebank/blobdload.asp?BlobID=12829 (as of Jan. 19, 2011).)

- In recounting the history of City actions "to protect mobile home park residents," the document states, "In 1975, City Council approved the Ranch Mobile Home Park (located at 2193 Los Feliz) as an income and age restricted park. Resolution No. 84-037 established specific criteria for adjusting rent and income limits for this mobile home park." (*Ibid.*, emphasis added.)

- It then says, "In 1980, City Council adopted the Mobile Home Rent Stabilization Ordinance (Municipal Code 5-25) to restrict and limit annual rent increases on mobile home park tenants who reside inside the City's other eight mobile home parks." (Ibid., emphasis added.)

- The Association and the Ranch Residents presented undisputed testimony that the Residents' purchases of mobile homes in the Ranch were based on the understanding—

consistent with Resolution 84-037—that any future rent increases would be modest. (*See, e.g.*, 1/24/11 RT 228:10-11 [tenant Hendrix invested all his savings in Ranch mobile home based on understanding that "the monthly rent would stay at a low rent amount"]; 2/7/11 RT 6:7-16 [tenant Brown purchased a coach in Ranch following representations by the manager "that the park had had only a couple of modest increases ever"]; 2/7/11 RT 8:10-11 [tenant Packman bought mobile home in Ranch with sons' assistance after being told regarding rent increases "that 'Hey, it's not going to go up very much'"].)

(4) The City Attorney's staff erroneously advised the RAC that it could simply disregard Resolution 84-037 based on staff's representation that the resolution might be subject to constitutional challenge.

Following the Association's submission to the RAC of briefing on the issue of jurisdiction, the City Attorney's office retreated from its assertion that Resolution 84-037 was trumped by the RSO. Instead, when asked directly by a Commissioner whether Resolution 84-037 applied to the Ranch, Assistant City Attorney Chris Norman declined to say that the resolution did not apply to the park. (2/7/11 RT 66:18-67:9 ["MR. SILACCI: . . . I need to understand just from the staff's perspective, when did Resolution 84-037 cease to apply to Ranch in your opinion? [¶] MR. NORMAN: That's a difficult question because this is the first time there's been a request outside of that resolution. . . . *We're not saying that it does, but we're not saying that it doesn't.* So I hope that answers your question" (emphasis added)]; 2/7/11 RT 73:19 ["COMMISSIONER FELDMAN: Okay, I understand then that 84-037 is still in effect? [¶] MR. NORMAN: Possibly. It—possibly"].)

Shifting from the position that Resolution 84-037 was trumped by the RSO, Mr. Norman confirmed that the City Attorney was instead advising the RAC to ignore the rent increase restrictions in Resolution 84-037 because "the constitutional requirement of fair return trumps Resolution 84-037." (2/7/11 RT 68:14-16, emphasis added.) Mr. Hehir similarly advised the RAC "to make sure that any decision you make is going to be based on something that would withstand constitutional inquiry." (2/7/11 RT 24-25.)

The City Attorney's office led the RAC astray by advising the RAC during its deliberations that it could safely ignore the rent increase limitations in Resolution 84-037 on the ground that the resolution might be subject to a constitutional attack. But even if the City Attorney's office speculation that Resolution 84-037 could be found constitutionally unsound were correct (it is not, for the reasons recently explained by the United States Court of Appeals for the Ninth Circuit in Guggenheim v. City of Goleta (9th Cir. Dec. 22, 2010, No. 06-56306) __ F.3d __ [2010 WL 5174984]), the RAC could not create its own jurisdiction merely by assuming Resolution 84-037's unconstitutionality.

Indeed, a very similar situation presented itself to the California Supreme Court in Lockyer v. City and County of San Francisco, 33 Cal. 4th 1055 (2004), where city officials ignored a state statute prohibiting the granting of marriage licenses to same-sex couples because

they believed the statute was unconstitutional. The court explained that "a local public official, charged with the ministerial duty of enforcing a statute, generally does not have the authority, in the absence of a ***judicial determination*** of unconstitutionality, to refuse to enforce the statute on the basis of the official's view that it is unconstitutional." *Id.* at 1082, emphasis added. Directly on point here, the court observed, "the same legal issue would be presented if the statute were one of the environmental measures that impose restrictions upon a property owner's ability to obtain a building permit for a development that interferes with the public's access to the California coastline, and a local official, charged with the ministerial duty of issuing building permits, refused to apply the statutory limitations because of his or her belief that they effect an uncompensated 'taking' of property in violation of the just compensation clause of the state or federal Constitution." *Id.* at 1067.

Thus, until Resolution 84-037 has either been repealed by the City Council, or has been judicially declared to effect an unconstitutional taking, neither the RAC nor the City Council may "refuse to enforce the [Resolution] on the basis of the [their] view that it is unconstitutional." Lockyer, *supra*, 33 Cal. 4th at 1082. Resolution No. RAC 09-2011, which is in conflict with the rent increase restrictions imposed on the Ranch Mobile Home Park by City Resolution No. 87-034, is void because the Rent Adjustment Commission had no jurisdiction to issue it in the first instance.

B. RESOLUTION 84-037 CANNOT BE DEEMED A "TAKING" OF PRIVATE PROPERTY

Contrary to City Staff's and the Owner's assertions otherwise, Resolution 84-037 is not an unconstitutional taking of the Owner's property interests. The Owner accepted the benefits of the original land use approvals, under which the zoning for the Ranch was changed, the Owner received over $100,000 in development fee waivers, and the City permitted the park to be built with fewer planning restrictions than would otherwise have been required—all in exchange for agreeing to provide housing for low-income seniors, and with restrictions on rent increases. *See* County of Imperial v. McDougal, 19 Cal. 3d 505, 510-511 (1977) ("a landowner or his successor in title is barred from challenging a condition imposed upon the granting of a special permit if he has acquiesced therein by either specifically agreeing to the condition or failing to challenge its validity, and accepted the benefits afforded by the permit."); see also Edmonds v. Los Angeles County, 40 Cal.2d 642, 650 (1953) (plaintiffs barred from challenging restriction on property use where "[t]hey accepted all benefits bestowed on them, securing their state and local permits on the basis of the [restriction" and therefore "should not now be allowed to challenge the effectiveness of the [restriction] under which they have obtained definite benefits to which they were not otherwise entitled"); 66A Cal.Jur.3d (2010) Zoning And Other Land Controls, § 437 ("The use authorized by a conditional-use permit is subject to the conditions under which it is granted and when the permittee accepts the benefits and privileges authorized by the permit, the permittee cannot avoid the application and enforcement of those conditions".)

The Ninth Circuit recently issued its en banc decision in Guggenheim v. City of Goleta (9th Cir. Dec. 22, 2010, No. 06-56306) __ F.3d __ [2010 WL 5174984]. Guggenheim makes clear that Resolution 84-037 would not be subject to a constitutional challenge on the ground that it interferes with investment-backed expectations. Guggenheim involved a challenge to a 1979 rent control ordinance for mobile homes that was adopted for the purpose of "relieving 'exorbitant rents exploiting' a shortage of housing and the high cost of moving mobile homes."

The court found that the primary factor in determining whether there was a taking of the Owner's property was "the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations." This factor was "fatal" to plaintiffs' claim because the "[t]he Guggenheims bought a trailer park burdened by rent control, and had no concrete reason to believe they would get something much more valuable, because of hoped-for legal changes, than what they had."

The court also observed, [t]he people who really do have investment-backed expectations that might be upset by changes in the rent control system are tenants who bought their mobile homes after rent control went into effect. . . . The tenants who purchased during the rent control regime have invested an average of over $100,000 each in reliance on the stability of government policy. Leaving the ordinance in place impairs no investment-backed expectations of the Guggenheims, but nullifying it would destroy the value these tenants thought they were buying."

