PARK OWNER BRIEF IN OPPOSITION TO TENANT ASSOCIATION APPEAL OF RENT ADJUSTMENT COMMISSION DECISION

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BEFORE THE CITY COUNCIL

OF THE CITY OF THOUSAND OAKS

AVMGH FIVE LTD., a California Limited Partnership [Owner of Ranch Mobilehome Park],

Applicant.

CASE NO. RAA-2010-01

AVMGH FIVE, LTD. BRIEF IN OPPOSITION TO TENANT ASSOCIATION APPEAL FROM RENT ADJUSTMENT COMMISSION DECISION

Date: May 24, 2011
Time: 6:00 p.m.
Place: Scherr Forum Theatre
City of Thousand Oaks
2100 Thousand Oaks Blvd.
Thousand Oaks, CA

I. INTRODUCTION—THE PRIOR RESOLUTION DOES NOT APPLY

This second AVMGH Five, Ltd. ("Park Owner") brief addresses the contentions raised by the Ranch Mobilehome Park ("Ranch" or "Park") tenant association ("Association") in its appeal of the City's Rent Adjustment Commission decision. The issues concerning the Park Owner's appeal of the decision are addressed in the Park Owner's first brief. This brief primarily rebuts the Association's principal contention on appeal that the Commission did not have jurisdiction to make its decision.

According to the Association, the City's current Rent Stabilization Ordinance (Ordinance No. 1254-NS, "Ordinance") enacted in the year 1996 does not apply to the Park, but instead a City resolution (Resolution No. 84-037, "Resolution") adopted in the year 1984 applies. Also, according to the Association, a 1977 Ranch use permit condition prevents the Park Owner from obtaining a constitutional just and reasonable return rent increase under the Ordinance. And finally, according to the Association, the Park Owner is estopped from obtaining a constitutional just and reasonable return rent increase under the Ordinance because of the City's prior statements about the applicability of the Resolution and the Park Owner's purported acquiescence therein.

The Tenants' positions have no merit because they are contrary to both the law and the facts. First and foremost, because the Resolution is not an ordinance, it does not have the force of law to apply to the present application. Only an ordinance (and not a resolution) can change the City's then-existing rent control ordinance. Furthermore, the City's Ordinance was enacted in 1996 and applies to all mobilehome parks in the City, thus superseding the Resolution, which was enacted in 1984. Second, the use permit condition imposed on the Ranch in the year 1977, on which the Resolution was purportedly based, expired as a matter of law as of the year 2007 at the latest. Thus the Resolution, which sought to implement that condition, could no longer be enforceable. Third, the Park Owner cannot be estopped from enforcing its constitutional rights to a just and reasonable return, especially not by third party misrepresentations of the City. Given the inapplicability of the Resolution, a taking of the Park Owner's property will ensue if the Resolution is applied rather than the Ordinance.

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II. FACTUAL BACKGROUND CONCERNING THE USE PERMIT CONDITION AND RESOLUTION[1]

A. THE CITY IMPOSED A LOW INCOME USE PERMIT CONDITION BASED ON DENSITY AND FEE WAIVERS

In May 1974, William Wyckoff acquired the Ranch property located at 2193 West Los Feliz Drive in the City of Thousand Oaks. The Ranch property at the time was undeveloped except for two older homes, stables and horse corrals. In 1974, Mr. Wyckoff applied for a Trailer Park Development use permit (TPD 74-6) for a 74-unit mobilehome park.

The Application Form for TPD 74-6 states: "We plan to provide a much needed low cost rental development for senior citizens, handicapped and low income group. This development is being requested to replace other facilities which have been removed in the City of Thousand Oaks. The density of this development is less than what has been projected for this particular site. The General Plan recommends high density of 15-30 units per acre. This project proposes slightly less than 15 units per acre." (A.R. CTO 01907)

Based on construction costs in 1974, Mr. Wyckoff submitted extensive testimony to the Planning Commission as to the proposed rental rates of $72.50 for single wide pad and $110 for double wide pad rental spaces. (Attachment 1, October 18, 1974 ETI Corporation letter)

On November 18, 1974, the City of Thousand Oaks Planning Commission approved TPD 74-6, subject to several conditions, including Condition 27, which stated as follows: "That prior to issuance of a zone clearance for this project, the developer shall enter into an agreement with the City of Thousand Oaks deed restricting the development for low-income mobile home park rental. Said agreement shall establish the City or its duly authorized representative as a housing authority and shall establish conditions of occupancy and rental

[1] The factual background regarding the Resolution discussed in this Brief is obtained from City Ranch files provided to the Park Owner by the City, only some of which are contained in the Administrative Record. The Park Owner attaches additional City Ranch file documents to this Brief, and requests that the City take judicial/official notice of its file documents attached hereto.

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rates. Said agreement shall be subject to review and approval of the City Attorney and the Planning Director and final review and approval by the Planning Commission." (A.R. CTO 00052)

Mr. Wyckoff appealed certain of the conditions of approval of TPD 74-6 to the City Council, claiming that such conditions were inconsistent with the development of a limited income low rent mobilehome community. Among the conditions appealed were those requiring a decorative block wall, payment of Quimby Act (park) fees, redesign resulting in the loss of 4-9 sites, bedroom tax fees, and a sewer hookup fee based on more than a single bedroom. (A.R. CTO 01924-01926)

At the hearing of the City Council appeal for TPD 74-6, Mr. Wyckoff requested that the City also waive normal City development fees, including park dedication, sewer and water service capital facilities fees. Those fees were estimated to total about $100,000. (Attachment 2, December 3, 1974 Wyckoff Appeal) The City approved the appeal, but due to Mr. Wyckoff's health condition and financial limitations, he was unable to pursue development of the Ranch.

B. <u>THE CITY DID NOT IMPLEMENT ITS LOW INCOME PERMIT CONDITION BUT INSTEAD ESTABLISHED A FIXED RATE OF RETURN</u>

In 1976, Andrew Hohn, who was at that time developing the Thunderbird Oaks Mobilehome Park, indicated a willingness to pursue construction of the Ranch pursuant to TPD 74-6 if he could be satisfied about the financial feasibility of the project. He requested that the initial rental rates and return on investment be established before he would agree to develop the Ranch. (Attachment 3, March 12, 1976 Pearce & Masri letter)

On June 24, 1976, Mr. Hohn submitted a proposed initial rent of $131 per space based on anticipated construction costs, land values, contingencies, loan fees and other developmental expenses, representing a $19 a lot reduction from the rents at the newly constructed Thunderbird Oaks. Mr. Hohn also requested a minimum 22% return on the gross investment of the project, which was an average return on investment experienced by

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Mr. Hohn on two other mobilehome parks he then owned. (Attachment 4, June 24, 1976 Pearce & Masri letter)

In a July 19, 1976 City staff in a memorandum to the Planning Commission rejected the proposed rent schedule as a significant departure from the initial rent schedule of $72-$112 and stated that the proposed rate of return on investment of 22% was too high, claiming that the Ranch had a low risk factor. (Attachment 5, July 19, 1976 City Staff Memorandum)

On July 22, 1976, Mr. Hohn subsequently adjusted the cash flow and deducted the debt service figures and revised his request downward to a 13% annual rate of return. (Attachment 6, July 22, 1976 Fred Wilson letter)

An August 25, 1976 City memorandum regarding TPD 74-6 states: "Prior to issuance of zone clearance it will be necessary for Gene Pierce (attorney for A.V. Hohn) to submit an agreement that will restrict the Park to low income housing. This agreement is also to establish rental rates and provisions for changing rental rates in the future." (Attachment 7, August 25, 1976 City Staff Memorandum)

At some point between August 1976 and August 1977, the City Council unilaterally imposed, per an Exhibit A of and Addendum to TPD 74-6, an 11.5% rate of return limit on park rentals. (A.R. CTO 00058-00059) A City records search does not reveal a signed agreement and a title search dating back to 1975 reveals that there is no recorded agreement establishing a deed restriction on rent increases.

