Ranch Mobile Home Park

Administrative Record

Rent Adjustment Application RA-2010-02

Part E

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CITY OF THOUSAND OAKS

RENT ADJUSTMENT HEARING

ORIGINAL

City Council meeting taken at City of Thousand Oaks, City Council Chambers, 2100 Thousand Oaks Boulevard, Second Floor, Civic Arts Plaza, City Hall, Thousand Oaks, California, commencing at 6:00 p.m., Monday, December 6, 2010, before Katherine Jones, CSR No. 10097.

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APPEARANCES:

LLOYD WERTHHEIMER
BEATRICE FERUZA
MAXWELL SHELDON
JOHN PRESCOTT
PATRICK HEHIR
BRENDA MOHR FELDMAN
MICHAEL SILACCI

PRESENTATIONS:
CHRIS NORMAN, City Staff
KENNETH BAHR
JAMES BRABANT

ADDITIONAL SPEAKERS
SHANDRA SPENCER, ESQ.
BOYD HILL, ESQ.

Monday, December 6, 2010; 6:00 p.m.
Thousand Oaks, California

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LLOYD WERTHEIMER: I want to announce the anticipated order or outline of how we will to proceed this evening.

First, Staff will make its presentation. Next, Rent Adjustment Commissioners will each have an opportunity to ask Staff questions. Following Commissioners' questions, the Applicant will have an opportunity to ask questions of the Staff experts' presented testimony.

Following that, you will have the opportunity to ask questions, residents attorney may ask questions. Staff may have follow-up questions or comments.

Next, Applicants will have an opportunity to present his position for an increase. Following Applicants' presentation, Commissioners may have questions for Applicants, and possibly Staff. Residents and Staff's counsel will also have an opportunity to question the Applicant.

Next, residents, representatives, or counsel may take their presentation. Again, Commissioners questions follow, then Applicant's questions, and so forth.

We, then, move to public testimony. If you wish to speak, please, complete and turn in a speaker card. If you don't want to speak but make a written comment, you may fill out a comment card. The Recording Secretary or Staff will take those comment cards and present them to us for review.

As to the public providing public testimony, each person will have two minutes, due to the large number of speakers anticipated. Finally, I'd like to reiterate that we'll try to move this along as fast as possible in an efficient manner while ensuring everyone has the right and opportunity to speak.

I understand that Shandra Spencer would like to make a motion.

MS. SPENCER: I would like to request that the Commission make a motion to continue the hearing, based on --

PATRICK HEHIR: Ms. Spencer, would you just state your position so -- for the audience, please.

MS. SPENCER: My name is Shandra Spencer and I'm the attorney for the Ranch Tenants Association, the Association of Ranch Tenants, the residents of the Ranch Mobile Home Park. I've requested a continuance of the hearing for a number of reasons: One is to provide a reasonable accommodation to those who are celebrating the Hanakkah holiday this evening, those residents who cannot attend based on their religious observations.

Two is to provide a reasonable accommodation or a further hearing at the Park so that those residents who cannot attend in person, due to their physical disabilities, are able to present information related to their respective interests in the park.

Three, is so that the residents who are unable to stand the length of this hearing -- I understand, based on my conversation with Mr. Hehir, that this hearing will -- may go as late as 11:00 p.m., and the majority of the residents here will not be able to withstand that length of a hearing, certainly, if their public comments are put towards the end. So I request that further hearing so that they will be able to do so.

I also request a continuance of the hearing so that the residents due process rights in their property and their right to be represented by counsel -- adequately represented by counsel will be preserved. I was retained by the Ranch Tenants Association last Monday night, on a pro bono basis, because, as you know, these residents are very low income and unable to afford counsel, despite their diligent efforts to obtain counsel prior to this date.

Since then, Ron Perry from California Rural Legal Assistance has also agreed to provide representation to the residents, as well as, John Taylor and his partner, the firm of Horvitz & Levy, has also agreed to provide pro bono assistance to the residents, and Mr. Taylor's firm. We were able to bring them in to provide pro bono assistance as of last Thursday.

As a result of Mr. Taylor's efforts and my efforts, we were able to obtain the services of two accountants who are willing to provide pro bono services to evaluate this very, very lengthy application, and Staff report for the residents. Given that we have not had sufficient time to review the information and the accountants are just looking at this for the first time today, we, simply, do not have the ability to prepare adequately for this hearing to represent the residents of this Park in the manner which it should be represented, given they're very significant investment backed expectations.

We estimate these residents have invested, approximately, $3 and a half million in their coaches. Whereas, the park owner, his investment was $500,000. So certainly, these residents have a substantial right to have their property interest protected, as well as, their persons protected, given the issues at stake, here, if the rent increase is approved.

So on that basis, I'd request that we -- if we do start the hearing tonight, at least leave the record open to a further date so we have adequate time to provide for all of these needs of the residents and the Residents Association. And I'd request that someone on the Commission make such a motion.

LLOYD WERTHEIMER: Thank you.

PATRICK HEHIR: All right. Mr. Chairperson and Fellow Commissioners, I did receive Ms. Spencer's November 30, 2010, correspondence and the packet that you all received last Thursday, as well. Again, I think she stated the three reasons were to -- or her three grounds were that some residents are Jewish -- have the Jewish religion, and tonight is one of the evenings for Hanakkah. The second reason was that some of the residents or all of the residents are elderly and some are disabled. And the third reason was that the residents are low income, retained this attorney November 29, and apparently, two new attorneys and two accountants. I've reviewed her letter and she, again, reiterates those comments tonight.

As for the first reason, we, certainly, respect her concern about the time and about the residents who are celebrating Hanakkah. Unclear how many are affected, but, certainly, for those two cannot make it, they can, certainly, rely upon counsel and also do comment cards if they wished.

As to her second reason, we, certainly, are going to follow 88 guidelines. And for the record, I did not say that we would end at 11:00, but just that council does sometimes -- has a policy that they could end at 11:00 and that it would be, of course, the Commissioners' prerogative to make that decision if they felt it was necessary.

As to her third response, certainly, the Commission and, certainly, I applaud your willingness to work on pro bono -- as a pro bono basis. The focus of this meeting, however, is Applicants' application, the owners' application, and they also have their due process rights we have to weigh when we look at these matters. And I've spoken to them briefly after Ms. Spencer spoke to me tonight to let them know that Ms. Spencer had indicated that she wanted to continue this matter, and they emphatically voiced their opposition to that request, and they do want to go forward tonight as planned.

Again, the guidelines that we have before us were created to set a fair time and date. That date has been determined and has been scheduled, been noticed appropriately. And based upon those things and weighing the fact that we have all this information, the Staff has also done a report and an independent analysis, and based upon all those things, it is my recommendation to the Commission that we proceed with the hearing tonight as noticed. And again, it is a balancing of these issues.

Either you can decide if you want to just go forward with it or if you want to do -- if someone wants to entertain a motion to continue, they can do that. If you just want to proceed forward, you would proceed forward.

LLOYD WERTHEIMER: I think, based on when we heard tonight, that we should proceed forward.

MS. SPENCER: Before I sit down, I have one other objection that I'd like to lodge for purposes of preserving the record. It's the Association's position that the Rent Adjustment Commission lacks jurisdiction over this matter. Given that the -- this Park's rents have not been regulated by the Rent Stabilization Ordinance, but are, instead, regulated by the development approvals for this Park. And any modification of those development approvals, any change in the rents, would need to be made pursuant to a modification request to the City Council or by a court of law and the scope of this Commission's authority, if this Commission approves a rent adjustment that's in excess of what has already been approved by the City Council and Resolution 84037, the Commission will be acting in excessive of its authority and has no jurisdiction to do so.

LLOYD WERTHEIMER: So noted.

MS. SPENCER: Thank you.

LLOYD WERTHEIMER: Madam Secretary, please call the hearing.

THE CLERK: Rent Adjustment Application for Ranch Mobile Home Park, case 5A. City application number RAA 2010-02. Applicant is AVMGH5 limited. Location: The address is 2193 Los Feliz Drive. And the request is to increase monthly per-space rent in the amount of $587.45 per month, per space. Total cumulative amount of the requested increase is $507,557.

LLOYD WERTHEIMER: Can we have the Staff recommendation, please?

CHRIS NORMAN: Thank you Mr. Chair, Commissioners, and members of the public. Staff has prepared a PowerPoint Presentation for your consideration tonight. This is a complicated application. The first two slides will give a background of the presentation -- sorry, you can't hear me. Is that better?

The background section will involve reviewing the mobile home parks city-wide. The rent stabilization program, the history of the ordinances and regulations, the particular history of this Park Ranch. We will review some benchmark rents, discuss the basis for hearing this application under the city's ordinance, some legal background, then we'll get into the analysis, which will include a description of the Applicant's request and evaluation of the request. We will review some different methodologies for consideration of the rent adjustment. We will review a summary of methodologies that are appropriate for determining the rent. And some which are prepared for comparative purposes only.

Finally, Staff will conclude with a recommendation. The background of mobile home parks city-wide. There are nine mobile home parks split between senior and family. There are over a thousand City spaces, mainly senior. One mobile home park is closing, that's the Canejo Mobile Home Park. Another has converted to for-sale lots, a subdivision, that's Valicedo Park. And as mentioned, Ranch has previously not been subject to the city's ordinance, but we will discuss the reasons why this is appropriate to do so today.

The Rent Stabilization Program was initially adopted in 1980 which acted as a freeze on rents. Since that time, there have been 16 different ordinance amendments modifying that program. In 1996, the program was permanently codified in the City's Municipal Code. The purpose of the program is to safeguard the tenants from excessive rents, but at the same time, provide landlords with a just and reasonable return from their rents. So it's a balancing act.

The ordinance provides three ways to request rents: There's an automatic rent increase which is 75 percent of CPI. That is done without any action from the City. There is a just and reasonable return application which is the one before you, which is under the purview of the Rent Adjustment Commission. And thirdly, there's a capital improvement rehabilitation rent adjustment process.

There are guidelines that help implement the ordinance. These were adopted in early 1980's. The two pertinent resolutions are what we refer to as Rack 2 and Rack 5, and they give the definition of what is a just and reasonable return. And it talks about the maintenance of the net operating income MNOI, as prescribed method. We will be going into great detail about what that means. It's important to note the guidelines do provide that the Commission may consider other types of methodologies.

A history of Ranch: The park was entitled in 1974 for development as a trailer park and limited to lower income seniors. In 1976, the City Council approved an 11.5 percent return on investment formula to set rental rates. In 1977, the mobile home park finally developed and the City approved the initial rental rates, which were 120 for a double wide lot, and 115 for single wide lot.

During that time, by the way, the City did not have rent regulations in place city-wide. In 1984, the City Council approved resolution 84-037 which granted the park owners' request for 7 percent increase. It also limited future increases to a maximum of 4 percent based on a formula. In 2001, the Applicant requested another increase of 4 percent under that resolution which was granted. That resulted in rents being $139 for a double wide and 128 for a single wide lot. It's important to note, these are the current rental rates, and those are the only two rental rate increases in the 33 history of the park.

Why is this before the Rent Adjustment

Commission? Well, Resolution 84-037 does not provide a method for calculating just and reasonable return. The ordinance does not exempt the Ranch Mobile Home Park from its purview and in Staff's opinion, the ordinance takes precedent over the resolution.

Finally, the owners are entitled, under relevant case law, to request a just and reasonable request, and the only way to do that is under the purview of the ordinance. The legal basis for these type of application requests is the Fifth Amendment, which protects the property owners right from regulations that constitute a taking. Rent control violations must provide for just and reasonable rate of return, however, there's no constitutionally prescribed method for determining what is a just and reasonable return.

The Applicant has stated in their application that the resolution 84-037 does not provide a just and reasonable return, that Rack 2 resolution prescribes the use of the MNOI method. The base year rent adjustment is required -- we will discuss this in more detail later -- something called a Vaga adjustment, which will be very important. And ultimately, they're requesting, through their application, a rent increase of $587.45 for a total of $720.45 to achieve what they claim is a just and reasonable return. However, I should point out that I was informed by the Applicant's attorney that they will be adjusting that level down to $466.12, and they'll have to explain the rationale for that. The increase, that is, correct.

Okay. In order to help evaluate the application, the City's hired two experts, the gentleman sitting to my left is Dr. Kenneth Bahr, and he's an expert in the field of mobile home rent stabilization fair return analyses. He has a Ph.D. in Urban Planning from UCLA and a JD. He has lectured, written extensively, written numerous articles in professional journals, chapters for books regarding just and reasonable return in rent control issues. He's acted as a consultant for dozens of cities for rent control, he's been an expert witness for, at least, half a dozen cities, and his articles and testimony have been cited in many, if not most, of the seminole California cases discussing rent control issues, at least 16. He's also prepared fair return reports for, at least, 16 jurisdictions, including the City of Ventura.

The gentleman to Mr. Bahr's left is Jim Brabant. He's an MII certified appraiser. He has prepared -- for over 30 years, he's prepared appraisals for mobile home parks, including dozens of cities for purposes of litigation, park conversions, subdivisions, and rent increase applications. Mr. Bahr, relying, in part, on Mr. Brabant's appraisals, has prepared a report that analyzes the application and provides a basis and methodology for determining what constitutes a just and reasonable return.

The consultants' report discusses two types of methodologies: The first is the appropriate measure to determine fair return. And goes into a detailed discussion of the MNOI methodology. He also analyzes two comparative types of methodologies: One is the comparable current controlled rents. That's, basically, taking an appraisal of what current rent control rents are in the City of Thousand Oaks. And he also does analysis of the return-on-investment methodology, one that is mentioned in the resolution 84-037.

Before handing this off to Mr. Bahr for his report, I want to go over a couple terms that he may be mentioning. I know it's a lot to keep in mind, but the term, "net operating income," in the MNOI calculation, "net operating income" is defined as the gross operating income in a single year, minus the operating expenses. That's your net operating income. Maintenance of net operating income is, basically, NOI, and it's adjusted by inflation factor to compensate for the erosion of income over time.

There is something referred to as the "base year." And this is the first year used to compare NOI data to the current year. There's a presumption that the net operating income in the base year provides just and reasonable return. Generally, the base year is the year prior to rent control becoming effective in a jurisdiction. There's something called a Vega Adjustment which allows the park owner to adjust the base year rents if they can show that the rents in the base year were below market, for whatever reason. There's references to the Consumer Price Index to measure inflation. And again, "fair market return" would be what would be the rent if there were no rent restrictions.

There are four main factors to consider when looking at the MNOI formula. The determination of a base year, the Vaga adjustment to the base year, any adjustments of operating expenses, if they're necessary, and looking at the appropriate indexing for inflation. These are all discussed in great detail in Mr. Bahr's report. And I will now hand it off to Mr. Bahr to discuss those issues.

KENNETH BAHR: Okay. As Mr. Norman indicated, the purpose of my report was to discuss and analyze what rent increases would be just and reasonable pursuant to the ordinance and constitutional standards.

First, I want to touch on some conceptual issues because there will be a lot of discussion, I think, about what a fair return is. This issue has been debated for over 100 -- almost 100 years, believe it or not, since rent controls were first introduced, temporarily, in the U.S. during World War I.

If you turn to pages 111 and 112 of the packet, I just wanted to highlight a few things that the courts have said. One is that -- one Court of Appeal commented, "What appears at first blush to be a simple question of substantial evidence, turns out to be considerably more complex when one realizes that the formula for determining a fair return is hotly debated in economic circles and has been the subject of sparse, scattered, and sometimes conflicting comment by Appellate courts."

And then if you go to the second quoted passage, which is in bold on page 111, the courts -- and the courts have said this many times -- that there's no single one formula that's constitutionally required. Board's administering ordinances have -- can use -- different standards are permitted.

And finally, recently, the Courts have

indicated that California supreme court indicated that the fair return concept is a constitutional minimum, and that's in the first full passage on the second page, about a third of the way down.

The courts have also said that -- well, they said that no particular formula is required, they have said that growth and income must be permitted under rent control. You can't freeze the net operating income. And I just want to point out, just to give you some perspective about the historical development, early on, during World War II, and then this theory re-emerged when rent controls were first were introduced on peace-time basis in California in 1970's, courts said that owners were entitled to a fair return on the value of their property, but then, subsequently, that theory was rejected because it's circular, because the value of a property is determined by the rental income, therefore, you can't use the value to determine what rental income should be permitted. It's, basically, a circular-type of theory. But what's interesting is here you had the courts, at one point, saying something is required and subsequently saying, it's not workable.

Rate of return on investment is used in some jurisdictions. It's -- in a number of cases park owners and experts have proposed the use of this type of formula, and intuitively, it sounds very reasonable, somebody should be able to get a fair rate of return on their investment. The problem with this type of formula, too, it's circular in the sense that if you guarantee somebody a certain rate of return on their investment, then no matter -- they can determine what they're allowed by determining the investment. The more you invest, the more you're permitted.

The other problem is a practical matter. This type of formula discriminates against long-term owners have low investments and it, often, will give a very large increase to a recent investor who's made a very high investment, relative to their return on the property, partly based on expectations about future growth and income.

The maintenance of net operating income formula is based on a different concept. It's, basically, that owners have different rates of return, we can't set a single rate of return and say that's fair. We'll take the pre-regulation income and assume that's fair it was set in an unregulated context, and we'll adjust that -- we'll adjust that by inflation in the future. So essentially, that type of formula, one, guarantees that owners have a right to pass through their operating cost increases and get some growth in income. And this type of formula has been -- in a number of cases, has been approved by the courts. It answers the issue of not freezing income because it guarantees growth in income.

Under your regulations, there's a presumption that the 1980 net operating income is fair, and so, basically, the ordinance and the regulations, they don't have the details of a maintenance of net operating income formula, but they do set that type of concept that, you know, we have a base area return, and that should be maintained.

There's also, subsequent to the adoption early on of the maintenance net operating income formulas, basically, in the early 1980's in California, the issue came up of, well, what happens if something has very, very low base rents which don't reflect market conditions? And what the courts' held was in that type of case, an owner had a right to have the rents adjusted -- and this is known as a Vaga adjustment, because that's the name of the first case that involved this issue -- so that they have a reasonable starting point. Because otherwise, if you have rents that are particularly low and you're only allowed to have those adjusted by inflation, you're always behind.

And that doctrine was not that every rent had to be equal, because in a market, there are variations in rents, but, basically, where there's exceptional situations, an owner had a right to a base rent adjustment.

In this particular case, there are a number of issues regarding the application of the maintenance of net operating income formula, and the bulk of my report discusses the use of that formula, why it should be used, et cetera. First of all, as you know, you have the extremely exceptional case where the park rent today is almost the same as it was 30 years ago. Then other issues that emerge -- then I'll go through them one by one, but first I'll list them -- is what should be the appropriate base year in this case? What's the base year net operating income? Which partly depends on what base year expenses are. What would be a fair starting point for the base year rents? And then the other issue is: What indexing or adjustments should be made to the net operating income, by what percentage of the consume price index should it be adjusted?

On page -- first I'll discuss the base year issue, and I discuss that on page 116 of the -- in the packet. The ordinance -- regulations, rather -- provide that 1979 shall be the base year, however, they also provide that where 1979 financial information is not available, then the base year shall be the first year for which records are available.

And in this case, the Applicant does not actually have actual income or expense information for 1979, but they took -- their conclusion is that 1979 can be used as the base year because they can take the 1982 expenses and, based on inflation, figure out what they -- make an adjustment to figure out the 1979 expenses. And that might be authorized under some regulations or ordinances, but, here, in the alternative, the regulations say if you don't have the '79 information, you have to use the information for the first year you have it available. Because to say you can take a later year and then work backwards based on inflation, well, then somebody would always have the 1979 data and the requirements in the regulations would be meaningless.

So the next possibility would be to use the 1982 year as the base year. Well, in that case, it's a little bit unusual -- there is income information, there's expense information, but only overall expense information. In 1982, data was used in a 1984 hearing before the City Council, but the information, he breakdown of expenses is no longer available, nobody has it any longer. So on one -- but it was reviewed by the

City Council. So, on one hand you have an overall number, but you don't have a breakdown for that number. And it was a number that was reviewed at that time.

Another possibility -- the first year that I'm aware of that full information is available -- a breakdown for income and expenses is 1999 -- the weakness of using that year as a base year is that this was 20 years after the rent control ordinance was adopted, so it's not an ideal base year. And it seems, from looking at the records of the increases in rental income for the parks, that the -- by 1999, the rents, besides reflecting the annual increases that were under the ordinance, also reflected increases that were due to either exempt leases, or you also have a provision in your ordinance that if there's a new mobile home moved on to the space in conjunction with a new tenancy, then the park owner can set the initial rent.

So you have a base -- if you use 1999, you have a mixture of regulated spaces and some that were unregulated and increases -- I don't know how many -- but what the evidence seems to indicate is that the overall rent increases certainly exceeded what was allowed under the annual general adjustments. So what happened is I recommended the use of a 1982 base year, but I also did the analyses using all three base years because there are arguments for and against using any of these base years.

The next issue is what are the appropriate base year expenses and net operating income. And under the maintenance of net operating income standards, there's an incentive to show as low as possible expenses in the base year because if the expenses are lower, the net operating income is higher in the base year. Well, here, we don't have that type of case because the park owner made an application in 1982, and certainly, then, they had more interest in showing lower expenses.

On the other hand, we don't have a comparison -- we don't have a breakdown for 1982, and what happened between 1982 and 2009 was that some of the operation of the park -- some of the tasks that were performed -- substantial tasks in managing the park, based on the information we got, as I understand, from the Applicant, the park owner performed substantial services in 1982. By 2009, the services were contracted out. The owner was, you know, older, or for what reason. So what happens is this shows a substantial cost increase because you not only have the actual cost increases, but you also have this transfer of the performance of services. And I felt that's not a real cost increase, it's a cost increase on the books. So to say that, you know, that management expenses went up from zero to 10,000 -- I'm making up those numbers -- that's not really what happened. It was -- they were shifted who performed them, they went from off the books to on the books.

So what I did was in my analysis, I adjusted the 1982 expenses upwards. And the way I made the adjustment is I assumed that the expenses from '82 to 2009 increased by the CPI, and I adjusted the base year expenses up from 34,000 to $42,000, and that does have the impact of reducing the 1982 net operating income. But I felt that was a fair adjustment to make this comparable.

The big issue, though, in the maintenance of net operating income analysis, or one of the two really big issues, is what should the base year rents should be. Because the base year rents were set based on affordability concept, and they were not based on market concept. And what happened is, as you know, the park owner appraiser conducted an analysis of what they thought what base rents would reflect market in the base year, and the park owner's appraiser came up with -- his number was $240 for 1979, as opposed to the actual rents of $120.

In contrast, the city's appraiser,

Mr. Brabant, his conclusion was in 1979, the market rents were of $150, the comparable rents at that time. And that's a huge difference, if -- especially in percentage-wise, when you compare 150 to $240. And when you use the net operating income formula, that difference is increased because you're indexing the profit. So whether you're indexing, starting point of $150 rent or $240 rent, makes a very, very large difference. And that's -- so what -- how you set the base rents is critical in the fair return analysis.

The other critical issue in the fair return analysis is whether you index net operating income at 50 -- or what percentage of the CPI increase you index in that operating income. Some cities index net operating income at 100 percent of the CPI, some at 75 percent, some at 50 percent, some at even only 40 percent. The courts have upheld 40 percent indexing, and they've rejected the view that 100 percent of indexing is required.

And as far as what's the right indexing ratio, that's a policy issue. You have this -- you've had standards from 40 to 100 percent and all have them have been upheld, and their arguments for and against indexing at 100 percent and the rationale for indexing at less than 100 percent. One rationale for indexing at less than 100 percent is -- and I'll use an analogy of a house purchase to explain this -- typically, real estate investments are leveraged -- I'm not saying this park, the investment was leveraged, but typically they are -- and imagine you buy a house for $100,000, you put $20,000 down, the house goes up in value 20 percent to 120,000. Well, on one hand, the house has only gone up in value 20 percent, but your equity is doubled.

So one type of return -- one type of increase is by 20 percent, but another type of increase by 100 percent. And typically, as I say -- as you know, real estate investments are leveraged. The other factor is, I mean, you know, you look investments, generally, in the economy, and if businesses have growth and income, they don't consider it a loss if their income goes up less than the CPI. You won't read the news that General Motors lost money because their profits only went up 6 percent but there was inflation of 10 percent.

So in my report. Now we should go -- I also want to make one clarifying point for you: Net operating income is income before debt service, but after operating expenses. Turn to page -- you have the chart, and it's also on Page 132 of your packet.

First, I did the maintenance of net operating income analysis using 1979 as a base year. Okay.

Basically, what I did was I took the base year that the park owner used and indexed that net operating income by 100 percent, 75 percent, and 50 percent of inflation. The park owner used 100 percent indexing, so the difference in my analysis is that I also used the 75 and 50 percent indexing. And these are numbers, of course, that were prepared before the correction -- or change in the Applicant's analysis tonight. But even under that standard, there were substantial differences. They showed they were entitled to a $587 increase with a 100 percent indexing. And I concluded, using their base rent adjustment, that they would have been entitled to a $487 with 75 percent indexing, and $386 with 50 percent indexing in net operating income. So you can see the indexing because it's over such a long period, has a big impact on the outcome.

Then I used Mr. Brabant's comparable figure and, of course, because that comparable figure -- base rent figure is substantially lower, the indexing amounts were lower, with 100 percent indexing there's a $324 rent increase, with 75 percent indexing there was a $267 increase, and with 50 percent indexing, a $210 increase. Then the next page I use 1982 as a base year. And the numbers were not drastically different, but they were different. And in order to figure -- Mr. Brabant did not actually provide a 1982 rent figure in his report, but using his mode of analysis, he adjusted back to 1983 back or 1979, while I adjusted back one -- I only went back one year instead of four using the percentage adjustments per year he used. And using his base year rent for 100 percent indexing, there would be a $297 rent increase for 75 percent, $252, and for 50 percent, $207.

And then with the park owners' appraiser, the numbers were similar to the 1979 for 100 percent indexing it was $515, and for 75 percent, $439, and for 50 percent, $363. And these numbers are without the expense adjustment that I made for 1982. With the expense adjustment I made for 1982, the numbers are about $20 lower. And those are the two right-hand columns.

And then the third chart was using -- on the next page 134, was using 1999 as the base year. Those adjustments -- those, I just used the base rents projected by Mr. Brabant. Because he was asked to do a projection for 1999 the park owner hadn't, and that's not as a criticism, I'm just saying that's -- this was done because we saw that 1999 was the only year which there was complete expense data. And if you use 1999 as a base year, you actually get higher -- the rent adjustments are higher pursuant to the MNOI formula. And my conclusion why that occurred was because the base rents -- the rents between 1979 and 1999 had increased by more than the annual general adjustments provided for, and there was probably greater growth and income for the parks than the constitutional minimum. And so the differences are particularly significant when you have less than 100 percent indexing.

It needs to go back to the PowerPoint.

Because of the unusual nature of this case, I -- and also because the Commission is not bound to use a particular standard, I did look at the increases compared to other measures. And one was, if you go to Page 102 and 103 of your packet, I compared them with what rent increases the park owner would have gotten if they had taken the annual increases that they were permitted, pursuant to the affordable rent restrictions. The affordable rent restrictions were unusual in the sense that, one, said they set an original rate of return at 11 and a half percent of the original historic investment, but then they provided in 1982 -- or 1984 they were modified to provide for an inflation adjustment of this net income. And actually, there was -- one technical difference is, here, net income was adjusted rather than operating income and net income was after depreciation, where net operating income is not considered depression.

And that adjustment used 1982 as a base, and from 1982 to 2009 the CPI went up -- there was 13.8 percent increase in the CPI. So on that basis, I concluded that if the park owner had taken the increases pursuant to that formula, instead of being allowed the base net income of 57,500, they would be permitted a net income of $132,720. And pursuant to that approach, currently, the net income is very low, it's only a few thousand dollars. Because the net operating income is only about 20,000, and if you subtract depreciation, the net income goes down to just a few thousand dollars. And on that basis, in order to bring the net income up to the adjusted standard under the net income formula, the park owner would be able to get a rent increase of $147, if they could do that. Now, that standard does not provide for banking of increases, but if it did, that's what, you know, the owner would be able to get today, and if the owner had taken the increases they were entitled to, that's where they'd stand, is under that formula.

I also compared the increases with the allowable increases under the rent stabilization ordinance. And that ordinance allowed for the first three years for annual increases of 8 percent, then 7 percent for the next three years, from 1983 to 1986. Then after that, there was a three quarters of CPI adjustment, but it was not three quarters of the CPI increase, but that was not on the current rents, that was a three quarter of the CPI increase to the 1986 rents. And for that I concluded that the overall allowable increase would have been 108 percent if the owner had taken that, and of course, whether you took that over the $150 figure that Mr. Brabandt came up with or the $240 figure that the park owner presents as the fair base rent would make a huge difference in what a fair rent -- or the rent that would have been permitted pursuant to the annual increases. And let me say that those annual increases under the ordinance have totaled 108 percent; they're substantially under the CPI because of the fact that the adjustments were based on the 1986 rent, rather than the current rent.

Go back to the PowerPoint.

I also performed a return on investment analysis. It's not the approach I recommend, but it has been used, and it's interesting because it's how investors look at their investments. I not saying, therefore, it should be used as a regulatory standard. And when the return on investments standard has been used in recent -- well, last decade, I'd say -- basically, the approach that's been used is rather than using the historic investment is to use an inflation adjusted investment based on the concept that it's not fair to use the historic investment.

So, in doing that analysis, I adjusted the rate base, or the original investment of $500,000 by the increase in the CPI since that period, which the investment was back in 1977. So the current imputed investment was $1.8 million. So that's basically, if you took the old dollars and converted them into current values.

Then I computed what increase the owner would be entitled -- different -- subject to different rates of return. And one rate of return was a 6 percent rate of return. Because in today's market, if somebody goes out and buys a mobile home park, that's a typical capitalization rate. It means if you buy a mobile home park for $3 million today, it's likely that you'll get a net operating income of 6 percent of that $180,000. Now, some parks, the cap rate is the higher, some, it's even lower.

You say, well, 6 percent might sound like a low number, but one, this is an appreciating investment, as opposed to if you buy a bond where the return stays constant, the income goes up, also, the value goes up as the net operating income goes up. And so it's a reasonable rate of return.

I also used a 9 percent rate of return. Commonly, experts on -- the park owners have said this is a fair rate. I haven't agreed with that, but I've presented it. And that -- the 6 percent rate would justify $100 increase, the 9 percent rate would justify a $162 rent increase, and then I used an 11 and a half percent rate, because that's the initial rate the owner was provided with, but actually, the owner wasn't provided that initial rate on an inflation adjusted investment, it was just on a fixed adjustment. But if you used an inflation adjustment -- inflation adjusted investment, the rent increase would be $214.

Then, also, I report in my report, but this is, basically, Mr. Brabant's appraisal, he compared the rent with the current rent for comparable rent control parks in the city, and his conclusion was that the current rent -- comparable rent was $400 a month, as opposed to the rent for the park of $133.

So, I've thrown out a lot of numbers and concepts at you, and I just want to say that this is an unusual case because we have an issue of, you know, base rent adjustment going back over a long period, we have a situation where the rents were frozen for a long time, there's even an issue of what should be a base year. All I'll say is you have a difficult job and to think about it carefully.

CHRIS NORMAN: Thank you. Now Mr. Brabant will say a few words.

JAMES BRABANT: Good evening, Commissioners. I was asked to do a -- two basic things. One was to review the appraisal of John Neat, the appraiser retained by the park owner and his attorneys, and also to provide my own opinions of the rental value of spaces at Ranch Mobile Home Park as of three different years, 1979, 1999, and 2009.

So, beginning with a few comments about Mr. Neat's appraisal that was included in the application. He starts out estimating the market rent for what he calls the base year of 1980, and his conclusion is $240 per month as of that date. But then at the end of his report, he, then, talks about the base year actually being 1979, but concludes that there was really no difference between his opinion in 1980 and 1979, however, no data was provided or information was provided in the report to explain the reason for that conclusion, that rents didn't change between 1979 and 1980.

He uses a comparative rent survey for his analysis for the rents during that -- what he's calling the base year, which is an appropriate approach. I think that is the correct approach to utilize. His -- the comparable data that he says he uses comes from rents -- rental information that was available in two years: 1983 and 1986. However, he doesn't provide any of that information in the report, at least that I can find. So he doesn't, actually, tell you what the 1983 and 1986 rents were in his report, he simply indicates that he adjusted those '86 and '83 rents down to 1980 levels, and he says he adjusts them based on maximum adjustments that are allowed by the ordinance. And he indicates that those adjustments were 8 percent in 1983 and 8 percent in 1986.

So he just gives you a column in his report that shows his conclusion of the rents as of 1980 that he had adjusted down from 1983 and 1986, but none of that information -- those adjustments and the mathematics of it or the 1983 or 1986 data, is actually contained in the report, that I saw.

And also, the saying that there were only two years of adjustment between 1986 and 1983, I found to be conflicting with the ordinance, which was enacted in April of 1980, and there was a brief period of a rent freeze when no increases were allowed. But the increases, then, from August of 1980, an annual 8 percent increase was allowed up -- and then there was an amendment in May of 1981 that allowed automatic 8 percent annual increases, or up to 8 percent. And that was in place until August of 1983, and then that automatic increase was reduced to 7 percent. And then in September of 1986, the automatic increases were changed to 75 percent CPI.

So increases were really allowed all of those years, even though he only made -- apparently, he made some kind of adjustments for two years: 1983 and 1986. So I just didn't find that to be consistent with the ordinance. What I did was I looked at the actual increases for the five -- the comparable parks that we had data from for those two years, 1983 and 1986, to see what was actually occurring in the market at those parks. In other words, how much did rents go up between 1983 and 1986 at five the parks where we had data for both years. And I have an exhibit that shows that, if we could bring that up. Oh, it's up. I'm sorry. Thank you.

So what it shows under 1986, you can see -- well, first of all, let me say that there are five parks listed on that exhibit that -- where we have rents for both years. Canejo Mobile Home Park, Elms Plaza -- well, we have it for rent, but it wasn't the subject of comparison, here -- Ventu Park Villa, Ventu Estates, and Thunderbird. And you can see in the two columns, I have in 1986 rents then I have the 1983 rents. And what I did was make calculations of what happened to those rents for that period of time.

And the rents of Canejo increased from $157 to $197, which is an overall increase of an average -- well, it's an overall increase of 25 percent, but an average annual increase compounded of 7.9 percent for that three-year period.

Elms Plaza, rents went from $187, to $227, which is an overall increase of 21 percent or an average annual increase of 6.7 percent.

Thunderbird increased from 246 to 277, which is an overall increase of 13 percent or an average annual increase of 4 percent. That was the lowest of the -- lowest annual increase of the five parks and, of course, that park is also subject to an upcoming rent hearing.

Ventu Park Villa increased from 204 to 247, which is an overall increase of 21 percent, or an average annual increase of 6.6 percent. So the -- I'm sorry, I skipped Ventu Estates, increased from $242 to

$292, which is an overall increase of 21 percent for an average annual increase of 6.5 percent.

So from this data, there were four of the five parks that were really, fairly closely clustered. It would easily support an increase between 6 and 7 percent as an indication of what the market was doing between 1983 and 1986. I concluded at 6.5 percent as an increase. And what I did was then I took the comparable parks for -- that we had information for in 1983, and I trended them back for four years to 1979, the base year, at an annual rate of 6.5 percent. And that's shown in the last column on the right, there, it shows you the adjusted rents for 1979.

Canejo Mobile Home Park $122; Elms Plaza, $145; Ventu Park Villa, $159; Ventu Estates, $188, Thunderbird Oaks, 191. Then I had arranged the parks, basically, in the order of, kind of, the overall appeal. The way I would adjust the comparables to the subject and where it fits in in relation to the overall quality and appeal and location of the other parks. And Mr. Neat did the same kind of ranking of the parks, and I thought I didn't have any big quarrel with the way he did it, I did it in kind of a similar fashion.

And in my opinion, as you can see, we did not have 1983 information for Twin Palms, so that park couldn't really be considered for this analysis. So anyway, in my opinion, the rent at Ranch for 1979 should fall between the $145 at Elms Plaza, it should be above that, it should be below the adjusted rent at Ventu Park Villa of $159, and my conclusion was $150 per month for the base year of 1979. And that was my opinion of the market rent in 1979.