Similarly here, the "investment-based expectations" factor is fatal to any claim by the owners of Ranch that Resolution 84-037 effects a taking of private property. The zoning and development were approved on the basis that it would provide housing for low-income residents aged 62 years and older. The rents for the Ranch are limited by the developmental approvals, as set forth in Resolution No. 267-74 PC (for Trailer Park Application TPD-74-6) and any addenda thereto. In 1984, in accordance with those approvals, Resolution 84-037 provided for an annual allowable rent increase of 4%. Thus, there can be no argument that Resolution 84-037 has interfered with any reasonable investment-based expectations of the Owner of the Ranch.

From its inception, the Ranch has been continuously subject to by restrictions on rent increases, restrictions imposed first by the original development approvals for the Ranch, and then subsequently by Resolution 84-037. Just as in Guggenheim, then, the Ranch has been subject to limitations on rent increases from the time it was purchased, and therefore its owners could not have had any "concrete reason to believe they would get something much more valuable, because of hoped-for legal changes, than what they had." Likewise as in Guggenheim, the only people whose reasonable investment-based expectations would be affected by not continuing to apply Resolution 84-037 would be the Ranch Residents, who invested in their mobile homes in reliance on the limitations it imposed on rent increases, and who would see the value of what they purchased destroyed by such increases

C. PRINCIPLES OF CONTRACT AND ESTOPPEL REQUIRE THAT THE OWNER OF THE RANCH BE BOUND BY THE DEALS MADE WITH THE CITY AND THE RESIDENTS.

It is axiomatic that one who accepts the benefits of a contract cannot deny the contract's validity. *See* Civ. Code, § 1589 ("a voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting"); Civ. Code § 3521 ("[h]e who takes the benefit must bear the burden.")

These principles apply equally in the land use context:

- "[A] landowner or his successor in title is barred from challenging a condition imposed upon the granting of a special permit if he has acquiesced therein by either specifically agreeing to the condition or failing to challenge its validity, and accepted the benefits afforded by the permit." County of Imperial v. McDougal, 19 Cal. 3d 505, 511 (1977).

- Landowners are barred from challenging a restriction on their property use where "[t]hey accepted all benefits bestowed on them, securing their state and local permits on the basis of the [restriction]" and therefore "should not now be allowed to challenge the effectiveness of the [restriction] under which they have obtained definite benefits to which they were not otherwise entitled." Edmonds v. Los Angeles County, 40 Cal. 2d 642, 650 (1953).

- "Conditions of a permit run with the land, once the benefits of the permit have been accepted. [Citation.] Subsequent owners of the land have no greater rights than those of the owner at the time the conditional use permit was issued." Sounhein v. City of San Dimas, 47 Cal. App. 4th 1181, 1188 (1996).

- "[C]ontracts affecting the use of land in zoning classifications, where the permitted use could be incompatible in some respects to other land uses within the zone classification, may impose use limitations when the condition is acquiesced in by the landowner by specifically agreeing to the condition or failing to challenge its validity." J-Marion Co. v. County of Sacramento, 76 Cal. App. 3d 517, 522-23 (1977).

- "In the present instance the landowner, by and through its agent, requested the restriction as a condition of the zoning change. Under such circumstances, the owner has acquiesced in the conditional zoning and accepted the benefits offered by the zoning classification. The present use limitation resulted from a consensual agreement relating to

the land's use and may not be challenged as a violation of the proscription of section 65852 against non-uniform application of use regulations. J-Marion Co. v. County of Sacramento, 76 Cal. App. 3d 517, 523 (1977).

The Owner of the Ranch accepted at least the following benefits:

- Zoning change to allow the property to be developed as a mobile home park.
- Waiver of $100,000 in development fees.
- Various other concessions as set forth in TPD 74-6.
- Payment of rent by Residents.

The Owner of the Ranch is therefore bound by at least the following burdens:

- Resident restrictions based on age and income.
- Limits on annual rental increases per Resolution 84-037 to ensure rent stability for seniors living on fixed incomes.
- Rent increases waived by contracts with and representations made to the Residents.

D. THE RSO AND PRINCIPLES OF CONTRACT AND EQUITY DO NOT ALLOW THE OWNER TO MAKE UP FOR ITS FAILURE TO TAKE ANNUAL RENT INCREASES BY SEEKING TO OBTAIN OVER THIRTY YEARS OF RENT INCREASES IN A SINGLE YEAR.

Even if the RSO is applied to the Ranch, which the Association contends it should not be, the RAC's decision should still be overturned. The "just and reasonable" return provision allows for a park owner, in any given year, to apply for a higher rent than the maximum rent allowed under the ordinance if the maximum rent for that particular year does not provide for a just a reasonable return based on unusually high expenses. It does not allow an owner to "catch-up" after more than thirty years of deliberately choosing to forego rent increases.

When seeking to discern the meaning of a statute, one "'must look first to the words of the statute, "because they generally provide the most reliable indicator of legislative intent." [Citation.] If the statutory language is clear and unambiguous our inquiry ends. "If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs."'" Meyer v. Sprint Spectrum L.P. , 45 Cal. 4th 634, 639-640 (2009). "[T]he statutory language is generally the most reliable indicator of legislative intent." Hassan v. Mercy American River Hospital, 31 Cal. 4th 709, 715. (2003) "The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context." *Id.*

Moreover, "[w]ell-established canons of statutory construction preclude a construction which renders a part of a statute meaningless or inoperative." Manufacturers Life Ins. Co. v. Superior Court, 10 Cal.4th 257, 274 (1995). "Interpretations that . . . render words surplusage are to be avoided" and "every provision of a statute is assumed to have meaning and to perform a useful function." Woods v. Young, 53 Cal. 3d 315, 323-324 (1991). "[S]tatutes . . . [are to be interpreted] so as to give force and effect to every provision and not in a way which would render words or clauses nugatory, inoperative or meaningless." Committee for Responsible School Expansion v. Hermosa Beach City School Dist., 142 Cal.App.4th 1178, 1189 (2006).

The plain language of RAC-2 (sections 2.01, 2.05 and 3.03) requires that the landlord's "gross total income" for the current year must include the difference between the current rent for each unit and the rent that could be charged if the landlord had imposed "the rent increases permitted by the Rent Stabilization Ordinance" from the base year through the current year.

RAC-2 recognizes this in Section 2.05 as follows: "Adjusted Income for Below Market Rentals is an amount representing the difference between the actual rent collected and what the landlord could have collected if the units had been rented at their full market value. Examples of below market rents may be units occupied by the landlord or the landlord's family, the unit of a resident manager, ***or any unit where the rent increases permitted by the Rent Stabilization Ordinance or the Regulations and Guidelines of the Rent Adjustment Commission could have been made, but have not been made because of the landlord's rental policies and purposes***." (Emphasis added.).

Further, "the language of a particular code section must be construed in light of and with reference to the language of other sections accompanying it and related to it with a view to harmonizing the several provisions and giving effect to all of them." Walker v. Superior Court, 47 Cal.3d 112, 131 (1988). "[A] cardinal rule of statutory construction" is "that 'every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.'" Landrum v. Superior Court, 30 Cal.3d 1, 14 (1981).

The development approvals for the Park do not allow the owner to "catch-up" after more than thirty years of deliberately choosing to forego rent increases. Furthermore, the contracts with the Residents do not allow the owner to "catch-up" after more than thirty years of deliberately choosing to forego rent increases.

E. THE RENT INCREASE IS INCONSISTENT WITH THE PURPOSES OF THE RSO

"The fundamental task of statutory construction is to 'ascertain the intent of the lawmakers so as to effectuate the purpose of the law.'" People v. Cruz, 13 Cal. 4th 764, 774-775 (1996). A "construction of statutory language will not prevail if contrary to the legislative intent apparent in the statutory scheme." Gomes v. County of Mendocino, 37 Cal.App.4th 977, 986 (1995). Words in a statute "should be interpreted to make them workable and reasonable,

practical, in accord with common sense and justice, and to avoid an absurd result." Cummings v. Stanley, 177 Cal.App.4th 493, 508 (2009).

