

**Ranch
Mobile Home Park**

**Administrative
Record**

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

Part G

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

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

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

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Transcripts of meeting dated February 7, 2011

Transcripts of meeting
dated February 7, 2011
Submission by Applicant's
Attorney

1 IN THE STATE OF CALIFORNIA
2 CITY OF THOUSAND OAKS

3
4 **ORIGINAL**

5 In re:)
6)
7 RANCH MOBILE HOME PARK) (RAA-2010-02)
8 RENT ADJUSTMENT APPLICATION)
9 -----)

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11
12
13
14 RENT ADJUSTMENT COMMISSION PUBLIC HEARING,
15 taken at 2100 Thousand Oaks Boulevard,
16 Thousand Oaks, California, commencing at
17 6:00 p.m., Monday, February 7, 2011,
18 before ROSA E. MORA, CSR No. 13016.

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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

13

14 APPEARANCES OF COUNSEL:

15 FOR THE APPLICANT:

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25 Attorney at Law

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1 THOUSAND OAKS, CALIFORNIA, MONDAY, FEBRUARY 7, 2011

2 6:00 p.m.

3 -o0o-

4
5 MR. WERTHEIMER: Good evening, ladies and gentlemen.
6 I'd like to call the meeting to order for the Rent
7 Adjustment Commission for February 7, 2011.

8 Can we stand for the Pledge of Allegiance, please.

9 (Pledge of Allegiance)

10 MR. WERTHEIMER: Will the recording secretary please
11 call the roll.

12 MS. VAUDREUIL: Commissioner Feldman.

13 MS. FELDMAN: Present.

14 MS. VAUDREUIL: Commissioner Ferruzza.

15 MS. FERRUZZA: Present.

16 MS. VAUDREUIL: Commissioner Silacci.

17 MR. SILACCI: Present.

18 MS. VAUDREUIL: Vice Chair Sheldon.

19 MR. SHELDON: Present.

20 MS. VAUDREUIL: Chair Wertheimer.

21 MR. WERTHEIMER: Present.

22 MS. VAUDREUIL: Alternate Commissioners Klussman and
23 Commissioner Schutz.

24 Absent.

25 MR. WERTHEIMER: Are there any communication

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1 announcements or continuance -- or Mr. -- John, would you
2 talk about the supplemental package, please.

3 MR. PRESCOTT: Yes. We do have two supplemental
4 packets that were distributed to the Commission, one earlier
5 today and then another one on the dias labeled supplemental
6 number two. They relate to case 7A on your agenda and will
7 be discussed at that time.

8 MR. WERTHEIMER: Thank you. Would any commissioner
9 like to propose a motion for approval of the minutes for
10 January 24th, 2011?

11 MS. FELDMAN: I propose we accept the minutes for that
12 date.

13 MR. WERTHEIMER: So moved. Call for a vote, please.

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

15 MR. WERTHEIMER: Before the secretary calls the case,
16 I'd like a few moments to announce the anticipated order or
17 outline of how we will proceed this evening.

18 First, we will be allowing additional public
19 testimony. If you want to speak, please complete and turn
20 in a speaker card. If you do not want to speak, but want to
21 make a written comment, you may fill out a comment card. If
22 you previously submitted a speaker card and have not
23 provided your testimony, you do not have to resubmit a
24 speaker card. The recording secretary has those cards and
25 will call them this evening. Hello? Thank you.

1 Next, the Applicant will have an opportunity to
2 question the park residents' witnesses. Staff may also want
3 to ask questions of the park residents, representative, and
4 witnesses. Commissioners may have additional questions for
5 parks' residents, representative, or witnesses.

6 After the final questions and comments from park
7 residents, witnesses, City Staff, will have time to respond
8 to the various positions and comments made since the initial
9 presentation on December 6th. Commissioners may have
10 follow-up questions for Staff.

11 Finally, the applicant will have up to 15 minutes
12 to present closing remarks. Once completed the public
13 hearing will be closed. Direct members have any questions
14 before for the hearing continues?

15 MS. FELDMAN: I have a question. Are we able to
16 question witnesses and Staff?

17 MR. WERTHEIMER: Yes.

18 MS. FELDMAN: Thank you.

19 MR. WERTHEIMER: Will the secretary please reopen the
20 meeting.

21 MS. VAUDREUIL: Hearing advertised as required by law
22 is hereby open to consider agenda item 7A regarding case
23 Ranch Mobile Home Park Rent Adjustment Application, RAA
24 2010-02; location, 2193 Los Feliz Drive; Applicant,
25 A.V.M.G.H. Five, Limited; request, rent increase in the

1 amended amount of \$466.12 per month per space to achieve a
2 just and reasonable return.

3 MR. WERTHEIMER: All right. On the comment cards, all
4 speakers will get their opportunity to speak. I received
5 over 20 speaker cards. Each speaker will have two minutes.
6 I will try to call out three speakers at a time. If your
7 name is called, please come down to one of the seats in
8 front and be ready to step forward when it's your turn to
9 ensure we proceed efficiently. We also have a portable mic
10 available as well.

11 First, Barbara Brown. Second, Dan Goldstein. And
12 third, Carol Classen. Are they here to speak? And we
13 remind you to speak your name and city. Thank you.

14 MS. BROWN: Thank you. My name is Barbara Brown. I
15 live in Thousand Oaks, and I'm pleased to do so. In
16 October, 2008, I purchased a coach in the Ranch Mobile Home
17 Park. It was within my budget and I was elated to find it,
18 a place here that I could afford to be in. When I was
19 applying to become a tenant, I was required to prove that I
20 lived within the poverty level. And it was because the park
21 is designated for low income seniors. The manager said that
22 the park had had only a couple of modest increases ever.
23 However, tonight we have been asked to cover a monthly
24 increase. I saw the revised figure, \$466, still over 300
25 percent, almost 360 percent.

1 I want to suggest right now that the increase
2 proposed here is not modest at all. I call it outrageous.
3 No one who qualifies to live in this park can afford this
4 rent. To live independently within our means in a safe
5 community means a lot to us. It's possible, thanks to the
6 city's low income designation of our park. To ignore or to
7 change the City's ordinance just to satisfy one individual
8 while simultaneously distressing and disrupting a park full
9 of seniors seems to me to be incomprehensible and totally
10 without merit. We're hoping that you will keep the faith
11 with the intention of the original ordinance and show that
12 we seniors are still important to the community at large by
13 rejecting this rent increase application. Thank you.

14 MR. WERTHEIMER: Thank you. Is either Dan Goldstein or
15 Carol Classen going to speak? Margaret Hahn, Barbara Brown.

16 MS. BROWN: Yes, I just spoke.

17 MR. WERTHEIMER: I apologize. K. Foster,
18 Donna K. Foster, Tom Packman.

19 MR. PACKMAN: Here.

20 MR. WERTHEIMER: Okay. The mic's yours.

21 MR. PACKMAN: I can't -- don't need a speaker. You can
22 hear me. I'm Tom Packman. I now live in Thousand Oaks, and
23 I have been here for a little over two years. And as that
24 young lady that was just up here spoke, and I have to agree
25 with everything that she said. She moved in just before I

1 did.

2 But, you know, my house burned down two -- a
3 little over two years ago, and I couldn't afford to rebuild.
4 I had no insurance and my sons helped me get into that
5 mobile home park because I am a senior citizen and I have a
6 very, very good education and it got spent to put my sons,
7 all three of them, through college. And they're making a
8 reasonable living, but they help me buy that mobile home
9 that I live in.

10 But I was told, like her, that, hey, it's not
11 going to go up very much and it sure as hell isn't going to
12 go up -- pardon me, young ladies -- but it was not going to
13 go up anywhere near what they're asking for. But, you know,
14 I haven't got too many years left. The last time you had a
15 meeting for us, I was in the hospital and I almost ripped
16 out all of the tubes that they had in me so I could be over
17 here and say, hey, you've asked me to speak a couple of
18 times and I'm in this hospital and I got this gown on that
19 doesn't have a back in it, and I wanted to speak.

20 But I'm here tonight, and I'm here just to tell
21 you that, you know, I can only live there or I'm back out on
22 the -- out on a -- well, I did live on the street for about
23 a month before they could -- my sons could help me find this
24 place here in Thousand Oaks. I lived between Calabasas and
25 Malibu and the county of Los Angeles. And I lived in the

1 same place for 32 years, and now I don't have a place to
2 live unless I live there. So thank you very much. That's
3 about all I can say. Hey, thank you very much.

4 MR. WERTHEIMER: Thank you, Mr. Packman. I'm glad to
5 see that you're out of the hospital and the tubes are gone.
6 Shirley Thoreau, Ruth Faustino, Jay Faigala, Lynn Sweeney,
7 Jane Garden, Lawrence Bloomquest, Gail Heavengen,
8 Vera Baldwin. We got one?

9 MS. BALDWIN: My name is Vera Baldwin. And I'm a
10 senior citizen in my late 70s, and have lived in Ranch
11 Mobile Home Park for the past 12 years. I have continued to
12 work for most of the time that I have lived there so that I
13 can fix up my home and maintain it. I put all my earnings
14 from my work into my home with the thought that should I
15 ever need to sell or move, I will be able to get a fair and
16 reasonable return for what I have put into it. It was not
17 with the thought that Mr. Hone's attorneys have tried to
18 make you believe. Gee, if I sell this, I will make a
19 killing.

20 I have tried to make sure that not only is it a
21 comfortable home for me, to the best of my ability, but also
22 the outside of my home is as well maintained so it is an
23 improvement also for the park. I even take care of an area
24 that should be cared for by the park. I have planted and
25 had sprinklers put in at my own expense to keep it looking

1 nice. I can't do this work anymore, so I have to pay a
2 gardener to keep it looking nice.

3 Mr. Hone's attorneys would have you believe we
4 have all the amenities that the other parks have. We don't
5 have a pool. We don't have tennis courts and our clubhouse
6 is very small. It is also hard to conceive that in an age
7 where most companies are downsizing that we suddenly need a
8 full-time manager when for the past 33 years we have managed
9 very well with one part-time. Maybe if we, the tenants, had
10 seen a vast improvement since this change, we may say it was
11 needed but none has been forthcoming. In fact, we've had to
12 wait over two months to have a light bulb replaced at our
13 entrance.

14 And lastly, I know a lot of people do not take
15 this seriously, but if the rents on these homes do go up
16 where they are unaffordable, many of us will be homeless.
17 We will lose everything we have, including having to
18 continue paying the mortgage on our home that we can no
19 longer afford. I know that I would not like to have this on
20 my conscious and would not be able to live with myself
21 knowing that this was partly my doing. So my hope is that
22 you will consider the matter of this rent increase very
23 carefully before you make your decision. Thank you.

24 MR. WERTHEIMER: Thank you. Kathy Parsons
25 Rob Cauldron. Ms. Parsons, is that you?

1 MS. PARSON: Yes.

2 MR. WERTHEIMER: Thank you.

3 MS. PARSON: Katie -- katie Parsons. I reside in
4 Woodland Hills. I'm a Realtor, and I recently represented a
5 lady who purchased in this development. She went through a
6 very rigorous application process. She came to mutual
7 agreement with the seller, but then she had to wait for
8 quite a length of time until she was approved by the park.
9 They checked in great detail if she could afford to live in
10 the park. Yes, she had to earn under 30,000 or
11 approximately that amount, but they wanted to know what her
12 car payment was, they wanted references from her other park
13 to make sure that she was the kind of person they wanted in
14 the park. If she had a mortgage, how much that mortgage
15 would be. They estimated, I think, you know, how much she'd
16 need for food, how much she'd need for gas, how much she'd
17 need to live.

18 So all of these things were looked at in great
19 detail before they accepted her to the park. And I feel
20 that this formula that they used in every resident in this
21 park had to apply and pass this -- not little test, this big
22 test to make sure they applied is not being taken into
23 consideration with these people. They're low income people,
24 and they had to pass this huge criteria to get in there, and
25 I don't feel that's being taken into account enough.

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1 Staying under the 30,000, but at the other end having enough
2 to live. Now we're saying push it up to 450 or whatever is
3 on the table now. We're going to be left with nobody who
4 can qualify to live in this park, nobody at all. So thank
5 you very much.

6 MR. WERTHEIMER: Thank you.

7 Mr. Boyd, do you have any questions for the
8 last -- do you have any cross-examination for the last
9 speaker?

10 MR. HILL: No.

11 MR. WERTHEIMER: Thank you. Pat Heckathorn. That's
12 it. Is there any other people in the audience that would
13 like to speak? If not, that will be the end of public
14 speaking.

15 Mr. Hill?

16 MR. HILL: Yes.

17 MR. WERTHEIMER: You're up.

18 MR. HILL: Thank you. We'd like to address
19 cross-examination to Ms. Randi Sorenson who testified at the
20 last hearing.

21 Good evening, Ms. Sorenson.

22 MS. SORENSON: Good evening.

23 MR. HILL: Let me see if I can understand your analysis
24 of the Ranch income and expenses for the year 2009 starting
25 at, I believe it was in your notebook RTA pages 110 through

1 112.

2 MS. SORENSON: Okay.

3 MR. HILL: It appears that you first start by taking
4 out expenses that you believe are not allowed by city
5 regulations; is that correct?

6 MS. SORENSON: I used per -- the RAC 5 --

7 MR. HILL: Okay.

8 MS. SORENSON: -- to calculate what was allowed.

9 MR. HILL: Okay. And then you attempt to average all
10 expenses over three years; is that correct?

11 MS. SORENSON: Utilizing the applicant's general
12 ledger --

13 MR. HILL: Okay.

14 MS. SORENSON: -- we were able to, as we had it for
15 three years, we were able to average the numbers from his
16 general ledger and recalculate them, yes.

17 MR. HILL: Without regard to any -- whether there were
18 any anomalies that required averaging; is that correct?

19 MS. SORENSON: We used his general ledger because if
20 the general ledger was correct, we would have had -- I
21 assume it was correct and that's the numbers we used, of
22 course.

23 MR. HILL: Okay. And then you adjusted -- step three
24 was then you adjusted those numbers to further account for
25 what you had been told are industry standards, did you

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1 not?

2 MS. SORENSON: We used the information given to us by
3 Jan Taylor who is here this evening to answer any
4 questions.

5 MR. HILL: Yeah. And I'll address some questions to
6 him as well. Then you further adjust those numbers a fourth
7 time by down to eight percent of the total; is that correct?

8 MS. SORENSON: We utilized the information in RAC 2 to
9 calculate the number at eight percent.

10 MR. HILL: Okay. Before we get involved in the
11 specifics of each of those points, I'd like to ask a little
12 bit about your background.

13 Have you ever testified before at a rent
14 adjustment hearing?

15 MS. SORENSON: No, I have not testified.

16 MR. HILL: Okay. Have you ever reviewed a rent
17 adjustment application or prepared a rent adjustment
18 application before?

19 MS. SORENSON: Not specifically a rent adjustment
20 application, no.

21 MR. HILL: Okay. Have you ever analyzed a rent
22 adjustment ordinance before to determine what expenses were
23 allowable or disallowable?

24 MS. SORENSON: No.

25 MR. HILL: Okay. Have you ever studied California

1 cases interpreting rent adjustment ordinances or regulations
2 before?

3 MS. SORENSON: No.

4 MR. HILL: Okay. How did you gain or acquire your
5 expertise to analyze or testify about appropriate rent
6 adjustment methodology?

7 MS. SORENSON: The expertise that I utilized to
8 complete my spreadsheet and my analysis is my years of
9 experience as an accountant and my years of experience as a
10 forensic examiner of numerous clients' information and
11 general ledgers and bills and invoices, et cetera.

12 MR. HILL: Have you ever prepared testimony or prepared
13 an analysis on maintenance of net operating income
14 methodology?

15 MS. SORENSON: For net income methodology, yes.

16 MR. HILL: When?

17 MS. SORENSON: I do that on a daily basis for clients.
18 It's my -- it's my business.

19 MR. HILL: I'm talking about the methodology used in
20 rent adjustment applications.

21 MS. SORENSON: In rent adjustment applications, no.

22 MR. HILL: Okay. Thank you. Let's move on to your
23 four-part analysis. In part one you excluded expenses for
24 meetings, travel, common area water and sewer and common
25 area of gas; is that correct?

1 MS. SORENSON: I'd have to go through them one by one
2 if you're going to -- I can't -- water, sewer, yes, that was
3 disallowed. What was the other ones?

4 MR. HILL: Meetings and travel?

5 MS. SORENSON: Yes.

6 MR. HILL: Okay. Does the ordinance or the regulations
7 say you must exclude those expenses?

8 MS. SORENSON: It does not say that I should exclude
9 the meetings and seminars. The water and sewer was a
10 different issue.

11 MR. HILL: And how did you determine to exclude the
12 water and sewer?

13 MS. SORENSON: Their general ledger shows that there
14 was a -- basically a wash in 2009 for water and sewer.

15 MR. HILL: I consulted the general ledger and on
16 page -- under item 7810, pages 38 and 39 in the general
17 ledger, and they didn't appear to be a wash. There actually
18 appeared to be a difference between the income and any of
19 the expenses and the income of those amounts that were on
20 there. Did you note that there were different income and
21 expense amounts for the common area gas and water and sewer?

22 MS. SORENSON: I think it was actually a credit of
23 \$87.48.

24 MR. HILL: Okay. All right.

25 MS. SORENSON: So, yes. Because that's income to him,

1 I didn't penalize him for that.

2 MR. HILL: Okay. Did you look at -- particularly on
3 pages 38 and 39 of the general ledger?

4 MS. SORENSON: I don't have those with me. I can get
5 them if you need me to.

6 MR. HILL: Okay. All right. Ms. Sorenson, what
7 particular methodology did you rely upon to exclude those
8 expenses?

9 MS. SORENSON: Which ones in particular?

10 MR. HILL: You said you determined to exclude those
11 expenses. Was there a particular methodology that you had
12 used before in your practice that would --

13 MS. SORENSON: Well, it would really depend on each
14 individual case and here we used RAC 5, as I said before.

15 MR. HILL: Okay. So it's solely your interpretation of
16 RAC 5 that it doesn't include those expenses so you must
17 exclude those expenses?

18 MS. SORENSON: They were not included in RAC 5, so yes,
19 we excluded them.

20 MR. HILL: And did you -- did you read RAC 5 and where
21 it talks about other expenses and other income items?

22 MS. SORENSON: I don't really know that that's in RAC
23 5. I know that --

24 MR. HILL: The RAC 2. I'm sorry.

25 MS. SORENSON: Oh, I was referencing in this case RAC

1 5.

2 MR. HILL: And RAC 5 is basically amendments to RAC 2;
3 is that correct?

4 MS. SORENSON: That, I don't know. I couldn't answer
5 you. I'd have to look.

6 MR. HILL: Did you ever review RAC 2?

7 MS. SORENSON: Yes, I did.

8 MR. HILL: Okay. And you don't recall there being a
9 statement about other operating expenses in RAC 2, do you?

10 MS. SORENSON: I do recall that, yes.

11 MR. HILL: Okay.

12 MS. SORENSON: Again, we were referencing RAC 5 in
13 this.

14 MR. HILL: Okay. All right. In your regular work as
15 an accountant, have you ever reviewed mobile home park
16 income and expenses before?

17 MS. SORENSON: No.

18 MR. HILL: Have you ever excluded the types of expenses
19 that you've excluded here when preparing tax returns for
20 rental communities?

21 MS. SORENSON: When I am preparing a tax return, no.
22 When I was comparing industry standards, which I do on a
23 regular basis for clients, yes.

24 MR. HILL: I don't think we were talking about
25 industry standards here. Okay. Ms. Sorenson, is there a

1 particular accounting methodology you were relying on for
2 step two to adjust three-year averages?

3 MS. SORENSON: Basic accounting.

4 MR. HILL: Okay. And when do you -- where have you
5 used that methodology before?

6 MS. SORENSON: If I am taking an average of something,
7 I would use that methodology. In high school.

8 MR. HILL: Would you use that in preparing during tax
9 returns?

10 MS. SORENSON: I wouldn't be averaging something on a
11 tax return, so no.

12 MR. HILL: Okay. All right. Is there a particular
13 accounting methodology you were relying on for adjustment in
14 expenses to industry standard?

15 MS. SORENSON: The industry standard, as I said, was
16 all based on testimony that I think you'll get from
17 Mr. Taylor.

18 MR. HILL: Is there any particular accounting
19 methodology that requires you to use industry standards for
20 expenses?

21 MS. SORENSON: Depends on the purpose. If there -- was
22 there in this case? There was a reason for me to put it on
23 here, yes.

24 MR. HILL: Have you ever used that methodology
25 before?

1 MS. SORENSON: The methodology of accepting information
2 from an -- another expert, yes.

3 MR. HILL: Have you ever used the methodology of
4 adjusting expenses to industry standards in your accounting
5 work for preparing a tax return?

6 MS. SORENSON: Again, not for a tax return, no.

7 MR. HILL: For any other purpose?

8 MS. SORENSON: Yes.

9 MR. HILL: What purpose?

10 MS. SORENSON: For the purpose of giving information to
11 somebody in business. I can't think of one off the top of
12 my head, but yes, there's cases where you will use industry
13 standards to determine if a company is similar to another
14 company or a company that is going to be purchasing another
15 company, we would look at industry standards, and there are
16 certain things that you would disallow.

17 MR. HILL: But not to do a balance sheet; is that
18 correct?

19 MS. SORENSON: Not to do a balance sheet, which is not
20 the case here.

21 MR. HILL: Okay. What sources did you consult to
22 determine industry standards, any independent sources?

23 MS. SORENSON: Mr. Taylor.

24 MR. HILL: Okay. You don't determine -- you don't
25 believe yourself to be an expert on industry standards for

1 mobile home parks; is that correct?

2 MS. SORENSON: No.

3 MR. HILL: Okay. Thank you. I have nothing further.
4 Thank you.

5 MS. SORENSON: Okay. Thank you.

6 MR. WERTHEIMER: Ms. Sorenson, could you stay for a
7 moment, please? Does the Staff have any questions for her?

8 MR. NORMAN: No questions.

9 MR. WERTHEIMER: Commissioners? Thank you.

10 MR. HILL: I'd like to call Mr. Taylor.

11 MS. SPENCER: I think before Mr. Taylor is subject to
12 cross-examination, because he wasn't here last time, it
13 would be helpful for him to give his own direct examination
14 presentation so he can explain to the Commission. I'd like
15 the opportunity -- the reason for his conclusions. And I'd
16 like the opportunity for him to do so.

17 MR. HILL: I don't think it's appropriate to be
18 surprised with new testimony at this point. We were
19 presented with merely a resume and a statement that he has
20 industry standards, and I think we're entitled to
21 cross-examine on what was presented.

22 MR. WERTHEIMER: We'll just hear the cross-examination.

23 MR. HILL: Thank you.

24 MR. TAYLOR: Good evening. My name is Jan Taylor.

25 MR. HILL: Good evening, Mr. Taylor. I note that on

1 your resume you've done a lot of buying and selling of
2 single-family homes; is that correct?

3 MR. TAYLOR: That is correct.

4 MR. HILL: And particularly you seem to have done a lot
5 of acquiring of distressed and foreclosure property; is that
6 correct?

7 MR. TAYLOR: That is correct.

8 MR. HILL: Okay. And you seem to be currently doing
9 some receivership work for properties; is that correct?

10 MR. TAYLOR: That is correct.

11 MR. HILL: And what types of properties are you doing
12 receivership work for?

13 MR. TAYLOR: Several multi-family, some small mixed
14 used, single-family residences.

15 MR. HILL: What particular duties are you doing as
16 receiver, are you collecting income?

17 MR. TAYLOR: I do do that, yes.

18 MR. HILL: And anything else?

19 MR. TAYLOR: As a -- under the fees and profits
20 receiverships we go in, we have a responsibility to the
21 receiver to deal with all the health safety issues of the
22 property, to serve notices on the residents, to collect
23 rents, to put the rents into a trust fund, a trust account
24 rather, and to stabilize the asset to the best of our
25 abilities.

1 MR. HILL: Okay. When you were Nunez Property --
2 Properties, you claim you were responsible for takeovers, is
3 the word that's used, in several 200 plus units in
4 manufactured home communities; is that correct?

5 MR. TAYLOR: No, that is not correct. Let me see what
6 my CV says. I don't believe it says that there. In the
7 Nunez team I did no manufactured home work whatsoever.

8 MR. HILL: Maybe I mis --

9 MR. TAYLOR: It was prior to that with Capital
10 Investment Network.

11 MR. HILL: I'm sorry. Capital Investment. I'm sorry.
12 I misspoke.

13 MR. TAYLOR: That's okay.

14 MR. HILL: Okay. And what was your role in those,
15 quote, unquote, takeovers?

16 MR. TAYLOR: Typically the ownership of the properties,
17 the group that I worked with would buy the manufactured home
18 community. Often times there were issues, health safety
19 issues, maintenance issues, deferred maintenance, resident
20 issues, water rights, septic problems, things like that. I
21 would go in in the beginning of the takeover and try to
22 stabilize the asset as quickly as possible and address all
23 those issues. And oftentimes I would be in a position of
24 having to deal with the on-site managers that we would
25 either hire or had been there or some hybrid in between.

1 MR. HILL: So you didn't actually manage any of these
2 properties?

3 MR. TAYLOR: I did not manage properties, no.

4 MR. HILL: Okay. And you said your role was to try and
5 stabilize the assets. What did you do in terms of
6 stabilizing the assets?

7 MR. TAYLOR: Well, a variety of things. A lot of what
8 happens in a takeover is you don't have accurate books and
9 records, your invoicing, vendors, condition of the property,
10 condition of the properties infrastructure. Sometimes you'd
11 get residents, tenants rights' organizations that you
12 weren't anticipating. A lot of problem solving in the
13 beginning to stabilize the asset.

14 MR. HILL: Were you involved in the financial analysis
15 of the properties that -- in order to determine whether the
16 properties were right for takeover?

17 MR. TAYLOR: Yes, I was.

18 MR. HILL: Okay. And what criteria did you use to
19 establish whether a property was right for a takeover?

20 MR. TAYLOR: Oftentimes we made the analysis based on
21 what we assumed would be a pro forma for the property. The
22 ones that I was involved in, we believed were
23 underperforming economically and that we go could go in and
24 make some changes, make some improvements, do some on-site
25 improvements, change management, change management style,

1 and create a value added atmosphere for the ownership.

2 MR. HILL: So is it safe to say that all the properties
3 that -- the mobile home properties that you were involved
4 with in these takeover activities were distressed for
5 underperforming properties?

6 MR. TAYLOR: That would be accurate.

7 MR. HILL: Okay. And where were these properties
8 located?

9 MR. TAYLOR: Boring, Oregon.

10 MR. HILL: Where?

11 MR. TAYLOR: Bore -- it's about an hour outside of
12 Portland. It's called Boring, B-o-r-i-n-g. I'm sorry. I
13 didn't name it. Well, the name of the complex was Big
14 Valley Wood, so it gets even funnier. Unfortunately, that's
15 where it was.

16 MR. HILL: Was that the only distressed property,
17 mobile home property that you dealt with?

18 MR. TAYLOR: Yeah, as an on-site I dealt with some out
19 of the office that are with that group.

20 MR. HILL: Approximately how many did you deal with out
21 of the office?

22 MR. TAYLOR: No more than three.

23 MR. HILL: Okay. So approximately four is this -- are
24 the several properties that you've dealt with; is that
25 correct?

1 MR. TAYLOR: On manufactured home communities?

2 MR. HILL: Yes.

3 MR. TAYLOR: That would be correct.

4 MR. HILL: Okay. Did you ever deal with any
5 manufactured homes in California or Ventura County?

6 MR. TAYLOR: No, I did not.

7 MR. HILL: Did you ever consult any source to determine
8 whether those park expenses were within industry
9 standards?

10 MR. TAYLOR: I attempted to, but I wasn't pleased with
11 what I found out, which was basically not much of
12 anything.

13 MR. HILL: Is there any publication that you use to
14 determine the industry standards that you applied to the
15 Ranch Mobile Home Park here tonight?

16 MR. TAYLOR: No.

17 MR. HILL: Okay. Have you ever testified before in any
18 rent board or court hearings on industry standards for
19 expenses for mobile home parks?

20 MR. TAYLOR: No.

21 MR. HILL: No further questions.

22 MR. WERTHEIMER: Any questions from the Staff?

23 MR. NORMAN: Staff has no questions.

24 MR. WERTHEIMER: Commissioners.

25 MS. FELDMAN: I -- are you going to be able to give

1 testimony? Why not?

2 MS. SPENCER: The hearing is still open. The record
3 has not been closed. I'd like to request that the tenants
4 have an opportunity for Mr. Taylor to present testimony or
5 that I be given an opportunity to examine him.

6 MR. HEHIR: Well, the Commission can entertain that.
7 Again, at this stage it was at cross-examination. You heard
8 the objection from Mr. Hill.

9 MS. SPENCER: Mr. Wertheimer specifically requested
10 that Mr. Taylor be here tonight so that he could provide
11 testimony. We would like an opportunity, if he's going to
12 be the cross-examined about his conclusions, for him to give
13 you direct examination, or I can cross-examine him so you
14 can fully understand what the basis are for his conclusions
15 so that we can make this an information gathering exercise
16 as it's intended to be.

17 MR. HEHIR: If the Commission is going to entertain --
18 the majority of it is the Commission is going to entertain
19 having some direct testimony from this witness --

20 MR. HILL. I believe --

21 MR. HEHIR: -- then -- just let me finish. That they
22 would then have to entertain also any further
23 cross-examination.

24 MR. HILL: I believe that the cross-examination has
25 determined that there are no industry standards upon which

1 he relied and that he's not qualified to testify in this
2 particular instance, but I'll leave it to the Commission.

3 MR. WERTHEIMER: How long would you like to
4 cross-examine him?

5 MS. SPENCER: I would like to just give him an
6 opportunity to explain the basis for his conclusions that
7 were provided in the spreadsheet. So I can ask him
8 questions on that point, if you'd like, or I can just let
9 him talk and explain it to you.

10 MR. WERTHEIMER: And the time period for either of
11 those would be?

12 MS. SPENCER: Five to 10 minutes.

13 MR. WERTHEIMER: Commission, any objections?

14 MS. FELDMAN: No objections.

15 MR. WERTHEIMER: Okay. Then testify directly, please.

16 MR. TAYLOR: All right. Thanks. All right. This is
17 more comfortable for me. When I was asked to take a look at
18 this spreadsheet that these guys were putting together on
19 this rent proposal, the questions that were asked of me were
20 fairly simply. Would you take a look at the property
21 management components and tell me do you think, in your
22 opinion as an owner and as a manager, that these numbers are
23 reasonable? Okay. The industry standards, all that sort of
24 happened without me. But what I began to do is I looked at
25 the asset, what kind of income it was producing. Bear in

1 mind I came to it a little late in the game.

2 And I began to look at how much they were paying
3 for the resident manager, the allowance for his coach, the
4 load for his payment and his salary as well as the property
5 management expenses. And I looked at them very carefully
6 and I thought very deeply about what would I pay as an
7 owner, what have I seen other owners pay, not so much for a
8 manufactured home community but for a multi-family. And
9 there's kind of a similarity between this asset and
10 multi-family except the management of this particular asset,
11 in my opinion, should be a great deal easier. It should be
12 quite a bit less work than you would for a -- say a 70-unit
13 apartment complex.

14 The reason being on a 70-unit apartment complex,
15 the management company and the on-site manager are required
16 to do a lot of duties that are not required of this
17 particular asset. For example, if a pipe breaks in a
18 resident's unit, the management is under no obligation to do
19 anything about it whatsoever. They're not responsible for
20 maintaining the yard, the roof, the windows, any of the
21 appliances, any of the plumbing, any of the electrical, or
22 anything else. What they are responsible for is collecting
23 the rents and maintaining the existing infrastructure, which
24 would be in this case roads and a clubhouse and what appears
25 to be a small monument at the front of the complex that

1 would need to be watered, maintained, and cleaned up.

2 Okay. Excuse me. Just give me a second. So when
3 I began to look at those components and then look at what
4 they were actually spending on it, I found that it was
5 unreasonable, in my opinion, as a either owner, manager, or
6 micro manager to pay that amount of expense for a asset
7 similar to this or that particular asset at the levels that
8 they were spending post-2009. Seems to me pre-2009, they
9 were paying the on-site manager \$200 a week plus a housing
10 allowance. And I don't believe there was any off-site
11 management at that time. So it seems to me that post-2009,
12 that the expenses have increased in such a way that it would
13 make the asset appear not as profitable as it should be.
14 How would that be?

15 And so these are only observations of a person who
16 was asked to analyze the numbers from the point of view of
17 having owned, managed, and micro managed such things. There
18 really aren't industry standards for something like this,
19 but I did find a section for Morgan Hill, California in
20 which it's very similar in which they capped the property
21 management at five percent. That was the only thing I could
22 find.

23 It's kind of like everything else in real estate,
24 commissions are negotiable. Somehow we always seem to spend
25 about six percent to sell our homes, about five percent to

1 sell our commercial property, about 10 percent to sell our
2 land. But they're not written down as industry standards,
3 but it seems to be what we do. And for this kind of an
4 asset, if it were multi-family, I would not expect to pay
5 more than six percent to manage that property plus the
6 expense for the on-site person and the load. So --

7 MR. WERTHEIMER: Are you finished?

8 MR. TAYLOR: That's what I --

9 MR. WERTHEIMER: All right. Staff have any questions?

10 MR. NORMAN: No questions.

11 MR. WERTHEIMER: Commissioners?

12 I do. Two questions.

13 MR. TAYLOR: Sure.

14 MR. WERTHEIMER: Have you ever owned a multiple --
15 mobile home park?

16 MR. TAYLOR: No, sir.

17 MR. WERTHEIMER: Have you ever managed one?

18 MR. TAYLOR: No, sir.

19 MR. WERTHEIMER: Have you in your capacity, in the
20 business you work in, ever purchased one that's under rent
21 control?

22 MR. TAYLOR: No, sir.

23 MR. WERTHEIMER: Thank you.

24 And Mr. Hill?

25 MR. HILL: I just have one additional question. Have

1 you ever compared the -- read the regulations in California
2 pertaining to mobile home parks?

3 MR. TAYLOR: I -- I -- I have skimmed them. I have not
4 read them completely, no.

5 MR. HILL: Have you ever compared the volume of
6 regulations pertaining to mobile home parks versus the
7 volume of regulations pertaining to apartment communities?

8 MR. TAYLOR: No, I have not.

9 MR. HILL: Okay. Thank you.

10 MR. WERTHEIMER: Thank you. That will be all.

11 Mr. Hill, do you have anymore witnesses you're
12 crossing?

13 MR. HILL: Not at this time, no. We -- we did present
14 a -- a declaration, which I believe is in the supplemental
15 packet for Mr. McCarthy, who could not be here similar to
16 Mr. Baar pertaining to the attendance analysis and
17 containing his -- his review of the tenant's analysis.

18 MR. WERTHEIMER: Mr. Norman, any questions?

19 MR. NORMAN: No, not at this time.

20 MR. WERTHEIMER: We're going to return to Staff
21 comments and responses. Do you have any? Yes?

22 MS. SPENCER: I just have a couple more documents I'd
23 like to provide to the Commission. One is this --

24 MR. PRESCOTT: Is -- are you doing a redirect or
25 something or --

1 MS. SPENCER: No. Some information that came out on
2 the cross examination last time. This magazine that the
3 Commission -- the Commission can see what it really looks
4 like, the full-time manager --

5 MS. FELDMAN: I don't think your mic is on.

6 MS. SPENCER: Maybe I'm just not talking into it.

7 MR. HEHIR: Again, this is one where you need to make
8 the call if you're going to accept anything new on this
9 direct examination.

10 MR. WERTHEIMER: Okay. On the items that you've just
11 talked about, we're not going to --

12 MS. SPENCER: So you're refusing to take the documents?

13 THE MR. WERTHEIMER: Yes.

14 MS. SPENCER: Okay. Well, for the record, I'd just
15 like to offer the copies of the Pow Wow Magazine so that we
16 can preserve the record as to what was refused. This is the
17 magazine that the mobile home park manager purportedly puts
18 together. And then I also have a couple of articles that we
19 pulled on mobile home park management and how it's not
20 complex, a complex management. And finally Black's Law
21 dictionary for a definition of standard. The articles that
22 we'd like to submit are called "How to Find a Mobile Home
23 Park Manager" and another article called "Mobile Homes."
24 The one called "Mobile Homes" is from Americancity.org. And
25 the one on "How to Find a Mobile Home Park Manager" is from

1 newwireinvestor.com.

2 MR. WERTHEIMER: Thank you very much. We understand.

3 MS. SPENCER: And then finally I'd like an opportunity
4 at some point tonight to address some of the items that are
5 in the supplemental packet that we just received tonight
6 because they specifically address some of the things that
7 were presented in the presentation, and I think we should
8 have an opportunity to at least address some of the legal
9 points made in those materials that were not received by me
10 prior to today. So I don't know at what point you'd want to
11 do it, but I'd like to make that request.

12 MR. WERTHEIMER: We'll take it under consideration.
13 Thank you. The Applicant has 15 minutes.

14 MR. HEHIR: Excuse me. If I could -- two things I'd --
15 Chair -- excuse me, Chair and Commissioners, good evening.
16 Two things, one if -- if tenant's attorneys comments are
17 related to redirect of her own witnesses only, you can
18 entertain that. And next step, if you're not going to
19 entertain that is to go with Staff, it's the third time now
20 to actually have their final conclusions.

21 MR. WERTHEIMER: Okay. So does the tenant's
22 representative have any questions or redirect?

23 MR. HEHIR: No. Actually, it's if -- it would be a
24 redirect of a witness that was actually cross-examined.

25 MR. WERTHEIMER: Exactly. Thank you.

1 MS. SPENCER: Yeah, I'd like to actually redirect to
2 Mr. Taylor and then -- does -- Mr. Hehir, just for
3 clarification, does that include witnesses other than the
4 tenant's witnesses who are cross-examination? Because there
5 are new materials tonight from Mr. Baar and Mr. McCarthy
6 that we have had not an opportunity to address.

7 MR. HEHIR: It is at this time that you would have it
8 for the witnesses only, the expert witnesses only that you
9 brought.

10 MS. SPENCER: Okay. So the resident association's
11 witnesses?

12 MR. HEHIR: Correct.

13 MS. SPENCER: Okay. If I could have Mr. Taylor come
14 back up. Thank you.

15 Mr. Taylor, how many -- how long have you been in
16 the property management industry?

17 MR. TAYLOR: Since 1991.

18 MS. SPENCER: And since 1991, in the property
19 management industry, have you overseen the activities of
20 property management of a mobile home park?

21 MR. TAYLOR: Indirectly.

22 MS. SPENCER: Through the takeovers that you worked on?

23 MR. TAYLOR: Yes.

24 MS. SPENCER: And when you were working on those
25 takeovers, were you required to analyze whether or not the

1 property management expenses that were being expended for a
2 park were reasonable?

3 MR. TAYLOR: Yes.

4 MS. SPENCER: And when you were determining whether
5 those expenses are reasonable, what went into your analysis?

6 MR. TAYLOR: A whole number of things, but
7 fundamentally being in the position that we were in, so
8 survival is the asset itself, we would have to look at
9 places that we could save money, starting out with property
10 management, overhead expenses, wasted materials, energy,
11 energy audits, water, gas, electrical, things like that.

12 MS. SPENCER: And in your other experience as a
13 property manager -- working as a property manager and
14 working for rents and profits receivable -- receivers, have
15 you been required to justify property management expenses,
16 what you're spending it on and why?

17 MR. TAYLOR: Help me with justify.

18 MS. SPENCER: Okay. Let me rephrase that. It probably
19 wasn't a very good question. Let's focus on what you're
20 doing, what you primarily do right now, which is property
21 management related to receiverships. Are property
22 management expenses in the receiverships scrutinized closely
23 by the receiver?

24 MR. TAYLOR: Absolutely.

25 MS. SPENCER: And are they also scrutinized by the

1 court?

2 MR. TAYLOR: Yes, they can be.

3 MS. SPENCER: Okay. And in terms of property
4 management, based on your experience that you've had
5 prior -- previously with mobile home parks in your current
6 full-time experience with other types -- or almost full-time
7 experience with other types of multi-family dwellings, are
8 there generally certain tasks that go into property
9 management, you have to do certain things?

10 MR. TAYLOR: Oh, yes, absolutely.

11 MS. SPENCER: And based on your experience with the
12 mobile home parks and your current experience, is there much
13 of a difference between those tasks between a mobile home
14 park and a multi-family?

15 MR. TAYLOR: Yeah. I would consider the mobile home
16 park substantially easier.

17 MS. SPENCER: And why is that?

18 MR. TAYLOR: There's less things to do.

19 MS. SPENCER: So what does it take to manage a mobile
20 home park?

21 MR. TAYLOR: You mean that mobile home park?

22 MS. SPENCER: Well, let's -- in general, what are the
23 tasks?

24 MR. TAYLOR: In general.

25 MS. SPENCER: And then we'll focus on Ranch.

1 MR. TAYLOR: Well, clearly the property manager would
2 be responsible, first and foremost, for collecting rents and
3 for depositing those rents and for preparing statements for
4 the owner and maintenance, if there was any, vendor
5 relationships, vendors, vendors being paid. Depending on
6 the relationship, there could be property taxes that get
7 paid by the property management company. If there's a
8 mortgage, that can be taken care of by the property
9 manager.

10 MS. SPENCER: And with respect to what -- all the
11 information that you've been provided both in the financial
12 data and the statements from the former on-site manager for
13 Ranch Mobile Home Park, what does it take to manage Ranch
14 Mobile Home Park based on the information you've been
15 provided?

16 MR. TAYLOR: It would seem that rent collection would
17 be number one. Preparing an owner statement would be number
18 two. Not necessarily in the order of preference, I'm just
19 kind of putting them in a chronology. If there's any kind
20 of vendors, vendor relationships. Somebody who clean the
21 roads. Probably any kind of noticing that would be
22 necessary for the residents if they were late or they
23 abandoned or there was a nuisance of some sort.

24 MS. SPENCER: And in your opinion, based on what -- the
25 tasks that you understand property management to require,

1 what you would understand mobile home management to require
2 and what you've seen and heard -- what you've seen and
3 observed about this park, does this park require a
4 full-time, on-site manager?

5 MR. TAYLOR: I don't know that it requires it, no.

6 MS. SPENCER: Now, you said that you looked at the
7 on-site manager expense, which is \$14,784 plus a housing
8 allowance of \$4,747, plus rent of \$4,200, all those items
9 that were included for the on-site manager here, you looked
10 at those and you determined that that amount seemed to be
11 unreasonable to you based on your knowledge, training, and
12 experience; is that correct?

13 MR. TAYLOR: That's correct.

14 MS. SPENCER: And what amount do you think is
15 reasonable for this mobile home park?

16 MR. TAYLOR: I believe I suggested \$200 a week and a
17 free -- or a housing allowance.

18 MS. SPENCER: And why is it that \$200 a week and a
19 housing allowance was reasonable?

20 MR. TAYLOR: It just isn't a lot of work. I mean, if
21 the manager is picking up rents, you've got, what, 58 units
22 that are occupied? So how many days would it take him to
23 log in 58 rents and then whatever else would happen after
24 the fifth or the sixth of the month whenever rent is due.

25 MS. SPENCER: And did you see this little magazine that

1 the on-site manager puts out?

2 MR. TAYLOR: Yes.

3 MS. SPENCER: Does that look like it took a lot of work
4 to you?

5 MR. TAYLOR: It doesn't appear to, but I don't know
6 about graphics.

7 MS. SPENCER: Okay. And then the off-site management
8 expense of \$16,987, based on your knowledge of what is
9 required for an off-site property manager, both in
10 multi-family housing and with respect to mobile home parks,
11 did that seem reasonable to you?

12 MR. TAYLOR: No.

13 MS. SPENCER: Why not?

14 MR. TAYLOR: I don't know what work is accomplished by
15 the off-site manager that isn't already sort of being done
16 by the on-site.

17 MS. SPENCER: And there's also an extra \$2,150 for a
18 billing service; is that correct?

19 MR. TAYLOR: To the best of my recollection, yes.

20 MS. SPENCER: So based on looking at this park and all
21 the information that you've been provided -- and you've read
22 through the materials that were provided by the owner; is
23 that correct?

24 MR. TAYLOR: Yes, I did.

25 MS. SPENCER: And what information you've been provided

1 by the former on-site manager, you don't think that it's
2 necessary to spend \$17,000 a year on an off-site manager?

3 MR. TAYLOR: No, absolutely not.

4 MS. SPENCER: Now, did it seem unusual to you that all
5 of a sudden this park went to an off-site manager and
6 started paying all this extra money in 2009?

7 MR. TAYLOR: Yeah. It was -- when the narrative was
8 given to me, it did seem unusual.

9 MS. SPENCER: And as a business person who -- in the
10 property management field, does it seem reasonable to you to
11 have three layers of management?

12 MR. TAYLOR: No. Typically the owner's responsible for
13 part of that. That's kind of what you do to get that
14 Schedule C going for that property. Was that clear enough
15 or no?

16 MS. SPENCER: No, that's fine.

17 MR. TAYLOR: Okay.

18 MS. SPENCER: And prior to 2009 -- you looked at some
19 expenses for 1999; is that correct.

20 MR. TAYLOR: I believe so, yes.

21 MS. SPENCER: And at the time -- those expenses, the
22 total management and administrative expenses were about 20
23 percent of the gross operating income; is that correct?

24 MR. TAYLOR: As I recall, that's correct.

25 MS. SPENCER: Does that seem to be a little bit more in

1 line with what you believe is reasonable for this mobile
2 home park?

3 MR. TAYLOR: Yes.

4 MS. SPENCER: And then you last mentioned that you
5 looked at -- you looked around to try to determine if there
6 was anybody who had published the magic percentage number
7 for mobile home park management and you were unable to find
8 anything specific within the industry itself; is that
9 correct?

10 MR. TAYLOR: That is correct.

11 MS. SPENCER: And that is because that these kind of
12 property management commissions are based on negotiations
13 typically?

14 MR. TAYLOR: Yes, absolutely.

15 MS. SPENCER: And in your experience as a property
16 manager, generally, what is the range of percentage for a
17 property management company, an off-site property management
18 company that you've seen in California?

19 MR. TAYLOR: For residential, for multi-family
20 residential?

21 MS. SPENCER: For multi-family residential.

22 MR. TAYLOR: Anywhere from three to eight percent.

23 MS. SPENCER: And you saw that the City of Morgan Hill
24 puts management expenses at five percent in the rent
25 stabilization ordinance; is that correct?

1 MR. TAYLOR: That's what they wrote in their ordinance,
2 yes.

3 MS. SPENCER: And you saw in the City of Thousand Oaks
4 puts that at eight percent?

5 MR. TAYLOR: That's correct.

6 MS. SPENCER: And does that seem more in line with what
7 you would consider to be reasonable for this park?

8 MR. TAYLOR: Yes.

9 MS. SPENCER: No further questions.

10 MR. HEHIR: Mr. Chair, if I may, and Commissioners, in
11 looking at the supplemental packet, not all of them have
12 been actually addressed, so let me just again review these
13 things for you and -- and give you my recommendation. We
14 had two supplemental packets. The first one was given to
15 the Commission, and it is a supplemental comment on the
16 Ranch Mobile Home Park from Kenneth Baar. I do not believe
17 Mr. Baar is here today. That packet -- that supplemental
18 packet was delivered to the commission last week.

19 Today we have a second supplemental packet, and
20 that supplemental packet includes a supplemental brief of
21 tenant's association in support of jurisdictional objections
22 to determination of rent increase application by Rent
23 Adjustment Commission. And we received something from
24 owner's position, and that is a declaration of
25 Michael McCarthy in rebuttal of tenant expert presentation.

1 And I did misspeak. The second -- the first supplemental
2 packet we also had a letter from one of the tenants at Ranch
3 Mobile Home Park.

4 If the Commission, any of the Commissioners are
5 going to consider any of this material, I think it would be
6 relevant to have each party, the tenant's side and the
7 owner's side, of course, have about five minutes to address
8 these specific things. Again, the supplemental brief from
9 the tenants is an argument, so certainly if you're going to
10 consider any of that, owner would have a right to at least
11 address that. He has had his cross, so he might've had a
12 chance. But if we're going to allow, that would be my
13 recommendation, that you allow each of them about five
14 minutes to address only the specific things in the
15 supplemental packet if they actually have anything to say.