In a letter dated August 9, 1977, as the Ranch construction was nearing completion, Mr. Hohn submitted accounting figures showing gross investment of $500,000, when factoring in the 11.5% rate of return, amounting to a net profit target of $57,500 per year, and establishing initial rental rates of $115 for regular single-wide lots, $120 for large lots, and $125 for double wide lots. (A.R. CTO 00028-00029)

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C. THE CITY ADOPTED THE RESOLUTION IN 1984, WHICH ALLOWED A RANCH RENT ADJUSTMENT IN THE SAME PERCENTAGE AS THE THEN EXISTING RENT STABILIZATION ORDINANCE

In 1983, the Ranch sought an automatic 7% rent increase under the City's 1983 version of its rent control ordinance. The City decided to grant the increase, but then attempted to justify that 7% increase under the 11.5% rate of return of TPD 74-6. According to the City's justification for granting the 7% increase, the Ranch was obtaining a net profit amount of $57,500 for the year, which would equal the 11.5% rate of return using 1977 dollars. However, the City reasoned that a stagnant rate of return which did not take into account inflation would not be in accordance with the City's unilaterally established rate of return. (A.R. CTO 00031-00034)

Under the guise of adjusting the City's unilaterally established rate of return for inflation, the City adopted Resolution No. 84-037, which simply accepted the then existing City Rent Stabilization Ordinance seven percent (7%) automatic rent increase for 1984. (A.R. CTO 00036-00038) The City's rate of return on investment inflation adjustment argument was inconsistent with the 7% increase. Resolution 84-037 was not a true inflation adjustment to the established rate of return. The seven percent (7%) rent increase did not reflect the real inflation rate from 1979 through 1982, which was 21% (24% if compounded).

D. THE CITY'S ADHERENCE TO THE RESOLUTION HAS KEPT THE PARK AT FAR LESS THAN THE SPECIFIED RATE OF RETURN

Resolution 84-037 also set forth a City policy to limit any future "inflation" adjustment to the City imposed unilateral rate of return of four percent (4%) per annum. The Park Owner did not seek any other rent increases from the years 1985 through 2000. In the year 2000, after being told by the City that the Resolution was still in effect, the Park Owner requested a four percent (4%) rent increase under the Resolution. (A.R. CTO 00040)

The City Manager's analysis of the year 2001 rent increase notes that the Ranch is treated differently from all other mobilehome parks in the City: "The resolution sets a target

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net return to the owner but limits increase to a maximum percentage increase of four percent per year. Ranch is the only park in the City whose rent increases is regulated by Resolution. All other mobilehome parks are subject to the City's Rent Stabilization Ordinance." (Attachment 8, February 6, 2001 City Staff Memorandum)

The City Manager's analysis of the year 2001 rent increase also notes that the 4% limit on discretionary rent increases leaves the Ranch more than 40% below the target net profit amount established by the City under its unilateral amendment to TPD 74-6: "Ranch Mobile Home Park requests City approval of a four percent (4%) rent increase, the maximum allowed by resolution. An increase of 46.7% would be needed to bring the Park to the adjusted target net owner return set by Council. Ranch has sought only one rent increase in 23 years of operation, an increase of seven percent (7%) in 1984."

It is important to note that the City Manager's analysis significantly understates the amount by which the Ranch is below the unilaterally imposed 11.5% rate of return, because the calculation by the City Manager under Resolution 84-037 ignores the need to adjust for inflation for the years 1979-1981 and ignores the fact that CPI increases are not compounded.

III. RESOLUTION 84-37 DOES NOT APPLY

A. THE RESOLUTION IS NOT BINDING ON THE COMMISSION

The Resolution does not have the force of law with respect to the present Commission proceedings. That is because the Resolution cannot bind future City proceedings. There is a substantive difference between a resolution and an ordinance. An ordinance is a local law which is adopted with all the legal formality of a statute, including requirements for notice, hearing and codification, and becomes the law of the State. On the other hand, a resolution is a mere declaration with respect to future purpose or proceedings of the board. A resolution does not have the force of law:

> We cannot in good conscience say that "ordinance" means the same thing as "resolution" in light of the well-established differences between the two modes of enacting legislation.
> 'The resolution of a board of supervisors is ordinarily not equivalent to an ordinance. A resolution is usually a mere

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declaration with respect to future purpose or proceedings of the board. An ordinance is a local law which is adopted with all the legal formality of a statute.' (*McPherson v. Richards* (1933) 134 Cal.App. 462, 466. See Housing Authority v. Superior Court (1950) 35 Cal.2d 550, 558-559; 5 McQuillin, Municipal Corporations (1969 rev. vol.) §§ 15.02-15.08, pp. 42-66; 37 Am.Jur., Municipal Corporations, § 142, pp. 754-755.) A resolution adopted without the 'formality' required of an ordinance cannot be deemed an ordinance. (5 McQuillin, *op. cit. supra*, § 15.02, pp. 46-47.) A duly enacted county ordinance is a 'law of this State' within the meaning of a penal statute proscribing the violation of such law (*In re Groves* (1960) 54 Cal.2d 154, 158; *County of Plumas v. Wheeler* (1906) 149 Cal. 758, 768); a board resolution is not.

"The Legislature has been explicit concerning this distinction. It has exacted certain 'formalities' in the enactment of an ordinance by the supervisors of a county ([Gov. Code,] §§25120-25121), but not of their adoption of a resolution. It has specified certain requirements relative to the publication of a county ordinance after its passage ([Gov. Code,] §§ 50021. 25124), its deferred effective date in the typical case ([Gov. Code,] § 25123), its mandatory recording in an 'ordinance book' ([Gov. Code,] §§ 25102, subd. (b), 25122); compare [Gov. Code,] § 25102.1, as to the recording of resolutions, and the codification of ordinances generally ([Gov. Code,] §§ 25126-25130; 50022.2-50022.5); none of these requirements apply to board resolutions. By statute, the Legislature has made the terms 'ordinance' and 'resolution' synonymous in a very few instances, each of which is highly specialized and applies to a city only (Gov. Code, § 60004; Sts. & Hy. Code, §§ 8007, 8305); in innumerable other statutes authorizing or directing actions by county boards of supervisors, it has been careful to state whether the specific action shall be taken by 'ordinance' or by 'resolution' in each case. It has emphasized the distinction between the two terms by further providing that, when a statute requires local legislative action by resolution but a local charter requires that it be taken by ordinance, 'action by ordinance is compliance with the statute for all purposes (§ 50020); it has made no converse statutory provision to the effect that a 'resolution' will suffice, where a statute requires action by 'ordinance,' under any circumstances.

"Because the difference between a 'resolution' and an 'ordinance' is thus substantive, under case law and by deliberate legislative definition, the one . . . cannot be construed as having amounted to the other . . . ." (*City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 565-566, fn. omitted.) (See *Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765, 774)

"An ordinance in its primary and usual sense means a local law. It prescribes a rule of conduct prospective in operation, applicable generally to persons and things subject to the jurisdiction of the city. "Resolution" denotes something less formal. It is the mere expression of the opinion of the legislative body concerning some administrative mater for the disposition of which it provides." (*Central Mfg. Dist. Inc. v. Board of*

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Supervisors (1960) 176 Cal.App.2d 850, 860, 35 Cal.Jur.2d, § 392, p. 200)

Therefore, the City's declaration of its opinion regarding the Ranch in the 1984 Resolution does not bind the Commission to act consistent with the Resolution in 2011.

B. THE RESOLUTION UNLAWFULLY ATTEMPTED TO ALTER THE EXISTING RENT CONTROL ORDINANCE THAT APPLIED TO THE RANCH

Furthermore, the Resolution cannot bind the City to act regarding the City's then existing rent stabilization ordinance. That is because the California Legislature, recognizing the distinction between a resolution and an ordinance, in the State Mobilehome Residency Law refers only to rent control adopted by ordinance. (See Civ. Code § 798.17 (a))

When a statute requires action by ordinance, passage of a resolution will not suffice:

> It is well settled that a city such as appellant has the authority to charge reasonable sewer fees providing it does so in a lawful manner. We consider here whether it did so. Appellant urges that its legislative branch may make legislative enactments by "ordinance" or "resolution." Under certain prescribed circumstances that is true, but where a statute requires that a matter be adopted by ordinance, adoption by resolution renders the enactment invalid. (*Pinewood Investors v. City of Oxnard* (1982) 133 Cal.App.3d 1030, 1038)

Furthermore, an ordinance cannot be amended by a resolution, but instead must be amended by a subsequent ordinance. (See Blotter v. Farrell (1954) 42 Cal.2d 804, 811)

Therefore, because the Resolution attempted to amend the City's rent control ordinance, which by law must be adopted and/or amended by ordinance, the Resolution was invalid for failure to proceed by way of ordinance as required by State law.

