Ranch Mobile Home Park

Administrative Record

Rent Adjustment Application RA-2010-02

Part F

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

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Rent Adjustment Application
RA-2010-02

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28.1

1 IN THE STATE OF CALIFORNIA
2 CITY OF THOUSAND OAKS
3
4 **ORIGINAL**
5
In re:)
6)
RANCH MOBILE HOME PARK) (RAA-2010-02)
7 RENT ADJUSTMENT APPLICATION)
_____)
8
9
10
11 RENT ADJUSTMENT COMMISSION PUBLIC HEARING,
12 taken at 2100 Thousand Oaks Boulevard,
13 Thousand Oaks, California, commencing at
14 4:04 p.m., Monday, January 24, 2011,
15 before ROSA E. MORA, CSR No. 13016.
16
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21
22
23
24
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1 APPEARANCES

2

3 FOR THE CITY:

4 LLOYD WERTHEIMER, CHAIR

5 MAXWELL SHELDON, VICE-CHAIR

6 BRENDA MOHR FELDMAN

7 BEATRICE FERRUZZA

8 MIKE SILACCI

9 JOHN PRESCOTT, AICP, COMMUNITY DEVELOPEMENT DIRECTOR

10 PATRICK HEHIR, ASSISTANT CITY ATTORNEY

11 CHRIS NORMAN, ASSISTANT CITY ATTORNEY

12 LILIA VAUDREUIL, RECORDING SECRETARY

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FOR THE RESIDENTS:

21

CHANDRA SPENCER

22 Attorney at Law

23

24

25

1 THOUSAND OAKS, CALIFORNIA, MONDAY, JANUARY 24, 2011

2 4:04 p.m.

3 -o0o-

4

5 MR. WERTHEIMER: I'd like to call to order the Rent

6 Adjustment Commission meeting for January 24th, 2011.

7 Please stand for the Pledge of Allegiance.

8 (Pledge of Allegiance).

9 MR. WERTHEIMER: Will the recording secretary please

10 call the roll.

11 MS. VAUDREUIL: Commissioner Feldman.

12 MS. FELDMAN: Present.

13 MS. VAUDREUIL: Commissioner Ferruzza.

14 MS. FERRUZZA: Present.

15 MS. VAUDREUIL: Commissioner Silacci.

16 MR. SILACCI: Present.

17 MS. VAUDREUIL: Vice Chair Sheldon.

18 MR. SHELDON: Yes.

19 MS. VAUDREUIL: Chair Wertheimer.

20 MR. WERTHEIMER: Present.

21 Are there any communication, announcements, or

22 continuances? We have received also a supplemental package,

23 and we'll have a Power Point presentation. And we also have

24 received a resolution of the Rent Adjustment Committee. And

25 the other thing is we have an attachment to the rent

1 adjustment application from the applicant to substantiate
2 the change.
3 Staff, do you have anything to -- can you add to
4 the supplemental, please?
5 MR. NORMAN: Yes. Good evening, Chair, members of the
6 commission and members of the public. The supplemental
7 package before you has several items. The first item is a
8 monthly rent rate used by Ventura County to establish low
9 and moderate income rental levels for the year 2010. Staff
10 will be referring to that later when it gives its final
11 remarks. There are also several declarations that have been
12 submitted by numerous tenants in the Ranch Park. There's
13 also a brief that's been submitted by the tenants' attorneys
14 in this matter. There's also some correspondence from a
15 Patrick, I believe it's Googan. And although not part of
16 the supplemental but should be on the dias (phonetic
17 spelling) is Staff's proposed resolution for the Ranch
18 Mobile Home application. Thank you.
19 MR. WERTHEIMER: Thank you. And it is on the dias with
20 us. Would any Commissioner like to propose a motion for
21 approval of minutes for the January 18, 2011?
22 MR. SHELDON: Move approval of the minutes.
23 MR. WERTHEIMER: So moved.
24 Call for a vote.
25 MS. VAUDREUIL: Motion passed, four to one with

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1 Commissioner Ferruzza opposed. No? Let's do it one more
2 time please.
3 MR. WERTHEIMER: Take another vote, please.
4 MS. VAUDREUIL: Motion passed, 5-0.
5 MR. WERTHEIMER: Thank you. Item 6 of the department
6 report.
7 MR. SILACCI: We have none.
8 MR. WERTHEIMER: Okay. Before the recording secretary
9 calls the case, I'd like, again, to reiterate some points on
10 how we're going to proceed tonight. We have a large
11 gathering here and many want to -- want their chance to
12 voice an opinion. We need to respect each other's opinion
13 on the matter before us. So we ask that there's no booing,
14 cheering, applauding, or any other actions that will
15 intimidate a person from speaking their point of view.
16 Respect and civility are core values to remember
17 this evening. All speakers will get their opportunity to
18 speak. Tonight's meetings are a continuance of the public
19 hearing for the Ranch Mobile Home Park rent adjustment
20 application opened by the Rent Adjustment Committee at the
21 meeting of December 6th, 2010. At that Staff -- at that
22 meeting Staff completed its presentation of the Staff
23 report. Representatives of the applicant and residents were
24 given the opportunity to ask questions of Staff and the
25 City's expert witness. Due to the lateness of the hour, the

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hearing was continued until tonight for additional testimony.

Tonight the hearing will be reopened and will begin with the Applicant's presentation. I'd just like to take a couple minutes to announce the anticipated order of the outline of how we will proceed this evening.

First, the applicant will have an opportunity to present its position for an increase. Following Applicant's presentation, commissioners may have questions for the Applicant. Staff may also want to ask questions of the applicant. Resident and Staff's counsel will also have an opportunity to question the Applicant. Next, residents, representatives, or counsel may make their -- make their representation again. Commissioner questions follows and Applicant questions and so forth.

We then move to the public testimony. If you wish to speak, please complete and turn in a speaker card. If you have already turned in a speaker card at the December 6th meeting, you will not need to do it again. We've kept those. If you don't -- if you wish not to speak but have a written comment, you also may make out a comment card. All members of the public that attended the 6th meeting, I repeat, do not have to submit their speaker card. The recording secretary does have those cards, and we have them on the diasis (phonetic spelling).

1 As to the people supplying public testimony, each
2 person will have two minutes due to the large number of
3 speakers anticipated. After public testimony is completed,
4 city staff may make some final comments and the commission
5 may have some final questions for staff.
6 Finally, the applicant will have the opportunity
7 to submit his closing remarks, time for 15 minutes. Once
8 completed, the public hearing will be closed. I just want
9 to repeat, that we will try to move this along in an
10 efficient manner while ensuring everyone who wants to
11 provide testimony gets their opportunity to do so.
12 If we complete all public testimony this evening,
13 the commission will decide if we want to begin our
14 deliberations this evening. It may be possible to consider
15 all testimony discussed this evening and render a decision.
16 Staff has prepared a resolution and depending on the
17 commission's review to the matter this evening, we may be
18 able to render a decision.
19 Do any of the RAC -- board members have any
20 questions before we start?
21 Will the secretary please reopen the hearing?
22 MS. VAUDREUIL: Hearing advertised as required by law
23 is hereby opened to consider agenda items 7a, continued
24 public hearing. Case, Ranch Mobile Home Park Rent
25 Adjustment Application, RAA 2010, dash, 02; location,

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1 2193 Los Feliz Drive; Applicant, A.V.M.G.H., Five, Limited;
2 request, rent increase in amount of $587.45 per month per
3 space to achieve a just and reasonable return;
4 recommendation, that the Commission adopt a resolution
5 granting a general rent increase for Ranch Mobile Home Park
6 in an amount not to exceed $191.95 per space, per month and
7 that the increase be phased over a five-year period in an
8 amount not to exceed $38.39 per month, per space, each year
9 with the date of the initial increase to be 90 days from the
10 date formal notice of such increase is provided to the
11 tenants. And the date of each subsequent increase shall be
12 not sooner than 365 days from the date of the prior
13 increase.
14 MR. WERTHEIMER: Thank you. Mr. Norman summarized the
15 package. Does -- do we have any questions on the dias here
16 for Mr. Norman before we proceed?
17 Nope, okay.
18 Applicant's presentation, please? Okay. Sorry.
19 Boyd Hill. And name -- and name and city of residence
20 please.
21 MR. HILL: Boyd Hill. City of Irvine, California on
22 behalf of the Applicant, A.V.M.G.H., Limited, A.V.M.G.H.,
23 Ranch Limited. I'm sorry. Before I get going, I wanted to
24 put a few objections on the record. I hope to do those very
25 quickly so we can move on to the -- the presentation.

1 First of all, we have a standard objection to the
2 order of the hearing. Given that this is a quasi judicial
3 hearing, the Applicant has the burden of proof. Normally,
4 the Applicant goes first and last. Here the City has gone
5 first as an interested party in favor of the tenants and we
6 object on that basis.
7 Second objection, general objection, is that the
8 City Attorney's office is acting both as an advocate and
9 commission representative here. The Commission attorney is
10 making recommendations following the City Attorney's staff
11 recommendations. And the -- we believe that that is
12 inappropriate splitting of duties for the City Attorney's
13 office and that the City Attorney's office cannot act as
14 both the Commission and the Applicant representative.
15 Third general objection is to the composition of
16 the board. There is one tenants appointee, three at large
17 appointees and one park manager appointee. The park manager
18 appointee is a -- is a manager of a competitive park and may
19 not be as interested as the tenant representative in
20 advocating the tenant's views, may not be as interested in
21 advocating the owner's views as the tenant representative is
22 in advocating the tenant's views. And we believe that that
23 is a due process violation and we object on that basis as
24 well.
25 The fourth general objection is to the conveyor of

1 the City to make an advanced determination as to whether the
2 board has jurisdiction over this rent adjustment
3 application. We presume that by going forward with this
4 hearing that the City acknowledges that the board does have
5 jurisdiction. And the fourth general point we wish to make
6 is that, to the extent that any deliberations of the board
7 are being made, they should be made in an open and public
8 meeting such as this.
9 Before I -- and that covers my objections. And
10 before I get going on the Power Point, I wanted to make
11 another general point, a legal point, which is that with
12 respect to the board's discretion, the board does have some
13 discretion as set forth in the ordinance and the
14 regulations. However, many of the recommendations that are
15 being made by the City's -- in the City's presentation are
16 recommendations that go beyond the discretion that was
17 granted to the board by the ordinance and by the rent -- by
18 the regulations.
19 For example, CPI adjustment, you can pick whatever
20 you -- you -- you please. We believe that unless there is a
21 specific statement in the ordinance or the regulations about
22 CPI adjustment, that the board does not have discretion to
23 pick its own number out of thin air. And it's certainly not
24 discretion to come up with a different formula other than
25 the prescribed, the MNOI formula, maintenance and net

1 operating income formula, and to go to a return on
2 investment formula and use that to justify a CPI factor of
3 less than 100 percent.
4 We believe that the ordinance and the regulations
5 set forth are very clear and certain. Maintenance and net
6 operating income formula that -- that is easy to apply and
7 should not be as convoluted as the -- as the application
8 that was presented by the City staff.
9 And with that, we'll go forward to the -- with the
10 Power Point that I had passed out. I've also passed out a
11 revised attachment one. And as -- as I explained to the
12 Commission Chair before the meeting, and will repeat what I
13 said, the revised attachment one is designed to take into
14 account an error that Mr. Neet made in the appraisal.
15 We made a wrong assumption and we corrected that,
16 and we revised our number and we presented that revised
17 number to you last time. And this just -- the attachment
18 one just follows through with that and inserts the correct
19 Neet number and then it's all just a matter of math. We're
20 not putting anything else new in there other than the new
21 Neet number. Mr. Neet will explain that number when he gets
22 his opportunity to speak.
23 We've gone through a very similar Power Point at
24 the Thunderbird Oaks Rent Adjustment Application. And I
25 don't want to belabor this presentation, so I will try to go

1 through it very quickly and let you hear it from Mr. Neet
2 and Mr. McCarthy, but I -- I wanted to make sure that we
3 reiterated those points for those that may not have been
4 here at the last hearing on a different application and make
5 the record clear.
6 So let's go to slide number two, please. Our
7 requested rent increase -- actually, let's start with the
8 current average -- current year average rent is $128. The
9 requested increased that we have is $466.12. As has been
10 already indicated, that's a significant increase, but there
11 have been -- there has -- have only been two increases since
12 the -- this park was -- became -- came into operation in
13 1976. So this is kind of playing catch up to bring us up to
14 the current net operating income level that we should be at.
15 And it doesn't try to claw back or take any of what we could
16 have asked for previously. The new average rent would then
17 be $594.12 and it would be effective 90 days after the
18 board's decision.
19 Page three, same statement by the park owner as we
20 made previously. Mr. Hone, Bruce Hone, is here and will
21 affirm that statement. "As long as the park owner is
22 treated fairly and can implement its rent increase without
23 further delay, the parker owner commits that no existing
24 long-term tenant in good standing will be forced from the
25 park by reason of the rent increase and an inability to pay

1 all or any portion of the rent increase."
2 MR. WERTHEIMER: Mr. Boyd?
3 MR. HILL: Yes.
4 MR. WERTHEIMER: Quick question. Could you define your
5 position on the -- or define fairly for us? What you're --
6 MR. HILL: Fairly means having a -- a maintenance of
7 net operating income formula applied as it is meant to be
8 applied in the City's regulations.
9 MR. WERTHEIMER: Okay.
10 MR. HILL: Next page. The maintenance of net operating
11 income formula is a formula that was adopted in order to
12 help the park owner obtain a constitutional, just, and
13 reasonable return on his investment. The rate of return
14 must be high enough to encourage good management, adequate
15 maintenance, reward efficiency, discourage flight of capital
16 from rental mobile home parks and enable operators to
17 maintain and support their credit. And both the principals,
18 constitutional principals of due process and the
19 constitutional principals of just and reasonable return
20 require higher rents.
21 The formula is rather simple. It's a formula
22 adopted by the City to determine whether a property under
23 rent control is maintaining the same net operating income as
24 it did at the time that the rent adjustment ordinance was
25 put into effect, which was in 1980. It presumes that the

1 rent owner -- that the owner's income before the time of
2 rent control provided a just and reasonable return.
3 And as we discussed previously, as we'll discuss
4 tonight, where the rent was not at a level that provided a
5 just and reasonable return there is an adjustment, an
6 appropriate adjustment that is called Vega adjustment based
7 on a case with the name Vega in it, that -- that says you
8 can adjustment rents to the market level as of the base
9 year. And we will be seeking a -- an adjustment, a Vega
10 adjustment as -- as we've discussed previously.
11 The MNOI formula, and this is a very important
12 point to -- to consider, this third point. The MNOI formula
13 allows the owner to recoup increases and ongoing operating
14 expenses including those caused by inflation and expenses in
15 obtaining just and reasonable rents. We heard from
16 Mr. Baar the last time we were here that we should do an
17 adjustment to the expenses for the base year that just
18 factors in inflation and does not factor in increased
19 operating costs Mr. Baar suggested we take 2009 operating
20 expenses and adjust them downwards for inflation to get a
21 base year operating expense. And we believe that fails to
22 take into account that second prong of inflation plus
23 increased operating expenses.
24 Next page. The City's regulations presume that
25 the MNOI formula provides owners with a just and reasonable

1 return. So when -- going back to the beginning when I
2 talked about discretion and -- and abusive discretion,
3 the -- the regulations adopted by the City limit the
4 discretion of the board to consider another operating --
5 another formula to provide a just and reasonable return,
6 such as return on investment unless certain criteria are
7 satisfied, which we will explain have not been satisfied
8 here tonight.
9 And it's -- the -- the resolution, the City
10 resolution, RAC two, Section 1.03 states that the MNOI
11 formula must be used unless there is clear and convincing
12 evidence that it does not provide owners with a just and
13 reasonable return. And that's the standard by which you can
14 depart from the -- the limited discretion that they -- that
15 the City has given to the board.
16 Next page. The tenants did not request any other
17 methodology as would be required by the City resolution RAC
18 two, Section 1.03. If an alternative approach is to be
19 presented, it must be fully explained in writing and be
20 provided to the City at the time of the application or
21 sufficiently in advance of the date set for the hearing.
22 We've had now an almost two-month continuance in the initial
23 hearing, and yet we've seen nothing at all from the tenants.
24 And to the extent that they attempt to present something
25 different tonight, it would be a violation of the

1 regulations adopted by the City which govern and which limit
2 the discretion of the -- of the board here tonight.
3 Okay. Step one of the MNOI formula is to
4 determine a base year. And there is a presumption in the
5 regulations that 1979 is the base year. And there's good
6 reason for that presumption and -- because if a different
7 year is used, then it takes into account limitations imposed
8 by the rent adjustment ordinance. And so to the extent that
9 we look at a later year, we failed to take into account --
10 and it's on slide 10 -- free rent control, fair market
11 assumptions. And that's why the image, see operating case,
12 which I believe Mr. Baar testified in. So here the
13 Commission must presume that rents and net operating income
14 as of 1980 is the base by which they compare the current
15 years net operating income and come up with an adjustment to
16 the rents.
17 And here we do have some very -- some -- some
18 operating expense information very close to the 1979 year or
19 1982 year, and the City has, in -- in a prior proceeding,
20 adopted that -- those operating expenses as the operating
21 expenses that would have been applied under the net
22 operating income formula. And so those operating -- that
23 operating expense information is not subject to debate.
24 It's something that's already been adopted by the City, the
25 City would be -- the rent board would be estopped to adopt

1 any other operating expense amounts for the 1982 year. And
2 as Mr. Baar testified in the MAC case, you can take those
3 1982 operating expenses and CPI adjust them down to the 1979
4 base year, and that's what we have done in this particular
5 instance.
6 Once again, the city ordinance, the City Code
7 Section 5-25.06 -- I'm on slide 12 -- sets forth maximum
8 rent as the starting point for a rent adjustment under fair
9 and reasonable return analysis. And maximum rent is defined
10 in the ordinance as the highest rent up to June of 1980. So
11 the city ordinance also clearly indicates that 1979 must be
12 used as a base year.
13 And going to page 15. The conclusions as to a
14 base year. The city's ordinance requires 1979 to be used as
15 a base year. The park owner did not exercise its option to
16 seek another base year. A 1983 base year would not be based
17 on pre-rent control, fair market assumption and thus would
18 be unconstitutional. There is no clear and convincing
19 evidence that another method is better. And the California
20 Court of Appeal has held, based on Dr. Baar's testimony,
21 that base year expenses can be estimated by doing backward
22 CPI adjustments. And in the MAC case it was from expenses
23 10 years later. In this case we're just asking the
24 Commission to go back three years.
25 And now, I'm going to pass the baton to Mr. Neet

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1 who will discuss the step two of the Vega adjustment that we
2 discussed with respect to the base year rents. As we get to
3 the particular presentations, I'm going to be handing out
4 some additional handouts. Mr. Neet's appraisal that you
5 have before you had to be corrected, and Mr. Neet will
6 explain that. But -- and so this appraisal that we will be
7 handing out adjusts for an incorrect number and just -- and
8 he'll explain the one item that was corrected, but I wanted
9 to make sure you have a revised appraisal.
10 MR. WERTHEIMER: Mr. Neet.
11 MR. NEET: Okay. Good evening. My name is -- can you
12 hear me? My name is John Neet. I am an MAI real estate
13 appraiser. I live in Fallbrook, California. And my office
14 is in Murrieta, California. And I specialize in the
15 appraisal of mobile home parks. I have done that for the
16 last 15 to 20 years. And at this point, for probably the
17 last 10 or 12 years, my practice has been exclusively in
18 mobile home parks and RV parks. I have completed over 3500
19 valuations assignments involving mobile home parks and RV
20 parks. Most of my clients are lending institutions. I also
21 do work for various attorneys, cities, resident groups, and
22 other persons and parties engaged in this business.
23 I was asked to take a look at two items for my
24 assignment in this case. The first was to prepare an
25 opinion of market rent in the pre-rent control -- immediate

1 pre-rent control era. That would be the end of 1979, the
2 beginning of 1980, before the ordinance went into effect. I
3 was also asked to review the appraisal work completed by the
4 City's expert, Mr. James Brabant (phonetic spelling).
5 One of the important things that we have to bear
6 in mind in all this is nobody in this room or anybody
7 anywhere else apparently -- excuse me. I apologize for
8 that. Nobody in this room or anywhere else knows what rents
9 were at the end of 1979 and the beginning of 1980 in any of
10 the mobile home parks in this city. That is just an unknown
11 fact. We have to come up with some method for estimating
12 what those rents might be in order to do our comparisons to
13 estimate what market rent is during that period of time.
14 The methodology that both the City's expert and I have used
15 is to adjust the known rents, which we know in 1983 for some
16 parks, in 1986 for some parks, from that period we adjusted
17 it backwards by the maximum increase allowed under the rent
18 control ordinance.
19 Now, remember that saying, maximum increase. That
20 means that if any of these parks -- if the rent in any of
21 these parks was not increased by the maximum number during
22 that period of time from 1980 to 1983 or 1986, then we are
23 going to come up with a conservative estimate of market
24 rent.
25 The City's own expert has determined that during

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1 the period of 1983 to 1986, that the four parks that we have
2 a comparative data for, they didn't increase it by that
3 amount. They were allowed increases of seven to eight
4 percent. The actual increases in average rent were between
5 4.0 and 6.7 percent in the four parks for which that data is
6 available.
7 So for us to assume that the maximum increases
8 were employed between 1980 and 1983 or 1986, as the case
9 maybe, is going to lead to a conservative indication of
10 market rent. Nevertheless, that's what we did. But I just
11 want you to bare in mind, that that is probably a
12 conservative indication for that reason.
13 Once you do that -- once you have determined what
14 may be an appropriate adjustment mechanism for time is, you
15 also have to look and say, what is the basis for this
16 adjustment? How am I going to get to what market rent is?
17 Remember, we're dealing in 1979, 1980 with market rent.
18 Market rent is a number that is set by the market.
19 It's not set by a rent control board. It's set by the
20 market. It's what willing people agree to pay for rent in a
21 park. It's not what somebody's rent is that's lived in the
22 park for 20 years. Somebody moved into this park in 1977
23 when it was built, what their rent is in 1979 is not an
24 indication of market rent. The transaction, the rental
25 transaction, is simply too old to be considered a market

1 transaction appropriate to that particular time.
2 We have to look and see what is typical practice
3 of mobile home park operators. One of the things that
4 mobile home park operators have tended to do since I've been
5 analyzing mobile home parks and continues today is there
6 tends to be inflationary times, somewhat of a two-tier rent
7 system. In that long-term tenants rents are held to a
8 fairly gradual increase; whereas when somebody new comes
9 into the park, the owner's inclination is to bring that rent
10 immediately to market. Okay? That is -- that is a common
11 operational technique.
12 So when you look at rents, your list of rents for
13 a park, and you see differences across the board and those
14 differences don't seem to be tied to the size of space or
15 other -- or other amenities, those differences are in all
16 likelihood the result of that very -- that very process in
17 which the higher rents are charged to the incoming tenant,
18 the lower rents are to the tenant who has been in the park
19 for a number of years.
20 For that reason, the use of the highest rents in
21 the park at that particular time is the appropriate tool,
22 that's the appropriate number to begin with a base for 1983
23 and 1986. Because we know that to use average rents is
24 going to throw in all of those tenants that may have resided
25 in some of these parks for 20 years prior to that time and

1 get -- and involve the rent that they're paying that may not
2 be an indication of market rent.
3 Once we have determined what the high rent is in
4 each of these parks, it's a fairly simple process because we
5 do have the rent roles and they do give us the rent for each
6 one of these parks in 1983 and 1986. Then we must determine
7 how the subject property, the ranch, fits into the mix.
8 Both the City's expert and myself used a similar method,
9 it's what we commonly call a bracketing method where the
10 parks -- you line the parks up worst to first and slot the
11 subject in. Where do you think it fits based upon its
12 amenities, age of construction, features, and et cetera.
13 Once we have positioned that, once we have
14 adjusted the rents, the -- the -- the highest rents of the
15 park down to the 1979, '80 levels by the increased factor
16 cited in the ordinance, my conclusion is that the market
17 rent for the Ranch -- the spaces of the Ranch Mobile Home
18 Park is -- in 1979, 1980, prior to rent control is $200.
19 Now, that differs somewhat from the subjects -- from the
20 expert of the City, Mr. Brabant, who's concluded that market
21 rent is $150. If I could just point out that in
22 Mr. Brabant's report he concluded that Elm's Plaza and Twin
23 Oaks were both inferior properties to the Ranch. I think
24 it's very clear in his report that he believes those two
25 properties are inferior to the subject.

1 Therefore, the market rents in the subject should
2 at least achieve the level of the highest rents in those two
3 parks, which were inferior. It only makes sense. Nobody's
4 going to pay less for a superior product, or nobody should
5 pay less for a superior product.
6 In this case, Elms Plaza and Twin Oaks, once the
7 adjustments are applied to the 1983 and 1986 high rents in
8 the parks, we find that in all likelihood there were rents
9 of $156 to $171 in those two inferior parks. For this
10 reason, I believe -- I disagree completely with
11 Mr. Brabant's conclusion that a market rent of 150 is
12 appropriate. It simply is not supported by the facts on the
13 ground.
14 And that is that based on the similar analysis
15 that we did to try and determine what the market rents were
16 for the various parks in 1979, 1980, that there were people
17 willing to pay to live in Elms Plaza and Twin Oaks more rent
18 than Mr. Brabant is allowing to be market rent for the
19 subject property.
20 In reviewing Mr. Brabant's appraisal, Mr. Brabant
21 addressed rent, market rent, in other years that was not
22 part of my assignment. However, by looking at the way
23 Mr. Brabant went about the estimating of two different types
24 of rent, two concepts we'll call it, I think it calls into
25 question some of his conclusions.

1 Mr. Brabant introduces us to two terms. One of
2 them is market rent. That's what I've been talking about
3 all along. I think it's clearly what we're looking for in
4 the 1979, 1980 period, is market rent. That's -- you know,
5 everybody knows what the market rent definition is. You
6 know, it involves willing seller, willing buyer, somebody
7 moving into the park, somebody with the ability to walk away
8 from the transaction. And all of those items, that fair --
9 that fair negotiations involve.
10 Average rent is what Mr. Brabant describes as the
11 average rent in all the parks or in a particular park. It's
12 not really a valuation concept, it's -- it's a fact. It's
13 something that, you know, we can add all the numbers up,
14 divide by the number of spaces and that's the -- that's the
15 average rent. It doesn't tell us when that was negotiated.
16 It doesn't tell us whether it was effected by rent control
17 or anything else.
18 Commonly the term that Mr. Brabant -- or the
19 concept that Mr. Brabant describes as average rent is also
20 called restricted or inhibited market rent. In other words,
21 it's not a real market rent. It's a market rent in that the
22 facts are derived by survey methodology in the same way.
23 You go out and see, well, what are they charging? However,
24 the rents do not come from a meeting of the minds between
25 the landlord and the incoming tenant. They come from a

1 meeting of the minds of a city board like this that says
2 this is the rent you will charge.
3 So that -- you have to really kind of make, you
4 know -- put those two concepts in the appropriate place.
5 And many times the use of this average rent or inhibited
6 market rent is a tool that cities with rent control use to
7 see if they are treating parks fairly.
8 In other words, if the average rent in park A is
9 similar to the average rent in park B and those parks are
10 similar, then there's some level of fairness exists in
11 the -- in the eyes of the ordinance. If the situation
12 exists where park A is a superior park, park B is an
13 inferior park, park B has higher rents than park A, for some
14 reason the ordinance isn't working. And that's often used
15 by cities. And so it's an appropriate tool to use. Okay.
16 But what we find is that while these two concepts
17 are completely different in their definition and their use,
18 what we find is that in Mr. Brabant's report, he uses the
19 exact same methodology for deriving both. He takes the
20 average rent from a known year and reduces it by the amount
21 of the allowed adjustment. Okay. Both cases.
22 I don't know if you have inhibited market rent or
23 average rent and you have market rent. One of them is based
24 upon the meeting of the minds between two parties. The
25 other one is based upon the meeting of the minds of a rent

1 control board, how the two concepts or how the two terms
2 or -- or conclusions can be reached using the exact same
3 methodology. What that does is it provides you with a
4 conservative indication of market rent.
5 If you're using the same manner because you're
6 talking about using rents -- the further away you get from
7 the initiation of rent control, the less those rents are
8 going to have any relation to market, even if you apply
9 those adjustment factors. As we noted in Mr. Brabant's
10 work, his own -- his own work indicates that those -- that
11 the use of those adjustment factors, the 7, 8, 8 percent
12 adjustments that were allowed of 1986, 1985, 1984, is not
13 the true difference between the rents and the parks for
14 those two years.
15 And because those adjustments happen -- because,
16 you know, for some reason somebody's rent is not increased,
17 for some reason something is miscalculated, for all those
18 reasons, the further away you get from the 1979, 1980 base
19 year, the less that that information is going to be used as
20 a tool, as a valuable tool, and the more it's going to be
21 influenced by the rate setting by government fiat as opposed
22 to the rate setting by the market.
23 And that's -- and -- and when you -- if -- if
24 you're showing two different concepts, then there's a lot --
25 lack -- lack of credibility when you define or when you

1 derive the numbers exactly the same way. Okay. For this
2 reason I suggest that Mr. Brabant's work, for the reasons I
3 stated, the fact that there are rents in other parks that he
4 rates as inferior that are higher than his conclusion of
5 market rent and for the reason of this confusion of average
6 rent versus market rent, that his estimate of market rent is
7 conservative to the point of not being well supported.
8 Now, I also was asked to give you a quick
9 explanation of why there was a change in the -- in -- in --
10 in the analysis that I presented. The analysis that --
11 without going into a lot of back and forth and detail, the
12 initial report that you read was intended to be a draft
13 based upon an assumption that the increases were less than
14 the maximum allowed under the ordinance. In other words,
15 I -- I assumed in that -- in that analysis that the rents
16 were only increased twice during those periods -- during
17 those periods of time rather than ever year. That's what
18 led to the higher $240 estimate of market rent.
19 Now, once the information came to light, once
20 there was more information on the ground that indicated that
21 that was not the appropriate assumption to make, then I
22 corrected that and that's what you have in front of you
23 today. And if there are any questions or -- I don't -- do
24 we finish the report or do we move on to the next speaker?
25 MR. WERTHEIMER: Next speaker.

1 MR. NEET: Next speaker.
2 MS. SPENCER: When is it that we'll be given the
3 opportunity to cross examine Mr. Neet?
4 MR. WERTHEIMER: After.
5 MS. SPENCER: After the entire presentation?
6 MR. WERTHEIMER: Yes, after the entire.
7 MS. SPENCER: Okay. Thank you.
8 MR. HILL: We'll be brief so that you'll get a chance.
9 Before Mr. McCarthy comes up, I wanted to give a couple of
10 handouts. First is his CV and then some other -- and his
11 revised MNOI. His MNOI analysis, I believe, was attachment
12 10 to the application and we revised it to take into account
13 Mr. Neet's changed number. That's the only change in it,
14 but I wanted you to have the -- the revised attachment. And
15 then Mr. McCarthy also has some handouts that he wants to
16 use in his presentation. So I will get those passed out
17 before Mr. McCarthy gets going so that you have those in
18 front of you.
19 MR. MC CARTHY: Good afternoon. My name is
20 Michael McCarthy. I'm a certified public accountant in the
21 State of California. I've been asked to do a maintenance of
22 net operating income analysis for this park for the purpose
23 of this rent control hearing.
24 MR. WERTHEIMER: Mr. McCarthy, your city of residence,
25 please. Your city of residence, please.

1 MR. MC CARTHY: I'm sorry. I didn't hear you.
2 MR. WERTHEIMER: City of residence?
3 MR. MC CARTHY: I'm sorry. I -- I live in
4 Mission Viejo, California. I work in Santa Ana, California.
5 I have a Bachelor's of Arts from Michigan State University
6 and a Master's of Business Administration from Cal State
7 Fullerton. I have been working in the rent control area for
8 approximately 12 years. I've testified at many hearings. I
9 also have a number of clients that also own real estate and
10 we do the accounting for their real estate holdings.
11 First thing I would like to do is if we could go
12 to the Power Point, and that would be slide number 19.
13 Thank you. I will walk you through this. This is similar
14 to what you've seen before. We had a -- of course, there
15 was a correction that -- that was discussed earlier of
16 Mr. Neet's number for the Vega adjustment. And basically to
17 walk you through this, we took the appraised val- -- the
18 appraised rent, which is $198.46 and, of course, we
19 extrapolated that out over the number of spaces and 12
20 months for the year to come up with a 1979 revenue of
21 176,232.
22 And then we took expenses that were for 1983 of
23 34,424 and we backed into, using the CPI adjustment,
24 expenses for the year 1979 at $27,500, I'll just round. If
25 we subtract the base year net operating income -- I'm sorry,

1 the base year revenue from the expenses, we get a base year
2 net operating income of approximately 400 -- I'm sorry,
3 $148,721. That base year net operating income is rolled
4 forward for inflation. And this would be slide 20. Rolled
5 forward for inflation, the base year net operating income
6 would be 434,380.
7 Now, if we could go to page two of the handout,
8 maintenance and net operating income, go to the bottom, the
9 bottom left. We calculated that with -- with adjustments
10 that we believe are necessary, we concluded that the current
11 year, the 2009 net operating income for this -- for this
12 calculation was $20,468. We subtracted that from the base
13 year net operating income calculated on page 1 of 434,380 to
14 come up with a rent adjustment of $413,912 a year. Of
15 course, we divided that by the number of spaces and the
16 number of months to come up with a recommended monthly
17 increase per space based on the maintenance and net
18 operating income methodology of $466.12.
19 The current average rent is approximately $128.
20 Added to the increase, we're looking at an average rent of
21 about $594 for the park. I'd like to point out that we --
22 that this rent increase that we're recommending is the
23 absolute minimum that I can recommend as an expert. And the
24 reason for this is that there were many other factors, many
25 other items that we were not allowed to include because

1 we're required to use the maintenance and net operating
2 income methodolody (phonetic spelling), methodology, excuse
3 me. One of the issues is that there's only been two rent
4 increases in -- in the last -- what is it? About 30 years
5 now. And that has resulted in losses -- lost revenue to the
6 park owner that basically is really lost forever.
7 We have -- I calculated -- the way I calculated
8 this is I took our recommended increase of $466 and just
9 roughly cut that in half because you get a small increase
10 the first year and another increase in year 29, the next
11 increase year 28 you get a little larger increase and so
12 forth. So just for the sake of coming up with an
13 approximate number of amount of revenue lost, I -- I divided
14 the recommended increase by two, which would make it $233.
15 Now, if I divide that by -- if I extrapolate that by 12
16 months and 74 spaces over 30 years, the amount of lost
17 revenue to this park owner has been approximately $6.2
18 million. Now, that's -- that's gone. The park owner will
19 never see that.
20 Just taking a conservative approach to the
21 interest on that money, we'll go with four percent at simple
22 interest, that's approximately $250,000 in interest that's
23 lost. So the amount of lost revenue plus interest is --
24 approaches six and a half million dollars, and we're not
25 asking for any of that. If we wanted just to make up the

1 interest only, that would come out to about $300 a month.
2 I'm sorry. About $280 a month. Once again, we're not
3 asking for that. We're asking for the increase under the
4 MNOI methodology as we stand here today.
5 Another issue that's -- that's going to be -- that
6 is probably going to be lost to the park owner, but it's
7 still a matter of debate, is losses due to timing issues.
8 The application is based on the results for a full year of
9 2009. We are already into the first year [sic] of 2011. So
10 there's been a 13-month gap there in the -- in the data
11 that -- that is -- that we can't use because of the --
12 because of the way that the system works. If you come to a
13 decision tonight, the rent increase would not be implemented
14 for another three months. If there's an appeal, there could
15 be a possible -- another three months attached onto that.
16 So we might be looking at a delay of up to 19 months from
17 the end of 2009 to the point where this park owner gets some
18 sort of an increase.
19 If you would grant the full maintenance and net
20 operating income increase, that would be approximately --
21 that would be $466.12 and the loss is going to be about
22 $650,000 to this park owner just due to the -- just due to
23 the tourney of the timing of the process. Once again,
24 we're -- the MNOI formula does not take this into account
25 either. So all these factors that are -- that -- that are

1 probably lost to the park owner are not being considered,
2 which is why I'm recommending that the full increase be
3 granted because it's actually a minimum in order to put --
4 to make this park owner whole under the -- under the concept
5 of maintenance of net operating income.
6 Another point I'd like to make is that the staff
7 is recommending a phase-in of its recommended increase of
8 $191.95 and they're recommending this phase-in to be about
9 five years. Now, that's going to have the effect of
10 compounding this owner's loss. The -- pardon me. Okay.
11 All right. I would like to direct you to -- you got a chart
12 that was AGMH 5, lost revenue, last page. Lost revenue to
13 due to the phase-in. Okay. Basically, if you phase-in the
14 staff recommendation of 191.95 over five years -- could I
15 have the ELMO?
16 It's a little tight, but basically the --
17 basically the park owner would get $38.39 in the first year,
18 double that in the second year, triple that in the third and
19 so forth until in the fifth year they get 191.95. Well,
20 what happens here is that there's a loss each year of
21 revenue due to the phase-in. And if over the sixty months
22 of the phase the park owner is going to lose about $511,300.
23 Now, if you -- I'm sorry. I misspoke. $511,000
24 is the amount of the increase that the park owner would
25 enjoy under the Staff's recommendation over the five years.

1 The problem is, if I can roll up here, if the park owner
2 were granted an immediate increase of the Staff
3 recommendation, over the five years they would gain $852,258
4 in additional rent. But under the five-year plan, they're
5 only going to get $511,000. Lost, $340,903 to the park
6 owner under a five-year phase-in.
7 If -- if we take into account the time value of
8 money, which is the chart below and interest rates in
9 general are pretty conservative these days. Now, this chart
10 was prepared on December 3rd, which is approximately the
11 date of the -- of our first meeting. Rates haven't changed
12 too much. But if you look, the range of rates, under a
13 different range of rates for CDs, treasuries, the prime
14 rate, the range of loss is about $411,000 to about 585,000.
15 If we use a cap rate of nine-and-a-half percent for the
16 park, the loss is about $750,000. Now, we can argue about
17 the cap rate being too high or too low, but the other rates
18 are based on, you know, on unpublished -- unpublished --
19 unpublished sources as well.
20 The next thing I'd like to discuss is the use of a
21 50 percent CPI indexing over 100 percent. Once again, I'll
22 go back to the ELMO. We have a -- we also have a slide on
23 this. I believe it's slide -- slide 25. And it's --
24 there's also a -- a larger version in your handout. I think
25 I -- I think I'd like to go to the -- I think I'd like to go

1 to the ELMO for this because it -- it comes out a little
2 larger.
3 What this chart shows is the effect of 50 percent
4 indexing on the net operating income of a mobile home park.
5 And the blue line represents the revenue. And we assumed
6 here that there would be -- that there would be an inflation
7 of about five percent and that would be cut in half due to
8 the 50 percent increase. So there would be -- there's a
9 curve upward but it's not a real sharp curve.
10 On the other hand, the green line is the expenses,
11 which we're assuming that are going to increase at the rate
12 of inflation. And if you notice, it's a much sharper curve.
13 And the space between the curve, which would be your net
14 operating income each year becomes smaller and smaller,
15 until you reach a point -- and this -- this extrapolation
16 goes out approximately 40 years. You reach a point around
17 year 40, right there, where expenses will out strip revenue.
18 Now, this park is actually very close to this
19 point at this -- right now. And the -- so our -- our red
20 line here is what the -- is the net operating income, and as
21 you see, because expenses are rising at a greater rate than
22 revenue is rising, the net operating income index for
23 inflation actually starts to go down. And eventually it
24 crosses -- at the same point it crosses zero dollars.
25 There's no profit left. The black line is the actual NOI,

1 which is strictly the -- the subtraction of revenue from
2 expenses without any -- without any adjustment for
3 inflation. As you see, the -- the -- the -- the -- the drop
4 is even more dramatic.
5 I'd also like to point out, and I don't believe
6 that you have this handout, but I'll throw this on the ELMO.
7 That in the general U.S. economy 100 percent of CPI is
8 pretty much the standard for adjustments for many things in
9 the economy. A lot of these things are governmental
10 adjustments, I would like to point out. Approximately 48
11 million social security recipients get a 100 percent
12 increase in the CPI. Four and a half million retired
13 military and federal -- civil service retirees,
14 approximately 22 million food stamp recipients,
15 approximately 27 million children in the school lunch
16 program. Real estate leases in the private sector use CPI
17 accelerators. Royal payments for patents, intellectual
18 property, et cetera, alimony, child support, and adjustments
19 used to the metrics for federal, state, and local taxes.
20 At this point I'd like to ask you to look at
21 another handout. And that handout is -- there's no real
22 title but it's this table. Once again, I'll go to the ELMO.
23 I think it's just a little easier. Dr. Baar's report, I
24 believe it is on page -- well, it's on page 28 of his page
25 28 and I think it's 28 on page 128 in the application. He

1 has a chart where he argues that the growth of equity due to
2 changes in market prices for real estate somehow protect the
3 owner so that the indexing under a hundred percent really
4 doesn't -- really isn't going to hurt the owner. In other
5 words, if you -- if you allow 50 percent, the owner is going
6 to do just fine. As you'll find out later in the hearing,
7 that's -- that's not the case.
8 But what I'd like to do is talk about this example
9 Dr. Baar uses in his -- in his report. He -- in his
10 example, in his report he says that with a 50 percent CPI
11 increase and a property value increase of 25 percent, the
12 park owner will enjoy an 83 percent increase in equity.
13 Now, I saw the chart and it -- it -- it works fine
14 mathematically, but the problem is is that it's really
15 basically kind of a textbook example.
16 And so what I'd like to do is I'd like to take
17 this -- I'd like to take that chart and change it around a
18 little bit. In other words, what happens if the value of
19 the property goes down? So if the value of the property
20 goes down 10 percent from six million to 5.4 million, the
21 equity -- everything else is being held equal in the -- in
22 the model. The equity in the property actually goes down 33
23 percent. So the market really doesn't hold in a falling
24 value environment.
25 Also, Dr. Baar bases his model on a

1 capitalization rate to the value of the property. In other
2 words, this is how the -- this is how the property value is
3 determined in his model. Well, I would argue that that's --
4 that is rarely the value of a rental property. A rental
5 property is -- is determined by willing buyers matched up
6 with willing sellers to agree on a price. Prices that
7 are -- prices are that tracked and followed by appraisers.
8 Appraisers don't make the value, but they do a very good job
9 of recording them. So I -- I would point out that if you
10 would -- not to take any solace in this model in terms of
11 accepting 50 percent because it's not -- it really doesn't
12 hold.
13 Also, in terms of returns, what's going to be
14 acceptable to -- is -- is based on many factors and it's
15 going to vary from place to place and according to industry
16 standards, so situations do differ. Once again, I'd like to
17 point out that -- this is slide No. 26. Dr. Baar uses a
18 return on investment approach to apply 50 percent CPI as
19 I've shown as an adjustment to the base year NOI. Now,
20 that's inconsistent with the MNOI approach. The MNOI
21 approach is exactly that, maintenance of net operating
22 income.
23 If you go under 50 percent or under -- I'm sorry.
24 Under 100 percent indexing, you're not maintaining that CPI.
25 Now, the City regulations requirements for the use of an

1 alternative approach haven't been met. And Baar admits in
2 his report that neither the ordinance nor the regulations
3 authorize the return on investments. So once again, I would
4 caution you against looking at that part of his report
5 because I don't believe that it actually applies here.
6 Now, he also admits that the return on investment
7 approach disfavors longer term owners with low investment
8 such as our owner here. This owner -- the original
9 investment was made, I believe, in 1976, and a return on
10 investment is not going to make any sense because the
11 investment, compared to current dollars, is so small that
12 almost any return in modern dollars is going to look like a
13 great return, which it's not.
14 And this would be the end of my presentation. I'd
15 like to turn it back over to -- to Mr. Hill. Thank you.
16 MR. WERTHEIMER: Thank you.
17 MR. HILL: Thank you. At the last hearing we were
18 requested to bring copies of the standard form rental
19 agreements that are in -- that are currently in place in the
20 park for the tenants. We have redacted out personal
21 information and address and space number, and we've given a
22 copy of the four standard form rental agreements for our
23 parks. And I will have Gretchen Carter authenticate that
24 these are the four standard form rental agreements that are
25 in use at the park. And I will note that none of the

1 standard form rental agreements say anything about applying
2 the resolution, the prior resolution, and all of them
3 indicate that they're subject to rent increases that may be
4 applied by the City under its ordinance.
5 And I'll just have Gretchen authenticate that
6 these are the standard -- four standard forms that are in
7 use. And then I have some other comments to make.
8 MS. CARTER: I'm Gretchen Carter from Hercules,
9 California, and I am the property manager for the ranch.
10 And the copies, sample copies of the rental agreements that
11 you're being provided with are copies of actual agreements
12 that are in the park files and are the ones that are -- are
13 being used today.
14 MR. WERTHEIMER: Thank you.
15 MR. HILL: Okay. At the last hearing on
16 cross-examination we questioned Mr. Baar about whether he
17 had looked at any current appraisals of the park and with
18 reference to his return -- use of the return on investments
19 standard and whether he thought that under the return on
20 investment standard whether he was aware that the property
21 had not increased in value as he had indicated under his
22 return on investment standard, but had actually decreased
23 in -- in real dollars and appraised market value.
24 And I questioned him about the -- would it
25 surprise him to know that the -- an appraisal of the park

1 has the park appraised at about the approximate cost of some
2 of the more expensive coaches in the park at $160,000. And
3 there was a bit of a surprise.
4 I will be passing around a copy of that appraisal
5 and have Mr. Hone attest to the -- authenticate this
6 appraisal for you.
7 MR. HONE: Hi, my name is Bruce Hone. I'm the son of
8 the owner of the Ranch Mobile Home Park. Back in April some
9 real estate agents approached us with the idea of possibly
10 selling this park or another one that we owned. And they
11 said, before we do that, we'd like to go out there and take
12 an appraisal of it, make an appraisal of it, and I said that
13 was a good idea. These are certified appraisers. They came
14 back with a price -- a sale price for this park of $168,000
15 and based on the rent structure, we weren't too surprised.
16 And that's the appraisal you have before you tonight.
17 Thanks.
18 MR. WERTHEIMER: Thank you.
19 MR. HILL: Sorry. I was busy negotiating with the
20 tenants' representative to buy the park. I told her she'd
21 have to pay the damages based on the MNOI formula first.
22 But anyway, the -- one question was raised last time of
23 Mr. Baar about the -- whether any case authorized less than
24 a hundred percent of CPI adjustments to the base year NOI
25 and Mr. Baar responded the Berger case. And I guess the

1 question that was asked of him was whether or not any -- any
2 case authorized that where the ordinance or regulation did
3 not specify that they can go lower than the hundred percent.
4 And I wanted to put before you the case of Berger
5 versus City of Escondido that Mr. Baar was referring to and
6 show you that indeed in that case the city regulation
7 authorized and, in fact, required the city to go at 60
8 percent below CPI or 60 percent of CPI.
9 All right. It's probably not very visible, the
10 case citation is 127 cal ap 4th one. It's a 2005 court case
11 in the Court of Appeal, Fourth Appellate District of State
12 of California. And I'm reading from pages 10 and 11 of that
13 opinion. It states, Dr. Baar noted that under the board's
14 written guidelines it shall take into account no more than
15 60 percent of increases in the CPI. He also noted, however,
16 that the board had an approach of granting 70 percent, 75
17 percent CPI increases pursuant to short-form petitions.
18 I just wanted to point this case out because it's
19 important to distinguish that there are no cities that --
20 there are no cases that can be pointed to where a hundred --
21 less than a hundred percent CPI adjustment was made where
22 the City did not expressly state that -- that a lower
23 percentage -- a lower percentage that can be used either in
24 its ordinance or in its guidelines.
25 And in this case the City does not specify

1 anything lower than a hundred percent CPI. The City's
2 ordinance refers to 75 percent CPI adjustment for the annual
3 increases of the -- I guess the 1986 rent, but -- as a base
4 year, but it does not -- the definition under the ordinance
5 specifically only refers to the index for use in the annual
6 adjustments and does not state that 75 percent can be used
7 for adjusted reasonable return adjustments, which we're
8 asking for here. And with that I will pass it on to -- for
9 cross-examination.
10 MR. WERTHEIMER: Thank you. Let's start with the
11 commissioners and Mr. Silacci.
12 MR. SILACCI: Thank you, Mr. Chair. I do have one
13 question for Mr. Hill.
14 MR. WERTHEIMER: But of who? I believe the questions
15 we have, we'll call up the -- the witness. You're the first
16 one.
17 MR. HILL: Yes. Thank you.
18 MR. SILACCI: Mr. Hill, I have one -- one question.
19 Can you please explain to me and the Commission the
20 rationale for the owner not increasing rents except for
21 2001, between 1985 to the present given the fact that the
22 ability was there to do that on an annual basis?
23 MR. HILL: Let me -- I think there's -- that's kind of
24 a loaded question and I want to address each -- each of
25 those issues that you raised. Number one, the City -- the

1 owner came in 198- -- in 1982 and asked for an increase
2 under the city ordinance and the city resolution was passed
3 in 1984, actually gave them that increase that they had
4 asked for, a seven percent increase.
5 There was a lot of subterfuge and a lot of
6 rationalization as to why this -- there was a different
7 standard applied, but they gave them that seven percent and
8 then said thereafter, you're going to have to, you know, be
9 limited by a certain percentage of CPI and subsequent
10 increases.
11 I can't explain why the owner did or didn't ask
12 for those increases subsequently. But in the year 2000, the
13 Commission acknowledged in a memorandum -- and I think it's
14 part of our presentation or our application materials. The
15 Commission acknowledged that the owner was entitled to a
16 much higher increase and that there -- the owner had -- had
17 not -- had -- was at a great disadvantage with respect to
18 CPI, cost of living increases that had happened in the
19 interim, and said that it's time to look outside this
20 resolution.
21 Now, legally a -- a low and moderate income
22 restriction that can be imposed on a property as part of a
23 use permit has a 30-year limit, and I cite to you government
24 code Section 65915, and I briefed that issue in our
25 application. At the 30 years expired on that restriction as

1 of 2008. So as of 2008, that restriction is no longer in
2 effect and government code Section 65915 is a preemptive
3 provision meaning that anything in the city's ordinance --
4 any -- any city ordinance or any city regulation cannot go
5 contrary to what government code section 65915 says.
6 So as of 2008, that restriction is now lifted and
7 now the park owner can obtain what it -- it is entitled to
8 under the city's rent control ordinance.
9 MR. SILACCI: So the short answer is with the exception
10 of 2000, between '85 and the present or I'll say '85 to
11 2000, the resolution 84037 allowed the owner to apply for
12 rent increases but for whatever reason that you can't
13 explain that didn't occur.
14 MR. HILL: I can explain it. It would be too costly
15 and the City wasn't giving them an adequate increase and the
16 park owner was also being very generous to the residents
17 during that time. And we're not asking to claw back any of
18 that money that could've been, you know, obtained then.
19 We're just trying to now start at -- start at what should be
20 the net operating income at this point in time.
21 MR. SILACCI: As a follow-up question, could you point
22 me and the rest of the commissioners to the documentation
23 you were referring to in your information around 2000, just
24 statements you made that during the time --
25 MR. HILL: Yeah, it's in my memorandum. I will grab it

and look -- look for it and give it to you while you're doing other questioning if --

MR. SILACCI: That'll be fine.

MR. HILL: Okay. Sure.

MR. SILACCI: Thank you.

MR. WERTHEIMER: I think, Mr. Hill, you're still up and we'll have to wait.

MR. HILL: I took silence as -- but yes, I can look it up and give you the cite. And if you have follow-up questions, I'll be glad to address those.

MR. WERTHEIMER: We'll go through the cycle up here of the commissioners and then you can sit down and research it while we do the other witnesses. Thank you.

MS. FELDMAN: Thank you. Mr. Hill, when you stated that we are required to use RAC2 or MNOI approach as a commission, are you aware that that was not part of the ordinance adopted in 1996? RAC2 through 5 were recommendations made quite awhile ago and not adopted formally into the present ordinance.

MR. HILL: I think the present ordinance in the section pertaining to just and reasonable return states according to the regulations adopted by the City, and those are -- those regulations were in effect at the time that the ordinance -- the present -- the present version of the ordinance was passed and, therefore, it was understood that those were --

1 those regulation weren't to be applied.
2 MS. FELDMAN: I'm concerned then why we are told
3 repeatedly that we have -- excuse me -- we have the
4 opportunity to make changes to that process. Why is that --
5 that commission given that opportunity if it's already been
6 put into law with those resolutions?
7 MR. HILL: If the commission is going to adopt
8 different regulations, then it would go through that
9 process, but those -- that is not an issue that I think we
10 are confronting here tonight. We're confronting the
11 regulations that are currently in place.
12 MS. FELDMAN: Okay. I have questions for Mr. Neet.
13 Are we going to go --
14 MR. WERTHEIMER: We're going to -- yeah, let's go --
15 MS. FELDMAN: Okay.
16 MR. SHELDON: Thank you. Would Mr. Hone be willing to
17 give some background into why there were no rent increases
18 for that period of time?
19 MR. HILL: Certainly. Do you want to go out of order
20 at this point?
21 MR. WERTHEIMER: I have questions for Mr. Hone, so
22 let's wait and -- yeah.
23 Do you have any questions for Mr. Hill? Do you
24 have any -- how about questions for Mr. Neet? Do we have
25 any?

1 MS. FELDMAN: I do.
2 MR. NEET: Hi.
3 MS. FELDMAN: Hello. I have a question regarding your
4 statement that the City's appraiser used -- came up with
5 different figures assuming that Elm's Plaza and Twin Palms
6 are inferior parks to Ranch. How many times in your career
7 have you driven through senior parks and family parks?
8 MR. NEET: Thousands.
9 MS. FELDMAN: Have you noticed a difference between
10 senior parks and family parks?
11 MR. NEET: I would hate to say that I have noticed
12 some -- any kind of differences that are -- I don't think
13 there's a universal truth there. I think that -- you know,
14 generally you don't see as many tricycles in senior parks.
15 But I mean, without being facetious, I mean really there may
16 be children playing. I -- I -- I don't -- there's --
17 there's no -- to me there's no -- I cannot make a universal
18 statement regarding --
19 MS. FELDMAN: Okay. Thank you.
20 MR. NEET: Okay.
21 MS. FELDMAN: I'm done.
22 MR. SHELDON: I'm sorry. But on the -- the -- the --
23 the topic or the concept of market rent that you were
24 talking about --
25 MR. NEET: Yes.

1 MR. SHELDON: It sounded like when coming up with that
2 number, there's the exclusion of -- of the renewal leases
3 that are just being renewed and it's really only when a new
4 tenant comes in, is that -- was that correct?
5 MR. NEET: That is the -- that's the best -- absolute
6 best data that you can have. Now, you know, stepping back
7 from that a little bit is sometimes you don't have always
8 the best data that you have. But generally speaking when --
9 you know, market rent is like market value of a property.
10 If I can kind of liken it to, you know, if you were getting
11 your house appraised, then somebody would come in and they
12 would say, okay, this house over here sold last month, this
13 house sold a month before that, this one's in escrow right
14 now and this one is a listing. And if you take those four
15 prices that are -- that are in evidence as a result of that,
16 that proper analysis of that will give you an indication of
17 the market's current value or the current value of your own
18 house.
19 So, you know, in the same -- in the same light,
20 you're not going to go back to, you know, the next door
21 neighbor's house that they bought 10 years ago an apply an
22 inflationary factor. You know, so that's -- so that's not
23 as good of data. Maybe if that's the only data you have,
24 you'd use that. But, you know, usually the -- kind of like
25 the best data that you could have is evidence of a recent

1 transaction where the parties have the right to walk away.
2 MR. SHELDON: I guess I didn't understand the exclusion
3 of the parties that are just renewing the leases.
4 MR. NEET: Well, generally -- generally, people who
5 are renewing -- who are renewing leases or renewing rental
6 agreements, there's a -- there's a suggestion there that one
7 party or another may -- may be more motivated and thus not
8 drive as hard of a bargain. Okay. If I can take it into
9 another context just so we don't get into some of the back
10 and forths that go along with this in mobile home parks.
11 If -- if your -- Claim Jumper restaurant next
12 door, your lease is coming up for renewal, you're motivated
13 to stay there because you already have an established
14 building at that place, you've spent a fortune on tenant
15 improvements, everybody knows where you are. You might be
16 less willing to negotiate to the last dollar than maybe the
17 owner of that property because the owner is saying, well,
18 you know, I can get, you know, I can get Marie Calendar to
19 come in here and -- and take your place over because they've
20 been banging at my door, so I'm not going to -- you know,
21 I'm -- I'm not going to give in.
22 So there's -- there's all those suggestions that
23 maybe, maybe not is completely arm's length when you're --
24 when you're looking at a renewal.
25 MR. SHELDON: So it could actually skew it either way

1 depending on who has the power?

2 MR. NEET: That's true. That's -- that's true. It --

3 it could go either way. So that's why it's best to, if at

4 all possible, to try and avoid that -- that circumstance.

5 MR. SHELDON: And -- and just one final thing, how

6 would it typically get skewed in a -- in relationship

7 between a mobile home park owner and the -- the tenant?

8 MR. NEET: You know, I don't know that there's a --

9 typical skewing of it. It -- it tends to -- you know -- you

10 know, there's -- there's a lot of times, you know, the --

11 the owners will say, okay, everybody we're going to -- you

12 know, we're talking about non-rent controlled situations

13 because obviously we can't talk about market rent in rent

14 controlled situations.

15 But, you know, the owner may say, okay,

16 everybody's rent is going up by $5 or $25 or whatever --

17 whatever number that the owner thinks that, you know, is

18 appropriate. And, you know, then he goes to -- you know,

19 then one of the -- one of the tenants comes and I, you know,

20 well, I just can't afford that. I can only afford $15. And

21 so in that case he makes a concession. So in that case --

22 you know, you have a situation where the tenant receives a

23 benefit and that would not be an arm's length transaction.

24 Likewise, you could say, you know, you could -- maybe a

25 tenant has an old beater coach, doesn't keep his yard clean

1 and the owners -- you know, if this guy leaves, I don't
2 care. And says, you know, you're third.
3 MR. WERTHEIMER: Thank you. You're next.
4 MS. FERRUZZA: Mr. Neet, isn't it true, by the City of
5 Thousand Oaks Rent Control Ordinance, a new tenant moving
6 into a park inherits the rent of the existing tenant?
7 MR. NEET: That -- that's correct. And, you know --
8 and that's the case, you know, that's -- that's the commonly
9 the case. So you can't -- that's why we say we take it out
10 of the rent control context. Now, there are some rent
11 control ordinances such as Camarillo, which does allow the
12 rents to increase or rents to be negotiated to market upon
13 turnover.
14 MR. WERTHEIMER: I have a question -- I have a question
15 for you. Just so I understand correctly, in your earlier
16 statements you said that no one in this room could -- could
17 quote rents back in 1979, nobody knew the market rates or
18 the rents -- or the rents in that time. Is that --
19 MR. NEET: It's my understanding that there is no
20 written record. We have found no written record of what was
21 being charged in any of the parks in Thousand Oaks in 1979,
22 1980.
23 MR. WERTHEIMER: Okay.
24 MR. NEET: With the exception of -- I think we know
25 what the Ranch was charging because of the -- the

1 restriction.

2 MR. WERTHEIMER: Okay. So it's written record not --

3 it's not people that would be in this room?

4 MR. NEET: That's true. I -- I -- I guess, you know,

5 my statement is that there's -- there's -- there's no

6 documentary evidence, I guess. I mean, there may be --

7 there may be somebody's recollection of what they were

8 paying. And then, you know, if -- I'm not -- I've not been

9 provided with any evidence of that sort. And if there was,

10 I guess, we'd have to weight that with, you know, what

11 someone's recollection might be of something that happened

12 31 years ago.

13 MR. WERTHEIMER: That's all I have. Thank you. Do you

14 have any other questions?

15 MR. SILACCI: Yes.

16 MR. WERTHEIMER: Mr. Boyd, I -- I apologize. I had a

17 question for you and I --

18 MR. HILL: Just a follow up on Mr. Silacci's -- I

19 pronounced it right, didn't I?

20 MR. SILACCI: Yes, sir. Thank you.

21 MR. HILL: I spent two years in Italy, so I can

22 pronounce Italian names at least. The part of our

23 application that refers back to the year 2000, are

24 attachment three appendixes G and H. Appendix H shows that

25 the percentage increase that they would be entitled to under

1 the resolution should be 48.2 percent, but they were only
2 able to obtain four percent under that resolution. That's
3 appendix H. And I think there was also a memo to that
4 effect although I don't -- didn't include it in the -- in
5 the application itself. It discusses how -- the -- the --
6 the inequity of this.
7 And then going to appendix G, there's a letter
8 dated August 30th, 2000, to the Ranch community manager from
9 Lynn Oshita (phonetic spelling) at the City of Thousand Oaks
10 stating that one of the two alternatives that could be
11 adopted was -- is to put the park under the ordinance
12 itself. So in the time of the '84 and the 2000 rent
13 increases, the ordinance was very much in play and there
14 were negotiations ongoing about whether the ordinance should
15 be applied.
16 MR. SILACCI: Thank you. That answers my question.
17 MR. HILL: Thank you.
18 MR. SILACCI: That answers my question. Thank you.
19 MR. WERTHEIMER: I had a question for you and I forgot
20 to ask. Can I get you know? Thanks. You had -- Mr. Neet
21 had said that the -- that probably the base year in his --
22 in his findings is going to be about $200 a month or a space
23 per month.
24 MR. HILL: Yes.
25 MR. WERTHEIMER: Okay. And you -- and you stated that

1 you're -- you're not clawing back to re- -- to recoup any of
2 the lost increases. Is that a fair statement?
3 MR. HILL: We're -- we're not clawing back. We're
4 not -- we're not going to go and recover all the rent
5 increases we could have recovered up to this current year.
6 MR. WERTHEIMER: Did you figure out, just by chance,
7 based on your rate if you took the seven percent over the
8 period of time what the current rent might be today?
9 MR. HILL: We would not be entitled to take seven
10 percent under the ordi- -- under the resolution. We would
11 be capped at four percent regardless.
12 MR. WERTHEIMER: All right. I take that's -- okay.
13 How about at four percent?
14 MR. HILL: I have not calc'd out. At some point
15 Mr. McCarthy and I might have done that, but I don't think
16 we have it currently in front of us that we could -- we
17 could possibly input, you know, numbers if you would like us
18 to, but I don't think we've --
19 MR. WERTHEIMER: No. Just a point of curiosity, I
20 wonder what the rent would be today at a slower pace of --
21 if it was just a slower pace of -- of increases.
22 MR. HILL: Actually, I think that is kind of the -- the
23 basis behind the Baar approach. I think Mr. Baar did kind
24 of a -- of a reverse analysis and took -- started with the
25 resolution and then tried to arrive at an MNOI number that

fit with what might be applicable during the resolution, and I think that might be covered in his -- in his report.

MR. WERTHEIMER So that would be the City's opinion possibly?

MR. HILL: Seems to be the City's position, yes.

MR. WERTHEIMER: Okay. Thanks. Thank you.

MR. HILL: Okay.

MR. WERTHEIMER: Are there any questions for Mr. Hone? I do. I have one. Could I ask it of you?

Your appraisal for the park, $168,000?

MR. HONE: Yes, sir.

MR. WERTHEIMER: And that was done by?

MR. HONE: Martinez & Associates.

MR. WERTHEIMER: Okay. Now, was that -- what method was that based on, as a user or investment?

MR. HONE: They were in the -- they were like real estate brokers. They wanted to go out and market these parks to sell them. And that's what they came up with, what this park would be worth on the open market based on the rent structure of losing money every month.

MR. WERTHEIMER: Empty or full?

MR. HONE: Excuse me?

MR. WERTHEIMER: Empty or full of -- of tenants?

MR. HONE: The way it exists today, full of tenants.

MR. WERTHEIMER: Did they tell you what cap rate that

1 was at?

2 MR. HONE: It's probably in the appraisal.

3 MR. WERTHEIMER: I'll take a look. Thank you. That

4 comes out to about $17 a square foot, just an FYI. That's

5 all I have. That's all I have. Thank you.

6 MR. HONE: Thank you.

7 MR. WERTHEIMER: Thank you. Any more questions?

8 MR. SHELDON: Sir, could you give just a bit of

9 background to why the rents weren't raise for such a long

10 period?

11 MR. HONE: Because my dad is a very generous

12 individual.

13 MR. SHELDON: Yeah.

14 MR. HONE: That's pretty much the background.

15 MR. SHELDON: And just -- you just want to make up for

16 that now?

17 MR. HONE: No. We want to set the record right now.

18 We're not trying to recoup everything we've lost or he's

19 lost over the years and years of being a very generous

20 person. He just wants to get now what he's entitled to.

21 MR. SHELDON: Thank you.

22 MR. HONE: Yeah.

23 MR. SILACCI: Now, I have a question for Mr. McCarthy,

24 please. Thank you, sir. In your calculations for MNOI with

25 the revised Vega adjustment, do you -- we show here that

1 total 1982 expenses from the Martello memo are $53,299, and
2 then you reduce that, otherwise minus to minus, with
3 depreciation to get a net, I guess is the term I use,
4 expenses. When I look -- my reading of the Martello memo
5 looks like the depreciation expense are in addition to that
6 53,299. So I guess my question to you is, are the -- is the
7 $53,299 total expenses including depreciation or is it
8 without depreciation?
9 MR. MC CARTHY: It includes depreciation. That was my
10 reading of the memo.
11 MR. SILACCI: Just my opinion, that's not my reading of
12 the memo. So -- my reading of the memo -- and if you refer
13 to both the first and the second page where it gets into it
14 is that depreciation is outside of that expense amount.
15 MR. MC CARTHY: Yeah, I did not have that
16 interpretation of it. I also want to point out that the
17 Martello memo is a -- is a memorandum. It doesn't have --
18 it walks through a calculation in a narrative fashion and
19 doesn't provide a formula. And my reading of it was that
20 the -- he says all expenses, and I take all to mean all.
21 And then to subtract the depreciation. That was my -- my
22 interpretation obviously is different from yours.
23 MR. SILACCI: Thank you. But as a follow up, and maybe
24 you can help me and -- and the commission, where -- where is
25 the underlying 1982 expenses, which would clear it up?

