

# **Ranch Mobile Home Park**

## **Administrative Record**

**Rent Adjustment Application  
RA-2010-02**

### **Part E**

**Ranch Mobile Home Park  
Administrative Record  
Rent Adjustment Application  
RA-2010-02**

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Administrative Record  
Rent Adjustment Application  
RA-2010-02**

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Administrative Record  
Rent Adjustment Application  
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# Transcripts of meeting dated December 6, 2011

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

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.



1 Monday, December 6, 2010; 6:00 p.m.

2 Thousand Oaks, California

3  
4 -oOo-

5  
6 LLOYD WERTHEIMER: I want to announce the  
7 anticipated order or outline of how we will to proceed  
8 this evening.

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

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

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

24 Next, residents, representatives, or counsel  
25 may take their presentation. Again, Commissioners

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1 questions follow, then Applicant's questions, and so  
2 forth.

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

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

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

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

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

22 MS. SPENCER: My name is Shandra Spencer and  
23 I'm the attorney for the Ranch Tenants Association, the  
24 Association of Ranch Tenants, the residents of the Ranch  
25 Mobile Home Park. I've requested a continuance of the

1 hearing for a number of reasons: One is to provide a  
2 reasonable accommodation to those who are celebrating  
3 the Hanakkah holiday this evening, those residents who  
4 cannot attend based on their religious observations.

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

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

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

1 counsel prior to this date.

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

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

21 We estimate these residents have invested,  
22 approximately, \$3 and a half million in their coaches.  
23 Whereas, the park owner, his investment was \$500,000.  
24 So certainly, these residents have a substantial right  
25 to have their property interest protected, as well as,

1 their persons protected, given the issues at stake,  
2 here, if the rent increase is approved.

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

9 LLOYD WERTHEIMER: Thank you.

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

24 As for the first reason, we, certainly,  
25 respect her concern about the time and about the

1 residents who are celebrating Hanakkah. Unclear how  
2 many are affected, but, certainly, for those two cannot  
3 make it, they can, certainly, rely upon counsel and also  
4 do comment cards if they wished.

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

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

24 Again, the guidelines that we have before us  
25 were created to set a fair time and date. That date has

1     been determined and has been scheduled, been noticed  
2     appropriately. And based upon those things and weighing  
3     the fact that we have all this information, the Staff  
4     has also done a report and an independent analysis, and  
5     based upon all those things, it is my recommendation to  
6     the Commission that we proceed with the hearing tonight  
7     as noticed. And again, it is a balancing of these  
8     issues.

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

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

16            MS. SPENCER: Before I sit down, I have one  
17    other objection that I'd like to lodge for purposes of  
18    preserving the record. It's the Association's position  
19    that the Rent Adjustment Commission lacks jurisdiction  
20    over this matter. Given that the -- this Park's rents  
21    have not been regulated by the Rent Stabilization  
22    Ordinance, but are, instead, regulated by the  
23    development approvals for this Park. And any  
24    modification of those development approvals, any change  
25    in the rents, would need to be made pursuant to a

1 modification request to the City Council or by a court  
2 of law and the scope of this Commission's authority, if  
3 this Commission approves a rent adjustment that's in  
4 excess of what has already been approved by the City  
5 Council and Resolution 84037, the Commission will be  
6 acting in excessive of its authority and has no  
7 jurisdiction to do so.

8 LLOYD WERTHEIMER: So noted.

9 MS. SPENCER: Thank you.

10 LLOYD WERTHEIMER: Madam Secretary, please  
11 call the hearing.

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

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

21 CHRIS NORMAN: Thank you Mr. Chair,  
22 Commissioners, and members of the public. Staff has  
23 prepared a PowerPoint Presentation for your  
24 consideration tonight. This is a complicated  
25 application. The first two slides will give a



1 background of the presentation -- sorry, you can't hear  
2 me. Is that better?

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

17 Finally, Staff will conclude with a  
18 recommendation. The background of mobile home parks  
19 city-wide. There are nine mobile home parks split  
20 between senior and family. There are over a thousand  
21 City spaces, mainly senior. One mobile home park is  
22 closing, that's the Canejo Mobile Home Park. Another  
23 has converted to for-sale lots, a subdivision, that's  
24 Valicedo Park. And as mentioned, Ranch has previously  
25 not been subject to the city's ordinance, but we will

1 discuss the reasons why this is appropriate to do so  
2 today.

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

12 The ordinance provides three ways to request  
13 rents: There's an automatic rent increase which is  
14 75 percent of CPI. That is done without any action from  
15 the City. There is a just and reasonable return  
16 application which is the one before you, which is under  
17 the purview of the Rent Adjustment Commission. And  
18 thirdly, there's a capital improvement rehabilitation  
19 rent adjustment process.

20 There are guidelines that help implement the  
21 ordinance. These were adopted in early 1980's. The two  
22 pertinent resolutions are what we refer to as Rack 2 and  
23 Rack 5, and they give the definition of what is a just  
24 and reasonable return. And it talks about the  
25 maintenance of the net operating income MNOI, as

1 prescribed method. We will be going into great detail  
2 about what that means. It's important to note the  
3 guidelines do provide that the Commission may consider  
4 other types of methodologies.

5 A history of Ranch: The park was entitled in  
6 1974 for development as a trailer park and limited to  
7 lower income seniors. In 1976, the City Council  
8 approved an 11.5 percent return on investment formula to  
9 set rental rates. In 1977, the mobile home park finally  
10 developed and the City approved the initial rental  
11 rates, which were 120 for a double wide lot, and 115 for  
12 single wide lot.

13 During that time, by the way, the City did not  
14 have rent regulations in place city-wide. In 1984, the  
15 City Council approved resolution 84-037 which granted  
16 the park owners' request for 7 percent increase. It  
17 also limited future increases to a maximum of 4 percent  
18 based on a formula. In 2001, the Applicant requested  
19 another increase of 4 percent under that resolution  
20 which was granted. That resulted in rents being \$139  
21 for a double wide and 128 for a single wide lot. It's  
22 important to note, these are the current rental rates,  
23 and those are the only two rental rate increases in the  
24 33 history of the park.

25 Why is this before the Rent Adjustment

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

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

17 The Applicant has stated in their application  
18 that the resolution 84-037 does not provide a just and  
19 reasonable return, that Rack 2 resolution prescribes the  
20 use of the MNOI method. The base year rent adjustment  
21 is required -- we will discuss this in more detail  
22 later -- something called a Vaga adjustment, which will  
23 be very important. And ultimately, they're requesting,  
24 through their application, a rent increase of \$587.45  
25 for a total of \$720.45 to achieve what they claim is a

1 just and reasonable return. However, I should point out  
2 that I was informed by the Applicant's attorney that  
3 they will be adjusting that level down to \$466.12, and  
4 they'll have to explain the rationale for that. The  
5 increase, that is, correct.

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

22 The gentleman to Mr. Bahr's left is Jim  
23 Brabant. He's an MII certified appraiser. He has  
24 prepared -- for over 30 years, he's prepared appraisals  
25 for mobile home parks, including dozens of cities for

1 purposes of litigation, park conversions, subdivisions,  
2 and rent increase applications. Mr. Bahr, relying, in  
3 part, on Mr. Brabant's appraisals, has prepared a report  
4 that analyzes the application and provides a basis and  
5 methodology for determining what constitutes a just and  
6 reasonable return.

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

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

1 income over time.

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

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

24 KENNETH BAHR: Okay. As Mr. Norman indicated,  
25 the purpose of my report was to discuss and analyze what

1 rent increases would be just and reasonable pursuant to  
2 the ordinance and constitutional standards.

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

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

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

25 And finally, recently, the Courts have



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

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

23 Rate of return on investment is used in some  
24 jurisdictions. It's -- in a number of cases park owners  
25 and experts have proposed the use of this type of

1 formula, and intuitively, it sounds very reasonable,  
2 somebody should be able to get a fair rate of return on  
3 their investment. The problem with this type of  
4 formula, too, it's circular in the sense that if you  
5 guarantee somebody a certain rate of return on their  
6 investment, then no matter -- they can determine what  
7 they're allowed by determining the investment. The more  
8 you invest, the more you're permitted.

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

16 The maintenance of net operating income  
17 formula is based on a different concept. It's,  
18 basically, that owners have different rates of return,  
19 we can't set a single rate of return and say that's  
20 fair. We'll take the pre-regulation income and assume  
21 that's fair it was set in an unregulated context, and  
22 we'll adjust that -- we'll adjust that by inflation in  
23 the future. So essentially, that type of formula, one,  
24 guarantees that owners have a right to pass through  
25 their operating cost increases and get some growth in

1 income. And this type of formula has been -- in a  
2 number of cases, has been approved by the courts. It  
3 answers the issue of not freezing income because it  
4 guarantees growth in income.

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

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

25 And that doctrine was not that every rent had

1 to be equal, because in a market, there are variations  
2 in rents, but, basically, where there's exceptional  
3 situations, an owner had a right to a base rent  
4 adjustment.

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

21 On page -- first I'll discuss the base year  
22 issue, and I discuss that on page 116 of the -- in the  
23 packet. The ordinance -- regulations, rather -- provide  
24 that 1979 shall be the base year, however, they also  
25 provide that where 1979 financial information is not

1 available, then the base year shall be the first year  
2 for which records are available.

3 And in this case, the Applicant does not  
4 actually have actual income or expense information for  
5 1979, but they took -- their conclusion is that 1979 can  
6 be used as the base year because they can take the 1982  
7 expenses and, based on inflation, figure out what  
8 they -- make an adjustment to figure out the 1979  
9 expenses. And that might be authorized under some  
10 regulations or ordinances, but, here, in the  
11 alternative, the regulations say if you don't have the  
12 '79 information, you have to use the information for the  
13 first year you have it available. Because to say you  
14 can take a later year and then work backwards based on  
15 inflation, well, then somebody would always have the  
16 1979 data and the requirements in the regulations would  
17 be meaningless.

18 So the next possibility would be to use the  
19 1982 year as the base year. Well, in that case, it's a  
20 little bit unusual -- there is income information,  
21 there's expense information, but only overall expense  
22 information. In 1982, data was used in a 1984 hearing  
23 before the City Council, but the information, he  
24 breakdown of expenses is no longer available, nobody has  
25 it any longer. So on one -- but it was reviewed by the

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

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

18 So you have a base -- if you use 1999, you  
19 have a mixture of regulated spaces and some that were  
20 unregulated and increases -- I don't know how many --  
21 but what the evidence seems to indicate is that the  
22 overall rent increases certainly exceeded what was  
23 allowed under the annual general adjustments. So what  
24 happened is I recommended the use of a 1982 base year,  
25 but I also did the analyses using all three base years

1 because there are arguments for and against using any of  
2 these base years.

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

12 On the other hand, we don't have a comparison  
13 -- we don't have a breakdown for 1982, and what happened  
14 between 1982 and 2009 was that some of the operation of  
15 the park -- some of the tasks that were performed --  
16 substantial tasks in managing the park, based on the  
17 information we got, as I understand, from the Applicant,  
18 the park owner performed substantial services in 1982.  
19 By 2009, the services were contracted out. The owner  
20 was, you know, older, or for what reason. So what  
21 happens is this shows a substantial cost increase  
22 because you not only have the actual cost increases,  
23 but you also have this transfer of the performance of  
24 services. And I felt that's not a real cost increase,  
25 it's a cost increase on the books. So to say that, you

1 know, that management expenses went up from zero to  
2 10,000 -- I'm making up those numbers -- that's not  
3 really what happened. It was -- they were shifted who  
4 performed them, they went from off the books to on the  
5 books.

6 So what I did was in my analysis, I adjusted  
7 the 1982 expenses upwards. And the way I made the  
8 adjustment is I assumed that the expenses from '82 to  
9 2009 increased by the CPI, and I adjusted the base year  
10 expenses up from 34,000 to \$42,000, and that does have  
11 the impact of reducing the 1982 net operating income.  
12 But I felt that was a fair adjustment to make this  
13 comparable.

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

25 In contrast, the city's appraiser,



1 Mr. Brabant, his conclusion was in 1979, the market  
2 rents were of \$150, the comparable rents at that time.  
3 And that's a huge difference, if -- especially in  
4 percentage-wise, when you compare 150 to \$240. And when  
5 you use the net operating income formula, that  
6 difference is increased because you're indexing the  
7 profit. So whether you're indexing, starting point of  
8 \$150 rent or \$240 rent, makes a very, very large  
9 difference. And that's -- so what -- how you set the  
10 base rents is critical in the fair return analysis.

11 The other critical issue in the fair return  
12 analysis is whether you index net operating income at  
13 50 -- or what percentage of the CPI increase you index  
14 in that operating income. Some cities index net  
15 operating income at 100 percent of the CPI, some at  
16 75 percent, some at 50 percent, some at even only  
17 40 percent. The courts have upheld 40 percent indexing,  
18 and they've rejected the view that 100 percent of  
19 indexing is required.

20 And as far as what's the right indexing ratio,  
21 that's a policy issue. You have this -- you've had  
22 standards from 40 to 100 percent and all have them have  
23 been upheld, and their arguments for and against  
24 indexing at 100 percent and the rationale for indexing  
25 at less than 100 percent. One rationale for indexing at

1 less than 100 percent is -- and I'll use an analogy of a  
2 house purchase to explain this -- typically, real estate  
3 investments are leveraged -- I'm not saying this park,  
4 the investment was leveraged, but typically they are --  
5 and imagine you buy a house for \$100,000, you put  
6 \$20,000 down, the house goes up in value 20 percent to  
7 120,000. Well, on one hand, the house has only gone up  
8 in value 20 percent, but your equity is doubled.

9 So one type of return -- one type of increase  
10 is by 20 percent, but another type of increase by  
11 100 percent. And typically, as I say -- as you know,  
12 real estate investments are leveraged. The other factor  
13 is, I mean, you know, you look investments, generally,  
14 in the economy, and if businesses have growth and  
15 income, they don't consider it a loss if their income  
16 goes up less than the CPI. You won't read the news that  
17 General Motors lost money because their profits only  
18 went up 6 percent but there was inflation of 10 percent.

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

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

1 Basically, what I did was I took the base year that the  
2 park owner used and indexed that net operating income by  
3 100 percent, 75 percent, and 50 percent of inflation.  
4 The park owner used 100 percent indexing, so the  
5 difference in my analysis is that I also used the 75 and  
6 50 percent indexing. And these are numbers, of course,  
7 that were prepared before the correction -- or change in  
8 the Applicant's analysis tonight. But even under that  
9 standard, there were substantial differences. They  
10 showed they were entitled to a \$587 increase with a  
11 100 percent indexing. And I concluded, using their base  
12 rent adjustment, that they would have been entitled to a  
13 \$487 with 75 percent indexing, and \$386 with 50 percent  
14 indexing in net operating income. So you can see the  
15 indexing because it's over such a long period, has a big  
16 impact on the outcome.

17 Then I used Mr. Brabant's comparable figure  
18 and, of course, because that comparable figure -- base  
19 rent figure is substantially lower, the indexing amounts  
20 were lower, with 100 percent indexing there's a \$324  
21 rent increase, with 75 percent indexing there was a \$267  
22 increase, and with 50 percent indexing, a \$210 increase.  
23 Then the next page I use 1982 as a base year. And the  
24 numbers were not drastically different, but they were  
25 different. And in order to figure -- Mr. Brabant did

1 not actually provide a 1982 rent figure in his report,  
2 but using his mode of analysis, he adjusted back to 1983  
3 back or 1979, while I adjusted back one -- I only went  
4 back one year instead of four using the percentage  
5 adjustments per year he used. And using his base year  
6 rent for 100 percent indexing, there would be a \$297  
7 rent increase for 75 percent, \$252, and for 50 percent,  
8 \$207.

9 And then with the park owners' appraiser, the  
10 numbers were similar to the 1979 for 100 percent  
11 indexing it was \$515, and for 75 percent, \$439, and for  
12 50 percent, \$363. And these numbers are without the  
13 expense adjustment that I made for 1982. With the  
14 expense adjustment I made for 1982, the numbers are  
15 about \$20 lower. And those are the two right-hand  
16 columns.

17 And then the third chart was using -- on the  
18 next page 134, was using 1999 as the base year. Those  
19 adjustments -- those, I just used the base rents  
20 projected by Mr. Brabant. Because he was asked to do a  
21 projection for 1999 the park owner hadn't, and that's  
22 not as a criticism, I'm just saying that's -- this was  
23 done because we saw that 1999 was the only year which  
24 there was complete expense data. And if you use 1999 as  
25 a base year, you actually get higher -- the rent

1 adjustments are higher pursuant to the MNOI formula.  
2 And my conclusion why that occurred was because the base  
3 rents -- the rents between 1979 and 1999 had increased  
4 by more than the annual general adjustments provided  
5 for, and there was probably greater growth and income  
6 for the parks than the constitutional minimum. And so  
7 the differences are particularly significant when you  
8 have less than 100 percent indexing.

9 It needs to go back to the PowerPoint.

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

1 after depreciation, where net operating income is not  
2 considered depression.

3 And that adjustment used 1982 as a base, and  
4 from 1982 to 2009 the CPI went up -- there was 13.8  
5 percent increase in the CPI. So on that basis, I  
6 concluded that if the park owner had taken the increases  
7 pursuant to that formula, instead of being allowed the  
8 base net income of 57,500, they would be permitted a net  
9 income of \$132,720. And pursuant to that approach,  
10 currently, the net income is very low, it's only a few  
11 thousand dollars. Because the net operating income is  
12 only about 20,000, and if you subtract depreciation, the  
13 net income goes down to just a few thousand dollars.  
14 And on that basis, in order to bring the net income up  
15 to the adjusted standard under the net income formula,  
16 the park owner would be able to get a rent increase of  
17 \$147, if they could do that. Now, that standard does  
18 not provide for banking of increases, but if it did,  
19 that's what, you know, the owner would be able to get  
20 today, and if the owner had taken the increases they  
21 were entitled to, that's where they'd stand, is under  
22 that formula.

23 I also compared the increases with the  
24 allowable increases under the rent stabilization  
25 ordinance. And that ordinance allowed for the first

1 three years for annual increases of 8 percent, then  
2 7 percent for the next three years, from 1983 to 1986.  
3 Then after that, there was a three quarters of CPI  
4 adjustment, but it was not three quarters of the CPI  
5 increase, but that was not on the current rents, that  
6 was a three quarter of the CPI increase to the 1986  
7 rents. And for that I concluded that the overall  
8 allowable increase would have been 108 percent if the  
9 owner had taken that, and of course, whether you took  
10 that over the \$150 figure that Mr. Brabandt came up with  
11 or the \$240 figure that the park owner presents as the  
12 fair base rent would make a huge difference in what a  
13 fair rent -- or the rent that would have been permitted  
14 pursuant to the annual increases. And let me say that  
15 those annual increases under the ordinance have totaled  
16 108 percent; they're substantially under the CPI because  
17 of the fact that the adjustments were based on the 1986  
18 rent, rather than the current rent.

19 Go back to the PowerPoint.

20 I also performed a return on investment  
21 analysis. It's not the approach I recommend, but it has  
22 been used, and it's interesting because it's how  
23 investors look at their investments. I not saying,  
24 therefore, it should be used as a regulatory standard.  
25 And when the return on investments standard has been

1 used in recent -- well, last decade, I'd say --  
2 basically, the approach that's been used is rather than  
3 using the historic investment is to use an inflation  
4 adjusted investment based on the concept that it's not  
5 fair to use the historic investment.

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

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

23 You say, well, 6 percent might sound like a  
24 low number, but one, this is an appreciating investment,  
25 as opposed to if you buy a bond where the return stays



1 constant, the income goes up, also, the value goes up as  
2 the net operating income goes up. And so it's a  
3 reasonable rate of return.

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

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

22 So, I've thrown out a lot of numbers and  
23 concepts at you, and I just want to say that this is an  
24 unusual case because we have an issue of, you know, base  
25 rent adjustment going back over a long period, we have a

1 situation where the rents were frozen for a long time,  
2 there's even an issue of what should be a base year.  
3 All I'll say is you have a difficult job and to think  
4 about it carefully.

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

7 JAMES BRABANT: Good evening, Commissioners.  
8 I was asked to do a -- two basic things. One was to  
9 review the appraisal of John Neat, the appraiser  
10 retained by the park owner and his attorneys, and also  
11 to provide my own opinions of the rental value of spaces  
12 at Ranch Mobile Home Park as of three different years,  
13 1979, 1999, and 2009.

14 So, beginning with a few comments about  
15 Mr. Neat's appraisal that was included in the  
16 application. He starts out estimating the market rent  
17 for what he calls the base year of 1980, and his  
18 conclusion is \$240 per month as of that date. But then  
19 at the end of his report, he, then, talks about the base  
20 year actually being 1979, but concludes that there was  
21 really no difference between his opinion in 1980 and  
22 1979, however, no data was provided or information was  
23 provided in the report to explain the reason for that  
24 conclusion, that rents didn't change between 1979 and  
25 1980.

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

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

22           And also, the saying that there were only two  
23 years of adjustment between 1986 and 1983, I found to be  
24 conflicting with the ordinance, which was enacted in  
25 April of 1980, and there was a brief period of a rent

1 freeze when no increases were allowed. But the  
2 increases, then, from August of 1980, an annual  
3 8 percent increase was allowed up -- and then there was  
4 an amendment in May of 1981 that allowed automatic  
5 8 percent annual increases, or up to 8 percent. And  
6 that was in place until August of 1983, and then that  
7 automatic increase was reduced to 7 percent. And then  
8 in September of 1986, the automatic increases were  
9 changed to 75 percent CPI.

10 So increases were really allowed all of those  
11 years, even though he only made -- apparently, he made  
12 some kind of adjustments for two years: 1983 and 1986.  
13 So I just didn't find that to be consistent with the  
14 ordinance. What I did was I looked at the actual  
15 increases for the five -- the comparable parks that we  
16 had data from for those two years, 1983 and 1986, to see  
17 what was actually occurring in the market at those  
18 parks. In other words, how much did rents go up between  
19 1983 and 1986 at five the parks where we had data for  
20 both years. And I have an exhibit that shows that, if  
21 we could bring that up. Oh, it's up. I'm sorry. Thank  
22 you.

23 So what it shows under 1986, you can see --  
24 well, first of all, let me say that there are five parks  
25 listed on that exhibit that -- where we have rents for

1 both years. Canejo Mobile Home Park, Elms Plaza --  
2 well, we have it for rent, but it wasn't the subject of  
3 comparison, here -- Ventu Park Villa, Ventu Estates, and  
4 Thunderbird. And you can see in the two columns, I have  
5 in 1986 rents then I have the 1983 rents. And what I  
6 did was make calculations of what happened to those  
7 rents for that period of time.

8 And the rents of Canejo increased from \$157 to  
9 \$197, which is an overall increase of an average --  
10 well, it's an overall increase of 25 percent, but an  
11 average annual increase compounded of 7.9 percent for  
12 that three-year period.

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

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

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

1     \$292, which is an overall increase of 21 percent for an  
2     average annual increase of 6.5 percent.

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

14            Canejo Mobile Home Park \$122; Elms Plaza,  
15    \$145; Ventu Park Villa, \$159; Ventu Estates, \$188,  
16    Thunderbird Oaks, 191. Then I had arranged the parks,  
17    basically, in the order of, kind of, the overall appeal.  
18    The way I would adjust the comparables to the subject  
19    and where it fits in in relation to the overall quality  
20    and appeal and location of the other parks. And  
21    Mr. Neat did the same kind of ranking of the parks, and  
22    I thought I didn't have any big quarrel with the way he  
23    did it, I did it in kind of a similar fashion.

24            And in my opinion, as you can see, we did not  
25    have 1983 information for Twin Palms, so that park

1 couldn't really be considered for this analysis. So  
2 anyway, in my opinion, the rent at Ranch for 1979 should  
3 fall between the \$145 at Elms Plaza, it should be above  
4 that, it should be below the adjusted rent at Ventu Park  
5 Villa of \$159, and my conclusion was \$150 per month for  
6 the base year of 1979. And that was my opinion of the  
7 market rent in 1979.

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

15 And since I've been asked to kind of speed  
16 this up, I won't go through all the details, but I did  
17 the same kind of comparable analysis in 1999. My  
18 conclusion of the indicated rent for Ranch Mobile Home  
19 Park as of that date was \$300 per month. And then we  
20 move on to 2009. I did the same thing, I obtained  
21 current rental information for the year 2009 for the  
22 comparable parks. And my conclusion, as of that date,  
23 was \$400 per month, and that rent in 2009 includes water  
24 and trash. I did not include -- I really wasn't able to  
25 analyze the inclusion of utilities as of the other dates

1 because I didn't have that information for all the  
2 parks. But the current rent -- for the current  
3 analysis, I did know what utilities were included in  
4 each park, and so the \$400 per month includes water and  
5 trash. And those are the opinions that I was asked to  
6 provide.

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

15 Staff's conclusion is given prior Court  
16 precedent in City's rent stabilization guidelines, MNOI  
17 is an appropriate method for doing a rent adjustment.  
18 Staff believes that 192 is the appropriate base year  
19 with the Vaga adjustment, according to City's appraiser,  
20 and with the adjustment to operating expenses to include  
21 the outsourcing of management. The range of indexing  
22 presented in the consultants' report is between 50 to  
23 100 percent. Staff would recommend that a 50 percent  
24 increase would pass the Constitutional requirement.

25 Here's a table that illustrates all the



1 options. Basically, the Staff's -- the way to view this  
2 chart is that Staff believes anything on here passes the  
3 minimum Constitutional requirement for fair return.  
4 This, again, highlights what the rents would be for  
5 various base years from '79 to '99 with the expense  
6 adjustment, there's a line for that in bold, it is the  
7 City's recommendation of \$191. That's based on  
8 50 percent CPI with an expense adjustment, and the Vaga  
9 adjustment using the City's appraiser. Again, the park  
10 owners' appraised value is the bottom line. Again that  
11 may be subject to change. We'll have to hear from the  
12 Applicant to see a basis for that.

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

24           For comparative purposes only, again, I'm  
25 relying on Mr. Brabant's comparable current controlled

1 rent for 2009, other parks he would value the increase  
2 at a \$267 per month increase using that methodology.  
3 And again, there is the increase as compared to the rent  
4 stabilization ordinance that I just mentioned and the  
5 resolution that I just mentioned in the prior slide.

6 And then for comparison purposes, you have the  
7 rate of return that Mr. Bahr explained in his  
8 presentation. It's interesting to note that even at  
9 11.5 percent rate of return, which is what the owner had  
10 agreed to back in 1977, the City's recommendation is  
11 right in that ballpark. So from Staff's perspective,  
12 Staff's recommendation is in line with the totality of  
13 the circumstances that are unique to this park.