Moreover, the RSO requires that the proposed increase be in keeping with the purposes of the ordinance as follows:

> "Sec. 5-25.06. Administrative adjustments to rent.
>
> Subd. b(1): "The Commission shall have the authority, in accordance with such guidelines as the Commission may establish, to grant increases in the rent for a rental space or spaces located in the same mobile home park, upon receipt of an application for adjustment filed by the landlord and after notice and hearing, if the Commission finds that such increase **is in keeping with the purposes of this chapter** and that the maximum rent or maximum adjusted rent otherwise permitted pursuant to this chapter does not constitute a just and reasonable rent on the rental space or spaces."

(Emphasis added.)

The legislative purposes of the RSO are to provide affordable housing for low-income residents living on fixed incomes and to provide long-term rent stability for mobile home tenants to avoid displacing them due to inability to pay increased rents. The rent increase approved by the RAC is wholly inconsistent with law and the RSO's purpose and plain language in that the increase:

- Will exacerbate the "shortage of vacant and available mobile home spaces in the City of Thousand Oaks";
- Will cause tenants on fixed incomes to be "displaced as a result of their inability to pay increased rents" and "relocate at a substantial loss or expense" ;
- Will cause those with fixed incomes to be "unable to find decent, safe and sanitary new housing at affordable rent levels";
- Will cause tenants to "attempt to pay requested and uncontrolled rent increases," which will require them to "expend less on other necessities of life";
- Will have a "detrimental effect" and cause "hardships on senior citizens" with fixed and low incomes;
- Will substantially impair the investment-backed expectations of the Residents;
- Will cause rents to be increased by a substantial percentage in a single year, contrary to the RSO's purpose and plain language; and
- Will allow for recapture of rent increase for 31 of past 33 years where the owner deliberately agreed not to increase rents, and decided it would forego any increase.

F. ANY RENT INCREASE SHOULD HAVE BEEN BASED ON RESOLUTION 84-037.

The rents for the Ranch are limited by the development approvals for the Park, as set forth in Resolution No. 267-74 PC, for Trailer Park Development Application TPD-74-6, and any addenda thereto. In accordance with those approvals, Resolution No. 84-037 provides that the maximum annual rent increase in any given year shall be 4%, and shall be set at 100% of CPI change for that year.

The City is entitled to use alternate approaches and this approach has already been evaluated by the City, adopted by the City and agreed to and used by the Owner. This approach is also consistent with all parties' reasonable investment expectations. Thus, the Owner is only entitled to request a rent increase of 1.85% in 2010, and must meet the criteria established in that Resolution in order to obtain this increase.

G. THE RAC FAILED TO PROPERLY APPLY THE MNOI FORMULA

The Basic Steps for application of the MNOI formula are as follows:

STEP 1: Sec. 3.02. "Determine the [Base Year] Net Operating Income."

STEP 2: Sec. 3.03. "Determine the current year Net Operating Income in accordance with the provisions of Sec. 2 – 2.17 . . . ."

STEP 3: Sec. 3.04. Make a Price Level Adjustment to the [Base Year] Net Operating Income.

STEP 4: Section 3.05. Compare the current year Net Operating Income to the {Base Year] Net Operating Income.

STEP 5: The landlord is eligible for a rent increase only if the current year Net Operating Income is less than the adjusted [Base Year] Net Operating Income.

The RAC failed to follow all of these steps properly.

(1) The Base Year should be changed.

The RSO has never previously been applied to the Park, so the base year should be set at the first year prior to its application, 2009. 2009 is also the first year that we have complete financial data.

Alternatively, the base year might have been set at 1999 if additional financial information had been provided for that year and the Association had been given an opportunity to analyze that data in accordance with RAC-2 and RAC-5. That was not done. Or,

alternatively, the base year might have been set at 1982 but **ONLY** if additional financial information had been provided and the Association were given an opportunity to analyze that data in accordance with RAC-2 and RAC-5. Again, that was not done.

(2) There should be no *Vega* Adjustment to the Base Year Rents.

The Vega rationale does not apply and should not have been applied to this situation, where the owner had a "two-sided" bargain that led the owner to adopt the original rents as the market rents for this low-income Park. No Vega adjustment to the rents should be permitted because the initial rents in 1977 were established by use permit conditions. Moreover, there is a separate "market" for affordable housing projects, and thus market principles utilized by the Owner and the City do not apply. Finally, the Owner has accepted the benefits of the use permit and zoning change approvals, and is required to accept the burden of them as well.

(3) The RAC Incorrectly Determined the Current Year Net Operating Income.

"[T]he provisions of Sec. 2 – 2.17" require the following when calculating "current year Net Operating Income" under RAC-2 (section 3.03):

- Sec. 2. "Net Operating Income is determined by subtracting the annual Operating Expenses from the Gross Total Income."

- Sec. 2.01. "Gross Total Income is determined by adding the following:
  a. Rental Unit Income
  b. Garage and Parking Income
  c. Stores and Offices Incomes
  d. Adjusted Income for Below Market Rentals
  e. Miscellaneous Income"

RAC-2 Section 2.05 defines "Adjusted Income for Below Market Rentals" as follows:

> "Adjusted Income for Below Market Rentals is an amount representing the difference between the actual rent collected and what the landlord could have collected if the units had been rented at their full market value. Examples of below market rents may be units occupied by the landlord or the landlord's family, the unit of a resident manager, ***or any unit where the rent increases permitted by the Rent Stabilization Ordinance or the Regulations and Guidelines of the Rent Adjustment Commission could have been made, but have not been made because of the landlord's rental policies and purposes***."

(Emphasis added.)

The Owner, the City's consultant, and the RAC all failed to adjust income for below market rentals for the Current Year to include the rent increases that the owner failed to take for the past 31 of 33 years, and thus have grossly understated the Current Year Gross Total Income.

Limiting the "Adjusted Income for Below Market Rentals" provision only to "units occupied by the landlord or the landlord's family" or "the unit of a resident manager" renders meaningless a third section of the statutory language—"any unit where the rent increases permitted by the Rent Stabilization Ordinance or the Regulations and Guidelines of the Rent Adjustment Commission could have been made, but have not been made." Ignoring the upward adjustment for rental increases the landlord has failed to seek is inconsistent with the sections of RAC-2 that require an identical adjustment in determining the base year net operating income. It is inconsistent with the statutory scheme to adjust the base year net operating income by rent increases that could have been made but were not, and not to make the exact same adjustment to the current year net operating income. To achieve an "apples to apples" comparison, the same adjustment must be made at both ends of the calculation.

Because the adjustment to current year net operating income for below market rentals was not made, as required by sections 2.01, 2.05, and 3.03, the RAC thwarted the primary purposes of the statutory scheme. Allowing landlords to recoup in a single year rent increases that have been foregone in multiple past years would undermine the following express legislative purposes the "Mobile Home Rent Stabilization" ordinance was intended to prevent—RENT STABILIZATION!!!!!

(4) The RAC Used Inaccurate Data For Operating Expenses For The Base Year Of 1982

RAC-2 and RAC-5 require two years of actual data, which was not provided for 1982. As such, it was impossible for anyone to do an accurate analysis of the expense figures. Moreover, the RAC used the ***wrong total expense figures*** for 1982, which led to a decrease in expenses and therefore an increase in base year net operating income.

(5) Operating Expenses for the Current Year Were Overstated

The City Staff and the RAC failed to properly analyze the operating expenses for the Current Year. RAC-2 and RAC-5 provide specific guidelines for allowable Operating Expenses, which must be supported and reasonable.

The expenses for 2009 were overstated because: (1) they were not permitted by RAC-2; (2) they were not supported by the General Ledger and receipts; (3) they were in excess of reasonable or industry standard; and (4) the Management and Administrative Expenses were not capped at 8%, as required. As such, the operating expenses for the current year were overstated, which meant that the net operating income for the current year was understated.

4. CONCLUSION

For all the above reasons, the Association of Ranch Tenants requests that the decision of the Rent Adjustment Commission related to the "just and reasonable return" rent increase application by the owner of the Ranch Mobile Home Park, as set forth in Resolution No. RAC 09-2011, be overturned and that no rent increase be permitted. Alternatively, if a rent increase is permitted, it should be only as set forth in the formula established by Resolution No. 84-037, which sets the maximum rent increase for the Ranch Mobile Home Park.