For 1999, I did -- I didn't do what I would call a "market rent study," because "market rent" assumes that the rents are uncontrolled. The rent control ordinance was in effect at that time, I'm calling it "rental value." But I surveyed and obtained rental information in 1999 for the same comparable parks, and that is shown in my report on page 21, there.

And since I've been asked to kind of speed this up, I won't go through all the details, but I did the same kind of comparable analysis in 1999. My conclusion of the indicated rent for Ranch Mobile Home Park as of that date was $300 per month. And then we move on to 2009. I did the same thing, I obtained current rental information for the year 2009 for the comparable parks. And my conclusion, as of that date, was $400 per month, and that rent in 2009 includes water and trash. I did not include -- I really wasn't able to analyze the inclusion of utilities as of the other dates because I didn't have that information for all the parks. But the current rent -- for the current analysis, I did know what utilities were included in each park, and so the $400 per month includes water and trash. And those are the opinions that I was asked to provide.

CHRIS NORMAN: Thank you. The things for the Commission to consider real quick, kind of an overview of what we just discussed: We talked about the court precedent for using MNOI standard, the appropriateness of considering other methodologies, what's the appropriate base year? What base year adjustments to either income or expenses are necessary? And the rate of indexing.

Staff's conclusion is given prior Court precedent in City's rent stabilization guidelines, MNOI is an appropriate method for doing a rent adjustment. Staff believes that 192 is the appropriate base year with the Vaga adjustment, according to City's appraiser, and with the adjustment to operating expenses to include the outsourcing of management. The range of indexing presented in the consultants' report is between 50 to 100 percent. Staff would recommend that a 50 percent increase would pass the Constitutional requirement.

Here's a table that illustrates all the

options. Basically, the Staff's -- the way to view this chart is that Staff believes anything on here passes the minimum Constitutional requirement for fair return. This, again, highlights what the rents would be for various base years from '79 to '99 with the expense adjustment, there's a line for that in bold, it is the City's recommendation of $191. That's based on 50 percent CPI with an expense adjustment, and the Vaga adjustment using the City's appraiser. Again, the park owners' appraised value is the bottom line. Again that may be subject to change. We'll have to hear from the Applicant to see a basis for that.

Some comparison rents, just to put this in perspective, are we off base with the MNOI or not? If you look at resolution 84-037, and had the park owner made annual increases under that resolution, hypothetically, in every year that he could, the rent increase, today, would be $147 per month increase, which would be at 267 total. Hypothetically, had the park been under the jurisdiction of the ordinance since 1980, and they had taken all the automatic increases that they were entitled to, the increase would be $162 per space increase for a total of 281.

For comparative purposes only, again, I'm relying on Mr. Brabant's comparable current controlled rent for 2009, other parks he would value the increase at a $267 per month increase using that methodology. And again, there is the increase as compared to the rent stabilization ordinance that I just mentioned and the resolution that I just mentioned in the prior slide.

And then for comparison purposes, you have the rate of return that Mr. Bahr explained in his presentation. It's interesting to note that even at 11.5 percent rate of return, which is what the owner had agreed to back in 1977, the City's recommendation is right in that ballpark. So from Staff's perspective, Staff's recommendation is in line with the totality of the circumstances that are unique to this park.

So, finally to wrap up, the City's recommendation is to approve a rent adjustment of $191.95 per space per month above existing rents. The City Staff also recommends that this be phased in in five years. The rationale behind that is: It's a huge rent increase. We're talking, even, the City's recommendation, if it worked out in one fell swoop, would be, I think, 160 percent increase.

And looking at the intent of the ordinance, we think that's just too burdensome on these residents and that a phase-in is appropriate. Even at a five-year phase in, which would be $38.89 per space, per month, each year increase, that's still over a 25 percent increase over existing rents. The initial increase, says here should be 60 days. Rent control law may have a different requirement on that, we will check on that, but it may be 90 days, but whatever State law is would be the minimum. And that each subsequent increase would be phased in one year from the prior. And with that, Staff has completed its presentation.

LLOYD WERTHEIMER: Thank you. We're going to have comments and questions from the Committee, but first off, just to remind the audience to turn off your cell phones. We're going to start from left to the right. Commissioner Mike?

MIKE SILACCI: Thank you, Mr. Chairman. I just have a couple of clarifying questions, if I could ask, and I'll direct them to Mr. Norman. First, I just want to the confirm for my understanding that when the city enacted resolution 84-037, that it only applied to the Ranch Mobile Home Park?

CHRIS NORMAN: That's correct.

MIKE SILACCI: Thank you. And could, please, help me understand a little bit more about the legal basis? Was the Constitutional requirement for a just and reasonable return, was that a requirement that was present back in 1984? At the time that the Council went through the process to enact this resolution?

CHRIS NORMAN: I don't know whether it was -- it probably was in case law. And I'll let Mr. Bahr elaborate on that. But at the time we had no rent control ordinance on the books, so that's probably the better answer.

MIKE SILACCI: I guess just an extension, maybe a two-parter, the Council had an opportunity to apply this resolution to the Ranch Mobile Home Park in 2001, so I would guess I would extend, that standard exists in 2001.

CHRIS NORMAN: Yeah, I misspoke. In '84, yes, that standard, I believe, did exist, and in 2001. Staff isn't clear as to why City Council went with the '84 resolution as opposed to the ordinance. I don't have a good answer to that, some others may, but I don't.

MIKE SILACCI: That's fine. Thank you. And just, I have -- excuse me, Mr. Chairman, I have, just for me, one more clarifying question. How was the -- at the beginning, with the development conditions for the, I guess, fee -- development fee waiver of $100,000, and I guess, some reduced cost as far as for giving some design requirements, I mean, how were those reflected in the initial rental rates? And was there a period of time that those would be taken into account? Because I guess I shouldn't comment, it's really a question -- I don't see how $100,000 is taken care of in one year. How were those -- how was that -- those fee waivers taken into account in setting the initial rental rates?

CHRIS NORMAN: From our review of the records, we're not sure how it was mentioned in some correspondence and memos in the files for that development. It was discussed by accountants for it park owner when developing the 11.5 percent rate, and it was a trade-off. It was more of a basis, in my opinion, for a justification for having a low income senior park.

MIKE SILACCI: Thank you. Those are all my questions.

BRENDA MOHR FELDMAN: Thank you. I would like to speak to that also, the $100,000 gift that was given to the park owner by the City. If we use the return on investment approach, which I think might be better for this park, we could say that $100,000, if we play it forward for inflation, is worth $443,000 today in equity to the park owner. So my -- I haven't heard you take into account that gift that the City made to the park owner. And would the return on investment approach do that?

KENNETH BAHR: I'm sorry. I'd say it is taken into account because the investment is lower because the park owner didn't have to make that investment, so therefore, you have a lower investment basis. You know, if they hadn't gotten that $100,000 gift, they would have invested 600,000 instead of 500,000 at the beginning, and that would have been taken into account in the formula.

BRENDA MOHR FELDMAN: Okay. But are you ever factoring it forward for CPI in any -- I haven't read anything about it anywhere, and I've read all the documentation, and I can't find it mentioned in any way.

KENNETH BAHR: You know, I'm saying the way it's factored in, it was an investment that the park owner didn't make, so it's factored in, in the sense, that the owner never gets credit for that later. So it's not an investment. So we don't subtract it later because it's subtracted from the original base. And so 100,000 less was indexed by the consumer price index.

BRENDA MOHR FELDMAN: Okay. May I ask another question? Okay. Initially, the documentation that I have that came from 1986 that I was presented, states that the proposed mobile home park rent ordinance would apply to all parks within the City, with the exception of Ranch Mobile Home Park which is under a separate affordable housing agreement. And you can say you can't find that acceptable affordable housing agreement.

That's a shame. I also wonder, are you considering -- is the City of Thousand Oaks considering this park as affordable housing? And if not, why not? Because they are making -- earning $10,000, and that $10,000, if you factor it forward to today with the CPI is still $10,000, but on the market, it would be $44,300 that the tenant would have to be earning to qualify. And in our park, $18,000 or $19,000 is the minimum we can earn to get into our park, yet with Ranch, a maximum of $10,000 for an individual. It just doesn't make sense to me. And no one is making mention of that here. And how did you factor that in?

CHRIS NORMAN: It's Staff's opinion that this Commission has a very, very limited jurisdiction, and may only consider the rent increase application. The issue involving any income restriction isn't factored into this application in analyzing it under the ordinance. I hope that answers your question.

BRENDA MOHR FELDMAN: It really doesn't. The fact that you didn't factor it in and it isn't part of what we're supposed to do, I understand that. But my concern is: If I go ahead with all of these thoughts on different methods, the MNOI and everything else, is it a decision that's to be made for Ranch, per se? And in that case, it just doesn't work for me. If this is an ordinance-wide thing, can we treat them differently? Can we treat Ranch differently from other parks, or is that ordinance-wide?

CHRIS NORMAN: Well, it's Staff's opinion that we're applying this ordinance to this park as we would to any other park making a similar application.

BRENDA MOHR FELDMAN: And that, of course, doesn't make sense to me. But I'm going to leave it at that. Thank you.

LLOYD WERTHEIMER: Mr. Sheldon?

MAXWELL SHELDON: Thank you. Could you talk a little bit about why the extrapolation from 1979 to 1982 is so problematic? I apologize. I was wondering if you could speak a little bit about why the extrapolation from 1979 to 1982 is problematic as a base year. I know you touched on it, but if you could talk a little bit more about it.

KENNETH BAHR: You mean, why 1982 should be used?

MAXWELL SHELDON: Yes, over 19 -- what was the problem -- 1982 to '79.

KENNETH BAHR: The regulations say that if you don't have the income and expense information from 1979, you have to use the first year for which you have income and expense information. So that's the reason.

MAXWELL SHELDON: As a follow on to that, could you talk a little bit about why the breakdown of expenses, and not having that, is so important, and what are some of the issues that you would be concerned about?

KENNETH BAHR: Well, the maintenance of net operating income standard is two components: The cost pass through, and the indexing of the net operating income. And the problem -- if you don't have a breakdown of expenses, you don't know exactly what you're comparing, you know, and whether some things were left out in the base year or how they were factored and how utility expenses were treated, et cetera.

MAXWELL SHELDON: Thank you. I have nothing.

LLOYD WERTHEIMER: Thank you. I have a couple questions: On the concessions made at the time that the park was built, do you know if any other parks in the area were also given concessions by the City for their development at the time?

JOHN PRESCOTT: Perhaps I can answer that. I'm not aware of any. The City did approve the Thunderbird Oaks Mobile Home Park shortly before that, and many of the other parks were already in existence when they were annexed to the City. I think the other one the City did approve in the early 70's was Valicedo.

LLOYD WERTHEIMER: Okay.

JOHN PRESCOTT: So I'm not aware of any that were approved for the other parks.

LLOYD WERTHEIMER: Thank you. How much value did you place on utilities, water, and trash on a monthly basis in your evaluation?

KENNETH BAHR: When you say how much they are --

LLOYD WERTHEIMER: In the comparisons that you were making at one point in time, you said the rent included trash and utilities, and at some point, it didn't. So I'm just curious to the value placed on a monthly basis on the utilities and trash.

KENNETH BAHR: Okay. I'd have to look through -- is this a question for Jim or Mr. Brabant or for me?

LLOYD WERTHEIMER: It's a question for the Staff and whoever can answer.

JAMES BRABANT: I can tell you the adjustments I made in the rental value comparison that I did in 2009. The rents at Ranch Mobile Home Park included water and trash. And, let's see, we had -- there was a park that just included water, and so -- and I made a $13 adjustment for the -- so that was -- the difference there was trash, so in that case, it was $13 for the trash. And, let's see, here's one that included water.

Let's see -- well, that's other one. Okay. I'm not -- here's one that included water, sewer, and trash. And so -- I was just looking to see if we had one that had none -- well, here's one that was none, and I adjusted $33 for the combination of water and trash.

LLOYD WERTHEIMER: By adding it to the base rate and including it in your appraisal? Or deducting it?

JAMES BRABANT: Well, it depends on which way -- if a comparable park had more services provided -- for instance, Legstone had water, sewer, and trash, all included in that. I made a minus $25 adjustment from that rent. If one had none, I made a plus 33 adjustment for that. So it depended on whether they had more or less, because I was adjusting to the condition at Ranch that had included water and trash.

LLOYD WERTHEIMER: I was just trying to see how you get to apples and apples, at the end of the day.

JAMES BRABANT: That's the way that I did it, so it was a plus adjustment for some, a minus adjustment for others.

LLOYD WERTHEIMER: In the base -- you all settled on the base year of 1982 for your calculations. Is that accurate?

KENNETH BAHR: Yes.

CHRIS NORMAN: That's the recommended action. It's the Staff's position that '79, '82, or 1999 can be considered by the Commission.

LLOYD WERTHEIMER: Okay. When you made -- when you based yours on '82, did you include in your formula to allow him an 11.5 percent ROI? Was that the ROI you were working with at the time, basing the rents so we could earn 11.5?

KENNETH BAHR: Yes. Because --

LLOYD WERTHEIMER: "Yes" is okay. That's good. So then my question is: Did you include the $100,000 concession in that as of -- when you went back to his original investment?

KENNETH BAHR: No. Because the 100,000 concession wasn't counted, it wasn't part of the investment.

LLOYD WERTHEIMER: Okay. So you didn't -- you took his investment as 500, not 600?

KENNETH BAHR: Yes.

LLOYD WERTHEIMER: That's fine. I'm looking to see that. That's the questions I have, anybody else on the Board come up with anything more?

All right. Do we have any questions for the Staff from the Applicants lawyer?

Okay. Give us your name and your City,

please.

MR. HILL: Boyd Hill, I'm the law firm Hart, King & Coldren, located in Santa Ana, California.

First, I'd like to start with Mr. Bahr, if that's appropriate. Good evening, Mr. Bahr. Also, can you put up the PowerPoint that I set you with? Yes.

CHRIS NORMAN: Sure.

MR. HILL: I don't need it on the screen yet, but I'll tell you when to -- okay.

Good evening, Mr. Bahr. The purpose of my cross-examination this evening will be to determine, first, on what matters you can agree with the Applicant's position, and then to further explore your positions on what matters -- on matters where you do not agree with the Applicants' position.

The City Staff is basing its position and its rent increase application on your opinions contained in November 30, 2010, report, entitled, "Analysis of the Ranch Mobile Home Park Rent Increase Application." First, is it your opinion, as stated in the summary of your report -- first slide -- that because there have been, virtually, no increase in 30 years, very substantial rent increases are required?

KENNETH BAHR: I'd say, under the ordinance, yes.

MR. HILL: Okay. Second, is your above opinion based, in part, on the following facts stated in your report: From 1979 to 2009, the average rent in the park increased by only about 10 percent compared with an increase of 192 percent in the CPI during this period?

KENNETH BAHR: Well, I'd answer -- I'd say, I'd clarify it --

MR. HILL: That's a "yes" or "no."

KENNETH BAHR: No, it isn't. I'd say yes, but my analysis is based on fair return standards, and I'd say that's the justification. But I pointed that out to point out the circumstances.

MR. HILL: Third, are the components of the various substantial rent increases described in your opinion the following: No. 1, to provide a fair base rent for the purposes of a fair rent calculation; Number 2, cover operating cost increases; and No. 3, provide for growth in net operating income reflecting inflation since the base year?

KENNETH BAHR: Yes.

MR. HILL: Okay. Mr. Bahr, so far your opinion that the Applicant should get a substantial rent increase and that the components of that rent increase should include adjustment of base year income, adjustment for inflation, and adjustment for increased costs of operation, corresponds with the position of the Applicant. I want you to keep in mind that these three components of the substantial rent increase that should be applied as we discuss the details of application and of your analysis, because as we get into it, it will become clear that your particular analysis ends up disregarding a significant amount of the increase attributable to each of these three components.

Now, let's consider what standards should be used to determine a just and reasonable return: According to your report -- next slide, please -- in this analysis a maintenance of net operating income standard is used as the measure of fair return. Mr. Bahr, did you use any standard in your report, other than the maintenance of net operating income standard to determine the proper amount of rent adjustment for the application.

KENNETH BAHR: I would say this: I discussed other standards to these types of checks to see, because we have the unusual circumstance, here, of one, we're adjusting base rent, two, the rents haven't been increased in 30 years. So I looked at the other standards as sort of checks to see if -- what we've got under the net operating income standard, whether it's way out of proportion with what -- how it compared with some of the other measures.

MR. HILL: So it's true you used other standards other than the MNOI standard; is that correct?

KENNETH BAHR: Yes. I didn't use them to make the actual calculations -- I made calculations of how those standards would work.

MR. HILL: Are you aware that the City regulations established a presumption that the MNOI standard applies -- next slide -- right there -- the Commission presumes that he net operating income received up to April 1980 provided landlords with a just and reasonable return on their rental units, unless there's a clear and convincing evidence to the contrary?

KENNETH BAHR: Yes, I'm aware of that.

MR. HILL: Are you aware of any clear and convincing evidence that demonstrates that the MNOI standard should not be used for the rent application?

KENNETH BAHR: Well, I'm not saying it should -- I didn't conclude it should not be used --

MR. HILL: That's not the question. Are you aware of any clear and convincing evidence that the MNOI standard should not be used for the application?

LLOYD WERTHEIMER: I'd like to interrupt, please. Counselor, we're not in a court of law.

MR. HILL: I understand, but I'm trying to get -- I'm trying to short circuit this.

LLOYD WERTHEIMER: He'll give you an answer.

KENNETH BAHR: Repeat your question again.

MR. HILL: Sure. I'll ask it again. Thank you. Are you aware of any clear and convincing evidence that demonstrates that the MNOI standard should not be used for the Ranch application?

KENNETH BAHR: No.

MR. HILL: Okay. Mr. Bahr, are you aware that the City regulations require that if another standard is to be used, the Applicant or tenants must, in advance, submit documentation and information to support an alternative methodology? Next slide.

KENNETH BAHR: Well, I think I remember --

MR. HILL: Where's the rest of that slide? There you go. Thank you. It states -- I'm reading from the regulation, it states, "The methods herein -- authorized herein are nonexclusive. Alternative approaches may be employed by the Commission. Applicants or tenants may propose the use of such 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 suggested approach. The methodology and documentation shall be provided with the application or sufficiently before the date set before the 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 continuance of the hearing at the Commission's discretion. The use of such approach, as suggested by Applicants or tenants, shall be at the discretion of the Commission."

Mr. Bahr, did either Applicant or the tenants comply with the requirements of Section 1.04 to request an alternative standard?

KENNETH BAHR: No. But I want to comment. I didn't think that precluded the Commission from considering other standards.

MR. HILL: Where do you get that idea from?

KENNETH BAHR: Well, because I feel the Commission had the authority to consider what evidence it considered relevant.

MR. HILL: So, there's nothing in the regulations or the ordinance that say the Commission can do that, but you just feel that's the way it should be?

KENNETH BAHR: It's not the question of feeling. Let me go back to the -- the language, you want to put it back up?

MR. HILL: Sure.

KENNETH BAHR: It says -- I don't see the whole screen. This is -- "May be employed by Commission" -- I mean, we can disagree. I felt -- my conclusion or understanding was that that meant that the Commission could consider --

MR. HILL: Did you read this provision before you did your analysis?

KENNETH BAHR: Yes.

MR. HILL: Mr. Bahr, did either the -- let's see. So the reference in your report to a rate of return on investment standard and the concurrent comparable rents are not appropriate for use at the hearing under the City's regulations, are they?

KENNETH BAHR: Well, I didn't reach that conclusion.

MR. HILL: Okay. Mr. Bahr, will you agree that your discussion and findings under those two standards are not appropriate, unnecessary, irrelevant, and that they should being stricken from your report.

KENNETH BAHR: No, I don't agree with that.

MR. HILL: Mr. Bahr, isn't it true that you will really started your analysis with the rate of return on investment standard and the current comparable rent standard, and then reversed engineered a modified MNOI analysis based on your results from those other two standards?

KENNETH BAHR: No, that's absolutely not true.

MR. HILL: Mr. Bahr, in your report, don't you admit that the rate of return on investment standard is not found anywhere in the City's ordinance or regulations? Next slide, please.

KENNETH BAHR: Yes, I do.

MR. HILL: States, "Neither the ordinance nor the regulations include any specific reference to the use of this type of standard." Referring to the rate of return on investment.

KENNETH BAHR: Right. But I also felt the broad language about the Commission being able to consider other standards.

MR. HILL: Which we discussed has to come through an application and sufficient advance notice; right?

KENNETH BAHR: That's your conclusion.

MS. SPENCER: And yet you incorporate the rate of return on investment standard into the MNOI standard to create a modified MNOI approach, don't you?

KENNETH BAHR: No, I included this to point out what happens under an alternative approach.

MR. HILL: Next slide, please. I'm going to quote from your report again. "However, this type of formula was used in order to establish a fair net income for this park in accordance with the City's affordability objectives associated with the development of this park?"

And so, under the guise of meeting the City's affordability objectives, which were supposed to have been met under the MNOI approach, you created altogether new MNOI modified approach, one that you admit is very disfavorable to long-time park owners, such as Mr. Hohn; don't you?

KENNETH BAHR: Why don't you repeat that question. That was a long question.

MR. HILL: Okay. And so under the guise of meeting the City's affordability objectives, which were supposed to have been met under the MNOI approach, you created an altogether new MNOI plus approach, one you admit is very disfavorable to long-time park owners, such as Mr. Hohn, didn't you?

KENNETH BAHR: First of all, I -- and I'll go back -- also, the ordinance says that it Commission can consider -- it's a list of factors that the ordinance -- under the ordinance that the Commission can consider, and it says, "Among other relevant factors." And their disagreements -- you know, there's a -- "relevant factors" has had a broad scope, and many cases, different factors have been considered relevant. And secondly, as far as the investment, I point out if you use a return on historic investment approach, and you don't adjust the historic investment, it's very, very, you know, unfavorable to a long-term owner. But when you put an inflation adjustment into the historic investment approach, your inflation adjusting in the original investment, I wouldn't say that's so unfavorable. And in fact, in a number of cases I've been in, that's what the park owner's expert has done.

MR. HILL: Next slide, please. You state in your report on page 35, "As a practical matter, when return on investment approaches are used, long-term owners, Mr. Hohn, who typically have low investments by current standards, are disfavored."

Isn't it true that you chose an approach to incorporate it into the MNOI standard that would disfavor Mr. Hohn's application?

KENNETH BAHR: Well, I guess I'll repeat my answer: I'd say, I qualified that by the way -- you know, of meeting that type of criticism or problem is to put an inflation adjustment into -- of the original investment so you're not using this old historic investment as the rate base.

MR. HILL: Mr. Bahr, by choosing a rate of return investment standard that's disfavorable to long-term owners, are you showing bias against the park owner and in favor of the tenants?

KENNETH BAHR: By putting in the inflation adjustment to the rate base, this is to compensate for how the formula would work if you didn't have that inflation adjustment of the rate base.

MR. HILL: Mr. Bahr, isn't it true that you were asked by the City to come up with an analysis that is would obtain the lowest possible rent increase for the park owner?

KENNETH BAHR: No. I was asked to come up with my analysis and look at the different factors.

MR. HILL: And isn't it true that you incorporated the rate of return on investment standard into your MNOI analysis that justify using a 50 percent CPI adjustment into your MNOI analysis?

KENNETH BAHR: No, it isn't.

MR. HILL: Next slide, please. I need to go -- no, maybe the next slide. Let's see, can you go back? It's hard when I'm not in control of the slide. Back one more, please. Thank you.

Let's read the statement, "If the park" -- second statement there, "If the park is granted a rent increase of $252, an amount authorized pursuant to the

MNOI student with a median 75 percent indexing ratio the rate of return on the inflation adjustment investment would be 13.3 percent, and the rate of return on the historic investment would be 48 percent." Bahr report, page 38.

Mr. Bahr, isn't it true that in coming up with your very low rate of return under your modified MNOI plus rate of return on investment approach, that you fail to take into account that under this City's particular ordinance, the rents come up to market when a coach is removed from the park, and that the regulations authorize the recapture of rent increases that were foregone in prior years?

KENNETH BAHR: I thought I mentioned that in my report that, basically, the rents are type of vacancy decontrol when there's a new mobile home in conjunction with the entry of a new tenant.

MR. HILL: And yet, in your modified MNOI rate of return approach, you failed to take this fact into account.

KENNETH BAHR: The park owner's not investing more money when this happens, so I don't know how you take into account, rate of return approach.

MR. HILL: But you didn't take it into account.

KENNETH BAHR: There's no investment at that point, it's, basically -- there's a right to a rent increase because there's -- no new mobile home was brought in in conjunction with a new tenancy. So --

MR. HILL: Okay. Mr. Bahr, I note that under your unauthorized rate of return on investment analysis, you came up with an imputed inflation adjustment investment value of $1.8 million. Mr. Bahr, did you, in your investigation, ever look at current property appraisals to see if the property appraises for that amount?

KENNETH BAHR: No, I didn't, because that's -- this was a return on investment analysis, not a return on value analysis.

MR. HILL: Mr. Bahr, would it surprise you to find out that the Ranch Mobile Home Park recently appraised for $168,000, about the same price as a new coach that some of the tenants can afford to pay cash for?

(Laughter.)

LLOYD WERTHEIMER: Quiet, please.

KENNETH BAHR: Would it surprise me? Yeah, it would surprise me and I don't know if it's true or not.

MR. HILL: Isn't it true that even a doubling or tripling of the rents won't bring the Ranch property up to the level of the inflation adjusted rate of return investment value?

KENNETH BAHR: This inflation adjustment value is 1.8 million. And net operating income of about 120,000 -- let's say we had 6 percent capitalization rate -- it would cover that -- would bring it up to that market value.

MR. HILL: Mr. Bahr, you didn't even look to see if there was a current appraisal of the current value of the rents of the park real property, did you?

KENNETH BAHR: Well, no, I wasn't doing a return on value analysis.

MR. HILL: You don't want to show anything in favor of a large increase to the park owner, do you?

LLOYD WERTHEIMER: Counsel --

KENNETH BAHR: I didn't --

LLOYD WERTHEIMER: One moment. Yeah, we aren't --

MR. HILL: I'll withdraw it.

LLOYD WERTHEIMER: Again, this is a fact finding hearing, and we're here to -- not to -- to just find some facts.

MR. HILL: Well, I think I'm trying to show a pattern, and it will become more apparent as I keep going.

LLOYD WERTHEIMER: Again, we're not in a Court of law.

MR. HILL: Mr. Bahr, let's now examine your use of current comparable rent standard, shall we?

To start off with, you recognize that a current comparable rent standard has never been used unless authorized or required by an ordinance, don't you?

KENNETH BAHR: I want to me see my --

MR. HILL: Next slide. That might help you. Next slide.

KENNETH BAHR: I didn't say "never," I said it's usually not been considered.

MR. HILL: Except when, specifically, authorized or required in an ordinance?

KENNETH BAHR: No, you had said "never been used," and I said "usually not considered". Because I've been -- I mean, the ordinances provide -- I'm talking about the mobile home rent control ordinances -- they provide, in general, discretion to consider other relevant factors, and some Rent Board Commissions elect to consider comparables, some don't. Even if it's not specifically authorized.

MR. HILL: Mr. Bahr, can you tell me where in the City's ordinance or regulations the City authorizes or requires use of a current comparable rent standard?

KENNETH BAHR: No, as I indicated, it's not specifically mentioned.

MR. HILL: Isn't it true that a current comparable rent standard is the antithesis of the MNOI standard because it looks at rent controlled rents, rather than at non-rent-controlled base year rents?

KENNETH BAHR: Well, it's not -- the MNOI standard looks at comparable rents in extreme cases in the base year. It doesn't look at comparable rents in the -- it doesn't look at the market rents -- the MNOI standard looks to see if there's is a situation where the base year rents had no connection with the market. The MNOI standard hasn't looked at, you know, whether the current rents, how they compare with the market, because basically, the rent regulation is based on the basic concept that the market is not working.

MR. HILL: Next slide, please.

KENNETH BAHR: Is it easy to hear me? Okay, good.

MR. HILL: These are kind of fuzzy microphones, here. Next slide it states -- you state, "The MNOI fair return concept has been premised on base year rents that reflect market conditions and the maintenance of base period net operating income levels provided by base rents, rather than current comparability of required rents." Bahr report, page 38. Is that correct?

KENNETH BAHR: That's correct.

MR. HILL: And yet you decided to use a current comparable rent standard in this case that you knew was tiered off of 30 years below market CPI rent adjustments -- 75 percent of CPI rent adjustments pegged to a 1986 rent adjusted rate to justified modifying the MNOI rent adjustment to which the park owner is entitled.

KENNETH BAHR: First of all, when you say modified it by not using the market rents, the ordinance is not based on the concept of -- the ordinance is based on the concept that the market is not working because you have a captive market. And, you know, in each one of these other things that I mentioned, I said I, you know, mentioned in these report because you had unusual circumstances. I mentioned that they're often not -- commonly not used in conjunction with MNOI analysis, but sometimes they are. And this ordinance authorizes the Board to consider other relevant factors, so I felt they had -- you know, should be mentioned. And I mentioned, also, the caveats about them.

MR. HILL: Okay. Mr. Bahr, you've not

explained where the ordinance, in particular, authorizes the comparable rent standard, have you?

KENNETH BAHR: No. I said it does not specifically mention it, but you also have this broad language about considering relevant factors.

MR. HILL: If the matter is brought before the Commission timely and notice is given, et cetera, et cetera --

KENNETH BAHR: Okay, well, we disagree about that. I think the Commission has the authority to consider factors that it deems relevant.

MR. HILL: Mr. Bahr, I note that in discussion of your use of the two alternative standards, you cite exclusively the City findings and propose to, quote, unquote, safeguard tenants from excessive rent increase, end quote. But nowhere in your discussion of those two standards do you explain how they will, quote, unquote, at the same time provide landlords with a just and reasonable return on their rental spaces, end quote.

Mr. Bahr, doesn't your insistence on only part of the objectives of the City requirements show your bias in favor of tenants and against park owners?

Next slide, please.

KENNETH BAHR: I think --

MR. HILL: Next slide, please. Next slide, please.

KENNETH BAHR: Okay. I think the purpose of the maintenance of net operating income standard is to safeguard owners and provide them with a fair return.

MR. HILL: The City Code, the ordinance that we're dealing with, says, "Therefore, it is necessary and reasonable to continue 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."

I find many instances in your report where you cite to the first part, but failed to mention the other part. Is there a reason why that omission occurred?

KENNETH BAHR: Well, I guess it was implicit. The maintenance of net operating income standard is a fair return standard and its purpose is to provide a just and reasonable return, and I guess to me, it was so obvious, that maybe that's why I didn't, specifically, repeat it.

MR. HILL: Mr. Bahr, I'm sure that in your analysis you had a chance to review the City's prior versions of its rent control ordinance, in particular, since we are now talking about objectives of the City's rent control ordinance, I think it would be a good idea to reflect on what the City originally intended with its rent control ordinance. Next slide. I'm going to read from that, for those who can't read it, since it's small print. "The City Council recognizes that permanent rent control localized in the City of Thousand Oaks would be inconsistent with the system of free enterprise and initiative, would tend to aggravate and prolong the shortage of rental units available on the market, would tend to discourage investment in rental unit development, and would tend to reduce incentives to improve or sustain a desirable environment within rental unit facilities." That's from City ordinance 755-NS, Section 2.

Mr. Bahr, isn't it true that nowhere in your report do you discuss those objectives of maintaining a system of free enterprise and of initiative, of encouraging more investment in rental unit development, and providing financing for a desirable environment within rental facilities?

KENNETH BAHR: Okay. First of all, you could say, in some sense, the City, then, pay a subsequent ordinances which set forth another policy, that they wanted to make one part of the ordinance permanent, the part that applied for mobile homes. I don't know if the apartment part is still in effect or not.

Secondly -- excuse me, it's a little hard because I'm looking at another screen instead of mine. As far as being inconsistent with the system of free enterprise and initiative, the problem was with mobile homes, you don't have a market or initiative, you have captive tenants, and you, basically, have a frozen supply.

MR. HILL: Because of rent control; right?

KENNETH BAHR: No, absolutely not. You have a frozen supply of mobile home parks for several reasons: One is that as the urban areas became denser, neighborhoods would not tolerate the construction of new mobile home parks, so they couldn't get use permits. Another, as other uses became more profitable, whether or not there was rent control, it just became other types of construction became more profitable. Apartment --

MR. HILL: Because rent control kept rents down?

KENNETH BAHR: No, I'm saying, even at market rents for mobile -- because the initial rents -- under State law, the initial rents for a mobile home park are exempt from rent control. In fact, I'm quite sure that any park -- I'll take it back -- or I'll broaden it -- any park that's built after a certain date, it's exempt from rent control. So the rent control is not deterring its construction.

MR. HILL: In the City of Thousand Oaks?

KENNETH BAHR: State-wide. State-wide. And so basically -- and also, other types of uses are allowed to higher density, for example, condominiums or apartments. So you wouldn't -- you have these factors, and those deterred the construction of new parks, and the park construction, basically, stopped before the rent controls came in. And so -- and, I mean, you know, we could talk about this for hours, but it's absolutely clear. And, you know, you pointed out this clause, but then the City made a subsequent decision that it was necessary to rent -- or they believed it was a proper policy to regulate the rents for mobile home parks and, generally, this is based on -- I'd have to go back to the exact language of the ordinance -- because of the unique captive situation.

MR. HILL: Mr. Bahr, isn't it true that your analysis fails to take to into account the objectives of maintaining a system of free enterprise and initiative?

KENNETH BAHR: No. You don't maintain free enterprise and initiative by not having regulation in a monopoly. It's an monopoly-type of situation.

MR. HILL: Oh. I guess a monopoly wouldn't be charging 100 -- what is it -- $127 a month for rent?

KENNETH BAHR: No, I agree with that. But I'm not saying the owner acted monopolistically, I'm saying you have a situation where if the rent goes up, a mobile home owner cannot move their mobile home to another space, they can only rent that space with that mobile home or they lose their investment. I'm not saying it's -- you know, so in that particular concept, you could say it's a type of monopoly. Other people might -- they've called it a "captive market," maybe a "captive market," you can choose that word -- but it's clearly a special situation. You've got this person who has a huge -- big investment, they cannot move it.

MR. HILL: Mr. Bahr, now that we've -- done with the appetizer, let's move on to the meat and potatoes. Let's discuss your opinion regarding --

LLOYD WERTHEIMER: Counselor? We're on a fact finding mission, here, please.

MR. HILL: I'm sorry, what?

LLOYD WERTHEIMER: We're here to out the facts and exchange ideas and information, okay?

MR. HILL: I was using an alliteration. I wasn't trying to be -- I was trying to --

LLOYD WERTHEIMER: Understood. Thank you.

MR. HILL: Mr. Bahr, isn't it true that in order for the maintenance of net operating income formula to work that the base year chosen must generally be a year prior to the imposition of rent control?

KENNETH BAHR: Well, generally, it has been. There have been exceptions. For example, if there was a fair rent decision, subject -- fair return decision, subject to the passage of the ordinance, that's often been used as the base year. And there are cases where base year information has not been available. I'd say, you know, ideally, the use of pre-regulation year is the best. It's not constitutionally required.

MR. HILL: Next slide, please. I'm going to quote from a case -- recent case, Court of Appeal case in Mountain -- MHC Operating Limited Partnership versus City of San Jose. I guess you testified in that the case, did you not?

KENNETH BAHR: Yes, I did.

MR. HILL: It states the opinion, "In general, the maintenance of net operating income formula is based on pre-rent control fair market assumptions." Is that a correct statement of law?

KENNETH BAHR: Yeah, generally, it is.

MR. HILL: And Mr. Bahr, isn't it true that City adopted such a presumption, the next statement on that slide?

KENNETH BAHR: Yes. But the City also passed a regulation that said where base year income and expense information was not available, that then the base year would be the first year for which income and expense information --

MR. HILL: We'll get to that. Let's start with the presumption first. Because I think -- you know, we need to -- you know, you're a lawyer and I think you understand the importance of a presumption of law. It states that, "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." That's Section 1.03 of Regulation 2.