1 MR. MC CARTHY: Well, as far as I have -- I have the
2 memo and that's really basically it. We don't have any
3 detail, so I don't know where they are.
4 MR. SILACCI: Thank you.
5 MR. WERTHEIMER: Any other questions for Mr. McCarthy?
6 Do the Staff have any questions for any of the Applicants?
7 MR. NORMAN: Yes, Mr. Chair. Mr. Neet.
8 MR. MC CARTHY: I'm excused.
9 MR. NORMAN: Hi. Your initial appraisal you did for
10 this, when did you do that appraisal, roughly?
11 MR. NEET: It was back in the early -- you know,
12 somewhere in the middle of the year, I think. I'm not sure.
13 It's dated. There's a date on the top of the letter. It's
14 actually both reports are dated the same because the second
15 one was just the corrections.
16 MR. NORMAN: Okay. And when did you actually do the
17 second report? Because I do note that the date does say
18 May 29, 2010.
19 MR. NEET: Right. I made the -- I made those
20 corrections, I don't know, last week some time.
21 MR. NORMAN: Did you make those corrections after
22 reading Mr. Brabant's report?
23 MR. NEET: I had -- yeah, I had read Mr. Brabant's
24 report, yes.
25 MR. NORMAN: Now, I believe your prior testimony was

1 that you prefer to use the highest rent from each park;
2 correct?
3 MR. NEET: That -- in the case of estimating -- for --
4 in this context, yes.
5 MR. NORMAN: Okay. Now, I just want to give a
6 hypothetical, so I can kind of see what your thinking is on
7 this. If you have a park, let's say, that had 200 spaces
8 that were -- the rent was $200 for 199 of those spaces and
9 then one space was $300 per month, would you use the $300
10 per month as the -- as representing the market rate in that
11 instance without any other information?
12 MR. NEET: I'm not sure that I would because the --
13 because the difference there is fairly -- you know, the
14 difference -- and in your hypothetical -- I mean, I don't
15 know exactly because I can't answer a hypothetical. But,
16 you know, I would say that, you know, if I'm looking at a
17 difference of, you know, 50 percent, then that might be
18 something to maybe try to investigate further or place less
19 weight on that. In this case the differences were nowhere
20 near that amount.
21 MR. NORMAN: Okay. And did you visit all the parks?
22 MR. NEET: Yes.
23 MR. NORMAN: Okay. And in your report, I believe, for
24 Ven Two Park Valley (phonetic spelling), in 1983 you state
25 that the rents range from approximately 191 to $233 per

1 month?
2 MR. NEET: I don't have it in front of me, so I'll
3 accept that you're -- that you're quoting correctly.
4 MR. NORMAN: Right. And in that case, do you recall if
5 you used the highest rents from that park in doing your
6 analysis?
7 MR. NEET: As far as I know I did, yes.
8 MR. NORMAN: Okay. And do you know how many spaces
9 were in that park? If I said 171, does that seem about
10 right?
11 MR. NEET: You know, I can certainly get out my report
12 and we can go over the minutia if that's -- if that's what
13 your intent is here.
14 MR. NORMAN: I don't know that we need to do that, but
15 if you would like to have it, I don't want to stop you.
16 MR. NEET: Okay. Well, I don't want to be -- I see
17 that you're the assistant city attorney, and I am just a
18 lowly appraiser, so.
19 MR. NORMAN: I'll give you a second.
20 MR. NEET: Actually, this is -- that information is in
21 file memorandum. It's -- It's not within the report that I
22 submitted. So if I may.
23 MR. NORMAN: Take your time.
24 MR. NEET: So is the question, do I know how many
25 spaces are in Ven Two Park Villa, is that --

1 MR. NORMAN: Correct.
2 MR. NEET: Okay. I believe -- I believe the 171 is
3 probably correct.
4 MR. NORMAN: Okay. And do you know how many of those
5 spaces were at the highest rent for that park in 1983?
6 MR. NEET: No. But I certainly could research that as
7 I -- and provide you with that information.
8 MR. NORMAN: If I said two, does that sound right?
9 MR. NEET: Maybe. I don't know.
10 MR. NORMAN: Okay. So --
11 MR. NEET: But that's not an uncommon -- that's not an
12 uncommon situation. If the rents -- that is an older park
13 and in some cases -- you know, they may -- you know, any of
14 this is obviously -- there's a level of conjecture that goes
15 along. The fact is somebody in that park agreed to pay --
16 to somebody according to what you're telling me, agreed to
17 pay a certain level of rent. Chances are those were the
18 more recent move ins to the park. It's possible. It may
19 not be the case. That's why this process relies on more
20 than two data points.
21 MR. NORMAN: Okay. But you made that assumption in
22 this case?
23 MR. NEET: I made the assumption that that's an
24 indication of what somebody was willing to pay to live in
25 that park.

1 MR. NORMAN: Okay. But you don't know when those rents
2 were set, for example, or anything of the particulars for
3 why those rents were set at that rate?
4 MR. NEET: No, I do not.
5 MR. NORMAN: Okay. Okay. I believe your earlier
6 testimony you stated that from 1983 to 1986, in
7 Thousand Oaks, at least, rents were not necessarily
8 increased at their maximum allowable amount; is that
9 correct?
10 MR. NEET: Yes.
11 MR. NORMAN: Okay. Could you look at your report that
12 was submitted today. On page 10 there is a table or graph
13 in the middle of that page. I just want to understand what
14 this says. I want to look at the Conejo Mobile Home Park
15 line that says 1983. And there's a number under 1983 at
16 seven percent that says 157.
17 MR. NEET: Which one are we looking at?
18 MR. NORMAN: Yeah. Conejo Mobile Home Park, 1983, and
19 then under 1983 at seven percent there's a number 157 in
20 red.
21 MR. NEET: Yes.
22 MR. NORMAN: And what does that number represent?
23 MR. NEET: That is the -- that is the number that was
24 the highest rent in the rent roll for 1983 that was obtained
25 from city records.

1 MR. NORMAN: Okay. And looking at the line above that
2 that says, Conejo Mobile Home Park 1986.
3 MR. NEET: Yes.
4 MR. NORMAN: The highest rent was $210?
5 MR. NEET: Yes.
6 MR. NORMAN: Okay. Do you know what the annual
7 compounded rate of those two numbers are approximately?
8 Would you say it's more than ten percent yearly?
9 MR. NEET: I can certainly -- looks like about seven
10 and a half. I'm sorry, it's three here not four, yes. I
11 punched in three, four. Yes, it's 10.2.
12 MR. NORMAN: All right. So would you say at least for
13 this park rents were increasing more than the allowable
14 amount?
15 MR. NEET: No.
16 MR. NORMAN: Why not?
17 MR. NEET: Because this is the -- this would be the
18 highest rent in 1983. It's not the same space. It's the
19 highest rent in 1986. Your own expert found that the rents
20 in that park, average rents in that park, and I confirm
21 these numbers were correct, the average rent in that park
22 increased by less than seven percent. And that was -- that
23 was what I was pointing out, was the average rents were
24 increased for less than seven percent. Not that one
25 particular rent.

1 MR. NORMAN: Okay. One -- one last question. In your
2 original appraisal, you didn't show the actual rents for
3 1983 and 1986 for the parks in Thousand Oaks; correct?
4 MR. NEET: That's correct. It was in my -- it was in
5 my notes and analysis on my computer. But one of the
6 comments that was made by Staff at some point in this
7 process is they would like to see the work, so I went ahead
8 and put that in here for your benefit.
9 MR. NORMAN: Wouldn't you normally include that type of
10 data in an appraisal report?
11 MR. NEET: Not in a summary report. This is a short
12 summary report. It's not -- it's not a requirement. It's
13 not necessary. These are -- these are -- these are factual.
14 These are factual information that everybody that is
15 involved in this process, you, Mr. Brabant, Dr. Baar, the
16 Staff, Applicant, Residents, all had access to that
17 information. It wasn't something that was -- you know,
18 there was no -- it wasn't something that was information
19 that only I had access to.
20 MR. NORMAN: Thank you. I have no further questions
21 for this witness.
22 MR. WERTHEIMER: Thank you.
23 MS. SPENCER: Mr. Chair, the court reporters informed
24 us that she could use a break. She's been going for almost
25 two hours. Would it be possible to do that at this time?

1 MR. WERTHEIMER: We'll take a break after your
2 cross-examination.
3 MS. SPENCER: I assure you I have four witnesses to
4 examine and I get 15 minutes for each witness. It's going
5 to take an hour. The court reporter can't go for another
6 hour.
7 MR. WERTHEIMER: Take a break. All right. We'll take
8 a break. We'll be back at --
9 MS. SPENCER: Thank you very much.
10 MR. WERTHEIMER: -- 6:30.
11 (A break was taken.)
12 MR. WERTHEIMER: Please. And the tenants'
13 representative.
14 MS. SPENCER: I wasn't clear if the Commission was
15 going to ask any questions of Mr. McCarthy or not or if the
16 Commission had -- or the Staff had completed all of its
17 witnesses or did you want me to go ahead and examine
18 Mr. Neet now? How do you want to handle it, I guess is the
19 question. Chandra Spencer from City of Oak Park, office in
20 Los Angeles on behalf of the tenants, by the way.
21 MR. WERTHEIMER: The answer to your question is that
22 we're done and it's your turn.
23 MS. SPENCER: Okay. Thank you. So with respect to
24 questions, I do have some questions for each of the
25 Applicants's witnesses. So I think we'll start with

1 Mr. Neet and just take everybody in order.
2 MR. NEET: How are we go doing this? Are you going to
3 be there and I'm going to be here?
4 MS. SPENCER: It's a very rare occasion in my life.
5 I'm shorter than you, so I'll take the shorter mic.
6 MR. NEET: Oh, thank you.
7 MR. WERTHEIMER: Excuse me. I was just informed that
8 we aren't done. So I'd like to ask you to sit down. We
9 have one more question by the staff for Mr. McCarthy.
10 MR. NORMAN: Hello, Mr. McCarthy.
11 MR. MC CARTHY: Hello, Mr. Norman.
12 MR. NORMAN: You read Mr. Baar's report; correct?
13 MR. MC CARTHY: Yes.
14 MR. NORMAN: Okay. And in that report do you recall
15 that he criticized the return on investment formula?
16 MR. MC CARTHY: He made some criticism of it, yes.
17 MR. NORMAN: Do you think the return on investment
18 formula is a reasonable type of fair return standard?
19 MR. MC CARTHY: No.
20 MR. NORMAN: Would your answer change if there was a
21 reasonable -- if the historic investment suggested for
22 inflation and then you did the return on investment?
23 MR. MC CARTHY: Could you repeat the question, please?
24 MR. NORMAN: Sure. Would it be a reasonable type of
25 standard if the historical investment, the original

1 investment amount is index for inflation?
2 MR. MC CARTHY: No.
3 MR. NORMAN: Why not?
4 MR. MC CARTHY: Because I believe the maintenance and
5 net operating income formula is the best way to determine
6 what the fair rents should be.
7 MR. NORMAN: Okay. Now, in your sheet that you
8 provided to the Commission, which shows the revenue loss for
9 the five-year phase-in, could you explain how you calculated
10 the numbers on the rates effective 12/3/10 for the five-year
11 CD, ten-year treasury, prime rate, et cetera? Just how --
12 how is the calculation done?
13 MR. MC CARTHY: It's done through the present value
14 table. And the data is taken from -- was taken from the
15 Wall Street Journal that day.
16 MR. NORMAN: Okay. And what was -- what was the amount
17 that you started with on those calculations? Is it the
18 340903?
19 MR. MC CARTHY: I believe it was. I want to see if I
20 kept a copy, which I don't -- it doesn't look like I have
21 with me.
22 MR. NORMAN: So you don't have a copy of that
23 spreadsheet?
24 MR. MC CARTHY: I don't have a copy of those, no, not
25 with me.

1 MR. NORMAN: Do you think you could provide those to
2 us?
3 MR. MC CARTHY: Not this evening.
4 MR. NORMAN: Obviously.
5 MR. MC CARTHY: But the answer is yes.
6 MR. NORMAN: Okay. Have you ever dealt with a
7 situation where there was a phase-in of the rent for a
8 mobile home park increase?
9 MR. MC CARTHY: What do you mean by dealt with?
10 MR. NORMAN: Well, have you been involved in as part of
11 an application for either the owner --
12 MR. MC CARTHY: I have not been asked to do this type
13 of calculation before. It's typical for -- to request a --
14 I lost the -- I lost the name of the case in my mind here.
15 The -- what's that? Cavanaugh adjustment. But I've not
16 been asked to -- I have not been asked to calculate it.
17 MR. NORMAN: Do you have any thoughts on how you would
18 adjust the rental amounts for a phase-in as proposed by
19 staff?
20 MR. MC CARTHY: No, I don't because I don't believe the
21 phase-in is fair.
22 MR. NORMAN: Why is that?
23 MR. MC CARTHY: Because the MNOI formula indicates that
24 in order to give this owner a fair return, he needs $466.
25 And if we -- if we go for a penny less, that's unfair

1 because of all the other -- of all the other losses that
2 this park owner has incurred over the years. The 466 number
3 is a floor. Now, if you -- if you go for a -- if you do a
4 phase-in, you're crashing through that floor, and that's not
5 fair.
6 MR. NORMAN: And the proposed increase, do you know
7 what percentage of the current rent that is?
8 MR. MC CARTHY: It's about 360 percent increase.
9 MR. NORMAN: Okay. No further questions. The Staff is
10 done.
11 MR. WERTHEIMER: Thank you. Ms. Spencer and Mr. Neet.
12 Thank you.
13 MS. SPENCER: Mr. Neet, have you ever done a rental
14 appraisal for an affordable housing project?
15 MR. NEET: Yes.
16 MS. SPENCER: Okay. And when you did the rental
17 appraisal for the affordable housing project, did you use
18 the same methodology that you used here?
19 MR. NEET: It's been so long I can't recall what
20 methodology was used. I think if it -- my recollection is
21 that the rents were based on the -- the HUD rents or the
22 rents as calculated by HUD every year for the community that
23 the property was in.
24 MS. SPENCER: So the rents were based on the HUD
25 established income levels for the various levels of income

1 for the affordable housing?

2 MR. NEET: Well, the rent levels themselves were

3 established like the Section -- using the Section 8 rents,

4 okay, so much for a four bedroom, so much for a three

5 bedroom, et cetera. And then the -- you know, but the

6 actual rents that the tenants paid were based on income,

7 were based on the tenant's income.

8 MS. SPENCER: And so the rents that were established on

9 the Section 8 rents, the government provided some sort of

10 maximum total rent that could be paid for that particular

11 space; is that correct?

12 MR. NEET: Yes. Every year in, I believe, it's every

13 county, HUD publishes a rent figure based upon the number of

14 bedrooms in the unit.

15 MS. SPENCER: And then the tenants' responsibility for

16 that rent is based -- is tied to their income; is that

17 correct?

18 MR. NEET: Correct. And then the Section 8 program

19 pays the rest.

20 MS. SPENCER: So when you did the appraisal of rents

21 for this affordable housing project, did you use similar

22 methodology?

23 MR. HILL: Objection.

24 MR. NEET: It was a completely different context. We

25 established -- I estimated what market rents were for that

1 particular -- for the particular project based upon what was
2 going on in that market at that time. You know, it was a
3 current -- it was a current date appraisal. We didn't have
4 to go back 30 some odd years. And it was -- you know, we
5 established what the market rent was. But because the loan
6 was subsidized under that -- under the program, the loan --
7 they paid a lower interest rate and everything else, they
8 collected less rent and the value was based upon the
9 contract, the rent that they would collect. But that was
10 how they got the -- to the -- that was how they got to the
11 amount of debt that the property could carry.
12 MS. SPENCER: Did you do any research when you did your
13 analysis in this case to determine what the market rents
14 were for the Ranch Mobile Home Park into the dealings
15 between Mr. Hone and the city back in the late '70s to
16 establish the rents for this park?
17 MR. NEET: No. Because that's not a market rent.
18 Those -- whatever those -- whatever those agreements or
19 negotiations might have been, they have nothing to do with
20 market rent.
21 MS. SPENCER: So you would agree then that rents for an
22 affordable housing project have nothing to do with market
23 rent; is that correct?
24 MR. NEET: I wouldn't say -- I think that's -- you're
25 putting words in my mouth there.

1 MS. SPENCER: Well, do rents for an affordable housing
2 project have anything to do with market rent?
3 MR. NEET: Sure.
4 MS. SPENCER: How?
5 MR. NEET: Well, in some cases the -- in some cases,
6 because HUD rents tend to be countywide, you might be -- the
7 rents may be established based upon countywide rents. And
8 the property that you're looking at may be in an area that
9 is less -- that attracts less rent. So the market rents
10 maybe less than the Section 8 rental amounts. I've seen
11 that occur.
12 MS. SPENCER: But the manner and mechanism under which
13 HUD establishes rents and Section 8 establishes rents is not
14 based on the market, is it?
15 MR. NEET: No, that's an incorrect statement because
16 HUD surveys property managers, property owners. You know,
17 I'm not sure exactly who they all survey, but it's part of
18 the work that the U.S. Census Bureau does, American -- AHV
19 studies. But, yeah, I mean, that Section 8 rent is based
20 upon research into what rent is being charged for units at
21 that time. So, yeah, that does have something to do with
22 market.
23 MS. SPENCER: So market is a small component of it but
24 not the entire determination by HUD as to what the rents
25 should be. Would you agree with that?

1 MR. NEET: No. I think you're parsing words here, and
2 I think you're -- you know, I would disagree with the
3 characterization. My statement is this, HUD sets rents
4 through the Section 8 housing program based upon research
5 and analysis of local rental market conditions, surveys, and
6 other things that tell them what people are paying for rent.
7 MS. SPENCER: Did you do any historical research into
8 how the rents were established for this particular
9 affordable housing project?
10 MR. NEET: Well, I'm not sure that -- I'm not sure that
11 I would agree with your characterization that this is an
12 affordable housing project. But if you want to ask me how
13 they were established for the mobile home park, the answer
14 is, no, I did not. Once, again, that's not a -- that's
15 really not a component of market rent.
16 MS. SPENCER: And you didn't do any research as to
17 whether or not there was an arm's length transaction between
18 the owner of the park and the City to establish that park,
19 did you?
20 MR. NEET: I have no idea.
21 MS. SPENCER: Okay. Do you have any experience
22 appraising mobile homes themselves as opposed to the
23 parks?
24 MR. NEET: Yes.
25 MS. SPENCER: Would you agree that as the rent for a

1 particular space increases, that the value of the mobile
2 home will typically decrease?
3 MR. NEET: I would not agree with that statement.
4 MS. SPENCER: Okay. So if my mobile home is worth
5 50,000 -- I paid 50 -- my mobile home is worth $50,000 today
6 and my space rent is $150 a month, if my space rent were to
7 go up to $300 a month, the value of my mobile home would
8 remain the same?
9 MR. NEET: The value of your mobile home would remain
10 the same. It's the value of your lease hold interest that
11 would change.
12 MS. SPENCER: So when you sell the mobile home, you
13 sell the lease hold interest with it, don't you?
14 MR. NEET: Correct.
15 MS. SPENCER: So would the increase in the space rent
16 decrease the value of the lease hold interest?
17 MR. NEET: Obviously, it would.
18 MS. SPENCER: Do you know if there's any particular
19 formula for that increase or for the decrease in the value
20 of the lease hold interest corresponding to the increase in
21 rent?
22 MR. NEET: There had been formulas banding about. I
23 have never found in my research that they were -- that they
24 were entirely predictive.
25 MS. SPENCER: When you were doing your analysis of the

rents in this situation, did you give any consideration to the value bestowed on the owner by the benefits granted by the City in improving the development? For example, changing the zoning, doing development fee waivers, reducing the planning restrictions, any of that. Did you give any consideration to that?

MR. NEET: No. Again, that is not a component of market rent.

MS. SPENCER: Would you agree that this park has never operated under the rent stabilization ordinance, that the rents had never been established in that manner?

MR. NEET: I do -- I really don't know.

MS. SPENCER: Is that an important factor for you in determining this Vega market analysis?

MR. NEET: In terms of determining what market rent was in 1979 through 1980 prior to the imposition of the ordinance, no, it is not.

MS. SPENCER: Well, let's assume that the first year that the ordinance is going to be imposed on this park is 2011. Ordinance has never been applied to this park prior to now and the ordinance will now be applied to this park. Does that have any impact in determining your market analysis for the purpose of determining a Vega adjustment?

MR. NEET: It has nothing to do with my portion of that because my portion is based purely on the market rental

1 analysis.

2 MS. SPENCER: So the concept of the -- would you agree

3 that the concept of the Vega adjustment, the reason that

4 comes into place is that it presumes that the year before

5 the ordinance comes into place is what establishes the fair

6 market rents; is that correct?

7 MR. NEET: I'm don't -- not sure that's what a Vega

8 adjustment is. My understanding is the Vega adjustment is

9 based -- is necessitated when there is a -- when the rents

10 are below market at the beginning of the initiation of the

11 ordinance. But then, that's a matter of law and I'm really

12 not an expert on that.

13 MS. SPENCER: Okay. I have no further questions for

14 you.

15 MR. NEET: Okay.

16 MS. SPENCER: Thank you.

17 MR. NEET: Thank you.

18 MS. SPENCER: Mr. McCarthy, I think you're up next.

19 I'm going to try to talk a little louder. It's usually not

20 a problem for me, but apparently the court reporter is

21 having a hard time hearing me.

22 Mr. McCarthy, when you did your income and expense

23 analysis for the Ranch Park, did you have any actual ledger

24 data or any actual accounting records for 1979?

25 MR. MC CARTHY: No.

MS. SPENCER: And did you have any actual ledger data or accounting records for 1982?

MR. MC CARTHY: No.

MS. SPENCER: And did you have any actual ledger data or accounting records for 1999?

MR. MC CARTHY: I might. I might have a tax return. Hold on. The answer is no.

MS. SPENCER: So the numbers that you used to determine the expenses for 1979, were based on a backwards adjustment of the summary data contained in the 1983 memo; is that correct?

MR. MC CARTHY: That is correct.

MS. SPENCER: Did you attempt to determine whether any of those expenses would be disallowed under RAC 2 or RAC 5, any of the expenses claimed by the owner would have been disallowed under RAC 2 or RAC 5?

MR. MC CARTHY: Well, I thought about it, but the problem is there's not enough detail to be able to eliminate the expenses had I determined they weren't supposed to be eliminated. There's not enough detail there to deal with.

MS. SPENCER: You just have a summary by a City staff member; is that correct?

MR. MC CARTHY: That's all I got.

MS. SPENCER: Okay. And at the time that the 1982 -- excuse me, 1983 memo was written and the 1982 expenses were

1 submitted, would you agree that the City was using the
2 formula adopted under the trailer park development permit as
3 opposed to the formula adopted under the rent stabilization
4 ordinance?
5 MR. MC CARTHY: I'm not sure what they used.
6 Mr. Martello's memo, as we learned from questioning before,
7 is subject to interpretation.
8 MS. SPENCER: But you would agree that they weren't
9 looking at it for purposes of doing an analysis under the
10 rent stabilization ordinance, wouldn't you?
11 MR. MC CARTHY: That is correct.
12 MS. SPENCER: Okay. Now, when you did your adjustments
13 to the net operating income for 1979, why did you adjust it
14 for a hundred percent of inflation as opposed to the price
15 level adjustment mandated by RAC 2?
16 MR. MC CARTHY: I'm not following you.
17 MS. SPENCER: Okay. Well, let's take --
18 MR. MC CARTHY: I adjusted it for inflation from 1979
19 to 2009.
20 MS. SPENCER: So under -- did you review RAC 2 before
21 you did your analysis?
22 MR. MC CARTHY: Yes, I did.
23 MS. SPENCER: And did you review RAC 5 before you did
24 your analysis?
25 MR. MC CARTHY: Yes, I did.

1 MS. SPENCER: Okay. Let me just get to the right page
2 here in RAC 2. And I don't know if the Commission has been
3 given a copy of the materials that I've provided in the
4 notebook, but for convenience I put the RAC 2 and the rent
5 stabilization ordinance in the notebook and I put some page
6 numbers in little tiny numbers there at the bottom. So if
7 you want to follow along, it will be a little easier for
8 you. And hold on just one moment and I'll give a copy to
9 the owner's counsel.
10 So, Mr. McCarthy, in the RAC 2, which is at page
11 RTA22 of the materials that I've provided in section 3.04 --
12 MR. MC CARTHY: May I look on?
13 MS. SPENCER: Yes. Actually, I have an extra copy
14 here. You're welcome to look over my shoulder if it's
15 easier. It says that in order to determine eligibility for
16 rent increases pursuant to the 1979 base year formula,
17 you're supposed to under Section 3.04, add to the net
18 operating income for 1979 all automatic adjustments of eight
19 percent as permitted by the Section 6 of the rent
20 stabilization ordinance, which the landlord could have been
21 implemented which shall be known as the price level
22 adjustment. Do you see that?
23 MR. MC CARTHY: I see that.
24 MS. SPENCER: Did you do that?
25 MR. MC CARTHY: No.

1 MS. SPENCER: Instead you used a hundred percent of the
2 CPI; is that correct?
3 MR. MC CARTHY: That is correct.
4 MS. SPENCER: Now, for the current year expenses, what
5 analysis -- I'm going to ask you some questions about what
6 analysis you did of the current year expenses. When you --
7 when you received the current year expenses, you received
8 the general ledger and all the supporting receipts that have
9 been submitted to the Commission; is that correct?
10 MR. MC CARTHY: I didn't receive the receipts. I
11 received compiled financial statements from the general
12 ledgers.
13 MS. SPENCER: Did you -- have you -- since you've done
14 your analysis, looked at any of those receipts or any of
15 those 1200 pages of supporting documentation offered by the
16 owner?
17 MR. MC CARTHY: I haven't looked at the receipts. If I
18 had any questions, I asked them of Mr. Hone or I asked them
19 of Gretchen Carter.
20 MS. SPENCER: In the expenses that were listed, did you
21 go through those to determine if any of those expenses were
22 not permitted by RAC 2 or RAC 5? For example, travel
23 expenses are not included in RAC 2 or RAC 5. Did you go
24 through and see if they were claiming expenses for travel?
25 MR. MC CARTHY: Yes, I did.

1 MS. SPENCER: And did you adjust those out?
2 MR. MC CARTHY: I adjust sought some of them out.
3 You're speaking specifically of travel?
4 MS. SPENCER: I gave it as a for example.
5 MR. MC CARTHY: Okay.
6 MS. SPENCER: Did you adjust out the travel expenses?
7 MR. MC CARTHY: I made a $1700 reduction of travel
8 expenses.
9 MS. SPENCER: Was that done recently?
10 MR. MC CARTHY: Recently? I did it when I did the
11 analysis.
12 MS. SPENCER: And did you look --
13 MR. MC CARTHY: I did the analysis before that date I
14 just showed you, by the way, so -- this analysis was done
15 back in March 2009, and then it was adjusted again after
16 Mr. Neet resubmitted his appraisal.
17 MS. SPENCER: And the analysis -- the worksheet that
18 was offered in conjunction with the application, was that a
19 worksheet that you prepared or was that a worksheet that was
20 prepared by the owner himself?
21 MR. MC CARTHY: Could you show me the worksheet,
22 please?
23 MS. SPENCER: Yes, I will. Going to page 108 of the
24 notebook. This worksheet that came with the application for
25 the just and reasonable return, did you prepare that

worksheet?

MR. MC CARTHY: That was prepared by the attorneys.

MS. SPENCER: Did you review it before it was submitted?

MR. MC CARTHY: You know, I don't recall. I may have. This is quite some time ago.

MS. SPENCER: Okay. Do you know if the numbers match up with yours?

MR. MC CARTHY: Well, I would need a few minutes. Do I have a few minutes?

MS. SPENCER: Well, let me just narrow it down. Do you see any deduction on that worksheet prepared by the attorneys for travel?

MR. MC CARTHY: Nothing specifically. However, there's -- if I point out line 23, that looks like a summation of several different things according to the explanation. So you'd have to ask the person that prepared this.

MS. SPENCER: Okay. Now, when you did your analysis of the data that was submitted to you, some of the figures and even some of the figures on your sheet are three-year averages; is that correct?

MR. MC CARTHY: Some are three-year averages, that is correct.

MS. SPENCER: Did you actually look at the underlying

1 data provided in the general ledger and the documentations
2 supporting the general ledger to determine if those
3 three-year averages were supported?
4 MR. MC CARTHY: I looked at the general ledger, and I
5 asked questions of the parties that would know that could
6 answer my questions.
7 MS. SPENCER: Why did you use a three-year average
8 rather than just simply using 2009?
9 MR. MC CARTHY: Because I noticed in some of the
10 expenses were -- there's kind of a whip saw effect. In
11 other words, there's no expense one year, there's a high
12 expense in another year, there's kind of a middling expense
13 in the third year. So I made the determination that an
14 average of the three years would be the most fair
15 presentation. In other words, the adjustments are there to
16 normalize the expenses.
17 MS. SPENCER: Did you have the general ledger data for
18 all three years when you did this far?
19 MR. MC CARTHY: Yes, I did.
20 MS. SPENCER: So based on this analysis that you did,
21 would you agree that in various categories expenses can vary
22 from year to year?
23 MR. MC CARTHY: Yes.
24 MS. SPENCER: Did you make any adjustment -- did you
25 consult with any experts in the industry to make any

1 adjustment for industry standards, whether or not any of
2 these expenses exceeded industry standards?
3 MR. MC CARTHY: I used my own judgment in that case
4 having done many of these in the past.
5 MS. SPENCER: Are you an expert in mobile home park
6 management?
7 MR. MC CARTHY: Not in management, no.
8 MS. SPENCER: Now, section 2.17 of RAC 2, and if you
9 want to look at it with me, it's at page 21 of the
10 materials, states "Operating expenses must be reasonable.
11 When a very particular expense exceeds normal industry
12 standards in the base year or in the current year for which
13 the application for a rent increase is made, the Rent
14 Adjustment Commission shall determine whether the expense is
15 reasonable."
16 MR. MC CARTHY: Uh-huh.
17 MS. SPENCER: So based on that did you consult with any
18 experts in the industry to determine whether or not these
19 expenses were in line with industry standards?
20 MR. MC CARTHY: The only experts I consulted were
21 Mr. Hone and Gretchen Carter.
22 MS. SPENCER: Did you ask Ms. Carter if the management
23 and administrative expenses that were being charged for this
24 park were in line with the other 12 or so parks that she
25 manages in the State of California?

MR. MC CARTHY: I believe we had a discussion of what the management expenses were in the other parks because I noticed quite a variance over the three years in the expenses. Now, what the -- her precise answer to that question, I frankly don't remember.

MS. SPENCER: Did you ask her what the normal industry standard is for an on-site mobile home park manager with a -- what the normal industry standard is for a salary for an on-site mobile home park manager?

MR. MC CARTHY: I did not ask her that specific question.

MS. SPENCER: Did you ask her what the normal industry standard is for an off-site management company for a mobile home park?

MR. MC CARTHY: No.

MS. SPENCER: Now, you stated you have a fair amount of experience doing accounting in real estate; is that correct?

MR. MC CARTHY: Yes.

MS. SPENCER: And in the other real estate business that you have, do you deal with property management expenses for --

MR. MC CARTHY: Sometimes.

MS. SPENCER: -- multi-unit properties?

MR. MC CARTHY: The only multi-unit properties we deal

1 with are industrial type properties.
2 MS. SPENCER: But not residential?
3 MR. MC CARTHY: But not residential.
4 MS. SPENCER: So you don't know what the market is for
5 residential property management expenses for off-site
6 management, do you?
7 MR. MC CARTHY: No, I don't.
8 MS. SPENCER: Okay. Now, for the nine -- for the 2009
9 current year income, you included the actual rents received;
10 is that correct?
11 MR. MC CARTHY: That is correct.
12 MS. SPENCER: And according to the worksheet that was
13 presented, it looked like there was an adjustment made for
14 the rent for the manager's unit. Did you include that as
15 income?
16 MR. MC CARTHY: No.
17 MS. SPENCER: Did you include the laundry, the $189 or
18 so in laundry --
19 MR. MC CARTHY: Yes.
20 MS. SPENCER: -- income as income?
21 MR. MC CARTHY: Uh-huh.
22 MS. SPENCER: Okay. Looking at RAC 2, page 16 of
23 the --
24 MR. MC CARTHY: Actually, I did include the housing
25 allowance as income.

1 MS. SPENCER: As income?
2 MR. MC CARTHY: Yes.
3 MS. SPENCER: Okay. So turning to RAC 2, page 16 and
4 it's Section 2.05. Now, in RAC 2, page 16 starting Section
5 2.01, that gives you the formula for determining the gross
6 total income, is that correct, or the factors that go into
7 it?
8 MR. MC CARTHY: Yes.
9 MS. SPENCER: And one of those factors, subsection D is
10 adjusted income for below market rentals. Do you see
11 that?
12 MR. MC CARTHY: I see the title.
13 MS. SPENCER: Did you include the -- under Section
14 2.05, adjusted income for below market rentals, the units
15 where the rent increase is permitted by the rent
16 stabilization ordinance or the regulations and guidelines of
17 the Rent Adjustment Commission could've been made but have
18 not been made because of the landlord's rental policies and
19 purposes. Did you adjust the income for that?
20 MR. MC CARTHY: I wasn't aware of any adjustment that
21 needed to be made. I saw the rent role. I didn't see
22 anything that I -- first of all, this is talking about below
23 market and there's nothing about the rents in charged in
24 this park that have anything close to a market. I don't
25 feel I have to be an appraiser to make that statement

1 either.

2 MS. SPENCER: But you didn't adjust the income where

3 the rent increases could've been made but were not made, but

4 made by the landlords from 1979 to 2009, did you?

5 MR. MC CARTHY: Repeat the question, please.

6 MS. SPENCER: You did not include an adjustment to

7 income where the rent increases could have been by the

8 landlord from 1979 to 2009, did you?

9 MR. MC CARTHY: No, I did not.

10 MS. SPENCER: No questions -- more questions for

11 Mr. McCarthy. Right on time.

12 MR. WERTHEIMER: Thank you.

13 MS. SPENCER: All right. The next witness I'd like to

14 examine is Mr. Hone.

15 Good evening, Mr. Hone.

16 MR. HONE: Hello.

17 MS. SPENCER: I'm going to ask you some questions about

18 the early years of the park because the -- based on your

19 declaration you indicated that you are an owner of the park

20 and you've been respon- -- involved in operations of the

21 park since the inception; is that correct?

22 MR. HONE: No.

23 MS. SPENCER: So you signed a declaration to that

24 affect. Is that declaration incorrect?

25 MR. HONE: You have it here somewhere so I could look

1 at it?

2 MR. WERTHEIMER: Mr. Hone, could you speak into the

3 mic. Thank you.

4 MR. HONE: Sure.

5 MS. SPENCER: If you could just give me a minute, I

6 didn't expect that. Let me grab the declaration.

7 All right. Mr. Hone, I'm looking at Attachment 3

8 to the rent adjustment application for the Ranch Mobile Home

9 Park entitled Bruce Hone declaration. On the second page --

10 it's a two-page declaration. On the second page, dated

11 June 7th, 2010, signed in Downey, California. On the second

12 page of that declaration, is that your signature?

13 MR. HONE: Sure is.

14 MS. SPENCER: All right. Looking at the first

15 paragraph of that declaration, you state, "I am the son of

16 Andrew Hone and a part owner together with my father of the

17 Ranch Mobile Home Park." So your testimony here today that

18 you are not a part owner of the park?

19 MR. HONE: I didn't recall exactly how this was worded.

20 But if you took it literally, yeah, I am a part owner of the

21 park.

22 MS. SPENCER: Okay. And it states that "Since 1975,

23 when I was 29 years of age, I participated with my father in

24 the management decisions regarding the park including the

25 decisions to establish and raise rents." Is that true?

1 MR. HONE: That's true.
2 MS. SPENCER: All right. Then I have some questions
3 for you about those management decisions.
4 MR. HONE: Let me leave the declaration open, please.
5 MS. SPENCER: Okay. I'm not going to ask you about
6 that at the moment.
7 MR. HONE: Oh, okay.
8 MS. SPENCER: I'm going to turn to something else.
9 MR. HONE: All right.
10 MS. SPENCER: Excuse me. I'm going to put this right
11 on top. All Right. Turning to the materials, page 34,
12 which is behind the green tab that says "City Documents."
13 The first document I want to ask you about is the planning
14 commission application that was submitted by Mr. Wycoff. At
15 the time that you and your father were developing this park
16 in the late 1970s, were you aware that Mr. Wycoff had
17 submitted this application and had obtained permission to
18 change the zoning --
19 MR. HONE: No.
20 MS. SPENCER: -- approvals for the park?
21 It would be helpful if you wait until I finish
22 asking my question before you answer. It's kind of hard on
23 the court reporter to take it down if you don't.
24 So when you -- now, it's my understanding, and correct
25 me if I'm wrong, that your family purchased this parcel from

1 Mr. Wycoff after the zoning had been changed; is that
2 correct?
3 MR. HONE: I couldn't tell you. I don't -- I don't
4 recall.
5 MS. SPENCER: Were you aware when you purchased this
6 park, that one of the conditions --
7 MR. HONE: We didn't purchase this park.
8 MS. SPENCER: Strike that.
9 Were you aware when you purchased the parcel? You
10 purchased the bare land; is that correct?
11 MR. HONE: My father purchased the bare land.
12 MS. SPENCER: Your father purchased the bare land and
13 at the time it had some of the development approvals already
14 completed; is that correct?
15 MR. HONE: I couldn't tell you to that.
16 MS. SPENCER: So you weren't involved in that?
17 MR. HONE: No, I was not.
18 MS. SPENCER: When did you first become aware that this
19 park was supposed to be a low income mobile home park?
20 MR. HONE: I don't recall that either.
21 MS. SPENCER: Was it before 1977?
22 MR. HONE: I said I don't recall that either.
23 MS. SPENCER: You have no recollection of when --
24 MR. HONE: No, ma'am, I don't.
25 MS. SPENCER: Did you have any discussions with your

1 father about what research he did into the parcel before he
2 purchased it?
3 MR. HONE: That's been so long ago. I can't recall.
4 MS. SPENCER: Did you have any discussions with your
5 father about what agreements he was aware of that had been
6 made with the city regarding development of this parcel
7 before the park was built?
8 MR. HONE: I probably did, but I certainly can't
9 recall.
10 MS. SPENCER: Now, turn your attention, please to page
11 43 of the materials. City of Thousand Oaks Planning
12 Commission Resolution No. 26774. Do you see that?
13 MR. HONE: Yes.
14 MS. SPENCER: Okay. This document is actually five,
15 six, seven, eight pages in total. When was the --
16 MR. HONE: Six more pages after the signature page?
17 MS. SPENCER: Yes?
18 MR. HONE: Okay.
19 MS. SPENCER: Has an -- what you call an exhibit. Have
20 you ever seen this document before?
21 MR. HONE: It's possible. But I certainly wouldn't
22 tell you here tonight that I've seen it.
23 MS. SPENCER: Turning to page RTA 46, which is page 4
24 of that document?
25 MR. HONE: Yes, ma'am.

1 MS. SPENCER: See condition number 27, that prior to
2 the issuance of a zone clearance for the project, the
3 developer shall enter into an agreement with the City of
4 Thousand Oaks deed restricting the development for low
5 income mobile home park rental. Do you see that?
6 MR. HONE: Yes, ma'am.
7 MS. SPENCER: Has that ever been done?
8 MR. HONE: I couldn't tell you.
9 MS. SPENCER: Did you or your father or any person
10 acting on behalf of the owner, to your knowledge, enter an
11 agreement to restrict the income -- the rent -- the rents
12 for the park?
13 MR. HONE: I don't know the answer to that question
14 either.
15 MS. SPENCER: Do you know whether or not the city gave
16 your father or any person acting on behalf of the owner any
17 development fee waivers in exchange for developing a low
18 income senior park?
19 MR. HONE: I don't remember any specifics, no.
20 MS. SPENCER: Well, there were about -- you don't
21 remember about $112,000 in development fee waivers being
22 given to your family to develop this park?
23 MR. HONE: Are you just making that up or is that
24 something that really took place? Because I haven't a clue.
25 MS. SPENCER: Excuse me. Well, I'm looking at your

1 declaration here. So why don't you go ahead and take a look
2 at it.
3 MR. HONE: Okay.
4 MS. SPENCER: Look at paragraph 6.
5 MR. HONE: Okay.
6 MS. SPENCER: You state in your declaration, "We
7 established the initial rental amounts at below market rent
8 because the City agreed to waive approximately $100,000 in
9 development fees." Do you see that?
10 MR. HONE: Oh, yes, I do.
11 MS. SPENCER: So, now that you've read your
12 declaration, does that help you remember?
13 MR. HONE: That refreshes my recollection, yes,
14 ma'am.
15 MS. SPENCER: Okay. All right. Turn your attention,
16 please, going back to the notebook.
17 MR. HONE: Sure.
18 MS. SPENCER: Pages 54 and 55.
19 MR. HONE: Okay.
20 MS. SPENCER: Addendum TPD 74-6 Covenant Conditions and
21 Restrictions.
22 MR. HONE: All right.
23 MS. SPENCER: And it states, rent, "The original rent
24 schedule and any increases thereafter shall be in accordance
25 with and as set forth in that certain Exhibit A attached

hereto and incorporated herein as though set forth in full. Have you ever seen that before?

MR. HONE: Not that I recall.

MS. SPENCER: So do you have any specific information as we sit here today, any personal knowledge, as to how it was that the rents were established back 1977 for this park?

MR. HONE: The only thing that I barely remember is my father having some discussion with the City. The City came to him, wanted him to build a park that would take care of lower incomed individuals, and he said, it would be my pleasure as long as I can make a profit. That's basically about the only thing I recall.

MS. SPENCER: Do you remember who the accountants were for the park back then?

MR. HONE: Whopper, Gril, & Freedman out of Beverly Hills.

MS. SPENCER: All right. So turn your attention, please, next to pages 56 and 57. It's a two-page letter.

MR. HONE: Okay.

MS. SPENCER: Wilson and Hughes Certified Public Accountants. Were these the accountants for the park?

MR. HONE: Not that I know of. I've never heard of these guys.

MS. SPENCER: All right. So the next page, page 58.

1 Do you see that?
2 MR. HONE: Yes, ma'am.
3 MS. SPENCER: See a signature down towards the bottom
4 of the page?
5 MR. HONE: Looks like my dad's.
6 MS. SPENCER: So your dad signed this acceptance
7 form?
8 MR. HONE: I said it looks like my dad's signature.
9 MS. SPENCER: Do you have any reason to believe he
10 didn't sign it?
11 MR. HONE: No, I don't.
12 MS. SPENCER: Like someone forged the signature or
13 anything like that?
14 MR. HONE: I wouldn't have anything to lead me to that
15 belief, no.
16 MS. SPENCER: Okay. Were you involved in the rent
17 increase application submitted to the City in 1983 on behalf
18 of the park?
19 MR. HONE: No, I was not. No.
20 MS. SPENCER: Were you aware that the city council
21 adopted a resolution 84037 that established when and how
22 rent increases could be made at the park?
23 MR. HONE: No.
24 MS. SPENCER: When did you first become aware -- well,
25 you know that now, right, that there was a resolution

1 adopted, 84037?

2 MR. HONE: Based on everything I've heard here, yes.

3 MS. SPENCER: And the first time you heard about that

4 was here?

5 MR. HONE: I may have heard about it earlier, I just

6 don't recall when.

7 MS. SPENCER: Do you know if your father or anyone else

8 acting on behalf of the owner ever filed an appeal of that

9 resolution?

10 MR. HONE: No, I don't.

11 MS. SPENCER: Or challenged it in court in any way?

12 MR. HONE: No, I don't.

13 MS. SPENCER: And were you involved in the rent

14 increase application submitted in 2000?

15 MR. HONE: I wasn't aware there was one submitted in

16 2000. So the answer to that question would be no.

17 MS. SPENCER: So you stated in your declaration that

18 there have been only two rent increases since -- and this is

19 at paragraph 4.

20 MR. HONE: Uh-huh.

21 MS. SPENCER: The Ranch has had only two rent increases

22 since 1979, one in 1984 and the second in 2001. The 1984

23 rent increase was seven percent per City resolution copy --

24 84037, a copy of which is appended hereto as Exhibit C.

25 So apparently you knew about it when you submitted

1 that declaration; right?
2 MR. HONE: Evidently.
3 MS. SPENCER: But you had no personal knowledge of
4 the -- what happened in those transactions between the City
5 and --
6 MR. HONE: Not really. I got a lot of this information
7 from my father.
8 MS. SPENCER: So this isn't really your personal
9 knowledge, this is something your dad told you?
10 MR. HONE: Some of it is my personal knowledge, some of
11 it's what I got from my father.
12 MS. SPENCER: And that particular paragraph is from
13 your father?
14 MR. HONE: I don't recall. I'm not sure.
15 MS. SPENCER: Was your father the one who made the
16 decision as to when and how rent increase applications for
17 the park would be made?
18 MR. HONE: Probably.
19 MS. SPENCER: Is there anyone else in the limited
20 partnership who made those decisions?
21 MR. HONE: No.
22 MS. SPENCER: Did your father make a deliberate
23 decision not to make any rent increase applications other
24 than the one in 1984 and the one in 2001 up until now?
25 MR. HONE: I would say that's accurate, yes, an

1 accurate statement.

2 MS. SPENCER: And your father was the one who was

3 responsible for setting the policies for the limited

4 partnership related to rent increases; is that correct, that

5 was his responsibility?

6 MR. HONE: I'm not sure what you're asking me.

7 MS. SPENCER: Well, he was the one who got to decide

8 when and if the limited partnership was going to make these

9 rent increase applications --

10 MR. HONE: He be like a -- you know, the managing

11 partner of a limited partnership, right, okay.

12 MS. SPENCER: He was the shot caller?

13 MR. HONE: That's right.

14 MS. SPENCER: Okay. And the limited partnership --

15 eventually a family owned limited partnership assumed

16 ownership of this park; is that correct?

17 MR. HONE: Yes.

18 MS. SPENCER: And the park was reassessed by the tax

19 assessor after that limited partnership transfer was done?

20 MR. HONE: I don't know if that's true or not.

21 MS. SPENCER: Well, have you evaluated the property tax

22 expenses for this park?

23 MR. HONE: Me personally, no, ma'am.

24 MS. SPENCER: When you bought the park back in -- when

25 your father bought the park back in 1977, he paid about

150,000 for the land?

MR. HONE: My father never bought the park, he built the park.

MS. SPENCER: Let me rephrase that. When your father bought the parcel back in the late '70s, he paid about 150,000 for the land; is that correct?

MR. HONE: I'm not sure what he paid for it.

MS. SPENCER: Have you done any analysis of whether your property taxes are too high?

MR. HONE: Me, personally, no, I haven't. Our accountants may have done something of that nature, but I'm not aware of it.

MS. SPENCER: Have you asked that the -- have you asked your accountants to apply for a reassessment of the park --

MR. HONE: No.

MS. SPENCER: -- based on your appraisal you got last year?

MR. HONE: No.

MS. SPENCER: Because your property taxes show that you're paying property taxes on an excess of a million dollars. Did you know that?

MR. HONE: Well, we're really getting ripped off.

MS. SPENCER: All right. Who's responsible for negotiating leases with the tenants?

MR. HONE: I would say that's probably the management

1 company.
2 MS. SPENCER: And prior to the hiring of this new
3 management company from northern California, who was
4 responsible?
5 MR. HONE: Probably the manager on site.
6 MS. SPENCER: Was there a manager at Thunderbird who
7 was also -- had assumed some management responsibilities for
8 Ranch?
9 MR. HONE: I believe so.
10 MS. SPENCER: Do you know what representations were
11 made to the tenants as far as what the rents would be and
12 how they would be set and when they'd be increased?
13 MR. HONE: No, I don't.
14 MS. SPENCER: All right. I don't have any more
15 questions for Mr. Hone.
16 I have just a couple questions for Ms. Carter.
17 MR. HONE: Anybody on the board have questions for me?
18 Thank you.
19 MS. SPENCER: Good evening.
20 MS. CARTER: Good evening.
21 MS. SPENCER: Ms. Carter, you are the off-site property
22 manager for the Ranch Park; is that correct?
23 MS. CARTER: That's correct.
24 MS. SPENCER: And who is it within the management
25 structure for Ranch who's responsible for negotiating leases

1 with the tenants? Is that you or somebody else?
2 MS. CARTER: For negotiating the leases? Well, the
3 leases are -- were created through the park's attorney, the
4 current lease that's being used, the rental agreement. And
5 the on-site manager would be the one who sits down and
6 explains the terms and signs --
7 MS. SPENCER: And how long has that been the case that
8 the on-site manager would sit down and explain the terms?
9 MS. CARTER: Well, certainly since I've taken over. I
10 can't speak to what was happening before I became the
11 manager.
12 MS. SPENCER: And the on-site manager is a gentleman
13 named Barry who lives at the park?
14 MS. CARTER: That's correct.
15 MS. SPENCER: Do you have any involvement in the
16 negotiation of leases with tenants since you took over?
17 MS. CARTER: Well, I was involved in working with the
18 park's attorney in the creation of the lease, reviewing it
19 and making sure that it had the terms that it has.
20 MS. SPENCER: But as far as the direct contact with the
21 resident?
22 MR. CARTER: No, I have not.
23 MS. SPENCER: And so in the past couple of weeks, have
24 you had any direct contact with any perspective buyers
25 regarding the rents for this park?

1 MS. CARTER: No, I have not.
2 MS. SPENCER: So these leases, the leases -- the leases
3 that you provided, these different forms of leases that you
4 provided, these were drafted by the attorney for the park?
5 MS. CARTER: No. The current one was, but the -- some
6 of the tenants signed an older rental agreement that was
7 provided by the park -- by the state Western Mobile Home
8 Park Owner's Association.
9 MS. SPENCER: Okay. So these -- these leases that you
10 provided here, are these the current ones or the old ones?
11 MS. CARTER: No. I need to explain. If you look at
12 the bottom of the lease or the rental agreement, it has
13 beginning with the first one, it has a copyright 2007 WMA.
14 That's one rental agreement that was used for some of the
15 tenants. And if you continue paging back, you see one that
16 says copyright 2003 WMA again, that's the Western
17 Manufactured Housing Community Association. And just the
18 order that they're stapled in. Then you come up a few pages
19 back. Further back there's one that says copyright 1996
20 WMA, the same organization. And then finally you get to one
21 that says on the bottom 2004, Law Office of Scott E. Carter,
22 revised June 27, 2009, and that --
23 MS. SPENCER: And Mr. Carter, that's your husband; is
24 that right?
25 MS. CARTER: He's my husband and the park's attorney,

1 that's correct. And that agreement is the one that's been
2 used for tenants that have moved into the park since I took
3 over the property management.
4 MS. SPENCER: Okay. So the -- the Scott Carter
5 agreement. It is fair to call it the Carter agreement?
6 MS. CARTER: Sure.
7 MS. SPENCER: I've got one here for a resident who
8 moved into the park -- and these are in the stack of
9 materials that have been provided to the Commission. We
10 provided all of the leases that we could obtain copies of.
11 Got one here for Space No. 22, dated July 20,
12 2010, is this a Carter agreement?
13 MS. CARTER: Yes, it does have that at the bottom of
14 the first page.
15 MS. SPENCER: Okay. So in paragraph three it says the
16 next -- down towards the -- there's an empty space and some
17 handwriting, the second to the last -- third to last
18 sentence it looks like. The next scheduled increase for
19 this park will be on not applicable -- n/a. Do you
20 understand that to mean not applicable?
21 MS. CARTER: That means there wasn't any one scheduled
22 at the time that this was written.
23 MS. SPENCER: Okay.
24 MS. CARTER: Nothing scheduled.
25 MS. SPENCER: So at the time that this agreement was

entered into on July 20th, 2010, the park had no scheduled rent increases coming up?

MS. CARTER: That's correct. And if you read the next sentence after that, it says, if this date is less than 90 days from the date of the commencement date of this lease, the new rental amount will be -- and then again, it says n/a because there wasn't anything scheduled at that point in time.

MS. SPENCER: So when you took over this park, when you took over off-site management for this park, up until now there haven't been any scheduled increases; is that correct?

MS. CARTER: We have not had any increases since I took over the park.

MS. SPENCER: And there haven't been any on your calendar to prepare notices; right?

MS. CARTER: I've not issued any kind of 90-day notice of a rent increase.

MS. SPENCER: And if they -- you would need to know at least 90 days in advance that a rent increase was coming up because the mobile home residency requires you to give 90-days notice; is that correct?

MS. CARTER: Well, I would know that, yes, because I would be the one preparing the notices.

MS. SPENCER: And do you know what representations were

1 made to Ms. Chason (phonetic spelling) as to when -- whether
2 or not the rents in this park would increase when she signed
3 this lease?
4 MS. CARTER: Well, the plain language says at this time
5 there's nothing scheduled.
6 MS. SPENCER: Do you have if any verbal representations
7 were made by Barry or anyone else acting on behalf of the
8 park to Ms. Chason when she signed this lease?
9 MS. CARTER: No, I wasn't in the room when that lease
10 was signed.
11 MS. SPENCER: And you didn't have any discussions with
12 any of the residents who've moved into the park since
13 January 1st, 2009, to the present about the annual increase,
14 any annual increases?
15 MS. CARTER: I have not had any meetings with any
16 tenants concerning a rent increase.
17 MS. SPENCER: Did you tell any tenants that the rents,
18 if they went up, would just go up by a few dollars?
19 MS. CARTER: No, I wouldn't make a statement like
20 that.
21 MS. SPENCER: Sometimes you come to the park and tour
22 it; is that right?
23 MS. CARTER: Oh, sure. As a property manager, I do
24 need to visit the park.
25 MS. SPENCER: And you've had various discussions with

1 the former on-site property manager, Ms. Liz Woods;
2 correct?
3 MS. CARTER: I wouldn't say various discussions. When
4 I first took over the property, she was in the park office
5 and so I did have some discussions with her at that time.
6 MS. SPENCER: Did you have -- do you recall having any
7 discussions with Ms. Woods about rental increases?
8 MS. CARTER: No, I sure don't.
9 MS. SPENCER: Okay. And then the Carter agreement also
10 was for Space No. 30 dated April 3rd, 2010; is that
11 correct?
12 MS. CARTER: That's what it says there, yes.
13 MS. SPENCER: And in that paragraph 3, it has the same
14 n/a?
15 MS. CARTER: That's correct. It has the same
16 information.
17 MS. SPENCER: And these -- these -- the fill-in the
18 blanks, were those completed by Barry or someone else?
19 MS. CARTER: Well, it appears as though it was
20 completed by Barry. That does look like his handwriting.
21 MS. SPENCER: The n/a looks like his handwriting?
22 MS. CARTER: Yes, it does.
23 MS. SPENCER: What does Barry -- exactly what does
24 Barry do at the park, what do his job responsibilities
25 entail?

1 MS. CARTER: Well, Barry is the on-site resident
2 manager, and he receives the rents and deposits them in the
3 bank. He issues any notices that would need to be issued if
4 someone didn't pay the rent on time. If someone is
5 interested in purchasing a home in the park, he would give
6 them an application, explain the approval process to them,
7 meet with them. He would process the application and then
8 pass it on to me to be reviewed for approval or denial.
9 He is responsible for making sure that the rules
10 and regulations of the park are enforced. He's responsible
11 for making sure that the maintenance of the park is taken
12 care of and that the maintenance person that we've hired, he
13 would oversee that person and direct them as far as what
14 maintenance work needs to be done. He receives any tenant
15 complaints. He organizes and hosts resident -- functions
16 for the residents such as we have monthly -- sometimes every
17 other month we have dinners, and he usually organizes those
18 and some other residents help him. He puts together a
19 monthly magazine that is distributed to the residents. So
20 he has many different responsibilities.
21 MS. SPENCER: So since January of 2009, how many
22 notices approximately has Barry had to deliver?
23 MS. CARTER: What type of notice are you --
24 MS. SPENCER: You said he has to deliver notices, how
25 many has he had to deliver, whatever notices you were

1 talking about?
2 MS. CARTER: Well, I don't -- I think he might have had
3 to deliver maybe a couple of rent -- late rent notices, but
4 I don't believe there's been any other type because, you
5 know, we have been able to work things out with the
6 residents when there's been issues.
7 MS. SPENCER: Just a couple in two years?
8 MS. CARTER: Yeah, probably.
9 MS. SPENCER: And how many prospective resident
10 applications has he had to process in two years
11 approximately?
12 MS. CARTER: Gosh, I would say in that park it's
13 probably been maybe half of dozen, something like that.
14 MS. SPENCER: So once every quarter?
15 MS. CARTER: They don't come in on a very regular basis
16 now.
17 MS. SPENCER: And that doesn't take more than a few
18 hours, does it?
19 MS. CARTER: Oh, yeah, it does to do it properly.
20 MS. SPENCER: How long does it take, do you know?
21 MS. CARTER: Depends on the applicant and the
22 information they have. Because we have certain information
23 that we verify. Some of them are very straight forward and
24 easy to do and some of them are very complicated and require
25 a lot of follow up, conversations with me, documentation

1 that may not have been provided at the beginning of the
2 process. It's really not a very --
3 MS. SPENCER: Can you give me a range of how long those
4 usually take?
5 MS. CARTER: Well, not the working on it full time, but
6 the process itself allows 15 business days and that's what
7 the law provides, so we do provide answers in 15 business
8 days.
9 MS. SPENCER: Do you know how many hours approximately,
10 the range of numbers of hours it takes Barry to do one of
11 those applications?
12 MS. CARTER: No, I don't because we don't require that
13 the manager accounts for his time to that minute detail.
14 MS. SPENCER: And then he doesn't do the maintenance
15 himself, he just makes sure the maintenance guy shows up and
16 does it; is that correct?
17 MS. CARTER: That's correct.
18 MS. SPENCER: And do you know how long it takes him to
19 prepare the monthly magazine?
20 MS. CARTER: No, I don't. But it is -- there are a lot
21 of pages in it. I know he has help from some other
22 residents sometimes to provide information, but no, I don't
23 know exactly how long.
24 MS. SPENCER: And the rents are paid usually between
25 the first and the fifth of the month; is that correct?

1 MS. CARTER: First and the sixth.
2 MS. SPENCER: First and the sixth. So during the first
3 five, six days of the month he's receiving rents at various
4 times from the residents; is that correct?
5 MS. CARTER: That's correct.
6 MS. SPENCER: And do most of the residents pay their
7 rent by check?
8 MS. CARTER: Some money orders, some check.
9 MS. SPENCER: Is there a drop box?
10 MS. CARTER: There is a drop -- slot in the door.
11 MS. SPENCER: Okay. So do you know how much time -- I
12 know Barry's a full-time manager, that's what he's called,
13 but do you know how much time he actually spends per week
14 doing these various job responsibilities that you've talked
15 about?
16 MS. CARTER: Well, I know that my managers are
17 scheduled to work 35 hours a week in the office and then
18 they have another five hours of time that they're available
19 for after-hour emergencies. They're available to -- if they
20 can't reach a tenant during the day, you know, phone calls
21 or visits, then they would use those five hours to meet
22 after hours. He might use that to meet with a prospective
23 resident or to sign up a new resident if they can't come in
24 during regular normal business hours, Monday through Friday.
25 MS. SPENCER: Do you know if it takes him 35 hours a

week to actually get all those responsibilities done or does he have a lot of down time?

MS. CARTER: I don't know. I know that he's always available whenever I need him, and I believe that he's always available whenever the residents need him and that's part of being a good manager.

MS. SPENCER: One more question about Barry. Do you know how many complaints he's received in the past two years regarding the park?

MS. CARTER: Regarding the park?

MS. SPENCER: You said he receives complaints and processes those. Do you have a number as to about how many complaints he's gotten?

MS. CARTER: No, that wasn't something I was asked to bring with me this evening.

MS. SPENCER: Compared to some of the other parks that you manage, is this a really high complaint park, low complaint park, or right there in the middle?

MS. CARTER: Probably average.

MS. SPENCER: Is there any information provided to the residents regarding -- have you ever provided any information to the residents regarding the zoning approvals for the park?

MS. CARTER: Zoning approvals?

MS. SPENCER: Correct.

1 MS. CARTER: I'm not sure what you mean by that.
2 MS. SPENCER: Well, have you ever provided any
3 information to the residents regarding any of the
4 development approvals for the park, the development permit,
5 the zoning, the resolutions, any of that stuff? Have you
6 ever provided that information to the residents?
7 MS. CARTER: Well, I believe there's a section in the
8 rental agreement that states what the zoning is. Typically
9 there is. I'm not sure -- yeah, there is zoning information
10 clause 36.
11 MS. SPENCER: So is --
12 MS. CARTER: We do provide that information.
13 MS. SPENCER: Is this zoned mobile home exclusive?
14 MS. CARTER: It's a mobile home park, yes, that's
15 the -- that's the zoning.
16 MS. SPENCER: Okay. Has any information ever been
17 provided to the residents regarding resolution No. 84037, to
18 your knowledge?
19 MS. CARTER: Not to my knowledge.
20 MS. SPENCER: And has any information ever been
21 provided to the residents about the expiration of resolution
22 No. 84037 or the trailer park development permit
23 conditions?
24 MS. CARTER: Not to my knowledge.
25 MS. SPENCER: You heard the attorney say it expired in

1 2008 or so?
2 MS. CARTER: Yes, I did.
3 MS. SPENCER: Have you ever told any of the residents
4 that in writing?
5 MS. CARTER: No.
6 MS. SPENCER: Okay. I don't have any further questions
7 for Ms. Carter. And I don't dare cross-examine another
8 attorney, so I'm complete with my cross-examination.
9 MR. WERTHEIMER: Okay. Then time for you to -- time
10 for your presentation.
11 Yes, sir.
12 MR. HILL: Can I have a couple of minutes to redirect
13 on a couple of questions?
14 MR. WERTHEIMER: Yes, to whom? Redirect to whom?
15 MR. HILL: A couple of questions to Mr. Neet and about
16 three or four to Mr. McCarthy.
17 MR. WERTHEIMER: Yes, go ahead.
18 MR. HILL: Thank you.
19 Good evening, Mr. Neet. Mr. Norman asked in the
20 cross-examination whether you verified whether the higher
21 rents that you found at your comparable parks were market
22 rents, and you had stated that you assumed that they were
23 market rents; is that correct?
24 MR. NEET: Something to that degree, yes.
25 MR. HILL: Is your assumption based on the fact that

1 the only reason that there would be higher rents than the
2 annual rent increases in some of those comparable parks is
3 because of the limited vacancy decontrol allowed under the
4 City's ordinance?
5 MR. NEET: Yes. Once the ordinance had taken place and
6 rent control was -- was in effect.
7 MR. HILL: Okay. Does limited vacancy decontrol
8 provide an indication of market rent?
9 MR. NEET: No, it provides a floor of what market rent
10 could possibly be. I guess maybe an example, if you were
11 selling a -- if you had a law that said that you could sell
12 a $10 item for $5, but you -- under certain circumstances
13 you could sell it for six, that six still would not be
14 market because people in other places were selling them for
15 10.
16 MR. HILL: One last question. A question was raised of
17 Mr. McCarthy whether or not he applied section 2.05 that
18 deals with adjusted income for below market rentals, and
19 Mr. McCarthy stated that he did not. Isn't it true that
20 this is what we're -- this section 2.05 is the Vega
21 adjustment that you were discussing earlier and that that's
22 what you applied?
23 MR. NEET: That's what it appears to be, yes.
24 MR. HILL: Okay. No further questions.
25 Mr. McCarthy, during the cross-examination by

1 Ms. Spencer, you were asked about RAC 3.04, which talks
2 about a -- add to the base year operating income all price
3 level adjustments as permitted by Section 6 of the rent
4 stabilization ordinance.
5 Mr. McCarthy, is the current -- does the current
6 rent stabilization ordinance contain an automatic adjustment
7 of eight percent or has that been taken out of the
8 ordinance, the current version of the ordinance?
9 MR. MC CARTHY: It is no longer in the ordinance.
10 MR. HILL: Thank you. Mr. McCarthy, you were asked
11 about the Martello memo and your interpretation of that
12 memo. Am I understand that Mr. Silacci and you may have a
13 reasonable disagreement about that, the meaning of that
14 language. Are there any -- is there any language in that
15 particular Martello memo that you are relying upon for your
16 interpretation that that was -- that the $18,000 deduction
17 was the -- let me restate that. Is there any particular
18 language that you're relying upon for your interpretation of
19 the Martello memo?
20 MR. MC CARTHY: In the Martello memo he refers to the
21 expenses as total expenses, that's the word that he uses for
22 a net operating income of, I think it was 53,000 or
23 something. And he gives a net operating income number. So
24 in other words, as if the -- as if the formula was complete
25 as he stated it.

1 MR. HILL: Okay. And you were asked by Ms. Spencer
2 whether or not that Martello memo was intended to be used to
3 establish net operating income under the ordinance; is that
4 correct?
5 MR. MC CARTHY: Yes, she asked me a question like
6 that.
7 MR. HILL: Okay. But isn't it true also that under
8 that Martello memo the City considers the income and
9 expenses of the park as if it were setting the net operating
10 income under the ordinance?
11 MR. MC CARTHY: Yes, I believe so.
12 MR. HILL: And what language in the Martello memo helps
13 you reach that conclusion?
14 MR. MC CARTHY: In the second page he talks about using
15 it to establish -- to measure a -- to measure the net
16 operating income against a figure. I believe it was
17 $57,000, which was the -- kind of an agreed upon return that
18 they had come up with over the years for the park.
19 MR. HILL: So even though --
20 MR. MC CARTHY: A hard dollar of return, I might point
21 out.
22 MR. HILL: So even though the purpose of the memo
23 wasn't to set grants under the ordinance, it does analyze
24 what the rents -- what the MOI would be under the ordinance;
25 is that correct?