MERGED RESOLUTION NO. RAC-2 and RAC-5*
(not formally adopted)

A RESOLUTION OF THE THOUSAND OAKS RENT ADJUSTMENT COMMISSION ESTABLISHING GUIDELINES IN ORDER TO DETERMINE A "JUST AND REASONABLE RETURN"

WHEREAS, the City Council of the City of Thousand Oaks has adopted Ordinance No. 755-NS regulating rents for residential housing in the City of Thousand Oaks: and

WHEREAS, that Ordinance established a RENT ADJUSTMENT COMMISSION to administer specified portion of said Ordinance; and

WHEREAS, the Commission is empowered by Section VI B to establish such Guidelines as the Commission may desire in order to grant increases in rent in order to insure that landlords achieve a Just and Reasonable Return on rental of their rental units.

NOW, THEREFORE, THE RENT ADJUSTMENT COMMISSION OF THE CITY OF THOUSAND OAKS DOES RESOLVE AS FOLLOWS:

1. The following Guidelines are established in order to enable the Commission to review requests by landlords for rent adjustments in order to achieve a Just and Reasonable Return on their rental units:

THE JUST AND REASONABLE RETURN GUIDELINES
RENT ADJUSTMENT COMMISSION
CITY OF THOUSAND OAKS

Sec. 1. GUIDELINES TO BE USED BY RENT ADJUSTMENT COMMISSION FOR DETERMINING A JUST AND REASONABLE RETURN (ORDINANCE NO. 755-NS, SECTION VI)

Sec. 1.01. The Rent Stabilization Ordinance, as amended, and Regulations and Guidelines promulgated by the Rent Adjustment Commission contain a number of provisions which normally assure a Just and Reasonable Return on rental units subject to the Ordinance. These provisions include:

a. Automatic rent increases.
b. Exemption of luxury apartment units and smaller units.
c. Pass through of capital improvement costs.
d. Pass through of rehabilitation work costs.
e. Vacancy Decontrol. *(Subsection (e) added by RAC-5)**

Sec. 1.02. The Rent Stabilization Ordinance authorizes the Rent Adjustment Commission to grant rent increases when the maximum rent or the maximum adjusted rent does not constitute a Just and Reasonable Return in accordance with such Guidelines as the Rent Adjustment Commission may establish.

Sec. 1.03. The Commission presumes that the net operating income received up to April, 1980 provided landlords with a Just and Reasonable Return on their rental units, unless there is clear and convincing evidence to the contrary. In most cases, the automatic increases allowed by the Ordinance and the property tax savings resulting from Proposition 13 provide sufficient additional operating income to landlords to maintain the same net operating income they experienced in 1979. However, in some cases landlords may have incurred reasonable operating expenses which exceed the rent increases allowed by the Ordinance and the tax savings resulting from Proposition 13. Therefore, landlords who have had such reasonable increased operating expenses should be able to maintain the same level of net operating income as they experienced in 1979 by requesting a rent adjustment pursuant to these

Guidelines.

Sec. 1.04. The method authorized herein is the approached preferred by the Commission, however, it is not exclusive. Applicants or tenants may propose the use of alternative approaches, but must fully explain, in writing, the methodology and the reasons supporting the use of the methodology and why the alternate approach is more appropriate than the method authorized herein. The proponent of an alternate approach must also provide information and documentation adequate to employ the suggested alternate approach. The methodology and documentation shall be provided with the application, sufficiently before the date set for hearing, so that the matter may be reviewed by the Commission staff. Failure to so provide that information shall be grounds for rejection of its use, or continuation of the hearing, at the Commission's discretion. The use of such approach as suggested by the applicant or tenant shall be at the discretion of the Commission.
*(This section amended by RAC-5)**

Sec. 1.04 A. The Commission promulgates these guidelines to assist them in determining whether the maximum adjusted rents under the Rent Stabilization Ordinance is permitting landlords to achieve a just and reasonable return on their rental units and is not intended to keep rents at the constitutional minimum. This approach has, and any proposed alternate approach should have, the ability to accurately and reliably make a determination as to when a rent adjustment is needed in as prompt and efficient a manner as possible with the least cost to the applicant and the least likelihood of delay, manipulation, or error.
*(This section added by RAC-5)**

Sec. 2. DETERMINATION OF THE NET OPERATING INCOME

Net Operating Income is determined by subtracting the annual Operating Expenses from the Gross Total Income.

Sec. 2.01. Gross Total Income is determined by adding the following:

a. Rental Unit Income
b. Garage and Parking Income
c. Stores and Offices Incomes
d. Adjusted Income for Below Market Rentals
e. Miscellaneous Income

Sec. 2.02. Actual Rental Unit Income is the total annual income received from all the dwelling units in the rental complex.

Sec. 2.03. Garage and Parking Income is additional income received for parking services in the garage or parking spaces on the grounds of the rental complex.

Sec. 2.04. Stores and Offices Income is the total annual income received from any stores or offices located within the rental complex.

Sec. 2.05. Adjusted Income for Below Market Rentals is an amount representing the difference between the actual rent collected and what the landlord could have collected if the units had been rented at their full market value. Examples of below market rents may be units occupied by the landlord or the landlord's family, the unit of a resident manager, or any unit where the rent increases permitted by the Rent Stabilization Ordinance or the Regulations and Guidelines of the Rent Adjustment Commission could have been made, but have not been made because of the landlord's rental polices and purposes.

Sec. 2.06. Miscellaneous Income is determined by adding all actual revenues received from such sources as maid service, gas and electricity sold to tenants, commissions from telephones, laundry and vending machines, signs on the building or property of the rental complex, air conditioning charges, special

charges for the use of amenities, income from oil, gas, or other minerals on the rental complex property, location use payments by motion picture or television production companies, special rentals for occasional use of recreation rooms or other common areas, any interest derived from tenant money held as security deposits, and any other income derived from the operations of the rental complex.

Sec. 2.07. Vacancies in both the base year, as that term is defined in Sec. 3 below, and the year for which the application is made are not calculated. However, in cases where the Commission finds unusual vacancy patterns, the Commission will have the discretion to adjust the Gross Total Income as for example where vacancies have been the result of a landlord withholding rental units from the market.

Sec. 2.08. Operating Expenses are determined by adding the following:

a. Management and Administrative Expanses
b. Adjustment for landlord performed services
c. Operating Expenses for:
    1. Supplies
    2. Heating Expenses
    3. Electricity
    4. Water and Sewer
    5. Gas
    6. Building Services
    7. Other Operating Expenses
d. Maintenance Expenses including:
    1. Security
    2. Grounds Maintenance
    3. Maintenance and Repairs
    4. Painting and Decorating
e. Taxes and Insurance Expenses including:

1. Real Estate Taxes
2. Other Taxes, Fees and Permits
3. Insurance

f. Service Expenses

g. Other Payroll Expenses

Sec. 2.09. In determining operating expenses, all debt service expense, depreciation, and expenses for which a landlord has been reimbursed must be excluded.

Sec. 2.10. Management and Administrative Expenses shall include and be determined as follows:

a. Wages, salaries and benefits for management, administrative and other personnel, including agency fees for administrative services.

b. Advertising rental units but excluding any advertising for the sale of condominiums or for the sale of the rental complex as a whole.

c. Auditing and accounting expenses.

d. Office expenses; telephone expenses.

e. Legal expenses - These expenses must be reasonable and in line with industry standards as per Sec. 2.17. This term shall not include fees incurred in selling or attempting to sell or convert the rental complex to another use or subdividing the rental complex. It shall also not include fees incurred in litigation involving rent control where such an inclusion would have the effect of "awarding" legal fees to the applicant or otherwise be inappropriate.

f. Application expenses - Expenses for making an application for rent adjustment may be included as an expense in the year paid. This term may include reasonable legal and accounting

expenses for making application but shall not include filing fees.

g. Professional property management fees, dues and licenses, except that if the landlord owns more than one rental complex, such expenses must be apportioned among the rental complexes owned.