Mr. Bahr, isn't it true that the City's regulations provide that 1979 must be the base year whenever any financial information pertaining to that year is available?

KENNETH BAHR: Well, did it say, "any financial" -- my understanding of "financial information" meant when there's income and expense information.

MR. HILL: Let's look at the Regulation Section 3.01. Next slide, please. "The base year shall be 1979 when the financial information for that year is available."

KENNETH BAHR: Right. And my conclusion is if you don't have any expense information, that -- I think when people drafted this ordinance -- or regulations -- they couldn't think of every possible variation that somebody would come in and say, "Well, I have income information, but I don't have expense information, but therefore, I still have base year information." And I think the clear intent -- you know, sensible reading of that is if you don't have expense information, you don't have base year -- you don't have information for that year.

MR. HILL: Mr. Bahr, isn't it true that there is financial information for 1979 regarding gross income?

KENNETH BAHR: For gross income, yes.

LLOYD WERTHEIMER: Counselor, question, please? Do you have your PowerPoint presentation available for the Committee for a copy of it?

MR. HILL: Yeah, it's loaded on the City's system.

LLOYD WERTHEIMER: Okay. Is there a way we can get that printed for the Committee?

PATRICK HEHIR: Counsel, what's happening is that when you go to the slide, you immediately go back to the witness.

MR. HILL: I don't.

PATRICK HEHIR: Well, I'm just saying, it's going back and forth, and so we're struggling with, we see something and we don't really have it. We have every other PowerPoint. Do you have any extra copies of this?

MR. HILL: I'd be glad for them to keep the PowerPoint up while I'm discussing it. I don't need it to be focused on me. Thank you.

LLOYD WERTHEIMER: Is there anybody here at the City who can print what he said is on the computer -- on the system? We need to find that out. So we're going to take a break, and we'll be back at 8:45.

(Recess taken.)

LLOYD WERTHEIMER: How long do you have?

MR. HILL: Five minutes with Mr. Bahr, five minutes with Mr. Brabandt, then we'll put on our witnesses.

LLOYD WERTHEIMER: Thank you.

MR. HILL: It is my understanding with City Staff that we would have adequate time to cross-examine the witnesses and we would, then, have equal time with the City's time to present our case.

LLOYD WERTHEIMER: Yes, you do, but it's

not -- your presentation is separate from your time and your cross.

MR. HILL: Correct.

LLOYD WERTHEIMER: Okay.

MR. HILL: Our presentation will be brief.

LLOYD WERTHEIMER: Thanks.

MR. HILL: Thank you.

Mr. Bahr, isn't it true 1979 expense information is available in the form of City records showing 1980 to expense data for which 1979 expense data can be extrapolated by adjusting for inflation?

KENNETH BAHR: My conclusion is that that does not meet the requirements for the regulations. Because don't think -- extrapolating information from 1982 in order to get 1979 is not having 1979 information within the context of the regulations, because, basically, somebody could -- under that approach, somebody would always have 1979 data, because even if they had 2000 data, you could extrapolate it back to 1979. And this is a very specific provision and it's meant to require actual data.

MR. HILL: Mr. Bahr, didn't you, in fact, testify in trial few years ago that similar type expense information is sufficient financial information from which to establish base year not 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.

KENNETH BAHR: Yes, I did testify to that, but that was not in the context of this type of regulation. And under other ordinances, I have extrapolated backwards, but this particular regulation is very specific in requiring something different.

MR. HILL: Mr. Bahr, according to the City regulations, isn't it true that only the park owner Applicant can request a different base year, and only if there's no actual or imputed financial information available, and only if the park owner can make a clear and convincing showing of evidence regarding lost records?

Next slide, please. Excuse me, next slide after that.

KENNETH BAHR: There's also a provision in the regulation that says, "In the event 1979 financial information is not available, and where the loss of records can be substantiated by clear and convincing evidence, the landlord of record may substitute as a base year the following first year following 1979 for which records are available."

MR. HILL: That's the regulation I'm citing to.

KENNETH BAHR: Yes. And I --

MR. HILL: Mr. Bahr --

KENNETH BAHR: The way I read that is that you can't use 1979 if you don't have the data.

MR. HILL: Mr. Bahr, is there anything in that regulation that requires the park owner to use a different year, other than 1979, if he chooses not to?

KENNETH BAHR: Okay. I read this -- and we can disagree -- that you can't use the 1979 if you don't have the data.

MR. HILL: Mr. Bahr, isn't it true that there are only two instances in which a Court has allowed a post rent control base year: First, when the City in its rent control ordinance has exercised its discretion to adopt a different base year, and second, when the mobile home park was sold after the original base year and the purchasing park owner adjusted his purchase price accordingly? And I'm referring to the MHC case.

The next slide, please.

KENNETH BAHR: Well, I don't know how many cases this issue has come up, but I believe that the -- there's no doctrine that says that there's a constitutional requirement that you have to use a pre-rent control base year in an MNOI standard. I've often recommended it -- or I have recommended it. But I don't think it's required by law.

MR. HILL: Mr. Bahr, doesn't the City ordinance adopt a year other than 1979 as base year? Look at the second bullet point on that slide. Maximum rent, is the that in effect between June 1979 and May 1980?

KENNETH BAHR: Well, I think this is for the annual rent increase provision, this section.

MR. HILL: Mr. Bahr, let's move on.

LLOYD WERTHEIMER: Counselor, question if I may, please?

MR. HILL: Sure.

LLOYD WERTHEIMER: Your questions are about his testimony and not about the facts that we need to make our decision on, here. So I ask that you, instead of questioning him regarding his testimony, just ask the questions so we can gain information as we go along.

MR. HILL: I'm trying to address the three legs of his opinion we addressed at the beginning. And the three legs of his opinion are key factors, here. I finished the one leg on the base year and I'm going on to the second leg right now, if I may.

LLOYD WERTHEIMER: As long as we get some information to help our decision up here, that would be great.

MR. HILL: Okay, thank you. Mr. Bahr, are you an appraiser?

KENNETH BAHR: No, I'm not.

MR. HILL: Have you ever been qualified to testify on market rents?

KENNETH BAHR: No, I'm not an appraiser. I don't think I could qualify to testify on that.

MR. HILL: Is your report -- your report, on page 22, includes an estimate of market value for 1982; is that correct?

KENNETH BAHR: Well, just a minute -- yeah, I used data that Mr. Brabant's supplied.

MR. HILL: Did you use proper appraisal techniques to come up with the number you did?

KENNETH BAHR: No. I relied on another appraiser, which certainly, and expert in putting together their testimony can rely on information from other experts.

MR. HILL: We'll move on to the next points of your appraisal that deals with 1982 expense information. Let's start with where that operating income figure came from. It came from 1983 memorandum prepared by Michael Martello, a Deputy City attorney, addressed to the Rent Adjustment Commission for purpose of ruling on an application under the City Rent Control Ordinance, did it not?

KENNETH BAHR: Yes, it did.

MR. HILL: And in that memorandum, summarized the City's review of the Ranch's 1982 gross income and net operating expenses, and concluded by finding and establishing what would be the net operating income under the City rent control ordinance, did it not?

KENNETH BAHR: That's my understanding of it.

MR. HILL: Okay. Next slide. Next slide. That's the statement that's in the report.

KENNETH BAHR: What number slide so I can follow?

MR. HILL: I'm sorry?

KENNETH BAHR: Is there a slide number so I can follow? Because I can't see any of these.

MR. HILL: Oh, okay. I'll read it to you. It says, "When" --

LLOYD WERTHEIMER: We've -- one moment. We've got a printed copy during the break, so if you could let us know what page it's on.

MR. HILL: Sure. It's on Page 10.

LLOYD WERTHEIMER: Page 10.

MR. HILL: I have a printout of it somewhere, here. Not here.

Okay. Moving on. Mr. Bahr, is it presumed that -- under Evidence Code 664 it's presumed that an official duty is regularly performed, is that not correct?

KENNETH BAHR: I can't testify about the Evidence Code.

MR. HILL: Okay. And do you have any reason to believe that Mr. Martello did not accurately state what the City -- what the net operating -- what the operating expenses would be for 1982 in that memorandum?

PATRICK HEHIR: Counselor, let me just say that we're getting to a point where you're starting to get beyond what we would consider in this type of situation --

MR. HILL: Well, I think it's important, here, Mr. Hehir, and I understand your concern, here. Mr. Bahr has disagreed with Mr. Martello's statement of the net operating expenses, and there's no basis in his report to the explain why Mr. Martello's statement of operating expenses is not correct.

PATRICK HEHIR: Well, then, that might be the question, instead of going into more detail of what we would consider something that would happen in trial.

MR. HILL: Okay. Mr. Martello -- Mr. Bahr, do you have any reason to believe that Mr. Martello failed to make an adjustment regarding imputed management and administrative expenses in his 1983 memorandum? Assuming one was required.

KENNETH BAHR: He would have been required to do it if they were over 8 percent. And if they were under, my understanding is he wouldn't have been required to make an adjustment.

MR. HILL: Let's look at that City regulation you're referring to, 3.02. Isn't it true that 3.02 applies only when the park owner voluntarily decides to seek an adjustment for imputed administrative and management expenses?

KENNETH BAHR: You said 3.02?

MR. HILL: RAC, sub 2, Section 3.02. Next slide, please.

KENNETH BAHR: This is on page 12?

MR. HILL: Yeah. There's nothing about that section that mandates that a park owner include an adjustment for imputed management and administrative expenses, is there?

KENNETH BAHR: No -- I don't -- yes, the park owner's not required to impute expenses if they didn't record -- you know, they're not allowed -- they're not required to impute them if they did the services themselves.

MR. HILL: Okay. I'm sorry, I was referring to Section 2.11, but that's the one you were reading from, I assume. It's not the same one -- the slide that we just reviewed is one I'm talking about but I used the wrong section number, it's 2.11.

KENNETH BAHR: So you're talking about the section where it says, "When the landlord performs different services in the base year and the current year, an adjustment will be allowed"?

MR. HILL: Yes. And the question was: There's nothing mandatory about that section, is there?

KENNETH BAHR: No. First of all, that analysis was made pursuant to a return on investment standard. And I made an adjustment because I was doing -- undertaking a maintenance of net operating income standard and I felt there had to be comparability between the base year and the current year.

MR. HILL: Let's skip ahead to the next slide. Okay. Mr. Bahr, you came up with your own form for determination of an imputed base year, didn't you, in this statement, "Subject to the gap and available information, an alternate calculation is included which increases the 1982 operating expense level to an amount which limits the rate of operating costs increases from 1928 to 2009 to the rate of increase in CPI."

Mr. Bahr, is that formula that you used ever been approved by a Court or used by you before?

KENNETH BAHR: Yes, it has.

MR. HILL: When?

KENNETH BAHR: Okay. The problem is I've prepared, you know, more than 50 of these reports, and I don't remember specifically which case it was used in, but I have used this type of approach in the past.

MR. HILL: Last point I want to address is your inflation indexing adjustment. Mr. Bahr, isn't it true that you apply a 50 percent inflation indexing adjustment to base year net operating income, despite the fact that no such reduced inflationary standard is set forth in either the City's ordinance or regulations?

KENNETH BAHR: Well, I believe that the ordinance and regulations say that base period net operating income is presumed to provide a fair return, and there's no provision in the ordinance or regulations setting forth how much indexing is required. That's the -- that's my reading of the ordinance. It doesn't -- if it said 100 percent was required, I'd only use 100 percent, if it said 50 percent was required, I'd only use 50, but my reading of it, it doesn't specify here.

MR. HILL: Mr. Bahr, isn't is true in none of the California cases which you cite, did the courts ever apply less than 100 percent inflation indexing adjustment where the City or Rent Adjustment Board did not expressly adopt such a standard in advance of the hearing?

KENNETH BAHR: I'm thinking for a minute. In Escondido, there's no -- there's just a list of factors, and in that case, I use less than 100 percent -- I listed indexing at 175, 50 percent, to the best of my memory, and the Board used 50 percent, and the Court upheld it.

MR. HILL: Mr. Bahr, wasn't there, in that case, a City regulation stating that an inflation index adjustment must be less than 60 percent? To cite page 15 of the opinion.

KENNETH BAHR: Was it -- I'd have to go back and look at the opinion.

MR. HILL: All right. Mr. Bahr -- I'm trying to move quickly. I have no further questions for Mr. Bahr.

Mr. Brabant? Good evening, Mr. Brabant.

JAMES BRABANT: Good evening.

MR. HILL: I hear from my partner, Mr. Coldren, that you had a tough day on the witness stand today. I understand that you apologized to it Court for your methodology and opinions in the Court. Is that the case?

JAMES BRABANT: No, I never --

PATRICK HEHIR: Are you talking about a different case or are you talking about tonight?

MR. HILL: No, Orange County Superior Court today.

PATRICK HEHIR: Let's stick to the testimony tonight.

MR. HILL: Mr. Brabant, on page 19 of your report, you state, "It is necessary to adjust the rental data we do have for the closest two years of 1983 and 1986." Is that true, that you adjusted the rental figures for the comparable parks?

JAMES BRABANT: Yes. I adjusted to 1979 from the only -- the closest two dates where we had rental information from comparable parks.

MR. HILL: Mr. Brabant, can you briefly summarize what adjustments you did for the rental figures for the comparable parks?

JAMES BRABANT: Yeah. You mean -- oh, to get to my adjusted figure for 1979?

MR. HILL: Well, what adjustments did you do for each park? Did you do the same adjustment for each park?

JAMES BRABANT: Yes, I did.

MR. HILL: And what adjustment was that?

JAMES BRABANT: I adjusted at the rate of 6 and a half percent per year for the four years between 1983 and 1979.

MR. HILL: And did you state on page 19 of your report that there was no rental data from which you could adjust comparable rents? I quote, "There is no rental data to show exactly how much rents were being increased during this four year period."

JAMES BRABANT: That's correct. Because we didn't have rental data for 1979 to show increase -- what increases up to 1983. We just had to work backwards from '83 back to '79.

MR. HILL: So to get right to the point, you, essentially, estimated the adjustments you made to comparable rents, didn't you?

JAMES BRABANT: I estimated them based on the way the rents were increasing between the three year period 1983 to 1986.

MR. HILL: I'm going to quote from page 19 of your report, "After analyzing the available rental data, I have made estimates of the adjusted 1979 rent for each of the five parks. From that data, I've been able to provide an opinion of the market rent of Ranch Mobile Home Park in base year of 1979." Is that -- that's what's stated on page 19 of your report; is that correct?

JAMES BRABANT: Yes.

MR. HILL: Okay. Now, let's turn to page 20 of your report. There, you discuss your adjustments for each one of the comparable rents. Mr. Brabant, did you use a different estimated adjustment for each one of the parks or the same one for each one of the parks?

JAMES BRABANT: I calculated the percentage difference between 1983 and 1986 for each of the five parks where we had data for both of those two years.

MR. HILL: And those adjustments were made to the average monthly rent of the comparable parks, weren't they?

JAMES BRABANT: Yes.

MR. HILL: Mr. Brabant, can you provide me with your definition of "market rent"?

JAMES BRABANT: "Market rent" would be the estimated rent that you would expect, and in this case, we're talking about space rent in a mobile home park. If you -- you know, any open market, if you allow reasonable time for, you know, the property to be marketed and there was no undue duress on either side, either party to the transaction.

MR. HILL: On Page 5 of your report you define "market rent" as, quote, The most probable rent that a property should bring in a competetive and open market, close quote. Is that correct?

JAMES BRABANT: Yes.

MR. HILL: Mr. Brabant, I don't know of any property owner that sees the highest rent available on the market that will decide to charge average rent, do you?

JAMES BRABANT: I think -- I'm sorry, your question was -- he wouldn't charge --

MR. HILL: Would a property owner -- on open and competetive market decide to choose the average rent of other competitors or would they try to get highest rent?

JAMES BRABANT: Well, we're talking about a concept of market rent for all of the spaces in this mobile home park. I don't think it would make any sense at all to look at the highest rent of one space in one park and then apply that to all the spaces in the park you're appraising. I looked at the average space rent in the comparable parks and applied that same average to the subject park.

MR. HILL: Isn't the highest rent, the rent that a property owner would seek on the highest rent that's available on the open market, the one that a property owner would normally seek?

JAMES BRABANT: Well, the property owner -- sure, he would try to seek the highest rent. And, of course, the tenant would try to pay the lowest rent.

MR. HILL: Mr. Brabant, isn't it true that California Evidence Code Section 822.84 and B exclude from evidence any appraisal where the appraiser bases -- where the appraisal is based on adjustments of the comparable rental values?

JAMES BRABANT: You're talking about Evidence Code and eminant domain?

MR. HILL: It applies in other case if you read subsection B, it applies that same provision to all other cases as well, and it says it excludes from evidence any testimony based on an estimate of comparables. Is that correct?

JAMES BRABANT: No. There's nothing in the Evidence Code that says you can't make adjustments to comparables. And what's that talking about is appraising the comparable. For instance, if you had an a -- if you were appraising a vacant commercial lot and you wanted to use as a comparable, a similar lot, but that lot had an office building on it, but you decided well, I'm going to -- I figure -- so they paid $1 million for the office building, I think the building was worth 500,000, so the land must have been worth 500,000. That's appraising the comparable. But you could, certainly -- you're certainly allowed to make adjustments to comparables.

MR. HILL: I'm not talking about adjustments. But didn't you make estimates of the comparables, here, Mr. Brabant?

JAMES BRABANT: No.

MR. HILL: Didn't you, essentially, appraise the comparables here?

JAMES BRABANT: No, I didn't. I adjusted the comparables based on market evidence from the data that we had.

MR. HILL: No further questions of this witness.

LLOYD WERTHEIMER: Thank you. Residents` lawyer, Shandra?

MS. SPENCER: Thank you.

LLOYD WERTHEIMER: Do you have questions?

MS. SPENCER: I do.

LLOYD WERTHEIMER: Okay.

MS. SPENCER: Thank you. I realized I didn't give my City of residence when I came up here last. I don't know if it makes a difference, but my office --

LLOYD WERTHEIMER: Oh, it does. You can't go on unless you do.

(Laughter.)

MS. SPENCER: My office address is in Los Angeles, but I'm a resident of Oak Park, here in Ventura County.

LLOYD WERTHEIMER: And we're on a fact finding tour, here.

MS. SPENCER: Oh, I understand. I heard you.

So I'm going to address these questions generally to Staff, and I'm not quite sure who amongst the four members here want to answer them. But I'll leave it up to you guys to pick and choose because there seems to be some division of labor here that I can't quite understand.

LLOYD WERTHEIMER: How about you just address the Staff and they'll choose.

MS. SPENCER: That's exactly what I was planning to do.

The first question is with respect to the Applicant of the TDP restrictions to the park. Is it the Staff's position that the rent stabilization ordinance, because it was subsequently adopted, somehow supersedes the TDP restrictions for the park?

CHRIS NORMAN: That's one of the reasons.

MS. SPENCER: Okay. So is it the Staff's

position that the TDP restrictions, as they exist in the TDP for this park, are not enforceable?

CHRIS NORMAN: What we're stating is that this type of application for a just and reasonable return, there's no mechanism in the resolution for that type of application and, therefore, it must be processed under the ordinance, the only regulation that deals with that type of application.

MS. SPENCER: Okay. So is it the Staff's position, then, that if the Rent Adjustment Commission were to adopt or to adopt a rent increase based on this adjust reasonable return application, that the TDP restrictions are not longer applicable and that the decision under the Rent Adjustment Commission somehow supersedes those?

CHRIS NORMAN: We have no position about whether those other restrictions are valid or invalid. What we're saying is to process a rent increase application, it must be done through the ordinance. If you look at the '84 resolution, the 11.5 percent rate of return is not tied, in any way, to the income of the tenant. So we feel that this can be processed this way without having to address, in this hearing, the status of those restrictions.

MS. SPENCER: Okay. Because there was some discussion in the Staff report -- and I suppose it sounds like these initial questions are best addressed to you, Mr. Norman -- there was some discussion in the Staff report about the current ordinance does not -- and this is at page 8 of the Staff report in the first paragraph, in the third sentence, it states, "The current ordinance does not exempt the Ranch Mobile Home Park from its purview, and therefore, would trump any conflicting resolution."

So it's the Staff's position that the rent stabilization ordinance trumps Resolution 84-037? Is that what you're trying to say there?

CHRIS NORMAN: In terms of this type of application, yes.

MS. SPENCER: Okay. Has the Staff submitted anything to the City Council in terms of this application to determine whether or not the City Council is going to come to a conclusion with respect to that trumping discussion? Or is this strictly been submitted to the Rent Adjustment Commission?

CHRIS NORMAN: I'm not at liberty to say whether the City Attorney's office has had discussions with Counsel regarding that issue.

MS. SPENCER: That wasn't my question. Has any formal request for a hearing or consideration by the

City Council been made by Staff to the City Council?

CHRIS NORMAN: I'm sorry, for what, though?

MS. SPENCER: For a determination as to whether or not the resolution trumps the ordinance.

CHRIS NORMAN: No.

MS. SPENCER: Okay. When did the rent stabilization ordinance first become applicable to this park?

CHRIS NORMAN: I don't think it's fair for me to try to engage in a hypothetical. It's Staff's position that it applies to this application.

MS. SPENCER: So the date on which the rent stabilization first became applicable to this park is not relevant to these proceedings, is that what you're saying?

CHRIS NORMAN: I'm saying that this is the first application which we are using the ordinance.

MS. SPENCER: Okay. Well, let me direct this question, then, to Mr. Bahr.

Mr. Bahr, you seem to be the expert in all things related to rent control law. So I'm going to defer to you on this question. The ordinance itself states that the base year should be 1979; correct?

KENNETH BAHR: Yes. With the exception --

MS. SPENCER: With some exceptions. And that is based on the fact that the rent stabilization ordinance first came into effect in 1980 and, therefore, 1979 would be presumed to be the year when there's fair market rents; is that correct?

KENNETH BAHR: Right, that's my understanding.

MS. SPENCER: And that's consistent with the case law about establishing base years that the presumption is the year before, and absent exceptional circumstances or Vaga adjustments, that the year before a rent stabilization ordinance goes into effect, should establish what the fair market value is; is that correct?

KENNETH BAHR: I don't think -- I'd have to go back and look at the opinions. I don't think they've been that specific about saying what the base year should be, and more they've said that whatever the base here year is, it should be a fair starting point.

MS. SPENCER: Based on fact that this ordinance first went into effect in 1980, is it your opinion that 1979, in absence of an exceptional circumstances, is a fair starting point?

KENNETH BAHR: Yeah. Yes, I believe it would be a fair starting point -- or it is.

MS. SPENCER: So what if this, as we know happened here, the rent stabilization ordinance was never actually applied to this park? So we have no -- we don't have the same presumption that the rent stabilization ordinance went into effect for this park in 1980; is that correct?

PATRICK HEHIR: Really quick, are you doing a hypothetical?

MS. SPENCER: Yeah. I'm trying to figure out what difference -- what these difference these base year makes for purposes of determining what would be the fair base year for the Rent Adjustment Commission to apply. And I want to see what the City's experts are saying on this.

PATRICK HEHIR: As I told other counsel, we're trying to get to the facts what the testimony is and ask questions about the facts of the testimony.

MS. SPENCER: Okay. Would it be fair, given the fact that rent stabilization ordinance has never been applied to this park to date, would it be fair to use 2009 as a base year?

KENNETH BAHR: Well, I guess, if you used 2009, you'd still have to start with a rent -- with the Vaga concept, you'd still have to start with a rent that reflected market conditions --

MS. SPENCER: We'd have to figure out if you make adjustments. But let's focus -- I agree with you, we'd have to figure out whether Vaga applies. But given the fact that there's never been any application of the rent stabilization to this park, would it be fair to use 2009 as the base year?

KENNETH BAHR: Yeah, I'd say -- when I answer that, when you ask fair, it is a little different than you know, what is the purpose of the ordinance. But, you know, let's say in the abstract is it -- would it be constitutionally fair? Yeah, I think it would be constitutionally fair.

MS. SPENCER: It would be constitutionally reasonable?

KENNETH BAHR: Yeah.

MS. SPENCER: Would you agree with that?

KENNETH BAHR: Yeah.

MS. SPENCER: So in the park owners` application, their position is that somehow -- and based on my understanding of the attorney's memo that was prepared in June of this year -- that somehow the rent restrictions imposed by the development approvals expired as of 2007. Did you read that in their application, that there was a 30-year limit?

KENNETH BAHR: Well, I might have read it; I don't remember.

MS. SPENCER: Okay. And in that, he seems to suggest that the first year that the rent stabilization ordinance would be applied to this park would be 2008. Did you see that.

KENNETH BAHR: I don't remember that.

MS. SPENCER: Okay. Let's assume that he's right, and that 2008 is the first year that the rent stabilization ordinance could have been applied to this park. Then based on the reasonableness, in terms of constitutional standard, would 2007 be considered a reasonable -- a fair year to use as the base year?

KENNETH BAHR: Well, I'd say this, I mean, you'd have to look at the applicable rent ordinance. But let's say there was no ordinance. We were discussing fair return --

MS. SPENCER: I'm saying, let's say the first time this ordinance could be applied to the park was in 2008. Let's assume that's correct.

KENNETH BAHR: Okay.

MS. SPENCER: Okay. Then would it be reasonable to use 2007 as a base year?

KENNETH BAHR: Well, I think --

MS. SPENCER: From a constitutional perspective.

KENNETH BAHR: Okay. I think that the arguments for and against using 2007.

MS. SPENCER: If the first time that the ordinance were to be applied was -- to this park was in 2008, would it be reasonable to use 1979 as a base year?

KENNETH BAHR: I think it's reasonable, their rationale for doing that because, you know, this was the starting point for rent regulation for what they're looking at in order to determine what's -- in order to determine what's reasonable, you look at the other parks. So the rationale for going back to 1979, because that's when the other parks weren't regulated is a starting point, so there are rationale for doing that.

MS. SPENCER: And there's a rationale for using 2007 as a base year?

KENNETH BAHR: Yeah --

MS. SPENCER: Under the --

KENNETH BAHR: I'd say the rationale, yeah.

MS. SPENCER: And Staff would agree that this park does lend itself to exceptional situation given the history; correct? You would agree with that? It's an exceptional -- I think the word is exceptional -- unique history. It has a unique history, you would agree with that?

KENNETH BAHR: Yes.

MS. SPENCER: Have you ever been asked to opine as to what a fair base year would be for a park who has a history similar to this one?

KENNETH BAHR: No, this is the first case I've been in with a park history like this.

MS. SPENCER: Where there's development approvals which establish the rent ceilings; is that correct? This is the first time you've had to deal with that?

KENNETH BAHR: Yes. As far as I remember, yes.

MS. SPENCER: And the scope of your expertise is, generally, limited to rent stabilization ordinances which are unilaterally imposed by the local body on the park owners; correct?

KENNETH BAHR: That's been the standard -- yeah, that's been the standard situation.

MS. SPENCER: And have you ever had to opine as to whether or not the fair and reasonable -- the just and fair return analysis should apply in a situation where the rent ceilings are established by development approvals, as opposed to a rent stabilization ordinance.

KENNETH BAHR: No, I haven't dealt with that issue previously.

MS. SPENCER: So the application of the development approvals and the temporary development permit conditions and everything that goes with that is beyond your purview of your expertise; correct?

KENNETH BAHR: You mean how they work?

MS. SPENCER: Yeah. And what that means in terms of a just and reasonable return, if anything.

KENNETH BAHR: Well, I see them as separate issues. I mean, there's a development agreement or whatever -- whatever occurred, that's one set of standards. And I felt like the just and reasonable under the ordinance was another set of standards.

MS. SPENCER: Have you ever been asked to apply a just and reasonable return analysis to a situation where the rent ceilings were based on a development -- or the development approvals?

LLOYD WERTHEIMER: Counselor, I think he's answered that. We can go forward?

MS. SPENCER: Okay.

Question to staff: Has the park ever attempted to register under the rent stabilization ordinance?

CHRIS NORMAN: To the best of my knowledge, no.

MS. SPENCER: Okay. Has the City ever asked the park to register under the rent stabilization ordinance?

CHRIS NORMAN: To the best of my knowledge, no.

MS. SPENCER: Now, let's go to -- again, probably going back to Mr. Bahr. Does the applicability of the Vaga analysis differ if the rents are set based on two-sided development deal as opposed to a one-sided rent stabilization ordinance?

KENNETH BAHR: No, I felt that the Vaga analysis is based on the concept of setting rents that are comparable to other comparable properties in a base year.

MS. SPENCER: Okay. Let's talk about other comparable properties. Is there -- have you done any analysis as to whether or not there are other comparable affordable housing properties, even within 100-mile radius of the City of Thousand Oaks, to determine what the comparable rent would be for an affordable housing project such as the Ranch Mobile Home Park?

KENNETH BAHR: I saw regular that he Vaga requirement, more what that is meant is meant comparable under -- with market conditions, and I didn't see the property of affordable housing restrictions was not operating under market conditions.

MS. SPENCER: So is there a market for affordable housing? Is there a market rent that can be established for affordable housing?

KENNETH BAHR: No. I mean -- affordable housing is based on the concept that you set the rents according to a different standard, which is affordability, rather than fair return and market.

MS. SPENCER: It's not --

KENNETH BAHR: It's a different standard.

MS. SPENCER: It's not a free and open market, it's a different set of circumstances?

KENNETH BAHR: Right.

MS. SPENCER: Let me ask, then, to you -- help me with your last name, I apologize.

JAMES BRABANT: Brabant.

MS. SPENCER: Brabant. Mr. Brabant, have you ever done any appraisals of affordable housing projects?

JAMES BRABANT: Yes.

MS. SPENCER: Okay. Is there a market for affordable housing? Is that something different than what we're talking about in terms of the fair market, here?

JAMES BRABANT: Well, there's a market. Are you talking about the rental for sale of the units? Or are you talking about developing a project and renting or selling it out? Affordable to who?

MS. SPENCER: To establish rents for a very low income affordable housing project, is there a way to do an appraisal of other comparable very low income affordable housing to determine what the market is for that?

JAMES BRABANT: Well, an appraisal of the property for the value to the owner of the property? Or are you talking about the rental of the individual units?

MS. SPENCER: Appraisal for the purposes of establishing what the rent should be.

JAMES BRABANT: Well, again, the rents -- they're not set by market standards, they're usually subsidized rents based on the income of the residents. So it's not a market derived number that you're coming up with.

MS. SPENCER: So are there any industry standards for trying to figure out what the rent should be in a very low income affordable housing project by using an appraisal method?

JAMES BRABANT: Sure. If your talk is to value the entire project, let's say, for lending purposes or something, they're going to want to know, well, how much rental income is going to be produced by this project. So you're going to have to come up with estimates, well, if there are standards as to how many units have to be rented to very low income residents that have a certain income level, and then others that are just low, but not very low. And then you move up the standard and you can -- but it's not based on the market, that's based on the income level and how many of those various types of people that you have to rent to.

LLOYD WERTHEIMER: Counselor, can I ask you a question?

MS. SPENCER: Sure.

LLOYD WERTHEIMER: Are you just trying to establish there's a standard market for -- standard rates and prices for an open market, versus one that has special conditions on it set by cities relevant to income and age, which this is about here?

MS. SPENCER: I'm trying to determine whether or not there are any industry standards within the appraisal industry to try to help determine what the rent should be in those -- what the fair market for those -- if there is any such fair market for affordable housing projects.

LLOYD WERTHEIMER: Is there such a difference, sir?

JAMES BRABANT: Well --

LLOYD WERTHEIMER: The open market versus something with so many special concessions to it, including what cities given up front for development and concessions?

JAMES BRABANT: Well, not if you're calling it "market rent." I mean, we know what rent was established for this particular project, so you know what the starting rent was as a low income project.

LLOYD WERTHEIMER: So is it fair to say each development, based on whether it has a certain age to it limitation, an income limitation, is unique and separate to just that the development, ergo, you can't have a standard that goes over City to City?

JAMES BRABANT: There's not a standard like that, that I'm aware of.

LLOYD WERTHEIMER: Thank you.

MS. SPENCER: And let me direct, actually, a question -- I think, probably Mr. Prescott as the community development director may have knowledge of this -- does the City have any other affordable housing type projects within the City of Thousand Oaks?

JOHN PRESCOTT: No. There are a number of affordable housing projects within the City that are owned by either the area housing authority, which is in the housing authority with the City of Thousand Oaks and other near by jurisdictions, and also by nonprofit housing providers such as many mansions.

MS. SPENCER: Are those rental properties?

JOHN PRESCOTT: Those are rental properties.

MS. SPENCER: And does the City have any input as to what may be in those properties as to what the rents are for those properties?

JOHN PRESCOTT: As Mr. Brabandt testified, the rents are usually -- not usually, they're definitely set to meet the income categories that the project is intending to serve. In other words, a low income project would have rents up to a certain level depending on family size, based on that particular income range. A moderate income would have higher rents based on that income range. And the requirements that families spend no more than certain percentage of their income for housing costs.

MS. SPENCER: So it's based on a percentage of the median income for those income levels is where the rent formula comes from?

JOHN PRESCOTT: That's an input to the formula. The income categories are defined by percentage of the median income. For example, a moderate income is anywhere from 80 to 120 percent of median income.

MS. SPENCER: And this year -- I think I pulled this number earlier -- would you agree with me this year's very low income for Ventura County is in the neighborhood of about $30,000 for a single person?

JOHN PRESCOTT: I can't confirm or not confirm that. I haven't looked at that data.

PATRICK HEHIR: Counsel, we getting off subject, here.

MS. SPENCER: Okay. So if you're trying to figure out what the rent that the should be established for a very low income housing project, you use some other formula other than the fair market rents that they came up with of $150; is that correct?

JAMES BRABANT: Yes.

MS. SPENCER: Do you know whether or not the rents that were established in the 1977 letter that was submitted by Mr. Hahn's accountant, were those consistent -- do you know whether or not those were consistent with very low income, affordable housing rents at the time?

JAMES BRABANT: No, I don't.

MS. SPENCER: And neither -- nobody on Staff was asked to determine that; is that correct? Correct? Nobody was --

CHRIS NORMAN: That's correct.

MS. SPENCER: Okay. So in terms of the Vaga analysis. The Vaga analysis, you've done that strictly based on free market, fair market conditions taking into no consideration the affordable housing restrictions based on this project; correct?

KENNETH BAHR: Right. They're different concepts.

MS. SPENCER: Okay. You would agree none of the parks that you evaluated to come up with $150 a month fair Vaga figure, had a any of the same requirements that the Ranch Park did?

JAMES BRABANT: Correct.

MS. SPENCER: So one of the -- this is directed to you Mr. Bahr -- where in the Municipal Code or the resolutions did you find authority for estimating the 1982 expenses? What allowed -- what did you find in there that allowed -- that you think allowed that to be done?

KENNETH BAHR: I think the ordinance allows -- I'd have to go back through it -- but generally, there's a provision, when you're looking at income and expenses, you can adjust based on reasonability -- and I think it's implicit on doing -- in the power to do a fair return analysis. And you know, that's what I would say it's based on. I'd have to go through the specific language, but that's always been understood that there can be adjustments made if the income and expenses are -- or should be adjusted for some reason.

MS. SPENCER: Let's move away from the income for a minute and let's focus on the expenses.

KENNETH BAHR: Okay.

MS. SPENCER: The expenses -- the expenses that you came up with for 1982 --

KENNETH BAHR: Right.

MS. SPENCER: -- were based on an estimate and some statistical extrapolations; is that correct?

KENNETH BAHR: That's correct.

MS. SPENCER: And that was based on an estimate pulling from some other actual year figures; correct?

KENNETH BAHR: That's correct.

MS. SPENCER: Where in the ordinance does it say that the Rent Adjustment Commission gets to make adjustment as opposed to having the actual, hard figures?

KENNETH BAHR: Okay. I think -- first of all, has the power to take into account other relevant factors, and as I say, I think that's -- I'd have to go back through all the regulations; I don't remember specifically what it says. But, you know, I think it's in those powers to review the income and expenses and -- you know, to make adjustments.

MS. SPENCER: Okay. So Section 3 of Rack 2 is the formula for determining what the adjustment can be; is that correct?