14 So, finally to wrap up, the City's  
15 recommendation is to approve a rent adjustment of  
16 \$191.95 per space per month above existing rents. The  
17 City Staff also recommends that this be phased in in  
18 five years. The rationale behind that is: It's a huge  
19 rent increase. We're talking, even, the City's  
20 recommendation, if it worked out in one fell swoop,  
21 would be, I think, 160 percent increase.

22 And looking at the intent of the ordinance, we  
23 think that's just too burdensome on these residents and  
24 that a phase-in is appropriate. Even at a five-year  
25 phase in, which would be \$38.89 per space, per month,

1 each year increase, that's still over a 25 percent  
2 increase over existing rents. The initial increase,  
3 says here should be 60 days. Rent control law may have  
4 a different requirement on that, we will check on that,  
5 but it may be 90 days, but whatever State law is would  
6 be the minimum. And that each subsequent increase would  
7 be phased in one year from the prior. And with that,  
8 Staff has completed its presentation.

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

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

20 CHRIS NORMAN: That's correct.

21 MIKE SILACCI: Thank you. And could, please,  
22 help me understand a little bit more about the legal  
23 basis? Was the Constitutional requirement for a just  
24 and reasonable return, was that a requirement that was  
25 present back in 1984? At the time that the Council went

1 through the process to enact this resolution?

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

7 MIKE SILACCI: I guess just an extension,  
8 maybe a two-parter, the Council had an opportunity to  
9 apply this resolution to the Ranch Mobile Home Park in  
10 2001, so I would guess I would extend, that standard  
11 exists in 2001.

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

17 MIKE SILACCI: That's fine. Thank you. And  
18 just, I have -- excuse me, Mr. Chairman, I have, just  
19 for me, one more clarifying question. How was the -- at  
20 the beginning, with the development conditions for the,  
21 I guess, fee -- development fee waiver of \$100,000, and  
22 I guess, some reduced cost as far as for giving some  
23 design requirements, I mean, how were those reflected in  
24 the initial rental rates? And was there a period of  
25 time that those would be taken into account? Because I

1 guess I shouldn't comment, it's really a question -- I  
2 don't see how \$100,000 is taken care of in one year.  
3 How were those -- how was that -- those fee waivers  
4 taken into account in setting the initial rental rates?

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

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

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

24 KENNETH BAHR: I'm sorry. I'd say it is taken  
25 into account because the investment is lower because the

1 park owner didn't have to make that investment, so  
2 therefore, you have a lower investment basis. You know,  
3 if they hadn't gotten that \$100,000 gift, they would  
4 have invested 600,000 instead of 500,000 at the  
5 beginning, and that would have been taken into account  
6 in the formula.

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

11 KENNETH BAHR: You know, I'm saying the way  
12 it's factored in, it was an investment that the park  
13 owner didn't make, so it's factored in, in the sense,  
14 that the owner never gets credit for that later. So  
15 it's not an investment. So we don't subtract it later  
16 because it's subtracted from the original base. And so  
17 100,000 less was indexed by the consumer price index.

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

1 That's a shame. I also wonder, are you considering --  
2 is the City of Thousand Oaks considering this park as  
3 affordable housing? And if not, why not? Because they  
4 are making -- earning \$10,000, and that \$10,000, if you  
5 factor it forward to today with the CPI is still  
6 \$10,000, but on the market, it would be \$44,300 that the  
7 tenant would have to be earning to qualify. And in our  
8 park, \$18,000 or \$19,000 is the minimum we can earn to  
9 get into our park, yet with Ranch, a maximum of \$10,000  
10 for an individual. It just doesn't make sense to me.  
11 And no one is making mention of that here. And how did  
12 you factor that in?

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

19 BRENDA MOHR FELDMAN: It really doesn't. The  
20 fact that you didn't factor it in and it isn't part of  
21 what we're supposed to do, I understand that. But my  
22 concern is: If I go ahead with all of these thoughts on  
23 different methods, the MNOI and everything else, is it a  
24 decision that's to be made for Ranch, per se? And in  
25 that case, it just doesn't work for me. If this is an

1 ordinance-wide thing, can we treat them differently?  
2 Can we treat Ranch differently from other parks, or is  
3 that ordinance-wide?

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

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

10 LLOYD WERTHEIMER: Mr. Sheldon?

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

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

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

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



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

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

14          MAXWELL SHELDON: Thank you. I have nothing.

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

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

1 LLOYD WERTHEIMER: Okay.

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

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

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

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

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

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

18 JAMES BRABANT: I can tell you the adjustments  
19 I made in the rental value comparison that I did in  
20 2009. The rents at Ranch Mobile Home Park included  
21 water and trash. And, let's see, we had -- there was a  
22 park that just included water, and so -- and I made a  
23 \$13 adjustment for the -- so that was -- the difference  
24 there was trash, so in that case, it was \$13 for the  
25 trash. And, let's see, here's one that included water.

1 Let's see -- well, that's other one. Okay. I'm not --  
2 here's one that included water, sewer, and trash. And  
3 so -- I was just looking to see if we had one that had  
4 none -- well, here's one that was none, and I adjusted  
5 \$33 for the combination of water and trash.

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

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

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

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

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

25 KENNETH BAHR: Yes.

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

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

9           KENNETH BAHR: Yes. Because --

10          LLOYD WERTHEIMER: "Yes" is okay. That's  
11          good. So then my question is: Did you include the  
12          \$100,000 concession in that as of -- when you went back  
13          to his original investment?

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

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

19          KENNETH BAHR: Yes.

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

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

25          Okay. Give us your name and your City,

1 please.

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

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

7 CHRIS NORMAN: Sure.

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

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

16 The City Staff is basing its position and its  
17 rent increase application on your opinions contained in  
18 November 30, 2010, report, entitled, "Analysis of the  
19 Ranch Mobile Home Park Rent Increase Application."

20 First, is it your opinion, as stated in the summary of  
21 your report -- first slide -- that because there have  
22 been, virtually, no increase in 30 years, very  
23 substantial rent increases are required?

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

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

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

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

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

13 MR. HILL: Third, are the components of the  
14 various substantial rent increases described in your  
15 opinion the following: No. 1, to provide a fair base  
16 rent for the purposes of a fair rent calculation; Number  
17 2, cover operating cost increases; and No. 3, provide  
18 for growth in net operating income reflecting inflation  
19 since the base year?

20 KENNETH BAHR: Yes.

21 MR. HILL: Okay. Mr. Bahr, so far your  
22 opinion that the Applicant should get a substantial rent  
23 increase and that the components of that rent increase  
24 should include adjustment of base year income,  
25 adjustment for inflation, and adjustment for increased

1 costs of operation, corresponds with the position of the  
2 Applicant. I want you to keep in mind that these three  
3 components of the substantial rent increase that should  
4 be applied as we discuss the details of application and  
5 of your analysis, because as we get into it, it will  
6 become clear that your particular analysis ends up  
7 disregarding a significant amount of the increase  
8 attributable to each of these three components.

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

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

1 some of the other measures.

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

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

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

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

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

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

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

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

25 MR. HILL: I understand, but I'm trying to



1 get -- I'm trying to short circuit this.

2 LLOYD WERTHEIMER: He'll give you an answer.

3 KENNETH BAHR: Repeat your question again.

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

8 KENNETH BAHR: No.

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

14 KENNETH BAHR: Well, I think I remember --

15 MR. HILL: Where's the rest of that slide?  
16 There you go. Thank you. It states -- I'm reading from  
17 the regulation, it states, "The methods herein --  
18 authorized herein are nonexclusive. Alternative  
19 approaches may be employed by the Commission.  
20 Applicants or tenants may propose the use of such  
21 approaches, but must fully explain, in writing, the  
22 methodology and the reasons supporting use of the  
23 methodology, and must provide information and  
24 documentation adequate to use suggested approach. The  
25 methodology and documentation shall be provided with the

1 application or sufficiently before the date set before  
2 the hearing so that the matter may be reviewed by the  
3 Commission Staff. Failure to so provide that  
4 information shall be grounds for rejection of its use or  
5 continuance of the hearing at the Commission's  
6 discretion. The use of such approach, as suggested by  
7 Applicants or tenants, shall be at the discretion of the  
8 Commission."

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

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

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

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

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

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

25 MR. HILL: Sure.

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

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

8 KENNETH BAHR: Yes.

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

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

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

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

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

1 standards?

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

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

7 KENNETH BAHR: Yes, I do.

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

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

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

18 KENNETH BAHR: That's your conclusion.

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

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

24 MR. HILL: Next slide, please. I'm going to  
25 quote from your report again. "However, this type of

1 formula was used in order to establish a fair net income  
2 for this park in accordance with the City's  
3 affordability objectives associated with the development  
4 of this park?"

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

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

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

19 KENNETH BAHR: First of all, I -- and I'll go  
20 back -- also, the ordinance says that it Commission can  
21 consider -- it's a list of factors that the ordinance --  
22 under the ordinance that the Commission can consider,  
23 and it says, "Among other relevant factors." And their  
24 disagreements -- you know, there's a -- "relevant  
25 factors" has had a broad scope, and many cases,

1 different factors have been considered relevant. And  
2 secondly, as far as the investment, I point out if you  
3 use a return on historic investment approach, and you  
4 don't adjust the historic investment, it's very, very,  
5 you know, unfavorable to a long-term owner. But when  
6 you put an inflation adjustment into the historic  
7 investment approach, your inflation adjusting in the  
8 original investment, I wouldn't say that's so  
9 unfavorable. And in fact, in a number of cases I've  
10 been in, that's what the park owner's expert has done.

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

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

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

25 MR. HILL: Mr. Bahr, by choosing a rate of

1 return investment standard that's disfavorable to  
2 long-term owners, are you showing bias against the park  
3 owner and in favor of the tenants?

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

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

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

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

18 KENNETH BAHR: No, it isn't.

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

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

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

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

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

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

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

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



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

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

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

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

20 (Laughter.)

21 LLOYD WERTHEIMER: Quiet, please.

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

24 MR. HILL: Isn't it true that even a doubling  
25 or tripling of the rents won't bring the Ranch property

1 up to the level of the inflation adjusted rate of return  
2 investment value?

3 KENNETH BAHR: This inflation adjustment value  
4 is 1.8 million. And net operating income of about  
5 120,000 -- let's say we had 6 percent capitalization  
6 rate -- it would cover that -- would bring it up to that  
7 market value.

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

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

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

15 LLOYD WERTHEIMER: Counsel --

16 KENNETH BAHR: I didn't --

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

19 MR. HILL: I'll withdraw it.

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

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

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

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

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

9 KENNETH BAHR: I want to me see my --

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

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

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

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

24 MR. HILL: Mr. Bahr, can you tell me where in  
25 the City's ordinance or regulations the City authorizes

1 or requires use of a current comparable rent standard?

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

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

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

18 MR. HILL: Next slide, please.

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

21 MR. HILL: These are kind of fuzzy  
22 microphones, here. Next slide it states -- you state,  
23 "The MNOI fair return concept has been premised on base  
24 year rents that reflect market conditions and the  
25 maintenance of base period net operating income levels

1 provided by base rents, rather than current  
2 comparability of required rents." Bahr report, page 38.  
3 Is that correct?

4 KENNETH BAHR: That's correct.

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

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

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

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

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

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

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

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

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

23 Next slide, please.

24 KENNETH BAHR: I think --

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

1 please.

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

5 MR. HILL: The City Code, the ordinance that  
6 we're dealing with, says, "Therefore, it is necessary  
7 and reasonable to continue to regulate rents so as to  
8 safeguard tenants from excessive rent increases and at  
9 the same time provide landlords with a just and  
10 reasonable return on their rental spaces."

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

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

20 MR. HILL: Mr. Bahr, I'm sure that in your  
21 analysis you had a chance to review the City's prior  
22 versions of its rent control ordinance, in particular,  
23 since we are now talking about objectives of the City's  
24 rent control ordinance, I think it would be a good idea  
25 to reflect on what the City originally intended with its

1 rent control ordinance. Next slide. I'm going to read  
2 from that, for those who can't read it, since it's small  
3 print. "The City Council recognizes that permanent rent  
4 control localized in the City of Thousand Oaks would be  
5 inconsistent with the system of free enterprise and  
6 initiative, would tend to aggravate and prolong the  
7 shortage of rental units available on the market, would  
8 tend to discourage investment in rental unit  
9 development, and would tend to reduce incentives to  
10 improve or sustain a desirable environment within rental  
11 unit facilities." That's from City ordinance 755-NS,  
12 Section 2.

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

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

25 Secondly -- excuse me, it's a little hard



1 because I'm looking at another screen instead of mine.  
2 As far as being inconsistent with the system of free  
3 enterprise and initiative, the problem was with mobile  
4 homes, you don't have a market or initiative, you have  
5 captive tenants, and you, basically, have a frozen  
6 supply.

7 MR. HILL: Because of rent control; right?

8 KENNETH BAHR: No, absolutely not. You have a  
9 frozen supply of mobile home parks for several reasons:  
10 One is that as the urban areas became denser,  
11 neighborhoods would not tolerate the construction of new  
12 mobile home parks, so they couldn't get use permits.  
13 Another, as other uses became more profitable, whether  
14 or not there was rent control, it just became other  
15 types of construction became more profitable. Apartment  
16 --

17 MR. HILL: Because rent control kept rents  
18 down?

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

1 its construction.

2 MR. HILL: In the City of Thousand Oaks?

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

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

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

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

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

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

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

18 MR. HILL: I'm sorry, what?

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

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

23 LLOYD WERTHEIMER: Understood. Thank you.

24 MR. HILL: Mr. Bahr, isn't it true that in  
25 order for the maintenance of net operating income

1 formula to work that the base year chosen must generally  
2 be a year prior to the imposition of rent control?

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

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

16 KENNETH BAHR: Yes, I did.

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

21 KENNETH BAHR: Yeah, generally, it is.

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

25 KENNETH BAHR: Yes. But the City also passed

1 a regulation that said where base year income and  
2 expense information was not available, that then the  
3 base year would be the first year for which income and  
4 expense information --

5 MR. HILL: We'll get to that. Let's start  
6 with the presumption first. Because I think -- you  
7 know, we need to -- you know, you're a lawyer and I  
8 think you understand the importance of a presumption of  
9 law. It states that, "The Commission presumes that the  
10 net operating income received up to April 1980 provided  
11 landlords with a just and reasonable return on their  
12 rental units, unless there is clear and convincing  
13 evidence to the contrary." That's Section 1.03 of  
14 Regulation 2.

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

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

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

1 available."

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

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

16 KENNETH BAHR: For gross income, yes.

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

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

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

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

1 to the witness.

2 MR. HILL: I don't.

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

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

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

15 (Recess taken.)

16 LLOYD WERTHEIMER: How long do you have?

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

20 LLOYD WERTHEIMER: Thank you.

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

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

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

3 MR. HILL: Correct.

4 LLOYD WERTHEIMER: Okay.

5 MR. HILL: Our presentation will be brief.

6 LLOYD WERTHEIMER: Thanks.

7 MR. HILL: Thank you.

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

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

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



1           Next slide, please. With respect to expenses,  
2 Dr. Bahr testified that expenses could be extrapolated  
3 by using current data and adjusting for inflation.

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

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

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

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

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

1 to.

2 KENNETH BAHR: Yes. And I --

3 MR. HILL: Mr. Bahr --

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

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

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

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

20 The next slide, please.

21 KENNETH BAHR: Well, I don't know how many  
22 cases this issue has come up, but I believe that the --  
23 there's no doctrine that says that there's a  
24 constitutional requirement that you have to use a  
25 pre-rent control base year in an MNOI standard. I've

1 often recommended it -- or I have recommended it. But I  
2 don't think it's required by law.

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

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

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

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

13 MR. HILL: Sure.

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

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

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

1 great.

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

4 KENNETH BAHR: No, I'm not.

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

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

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

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

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

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

20 MR. HILL: We'll move on to the next points of  
21 your appraisal that deals with 1982 expense information.  
22 Let's start with where that operating income figure came  
23 from. It came from 1983 memorandum prepared by Michael  
24 Martello, a Deputy City attorney, addressed to the Rent  
25 Adjustment Commission for purpose of ruling on an

1 application under the City Rent Control Ordinance, did  
2 it not?

3 KENNETH BAHR: Yes, it did.

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

9 KENNETH BAHR: That's my understanding of it.

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

12 KENNETH BAHR: What number slide so I can  
13 follow?

14 MR. HILL: I'm sorry?

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

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

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

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

23 LLOYD WERTHEIMER: Page 10.

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

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

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

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

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

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

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

24          MR. HILL: Okay. Mr. Martello -- Mr. Bahr, do  
25   you have any reason to believe that Mr. Martello failed

1 to make an adjustment regarding imputed management and  
2 administrative expenses in his 1983 memorandum?  
3 Assuming one was required.

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

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

13 KENNETH BAHR: You said 3.02?

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

16 KENNETH BAHR: This is on page 12?

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

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

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

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

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

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

18 MR. HILL: Let's skip ahead to the next slide.  
19 Okay. Mr. Bahr, you came up with your own form for  
20 determination of an imputed base year, didn't you, in  
21 this statement, "Subject to the gap and available  
22 information, an alternate calculation is included which  
23 increases the 1982 operating expense level to an amount  
24 which limits the rate of operating costs increases from  
25 1928 to 2009 to the rate of increase in CPI."



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

3 KENNETH BAHR: Yes, it has.

4 MR. HILL: When?

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

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

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

24 MR. HILL: Mr. Bahr, isn't it true in none of  
25 the California cases which you cite, did the courts ever

1 apply less than 100 percent inflation indexing  
2 adjustment where the City or Rent Adjustment Board did  
3 not expressly adopt such a standard in advance of the  
4 hearing?

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

11 MR. HILL: Mr. Bahr, wasn't there, in that  
12 case, a City regulation stating that an inflation index  
13 adjustment must be less than 60 percent? To cite page  
14 15 of the opinion.

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

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

20 Mr. Brabant? Good evening, Mr. Brabant.

21 JAMES BRABANT: Good evening.

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

1 case?

2 JAMES BRABANT: No, I never --

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

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

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

9 MR. HILL: Mr. Brabant, on page 19 of your  
10 report, you state, "It is necessary to adjust the rental  
11 data we do have for the closest two years of 1983 and  
12 1986." Is that true, that you adjusted the rental  
13 figures for the comparable parks?

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

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

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

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

25 JAMES BRABANT: Yes, I did.

1 MR. HILL: And what adjustment was that?

2 JAMES BRABANT: I adjusted at the rate of 6  
3 and a half percent per year for the four years between  
4 1983 and 1979.

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

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

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

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

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

1 what's stated on page 19 of your report; is that  
2 correct?

3 JAMES BRABANT: Yes.

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

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

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

15 JAMES BRABANT: Yes.

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

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

25 MR. HILL: On Page 5 of your report you define

1 "market rent" as, quote, The most probable rent that a  
2 property should bring in a competitive and open market,  
3 close quote. Is that correct?

4 JAMES BRABANT: Yes.

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

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

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

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

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

1 property owner would normally seek?

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

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

10 JAMES BRABANT: You're talking about Evidence  
11 Code and eminent domain?

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

17 JAMES BRABANT: No. There's nothing in the  
18 Evidence Code that says you can't make adjustments to  
19 comparables. And what's that talking about is  
20 appraising the comparable. For instance, if you had an  
21 a -- if you were appraising a vacant commercial lot and  
22 you wanted to use as a comparable, a similar lot, but  
23 that lot had an office building on it, but you decided  
24 well, I'm going to -- I figure -- so they paid  
25 \$1 million for the office building, I think the building

1 was worth 500,000, so the land must have been worth  
2 500,000. That's appraising the comparable. But you  
3 could, certainly -- you're certainly allowed to make  
4 adjustments to comparables.

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

8 JAMES BRABANT: No.

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

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

14 MR. HILL: No further questions of this  
15 witness.

16 LLOYD WERTHEIMER: Thank you. Residents'  
17 lawyer, Shandra?

18 MS. SPENCER: Thank you.

19 LLOYD WERTHEIMER: Do you have questions?

20 MS. SPENCER: I do.

21 LLOYD WERTHEIMER: Okay.

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

25 LLOYD WERTHEIMER: Oh, it does. You can't go



1 on unless you do.

2 (Laughter.)

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

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

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

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

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

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

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

24 CHRIS NORMAN: That's one of the reasons.

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

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

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

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

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

25 MS. SPENCER: Okay. Because there was some

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

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

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

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

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

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

1 City Council been made by Staff to the City Council?

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

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

5 CHRIS NORMAN: No.

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

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

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

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

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

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

24 KENNETH BAHR: Yes. With the exception --

25 MS. SPENCER: With some exceptions. And that

1 is based on the fact that the rent stabilization  
2 ordinance first came into effect in 1980 and, therefore,  
3 1979 would be presumed to be the year when there's fair  
4 market rents; is that correct?

5 KENNETH BAHR: Right, that's my understanding.

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

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

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

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

24 MS. SPENCER: So what if this, as we know  
25 happened here, the rent stabilization ordinance was

1 never actually applied to this park? So we have no --  
2 we don't have the same presumption that the rent  
3 stabilization ordinance went into effect for this park  
4 in 1980; is that correct?

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

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

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

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

20 KENNETH BAHR: Well, I guess, if you used  
21 2009, you'd still have to start with a rent -- with the  
22 Vaga concept, you'd still have to start with a rent that  
23 reflected market conditions --

24 MS. SPENCER: We'd have to figure out if you  
25 make adjustments. But let's focus -- I agree with you,

1 we'd have to figure out whether Vaga applies. But given  
2 the fact that there's never been any application of the  
3 rent stabilization to this park, would it be fair to use  
4 2009 as the base year?

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

11 MS. SPENCER: It would be constitutionally  
12 reasonable?

13 KENNETH BAHR: Yeah.

14 MS. SPENCER: Would you agree with that?

15 KENNETH BAHR: Yeah.

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

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

25 MS. SPENCER: Okay. And in that, he seems to

1 suggest that the first year that the rent stabilization  
2 ordinance would be applied to this park would be 2008.  
3 Did you see that.

4 KENNETH BAHR: I don't remember that.

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

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

15 MS. SPENCER: I'm saying, let's say the first  
16 time this ordinance could be applied to the park was in  
17 2008. Let's assume that's correct.

18 KENNETH BAHR: Okay.

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

21 KENNETH BAHR: Well, I think --

22 MS. SPENCER: From a constitutional  
23 perspective.

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



1 MS. SPENCER: If the first time that the  
2 ordinance were to be applied was -- to this park was in  
3 2008, would it be reasonable to use 1979 as a base year?

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

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

14 KENNETH BAHR: Yeah --

15 MS. SPENCER: Under the --

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

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

23 KENNETH BAHR: Yes.

24 MS. SPENCER: Have you ever been asked to  
25 opine as to what a fair base year would be for a park

1 who has a history similar to this one?

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

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

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

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

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

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

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

23 MS. SPENCER: So the application of the  
24 development approvals and the temporary development  
25 permit conditions and everything that goes with that is

1 beyond your purview of your expertise; correct?

2 KENNETH BAHR: You mean how they work?

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

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

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

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

16 MS. SPENCER: Okay.

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

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

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

25 CHRIS NORMAN: To the best of my knowledge,

1 no.

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

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

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

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

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

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

5 MS. SPENCER: It's not --

6 KENNETH BAHR: It's a different standard.

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

9 KENNETH BAHR: Right.

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

12 JAMES BRABANT: Brabant.

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

15 JAMES BRABANT: Yes.

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

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

24 MS. SPENCER: To establish rents for a very  
25 low income affordable housing project, is there a way to

1 do an appraisal of other comparable very low income  
2 affordable housing to determine what the market is for  
3 that?

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

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

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

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

19 JAMES BRABANT: Sure. If your talk is to  
20 value the entire project, let's say, for lending  
21 purposes or something, they're going to want to know,  
22 well, how much rental income is going to be produced by  
23 this project. So you're going to have to come up with  
24 estimates, well, if there are standards as to how many  
25 units have to be rented to very low income residents

1 that have a certain income level, and then others that  
2 are just low, but not very low. And then you move up  
3 the standard and you can -- but it's not based on the  
4 market, that's based on the income level and how many of  
5 those various types of people that you have to rent to.

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

8 MS. SPENCER: Sure.

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

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

20 LLOYD WERTHEIMER: Is there such a difference,  
21 sir?

22 JAMES BRABANT: Well --

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

1 concessions?

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

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

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

13 LLOYD WERTHEIMER: Thank you.

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

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

25 MS. SPENCER: Are those rental properties?



1 JOHN PRESCOTT: Those are rental properties.

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

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

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

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

23 MS. SPENCER: And this year -- I think I  
24 pulled this number earlier -- would you agree with me  
25 this year's very low income for Ventura County is in the

1 neighborhood of about \$30,000 for a single person?

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

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

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

11 JAMES BRABANT: Yes.

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

18 JAMES BRABANT: No, I don't.

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

22 CHRIS NORMAN: That's correct.

23 MS. SPENCER: Okay. So in terms of the Vaga  
24 analysis. The Vaga analysis, you've done that strictly  
25 based on free market, fair market conditions taking into

1 no consideration the affordable housing restrictions  
2 based on this project; correct?

3 KENNETH BAHR: Right. They're different  
4 concepts.

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

9 JAMES BRABANT: Correct.

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

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

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

3 KENNETH BAHR: Okay.

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

6 KENNETH BAHR: Right.

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

9 KENNETH BAHR: That's correct.

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

13 KENNETH BAHR: That's correct.

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

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

25 MS. SPENCER: Okay. So Section 3 of Rack 2 is

1 the formula for determining what the adjustment can be;  
2 is that correct?

3 KENNETH BAHR: I'm looking for it.

4 MS. SPENCER: Take your time.

5 KENNETH BAHR: Which section are you talking  
6 about now?

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

10 KENNETH BAHR: Yes.

11 MS. SPENCER: You got that?

12 KENNETH BAHR: Yes.

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

16 KENNETH BAHR: Page 3?

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

22 KENNETH BAHR: Yes.

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

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

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

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

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

15 KENNETH BAHR: I will.

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

17 KENNETH BAHR: Okay.

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

21 KENNETH BAHR: That's correct.

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

24 KENNETH BAHR: Yes.

25 MS. SPENCER: So the reason behind -- would

1 you agree that the reason behind that is because  
2 expenses can vary significantly from year to year?

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

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

8 KENNETH BAHR: Right.

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

12 KENNETH BAHR: Yes.

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

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

1 for using that kind of data.