*(This section amended by RAC-5)**

Sec. 2.11. An Adjustment for Management and Administrative Expenses shall be allowed where the landlord performs management or administrative functions or self-labor in operating and/or maintaining the property. In addition to the actual Management and Administrative Expenses listed in Sec. 2.10 above, where the landlord performs such services, the landlord may calculate an expense figure representing the value of such unpaid management and administrative services. However, the total cost of Management and Administrative Expenses including the foregoing adjusted expense cannot exceed 8% of the Actual Rental Income as described in Sec. 2.02 above, and where the landlord has performed substantially similar services in both the base year and the current year, the foregoing adjusted expenses must be calculated for both the base year and the current year at the same percentage of actual rental income. When the landlord performs different services in the base year and the current year, an adjustment will be allowed for such differences to the extent the landlord shall document the amount of such differences.

Sec. 2.12. Operating Expenses include:

a. Supplies including janitorial services, light bulbs, uniforms for employees, etc.
b. Heating Expenses include coal or oil used for heating the building.
c. Electricity Expense include all landlord paid electricity for both rental units and common areas.
d. Water and Sewer Expenses include all landlord paid expenses for the rental complex.

e. Gas includes all gas charges paid by the landlord for both rental units and common areas.

f. Building Services include expenses for window washing, lobby directory, exterminating, rubbish removal, TV antenna service.

g. Other Operating Expenses include any other expenses which do not fit some other category. Expenses listed under this category must be explained.

Sec. 2.13. Maintenance Expenses include:

a. Security Expense such as wages of any security personnel, contracted security expenses, door guards, and the operating cost of security equipment.

b. Grounds Maintenance Expenses include wages of groundskeepers, gardeners, external building lighting, sidewalk and parking lot maintenance costs.

c. Maintenance and Repairs include all general maintenance or repair both inside and outside the building, painting of the exterior, elevator maintenance, plumbing and electrical services, fire protection and smoke detector services, plastering and masonry repair, carpentry, heating repair, roofing and buck pointing. However, Capital Improvements are not eligible expenses. Landlords who did work which constitutes Capital Improvements in the base year must capitalize such expenses on the basis of a five year (60 month) amortization and charge only one/fifth of the total expenses in the year such an expense incurred and for the next successive four years until fully amortized. Capital Improvements performed or paid for in the current year must be amortized pursuant to Sec. VII (A) of the Rent Stabilization Ordinance.

The installation of separate utility meters is not an eligible expense within these guidelines. *(Subsection 2.13 (c) amended by RAC-5)**

d. Painting and Decorating include all costs including wages materials, and contracted labor painting and decorating the interior of the building, including the cost of paint, wallpaper, brushes, wall washing, and minor replacement costs related to floor coverings, draperies and light fixtures. Capital Improvement replacements of floor covering or draperies must be amortized as in subsection c above.

Sec. 2.14. Taxes and Insurance include:

a. Real Estate Taxes including all local or state taxes as well as noncapitalized assessments.
b. Other Taxes, Fees and Permits such as personal property taxes applicable to the building, franchise and business taxes, sign permit fees, etc.
c. Insurance including all one-year charges for fire, liability, theft, boiler explosion, rent fidelity bonds, and all insurance premiums except those paid to FHA for mortgage insurance or employee benefit plans. Whenever a premium is multi-year, it must be prorated to all applicable years.

Sec. 2.15. Service Expenses include the amount of the cost of maintaining recreational amenities such as saunas, gymnasiums, billiard rooms, pools, jacuzzis and tennis courts. Such costs include payroll, contractual services, materials and supplies and minor noncapitalized equipment replacement. Improvements qualifying as Capital Improvements must be amortized as described in Sec. 2.13(c) above.

Sec. 2.16. Other Payroll Expenses include any payroll expenses not included in any of the categories previously listed, such as janitors, maids, elevator operators, telephone switchboard operators, and rental agents.

Sec. 2.17. Operating expenses must be reasonable. Whenever a particular

expense exceeds normal industry standards in the base year or in the current year for which the application for a rent increase is made, the Rent Adjustment Commission shall determine whether the expense is reasonable. In cases where the Rent Adjustment Commission determines that a particular expense is unreasonable, the Rent Adjustment Commission shall adjust the expense to reflect the normal industry range for that year. The Rent Adjustment Commission shall indicate the reason for such an adjustment in the determination.

Sec. 3. DETERMINATION OF ELIGIBILITY FOR RENT INCREASES PURSUANT TO THE 1979 BASE YEAR FORMULA

Sec. 3.01. The base year shall be 1979 when the financial information for that year is available.

Sec. 3.02. Determine the 1979 Net Operating Income.

Sec. 3.03. Determine the current year Net Operating Income in accordance with the provisions of Sec. 2-2.17 (i.e. the latest calendar year or the latest fiscal year used by the landlord for accounting purposes).

Sec. 3.04. Add to the Net Operating Income for .1979, all automatic adjustments of 8%, as permitted by Section VI of the Rent Stabilization Ordinance which the landlord could have implemented, which shall be known as the Price Level Adjustment.

Sec. 3.05. The Net Operating Income for the current year is compared to the 1979 Net Operating Income plus the Price Level Adjustment:

a. If the current year Net Operating Income is larger than the 1979 Net Operating Income plus the Price Level Adjustment, the landlord is ineligible for a Just and Reasonable rent increase based on this formula.

b. If the current year Net Operating Income is less than the 1979 Net Operating Income plus the Price level Adjustment, the landlord is eligible for a rent increase that will allow the current year Net Operating Income to equal the 1979 Net Operating Income plus the Price Level Adjustment.

Sec. 3.06. Landlords who did not own the rental property in 1979 shall use the 1979 Net Operating Income of the landlord of record in 1979 if the financial information is available.

Sec. 3.07. A determination of eligibility for a rent adjustment under this Resolution shall be conducted on the basis of the comparison of two (2) full years of data. The use of a base year other than calendar year 1979 shall only occur upon the showing of good cause as shall be determined within the discretion of the Rent Adjustment Commission. Good cause shall include, but shall not be limited to a showing that calendar year 1979 was not representative of net operating income produced by the complex; that income and/or expenses, where usually high or low during that period, in that 1979 was otherwise aberrational.
*(This section added by RAC-5)**

Sec. 4. DETERMINATION OF ELIGIBILITY FOR RENT INCREASES WHEN 1979 NET OPERATING INCOME AND EXPENSE INFORMATION IS NOT AVAILABLE

In the event that the 1979 financial information is not available, and where the loss of such records can be substantiated by clear and convincing evidence, the landlord of record in 1979 may substitute as a base year the first year following 1979 for which records are available.

Sec. 4.01. In the case of a new landlord who did not own the rental property in 1979 and where 1979 records are not available from the previous landlord, the

present landlord may, when the unavailability of the 1979 records can be substantiated by clear and convincing evidence, substitute as a base year the first year following 1979 for which the previous landlord's records are available.

Sec. 4.02. In the event that no financial records are available from a previous landlord, the current landlord is eligible for a Just and Reasonable rent increase only when the landlord has two complete years of operating income and expenses. The first year Net Operating Income for such landlords will be the base year.

Sec. 4.03. Whenever permitted by the Price Level Adjustment factor, a Price Level Adjustment may be made to the base year Net Operating Income.

Sec. 4.04. The current year Net Operating Income is subtracted from the base year Net Operating Income plus the Price Level Adjustment.

Sec. 4.05. If the current year Net Operating Income is larger than the base year Net Operating Income plus the Price Level Adjustment, the landlord is ineligible for a Just and Reasonable rent increase based on this formula.

Sec. 4.06. If the current year Net Operating Income is less than the base year Net Operating Income plus the Price Level Adjustment, the landlord is eligible for a rent increase that will allow the current year Net Operating Income to equal the 1979 Net Operating Income plus the Price Level Adjustment.