KENNETH BAHR: I'm looking for it.

MS. SPENCER: Take your time.

KENNETH BAHR: Which section are you talking about now?

MS. SPENCER: Section 3, the heading says, "Determination of eligibility for rent increases pursuant to the 1979 base year formula --

KENNETH BAHR: Yes.

MS. SPENCER: You got that?

KENNETH BAHR: Yes.

MS. SPENCER: Now, Rack 5 amends -- affords one portion of Section 3, which is 3.07; correct? At Page 3 Rack 5.

KENNETH BAHR: Page 3?

MS. SPENCER: Correct. It states at 3.07 the amended version, "A determination of eligibility for rent adjustment under this resolution shall be conducted on the basis of the comparison of two full years of data." Do you see that?

KENNETH BAHR: Yes.

MS. SPENCER: So would you agree, then, that by the City's own resolution, that there have to be two complete years of accurate data?

KENNETH BAHR: Well, it says "two full years of the data." And whether or not it has to be accurate --

MS. SPENCER: It's not important the data be accurate.

KENNETH BAHR: No -- well, let me say this: I'm not saying it's not important. I think that's the purpose of an analysis to make an adjustment or consider, you know, what weight to give it and how -- you know, it's accuracy, et cetera.

MS. SPENCER: Okay. Going to Section 4 of Rack 2, "Determination of eligibility for rent increases when 1979 operating income and expense information is not available." Do you see that?

KENNETH BAHR: I will.

MS. SPENCER: It's page 10 of Rack 2.

KENNETH BAHR: Okay.

MS. SPENCER: So this -- under this provision, another year may be substituted based on the full first year for which records are available; is that correct?

KENNETH BAHR: That's correct.

MS. SPENCER: And the premise of that is that the records have to actually be available; correct?

KENNETH BAHR: Yes.

MS. SPENCER: So the reason behind -- would you agree that the reason behind that is because expenses can vary significantly from year to year?

KENNETH BAHR: Well, I don't think that's -- the reason is because assuming there has to be some report of expenses for the year.

MS. SPENCER: We have to know what the actual expenses are? We need to know that.

KENNETH BAHR: Right.

MS. SPENCER: And it's important to know that, and the reason it's important to know that is to be able to evaluate the reasonableness of the expense; correct?

KENNETH BAHR: Yes.

MS. SPENCER: And in order to evaluate the reasonableness of the expense, you need to have exact data figures as to what categories go into that overall expense; correct?

KENNETH BAHR: Yes. And as I pointed out in my report, we had a very unusual situation, here. We had a total -- we had a total that was examined by Staff at a former point. We don't know what went into that examination, but it was reviewed by Staff, it wasn't just something that the park owner wrote down when submitting the application now. And as -- you know, there are rationale, you know, or problems with that kind of data, but on the other hand there are rationale for using that kind of data.

MS. SPENCER: And we don't know what kind of analysis was done by Staff of the 1982 expense figures; correct?

KENNETH BAHR: No, we don't -- they didn't say -- they say that they reviewed it.

MS. SPENCER: Okay.

KENNETH BAHR: Or put it this way, they clearly reviewed it from --

MS. SPENCER: And one are the categories of expenses that's significant for this park is the management and administrative expenses; correct? That's sort of the biggest -- big ticket item.

KENNETH BAHR: It's a significant expense, yes. It might be the biggest, I'd just have to go back. I'm not disagreeing with you.

MS. SPENCER: And the management and administrative expenses for under the current application need to be compared to the management and administrative expenses of prior years to figure out whether or not the dollar amount we have now is reasonable; correct? We need some historical data to compare the two.

KENNETH BAHR: Right. Well, let me say this: What I did was, you know, we didn't have the data going back to base, and so that's why I assume -- you know, I assume they were proportionate it base year to what they are now. That's what I did.

MS. SPENCER: You presume that, but you don't know that for a fact?

KENNETH BAHR: Well, because they had this non-record expenses, so I made an adjustment. Because the park owner was managing the property and so it wasn't recorded so we did -- I felt I did the best under the circumstances which was presuming they had the same ratio. I mean this is -- even if you have the total records, this is the kind of, you know, adjustment that I've commonly made when there's off-the-book expenditures -- a type of off-the-book expenditures because they're not recorded because they're done by the owner.

MS. SPENCER: One of the things that the rent stabilization ordinance requires is that the -- and the regulations require -- is that the expenses be reasonable in accordance with industry standards; is that correct?

KENNETH BAHR: Well, you have to point me to the section. I mean, I believe that.

MS. SPENCER: Let me find it real quick. Give me just a minute. Section 2.17 of Rack 2 states, "Operating expenses must be reasonable. Whenever a particular expense exceeds normal industry standards in a base year or in the current year for which a rent" -- "for which the application for a rent increase is made, the Rent Adjustment Commission shall determine whether the expense is reasonable." Do you see that?

KENNETH BAHR: Yes.

MS. SPENCER: Has any determination -- and I'll direct this to all Staff -- has any determination been made by Staff as to whether or not the specific expenses for either the base year or the current year being requested to be included in this application by the owner are reasonable under that standard?

KENNETH BAHR: Well, first of all, the overall expenses, you know, compared to, let's say, for a park this size were reasonable -- let's say, compared with a market rent, they were reasonable and the ratio of expenses was reasonable. And secondly -- and this is a little complicated -- what happened is because of the lack of data and also you had this factor of even if you had the data, the owner was doing their own work, so it was off the record so you had no record of it. But by making the base year expenses a percentage of what the current year expenses were, this was a type of compensating adjustment, in the sense, that if the current year expenses were high, I said the base year expenses were a percentage of those, so this provided, you know, a type of compensation. Because, basically, in a net operating income -- maintenance of net operating income analysis, the critical factor is the comparison. And here, you know, you said, "Well, it would be reasonable that these expenses went up by the CPI since the base year.

MS. SPENCER: Isn't the critical factor of what actually happens at this park? Because you start with the first year, the base year, and you figure out whether or not the expenses were so out of bounds with what was going on with the income, that you need to give them an additional increase in the rent; is that correct? We started -- isn't that correct that you've got to really do an in-depth analysis whether or not the expenses were out of bounds with the income increases; correct?

KENNETH BAHR: What you're saying is if the income increases weren't adequate to cover the expense increases.

MS. SPENCER: The allowable income increases.

KENNETH BAHR: Right.

MS. SPENCER: That's the purpose of a just and reasonable return type provision and a maintenance of net operating income is expenses are going up, but your income isn't going up; right?

KENNETH BAHR: Right.

MS. SPENCER: So one component, one very significant component of that is the actual operating expenses for both the base year and current year; correct?

KENNETH BAHR: Yes. And the problem here is, though, as I point out in the report is we have severe limitation. And this happens in other cases too, you're going back a very long period, you don't have all the data, you don't have all the information. And secondly, as I pointed out, even if we had all the information, we have this problem of a lot of the expenses weren't recorded in the base years, substantial percentage of them.

MS. SPENCER: And one of the things the Rent Adjustment Commission is allowed to do is if they don't have enough information, they can ask for it. "Give me more data"; correct?

KENNETH BAHR: They were -- the park owner was asked for all they had.

MS. SPENCER: The park owner did provide, I think it was about 888 pages of receipts for expenses; correct?

KENNETH BAHR: Yes.

MS. SPENCER: Did anybody on Staff go through those receipts and make sure that what they were claiming for expenses was reasonable and allowed under the ordinance, or did you just presume that everything they asked for was okay?

KENNETH BAHR: No. We did not go through the receipts. That's correct. But I also, to put this in perspective, one, the overall expense level was reasonable. And secondly, if we had reduced those expenses, because of the fact we didn't have the '82 data, if we'd reduced those expenses because the '82 expenses were based on 2009 expenses, we use the inflation adjustment, we also would have been reducing the '82 -- reducing the '82 expenses and increasing the NOI. So I don't think it would have had a substantial impact on the outcome.

MS. SPENCER: Well, the rent --

KENNETH BAHR: But I see the point you're making, but I'm saying, I don't think it would have had much of an impact when we had such other factors that were so enormous in this case, the NOI adjustment and the base rent adjustment that I don't think this would have had much impact. You know, in a perfect world I'd say, yes, we could have gone through the 800 pages of receipts.

MS. SPENCER: Now, the rent stabilization ordinance in it's implementing -- I think we're calling them "regulations," the racks, we're calling them regulations -- they actually provide for a maximum of an 8 percent cap on management and administrative expenses, don't they?

KENNETH BAHR: Yes, they do.

MS. SPENCER: And the management administrative expenses of this park well exceed that 8 percent cap; don't they?

KENNETH BAHR: Right.

MS. SPENCER: And they also don't allow for -- they only allow for certain categories of expenses to be included in management and administrative expenses; correct? They have an enumerated list?

KENNETH BAHR: Right.

MS. SPENCER: Is travel expenses in there anywhere?

KENNETH BAHR: That, I don't remember. But then -- see, but what I did -- whatever over estimate that -- whatever -- let's say they had an overstatement of management in maintenance in the current year, by making a base year a percentage of the current year, there was a compensating adjustment. I understand what you're saying, but there was a compensating adjustment, so if the common year expenses were inflated, the base year expenses were made proportional to those, and because we didn't have the actual, you know, data. And I think, under these particular circumstances, this was the best kind of analysis that was possible.

MS. SPENCER: I have another question about the expenses. The park owner was permitted a 20-year straight-line depreciation of the $500,000 initial investment of $18,700 and change; correct? Back in the early development approvals?

KENNETH BAHR: Right. I'm taking your word for it, they were allowed 18,000 a year depreciation.

MS. SPENCER: It was a 20-year straight line depreciation; correct?

KENNETH BAHR: I believe you. I don't remember.

MS. SPENCER: So that was in 1976.

KENNETH BAHR: Right.

MS. SPENCER: Which 20 years is up in 1996. Why did you give them a depreciation expense in 2010 in your report?

KENNETH BAHR: I didn't -- when I was using the net income comparison, I kept the depreciation, but I didn't keep the depreciation in the net operating income analysis. I took it out.

MS. SPENCER: Didn't you adjust the current year net operating income -- I thought I saw something in your report where you gave them back this depreciation expense. You're saying, none of your analysis that you relied on included the depreciation expense?

KENNETH BAHR: The only place in included it was when I made the net income comparison.

MS. SPENCER: When you were trying to figure out what the net operating income was for 2010, you afforded them an $18,000 depreciation expense; isn't that correct?

KENNETH BAHR: No.

MS. SPENCER: Okay. I thought that you reduced the net operating income this year by the $18,000 depreciation expense. That's the way I read your report. You're saying I'm incorrect?

KENNETH BAHR: That's not my -- yeah.

MS. SPENCER: Okay. I've been known to be wrong a few times in my life. All right. Then the next question I have is, let's talk a little bit about this issue of the recapture. It's Staff's position that under the rent stabilization ordinance, a park owner is entitled to capture the 31 of 33 years that they didn't take a rent -- didn't impose a rent increase on the tenants through the just and fair return formula; correct?

KENNETH BAHR: Well, just a minute. Let's -- I just want to make some things clear, so -- because there are different meanings of "recapture." And obviously, but let's just make it clear -- when you say "recapture" you don't mean charged rent for back years.

MS. SPENCER: No. But you get to ask for it now.

KENNETH BAHR: Well, okay -- I did the analysis -- you know, I did a maintenance of net operating income analysis according to certain methodology. I mentioned in the report what would have happened if they had implemented those increases, you know, what the current rent level would be. And as far as a right to recapture it, I mean, it's more, I did a fair return analysis under the rent control ordinance. I didn't make a determination of what rights the park owner had, except I looked in the perspective of a rent control analysis.

MS. SPENCER: Let's go through -- let's talk about that concept a little bit in the context of the City's rent control ordinance. In Rack 2, Section 2 -- that's Page 3 of Rack 2 -- there's a formula for determinating net operating income.

KENNETH BAHR: Just a second. Oh, here it is, I have it. Okay.

MS. SPENCER: So net operating income is determined by subtracting the annual operating expenses from the gross total income, and that's what you did?

KENNETH BAHR: Right.

MS. SPENCER: Okay. So when you were calculating gross total income under Section 2.01 for the current year, you included the actual rental unit income which is Section A; correct? Section 2.01 A?

KENNETH BAHR: Right.

MS. SPENCER: That's the actual cash the park owner received from the residents of this park; correct?

KENNETH BAHR: Right. Well, there also -- I think there was some utility income which was excluded.

MS. SPENCER: Okay. You excluded that; you didn't include that?

KENNETH BAHR: Right. That, I saw as an offset.

MS. SPENCER: There's no garage and parking income and no stores and offices income; correct?

KENNETH BAHR: That's my understanding.

MS. SPENCER: There is also a provision here where it states that you're supposed to include the adjusted income for below market rentals. Do you see that?

KENNETH BAHR: Yes.

MS. SPENCER: Now, under Section 2.05, it defines what constitutes the adjusted income for below market rentals. When you did your analysis, did you apply Section 2.05 to adjust the income for below market rentals for the current year -- for the 2009 year?

KENNETH BAHR: I saw this as having a different purpose. This was, you know, when look at the example here, I see this as making sure -- if the landlord has a right to charge somebody more money, that they -- let's say they're giving a space to a relative for $100 and it's worth 300, they can't say, "Well, I'm only getting $100 for that." I see that as having a different purpose.

MS. SPENCER: Okay. Well, what that ordinance said -- what the resolution says is, "Adjusted income for below market rentals it an amount representing the difference between the actual rent collected and then 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 landlord's family, the unit of a resident manager, or any unit where the rent increase is permitted by the rent stabilization 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."

Would you agree with me that this landlord could have made rent adjustments between -- for all 33 years, between 1977 and 2010?

KENNETH BAHR: Yes, he could have made -- yeah -- he could have.

MS. SPENCER: And he didn't make those rental increases for 31 of those 33 years; correct?

KENNETH BAHR: That's correct.

MS. SPENCER: So -- and if you go on to Section 3.04 at Page 9 -- excuse me, 3.03 of Page 9 for the formula, to determine that -- you determined the current year net operating income in accordance with the provisions of Sections 2 to 2.17. You see that?

KENNETH BAHR: Right.

MS. SPENCER: So you're supposed to determine the current year net operating income in accordance with all of those sections, including 2.05; correct?

KENNETH BAHR: I understand. But I don't think, you know, reading this, I don't see that's the purpose, so you can impute income to the park owner that they didn't take and can't now charge.

MS. SPENCER: Doesn't the ordinance say exactly that in its plain language that for the current year you have to impute the income that they could have charged, but they chose not to? Doesn't it say that?

PATRICK HEHIR: Counsel, we're getting into an argumentative state, here. And this is, again, not a trial or courtroom. So this is -- you asked him his opinion, he gave his opinion.

MS. SPENCER: Okay, How do you interpret that provision of the ordinance, then, for the current year?

PATRICK HEHIR: And one more thing, please. Since we're trying to get this information -- counsel, please make sure you give him time to answer, as well.

MS. SPENCER: Okay.

KENNETH BAHR: What I see the purpose of this provision is so that somebody doesn't come in, they apply for a rent increase, and they say, "I'm only getting $100 income," they get a rent increase based on that, and the next day, they charge 500, because that's what they could have charged, I mean, when it's -- it talks about non -- rentals to family members the resident manager, et cetera, it's a provision in here so people can't -- so park owners can't understate their income, and then, you know, yet on that basis get a rent increase. And I don't see that -- this is not this kind of case, this is a case where the park owner didn't take the rent increases and can't, you know, under the affordable rent agreement, cannot get them.

MS. SPENCER: Well, under your -- that interpretation of the purpose, how does that last -- those last couple clauses come into play? How can you have this supply in any circumstances other than the circumstances that we have exactly here?

KENNETH BAHR: Well, I told you, it could apply in the situation where, let's say, somebody's renting to a relative or a manager, non-arm's-length transaction. And I think if you combine this with -- you know, you have the price level adjustment provisions in the regulations.

MS. SPENCER: Which is just for the base year?

KENNETH BAHR: No. It's more than that.

MS. SPENCER: The price level adjustment is only added for Section 3.04 to the base year; correct? There's no price level adjustment for the current year, other than possibly 2.05.

KENNETH BAHR: I want to -- just a minute. I'm looking at my report. There's a provision -- my understanding is that the owners were entitled to price level adjustment if, in order to make up for situations where they didn't implement rent increases that they could have.

MS. SPENCER: But according to the ordinance, the only wording I see about price level adjustment is in Section 3.04, which only applies to the base year. I'm trying to figure out what we do about the current year, if anything, under your analysis of this rent stabilization ordinance.

KENNETH BAHR: Well, I think it applies to more than the base year because it infers where increase is permitted by the rent stabilization ordinance or the guidelines could have been. So that clearly has to refer to increases that were made after -- or could have been made after the base year but weren't.

MS. SPENCER: So it should apply to the current year?

KENNETH BAHR: Right. Well, I think the purpose of it is to provide that an owner can get an adjustment to make rent increases when they have the power to make them but didn't make them in the past.

MS. SPENCER: All right. Does resolution 84-037 allow for you to -- is that a use-it-or-lose-it provision or does it allow for a recapture for the years where the increase was not taken? If you have any opinion on that.

KENNETH BAHR: Just a second. I want to --

okay, so go to the section you're referring to.

MS. SPENCER: I'm actually referring to Resolution 84-037.

KENNETH BAHR: Right.

MS. SPENCER: Does that allow for a recapture of the prior years or allow an owner to make up for not taking rent increases or 31 or 33 years?

KENNETH BAHR: No. This regulates the affordable -- this involves the affordable rent restrictions, not the rent control ordinance.

MS. SPENCER: I understand that. But there was some discussion in the reports that 84-037 doesn't allow for recapture, whereas, the rent stabilization ordinance does.

KENNETH BAHR: That's correct.

MS. SPENCER: Okay. When you came up with your recommendations for the rent increase using the just and reasonable return analysis, did you take into account whether or not the -- between 12,000 and possibly $30,000 a year annual income for these residents -- could actually afford those rents that you were recommending? Did you take any of that into consideration?

KENNETH BAHR: No, because the fair return law has been -- is to provide an owner a fair return, and the rent controls have prevented -- their purpose is to prevent excessive rent increases. They're not laws that tie the rents to the income of the tenants, the rent control laws, as opposed to the affordability -- the affordability agreement didn't do it directly, but the rent controls in fair return analysis -- there hasn't been a fair return analysis where the allowable rent is dependent -- you know --

MS. SPENCER: Is income-dependent?

KENNETH BAHR: Yeah.

MS. SPENCER: Income of the residents?

KENNETH BAHR: Yes.

MS. SPENCER: Of the home owners?

KENNETH BAHR: Yes. Because the fair return is more, you know, to guarantee somebody a constitutional fair return, and while preventing excessive rent increases.

MS. SPENCER: Did you -- now under Section 5-25.06, administrative adjustments to rent, which is subsection B, is where the just and reasonable return provision is, it states that, "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 increases 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."

Whoever crafted that, that was very long sentence. Did you -- anybody on City Staff -- make any findings or do any investigation as to whether the rent increases recommended by you were in keeping with the purposes of the chapter?

KENNETH BAHR: Well, the rent controls they're a balancing mechanism by preventing excessive rent increases. And I'd say it was in keeping -- and at the same time a fair return has to be permitted.

MS. SPENCER: Okay. We got the fair return -- the just and reasonable return part. But the purposes of the chapter are set forth in Section 5-25.01. Did anybody on Staff prepare any findings as to whether the rent increases that you propose are in keeping with the purposes of the chapter? That's my question. Did anybody make such findings or recommended findings?

KENNETH BAHR: We did not -- the analysis that I did was a fair return analysis.

MS. SPENCER: Okay. So it wasn't actually an analysis of what's required under the rent stabilization ordinance, it's just part two of that. Part one hasn't been done?

KENNETH BAHR: Well, I'd say, part of the fair return analysis, on one hand is to provide the park owner with their constitutional right to a fair return, but also it's a methodology designed to prevent excessive rent increases. Because it ties the rent increases to the operating cost increases and the CPI.

MS. SPENCER: Anywhere in your report did you take into account the investment backed expectations of these residents and their trailers after 31 or 33 years not getting any rent increases, and being told they wouldn't get any? Was that taken into consideration?

KENNETH BAHR: Well, I guess my reaction -- that's not a fair return issue. If they were told they wouldn't get any, that's another type of legal issue.

MS. SPENCER: And actually, the rent stabilization ordinance says that if the contract doesn't allow for the rent increases, the rent stabilization ordinance can't supercede that; correct?

KENNETH BAHR: Well, I don't know -- I don't know if the ordinance says that, but my understanding, that's the way the contract law would work.

MS. SPENCER: Well, actually, the ordinance does say it at Rack 2, Section 6.03. "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."

Did anybody on Staff try to figure out whether there was anything on these residents' leases that would prevent this increase from going into effect?

KENNETH BAHR: No. I'd say -- put it this way, this was a fair return analysis. I'll talk about myself. I did a fair return analysis, and I didn't do analysis of whether there's at lease that overrides or supersedes or preempts whatever park owner is allowed to do the fair return analysis. And I see that as something beyond the scope of the fair return analysis. I'm not saying it's a fact or it doesn't exist.

MS. SPENCER: So my question is to all the Staff, did anybody do that? Make any kind of investigation into that, for the Commission's benefit?

CHRIS NORMAN: No.

LLOYD WERTHEIMER: Counselor?

MS. SPENCER: And the last question -- if you don't mind is did -- was there ever any consideration taken for the fact that this owner didn't pay the rent stabilization ordinance fee and the required late fees in determining income and expense figures?

KENNETH BAHR: No, I didn't consider that.

MS. SPENCER: Okay. I'm done.

LLOYD WERTHEIMER: I have a question for you.

MS. SPENCER: Yes.

LLOYD WERTHEIMER: Do any of the tenants in Ranch have leases with the owner?

MS. SPENCER: Absolutely.

LLOYD WERTHEIMER: Any or all?

MS. SPENCER: Not all.

LLOYD WERTHEIMER: Just some.

MS. SPENCER: Many. The mobile home residency law requires that the owner have written leases, but not all of the residents have written leases.

LLOYD WERTHEIMER: What's a fair percentage that has them? What's the percentage that exists?

MS. SPENCER: My residents are telling me 50/50.

LLOYD WERTHEIMER: Thank you. Are there any questions for the panel -- from the dais?

BEATRICE FERUZA: Is there any documentation that says that this park had a 30-year expectation to do low income?

MS. SPENCER: No. The documentation has no time limit.

BEATRICE FERUZA: Okay. Why didn't Mr. Hohn increase the rents over that period of time?

LLOYD WERTHEIMER: Our questions are to the Staff, not to counselor. For this time right now, our questions are going to be directed to the Staff.

BEATRICE FERUZA: Okay.

LLOYD WERTHEIMER: They'll make a presentation another day. I do have a question for the Staff. It was discussed earlier to use the 2009 base year, and it was questioned was it fair. Let me ask you: Is it equitable and reasonable for both parties the way you did it, or were you were to use 2009 as base year establishment?

KENNETH BAHR: Well, it's one type of analysis you could use, but I'd say, the maintenance of net operating income analysis is based on a starting point. You try to get pre-regulation and if not, I think it's better to get near it and then look if somebody was charging a reasonable rent in the base year what would they be entitled to today. If you do an analysis based on 2009 comparable rents, it would be based on a combination -- you would look at a combination of rent control increases and exempt increases. And I don't know what proportion of the rent increases in the parks were exempt, and what portion were rent controlled, but I do see increases in the parks were above what the annual adjustments were. So you get a different type of analysis. I mean, that's my answer. You'd get something different. You could do it.

LLOYD WERTHEIMER: Would it be fair to both sides if you did do it? Would it be balanced or equitable -- I'll take the word "fair" out of it.

KENNETH BAHR: Well, it's something -- there are arguments about why you could -- rationale of why you could say it's fair, and on the other hand, I don't know if -- I'd say it's less consistent with rent control ordinance.

LLOYD WERTHEIMER: Thank you. Real quick. Counselor, would you submit the leases that -- the leases that exist and that are in effect to the Board? To the Committee?

MS. SPENCER: I will do my best to gather those. It's been one of the time-crunch considerations, but I'll get as many as I can to you. I actually did submit one copy of one in your PowerPoint presentation, but I'll gather as many as possible prior to the next hearing.

LLOYD WERTHEIMER: We'd like to see all those that are in effect.

MS. SPENCER: I will do my best.

LLOYD WERTHEIMER: Thank you.

MAXWELL SHELDON: My question is: If the rent control is intended to prevent unreasonable rent increases --

PATRICK HEHIR: A little closer.

MAXWELL SHELDON: I apologize. If rent control is intended to prevent unjust or unreasonable rent increases, how are they able to go back and collect all of these rent increases at once, or to collect even a few rent increases? How is that reasonable?

KENNETH BAHR: Well, the underlying concept is the rent increases should be -- instead of markets not working because you have a captive situation, and that reasonable -- as rent increases that reflect operating cost increases and inflation. And so you could say, well, you know, you could look over a period and say, over these 10 years, you know, here's the operating cost increases, here's the inflation, so this should be what the rent is, as opposed to the market --

MAXWELL SHELDON: It's still within the spirit or the intention?

KENNETH BAHR: Well, I guess -- I'll just throw this out, and I'm not saying there's some absolute right or wrong in the world -- is what happens is if you say, you know, somebody can never recapture what they didn't charge, what you're saying is you have to charge everything you possibly can otherwise you can never get it back. And so that can create a situation where, you know, let's look at other situations in other cities I've seen saying, well, if the park owners can increase the rent this year, they can never increase it, and if they don't increase it is this year, the residents are saving money because it's better to get the five percent increases each year and have to pay them all those years or, subsequently, you have a big jump. So the is drawback is that's a huge shock. But on the other hand, in the meantime, residents have been getting a substantial saving. So, you know, imagine --

MAXWELL SHELDON: I certainly understand that. But I -- it feels like there was a choice made there.

LLOYD WERTHEIMER: Mr. Norman, do you have any followup questions for your experts?

CHRIS NORMAN: No, Mr. Chair.

LLOYD WERTHEIMER: Anything more? Yes, ma'am.

MS. SPENCER: My cocounsel reminded me that the owners may actually have copies of those written leases, as well. So we'll gather what we can, but the owners may actually have them and be able to submit those to the Commission for the ones we're not able to locate.

LLOYD WERTHEIMER: Okay. We still would like those from the tenants. Those would be more accurate, right? We find this to the time for a reasonable break. And is there a motion to continue from the dais -- to continue this meeting to next Monday, which would be December 13, 2010.

BRENDA MOHR FELDMAN: I move that we continue this to -- is it December 13? Right. I move that we continue to 6:00 p.m., December 13.

LLOYD WERTHEIMER: Yes?

MR. HILL: May I be heard?

LLOYD WERTHEIMER: Yes.

MR. HILL: We brought our experts here considerable expense and time on their behalf, and we would object to a continuance at this point on that basis. Thank you.

LLOYD WERTHEIMER: So noted.

PATRICK HEHIR: The procedure would be that if you want to discuss this motion, you can discuss it, if not, you need to move forward and vote on it.

LLOYD WERTHEIMER: Is there any discussion on the motion presented by Counsel?

MR. HILL: Sorry, I have another statement to make. One of our experts is not available next Monday.

LLOYD WERTHEIMER: Okay. Point noted. We will vote to -- B?

BEATRICE FERUZA: Could we ask them how long they think it would take?

LLOYD WERTHEIMER: Counselor?

MR. HILL: Thirty minutes for each of our two experts, Mr. Chair.

PATRICK HEHIR: I'd like to vote on that.

LLOYD WERTHEIMER: Sure. We are going to vote on this motion. We feel this is a reasonable time, based on -- vote on it from here.

MR. HILL: There hasn't been advanced notice of the time. I think we need to work out a time when our experts can be here. They went through considerable time and expense to be here, and we were told by the City their presentation would be 45 minutes. It went two hours. We took a half an hour of cross-examination, the tenants took an hour of cross-examination -- hour and a half of cross-examination.

In a normal proceeding of this type, a quasi-judicial proceeding, the Applicant would go first, and then the Applicant would go last. Here the City, taking on the de facto representation of the tenants, went first, the tenants are going to go last. This is totally contrary to due process and we need an opportunity to have our experts here to present their testimony. We'd be glad to work out a date that would accommodate both interests.

PATRICK HEHIR: Chairperson, first, if I may. I do not believe that there a lack of any due process. We've given everybody -- both parties a chance. As far as, Staff is concerned I believe the Staff's position was an independent position, that's why we have an attorney here representing the tenants, as well.

But just, again, for this motion, we have to look at the time that they expect for their experts, plus any cross-examination time and plus cross-examination from tenants' attorneys. And of course, our questions that might have from the Commissioners. That is the thing that you have to think about. Again, it's your motion, but those are the factors I want you to make sure you understand.

LLOYD WERTHEIMER: I understand it. We do have a motion out there, and let's vote.

And the motion is we're voting to move this and extend it to 10/13/2010.

BRENDA MOHR FELDMAN: 12/13.

LLOYD WERTHEIMER: 12/13/2010.

THE CLERK: Motion passed, four to one with Commissioner Feruza voting no.

LLOYD WERTHEIMER: Passed four to one. And we are adjourned. Thank you.

(30 MINUTE BREAK TAKEN.)

LLOYD WERTHEIMER: We are back. We'd like to consider a motion to consider 12/13/2010 for this next meeting to remain, or to extend it to the 24th on the conditions that the witnesses confirm the date -- expert witnesses confirm with their Counsel.

MR. COLDRON: Thank you, Mr. Chair. I'm Rob Coldren, also for the Applicant. Counsel for the tenants graciously said she'd join in trying to get this thing schedule for our experts to be here. I thank the Commission for giving us that consideration.

As I noted with the Assistant City Attorney off the record -- I want to make it on the record -- we object to the delay of the proceeding overall, given the choice forfeiting our expert, which the could have been the effect of the hearing next Monday night. And having the 24th of January -- without waiving our objections to the procedure and due process situation, we do prefer the January 24th.

In view of that, we won't raise the failure to conclude the hearing next Monday as a problem under the 75-day rule that you guys have. But we do reserve our objections to -- we want this done tonight. Our experts cost us many, many thousands of dollars, and we'll have to bring them back and wait another month. We wanted this thing finished tonight. We would prefer you still do so. Thank you.

MS. SPENCER: I just want to confirm that January 24th is an available date for me and for the rest of us.

LLOYD WERTHEIMER: So noted. And we thank you, the attorneys, for working this out. Any discussion to make a motion to recall our expert witnesses on the 24th of January 2011 and set the meeting? Help me out on this. Any discussion on the motion?

BEATRICE FERUZA: Are you making the motion that we adjourn now and come back on January 24th?

LLOYD WERTHEIMER: No we're making a motion to continue this hearing to the 24th of January 2011.

BEATRICE FERUZA: Exactly.

BRENDA MOHR FELDMAN: May I make a discussion that we not meet on the 24th of January, because I can't be here.

LLOYD WERTHEIMER: You can make that suggestion. Do we have a motion, Mike?

MIKE SILACCI: You need me to make that motion?

LLOYD WERTHEIMER: Yes.

MIKE SILACCI: I'll move that we continue this hearing until January 24th, 2011.

PATRICK HEHIR: That's the public hearing we have on calendar today.

MIKE SILACCI: The qualification is that we extend the public hearing we have on the calendar today to January 24th, 2011.

LLOYD WERTHEIMER: Let's vote.

THE CLERK: Motion passed 5, 0.

LLOYD WERTHEIMER: Also, do we have any public comments for this meeting tonight that do not pertain to what we've been hearing tonight? We have a gentleman standing up. What you have to say has nothing to do with the hearing?

UNIDENTIFIED MAN: I would simply ask that it got to be bitter cold this time of the evening, and for the next meeting, a consideration be given to the temperature control.

LLOYD WERTHEIMER: Any comments? Any public comments. Motion to adjourn? Adjourned.

(Proceedings concluded at 10:50 p.m.)

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I, KATHERINE JONES, Certified Shorthand Reporter No. 10097 in the State of California, duly empowered to administer oaths, certify:

That said hearing was taken before me at the time and place therein set forth and was taken down by me in shorthand and thereafter transcribed under my direction and supervision, and I hereby certify that the foregoing deposition is a full, true, and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for, nor related to any party to said action, nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this 26th day of December 2010.

Katherine Jones

KATHERINE JONES
Certified Shorthand Reporter No. 10097

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Transcripts of meeting dated December 6, 2011 Submission by Tenants' Attorney

27.2

RENT ADJUSTMENT COMMISSION

CITY OF THOUSAND OAKS, CALIFORNIA

SPECIAL MEETING

PUBLIC HEARING)
)
RE:)
)
RANCH MOBILE HOME PARK RENT ADJUSTMENT)
APPLICATION (RAA-2010-02))
____)

Monday, December 6, 2010
Council Chambers
2100 Thousand Oaks Boulevard
Thousand Oaks, California 91362

REPORTED BY
TYLENE M. BORJON
CSR. NO. 8952

CERTIFIED COPY

APPEARANCES:

Commissioners:

LLOYD WERTHEIMER - Chair
MAXWELL SHELDON - Vice-Chair
BRENDA MOHR FELDMAN
BEATRICE FERRUZZA
MIKE SILACCI

Alternate Commissioners:

ALYCE KLUSSMAN
CATHY SCHUTZ

PATRICK HEHIR - Assistant City Attorney
JOHN C. PRESCOTT - AICP, Community Development Director
RUSS WATSON - Housing and Redevelopment Manager

Thousand Oaks, California

Monday, December 6, 2010; 6:16 p.m.

(Pledge of allegiance.)

CHAIR WERTHEIMER: Will the recording secretary please call the roll.

(Roll call.)

CHAIR WERTHEIMER: Well, would any Commissioner like to propose a motion for the approval of the minutes on September 29th?

COMMISSIONER SILACCI: I'll make a motion. I move approval of the minutes of the Rent Adjustment Commission's September 29th, 2010 special meeting.

CHAIR WERTHEIMER: So moved. Call for a vote.

Pardon me?

RECORDING SECRETARY: Motion passed, 5-0.

CHAIR WERTHEIMER: Thank you.

Before the recording secretary calls the case, I'd like to say a few words.

We have a large gathering here tonight. We have a very sensitive subject based on -- that will affect many people in the community and we need to respect each other's opinions in this matter. Thus we're asking for the respect of no booing, jeering, cheering, applauding or other actions that will intimidate a person from speaking their point of view.

Respect and civility are core values to remember tonight. All speakers will get their chance to -- to speak. There's going to be a lot of information that needs to be discussed tonight and that's contained in the packet. I want to announce the anticipated order or outline of how we will proceed this meeting.

First, staff will make its presentation. Next, Rent Adjustment Commissioners will each have an opportunity to ask staff questions. Following Commissioners' questions, the applicant will have an opportunity to ask questions of the staff experts who presented testimony.

Following the applicant's opportunity to ask questions, residents' attorney may ask questions of the experts. Staff may have follow-up questions or comments.

Next, applicant will have an opportunity to present his position for an increase. Following applicant's presentation, Commissioners may have questions for applicant and possibly staff. Residents' and staff's counsel will also have an opportunity to question the applicant.

Next, residents' representatives or counsel may make their presentation. Again, Commissioners' questions follow, then applicant's questions and so forth.

We then move to public testimony. If you wish to speak, please complete and turn in a speaker card. If you don't want to speak but have a -- make a written comment, you may fill out a comment card. The recording secretary or staff will take those comment cards and present them to us for review.

As to the public providing public testimony, each person will have two minutes due to the large number of speakers anticipated.

Finally, I'd like to reiterate the -- to reiterate that we'll try to move this along as fast as possible in an efficient manner while ensuring everyone has the right and opportunity to speak.

I understand that Chandra Spencer would like to make a motion.

MS. SPENCER: I would like to request that the Commission make a motion to continue the hearing based on --

MR. HEHIR: Excuse me. Ms. Spencer, would you just state your position so -- for the audience, please.

MS. SPENCER: My name is Chandra Spencer and I'm the attorney for the Ranch Rent Tenants Association, the association of Ranch tenants, the residents of the Ranch Mobile Home Park.