1 MR. MC CARTHY: Under that ordinance at the time.
2 MR. HILL: Thank you. Before we turn it over to the
3 tenants, we wanted to -- we wanted to make sure that our
4 attachments were correctly identified. The attachment one
5 that we submitted tonight is intended to replace the
6 attachment one to the rent adjustment application. That was
7 the second thing after the PowerPoint that was in
8 your materials that we presented to you this evening.
9 Also, the Neet appraisal that you were provided
10 this evening is intended to supercede Attachment 5 of our
11 application. As we stated, it's a corrected appraisal as
12 Mr. Neet explained the correction. So the Neet appraisal
13 you've been provided with tonight would replace Attachment 5
14 of our application. Also, the revised McCarthy MNOI
15 calculations that you were provided this evening are
16 intended to replace what was in the application as
17 Attachment No. 8.
18 And I think that will help keep everything
19 organized and help you identify the current attachments.
20 Thank you.
21 MR. WERTHEIMER: I have a question, this appraisal, has
22 nothing --
23 MR. HILL: No, no. That is the one provided by
24 Mr. Hone just to verify our cross-examination question of
25 Mr. Baar regarding the current value or current valuation of

1 the park by a licensed broker. Thank you.
2 MR. WERTHEIMER: Thank you. Is the tenant's
3 representative ready to present?
4 MR. HILL: Can our witnesses be excused?
5 MR. WERTHEIMER: Did the Commissioners plan to have any
6 questions more of the witnesses? Your choice.
7 MS. SPENCER: Would you like me to wait until he
8 returns? I can.
9 MR. WERTHEIMER: Not necessarily.
10 MS. SPENCER: All right. Okay. Perfect. I'm not used
11 to having a technical assistant over here running the
12 PowerPoint. So thank you for that.
13 Good evening, once again. My name is
14 Chandra Spencer. I'm a resident of Oak Park. My office is
15 in Los Angeles. And I'm an attorney and I represent the
16 Association of Ranch Tenants. The Association of Ranch
17 Tenants was formed after the residents received notice of
18 increase, the proposed rent increase, and was formed on
19 behalf of the residents, although not all residents are
20 members of the association. In order to, as the notice of
21 rent increase had suggested, for the residents to try to
22 form together to respond to the rent increase application.
23 As previously indicated, I was brought in as
24 counsel for the association about a week before the last
25 hearing, and I was brought in on a pro bono basis, and the

1 other attorneys who may actually speak tonight, I don't know
2 if they will or not, but I'm going to go ahead and introduce
3 them are Ronald Perry from California Rural Legal
4 Assistants, Eileen McCarthy from California Rural Legal
5 Assistants, John Taylor from the appellate Law Firm of
6 Horbitz & Levy, and Mr. Taylor's partner is also on the
7 team, although I don't believe he's here tonight.
8 In addition, we have some accountants who have
9 graciously volunteered their time to work with the residents
10 in dealing in valuating this rent increase application. We
11 have Randi Sorenson, Certified Public Accountant, and
12 Jake Ling, Certified Public Accountant. We also have a
13 property management expert. And the resumes of all -- the
14 two accountants and the property management expert are
15 contained in the materials I provided to the Commission at
16 the very last tab whom the accountants have consulted with
17 in making their evaluation of the accounting data that's
18 been submitted, and his name is Mr. Jan Taylor. But given
19 he lives in Inland Empire, and we can't afford to pay him,
20 he wasn't able to come and be here tonight.
21 Slide one please or two, I guess, of the
22 PowerPoint. I know that you've heard a lot about the Ranch
23 Mobile Home Park, and some of what I'm going to be talking
24 to you about tonight is going to be somewhat repetitive, but
25 I think it's helpful because there is such a huge volume of

1 information to go over some of the information provided and
2 put some focus on where we think the Commission should be
3 looking.
4 With all due respect to the Commission and to the
5 Staff and to the City Attorney's Office, I'm going to join
6 in the property owner's objection that the City Attorney's
7 Office is advising the Commission with respect to this
8 application. And I think that -- I'm concerned that --
9 especially reading -- after reading the Thunderbird
10 application that an undue emphasis is going to be placed on
11 the opinions of Staff, particularly with respect to the
12 legal issues, and that the tenants won't be given a fair
13 opportunity for their own presentation of what the legal
14 issues are to be heard.
15 And I think the most important legal issue and the
16 most important objection that we have here for which you've
17 received actually a separate brief that was submitted this
18 morning, is that the Commission has no jurisdiction over
19 this park or even to decide this application. And I want to
20 note that I'll talk a little bit about it in the PowerPoint,
21 but I want to, again, note and reiterate the Association's
22 position is that this park is not governed by the rent
23 stabilization ordinance, it never has been. And unless and
24 until this park is brought under the umbrella of the rent
25 stabilization ordinance, there's no reason for any of us to

1 be here tonight.

2 The Ranch Mobile Home Park has 72 of 74 spaces

3 shown on the rent rolls. But -- and one of the residents is

4 going to talk a little bit more about the demographics of

5 the park. But at this time it appears that about 58 of the

6 74 spaces are occupied. The reason why some of the spaces

7 are no longer occupied is because some of the residents are

8 hospitalized, in part due to the stress that they've endured

9 after receiving this exorbitant rent increase application.

10 Some of those residents have been moved into assisted living

11 facilities and their families have been unable to sell their

12 coach and their leasehold interest because of the threat of

13 the rent increase to the dollar amount that's been proposed.

14 And because the residents have been deprived of

15 the rights that their entitled to under the trailer park

16 development permit, 74-6 and resolution 84037, in the past

17 week alone two buyers have walked away when they heard that

18 the rents at this park may be established at the point that

19 the owner has proposed and that even that the City has

20 proposed.

21 In fact, I wasn't there at the park today, but I'm

22 told that one of the -- and I saw the documentation that one

23 of the coaches was actually put up for auction today. And

24 the reason that that coach was put up for auction is because

25 the family was unable to sell the coach and -- and they had

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1 to just walk away from it. And unfortunately, I'm told that
2 this family actually may be responsible, personally
3 responsible, for the Medi-cal bills that their deceased
4 mother incurred that they had depended on the proceeds from
5 this coach and leasehold interest to pay.
6 So not only did they lose the asset, now they're
7 getting sued by the State. And I share these stories with
8 you, and we provided a bunch of declarations, so that you
9 can really understand what is happening at the Ranch Mobile
10 Home Park and how significant this rent increase application
11 is in terms of the lives of the folks who live there.
12 Each space is occupied by one to two very low
13 income senior citizens. Pursuant to the restrictions for
14 the park, you have to be very low income to live there and
15 you have to be over 62 years of age. It's a 74-unit park as
16 indicated with mostly single wide pads designed to
17 accommodate ten-foot wide coaches and a few 20-foot wide.
18 And the zoning was changed for this park and the
19 park development was approved on the basis of two things, 62
20 years of age or older and very low income. And we can't --
21 even though the park owner and even the City would want you
22 to bring this park under a fair market -- so called fair
23 market analysis, this market is totally different for this
24 park. This is an affordable housing market.
25 I was joking with my co-counsel that I should have

1 brought an apple and an orange tonight because I tend to get
2 a little demonstrative when I do these things. Because this
3 is apples and oranges. We're talking about an affordable
4 housing development, and we're going to talk about the
5 history in a bit and how it got there.
6 The average age of the residents is 80 years old.
7 The average income of the residents is less than $1,000 per
8 month, and nearly half of the residents are disabled. These
9 are some of the most vulnerable members of the Conejo Valley
10 and of our community. And the City recognized it's
11 responsibility to protect these individuals back in 1977
12 when this park was built, and the City needs to continue to
13 recognize its responsibility to protect these individuals as
14 we stand here today. That's why I'm standing here today on
15 a pro bono basis, because I recognize that obligation.
16 If you could turn to the next slide, please. The
17 rent increase, let's talk a little bit about the rent
18 increase application, and some of these numbers might not be
19 entirely accurate because it seems to be a moving target.
20 We keep getting new updated numbers here and there, but this
21 is what I had when I prepared the slide. The current space
22 rents are between $126.37 and $139.36 per month. The
23 requested increase would put the space rents at -- it sounds
24 like they're going to go to about $500 a month now. It was
25 700 when the application was first done. But still way too

1 much. And it's still huge.
2 Even the Staff recommendation would put the space
3 rent increase to $191.95 per month for all the spaces, which
4 would put the space rent between $318.32 and $331.31 per
5 month. This is 137 percent to 151 percent increase, 27 to
6 30 percent each year. Now, one of the things you need to
7 take into consideration, and we're going to be talking about
8 when you're evaluating this rent increase is, is it
9 consistent with what was supposed to happen for this park
10 and is it consistent with the rent stabilization ordinance.
11 I suggest to you that there is no possibility that
12 a sudden change in housing expense by a factor of 137 to 151
13 percent in any way could be considered stabilized rent. If
14 my rent went up by that, I'd be moving in a heart beat. But
15 the problem is that none of the folks who live in this park
16 can move. And you'll see it in your declarations and you're
17 going to hear it from the residents who speak here tonight.
18 They can't move. One, because they have nowhere to go.
19 Two, because they would lose the entire value of their
20 investment. And three, because they're physically unable to
21 do so. This is not a situation where they can just pick up
22 and move from one apartment to another apartment building
23 across the street. This is a mobile home park, a hybrid
24 ownership situation and it has to be evaluated differently.
25 And even the Ninth Circuit in it's recent Googenheim

1 (phonetic spelling) case recognized that. It has to be
2 evaluated differently because it's different. It's a
3 totally different ball of wax. It is an orange, not an
4 apple.
5 The average income of these residents, as
6 indicated, is less than $1,000 a month. Most of the
7 residents are in fixed incomes, primarily living solely on
8 social security. And some of the residents don't even
9 receive SSI. Some of them are living on less than $500 a
10 month. The rent that they would have to pay for their space
11 will take up all of their monthly income. The residents
12 just simply do not have the sufficient income to pay the
13 proposed space rent increases, even the amount proposed by
14 the city. And most -- one of the important factors, and we
15 are going to have the residents come up and talk about a
16 little bit tonight, is they will lose their own investment
17 back expectations in their coaches and the improvements
18 they've made to them if they can't pay their space rent,
19 which they won't be able to do.
20 Each one of those declarations that you've
21 received from the residents has a list of how much was paid
22 for the coach and how much they've made in improvements.
23 And they've made those investments with whatever little bit
24 of savings they had left with the reasonable expectation
25 that the rents would be enforced the way that the City

1 passed them back in 1977. Back in 1974, when John Prescott
2 wrote the staff report for the zoning change. Back in 1977,
3 when these rents were approved. Back in 1984, when the rent
4 increase was permitted up to four percent. And the
5 residents have continued to rely on that for the past 33
6 years.
7 We're going to talk a little bit, too, about some
8 of the things that the City has represented in official
9 documents and to this day on the City's website about how
10 the Ranch is different. When I was listening to the City's
11 presentation and to the Owner's presentation, I felt like I
12 was in a parallel universe because everyone wants to talk
13 about the Ranch as if it's just a standard run of the mill,
14 okay, let's just do the math. That's not what we have here.
15 We have an entirely different set of circumstances, and the
16 Commission needs to realize this. If ever there was a time
17 when an alternative formula needed to be imposed or an
18 appropriate application of the standards for rent increases,
19 even under the proposed MNOI formula needed to be imposed,
20 this is it.
21 So I would like to first, so you can have a chance
22 to hear from some of these residents, I've got three
23 residents who are going to come up and talk to you tonight
24 for the more extended length of time we've been permitted,
25 and I know there's a number of residents that are going to

1 take the opportunity to be heard for their two minutes that
2 they get at the end of the presentation. But there's three
3 residents that I'm going to have come up and talk to you
4 tonight, and they're going to present to you information in
5 three discrete areas. We're trying not to be repetitive and
6 we're trying to get to the point.
7 One is Mr. Jim Wolff who is going to talk to you a
8 little bit about these demographics for the park because the
9 residents have done a survey. And you need this information
10 and you need to understand what the age is, what the income
11 is, what the disabilities are, and what the investment has
12 been. This park owner invested half a million dollars in
13 this park. These residents have invested over $4 million in
14 this park.
15 I'm also going to have Valerie come up and talk to
16 you. And Valerie is going to tell you about the investment
17 decision that she made when she moved into this park a few
18 years ago and why she did it and how she did it and what she
19 was told. Because, again, the Ninth Circuit and the Supreme
20 Court Authority, you have to take into account these
21 investment backed expectations and the rent stabilization
22 ordinance requires you to do it.
23 And then finally, we're going to have Georgia come
24 up and talk. And Georgia, for lack of a better explanation,
25 not that every person in this room, including Jim and

1 Valerie, aren't humans, but she needs to tell you the human
2 side of this. Because you need to understand this on the
3 most basic of human levels because that's what the rent
4 stabilization ordinance requires you to do and that's what
5 you as responsible appointed city officials should be doing.
6 So first I'd like Jim to come up. And to explain
7 the reason why I gave you a notebook is because I thought it
8 would be easier for you to look at these materials as we go
9 through them in the notebook as opposed to just on the
10 screen. So you have them in front of you. Those are your
11 copies. Do whatever you want with them, make notes. But
12 first we're going to start with Jim's presentation. And
13 Jim -- that's going to start at the little footnote at the
14 bottom RTA 96.
15 MR. WOLFF: Mr. Chairman and Commissioners and Staff,
16 my name is James Wolff, and I'm a nine-year resident at the
17 Ranch Mobile Home Park here in Thousand Oaks. And what I
18 want to present to you this evening are some of the
19 demographics of our park. Actually, two-fold, one being the
20 demographics of the Ranch. And secondly, the homeowners
21 investments and assets in the Ranch itself. So rather than
22 give you -- bore you to sleep with a bunch of numbers and
23 such, because I do tend to speak in monotone a little bit.
24 So I'm going to do this graphically and give you a good
25 summary of what's going on.

1 I also wanted to mention that we've done these
2 surveys for the park over a period of time and these numbers
3 might change because we have a fluid park as you can imagine
4 with the average age of the park things change. So to begin
5 with, we have an age chart on the screen now, and please
6 notice that we have 44 percent of our residents are over 80
7 years of age. And, in fact, 65 percent are over 75 years of
8 age. So these are not people that can bound out in the
9 street and find a job or go to work someplace to make up for
10 any increase in rent. All but four of our residents are
11 over 70. We have only four residents that are under 70
12 years of age.
13 So -- did I mention that we have -- we have an
14 evolving park and we've actually lost a resident here
15 recently. Three of them, actually, since this ordeal has
16 started. So we lost our 99-year-old lady. She was just
17 three months short of being a hundred. But we have also on
18 here, we show that we have only four people that are over 90
19 years, and, again, that has changed a little bit because we
20 lost our -- one 90-year-old, but we've gained three more.
21 One has turned 90 since. And another two that we have kept
22 information from because of their age. We did not include
23 them in the surveys and such. But they're now included and
24 they're 94 and 97 years old. And, of course, with the TV
25 and newspaper information, they have been able to find out

1 about what's going on.

2 But I'd like now to turn to the income of the

3 residents. And as our attorney suggested, we have residents

4 here that make less than $500 a month. In fact, we have six

5 of them that do not make more than $500 a month. Our

6 average income actually is $957 per month for the average

7 resident in this park. It doesn't -- I think if you do a

8 little fifth grade math, I think you can see what this

9 increase would do for these people on the whole because they

10 just don't have the resources to pay for it.

11 In 2010, the poverty level was $10,830 annually.

12 That's $952 a month. So we're all pretty close. We have at

13 least 16 people within the park that are living in poverty.

14 So I think this chart pretty much speaks for itself. And I

15 know we've got a lot to cover tonight, but I think this is

16 also important. But -- and also to put things in

17 prospective, we've recently had two residents who had to

18 replace their water heaters. It cost $1,000 to replace a

19 water heater. I didn't realize that. I haven't replaced

20 one in so long, I'm thinking 3- or $400. It's $1,000 to get

21 rid of the water heater.

22 Now, what that means is that these people lose one

23 month of their income. And I would like to put you in their

24 place and say, what would happen to me if I just lost one

25 month of my income, it was taken away? How would that

1 impact you? I have to do a little reading because this was
2 done about 12:00 o'clock last night, so -- actually, part of
3 it was done today. I think that's it for that chart.
4 Then we want -- yes, we want to do -- the last
5 chart is -- here is the demographics for the disabilities
6 that are in the park. Now, what we have here, it's actually
7 changed slightly because of our recent addition of -- to the
8 survey. So we actually have 29 people who admit that
9 they're disabled and 28 who don't. And about half of those
10 28 are disabled but won't admit it.
11 So that really concludes that portion of the
12 demographics. And now I would like to jump into the
13 investment that these people have in the park. And most
14 people as you -- as I'm sure you know, if you have a mobile
15 home that's over 20 years old, you just can't finance it.
16 So many of the people in the park, they've either -- if they
17 bought newer places, they were able to finance, they have a
18 house payment on top of everything else. And if not, they
19 put their life savings into these -- into buying a mobile
20 home. And this is a -- this is a very, very frequent case
21 where someone basically -- usually they're forced out of
22 another place where they live. And they may be -- they may
23 be down on their luck, they maybe have physical
24 disabilities, bad medical problems and stuff that force them
25 to find an alternative way of life.

1 Okay. So in the surveys that we did, we have 74
2 total spaces, 16 of those are vacant and four of them are
3 really non-incoming producing, at least most of them for
4 this time. There's one empty space that does not have a
5 home on it. There's one space that's too small to put
6 anything on because these places were built quite some years
7 ago when the mobile homes were much smaller. And there's a
8 place where the ex manager and, of course a home for the
9 manager. So we have a net occupied spaces on the park
10 currently of 54 spaces.
11 Now, we have a chart here. This chart shows the
12 total income, the total home investment, and we have three
13 homeowners that have homes that are -- that have been here a
14 long time. Actually, let's just say there's six long-time
15 residents that have their homes under $40,000. There's 10
16 residents that are in the 40- to 50,000 range. And there's
17 also 10 residents that have invested over $80,000 in their
18 homes in this park. So it's not -- let me find my place
19 again. So there's 28 homes in this park now that are over
20 $50,000. And as I mentioned, there's -- 10 of those are
21 over $80,000 in value.
22 So 81 percent of the residents were available for
23 the survey, so we have a very high confidence level really
24 that these are pretty accurate. And the 44 residents that
25 we did survey out of the 54 have a cumulative investment of

1 $3.5 million. Now, so far we've covered -- focused on pure
2 facts and now I want to do rather an extrapolation, which I
3 think everybody who has looked at the data that we have
4 received on the application is familiar with extrapolation.
5 So if we take the average -- the average home
6 purchase price for these units is 59,357. The improvements
7 that people have made average of 19,481. So we have a grand
8 total of an average investment for the park owner of -- for
9 the park resident rather of $78,788. And if we extrapolate
10 that for the other 10 that we did not get into our survey,
11 we would have round numbers, four and a quarter million
12 dollars of investment by the homeowners. And I think that
13 chart -- yes, that table shows that -- that Chandra has up
14 now. So that really is all we have to say on this. I think
15 that demonstrates what we want --
16 And so I just want to sum up and review the facts
17 here. And so there's a fact that the average income of the
18 resident is under $1,000 a month. Fact, at least 16
19 residents live below the poverty line. Fact, one half of
20 the residents are disable and admit it. Fact, 44 percent of
21 the residents are over 80 years of age. Fact, the average
22 price paid -- the average price the residents paid for their
23 homes is $59,000. Fact, the average resident has invested
24 $20,000 in improvements in round numbers. In fact, the
25 total average resident investment in their home is nearly

$80,000. So the entire park, again, the extrapolated value of the property on this park that the residents own is four and a quarter million dollars. And it's seems to me there's some place written in the Constitution, the Fifth Amendment, that we have some rights to that property as well. Thank you very much.

MR. WERTHEIMER: Thank you, Mr. Wolff.

MR. SPENCER: The next resident you'll be hearing from is Valerie.

MS. HOPKINS: Good evening. My name is Valerie Hopkins. I'm a 42-year resident of the Conejo Valley. I'm also the Chairperson of the Association of Ranch Tenants, and I'm under 70. And that didn't get a smile out of anybody, so I'll just move right along. Okay. The Conejo Valley has been my safe harbor. And 42 years ago my late husband, infant daughter, and I moved here and quickly became part of the community because it was a really tiny community at that time. Over the years we've had our shares of ups and downs, all a part of living, but no matter where I worked, no matter how far I commuted, we stayed here. And the reason for that is because we were safe here. The schools are good, the parks and recreation. I even got to know people on the city council. It's been terrific.

So when I started thinking about retirement, my children were grown, pretty much out of the house. I sold

1 my home in West Lake Village that we had -- I had resided in
2 for 25 years, and I took that nest egg and I put it aside,
3 and then I rented for two years. And for those two years,
4 during that two-year period while I was still employed, I
5 looked all over the place where can I retire, where can I
6 have a comfortable retirement, what can I afford, and it
7 goes on and on. But there were some other parameters
8 involved in that. One, my children are located here. I
9 have a daughter and two grandchildren in Simi Valley. And
10 my son resides in Camarillo.
11 Also, I don't have asthma out here, at least not
12 like I used to. So that becomes a big factor when you're
13 looking for places to live. You know, molds and mildews,
14 hay fever, all these things that blow on the wind don't seem
15 to blow on the wind here except during the Santa Anas. So
16 all the searching began, and no matter where I looked, I
17 kept coming back here. I kept coming back here. Okay.
18 What can I afford? Well, I couldn't afford another house.
19 This was three and a half, almost four years ago, so you
20 know what the housing market was then. I didn't want a
21 condo. I had lived in apartments, condos, and townhomes for
22 10 years while my husband and I saved up to buy our first
23 home. I didn't want to do that anymore. Aside from the
24 fact that you really don't have too much control over what
25 happens with association fees and increases.

1 So I wanted something that was rent controlled. I
2 wanted to own something, and I started looking at mobile
3 homes. I looked from Calabasas all the way to Ventura. I
4 went through all the chambers of commerce, all the senior
5 societies, everything that was involved. I did my due
6 diligence. Now, in that two-year period the price of
7 housing was still very high. When I came down to
8 Thousand Oaks, I found out that this was a rent controlled
9 area. I also found out that Ranch Mobile Home and
10 Thunderbird, because I really weighed those two, were under
11 special ordinance. Now, I'm saying rent control because at
12 that time when I first started looking, I didn't know there
13 was a special city ordinance for Ranch. I found that out
14 later.
15 Okay. So I'm looking at these places. Well,
16 Thunderbird is closer to the freeway. Freeways make me
17 wheeze. Okay. So I looked over at Ranch. I talked to the
18 residents before I talked to anybody else. I met the
19 managers. I met the managers over at Thunderbird who were
20 actually overseeing Ranch at that time. I found out what
21 people paid in utilities. I found out what they did in the
22 park. I didn't need to have a park with a lot of extras in
23 it because I belong to a gym for one thing and for another
24 thing I have a very active life with my family.
25 So when time finally came around, I retired. I

1 decided this was the area I was going to be in. There were
2 four homes available in Ranch, two doubles and two singles.
3 The doubles were going -- the asking price was well over
4 $100,000, this was in the Ranch. They were older homes. I
5 don't remember how old exactly, but I know they were over 20
6 years old. The singles, one was very small. It had been
7 updated, but it was very small. It was, I believe, around
8 $80,000. And then the one that I finally settled on was
9 $25,000.
10 Now, I know that what people were doing were
11 buying existing homes, donating them, and replacing them
12 with manufactured homes, which is what I did. I paid the
13 cost of buying the home, okay, paying the closing costs and
14 all the fees that went along with that. I paid to have
15 it -- I donated the home. I paid to have it removed for
16 donation. I paid to have the land cleared, graded, paid to
17 have the utilities moved. I even paid for a block wall, 65
18 feet long by about 30 feet wide. Okay. Those were all
19 parts of being able to be part of this park. My finances
20 were checked very, very thoroughly. At no time did anyone
21 allude to anything that sounds like a 30-year cap, which
22 I've never heard of before on what kind of park this was
23 going to remain.
24 I qualified easily to live here and knew that with
25 my home paid for and my car paid for, I could retire, afford

1 to retire, and live fine. Now, that's important to me
2 because of the longevity in my family. I have four
3 grandparents who lived to be over a hundred years old. That
4 can be really scary, okay. That's a good news, bad news
5 situation. Do I want to live to be that old? I don't know.
6 Ask me when I get there. Okay. I'll tell you whether or
7 not it was worth it. The point is is that I was looking for
8 another safe harbor, and I thought I had it here.
9 I am helping to support a disabled son. That's
10 not your problem, it's mine. But I could afford to do that
11 with the ordinances that I understood. Okay. So here we
12 are. All of a sudden on October -- I got a letter dated
13 October 8th. I didn't even get it October 8th on that date
14 because the postman delivered it to the wrong address, and I
15 didn't find out until everybody started talking about it.
16 That was in October.
17 We were advised to get legal representation.
18 You've heard the demographics of the park. There was no way
19 on earth we could afford legal representation. But
20 something that's crucial in this, too, is the fact that the
21 owners of the park knew very good and well what the income
22 was because all of that information had to be -- all that
23 information had to be documented and given to them. I'm
24 drawing a blank.
25 MS. SPENCER: Disclosed.

1 MS. HOPKINS: Disclosed. Thank you so much. All that
2 information had to be disclosed, proved, and provided. They
3 had it. So here we are now. And I have sort of gone
4 outside of what I was going to talk about, but I will tell
5 you that I paid $100,000 for the manufactured home that's in
6 there. I paid $25,000 for the house that was there plus all
7 the extras and the block walls and moving this and moving
8 that and having this removed and so forth. I landscaped it.
9 I put in trees. And I thought I was set. The rest is up to
10 you. Thank you very much for your time, and I appreciate
11 your attention. And I know you're tired and I'm sorry.
12 Anything else?
13 MR. WERTHEIMER: Thank you.
14 MS. SPENCER: Georgia is next.
15 MS. NORBIN: My name is Georgia Norbin. I have been a
16 resident of Ranch Mobile Park for six-and-a-half years. We
17 are a community of peers. We have health problems. We have
18 disabilities, but we prevail. We are a close-knit
19 community. We care about each other, we watch out for each
20 other. If nobody is out of their home in a couple of days,
21 we check on them. These are the sweetest people, the
22 kindest people you ever want to meet. They care -- when I
23 learned in 2004 what my income was going to be, a friend of
24 a friend told me to go over to Thunderbird. The managers
25 over there, I told them what I wanted to do. Nobody

1 could -- you wouldn't be able to purchase a home through a
2 bank there. My son said he would help me.
3 But she told me, and Richard did too, and I was
4 assured that I could live the rest of my life at Ranch.
5 They told me that the rents -- the last rents that were
6 raised was in 2001 and it was only like 4 or $5. The rents
7 there were low for low income people like me. I earn under
8 $1,000 a month. So I went over there. There were three
9 mobile homes for rent, I mean for sale. I bought the
10 cheapest one, which was a big fixer upper. And my home has
11 been a work in progress for six-and-a-half years. When it's
12 done, it'll be brand new inside and brand new outside.
13 It's not a mobile home to me. There's nothing
14 mobile about it. It has no wheels. It has no axle. It's
15 bolted to cement blocks. It's my home. It's a house. It's
16 not even -- I don't even consider it a mobile. It's like a
17 little cottage. All of our homes are like this. They're --
18 they're neat, they're well taken care of. We maintain the
19 property for the owners. If you drive by our park, it is
20 quaint. It's like little cottages. It's like a Kincaid
21 masterpiece. I look at it that way anyway. The people
22 there care about each other. We protect each other. We
23 have a lot in common. As I said, we're a community of
24 peers.
25 I have lived in Thousand Oaks since 1966, two of

1 my sons were born here. Like the slogan says, "Shop here,
2 shop locally." All of us shop locally. We have our dogs
3 groomed. We have -- we share things. We have a lot in
4 common. My doctors are here. My family's here. My
5 sister's here. My friends of over 40 years live here in
6 Thousand Oaks, not Calabasas or Ventura, in Thousand Oaks.
7 My kids went to school here. This is where I live. This is
8 where my doctors are. I have had open heart surgery. I'm a
9 cancer survivor. All these people here have their doctors
10 here that they trust. They are -- they are the generation
11 that grew, that makes Thousand Oaks grow. We are the
12 generation that supported this community.
13 We need to live. We lived fine. We prevail. We
14 cope. We share things. If you allow this rent increase,
15 it'll devastate us like it did in October. In October, we
16 went from a happy community to people that were depressed.
17 It was so evident. Older people talking about in their 90s,
18 that I'd rather die than lose my house. These people, they
19 are sweet and deserve -- they've worked hard all their
20 lives. They deserve to have -- to be secure. When that
21 letter came and said our rents were going to be so high, it
22 made us insecure. It made us sick. I -- one of us, Bobbi,
23 she was on our committee, she had a stroke. Richard had a
24 stroke and he died. Because we are -- we were so stressed
25 out. How were we going to prevail.

1 We called Marilyn over at the Thunderbird. We
2 talked to Mr. Watson. He told us to get together, get a
3 committee together, but there's no way we could afford
4 lawyers. They were -- there was just no way. But we hung
5 in there. We helped Thunderbird picket, and we talked to
6 the media because we wanted -- we wanted some help. But
7 most of all, we prayed. We went to the churches. Audrey
8 went to her synagogue and to Calvary Church. They prayed
9 for us, and we prayed, and God sent us angels in the form of
10 these lawyers and CPAs who came to help us with no money.
11 We matter. We should matter to you as well.
12 We matter to these people who have given their
13 time and their expertise and smart. We want to live. We
14 don't want to just exist. If you raise these rents, even by
15 the Staff standards, some of us will be just be existing.
16 We will not be living. Please. I'm sorry. But these
17 people -- we need -- we need to have -- I can't do it
18 anymore.
19 MS. SPENCER: Okay. You can sit down.
20 MR. WERTHEIMER: Can you hold your applause, please?
21 MS. SPENCER: All right. Now, that we've had you have
22 a chance to hear a little bit more from the residents
23 themselves and a little bit more about what this park is
24 about, it's time to get into the boring discussion of the
25 law. And at risk of sounding like a law professor here, I

1 think it's important that we spent a little bit of time
2 going over some of the legal principals, from the
3 Association's prospective of what it is you need to do to
4 evaluate this rent increase application.
5 If we can turn on the PowerPoint to the next slide
6 that states legal principals, that would be great. I've
7 tried to break these down into categories so that you can
8 understand what we consider to be the major legal issues
9 that you need to consider. And then after I'm done talking
10 about the legal issues, then we'll have the accounts talk it
11 up and do something which I'm not good at and talk to you
12 about numbers.
13 The first issue is the jurisdictional principals.
14 We've given you the brief. I'm going to spend a little bit
15 of time going over it because I don't think you've had a
16 chance to review it. But it is paramount that you
17 understand that there are some very important jurisdictional
18 principals at play here, which we believe prevent you from
19 even taking action on this application.
20 The second issue relates to the jurisdictional
21 principals, and that's the takings and due process
22 arguments. You've heard the owner's representatives. You
23 heard them say fair and just return, taking, Fifth
24 Amendment, 14th Amendment, throwing all this stuff out at
25 you. I can tell you that after researching this, you need

1 to understand this because what you're being fed is nothing
2 but a pile of garbage. And with all due respect to the City
3 staff, in their own staff report there was a throw away
4 two-line sentence that if you don't give them a just and
5 reasonable return, you'll be taking their property. And I'm
6 challenging to tell you -- challenging you to listen to this
7 very carefully because it's just not true.
8 There's also some estoppel and contractual issues
9 involved here. The park owner's attorney would have you
10 believe that the estoppel issues work in their favor and
11 that there's some 30-year sunset clause on this trailer park
12 development permit and the resolution that amended it. It's
13 just not true. The government code that the trailer park --
14 the park owner's attorneys relied on doesn't say that. It's
15 just not true. And the other principals about estoppel and
16 the taking and we can't give up our constitutional rights,
17 more garbage, so we're going to talk about that a little
18 bit.
19 And lastly, when we go through the ordinance
20 itself, after getting through all that, if you decide you
21 still want to be here and we want to talk about numbers, I
22 need you to spend a little time looking at the statutory
23 interpretation because you need to understand what rules you
24 need to follow to interpret the rent stabilization ordinance
25 as well as RAC 2 and RAC 5 because I don't believe, based on

1 what I've heard from the reports that have been submitted to
2 you that this has been adequately explained to you.
3 So, again, I apologize if I sound like a little
4 bit too much like a law professor here, but I think it's
5 helpful. All right. Next slide, please. The first thing
6 is the jurisdictional argument. I've taken the brief and
7 summarized it into some bullet points. I encourage you to
8 read the brief. It was written by a lawyer who's much
9 smarter than I am and understands -- he was able to present
10 to you, I think in a very important fashion, a way for you
11 to understand why we shouldn't even be here. The Commission
12 has no jurisdiction to consider a rent increase at the Ranch
13 because this park is governed by resolution 84037 and
14 trailer park development permit 74-6, not the rent
15 stabilization ordinance.
16 It states very specifically in the rent
17 stabilization ordinance that the Rent Adjustment Commission
18 has limited jurisdiction. It has the power to carry out the
19 provisions of the mobile home rent stabilization ordinance
20 or of any ordinance regulating rents and apartment complex.
21 That's not what we have here. Ranch is not governed by the
22 rent stabilization ordinance. Ranch is governed by trailer
23 park development permit 74-6 as amended in 1977 and again in
24 1984 through resolution 84037. And because resolution
25 84037, which amended the trailer park development permit,

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1 governs rent increases at the Ranch, not with the rent
2 stabilization ordinance, this Commission has no jurisdiction
3 to even consider, to even be here today. Only the city
4 council gets to make that call. Lucky for you, you guys can
5 walk away and throw this to the city council, and that's
6 what you should be doing because I wouldn't want to be in
7 your shoes and have to make this very, very hard call about
8 what to do with the residents of the Ranch Mobile Home Park.
9 I know there's some representatives of other
10 parks, resident and owner representative on this commission.
11 And it's important to understand that Ranch is its only
12 little special set of circumstances. Not Thunderbird, not
13 Valacedo, not any of the others that I can't name. It's the
14 Ranch. And the Ranch got special rules applied to it
15 because that's the way it was designed from the beginning,
16 and that's why you have people who live on less than $1,000
17 a month living here.
18 Next slide, please. Even Staff, in their memo,
19 conceded that the Commission does not have jurisdiction to
20 consider the validity of age and income restrictions under
21 which the park was entitled to and has been operating. They
22 also, the Commission, doesn't have jurisdiction to consider
23 the rents that were established by those development
24 approvals for the park.
25 Although noting the Commission's lack of

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1 jurisdiction, Staff, nonetheless, says the Commission has
2 the power to contravene the four percent rent increase limit
3 in resolution 84037. And its conclusion is based on two
4 things. One is the rent stabilization ordinance was
5 intended to supercede or trump resolution 84037. Statement
6 with no factual basis behind it whatsoever in the Staff's
7 memo. And actually the Staff's memo contradicts it and the
8 documents we're going to go over contradict that.
9 And the other argument is that continuing
10 application of the rent increase limitation in resolution
11 84037 would violate due process as a taking of private
12 property. Not only is that not true but guess what, it
13 doesn't matter. Because unless and until resolution 84037
14 is found unconstitutional by a court of law, you're stuck
15 with it. Unless the city council decides to repeal it. And
16 they'd have to go through a whole noticed hearing process
17 before that could ever happen. So simply stated, the Staff
18 report on this issue is simply incorrect.
19 So let's talk about -- the next slide, please --
20 the history of Ranch. We lawyers spend a lot of time
21 talking about legislative history. It's important you
22 understand the background and the history of Ranch. The RSO
23 does not trump resolution 84037. And the history of Ranch
24 shows that that's, in fact, been the case for the past 30
25 years since the rent stabilization ordinance came into

1 effect. Consistently every single place except for now.
2 First of all, it's important to note that Ranch
3 has never registered under the RSO. We got that admission
4 back in December. I think you may recall that. They
5 haven't paid their fees to register because they didn't have
6 to. If they were supposed to be a park under the RSO, you
7 would've think that the City would've been after them for
8 their registration fees, but no.
9 And if they were supposed to register, they owe
10 the City a lot of money at this point, don't they? But they
11 weren't and they didn't. In the Staff report -- and I'm not
12 going to read all of this to you, it's in your -- you have a
13 copy of the PowerPoint, you have a copy of the report.
14 There are several places where the Staff recognizes that the
15 RSO never applied to the park. But what I want you to look
16 at, and I think this is where it's most important, is I want
17 you to look through and I want you to understand the history
18 of the Ranch as it's told by the documents. The documents,
19 as we lawyers like to say, speak for themselves.
20 So I prepared -- next slide, please -- a time line
21 summary of the documents, and I've also attached all the
22 documents to this, put them in the binder. So if you go to
23 -- starting at page 34 of the binder, how did Ranch Mobile
24 Home Park come in to be. It's important to understand that
25 history and figure it out because I know that the Commission

1 had a lot of questions at the last hearing and they were
2 good questions about how it came into being and what happens
3 sine then, and why the heck haven't there been rent
4 increases for the past 31 of 33 years. Well, guess what?
5 It's because the rules were different. The Ranch was an
6 apple, all the rest of the parks in the city were oranges.
7 So going through the time line, lets start May 24,
8 1974, former property owner applied for a zone change from
9 RPD 15 to trailer park development with the justification
10 that this was for development of a much needed low income
11 mobile home park site. He came to the City and said, I want
12 to change the zoning, spot change the zoning for this
13 parcel. And I don't want to built 15 residences on this
14 property, I want to build a trailer park. And even though I
15 probably shouldn't be allowed to, will you please let me do
16 so so I can build a low income senior park.
17 And on June 24th, 1974, Staff issued a report.
18 And guess what, Mr. Prescott was the guy who wrote that
19 report back in 1974 when he was an associate planner. And
20 he wrote that report and he said, you know what, this really
21 isn't an appropriate site for a mobile home park because
22 it's right in the middle of all of these residences. It's
23 not -- it's only -- it's not big enough. There's a lot of
24 problems with this zone application that -- that -- that the
25 planning commission should consider, but we think it's a

1 good idea because the proposed zoning and corresponding
2 permit are submitted to provide for lower income housing for
3 senior citizens.
4 And, therefore, it's okay that the City changes
5 the rules for Mr. Wycoff because he's going to develop a low
6 income senior park. It seemed like a pretty good
7 compromise. The staff report, if you want to take a look at
8 it, is in the materials. I don't know if you've ever seen
9 it. I don't know if it's in what you already have. I
10 didn't see it in the other staff materials or the materials
11 submitted by the owner. So in that report Mr. Prescott
12 recommended that provided that the property owner guarantees
13 in an appropriate manner to the City that this parked will
14 be used for this stated purpose.
15 September 3rd, 1974, City approved the zone
16 change, and that's when the negotiations started as to what
17 the deal was going to be, what the two-sided, negotiated
18 bargain was going to be between the property owner and the
19 City as to what the rules were going to be for developing
20 this as a low income senior park.
21 On November 18th, 1974, the planning commission
22 approved development permit TPD 74-6 for the mobile home
23 park with the condition No. 24. You heard me talking about
24 it to Mr. Hone, have you ever seen this. And the condition
25 requires that the park be a low income mobile home park

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1 rental. From its inception this park was required to be an
2 affordable housing project. It wasn't a market condition.
3 We give you your zone change. We let you do
4 something different with this park that kind of doesn't
5 really fit where it is. If you've ever been out there,
6 it's -- doesn't exactly -- doesn't match the apartment
7 complexes and the houses nearby. It fits in nicely because
8 they did a really good job of maintaining it, but really
9 it's different. And the reason it's different is because of
10 the guarantee that it was going to be a low income senior
11 park.
12 The former property owner, Mr. Wycoff, appealed
13 some conditions of the trailer park development permit but
14 never appealed the low income restriction, condition No. 27.
15 On January 21st, 1975, the city council approved the appeal
16 of the conditions and modifications of certain conditions
17 but not condition No. 27. But interestingly, not only did
18 they change the zoning, but they gave this park owner some
19 additional -- or the property owner at the time some
20 additional concessions. You don't have to build a block
21 wall, you can build a cheaper chain link fence. And the
22 pads don't have to be -- I don't know what this means but
23 more imaginative.
24 They started changing the development conditions
25 for this park because the owner was saying low income

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1 senior, low income senior, low income senior. Cut me a
2 break. I'm doing a good thing so you guys need to step up
3 and cut me a break on these development conditions and make
4 this park an easier park to build. In 1976 the City waived
5 about $110,000 in development fees in addition to other
6 concessions made through that land use approval process that
7 we talked about to allow for development of the low income
8 senior park.
9 And unfortunately, I got this a little late to put
10 into your materials, but I know it's on a PDF somewhere in
11 the City Attorney's office if you want to look for it.
12 There's a letter dated June 14th, 1976, to a Mr. Pierce
13 who's an attorney from a Fred Wilson, CPA talking about the
14 importance. And in page 2 of this letter it talks about the
15 importance of those development fee waivers in establishing
16 the rents. And it talks about that because what they were
17 trying to figure out was what was a target profit percentage
18 for this park. Back in this time when they were trying to
19 figure out what the rents should be for the park and the
20 negotiations were going back and forth for a couple year
21 time period, the City wasn't requiring what we do now.
22 You've heard a lot of discussion about HUD and 30 percent.
23 And affordable housing project rents are set in a different
24 way now than they were back in the late '70s.
25 So what the City -- what the park owner said is

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because you've given me these development fee approvals, I can set these park rents lower than the Thunderbird Park. Because they were building the Thunderbird Park at the same time. Because after Mr. Wycoff stepped out of this deal, the Hone family stepped in and bought this parcel and bought the Thunderbird parcel and built both of them, right around the same time.

And the reason why the rents were about 17 percent below what was charged at Thunderbird is because they got $110,000 in development fee waivers. And this letter says exactly that. On July 27, 1976, the city council interpreted condition No. 27, that one we talked about. And they did an amendment -- and unfortunately the city council minutes are unavailable. I checked the City's website and for some reason they were never prepared or they've been destroyed.

But what we do know is on 1977, an amendment to Trailer Park Development Permit No. 74-6 was approved, and it set the rents for the Ranch Park after this two-year long series of negotiations back and forth of what they were supposed to look like, this two-sided bargain between the city and the Hone family. It set the rents based on an 11.5 percent net profit percentage as a return on investment formula and set tenancy qualification of 62 years old and income of no more than $10,000 per year.

1 So this is the deal that the City made with the
2 owner. We will continue to allow you to operate this park
3 because if he doesn't comply with the development permit
4 requirements, he doesn't get to operate the park. But these
5 are the rents that you have to do -- set and this was the
6 bargain that they struck as part of the development
7 approvals.
8 On August 9th, 1977, at the owner's request,
9 you've seen this CPA letter, the owner said based on that
10 formula and based on our expense calculations and our income
11 calculations, these are the rents that we want. And this
12 City said, okay, let's set the rents like that. They
13 came -- we're coming to the end of the final negotiations of
14 their deal. And the park owner got what he wanted. He got
15 to build his park. And the City got what they wanted, they
16 wanted a low income senior park.
17 And Mr. Hone, on September 11, 1977, executed a
18 document accepting all of the conditions. He signed a deal
19 with the City and never appealed that because he got exactly
20 what he wanted. And I think it's fair to say that it's
21 reasonable to assume that Mr. Hone's a pretty sophisticated
22 businessman and a property developer. He knew what he was
23 doing.
24 After that, in 1980, the City adopted the rent
25 stabilization ordinance, never applied to the Ranch Park.

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1 In 1983, the owner of the Ranch Park made a rent increase
2 application to city council separate and apart from the rent
3 stabilization ordinance. The city council referred the
4 issue to the Rent Adjustment Commission for evaluation. And
5 on August 9th, 1983, the rent committee issued a memo. Oh,
6 this was -- so this whole rent increase application was
7 being evaluated. But at the same time there was some
8 evaluation about extension of the rent stabilization
9 ordinance. Because as you may recall, when it was adopted
10 in 1980, it was a three-year temporary ordinance, emergency
11 ordinance.
12 So 1983, there's a separate committee that's
13 evaluating should we keep this rent stabilization ordinance
14 going. And in the memo dated August 9th, 1983, they
15 recognized the importance of the rent stabilization
16 ordinance points out that an increase in rents and total
17 vacancy decontrol has a detrimental impact on the
18 marketability of coaches.
19 Nowhere in there is there any discussion about
20 what to do about Ranch. And the reason why is because Ranch
21 wasn't part of it. It had it's own separate deal. And, in
22 fact, on December 8th, 1983, when Staff issued it's memo to
23 the Rent Adjustment Commission regarding the proposed rent
24 increase, it specifically stated the rents in the Ranch Park
25 are limited by Trailer Park Development Permit 74-6 and its

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1 modifications, not the rent stabilization ordinance.
2 And on January 24th, 1984, Staff issues a memo to
3 the city council subsequently regarding what the Rent
4 Adjustment Commission came up with as far as recommendations
5 for the Ranch Park proposed in rent increase and
6 modification of the Trailer Park Development 74-6. And this
7 is where Resolution 84037 came from. Again, nowhere at any
8 time during this time period did anyone have a discussion
9 about the rent stabilization ordinance because it simply did
10 not apply to the park.
11 On February 7th, 1984, Resolution 84037 was
12 adopted allowing the rent increases for the Ranch Park to be
13 based on a set formula. 1984's rent increase was allowed at
14 seven percent and subsequent years are allowed up to four
15 percent based on a hundred percent of percentage changed of
16 CPI on a yearly basis with no recapture. Use it or lose it.
17 On September 9th, 1986, when the city council was
18 evaluating whether or not they should extend the rent
19 stabilization ordinance, the rent committee issued another
20 memo to the city council regarding proposed changes to the
21 rent stabilization ordinance an adoption of a permanent rent
22 stabilization ordinance for mobile home parks. In that
23 document they note that the new rent stabilization ordinance
24 would apply to all parks within the city with the exception
25 of the Ranch Mobile Home Park, which is under a separate

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1 affordable housing agreement.

2 In 2000, the owner of the Ranch Park made its

3 second rent increase application. And in that application

4 the owner of the Ranch Park specifically put at the top,

5 Resolution 84037. It was well recognized by all the players

6 involved at this point that the RSO didn't apply. It was

7 all about Trailer Park Development 74-6 as modified by

8 Resolution 84037.

9 On August 30th, 2000, Staff met with the owner of

10 the Ranch Park and sent a letter following regarding the

11 proposed rent increase application. And I put in the

12 materials, you probably have it already, but it's worth

13 looking at again, the letter and the memo. And the Staff

14 notes and the letter indicate that correctly Resolution

15 84037 would have to be repealed and other action would have

16 to be taken to bring the Ranch under the purview of the RSO

17 because it wasn't there. It wasn't part of the rent

18 stabilization ordinance. At least it'd been treated as such

19 for that many years, and everybody had gone forward in their

20 business relying on that, including the owner.

21 The owner was given the option of going forward

22 with the public hearing, of trying to come within the

23 purview of the RSO, or take the rent increase of four

24 percent allowed by Resolution 84037, and the owner chose to

25 just stay with 84037, and I think that's because he got more

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1 money that year if he did that. I've done a little analysis
2 and that year the rent increase under the RSO would have
3 been less than four percent.
4 In June 2008, the City issued a document in your
5 materials -- a reporter sent this to me. Can you believe
6 this? Still posted on the City's website. It's still
7 there. Indicating -- it's talking about everything that the
8 City of Thousand Oaks is doing for mobile home parks. And
9 in that document, which is in your materials, it
10 specifically provides that Resolution 84037 provides the
11 formula for establishing rents in the Ranch Park. And even
12 in the Staff's materials and in the owner's materials,
13 everybody admits that up until right now, the rent
14 stabilization ordinance has never been applied.
15 And that's one of the reasons why this has gotten
16 so complicated and we have to do all these statistical
17 extrapolations and stuff. And that's more importantly one
18 of the reasons why all of the folks sitting here today are
19 so upset. Because they counted on this. They were told
20 their rent may increase by just a few dollars and that's
21 likely why there's a lot of n/a's in those leases. A lot of
22 not applicables in those leases. Because this wasn't like
23 every other park in the city.
24 One other thing I wanted to bring out, and it
25 really doesn't have anything specifically to do with the

1 history of the Ranch Park, but I think it's important to
2 understand historically context for the City of
3 Thousand Oaks. On July 15, 2008, the City Council adopted a
4 new ordinance related to relocation for mobile home park
5 residents. And the reason why I think it's important that
6 you pay attention to that ordinance is because of its
7 preamble. That ordinance was adopted after the voters came
8 to the city council with an initiative petition and said, we
9 want this on the ballot. And the City said, no, that's
10 okay. You don't need to put it on the ballot. We're going
11 to adopt it.
12 And in that ordinance the voters and the city
13 council, the City of Thousand Oaks specifically recognized
14 that mobile home parks provide affordable and necessary
15 housing for senior citizens and minimizing the impact of
16 displacement of seniors and others from their homes is
17 essential to maintaining the economic and social well-being
18 of our communities. Just like you heard from the residents
19 and just like you heard from me and now you've heard it from
20 the voters and the city council. This is important that we
21 protect these people who live in these parks. It's not all
22 about protecting or providing some windfall for, not just
23 protecting, I don't look at it that way. A windfall for the
24 family of a park owner who's now decided they want to change
25 all the rules without basis for it or authority.

1 It is not your job and absolutely contrary to your
2 job to give these folks the windfall they're asking for.
3 This isn't about their constitutional rights because their
4 constitutional rights have been well protected for the last
5 33 years every step of the way when they bought into this
6 deal that they made. And if they didn't like it back then,
7 they should have appealed it back then. This is about
8 ha-ha, let's try to get a 500 percent rent increase from a
9 bunch of folks who can't afford a lawyer.
10 And even if I weren't standing here today and
11 hadn't been blessed with this amazing team of talent who
12 volunteer their time for these folks, I trust that you
13 members of the Commission would do the right thing. And do
14 your -- and discharge your responsibility well. You have a
15 responsibility to protect the people who live in this park
16 and not to the -- just protect the so-called investment
17 backed expectations of this park owner because guess what,
18 those have been protected for years.
19 All right. Back into the law. Next slide is
20 Resolution 84037 cannot be deemed either a taking of private
21 property because the owner accepted its benefit and is bound
22 by its burdens. Cited some authority for you there if you
23 feel like reading it. I'm guessing that the city attorney
24 has his cases handy. They're cited in the brief. The owner
25 accepted the benefits of the original land use approvals

1 under which the zoning was changed. The owner received over
2 $100,000 in development fee waivers and the City permitted
3 the park to be built with fewer planning restrictions than
4 would otherwise had been required all in exchange for this
5 agreement to provide housing for low income seniors with
6 very specific restrictions on rent increases.
7 This is not a situation like you see when rent
8 stabilization is challenged where there's a unilateral
9 imposition of rules. You know, rent stabilization
10 ordinances are adopted unilaterally. And the park owner
11 doesn't have any say in whether the rents are restricted or
12 not. They're stuck with it. That's why we do the Vega
13 analysis and the year before and all that. But this is a
14 different situation. This park owner bought onto this deal.
15 And remarkably, even though the names and the titles of the
16 owners have changed, it's the same family who's owned this
17 park since the day it was built. And this was a deal that
18 that family bargained for, and they can't complain about it
19 now. And that's what those cases say. You get the
20 benefits, you're stuck with the burdens.
21 Also, in the next slide, the resolution 84037 and
22 the trailer park development permit cannot be considered a
23 taken, especially in light of that recent court decision of
24 Googenheim. And the Googenheim decision factually is
25 different than what we have here because there the park

1 owner was actually challenging the ordinance itself and
2 making a facial challenge to the ordinance itself.
3 But the -- what the Googenheim decision does have
4 is some very important language in terms of what factors
5 need to be analyzed when there's price restrictions put on
6 property. So putting the benefits and burdens argument
7 aside, the analysis that the Googenheim court said was this
8 is about investment backed expectations. The owner's
9 invested back expectations here can only be read to he
10 accepted the deal that he asked for. That's what he bought
11 into. That's the deal he asked for.
12 The reason why we gave you all that data, and Jim
13 is a statistician and is, again, better at numbers than I
14 am. And we've given you all the information about the
15 residents' investment backed expectations is because as I
16 believed back in December, but as was confirmed, thankfully,
17 by the Ninth Circuit two weeks later, the residents
18 themselves have a stronger investment backed expectation
19 than the owner ever did in this park.
20 The estimated aggregate of the resident's
21 investment in this park is over $4 million. They have a
22 right to expect that their investment is going to be
23 protected. When Valerie did her due diligence and spent two
24 years looking for a place to live and invested her entire
25 life savings pretty much into the coach and the improvements

1 she made, she has a right to expect that the City's going to
2 honor that and not just change the rules, which is exactly
3 what you'll be doing if you approve the rent increase as
4 requested. And all of the other residents who have done the
5 same thing and you can read their stories and their
6 declarations, and I'm sure you will hear from them tonight.
7 From its inception the park has been continuously
8 burdened with rent restrictions in exchange for the benefit
9 of getting to run a cash cow mobile home park. Last -- the
10 next slide I want to talk to you about and, again, still
11 focusing on the jurisdictional issues. Even if Resolution
12 84037 might be subject to some kind of constitutional
13 attack, the Lockhear (phonetic spelling) case.
14 And I think you may remember a little bit reading
15 in the papers about this. This is about the law related to
16 same sex marriages. That's what the Lockhear case is about.
17 But remarkably, the Lockhear case cites as an example, a
18 development permit, land use. And what it says is that you
19 can't create your own jurisdiction by assuming the
20 unconstitutionality of the resolution unless and until
21 Resolution 84037 and Trailer Park Development Permit 74-6
22 are found to be unconstitutional, you're stuck with them.
23 And the Lockhear case made it very clear that
24 unless there's been a judicial declaration to the effect
25 those are taking or unless a city council appeals it,

1 repeals it, you can't refuse to enforce it. You're stuck
2 with it. That's actually a good thing for you. You don't
3 have to make those decisions.
4 All right. So spend a little time on the takings.
5 Before I finish up on the takings law, I think that some of
6 the estoppel arguments that have been raised by the owner
7 will be addressed in the brief, but I would encourage you to
8 look at the government code section cited and read it
9 because it's about density bonuses and that doesn't apply
10 here. It's just not the deal we had. There was no 30-year
11 sunset clause.
12 In fact, I think if you research the history of
13 this park, there was actually the inverse of a density
14 bonus. I don't even know what you would call that. The
15 park was required to be less dense. The park was like less
16 dense than what the restrictions would allow. He didn't get
17 some extra density. The City didn't give up density to
18 allow this park to be developed.
19 So with regard to the contract and estoppel
20 principals, basic principals of contract law and estoppel.
21 If you could move the slide probably to the next -- a couple
22 more. Right there. First, it's basic black letter law. If
23 you accept the benefits of a contract, you can't just deny
24 its validity. A voluntary acceptance of the benefit of a
25 transaction is equivalent to consent to all of the

1 obligations arising from it. He who takes the benefit must
2 bear the burden.
3 And if you could go to the next slide. There's a
4 bunch of cases cited here that apply these contract and
5 estoppel principals with equal force if not even stronger in
6 the real estate and land use context and in fact, some of
7 them even cite these contractual code sections if you look
8 at them.
9 All right. So if you could go to the next slide.
10 So talking about principals of contract and estoppel, those
11 require that the owner of the Ranch park be bound by the
12 deals that the owner made with the City and the residents.
13 What benefits did he get? He got a zoning change. He got
14 waiver of development fees. He got some other development
15 concessions. And he's gotten payment of the rent from the
16 residents every month for the past 33 years. These people
17 pay the rent. They kept their deal. The owner should be
18 forced to keep his.
19 And what are the burdens he's stuck with or the
20 owner -- I say he, I mean the owner, I mean the corporation,
21 but it's easier to say he. Tenant restrictions based on age
22 and income, limits on annual rent increases now pursuant to
23 Resolution 84037 to ensure rent stability for seniors living
24 on fixed incomes. And the rent increases, in a number of
25 the contracts, even waived by the contracts themselves. And

1 as you'll read in the declarations, the representations that
2 were made to the tenants, the residents when they moved into
3 this park. Your rent is not going to be raised. Your rent
4 is stable. You're not subject to the rent increases.
5 They heard it all. They got the great sales
6 pitch. It's time for the owner to deliver. Some other
7 principals of contract and equity that we need to take into
8 account here and I know it's been a part of much discussion
9 and questions, and good questions from the Commission, and
10 that is does the owner get to make up for the rent increases
11 that they didn't take. Is the -- does the RSO have a use it
12 or lose it provision? Does Resolution 84037 have a use it
13 or lose it provision? If you look at the rent stabilization
14 ordinance itself, and especially the adjusted -- it's
15 actually in RAC 2, the just and reasonable return provision.
16 It allows for an owner in any given year to apply for a
17 higher rent than the maximum rent allowed under the
18 ordinance.
19 If the maximum rent for that particular year does
20 not provide for a just and reasonable return based on
21 unusually high expenses, it doesn't allow the owner to catch
22 up after making a deliberate and conscious decision to forgo
23 potential rent increases for 30 plus years. And this is
24 recognized in Section 2.05 of RAC 2, which we're going to
25 talk about a little bit later. The development approvals of

1 the park don't allow this catch up provision and the
2 contracts with the residents don't allow this catch up
3 provision. And it doesn't make sense. More importantly it
4 doesn't make sense. And we're going to talk about that.
5 I've been told that the court reporters need a
6 break again. I talk fast. And I don't know if the
7 Commission is going to allow for that at this point or not,
8 but this would be a logical place for me to stop if we're
9 going to take a break.
10 MR. WERTHEIMER: All right. We'll take a break, and
11 we'll be back at 9:30.
12 MS. SPENCER: Great. Thank you.
13 (A recess was taken.)
14 MR. WERTHEIMER: Ms. Spencer, can I ask you how much
15 more time it will be because we have three witnesses that we
16 want to think about. They're going to have to stick around.
17 MS. SPENCER: Three witnesses? You mean the people --
18 MR. WERTHEIMER: Georgia --
19 MS. SPENCER: Georgia's already been given -- she
20 actually went home because she wasn't feeling well
21 Mr. Hill and Committee didn't want to cross examine her.
22 MR. WERTHEIMER: Well, she needed to stay.
23 MS. SPENCER: Did the Commission have some questions
24 for her? Do you want me to see if I can get her back here?
25 MR. WERTHEIMER: Yes, please.

1 MS. SPENCER: Okay. And my apologies. I checked with
2 Mr. Hill, and I should have checked with Mr. Hehir. I'm not
3 used to having multiple lawyers I have to consult with, so
4 my apologies. All right.
5 MR. HEHIR: Well, if -- if I may, just for the
6 Commission, I mean, my biggest concern for Mr. Hill to make
7 sure that he had the right to cross-examine all the
8 witnesses that come on board. If he's -- if you guys have
9 questions for her, that's fine. I just want to make sure
10 that --
11 MR. WERTHEIMER: Well, let's find out.
12 MR. HEHIR: Okay.
13 MR. WERTHEIMER: Does anyone on the Commission have --
14 any Commissioners have any questions for the lady that left?
15 Mr. Hill? Any Staff?
16 MS. SPENCER: Okay. I guess we don't need her back.
17 MR. WERTHEIMER: Ms. Spencer, any questions?
18 MS. SPENCER: No, I don't have anymore questions.
19 MR. WERTHEIMER: Of her?
20 MS. SPENCER: I don't have any questions for her.
21 MR. WERTHEIMER: All right.
22 MS. SPENCER: Okay. Going back to some of the legal
23 issues. I think that one of the other things that I think
24 it's important to remind the Commission of is that you are
25 being tasked with the obligation of interpreting and

1 applying a statute. So some of the basic principals behind
2 statutory interpretation need to be kept in mind when you're
3 making your decision as to what this -- how the statute
4 should be applied, assuming that you agree that you have
5 jurisdiction and you can apply the rent stabilization
6 ordinance to this park, the sooner you'll agree with the
7 City and the park owner's contention that you have
8 jurisdiction, then you still have an obligation to apply the
9 statute in a number of ways.
10 One is you have to apply it according to its plain
11 meaning. Two is -- next slide, please. You have to apply
12 it so as not to render any language in the statute
13 meaningless or mere surplusage. And we'll talk about where
14 this matters when we get to that point in the statute. Next
15 slide, please. Statutory language should not be read in
16 isolation but must be implied consistent with similar
17 provisions in the statute. You've got to harmonize the
18 statute with -- in itself. And then the next slide, please.
19 And statutory language should be applied consistent with the
20 purposes of the statutory scheme and so as to avoid an
21 absurd result.
22 When we were on the break, I was having a
23 discussion with somebody, and actually I think this kind of
24 brought this last one home to me the best, and the best way
25 I can explain it. This park is set -- the people who live

1 in this park can only make a certain amount of money per
2 year maximum. And they were qualified to move into this
3 park based on those income restrictions. But the way the
4 proposed rent increase and the proposed application of the
5 rent increase is set up, these people who have to make a
6 small amount of income to live there will never be able to
7 afford the rent increase proposed.
8 So it's -- you're creating a situation where
9 there's a requirement that these folks -- and they actually
10 only make less than $1,000 a year on average -- I mean
11 $1,000 a month, excuse me, on average, $12,000 a year, but
12 that they make no more than $30,000 approximately per year,
13 yet the rent increased proposed makes them have to pay such
14 a huge amount of their income, they'll never afford to live.
15 They won't even be able to exist. As one of them said, they
16 don't even want to just exist, they want to live. And I
17 think that's important to take into consideration when
18 you're looking at a rent increase for this park and why
19 Ranch is different and unique. Because the very
20 restrictions which created this park and which flow with
21 this park will make it impossible for the folks to continue
22 to live there.
23 So what's the end result going to be? The end --
24 the logical end to that result is going to be they're going
25 to walk away from their mobiles that they won't be able to

1 sell because nobody will be able to afford to buy them
2 because they won't be able to pay the rent, not because they
3 can't pay the market price. And they won't be able to
4 continue to stay there, and you're going to have a vacant
5 park, which I'm sure is great for the owner because then he
6 can redevelop it into something else. But that's not what
7 the City approval for this park called for and that's not
8 what the folks who moved into this park counted on when they
9 invested their over $4 million into their mobiles and the
10 improvements.
11 I think the term was a "reverse wealth transfer"
12 and that's just completely contrary to the purposes of this
13 park and the rent stabilization Ordinance. So if we could
14 go to the next slide. The legislative purposes of the rent
15 stabilization ordinance: To provide affordable housing for
16 low income residents living on fixed incomes and to provide
17 long-term rent stability for mobile home tenants to avoid
18 displacing them due to their inability to pay increased
19 rents. It's the whole reason we have it.
20 Now, politically, some people don't agree with
21 rent stabilization, but it is what it is. And I think it's
22 very hard for anybody to argue with the fact that we have to
23 have stabilized rents in this park in particular. Some of
24 the most vulnerable members of our society, elderly, fixed
25 income, disabled, low income, very low income.

1 Next slide, please. The RSO itself requires that
2 the Commission find that the proposed increase is in keeping
3 with the purposes of the ordinance. Section 5-25.06,
4 talking about the just and reasonable return increases. You
5 have to make a specific finding that the increases in keep
6 in the purposes of the ordinance.
7 So what are the purposes of the ordinance? Next
8 slide, please. The RSO's purposes are stated very clearly
9 in the preamble to the RSO, not unlike a lot of other rent
10 stabilization laws that are adopted. The rent -- the
11 language of the RSO provides that if you don't have
12 stabilized rents, you exacerbate the shortage of vacant and
13 available mobile home prices in the City of Thousand Oaks.
14 You'll cause tenants on fixed incomes to be displaced as a
15 result of their inability to pay increased rents and to
16 relocate at a substantial loss or expense. Will cause those
17 with fixed incomes to be able to fine decent, safe, and
18 sanitary new housing at affordable rent levels. Will cost
19 tenants to attempt to pay requested and uncontrolled rent
20 increases, which will require them to spend less on the
21 other necessities of life.
22 Will have a detrimental effect and cause hardships
23 on senior citizens with fixed and low incomes. And then I'm
24 going to add some more things, not in the rent stabilization
25 ordinance itself, but certainly implicit in it.

1 Substantially impair the investment backed expectations of
2 the residents. Will cause the rents to be increased by a
3 substantial percentage in a single year contrary to the
4 purpose and plain language of the RSO. And will allow for a
5 recapture of rent increases for 31 of the past 33 years
6 where owner deliberately agreed not to increase rents and
7 decided would forego any increase.
8 Mr. Hone said, admitted on cross-examination, that
9 his dad made -- was the shot caller. He could decide
10 whether to increase rents and decided not to. He made a
11 deliberate business decision not to do it. And maybe he did
12 that out of the goodness of his heart. We don't know. He's
13 not here. But the point is it was a deliberate decision.
14 So in keeping with the purposes of the rent
15 stabilization ordinance and the park itself, this park, the
16 Ranch Mobile Home Affordable Housing Project Senior Low
17 Income Park, if this Commission decides to exercise
18 jurisdiction, you get to adopt an alternate formula. And I
19 know I heard the owner's attorney say, well, we didn't
20 present one. Well, guess what, we didn't have to present
21 one because the City created one in 1984. There's no reason
22 why you have to apply the MNOI formula here because there's
23 clear and convincing evidence that would be -- that it would
24 be directly contrary to the purposes of the rent
25 stabilization ordinance.