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

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

7 MS. SPENCER: Okay.

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

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

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

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

24 KENNETH BAHR: Right. Well, let me say this:  
25 What I did was, you know, we didn't have the data going



1 back to base, and so that's why I assume -- you know, I  
2 assume they were proportionate it base year to what they  
3 are now. That's what I did.

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

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

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

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

24 MS. SPENCER: Let me find it real quick. Give  
25 me just a minute. Section 2.17 of Rack 2 states,

1 "Operating expenses must be reasonable. Whenever a  
2 particular expense exceeds normal industry standards in  
3 a base year or in the current year for which a rent" --  
4 "for which the application for a rent increase is made,  
5 the Rent Adjustment Commission shall determine whether  
6 the expense is reasonable." Do you see that?

7 KENNETH BAHR: Yes.

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

14 KENNETH BAHR: Well, first of all, the overall  
15 expenses, you know, compared to, let's say, for a park  
16 this size were reasonable -- let's say, compared with a  
17 market rent, they were reasonable and the ratio of  
18 expenses was reasonable. And secondly -- and this is a  
19 little complicated -- what happened is because of the  
20 lack of data and also you had this factor of even if you  
21 had the data, the owner was doing their own work, so it  
22 was off the record so you had no record of it. But by  
23 making the base year expenses a percentage of what the  
24 current year expenses were, this was a type of  
25 compensating adjustment, in the sense, that if the

1 current year expenses were high, I said the base year  
2 expenses were a percentage of those, so this provided,  
3 you know, a type of compensation. Because, basically,  
4 in a net operating income -- maintenance of net  
5 operating income analysis, the critical factor is the  
6 comparison. And here, you know, you said, "Well, it  
7 would be reasonable that these expenses went up by the  
8 CPI since the base year.

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

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

22 MS. SPENCER: The allowable income increases.

23 KENNETH BAHR: Right.

24 MS. SPENCER: That's the purpose of a just and  
25 reasonable return type provision and a maintenance of

1 net operating income is expenses are going up, but your  
2 income isn't going up; right?

3 KENNETH BAHR: Right.

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

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

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

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

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

1 KENNETH BAHR: Yes.

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

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

18 MS. SPENCER: Well, the rent --

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

1 receipts.

) 2 MS. SPENCER: Now, the rent stabilization  
3 ordinance in it's implementing -- I think we're calling  
4 them "regulations," the racks, we're calling them  
5 regulations -- they actually provide for a maximum of an  
6 8 percent cap on management and administrative expenses,  
7 don't they?

8 KENNETH BAHR: Yes, they do.

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

12 KENNETH BAHR: Right.

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

17 KENNETH BAHR: Right.

18 MS. SPENCER: Is travel expenses in there  
19 anywhere?

20 KENNETH BAHR: That, I don't remember. But  
21 then -- see, but what I did -- whatever over estimate  
22 that -- whatever -- let's say they had an overstatement  
23 of management in maintenance in the current year, by  
24 making a base year a percentage of the current year,  
25 there was a compensating adjustment. I understand what

1 you're saying, but there was a compensating adjustment,  
2 so if the common year expenses were inflated, the base  
3 year expenses were made proportional to those, and  
4 because we didn't have the actual, you know, data. And  
5 I think, under these particular circumstances, this was  
6 the best kind of analysis that was possible.

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

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

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

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

18 MS. SPENCER: So that was in 1976.

19 KENNETH BAHR: Right.

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

23 KENNETH BAHR: I didn't -- when I was using  
24 the net income comparison, I kept the depreciation, but  
25 I didn't keep the depreciation in the net operating

1 income analysis. I took it out.

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

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

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

14 KENNETH BAHR: No.

15 MS. SPENCER: Okay. I thought that you  
16 reduced the net operating income this year by the  
17 \$18,000 depreciation expense. That's the way I read  
18 your report. You're saying I'm incorrect?

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

20 MS. SPENCER: Okay. I've been known to be  
21 wrong a few times in my life. All right. Then the next  
22 question I have is, let's talk a little bit about this  
23 issue of the recapture. It's Staff's position that  
24 under the rent stabilization ordinance, a park owner is  
25 entitled to capture the 31 of 33 years that they didn't



1 take a rent -- didn't impose a rent increase on the  
2 tenants through the just and fair return formula;  
3 correct?

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

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

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

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

1       determinating net operating income.

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

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

7               KENNETH BAHR: Right.

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

12              KENNETH BAHR: Right.

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

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

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

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

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

23              KENNETH BAHR: That's my understanding.

24              MS. SPENCER: There is also a provision here  
25 where it states that you're supposed to include the

1 adjusted income for below market rentals. Do you see  
2 that?

3 KENNETH BAHR: Yes.

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

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

17 MS. SPENCER: Okay. Well, what that ordinance  
18 said -- what the resolution says is, "Adjusted income  
19 for below market rentals it an amount representing the  
20 difference between the actual rent collected and then  
21 what the landlord could have collected if the units had  
22 been rented at their full market value. Examples of  
23 below market rents may be units occupied by the landlord  
24 or landlord's family, the unit of a resident manager, or  
25 any unit where the rent increase is permitted by the

1 rent stabilization or the regulations and guidelines of  
2 the Rent Adjustment Commission could have been made, but  
3 have not been made because of the landlord's rental  
4 policies and purposes."

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

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

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

12 KENNETH BAHR: That's correct.

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

18 KENNETH BAHR: Right.

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

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

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

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

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

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

14 MS. SPENCER: Okay.

15 KENNETH BAHR: What I see the purpose of this  
16 provision is so that somebody doesn't come in, they  
17 apply for a rent increase, and they say, "I'm only  
18 getting \$100 income," they get a rent increase based on  
19 that, and the next day, they charge 500, because that's  
20 what they could have charged, I mean, when it's -- it  
21 talks about non -- rentals to family members the  
22 resident manager, et cetera, it's a provision in here so  
23 people can't -- so park owners can't understate their  
24 income, and then, you know, yet on that basis get a rent  
25 increase. And I don't see that -- this is not this kind

1 of case, this is a case where the park owner didn't take  
2 the rent increases and can't, you know, under the  
3 affordable rent agreement, cannot get them.

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

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

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

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

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

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

1     could have.

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

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

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

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

20                MS. SPENCER: All right. Does resolution  
21    84-037 allow for you to -- is that a use-it-or-lose-it  
22    provision or does it allow for a recapture for the years  
23    where the increase was not taken? If you have any  
24    opinion on that.

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

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

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

4             KENNETH BAHR: Right.

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

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

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

15            KENNETH BAHR: That's correct.

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

24            KENNETH BAHR: No, because the fair return law  
25    has been -- is to provide an owner a fair return, and



1 the rent controls have prevented -- their purpose is to  
2 prevent excessive rent increases. They're not laws that  
3 tie the rents to the income of the tenants, the rent  
4 control laws, as opposed to the affordability -- the  
5 affordability agreement didn't do it directly, but the  
6 rent controls in fair return analysis -- there hasn't  
7 been a fair return analysis where the allowable rent is  
8 dependent -- you know --

9 MS. SPENCER: Is income-dependent?

10 KENNETH BAHR: Yeah.

11 MS. SPENCER: Income of the residents?

12 KENNETH BAHR: Yes.

13 MS. SPENCER: Of the home owners?

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

18 MS. SPENCER: Did you -- now under Section  
19 5-25.06, administrative adjustments to rent, which is  
20 subsection B, is where the just and reasonable return  
21 provision is, it states that, "The Commission shall have  
22 the authority in accordance with such guidelines as the  
23 Commission may establish to grant increases in the rent  
24 for a rental space or spaces located in the same mobile  
25 home park upon receipt of an application for adjustment

1 filed by the landlord and after notice and hearing, if  
2 the Commission finds that such increases in keeping with  
3 the purposes of this chapter, and that the maximum rent  
4 or maximum adjusted rent, otherwise, permitted pursuant  
5 to this chapter does not constitute a just and  
6 reasonable rent on the rental space or spaces."

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

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

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

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

25           MS. SPENCER: Okay. So it wasn't actually an

1 analysis of what's required under the rent stabilization  
2 ordinance, it's just part two of that. Part one hasn't  
3 been done?

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

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

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

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

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

25 MS. SPENCER: Well, actually, the ordinance

1 does say it at Rack 2, Section 6.03. "No rent increase  
2 granted, pursuant to the above, shall be construed to  
3 permit landlords to raise their rents in violation of  
4 any terms or provisions of a written lease."

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

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

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

19 CHRIS NORMAN: No.

20 LLOYD WERTHEIMER: Counselor?

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

1 KENNETH BAHR: No, I didn't consider that.  
2 MS. SPENCER: Okay. I'm done.  
3 LLOYD WERTHEIMER: I have a question for you.  
4 MS. SPENCER: Yes.  
5 LLOYD WERTHEIMER: Do any of the tenants in  
6 Ranch have leases with the owner?  
7 MS. SPENCER: Absolutely.  
8 LLOYD WERTHEIMER: Any or all?  
9 MS. SPENCER: Not all.  
10 LLOYD WERTHEIMER: Just some.  
11 MS. SPENCER: Many. The mobile home residency  
12 law requires that the owner have written leases, but not  
13 all of the residents have written leases.  
14 LLOYD WERTHEIMER: What's a fair percentage  
15 that has them? What's the percentage that exists?  
16 MS. SPENCER: My residents are telling me  
17 50/50.  
18 LLOYD WERTHEIMER: Thank you. Are there any  
19 questions for the panel -- from the dais?  
20 BEATRICE FERUZA: Is there any documentation  
21 that says that this park had a 30-year expectation to do  
22 low income?  
23 MS. SPENCER: No. The documentation has no  
24 time limit.  
25 BEATRICE FERUZA: Okay. Why didn't Mr. Hohn

1       increase the rents over that period of time?

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

5               BEATRICE FERUZA: Okay.

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

13              KENNETH BAHR: Well, it's one type of analysis  
14      you could use, but I'd say, the maintenance of net  
15      operating income analysis is based on a starting point.  
16      You try to get pre-regulation and if not, I think it's  
17      better to get near it and then look if somebody was  
18      charging a reasonable rent in the base year what would  
19      they be entitled to today. If you do an analysis based  
20      on 2009 comparable rents, it would be based on a  
21      combination -- you would look at a combination of rent  
22      control increases and exempt increases. And I don't  
23      know what proportion of the rent increases in the parks  
24      were exempt, and what portion were rent controlled, but  
25      I do see increases in the parks were above what the

1 annual adjustments were. So you get a different type of  
2 analysis. I mean, that's my answer. You'd get  
3 something different. You could do it.

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

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

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

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

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

24 MS. SPENCER: I will do my best.

25 LLOYD WERTHEIMER: Thank you.

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

4           PATRICK HEHIR: A little closer.

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

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

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

21          KENNETH BAHR: Well, I guess -- I'll just  
22 throw this out, and I'm not saying there's some absolute  
23 right or wrong in the world -- is what happens is if you  
24 say, you know, somebody can never recapture what they  
25 didn't charge, what you're saying is you have to charge



1 everything you possibly can otherwise you can never get  
2 it back. And so that can create a situation where, you  
3 know, let's look at other situations in other cities  
4 I've seen saying, well, if the park owners can increase  
5 the rent this year, they can never increase it, and if  
6 they don't increase it is this year, the residents are  
7 saving money because it's better to get the five percent  
8 increases each year and have to pay them all those years  
9 or, subsequently, you have a big jump. So the is  
10 drawback is that's a huge shock. But on the other hand,  
11 in the meantime, residents have been getting a  
12 substantial saving. So, you know, imagine --

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

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

17 CHRIS NORMAN: No, Mr. Chair.

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

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

25 LLOYD WERTHEIMER: Okay. We still would like

1 those from the tenants. Those would be more accurate,  
2 right? We find this to the time for a reasonable break.  
3 And is there a motion to continue from the dais -- to  
4 continue this meeting to next Monday, which would be  
5 December 13, 2010.

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

9 LLOYD WERTHEIMER: Yes?

10 MR. HILL: May I be heard?

11 LLOYD WERTHEIMER: Yes.

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

16 LLOYD WERTHEIMER: So noted.

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

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

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

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

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

3 LLOYD WERTHEIMER: Counselor?

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

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

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

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

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

1 accommodate both interests.

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

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

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

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

20 BRENDA MOHR FELDMAN: 12/13.

21 LLOYD WERTHEIMER: 12/13/2010.

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

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

1 (30 MINUTE BREAK TAKEN.)

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

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

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

20 In view of that, we won't raise the failure to  
21 conclude the hearing next Monday as a problem under the  
22 75-day rule that you guys have. But we do reserve our  
23 objections to -- we want this done tonight. Our experts  
24 cost us many, many thousands of dollars, and we'll have  
25 to bring them back and wait another month. We wanted

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1 this thing finished tonight. We would prefer you still  
2 do so. Thank you.

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

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

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

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

16 BEATRICE FERUZA: Exactly.

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

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

22 MIKE SILACCI: You need me to make that  
23 motion?

24 LLOYD WERTHEIMER: Yes.

25 MIKE SILACCI: I'll move that we continue this

1 hearing until January 24th, 2011.

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

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

7 LLOYD WERTHEIMER: Let's vote.

8 THE CLERK: Motion passed 5, 0.

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

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

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

20 (Proceedings concluded at 10:50 p.m.)  
21  
22  
23  
24  
25





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[conversions - depreciation]

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

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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**

GTO 02278

1 APPEARANCES:

2 Commissioners:

3 LLOYD WERTHEIMER - Chair  
4 MAXWELL SHELDON - Vice-Chair  
5 BRENDIA MOHR FELDMAN  
6 BEATRICE FERRUZZA  
7 MIKE SILACCI

8 Alternate Commissioners:

9 ALYCE KLUSSMAN  
10 CATHY SCHUTZ

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25

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

1                   Thousand Oaks, California  
2                   Monday, December 6, 2010; 6:16 p.m.

3  
4                   (Pledge of allegiance.)

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

7                   (Roll call.)

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

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

14                  CHAIR WERTHEIMER: So moved. Call for a vote.

15                  Pardon me?

16                  RECORDING SECRETARY: Motion passed, 5-0.

17                  CHAIR WERTHEIMER: Thank you.

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

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

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

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

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

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

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

23          We then move to public testimony. If you wish to  
24          speak, please complete and turn in a speaker card. If you  
25          don't want to speak but have a -- make a written comment, you

1 may fill out a comment card. The recording secretary or staff  
2 will take those comment cards and present them to us for  
3 review.

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

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

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

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

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

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

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

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

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

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

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

23           Since then, Ron Perry from California Rural Legal  
24 Assistance has also agreed to provide representation to the  
25 residents as well as John Taylor and his partner from the firm



1 of Horvitz & Levy has also agreed to provide pro bono  
2 assistance to the residents. And Mr. Taylor's firm, we were  
3 able to bring them in to provide pro bono assistance as of  
4 last Thursday.

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

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

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

23 So on that basis, I'd request that we, if we do start  
24 the hearing tonight, at least leave the record open to a  
25 further date so that we have adequate time to provide for all

1 of these needs of the residents and the residents association.

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

4 CHAIR WERTHEIMER: Thank you.

5 MR. HEHIR: All right. Mr. Chairperson and fellow  
6 Commissioners, I did receive Ms. Spencer's November 30th,  
7 2010 correspondence in the packet that you all received last  
8 Thursday as well.

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

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

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

24 As to her second reason, we certainly are going to  
25 follow ADA guidelines. And for the record, I did not say that

1 we would end at 11 o'clock, but just that counsel does  
2 sometimes -- has a policy that they could end at 11 o'clock  
3 and that it would be, of course, the Commissioners'  
4 prerogative to make that decision if they felt it was  
5 necessary.

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

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

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

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

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

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

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

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

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

24           CHAIR WERTHEIMER: So noted.

25           MS. SPENCER: Thank you.

1 CHAIR WERTHEIMER: Will the secretary please call the  
2 hearing.

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

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

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

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

18 Is that better?

19 THE PUBLIC: Yes.

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

24 We will review some benchmark rents, discuss the  
25 basis for hearing this application under the City's ordinance,

1 some legal background, then we'll get into the analysis which  
2 will include a description of the applicant's request, an  
3 evaluation of the request.

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

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

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

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

23 The purpose of the program is to safeguard the  
24 tenants from excessive rents, but at the same time provide  
25 landlords with a just and reasonable return from the rent. So

1     it's a balancing act.

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

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

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

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

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

1 place city-wide.

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

6 In 2001, the applicant requested another increase of  
7 4 percent under that resolution, which was granted. That  
8 resulted in rents being \$139 for a double-wide and \$128 for a  
9 single-wide lot.

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

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

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

22 The legal basis for these type of application  
23 requests is the Fifth Amendment, which protects the property  
24 owner's right from regulations that constitute a taking. Rent  
25 control regulations must provide for just and reasonable rate



1 of return. However, there is no constitutionally-prescribed  
2 method for determining what is a just and reasonable return.

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

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

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

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

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

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

7           The gentleman to Mr. Baar's left is Jim Brabant.  
8 He's an MII certified appraiser. He has prepared -- for over  
9 30 years, he's prepared appraisals for mobile home parks  
10 including dozens of cities for purposes of litigation, park  
11 conversions, subdivisions and rent increase applications.

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

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

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

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

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

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

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

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

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

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

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

7 MR. BAAR: Okay. As Mr. Norman indicated, the  
8 purpose of my report was to discuss and analyze what rent  
9 increases would be just and reasonable pursuant to the  
10 ordinance and constitutional standards.

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

16 And if you turn to page -- pages 111, 112 of the  
17 packet, I just wanted to highlight a few things that the  
18 courts have said.

19 And -- and one is that the courts -- one court of  
20 appeal commented what appears at blush to be a simple question  
21 of substantial evidence turns out to be considerably more  
22 complex when -- when one realizes that the formula for  
23 determining a fair return is hotly debated in economic circles  
24 and has been the subject of sparse, scattered and sometimes  
25 conflicting comment by appellate courts.

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

7           And finally recently the courts have indicated  
8   that -- the California Supreme Court indicated that the fair  
9   return concept is a constitutional minimum, and that's in the  
10  first full passage on the second page, about a third of the  
11  way down.

12           The courts have also said that -- while they've said  
13   that no particular formula is required, they have said that  
14   growth and income must be permitted under the rent control.  
15   You can't freeze the net operating income.

16           And I just want to point out just to give you some  
17   perspective about the historical development, early on during  
18   World War II and then this theory re-emerged when rent  
19   controls were first re -- re-introduced on a peacetime basis  
20   in California in the 1970's, courts said that owners were  
21   entitled to a fair return on the value of their property.

22           But then subsequently that theory was rejected  
23   because it's circular, because the value of a property  
24   determines -- is determined by the rental income; therefore,  
25   you can't use the value to determine what rental income should

1 be permitted. It's basically a circular type of theory.

2 But what's interesting is here you had the courts at  
3 one point saying something was required and then subsequently  
4 saying it's not workable.

5 Rate of return on investment is used in some  
6 jurisdictions. It's a com -- a number of -- in a number of  
7 cases, park owners have experts propose the use of this type  
8 of formula, and intuitively, it sounds very reasonable.  
9 Somebody should get -- be able to get a fair rate of return on  
10 their investment.

11 The problem is with this type of formula, 2, it's  
12 circular in the sense that if you guarantee somebody a certain  
13 rate of return on their investment, then no matter -- they can  
14 determine what they're allowed by determining the investment.  
15 The more you invest, the more you're permitted.

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

22 The maintenance of net operating income formula is  
23 based on a different concept. It's basically that owners have  
24 different rates of return. We can't set a single rate of  
25 return and say that's fair. We'll take the pre-regulation

1 income and assume that's fair. It was set in an unregulated  
2 context and we'll adjust that -- we'll adjust that by  
3 inflation in the future.

4 So essentially, that type of formula, one, guarantees  
5 that owners have a right to pass through their operating cost  
6 increases and get some growth in income. And this type of  
7 formula has been -- in a number of cases has been approved by  
8 the courts. It answers the issue of not freezing income  
9 because it guarantees growth in income.

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

16 There's also -- subsequent to the adoption early on  
17 of the maintenance of net operating formula basically in the  
18 early 1980s in California, the issue came up of, well, what  
19 happens if somebody has low -- very, very low base rents which  
20 don't reflect market conditions.

21 And what the courts held was that in that type of  
22 case, an owner had a right to have the rents adjusted, and  
23 this was known as a Vega adjustment because that's the name of  
24 the first case that involved this issue, so that they have a  
25 reasonable starting point, because otherwise, if you have

1 rents that are peculiarly low and you're only allowed to have  
2 those adjusted by inflation, you're always behind.

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

7 In this particular case, there are a number of issues  
8 regarding the application of the maintenance of net operating  
9 income formula, and the bulk of my report discusses the use of  
10 that formula, why it should be used, et cetera.

11 First of all, as you know, you have the extremely  
12 exceptional case where the park rent today is almost the same  
13 as it was 30 years ago. Then other issues that emerge - then  
14 I'll go through them one by one, but first I'll list them - is  
15 what should be the appropriate base year in this case, what's  
16 the base year of net operating income which partly depends on  
17 what the base year expenses are, what would be a fair starting  
18 point for the base year rents.

19 And then the other issue is what -- what indexing or  
20 adjustment should be made to the net operating income, by what  
21 percentage of the consumer price index should it be adjusted.

22 On page -- first I'll discuss the base year issue and  
23 I discuss that on page 116 in the packet. The ordinance -- or  
24 the regulations, rather, provide that 1979 shall be the base  
25 year. However, they also provide that where they -- 1979



1 financial information is not available, then the base year  
2 shall be the first year for which records are available.

3 And in this case, the applicant does not actually  
4 have actual income or expense information for 1979, but they  
5 took -- their conclusion is that 1979 can be used as the base  
6 year because they can take the 1982 expenses and based on  
7 inflation figure out what they -- make an adjustment to figure  
8 out the 1979 expenses.

9 And that might be authorized under some regulations  
10 or ordinances, but here in the alternative, the regulations  
11 say if you don't have the '79 information, you have to use the  
12 information for the first year you have it available because  
13 to say you take a later year and then work backwards based on  
14 inflation, well, then somebody would always have the 1979 data  
15 and the requirements and regulations, you know, wouldn't --  
16 would be meaningless.

17 So -- but the next possibility would be to use the  
18 1982 year as the base year. Well, in that case, it's a little  
19 bit unusual. There is income information. There's expense  
20 information, but only overall expense information.

21 In 1980 -- 1982 data was used in the 1984 hearing  
22 before the City Council, but the information, the breakdown of  
23 expenses is no longer available. Nobody has it any longer.  
24 So -- but -- but it was reviewed by the City Council. So one  
25 hand, you have an overall number, but you don't have a

1 breakdown for that number and it was a number that was  
2 reviewed at that time.

3 Another possibility -- the first year that I'm aware  
4 of that full information is available of breakdown for income  
5 and expenses is 1999. The weakness of using that year as a  
6 base year is that this was 20 years after the rent control  
7 ordinance was adopted. So it's -- it's not an ideal base  
8 year.

9 And when -- it seems from looking at the records of  
10 the increases in rental income for the parks, that the -- by  
11 1999, the rents besides reflecting the annual increase that  
12 were under the ordinance, also reflected increases that were  
13 due to either exempt leases or you also have a provision in  
14 your ordinance that if there's a new mobile home moved onto  
15 the space in conjunction with a new tenancy, then the park  
16 owner can set the initial rent.

17 So you have a base -- if you use 1999, you have a  
18 mixture of regulated spaces and some that were unregulated  
19 increases. I don't know how many, but what the evidence seems  
20 to indicate is that the overall rent increases certainly  
21 exceeded what was allowed under the annual general  
22 adjustments.

23 So what happened is I -- I recommended the use of a  
24 1982 base year, but I also did the analyses using all three  
25 base years because there are arguments for and against using

1 any of these base years.

2 The next issue is what -- what are the appropriate  
3 base year expenses and net operating income, and under the  
4 maintenance of net operating income standards, there's an  
5 incentive to show as low as possible expenses in the base year  
6 because if the expenses are lower, the net operating income is  
7 higher in the base year.

8 Well, here we don't exact -- we don't have that type  
9 of case because the park owner made an application in 1982 and  
10 certainly then they had no interest in showing lower expenses,  
11 but we -- on the other hand, we don't have a comparison -- we  
12 don't have a breakdown for 1982.

13 And what happened between 1982 and 2009 was that some  
14 of the operation of the park went -- some of the tasks that  
15 were performed, substantial task in managing the park based on  
16 the information that we got and as I understand it from the  
17 applicant, the park owner performed substantial services in  
18 1982.

19 By 2009, these services were contracted out. The  
20 owner was, you know, old or for what -- you know, for whatever  
21 reason. So what happens is this shows a substantial cost  
22 increase because you not only have the actual cost increases,  
23 but you also have this transfer of the performance of  
24 services.

25 And I felt that's not a real cost increase. It's a

1 cost increase on the books. So to say that, you know,  
2 management expenses went up 10 -- from 0 to 10,000, I'm making  
3 up those numbers, that's not really what happened. It was --  
4 they were shifted who performed them. They went from off the  
5 books to on the books.

6 So what I did was in my analysis I adjusted the 1982  
7 expenses upwards, and the way I made the adjustment is I  
8 assumed that the expenses from '82 to 2009 increased by the  
9 CPI and I adjusted the base year expenses up from 34,000 to  
10 \$42,000. And that does have the impact of reducing the 1982  
11 net operating income, but I felt that was a fair adjustment to  
12 make this comparable.

13 Okay. The big issue though in the maintenance of net  
14 operating income analysis or one of the two really big issues  
15 is what should -- the base year rents should be because the  
16 base year rents were set based on an affordability concept and  
17 they were not based -- they were not based on a market  
18 concept.

19 And what happened is the -- as you know, the park  
20 owner appraiser conducted analysis of what they thought what  
21 base rents would reflect market in the base year and the park  
22 owner's appraiser came up with a -- his number was \$240 for  
23 1979 as opposed to the actual rents of \$120.

24 In contrast, the City's appraiser, Mr. Brabant, his  
25 conclusion was that in 1979 the market rents were up \$150, the

1 comparable rents at that time, and that's a huge difference  
2 of -- you know, especially percentage-wise when you compare  
3 150 to \$240.

4 And when you use the net operating income formula,  
5 that difference is increased because you're indexing the  
6 profit. So whether you're indexing starting point of \$150  
7 rent or \$240 rent makes a very, very large difference. And  
8 that's -- so what -- how you set the base rents is critical in  
9 the fair return analysis.

10 The other critical issue in the fair return analysis  
11 is whether you index net operating income at 50 -- or what  
12 percentage of the CPI increase you index net operating income.  
13 Some cities index net operating income at 100 percent of the  
14 CPI, some at 75 percent, some at 50 percent, some at even --  
15 only 40 percent.