16 MR. WERTHEIMER: Any comments on the Commission on the
17 suggestion that we give five minutes to each of the -- to
18 the Applicant and the tenants on reviewing these?

19 MR. SILACCI: Agreed.

20 MR. WERTHEIMER: Yes.

21 MS. FELDMAN: I just want to say one thing about what
22 Mr. Taylor and the lawyers for the tenants is saying. The
23 State requires that there be an on-site manager. So you
24 have to have somebody on-site.

25 MR. WERTHEIMER: Okay. The question is regarding

1 letting each party speak. Okay. Mike.

2 MR. SILACCI: I was just going to say I agree with the
3 recommendation that that's what we should do.

4 MR. WERTHEIMER: Who would like to go first?

5 MR. HILL: I think we've covered the issues in the
6 McCarthy declaration in the cross-examination. And I think
7 the McCarthy declaration merely amplifies some of the points
8 that we raised in cross-examination about whether these
9 standards are in the RAC or not and whether the standards
10 are -- whether there are any industry standards. So I don't
11 feel the need to further address those issues.

12 The -- with regard to the brief by the tenants
13 concerning whether the prior resolution applies, I think
14 we've addressed that in our brief that we submitted with our
15 application. And we're -- we've reached the conclusion that
16 government code 65915 controls and preempts any limitation
17 beyond 30 years. All good things must come to an end and --
18 and free subsidy and free ride by the land owner for 30
19 years has been quite sufficient for the owners or for the
20 mobile home park residents. Many of them seem to be able to
21 quite capably afford to buy their coaches in cash. I think
22 we've heard many of them testify to that.

23 I think the important point here is that -- that
24 we have promised and put it in writing that no existing
25 resident who cannot afford to pay the rent under the rent

1 increases, if we're treated fairly, will be forced out of
2 their home by inability to pay rent. What we're trying to
3 do here, and I'll be very clear, is to stop the land owner
4 subsidy, the unconstitutional land owner subsidy that went
5 on for -- I guess for 30 years. It was a condition but now
6 it's no longer an acceptable condition given government code
7 65915. And so it's time to stop that land owner
8 unconstitutional subsidy of the residents. If the City
9 wants to help out the low income people, that's -- there's
10 plenty of methods that the City can do to help out the low
11 income people going forward.

12 What we're proposing is to not force people out by
13 means of the rent increases. But what we've got in the park
14 now is a situation where we're running at a negative and
15 where they're now 12 coaches that are vacant because no one
16 can afford to buy the coaches at the prices that the
17 residents want to charge given the -- this significant low
18 rents under the pre-existing resolution that apply to
19 these -- to these coaches.

20 So we've got a situation where the spaces are
21 going vacant. There's 12 spaces that are vacant. No one
22 can afford to buy in because there's such a high premium.
23 If the rents are allowed to go -- to be raised under the net
24 operating income standard, then the coach prices will go
25 down and people will -- more people will come in who are

1 looking for affordable housing instead of people holding
2 onto their coaches to try and get a -- a regulation induced
3 premium.

4 And we believe that it's time now to put the --
5 put the properties under the ordinance. There's no --
6 there's no basis for keeping the properties under the prior
7 resolution at this time anymore. And it would be fair to
8 those people who want to purchase a mobile home and want to
9 live in the park and -- at an affordable rate while those
10 who are existing tenants would be taken care of by the --
11 the land owner's promise and by any programs that the City
12 wants to apply to these existing tenants. Thank you.

13 MR. WERTHEIMER: Thank you.

14 Ms. Spencer.

15 MS. SPENCER: Well, I'd like to -- I'd like to address
16 one portion of the memo that Mr. Baar has provided, the
17 supplemental memo, address a few comments in Mr. McCarthy's
18 declaration. Although, I will note that we're objecting to
19 inclusion of this declaration at all because Mr. McCarthy is
20 not here tonight for cross-examination, and they're
21 attempting to submit new evidence from Mr. McCarthy with no
22 opportunity for cross-examination. And then I'll give you a
23 summary of what I think from my prospective happened here
24 throughout the course of the examination and reiterate where
25 I think the Commission should come in terms of its

1 conclusion.

2 First, with respect to Mr. Baar's -- I don't even
3 know what this is. I think it's just a memo. It's
4 supplemental comments he made. Mr. Baar appears to be
5 making legal arguments to the Commission, although he was
6 identified as the person to make a fair and just return
7 analysis. And I find it remarkable that Mr. Baar here is
8 presenting a legal argument. I think that probably better
9 come from the city attorney's office, but nonetheless I want
10 to address it. And specifically it's at point three of
11 Mr. Baar's memo.

12 Mr. Baar, his response to the resident's
13 contention that the park owners foregone rent increases
14 should be imputed in an MNOI analysis. And I think you may
15 recall that when I was here last time we talked a little bit
16 about statutory interpretation and some of your obligations
17 as a Rent Adjustment Commission to really focus on statutory
18 interpretation and determine what all of these regulations
19 say that you should be doing if you're going to be doing the
20 MNOI analysis.

21 If you look at RAC 2 and you look at section 1.03
22 of RAC 2, it states that the Commission presumes that the
23 net operating -- and this is at RTA 15 of the notebook if
24 you still have it and you want to follow along. The
25 Commission presumes that the net operating income received

1 after April 1980, provided landlords with a just and
2 reasonable return on their rental units unless there is
3 clear and convincing evidence to the contrary.

4 And then it goes on to say, in most cases the
5 automatic increases allowed by the ordinance, or in this
6 case the automatic increases that would have been allowed by
7 the resolution 84-037, and the property tax savings
8 resulting from proposition 13 provides sufficient additional
9 operating income to landlords to maintain the same net
10 operating income they experienced in 1979.

11 And this is the part that I think is important
12 that you pay attention to. However, in some cases landlords
13 may have incurred reasonable operating expenses, which
14 exceed the rent increases allowed by the ordinance and the
15 tax savings resulting from Proposition 13. Therefore,
16 landlords who have had such reasonable increased operating
17 expenses should be able to maintain the same level of net
18 operating income as they experienced in 1979 by requesting a
19 rent adjustment pursuant to these guidelines.

20 And the reason I point that out is because
21 Mr. Baar seems to want to say that this provision of
22 applying adjusted income for below market rentals, as it's
23 specifically stated in your ordinance, should apply to
24 current year. Even though the ordinance says it should
25 apply to current year net operating income. He wants --

1 MR. WERTHEIMER: Ms. Spencer, if I may, the time up
2 here is in regards to addressing the supplemental and what's
3 in that.

4 MS. SPENCER: Yeah. I'm addressing what Mr. Baar wrote
5 in his document, so I'm trying to point you where I believe
6 that you should be doing your analysis here.

7 The ordinance itself says, for current year net
8 operating income, you have to apply 2.05. It doesn't say
9 only apply it to base year. And, in fact, it would be
10 counter intuitive and illogical to apply it to the base year
11 because it's for where rent increase is permitted by the
12 rent stabilization ordinance could have been made but have
13 not been made because of the landlord's rental policies and
14 purposes.

15 How can you apply this to the base year when this
16 ordinance didn't even exist in the base year? So if you
17 take that -- the fact that the purpose of the just and
18 reasonable return is to account for those unusual
19 circumstances where expenses have gone up, not to account
20 for a landlord who deliberately made a decision for 31 out
21 of 33 years to forego a rent increase, and you look at the
22 ordinance itself, you can see that Mr. Baar's conclusion
23 that he comes to, that Section 2.05, shouldn't be applied to
24 the current year to include all the rent increases that we
25 know this landlord made a deliberate decision to forego is

1 incorrect.

2 May I have some more time to address some of the
3 other points? Thank you. It also is inconsistent with
4 stabilized rents. This is a rent stabilization ordinance.
5 And to make these folks who currently live in this park make
6 up for a deliberate decision of the landlord for 31 out of
7 33 years is totally contrary to the purposes of the
8 ordinance.

9 With Mr. McCarthy's comments, the only thing I
10 would say with respect to Mr. McCarthy's comments, that
11 haven't already been covered by my experts' responses on
12 cross-examination are that Mr. McCarthy wants to expand the
13 scope of expenses that the owner is allowed to take to
14 include everything. And it's remarkable to me that all of
15 these expenses started going up in 2009. This management
16 company was hired in January of 2009, and that's the only
17 year we have numbers for. That's the only year we have
18 numbers for because they drove their expenses up so that
19 they could come in here and try to get more money out of
20 these folks.

21 Now, the owner says, well, I'm not going to apply
22 these rent increases to the existing residents. So these
23 residents may -- assuming he keeps that deal and assuming
24 it's even enforceable, they may not be applied to those
25 folks while they're living there, but what about their

1 investment? Because the reason why these mobiles haven't
2 been selling are not because the prices they're asking are
3 ridiculous. I was out there today, they're asking 40 to
4 \$80,000 for these mobiles. It's because the folks are
5 facing a huge rent increase and nobody wants to buy into
6 this park knowing they're going to have to pay \$700 a month
7 for rent on a \$1,000 a month income. No one can do that.

8 MR. WERTHEIMER: Come to a conclusion, please.

9 MS. SPENCER: RAC 2 and RAC 5 have some very specific
10 guidelines and standards. When convenient to deviate from
11 them, the owner chooses to. But they should be applied and
12 they should be applied fairly assuming that this Commission
13 decides that you should even apply the MNOI analysis. As we
14 stated previously, and I'm not going to keep reiterating it,
15 but this park is different. This park is unique. This
16 owner made a deal back in the late '70s that this park be
17 operated as a low income senior park with specific scheduled
18 rents.

19 If this Commission is going to attempt to exercise
20 jurisdiction over this park, then this commission should
21 continue to apply the standards that apply to this park
22 under the trailer park development permit and the
23 resolution. That's where this Commission should be going
24 because that's the only thing that's fair, right, and
25 just --

1 MR. WERTHEIMER: Thank you, Ms. Spencer.

2 MS. SPENCER: -- from a moral, legal, and ethical
3 prospective. Thank you.

4 MR. WERTHEIMER: We're going to return to the Staff's
5 comments and responses.

6 MR. NORMAN: Thank you, Mr. Chair, members of the
7 Commission, members of the public. There are a lot of
8 issues to discuss, and I think the first one to discuss is
9 the jurisdictional issue that Ms. Spencer's mentioned at the
10 last meeting. And I'm going to hand this off to Mr. Hehir
11 to discuss the jurisdictional issue before continuing with
12 further comments.

13 MR. HEHIR: Thank you, Mr. Norman,
14 Chairperson Wertheimer. One matter that has been raised by
15 tenant's counsel is related to jurisdiction, and she has
16 asserted that Resolution 84-037 prohibits this Commission
17 from hearing the owner's application for a just and
18 reasonable return rent adjustment. The City's attorney's
19 office has reviewed this issue, and it is my opinion that
20 the Rent Adjustment should continue to review and make a
21 decision on this application.

22 Significantly, the jurisdictional issue, if such
23 an issue needs to be addressed, is not for this Commission
24 to decide, is not within its power. The city council will
25 need to make that decision or possibly a court. The

1 Commission's obligation is to review the applications before
2 it and run the analysis of the application.

3 Another reason to move forward is that the mobile
4 home rent stabilization ordinance does not exempt any park
5 from an analysis of just and reasonable return rent
6 adjustment application. In addition, resolution 84-037
7 provides a four percent cap. And without doing an analysis
8 of the history, profits, cost, et cetera, simply picking a
9 number might not lead to a defensible finding that a rent
10 adjustment was just and reasonable under the law.

11 The ordinance, Ordinance 525.06, Subsection B,
12 lays out the authority for the Rent Adjustment Commission to
13 process such a request like other parks. The ordinance does
14 not provide an exception of this park -- this type of review
15 including Ranch. In addition, Resolution 84-037 does not
16 complete the analysis necessary to ensure the rent limit is
17 not a taking. And again, I want to emphasize for the
18 Commission that this is a balancing action by the
19 Commission. They need to weigh the rights of the tenants
20 with the rent ceiling also against the owner's right to a
21 fair and just, reasonable review and a just and reasonable
22 rent under the law.

23 I previously spoke to you about this balancing.
24 Again, it's important that you understand that both the
25 owners and the tenants' attorney have both brought their

1 presentation to their point. One -- of course one is the
2 maximum amount of rent that they can possibly get and that's
3 what they've asked for. The tenant has specifically said
4 that the interest of the tenants is really at stake. And I
5 want you to understand that the purpose is listed in the
6 ordinance. And the purpose shows that it's really both
7 issues. Again, it's the balancing.

8 The section 5-25.01 provides -- and this isn't the
9 pertinent part. It is necessary and reasonable to continue
10 to regulate rents so as to safeguard the tenants from
11 excessive rent increases and at the same time -- at the same
12 time provide landlords with a just and reasonable return on
13 the rental spaces. Therefore, I recommend that you proceed
14 forward with your review and make a decision on this
15 application. If you do move forward with your analysis,
16 again, you would go through the same thing that you
17 previously did in Thunderbird if we get to that point. And
18 that would be, again, to decide on a formula you want to
19 address and then go through the various elements of that
20 formula, if there is one. Thank you.

21 MR. NORMAN: Thank you. I want to address a couple of
22 questions that arose back, I think, in December 6th, if I'm
23 not mistaken. Some issues came up. And if you look at your
24 supplemental packet from January 24th, Staff provided you
25 a -- the 2010 Ventura County monthly rent levels for

1 affordable housing. And some questions came about, well,
2 how much rent can you charge someone that is in the very low
3 income category. And this document provides the answer and
4 hopefully it will be helpful for you in your deliberations.

5 According to this, if you look at the very low
6 income category with one bedroom, which Staff believes is
7 most analogous to a mobile home, the maximum monthly rent to
8 be charged is \$866. So that just puts things in prospective
9 on that issue. Some other issue that -- unfortunately,
10 Dr. Baar couldn't be here today, but we did discuss a lot of
11 issues and Dr. Baar did provide some supplemental comments
12 basically commenting on some of the major issues he thought
13 were important brought out in the testimony of both the
14 owner's witnesses and the tenants' witnesses. And I just
15 want to go over those real quickly with you.

16 The owners have stated over and over that a 50
17 percent index -- now, we're assuming MNOI formula here --
18 that a 50 percent index would -- or at least it's implied
19 that net operating income out in the future would reach
20 zero. I think that's what Mr. McCarthy said. And there was
21 a graph, if you recall, with lines that converged. And when
22 you look at the MNOI formula, when you apply it, it's
23 impossible for net operating income to be zero when you
24 apply the formula because no matter what happens in the
25 current year, in the base year you have a net operating

1 income and it's always going to increase. Maybe not as much
2 as inflation, but it's always going to get bigger. So when
3 you run the formula, it's impossible logically for net
4 operating income to be zero.

5 Now, there's also been -- it's been the --
6 Mr. Hill's contention and Mr. McCarthy's also that if the
7 city's regulations don't have a specific index percentage
8 that, therefore, you have to use a hundred percent or
9 something to that effect. And the case of Berger versus the
10 City of Escondido has been mentioned. And perhaps Mr. Hehir
11 will have some comments on that to you later. Dr. Baar has
12 looked at that case, I've looked at that case, and in his
13 report he explains that, in fact, there was no index
14 percentage for the fair return standards. There was for an
15 automatic just like here in Thousand Oaks. So that case,
16 again, supports Dr. Baar's analysis that using an index
17 percentage less than a hundred percent passes the
18 constitutional test.

19 Now, Ms. Spencer has indicated strongly that --
20 about the price level adjustment and about whether or not
21 the regulations allow you to impute automatic rent increases
22 that were foregone. We have a very unusual case here where
23 there have been two rent increases in 30 years, one seven
24 percent and one four percent.

25 In discussing this with Dr. Baar, you have to

1 allow -- under the constitutional test you have to allow an
2 applicant to make up for those rents that have been
3 foregone. If you don't and you run the MNOI, you will never
4 meet the constitutional standard because that number can get
5 driven way down. In fact, the code section that Ms. Spencer
6 cites, which I believe is 2.05, when you look at it -- these
7 guidelines, I admit, sometimes there are some
8 inconsistencies when you look at them. And it's our job as
9 Staff to put a reasonable interpretation of these guideline
10 in their totality.

11 When you look at 2.05, this adjustment of income
12 for below market rentals, this provision, in my opinion and
13 Dr. Baar's opinion, was meant to apply to a Vega adjustment
14 in the base year. It's a proxy for a Vega adjustment, which
15 we talked about and I'll go over again later.

16 There's a case that came out just a couple of
17 years ago called Stardust versus City of Ventura where this
18 exact language was at issue in that case. And the Appellate
19 Court stated that that regulation is a proxy for a Vega
20 adjustment, that's what that is. The price level adjustment
21 in the regulations are in section 3.07, I believe. And
22 that's different. The price level adjustment calls out
23 specifically to include in the base year only those rents
24 that -- automatic rents that could've been made but weren't
25 for whatever reason. Those get imputed into the base year

1 income. And there's nothing there about doing a price level
2 adjustment in the current year.

3 When you look at the totality of this, that makes
4 sense. And so it's Staff's position that that's what the
5 price level adjustments for and you have to use it. Again,
6 Staff recommends using the guidelines to the extent the
7 result makes sense. In cases where it doesn't, we feel the
8 Commission has a discretion to wander a little bit.

9 Final major issue is the resolution, the proposed
10 resolution that was provided to you, I think, at the last
11 meeting. And I'm actually going to go to the PowerPoint,
12 please. Can we get to the PowerPoint? Well, that's --
13 while we're waiting for that, there's a resolution in front
14 of you that has Staff's proposed findings for this. And --

15 MR. WERTHEIMER: Mr. Norman, give us a couple seconds
16 here. We're trying to get the PowerPoint.

17 MR. NORMAN: There we go. These are some slides that
18 Staff has already shown you on December 6th, but I want to
19 go back to what Mr. Hehir was mentioning about the purpose
20 of the resolution. When one side is advocating for their
21 client, sometimes they want to pay attention to one part and
22 ignore the other and vice versa. Here's in front of you
23 what the purpose of the ordinance is. Again, safeguard
24 tenants from excessive rent increases, but also provide a
25 just and reasonable return. It is a balancing test. And

1 Staff recommends that you have to keep that balancing test
2 in front of you at all times when you're deliberating on
3 this. It's difficult. There's a lot of unusual issues, but
4 it's very, very important. And I'll keep coming back to
5 that.

6 Just real quick, going over Staff's
7 recommendation, it's been awhile. Staff recommends using
8 the MNOI formula. It's one of the Court's sanction, and
9 that's what the City's guidelines prefer. Staff, again,
10 recommends 1982 is the base year with the Vega adjustment.

11 Again, the Vega adjustment is an adjustment to the
12 rent levels in that year to approximate what the market
13 rates would be. Also staff recommends an adjustment to
14 operating expenses to take into account the maintenance and
15 administrative expenses that were not on the books in the
16 base year but were on the books in 2009. And we heard
17 testimony tonight that the park owner may have had on the
18 book management expenses starting in 2009.

19 By imputing it to the base year, you equalize and
20 take away that advantage in the current year. So the
21 adjustment that Dr. Baar recommends really solves that issue
22 that was brought up tonight. And finally, you have to
23 determine a range of rents and range of indexing. Dr. Baar
24 provided numbers from 50 percent to a hundred percent
25 indexing. And Staff recommends 50 percent is a fair return.

1 This chart shows, according to Dr. Baar's report, all of the
2 different rent increases the Commission can consider and
3 would meet the constitutional criteria for fair return
4 according to Dr. Baar. The one highlighted, the 191.95 is
5 Staff's recommendation, but all of those are in play.

6 Because this is potentially a very large increase,
7 even the 191 is, I think, 144 percent increase, Staff is
8 recommending a five-year phase-in. The difficulty with the
9 phase-in is if you phase it in over too long a period of
10 time, there is more of a likelihood that a court, for
11 example, could consider that to be a taking. If you give it
12 to the owner all at once, it is a burden on the tenants.
13 Again, going back to what the purpose of the ordinance is,
14 it's a balancing. Fair return but also not having excessive
15 rents. So Staff has fashioned a recommendation, a phase-in
16 that we believe is on that line. It eases the burden on the
17 residents to the extent it can and provides the owner a fair
18 return.

19 Now, one other thing that we didn't mention at the
20 last meeting that Staff is recommending is providing the
21 owner a rate of return on that rent that's being foregone
22 during that five-year phase-in. And Staff is recommending
23 seven percent because according to Dr. Baar seven percent is
24 the expected rate of return for mobile home parks. We feel
25 as Staff that having that interest component during the

1 five-year phase-in helps mitigate some of the burden that
2 the owner faces by not having all of its increase at one
3 time. So those are the numbers when you do a seven percent.
4 The rents would be a little higher the first year and then
5 decreasing up through the fifth year. And that would be the
6 \$191 increase after the fifth year.

7 Again, the things that Staff believes this
8 Commission should focus in on are, what's the type of
9 formula? The Staff believes MNOI is the best one to use.
10 What's the base year if you do use that formula? What
11 income and expense adjustment should you make and what rate
12 of indexing should you consider. Staff believes if you
13 follow those steps, it will be helpful to you in coming to a
14 conclusion on your deliberations. Rather than get into more
15 details of what's conspired, I will now answer any questions
16 you might have regarding what I've just stated or anything
17 that has transpired at the hearings to date. Thank you.

18 MR. WERTHEIMER: Mike, you have any questions?

19 MR. SILACCI: I do. A couple. And I appreciate the
20 counsel from Mr. Hehir and Mr. Norman. I appreciate your
21 extra and diligent -- you know, going to at least the
22 guidance to the Commission. But I have to go back, just for
23 my own mind and sanity. I need to understand just from
24 Staff's prospective, when did resolution 84-037 cease to
25 apply to Ranch in your opinion?

1 MR. NORMAN: That's a difficult question because this
2 is the first time there's been a request outside of that
3 resolution. Here's how Staff views it. We have not had
4 this type of application before, which is a rate of return
5 application. And we're not stating by the Commission taking
6 this action -- Staff is not suggesting that Resolution
7 84-037 doesn't necessarily apply in different context. It
8 says nothing about whether the age and income restrictions
9 in that resolution are valid.

10 It doesn't suggest that an automatic increase may
11 be under the purview of that ordinance. We're not saying
12 that it does, but we're not saying it doesn't. So I hope
13 that answers your question.

14 MR. SILACCI: It does in part, but let me follow up. I
15 mean, I've done my best as a lay person to read that
16 resolution and try to understand the context, which I think
17 is required of any of us as Commissioners. And my
18 understanding, and maybe I'll ask your opinion or Staff's
19 opinion, is that the reason that that resolution was passed
20 by city council back in 1984 was to ensure that there was a
21 fair return to the owner. That there was a concern -- and
22 not only looked at some sort of orderly rent increases but
23 it also looked at, from the owner's standpoint, the erosion
24 caused by inflation to their initial investment. So that's
25 where I'm struggling to try to understand. It seemed to me

1 and maybe I -- I guess there's a question here some way.

2 I'd appreciate Staff's opinion as to why the
3 intent of that resolution, which was really to go out and
4 ensure a fair return to the owner, why that doesn't apply to
5 the fair return standards, constitutional standards now?

6 MR. NORMAN: Well, a couple things. As Mr. Hehir
7 mentioned, and Mr. Hehir may want to weigh in again, there's
8 a four percent cap on that resolution, as you recall in
9 terms of a yearly increase. There is no mechanism in that
10 resolution to make up for rents that may have been foregone.
11 So there's really no good way with my understanding of how
12 fair return applications are viewed by the courts that that
13 mechanism could provide a result that would stand up in
14 court.

15 MR. SILACCI: Okay. If I may, some more -- a couple
16 more follow ups. Maybe ask it -- I can ask it this way. Is
17 it Staff's opinion that the constitutional requirement of a
18 fair return trumps resolution 84-037?

19 MR. NORMAN: Yes.

20 MR. SILACCI: Thank you. I'm still thinking here,
21 Mr. Chairman. I may have another question.

22 MR. NORMAN: Let me -- let me elaborate a little bit on
23 that. It's one issue. There's lots with the interplay of
24 the past history of this park and applying the rent
25 stabilization ordinance today. Generally, when the City

1 acts in its police power capacity to regulate something,
2 that power is limited by the constitution normally. You can
3 exercise your police power as the City but not over the
4 constitution, so that's one way to look at this.

5 MR. SILACCI: Well, again, I know I don't need to
6 apologize, but I may be asking some basic questions here.
7 But as far as -- obviously we've gotten a lot of materials
8 as a commission, and we've gotten a lot of testimony and
9 legal arguments and cases. But I guess maybe I can simply
10 ask, when -- at what point was it clear from a
11 constitutionality basis that a just and reasonable return,
12 the standard was MNOI? I mean, at what point did that
13 happen, 1995, 2000? I'm trying to recall.

14 MR. NORMAN: That's a difficult question to ask
15 because these things come up when applications are filed.
16 So this -- if this application had been filed, for example,
17 five years ago, then it may have come up five years ago, but
18 it wasn't. So that's a question that's -- I really can't
19 answer.

20 MR. SILACCI: That's fine. I appreciate that. The
21 reason I asked the question is because in reviewing all the
22 materials and trying to follow the history of this and going
23 back and looking, again, at all the evidence that was
24 offered here, it seems to me that going back to September of
25 1986, when the Commission was asked to render opinion to

1 counsel in a memo, it specifically excluded Ranch and
2 acknowledged 84-037. And, of course, then counsel enacted
3 an ordinance, which did a number of things, sets ordinance
4 93 -- 933NS.

5 And while my plain reading of that ordinance is
6 that it doesn't specifically exclude Ranch, nor does it
7 include it, it seems that the application of resolution
8 84-037 has been consistent all the way including 2000 when
9 the owner saw the rent increase, so on and so forth, which
10 is why I'm -- I appreciate your providing feedback to me and
11 the Commission's questions. I'm just trying to get a basis.
12 That's why I was asking the -- I guess, the
13 constitutionality standard of -- of what would be the
14 standard used to determine a just and reasonable return. I
15 have no further questions. Thank you.

16 MR. WERTHEIMER: Mr. Hehir.

17 MR. HEHIR: Thank you, Chair. Mr. Silacci, in my
18 prospective and what I was trying to address initially when
19 we started was I look at it a little bit differently as to
20 the concern that when you have an application, which is the
21 first we need to look at. We had this application from the
22 owner and it's for a just and reasonable return. So when
23 you have that type of application, you want to look at it to
24 make sure that any decision you make is going to be based on
25 something that would stand constitutional inquiry.

1 And so in looking at the decision of Staff -- when
2 I looked at the decision of Staff to go to the MNOI and
3 address this application under the ordinance, I understood
4 the reason in looking at the case is to say that is --
5 obviously the concern is to make sure that when you come up
6 with a decision, you're basing it upon facts and figures and
7 a formula that makes sense to ensure, we believe through the
8 case law, that that decision is going to be based upon
9 something that can be supported under the constitution. So
10 that's -- again, we had that balancing but it's really at
11 the end of the day, it's got to ensure that you guys are
12 giving -- making a decision that's going to be based upon
13 something that can be supported under the constitution.

14 That's obviously the ultimate goal because if you
15 do not do that, in the cases in which the court has found
16 that a board or a commission has not done that, part of it's
17 because it's a taking because they limited or they did an
18 analysis that wasn't supported by the information that they
19 had before them.

20 The second element, and I believe Mr. Norman
21 talked about this a little bit, is there are other formulas
22 you can apply. Our ordinance does say MNOI is the one they
23 they initially look at, but there are other formulas. When
24 this park was created, the formula that they were applying
25 was the rate of the -- make sure I get it right, the rate of

1 return on investment. And that's where you see that 11.5
2 percent. And we can get into that later on if you want.
3 But that is another formula that you can apply, of course.
4 It's just when you apply that, you want to make sure you
5 have the findings for that type of analysis. And that is
6 actually addressed in, I believe, the packet as well and in
7 Mr. Baar's and Staff's presentation. I believe it was
8 addressed at some point in time by tenants' attorney. And
9 so that's kind of where I was going with my analysis.

10 The biggest -- for me the biggest thing is on the
11 jurisdictional issue, is that I believe that in looking at
12 all these factors that the Commission needs to address this
13 particular application and make a decision on this
14 application because that's what's before it.

15 MR. SILACCI: Thank -- thank you very much. I mean,
16 I -- again, I appreciate it, as a Commissioner, all of the
17 information, either from Staff, your guidance, Mr. Hehir,
18 from the Applicant, from the tenants' counsel, I've
19 appreciated all of that. And I guess, Mr. Hehir, you kind
20 of helped at least me. You always have to start from the
21 first step. And so, frankly, my questions, in my mind, are
22 going from the first step. And quite -- it wasn't really
23 jurisdictional, it was more trying to understand more about
24 Resolution 84-037 as a starting point. And I appreciate
25 emphasizing that the Commission does have discretion as far

1 as the alternatives it can use.

2 I just -- I guess, one last -- excuse me,
3 Mr. Chairman, I realize it's questions and not commenting.
4 I appreciate the balancing act part of this, but I'm having
5 a little trouble with that, especially with all of the
6 foregone rent increases that were allowed for about 30 years
7 and then to come to this point. So that's why I'm really,
8 as a Commissioner, or at least one person on this dias
9 trying to understand the basis and start with that first
10 step. So thank you. I have no further questions at this
11 point, Mr. Chairman.

12 MR. WERTHEIMER: Thank you. Ms. Feldman.

13 MS. FELDMAN: Okay. I understand then that 84-037 is
14 still in effect.

15 MR. NORMAN: Possibly. Possibly.

16 MS. FELDMAN: Thank you. I have several other
17 questions. May I proceed with those? Okay. Did the owner
18 of Ranch ever pay its required \$10 per year per unit to the
19 City as required by the rent ordinance? And did they pay in
20 2009 and 2010?

21 MR. NORMAN: I believe the answer is no.

22 MS. FELDMAN: Okay. Two more. Did the park owner ever
23 respond to the letter written by Ms. Oshita on behalf of the
24 City and Tim Guiles in 2000? And did the owner take at that
25 time the four percent rent increase?

1 MR. NORMAN: I don't know if there was a letter. I
2 know they did take a four percent increase in 2000.

3 MS. FELDMAN: They did?

4 MR. NORMAN: They did, correct. 2001.

5 MS. FELDMAN: Okay. So in 2001 they were -- you were
6 all following 84-037; is that correct?

7 MR. NORMAN: At that time, yes.

8 MS. FELDMAN: Okay. I wonder -- you included these
9 apartment rents for all levels of income, including
10 extremely low income. Was that requested by the Commission?

11 MR. NORMAN: I do recall at the first hearing in
12 December there were some questions about that. I'm not sure
13 if it was an inquiry by one of the Commissioners or from
14 Staff, but there was some conversation about it and Staff
15 felt that it would help the Commission to get that
16 information to you.

17 MS. FELDMAN: So it -- it arose from Staff?

18 MR. NORMAN: Yes, staff obtained that document,
19 correct.

20 MS. FELDMAN: Okay. Are you aware of how
21 unconscionable this is to residents who live in this city
22 who have invested their life savings into their mobile home
23 to be compared to those folks who have invested nothing and
24 can easily move from one apartment to another? Did that
25 strike you as unconscionable?

1 MR. NORMAN: Well, that wasn't the intent in bringing
2 that to the Commission's attention. It was a piece of
3 information that was discussed and Staff felt it would be
4 helpful. You may view it that way. As Staff, I -- I don't
5 view it one way or the other.

6 MS. FELDMAN: Okay. One last question. California has
7 been deemed to be in a state of economic emergency. All
8 community redevelopment funding is expected to end. Is
9 there any residual redevelopment money available to the
10 city?

11 MR. NORMAN: My understanding is, yes, the city does
12 have a redevelopment agency that does have funding. I don't
13 know the amount sitting here.

14 MS. FELDMAN: Thank you. That's all.

15 MR. WERTHEIMER: Thank you. Maxwell.

16 MR. SHELDON: Thank you. I have two questions for you.
17 Excuse me, sir. I apologize. The two sides have really
18 differed on their views of the expenses. How should we
19 reconcile those two views?

20 MS. FELDMAN: Could you get closer to the mic, please?

21 MR. SHELDON: The question is on expenses and the two
22 sides having very different views on expenses, and I was
23 wondering how you reconcile the two different views.

24 MR. NORMAN: Well, I'm not clear what specifically
25 you're focusing on in terms of the difference.

1 MR. SHELDON: Well, at times there were questions about
2 the credibility of the expenses in the last couple of years
3 and the inclusion and the exclusion of certain things. And
4 if you could comment just a little bit on those things.

5 MR. NORMAN: Yeah. How Staff approached that was
6 Dr. Baar recognized that there was a management expense that
7 was on the books, basically in the current year, and that it
8 wasn't on the books in base year. So when he ran the
9 formula, Dr. Baar imputed basically a management expense in
10 the base year so that when you're doing the comparison,
11 you're comparing like things. So that, in Staff's opinion,
12 kind of eliminates any distortion in the end result that the
13 owner may gain by having increased expenses in the current
14 year. If you equalize it in the base year, then it takes
15 away any advantage that the owner would gain from that.

16 MR. SHELDON: My next question. How does the Staff
17 reconcile the residents as being low income and qualified as
18 such with now having to pay rents that aren't necessarily
19 considered to be low income. Like from a practical
20 standpoint, the transition of bringing people into park and
21 saying you have to earn below this amount of money and then
22 changing the rent structure and saying the rents are now
23 higher and might not be affordable to somebody who was
24 qualified.

25 MS. FELDMAN: I'm sorry. We cannot hear you. Could

1 you please speak into the mic.

2 MR. SHELDON: Certainly. Did you get the -- what part
3 did you not get?

4 MR. NORMAN: I did.

5 MR. HEHIR: You may want to repeat the question,
6 though.

7 MS. SHELDON: I just wanted to understand from a
8 practical standpoint how Staff reconciled having low income
9 people that were qualified as such, the practical transition
10 of now having them pay rents that are not designed for low
11 income individuals. Is that essentially our problem?

12 MR. NORMAN: Well, I mean, that's -- that would
13 probably be a problem in any mobile home park in the city.
14 The whole mobile home rent stabilization ordinance is geared
15 for low income residents, that -- that's the intent. And so
16 there's an applied assumption that when rents are raised to
17 the constitutional minimum, that it would still be feasible
18 for lower income folks to live there.

19 Now, this is the difficulty because lower income
20 is defined by the county and the state and ultimately by the
21 federal government in a certain way. And that's why Staff
22 provided that document. That's the best thing that Staff
23 has to give you a proxy, and albeit an imperfect proxy, of
24 what a comparable lower rent would be. And it seems high,
25 but that's -- that's -- that's what it is.

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1 MR. SHELDON: Thank you very much.

2 MR. WERTHEIMER: Ms. Ferruzza.

3 MS. FERRUZZA: I have no questions.

4 MR. WERTHEIMER: 84-037, if we were to consider that,
5 is the base year 2009?

6 MR. NORMAN: That's a difficult question. I'm not
7 sure -- when you say "consider it," I'm not sure how you
8 want to consider it, so --

9 MR. WERTHEIMER: Oh, if we chose that as the
10 determining method.

11 MR. NORMAN: The methodology?

12 MR. WERTHEIMER: Yeah, the methodology.

13 MR. NORMAN: Dr. Baar, in his report, did provide a
14 couple calculations based on a rate of return on investment
15 in his report. And he did it based on -- one of them was at
16 11.5 percent rate of return. And that number, when he ran
17 the number, comes out to a rent increase of \$214. And that
18 is stated on page 22 of the Staff report.

19 MR. WERTHEIMER: How does that answer my question? I'm
20 baffled.

21 MR. NORMAN: I'm trying to -- maybe I don't understand
22 your question.

23 MR. WERTHEIMER: In -- if the methodology was based on
24 84-037, would we -- would we start at a base year of 2009.
25 I understand an ROI is based at 11.5 percent, is another

1 methodology that gives that \$214.66 figure. But if we chose
2 to use the methodology of that resolution, we need to --

3 MR. NORMAN: Well, I just want to be clear that I
4 understand what you're asking. So forgive me for asking
5 questions back. But my understanding from your question is
6 if you wanted to use the methodology that's contained in
7 Resolution 84-037, that there really isn't a base year to
8 use. It's a completely different methodology. And so my
9 understanding of that methodology is you figure out what the
10 amount invested was for the park at some point in time.

11 And then what Dr. Baar did was he took that
12 investment -- in this case we know it was \$500,000 back in
13 1977. He inflated that investment amount over the course of
14 time through a CPI adjustment and then applied the 11.5
15 percent return to what that number is coming out with an
16 adjustment of \$214. That -- that was the methodology that
17 Dr. Baar used. So I hope that -- it doesn't answer your
18 question, but I hope it clarifies things.

19 MR. WERTHEIMER: Did the -- did the Staff look at what,
20 if they used 84-037, what the rent would be today?

21 MR. NORMAN: Yes. If they had taken -- let me just be
22 clear. Had they taken all of their rent increases that they
23 were entitled to under 84-037, then according to Dr. Baar's
24 calculations, they would be entitled today to an increase --
25 or rents would be \$147 more than they are today per month.

1 MR. WERTHEIMER: Another area that was talked about
2 was -- and/or requested is using a base of year of 2009, and
3 if we did that and considered that, where -- and you would
4 use the Vega in that, where would it be today?

5 MR. NORMAN: Well, again, in Dr. Baar's report, he did
6 do that. There was a Vega adjustment with Jim --
7 James Brabrant was the City's appraiser on this. And one of
8 things that he did in his appraisal is do a comparable
9 current controlled rent for 2009. And his conclusion, which
10 is basically the Vega adjustment for 2009 to simplify it,
11 and he came to the conclusion that rents would have to be
12 increased \$267 per month for a 2009 base year with a Vega
13 adjustment.

14 MR. WERTHEIMER: That's it. Thank you very much.

15 Applicant will now have 15 minutes for rebuttal and
16 closing comments.

17 MR. HILL: Good evening, members of the Commission. I
18 was waiting for Mr. Prescott to finish his comments. I
19 didn't want to interrupt. I'll take less than 15 minutes.
20 I appreciate the patience of the Commissioners, and I
21 appreciate their willingness to consider all the issues that
22 have been presented by all the sides and to analyze the
23 regulations and the ordinance and to try to come to a fair
24 and just result.

25 I appreciate no more interruptions from tenants'

1 counsel. The chair can admonition her accordingly. Thank
2 you.

3 MR. WERTHEIMER: It wasn't her. I was watching. It
4 wasn't her.

5 MR. HILL: Thank you. Thank you. What we're -- I'd
6 like to first address a few misconceptions about what we're
7 doing here. What we're doing here is not trying to go back
8 and recapture what was left behind over the last 30 years.
9 What we're trying to do is to come up to what is the just
10 and reasonable return at present going forward.

11 The tenants, as Mr. McCarthy explained in his
12 presentation, the tenants have received an incredibly
13 significant benefit for the last 30 years, much more
14 significant than they -- than the simple \$100,000 benefit
15 the park owner received way back in 1986 when he -- or 1976
16 when he constructed the park. That's all been taken care of
17 over the last 30 years. The residents have received a great
18 benefit. The City's received a great benefit by being able
19 to maintain -- help low income residents maintain their
20 residences in the Ranch.

21 And many of the -- some of the testimony that
22 we've heard from the residents is that they've been able to
23 go out and buy coaches and very nice coaches with the amount
24 of rent that they've saved under these very extreme
25 restrictions on rent increases. And for a number of years,

1 there -- there have been no -- no increases sought. So I
2 don't think anyone can fault the owner here for being quite
3 generous and for being quite concerned with the -- with the
4 plight of the residents. And I think you've heard the owner
5 state categorically that he is not going to push people out
6 and cause them to be out on the street because they cannot
7 pay the rent increases.

8 What we're talking about here is the fact that
9 we've got coaches going vacant. We've got people that can't
10 afford to buy -- the very same low income people that
11 this -- that we were intending to benefit in the first place
12 being unable to come in and buy coaches in the park, and
13 we're going to continue to see vacancies. It's the park
14 owner's position that those coaches that are currently
15 vacant should be adjusted fully up to the requested amount
16 of the rent increase. There should be no consideration for
17 tenants -- for tenants that don't exist there in those
18 mobile homes. That's approximately, I believe, 12 or 14
19 coaches currently out of the 74.

20 With respect to the other ones, the other coaches,
21 while we disagree what's -- that there should be any
22 adjustment to the maintenance and net operating income
23 formula because the maintenance and net operating income
24 formula is really that balancing between the constitutional
25 fair and reasonable return and the interest of the tenants

1 in not having unreasonable rent increases. That's the
2 balancing. And I think you heard that even if we were to
3 start over from, you know, the year 2007 or 2009 and -- and
4 apply the Vega adjustment, there would be -- need to be a
5 significant rent increase in order to achieve a just and
6 reasonable return.

7 So what we're here considering tonight is -- and
8 what the Commission has discretion to determine is whether
9 or not, under the maintenance of net operating income
10 formula, there is a justifiable rent increase. And we've
11 heard and we've seen evidence that there is, in fact,
12 significant increase in expenses and a significant increase
13 in inflation from the base year of 1979 or whatever base
14 year the commission decides to adopt to the current year.

15 And we've heard a lot of anecdotes and a lot of
16 suppositions about whether or not the expenses increased
17 inordinately or were unreasonable, but there's been no
18 credible testimony as to whether or not those increases are
19 unreasonable or not. The testimony of Mr. Taylor to that
20 extent revealed that he did not know any industry standards.
21 He did not make any inquiry of the park or make any inquiry
22 of the applicable regulations or ordinances to really
23 understand what those expenses should be in a reasonable
24 fashion.

25 So we -- what we have is what are the real

1 expenses of operating the park. And the Commission is not
2 entitled to look at other methodologies or look at other
3 evidence in the absence of any credible evidence that these
4 are not the real operating expenses for the year 2009. We
5 appreciate the attempt of Mr. Baar to try and make a
6 comparison between 2009 and the base year, but such a
7 comparison is not warranted, first, by the ordinance and
8 regulations and, second, is not according to any accepted
9 methodology in any of the cases that I've reviewed or to --
10 according to any accepted methodology that Dr. Baar has ever
11 used as far as I've been able to review his prior testimony.

12 So what we've got here are increased expenses and
13 inflationary -- and significant inflation from the base year
14 that requires an adjustment to bring the maintenance of net
15 operating income in the base year up to the level it should
16 be with those inflation adjustments of the current year.

17 A lot has been made of the -- a lot of attention
18 has been focused on the Decker case and probably
19 inordinately. I don't think the Decker case ever made a
20 decision as to what percentage of CPI should be applied.
21 What the Decker case said is it need not be a hundred
22 percent. That was the holding in the Decker case. And it
23 was very clear in the Decker case that the Court looked at
24 both a -- a not greater than 60 percent requirement in
25 the -- as Mr. Baar and as Mr. Norman had pointed out, in the

1 annual increase. And also looked at the Commission's prior
2 history of applying a 75 percent CPI adjustment to prior
3 rent adjustment applications.

4 If we -- I don't know that anyone in the city
5 staff has looked at prior rent adjustment applications that
6 may have been considered by the Commission, and I don't know
7 that there really have been any, but if the Staff were to
8 apply Decker, then it would be looking at a range between
9 the 75 percent allowed for annual rent increases of the city
10 and any -- and -- and -- and a hundred percent. So if
11 you're going to apply Decker, then apply it correctly.
12 Apply it -- give us somewhere between 75 and a hundred
13 percent, but not down to 50 percent. And that's -- that's
14 really not even the holding in Decker. But that's just
15 the -- the -- really the dicta or the suggestion that the
16 Court is making in the Decker case.

17 I -- I can't stress enough the fact that if we --
18 if we continue under the current way the park is being
19 restricted in its rent increases, the park will go under.
20 The park will be of less value than the coaches on the park
21 and the park owner will be entitled to a takings action
22 against the City for its application of the -- of the
23 resolution and/or rent ordinance.

24 What we're trying to do here tonight is -- is not
25 put tenants under, but we're trying to get the park rents at

1 a level that they should be for a just and reasonable return
2 so that moving forward when these tenants move out and other
3 tenants want to come in, that we can be able to charge a
4 just and reasonable return, and we feel we should be able to
5 do that immediately for those 12 to 14 spaces that are
6 currently vacant.

7 With respect to the Commission's jurisdiction and
8 starting -- and then looking at resolution 84-037, we have
9 basically two points to make. First, that Government Code
10 Section 65915 gives a 30-year sunset on any income -- low
11 income restriction that might be applied under a city zoning
12 code for purposes of offsetting incentives that are given to
13 the park owner such as the \$100,000 in -- in -- in fees that
14 were not required at the time of the original park
15 construction. That 30-year sunset occurred approximately
16 2007. With regard to whether or not section -- Resolution
17 84-037 currently applies, it is a zoning ordinance or a
18 zoning resolution. And a zoning resolution must be passed
19 by ordinance and cannot be passed by resolution.

20 We've addressed that issue previously. I know
21 that the tenants' attorneys have submitted their brief
22 trying to take issue with that and saying this is not a
23 zoning resolution because it doesn't set forth a zoning, but
24 I think they're being a little bit narrow in their
25 construction of what a zoning resolution is. You'll find

1 the rent adjustment ordinance in the -- under the zoning
2 code of the city ordinance -- of the city code.

3 Anyway, unless there are any questions by the
4 commissioners, we would just like to urge the Commission to
5 apply a just and reasonable return and to treat the park
6 owner fairly and we promise that we will treat the tenants
7 fairly as well. Thank you.

8 MR. WERTHEIMER: Thank you. Before you go away.

9 MR. SILACCI: Questions, Mr. Hill. Would you please
10 tell us, and it may be again, I mean, the rationale that the
11 owner did not take the allowable annual increases under
12 whatever guiding regulation, but I'll say 84-037?

13 MR. HILL: I can't speak for what the owner -- went on
14 in the owner's mind other than perhaps being quite generous
15 and -- and not doing anything. But let me just cite you to
16 the fact that the owner has spent tens of thousands of
17 dollars with respect to this application, probably over
18 \$100,000 just getting it through the Staff review, going
19 through the city records, going through everything that's
20 been involved here and getting this -- hiring the experts to
21 testify.

22 If you would expect them to do this every year and
23 pile on \$100,000 to the tenants rent every year, then you
24 can see where the owner is being quite generous in having
25 not pursued this and also trying to save costs on the

1 owner's behalf by -- by having to go through this process.
2 And you've heard Staff say, we can't even understand our own
3 regulations here. So, you know, it's not an easy process,
4 and it's very expensive process. And I really can't answer
5 what went on in the owner's mind, but I'd just like to point
6 out the costs involved.

7 MR. SILACCI: Well, as a follow up, would it not have
8 helped the owner to take those allowed annual increases,
9 would that have not helped the owner in the current year as
10 far as getting to a just and reasonable return?

11 MR. HILL: It would have helped the owner. However,
12 the owner, by not doing so, has waived no constitutional
13 rights. I don't think you can say that the owner has waived
14 his constitutional rights by not taking those. So I think
15 that may be answering the implied question that you were
16 going to --

17 MR. SILACCI: It wasn't my implied question, but thanks
18 for answering that as well.

19 MR. WERTHEIMER: Ms. Feldman.

20 MS. FELDMAN: Mr. Hill, you stated that the residents
21 have enjoyed the restrictions made by the City. They've
22 enjoyed benefits --

23 MR. HILL: Certainly.

24 MR. FELDMAN: -- from the restrictions made by the
25 City. Isn't it rather that they've enjoyed benefits given

1 by the park owner?

2 MR. HILL: I don't know that they -- if you look at the
3 history behind that restriction, I think the park owner was
4 actually asking for a different percentage and the City
5 imposed that restriction contrary to the request of the park
6 owner. So to say that they were given by the park owner, I
7 think the park owner has been very generous and I do
8 appreciate the fact that you're applauding the park owner
9 for being so generous in not seeking rent increases, but I
10 don't -- if you're trying to imply that the park owner is
11 somehow estopped from exercising his constitutional rights,
12 I can't agree with that.

13 MS. FELDMAN: Okay. As a follow up, in 2000 the City
14 offered Mr. Hone the opportunity to use the rent ordinance
15 instead of the 84-037. Mr. Hone chose to use chose 84-037,
16 so he was making a certain choice at that time. Do you
17 agree?