1 You have an alternative. You already have an
2 alternative that was evaluated by the City, both the Rent
3 Adjustment Commission and the city council back in 1984 and
4 approved by the park owner. He never challenged it within
5 the 90 days he was required to do that back in 1984, and
6 then he used it to his own benefit in 2000 when he applied
7 for the new rent increase. Why not just use 84037? You
8 have the right to do it, and you should do it. As a matter
9 of fact, there's no reason why you shouldn't. So if you're
10 going to pick -- if you're going to approve a rent increase
11 based on a just and reasonable return, use 84037. This is
12 the deal the owner bargained for. This is the deal the City
13 bargained for. This is the deal that the residents
14 bargained for.
15 No need to reinvent the wheel for this park. So
16 pick it. Decide you're going to evaluate the rent increase
17 application and use 84037. There's nothing in the law that
18 requires you to make up for 31 of 33 years of rent increases
19 that the owner deliberately required you to forego. Strike
20 that. I didn't say that right. That the owner deliberately
21 decided to forego. You don't have to make up for his bad
22 business decisions. That is not your obligation. And to do
23 so would be directly contrary to the very purpose of the
24 rent stabilization ordinance, to provide some certainty
25 about rents for this very vulnerable population that don't

1 really have mobile homes. They're not on wheels. They're
2 bolted to the ground, and they can't move them and they have
3 nowhere else to go with them anyways if they could.
4 So turning your attention to the financial
5 worksheets, so starting at 101 of the notebook, right behind
6 the green page that says "financial worksheets." By the
7 way, I picked green because my team is going to the Super
8 Bowl, so it must be a good day for me.
9 MR. WERTHEIMER: You don't have to worry, counsel.
10 MS. SPENCER: Go, Pack, go. All right. Sorry, this
11 gets a little boring, had to have some levity. I'm not very
12 good at math. I've admitted that. But even I can figure
13 out what the rent increase would be under 84037. So I don't
14 like to testify because I don't like to be cross-examined,
15 but I will tell you, I put that sheet together. It's a very
16 simple formula in 84037. You take your CPI for 2009. You
17 deduct the previous index of 221.4, and actually truthfully
18 I didn't do this all on my own. I even needed Jim to help
19 me. And you get the index point change of 4.1 divided by
20 the previous index of 221.4. Get your results. Multiply it
21 by a hundred. Your percentage change is 1.85 percent.
22 Resolution 84037 says that for this application
23 they get 1.85 percent. Alternate formula there already
24 packaged, ready to go for you and agreed upon by the Rent
25 Adjustment Commission, agreed upon by the city council, and

1 accepted by the park owner since 1984. No need to reinvent
2 the wheel. And you wouldn't run a foul on all those
3 constitutional principals and those other legal principals
4 we talked about. And it might even keep Mr. McCarthy happy
5 because this formula is based on 100 percent of the change
6 in the CPI for that year. You don't even have to back it
7 off to 40 percent. It's wholly consistent with the parties
8 investment backed expectations and their constitutional
9 rights. Anything else would be contrary. We're not saying
10 that the owner doesn't get a rent increase, but he gets 1.85
11 percent, and he doesn't get to make up for the past 31 of 33
12 years where he decided not to raise rents. And doesn't --
13 more importantly doesn't make the folks who haven't been
14 living at the park for the last 31 of 33 years pay for his
15 bad business decisions.
16 So I would suggest to you that that is an
17 alternative that you could employ, tested, tried, approved.
18 All right. Now for the more difficult part. Let's assume
19 you decide to exercise jurisdiction and let's assume you
20 decide you don't want to use Resolution 84037, and you're
21 going to ignore that and you're going to ignore the Trailer
22 Park Development Permit and you've got to go with the MNOI
23 formula. You decided as a Commission that's the way to do
24 it.
25 Well, I brought the accountants with me to talk to

1 you about what the problem is with the MNOI formula as
2 applied by the park owner and even as applied by the City.
3 And there's some steps you need to follow, and I'm sure
4 you're familiar with those because you've gone over it and
5 over it again. But one of the things that I need you to
6 understand is that nobody has been following those steps as
7 written.
8 There's a provision in the -- we're going to talk
9 about in the Rent Adjustment Commission regulations that
10 everyone wants to pretend that's not there and everyone
11 wants to reinterpret. But going back to the statutory
12 principals, we've got plain language and it says what it
13 says. So we're going to spend some time talking about how
14 you should apply the MNOI formula and come to the conclusion
15 that you should -- that we think that you should.
16 So we've got the basic steps. You've got to
17 figure out the base of your operating income. You've got to
18 figure out the current year operating income. You've got to
19 make a price level adjustment to the net operating income
20 for 1979. And you've got to compare the current year net
21 operating income to the 1979 operating income. On its face
22 the ordinance isn't unduly complicated, everybody just wants
23 to over complicate it because they want to do all these
24 extrapolations and let's go back and let's do all these
25 numbers. It shouldn't take a degree in mathematics to

figure this out because remember this is intended for people who live in mobile home parks to have stabilized rents. And nobody should have to go through these crazy imagulations (phonetic spelling) to figure this out. It's a pretty simple straight forward formula.

But one of the challenges that we have here that is somewhat difficult is to figure out, one, what the base year should be because we know the rent stabilization ordinance has never applied to this park. And the MHOC decision that everyone's been talking about that says use the base year that was in effect before rent stabilization ordinance went into effect doesn't really apply here, does it. You have the choice of picking a different base year. And there's a number of reasons why you can and you should.

One is rent stabilization ordinance has never applied to this park. So using the logic in that decision, the first year that the rent stabilization ordinance is going to apply to this park is this year or 2010, that's when the application was made. So our base year should be 2009. If we're going to start to change the rules and suddenly the City is going to apply the RSO to this park, let's go to the year before because that's what we've done for every other park in the City. We're using base year 1979 according to the ordinance because that's when rent stabilization went into effect for other park in the city.

1 But guess what, Ranch is different.
2 Another reason we should use 2009 as the base year
3 is because it's the only year that we have complete
4 financial data. And I know that you guys just made that --
5 thank you for that Thunderbird Oak's decision, by the way,
6 it helped me. It helped me figure out really what the
7 decision-making process was going on with the Commission.
8 The rent stabilization ordinance says you need two full
9 years of complete data. We don't have two full years of
10 complete data other than 2009. That's the only year we have
11 complete data for. What do we have for 1979? We have a
12 backwards statistical extrapolation of what the expenses
13 maybe should've might have been. And as the accountant
14 admitted, expenses change from year to year. And you're
15 going to hear that from our accountant.
16 The IRS wouldn't let you get away with that. Why
17 should you? And especially because the rent stabilization,
18 the RAC provisions specifically say you need two years of
19 data. Well, what do we have next? We have 1982. We have
20 a throw away one liner in a memo that no one can figure out
21 what it actually says. Is it this much expense or is it
22 that much expense? Does it include depreciation or does it
23 not? And more importantly, we don't have any of the
24 underlying data to evaluate or analyze, which you're going
25 to hear from our accountants, that's really important here.

1 Because when you go through and you actually analyze the
2 numbers and use the general ledger and audit it and do a
3 forensic analysis of the numbers, you figure out that
4 there's a lot of expenses claimed that aren't allowed or
5 incorrectly stated and are overstated.
6 And back in 1982, when that application for a rent
7 increase was submitted, we were using Resolution 84037,
8 which is a totally different set of criteria than the MNOI
9 formula and all the detail required by RAC 2 and RAC 5. So
10 we cannot rely on 1982. And as Mr. McCarthy admitted, he
11 doesn't have the underlying ledger information, et cetera,
12 from 1982. We just have a one liner and a memo. I wouldn't
13 want to go to the IRS with that, and I certainly wouldn't
14 want my entire life to be altered based on the fact of just
15 a one line set of numbers in a memo. I want to see the
16 proof. And as you're going to hear from our forensic
17 accountant, in this situation in particular, it's important
18 to see the proof.
19 And let's look at -- now let's go to 1999. We
20 have a little bit more information, but we still don't have
21 the underlying financial data. We can't do a forensic
22 analysis. We can't see if they're asking for expenses that
23 they shouldn't be allowed to ask for. And we can't rely on
24 the fact that the City accepted those numbers for two
25 reasons. One is it doesn't appear there was any kind of a

1 public hearing on that because they were granting the rent
2 increase pursuant to the resolution. And two is, they were
3 granting the rent increase pursuant to the resolution. It
4 was a totally different analysis. There was no reason to
5 scrutinize those numbers in the same way that we have to
6 here.
7 So if we were given an opportunity to analyze all
8 the data for '99 maybe we could use it, but we don't have
9 that opportunity here. And the RAC provisions allow you to
10 do one of two things with that, pick a different base year
11 or return the application and say it's incomplete, give us
12 the data, pick one. Same thing with 1982.
13 The last thing I want to talk about before I bring
14 the accountants up is this whole concept of the Vega
15 adjustment. What does that really mean? Well, what Vega is
16 about is if rents are set at an artificially low amount
17 because there wasn't a two-sided deal that establishes rents
18 then some adjustment might be allowed. But you heard the
19 City's appraiser admit, and you almost heard the owner's
20 appraiser admit, but he had heard my questions before so he
21 was a little more cagey about his response, that affordable
22 housing is a totally different market. And as Mr. Prescott
23 even said, affordable housing is a totally different set of
24 circumstances. Fair market analysis is not what applies to
25 affordable housing. So it's wholly unfair to apply fair

1 market to an affordable housing project. And what you also
2 know, based on that 1976 letter, which I can provide my
3 copy, this copy here for the Commission to look at and then
4 all of the back and forth that happened in the late '70s to
5 establish these rents is that Mr. Hone and the City made a
6 deal. And Mr. Hone agreed that this was the market for his
7 project. That these rents were the market he was looking
8 for.
9 He agreed to set the rents at this amount. His
10 accountant, the letter you have in your materials from 1977
11 said this is what we want and the City said okay. So how is
12 it that you can make a Vega adjustment to change the market
13 to something that doesn't even apply to this project when
14 the market was established by Mr. Hone's deal that he made
15 with the City. We have to stay with the rents as they were
16 in 1977 and 1979. And these rents were even established in
17 1977, three years before the City even dreamed of rent
18 control. There's no reason why we have to change that
19 number. In this market, these circumstances, this set of
20 facts.
21 Okay. So what I would like to do now is that we
22 have some worksheets that have been prepared. But before we
23 get to those worksheets -- because some of the assumptions
24 in those worksheets are based on the analysis of the
25 expenses for 2009. And the worksheets that have been

1 prepared are at pages 110 -- we did it a whole bunch of
2 different ways so we give you all kinds of options. 133.
3 But before we get to those -- I'm sorry, 110 is the analysis
4 of the expenses. The worksheets are at starting on page
5 113.
6 MR. WERTHEIMER: Can I interrupt you for a moment?
7 MS. SPENCER: Pardon?
8 MR. WERTHEIMER: May I interrupt you for a moment?
9 MS. SPENCER: Sure.
10 MR. WERTHEIMER: Are we getting close to your
11 witnesses?
12 MS. SPENCER: Yeah, that's what I'm about to bring up.
13 MR. WERTHEIMER: Okay.
14 MS. SPENCER: So starting at page 110 to 112 is an
15 analysis of the expenses and income for 2009 as done by
16 Randi Sorenson, CPA, and certified fraud examiner. And I'm
17 going to ask her to come up and explain to you what her
18 methodology was and what her findings were with respect to
19 the 2009 expenses as requested by the owner.
20 MS. SORENSON: Good evening. I'm Randi Sorenson. I am
21 a CPA and certified fraud examiner out of Thousand Oaks,
22 California. And I am here this evening to discuss my
23 findings in reference to the just and reasonable return net
24 operating income worksheet, which is found in the Attachment
25 3 of Ranch 2010 Rent Adjustment Application. You'll find it

in Exhibit 4 on page 4 of the Rent Adjustment Application for the Ranch Mobile Home Park as well as, I believe, on page 109 of the documentation submitted today by Ms. Spencer.

My task was to do a forensic analysis of the aforementioned worksheet and adjust out any unallowed expenses per RAC 5, verify the data on the worksheet to the Applicant's general ledger, information that was applied by the Applicant, any supporting document that he supplied us, I was going to correct or I did correct the data as needed, compare these figures to industry standard figures and also to RAC 2 figures.

My findings were as follows, if you will reference the spreadsheet that is in the documentation. Put it up for us. Again, you'll find it on page 110. You got that? Okay. So the first column is a reorganization and breakdown of the numbers and rows found on the application. You'll notice that the first section, the operating expenses, there's a total of $53,736. If you would go to Attachment 7 in the Rent Adjustment Application, Page 2, you'll see that's where we obtained those -- the break out of those numbers.

So, again, that first column is just a -- basically the same information that was supplied by the Applicant in his application. Column 2, we adjusted these

1 numbers by removing any expenses that were not expressly
2 allowed per RAC 5. So we went to the RAC 5 information,
3 pulled out anything that was not allowed and recalculated
4 our numbers. To calculate column 3, we reviewed the
5 Applicant's general ledger and support documentation. We
6 looked at bills. We looked at reports, invoices, et cetera.
7 Again, all supplied by the applicant. We then adjusted
8 column 2 numbers further to be the actual numbers we found
9 in the Applicant's general ledger.
10 Now, you might note in the original application,
11 and I believe in the testimony earlier, that there were
12 several numbers that were averaged over three years. As
13 they used that as their standard, we continued with that
14 standard. So you'll notice that there are some adjustments
15 to their three-year averages. We were supplied with the
16 general ledger for 2007, 2008, and 2009. We pulled out
17 those numbers for each year and averaged them by three just
18 as they had done in their application. So we followed suit.
19 We didn't change any of that.
20 With these corrections or adjustments made to
21 column 3, I'd like to point out that the difference in
22 expenses, which resulted in an adjustment to the net income,
23 in the application worksheet their net profit was calculated
24 to be $20,468 for 2009. After the corrections that you find
25 in column 3, the net profit is then $44,923, a difference of

1 $24,455.

2 Going onto column 4, this was calculated by

3 Jan Taylor and he was -- of Delmar Property Management. I

4 think that you're going to find his credentials also in the

5 documentation you received. His CV is in there. You'll see

6 that the property management fee in column 4 was adjusted to

7 industry standards of six percent. That was under the

8 property management fees. He also adjusted the wages and

9 salaries of the on-site manager to be instead of $14,784, he

10 adjusted it to $9,600. Again, per industry standards. And

11 based on that we did also adjust the payroll taxes that

12 would be paid on that amount.

13 With those adjustments the -- using industry

14 standards the net income becomes $61,523. Quite a

15 difference. Now, the final column that we calculated takes

16 column 3's adjustments and calculates them and adjusts them

17 per RAC 2. And this will change the total management and

18 administrative fee to the allowed eight percent, which would

19 then give us a net income of $76,648. And that

20 concludes the presentation.

21 MS. SPENCER: In addition to providing more accurate

22 data for the 2009 current year, I think Ms. Sorenson's

23 findings also underscore the importance of having all the

24 backup data for the base year. Because, as you can see,

25 there's a significant discrepancy between what the owner

1 claimed he is entitled to and when you really go down and
2 analyze the numbers what he's actually entitled to.
3 A couple of comments about the basis for
4 Ms. Sorenson's conclusions. There is a provision in RAC 2,
5 which limits management and administrative expenses to eight
6 percent. There is also a provision in RAC 2, which states
7 that all expenses must be reasonable and in accordance with
8 industry standards. And, of course, there's the provisions
9 in both RAC 2 and RAC 5 which tell you what expenses can and
10 cannot be claimed. So all of Ms. Sorenson's information was
11 based on her being provided a copy of RAC 2 in her
12 consultation with experts in the industry -- an expert in
13 the industry as to what constituted industry standards.
14 So after Ms. Sorenson did her analysis of the
15 expenses for 2009, then we worked with Mr. Ling on providing
16 the Commission some worksheets about where you get at with
17 the rent increases assuming you use the MNOI formula and
18 based on the potential base years that the Commission may
19 choose to use. I noted that in hearing Mr. McCarthy's
20 presentation that apparently some of the worksheet numbers
21 he's provided to you are different than that which is
22 contained in the application itself. And I think Mr. Hill
23 had tried to make -- I don't know, I guess an oral amendment
24 to the application based on that, those -- all differences.
25 A couple of things I'd like to bring out before I

1 bring up Mr. Ling to walk through the worksheets. And if
2 you look at page 108 of our materials, there's a couple of
3 things I want you to be aware of. And 108 is the owner's
4 worksheet that he submitted with the application. One is
5 for the base year of 1979 that the owner is relying on, in
6 the application he attempts to add an adjusted income for
7 below market rentals of $110,280. And the explanation in
8 the materials was that was the development fees that were
9 waived in 1977. Nowhere in the rent stabilization ordinance
10 or in the interpreting application -- any interpreting
11 provisions or the resolutions is such an income figure
12 permitted.
13 And, furthermore, it was an income -- even if you
14 assume it was income, it wasn't an income in 1979, it was in
15 1977. So I think that Mr. McCarthy, looking at the quick
16 review I did of the worksheet I received from him today,
17 doesn't have that figure in it. So I don't know that it's
18 an issue, but based on the ordinance itself if it does
19 become part of your evaluation, my recommendation to you is
20 that you simply take that out because it's not substantiated
21 by any of the standards set forth in the formula.
22 The next thing, couple critical assumptions and
23 critical questions that we need to have answered, and that I
24 think we can answer -- if you could turn to the slide, the
25 PowerPoint slide that's entitled critical questions. There

1 we go -- is what are the provisions of Section 2-217
2 requiring -- calculating current year net operating income
3 under RAC 2, Section 3.03? And what do we do with this
4 adjusted income for below market rental issue?
5 Now, as you may recall, one of the principals of
6 statutory interpretation is you're supposed to apply
7 everything it says and no surplusage and you're supposed to
8 really go through and include everything, not just leave
9 things out. And I think one of the critical flaws in the
10 City and the owner's analysis is there's a very important
11 factor that was left out and that is the suggested income to
12 below market rentals for the current year net gross
13 operating income.
14 The current year net operating income was impacted
15 as a result. Section 2 of RAC 2 states that net operating
16 income is determined by subtracting the annual operating
17 expenses from the gross total income. Section 2.01 says the
18 gross total income is determined by having the following:
19 The actual rental unit income -- we have that -- the garage
20 and parking income the stores and offices income the
21 adjusted income for below market rentals. And the
22 miscellaneous income. And Section -- everybody seems to
23 want to apply this adjusted income for below market rentals
24 only to the base year, not to the current year. There's
25 some belief -- maybe it has something to do with the Vega

1 adjustment.

2 Actually, if you really read this carefully, and I

3 had to read it I don't know how many times before it really

4 made sense to me, this is the use it or lose it provision.

5 Because the rent stabilization ordinance and the just and

6 reasonable return formula were really intended to address

7 those years when there was extraordinary expenses, not to

8 address those years when the owner had decided for 31 of 33

9 years to forego rent increases. This is where we make up

10 the difference. This is where the rubber meets the road.

11 So if you look at -- and I'd like to walk you

12 through this, and if I'm repetitive, I apologize, but I

13 think it's important. Page 22 of the materials has a copy

14 of RAC 2. And if you look at RAC 2, Section 3, 3.03, you're

15 supposed to determine the current year net operating income,

16 in accordance with the provisions of Section 2 to 2.17,

17 parens, i.e. the latest calendar year or the latest fiscal

18 year used by the landlord for accounting purposes. So this

19 is how you figure out the current year net operating income.

20 You go back to two and you plug in the numbers.

21 So if you go back to two and you start at the

22 beginning, 2.01 says, gross total income. So you get your

23 net operating income by subtracting the annual operating

24 expenses as permitted, the stuff that Randi did, from the

25 gross total income. Section 2.01 says the gross total

1 income is determined by adding the following: The rental
2 unit income, Subsection A -- there's no garage income here,
3 there's no store and offices -- in Section D, adjusted
4 income for below market rentals, and then miscellaneous
5 income. Well, let's look and see what adjusted income for
6 below market rental says. Section 2.05. Going back to
7 statutory interpretation. You have to use all of the words.
8 You can't just pretend that these words don't exist as the
9 owner would like to do.
10 It says, represents the difference between the
11 actual rent collected and what the owner could have
12 collected if the units had been rented at their full market
13 value. Now, the challenge to that is that the term "full
14 market value" gets us a little confused. What does that
15 really mean for purposes of a rent stabilization ordinance
16 application? Is that what these folks were talking about,
17 the term of art of market value? Well, no, we don't have to
18 figure it out because it defines what it is.
19 The next sentence defines it, examples of the
20 below market rents may be units occupied by the landlord or
21 landlord's family -- but we don't have that here, so we
22 don't need to worry about that provision -- the unit of the
23 resident manager. We do have that here. So everybody made
24 an adjustment for housing allowance, about $4,000. Or any
25 unit -- this is the -- this is the key language. Any unit

1 where the rent increases permitted by the rent stabilization
2 ordinance or the regulations and guidelines of the Rent
3 Adjustment Commission could have been made, but have not
4 been made because of the landlord's rental policies and
5 purposes.
6 That language right there is the use it or lose it
7 provision. And it's wholly consistent with the entire
8 purpose of the ordinance. You can't sock somebody with a
9 150 to 500 percent rent increase in one year because you
10 didn't do it for 31 of 33 years. How is that stabilized
11 rent? Instead what this says is you have to adjust the
12 current year net operating income for all those rent
13 increases that he didn't take. Because he made -- the shot
14 caller made a deliberate decision not to do it. And that's
15 the biggest problem we have with the City's report and the
16 owner's report, is they missed a step. And because if you
17 go through and you do the math, and I'm going to have Jake
18 go through the worksheets with you so we can do the math.
19 MR. WERTHEIMER: Is Jake going to be here soon?
20 MS. SPENCER: Yes, he's coming down right now.
21 MR. WERTHEIMER: Okay.
22 MS. SPENCER: They don't get a rent increase, or if
23 they do, it's very, very small depending on what base year
24 you get. So Jake's coming down, because apparently I'm
25 talking too much, and he's going to go through these

1 worksheets and these alternatives that we've come up with
2 applying the right standards.
3 MR. WERTHEIMER: Name and where you're from, Jake.
4 MALE SPEAKER: Well, I'm from Thousand Oaks. I was a
5 graduate of the inaugural class from Westlake High School in
6 1982. My practice is also in Westlake Village. I'm a CPA.
7 I graduated from Brigham Young University with a degree in
8 accounting and have an MBA from Pepperdine and I have a
9 Master's in Business Taxation from the University of
10 Southern California. And I know it's been represented that
11 I was not paid, however, I did have a bagel that was
12 provided to me and a cookie tonight.
13 So starting with the schedule on page 113, and I'm
14 not going to take you through them all because they're
15 really just dealing with different base years. So if I get
16 you through 1979, I trust that the Commission can get
17 through the rest if we change the base year to '82, the
18 methodology is the same. If we change the base year to '99,
19 same methodology.
20 I believe you asked earlier if anyone had done a
21 calculation where it showed what the rent would be had the
22 increases been taken that were allowed to the owner. I was
23 thinking about it, and I managed property when I was in
24 college and I had an owner that didn't ever raise rents, and
25 they weren't particularly benevolent, but they didn't raise

rents. And that was about 10 units. And the reason they didn't raise rents is because they liked having the stable tenants. They didn't want tenants to -- there's a cost when people leave, you've got vacant spaces, and they were counting on the appreciation in the market, which may or may not turn out but it was investment risk.

So they weren't really in it for rental income, they were in it for the appreciation. And interestingly enough, I happen to have the property tax on the property here, I know it's been represented that it's about $168,000 value. And the property tax assessment for 2009, I believe it is, shows the value at $1.2 million on the park. Now, I realize that property tax assessment may not be fair market value and probably is not, but it seems a little strange that we'd be giving away that much in taxes each year when we could apply for an adjustment. So I suggest that we can probably find $10,000 of savings there based on the owner's representation of the value of the park to current numbers.

So we've talked a lot about yields and returns and inflation returns and we go through CPI and we've done a lot of that thing. And we've been talking about inflation protected returns. So I just pulled what an inflation protected is return currently. The current yield on TIPs, which are treasury inflation protected returns, is about a quarter of a percent is the current yield. We're talking

1 about a lot bigger numbers here when we're trying to protect
2 the value of this park or the city owners at the detriment
3 of those who are the coach owners.
4 So starting again on 113, I'll just take you
5 through it. The rental income unit, we have the base year.
6 If it was 1979, you have the current year. The first thing
7 is what we just learned about was the Section 205, 2.05, and
8 that was the rental increase. Again, it's on 113 if you're
9 not following along. That was the rental increase due to
10 the RAC, RAC 2. And for a schedule that deals on how those
11 rental increases were done, the first one is RTA 118. So if
12 you're looking at that, what it does is it takes the current
13 year income and adds to it what would be necessary to arrive
14 to the 231,000 on 118. And so this schedule actually shows
15 what would happen using the rent stabilization ordinance.
16 Then if you go to RTA 115, you have the same
17 adjustment, but it's by using the development permit, so
18 it's not the rent stabilization order. And that calculation
19 can be found at 119. And so when you see -- for instance,
20 if you look at the schedule and you were to take the current
21 year with expenses claimed by owner on page 115, that
22 113,000 is the current rent. The 135 is the necessary
23 adjustment under RAC 2, Section 205, below that is the
24 managers, and then there's some other miscellaneous of 180.
25 And that gets you to the total gross income for the park.

1 And that, again, is assuming that the development permit
2 method was used.
3 And then the expenses are just lifted off the work
4 of my predecessor who just spoke. And so we have the
5 adjusted expenses. We have a column for the different types
6 of adjustments that were made to the expenses with industry
7 standards with a maximum of eight percent. And then we come
8 down to a total net operating income. And that net
9 operating income is compared to the market price level
10 adjustment as required by RAC 2, Section 304. And that
11 calculation, which utilizes a CPI, which I'm not going to
12 bore everyone with some of the problems in utilizing CPI.
13 It's interesting. We utilize CPI to talk about inflation,
14 about everything except for the value of the park. So we're
15 talking about expenses going up but apparently the park
16 value continues to drop.
17 So we have this increase that's necessary to do
18 that adjustment and to be compared to the other income. So
19 if you were, again, to take on page 115 and you were to look
20 at the current year and compare it to -- this is with the
21 owner's claimed expenses. You have a 156,000 and the price
22 level adjustments at 178,000. Under that scenario on page
23 116, the owner would be entitled to a $24.68 monthly
24 increase. That's with their expenses. We've gone through
25 it and Randi did the work on the changes on what's allowed

1 and what's not allowed. So what we have here is based on
2 the increases and it's just -- you know, again, I'm an
3 accountant, I'm not an attorney. But when I look at it and
4 to get in the park we require people to be low income, yet
5 even under the council's proposal of rent increases, lower
6 income people won't be able to afford to live there. So it
7 seems a little odd to me that we would have a tsunami effect
8 of renting to people or renting space to people requiring
9 them to be low income and then pricing them out a few years
10 later.
11 What we would have at that point is a wealth
12 transfer. If this was sales tax, we would be calling it a
13 regressive sales tax or a regressive tax -- sales tax
14 considered regressive because it hits those of us in society
15 who could least afford to pay it the most and those who can
16 afford to pay it, it's not as big a deal to them. In this
17 case we're trying to take the $4.5 million investment of
18 these coach holders and transfer some of that value to the
19 owner who has made decisions, business decisions, based on
20 things that we weren't able to give testimony on tonight,
21 but decisions to forego his rent increases. And that's my
22 testimony tonight. If you have any questions for me, I'll
23 take them when it's time.
24 MS. SPENCER: And the good news is I'm almost done. So
25 each one of those worksheets for each one of the base years

1 and all the incomes, adjustments, and worksheets are all
2 provided in the materials. And those are taken directly
3 from what RAC 2 requires.
4 So a couple of points that I'd like to just
5 emphasize before we -- I wrap it up. If you use this MNOI
6 formula, it's clear that the owner and the City have
7 understated gross total income for the current year because
8 they left out a very important component and that was the
9 adjusted income for below market rentals. If you use the
10 MNOI formula, the owner has also failed to provide accurate
11 data for operating expenses for the base year 1979.
12 The owner has also overstated allowable operating
13 expenses for the current year as shown in the worksheets
14 that was prepared by Ms. Sorenson. And those expenses were
15 overstated because they're not permitted, they're not
16 supported, they're in excess of industry standards, and they
17 exceed the eight percent cap for management and
18 administrative expenses.
19 I've given the Commission a lot of alternatives
20 here in these various worksheets. But the most important
21 things that I think that the Commission should remember in
22 making this decision is; one, should it make the decision at
23 all; two, if it does make the decision, what are you going
24 to use to make that decision? Are you going to go with what
25 everyone's been counting on for the past 33 years, the

1 Trailer Park Development Permit and the Resolution or are
2 you going to go to the MNOI formula?
3 And if you're going to go to the MNOI formula and
4 make the decision then, please, I implore you, apply it
5 properly. It's not that complicated. It just requires that
6 you plug the right numbers in based on the standards that
7 were already developed for the commission many years ago,
8 and that we don't need to reinvent that wheel.
9 And when you get to that, you'll find that in each
10 one of those worksheets you'll have alternatives, and all
11 the data has been provided for you as to what those
12 alternatives are. And it's our urging that under the MNOI
13 formula no rent increase should be permitted at all based on
14 the data, the numbers speaking for themselves.
15 But if you are going to allow some kind of a rent
16 increase, please, explain why it is you got to that point,
17 what year you chose, what data you chose to rely on.
18 Because I believe that you have all the information before
19 you to approve no just and reasonable return increase. And
20 if the city council decides to put this park within the
21 purview of the rent stabilization ordinance, this owner can
22 take his automatic rent increase. But in the meantime, he
23 can take the rent increase -- he can apply for the rent
24 increase under 84037.
25 So in conclusion, very last slide on the

1 PowerPoint, we request on behalf of the residents who are
2 members of the Association of Ranch Tenants so that these
3 folks can continue to live in the safe harbor place that
4 they came to in the City of Thousand Oaks and continue to
5 afford their medication, their food, their rent, their pets,
6 everything that they need to afford to live.
7 That first and foremost you should decline
8 jurisdiction over this issue. Second, if you decide to
9 exercise jurisdiction, that you decide this rent increase
10 application under TPD 74-6 and Resolution 84037. Third, if
11 you decide to use the MNOI approach, you set the base here
12 at 2009 because that's the year the rent stabilization
13 ordinance is first being applied to this park. And four, if
14 you use the MNOI approach, you deny it using any -- you deny
15 the rent -- request for a rent increase using any of the
16 other base years that they've asked for and apply the
17 standards that you're supposed to apply, adjust the income
18 for below market rentals, reduce the expenses that the
19 owner's claiming. And you're going to find out when you
20 look through those numbers that no rent increase is
21 justified.
22 Our your last alternative, send it back. You have
23 the right to send this back and tell the owner unless and
24 until you provide us with adequate financial data to use
25 base year 1979 or base year 1982 or base year 1999, unless

1 you can prove it, we're not going to give you what you're
2 asking for.
3 So on behalf of the Ranch residents and the
4 association, I thank you for your time. And if the
5 Commission has any questions for me or for the witnesses,
6 I'm done.
7 MR. HEHIR: If I may, Chair. One question I have is
8 did you provide the binder that you've been referring to for
9 most of your presentation? I know you provided it to the
10 Commissioners. Did you provide it to staff?
11 MS. SPENCER: Yes.
12 MR. HEHIR: And did you provide it to the owner?
13 MS. SPENCER: Yes.
14 MR. HEHIR: Thank you.
15 MS. SPENCER: And copies.
16 MR. WERTHEIMER: Does the Commission have any questions
17 for Ms. Spencer?
18 MR. SILACCI: I do. First of all, Ms. Spencer, thank
19 you very much for you and your experts taking the time to
20 lay out your case. Speaking for myself, I really appreciate
21 that. Earlier in your presentation you had mentioned --
22 just trying to be thorough here, a letter from June 14th,
23 1976, is that a letter that you actually looked at yourself
24 and have a copy of? And if you do, can you make sure that
25 we get -- I'd appreciate the Commission having a copy of

1 that letter.

2 MS. SPENCER: Yeah. Actually what I have here is a

3 stack of -- a series of letters. But I'll give you just --

4 if you want, just that one that was -- and I can provide

5 that, too. I didn't make extra copies because I just got

6 this today.

7 MR. SILACCI: That's fine.

8 MS. SPENCER: But I'll be happy to provide it to you.

9 Would you like me to give it to the clerk right now?

10 MR. WERTHEIMER: Yes, please.

11 MR. SILACCI: Please. Another question that I have,

12 and just trying to go follow along but maybe you can help

13 me. If we were to apply Resolution 84037, would you please

14 help me understand where the fair return or just and

15 reasonable return standard comes into that?

16 MS. SPENCER: Well, the fair and just reasonable return

17 standard is based on the concept that you have to provide to

18 a property owner a fair return on their investment. And you

19 can't arbitrarily impose rent control restrictions that

20 somehow prohibit them from getting a fair return on their

21 investment as, for example, as stated in the RAC 2, if there

22 is an unusually high amount of expenses for a particular

23 year.

24 And the reason why 84037 provides a fair and

25 reasonable return is because it is the return on investment

1 that this owner has asked for. This owner has stated this
2 is the deal that I want and, therefore, it is presumed to
3 provide a fair and reasonable return. Because if it didn't,
4 he would have been required to challenge it back in 1984.
5 So it's based on the concept that this was a
6 two-sided bargain when he opened this park as opposed to a
7 one-sided, unilaterally imposed rent increase through a rent
8 stabilization ordinance. And I think that if you read
9 through the PowerPoint authority cited that the most
10 important one to remember is one who accepts the benefits of
11 development permit is also saddled with its burdens. Does
12 that answer your question?
13 MR. SILACCI: Yes, it does answer my question, and I
14 have no further questions other than make one final comment.
15 Thank you, again, to you, all of your experts, and also for
16 the three residents, Jim, Valerie, and Georgia who came down
17 to speak so eloquently. So thank you very much.
18 MS. SPENCER: Thank you on their behalf for your
19 attention.
20 MR. WERTHEIMER: Commissioner Feldman. No questions?
21 MS. SPENCER: Should I bring any of my experts down or
22 the witnesses down? Does anybody have questions?
23 MR. WERTHEIMER: Well, that's my next question.
24 MS. SPENCER: Okay.
25 MR. WERTHEIMER: Do we have any questions for the

1 experts? This way. Neither. None here as well.
2 MR. SHELDON: I have one quick one.
3 MR. WERTHEIMER: Okay. For whom?
4 MR. SHELDON: For Randi Sorenson. Thank you. On page
5 RTA 110, there's a six percent cap on the management
6 expenses, is that six percent of what the rent is currently
7 at?
8 MS. SORENSON: It's the six percent of the current
9 income. So the income figure is -- let me take a look
10 here -- is calculated based on the rental unit income of
11 $113,662, miscellaneous income, which is for laundry, which
12 is $4,258, for a total of 117,920. So we calculate six
13 percent of that number.
14 MR. SHELDON: So everything is exceptionally clear in
15 your presentation. I just -- is that a good proxy to use?
16 Because the rents haven't been raised in 30 years you're
17 using a percentage of that?
18 MS. SORENSON: Well, we used -- we're basing it on what
19 they're earning right now. That's all we can base it on.
20 You know, I could've what if'd it from today, you know,
21 until next year, what it could possibly be to base it on.
22 But this is what they're earning and so we're looking at
23 what their reasonable expenses would be based on what
24 they're earning now.
25 MR. SHELDON: Cap those at six percent, you think

1 that's reasonable --
2 MR. SORENSON: Absolutely. You know, this is per Jan
3 and per my own experience. You know, I was dealing with
4 clients myself this week who have rental properties. And,
5 you know, they're paying between six and eight percent for
6 their management fees. So to use that figure here and --
7 you know, which is again, what Jan supplied was totally
8 reasonably. You know, I see it every day. You know, I also
9 have my real estate license. I come from a real estate
10 background. You know, I was in loans for a long time. So
11 I'm very comfortable with that number.
12 MR. SHELDON: Okay. Thank you.
13 MR. WERTHEIMER: I have a couple of questions for you.
14 MS. SORENSON: Okay.
15 MR. WERTHEIMER: The clients you talk to, what type of
16 properties do they own?
17 MS. SORENSON: Rental properties.
18 MR. WERTHEIMER: Residential? Commercial?
19 MS. SORENSON: Residential.
20 MR. WERTHEIMER: Okay. You had cited many times
21 justification for the things that you stated on industry
22 standards. Where do you get your sources?
23 MR. SORENSON: That is from Jan -- I can't remember his
24 last name. Jan Taylor who is -- if you look at his CV, he
25 is in that field. He's an expert in the mobile home park

1 field.
2 MR. WERTHEIMER: What does he do? I don't -- I'm not
3 going to look at it, so I need to understand what this
4 gentleman does based on an industry standard.
5 MS. SPENCER: Mr. Taylor is -- Mr. Taylor is a property
6 management -- manager who has significant experience with
7 both mobile home parks and other residential rental
8 properties. He operates a property management team for a
9 rent and profits receiver out in the Inland Empire and used
10 to do takeovers of mobile home parks all across the pacific
11 northwest. And so --
12 MR. WERTHEIMER: And what sort of -- what certificates
13 does he have, CRM, does he have anything of --
14 MS. SPENCER: I'm going to have to look at his resume.
15 MS. SORENSON: He has his --
16 MR. WERTHEIMER: Because a receiver is not a manager.
17 MS. SPENCER: He has a BA, an MA and an MFA. And he
18 has worked from 2009 to the present at Delmar Property
19 Management in managing properties for receivers. Prior to
20 that from 2003 to 2009 he was an investment manager. And I
21 think the part that -- let me find it here.
22 MR. WERTHEIMER: Correct me if I'm wrong, but your
23 facts are based for industry standards on one person.
24 MS. SORENSON: And my own experience. One person in
25 the industry. He's the only person in this specific

1 industry that I spoke with. But, again, a knowledge of
2 management companies in residential would be between six to
3 eight percent.
4 MR. WERTHEIMER: Right. I -- okay. For me it's more
5 than just this percentage. It also -- there's also a number
6 of times you stated your position as industry standards.
7 And there's property management companies or organizations
8 out there that create industry standards now for property
9 management. And as BOMA is certified for building owners,
10 maintenance association, they have building standards. And
11 if you say BOMA, you've already created credibility that
12 everyone can -- so I'm looking for a society we can tag for
13 property management for the same thing because one person
14 isn't it.
15 MS. SPENCER: With all due respect, I think with
16 respect to the -- this was a challenge. In the mobile home
17 industry, it tends to be a very closed-knit community.
18 Mr. Taylor has a significant amount of experience managing
19 mobile home parks as indicated on his resume, throughout the
20 pacific northwest as well as property management. And it
21 was based on his experience and his consulting that he
22 provided to the expert what he believed was the industry
23 standard for this industry.
24 MR. WERTHEIMER: I understand your statement.
25 MS. SPENCER: Okay.

1 MR. WERTHEIMER: It doesn't pass. Did you get a
2 declaration from him by chance?
3 MS. SPENCER: No.
4 MS. SORENSON: No.
5 MR. WERTHEIMER: Thank you.
6 MS. SPENCER: It's common practice for --
7 MR. WERTHEIMER: I'm sorry. My question's answered.
8 Thank you.
9 MS. SPENCER: Okay.
10 MS. SORENSON: Anything else for me?
11 MR. WERTHEIMER: That's -- any other questions for her?
12 We're done. Thank you.
13 MR. SORENSON: Thank you.
14 MR. WERTHEIMER: Does the Applicant have any questions
15 for the witnesses or the representative of the tenants?
16 MR. HILL: Yes, we have several questions. I'm just
17 curious what the Commission's agenda is for the rest of the
18 evening here.
19 MR. WERTHEIMER: The agenda will be to listen to yours,
20 have cross-examination by the City. We then will listen to
21 public testimony, and then suggest our next meeting.
22 MR. HILL: Because I don't know that the tenants have
23 finished their presentation at this point.
24 MR. WERTHEIMER: You don't?
25 MR. HILL: I know that the attorney representing some

1 of the tenants have done their presentation, but not all the
2 tenants that are representing themselves have appeared. And
3 also, we were just presented with this information at 10:00
4 o'clock at night, blindsided, and it would be nice to be
5 able to ask the questions -- I'm -- you know, would like to
6 explore more the issue of the lack of industry standard
7 testimony. We don't even have the person here to
8 cross-examine who is the basis for their analysis. And it
9 doesn't seem like that's any kind of due process at all to
10 be respectful to the Commission here.
11 MR. HEHIR: If I may, Chair. We have a couple of
12 issues here. One of the first ones is that we've been going
13 a lot longer than we anticipated, I believe, with tenant's
14 presentation tonight. It went on for certainly more hours
15 than we anticipated, and so we haven't even got to the
16 tenant public comments stage of this. The other concern I
17 have is that normally at around 10:00 o'clock, and it's
18 already 10:45 almost, council does -- through council
19 policy, we would see how the Commission is doing as far as
20 how long they want to get going and discuss that among the
21 Commissioners as well.
22 The other issue we have is through the tenant's
23 presentation tonight, they did provide two different
24 analyses, one obviously was the resolution from 1984 and the
25 second one was the MNOI analysis. And, of course, under our

1 guidelines -- and let me pull them for you just so I can
2 read them and quote.
3 MR. HILL: 1.04 of RAC 2.
4 MR. HEHIR: Thank you. Yup. One of the concerns we
5 have is, and I'm just going to get to the point, the
6 methodology and documentation shall be provided with
7 application sufficiently before the date set for hearing so
8 that the matter may be reviewed by the Commission staff.
9 Failure to do so -- failure to so provide that information
10 shall be grounds for rejection of its use or continuation of
11 the hearing at the Commissioner's discretion. The use of
12 such approach as suggested by the Applicant or Tenant shall
13 be at the discretion of the Commission.
14 And, again, I'm bringing that up not in any way to
15 indicate one way or another how you should proceed with the
16 information provided by the tenants, but to let you know
17 that that needs to be addressed by you as well since it was
18 provided today. And I will also say, for the record, that I
19 received her -- the tenant attorney's, Ms. Spencer's report
20 today, and so certainly I need to review that as well. But
21 those are just two issues I wanted to bring up to your
22 attention. Maybe you should discuss it among the
23 Commissioners one time and as to how you want to proceed
24 with the public testimony tonight.
25 MR. HILL: I would propose that if Mr. Taylor is not

1 here to be cross-examined that the tenant's position on the
2 MNOI be rejected at this point but if -- I'll let the
3 Commission make their deliberation on that issue. Thank
4 you.
5 MR. HEHIR: If I may, Chair, it's actually -- this is a
6 discussion among the Commissioners at this point.
7 MR. WERTHEIMER: So the Commission, do we have any
8 thoughts on where we want to go to allow this to be
9 continued? Mike? How long we want to go or we'll continue
10 it, whatever.
11 MR. SILACCI: Well, I hate to answer a question with a
12 question, but --
13 MR. WERTHEIMER: Than don't.
14 MR. SILACCI: Thank you. I'm just wondering how
15 many -- and maybe this will be out of order, but how many
16 speaker cards do we have?
17 MR. WERTHEIMER: About 30. But one of the things I was
18 going to do was it looks like maybe not all 30 will be here
19 looking up in the audience, so that was the other side.
20 MR. SILACCI: The only reason I ask that question is I
21 was just concerned that this will be two hearings where
22 the -- where speakers haven't been heard. So I don't know.
23 MR. WERTHEIMER: It's a tough choice.
24 MR. SHELDON: It doesn't make sense.
25 MR. WERTHEIMER: No, I don't think it makes sense to

1 take a break.

2 MR. SHELDON: No, I mean to break for the evening.

3 MR. WERTHEIMER: To break for the evening at this

4 point. We'd have to ask for them to come back, including

5 the cards.

6 MS. FELDMAN: I agree. Could you find out how many

7 speakers are here?

8 MR. WERTHEIMER: Sure. If I get the name, please

9 forgive me if I do it wrong.

10 Henry Herbert, yes. Thank you.

11 MS. FELDMAN: We're making a count.

12 MR. WERTHEIMER: There's no other way to count. Oh,

13 no, we're not asking you to come down. We're just checking

14 to see how many are here. Carol Classen. That's a no.

15 Dan Goldstein. That's a no. Barbara Brown. Audrey -- yes,

16 thank you. Don Hendricks.

17 MR. HENDRICKS: Here.

18 MR. WERTHEIMER: Vera Baldwin. Margaret Riggs.

19 MS. RIGGS: Here.

20 MR. WERTHEIMER: Did I hear a "here"? Thank you.

21 Gale Hennington. Lawrence Bloomfish. Frances Morton.

22 MS. MORTON: Here.

23 MR. WERTHEIMER: Thank you. Jane Garden.

24 MS. GARDEN: I'm here but I withdraw.

25 MR. WERTHEIMER: Withdrawn. Thank you. Lynn Sweeny.

1 Jay Falga, Falga. Judy Hurrari.
2 MS. HURRARI: Here.
3 MR. WERTHEIMER: Thank you. Donna K. Foster.
4 Vick Eberonzo.
5 MR. EBERONZO: Here. And it's Eberonzo.
6 MR. WERTHEIMER: Thank you. So noted. Ruth Faustino.
7 Shirley Thorn. Tom Packman. Donna K. Foster.
8 Barbara Brown. That's what I was thinking. You're still
9 here. Good. Haven't left, okay. Pat Hinklethorn.
10 James Wolff. Cathy Parsons.
11 Okay. Brenda, to answer your question, there's
12 11.
13 MS. FELDMAN: Okay. So that will be a minimum of 22
14 minutes, which is another half hour, and then we -- I think
15 we might be -- personally, I think it's -- I don't know.
16 MR. WERTHEIMER: Do you want to go for another 25, 30
17 minutes?
18 MR. SHELDON: Well, I'm confused as to why we would go
19 right to the public comment and not let the -- why wouldn't
20 they have a chance to question?
21 MR. WERTHEIMER: Who's they?
22 MR. SHELDON: The owners of the mobile home park have
23 not had a chance to question the tenants' representatives.
24 They have 15 minutes for each of the experts.
25 MR. HEHIR: If I may sum up, I think the issues you

have is, one, how long you want to go tonight. We've been over for six and a half, almost seven hours now. The second issue is do you want to take the public comments, the public testimony from individuals that are here, again, the two minutes speaking now, the 11.

And that would mean that you would actually have the cross-examination or any other questioning by either Staff, additional comments by the Commissioners, and, of course, the owner to the Tenant at a later time if you're going to end it in some short time. I'm assuming you would end it within the next half an hour if that's where you're going or to continue with the cross-examination now and either go forward with the public comments or testimony, excuse me, or stop it at some point in time. So, I mean, those are the discussions you have to have to make sure you kind of know where you're going with each one of them and go from there.

MR. WERTHEIMER: I like the idea of going forward with the public testimony, having the Applicant cross-examine the witnesses at the next meeting. Comments on that, thoughts?

MS. FERRUZZA: I agree that we could have the public comment now and then anything -- and then end the evening and then anything else at the next meeting.

MR. WERTHEIMER: All right. I will call three names, please be ready. And then I will do that until we're

1 through with the 11. And, Ms. Spencer, you have something
2 you'd like to say?
3 MS. SPENCER: I was just informed that some of the
4 folks who believed they filled out cards, their names
5 weren't called. So I don't know if there's -- if you want
6 to do a show of hands of people who think they filled out a
7 card and weren't called or not.
8 MR. WERTHEIMER: Did anybody fill out a card and not
9 hear their name? Okay. Two of you. Two or three. What's
10 your names, please, young lady in the front who already
11 spoke. Okay. Do you want to speak again? I did not read
12 your name because I knew you had already spoken. Is there
13 someone else that didn't hear their name and haven't already
14 spoke?
15 MS. SPENCER: Here's Mr. -- it's Chocha,
16 Mr. Alex Chocha.
17 MR. WERTHEIMER: Could we get him a card?
18 MS. SPENCER: That may be the only one. I just wanted
19 to make sure.
20 MR. WERTHEIMER: Okay. Will Barbara Brown,
21 Margaret Riggs, and Don Hendricks. Thank you. Okay.
22 Margaret Riggs, Don -- okay. And you are? You are
23 Margaret. How about Don Hendricks, are you here? Will you
24 step up to the podium, please? And then Audrey Filoga.
25 Thank you. And Henry J. Eber.

1 MR. HENDRICKS: First off, I'm so tired I don't know
2 whether I'm disabled or not. My name is Don Hendricks. I
3 live at the Ranch Mobile Home Park, Space 73, and I've lived
4 there for eight years. 2002 I moved from Las Vegas to
5 Thousand Oaks so I could be closer to my family. After four
6 months of shopping for a place to buy and one that I could
7 afford, I found the Ranch Mobile Home park with low monthly
8 rental -- rent, and was pleased that I could manage the
9 monthly cost.
10 In talking with the realtor, I was told that the
11 monthly rent would stay at a low rent amount. After buying
12 this mobile home, I invested another $20,000, which took all
13 my savings, and fixed up my mobile home. So if you raise
14 the rent, it will effect the way I live and like eating, and
15 most important the medicines I need to survive. Is my time
16 up?
17 The most important thing for most of us living
18 here in the park is the low rent and that this is the reason
19 for buying here and in the park in the first place. So if
20 you take that away from us, we will not be put out on the
21 streets -- we will be put out on the streets. And you know
22 that we will not be able to sell our mobile homes. Okay.
23 We are all so concerned about the rent increase that it's
24 effecting all of our healths. We have already had a couple
25 of problems here in the park since this all started. What

1 do you expect us to do, sell our autos, give up our
2 insurance so we can just live? Thank you.
3 MR. WERTHEIMER: Thank you.
4 MS. FILOGA: My name is Audrey Filoga, and I live at
5 the Ranch Mobile Home Park. I had heard about the Ranch
6 being a low income, and I needed a place where I lived to be
7 safe. Because where I was living it wasn't safe before. I
8 find a very nice -- I had a meeting when I moved in with the
9 manager and some park residents, and then I had to go to
10 Thunderbird to see Betty Faulkner and bring all my rental
11 information with me as to qualify as low income. They say
12 they just had a raise and the raise might be maybe 1 or $2
13 more, but not very much.
14 Okay. I have MS, fibromyalgia, osteoarthritis,
15 and I try to do the best that I can. I says it's not going
16 to get me down, I'm going to get it down. And we appreciate
17 it. And also to realize that we have the rent raise, I
18 would not be able to afford it. Me and the other residents
19 are low income. We are doing that and we also have no place
20 to live. We would be all out on the streets.
21 And also please remember, as for social security,
22 we have not gotten a raise in over three years. And if we
23 get the raise, we'll probably all be out in the street
24 pushing the carts being homeless. And I am not being funny
25 but cartons saying going my way or help me I'm home because

as seniors you have no place and nothing to do with the amount of rent that they raised and we're not supposed to have in a low income park and that's why I moved, to be safe and happy and we're a very supportive community with each other. Thank you.

MR. WERTHEIMER: Thank you. Henry Eber. Alex -- help me out, please.

MR. EBER: My name is Henry Eber. I live in Ranch Mobile Home Park. We were looking for an affordable place to buy in Thousand Oaks area, and we looked at different places which we couldn't afford, but my wife worked for a tax preparer. Her mother used to live in Ranch Mobile Home Park. So she visited her one time. So we came over here and we found the place. So we bought it and, let's see, we've been living there 19 years. And we bought it and it's a really -- really a nice deal there. We fixed the whole place up. We spent quite a bit of money on there. I had it all written down here, they've got it somewhere. But we live on social security and when this raise thing comes along, there was no way we could keep that up.

And there's no place for us to go. We used to stay with our daughter in Simi Valley. She's losing her home on account of this mortgage thing, so we can't even be over there. So I don't know where we would go if this rent thing comes through. So it's been a good place to live and

1 we all get along well together. I mean, we all pay our
2 bills as we go along. Any money that we save, we've been
3 spending on the mobile home. So I don't know what else I
4 can tell you, but we just live on social security and that's
5 it. I know I've got three minutes but -- well, that's it.
6 MR. WERTHEIMER: Thank you. Kathy Parsons and I can't
7 pronounce the last name on this. Alex, C-O-S-T -- Costia,
8 thank you. Kathy Parsons and Judy Hurrari.
9 MR. COSTA: My name is Alex Costia. I live in 2193 Los
10 Feliz Avenue space number 36 Ranch Mobile Park. I was lucky
11 moving around. I don't have no home. I live with my kids.
12 I was lucky I know Ms. Ferruzza, my daughter-in-law's
13 parents, mother. She told me go ahead, look at the place.
14 My mother used to live there. I was lucky I have one space
15 left. And I talked to my kids. They help me out. They got
16 the money together and we bought the home. And this is
17 my -- I'm going to check out from there. Thank you.
18 MR. WERTHEIMER: Thank you. Judy Hurrari.
19 MS. HURRARI: Hi. My name is Judy Hurrari. I moved
20 into the Thunderbird Oaks Mobile Home Park. I lived there
21 for 16 years with no increases in my money. I eventually
22 had to sell my home and move. The only place I could go I
23 was told the Ranch place was a low income. It worked out
24 great. I moved in there. This was two years ago and now
25 all of a sudden I am going to be placed out of my house if

1 they get the money they want for their rent increase. My
2 income is $695 total every month. It would be more -- I
3 wouldn't be able to afford any medicine, anything. Thank
4 God I have a car because I would be living in my car on the
5 street. The worst part of all, would be having to give up
6 my two little dogs back to the rescue. That would be the
7 worst thing in the world for me.
8 Anyway, I hope you can find some way to keep the
9 rent down lower so that I can stay there. As it is right
10 now, now I can afford my oxygen and the medicines I need
11 with the rents the way they are now. If they go up much
12 higher, I won't be able to afford to live there. That's all
13 I have to say. Thank you.
14 MR. WERTHEIMER: Thank you. Cathy Parsons.
15 Al Francis. Frances Morton. Yes? No? Thank you, Frances.
16 And then with victor Abroonzo and Patrick Heckathorn.
17 MR. MORTON: I'll try to make my comments kind of
18 brief. I don't know -- my name as Frances Morton commonly
19 known as Frank. And my wife's name is Virginia commonly
20 known as Virginia. We lived in the mobile home park since
21 1999, about eleven years now, except for the fact that we
22 travel back and forth to Los Angeles. I've been a church
23 musician for the last 25 years. My wife and I have lived a
24 relatively quiet life, secure in our home, watching TV,
25 doing other things, practicing for my music, you know, et

1 cetera, et cetera, et cetera. Until this rent increase
2 business popped up and disturbed our quietude.
3 This has caused us much mental angst and stress,
4 sleeplessness, disturbance, and worried. In fact, we were
5 beginning to feel more like the travel insurance dog worry,
6 worry, worry, trouble, trouble, trouble. However, but not
7 over a bone but over a humongous rent increase as being
8 proposed now. And I sincerely request that the Rent
9 Commission would consider, have compassion, please, and be
10 compassionate with us and help us for -- and help alleviate
11 our situation. Thank you very much.
12 MR. WERTHEIMER: Thank you. Pat Heckathorn.
13 Victor Arunzzo. And you'll get four minutes.
14 MR. ARUNZZO: Thank you, sir. And thank you,
15 Mr. Chairman for this opportunity. Hi. My name is
16 Victor Arunzzo. I'm a resident of Thousand Oaks. I live
17 next door to Frank and Virginia's daughter, which is how I
18 came to learn something of this embroido. Frank asked me to
19 participate because prior to my retirement, I'd been
20 involved as a senior financial analyst for the United States
21 Trustee for the Southern District of New York.
22 Having said that, I'm going to harken on to the
23 comment that Mr. Hill made early on, that he and his client
24 carried the burden in this case and that they should've
25 given more deference in the timing of parties' statements.

1 I would suggest to you that they've not bourne that burden
2 because you've not been provided reasonable financial data.
3 I would furthest suggest to you that, to the best of my
4 knowledge and belief, Valerie reported to you in December
5 that you did not have financials that were on an accrual
6 basis according to generally accepted accounting principals
7 or under the opinion of an accountant that they fairly
8 represented the financials.
9 If I'm to believe Mr. McCarthy that expenses had
10 to be averaged over three years because they seemed
11 disportionate (phonetic spelling) from one year to the next,
12 I would suggest that that is yet further evidence of lack of
13 accounting on an accrual basis. I would suggest to you that
14 even in a high school business class one learns that as part
15 of a contract one is required to deal fairly and in good
16 faith. And if they haven't provided the data that you need
17 to make on a financial analysis, I would suggest to you
18 whether you took that case or not or course of not or
19 recognize that our business and professions code requires
20 that under Section 6600. The fair dealing has not been
21 there.
22 More importantly, I would shame the City for an
23 application that doesn't require appropriately identified
24 financials that give you a fair statement. And lastly with
25 respect to those financials, I would ask anybody who has

1 property management experience how a person located in Pinol
2 (phonetic spelling) on the east side of San Francisco Bay
3 can meaningfully conduct business with the contractors that
4 operate in the greater Conejo Oaks, Thousand Oaks area,
5 whether it's reasonable to have a person from that distance
6 come in and charge for their travel and their time here and
7 try to find appropriate people to get work done at
8 reasonable prices. These folks have not been treated fairly
9 and they deserve to be treated fairly.
10 I'm receiving those social security checks. I am
11 painfully aware of the fact that there has been no raise for
12 three years. And given the temperament of the legislature,
13 no reasonable expectation for a raise in the near future.
14 Having said that, I would ask you and hope that your counsel
15 provides you a copy of that Googenheim case. The Enbunk
16 Googenheim versus the City of Galeda (phonetic spelling),
17 Case No. 06-56306 out of the United States Court of Appeals
18 for the Ninth Circuit. In that case the Court foc- -- the
19 majority and there was a split decision -- focused on the
20 distinct investment based expectations. And they went much
21 further in subheading eight and identified a definition for
22 those words.
23 Distinct investment based expectations implies
24 reasonable probability like expecting rents to be paid, not
25 starry-eyed hope of winning the jackpot if the law changes.

1 The only way Mr. Hone could have expected a 500 percent
2 increase was to expect the law to change. And I think
3 Ms. Spencer has done an excellent job in letting you know
4 that the law, as it has been developed, and as she brought
5 it through on a chronological basis, provides you a clear
6 and distinct definition of where to go and how to get there.
7 Lastly, I'll say that these are very fine people.
8 As tough a time as they are having with their life, when I
9 explained that I represented the inmate family counsel for
10 the women at Valley State Prison, they gave me baskets of
11 hotel amenities so I can take shampoo and toothpaste and
12 stuff like that to these woman who don't have it. These
13 women --
14 MR. WERTHEIMER: Thank you very much.
15 MR. ARUNZZO: -- take care of themselves and others,
16 and I'll hope you'll do the same. I thank you all.
17 MR. WERTHEIMER: That's it's. Do you have something to
18 say?
19 MR. HEHIR: Thank you, Mr. Chair. Chairman and
20 Commissioners. You might recall at the first meeting we
21 had, the first public meeting we had in which I discussed
22 how these cases can get complicated and there can be a lot
23 of consultants or experts that are going to be involved
24 along with attorneys involved. And I think tonight
25 demonstrates that my words were true.

1 With that, we have gone for a long time, and I do
2 not know if this is the time that you wanted to break, but
3 we initially had planned for January 31st as a second -- as
4 a third date now actually. I've been informed from both
5 Staff and from Ms. Spencer that experts will not be
6 available on the 31st of January.
7 And one of the concerns that we have for due
8 process, of course, is to ensure that, again, even for
9 Ms. Spencer and her consultants that Staff or the owner have
10 a right to ensure that they have a chance to cross-examine
11 those individuals. So obviously we want to make sure those
12 individuals who have testified tonight are present or who
13 have been providing counsel or expertise are present.
14 And this is just an example of where, again,
15 sometimes plans don't go as we expect due to extra time we
16 have taken that we didn't expect in presentations or
17 cross-examination, et cetera. So I do believe that
18 Ms. Spencer is going to indicate that her experts, including
19 Mr. Spencer -- I'm sorry, Jan Taylor will be available on
20 February 7th.
21 MS. SPENCER: I haven't spoken to Mr. Taylor, but I'm
22 going to contact him and see if I can get him here. And I
23 know that the two accountants who testified tonight are
24 first available on February 7th.
25 MR. HEHIR: All right. And I believe Staff has a

1 comment about their expert.

2 MR. NORMAN: Although Dr. Baar has already testified,

3 Staff will have one last opportunity to answer any questions

4 and Dr. Baar will not be available until February 14th, but

5 Staff is prepared to proceed on the 7th if necessary.

6 MR. HEHIR: And I'm not sure if they have spoken to

7 Mr. Hill or not. I do not know if -- I don't know if his

8 experts actually need to be here on the next date because

9 they've already testified and have been crossed, but if he

10 wants to speak.

11 MR. HILL: We hope to get through cross-examination

12 rather quickly. We don't think we can effectively do it

13 tonight because Mr. Taylor is not here. And we hope to get

14 through it rather quickly on the 7th. We don't need to have

15 our experts here. I think they've come and given their --

16 spoken their peace. And I would urge the Commission not go

17 on the 14th, or I might have marital problems.

18 MR. HEHIR: And then, of course, Chair and Commission

19 that leaves the issue for you since we have not planned.

20 And, again, this is another example of where you try to plan

21 for upcoming events and now we've thrown a curve ball at you

22 as to whether or not the Commissioners will be available on

23 the 7th as well.

24 MR. WERTHEIMER: Well, Mike.

25 MR. SILACCI: I'm available.

1 MS. FELDMAN: Yes, I'm available.
2 MR. SHELDON: Yes, I am, too.
3 MS. FERRUZZA: As far as I know, I am, too.
4 MR. WERTHEIMER: I'll put my yes in as well. But we
5 still have an issue of somebody can't be here until the
6 14th? Dr. Baar.
7 MR. PRESCOTT: That was Dr. Baar, but Staff indicated
8 we're able to proceed if he is not here.
9 MR. WERTHEIMER: Okay. Then I move we adjourn
10 until --
11 MR. HEHIR: Actually, if I may --
12 MR. WERTHEIMER: Go ahead.
13 MR. HEHIR: -- you're going to be continuing -- the
14 motion would be continuing the public hearing to February 7,
15 2011. We still need to continue with the other aspects of
16 the agenda, but you would need to -- need to make that
17 motion first.
18 MR. WERTHEIMER: All right. I'm going to make a motion
19 that we adjourn until February 7th. Yes, ma'am? Let's go
20 for 4:00 o'clock again, can we do that?
21 MR. PRESCOTT: I might suggest the typical time to
22 start these would be 6:00 o'clock. And since I think we're
23 nearing the end of this particular hearing, we can probably
24 move expeditiously and it wouldn't go too late if we started
25 at 6:00. But it is up to the Commission so you might want

1 to --

2 MR. SILACCI: 6:00 actually works better for me.

3 MS. FELDMAN: 6:00 is better.

4 MR. WERTHEIMER: Okay. Then I have a motion for

5 February 7th at 6:00 p.m.

6 MS. FELDMAN: I move that we have our next meeting on

7 the 7th at 6:00 p.m.

8 MR. WERTHEIMER: So moved.

9 MR. HEHIR: You need to vote.

10 MS. FELDMAN: May I say something? For all -- okay.

11 Okay.

12 MR. SILACCI: Has everybody voted?

13 MS. VAUDREUIL: Motion passed, 5-0.

14 MR. WERTHEIMER: Barbara? Brenda? I'm sorry.

15 MS. FELDMAN: This is out of order, but I just want to

16 say to all the residents, that we have all read the comments

17 that you sent us in letter form. And when you talked to

18 folks who were not able to make it tonight because they got

19 too tired, would you please tell them that we are reading

20 these letters and taking them to heart. Thank you.

21 MR. WERTHEIMER: Thank you. Do we have any public

22 comments? Any more comments from the Commission?

23 MR. PRESCOTT: We have no speaker cards.

24 MR. WERTHEIMER: Okay. Any commissioner comments,

25 further? All right. Meeting will be adjourned until

1 February 7th at 6:00 p.m.

2 (The proceedings adjourned at 11:23 p.m.)

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REPORTER'S CERTIFICATE

I Rosa Mora do hereby certify that the within and foregoing transcript is a full, true, and correct transcript of my shorthand notes thereof and a full, true, and correct statement of the testimony of proceedings had in said cause.

ROSA E. MORA, CSR No. 13016

DATE: February 23, 2011

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CTO 02720

Transcripts of meeting dated January 24, 2011 Submission by Tenants' Attorney

28.2

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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, January 24, 2011
Council Chambers
2100 Thousand Oaks Boulevard
Thousand Oaks, California 91362

REPORTED BY
TYLENE M. BORJON
CSR. NO. 8952

CERTIFIED COPY

APPEARANCES:

Commissioners:

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

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

1 Thousand Oaks, California

2 Monday, January 24, 2011; 4:22 p.m.

3

4 CHAIR WERTHEIMER: Good evening, ladies and

5 gentleman. I'd like to call to order the rent adjustment

6 meeting for January 24th, 2011. Please stand for the pledge

7 of allegiance.

8 (Pledge of allegiance.)

9 CHAIR WERTHEIMER: Will the recording secretary

10 please call the roll.

11 (Roll.)

12 CHAIR WERTHEIMER: Are there any communication

13 announcements or continuances?

14 We have received also a supplemental package and

15 we'll have a PowerPoint presentation and a resolution -- we

16 also received a resolution of the Rent Adjustment Committee.

17 And the other thing is we have an attachment to the rent

18 adjustment application from the applicant to substantiate the

19 change.

20 Staff, do you have anything to -- can you add to the

21 supplemental, please.

22 MR. NORMAN: Yes. Good evening, Chair, members of

23 the Commission and members of the public. The supplemental

24 package before you has several items. The first item is a

25 monthly rent rate used by Ventura County to establish low and

CTO 02723

moderate income levels for the year 2010. Staff will be referring to that later when it gives its final remarks.

There are -- there are also declarations that have been submitted by members -- numerous tenants in the Ranch park. There's also a brief that's been submitted by the tenants' attorneys in this matter.

There is also a -- some correspondence from a Patrick I believe it's Googan. And although not part of the supplemental but should be on the dais is staff's proposed resolution for the Ranch Mobile Home application.

Thank you.

CHAIR WERTHEIMER: Thank you, and it is on the -- on the dais with us.

Would any commissioner like to propose a motion for approval of the minutes for the January 18th, 2011?

COMMISSIONER SILACCI: Move approval of the minutes.

CHAIR WERTHEIMER: So moved. Call for a vote.

RECORDING SECRETARY: Motion passed four to one with Commissioner Ferruzza opposed.

COMMISSIONER FERRUZZA: No.

RECORDING SECRETARY: No. Let's vote one more time.

CHAIR WERTHEIMER: Take another vote, please.

RECORDING SECRETARY: Motion passed five, zero.

CHAIR WERTHEIMER: Thank you. Item 6, our department report.

1 MR. PRESCOTT: We have none.

2 CHAIR WERTHEIMER: Okay. Before the -- before the
3 recording secretary calls the case, I'd like again to
4 reiterate some points on how we're going to proceed tonight.

5 We have a larger gathering here and many want to --
6 want their chance to voice an opinion. We need to respect
7 each other's opinion on the matter before us. So we ask that
8 there's no booing, jeering, applauding or any other actions
9 that will intimidate a person from speaking their point of
10 view. Respect and civility are core values to remember this
11 evening. All speakers will get their opportunity to speak.

12 Tonight's meeting is a continuance of the public
13 hearing for the Ranch Mobile Home Park rent adjustment
14 application opened by the Rent Adjustment Commission at the
15 meeting of December 6th, 2010.

16 At that staff -- at that meeting, staff completed its
17 presentation of the staff report. Representatives for the
18 applicant and residents were given the opportunity to ask
19 questions of staff and the City's expert witness.

20 Due to the lateness of the hour, the hearing was
21 continued until tonight for additional testimony. Tonight the
22 hearing will be reopened and we'll begin with the applicant's
23 presentation.