I've requested a continuance of the hearing for a number of reasons. One is to provide a reasonable accommodation to those who should -- who are celebrating the Hanukkah holiday this evening, those residents who cannot attend based on their religious observations.

Two is to provide a reasonable accommodation or a further hearing at the park so that those residents who cannot attend in person due that their physical disabilities are able to present information related to their respective interests in the park.

Three is so that the residents who are unable to withstand the length of this hearing, I understand based on my conversation with Mr. Hehir that this hearing will -- may go as late as 11 o'clock p.m. and the majority of the residents here will not be able to withstand that length of a hearing and certainly if their public comments are put towards the end. So I request a further hearing so that they will be able to do so.

I also request a continuance of the hearing so that the residents' due process rights in their property and the right to be represented by counsel -- adequately represented by counsel will be preserved.

I was retained by the Ranch Tenants Association last Monday night on a pro bono basis because, as you know, these residents are very low income and unable to afford counsel despite their diligent efforts to obtain counsel prior to this date.

Since then, Ron Perry from California Rural Legal Assistance has also agreed to provide representation to the residents as well as John Taylor and his partner from the firm of Horvitz & Levy has also agreed to provide pro bono assistance to the residents. And Mr. Taylor's firm, we were able to bring them in to provide pro bono assistance as of last Thursday.

As a result of Mr. Taylor's efforts and my efforts, we were able to obtain the services of two accountants who are -- who are willing to provide pro bono services to evaluate this very, very lengthy application and staff report for the residents.

Given that we have not had sufficient time to review the information and the accountants just are looking at this for the first time today, we simply do not have the ability to prepare adequately for this hearing to represent the residents of this park in the manner in which they should be represented given their very significant investment-backed expectations.

We estimate that these residents have invested approximately three and a half million dollars in their coaches; whereas, the park owner, his investment was $500,000. So certainly these residents have a substantial right to have their property interests protected as well as their persons protected given the issues at stake here if the -- the rent increase is approved.

So on that basis, I'd request that we, if we do start the hearing tonight, at least leave the record open to a further date so that we have adequate time to provide for all of these needs of the residents and the residents association.

And I'd request that someone on the Commission make such a motion.

CHAIR WERTHEIMER: Thank you.

MR. HEHIR: All right. Mr. Chairperson and fellow Commissioners, I did receive Ms. Spencer's November 30th, 2010 correspondence in the packet that you all received last Thursday as well.

Again, I think she stated the three reasons were to -- or her three grounds were that some residents are of Jewish -- have the Jewish religion and tonight is one of the evenings for Hanukkah. The second reason was that some of the residents or all the residents are elderly and some are disabled.

And the third reason was that the residents are low income, retained this attorney on November 29th and apparently two new attorneys and two accountants. I have reviewed her letter and she again reiterates those comments tonight.

As for the first reason, we certainly respect her concern about the time and about the -- of the residents who are celebrating Hanukkah. Unclear how many are affected, but certainly for those who cannot make it, they can certainly rely upon counsel and also do comment cards if they wished.

As to her second reason, we certainly are going to follow ADA guidelines. And for the record, I did not say that we would end at 11 o'clock, but just that counsel does sometimes -- has a policy that they could end at 11 o'clock and that it would be, of course, the Commissioners' prerogative to make that decision if they felt it was necessary.

As to her third response, certainly the Commission and -- and certainly I applaud your willingness to work on pro bono -- as a pro bono basis. The focus of this meeting, however, is applicant's application, the owner's application, and they also have their due process rights we have to weigh when we look at these matters.

And I have spoke to them briefly after Ms. Spencer spoke to me -- to me tonight to let them know that Ms. Spencer had indicated -- indicated that she wanted to continue this matter, and they emphatically voiced their opposition to that request and they do want to go forward tonight as planned.

Again, the guidelines that we have before us were created to set a fair time and date. That date has been determined and has been scheduled, been noticed appropriately.

And based upon all those things and weighing the fact that we have all this information, staff has also done a report and an independent analysis, and based upon all those things, it is my recommendation to the Commission that we proceed with the hearing tonight as noticed. And again, it is a balancing of these -- of these issues.

Either you -- you can decide if you want to just go forward with it or if you want to do -- if someone wants to entertain a motion to continue, they can do that. If you just want to proceed forward, you would proceed forward.

CHAIR WERTHEIMER: I think based on what we've heard tonight that we should proceed forward.

MS. SPENCER: And before -- before I sit down, I have one other objection that I'd like to lodge for purposes of preserving the record.

It's the association's position that the Rent Adjustment Commission lacks jurisdiction over this matter given that the -- this park's rents are not -- have not been regulated by the Rent Stabilization Ordinance but are instead regulated by the development approvals for this park, and the -- any modification of those development approvals, any change in the rents would need to be made pursuant to a modification request to the City Council or by a court of law.

And the scope of this Commission's authority this -- if this -- if this Commission approves a rent adjustment that's in excess of what has already been approved by the City Council in resolution No. 84-037, the Commission will be enacting -- acting in excess of its authority and has no jurisdiction to do so.

CHAIR WERTHEIMER: So noted.

MS. SPENCER: Thank you.

CHAIR WERTHEIMER: Will the secretary please call the hearing.

RECORDING SECRETARY: Rent adjustment application for Ranch Mobile Home Park, Case 5.A, City application number: RAA-2010-02. Applicant is A.V.M.G.H. Five, Limited. Location: The address is 2193 Los Feliz Drive and the request is to increase monthly per space rent in the amount of $587.45 per month per space. Total cumulative amount of the requested increase is $507,557.

CHAIR WERTHEIMER: We'll now have the staff recommendation, please.

MR. NORMAN: Thank you, Mr. Chair, Commissioners and members of the public.

Staff has prepared a PowerPoint presentation for your consideration tonight. This is a complicated application. The first two slides will give a background of the presentation -- sorry you can't hear me.

Is that better?

THE PUBLIC: Yes.

MR. NORMAN: The background section will involve reviewing the mobile home parks city-wide, the Rent Stabilization Program, a history of the ordinances and regulations, the particular history of this park, Ranch.

We will review some benchmark rents, discuss the basis for hearing this application under the City's ordinance, some legal background, then we'll get into the analysis which will include a description of the applicant's request, an evaluation of the request.

We will review some different methodologies for consideration of the rent adjustment. We will review a summary of methodologies that are appropriate for determining the rent and some which are prepared for comparative purposes only. Finally, staff will conclude with a recommendation.

The background of mobile home parks city-wide: There are nine mobile home parks split between senior and family. There are over 1,000 total spaces, mainly senior. One mobile home park is closing. That's the Conejo Mobile Home Park. Another has converted to for sale lots, a subdivision. That's the Vallecito Park.

And as mentioned, Ranch has previously not been subject to the City's ordinance, but we will discuss the reasons why it is appropriate to do so today.

The Rent Stabilization Program was initially adopted in 1980 which acted as a freeze on rents. Since that time, there have been 16 different ordinance amendments modifying that program. In 1996, the program was permanently codified into the City's municipal code.

The purpose of the program is to safeguard the tenants from excessive rents, but at the same time provide landlords with a just and reasonable return from the rent. So it's a balancing act.

The ordinance provides three ways to request rents. There is an automatic rent increase which is 75 percent of CPI. That is done without any action from the City. There is a just and reasonable return application which is the one before you which is under the purview of the Rent Adjustment Commission, and thirdly, there's a capital improvement rehabilitation rent adjustment process.

There are guidelines that help implement the ordinance. These were adopted in early 1980s. The two pertinent resolutions are what we refer to as RAC-2 and RAC-5. And they give the definition of what is a just and reasonable return, and it talks about the maintenance of net operating income, MNOI. That's the prescribed method. We will be going into great detail about what that means.

It's important to note that the guidelines do provide that the Commission may consider other types of methodologies.

A history of Ranch: The park was entitled in 1974 for development as a trailer park, limited to lower-income seniors. In 1976, the City Council approved an 11.5 percent return on investment formula to set rental rates.

In 1977, the mobile home park finally developed and the City approved the initial rental rates which were 125 for a double-wide lot and 115 for a single-wide lot. During that time, by the way, the City did not have rent regulations in place city-wide.

In 1984, the City Council approved Resolution 84-037 which granted the park owner's request for a 7 percent increase. It also limited future increases to a maximum of 4 percent based on the formula.

In 2001, the applicant requested another increase of 4 percent under that resolution, which was granted. That resulted in rents being $139 for a double-wide and $128 for a single-wide lot.

It's important to note these are the current rental rates and those have been the only two rental rate increases in the 33-year history of the park.

Why is this before the Rent Adjustment Commission. Well, Resolution 84-037 does not provide a method for calculating just and reasonable return. The ordinance does not exempt the Ranch Mobile Home Park from its purview, and in staff's opinion, the ordinance takes precedent over the resolution.

Finally, the owner's entitled under relevant case law to request a just and reasonable request and the only way to do that is under the purview of the ordinance.

The legal basis for these type of application requests is the Fifth Amendment, which protects the property owner's right from regulations that constitute a taking. Rent control regulations must provide for just and reasonable rate of return. However, there is no constitutionally-prescribed method for determining what is a just and reasonable return.

The applicant has stated in their application that Resolution 84-037 does not provide a just and reasonable return, that RAC-2 resolution prescribes the use of the MNOI method and the base year rent adjustment is required. We will discuss this in more detail later. Something called a Vega adjustment, which will be very important.

And ultimately they are requesting through their application a rent increase of $587.45 for a total of $720.45 to achieve what they claim is a just and reasonable return.

However, I should point out that I was informed by the applicant's attorney that they will be adjusting that level down to $466.12 and they will have to explain the rationale for that. Right, the increase, that is, correct.

Okay. In order to help evaluate the application, the City's hired two experts. The gentleman sitting to my left is Dr. Kenneth Baar, and he is an expert in the field of mobile home rent stabilization fair return analyses. He has a Ph.D. in urban planning from UCLA and a J.D.

He has lectured, written extensively, written numerous articles in professional journals, chapters for books regarding just and reasonable return in rent control issues. He's acted as a consultant for dozens of cities with rent control.

He's been an expert witness for at least half a dozen cities, and his articles and testimony have been cited in many, if not most, of the seminal California cases discussing rent control issues, at least 16. He's also prepared fair return reports for at least 16 jurisdictions including the City of Ventura.

The gentleman to Mr. Baar's left is Jim Brabant. He's an MII certified appraiser. He has prepared -- for over 30 years, he's prepared appraisals for mobile home parks including dozens of cities for purposes of litigation, park conversions, subdivisions and rent increase applications.

Mr. Baar relying in part on Mr. Brabant's appraisals has prepared a report that analyzes the application and provides a basis and methodology for determining what constitutes a just and reasonable return.

The consultant's report discusses two types of methodologies. The first is an appropriate measure to determine fair return and goes into a detailed discussion of the MNOI methodology. He also analyzes two comparative types of methodologies.

One is the comparable current controlled rents. That's basically taking an appraisal of what current rent controlled rents are in the City of Thousand Oaks and he also does analysis of the return on investment methodology. One that is mentioned in the Resolution 84-037.

Before handing this off to Mr. Baar for his report, I want to go over a couple key terms that he may be mentioning. I know it's a lot to keep in mind, but the term net operating income when -- in the MNOI calculation, net operating income is defined as the gross operating income in a single year minus the operating expenses. That's your net operating income.

Maintenance of net operating income is basically NOI and it's adjusted for -- by an inflation factor to compensate for the erosion of income over time.

There is something referred to as the base year and this is the first year used to compare NOI data to the current year. It is a presumption that the net operating income in the base year provides just and reasonable return. Generally the base year is the year prior to rent control becoming effective in a jurisdiction.

There's something called a Vega adjustment which allows the park owner to adjust the base year rents if they can show that the rents in the base year were below market for whatever reason.

There's references to the consumer price index to measure inflation, and again, fair market return would be what would be the rent if there were no rent restrictions.

There are four main factors to consider when looking at the MNOI formula: The determination of a base year, the

Vega adjustment to the base year, any adjustment -- adjustments of operating expenses if -- if they're necessary and looking at the appropriate indexing for -- for inflation.

These are all discussed in great detail in Mr. Baar's report, and I will now hand it off to Mr. Baar to discuss those issues.

MR. BAAR: Okay. As Mr. Norman indicated, the purpose of my report was to discuss and analyze what rent increases would be just and reasonable pursuant to the ordinance and constitutional standards.

First, I want to touch on some conceptual issues because there will be a lot of discussion I think about what a fair return is. This issue has been debated for over 100 -- almost 100 years, believe it or not, since rent controls were first introduced temporarily in the U.S. during World War I.

And if you turn to page -- pages 111, 112 of the packet, I just wanted to highlight a few things that the courts have said.

And -- and one is that the courts -- one court of appeal commented what appears at blush to be a simple question of substantial evidence turns out to be considerably more complex when -- when one realizes that the formula for determining a fair return is hotly debated in economic circles and has been the subject of sparse, scattered and sometimes conflicting comment by appellate courts.

And then if you go to the second quoted passage, which is in bold on page 111, the courts -- and the courts have said this many times, that there's no single one formula that's constitutionally required. Boards administering fair -- ordinances have -- can use -- you know, different standards are permitted.

And finally recently the courts have indicated that -- the California Supreme Court indicated that the fair return concept is a constitutional minimum, and that's in the first full passage on the second page, about a third of the way down.

The courts have also said that -- while they've said that no particular formula is required, they have said that growth and income must be permitted under the rent control. You can't freeze the net operating income.

And I just want to point out just to give you some perspective about the historical development, early on during World War II and then this theory re-emerged when rent controls were first re -- re-introduced on a peacetime basis in California in the 1970's, courts said that owners were entitled to a fair return on the value of their property.

But then subsequently that theory was rejected because it's circular, because the value of a property determines -- is determined by the rental income; therefore, you can't use the value to determine what rental income should be permitted. It's basically a circular type of theory.

But what's interesting is here you had the courts at one point saying something was required and then subsequently saying it's not workable.

Rate of return on investment is used in some jurisdictions. It's a com -- a number of -- in a number of cases, park owners have experts propose the use of this type of formula, and intuitively, it sounds very reasonable. Somebody should get -- be able to get a fair rate of return on their investment.

The problem is with this type of formula, 2, it's circular in the sense that if you guarantee somebody a certain rate of return on their investment, then no matter -- they can determine what they're allowed by determining the investment. The more you invest, the more you're permitted.

The other problem is a practical matter. This type of formula discriminates against long-term owners who have low -- low investments and often will give a very large increase to a recent investor who's made a very high investment relative to the return on the property partly based on expectations about future growth in income.

The maintenance of net operating income formula is based on a different concept. It's basically that owners have different rates of return. We can't set a single rate of return and say that's fair. We'll take the pre-regulation income and assume that's fair. It was set in an unregulated context and we'll adjust that -- we'll adjust that by inflation in the future.

So essentially, that type of formula, one, guarantees that owners have a right to pass through their operating cost increases and get some growth in income. And this type of formula has been -- in a number of cases has been approved by the courts. It answers the issue of not freezing income because it guarantees growth in income.

Under your regulations, there's a presumption that the 1980 net operating income is fair and so basically the ordinance doesn't have -- and the regulations, they don't have the details of a maintenance of net operating income formula, but they do set that type of concept that, you know, we have a base period return and that should be maintained.

There's also -- subsequent to the adoption early on of the maintenance of net operating formula basically in the early 1980s in California, the issue came up of, well, what happens if somebody has low -- very, very low base rents which don't reflect market conditions.

And what the courts held was that in that type of case, an owner had a right to have the rents adjusted, and this was known as a Vega adjustment because that's the name of the first case that involved this issue, so that they have a reasonable starting point, because otherwise, if you have rents that are peculiarly low and you're only allowed to have those adjusted by inflation, you're always behind.

And that doctrine was not that every rent had to be equal, because in a market there are variations in rents, but basically where there's exceptional situations, an owner had a right to a base rent adjustment.

In this particular case, there are a number of issues regarding the application of the maintenance of net operating income formula, and the bulk of my report discusses the use of that formula, why it should be used, et cetera.

First of all, as you know, you have the extremely exceptional case where the park rent today is almost the same as it was 30 years ago. Then other issues that emerge - then I'll go through them one by one, but first I'll list them - is what should be the appropriate base year in this case, what's the base year of net operating income which partly depends on what the base year expenses are, what would be a fair starting point for the base year rents.

And then the other issue is what -- what indexing or adjustment should be made to the net operating income, by what percentage of the consumer price index should it be adjusted.

On page -- first I'll discuss the base year issue and I discuss that on page 116 in the packet. The ordinance -- or the regulations, rather, provide that 1979 shall be the base year. However, they also provide that where they -- 1979 financial information is not available, then the base year shall be the first year for which records are available.

And in this case, the applicant does not actually have actual income or expense information for 1979, but they took -- their conclusion is that 1979 can be used as the base year because they can take the 1982 expenses and based on inflation figure out what they -- make an adjustment to figure out the 1979 expenses.

And that might be authorized under some regulations or ordinances, but here in the alternative, the regulations say if you don't have the '79 information, you have to use the information for the first year you have it available because to say you take a later year and then work backwards based on inflation, well, then somebody would always have the 1979 data and the requirements and regulations, you know, wouldn't -- would be meaningless.

So -- but the next possibility would be to use the 1982 year as the base year. Well, in that case, it's a little bit unusual. There is income information. There's expense information, but only overall expense information.

In 1980 -- 1982 data was used in the 1984 hearing before the City Council, but the information, the breakdown of expenses is no longer available. Nobody has it any longer. So -- but -- but it was reviewed by the City Council. So one hand, you have an overall number, but you don't have a breakdown for that number and it was a number that was reviewed at that time.

Another possibility -- the first year that I'm aware of that full information is available of breakdown for income and expenses is 1999. The weakness of using that year as a base year is that this was 20 years after the rent control ordinance was adopted. So it's -- it's not an ideal base year.

And when -- it seems from looking at the records of the increases in rental income for the parks, that the -- by 1999, the rents besides reflecting the annual increase that were under the ordinance, also reflected increases that were due to either exempt leases or you also have a provision in your ordinance that if there's a new mobile home moved onto the space in conjunction with a new tenancy, then the park owner can set the initial rent.

So you have a base -- if you use 1999, you have a mixture of regulated spaces and some that were unregulated increases. I don't know how many, but what the evidence seems to indicate is that the overall rent increases certainly exceeded what was allowed under the annual general adjustments.

So what happened is I -- I recommended the use of a 1982 base year, but I also did the analyses using all three base years because there are arguments for and against using any of these base years.

The next issue is what -- what are the appropriate base year expenses and net operating income, and under the maintenance of net operating income standards, there's an incentive to show as low as possible expenses in the base year because if the expenses are lower, the net operating income is higher in the base year.

Well, here we don't exact -- we don't have that type of case because the park owner made an application in 1982 and certainly then they had no interest in showing lower expenses, but we -- on the other hand, we don't have a comparison -- we don't have a breakdown for 1982.

And what happened between 1982 and 2009 was that some of the operation of the park went -- some of the tasks that were performed, substantial task in managing the park based on the information that we got and as I understand it from the applicant, the park owner performed substantial services in 1982.

By 2009, these services were contracted out. The owner was, you know, old or for what -- you know, for whatever reason. So what happens is this shows a substantial cost increase because you not only have the actual cost increases, but you also have this transfer of the performance of services.

And I felt that's not a real cost increase. It's a cost increase on the books. So to say that, you know, management expenses went up 10 -- from 0 to 10,000, I'm making up those numbers, that's not really what happened. It was -- they were shifted who performed them. They went from off the books to on the books.

So what I did was in my analysis I adjusted the 1982 expenses upwards, and the way I made the adjustment is I assumed that the expenses from '82 to 2009 increased by the CPI and I adjusted the base year expenses up from 34,000 to $42,000. And that does have the impact of reducing the 1982 net operating income, but I felt that was a fair adjustment to make this comparable.

Okay. The big issue though in the maintenance of net operating income analysis or one of the two really big issues is what should -- the base year rents should be because the base year rents were set based on an affordability concept and they were not based -- they were not based on a market concept.

And what happened is the -- as you know, the park owner appraiser conducted analysis of what they thought what base rents would reflect market in the base year and the park owner's appraiser came up with a -- his number was $240 for 1979 as opposed to the actual rents of $120.

In contrast, the City's appraiser, Mr. Brabant, his conclusion was that in 1979 the market rents were up $150, the comparable rents at that time, and that's a huge difference of -- you know, especially percentage-wise when you compare 150 to $240.

And when you use the net operating income formula, that difference is increased because you're indexing the profit. So whether you're indexing starting point of $150 rent or $240 rent makes a very, very large difference. And that's -- so what -- how you set the base rents is critical in the fair return analysis.

The other critical issue in the fair return analysis is whether you index net operating income at 50 -- or what percentage of the CPI increase you index net operating income. Some cities index net operating income at 100 percent of the CPI, some at 75 percent, some at 50 percent, some at even -- only 40 percent.

The courts have upheld 40 percent indexing and they've rejected the view that 100 percent of indexing is required. And as far as what's the right indexing ratio that's -- you know, policy issue, you have this -- you've had standards from 40 to 100 percent though and all of them -- all of them have been upheld. And there are arguments for and against indexing at 100 percent and the rationale for indexing at less than 100 percent.

The -- one rationale for indexing at less than 100 percent is -- and I'll use an analogy of a house purchase to explain this. Typically real estate investments are leveraged. I'm not saying this particular park the investment was leveraged, but typically they are.

And imagine you buy a house for $100,000. You put $20,000 down. The house goes up in value 20 percent to 120,000. Well, on one hand the house has gone -- only gone up in value 20 percent, but your equity is doubled. So one type of return -- you know, one type of increase it's done by 20 percent but another type of increase by 100 percent, and typically as I say, as you know, real estate investments are leveraged.

The other factor is I mean, you know, you look at investments generally in the economy and if people -- businesses have growth in income, they don't consider it a loss if their income goes up less than the CPI. You don't -- you won't read the news that General Motors lost money because their profits only went up 6 percent and there was inflation of 10 percent.

And so what -- in my report -- now we should go -- I also want to make one clarifying point to you. Net operating income is income before debt service, but after operating expenses.

Okay. Turn to page -- we have the chart and it's also on page 132 of your packet. First -- first I did the maintenance of net operating income analysis using 1979 as a base year and --

THE PUBLIC: We can't read it. We can't read it.

MR. BAAR: Okay. I guess -- well, basically in that what I did was I took the base year that the park owner used and indexed that net operating income by 100 percent, 75 percent and 50 percent of inflation.

The park owner used 100 percent indexing. So the difference in my analysis is I also use the 75 and 50 percent indexing. And these -- these are numbers of course that were prepared before the correction in the -- or change in the applicant's analysis tonight.

But even under that standard, theirs were substantial differences. They showed that they were entitled to $587 increase with 100 percent indexing, and I concluded using their base rent adjustment that they would have been entitled to $487 with 75 percent indexing and $386 with 50 percent indexing of net operating income.

So you can see that the indexing because it's over such a long period has a big impact on the outcome. Then I used Mr. Brabant's comparable figure, and of course, because that comparable figure -- base rent figure is substantially lower, the indexing amounts were lower. With 100 percent indexing, there was a $324 rent increase, with 75 percent indexing, it was a $267 increase and with 50 percent indexing, a $210 increase.

Then the next -- on the next page, I used 1982 as the base year. And the numbers were not drastically different, but they were different. And in order to figure -- Mr. Brabant did not actually provide 1982 rent figure in his report, but using his mode of analysis, he adjusted back from 1983 back to 1979. Well, I adjusted back one -- I only went back one year instead of four using his -- using the percentage adjustments per year he used.

And using his base year rent for 100 percent indexing, there would be a $297 increase; for 75 percent, $252 and for 50 percent, $207. And this is -- and then with the park owner's appraiser, the numbers were similar to the 1979. For 100 percent indexing, it was $515; for 75 percent, $439, and for 50 percent, $363.

And these numbers are without the expense adjustment that I made for 1982. With the expense adjustment I made for 1982, the numbers are about $20 lower, and those are in the right -- two right-hand columns.

And then the third chart was using -- on the next page, 134, was using 1999 as the base year, and those adjustments -- and those I just used the base rents projected by Mr. Brabant because he was asked to do a projection for 1999. The park -- the park owner hadn't. And I'm not saying -- that's not as a criticism. I'm just saying that's -- this was done because we saw that 1999 was the only year which there was complete expense data.

And those if you use 1999 as the base year, you actually get higher -- the rent adjustments are higher pursuant to the MNOI formula. And my conclusion about why that was -- occurred was because the base rents had an -- or the rents that -- between 1979 and 1999 had increased by more than the annual general adjustments provided for and there was probably greater growth in income for the parks than the constitutional minimum.

And so the differences are particularly significant when you have less than 100 percent indexing.

Okay. What?

Oh, okay. It needs to go back to the PowerPoint.

Because of the unusual nature of this case, I also -- and also because the Commission is now bound to use a particular standard, I did look at the increases compared to other measures.

And one was if you go to page 102 and 103 of your packet, I compared them with what rent increases the park owner would have gotten if they had taken the annual increases they were permitted pursuant to the affordable rent restrictions.

The affordable rent restrictions were unusual in the sense that, one, they set an original rate of return at 11 and a half percent of the original historic investment, but then they provided in 1982 -- or 1984, they were modified to provide for an inflation adjustment of this net income.

And actually it was -- one technical difference is here net income was adjusted rather than net operating income and net income was after depreciation, where net operating income does not consider depreciation.

And in that -- since -- and that adjustment used 1982 as a base and from 1982 to 2009, the CPI went up 100 -- okay. That's the -- it was 138 percent -- 130.8 percent increase in the CPI.

So on that basis, I concluded that if the park owner had taken the increases that -- pursuant to that formula instead of being allowed the base net -- net income of 57,500, they would be permitted a net income of $132,720.

And I -- and pursuant to that approach, in order to -- currently the net income is very low. It's only a few thousand dollars because the -- the net operating income is only about 20,000 and if you take -- subtract depreciation, the net income goes down to just a few thousand dollars.

And on that basis, in order to bring the net income up to the, you know, adjusted standard under the net income formula, the park owner would be able to get a rent increase of $147 if they could do that.

Now, that standard does not provide for banking of increases, but if it did, that's what, you know, the owner would be able to get today. And if the owner had taken the increases they were entitled to, that's where they'd stand is -- under that formula.

I also compared the increases with the allowable increases under the Rent Stabilization Ordinance and that ordinance allowed for -- for the first three years for annual increases of 8 percent, then 7 percent for the next three years from 1983 to 1986.

Then after that, there was a three-quarters of CPI adjustment, but it was not three-quarters CP -- three-quarters of the CPI increase, but that was not on the current rents. That was three-quarters of CPI increase to the 1986 rents.

And for that I concluded that the overall allowable increase would have been 108 percent if the owner had taken that, and of course, whether you took that over the $150 figure that Mr. Brabant came up with or the $240 figure that the park owner presents as the fair base rent would make a huge difference in what the fair, you know, rent -- or the rent that would have been permitted pursuant to the annual increases.

And let me say that those annual increases under the ordinance total 108 percent. They're substantially under the CPI because of the fact that the adjustments were based on the 1986 rent rather than the current rent.

Okay. Okay. Go back to the PowerPoint.

Okay. I also performed a return on investment analysis. It's not the approach that I recommend, but it has been used and it's also interesting because it's how investors look at their investments. I'm not saying that, therefore, it should be used as a regulatory standard.

And when the return on investment standard has been used in recent -- well, last decade I'd say, basically the approach that's been used is rather than using the historic investment, is to use an inflation-adjusted investment based on the concept that the -- it's not fair to use the historic investment.

So in doing that analysis, I adjusted the rate base -- or the original investment of $500,000 by the increase in the CPI since that period which -- the investment was back in 1977. So the current imputed investment was 1.8 million dollars. That's basically if you took the old dollars and converted them into current values.

Then I imputed what increase the owner would be entitled different -- subject to different rates of return. And one rate of return was a 6 percent rate of return because in today's market if somebody goes out and buys a mobile home park, that's a typical capitalization rate. It means if you buy a mobile home park for three million dollars today, it's likely that you'll get a net operating income of 6 percent of that, $180,000.

Now, some parks, the cap rate is higher; some it's even lower. And you say, well, 6 percent is a -- might sound like a low number, but, one, this is an appreciating -- appreciating investment as opposed to if you buy a bond where the return stays constant. The income goes up, also the value goes up as the net operating income goes up, and so it's a reasonable rate of return.

I also used a 9 percent rate of return commonly experts on behalf of park owners have said that this is a fair rate. I haven't agreed with that, but I've presented it. And that -- the 6 percent rate would adjust -- would justify a $100 increase. The 9 percent rate would justify a $162 rent increase.

And then I used an 11 and a half percent rate and -- because that's the initial rate that the owner was provided with, but actually the owner wasn't provided that initial rate on an inflation-adjusted investment. It was just on a fixed investment, but if you used an inflation adjustment -- an inflation-adjusted investment, the rent increase would be $214.

Then also I reported in my report, but this was basically Mr. Brabant's appraisal, he compared the rent with the current rent for comparable rent controlled parks in the City, and his conclusion was that the current rent -- comparable rent was $400 a month as opposed to the rent for the park of $133.

So I've thrown out a lot of numbers and concepts at you, and I just want to say that this is an unusual case because we have an issue of -- you know, base -- base rent adjustment going back over a long period. We have a situation where the rents were frozen for a long time. There's even an issue of what should be the base year.

And you know, I -- all I'd say, is you have a difficult job and to think about it carefully.

MR. NORMAN: Thank you.

Now, Mr. Brabant will say a few words.

MR. BRABANT: Good evening, Commissioners. I was asked to do a couple -- two basic things; one was to review the appraisal of John Neet, the appraiser retained by the park owner and his attorneys, and also to provide my own opinions of the rental value of spaces at Ranch Mobile Home Park as of three different years, 1979, 1999 and 2009.

So beginning with a few comments about Mr. Neet's appraisal that was included in the application, he starts out estimating the market rent for what he calls the base year of 1980, and his conclusion is $240 per month as of that date.

But then at the end of his report he then talks about the base year actually being 1979, but concludes that there was really no difference between his opinion in 1980 and 1979. However, no data was provided or information was provided in the report to explain the reason for that conclusion that rents didn't change between 1979 and 1980.

He uses a comparative rent survey for his analysis for the rents during that what he's calling the base year and which is an appropriate approach. I think that is the correct approach to utilize.

His -- the comparable data that he says he uses comes from rents -- rental information that was available in two years, 1983 and 1986. However, he doesn't provide any of that information in the report, at least that I could find.

So he doesn't actually tell you what the 1983 and 1986 rents were in his report. He simply indicates that he adjusted those '86 and '83 rents down to 1980 levels, and he says he -- he adjusts them based on maximum adjustments that are allowed by the ordinance. And he indicates that -- that those adjustments were 8 percent in 1983 and 8 percent in 1986.

So he just gives you a column in his report that shows his conclusion of the rents as of 1980 that he had adjusted down from 1983 and 1986. But none of that information, those adjustments and the mathematics of it or -- or the 1983 or 1986 data is actually contained in -- in the report that I saw.

And also the -- saying that there were only two years of adjustment between 1986 and 1983 I found to be conflicting with the ordinance which was enacted in April of 1980, and there was a brief period of a rent freeze when no increases were allowed.

But the increases then from August of 1980, an annual 8 percent increase was allowed up and then there was an amendment in May of 1981 that -- that allowed automatic 8 percent annual increases or up to 8 percent and that was in place until August of 1983, and then that automatic increase was reduced to 7 percent. And then in September of 1986, the automatic increases were changed to 75 percent of the CPI.

So increases were really allowed all of those -- of those years, even though he only made -- apparently made some kind of adjustments for two years, 1983 and 1986. So I just didn't find that to be consistent with the -- with the ordinance.

What I did was I looked at the actual increases for the five -- the comparable parks that we had data from for those two years, 1983 and 1986, to see what was actually occurring in -- in the market at those parks. In other words, how much did rents go up between 1983 and 1986 at -- at five of the parks where we had data for both years. And I -- I have an exhibit that shows that, if we could bring that up -- oh, it's up. Okay. I'm sorry. Thank you.

So what it shows under 1986, you can see -- well, first of all, let me say there are -- there are five parks listed on that exhibit that -- where we have rents for both years, Conejo Mobile Home Park, Elms Plaza -- well, we have it for Ranch, but that's -- that wasn't the subject of comparison here, Ventu Park Villa, Ventu Estates and Thunderbird.

And you can see in the two columns, I have the 1986 rents and I have the 1983 rents, and what I did was make calculations of what happened to those rents for that -- that period of time.

And you can -- the rents at Conejo increased from $157 to $197, which is an overall increase of -- an average -- well, it's an overall increase of 25 percent, but an average annual increase compounded of 7.9 percent for that three-year period.

Elms Plaza rents went from 187 to $227, which is an overall increase of 21 percent or an average annual increase of 6.7 percent. Thunderbird increased from 246 to 277, which is an overall increase of 13 percent or an average annual increase of 4 percent. That was the lowest of the -- lowest annual increase of the five parks, and of course, that park is also subject to an upcoming rent hearing.

Ventu Park Villa increased from 204 to 247, which is an overall increase of 21 percent or an average annual increase of 6.6 percent.

So the -- and Ventu -- I'm sorry. I missed -- skipped Ventu Estates, increased from $242 to $292, which is an overall increase of 21 percent or an average annual increase of 6.5 percent.

So from this data, there were four of the five parks really fairly closely clustered. It would easily support an increase between 6 and 7 percent as an indication of what the market was doing between 1993 and 1986.

I concluded at 6.5 percent as an increase and what I did was then I took the comparable parks for -- that we had information for in 1983 and I trended them back for four years to 1979, the base year, at an annual rate of 6.5 percent and that's shown in the last column on the right there.

It shows you the adjusted rents for 1979, Conejo Mobile Home Park, $122; Elms Plaza, $145; Ventu Park Villa, $159; Ventu Estates, $188; Thunderbird Oaks, $191.

Then I had arranged the parks basically in the order of kind of the overall appeal and the way I would adjust the comparables to the subject and where it fits in in relation to the overall quality and appeal and location of the other parks.

And Mr. Neet did the same kind of -- kind of ranking of the parks, and I thought -- I didn't have any big quarrel with -- with the way he did it. I did it in kind of a similar fashion.

And in my opinion, the -- well, as you can see, we did not have 1983 information for Twin Palms. So that park couldn't really be considered for this analysis.

So anyway, it should -- in my opinion, the rent at Ranch for 1979 should fall between the $145. At Elms Plaza, it should be above that. It should be below the adjusted rent at Ventu Park Villa at $159, and my conclusion was $150 per month for the base year of 1979. Then -- and that was my opinion of the market rent in 1979.

For 1999, I did -- I didn't do what I would call a market rent study because market rent assumes -- assumes that the rents are uncontrolled. The rent control ordinance was in -- was in effect at that time. I'm calling it rental value.

But I surveyed and obtained rental information in 1999 for the same comparable parks and that is shown in my report on page 21 there. And since I've been asked to kind of speed this up, I won't go through all the detail, but I did the same kind of comparative analysis in 1999.

My conclusion of the indicated rent for Ranch Mobile Home Park as of that date was $300 per month, and then we move on to 2009. I did the same thing. I obtained current rental information for the year 2009 for the comparable parks, and my conclusion as of that date was $400 per month. And that rent in 2009 includes water and trash.

I did not include -- I really wasn't able to analyze the inclusion of utilities as of the other dates because I did not have that information for all of the parks. But the current rent for the current analysis, I did know what utilities were included in each park and so the $400 per month includes water and trash.

And those are the opinions that I was asked to provide.

MR. NORMAN: Thank you.

Things for the Commission to consider real quick, kind of an overview of what we just discussed, we talked about the court precedent for using the MNOI standard, the appropriateness of considering other methodologies, what's the appropriate base year, what base year adjustments to either income or expenses are necessary and the rate of indexing.

Staff's conclusion is given prior court precedent and the City's rent stabilization guidelines, MNOI is an appropriate method for doing a rent adjustment.

Staff believes that 1982 is the appropriate base year with the Vega adjustment according to the City's appraiser and with an adjustment to operating expenses to include the outsourcing of management.

The range of indexing presented in the consultant's report is between 50 and 100 percent. Staff would recommend that a 50 percent increase would pass the constitutional requirement.