16 The courts have upheld 40 percent indexing and  
17 they've rejected the view that 100 percent of indexing is  
18 required. And as far as what's the right indexing ratio  
19 that's -- you know, policy issue, you have this -- you've had  
20 standards from 40 to 100 percent though and all of them -- all  
21 of them have been upheld. And there are arguments for and  
22 against indexing at 100 percent and the rationale for indexing  
23 at less than 100 percent.

24 The -- one rationale for indexing at less than 100  
25 percent is -- and I'll use an analogy of a house purchase to

1 explain this. Typically real estate investments are  
2 leveraged. I'm not saying this particular park the investment  
3 was leveraged, but typically they are.

4 And imagine you buy a house for \$100,000. You put  
5 \$20,000 down. The house goes up in value 20 percent to  
6 120,000. Well, on one hand the house has gone -- only gone up  
7 in value 20 percent, but your equity is doubled. So one type  
8 of return -- you know, one type of increase it's done by 20  
9 percent but another type of increase by 100 percent, and  
10 typically as I say, as you know, real estate investments are  
11 leveraged.

12 The other factor is I mean, you know, you look at  
13 investments generally in the economy and if people --  
14 businesses have growth in income, they don't consider it a  
15 loss if their income goes up less than the CPI. You don't --  
16 you won't read the news that General Motors lost money because  
17 their profits only went up 6 percent and there was inflation  
18 of 10 percent.

19 And so what -- in my report -- now we should go -- I  
20 also want to make one clarifying point to you. Net operating  
21 income is income before debt service, but after operating  
22 expenses.

23 Okay. Turn to page -- we have the chart and it's  
24 also on page 132 of your packet. First -- first I did the  
25 maintenance of net operating income analysis using 1979 as a

1 base year and --

2 THE PUBLIC: We can't read it. We can't read it.

3 MR. BAAR: Okay. I guess -- well, basically in  
4 that what I did was I took the base year that the park owner  
5 used and indexed that net operating income by 100 percent, 75  
6 percent and 50 percent of inflation.

7 The park owner used 100 percent indexing. So the  
8 difference in my analysis is I also use the 75 and 50 percent  
9 indexing. And these -- these are numbers of course that were  
10 prepared before the correction in the -- or change in the  
11 applicant's analysis tonight.

12 But even under that standard, theirs were substantial  
13 differences. They showed that they were entitled to \$587  
14 increase with 100 percent indexing, and I concluded using  
15 their base rent adjustment that they would have been entitled  
16 to \$487 with 75 percent indexing and \$386 with 50 percent  
17 indexing of net operating income.

18 So you can see that the indexing because it's over  
19 such a long period has a big impact on the outcome. Then I  
20 used Mr. Brabant's comparable figure, and of course, because  
21 that comparable figure -- base rent figure is substantially  
22 lower, the indexing amounts were lower. With 100 percent  
23 indexing, there was a \$324 rent increase, with 75 percent  
24 indexing, it was a \$267 increase and with 50 percent indexing,  
25 a \$210 increase.

1           Then the next -- on the next page, I used 1982 as the  
2     base year. And the numbers were not drastically different,  
3     but they were different. And in order to figure --  
4     Mr. Brabant did not actually provide 1982 rent figure in his  
5     report, but using his mode of analysis, he adjusted back from  
6     1983 back to 1979. Well, I adjusted back one -- I only went  
7     back one year instead of four using his -- using the  
8     percentage adjustments per year he used.

9           And using his base year rent for 100 percent  
10    indexing, there would be a \$297 increase; for 75 percent, \$252  
11    and for 50 percent, \$207. And this is -- and then with the  
12    park owner's appraiser, the numbers were similar to the 1979.  
13    For 100 percent indexing, it was \$515; for 75 percent, \$439,  
14    and for 50 percent, \$363.

15           And these numbers are without the expense adjustment  
16    that I made for 1982. With the expense adjustment I made for  
17    1982, the numbers are about \$20 lower, and those are in the  
18    right -- two right-hand columns.

19           And then the third chart was using -- on the next  
20    page, 134, was using 1999 as the base year, and those  
21    adjustments -- and those I just used the base rents projected  
22    by Mr. Brabant because he was asked to do a projection for  
23    1999. The park -- the park owner hadn't. And I'm not  
24    saying -- that's not as a criticism. I'm just saying  
25    that's -- this was done because we saw that 1999 was the only



1 year which there was complete expense data.

2 And those if you use 1999 as the base year, you  
3 actually get higher -- the rent adjustments are higher  
4 pursuant to the MNOI formula. And my conclusion about why  
5 that was -- occurred was because the base rents had an -- or  
6 the rents that -- between 1979 and 1999 had increased by more  
7 than the annual general adjustments provided for and there was  
8 probably greater growth in income for the parks than the  
9 constitutional minimum.

10 And so the differences are particularly significant  
11 when you have less than 100 percent indexing.

12 Okay. What?

13 Oh, okay. It needs to go back to the PowerPoint.

14 Because of the unusual nature of this case, I also --  
15 and also because the Commission is now bound to use a  
16 particular standard, I did look at the increases compared to  
17 other measures.

18 And one was if you go to page 102 and 103 of your  
19 packet, I compared them with what rent increases the park  
20 owner would have gotten if they had taken the annual increases  
21 they were permitted pursuant to the affordable rent  
22 restrictions.

23 The affordable rent restrictions were unusual in the  
24 sense that, one, they set an original rate of return at 11 and  
25 a half percent of the original historic investment, but then

1     they provided in 1982 -- or 1984, they were modified to  
2     provide for an inflation adjustment of this net income.

3             And actually it was -- one technical difference is  
4     here net income was adjusted rather than net operating income  
5     and net income was after depreciation, where net operating  
6     income does not consider depreciation.

7             And in that -- since -- and that adjustment used  
8     1982 as a base and from 1982 to 2009, the CPI went up 100 --  
9     okay. That's the -- it was 138 percent -- 130.8 percent  
10    increase in the CPI.

11            So on that basis, I concluded that if the park owner  
12    had taken the increases that -- pursuant to that formula  
13    instead of being allowed the base net -- net income of 57,500,  
14    they would be permitted a net income of \$132,720.

15            And I -- and pursuant to that approach, in order  
16    to -- currently the net income is very low. It's only a few  
17    thousand dollars because the -- the net operating income is  
18    only about 20,000 and if you take -- subtract depreciation,  
19    the net income goes down to just a few thousand dollars.

20            And on that basis, in order to bring the net income  
21    up to the, you know, adjusted standard under the net income  
22    formula, the park owner would be able to get a rent increase  
23    of \$147 if they could do that.

24            Now, that standard does not provide for banking of  
25    increases, but if it did, that's what, you know, the owner

1 would be able to get today. And if the owner had taken the  
2 increases they were entitled to, that's where they'd stand  
3 is -- under that formula.

4 I also compared the increases with the allowable  
5 increases under the Rent Stabilization Ordinance and that  
6 ordinance allowed for -- for the first three years for annual  
7 increases of 8 percent, then 7 percent for the next three  
8 years from 1983 to 1986.

9 Then after that, there was a three-quarters of CPI  
10 adjustment, but it was not three-quarters CP -- three-quarters  
11 of the CPI increase, but that was not on the current rents.  
12 That was three-quarters of CPI increase to the 1986 rents.

13 And for that I concluded that the overall allowable  
14 increase would have been 108 percent if the owner had taken  
15 that, and of course, whether you took that over the \$150  
16 figure that Mr. Brabant came up with or the \$240 figure that  
17 the park owner presents as the fair base rent would make a  
18 huge difference in what the fair, you know, rent -- or the  
19 rent that would have been permitted pursuant to the annual  
20 increases.

21 And let me say that those annual increases under the  
22 ordinance total 108 percent. They're substantially under the  
23 CPI because of the fact that the adjustments were based on the  
24 1986 rent rather than the current rent.

25 Okay. Okay. Go back to the PowerPoint.

1           Okay. I also performed a return on investment  
2 analysis. It's not the approach that I recommend, but it has  
3 been used and it's also interesting because it's how investors  
4 look at their investments. I'm not saying that, therefore, it  
5 should be used as a regulatory standard.

6           And when the return on investment standard has been  
7 used in recent -- well, last decade I'd say, basically the  
8 approach that's been used is rather than using the historic  
9 investment, is to use an inflation-adjusted investment based  
10 on the concept that the -- it's not fair to use the historic  
11 investment.

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

18           Then I imputed what increase the owner would be  
19 entitled different -- subject to different rates of return.  
20 And one rate of return was a 6 percent rate of return because  
21 in today's market if somebody goes out and buys a mobile home  
22 park, that's a typical capitalization rate. It means if you  
23 buy a mobile home park for three million dollars today, it's  
24 likely that you'll get a net operating income of 6 percent of  
25 that, \$180,000.

1           Now, some parks, the cap rate is higher; some it's  
2 even lower. And you say, well, 6 percent is a -- might sound  
3 like a low number, but, one, this is an appreciating --  
4 appreciating investment as opposed to if you buy a bond where  
5 the return stays constant. The income goes up, also the value  
6 goes up as the net operating income goes up, and so it's a  
7 reasonable rate of return.

8           I also used a 9 percent rate of return commonly  
9 experts on behalf of park owners have said that this is a fair  
10 rate. I haven't agreed with that, but I've presented it. And  
11 that -- the 6 percent rate would adjust -- would justify a  
12 \$100 increase. The 9 percent rate would justify a \$162 rent  
13 increase.

14           And then I used an 11 and a half percent rate and --  
15 because that's the initial rate that the owner was provided  
16 with, but actually the owner wasn't provided that initial rate  
17 on an inflation-adjusted investment. It was just on a fixed  
18 investment, but if you used an inflation adjustment -- an  
19 inflation-adjusted investment, the rent increase would be  
20 \$214.

21           Then also I reported in my report, but this was  
22 basically Mr. Brabant's appraisal, he compared the rent with  
23 the current rent for comparable rent controlled parks in the  
24 City, and his conclusion was that the current rent --  
25 comparable rent was \$400 a month as opposed to the rent for

1 the park of \$133.

2 So I've thrown out a lot of numbers and concepts at  
3 you, and I just want to say that this is an unusual case  
4 because we have an issue of -- you know, base -- base rent  
5 adjustment going back over a long period. We have a situation  
6 where the rents were frozen for a long time. There's even an  
7 issue of what should be the base year.

8 And you know, I -- all I'd say, is you have a  
9 difficult job and to think about it carefully.

10 MR. NORMAN: Thank you.

11 Now, Mr. Brabant will say a few words.

12 MR. BRABANT: Good evening, Commissioners. I was  
13 asked to do a couple -- two basic things; one was to review  
14 the appraisal of John Neet, the appraiser retained by the park  
15 owner and his attorneys, and also to provide my own opinions  
16 of the rental value of spaces at Ranch Mobile Home Park as of  
17 three different years, 1979, 1999 and 2009.

18 So beginning with a few comments about Mr. Neet's  
19 appraisal that was included in the application, he starts out  
20 estimating the market rent for what he calls the base year of  
21 1980, and his conclusion is \$240 per month as of that date.

22 But then at the end of his report he then talks about  
23 the base year actually being 1979, but concludes that there  
24 was really no difference between his opinion in 1980 and 1979.  
25 However, no data was provided or information was provided in

1 the report to explain the reason for that conclusion that  
2 rents didn't change between 1979 and 1980.

3 He uses a comparative rent survey for his analysis  
4 for the rents during that what he's calling the base year and  
5 which is an appropriate approach. I think that is the correct  
6 approach to utilize.

7 His -- the comparable data that he says he uses comes  
8 from rents -- rental information that was available in two  
9 years, 1983 and 1986. However, he doesn't provide any of that  
10 information in the report, at least that I could find.

11 So he doesn't actually tell you what the 1983 and  
12 1986 rents were in his report. He simply indicates that he  
13 adjusted those '86 and '83 rents down to 1980 levels, and he  
14 says he -- he adjusts them based on maximum adjustments that  
15 are allowed by the ordinance. And he indicates that -- that  
16 those adjustments were 8 percent in 1983 and 8 percent in  
17 1986.

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

24 And also the -- saying that there were only two years  
25 of adjustment between 1986 and 1983 I found to be conflicting

1 with the ordinance which was enacted in April of 1980, and  
2 there was a brief period of a rent freeze when no increases  
3 were allowed.

4 But the increases then from August of 1980, an annual  
5 8 percent increase was allowed up and then there was an  
6 amendment in May of 1981 that -- that allowed automatic 8  
7 percent annual increases or up to 8 percent and that was in  
8 place until August of 1983, and then that automatic increase  
9 was reduced to 7 percent. And then in September of 1986, the  
10 automatic increases were changed to 75 percent of the CPI.

11 So increases were really allowed all of those -- of  
12 those years, even though he only made -- apparently made some  
13 kind of adjustments for two years, 1983 and 1986. So I just  
14 didn't find that to be consistent with the -- with the  
15 ordinance.

16 What I did was I looked at the actual increases for  
17 the five -- the comparable parks that we had data from for  
18 those two years, 1983 and 1986, to see what was actually  
19 occurring in -- in the market at those parks. In other words,  
20 how much did rents go up between 1983 and 1986 at -- at five  
21 of the parks where we had data for both years. And I -- I  
22 have an exhibit that shows that, if we could bring that up --  
23 oh, it's up. Okay. I'm sorry. Thank you.

24 So what it shows under 1986, you can see -- well,  
25 first of all, let me say there are -- there are five parks



1 listed on that exhibit that -- where we have rents for both  
2 years, Conejo Mobile Home Park, Elms Plaza -- well, we have it  
3 for Ranch, but that's -- that wasn't the subject of comparison  
4 here, Ventu Park Villa, Ventu Estates and Thunderbird.

5 And you can see in the two columns, I have the 1986  
6 rents and I have the 1983 rents, and what I did was make  
7 calculations of what happened to those rents for that -- that  
8 period of time.

9 And you can -- the rents at Conejo increased from  
10 \$157 to \$197, which is an overall increase of -- an average --  
11 well, it's an overall increase of 25 percent, but an average  
12 annual increase compounded of 7.9 percent for that three-year  
13 period.

14 Elms Plaza rents went from 187 to \$227, which is an  
15 overall increase of 21 percent or an average annual increase  
16 of 6.7 percent. Thunderbird increased from 246 to 277, which  
17 is an overall increase of 13 percent or an average annual  
18 increase of 4 percent. That was the lowest of the -- lowest  
19 annual increase of the five parks, and of course, that park is  
20 also subject to an upcoming rent hearing.

21 Ventu Park Villa increased from 204 to 247, which is  
22 an overall increase of 21 percent or an average annual  
23 increase of 6.6 percent.

24 So the -- and Ventu -- I'm sorry. I missed --  
25 skipped Ventu Estates, increased from \$242 to \$292, which is

1 an overall increase of 21 percent or an average annual  
2 increase of 6.5 percent.

3 So from this data, there were four of the five parks  
4 really fairly closely clustered. It would easily support an  
5 increase between 6 and 7 percent as an indication of what the  
6 market was doing between 1993 and 1986.

7 I concluded at 6.5 percent as an increase and what I  
8 did was then I took the comparable parks for -- that we had  
9 information for in 1983 and I trended them back for four years  
10 to 1979, the base year, at an annual rate of 6.5 percent and  
11 that's shown in the last column on the right there.

12 It shows you the adjusted rents for 1979, Conejo  
13 Mobile Home Park, \$122; Elms Plaza, \$145; Ventu Park Villa,  
14 \$159; Ventu Estates, \$188; Thunderbird Oaks, \$191.

15 Then I had arranged the parks basically in the order  
16 of kind of the overall appeal and the way I would adjust the  
17 comparables to the subject and where it fits in in relation to  
18 the overall quality and appeal and location of the other  
19 parks.

20 And Mr. Neet did the same kind of -- kind of ranking  
21 of the parks, and I thought -- I didn't have any big quarrel  
22 with -- with the way he did it. I did it in kind of a similar  
23 fashion.

24 And in my opinion, the -- well, as you can see, we  
25 did not have 1983 information for Twin Palms. So that park

1       couldn't really be considered for this analysis.

2               So anyway, it should -- in my opinion, the rent at  
3       Ranch for 1979 should fall between the \$145. At Elms Plaza,  
4       it should be above that. It should be below the adjusted rent  
5       at Ventu Park Villa at \$159, and my conclusion was \$150 per  
6       month for the base year of 1979. Then -- and that was my  
7       opinion of the market rent in 1979.

8               For 1999, I did -- I didn't do what I would call a  
9       market rent study because market rent assumes -- assumes that  
10      the rents are uncontrolled. The rent control ordinance was  
11      in -- was in effect at that time. I'm calling it rental  
12      value.

13              But I surveyed and obtained rental information in  
14      1999 for the same comparable parks and that is shown in my  
15      report on page 21 there. And since I've been asked to kind of  
16      speed this up, I won't go through all the detail, but I did  
17      the same kind of comparative analysis in 1999.

18              My conclusion of the indicated rent for Ranch Mobile  
19      Home Park as of that date was \$300 per month, and then we move  
20      on to 2009. I did the same thing. I obtained current rental  
21      information for the year 2009 for the comparable parks, and my  
22      conclusion as of that date was \$400 per month. And that rent  
23      in 2009 includes water and trash.

24              I did not include -- I really wasn't able to analyze  
25      the inclusion of utilities as of the other dates because I did

1 not have that information for all of the parks. But the  
2 current rent for the current analysis, I did know what  
3 utilities were included in each park and so the \$400 per month  
4 includes water and trash.

5 And those are the opinions that I was asked to  
6 provide.

7 MR. NORMAN: Thank you.

8 Things for the Commission to consider real quick,  
9 kind of an overview of what we just discussed, we talked about  
10 the court precedent for using the MNOI standard, the  
11 appropriateness of considering other methodologies, what's the  
12 appropriate base year, what base year adjustments to either  
13 income or expenses are necessary and the rate of indexing.

14 Staff's conclusion is given prior court precedent and  
15 the City's rent stabilization guidelines, MNOI is an  
16 appropriate method for doing a rent adjustment.

17 Staff believes that 1982 is the appropriate base year  
18 with the Vega adjustment according to the City's appraiser and  
19 with an adjustment to operating expenses to include the  
20 outsourcing of management.

21 The range of indexing presented in the consultant's  
22 report is between 50 and 100 percent. Staff would recommend  
23 that a 50 percent increase would pass the constitutional  
24 requirement.

25 There's a table that illustrates all the options.

1 Basically it's staff's -- the way to view this chart is that  
2 staff believes anything on here passes the minimum  
3 constitutional requirement for fair return. This again  
4 highlights what the rents would be for the various base years  
5 from '79 to '99. With the expense adjustment, there's a line  
6 for that.

7 In bold is the City's recommendation of \$191. That's  
8 based off 50 percent CPI with an expense adjustment and the  
9 Vega adjustment using the City's appraiser. Again, the park  
10 owner's appraised value is the bottom line. Again, that may  
11 be subject to change. We'll have to hear from the applicant  
12 to see the basis for that.

13 Some comparison rents just to put this in  
14 perspective, are we off base with the MNOI or not. If you  
15 look at Resolution 84-037, and had the park owner made annual  
16 increases under that resolution hypothetically in every year  
17 that he could, the rent increase today would be \$147 per month  
18 increase, which would be 267 total.

19 Hypothetically had the park been under the  
20 jurisdiction of the ordinance since 1980 and they had taken  
21 all the automatic increases that they were entitled to, the  
22 increase would be \$162 per space increase for a total of 281.

23 For comparative purposes only, again, I'm relying on  
24 Mr. Brabant's comparable current control rent of 2009, other  
25 parks he would value the increase at \$267 per month increase

1 using that methodology.

2 And again, there is the increase as compared to the  
3 Rent Stabilization Ordinance that I just mentioned and the  
4 resolution that I just mentioned in the prior slide. And then  
5 for comparison purposes, you have the rate of return that  
6 Mr. Baar explained in his presentation.

7 It's interesting to note that even at 11.5 percent  
8 rate of return, which is what the owner had agreed to back in  
9 1977, the City's recommendation is right in that ballpark. So  
10 from staff's perspective, staff's recommendation is in line  
11 with the totality of circumstances that are unique to this  
12 park.

13 So finally to wrap up, the City's recommendation is  
14 to approve a rent adjustment of \$191.95 per space per month  
15 above existing rents.

16 The City staff also recommends that this be phased in  
17 in five years, and the rationale behind that is it's a huge  
18 rent increase. We're talking even -- the City's  
19 recommendation if it were done in one fell swoop, would be I  
20 think 160 percent increase.

21 And looking at the intent of the ordinance, we think  
22 that's just too burdensome on these residents and that a  
23 phase-in is appropriate. Even at a five-year phase-in,  
24 which -- which would be \$38.89 per space per month each year  
25 increase, that's still over a 25 percent increase over

1 existing rents.

2           The initial increase I should -- says here should be  
3 60 days. Rent control law may have a different requirement on  
4 that. We'll check on that, but it may be 90 days. But  
5 whatever state law is would be the -- the minimum and that  
6 each subsequent increase would be phased in one year from --  
7 from the prior increase.

8           And with that, staff has completed its presentation.

9           CHAIR WERTHEIMER: Thank you.

10           We're going to have comments and questions from the  
11 committee, but first off, just to remind the audience to turn  
12 off your cellphones or put them on silent, please.

13           We're going to start from left to right, Commissioner  
14 Mike.

15           MR. SILACCI: Thank you, Mr. Chairman.

16           I just have a couple of clarifying questions if I  
17 could ask and I guess I'll direct them to Mr. Norman.

18           First, I just wanted to confirm just for my  
19 understanding that when the City enacted Resolution 84-037  
20 that it only applied to the Ranch Mobile Home Park?

21           MR. NORMAN: That's correct.

22           MR. SILACCI: Thank you. And could you please help  
23 me understand a little bit more about the legal basis. Was  
24 the constitutional requirement for a just and reasonable  
25 return, was that a requirement that was present back in 1984

1 at the time that the Council went through the process to enact  
2 this resolution?

3 MR. NORMAN: I don't know whether it was -- it  
4 probably was in case law and I may let Mr. Baar elaborate on  
5 that. But at that time, we had no rent control ordinance on  
6 the books. So that's probably the better answer.

7 MR. SILACCI: I guess just an extension, maybe a  
8 two-parter, the Council had an opportunity to apply this  
9 resolution to the Ranch Mobile Home Park in 2001. So I guess  
10 I would extend did that standard exist in 2001?

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

16 MR. SILACCI: That's fine. Thank you.

17 And just -- I have, excuse me, Mr. Chairman, one more  
18 just for me clarifying question.

19 How was the -- at the beginning when -- with the  
20 development conditions for the -- I guess the fee --  
21 development fee waiver of \$100,000 and I guess some reduced  
22 costs as far as forgiving some design requirements, I mean  
23 how -- how were those reflected in the initial rental rates  
24 and was there a period of time that -- that those would be  
25 taken into account?



1           Because I -- I guess I shouldn't comment. It's  
2 really a question. But I don't see how \$100,000 is taken care  
3 of in one year. How were those -- how was that -- those fee  
4 waivers taken into account in setting the initial rental  
5 rates?

6           MR. NORMAN: From our review of the records, we're  
7 not sure how it was mentioned in some correspondence and memos  
8 in the files for that development.

9           It was discussed by accountants for the park owner  
10 when developing the 11.5 percent rate and it was a trade-off.  
11 It was more of a basis in my opinion for -- justification for  
12 having a low-income senior park.

13          MR. SILACCI: Thank you. Those were all my  
14 questions.

15          COMMISSIONER FELDMAN: Thank you.

16          I would like to speak to that also, the \$100,000 gift  
17 that was given to the park owner by the City. If we use the  
18 return on investment approach, which I think might be better  
19 for this park, we could say that \$100,000 if we play it  
20 forward for inflation is worth \$443,000 today in equity to the  
21 park owner.

22          So my -- I haven't heard you take into account that  
23 gift that the City made to the park owner, and would the  
24 return on investment approach do that?

25          MR. BAAR: Well, I would say -- oh, I'm sorry. I'd

1 say it is taken into account because the investment is lower  
2 because the park owner didn't have to make that investment, so  
3 therefore you have a lower investment basis.

4 So, you know, if they hadn't gotten that \$100,000  
5 gift, they would have invested 600,000 instead of 500,000 at  
6 the beginning and that would have been taken into account in  
7 the formula.

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

12 MR. BAAR: No. Well, I'm saying the way it's  
13 factored in, it was an investment that the park owner didn't  
14 make. So it's factored in in the sense that the owner never  
15 gets credit for that later.

16 So it's not -- it's not an investment. So we -- we  
17 don't subtract it later because it's subtracted from the  
18 original base and so that -- 100,000 less was indexed by the  
19 consumer price index.

20 COMMISSIONER FELDMAN: Okay. May I ask another  
21 question?

22 Okay. Thanks.

23 Initially the documentation that I have that came  
24 from 1986 that I was presented states that the proposed mobile  
25 home park rent ordinance would apply to all parks within the

1 city with the exception of Ranch Mobile Home Park which is  
2 under a separate affordable housing agreement. And I hear you  
3 say you can't find that acceptable affordable housing  
4 agreement. That's a shame.

5 I also wonder are you considering -- is the City of  
6 Thousand Oaks considering this park as affordable housing?  
7 And if not, why not? Because they are making -- earning  
8 \$10,000 and that \$10,000 if you factor it forward to today  
9 with the CPI is still \$10,000. But on the market, it would be  
10 \$44,300 that the tenant would have to be earning to qualify.

11 And in our park, \$18,000 or \$19,000 is the minimum we  
12 can earn to get into our park, yet with Ranch, a maximum of  
13 10,000 per an individual. It just doesn't make sense to me,  
14 and no one is making mention of that here. And how did you  
15 factor that in?

16 MR. NORMAN: It's staff's opinion that this  
17 Commission has a very, very limited jurisdiction and may only  
18 consider the rent increase application.

19 The issue involving any income restriction isn't  
20 factored in to this application in analyzing it under the  
21 ordinance. I hope that answers your question.

22 THE PUBLIC: It doesn't answer ours.

23 COMMISSIONER FELDMAN: It really doesn't. The fact  
24 that you didn't factor it in and it isn't part of what we're  
25 supposed to do, I understand that.

1           But my concern is if I go ahead with all of these  
2           thoughts on different methods, the MNOI and everything else,  
3           is it a decision that's to be made for Ranch, per se, and in  
4           that case, it just doesn't work for me.