24 Just like to take a couple minutes to announce the
25 anticipated order of the outline of how we'll proceed this

1 evening. First the applicant will have an opportunity to
2 present his position for an increase.
3 Following applicant's presentation, Commissioners may
4 have questions for the applicant. Staff may also want to ask
5 questions of the applicant. Residents and staff's counsel
6 will also have an opportunity to question the applicant.
7 Next, residents' representatives or counsel may
8 take -- make their -- make their presentation again.
9 Commissioner questions follows, then applicant's questions and
10 so forth. We then move to the public testimony.
11 If you wish to speak, please complete and turn in a
12 speaker card. If you had already turned in a speaker card at
13 the December 6th meeting, you won't need to do it again.
14 We've kept those. If you want -- if you don't -- if you wish
15 not to speak but have a written comment, you also may -- you
16 also may make out a comment card.
17 All members of the public that attended the 6th
18 meeting, I repeat, do not have to submit their speaker card.
19 The recording secretary does have those cards and we have them
20 here on the dais.
21 As to the people supplying public testimony, each
22 person will have two minutes due to the large number of
23 speakers anticipated. And after public testimony is
24 completed, City staff may make some final comments and the
25 Commission may have some final questions for staff.

1 Finally, the applicant will have the opportunity to
2 submit his closing remarks timed for 15 minutes. Once
3 completed, the public hearing will be closed. I just want to
4 repeat that we will try to move this along in an efficient
5 manner while ensuring everyone who wants to provide testimony
6 gets their opportunity to do so.
7 If we complete all public testimony this evening, the
8 Commission will decide if we want to begin the deliberations
9 this evening. It may be possible to consider all testimony,
10 discuss this this evening and render a decision.
11 Staff has prepared a resolution and depending on the
12 Commission's review of the matter this evening we may be able
13 to render a decision.
14 Do any of the rack -- boardmembers have any questions
15 before we start?
16 Will the secretary please reopen the hearing.
17 RECORDING SECRETARY: Hearing advertised as required
18 by law is hereby opened to consider. Agenda item 7.A,
19 continued public hearing. Case: Ranch Mobile Home Park Rent
20 Adjustment Application (RAA-2010-02). Location: 2193
21 Los Feliz Drive. Applicant A.V.M.G.H. Five, Limited.
22 Request: Rent increase in amount of $587.45 per month per
23 space to achieve a just and reasonable return.
24 Recommendation: That the Commission adopt a
25 resolution granting a general rent increase for Ranch Mobile

Home Park in an amount not to exceed $191.95 per space per month and that the increase be phased over a five-year period in an amount not to exceed $38.39 cents per month per space each year with the date of the initial increase to be 90 days from the date formal notice of such increase is provided to the tenants and the date of each subsequent increase shall be not sooner than 365 days from the date of the prior increase.

CHAIR WERTHEIMER: Thank you. Mr. Norman summarized the package. Does the -- does -- do we have any questions on the dais here for Mr. Norman before we proceed?

No, okay.

Applicant's presentation, please. Okay, sorry.

Boyd Hill.

MR. HILL: Yes.

CHAIR WERTHEIMER: And name and city -- name and city of residence, please.

MR. HILL: Boyd Hill -- is this on? Of -- there. Thank you.

Boyd Hill of City of Irvine, California on behalf of the applicant, A.V.M.G.H., Limited -- A.V.M.G.H. Ranch, Limited, I'm sorry.

Before I get going, I wanted to put a few objections on the record. Hope to do those very quickly so we can move on to the -- the presentation.

First of all, we have standard objection to the order

1 of the hearing. Given that this is a quasi judicial hearing,
2 the applicant has the burden of proof. Normally the applicant
3 goes first and last. Here the City has gone first as an
4 interested party in favor of the tenants and we object on that
5 basis.
6 The second objection, general objection is that the
7 City Attorney's office is acting both as an advocate and
8 Commission representative here. The Commission attorney is
9 making recommendations following the City Attorney's staff
10 recommendations, and the -- we believe that that is
11 inappropriate splitting of duties for the City Attorney's
12 office and that the City Attorney's office cannot act as both
13 the Commission and the applicant representative.
14 Third general objection is to the composition of the
15 Board. There is one tenants' appointee, three at large
16 appointees and one park manager appointee. The park manager
17 appointee is a manager of a competitive park and may not be as
18 interested as the tenant representative in advocating the
19 tenants' views -- may not be as interested in advocating the
20 owner's views as the tenant representative is in advocating
21 the tenants' views. And we believe that that is a due process
22 violation and we object on that basis as well.
23 The fourth general objection is to the failure of the
24 City to make an advanced determination as to whether the Board
25 has jurisdiction over this rent adjustment application. We

1 presume that by going forward with this hearing that the City
2 acknowledges that the Board does have jurisdiction.
3 And the fourth general point we wish to make is -- is
4 that to the extent that any deliberations of the Board are
5 being made, they should be made in an open and public meeting
6 such as this. Before I -- and that covers my objections.
7 And before I get going on the PowerPoint, I wanted to
8 make another general point, a legal point which is that with
9 respect to the Board's discretion, the board does have some
10 discretion as set forth in the ordinance and the regulations.
11 However, many of the recommendations that are being
12 made by the City's -- in the City's presentation are
13 recommendations that go beyond the discretion that was granted
14 to the Board by the ordinance and by the rent -- by the
15 regulations.
16 For example, CPI adjustment, you can pick whatever
17 you -- you -- you please. We believe that unless there is a
18 specific statement in the ordinance or the regulations about
19 CPI adjustment that the Board does not have discretion to pick
20 its own number out of thin air, and it's certainly not
21 discretion to come up with a different formula other than that
22 prescribed, the MNOI formula, the maintenance of net operating
23 income formula and to go to a return on investment formula and
24 use that to justify a CPI factor of less than 100 percent.
25 We believe that the ordinance and the regulations set

1 forth a very clear and certain maintenance of net operating
2 income formula that is easy to apply and should not be as
3 convoluted as the -- as the application that was presented by
4 the City staff.
5 And with that, we'll go forward to the -- with the
6 PowerPoint that I've had passed out. I've also passed out a
7 revised attachment 1, and as -- as I explained to the
8 Commission Chair before the meeting and will repeat what I
9 said, the revised attachment 1 is designed to take into
10 account an error that Mr. Neet made in the appraisal.
11 We made a wrong assumption and we corrected that and
12 we revised our number and we presented that revised number to
13 you last time. And this just -- the attachment 1 just follows
14 through with that and inserts the correct Neet number and then
15 it's all just a matter of math.
16 We're not putting anything else new in there other
17 than the new Neet number, and Mr. Neet will explain that
18 number when he gets his opportunity to speak. We've gone
19 through a very similar PowerPoint at the Thunderbird Oaks rent
20 adjustment application and I don't want to belabor this
21 application. So I will try to go through it very quickly and
22 let you hear from Mr. Neet and Mr. McCarthy.
23 But I wanted to make sure that we reiterated those
24 points for those that may not have been here on the last
25 hearing on a different application and make the record clear.

1 So let's go to slide No. 2, please.

2 Our requested rent increase -- or actually let's
3 start with the current average -- current year average rent is
4 $128. The requested increase that we have is $466.12. As --
5 as has been already indicated, that's a significant increase,
6 but there have been -- there have only been two increases
7 since the -- this park was -- became -- came into operation in
8 1976.

9 So this is kind of playing catch-up to bring us up to
10 current net operating income level that we should be at and it
11 doesn't try to clawback or take any of what we could have
12 asked for previously. The new average rent would be the
13 $594.12 and it would be effective 90 days after the Board's
14 decision.

15 Page 3, same statement by the park owner as we made
16 previously. Mr. Hohn, Bruce Hohn, is here and will affirm
17 that statement, as long as the park owner is treated fairly
18 and can implement its rent increase without further delay, the
19 park owner commits that no existing long-term tenant in good
20 standing will be forced from the park by reason of the rent
21 increase and an inability to pay all or any portion of the
22 rent increase.

23 CHAIR WERTHEIMER: Mr. Boyd?

24 MR. HILL: Yes.

25 CHAIR WERTHEIMER: Quick question.

1 MR. HILL: Yes.

2 CHAIR WERTHEIMER: Could you define your position on

3 the -- or define "fairly" for us, what you're --

4 MR. HILL: "Fairly" means having a maintenance of net

5 operating income formula applied as it is meant to be applied

6 in the City's regulations.

7 Next page. The maintenance of net operating income

8 formula is a formula that was adopted in order to help the

9 park owner obtain a constitutional just and reasonable return

10 on his investment.

11 The rate of return must be high enough to encourage

12 good management, adequate maintenance, reward efficiency,

13 discourage flight of capital from rental mobile home parks and

14 enable operators to maintain and support their credit. And

15 both the principle -- constitutional principles of due process

16 and the constitutional principles of just and reasonable

17 return require higher rents.

18 The formula is rather simple. It's a formula adopted

19 by the City to determine whether a property under rent control

20 is maintaining the same net operating income as it did at the

21 time that the rent adjustment ordinance was put into effect

22 which was in 1980.

23 It presumes that the rent owner -- that the owner's

24 income before the time of rent control provided a just and

25 reasonable return.

1 And as we discussed previously as we'll discuss
2 tonight where the rent was not at a level that provided a just
3 and reasonable return, there is an adjustment, an appropriate
4 adjustment that is called Vega adjustment based on a case with
5 the name Vega in it that says you can adjust rents to the
6 market level as of the base year. And we will be seeking a --
7 an adjustment, a Vega adjustment as we've discussed
8 previously.
9 The MNOI formula -- and this is a very important
10 point to -- to consider, this third point, the MNOI formula
11 allows the owner to recoup increases in ongoing operating
12 expenses including those caused by inflation and expenses in
13 obtaining just and reasonable rents.
14 We heard from Mr. Baar last -- the last time we were
15 here that we should do an adjustment to the expenses for the
16 base year that just factors in inflation and does not factor
17 in increased operating costs.
18 Mr. Baar suggested we take 2009 operating expenses
19 and adjust them downwards for inflation to get a base year
20 operating expense, and we believe that fails to take into
21 account that second prong of inflation plus increased
22 operating expenses.
23 Next page. The City's regulations presume that the
24 MNOI formula provides owners with a just and reasonable
25 return. So when -- going back to the beginning when I talked

1 about discretion and -- and abuse of discretion, the -- the
2 regulations adopted by the City limit the discretion of the
3 Board to consider another operating -- another formula to
4 provide a just and reasonable return, such as return on
5 investment, unless certain criteria are satisfied which we'll
6 explain have not been satisfied here tonight.
7 And it's -- the resolution -- City Resolution RAC-2,
8 Section 1.03 states that the MNOI formula must be used unless
9 there is clear and convincing evidence that it does not
10 provide owners with a just and reasonable return, and that's
11 the standard by which you can depart from the -- the limited
12 discretion that the City has given to the Board.
13 Next page. The tenants did not request any other
14 methodology as would be required by the City resolution RAC-2,
15 Section 1.03. If an alternative approach is to be presented,
16 it must be fully explained in writing and be provided to the
17 City at the time of the application or sufficiently in advance
18 of the date set for the hearing.
19 We've had now an almost two-month continuance in the
20 initial hearing and yet we've seen nothing at all from the
21 tenants and to the extent that they attempt to present
22 something different tonight, it would be a violation of the
23 regulations adopted by the City which govern and which limit
24 the discretion of the -- of the Board here tonight.
25 Okay. Step one of the MNOI formula is to determine a

1 base year. And there is a presumption in the regulations that
2 1979 is the base year, and there's good reason for that
3 presumption and -- because if a different year is used, then
4 it takes into account limitations imposed by the rent
5 adjustment ordinance.
6 And so to the extent that we look at a later year, we
7 fail to take into account, and it's on slide 10, pre-rent
8 control fair market assumptions, and that's by the MHC
9 operating case in which I believe Mr. Baar testified in.
10 So here the Commission must presume that rents and
11 net operating income as of 1980 is the base by which they
12 compare the current year's net operating income and come up
13 with an adjustment to the rents.
14 And here we do have some very -- some -- some -- some
15 operating expense information very close to the 1979 year and
16 1982 year, and the City has in a -- in a prior proceeding
17 adopted that -- those operating expenses as the operating
18 expenses that would have been applied under the net operating
19 income formula.
20 And so those operating -- that operating expense
21 information is not subject to debate. It's something that's
22 already been adopted by the City. The City would be -- the
23 rent Board would be estopped to adopt any other operating
24 expense amounts for the 1982 year.
25 And as Mr. Baar testified in the MHC case, you can

1 take those 1982 operating expenses and CPI, adjust them down
2 to the base -- to the 1979 base year, and that's what we have
3 done in this particular instance.
4 Once again, the City ordinance, City Code Section
5 5-25.06, I'm on slide 12, sets forth maximum rent as the
6 starting point for a rent adjustment under a fair and
7 reasonable return analysis, and maximum rent is defined in the
8 ordinance as the highest rents up to June of 1980. So the
9 City ordinance also clearly indicates that 1979 must be used
10 as the base year.
11 And going to page 15, the conclusions as to a base
12 year, the City's ordinance requires 1979 to be used as a base
13 year. The park owner did not exercise its option to seek
14 another base year. A 1983 base year would not be based on
15 pre-rent control fair market assumptions and thus would be
16 unconstitutional.
17 There is no clear and convincing evidence that
18 another method is better. And the California Court of Appeal
19 has held based on Dr. Baar's testimony that base year expenses
20 can be estimated by doing backwards CPI adjustments and in the
21 MHC case, it was from 10 year -- expenses 10 years later. In
22 this case, we're just asking the Commission to go back three
23 years.
24 And now I'm going to pass the baton to Mr. Neet who
25 will discuss the step two of the Vega adjustment that we

1 discussed with respect to the base year rents.

2 As we get to the particular presentations, I'm going

3 to be handing out some additional handouts. Mr. Neet's

4 appraisal that you have before you had to be corrected and

5 Mr. Neet will explain that.

6 And so this appraisal that we will be handing out

7 adjusts for an incorrect number and just -- and he'll explain

8 the one item that was corrected, but I wanted to make sure you

9 have a revised appraisal.

10 CHAIR WERTHEIMER: Mr. Neet.

11 MR. NEET: Okay. Good evening. My name is -- can

12 hear me?

13 My name is John Neet. I'm an MAI real estate

14 appraiser. I live in Fallbrook, California. My office is in

15 Murrieta, California, and I specialize in the appraisal of

16 mobile home parks, have done that for the last 15 to 20 years.

17 And at this point, for probably the last 10 or 12

18 years, my practice has been exclusively in mobile home parks

19 and R.V. parks. I have completed over 3,500 valuation

20 assignments involving mobile home parks and R.V. parks. Most

21 of my clients are lending institutions. I also do work for

22 various attorneys, cities, resident groups and other persons

23 and parties engaged in this business.

24 I was asked to take a look at two items as -- for

25 my -- for my assignment in this case. The first was to

1 prepare an opinion of market rent in the pre-rent control --
2 immediate pre-rent control era. That would be the end of
3 1979, the beginning of 1980, before the ordinance went into
4 effect. I was also asked to review the appraisal work
5 completed by the City's expert, Mr. James Brabant.
6 One of the important things that we have to bear in
7 mind in all this is nobody in this room or anybody anywhere
8 else apparently -- excuse me. Apologize for that.
9 Nobody in this room or anywhere else knows what rents
10 were at the end of 1979 and the beginning of 1980 in any of
11 the mobile home parks in this City. That is just an unknown
12 fact. We have to come up with some method for estimating what
13 those rents might be in order to do our comparisons to
14 estimate what market rent is during that period of time.
15 The methodology that both the City's expert and I
16 have used is to adjust the known rents which we know in 1983
17 for some parks and 1986 for some parks. From that period, we
18 adjusted it backwards by the maximum increase allowed under
19 the rent control ordinance.
20 Now, remember that saying, "maximum increase." That
21 means that if any of these parks, if the rent in any of these
22 parks was not increased by the maximum number during that
23 period of time from 1980 to 1983 or 1986, then we are going to
24 come up with a conservative estimate of market rent.
25 The City's own expert has determined that during the

1 period of 1983 to 1986 that the four parks that we have the
2 comparative data for, they didn't increase it by that amount.
3 They were allowed increases of 7 to 8 percent. The actual
4 increases in average rent were between 4.0 and 6.7 percent in
5 the four parks for which that data's available.
6 So for us to assume that the maximum increases were
7 employed between 1980 and 1983 or 1986, as the case may be, is
8 going to lead to a conservative indication of market rent.
9 Nevertheless, that's what we did. But I just want you to bear
10 in mind that that is probably a conservative indication for
11 that reason.
12 Once you do that -- once you have determined what may
13 be an appropriate adjustment mechanism for time is, you also
14 have to look and say what is the basis for this adjustment,
15 how am I going to get to what market rent is. Remember, we're
16 dealing in 1979 and 1980 with market rent.
17 Market rent is a number that is set by the market.
18 It's not set by a rent control board. It's set by the market.
19 It's what willing people agree to pay for rent in a park.
20 It's not what somebody's rent is that's lived in the park for
21 20 years.
22 Somebody moved into this park in 1977 when it was
23 built, what their rent is in 1979 is not an indication of
24 market rent. The transaction -- the rental transaction is
25 simply too old to be considered a market transaction

1 appropriate to that particular time.

2 We have to look and see what is typical practice of

3 mobile home park operators. One of the things that mobile

4 home park operators have tended to do since I have been

5 analyzing mobile home parks and continues today is there tends

6 to be in inflationary times somewhat of a two-tier rent system

7 in that long-term tenants' rents are held to a fairly gradual

8 increase, whereas when somebody new comes into the park, the

9 owner's inclination is to bring that rent immediately to

10 market.

11 Okay. That is -- that is a common operational

12 technique. So when you look at rents, you list the rents for

13 a park and you see differences across the board and those

14 differences don't seem to be tied to the size of space or

15 other -- or other amenities.

16 Those differences are in all likelihood the result of

17 that very -- that very process in which the higher rents are

18 charged to the incoming tenant, the lower rents are to the

19 tenant who has been in the park for a number of years.

20 For that reason, the use of the highest rents in the

21 park at that particular time is the appropriate tool, that's

22 the appropriate number to begin with a base for 1983 and 1986

23 because we know that to use average rents is going to throw in

24 all of those tenants that may have resided in some of these

25 parks for 20 years prior to that time and get -- and it

1 involved the rent that they're paying that may not be an
2 indication of market rent.
3 Once we have determined what the high rent is in each
4 of these parks, it's a fairly simple process because we do
5 have the rent rolls and they do give us the rent for each one
6 of these parks in 1983 and 1986. Then we must determine how
7 the subject property, the Ranch, fits into the mix.
8 Both the City's expert and myself used a similar
9 method. It's what we commonly call a bracketing method where
10 the parks -- you line the parks up worst to first and slot the
11 subject in where you think it fits based upon its amenities,
12 age of construction, features and et cetera.
13 Once we have positioned that, once we have adjusted
14 the rents, the -- the -- the highest rents in the park down to
15 the 1979, '80 levels by the increased factor cited in the
16 ordinance, my conclusion is that the market rent for the
17 Ranch -- the spaces in the Ranch Mobile Home Park is -- in
18 1979, 1980 prior to rent control is $200.
19 Now, that differs somewhat from the subjects -- from
20 the expert of the City, Mr. Brabant, who's concluded that
21 market rent is $150. If I could just point out that in
22 Mr. Brabant's report he concluded that Elms Plaza and Twin
23 Oaks were both inferior properties to the Ranch.
24 I think it's very clear in his report that he
25 believes those two properties are inferior to the subject.

1 Therefore, the market rents in the subject should at least
2 achieve the level of the highest rents in those two parks
3 which are inferior. It only makes sense. Nobody is going to
4 pay less for a superior product or nobody should pay less for
5 a superior product.
6 In this case, Elms Plaza and Twin Oaks once the
7 adjustments are applied to the 1983 and 1986 high rents in the
8 parks, we find that in all likelihood there were rents of $156
9 to $171 in those two inferior parks.
10 For this reason I believe I disagree completely with
11 Mr. Brabant's conclusion that a market rent of 150 is
12 appropriate. It simply is not supported by the facts on the
13 ground, and that is that based on the similar analysis that we
14 did to try and determine what the market rents were for the
15 various parks in 1979, 1980, that there were people willing to
16 pay to live in Elms Plaza and Twin Oaks more rent than
17 Mr. Brabant is allowing to be market rent for this subject
18 property.
19 In reviewing Mr. Brabant's appraisal, Mr. Brabant
20 addressed rent -- market rent in other years. That was not
21 part of my assignment. However, by looking at the way
22 Mr. Brabant went about the estimating of two different types
23 of rent, two concepts we'll call it, I think he calls into
24 question some of his conclusions.
25 Mr. Brabant introduces us to two terms. One of them

1 is market rent. That's what I've been talking about all
2 along. I think it's clearly what we're looking for in the
3 1979, 1980 period, is market rent.
4 That's -- you know, everybody knows what market --
5 the market rent definition is -- you know, involves willing
6 seller, willing buyer, somebody moving into the park, somebody
7 with the ability to walk away from the transaction and all of
8 those items that fair -- that fair negotiations involve.
9 Average rent is what Mr. Brabant describes as the
10 average rent in all the parks or in a particular park. It's
11 not really a valuation concept. It's -- it's a fact. It's
12 something that, you know, we can add all the numbers up,
13 divide by the number of spaces and that's the -- that's the
14 average rent. It doesn't tell us when that was negotiated.
15 It doesn't tell us whether it was affected by rent control or
16 anything else.
17 Commonly the term that Mr. Brabant or the concept
18 that Mr. Brabant describes as average rent is also called
19 restricted or inhibited market rent. In other words, it's not
20 a real market rent. It's a market rent in that the facts are
21 derived by survey methodology in the same way. You go out and
22 see, well, what are they charging.
23 However, the rents do not come from a meeting of the
24 minds between the landlord and the incoming tenant. They come
25 from a meeting of the minds of a city board like this that

1 says, "This is the rents you will charge." So that you have
2 to really kind of make -- you know, put those two concepts in
3 the appropriate place.
4 And many times the use of this average rent or
5 inhibited market rent is a tool that cities with rent control
6 use to see if they are treating parks fairly. In other words,
7 if the average rent in park A is similar to the average rent
8 in park B and those parks are similar, then there's -- some
9 level of fairness exists in the eyes of the ordinance.
10 If the situation exists where park A is a superior
11 park, park B is an inferior park, park B has higher rents than
12 park A, for some reason the ordinance isn't working and that's
13 often used by cities. So it's an appropriate tool to use,
14 okay?
15 But what we find is that while these two concepts are
16 completely different in their definition and their use, what
17 we find is that in Mr. Brabant's report, he used the exact
18 same methodology for deriving both. He takes the average rent
19 from a known year and reduces it by the amount of the allowed
20 adjustment, okay, in both cases.
21 I don't know if you have inhibited market rent or
22 average rent and you have market rent, one of them is based
23 upon the meeting of the minds between two parties, the other
24 one is based upon the meeting of the minds of a rent control
25 board, how the two concepts or how the two terms or -- or --

1 or conclusions can be reached using the exact same
2 methodology.
3 What that does is it provides you with a conservative
4 indication of market rent. If you're using the same manner
5 because you're talking about using rents -- the further away
6 you get from the initiation of rent control, the less those
7 rents are going to have any relation to market.
8 Even if you apply those adjustment factors as we
9 noted in Mr. Brabant's work, his own -- his own work indicates
10 that those -- that the use of those adjustment factors, the 7,
11 8 -- 8 percent adjustments that were allowed in 1986, 1985,
12 1984 is not the true difference between the rents in the parks
13 for those two years.
14 And because those adjustments happen because for some
15 reason somebody's rent is not increased, for some reason
16 something is miscalculated, for all those reasons, the further
17 away you get from the 1979, 1980 base year, the less that that
18 information is going to be used as a tool, as a valuable tool
19 and the more it's going to be influenced by the rate setting
20 by government fiat as opposed to the rate setting by the
21 market.
22 And that's -- and -- and when you -- if you're -- if
23 you're showing two different concepts, then there's a --
24 there's a lot -- lack of credibility when you define and -- or
25 when you derive the numbers exactly the same way.

1 Okay. For this reason, I suggest that Mr. Brabant's
2 work for the reasons I've stated, the fact that there are
3 rents in other parks that he rates as inferior that are higher
4 in his conclusion than market rent and for the reason of this
5 confusion of average rent versus market rent that his estimate
6 of market rent is conservative to the point of not being well-
7 supported.
8 Now, I also was asked to give you a quick explanation
9 of why there was a change in the -- in the -- in the analysis
10 that I presented. The analysis that -- without going into a
11 lot of back and forth and detail, the initial report that you
12 read was intended to be a draft based upon an assumption that
13 the increases were less than the maximum allowed under the
14 ordinance.
15 In other words, I -- I assumed in that -- in that
16 analysis that the rents were only increased twice during those
17 periods, during those periods of time rather than every year.
18 That's what led to the higher $240 estimate of market rent.
19 Now, once the information came to light, once there
20 was more information on the ground that indicated that that
21 was not the appropriate assumption to make, then I corrected
22 that and that's what you have in front of you today.
23 And if there are any questions or -- do we finish the
24 report or do we move on to the next speaker?
25 CHAIR WERTHEIMER: Next speaker.

1 MR. NEET: Next speaker.

2 MS. SPENCER: When is it that we'll be given the

3 opportunity to cross-examine Mr. Neet?

4 CHAIR WERTHEIMER: After.

5 MS. SPENCER: After the entire presentation?

6 CHAIR WERTHEIMER: Yes, after the entire.

7 MS. SPENCER: Okay. Thank you.

8 MR. HILL: We'll be brief so that you'll get a

9 chance.

10 Before Mr. McCarthy comes up, I wanted to give a

11 couple of handouts. First is his C.V. and then some other --

12 and his revised MNOI. His MNOI analysis I believe was

13 attachment 10 to the -- prior to the application and we

14 revised it to take into account Mr. Neet's changed number.

15 That's the only change in it, but I wanted you to have the

16 revised attachment.

17 And then Mr. McCarthy also has some handouts that he

18 wants to use in his presentation. So I will get those passed

19 out before Mr. McCarthy gets going so that you have those in

20 front of you.

21 MR. McCARTHY: Good afternoon. My name is Michael

22 McCarthy. I'm a certified public accountant in the State of

23 California. I have been asked to do a maintenance of net

24 operating income analysis for this park for the purpose of

25 this rent control hearing.

1 CHAIR WERTHEIMER: Mr. McCarthy, your city of
2 residence, please.
3 Your city of residence, please.
4 MR. McCARTHY: I'm sorry. I didn't hear you.
5 CHAIR WERTHEIMER: Your city of residence.
6 MR. McCARTHY: I'm sorry. I -- I live in Mission
7 Viejo, California. I work in Santa Ana, California.
8 CHAIR WERTHEIMER: Thank you.
9 MR. McCARTHY: I have a bachelor of arts from
10 Michigan State University and a master of business
11 administration from Cal State Fullerton. I have been working
12 in the rent control area for approximately 12 years. I've
13 testified at many hearings. I also have a number of clients
14 that also own real estate and we do the accounting for their
15 real estate holdings.
16 The first thing I would like to do is if we could go
17 to the PowerPoint and it would be slide No. 19. Thank you. I
18 will walk you through this. This is similar to what you have
19 seen before.
20 We had a -- of course, there was a correction that --
21 that was discussed earlier of Mr. Neet's number for the Vega
22 adjustment. And basically to walk you through this, we took
23 the appraised val -- the appraised rent which is $198.46 and
24 of course, we extrapolated that out over the number of spaces
25 and 12 months of the year to come up with a 1979 revenue of

1 176,232.

2 Then we took expenses that were for 1983 of 34,424
3 and we backed into using the CPI adjustment expenses for the
4 year 1979 at $27,500. I'll just round. If we subtract the
5 base year net operating income -- I'm sorry. The base year
6 revenue from the expenses, we get a base year net operating
7 income of approximately 400 -- I'm sorry, $148,721.

8 That base year net operating income is rolled forward
9 for inflation, and this would be slide 20. Rolled forward for
10 inflation the base year net operating income would be 434,380.

11 Now, if we could go to page 2 of the handout,
12 maintenance of net operating income, go to the bottom, bottom
13 left, we calculated that with -- with adjustments that we
14 believe are necessary, we concluded that the current year for
15 the 2009 net operating income for this -- for this calculation
16 was $20,468.

17 We subtracted that from the base year net operating
18 income calculated on page 1 of 434,380 to come up with a rent
19 adjustment of $413,912 a year. Of course, we divided that by
20 the number of spaces and the number of months to come up with
21 a recommended monthly increase per space based on the
22 maintenance of net operating income methodology of $466.12.

23 The current average rent is approximately $128.
24 Added to the increase, we are looking at an average rent of
25 about $594 for the park.

1 I would like to point out that we -- that this rent
2 increase that we're recommending is the absolute minimum that
3 I can recommend as an expert. And the reason for this is that
4 there are many other factors, many other items that we were
5 not allowed to include because we're required to use the
6 maintenance of net operating income methodology, excuse me.
7 One of the issues is that there's only been two rent
8 increases in -- in the last, what is it, about 30 years now.
9 And that has resulted in losses, lost revenue to the park
10 owner that basically is really lost forever.
11 We have -- I calculate -- the way I calculated this
12 is I took our recommended increase of $466 and just roughly
13 cut that in half because you get a small increase the first
14 year and another increase in year -- year 29. The next
15 increase year 28, you get a little larger increase and so
16 forth.
17 So just for the sake of coming up with an approximate
18 number of amount of revenue lost, I -- I divided the
19 recommended increase by two which would make it $233. Now, if
20 I divide that -- if I extrapolate that by 12 months and 74
21 spaces over 30 years, the amount of lost revenue to this park
22 owner has been approximately 6.2 million dollars. Now
23 that's -- that's gone. Park owner will never see that.
24 Just taking a conservative approach to the interest
25 on that money, we'll go with 4 percent at simple interest.

1 That's approximately $250,000 in interest that's lost. So the
2 amount of lost revenue plus interest approaches 6 and a half
3 million dollars, and we're not asking for any of that.
4 If we wanted just to make up the interest only, that
5 would come out to about $300 a month -- I'm sorry, about $280
6 a month. Once again, we're not asking for that. We're asking
7 for the increase under the MNOI methodology as we stand here
8 today.
9 Another issue that's -- that's going to be -- that is
10 probably going to be lost to the park owner, but it's still a
11 matter of debate, is losses due to timing issues.
12 The application is based on the results for a full
13 year of 2009. We are already into the first year of 2011. So
14 there's been a 13-month gap there in the -- in the data
15 that -- that is -- that we can't use because of this --
16 because of the way the system works.
17 If you come to a decision tonight, the rent increase
18 would not be implemented for another three months. If there's
19 an appeal, there could be a possible -- another three months
20 attached on to that. So we might be looking at a delay of up
21 to 19 months from the end of 2009 to the point where this park
22 owner gets some sort of an increase.
23 If you would grant the full maintenance of net
24 operating income increase, that would be approximately -- that
25 would be $466.12 and the loss is going to be about $650,000 to

1 this park owner just due to the -- just due to the tyranny of
2 the timing of the process. Once again, the MNOI formula does
3 not take this into account either.
4 So all these factors that are -- that are probably
5 lost to the park owner are not being considered, which is why
6 I'm recommending that the full increase be granted because
7 it's actually a minimum in order to put -- to make this park
8 owner whole under the -- under the concept of maintenance of
9 net operating income.
10 Another point I'd like to make is that the staff is
11 recommending a phase-in of its recommended increase of
12 $191.95, and they're recommending this phase-in to be about
13 five years. Now, that's going to have the effect of
14 compounding this owner's loss. The -- pardon me.
15 Okay. All right. I would like to direct you -- you
16 got a chart that was A.V.M.G.H. Five lost revenue, last page,
17 lost revenue due to the phase-in. Okay. Basically if you
18 phase in the staff recommendation of 191.95 over five years --
19 can I have the Elmo.
20 That's a little tight, but basically the -- basically
21 the park owner would get $38.39 in the first year, double that
22 in the second year, triple that in the third and so forth
23 until in the fifth year they get 191.95.
24 Well, what happens here is that there's a loss each
25 year of revenue due to the phase-in and if -- over the 60

1 months of the phase-in, the park owner is going to lose about
2 $511,300.
3 Now, if you -- I'm sorry, I misspoke. $511,000 is
4 the amount of the increase that the park owner would enjoy
5 under the staff recommendation over the five years. The
6 problem is, if I could roll up here, if the park owner were
7 granted an immediate increase of the staff recommendation,
8 over the five years they would gain $852,258 in additional
9 rent, but under the five-year plan, they're only going to get
10 $511,000. Lost $340,903 to the park owner under a five-year
11 phase-in.
12 If -- if we take into account the time value of
13 money, which is the chart below, and interest rates in general
14 are pretty conservative these days -- now, this chart was
15 prepared on December 3rd, which is approximately the date
16 of the -- of our first meeting. Rates haven't changed too
17 much, but if you look, the range of rates under -- under a
18 different range of rates for C.D.s, treasuries, the prime
19 rate, the range of loss is about $411,000 to about 585,000.
20 If we use a cap rate of 9 and a half percent for the
21 park, the loss is about $750,000. Now, we can argue about the
22 cap rate being too high or too low, but the other rates are --
23 are based on, you know, on published -- on public -- on
24 published sources as well.
25 The next thing I'd like to discuss is the -- the use

1 of a 50 percent CPI indexing over 100 percent. Once again,
2 I'll go back to the Elmo. We have a -- we also have a slide
3 on this. I believe it's slide -- slide 25, and there's also a
4 larger version in your handout.
5 I think I would like -- I think I'd like to go to
6 the -- I think I'd like to go to the Elmo for this because it
7 comes out a little larger.
8 What this chart shows is the effect of 50 percent
9 indexing on the net operating income of a mobile home park.
10 And the blue line is -- represents the revenue, and we assumed
11 here that there would be a -- that there would be inflation of
12 about 5 percent and that would be cut in half due to the 50
13 percent increase.
14 So there would be -- there's a curve upward, but it's
15 not a real sharp curve. On the other hand, the green line is
16 the expenses which we're assuming that are going to increase
17 at the rate of inflation. And if you notice, it's a much
18 sharper curve.
19 And the space between the curve which would be your
20 net operating income each year becomes smaller and smaller
21 until you reach a point -- and this -- this extrapolation goes
22 out approximately 40 years. You reach a point around year 40
23 right there where expenses will outstrip revenue.
24 Now, this park is actually very close to this point
25 at this -- right now, and the -- so our red line here is what

1 the -- is the net operating income. And as you see, because
2 expenses are rising at a greater rate than revenue is rising,
3 the net operating income index for inflation actually starts
4 to go down. And eventually it crosses -- at the same point,
5 it crosses zero dollars. There's no profit left.
6 The black line is the actual NOI, which is strictly
7 the subtraction of revenue from expenses without any --
8 without any adjustment for inflation. As you can see, the
9 drop is even more dramatic.
10 I'd also like to point out, and I don't believe that
11 you have this handout, but I'll throw this on the Elmo, that
12 in the general -- in the general U.S. economy, 100 percent of
13 CPI is pretty much the standard for adjustments for -- for
14 many things in the economy. A lot of these things are
15 governmental adjustments.
16 I would like to point out approximately 48 million
17 social security recipients get a 100 percent increase in the
18 CPI. Four and a half million retired military and federal
19 service -- civil service retirees, approximately 22 million
20 food stamp recipients, approximately 27 million children in
21 the school lunch program, real estate leases in the private
22 sector use CPI accelerators, royalty payments for patents,
23 intellectual property, et cetera, alimony, child support and
24 adjustments used to the metrics for federal, state and local
25 taxes.

1 At this point, I'd like to ask you to look at another
2 handout, and that handout is -- there's no real title, but
3 it's this table. Once again, I'll go to the Elmo. I think
4 it's -- it's a little easier.
5 In Dr. Baar's report, I believe it is on page --
6 well, it's on 28 of his page 28, and I think it's 28 -- on
7 page 128 in the application, he has a chart where he argues
8 that the growth of equity due to changes in market prices for
9 real estate somehow protect the owner so that the indexing
10 under 100 percent really doesn't -- really isn't going to hurt
11 the owner.
12 In other words, if you -- if you allow 50 percent,
13 the owner's -- the owner's going to do just fine. As you'll
14 find out later in the hearing, that's -- that's not the case,
15 but what I'd like to do is talk about this example Dr. Baar
16 uses in his -- in his report.
17 He -- in his example, in his report, he says that
18 with a 50 percent CPI increase and a property value increase
19 of 25 percent, the park owner will enjoy an 83 percent
20 increase in equity.
21 Now, I saw the chart and it -- it works fine
22 mathematically, but the problem is, is that it's really
23 basically a kind of a textbook example. And so what I'd like
24 to do is I'd like to take this -- I'd like to take that chart
25 and change it around a little bit. In other words, what

1 happens if the value of the property goes down.

2 So if the value of the property goes down 10 percent

3 from 6 million to 5.4 million, the equity -- everything else

4 is being held equal in the -- in the model, the equity in the

5 property actually goes down 33 percent. So the market really

6 doesn't hold in a falling-value environment.

7 Also Dr. Baar bases his model on a capital --

8 capitalization rate to the value of the property. In other

9 words, this is how the -- this is how the property value is

10 determined in his model.

11 Well, I would argue that that's -- that is rarely the

12 value of a rental property. A rental property is -- as

13 determined by willing buyers matched up with willing sellers

14 to agree on a price, prices that are -- prices that are

15 tracked and followed by appraisers. Appraisers don't make the

16 value, but they do a very good job of recording them.

17 So I would -- would point out that if -- if you --

18 not to take -- not to take any solace in this model in terms

19 of accepting 50 percent because it's not -- it really doesn't

20 hold.

21 Also in terms of returns, what's going to be

22 acceptable to -- is based on many factors, and it's going to

23 vary place to place and from -- and according to industry

24 standards. So situations do differ.

25 Once again, I'd like to point out that this is slide

1 No. 26. Dr. Baar uses the -- a return on investment approach
2 to apply 50 percent CPR as I've shown -- CPI as I've shown
3 to -- as an adjustment to the base year NOI.
4 Now, that's inconsistent with the MNOI approach. The
5 MNOI approach is exactly that, maintenance of net operating
6 income. If you go under 50 percent or under -- I'm sorry,
7 under 100 percent indexing, you're not maintaining that CPI.
8 Now, the City regulations -- requirements for the use
9 of an alternative approach haven't been met, and Baar admits
10 in his report that neither the ordinance nor the regulations
11 authorize the return on investment. So once again, I would
12 caution you against looking at that part of his report because
13 I don't believe that it actually applies here.
14 Now, he also admits that the return on investment
15 problem disfavors longer term owners with low investment, such
16 as our owner here. This owner -- the original investment was
17 made I believe in 1976, and a return on investment is not
18 going to make any sense because the investment compared to
19 current dollars is so small that almost any return, the amount
20 of dollars is -- is going to look like a great return, which
21 is not.
22 And this would be the end of my presentation. I'd
23 like to turn it back over to -- to Mr. Hill.
24 CHAIR WERTHEIMER: Thank you.
25 MR. HILL: Thank you.

1 At the last hearing, we were requested to bring
2 copies of the standard form rental agreements that are in --
3 that are currently in place in the park for the tenants.
4 We have redacted out personal information and address
5 and space number, and we've given a copy of the four standard
6 form rental agreements for our parks.
7 And I will have Gretchen Carter authenticate that
8 these are the four standard form rental agreements that are in
9 use at the park, and I will note that none of the standard
10 form rental agreements say anything about applying the
11 resolution -- the prior resolution. And all of them indicate
12 that they're subject to rent increases that may be applied by
13 the City under its ordinance.
14 And I'll just have Gretchen authenticate that these
15 are the standard -- four standard forms that are in use and
16 then I have some other comments to make.
17 MS. CARTER: I'm Gretchen Carter from Hercules,
18 California, and I am the property manager for the Ranch. And
19 the copies -- sample copies of the rental agreements that
20 you're being provided with are copies of actual agreements
21 that are in the park files and are the ones that are being
22 used today.
23 CHAIR WERTHEIMER: Thank you.
24 MR. HILL: Okay. At the last hearing under
25 cross-examination, we questioned Mr. Baar about whether he had

1 looked at any current appraisals of the park in -- with
2 reference to his return -- use of the return on investment
3 standard and whether he thought that under the return on
4 investment standard, whether he was aware that the property
5 had not increased in value as he had indicated under his
6 return on investment standard but had actually decreased in
7 real dollars in appraised market value.
8 And I questioned him about the -- would it surprise
9 him to know that an appraisal of the park has the park
10 appraised at about the approximate cost of some of the more
11 expensive coaches in the park at $160,000, and there was a bit
12 of a surprise.
13 I will be passing around a copy of that appraisal and
14 have Mr. Hohn attest to the -- authenticate this appraisal for
15 you.
16 MR. HOHN: Hi. My name is Bruce Hohn. I'm the son
17 of the owner of the Ranch Mobile Home Park.
18 Back in April, some real estate agents approached us
19 with the idea of possibly selling this park or another one
20 that we owned. And they said, "Before we do that, we'd like
21 to go out there and take an appraisal -- make an appraisal of
22 it." I said that was a good idea.
23 These are certified appraisers. They came back with
24 a price -- a sale price for this park of $168,000, and based
25 on the rent structure, we weren't too surprised. And that's

1 the appraisal you have before you tonight, thanks.

2 CHAIR WERTHEIMER: Thank you.

3 MR. HILL: Sorry. I was busy negotiating with the

4 tenants' representative to buy the park. I told her she'd

5 have to pay the damages based on the MNOI formula first.

6 But anyway, the -- one question was raised last time

7 of Mr. Baar about the -- whether any case authorized less than

8 100 percent of CPI adjustments to the base year NOI, and

9 Mr. Baar responded the Berger case. And I guess the question

10 that was asked of him was whether or not any -- any case

11 authorized that where the ordinance or regulation did not

12 specify that they could go lower than the 100 percent.

13 And I wanted to put before you the case of Berger

14 versus City of Escondido that Mr. Baar was referring to and

15 show you that indeed that in that case the city regulation

16 authorized and, in fact, required the city to go at 60 percent

17 below CPI -- or 60 percent of CPI.

18 All right. I -- it's probably not very visible. The

19 case citation is 127 Cal. App Fourth. One is a 2005 court

20 case in the Court of Appeal, Fourth Appellate District of

21 State of California, and I'm reading from pages 10 and 11 of

22 that opinion.

23 It states, "Dr. Baar noted that under

24 the board's written guidelines it shall

25 take into account no more than 60

1 percent of increases in the CPI. He
2 also noted, however, that the board had
3 an approach of granting 70 percent -- 75
4 percent CPI increases pursuant to short
5 form petitions."
6 I just wanted to point this case out because it's
7 important to -- to distinguish that there are no cities
8 that -- no cases that can be pointed to where 100 -- less than
9 100 percent CPI adjustment was made where the city did not
10 expressly state that -- that a lower percentage -- a lower
11 percentage that could be used either in its ordinance or in
12 its guidelines.
13 And in this case, the city does not specify anything
14 lower than 100 percent CPI. The city's ordinance refers to 75
15 percent CPI adjustment for the annual increases of the -- I
16 guess the 1986 rent, but as a -- as base year, but it does
17 not -- the definition under the ordinance specifically only
18 refers to the index for use in the annual adjustments and does
19 not state that 75 percent can be used for a -- just and
20 reasonable return adjustments, which we are asking for here.
21 And with that, I will pass it on to -- for
22 cross-examination.
23 CHAIR WERTHEIMER: Thank you.
24 Let's start with the Commissioners and Mr. Silacci.
25 MR. SILACCI: Thank you, Mr. Chair. I do have one

1 question for Mr. Hill.

2 CHAIR WERTHEIMER: Of who? Okay.

3 I believe the questions we have will call up the

4 witness and you're the first one.

5 MR. HILL: Yes, thank you.

6 MR. SILACCI: Mr. Hill, I have one -- one question.

7 Can you please explain to me and the Commission the rationale

8 for the owner not increasing rents, except for 2001, between

9 1985 to the present given the fact that the ability was there

10 to do that on an annual basis.

11 MR. HILL: Let me -- I think there -- it's kind of a

12 loaded question and I want to address each -- each of those

13 issues that you raised.

14 No. 1, the City -- the owner came in 19 -- in 1982

15 and asked for an increase under the City ordinance, and the

16 City resolution that was passed in 1984 actually gave them

17 that increase that they had asked for, a 7 percent increase.

18 There was a lot of subterfuge and a lot of

19 rationalization as to why this -- there was a different

20 standard applied, but they gave him that 7 percent and then

21 said thereafter, "You're going to have to, you know, be

22 limited by a certain percentage of CPI in -- in subsequent

23 increases."

24 I can't explain why the owner did or didn't ask for

25 those increases subsequently, but in the year 2000, the

1 Commission acknowledged in a memorandum, and I think it's part
2 of our presentation, our application materials, the Commission
3 acknowledged that the owner was entitled to a much higher
4 increase and that their -- the owner had -- had not -- had --
5 was at a great disadvantage with respect to CPI, cost of
6 living increases that had happened in the interim and said
7 that it's time to look outside this resolution.
8 Now, legally a -- a low and moderate income
9 restriction that can be imposed on a property as a -- as part
10 of a use permit has a 30-year limit, and I cite to you
11 Government Code Section 65-915 and I briefed that issue in our
12 application.
13 At -- the 30 years expired on that restriction as of
14 2008. So as of 2008, that restriction is no longer in effect
15 and Government Code Section 65-915 is a preemptive provision,
16 meaning that anything in the City's ordinance, anything -- any
17 City ordinance or any City regulation cannot go contrary to
18 what Government Code Section 65-915 says.
19 So as of 2008, that restriction is now lifted and now
20 the park owner can obtain what it is entitled to under the
21 City's rent control ordinance.
22 MR. SILACCI: So the short answer is with the
23 exception of 2000, between '85 and the present -- or I'll
24 say -- I'll say '85 to 2000, Resolution 84-037 allowed the
25 owner to apply for rent increases, but for whatever reason

1 that you can't explain, that didn't occur?

2 MR. HILL: I can explain it. That it would be too

3 costly and the City wasn't giving them an adequate increase

4 and the park owner was also being very generous to -- to the

5 residents during that time.

6 And we're not asking to clawback any of that money

7 that -- that could have been, you know, obtained then. We're

8 just trying to now start at -- start at what should be the net

9 operating income at this point in time.

10 MR. SILACCI: As a follow-up question: Could you

11 point me and the rest of the Commissioners to the

12 documentation you're referring to in your information around

13 2000, just the statements you made that during the time of the

14 2000 --

15 MR. HILL: Yeah. It's in -- it's in my memorandum.

16 I will grab it and look -- look for it and give it to you

17 while you're doing other questioning if --

18 MR. SILACCI: That would be fine.

19 MR. HILL: Okay, sure.

20 MR. SILACCI: Thank you.

21 CHAIR WERTHEIMER: I think, Mr. Hill, you're still

22 up, and -- we'll have to wait.

23 MR. HILL: Okay. I'm sorry. I took silence as --

24 but yes, I can look it up and give you the cite and if you

25 have follow-up questions, I'll be glad to address those.

1 CHAIR WERTHEIMER: We'll go through the cycle of the
2 Commissioners and then you can sit down and research it while
3 we do the other witnesses, thank you.
4 MR. HILL: Thank you.
5 COMMISSIONER FELDMAN: Thank you.
6 Mr. Hill, when you stated that we are required to use
7 RAC-2 or MNOI approach as a Commission, are you aware that
8 that was not part of the ordinance adopted in 1996? RAC-2
9 through 5 were recommendations made quite a while ago and not
10 adopted formally into the present ordinance.
11 MR. HILL: I think the present ordinance in the
12 section pertaining to just and reasonable return states,
13 "according to the regulations adopted by the City," and those
14 are -- those regulations were in effect at the time that the
15 ordinance -- the present -- the present version of the
16 ordinance was passed and therefore it was understood that
17 those were -- those regulations were to be applied.
18 COMMISSIONER FELDMAN: I'm concerned then why we are
19 told repeatedly that we have -- excuse me, we have the
20 opportunity to make changes to that process. Why is that --
21 the Commission given that opportunity if it's already been put
22 into law with those resolutions?
23 MR. HILL: If the Commission is going to adopt
24 different regulations, then it would go through that process,
25 but those -- that is not an issue that I think we are

1 confronting here tonight. We're confronting the regulations
2 that are currently in place.
3 COMMISSIONER FELDMAN: Okay. I have questions for
4 Mr. Neet. Are we going to go -- okay.
5 CHAIR WERTHEIMER: Yeah. Let's --
6 VICE-CHAIR SHELDON: Thank you. Would -- would
7 Mr. Hohn be willing to give some background into to why there
8 were no rent increases for that period of time?
9 MR. HILL: Certainly. Do you want to go out of order
10 at this point?
11 CHAIR WERTHEIMER: I -- I have questions for Mr.
12 Hohn, so let's wait and -- do you have questions for Mr. Hill?
13 Do you have -- how about questions for Mr. Neet, do
14 we have any?
15 COMMISSIONER FELDMAN: I do.
16 MR. NEET: Hi.
17 COMMISSIONER FELDMAN: Hello. I have a question
18 regarding your statement that the City's appraiser used --
19 came up with different figures assuming that Elms Plaza and
20 Twin Palms are inferior parks to Ranch. How many times in
21 your career have you driven through senior parks and family
22 parks?
23 MR. NEET: Thousands.
24 COMMISSIONER FELDMAN: Have you noticed a difference
25 between senior parks and family parks?

1 MR. NEET: I would hate to say that I have noticed
2 some -- any kind of differences that are -- I don't think
3 there's a universal truth there.
4 I think that, you know, generally you don't see as
5 many tricycles in senior parks, but I mean -- without being
6 facetious, I mean really, you know, there's -- there may be
7 children playing. I -- I don't -- there -- there's no -- to
8 me, there's no -- I cannot make a universal statement
9 regarding it in that.
10 COMMISSIONER FELDMAN: Okay. Thank you.
11 MR. NEET: Okay.
12 COMMISSIONER FELDMAN: I'm done.
13 VICE-CHAIR SHELDON: I'm sorry, but on the -- the --
14 the topic or the concept of market rent --
15 MR. NEET: Yes.
16 VICE-CHAIR SHELDON: -- that you were talking about
17 and the -- sounded like when coming up with that number,
18 there's the exclusion of -- of the renewal leases that are
19 just being renewed and it's really only when a new tenant
20 comes in, is that -- was that correct?
21 MR. NEET: That is the -- that's the best -- absolute
22 best data that you can have.
23 Now, you know, I -- stepping back from that a little
24 bit, sometimes you don't have always the best data that you
25 can have, but generally speaking when -- you know, market rent

1 is like market value of -- of a property.

2 If I could kind of liken it to, you know, if you were

3 getting your house appraised, then somebody would come in and

4 they would say, "Okay. This house over here sold last month.

5 This house sold a month before that. This one's in escrow

6 right now and this one is a listing," and if you take those

7 four prices that are -- that are in evidence as a result of

8 that, that -- proper analysis of that will give you an

9 indication of the market's current value of the -- or the

10 current value of your own house.

11 So, you know, in the same -- in the same light,

12 you're not going to go back to, you know, the next door

13 neighbor's house that they bought ten years ago and apply an

14 inflationary factor. You know, that -- so that's not as good

15 a data. Maybe if that's the only data you have, you'd use

16 that.

17 But you know, usually the -- kind of like the best

18 data that you could have is evidence of a recent transaction

19 where the parties have the right to walk away.

20 VICE-CHAIR SHELDON: I guess I didn't understand the

21 exclusion of the parties that are just renewing the leases.

22 MR. NEET: Well, generally -- generally people who

23 are renewing -- are renewing leases or renewing rental

24 agreements, there's a -- there's a suggestion there that one

25 party or another may -- may be more motivated and thus not

1 drive as hard of a bargain, okay?

2 If I can take it into another context just -- just so

3 we don't get into the -- some of the back and forths that go

4 along with this. In mobile home parks, if -- if you're a

5 Claim Jumper restaurant next door, your lease is coming up for

6 renewal. You're motivated to stay there because you already

7 have an established building at that place. You've spent a

8 fortune on tenant improvements. Everybody knows where you

9 are.

10 You might be less willing to negotiate to the last

11 dollar than maybe the owner of that property because the owner

12 is saying, "Well, you know I can get" -- you know, "I can get

13 Marie Callender's to come in here and take your place over

14 'cause they've been banging at my door. So I'm not going

15 to -- you know, I'm not going to give in."

16 So it -- there's -- there's all those suggestions

17 that maybe/maybe not. It's completely arm's length when

18 you're -- when you're looking at a renewal.

19 VICE-CHAIR SHELDON: So it could actually skew it

20 either way depending on who has the power.

21 MR. NEET: That's true.

22 VICE-CHAIR SHELDON: Yeah.

23 MR. NEET: That's true. It could -- it could go

24 either way. So that's why it's best to -- if at all possible

25 to try and avoid that -- that circumstance.

1 VICE-CHAIR SHELDON: And -- and -- just one final
2 thing: How would it typically get skewed in a -- in a
3 relationship between a mobile home park owner and the tenant?
4 MR. NEET: You know, I don't know that there's a
5 typical skewing of it. It -- it tends to, you know -- you
6 know, there's a lot -- a lot of times a -- you know, the
7 owners will say, "Okay. Everybody, you -- we're going" -- you
8 know, we're talking about non-rent controlled situations
9 because obviously we can't talk about market rent in rent
10 controlled situations.
11 But you know, the owner may say, "Okay. Everybody's
12 rent is going up by $5 or $25," or whatever -- whatever number
13 that the owner thinks that, you know, it appropriate. And you
14 know, then he goes to -- you know, then one of the -- one of
15 the tenants comes and says, "Well, I just can't afford that.
16 I can only afford $15," and so in that case, he makes the
17 concession.
18 So in that case, you know, there's -- you know, you
19 have a situation where the tenant receives a benefit and that
20 would not be an arm's length transaction.
21 Likewise, you could say -- you know, you could -- you
22 know, maybe a tenant has an old beater coach, doesn't keep his
23 yard clean and the owner says, you know, "If this guy leaves,
24 I don't care," and says, you know, "You're 30."
25 VICE-CHAIR SHELDON: Thank you.

1 COMMISSIONER FERRUZZA: Mr. Neet, isn't it true by
2 the City of Thousand Oaks rent control ordinance, a new tenant
3 moving into a park inherits the rent of the existing tenant?
4 MR. NEET: That -- that's correct, and -- you know,
5 and that's the case -- you know, that's -- that's commonly the
6 case. So you can't -- that's why we say we take it out of the
7 rent control context.
8 Now, there's some rent control ordinances such as
9 Camarillo which does allow the rents to increase or rents to
10 be negotiated to market upon turnover.
11 CHAIR WERTHEIMER: I have a question -- I have a
12 question for you. Just so I understand correctly, in your
13 earlier statements, you said that no one in this room could --
14 could quote rents back in 1979. Just -- nobody knew the
15 market rates to the rent -- for the rents at that time, is
16 that --
17 MR. NEET: It's my understanding that there is no
18 written record. We have found no written record of what was
19 being charged in any of the parks in Thousand Oaks in 1979,
20 1980 --
21 CHAIR WERTHEIMER: Okay.
22 MR. NEET: -- with the exception of -- I think we
23 know what the Ranch was charging because of the -- the
24 restriction.
25 CHAIR WERTHEIMER: Okay. So it's a written record,

1 not some -- it's not people that would be in this room?

2 MR. NEET: That's true. I guess my -- you know, my

3 state -- my statement is that there's no -- there's no

4 documentary evidence I guess.

5 I mean there may be -- there may be somebody's

6 recollection of what they were paying. And you know, I've not

7 been provided with any evidence of that sort, and if there

8 was, I guess we'd have to weight that with, you know, what

9 someone's recollection might be of something that happened 31

10 years ago.

11 CHAIR WERTHEIMER: That's all I have. Thank you.

12 MR. NEET: Okay.

13 CHAIR WERTHEIMER: Do we have any other questions?

14 Mr. Boyd, I apologize. I had a question for you and

15 I -- can I go ahead?

16 Okay. We'll make it work, thanks.

17 MR. HILL: Just to follow up on Mr. Silacci's -- I

18 pronounced it right, didn't I?

19 COMMISSIONER SILACCI: Yes, sir. Thank you.

20 MR. HILL: I spent two years in Italy. So I can

21 pronounce Italian names at least.

22 The -- part of our application that refers back to

23 the year 2000 are attachment 3, appendixes g and h. Appendix

24 h shows that the percentage increase that they would be

25 entitled to under the resolution should be 48.2 percent, but

1 they were only able to obtain 4 percent under that resolution.
2 That's appendix h.
3 And I think there was also a memo to that effect,
4 although I don't -- didn't include it in the -- in the
5 application itself. It discusses how the -- the inequity of
6 this.
7 And then going to appendix g, there's a letter dated
8 August 30 of 2002, the Ranch community manager from Lynn
9 Oshida at the City of Thousand Oaks stating that -- that one
10 of the two alternatives that could be adopted was -- is to put
11 the park under the ordinance itself.
12 So even in -- at the time of the '84 and the 2000
13 rent increases, the ordinance was very much in play and there
14 were negotiations ongoing about whether the ordinance should
15 be applied.
16 MR. SILACCI: Thank you. That answers my question.
17 MR. HILL: Thank you.
18 COMMISSIONER SILACCI: I -- that answers my question.
19 Thank you.
20 CHAIR WERTHEIMER: I had a question for you and I
21 forgot to ask. I can get you now, thanks.
22 You -- you had -- Mr. Neet had said that -- that
23 probably the base year in his findings would be about $200 a
24 month or a space per month.
25 MR. HILL: Yes.

1 CHAIR WERTHEIMER: Okay. And you stated that
2 you're -- you're not calling back to recoup any of the lost
3 increases, is that a fair statement?
4 MR. HILL: We're not clawing back -- we're not --
5 we're not going to go and recover all the rent increases we
6 could have recovered up to this current year.
7 CHAIR WERTHEIMER: Did you figure out just by chance
8 based on your rate if you took those 7 percent over the period
9 of time what the current rent might be today?
10 MR. HILL: We would not be entitled to take 7
11 percent. Under the -- under the resolution, we would be
12 capped at 4 percent regardless.
13 CHAIR WERTHEIMER: All right. I take back -- okay.
14 How about at 4 percent?
15 MR. HILL: I have calc'd that. At some point,
16 Mr. McCarthy might have done that, but I don't think we have
17 it currently in front of us that we could -- we could
18 possibly, you know, input numbers if you would like us to, but
19 I don't think we've --
20 CHAIR WERTHEIMER: No, just a point of curiosity. I
21 wondered what the rent would be today at a slower pace of --
22 MR. HILL: I think Mr. --
23 CHAIR WERTHEIMER: If it was just a slower pace of
24 increases.
25 MR. HILL: Actually, I think that is kind of the

1 basis behind the Baar approach. I think Mr. Baar did kind of a
2 reverse analysis and took -- started with the resolution and
3 then tried to arrive at an MNOI number that fit what might be
4 applicable during the resolution, and I think that might be
5 covered in his -- his report.
6 CHAIR WERTHEIMER: So that would be the City's
7 opinion possibly.
8 MR. HILL: It seems to be the City's position, yes.
9 CHAIR WERTHEIMER: Okay. Thanks. Thank you.
10 I -- are there any questions for Mr. Hohn? On --
11 on -- I do. I have one. Could I ask it of you?
12 Your appraisal for the park, $168,000?
13 MR. HOHN: Yes, sir.
14 CHAIR WERTHEIMER: And that was done by?
15 MR. HOHN: Martinez & Associates.
16 CHAIR WERTHEIMER: Okay. Now, was that -- what
17 method was that based on, as a user or an investment?
18 MR. HOHN: They were in a -- they were like real
19 estate brokers. They wanted to go out and market these parks
20 to sell them and that's what they came up with, was this --
21 this park would be worth on the open market based on the rent
22 structure of losing money every month.
23 CHAIR WERTHEIMER: Empty or full?
24 MR. HOHN: Excuse me?
25 CHAIR WERTHEIMER: Empty or full of tenants?

1 MR. HOHN: The way it exists today, full of tenants.
2 CHAIR WERTHEIMER: Did they tell you what cap rate
3 that was at?
4 MR. HOHN: It's probably in the appraisal.
5 CHAIR WERTHEIMER: I'll take a look, thank you.
6 That comes out to about $17 a square foot, just an
7 FYI. That's all I have. That's all I have. Thank you.
8 MR. HOHN: Okay, yeah. Thank you.
9 VICE-CHAIR SHELDON: Sir --
10 CHAIR WERTHEIMER: Any more questions?
11 VICE-CHAIR SHELDON: Sir, could you give just a bit
12 of background to why the rents weren't raised for such a
13 long --
14 MR. HOHN: Because my dad is a very generous
15 individual.
16 VICE-CHAIR SHELDON: Yeah.
17 MR. HOHN: That's pretty much the background.
18 VICE-CHAIR SHELDON: Is the -- and you just want to
19 make up for that now?
20 MR. HOHN: No. We want to set the record right now.
21 We're not trying to recoup everything we've lost or he's lost
22 over the years and years of being a very generous person. He
23 just wants to get now what he's entitled to.
24 VICE-CHAIR SHELDON: Thank you.
25 MR. HOHN: Yeah.

1 MR. SILACCI: Now, I have a question for
2 Mr. McCarthy, please.
3 Thank you, sir. In your calculations for MNOI with a
4 revised Vega adjustment, you show here that the total 1982
5 expenses from the Martello memo are 53,299 and then you reduce
6 that otherwise minus the minus with depreciation to get a net,
7 I guess is the term I use, expenses.
8 When I look -- my reading of the Martello memo, looks
9 like the depreciation expenses are in addition to that 53,299.
10 So I guess my question to you is, are the -- is the $53,299
11 total expenses including depreciation or is it without
12 depreciation?
13 MR. McCARTHY: It includes depreciation. That was my
14 reading of the memo.
15 MR. SILACCI: That -- just my opinion, that's not my
16 reading of the memo. So my reading of the memo -- and if you
17 refer to both the first and the second page where he gets into
18 it is that depreciation is outside of that expense amount.
19 MR. McCARTHY: Yeah. I did not have that
20 interpretation of it. I also want to point out that the
21 Martello memo is -- is a memorandum. It doesn't have -- it
22 walks through a calculation in a narrative fashion and doesn't
23 provide a formula.
24 And my reading of it was that the -- he says "all
25 expenses" and I take "all" to mean all and then to subtract

1 the -- the -- the depreciation. That was my -- my
2 interpretation obviously is different from yours.
3 MR. SILACCI: That -- thank you, but as a follow-up
4 and maybe you can help me and -- and the Commission, are --
5 where -- where is the underlying 1982 expenses which would
6 clear it up?
7 MR. McCARTHY: Well, as far as I have -- I have the
8 memo and that's really basically it.
9 COMMISSIONER SILACCI: Okay.
10 MR. McCARTHY: We don't have any detail. So I don't
11 know where they are.
12 MR. SILACCI: Okay. Thank you.
13 CHAIR WERTHEIMER: Any other questions for
14 Mr. McCarthy?
15 Does staff have any -- any questions for any of the
16 applicants?
17 MR. NORMAN: Yes, Mr. Chair.
18 Mr. Neet.
19 MR. McCARTHY: I'm excused?
20 CHAIR WERTHEIMER: You are, sir. Thank you.
21 MR. NORMAN: Hi. Your initial appraisal you did for
22 this, when did you draft that appraisal, roughly?
23 MR. NEET: It was back in the early -- you know,
24 somewhere in the middle of the year, I think. I'm not -- I'm
25 not sure. There's a -- it's dated. There's a date on the

1 top of -- the top of the letter. It's -- actually both
2 reports are dated the same 'cause the second one was just the
3 corrections.
4 MR. NORMAN: Okay. And when did you actually do the
5 second report? Because I do note that the date say -- does
6 say May 29th, 2010.
7 MR. NEET: Right. I mean I made the corrections -- I
8 made those corrections, I don't know, last week sometime.
9 MR. NORMAN: Did you make those corrections after
10 reading Mr. Brabant's report?
11 MR. NEET: I had -- I had read Mr. Brabant's report,
12 yes.
13 MR. NORMAN: Now, I believe your prior testimony was
14 that you prefer to use the highest rent from each park,
15 correct?
16 MR. NEET: That -- in -- in the case of estimating
17 market for this -- in this context, yes.
18 MR. NORMAN: Okay. Now, I just want to give a
19 hypothetical so I can kind of see what your thinking is on
20 this, but if you had a park, let's say, that had 200 spaces
21 that were -- the rent was $200 for 199 of those spaces and
22 then one space was $300 per month, would you use the $300 per
23 month as the -- as representing the market rate in that
24 instance without any other information?
25 MR. NEET: I'm not sure that I would because the --

1 because the difference there is fairly -- you know, the
2 difference -- and in your hypothetical -- I mean I don't know
3 exactly because I can't answer a hypothetical.
4 But you know, I would say that, you know, if I'm
5 looking at a difference of, you know, 50 percent then that
6 might be something to maybe try to investigate further or
7 place less weight on that. In this case, the differences were
8 no way near that amount.
9 MR. NORMAN: Okay. And did you visit all the parks?
10 MR. NEET: Yes.
11 MR. NORMAN: Okay. And in your report I believe for
12 Ventu Park Valley, in 1983 you state that the rents ranged
13 from approximately 191 to $233 per month.
14 MR. NEET: I don't have it in front of me, so I'll
15 accept that you're --
16 MR. NORMAN: Right.
17 MR. NEET: -- that you're quoting correctly.
18 MR. NORMAN: And in that case, do you recall if you
19 used the highest rents from that park in doing your analysis?
20 MR. NEET: As far as I know, I did, yes.
21 MR. NORMAN: Okay. And do you know how many spaces
22 were in that park? If I said 171, does that seem about right?
23 MR. NEET: You know, I -- you know, I can certainly
24 get out my report and we can -- we can go over the minutia if
25 that's -- if that's what your intent is here.