There's a table that illustrates all the options.

Basically it's staff's -- the way to view this chart is that staff believes anything on here passes the minimum constitutional requirement for fair return. This again highlights what the rents would be for the various base years from '79 to '99. With the expense adjustment, there's a line for that.

In bold is the City's recommendation of $191. That's based off 50 percent CPI with an expense adjustment and the Vega adjustment using the City's appraiser. Again, the park owner's appraised value is the bottom line. Again, that may be subject to change. We'll have to hear from the applicant to see the basis for that.

Some comparison rents just to put this in perspective, are we off base with the MNOI or not. If you look at Resolution 84-037, and had the park owner made annual increases under that resolution hypothetically in every year that he could, the rent increase today would be $147 per month increase, which would be 267 total.

Hypothetically had the park been under the jurisdiction of the ordinance since 1980 and they had taken all the automatic increases that they were entitled to, the increase would be $162 per space increase for a total of 281.

For comparative purposes only, again, I'm relying on Mr. Brabant's comparable current control rent of 2009, other parks he would value the increase at $267 per month increase using that methodology.

And again, there is the increase as compared to the Rent Stabilization Ordinance that I just mentioned and the resolution that I just mentioned in the prior slide. And then for comparison purposes, you have the rate of return that Mr. Baar explained in his presentation.

It's interesting to note that even at 11.5 percent rate of return, which is what the owner had agreed to back in 1977, the City's recommendation is right in that ballpark. So from staff's perspective, staff's recommendation is in line with the totality of circumstances that are unique to this park.

So finally to wrap up, the City's recommendation is to approve a rent adjustment of $191.95 per space per month above existing rents.

The City staff also recommends that this be phased in in five years, and the rationale behind that is it's a huge rent increase. We're talking even -- the City's recommendation if it were done in one fell swoop, would be I think 160 percent increase.

And looking at the intent of the ordinance, we think that's just too burdensome on these residents and that a phase-in is appropriate. Even at a five-year phase-in, which -- which would be $38.89 per space per month each year increase, that's still over a 25 percent increase over existing rents.

The initial increase I should -- says here should be 60 days. Rent control law may have a different requirement on that. We'll check on that, but it may be 90 days. But whatever state law is would be the -- the minimum and that each subsequent increase would be phased in one year from -- from the prior increase.

And with that, staff has completed its presentation.

CHAIR WERTHEIMER: Thank you.

We're going to have comments and questions from the committee, but first off, just to remind the audience to turn off your cellphones or put them on silent, please.

We're going to start from left to right, Commissioner Mike.

MR. SILACCI: Thank you, Mr. Chairman.

I just have a couple of clarifying questions if I could ask and I guess I'll direct them to Mr. Norman.

First, I just wanted to confirm just for my understanding that when the City enacted Resolution 84-037 that it only applied to the Ranch Mobile Home Park?

MR. NORMAN: That's correct.

MR. SILACCI: Thank you. And could you please help me understand a little bit more about the legal basis. Was the constitutional requirement for a just and reasonable return, was that a requirement that was present back in 1984 at the time that the Council went through the process to enact this resolution?

MR. NORMAN: I don't know whether it was -- it probably was in case law and I may let Mr. Baar elaborate on that. But at that time, we had no rent control ordinance on the books. So that's probably the better answer.

MR. SILACCI: I guess just an extension, maybe a two-parter, the Council had an opportunity to apply this resolution to the Ranch Mobile Home Park in 2001. So I guess I would extend did that standard exist in 2001?

MR. NORMAN: Yeah, I misspoke. In '84, yes, that standard I believe did exist and in 2001. Staff isn't clear as to why City Council went with the '84 resolution as opposed to the ordinance. I don't have a good answer to that. Some others here may, but I don't.

MR. SILACCI: That's fine. Thank you.

And just -- I have, excuse me, Mr. Chairman, one more just for me clarifying question.

How was the -- at the beginning when -- with the development conditions for the -- I guess the fee -- development fee waiver of $100,000 and I guess some reduced costs as far as forgiving some design requirements, I mean how -- how were those reflected in the initial rental rates and was there a period of time that -- that those would be taken into account?

Because I -- I guess I shouldn't comment. It's really a question. But I don't see how $100,000 is taken care of in one year. How were those -- how was that -- those fee waivers taken into account in setting the initial rental rates?

MR. NORMAN: From our review of the records, we're not sure how it was mentioned in some correspondence and memos in the files for that development.

It was discussed by accountants for the park owner when developing the 11.5 percent rate and it was a trade-off. It was more of a basis in my opinion for -- justification for having a low-income senior park.

MR. SILACCI: Thank you. Those were all my questions.

COMMISSIONER FELDMAN: Thank you.

I would like to speak to that also, the $100,000 gift that was given to the park owner by the City. If we use the return on investment approach, which I think might be better for this park, we could say that $100,000 if we play it forward for inflation is worth $443,000 today in equity to the park owner.

So my -- I haven't heard you take into account that gift that the City made to the park owner, and would the return on investment approach do that?

MR. BAAR: Well, I would say -- oh, I'm sorry. I'd say it is taken into account because the investment is lower because the park owner didn't have to make that investment, so therefore you have a lower investment basis.

So, you know, if they hadn't gotten that $100,000 gift, they would have invested 600,000 instead of 500,000 at the beginning and that would have been taken into account in the formula.

COMMISSIONER FELDMAN: Okay. But are you ever factoring it forward for CPI in any -- I haven't read anything about it anywhere and I've read all the documentation and I can't find it mentioned in any way.

MR. BAAR: No. Well, I'm saying the way it's factored in, it was an investment that the park owner didn't make. So it's factored in in the sense that the owner never gets credit for that later.

So it's not -- it's not an investment. So we -- we don't subtract it later because it's subtracted from the original base and so that -- 100,000 less was indexed by the consumer price index.

COMMISSIONER FELDMAN: Okay. May I ask another question?

Okay. Thanks.

Initially the documentation that I have that came from 1986 that I was presented states that the proposed mobile home park rent ordinance would apply to all parks within the city with the exception of Ranch Mobile Home Park which is under a separate affordable housing agreement. And I hear you say you can't find that acceptable affordable housing agreement. That's a shame.

I also wonder are you considering -- is the City of Thousand Oaks considering this park as affordable housing? And if not, why not? Because they are making -- earning $10,000 and that $10,000 if you factor it forward to today with the CPI is still $10,000. But on the market, it would be $44,300 that the tenant would have to be earning to qualify.

And in our park, $18,000 or $19,000 is the minimum we can earn to get into our park, yet with Ranch, a maximum of 10,000 per an individual. It just doesn't make sense to me, and no one is making mention of that here. And how did you factor that in?

MR. NORMAN: It's staff's opinion that this Commission has a very, very limited jurisdiction and may only consider the rent increase application.

The issue involving any income restriction isn't factored in to this application in analyzing it under the ordinance. I hope that answers your question.

THE PUBLIC: It doesn't answer ours.

COMMISSIONER FELDMAN: It really doesn't. The fact that you didn't factor it in and it isn't part of what we're supposed to do, I understand that.

But my concern is if I go ahead with all of these thoughts on different methods, the MNOI and everything else, is it a decision that's to be made for Ranch, per se, and in that case, it just doesn't work for me.

If this is an ordinance-wide thing, can we treat them differently? Can we treat Ranch differently from the other parks or is this ordinance-wide?

MR. NORMAN: Well, it's staff's opinion that we are applying the ordinance to this park as we would to any other park making a similar application.

COMMISSIONER FELDMAN: And that -- that, of course, doesn't make sense to me, but I'm going leave it at that. Thank you.

THE PUBLIC: It doesn't make sense to anybody. It would only make sense if it was a low-income park.

CHAIR WERTHEIMER: Mr. Sheldon.

VICE-CHAIR SHELDON: Thank you.

Could you talk a little about why the extrapolation from 1979 to 1982 is so problematic.

I apologize. I was wondering if you could speak a little bit about why the extrapolation from 1979 to 1982 was problematic as a base year. I know you touched on it, but if you could talk a little bit more about it.

MR. BAAR: When you say -- you mean why 1982 should be used?

VICE-CHAIR SHELDON: Yes, over 19 -- what was the problem with going from '82 to '79?

MR. BAAR: Oh, okay. The ordinance -- the regulations say if you don't have the income and expense information for 1979, you have to use the first year for which you have income and expense information. So that's the reason.

VICE-CHAIR SHELDON: As a follow-on to that, could you talk a little bit about why the breakdown of expenses and not having that is so important and what are some of the issues that you would be concerned about.

MR. BAAR: Well, the maintenance of net operating income standard, you know, is two components; the cost pass-through and the indexing of the net operating income.

And the problem -- if you don't have a breakdown of expenses, you don't know exactly what you're comparing, you know, and whether some things were left out in the base year or how they were factored and how utility expenses were treated, et cetera.

VICE-CHAIR SHELDON: Thank you. I have nothing.

CHAIR WERTHEIMER: Commissioner Ferruzza.

COMMISSIONER FERRUZZA: I don't have any questions.

CHAIR WERTHEIMER: Thank you.

I have a couple questions, if I may.

And on the concessions made at the time that the park was built, do you know if any of the other -- if any other parks in the area were also given concessions by the City for their development at the time?

MR. PRESCOTT: Perhaps I can answer that. I'm -- I'm not aware of any. The City did approve the Thunderbird Oaks Mobile Home Park shortly before that, and many of the other parks were already in existence when they were annexed to the City. I think the other one that the City did approve in the early '70s was Vallecito.

CHAIR WERTHEIMER: Okay.

MR. PRESCOTT: So I'm not -- I'm not aware of any that were approved for the other parks.

CHAIR WERTHEIMER: Thank you. How much value do you place on water and -- or utilities, water and trash on a monthly basis in your evaluations?

MR. BAAR: When you say how much they are in the --

CHAIR WERTHEIMER: In the comparisons that you were making, at one point in time you said the rent included the trash and utilities and at some point it -- it didn't. So in other words, I'm just curious as to the value you placed on a monthly basis on their utilities and trash.

MR. BAAR: Okay. I have to look through. I don't know if -- is this a question for Jim -- or Mr. Brabant or for me?

CHAIR WERTHEIMER: It's a question for the staff and whoever can answer it.

MR. BRABANT: I can tell you what adjustments I made in the rental value comparison that I did in 2009. The rents at Ranch Mobile Home Park included water and trash. And let's see, we had -- there was a park that just included water, and so the -- and I made a $13 adjustment for the -- so that was -- the difference there was trash. So in that case, it was $13 for the trash.

And let's see, here's one that included water. Let's see -- well, that's another one. I'm not -- here's one that included water, sewer and trash, and so -- I was just looking to see if we had one that had none.

Well, here's one that was none and I adjusted $33 for the combination of water and trash.

CHAIR WERTHEIMER: By adding it to the -- to the base rate and including it in your appraisal or deducting it?

MR. BRABANT: Well, it depends on -- on which way -- if -- if a comparable park had more services provided, for instance, Lakestone had water, sewer and trash all included in that, I made a minus $25 adjustment from that rent. If one had none, I made a plus 33 adjustment for that.

So it depended on whether they had more or less --

CHAIR WERTHEIMER: Okay.

MR. BRABANT: -- 'cause I was adjusting to the condition at Ranch that had included water and trash.

CHAIR WERTHEIMER: I was just trying to see how you get to apples and apples at the end of the day.

MR. BRABANT: That's the way I did it. So it was a plus adjustment for some, a minus adjustment for others.

CHAIR WERTHEIMER: In the base -- if you -- you all settled on the base year of 1982 to -- for your calculations, is that accurate?

MR. NORMAN: That's the recommended action.

CHAIR WERTHEIMER: Right.

MR. NORMAN: It's staff's position that '79, '82 or 1999 can be considered by the Commission.

CHAIR WERTHEIMER: Okay. When you made -- when you based yours on '82, did you include in your formula to allow him an 11.5 percent ROI? Was that the ROI you were working with at the time, basing the rents so he could earn 11.5?

MR. BAAR: Yes, because --

CHAIR WERTHEIMER: "Yes" is okay. That's good.

That's -- so then my question is did you include the $100,000 concession in -- in that as -- when you went back to his original investment?

MR. BAAR: No, because the 100,000 concession wasn't counted. It wasn't part of the investment.

CHAIR WERTHEIMER: So you didn't -- okay. So you took his investment as 500, not 600?

MR. BAAR: Yes.

CHAIR WERTHEIMER: That's fine.

MR. BAAR: Absolutely.

CHAIR WERTHEIMER: Just want to make -- yeah. I'm looking to see that.

That's the questions I have.

Anybody else in the board come up with anything more?

All right. Do we have any questions for the staff from the applicant's lawyer?

Thank you.

MR. HILL: Is this where I stand?

CHAIR WERTHEIMER: Is that -- yes. Give us your name and your city, please.

MR. HILL: Okay. Boyd Hill. I'm with the law firm of Hart, King & Coldren located in Santa Ana, California.

First, I'd like to start with Mr. Baar, if that's appropriate.

Good evening, Mr. Baar. Also, can you put up the PowerPoint that I sent you with Mr. Baar, yes.

I don't -- I don't need it on screen yet, but I'll tell you when to.

Okay. Good evening, Mr. Baar. The purpose of my cross-examination this evening will be to determine, first, on what matters you can agree with the applicant's position and then to further explore your positions on what matters -- on matters where you do not agree with the applicant's position.

The City staff is basing its position in this rent increase application on your opinions contained in your November 30th, 2010 report entitled Analysis of the Ranch Mobile Home Park Rent Increase Application.

First, is it your opinion as stated in the summary of your report, first slide, that because there have been virtually no increases in 30 years, very substantial rent increases are required?

MR. BAAR: I would say, yeah, under the ordinance, yes.

MR. HILL: Okay. Second, is your above opinion based in part on the following facts stated in your report: From 1979 to 2009, the average rent in the park increased by only about 10 percent compared with an increase of 192 percent in the CPI during this period?

MR. BAAR: Well, I'd answer -- I'd say -- I'd clarify it, I'd say --

MR. HILL: That's a "yes" or "no."

MR. BAAR: No, it's not. I'd say yes, but my analysis is based on the fair return standards. And that -- I'd say that's the justification, but I -- I pointed that out to point out the circumstances.

MR. HILL: Okay. Third, are the components of the very substantial rent increases described in your opinion the following: No. 1, to provide a fair base rent for the purposes of a fair rent calculation, No. 2, cover operating cost increases, and No. 3, provide for the growth in net operating income reflecting inflation since the base year?

MR. BAAR: Yes.

MR. HILL: Okay. Mr. Baar, so far your opinion that the applicant should get a substantial rent increase and that the components of that rent increase should include adjustment of base year income, adjustment for inflation and adjustment for increased costs of operation, corresponds with the position of the applicant.

I want you to keep in mind that these three components of the substantial rent increase that should be applied as we discuss the details of the application and of your analysis because as we get into it, it will become clear that your particular analysis ends up disregarding a significant amount of the increase attributable to each of these three components.

Now, let's consider what standards should be used to determine a just and reasonable return. According to your report, next slide, please, in this analysis a maintenance of net operating income standard is used as the measure of fair return.

Mr. Baar, did you use any standard in your report other than the maintenance of net operating income standard to determine the proper amount of rent adjustment for the application?

MR. BAAR: I would say this: I discussed other standards to -- as types of checks to see because we had the unusual circumstance here of, one, we're adjusting the base rent; two, the rents haven't been increased in 30 years.

So I looked -- you know, I looked at the other standards as sort of checks to see if what we got under the net operating income standard, whether it was, you know, way out of proportion with what -- how it compared with some of the other measures.

MR. HILL: So it's true you used other standards other than the MNOI standard, is that correct?

MR. BAAR: Yes. I didn't use them to make the actual calculation. I made calculations of how those standards would work.

MR. HILL: Are you aware that the City regulations establish a presumption that the MNOI standard applies --

Next slide.

MR. NORMAN: That slide?

MR. HILL: Right there, yeah.

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.

MR. BAAR: Yes, I'm aware of that.

MR. HILL: Okay. Are you aware of any clear and convincing evidence that demonstrates that the MNOI standard should not be used for the Ranch application?

MR. BAAR: Well, I'm not saying it should -- I didn't conclude it should not be used, but you know --

MR. HILL: That's not the question.

Are you aware of any clear and convincing evidence that the MNOI standard should not be used for the application --

CHAIR WERTHEIMER: I'd like to interrupt, please.

Counselor, we're not in a court of law. This is --

MR. HILL: I understand. What I'm trying to get -- you know --

CHAIR WERTHEIMER: He'll give you an answer.

MR. HILL: -- I'm trying to short circuit this.

CHAIR WERTHEIMER: He'll give you an answer.

MR. BAAR: Repeat your question again.

MR. HILL: Sure. I'll -- I'll ask it again. Thank you.

Are you aware of any clear and convincing evidence that demonstrates that the MNOI standard should not be used for the Ranch application?

MR. BAAR: No.

MR. HILL: Okay. Mr. Baar, are you aware that the City regulations require that if another standard is to be used, the applicant or tenants must in advance submit documentation and information to support an alternative methodology?

Next slide.

MR. BAAR: Well, I think I remember that.

MR. HILL: Where's the rest of that slide?

There you go. Thank you.

States -- I'm reading from the regulations. It states: The methods herein authorized herein are not exclusive. Alternative approaches may be employed by the Commission. Applicants or tenants may propose the use of such 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.

The methodology and documentation shall be provided with the application or sufficiently before the date set for the 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 continuance of the hearing at the Commission's discretion. The use of such approach as suggested by applicants or tenants shall be at the discretion of the Commission.

Mr. Baar, did either the applicant or the tenants comply with the requirements of Section 1.04 to request a alternative standard?

MR. BAAR: No, but I want to comment. I didn't think that precluded the Commission from considering other standards.

MR. HILL: Where do you get that idea from?

MR. BAAR: Well, because I feel the Commission had the authority to consider what evidence it considered relevant.

MR. HILL: So there's nothing in the regulations of the ordinance that say that the Commission can do that, but you just feel that's the way it should be?

MR. BAAR: Well, it's not a question of feeling. Let me go back to the -- the language. You want to put it back up.

MR. HILL: Sure.

MR. BAAR: It says alternative -- I don't see the whole screen. Alternate approaches may be employed by the Commission, and I mean we can disagree. I felt my conclusion or understanding was that that meant that the Commission could consider other methodologies.

MR. HILL: Did you read this provision before you did your analysis?

MR. BAAR: Yes.

MR. HILL: Okay. Mr. Baar, did either the -- let's see. So the reference in your report to a rate of return on investment standard and the current comparable rents are not appropriate for use at the hearing under the City's regulations, are they?

MR. BAAR: Well, I didn't reach that conclusion.

MR. HILL: Okay. Mr. Baar, will you agree that your discussion and findings under those two standards are not appropriate, unnecessary, irrelevant and that they should be stricken from your report?

MR. BAAR: No, I don't agree with that.

MR. HILL: Okay. Mr. Baar, isn't it true that you really started your analysis with the rate of return on investment standard and the current comparable rent standard and then reverse-engineered a modified MNOI analysis based on your results from those other two standards?

MR. BAAR: No, that's absolutely not true.

MR. HILL: Mr. Baar, in your report don't you admit that the rate of return on investment standard is not found anywhere in the City's ordinance or regulations?

Next slide, please.

MR. BAAR: Yes, I do.

MR. HILL: Okay. It states: Neither the ordinance nor the regulations include any specific reference to the use of this type of standard, referring to the rate of return on investment.

MR. BAAR: Right, but I also felt that there was the broad language about the Commission being able to consider other standards.

MR. HILL: Which we discussed has to come through an application and sufficient advanced notice, right?

MR. BAAR: Well, that's your conclusion.

MR. HILL: And yet you incorporate the rate of return on investment standard into the MNOI standard to create a modified MNOI approach, don't you?

MR. BAAR: No. I included this to point out what happens under an alternate approach.

MR. HILL: Next slide, please.

I'm going to quote from your report again. However, this type of formula was used in order to establish a fair net income for this park in accordance with the City's affordability objectives associated with the development of this park.

And so under the guise of meeting the City's affordability objectives, which were supposed to have been met under the MNOI approach, you created an altogether new MNOI modified approach, one that you admit is very disfavorable to long-time park owners such as Mr. Hohn, don't you?

MR. BAAR: Why -- repeat that question. That was a long question.

MR. HILL: Okay. And so under the guise of meeting the City's affordability objectives which were supposed to have been met under the MNOI approach, you created an altogether new MNOI plus approach, one that you admit is very disfavorable to long-time park owners such as Mr. Hohn, didn't you?

THE PUBLIC: Objection, your Honor. This is badgering the witness.

MR. BAAR: Okay. First of all, I -- and I'll go back. Also the ordinance says that the Commission can consider -- there's a list of factors that the ordinance -- under the ordinance that the Commission can consider and it says among other relevant factors.

And their disagreements -- you know, these are relevant factors, this had a broad scope and there -- in many cases different factors have been considered relevant.

And secondly, as far as the investment, I point out if you use a return on historic investment approach and you don't adjust the historic investment, it's very, very, you know, unfavorable to a long-term owner.

But when you put an inflation adjustment into the historic investment approach, you're inflation adjusting in the original investment, I wouldn't say that's so unfavorable. And in fact, in a number of cases I have been in, that's what the park owner's expert has done.

MR. HILL: Next slide, please.

You state in your report on page 35: As a practical matter when return on investment approaches are used, long-term owners, Mr. Hohn, who typically have low investments by current standards are disfavored.

Isn't it true that you chose an approach to incorporate it into the MNOI standard that would disfavor Mr. Hohn's application?

MR. BAAR: Well, I guess I'll repeat my answer. I'd say -- I qualified that by pointing the way to -- you know, of meeting that type of criticism or problem is to put an inflation adjustment into -- of the original investment so you're not using this old historic investment as the rate base.

MR. HILL: Mr. Baar, by choosing a rate of return investment standard that's disfavorable to long-term owners, are you showing bias against the park owner and in favor of the tenants?

MR. BAAR: Well, saying by -- by putting in the -- the inflation adjustment to the rate base, this is to compensate for how the formula would work if you didn't have that inflation adjustment of the rate base.

MR. HILL: Mr. Baar, isn't it true that you were asked by the City to come up with an analysis that would obtain the lowest possible rent increase for the park owner?

MR. BAAR: No. I was asked to come up with my analysis and look at the different factors.

MR. HILL: And isn't it true that you incorporated the rate of return on investment standard into your MNOI analysis to justify using a 50 percent CPI adjustment into your MNOI analysis?

MR. BAAR: No, it isn't.

MR. HILL: Next slide, please. I need to go -- no. Maybe the next slide. Go -- let's see. Can you go back, I'm sorry. Hard when I'm not in control of the slide. Back one more, please. Thank you.

Okay. Let's read the statement: If the park -- the second statement there, if the park is granted a rent increase of $252, an amount authorized pursuant to the MNOI student with a median 75 percent indexing ratio, the rate of return on the inflation adjusted investment would be 13.3 percent and the rate of return on the historic investment would be 48 percent. Baar report, page 38.

Mr. Baar, isn't it true that in coming up with your very low rate of return under your modified MNOI plus rate of return on investment approach that you failed to take into account that under this City's particular ordinance, the rents come up to market when a coach is removed from the park and that the regulations authorize the recapture of rent increases that were forgone in prior years?

MR. BAAR: I thought I mentioned that in my report, that basically the rents are -- type of vacancy de-control when -- when the mobile -- when there's a new mobile home in conjunction with the entry of a new tenant.

MR. HILL: And yet in your modified MNOI rate of return approach you failed to take this fact into account.

MR. BAAR: Well, I don't -- the park owner is not investing more money when this happens. So I don't know how you would take that into account, a rate of return approach.

MR. HILL: But you didn't take it into account?

MR. BAAR: Well, there's no invest -- there's no investment at that point. It's basically the -- there's a right to a rent increase because this -- because there's -- no new mobile home was brought in conjunction with a new tenancy, so I --

MR. HILL: Okay. Mr. Baar, I note that under your unauthorized rate of return on investment analysis you came up with an imputed inflation adjustment -- investment value of 1.8 million dollars.

Mr. Baar, did you in your investigation ever look at current property appraisals to see if the property appraises for that amount?

MR. BAAR: No, I didn't because that's -- this was a return on investment analysis, not a return on value analysis.

MR. HILL: Mr. Baar, would it surprise you to find out that the Ranch Mobile Home Park recently appraised for -- for $168,000, about the same price as a new coach that some of the tenants can afford to pay cash for?

THE PUBLIC: Oh.

CHAIR WERTHEIMER: Quiet, please.

MR. BAAR: Yeah. I -- will it surprise me, it's -- it's -- you know, yeah, it would surprise me and I don't know if it's true.

MR. HILL: Isn't it true that even a doubling or tripling of the rents won't bring the Ranch property up to the level of the inflation adjusted rate of return investment value?

MR. BAAR: Well, just a minute. Okay. So this inflation adjusted value is 1.8 million and net operating income of about 120,000. Let's say we have a 6 percent capitalization rate, would cover that net -- would cover that -- would bring it up to that market value.

MR. HILL: Mr. Baar, you didn't even look to see if there was a current appraisal of the current value of the rent -- of the park real property, did you?

MR. BAAR: Well, no. I wasn't doing a return on value analysis.

MR. HILL: You don't want to show anything in favor of a large increase to the park owner, do you?

CHAIR WERTHEIMER: Counsel --

MR. BAAR: I didn't --

CHAIR WERTHEIMER: One moment. Yeah, we aren't --

MR. HILL: I'll withdraw. I'll withdraw, thank you.

CHAIR WERTHEIMER: Again this a fact-finding hearing and we're here to not -- to just find some facts --

MR. HILL: Well, I -- I think I'm trying to show a pattern and -- and it will become more apparent as I keep going.

CHAIR WERTHEIMER: Again, we're not in a court of law.

MR. HILL: Mr. Baar, let's now examine your use of a current comparable rent standard, shall we? Let's start off with you recognize that a current comparable rent standard has never been used unless authorized or required by an ordinance, don't you?

MR. BAAR: I want to see my --

MR. HILL: Next slide, that might help you.

Next slide.

MR. BAAR: I -- I didn't say never. I said has usually not been considered.

MR. HILL: Except when specifically authorized or required in an ordinance.

MR. BAAR: Yeah -- no. You had said I -- it had never been used and I said usually not considered because I have been -- I mean the -- the ordinances provide -- I'm talking about the mobile home rent control ordinances, they provide in general, you know, discretion to consider other relevant factors.

And some rent board commissions like to consider comparables, some don't even if it's not specifically authorized.

MR. HILL: Mr. Baar, can you tell me where in the City's ordinance and regulations the City authorizes or requires use of a current comparable rent standard?

MR. BAAR: No. As I indicated, it's not specifically mentioned.

MR. HILL: Isn't it true that a current comparable rent standard is the antithesis of the MNOI standard because it looks at rent -- controlled rents rather than non-rent controlled base year rents?

MR. BAAR: Well, it's not -- the MNOI standard looks at comparable rents in extreme cases in the base year. It doesn't look at comparable rents in the current -- it doesn't look at market rents -- or it looks -- the MNOI standard looks to see if there's a situation where the base year rents had no connection with the market.

The MNOI standard doesn't -- hasn't looked at, you know, whether the current rents -- how they compare with the market because basically the rent regulations are based on the, you know, basic concept that the market is not working.

MR. HILL: Next slide, please.

MR. BAAR: Is it easy to hear me?

THE PUBLIC: No.

MR. BAAR: Okay. Good.

MR. HILL: Yeah. These -- these are kind of fuzzy microphones here.

Next slide, it states -- you state: The MNOI fair return concept has been premised on base year rents that reflect market conditions and the maintenance of base period net operating income levels provided by base rents rather than current comparability of required rents. Baar report, page 38, is that correct?

MR. BAAR: That's correct.

MR. HILL: Okay. And yet you decided to use a current comparable rent standard in this case that you knew was tiered off of 30 years of below market CPI rent adjustments paid -- or 75 percent of CPI rent adjustments paid to a 1986 rent adjusted rate to justify modifying the MNOI rent adjustment to which the park owner is entitled.

MR. BAAR: First of all -- yeah, the -- the -- when you say modified it by not using the market rents, the ordinance is not based on the concept of -- the ordinance is based on the concept that the market is not working because you have a captive market.

And -- you know, and each one of these other things that I mentioned, I said I -- you know, mentioned these reports because you had unusual circumstances.

I mentioned that they're, you know, often not -- you know, commonly not used in conjunction with MNOI analysis, but sometimes they are, and this ordinance authorizes the board to consider other relevant factors. So I felt they had -- you know, should be mentioned and I mentioned also the caveats about them.

MR. HILL: Okay. Mr. Baar, you have not explained where the ordinance in particular authorizes the comparable rent standard, have you?

MR. BAAR: No. I said it does not specifically mention it, but you also have this broad language about considering relevant factors.

MR. HILL: If the matter is brought before the Commission timely and notices given, et cetera, et cetera, et cetera.

MR. BAAR: Well, that -- okay. Well, we disagree about that. I think the Commission has the authority to consider factors that it deems relevant.

MR. HILL: Mr. Baar, I note that in discussion of your use of the two alternative standards, you cite exclusively the City findings and proposed to, quote, unquote, "safeguard tenants from excessive rent increase," end quote.

But nowhere in your discussion of those two standards do you explain how they will, quote, unquote, "at the same time provide landlords with a just and reasonable return on their rental spaces," end quote.

Mr. Baar, doesn't your insistence on only part of the objectives of the City requirements show your -- show your bias in favor of tenants and against park owners?

Next slide, please.

MR. BAAR: I -- I think that --

MR. HILL: Next slide, please.

Next slide, please.

MR. BAAR: Okay. I think the main -- the purpose of the maintenance of net operating income standard is to safeguard owners and provide them with a fair return.

MR. HILL: Okay. The City code -- the ordinance that we're dealing with says: Therefore it is necessary and reasonable to continue 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.

I find many instances in your report where you cite to the first part but failed to -- to mention the other part. Is there a reason why that omission occurred?

MR. BAAR: Well, I guess it was implicit the maintenance of net operating income standard is a fair return standard and its purpose is to provide a just and reasonable return. And I guess to me it was so obvious that maybe that's why I didn't specifically repeat it.

MR. HILL: Mr. Baar, I'm sure that in your analysis you had a chance to review the City's prior versions of its rent control ordinance in particular since we are now talking about objectives of the City's rent control ordinance. I think it would be a good idea to reflect on what the City originally intended with its rent control ordinance.

Next slide.

I'm going to read from that for those that can't read it since it's small print. The City Council recognizes that permanent rent control localized in the City of Thousand Oaks would be inconsistent with the system of free enterprise and initiative, would tend to aggravate and prolong the shortage of rental units available on the market, would tend to discourage investment in rental unit development, and would tend to reduce incentives to improve or sustain a desirable environment within rental unit facilities. And that's from City Ordinance No. 755-NS, Section II.

Mr. Baar, isn't it true that nowhere in your report do you discuss those objectives of maintaining a system of free enterprise and initiative, of encouraging more investment in rental unit development and of providing financing for a desirable environment within rental facilities?

MR. BAAR: Okay. First of all, you could say in some sense the City then passed subsequent, you know, ordinances which set forth another policy, that they wanted to make one part of the ordinance permanent, the part that applied for mobile homes. I don't know if the apartment part is still in effect or not.

Secondly - excuse me, it's a little hard because I'm looking at another screen instead of mine - as far as being inconsistent with the system of free enterprise and initiative, the problem is with mobile homes you don't have a market or initiative. You have captive tenants and you basically have a frozen supply.

MR. HILL: Because of rent control, right?

MR. BAAR: No, absolutely not. You have a frozen supply of mobile home parks for several reasons. One is that as the urban areas became denser, neighborhoods would not tolerate the construction of new mobile home parks. They couldn't get use permits.

Another -- as other uses became more profitable, whether or not there was rent control, it just became -- other types of construction became more profitable. Apartment --

MR. HILL: Because rent control kept rents down.

MR. BAAR: No. I'm saying even at market rents for mobile homes -- because the initial rents -- under state law, the initial rents for a mobile home park are exempt from rent control.

In fact, I'm quite sure that any park that -- I take it back -- or I'll broaden it. Any park that's built after a certain date, it's exempt from rent control. So the rent control is not deterring its construction.

MR. HILL: In the City of Thousand Oaks?

MR. BAAR: Statewide. Statewide. And so basically -- and also other types of uses are allowed a higher density, for example, condominiums, apartments. So you have these factors and those deterred the construction of new parks, and the park construction basically stopped before the rent controls came in.

And so -- and -- I mean we -- you know, we could talk about this for -- for hours, but it's absolutely clear and -- and you know, you've pointed out this clause, but then the -- you know, the City made, you know, a subsequent decision that it was necessary to rent -- or they believed it was the proper policy to regulate the rents for mobile home parks.

And -- and generally this is based on -- I'd have to go back to the exact language of the ordinance because of the unique captive situation.

MR. HILL: Mr. Baar, isn't it true that your analysis fails to take into account the objectives of maintaining a system of free enterprise and of initiative?

MR. BAAR: No. You don't maintain free enterprise and initiative by not having regulation in a monopoly -- it's a monopoly type of situation.

MR. HILL: Oh, I guess -- I guess a monopoly would be -- it wouldn't be charging 100 and -- what is it? $127 a month for rent?

MR. BAAR: No. I -- I agree with that, but I'm not saying the owner acted monopolistically. I'm saying you have a situation where if the rent goes up, a mobile home owner cannot move their mobile home to another space. They can only rent that space with that mobile home or they lose their investment.

I'm not saying it's -- you know, so in that particular concept you could say it's a type of monopoly. Other people might -- they'd call it a captive market, maybe a captive market. You could choose that word, but it's clearly a special situation. You've got this person who has a huge -- you know, a big investment. They cannot move it.

MR. HILL: Okay. Mr. Baar, now that we've done with the appetizer, let's move on to the meat and potatoes. Let's discuss your opinion regarding the proper base year --

CHAIR WERTHEIMER: Counselor, we're on a fact-finding mission here, please.

MR. HILL: I'm sorry, what?

CHAIR WERTHEIMER: We're here to find out the facts and exchange -- and exchange ideas and information, okay?

MR. HILL: I -- I was using an alliteration. I wasn't trying to be -- I was trying to -- I was trying --

CHAIR WERTHEIMER: Understood, thank you.

MR. HILL: Thank you.

Mr. Baar, isn't it true that in order for the maintenance of net operating income formula to work, that the base year chosen must generally be a year prior to the imposition of rent control?

MR. BAAR: Well, generally it has been. There have been exceptions. For example, if there was a fair rent decision subject -- fair return decision subject to the passage of the ordinance. That's often been used as the base year.

And then there's cases where base year information has not been available, I'd say, you know, ideally to, you know, use a pre-regulation year is the best. It's not constitutionally required.

MR. HILL: Next slide, please.

I'm going to quote from a case -- recent case, court of appeal case in Mountain -- MHC Operating Limited Partnership versus City of San Jose. I guess you testified in that case, did you not?

MR. BAAR: Yes, I did.

MR. HILL: It states the opinion: In general, the maintenance of net operating income formula is based on pre-rent control, fair market assumptions. Is that a correct statement of law?

MR. BAAR: Yeah, generally it is.

MR. HILL: Okay. And Mr. Baar, isn't it true that the City adopted such a presumption? The next statement on that slide, sorry.

MR. BAAR: Yes, but the City also passed a regulation that said where the base year income and expense information was not available, that then the base year would be the first year for which income and expense information --

MR. HILL: We'll get to that. Let's start with the presumption first because I think, you know, we need to -- you know, you're a lawyer and I think you understand the -- the importance of a presumption of law.

It states: 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. That's Section 1.03 of Regulation 2.

Mr. Baar, isn't it true that the City's regulations provided that 1979 must be the base year whenever any financial information pertaining to that year is available?

MR. BAAR: Well, did it say any financial -- my understanding of financial information meant when there's income and expense information.

MR. HILL: Let's look at the regulation Section 3.01.

Next slide, please.

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

MR. BAAR: Right, and my conclusion is if you don't have any expense information that -- you know what, I think when people drafted this, you know, ordinance they couldn't think of -- or regulations, they couldn't think of every possible variation that somebody would come in and say, "Well, I have income information, but I don't have expense information but therefore I still have base year information."