Sec. 5. EXCEPTION FOR CIRCUMSTANCES WHERE A LANDLORD IS SUFFERING A NET OPERATING LOSS

To ensure that no landlord suffers a net operating loss because of the provisions of the Rent Stabilization Ordinance, the Rent Adjustment Commission shall grant a rent increase sufficient for a landlord to reach a breakeven point in the current year for which the application is made. All the criteria contained in Sections 2-2.17 shall be followed.

Sec. 6. DETERMINATION OF THE RENT INCREASE FOR EACH INDIVIDUAL RENTAL UNIT

The rental increase permitted by using one of the following listed formula is determined:

a. The 1979 Base Year (Sections 3-3.05).
b. When the 1979 Base Year Data is not available (Sections 4-4.04).
c. The Net Operating Loss Circumstance (Sec. 5).

Sec. 6.01. The dollar amount that the total rent can be raised according to one of the above 3 formulas is divided by the Gross Total Income for the current year for which the application is made. The result of this calculation is the percentage individual rents can be raised.

Sec. 6.02. The percentage obtained by the calculation in Sec. 6.01 above is multiplied by the legal rent in effect in each rental unit for which a Just and Reasonable rent increase has been requested. The result of these calculations is the dollar amount the rent can be raised in each rental unit. The legal rent used in these calculations is the current rent at the time of the application, provided this rent does not exceed the amount permitted by the Rent Stabilization Ordinance and any Regulation or Guidelines issued by the Rent Adjustment Commission.

Sec. 6.03. SPECIAL NOTICE - No rent increase granted pursuant to the above shall be construed to permit landlords to raise their rents in violation of any terms or provisions of a written lease.

Sec. 7. PROCEDURES FOR LANDLORDS APPLYING FOR A JUST AND REASONABLE RENT INCREASE

Landlords should carefully examine these Guidelines and the Rent

Stabilization Ordinance (specifically, Section VII (C) of the Ordinance). The procedures and conditions covering eligibility are described therein. *(Preamble to section 7 amended by RAC-5)**

Sec. 7.01. Before a landlord may increase rents on the basis of the Just and Reasonable Guidelines, the landlord must first obtain the written approval of the Commission.

Sec. 7.02. The landlord may request written permission by completing an application and mailing it to the City of Thousand Oaks at the address listed on the application. The application form is titled "Application Form, 'JUST AND REASONABLE' RENT INCREASE."

Sec. 7.03. The landlord may not notice nor collect any rent increase based on a just and reasonable return application until such time as the Commission approves the request. Such increase may not go into effect until after compliance with statutory notice requirements.
*(This section amended by RAC-5)**

Sec. 7.04. In no case will the Commission authorize a rent increase beyond the amount requested by the landlord in the application unless the Commission finds that such an increase is warranted due to adjustments which must be made to the landlord's figures or calculations pursuant to the Ordinance, these guidelines, or pursuant to Commission policy.
*(This section amended by RAC-5)**

Sec . 7.05. In the event that an application lacks the required documents or that there are major errors in the mathematical computations showing the individual rent increases, the application will be returned to the landlord with an explanation as to why the application cannot be accepted.

Sec. 7.06. If an application is returned by the Commission or by Commission

staff because of an error or missing documents, the landlord may resubmit the application without an additional filing fee after correcting the error or obtaining the necessary documents.
*(This section amended by RAC-5)**

Sec. 7.07. The Commission staff shall determine when an application is complete. This determination shall be made within five (5) working days of the filing of the application unless the application indicates on its face that it is not yet complete. Notice that an application is complete will be given in writing to the applicant and the hearing date will be set within forty-five (45) days of the date that the application is determined to be complete. The applicant can appeal staff's determination as to whether an application is complete to the Commission by filing a letter of appeal with the City Manager. A determination with written findings in support thereof will be made by the Commission within seventy (70) days of the date the application is determined to be complete.
*(This section amended by RAC-5)**

Sec. 7.08. Whenever a Just and Reasonable rent increase application lacks complete documentation and/or required information, the case may be suspended prior to the hearing for a 30-day period commencing upon the date of mailing the notification to the landlord of the documentation and/or information needed. If at the end of this 30-day period the requested information has not been supplied, the time periods stated in the Rent Stabilization Ordinance will continue to run and a hearing will be scheduled.

Sec. 7.09. Photocopies of all relevant documents must be attached to the application to consider it complete and must be legible and of a size and quality suitable for reproduction. Materials attached to the application will not be returned to the landlord. However, the landlord must, upon request by the Commission, show the Commission the original document from which the photocopy was made.
*(This section amended by RAC-5)**

* * * * *

PASSED AND ADOPTED this 7th day of May, 1981. *(Date of RAC-2)*

_____
Frank Millar, Chairman
RENT ADJUSTMENT COMISSION

ATTEST:

_____
Suzanne Ota, Clerk of the Commission

_____
James Longtin,
Attorney for the Commission

APPROVED AS TO ADMINISTAION:

_____
Grant R. Brimhall,
Secretary of the Commission

**Resolution No. RAC-5: An Amendment to Resolution No. RAC-2 of the Thousand Oaks Rent Adjustment Commission Establishing Guidelines in Order to Determine a "Just and Reasonable Return" (undated Resolution)*

CHAPTER 4. APPEALS

Sec. 1-4.01. Right to appeal.

Except where an appeals procedure is otherwise specifically provided in this Code, any person excepting to the denial, suspension, or revocation of a permit applied for or held by him pursuant to any of the provisions of this Code, or to any administrative decision made by any official of the City, if the denial, suspension, or revocation of such permit or the determination of such administrative decision involves the exercise of administrative discretion or personal judgment exercised pursuant to any of the provisions of this Code, may appeal in writing to the Council by filing with the City Clerk a written notice of such appeal, setting forth the specific grounds thereof.

No appeal may be taken to any such administrative decision made by an official of the City pursuant to the provisions of this chapter unless such decision to appeal has been first taken up with the department head concerned.

No right of appeal to the Council from any administrative decision made by an official of the City pursuant to any of the provisions of this Code shall exist when such decision is ministerial and thus does not involve the exercise of administrative discretion or personal judgement exercised pursuant to any of the provisions of this Code, whether the administrative decision involves the denial, suspension, or revocation of a permit or any other administrative decision.

Sec. 1-4.02. Time limit for filing.

The appellant shall file a notice of appeal with the City Clerk within fourteen (14) days after receipt of the notice of the administrative decision concerned.

Sec. 1-4.03. Hearing: Notices.

After the City Clerk's receipt of the Notice of Appeal on the proper form, the City Clerk shall consider the pending City Council agenda requests and set the matter at the earliest reasonable and available date, which shall be within at least ninety (90) days of the filing. The City Clerk shall cause a written notice of the hearing to be given to the appellant, applicant and City official or department whose decision is appealed, not less than ten (10) days prior to such hearing, unless such notice is waived in writing by the applicant and appellant.
(§ 1, Ord. 921-NS, eff. May 20, 1986)

Sec. 1-4.04. Hearings.

At such hearing the appellant shall show cause on the grounds specified in the notice of appeal why the action appealed from should not be approved. The Council may continue the hearing from time to time, and its findings on the appeal shall be final and conclusive in the matter.

Sec. 1-4.05. Time limitations for judicial reviews of City decisions.

Any court action or legal proceedings to attack, review, set aside, void, annul, or seek damages for any final City decision on a permit, license, City entitlement, or any City decision or action taken pursuant to Title 9 of this code, or referred to in Section 1-4.01 of this chapter, shall be commenced and the service of summons effected within ninety (90) days after the date of such final decision or action taken, or if a shorter period of time is prescribed in state law or elsewhere in this code, such shorter period shall prevail.

The time provision of Code of Civil Procedure Section 1094.6 is also made applicable by this section. This section shall not expand the scope of judicial review. Except where a shorter time period is set forth, this Code of Civil Procedure section shall prevail over any conflicting provision, law or code section.