C. THE RESOLUTION WAS SUPERSEDED BY THE PRESENT CITY RENT ADJUSTMENT ORDINANCE

The Association's argument that the Resolution trumps the Ordinance ignores the fact that the Ordinance supersedes the Resolution by its very nature and terms. A validly enacted ordinance passed by the City within the scope of its authority has the same force within its corporate limits as a statute passed by the legislature has throughout the state. (See *Marculescu v. City Planning Comm'n of City & county of San Francisco* (1935) 7

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Cal.App.2d 371, 373) Therefore, contrary to the argument of the Association, the Ordinance trumps the Resolution.

There is nothing in the City's present Ordinance that carves out a special exception for the Ranch. To the contrary, the Ordinance expressly applies to all mobilehome parks within the City and expressly supersedes all provisions of any prior rent stabilization ordinance to the contrary. (See City Code § 5-25.10)

The Association's arguments about the legislative intent of the 1986 version of the City's rent adjustment ordinance are unavailing. The intent of the City in 1986 is not determinative of the intent of the City in 1996 when it enacted the present Ordinance in 1996.

IV. THE RANCH USE PERMIT CONDITION 27 ON WHICH THE RESOLUTION WAS PURPORTEDLY BASED IS NO LONGER VALID

The Association would have the City force the Park Owner to operate the Ranch in perpetuity as a low income senior housing park under Condition 27 of the 1977 Use Permit regardless of the fact that the approximate $100,000 benefit that the Park Owner obtained from fee and permit waivers long ago became obsolete as a result of foregone rental earnings. The Association's position is entirely contrary to constitutional and land use law requiring permit conditions to be reasonably related to the improvement being permitted in order to be lawful under the City's police power. The Association's position is also entirely contrary to the State Planning and Zoning Law express sunset provision on the imposition of age and income conditions in exchange for fee waivers.

Finally, the Association's position is contrary to the express language of Condition 27 which requires the Park Owner and the City to negotiate, enter into and record an "agreement" for the rate of return that would have included terms and conditions relating to the percentage rate of return, inflation adjustments, expiration of age and income restriction, etc. The City did not negotiate, enter into or record such an agreement, but instead sought to unilaterally impose its own terms and conditions on the Park Owner by fiat. Therefore,

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because the City failed to perform its own obligations under Condition 27, it cannot enforce Condition 27 as against the Park Owner by means of the Resolution or otherwise.

A. CONTINUED APPLICATION OF CONDITION 27 HAS ALREADY BEEN AND WILL CONTINUE TO BE AN UNCOMPENSATED TAKING

Conditions for a use permit must be reasonably related to the improvement being permitted in order to be sustainable under the City's police power and not be considered a taking of private property. "Neither the federal government nor the state may commandeer private property." (See *Mid-Way Cabinet etc. Mfg. v. County of San Joaquin* (1967) 257 Cal.App.2d 181, 186) The state may only take property under the powers of eminent domain by paying just compensation. "[C]oexisting alongside the power of eminent domain is the police power ...." (*Id.*) The police power allows the state to "govern men and things within the limits of its dominion." (*Id.*) Zoning ordinances, which are based in the police power, may sometimes in their application result in "uncompensated diminution in value of property." (Id. at 187) "The decisive consideration is the effect of the public improvement on the property and whether the owner of the damaged property if uncompensated would **contribute more than his proper share to the public undertaking**." (*Id.* [bold and underline added], citing *House v. Los Angeles County Flood Control Dist.* (1944) 25 Cal.2d 384, 396-397)

Here, the City admits that the Park Owner has foregone rent in an amount far in excess of the approximate $100,000 in fee and permit waivers that the City provided to the Park Owner in 1977. As admitted by the City's expert Dr. Baar, the Park Owner is currently giving up rental income in excess of $100,000 on an annual basis, even if the Resolution were still applicable:

> Baar: If the park owner had implemented the rent increases authorized by the affordable rent restrictions, now the Park Owner would be entitled to a net income in the range of $132,720; a 130.8% adjustment of the "base net profit target of $47,500.
>
> This net income of $132,720 exceeds the current (2009) net income of the park, which was only $1,583. (this amount is

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> calculated by subtracting $18,750 in depreciation from the current net operating income of the park of $20,468.) A rent adjustment of approximately $131,137 or $147.67/space/month would be required to provide this net income. This increase would have been authorized if the permitted increases had been annually implemented. (A.R. CTO 01279)

If the annual amounts of foregone rent were added up over the last thirty years, the contribution by the Park Owner under the use permit exceeds the Park Owner's benefit obtained by the fee and permit waivers by a staggering amount. Therefore, the City can no longer impose Condition 27 by means of the Resolution or otherwise and withstand constitutional scrutiny, and indeed, the City's imposition of the Resolution up to the present date has arguably already caused the Park Owner's property to be taken.

B. CONDITION 27 EXPIRED BY OPERATION OF LAW IN 2007

Furthermore, in addition to Condition 27 being an unsustainable condition far in excess of the benefit of the fee and permit waivers granted, Condition 27, to the extent that its performance is required by the Park Owner, has expired by operation of law. A restriction imposed by a condition or covenant must be not be in violation of subsequently enacted State legislation that is intended to be preemptive of local government regulation. (See *Broadmoor San Clemente Homeowner's Assn. v. Nelson* (1994) 25 Cal.App.4th 1, 4)

Government Code Section 65915 expressly limits continued affordability conditions for properties receiving density bonuses (*i.e.*, the fee and density waivers) to a 30 year term, unless a longer term is required by a particular government financing assistance program (there was no such government financing assistance program involved here):

> An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction of mortgage financing assistance program, mortgage insurance program, or rental subsidy program. (Govt. Code § 65915 (c) (1))

The 30 year limitation language contained in Government Code Section 65915 (c) (1) was enacted after Condition 27 was imposed in the year 1977. The 30 year limitation language was added by amendments to Section 65915 in the year 2002 as part of Statutes of 2002 chapter 1062 (Assembly Bill 1866).

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Government Code Section 65915 expressly provides that it preempts all local agency ordinances and actions to the contrary of its provisions:

> All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section. (Govt. Code § 65915 (a))

Therefore, to the extent it was still valid and enforceable, Condition 27 of the City's Use Permit for the Ranch expired in the year 2007 by operation of expressly preemptive State law, 30 years after it was adopted, and the City can no longer enforce Condition 27 by means of the Resolution or otherwise.

C. THE CITY LONG AGO ABANDONED CONDITION 27

The Association claims that principles of contract law require the Park Owner to abide by Condition 27. However, the City abandoned and never performed on its part any of the conditions precedent for enforcement of Condition 27. (See Civ. Code § 1439) The City never entered into or recorded an enforceable covenant that would run with the land. (See Civ. Code § 1468) If the City had entered into such a covenant with the Park Owner, the Park Owner could have ensured that such covenant would have maintained a profitable return on investment that responded to inflation by inserting appropriate provisions into that required agreement.

Instead of entering into such a bilateral agreement, the City, by fiat amendment of the Use Permit, imposed the City's own rate of return on the Park Owner, without thought for the impact that a fixed rate of return would have on the eroding impacts of inflation. Therefore, Condition 27 is not valid because the City never obtained the Park Owner's mutual assent and never entered into an agreement as required by Condition 27. (See Civ. Code § 1565 [mutual assent required for a valid agreement]; Civ. Code § 1439 [performance excused by other party's failure to perform condition precedent])

Indeed, it was the City's wholesale disregard for Condition 27 that caused the City to enact its band-aid approach for dealing with inflation adjustments to TPD 74-6 in the 1984 Resolution. However, despite the City's claims regarding the Resolution as a solution to the

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City's failure to bargain regarding inflation adjustment of the rate of return on investment, the Resolution simply gave the Park Owner a one time, one year automatic 7% rent increase that would have been applicable under the City's then-existing rent stabilization ordinance. Neither did the Resolution consider the Park Owner's position on obtaining a full inflation adjustment of the City's imposed return on investment percentage, but instead it imposed by fiat a 4% cap on inflation adjustments and a requirement for an annual Park Owner application just to obtain the capped 4% inflation adjustment. Those additional conditions imposed by the City were not a part of Condition 27, and thus not a part of any mutual assent between the Park Owner and the City.