5           If this is an ordinance-wide thing, can we treat them  
6           differently? Can we treat Ranch differently from the other  
7           parks or is this ordinance-wide?

8           MR. NORMAN: Well, it's staff's opinion that we are  
9           applying the ordinance to this park as we would to any other  
10          park making a similar application.

11          COMMISSIONER FELDMAN: And that -- that, of course,  
12          doesn't make sense to me, but I'm going leave it at that.  
13          Thank you.

14          THE PUBLIC: It doesn't make sense to anybody. It  
15          would only make sense if it was a low-income park.

16          CHAIR WERTHEIMER: Mr. Sheldon.

17          VICE-CHAIR SHELDON: Thank you.

18          Could you talk a little about why the extrapolation  
19          from 1979 to 1982 is so problematic.

20          I apologize. I was wondering if you could speak a  
21          little bit about why the extrapolation from 1979 to 1982 was  
22          problematic as a base year. I know you touched on it, but if  
23          you could talk a little bit more about it.

24          MR. BAAR: When you say -- you mean why 1982 should  
25          be used?

1           VICE-CHAIR SHELDON: Yes, over 19 -- what was the  
2 problem with going from '82 to '79?

3           MR. BAAR: Oh, okay. The ordinance -- the  
4 regulations say if you don't have the income and expense  
5 information for 1979, you have to use the first year for which  
6 you have income and expense information. So that's the  
7 reason.

8           VICE-CHAIR SHELDON: As a follow-on to that, could  
9 you talk a little bit about why the breakdown of expenses and  
10 not having that is so important and what are some of the  
11 issues that you would be concerned about.

12          MR. BAAR: Well, the maintenance of net operating  
13 income standard, you know, is two components; the cost pass-  
14 through and the indexing of the net operating income.

15          And the problem -- if you don't have a breakdown of  
16 expenses, you don't know exactly what you're comparing, you  
17 know, and whether some things were left out in the base year  
18 or how they were factored and how utility expenses were  
19 treated, et cetera.

20          VICE-CHAIR SHELDON: Thank you. I have nothing.

21          CHAIR WERTHEIMER: Commissioner Ferruzza.

22          COMMISSIONER FERRUZZA: I don't have any questions.

23          CHAIR WERTHEIMER: Thank you.

24          I have a couple questions, if I may.

25          And on the concessions made at the time that the park

1 was built, do you know if any of the other -- if any other  
2 parks in the area were also given concessions by the City for  
3 their development at the time?

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

10 CHAIR WERTHEIMER: Okay.

11 MR. PRESCOTT: So I'm not -- I'm not aware of any  
12 that were approved for the other parks.

13 CHAIR WERTHEIMER: Thank you. How much value do you  
14 place on water and -- or utilities, water and trash on a  
15 monthly basis in your evaluations?

16 MR. BAAR: When you say how much they are in the --

17 CHAIR WERTHEIMER: In the comparisons that you were  
18 making, at one point in time you said the rent included the  
19 trash and utilities and at some point it -- it didn't. So in  
20 other words, I'm just curious as to the value you placed on a  
21 monthly basis on their utilities and trash.

22 MR. BAAR: Okay. I have to look through. I don't  
23 know if -- is this a question for Jim -- or Mr. Brabant or for  
24 me?

25 CHAIR WERTHEIMER: It's a question for the staff and

1       whoever can answer it.

2               MR. BRABANT: I can tell you what adjustments I made  
3       in the rental value comparison that I did in 2009. The rents  
4       at Ranch Mobile Home Park included water and trash. And let's  
5       see, we had -- there was a park that just included water, and  
6       so the -- and I made a \$13 adjustment for the -- so that  
7       was -- the difference there was trash. So in that case, it  
8       was \$13 for the trash.

9               And let's see, here's one that included water. Let's  
10      see -- well, that's another one. I'm not -- here's one that  
11      included water, sewer and trash, and so -- I was just looking  
12      to see if we had one that had none.

13              Well, here's one that was none and I adjusted \$33 for  
14      the combination of water and trash.

15              CHAIR WERTHEIMER: By adding it to the -- to the base  
16      rate and including it in your appraisal or deducting it?

17              MR. BRABANT: Well, it depends on -- on which way --  
18      if -- if a comparable park had more services provided, for  
19      instance, Lakestone had water, sewer and trash all included in  
20      that, I made a minus \$25 adjustment from that rent. If one  
21      had none, I made a plus 33 adjustment for that.

22              So it depended on whether they had more or less --

23              CHAIR WERTHEIMER: Okay.

24              MR. BRABANT: -- 'cause I was adjusting to the  
25      condition at Ranch that had included water and trash.

1           CHAIR WERTHEIMER: I was just trying to see how you  
2 get to apples and apples at the end of the day.

3           MR. BRABANT: That's the way I did it. So it was a  
4 plus adjustment for some, a minus adjustment for others.

5           CHAIR WERTHEIMER: In the base -- if you -- you all  
6 settled on the base year of 1982 to -- for your calculations,  
7 is that accurate?

8           MR. NORMAN: That's the recommended action.

9           CHAIR WERTHEIMER: Right.

10          MR. NORMAN: It's staff's position that '79, '82 or  
11 1999 can be considered by the Commission.

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

16          MR. BAAR: Yes, because --

17          CHAIR WERTHEIMER: "Yes" is okay. That's good.

18          That's -- so then my question is did you include the  
19 \$100,000 concession in -- in that as -- when you went back to  
20 his original investment?

21          MR. BAAR: No, because the 100,000 concession wasn't  
22 counted. It wasn't part of the investment.

23          CHAIR WERTHEIMER: So you didn't -- okay. So you  
24 took his investment as 500, not 600?

25          MR. BAAR: Yes.



1 CHAIR WERTHEIMER: That's fine.

2 MR. BAAR: Absolutely.

3 CHAIR WERTHEIMER: Just want to make -- yeah. I'm  
4 looking to see that.

5 That's the questions I have.

6 Anybody else in the board come up with anything more?

7 All right. Do we have any questions for the staff  
8 from the applicant's lawyer?

9 Thank you.

10 MR. HILL: Is this where I stand?

11 CHAIR WERTHEIMER: Is that -- yes. Give us your name  
12 and your city, please.

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

15 First, I'd like to start with Mr. Baar, if that's  
16 appropriate.

17 Good evening, Mr. Baar. Also, can you put up the  
18 PowerPoint that I sent you with Mr. Baar, yes.

19 I don't -- I don't need it on screen yet, but I'll  
20 tell you when to.

21 Okay. Good evening, Mr. Baar. The purpose of my  
22 cross-examination this evening will be to determine, first, on  
23 what matters you can agree with the applicant's position and  
24 then to further explore your positions on what matters -- on  
25 matters where you do not agree with the applicant's position.

1           The City staff is basing its position in this rent  
2   increase application on your opinions contained in your  
3   November 30th, 2010 report entitled Analysis of the Ranch  
4   Mobile Home Park Rent Increase Application.

5           First, is it your opinion as stated in the summary of  
6   your report, first slide, that because there have been  
7   virtually no increases in 30 years, very substantial rent  
8   increases are required?

9           MR. BAAR: I would say, yeah, under the ordinance,  
10   yes.

11          MR. HILL: Okay. Second, is your above opinion based  
12   in part on the following facts stated in your report: From  
13   1979 to 2009, the average rent in the park increased by only  
14   about 10 percent compared with an increase of 192 percent in  
15   the CPI during this period?

16          MR. BAAR: Well, I'd answer -- I'd say -- I'd  
17   clarify it, I'd say --

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

19          MR. BAAR: No, it's not. I'd say yes, but my  
20   analysis is based on the fair return standards. And that --  
21   I'd say that's the justification, but I -- I pointed that out  
22   to point out the circumstances.

23          MR. HILL: Okay. Third, are the components of the  
24   very substantial rent increases described in your opinion the  
25   following: No. 1, to provide a fair base rent for the

1 purposes of a fair rent calculation, No. 2, cover operating  
2 cost increases, and No. 3, provide for the growth in net  
3 operating income reflecting inflation since the base year?

4 MR. BAAR: Yes.

5 MR. HILL: Okay. Mr. Baar, so far your opinion that  
6 the applicant should get a substantial rent increase and that  
7 the components of that rent increase should include adjustment  
8 of base year income, adjustment for inflation and adjustment  
9 for increased costs of operation, corresponds with the  
10 position of the applicant.

11 I want you to keep in mind that these three  
12 components of the substantial rent increase that should be  
13 applied as we discuss the details of the application and of  
14 your analysis because as we get into it, it will become clear  
15 that your particular analysis ends up disregarding a  
16 significant amount of the increase attributable to each of  
17 these three components.

18 Now, let's consider what standards should be used to  
19 determine a just and reasonable return. According to your  
20 report, next slide, please, in this analysis a maintenance of  
21 net operating income standard is used as the measure of fair  
22 return.

23 Mr. Baar, did you use any standard in your report  
24 other than the maintenance of net operating income standard to  
25 determine the proper amount of rent adjustment for the

1 application?

2 MR. BAAR: I would say this: I discussed other  
3 standards to -- as types of checks to see because we had the  
4 unusual circumstance here of, one, we're adjusting the base  
5 rent; two, the rents haven't been increased in 30 years.

6 So I looked -- you know, I looked at the other  
7 standards as sort of checks to see if what we got under the  
8 net operating income standard, whether it was, you know, way  
9 out of proportion with what -- how it compared with some of  
10 the other measures.

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

13 MR. BAAR: Yes. I didn't use them to make the actual  
14 calculation. I made calculations of how those standards would  
15 work.

16 MR. HILL: Are you aware that the City regulations  
17 establish a presumption that the MNOI standard applies --

18 Next slide.

19 MR. NORMAN: That slide?

20 MR. HILL: Right there, yeah.

21 The Commission presumes that the net operating income  
22 received up to April 1980 provided landlords with a just and  
23 reasonable return on their rental units unless there is clear  
24 and convincing evidence to the contrary.

25 MR. BAAR: Yes, I'm aware of that.

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

4           MR. BAAR: Well, I'm not saying it should -- I didn't  
5           conclude it should not be used, but you know --

6           MR. HILL: That's not the question.

7           Are you aware of any clear and convincing evidence  
8           that the MNOI standard should not be used for the  
9           application --

10          CHAIR WERTHEIMER: I'd like to interrupt, please.  
11          Counselor, we're not in a court of law. This is --

12          MR. HILL: I understand. What I'm trying to get --  
13          you know --

14          CHAIR WERTHEIMER: He'll give you an answer.

15          MR. HILL: -- I'm trying to short circuit this.

16          CHAIR WERTHEIMER: He'll give you an answer.

17          MR. BAAR: Repeat your question again.

18          MR. HILL: Sure. I'll -- I'll ask it again. Thank  
19          you.

20          Are you aware of any clear and convincing evidence  
21          that demonstrates that the MNOI standard should not be used  
22          for the Ranch application?

23          MR. BAAR: No.

24          MR. HILL: Okay. Mr. Baar, are you aware that the  
25          City regulations require that if another standard is to be

1 used, the applicant or tenants must in advance submit  
2 documentation and information to support an alternative  
3 methodology?

4 Next slide.

5 MR. BAAR: Well, I think I remember that.

6 MR. HILL: Where's the rest of that slide?

7 There you go. Thank you.

8 States -- I'm reading from the regulations. It  
9 states: The methods herein authorized herein are not  
10 exclusive. Alternative approaches may be employed by the  
11 Commission. Applicants or tenants may propose the use of such  
12 approaches, but must fully explain in writing the methodology  
13 and the reasons supporting use of the methodology and must  
14 provide information and documentation adequate to use the  
15 suggested approach.

16 The methodology and documentation shall be provided  
17 with the application or sufficiently before the date set for  
18 the hearing so that the matter may be reviewed by the  
19 Commission staff. Failure to so provide that information  
20 shall be grounds for rejection of its use or continuance of  
21 the hearing at the Commission's discretion. The use of such  
22 approach as suggested by applicants or tenants shall be at the  
23 discretion of the Commission.

24 Mr. Baar, did either the applicant or the tenants  
25 comply with the requirements of Section 1.04 to request a

1 alternative standard?

2 MR. BAAR: No, but I want to comment. I didn't think  
3 that precluded the Commission from considering other  
4 standards.

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

6 MR. BAAR: Well, because I feel the Commission had  
7 the authority to consider what evidence it considered  
8 relevant.

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

12 MR. BAAR: Well, it's not a question of feeling. Let  
13 me go back to the -- the language. You want to put it back  
14 up.

15 MR. HILL: Sure.

16 MR. BAAR: It says alternative -- I don't see the  
17 whole screen. Alternate approaches may be employed by the  
18 Commission, and I mean we can disagree. I felt my conclusion  
19 or understanding was that that meant that the Commission could  
20 consider other methodologies.

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

23 MR. BAAR: Yes.

24 MR. HILL: Okay. Mr. Baar, did either the -- let's  
25 see. So the reference in your report to a rate of return on

1 investment standard and the current comparable rents are not  
2 appropriate for use at the hearing under the City's  
3 regulations, are they?

4 MR. BAAR: Well, I didn't reach that conclusion.

5 MR. HILL: Okay. Mr. Baar, will you agree that your  
6 discussion and findings under those two standards are not  
7 appropriate, unnecessary, irrelevant and that they should be  
8 stricken from your report?

9 MR. BAAR: No, I don't agree with that.

10 MR. HILL: Okay. Mr. Baar, isn't it true that you  
11 really started your analysis with the rate of return on  
12 investment standard and the current comparable rent standard  
13 and then reverse-engineered a modified MNOI analysis based on  
14 your results from those other two standards?

15 MR. BAAR: No, that's absolutely not true.

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

19 Next slide, please.

20 MR. BAAR: Yes, I do.

21 MR. HILL: Okay. It states: Neither the ordinance  
22 nor the regulations include any specific reference to the use  
23 of this type of standard, referring to the rate of return on  
24 investment.

25 MR. BAAR: Right, but I also felt that there was the



1 broad language about the Commission being able to consider  
2 other standards.

3 MR. HILL: Which we discussed has to come through an  
4 application and sufficient advanced notice, right?

5 MR. BAAR: Well, that's your conclusion.

6 MR. HILL: And yet you incorporate the rate of return  
7 on investment standard into the MNOI standard to create a  
8 modified MNOI approach, don't you?

9 MR. BAAR: No. I included this to point out what  
10 happens under an alternate approach.

11 MR. HILL: Next slide, please.

12 I'm going to quote from your report again. However,  
13 this type of formula was used in order to establish a fair net  
14 income for this park in accordance with the City's  
15 affordability objectives associated with the development of  
16 this park.

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

22 MR. BAAR: Why -- repeat that question. That was a  
23 long question.

24 MR. HILL: Okay. And so under the guise of meeting  
25 the City's affordability objectives which were supposed to

1 have been met under the MNOI approach, you created an  
2 altogether new MNOI plus approach, one that you admit is very  
3 disfavorable to long-time park owners such as Mr. Hohn, didn't  
4 you?

5 THE PUBLIC: Objection, your Honor. This is  
6 badgering the witness.

7 MR. BAAR: Okay. First of all, I -- and I'll go  
8 back. Also the ordinance says that the Commission can  
9 consider -- there's a list of factors that the ordinance --  
10 under the ordinance that the Commission can consider and it  
11 says among other relevant factors.

12 And their disagreements -- you know, these are  
13 relevant factors, this had a broad scope and there -- in many  
14 cases different factors have been considered relevant.

15 And secondly, as far as the investment, I point out  
16 if you use a return on historic investment approach and you  
17 don't adjust the historic investment, it's very, very, you  
18 know, unfavorable to a long-term owner.

19 But when you put an inflation adjustment into the  
20 historic investment approach, you're inflation adjusting in  
21 the original investment, I wouldn't say that's so unfavorable.  
22 And in fact, in a number of cases I have been in, that's what  
23 the park owner's expert has done.

24 MR. HILL: Next slide, please.

25 You state in your report on page 35: As a practical

1 matter when return on investment approaches are used,  
2 long-term owners, Mr. Hohn, who typically have low investments  
3 by current standards are disfavored.

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

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

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

17           MR. BAAR: Well, saying by -- by putting in the --  
18 the inflation adjustment to the rate base, this is to  
19 compensate for how the formula would work if you didn't have  
20 that inflation adjustment of the rate base.

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

24           MR. BAAR: No. I was asked to come up with my  
25 analysis and look at the different factors.

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

5           MR. BAAR: No, it isn't.

6           MR. HILL: Next slide, please. I need to go -- no.  
7 Maybe the next slide. Go -- let's see. Can you go back, I'm  
8 sorry. Hard when I'm not in control of the slide. Back one  
9 more, please. Thank you.

10           Okay. Let's read the statement: If the park -- the  
11 second statement there, if the park is granted a rent increase  
12 of \$252, an amount authorized pursuant to the MNOI student  
13 with a median 75 percent indexing ratio, the rate of return on  
14 the inflation adjusted investment would be 13.3 percent and  
15 the rate of return on the historic investment would be 48  
16 percent. Baar report, page 38.

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

24           MR. BAAR: I thought I mentioned that in my report,  
25 that basically the rents are -- type of vacancy de-control

1       when -- when the mobile -- when there's a new mobile home in  
2       conjunction with the entry of a new tenant.

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

5               MR. BAAR:  Well, I don't -- the park owner is not  
6       investing more money when this happens.  So I don't know how  
7       you would take that into account, a rate of return approach.

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

9               MR. BAAR:  Well, there's no invest -- there's no  
10      investment at that point.  It's basically the -- there's a  
11      right to a rent increase because this -- because there's -- no  
12      new mobile home was brought in conjunction with a new tenancy,  
13      so I --

14              MR. HILL:  Okay.  Mr. Baar, I note that under your  
15      unauthorized rate of return on investment analysis you came up  
16      with an imputed inflation adjustment -- investment value of  
17      1.8 million dollars.

18              Mr. Baar, did you in your investigation ever look at  
19      current property appraisals to see if the property appraises  
20      for that amount?

21              MR. BAAR:  No, I didn't because that's -- this was a  
22      return on investment analysis, not a return on value analysis.

23              MR. HILL:  Mr. Baar, would it surprise you to find  
24      out that the Ranch Mobile Home Park recently appraised for --  
25      for \$168,000, about the same price as a new coach that some of

1 the tenants can afford to pay cash for?

2 THE PUBLIC: Oh.

3 CHAIR WERTHEIMER: Quiet, please.

4 MR. BAAR: Yeah. I -- will it surprise me, it's --

5 it's -- you know, yeah, it would surprise me and I don't know

6 if it's true.

7 MR. HILL: Isn't it true that even a doubling or

8 tripling of the rents won't bring the Ranch property up to the

9 level of the inflation adjusted rate of return investment

10 value?

11 MR. BAAR: Well, just a minute. Okay. So this

12 inflation adjusted value is 1.8 million and net operating

13 income of about 120,000. Let's say we have a 6 percent

14 capitalization rate, would cover that net -- would cover

15 that -- would bring it up to that market value.

16 MR. HILL: Mr. Baar, you didn't even look to see if

17 there was a current appraisal of the current value of the

18 rent -- of the park real property, did you?

19 MR. BAAR: Well, no. I wasn't doing a return on

20 value analysis.

21 MR. HILL: You don't want to show anything in favor

22 of a large increase to the park owner, do you?

23 CHAIR WERTHEIMER: Counsel --

24 MR. BAAR: I didn't --

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

1 MR. HILL: I'll withdraw. I'll withdraw, thank you.

2 CHAIR WERTHEIMER: Again this a fact-finding hearing  
3 and we're here to not -- to just find some facts --

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

7 CHAIR WERTHEIMER: Again, we're not in a court of  
8 law.

9 MR. HILL: Mr. Baar, let's now examine your use of a  
10 current comparable rent standard, shall we? Let's start off  
11 with you recognize that a current comparable rent standard has  
12 never been used unless authorized or required by an ordinance,  
13 don't you?

14 MR. BAAR: I want to see my --

15 MR. HILL: Next slide, that might help you.

16 Next slide.

17 MR. BAAR: I -- I didn't say never. I said has  
18 usually not been considered.

19 MR. HILL: Except when specifically authorized or  
20 required in an ordinance.

21 MR. BAAR: Yeah -- no. You had said I -- it had  
22 never been used and I said usually not considered because I  
23 have been -- I mean the -- the ordinances provide -- I'm  
24 talking about the mobile home rent control ordinances, they  
25 provide in general, you know, discretion to consider other

1 relevant factors.

2 And some rent board commissions like to consider  
3 comparables, some don't even if it's not specifically  
4 authorized.

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

8 MR. BAAR: No. As I indicated, it's not specifically  
9 mentioned.

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

14 MR. BAAR: Well, it's not -- the MNOI standard looks  
15 at comparable rents in extreme cases in the base year. It  
16 doesn't look at comparable rents in the current -- it doesn't  
17 look at market rents -- or it looks -- the MNOI standard looks  
18 to see if there's a situation where the base year rents had no  
19 connection with the market.

20 The MNOI standard doesn't -- hasn't looked at, you  
21 know, whether the current rents -- how they compare with the  
22 market because basically the rent regulations are based on  
23 the, you know, basic concept that the market is not working.

24 MR. HILL: Next slide, please.

25 MR. BAAR: Is it easy to hear me?



1 THE PUBLIC: No.

2 MR. BAAR: Okay. Good.

3 MR. HILL: Yeah. These -- these are kind of fuzzy  
4 microphones here.

5 Next slide, it states -- you state: The MNOI fair  
6 return concept has been premised on base year rents that  
7 reflect market conditions and the maintenance of base period  
8 net operating income levels provided by base rents rather than  
9 current comparability of required rents. Baar report, page  
10 38, is that correct?

11 MR. BAAR: That's correct.

12 MR. HILL: Okay. And yet you decided to use a  
13 current comparable rent standard in this case that you knew  
14 was tiered off of 30 years of below market CPI rent  
15 adjustments paid -- or 75 percent of CPI rent adjustments paid  
16 to a 1986 rent adjusted rate to justify modifying the MNOI  
17 rent adjustment to which the park owner is entitled.

18 MR. BAAR: First of all -- yeah, the -- the -- when  
19 you say modified it by not using the market rents, the  
20 ordinance is not based on the concept of -- the ordinance is  
21 based on the concept that the market is not working because  
22 you have a captive market.

23 And -- you know, and each one of these other things  
24 that I mentioned, I said I -- you know, mentioned these  
25 reports because you had unusual circumstances.

1           I mentioned that they're, you know, often not -- you  
2     know, commonly not used in conjunction with MNOI analysis, but  
3     sometimes they are, and this ordinance authorizes the board to  
4     consider other relevant factors. So I felt they had -- you  
5     know, should be mentioned and I mentioned also the caveats  
6     about them.

7           MR. HILL: Okay. Mr. Baar, you have not explained  
8     where the ordinance in particular authorizes the comparable  
9     rent standard, have you?

10          MR. BAAR: No. I said it does not specifically  
11     mention it, but you also have this broad language about  
12     considering relevant factors.

13          MR. HILL: If the matter is brought before the  
14     Commission timely and notices given, et cetera, et cetera, et  
15     cetera.

16          MR. BAAR: Well, that -- okay. Well, we disagree  
17     about that. I think the Commission has the authority to  
18     consider factors that it deems relevant.

19          MR. HILL: Mr. Baar, I note that in discussion of  
20     your use of the two alternative standards, you cite  
21     exclusively the City findings and proposed to, quote, unquote,  
22     "safeguard tenants from excessive rent increase," end quote.

23          But nowhere in your discussion of those two standards  
24     do you explain how they will, quote, unquote, "at the same  
25     time provide landlords with a just and reasonable return on

1     their rental spaces," end quote.

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

5             Next slide, please.

6             MR. BAAR: I -- I think that --

7             MR. HILL: Next slide, please.

8             Next slide, please.

9             MR. BAAR: Okay. I think the main -- the purpose of  
10    the maintenance of net operating income standard is to  
11    safeguard owners and provide them with a fair return.

12            MR. HILL: Okay. The City code -- the ordinance that  
13    we're dealing with says: Therefore it is necessary and  
14    reasonable to continue to regulate rents so as to safeguard  
15    tenants from excessive rent increases and at the same time  
16    provide landlords with a just and reasonable return on their  
17    rental spaces.

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

21            MR. BAAR: Well, I guess it was implicit the  
22    maintenance of net operating income standard is a fair return  
23    standard and its purpose is to provide a just and reasonable  
24    return. And I guess to me it was so obvious that maybe that's  
25    why I didn't specifically repeat it.

1           MR. HILL: Mr. Baar, I'm sure that in your analysis  
2   you had a chance to review the City's prior versions of its  
3   rent control ordinance in particular since we are now talking  
4   about objectives of the City's rent control ordinance. I  
5   think it would be a good idea to reflect on what the City  
6   originally intended with its rent control ordinance.

7           Next slide.

8           I'm going to read from that for those that can't read  
9   it since it's small print. The City Council recognizes that  
10  permanent rent control localized in the City of Thousand Oaks  
11  would be inconsistent with the system of free enterprise and  
12  initiative, would tend to aggravate and prolong the shortage  
13  of rental units available on the market, would tend to  
14  discourage investment in rental unit development, and would  
15  tend to reduce incentives to improve or sustain a desirable  
16  environment within rental unit facilities. And that's from  
17  City Ordinance No. 755-NS, Section II.

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

23           MR. BAAR: Okay. First of all, you could say in some  
24  sense the City then passed subsequent, you know, ordinances  
25  which set forth another policy, that they wanted to make one

1 part of the ordinance permanent, the part that applied for  
2 mobile homes. I don't know if the apartment part is still in  
3 effect or not.

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

10 MR. HILL: Because of rent control, right?

11 MR. BAAR: No, absolutely not. You have a frozen  
12 supply of mobile home parks for several reasons. One is that  
13 as the urban areas became denser, neighborhoods would not  
14 tolerate the construction of new mobile home parks. They  
15 couldn't get use permits.

16 Another -- as other uses became more profitable,  
17 whether or not there was rent control, it just became -- other  
18 types of construction became more profitable. Apartment --

19 MR. HILL: Because rent control kept rents down.

20 MR. BAAR: No. I'm saying even at market rents for  
21 mobile homes -- because the initial rents -- under state law,  
22 the initial rents for a mobile home park are exempt from rent  
23 control.

24 In fact, I'm quite sure that any park that -- I take  
25 it back -- or I'll broaden it. Any park that's built after a

1     certain date, it's exempt from rent control. So the rent  
2     control is not deterring its construction.

3             MR. HILL: In the City of Thousand Oaks?

4             MR. BAAR: Statewide. Statewide. And so  
5     basically -- and also other types of uses are allowed a higher  
6     density, for example, condominiums, apartments. So you have  
7     these factors and those deterred the construction of new  
8     parks, and the park construction basically stopped before the  
9     rent controls came in.