The posted meeting agenda shall contain a notice or, if no agenda, the chairperson of the meeting shall announce to the parties in attendance, that the time within which judicial review must be sought is governed by Code of Civil Procedure Section 1094.6. Thereafter, all persons are barred from filing,

commencing or prosecuting any such legal action, or from asserting any defense of invalidity or unreasonableness of such decision, proceeding, determination, or action taken by the City.
(§ 1, Ord. 705-NS, eff. March 29, 1979, as amended by § 4, Ord. 907-NS, eff. February 11, 1986, and Ord. 1165-NS, eff. December 15, 1992)

ATTACHMENT #6

City Clerk staff research on May 1, 1985, indicates that City Council Minutes for the July 27, 1976 meeting were not prepared.

Refer to City Clerk file number 610-10 for information regarding tape or action report availability.

DATED this 30th day of May, 1985.

Mark G. Sellers
City Attorney

Nandy A. Dillon
City Clerk

* * * * *

7:30 p.m. Redevelopment Agency
Minutes 7/13 app'd

CITY OF THOUSAND OAKS

CITY COUNCIL AGENDA

JULY 27, 1976
7:15 p.m. - Caucus Session
7:30 p.m. - Council Meeting

Approvd	Denied	Refer	Contd	File

* *

Those who wish to speak on Agenda items scheduled as public hearings, other hearings or public concerns are required to fill out a speaker's card and leave it at the desk of the City Clerk. Speaker's cards not turned in at the commencement of a proceeding will not be received.

* *

1. CALL TO ORDER: 7:34 pm.

2. PLEDGE OF ALLEGIANCE TO OUR FLAG:

3. ROLL CALL: Council Members Prince, Schur, Bowen, Fiore & Mayor Horner 4-Horner

4. SPECIAL PRESENTATIONS: None

5. PUBLIC HEARINGS:

* *

NO HEARINGS SHALL COMMENCE AFTER 11:00 P.M. Hearings not completed at this meeting will be continued to a future meeting or rescheduled.

* *

5. A. LU-76-93 -- Proposed amendment to the Land Use Element of the General Plan to change the land use designation from "Commercial" to "Medium Density Residential" on land located at the southeast corner of Westlake Boulevard & Triunfo Canyon Road, Belding Developers (request for continuance to 8/10)

X to 8/10 on open hearing basis (4-0)

B. SUP 76-315 -- Appeal of Carlson's Building Materials, on Conditions Nos. 2, 3, 4, 5, 6, 7, 10 and 11-B, C, D, E, F, I, M, N, O, and P from the decision of the Plan. Comm., which approved the subject permit to allow the construction of a recreation vehicle storage yard on land located on the south side of Thousand Oaks Boulevard, approximately 600' west of Erbes Road.

X appeal on al conditions 'cep landscaping; to review SUP on 2 yr. basis; lar scaping should nominal & mutu agreed upon by appellant and Plan. Dir. (4-0 RES. 8/10

6. OTHER HEARINGS:

A. RPD 72-106 (Mod'n) -- Appeal of Prudential Insurance Company of America, on Condition No. 34G from the decision of the Plan. Comm., which approved the subject modification to allow the modification of the North Ranch Golf Course.

X staff In design of the bldg. it is permissible to hav a design which would not inclu a full roof (3-P

RECESS: 9:13 - 9:25 pm

B. RPD 72-106 (Mod'n) -- Appeal of Prudential Insurance Company of America, on Condition No. 2 revising curve radii of existing roadway from the decision of the Plan. Comm., which approved the subject permit to allow the realignment of Lakeview Canyon Road from the terminus of the existing improved section to the northerly entrance into School House Canyon, SE 74-1052 (request continuance for one week)

X to 8/3 on open hearing basis (4-0)

CITY OF THOUSAND OAKS

CITY COUNCIL AGENDA

JULY 27, 1976

		Approved	Denied	Refer	Cont'd
	6. OTHER HEARINGS: (cont'd)				
484) :25	C. Oak Tree Removal Permit #113 -- Appeal of Arthur Barens		X (3-S) Res. 8/10		
	7. DEPARTMENT REPORTS:				
	A. Utilities:				
	1) Preliminary Budget 1976-77 for conceptual approval. pp 25, 31, 69, 46, 76 totals: $132,452	Conce of 5 i			
	B. Engineering: None	Balar of budg om 8/			
		Tax ates 8/17 Final Budge 8/			
	C. Planning:				
563)	1) Updated School Enrollment Data	Send report			
	2) Pygmalion - Review of Specific Plan #5	Review pro 1 yr. for dil ge pursuit (4-0)			
808) 0:00	3) Request to Initiate Amendment to the Land Use Element of the General Plan - Kimber Venture		X (3-S) Res. 8/10		
	4) Interpretation of Condition No. 27 of TPD 74-6 (Rent Schedule) Wycoff Mobile Home Park	(See Addend			
836) 1:12	5) Regional Land Use Program - Milestone #1, 2, & 3		X to 8		
		Cameron (Se			
903) 1:35	6) Civic Center Enterprises - Request for Temporary Occupancy DP 73-222 Rolling Oaks Plaza	X w/added re drainage wo			
	-- PC rec'n for moratorium along Arroyo Conejo; placed on 8/17 agenda; C. Atty. to send CC	(4-0) memo on subj.			
	D. Building & Safety: None				
	E. City Manager:				
	1) Administrative Newsletter: None				
	F. City Attorney: None				
	G. City Clerk: None				
	8. ORDINANCES - Second Reading:				
35) :47	A. Proposed Amendment to Allow Church Directional Signs pursuant to Section 9-4.2916 of the Zoning Chapter of the Thousand Oaks Municipal Code (intro'd 7/20; 5-0) ORD. 585-NS	X (4-0)			
	9. UNFINISHED BUSINESS: None				
	10. NEW BUSINESS: None				

CITY OF THOUSAND OAKS

CITY COUNCIL AGENDA

JULY 27, 1976

			Apprvd	Denied	Refer	Contd
11.	A.	PUBLIC CONCERNS: None				
	B.	COUNCIL CONCERNS: --Conceptual approval of City/Co. bus & refer to staff to work out details on the basis of this evening's report, 4-0.				
12.		CONSENT CALENDAR: --Bowman letter of 7/13 re AB 163 (Berman) (formerly AB 1254) referred to C. Atty. for respons				

* *

All matters listed on the CONSENT CALENDAR are considered by the City Council to be routine and nondebatable and will be enacted by one motion in the form listed below. There will be no separate discussion of these items unless a Council member, staff member, or private citizen requests separate discussion prior to the time the Council votes on the motion to adopt the Consent Calendar.

* *

12.	A.	Resolution Accepting the Street Improvements for SUP 74-250 (Rancho Oaks Investment Company) RES. 76-245	P	X	all items	4	
	B.	Amendment to Cooperative Agreement for the Construction of Lang Creek at Gainsborough Road — CI 76-4 (original agreement approved on 4/6/76) FC 3-76-7AA CONTRACT #486-A					
	C.	Resolution Denying an Appeal of Franklin A. Katz, M.D., on Conditions Nos. 1 & 2 for DP 76-311 -- Steven Rose (confirming action of 7/13; 5-0) RES. 76-246					
	D.	Resolution Approving the request of Conejo Valley Unified School District on Oak Tree Removal Permit No. 115 (confirming action of 7/13; 4-B) RES. 76-247					
	E.	Resolution Interpreting the Thousand Oaks General Plan Relating to the "Low Density Residential" Range of the Land Use Element (confirming action of 7/13; 5-0) RES. 76-248					
13.		DEMANDS: None					
14.		ADJOURNMENT: Midnight					

971)

ADDENDUM

7 C (4) Motion that the format adopted by the applicant's financial adviser be that used to derive at the rent schedule and that the net profit expressed as a ratio of the net profit percentage as a return on the investment be no more than 11.5 percent, carried 4-0.

7 C (5) Motion to refer to Bruce Cameron to draft a reply to the issue paper incorporating some of the Council's remarks and that this be reviewed for final adoption prior to forwarding to County.

* * * * *

City of Thousand Oaks, California
September 20, 1977

The City Council of the City of Thousand Oaks convened in regular session at 7:30 p.m., Tuesday, September 20, 1977 in the Council Chambers, 401 West Hillcrest Drive, Thousand Oaks, California, with Councilmembers Schur, Prince, Horner, Bowen and Mayor Fiore present. None absent.