18 MR. HILL: I don't know from what I read of the letter
19 whether they were making a serious offer or not. That was a
20 Staff communication. You know, if -- if the City had come
21 to the park owner and adopted some different resolution,
22 then I can see there being a serious offer, but I don't know
23 that the Staff had any rights to do anything other than have
24 a discussion with the owner. And I don't know what -- what
25 the answer was. I haven't seen any writings. All I could

1 do was look in the City records, and all I could find was
2 that correspondence. I think eventually what happened was
3 that there was a four percent increase which was given,
4 which was better than nothing, I guess, in that context.

5 MS. FELDMAN: Okay. How much do you think it cost
6 Mr. Hone to make that four percent rent increase at that
7 time?

8 MR. HILL: I don't know. I know there was a lot of
9 documentation included with that. I haven't made any
10 inquiry, and I don't think I am qualified to testify on my
11 personal knowledge.

12 MS. FELDMAN: Okay. Well, I can assume it wasn't
13 \$100,000. You said every time you go for a rent increase,
14 if they have to spend \$100,000, that's totally unreasonable,
15 and you're right, it is. And I imagine if he had gone every
16 year for the four percent increase, it wouldn't have cost
17 him \$100,000. That's just an assumption. Do you agree with
18 that?

19 MR. HILL: I don't -- let me first state, I don't think
20 it was an automatic four percent increase every year. It
21 was inflation with a cap of four percent. And a cap of four
22 percent doesn't get anywhere near inflation. And -- and it
23 was a regressive application of -- of what was intended to
24 be an eleven and a half percent return on investment
25 formula. It wasn't really the eleven and a half percent

1 return on investment.

2 You've heard Dr. Baar testify that to really get
3 the return on investment, you'd have to kick out the four
4 percent cap. So I -- I don't know what the park owner
5 thought. And, you know, I'm sorry, I'm just the wrong
6 person to ask for that, but I can tell you that the four
7 percent -- the expense of going for that may not have
8 justified getting the four percent cap rent increase.

9 MS. FELDMAN: Okay. Thank you.

10 MR. WERTHEIMER: Mr. Sheldon.

11 MR. SHELDON: I have nothing.

12 MR. WERTHEIMER: Ms. Ferruzza.

13 MS. FERRUZZA: Okay. I want to ask you, are you
14 proposing that no matter what the rent commission decides
15 for the existing tenants, that the rent increase, whatever
16 is decided, that new tenants coming in will get the new
17 total rent increase to begin with, this whole total amount
18 of whatever is decided on? Are you suggesting that?

19 MR. HILL: Yes.

20 MS. FERRUZZA: That's what I thought.

21 MR. WERTHEIMER: Yes. I have a couple of questions, if
22 I may. You had mentioned -- and it was very generous --
23 that on the increase, whatever it would be, since it wasn't
24 specified, that none of the current tenants who couldn't
25 afford it would not be thrown out. Is that accurate?

1 MR. HILL: That's correct. And Mr. Hone nods and
2 agrees.

3 MR. WERTHEIMER: And he would put that in writing?

4 MR. HONE: If we get the rent increase we're asking
5 for, yes.

6 MR. WERTHEIMER: That's not what he said earlier and
7 that's why I'm asking this question.

8 MR. HILL: No. I think the statement we made in
9 writing was if the park is treated fairly. And -- and I
10 think we discussed fairly being, you know, applying the MNOI
11 formula as per the ordinance, yes.

12 MR. WERTHEIMER: Fairly and getting what you ask for is
13 the same thing?

14 MR. HILL: Well, fairly -- fairly has to be defined in
15 terms of the MNOI formula, which the City adopted, which is
16 intended to be a reasonable -- just and reasonable return
17 and balance the interest of the tenants as well. So we
18 define fairly as the MNOI formula that the City adopted,
19 yes.

20 MR. WERTHEIMER: Would you -- if the increase that came
21 out of this hearing increased the value of the park, would
22 you then consider that a taking?

23 MR. HILL: I'm sorry.

24 MR. WERTHEIMER: If whatever increase came out of this
25 hearing, the choices that are available, and that price

1 increase increased the value of the park, then would you
2 consider the rate a taking?

3 MR. HILL: It would really depend on whether a court
4 were to find that it was not a just and reasonable return.
5 That's -- you know, it would be our opinion that if the MNOI
6 formula is not applied correctly, it could be a taking. I
7 can't say one way or another whether or not -- you're asking
8 an incomplete hypothetical. I don't know what kind of rent
9 increase you're going to decide on tonight, so I really
10 can't say whether there would be a taking or not, and I
11 haven't done the analysis. But if the MNOI formula is not
12 applied correctly, then -- then I think there's a good
13 argument that there could be a taking.

14 MR. WERTHEIMER: Well, what I was implying is by the
15 appraisal that was given. And I'm kind of just curious.
16 Maybe the taking still can be considered. But by the
17 appraisal that was given us, the value of .80 a square foot
18 for his property. And based on an investment review,
19 that -- an increase would increase -- an increase in rent
20 would increase the value of his property some.

21 MR. HILL: I disagree with your assumption that the --
22 I believe you're talking about the 2009 appraisal that was
23 done by a broker that -- that -- that looked at the current
24 rent structure under the -- under the restricted rent
25 structure and said that based on that -- that income stream,

1 your park value is approximately \$160,000. Is that what
2 you're asking about?

3 MR. WERTHEIMER: That estimate gave a value of the park
4 at \$168,000, yes.

5 MR. HILL: Right. Yes. And my reply to you is that
6 you're making an assumption that that appraisal is -- is the
7 market value under a just and reasonable return, and I
8 disagree most strongly with that assumption that that --
9 that the market value under a just and reasonable return
10 should be that low.

11 MR. WERTHEIMER: Well, I disagree that his appraisal
12 has any value at all.

13 MR. HILL: I just think --

14 MR. WERTHEIMER: I think it's worthless.

15 MR. HILL: I just think it goes to show where we're
16 going if we -- if we remain under the current rents under
17 the -- or under the regulation. We'll -- we'll eventually
18 have zero value in the -- zero market value for the park and
19 there will be a total and complete taking.

20 MR. WERTHEIMER: So your appraisal wasn't entered as
21 evidence to show value but show a trip down zero worth lane.

22 MR. HILL: It was -- it was entered to show an opinion
23 of value by a qualified broker, yes. And it was entered to
24 show how far down we've gotten in market value of the park
25 because of the application -- the owner's application under

1 the regulation.

2 MR. WERTHEIMER: That's it. Thank you. Anymore
3 questions from up here? I move that we close the hearing.

4 MR. WERTHEIMER: Okay. Mr. Silacci, questions of the
5 Applicant counsel? We're done with questioning. Yeah,
6 we're done. So we close the meeting and take a break.
7 We'll be back at 8:45.

8 (Meeting closed.)

9 (A brief recess was taken.)

10 MR. WERTHEIMER: We're going to have our deliberations
11 as a Commission. So, Mr. Hehir, would you like to summarize
12 for us, the Commission, of our options and responsibilities
13 at this time.

14 MR. HEHIR: Thank you, Mr. Chair and Commissioners. We
15 are finally at a point after three days, basically, of
16 testimony where we have what is really a very narrow issue
17 that is before you. And that issue is that the owner has
18 submitted an application for a just and reasonable rent
19 adjustment at the Ranch Mobile Home Park.

20 Now, certainly as we all can state, this park is
21 very unique and has an incredible history that makes it, and
22 your decisions, very difficult and makes the procedure more
23 complicated. The issue, again, before you is the same as we
24 had with Thunderbird, and that is to take the application
25 and apply it. And, again, it's my opinion that you need to

1 use the ordinance to do that. The jurisdiction that has
2 been addressed is not something for you to consider.

3 Now, when I say that, I want to first give you a
4 couple of rationales from cases that I think really hone and
5 mean -- and should mean something to you as far as your
6 analysis is concerned. And then I want to talk to you about
7 the rationale of what you have before you.

8 One of the cases that you've I know heard a number
9 of times is a case called Kavanaugh. And the Kavanaugh case
10 has several points. It's a California Supreme Court case.
11 And one of the decisions or findings in that case is that
12 the Court found that there was no single formula to
13 calculate rent ceilings. The Court also noted that the
14 maintenance of operating income, the MNOI, for calculating
15 rent ceilings is a typical method.

16 We've also talked about the Berger case, and we've
17 had different opinions on what the Berger case stands for.
18 We had the tenants' attorney and also the owner's attorney
19 talking to Mr. Baar, I believe, about the Berger case
20 specifically. The Berger case is important because it does
21 outline some basic principals governing rent control. And
22 it notes that a city's ability to control rents is
23 principally circumscribed by substantive due process, which
24 requires that all legislation have a reasonable relation to
25 a proper legislative purpose.

1 Now, here's the difficult part about your task,
2 the Berger case also notes that a constitutionally valid
3 rent control scheme must allow park owners to earn a just
4 and reasonable or fair return on their investment. That's
5 what this case says. The problem is that when it goes to
6 what does fair return means, the Court notes it's incapable
7 of precise definition. However, the Court further goes it
8 is generally considered to include returns that are
9 commensurate with the returns on investments and other
10 enterprises having comparable risk or high enough to
11 encourage good management, reward efficiency, discourage the
12 flight of capital and enable operators to maintain their
13 credit.

14 The term fair rate of return, again, we've said
15 this over and over, but I want to remind you, refers to a
16 constitutional minimum within a broad zone of
17 reasonableness. I know that might be even more confusing,
18 but that's the task before you, is that there might be this
19 broad range of what is reasonable for a rate of return, but
20 that is something that we have to always consider when we're
21 making your decision.

22 Another thing in the Berger case, and these are
23 two points that have been recently discussed, is that in the
24 Berger case the Court mentioned that a rent control system
25 generally permits profits to be adjusted over time for

1 inflation so that the real value of the profit does not
2 shrink towards the vanishing point. In other words, you
3 can't freeze the dollar. Another point of Berger is that
4 indexing at 100 percent is not -- not constitutionally
5 mandated. The Court noted a city is not required as a
6 matter of law to use 100 percent indexing of NOI in an MNOI
7 approach.

8 Now, when I talk about approach, and we talked
9 about this at the last meeting, your first task is to talk
10 about a formula. We have the MNOI formula which we have
11 talked about, and I know you're all familiar with. There is
12 another formula that has been, in a sense, brought up in
13 this discussion, and that is the rate of return of
14 investment.

15 While I do not believe that you can imply the
16 resolution as far as the jurisdictional issue, you do not
17 have jurisdiction under that resolution to decide whether or
18 not you can go forward with it. The ordinance is actually
19 what is controlling this application. However, the
20 rationale of that resolution in 84, that rationale it's
21 talking about a rate of return on investment, and that goes
22 back to, again, the history of this case. And, again, I
23 will repeat, this is a unique case because of the history.

24 In the rate of return on investment, when we
25 looked at this park, there was an idea and an acceptance

1 that there would be 11.5 percent rate of return on
2 investment starting when the park opened. Now, we talk
3 about that as a possible formula. That is something that
4 you, as a Commission, you need to decide first, is what
5 formula? Do you want to apply MNOI? Do you want to apply
6 this rate of return of investment?

7 I will say that in looking at the information that
8 we have before us, if you use a rate of return on
9 investment, you need to use a rationale of 11.5 percent
10 because that is what it was initially doing when it was
11 created in 1977. If you use the MNOI, we can talk about
12 those various aspects of the MNOI.

13 As you know, Staff has recommended an MNOI. The
14 Applicant's attorney has recommended -- and the owner has
15 recommended an MNOI. And the tenants' attorney initially
16 and for most of the argument is about doing the ordinance or
17 doing the -- excuse me -- resolution and saying that the
18 Commission does not have jurisdiction. But if the
19 Commission were to go to an MNOI, then they would use a base
20 year of 2009.

21 So I wanted to give you those basic principals.
22 Because, again, we talk about the balancing. We say it over
23 and over again. But there is a balancing of the interest of
24 the tenants in keeping something steady with rent control,
25 but also the interest of the owner in making sure that if

1 you make a decision on any adjustment, it is
2 constitutionally supported.

3 And I know when we look at these cases, it doesn't
4 tell you, well, if you add this number and do this number
5 you have it. Unfortunately, we don't have that type of
6 thing. But I believe that when you look at what Staff has
7 done with their recommendation, at least, they're trying to
8 tackle that issue with all these options and all these
9 different figures to kind of say, here the meat and potatoes
10 is, you need to address this application that's before us
11 and you need to address it through the ordinance.

12 So I would say that the first step you would need
13 to take is what formula you want to apply. I believe
14 that -- and, again, whatever formula you apply, by the way,
15 it is very important that you make a basis for finding for
16 why you are relying on that formula. If it's the rate of
17 return on investment, we need to talk about that -- or you
18 need to talk about that. If it is MNOI, you need to discuss
19 that. And then once you have that type of formula, then you
20 need to go forward with that analysis under that particular
21 formula.

22 And if you have any questions at this point, we
23 can talk about that or you can just move forward to the next
24 step?

25 MR. WERTHEIMER: Any questions from the Commissioners

1 for Mr. Hehir?

2 MR. SILACCI: Sorry. I'm unusually slow so, Mr. Hehir,
3 help me because I -- and I appreciate how you laid it out.
4 I understand. But when -- the advice you're giving the
5 Commission is we can't decide jurisdiction, does that mean
6 we can't decide to apply this application under anything
7 other than the ordinanc?.

8 MR. HEHIR: I think I understand what you're saying,
9 and my answer is -- I'm not trying to be a lawyer here, but
10 it's actually two parts. It is -- that's correct, except
11 you have to realize that an ordinance provides for formulas
12 and it could imply -- you know, it does obviously state the
13 MNOI is a preferred method. However, there are other
14 alternatives that you can apply.

15 My point to you is that if you apply a different
16 type of theory for recovery or for the application, that you
17 based it upon the findings that you have before you. And
18 what I would counsel you is that you certainly do not want
19 to try to come up with -- and I'm not trying to put words or
20 any ideas in anyone's mind, but when you look at the cases,
21 some of the problems that you have is that the Commission or
22 the Board is trying to do something positive and trying to
23 say, let's just tackle this and let's take everyone's idea
24 and put it together and then we'll divide it by three or
25 divide it in some way and we'll come up with a number.

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1 And the Courts have faulted that type of analysis
2 because they say, you just need to use a formula and show
3 the ground work for each point that you have. And to take
4 different aspects of different ideas and say, oh, this makes
5 sense and this makes sense because we're going to get a
6 certain number, it is very difficult and can be very
7 challenging. I think my goal in counseling you, and I think
8 Staff's position, and you said this before, is to try to
9 give you options or information so you can make a decision
10 that can be defended if it needs to be as a just and
11 reasonable return.

12 MR. SILACCI: I appreciate that. Maybe I can ask the
13 question differently. Can this commission decide not to --
14 can this -- it's going to be a double. Can this decision --
15 can this commission decide not to make a decision on this
16 application because we may believe that the ordinance
17 doesn't apply to the application?

18 MR. HEHIR: My recommendation would be that, no. My
19 recommendation is that the ordinance does apply, and that
20 the issuing on jurisdiction that should even addressing this
21 is not something for you to tackle.

22 MR. SILACCI: Okay. I appreciate that. Thanks.
23 thanks for -- again, basic questions, but that helps me and
24 hopefully helps my commissioners.

25 MR. HEHIR: Please do not apologize. This is very

1 complicated issues that we have here and a very complicated
2 case due to the history.

3 MR. SILACCI: And just another question that I have,
4 Mr. Chair, if I may. I realize then it falls to the
5 Commission to decide the method. If we choose an
6 alternative from MNOI and -- say a rate of return
7 alternative, are we then tied to the original eleven and a
8 half percent that was set forth in the development
9 commissions?

10 MR. HEHIR: I think you -- my recommendation would be
11 you would have to follow that rationale. And the reason why
12 is because when you look at the alternatives -- and Mr. Baar
13 actually addresses this in his report in a couple sections,
14 and if you want, I can get that for you if you want. But
15 when he looks at the rate of return of investment, that's
16 another one. Again, whatever one you use, whatever formula
17 you want to pick out of the air, whether it's MNOI or rate
18 of return of investment, you certainly have to have the
19 findings and the data to back that up.

20 So if you want to go with the rate of return of
21 investment based upon this history of this particular park,
22 you would need to go to 11.5 percent because that is the
23 foundation that you have to go with.

24 MR. SILACCI: Thank you. I understand. I -- I have no
25 further questions based on the counsel that Mr. Hehir has

1 provided us.

2 MR. WERTHEIMER: Ms. Feldman, any questions?

3 MS. FELDMAN: No.

4 MR. WERTHEIMER: Mr. Sheldon?

5 MR. SHELDON: No.

6 MR. WERTHEIMER: Well, I suggest that we deliberate in
7 a similar manner that we did for Thunderbird in that we kind
8 of break apart our decisions and first talk about -- to
9 determine a method that has been put out for us to consider.
10 So with that, Michael?

11 MR. SILACCI: Well, again, I'm not afraid to profess my
12 ignorance because there has been so much detail and so many
13 calculations that, frankly, it would be helpful to me to
14 understand what -- what my options are. For example, if I
15 felt that MNOI was the standard, then I want to see what my
16 options -- if I felt that an alternative, which would be,
17 you know, a rate of -- return on investments, excuse me,
18 then I would want to know what that came -- you know, what
19 the end result would be.

20 MR. HEHIR: Okay.

21 MR. WERTHEIMER: You -- so you'd like to know if an ROI
22 method was used at 11.5 percent, you'd want to know where we
23 would be at a rate? Is that your question?

24 MR. SILACCI: Yes. No. What -- what -- I'd like to
25 know, given all the information that we've been provided,

1 it's almost -- what are the matrix of options given all the
2 recommendations?

3 MR. HEHIR: Sure.

4 MR. SILACCI: And has that changed to date?

5 MR. HEHIR: Okay. I think from the review that I've
6 seen from the evidence, the information provided to you -- I
7 talked about the rationale of the 11.5 percent, that is
8 based upon the initial history of this park. Obviously the
9 other option is the MNOI.

10 If you go with the MNOI formula, then there's a
11 formula that you would follow and you would, again, discuss
12 each point. One of them being what base year do you wish to
13 address, do you wish to use as a base year for a MNOI
14 formula. In this case, the owner has used 1979 as a base
15 year. In this case the Staff has used 1982. And -- and I'd
16 have to actually check again, but I believe, in looking at
17 all the rationale of the tenants' attorney, at the end I
18 believe she says -- initially I think she said use 2009. I
19 do believe that are her PowerPoint actually has -- you can
20 also go to 1999 and 1982, but I believe her initial
21 assertion was to use 2009 as a base year.

22 So after the base year, if you use the MNOI
23 formula, you would pick the base year. And the next step in
24 that formula would be to do any adjustments to the base
25 year. This, again, goes to where this park is very unique.

1 Because if you look at the history of the rent control, we
2 always talk about 1979 as that one year. And that's because
3 that year things were generally at market rate. Except we
4 do know, from the history of this case, that before that
5 time, 1977, there were different restriction on this park,
6 the Ranch park. Therefore, if you were going to do an
7 analysis for that adjustment, you need to say what's your
8 base year first, 2009, 1982, 1979, and then do an analysis
9 as to whether that base year rent, the base year rent has to
10 be adjusted.

11 In this case, the owner has indicated that the
12 base year rent should be adjusted up to a certain figure.
13 Again, that is because they're using 1979 as a base year as
14 well. Staff's recommendation, I believe, and I'd have to
15 check again, but I believe it's -- because they're using
16 1982, they go to 1979, and they do an adjustment. But,
17 again, because of the uniqueness of this park, we have two
18 different adjustments. You have to go back to '77 and
19 you'll go to '79 to do an adjustment. And then from 1979
20 with that adjustment, you go to 1982. That's what Staff
21 did. And the reason why Staff did that is because they
22 wanted to go with 1982 as the first year that they had some
23 documentation in which to do an analysis.

24 After that, then there's an adjustment for -- once
25 you have the base year, then you have the base year rent

1 with adjustments, we also call that the Vega adjustment. We
2 talked about that numerous times. Then you go to the third
3 step, which is dealing with operating expenses in comparing
4 the base year with the current year.

5 In this case the current year would be 2009. So
6 for simplicity sake, say, if you were to take -- do an
7 analysis at least that you want to do an MNOI for 2009, you
8 would do 2009 as -- you pick that as a base year and then do
9 any rent adjustment -- well, there would be a rent
10 adjustment in this particular case, but you'd have to go
11 back to, again, Vega, and go all the way back because
12 there's an emphasis on making sure that there's market
13 condition and general market condition when you do that
14 analysis, which I believe is why in the Staff report, the
15 Staff's position was not to use 1999 because going to Vega
16 over all these years from 1980 all the way to 1999, to do a
17 Vega adjustment for market conditions, when all the mobile
18 home parks by that time are under some type of rent sync or
19 rent control, it makes it very difficult. Not impossible,
20 but it's a difficult task.

21 But if you were to use 2009 again, you would do a
22 Vega adjustment for 2009, and then there wouldn't be any
23 change in operating expenses because you're using the same
24 year. And then there wouldn't be a CPI index because you're
25 using the same year. Again, for the owner, he wants to use

1 1979. He wants to adjust it. He had his experts and people
2 come in and testify as to why the adjusted -- appraiser, et
3 cetera. And then you would do -- again, make that
4 adjustment, change operating expenses, address that issue
5 and then you go to a CPI indexing at the very end because --
6 remember we talk about freezing the dollar. We don't want
7 to freeze a dollar so there's an indexing adjustment. And
8 in the owner's case, they want a hundred percent. In the
9 Staff's report it's 50 percent.

10 So if you look at page 22 of the Staff report, 21
11 and 22, excuse me, some of these things are laid out. And,
12 again, this is for an MNOI and then there's also if you want
13 to do a rate of return on investment. Again, if you go to
14 rate of return on investment and then you would go back, I
15 believe, to 1977, 11.5 and do that calculation, which is
16 what Mr. Baar did. I will also state that -- in my looking
17 at Mr. Baar's reports and his Staff report, I think he
18 said -- used the word "comparable." I don't believe he's
19 actually using it to say -- you know, because that's not his
20 recommendation obviously. He's not recommending this. But
21 he is actually saying, I am doing this at a comparable rate
22 to see what it -- if we do it this way, what's going to be
23 compared to an MNOI formula. I think that's why he keeps on
24 saying comparable, comparable, comparable.

25 And if you look at his actual report, he's in

1 there saying -- he's not in any way saying -- since I didn't
2 read it, that if you do a different formula, I'm confident
3 it's going to be constitutionally, you know, defended --
4 defensible. You know, I don't think he's -- I don't see
5 that in his report. Those are -- from what I've seen, those
6 are really the two types of formula you can apply. If you
7 want to apply a different one, again, my only comment on
8 that is make sure you have the findings to do so.

9 MS. FELDMAN: May I ask a question? You said that we
10 apply the Vega adjustment. Okay. What if we do not apply
11 Vega adjustment?

12 MR. HEHIR: Well, the reason why you apply a Vega
13 adjustment through the -- the formula requires some type
14 of -- I mean, it can require a Vega adjustment. There are
15 times when you don't apply the Vega adjustment. In this
16 case, I believe you would have to apply the Vega adjustment
17 based upon the history and the low rent of this particular
18 park. And so that Vega adjustment needs to be done.
19 Because a part of that analysis, when the courts look at
20 this as far as whether it's a taking or not -- and again,
21 what we're trying to prevent is the government controlling
22 and controlling to such an extent that it's a taking of the
23 owner by keeping it so low.

24 So when you do this formula that the courts have
25 said, you know, MNOI, this is a formula that we actually

1 kind of -- we can stand by, we understand. There is a need
2 to do a Vega adjustment if -- you want to make sure that you
3 have the current market conditions so you can adjust it up.
4 So when you're doing the number crunching, it's really
5 reflecting a market -- a general market condition, not the
6 lowest possible thing or the highest possible thing.

7 MS. FELDMAN: Okay. Can we apply the Vega adjustment
8 to the resident's income?

9 MR. HEHIR: No. The -- the Vega adjustment is strictly
10 on the rent. What is the market condition for the rent, the
11 general market condition of the rent.

12 MR. WERTHEIMER: Anymore questions for Mr. Hehir? So,
13 Mike, we go back to you.

14 MR. SILACCI: Well, I just hate -- I am not trying to
15 delay this but just a question, and I think I may have asked
16 it already, so if I ask it again. I know I don't have to
17 apologize, but I am. If we -- your advice is if we choose
18 other than the MNOI formula and we use a return of
19 investment formula, we use a return on investment formula,
20 we don't apply 84-037. Instead of 84-037, we're basically
21 using -- the formula is return on investment.

22 MR. HEHIR: Right. We're using the rationale of the
23 resolution, but we're going back to use the intent
24 initially, which is 11.5 percent of the rate of return for
25 investment. That was what was initial planned and you want

1 to keep that steady; right? So you're trying to keep that
2 steady. The MNOI does it as well, just a different way.
3 Trying to make sure that what -- what the MNOI does is, is
4 it does as a net operating income to say if that net profit
5 that you're making through that analysis is the same as it
6 was when you first started for rent control to now, then
7 that's the goal that you're trying to meet, something in
8 that range.

9 MR. SILACCI: Okay. Well, thank you. That answers my
10 question. If I -- that answers my question. I just -- it
11 limits the choices, you know, based on the counsel that
12 we're receiving to reach a decision and based on what's -- I
13 guess if I'm -- you know, what's a constitutional minimum.

14 MR. HEHIR: Right. And, again, my point is if you use
15 different formulas, it's more of what formulas do you have,
16 what's your basis for using a different formula. There are
17 other formulas that cases have talked about. We know,
18 obviously, of MNOI and we know of the rate of return on
19 investment. Those are two formulas that are addressed
20 throughout this packet. But my counsel would be that I
21 would pick one of those two just because I don't -- I didn't
22 really here any other evidence -- excuse me, any evidence of
23 other formulas that you could possibly use that would make
24 sure that you have a foundation to have a decision.

25 MR. SILACCI: Okay. But just to clear it up for me,

1 just to -- so your counsel -- I'm trying to phrase this.
2 It's like Jeopardy. I'm trying to phrase this as a
3 question -- is that there would not be a good basis to use
4 84-037 starting with the base year of 2009 as our formula,
5 which has been offered up? Because right now what I'm
6 hearing is MNOI is the standard, is an acceptable standard.
7 We have the discretion for alternatives, so return on
8 investment would certainly be that, which is the -- I guess
9 the intent or was the intent of 84-037. But I guess what
10 I'm asking specifically is could we use an alternative being
11 84-037 and its provisions, which didn't allow recapture and
12 using a base year of 2009?

13 MR. HEHIR: My recommendation would be that you do not
14 use 84-037. And the reason why is because I believe the
15 issue on jurisdiction is not your call. The second issue is
16 that while the rationale of 11.5 percent is there, now that
17 that ordinance is -- that resolution is there, it provides
18 for a cap. And when it has a cap, that's where you get
19 concerned about making -- that's why you have an MNOI, to
20 make sure you have an analysis that says, yes, after all
21 this time.

22 The 2009 issue, to me, as an MNOI, is using that
23 as a possible base year to start with that year. That's
24 certainly something that could be addressed. But if you're
25 going to use the rate of return on investment, you need to

1 go back for the whole time and then do the 11.5 percent.
2 And on page 22 of Mr. Baar's report, he has a rate of return
3 on investment, and he has six percent, nine percent, and
4 11.5 percent. And if you look at the 11.5 percent, this
5 would be a \$214.66 increase to the rent currently under that
6 theory if you go back to -- go back in time.

7 MR. SILACCI: And I appreciate that clarity, and I
8 appreciate the -- well, your counsel and the patience of my
9 fellow commissioners as I kind of go through. I realize
10 that we as a body are bound by, I'll call it the local laws.
11 We have to do this based on the law. And so I appreciate
12 your advice. And, again, if we -- I mean, here's another
13 question or just honing in on it. If we were -- or if I had
14 the opinion that the standard ought to be return on
15 investment, your -- if I understand it correctly, your
16 advice to me and my fellow commissioners is that to use
17 something other than the eleven and a half percent may not
18 have a strong basis.

19 MR. HEHIR: Correct. That is correct. I think you
20 have to look at the rationale for this particular type of
21 investment and for the history of this particular park, and
22 you look at that. That's where that 11.5 percent comes in.
23 That is correct.

24 MR. SILACCI: I guess right or wrong I would argue that
25 possibly the rate of return percentages have changed today

1 versus in the mid '70s, but that's just an opinion.

2 MR. HEHIR: And I will also state that if you look at
3 his report, that there are different -- he does an analysis
4 as well where he goes to six percent and talks about current
5 things. And he did -- he has his comments. And, again,
6 when I say he, Mr. Baar, because that's the only one that I
7 see has done this analysis, frankly, in the information that
8 I have.

9 MR. SILACCI: And as a commissioner, I appreciate the
10 options. But it's nice to have those options for
11 comparative purposes, but it seems that the advice is that
12 in order to be clear from the beginning of this unique
13 property, we have to stick with eleven and a half percent,
14 or at least that's the advice.

15 MR. HEHIR: If you were use that type of formula,
16 correct.

17 MR. SILACCI: Okay. Thank you. So, Mr. Chairman, I
18 guess it still comes back to me. At this point, at least in
19 our deliberation, I guess I would, at least for deliberative
20 purposes and discussion, I guess I would hang my hat on the
21 MNOI standard, but I'm looking forward to the discussion and
22 deliberation that happens after that. I will definitely say
23 I don't like it.

24 MR. WERTHEIMER: Ms. Feldman.

25 MS. FELDMAN: Are we right now proposing what kind of

1 standard we each choose to adopt. Is there a motion to
2 that?

3 MR. WERTHEIMER: No, this is not about a motion.

4 MS. FELDMAN: What is this?

5 MR. WERTHEIMER: This is not about a motion.

6 MS. FELDMAN: Okay.

7 MR. WERTHEIMER: This is about a consensus that we're
8 trying to establish among the commissioners in order to get
9 some idea of the first step that we're going to take towards
10 a process and a choice.

11 MS. FELDMAN: Okay. Well, this is really the problem.
12 I do accept the MNOI. However, I do not accept the Vega
13 adjustment. I think that the residents need due process
14 just as the park owner needs due process, and they have
15 never been informed about MNOI or about any of this. When
16 they bought their coaches, it was with the understanding
17 that they would be protected in the future. So I will go
18 with the MNOI but not the Vega adjustment.

19 MR. HEHIR: And I certainly appreciate your opinion.
20 And my -- what I want to do is I just want to read the Vega
21 case or portions of the Vega case because I know it's -- it
22 is an important case when we do these types of analysis.
23 And I want to talk to you or just at least read some of the
24 points of the Vega case and kind of why the courts have
25 found that that is an important adjustment.

1 One of the points is that the rent ceilings of an
2 indefinite duration would be a taking and that's
3 unconstitutional. So if no adjustment, you need to have --
4 there needs to be a mechanism that provides for changes of
5 circumstances and to provide as relevant to the ordinance
6 under review for situations in which the base rent cannot
7 reasonably be deemed to reflect general market conditions.
8 So if you look at today's date and you look at the rent, you
9 say, does this reflect general market conditions? Under the
10 Vega, the Court would say, you need to go back and look at
11 what -- at the time before rent control and do that
12 analysis. And at the time that you do that analysis, was
13 that rent in the general area of market rent?

14 MS. FELDMAN: Okay. Could we not then put the Vega
15 adjustment back to 2001, which at that time Mr. Hone elected
16 for the four percent rent increase? Why would we have to go
17 back all the way back to 1982?

18 MR. HEHIR: Well, you actually go back to before 1982.
19 You go back to --

20 MS. FELDMAN: 1979.

21 MR. HEHIR: 1979. And, again, this is a unique case
22 because normally you go back there. This is a double
23 adjustment because of the uniqueness of Ranch, where you
24 actually have to go from 1977 and adjust up to get a
25 market -- general market rate at that point. And then

1 depending if you go with the owner's appraiser or you go
2 with Staff's appraiser, there's an adjustment to either --
3 for 1979 or to 1982. If you go to 2009, you would need to
4 do the adjustments all the way through. And that's
5 obviously difficult, but that's what you would have to do.

6 MS. FELDMAN: When you speak about constitutional law,
7 the Ninth District Court of Appeals in its recent ruling
8 stated state and local governments have a legitimate
9 interest in increasing the availability of affordable
10 housing for their citizens. And I think this issue has been
11 completely ignored, the affordable housing issue, with
12 choosing MNOI or return of investment. That whole leg of
13 the responsibility of the city has been ignored. And I
14 think that -- it appears to me that this park was conceived
15 and maintained as affordable housing all the way back to
16 1986. What Mr. Silacci was stating, the Commission agreed
17 that Ranch was separate from the other parks.

18 And when I go to -- the City of Thousand Oaks
19 support mobile home park residents. What has the city done
20 to help? This is written in 2008. And it states -- we all
21 remember this. And it states that the social well-being of
22 the community is a prime concern to the city. Over the past
23 few decades city council has demonstrated considerable
24 compassion and support for tenants by implementing several
25 measures.

1 In 1975 city council approved Ranch Mobile Home
2 Park as an income and age restricted park. Resolution
3 84-037 established specific criteria for adjusting rent and
4 income limits for the mobile home park. That was dated in
5 2008. They go on to say, in 1980 the city council adopted
6 the mobile home rent stabilization ordinance to restrict and
7 limit annual rent increases on mobile home park tenants who
8 reside inside the city's other eight mobile home parks. To
9 now apply methods of investments and return on investments,
10 an MNOI, that would be applied to other parks just doesn't
11 make sense.

12 So I -- I feel like you're putting me into a tiny
13 box, and I can't protect these folks.

14 MR. HEHIR: And I'm not trying to put you in any box.
15 I'm trying to give you my legal counsel, and I'm not sure if
16 you're referring to the Googenheim case or not.

17 MS. FELDMAN: Yes, I was.

18 MR. HEHIR: Okay. That case is very -- in my opinion
19 very case specific. But when you look at our ordinance,
20 this is where we talk about the balancing. We do have these
21 issues of do we -- does the government have an interest in
22 controlling rents and having rent ceilings in certain
23 circumstances? The answer is yes. Does an owner have the
24 right to ensure that they get some type of reasonable
25 return, whether it's on their investment or whether it's

1 through some other analysis, MNOI, et cetera? The answer is
2 yes. And so you have this balancing issue.

3 Again, I think what is difficult in this
4 particular case is that there's this history of no change in
5 a long period of time. And so it makes it difficult because
6 you have this -- when you do any analysis, you have this big
7 jump. And I believe that's why Staff is, you know,
8 recommending the phase-in issue, trying to make that big
9 jump, that spike, if you will, into, you know, something a
10 little bit more tolerable.

11 MS. FELDMAN: Okay. The U.S. Constitution -- you state
12 the takings, and I know Googenheim versus Goleta was in some
13 ways unique. But the U.S. Constitution requires that the
14 City compensate the park owners for taking their property by
15 regulation, and that has occurred. Years ago there was a
16 contract made between the City and the park owner, and that
17 contract required minimum rents. And that contract enticed
18 the residents to come in of lower income and be a third
19 party to that contract. The City has a definite interest in
20 this because they really are responsible for compensating
21 the park owner if they cannot give a reasonable return to
22 the park owner, and I think they cannot.

23 I think these residents are -- you can't get blood
24 from a stone or whatever. The lady who is going to go to
25 sleep in her car at night because she's going to lose her

1 place, that's absurd. And I personally feel this isn't our
2 jurisdiction because you're pushing us to make a decision
3 that will put a big rent increase on these folks, which is
4 not applicable to this park. Is it affordable housing, it
5 always has been. If the City wants to compensate the park
6 owner, so be it, but not the residents.

7 MR. WERTHEIMER: Mr. Sheldon.

8 MR. SHELDON: Thank you. Thank you. Commissioner
9 Feldman, I would support your confusion on the
10 jurisdictional issues as well, but I also agree that we
11 should make a decision on the application based on the law
12 as it is. So on that I do support the MNOI, mostly because
13 it was what was requested and agreed upon by Staff and the
14 tenants' representative foregoing the jurisdictional issues.
15 I also think it avoids the circular nature of the rate of
16 return analysis and it allows up to apply it consistently,
17 so -- thank you.

18 MR. WERTHEIMER: Ms. Ferruzza.

19 MS. FERRUZZA: I will support the MNOI because I feel
20 that we were asked to be on this commission to make
21 decisions. And right or wrong, the City asked us to do this
22 and this is our responsibility.

23 MR. WERTHEIMER: Thank you. I join with the fellow
24 commissioners on how tough this is. And the -- not only the
25 choices that you have but the understanding of the choices

1 we have to make and mostly the responsibilities that we
2 hold. I will support the MNOI as well.

3 I think the next thing that we need to determine
4 after we've got a general consensus on the MNOI is, again,
5 another general consensus break down to determine the base
6 year that we should select. With that, Mr. Hehir?

7 MR. HEHIR: And, again, as you know, there are four
8 steps if you go with the MNOI analysis. The first step is
9 to determine a base year. The second step is to make an
10 adjustment of the base year rent. Step three would be to
11 determine and make any adjustment of the base year operating
12 expenses. And step four is to decide if an adjustment of
13 net operating income for inflation is necessary and if so,
14 at what level.

15 So step one would be to determine a base year.
16 The owner has indicated 1979 and has presented documentation
17 evidence for that. Staff has used 1982. And tenants start
18 with 2009. I also believe that they do mention 1999 and
19 1982, I believe.

20 MR. WERTHEIMER: Mr. Silacci.

21 MR. SILACCI: Yes, Mr. Chairman. My opinion is that at
22 minimum we would use 1982 because we at least have some
23 financial information. Although I'm very disappointed in
24 this case that there weren't adequate records kept in any of
25 the years. But to me '82 would be defensible. I can't

1 agree with 1979 as base year because there is no financial
2 information. I'm done.

3 MR. WERTHEIMER: Thank you.

4 Ms. Feldman.

5 MS. FELDMAN: Oh, boy. I am going to go with 2009 as
6 the base year simply because until that time the park owner
7 never requested to be part of the ordinance. He never made
8 payments to the city for registration, the \$10 a year
9 registration per unit. He never even thought himself as
10 being part of the ordinance. And now he has to spend
11 \$100,000 to be considered part of the ordinance. Well, I --
12 I'll go with the 2009.

13 MR. WERTHEIMER: Does your opinion include any
14 reference to Vega?

15 MS. FELDMAN: Have we gotten that far? No. No, it
16 doesn't. Not yet.

17 MR. WERTHEIMER: Okay. Mr. Sheldon.

18 MR. SHELDON: I also support 1982, for all the reasons
19 that Commissioner Michael Silacci said.

20 MR. WERTHEIMER: Ms. Ferruzza.

21 MS. FERRUZZA: I'll go with 1982.

22 MR. WERTHEIMER: And I, too, will go with 1982.

23 MR. SILACCI: Mr. Chairman, can I -- is there a point
24 in the deliberation when we start and we go down -- if
25 there's a question that's sparked that one of us can ask a

1 follow up? Can I do that?

2 MR. WERTHEIMER: Yes, any point that comes up.

3 MR. SILACCI: Mr. Hehir, I'd appreciate your counsel
4 and opinion on how we could use 2009 as a base year or why
5 we cannot.

6 MR. HEHIR: You certainly could use 2009. It is a year
7 in which you have complete -- all the records. The issue
8 with 2009 is -- that I see, is that when you do an
9 adjustment, it's difficult to go all the way back to
10 pre-market control to make sure that you do that adjustment.
11 It can be done, and I believe --

12 MR. SILACCI: When you know -- and I'm sorry to --

13 MR. HEHIR: I was going to say I believe that Mr. Baar
14 does an analysis for 2009 in his report on page 22. And,
15 again, that is why you would use that. Again, I believe
16 that -- the Tenants -- I mean, the Applicant's attorney
17 obviously wants to use 1979. And Staff is saying 1982
18 because they have some records. And if you use 2009, it's
19 because you have all the records. But you get to the next
20 point, which is the adjustment issue.

21 MR. SILACCI: And excuse me. When you say adjustment,
22 you mean the Vega adjustment?

23 MR. HEHIR: Correct.

24 MR. SILACCI: Thank you.

25 MR. WERTHEIMER: The next point we need to deliberate

1 and discuss would be the base year's rent, how we establish
2 it and adjust it. Mr. Silacci.

3 MR. SILACCI: I don't know if it's good or bad to go
4 first. And we're talking, again, about the Vega adjustment.
5 Not to delay but to further understand, is there the
6 ability -- I'm trying to understand. Here's where I get
7 lost in Vega. Making an adjustment to the base year for a
8 market price when you had a piece of property that was
9 already income controlled, there's really, in my opinion, no
10 market. Maybe I just don't understand.

11 MR. HEHIR: And I appreciate you -- this is great that
12 you're asking these questions. It is important that you all
13 have this understanding or try to. These are not easy
14 topics, frankly. If you look at the Vega case, one of the
15 questions that the Court had was do the base date rents,
16 whatever base date you're going to pick, do those rents
17 reasonably reflect the general market conditions? Because
18 when you look at the taking issue, when you look at the
19 constitutional issue of the Fifth Amendment, you're looking
20 to make sure that you have -- if they do, then great. If
21 not, then you need to do some adjustments.

22 In our case here with the Ranch -- specifically
23 Ranch, we have the issue when we go to 1979 is when the City
24 starts to do some type of rent control. But Ranch, being
25 unique, has a previous history where it wasn't the market

1 rate at that time, clearly it was not. And so there is that
2 double adjustment that was done. I assume you're going to
3 1982 that had to be done. Once you pick the base year, then
4 what you do is whatever that year, if it is 1979, it would
5 be what is the general market condition at that time. If
6 it's 1982, you need to say what was the general market
7 condition of 1979 and then adjust it to 1982 time.

8 So what Staff did, if I understand Mr. Baar's
9 analysis correctly, is that they had to do two adjustments.
10 He goes first to 1977. He goes up until he gets a general
11 market rate for 1979, which is 150. And then he takes a
12 second adjustment to go to 1982, which is a base year
13 selected and does an adjustment to that and that's another
14 number. I believe it's 173, I believe. So that analysis.
15 With owner, they're going to 1979 and saying that's the year
16 that you do it and then they do an adjustment at that time
17 of the market rate that they have and that is -- I don't
18 want to misquote, it's either 240 or 198.46. So that is,
19 again, how they did that adjustment.

20 If you go to 2009, you would have to do the Vega
21 adjustment all the way through because you've got to make
22 sure that you're showing -- when you do this analysis, that
23 the rent is a general market condition at the time. And
24 that's why you have to do this adjustment. Sometimes you
25 don't have to apply Vega. It just depends on the case.

1 It's a case-by-case basis. In this case my recommendation
2 would be that you apply Vega.

3 MR. SILACCI: Okay. I understand that. I appreciate
4 your clarity, Mr. Hehir, because so at fitting the process
5 here, going with the process of each of our commissioners
6 positions or opinions to get the consensus, my opinion is
7 that no Vega adjustment using '82 as a base year, that no
8 Vega adjustment is warranted because of the unique
9 circumstances of Ranch, which was conditioned as a
10 low-income senior development. So, I mean, that's my
11 opinion, my position at this point. But I'm willing to
12 listen to other thoughts and comments from my fellow
13 commissioners. Thanks.

14 MS. FELDMAN: And would you explain your position to me
15 a little bit. You're choosing 1982 as a base year and no
16 Vega adjustment.

17 MR. SILACCI: Correct.

18 MS. FELDMAN: What does that amount to? You don't
19 know?

20 MR. SILACCI: No. Well, what it amounts to is that the
21 base year would not be adjusted upward to whatever the
22 market price versus what the actual rent, as I understand
23 it. The actual -- isn't that correct, Mr. Hehir, that the
24 actual rent in 1982 would have been lower than what the Vega
25 adjustment rent would be?

1 MR. HEHIR: Correct. It actually -- two points. There
2 was no adjustment by that time. There had been no change.
3 That's one issue. The second issue is if you do an MNOI
4 analysis, you need to assess whether or not a Vega
5 adjustment needs to be done to ensure that there is a
6 calculation as to whether or not whatever base year you use
7 establishes a general market condition at that time. And my
8 recommendation to you is just -- I mean, I have Vega right
9 here. I've looked at it a number of times.

10 The concern I have with your analysis is that when
11 you get into this MNOI formula, you have to look at whether
12 or not an adjustment is necessary. And if you look at that
13 adjustment, you say, what date do I have and is this -- at
14 the end of the day does it reasonably reflect the general
15 market conditions. You have an owner who says it does not.
16 You have Staff who says it does not. And so those are the
17 two -- if you're using 1982, you have to use that analysis.
18 And to do the MNOI, you have to make a decision whether Vega
19 needs to be applied or not.

20 If you recall in a previous case when we looked at
21 Vega, it didn't have to be applied because at the time it
22 was -- there was an argument that it was generally market
23 condition at that time. And we don't have that case here.
24 So that's why when you do the MNOI analysis and you get to
25 the adjustment, you have to make a decision, is Vega going

1 to apply or why doesn't it apply. It's not because -- I
2 think the analysis has to be does Vega apply. And if not,
3 it's because whatever basis you have, 1982 in this case,
4 that has -- really reflects a general market condition.

5 MR. SILACCI: Well, I guess if I state it,
6 understanding that, I would say that in my opinion at this
7 point in the deliberation, with '82 being the base year,
8 Vega would not apply because there was no comparable market
9 for Ranch given the unique nature of how the rents were set
10 in that park.

11 MR. HEHIR: And my only -- I'll let the other
12 commissioners get into this decision. But my point of that
13 is actually when you have rent control, then you have that
14 kind of control and that's when you do that analysis as to
15 whether Vega applies. So, actually, I know that you're
16 saying that Ranch is unique, but there are other parks --
17 all these other parks that have some type of rent control on
18 it. Whether or not it's low as Ranch or not is a different
19 story, but they all do have -- at that point in '79, they do
20 have that element to them. And that's why you have to get
21 outside of the rent control issue and go to what is the
22 general market condition. And that's what Vega requires
23 Staff to at least review and go through.

24 MR. SILACCI: Okay. Well, I'll -- I'm flexible on that
25 point. That's where I am right now, but I think I

1 understand it. I think put another way based on your
2 counsel, you've evaluated Vega and your legal advice is an
3 adjustment would apply in this case.

4 MR. HEHIR: That is absolutely correct.

5 MR. SILACCI: All right. But I'm flexible in my point.
6 So I appreciate other comments from other commissioners and
7 discussion. Thank you.

8 MS. FELDMAN: Vega requires market value rents. This
9 is not a market value park. It never was. So Vega doesn't
10 apply here.

11 MR. HEHIR: I'm not trying to disagree with any of you.
12 I understand your questions and your concerns. But,
13 frankly, the Vega does apply because when you do the
14 analysis, it has to be what are the general market
15 conditions, period. Not just general market conditions for
16 very low income or low income or moderately income type of
17 situations. It is what are the general market conditions.

18 Because, again, we're talking about -- we get to
19 the main point which is the analysis of when you give some
20 type of decision on the application is that amount, that
21 rent adjustment, is it really a taking or not. And so the
22 Vega case basically says you have to look at Vega or do some
23 type of adjustment, if necessary, but you have to at least
24 look at it. In this case my recommendation would be it
25 has -- you have to apply it because of the fact that you

1 have to look at the market condition at the time. And
2 that's why it has the adjustment because it wasn't market
3 condition.

4 MR. SILACCI: Go ahead. It's your turn.

5 MS. FELDMAN: I think that we're not looking at the
6 taking of the residents here. We're always looking at the
7 taking of the park owner.

8 MR. HEHIR: And, again, that's where we are talking
9 about the balancing issue because we -- I understand your
10 point. And, again, it's about you weighing both sides here.
11 It's very difficult, but there's a balancing of both. The
12 rights -- the concerns that you have for the tenants to
13 ensure that they have some type of rent control versus the
14 owner's issue of making sure that whatever adjustments are
15 made that's it not -- doesn't constitute a taking. So it's
16 that balancing issue. I mean, obviously we understand that
17 there's two sides to this argument and that you guys are in
18 the middle, but we have to make sure that we have that
19 balancing aspect of it. That's what -- certainly what the
20 cases require.