1 MR. NORMAN: I don't know that we need to do that,
2 but if you would like to have it, I don't want to stop you.
3 MR. NEET: Okay. Well, I don't want to be -- I --
4 you know, I see that you're the assistant city attorney and
5 I'm just a lowly appraiser, so.
6 MR. NORMAN: I'll give you a second.
7 MR. NEET: Actually, this is -- that information is
8 in a file -- in file memorandum. It's not -- it's not within
9 the report that I submitted, so if I may.
10 MR. NORMAN: Take your time.
11 MR. NEET: So is the question do I know how many
12 spaces are in Ventu Park Villas, is that --
13 MR. NORMAN: Correct.
14 MR. NEET: Okay. I -- I believe -- I believe that
15 the 171 is probably correct.
16 MR. NORMAN: Okay. And do you know how many of those
17 spaces were at the highest rent for that park in 1983?
18 MR. NEET: No, but I certainly could research that
19 and provide you with that information.
20 MR. NORMAN: If I said two, does that sound right?
21 MR. NEET: Maybe, I don't know.
22 MR. NORMAN: Okay. So --
23 MR. NEET: But that's not an uncommon -- that's not
24 an uncommon situation if the rents -- that is an older park
25 and in some cases, you know, they may -- you know, any of this

1 is -- is obviously -- there's a level of conjecture that goes
2 along.
3 The fact is, somebody in that park agreed to pay --
4 two somebodies, according to what you're telling me, agreed to
5 pay a certain level of rent. Chances are those were the more
6 recent move-in's to the park. It's possible. It may not --
7 that may not be the case. That's why this process relies on
8 more than two data points.
9 MR. NORMAN: Okay. But you made that assumption in
10 this case?
11 MR. NEET: I made the assumption that that's an
12 indication of what somebody was willing to pay to live in that
13 park.
14 MR. NORMAN: Okay. But you don't know when those
15 rents were set, for example, or anything of the particulars
16 for why those rents were set at that rate?
17 MR. NEET: No, I do not.
18 MR. NORMAN: Okay. Okay. I believe your earlier
19 testimony you stated that from 1983 to 1986 in Thousand Oaks,
20 at least, rents were not necessarily increased at their
21 maximum allowable amount, is that correct?
22 MR. NEET: Yes.
23 MR. NORMAN: Okay. Could you look at your report
24 that was submitted today on page 10. There is a table or
25 graph in the middle of that page. I just want to understand

1 what this says. I want to look at the Conejo Mobile Home Park
2 line that says 1983 and there is a number under 1983 at 7
3 percent that says 157.
4 MR. NEET: Which one are we looking at?
5 MR. NORMAN: Yeah. Conejo Mobile Home Park 1983 and
6 then under 1983 at 7 percent there's a number 157 in red.
7 MR. NEET: Yes.
8 MR. NORMAN: And what does that number represent?
9 MR. NEET: That is the -- that is the number that was
10 the highest rent in the rent roll for 1983 that was obtained
11 from the City records.
12 MR. NORMAN: Okay. And looking at the line above
13 that that says Conejo Mobile Home Park 1986 --
14 MR. NEET: Yes.
15 MR. NORMAN: -- the highest rent was $210?
16 MR. NEET: Yes.
17 MR. NORMAN: Okay. Do you know what the annual
18 compounded rate of those two numbers are approximately? Would
19 you say it's more than 10 percent yearly?
20 MR. NEET: I can certainly -- it looks like about 7
21 and a half -- I'm sorry, it's 3 year, not 4 year. Yeah. I
22 punched in 3, 4. Yes, it's 10.2.
23 MR. NORMAN: All right. So would you say at least
24 for this park rents were increasing more than the allowable
25 amount?

1 MR. NEET: No.

2 MR. NORMAN: And why not?

3 MR. NEET: Because this is -- this -- the highest

4 rent in 1983 is not the same space as the highest rent in

5 1986.

6 Your own expert found that the rents in that park --

7 average rents in that park -- and I confirmed these numbers.

8 He's correct. The average rents in that park increased by

9 less than 7 percent. And that was -- that was what I was

10 pointing out, was that the average rents were increasing less

11 than 7 percent, not that one particular rent.

12 MR. NORMAN: Okay. One -- one last question. In

13 your original appraisal, you didn't show the actual rents for

14 1983 and 1986 for the -- for the parks in Thousand Oaks,

15 correct?

16 MR. NEET: That's correct. It was in my -- it was

17 in -- in my -- my notes and analysis on my computer, but one

18 of the comments that was made by staff at some point in this

19 process was they would like to see the work. So I went ahead

20 and put that in here for your benefit.

21 MR. NORMAN: Wouldn't you normally include that type

22 of data in an appraisal report?

23 MR. NEET: Not in a summary. This is -- this is a

24 short summary report. It's not -- it's not a requirement.

25 It's not necessary.

1 These are -- these are -- these are factual -- the
2 kind of factual information that everybody that is involved in
3 this process, you, Mr. Brabant, Dr. Baar, the staff,
4 applicant, residents all had access to that information. It
5 wasn't something that was -- you know, there was no -- it
6 wasn't something that was information that only I had access
7 to.
8 MR. NORMAN: Thank you. I have no further questions
9 for this witness.
10 CHAIR WERTHEIMER: Thank you. Would there be --
11 MS. SPENCER: Mr. -- Mr. Chair, the court reporter
12 has informed us that she could use a break. She's been going
13 for almost two hours. Would it be possible to do that at this
14 time?
15 CHAIR WERTHEIMER: We'll take a break after your
16 cross-examination.
17 MS. SPENCER: I assure you I have four witnesses to
18 examine. I get 15 minutes for each. That's going to take an
19 hour. The court reporter can't go for another hour.
20 CHAIR WERTHEIMER: Take a break?
21 VICE-CHAIR SHELDON: Sure.
22 CHAIR WERTHEIMER: All right. We'll take a break.
23 We'll be back at --
24 MS. SPENCER: Thank you very much.
25 CHAIR WERTHEIMER: -- 6:30.

1 (Recess.)

2 CHAIR WERTHEIMER: We'll have the tenants'

3 representative.

4 MS. SPENCER: I wasn't clear if the Commission was

5 going to ask any questions of Mr. McCarthy or not or if the

6 Commission had -- or the staff had completed all of its

7 witnesses or did you want me to go ahead and examine Mr. Neet

8 now?

9 How do you want to handle it, I guess is the

10 question?

11 CHAIR WERTHEIMER: Okay.

12 MS. SPENCER: Chandra Spencer from City of Oak Park.

13 Office in Los Angeles on behalf of the tenants, by the way.

14 CHAIR WERTHEIMER: The answer to your question is

15 that we're done and it's your turn.

16 MS. SPENCER: Okay. Thank you.

17 So with respect to questions, I do have some

18 questions for each of the applicant's witnesses. So I think

19 we'll start with Mr. Neet and just take everybody in order.

20 MR. NEET: How are we doing this? Are you going to

21 be there and I'm going to be here or I mean -- so we know how

22 we're doing this?

23 MS. SPENCER: A very rare occasion in my life, I'm

24 shorter than you, so I'll take the shorter mike.

25 MR. NEET: Thank you.

1 CHAIR WERTHEIMER: Excuse me, I was just informed
2 that we aren't done. So I'd like to ask you to sit down and
3 we've got one more question by the staff for Mr. McCarthy.
4 MR. NORMAN: Hello, Mr. McCarthy.
5 MR. McCARTHY: Hello, Mr. Norman.
6 MR. NORMAN: You read Mr. Baar's report, correct?
7 MR. McCARTHY: Yes.
8 MR. NORMAN: Okay. And in that report, do you recall
9 that he criticized the return on investment formula?
10 MR. McCARTHY: He made some criticism of it, yes.
11 MR. NORMAN: Do you think the return on investment
12 formula is a reasonable type of fair return standard?
13 MR. McCARTHY: No.
14 MR. NORMAN: Would your answer change if there was a
15 reasonable -- if the historic investment suggested for
16 inflation and then you did the return on investment?
17 MR. McCARTHY: Could you repeat the question, please.
18 MR. NORMAN: Sure. Would it be a reasonable type of
19 standard if the historical investment, the original investment
20 amount is indexed for inflation?
21 MR. McCARTHY: No.
22 MR. NORMAN: Okay. Why not?
23 MR. McCARTHY: Because I believe the maintenance of
24 net operating income formula is the best way to determine what
25 the fair rents should be.

1 MR. NORMAN: Okay. Now, in your sheet that you
2 provided to the Commission which shows the revenue loss for
3 the five-year phase-in, could you explain how you calculated
4 the numbers on the rates effective 12-3-10 for the five-year
5 C.D., ten-year treasury, prime rate, et cetera? Just how --
6 how -- how is the calculation done?
7 MR. McCARTHY: It's done for the present value table
8 and the data is taken from -- it was taken from the Wall
9 Street Journal that day.
10 MR. NORMAN: Okay. And what was -- what was the
11 amount that you started with on those calculations? Is it the
12 340,903?
13 Okay.
14 MR. McCARTHY: I believe it was. I wanted to see if
15 I kept a copy which I don't -- doesn't look like I have with
16 me.
17 MR. NORMAN: So you don't -- you don't have a copy of
18 that spreadsheet?
19 MR. McCARTHY: I don't have a copy of those, no.
20 MR. NORMAN: Okay.
21 MR. McCARTHY: Not with me.
22 MR. NORMAN: Do you think you could provide those to
23 us?
24 MR. McCARTHY: Not this evening.
25 MR. NORMAN: Obviously.

1 MR. McCARTHY: But the answer is yes.

2 MR. NORMAN: Okay. There -- have you ever dealt with

3 a situation where there was a phase-in of the rent for a

4 mobile home park increase?

5 MR. McCARTHY: What do you mean by "dealt with"?

6 MR. NORMAN: Well, have you been involved in -- as

7 part of an application for either the owner --

8 MR. McCARTHY: I have not been asked to do this type

9 of calculation before. It's typical for -- to request a --

10 oh, I -- I lost the -- I lost the name of the case in my mind

11 here. The -- what's that?

12 Cavanaugh adjustment, but I -- I've not been asked

13 to -- I have not been asked to calculate it.

14 MR. NORMAN: Do you have any thoughts on how you

15 would adjust the rental amounts for a phase-in as proposed by

16 staff?

17 MR. McCARTHY: No, I don't because I don't believe

18 the phase-in is fair.

19 MR. NORMAN: Why is that?

20 MR. McCARTHY: I -- not -- because the MNOI formula

21 indicates that in order to give this -- this owner a fair

22 return, he needs $466. And if we -- if we go for a penny

23 less, that's unfair because of all the other -- of all the

24 other losses that this -- this park owner has incurred over

25 the years.

1 The 466 number is a floor. Now, if you -- if you go
2 for a -- if you do a phase-in, you're crashing through that
3 floor and that's not fair.
4 MR. NORMAN: And the proposed increase, do you know
5 what percentage of the current rent that is?
6 MR. McCARTHY: It's about 360 percent increase.
7 MR. NORMAN: Okay. No further questions.
8 Staff is done.
9 CHAIR WERTHEIMER: Thank you.
10 Ms. Spencer and Mr. Neet, thank you.
11 MS. SPENCER: Mr. Neet, have you ever done a rental
12 appraisal for an affordable housing project?
13 MR. NEET: Yes.
14 MS. SPENCER: Okay. And when you did the rental
15 appraisal for the affordable housing project, did you use the
16 same methodology that you used here?
17 MR. NEET: It's been so long, I can't recall what
18 methodology was used. I think it -- if it -- my recollection
19 is that the rents were based on the HUD rents or the -- the
20 rents as -- as calculated by HUD every year for the community
21 the property was in.
22 MS. SPENCER: So the rents were based on the HUD
23 established income levels for the various levels of income for
24 the affordable housing?
25 MR. NEET: Well, the -- the rent levels themselves

1 were established like the Section -- using this Section 8
2 rents, okay, so much for a four-bedroom, so much for a three-
3 bedroom, et cetera.
4 And then the -- you know, and -- but the actual rents
5 that the tenants paid were based on income -- were based on
6 the tenant's income.
7 MS. SPENCER: And so the rents that were established
8 on the Section 8 rents, the Government provided some sort of
9 the maximum total rent that could be charged -- could be paid
10 for that particular space, is that correct?
11 MR. NEET: Yes. Every year in I believe it's every
12 county, HUD publishes a rent figure based upon the number of
13 bedrooms in the unit.
14 MS. SPENCER: And then the tenant's responsibility
15 for that rent is based -- is tied to their income, is that
16 correct?
17 MR. NEET: Correct, and then the Section 8 program
18 pays the rest.
19 MS. SPENCER: So when you did the appraisal of rents
20 for this affordable housing project, did you use similar
21 methodology?
22 MR. HILL: Objection.
23 MR. NEET: It was a completely different context. We
24 established -- we -- I estimated what market rents were for
25 that -- for the particular project based upon what was going

on in that market at that time.

You know, it was a current -- it was a current date appraisal. We didn't have to go back 30-some-odd years, and it was -- you know, we established what the market rent was.

But because the loan was subsidized under that -- under the program, the loan -- they paid a lower interest rate and everything else, they collected less rent and the value was based upon the contract, the rent that they would collect, but that was how they got the -- the -- that was how they got to the amount of debt that the property could carry.

MS. SPENCER: Did you do any research when you did your analysis in this case to determine what the market rents were for the Ranch Mobile Home Park into the dealings between Mr. Hohn and the City back in the late '70s to establish the rents for this park?

MR. NEET: No, because that's not a market rent -- that -- those -- whatever those -- whatever those agreements or negotiations might have been, they have nothing to do with market rent.

MS. SPENCER: So you would agree then that rents for an affordable housing project have nothing to do with market rent, is that correct?

MR. NEET: No, I don't -- said that. I think that's -- you're putting words in my mouth there.

MS. SPENCER: Well, do rents for an affordable

1 housing project have anything to do with market rent?

2 MR. NEET: Sure.

3 MS. SPENCER: How?

4 MR. NEET: Well, in some cases the -- in -- in some

5 cases because HUD rents tend to be county-wide, you might

6 be -- the rents may be established based upon county-wide

7 rents and the property that you're looking at may be in an

8 area that is less -- that attracts less rent.

9 So the market rents may be less than the Section 8

10 rental amounts. I've seen that occur.

11 MS. SPENCER: But the -- the manner and mechanism

12 under which HUD establishes rents and Section 8 establishes

13 rents is not based on the market, is it?

14 MR. NEET: No, that's incorrect. That's an incorrect

15 statement because HUD surveys property managers, property

16 owners, you know, and I'm not sure exactly of all they survey,

17 but it's part -- it's part of the work that the U.S. Census

18 Bureau does, is the American -- American -- the AHD studies.

19 But yeah, I mean that Section 8 rent is based upon

20 research into what rent is being charged for units at that

21 time. So yeah, that does have something to do with market.

22 MS. SPENCER: So market is a small component of it

23 but not the entire determination by HUD as to what the rents

24 should be, would you agree with that?

25 MR. NEET: No. I think you're parsing words here and

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1 I think you're -- you know, I would disagree with the
2 characterization.
3 My statement is this: HUD sets rents for the Section
4 8 housing program based upon research and analysis of local
5 rental market conditions, surveys and other things that tell
6 them what people are paying for rent.
7 MS. SPENCER: Did you do any historical research into
8 how the rents were established for this particular affordable
9 housing project?
10 MR. NEET: Well, I'm not sure -- I'm not sure that I
11 would agree with your characterization that this is an
12 affordable housing project, but if you want to ask me how they
13 were established for the mobile home park, the answer is no, I
14 did not.
15 Once again, that's not a -- that's really not a
16 component of the market rent.
17 MS. SPENCER: And you didn't do any research as to
18 whether or not there was an arm's length transaction between
19 the owner of the park and the City to establish that part, did
20 you?
21 MR. NEET: I have no idea.
22 MS. SPENCER: Okay. Do you have any experience
23 appraising mobile homes themselves as opposed to the parks?
24 MR. NEET: Yes.
25 MS. SPENCER: Would you agree that as the rent for a

1 particular space increases that the value of the mobile home
2 will typically decrease?
3 MR. NEET: I would not agree with that statement.
4 MS. SPENCER: Okay. So if my mobile home is worth
5 50,000 -- if I paid 50 -- if my mobile home is worth $50,000
6 today and my space rent is $150 a month, if my space rent were
7 to go up to $300 a month, the value of my mobile home would
8 remain the same?
9 MR. NEET: The value of your mobile home would remain
10 the same. It's the value of your leasehold interest that
11 would change.
12 MS. SPENCER: So when you sell the mobile home, you
13 sell the leasehold interest with it, don't you?
14 MR. NEET: Correct.
15 MS. SPENCER: So would -- would the increase in the
16 space rent decrease the value of the leasehold -- leasehold
17 interest?
18 MR. NEET: Obviously it would.
19 MS. SPENCER: Do you -- is there -- do you know if
20 there's any particular formula for that increase or the -- for
21 the decrease in the value of the leasehold interest
22 corresponding to the increase in rent?
23 MR. NEET: There has been formulas bandied about.
24 I've never found in my research that they were -- that they
25 were entirely predictive.

1 MS. SPENCER: When you were doing your analysis of
2 the rents in this situation, did you give any consideration to
3 the value bestowed on the owner by the benefits granted by the
4 City in approving the development, for example, changing the
5 zoning, doing development fee waivers, reducing the planning
6 restrictions, any of that, did you give any consideration to
7 that?
8 MR. NEET: No. Again, that is not a component of
9 market rent.
10 MS. SPENCER: Would you agree that this park has
11 never operated under the Rent Stabilization Ordinance, that
12 the rents have never been established in that manner?
13 MR. NEET: I do -- I really don't know.
14 MS. SPENCER: Is that an important factor for you in
15 determining this Vega market analysis?
16 MR. NEET: In terms of determining what market rent
17 was in 1979 to 1980 prior to the -- the imposition of the
18 ordinance, no, it is not.
19 MS. SPENCER: Well, let's assume that the first year
20 that the ordinance is going to be imposed on this park is
21 2011. Ordinance has never been applied to this park prior to
22 now and the ordinance will now be applied to this park. Does
23 that have any impact in determining your market analysis for
24 the purpose of determining a Vega adjustment?
25 MR. NEET: It has nothing to do with my portion of

1 that because my portion is based purely on the -- on the
2 market rental analysis.
3 MS. SPENCER: So the -- the concept of -- would you
4 agree that the concept of the Vega adjustment, the reason that
5 comes into place is that it presumes that the year before the
6 ordinance comes into place is what establishes the fair market
7 rents, is that correct?
8 MR. NEET: I don't -- not sure that's what a Vega
9 adjustment is. My understanding is the Vega adjustment is
10 based -- is -- is necessitated when there is a -- when the
11 rents are below market at the beginning of the -- at the
12 initiation of the ordinance, but then that's a matter of law
13 and I'm really not an expert in that.
14 MS. SPENCER: Okay. I have no further questions for
15 you.
16 MR. NEET: Okay.
17 MS. SPENCER: Thank you.
18 MR. NEET: Thank you.
19 MS. SPENCER: Mr. McCarthy, I think you're up next.
20 I'm going to try to talk a little louder. Usually
21 not a problem for me, but apparently the court reporter is
22 having a hard time hearing me.
23 Mr. McCarthy, when you did your income and expense
24 analysis for the Ranch park, did you have any actual ledger
25 data or any actual accounting records for 1979?

1 MR. McCARTHY: No.

2 MS. SPENCER: And did you have any actual ledger data

3 or accounting records for 1982?

4 MR. McCARTHY: No.

5 MS. SPENCER: And did you have any actual ledger data

6 or accounting records for 1999?

7 MR. McCARTHY: I might. Let -- I might have a tax

8 return. Hold on.

9 The answer is no.

10 MS. SPENCER: So the numbers that you used to

11 determine the expenses for 1979 were based on a backwards

12 adjustment of the summary data contained in the 1983 memo, is

13 that correct?

14 MR. McCARTHY: That is correct.

15 MS. SPENCER: Did you attempt to determine whether

16 any of those expenses would be disallowed under RAC-2 or

17 RAC-5, any of the expenses claimed by the owner would be --

18 would have been disallowed under RAC-2 or RAC-5?

19 MR. McCARTHY: Well, I thought about it, but the

20 problem is there's not enough detail to be able to eliminate

21 the expenses had I determined they weren't supposed to be

22 eliminated. There's not enough detail there to -- to deal

23 with.

24 MS. SPENCER: You just have a summary by a staff --

25 City staff member, is that correct?

1 MR. McCARTHY: That's all I got.

2 MS. SPENCER: Okay. And at the time that the 1982 --

3 excuse me, the 1983 memo was written and the 1982 expenses

4 were submitted, would you agree that the City was using the

5 formula adopted under the trailer park development permit as

6 opposed to the formula adopted under the Rent Stabilization

7 Ordinance?

8 MR. McCARTHY: I'm not sure what they used. Mr. --

9 Mr. Martello's memo, as we've learned from questioning before,

10 is subject to interpretation.

11 MS. SPENCER: But you would agree that they weren't

12 looking at it for purposes of doing an analysis under the Rent

13 Stabilization Ordinance, wouldn't you?

14 MR. McCARTHY: That is correct.

15 MS. SPENCER: Okay. Now, when you did your

16 adjustments to the net operating income for 1979, why did you

17 adjust it for 100 percent of inflation as opposed to the price

18 level adjustment mandated by RAC-2?

19 MR. McCARTHY: I'm not following you.

20 MS. SPENCER: Okay. Well, let's take --

21 MR. McCARTHY: I adjusted it for inflation from 1979

22 to 2009.

23 MS. SPENCER: So under -- did you review RAC-2 before

24 you did your analysis?

25 MR. McCARTHY: Yes, I did.

1 MS. SPENCER: And did you review RAC-5 before you did
2 your analysis?
3 MR. McCARTHY: Yes, I did.
4 MS. SPENCER: Okay. Let me just get the right page
5 here in RAC-2.
6 And I don't know if the Commission has been given a
7 copy of the materials that I've provided in the notebook, but
8 there -- I -- for convenience, I put the RAC-2 and the Rent
9 Stabilization Ordinance in the notebook and I put some page
10 numbers in little tiny numbers there at the bottom. So if you
11 want to follow along, it will be a little easier for you.
12 And hold on just one moment and I'll give a copy to
13 the owner's counsel.
14 So Mr. McCarthy, in the RAC-2, which is at page RTA
15 22 of the materials that I've provided, in Section 3 --
16 MR. McCARTHY: May I look on?
17 MS. SPENCER: -- .04 -- yes. Actually, I have an
18 extra copy here. You're welcome to look over my shoulder if
19 it's easier. It's hard to do this standing up.
20 All right. Right here. It says that in order to
21 determine eligibility for rent increases pursuant to the 1979
22 base form -- base year formula, you're supposed to under
23 Section 3.04 add to the net operating income for 1979 all
24 automatic adjustments of 8 percent as permitted by the Section
25 6 of the Rent Stabilization Ordinance which the landlord could

1 have implemented which shall be known as the price level
2 adjustment. You see that?
3 MR. McCARTHY: I see that.
4 MS. SPENCER: Did you do that?
5 MR. McCARTHY: No.
6 MS. SPENCER: Instead you used 100 percent of the
7 CPI, is that correct?
8 MR. McCARTHY: That is correct.
9 MS. SPENCER: Now, for the current year expenses,
10 what analysis -- let me -- I'm going to ask you some questions
11 about what analysis you did of the current year expenses.
12 When you -- when you received the current year
13 expenses, you received the general ledger and all the
14 supporting receipts that have been submitted to the
15 Commission, is that correct?
16 MR. McCARTHY: I didn't receive the receipts. I
17 received compiled financial statements and the general
18 ledgers.
19 MS. SPENCER: Did you -- have you, since you've done
20 your analysis, looked at any of those receipts or any of those
21 1200 pages of supporting documentation offered by the owner?
22 MR. McCARTHY: I haven't looked at the receipts. If
23 I had any questions, I asked of them Mr. Hohn or I asked them
24 of Gretchen Carter.
25 MS. SPENCER: In the expenses that were listed, did

1 you go through those to determine if any of those expenses
2 were not permitted by RAC-2 or RAC-5? For example, travel
3 expenses are not included in RAC-2 or RAC-5. Did you go
4 through and see if they were claiming expenses for travel?
5 MR. McCARTHY: Yes, I did.
6 MS. SPENCER: And did you adjust those out?
7 MR. McCARTHY: I adjusted some of them out. You're
8 speaking specifically of travel?
9 MS. SPENCER: I gave it as a "for example."
10 MR. McCARTHY: Okay.
11 MS. SPENCER: Did you adjust out the travel expenses?
12 MR. McCARTHY: I made a $1700 reduction of travel
13 expenses.
14 MS. SPENCER: Was that done recently?
15 MR. McCARTHY: Recently, I did it when I did the
16 analysis.
17 MS. SPENCER: And did you look --
18 MR. McCARTHY: I did the analysis before that date I
19 just showed you, by the way. So this analysis was done back
20 in March 2009 and then it was adjusted again after Mr. Neet
21 resubmitted his appraisal.
22 MS. SPENCER: And the anal -- the worksheet that was
23 offered in conjunction with the application, was that a
24 worksheet that you prepared or was that a worksheet that was
25 prepared by the owner himself?

1 MR. McCARTHY: Could you show me the worksheet,
2 please.
3 MS. SPENCER: Yes, I will. Going to page 108 of the
4 notebook --
5 MR. McCARTHY: Uh-huh. You know your notebook better
6 than I do. There you go.
7 MS. SPENCER: Here you go. This worksheet that came
8 with the application for the just and reasonable return, did
9 you prepare that worksheet?
10 MR. McCARTHY: That was prepared by the attorneys.
11 MS. SPENCER: Did you review it before it was
12 submitted?
13 MR. McCARTHY: You know, I don't recall. I may have.
14 This is quite some time ago.
15 MS. SPENCER: Okay. Do you know if the numbers match
16 up with yours?
17 MR. McCARTHY: Well, I would need a few minutes. Do
18 I have a few minutes?
19 MS. SPENCER: Well, let me just narrow it down. Do
20 you see any deduction on that worksheet prepared by the
21 attorneys for travel?
22 MR. McCARTHY: Nothing specifically. However, there
23 is -- if I point out line 23, that looks like a summation of
24 several different things according to the explanation. So
25 you'd have to ask the person that prepared this.

MS. SPENCER: Okay. Now, when you did your analysis of the data that was submitted to you, some of the figures and even some of the figures on your sheet are three-year averages, is that correct?

MR. McCARTHY: Some are three-year averages, that is correct.

MS. SPENCER: Did you actually look at the underlying data provided in the general ledger and the documentations supporting the general ledger to determine if those three averages -- three-year averages were supported?

MR. McCARTHY: I looked at the general ledger and I asked questions of the parties that would know that could answer my questions.

MS. SPENCER: Why did you use a three-year average rather than just simply using 2009?

MR. McCARTHY: Because I noticed in some of the expenses were -- there's kind of a whipsaw effect, in other words, there's no expense one year, there's a high expense in another year, there's kind a middling expense in the third year.

So I made the determination that an average of the three years would be the most fair presentation. In other words, the -- the adjustments are there to normalize the expenses.

MS. SPENCER: Did you have the general ledger data

1 for all three years when you did this?

2 MR. McCARTHY: Yes, I did.

3 MS. SPENCER: So based on this analysis that you did,

4 would you agree that in various categories, expenses can vary

5 from year to year?

6 MR. McCARTHY: Yes.

7 MS. SPENCER: Okay. Did you make any adjustment --

8 did you consult with any experts in the industry to make any

9 adjustment for industry standards whether or not any of these

10 expenses exceeded industry standards?

11 MR. McCARTHY: I used my own judgment in that case

12 having done many of these in the past.

13 MS. SPENCER: Are you an expert in mobile home park

14 management?

15 MR. McCARTHY: Not in management, no.

16 MS. SPENCER: Now, Section 2.17 of RAC-2, and if you

17 want to look at it with me, it's at page 21 of the materials,

18 states:

19 "Operating expenses must be reasonable.

20 Whenever a particular expense exceeds

21 normal industry standards in the base

22 year or in the current year for which

23 the application for a rent increase is

24 made, the rent adjustment commission

25 shall determine whether the expense is

1 reasonable."

2 MR. McCARTHY: Uh-huh.

3 MS. SPENCER: So based on that, did you consult with

4 any experts in the industry to determine whether or not these

5 expenses were in line with industry standards?

6 MR. McCARTHY: The only experts I consulted were

7 Mr. Hohn and Gretchen Carter.

8 MS. SPENCER: Did you ask Ms. Carter if the

9 management and administrative expenses that were being charged

10 for this park were in line with the other 12 or so parks that

11 she manages in the state of California?

12 MR. McCARTHY: I believe we had a discussion of what

13 the management expenses were in the other parks because I

14 noticed a -- quite a variance over the three years in the

15 expenses. Now, what the -- her precise answer to that

16 question, I frankly don't remember.

17 MS. SPENCER: Did you ask her what the normal

18 industry standard is for a -- on-site mobile home park

19 manager, what the normal industry standard is for a salary for

20 an on-site mobile home park manager?

21 MR. McCARTHY: I did not ask her that specific

22 question.

23 MS. SPENCER: Did you ask her what the normal

24 industry standard is for an off-site management company for a

25 mobile home park?

1 MR. McCARTHY: No.

2 MS. SPENCER: Now, you stated you have a fair amount

3 of experience doing accounting in real estate, is that

4 correct?

5 MR. McCARTHY: Yes.

6 MS. SPENCER: And in the other real estate business

7 that you have, do you deal with property management expenses

8 for --

9 MR. McCARTHY: Sometimes.

10 MS. SPENCER: -- multi-unit properties?

11 MR. McCARTHY: The only multi-unit properties we deal

12 with are industrial-type properties.

13 MS. SPENCER: But not residential?

14 MR. McCARTHY: But not residential.

15 MS. SPENCER: So you -- you don't know what the

16 market is for residential property management expenses for

17 off-site management, do you?

18 MR. McCARTHY: No, I don't.

19 MS. SPENCER: Okay. Now, for the 2009 current year

20 income, you included the actual rents received, is that

21 correct?

22 MR. McCARTHY: That is correct.

23 MS. SPENCER: And according to the worksheet that was

24 presented, it looked like they -- there was an adjustment made

25 for the rent for the manager's unit. Did you include that as

1 income?

2 MR. McCARTHY: No.

3 MS. SPENCER: Did you include the laundry -- the $189

4 or so in laundry --

5 MR. McCARTHY: Yes.

6 MS. SPENCER: -- income as income?

7 MR. McCARTHY: Uh-huh.

8 MS. SPENCER: Okay. Looking at RAC-2, page 16 of

9 the --

10 MR. McCARTHY: Actually, I did include the housing

11 allowance as income.

12 MS. SPENCER: For the manager?

13 MR. McCARTHY: Yes.

14 MS. SPENCER: Okay. So turning to RAC-2, page 16 and

15 it's Section 2.05, now, in RAC-2, page 16, starting in Section

16 2.01, that gives you the formula for determining the gross

17 total income, is that correct, or the factors that go into it?

18 MR. McCARTHY: Yes.

19 MS. SPENCER: And one of those factors of Section D

20 is adjusted income for below market rentals. You see that?

21 MR. McCARTHY: I see the title.

22 MS. SPENCER: Did you include the -- under Section

23 2.05, adjusted income for below market rentals, the units

24 where the rent increase is permitted by the Rent Stabilization

25 Ordinance or the regulations and guidelines of the Rent

1 Adjustment Commission could have been made but have not been
2 made because of the landlord's rental policies and purposes?
3 Did you adjust the income for that?
4 MR. McCARTHY: I wasn't aware of any adjustment that
5 needed to be made. I saw the rent roll. I didn't see any --
6 anything that I -- first of all, this is talking about below
7 market, and there's nothing about the rents in -- charged in
8 this park that have anything close to a market. I don't feel
9 I have to be an appraiser to make that statement either.
10 MS. SPENCER: But you didn't adjust the income where
11 the rent increases could have been made but were not made --
12 made by the landlord from 1979 to 2009, did you?
13 MR. McCARTHY: Repeat the question, please.
14 MS. SPENCER: You did not include an adjustment to
15 income where the rent increases could have been made by the
16 landlord from 1979 to 2009, did you?
17 MR. McCARTHY: No, I did not.
18 MS. SPENCER: No questions -- more questions for
19 Mr. McCarthy. Right on time.
20 CHAIR WERTHEIMER: Thank you.
21 MS. SPENCER: All right. The next witness I'd like
22 to examine is Mr. Hohn.
23 Good evening, Mr. Hohn.
24 MR. HOHN: Hello.
25 MS. SPENCER: I'm going to ask you some questions

about the early years of the park because the -- based on your declaration, you indicated that you are an owner of the park and you've been response -- involved in operations of the park since the inception, is that correct?

MR. HOHN: No.

MS. SPENCER: So you signed a declaration to that effect. Is that declaration incorrect?

MR. HOHN: Do you have it here somewhere so I can look at it?

CHAIR WERTHEIMER: Mr. Hohn, could you speak into the mike, thank you.

MR. HOHN: Sure.

MS. SPENCER: If you could just give me a minute, I didn't expect that. Let me grab the declaration.

All right. Mr. Hohn, I'm looking at attachment 3 to the rent adjustment application for the Ranch Mobile Home Park entitled Bruce Hohn Declaration. On the second page -- it's a two-page declaration. On the second page dated June 7th, 2010 signed in Downey, California, on the second page of that declaration, is that your signature?

MR. HOHN: It sure is.

MS. SPENCER: All right. Looking at the first paragraph of that declaration, you state: "I am the son of Andrew Hohn and a part owner together with my father of the Ranch Mobile Home Park."

1 So your testimony here today that you are not a part
2 owner of that park?
3 MR. HOHN: I didn't recall exactly how this was
4 worded, but if you took it literally, yeah, I am a part owner
5 of the park.
6 MS. SPENCER: Okay. And it states that:
7 "Since 1975 when I was twenty-nine years
8 of age I participated with my father in
9 the management decisions regarding the
10 park including decisions to establish
11 and raise rents."
12 Is that true?
13 MR. HOHN: That's true.
14 MS. SPENCER: All right. Then I have some questions
15 for you about those management decisions.
16 MR. HOHN: Let me leave the declaration open, please.
17 MS. SPENCER: Okay. I'm not going to ask you about
18 that at the moment.
19 MR. HOHN: Oh, okay.
20 MS. SPENCER: We're going to turn to something else.
21 MR. HOHN: All right.
22 MS. SPENCER: Excuse me. I'm going to put this right
23 on top.
24 All right. Turning to the materials, page 34, which
25 is behind the green tab that says "City Documents," the first

1 document I want to ask you about is the planning commission
2 application that was submitted by Mr. Wyckoff.
3 At the time that you and your father were developing
4 this park in the late 1970's, were you aware that Mr. Wyckoff
5 had submitted this application and had obtained permission to
6 change the zoning approvals --
7 MR. HOHN: No.
8 MS. SPENCER: -- for the park?
9 It would be helpful if you wait till I finish
10 answering my -- asking my question before you answer. It's
11 kind of hard on the court reporter to take it down if you do.
12 So when your -- now, it's my understanding, and
13 correct me if I'm wrong, that your family purchased this
14 parcel from Mr. Wyckoff after the zoning had been changed, is
15 that correct?
16 MR. HOHN: I couldn't tell you. I don't -- I don't
17 recall.
18 MS. SPENCER: Were you aware when you purchased this
19 park that one of the --
20 MR. HOHN: We didn't purchase this park.
21 MS. SPENCER: Strike that.
22 When -- were you aware when you purchased the
23 parcel -- you purchased the bare land, is that correct?
24 MR. HOHN: My father purchased the bare land.
25 MS. SPENCER: Your father purchased the bare land and

at the time it had some of the development approvals already completed, is that correct?

MR. HOHN: I couldn't tell you that.

MS. SPENCER: So you weren't involved in that?

MR. HOHN: No, I was not.

MS. SPENCER: When did you first become aware that this park was supposed to be a low-income mobile home park?

MR. HOHN: I don't recall that either.

MS. SPENCER: Was it before 1977?

MR. HOHN: I said I don't recall that either.

MS. SPENCER: You have no recollection of when you learned that?

MR. HOHN: No, ma'am, I don't.

MS. SPENCER: Did you have any discussions with your father about what research he did into the parcel before he purchased it?

MR. HOHN: It's been so long ago, I can't recall.

MS. SPENCER: Did you have any discussions with your father about what agreements he was aware of that had been made with the City regarding development of this parcel before the park was built?

MR. HOHN: I probably did, but I certainly can't recall.

MS. SPENCER: Now, turn your attention, please, to page 43 of the materials, next page, City of Thousand Oaks

Planning Commission Resolution No. 267-74. Do you see that?

MR. HOHN: Yes.

MS. SPENCER: Okay. This document is actually five, six, seven, eight pages in total. When was the -- have you ever seen that --

MR. HOHN: Six more pages after the signature page?

MS. SPENCER: Yes.

MR. HOHN: Okay.

MS. SPENCER: Has an -- an -- what do they call -- an exhibit. Have you ever seen this document before?

MR. HOHN: That's possible, but I certainly wouldn't tell you here tonight that I've seen it.

MS. SPENCER: Turning to page RTA 46, which is page 4 of that document.

MR. HOHN: Yes, ma'am.

MS. SPENCER: See condition No. 27,

"That prior to the issuance of a zone clearance for the project, the developer shall enter into an agreement with the City of Thousand Oaks, deed restricting the development for a low-income mobile home park rental."

Do you see that?

MR. HOHN: Yes, ma'am.

MS. SPENCER: Has that ever been done?

1 MR. HOHN: I couldn't tell you.

2 MS. SPENCER: Did you or your father or any person

3 acting on behalf of the owner to your knowledge enter an

4 agreement to restrict the income -- the rent -- the rents for

5 the park?

6 MR. HOHN: I don't know the answer to that question

7 either.

8 MS. SPENCER: Do you know whether or not the City

9 gave your father or any person acting on behalf of the owner

10 any development fee waivers in exchange for developing a low-

11 income senior park?

12 MR. HOHN: I don't remember any specifics, no.

13 MS. SPENCER: Well, there were about -- you don't

14 remember about $112,000 in development fee waivers being given

15 to your family to develop this park?

16 MR. HOHN: Are you just making that up or is that

17 something that really took place? 'Cause I haven't a clue.

18 MS. SPENCER: Excuse me. Well, I'm looking at your

19 declaration here. So why don't you go ahead and take a look

20 at it.

21 MR. HOHN: Okay.

22 MS. SPENCER: Look at paragraph 6.

23 MR. HOHN: Okay.

24 MS. SPENCER: You state in your declaration:

25 "We established the initial rental

amounts at below market rent because the City agreed to waive approximately $100,000 in development fees."

You see that?

MR. HOHN: Okay. Yes, I do.

MS. SPENCER: So now that you've read your declaration, does that help you remember?

MR. HOHN: That refreshes my recollection, yes, ma'am.

MS. SPENCER: Okay. All right. Turn your attention, please, going back to the notebook, pages 54 and 55.

MR. HOHN: Okay.

MS. SPENCER: Addendum TPD 74-6, Covenants, Conditions and Restrictions.

MR. HOHN: All right.

MS. SPENCER: And it states:

"Rent, the original rent schedule and any increases thereafter shall be in accordance with and as set forth in that certain Exhibit A attached hereto and incorporated herein as though set forth in full."

Have you ever seen that before?

MR. HOHN: Not that I recall.

MS. SPENCER: So do you have any specific information

1 as we sit here today, any personal knowledge as to how it was
2 that the rents were established back in 1977 for this park?
3 MR. HOHN: The only thing that I barely remember is
4 my father having some discussion with the City. The City came
5 to him, wanted him to build a park that would take care of
6 lower-income individuals, and he said, "It would be my
7 pleasure as long as I can make a profit." That's basically
8 about the only thing I recall.
9 MS. SPENCER: Do you remember who your accountant --
10 the accountants were for the park back then?
11 MR. HOHN: Walker, Gruwell and Freedman out of
12 Beverly Hills.
13 MS. SPENCER: All right. So turn your attention,
14 please, next to pages 56 and 57, it's a two-page letter.
15 MR. HOHN: Okay.
16 MS. SPENCER: Wilson & Hughes, Certified Public
17 Accountants. Were these the accountants for the park at the
18 time?
19 MR. HOHN: Not that I know of. I never heard of
20 these guys.
21 MS. SPENCER: All right. So the next page, page 58.
22 You see that?
23 MR. HOHN: Yes, ma'am.
24 MS. SPENCER: Do you see a signature down towards the
25 bottom of the page?

1 MR. HOHN: Looks like my dad's.
2 MS. SPENCER: So your dad signed this acceptance
3 form?
4 MR. HOHN: I said it looks like my dad's signature.
5 MS. SPENCER: Do you have any reason to believe he
6 didn't sign it?
7 MR. HOHN: No, I don't.
8 MS. SPENCER: Someone forged his signature, anything
9 like that?
10 MR. HOHN: I wouldn't have anything to lead me to
11 that belief, no.
12 MS. SPENCER: Okay. Were you involved in the rent
13 increase application submitted to the City in 1983 on behalf
14 of the park?
15 MR. HOHN: No, I was not, no.
16 MS. SPENCER: Were you aware that the City Council
17 adopted a resolution, 84-037, that established -- established
18 when and how rent increases could be made at the park?
19 MR. HOHN: No.
20 MS. SPENCER: When did you first become aware --
21 well, you know that now, right, that there was a resolution
22 adopted, 84-037?
23 MR. HOHN: Based on everything I've heard here, yes.
24 MS. SPENCER: And the first time you heard about that
25 was here?

1 MR. HOHN: I may have heard about it earlier. I just
2 don't recall when.
3 MS. SPENCER: Do you know if your father or anyone
4 else acting on behalf of the owner ever filed an appeal of
5 that resolution?
6 MR. HOHN: No, I don't.
7 MS. SPENCER: Or challenged it in court in any way?
8 MR. HOHN: No, I don't.
9 MS. SPENCER: And were you involved in the rent
10 increase application submitted in 2000?
11 MR. HOHN: I wasn't aware there was one submitted in
12 2000. So the answer to that question would be no.
13 MS. SPENCER: So you stated in your declaration that
14 there have been only two rent increases since -- and this is
15 at paragraph 4 --
16 MR. HOHN: Uh-huh.
17 MS. SPENCER: -- "the Ranch has had only
18 two rent increases since 1979, one in
19 1984 and the second in 2001. The 1984
20 rent increase was 7 percent per City
21 Resolution 84-037, a copy of which is
22 appended hereto as Exhibit C."
23 So apparently you knew about it when you submitted
24 that declaration, right?
25 MR. HOHN: Evidently.

1 MS. SPENCER: But you had no personal knowledge of
2 what happened in those transactions between the City and --
3 MR. HOHN: Not really. I got a lot of this
4 information from my father.
5 MS. SPENCER: So this isn't really your personal
6 knowledge. This is something your dad told you?
7 MR. HOHN: Some of it's my personal knowledge. Some
8 of it's what I got from my father.
9 MS. SPENCER: And that particular paragraph is from
10 your father?
11 MR. HOHN: I don't recall. I'm not sure.
12 MS. SPENCER: Was your father the one who made the
13 decision as to when and how rent increase applications for the
14 park would be made?
15 MR. HOHN: Probably.
16 MS. SPENCER: Is there anyone else in the limited
17 partnership who made those decisions?
18 MR. HOHN: No.
19 MS. SPENCER: Did your father make a deliberate
20 decision not to make any rent increase applications other than
21 the one in 1984 and the one in 2001 up until now?
22 MR. HOHN: I would say that's accurate, yes, an
23 accurate statement.
24 MS. SPENCER: And your father was the one who was
25 responsible for setting the policies for the limited

1 partnership related to rent increases, is that correct? That
2 was his -- that was his responsibility?
3 MR. HOHN: I'm not sure what you're asking me.
4 MS. SPENCER: Well, he was the one who got to decide
5 when and if the limited partnership was going to make these
6 rent increase applications and --
7 MR. HOHN: He'd be -- he'd be like a -- you know, the
8 managing partner of a limited partnership, right, okay.
9 MS. SPENCER: He was the shot caller?
10 MR. HOHN: That's right.
11 MS. SPENCER: Okay. And the limited partnership --
12 eventually a family-owned limited partnership assumed
13 ownership of this park, is that correct?
14 MR. HOHN: Yes.
15 MS. SPENCER: And the park was reassessed by the tax
16 assessor after that limited partnership transfer was done?
17 MR. HOHN: I don't know if that's true or not.
18 MS. SPENCER: Well, have you evaluated the property
19 tax expenses for this park?
20 MR. HOHN: Me personally, no, ma'am.
21 MS. SPENCER: 'Cause you -- when you bought the
22 park back in 19 -- when your father bought the park back in
23 1977, he paid about 150,000 for the land?
24 MR. HOHN: My father never bought the park. He built
25 the park.

1 MS. SPENCER: Okay. Let me rephrase that.
2 When your father bought the parcel back in the late
3 '70s, he paid about 150,000 for the land, is that correct?
4 MR. HOHN: I'm not sure what he paid for it.
5 MS. SPENCER: Do you -- have you done any analysis of
6 whether your property taxes are too high?
7 MR. HOHN: Me personally, no. I haven't.
8 MS. SPENCER: Okay.
9 MR. HOHN: Our accountants may have done something of
10 that nature, but I'm not aware of it.
11 MS. SPENCER: Have you asked that the -- have you ask
12 your accountants to apply for a reassessment of the park --
13 MR. HOHN: No.
14 MS. SPENCER: -- based on your appraisal you got last
15 year?
16 MR. HOHN: No.
17 MS. SPENCER: 'Cause your property taxes show that
18 you're paying property taxes on -- in excess of a million
19 dollars. Did you know that?
20 MR. HOHN: Well, we're really getting ripped off.
21 MS. SPENCER: All right. Who was responsible for
22 negotiating leases with the tenants?
23 MR. HOHN: I would say that's probably the -- the
24 management company.
25 MS. SPENCER: And prior to the hiring of this new

1 management company from Northern California, who was
2 responsible?
3 MR. HOHN: Probably the manager on site.
4 MS. SPENCER: Was there a manager at Thunderbird who
5 was also -- had assumed some management responsibilities for
6 Ranch?
7 MR. HOHN: I believe so.
8 MS. SPENCER: Do you know what representations were
9 made to the tenants as far as what the rents would be and how
10 they would be set and when they'd be increased?
11 MR. HOHN: No, I don't.
12 MS. SPENCER: All right. I don't have any more
13 questions for Mr. Hohn. I have just a couple questions for
14 Ms. Mc -- for Ms. Carter.
15 MR. HOHN: Anybody on the Board have questions for
16 me?
17 Thank you.
18 MS. SPENCER: Good evening.
19 MS. CARTER: Good evening.
20 MS. SPENCER: Ms. Carter, you are the off-site
21 property manager for the Ranch park, is that correct?
22 MS. CARTER: That's correct.
23 MS. SPENCER: And who is it within the management
24 structure for Ranch who is responsible for negotiating leases
25 with the tenants? Is that you or somebody else?

1 MS. CARTER: For negotiating the leases, well, the
2 leases are -- were created through the park's attorney, the
3 current lease that's -- that's being used, the rental
4 agreement. And the on-site management would be the one who
5 would sit down and explain the terms and sign the new tenant.
6 MS. SPENCER: And how long has that been the case
7 that the on-site manager would sit down and explain the terms?
8 MS. CARTER: Well, certainly since I've taken over I
9 can't speak to what was happening before I became the off-site
10 manager.
11 MS. SPENCER: And the on-site manager is a gentleman
12 named Barry who lives at the park?
13 MS. CARTER: That's correct.
14 MS. SPENCER: Do you have any involvement in the
15 negotiation of leases with tenants since you took over?
16 MS. CARTER: Well, I was involved in -- in working
17 with the park's attorney in the creation of the lease,
18 reviewing it and making sure that it had the terms that it
19 has.
20 MS. SPENCER: But as far as the direct contact with
21 the -- the resident.
22 MS. CARTER: No, I have not.
23 MS. SPENCER: And so in the past couple weeks, have
24 you had any direct contact with any prospective buyers
25 regarding the rents for this park?

1 MS. CARTER: No, I have not.

2 MS. SPENCER: So these leases -- the leases that --

3 that you've provided -- these different forms of leases that

4 you've provided, these were drafted by the attorney for the

5 park?

6 MS. CARTER: No. The current one was, but the --

7 the -- some of the tenants signed an older rental agreement

8 that was provided by the park -- by the state Western Mobile

9 Home Park Owners Association.

10 MS. SPENCER: Okay. So these -- these leases that

11 you've provided here, are these the current ones or the old

12 ones?

13 MS. CARTER: Well, let me explain. If you look at

14 the bottom of the lease or the rental agreement, it has --

15 beginning with the first one, it has a Copyright 2007, WMA.

16 That's one rental agreement that was used for some of the

17 tenants.

18 And if you continue paging back, you see one that

19 says Copyright 2003, WMA. Again, that's the Western

20 Manufactured Housing Community Association. And let's see

21 just the order that they're stapled in.

22 Then you come up a few pages back, further back

23 there's one that says Copyright 1996, WMA, the same

24 organization. And then finally you get to one that says in

25 the bottom 2004, Law Office of Scott E. Carter, Revised June

1 27th, 2009. And that --

2 MS. SPENCER: And Mr. Carter, that's your husband, is

3 that right?

4 MS. CARTER: He's my husband and the park's attorney,

5 that's correct. And that agreement is the one that's been

6 used for tenants that have moved into the park since I took

7 over the property management.

8 MS. SPENCER: Okay. So the -- the Scott Carter

9 agreement, let's call it.

10 MS. CARTER: Okay.

11 MS. SPENCER: Fair to call it the Carter agreement?

12 MS. CARTER: Sure.

13 MS. SPENCER: I've got one here for a resident who

14 moved into the park -- and this is in the stack of materials

15 that have been provided to the Commission. We provided all of

16 the leases that we could obtain copies of.

17 Got one here for space No. 22 dated July 20th, 2010.

18 Is this a Carter agreement?

19 MS. CARTER: Yes. It does have that at the bottom of

20 the first page.

21 MS. SPENCER: Okay. So in paragraph 3, it says --

22 the next -- down towards the -- there's an empty space and

23 some handwriting, the --

24 MS. CARTER: Uh-huh.

25 MS. SPENCER: -- second to the last -- third to the

1 last sentence it looks like, "The next scheduled increase for
2 this park will be on" not applic -- "NA."
3 MS. CARTER: Uh-huh.
4 MS. SPENCER: Do you understand that to mean not
5 applicable?
6 MS. CARTER: It means there wasn't any one scheduled
7 at the time that this was written.
8 MS. SPENCER: Okay.
9 MS. CARTER: Nothing scheduled.
10 MS. SPENCER: So at the time that this agreement was
11 entered into on July 20th, 2010 --
12 MS. CARTER: Uh-huh.
13 MS. SPENCER: -- the park had no scheduled rent
14 increases coming up?
15 MS. CARTER: That's correct. And if you read the
16 next sentence after that it says, "If this date is less than
17 90 days from the date of the commencement date of this lease,
18 the new rental amount will be," and then again it says "NA"
19 because there wasn't anything scheduled at that point in time.
20 MS. SPENCER: So when you took over this park, when
21 you took over off-site management for this park --
22 MS. CARTER: Uh-huh.
23 MS. SPENCER: -- up until now, there haven't been any
24 scheduled increases, is that correct?
25 MS. CARTER: We have not had any increases since I

1 took over the park.

2 MS. SPENCER: And there haven't even been any on your

3 calendar to prepare notices, right?

4 MS. CARTER: I have not issued any day -- any 90-day

5 notice of a rent increase.

6 MS. SPENCER: And if they -- you would need to know

7 at least 90 days in advance that a rent increase was coming up

8 'cause the mobile home residency requires you to give 90 days'

9 notice, is that correct?

10 MS. CARTER: Well, I would know that, yes, because I

11 would be the one preparing the notices.

12 MS. SPENCER: And do you know what representations

13 were made to Ms. Chason as to when -- whether or not the rents

14 in this park would increase when she signed this lease?

15 MS. CARTER: Well, the plain language says at this

16 time there's nothing scheduled.

17 MS. SPENCER: Do you know if any verbal

18 representations were made by Barry or anyone else acting on

19 behalf of the park to Ms. Chason when she signed this lease?

20 MS. CARTER: No, I wasn't in the room when that lease

21 was signed.

22 MS. SPENCER: And you didn't have any discussions

23 with any of the residents who moved into the park since

24 January 1st, 2009 to the present about the annual increase,

25 any annual increases, is that correct?

1 MS. CARTER: I have not had any meetings with any
2 tenants concerning a rent increase.
3 MS. SPENCER: Did you tell any tenants that the rents
4 if they went up would just go up by a few dollars?
5 MS. CARTER: No, I wouldn't make a statement like
6 that.
7 MS. SPENCER: Sometimes you come to the park and tour
8 it, is that right?
9 MS. CARTER: Oh, sure. As a property manager, I do
10 need to visit the park.
11 MS. SPENCER: And you've had various discussions with
12 the former on-site property manager, Ms. Liz Woods, correct?
13 MS. CARTER: I wouldn't say various discussions.
14 When I first took over the property, she was in the park
15 office, and so I did have some discussions with her at that
16 time.
17 MS. SPENCER: Did you have -- do you recall having
18 any discussions with Ms. Woods about rental increases?
19 MS. CARTER: No, I sure don't.
20 MS. SPENCER: Okay. And then the Carter agreement
21 also was for space No. 30 dated April 3rd, 2010, is that
22 correct?
23 MS. CARTER: That's what it says there, yes.
24 MS. SPENCER: And on -- and in that paragraph 3, it
25 has the same "NA."

1 MS. CARTER: That's correct, has the same
2 information.
3 MS. SPENCER: And this -- these -- the fill in the
4 blanks, were those completed by Barry or someone else?
5 MS. CARTER: Well, it appears as though it was
6 completed by Barry. That does look like his handwriting.
7 MS. SPENCER: The "NA" looks like his handwriting?
8 MS. CARTER: Yes, it does.
9 MS. SPENCER: What's Barry -- exactly what does Barry
10 do at the park? What do his job responsibilities entail?
11 MS. CARTER: Well, Barry is the on-site resident
12 manager, and he receives the rents and deposits them in the
13 bank. He issues any notices that would need to be issued if
14 someone didn't pay the rent on time.
15 If someone is interested in purchasing a home in the
16 park, he would give them an application, explain the approval
17 process to them, meet with them. He would process the
18 application and then pass it on to me to be reviewed for
19 approval or denial.
20 He is responsible for making sure that the rules and
21 regulations of the park are enforced. He's responsible for
22 making sure that the maintenance of the park is taken care of
23 and that the maintenance person that we've hired, he would
24 oversee that person, direct them as far as what maintenance
25 work needs to be done.

1 He receives any tenant complaints. He organizes and
2 hosts a resident -- functions for the residents such as we
3 have monthly -- sometimes every other month we have dinners,
4 and he usually organizes those and some other residents help
5 him.
6 He puts together a monthly magazine that is
7 distributed to the residents. So he has many different
8 responsibilities.
9 MS. SPENCER: So since January of 2009, how many
10 notices approximately has Barry had to deliver?
11 MS. CARTER: What type of notice are you asking
12 about?
13 MS. SPENCER: Well, you said he has to deliver
14 notices. What -- how many has he had to deliver, whatever
15 notices you were talking about?
16 MS. CARTER: Well, I don't -- I think he might have
17 had to deliver maybe a couple rent -- late rent notices, but I
18 don't believe there's been any other type because, you know,
19 we've had -- been able to work things out with the residents
20 when there's been issues.
21 MS. SPENCER: So just a couple in two years?
22 MS. CARTER: Yeah, probably.
23 MS. SPENCER: And how many prospective resident
24 applications has he had to process in two years approximately?
25 MS. CARTER: Gosh, I would say in that park it's

1 probably been maybe half a dozen, something like that.

2 MS. SPENCER: So once every quarter?

3 MS. CARTER: They don't come in on a very regular

4 basis, no.

5 MS. SPENCER: And that doesn't take more than a few

6 hours, does it?

7 MS. CARTER: Oh, yeah. It does to do it properly.

8 MS. SPENCER: How long does it take, do you know?

9 MS. CARTER: Depends on the applicant and the

10 information they have because we have certain information that

11 we verify.

12 Some of them are very straightforward and easy to do

13 and some of them are very complicated and require a lot of

14 follow-up conversations with me, documentation that may not

15 have been provided at the beginning of the process. It's --

16 it's really not a very --

17 MS. SPENCER: Can you give me a range of how long

18 those usually take?

19 MS. CARTER: Well, not working on it full time, but

20 the process itself allows 15 business days and that's what the

21 law provides. So we do provide answers in 15 business days.

22 MS. SPENCER: Do you know how many hours --

23 approximately the range in number of hours it takes Barry to

24 do one of those applications?

25 MS. CARTER: No, I don't because we don't require

1 that the manager accounts for his time to that minute detail.
2 MS. SPENCER: And then he doesn't do the maintenance
3 himself. He just makes sure the maintenance guy shows up and
4 does it, is that correct?
5 MS. CARTER: That's correct.
6 MS. SPENCER: And do you know how long it takes him
7 to prepare the monthly magazine?
8 MS. CARTER: No, I don't, but it is -- there are a
9 lot of pages in it. I know he has help from -- some of the
10 residents sometimes provide information, but no, I don't know
11 exactly how long.
12 MS. SPENCER: And the rents are paid usually between
13 the 1st and the 5th of the month, is that correct?
14 MS. CARTER: 1st and the 6th.
15 MS. SPENCER: 1st and the 6th.
16 MS. CARTER: Uh-huh.
17 MS. SPENCER: So during the first five, six days of
18 the month he's receiving rents at various times from the
19 residents, is that correct?
20 MS. CARTER: That's correct.
21 MS. SPENCER: And do most of the residents pay their
22 rent by check?
23 MS. CARTER: Some money order, some check.
24 MS. SPENCER: Is there a drop box?
25 MS. CARTER: There is a drop slot in the door.

1 MS. SPENCER: Okay. So do you know how much time --
2 I know you -- Barry is a full-time manager. That's what he's
3 called, but do you know how much time he actually spends per
4 week doing these various job responsibilities that you've
5 talked about?
6 MS. CARTER: Well, I know that my managers are
7 scheduled to work 35 hours a week in the office and then they
8 have another five hours of time that they're -- that they're
9 available for afterhours emergencies.
10 They're available to -- if they can't reach a tenant
11 during the day, you know, phone calls or visits, then they
12 would use those five hours to meet afterhours. He might use
13 that to meet with a prospective resident or to sign up a new
14 resident if they can't come in during regular normal business
15 hours Monday through Friday.
16 MS. SPENCER: Do you know if it takes him 35 hours a
17 week to actually get all those responsibilities done or does
18 he have a lot of downtime?
19 CHAIR WERTHEIMER: I don't know. I know that he's
20 always available whenever I -- I need him and I believe that
21 he's always available whenever the residents need him, and
22 that's part of being a good manager.
23 MS. SPENCER: One more question about Barry. Do you
24 know how many complaints he's received in the past two years
25 regarding the park?

1 MS. CARTER: Regarding the parks?

2 MS. SPENCER: You said he receives complaints and

3 processes those. Do you have a number about how many

4 complaints you've gotten?

5 MS. CARTER: No, that wasn't something I was asked to

6 bring with me this evening.

7 MS. SPENCER: Compared to some of the other parks

8 that you manage, is this a really high complaint park, low

9 complaint park or right there in the middle?

10 MS. CARTER: Probably average.

11 MS. SPENCER: Is there any information provided to

12 the residents regarding -- have you ever provided any

13 information to the residents regarding the zoning approvals

14 for the park?

15 MS. CARTER: Zoning approvals?

16 MS. SPENCER: Correct.

17 MS. CARTER: I'm not sure what you mean by that.

18 MS. SPENCER: Well, have you ever provided any

19 information to the residents regarding any of the development

20 approvals for the park, the development permit, the zoning,

21 the resolutions, any of that stuff? Have you ever provided

22 that information to the residents?

23 MS. CARTER: Well, I believe there's a section in the

24 rental agreement that states what the zoning is. Typically

25 there is. I'm not sure in this -- yeah. There's zoning

1 information, clause 36.

2 MS. SPENCER: So is --

3 MS. CARTER: We do provide that information.

4 MS. SPENCER: So it's zoned as mobile home exclusive?

5 MS. CARTER: Uh-huh. It's a mobile home park, yes,

6 that's the -- that's the zoning.

7 MS. SPENCER: Okay. Has any information ever been

8 provided to the residents regarding Resolution No. 84-037 to

9 your knowledge?

10 MS. CARTER: Not to my knowledge.

11 MS. SPENCER: And has any information ever been

12 provided to the residents about the expiration of Resolution

13 No. 84-037 or the trailer park development permit conditions?

14 MS. CARTER: Not to my knowledge.

15 MS. SPENCER: You heard the attorneys say it expired

16 in 2008 or so?

17 MS. CARTER: Yes, I did.

18 MS. SPENCER: Have you ever told any of the residents

19 that in writing?

20 MS. CARTER: No.

21 MS. SPENCER: Okay. I don't have any further

22 questions for Ms. Carter.

23 And I don't dare cross-examine another attorney. So

24 I'm complete with my cross-examination.

25 CHAIR WERTHEIMER: Okay. Then it's time for you --

1 for your presentation.

2 Yes, sir.

3 MR. HILL: Can I have a couple of minutes to redirect

4 on a couple of questions?

5 CHAIR WERTHEIMER: Yes. To whom? Redirect to whom?

6 MR. HILL: A couple of questions to Mr. Neet and

7 about three or four to Mr. McCarthy.

8 CHAIR WERTHEIMER: Yes. Go ahead.

9 MR. HILL: Thank you.

10 Good evening, Mr. Neet. Mr. Norman asked in the

11 cross-examination whether you verified whether the higher

12 rents that you found at your comparable parks were market

13 rents and you stated that you assumed that they were market

14 rents, is that correct?

15 MR. NEET: Somewhat to that degree, yes.

16 MR. HILL: Is your assumption based on the fact that

17 the only reason that there would be higher rents than the

18 annual rent increases in those comparable parks is because of

19 the limited vacancy decontrol allowed under the City's

20 ordinance?

21 MR. NEET: Yes, once the ordinance had taken place

22 and rent control was -- was in effect.

23 MR. HILL: Okay. Does limited vacancy decontrol

24 provide an indication of market rent?

25 MR. NEET: No. It provides a floor of what market

1 rent could possibly be. I guess maybe an example of -- if you
2 were selling -- if you had a law that said you could sell a
3 $10 item for $5, but to -- but under certain circumstances you
4 could sell it for 6, that 6 still would not be market because
5 people in other places were selling them for 10.
6 MR. HILL: Okay. One last question: A question was
7 raised of Mr. McCarthy whether or not he applied Section 2.05
8 that deals with adjusted income with below market rentals and
9 Mr. McCarthy stated that he did not. Isn't it true that this
10 is what we're -- this Section 2.05 is the Vega adjustment that
11 you were discussing earlier and that that's what you applied?
12 MR. NEET: That's what it appears to be, yes.
13 MR. HILL: Okay. No further questions.
14 Mr. McCarthy, during the cross-examination by the --
15 by Ms. Spencer you were asked about RAC 3.04 which talks about
16 a -- add to the base year operating income all price level
17 adjustments as permitted by Section 6 of the Rent
18 Stabilization Ordinance.
19 Mr. McCarthy, is the current -- does the current Rent
20 Stabilization Ordinance contain a -- an automatic adjustment
21 of 8 percent or has that been taken out of the ordinance, the
22 current version of the ordinance?
23 MR. McCARTHY: It is no longer in the ordinance.
24 MR. HILL: Thank you.
25 Mr. McCarthy, you were asked about the Martello memo

1 and your interpretation of that memo, and I understand that
2 Mr. Silacci and you may have a reasonable disagreement about
3 that -- the meaning of that language.
4 Are there any -- is there any language in that
5 particular Martello memo that you were relying on -- upon
6 that -- for your interpretation that that was -- that the
7 $18,000 deduction was the -- let me restate it.
8 Is there any particular language that you're relying
9 upon for your interpretation of the Martello memo?
10 MR. McCARTHY: In the Martello memo, he refers to the
11 expenses as "total" expenses. That's the word that he uses
12 for a net operating income of I think it was 53,000 or
13 something was for -- and he gives a net operating income
14 number. So in other words, as if the -- as if the formula was
15 complete as he stated it.
16 MR. HILL: And you were asked by Ms. Spencer whether
17 or not that Martello memo was intended to be used to establish
18 net operating income under the ordinance, is that correct?
19 MR. McCARTHY: Yes. She asked me a question like
20 that.
21 MR. HILL: Okay. But isn't it true also that under
22 that Martello memo the City considers the -- the income and
23 expenses of the park as if it were setting the net operating
24 income under the ordinance?
25 MR. McCARTHY: Yes, I believe so.

MR. HILL: Okay. And what language in the Martello memo helps you reach that conclusion?

MR. McCARTHY: In the second page, he talks about using it to establish the -- to measure a -- to measure the net operating income against a figure, I believe it was $57,000 which -- which was the -- it was kind of an agreed upon return that they had come up with over the years for the park.

MR. HILL: So even though the --

MR. McCARTHY: A hard dollar return, I might point out.

MR. HILL: So even though the purpose of the memo wasn't to set rents under the ordinance, it does analyze what the rents -- what the NOI would be under the ordinance, is that correct?

MR. McCARTHY: Under that ordinance at the time.

MR. HILL: Thank you.

Before we turn it over to the tenants, we wanted to -- we wanted to make sure that our attachments were correctly identified.

The -- the attachment 1 that we submitted tonight is intended to replace the attachment 1 to the rent adjustment application. That was the second thing after the PowerPoint that was in the materials that we presented to you this -- this evening.

1 Also the Neet appraisal that you were provided this
2 evening was intended to supersede attachment 5 of our -- of
3 our application. As we stated, it's a corrected appraisal as
4 Mr. Neet explained the correction. So the Neet appraisal
5 you've been provided with tonight would replace attachment 5
6 of our application.
7 Also the revised McCarthy MNOI calculations that you
8 were provided this evening are intended to replace what was in
9 the application as attachment No. 8.
10 And I think that will help keep everything organized
11 and -- and help you identify the current attachments. Thank
12 you.
13 CHAIR WERTHEIMER: Thank you. Question: This
14 appraisal have any --
15 MR. HILL: No, no. That's --
16 CHAIR WERTHEIMER: Has nothing --
17 MR. HILL: That is the one provided by Mr. Hohn just
18 to verify our cross-examination question of Mr. Baar regarding
19 the current value -- or current valuation of the park by a
20 licensed broker. Thank you.
21 CHAIR WERTHEIMER: Thank you.
22 Is the tenants' representative ready to present?
23 MR. HILL: Can our witnesses be excused?
24 CHAIR WERTHEIMER: Are the Commissioners planning to
25 have any questions more of the witnesses?

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MR. HILL: Thank you.

CHAIR WERTHEIMER: Your choice.

MR. HILL: I'll be right back. Go ahead.

MS. SPENCER: Would you like me to wait until he returns? I can.