10            And so -- and -- I mean we -- you know, we could talk  
11    about this for -- for hours, but it's absolutely clear and --  
12    and you know, you've pointed out this clause, but then the --  
13    you know, the City made, you know, a subsequent decision that  
14    it was necessary to rent -- or they believed it was the proper  
15    policy to regulate the rents for mobile home parks.

16            And -- and generally this is based on -- I'd have to  
17    go back to the exact language of the ordinance because of the  
18    unique captive situation.

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

22            MR. BAAR: No. You don't maintain free enterprise  
23    and initiative by not having regulation in a monopoly -- it's  
24    a monopoly type of situation.

25            MR. HILL: Oh, I guess -- I guess a monopoly would

1 be -- it wouldn't be charging 100 and -- what is it? \$127 a  
2 month for rent?

3 MR. BAAR: No. I -- I agree with that, but I'm not  
4 saying the owner acted monopolistically. I'm saying you have  
5 a situation where if the rent goes up, a mobile home owner  
6 cannot move their mobile home to another space. They can only  
7 rent that space with that mobile home or they lose their  
8 investment.

9 I'm not saying it's -- you know, so in that  
10 particular concept you could say it's a type of monopoly.  
11 Other people might -- they'd call it a captive market, maybe a  
12 captive market. You could choose that word, but it's clearly  
13 a special situation. You've got this person who has a huge --  
14 you know, a big investment. They cannot move it.

15 MR. HILL: Okay. Mr. Baar, now that we've done with  
16 the appetizer, let's move on to the meat and potatoes. Let's  
17 discuss your opinion regarding the proper base year --

18 CHAIR WERTHEIMER: Counselor, we're on a fact-finding  
19 mission here, please.

20 MR. HILL: I'm sorry, what?

21 CHAIR WERTHEIMER: We're here to find out the facts  
22 and exchange -- and exchange ideas and information, okay?

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

25 CHAIR WERTHEIMER: Understood, thank you.

1 MR. HILL: Thank you.

2 Mr. Baar, isn't it true that in order for the  
3 maintenance of net operating income formula to work, that the  
4 base year chosen must generally be a year prior to the  
5 imposition of rent control?

6 MR. BAAR: Well, generally it has been. There have  
7 been exceptions. For example, if there was a fair rent  
8 decision subject -- fair return decision subject to the  
9 passage of the ordinance. That's often been used as the base  
10 year.

11 And then there's cases where base year information  
12 has not been available, I'd say, you know, ideally to, you  
13 know, use a pre-regulation year is the best. It's not  
14 constitutionally required.

15 MR. HILL: Next slide, please.

16 I'm going to quote from a case -- recent case, court  
17 of appeal case in Mountain -- MHC Operating Limited  
18 Partnership versus City of San Jose. I guess you testified in  
19 that case, did you not?

20 MR. BAAR: Yes, I did.

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

25 MR. BAAR: Yeah, generally it is.



1           MR. HILL: Okay. And Mr. Baar, isn't it true that  
2 the City adopted such a presumption? The next statement on  
3 that slide, sorry.

4           MR. BAAR: Yes, but the City also passed a regulation  
5 that said where the base year income and expense information  
6 was not available, that then the base year would be the first  
7 year for which income and expense information --

8           MR. HILL: We'll get to that. Let's start with the  
9 presumption first because I think, you know, we need to -- you  
10 know, you're a lawyer and I think you understand the -- the  
11 importance of a presumption of law.

12           It states: The Commission presumes that the net  
13 operating income received up to April 1980 provided landlords  
14 with a just and reasonable return on their rental units unless  
15 there is clear and convincing evidence to the contrary.  
16 That's Section 1.03 of Regulation 2.

17           Mr. Baar, isn't it true that the City's regulations  
18 provided that 1979 must be the base year whenever any  
19 financial information pertaining to that year is available?

20           MR. BAAR: Well, did it say any financial -- my  
21 understanding of financial information meant when there's  
22 income and expense information.

23           MR. HILL: Let's look at the regulation Section 3.01.  
24 Next slide, please.

25           The base year shall be -- shall be 1979 when the

1 financial information for that year is available.

2 MR. BAAR: Right, and my conclusion is if you don't  
3 have any expense information that -- you know what, I think  
4 when people drafted this, you know, ordinance they  
5 couldn't think of -- or regulations, they couldn't think of  
6 every possible variation that somebody would come in and say,  
7 "Well, I have income information, but I don't have expense  
8 information but therefore I still have base year information."

9 And I think the clear intent, you know, sensible  
10 reading of that is if you don't have expense information you  
11 don't have base year -- you don't have information for that  
12 year.

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

15 MR. BAAR: For gross income, yes.

16 MR. HILL: Okay.

17 CHAIR WERTHEIMER: Counselor, question, please. Do  
18 you have your PowerPoint presentation available for  
19 the committee to -- or a copy of it?

20 MR. HILL: Yeah. It's on -- it's loaded on the City  
21 system.

22 CHAIR WERTHEIMER: Okay. Is there a way we can get  
23 that printed for the committee?

24 MR. HEHIR: Counsel, what's happening is that when  
25 you go to the slide, you immediately go back to --

1 MR. HILL: I don't.

2 MR. HEHIR: -- the witness.

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

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

10 CHAIR WERTHEIMER: Is there anybody here in the city  
11 who can print what he said is on the computer, on the system?  
12 We -- we need to find that out. So we're going to take a  
13 break and we'll be back at 8:45. Thank you.

14 (Recess.)

15 MR. HILL: It was my understanding with the City  
16 staff that we would have adequate time to cross-examine  
17 witnesses and then we would then have equal time with the  
18 City's time to present our case.

19 CHAIR WERTHEIMER: Yes, you do, but it's not -- your  
20 presentation is set (unintelligible) then your cross.

21 MR. HILL: Correct.

22 CHAIR WERTHEIMER: Okay. (Unintelligible).

23 MR. HILL: So we'll be brief.

24 CHAIR WERTHEIMER: Okay. Thanks.

25 MR. HILL: Thank you.

1           Mr. Baar, isn't it true that 1979 expense information  
2   is available in the form of City records showing 1982 expense  
3   data from which 1979 expense data can be extrapolated by  
4   adjusting for inflation?

5           MR. BAAR: My conclusion is that that does not meet  
6   the requirements of the regulations because I don't think  
7   extrapolating information from 1982 in order to get 1979 is  
8   not having 1979 information within the contents of the  
9   regulations because basically if somebody could -- under that  
10   approach, somebody would always have 1979 data because even if  
11   they have, you know, 2000 data, you could extrapolate it back  
12   to 1979.

13           And it's -- this is a very specific provision and  
14   it's meant to require actual data.

15           MR. HILL: Mr. Baar, didn't you in fact testify in  
16   trial a few years ago that similar type expense information is  
17   sufficient financial information from which to establish base  
18   year net operating income?

19           Next slide, please.

20           With respect to expenses, Dr. Baar testified that  
21   expenses could be extrapolated by using current data in  
22   adjusting for inflation.

23           MR. BAAR: Yes, I did testify to that, but that was  
24   not in the context of this type of regulation, and under other  
25   ordinances, I have extrapolated backward. But this particular

1 regulation is very specific and requiring something different.

2 MR. HILL: Mr. Baar, according to the City  
3 regulations, isn't it true that only the park owner/applicant  
4 can request a different base year and only if there is no  
5 actual or imputed financial information available and only if  
6 the park owner can make a clear and convincing showing of  
7 evidence regarding lost records?

8 MR. BAAR: Just a second. I'm looking --

9 MR. HILL: Next slide -- excuse me, next slide after  
10 that.

11 THE PUBLIC: Objection. Calls for a legal  
12 conclusion.

13 MR. BAAR: There's also a provision in the regulation  
14 that says in the event 1979 financial information is not  
15 available and where the loss of such information -- records  
16 can be substantiated by clear and convincing evidence, the  
17 landlord of record may substitute as a base year the  
18 following -- first year following 1979 for which records are  
19 available.

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

21 MR. BAAR: Yes, and I --

22 MR. HILL: Mr. Baar --

23 MR. BAAR: The way I read that is you can't use 1979  
24 if you don't have the data.

25 MR. HILL: Mr. Baar, is there anything in that

1 regulation that requires the park owner to use a different  
2 year other than 1979 if he chooses not to?

3 MR. BAAR: Okay. I read this, and we can disagree,  
4 that you can't use the 1979 if you don't have the data.

5 MR. HILL: Mr. Baar, isn't it true that there are  
6 only two instances in which a court has allowed a post-rent  
7 control base year, first, when a city in its rent control  
8 ordinance has exercised its discretion to adopt a different  
9 base year, and second, when the mobile home park was sold  
10 after the original base year and the purchasing park owner  
11 adjusted its purchase price accordingly? And I'm referring to  
12 the MHC case.

13 The next slide, please.

14 MR. BAAR: Well, I don't know how many cases this  
15 issue has come up, but I believe that the -- there's no  
16 doctrine that says that there's a constitutional requirement  
17 that you have to use a pre-rent control base year in an MNOI  
18 standard.

19 I've often recommended it -- or I have recommended  
20 it, but I don't think it's required by law.

21 MR. HILL: Mr. Baar, does the City ordinance adopt a  
22 year other than 1979 as base year? Look at the second bullet  
23 point on that slide. Maximum rent is that rent in effect  
24 between June 1979 and May 1980.

25 MR. BAAR: Well, I -- let me see. I think this is

1 for the annual rent increase provision, this section --

2 MR. HILL: Mr. Baar, let's move on.

3 MR. BAAR: -- under the fair return standard.

4 CHAIR WERTHEIMER: Counselor, question if I may,

5 please.

6 MR. HILL: Sure.

7 CHAIR WERTHEIMER: The -- your questions are about

8 his testimony and not about the facts that we need to make our

9 decision on here. So I ask that you instead of questioning

10 his -- his testimony, just ask the questions so we can gain

11 information as we go along.

12 MR. HILL: I'm -- I'm trying to address the -- the

13 three legs of his opinion that we addressed at the beginning

14 and -- and the three legs of his opinion are -- are -- are key

15 factors here. I've finished the one leg on the base year and

16 I'm going on to the second leg right now, if I may.

17 CHAIR WERTHEIMER: As long as we get some information

18 to help our decision up here, that would be great.

19 MR. HILL: Okay. Thank you.

20 Mr. Baar, are you an appraiser?

21 MR. BAAR: No, I'm not.

22 MR. HILL: Have you ever been qualified to testify on

23 market rents?

24 MR. BAAR: No. I'm not an appraiser. I don't think

25 I've been qualified to testify on that.

1           MR. HILL: Does your report -- your report on page 22  
2 includes an estimate of market value for 1982, is that  
3 correct?

4           MR. BAAR: Well, just a minute.

5           Yeah. I used the data that Mr. Brabant supplied.

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

8           MR. BAAR: No. I relied on another appraiser.  
9 Where -- certainly an expert in putting together their  
10 testimony can rely on information from other experts.

11          MR. HILL: We'll move on to the next -- the next  
12 point of your appraisal that deals with 1982 expense  
13 information. Let's start with where that operating income  
14 figure came from.

15          It came from a 1983 memorandum prepared by Michael  
16 Martello, deputy city attorney, addressing the rent --  
17 addressed to the Rent Adjustment Commission for purpose of  
18 ruling on an application under the City rent control  
19 ordinance, did it not?

20          MR. BAAR: Yes, it did.

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



1 MR. BAAR: That's my understanding of it.

2 MR. HILL: Okay. Next slide.

3 Next slide.

4 That's the statement that's in the report.

5 MR. BAAR: What -- what number is the slide so I can

6 follow?

7 MR. HILL: I'm sorry?

8 MR. BAAR: Is there a slide number so I can follow?

9 Because I can't see any of these.

10 MR. HILL: Oh, okay. Well, I'll read it to you. It

11 says --

12 CHAIR WERTHEIMER: We've got -- one moment. We got a

13 printed copy during the break, so if you could let us know

14 what page it's on --

15 MR. HILL: Okay. Sure.

16 CHAIR WERTHEIMER: Thank you.

17 MR. BAAR: It's number -- it's on page 10.

18 CHAIR WERTHEIMER: Page 10.

19 MR. HILL: I have a printout of it somewhere here,

20 not here. Sorry. I have my printouts only, thank you.

21 Okay. Okay. Moving on, Mr. Baar, is it presumed

22 that -- under Evidence Code 664 it's presumed that an official

23 duty has been regularly performed, is that -- is that not

24 correct?

25 MR. BAAR: I can't testify about the Evidence Code.

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

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

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

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

17          MR. HILL: Okay. Mr. Martel -- or Mr. Baar, do you  
18 have any reason to believe that Mr. Martello failed to make an  
19 adjustment regarding imputed management and administrative  
20 expenses in his 1983 memorandum, assuming one was required?

21          MR. BAAR: All right. This one. He would have been  
22 required to do it if they were over 8 percent, and if they  
23 were under, my understanding is he wouldn't have been required  
24 to make an adjustment.

25          MR. HILL: Let's look at that City regulation you're

1 referring to, 3.02. Isn't it true that 3.02 applies only when  
2 the park owner voluntarily decides to seek an adjustment for  
3 imputed administrative and management expenses?

4 MR. BAAR: You said 3.02?

5 MR. HILL: Of RAC Sub 2, Section 3.02.  
6 Next slide, please.

7 MR. BAAR: Okay. This is on page 12.

8 MR. HILL: Yeah. There's nothing about 3. -- there's  
9 nothing about that section that mandates that a park owner  
10 include an adjustment for imputed management and  
11 administrative expenses, is there?

12 MR. BAAR: No. I don't -- I mean I don't -- yes, the  
13 park owner is not allowed to -- not required to impute  
14 expenses if they didn't record -- you know, they're not  
15 allowed to -- they're not required to impute them if they did  
16 the services themselves.

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

22 MR. BAAR: So you were talking about the section  
23 where it says when the landlord performs different services in  
24 the base year and the current year --

25 MR. HILL: Yeah, right.

1 MR. BAAR: -- an adjustment will be allowed?

2 MR. HILL: Yeah. And the question was there's  
3 nothing mandatory about that section, is there?

4 MR. BAAR: No. I -- but first of all, that analysis  
5 was made pursuant to a return on investment standard, and I  
6 made an adjustment because I was doing -- you know,  
7 undertaking a maintenance of net operating income standard and  
8 I felt there had to be comparability between the base year and  
9 the current year.

10 MR. HILL: Let's skip ahead to the next slide.

11 Okay. Page 18.

12 Okay. Mr. Baar, you made -- you came up with your  
13 own formula for determination of an imputed base year, didn't  
14 you, in this statement: Subject to the gap in available  
15 information, an alternate calculation is included which  
16 increases the 1982 operating expense level to an amount which  
17 limits the rate of operating cost increases from 1982 to 2009  
18 to the rate of increase in CPI?

19 Mr. Baar, has that -- that formula that you used ever  
20 been approved by a court or used by you before?

21 MR. BAAR: Yes, it has.

22 MR. HILL: When?

23 MR. BAAR: Okay. The problem is I've prepared, you  
24 know, more than 50 of these reports and I don't remember  
25 specifically one -- which case it was used in, but I have used

1     this type of approach in the past.

2             MR. HILL:   Okay.   Okay.   The last point I want to  
3     address is your inflation indexing adjustment.

4             Mr. Baar, isn't it true that you apply a 50 percent  
5     inflation indexing adjustment to base year net operating  
6     income despite the fact that no such reduced inflationary  
7     standard is set forth in either the City's ordinance or  
8     regulations?

9             MR. BAAR:   Well, I believe that the ordinance or  
10    regulations say that base, you know, period net operating  
11    income is presumed to provide a fair return, and there's no  
12    provision in the ordinance or regulations setting forth how  
13    much indexing is required.   That's -- that's the issue.  
14    That's my reading of the ordinance.

15            It doesn't -- if it said 100 percent was required,  
16    I'd only use 100 percent.   If it said 50 percent was required,  
17    I'd only use 50, but my reading of it, it doesn't specify  
18    here.

19            MR. HILL:   Mr. Baar, isn't it true that in none of  
20    the California cases to which you cite did the courts ever  
21    apply less than 100 percent inflation indexing adjustment  
22    where the city or rent adjustment board did not expressly  
23    adopt such a standard in advance of the hearing?

24            MR. BAAR:   Let's -- I'm thinking for a minute.

25            In Escondido, there's no -- there's just a list of

1 factors, and in that case, I used a less than 100 percent -- I  
2 listed indexing at 100, 75, 50 percent to the best of my  
3 memory, and the court and the board used 50 percent, and the  
4 court upheld it.

5 MR. HILL: Mr. Baar, wasn't there in that case a city  
6 regulation stating that an inflation index adjustment must be  
7 less than 60 percent? Cite to page 15 of that opinion.

8 MR. BAAR: Was it the -- I'd have to go back and look  
9 at the opinion.

10 MR. HILL: Okay. All right. Mr. Baar, let's see.  
11 I'm trying to move quickly in accordance with your --

12 Okay. I have no further questions for Mr. Baar.

13 Mr. Brabant.

14 Good evening, Mr. Brabant.

15 MR. BRABANT: Good evening.

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

20 MR. BRABANT: No, I never --

21 MR. HEHIR: Wait, wait. Are you talking about a  
22 different case or are you talking about tonight?

23 MR. HILL: In Orange County Superior Court today.

24 MR. HEHIR: Let's stick to the testimony tonight.

25 MR. HILL: Okay. Mr. Brabant, on page 19 of your

1 report, you state: It is necessary to adjust the rental data  
2 we do have for the closest two years of 1983 and 1986. Is  
3 that true, that you adjusted the rental figures for the  
4 comparable parts?

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

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

11 MR. BRABANT: Yes. You mean -- oh, to get to my  
12 adjusted figure for 1979?

13 MR. HILL: What adjustments did you do for each park?  
14 Did you do the same adjustment for each park?

15 MR. BRABANT: Yes, I did.

16 MR. HILL: And what adjustment was that?

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

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

24 MR. BRABANT: That's correct, because we didn't have  
25 any rental data for 1979 to show increase -- what increases up

1 to 1983. We just had to work backwards from '83 back to '79.

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

5 MR. BRABANT: I estimated them based on the -- the  
6 way the rents were increasing between the three-year period  
7 1983 to 1986.

8 MR. HILL: I'm going to quote from page 19 of your  
9 report: After analyzing the available rental data, I have  
10 made estimates of the adjusted 1979 rent for each of the five  
11 parks. From that data, I have been able to provide an opinion  
12 of the market rent of Ranch Mobile Home Park in the base year  
13 of 1979.

14 Is that -- that's what's stated on page 19 of your  
15 report, is that correct?

16 MR. BRABANT: Yes.

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

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

25 MR. HILL: And those adjustments were made to the



1 average monthly rent of the comparable parks, weren't they?

2 MR. BRABANT: Yes.

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

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

11 MR. HILL: On page 5 of your report, you define  
12 market rent as, quote, "the most probable rent that a property  
13 should bring in a competitive and open market," closed quote,  
14 is that correct?

15 MR. BRABANT: Yes.

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

19 MR. BRABANT: I think -- I'm sorry. Your question  
20 was he wouldn't charge --

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

25 MR. BRABANT: Well, we're talking about a concept of

1 market rent for all of the spaces in this mobile home park. I  
2 don't think it would make any sense at all to look at the  
3 highest rent of one space in one park and then apply that to  
4 all the spaces in the park you're appraising.

5 I looked at the average space rent in the comparable  
6 parks and applied that same average to the subject park.

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

11 MR. BRABANT: Well, the property owner -- sure, he  
12 would try to seek the highest rent. Of course, the tenant  
13 would try to pay the lowest rent.

14 MR. HILL: Mr. Brabant, isn't it true that California  
15 Evidence Code Section 822 A4 and B exclude from evidence any  
16 appraisal where the appraiser bases -- where the appraisal is  
17 based on an adjustment of the comparable rental values?

18 MR. BRABANT: You're talking about Evidence Code in  
19 imminent domain?

20 MR. HILL: It applies in other cases. If you read  
21 Subsection b, it applies that same provision to all other  
22 cases as well, and it says -- and it excludes from evidence  
23 any testimony based on -- on an estimate of comparables, is  
24 that correct?

25 MR. BRABANT: No, no. There's nothing in that

1 Evidence Code that says you can't make adjustments to  
2 comparables, and what that's talking about is appraising the  
3 comparable.

4 For instance, if you had a -- if you had an -- if you  
5 were appraising a vacant commercial lot and you wanted to use  
6 as a comparable a similar lot, but that lot had an office  
7 building on it, but you decided, well, I'm going to -- I  
8 figure so they paid a million dollars for the office building,  
9 I think the building is worth 500,000, so the land must have  
10 been worth 500,000. That's appraising the comparable.

11 But you could certainly -- you are certainly allowed  
12 to make adjustments to comparables.

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

16 MR. BRABANT: No.

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

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

22 MR. HILL: No further questions of this witness.

23 CHAIR WERTHEIMER: Thank you.

24 MR. HILL: One moment, please.

25 CHAIR WERTHEIMER: You're done, great.

1           Okay. The residents' lawyer, Chandra.

2           MS. SPENCER: I didn't know if he was done.

3           CHAIR WERTHEIMER: I guess I should have asked. Do

4   you have questions?

5           MS. SPENCER: Pardon?

6           CHAIR WERTHEIMER: Do you have questions?

7           MS. SPENCER: I do.

8           CHAIR WERTHEIMER: Okay.

9           MS. SPENCER: Thank you.

10          And I realized I didn't give my city of residence

11   when I came up here last. I don't know if it makes a

12   difference, but my office --

13          CHAIR WERTHEIMER: Oh, it does. You can't go on

14   unless you do.

15          MS. SPENCER: My office address is in Los Angeles,

16   but I'm a resident of Oak Park here in Ventura County.

17          CHAIR WERTHEIMER: And we're on a fact-finding

18   mission here.

19          MS. SPENCER: I understand.

20          CHAIR WERTHEIMER: Okay, good.

21          MS. SPENCER: I heard you.

22          So I'm going to address these questions generally to

23   staff, and -- and I'm not quite sure what -- who amongst the

24   four members here want to answer them, but I'll leave it up to

25   you guys to pick and choose who 'cause there seems to be some

1 division of labor here that I can't quite understand.

2 CHAIR WERTHEIMER: How about you just address to the  
3 staff and they'll choose to whom.

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

6 The first question is with respect to the application  
7 of the TDP restrictions to the park. Is it the staff's  
8 position that the Rent Stabilization Ordinance because it was  
9 subsequently adopted somehow supersedes the TDP restrictions  
10 for the park?

11 MR. NORMAN: That's one of the reasons.

12 MS. SPENCER: Okay. So is it the staff's position  
13 that the TDP restrictions as they exist in the TDP for this  
14 park are not enforceable?

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

20 MS. SPENCER: Okay. So is it the staff's position  
21 then that if the Rent Adjustment Commission were to adopt --  
22 or to -- to adopt a rent increase based on this just and  
23 reasonable return application that the TDP restrictions are no  
24 longer applicable and that the decision of the Rent Adjustment  
25 Commission would then somehow supersede those?

1           MR. NORMAN: We have no position about whether those  
2 other restrictions are valid or are invalid. What we're  
3 saying is to process a rent increase application, it must be  
4 done through the ordinance.

5           I see you. If you look at the 84 resolution, the  
6 11.5 percent rate of return is not tied in any way to the  
7 income of the tenants. So we feel that this can be processed  
8 that way without having to address in this hearing the status  
9 of those restrictions.

10          MS. SPENCER: Okay. 'Cause there was some discussion  
11 in the staff report -- and I suppose it sounds like these  
12 initial questions are best addressed to you, Mr. Norman.

13          There was some discussion in the staff report about:  
14 The current ordinance does not -- and this is at page 8 of the  
15 staff report in the first paragraph and the third sentence, it  
16 states: The current ordinance does not exempt the Ranch  
17 Mobile Home Park from its purview and therefore would trump  
18 any conflicting resolution.

19          So it's the staff's position that the Rent  
20 Stabilization Ordinance trumps Resolution 84-037, is that  
21 my -- is that what you're trying to say there?

22          MR. NORMAN: In terms of this type of application,  
23 yes.

24          MS. SPENCER: Okay. Has the staff submitted anything  
25 to the City Council in terms of this application to determine

1     whether or not the City Council is going to come to a  
2     conclusion with respect to that trumping discussion or has  
3     this strictly been submitted to the Rent Adjustment  
4     Commission?

5             MR. NORMAN: I'm not at liberty to say whether the  
6     city attorney's office has had discussions with Council --

7             MS. SPENCER: No.

8             MR. NORMAN: -- regarding that issue.

9             MS. SPENCER: That wasn't my question.

10            Has any formal request for a hearing or a  
11     consideration by the City Council been made by staff to the  
12     City Council?

13            MR. NORMAN: I'm sorry. For what though?

14            MS. SPENCER: For a determination as to whether or  
15     not there's -- the resolution trumps the ordinance.

16            MR. NORMAN: No.

17            MS. SPENCER: Okay. When did the Rent Stabilization  
18     Ordinance first become applicable to this park?

19            MR. NORMAN: I don't think it's fair for me to try to  
20     engage in a hypothetical. It's staff's position that it  
21     applies to this application.

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

25            MR. NORMAN: I'm saying that this is the first

1 application which we are using the ordinance.

2 MS. SPENCER: Okay. Well, let me direct this  
3 question then to Mr. Baar.

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

8 MR. BAAR: Yes, with the exception --

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

14 MR. BAAR: Right, that's my understanding.

15 MS. SPENCER: And that's consistent with the case law  
16 about establishing base years, that the presumption is the  
17 year before and absent exceptional circumstances or Vega  
18 adjustments, that the year before a Rent Stabilization  
19 Ordinance goes into effect should establish what the fair  
20 market value is, is that correct?

21 MR. BAAR: I don't know. I don't think -- I'd have  
22 to go back and look at the opinions. I don't think they've  
23 been that specific about saying what the base year should be  
24 and more they said that whatever the base year is, it should  
25 be a fair starting point.



1 MS. SPENCER: So do you -- based on the fact that  
2 this ordinance first went into effect in 1980, is it your  
3 opinion that 1979 in absence of exceptional circumstances is a  
4 fair starting point?

5 MR. BAAR: Yeah. Well -- yes, I believe it would be  
6 a fair starting point, yeah --

7 MS. SPENCER: Okay.

8 MR. BAAR: -- or it is.

9 MS. SPENCER: So what if this -- as we know what  
10 happened here, the Rent Stabilization Ordinance was never  
11 actually applied to this park. So we have no -- we don't have  
12 the same presumption that the Rent Stabilization Ordinance  
13 went into effect for this park in 1980, is that correct?