21 MR. SILACCI: Can I -- Commissioner, can I jump in?

22 MR. WERTHEIMER: You're looking at her and --

23 MR. SILACCI: Well, I don't want to -- if you have
24 further questions.

25 MR. WERTHEIMER: Ms. Feldman, are you done?

1 MS. FELDMAN: I'm finished.

2 MR. WERTHEIMER: Mr. Silacci.

3 MR. SILACCI: Can I ask a follow-up? Indulge me.

4 What -- what would be -- I want to ask this as an open
5 question as opposed to giving you a specific. What would be
6 an example where a Vega adjustment wouldn't be required?

7 MR. HEHIR: Would?

8 MR. SILACCI: Would not.

9 MR. HEHIR: If you were to have an analysis in which
10 you looked at whatever base years is -- you pick, and then
11 you look at the rents that were being charged at the time
12 and then you look at the general market conditions and you
13 do that analysis and you say, those general market
14 conditions reflect what the rents were for this particular
15 location, then a Vega adjustment doesn't need to be made.

16 MR. SILACCI: Or put another way, if the rents, actual
17 rents that you were -- I'm just giving a hypothetical here.
18 In fact, nothing -- if the rents that were being charged at
19 the time were \$300 and the general market condition was
20 \$305, you would be within the range where you wouldn't need
21 to make an adjustment; is that true?

22 MR. HEHIR: Based on that hypothetical --

23 MR. SILACCI: Given that hypothetical.

24 MR. HEHIR: -- that would be correct, yeah.

25 MR. SILACCI: Thank you.

1 MR. HEHIR: Sure.

2 MR. WERTHEIMER: Mr. Sheldon.

3 MS. SHELDON: Did you have a question?

4 MS. FERRUZZA: I want to know what his suggestion is at
5 this time. Has he put a proposal on the table?

6 MR. WERTHEIMER: Who's him?

7 MS. FERRUZZA: Regarding either with the Vega or
8 without the Vega?

9 MR. WERTHEIMER: Again, my question is who is him?

10 MS. FERRUZZA: Mr. Silacci.

11 MR. SILACCI: I didn't know my father was here tonight,
12 but that's okay. No. Thank you. At this -- at my
13 initial point or my initial position was I didn't believe
14 that a Vega should be applied here just based on my
15 understanding. But upon further clarification on the limits
16 or the latitude that we have, frankly, I'm shifting to a
17 Vega would be required. Only because of my understanding of
18 what would be defensible under the law. Thank you.

19 MS. FERRUZZA: Thank you.

20 MR. SHELDON: Patrick, thank you for spending so much
21 time going over the issue. I also support the Vega
22 adjustment. I feel it's necessary due to the lack of free
23 market conditions in 1982 on this particular mobile home
24 park.

25 MS. FERRUZZA: Okay. Now I understand, and I support

1 the Vega also.

2 MR. WERTHEIMER: I believe this has been talked out and
3 I understand our responsibilities and -- and the -- the
4 areas of law and balance that we need to have, so I, too,
5 support the Vega.

6 With that, the next thing we need to consider --

7 MR. SILACCI: Mr. Chairman, sorry.

8 MR. WERTHEIMER: Of course, Michael.

9 MR. SILACCI: I'm the thorn in your side. Let me ask,
10 before you close this, please, because I think I posed a
11 question or asked a question earlier or Commissioner Feldman
12 did at least offer up 2009 being the base year and not 1982.
13 And I know Mr. Hehir provided his counsel based on that, but
14 let me ask something more specifically. If we were to go
15 with 2009 as the base year, we would still have to make a
16 Vega -- or consider a Vega adjustment and likely have to
17 make one?

18 MR. HEHIR: Yes, that would be my recommendation.

19 MR. SILACCI: Which, if I understand it correctly,
20 would be the difference between the current rent and what
21 the prevailing market would be. So there would be a
22 significant delta between the two or would it be a
23 significant adjustment because you had about 30 years worth
24 of post-rent control market conditions; is that correct?

25 MR. HEHIR: I believe on page 22 of the Staff report,

1 Mr. Baar does a comparable current controlled rent with a
2 Vega adjustment and it's \$267. That's using 2009 as the
3 base year.

4 MR. WERTHEIMER: That's an increase, not the rent?

5 MR. HEHIR: That's correct.

6 MR. SILACCI: Thank you. I'm done with this item.

7 Thank you, Mr. Hehir.

8 MR. HEHIR: You're welcome.

9 MR. WERTHEIMER: We're going to go to the next item,
10 and that'll be discussing which index that's been
11 recommended is available to us.

12 MR. HEHIR: Excuse me, Mr. Chair. Step three would be
13 determining and making an adjustment of the base year
14 operating expenses, and then the fourth step would be to
15 decide if an adjustment of net operating for inflation is
16 necessary. So far you've determined the base year, which I
17 believe the consensus is 1982, you've made an adjustment of
18 the base year rent on Vega, I'm not sure if you picked a
19 number or if you're doing Staff's recommendation, and then
20 the third step would be to determine and make any
21 adjustments of the base year operating expenses.

22 MR. SILACCI: At this point I would accept Staff's
23 recommendation for the adjustments.

24 MR. WERTHEIMER: Ms. Feldman.

25 MS. FELDMAN: Of course I could not accept Staff's

1 recommendation. I think it's just totally inappropriate to
2 put \$191 a month on each of these people who cannot afford
3 it. Whether it's -- walking down the aisle, I'm the
4 reluctant groom here. I won't support that.

5 MR. WERTHEIMER: Mr. Sheldon.

6 MR. SHELDON: I apologize for my confusion. Are we
7 back on the base -- adjustment to the base rent in the
8 actual dollar amount or are we on --

9 MR. WERTHEIMER: We are.

10 MR. SHELDON: Yes, I support the Staff's
11 recommendation, that dollar amount.

12 MR. WERTHEIMER: Ms. Ferruzza.

13 MS. FERRUZZA: I support it, too.

14 MR. WERTHEIMER: I am going to go with the Staff's
15 recommendation with the exception of extending it out for
16 seven years as opposed to their recommendation of five.

17 MR. HEHIR: Okay. Just to be clear, I think we're at
18 step two. And step two is to -- if you're going to adjust
19 the base year rent, the owner, again, is adjusting it to
20 either 240 or 198. The Staff adjustment for step number two
21 would be \$173 after doing the adjustment from 1977 to 1979
22 and then from 1979 to 1982. And the tenants do not have one
23 in there's. So that is the second step, is to -- and it's
24 to your pleasure, of course, the Commission as to what
25 recommendation you're following. If you're going to follow

1 Staff's recommendation, it would be \$173 for the adjustment
2 of the base year rent. And then you would go to step three,
3 which is determining and making any adjustments of the base
4 year operating expenses.

5 MR. WERTHEIMER: Mr. Hehir, I have a question. In
6 adjusting the base year expenses -- this is where I'm going
7 to plead my ignorance -- my lack of understanding and
8 acknowledge and ask that you explain that for us.

9 MR. HEHIR: Under the MNOI formula as part of this
10 analysis, you need to do an adjustment of the base operating
11 expenses. So you look at the base year, in this case you're
12 using 1982, and you're looking at what the costs are to
13 operate the park. You have to compare that to the 2009
14 current year that you're using and then make a comparison
15 and make sure that, again, at the end of the day that those
16 that are equal. So that's where you do this analysis.
17 That's why when you look at Staff's recommendation, step
18 number two, the recommendation is 173. And then with the
19 adjustment it goes to a higher number because you're
20 adjusting it based on the net operating -- the operating
21 expenses that are incurred in the base year that you're
22 using, in this case 1982 and then in 2009.

23 MR. WERTHEIMER: It's my understanding, except for
24 Ms. Feldman, that we've agreed with the Staff on this
25 consensus as determining the base year's rent with the

1 adjust -- and agreeing with the Staff on the adjustment for
2 expenses that they've recommended. Mr. Silacci, am I wrong
3 on that?

4 MR. SHELDON: I think you're a step or two ahead.

5 MR. WERTHEIMER: That was it.

6 MR. SHELDON: In terms of where we are from a process
7 standpoint, we have not actually gone through on the last
8 two points.

9 MR. WERTHEIMER: I --

10 MR. SHELDON: Base year expenses and then inflation
11 factor.

12 MR. WERTHEIMER: The inflation factor, we haven't got
13 to, correct, that's CPI and we haven't discussed that yet.
14 I'm still trying to determine that we've -- we have
15 discussed, and it seems I guess we haven't -- then let's
16 start out, Mr. Silacci, determining the base year's rent and
17 the adjustment for the expenses.

18 MR. SILACCI: And, again, I thought I accepted Staff's
19 recommendation to adjust -- yeah, to be clear. Yes.

20 MR. SHELDON: Commissioner, we have done that for the
21 base year rent. We have not done that for the base year
22 expenses. We took the base year rent from 119 to 173 is my
23 understanding. We have not discussed at all the expenses.

24 MS. FELDMAN: Well, I'd like to comment on the
25 expenses. Since we're using the ordinance, it says

1 reasonable. I do not think these management expenses that
2 they're quoting here are reasonable at all. I don't think
3 anyone does. None of us does. Come on.

4 MR. WERTHEIMER: Mr. Silacci.

5 MR. SILACCI: My opinion hasn't changed. I mean, at
6 this point, based on my understanding of Staff, relying on
7 the expert, they've gone through and looked at the expenses
8 and made adjustments on both ends and took into -- I mean,
9 someone help me if I'm incorrect, Mr. Hehir or otherwise,
10 and took into account the -- this is my term, the spiking of
11 management expenses in the last couple years but made an
12 adjustment for that both in the base year and the current
13 year. So I grudgingly accept Staff's recommendation.

14 MR. WERTHEIMER: Ms. Feldman, could you repeat yours,
15 please.

16 MS. FELDMAN: I do not accept Staff's recommendation on
17 income expenses or on management expenses at all because the
18 park owner, I think, did an end run around all of these
19 statutes simply to get a big increase of rent now. And it's
20 totally inappropriate. It goes against affordable housing
21 issues. Where is the Thousand Oaks from before? This was a
22 kinder, gentler city in the past. And I think the Staff has
23 really marched us down the aisle, and I find it bitter,
24 really bitter. And I am so sorry.

25 MR. WERTHEIMER: Mr. Sheldon.

1 MR. SHELDON: I support the Staff's recommendations
2 because of the adjustments that they made. And the
3 adjustments that they made dealt with my concerns around the
4 spike at the end of -- in the last few years. So thank
5 you.

6 MR. WERTHEIMER: Ms. Ferruzza.

7 MS. FERRUZZA: I support it also.

8 MR. WERTHEIMER: I believe it is important to look at
9 the Staff's recommendation and not just one or two points
10 that may stand out and grab you and twist your emotion. And
11 with that, based on the Staff's backing and expertise, I
12 also support it.

13 And now I also believe that the next step will be
14 the indexing of the CPI. And, Mr. Silacci, you're up.

15 MR. SILACCI: I'll accept Staff's recommendation of 50
16 percent. Frankly, I'd like to go lower, but I don't think
17 it is defensible. If it was, I would go lower than that.
18 But 50 percent, frankly, is as high as I'll go.

19 MR. WERTHEIMER: Ms. Feldman.

20 MS. FELDMAN: I decline to support anything now in this
21 regard. I can't support this. I'm sorry.

22 MR. WERTHEIMER: Understood.

23 MR. SHELDON: I support the 50 percent.

24 MS. FERRUZZA: I agree.

25 MR. WERTHEIMER: Then I put out 75 percent.

1 Mr. Norman, I ask that you present the basis of the
2 resolution for us. None?

3 MR. HEHIR: The next step is -- do you have a consensus
4 at 50 percent, is that your consensus?

5 MR. SHELDON: We have three at 50 percent.

6 MR. HEHIR: The only step that was remaining that I
7 believe is on the table is whether you want to phase this in
8 or not.

9 MR. WERTHEIMER: Okay. Mr. Silacci, how we put this
10 into force or into operation? Do you have any suggestions
11 on phasing or all at once?

12 MR. SILACCI: Well, thank you, Mr. Chairman. At the
13 risk of asking the same question again. Mr. Hehir, please
14 summarize your advice as to, you know, the phase-in. I
15 realize that what's being proposed by Staff is five years.
16 Frankly, I'd like to make that even longer, but I seek your
17 advice to, you know, again what's legally defensible,
18 wouldn't constitute a taking. So I'd appreciate your
19 advice.

20 MR. HEHIR: Thank you, Commissioner Silacci. This is a
21 very -- or extremely difficult analysis, frankly. I have
22 looked at the cases and I frankly cannot find one on point
23 that I can point to and say here's my answer. The concerns
24 I have are similar to what I expressed before. And the
25 first point -- and if you look at the Supreme Court case,

1 the Kavanaugh case, again, it goes with the balancing of the
2 right of the owner to receive future rent ceilings that will
3 maintain financial integrity to fairly compensate him and
4 yet provide appropriate protection to the relevant public
5 interest both existing and foreseeable.

6 So with that basis, we return again to our
7 purpose, the Commissioner's purpose, and the need to control
8 rent ceilings and at the same time balance the interest that
9 you need to do as part of your analysis of the owner. In
10 looking at this, my recommendation is the further out you
11 go, the riskier it gets when you have the claim of a taking.
12 My -- obviously, if you were to award a rent adjustment
13 today and not have any phase-in, then this is not an issue.
14 But with the history of this -- of this park and the history
15 of the fact that there had not been significant or any
16 significant increases over this long period of time, that's
17 where we get to the keep balancing aspect of it.

18 So, unfortunately, I don't have an answer because
19 I can't say, oh, you know, here's this case or here's what
20 the courts have certainly decided or here is what they said
21 is good or concerning. Again, going back to the Kavanaugh
22 case, and I'm using that one because it's a Supreme Court
23 case in California and it kind of sets the stage for a lot
24 of these other cases that follow. But one of the comments
25 in the Kavanaugh case the Court stated was creating a fair

1 return over the course of several years can offset an
2 efiscatory return during a particular year.

3 So I understand Staff's recommendation. I
4 understand what they're trying to do. What they're trying
5 to do with this phase-in over five years and adding an
6 interest component to it is to, one, make it so an increase
7 is not going to be as harsh if you were to do it and award
8 it all at one time. On the other hand, they're trying to
9 balance the right of the owner to make sure that he's
10 getting the income that has been awarded as far as an
11 adjustment is concerned. So with that, I would say that the
12 further you take it out, the more difficult it's going to be
13 to defend it because it's getting more and more risky,
14 frankly. And that's why -- you know, I don't have an
15 answer, two years, five years. I just think the further out
16 you go, the more difficult it is.

17 And so because of, again, the history of this
18 case, the fact that there's been an unusual long time
19 without any adjustments, I do believe it is, you know,
20 appropriate to phase it in and add an interest component to
21 it, so you are kind of trying to address both issues of the
22 owner and also the tenants at one time. I would not --
23 again, this is -- I can't state any cases, just I would not
24 probably go out more than five years.

25 MR. SILACCI: I appreciate your candid advice. I'm

1 certainly not putting you on the spot. But I think it
2 hopefully helps my fellow commissioners. The other point
3 that you raised, which I think we all need to consider here
4 too, is what's being proposed is also a seven percent
5 interest.

6 And let me ask you just a follow-on question. I
7 have a question, but if you let me kind of finish this line
8 of questioning and getting advice from counsel. But what if
9 we, the Commission, considered five years, like Staff
10 recommends, but not the seven percent? Your opinion on that
11 as far as how defensible that would be. Because originally
12 the -- I know things have changed because a lot of the facts
13 have changed in this case with testimony and everything
14 else. But originally I don't believe that seven percent was
15 part of the recommendation. So I appreciate your opinion on
16 that. Thank you.

17 MR. HEHIR: I, frankly, don't know how to answer that
18 other than to say that my previous answer kind of states the
19 same. It's -- it's difficult to -- again, we're trying to
20 balance out. We're trying to balance out the fact that if
21 you're going to do an adjustment, at what point in time does
22 the owner receive that adjustment? And the idea is to do
23 the component. I can't -- I just can't give you advice as
24 to whether or not. If you just do five years without an
25 interest component, you know, that's your decision. It's

1 knowing these risks that we're trying to balance these
2 issues in making sure that, again, if you're doing an
3 adjustment, at what point in time does the owner -- I mean,
4 maybe that's the question. At what point in time does the
5 owner receive the full benefit of that adjustment.

6 And the more you -- the further out you go, again,
7 that makes it more and more difficult to say that he's not
8 getting the benefit of your adjustment or enjoying it I
9 should say.

10 MR. SILACCI: I appreciate that. Certainly not putting
11 you on -- on the spot. And I appreciate the -- not only
12 your advice but the time that Staff and others have put into
13 this case. I guess where I'm having difficulty is in this
14 balance because even being generous here and realizing that
15 it's been 10 years since the last increase, it would be easy
16 for me to say the pain ought to be spread forward 10 years,
17 frankly. And, you know, not to go further on this, but the
18 comment the Applicant's counsel made earlier about the fact
19 that, you know, the residents got this grand benefit because
20 they didn't get increases, quite frankly -- this is just me,
21 a hypothetical. If I knew there was a balloon payment at
22 the end, I would have rather taken the increases as they
23 were coming.

24 So at this point I -- honestly, as we go down and
25 discuss this, I would like to -- I can agree with a minimum

1 of five years. Frankly, I would like that to be a little
2 bit higher to spread, if you will, the burden as well as I'm
3 not quite sure where I'm falling on the seven percent. But
4 with a guy whose got a financial background, I understand
5 what that means as far as time value of money. So thank
6 you.

7 MR. WERTHEIMER: Ms. Feldman.

8 MS. FELDMAN: Well, of course, spreading it out over 10
9 years is putting it out over five years, is better than
10 putting it out over five years or the beginning. I really
11 am reluctant to put a year on this because I know this is
12 going to go before the city council. I think that's going
13 to happen. And I hope the city council will be more
14 amenable to the City absorbing some of this rent adjustment.
15 I -- I cannot imagine that the City wouldn't do that. There
16 are redevelopment funds available. Of course, I concur with
17 extending this as many years as possible, so I'll go with
18 the 10 years if that's what Mr. Silacci is proposing. I'll
19 go with it.

20 MR. SILACCI: I -- I -- just to be clear, Commissioner,
21 I wasn't proposing 10. I was saying the minimum would be
22 five, but would love to go as high as 10 realizing that that
23 may not be defensible.

24 MS. FELDMAN: Well, I'd love to go as high as 10,
25 too.

1 MR. WERTHEIMER: Mr. Sheldon, into the mic.

2 MR. SHELDON: I would support the five years with the
3 interest.

4 MR. WERTHEIMER: Ms. Ferruzza.

5 MS. FERRUZZA: I have a question. I have a question.
6 I asked the -- Mr. Hill if the new tenants coming in would
7 get this new rent, and if that was the case, then the owner
8 of the park would be getting more rent from new tenants and
9 so that would offset our extending this out a longer period
10 of time. And I would agree that we should extend this out a
11 longer period of time because the tenants that are here
12 presently didn't -- didn't agree to a higher rent. They
13 believe that they have low income. So that's what I'm
14 asking about. Whether or not the fact that he would be able
15 to get more rent from new tenants coming in would offset the
16 fact that we could have this go out longer?

17 MR. WERTHEIMER: That's -- I have that question, too.
18 On the vacant spaces, if we give a certain -- if we come to
19 a vote and it's agreed upon, a certain new rate, will that
20 new rate apply to those 12 to 14 vacants immediately or will
21 they also have to be phased-in?

22 MR. HEHIR: I'm trying to do my analysis here in my
23 head here. It's going to take some time here. I think it's
24 going to be -- my answer is that it's actually -- this
25 adjustment is going to be based upon the rents that are

1 being charged right now. As far as adjustments for -- I
2 guess what I don't have an understanding of is if the
3 adjustments would be for -- would be whether or not if
4 you're doing a new tenant coming in, I would think that it
5 would be what the rent would be at that time that they're
6 going to charge. And so I'm not sure that that adjustment
7 would be for those spaces that are empty.

8 MR. WERTHEIMER: When you say charged, charged existing
9 tenants or --

10 MR. HEHIR: Not existing. If there are empty spaces
11 and people coming in, then that's a separate issue as well.
12 That's how I'm thinking it is.

13 MR. WERTHEIMER: Okay. So existing tenants, the new
14 rates a hundred bucks, but we agreed on 200 bucks and the 12
15 to 14 empty spaces are at the \$200? That's only an example
16 everyone, that's only for the sake of discussion.

17 MR. HEHIR: Just to make sure I'm clear, your question
18 is going to be if these adjustments are going to be based
19 upon the rent that we have and you're adjusting it and you
20 were going to phase it over time. And your next question is
21 if -- will this apply to the ones that are empty at this
22 stage?

23 MR. WERTHEIMER: Yeah, the empty ones, do they -- are
24 they subject to the phase-in method or the new rate at the
25 end of the phase-in method?

1 MR. HEHIR: I actually do not have a clear-cut answer
2 for you. I would say that it would be not subject to the
3 phase-in.

4 MR. WERTHEIMER: Okay. Does Staff have any comments on
5 that?

6 MR. NORMAN: I may direct Mr. Hehir to Section 602 of
7 the guidelines.

8 MR. HEHIR: Thank you, Mr. Norman. In Section 602, it
9 reads that the percentage obtained by the calculation of
10 Section 6.01 above is multiplied by the legal rent in effect
11 in each rental unit for each -- for which a just and
12 reasonable rent increase has been requested. The result of
13 these calculations is the dollar amount the rent can be
14 raised in each rental unit. The legal rent used in these
15 calculations is the current rent at the time of application
16 provided this rent does not exceed the amount permitted by
17 the rent stabilization ordinance and any regulation or
18 guidelines issued by the rent adjustment commission.

19 So, again, the legal rent used in these
20 calculations, the current rent at the time of application
21 provided this rent does not exceed the amount permitted by
22 the rent stabilization ordinance and any regulation or
23 guidelines issued by the rent commission.

24 MR. WERTHEIMER: Okay. So I interpret that as being
25 that it's the new rent, as the example I used. So the

1 vacant ones are subject to the \$200, the higher rate. It
2 just so happens that the existing tenants happen to have a
3 mechanism in place to get them there.

4 MR. HEHIR: Yeah, I, again, believe it is. You would
5 apply it to the vacant rents, but you phase it in for the
6 ones that are present.

7 MR. WERTHEIMER: Does that answer your question? All
8 right. Okay. It's been said tonight that the City should
9 do something more. So when I hear that our recommendation
10 should be going unbalanced on how well this may stand up to
11 a challenge, and I think we should take certain points, if
12 we can, to take a challenge. I think the City should stand
13 in there and do it.

14 So with that being said, I say that we take it out
15 seven years and reduce the -- you going to punch a button?
16 And we put the rate at something more market real, which is
17 four percent.

18 MR. HEHIR: If I may, and my recommendation is -- this
19 is the something you'll have to deliberate on and try to
20 actually come up with a consensus.

21 MR. WERTHEIMER: Mr. Silacci.

22 MR. SILACCI: I hate to answer a question with a
23 question, but would someone please help me -- I shouldn't
24 say someone. Patrick, Mr. Hehir, excuse me, the basis for
25 the seven percent rate was ten-year treasury -- I probably

1 should read. It's in here somewhere.

2 MR. HEHIR: I would actually need to go back to his
3 report and look at it specifically. But you are correct,
4 that's where he does his -- Mr. Baar does that analysis.

5 MR. SILACCI: I appreciate the help only because I
6 don't recall that seven percent and the basis for it.

7 MR. NORMAN: If I may interrupt, it may be help --

8 MR. HEHIR: Please, Mr. Norman.

9 MR. NORMAN: If you look at page 136 of Dr. Baar's
10 report he talks about the rate of return for mobile home
11 parks being six to seven percent in the second full
12 paragraph under Subsection B.

13 MR. WERTHEIMER: Was this a source code star?

14 MR. SILACCI: That's an adequate answer as for me. But
15 as to -- Mr. Chairman, you asked my -- I agree with the -- I
16 agree with -- like I said, originally, five years was a
17 minimum for me. Ten would've been great, you know. Seven
18 is moving in the right direction. As far as the percentage,
19 in my opinion it shouldn't be the return -- average rate of
20 return for a mobile home park or a conser- -- it ought to be
21 based on some risk free -- I support your four percent.
22 Ten-year treasury, something like that, but something a
23 little more keeping with what the -- what a risk-free market
24 rate would be for your money.

25 MR. WERTHEIMER: Ms. Feldman.

1 MS. FELDMAN: Yeah, I think that's a great idea. I
2 fully support what you've said.

3 MR. WERTHEIMER: Mr. Sheldon, into the mic.

4 MR. SHELDON: It sounds like a reasonable
5 accommodation.

6 MS. FERRUZZA: I agree.

7 MR. WERTHEIMER: So there's a consensus up here that we
8 ask the City to stand up and put their foot forward.
9 Although it may be challenged, we're going to put our
10 confidence in the lawyers that we have as being better.

11 MR. HEHIR: So, Mr. Chair, it's my understanding that
12 you are going with Staff's recommendation for the base year,
13 the adjustment, but there is adjustments to the operating
14 expenses and then a 50 percent indexing. The only
15 difference is that the -- the phase-in will be at seven
16 years at four percent?

17 MR. WERTHEIMER: That's correct. Any comment from the
18 Commissioners? The question was asked to me, but I'm
19 checking with everyone. Mr. Silacci.

20 MR. SILACCI: You mean overall comments now that we've
21 gone through --

22 MR. WERTHEIMER: No. Do you agree with what he says or
23 disagree, that that's our route?

24 MR. SILACCI: I -- I agree that. I don't know want to
25 parse here. I agree that through our deliberation we have

1 come to a consensus on the points. Frankly --

2 MR. WERTHEIMER: Were those points what he just
3 mentioned?

4 MR. SILACCI: Yes. Base year -- yeah, I agree on that.
5 The voting may be different, but I agree on the consensus on
6 the points.

7 MR. WERTHEIMER: You agree, but your vote might be
8 different?

9 MR. SILACCI: I didn't say that. I said I agree on the
10 consensus of the points.

11 MR. WERTHEIMER: Great. Thank you. Ms. Feldman.

12 MS. FELDMAN: Again, I feel that there has to be a way
13 available to protect these folks through redevelopment
14 funds, and I hope that -- Ms. Spencer, will you be
15 continuing with this group?

16 MS. SPENCER: Time permitting.

17 MS. FELDMAN: Okay. Thank you.

18 MR. WERTHEIMER: Did you have your hand up, Mike?

19 MR. SILACCI: Well, I -- Mr. Chair, I just want to be
20 clear. I mean, I seem to be stepping out of turn, and I'm
21 sure I'll be punished for it, but --

22 MR. WERTHEIMER: You will.

23 MR. SILACCI: -- is this our final opportunity to
24 comment or is this just going down through each of us to
25 find out, based on what Mr. Hehir noted as at least a

1 consensus of all of us on the points?

2 MR. WERTHEIMER: We're still on about consensus.

3 MR. SILACCI: Okay. All right. So there will be
4 another opportunity to comment. All right. Thank you.

5 MR. WERTHEIMER: Maybe not. Ms. Feldman, did we
6 interrupt you?

7 MS. FELDMAN: No, no, not at all. We're going for a
8 consensus now on your proposal for the seven year, four
9 percent; is that correct?

10 MR. WERTHEIMER: We're going for a consensus on this
11 round based on Mr. Hehir's statements in regards to what we
12 propose for step one through my suggestion of the --

13 MS. FELDMAN: Okay. So we're discussing now whether or
14 not we go for Staff's recommendation in total; is that
15 correct?

16 MR. WERTHEIMER: Staff's recommendation in total with
17 the exception of how it's disbursed. And the suggestion we
18 all agreed on that one point was seven years, four
19 percent.

20 MS. FELDMAN: Okay. Mr. Prescott, I notice you looking
21 array.

22 MR. PRESCOTT: Well, now just as an observer, I think
23 what Mr. Hehir was trying to establish was the sequence of
24 the steps and the individual decisions that will comprise
25 the full decision. And the Commission has talked about each

1 one of those in order and reached what we believed was a
2 consensus on each one of those points. And the consensus
3 was the same as the Staff recommendation except for the
4 phase-in, in which case we believe that the Commission made
5 a consensus. And I think the Chair was trying to find out
6 if anybody felt differently about that last point. The
7 consensus was the phase-in would be seven years rather than
8 five and the interest rate for foregone rent would be four
9 percent rather than seven percent. So I think it's
10 established. I am seeing nods of the heads. Except one
11 question, Commissioner?

12 MS. FERRUZZA: Yes. What my question is, is the dollar
13 amount. What are we talking about here?

14 MR. WERTHEIMER: We're talking about the 191 and
15 change, 65, yeah. So this is just a request for consensus
16 from the dias about Mr. Hehir's line of events.

17 MR. HEHIR: Yes. Ultimately if you're going to do a
18 motion, you need to do a motion and have some of these
19 findings down. And so what I was trying to do is just to
20 make sure I understood where you were at this point of time
21 as Mr. Prescott so eloquently summarized.

22 MR. WERTHEIMER: And we were just looking to make sure
23 that we all agreed with the consensus that we are going to
24 present to you. So now, do we have any other comments
25 before our next step?

1 MR. SILACCI: Which is?

2 MR. WERTHEIMER: A motion.

3 MR. SILACCI: I take it that commissioners will have --
4 I mean, once the motion is made and seconded there will be
5 an opportunity for discussion?

6 MR. WERTHEIMER: No. There will be a vote.

7 MR. HEHIR: There would be opportunity for
8 discussion.

9 MR. SILACCI: Thank you.

10 MR. HEHIR: If I may point out, there is -- there is a
11 draft resolution that, again, is presented from Staff. I
12 know it was part of your packet before. You know, with all
13 this discussion, I'm not sure if you guys have gone through
14 the analysis of going through this entire resolution or not.
15 If you are sticking with the points of Staff
16 recommendations, resolution obviously contains those
17 sections, each one, the base year date, the adjustments, et
18 cetera. The difference would be, of course, that you're
19 changing the phase-in aspect of it.

20 So if you're going to talk about a motion and
21 discussion about that motion, you would probably address it
22 towards that resolution itself if you're going along with
23 that -- to forming that type of motion. There also might be
24 a need to, obviously, change the resolution as this one is
25 not the one you might be voting on. And that would have to

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1 be something that we'd have to address as to whether or not
2 that resolution can be generated now, within a short time
3 tonight, or whether you would have to do a notice of intent
4 to adopt a resolution with the findings that you want. And
5 then have -- come back at another time to actually adopt
6 that resolution in final form.

7 MR. SILACCI: I appreciate that you were directing your
8 advice to the entire commission. I appreciate you looking
9 at me. I love to be the object of attention. Let me ask a
10 question with a question. What is, Mr. Hehir, or,
11 Mr. Prescott, how long would it take to -- and, again, I --
12 I'd have to take a moment or two to at this resolution again
13 given the -- you know, what we've just gone through. I'm
14 just speaking for me personally. But how long would it take
15 to make the adjustments as a result of the deliberation and
16 the consensus?

17 MR. HEHIR: In my opinion, because it appears that you
18 are -- your consensus to do a motion that for the most part
19 follows this recommendation of staff, it shouldn't take that
20 long to actually make the changes now and articulate on your
21 motion that it is Staff's recommendation with the ending
22 being the difference, which is -- again, I am not speaking
23 for you, but if your consensus is going to be seven years
24 with a four percent interest, I would also indicate that it
25 wouldn't apply to the vacant parcels or the vacant lots as

1 part of that motion. But everything else you can actually
2 have it as part of adopting Staff recommendation.

3 MR. SILACCI: Well, let me -- let me -- I appreciate
4 that. Let me ask, would it be worth while -- and I realize
5 it's 10:25, folks have been sitting here for a long time.
6 Would it be worthwhile to take a 10-minute break to look at
7 it and then reconvene? I'm just asking a question.

8 MR. HEHIR: It would not be -- you would do your
9 deliberations on the dias and you would look at it on the
10 dias during the public meeting. It wouldn't be something
11 that you would take a break on. I mean, certainly, you can
12 take time to go through this and make sure you're
13 comfortable with it. That's where I would be.

14 MR. SILACCI: Understood. I appreciate the -- I
15 appreciate that.

16 MR. PRESCOTT: If -- part of the question involved how
17 long it would take to change the resolution so that you
18 could adopt it tonight assuming, and I believe there was
19 consensus on all the points, so it would be, I think,
20 changing subsection or Section 2C on page 7 of
21 the resolution, which is where we have the seven percent
22 interest rate and the five-year phase-in.

23 We would need to do some new calculations on that
24 and redo that, those last two pages of the resolution. It,
25 I don't know, probably could take a half an hour to 45

1 minutes to make the changes and then reprint. Maybe a
2 little bit less. But we'd have to go down and fire up the
3 computer and get out our abacus to calculate the new
4 numbers. But it can be done this evening if the
5 Commission -- and that would be a time when the Commission
6 could take a break because you wouldn't be doing any
7 deliberations or anything. You'd be waiting for that new
8 resolution to come back.

9 And, again, I'm assuming, Patrick, that they need
10 to have the actual document in front of them as opposed to
11 just saying we'll adopt this resolution with changes as
12 outlined for that particular section and then let Staff
13 makes those changes. But if they have to actually see that,
14 those changes, the actual dollar amounts, then it would
15 probably take half an hour to 45 minutes to do that.

16 MR. WERTHEIMER: Can I ask a question before -- if we
17 all agree, take a vote and say yes and now it's just a
18 matter of making the paperwork, correct, isn't that just for
19 one person to sign, that paperwork?

20 MR. HEHIR: Yeah. The only caution that I have is that
21 when you're changing the time line of the seven years, out
22 seven years instead of five and seven percent to four
23 percent, then when you look at -- obviously, we have the 191
24 figure, but then you have the other figures for the
25 phase-in. Those figures are going to be changed. But,

1 again, if you're articulating that you want to follow Staff
2 recommendation and then actually specifically say seven --
3 seven years at four percent, the only difference is you're
4 not going to know those numbers as to, if you look on that
5 page, Subsection C, you're not going to have those numbers
6 as to what the calculation is unless you wait for it to come
7 back and there's a calculation done. And so that's -- that
8 would be the resolution aspect of it.

9 MR. WERTHEIMER: Well, I understand -- I don't -- I'll
10 just speak for myself. I understand that the numbers will
11 be different. And based on how you get to those, the change
12 that we made, that those numbers are going to be less. And
13 I'm not too sure anybody thinks otherwise up here. And that
14 was the whole purpose of us phasing it in, changing the
15 phase-in and changing the percentage.

16 So as far as time is concerned, you know, if we
17 vote, we say yes and it's just a matter of paperwork for
18 someone to sign, that someone is willing to come back
19 tomorrow anytime city hall wants me to and sign it.

20 MR. HEHIR: Yeah, that would actually be part of the
21 motion. You would actually articulate, again, Staff
22 recommendation up to the point of the seven-year phase-in
23 with four percent. Request as part of your motion that
24 Staff make those changes to the resolution and then have, as
25 part of your motion, again, that you're authorizing the

1 Chair to sign that resolution if you do not want to wait.

2 MR. WERTHEIMER: And the other request is --

3 MR. HEHIR: Again, for this phase-in, just in the
4 motion itself you would indicate that this --

5 MR. WERTHEIMER: This phase-in is only -- the phase-in
6 part of the increase only applies to existing tenants. All
7 new and future tenants will be --

8 MR. HEHIR: It applies to --

9 MR. WERTHEIMER: Applies to -- thank you. Yeah. Okay.
10 Mike, we're back to you.

11 MR. SILACCI: Back to me, Mr. Chairman, just to come to
12 a conclusion on our path forward on the resolution or back
13 to me on my comments on --

14 MR. WERTHEIMER: No, no. We're here about -- we've got
15 some choices and we've got some consensus that we all agree
16 on. You still agree or do you need to talk some more? You
17 have any further questions?

18 MR. SILACCI: Well, before I go there, Mr. Chairman.
19 If I understand Mr. Hehir correctly, we can craft the motion
20 in such a way that we can accept -- we can accept the
21 resolution with certain changes that will be made and that
22 that would be procedurally correct for us to do tonight
23 short of actually taking a break so Staff can make the
24 changes. We wouldn't deliberate on it and then we would
25 reconvene. So I -- if I understand it correctly --

1 MR. HEHIR: That is correct. In this particular case
2 because it's -- you are pretty much following the Staff
3 recommendation at this point. That minor change is not
4 something that -- you can articulate that on the dias and
5 make that. And it would be, again, the authorization for
6 the Chair to then sign that resolution. As long as you're
7 instructing Staff to make those changes to reflect your
8 decision.

9 MR. SILACCI: So, Mr. Chairman, if you're asking me if
10 I accept that path forward, you know, getting to a vote on
11 the resolution tonight, I would.

12 MR. WERTHEIMER: Great. Thank you. Ms. Feldman.

13 MS. FELDMAN: You're asking me now if I support the
14 resolution entirely, the recommendation of the City --

15 MR. HEHIR: Just the process.

16 MS. FELDMAN: Yes, with the exclusion of the seven
17 years and four percent and that would be finished tomorrow?

18 MR. WERTHEIMER: Yes.

19 MS. FELDMAN: Okay. I cannot support the resolution.
20 I can't support any of the recommendations by Staff. I
21 appreciate your wanting to put seven years and four percent.
22 I like that better than what the Staff has requested. I
23 could, if I knew the City was going to pick up the slack.
24 The City caused the problem. The City caused the taking of
25 the park owner. The City would cause now, if they went with

1 this ordinance, with this recommendation, the City would be
2 causing a taking of the residents. And both are equally --
3 as a matter of fact, the Ninth District Court of Appeals
4 said the residents have more of an interest in their equity
5 maintenance than the park owner. They stated that, and we
6 believe it.

7 I think also you're forgetting about the park
8 residents who aren't there, the 12 vacant homes. They have
9 an equity interest. And I don't see why -- they're not
10 there because they don't want to be there. They're probably
11 there because they're too ill to be there. I don't know.
12 It's pretty sad. And I hope that the City will step up and
13 do what it's supposed to do here. Thank you.

14 MR. WERTHEIMER: Thank you. Mr. Sheldon.

15 MR. SHELDON: Yeah, I do support the proposed motions,
16 the consensus that we've come to and the process that we
17 have suggested in having it signed tomorrow.

18 MR. WERTHEIMER: Thank you.

19 MR. SILACCI: I'm out of turn again. Sorry. I just
20 want to be clear, Mr. Chairman. What we're -- as I
21 understand it is we, as a commission, are deciding on how
22 we're going to handle the resolution. We actually haven't
23 had an opportunity -- I mean, a motion hasn't been made or
24 seconded and there hasn't been an opportunity for each
25 Commissioner to have discussion leading to a vote. We are

1 just getting a consensus on the actual path forward to a
2 resolution.

3 MR. WERTHEIMER: I kind of thought that this was the
4 discussion we were having prior to voting.

5 MR. SILACCI: Well, if that's the case, then I'll wait
6 my turn and come back because I haven't had an opportunity
7 to give -- I was actually just commenting on it being
8 acceptable to me based on Mr. Hehir's and Mr. Prescott's
9 advice on how we would craft that resolution.

10 MR. WERTHEIMER: I'll come back to you.

11 MR. HEHIR: Mr. Chair, let me just clarify. If you're
12 going want to, again, adopt the resolution with Staff
13 recommendations except for that last section, what the
14 motion would be is that you would adopt the resolution with
15 the changes as you indicate, seven years, four percent, and
16 authorize the Chair to sign that resolution.

17 MR. WERTHEIMER: Understood.

18 MR. HEHIR: If you have that motion, the next stage
19 then is you have discussion on that motion itself, because
20 that would be the motion in front of you at the time.

21 MR. WERTHEIMER: Understood.

22 MR. HEHIR: And then after that, after the discussion
23 of that motion, then you would have the vote.

24 MR. WERTHEIMER: Understood. Ms. Ferruzza.

25 MS. FERRUZZA: I agree that we should go ahead with

1 making the motion.

2 MR. WERTHEIMER: I agree also. And do I hear a motion
3 that we accept the Staff's recommendation with the phasing
4 in portion being seven years at four percent and that the
5 existing vacant homes or lots are subject to the new rate
6 and that once this has passed, it can be signed tomorrow.
7 Mr. Silacci.

8 MR. SILACCI: Mr. Chairman, you're looking for a motion
9 and I'm unwilling to make it.

10 MR. WERTHEIMER: Okay.

11 MR. SHELDON: I will make that motion.

12 MR. WERTHEIMER: Motion made. Mr. Maxwell -- Sheldon,
13 my apologies. Any discussions, starting with Mr. Silacci.

14 MR. SILACCI: So -- so I just want to make it clear.
15 We have the motion on the floor now? Okay. I see a nod.
16 When I see a nod from Mr. Prescott, I know we're okay. This
17 obviously is extremely difficult, and I understand -- first
18 of all, I appreciate all the information that was provided
19 both from the Applicant, from the tenants, either through
20 their own voice or through their pro bono counsel. I
21 appreciate the Staff very much. This was very complex, all
22 the information. I appreciate the counsel here on the dias.
23 My understanding of this is we have to follow the
24 law and whatever we decide needs to be legally defensible.
25 The choices are pretty narrow at this point. And I realize

1 a part of that is there needs to be a balance. And,
2 unfortunately, my opinion is there's not much balance here.
3 And so given that, even though I agree with the methodology
4 and understand why we have to follow it, I, at this point,
5 can't support it.

6 MS. FELDMAN: I cannot support it. And I think I said
7 my reasons over and over again. But the U.S. Constitution
8 states that the City compensate the park owners for taking
9 their property by regulation, and I think it is the City's
10 responsibility. So I cannot support this resolution. Thank
11 you.

12 MR. WERTHEIMER: Mr. Sheldon.

13 MR. SHELDON: Obviously I support the resolution
14 because I made it. In general I would say that that support
15 comes from confidence in the City's experts and the way that
16 they laid things out.

17 MR. WERTHEIMER: Ms. Ferruzza.

18 MS. FERRUZZA: I will support it.

19 MR. WERTHEIMER: I have no comment. And would you like
20 to say something, Mike. So I -- it's time to call fer- --

21 MR. HEHIR: Yeah, just to make sure I'm clear, the
22 motion is going to be to adopt the resolution with the
23 changes and authorize the Chair to sign the resolution with
24 those corrections?

25 MR. WERTHEIMER: Correct. Are we ready for a vote?

1 MS. VAUDREUIL: Motion passed, three to two with
2 Commissioner Feldman and Silacci voting no.

3 MR. PRESCOTT: Yes. The Commission's decision will be
4 ratified in the resolution as authorized by the Commission.
5 That will be completed tomorrow sometime. At that time we
6 will provide copies of the resolution to the Applicant. And
7 to all of the tenants in the mobile home park, we will mail
8 the resolution. And that will start an appeal period, which
9 will run, if we get this out tomorrow, 19 days. And I
10 believe that will fall on a weekend in which case it will go
11 over the following Monday. So it'll be pretty close to
12 three weeks and the letter will actually say what that
13 appeal period is.

14 The appeal would be -- if any, would be filed with
15 our office or with the city clerk's office, I'm sorry, and
16 would be heard by the city council.

17 MR. WERTHEIMER: Thank you, Mr. Prescott. Do we have
18 any public comments, recording secretary?

19 MS. VAUDREUIL: No.

20 MR. WERTHEIMER: None. Thank you. Do we have anymore
21 comments from the Commissioners? Meeting's adjourned.

22 (Meeting adjourned at 10:45 p.m.)

23 * * *

24

25

1 REPORTER'S CERTIFICATE

2
3 I, ROSA MORA do hereby certify that the
4 within and foregoing transcript is a full, true, and correct
5 transcript of my shorthand notes thereof and a full, true,
6 and correct statement of the testimony of proceedings had in
7 said cause.

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12 ROSA E. MORA, CSR No. 13016

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14
15 DATE: February 25, 2011

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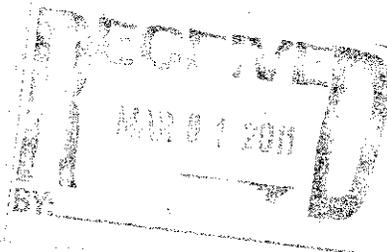
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Transcripts of meeting
dated February 7, 2011
Submission by Tenants'
Attorney

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RENT ADJUSTMENT COMMISSION
CITY OF THOUSAND OAKS, CALIFORNIA
SPECIAL MEETING

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

Monday, February 7, 2011
Council Chambers
2100 Thousand Oaks Boulevard
Thousand Oaks, California 91362

REPORTED BY
TYLENE M. BORJON
CSR. NO. 8952

CERTIFIED COPY

1 APPEARANCES:

2 Commissioners:

3 LLOYD WERTHEIMER - Chair
4 MAXWELL SHELDON - Vice-Chair
5 BRENDA MOHR FELDMAN
6 BEATRICE FERRUZZA
7 MIKE SILACCI

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

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Thousand Oaks, California

Monday, February 7, 2011; 6:01 p.m.

CHAIR WERTHEIMER: Good evening ladies and gentlemen.
I'd like to call the meeting to order for the Rent Adjustment
Commission for February 7th, 2011.

We stand for the pledge allegiance, please.
(Pledge of allegiance.)

CHAIR WERTHEIMER: And will the recording secretary
please call the roll.

(Roll.)

CHAIR WERTHEIMER: Are there any communication
announcements or continuance or -- or, John, would you talk
about the supplemental package, please.

MR. PRESCOTT: Yes. We do have two supplemental
packets that were distributed to the Commission, one earlier
today and then another one on the dais labeled Supplemental
No. 2. They relate to case to 7. A. on your agenda and will
be discussed at that time.

CHAIR WERTHEIMER: Thank you.

Would any Commissioner like to propose a motion for
approval of the minutes for January 24th, 2011?

COMMISSIONER FELDMAN: I propose we accept the
minutes for that date.

CHAIR WERTHEIMER: So moved.

1 Call for a vote, please.

2 RECORDING SECRETARY: Motion passed, 5-0.

3 CHAIR WERTHEIMER: Before the secretary calls the
4 case, I'd like a few moments to announce the anticipated order
5 or outline of how we will proceed this evening.

6 First, we will be allowing additional public
7 testimony. If you want to speak, please complete and turn in
8 a speaker card. If you do not want to speak but want to make
9 a written comment, you may fill out a comment card.

10 If you previously submitted a speaker card and have
11 not provided your testimony, you do not have to resubmit the
12 speaker card. The recording secretary has those cards and
13 will call them this evening.

14 Hello?

15 Thank you.

16 Next the applicant will have an opportunity to
17 question the park residents' witnesses. Staff may also want
18 to ask questions of the park residents' representatives and
19 witnesses. Commissioners may have additional questions for
20 park's residents' representative or witnesses.

21 After the final questions and comments from park
22 residents, witnesses, City staff will have the time to respond
23 to the various positions and comments made since the initial
24 presentation on December 6th. Commissioners may have follow-
25 up questions for staff.

1 Finally, the applicant will have up to 15 minutes to
2 present closing remarks. Once completed, the public hearing
3 will be closed.

4 Do members have any questions before the hearing
5 continues?

6 COMMISSIONER FELDMAN: I have a question.
7 Are we able to question witnesses and staff?

8 MR. HEHIR: Yes.

9 COMMISSIONER FELDMAN: Thank you.

10 CHAIR WERTHEIMER: Will the secretary please reopen
11 the meeting.

12 RECORDING SECRETARY: Hearing advertised as required
13 by law is hereby open to consider agenda item 7. A. regarding
14 Case: Ranch Mobile Home Park Rent Adjustment Application
15 RAA-2010-02. Location: 2193 Los Feliz Drive. Applicant:
16 A.V.M.G.H. Five, Limited. Request: Rent increase in the
17 amended amount of \$466.12 per month per space to achieve a
18 just and reasonable return.

19 CHAIR WERTHEIMER: All right. On the comment cards,
20 all speakers will get their opportunity to speak. I received
21 over 20 speaker cards. Each speaker will have two minutes. I
22 will try to call out three speakers at a time.

23 If your name is called, please come down to one of
24 the seats in front and be ready to step forward when it's your
25 turn to ensure we proceed efficiently. We also have a

1 portable mike available as well.