And I think the clear intent, you know, sensible reading of that is if you don't have expense information you don't have base year -- you don't have information for that year.

MR. HILL: Okay. Mr. Baar, isn't it true that there is financial information for 1979 regarding gross income?

MR. BAAR: For gross income, yes.

MR. HILL: Okay.

CHAIR WERTHEIMER: Counselor, question, please. Do you have your PowerPoint presentation available for the committee to -- or a copy of it?

MR. HILL: Yeah. It's on -- it's loaded on the City system.

CHAIR WERTHEIMER: Okay. Is there a way we can get that printed for the committee?

MR. HEHIR: Counsel, what's happening is that when you go to the slide, you immediately go back to --

MR. HILL: I don't.

MR. HEHIR: -- the witness.

Well, I'm just saying that it's going back and forth, and so we're struggling with we see something and we don't really have it. We have every other PowerPoint. Do you have any extra copies of this?

MR. HILL: I'd be glad for them to keep the PowerPoint up while I'm discussing it. I don't need it to be focused on me. Thank you.

CHAIR WERTHEIMER: Is there anybody here in the city who can print what he said is on the computer, on the system? We -- we need to find that out. So we're going to take a break and we'll be back at 8:45. Thank you.

(Recess.)

MR. HILL: It was my understanding with the City staff that we would have adequate time to cross-examine witnesses and then we would then have equal time with the City's time to present our case.

CHAIR WERTHEIMER: Yes, you do, but it's not -- your presentation is set (unintelligible) then your cross.

MR. HILL: Correct.

CHAIR WERTHEIMER: Okay. (Unintelligible).

MR. HILL: So we'll be brief.

CHAIR WERTHEIMER: Okay. Thanks.

MR. HILL: Thank you.

Mr. Baar, isn't it true that 1979 expense information is available in the form of City records showing 1982 expense data from which 1979 expense data can be extrapolated by adjusting for inflation?

MR. BAAR: My conclusion is that that does not meet the requirements of the regulations because I don't think extrapolating information from 1982 in order to get 1979 is not having 1979 information within the contents of the regulations because basically if somebody could -- under that approach, somebody would always have 1979 data because even if they have, you know, 2000 data, you could extrapolate it back to 1979.

And it's -- this is a very specific provision and it's meant to require actual data.

MR. HILL: Mr. Baar, 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. Baar testified that expenses could be extrapolated by using current data in adjusting for inflation.

MR. BAAR: Yes, I did testify to that, but that was not in the context of this type of regulation, and under other ordinances, I have extrapolated backward. But this particular regulation is very specific and requiring something different.

MR. HILL: Mr. Baar, according to the City regulations, isn't it true that only the park owner/applicant can request a different base year and only if there is no actual or imputed financial information available and only if the park owner can make a clear and convincing showing of evidence regarding lost records?

MR. BAAR: Just a second. I'm looking --

MR. HILL: Next slide -- excuse me, next slide after that.

THE PUBLIC: Objection. Calls for a legal conclusion.

MR. BAAR: There's also a provision in the regulation that says in the event 1979 financial information is not available and where the loss of such information -- records can be substantiated by clear and convincing evidence, the landlord of record may substitute as a base year the following -- first year following 1979 for which records are available.

MR. HILL: That's the regulation I'm citing to.

MR. BAAR: Yes, and I --

MR. HILL: Mr. Baar --

MR. BAAR: The way I read that is you can't use 1979 if you don't have the data.

MR. HILL: Mr. Baar, is there anything in that regulation that requires the park owner to use a different year other than 1979 if he chooses not to?

MR. BAAR: Okay. I read this, and we can disagree, that you can't use the 1979 if you don't have the data.

MR. HILL: Mr. Baar, isn't it true that there are only two instances in which a court has allowed a post-rent control base year, first, when a city in its rent control ordinance has exercised its discretion to adopt a different base year, and second, when the mobile home park was sold after the original base year and the purchasing park owner adjusted its purchase price accordingly? And I'm referring to the MHC case.

The next slide, please.

MR. BAAR: Well, I don't know how many cases this issue has come up, but I believe that the -- there's no doctrine that says that there's a constitutional requirement that you have to use a pre-rent control base year in an MNOI standard.

I've often recommended it -- or I have recommended it, but I don't think it's required by law.

MR. HILL: Mr. Baar, does the City ordinance adopt a year other than 1979 as base year? Look at the second bullet point on that slide. Maximum rent is that rent in effect between June 1979 and May 1980.

MR. BAAR: Well, I -- let me see. I think this is for the annual rent increase provision, this section --

MR. HILL: Mr. Baar, let's move on.

MR. BAAR: -- under the fair return standard.

CHAIR WERTHEIMER: Counselor, question if I may, please.

MR. HILL: Sure.

CHAIR WERTHEIMER: The -- your questions are about his testimony and not about the facts that we need to make our decision on here. So I ask that you instead of questioning his -- his testimony, just ask the questions so we can gain information as we go along.

MR. HILL: I'm -- I'm trying to address the -- the three legs of his opinion that we addressed at the beginning and -- and the three legs of his opinion are -- are -- are key factors here. I've finished the one leg on the base year and I'm going on to the second leg right now, if I may.

CHAIR WERTHEIMER: As long as we get some information to help our decision up here, that would be great.

MR. HILL: Okay. Thank you.

Mr. Baar, are you an appraiser?

MR. BAAR: No, I'm not.

MR. HILL: Have you ever been qualified to testify on market rents?

MR. BAAR: No. I'm not an appraiser. I don't think I've been qualified to testify on that.

MR. HILL: Does your report -- your report on page 22 includes an estimate of market value for 1982, is that correct?

MR. BAAR: Well, just a minute.

Yeah. I used the data that Mr. Brabant supplied.

MR. HILL: Did you use proper appraisal techniques to come up with the number you did?

MR. BAAR: No. I relied on another appraiser. Where -- certainly an expert in putting together their testimony can rely on information from other experts.

MR. HILL: We'll move on to the next -- the next point of your appraisal that deals with 1982 expense information. Let's start with where that operating income figure came from.

It came from a 1983 memorandum prepared by Michael Martello, deputy city attorney, addressing the rent -- addressed to the Rent Adjustment Commission for purpose of ruling on an application under the City rent control ordinance, did it not?

MR. BAAR: Yes, it did.

MR. HILL: And in that memorandum summarized the City's review of the Ranch's 1982 gross income and net operating expenses and concluded by finding and establishing what would be the net operating income under the City rent -- rent control ordinance, did it not?

MR. BAAR: That's my understanding of it.

MR. HILL: Okay. Next slide.

Next slide.

That's the statement that's in the report.

MR. BAAR: What -- what number is the slide so I can follow?

MR. HILL: I'm sorry?

MR. BAAR: Is there a slide number so I can follow? Because I can't see any of these.

MR. HILL: Oh, okay. Well, I'll read it to you. It says --

CHAIR WERTHEIMER: We've got -- one moment. We got a printed copy during the break, so if you could let us know what page it's on --

MR. HILL: Okay. Sure.

CHAIR WERTHEIMER: Thank you.

MR. BAAR: It's number -- it's on page 10.

CHAIR WERTHEIMER: Page 10.

MR. HILL: I have a printout of it somewhere here, not here. Sorry. I have my printouts only, thank you.

Okay. Okay. Moving on, Mr. Baar, is it presumed that -- under Evidence Code 664 it's presumed that an official duty has been regularly performed, is that -- is that not correct?

MR. BAAR: I can't testify about the Evidence Code.

MR. HILL: Okay. And do you have any reason to believe that Mr. Martello did not accurately state what the City -- what the net operating -- what the operating expenses would be for 1982 in that memorandum?

MR. HEHIR: Counselor, let me just say that we're getting to a point where you're starting to get beyond what we would consider in a -- in this type of situation --

MR. HILL: Well, I think it's important here, Mr. Hehir -- I understand your concern, but here, Mr. -- Mr. Baar has disagreed with Mr. Martello's statement of the net operating expenses and I -- there's no basis in his report to explain why Mr. Martello's statement of net -- of operating expenses is not correct.

MR. HEHIR: Well, then that might be the question instead of going into more detail of what we would consider something that would happen in trial.

MR. HILL: Okay. Mr. Martel -- or Mr. Baar, do you have any reason to believe that Mr. Martello failed to make an adjustment regarding imputed management and administrative expenses in his 1983 memorandum, assuming one was required?

MR. BAAR: All right. This one. He would have been required to do it if they were over 8 percent, and if they were under, my understanding is he wouldn't have been required to make an adjustment.

MR. HILL: Let's look at that City regulation you're referring to, 3.02. Isn't it true that 3.02 applies only when the park owner voluntarily decides to seek an adjustment for imputed administrative and management expenses?

MR. BAAR: You said 3.02?

MR. HILL: Of RAC Sub 2, Section 3.02.

Next slide, please.

MR. BAAR: Okay. This is on page 12.

MR. HILL: Yeah. There's nothing about 3. -- there's nothing about that section that mandates that a park owner include an adjustment for imputed management and administrative expenses, is there?

MR. BAAR: No. I don't -- I mean I don't -- yes, the park owner is not allowed to -- not required to impute expenses if they didn't record -- you know, they're not allowed to -- they're not required to impute them if they did the services themselves.

MR. HILL: Okay. I'm sorry. I was referring to Section 2.11, but that's the one you were reading from, I assume. It's not the same one that -- the slide that we just reviewed is the one I'm talking about, but I used the wrong section number. It's 2.11.

MR. BAAR: So you were talking about the section where it says when the landlord performs different services in the base year and the current year --

MR. HILL: Yeah, right.

MR. BAAR: -- an adjustment will be allowed?

MR. HILL: Yeah. And the question was there's nothing mandatory about that section, is there?

MR. BAAR: No. I -- but first of all, that analysis was made pursuant to a return on investment standard, and I made an adjustment because I was doing -- you know, undertaking a maintenance of net operating income standard and I felt there had to be comparability between the base year and the current year.

MR. HILL: Let's skip ahead to the next slide.

Okay. Page 18.

Okay. Mr. Baar, you made -- you came up with your own formula for determination of an imputed base year, didn't you, in this statement: Subject to the gap in available information, an alternate calculation is included which increases the 1982 operating expense level to an amount which limits the rate of operating cost increases from 1982 to 2009 to the rate of increase in CPI?

Mr. Baar, has that -- that formula that you used ever been approved by a court or used by you before?

MR. BAAR: Yes, it has.

MR. HILL: When?

MR. BAAR: Okay. The problem is I've prepared, you know, more than 50 of these reports and I don't remember specifically one -- which case it was used in, but I have used this type of approach in the past.

MR. HILL: Okay. Okay. The last point I want to address is your inflation indexing adjustment.

Mr. Baar, isn't it true that you apply a 50 percent inflation indexing adjustment to base year net operating income despite the fact that no such reduced inflationary standard is set forth in either the City's ordinance or regulations?

MR. BAAR: Well, I believe that the ordinance or regulations say that base, you know, period net operating income is presumed to provide a fair return, and there's no provision in the ordinance or regulations setting forth how much indexing is required. That's -- that's the issue. That's my reading of the ordinance.

It doesn't -- if it said 100 percent was required, I'd only use 100 percent. If it said 50 percent was required, I'd only use 50, but my reading of it, it doesn't specify here.

MR. HILL: Mr. Baar, isn't it true that in none of the California cases to which you cite did the courts ever apply less than 100 percent inflation indexing adjustment where the city or rent adjustment board did not expressly adopt such a standard in advance of the hearing?

MR. BAAR: Let's -- I'm thinking for a minute.

In Escondido, there's no -- there's just a list of factors, and in that case, I used a less than 100 percent -- I listed indexing at 100, 75, 50 percent to the best of my memory, and the court and the board used 50 percent, and the court upheld it.

MR. HILL: Mr. Baar, wasn't there in that case a city regulation stating that an inflation index adjustment must be less than 60 percent? Cite to page 15 of that opinion.

MR. BAAR: Was it the -- I'd have to go back and look at the opinion.

MR. HILL: Okay. All right. Mr. Baar, let's see. I'm trying to move quickly in accordance with your --

Okay. I have no further questions for Mr. Baar.

Mr. Brabant.

Good evening, Mr. Brabant.

MR. BRABANT: Good evening.

MR. HILL: I hear from my partner, Mr. Coldren, that you had a tough day on the witness stand today. I understand that you apologized to the court for your methodology and opinions in the court. Is that the case?

MR. BRABANT: No, I never --

MR. HEHIR: Wait, wait. Are you talking about a different case or are you talking about tonight?

MR. HILL: In Orange County Superior Court today.

MR. HEHIR: Let's stick to the testimony tonight.

MR. HILL: Okay. Mr. Brabant, on page 19 of your report, you state: It is necessary to adjust the rental data we do have for the closest two years of 1983 and 1986. Is that true, that you adjusted the rental figures for the comparable parts?

MR. BRABANT: Yes. I adjusted to 1979 from the only -- the closest two dates where we had rental information from comparable parks.

MR. HILL: Mr. Brabant, can you briefly summarize what adjustments you did for the rental figures for the comparable parks.

MR. BRABANT: Yes. You mean -- oh, to get to my adjusted figure for 1979?

MR. HILL: What adjustments did you do for each park? Did you do the same adjustment for each park?

MR. BRABANT: Yes, I did.

MR. HILL: And what adjustment was that?

MR. BRABANT: I adjusted at the rate of 6 and a half percent per year for the four years between 1983 and 1979.

MR. HILL: And did you state on page 19 of your report that there was no rental data from which you could adjust the comparable rents? I quote: There is no rental data to show exactly how much rents were being increased during this four-year period.

MR. BRABANT: That's correct, because we didn't have any rental data for 1979 to show increase -- what increases up to 1983. We just had to work backwards from '83 back to '79.

MR. HILL: So to get right to the point, you essentially estimated the adjustments you made to comparable rents, didn't you?

MR. BRABANT: I estimated them based on the -- the way the rents were increasing between the three-year period 1983 to 1986.

MR. HILL: I'm going to quote from page 19 of your report: After analyzing the available rental data, I have made estimates of the adjusted 1979 rent for each of the five parks. From that data, I have been able to provide an opinion of the market rent of Ranch Mobile Home Park in the base year of 1979.

Is that -- that's what's stated on page 19 of your report, is that correct?

MR. BRABANT: Yes.

MR. HILL: Okay. Now, let's turn to page 20 of your report. There you discuss your adjustments for each one of the comparable rents. Mr. Brabant, did you use a different estimated adjustment for each one of the parks or the same one for each one of the parks?

MR. BRABANT: I calculated the percentage difference between 1983 and 1986 for each of the five parks where we had data for both of those two years.

MR. HILL: And those adjustments were made to the average monthly rent of the comparable parks, weren't they?

MR. BRABANT: Yes.

MR. HILL: Mr. Brabant, can you provide me with your definition of market rent.

MR. BRABANT: Market rent would be the estimated rent that you would expect, and in this case we're talking about space rent in a mobile home park, if you -- you know, in the open market, if you allow reasonable time for, you know, the property to be marketed and there was no undue duress on either side, either party to the transaction.

MR. HILL: On page 5 of your report, you define market rent as, quote, "the most probable rent that a property should bring in a competitive and open market," closed quote, is that correct?

MR. BRABANT: Yes.

MR. HILL: Mr. Brabant, I don't know of any property owner that sees the highest rent available on the market that will decide to charge average rent, do you?

MR. BRABANT: I think -- I'm sorry. Your question was he wouldn't charge --

MR. HILL: Would a -- would a property owner on an open and competitive market decide to choose the average rent of other competitors or would they try to get the highest rent?

MR. BRABANT: Well, we're talking about a concept of market rent for all of the spaces in this mobile home park. I don't think it would make any sense at all to look at the highest rent of one space in one park and then apply that to all the spaces in the park you're appraising.

I looked at the average space rent in the comparable parks and applied that same average to the subject park.

MR. HILL: Isn't the highest rent the rent that a -- that a property owner would seek on -- the highest rent that's available on the open market, the one that a property owner would normally seek?

MR. BRABANT: Well, the property owner -- sure, he would try to seek the highest rent. Of course, the tenant would try to pay the lowest rent.

MR. HILL: Mr. Brabant, isn't it true that California Evidence Code Section 822 A4 and B exclude from evidence any appraisal where the appraiser bases -- where the appraisal is based on an adjustment of the comparable rental values?

MR. BRABANT: You're talking about Evidence Code in imminent domain?

MR. HILL: It applies in other cases. If you read Subsection b, it applies that same provision to all other cases as well, and it says -- and it excludes from evidence any testimony based on -- on an estimate of comparables, is that correct?

MR. BRABANT: No, no. There's nothing in that

Evidence Code that says you can't make adjustments to comparables, and what that's talking about is appraising the comparable.

For instance, if you had a -- if you had an -- if you were appraising a vacant commercial lot and you wanted to use as a comparable a similar lot, but that lot had an office building on it, but you decided, well, I'm going to -- I figure so they paid a million dollars for the office building, I think the building is worth 500,000, so the land must have been worth 500,000. That's appraising the comparable.

But you could certainly -- you are certainly allowed to make adjustments to comparables.

MR. HILL: I'm not talking about adjustments, but didn't you make estimates of the comparables here, Mr. Brabant?

MR. BRABANT: No.

MR. HILL: Didn't you essentially appraise the comparables here?

MR. BRABANT: No, I didn't. I adjusted the comparables based on market evidence from the data that we had.

MR. HILL: No further questions of this witness.

CHAIR WERTHEIMER: Thank you.

MR. HILL: One moment, please.

CHAIR WERTHEIMER: You're done, great.

Okay. The residents' lawyer, Chandra.

MS. SPENCER: I didn't know if he was done.

CHAIR WERTHEIMER: I guess I should have asked. Do you have questions?

MS. SPENCER: Pardon?

CHAIR WERTHEIMER: Do you have questions?

MS. SPENCER: I do.

CHAIR WERTHEIMER: Okay.

MS. SPENCER: Thank you.

And I realized I didn't give my city of residence when I came up here last. I don't know if it makes a difference, but my office --

CHAIR WERTHEIMER: Oh, it does. You can't go on unless you do.

MS. SPENCER: My office address is in Los Angeles, but I'm a resident of Oak Park here in Ventura County.

CHAIR WERTHEIMER: And we're on a fact-finding mission here.

MS. SPENCER: I understand.

CHAIR WERTHEIMER: Okay, good.

MS. SPENCER: I heard you.

So I'm going to address these questions generally to staff, and -- and I'm not quite sure what -- who amongst the four members here want to answer them, but I'll leave it up to you guys to pick and choose who 'cause there seems to be some division of labor here that I can't quite understand.

CHAIR WERTHEIMER: How about you just address to the staff and they'll choose to whom.

MS. SPENCER: Perfect. That's exactly what I was planning to do.

The first question is with respect to the application of the TDP restrictions to the park. Is it the staff's position that the Rent Stabilization Ordinance because it was subsequently adopted somehow supersedes the TDP restrictions for the park?

MR. NORMAN: That's one of the reasons.

MS. SPENCER: Okay. So is it the staff's position that the TDP restrictions as they exist in the TDP for this park are not enforceable?

MR. NORMAN: What we're stating is that this type of application for a just and reasonable return, there is no mechanism in the resolution for that type of application and therefore it must be processed under the ordinance, the only regulation that deals with that type of application.

MS. SPENCER: Okay. So is it the staff's position then that if the Rent Adjustment Commission were to adopt -- or to -- to adopt a rent increase based on this just and reasonable return application that the TDP restrictions are no longer applicable and that the decision of the Rent Adjustment Commission would then somehow supersede those?

MR. NORMAN: We have no position about whether those other restrictions are valid or are invalid. What we're saying is to process a rent increase application, it must be done through the ordinance.

I see you. If you look at the 84 resolution, the 11.5 percent rate of return is not tied in any way to the income of the tenants. So we feel that this can be processed that way without having to address in this hearing the status of those restrictions.

MS. SPENCER: Okay. 'Cause there was some discussion in the staff report -- and I suppose it sounds like these initial questions are best addressed to you, Mr. Norman.

There was some discussion in the staff report about: The current ordinance does not -- and this is at page 8 of the staff report in the first paragraph and the third sentence, it states: The current ordinance does not exempt the Ranch Mobile Home Park from its purview and therefore would trump any conflicting resolution.

So it's the staff's position that the Rent Stabilization Ordinance trumps Resolution 84-037, is that my -- is that what you're trying to say there?

MR. NORMAN: In terms of this type of application, yes.

MS. SPENCER: Okay. Has the staff submitted anything to the City Council in terms of this application to determine whether or not the City Council is going to come to a conclusion with respect to that trumping discussion or has this strictly been submitted to the Rent Adjustment Commission?

MR. NORMAN: I'm not at liberty to say whether the city attorney's office has had discussions with Council --

MS. SPENCER: No.

MR. NORMAN: -- regarding that issue.

MS. SPENCER: That wasn't my question.

Has any formal request for a hearing or a consideration by the City Council been made by staff to the City Council?

MR. NORMAN: I'm sorry. For what though?

MS. SPENCER: For a determination as to whether or not there's -- the resolution trumps the ordinance.

MR. NORMAN: No.

MS. SPENCER: Okay. When did the Rent Stabilization Ordinance first become applicable to this park?

MR. NORMAN: I don't think it's fair for me to try to engage in a hypothetical. It's staff's position that it applies to this application.

MS. SPENCER: So the -- the date on which the rent stabilization first became applicable to this park is not relevant to these proceedings, is that what you're saying?

MR. NORMAN: I'm saying that this is the first application which we are using the ordinance.

MS. SPENCER: Okay. Well, let me direct this question then to Mr. Baar.

Mr. Baar, you seem to be the expert in all things related to rent control law. So I'm going to defer to you on this question. The ordinance itself states that the base year should be 1979, correct?

MR. BAAR: Yes, with the exception --

MS. SPENCER: With some exceptions. And that is based on the -- the fact that the rent stabilization when it first came into effect in 1980 and therefore 1979 would be presumed to be the year when there's fair market rents, is that correct?

MR. BAAR: Right, that's my understanding.

MS. SPENCER: And that's consistent with the case law about establishing base years, that the presumption is the year before and absent exceptional circumstances or Vega adjustments, that the year before a Rent Stabilization Ordinance goes into effect should establish what the fair market value is, is that correct?

MR. BAAR: I don't know. I don't think -- I'd have to go back and look at the opinions. I don't think they've been that specific about saying what the base year should be and more they said that whatever the base year is, it should be a fair starting point.

MS. SPENCER: So do you -- based on the fact that this ordinance first went into effect in 1980, is it your opinion that 1979 in absence of exceptional circumstances is a fair starting point?

MR. BAAR: Yeah. Well -- yes, I believe it would be a fair starting point, yeah --

MS. SPENCER: Okay.

MR. BAAR: -- or it is.

MS. SPENCER: So what if this -- as we know what happened here, the Rent Stabilization Ordinance was never actually applied to this park. So we have no -- we don't have the same presumption that the Rent Stabilization Ordinance went into effect for this park in 1980, is that correct?

MR. HEHIR: Counsel, just really quick, are you doing a hypothetical?

MS. SPENCER: Yeah. I'm trying to figure out what difference -- what difference base year makes for purposes of determining what would be the fair base year for the Rent Adjustment Commission to apply and I want to see what the City's experts are saying on this.

MR. HEHIR: Well, okay. As I told other counsel, just -- we're trying to get to the facts of what their testimony is and that's questions about the facts of their testimony.

MS. SPENCER: Okay. Would it be fair -- given the fact that the Rent Stabilization Ordinance has never been applied to this park to date, would it be fair to use 2009 as a base year?

MR. BAAR: Well, I guess more (unintelligible), if you used 2009, you'd still have to start with a rent that under the Vega concept, you'd have to start with a rent that reflected market conditions and --

MS. SPENCER: We'd have to figure out if you make adjustments, but let's focus on -- right, I agree with you. We'd have to figure out if Vega even applies.

But would -- given the fact that there's never been any application of the rent stabilization to this park, would it be fair to use 2009 as the base year?

MR. BAAR: Yeah. I'd say when I answer that -- when you ask is it fair it's a little different than, you know, what -- what is the purpose of the ordinance, but you know, let's say in the abstract it is -- would it be constitutionally fair, yeah, I think it would be constitutionally fair.

MS. SPENCER: It would be constitutionally reasonable, is that -- would you agree with that?

MR. BAAR: Yeah, yeah.

MS. SPENCER: So in the rental -- in the park owner's application, their position is that somehow the -- and based on my understanding of the attorney's memo that was prepared in June of this year, that somehow the rent restrictions imposed by the development approvals expired as of 2007.

Did you read that in their application, that there was a 30-year limit?

MR. BAAR: Well, I might have read it. I don't remember.

MS. SPENCER: Okay. And in that, he seems to suggest that the first year that the Rent Stabilization Ordinance would be applied to this park would be 2008. Did you see that?

MR. BAAR: I don't remember that.

MS. SPENCER: Okay. Let's assume that he's right and that 2008 is the first year that the Rent Stabilization Ordinance could have been applied to this park, then based on that fair and -- the reasonableness in terms of the constitutional standard, would 2007 be considered a reasonable -- a fair year to use as the base year?

MR. BAAR: Well, I'd say this, I mean you have to look at -- you know, the applicable rent ordinance, but let's say there was no ordinance, we're just discussing fair return.

MS. SPENCER: Okay. Let's say that the ordinance -- the first time this ordinance could be applied to the park was in -- was in 2008. Let's assume that that's correct.

MR. BAAR: Okay.

MS. SPENCER: Okay. Then would it be reasonable to use 2007 as a base year?

MR. BAAR: Well, I think -- I think it would be --

MS. SPENCER: From a constitutional perspective.

MR. BAAR: Okay. I think there would be arguments, you know, for and against using 2007.

MS. SPENCER: If the first time that the ordinance were to be applied was in -- to this park was in 2008, would it be reasonable to use 1979 as a base year?

MR. BAAR: I -- I think it's reasonable there are -- you know, their rationale for doing that because, you know, this was the starting point for rent regulation for what you're looking at in order to determine what's -- in order to determine what's reasonable, you look at the other parks.

So their rationale for going back to 1979, because that's when the other parks weren't regulated, as a starting point and, you know, so there are rationale for doing that.

MS. SPENCER: And there's a rationale for using 2007 as a base year?

MR. BAAR: Yeah. I'd -- I'd say there are rationale -- I'd say there are rationale -- yeah, there are rationale both ways.

MS. SPENCER: And -- and staff would agree that this park is -- it does lend itself to an exceptional situation given the history, correct? You would agree with that?

It's an exceptional -- I think the word's "exceptional" -- unique history, it has a unique history, you would agree with that?

MR. BAAR: Yes.

MS. SPENCER: Have you -- have you ever been asked to opine as to what a fair base year would be for a park who has a history similar to this one?

MR. BAAR: No. This is the first case I've been in with a park history like this.

MS. SPENCER: Where there's development approvals which established the rent ceilings, is that correct? This is the first time you've had to deal with that?

MR. BAAR: Yes, as far as I remember, yes.

MS. SPENCER: And the scope of your expertise is generally limited to rent stabilization ordinances which are unilaterally imposed by the local body on the park owners, correct?

MR. BAAR: That's been the standard -- yeah, that's been the standard situation.

MS. SPENCER: And have you ever had to opine as to whether or not the fair and reasonable -- just and fair return analysis should apply in a situation where the rent ceilings are established by development approvals as opposed to a Rent Stabilization Ordinance?

MR. BAAR: No, I haven't -- I haven't dealt with that issue previously.

MS. SPENCER: So the application of the development approvals and the temporary development permit conditions and everything that goes with that is beyond the purview of your expertise, correct?

MR. BAAR: You mean how they work?

MS. SPENCER: Yeah, and what that means in terms of a just and reasonable return, if anything.

MR. BAAR: Well, I see them as separate issues. I mean if there's a development agreement or whatever, whatever occurred, that's one set of standards, and I felt like the just and reasonable under the ordinance was another set of standards.

MS. SPENCER: Have you ever been asked to apply a just and reasonable return analysis to a situation where the rent ceilings were based on a -- a development agreement or development approvals, we'll call them?

CHAIR WERTHEIMER: Counselor, I think he's been -- I think he's answered that.

MS. SPENCER: Okay.

CHAIR WERTHEIMER: Can we go forward, thank you.

MS. SPENCER: Okay. Question to the staff: Has the park ever attempted to register under the Rent Stabilization Ordinance?

MR. NORMAN: To the best of my knowledge --

MS. SPENCER: Did the park owners --

MR. NORMAN: -- no.

MS. SPENCER: Okay. Has the City ever asked the park to register under the Rent Stabilization Ordinance?

MR. NORMAN: To the best of my knowledge, no.

MS. SPENCER: Now, let's go to -- again, probably going back to Mr. Baar, does the applicability of the Vega analysis differ if the rents are set based on a two-sided development bill as opposed to a one-sided Rent Stabilization Ordinance?

MR. BAAR: No. I felt that the Vega -- the Vega analysis is based on the concept of setting rents that are comparable to other comparable properties in a base year.

MS. SPENCER: Okay. Well, let's talk about comparable properties. Is there -- has there been -- have you done any analysis as to whether or not there are other comparable affordable housing properties even within a 100-mile radius of the City of Thousand Oaks to determine what the comparable rents would be for an affordable housing project such as the Ranch Mobile Home Park?

MR. BAAR: Well, I saw that the Vega requirement more -- what that has meant is meant comparable under -- with market conditions and I didn't see that the -- a property with affordable housing provisions was not operating under market conditions.

MS. SPENCER: So is there a market for affordable housing? Is there a market rent that can be established for affordable housing?

MR. BAAR: No. I mean affordable housing is based on the concept that you set the rents according to a different standard which is affordability rather than fair return or market.

MS. SPENCER: It's not --

MR. BAAR: It's a different standard.

MS. SPENCER: It's not a free and open market. It's a different set of circumstances.

MR. BAAR: Right.

MS. SPENCER: Let me ask that then to -- to you. Help me with your last name, I apologize.

MR. BRABANT: Brabant.

MS. SPENCER: Brabant, okay. Mr. Brabant, have you ever -- have you ever done any appraisals of affordable housing projects?

MR. BRABANT: Yes.

MS. SPENCER: Okay. Is there a market for affordable housing? Is that something different than what we'd be talking about in terms of the fair market here?

MR. BRABANT: Well, there's a market. Are you talking about the rental or sale of the units or are you talking about developing a project and renting or selling it out?

MS. SPENCER: To establish --

MR. BRABANT: Affordable to who?

MS. SPENCER: To establish rents for a very low income affordable housing project, is there a way to do an appraisal -- appraisal of other comparable very low-income affordable housing to determine what the market is for that?

MR. BRABANT: Well, an appraisal of the property for the value to the owner of the property or are you talking about the rental of the individual units?

MS. SPENCER: Appraisal for the purposes of establishing what the rent should be.

MR. BRABANT: Well, again, the rents, they're not set by market standards. They're -- they're usually subsidized rents based on the income of the -- of the residents. So it's not a market-derived number that you're coming up with.

MS. SPENCER: So is there -- are there any industry standards for trying to figure out what the rent should be in a very low-income affordable housing project by using an appraisal method?

MR. BRABANT: Well, sure, if your task is to value the entire project, let's say for lending purposes or something, they're going to want to know, well, how much rental income is going to be produced by this project.

So you're going to have to come up with estimates, well, if there are standards as to how many units have to be rented to very low-income residents that have a certain income level and then others that are just low but not very low.

And then you move up the standard and you can -- but it's not based -- it's not based on the market. That's based on the income level and -- and how many of those various types of people have -- you have to rent to.

CHAIR WERTHEIMER: Counselor.

MS. SPENCER: Yes.

CHAIR WERTHEIMER: Can I ask you a question?

MS. SPENCER: Sure.

CHAIR WERTHEIMER: Are you just trying to establish whether there's a standard market for open -- standard rates and prices for an open market versus one that has special conditions on it set by cities relevant to income and age, which this is -- this is about here?

MS. SPENCER: I'm trying to determine whether or not there are any industry standards within the appraisal industry to try to help determine what the rent should be in those -- what the fair market for those -- if there is any such fair market for low -- for affordable housing projects.

CHAIR WERTHEIMER: Is there such a difference, sir? The open market versus something with so many special concessions to it including what City's given for -- given upfront for development and concessions?

MR. BRABANT: Well, not if you're calling it market rent. Yeah, I mean we know what the market -- we know what rent was established for this particular project. So you know what the starting rent was as a low-income project.

CHAIR WERTHEIMER: So is it fair to say that each development based on -- whether it has a certain age to it limitation and income limitation is unique and separate to just that development, ergo you can't have a standard that goes over city to city?

MR. BRABANT: There's not a standard like that that I'm aware of.

CHAIR WERTHEIMER: Thank you.

MS. SPENCER: And let me direct actually a question I think probably Mr. Prescott as the community development director may have some knowledge of this.

Does the City have any other affordable housing-type projects within the City of Thousand Oaks?

MR. PRESCOTT: No. There are a number of affordable housing projects within the city that are owned by -- by either the Area Housing Authority, which is the housing authority for the City of Thousand Oaks and other nearby jurisdictions and also by non-profit housing providers such as Mini Mansions.

MS. SPENCER: And are those rental properties?

MR. PRESCOTT: Those are rental properties.

MS. SPENCER: And does the City have any input as to what the -- in those properties as to what the rents are for those properties?

MR. PRESCOTT: As Mr. Brabant testified, the rents are usually -- or not usually, they're definitely set to meet the income categories that the project is intending to serve.

In other words, a low-income project would have rents up to certain levels depending on family size, based on their particular income range, a moderate income would have higher rents based on that income range and the requirements that families spend no more than a certain percentage of their income for housing costs.

MS. SPENCER: So it's based on a percentage of the median income for those income levels is where the rents -- the rent formula comes from?

MR. PRESCOTT: That's imputed to the formula. The -- the income categories are defined by percentage of the median income. For example, a moderate income is anywhere from 80 to 120 percent of median income.

MS. SPENCER: And this year -- I think I pulled this number earlier, would you agree with me that this year's very low income for Ventura County is in the neighborhood of about $30,000 for a single person?

MR. PRESCOTT: I can't -- I can't confirm or not confirm that.

MS. SPENCER: Okay.

MR. PRESCOTT: I haven't looked at that data.

MR. HEHIR: And Counsel, we're getting off -- off subject here.

MS. SPENCER: Okay. Okay. So -- so if you're trying to figure out what the rents that should be established for a very low-income housing project, you use some other formula other than the fair market rents that you came up with of $150, is that correct?

MR. BRABANT: Yes.

MS. SPENCER: Do you know whether or not the rents that were established in the 1977 letter that was submitted by Mr. Hohn's accountant was -- were those consistent -- do you know whether or not those were consistent with very low-income affordable housing rents at the time?

MR. BRABANT: No, I don't.

MS. SPENCER: And neither you -- nobody on staff was asked to determine that, is that correct?

Correct, nobody was --

MR. BAAR: That's correct.

MS. SPENCER: Okay. So in terms of the Vega analysis, the Vega analysis, you've done that strictly based on free market, fair market conditions taking into no consideration the affordable housing restrictions placed on this project, correct?

MR. BAAR: Right, they're different concepts.

MS. SPENCER: Okay. And you -- you would agree that none of the parks that you evaluated to come up with this $150 a month fair Vega figure had any of the same requirements that the Ranch park did?

MR. BRABANT: Correct.

MS. SPENCER: Okay. So one of the -- this is directed to you, Mr. Baar. Where in the municipal code or the resolutions did you find authority for estimating the 1982 expenses? What allowed -- what did you find in there that allowed -- that you think allowed that to be done?

MR. BAAR: I think -- I think the -- the ordinance allows -- I'd have to go back through it, but generally there's a provision when you're looking at income and expenses you can adjust them based on reasonability and I think that's implicit on doing -- you know, in the power to do a fair return analysis.

And you know, that's what I would say it's, you know, based on that. I'd have to go back through the specific language, but that's always been understood, that there can be adjustments made if the income and expenses are un -- you know, or should be adjusted for some reason.

MS. SPENCER: Let's move away from the income for a minute and let's focus on the expenses.