Also present were City Manager Glenn Kendall, City Attorney James Longtin, Director of Public Works J. Louis Scherer, Planning Director Philip E. Gatch, Director of Building and Safety Robert O'Brien, Director of Finance Jack R. Hale, Director of Utilities Otto H. W. Blume and City Clerk Velma S. Quinn.

Pledge of Allegiance to our Flag.

* * * * *

SPECIAL PRESENTATIONS:

Arts Council Presentation "Wildwood"

Catherine Smith, 1490 Eastwind Circle, Westlake Village, and Roberta Cronkhite, 1259 Knollwood Drive, Newbury Park, representing the Arts Council of the Conejo Valley, presented the City with an original oil painting entitled "Wildwood" by Grace Eicholz. Mayor Fiore expressed his appreciation and accepted the painting on behalf of the City.

Proclamation from Kinitsu-Shi, Japan

Itsue Shinehoro and Shinichi Takshite presented Mayor Fiore with a Proclamation and several souvenirs from the City of Kinitsu-Shi, Japan, and the Mayor presented each of them with personal souvenirs from the City.

"United Way Week"

Mayor Fiore read in full the Proclamation declaring the week of October 3, 1977 as "United Way Week" and directed the Clerk to forward it to the appropriate agency.

"Energy Conservation Week"

The Proclamation declaring the week of October 3, 1977 as "Energy Conservation Awareness Week" was read in full and accepted by Earl Meek on behalf of the Conejo Future Foundation.

PUBLIC CONCERNS:

Additional low cost housing

John Beyer, 221 Beyer Lane, requested that the Council consider providing additional low cost housing for seniors and low income families similar to "The Ranch" mobile home park being built by A. V. Hohn, with rental rates controlled by the Council.

Interim Rental rates for "The Ranch" mobile home park

Gene Pearce, 100 East Thousand Oaks Boulevard, attorney, representing A. V. Hohn, stated that in the absence of certified cost figures for the construction of "The Ranch" mobile home park which are required to establish the rental rates, Mr. Hohn has requested approval of an interim rate structure in order to allow immediate occupancy. The suggested rates, based on a letter from Fred Wilson dated August 9, 1977 would be as follows: double wides--$125 per month, large lots--$120 per month, and regular

lots--$115 per month. In the event the certified costs indicate that the rates should be higher, Mr. Hohn would absorb the loss, and if the interim rates are in excess of what should have been charged, then a refund of the overcharge would be made.

Motion by Mayor Flore to approve the interim rate schedule carried unanimously on vote call.

COUNCIL CONCERNS:

Library site

Councilman Horner -- reported on the possibility of locating the proposed library on the school district property on Janss Road adjacent to the property owned by the Conejo Recreation and Park District.

Stop signs & additional selective patrol

-- directed staff to obtain input from the Sheriff's Department relative to the number of requests received for stop signs as they are familiar with the area and also obtain some indication if they will provide additional patrols. Further, he requested that the Council consider putting on an extra car on a periodic basis for those areas having a high concentration of infractions to patrol on a selective and rotating basis.

Open Space Committee

Councilwoman Prince -- reported that the ad hoc Open Space Committee would be meeting on Thursday the 22nd at 8:30 p.m. to review the draft of the Joint Powers Agreement.

GLC to meet

-- reported the Government Liaison Committee will meet on Thursday and the agenda items include: areas for the proposed library site, school district report on the school boy patrol program, discussion of the developer's donation policy, and the compatibility of park sites and school sites.

SMMCPC

-- stated that the Santa Monica Mountain Comprehensive Planning Commission will meet Friday at 3:00 p.m.

Stop signs - public awareness program

-- endorsed Councilman Horner's recommendation regarding stop signs and suggested that the Council solicit input from residents in those areas where stop signs have already been installed to determine their impact. She also suggested that the Mayor appoint a committee to look into the issue, as well as forming some kind of public awareness program, and to recommend other methods of handling the requests.

Check list for stop sign violations

Councilman Bowen -- with regard to stop signs, suggested staff explore the possibility of providing some type of printed form with common principal violations listed for use as a check list by city personnel, crossing guards, etc. to accumulate data to see if some type of pattern develops by license number and possible referral to insurance carriers.

Hatch Act

-- moved to support the recommendation of Mayor Pete Wilson (San Diego) relative to the repeal of the Hatch Act; the motion carried unanimously. The Mayor directed the Clerk to advise Mayor Wilson of the Council's action.

TCSD

-- reported on the Triunfo County Sanitation District meet-

WILSON & HUGHES
CERTIFIED PUBLIC ACCOUNTANTS
100 THOUSAND OAKS BOULEVARD - 245
THOUSAND OAKS, CALIFORNIA 91360
(805) 495-7958 - (213) 991-0742

FRED P. WILSON, C.P.A.
WILLIAM R. HUGHES, C.P.A.

MEMBERS
AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS
CALIFORNIA SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

August 9, 1977

Mr. George Elias
City Planning Department
City of Thousand Oaks
401 W. Hillcrest Drive
Thousand Oaks, Ca. 91360

Dear Mr. Elias:

The mobile home park known as the "The Ranch" on Los Feliz Drive is almost completed and it is necessary to establish the approved rental rates so that the leases can be executed.

I refer you to exhibit A on TPO-74-6 indicating that the rate of return shall be no more than 11.5%. I also refer you to "schedule B" which was attached to the applicant's presentation which shows the economic model for the park. Using those documents, following is the applicant's calculation of the initial rents to be charged:

"Gross Investment"		$500,000.00
Rate of return authorized by City Council	x	11.5%
Net profit target per year	=	$ 57,500.00
Add projected expenses annualized -		
Depreciation - 5% of non-land investment	+	18,875.00
Other as originally estimated per "Schedule B"	+	46,398.00
Targeted gross rent, including utilities	=	$122,773.00
Less estimated utilities	-	20,054.00
Target, rent, excluding manager's space - annual	=	$102,719.00
- monthly		$ 8,560.00

continued .....

Allocation to Spaces

12	double wides @ $125.00 per month	$1,500.00
2	large lots @ $120.00	240.00
59	regular lots @ 115.00	6,785.00
		$8,525.00

Possible change of 112 lots to double wides, depending on size and shape of unit. 20.00

The developer is not yet prepared to certify that the cost of the land and improvements is $500,000; it may be several months before the final cost figures are known that would permit him to do that. In the meanwhile, it becomes necessary to set the rates. We are suggesting that the rates be established as above and be subject to review and adjustment at some future date after the final actual costs are known and after some history has developed in the operating expenses of the park.

Your prompt acceptance of these rates would be greatly appreciated so that the park can proceed with rentals.

Very truly yours,
Wilson & Hughes

By 
Fred P. Wilson, C.P.A.

FPW/mc
cc Gene Pearce
Andrew Hohn

2010 Ventura County Income Limits

Based on current effective median income of Ventura County, as set forth in 25 Cal. Code Regs. Section 6932. These median income numbers are revised annually.

Annual Income	1 Person Household	2 Person Household	3 Person Household	4 Person Household	5 Person Household	6 Person Household	7 Person Household	8 Person Household
Extremly Low (30%)	$ 18,200	$ 20,800	$ 23,400	$ 26,000	$ 28,100	$ 30,200	$ 32,250	$ 34,350
Very Low (50%)	$ 30,350	$ 34,700	$ 39,050	$ 43,350	$ 46,850	$ 50,300	$ 53,800	$ 57,250
Lower (80%)	$ 48,300	$ 55,200	$ 62,100	$ 68,950	$ 74,500	$ 80,000	$ 85,500	$ 91,050
Median (100%)	$ 60,700	$ 69,350	$ 78,050	$ ***86,700***	$ 93,650	$ 100,550	$ 107,500	$ 114,450
Moderate (120%)	$ 72,850	$ 83,250	$ 93,650	$ 104,050	$ 112,350	$ 120,700	$ 129,000	$ 137,350