2 First Barbara Brown, second Dan Goldstein and third
3 Carol Klassen.

4 Are they here to speak?

5 And we remind you to speak your name and city, thank
6 you.

7 MS. BROWN: Good evening. My name is Barbara Brown.
8 I live in Thousand Oaks and pleased to do so.

9 In October 2008, I purchased a coach in the Ranch
10 Mobile Home Park. It was within my budget and I was elated to
11 find it, a place here that I could afford to be in. When I
12 was applying to become a tenant, I was required to prove that
13 I lived within the poverty level and it was because the park
14 is designated for low-income seniors.

15 The manager said that the park had had only a couple
16 of modest increases ever; however, tonight we've been asked to
17 cover a monthly increase. I saw the revised figure \$466,
18 still over 300 percent, almost 360 percent.

19 I want to suggest right now that the increase
20 proposed here is not modest at all. I'd call it outrageous.
21 No one who qualifies to live in this park can afford this
22 rent.

23 To live independently within our means in a safe
24 community means a lot to us. It's possible thanks to the
25 City's low-income designation of our park. To ignore or to

1 change the City's ordinance just to satisfy one individual
2 while simultaneously distressing and disrupting a park full of
3 seniors seems to me to be incomprehensible and totally without
4 merit.

5 We're hoping that you will keep the faith with the
6 intention of the original ordinance and show that we seniors
7 are still important to the community at large by rejecting
8 this rent increase application. Thank you.

9 CHAIR WERTHEIMER: Thank you.

10 Is either Dan Goldstein or Carol Klassen going to
11 speak?

12 Margaret Hahn.

13 Barbara Brown.

14 My apologies.

15 K. Foster -- Donna K. Foster.

16 Tom Packman.

17 MR. PACKMAN: Here.

18 CHAIR WERTHEIMER: Okay. The mike's yours.

19 MR. PACKMAN: No. You -- I can't need -- I don't
20 need a -- a speaker. You can hear me.

21 CHAIR WERTHEIMER: Yes.

22 MR. PACKMAN: I'm Tom Packman. I now live in
23 Thousand Oaks and I have been here for a little over two
24 years. And as that young lady that was just up here spoke --
25 and I have to agree with everything that she said. She moved

1 in just before I did.

2 But you know, my house burned down two -- a little
3 over two years ago and I couldn't afford to rebuild. I had no
4 insurance. And my sons helped me get into that mobile home
5 park because I am a senior citizen and I have a very, very
6 good education, and it got spent to put my sons, all three of
7 them, through college. And they're making a reasonable
8 living, but they helped me buy that mobile home that I live
9 in.

10 But I was told like her that, "Hey, it's not going to
11 go up very much," and it sure as hell isn't going to go up
12 as -- pardon me, young ladies, but it was not going to go up
13 anywhere near what they're asking for.

14 But you know, I haven't got too many years left. The
15 last time you had a meeting for us, I was in the hospital and
16 I almost ripped out all of the tubes that they had in me so I
17 could be over here and say, "Hey, you've asked -- you've asked
18 me to speak a couple of times and I'm in this hospital and I
19 got this gown on that doesn't have a back in it and I want to
20 speak."

21 And -- but I'm here tonight and I am here just to
22 tell you that, you know, I can only live there or I'm back
23 out on the -- no, not out on -- well, I did live on the street
24 for about a month before they could -- my sons could help me
25 find this place here in Thousand Oaks.

1 I lived between Calabasas and Malibu in the County of
2 Los Angeles and I lived in the same place for 32 years, and
3 now I don't have a place to live unless I live there.

4 So thank you very much. That's about all I can say.
5 Thank you very much.

6 CHAIR WERTHEIMER: Thank you, Mr. Packman. I'm glad
7 to see that you're out of hospital and the tubes are gone.

8 Is it Shirley Thor -- Thoro?

9 Ruth Faustino.

10 Jay Fagela.

11 Lynn Sweeney.

12 Jane Garden.

13 Lawrence Bloomquest.

14 Gail Hevengen.

15 Beryl Baldwin.

16 We got one?

17 MS. BALDWIN: My name is Beryl Baldwin and I'm a
18 senior citizen in my late seventies and have lived in Ranch
19 Mobile Home Park for the past 12 years.

20 I have continued to work for most of the time that I
21 have lived there so that I can fix up my home and maintain it.
22 I have put all my earnings from my work into my home with the
23 thought that should I ever need to sell or move I will be able
24 to get a fair and reasonable return for what I have put into
25 it.

1 It was not with the thought that Mr. Hohn's attorneys
2 have tried to make you believe, gee, if I sell this I will
3 make a killing. I have tried to make sure that not only is it
4 a comfortable home for me to the best of my ability, but also
5 the outside of my home is well-maintained so it is an
6 improvement also for the park.

7 I even take care of an area that should be cared for
8 by the park and have planted and had sprinklers put in at my
9 own expense to keep it looking nice. I can't do this work
10 anymore, so I have to pay a gardener to keep it looking nice.

11 Mr. Hohn's attorneys would have you believe we have
12 all the amenities that the other parks have. We don't have a
13 pool. We don't have tennis courts and our clubhouse is very
14 small.

15 It is also hard to conceive that in an age when most
16 companies are downsizing that we suddenly need a full-time
17 manager when for the past 33 years we have managed very well
18 with one part time.

19 Maybe if we the tenants had seen a vast improvement
20 since this change, we may say it was needed, but none has been
21 forthcoming. In fact, we've had to wait over two months to
22 have a light bulb replaced at our entrance.

23 And lastly I know a lot of people do not take this
24 seriously, but if the rents on these homes go up where they
25 are unaffordable, many of us will be homeless. We will lose

1 everything we have including having to continue paying the
2 mortgage on our home that we can no longer afford.

3 I know that I would not like to have this on my
4 conscience and would not be able to live with myself knowing
5 that this was partly my doing. So my hope is that you will
6 consider the matter of this rent increase very carefully
7 before you make your decision. Thank you.

8 CHAIR WERTHEIMER: Thank you.

9 Cathy Parsons.

10 Rob Caldron.

11 Oh. Ms. Parsons, is that you?

12 MS. PARSONS: Yes.

13 CHAIR WERTHEIMER: Thank you.

14 MS. PARSONS: Katie -- Katie Parsons. I reside in
15 Woodland Hills.

16 I'm a realtor and I recently represented a lady who
17 purchased in this development, and she went through a very
18 rigorous application process. She came to mutual agreement
19 with the seller, but then she had to wait for quite a length
20 of time until she was approved by the park.

21 They checked in great detail if she could afford to
22 live in the park. Yes, she had to earn under 30,000 or
23 approximately that amount, but they wanted to know what her
24 car payment was.

25 They wanted references from her other park to make

1 sure that she was the kind of person they wanted in the park,
2 any -- if she had a mortgage, how much that mortgage would be.
3 They estimated I think, you know, how much she'd need for
4 food, how much she'd need for gas, how much she'd need to
5 live. So all of these things were looked at in great detail
6 before they accepted her to the park.

7 And I feel that this formula that they used and every
8 resident in this park had to apply and pass this -- this --
9 not little test, this big test to make sure they applied is
10 not being taken into consideration with these people.

11 They're low-income people and they had to pass this
12 huge criteria to get in there, and I don't feel that's been
13 taken into account enough. Staying under the 30,000, but at
14 the other end having enough to live.

15 Now we're saying push it up to 450 or whatever is on
16 the table now. We're going to be left with nobody who can
17 qualify to live in this park, nobody at all. So thank you
18 very much.

19 CHAIR WERTHEIMER: Thank you.

20 Mr. Boyd, do you have any questions for the last --
21 do you have any cross-examination of the last speaker?

22 MR. HILL: No.

23 CHAIR WERTHEIMER: Thank you.

24 Pat Hinka -- Heckathorn.

25 That's it.

1 Is there any other people in the audience who would
2 like to speak?

3 If not, that will be the end of public speaking.

4 Mr. Hill.

5 MR. HILL: Yes?

6 CHAIR WERTHEIMER: You're up.

7 MR. HILL: Thank you. We'd like to address
8 cross-examination to Ms. Randi Sorenson who testified at the
9 last hearing.

10 Good evening, Ms. Sorenson.

11 MS. SORENSON: Good evening.

12 MR. HILL: Let me see if I can understand your
13 analysis of the Ranch income and expenses for the year 2009,
14 starting at I believe it was in your notebook RTA pages 110
15 through 112.

16 MS. SORENSON: Okay.

17 MR. HILL: It appears that you first start by taking
18 out expenses that you believe are not allowed by City
19 regulations, is that correct?

20 MS. SORENSON: I used the RAC-5 to --

21 MR. HILL: Okay.

22 MS. SORENSON: -- calculate what was allowed.

23 MR. HILL: Okay. And then you attempt to average all
24 expenses over three years, is that correct?

25 MS. SORENSON: Utilizing the applicant's general

1 ledger --

2 MR. HILL: Okay.

3 MS. SORENSON: -- we were able to -- as we had it for
4 three years, we were able to average the numbers from his
5 general ledger and recalculate them, yes.

6 MR. HILL: Without regard to any -- whether there
7 were any anomalies that required averaging, is that correct?

8 MS. SORENSON: We used his general ledger.

9 MR. HILL: Okay.

10 MS. SORENSON: If his general ledger was correct, we
11 would have had --

12 MR. HILL: Okay.

13 MS. SORENSON: I assume it was correct and that's the
14 numbers we used, of course.

15 MR. HILL: Okay. And -- and then you adjusted --
16 step 3 was then you adjusted those numbers to further account
17 for what you had been told are industry standards, did you
18 not?

19 MS. SORENSON: We used the information given to us by
20 Jan Taylor, who is here this evening to answer any questions.

21 MR. HILL: Yeah, and -- and I'll address those --
22 some questions to him as well.

23 Then you further adjust those numbers a fourth time
24 by down to 8 percent of the total, is that correct?

25 MS. SORENSON: We utilized the information in RAC-2

1 to calculate the number at 8 percent.

2 MR. HILL: Okay. Before we get involved in the
3 specifics of each of those points, I'd like to ask a little
4 bit about your background. Have you ever testified before a
5 rent adjustment hearing?

6 MS. SORENSON: No, I have not testified.

7 MR. HILL: Okay. Have you ever reviewed a rent
8 adjustment application or prepared a rent adjustment
9 application before?

10 MS. SORENSON: Not specifically a rent adjustment
11 application, no.

12 MR. HILL: Okay. Have you ever analyzed a rent
13 adjustment ordinance before to determine what expenses were
14 allowable or disallowable?

15 MS. SORENSON: No.

16 MR. HILL: Okay. Have you ever studied California
17 cases interpreting rent adjustment ordinances or regulations
18 before?

19 MS. SORENSON: No.

20 MR. HILL: Okay. How did you gain or acquire your
21 expertise to analyze or testify about appropriate rent
22 adjustment methodology?

23 MS. SORENSON: The expertise that I utilized to
24 complete my spread sheet in my analysis is my years of
25 experience as an accountant.

1 MR. HILL: Okay.

2 MS. SORENSON: And my years of experience as a
3 forensic examiner of numerous clients' information and general
4 ledgers and bills and invoices, et cetera.

5 MR. HILL: Have you ever prepared testimony or
6 prepared an analysis on maintenance of net operating income
7 methodology?

8 MS. SORENSON: For net income methodology, yes.

9 MR. HILL: When?

10 MS. SORENSON: I do that on a daily basis for
11 clients. It's my -- my business.

12 MR. HILL: I'm talking about the methodology used in
13 rent adjustment applications.

14 MS. SORENSON: In rent adjustment applications, no.

15 MR. HILL: Okay. Thank you.

16 Let's move on to your four -- four-part analysis. In
17 part 1, you excluded expenses for meetings, travel, common
18 area water and sewer and common area gas, is that correct?

19 MS. SORENSON: I have to go through them one by one
20 if you're going to -- I can't have --

21 MR. HILL: Sure.

22 MS. SORENSON: Water, sewer, yes, that was
23 disallowed.

24 What was the other ones?

25 MR. HILL: Meetings and travel.

1 MS. SORENSON: Yes.

2 MR. HILL: Okay. Does the ordinance or the
3 regulation say you must exclude those expenses?

4 MS. SORENSON: It does not say that I should exclude
5 the meetings and seminars. The water and sewer was a
6 different issue.

7 MR. HILL: And how did you determine to exclude the
8 water and sewer?

9 MS. SORENSON: Their general ledger shows that there
10 was a -- basically a wash in 2009 for water and sewer.

11 MR. HILL: I consulted the general ledger and on
12 page -- under item 7810, pages 38 and 39 in the general ledger
13 and they didn't appear to be a wash. There actually appeared
14 to be a difference between the income and -- the expenses and
15 the income of those amounts that were on there.

16 Did you note that there were different income and
17 expense amounts for the common area gas and water and sewer?

18 MS. SORENSON: I think it was actually a credit of
19 \$87.48.

20 MR. HILL: Okay. All right.

21 MS. SORENSON: So, yes. But as that's income to him,
22 I didn't penalize him for that.

23 MR. HILL: Okay. Did you look at -- particularly on
24 pages 38 and 39 of the general ledger?

25 MS. SORENSON: I don't have those with me.

1 MR. HILL: Okay.

2 MS. SORENSON: I have to -- I can get them if you
3 need me to.

4 MR. HILL: Okay. All right. Ms. Sorenson, what
5 particular methodology did you rely upon to exclude those
6 expenses?

7 MS. SORENSON: Which ones in particular?

8 MR. HILL: The -- you said you determined to exclude
9 those expenses. Was there a particular methodology that
10 you've used before in your practice that would --

11 MS. SORENSON: It really depends on each individual
12 case and here we used RAC-5, as I said before.

13 MR. HILL: Okay. So it's solely your interpretation
14 of RAC-5 that it doesn't include those expenses so you must
15 exclude those expenses?

16 MS. SORENSON: They were not included in RAC-5, so
17 yes, we excluded them.

18 MR. HILL: And did you -- did read RAC-5 where it
19 talks about other expenses and other income items?

20 MS. SORENSON: I don't really know that that's in
21 RAC-5. I know that --

22 MR. HILL: RAC-2, I'm sorry.

23 MS. SORENSON: Oh, I was referencing in this case
24 RAC-5.

25 MR. HILL: And RAC-5 is -- is basically amendments to

1 RAC-2, is that correct?

2 MS. SORENSON: That, I don't know. I could ask.

3 MR. HILL: Did you ever review RAC-2?

4 MS. SORENSON: Yes, I did.

5 MR. HILL: Okay. And you don't recall there being a
6 statement about other operating expenses in RAC-2, do you?

7 MS. SORENSON: I do recall that, yes.

8 MR. HILL: Okay.

9 MS. SORENSON: Again, we were referencing RAC-5 in
10 this.

11 MR. HILL: Okay. All right. In your regular work as
12 an accountant, have you ever reviewed mobile home park income
13 and expenses before?

14 MS. SORENSON: No.

15 MR. HILL: Have you ever excluded the types of
16 expenses that you excluded here when preparing tax returns for
17 rental communities?

18 MS. SORENSON: When I'm preparing a tax return, no.

19 MR. HILL: Okay.

20 MS. SORENSON: When I was comparing industry
21 standards, which I do on a regular basis for clients, yes.

22 MR. HILL: I don't think we were talking about
23 industry standards here.

24 Okay. Ms. Sorenson, is there a particular accounting
25 methodology you were relying on for step 2 to adjust three-

1 year averages?

2 MS. SORENSON: Basically accounting.

3 MR. HILL: Okay. And -- and when do you -- where
4 have you used that methodology before?

5 MS. SORENSON: If I am taking an average of
6 something, I would use that methodology in high school up.

7 MR. HILL: Would you use that in preparing tax
8 returns?

9 MS. SORENSON: I wouldn't be averaging something on a
10 tax return, so no.

11 MR. HILL: Okay. All right. Is there a particular
12 accounting methodology you're relying on for adjustment of
13 expenses to industry standard?

14 MS. SORENSON: The industry standard, as I said, was
15 all based on testimony that I think you'll get from
16 Mr. Taylor.

17 MR. HILL: Okay. Is there any particular accounting
18 methodology that requires you to use industry standards for
19 expenses?

20 MS. SORENSON: Depends on the purpose. Was there in
21 this case? There was a reason for me to put it on here, yes.

22 MR. HILL: Have you ever used that methodology
23 before?

24 MS. SORENSON: The methodology of accepting
25 information from another expert, yes.

1 MR. HILL: Have you ever used the methodology of
2 adjusting expenses to industry standards in your accounting
3 work for preparing a tax return?

4 MS. SORENSON: Again, not for a tax return, no.

5 MR. HILL: For any other purpose?

6 MS. SORENSON: Yes.

7 MR. HILL: What purpose?

8 MS. SORENSON: For the purpose of giving information
9 to somebody in -- in business. I can't think of one off the
10 top of my head, but yes, there's cases where you will use
11 industry standards to determine if a company is similar to
12 another company or a company that's going to be purchasing
13 another company. We would look at industry standards and
14 there are certain things that you would disallow.

15 MR. HILL: But not to do a balance sheet, is that
16 correct?

17 MS. SORENSON: Not to do a balance sheet, which is
18 not the case here.

19 MR. HILL: Okay. What sources did you consult to
20 determine industry standards? Any independent sources?

21 MS. SORENSON: Mr. Taylor.

22 MR. HILL: Okay. You don't determine -- you don't
23 believe yourself to be an expert in industry standards for
24 mobile home parks, is that correct?

25 MS. SORENSON: No.

1 MR. HILL: Okay. Thank you.

2 I have nothing further. Thank you.

3 MS. SORENSON: Okay. Thank you.

4 CHAIR WERTHEIMER: Ms. Sorenson, could you stay for a
5 moment, please.

6 Does the staff have any questions for her?

7 MR. NORMAN: No questions.

8 CHAIR WERTHEIMER: Commissioners?

9 Commissioners?

10 Thank you.

11 MR. HILL: I would like to call Mr. Taylor.

12 MS. SPENCER: I think before Mr. Taylor is subject to
13 cross-examination, because he wasn't here last time, it would
14 be helpful for him to give his own direct examination
15 presentation so he can explain to the Commission and I'd the
16 opportunity -- the reason for his conclusions, and I'd like
17 the opportunity for him to do so.

18 MR. HILL: I -- I don't think it's appropriate to be
19 surprised with new testimony at this point. We were presented
20 with merely a resume and a statement that he has industry
21 standards and I think we're entitled to cross-examine on what
22 was represented. I think the --

23 CHAIR WERTHEIMER: We'll just hear the
24 cross-examination.

25 MR. HILL: Thank you.

1 MR. TAYLOR: Good evening. My name is Jan Taylor.

2 MR. HILL: Good evening, Mr. Taylor. I note that on
3 your resume you've done a lot of buying and selling of single-
4 family homes, is that correct?

5 MR. TAYLOR: That is correct.

6 MR. HILL: And particularly you seem to have done a
7 lot of acquiring of distressed and foreclosure property, is
8 that correct?

9 MR. TAYLOR: That is correct.

10 MR. HILL: Okay. And you seem to be currently doing
11 some receivership work for properties, is that correct?

12 MR. TAYLOR: That is correct.

13 MR. HILL: And what types of properties are you doing
14 receivership work for?

15 MR. TAYLOR: Several multi-family, some small
16 mixed-use, single-family residences.

17 MR. HILL: What particular duties are you doing as a
18 receiver? Are you collecting income?

19 MR. TAYLOR: That -- I do do that, yes.

20 MR. HILL: And anything else?

21 MR. TAYLOR: As a -- under the fees and profits
22 receiverships, we go in -- we have a responsibility to the
23 receiver to deal with all the health safety issues of the
24 property, to serve notices on the residents, to collect rents,
25 to put the rents in a trust fund -- a trust account rather and

1 to stabilize the asset to the best of our abilities.

2 MR. HILL: Okay. When you were Nunez Property --
3 Properties, you claimed you were responsible for takeovers, is
4 the word that's used, in several 200-plus unit manufactured
5 home communities, is that correct?

6 MR. TAYLOR: No, that is not correct.

7 MR. HILL: Okay.

8 MR. TAYLOR: Let me see what my C.V. says. I don't
9 believe it says that there. In the Nunez team I did no
10 manufactured home work whatsoever.

11 MR. HILL: Maybe I missed --

12 MR. TAYLOR: It was prior to that with Capital
13 Investment Network.

14 MR. HILL: I'm sorry, Capital Investment. I'm sorry,
15 I misspoke.

16 MR. TAYLOR: That's okay.

17 MR. HILL: Okay. And what was your role in those,
18 quote, unquote, "takeovers"?

19 MR. TAYLOR: Typically the -- the ownership of the
20 properties, the group that I work with would buy a
21 manufactured home community. Oftentimes there were issues,
22 health safety issues, maintenance issues, deferred
23 maintenance, resident issues, water rights, septic problems,
24 things like that.

25 I would -- I would go in in the beginning of the

1 takeover and try to stabilize the asset as quickly as possible
2 and address all those issues. And oftentimes I would be in a
3 position of having to deal with the on-site managers that we
4 would either hire or had been there on some hybrid in between.

5 MR. HILL: So you didn't actually manage any of these
6 properties?

7 MR. TAYLOR: I did not manage properties, no.

8 MR. HILL: Okay. And you said your role was to try
9 and stabilize the assets. What did you do in terms of
10 stabilizing the assets?

11 MR. TAYLOR: Well, a variety of things. A lot of
12 what happens in a takeover is you don't have accurate books
13 and records, your invoicing, vendors, condition of the
14 property, condition of the property's infrastructure.

15 Sometimes you get residents or tenants rights
16 organizations that you weren't anticipating. A lot of
17 problem-solving in beginning to stabilize the asset.

18 MR. HILL: Yeah. Were you involved in the financial
19 analysis of the properties that -- in order to determine
20 whether the properties were right for takeover?

21 MR. TAYLOR: Yes, I was.

22 MR. HILL: Okay. And what criteria did you use to
23 establish whether a property was right for a takeover?

24 MR. TAYLOR: Oftentimes we -- we made the analysis
25 based on what we assumed would be a pro forma for the

1 property. The ones that I was involved in, we believed were
2 underperforming economically and that we could go in and make
3 some changes, make some improvements, do some on-site
4 improvements, change management, change management style and
5 create a value-added atmosphere for the ownership.

6 MR. HILL: So is it safe to say that all the
7 properties -- the mobile home properties that you were
8 involved with in these takeover activities were distressed or
9 underperforming properties?

10 MR. TAYLOR: That would be accurate.

11 MR. HILL: Okay. And where were these properties
12 located?

13 MR. TAYLOR: Boring, Oregon.

14 MR. HILL: In where?

15 MR. TAYLOR: Bor -- it's about an hour outside of
16 Portland. It's called Boring, B-o-r-i-n-g. I'm sorry, I
17 didn't name it. Well, the name of the complex was Big Valley
18 Woods, so it gets even funnier. Unfortunately, that's what it
19 was.

20 MR. HILL: And was that the only distressed
21 property -- mobile home property that you dealt with?

22 MR. TAYLOR: He has an on-site. I dealt with some
23 out of the office that are with that group.

24 MR. HILL: Approximately how many did you deal with
25 out of the office?

1 MR. TAYLOR: No more than three.

2 MR. HILL: Okay. So approximately four is this --
3 are the several properties that you've dealt with, is that
4 correct?

5 MR. TAYLOR: On manufactured home communities?

6 MR. HILL: Yes.

7 MR. TAYLOR: That would be correct.

8 MR. HILL: Okay. Did you ever deal with any
9 manufactured homes in California or Ventura County?

10 MR. TAYLOR: No, I did not.

11 MR. HILL: Did you ever consult any source to
12 determine whether those park's expenses were within industry
13 standards?

14 MR. TAYLOR: I attempted to, but I wasn't pleased
15 with what I found out --

16 MR. HILL: Okay.

17 MR. TAYLOR: -- which was basically not much of
18 anything.

19 MR. HILL: Is there any publication that you used to
20 determine industry standards that you applied to the Ranch
21 Mobile Home Park here tonight?

22 MR. TAYLOR: No.

23 MR. HILL: Okay. Have you ever testified before on
24 any rents board or court hearings on industry standards for
25 expenses for mobile home parks?

1 MR. TAYLOR: No.

2 MR. HILL: No further questions.

3 CHAIR WERTHEIMER: Any questions from the staff?

4 MR. NORMAN: Staff has no questions.

5 CHAIR WERTHEIMER: Commissioners?

6 COMMISSIONER FELDMAN: Are -- are you going to be
7 able to give testimony?

8 Why not?

9 MS. SPENCER: The hearing is still open. The record
10 has not been closed.

11 COMMISSIONER FELDMAN: Yeah, it's not.

12 MS. SPENCER: I would like to request that the
13 tenants have an opportunity for Mr. Taylor to present
14 testimony or that I be given an opportunity to examine him.

15 MR. HEHIR: Well, the Commission can entertain that.
16 Again, at this stage it was a cross-examination. You heard
17 that objection from Mr. Hill.

18 MS. SPENCER: Mr. Wertheimer specifically requested
19 that Mr. Taylor be here tonight so that he could provide
20 testimony. We would like an opportunity if he's going to be
21 cross-examined about his conclusions for him to give you
22 direct examination or I can cross-examine him so you can fully
23 understand what the bases are for his conclusions so that we
24 can make this an information gathering exercise as it's
25 intended to be.

1 MR. HEHIR: If -- just if the Commission is going to
2 entertain -- the majority of the Commission's going to
3 entertain having some direct testimony from this
4 witness then --

5 MR. HILL: I believe --

6 MR. HEHIR: Then -- just let me finish. That they
7 would then have to entertain also any further
8 cross-examination.

9 MR. HILL: I believe that the cross-examination has
10 determined that there are no industry standards upon which he
11 relied and that he's not qualified to testify in this
12 particular instance, but I'll leave it to the Commission.

13 CHAIR WERTHEIMER: How long would you like to
14 cross-examine him?

15 MS. SPENCER: I would like to just give him an
16 opportunity to explain the bases for his conclusions that were
17 provided in the spreadsheet. So I can ask him questions on
18 that point if you'd like or I can just let him talk and
19 explain it to you.

20 CHAIR WERTHEIMER: And the time period for either of
21 those would be?

22 MS. SPENCER: Five to 10 minutes.

23 CHAIR WERTHEIMER: Commission, any objections?

24 COMMISSIONER FELDMAN: No objections.

25 CHAIR WERTHEIMER: Okay. Then testify directly,

1 please.

2 MR. TAYLOR: All right. How would you like me to do
3 it?

4 MS. SPENCER: Go ahead and just explain --

5 MR. TAYLOR: Okay.

6 MS. SPENCER: -- how you got to where you got.

7 CHAIR WERTHEIMER: You can stand next to the mike
8 that's taller.

9 MR. TAYLOR: Oh, can I? Thanks. I was starting to
10 get kind of uncomfortable.

11 CHAIR WERTHEIMER: Just a suggestion.

12 MR. TAYLOR: Okay. All right. This is more
13 comfortable for me.

14 When I was asked to take a look at this spreadsheet
15 that these guys were putting together on this rent proposal,
16 the questions that were asked of me were fairly simple: Would
17 you take a look at the property management components and tell
18 me do you think in your opinion as an owner and as a manager
19 that these numbers are reasonable.

20 Okay. The industry standards, all that sort of
21 happened without me, but what I began to do was I looked at
22 the asset, what kind of -- what kind of an income it was
23 producing. Bear in mind, I came to it a little late in the
24 game. And I began to look at how much they were paying for
25 the resident manager, the allowance for his coach, the load

1 for his payment and his salary as well as the property
2 management expenses.

3 And I looked at them very carefully and I thought
4 very deeply about what would I pay as an owner, what have I
5 seen other owners pay, not so much for a manufactured home
6 community, but for a multi-family. And there's kind of a
7 similarity between this asset and multi-family, except the
8 management of this -- this particular asset in my opinion
9 should be a great deal easier.

10 It should be quite a bit less work than you would for
11 a -- say a 70-unit apartment complex. Reason being, in a
12 70-unit apartment complex the management company and the
13 on-site manager are required to do a lot of duties that are
14 not required of this particular asset.

15 For example, if a pipe breaks in a resident's unit,
16 the management's under no obligation to do anything about it
17 whatsoever. They're not responsible for maintaining the yard,
18 the roof, the windows, any of the appliances, any of the
19 plumbing, any of the electrical or anything else.

20 What they are responsible for is collecting the rents
21 and maintaining the existing infrastructure, which would be in
22 this case roads and a clubhouse and what appears to be a small
23 monument at the front of the complex that would need to be
24 watered or maintained and cleaned up.

25 Okay. I'm going to need a water. Excuse me, just

1 give me a second with this.

2 So when I began to look at those components and then
3 look at what they were actually spending on it, I found that
4 it was unreasonable in my opinion as a -- either owner,
5 manager or micro manager to pay that amount of expense for a
6 asset similar to this or that -- that particular asset at the
7 levels that they were spending post-2009.

8 Seems to me pre-2009 they were paying the on-site
9 manager \$200 a week plus a housing allowance, and I don't
10 believe there was any off-site management at that time. So it
11 seems to me that post-2009 that the expenses have increased in
12 such a way that it would make the -- the asset appear not as
13 profitable as it should be. How would that be?

14 And so these are only observations of a person who
15 was asked to analyze the numbers from the point of view of
16 having owned, managed and micro managed such things. There
17 really aren't industry standards for something like this.

18 But I did find a section from Morgan Hill, California
19 in which -- it's very similar in which they capped the
20 property management at 5 percent. That was the only thing I
21 could find. It's kind of like everything else in real estate.

22 Commissions are negotiable. Somehow we always seem
23 to spend about 6 percent to sell our homes, about 5 percent to
24 sell our commercial property, about 10 percent to sell our
25 land, but they're not written down as industry standards. But

1 it seems to be what we do.

2 And for this kind of an asset if it were
3 multi-family, I would not expect to pay more than 6 percent to
4 manage that property, plus the expense for the on-site person
5 and the load, so.

6 CHAIR WERTHEIMER: Is that -- are you finished?

7 MR. TAYLOR: That's what I --

8 CHAIR WERTHEIMER: All right. Staff have any
9 questions?

10 MR. NORMAN: No questions.

11 CHAIR WERTHEIMER: Commissioners?

12 COMMISSIONER FELDMAN: No.

13 CHAIR WERTHEIMER: I do, two questions.

14 MR. TAYLOR: Okay.

15 CHAIR WERTHEIMER: Have you ever owned a multiple --
16 or mobile home park?

17 MR. TAYLOR: No, sir.

18 CHAIR WERTHEIMER: Have you ever managed one --

19 MR. TAYLOR: No, sir.

20 CHAIR WERTHEIMER: Have you in your capacity being in
21 the business you work in ever purchased one that's under rent
22 control?

23 MR. TAYLOR: No, sir.

24 CHAIR WERTHEIMER: Thank you.

25 And Mr. Hill.

1 MR. HILL: I just have -- I just have one additional
2 question.

3 Have you ever compared the -- or read the regulations
4 in California pertaining to mobile home parks?

5 MR. TAYLOR: I've skimmed them. I have not read them
6 completely, no.

7 MR. HILL: Have you ever compared the volume of
8 regulations pertaining to mobile home parks versus the volume
9 of regulations pertaining to apartment communities?

10 MR. TAYLOR: No, I have not.

11 MR. HILL: Okay. Thank you.

12 CHAIR WERTHEIMER: Thank you. That will be all.

13 MR. TAYLOR: Thanks.

14 CHAIR WERTHEIMER: Mr. Hill, do you have any more --
15 any more witnesses you're crossing?

16 MR. HILL: Not at this point, no.

17 We -- we did present a declaration which I believe is
18 in the supplemental packet from Mr. McCarthy who could not be
19 here similar to Mr. Baar pertaining to the tenants' analysis
20 and containing his -- his review of the tenants' analysis.

21 CHAIR WERTHEIMER: Mr. Norman, any questions?

22 MR. NORMAN: No, not at this time.

23 CHAIR WERTHEIMER: We're going to return to staff
24 comments and responses. Do you have any -- oh, hi. Yes?

25 MS. SPENCER: Hi. I just have a couple more

1 documents I'd like to provide to the Commission. One is
2 this --

3 MR. HEHIR: Is -- are you doing redirect or something
4 or --

5 MS. SPENCER: No, just some information that came out
6 on the cross-examination last time. One was this magazine
7 that the manager puts together. I thought the Commission
8 should see what it really looks like, what apparently takes a
9 full-time manager to put together.

10 COMMISSIONER FELDMAN: I don't think your mike is on.

11 MS. SPENCER: Maybe I'm just not talking directly
12 into it.

13 MR. HEHIR: Again, this is one where you need to make
14 the call if you're going to accept anything new on this direct
15 examination.

16 CHAIR WERTHEIMER: Okay. On the items that you just
17 talked about, we're -- we're not going to --

18 MS. SPENCER: So you're refusing to take the
19 documents?

20 CHAIR WERTHEIMER: Yes.

21 MS. SPENCER: Okay. Well, for the record, I'd just
22 like to offer the copies of the Pow Wow Magazine so we can
23 preserve the record as to what was refused. This is the
24 magazine that the mobile home park manager purportedly puts
25 together.

1 And then I also have a couple of articles that we
2 pulled on mobile home park management and how it's not
3 complex -- a complex management and finally, Black's Law
4 Dictionary for a definition of "standard."

5 The articles that we'd like to submit are called "How
6 to Find a Mobile Home Park Manager" and another article called
7 "Mobile Homes." The one called "Mobile Homes" is from
8 Americancity.org and the one on "How to Find a Mobile Home
9 Park Manager" is from Newwireinvestor.com.

10 CHAIR WERTHEIMER: Thank you very much. We
11 understand.

12 MS. SPENCER: And then finally, I'd like an
13 opportunity at some point tonight to address some of the items
14 that are in the supplemental packet that we just received
15 tonight because they specifically address some of the things
16 that were presented in the presentation.

17 And I think we should have an opportunity to at least
18 address some of the legal points made in those materials that
19 were not received by me prior to today. So I don't know at
20 what point you'd want to do it, but I'd like to make a
21 request --

22 CHAIR WERTHEIMER: We'll take it under consideration,
23 thank you.

24 The applicant has 15 minutes.

25 MR. HEHIR: If I -- excuse me.

1 CHAIR WERTHEIMER: Yeah.

2 MR. HEHIR: Now it's back to -- well, two things,
3 Chair -- excuse me, Chair and Commissioners, good evening.
4 Two things: One, if -- if the tenants' attorney's comments
5 are related to redirect of her own witnesses only, you can
6 entertain that.

7 CHAIR WERTHEIMER: Okay.

8 MR. HEHIR: The next step if you're not going to
9 entertain that is to go with staff. It's their time now to
10 actually have their final --

11 CHAIR WERTHEIMER: Okay.

12 MR. HEHIR: -- conclusions.

13 CHAIR WERTHEIMER: So does the tenants'
14 representative have any questions or redirect?

15 MR. HEHIR: No, it's -- actually it would be a
16 redirect of a witness that was actually cross-examined.

17 CHAIR WERTHEIMER: Exactly, thank you.

18 MS. SPENCER: Yeah. I would actually like to
19 redirect to Mr. Taylor and then does -- Mr. Hehir, just for
20 clarification, does that include witnesses other than the
21 tenants' witnesses who were cross-examined? Because there are
22 new materials tonight from Mr. Baar and Mr. McCarthy that we
23 have not had an opportunity to address.

24 MR. HEHIR: It is at this time that you would have it
25 for the witnesses only, the expert witnesses only that you

1 brought.

2 MS. SPENCER: Okay. So the resident association's
3 witnesses?

4 MR. HEHIR: Correct.

5 MS. SPENCER: Okay. If I could have Mr. Taylor come
6 back up, thank you.

7 That will make the microphone situation a little
8 easier.

9 MR. TAYLOR: Oh, okay.

10 MS. SPENCER: So there won't be so much leaning.

11 Mr. Taylor, how many -- how long have you been in the
12 property management industry?

13 MR. TAYLOR: Since 1991.

14 MS. SPENCER: And in -- since 1991, in the property
15 management industry, have you overseen the activities of
16 property management of a mobile home park?

17 MR. TAYLOR: Indirectly.

18 MS. SPENCER: Through the takeovers that you worked
19 on?

20 MR. TAYLOR: Yes.

21 MS. SPENCER: And when you were working on those
22 takeovers, were you required to analyze whether or not the
23 property management expenses that were being expended for a
24 park were reasonable?

25 MR. TAYLOR: Yes.

1 MS. SPENCER: And when you were determining whether
2 those expenses are reasonable, what went into your analysis?

3 MR. TAYLOR: A whole number of things, but
4 fundamentally being in a position that we were in, so survival
5 of the asset itself, we would have to look at places that we
6 could save money, starting out with property management,
7 overhead expenses, wasted materials, energy, energy audits,
8 water, gas, electrical, things like that.

9 MS. SPENCER: And in your other experience as a
10 property manager, working as a property manager and working
11 for rents and profits receivables -- receivers, have you been
12 required to justify property management expenses, what you're
13 spending it on and why?

14 MR. TAYLOR: Help me with "justify."

15 MS. SPENCER: Okay. Let me -- let me rephrase that.
16 It probably wasn't a very good question.

17 Let's focus on what you're doing -- what you
18 primarily do right now, which is property management related
19 to receiverships. Are property management expenses in the
20 receiverships scrutinized closely by the receiver?

21 MR. TAYLOR: Absolutely.

22 MS. SPENCER: And are they are also scrutinized by
23 the court?

24 MR. TAYLOR: Yes, they can be.

25 MS. SPENCER: Okay. And in terms of property

1 management, based on your experience that you've had
2 previously with mobile home parks and your current full-time
3 experience with other types or almost full-time experience
4 with other types of multi-family dwellings, are there
5 generally certain tasks that go into property management? You
6 have to do certain things?

7 MR. TAYLOR: Oh, yes, absolutely.

8 MS. SPENCER: And based on your experience with the
9 mobile home parks and your current experience, is there much
10 of a difference between those tasks between a mobile home park
11 and a multi-family?

12 MR. TAYLOR: Yeah. The -- I would consider the
13 mobile home park substantially easier.

14 MS. SPENCER: And why is that?

15 MR. TAYLOR: There's less things to do.

16 MS. SPENCER: So what does it take to manage a mobile
17 home park?

18 MR. TAYLOR: You mean that mobile home park?

19 MS. SPENCER: Well, let's -- in general, what are the
20 tasks?

21 MR. TAYLOR: In general.

22 MS. SPENCER: And then we'll focus on Ranch.

23 MR. TAYLOR: Well, clearly the property manager would
24 be responsible first and foremost for collecting rents and for
25 depositing those rents and for preparing statements for the

1 owner, and maintenance, if there was any, vendor
2 relationships, vendors, vendors being paid.

3 Depending on the relationship, there could be
4 property taxes that get paid by the property management
5 company. If there's a mortgage, that could be taken care of
6 by the property management.

7 MS. SPENCER: And with respect to what -- all the
8 information that you've been provided both in the financial
9 data and the statements from the former on-site manager for
10 Ranch Mobile Home Park, what does it take to manage Ranch
11 Mobile Home Park in -- based on the information you've been
12 provided?

13 MR. TAYLOR: It would seem that rent collection would
14 be No. 1, preparing an owner statement would be No. 2, not
15 necessarily in the order of preference. I'm just kind of
16 putting them in a chronology.

17 If there's any kind of vendors, vendor relationships,
18 somebody that cleans the roads, probably any kind of noticing
19 that would be necessary for the residents if they were late or
20 they abandoned or there was a nuisance of some sort.

21 MS. SPENCER: And in your opinion based on what the
22 tasks that you understand property management to require, what
23 you understand mobile home management to require and what
24 you've seen and heard -- what you've seen and observed about
25 this park, does this park require a full-time on-site manager?

1 MR. TAYLOR: I don't know that it requires it, no.

2 MS. SPENCER: Now, you said that you looked at the
3 on-site manager expense which is \$14,784, plus a housing
4 allowance of \$4,747, plus rent of \$4,200, all those items that
5 were included for the on-site manager here, you looked at
6 those and you determined that that amount seemed to be
7 unreasonable to you based on your knowledge, training and
8 experience, is that correct?

9 MR. TAYLOR: That's correct.

10 MS. SPENCER: And what amount do you think is
11 reasonable for this mobile home park?

12 MR. TAYLOR: I believe I suggested \$200 a week and a
13 free -- or a housing allowance.

14 MS. SPENCER: And why is it that \$200 a week and a
15 housing allowance was reasonable?

16 MR. TAYLOR: It just isn't a lot of work. I mean if
17 the manager is picking up rents, you've got, what, 58 units
18 that are occupied? So how many days would it take him to log
19 in 58 rents and then whatever else would happen after the 5th
20 or the 6th of the month whenever rent's due, so.

21 MS. SPENCER: And did you see this little magazine
22 that the on-site manager puts out?

23 MR. TAYLOR: Yeah.

24 MS. SPENCER: Does that look like it took a lot of
25 work to you?

1 MR. TAYLOR: It doesn't appear to, but I don't know
2 about graphics.

3 MS. SPENCER: Okay. And then the off-site management
4 expense of \$16,987, based on your knowledge of what is
5 required for an off-site property manager both in multi-family
6 housing and with respect to mobile home parks, did that seem
7 reasonable to you?

8 MR. TAYLOR: No.

9 MS. SPENCER: Why -- why not?

10 MR. TAYLOR: I don't know what work is accomplished
11 by the off-site manager that isn't already sort of being done
12 by the on-site.

13 MS. SPENCER: And there's also an extra \$2,150 for a
14 billing service, is that correct?

15 MR. TAYLOR: To the best of my recollection, yes.

16 MS. SPENCER: So based on looking at this park and
17 all the information that you've been provided -- and you've
18 read through the materials that were provided by the owner, is
19 that correct?

20 MR. TAYLOR: Yes, it is.

21 MS. SPENCER: And what you've been -- information
22 you've been provided by the former on-site manager, you don't
23 think that it's necessary to spend \$17,000 a year on an
24 off-site manager?

25 MR. TAYLOR: No, absolutely not.

1 MS. SPENCER: Now, did it seem unusual to you that
2 all of a sudden this park went to an off-site manager and
3 started paying all this extra money in 2009?

4 MR. TAYLOR: Yeah, it was. The narrative was given
5 to me, it did seem unusual.

6 MS. SPENCER: And as a -- as a business person who --
7 who -- in the property management field, does it seem
8 reasonable to you to have three layers of management?

9 MR. TAYLOR: No. Typically, the owner's responsible
10 for part of that. That's kind of what you do to get that
11 Schedule C going for that property.

12 Was that clear enough or no?

13 MS. SPENCER: No, that's fine.

14 MR. TAYLOR: Okay.

15 MS. SPENCER: And prior to 2009, you looked -- you
16 looked at some expenses for 1999, is that correct?

17 MR. TAYLOR: I believe so, yes.

18 MS. SPENCER: And at that time, those expenses, the
19 total management and administrative expenses were about 20
20 percent of the gross operating income, is that correct?

21 MR. TAYLOR: As I recall, that's correct.

22 MS. SPENCER: Does that seem to be a little bit more
23 in line with what you believe is reasonable for this mobile
24 home park?

25 MR. TAYLOR: Yes.

1 MS. SPENCER: And then you -- last you mentioned that
2 you looked at -- you looked around to try to determine if
3 there was anybody who had published the magic percentage
4 number for mobile home park management. You were unable to
5 find anything specific within the industry itself, is that
6 correct?

7 MR. TAYLOR: That is correct.

8 MS. SPENCER: And that is because that these kinds of
9 property management commissions are based on negotiation
10 typically?

11 MR. TAYLOR: Yes, absolutely.

12 MS. SPENCER: And in your experience as a property
13 manager, generally what is the range of percentage for a
14 property management company, an off-site property management
15 company that you have seen in California?

16 MR. TAYLOR: For residential, for multi-family
17 residential?

18 MS. SPENCER: For multi-family residential.

19 MR. TAYLOR: Anywhere from 3 to 8 percent.

20 MS. SPENCER: And you saw that the City of Morgan
21 Hill puts management expenses at 5 percent in their rent
22 stabilization ordinance, is that correct?

23 MR. TAYLOR: That's what they wrote in their
24 ordinance, yes.

25 MS. SPENCER: And you saw that the City of Thousand

1 Oaks puts that at 8 percent?

2 MR. TAYLOR: That's correct.

3 MS. SPENCER: And does that seem more in line with
4 what you would consider to be reasonable for this park?

5 MR. TAYLOR: Yes.

6 MS. SPENCER: No further questions.

7 MR. HEHIR: Mr. Chair, if I may, and Commissioners,
8 in looking at the supplemental packet, not all of them have
9 been actually addressed. So let me just again review these
10 things for you and -- and give you my recommendation.

11 We had two supplemental packets. The first one was
12 given to the Commission and it is a supplemental comment on
13 the Ranch Mobile Home Park from Kenneth Baar. I do not
14 believe Mr. Baar is here today. That packet was --
15 supplemental packet was delivered to the Commission last week.

16 Today we have a second supplemental packet and that
17 supplemental packet includes a supplemental brief of tenants'
18 association in support of jurisdictional objections to
19 determination of rent increase application by Rent Adjustment
20 Commission.

21 And we received something from the owner's position
22 and that is a declaration of Michael McCarthy in rebuttal of
23 tenant expert presentation.

24 And I did misspeak. The second -- the first
25 supplemental packet we also had a letter from one of the

1 tenants at Ranch Mobile Home Park.

2 If the Commission -- any of the Commissioners are
3 going to consider any of this material, I think it would be
4 relevant to have each party, the tenants' side and the owner
5 side, of course, have about five minutes to address these
6 specifics things.

7 Again, the supplemental brief from the tenants is an
8 argument, and so certainly if you're going to consider any of
9 that, owner would have a right to at least address that. He
10 has had his cross. So he might have had a chance.

11 But if we're going to allow that, that would be my
12 recommendation, that you allow each of them about five minutes
13 to address only the specific things in the supplemental packet
14 if they actually have anything to say.

15 CHAIR WERTHEIMER: Any comments from the Commission
16 on the suggestion that we give five minutes to each of the --
17 to the applicant and the tenants on reviewing these?

18 Yes.

19 COMMISSIONER FERRUZZA: I just want to say -- well,
20 there. I just want to say one thing about what Mr. Taylor and
21 the lawyers for the tenants is saying. The State requires
22 that there be an on-site manager. So you have to have
23 somebody on site.

24 CHAIR WERTHEIMER: Okay. The question is regarding
25 letting each party speak.

1 Okay. Oh, Mike?

2 MR. SILACCI: I was just going to say I agree with
3 the recommendation, that that's what we should do.

4 CHAIR WERTHEIMER: Who would like to go first?

5 MR. HILL: I think -- I think we've covered the
6 issues in the McCarthy declaration and the cross-examination.

7 And I think the McCarthy declaration merely amplifies
8 some of the points that -- that we raised in cross-examination
9 about whether these standards are in the RAC or not or whether
10 the standards are -- whether there are any industry standards.
11 So I don't feel the need to further address those issues.

12 The -- with regard to the brief by the tenants
13 concerning whether the prior resolution applies, I think we've
14 addressed that in our brief that we submitted with our
15 application. And we're -- we reached the conclusion that
16 Government Code 65915 controls and preempts any limitations
17 beyond 30 years.

18 All good things must come to an end and -- and -- and
19 free subsidy and free ride by the land owner for 30 years has
20 been quite sufficient for the owners -- or for the mobile home
21 park residents. Many of them seem to be able to quite capably
22 afford to buy their coaches in cash. I think we've heard many
23 of them testify to that.

24 I think the important point here is that -- that we
25 have promised and put it in writing that no existing residents

1 who cannot afford to pay the rents under the rent increases,
2 if we are treated fairly will be forced out of their home by
3 inability to pay rent.

4 What we're trying to do here, and I'll be very clear,
5 is to stop the land owner subsidy -- the unconstitutional land
6 owner subsidy that went on for -- well, I guess for 30 years
7 it was a condition, but now it's no longer an acceptable
8 condition given Government Code 65915. And so it's time to
9 stop that land owner unconstitutional subsidy of the
10 residents.

11 If the City wants to help out the low-income people,
12 that's -- there are plenty of -- of methods that the City can
13 do to help out the low-income people going forward.