CHAIR WERTHEIMER: Not necessarily.

MS. SPENCER: All right.

Okay. Perfect. I'm not used to having a technical assistant over here running the PowerPoint. So thank you for that.

Good evening. Once again, my name is Chandra Spencer. I'm a resident of Oak Park. My office is in Los Angeles. And I'm an attorney and I representative the Association of Ranch Tenants.

The Association of Ranch Tenants was formed after the residents received notice of increase -- the proposed rent increase and was formed on behalf of the residents, although, not all residents are members of the association, in order to -- as the notice of rent increase had suggested, for the residents to try to form together to respond to the rent increase application.

As previously indicated, I was brought in as counsel for the Association about a week before the last hearing and I was brought in on a pro bono basis. And the other attorneys who may actually speak tonight, I don't know if they will or

1 not, but I'm going to go ahead and introduce them, are Ronald
2 Perry from California Rural Legal Assistance, Ilene McCarthy
3 from California Rural Legal Assistance, John Taylor from the
4 appellate law firm of Horvitz & Levy and Mr. Taylor's partner
5 is also on the team, although, I don't believe he's here
6 tonight.
7 In addition, we have some accountants who have
8 graciously volunteered their time to work with the residents
9 in dealing and valuating this rent increase application. We
10 have Randi Sorenson, certified public accountant, and Jake
11 Lang, certified public accountant.
12 We also have a property management expert and the --
13 the -- the resumes of all -- the two accountants and the
14 property management expert are contained in the materials I've
15 provided to the Commission at the very last tab, whom the
16 accountants have consulted with in making their valuation of
17 the accounting data that's been submitted and his name is
18 Mr. Jan Taylor, but given he lives in the Inland Empire and we
19 can't afford to pay him, he wasn't able to come and be here
20 tonight.
21 So slide 1 please of the -- 2, I guess, of the
22 PowerPoint.
23 I know that you've heard a lot about the Ranch Mobile
24 Home Park and some of what I'm going to be talking to you
25 about tonight is going to be somewhat repetitive, but I think

1 it's helpful because there is such a huge volume of
2 information to go over, some of the information provided, and
3 put some focus on where we think the Commission should be
4 looking.
5 With all due respect to the Commission and to the
6 staff and the City attorney's office, I'm going to join in the
7 property owner's objection that the City attorney's office is
8 advising the Commission with respect to this application.
9 And I think that a -- I'm concerned that especially
10 reading -- after reading the Thunderbird application that an
11 undue emphasis is going to be placed on the opinions of staff,
12 particularly with respect to the legal issues and that the
13 tenants won't be given a fair opportunity for their own
14 presentation of what the legal issues are to be heard.
15 And I think the most important legal issue and the
16 most important objection that we have here for which you've
17 received actually a separate brief that was submitted this
18 morning is that the Commission has no jurisdiction over this
19 park or even to decide this application.
20 And I want to note that I'll talk a little bit about
21 it in the PowerPoint, but I want to again note and reiterate
22 the -- the Association's position is that this park is not
23 governed by the Rent Stabilization Ordinance. It never has
24 been, and unless and until this park is brought under the
25 umbrella of the Rent Stabilization Ordinance, there's no

1 reason for any of us to be here tonight.

2 The Ranch Mobile Home Park has 72 of 74 spaces shown
3 on the rent rolls, but -- and one of the residents is going to
4 talk a little bit more about the demographics of the park.
5 But at this time, it appears that about 58 of the 74 spaces
6 are occupied.

7 And the reason why some of the spaces are no longer
8 occupied is because some of the residents are hospitalized in
9 part due to the stress that they've endured after receiving
10 this exorbitant rent increase application.

11 Some of those residents have been moved into assisted
12 living facilities and their families have been unable to sell
13 their coach and their leasehold interest because of the threat
14 of the rent increase -- rent increase to the dollar amount
15 that's been proposed.

16 And because the residents have been deprived of the
17 rights that they're entitled to under the trailer park
18 development permit, 74-6, in Resolution 84-037, in the past
19 week alone, two buyers have walked away when they heard that
20 the rents at this park may be established at the point that
21 the owner has proposed and that -- even that the City has
22 proposed.

23 In fact, I wasn't there at the park today, but I'm
24 told that one of the -- and I saw the documentation, that one
25 of the coaches was actually put up for auction today. And the

1 reason that that coach was put up for auction is because the
2 family was unable to sell the coach and -- and they had to
3 just walk away from it.
4 And unfortunately, I'm told that this family actually
5 may be responsible -- personally responsible for the Medi-Cal
6 bills that their deceased mother incurred that they had
7 depended on the proceeds from this coach and leasehold
8 interest to pay. So not only did they lose the asset, now
9 they're getting sued by the State.
10 And I share these stories with you and we've provided
11 a bunch of declarations so that you can really understand what
12 is happening at the Ranch Mobile Home Park and how significant
13 this rent increase application is in terms of the -- the lives
14 of the folks who live there.
15 Each space is occupied by one to two very low-income
16 senior citizens. Pursuant to the restrictions for the park,
17 you have to be very low income to live there and you have to
18 be over sixty-two years of age.
19 It's a 74-unit park as indicated with mostly
20 single-wide pads designed to accommodate 10-foot wide coaches
21 and a few 20-foot wide. And the zone -- zoning was changed
22 for this park and the park development was approved on the
23 basis of two things, sixty-two years of age or older and very
24 low income.
25 And we can't -- even though the park owner and even

1 the City would want you to bring this park under a fair
2 market -- so-called, fair market analysis, this market is
3 totally different for this park. This is an affordable
4 housing market.
5 I was joking with my co-counsel that I should have
6 brought an apple and an orange tonight 'cause I tend to get a
7 little bit demonstrative when I do these things because this
8 is apples and oranges. We're talking about an affordable
9 housing development and we're going to talk about the history
10 in a bit and how it got there.
11 The average age of the residents is eighty years old.
12 The average income of the residents is less than $1,000 per
13 month, and nearly half of the residents are disabled. These
14 are some of the most vulnerable members of the Conejo Valley
15 and of our community.
16 And the City recognized its responsibility to protect
17 these individuals back in 1977 when this park was built and
18 the City needs to continue to recognize its responsibility to
19 protect these individuals as we stand here today. That's why
20 I'm standing here today on a pro bono basis because I
21 recognize that obligation.
22 If you could turn to the next slide, please.
23 The rent increase -- let's talk a little bit about
24 the rent increase application, and some of these numbers might
25 not be entirely accurate because the -- it seems to be a

moving target. We keep getting new updated numbers and -- here and there, but this is what I had when I prepared the slide.

The current space rents are between $126.37 and $139.36 per month. The requested increase would put the space rents at -- sounds like they're going to go about $500 a month now. It was 700 when the application was first done, but it's still way too much and it's still huge.

Even the staff recommendation would put the space rent increase to $191 -- $191.95 per month for all the spaces which would put the space rent between $318.32 and $331.31 per month. This is 137 percent to 151 percent increase, 27 to 30 percent each year.

Now, one of the things you need to take into consideration and we're going to be talking about when you're evaluating this rent increase is, is it consistent with what was supposed to happen for this park and is it consistent with the Rent Stabilization Ordinance.

And I'd suggest to you that there is no possibility that a sudden change in housing expense by a factor of 137 to 151 percent in any way could be considered stabilized rent. If my rent up went up by that I'd be moving in a heartbeat, but the problem is, is none of the folks who live in this park can move.

And you see it in your declarations and you're going

1 to hear it from the residents who speak here tonight. They
2 can't move; one, because they have nowhere to go, two, because
3 they would lose the entire value of their investment, and
4 three, because they're physically unable to do so.
5 This is not a situation where they can just pick up
6 and move from one apartment to another apartment building
7 across the street. This is a mobile home park, a hybrid
8 ownership situation and it has to be evaluated differently.
9 And even the 9th Circuit in its recent Guggenheim
10 case recognized that. It has to be evaluated differently
11 because it's different. It's a totally different ball of wax.
12 It is an orange, not an apple.
13 The average income of these residents as indicated is
14 less than $1,000 a month. Most of the residents are on fixed
15 incomes, primarily living solely on social security, and some
16 of the residents don't even receive SSI. Some of them are
17 living on less than $500 a month.
18 The rent that they would have to pay for their space
19 will take up all of their monthly income. The residents just
20 simply do not have the sufficient income to pay the proposed
21 space rent increases, even the amount proposed by the City.
22 And most -- one the important factors and we're going
23 to have the residents come up and talk about a little bit
24 tonight is they will lose their own investment-backed
25 expectations in their coaches and the improvements they've

1 made to them if they can't pay their space rent, which they
2 won't be able to do.
3 Each one of those declarations that you've received
4 from the residents has a list of how much was paid for the
5 coach and how much they've made in improvements. And they
6 made those investments with whatever little bit of savings
7 that they had left with the reasonable expectation that the
8 rents would be enforced the way that the City passed them back
9 in 1977, back in 1974 when John Prescott wrote the staff
10 report for the zoning change, back in 1977 when these rents
11 were approved, back in 1984 when the rent increase was
12 permitted at up to 4 percent, and the residents have continued
13 to rely on that for the past 33 years.
14 We're going to talk a little bit, too, about some of
15 the things that the City has represented in official documents
16 and to this day on the City's website about how the Ranch is
17 different.
18 When I was listening to the City's presentation and
19 to the owner's preparation, I felt like I was in a parallel
20 universe because everyone wants to talk about the Ranch as if
21 it's just a standard, run of the mill, okay, let's just do the
22 math. That's not what we have here.
23 We have an entirely different set of circumstances,
24 and the Commission needs to realize this. If ever there was a
25 time when an alternative formula needed to be imposed or an

1 appropriate application of the standards for rent increases
2 even under the proposed MNOI formula needed to be imposed,
3 this is it.
4 So I would like to first -- so you can have a chance
5 to hear from some of these residents, I've got three residents
6 who are going to come up and talk to you tonight for the more
7 extended length of time we've been permitted. And I know
8 there's a number of residents that are going to take the
9 opportunity to be heard for their two minutes that they get at
10 the end of the presentation.
11 But there's three residents that I'm going to have
12 come up and talk to you tonight and they're going to present
13 to you information in three discreet areas. We're trying not
14 to be repetitive and we're trying to get to the point.
15 One is -- one is Mr. Jim Wolfe, who is going to talk
16 to you a little bit about these demographics for the park
17 because the residents have done a survey, and you need this
18 information and you need to understand what the age is, what
19 the income is, what the disabilities are and what the
20 investment has been.
21 This park owner invested half a million dollars in
22 this park. These residents have invested over 4 million
23 dollars in this park.
24 I'm also going to have Valerie come up and talk to
25 you, and Valerie's going to tell you about the investment

1 decision that she made when she moved into this park a few
2 years ago and why she did it and how she did it and what she
3 was told, because again, this -- the 9th Circuit and the
4 Supreme Court authority has -- you have to take into account
5 these investment-backed expectations and the Rent
6 Stabilization Ordinance requires you to do it.
7 And then finally we're going to have Georgia come up
8 and talk, and Georgia, for lack of a better explanation, not
9 that -- that every person in this room including Jim and
10 Valerie aren't humans, but she needs to tell you the human
11 side of this 'cause you need to understand this on the most
12 basic of human levels because that's what the Rent
13 Stabilization Ordinance requires you to do and that's what you
14 as responsible appointed City officials should be doing.
15 So first I'd like Jim to come up. And to explain the
16 reason why I gave you a notebook is 'cause I thought it would
17 be easier for you to look at these materials as we go through
18 in the notebook as opposed to just on the screen. So you have
19 them in front. Those are your copies to do whatever you want
20 with and make notes.
21 But first we're going to start with Jim's
22 presentation and Jim -- and that's going to start at the
23 little footnote at the bottom, RTA 96.
24 MR. WOLFE: Mr. Chairman and Commissioners and staff,
25 my name is James Wolfe and I have a nine year residence at the

1 mobile -- Ranch Mobile Home Park here in Thousand Oaks.

2 And what I want to present to you this evening are

3 some of the demographics of our park -- actually twofold, one

4 being the -- the demographics of the Ranch and secondly the

5 homeowners' investment and their assets in the Ranch itself.

6 So rather than give you -- lull you to sleep with a

7 bunch of numbers and stuff, because I do tend to speak in a

8 monotone a little bit, so I'm going to do this graphically and

9 give you a good summary of what's going on.

10 I also wanted to mention that we've done these

11 surveys for the park over a period of time and these numbers

12 might change because we have a fluid park. As you can

13 imagine, with the average age of the park, things change.

14 So to begin with, we have an age chart up on the

15 screen now, and please notice that we have -- 44 percent of

16 our residents are over eighty years of age, and in fact, 65

17 percent are over seventy-five years of age. So these are not

18 people that can bound out on the street and find a job or go

19 to work someplace to make up for any increase in rent.

20 All but four of our residents are over seventy. We

21 only have four residents that are under seventy years of age.

22 So I mentioned that we have -- we have an evolving park and we

23 actually have lost -- we've lost a resident here recently,

24 three of them actually since this ordeal has started. So we

25 lost our ninety-nine-year-old lady. She was just three months

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1 of being a hundred.

2 But we have also on here -- we show that we have only

3 four people that are over ninety years, and again that has

4 changed a little bit because we lost our one ninety-year-old,

5 but we gained three more as one has turned ninety since.

6 And another two that we had kept information from

7 because of their age we did not include them in the surveys

8 and such, but they're now included and they are ninety-four

9 and ninety-seven years old. And of course with the T.V. and

10 newspaper information, they have been able to find out about

11 what's going on.

12 But I'd like now to turn to the income of the

13 residents, and it's -- as our attorney suggested, we have

14 residents here that make less than $500 a month. In fact, we

15 have six of them that do not make more than $500 a month.

16 Our average income actually is $957 per month for the

17 average resident in this park. It doesn't -- I think if you

18 do a little fifth grade math, I think you can see what this

19 increase would do for these people on the whole because they

20 just don't have the resources to pay for it.

21 In 2010, the poverty level was $10,830 annually.

22 That's $952 a month. So we're all pretty close. We have at

23 least 16 people within the park that are living in poverty.

24 So I think this chart pretty much speaks for itself.

25 And I know we've got a lot to cover tonight, but I

1 think this is also important. But -- and also to put things
2 in perspective, we've recently had two residents who had to
3 replace their water heaters. It costs $1,000 to replace a
4 water heater. I didn't realize that. I haven't replaced one
5 in so long. I'm thinking $3- or $400. It's $1,000 to get rid
6 of a water heater.
7 Now what that means is, is these people lose one
8 month of their income, and I would like to put you in their
9 place and say what would happen to me if I just lost one month
10 of my income, was taken away, how would that impact you.
11 I have to do a little reading because this was done
12 about 12 o'clock last night. So -- actually part of it was
13 done today. Okay. I think that's it for that chart.
14 And then we want -- yes, we want to do the -- the
15 last chart is here, is the demographics for -- for the
16 disabilities that are in the park.
17 Now, what we have here, it's actually changed
18 slightly because of our recent addition of -- to the survey.
19 So we actually have 29 people who admit that they're disabled
20 and 28 who don't and about half of those 28 are disabled but
21 won't admit it. So that really concludes that portion of the
22 demographics.
23 And now I would like to jump into the investment that
24 these people have in the park, and most people as you -- I'm
25 sure you know, if you have a mobile home that's over 20 years

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1 old, you just can't finance it. So many of the people in the
2 park, they've either -- if they bought newer places they were
3 able to finance, they have a house payment on top of
4 everything else, and if not, they put their life savings into
5 these, into buying the mobile home.
6 And this is a -- this is a very, very frequent case
7 where someone basically -- usually they're forced out of
8 another place where they live and they may be -- they may be
9 down on their luck, they maybe have physical disabilities, bad
10 medical problems and stuff that forced them to find an
11 alternative way of life.
12 And where we at? Oh, we're on 4. I don't know if we
13 have that. Four is for me to talk on. I'm sorry.
14 Okay. So in the surveys that we did, we have 74
15 total spaces. Sixteen of those are vacant and four of them
16 are -- are really non-income producing, at least most of them
17 for this point. There's one empty space that is -- does not
18 have a home on it.
19 There are -- there's one space that's too small to
20 put anything on because these places were built quite some
21 years ago when -- when the mobile homes were much smaller.
22 And there's a place for the ex-manager and, of course, a home
23 for the manager. So we have a net occupied spaces on the park
24 currently of 54 spaces.
25 Now, we have a chart here. This chart shows the

1 total income -- the total home investment, and we have three
2 homeowners that have homes that are -- that have been there a
3 long time -- well, actually let's just say there's six
4 long-time residents that have their homes under $40,000.
5 There's 10 residents that are in the 40- to 50,000
6 range and there's also 10 residents that have invested over
7 $80,000 in their homes in this park. So it's not -- let me
8 find my place again.
9 So there's 28 homes in this park now that are over
10 $50,000, and as I mentioned, there's -- 10 of those are over
11 $80,000 in value.
12 So 81 percent of the residents were available for
13 this survey. So we have a very high confidence level really
14 that these are pretty accurate, and the 40 -- the 44 residents
15 that we did survey out of the 54 have a cumulative investment
16 of three and a half million dollars.
17 Now, so far we've gone -- we've covered -- focused on
18 pure facts, and now I want to do a -- rather an extrapolation,
19 which I think everybody who has looked at the data that we
20 have received on the application is familiar with
21 extrapolation.
22 So if we take the average -- the average home
23 purchase price for these -- these units is 59,357. The
24 improvements that people have made average 19,481. So we have
25 a grand total of an average investment for the park owner of

1 78 -- for the park resident, rather, of $78,788.

2 And if we extrapolate that for the other 10 that we

3 did not get into our survey, we would have round numbers four

4 and a quarter million dollars of investment by the homeowners.

5 And I think that -- yes, that chart -- that table shows that

6 that Chandra has up now.

7 So that really is all we have to stay on this. I

8 think that demonstrates what we want, here, right? And so I

9 just want to sum up and review the facts here.

10 And so there's a fact that the average income of the

11 residents is under $1,000 a month.

12 Fact: At least 16 residents live below the poverty

13 line.

14 Fact: One half of the residents are disabled and

15 admit it.

16 Fact: 44 percent of the residents are over eighty

17 years of age.

18 Fact: The average price -- price paid -- the average

19 price the residents paid for their homes is $59,000.

20 Fact: The average resident has invested $20,000 in

21 improvements in round numbers.

22 And fact: The total average resident investment in

23 their home is nearly $80,000.

24 So the entire park -- again, the extrapolated value

25 of the property on this park that the residents own is four

1 and quarter million dollars, and it seems to me there's
2 someplace written in the Constitution in the Fifth Amendment
3 that we have some rights to that property as well.
4 Thank you very much.
5 CHAIR WERTHEIMER: Thank you, Mr. Wolfe.
6 MR. WOLFE: I'll take my mess away with me, too.
7 MS. SPENCER: The next resident you'll be hearing
8 from is Valerie.
9 MS. HOPKINS: Good evening. My name is Valerie
10 Hopkins. I'm a 42-year resident of the Conejo Valley. I'm
11 also the chairperson of the Association of Ranch Tenants and
12 I'm under seventy. And that didn't get a smile out of
13 anybody, so I'll just move right along.
14 Okay. The Conejo Valley has been my safe harbor, and
15 42 years ago, my late husband, infant daughter and I moved
16 here and quickly became part of the community because it was a
17 really tiny community at that time.
18 Over the years, we've had our shares of ups and
19 downs, all a part of living, but no matter where I worked, no
20 matter how far I commuted we stayed here. And the reason for
21 that is because we were safe here. The schools are good. The
22 parks and recreation, I even got to know people on the City
23 Council. It's been terrific.
24 So when I started thinking about retirement, my
25 children were grown, pretty much out of the house. I sold my

1 home in Westlake Village that we had -- I had resided in for
2 25 years. And I took that nest egg and I put it aside, and
3 then I rented for two years.
4 And for those two years during that two-year period,
5 while I was still employed, I looked all over the place, where
6 can I retire, where can I have a comfortable retirement, what
7 can I afford, and it goes on and on.
8 But there were some other parameters involved in
9 that; one, my children are located here. I have a daughter
10 and two grandchildren in Simi Valley, and my son resides in
11 Camarillo.
12 Also I don't have asthma out here, at least not like
13 I used to. So that becomes a big factor when you're looking
14 for places to live, you know, molds and mildews, hay fever,
15 all these things that blow on the wind don't seem to blow on
16 the wind here except during the Santa Anas.
17 So all this searching began, and no matter where I
18 looked, I kept coming back here. I kept coming back here.
19 Okay. What can I afford? Well, I couldn't afford another
20 house. This was three and a half, almost four years ago. So
21 you know what the housing market was then.
22 I didn't want a condo. I had lived in apartments,
23 condos and town homes for 10 years while my husband and I
24 saved up to buy our first home. Didn't want to do that
25 anymore, aside from the fact that you really don't have too

1 much control over what happens with association fees and
2 increases.
3 So I wanted something that was rent controlled. I
4 wanted to own something, and I started looking at mobile
5 homes. I looked from Calabasas all the way to Ventura. I
6 went through all the chambers of commerce, all the senior
7 societies, everything that was involved. I did my due
8 diligence.
9 Now, in that two-year period, the price of housing
10 was still very high. When I came down to Thousand Oaks, I
11 found out that this was a rent controlled area. I also found
12 out that Ranch Mobile Home and Thunderbird, because I really
13 weighed those two, were under special ordinance.
14 Now, I'm saying "rent control" because at that time
15 when I first started looking I didn't know there was a special
16 city ordinance for Ranch. I found that out later.
17 Okay. So I'm looking at these places. Well,
18 Thunderbird is closer to the freeway. Freeways make me
19 wheeze, okay. So I looked over at Ranch. I talked to the
20 residents before I talked to anybody else. I met the
21 managers. I met the managers over at Thunderbird who were
22 actually overseeing Ranch at that time.
23 I found out what people paid in utilities. I found
24 out what they did in the park. I didn't need to have a park
25 with a lot of extras in it because I belong to a gym for one

1 thing, and for another thing, I have a very active life with
2 my family.
3 So when the time finally came around, I retired. I
4 decided this was the area I was going to be in. There were
5 four homes available in Ranch, two doubles and two singles.
6 The doubles were going -- the asking price was well over
7 $100,000. This was in the Ranch. They were older homes. I
8 don't remember how old exactly, but I know they were over 20
9 years old.
10 The singles, one was very small. It had been
11 updated, but it was very small. It was I believe around
12 $80,000, and then the one that I finally settled on was
13 $25,000.
14 Now, I know that what people were doing were buying
15 the existing homes, donating them and replacing them with
16 manufactured homes, which is what I did. I paid the cost of
17 buying the home, okay, paying the closing costs and all of the
18 fees that went along with that.
19 I paid to have it -- I donated the home. I paid to
20 have it removed for donation. I paid to have the land
21 cleared, graded, paid to have the utilities moved. I even
22 paid for a block wall, 65 feet long by about 30 feet wide,
23 okay. Those were all parts of being able to be part of this
24 park.
25 My finances were checked very, very thoroughly. At

1 no time did anyone allude to anything that sounded like a 30-
2 year cap, which I've never heard of before on what kind of
3 park this was going to remain.
4 I qualified easily to live here and knew that with my
5 home paid for and my car paid for, I could retire, afford to
6 retire and live fine. Now, that's important to me because of
7 the longevity in my family.
8 I have four grandparents who lived to be over a
9 hundred years old. That can be really scary, okay? That's a
10 good news/bad news situation. Do I want to live to be that
11 old? I don't know. Ask me when I get there, okay? I'll tell
12 you whether or not it was worth it.
13 The point is, is that I was looking for another safe
14 harbor and I thought I had it here. I am helping to support a
15 disabled son. That's not your problem. It's mine, but I
16 could afford to do that with the ordinances that I understood.
17 Okay. So here we are. All of a sudden on October --
18 I got a letter dated October 8th. I didn't even get it
19 October 8th on that date because the postman delivered it to
20 the wrong address and I didn't find out until everybody
21 started talking about it.
22 That was in October. We were advised to get legal
23 representation. You've heard the demographics of the park.
24 There was no way on earth we could afford legal
25 representation.

1 But something that's crucial in this, too, is the
2 fact that the owners of the park knew very good and well what
3 the income was because all of that information had to be --
4 all that information had to be documented and given to them.
5 I've drawn a blank. I'm -- disclosed, thank you so much.
6 Okay. All that information had to be disclosed,
7 proved and provided. They had it. So here we are now and I
8 have sort of gone outside of what I was going to talk about.
9 But I will tell you that I paid $100,000 for the
10 manufactured home that's in there. I paid $25,000 for the
11 house that was there, plus all the extras and the block walls
12 and moving this and moving that and having this removed and so
13 forth. I landscaped it. I put in trees and I thought I was
14 set. The rest is up to you.
15 Thank you very much for your time and I appreciate
16 your attention. And I know you're tired and I'm sorry.
17 CHAIR WERTHEIMER: Thank you.
18 MS. SPENCER: Georgia is next.
19 MS. NORBLOOM: My name -- my name is Georgia
20 Norbloom. I have been a resident of Ranch Mobile Park for six
21 and a half years.
22 We are a community of peers. We have health
23 problems. We have disabilities, but we prevail. We are a
24 close knit community. We care about each other. We watch out
25 for each other. If nobody is out of their home in a couple

1 days, we check on them.

2 These are the sweetest people, the kindest people you

3 ever want to meet. They care -- oh, God. I told you.

4 When I learned in 2004 what my income was going to

5 be, a friend of a friend told me to go over to Thunderbird.

6 The managers over there, I told them what I wanted to do.

7 Nobody could -- you wouldn't be able to purchase a home

8 through a bank there.

9 My son said he would help me, but she told me and

10 Richard did, too, and I was assured that I could live the rest

11 of my life at Ranch. They told me that the rents -- the last

12 rents that were raised was in 2001 and it was only like $4 or

13 $5. The rents there were low for low-income people like me.

14 I earn under $1,000 a month.

15 So I went over there. There were three mobile homes

16 for rent -- I mean for sale. I bought the cheapest one which

17 was a big fixer-upper, and my home has been a work in progress

18 for six and a half years, and when it's done, it will be brand

19 new inside and brand new outside.

20 It's not a mobile home to me. There's nothing mobile

21 about it. It has no wheels. It has no axle. It's bolted to

22 cement blocks. It's my home. It's a house. It's not even --

23 I don't even consider it a mobile. It's like a little

24 cottage.

25 All of our homes are like this. They're -- they're

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1 neat. They're well taken care of. We -- we maintain the
2 property for the owners. If you drive by our park, it is
3 quaint. It's like little cottages. It's like a Kincaid
4 masterpiece. I look at it that way anyway.
5 The people there care about each other. We protect
6 each other. We have a lot in common. As I said, we are a
7 community of peers. I have lived in Thousand Oaks since 1966.
8 Two of my sons were born here.
9 Like the slogan says, shop here, shop locally. All
10 of us shop locally. We have our dogs groomed. We have -- we
11 share things. We have a lot in common. My doctors are here,
12 my family's here, my sister's here. My friends of over 40
13 years live here in Thousand Oaks, not Calabasas or Ventura, in
14 Thousand Oaks.
15 My kids went to school here. This is where I live.
16 This is where my doctors are. I have had open heart surgery.
17 I'm a cancer survivor. All these people here have their
18 doctors here that they trust.
19 They are -- they are the generation that grew, that
20 made Thousand Oaks grow. We are the generation that supported
21 this community. We need to live. We lived fine. We prevail.
22 We cope. We share things.
23 If you allow this rent increase, it will devastate us
24 like it did in October. In October, you went from a happy
25 community to people that were depressed. It was so evident.

1 Older people talking about -- in their nineties saying, "I'd
2 rather die than lose my house."
3 These are people that are sweet and deserve --
4 they've worked hard all their lives. They deserve to have --
5 to be secure. When that letter came and said our rents were
6 going to be so high, it made us insecure. It made us sick.
7 I -- one of us, Bobbie, she was on our committee, she
8 had a stroke. Richard had a stroke and he died because we
9 are -- we were so stressed out. How were we going to prevail?
10 We called Marilyn over at the Thunderbird. We talked to
11 Mr. Watson. He told us to get together, get a committee
12 together, but there was no way we could afford lawyers. There
13 was just no way, but we hung in there.
14 We helped Thunderbird picket and we talked to the
15 media because we wanted -- we wanted some help, but most of
16 all we prayed. We went to the churches, the -- Audry went to
17 her synagogue and to Calvary Church.
18 They prayed for us and we prayed, and God sent us
19 angels in form of these -- these lawyers and CPAs who are
20 working to help us with no money.
21 We matter. We should matter to you as well. We
22 matter to these people who -- who have given their time and
23 their expertise and smart.
24 We want to live. We don't want to just exist. If
25 you raise these rents even by the staff's standards, some of

1 us will be just existing. We will not be living. Please --
2 I'm sorry, but these people, we need -- we need help.
3 CHAIR WERTHEIMER: Can you hold your applause,
4 please.
5 MS. SPENCER: All right. Now that we've had -- you
6 had a chance to hear a little bit more from the residents
7 themselves and a little bit more about what this park is
8 about, it's time to get into the boring discussion of the law.
9 And at risk of sounding like a law professor here, I
10 think it's important that we spend a little bit of time going
11 over some of the legal principles from the Association's --
12 the Association's perspective of what it is you need to do to
13 evaluate this rent increase application.
14 If you turn on the PowerPoint to the next slide that
15 states "Legal Principles" that would be great. I've tried to
16 break these down into categories so that you can understand
17 what the -- we consider to be the major legal issues that you
18 need to consider.
19 And then after I'm done talking about the legal
20 issues, then we'll have the accountants talk -- get up and do
21 something which I'm not good at and talk to you about numbers.
22 The first issue is the jurisdictional principles.
23 We've given you the brief. I'm going to spend a little bit of
24 time going over it because I don't think you've had a chance
25 to review it, but it is paramount that you understand there

1 are some very important jurisdictional princi --
2 jurisdictional principles at play here which we believe
3 prevent you from even taking action on this application.
4 The second issue relates to the jurisdictional
5 principles and that's the takings and due process arguments.
6 You've heard the owners' representatives. You've heard them
7 say fair and just return, taking, Fifth Amendment, 14th
8 Amendment, throwing all this stuff out at you.
9 I can tell you that after researching this, you need
10 to understand this because what you're being fed is nothing
11 but a pile of garbage.
12 And with all due respect to the City staff, in their
13 own staff report there was a throw-away two-line sentence that
14 if you don't give them a just and reasonable return, you'll be
15 taking their property. And I'm challenging you -- to tell
16 you -- I'm challenging you to listen to this very carefully
17 because it's just not true.
18 There's also some estoppel and contractual issues
19 involved here. The park owner's attorney would have you
20 believe that the estoppel issues work in their favor and that
21 there's some 30-year sunset clause on this trailer park
22 development permit and the resolution that amended it. It's
23 just not true.
24 The Government code that the trailer park -- the park
25 owner's attorneys relied on doesn't say that. It's just not

1 true. And the other principles about estoppel and the taking
2 and we can't give up our constitutional rights, more garbage.
3 So we're going to talk about that a little bit.
4 And lastly when we go through the ordinance itself
5 after getting through all that, if you guys decide you still
6 want to be here, we want to talk about numbers, I need you to
7 spend a little bit more -- little time looking at the
8 statutory interpretation because you need to understand what
9 rules you need to follow to interpret the Rent Stabilization
10 Ordinance as well as RAC-2 and RAC-5 because I don't believe
11 based on what I've heard from the reports that have been
12 submitted to you that this has been adequately explained to
13 you.
14 So again, I apologize if I sound like a little bit
15 too much like a law professor here, but I think it's helpful.
16 All right. Next slide, please.
17 The first thing is the jurisdictional argument. I've
18 taken the brief and summarized into some bullet points. I
19 encourage you to read the brief. It was written by a lawyer
20 who is much smarter than I am and who understands -- who was
21 able to present to you I think in a very important fashion a
22 way for you to understand why we shouldn't even be here.
23 The Commission has no jurisdiction to consider a rent
24 increase at the Ranch because this park is governed by
25 Resolution 84-037 and trailer park development permit 74-6,

1 not the Rent Stabilization Ordinance.

2 It states very specifically in the Rent Stabilization
3 Ordinance that the Rent Adjustment Commission has limited
4 jurisdiction. It has the power to carry out the provisions of
5 the mobile home Rent Stabilization Ordinance or of any
6 ordinance regulating rents in an apartment complex. That's
7 not what we have here.

8 Ranch is not governed by the Rent Stabilization
9 Ordinance. Ranch is governed by trailer park development
10 permit 74-6 as amended in 1977 and again in 1984 through
11 Resolution No. 84-307.

12 And because Resolution 84-037, which amended the
13 trailer park development permit, governs rent increases at the
14 Ranch, not the Rent Stabilization Ordinance, this Commission
15 has no jurisdiction to even consider, to even be here today.
16 Only the City Council gets to make that call.

17 Lucky for you, you guys can walk away and throw this
18 to the City Council, and that's what you should be doing
19 because I wouldn't want to be in your shoes and have to make
20 this very, very hard call about what to do with the residents
21 of the Ranch Mobile Home Park.

22 I know there's some representatives of other parks,
23 resident and owner representatives on this Commission, and
24 it's important to understand that Ranch is its own little
25 special set of circumstances, not Thunderbird, not Vallecito,

1 not any of the others that I can't name. It's the Ranch.
2 And the Ranch got special rules applied to it because
3 that's the way it was designed from the beginning, and that's
4 why you have people who live on less than a $1,000 a month
5 living here.
6 Next slide, please.
7 Even staff in their memo conceded that the Commission
8 does not have jurisdiction to consider the validity of age and
9 income restrictions under which the park was entitled to and
10 has been operating. They also -- the Commission doesn't have
11 jurisdiction to consider the rents that were established by
12 those development approvals for the park.
13 Although noting the Commission's lack of
14 jurisdiction, staff nonetheless says the Commission has the
15 power to contravene the 4 percent rent increase limit in
16 Resolution 84-037.
17 And it's conclusion is based on two things; one is
18 the Rent Stabilization Ordinance was intended to supersede or
19 trump Resolution 84-037, a statement with no factual basis
20 behind it whatsoever in the staff's memo, and actually the
21 staff's memo contradicts it and the documents we're going to
22 go over contradict that.
23 And the other argument is that continuing application
24 of the rent increase limitation in Resolution 84-037 would
25 violate due processes of taking of private property. Not only

1 is that not true, but guess what, it doesn't matter because
2 unless and until Resolution 84-037 is found unconstitutional
3 by a court of law, you're stuck with it unless the City
4 Council decides to amend -- to repeal it. And they'd have to
5 go through a whole noticed hearing process before that could
6 ever happen.
7 So simply stated, the staff report on this issue is
8 simply incorrect. So let's talk about - the next slide,
9 please - the history of Ranch. We lawyers spend a lot of time
10 talking about legislative history. It's important you
11 understand the background and history of Ranch.
12 The RSO does not trump Resolution 84-037, and the
13 history of Ranch shows that that's, in fact, been the case for
14 the past 30 years since the Rent Stabilization Ordinance first
15 came into effect consistently every single place except for
16 now.
17 First of all, it's important to note that Ranch has
18 never registered under the RSO. We got that admission back in
19 December. I think you may recall that. They haven't paid
20 their fees to register because they didn't have to.
21 If they were supposed to be a park under the RSO, you
22 would think that the City would have been after them for their
23 registration fees, but no. And if they were supposed to
24 register, they owe the City a lot of money at this point,
25 don't they? But they weren't and they didn't.

In the staff report -- and I'm not going to read all of this to you. It's in your -- you have a copy of the PowerPoint. You have a copy of the report. There's several places where the staff recognizes that their RSO never applied to the park.

But what I want you to look at and I think this is where it's most important is I want you to look through and I want you to understand the history of the Ranch as it's told by the documents. The documents, as we lawyers like to say, speak for themselves.

So I prepared - next slide, please - a time line summary of the documents and I also attached all the documents to this -- put them in the binder. So if you go to starting at page 34 of the binder, how did Ranch Mobile Home Park come into being.

It's important to understand that history and figure it out 'cause I know that the Commission had a lot of questions at the last hearing, and they were good questions about how it came into being and what's happened since then and why the heck haven't there been rent increases for the past 31 of 33 years. Well, guess what? It's because the rules were different. The Ranch was an apple. All the rest of the parks in the city were oranges.

So going through the time line, let's start May 24th, 1974. Former property owner applied for a zone change from

1 RPD-15 to trailer bark -- to trailer park development with the
2 justification that this was for development of a much needed
3 low-income mobile home park site.
4 He came to the City and said, "I want to change the
5 zoning -- spot change the zoning for this parcel and I don't
6 want to build 15 residences on this property. I want to build
7 a trailer park. And even though I probably shouldn't be
8 allowed to, I'm going -- will you please let me do so so I can
9 build a low-income senior park?"
10 And on June 24th, 1974, staff issued a report and
11 guess what? Mr. Prescott was the guy who wrote that report
12 back in 1974 and he was an associate planner.
13 And he wrote that report and he said, you know what,
14 this really isn't an appropriate site for a mobile home park
15 because it's right in the middle of all these residences.
16 It's not -- it's only -- it's not big enough. There's a lot
17 of problems with this zone application that the Planning
18 Commission should consider.
19 But we think it's a good idea because the proposed
20 zoning and corresponding permit are submitted to provide for
21 lower-income housing for senior citizens and therefore it's
22 okay that the City changes the rules for Mr. Wyckoff because
23 he's going to develop a low-income senior park.
24 It seemed like a pretty good compromise. The staff
25 report if you want to take a look at it is in the materials.

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1 I don't know if you've ever seen it. I don't know if it's in
2 what you already have. I didn't see it in the other staff
3 materials or the materials submitted by the owner.
4 So in that report Mr. Prescott recommended that
5 provided that the property owner guarantees in an appropriate
6 manner to the City that this park will be used for this stated
7 purpose and that September 3rd, 1974, City approved the zone
8 change.
9 And that's when the negotiations started as to what
10 the deal was going to be, what the two-sided negotiated
11 bargain was going to be between the property owner and the
12 City as to what the rules were going to be for developing this
13 as a low-income senior park.
14 On November 18th, 1974, the Planning Commission
15 approved development permit TPD 74-6 for the mobile home park
16 with the condition No. 27. You heard me talking about it to
17 Mr. Hohn, "Have you ever seen this?"
18 And the condition requires that the park be a low-
19 income mobile home park rental. From its inception, this park
20 was required to be an affordable housing project. It wasn't a
21 market condition.
22 We give you your zone change, we let you do something
23 different with this park that kind of doesn't really fit where
24 it is -- if you've ever been out there, it doesn't exactly --
25 doesn't match the apartment complexes and the houses nearby.

1 It fits in nicely because they did a really good job
2 of maintaining it, but really, it's different. And the reason
3 it's different is because of the guarantee that it was going
4 to be a low-income senior park.
5 The former property owner, Mr. Wyckoff, appealed some
6 conditions of the trailer park development permit, but never
7 appealed the low-income restriction, condition No. 27.
8 On January 21st, 1975, the City Council approved the
9 appeal of the conditions and modifications of certain
10 conditions but not condition No. 27.
11 But interestingly, not only did they change the
12 zoning, but they gave this park owner some additional -- or
13 the property owner at the time some additional concessions.
14 You don't have to build a block wall. You can build a cheaper
15 chain link fence, and the pads don't have to be -- I don't
16 know what this means, but more imaginative.
17 They started changing the development conditions for
18 this park because the owner was saying low-income senior, low-
19 income senior, low-income senior, cut me a break. I'm doing a
20 good thing, so you guys need to step up and cut me a break on
21 these development conditions and make this park an easier park
22 to build.
23 In 1976, the City waived about $110,000 in
24 development fees in addition to other concessions made through
25 that land use approval process that we talked about to allow

1 for development of the low-income senior park.

2 And unfortunately I got this a little late to put

3 into your materials, but I know it's in -- on a PDF somewhere

4 in the City attorney's office if you want to look for it,

5 there's a letter dated June 14th, 1976 to a Mr. Pierce, who's

6 an attorney, from a Fred Wilson, CPA, talking about the

7 importance -- and at page 2 of this letter, it talks about the

8 importance of those development fee waivers in establishing

9 the rents.

10 And it talks about that because what they were trying

11 to figure out was what was a target profit percentage for this

12 park. Back in this time when they were trying to figure out

13 what the rents should be for the park and the negotiations

14 were going back and forth for a couple year time period, the

15 City wasn't requiring what we do now.

16 You heard a lot of discussion about HUD and 30

17 percent and -- affordable housing project rents are set in a

18 different way now than they were back in the late '70s.

19 So what the City -- what the park owner said is

20 because you've given me these development fee approvals, I can

21 set these park rents lower than the Thunderbird park because

22 they were building the Thunderbird park at the same time.

23 Because after Mr. Wyckoff stepped out of this deal, the Hohn

24 Family stepped in and bought this parcel and bought the

25 Thunderbird parcel and built both of them right around the

1 same time.

2 And the reason why the rents were about 17 percent

3 below what was charged at Thunderbird is because they got

4 $110,000 in development fee waivers, and this letter says

5 exactly that.

6 On July 27th, 1976, the City Council interpreted

7 condition No. 27, that one we talked about and they did an

8 amendment. And unfortunately, the City Council minutes are

9 unavailable. I checked the City's website and for some reason

10 they were never prepared or they've been destroyed.

11 But what we do know is on -- 1977, an amendment to

12 trailer park development permit No. 74-6 was approved and it

13 set the rents for the Ranch park after this two-year long

14 series of negotiations back and forth of what they were

15 supposed to look like, this two-sided bargain between the City

16 and the Hohn Family, it set the rents based on an 11.5 percent

17 net profit percentage as a return on investment formula and

18 set tenancy qualification of sixty-two years old and income of

19 no more than $10,000 per year.

20 So this is the deal that the City made with the

21 owner. We will continue to allow you to operate this park

22 because if he doesn't comply with the development permit

23 requirements, he doesn't get to operate the park. But these

24 are the rents that you have to do, set, and this was the

25 bargain that they struck as part of the development approvals.

1 On August 9th, 1977, at the owner's request, you've
2 seen the CPA letter, the owner said based on that formula and
3 based on our expense calculations and our income calculations,
4 these are the rents that we want, and the City said okay.
5 Let's set rents like that.
6 They came -- we're coming to the end of their -- the
7 final negotiations of their deal, and the park owner got what
8 he wanted. He got to build his park. And the City got what
9 they wanted. They wanted a low-income senior park.
10 And Mr. Hohn on September 11th, 1977 executed a
11 document accepting all of the conditions. He signed a deal
12 with the City and never appealed that because he got exactly
13 what he wanted.
14 And I think it's fair to say that it's reasonable to
15 assume that Mr. Hohn's a pretty sophisticated businessman and
16 a property developer. He knew what he was doing.
17 After that, in 1980, the City adopted the Rent
18 Stabilization Ordinance, never applied to the Ranch park. In
19 1983, the owner of the Ranch park made a rent increase
20 application to the City Council separate and apart from the
21 Rent Stabilization Ordinance.
22 City Council referred the issue to the Rent
23 Adjustment Commission for evaluation, and on August 9th, 1983,
24 the rent committee issued a memo -- oh, this was -- so this --
25 this whole rent increase application was being evaluated.

1 But at the same time there was some evaluation about
2 extension of the Rent Stabilization Ordinance, because as you
3 may recall when it was adopted in 1980, it was a three-year
4 temporary ordinance, emergency ordinance.
5 So in 1983, there was a separate committee that's
6 evaluating should we keep this Rent Stabilization Ordinance
7 going, and in the memo dated August 9th, 1983, they recognize
8 the importance of the Rent Stabilization Ordinance, points out
9 that an increase in rents and total vacancy decontrol has a
10 detrimental impact on the marketability of coaches.
11 Nowhere in there is there any discussion about what
12 to do about Ranch, and the reason why is because Ranch wasn't
13 part of it. It had its own separate deal. And in fact, on
14 December 8th, 1983, when staff issued its memo to the Rent
15 Adjustment Commission regarding the proposed rent increase, it
16 specifically stated that the rents in the Ranch park are
17 limited by trailer park development permit 74-6 and its
18 modifications, not the Rent Stabilization Ordinance.
19 And on January 24th, 1984, staff issues a memo to the
20 City Council subsequently regarding what the Rent Adjustment
21 Commission came up with as far as recommendations for the
22 Ranch park proposed rent increase and modification of the
23 trailer park development 74-6, and this is where Resolution
24 84-037 came from. Again, nowhere at any time during this time
25 period did anyone have a discussion about the Rent

1 Stabilization Ordinance 'cause it simply did not apply to the
2 park.
3 On February 7th, 1984, Resolution 84-037 was adopted
4 allowing the rent increases for the Ranch park to be based on
5 a set formula. 1984's rent increase was allowed at 7 percent,
6 and subsequent years were allowed up to 4 percent based on 100
7 percent of percentage change of CPI on a yearly basis with no
8 recapture, use it or lose it.
9 On September 9th, 1986 when the City Council was
10 evaluating whether or not they should extend the Rent
11 Stabilization Ordinance, the rent committee issued another
12 memo to the City Council regarding proposed changes to the
13 Rent Stabilization Ordinance in adoption of a permanent Rent
14 Stabilization Ordinance for mobile home parks.
15 In that document, they note that the new Rent
16 Stabilization Ordinance would apply to all parks within the
17 city with the exception of the Ranch Mobile Home Park which is
18 under a separate affordable housing agreement.
19 In 2000, the owner of the Ranch park made a second
20 rent increase application, and in that application the owner
21 of the Ranch park specifically put at the top Resolution
22 84-037. It was well-recognized by all the players involved at
23 this point that the RSO didn't apply. It was all about
24 trailer park development 74-6 as modified by Resolution
25 84-037.

1 On August 30th, 2000, staff met with the owner of the
2 Ranch park and sent a letter following regarding the proposed
3 rent increase application. And I put in the materials, you
4 probably have it already, but it's worth looking at again, the
5 letter and the memo.
6 And the staff note -- staff notes and the letter
7 indicate that correctly Resolution 84-037 would have to be
8 repealed and other action would have to be taken to bring the
9 Ranch under the purview of the RSO because it wasn't there.
10 It wasn't part of the Rent Stabilization Ordinance. At least
11 it had been treated as that for that many years and everybody
12 had gone forward in their business relying on that, including
13 the owner.
14 The owner was given the option of going forward with
15 a public hearing of trying to come within the purview of the
16 RSO or take the rent increase of 4 percent allowed by
17 Resolution 84-037 and the owner just chose to stay with
18 84-037. And I think that's because he got more money that
19 year if he did that. We've done a little analysis and that
20 year the rent increase under the RSO would have been less than
21 4 percent.
22 In June 2008, the City issued a document - in your
23 materials -- a reporter sent this to me. Can you believe
24 this? Still posted on the City's website. It's still there -
25 indicating -- it's talking about everything that the City of

1 Thousand Oaks is doing for mobile home parks.

2 And in that document, which is in your materials, it

3 specifically provides that Resolution 84-037 provides the

4 formula for establishing rents in the Ranch park. And even in

5 the staff's materials and in the owner's materials, everybody

6 admits that up until right now the Rent Stabilization

7 Ordinance has never been applied.

8 And that's one of the reasons why this has gotten so

9 complicated and we have to do all these statistical

10 extrapolations and stuff, and that's more importantly one of

11 the reasons why all of the folks sitting here today are so

12 upset because they counted on this.

13 They were told their rent may be increased by just a

14 few dollars, and that's likely why there's a lot of NA's in

15 those leases, a lot of not applicables in those leases because

16 this wasn't like every other park in the city.

17 One other thing I wanted to bring out and it really

18 doesn't have anything specifically to do with the history of

19 the Ranch park, but I think it's important to understand

20 historically context for the City of Thousand Oaks. On July

21 15th, 2008, the City Council adopted a new ordinance related

22 to relocation for mobile home park residents.

23 And the reason why I think it's important that you

24 pay attention to that ordinance is because of its preamble.

25 That ordinance was adopted after the voters came to the City

1 Council with an initiative petition and said we want this on
2 the ballot and the city said no, it's okay. You don't need to
3 put it on a ballot. We're going to adopt it.
4 And in that ordinance, the voters and the City
5 Council, the City of Thousand Oaks specifically recognized
6 that mobile home parks provide affordable and necessary
7 housing for senior citizens and minimizing the impact of
8 displacement of seniors and others from their homes is
9 essential to maintaining the economic and social well-being of
10 our communities.
11 Just like you heard from the residents and just like
12 you heard from me and now you heard it from the voters and the
13 City Council, this is important that we protect these people
14 who live in these parks. It's not all about protecting or
15 providing some windfall for -- not just protecting. I don't
16 look at it that way, a windfall for the family of a park owner
17 who's now decided they want to change all the rules without
18 basis for it or authority.
19 It is not your job and absolutely contrary to your
20 job to give these folks the windfall they're asking for. This
21 isn't about their constitutional rights, because their
22 constitutional rights have been well-protected for the last 33
23 years every step of the way when they bought into this deal
24 that they made. And if they didn't like it back then, they
25 should have appealed it back then.

1 This is about a-ha, let's try to get a 500 percent
2 rent increase from a bunch of folks who can't afford a lawyer.
3 And even if I weren't standing here today and hadn't been
4 blessed with this amazing team of talent who volunteered their
5 time for these folks, I trust that you members of the
6 Commission would do the right thing and do your respons -- and
7 discharge your responsibility well.
8 You have a responsibility to protect the people who
9 live in this park and not to be -- just protect the so-called
10 investment-backed expectations of this park owner because
11 guess what, those have been protected for years.
12 All right. Back into the law. Next slide is
13 Resolution 84-037 cannot be deemed a taking of private
14 property because the owner accepted its benefit and is bound
15 by its burdens. Cited some authority for you there if you
16 feel like reading it. I'm guessing that the City attorney has
17 these cases handy. They're cited in the brief.
18 The owner accepted the benefits of the original land
19 use approvals under which the zoning was changed. The owner
20 received over $100,000 in development fee waivers, and the
21 City permitted the park to be built with fewer planning
22 restrictions than would otherwise have been required all in
23 exchange for this agreement to provide housing for low-income
24 seniors with very specific restrictions on rent increases.
25 This is not a situation like you see when rent

1 stabilization is challenged, where there's a unilateral
2 imposition of rules. You know, rent stabilization ordinances
3 are adopted unilaterally and the park owner doesn't have any
4 say in whether the rents are restricted or not. They're stuck
5 with it. That's why we do the Vega analysis and the year
6 before and all that.
7 But this is a different situation. This park owner
8 bought on to this deal. And remarkably even though the names
9 and the titles of the owners have changed, it's the same
10 family who's owned this park since the day it was built, and
11 this was a deal that that family bargained for and they can't
12 complain about it now. And that's what those cases say. You
13 get the benefits, you're stuck with the burdens.
14 Also then the next slide, the Resolution 84-037 and
15 the trailer park development permit cannot be considered a
16 taking especially in light of that recent court decision of
17 Guggenheim. And the Guggenheim decision factually is
18 different than what we have here because there the park owner
19 was actually challenging the ordinance itself and making a
20 facial challenge to the ordinance itself.
21 But the Guggenheim -- what the Guggenheim decision
22 does have is some very important language in terms of what
23 factors need to be analyzed when there's price restrictions
24 put on property.
25 So putting the benefits and burdens argument aside,

1 the analysis that the Guggenheim court said was this is about
2 investment-backed expectations. And the owner's
3 investment-backed expectations here can only be read to he
4 accepted the deal that he asked for. That's what he bought
5 into. That's the deal he asked for.
6 The reason why we gave you all that data and Jim is a
7 statistician and is again better at numbers than I am and
8 we've given you all the information about the residents'
9 investment-backed expectations is because as I believed back
10 in December but as was confirmed thankfully by the 9th Circuit
11 two weeks later, the residents themselves have a stronger
12 investment-backed expectation than the owner ever did in this
13 park.
14 The estimated aggregate of the residents' investment
15 in this park is over 4 million dollars. They have a right to
16 expect that their investment is going to be protected.
17 When Valerie did her due diligence and spent two
18 years looking for a place to live and invested her entire life
19 savings pretty much into the coach and the improvements she
20 made, she has a right to expect that the City's going to honor
21 that and not just change the rules which is exactly what
22 you'll be doing if you approve the rent increase as requested
23 and all of the other residents who have done the same thing,
24 and you can read their stories in their declarations and I'm
25 sure you'll hear from them tonight.

1 From its inception, the park has been continuously
2 burdened with rent restrictions in exchange for the benefit of
3 getting to run a cash cow mobile home park.
4 The last -- the next slide I want to talk to you
5 about and again still focusing on the jurisdictional issues,
6 even if Resolution 84-037 might be subject to some kind of
7 constitutional attack, the Lockyer case, and I think you may
8 remember a little bit reading in the papers about this, this
9 is about the law related to same-sex marriages. That's what
10 the Lockyer case is about.
11 But remarkably, the Lockyer case cites as an example
12 a development permit, land use, and what it says is that you
13 can't create your own jurisdiction by assuming the
14 unconstitutionality of the resolution unless and until
15 Resolution 84-037 and trailer park development permit 74-6 are
16 found to be unconstitutional. You're stuck with them.
17 And the Lockyer case made it very clear that unless
18 there's been a judicial declaration to the effect that those
19 are a taking or unless the City Council appeals it -- repeals
20 it, you can't refuse to enforce it. You're stuck with it.
21 That's actually a good thing for you. You don't have to make
22 those decisions.
23 All right. So I spent a little time on the takings
24 law. Before I finish up on the takings law, I think that some
25 of the estoppel arguments that have been raised by the owner

will be addressed in the brief, but I would encourage you to look at that Government code section cited and read it because it's about density bonuses and that doesn't apply here. It's just the deal we had. There was no 30-year sunset clause.

In fact, I think if you read -- research the history of this park, there was actually the inverse of a density bonus. I don't even know what you call that. The park was required to be less dense.

The park was like less dense than what the restrictions would allow. He didn't get some extra density -- he didn't -- the City didn't give up density to allow this park to be developed.

So with regard to the contract and estoppel principles, basic principles of contract law and estoppel.

You could move the slide probably to the next couple more. Right there.

Basic black letter law: If you accept the benefits of a contract, you can't just deny its validity. A voluntary acceptance of the benefit of a transaction is equivalent to consent to all of the obligations arising from it. He who takes a benefit must bear the burden.

And if you could go to the next slide.

There's a bunch of cases cited here that applied these contract and estoppel principles with equal force, if not even stronger in the real estate and land use context, and

1 in fact, some of them even cite these contractual code
2 sections if you look at them.
3 All right. So go -- if you could go to the next
4 slide.
5 So talking about principles of contract and estoppel,
6 those require that the owner of the Ranch park be bound by the
7 deals that the owner made with the City and the residents.
8 What benefits did he get? He got a zoning change. He got
9 waiver of development fees. He got some other development
10 concessions and he's gotten payment of the rent from the
11 residents every month for the past 33 years.
12 These people pay their rent. They kept their deal.
13 The owner should be forced to keep his. And what are the
14 burdens he's stuck with? Or the owner -- I say "he," I mean
15 the owner. I mean the corporation, but it's easier to say
16 "he." Tenant restrictions based on age and income, limits on
17 annual rent increases now pursuant to Resolution 84-037 to
18 ensure rent stability for seniors living on fixed incomes.
19 And the rent increases in a number of the contracts
20 have been waived by the contracts themselves, and as you'll
21 read in the declarations, the representations that were made
22 to the tenants, the residents when they moved into this park:
23 Your rent's not going to be raised. Your rent is stable.
24 You're not subject to the rent increases. They all -- they
25 heard it all. They got the great sales pitch. It's time for

1 the owner to deliver.

2 Some other principles of contract and equity that we
3 need to take into account here and I know it's been a part of
4 much discussion and questions -- good questions from the
5 Commission, and that is does the owner get to make up for the
6 rent increases they didn't take, is the -- does the RSO have a
7 use it or lose it provision, does Resolution 84-037 have a use
8 it or lose it provision.

9 If you look at the Rent Stabilization Ordinance
10 itself and especially the just -- not -- it's actually in
11 RAC-2, the just and reasonable return provision, it allows for
12 an owner in any given year to apply for a higher rent than the
13 maximum rent allowed under the ordinance.

14 If the maximum rent for that particular year does not
15 provide for a just and reasonable return based on unusually
16 high expenses, it doesn't allow the owner to catch up after
17 making a deliberate and conscious decision to forgo potential
18 rent increases for 30-plus years.

19 And this is recognized in Section 2.05 of RAC-2 which
20 we're going to talk about a little bit later. The development
21 approvals of the park don't allow this catch-up provision and
22 the contracts with the residents don't allow this catch-up
23 provision. And it doesn't make sense -- more importantly, it
24 doesn't make sense and we're going to talk about that.

25 I've been told that the court reporters need a break

1 again. I talk fast. And I don't know if the Commission is
2 going to allow for that at this point or not, but this would
3 be a logical place for me to stop if we're going to take a
4 break.
5 CHAIR WERTHEIMER: All right. We'll take a break and
6 be back at 9:30.
7 MS. SPENCER: Great, thank you.
8 (Recess.)
9 CHAIR WERTHEIMER: Ms. Spencer, can I ask you a
10 question. How much more time we'll be, because we have three
11 witnesses and we want to think about -- they're going to have
12 to stick around.
13 MS. SPENCER: Three witnesses -- you mean the
14 people --
15 CHAIR WERTHEIMER: Georgia --
16 MS. SPENCER: Oh, Georgia's already been given -- she
17 actually went home 'cause she wasn't feeling well. Mr. Hill
18 indicated he didn't want to cross-examine her.
19 CHAIR WERTHEIMER: Well, she needed to stay.
20 MS. SPENCER: Okay. Did -- did the Commission have
21 some questions for her? Do you want me to see if I can get
22 her back here?
23 CHAIR WERTHEIMER: Yes, please.
24 MS. SPENCER: Okay. Okay. She might -- and my
25 apologies. I -- I checked with Mr. Hill and I should have

1 checked with Mr. Hehir.

2 CHAIR WERTHEIMER: Uh-huh.

3 MS. SPENCER: Not used to having multiple lawyers I

4 have to consult with, so my apologies.

5 All right.

6 MR. HEHIR: Well, if -- if I may just for the

7 Commission, I mean my biggest concern for Mr. Hill to make

8 sure that he had the right to cross-examine that -- all the

9 witnesses that come on board. If he's -- you know, if you

10 guys have questions for her, that's fine. I just want to make

11 sure that --

12 CHAIR WERTHEIMER: Let's find out.

13 MR. HEHIR: Okay.

14 CHAIR WERTHEIMER: Does anybody on the

15 Commission have -- any Commissioners have any questions for

16 the lady that left?

17 Mr. Hill?

18 MR. HILL: No.

19 CHAIR WERTHEIMER: Any staff?

20 MS. SPENCER: Okay. I guess we don't need her back.

21 CHAIR WERTHEIMER: Ms. Spencer, any questions?

22 MS. SPENCER: No, I don't have any more questions.

23 CHAIR WERTHEIMER: Of her.

24 MS. SPENCER: I don't have any questions for her.

25 CHAIR WERTHEIMER: All right.

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1 MS. SPENCER: Okay. Going back to some of the legal
2 issues, I think that the statutory language -- one of the
3 other things that I think is important to remind the
4 Commission of is that you are being tasked with the obligation
5 of interpreting and applying a statute.
6 So some of the basic principles behind statutory
7 interpretation need to be kept in mind when you're making your
8 decision as to what this -- how this statute should be applied
9 assuming that you agree that you have jurisdiction and you can
10 apply the Rent Stabilization Ordinance to this park.
11 And assuming you'll agree with the City's and the
12 park owner's contention that you have jurisdiction, then you
13 still have an obligation to apply the statute in a number of
14 ways.
15 One is you have to apply it according to its plain
16 meaning; two is - next slide, please - you have to apply it so
17 as not to render any language in the statue meaningless or
18 mere surplusage. And we'll take about where this matters when
19 we get to that point in the statute.
20 Next slide, please.
21 Statutory language should not be read in isolation
22 but must be implied consistent with similar provisions in the
23 statute. You've got to harmonize the statute within itself.
24 And then the next slide, please.
25 And statutory language should be applied consistent

1 with the purposes of the statutory scheme and so as to avoid
2 an absurd result.
3 When we were on the break, I was having a discussion
4 with somebody and actually I think this kind of brought this
5 last one home to me the best, in the best way I can explain
6 it.
7 This park is set -- the people who live in this park
8 can only make a certain amount of money per year maximum and
9 they were qualified to move into this park based on those
10 income restrictions. But the way the proposed rent increase
11 and the proposed application of the rent increase is set up,
12 these people who have to make a small amount of income to live
13 there will never be able to afford the rent increase proposed.
14 So it's -- you're creating a situation where there's
15 a requirement that these folks -- and they actually only make
16 less than $1,000 year on average -- I mean $1,000 a month,
17 excuse me, on average, $12,000 a year, but that they make no
18 more than $30,000 approximately per year, yet the rent
19 increase proposed makes them have to pay such a huge amount of
20 their income, they'll never be able to afford to live.
21 They won't even be able to exist, as one of them
22 said, that they don't even want just to exist. They want to
23 live. And I think that is important to take into
24 consideration when you're looking at a rent increase for this
25 park and why Ranch is different and unique, because the very

1 restrictions which created this park and which flow with this
2 park will make it impossible for the folks to continue to live
3 there.
4 So what's the end result going to be? The end -- the
5 logical end to that result is going to be they're going to
6 walk away from their mobiles that they won't be able to sell
7 because nobody will be able to afford to buy them because they
8 won't be able to pay the rent, not because they can't pay the
9 market price.
10 And they won't be able to continue to stay there and
11 you're going to have a vacant park, which I'm sure is great
12 for the owner because then he can redevelop it into something
13 else. But that's not what the City approvals for this park
14 called for and that's not what the folks who moved into this
15 park counted on when they invested their over 4 million
16 dollars into their mobiles and the improvements.
17 I think the term was a reverse wealth transfer and
18 that's just completely contrary to the purposes of this park
19 and the Rent Stabilization Ordinance.
20 So if we could go to the next slide.
21 The legislative purposes of the Rent Stabilization
22 Ordinance, to provide affordable housing for low-income
23 residents living on fixed incomes and to provide long-term
24 rent stability for mobile home tenants to avoid displacing
25 them due to their inability to pay increased rents. That's

1 the whole reason we have it.

2 Now, politically some people don't agree with rent

3 stabilization, but it is what it is. And I think it's very

4 hard for anybody to argue with the fact that we have to have

5 stabilized rents in this park in particular. Some of the most

6 vulnerable members of our society, elderly, fixed-income,

7 disabled, low income -- very low income.

8 Next slide please.

9 The RSO itself requires that the Commission find that

10 the proposed increase is in keeping with the purposes of the

11 ordinance. Section 5-25.06 talking about the just and

12 reasonable return increases, you have to make a specific

13 finding that the increase is in keeping with the purposes of

14 the ordinance. So what are the purposes of the ordinance?

15 Next slide, please.

16 The RSO's purposes are stated very clearly in the

17 preamble to the RSO. Not unlike a lot of other rent

18 stabilization laws that are adopted, the rent -- the language

19 of the RSO provides that if you have -- don't have stabilized

20 rents, you'll exacerbate the shortage of vacant and available

21 mobile home places in the City of Thousand Oaks. You'll cause

22 tenants on fixed incomes to be displaced as a result of their

23 inability to pay increased rents and to relocate at a

24 substantial loss or expense, will cause those with fixed

25 incomes to be unable to find decent, safe and sanitary new

1 housing at affordable rent levels, will cause tenants to
2 attempt to pay requested and uncontrolled rent increases which
3 will require them to expend less on other necessities of life,
4 will have a detrimental effect and cause hardship on senior
5 citizens with fixed and low incomes.
6 And then I'm going to add some more things not in the
7 Rent Stabilization Ordinance itself but certainly implicit in
8 it. Substantially impair the investment-backed expectations
9 of the residents, will cause the rents to be increased by a
10 substantial percentage in a single year contrary to the
11 purpose and plain language of the RSO and will allow for
12 recapture of rent increases for 31 of the past 33 years where
13 owner deliberately agreed not to increase rents and decided
14 would forego any increase.
15 Mr. Hohn said -- admitted on cross-examination that
16 his dad made -- was the shot caller. He could decide whether
17 to increase rents and decided not to. He made a deliberate
18 business decision not to do it.
19 And maybe he did that out of the goodness of his
20 heart. We don't know. He's not here, but the point is it was
21 a deliberate decision.
22 So in keeping with the purposes of the Rent
23 Stabilization Ordinance and the park itself, this park, the
24 Ranch Mobile Home affordable housing project, low-income
25 senior park, if this Commission decides to exercise

1 jurisdiction, you get to adopt an alternate formula.

2 And I know I heard the owner's attorney say, well, we

3 didn't present one. Well, guess what, we didn't have to

4 present one 'cause the City created one in 1984. There's no

5 reason why you have to apply the MNOI formula here because

6 there's clear and convincing evidence that it would be

7 directly contrary to the purposes of the Rent Stabilization

8 Ordinance.

9 You have an alternative. You already have an

10 alternative that was evaluated by the City, both the Rent

11 Adjustment Commission and the City Council, back in 1984 and

12 approved by the park owner 'cause he never challenged it

13 within the 90 days he was required to do that back in 1984.

14 And then he used it to his own benefit in 2000 when he applied

15 for the new rent increase.

16 Why not just use 84-037. You have the right to do it

17 and you should do it. Matter of fact, there's no reason why

18 you shouldn't. So if you're going to pick -- if you're going

19 to approve a rent increase based on a just and reasonable

20 return, use 84-037. This is the deal the owner bargained for.

21 This is the deal the City bargained for. This is the deal

22 that the residents bargained for.