Therefore, the cases cited to by the Association regarding landowners being barred from enforcing valid contractual restrictions on their property do not apply here. The City abandoned Condition 27 and substituted something in its place not agreed to by the Park Owner. Thus, in addition to the fact that Condition 27 expired by operation of law under Government Code Section 65915, Condition 27 is unenforceable as a covenant or contract against the Park Owner due to the failure of the City to perform its condition precedent of entering into an enforceable bilateral covenant that runs with the land and due to the City's subsequent imposition of additional terms and conditions not a part of Condition 27. (See Civ. Code § 3392 [specific performance not available where failure to fully and fairly perform all conditions precedent])

V. THE DOCTRINE OF EQUITABLE ESTOPPEL DOES NOT PREVENT APPLICATION OF THE ORDINANCE

The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. The elements of the doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his

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injury. (See *Aerojet-General Corp. v. Commercial Union Ins. Co.* (2007) 155 Cal.App.4th 132)

The Association cannot prevail on its defense of equitable estoppel. First and foremost, estoppel cannot prevent the Park Owner from obtaining his constitutionally guaranteed "just and reasonable" return on its investment under the City's Zoning Code. Second, the Park Owners never acted in such a manner that the Association could have believed that the tenants had a perpetual right under the Resolution. Third, estoppel against the Park Owner cannot be established by the City's mistaken statements about the applicability of the Resolution. Fourth, Tenants cannot have any investment-backed expectations under the Resolution.

A. ESTOPPEL CANNOT LIMIT THE PARK OWNER'S CONSTITUTIONAL RIGHTS FOR A JUST AND REASONABLE RETURN UNDER THE CITY'S ZONING CODE

Even if the elements for estoppel can be established, estoppel does not apply if to do so would effectively nullify a strong rule of public policy adopted for the benefit of the public. (See *Hansen Bros. Enters. v. Bd. of Supervisors* (1996) 12 Cal.4th 533, 564) Certainly, the constitutional requirement of a just and reasonable return is a strong rule of public policy adopted for the benefit of the public to prevent regulatory taking of property by means of rent control. (See *Concord Communities v. City of Concord* (2001) 91 Cal.App.4th 1407, 1414) Therefore, estoppel simply cannot apply to prevent application of the Ordinance.

B. THE PARK OWNER NEVER ACTED IN A MANNER TO CAUSE THE TENANTS TO RELY ON PERPETUAL APPLICATION OF THE RESOLUTION

The Park Owner always acted in the past to seek rent increases based on the City's then-applicable rent stabilization ordinance. In 1983, the Park Owner applied for a just and reasonable return under the City's then-existing rent stabilization ordinance. In 2000, the Park Owner applied for a just and reasonable return under the City's then-existing rent

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stabilization ordinance. The Park Owner in both instances applied for rent increases without acknowledging the City's fiat Addendum to TPD 74-6 or the Resolution. It was the City, not the Park Owner, that required the Park Owner to proceed by way of the Resolution in both instances. The Park Owner's decision not to expend time and money to mount a court challenge to the City's application of the Resolution in those two instances does not operate as conduct that would lead the tenants to reasonably believe that the Park Owner would never challenge the Resolution, especially given the fact that the tenants were aware of the Park Owner's attempt to obtain those two rent increases under the then-existing rent stabilization ordinance.

C. THE CITY'S STATEMENTS ABOUT THE APPLICABILITY OF THE ORDINANCE ARE NOT SUFFICIENT TO ESTABLISH ESTOPPEL

Estoppel cannot be established even by incorrect statements on the part of the City about applicability of the Resolution. It is up to the tenants, as the parties most interested in their property rights to obtain correct information about the zoning of their property. The tenants cannot excuse their ignorance even based on negligent statements of the government body concerning application of an ordinance to the tenants' particular piece of property:

> The owner of property or one proposing to acquire it cannot justify his ignorance of the true state of the facts and the law affecting it by pointing to similar ignorance in government bodies. Negligence which may be less than culpable in a government body charged with the administration and regulation of vast amounts of land under diverse ownership, cannot be so easily excused in one whose interest is focused on a particular piece of property. (See *Hansen Bros. Enters. v. Bd. of Supervisors*, *supra*, 12 Cal.4th at 564)

D. RANCH TENANTS HAVE NO INVESTMENT BACKED EXPECTATIONS BASED ON THE RESOLUTION

The Association cannot seriously argue that the tenants had any investment backed expectations based on City and/or Park Owner representations about applicability of the Resolution to their rental spaces. That is because the authority that the Association is relying upon does not state that tenants have any investment backed expectations based on a resolution, but instead based on a rent control ordinance:

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> The people who really do have investment-backed expectations that might be upset by changes in the rent control system are tenants who bought their mobile homes after rent control went into effect. Ending rent control would be a windfall to the Guggenheims, and a disaster for tenants who bought their mobile homes after rent control was imposed in the 70's and 80's. Tenants come and go, and even though rent control transfers wealth to "the tenants," after a while, it is likely to affect different tenants from those who benefitted from the transfer. The present tenants lost nothing on account of the City's reinstitution of the County ordinance. But they would lose, on average, over $100,000 each if the rent control ordinance were repealed. The tenants who purchased during the rent control regime have invested an average of over $100,000 each in reliance on the stability of government policy. Leaving the ordinance in place impairs no investment-backed expectations of the Guggenheims, but nullifying it would destroy the value these tenants thought they were buying. (*Guggenheim v. City of Goleta* 2010 U.S. App. LEXIS 25981, at p. 28)

The above reasoning in *Guggenheim* is the exact opposite of the Association's position. Instead of relying on the Ordinance which has the effect of State law, the Association claims that the residents relied on the Resolution, a mere policy statement made nearly 30 years ago. The tenants' reliance on something other than the expressly applicable rent control ordinance does not help them under the reasoning in *Guggenheim* which relied such an ordinance. The Resolution certainly provides no investment backed expectation, nor can or does the Association cite to any case that holds that a resolution with provisions different and contradictory to an applicable rent control ordinance would or could be the basis for an investment backed expectation on the part of mobilehome park tenants.

VI. THE PARK OWNER IS NOT SEEKING TO RECAPTURE LOST RENT INCREASES BY WAY OF THE APPLICATION

The Association's argument that the Park Owner's application is seeking to "catch up" for more than thirty years of deliberately choosing to forego rent increases is false. The Park Owner is not seeking to claw back foregone rents in prior years under its application, but instead is seeking to raise rents to current market levels for future application as expressly allowed and required by the Ordinance. Section 2.05 of the Ordinance expressly requires that the base year income be established on the basis of full market rent:

> Adjusted income for below market rentals is an amount representing the difference between the actual rent collected and

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

The Association seizes upon the example suggested in Section 2.05 which refers to rent increases permitted by the Ordinance that could have been made but were not made. That is precisely the situation faced by the Ranch. It could have made increases under the Ordinance, but did not. It does not matter that the Ranch was prevented from applying the Ordinance by the City Resolution attempting to implement a fixed return on investment percentage in violation of the City's obligations under Condition 27. The purpose of Section 2.05 is to provide a *Vega* or full market value adjustment to base year market rent, as required by California courts.

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

Thus, by making a Vega adjustment to the Ranch base year rental income, the Park Owner is making calculations that allow the Ranch to implement what is a present year just and reasonable return. The Park Owner is not seeking to go back into the past and recapture what might have been a just and reasonable return for prior years.

VII. THERE IS NO EVIDENCE THAT THE RENT INCREASE WILL VIOLATE THE POLICIES OF THE ORDINANCE

The policies of the Ordinance will be maintained by granting the Park Owner's requested rent increase of $466.12 per month. The Ordinance policy to provide housing at affordable rent levels for mobilehome tenants will be maintained. The City presented evidence that affordable rental rates for low income residents are above $900 per month. (A.R. CTO 01532) Therefore, by raising current average rents of $191 in the $466.12 amount proposed by the Park Owner, the Ordinance affordable housing policy will be maintained.