14 MR. HEHIR: Counsel, just really quick, are you doing  
15 a hypothetical?

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

21 MR. HEHIR: Well, okay. As I told other counsel,  
22 just -- we're trying to get to the facts of what their  
23 testimony is and that's questions about the facts of their  
24 testimony.

25 MS. SPENCER: Okay. Would it be fair -- given the

1 fact that the Rent Stabilization Ordinance has never been  
2 applied to this park to date, would it be fair to use 2009 as  
3 a base year?

4 MR. BAAR: Well, I guess more (unintelligible), if  
5 you used 2009, you'd still have to start with a rent that  
6 under the Vega concept, you'd have to start with a rent that  
7 reflected market conditions and --

8 MS. SPENCER: We'd have to figure out if you make  
9 adjustments, but let's focus on -- right, I agree with you.  
10 We'd have to figure out if Vega even applies.

11 But would -- given the fact that there's never been  
12 any application of the rent stabilization to this park, would  
13 it be fair to use 2009 as the base year?

14 MR. BAAR: Yeah. I'd say when I answer that -- when  
15 you ask is it fair it's a little different than, you know,  
16 what -- what is the purpose of the ordinance, but you know,  
17 let's say in the abstract it is -- would it be  
18 constitutionally fair, yeah, I think it would be  
19 constitutionally fair.

20 MS. SPENCER: It would be constitutionally  
21 reasonable, is that -- would you agree with that?

22 MR. BAAR: Yeah, yeah.

23 MS. SPENCER: So in the rental -- in the park owner's  
24 application, their position is that somehow the -- and based  
25 on my understanding of the attorney's memo that was prepared

1 in June of this year, that somehow the rent restrictions  
2 imposed by the development approvals expired as of 2007.

3 Did you read that in their application, that there  
4 was a 30-year limit?

5 MR. BAAR: Well, I might have read it. I don't  
6 remember.

7 MS. SPENCER: Okay. And in that, he seems to suggest  
8 that the first year that the Rent Stabilization Ordinance  
9 would be applied to this park would be 2008. Did you see  
10 that?

11 MR. BAAR: I don't remember that.

12 MS. SPENCER: Okay. Let's assume that he's right and  
13 that 2008 is the first year that the Rent Stabilization  
14 Ordinance could have been applied to this park, then based on  
15 that fair and -- the reasonableness in terms of the  
16 constitutional standard, would 2007 be considered a  
17 reasonable -- a fair year to use as the base year?

18 MR. BAAR: Well, I'd say this, I mean you have to  
19 look at -- you know, the applicable rent ordinance, but let's  
20 say there was no ordinance, we're just discussing fair return.

21 MS. SPENCER: Okay. Let's say that the ordinance --  
22 the first time this ordinance could be applied to the park was  
23 in -- was in 2008. Let's assume that that's correct.

24 MR. BAAR: Okay.

25 MS. SPENCER: Okay. Then would it be reasonable to

1 use 2007 as a base year?

2 MR. BAAR: Well, I think -- I think it would be --

3 MS. SPENCER: From a constitutional perspective.

4 MR. BAAR: Okay. I think there would be arguments,  
5 you know, for and against using 2007.

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

9 MR. BAAR: I -- I think it's reasonable there are --  
10 you know, their rationale for doing that because, you know,  
11 this was the starting point for rent regulation for what  
12 you're looking at in order to determine what's -- in order to  
13 determine what's reasonable, you look at the other parks.

14 So their rationale for going back to 1979, because  
15 that's when the other parks weren't regulated, as a starting  
16 point and, you know, so there are rationale for doing that.

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

19 MR. BAAR: Yeah. I'd -- I'd say there are  
20 rationale -- I'd say there are rationale -- yeah, there are  
21 rationale both ways.

22 MS. SPENCER: And -- and staff would agree that this  
23 park is -- it does lend itself to an exceptional situation  
24 given the history, correct? You would agree with that?

25 It's an exceptional -- I think the word's

1 "exceptional" -- unique history, it has a unique history, you  
2 would agree with that?

3 MR. BAAR: Yes.

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

7 MR. BAAR: No. This is the first case I've been in  
8 with a park history like this.

9 MS. SPENCER: Where there's development approvals  
10 which established the rent ceilings, is that correct? This is  
11 the first time you've had to deal with that?

12 MR. BAAR: Yes, as far as I remember, yes.

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

17 MR. BAAR: That's been the standard -- yeah, that's  
18 been the standard situation.

19 MS. SPENCER: And have you ever had to opine as to  
20 whether or not the fair and reasonable -- just and fair return  
21 analysis should apply in a situation where the rent ceilings  
22 are established by development approvals as opposed to a Rent  
23 Stabilization Ordinance?

24 MR. BAAR: No, I haven't -- I haven't dealt with that  
25 issue previously.

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

5 MR. BAAR: You mean how they work?

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

8 MR. BAAR: Well, I see them as separate issues. I  
9 mean if there's a development agreement or whatever, whatever  
10 occurred, that's one set of standards, and I felt like the  
11 just and reasonable under the ordinance was another set of  
12 standards.

13 MS. SPENCER: Have you ever been asked to apply a  
14 just and reasonable return analysis to a situation where the  
15 rent ceilings were based on a -- a development agreement or  
16 development approvals, we'll call them?

17 CHAIR WERTHEIMER: Counselor, I think he's been -- I  
18 think he's answered that.

19 MS. SPENCER: Okay.

20 CHAIR WERTHEIMER: Can we go forward, thank you.

21 MS. SPENCER: Okay. Question to the staff: Has the  
22 park ever attempted to register under the Rent Stabilization  
23 Ordinance?

24 MR. NORMAN: To the best of my knowledge --

25 MS. SPENCER: Did the park owners --

1 MR. NORMAN: -- no.

2 MS. SPENCER: Okay. Has the City ever asked the park  
3 to register under the Rent Stabilization Ordinance?

4 MR. NORMAN: To the best of my knowledge, no.

5 MS. SPENCER: Now, let's go to -- again, probably  
6 going back to Mr. Baar, does the applicability of the Vega  
7 analysis differ if the rents are set based on a two-sided  
8 development bill as opposed to a one-sided Rent Stabilization  
9 Ordinance?

10 MR. BAAR: No. I felt that the Vega -- the Vega  
11 analysis is based on the concept of setting rents that are  
12 comparable to other comparable properties in a base year.

13 MS. SPENCER: Okay. Well, let's talk about  
14 comparable properties. Is there -- has there been -- have you  
15 done any analysis as to whether or not there are other  
16 comparable affordable housing properties even within a  
17 100-mile radius of the City of Thousand Oaks to determine what  
18 the comparable rents would be for an affordable housing  
19 project such as the Ranch Mobile Home Park?

20 MR. BAAR: Well, I saw that the Vega requirement  
21 more -- what that has meant is meant comparable under -- with  
22 market conditions and I didn't see that the -- a property with  
23 affordable housing provisions was not operating under market  
24 conditions.

25 MS. SPENCER: So is there a market for affordable

1     housing?  Is there a market rent that can be established for  
2     affordable housing?

3             MR. BAAR:  No.  I mean affordable housing is based on  
4     the concept that you set the rents according to a different  
5     standard which is affordability rather than fair return or  
6     market.

7             MS. SPENCER:  It's not --

8             MR. BAAR:  It's a different standard.

9             MS. SPENCER:  It's not a free and open market.  It's  
10    a different set of circumstances.

11            MR. BAAR:  Right.

12            MS. SPENCER:  Let me ask that then to -- to you.  
13    Help me with your last name, I apologize.

14            MR. BRABANT:  Brabant.

15            MS. SPENCER:  Brabant, okay.  Mr. Brabant, have you  
16    ever -- have you ever done any appraisals of affordable  
17    housing projects?

18            MR. BRABANT:  Yes.

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

22            MR. BRABANT:  Well, there's a market.  Are you  
23    talking about the rental or sale of the units or are you  
24    talking about developing a project and renting or selling it  
25    out?



1 MS. SPENCER: To establish --

2 MR. BRABANT: Affordable to who?

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

7 MR. BRABANT: Well, an appraisal of the property for  
8 the value to the owner of the property or are you talking  
9 about the rental of the individual units?

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

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

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

20 MR. BRABANT: Well, sure, if your task is to value  
21 the entire project, let's say for lending purposes or  
22 something, they're going to want to know, well, how much  
23 rental income is going to be produced by this project.

24 So you're going to have to come up with estimates,  
25 well, if there are standards as to how many units have to be

1     rented to very low-income residents that have a certain income  
2     level and then others that are just low but not very low.

3             And then you move up the standard and you can -- but  
4     it's not based -- it's not based on the market. That's based  
5     on the income level and -- and how many of those various types  
6     of people have -- you have to rent to.

7             CHAIR WERTHEIMER: Counselor.

8             MS. SPENCER: Yes.

9             CHAIR WERTHEIMER: Can I ask you a question?

10            MS. SPENCER: Sure.

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

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

21            CHAIR WERTHEIMER: Is there such a difference, sir?  
22    The open market versus something with so many special  
23    concessions to it including what City's given for -- given  
24    upfront for development and concessions?

25            MR. BRABANT: Well, not if you're calling it market

1 rent. Yeah, I mean we know what the market -- we know what  
2 rent was established for this particular project. So you know  
3 what the starting rent was as a low-income project.

4 CHAIR WERTHEIMER: So is it fair to say that each  
5 development based on -- whether it has a certain age to it  
6 limitation and income limitation is unique and separate to  
7 just that development, ergo you can't have a standard that  
8 goes over city to city?

9 MR. BRABANT: There's not a standard like that that  
10 I'm aware of.

11 CHAIR WERTHEIMER: Thank you.

12 MS. SPENCER: And let me direct actually a question I  
13 think probably Mr. Prescott as the community development  
14 director may have some knowledge of this.

15 Does the City have any other affordable housing-type  
16 projects within the City of Thousand Oaks?

17 MR. PRESCOTT: No. There are a number of affordable  
18 housing projects within the city that are owned by -- by  
19 either the Area Housing Authority, which is the housing  
20 authority for the City of Thousand Oaks and other nearby  
21 jurisdictions and also by non-profit housing providers such as  
22 Mini Mansions.

23 MS. SPENCER: And are those rental properties?

24 MR. PRESCOTT: Those are rental properties.

25 MS. SPENCER: And does the City have any input as to

1     what the -- in those properties as to what the rents are for  
2     those properties?

3             MR. PRESCOTT:  As Mr. Brabant testified, the rents  
4     are usually -- or not usually, they're definitely set to meet  
5     the income categories that the project is intending to serve.

6             In other words, a low-income project would have rents  
7     up to certain levels depending on family size, based on their  
8     particular income range, a moderate income would have higher  
9     rents based on that income range and the requirements that  
10    families spend no more than a certain percentage of their  
11    income for housing costs.

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

15            MR. PRESCOTT:  That's imputed to the formula.  The --  
16    the income categories are defined by percentage of the median  
17    income.  For example, a moderate income is anywhere from 80 to  
18    120 percent of median income.

19            MS. SPENCER:  And this year -- I think I pulled this  
20    number earlier, would you agree with me that this year's very  
21    low income for Ventura County is in the neighborhood of about  
22    \$30,000 for a single person?

23            MR. PRESCOTT:  I can't -- I can't confirm or not  
24    confirm that.

25            MS. SPENCER:  Okay.

1           MR. PRESCOTT: I haven't looked at that data.

2           MR. HEHIR: And Counsel, we're getting off -- off  
3 subject here.

4           MS. SPENCER: Okay. Okay. So -- so if you're trying  
5 to figure out what the rents that should be established for a  
6 very low-income housing project, you use some other formula  
7 other than the fair market rents that you came up with of  
8 \$150, is that correct?

9           MR. BRABANT: Yes.

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

15          MR. BRABANT: No, I don't.

16          MS. SPENCER: And neither you -- nobody on staff was  
17 asked to determine that, is that correct?

18          Correct, nobody was --

19          MR. BAAR: That's correct.

20          MS. SPENCER: Okay. So in terms of the Vega  
21 analysis, the Vega analysis, you've done that strictly based  
22 on free market, fair market conditions taking into no  
23 consideration the affordable housing restrictions placed on  
24 this project, correct?

25          MR. BAAR: Right, they're different concepts.

1 MS. SPENCER: Okay. And you -- you would agree that  
2 none of the parks that you evaluated to come up with this \$150  
3 a month fair Vega figure had any of the same requirements that  
4 the Ranch park did?

5 MR. BRABANT: Correct.

6 MS. SPENCER: Okay. So one of the -- this is  
7 directed to you, Mr. Baar. Where in the municipal code or the  
8 resolutions did you find authority for estimating the 1982  
9 expenses? What allowed -- what did you find in there that  
10 allowed -- that you think allowed that to be done?

11 MR. BAAR: I think -- I think the -- the ordinance  
12 allows -- I'd have to go back through it, but generally  
13 there's a provision when you're looking at income and expenses  
14 you can adjust them based on reasonability and I think that's  
15 implicit on doing -- you know, in the power to do a fair  
16 return analysis.

17 And you know, that's what I would say it's, you know,  
18 based on that. I'd have to go back through the specific  
19 language, but that's always been understood, that there can be  
20 adjustments made if the income and expenses are un -- you  
21 know, or should be adjusted for some reason.

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

24 MR. BAAR: Okay.

25 MS. SPENCER: The expenses, you -- the expenses that

1     you came up with for 1982 --

2             MR. BAAR: Right.

3             MS. SPENCER: -- were based on an estimate and some

4     statistical extrapolations, is that correct?

5             MR. BAAR: That's correct.

6             MS. SPENCER: And that was based on an estimate

7     pulling from some other actual year figures, correct?

8             MR. BAAR: That's correct.

9             MS. SPENCER: Where in the ordinance does it say that

10    the Rent Adjustment Commission gets to make an estimate as

11    opposed to having the actual hard figures?

12            MR. BAAR: Okay. I -- I -- I mean I think it, first

13    of all, has the power to take into account other relevant

14    factors. And as I say, I think that's -- I'd have to go back

15    through all the regulations. I don't remember specifically

16    what it says.

17            But I -- you know, I think it's in these powers to

18    review the income and expenses and, you know, to make

19    adjustments.

20            MS. SPENCER: Okay. So Section 3 of RAC-2 is the

21    formula for determining what the -- what the adjustment can

22    be, is that correct?

23            MR. BAAR: I'm looking for it.

24            MS. SPENCER: Take your time.

25            MR. BAAR: You're talking about -- okay. Which

1 section are you talking about now?

2 MS. SPENCER: Okay. Section 3, the heading says

3 Determination of Eligibility for Rent Increases, pursuant to

4 the 1979 base year formula --

5 MR. BAAR: Okay. I found it.

6 MS. SPENCER: You got that?

7 MR. BAAR: Yes.

8 MS. SPENCER: Okay. Now, RAC-5 amends a -- one

9 portion of Section 3 which is 3.07, correct, at page 3 of

10 RAC-5?

11 MR. BAAR: Okay. Page 3 and you're looking at 3.07?

12 MS. SPENCER: Correct. It states at 3.07 the amended

13 version: A determination of eligibility for rent adjustment

14 under this resolution shall be conducted on the basis of the

15 comparison of two full years of data. You see that?

16 MR. BAAR: Yes.

17 MS. SPENCER: So would you agree then that by the

18 City's own resolution that there have to be two complete years

19 of accurate data?

20 MR. BAAR: Well, it says two full years of data and

21 whether or not it has to be accurate --

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

23 accurate?

24 MR. BAAR: No. Well, let me say this: I -- I -- I'm

25 not saying it's not important. I think that's the purpose of



1 an analysis to make an adjustment and consider, you know, what  
2 weight to give it and how -- you know, its accuracy, et  
3 cetera.

4 MS. SPENCER: Okay. Going to Section 4 of RAC-2:  
5 Determination of eligibility for rent increases when 1979 net  
6 operating income and expense information is not available, do  
7 you see that?

8 MR. BAAR: I will.

9 MS. SPENCER: It's page 10 of RAC-2.

10 MR. BAAR: Okay.

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

14 MR. BAAR: That's correct.

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

17 MR. BAAR: Yes.

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

21 MR. BAAR: Well, I don't -- I don't think that's --  
22 the reason is, is because it's saying there has to be some  
23 record of the expense for the year.

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

1 MR. BAAR: Right.

2 MS. SPENCER: It's important to know that.

3 MR. BAAR: Yes.

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

7 MR. BAAR: Yes.

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

12 MR. BAAR: Yes. And as I pointed out in my report,  
13 we had a very unusual situation here. We had a total -- we  
14 had a total that was examined by staff at a former point. We  
15 don't know what went into that examination, but it was  
16 reviewed by staff.

17 It wasn't just something that the park owner wrote  
18 down when submitting the application now and as, you know,  
19 there were -- there are rationale, you know, or problems with  
20 that kind of data, but on the other hand, there were rationale  
21 for using that kind of data.

22 MS. SPENCER: And we don't know what kind of analysis  
23 was done by staff of the 1982 expense figures, correct?

24 MR. BAAR: No. We don't -- they didn't say -- they  
25 say that they reviewed it.

1 MS. SPENCER: Okay.

2 MR. BAAR: Or put it this way: They clearly reviewed  
3 it.

4 MS. SPENCER: And one of the categories of expenses  
5 that's significant for this park is management and  
6 administrative expenses, correct? That's sort of the biggest  
7 big ticket item?

8 MR. BAAR: It's a significant expense, yes. It might  
9 be the biggest. I just have to go back. I'm not disagreeing  
10 with you.

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

17 MR. BAAR: Right. Well, let me say this: What I did  
18 was -- you know, we didn't have the data going back to base,  
19 and so that's why I assumed that these -- you know, I assumed  
20 they were proportionate in the base year to what they are now.  
21 That's why I did that.

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

24 MR. BAAR: Well, because they had these non-record  
25 expenses. So I made an adjustment because the park owner was

1 managing the property and so it wasn't recorded. So we did --  
2 I felt I did the best under the circumstances which was, you  
3 know, presuming they had the same ratio.

4 I mean even if you have the total records, this is  
5 the kind of, you know, adjustment that are commonly made when  
6 there's off-the-book expenditures, type of off-the-book  
7 expenditures because they're not recorded because they're done  
8 by the owner.

9 MS. SPENCER: One of the things that the Rent  
10 Stabilization Ordinance requires is that the -- and the  
11 regulations require is that the expenses be reasonable in  
12 accordance with industry standards, is that correct?

13 MR. BAAR: Well, you'll have to point me to the  
14 section. I mean I believe that.

15 MS. SPENCER: Well, let's -- let me find it real  
16 quick. Give me just a minute.

17 Section 2.117 of RAC-2 states: Operating expenses  
18 must be reasonable. Whenever a particular expense exceeds  
19 normal industry standards in the base year or in the current  
20 year for which a rent -- for which the application for a rent  
21 increase is made, the Rent Adjustment Commission shall  
22 determine whether the expense is reasonable.

23 Do you see that?

24 MR. BAAR: Yes.

25 MS. SPENCER: Has any determine -- I'll direct this

1 to all the staff. Has any determination been made by staff as  
2 to whether or not the specific expenses for either the base  
3 year or the current year being requested to be included in  
4 this application by the owner are reasonable under that  
5 standard?

6 MR. BAAR: Well, first of all, the overall expenses,  
7 you know, compared to, let's say, what a -- for a park this  
8 size were reasonable, let's say, compared with what a -- you  
9 know, a market rent. They were reasonable in -- the ratio of  
10 expenses was reasonable.

11 And secondly, and this is a little complicated, what  
12 happened is because, you know, the lack of data and also you  
13 had this, you know, factor even if you had the data, the owner  
14 was doing their own work, so it was off the record. So you  
15 had no record of it.

16 But by making the base year expenses a percentage of  
17 what the current year expenses were, this was the type of  
18 compensating adjustment in the sense that if the current year  
19 expenses were high, I said the base year expenses were a  
20 percentage of those.

21 So this provided, you know, a type of compensation  
22 because basically in a net operating income -- in a  
23 maintenance of net operating income analysis the critical  
24 factor is the comparison. And here I, you know, used -- said,  
25 well, it would be reasonable that these expenses went up by

1 the CPI since the base year.

2 MS. SPENCER: Isn't the critical factor what actually  
3 happens at this park? Because you start with the first year,  
4 the base year and you figure out whether or not the expenses  
5 were so out of bounds with what was going on with the income  
6 that you need to give them additional -- an additional  
7 increase in the rent, is that correct?

8 We -- we started -- isn't that correct, that you've  
9 got to really do an in depth analysis of whether or not the  
10 expenses were out of balance with the income increases,  
11 correct?

12 MR. BAAR: Well, okay, what you're saying is that  
13 the -- you know, if the income increases weren't adequate to  
14 cover the expense increases.

15 MS. SPENCER: The allowable income increases.

16 MR. BAAR: Right.

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

21 MR. BAAR: Right.

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

25 MR. BAAR: Yes. And the problem here is though, you

1 know, as I point out in the report is severe limitation and  
2 this happens in other cases, too. You're going back a very  
3 long period. You don't have all the data. You don't have all  
4 the information.

5 And secondly, as I pointed out, even if we had all  
6 the information, we have this problem of a lot -- the expenses  
7 weren't recorded in the base year, a substantial percentage of  
8 them.

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

13 MR. BAAR: Yeah. They were -- the park owner was  
14 asked for all they had.

15 MS. SPENCER: Okay. The park owner did provide I  
16 think it was about 888 pages of receipts for -- for expenses,  
17 correct?

18 MR. BAAR: Yes.

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

23 MR. BAAR: No. We -- we did not go through the  
24 receipts, but I -- and that's correct. But I also to put this  
25 in perspective, one, the overall expense level was reasonable.

1           And secondly, if we had reduced those expenses,  
2       because of the fact that we didn't have the '82 data, if we  
3       had reduced those expenses because the '82 expenses were based  
4       on the 2009 expenses, we used the inflation adjustment, we  
5       also would have been reducing the '82 -- reducing the '82  
6       expenses and increasing the NOI. So I don't think it would  
7       have had a substantial impact on the outcome.

8           MS. SPENCER: Well, the rent --

9           MR. BAAR: But I see the point you're making, but I'm  
10      saying I don't think it would have had much of an impact and  
11      we had such other factors which were so enormous in this case,  
12      the NOI adjustment and the base rent adjustment, that I don't  
13      think this would have had much impact.

14           You know, in a perfect world, I'd say yes, we could  
15      have gone through the, you know, 800 pages of receipts.

16           MS. SPENCER: Now, the Rent Stabilization Ordinance  
17      in its implementing -- I think we're calling them regulations,  
18      the RACs, we're calling them regulations, they actually  
19      provide for a maximum of an 8 percent cap on management and  
20      administrative expenses, don't they?

21           MR. BAAR: Yes, they do.

22           MS. SPENCER: And this -- the management and  
23      administrative expenses of this park well exceed that 8  
24      percent cap, don't they?

25           MR. BAAR: Right, but --



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

5 MR. BAAR: Right, right.

6 MS. SPENCER: Is travel expenses in there anywhere?

7 MR. BAAR: That, I don't remember. But then -- see,  
8 but what I did, whatever overestimate that -- or whatever --  
9 let's say they had an overstatement of management and  
10 maintenance in the current year, by making the base year a  
11 percentage of the current year, there was a compensating  
12 adjustment.

13 I understand what you're saying, but there was a  
14 compensating adjustment. So if the current year expenses were  
15 inflated, the base year expenses were made proportional to  
16 those and -- because we didn't have the actual, you know,  
17 data.

18 And I think under these particular circumstances this  
19 was the best kind of analysis that was possible.

20 MS. SPENCER: Okay. I have another question about  
21 the expenses. The park owner was permitted a 20-year straight  
22 line depreciation of their \$500,000 initial investment of  
23 \$18,700 and change, correct? Back in the early --

24 MR. BAAR: Right.

25 MS. SPENCER: -- development approvals?

1           MR. BAAR: Right. I'm taking your word for it. They  
2 were allowed 18,000 a year depreciation.

3           MS. SPENCER: It was a 20-year straight-line  
4 depreciation, correct?

5           MR. BAAR: I believe you. I don't remember.

6           MS. SPENCER: Okay. So that was in 1976?

7           MR. BAAR: Right.

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

11          MR. BAAR: I didn't. When I was using the net income  
12 comparison, I kept the depreciation, but I didn't keep the  
13 depreciation in the net operating income analysis. I took it  
14 out.

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

20          MR. BAAR: The only place I included it was when I  
21 made the net income comparison.

22          MS. SPENCER: Uh-huh. When you were trying to figure  
23 out what the net operating income was for 2010, you allowed --  
24 afforded them an \$18,000 depreciation expense, isn't that  
25 correct?

1 MR. BAAR: No.

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

6 MR. BAAR: Yeah, that's not my -- yeah.

7 MS. SPENCER: Okay. I've been known to be wrong a  
8 few times in my life, so.

9 All right. Then the next question I have is -- let's  
10 talk a little bit about this issue of the recapture. It's the  
11 staff's position that under the Rent Stabilization Ordinance,  
12 a park owner is entitled to recapture the 31 of 33 years that  
13 they didn't take a rent -- didn't impose a rent increase on  
14 the tenants through the just and fair return formula, correct?

15 MR. BAAR: Well, just a minute. Let's -- I just want  
16 to make some things clear, so --- because there are  
17 different -- different meanings of "recapture," you know, and  
18 obviously let's just make it clear. When you say "recapture"  
19 you don't mean charge rent for back years?

20 MS. SPENCER: No, but you get to ask for it now.

21 MR. BAAR: Well, okay. I don't know -- I did the  
22 analysis -- you know, I did a maintenance of net operating  
23 income analysis according to a certain methodology. I  
24 mentioned in the report what would have happened if they had  
25 implemented those increases, you know, what their current rent

1 level would be.

2 And as far as a right to recapture it, I mean it's  
3 more I did a fair return analysis under the rent control  
4 ordinance. I didn't make a determination of what rights the  
5 park owner had except I looked from the perspective of a rent  
6 control analysis.

7 MS. SPENCER: Let's go through -- let's talk about  
8 that concept a little bit in the context of the City's rent  
9 control ordinance. In the -- in RAC-2, Section 2, page --  
10 that's page 3 of RAC-2, there's a formula for determining net  
11 operating income.

12 MR. BAAR: Just a second. Oh, here it is. I have  
13 it.

14 MS. SPENCER: Okay.

15 MR. BAAR: Okay.

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

19 MR. BAAR: Right.

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

24 MR. BAAR: Right.

25 MS. SPENCER: Section 2.01, A is the gross -- the

1 rental unit income.