23 No need to reinvent the wheel for this park. So pick

24 it. Decide you're going to evaluate the rent increase

25 application and use 84-037. There's nothing in the law that

1 requires you to make up for 31 of 33 years of rent increases
2 that the owner deliberately required you to forgo -- strike
3 that. I didn't say that right, that the owner deliberately
4 decided to forego.
5 You don't have to make up for his bad business
6 decisions. That is not your obligation and to do so would be
7 directly contrary to the very purpose of the Rent
8 Stabilization Ordinance, to provide some certainty about rents
9 for this very vulnerable population that don't really have
10 mobile homes. They're not on wheels. They're bolted to the
11 ground, and they can't move them and they have nowhere else to
12 go with them anyways if they could.
13 So turning your attention to the financial
14 worksheets, starting at 101 of the notebook right behind the
15 green page that says "Financial Worksheets." By the way, I
16 picked green because my team's going to the Super Bowl. So it
17 must be a good day for me.
18 CHAIR WERTHEIMER: We all have dreams, Counsel.
19 MS. SPENCER: Pardon?
20 CHAIR WERTHEIMER: We all have dreams.
21 MS. SPENCER: Oh, go Pack, go. All right. Sorry.
22 This gets a little boring. Had to have some levity.
23 I'm not very good at math. I've admitted that, but
24 even I can figure out what the rent increase would be under
25 84-037. So I don't like to testify 'cause I don't like to be

1 cross-examined, but I will tell you I put that sheet together.
2 It's a very simple formula in 84-037.
3 You take your CPI for 2009. You deduct the previous
4 index of 221.4. And actually, truthfully, I didn't do this
5 all on my own. I even needed someone to help me.
6 And you get the index point change of 4.1, divide it
7 by the previous index of 221.4, get your results, multiply it
8 by 100. Your percentage change is 1.85 percent. Resolution
9 84-037 says that for this application, they get 1.85 percent.
10 Alternate formula there already packaged, ready to go
11 for you and agreed upon by the Rent Adjustment Commission,
12 agreed upon by the City Council and accepted by the park owner
13 since 1984. No need to reinvent the wheel, and you wouldn't
14 run afoul of all those constitutional principles and those
15 other legal principles we talked about.
16 And it might even keep Mr. McCarthy happy because
17 this formula is based on 100 percent of the change in the CPI
18 for that year. You don't even have to back it off to 40
19 percent. It's wholly consistent with the parties' investment-
20 backed expectations and their constitutional rights. Anything
21 else would be contrary.
22 We're not saying that the owner doesn't get a rent
23 increase, but he gets 1.85 percent, and he doesn't get to make
24 up for the past 31 of 33 years where he decided not to raise
25 rents and doesn't -- more importantly, doesn't make the folks

1 who haven't been living at the park for the last 31 of 33
2 years pay for his bad business decisions. So I will suggest
3 to you that that is an alternative that you could employ,
4 tested, tried, approved.
5 All right. Now, for the more difficult part. Let's
6 assume you decide to exercise jurisdiction and let's assume
7 you decide you don't want to use Resolution 84-037 and you're
8 going to ignore that and ignore the trailer park development
9 permit and you got to got with the MNOI formula. You decide
10 as a commission that's the way to do it.
11 Well, I brought the accountants with me to talk to
12 you about what the problem is with the MNOI formula as applied
13 by the park owner and even as applied by the City. And
14 there's some steps you need to follow, and I'm sure you're
15 familiar with those 'cause you've gone over it and over it
16 again.
17 But one of the things that I need you to understand
18 is that nobody has been following those steps as written.
19 There's a provision in the -- that we're going to talk about
20 in the Rent Adjustment Commission regulations that everyone
21 wants to pretend that's not there and everyone wants to
22 reinterpret, but going back to those statutory principles,
23 we've got plain language and it says what it says.
24 So we're going to spend some time talking about how
25 you should apply the MNOI formula and come to the conclusion

1 that you should -- that we think that you should.

2 So we've got the basic steps. You've got to figure

3 out the base year operating income. You've got to figure out

4 the current year operating income. You've got to make a price

5 level adjustment to the net operating income for 1979 and

6 you've got to compare the current year net operating income to

7 the 1979 operating income.

8 On its face, the ordinance isn't unduly complicated.

9 Everybody just wants to overcomplicate it 'cause they want to

10 do all these extrapolations and let's go back and let's do all

11 these numbers.

12 It shouldn't take a degree in mathematics to figure

13 this out because remember, this is intended for people who

14 live in mobile home parks to have stabilized rents, and nobody

15 should have to go through these crazy amalgamations to figure

16 this out. It's a pretty simple, straightforward formula.

17 But one of the challenges that we have here that is

18 somewhat difficult is to figure out, one, what the base year

19 should be, because we know the Rent Stabilization Ordinance

20 has never applied to this park and the MHOA's -- MHOC decision

21 that everyone's been talking about that says use the base year

22 that was in effect before Rent Stabilization Ordinance went

23 into effect doesn't really apply here, does it?

24 You have the choice of picking a different base year

25 and there's a number of reasons why you can and you should.

1 One is the Rent Stabilization Ordinance has never applied to
2 this park.
3 So using the logic in that decision, the first year
4 that the Rent Stabilization Ordinance is going to apply to
5 this park is this year or 2010. That's when the application
6 has been -- was made. So our base year should be 2009.
7 If we're going to start to change the rules and
8 suddenly the City is going to apply the RSO to this park,
9 let's go to the year before because that's what we've done for
10 every other park in the city.
11 We're using base year 1979 according to the
12 ordinance, because that's when rent stabilization went into
13 effect for every other park in the city, but guess what, Ranch
14 is different.
15 Another reason we should use 2009 as the base year is
16 because it's the only year that we have complete financial
17 data, and I know that you guys made -- thank you for that
18 Thunderbird Oaks decision. By the way, it helped me, helped
19 me figure out really what the decision-making process was
20 going on with the Commission.
21 The Rent Stabilization Ordinance says you need two
22 full years of complete data. We don't have two full years of
23 complete data other than 2009. That's the only year we have
24 complete data for.
25 What do we have for 1979? We have a backwards

1 statistical extrapolation of what the expenses may be, should
2 have, might have been, and as the accountant admitted,
3 expenses changed from year to year, and you're going to hear
4 that from our accountants.
5 The IRS wouldn't let you get away with that. Why
6 should you, and especially because the Rent Stabilization --
7 the RAC -- the RAC provisions specifically say you need two
8 years of data.
9 Well, what do we have next? We have 1982. We have a
10 throw-away one-liner in a memo that no one can figure out what
11 it actually says. Is it this much expense or is it that much
12 expense? Does it include depreciation or does it not.
13 And more importantly, we don't have any of the
14 underlying data to evaluate or analyze, which what you're
15 going to hear from our accountants that's really important
16 here, because when go through and you actually analyze the
17 numbers and use the general ledger and audit it and do a -- a
18 forensic analysis of the numbers, you figure out that there's
19 a lot of expenses claimed that aren't allowed or incorrectly
20 stated and are overstated.
21 And back in 1982, when that application for a rent
22 increase was submitted, we were using Resolution 84-037 which
23 is a totally different set of criteria than the MNOI formula
24 and all the detail required by RAC-2 and RAC-5. So we cannot
25 rely on 1982.

1 And as Mr. McCarthy admitted, he doesn't have the
2 underlying ledger information, et cetera, for 1982. We just
3 have a one-liner in a memo. I wouldn't want to go to the IRS
4 with that, and I certainly wouldn't want my entire life to
5 altered based on the fact -- just one line set of numbers in a
6 memo. I want to see the proof.
7 And as you're going to hear from our friends and the
8 accountant, in this situation in particular, it's important to
9 see the proof.
10 And let's look at -- now, let's go to 1999. We have
11 a little bit more information, but we still don't have the
12 underlying financial data. We can't do a forensic analysis.
13 We can't see if they're asking for expenses that they
14 shouldn't be allowed to ask for, and we can't rely on the fact
15 that the City accepted those numbers for two reasons.
16 One is it doesn't appear there was any kind of a
17 public hearing on that 'cause they were granting the rent
18 increase pursuant to the resolution, and two is they were
19 granting the rent increase pursuant to the resolution. It was
20 a totally different analysis. There was no reason to
21 scrutinize those numbers in the same way that we have to here.
22 So if we were given an opportunity to analyze all the
23 data for '99 maybe we could use it, but we don't have that
24 opportunity here. And the RAC provisions allow you to do one
25 of two things with that, pick a different base year or return

1 the application and say it's incomplete, give us the data.
2 Pick one. Same thing with 1982.
3 The last thing I want to talk about before I bring
4 the accountants up is this whole concept of the Vega
5 adjustment. What does that really mean?
6 Well, what Vega is about is if rents are set at an
7 artificially low amount because there wasn't a two-sided deal
8 that established those rents, then some adjustment might be
9 allowed.
10 But you've heard the City's appraiser admit and you
11 almost heard the owner's appraiser admit, but he had heard my
12 questions before so he was a little bit more cagey about his
13 response, that affordable housing is a totally different
14 market, and as Mr. Prescott even said, affordable housing is a
15 totally different set of circumstances.
16 Fair market analysis is not what applies to
17 affordable housing. So it's wholly unfair to apply fair
18 market to an affordable housing project. And what you also
19 know based on that 1976 letter, which I can provide my copy --
20 this copy here for the Commission to look at, and all of the
21 back and forth that happened in the late '70s to establish
22 this rent is that Mr. Hohn and the City made a deal.
23 And Mr. Hohn agreed that this was the market for his
24 project, that these rents were the market he was looking for.
25 He agreed to set the rents at this amount. His accountant,

1 the letter you have in your materials from 1977, said this is
2 what we want and the City said okay.
3 So how is it that you can make a Vega adjustment to
4 change the market to something that doesn't even apply to this
5 project when the market was established by Mr. Hohn's deal
6 that he made with the City.
7 We have to stay with the rents as they were in 1977
8 and '79, and these rents were even established in 1977 three
9 years before the City even dreamed of rent control. There's
10 no reason why we have to change that number in this market,
11 these circumstances, this set of facts.
12 Okay. So what I would like to do now is that we have
13 some worksheets that have been prepared, but before we get to
14 those worksheets, because some of the assumptions in those
15 worksheets are based on the analysis of the expenses for 2009
16 and -- the worksheets that have been prepared are at pages
17 110 - we did it a whole bunch of different ways so we could
18 give you all kinds of options - to 133.
19 But before we get to those -- I'm sorry. 110 is the
20 analysis of the expenses. The worksheets are at -- starting
21 at page 113.
22 CHAIR WERTHEIMER: May I interrupt you for a moment?
23 MS. SPENCER: Pardon?
24 CHAIR WERTHEIMER: May I interrupt you for a moment?
25 MS. SPENCER: Sure.

CHAIR WERTHEIMER: Are we getting close to your witnesses?

MS. SPENCER: Yeah, that's what I'm about to bring up.

CHAIR WERTHEIMER: Okay.

MS. SPENCER: So starting at page 110 to 112 is an analysis of the expenses and income for 2009 as done by Randi Sorenson, CPA and certified fraud examiner. And I'm going to ask her to come up and explain to you what her methodology was and what her findings were with respect to the 2009 expenses as requested by the owner.

MS. SORENSON: Good evening. I'm Randi Sorenson. I am a CPA and certified fraud examiner out of Thousand Oaks, California.

And I am here this evening to discuss my findings in reference to the just and reasonable return net operating income worksheet which is found in the attachment 3 of Ranch 2010 rent adjustment application. You will find it in Exhibit 4 on page 4 of the rent adjustment application for the Ranch Mobile Home Park as well as I believe on page 109 of the documentation submitted today by Ms. Spencer.

My task was to do a forensic analysis of the aforementioned worksheet and adjust out any unallowed expenses per RAC-5, verify the data on the worksheet to the applicant's general ledger, information that was supplied by the

1 applicant, any supporting document that he supplied us. I was
2 going to correct or I did correct the data as needed, compare
3 these figures to industry standard figures and also to RAC-2
4 figures.
5 My findings are as follows: If you will reference
6 the spreadsheet that is in the documentation -- I don't if
7 Chandra can put it up for us. Again you'll find that on page
8 110. We got that.
9 Okay. So the first column is a reorganization and
10 breakdown of the numbers and rows found on the application.
11 You'll notice that the first section, the operating expenses,
12 leave it there, there's a total of $53,736. If you would go
13 to attachment 7 in the rent adjustment application, page 2,
14 you will see that's where we obtained those -- the breakout of
15 those numbers.
16 So again, that first column is just a -- basically
17 the same information that was supplied by the applicant in his
18 application.
19 Column 2, we adjusted these numbers by removing any
20 expenses that were not expressly allowed per RAC-5. Though we
21 went to the RAC-5 information, pulled out anything that was
22 not allowed and we calculated our numbers.
23 To calculate column 3, we reviewed the applicant's
24 general ledger and support documentation. We looked at bills,
25 we looked at reports, invoices, et cetera. Again, all

1 supplied by the applicant.

2 The -- we then adjusted column 2 numbers further to

3 be the actual numbers we found in the applicant's general

4 ledger. Now, you might note in the original application and I

5 believe in the testimony earlier that there were several

6 numbers that were averaged over three years. As they used

7 that as their standard, we continued with that standard.

8 So you'll notice that there are some adjustments to

9 their three-year averages. We were supplied with the general

10 ledger for 2007, 2008 and 2009. We pulled out those numbers

11 for each year and averaged them by three just as they had done

12 in their application. So we followed suit. We didn't change

13 any of that.

14 These corrections or adjustments made to column 3,

15 I'd like to point out that the difference in expenses which

16 resulted in an adjustment to the net income, in the

17 application worksheet their net profit was calculated to be

18 $20,468 for 2009. After the corrections that you find in

19 column 3, the net profit is then $44,923, a difference of

20 $24,455.

21 Going on to column 4, this was calculated by Jan

22 Taylor and he was -- with Delmar Property Management. I think

23 that you're going to find his credentials also in the

24 documentation you received. His C.V. is in there.

25 He -- you'll see that the property management fee in

1 column 4 was adjusted to industry standards of 6 percent.
2 That was under the property management fees. He also adjusted
3 the wages and salaries of the on-site manager to be instead of
4 $14,784, he adjusted it to $9,600, again, per industry
5 standards.
6 And based on that, we did also adjust the payroll
7 taxes that would be paid on that amount. With those
8 adjustments, using industry standards the net income becomes
9 $61,523. Quite a difference.
10 Now, the final column that we calculated takes column
11 3's adjustments and calculates them and adjusts them per
12 RAC-2. And this will change the total management and
13 administrative fee to the allowed 8 percent which would then
14 give us a net income of $76,648.
15 And that concludes my presentation.
16 MS. SPENCER: In addition to providing more accurate
17 data for the 2009 current year, I think Ms. Sorenson's
18 findings also underscore the importance of having all the
19 back-up data for the base year, 'cause as you can see, there's
20 a significant discrepancy between what the owner claimed he's
21 entitled and when you really go down and analyze the numbers
22 what he's actually entitled to.
23 A couple of comments about the -- the basis for
24 Ms. Sorenson's conclusions. There is a provision in RAC-2
25 which limits management and administrative expenses to 8

1 percent.

2 There's also a provision in RAC-2 which states that

3 all expenses must be reasonable and in accordance with

4 industry standards. And of course, there's the provisions in

5 both RAC-2 and RAC-5 which tell you what expenses can and

6 cannot be claimed.

7 So all of Ms. Sorenson's information was based on her

8 being provided a copy of RAC-2 and her consultation with

9 experts in the industry -- an expert in the industry as to

10 what constituted industry standards.

11 So after Ms. Sorenson did her analysis of the

12 expenses for 2009, then we worked with Mr. Lang on providing

13 the Commission some worksheets about where you get at with the

14 rent increases, assuming you use the MNOI formula, and based

15 on the potential base years that the Commission may choose to

16 use.

17 I noted that in hearing Mr. McCarthy's presentation

18 that apparently some of the worksheet numbers he's provided to

19 you are different than that which is contained in the

20 application itself. And I think Mr. Hill had tried to make, I

21 don't know, I guess an oral amendment to the application based

22 on that -- those differences.

23 A couple of things I'd like to point out before I

24 bring up Mr. Lang to talk -- walk through the worksheets and

25 if you look at page 108 of our materials, there's a couple of

1 things that I want you to be aware of. And 108 is the owner's
2 worksheet that he submitted with the application.
3 One is for the base year of 1979 that the owner is
4 relying on, in the application he attempts to add an adjusted
5 income for below market rentals of $110,280, and the
6 explanation in the materials was that was the development fees
7 that were waived in 1977.
8 Nowhere in the Rent Stabilization Ordinance or in the
9 interpreting application -- any interpreting provisions or the
10 resolutions is such an income figure permitted. And
11 furthermore, it wasn't income in 19 -- even if you assume it's
12 income, it wasn't income in 1979. It was in 1977.
13 So I think that Mr. McCarthy in looking at the -- the
14 quick review I did of the worksheet I received from him today
15 doesn't have that figure in it. So I don't know that it's an
16 issue, but based on the ordinance itself, if it does become
17 part of your evaluation, my recommendation to you is that you
18 simply take that out because it's not substantiated by any of
19 the standards set forth in the formula.
20 The next thing -- couple critical assumptions and
21 critical questions that we need to have answered and I think
22 we can answer - if you could turn to the slide -- the
23 PowerPoint slide that's entitled "Critical Questions," there
24 we go - it's what do the provisions of Section 2-217 require
25 when calculating current year net operating income under

1 RAC-2, Section 3.03 and what do we do with this adjusted
2 income for below market rentals issue.
3 Now, as you may recall, one of the -- one of the
4 principles of statutory interpretation is you're supposed to
5 apply everything it says and no surplusage and you're supposed
6 to really go through and include everything, not just leave
7 things out.
8 And I think one of the critical flaws in the City's
9 and the owner's analysis is there's a very important factor
10 that was left out and that is the suggested income to below
11 market rentals for the current year net gross operating
12 income. The current year net operating income was impacted as
13 a result.
14 Section 2 of RAC-2 states that net operating income
15 is determined by subtracting the annual operating expenses
16 from the gross total income. Section 2.01 says the gross
17 total income is determined by adding the following: The
18 actual rental unit income. We have that. The garage and
19 parking income, the stores and offices income, the adjusted
20 income for below market rentals and the miscellaneous income.
21 And Section -- everybody seems to want to apply this
22 adjusted income for below market rentals only to the base
23 year, not to the current year. There's -- everyone -- there's
24 some belief maybe it has something to do with the Vega
25 adjustment.

1 Actually, if you really read this carefully, and I
2 had to read it I don't know how many times before really made
3 sense to me, this is the use it or lose it provision, because
4 the Rent Stabilization Ordinance and the just and reasonable
5 return formula were really intended to address those years
6 when there was extraordinary expenses, not to address those
7 years when the owner had decided for 31 of 33 years to forego
8 rent increases. This is where we make up the difference.
9 This is where the rubber meets the road.
10 So if you look at -- and I'd like to walk you through
11 this and if I'm repetitive, I apologize, but I think it's
12 important. Page 22 of the materials has a copy of RAC-2. And
13 if you look at RAC-2, Section 3, 3.03, you're supposed to
14 determine the current year net operating income in accordance
15 with the provisions of Section 2 to 2.17, parens, (i.e. the
16 latest calendar year or the latest fiscal year used by the
17 landlord for accounting purposes.)
18 So this is how you figure out the current year net
19 operating income. You go back to 2 and you plug in the
20 numbers. So if you go back to 2 and you start at the
21 beginning, 2.01 says gross total income. So you get your net
22 operating income by subtracting the annual operating expenses
23 as permitted, the stuff that Randi did, from the gross total
24 income.
25 Section 2.01 says the gross total income is

1 determined by adding the following: The rental unit income,
2 Subsection (a), there's no garage income here, there's no
3 storage and offices, and Section (d), adjusted income for
4 below market rentals and then miscellaneous income.
5 Well, let's look and see what adjusted income for
6 below market rental says. Section 2.05 -- going back to
7 statutory interpretation, you have to use all of the words.
8 You can't just pretend that these words don't exist, as the
9 owner would like to do.
10 It says, represents the difference between the actual
11 rent collected and what the owner could have collected if the
12 unit -- if the units had been rented at their full market
13 value.
14 Now, the challenge to that is that the term "full
15 market value" gets us a little confused. What does that
16 really mean for purposes of a Rent Stabilization Ordinance
17 application? Is that what these folks were talking about, the
18 term of art of market value?
19 Well, no. We don't have to figure it out because it
20 defines what it is. The next sentence defines it. Examples
21 of below market rents may be units occupied by the landlord or
22 the landlord's family. Well, we don't have that here. So we
23 don't need to worry about that provision.
24 The unit of the resident manager, we do have that
25 here. So everybody made an adjustment for housing allowance,

1 about $4,000. For any unit -- this is -- now, this is the key
2 language, any unit where the rent increase is permitted by the
3 Rent Stabilization Ordinance or the regulations and guidelines
4 of the Rent Adjustment Commission could have been made but
5 have not been made because of the landlord's rental policies
6 and purposes. That language right there is the use it or lose
7 it provision.
8 And it's wholly consistent with the entire purpose of
9 the ordinance. You can't sock somebody with a 150 to 500
10 percent rent increase in one year because you didn't do it for
11 31 of 33 years. How is that stabilized rent?
12 Instead, what this says is you have to adjust the
13 current year net operating income for all those rent increases
14 that he didn't take because he made -- the shot caller made a
15 deliberate decision not to do it. And that's the biggest
16 problem we have with the City's report and the owner's report,
17 is they missed a step.
18 'Cause if you go through and you do the math, and I'm
19 going to have Jake go through the worksheets with you so we
20 can do the math --
21 CHAIR WERTHEIMER: Is Jake going to be here soon?
22 MS. SPENCER: Yeah.
23 CHAIR WERTHEIMER: Okay.
24 MS. SPENCER: He's coming down right now.
25 MR. LANG: I've been here all night.

MS. SPENCER: They don't get a rent increase or if they do, it's very, very small depending on what base year you get.

So Jake's coming down because apparently I'm talking too much, and he's going to go through these worksheets -- these alternatives that we come up with applying the right standards.

CHAIR WERTHEIMER: Name and where you're from, Jake.

MR. LANG: Well, I'm from Thousand Oaks. I was a graduate of the inaugural class from Westlake High School in 1982. My practice is also in Westlake Village. I'm a CPA.

I graduated from Brigham-Young University with a degree in accounting and have an MBA from Pepperdine, and I have a Master's in business taxation from University of Southern California.

And I know it's been represented that I was not paid; however, I did have a bagel that was provided to me and a cookie tonight.

So starting with the schedule on page 113 -- and I'm not going to take you through them all because they're really just dealing with different base years. So if I give you through 1979, I trust that the Commission can get through the rest if we change the base year to '82. The methodology's the same. If we change the base year to '99, same methodology.

I believe you asked earlier if anyone had done a

1 calculation where it showed what the rent would be had the
2 increases been taken that were allowed to the owner, and I was
3 thinking about it and I -- I managed property when I was in
4 college and had an owner that didn't ever raise rents.
5 And they weren't particularly benevolent, but they
6 didn't raise rents. And it was about 10-units and the reason
7 they didn't raise rents is 'cause they liked having stable
8 tenants. They don't want tenants to -- there's a cost when
9 people leave. You have vacant spaces.
10 And they were counting on the appreciation in the
11 market which may or may not turn out, but it was an investment
12 risk. So they weren't really in it for rental income. They
13 were in it for the appreciation.
14 And interestingly enough, I happen to have the
15 property tax on the property here. I know it's been
16 represented that it's about $168,000 value, and the property
17 tax assessment for 2009, I believe it is, shows the value at
18 1 -- 1.2 million dollars on the park.
19 Now, I realize that property tax assessment may not
20 be fair market value and probably is not, but it seems a
21 little strange that we'd be giving away that much in taxes
22 each year when we can apply for an adjustment. So I suggest
23 that we can probably find $10,000 of savings there based on
24 the owner's representation of the value of the park to current
25 numbers.

1 So we've talked a lot about yields and returns and
2 inflation returns and we go through CPI and we've done a lot
3 of that thing, and we've been talking about inflation
4 protected returns. So I just pulled what an inflation
5 protected return is currently.
6 The current yield on tips which are treasury
7 inflation protected returns is about a quarter of a percent.
8 That's the current yield. We're talking about lot bigger
9 numbers here when we're trying to protect the value of this
10 park or -- to the owners at the detriment of those who are the
11 coach owners.
12 So starting again on 113, I'll just take you through
13 it, the rental unit income, you have the base year if it was
14 1979. You have the current year. The first thing is what we
15 just learned about was the Section 205 -- 2.05 and that was
16 the rental increase. Again, this is on 113 if you're not
17 following along.
18 That was rental increase due to the RAC -- RAC-2.
19 And for a schedule that deals on how those rental increases
20 were done, the first one is RTA 118. So if you're looking at
21 that, what it does is it takes the current year income and
22 adds to it what would be necessary to arrive to the 231,000 on
23 118. And so this schedule actually shows what would happen
24 using the Rent Stabilization Ordinance.
25 Then if you go to RTA 115, you have the same

1 adjustment, but it's by using the development permit. So it's
2 not the rent stabilization order, and that calculation can be
3 found at 119.
4 And so when you see -- for instance, if you look at
5 the schedule and you were to take the current year with
6 expenses claimed by owner on page 115, that 113,000 is the
7 current rent. The 135 is the necessary adjustment under
8 RAC-2, Section 2.05. Below that's the managers and there's
9 some other miscellaneous of 189, and that gets you to the
10 total gross income for the park.
11 And that -- that again is assuming that the
12 development permit method was used. And then the expenses are
13 just lifted off the work of my predecessor who just spoke, and
14 so we have the adjusted expenses.
15 We have a column for the different types of
16 adjustments that were made to the expenses with industry
17 standards with a maximum of 8 percent. And then we come down
18 to a total net operating income, and that net operating income
19 is prepared -- is compared to the market price level
20 adjustment as required by RAC-2, Section 304.
21 And that calculation which utilizes CPI, which I'm
22 not going to bore everyone with some of the problems in
23 utilizing CPI, it's interesting. We utilize CPI to talk about
24 inflation about everything except for the value of the park,
25 so when we're talking about expenses going up, but apparently

1 the park value continues to drop.

2 So we have this -- this increase that's necessary to

3 do that adjustment and to be compared to the other income. So

4 if you were to take -- again, on page 115, and you were to

5 look at the current year and compare it to -- this is where

6 the owner claimed expenses, you have 156,000 and the price

7 level adjustments of 178,000.

8 Under that scenario on page 116, the owner would be

9 entitled to a $24.68 monthly increase. That's with their

10 expenses that we've gone through and again Randi did the work

11 on, the changes on what's allowed and what's not allowed.

12 So what we have here is based on the increases and it

13 just -- again, I'm an accountant. I'm not an attorney, but

14 when I look at it and -- to get into the park, we require

15 people to be low income, yet even under the council's

16 proposal of rent increases, lower-income people won't be able

17 to afford to live there.

18 So it seems a little odd to me that we would have a

19 tsunami effect of renting to people or renting space to people

20 requiring them to be low income and then pricing them out a

21 few years later. What we would have at that point is a wealth

22 transfer.

23 If this was sales tax, we'd be calling it a

24 regressive sales tax or a regressive tax. Sales tax is

25 considered regressive because it hits those of us in society

1 who can least afford to pay it the most, and those who can
2 afford to pay, it's not as big a deal to them.
3 In this case, we're trying to take the 4.5 million
4 dollar investment of these coach holders and transfer some of
5 that value to the owner who has made decisions -- business
6 decisions based on things that we weren't able to get
7 testimony on tonight, but decisions to forego his rent
8 increases.
9 And that's my testimony tonight. If you have any
10 questions for me, I'll take them when it's time.
11 MS. SPENCER: And the good news is I'm almost done.
12 So each one of those worksheets for each one of the
13 base years and all the incomes, adjustments and worksheets are
14 all provided in the materials and those are taken directly
15 from what RAC-2 requires.
16 So a couple of points that I'd like to just emphasize
17 before we -- I wrap it up: If you use this MNOI formula, it's
18 clear that the owner and the City have understated gross total
19 income for the current year because they left out a very
20 important component and that was the adjusted income for below
21 market rentals.
22 If you use the MNOI formula, the owner has also
23 failed to provide accurate -- accurate data for operating
24 expenses for the base year of 1979.
25 The owner has also overstated allowable operating

1 expenses for the current year as shown in the worksheets that
2 were prepared by Ms. Sorenson, and those expenses were
3 overstated because they're not permitted, they're not
4 supported, they're in excess of industry standards and they
5 exceed the 8 percent cap for management and administrative
6 expenses.
7 I've given the Commission a lot of alternatives here
8 in these various worksheets, but the most important thing that
9 I think that the Commission should remember in making this
10 decision is, one, should it make the decision at all; two, if
11 it does make the decision, what are you going to use to make
12 that decision?
13 Are you going to go with what everyone's been
14 counting on for the past 33 years, the trailer park
15 development permit and the resolution, or you're going to go
16 to the MNOI formula?
17 And if you're going to go to the MNOI formula and
18 make the decision, then please, I implore you, apply it
19 properly. It's not that complicated. It just requires that
20 you plug the right numbers in based on the standards that were
21 already developed for the Commission many years ago and that
22 we don't need to reinvent that wheel.
23 And when you get to that, you'll find that in each
24 one of those worksheets you'll have alternatives and all the
25 data has been provided for you as to what those alternatives

1 are.

2 And it's our urging that under the MNOI formula, no
3 rent increase should be permitted at all based on the data,
4 the numbers speaking for themselves, but if you are going to
5 allow some kind of a rent increase, please explain why it is
6 you got to that point, what year you chose, what data you
7 chose to rely on, because I believe that you have all the
8 information before you to prove no just and reasonable return
9 rent increase.

10 And if the City Council decides to put this park
11 within the purview of the Rent Stabilization Ordinance, this
12 owner can take his automatic rent increase, but in the
13 meantime, he can take the rent increase -- he can apply for
14 the rent increase under 84-037.

15 So in conclusion, very last slide on the PowerPoint,
16 we request on behalf of the residents who are members of the
17 Association of Ranch Tenants so that these folks can continue
18 to live in the safe harbor place that they came to in the City
19 of Thousand Oaks and continue to afford their medication,
20 their food, their rent, their pets, everything that they need
21 to afford to live, that first and foremost, you should decline
22 jurisdiction over this issue.

23 Second, if you decide to exercise jurisdiction, that
24 you decide this rent increase application under TPD 74-6 and
25 Resolution 84-037.

1 Third, if you decide to use the MNOI approach, you
2 set the base year at 2009 'cause that's the year the Rent
3 Stabilization Ordinance is first being applied to this park.
4 And four, if you use the MNOI approach, you deny it
5 using any -- you deny the rent -- request for a rent increase
6 using any of other base years that they've asked for and apply
7 the standards that you're supposed to apply, adjust the income
8 for below market rentals, reduce the expenses that the owner's
9 claiming.
10 And you're going to find out when you look through
11 those numbers that no rent increase is justified, or your last
12 alternative, send it back. You have the right to send this
13 back and tell the owner unless and until you provide us with
14 adequate financial data to use base year 1979 or base year
15 1982 or base year 1999, unless you can prove it, we're not
16 going to give you what you're asking for.
17 So on behalf of the Ranch residents and the
18 association, I thank you for your time. And if the Commission
19 has any questions for me or for the witnesses, I'm done.
20 MR. HEHIR: If I may, Chair, the first -- the one
21 question I have is did you provide the binder that you've been
22 referring to in most of your presentation -- I know you
23 provided it to the Commissioners. Did you provide it to
24 staff?
25 MS. SPENCER: Yes.

1 MR. HEHIR: And did you provide it to the owner?
2 MS. SPENCER: Yes.
3 MR. HEHIR: Thank you.
4 MS. SPENCER: Ten copies.
5 CHAIR WERTHEIMER: Does the Commissioner have any
6 questions for Ms. Spencer?
7 MR. SILACCI: I do.
8 First of all, Ms. Spencer, thank you very much for
9 you and your experts taking the time to lay out your case.
10 Speaking for myself, I really appreciate that.
11 Earlier in your presentation, you had mentioned, just
12 trying to be thorough here, a letter from June 14th, 1976. Is
13 that a letter that you actually looked at yourself and have a
14 copy of? And if you do, can you make sure that we get -- I'd
15 appreciate the Commission having a copy of that letter.
16 MS. SPENCER: Yeah. Actually, what I have here is a
17 stack of -- a series of letters, but I'll give you just -- if
18 you want just that one that was -- and I can provide that
19 to -- I didn't make extra copies because I just got this
20 today.
21 COMMISSIONER SILACCI: That's fine.
22 MS. SPENCER: I'd be happy to provide it to you.
23 Would you like me to give it to the clerk right now?
24 CHAIR WERTHEIMER: Yes, please.
25 MR. SILACCI: Please.

1 Another question that I have -- and just trying to
2 follow along, but maybe you can help me, if we were to apply
3 Resolution 84-037, would you please help me understand where
4 the fair return or just and reasonable return standard comes
5 into that.
6 MS. SPENCER: Well, the fair and just reasonable
7 return standard is based on the concept that you have to
8 provide to a property owner a fair return on their investment,
9 and you can't arbitrarily impose rent control restrictions
10 that somehow prohibit them from getting a fair return on their
11 investment as -- for example, as stated in RAC-2, if there's
12 an unusually high amount of expenses for a particular year.
13 And the reason why 84-037 provides a fair and
14 reasonable return is because it is the return on investment
15 that this owner has asked for. This owner has stated this
16 is -- this is the deal that I want, and therefore, it is
17 presumed to provide a fair and reasonable return because if it
18 didn't, he would have been required to challenge it back in
19 1984.
20 So it's based on the concept that this was a two-
21 sided bargain when he opened this park as opposed to a one-
22 sided unilaterally imposed rent increase through a rent
23 stabilization ordinance.
24 And I think that if you read through the PowerPoint
25 authority cited, that the most important one to remember is

1 one who accepts the benefits of development permit is also
2 saddled with its burdens.
3 Does that answer your question?
4 COMMISSIONER SILACCI: Yes, it does answer my
5 question, and I have no further questions other than to make
6 one final comment. Thank you, again, to you, all of your
7 experts and also for the three residents, Jim, Valerie and
8 Georgia who came down to speak so eloquently. So thank you
9 very much.
10 MS. SPENCER: Thank you on their behalf for your
11 attention.
12 CHAIR WERTHEIMER: Commissioner Feldman, no
13 questions.
14 Questions?
15 MS. SPENCER: Should I bring any of my experts down
16 or the witnesses down? Does anybody have questions --
17 CHAIR WERTHEIMER: Well, that's my next act,
18 questions.
19 MS. SPENCER: Okay.
20 CHAIR WERTHEIMER: Do we have any questions for the
21 experts this way?
22 Either?
23 None here as well.
24 VICE-CHAIR SHELDON: I have a question.
25 CHAIR WERTHEIMER: Okay. For whom?

1 VICE-CHAIR SHELDON: Quick one for Randi Sorenson.
2 Thank you. I'm sorry. On page 1 -- or RTA 110,
3 there's the 6 percent cap on the management expenses. Is that
4 6 percent of what the rent is currently at?
5 MS. SORENSON: It's 6 percent of the current income.
6 So the income figure is -- let me take a look here, is
7 calculated based on the rent -- rental unit income of
8 $113,662, miscellaneous income, which is for laundry, which is
9 $4,258, for a total of 117,920. So we calculate 6 percent of
10 that number.
11 VICE-CHAIR SHELDON: So everything is exceptionally
12 clear in your presentation. I just -- is that a good proxy I
13 mean to use because the rent hasn't been raised in 30 years?
14 You're using a percentage of that.
15 MS. SORENSON: Well, we used -- we're basing it on
16 what they're -- they're earning right now. That's all we can
17 base is on. You know, I could have what if'd it from today,
18 you know, till next year, what it could possibly be to base it
19 on.
20 But this is what they're earning and so we're looking
21 at what their reasonable expenses would be based on what
22 they're earning now.
23 VICE-CHAIR SHELDON: If you cap those at 6 percent,
24 do you think that's reasonable?
25 MS. SORENSON: Absolutely. You know, this is per Jan

1 and per my own experience. You know, I was dealing with
2 clients myself this week who have rental properties, and you
3 know, they're paying between 6 and 8 percent for their
4 management fees.
5 So to use that figure here and, you know, which is
6 again what Jan supplied is totally reasonable. You know, I
7 see it every day. You know, I also have my real estate
8 license. I come from a real estate background. You know, I
9 was in loans for a long time. So I'm very comfortable with
10 that number.
11 VICE-CHAIR SHELDON: Perfect. Thank you.
12 CHAIR WERTHEIMER: I have a couple questions for you.
13 MS. SORENSON: Okay.
14 CHAIR WERTHEIMER: The clients you talked to, what
15 type of properties do they have?
16 MS. SORENSON: Rental properties.
17 CHAIR WERTHEIMER: Residential, commercial?
18 MS. SORENSON: Residential.
19 CHAIR WERTHEIMER: Okay. You had cited many times
20 just -- justification for the things that you stated on
21 industry standards. Where do you get your sources?
22 MS. SORENSON: That is from Jan -- I can't remember
23 his last name, Jan Taylor who is -- if you look at his C.V.,
24 he is in that field. He is an expert in the mobile home park
25 field.

1 CHAIR WERTHEIMER: But what does he do? I didn't
2 look -- I'm not going to look at it. So I need to understand
3 what this gentleman does that makes him an industry standard.
4 MS. SPENCER: Mr. Taylor is -- Mr. Taylor is a
5 property management -- manager who has significant experience
6 with both mobile home parks and other residential rental
7 properties.
8 He operates a property management team for a rent and
9 profits receiver out in the Inland Empire and used to do
10 takeovers of mobile home parks all across the Pacific
11 Northwest. And so he --
12 CHAIR WERTHEIMER: And he's sort -- what sorts of
13 certificates does he have, CRM? Does he have anything of --
14 MS. SPENCER: I'm going to have to look at his
15 resume.
16 MS. SORENSON: He has his edu --
17 CHAIR WERTHEIMER: Because a receiver is not a
18 manager.
19 MS. SPENCER: He -- he has a B.A., an M.A. and an
20 MFA, and he has worked from 2009 to the present at Delmar
21 Property Management in managing properties for receivers.
22 Prior to that, from 2003 to 2009, he was an
23 investment manager, and I think the part that -- let me find
24 it here.
25 CHAIR WERTHEIMER: Correct me if I'm wrong, but

1 your -- your facts are based for industry standards on one
2 person?
3 MS. SORENSON: And my own experience. One person in
4 the industry. He's the only person in this specific industry
5 that I spoke with, but again, a knowledge of -- of management
6 companies and rent -- in residential would be between 6 to 8
7 percent.
8 CHAIR WERTHEIMER: Right. I -- okay. It's more --
9 for me, it's more than just this percentage. It also -- there
10 was also a number of times you stated your position as
11 industry standards.
12 And there's -- there's property management companies,
13 other organizations out there that create industry standards.
14 Now, for property management -- and as Bowman is certified for
15 building owners, maintenance association, they have building
16 standards.
17 And if you say Bowman, you're already -- you've
18 already created credibility that everyone can -- so I'm
19 looking for a society that -- that we can tag as -- for
20 property management, the same thing, 'cause one person isn't
21 it.
22 MS. SPENCER: With -- with all due respect, I think
23 with respect to the -- this is a challenge in the mobile home
24 industry. It tends to be a very close knit community.
25 Mr. -- Mr. Taylor has a significant amount of

1 experience in -- amount of experience managing mobile home
2 parks as indicated on his resume throughout the Pacific
3 Northwest as well as property management.
4 And it was based on his experience and his consulting
5 that he provided to the expert what he believed was the
6 industry standard for this industry.
7 CHAIR WERTHEIMER: I understand your statement.
8 MS. SPENCER: Okay.
9 CHAIR WERTHEIMER: It doesn't pass.
10 Do you have a declaration from him by chance?
11 MS. SPENCER: No.
12 MS. SORENSON: No.
13 CHAIR WERTHEIMER: Thank you.
14 MS. SPENCER: It's common practice for --
15 CHAIR WERTHEIMER: I'm -- it's all right. My
16 question's answered. Thank you.
17 MS. SPENCER: Okay.
18 MS. SORENSON: Anything else for me?
19 CHAIR WERTHEIMER: Any other questions for her?
20 We're done. Thank you.
21 MS. SORENSON: Thank you.
22 CHAIR WERTHEIMER: Does the applicant have any
23 questions for the witnesses or the representative of the
24 tenants?
25 MR. HILL: Yes. We -- we have several questions.

1 I'm just curious what the Commission's agenda is for the rest
2 of the evening here?
3 CHAIR WERTHEIMER: The agenda will be to listen to
4 yours, have cross-examination by the City. We then will
5 listen to public testimony and then suggest -- my next
6 meeting --
7 MR. HILL: 'Cause I don't know that the tenants have
8 finished their presentation at this point.
9 CHAIR WERTHEIMER: You don't?
10 MR. HILL: I know -- I know that the attorney
11 representing some of the tenants has done their presentation,
12 but not all the tenants that are representing themselves have
13 appeared.
14 And also we were just presented this with information
15 at, you know, 10 o'clock at night and blind-sided, and it
16 would be nice to be able to ask the questions. I, you know,
17 would like to explore more the issue of the lack of industry
18 standard testimony.
19 We don't even have the person here to cross-examine
20 who's the basis for their analysis, and it doesn't seem like
21 that's any kind of any due process at all to be respectful to
22 the Commission here.
23 MR. HEHIR: If I may, Chair, we have a couple issues
24 here. One of the first ones is that we've been going a lot
25 longer than we anticipated I believe with tenants'

1 presentation tonight. It went on for certainly more hours
2 than we anticipated, and so we haven't even got to the tenant
3 public comment stage of this.
4 The other concern I have is that normally at around
5 10 o'clock, and it's already 10:45 almost, Council does --
6 through Council policy we would see how the Commission is
7 doing as far as how long they want to get going and discuss it
8 among Commissioners as well.
9 The other issue we have is through the tenants'
10 presentation tonight they did provide two different analyses;
11 one obviously was the resolution from 1984 and the second one
12 was the MNOI analysis.
13 And of course, under our guidelines, and let me pull
14 them for you just so I can read them and quote.
15 MR. HILL: 1.04 --
16 MR. HEHIR: Thank you.
17 MR. HILL: -- of RAC-2.
18 MR. HEHIR: Yep. One of the concerns we have is, and
19 I'm just going to get to the point, the methodology and
20 documentation shall be provided with application sufficiently
21 before the date set for hearing so that the matter may be
22 reviewed by the Commission staff.
23 Failure to do so to provide -- failure to so provide
24 that information shall be ground for rejection of its use or
25 continuation of the hearing at the Commissioners' discretion.

1 The use of such approach as suggested by the applicant or
2 tenant shall be at the discretion of the Commission.
3 And again I'm bringing that up not in any way to
4 indicate one way or another how you should proceed with the
5 information provided by the tenants, but to let you know that
6 that needs to be addressed by you as well since it was
7 provided today.
8 And I will also say for the record that I received
9 her -- the tenants' attorney's, Ms. Spencer's, report today
10 and so certainly I need to review that as well.
11 But those are just two issues I wanted to bring up to
12 your attention. Maybe you should discuss it among the
13 Commissioners, one, the time, and two, how you want to proceed
14 with the public testimony tonight.
15 MR. HILL: I -- I would propose that if Mr. Taylor is
16 not here to be cross-examined that the tenant's position on
17 the MNOI be rejected at this point, but if I -- I will let the
18 Commission make their deliberation on that issue, thank you.
19 MR. HEHIR: If I may, Chair, it's actually -- this is
20 a discussion among the Commissioners at this point.
21 CHAIR WERTHEIMER: I was just going to say that.
22 So does the Commission -- do we have any thoughts on
23 where we want to go, allow this to be continued?
24 Mike?
25 MR. HEHIR: At least how long we go.

1 CHAIR WERTHEIMER: How long we want to go or
2 continue, whatever.
3 MR. SILACCI: Well, I hate to answer a question with
4 a question but --
5 CHAIR WERTHEIMER: Then don't.
6 COMMISSIONER SILACCI: -- I'm just wondering -- thank
7 you.
8 I'm just wondering how many -- and maybe this will be
9 out of order, but how many speaker cards do we have?
10 CHAIR WERTHEIMER: About 30, but one of the things I
11 was going to do was -- it looks like maybe not all 30 will be
12 here. I'm looking up at the audience. So that was the
13 other side of it.
14 COMMISSIONER SILACCI: The only reason I ask that
15 question is I was just concerned that this will be two
16 hearings where the -- where speakers haven't been heard. So I
17 don't know. I hate to keep --
18 CHAIR WERTHEIMER: Yeah, it's a tough choice.
19 VICE-CHAIR SHELDON: Does it make sense to take a
20 break?
21 CHAIR WERTHEIMER: Speak into the mike.
22 No. I don't think it makes sense to take a break.
23 VICE-CHAIR SHELDON: No, I mean to break for the
24 evening.
25 CHAIR WERTHEIMER: To break for the evening at this

1 point, we'd have to ask for them to come back including the --
2 the cards.
3 COMMISSIONER FELDMAN: I agree. Could you find out
4 how many speakers are here.
5 CHAIR WERTHEIMER: Sure. Could -- if I get the name,
6 please forgive me if I do it wrong. Henry Heber.
7 Yes, thank you.
8 COMMISSIONER FELDMAN: We're making a count.
9 CHAIR WERTHEIMER: What? There's no other way to
10 count. Oh, no. We're not asking you to come down. We're
11 just checking to see how many are here.
12 Carol Claussen.
13 That's a no.
14 Dan Goldstein.
15 That's a no.
16 Barbara Brown.
17 Audry -- yes, thank you.
18 Don Hendrix.
19 Carol Baldwin.
20 Margaret Riggs.
21 Did I hear a "here"?
22 Thank you.
23 Gale Henington, Hengon.
24 Lawrence Bloomfish.
25 Francis Morton.

1 Thank you.

2 Jane Garden.

3 Withdrawn, thank you.

4 Lynn Sweeney.

5 Jay Felga, Feliga.

6 Judy Herrari.

7 Thank you.

8 Donna K. Foster.

9 Vic Aberanza.

10 Thank you. So noted.

11 Ruth Faustino.

12 Shirley Thorn.

13 Tom Packman.

14 Donna K. Foster.

15 Barbara Brown.

16 Yeah, that's what I was thinking. You're still here.

17 Good. Haven't left, okay.

18 Pat Hinkelthorn.

19 James Wolfe.

20 And Cathy Parsons.

21 All right. This is -- the other people didn't

22 answer.

23 Okay. Brenda, in answer to your question, there's

24 11.

25 COMMISSIONER FELDMAN: Okay. So that will be a

1 minimum of 22 minutes, which is another half hour, and then
2 we -- I think we might leave personally. I think it's -- I
3 don't know. What -- what do you all think?
4 CHAIR WERTHEIMER: Do you want to go for another 25,
5 30 minutes?
6 VICE-CHAIR SHELDON: Well, I'm confused as to why we
7 would go right to the public comment and not let the -- why
8 wouldn't they have a chance to -- to question.
9 CHAIR WERTHEIMER: Who's "they"?
10 VICE-CHAIR SHELDON: The -- the -- the owners of the
11 mobile home park have not had a chance to question the
12 tenants' representatives. They have 15 minutes for each of
13 the experts.
14 MR. HEHIR: If I may say, some -- I think the issues
15 you have is, one, how long you want to go tonight. We've been
16 going for six and a half, almost seven hours now.
17 The second issue is do you want to take the public
18 comments -- the public testimony from the individuals that are
19 here, again the two minutes speaking, now -- the 11 -- the 11
20 and that would mean that you would actually have their
21 cross-examination or any other questioning by either staff,
22 additional comments from the Commissioners and, of course, the
23 owner to the tenants at a later time if you're going to end it
24 in some short time.
25 I'm assuming you would end it within the next half

1 hour if that's where you're going or to continue with the
2 cross-examination now and either go forward with
3 the Commission -- with the public comments or -- the
4 testimony, excuse me, or stop it at some point in time.
5 So I mean those are the -- the discussion you have to
6 have and make sure you kind of know where you're going with
7 each one of them and go from there.
8 CHAIR WERTHEIMER: Well, I like the idea of going
9 forward with the public testimony and having the applicant
10 cross the witnesses at the next meeting -- at the next
11 meeting.
12 Comments on that, thoughts?
13 COMMISSIONER FERRUZZA: I -- I agree that we could
14 have the public comment now and then anything -- and then end
15 the evening and then anything else the next meeting.
16 CHAIR WERTHEIMER: All right. I will call the --
17 three names. Please be ready and then we'll do that until
18 we're through with the 11.
19 And Ms. Spencer, you have something you'd like to
20 say?
21 MS. SPENCER: I was just informed that some of the
22 folks who believed they called out -- they filled out cards,
23 their names weren't called. So I don't know if there's -- if
24 you want to do a show of hands of people who think they filled
25 out a card and weren't called or not.

1 CHAIR WERTHEIMER: Yeah. Did anybody fill out a card
2 and not hear their name?
3 Okay. Two of you, two, three. Somebody -- what's
4 your name, please, young lady in the front? You already
5 spoke?
6 Okay. Do you want to speak again, is that -- I
7 didn't -- I didn't read your name 'cause I knew you'd already
8 spoken, Valerie.
9 Okay. Is there someone else that didn't hear their
10 name and haven't already spoke?
11 MS. SPENCER: Here's Mr. -- it's Csotia. Mr. Alex
12 Csotia.
13 CHAIR WERTHEIMER: Can we get him a card?
14 MS. SPENCER: That may be the only one. I just
15 wanted to make sure.
16 It's up to you.
17 CHAIR WERTHEIMER: Okay. Will Barbara Brown,
18 Margaret Riggs and Don Hendrix.
19 Thank you.
20 Okay. Margaret Riggs, Don -- okay. And you are?
21 You are Margaret Riggs.
22 How about Don Hendrix? Are you here?
23 Will you step up to the podium please, and then Audry
24 Feluca. Thank you.
25 And Henry J. Heber.

1 MR. HENDRIX: First off, I'm so tired I don't know
2 whether I'm disabled or not -- or not.
3 My name is Don Hendrix. I live at the Ranch Mobile
4 Home Park, space 73, and I've lived there for eight years.
5 2002, I moved from Las Vegas to Thousand Oaks so I could be
6 closer to my family.
7 After four months of shopping for a place to buy and
8 one that I could afford, I found the Ranch Mobile Home Park
9 with low monthly rental -- rent and was pleased that I could
10 manage the monthly costs. And talking with the realtor, I was
11 told that the monthly rent would stay at a low rent amount.
12 After buying this mobile home, I invested another
13 20,000, which took all my savings, and fixed up my mobile
14 home. So if you raise the rent, it will affect the way I live
15 and -- like eating and most important the medicines I need to
16 survive.
17 Is my time up?
18 CHAIR WERTHEIMER: Yes, sir. Your time.
19 MR. HENDRIX: Most important thing for most of us
20 living here in the park is the low rent, and that -- this is
21 the reason for buying here and -- in the park in the first
22 place.
23 So if you take that away from us, we will not be put
24 out on the streets -- or we will be put out on the streets and
25 you know that we will not be able to sell our mobile homes.

1 Okay. We're all so concerned about the rent increase
2 that it's affecting all of our health. We have already had a
3 couple problems here in the park since this all started.
4 What do you expect us to do? Sell our autos, give up
5 our insurance so we can just live? Thank you.
6 CHAIR WERTHEIMER: Thank you.
7 MS. FELUCA: My name is Audry Feluca and I live at
8 the Ranch Mobile Home Park. I had heard about the Ranch being
9 a low income and I needed a place to -- where I lived to be
10 safe because where I lived it wasn't safe before.
11 I find it very nice. I had a meeting when I moved in
12 with the manager and some park residents, and then I had to go
13 to Thunderbird to see Betty Faulkner and bring all my rental
14 information with me as we qualified as low income. They say
15 they just had a raise and the raise might be maybe one or two
16 dollars more, but not very much.
17 Okay. I have M.S., fibromyalgia, osteoarthritis and
18 I try to do the best that I can. I says it's not going to get
19 me down. I'm going to get it down. And we appreciate it and
20 also to realize that we have the rent raise, I will not be
21 able to afford it.
22 Being that all the residents are low income, we are
23 doing that and we also have no place to live. We would be all
24 out on the streets.
25 And also please remember, as for social security, we

have not gotten a raise in over three years, and if we get the raise, we'll probably all be out on the street, pushing the carts, being homeless. And I'm not being too funny but -- funny in saying, "Going my way?" or, "Help me, I'm home." Because as seniors, we have no place and nothing to do with the amount of rent that they're raising.

And we don't suppose to have been a low-income park and that's why I moved, to be safe and happy, and we're a very supportive community with each other. Thank you.

CHAIR WERTHEIMER: Thank you. Henry Heber.

Would Alex Cso -- help me out, please.

MR. HEBER: My name is Henry Heber. I live at Ranch Mobile Home Park.

We were looking for an affordable place to buy in Thousand Oaks area and we'd looked at different places that we couldn't afford. But my wife worked for a tax preparer. Her mother used to live at Ranch Mobile Home Park. So she visited her one time. So we came over here and we found a place.

So we -- we bought it and let's see, we've been living there 19 years. And we bought it and it's really -- really a nice deal there. We fixed the whole place up. We spent quite a bit of money on there. I had it all written down here. They've got it somewhere.

But we live on social security and when this raise thing come along, there was no way we could keep that up and

1 there's no place for us to go. We stayed with our daughter
2 over in Simi Valley. She's losing her home on account of this
3 mortgage thing. So we can't -- we can't even be over there.
4 So I don't know where we would go if we -- if this
5 rent thing comes through. So it's been a good place to live
6 and we all get along well together. And we all pay our bills
7 as we go along.
8 Any money that we save, we've been spending on the --
9 on the mobile home. So I don't know what else I can tell you,
10 but we just live on social security and that's it.
11 I know I got three minutes but --
12 CHAIR WERTHEIMER: You can have some more time if
13 you'd like.
14 MR. HEBER: Well, that's it.
15 CHAIR WERTHEIMER: Thank you.
16 MR. HEBER: Okay.
17 CHAIR WERTHEIMER: Cathy Parsons.
18 And I can't pronounce the last name on this, Alex
19 C-s-o-t -- Csotia, thank you.
20 Cathy Parsons and Judy Herrari.
21 MR. CSOTIA: My name is Alex Csotia. I live in 230
22 Vince Avenue, space No. 36, Ranch Mobile Park. I was
23 looking -- looking around. I don't have no home. I live with
24 my kids and I was lucky I know Mrs. Ferruzza, my
25 daughter-in-law parents' -- mother, and she told me, "Go

1 have -- look -- look at that place. My mother used to live
2 there."
3 I was lucky I have -- I have one space left. And I
4 talk to my kids. They help me out. We got the money together
5 and we bought the home, and this is my -- I'm going to check
6 out from there. Thank you.
7 CHAIR WERTHEIMER: Thank you.
8 Judy Herrari.
9 MS. HERRARI: Hi. My name is Judy Herrari. I moved
10 into the Thunderbird Oaks Mobile Home Park. I lived there for
11 16 years with no increases in my money. I eventually had to
12 sell my home and move. The only place I could go I was told
13 to Ranch place was a low income.
14 It worked out great. I moved in there. It was two
15 years ago. And now all of a sudden, I'm going to be placed
16 out of my house if they get the money they want for their rent
17 increase.
18 My income is $695 total every month. It would be
19 more -- I wouldn't be able to afford any medicine, anything.
20 Thank God I have a car because I would be living in my car on
21 the street. The worst part of all would be having to give up
22 my two little dogs back to the rescue. That would be the
23 worst thing in the world for me.
24 Anyway, I hope you can find it -- some way to keep
25 the rent down lower so that I can stay there. As it is right

1 now, now I can afford my oxygen and the medicines I need with
2 the rents the way they are now. If they go up much higher, I
3 won't be able to afford to live there.
4 That's all I have to say. Thank you.
5 CHAIR WERTHEIMER: Thank you.
6 Katie Parsons.
7 Francis -- it's Francis Morton, yes, no?
8 Thank you, Francis.
9 And then Victor Abrunzo and Patrick Hecathorn.
10 MR. MORTON: I'll try and make my remark kind of
11 brief. I don't know why.
12 My name is Francis Morton, commonly known as Frank
13 and my wife's name is Virginia, commonly known as Virginia.
14 We live in a mobile home park since 1999, about 11 years now.
15 Except for the fact that we travel back and forth to
16 Los Angeles.
17 I have been a musician for the last 25 years. My
18 wife and I have lived a relatively quiet life secure in our
19 home, watching T.V., doing other things, practicing for my
20 music, you know, et cetera, et cetera, et cetera, until this
21 rent increase business popped up and disturbed our quietude.
22 This has caused as much mental angst and stress,
23 sleeplessness, disturbances and worry. In fact, we were
24 beginning to feel more like the traveler insurance dog, worry,
25 worry, worry, trouble, trouble, trouble, our -- our, but not

1 over a bone, but over a humongous rent increase that's being
2 proposed now.
3 And I sincerely request that the rent commission
4 would consider having compassion please and be compassionate
5 with us and help us and help -- help alleviate our situation.
6 Thank you very much.
7 CHAIR WERTHEIMER: Thank you.
8 Pat Hecathorn.
9 She left.
10 Okay. Victor Abrunzo. And you'll get four minutes.
11 MR. ABRUNZO: Right. Thank you, sir. And thank you
12 Mr. Chairman for this opportunity.
13 Hi. My name is Victor Abrunzo. I'm a resident of
14 Thousand Oaks. I live next door to Frank and Virginia's
15 daughter, which is how I came to learn something of this
16 embroilment.
17 Frank asked me to participate because prior to my
18 retirement I'd been involved as senior financial analyst for
19 the United States Trustee for the Southern District of New
20 York.
21 Having said that, I'm going to harken on to the
22 comment that Mr. Hill made early on that he and his client
23 carry the burden in this case and that they should have given
24 more deference in the timing of parties' statements.
25 I would suggest to you that they've not borne that

1 burden because you've not been provided reasonable financial
2 data. I would further suggest to you that to the best of my
3 knowledge and belief, Valerie reported to you in December that
4 she did not have financials that were on an accrual basis
5 according to generally accepted accounting principles or under
6 the opinion of an accountant that they fairly represented the
7 financials.
8 Now, if I'm to believe Mr. McCarthy that expenses had
9 to be averaged over three years because they seemed
10 disproportionate from one year to the next, I would suggest
11 that it get further evidence of lack of accounting on an
12 accrual basis.
13 I would suggest to you that even in a high school
14 business class one learns that as part of a contract one is
15 required to deal fairly and in good faith. And if they
16 haven't provided the data that you need to make that financial
17 analysis, I would suggest to you whether you took that case or
18 not or course or not or recognize that --
19 CHAIR WERTHEIMER: Keep going.
20 MR. ABRUNZO: -- our Business and Professions Code
21 requires that under Section 6600. The fair dealing has not
22 been there.
23 More importantly I would shame the City for an
24 application that doesn't require appropriately identified
25 financials that give you a fair statement.

1 And lastly with respect to those financials, I would
2 ask anybody who has property management experience how a
3 person located in Pinole on the east side of San Francisco Bay
4 can meaningfully conduct business with the contractors that
5 operate in the greater Conejo Oaks -- or Thousand Oaks area,
6 whether it's reasonable to have a person from that distance
7 come in and charge for their travel and their time here and
8 try to find appropriate people to get work done at reasonable
9 prices.
10 These folks have not been treated fairly and they
11 deserve to be treated fairly. I'm receiving no social
12 security checks. I am painfully aware of the fact that there
13 has been no raise for three years, and given the temperament
14 of the legislature, no reasonable exception for a raise in the
15 near future.
16 Having said that, I would ask you and -- and hope
17 that your counsel provides you a copy of that Guggenheim case.
18 The En Banc Guggenheim versus the City of Goleta, Case No.
19 06-56306 at the United States Court of Appeals for the 9th
20 Circuit.
21 In that case, the court fo -- the majority, and there
22 was a split decision, focused on the distinct investment based
23 expectations, and they went much further in subheading 8 and
24 identified a definition for those words distinct investment
25 based expectations implies reasonable probability, like

1 expecting rents to be paid, not starry-eyed hope of winning
2 the jackpot if the law changes.
3 The only way Mr. Hohn could have expected a 500
4 percent increase was to expect the law to change, and I think
5 Ms. Spencer has done an excellent job in letting you know that
6 the law as it has been developed and as she brought it through
7 on a chronological basis provides you a clear and distinct
8 definition of where to go and how to get there.
9 Lastly, I'll say that these are very fine people. As
10 tough a time as they are having with their lives, when I
11 explain that I represented inmate family counsel for the women
12 at Valley State Prison, they gave me baskets of hotel
13 amenities so I could take shampoo and tooth paste and stuff
14 like that to these women who don't have it. These women take
15 care of themselves --
16 CHAIR WERTHEIMER: Thank you very much.
17 MR. ABRUNZO: -- and others and I hope you'll do the
18 same. I thank you all.
19 CHAIR WERTHEIMER: That's it, yeah. Got something to
20 say?
21 MR. HEHIR: I do. Thank you, Mr. Chair.
22 Chairman and Commissioners, you might recall at the
23 first meeting we had, the first public meeting we had in which
24 I discussed how these cases can get complicated and there
25 could be a lot of consultants or experts to be involved along

1 with attorneys involved, and I think tonight demonstrates that
2 my words were true.
3 With that, we have gone for a long time and I do not
4 know if this is the time that you wanted to break, but we
5 initially had planned for January 31st as a second -- as a
6 third date now actually.
7 I have been informed from both staff and from
8 Ms. Spencer's -- from Ms. Spencer that experts would be
9 available on the 31st of January.
10 And one of the concerns we have for due process, of
11 course, is to ensure that again even for Ms. Spencer and her
12 consultants that staff or the owner have a right to ensure
13 that they have a right to cross-examine those individuals.
14 And so obviously we want to make sure those
15 individuals who have testified tonight are present or who have
16 been providing counsel or expertise are present, and this is
17 just an example of where again sometimes plans don't go as we
18 expect due to extra time taken that we didn't expect in
19 presentations or cross-examination, et cetera.
20 So I do believe Ms. Spencer is going to indicate that
21 her experts, including Mr. Spencer -- or I'm sorry, Jan Taylor
22 will be available on February 7th.
23 MS. SPENCER: I haven't spoke -- I haven't spoken to
24 Mr. Taylor, but I'm going to contact him and see if I can get
25 him here. And I know that the two accountants that testified

1 tonight are first available on February 7th.

2 MR. HEHIR: All right. And I believe staff has a

3 comment about their expert.

4 MR. NORMAN: Well, Dr. Baar's already testified.

5 Staff will have one last opportunity to answer any questions

6 and Dr. Baar will not be available until February 14th, but

7 staff is prepared to proceed on the 7th if necessary.

8 MR. HEHIR: And I'm not sure if they've spoken to

9 Mr. Hill or not. I do not know if -- I don't know if his

10 experts actually need to be here on the -- on the next date

11 because they've already testified and have been crossed, but

12 if he wants to speak --

13 MR. HILL: We hope to get through cross-examination

14 rather quickly. We don't think we can effectively do it

15 tonight because Mr. Taylor is not here.

16 And we will -- we hope to get through it rather

17 quickly on the 7th. We don't need to have our experts here.

18 I think they've come and given their -- spoken their peace,

19 and I would urge the Commission not to go on the 14th or I

20 might have marital problems.

21 MR. HEHIR: And then, of course, Chair and

22 Commissioners, leaves the issue for you since we have not

23 planned, and again, this is another example of where you try

24 to plan for upcoming events and now we've thrown a curve ball

25 at you as to whether or not the Commissioners will be

1 available on the 7th as well.

2 CHAIR WERTHEIMER: Well, Mike?

3 MR. SILACCI: I'm available.

4 COMMISSIONER FELDMAN: Yes, I'm available.

5 VICE-CHAIR SHELDON: Yes, I am, too.

6 COMMISSIONER FERRUZZA: As far as I know, I am, too.

7 CHAIR WERTHEIMER: And I'll put my yes in as well.

8 But we still have an issue of -- somebody can't be

9 here till the 14th? Dr. Baar or --

10 MR. PRESCOTT: That was Dr. Baar, but staff indicated

11 we're able to proceed if he is not here.

12 CHAIR WERTHEIMER: Okay. Then I move we adjourn

13 until --

14 MR. HEHIR: Actually, if I may --

15 CHAIR WERTHEIMER: Go ahead.

16 MR. HEHIR: -- if you're going to be continuing --

17 the motion would be continuing the public hearing to February

18 7th, 2011? We still need to continue with the other -- other

19 aspects of the agenda, but you would need -- you would need to

20 make that motion first.

21 CHAIR WERTHEIMER: I want to make a motion that we

22 adjourn till February 7th. What -- yes, ma'am?

23 I was going -- yeah, February 7th. We're going to

24 go for -- let's go for four o'clock again. Can we do that?

25 MR. PRESCOTT: I might suggest a typical time to

1 start meetings would be at six o'clock, and since I think
2 we're nearing the end of this particular hearing, we can
3 probably move expeditiously and it wouldn't go too late if we
4 start it at 6:00.
5 But it is up to the Commission. So we might want
6 to --
7 COMMISSIONER SILACCI: 6:00 actually works better for
8 me.
9 COMMISSIONER FELDMAN: 6:00 is better.
10 CHAIR WERTHEIMER: Okay. Then I have a motion for
11 February 7th at 6:00 p.m.
12 COMMISSIONER FELDMAN: I move that we have our next
13 meeting on the 7th at 6:00 p.m.
14 CHAIR WERTHEIMER: So moved. I think we're going to
15 vote.
16 COMMISSIONER FELDMAN: May I say something? For
17 all -- oh, okay. Okay.
18 RECORDING SECRETARY: Motion passed 5-0.
19 CHAIR WERTHEIMER: Barbara -- or Brenda, I'm sorry.
20 COMMISSIONER FELDMAN: This is out of order, but I
21 just want to say to all the residents that we have all read
22 the comments that you sent us in letter form.
23 And when you talk to folks who were not able to make
24 it tonight because they got too tired, would you please tell
25 them that we are reading these letters and taking them to

heart. Thank you.

CHAIR WERTHEIMER: Thank you.

Do we have any public comments?

Any more comments to the Commissioners?

MR. PRESCOTT: We have no speaker cards.

CHAIR WERTHEIMER: Okay. Yeah, any Commissioner comments, further?

All right. The meeting will be adjourned until February 7th at 6:00 p.m.

(The hearing was adjourned at 11:23 p.m.)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

I, TYLENE M. BORJON, Certified Shorthand Reporter No. 8952, in and for the State of California, do hereby certify that said hearing was taken at the time and place as herein set forth; that said hearing was taken down in shorthand by me and thereafter transcribed into typewriting, and I hereby certify the foregoing 242 pages contain a full, true, and correct computer-assisted transcription of my shorthand notes so taken.

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

IN WITNESS WHEREOF, I have hereunto subscribed my name this 2nd day of January, 2011 at Ventura, California.

TYLENE M. BORJON NO. 8952