14 What we're proposing is to not force people out by
15 means of the rent increases, but what we've got in the park
16 now is a situation where we're running in a negative and where
17 there are now 12 coaches that are vacant because no one can
18 afford to buy the coaches at the prices that the -- that the
19 residents want to charge given the -- this significant low
20 rents under the -- under the preexisting resolution that
21 applied to these -- to these coaches.

22 So we've got a situation where -- where the spaces
23 are going vacant. There's 12 spaces that are vacant. No one
24 can afford to buy in because there's such a high premium.

25 If the rents are allowed to go -- to be raised under

1 the net operating income standard, then the coach prices will
2 go down and people will -- more -- more people will come in
3 who -- who are looking for affordable housing instead of
4 people holding on to their coaches to try and get a -- a
5 regulation-induced premium.

6 And we believe that it's time now to -- to put the --
7 put the properties under the ordinance. There's no -- there's
8 no basis for keeping the properties under the prior resolution
9 at this time anymore.

10 And it would be fair to those people who want to
11 purchase a mobile home and want to live in the park and -- at
12 an affordable rate while those who are existing tenants would
13 be taken care of by the -- the -- the landowner's promise and
14 by any programs that the City wants to apply to the -- these
15 existing tenants. Thank you.

16 CHAIR WERTHEIMER: Thank you.

17 Ms. Spencer.

18 MS. SPENCER: Well, I'd like to -- I'd like to
19 address one portion of the memo that Mr. Baar has provided,
20 the supplemental memo, address a few comments in
21 Mr. McCarthy's declaration.

22 Although, I will note that we are objecting to
23 inclusion of this declaration at all because Mr. McCarthy is
24 not here tonight for cross-examination, and they're attempting
25 to submit new evidence for Mr. McCarthy with no opportunity

1 for cross-examination.

2 And then I'll give you a summary of what I think from
3 my perspective happened here throughout the course of the
4 examination and reiterate where I think the Commission should
5 come in terms of its conclusion.

6 First, with respect to Mr. Baar's dec -- I don't even
7 know what this is. I think it's just a memo. It's
8 supplemental comments he made. Mr. Baar appears to be making
9 legal arguments to the Commission, although, he was identified
10 as the person to make a fair and just return analysis.

11 And I find it remarkable that Mr. Baar here is
12 presenting a legal argument, and I think that probably better
13 come from the City attorney's office, but nonetheless, I want
14 to address it and specifically it's a point 3 of Mr. Baar's
15 memo. Mr. Baar -- his response to the residents' contention
16 that the park owner's forgone rent increases should be imputed
17 in an MNOI analysis.

18 And I think you may recall that when I was here last
19 time we talked a little bit about statutory interpretation and
20 some of your obligations as a Rent Adjustment Commission to
21 really focus on statutory interpretation and determine what
22 all of these regulations say that you should be doing if
23 you're going to be doing the MNOI analysis.

24 If you look at RAC-2 and you look at Section 1.03 of
25 RAC-2, it states that: The Commission presumes that the net

1 operating -- and this is RTA 15 of the notebook if you still
2 have it and you want to follow along:

3 The Commission presumes that the net operating income
4 received after April 1980 provided landlords with a just and
5 reasonable return on their rental units unless there is clear
6 and convincing evidence to the contrary.

7 And then it goes on to say: In most cases, the
8 automatic increases allowed by the ordinance, or in this case
9 the automatic increases that would have been allowed by the
10 Resolution 84-037, and the property tax savings resulting from
11 Proposition 13 provides sufficient additional operating income
12 to landlords to maintain the same net operating income they
13 experienced in 1979.

14 And this is the part that I think is important that
15 you pay attention to: However, in some cases, landlords may
16 have incurred reasonable operating expenses which exceed the
17 rent increases allowed by the ordinance and a tax savings
18 resulting from Proposition 13.

19 Therefore, landlords who have had such reasonable
20 increased operating expenses should be able to maintain the
21 same level of net operating income as they experienced in 1979
22 by requesting a rent adjustment pursuant to these guidelines.

23 And the reason I point that out is because Mr. Baar
24 seems to want to say that this provision of applying adjusted
25 income for below market rentals as it's specifically stated in

1 your ordinance should apply to current year, even though the
2 ordinance says it should apply to current year net operating
3 income.

4 He wants --

5 CHAIR WERTHEIMER: Ms. -- Ms. Spencer, if I may, the
6 time up here is in regards to addressing the supplemental and
7 what's in that.

8 MS. SPENCER: Yeah. I'm addressing what Mr. Baar
9 wrote in his -- in his document. So I'm trying to point you
10 where I believe that you should be doing your analysis here.

11 The ordinance itself says for current year net
12 operating income you have to apply 2.05. It doesn't say only
13 apply it to base year, and in fact, it would be
14 counterintuitive and illogical to apply it to the base year
15 because it's for where rent increases permitted by the Rent
16 Stabilization Ordinance could have been made but have not been
17 made because of the landlord's rental policies and purposes.

18 How can you apply this to the base year when this
19 ordinance didn't even exist in the base year?

20 So if you take that -- the fact that the purpose of
21 the just and reasonable return is to account for those unusual
22 circumstances where expenses have gone up, not to account for
23 a landlord who deliberately made a decision for 31 out of 33
24 years to forgo a rent increase and you look at the ordinance
25 itself, you can see that Mr. Baar's conclusion that he comes

1 to that Section 2.05 shouldn't be applied to the current year
2 to include all the rent increases that we know this landlord
3 made a deliberate decision to forgo is incorrect.

4 May I have some more time to address some of the
5 other points?

6 Thank you.

7 It also is inconsistent with stabilized rents. This
8 is a Rent Stabilization Ordinance, and to make these folks who
9 currently live in this park make up for a deliberate decision
10 of the landlord for 31 out of 33 years is totally contrary to
11 the purposes of the ordinance.

12 With Mr. McCarthy's comments, my -- the only thing I
13 would say with respect to Mr. McCarthy's comments that haven't
14 already been covered by my expert's responses on
15 cross-examination are that Mr. McCarthy wants to expand the
16 scope of expenses that the owner is allowed to take to include
17 everything.

18 And it's remarkable to me that all of these expenses
19 started going up in 2009. This management company was hired
20 in January of 2009 and that's the only year we have numbers
21 for. That's the only year we have numbers for because they
22 drove their expenses up so they could come in here and try to
23 get more money out of these folks.

24 Now, the rent -- the owner says, "Well, I'm not going
25 to apply this rent increase to the existing residents." So

1 these residents may if -- assuming he keeps that deal and
2 assuming it's even enforceable, they may not be applied to
3 those folks while they're living there, but what about their
4 investment?

5 Because the reason why these mobiles haven't been
6 selling are not because the prices they're asking are
7 ridiculous. I was out there today. They're asking \$40- to
8 \$80,000 for these mobiles. It's because the folks are facing
9 a huge rent increase and nobody wants to buy into this park
10 knowing they're going to have to pay \$700 a month for rent on
11 \$1,000 a year -- \$1,000 a month income. No one can do that.

12 CHAIR WERTHEIMER: Come to a conclusion, please.

13 MS. SPENCER: RAC-2 and RAC-5 have some very specific
14 guidelines and standards. When convenient to deviate from
15 them, the owner chooses to, but they should be applied and
16 they should be applied fairly assuming that this Commission
17 decides that you should even apply the MNOI analysis.

18 As we stated previously, and I'm not going to keep
19 reiterating it, but this park is different. This park is
20 unique. This owner made a deal back in the late '70s that
21 this park be operated as a low-income senior park with
22 specific scheduled rents.

23 If this Commission is going to attempt to exercise
24 jurisdiction over this park, then this Commission should
25 continue to apply the standards that apply to this park under

1 the trailer park development permit and the resolution.
2 That's where this Commission should be going because that's
3 the only thing that's fair, right and just --

4 CHAIR WERTHEIMER: Thank you, Ms. Spencer.

5 MS. SPENCER: -- from a moral, legal and ethical
6 perspective. Thank you.

7 CHAIR WERTHEIMER: We're going to return to the
8 staff's comments and responses.

9 MR. NORMAN: Thank you, Mr. Chair, members of the
10 Commission, members of the public.

11 There are a lot of issues to discuss and I think the
12 first one to discuss is the jurisdictional issue that
13 Ms. Spencer mentioned at the last meeting. I'm going to hand
14 this off to Mr. Hehir to discuss the jurisdictional issue
15 before continuing with further comments.

16 MR. HEHIR: Thank you, Mr. Norman.

17 Chairperson Wertheimer, one matter that has been
18 raised by tenants' counsel is related to jurisdiction, and she
19 has asserted that Resolution 84-037 prohibits this Commission
20 from hearing the owner's application for a just and reasonable
21 return rent adjustment.

22 The City's attorney's office has reviewed this issue
23 and it is my opinion that the rent adjustment should continue
24 to review and make a decision on this application.

25 Significantly, the jurisdictional issue, if such an

1 issue needs to be addressed, is not for this Commission to
2 decide, is not within its power. City Council would need to
3 make that decision or possibly a court. The Commission's
4 obligation is to review the applications before and run an
5 analysis of that application.

6 Another reason to move forward is that the mobile
7 home Rent Stabilization Ordinance does not exempt any park
8 from an analysis of just and reasonable return rent adjustment
9 application. In addition, Resolution 84-037 provides a 4
10 percent cap, and without doing an analysis of the owner's
11 history, profits, costs, et cetera, simply picking a number
12 might not lead to a defensible finding that a rent adjustment
13 was just and reasonable under the law.

14 The ordinance, Ordinance 525.06, Subsection B lays
15 out the authority for the Rent Adjustment Commission to
16 process such a request like other parks. The ordinance does
17 not provide an exception of this park -- of this type of
18 review, including Ranch.

19 In addition, Resolution 84-037 does not complete the
20 analysis necessary to ensure the rent limit is not a taking.
21 And again, I want to emphasize for the Commission that this is
22 a balancing action by the Commission. They need to weigh the
23 rights of the tenants with the rent ceiling also against the
24 owner's right to a fair and just, reasonable review and a just
25 and reasonable rent under the law.

1 I previously spoke to you about this balancing.
2 Again, it's -- it's important that you understand that both
3 the owner's and the tenants' attorney have both brought their
4 presentation to their point. One -- of course, one's the
5 maximum amount of rent that they can possibly get and that's
6 what they've asked for. The tenant has specifically said that
7 the interests of -- of the tenants is really at stake.

8 And I want you to understand that the purpose is
9 listed in the ordinance and the purpose is -- showed that it's
10 really both issues. Again, it's a balancing.

11 Section 5-25.01 provides, and this isn't the
12 pertinent part: It is necessary and reasonable to continue to
13 regulate rents so as to safeguard the tenants from excessive
14 rent increases and at the same time -- at the same time
15 provide landlords with a just and reasonable return on their
16 rental spaces.

17 Therefore, I recommend that you proceed forward with
18 your review and make a decision on this application. If you
19 do move forward with you analysis, again you would go through
20 the same thing that you previously did in Thunderbird, if we
21 get to that point, and that would be again to decide on a
22 formula you want to address and then go through that various
23 elements of that formula if there is one. Thank you.

24 MR. NORMAN: Thank you.

25 I want to address a couple of questions that arose

1 back I think on December 6th, if I'm not mistaken. Some
2 issues came up and if you look at your supplemental packet
3 from January 24th, staff provided you a -- the 2010 Ventura
4 County monthly rent levels for affordable housing.

5 And some questions came up about, well, how much rent
6 can you charge someone that is in the very low income
7 category, and this document provides the answer and hopefully
8 it will be helpful for you in your deliberations.

9 According to this, if you look at the very low income
10 category with one bedroom, which staff believes is most
11 analogous to a mobile home, the maximum monthly rent to be
12 charged is \$866. So that just puts things in perspective on
13 that issue.

14 Some other issues that -- unfortunately, Dr. Baar
15 couldn't be here today, but we did discuss a lot of issues and
16 Dr. Baar did provide some supplemental comments basically
17 commenting on some of the major issues he thought were
18 important, brought out in testimony of both the owner's
19 witnesses and the tenants' witnesses, and I just want to go
20 over those really quickly with you.

21 The owners have stated over and over that a 50
22 percent index -- and we're assuming an MNOI formula here, that
23 a 50 percent index would -- would -- or at least it -- it's
24 implied that net operating income out in the future would
25 reach zero. I think that's what Mr. McCarthy said, and there

1 was a graph, if you recall, with lines that converged.

2 And when you look at the MNOI formula, when you apply
3 it -- it's impossible for net operating income to be zero when
4 you apply the formula because no matter what happens in the
5 current year, in the base year you have a net operating income
6 and it's always going to increase, maybe not as much as
7 inflation, but it's always going to get better. So when you
8 run the formula, it's impossible logically for net operating
9 income to be zero.

10 Now, there's also been -- it's been Mr. Hill's
11 contention and Mr. McCarthy's also that if the City
12 regulations don't have a specific index percentage that
13 therefore you have to use 100 percent or something to that
14 effect, and the case of Berger versus City of Escondido has
15 been mentioned and perhaps Mr. Hehir will have some comments
16 on that to you later.

17 Dr. Baar's looked at that case. I've looked at that
18 case. And in his report he explains that, in fact, there was
19 no indexed percentage for the fair return standard. There was
20 for an automatic, just like here in Thousand Oaks. So that
21 case again supports Dr. Baar's analysis that using an index
22 percentage less than 100 percent passes the constitutional
23 test.

24 Okay. Now, Ms. Spencer has indicated strongly
25 that -- about the price level adjustment and about whether or

1 not you -- the regulations allow you to impute automatic rent
2 increases that were forgone. We have a very unusual case
3 where there have been two rent increases in 30 years, one 7
4 percent and one 4 percent.

5 In discussing this with Mr. Baar, you have to
6 allow -- under the constitutional test, you have to allow an
7 applicant to make up for those rents that have been forgone.
8 If you don't and you run the MNOI, you will never meet the
9 constitutional standard because that number can get driven way
10 down.

11 In fact, the code section that Ms. Spencer cites,
12 which I believe is 2.05, when you look at it -- these
13 guidelines, I admit, sometimes there's some inconsistencies
14 when you look at them, and it's our job as staff to put a
15 reasonable interpretation of these guidelines in their
16 totality.

17 When you look at 2.05, this adjustment of income for
18 below market rentals, this provision in my opinion and in
19 Dr. Baar's opinion was meant to apply to a Vega adjustment in
20 the base year. It's a proxy for a Vega adjustment, which we
21 talked about and I'll go over again later.

22 If -- there was a case that came out just a couple of
23 years ago called Stardust versus City of Ventura where this
24 exact language was at issue in that case, and the appellate
25 court stated that that regulation is a proxy for a Vega

1 adjustment. That's what that is.

2 The price level adjustment in the regulations are in
3 Section 3.07 I believe, and that's different. The price level
4 adjustment calls out specifically to include in the base year
5 only those rents that -- automatic rents that could have been
6 made but weren't for whatever reason, those get inputted into
7 the base year income.

8 And there's nothing there about doing a price level
9 adjustment in the current year. When you look at the totality
10 of this, that makes sense. And so it's staff's position that
11 that's what the price level adjustment's for and you have --
12 you have to use it.

13 Again, staff recommends using the guidelines to the
14 extent the result makes sense. In cases where it doesn't, we
15 feel the Commission has the discretion to wander a little bit.

16 Final major issue is the resolution -- proposed
17 resolution that was provided to you I think at the last
18 meeting, and I'm actually going to go to the PowerPoint,
19 please.

20 May we get to the PowerPoint?

21 Well, I'll -- while that's -- we're waiting for that,
22 there's a resolution in front of you that has staff's proposed
23 findings for this and --

24 CHAIR WERTHEIMER: Mr. Norman.

25 MR. NORMAN: Yeah?

1 CHAIR WERTHEIMER: Give us a couple seconds here.
2 We're trying to get the PowerPoint.

3 MR. NORMAN: There we go.

4 These are some slides that we -- that staff has
5 already shown you on December 6th, but I want to go back to
6 what Mr. Hehir was mentioning about the purpose of the
7 resolution.

8 It's -- when one side's advocating for their client,
9 sometimes they want to pay attention to one part and ignore
10 the other and vice versa. Here's in front of you what the
11 purpose of the -- the ordinance is.

12 Again, safeguard tenants from excessive rent
13 increases, but also provide a just and reasonable return. It
14 is a balancing test, and staff recommends that you have to
15 keep that balancing test in front of you at all times when
16 you're deliberating on this. It's difficult. There's a lot
17 of unusual issues. It's very, very important, and I'll keep
18 coming back to that.

19 Just real quick, going over staff's recommendation,
20 it's been a while. Staff recommends using the MNOI formula.
21 It's one that the court's sanction and that's what these
22 City's guidelines prefer.

23 Staff again recommends 1982 as the base year with a
24 Vega adjustment. Again, the Vega adjustment is an adjustment
25 to the rent levels in that year to approximate what the market

1 rents would be.

2 Also staff recommends an adjustment to operating
3 expenses to take into account the maintenance and
4 administrative expenses that were not on the books in the base
5 year but were on the books in 2009. And we heard testimony
6 tonight that the park owner may have had on the books
7 management expenses starting in 2009.

8 By inputting it to the base year, you equalize and
9 take away that -- that advantage in -- in the current year.
10 So the adjustment that Dr. Baar recommends really solves that
11 issue that was brought up tonight.

12 And finally you have to determine a range of rents
13 and range of indexing. Dr. Baar provided numbers from 50
14 percent to 100 percent indexing, and staff recommends 50
15 percent is a fair return.

16 This chart shows, according to Dr. Baar's report, all
17 of the different rent increases the Commission can consider
18 and would meet the constitutional criteria for fair return
19 according to Dr. Baar. The one highlighted, the 191.95 is
20 staff's recommendation, but all of those are in play.

21 Because this is potentially a very large increase,
22 even the 191 is I think 144 percent increase, staff is
23 recommending a five-year phase-in. The difficulty with a
24 phase-in is if you phase it in over too long a period of time,
25 there is more of a likelihood that a court, for example, could

1 consider that to be a taking.

2 If you give it to the owner all at once, it is a
3 burden on the tenants. Again, going back to what the purpose
4 of the ordinance is, it's a balancing. Fair return, but also
5 not having excessive rents.

6 So staff has fashioned a recommendation, a phase-in
7 that we believe is on that line. It eases the burden on the
8 residents to the extent it can and provides the owner a fair
9 return.

10 Now, one other thing that we didn't mention at the
11 last meeting that staff is recommending is providing the owner
12 a rate of return on that rent that's being forgone during that
13 five-year phase-in. And staff is recommending 7 percent
14 because according to Dr. Baar 7 percent is the expected rate
15 of return for mobile home parks.

16 We feel as staff that having that interest component
17 during the five-year phase-in helps mitigate some of the
18 burden that the owner faces by not having all of this increase
19 at one time.

20 So those are the numbers. When you do a 7 percent,
21 the rents will be a little higher the first year and then
22 decreasing up through the fifth year and then that would be
23 the \$191 increase after the fifth year.

24 Again, the things that staff believes this Commission
25 should focus in on are what's the type of formula. Staff

1 believes the MNOI is the best one to use. What's the base
2 year if you do use that formula. What income and expense
3 adjustments should you make and what rate of indexing should
4 you consider.

5 Staff believes if you follow those steps, it will be
6 helpful to you in coming to a conclusion on your
7 deliberations.

8 Rather than get into more details of what's
9 transpired, I will now answer any questions you might have
10 regarding what I've just stated or anything that has
11 transpired at the hearings to date. Thank you.

12 CHAIR WERTHEIMER: Mike, do you have any questions?

13 MR. SILACCI: I do, a couple. And I appreciate the
14 counsel from Mr. Hehir, and Mr. Norman, I appreciate your --
15 your extra and diligent -- you know, going through the -- at
16 least the guidance to the Commission.

17 But I have to go back just for my own mind and
18 sanity, I need to understand just from the staff's
19 perspective, when did Resolution 84-037 cease to apply to
20 Ranch in your opinion?

21 MR. NORMAN: That's a difficult question because this
22 is the first time there's been a request outside of that
23 resolution.

24 Here's how staff views it: We have not had this type
25 of application before, which is a rate of return application,

1 and we're not stating -- by the Commission taking this action,
2 staff is not suggesting that Resolution 84-037 doesn't
3 necessarily apply in different contexts.

4 It says nothing about whether the age and income
5 restrictions in that resolution are valid. It doesn't suggest
6 that an automatic increase may be under the purview of that
7 ordinance. We're not saying that it does, but we're not
8 saying that it doesn't.

9 So I hope that answers your question.

10 MR. SILACCI: It does in part, but let me -- let me
11 follow up.

12 I mean I've done my best as a layperson to read that
13 resolution and try to understand the context which I think is
14 required of any of us as Commissioners, and my understanding,
15 and maybe I'll ask your opinion or staff's opinion, is that
16 the reason that resolution was passed by City Council back in
17 1984 was to ensure that there was a fair return to the owner,
18 that there was a concern.

19 It not only looked at some sort of orderly rent
20 increases, but it also looked at from the owner's standpoint
21 the erosion caused by inflation to their initial investment.
22 So that's where I'm struggling to try to understand.

23 It seemed to me -- and maybe I guess there's a
24 question here. So I'd appreciate staff's opinion as to why
25 the intent of that resolution which was really to go out and

1 ensure a fair return to the owner, why that doesn't apply to
2 the fair return standards, the constitutional standards now.

3 MR. NORMAN: Well, a couple things, as Mr. Hehir
4 mentioned, and Mr. Hehir may want to weigh in again, there's
5 an 4 percent cap on that -- that resolution, as you recall, in
6 terms of a yearly increase.

7 There is no mechanism in that resolution to make up
8 for rents that may have been forgone. So there is really no
9 good way with my understanding of how fair return applications
10 are viewed by the courts that that mechanism could provide a
11 result that would stand up in court.

12 MR. SILACCI: Okay. But if I may, some more -- a
13 couple more follow-ups to that. Maybe ask it -- I can ask it
14 this way: Is it staff's opinion that the constitutional
15 requirement of fair return trumps Resolution 84-037?

16 MR. NORMAN: Yes.

17 MR. SILACCI: Thank you.

18 I'm still thinking here, Mr. Chairman. I may have
19 another -- another question.

20 MR. NORMAN: And let me -- let me elaborate a little
21 bit on that.

22 It's one issue -- there's lots with the interplay of
23 the past history of this park in applying the Rent
24 Stabilization Ordinance today.

25 Generally when the City acts in its police power

1 capacity to regulate something, that power is limited by the
2 Constitution normally. You can enact and exercise your police
3 power as a city, but not over the Constitution. So that's one
4 way to look at this.

5 MR. SILACCI: Well, and again, I know I don't need to
6 apologize, but I may be asking some basic questions here, but
7 as far as -- obviously we've gotten a lot of materials as a
8 Commission and we've gotten a lot of testimony and legal
9 arguments and cases.

10 But I guess maybe I can simply ask when -- at what
11 point was it clear from a constitutionality basis that a just
12 and reasonable return, the standard was MNOI? I mean at what
13 point did that happen, 1995, 2000? I'm trying to recall.

14 MR. NORMAN: That's a difficult question to answer
15 because these things come up when applications are filed.
16 So this -- if this application had been filed, for example,
17 five years ago, it may have come up five years ago, but it
18 wasn't. So that's a question that's -- I really can't answer.

19 MR. SILACCI: That's fine. I appreciate that.

20 The reason I asked the question is because in
21 reviewing all the materials and trying to follow the history
22 of this and going back and looking again at all the evidence
23 that was offered here, it -- it seems to me that going back to
24 September of 1986 when the Commission was asked to render
25 opinion to counsel in a memo, it specifically excluded Ranch

1 and acknowledged 84-037.

2 And of course, then counsel enacted an ordinance
3 which did a number of things. That's Ordinance 93 -- 933-NS.
4 And while my plain reading of that ordinance is it doesn't
5 specifically exclude Ranch, nor does it include it, it seems
6 that -- that the application of Resolution 84-037 has been
7 consistent all the way including 2000 when the owner sought a
8 rent increase, so on and so forth, which is why I appreciate
9 your providing feedback to me and the Commission questions.

10 I'm just trying to get a basis of -- that's why I was
11 asking the -- I guess the constitutionality standard of -- of
12 what would be the standard you used to determine a just and
13 reasonable return.

14 I have no further questions. Thank you.

15 CHAIR WERTHEIMER: Mr. Hehir.

16 MR. HEHIR: Thank you, Chair.

17 Mr. Silacci, in my perspective and what I was trying
18 to address initially when we started was I look at it a little
19 bit differently as to the concern that when you have an
20 application, which is the first thing you have to look at, we
21 have this application from the owner and it's for a just and
22 reasonable return.

23 So when you have that type of application, you want
24 to look at it to make sure that any decision you make is going
25 to be based on something that would withstand constitutional

1 inquiry.

2 And so in looking at the decision of staff, when I
3 looked at the decision of staff to go to the MNOI and -- and
4 address this application under the ordinance, I understood the
5 reasoning in looking at the cases to say that is obviously the
6 concern, is to make sure that when you come up with a
7 decision, you're basing it on facts and figures and a formula
8 that makes sense to ensure we believe through the case law
9 that a decision is going to be based upon something that can
10 be supported under the Constitution.

11 So that's -- again, we have that balancing, but it's
12 really at the end of the day it's going to be to ensure that
13 you guys are giving -- making a decision that's going to be
14 based upon something that can be supported under the
15 Constitution.

16 That's obviously the ultimate goal, because if you do
17 not do that, in the cases in which the court has found that a
18 board or a commission has not done that, it's -- part of it's
19 because it's a taking because they limited or they did an
20 analysis that wasn't supported by the information that they
21 had before them.

22 The second element, and I believe Mr. Norman did talk
23 about this a little bit, is there are other formulas you can
24 apply. Our ordinance does say MNOI is the one that they
25 initially look at, but there are other formulas.

1 When this park was created, the formula that they
2 were applying was the rate of the - make sure I get it right -
3 the rate of return on investment, and that's where you see
4 that 11.5 percent. We can get into that later on if you want,
5 but when you -- that is another formula that you could apply,
6 of course. It's just when you apply that, you make sure you
7 have the findings for that type of analysis.

8 And that is actually addressed in I believe the
9 packet as well and in Mr. Baar's and staff's presentation I
10 believe was addressed at some point in time by tenants'
11 attorney. And so that's kind of where I was going with my
12 analysis.

13 The biggest -- for me, the biggest thing's on the
14 jurisdictional issue is that I believe that in looking at all
15 these factors that the Commission needs to address this
16 particular application and make a decision on this application
17 because that's what's before it.

18 MR. SILACCI: Thank you. Thank you very much. I
19 mean I -- again, I've appreciated as a Commissioner all of the
20 information either from staff, your guidance, Mr. Hehir, from
21 the applicant, from the tenants' counsel. I've appreciated
22 all that.

23 And I guess, Mr. Hehir, you've kind of helped at
24 least me. You always have to start from the first step and so
25 frankly my questions are -- in my mind are going from the

1 first step and it wasn't really jurisdictional.

2 It was more trying to understand more about
3 Resolution 84-037 as a starting point. And I appreciate
4 emphasizing that the Commission does have discretion as far as
5 the alternatives it can use.

6 I just -- I guess one last -- excuse me,
7 Mr. Chairman. I realize this is questions and not commenting,
8 is that I appreciate the balancing act part of this. But I'm
9 having a little trouble with that especially with all of the
10 forgone rent increases that were allowed for about 30 years
11 and then to come to this point.

12 So that's why I'm really as a Commissioner or at
13 least one person on this dais trying to understand the basis
14 and start with that first step. So thank you.

15 I -- I have no further questions at this point,
16 Mr. Chairman.

17 CHAIR WERTHEIMER: Thank you.

18 Ms. Feldman.

19 COMMISSIONER FELDMAN: Okay. I understand then that
20 84-037 is still in effect?

21 MR. NORMAN: Possibly. It -- possibly.

22 COMMISSIONER FELDMAN: Thank you.

23 I have several other questions. May I proceed with
24 those?

25 Okay. Did the owner of Ranch ever pay its required

1 \$10 per year per unit to the City as required by the rent
2 ordinance and did they pay in 2009 and 2010?

3 MR. NORMAN: I believe the answer is no.

4 COMMISSIONER FELDMAN: Okay. Two more. Did the park
5 owner ever respond to the letter written by Ms. Oshida on
6 behalf of the City and Tim Giles in 2000?

7 And did the -- did the owner take at that time the 4
8 percent rent increase?

9 MR. NORMAN: I don't know if there was a letter. I
10 know they did take a 4 percent increase in 2000 --

11 COMMISSIONER FELDMAN: They did?

12 MR. NORMAN: They did, correct.

13 COMMISSIONER FELDMAN: Okay.

14 MR. NORMAN: 2001, correct.

15 COMMISSIONER FELDMAN: So in 2001, they were -- you
16 were all following 84-037, is that correct?

17 MR. NORMAN: At that time, yes.

18 COMMISSIONER FELDMAN: Okay. I wonder, you included
19 these apartment rents for all levels of income including
20 extremely low income. Was that requested by the Commission?

21 MR. NORMAN: I do recall at the first hearing in
22 December there was some questions about that. I'm not sure if
23 it was an inquiry by one of the Commissioners or from staff,
24 but there was some conversation about it and staff felt that
25 it would help the Commission to get that information to you.

1 COMMISSIONER FELDMAN: So it's -- it arose from
2 staff -- for staff?

3 MR. NORMAN: Yes, staff -- staff obtained that
4 document, correct.

5 COMMISSIONER FELDMAN: Okay. Are you aware of how
6 unconscionable this is to residents who live in the city who
7 have invested their life savings into their mobile home to be
8 compared to those folks who've invested nothing and can easily
9 move from one apartment to another?

10 Did that strike you as unconscionable?

11 MR. NORMAN: Well, that wasn't the intent in bringing
12 that to the Commission's attention. It was a piece of
13 information and it was discussed and staff felt it would be
14 helpful. You may view it that way. I -- staff -- I -- I
15 don't view it one way or the other.

16 COMMISSIONER FELDMAN: Okay. One last question:
17 California has been deemed to be in a state of economic
18 emergency. All community redevelopment funding is expected to
19 end. Is there any residual redevelopment money available to
20 the City?

21 MR. NORMAN: My understanding is yes. The City does
22 have a redevelopment agency that does have funding. I don't
23 know the amount sitting here.

24 COMMISSIONER FELDMAN: Okay. That's all.

25 CHAIR WERTHEIMER: Thank you.

1 Maxwell.

2 VICE-CHAIR SHELDON: Thank you.

3 I have two questions for you, excuse me, sir,
4 apologize.

5 The two sides have really differed on their views of
6 the expenses. How should we reconcile those two views?

7 COMMISSIONER FELDMAN: Could you get closer to the
8 mike, please.

9 VICE-CHAIR SHELDON: The question is on expenses and
10 the -- the two sides having very different views on expenses,
11 and I was wondering how you reconciled the two different
12 views.

13 MR. NORMAN: Well, I'm -- I'm not clear what
14 specifically you're focusing on in terms of the difference.

15 VICE-CHAIR SHELDON: Well, at times there were
16 questions about the credibility of the expenses in the last
17 couple of years and the inclusion and the exclusion of certain
18 things and if you could comment just a little bit on those.

19 MR. NORMAN: Yeah. How staff approached that was
20 Dr. Baar recognized that there was a management expense that
21 was on the books basically in the current year and that it
22 wasn't on the books in the base year.

23 So when he ran the formula, Dr. Baar inputted
24 basically a management expense in the base year so that when
25 you're doing a comparison, you're comparing like things. So

1 that in staff's opinion kind of eliminates any distortion in
2 the end result that the owner may gain by having increased
3 expenses in the current year. If you equalize it in the base
4 year, then it takes away any advantage that the owner would
5 gain from that.

6 VICE-CHAIR SHELDON: My next question, how does the
7 staff reconcile the residents as being low income and
8 qualified as such with now having to pay rents that aren't
9 necessarily considered to be low income?

10 Like from a practical standpoint, the transition of
11 bringing people into the park and saying you have to earn
12 below this amount of money and then changing the rent
13 structure and saying the rents are now higher and might not be
14 affordable to somebody who was qualified --

15 COMMISSIONER FELDMAN: I'm sorry. We cannot hear
16 you. Could you please speak into the mike.

17 VICE-CHAIR SHELDON: Certainly.

18 Did you get the --

19 MR. NORMAN: I did. You may want to repeat the
20 question, though.

21 VICE-CHAIR SHELDON: I just wanted to understand from
22 a practical standpoint how staff reconciled having low-income
23 people that were qualified as such, the practical transition
24 of now having them pay rents that are not designed for low-
25 income individuals. That -- is that essentially our problem?

1 MR. NORMAN: Well, I mean that's -- that would be
2 probably a problem in any mobile home park in the city. The
3 whole mobile home Rent Stabilization Ordinance is geared for
4 low-income residents. That's the intent.

5 And so there's an implied assumption that when rents
6 are raised to the constitutional minimum that it would still
7 be feasible for lower income folks to live there.

8 Now, this is the difficulty because lower income is
9 defined by the County and the State and ultimately by the
10 Federal Government in a certain way and that's why staff
11 provided that -- that document. That's the best thing that
12 staff has to give you a proxy, and albeit an imperfect proxy,
13 of what a comparable lower rent would be.

14 And it seems high, but that's -- that's -- that's
15 what it is.

16 VICE-CHAIR SHELDON: Thank you very much.

17 CHAIR WERTHEIMER: Ms. Ferruzza.

18 COMMISSIONER FERRUZZA: I don't have any.

19 CHAIR WERTHEIMER: 84-037, if we were to consider
20 that, is the base year 2009?

21 MR. NORMAN: That's a difficult question. I'm not
22 sure when you say consider it, I'm not sure how you want to
23 consider it, so.

24 CHAIR WERTHEIMER: Oh, if we chose that as the
25 determining method.

1 MR. NORMAN: The methodology?

2 CHAIR WERTHEIMER: Yeah, the methodology.

3 MR. NORMAN: Dr. Baar in his report did provide a
4 couple calculations based on a rate of return on investment in
5 his report, and he did it based on -- one of them was at 11.5
6 percent rate of return.

7 And that number -- when he ran the number comes out
8 to a rent increase of \$214 and that is stated on page 22 of
9 the staff report.

10 CHAIR WERTHEIMER: How does that answer my question?
11 I'm baffled.

12 MR. NORMAN: I'm trying -- maybe I don't understand
13 your question.

14 CHAIR WERTHEIMER: In -- if the methodology was based
15 on 84-037, would we -- would we start at a base year of 2009?
16 I understand an ROI is -- based at 11.5 percent is another
17 methodology that gives that \$214.66 figure, but if we chose to
18 use the methodology of that resolution, we need to --

19 MR. NORMAN: Well, I'm -- I'm -- just want to be
20 clear that I understand what you're asking and so forgive me
21 for asking questions back, but my understanding from your
22 question is if you wanted to use the methodology that's
23 contained in Resolution 84-037, that there really isn't a base
24 year to use. It's a completely different methodology.

25 And so my understanding of that methodology is you

1 figure out what the amount invested was for the park at some
2 point in time, and then what Dr. Baar did was he took that
3 investment -- in this case we know it was \$500,000 back in
4 1977.

5 He inflated that investment amount over the course of
6 time through a CPI adjustment and then applied the 11.5
7 percent return to what that number is, coming out with an
8 adjustment of \$214. That -- that was the methodology that
9 Dr. Baar used.

10 So I hope that -- if it doesn't answer your question,
11 I hope it clarifies things.

12 CHAIR WERTHEIMER: Did the -- did the staff look at
13 what -- if they used 80 -- 84-037 what the rent would be
14 today?

15 MR. NORMAN: Yes. If they had take -- let me just be
16 clear. Had they taken all their rent increases that they were
17 entitled to under 84-037, then according to Dr. Baar's
18 calculations, they would be entitled today to an increase --
19 or rents would be \$147 more than they are today per month.

20 CHAIR WERTHEIMER: Another area that was talked about
21 was -- or and/or requested is using a base year of 2009, and
22 if we did that and considered that, where -- and you used the
23 Vega in that, where would it be today?

24 MR. NORMAN: Well, again, in Dr. Baar's report, he
25 did do that. There was a Vega adjustment with Jim -- James

1 Brabant was the City's appraiser on this, and one of the
2 things that he did in his appraisal is do a comparable current
3 controlled rent for 2009. And his conclusion -- which is
4 basically the Vega adjustment for 2009, to simplify it.

5 And he came to the conclusion that rents would have
6 to be increased \$267 per month for a 2009 base year with a
7 Vega adjustment.

8 CHAIR WERTHEIMER: That's it. Thank you very much.

9 Applicant -- and applicant will now have 15 minutes
10 for rebuttal and closing comments.

11 MR. HILL: Good evening. I'm sorry. I was waiting
12 for Mr. Prescott to sit.

13 Good evening, members of the Commission. I was
14 waiting for Mr. Prescott to finish his comments. I didn't
15 want to interrupt. I'll -- I'll take less than 15 minutes.

16 I appreciate the patience of the Commissioners and I
17 appreciate their willingness to -- to consider all the issues
18 that have been represented by all the sides and to analyze
19 the -- the regulations and the ordinance and to try to come to
20 a fair and just result.

21 I appreciate no more interruptions from tenants'
22 counsel. If the Chair could admonish her accordingly. Thank
23 you.

24 CHAIR WERTHEIMER: Wasn't her.

25 MR. HILL: Oh.

1 CHAIR WERTHEIMER: It was a response, but it wasn't
2 her.

3 MR. HILL: Thank you. Thank you.

4 What we're -- I'd like to first address a few
5 misconceptions about what we're doing here. What we're doing
6 here is not trying to go back and recapture what was left
7 behind over the last 30 years. What we're trying to do is to
8 come up to what is the just and reasonable return at present
9 and going forward.

10 The tenants -- as Mr. McCarthy explained in his
11 presentation, the tenants have received an incredibly
12 significant benefit for the last 30 years, much more
13 significant than the -- than the simple \$100,000 benefit that
14 the park owner received way back in 1986 when he -- or 1976
15 when he constructed the park.

16 That's -- that's all been taken care of in -- over
17 the last 30 years. The residents have -- have received a
18 great benefit. The City's received a great benefit by being
19 able to maintain -- help low-income residents maintain their
20 residences in the Ranch.

21 And many of the -- some of the testimony that we've
22 heard from the residents is that they've been able to go out
23 and buy coaches and very nice coaches with the amount of rent
24 that they've saved under these very extreme restrictions on --
25 on rent increases, and for a number of years there have been

1 no -- no increases sought.

2 So I don't think anyone can fault the owner here for
3 being quite generous and for being quite concerned with the --
4 with the -- the plight of the residents. And I think you've
5 heard the owner state categorically that he is not going to
6 push people out and cause them to be out on the street because
7 they cannot pay the rent increases.

8 What we're talking about here is the fact that we've
9 got coaches going vacant. We've got people that can't afford
10 to buy -- the very same low-income people that -- that we were
11 intending to benefit in the -- in the first place being unable
12 to come in and buy coaches in the park and we're going to
13 continue to see vacancies.

14 It's the park owner's position that those coaches
15 that are currently vacant should be adjusted fully up to the
16 requested amount of the rent increase. There should be no
17 consideration for tenants -- for tenants that don't exist
18 there in those mobile homes. That's approximately I believe
19 12 or 14 coaches currently out of the 74.

20 With respect to the other ones, the other coaches,
21 while we -- while we disagree was that -- that -- that there
22 should be any adjustment to the maintenance of net operating
23 formula because the maintenance of net operating income
24 formula is really that balancing between the constitutional
25 fair and reasonable return and the interests of the tenants in

1 not having unreasonable rent increases. That's the balancing.

2 And I think you heard that -- that even if we were to
3 start over from, you know, the year 2007 or 2009 and apply the
4 Vega adjustment, there would be -- need to be a significant
5 rent increase in order to achieve a just and reasonable
6 return.

7 So what we're -- what we're here considering tonight
8 is -- and what the Commission has discretion to determine is
9 whether or not under the maintenance of net operating income
10 formula there is a justifiable rent increase. And we've heard
11 and we've seen evidence that there is, in fact, significant
12 increase in expenses and a significant increase in inflation
13 from the base year of 1979 or whatever base year the
14 Commission decides to -- to adopt to -- to the current year.

15 And we've heard a lot of anecdotes and a lot of
16 suppositions about whether or not the expenses increased
17 inordinately or were unreasonable, but there's been no
18 credible testimony as to whether or not those increases are
19 unreasonable or not.

20 The testimony of the -- of Mr. Taylor to that extent
21 revealed that he did not know any industry standards. He did
22 not make any inquiry of the park or make any inquiry of the
23 applicable regulations or ordinances to -- to really
24 understand what those expenses should be in a reasonable
25 fashion.

1 So we -- what we have is what are the real expenses
2 of operating the park, and the Commission is not entitled to
3 look at other methodologies or look at other evidence in the
4 absence of any credible evidence that these are not the real
5 operating expenses for -- for the year 2009.

6 We appreciate the attempt of Mr. Baar to try and --
7 and make a -- a -- a comparison between 2009 and the base
8 year, but such a comparison is not warranted first by the
9 ordinance or regulations and second, is not according to any
10 accepted methodology in any of the cases that I've reviewed or
11 according to any accepted methodology that Dr. Baar has ever
12 used as far as I have been able to review his prior testimony.

13 So what we've got here are increased expenses and
14 inflationary and -- and significant inflation from the base
15 year that requires an adjustment to bring the maintenance of
16 net operating income in the base year up to the level it
17 should be with those inflation adjustments to the current
18 year.

19 A lot has -- has been made of the -- a lot of
20 attention has been focused on the Decker case and probably
21 inordinately. I don't think the Decker case ever made a
22 decision as to what percentage of CPI should be applied.

23 What the Decker case said is it need not be 100
24 percent. That's -- that was the holding in the Decker case,
25 and it was clear -- very clear in the Decker case that the

1 court looked at both a -- a not greater than 60 percent
2 requirement in the -- as Mr. Baar and as Mr. Norman have
3 pointed out in the annual increase and also looked at the
4 Commission's prior history of applying a 75 percent CPI
5 adjustment to prior rent adjustment applications.

6 If we -- I don't know that anyone in the City staff
7 has looked at prior rent adjustment applications that may have
8 been considered by the Commission and I don't know that there
9 really -- really have been any. But if -- if the staff were
10 to apply Decker, then it would be looking at a range between
11 the 75 percent allowed for annual rent increases of the City
12 and any -- and -- and 100 percent.

13 So if you're going to apply Decker, then apply it
14 correctly. Apply it -- give us somewhere between 75 and 100
15 percent, but not down -- down to 50 percent. And that's --
16 that's really not even holding in Decker, but that's just
17 the -- the -- really the dicta or the suggestion that the
18 court is making in the Decker case.

19 I can't stress enough the fact that if we -- if we
20 continue under the current way the park is being restricted in
21 its rent increases, the park will go under. The park will be
22 of less value than the coaches on the park, and the park owner
23 will be entitled to a takings action against the City for its
24 application of the -- of the resolution and/or rent ordinance.

25 What we're trying to do here tonight is -- is not put

1 tenants under, but we're trying to get the park rents at a
2 level that they should be for a just and reasonable return so
3 that moving forward when these tenants move out and other
4 tenants want to come in that we can be able to charge a just
5 and reasonable return. And we feel we should be able to do
6 that immediately for those 12 to 14 spaces that are currently
7 vacant.

8 With respect to the Commission's jurisdiction and
9 starting -- and looking at Resolution 84-037, we have
10 basically two points to make. First, that Government Code
11 Section 65-915 gives a 30-year sunset on any income -- low
12 income restriction that might be applied under a City zoning
13 code for purposes of offsetting incentives that are given to
14 the park owner such as the \$100,000 in -- in -- in fees that
15 were -- that were not required at the time of original park
16 construction. That 30-year sunset occurred approximately
17 2007.

18 With regard to whether or not section -- Resolution
19 84.037 currently applies, it is a zoning ordinance and -- or a
20 zoning resolution, and a zoning resolution must be passed by
21 ordinance and it cannot be passed by resolution.

22 We've addressed that issue previously. I know that
23 the tenants' attorneys have submitted their -- their brief
24 trying to take issue with that and saying this is not a
25 zoning -- a zoning resolution because it doesn't set forth the

1 zoning.

2 But I think they're being a little bit narrow in
3 their construction of what a zoning resolution is. You'll
4 find the rent adjustment ordinance in the -- under the zoning
5 code of the City ordinance -- of the City code.

6 Anyway, unless there are any questions by the
7 Commissioners, we would just like to urge the Commission to
8 apply a just and reasonable return and to treat the park owner
9 fairly, and we promise that we will treat the tenants fairly
10 as well. Thank you.

11 CHAIR WERTHEIMER: Thank you. Before you go away --

12 MR. HILL: Yes.

13 MR. SILACCI: Questions.

14 Mr. Hill, would you please tell us and then maybe
15 again I mean the rationale that the owner did not take the
16 allowable annual increases under whatever guiding regulation,
17 but I'll say 84-037.

18 MR. HILL: I can't speak for what the owner -- went
19 on in the owner's mind other than perhaps being quite generous
20 and -- and not -- not doing anything.

21 But let me -- let me just cite you to the fact that
22 the owner has spent tens of thousand of dollars with respect
23 to this application, probably over \$100,000 just getting it
24 through the staff review, going through the City records,
25 going through everything that's been involved here and -- and

1 getting this -- hiring the experts to testify.

2 If you would expect them to do this every year and
3 pile on \$100,000 to the tenants' rent every year, then you can
4 see where the owner is being quite generous in having not
5 pursued this and also trying to save costs on the owner's
6 behalf by -- by -- by having to go through this process.

7 And you heard staff say we can't even understand our
8 own regulations here. So, you know, it's -- it's not an easy
9 process, and -- and it's a very expensive process. And I
10 really can't answer what -- what went on in the owner's mind,
11 but I'd just like to point out that -- the costs involved.

12 MR. SILACCI: Well, as a follow-up, would it not have
13 helped the owner to take those allowed annual increases?
14 Would that have not helped the owner in the current year as
15 far as getting to a just and reasonable return?

16 MR. HILL: It would have helped the owner; however,
17 the owner by not doing so has waived no constitutional rights.
18 I don't think you can say that the owner has waived his
19 constitutional rights by not taking those.

20 So I think that maybe answered the -- maybe answering
21 the implied question that you were going --

22 COMMISSIONER SILACCI: That wasn't my implied
23 question, but thanks for answering that as well.

24 CHAIR WERTHEIMER: Ms. Feldman.

25 COMMISSIONER FELDMAN: Mr. Hill, you stated that the

1 residents have enjoyed the restrictions made by the City.
2 They've enjoyed benefits --

3 MR. HILL: Certainly.

4 COMMISSIONER FELDMAN: -- from restrictions made by
5 the City. Isn't it rather that they've enjoyed benefits given
6 by the park owner?

7 MR. HILL: I don't know that they -- if you look at
8 the history behind that restriction, I think the park owner
9 was actually asking for a different percentage and the City
10 imposed that restriction contrary to the request of the park
11 owner.

12 So to say that they were given by the park owner, I
13 think the park owner has been very generous, and I do
14 appreciate the fact that -- that you're applauding the park
15 owner for being so generous in -- in not seeking rent
16 increases.

17 But I don't -- if you're -- if you're trying to imply
18 that the park owner is somehow estopped from exercising his
19 constitutional rights, I -- I can't agree with that.

20 COMMISSIONER FELDMAN: Okay. As a follow-up, in
21 2000, the City offered Mr. Hohn the opportunity to use the
22 rent ordinance instead of the 84-037. Mr. Hohn chose to use
23 84-037. So he was making a certain choice at that time. Do
24 you agree?

25 MR. HILL: I don't know from what I read of the

1 letter whether they were making a serious offer or not. That
2 was a staff communication.

3 You know, if -- if -- you know, if the City had come
4 to the park owner and -- and adopted some different
5 resolution, then I could see there being a -- a serious offer,
6 but I don't know that the staff had any -- any rights to do
7 anything other than have a discussion with the owner.

8 And I don't know what -- what the answer was. I
9 haven't seen any writings. All I could do was look in the
10 City records and all I could find was that correspondence.

11 I think eventually what happened was that -- that
12 there was a 4 percent increase that was given which was, you
13 know, better than nothing I guess in that context.

14 COMMISSIONER FELDMAN: Okay. How much do you think
15 it cost Mr. Hohn to make that 4 percent rent increase at that
16 time?