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The Ordinance policy to prevent displacement of current residents will also be maintained. The Park Owner promised that he would not displace current residents based on their inability to pay. (A.R. CRO 01693)

Finally, the Ordinance policy to provide the Park Owner with a just and reasonable return will be maintained by providing the Park Owner with the full increase indicated by application of the MNOI formula.

VIII. CONCLUSION

In conclusion, the Association appeal claiming lack of Commission jurisdiction based on the Resolution must fail. The Ordinance clearly controls, and the neither the twenty-five year old resolution nor the 33 year old Condition 27 can prevent application of the Ordinance to the Park Owner application. The Park Owner respectfully requests that the City deny the Association's appeal.

Dated: May 10, 2011

HART, KING & COLDREN

By: _____
Robert S. Coldren
Boyd L. Hill
Attorneys for Applicant
AVMGH Ltd.

HART, KING & COLDREN
A PROFESSIONAL LAW CORPORATION
200 SANDPOINTE, FOURTH FLOOR
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ATTACHMENT "1"

OCT 21 1974

October 18, 1974
W.O. 74-2519

CORPORATION
The Financial Plaza
400 Esplanade Drive
Oxnard, California 93030
(805) 485-7867

City of Thousand Oaks
Planning Department
401 West Hillcrest Drive
Thousand Oaks, CA 91360

Attention: David D. Davis

Subject: TPD 74-6

Gentlemen:

In response to your letter of October 3, 1974; the following answers are provided for the four questions presented to us.

ITEM NO. 1: You requested pertinent information regarding how the proposed trailer park would provide housing for lower income groups and senior citizens and how it would be guaranteed.

Based on our current projections, which must be finalized after the development permit is issued, our rental structure will range from $72.50 to $110 per month, depending on size and location of each individual site. This rental price will include use of a specific site, water and trash pick up. People moving into the park will be required to present financial information to determine their ability to pay. No person will be allowed to live in the park unless their fixed income is less than $600± per month, with the bulk of that income being contributed from social security or a pension fund. We would be glad to subject our rental structure for review by a housing authority or committee if the City of Thousand Oaks elects to set up such an agency. We are attempting to establish the lowest monthly rates possible with a reasonable profit built-in. We are quite willing to establish these rates and limit any

increase to the normal cost of living adjustment necessary based on changes in taxes, labor costs or utility service costs.

A potential tenant moving into the park will be required to deposit with the management, the first and last month rent plus obtain the necessary State permits, which include an inspection of the coach ($30), inspection of any porches or awning ($25) and inspection of the air conditioning ($15). These will be the basic charges that a prospective tenant would pay plus his moving and hook up costs, which vary depending on the coach; which should not be considered part of the Developer's responsibility.

We find it very difficult to come up with a formula for our rental structure. All we can do is tell you that our intent is to rent primarily to senior citizens or handicapped and to provide the lowest possible rental structure for this type of development. If you have any suggestions related to this matter, we will be happy to discuss them at your convenience.

ITEM NO. 2: Relates to geology and soils reports for the project. We have not obtained these yet because until we have a development permit, we do not know exactly what our design problems will be. Therefore, we feel it would be a waste of money to expend these fees at this time. If you need an opinion about possible faults for the purpose of preparing an Environmental Impact Report, we will be happy to obtain that information for you.

ITEM NO. 3: We propose to dispose of the sanitary sewer affluent generated by this development through the City's sanitary sewer system; an outlet of which is located at the rear of the property.

ITEM NO. 4: Regarding traffic generated by this proposed project; we anticipate one car or less per site, because of the people we are going to allow in the park will be senior citizens with no need for a second car and many of them will not have any trans-

portation because of age or the inability to drive.

We hope the above information helps clarify our proposed development. If you have any questions, please do not hesitate to give us a call.

Very truly yours,

Stanley C. Hopkins

SCH:rc

cc: Mr. Chet Wyckoff

ATTACHMENT "2"

NOTICE OF APPEAL - PERMITS AND VARIANCES

ON PLANNING COMMISSION RESOLUTION NO. 267-74PC

TO: CITY COUNCIL
City of Thousand Oaks
401 West Hillcrest Drive
Thousand Oaks, California 91360

1974 DEC -3 PM 2:53

CITY OF
THOUSAND OAKS

In accordance with Section 9-4.2807 of the Municipal Code, I hereby appeal the decision of the Planning Commission on NOVEMBER 18, 1974, relating to:

A. the denial of the _____ application as set forth in Planning Commission Resolution No. _____; or

B. the approval of the TPD-74-6 application subject to Condition No(s). 5,17,21,25,26,31F as set forth in Planning Commission Resolution No. 267-74 PC.

The grounds of appeal are: (If the appeal relates to item B above, indicate the justification for each condition appealed) SEE ATTACHED GROUNDS OF APPEAL FOR EACH CONDITION.

I request that the City Council take the following action: (If the appeal relates to condition(s) for either item A or B above, indicate on a separate sheet of paper, whether said individual condition(s) should be either deleted or modified with suggested re-wording) SEE ATTACHED GROUNDS OF APPEAL WITH RECOMMENDATION THEREFOR FOR EACH CONDITION.

Name of Appellant WILLIAM C. WYCKOFF

Address of Appellant 1782 LOS FELIZ DRIVE, THOUSAND OAKS, CA 91360
(Street, City, State, Zip Code)

Telephone Number of Appellant _____

Is the appellant a part in the application? NO. If not, state basis for filing appeal as an "aggrieved person". CONSULTING ENGINEER ACTING AS AGENT FOR APPELLANT

ETH-CARP
by Robert Evans
(Signature of Appellant)
12-2-74
(Date)

NOTE: This form must be completed by the appellant in triplicate and filed with the City Clerk of the City of Thousand Oaks not later than 20 calendar days after the date of decision by the Planning Commission. An appeal by the applicant must include the submittal of five (5) copies of all exhibits (e.g., plot and elevation plans, etc.). The Clerk shall forward a copy of this appeal to the Planning Department and the City Attorney.

This appeal will be heard on the date as scheduled, unless it is in the public interest for such matter to be continued to a later date. Testimony will be taken; and failure of the appellant or his representative to present testimony may be cause for denial.

Appeal and filing fee received by City Clerk of the City of Thousand Oaks at 2:53 p.m. on December 3, 1974.

BY Grace J. Lidford
Deputy City Clerk

APPEAL TO CERTAIN CONDITIONS CONTAINED

IN PLANNING COMMISSION RESOLUTION NO. 267-74PC

CONDITION NO. 5:

THIS CONDITION REQUIRES A 20--FOOT SETBACK TO THE FRONT DECORATIVE BLOCK WALL. IT IS RESPECTFULLY REQUESTED THAT THIS CONDITION BE MODIFIED AND THAT A VARIANCE TO SECTION 9-4.2004 (C) BE MADE AS FOLLOWS: "THE MINIMUM SETBACK FROM THE RIGHT-OF-WAY LINE TO ANY MOBILEHOME SHALL BE 15 FEET. THE DECORATIVE BLOCK WALL MAY ENCROACH INTO THE SETBACK AREA, PROVIDED THAT THE MINIMUM DISTANCE BETWEEN THE BACK OF SIDEWALK AND THE WALL (STREETSCAPE AREA) SHALL BE 10 FEET."

CONDITION NO. 17:

THIS CONDITION REQUIRES A 6-FOOT HIGH DECORATIVE WALL ON THE NORTHERLY AND EASTERLY PROPERTY LINES, WHEREAS THE ORIGINAL APPLICATION REQUEST WAS FOR A MODIFICATION TO CHAIN LINK FENCE ALONG SAID LINES. THE APPEAL IS FOR A VARIANCE TO SECTION 9-4.2004 (B) FOR SUCH A CHAIN LINK FENCE. THE ADDED COST OF THE MASONRY WALL WILL RESULT IN AN INCREASE OF INITIAL RENTAL RATE, THEREBY DEFEATING THE PRINCIPAL OF LOW COST HOUSING.