2 MR. BAAR: Rental income, right.

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

5 MR. BAAR: Right. Well, there also -- I think there  
6 was some utility income which was excluded.

7 MS. SPENCER: Okay. You excluded that. You didn't  
8 include that?

9 MR. BAAR: Right, that I saw as an offset.

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

12 MR. BAAR: That's my understanding, yeah.

13 MS. SPENCER: There's also a provision here where it  
14 states that you're supposed to include the adjusted income for  
15 below-market rentals. You see that?

16 MR. BAAR: Yes.

17 MS. SPENCER: Now, under Section 2.05, it defines  
18 what constitutes the adjusted income for below-market rentals.  
19 When you did your analysis, did you apply Section 2.05 to  
20 adjust the income for below-market rentals for the 2000 -- for  
21 the current year, for the 2009 year?

22 MR. BAAR: No. I saw this as having a different  
23 purpose. This was -- you know, when you look at the example  
24 here, I see this as making sure that the -- if the landowner  
25 has a right to charge somebody more money than they -- you

1 know, let's say -- let's say they're giving space to a  
2 relative for \$100 and it's worth \$300, they can't say, "Well,  
3 I'm only getting \$100 for that." I saw that as having a -- I  
4 see that as having a different purpose.

5 MS. SPENCER: Okay. Well, what that ordinance  
6 says -- or what the resolution says is: Adjusted income for  
7 below-market rentals is an amount representing the difference  
8 between the actual rent collected and then what the landlord  
9 could have collected if the rents -- if the units had been  
10 rented at their full market value.

11 Exemption -- examples, excuse me, of below-market  
12 rents may be units occupied by the landlord or landlord's  
13 family, the unit of a resident manager or any unit where the  
14 rent increase is permitted by the rent stabilization or the  
15 regulations and guidelines of the Rent Adjustment Commission  
16 could have been made but have not been made because of the  
17 landlord's rental policies and purposes.

18 Would you agree with me that this landlord could have  
19 made rent adjustments between 19 -- for the -- for all 33  
20 years between 1977 and 2010?

21 MR. BAAR: Yes, he could have made -- I -- yes --  
22 no -- yes, he could have.

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

25 MR. BAAR: That's correct.

1 MS. SPENCER: So did you -- and if you go on to  
2 Section 3.04 at page 9 -- excuse me, 3.03 of page 9, for the  
3 formula to determine -- you determine the current year net  
4 operating income in accordance with the provisions of Sections  
5 2 to 2.17. You see that?

6 MR. BAAR: Right.

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

10 MR. BAAR: I understand it, but I don't think -- you  
11 know, reading this, I don't see as -- that's the purpose so  
12 you can impute income to the park owner that they didn't take  
13 and can now charge.

14 MS. SPENCER: Didn't -- doesn't the ordinance say  
15 exactly that in its plain language, that for the current year  
16 you have to impute the income that they could have charged but  
17 they choose not to? Doesn't it say that?

18 MR. HEHIR: Counsel, we're getting into an  
19 argumentative state here and this is, again, not a trial or  
20 courtroom. So this is --

21 MS. SPENCER: Okay.

22 MR. HEHIR: Ask him his opinion, he gives his opinion  
23 and go from there.

24 MS. SPENCER: How do you interpret that provision of  
25 the ordinance then --

1 MR. HEHIR: And one more thing, please --

2 MS. SPENCER: -- for the current year?

3 MR. HEHIR: -- since we're trying to get his

4 information, Counsel --

5 MS. SPENCER: Uh-huh.

6 MR. HEHIR: -- please make sure that you let -- give

7 him time to answer as well.

8 MS. SPENCER: Okay.

9 MR. BAAR: What I see the purpose of this provision

10 is so that somebody doesn't come in, they apply for a rent

11 increase and they say, "I'm only getting \$100 income," they

12 get a rent increase based on that and the next day they charge

13 5 -- you know, 500 because that's what they could have

14 charged.

15 I mean when it -- it talks about, you know, non --

16 you know -- you know, rentals to family members, the resident

17 manager, et cetera, it's a provision in here so

18 people can't -- so park owners can't understate their income

19 and then, you know, again on that basis get a rent increase.

20 And I don't see that -- this is not this kind of case.

21 This is a case where the park owner didn't take the

22 rent increases and can't -- you know, under the affordable

23 rent agreement cannot get them.

24 MS. SPENCER: Well, under your -- that interpretation

25 of the purpose, how does that last -- those last couple



1 clauses come into play? How can you have this apply in any  
2 circumstances other than the circumstances that we have  
3 exactly here?

4 MR. BAAR: Well, I told you, it -- it could apply in  
5 the situation where, let's say, somebody's rent -- you know,  
6 renting to a relative or non -- you know, or manager,  
7 non-arm's length transaction. And I think if you combine this  
8 with the -- you know, you have the price level adjustment  
9 provisions and the regulations.

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

11 MR. BAAR: No, it's -- it's more than that.

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

16 MR. BAAR: No. I want to -- just a minute.

17 Okay. This -- I'm looking at my report. There's a  
18 provision that a just -- my understanding is that the owners  
19 were entitled to a price level adjustment if -- in order to  
20 make up for situations where they didn't implement rent  
21 increases that they could have.

22 MS. SPENCER: But according to the ordinance, the  
23 only wording I see about price level adjustment is in Section  
24 3.04 which only applies to the base year. I'm trying to  
25 figure out what we do about the current year, if anything,

1 under your analysis of this Rent Stabilization Ordinance.

2 MR. BAAR: Well, I think it applies to more than the  
3 base year because it refers where rent increase is permitted  
4 by the Rent Stabilization Ordinance or the guidelines could  
5 have been made, but that -- so that clearly has to refer to  
6 increases that were made after the base year or could have  
7 been made after the base year but weren't.

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

9 MR. BAAR: Right. Well, I think --

10 MS. SPENCER: Okay.

11 MR. BAAR: I think the purpose of it is to provide  
12 that an owner can get an adjustment to make rent increases  
13 when they had the power to make them but didn't make them in  
14 the past.

15 MS. SPENCER: All right. Does -- does Resolution  
16 84-037 allow for you to -- is that a use it or lose it  
17 provision or does it allow for a recapture for the years where  
18 the increase was not taken? If you have any opinion on that.

19 MR. BAAR: Just a second. I want to --

20 Okay. Just a minute. Okay. So go to the section  
21 you're referring to --

22 MS. SPENCER: I'm actually referring to Resolution  
23 84-307.

24 MR. BAAR: 37, right.

25 MS. SPENCER: Does that allow for a recapture of

1 prior years or allow an owner to make up for not taking rent  
2 increases for 31 of 33 years?

3 MR. BAAR: No. This -- this -- this regulates the  
4 affordable rent -- this is -- this involves the affordable  
5 rent restrictions, not the rent control ordinance.

6 MS. SPENCER: Right. I understand that, but there  
7 was some discussion in the reports that 84-037 doesn't allow  
8 for recapture whereas the Rent Stabilization Ordinance does.

9 MR. BAAR: That's correct.

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

17 MR. BAAR: No, because the fair return law has  
18 been -- is -- is to provide an owner a fair return, and the  
19 rent controls have prevented -- the purpose is to prevent  
20 excessive rent increases. They're not laws that tie the rents  
21 to the income of the tenants, the rent control laws as opposed  
22 to the affordability -- well, the affordability agreement  
23 didn't do it directly.

24 But the rent control was -- in fair return analysis,  
25 that hasn't been a fair return analysis where -- where the

1 allowable rent is dependent -- is a -- you know --

2 MS. SPENCER: Is income dependent?

3 MR. BAAR: Yeah, is dependent --

4 MS. SPENCER: Income of the residents, of the  
5 homeowners.

6 MR. BAAR: Yes, yes, because the fair return is  
7 more -- you know, to guarantee somebody a constitutional fair  
8 return and -- while preventing excessive rent increases.

9 MS. SPENCER: Did you -- now, under Section 5-25.06,  
10 administrative adjustments to rent, which is -- subsection (b)  
11 is where the just and reasonable provision is. It states  
12 that:

13 The commission shall have the authority in accordance  
14 with such guidelines as the commission may establish to grant  
15 rent increase -- to grant increases in the rent for a rental  
16 space or spaces located in the same mobile home park upon  
17 receipt of an application for adjustment filed by the landlord  
18 and after notice and hearing if the commission finds that such  
19 increase is in keeping with the purposes of this chapter and  
20 that the maximum rent or maximum adjusted rent otherwise  
21 permitted pursuant to this chapter does not constitute a just  
22 and reasonable rent on the rental space or spaces.

23 Whoever crafted that, that was a very long sentence.

24 Did you -- anybody on City staff make any findings or  
25 make -- do any investigation as to whether the rent increases

1 recommended by you were in keeping with the purposes of the  
2 chapter?

3 MR. BAAR: Well, the -- the rent controls are --  
4 they're a balancing -- they're a balancing mechanism by  
5 preventing excessive rent increases, and I'd say it was in  
6 keeping -- so the -- and at the same time a fair return had to  
7 be -- has to be permitted.

8 MS. SPENCER: Okay. We got the fair return, the just  
9 and reasonable return part, but the purposes of the chapter  
10 are set forth in Section 5-25.01, did anybody on staff prepare  
11 any findings as to whether the rent increases that you  
12 proposed are in keeping with the purposes of the chapter?  
13 That's my question.

14 Did anybody make such findings or recommended  
15 findings?

16 MR. BAAR: No. We did -- we did not -- the analysis  
17 that I did was a fair return analysis.

18 MS. SPENCER: Okay. So it wasn't actually an  
19 analysis of what's required under the Rent Stabilization  
20 Ordinance. It's just part two of that. Part one hasn't been  
21 done?

22 MR. BAAR: Well, I'd say part of the fair return  
23 analysis on one hand is to, you know, provide park owner with  
24 the constitutional right to a fair return, but also it's --  
25 it's a methodology designed to prevent excessive rent

1 increases because it ties the rent increases to the operating  
2 cost increases and the CPI.

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

8 MR. BAAR: Well, I guess my reaction -- that's not a  
9 fair return issue if they were told they wouldn't get any,  
10 that's another type of legal issue.

11 MS. SPENCER: And actually the Rent Stabilization  
12 Ordinance says that if the contract doesn't allow for the rent  
13 increases, the Rent Stabilization Ordinance can't over --  
14 can't supersede that, correct?

15 MR. BAAR: Well, I don't know -- I don't know if the  
16 ordinance says that, but that's my understanding that's the  
17 way contract law would work.

18 MS. SPENCER: Well, actually the ordinance does say  
19 it at RAC-2, Section 6.03, no rent increase granted pursuant  
20 to the above shall be construed to permit landlords to raise  
21 their rents in violation of any terms or provision of a  
22 written lease.

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

1           MR. BAAR: No. I'd say that -- that -- put it this  
2 way: This was a fair return analysis that were -- I'll talk  
3 about myself. You know, I did a fair return analysis and, you  
4 know, I didn't do analysis of whether there's a lease that  
5 overrides the -- you know, or supersedes or preempts whatever  
6 park owner is allowed through the fair return analysis.

7           And I see that as something beyond the scope of the  
8 fair return analysis. I'm not saying it's a factor that  
9 doesn't exist.

10          MS. SPENCER: So my question is to all of staff, did  
11 anybody do that, make any kind of investigation into that for  
12 the Commission's benefit?

13          MR. NORMAN: No.

14          CHAIR WERTHEIMER: Counselor.

15          MS. SPENCER: And the last question, if you don't  
16 mind, is -- did -- was there ever any consideration taken for  
17 the fact that this owner didn't pay the Rent Stabilization  
18 Ordinance fee and the required late fees in determining income  
19 and expense figures?

20          MR. BAAR: No, I didn't consider that.

21          MS. SPENCER: Okay. I'm done. Thank you.

22          CHAIR WERTHEIMER: I have a question for you.

23          MS. SPENCER: Yes.

24          CHAIR WERTHEIMER: Do any of the tenants in this --  
25 in Ranch have leases with the owner?

1 MS. SPENCER: Absolutely.

2 CHAIR WERTHEIMER: Any or -- or all?

3 MS. SPENCER: Not all.

4 CHAIR WERTHEIMER: Just some?

5 MS. SPENCER: Many. The rent stable -- the mobile

6 home residency law requires that the owner have written

7 leases, but not all of the residents have written leases.

8 CHAIR WERTHEIMER: What's a fair percentage that has

9 them? What's -- what's the percentage that exists?

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

11 CHAIR WERTHEIMER: Thank you.

12 Are there any questions?

13 Okay. Are there any questions from the dais?

14 Mike?

15 Brenda?

16 Bea?

17 COMMISSIONER FERRUZZA: Is there any documentation

18 that says that this park had a 30-year expectation to do low

19 income?

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

21 limit.

22 COMMISSIONER FERRUZZA: Okay. Why didn't Mr. Hohn

23 increase the rents over that period of time?

24 CHAIR WERTHEIMER: Bea, our questions are to the

25 staff, not to the -- not to the counselor.



1 MS. SPENCER: And frankly that's just a question I  
2 can't answer.

3 CHAIR WERTHEIMER: At this time -- for this time  
4 right now, our questions are going to be directed to the  
5 staff.

6 COMMISSIONER FERRUZZA: They'll make a  
7 presentation --

8 CHAIR WERTHEIMER: Yeah, they'll make a presentation  
9 another date. So we'll save them.

10 I do have a question for the staff. It was discussed  
11 earlier if you use 2009 as base year and it was questioned was  
12 it fair. Let me ask you, is it equitable and reasonable for  
13 both parties the way you did it or if you were to use 2009 as  
14 the base year establishment?

15 MR. BAAR: Well, it's one type of analysis you can  
16 use, but I'd -- I'd say the maintenance of net operating  
17 income analysis is based on a starting point. You try to get  
18 pre-regulation and if not, I think it's better to get near it  
19 and then look at if somebody was charging a reasonable rent in  
20 the base year, what would they be entitled to today.

21 If you do an analysis based on 2009 comparable rents,  
22 it would be based on a combina -- it would look at a  
23 combination of rent control increases and exempt increases.

24 And I don't know how -- what proportion of the rent  
25 increases in the parks were exempt and proportion were rent

1 controlled. But I do see that the increases in the parks were  
2 substan -- were above what the annual adjustments were. So  
3 you'd get a different type of analysis.

4 I mean that's my answer. You'd get something  
5 different. You could do it.

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

9 MR. BAAR: Well, it's something -- I mean there are  
10 arguments about, you know, why you could -- rationale of why  
11 you could say it's fair and on the other hand, I don't know  
12 if -- I'd say it's less consistent with the rent control  
13 ordinance.

14 CHAIR WERTHEIMER: Thank you.

15 Real quick, Counselor, would you submit the leases  
16 that do -- the leases that exist and that are in effect to the  
17 board, to the committee.

18 MS. SPENCER: I will do my best to gather those.  
19 It's been one of the time-crunch considerations, but I'll  
20 get as many as I can to you. I actually did submit one copy  
21 of one in your --

22 MR. NORMAN: Are they in the PowerPoint?

23 MS. SPENCER: -- PowerPoint presentation, but I'll  
24 gather as many as possible prior to the next hearing.

25 CHAIR WERTHEIMER: We'd like to see all those that

1       are in effect.

2               MS. SPENCER: I will do my best, thank you.

3               CHAIR WERTHEIMER: Thank you.

4               VICE-CHAIR SHELDON: Yeah. My question is, if the  
5       rent control is intended to prevent unreasonable rent  
6       increases --

7               THE PUBLIC: We can't hear. Can't hear.

8               MR. PRESCOTT: A little closer to the --

9               VICE-CHAIR SHELDON: I'm -- I apologize.

10              If rent control is intended to prevent unjust or  
11       unreasonable rent increases, how are they able to go back and  
12       collect all of these rent increases at once or to -- even to  
13       collect even a few rent increases at once, how is that  
14       reasonable?

15              MR. BAAR: Well, the underlying concept is the rent  
16       increases should be -- instead of markets not working because  
17       you have a captive situation and what's reasonable is rent  
18       increases that reflect operating cost increases and -- and  
19       inflation.

20              And so you could say, well, you know, looking -- you  
21       could look over a period and say, look, over these 10 years,  
22       you know, here's the operating cost increases, here's the  
23       inflation, so this should be what the rent is as opposed to  
24       the market and --

25              VICE-CHAIR SHELDON: It's still within the spirit or

1 the intention?

2 MR. BAAR: Well, I guess, I want -- I'll just throw  
3 this out and I'm not -- I'm not saying it's some absolute  
4 right or wrong in the world, is -- what happens is if you say,  
5 you know, somebody can never recapture what they didn't  
6 charge, what you're saying is you have to charge everything  
7 you possibly can otherwise you can never get it back.

8 And so that can create a situation where, you know --  
9 you know, let's look at other situations that -- you know,  
10 other cities I've seen. Well, if the park owners can't  
11 increase the rent this year, they can never increase it and if  
12 they don't increase it this year, the residents are saving  
13 money because is it better to get the 5 percent increases each  
14 year and have to pay them all those years or otherwise -- you  
15 know, subsequently you have a big jump. So the drawback is  
16 that's a huge shock.

17 But on the other hand, in the meantime, residents  
18 have been getting a substantial saving. So, you know, I  
19 imagine --

20 VICE-CHAIR SHELDON: I certainly understand that, but  
21 I -- I -- I mean it feels like there was a choice made there,  
22 so.

23 CHAIR WERTHEIMER: Chris -- Mr. Norman, do you have  
24 any follow-up questions for your witness -- for your experts?

25 MR. NORMAN: No, Mr. Chair.

1 CHAIR WERTHEIMER: Anything more?

2 Yes, ma'am.

3 MS. SPENCER: My co-counsel reminded me that the  
4 owners may actually have copies of those written leases as  
5 well. So we'll gather what we can, but the owners may  
6 actually also have them and be able to submit those to the  
7 Commission for the ones that we are not able to locate.

8 CHAIR WERTHEIMER: Okay. We still would like them  
9 from the tenants, thank you. Those would be more accurate,  
10 right.

11 We find this to be a good time for a reasonable break  
12 and is there a motion to continue from the dais for -- to  
13 continue our meeting till next Monday, which would be December  
14 13th, 2010?

15 COMMISSIONER FELDMAN: I move that we continue this  
16 till -- is it December --

17 CHAIR WERTHEIMER: 13th.

18 COMMISSIONER FELDMAN: -- 13th, right. I move that  
19 we continue to 6:00 p.m., December 13th.

20 CHAIR WERTHEIMER: And we will -- yes?

21 MR. HILL: May I be heard?

22 CHAIR WERTHEIMER: Yes.

23 MR. HILL: We've brought our experts here at  
24 considerable expense and time on their behalf and we would  
25 object to a continuance at this point on that basis, thank

1     you.

2             CHAIR WERTHEIMER:   So noted.

3             MR. HEHIR:   Then the procedure would be that if you  
4     want to discuss this motion, you can discuss it.  If not, you  
5     need to move forward and vote on it.

6             CHAIR WERTHEIMER:  Is there any discussion on the  
7     motion presented by counsel?

8             MR. HILL:   Sorry, I have another statement to make.  
9     Our -- one of our experts is not available next Monday.

10            CHAIR WERTHEIMER:  Let's -- okay.  Noted.

11            We will vote to -- yes, Bea.

12            COMMISSIONER FERRUZZA:  Could we ask them how long  
13     they think it would take.

14            CHAIR WERTHEIMER:  Counselor.

15            MS. SPENCER:  Is that question directed to both  
16     sides?

17            CHAIR WERTHEIMER:  To both sides, sure.

18            MR. HILL:   Thirty minutes for each of our two  
19     experts, your Honor -- or Mr. Commissioner.

20            CHAIR WERTHEIMER:  We are going to vote on this  
21     motion.  We feel this is a reasonable time based on -- and  
22     vote on it from here.

23            MR. HILL:   There hasn't been advanced notice of the  
24     time.  I think we'd need to work out a time when our experts  
25     can be here.  They went through considerable time and expense

1 to be here.

2 And we -- we were told by the City that their  
3 presentation would be 45 minutes. It went two hours. We took  
4 a half an hour of cross-examination. The tenants took an hour  
5 of cross-examination -- hour and a half of cross-examination.  
6 In a normal proceeding of this type, a quasi judicial  
7 proceeding, the applicant would go first and then the  
8 applicant would go last.

9 Here, the City taking on the de facto representation  
10 of the tenants went first. The tenants are going to go last.  
11 This is totally contrary to due process and -- and we need an  
12 opportunity to have our -- our experts here to present their  
13 testimony.

14 We'd be glad to work out a date that would  
15 accommodate both interests -- or all interests.

16 MR. HEHIR: Chairperson, first, if I may, I do not  
17 believe that there is any lack of due process. We have given  
18 everybody, both parties, a chance.

19 As far as staff is concerned, I believe staff's  
20 position was an independent position. That's why we have an  
21 attorney here representing the tenants as well.

22 But just, again, for this motion, we have to look at  
23 a time that they expect for their experts plus any  
24 cross-examination time, plus cross-examination from tenants'  
25 attorney and of course our questions that you might have from

1 the Commissioners. So that is a thing that you have to think  
2 about.

3 Again, it's your motion, but those are the factors I  
4 want you to make sure you understand.

5 CHAIR WERTHEIMER: I understand it. We do have a  
6 motion out there and let's vote.

7 And the motion is we're voting to move this and  
8 extend it to 10-13-2010 -- 12-13-2010.

9 RECORDING SECRETARY: Motion passed 4 to 1 with  
10 Commissioner Ferruzza voting no.

11 CHAIR WERTHEIMER: Okay. Passed 4 to 1.

12 And we are adjourned, thank you.

13 (Recess.)

14 CHAIR WERTHEIMER: Committee members,  
15 (unintelligible) a motion and we'll consider 12-13-2010  
16 (unintelligible) to reconvene or to extend it to the 24th on  
17 the condition that the witnesses confirm that they can  
18 (unintelligible) the witness has confirmed by their counsel,  
19 January 24th, 2011.

20 MR. COLDREN: Robert Coldren with Hart, King &  
21 Coldren, for the applicant. Opposing counsel (unintelligible)  
22 indicated that she would also join (unintelligible) this thing  
23 scheduled with our experts to be here. I thank the Commission  
24 for giving us that consideration.

25 As I noted with the assistant city attorney off the



1 record, now I make it on the record, I object to the delay of  
2 the proceeding overall.

3 But given no choice between forfeiting our experts  
4 which were (unintelligible) of hearing next Monday night and  
5 having it being on the 24th of January without waiving our  
6 objections to the procedure and the process situation, we do  
7 prefer the January 24th in view of that we won't raise  
8 (unintelligible) conclude the hearing next Monday as a problem  
9 and 75-day rule.

10 But we do reserve our objections (unintelligible) we  
11 wanted this hearing done tonight. Our experts cost us many,  
12 many thousands of dollars and we're going to have to bring  
13 them back. Now we have to wait another month. We wanted this  
14 thing finished tonight. We would prefer you still do so.  
15 Thank you.

16 MS. SPENCER: And I just want to confirm that January  
17 24th is an available date for me and for the rest of us.

18 CHAIR WERTHEIMER: So noted then. And we thank the  
19 attorneys for this consent. We have a motion up here as we  
20 suggested (unintelligible).

21 MR. HEHIR: You mean a motion to --

22 CHAIR WERTHEIMER: (Unintelligible) motion to  
23 reconsider and having the expert witnesses back on the -- on  
24 the 24th of January, 2011.

25 MR. HEHIR: Let's have them back --

1 CHAIR WERTHEIMER: Help me out on this.  
2 So any discussion on the motion?  
3 COMMISSIONER FERRUZZA: Are you making a motion that  
4 we -- are we making a motion that we adjourn now and come back  
5 on January 24th?  
6 CHAIR WERTHEIMER: We are making a motion to continue  
7 this current hearing to the 24th of January of 2011.  
8 COMMISSIONER FERRUZZA: Thank you.  
9 CHAIR WERTHEIMER: We are not adjourning.  
10 COMMISSIONER FELDMAN: May I make a suggestion that  
11 we do not go on the 24th of January because I can't be here.  
12 CHAIR WERTHEIMER: You can make that suggestion, but  
13 it's (unintelligible).  
14 Okay. So do we have a motion, Mike?  
15 COMMISSIONER SILACCI: You need me to make that  
16 motion?  
17 CHAIR WERTHEIMER: Yes.  
18 COMMISSIONER SILACCI: I'll move that we continue  
19 this hearing of the Rent Adjustment Commission until January  
20 24th, 2011.  
21 MR. HEHIR: The publication of the public hearing we  
22 have on calendar (unintelligible) with the clarification that  
23 we extend the public hearing that we have on the calendar  
24 today to January 24th, 2007.  
25 CHAIR WERTHEIMER: Let's vote.

1               RECORDING SECRETARY: Motion passed five, zero.

2               CHAIR WERTHEIMER: Also can we have any public  
3       comments of this meeting tonight that do not pertain to what  
4       we've been hearing tonight on the -- we have no speaker cards,  
5       but we have a gentleman that has nothing to do with the  
6       hearing.

7               THE PUBLIC: I would simply ask that it got to be  
8       bitter cold this evening, that given this next meeting and  
9       again proper consideration be given to the temperature  
10      control.

11              CHAIR WERTHEIMER: I understand.

12              Any comment from the committee?

13              For public comment?

14              THE PUBLIC: Thank you.

15              CHAIR WERTHEIMER: You're welcome. We have a motion  
16      to adjourn?

17              Adjourned.

18              (The hearing was adjourned at 10:50 p.m.)

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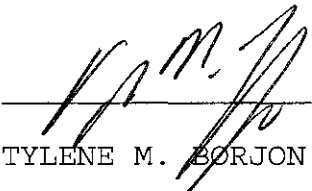
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1 STATE OF CALIFORNIA )  
2 ) ss.  
3 COUNTY OF VENTURA )

4 I, TYLENE M. BORJON, Certified Shorthand Reporter No.  
5 8952, in and for the State of California, do hereby certify  
6 that said hearing was taken at the time and place  
7 as herein set forth; that said hearing was taken down in  
8 shorthand by me and thereafter transcribed into typewriting,  
9 and I hereby certify the foregoing 153 pages contain a full,  
10 true, and correct computer-assisted transcription of my  
11 shorthand notes so taken.

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

14 IN WITNESS WHEREOF, I have hereunto subscribed my  
15 name this 25<sup>th</sup> day of February, 2011 at Ventura, California.

16  
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18 \_\_\_\_\_  
19 TYLENE M. BORJON NO. 8952  
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