17 MR. HILL: I don't know. I know there was a lot of
18 documentation included with that. I haven't made any inquiry
19 and I don't think I'm qualified to testify on my personal
20 knowledge.

21 COMMISSIONER FELDMAN: Okay. Well, I can assume it
22 wasn't \$100,000. You said every time you go for a rent
23 increase if they have to spend \$100,000 that's totally
24 unreasonable and you're right. It is.

25 MR. HILL: Yeah.

1 COMMISSIONER FELDMAN: And I imagine if he had gone
2 every year for the 4 percent rent increase it wouldn't have
3 cost him \$100,000. That's just the assumption. Do you agree
4 with that?

5 MR. HILL: I don't -- let me first state I don't
6 think it was an automatic 4 percent increase every year. It
7 was inflation with a cap of 4 percent, and a cap of 4 percent
8 doesn't get anywhere near inflation.

9 And -- and it was a regressive application of -- of
10 what was intended to be 11 and a half percent return on
11 investment formula. It wasn't really the 11 and a half
12 percent return on investment.

13 You've heard Dr. Baar testify that to really get the
14 return on investment, you'd have to kick out the 4 percent
15 cap. So I don't -- I don't know whether -- what the park
16 owner thought, and -- and -- you know, I'm sorry. I'm just
17 the wrong person to ask for that.

18 But -- but I can tell you that -- that the 4
19 percent -- the expense of going for that may not have
20 justified getting the -- the 4 percent cap rent increase.

21 COMMISSIONER FELDMAN: Okay. Thank you.

22 CHAIR WERTHEIMER: Mr. Sheldon.

23 VICE-CHAIR SHELDON: I have nothing.

24 CHAIR WERTHEIMER: Ms. Ferruzza.

25 COMMISSIONER FERRUZZA: Okay. I want to ask you, are

1 you proposing that no matter what the rent Commission decides
2 for the existing tenants, that the rent increase whatever is
3 decided that new tenants coming in will get the new total rent
4 increase to begin with, this whole total amount of whatever is
5 decided on? Are you suggesting that?

6 MR. HILL: Yes.

7 COMMISSIONER FERRUZZA: That's what I thought.

8 CHAIR WERTHEIMER: Yes, I have a couple questions, if
9 I may.

10 You had mentioned and it was very generous that -- on
11 the increase, whatever it would be because it wasn't
12 specified, that none of the current tenants who couldn't
13 afford it would not be thrown out. Is that accurate?

14 MR. HILL: That's correct, and Mr. Hohn nods and
15 agrees.

16 CHAIR WERTHEIMER: And he would put that in writing?

17 MR. HOHN: If we get the rent increase we're asking
18 for, yes.

19 CHAIR WERTHEIMER: Well, now, that's not what he said
20 earlier and that's why I'm asking this question.

21 MR. HILL: No. I think the statement that we made in
22 writing was if the park is treated fairly, and I think we
23 discussed fairly being, you know, applying the MNOI formula as
24 per -- as per the ordinance, yes.

25 CHAIR WERTHEIMER: Okay. So fairly and getting what

1 you asked for is the same thing?

2 MR. HILL: Well, fairly -- fairly is -- has to be
3 defined in terms of the MNOI formula which the City adopted
4 which is intended to be a reasonable -- just and reasonable
5 return and balance the interests of the -- of the tenants as
6 well.

7 CHAIR WERTHEIMER: Hum.

8 MR. HILL: So we define fairly as the MNOI formula
9 that the City adopted, yes.

10 CHAIR WERTHEIMER: Would you -- if the increase that
11 came out of this hearing increased the value of the park,
12 would you consider that a taking?

13 MR. HILL: I'm sorry?

14 CHAIR WERTHEIMER: If whatever increase came out of
15 this hearing, whether -- the choices that are available and
16 that price increase increased the value of the park, then
17 would you consider the rate a taking?

18 MR. HILL: It would really depend on whether a court
19 were to find that it was not a just and reasonable return.
20 That's -- you know, it would be our opinion that if the MNOI
21 formula is not applied correctly, it could be a taking.

22 It -- it -- I can't say one way or another whether or
23 not -- you're asking an incomplete hypothetical. I don't know
24 what kind of rent increase you're -- you're going to decide on
25 tonight. So I really can't say whether there would be a

1 taking or not, and I haven't done the analysis.

2 But if the MNOI formula is not applied correctly,
3 then I think there's a good argument that there could be a
4 taking.

5 CHAIR WERTHEIMER: Well, what I was implying is by
6 the -- by the appraisal that was given -- and I'm kind of just
7 curious though. Maybe the taking still can be considered, but
8 by the appraisal that was given to us gave value of 80 cents a
9 square foot for his property. And based -- and based on an
10 investment review, that -- an increase would increase -- an
11 increase in rent would increase the value of his property, so.

12 MR. HILL: I disagree with your assumption that
13 the -- that the -- I believe you're talking about the 2009
14 appraisal that was done by a broker that -- that -- that
15 looked -- looked at the current rent structure under the --
16 under the restricted rent structure and said that based on
17 that -- that income stream, your -- your park value is
18 possibly \$160,000. Is that -- is that what you're asking
19 about?

20 CHAIR WERTHEIMER: That estimate gave the value of
21 the park at \$168,000, yes.

22 MR. HILL: Yeah. And -- and my reply to you is that
23 you're making an assumption that that appraisal is -- is the
24 market value under a just and reasonable return. And I
25 disagree most strongly with that assumption that -- that --

1 that the market value under a just and reasonable return
2 should be that low.

3 CHAIR WERTHEIMER: Well, I disagree that his
4 appraisal has any value at all.

5 MR. HILL: I just think --

6 CHAIR WERTHEIMER: I think it's worthless.

7 MR. HILL: I just think it goes to show where we're
8 going if we -- if we remain under the current rents under
9 the -- or under the regulation. We'll -- we'll eventually
10 have zero value in the -- zero market value for the park and
11 there will be a total and complete taking.

12 CHAIR WERTHEIMER: So your appraisal wasn't entered
13 as evidence to show value, but show a trip down zero worth
14 lane?

15 MR. HILL: It was -- it was entered to show an
16 opinion of value by a qualified broker, yes, and it was
17 entered to show how far down we've gotten in market value of
18 the park because of the application -- the owner's application
19 under the regulation.

20 CHAIR WERTHEIMER: That's it. Thank you.

21 Any more questions from up here?

22 I move that we close the hearing.

23 MR. SILACCI: We have questions for applicant's
24 counsel.

25 CHAIR WERTHEIMER: We're done with questions. So we

1 close the meeting and take a break.

2 We'll be back at 8:45.

3 (Recess.)

4 CHAIR WERTHEIMER: We're going to have our
5 deliberation as a Commission.

6 So Mr. Hehir, would you like to summarize for us, the
7 Commission, our options, responsibilities at this time.

8 MR. HEHIR: Thank you, Mr. Chair and Commissioners.

9 We are finally at a point after three days basically
10 of testimony where we have what is really a very narrow issue
11 that is before you, and that issue is that the owner has
12 submitted an application for a just and reasonable rent
13 adjustment at the Ranch Mobile Home Park.

14 Now, certainly as we all can state, this park is very
15 unique and has an incredible history that makes it and your
16 decisions very difficult and makes the procedure more
17 complicated.

18 But the issue, again, before you is the same as we
19 had with Thunderbird and that is to take the application and
20 apply it, and again, it's my opinion that you need to use the
21 ordinance to do that.

22 The jurisdiction that has been addressed is not
23 something for you to consider. Now, when I say that, I -- I
24 want to first give you a couple of rationales from cases that
25 I think really hone and -- and mean -- should mean something

1 to you as far as your analysis is concerned, and then I want
2 to talk to you about the rationale of what you have before
3 you.

4 One of the cases that you've I know heard a number of
5 times is a case called Cavanaugh, and the Cavanaugh case has
6 several points. It's a California Supreme Court case, and one
7 of the decisions or findings in that case is that the court
8 found that there was no single formula to calculate rent
9 ceilings. The court also noted that the maintenance of
10 operating income, the MNOI, for calculating rent ceilings is a
11 typical method.

12 We've also talked about the Berger case, and we've
13 had different opinions on what the Berger case stands for. We
14 had the tenants' attorney and also the owner's attorney
15 talking to Mr. Baar I believe about the Berger case
16 specifically.

17 The Berger case is important because it does outline
18 some basic principles governing rent control, and it notes
19 that a city's ability to control rents is principally
20 circumscribed by substantive due process which requires that
21 all legislation have a reasonable relation to a proper
22 legislative purpose.

23 Now, here is the difficult part about your task: The
24 Berger case also notes that a constitutionally valid rent
25 control scheme must allow park owners to earn a just and

1 reasonable or fair return on their investment. That's what
2 this case says.

3 The problem is that when it goes to what does fair
4 return mean, it -- the court notes is incapable of precise
5 definition. However, the court further notes it is generally
6 considered to include returns that are commensurate with the
7 returns on investments and other enterprises having comparable
8 risks or high enough to encourage good management, reward
9 efficiency, discourage the flight of capital and enable
10 operators to maintain their credit.

11 The term "fair rate of return," again, we've said
12 this over and over, but I want to remind you, refers to a
13 constitutional minimum within a broad zone of reasonableness.

14 I know that might be even more confusing, but that's
15 the task before you, is that there might be this broad range
16 of what is reasonable for a rate of return, but that is
17 something that we have to always consider when we're making
18 your decision.

19 Another thing in the Berger case, and these are two
20 points that have been recently discussed, is that in the
21 Berger case the court mentioned that a rent control system
22 must generally permit profits to be adjusted over time for
23 inflation so that the real value of the profit does not shrink
24 toward the vanishing point. In other words, you can't freeze
25 the dollar.

1 Another point of Berger is that indexing at 100
2 percent is not, not constitutionally mandated. The court
3 noted a city is not required as a matter of law to use 100
4 percent indexing of NOI in an MNOI approach.

5 And when I talk about approach, and we talked about
6 this at the last meeting, your first task is to talk about a
7 formula. We have the MNOI formula which we have talked about
8 and I know you are familiar with.

9 There is another formula that has been in a sense
10 brought up in this discussion and that is the rate of return
11 on investment. While I do not believe that you can apply the
12 resolution as far as the jurisdictional issue. You do not
13 have jurisdiction under that resolution to decide whether or
14 not you can go forward with it. The ordinance actually is
15 what is controlling this application.

16 However, the rationale of that resolution in '84,
17 that rationale, it's talking about a rate of return on
18 investment and that goes back to again the history of this
19 case. And again, I will repeat this is a unique case because
20 of history.

21 In the rate of return on investment when we looked at
22 this park, there was an idea and an acceptance that there
23 would be 11.5 percent rate of return on investment starting
24 when the park opened.

25 Now, we talk about that as a possible formula. That

1 is something that you as a Commission need to decide first is
2 what formula. Do you want to apply MNOI. Do you want to
3 apply this rate of return on investment.

4 I will say that in looking at the information we have
5 before us, if you use a rate of return on investment, you need
6 to use the rationale of 11.5 percent because that is what it
7 was initially doing when it was created in 1977.

8 If you use MNOI, we can talk about those various
9 aspects of the MNOI. As you know, staff has recommended MNOI.
10 The applicant's attorney has recommended it and the owner has
11 recommended MNOI.

12 And the tenants' attorney initially and for most of
13 their argument is about doing the ordinance -- or doing,
14 excuse me, the resolution and saying that the Commission does
15 not have jurisdiction, but if the Commission were to go to an
16 MNOI, then they would use a base year of 2009.

17 So I wanted to give you those basic principles of
18 this -- again, we talk about the balancing. We say it over
19 and over again, but there is a balancing of the interest of
20 the tenants and keeping something steady with the rent control
21 but also the interests of the owner and making sure that if
22 you make a decision on any adjustment it is constitutionally
23 supported.

24 And I know when we look at these cases it doesn't
25 tell you, well, if you, you know, add this number and do this

1 number, you have it. Unfortunately, we don't have that type
2 of thing.

3 But I believe that when you look at what staff has
4 done with their recommendation at least, they are trying to
5 tackle that issue with all these options and all these
6 different figures to kind of say, here, the meat and potatoes
7 is you need to address this application that's before us and
8 you need to address it through the ordinance.

9 So I would say that the first step you would need to
10 take is what formula you want to apply. I believe from the --
11 and again, whatever formula you apply, by the way, it is very
12 important that you make a basis or a finding for why you are
13 relying on that formula.

14 If it's a rate of return on investment, we need to
15 talk about that -- or you need to talk about that. If it is
16 MNOI, you need to discuss that. And then once you have that
17 type of formula, then you need to go forward with that
18 analysis under that particular formula.

19 And if you have any questions at this point, we can
20 talk about that or you can just forward with your next step.

21 CHAIR WERTHEIMER: Any questions from the
22 Commissioners for Mr. Hehir?

23 MR. SILACCI: Sorry. I'm usually slow. So
24 Mr. Hehir, help me.

25 MR. HEHIR: Sure.

1 MR. SILACCI: Because I -- and I appreciate how
2 you've laid it out. I understand, but when the advice you're
3 giving the Commission is we can't decide jurisdiction, does
4 that mean we can't decide to apply this application under
5 anything other than the ordinance?

6 MR. HEHIR: I think I understand what you're saying,
7 and my answer is -- and I'm not trying to be a lawyer here,
8 but it's actually two parts.

9 It is -- that's correct, except you have to realize
10 that our ordinance provides four formulas and it could
11 imply -- you know, it does obviously state the MNOI is the
12 preferred method. However, there are other alternatives that
13 you can apply.

14 My point to you is that if you apply a different type
15 of theory for recovery or for the application, that you base
16 it upon the findings that you have before you. And what I
17 would counsel you is that you certainly do not want to try to
18 come up with an -- and I'm not trying to put words, you know,
19 or any ideas in anyone's mind.

20 But when you look at the cases, some of the problems
21 that you have is that the Commission or the Board is trying to
22 do something positive and trying to say let's just tackle this
23 and let's take everyone's idea and put it together and then
24 we'll divide it by three or divide it in some way and then
25 we'll come up with a number.

1 And the courts have faulted that type of analysis
2 because you say you just need to use a formula and -- and show
3 the groundwork for each point that you have and to take
4 different aspects of different ideas and say, oh, this makes
5 sense and this makes sense because we want to get to a certain
6 number, it's very difficult and it can be very challenging.

7 I think my goal in counseling you and I think staff's
8 position in -- and we've said this before is to try to give
9 you options or -- or information so you can make a decision
10 that can be defended if it needs to be as a just and
11 reasonable return.

12 MR. SILACCI: I appreciate that and maybe I can ask
13 the question differently. Can this Commission decide not
14 to -- can this -- it's going to be a double. Can this
15 Commission decide not to make a decision on this application
16 because we believe -- we may believe that the ordinance
17 doesn't apply to the application?

18 MR. HEHIR: I -- my recommendation would be that no.
19 My recommendation is that the ordinance does apply and that
20 the issue on jurisdiction that should you even be addressing
21 this is not something for you to tackle.

22 MR. SILACCI: Okay. I appreciate that. Thanks --
23 thanks for -- they may be basic questions, but that helps me
24 and hopefully helps my -- my Commissioners.

25 MR. HEHIR: No, please. Do not apologize. This

1 is -- again, very complicated issues that we have here and a
2 very complicated case due to the history.

3 MR. SILACCI: Just another question that I have,
4 Mr. Chair, if I -- if I may. I realize then -- then it falls
5 to the Commission to decide the method. If we choose an
6 alternative from MNOI and say a rate of return alternative,
7 are we then tied to the original 11 and a half percent that
8 was set forth in the development commission?

9 MR. HEHIR: I think you -- my recommendation would be
10 you would have to follow that rationale, and the reason why is
11 because when you look at the alternatives -- and Mr. Baar
12 actually addresses this in his report in a couple sections,
13 and if you want, I can get that for you if you want.

14 But when he looks at the rate of return on investment
15 if that's another one, and again, whatever one you use,
16 whatever formula you want to pick out of the air, whether it's
17 MNOI or rate of return of investment, you certainly have to
18 have the findings and the data to back that up.

19 So if you want to go with a rate of return on
20 investment based upon this history of this particular park,
21 you would need to go to the 11.5 percent because that is the
22 foundation that you have to go with.

23 MR. SILACCI: Thank you. I understand.

24 I have no at least further questions based on the
25 counsel that Mr. Hehir has provided us.

1 CHAIR WERTHEIMER: Ms. Feldman, any questions?

2 This way?

3 Well, I think we should -- I suggest that we
4 deliberate in a similar manner that we did for Thunderbird and
5 we kind of break apart our decisions and first talk about
6 the -- to determine the method that has been put out for us to
7 consider.

8 So with that, Michael.

9 MR. SILACCI: Well, again, I'm not afraid to profess
10 my ignorance because there's been so much detail and so many
11 calculations that frankly it would be helpful to me to
12 understand what -- what my options are.

13 For example, if I felt that MNOI was the standard,
14 then I would want to see what my options are. If I felt that
15 an alternative which would be rate -- you know, rate of
16 return -- rate of return -- return on investment, excuse me,
17 then I would want to know, you know, what that came -- you
18 know, what the end result would be.

19 MR. HEHIR: Okay.

20 CHAIR WERTHEIMER: So you'd like to know what -- if
21 an ROI method was used at 11.5 percent you'd want to know
22 where we would be, the rate, is that your question?

23 MR. SILACCI: Yes -- no. What -- I'd like to know
24 given all the information that we've been provided -- it's
25 almost -- what are the matrix of options given all the

1 recommendations?

2 MR. HEHIR: Sure.

3 COMMISSIONER SILACCI: And has that changed to date?

4 MR. HEHIR: Okay. I think from the review that I
5 have seen from the evidence, the information provided to you,
6 I talked about the rationale of the 11.5 percent. That is
7 based upon the initial history of this park. Obviously the
8 other option is the MNOI.

9 If you go with the MNOI formula, then there is a --
10 a formula that you would follow and you would again discuss
11 each point, one of them being what base year do you wish to
12 address, do you wish to use as the base year for an MNOI
13 formula.

14 In this case, the owner has used 1979 as the base
15 year. In this case, the staff has used 1982, and -- and I'd
16 have to actually check again, but I believe in looking at all
17 the -- the rationale of the tenants' attorney at the end I
18 believe she says -- initially at least she says use 2009.

19 I do believe that her PowerPoint actually has if
20 you -- you could also go to 1999 and 1982, but I believe her
21 initial assertion was to use 2009 as the base year. So after
22 the base year, if you use the MNOI formula, you would pick the
23 base year and the next step in that formula would be to do any
24 adjustments to the base year.

25 This again goes to where this park is very unique

1 because if you look at the history of the rent control, we
2 always talk about 1979 as that one year, and that's because at
3 that year, things were generally at market rate. Except we do
4 know from the history of this case that before that time,
5 1977, there were different restrictions on this -- on this
6 park, the Ranch park.

7 Therefore, if you were going to do an analysis for
8 that adjustment, you need to say what's your base year first,
9 2009, 1982, 1979, and then do an analysis as to whether
10 that -- that base year rent -- the base year rent has to be
11 adjusted.

12 In this case, the owner has indicated that the base
13 year rent should be adjusted up to a certain figure. Again,
14 that is because they're using 1979 as a base year as well.
15 Staff's recommendation I believe, and I'd have to check again,
16 but I believe it's because they're using 1982, they go to 1979
17 and they do an adjustment.

18 But again, because of the uniqueness of this park, we
19 have two different adjustments. You have to go back to '77
20 and you go to '79 to do an adjustment and then from 1979 with
21 that adjustment you go to 1982.

22 That's what staff did and the reason why staff did
23 that is because they wanted to go with 1982 as the first year
24 that they had some documentation in which to do an analysis.

25 After that, then there is an adjustment for -- if

1 you -- once you had the base year, then you had the base year
2 rent with adjustments. We also call that the Vega adjustment.
3 We talked about that numerous times.

4 Then you go to the third step which is dealing with
5 operating expenses and comparing the base year with the
6 current year. In this case, the current year would be 2009.

7 So for simplicity's sake, if you were to take -- do
8 an analysis at least that -- you want to do an MNOI for 2009,
9 you would do 2009 as a -- pick that as the base year then do
10 a -- any rent adjustment whether there -- there would be a
11 rent adjustment in this particular case, but you'd have to go
12 back to, again, Vega, and go all the way back because there's
13 an emphasis on making sure that there's market condition, a
14 general market condition when you do that analysis, which I
15 believe is why in the staff report, the staff's position was
16 not to use 1999.

17 Because going to do a Vega over all these years from
18 1980 all the way to 1999 to do a Vega adjustment for market
19 conditions when all the mobile home parks by that time are
20 under some type of rent ceiling or rent control, it makes it
21 very difficult, not impossible, but it's a difficult task.

22 But if you were to use 2009 again, then you would do
23 a Vega adjustment for 2009 and then there wouldn't be any
24 change in operating expenses because you're using the same
25 year and then there wouldn't be a CPI index because you're

1 using the same year.

2 Again, for the owner, he wants to use 1979. He wants
3 to adjust it. He had his experts and people come in and
4 testify as to why they adjusted it, his appraiser, et cetera.

5 And then you would do -- again, make that adjustment,
6 change operating expenses, address that issue, and then you go
7 to a CPI indexing at the very end because, remember, we talked
8 about freezing the dollar. We don't want to freeze the
9 dollar. So there's an indexing adjustment. And in the
10 owner's case, they went 100 percent and in the staff's report
11 it's 50 percent.

12 So if you look at page 22 of the staff report, 21 and
13 22, excuse me, some of these things are laid out. And again,
14 this is for an MNOI and there's also if you want to do a rate
15 of return on investment. Again, if you go to rate of return
16 on investment then you would go back I believe to 1977, 11.5
17 and do that calculation, which is what Mr. Baar did.

18 I will also state that in my looking at Mr. Baar's
19 reports and -- and his -- his staff report, I think he -- he
20 started using the word "comparable." I don't believe he is
21 actually using it to say -- you know, because that's not his
22 recommendation obviously. He's not recommending this.

23 But he is actually saying, "I'm doing this at a
24 comparable rate to see what is -- if we do it this way, what's
25 going to be compared to an MNOI formula." I think that's why

1 he keeps on saying "comparable," "comparable," "comparable."

2 And if you look at his actual report, he's -- he's in
3 there saying -- he's not in any way saying -- well, at least I
4 didn't read it, that if you do a different formula I'm
5 confident it's going to be constitutionally, you know,
6 defended -- defensible. You know, I don't think he's -- I
7 don't see that in his report.

8 But those are -- from what I've seen, those are
9 really the two types of formulas you could apply. If you want
10 to apply a different one, again, my only comment on that is
11 make sure you have the findings to do so.

12 COMMISSIONER FELDMAN: May I ask a question?

13 You said that we apply the Vega adjustment. Okay.
14 What if we do not apply the Vega adjustment?

15 MR. HEHIR: Well, the reason why you apply a Vega
16 adjustment through -- the formula requires some type of -- I
17 mean it can require a Vega adjustment. There are times when
18 you don't apply the Vega adjustment.

19 In this case, I believe you would have to apply the
20 Vega adjustment based upon the history and the -- and the low
21 rent of this particular park, and so that Vega adjustment
22 needs to be done.

23 Because a part of that analysis when the courts look
24 at this as far as whether it's a taking or not -- and again
25 what we're trying to prevent is the government controlling

1 and -- controlling to such an extent that it's a taking of the
2 owner by keeping it so low.

3 And so when you do this formula that the courts have
4 said, you know, MNOI -- this is a formula that we -- we
5 actually kind of -- we can stand by. We understand.

6 There is a -- a need to do a Vega adjustment if --
7 you want to make sure that you have the current market
8 conditions so you can adjust it up so when you're doing the --
9 the number crunching, it's really reflecting a market -- a
10 general market condition, not the lowest possible thing or the
11 highest possible thing.

12 COMMISSIONER FELDMAN: Okay. Can we apply the Vega
13 adjustment to the residents' income?

14 MR. HEHIR: No. The Vega adjustment is strictly on
15 the rent, what is the market condition for the rent, the
16 general market condition of the rent.

17 CHAIR WERTHEIMER: Any questions?

18 Any more questions for Mr. Hehir?

19 So, Mike, we go back to you.

20 MR. SILACCI: Well, I -- I just hate -- I'm not
21 trying to delay this, but just a question, and I think I may
22 have asked it already. So if I ask it again -- I know I don't
23 have to apologize, but I am.

24 If we -- your advice is if we choose other than the
25 MNOI formula and we use a return on investment formula, we use

1 a return on investment formula, we don't apply 84-037.
2 Instead of 84-037 where it basically using -- the formula is
3 return on investment --

4 MR. HEHIR: Right. It -- we're using the rationale
5 of that resolution, but we're going back and -- to use the
6 intent initially which is 11.5 percent of the rate of return
7 for investment. That was what was the initial plan and you
8 want to keep that steady, right? So you're trying to keep
9 that steady.

10 The MNOI does it as well just a different way trying
11 to make sure that what -- what the MNOI does is it does as a
12 net operating income is say if that net profit that you're
13 making through that analysis is the same as it was when you
14 first started before rent control to now then that's the goal
15 that you're trying to meet, something in that range.

16 MR. SILACCI: Okay. Thank you. That answers my --
17 my question. If I -- that -- that answers my question. I
18 just -- it limits the choices, you know, based on the counsel
19 that we're receiving to reach the decision and based on what's
20 I guess if I'm -- you know, what's the constitutional minimum.

21 MR. HEHIR: Right. And again, my point is that if
22 you use different formulas, it's more of what formulas do you
23 have, what's your basis for using a different formula.

24 There are other formulas that cases have talked
25 about. We know obviously of MNOI and we know of the rate of

1 return on investment. Those are two formulas that are
2 addressed throughout this packet.

3 But my counsel would be that I would pick one of
4 those two just because I don't -- I didn't hear really any
5 other evidence -- excuse me, any evidence of other formulas
6 that you could possibly use that would make sure that you have
7 a foundation to have a decision.

8 MR. SILACCI: Okay. But just this will clear it up
9 for me, just to -- so your counsel - I'm trying to phrase
10 this. This is like Jeopardy. I'm trying to phrase this in a
11 question - is that there would not be a good basis to use
12 84-037 starting with the base year of 2009 as our formula
13 which is what's been offered up?

14 'Cause right now what I'm hearing is MNOI is the
15 standard. It is an acceptable standard. We -- we have the
16 discretion for alternatives. So return on investment would
17 certainly be that which is the -- I guess the intent or was
18 the intent of 84-037, but I guess what I'm asking specifically
19 is could we use an alternative being 84-037 and its provisions
20 which didn't allow recapture and using a base year of 2009?

21 MR. HEHIR: No. My recommendation would be that you
22 do not use 84-037. The reason why is because I believe based
23 on jurisdiction is not your call.

24 The second issue is that while the rationale of 11.5
25 percent is there, now that that ordinance is -- that

1 resolution is there, it provides for a cap, and when it has a
2 cap that's where you get concerned about -- that's why you
3 have MNOI, to make sure you have an analysis that says yes,
4 after all this time.

5 The 2009 issue to me is the MNOI is using that as a
6 possible base -- base year to start with that year. That's
7 certainly something that could be addressed. But if you're
8 going to use the rate of return on investment, you need to go
9 back for the whole time and then do the 11.5 percent.

10 And on page 22 of Mr. Baar's report, he has a rate of
11 return on investment and he has 6 percent, 9 percent and 11.5
12 percent, and if you look at the 11.5 percent, this would be a
13 \$214.66 increase to the rent currently under that theory if
14 you go back to -- go back in time.

15 COMMISSIONER SILACCI: And I appreciate that clarity
16 and I appreciate the -- well, your counsel and the patience of
17 my fellow Commissioners as I kind of go through -- because I
18 realize that we as a body are bound by I'll call it the local
19 laws. I mean we have to do this based on the law, and so I
20 appreciate your advice.

21 And again, if we -- I mean, here's another question.
22 I was just honing in on it. If we were -- or if I had the
23 opinion that the standard ought to be return on investment,
24 your -- if I understand correctly, your advice to me and my
25 fellow Commissioners is that to use something other than 11

1 and a half percent may not have a strong a basis.

2 MR. HEHIR: Correct. That is correct. I think
3 you -- you have to look at the rationale for this particular
4 type of investment and -- or the history of this particular
5 park and you'd look at that. That's where the 11.5 percent
6 comes in. So that is correct.

7 MR. SILACCI: I guess right or wrong, I would argue
8 that possibly the -- the rate of return percentages have
9 changed today versus in the mid-'70s, but that's just an
10 opinion.

11 MR. HEHIR: And I will also state, if you look at his
12 report that there are different -- he does that analysis as
13 well where he goes to 6 percent and, you know, talks about
14 current things and he has his comments. And again, when I say
15 "he," Mr. Baar 'cause that's the only one that I see has done
16 this analysis frankly in the information that I have.

17 COMMISSIONER SILACCI: And as a Commissioner, I
18 appreciate the options, but I -- it's nice to have those
19 options for comparative purposes, but it seems that the advice
20 is that in order to be clear from the beginning of this unique
21 property, we have to stick with 11 and a half percent or at
22 least that's the advice.

23 MR. HEHIR: If you -- if you were to use that -- that
24 type of formula, correct.

25 MR. SILACCI: Okay. Thank -- thank you.

1 So Mr. Chairman, I guess it comes back to me.

2 At -- at this point at least in our deliberation I
3 guess I would at least as far as for delibera -- deliberative
4 purposes and discussion, I guess I would hang my hat on the
5 MNOI standard, but I'm looking forward to the discussion and
6 the deliberation that happens after that. I will definitely
7 say I don't like it.

8 CHAIR WERTHEIMER: Ms. Feldman.

9 COMMISSIONER FELDMAN: Are we right now proposing
10 what kind of standard we each choose to adopt? Is that -- is
11 there a motion to that?

12 CHAIR WERTHEIMER: No. This is not about a motion.
13 This is not about --

14 COMMISSIONER FELDMAN: What is this?

15 CHAIR WERTHEIMER: -- a motion.

16 COMMISSIONER FELDMAN: Okay.

17 CHAIR WERTHEIMER: Okay. This is about a consensus
18 that we're trying to establish among the Commissioners in
19 order to get some idea of the first step that we're going to
20 take towards a process and a choice.

21 COMMISSIONER FELDMAN: Okay. Well, this is really
22 difficult. I do accept the MNOI; however, I do not accept the
23 Vega adjustment. I think that the residents need due process
24 just as the park owner needs due process, and they have never
25 been informed about MNOI or about any of this.

1 When they bought their coaches, it was with the
2 understanding that they would be protected in the future. So
3 I will go with the MNOI, but not the Vega adjustment.

4 MR. HEHIR: And -- and I certainly appreciate your
5 opinion and my -- what I want to do is I want to just read the
6 Vega case or portions of the Vega case because I know it's --
7 it is an important case when we do these type of analyses.
8 And I want to talk to you or just at least read some of the
9 points of the Vega case and kind of why the courts have found
10 that that is an important adjustment.

11 One of the points is that the rent ceilings of an
12 indefinite duration would be a taking and that's
13 unconstitutional. So if no adjustment, you need -- there
14 needs to be a mechanism that provides for changes of
15 circumstances and to provide as relevant to the ordinance
16 under review for situations in which the base rent cannot
17 reasonably be deemed to reflect general market conditions.

18 So if you look at today's date and you look at the
19 rent, you says does this reflect general market conditions.
20 Under the Vega, the court would say you need to go back and
21 look at what -- at the time before rent control and do that
22 analysis and at the time that you do that analysis, was that
23 rent in the general area of market rent.

24 COMMISSIONER FELDMAN: Okay. Could we not then put
25 the Vega adjustment back to 2001, which at that time Mr. Hohn

1 elected for the 4 percent rent increase? Why would we have to
2 go all the way back to 1982?

3 MR. HEHIR: Well, you actually go back before 1982.
4 You go back to I think --

5 COMMISSIONER FELDMAN: 1979.

6 MR. HEHIR: -- 1979.

7 And again, this is a unique case because normally you
8 go back there -- this is a double adjustment because of the
9 uniqueness of Ranch where you actually have to go from 1977
10 and adjust up to get a market -- general market rate at that
11 point.

12 And depending if you go with the owner's appraiser or
13 you go with staff's appraiser, there is an adjustment to
14 either -- for 1979 or to 1982. If you go to 2009, you would
15 need to do the adjustments all the way through. And that's
16 obviously difficult, but that's what you would have to do.

17 COMMISSIONER FELDMAN: And when you speak about
18 constitutional law, the 9th District Court of Appeals in its
19 recent ruling stated: State and local governments have a
20 legitimate interest in increasing the availability of
21 affordable housing for their citizens.

22 And I think this issue has been completely ignored,
23 the affordable housing issue. With choosing MNOCI or return of
24 investment, that whole leg of the responsibility of the City
25 has been ignored.

1 And I think that -- it appears to me that this park
2 was conceived and maintained as affordable housing all the way
3 back to 1986. What Mr. Silacci was stating, the Commission
4 agreed that Ranch was separate from the other parks.

5 And when I go to the City of Thousand Oaks supports
6 mobile home park residents, what has the City done to help,
7 this is written in 2008, and it states -- we all remember
8 this, and it states that:

9 The social well-being of the community is a prime
10 concern to the City. Over the past few decades, City Council
11 has demonstrated considerable compassion and support for
12 tenants by implementing several measures.

13 In 1975, City Council approved Ranch Mobile Home Park
14 as an income and age restricted park. Resolution 84-037
15 established specific criteria for adjusting rent and income
16 limits for the mobile home park.

17 That was stated in 2008. They go on to say: In
18 1980, the City Council adopted the mobile home Rent
19 Stabilization Ordinance to restrict and limit annual rent
20 increases on mobile home park tenants who reside inside the
21 city's other eight mobile home parks.

22 To now apply methods of investments and return on
23 investments and MNOI that would be applied to other parks just
24 doesn't make sense. So I -- I feel like you're putting me
25 into a tiny box and I can't protect these folks.

1 MR. HEHIR: And I'm not trying to put you in any box.
2 I'm trying to give you my legal counsel, and I'm not sure if
3 you were referring to the Guggenheim case or not.

4 COMMISSIONER FELDMAN: Yes, I was.

5 MR. HEHIR: Okay. That case is very -- in my
6 opinion, very case specific.

7 But when you look at our ordinance, this is where we
8 talk about the balancing, we do have these issues of do we --
9 does the government have an interest in controlling rents and
10 having rent ceilings in certain circumstances. The answer is
11 yes.

12 Does the owner have a right to ensure that they get
13 some type of reasonable return whether it's on their
14 investment or whether it's through some other analysis, MNOI,
15 et cetera, the answer is yes. And so you have this balancing
16 issue.

17 Again, I think what -- what's difficult in this
18 particular case is that there's this history of no change in a
19 long period of time and so it makes it difficult because you
20 have this -- when you do any analysis, you have this big jump.
21 And I believe that's why staff is, you know, recommending the
22 phase-in issue trying to make that big jump, that spike, if
23 you will, into, you know, something a little bit more
24 tolerable.

25 COMMISSIONER FELDMAN: Okay. The

1 U.S. Constitution -- you state the takings and I know
2 Guggenheim versus Goleta was in some ways unique, but the U.S.
3 Constitution requires that the City compensate the park owners
4 for taking their property by regulation and that has occurred.

5 Years ago, there was a contract made between the City
6 and the park owner and that contract required minimum rents.
7 And that contract enticed the residents to come in of lower
8 income and be a third party to that contract.

9 The City has a definite interest in this because they
10 really are responsible for compensating the park owner if they
11 cannot give a reasonable return to the park owner, and I think
12 they cannot. I think these residents are -- you can't get
13 blood from a stone or whatever.

14 The lady who is going to go to sleep in her car at
15 night because she's going to lose her place, that's absurd,
16 and I personally feel this isn't our jurisdiction because
17 you're pushing us to make a decision that will put a big rent
18 increase on these folks which is not applicable to this park.
19 It is affordable housing. It always has been.

20 If the City wants to compensate the park owner, so be
21 it, but not the residents.

22 MR. HEHIR: You're entitled to your opinion.

23 CHAIR WERTHEIMER: Mr. Sheldon.

24 COMMISSIONER FELDMAN: Thank you.

25 VICE-CHAIR SHELDON: Thank you very much.

1 And -- and Commissioner Feldman, I would just -- I
2 would support your confusion on the jurisdictional issues as
3 well, but I also agree that we should make a decision on the
4 application based on the law as it is.

5 So on that, I do support the MNOI mostly because it
6 was what was requested and agreed upon by staff and by the --
7 the -- the tenants' representative forgoing the jurisdictional
8 issues. I also think it avoids the circular nature of the
9 rate of return analysis and it allows us to apply it
10 consistently. So thank you.

11 CHAIR WERTHEIMER: Ms. Ferruzza.

12 COMMISSIONER FERRUZZA: I will support the MNOI
13 because I feel that we were asked to be on this Commission to
14 make decisions, and right or wrong, the City asked us to do
15 this and this is our responsibility.

16 CHAIR WERTHEIMER: Thank you.

17 I join with the fellow Commissioners on how tough
18 this is and the -- not only the choices that you have, but the
19 understanding of the choices that we have to make and mostly
20 the responsibilities that we hold. I will support the MNOI as
21 well.

22 I think the next thing that we need to determine
23 after I believe we got a general consensus on the MNOI is
24 again another general consensus breakdown to determine the
25 base year that we should select.

1 And with that, Mr. Hehir.

2 MR. HEHIR: And again, as you know there are four
3 steps if you go with the MNOI analysis. The first step is to
4 determine a base year. The second step is to make an
5 adjustment of the base year rent.

6 Step 3 would be to determine and make any adjustment
7 of the base year operating expenses, and step 4 is to decide
8 if an adjustment of net operating income for inflation is
9 necessary, and if so, at what level.

10 So step 1 would be to determine a base year. Owner
11 has indicated 1979 and has presented documentation evidence
12 for that. Staff has used 1982 and tenants start with 2009. I
13 also believe that they do mention 1989 and 1982, I believe.

14 CHAIR WERTHEIMER: Mr. Silacci.

15 MR. SILACCI: Yes, Mr. Chairman.

16 My opinion is that at minimum we would use 1982
17 because we at least have some financial information.
18 Although, I'm very disappointed in this case that there
19 weren't adequate records kept in any of the years, but to me,
20 '82 would be defensible. I can't agree with 1979 as a base
21 year because there is no financial information.

22 I'm done.

23 CHAIR WERTHEIMER: Thank you.

24 Ms. Feldman.

25 COMMISSIONER FELDMAN: Oh, boy. I am going to go

1 with 2009 as the base year simply because until that time the
2 park owner never requested to be part of the ordinance. He
3 never made payments to the City for registration, the \$10 a
4 year registration per unit.

5 He never even thought himself as being part of the
6 ordinance and now he has to spend \$100,000 to be considered
7 part of the ordinance. Well, I -- I'll go with 2009.

8 CHAIR WERTHEIMER: Does your opinion include any
9 reference to the Vega?

10 COMMISSIONER FELDMAN: Have we gotten that far?

11 MR. HEHIR: No.

12 COMMISSIONER FELDMAN: No, no, it doesn't, not yet.

13 CHAIR WERTHEIMER: Mr. Sheldon.

14 VICE-CHAIR SHELDON: I also support 1982 for all the
15 reasons that Commissioner Michael Silacci mentioned.

16 COMMISSIONER FERRUZZA: I'll go with 1982.

17 CHAIR WERTHEIMER: And I, too, will go with 1982.

18 COMMISSIONER SILACCI: Can -- can I -- Mr. Chairman,
19 can I -- is there a point in the deliberation when we start
20 and we go down if there's a question that's sparked that one
21 of us can ask a follow-up?

22 CHAIR WERTHEIMER: Is there a point?

23 MR. SILACCI: Yeah, is it -- can -- can I do that?

24 CHAIR WERTHEIMER: Yeah, yeah.

25 MR. SILACCI: All right. Just wanted to be polite.

1 CHAIR WERTHEIMER: Yes, any point that comes up.

2 COMMISSIONER SILACCI: Thanks.

3 Mr. Hehir, I'd appreciate your counsel and opinion on
4 how we could use 2009 as a base year or why we cannot.

5 MR. HEHIR: You certainly could use 2009. It is a
6 year in which you have complete all the records.

7 The issue with 2009 is -- that I see is that when you
8 do an adjustment it's difficult to go all the way back to pre-
9 market control to make sure that you do that adjustment. It
10 can be done and I believe --

11 MR. SILACCI: When you noted -- I'm sorry.

12 MR. HEHIR: I was going to say I believe that
13 Mr. Baar does an analysis for 2009 in his report on page 22,
14 and again that is why you would use that.

15 Again, the tenant -- I mean applicant's attorney
16 obviously wants to use 1979 and staff is saying 1982 because
17 they have some records, and if you use 2009 it's because they
18 have all the records. But you get to the next point which is
19 the adjustment issue.

20 COMMISSIONER SILACCI: And excuse me, when you say
21 adjustment, you mean the Vega adjustment?

22 MR. HEHIR: Correct.

23 MR. SILACCI: Thank you.

24 CHAIR WERTHEIMER: The next point we need to
25 deliberate and discuss would be the base year's rent, how we

1 establish it and adjust it.

2 Mr. Silacci.

3 MR. SILACCI: I don't know if it's good or bad to go
4 first.

5 And we're talking about again about the Vega
6 adjustment. Not to delay, but to further understand, is there
7 the ability -- I'm trying to understand -- here's where I get
8 lost on Vega: Making an adjustment to the base year for a
9 market price when you had a piece of property that was already
10 income controlled, there's really in my opinion no market, but
11 maybe I just don't understand.

12 MR. HEHIR: And I appreciate your -- this is great
13 that you're asking these questions and it is important that
14 you all have this understanding or try to. These are not easy
15 topics, frankly.

16 If you look at the Vega case, one of the questions
17 that the court had was do the base date rents, whatever base
18 date you're going to pick, do those rents reasonably reflect
19 the general market conditions.

20 Because when you look at the taking issue, when you
21 look at the constitutional issue of the Fifth Amendment,
22 you're looking to make sure that you have -- if they do,
23 then -- then great. If not, then you need to do some
24 adjustment.

25 In our case here, with the Ranch -- specifically

1 Ranch, we have the issue when you go to 1979 is when the City
2 starts to do some kind of rent control, but the Ranch being
3 unique has a previous history where it wasn't the market rate
4 at that time. Clearly it was not.

5 And so there is that double adjustment that is done.
6 I assume you're going to 1982 that had to be done, because
7 once you pick the base year, then what you do is whatever that
8 year is, if it's 1979 it would be what's the market -- general
9 market condition at that time. If it's 1982, you need to say
10 what was the general market condition of 1979 and then adjust
11 it to 1982 time.

12 So what staff did, if I understand Mr. Baar's
13 analysis correctly, is that they had to do two adjustments.
14 He goes first to 1977 and goes up until he gets a general
15 market rate for 1979, which is 150. And then he takes a
16 second adjustment to go to 1982, which is the base year
17 selected and does an adjustment to that and that's another
18 number. I believe it's 173, I believe. So that's that
19 analysis.

20 With owner, they're going to 1979 and saying that's
21 the year that you do it, and then they do an adjustment at
22 that time of the market rate that they have and that is -- I
23 don't want to misquote. It's either 240 or 198.46. So that
24 is again how they did that adjustment.

25 If you go to 2009, you would have to do the Vega

1 adjustment all the way through because you got to make sure
2 that you're showing when you do this analysis that the rent is
3 a general market condition at the time, and that's why you
4 have to do this adjustment.

5 Sometimes you don't have to apply Vega. It just
6 depends on the case. It's a case-by-case basis. In this
7 case, my recommendation would be that you apply Vega.

8 MR. SILACCI: Well -- excuse me. I'll be finished
9 and then -- thank you.

10 I appreciate the clarity, Mr. Hehir, because -- so as
11 fitting the process here, going with the process of each of
12 our -- each of Commissioner's I guess positions or opinions to
13 get the consensus, my opinion is that no Vega adjustment --
14 using '82 as a base year, that no Vega adjustment is warranted
15 because of the unique circumstances of Ranch which was
16 conditioned as a low-income senior development.

17 And so -- I mean that's -- that's my -- my opinion
18 and my -- my position at this point, but I'm willing to listen
19 to other thoughts and comments from my fellow Commissioners.
20 Thanks.

21 COMMISSIONER FELDMAN: And would you explain your
22 position to me a little bit. You're -- you're choosing 1982
23 as the base year and no Vega adjustment?

24 MR. SILACCI: Correct.

25 COMMISSIONER FELDMAN: What does that amount to? You

1 don't know?

2 MR. SILACCI: No. Well, what it amounts to is that
3 the -- the base year would not be adjusted upward to whatever
4 the market price versus what the actual rent, as I understand
5 it. I mean the actual -- isn't that correct, Mr. Hehir, that
6 the actual rent in 1982 would have been lower than what the
7 Vega adjustment rent would be?

8 MR. HEHIR: Correct. It -- and actually two points.
9 There was no adjustment by that time. There had been no
10 change. That's one issue.

11 The second issue is if you do an MNOI analysis, you
12 need to assess whether or not a Vega adjustment needs to be
13 done to ensure that there is a -- a calculation as to whether
14 or not whatever base year you use establishes a general market
15 condition at that time.

16 And my recommendation to you is just -- I mean I have
17 Vega right here. I've looked at it a number of times. The
18 concern I have with your analysis is that when you get into
19 this MNOI formula, you have to look at whether or not an
20 adjustment is necessary.

21 And if you look at that adjustment, you say what date
22 do I have and is this -- at the end of the day does it
23 reasonably reflect the general market conditions. You have
24 owner who says it does not. You have staff who says it does
25 not.

1 And so those are the two -- if you're using 1982, you
2 have to use that analysis and to do the MNOI you have to make
3 a decision whether Vega needs to be applied or not.

4 If you recall in a previous case when you looked at
5 Vega, it didn't have to be applied because at the time it
6 was -- there was an argument that it was generally market
7 condition at the time, and -- and we don't have that case
8 here.

9 So that's why when you do the MNOI analysis and you
10 get the adjustment, you have to make a decision is Vega going
11 to apply or why doesn't it apply. It's not because -- I think
12 the analysis has to be does Vega apply and if not, it's
13 because whatever base year you have, 1982 in this case, that
14 has -- really reflects a general market condition.

15 MR. SILACCI: Well, I guess if I state -- and
16 understanding that I would say in opinion at this point in the
17 deliberation that with '82 being the base year, Vega would not
18 apply because there was no comparable market for Ranch given
19 the unique nature of how the rents were set in that park.

20 MR. HEHIR: And my only -- I mean I don't -- I'll let
21 the other Commissioners get into this decision, but my point
22 of that is actually when you have rent control then you have
23 that kind of control and that's when you do that analysis to
24 whether Vega applies.

25 So actually, I know you're saying that Ranch is

1 unique, but there are other parks, all these parks that have
2 some type of rent control on it. Whether or not it's as low
3 as Ranch or not is a different story, but they all do have --
4 at that point in '79, they do have that element to them.

5 And that's why you have to get outside of the rent
6 control issue and go to what is the general market condition,
7 and that's what Vega requires staff to at least review and go
8 through.

9 MR. SILACCI: Okay. Well, then -- I'm flexible on
10 that point. That's where I am right now, but I think I
11 understand it. I think put another way based on your counsel,
12 you -- you've evaluated Vega and your legal advice is that an
13 adjustment would apply in this case.

14 MR. HEHIR: That is absolutely correct.

15 COMMISSIONER SILACCI: All right. But I'm flexible
16 on my point. So I'd appreciate other comments from the other
17 Commissioners and discussion. Thank you.

18 COMMISSIONER FELDMAN: Vega requires market value
19 rents. This is not a market value park. It never was. So
20 Vega doesn't apply here.

21 MR. HEHIR: I'm not trying to disagree with any of
22 you. I mean I'm understanding your questions and your
23 concerns, but frankly, the Vega does apply because when you do
24 the analysis, it has to be what are the general market
25 conditions, period, not -- not just general market conditions

1 for very low income or low income or moderately income type of
2 situations.

3 It is what are the general market conditions because
4 again we're talking about -- we get to the main point which is
5 the analysis that when you give some type of decision on the
6 application, is that amount, that rent adjustment is it really
7 a taking or not. And so the Vega case basically says you have
8 to look at Vega or do some type of adjustment if necessary,
9 but you have to at least look at it.