CONDITION NO. 21:

THE APPEAL IS FOR THE DELETION OF THE FEES REQUIRED BY SECTION 9-3.607 OF THE MUNICIPAL CODE (QUIMBY ACT). SUCH A FEE REQUIREMENT WILL RESULT IN A HIGHER RENTAL FEE STRUCTURE THAN ANTICIPATED BY THE DEVELOPER OF THE LOW COST HOUSING.

CONDITION NO. 25:

AN APPEAL IS MADE FOR THE DELETION OF THIS CONDITION IN ITS ENTIRETY. MANY STUDIES HAVE BEEN MADE UPON THE AREA ALLUDED TO, ALL OF WHICH RESULT IN THE LOSS OF 4 TO 9 MOBILEHOME SITES. LOT RE-ORIENTATION OFTEN RESULT IN MOBILEHOME ENTRANCES FACING ONTO THE REAR OF MOBILEHOMES ON ADJOINING LOTS.

CONDITION NO. 26:

AN APPEAL IS MADE FOR DELETION OF THIS CONDITION IN ITS ENTIRETY. THE VARIANCE FOR ELIMINATION OF THE $100.00 PER UNIT IS THE SAME AS HEREINTOFOR STATED--THE CONCEPT OF LOW RENTAL RATES FOR LOW COST HOUSING.

CONDITION 31 F:

AN APPEAL IS MADE FOR A SEWER HOOKUP FEE BASED UPON ONE BEDROOM.

CONDITION 51 F.(CONTINUED):

PER MOBILEHOME SPACE. THE ANTICIPATED OCCUPANCY IS 1.8 PERSONS PER MOBILEHOME, WHICH WOULD READILY INDICATE ONE BEDROOM USEAGE THROUGHOUT THE MOBILEHOME PARK. SUCH A FEE IS CONSIDERED REASONABLE ON THE PART OF THE APPELLANT.

ATTACHMENT "3"

PEARCE & MASCI
ATTORNEYS AT LAW

FELIX G. MASCI
J.E. PEARCE
Telephones: ~~xx495-8343~~ 497-9476
Area Code (805) ~~495-1696~~

Thousand Oaks Plaza - Suite ~~104~~ 185
100 East Thousand Oaks Blvd.
Thousand Oaks, Calif. 91360

March 12, 1976

Mr. George Elias, Associate Planner
City of Thousand Oaks Planning Department
401 West Hillcrest Drive
Thousand Oaks, California 91360

Dear Mr. Elias:

As a starting point, it would appear wise to memorialize my understanding of our recent telephone conversation relating to the proposed Wycoff mobile home park. As you are aware, Mr. Andrew V. Hohn is considering purchasing the property and developing said mobile home park. It is my understanding that there is a TPD for the subject property and that there are some unusual waivers by the City and conditions upon the mobile home park. I have not seen a copy of the TPD and the conditions contained therein; however, I understand that certain fees were waived by the City, and as a condition for waiver of said fees, the developer will have to establish first a minimum age level for the occupants of the mobile home park. Second, a maximum income level will have to be set. Third, the City will have to approve the rates the developer may charge. The theory of this particular approval is that this park is intended for senior citizens with low income, and therefore, certain City fees were waived, such as Quimby fees, hookup fees, etc.

In further discussions with yourself and Mr. James Longtin, City Attorney, it was suggested that Ordinance No. 530 NS be used by way of a guideline for establishing criteria. So far as I am aware, Mr. Hohn does not take exception to those guidelines that basically state the person must be 62 years of age or older and have an income of less than $10,000 per year. The only problem with that particular criteria is that of determining who is 62 years of age and what a particular person's income may be. Mr. Hohn could ask for a declaration from the people that they fall within this category but would not want to be put in the position of certifying to the truthfulness of the person making the declaration.

In further talks with you and Mr. Longtin relative to what sort of return could Mr. Hohn expect, it was suggested that this matter be put before the Franchise Committee to determine what a reasonable return should be. You had indicated that it would be necessary for a study to be submitted to that group to justify the rates. May I suggest that the matter be referred to the Franchise Committee prior to that study in order to determine what the parameters of the study should be for their purposes. There is little doubt that they will take many factors into

consideration, such as what rents could be expected, what are the expenses of operating a mobile home park, what the debt service would require and what would be a reasonable profit to the operator. They will also be concerned with the construction cost as well. Again, prior to preparing such a study, it would appear altogether wise to meet with this Committee to determine the thrust the study should take and what authorities could be relied upon. Should you concur with this approach, may I request that you refer the matter to the Committee and request a date that we can appear before the same.

Inasmuch as it is recognized that this is the first time an approach of this type has been made to low cost housing, your cooperation is essential and is appreciated. Thank you.

Sincerely,

J. E. PEARCE

JEP/jes

ATTACHMENT "4"

LAW OFFICES
PEARCE & MASCI
SUITE 185 THOUSAND OAKS PLAZA
100 EAST THOUSAND OAKS BOULEVARD
THOUSAND OAKS, CALIFORNIA 91360

FELIX G. MASCI
J. E. PEARCE

TELEPHONE (805) 497-9476

June 24, 1976

Mr. George Elias
Associate Planner
City of Thousand Oaks
Planning Department
401 West Hillcrest Drive
Thousand Oaks, California 91360

Re: TPD 74-6 Criteria for Fees

Dear Mr. Elias:

The criteria for setting fees for the proposed mobile home park has been the subject of numerous meetings and conversations. It appears that the intent of the Council in waiving a number of fees such as plant investment fees, sewer hookup fees, Quimby Act contribution, bedroom tax and certain other items was to enable the developer to create a mobile home park where those on limited incomes could afford to live. Therefore, it followed that our task was to establish what criteria would be utilized in establishing not only the fees the developer could charge, but also who would be eligible to occupy the park.

In discussion with yourself and Mr. James Longtin, it was suggested that Ordinance No. 530 NS be used as a guideline for establishing the criteria. That criteria for qualifying senior citizens was (1) a resident of the City; (2) 62 years of age or older at the start of the calendar year, or the claimant must meet the criteria of disability established by the Social Security Administration's Supplemental Income Program for the aged, blind and disabled, and the claimants annual household income as herein defined should not exceed $10,000.00 for the calendar year. So far as I am aware, Mr. Hohn does not take exception to those guidelines. The only problem that presents itself is that of determining who is 62 years of age and what a particular peron's income may be. Mr. Hohn could ask for a declaration from the people that they fall within this category but would not want to be put in the position of certifying as to the truthfulness of the person making the declaration. If such a declaration was acceptable, it would appear that part of our problem is solved.

Mr. Fred Wilson, Certified Public Accountant, was asked to review mobile home park operations and give a recommendation as to a method of establishing the rental to be charged in the mobile home park. Mr. Wilson's analysis and conclusions have been discussed with you. Basically, Mr. Wilson has analyzed the income relative to investment in other parks and suggests that

LAW OFFICES
PEARCE & MASCI
PROFESSIONAL CORPORATION

we apply that criteria to the proposed trailer park. It should be noted that all the figures for the proposed trailer park are estimates, and as he indicated in his letter to you, the proposed monthly rental will fluctuate according to actual construction costs. Should this approach to establishing rental fees be acceptable, then it would appear that we have only one other step to make at this time, i. e., the criteria for any future increase in rental fees. It has been suggested, and it does appear reasonable, that once a year the cost of living index be used as a criteria for any increase in rents.

Inasmuch as time is running short on this matter, may I request that it be placed before the Council at the earliest possible date.

Thank you for your cooperation.

Sincerely,

J. E. PEARCE

JEP/jes

ATTACHMENT "5"

M E M O

TO: Planning Commission

FROM: Planning Department

SUBJECT: Planning Director's Referral on Condition 27
TPD-74-6 - Andrew Hohn for Chet Wyckoff

DATE: July 19, 1976

The attached correspondence has been submitted in accordance with Condition No. 27 of Resolution 267-74 PC in order to establish a rental schedule for the Ranch Mobile Home Park. Condition No. 27 of TPD-74-6 requires the following:

"That prior to the issuance of a zone clearance for this project, the developer shall enter into an agreement with the City of Thousand Oaks, deed restricting the development for low income mobile home park rental. Said agreement shall establish the City or its duly authorized representative as a housing authority and shall establish conditions of occupancy and rental rates. Said agreement shall be subject to review and approval of the City Attorney and the Planning Director with the final review and approval by the Planning Commission."