MR. BAAR: Okay.

MS. SPENCER: The expenses, you -- the expenses that you came up with for 1982 --

MR. BAAR: Right.

MS. SPENCER: -- were based on an estimate and some statistical extrapolations, is that correct?

MR. BAAR: That's correct.

MS. SPENCER: And that was based on an estimate pulling from some other actual year figures, correct?

MR. BAAR: That's correct.

MS. SPENCER: Where in the ordinance does it say that the Rent Adjustment Commission gets to make an estimate as opposed to having the actual hard figures?

MR. BAAR: Okay. I -- I -- I mean I think it, first of all, has the power to take into account other relevant factors. And as I say, I think that's -- I'd have to go back through all the regulations. I don't remember specifically what it says.

But I -- you know, I think it's in these powers to review the income and expenses and, you know, to make adjustments.

MS. SPENCER: Okay. So Section 3 of RAC-2 is the formula for determining what the -- what the adjustment can be, is that correct?

MR. BAAR: I'm looking for it.

MS. SPENCER: Take your time.

MR. BAAR: You're talking about -- okay. Which section are you talking about now?

MS. SPENCER: Okay. Section 3, the heading says Determination of Eligibility for Rent Increases, pursuant to the 1979 base year formula --

MR. BAAR: Okay. I found it.

MS. SPENCER: You got that?

MR. BAAR: Yes.

MS. SPENCER: Okay. Now, RAC-5 amends a -- one portion of Section 3 which is 3.07, correct, at page 3 of RAC-5?

MR. BAAR: Okay. Page 3 and you're looking at 3.07?

MS. SPENCER: Correct. It states at 3.07 the amended version: A determination of eligibility for rent adjustment under this resolution shall be conducted on the basis of the comparison of two full years of data. You see that?

MR. BAAR: Yes.

MS. SPENCER: So would you agree then that by the City's own resolution that there have to be two complete years of accurate data?

MR. BAAR: Well, it says two full years of data and whether or not it has to be accurate --

MS. SPENCER: It's not important that the data be accurate?

MR. BAAR: No. Well, let me say this: I -- I -- I'm not saying it's not important. I think that's the purpose of an analysis to make an adjustment and consider, you know, what weight to give it and how -- you know, its accuracy, et cetera.

MS. SPENCER: Okay. Going to Section 4 of RAC-2: Determination of eligibility for rent increases when 1979 net operating income and expense information is not available, do you see that?

MR. BAAR: I will.

MS. SPENCER: It's page 10 of RAC-2.

MR. BAAR: Okay.

MS. SPENCER: So this is -- under this provision, another year may be substituted based on the full first year for which records are available, is that correct?

MR. BAAR: That's correct.

MS. SPENCER: And the premise of that is that the records have to actually be available, correct?

MR. BAAR: Yes.

MS. SPENCER: So the -- the reason behind -- would you agree that the reason behind that is because expenses can vary significantly from year to year?

MR. BAAR: Well, I don't -- I don't think that's -- the reason is, is because it's saying there has to be some record of the expense for the year.

MS. SPENCER: We have to know what the actual expenses are. We need to know that?

MR. BAAR: Right.

MS. SPENCER: It's important to know that.

MR. BAAR: Yes.

MS. SPENCER: And the reason it's important to know that is to be able to evaluate the reasonableness of the expense, correct?

MR. BAAR: Yes.

MS. SPENCER: And in order to evaluate the reasonableness of the expense, you need to have the specific data figures as to what categories go into that overall expense, correct?

MR. BAAR: Yes. And as I pointed out in my report, we had a very unusual situation here. We had a total -- we had a total that was examined by staff at a former point. We don't know what went into that examination, but it was reviewed by staff.

It wasn't just something that the park owner wrote down when submitting the application now and as, you know, there were -- there are rationale, you know, or problems with that kind of data, but on the other hand, there were rationale for using that kind of data.

MS. SPENCER: And we don't know what kind of analysis was done by staff of the 1982 expense figures, correct?

MR. BAAR: No. We don't -- they didn't say -- they say that they reviewed it.

MS. SPENCER: Okay.

MR. BAAR: Or put it this way: They clearly reviewed it.

MS. SPENCER: And one of the categories of expenses that's significant for this park is management and administrative expenses, correct? That's sort of the biggest big ticket item?

MR. BAAR: It's a significant expense, yes. It might be the biggest. I just have to go back. I'm not disagreeing with you.

MS. SPENCER: And the management and administrative expenses for -- under the current application need to be compared to the management and the administrative expenses of prior years to figure out whether -- whether or not the dollar amount we have now is reasonable, correct? We need some historical data to compare the two?

MR. BAAR: Right. Well, let me say this: What I did was -- you know, we didn't have the data going back to base, and so that's why I assumed that these -- you know, I assumed they were proportionate in the base year to what they are now. That's why I did that.

MS. SPENCER: You presume that, but you don't know that for a fact?

MR. BAAR: Well, because they had these non-record expenses. So I made an adjustment because the park owner was managing the property and so it wasn't recorded. So we did -- I felt I did the best under the circumstances which was, you know, presuming they had the same ratio.

I mean even if you have the total records, this is the kind of, you know, adjustment that are commonly made when there's off-the-book expenditures, type of off-the-book expenditures because they're not recorded because they're done by the owner.

MS. SPENCER: One of the things that the Rent Stabilization Ordinance requires is that the -- and the regulations require is that the expenses be reasonable in accordance with industry standards, is that correct?

MR. BAAR: Well, you'll have to point me to the section. I mean I believe that.

MS. SPENCER: Well, let's -- let me find it real quick. Give me just a minute.

Section 2.117 of RAC-2 states: Operating expenses must be reasonable. Whenever a particular expense exceeds normal industry standards in the base year or in the current year for which a rent -- for which the application for a rent increase is made, the Rent Adjustment Commission shall determine whether the expense is reasonable.

Do you see that?

MR. BAAR: Yes.

MS. SPENCER: Has any determine -- I'll direct this to all the staff. Has any determination been made by staff as to whether or not the specific expenses for either the base year or the current year being requested to be included in this application by the owner are reasonable under that standard?

MR. BAAR: Well, first of all, the overall expenses, you know, compared to, let's say, what a -- for a park this size were reasonable, let's say, compared with what a -- you know, a market rent. They were reasonable in -- the ratio of expenses was reasonable.

And secondly, and this is a little complicated, what happened is because, you know, the lack of data and also you had this, you know, factor even if you had the data, the owner was doing their own work, so it was off the record. So you had no record of it.

But by making the base year expenses a percentage of what the current year expenses were, this was the type of compensating adjustment in the sense that if the current year expenses were high, I said the base year expenses were a percentage of those.

So this provided, you know, a type of compensation because basically in a net operating income -- in a maintenance of net operating income analysis the critical factor is the comparison. And here I, you know, used -- said, well, it would be reasonable that these expenses went up by the CPI since the base year.

MS. SPENCER: Isn't the critical factor what actually happens at this park? Because you start with the first year, the base year and you figure out whether or not the expenses were so out of bounds with what was going on with the income that you need to give them additional -- an additional increase in the rent, is that correct?

We -- we started -- isn't that correct, that you've got to really do an in depth analysis of whether or not the expenses were out of balance with the income increases, correct?

MR. BAAR: Well, okay, what you're saying is that the -- you know, if the income increases weren't adequate to cover the expense increases.

MS. SPENCER: The allowable income increases.

MR. BAAR: Right.

MS. SPENCER: That's the purpose of a just and reasonable return type provision in the maintenance of net operating income, is expenses are going up but your income isn't going up, correct?

MR. BAAR: Right.

MS. SPENCER: Okay. So one component, one very significant component of that is the actual operating expenses for both the base year and the current year, correct?

MR. BAAR: Yes. And the problem here is though, you know, as I point out in the report is severe limitation and this happens in other cases, too. You're going back a very long period. You don't have all the data. You don't have all the information.

And secondly, as I pointed out, even if we had all the information, we have this problem of a lot -- the expenses weren't recorded in the base year, a substantial percentage of them.

MS. SPENCER: And one of the things a Rent Adjustment Commission is allowed to do is if they don't have enough information, they can ask for it, "Give me more data," correct?

MR. BAAR: Yeah. They were -- the park owner was asked for all they had.

MS. SPENCER: Okay. The park owner did provide I think it was about 888 pages of receipts for -- for expenses, correct?

MR. BAAR: Yes.

MS. SPENCER: Did anybody on staff go through those receipts and make sure that what they were claiming for expenses was reasonable and allowed under the ordinance or did you just presume that everything they asked for was okay?

MR. BAAR: No. We -- we did not go through the receipts, but I -- and that's correct. But I also to put this in perspective, one, the overall expense level was reasonable.

And secondly, if we had reduced those expenses, because of the fact that we didn't have the '82 data, if we had reduced those expenses because the '82 expenses were based on the 2009 expenses, we used the inflation adjustment, we also would have been reducing the '82 -- reducing the '82 expenses and increasing the NOI. So I don't think it would have had a substantial impact on the outcome.

MS. SPENCER: Well, the rent --

MR. BAAR: But I see the point you're making, but I'm saying I don't think it would have had much of an impact and we had such other factors which were so enormous in this case, the NOI adjustment and the base rent adjustment, that I don't think this would have had much impact.

You know, in a perfect world, I'd say yes, we could have gone through the, you know, 800 pages of receipts.

MS. SPENCER: Now, the Rent Stabilization Ordinance in its implementing -- I think we're calling them regulations, the RACs, we're calling them regulations, they actually provide for a maximum of an 8 percent cap on management and administrative expenses, don't they?

MR. BAAR: Yes, they do.

MS. SPENCER: And this -- the management and administrative expenses of this park well exceed that 8 percent cap, don't they?

MR. BAAR: Right, but --

MS. SPENCER: And they also don't allow for -- they only allow for certain categories of expenses to be included in management and administrative expenses, correct? They have an enumerated list?

MR. BAAR: Right, right.

MS. SPENCER: Is travel expenses in there anywhere?

MR. BAAR: That, I don't remember. But then -- see, but what I did, whatever overestimate that -- or whatever -- let's say they had an overstatement of management and maintenance in the current year, by making the base year a percentage of the current year, there was a compensating adjustment.

I understand what you're saying, but there was a compensating adjustment. So if the current year expenses were inflated, the base year expenses were made proportional to those and -- because we didn't have the actual, you know, data.

And I think under these particular circumstances this was the best kind of analysis that was possible.

MS. SPENCER: Okay. I have another question about the expenses. The park owner was permitted a 20-year straight line depreciation of their $500,000 initial investment of $18,700 and change, correct? Back in the early --

MR. BAAR: Right.

MS. SPENCER: -- development approvals?

MR. BAAR: Right. I'm taking your word for it. They were allowed 18,000 a year depreciation.

MS. SPENCER: It was a 20-year straight-line depreciation, correct?

MR. BAAR: I believe you. I don't remember.

MS. SPENCER: Okay. So that was in 1976?

MR. BAAR: Right.

MS. SPENCER: Which 20 years is up in 1996. Why -- why did you give them a depreciation expense in 2010 in your report?

MR. BAAR: I didn't. When I was using the net income comparison, I kept the depreciation, but I didn't keep the depreciation in the net operating income analysis. I took it out.

MS. SPENCER: Didn't you adjust the current year net operating income in -- I thought I saw something in your report where you gave them back this depreciation expense. So you're saying that your -- none of your analysis that you relied on included the depreciation expense?

MR. BAAR: The only place I included it was when I made the net income comparison.

MS. SPENCER: Uh-huh. When you were trying to figure out what the net operating income was for 2010, you allowed -- afforded them an $18,000 depreciation expense, isn't that correct?

MR. BAAR: No.

MS. SPENCER: Okay. I thought that you reduced the net operating income this year by the 18,000 depreciation expense. That's the way I read your report. You're saying I'm incorrect?

MR. BAAR: Yeah, that's not my -- yeah.

MS. SPENCER: Okay. I've been known to be wrong a few times in my life, so.

All right. Then the next question I have is -- let's talk a little bit about this issue of the recapture. It's the staff's position that under the Rent Stabilization Ordinance, a park owner is entitled to recapture the 31 of 33 years that they didn't take a rent -- didn't impose a rent increase on the tenants through the just and fair return formula, correct?

MR. BAAR: Well, just a minute. Let's -- I just want to make some things clear, so -- because there are different -- different meanings of "recapture," you know, and obviously let's just make it clear. When you say "recapture" you don't mean charge rent for back years?

MS. SPENCER: No, but you get to ask for it now.

MR. BAAR: Well, okay. I don't know -- I did the analysis -- you know, I did a maintenance of net operating income analysis according to a certain methodology. I mentioned in the report what would have happened if they had implemented those increases, you know, what their current rent level would be.

And as far as a right to recapture it, I mean it's more I did a fair return analysis under the rent control ordinance. I didn't make a determination of what rights the park owner had except I looked from the perspective of a rent control analysis.

MS. SPENCER: Let's go through -- let's talk about that concept a little bit in the context of the City's rent control ordinance. In the -- in RAC-2, Section 2, page -- that's page 3 of RAC-2, there's a formula for determining net operating income.

MR. BAAR: Just a second. Oh, here it is. I have it.

MS. SPENCER: Okay.

MR. BAAR: Okay.

MS. SPENCER: So net operating income is determined by subtracting the annual operating expenses from the gross total income and that's what you did.

MR. BAAR: Right.

MS. SPENCER: Okay. So when you were calculating gross total income under Section 2.01 for the current year, you included the actual rental unit income which is Section A, correct?

MR. BAAR: Right.

MS. SPENCER: Section 2.01, A is the gross -- the rental unit income.

MR. BAAR: Rental income, right.

MS. SPENCER: That's the actual cash the park owner received from the residents of this park, correct?

MR. BAAR: Right. Well, there also -- I think there was some utility income which was excluded.

MS. SPENCER: Okay. You excluded that. You didn't include that?

MR. BAAR: Right, that I saw as an offset.

MS. SPENCER: There's no garage and parking income and no stores and offices income, correct?

MR. BAAR: That's my understanding, yeah.

MS. SPENCER: There's also a provision here where it states that you're supposed to include the adjusted income for below-market rentals. You see that?

MR. BAAR: Yes.

MS. SPENCER: Now, under Section 2.05, it defines what constitutes the adjusted income for below-market rentals. When you did your analysis, did you apply Section 2.05 to adjust the income for below-market rentals for the 2000 -- for the current year, for the 2009 year?

MR. BAAR: No. I saw this as having a different purpose. This was -- you know, when you look at the example here, I see this as making sure that the -- if the landowner has a right to charge somebody more money that they -- you know, let's say -- let's say they're giving space to a relative for $100 and it's worth $300, they can't say, "Well, I'm only getting $100 for that." I saw that as having a -- I see that as having a different purpose.

MS. SPENCER: Okay. Well, what that ordinance says -- or what the resolution says is: Adjusted income for below-market rentals is an amount representing the difference between the actual rent collected and then what the landlord could have collected if the rents -- if the units had been rented at their full market value.

Exemption -- examples, excuse me, of below-market rents may be units occupied by the landlord or landlord's family, the unit of a resident manager or any unit where the rent increase is permitted by the rent stabilization 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.

Would you agree with me that this landlord could have made rent adjustments between 19 -- for the -- for all 33 years between 1977 and 2010?

MR. BAAR: Yes, he could have made -- I -- yes -- no -- yes, he could have.

MS. SPENCER: And he didn't make those rental increases for 31 of those 33 years, correct?

MR. BAAR: That's correct.

MS. SPENCER: So did you -- and if you go on to Section 3.04 at page 9 -- excuse me, 3.03 of page 9, for the formula to determine -- you determine the current year net operating income in accordance with the provisions of Sections 2 to 2.17. You see that?

MR. BAAR: Right.

MS. SPENCER: So you're supposed to determine the current year net operating income in accordance with all of those sections including 2.05, correct?

MR. BAAR: I understand it, but I don't think -- you know, reading this, I don't see as -- that's the purpose so you can impute income to the park owner that they didn't take and can now charge.

MS. SPENCER: Didn't -- doesn't the ordinance say exactly that in its plain language, that for the current year you have to impute the income that they could have charged but they choose not to? Doesn't it say that?

MR. HEHIR: Counsel, we're getting into an argumentative state here and this is, again, not a trial or courtroom. So this is --

MS. SPENCER: Okay.

MR. HEHIR: Ask him his opinion, he gives his opinion and go from there.

MS. SPENCER: How do you interpret that provision of the ordinance then --

MR. HEHIR: And one more thing, please --

MS. SPENCER: -- for the current year?

MR. HEHIR: -- since we're trying to get his information, Counsel --

MS. SPENCER: Uh-huh.

MR. HEHIR: -- please make sure that you let -- give him time to answer as well.

MS. SPENCER: Okay.

MR. BAAR: What I see the purpose of this provision is so that somebody doesn't come in, they apply for a rent increase and they say, "I'm only getting $100 income," they get a rent increase based on that and the next day they charge 5 -- you know, 500 because that's what they could have charged.

I mean when it -- it talks about, you know, non -- you know -- you know, rentals to family members, the resident manager, et cetera, it's a provision in here so people can't -- so park owners can't understate their income and then, you know, again on that basis get a rent increase. And I don't see that -- this is not this kind of case.

This is a case where the park owner didn't take the rent increases and can't -- you know, under the affordable rent agreement cannot get them.

MS. SPENCER: Well, under your -- that interpretation of the purpose, how does that last -- those last couple clauses come into play? How can you have this apply in any circumstances other than the circumstances that we have exactly here?

MR. BAAR: Well, I told you, it -- it could apply in the situation where, let's say, somebody's rent -- you know, renting to a relative or non -- you know, or manager, non-arm's length transaction. And I think if you combine this with the -- you know, you have the price level adjustment provisions and the regulations.

MS. SPENCER: Which is just for the base year?

MR. BAAR: No, it's -- it's more than that.

MS. SPENCER: The price level adjustment is only added per Section 3.04 to the base year, correct? There's no price level adjustment for the current year other than possibly 2.05?

MR. BAAR: No. I want to -- just a minute.

Okay. This -- I'm looking at my report. There's a provision that a just -- my understanding is that the owners were entitled to a price level adjustment if -- in order to make up for situations where they didn't implement rent increases that they could have.

MS. SPENCER: But according to the ordinance, the only wording I see about price level adjustment is in Section 3.04 which only applies to the base year. I'm trying to figure out what we do about the current year, if anything, under your analysis of this Rent Stabilization Ordinance.

MR. BAAR: Well, I think it applies to more than the base year because it refers where rent increase is permitted by the Rent Stabilization Ordinance or the guidelines could have been made, but that -- so that clearly has to refer to increases that were made after the base year or could have been made after the base year but weren't.

MS. SPENCER: So it should apply to the current year?

MR. BAAR: Right. Well, I think --

MS. SPENCER: Okay.

MR. BAAR: I think the purpose of it is to provide that an owner can get an adjustment to make rent increases when they had the power to make them but didn't make them in the past.

MS. SPENCER: All right. Does -- does Resolution 84-037 allow for you to -- is that a use it or lose it provision or does it allow for a recapture for the years where the increase was not taken? If you have any opinion on that.

MR. BAAR: Just a second. I want to --

Okay. Just a minute. Okay. So go to the section you're referring to --

MS. SPENCER: I'm actually referring to Resolution 84-307.

MR. BAAR: 37, right.

MS. SPENCER: Does that allow for a recapture of prior years or allow an owner to make up for not taking rent increases for 31 of 33 years?

MR. BAAR: No. This -- this -- this regulates the affordable rent -- this is -- this involves the affordable rent restrictions, not the rent control ordinance.

MS. SPENCER: Right. I understand that, but there was some discussion in the reports that 84-037 doesn't allow for recapture whereas the Rent Stabilization Ordinance does.

MR. BAAR: That's correct.

MS. SPENCER: Okay. When you came up with your recommended -- recommendations for the rent increase using the just and reasonable return analysis, did you take into account whether or not the between 12,000 and possibly $30,000 a year annual income for these residents could actually afford those rents that you were recommending? Did you take -- did you take any of that into consideration?

MR. BAAR: No, because the fair return law has been -- is -- is to provide an owner a fair return, and the rent controls have prevented -- the purpose is to prevent excessive rent increases. They're not laws that tie the rents to the income of the tenants, the rent control laws as opposed to the affordability -- well, the affordability agreement didn't do it directly.

But the rent control was -- in fair return analysis, that hasn't been a fair return analysis where -- where the allowable rent is dependent -- is a -- you know --

MS. SPENCER: Is income dependent?

MR. BAAR: Yeah, is dependent --

MS. SPENCER: Income of the residents, of the homeowners.

MR. BAAR: Yes, yes, because the fair return is more -- you know, to guarantee somebody a constitutional fair return and -- while preventing excessive rent increases.

MS. SPENCER: Did you -- now, under Section 5-25.06, administrative adjustments to rent, which is -- subsection (b) is where the just and reasonable provision is. It states that:

The commission shall have the authority in accordance with such guidelines as the commission may establish to grant rent increase -- 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.

Whoever crafted that, that was a very long sentence.

Did you -- anybody on City staff make any findings or make -- do any investigation as to whether the rent increases recommended by you were in keeping with the purposes of the chapter?

MR. BAAR: Well, the -- the rent controls are -- they're a balancing -- they're a balancing mechanism by preventing excessive rent increases, and I'd say it was in keeping -- so the -- and at the same time a fair return had to be -- has to be permitted.

MS. SPENCER: Okay. We got the fair return, the just and reasonable return part, but the purposes of the chapter are set forth in Section 5-25.01, did anybody on staff prepare any findings as to whether the rent increases that you proposed are in keeping with the purposes of the chapter? That's my question.

Did anybody make such findings or recommended findings?

MR. BAAR: No. We did -- we did not -- the analysis that I did was a fair return analysis.

MS. SPENCER: Okay. So it wasn't actually an analysis of what's required under the Rent Stabilization Ordinance. It's just part two of that. Part one hasn't been done?

MR. BAAR: Well, I'd say part of the fair return analysis on one hand is to, you know, provide park owner with the constitutional right to a fair return, but also it's -- it's a methodology designed to prevent excessive rent increases because it ties the rent increases to the operating cost increases and the CPI.

MS. SPENCER: Anywhere in your report did you take into account the investment-backed expectations of these residents and their trailers after 31 of 33 years of not getting any rent increases and being told they wouldn't get any? Was that taken into consideration?

MR. BAAR: Well, I guess my reaction -- that's not a fair return issue if they were told they wouldn't get any, that's another type of legal issue.

MS. SPENCER: And actually the Rent Stabilization Ordinance says that if the contract doesn't allow for the rent increases, the Rent Stabilization Ordinance can't over -- can't supersede that, correct?

MR. BAAR: Well, I don't know -- I don't know if the ordinance says that, but that's my understanding that's the way contract law would work.

MS. SPENCER: Well, actually the ordinance does say it at RAC-2, Section 6.03, no rent increase granted pursuant to the above shall be construed to permit landlords to raise their rents in violation of any terms or provision of a written lease.

Did anybody on staff try to figure out whether there was anything on these residents' leases that would prevent this rent increase from going into effect?

MR. BAAR: No. I'd say that -- that -- put it this way: This was a fair return analysis that were -- I'll talk about myself. You know, I did a fair return analysis and, you know, I didn't do analysis of whether there's a lease that overrides the -- you know, or supersedes or preempts whatever park owner is allowed through the fair return analysis.

And I see that as something beyond the scope of the fair return analysis. I'm not saying it's a factor that doesn't exist.

MS. SPENCER: So my question is to all of staff, did anybody do that, make any kind of investigation into that for the Commission's benefit?

MR. NORMAN: No.

CHAIR WERTHEIMER: Counselor.

MS. SPENCER: And the last question, if you don't mind, is -- did -- was there ever any consideration taken for the fact that this owner didn't pay the Rent Stabilization Ordinance fee and the required late fees in determining income and expense figures?

MR. BAAR: No, I didn't consider that.

MS. SPENCER: Okay. I'm done. Thank you.

CHAIR WERTHEIMER: I have a question for you.

MS. SPENCER: Yes.

CHAIR WERTHEIMER: Do any of the tenants in this -- in Ranch have leases with the owner?

MS. SPENCER: Absolutely.

CHAIR WERTHEIMER: Any or -- or all?

MS. SPENCER: Not all.

CHAIR WERTHEIMER: Just some?

MS. SPENCER: Many. The rent stable -- the mobile home residency law requires that the owner have written leases, but not all of the residents have written leases.

CHAIR WERTHEIMER: What's a fair percentage that has them? What's -- what's the percentage that exists?

MS. SPENCER: My residents are telling me 50/50.

CHAIR WERTHEIMER: Thank you.

Are there any questions?

Okay. Are there any questions from the dais?

Mike?

Brenda?

Bea?

COMMISSIONER FERRUZZA: Is there any documentation that says that this park had a 30-year expectation to do low income?

MS. SPENCER: No. The documentation has no time limit.

COMMISSIONER FERRUZZA: Okay. Why didn't Mr. Hohn increase the rents over that period of time?

CHAIR WERTHEIMER: Bea, our questions are to the staff, not to the -- not to the counselor.

MS. SPENCER: And frankly that's just a question I can't answer.

CHAIR WERTHEIMER: At this time -- for this time right now, our questions are going to be directed to the staff.

COMMISSIONER FERRUZZA: They'll make a presentation --

CHAIR WERTHEIMER: Yeah, they'll make a presentation another date. So we'll save them.

I do have a question for the staff. It was discussed earlier if you use 2009 as base year and it was questioned was it fair. Let me ask you, is it equitable and reasonable for both parties the way you did it or if you were to use 2009 as the base year establishment?

MR. BAAR: Well, it's one type of analysis you can use, but I'd -- I'd say the maintenance of net operating income analysis is based on a starting point. You try to get pre-regulation and if not, I think it's better to get near it and then look at if somebody was charging a reasonable rent in the base year, what would they be entitled to today.

If you do an analysis based on 2009 comparable rents, it would be based on a combina -- it would look at a combination of rent control increases and exempt increases.

And I don't know how -- what proportion of the rent increases in the parks were exempt and proportion were rent controlled. But I do see that the increases in the parks were substan -- were above what the annual adjustments were. So you'd get a different type of analysis.

I mean that's my answer. You'd get something different. You could do it.

CHAIR WERTHEIMER: Would it be fair to both sides if you did do it? Would it be balanced or equitable? I'll take the word "fair" out of it.

MR. BAAR: Well, it's something -- I mean there are arguments about, you know, why you could -- rationale of why you could say it's fair and on the other hand, I don't know if -- I'd say it's less consistent with the rent control ordinance.

CHAIR WERTHEIMER: Thank you.

Real quick, Counselor, would you submit the leases that do -- the leases that exist and that are in effect to the board, to the committee.

MS. SPENCER: I will do my best to gather those. It's been one of the time-crunch considerations, but I'll get as many as I can to you. I actually did submit one copy of one in your --

MR. NORMAN: Are they in the PowerPoint?

MS. SPENCER: -- PowerPoint presentation, but I'll gather as many as possible prior to the next hearing.

CHAIR WERTHEIMER: We'd like to see all those that are in effect.

MS. SPENCER: I will do my best, thank you.

CHAIR WERTHEIMER: Thank you.

VICE-CHAIR SHELDON: Yeah. My question is, if the rent control is intended to prevent unreasonable rent increases --

THE PUBLIC: We can't hear. Can't hear.

MR. PRESCOTT: A little closer to the --

VICE-CHAIR SHELDON: I'm -- I apologize.

If rent control is intended to prevent unjust or unreasonable rent increases, how are they able to go back and collect all of these rent increases at once or to -- even to collect even a few rent increases at once, how is that reasonable?

MR. BAAR: Well, the underlying concept is the rent increases should be -- instead of markets not working because you have a captive situation and what's reasonable is rent increases that reflect operating cost increases and -- and inflation.

And so you could say, well, you know, looking -- you could look over a period and say, look, over these 10 years, you know, here's the operating cost increases, here's the inflation, so this should be what the rent is as opposed to the market and --

VICE-CHAIR SHELDON: It's still within the spirit or the intention?

MR. BAAR: Well, I guess, I want -- I'll just throw this out and I'm not -- I'm not saying it's some absolute right or wrong in the world, is -- what happens is if you say, you know, somebody can never recapture what they didn't charge, what you're saying is you have to charge everything you possibly can otherwise you can never get it back.

And so that can create a situation where, you know -- you know, let's look at other situations that -- you know, other cities I've seen. Well, if the park owners can't increase the rent this year, they can never increase it and if they don't increase it this year, the residents are saving money because is it better to get the 5 percent increases each year and have to pay them all those years or otherwise -- you know, subsequently you have a big jump. So the drawback is that's a huge shock.

But on the other hand, in the meantime, residents have been getting a substantial saving. So, you know, I imagine --

VICE-CHAIR SHELDON: I certainly understand that, but I -- I -- I mean it feels like there was a choice made there, so.

CHAIR WERTHEIMER: Chris -- Mr. Norman, do you have any follow-up questions for your witness -- for your experts?

MR. NORMAN: No, Mr. Chair.

CHAIR WERTHEIMER: Anything more?

Yes, ma'am.

MS. SPENCER: My co-counsel reminded me that the owners may actually have copies of those written leases as well. So we'll gather what we can, but the owners may actually also have them and be able to submit those to the Commission for the ones that we are not able to locate.

CHAIR WERTHEIMER: Okay. We still would like them from the tenants, thank you. Those would be more accurate, right.

We find this to be a good time for a reasonable break and is there a motion to continue from the dais for -- to continue our meeting till next Monday, which would be December 13th, 2010?

COMMISSIONER FELDMAN: I move that we continue this till -- is it December --

CHAIR WERTHEIMER: 13th.

COMMISSIONER FELDMAN: -- 13th, right. I move that we continue to 6:00 p.m., December 13th.

CHAIR WERTHEIMER: And we will -- yes?

MR. HILL: May I be heard?

CHAIR WERTHEIMER: Yes.

MR. HILL: We've brought our experts here at considerable expense and time on their behalf and we would object to a continuance at this point on that basis, thank you.

CHAIR WERTHEIMER: So noted.

MR. HEHIR: Then the procedure would be that if you want to discuss this motion, you can discuss it. If not, you need to move forward and vote on it.

CHAIR WERTHEIMER: Is there any discussion on the motion presented by counsel?

MR. HILL: Sorry, I have another statement to make. Our -- one of our experts is not available next Monday.

CHAIR WERTHEIMER: Let's -- okay. Noted.

We will vote to -- yes, Bea.

COMMISSIONER FERRUZZA: Could we ask them how long they think it would take.

CHAIR WERTHEIMER: Counselor.

MS. SPENCER: Is that question directed to both sides?

CHAIR WERTHEIMER: To both sides, sure.

MR. HILL: Thirty minutes for each of our two experts, your Honor -- or Mr. Commissioner.

CHAIR WERTHEIMER: We are going to vote on this motion. We feel this is a reasonable time based on -- and vote on it from here.

MR. HILL: There hasn't been advanced notice of the time. I think we'd need to work out a time when our experts can be here. They went through considerable time and expense to be here.

And we -- we were told by the City that their presentation would be 45 minutes. It went two hours. We took a half an hour of cross-examination. The tenants took an hour of cross-examination -- hour and a half of cross-examination. In a normal proceeding of this type, a quasi judicial proceeding, the applicant would go first and then the applicant would go last.

Here, the City taking on the de facto representation of the tenants went first. The tenants are going to go last. This is totally contrary to due process and -- and we need an opportunity to have our -- our experts here to present their testimony.

We'd be glad to work out a date that would accommodate both interests -- or all interests.

MR. HEHIR: Chairperson, first, if I may, I do not believe that there is any lack of due process. We have given everybody, both parties, a chance.

As far as staff is concerned, I believe staff's position was an independent position. That's why we have an attorney here representing the tenants as well.

But just, again, for this motion, we have to look at a time that they expect for their experts plus any cross-examination time, plus cross-examination from tenants' attorney and of course our questions that you might have from the Commissioners. So that is a thing that you have to think about.

Again, it's your motion, but those are the factors I want you to make sure you understand.

CHAIR WERTHEIMER: I understand it. We do have a motion out there and let's vote.

And the motion is we're voting to move this and extend it to 10-13-2010 -- 12-13-2010.

RECORDING SECRETARY: Motion passed 4 to 1 with Commissioner Ferruzza voting no.

CHAIR WERTHEIMER: Okay. Passed 4 to 1.

And we are adjourned, thank you.

(Recess.)

CHAIR WERTHEIMER: Committee members, (unintelligible) a motion and we'll consider 12-13-2010 (unintelligible) to reconvene or to extend it to the 24th on the condition that the witnesses confirm that they can (unintelligible) the witness has confirmed by their counsel, January 24th, 2011.

MR. COLDREN: Robert Coldren with Hart, King & Coldren, for the applicant. Opposing counsel (unintelligible) indicated that she would also join (unintelligible) this thing scheduled with our experts to be here. I thank the Commission for giving us that consideration.

As I noted with the assistant city attorney off the record, now I make it on the record, I object to the delay of the proceeding overall.

But given no choice between forfeiting our experts which were (unintelligible) of hearing next Monday night and having it being on the 24th of January without waiving our objections to the procedure and the process situation, we do prefer the January 24th in view of that we won't raise (unintelligible) conclude the hearing next Monday as a problem and 75-day rule.

But we do reserve our objections (unintelligible) we wanted this hearing done tonight. Our experts cost us many, many thousands of dollars and we're going to have to bring them back. Now we have to wait another month. We wanted this thing finished tonight. We would prefer you still do so. Thank you.

MS. SPENCER: And I just want to confirm that January 24th is an available date for me and for the rest of us.

CHAIR WERTHEIMER: So noted then. And we thank the attorneys for this consent. We have a motion up here as we suggested (unintelligible).

MR. HEHIR: You mean a motion to --

CHAIR WERTHEIMER: (Unintelligible) motion to reconsider and having the expert witnesses back on the -- on the 24th of January, 2011.

MR. HEHIR: Let's have them back --

CHAIR WERTHEIMER: Help me out on this.

So any discussion on the motion?

COMMISSIONER FERRUZZA: Are you making a motion that we -- are we making a motion that we adjourn now and come back on January 24th?

CHAIR WERTHEIMER: We are making a motion to continue this current hearing to the 24th of January of 2011.

COMMISSIONER FERRUZZA: Thank you.

CHAIR WERTHEIMER: We are not adjourning.

COMMISSIONER FELDMAN: May I make a suggestion that we do not go on the 24th of January because I can't be here.

CHAIR WERTHEIMER: You can make that suggestion, but it's (unintelligible).

Okay. So do we have a motion, Mike?

COMMISSIONER SILACCI: You need me to make that motion?

CHAIR WERTHEIMER: Yes.

COMMISSIONER SILACCI: I'll move that we continue this hearing of the Rent Adjustment Commission until January 24th, 2011.

MR. HEHIR: The publication of the public hearing we have on calendar (unintelligible) with the clarification that we extend the public hearing that we have on the calendar today to January 24th, 2007.

CHAIR WERTHEIMER: Let's vote.

RECORDING SECRETARY: Motion passed five, zero.

CHAIR WERTHEIMER: Also can we have any public comments of this meeting tonight that do not pertain to what we've been hearing tonight on the -- we have no speaker cards, but we have a gentleman that has nothing to do with the hearing.

THE PUBLIC: I would simply ask that it got to be bitter cold this evening, that given this next meeting and again proper consideration be given to the temperature control.

CHAIR WERTHEIMER: I understand.

Any comment from the committee?

For public comment?

THE PUBLIC: Thank you.

CHAIR WERTHEIMER: You're welcome. We have a motion to adjourn?

Adjourned.

(The hearing was adjourned at 10:50 p.m.)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

I, TYLENE M. BORJON, Certified Shorthand Reporter No. 8952, in and for the State of California, do hereby certify that said hearing was taken at the time and place as herein set forth; that said hearing was taken down in shorthand by me and thereafter transcribed into typewriting, and I hereby certify the foregoing 153 pages contain a full, true, and correct computer-assisted transcription of my shorthand notes so taken.

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

IN WITNESS WHEREOF, I have hereunto subscribed my name this 25th day of February, 2011 at Ventura, California.

TYLENE M. BORJON NO. 8952