10 And in this case, my recommendation would be it
11 has -- you have to apply it because of the fact that you have
12 to look at the market condition at the time, and that's why it
13 has to be adjustment because it wasn't market condition.

14 COMMISSIONER SILACCI: No. You go ahead. It's your
15 turn.

16 COMMISSIONER FELDMAN: I think that we're not looking
17 at the taking of the residents here. We're always looking at
18 the taking of the park owner.

19 MR. HEHIR: And again, that's where we talked about
20 the balancing issue because we -- I understand your point, and
21 again, it's about you weighing both sides here.

22 It's very difficult, but there's a balancing of both,
23 the rights -- the concerns that you have for the tenants to
24 ensure that they have some type of rent control versus the
25 owner's issue of making sure that whatever adjustments are

1 made that it's not -- doesn't constitute a taking. So it's
2 that balancing issue.

3 I mean we -- obviously we understand that there's two
4 sides of this argument and that you guys are in the middle,
5 but we have to make sure that we have that balancing aspect of
6 it. That's what -- certainly what the cases require.

7 MR. SILACCI: Can I -- Can I -- Commissioner, can I
8 jump in?

9 CHAIR WERTHEIMER: You're looking at her.

10 MR. SILACCI: Yes. Well, I don't want to -- if you
11 have further questions.

12 COMMISSIONER FELDMAN: No, no, I don't.

13 CHAIR WERTHEIMER: Ms. Feldman, are you done?

14 COMMISSIONER FELDMAN: I'm finished, yes.

15 CHAIR WERTHEIMER: Mr. Silacci.

16 MR. SILACCI: Can I ask a follow -- if I -- indulge
17 me.

18 What -- what would be -- I want to ask this as an
19 open question as opposed to giving you a specific. What --
20 what would be an example where a Vega adjustment wouldn't be
21 required?

22 CHAIR WERTHEIMER: Wouldn't?

23 COMMISSIONER SILACCI: Would not.

24 MR. HEHIR: If you were to have an analysis in which
25 you looked at whatever base years is -- you pick and then you

1 look at the rents that were being charged at the time and then
2 you look at the general market conditions and you do that
3 analysis and you say those general market conditions reflect
4 what the rents were for this particular location, then a Vega
5 adjustment doesn't need to be made.

6 MR. SILACCI: Or put another way, if the rents -- the
7 actual rents that -- I'm just giving a hypothetical here. In
8 fact, nothing -- if the rents that were being charged at the
9 time were \$300 and the general market condition was \$305,
10 you'd be within in the range where you wouldn't need to make
11 an adjustment, is that true?

12 MR. HEHIR: Based on that --

13 COMMISSIONER SILACCI: Given that hypothetical.

14 MR. HEHIR: -- hypothetical, that would be correct,
15 yeah.

16 MR. SILACCI: Thank you.

17 MR. HEHIR: Sure.

18 CHAIR WERTHEIMER: Mr. Sheldon.

19 VICE-CHAIR SHELDON: Did you have a question?

20 COMMISSIONER FERRUZZA: I want to know what his
21 suggestion is at this point.

22 I'm sorry. I want to know -- I want to know what his
23 suggestion is at this time? Has he put a proposal on the
24 table now?

25 CHAIR WERTHEIMER: Who is "him"?

1 COMMISSIONER FERRUZZA: Regarding either with the
2 Vega or without the Vega.

3 CHAIR WERTHEIMER: Again my question is who is "him"?

4 COMMISSIONER FERRUZZA: Mr. Silacci.

5 CHAIR WERTHEIMER: Thank you.

6 MR. SILACCI: Who knew my father was here tonight,
7 but that's -- that's okay. No, thank you.

8 At this -- at my initial point or my initial position
9 was I didn't believe that a Vega should be applied here just
10 based on my understanding, but upon further clarification on
11 the limits or the latitude that we have, frankly I'm shifting
12 to a Vega would be required only because of my understanding
13 of what would be defensible under the law. Thank you.

14 COMMISSIONER FERRUZZA: Thank you.

15 VICE-CHAIR SHELDON: Patrick, thank you for spending
16 so much time going over the issue. I also support the Vega
17 adjustment. I feel like it's necessary due to the lack of
18 free market conditions on 1982 on this particular mobile home
19 park.

20 COMMISSIONER FERRUZZA: Okay. Now, I understand and
21 I support the Vega also.

22 CHAIR WERTHEIMER: I believe this has been talked out
23 and I understand our responsibilities and the -- the areas of
24 law and balance that we need to have. So I, too, support the
25 Vega.

1 With that, the next thing we need to consider --

2 MR. SILACCI: Mr. Chairman, sorry.

3 CHAIR WERTHEIMER: Of course, Michael.

4 MR. SILACCI: I'm the thorn in your side.

5 Let me ask before you close this, please, because I
6 think I posed a question or asked a question earlier or
7 Commissioner Feldman did at least offer up 2009 being the base
8 year, not 1982, and I know Mr. Hehir provided his counsel
9 based on that, but let me ask something more specifically.

10 If we were to go with 2009 as the base year, we would
11 still have to make a Vega or consider a Vega adjustment and
12 likely have to make one?

13 MR. HEHIR: Yes, that would be my recommendation.

14 MR. SILACCI: Which if I understand correctly would
15 be the difference between the current rent and what the
16 prevailing market would be so there would be a significant
17 delta between the two? It would be a significant adjustment
18 because you had about 30 years worth of, what, post-rent
19 control market conditions, is that correct?

20 MR. HEHIR: I believe on page 22 of the staff report,
21 Mr. Baar does a comparable current controlled rent with a Vega
22 adjustment and it's \$267. That's using 2009 as the base year.

23 CHAIR WERTHEIMER: That's an increase, not the rent?

24 MR. HEHIR: That's correct.

25 MR. SILACCI: Thank you. I'm done with -- with this

1 item.

2 Thank you, Mr. Hehir.

3 MR. HEHIR: You're welcome.

4 CHAIR WERTHEIMER: We're going to go to the next item
5 and that will be discussing which index in order -- that's
6 been recommended, that's available to us.

7 MR. HEHIR: Excuse me, Mr. Chair, step 3 would be
8 determine and make any adjustment of the base year operating
9 expenses, and then the fourth step would be to decide if an
10 adjustment of net operating income for inflation is necessary.

11 So far I believe you've done the determine the base
12 year, which I believe the consensus is 1982. You've made an
13 adjustment of the base year rent on Vega. I am not sure if
14 you've picked a number or if you're doing staff's
15 recommendation, and then the third step would be to determine
16 and make any adjustments of the base year operating expenses.

17 MR. SILACCI: At this point, I would accept staff's
18 recommendation for the adjustments.

19 CHAIR WERTHEIMER: Ms. Feldman.

20 COMMISSIONER FELDMAN: Of course, I could not accept
21 that -- staff's recommendation. I think it's just totally
22 inappropriate to -- \$191 a month on each of these people who
23 could not afford it, whether it's walk down the aisle, I'm the
24 reluctant groom here. I won't support that.

25 CHAIR WERTHEIMER: Mr. Sheldon.

1 VICE-CHAIR SHELDON: I apologize for my confusion.
2 Are we -- are we back on the base -- adjustment to the base
3 rent and the actual dollar amount or are we on --

4 CHAIR WERTHEIMER: Correct, we are.

5 VICE-CHAIR SHELDON: Yes. I support the staff's
6 recommendation, that dollar amount.

7 CHAIR WERTHEIMER: Ms. Ferruzza.

8 COMMISSIONER FERRUZZA: I support it, too.

9 CHAIR WERTHEIMER: I am going to go with the staff's
10 recommendation with the exception of extending it out for
11 seven years as opposed to their recommendation of five.

12 MR. HEHIR: Okay. Just -- just to be clear, I think
13 we're at step 2, and step 2 is to -- if you're going to adjust
14 the base year rent, the owner again is adjusting it to either
15 240 or 198. The staff adjustment for step No. 2 would be \$173
16 after doing the adjustment from 1977 to 1979 and then from
17 1979 to 1982, and the tenants do not have one in theirs.

18 So that -- that is the second step, is to -- and it's
19 to your pleasure, of course, the Commission, as to what
20 recommendation you're following. If you're going to follow
21 staff's recommendation, it would be \$173 for the adjustment of
22 the base year rent.

23 And then you would go to step 3, which is determining
24 and making any adjustments of the base year operating
25 expenses.

1 CHAIR WERTHEIMER: Mr. Hehir, I have a question. In
2 adjusting the base year's expenses, this is where I'm going to
3 plead my -- my lack of understanding and knowledge and ask
4 that you explain that for us.

5 MR. HEHIR: Under the MNOI formula, as part of this
6 analysis, you need to do an adjustment of the base operating
7 expenses. So you look at the base year, in this case you're
8 using 1982, and you're looking at what the costs are to
9 operate the park.

10 You have to compare that to the 2009 current year
11 that you're using and then make a comparison and make sure
12 that, again, at the end of the day that those are equal, and
13 so that's where you do this analysis.

14 That's why when you look at staff's recommendation,
15 step No. 2, the recommendation is 173 and then with the
16 adjustment it goes to a higher number because you're adjusting
17 it based on the net operating -- the operating expenses that
18 are incurred in the base year that you're using, in this case
19 1982 and then in 2009.

20 CHAIR WERTHEIMER: It's my understanding except for
21 Ms. Feldman that we've agreed with the staff on this consensus
22 as determining the base year's rent with the adjust -- and
23 agreeing with the staff on the adjustment for expenses that
24 they recommended.

25 Mr. Silacci, am I wrong on that?

1 COMMISSIONER SILACCI: I think you're a step or two
2 ahead.

3 VICE-CHAIR SHELDON: In terms of where we are from
4 the process standpoint, we -- we have not actually gone
5 through on the last two points.

6 CHAIR WERTHEIMER: On base --

7 VICE-CHAIR SHELDON: Base year expenses and then
8 inflation factor.

9 CHAIR WERTHEIMER: Okay. The inflation factor we
10 haven't got to it, correct. That's CPI and we haven't
11 discussed that yet. I'm still trying to determine that
12 we've -- we have discussed -- and it seems I guess we haven't.

13 Then let's start out, Mr. Silacci, determining the
14 base year's rent and the adjustment for the expenses.

15 MR. SILACCI: And again I thought I accepted staff's
16 recommendation to adjust. That's fine, yeah, to be clear,
17 yes.

18 VICE-CHAIR SHELDON: Commissioner, we have done that
19 for the base year rent. We have not done that for the base
20 year expenses. We -- we took the base year rent from 119 to
21 173, is my understanding. We have not discussed at all the
22 expenses.

23 COMMISSIONER FELDMAN: Well, I'd like to comment on
24 the expenses. Since we're using the ordinance, it says
25 "reasonable." I do not think these management expenses that

1 they're quoting here are reasonable at all. I don't think
2 anyone does. None of us does, come on.

3 CHAIR WERTHEIMER: Mr. Silacci.

4 MR. SILACCI: My -- my opinion hasn't -- I mean at
5 this point based on my understanding of staff relying on the
6 expert, they've gone through and looked at the expenses and
7 made adjustments on both ends and -- and took into -- I mean
8 someone help me if I'm incorrect, Mr. Hehir, or otherwise, but
9 took into account the -- this is my term, the spiking of
10 management expenses in the last couple of years but made an
11 adjustment for that both in the base year and the current
12 year. So I grudgingly accept staff's recommendation.

13 CHAIR WERTHEIMER: Ms. Feldman, could you repeat
14 yours, please.

15 COMMISSIONER FELDMAN: I do not accept staff's
16 recommendation on income expenses or management expenses at
17 all because the park owner I think did an Enron around all
18 these statutes simply to get a big increase of rent now, and
19 it's totally inappropriate. It goes against affordable
20 housing issues.

21 Where is the Thousand Oaks from before? This was a
22 kinder, gentler city in the past, and I think the staff has
23 really marched us down the aisle. And I find it bitter,
24 really bitter and I am so sorry.

25 CHAIR WERTHEIMER: Mr. Sheldon.

1 VICE-CHAIR SHELDON: I support the staff's
2 recommendations because of the adjustments that they made, and
3 the adjustments that they made dealt with my concerns around
4 the spike at the end of the -- in the last few years. So
5 thank you.

6 CHAIR WERTHEIMER: Ms. Ferruzza.

7 COMMISSIONER FERRUZZA: I support it also.

8 CHAIR WERTHEIMER: I believe it is important to look
9 at the staff's recommendation and not just one or two points
10 that may stand out and grab you and twist your emotion. And
11 with that, based on the staff's backing expertise I also
12 support it.

13 And now I also believe that the next step will be the
14 indexing and the CPI.

15 And Mr. Silacci, you're up.

16 MR. SILACCI: I'll accept staff's recommendation of
17 50 percent. Frankly, I'd like to go lower, but I don't think
18 it's defensible. If it was, I would go lower than that, but
19 50 percent frankly is as high as I'll go.

20 CHAIR WERTHEIMER: Ms. Feldman.

21 COMMISSIONER FELDMAN: I -- I decline to support
22 anything now in this regard. I can't support this. I'm
23 sorry.

24 CHAIR WERTHEIMER: Understood.

25 VICE-CHAIR SHELDON: I support the 50 percent.

1 COMMISSIONER FERRUZZA: I agree.

2 CHAIR WERTHEIMER: And I put out 75 percent.

3 Mr. Norman, I ask you to present the basis of the
4 resolution for us.

5 None?

6 MR. HEHIR: The next step is -- is you -- do you have
7 a consensus it's 50 percent? Is that your consensus?

8 VICE-CHAIR SHELDON: All right. We have three at 50
9 percent.

10 MR. HEHIR: The only step that was remaining that I
11 believe is on the table is whether you want to phase this in
12 or not.

13 CHAIR WERTHEIMER: Okay. Mr. Silacci, how do we put
14 this into -- in force or into operation? Do you have any
15 suggestions on phasing or all at once?

16 MR. SILACCI: Well, thank you, Mr. Chairman.

17 At the risk of asking the same question again,
18 Mr. Hehir, please summarize your advice as to, you know, the
19 phase-in.

20 I realize that what's being proposed by staff is five
21 years. You know, frankly I'd like to make that even longer,
22 but I seek your advice as to, you know, again what's legally
23 defensible, wouldn't constitute a taking. So I appreciate
24 your advice.

25 MR. HEHIR: Thank you, Commissioner Silacci.

1 This is a very -- or extremely difficult analysis,
2 frankly. I have looked at cases and I frankly could not find
3 one on point that I can point to and say, "Here's my answer."

4 The concerns I have are similar to what I expressed
5 before, and the first point -- and if you look at the Supreme
6 Court case, the Cavanaugh case, again it goes with the
7 balancing of the right of the owner to receive future rent
8 ceilings that will maintain financial integrity to fairly
9 compensate him and yet provide appropriate protection to the
10 relevant public interest both existing and foreseeable.

11 So with that -- that basis, we return again to our
12 purpose, the Commissioners' purpose, of the need to control
13 rent ceilings and at the same time balance the interest that
14 you need to do as part of your analysis of the owner.

15 In looking at this, my recommendation is the further
16 out you go, the riskier it gets when you have the claim of a
17 taking. My -- obviously if you were to award a rent
18 adjustment today and not have any phase-in, then this is not
19 an issue.

20 But with the history of this -- of this park and the
21 history of the fact there had not been significant or any
22 significant increases over the -- over this long period of
23 time, that's where you get to the balancing aspect of it.

24 So unfortunately, I don't have -- I don't have an
25 answer 'cause I can't say, "Oh, you know, here's this case" or

1 "Here's what the courts have certainly decided" or "Here's
2 what they've said is good" or -- or concerning.

3 Again, going back to the Cavanaugh case, and I'm
4 using that one 'cause it's a Supreme Court case of California
5 and it kind of sets the stage for a lot of these other cases
6 that follow, but one of the comments in the Cavanaugh case the
7 court stated was creating a fair return over the course of
8 several years can offset a -- confiscatory return during a
9 particular year.

10 So I understand staff's recommendation. I understand
11 what they're trying to do. What they're trying to do with
12 this phase-in over five years and adding an interest component
13 to it is to, one, make it so an increase is not going to be as
14 harsh if you would do it and award it all at one time.

15 On the other hand they're trying to balance the right
16 of the owner to make sure that he's getting the income that
17 has been awarded as far as the adjustment is concerned.

18 So with that, I would say that the further you take
19 it out, the more difficult it's going to be to defend it
20 because you're getting more -- it's getting more and more
21 risky, frankly, and that's why -- you know, I don't have an
22 answer, two years, five years. I just think the further out
23 you go the more difficult it is.

24 And so because of, again, the history of this case,
25 the fact that there's been an unusual long time without any

1 adjustments, I do believe it is appropriate to phase it in and
2 add an interest component to it so you're kind of trying to
3 address both issues of the owner and also the tenants at one
4 time.

5 I would not -- again, this is -- I can't state any
6 cases, just I would not probably go out more than five years.

7 MR. SILACCI: I appreciate your candid advice. I'm
8 certainly not putting you on the spot, but I think it
9 hopefully helps my fellow -- fellow Commissioners.

10 The other point that you raised which I think we all
11 need to consider here, too, is what's being proposed is also a
12 7 percent interest. And let me ask you just a follow-on
13 question. I know, Bea, you have a question, but if you let me
14 kind of finish this line of questioning and getting advice
15 from counsel.

16 What if we, the Commission, considered five years
17 like staff recommends but not the 7 percent? Your opinion on
18 that as far as how defensible that would be, because
19 originally the -- and I know things have changed because a lot
20 of facts have changed in this case with testimony and
21 everything else, but originally I don't believe that 7 percent
22 was part of the recommendation. So I appreciate your opinion
23 on that. Thank you.

24 MR. HEHIR: I frankly don't know how to answer that
25 other than to say that my previous answer kind of states the

1 same. It's -- it's difficult to -- again, we're trying to
2 balance out. We're trying to balance out the fact that if
3 you're going to do an adjustment, at what point in time does
4 the owner receive that adjustment and the idea is to do the
5 component.

6 I can't -- I just can't give you advice as to whether
7 or not if you just did five years without an interest
8 component, you know, that's your decision. It's -- it's
9 knowing that these risks that we're trying to balance these
10 issues and making sure that, again, if you do an adjustment,
11 at what point in time does the owner -- I mean maybe that's
12 the question, at what point in time does the owner receive the
13 full benefit of that adjustment.

14 And the more you -- the further out you go, again,
15 that makes it more and more difficult to say that he's not
16 getting the benefit of your adjustment or enjoying it, I
17 should say.

18 MR. SILACCI: I appreciate that. Certainly not
19 putting you on the spot and I appreciate the -- not only your
20 advice, but the time that staff and others have put into this
21 case.

22 I guess where I'm having difficulty is in this
23 balance, because even being been generous here and realizing
24 that it's been 10 years since the last increase, you know, it
25 would be easy for me to say the pain ought to be spread

1 forward 10 years, frankly.

2 And you know, not to go further on this, but the
3 comment the applicant's counsel made earlier about the fact
4 that, you know, the residents got this grand benefit because
5 they didn't get increases, quite frankly, this is just me, a
6 hypothetical, if I knew there was a balloon payment at the
7 end, I would have rather taken the increases as they were
8 coming.

9 So at this point I would -- honestly as we go down
10 and discuss this, I would like to -- I can agree with a
11 minimum of five years. Frankly, I'd like that to be a little
12 bit higher to spread, if you will, the burden as well as --
13 I'm not quite sure where I'm falling on the 7 percent, but
14 with a guy who's got a financial background, I understand what
15 that means as far as time value of money. So thank you.

16 CHAIR WERTHEIMER: Ms. Feldman.

17 COMMISSIONER FELDMAN: Well, of course, spreading it
18 out over 10 years is -- putting it out over 5 years is better
19 than putting it out over 5 years or -- or the beginning.

20 I really am reluctant to put a year on this because I
21 know this is going to go before the City Council. I think
22 that's going to happen, and I hope the City Council will be
23 more amenable to the City absorbing some of this rent
24 adjustment. I -- I cannot imagine that the City wouldn't do
25 that. There are redevelopment funds available.

1 Of course, I concur with extending this as many years
2 as possible. So I'll go with the 10 years. If that's what
3 Mr. Silacci is proposing, I'll go with it.

4 COMMISSIONER SILACCI: I -- just to be clear,
5 Commissioner, I wasn't proposing 10. I was at least saying
6 the minimum would be 5, but would love to go as high as 10,
7 realizing that that may not be defensible.

8 COMMISSIONER FELDMAN: Well, I'd love to go as high
9 as 10, too.

10 CHAIR WERTHEIMER: Mr. Sheldon, into the mike.

11 VICE-CHAIR SHELDON: I -- I would support the five
12 years with the interest.

13 CHAIR WERTHEIMER: Ms. Ferruzza.

14 COMMISSIONER FERRUZZA: I have a question -- I have a
15 question.

16 I asked the -- Mr. Hill if the new tenants coming in
17 would get this new rent, and if that was the case, then the
18 owner of the park would be getting more rent from new tenants
19 and so that would offset our extending this out a longer
20 period of time.

21 And I -- I would agree that we should extend this out
22 a longer period of time because the tenants that are here
23 presently didn't -- didn't agree to a higher rent. They
24 believed that they had low income.

25 So that's where I'm asking about, whether or not the

1 fact that he's -- would be able to get more rent from new
2 tenants coming in would offset the fact that we could have
3 this go out longer.

4 CHAIR WERTHEIMER: That's a -- I have that question,
5 too. On the vacant spaces, if we give a certain -- if we come
6 to a vote and it's agreed upon a certain new rate, will that
7 new rate apply to those 12 to 14 vacants immediately or will
8 they also have to be phased in?

9 MR. HEHIR: I'm trying to do my analysis here in my
10 head here. It's going to take some time here.

11 I think it's going to be -- my answer is that it's
12 actually -- this adjustment is going to be based upon the
13 rents that are being charged right now.

14 As far as adjustments for -- I guess what I don't
15 have an understanding is the adjustments would be for -- would
16 be whether or not if you're doing -- a new tenant coming in, I
17 would think that it would be -- what the rent would be at that
18 time that they're going to charge. And so I'm not sure that
19 that adjustment would be for those spaces that are empty.

20 CHAIR WERTHEIMER: When you say "charge," charge the
21 existing tenants or --

22 MR. HEHIR: Not existing. If there are empty spaces
23 and people coming in, then that's a -- that's a separate issue
24 as well. That's how I'm thinking it is.

25 CHAIR WERTHEIMER: Okay. So existing tenants, the

1 new rate's 100 bucks, but we agreed on 200 bucks and the
2 11 to -- the 12 to 14 empty spaces are at the \$200? That's
3 only an example everyone. That's only for the sake of
4 discussion.

5 MR. HEHIR: Well, just make sure I'm clear, your
6 question is going to be if these adjustments are going to be
7 based upon the rent that we have and you're adjusting it and
8 you're going to phase it over time, then your next question is
9 if -- will this apply to the ones that are empty at this
10 stage?

11 CHAIR WERTHEIMER: Yeah. The empty ones, do they --
12 are they subject to the phase-in method or the new rate at the
13 end of the phase-in?

14 MR. HEHIR: I actually do not have a clear-cut answer
15 for you. I would say that it would be not subject to the
16 phase-in.

17 CHAIR WERTHEIMER: Okay.

18 Does staff have any comments on that?

19 MR. NORMAN: I may direct Mr. Hehir to Section 602 of
20 the guidelines.

21 MR. HEHIR: Thank you, Mr. Norman.

22 In Section 602, it reads that: The percentage
23 obtained by the calculation of Section 6.01 above as
24 multiplied by the legal rent in effect in each rental unit for
25 each for which a just and reasonable rent increase has been

1 requested.

2 The result of these calculations is a dollar amount
3 the rent can be raised in each rental unit. The legal rent
4 used in these calculations is the current rent at the time of
5 application provided this rent does not exceed the amount
6 permitted by the Rent Stabilization Ordinance and any
7 regulation or guidelines issued by the Rent Adjustment
8 Commission.

9 So again, the legal rent used in these calculations
10 is the current rent at the time of the application provided
11 this rent does not exceed the amount permitted by the Rent
12 Stabilization Ordinance and any regulation or guidelines
13 issued by the Rent Commission.

14 CHAIR WERTHEIMER: Okay. So I interpret that as
15 being -- that it's the new rent. As the example I used, so
16 the vacant ones are subject to the \$200, the higher rate. It
17 just so happens that the existing tenants happen to have a
18 mechanism in place to get them there.

19 MR. HEHIR: Yeah. Again, I believe it is you would
20 apply it to the vacant rents, but you phase it in for the ones
21 that are present.

22 CHAIR WERTHEIMER: Okay. Does that answer your
23 question?

24 All right. It's been said tonight that the City
25 should do something more. So when I hear that our

1 recommendation should be going on balanced on how well this
2 may stand up to a challenge, and I think we should take
3 certain points that we can do it, take a challenge. I think
4 the City should stand in there and do it.

5 So with that being said, I say that we take it out
6 seven years and reduce the -- you going to punch a button?
7 And that we're going to -- and we put the rate at something
8 more market real which is 4 percent.

9 MR. HEHIR: If I may then, my recommendation with
10 regard -- this would be something you got to deliberate on and
11 try to actually come up with --

12 CHAIR WERTHEIMER: A consensus.

13 MR. HEHIR: -- a consensus.

14 CHAIR WERTHEIMER: Mr. Silacci.

15 MR. SILACCI: I hate to answer a question with a
16 question, but would someone please help me -- I say someone.
17 Patrick, Mr. Hehir, excuse me, the basis for the 7 percent
18 rate was 10-year treasuries -- and I probably should read --

19 MR. HEHIR: I would actually need to go back to his
20 report and look at it specifically, but you are correct and
21 that's where he does his -- Mr. Baar does that analysis.

22 MR. SILACCI: I appreciate the help only because I
23 don't recall that 7 percent and the basis for it.

24 MR. NORMAN: If I may interrupt, it may help --

25 MR. HEHIR: Please, Mr. Norman, I think it is --

1 MR. NORMAN: -- the Commission. If you look page 136
2 of Dr. Baar's report, he talks about the rate of return for
3 mobile home parks being 6 to 7 percent in the second full
4 paragraph under subsection (b).

5 CHAIR WERTHEIMER: Was his source Gold Star?

6 MR. SILACCI: That's an adequate answer -- answer for
7 me, but Mr. Chairman, you asked my -- I agree with the -- I
8 agree with -- like I said originally. You know, five years
9 was a minimum for me. Ten would have been great. You know,
10 7's moving in the right direction.

11 As far as the percentage, in my opinion, it shouldn't
12 be the return -- average rate of return for a mobile home park
13 or a (unintelligible) it ought to be based on some risk
14 free -- I support your 4 percent, 10-year treasury, something
15 like that, but something a little more in keeping with what
16 the -- what a risk-free market would be for you money.

17 CHAIR WERTHEIMER: Ms. Feldman.

18 COMMISSIONER FELDMAN: Yeah. I think that's a great
19 idea. I fully support what you said.

20 CHAIR WERTHEIMER: Mr. Sheldon, into the mike.

21 VICE-CHAIR SHELDON: Sounds like a reasonable
22 accommodation.

23 COMMISSIONER FERRUZZA: I agree.

24 CHAIR WERTHEIMER: So there's a consensus up here
25 that we -- that we ask the City to stand up and put their foot

1 forward, and though it may be challenged, we're going to put
2 our confidence in the lawyers that we have is even better.

3 MR. HEHIR: So if I may, Mr. Chair, it's my
4 understanding that you are going with staff's recommendation
5 for the base year, the adjustment, there is adjustments to the
6 operating expenses and then a 50 percent indexing and the only
7 difference is that the phase -- the phase-in would be 7 years
8 at 4 percent?

9 CHAIR WERTHEIMER: That's correct.

10 Any comment from the Commissioners? The question was
11 asked of me, but I'm checking with everyone.

12 Mr. Silacci.

13 COMMISSIONER SILACCI: You mean overall comments now
14 that we've gone through --

15 CHAIR WERTHEIMER: No. Do you agree with what he
16 says or disagree that that's our route?

17 MR. SILACCI: I agree that -- I don't want to parse
18 here. I -- I agree that through our deliberation we've come
19 to a consensus on the points. Frankly --

20 CHAIR WERTHEIMER: Those points that he just
21 mentioned?

22 MR. SILACCI: Yes, base year -- yeah. I agree on
23 that. The voting may be different, but I agree on the
24 consensus on the points.

25 CHAIR WERTHEIMER: You agree, but your vote might be

1 different?

2 MR. SILACCI: No, I didn't say that. I said I agree
3 on the consensus of the points.

4 CHAIR WERTHEIMER: Great, thank you.

5 Ms. Feldman.

6 COMMISSIONER FELDMAN: Again, I feel that there has
7 to be a way available to protect these folks through
8 redevelopment funds, and I hope that the -- Ms. Spencer, will
9 you be continuing with this group?

10 MS. SPENCER: Time permitting.

11 COMMISSIONER FELDMAN: Okay. Thank you.

12 CHAIR WERTHEIMER: Do you have your hand up, Mike?

13 MR. SILACCI: Well, I -- Mr. Chair, I just want to be
14 clear, is -- I mean I seem to be stepping out of turn and I'm
15 sure I'll be punished for it, but --

16 CHAIR WERTHEIMER: You will.

17 COMMISSIONER SILACCI: -- I -- is this our final
18 opportunity to comment or is this going down through each of
19 us to find out based on what Mr. Hehir noted as at least a
20 consensus of all of us on the points?

21 CHAIR WERTHEIMER: We're still on about consensuses.

22 MR. SILACCI: Okay. All right.

23 CHAIR WERTHEIMER: This is not voting. This is
24 just --

25 COMMISSIONER SILACCI: So there will be another

1 opportunity to comment, all right. Thank you.

2 CHAIR WERTHEIMER: Maybe not.

3 Ms. Feldman, did we interrupt you?

4 COMMISSIONER FELDMAN: No, no, not at all.

5 We -- we're going for a consensus now on your
6 proposal for the 7 year at 4 percent, is that correct?

7 CHAIR WERTHEIMER: We're going to go for -- we're
8 going for a consensus on this round based on Mr. Hehir's
9 statements in regards to what we've proposed from step one
10 through my suggestion of -- of the --

11 COMMISSIONER FELDMAN: Okay. So we're discussing now
12 whether or not we go for staff's recommendation in total, is
13 that correct?

14 CHAIR WERTHEIMER: Staff's recommendation in total
15 with the exception of how it's disbursed and the suggestion we
16 all agreed on on that one point was -- was 7 years, 4 percent.

17 COMMISSIONER FELDMAN: Okay. Mr. Prescott, I notice
18 you looking awry.

19 MR. PRESCOTT: No. Just as an observer, I think -- I
20 think what Mr. Hehir was trying to establish was the sequence
21 of the -- of the steps and the individual decisions of what
22 comprise the full decision.

23 And the Commission has talked about each one of those
24 in order and reached what we believed was a consensus on each
25 one of those points, and the consensus was the same as the

1 staff recommendation except for the phase-in, in which case we
2 believe the Commission made a consensus.

3 And I think the Chair was trying to find out if
4 anybody felt differently about that last point and the
5 consensus was the phase-in would be 7 years rather than 5 and
6 the interest rate for forgone rent would be 4 percent rather
7 than 7 percent.

8 So I think it's established and I'm seeing nods of
9 heads that -- except one question.

10 COMMISSIONER FERRUZZA: Yes. What my question is, is
11 the dollar amount. What are we talking about here?

12 CHAIR WERTHEIMER: We're talking about the 191 and
13 change, 65, yeah. So this is just a request for consensus
14 from the -- from the dais about Mr. Hehir's line of events.

15 MR. HEHIR: Yes. Ultimately if you're going to do a
16 motion, you need to do a motion and -- and have some of these
17 findings down. And so what I was trying to do is just to make
18 sure I understood where you were at this point in time as
19 Mr. Prescott so eloquently summarized.

20 CHAIR WERTHEIMER: And we were just looking to make
21 sure that we all agreed with the consensus that we're going to
22 present to you.

23 So now, do we have any comments before our next step?

24 MR. SILACCI: Which is?

25 CHAIR WERTHEIMER: A motion.

1 MR. SILACCI: I take it that the Commissioners will
2 have -- I mean once the motion is made and seconded, there
3 will be an opportunity for discussion.

4 CHAIR WERTHEIMER: No, there will be a vote.

5 MR. HEHIR: No. There would -- there would be
6 opportunity for discussion.

7 MR. SILACCI: Thank you.

8 MR. HEHIR: If I may point out, there is -- there is
9 a draft resolution that, again, is presented from staff. I
10 know it was part of your packet before. I'm -- you know, with
11 all this discussion, I'm not sure if you guys have gone
12 through the analysis of going through this entire resolution
13 or not.

14 If you are sticking with the points of staff
15 recommendations, the resolution obviously contains those
16 sections, each one the base year date, the adjustments, et
17 cetera. The difference would be, of course, that you're
18 changing the phase-in aspect of it.

19 So if you're going to talk about a motion and
20 discussion about that motion, you would probably address it
21 towards that resolution itself. If you're going with that --
22 to forming that type of -- of motion.

23 There also might be a need to obviously change this
24 resolution as this one is not the one that you might be voting
25 on, and that would have to be something that we'd have to

1 address as to whether or not that resolution can be generated
2 now within a short time tonight or whether you would have to
3 do a notice of intent to adopt a resolution with the findings
4 that you want and then have -- come back at another time to
5 actually adopt that resolution in final form.

6 MR. SILACCI: I appreciate that you are directing
7 your advice to the entire Commission. I appreciate you
8 looking at me. I love to be the object of attention.

9 But let me ask a -- again, a question with a
10 question. What is -- Mr. Hehir, Mr. Prescott, how long would
11 it take to -- and again, I -- I'd have to take a moment or two
12 to look at this resolution again given the -- you know, what
13 we've just gone through. I'm just speaking for me personally.

14 But how long would it take to make the adjustments
15 that -- as a result of the -- you know, the deliberation and
16 the consensus?

17 MR. HEHIR: I would say in my opinion because it
18 appears that you are near a consensus to doing a motion that
19 for the most part follows the recommendation of staff, it
20 shouldn't take that long to actually make the changes now and
21 articulate on your motion that it is staff's recommendation
22 with the ending being the difference, which is -- again, I'm
23 not speaking for you, but if your consensus is going to be 7
24 years with a 4 percent interest, I would also indicate that it
25 wouldn't apply to the vacant parcels or the vacant lots as

1 part of that motion, but everything else you can actually have
2 it as part of adopting staff recommendation.

3 MR. SILACCI: Well, let me -- let me -- I appreciate
4 that. Let me ask, would it be worthwhile -- and I realize
5 it's 10:25. Folks have been sitting here for a long time.
6 Would it worthwhile to take a ten-minute break to look at it
7 and then -- and then reconvene? I'm just asking a question.

8 MR. HEHIR: It would -- it would not. But you would
9 do your deliberations on the dais and you would look at it on
10 the dais during a public meeting. It wouldn't be something
11 that you would take a break on.

12 I mean certainly you can take time to go through this
13 and make sure you're comfortable with it. That's where I
14 would be.

15 MR. SILACCI: Understood. I appreciate the -- yeah.
16 I appreciate that.

17 MR. PRESCOTT: If part of the question involved how
18 long it would take to change the resolution so that you could
19 adopt it tonight, assuming -- and I believe there was
20 consensus on all the points, so it would be I think changing
21 Subsection or Section 2(c) on page 7 of the resolution which
22 is where we have the 7 percent interest rate and the 5 year
23 phase-in, we would need to do -- do some new calculations on
24 that and re-do that -- those last two pages of the resolution.

25 And it probably could take a half an hour to 45

1 minutes to -- to make the changes and then reprint. Maybe --
2 maybe a little bit less. But we'd have to go, you know, down
3 and fire up the computer and get out our abacus to calculate
4 the new numbers.

5 But it could be done this evening if the
6 Commission -- and that would be a time when the Commission
7 could take a break because you wouldn't be doing any
8 deliberations or anything. You'd be waiting for that new
9 resolution to come back.

10 And again, I'm assuming, Patrick, that they need to
11 have the actual document in front of them as opposed to just
12 saying we'll adopt this resolution with changes as outlined
13 for that particular section and then let staff make those
14 changes.

15 But if they have to actually see that -- those
16 changes, the actual dollar amounts, then it would probably
17 take half an hour to 45 minutes to do that.

18 CHAIR WERTHEIMER: Can I ask a question before?

19 If we all agree, take a vote, vote and say yes and
20 now it's just a matter of making the paperwork correct, isn't
21 that just for one person to sign that paperwork?

22 MR. HEHIR: Yeah. The only caution I have is that
23 when you're changing the time line of the 7 years -- out 7
24 years instead of 5 and 7 percent to 4 percent, then when you
25 look at -- we -- obviously we have the 191 figure, but then

1 you have those other figures for the phase-in. Those figures
2 are going to be changed.

3 But again, if you're articulating that you want to
4 follow staff recommendation and then actually specifically say
5 7 -- 7 years at 4 percent, the only difference is you're not
6 going to know those numbers as to -- if you look on that page,
7 Subsection (c), you're not going to have those numbers as to
8 what the calculation is unless you wait for it to come back
9 and there's a calculation done. And so that's -- that would
10 be the resolution aspect of it.

11 CHAIR WERTHEIMER: Well, I understand -- I don't --
12 I'll just speak for myself. I understand that the numbers
13 will be different and based on how you get to those -- on the
14 change we made, that those numbers are going to be less, and
15 I'm not too sure anybody thinks otherwise up here. And that's
16 the whole purpose of us phasing it in, changing the phase-in
17 and changing the percentage.

18 So as far as time's concerned, you know, if we vote,
19 we say yes, it's just a matter of paperwork for someone to
20 sign and that someone's willing to come back tomorrow any time
21 city hall wants me to and sign it.

22 MR. HEHIR: Yeah, that would actually be part of the
23 motion. You would actually articulate, again, staff
24 recommendation up to the point of the 7 years phase-in at 4
25 percent request as part of your motion that staff make those

1 changes to the resolution and then have as part of your
2 motion, again, that you're authorizing the Chair to sign that
3 resolution if you do not want to wait.

4 CHAIR WERTHEIMER: And the other request is --

5 MR. HEHIR: Again, for this phase-in, just -- when
6 the motion's up, you would indicate that this --

7 CHAIR WERTHEIMER: This phase-in is only -- the
8 phase-in part of the increase only applies to existing
9 tenants. All new and future tenants will be --

10 MR. HEHIR: It applies to.

11 CHAIR WERTHEIMER: Applies to. Thank you, yeah.
12 Okay. Mike, we're back to you.

13 MR. SILACCI: Back -- back to me, Mr. Chairman, just
14 to come to conclusion on our -- our path forward on the
15 resolution or back to me on my comments on --

16 CHAIR WERTHEIMER: Well, no, no. We're -- we're here
17 about -- we've got some choices and we've got some consensus
18 that we all agree on. We still agree or do you need to talk
19 some more? Some -- do you have some further questions and
20 discussion --

21 MR. SILACCI: Well, before I go there, Mr. Chairman,
22 if I understand Mr. Hehir correctly, we go craft the motion in
23 such a way that we can accept -- we can accept the resolution
24 with certain changes that will be made and that that would be
25 procedurally correct for us to do tonight short of actually

1 taking a break so staff can make the changes. We wouldn't
2 deliberate on it and then we would reconvene. So if I
3 understand that correctly --

4 MR. HEHIR: That is correct in this particular case
5 because it's -- you're pretty much following the staff
6 recommendation at this point. That minor change is not
7 something that -- you can articulate that on the dais and make
8 that -- and there would be, again, authorization for the Chair
9 to then sign that resolution as long as you're instructing
10 staff to make that -- to make those changes to reflect your
11 decision.

12 MR. SILACCI: So Mr. Chairman, if you're asking me
13 if -- I accept that path forward, you know, getting to a vote
14 on the resolution tonight, I would.

15 CHAIR WERTHEIMER: Great. Thank you.

16 Ms. Feldman.

17 COMMISSIONER FELDMAN: You're asking me now if I
18 support the resolution entirely, the recommendation of the
19 City --

20 COMMISSIONER SILACCI: No, just the process.

21 COMMISSIONER FELDMAN: -- with -- with the -- yes,
22 with the exclusion of the 7 years and 4 percent and that will
23 be finished tomorrow?

24 CHAIR WERTHEIMER: Yes.

25 COMMISSIONER FELDMAN: Okay. I cannot support the

1 resolution. I can't support any of the recommendations by
2 staff. I appreciate your wanting to put 7 years and 4
3 percent. I like that better than what the staff has
4 requested.

5 I could if I knew the City was going to pick up the
6 slack. The City caused the problem. The City caused the
7 taking of the park owner. The City caused -- would cause
8 now -- if they went with this ordinance with this
9 recommendation, the City would be causing a taking of the
10 residents.

11 And both are equally -- as a matter of fact, the 9th
12 District Court of Appeals said the residents have more of an
13 interest in their equity maintenance than the park owner.
14 They stated that and we believe it.

15 I think also you're forgetting about the park
16 residents who aren't there. The 12 vacant homes, they have an
17 equity interest, and I don't see why -- they're not there
18 because they don't want to be there. They're probably there
19 because they're too ill to be there, not -- and I -- I don't
20 know.

21 It's -- it's -- it's pretty sad and I hope that the
22 City will step up and do what it's supposed to do here. Thank
23 you.

24 CHAIR WERTHEIMER: Thank you.

25 Mr. Sheldon.

1 VICE-CHAIR SHELDON: Yeah. I do support the -- the
2 proposed motions or the -- the consensus that we've come to
3 and the process that we have suggested and having it signed
4 tomorrow.

5 CHAIR WERTHEIMER: Thank you.

6 MR. SILACCI: I'm out of turn again, sorry. I just
7 want to be clear, Mr. Chairman, what we're -- what we're -- as
8 I understand it, is we as a commission are deciding on how
9 we're going to handle the resolution.

10 We actually haven't had an opportunity -- I mean a
11 motion hasn't been made or seconded and there hasn't been an
12 opportunity for each of the Commissioners to have discussion
13 leading to a vote. We -- we are just getting a consensus on
14 the actual path forward to a resolution?

15 CHAIR WERTHEIMER: I kind of thought -- I kind of
16 thought that this was the discussion we were having prior to
17 voting.

18 VICE-CHAIR SHELDON: Oh, well, if that's the case,
19 then I'll waive my turn and come back as I haven't had an
20 opportunity -- I was actually just commenting on it being
21 acceptable to me based on Mr. Hehir's and Mr. Prescott's
22 advice on how we would craft that resolution.

23 CHAIR WERTHEIMER: I'll come back to you.

24 MR. HEHIR: Mr. Chair, this may clarify, if you're
25 going to, again, adopt the resolution with staff

1 recommendations except for that last section, what the motion
2 would be is that you would adopt the resolution with the
3 changes as you indicate, 7 -- 7 years, 4 percent, and
4 authorize the Chair to sign that resolution.

5 CHAIR WERTHEIMER: Understood.

6 MR. HEHIR: If you have that motion, the next stage
7 then is you have discussion on that motion itself 'cause that
8 would be the motion in front -- in front of you at the time.

9 CHAIR WERTHEIMER: Understood.

10 MR. HEHIR: And then after that, after the discussion
11 of that motion, then you would have the vote.

12 CHAIR WERTHEIMER: Understood.

13 Ms. Ferruzza.

14 COMMISSIONER FERRUZZA: I agree that we should go
15 ahead with making the motion.

16 CHAIR WERTHEIMER: I agree also.

17 And do I hear a motion that we accept the staff's
18 recommendation with the phasing-in portion being 7 years at 4
19 percent and that the existing vacant home -- or lots are
20 subject to the new rate and that once this is passed, it could
21 be signed tomorrow?

22 Mr. Silacci.

23 MR. SILACCI: Mr. Chairman, you're looking for a
24 motion and I'm unwilling to make it.

25 CHAIR WERTHEIMER: You aren't?

1 MR. SILACCI: Yeah.

2 VICE-CHAIR SHELDON: I will make that motion.

3 CHAIR WERTHEIMER: Motion made, Mr. Maxwell --
4 Sheldon, my apologies.

5 Any discussions starting with Mr. Silacci?

6 MR. SILACCI: So -- so we have -- I just want to make
7 clear, we have the motion on the floor now?

8 Okay. I see a nod. When I see a nod from
9 Mr. Prescott I know we're okay.

10 This obviously is extremely difficult and I
11 understand -- first of all, I appreciate all the information
12 that was provided both from the applicant, from the tenants,
13 either through their own voice or through their pro bono
14 counsel. I appreciate the staff very much. This was very
15 complex. All the information -- I appreciate the counsel here
16 on the dais.

17 My understanding of this is we have to follow the
18 law, and whatever we decide needs to be legally defensible.
19 The choices are pretty narrow at this point. And I realize
20 that part of that is there needs to be a balance, and
21 unfortunately, my opinion is, is there's not much balance
22 here.

23 And so given that, even though I agree with the
24 methodology and understand why we have to follow it, I at this
25 point can't support it.

1 COMMISSIONER FELDMAN: I didn't hear your last words.

2 COMMISSIONER SILACCI: Can't support it.

3 COMMISSIONER FELDMAN: Cannot?

4 COMMISSIONER SILACCI: Cannot.

5 COMMISSIONER FELDMAN: I cannot support it.

6 And I think I've said my reasons over and over again,
7 but the U.S. Constitution states that the City compensate the
8 park owners for taking their property by regulation and I
9 think it is the City's responsibility. So I cannot support
10 this resolution. Thank you.

11 CHAIR WERTHEIMER: Mr. Sheldon.

12 VICE-CHAIR SHELDON: Obviously I support the
13 resolution 'cause I made it, but I -- in general I would say
14 that that support comes from confidence in the City's experts
15 and the way that they laid things out.

16 CHAIR WERTHEIMER: Ms. Ferruzza.

17 COMMISSIONER FERRUZZA: I will support it.

18 CHAIR WERTHEIMER: I have no comment and -- you would
19 like to say something, Mike?

20 Okay. So I -- it's time to call for a vote.

21 MR. HEHIR: And just to make sure I'm clear, the
22 motion is going to be to adopt the resolution with the changes
23 and authorize the Chair to sign the resolution with those
24 corrections?

25 CHAIR WERTHEIMER: Correct.

1 Are we ready for a vote?

2 RECORDING SECRETARY: Motion passed 3 to 2 with
3 Commissioner Feldman and Silacci voting no.

4 CHAIR WERTHEIMER: The --

5 MR. PRESCOTT: If I could make a comment.

6 CHAIR WERTHEIMER: Oh, okay.

7 MR. PRESCOTT: Yes. The Commission's decision will
8 be ratified in the -- in the resolution as authorized by the
9 Commission. That will be completed tomorrow some time.

10 At that time, we will provide copies of the
11 resolution to the applicant and to all of the tenants in the
12 mobile home park. We will mail the resolution.

13 And that will start an appeal period which will run,
14 if we get this out tomorrow, 19 days and I believe that will
15 fall on a weekend, in which case it will go over to the
16 following Monday. So it would be pretty close to three weeks.

17 And the letter will actually say what that appeal
18 period is. The appeal would be -- if any, would be filed with
19 our office -- or with the City clerk's office, I'm sorry, and
20 would be heard by the City Council.

21 CHAIR WERTHEIMER: Thank you, Mr. Prescott.

22 Do we have any public comments, recording secretary?

23 None, thank you.

24 Do we have any more comments from the Commissioners?

25 The meeting's adjourned.

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(The hearing was adjourned at 10:45 p.m.)

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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF VENTURA)

4 I, TYLENE M. BORJON, Certified Shorthand Reporter No.
5 8952, in and for the State of California, do hereby certify
6 that said hearing was taken at the time and place as herein
7 set forth; that said hearing was taken down in shorthand by me
8 and thereafter transcribed into typewriting, and I hereby
9 certify the foregoing 173 pages contain a full, true, and
10 correct computer-assisted transcription of my shorthand notes
11 so taken.

12 I further certify that I am not interested in the event
13 of the action.

14 IN WITNESS WHEREOF, I have hereunto subscribed my
15 name this 14th day of February, 2011 at Ventura, California.

16
17 
18 _____
19 TYLENE M. BORJON NO. 8952

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