Background

This TPD application was filed by Mr. Chet Wyckoff in the early part of 1974. At that time, Mr. Wyckoff petitioned the City by filing both a zone change application and the trailer park permit in order to establish a "low income" mobile home park development on a parcel of property located at the north side of Los Feliz Drive, approximately 500 feet westerly of Conejo School Road. During the zone change consideration, the Planning Commission and the City Council waived the minimum park size area from 10 to 5 acres and reduced the pad size requirements to allow development of the 74 units (15 units/acre) on the subject site. See attached Staff Report and Resolutions for the zone change.

During the public hearings on this development, the applicant submitted extensive testimony as to the proposed rental rates and qualifications of residency within the mobile home park. Based on construction costs in 1974, the applicants projected that the minimum rental rate would be approximately $72.50 for a single width space and $110.00 for a double width space mobile home pad. In order to maintain the low rental rates and minimize development costs, the applicant further requested the City Council, under an appeal, to waive the normal City development fees. Based on this request, the City Council amended the City's standard development fees consisting of the park dedication, sewer and water service costs. These fees to date have been estimated at approximately $100,000 for the project.

Request

Since the approval of the permit, the applicant, Chet Wyckoff, has attempted to proceed with construction of the mobile home park. Because of health conditions and financial limitations of the applicant, he has been unable to pursue development of the mobile home park, thus he is attempting to sell the project. Mr. Andrew Hohn, developer of the Thunderbird Oaks Mobile Home Park, has indicated a willingness to pursue construction of the park as per the City's conditional approval of TPD-74-6. In order to assess the financial feasibility of the project, however, Mr. Hohn has requested, in light of the City's rental rate controls, that the rate or at least the method of establishing the rate, be reviewed and conceptually approved prior to development of the park.

For the Commission's consideration, Mr. Gene Pierce, attorney representing Andrew Hohn, has submitted a tentative rental schedule. This rate schedule is based on anticipated construction costs, land values, contingencies, loan fees and other developmental expenses. The anticipated monthly rental rate is $131.00 per lot. This represents a $19.00 a lot monthly rental rate fee reduction that, according to the applicant, can be passed on to the tenants as a result of the City's exemption of development fees. According to the applicant, the $131.00 rental fee is based upon a preliminary development cost estimate and is subject to numerous changes, depending upon actual construction cost. This expenditure can be confirmed after construction of the park by the submittal of a certified accounting analysis for the project.

In addition to construction costs, the $131.00 rental fee also includes a minimum 22% return (profit) on the gross investment of the project. This return is an average percentage of profit presently experienced by the proposed developer on other mobile home parks, as illustrated on Exhibits A and B of the attachments.

Evaluation

The Staff in evaluating this request, concurs with the applicant that the development cost plus profit is the most equitable way of establishing the rental rate. Accordingly, we would suggest that this approach be approved subject to the submittal of a Certified Accounting of development costs from the builder. The main issue concerning this request, in the Staff's opinion is the appropriate profit or percentage of return on the gross investment for the mobile home park. Considering the low risk factor for this park, the 22% profit appears to be excessive.

In further evaluating this request, the Staff is of the opinion that the $131.00 rate is a significant departure from the initial rent schedule of $72.00 to $112.00 previously indicated by the applicant. Furthermore, the proposed rental rate is high in light of the numerous waivers of City development standards and fees, thus the original intent of the City's decision to provide a "low-cost" mobile home park is not fulfilled.

Recommendation

It is the position of the Planning Department in evaluating the information submitted that the initial purpose in approving this project in conjunction with the reduction of standards and waiver of fees has not been accomplished. The Staff has reached its position based on the following:

1. The applicant has not quantified the cost reductions derived from the City's waiver of development standards for this mobile home park, i.e., elimination of block wall requirements, reduction in average pad and minimum pad sizes, etc.

2. The City has demonstrated a willingness to sacrifice fees in order to provide low cost housing and any developer of such a park should also accept a reduction in the profit margin realized from the project.

3. The proposed rental fee structure does not reflect the reductions that were presented to the Planning Commission and the City Council in 1974. It is found that this rental fee is similar to fees charged to residents within standard mobile home parks and it is higher than fees charged to residents in the older trailer parks within the Community.

The Planning Commission should receive testimony from the applicant during the Public Hearing to determine if the proposed rate, including the method for deriving the rental structure and percentage of profit margin complies with the Planning Commission's previous intent in imposing Condition No. 27.

Prepared by:

George Elias
Associate Planner

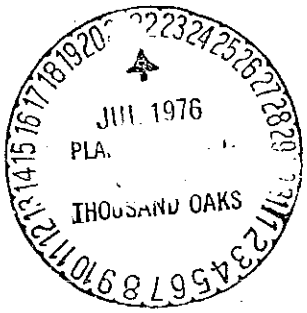
Submitted by:

Philip E. Gatch
Planning Director

PEG:GE:jm
Attachments

ATTACHMENT "6"

FRED P. WILSON
Accountancy Corporation
100 Thousand Oaks Blvd. - Suite 240
Thousand Oaks, California 91360
(213) 991-0762
(805) 495-7458



July 22, 1976

Planning Department
City of Thousand Oaks
401 W. Hillcrest Drive
Thousand Oaks, California 91360

Att: Mike Sangster

Gentlemen:

On behalf of Mr. Andrew V. Hohn and in regard to the planning commission's July 19 denial relative to TPD 74-6, we would like to submit some comments prior to appeal to the City Council.

We are resubmitting schedules A and B from which we have deducted appropriate depreciation to arrive at the adjusted net yield on investment of 13%. In the memo of July 19 your department referred to a profit of 22% which, as we discussed, is an erroneous number. The proper numbers are 17% cash flow before debt service and 13% net profit. The 22% number you used is the gross rental rate. We hope that this will change your evaluation and that you will no longer conclude that the rate of profit appears to be excessive.

Paragraph 1 of the recommendation section of your July 19 memo refers to the absence of quantified cost reductions. The cost estimate does compare the effect of $100,000 of such cost reductions, the best estimate available for the dollar cost differences. If the zone change, average pad size, etc. had not been granted the project would not have been feasible because a 35 or 40 space park isn't economically viable, so we made no attempt to project the cost of such a park.

Paragraph 2 of the recommendation section indicates that the developer should accept a reduction in the profit margin. The waiver of fees and costs has been relfected in the absolute dollars of profit margin, proportionate to investment reductions but the degree of risk was not reduced by the City action we see no justification for a reduced rate of profit.

Paragraph 3 of the recommendation section indicates that "the proposed rental fee structure does not reflect the reductions that were presented . . . in 1974 . . . is similar to fees charges . . . with standard . . . parks and higher than fees . . . in the older trailer parks . . . ." It was never demonstrated in the 1974 application that the project could be delivered at the rental rates presented and the applicant stated at that time that "We find it very difficult to come up with a formula for our rental structure." In the meanwhile, the increasing rate of inflation has pushed costs and prices substantially above the rates at which the project could have been delivered at that time. It is true that the

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Thousand Oaks, California 91360
(805) 495-7458
(213) 991-0762

projected rental fee is about the same as the current fee at other standard parks in the area and more than the current fee at some of the older parks in the community. However, the projected rates are "locked in" to a cost factor which will undoubtedly perpetually keep the rates below those which are unrestrained except by supply/demand which will probably have pushed the rates above the proposed rate before the proposed park is ever opened. The older parks generally are of lower standards and poorer conditions than the proposed park and it does no good to tell the needy retired citizen that he can enjoy a lower fee at those parks when those parks are full and they can't get in at all!

In an effort to further restrain prices the developer is willing, if the City Council desires, to adjust future rental rates proportionate to future operating expense fluctuations rather than to the cost of living index. In this manner, any economies which the owner is able to effect will automatically be shared with the tenants.

In conclusion, we feel that whereas you might wish that lower rents could be provided, if our proposal is accepted both the City and the developer will have done as much as they can to reduce the rents and senior citizens with limited incomes will in fact be able to rent 74 spaces at prices lower than would otherwise be possible.

Very truly yours,
Fred P. Wilson Accountancy Corporation

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

FPW:ecw

ATTACHMENT "7"

CITY OF THOUSAND OAKS, CALIFORNIA

INTER-OFFICE MEMORANDUM

Date August 25, 1976 19

To File From George Elias

Subject Plan Check for TPD 75-6 - Chet Wycoff and/or Andy Hohn Park Ranch Mobile Home Park

A review was conducted on TPD 75-6 to determine outstanding items that must be resolved prior to issuance of a zone clearance or occupancy permit (when noted) for this project.

1. A wall design needs to be submitted and reviewed along Los Feliz Drive.

2. A notation is needed on the mobile home park site plan that will designate landscaping adjacent to chainlink fencing along the east, west and northerly property lines.

3. A notation will be also needed that this landscaping must be permanently irrigated.

4. The project Landscaping and Sprinkler Plan will need to be submitted and approved prior to occupancy.

5. Building elevation for the recreational facility will have to be submitted and approved prior to issuance of a zone clearance.

6. A letter is necessary of A.V. Hohn advising the Planning Department that he will be building the mobile home park as well as his recognition and willingness to comply with the conditions of TPD 75-6.

7. The Park Lighting Plan needs to be submitted.

8. The site plan for the mobile home park needs to be amended to designate the land use at the northwest corner of the mobile home park.

9. Clarification will be needed from the City Attorney's Office whether the Bedroom Tax fee was waived by City Council's adoption of the ordinance, exempting fees for low income type housing developments.

10. CC & R's need to be submitted incorporating provisions to satisfy conditions 8, 9, 13, 14, 23 and 24. These CC & R's will need to be

(Cont'd)

Copies:

Signed

Title

approved by our department as to content and by the City Attorney's Office as to form.

11. A note will need to be added on the site plan that all existing overhead utilities are to be placed underground or the ordinance requirement waived under an underground utility waiver application.

12. Prior to issuance of zone clearance it will be necessary for Gene Pierce (attorney for A.V. Hohn) to submit an agreement that will restrict the Park to low income housing. This agreement is also to establish rental rates and provisions for changing rental rates in the future.

13. Additional detailed site plans are needed to show lots adjacent to oak trees. This plan will need to demonstrate the impact of the adjacent mobile homes on the oak trees and the method for protection and preservation of the trees. The latter portion of this item can be resolved under the Landscaping Sprinkler Plan, and it could be resolved prior to issuance of an occupancy permit.

George

George Elias
Senior Planner

cc: Paul Metrovitch
Brian Besinque

GE:hd

ATTACHMENT "8"

M E M O R A N D U M

City of Thousand Oaks • Thousand Oaks, California

Community Development Department

Meeting Date: 2/6/2001 File # 430-40

Office of Record: CDD/CAO

(Res.)/Ord. No. 2001-012

Action: Recommendation Approved 4-0, Del Campo Absent

To: City Manager

From: City Attorney
Community Development Director

Date: February 6, 2001

Subject: Consideration of 4% rent increase request at Ranch Mobile Home Park

Issue:

Should the City Council approve a 4% rent increase requested by the owner's of Ranch Mobile Home Park?

Financial Impact:

No financial impact to the City of Thousand Oaks.

Recommendation:

Adopt resolution approving a four percent (4%) rent increase for Ranch Mobile Home Park.

Synopsis:

Ranch Mobile Home Park requests City approval of a four percent (4%) rent increase, the maximum allowed by resolution. An increase of 46.7% would be needed to bring the Park to the adjusted target net owner return set by Council. Ranch has sought only one rent increase in 23 years of operation, an increase of seven percent (7%) in 1984. This requested increase is within parameters set for this park by Council Resolution in 1984.

Background:

Ranch Mobile Home Park (the "Park") is a 74-unit park located at 2193 Los Feliz Drive (see map), initially approved for development in 1974 and completed in the fall of 1977. The Park was designed to accommodate singlewide mobile homes and to afford low cost rents to very low-income seniors. Resolution 84-037 ("Resolution"), which is attached to this report and was adopted by Council in 1984, established criteria for approval of any rent increase application. The

Resolution sets a target net return to the owner but limits increases to a maximum percentage increase of four percent per year. Ranch is the only park in the City whose rent increases is regulated by Resolution. All other mobile home parks are subject to the City's Rent Stabilization Ordinance (TOMC §5-25.01 et seq.).

On November 20, 2000 the City received an application from the Park requesting a 4% rent increase based upon the Resolution criteria. This is the first application for a rent increase since 1984. The owner now seeks to increase rents to cover increased costs to maintain the Park after 17 years of fixed rents.

The Park advised the City that tenants have been notified of the requested rent increase and in their discussions with tenants no apparent opposition to the request was raised. The City mailed notice on January 23, 2001 to the tenants, and a public notice was advertised notifying tenants, the owner and interested parties the Council would consider the request at a public hearing on February 6, 2001.

Analysis:

The City's economic consultant, Keyser Marston Associates, Inc. (KMA) reviewed the application submitted by the Park based upon Resolution criteria. The purpose of the KMA review was: 1) to evaluate the four percent (4%) rent increase request; 2) determine the adequacy of the application's supporting documentation; 3) determine whether the requested increase is supported by the applicant's information; 4) determine if the Park is entitled to the requested increase per Resolution; and, 5) to recommend Council action on the application.

1. KMA has determined the application is complete and the information provided is appropriate to determine the eligible level of rent increase for the park. KMA's review of criteria for a rent increase has followed the formula and criteria set forth in the Resolution.
2. KMA reviewed the submitted application and found the documentation supporting income and expense was complete and adequate to conduct an analysis of the requested rent increase.
3. KMA determined the requested rent increase is supported by the applicant's information.
4. KMA's financial analysis confirms Ranch Mobile Home Park is eligible to increase space rents to the maximum allowed by Resolution, which is four percent. This equates to an increase of $4.94 per space per month for the entire Park for a total annual increase of $4,391.
5. KMA recommends based on its review of the City's Resolution, information provided in the application, and the applicant's request to increase rents four percent (4%), that Council approve the requested increase.

Conclusion:

Based on the information provided by Ranch and the analysis prepared by KMA, staff recommends the Council adopt a resolution approving a four percent (4%) rent increase for Ranch Mobile Home Park to be effective upon notification to tenants the later of April 1, 2001 or per the terms and conditions of each tenant lease agreement.

Prepared by:

Tim Giles
Assistant City Attorney

Prepared by:

Mark Asturias
Housing & Redevelopment Manager

Submitted by:

Mark Sellers,
City Attorney

Submitted by:

Philip Gatch,
Community Development Director

Attachment: Site Map
Resolution 84-037
Resolution
Summary Analysis

Cdd:\430-45\leo\H:\COMMON\HOUSING\Rent Control\Ranch Mobile Home\Staff Report 1-01.doc

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 200 Sandpointe, Fourth Floor, Santa Ana, California 92707. On May 10, 2011, I caused the foregoing documents(s) described as: **AVMGH FIVE, LTD. BRIEF IN OPPOSITION TO TENANT ASSOCIATION APPEAL FROM RENT ADJUSTMENT COMMISSION DECISION** to be served on the interested parties in this action as follows:

by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as stated on the ATTACHED SERVICE LIST.

☐ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U. S. Postal Service on that same day with postage thereon fully prepaid Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

☒ **BY OVERNIGHT COURIER**. I caused such envelope to be placed for collection and delivery on this date in accordance with standard delivery procedures.

☐ **BY ELECTRONIC TRANSMISSION**. I caused such document to be served on this date by electronic transmission at 4:25 p.m. in accordance with standard procedures and to the e-mail address listed on the attached service list. The transmission was reported as complete and without error.

☐ **BY FACSIMILE:** I caused such document(s) to be transmitted by facsimile transmission from a facsimile transmission machine, at Santa Ana, California, with the telephone number, (714) 546-7457 to the parties and/or attorney for the parties at the facsimile transmission number(s) shown above. The facsimile transmission was reported as complete without error by a transmission report, issued by the facsimile transmission machine upon which the transmission was made, a copy of which is attached hereto.

☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the above-referenced person(s).

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 10, 2011, at Santa Ana, California.

Dora Renteria

HART, KING & COLDREN
A PROFESSIONAL LAW CORPORATION
200 SANDPOINTE, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

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