Date: September 12, 2012
Case: Colonial Mobile Manor Mobilehome Park

FINAL RENT ADJUSTMENT AWARD

Enclosed is the Final Rent Adjustment Award with regards to the rent increase petition for the Colonial Mobile Manor Mobilehome Park.

If you are being represented in this hearing, please contact your representative for additional information. Otherwise, if you have any inquiries, please contact Program staff, Theresa Ramos at (408) 975-4475.

NOTICE TO PARTIES

Please note the time within which judicial review must be sought to review this decision is governed by the provisions of California Code of Civil Procedure Section 1094.6.

CITY OF SAN JOSE
RENTAL RIGHTS AND REFERRALS PROGRAM

PROCEEDINGS PURSUANT TO THE CITY OF SAN JOSE
MOBILE HOME RENT ORDINANCE
SAN JOSÉ MUNICIPAL CODE—CHAPTER 17.22
BEFORE
SUZANNE K. NUSBAUM
HEARING OFFICER

In re: **COLONIAL MOBILE MANOR LLP**	**RENT ADJUSTMENT AWARD**

BACKGROUND

The Supreme Court of California explains in *Galland v. City of Clovis*, 24 Cal.4th 1003, 1009-1010 (2001):

> "The term 'mobile home' is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. . . A mobile home owner typically rents a plot of land, called a 'pad,' from the owner of a mobile home park. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site specific improvements such as a driveway, steps, walkways, porches, or landscaping. When the mobile home owner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located." *Yee v. Escondido*, 503 U.S. 519, 523 (1992). Thus, unlike the usual tenant, the mobilehome owner generally makes a substantial investment in the home and its appurtenances, typically a greater investment in his or her space than the mobilehome park owner. *See* Baar, *The Right to Sell the Immobile Manufactured Home in Its Rent-controlled Space in the Immobile Home Park: Valid Regulation or Unconstitutional Taking?"* 24 Urb. Law. 157, 158, fn. 13 (1992). The immobility of the mobilehome, the investment of the mobilehome owner, and restriction on mobilehome spaces, has sometimes led to what has been perceived as an economic imbalance of power in favor of mobilehome park owners (*id.* at pp. 170-182) that has in turn led many California cities to adopt mobilehome rent control ordinances.

GENERAL PRINCIPLES GOVERNING RENT CONTROL

Rent control laws must be reasonably calculated to provide landlords with a just and

reasonable return on their property. Fair return is the constitutional measuring stick by which every rent adjustment petition control board decision is evaluated. A 'just, fair and reasonable" return is characterized as sufficiently high to encourage and reward efficient management, discourage the flight of capital, maintain adequate services, and enable operators to maintain and support their credit status. However, the amount of return should not defeat the purpose of rent control to prevent excessive rents. *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.,* 82 Cal. Rptr. 2d 569, 574 (1999).

While a fair return is constitutionally required, the state and federal Constitutions do not mandate a particular administrative formula for measuring fair return. *MHC Operating Limited Partnership v. City of San Jose*, 106 Cal. App. 4th 204, 220 (2003). The "maintenance of net operating income" (MNOI) formula used by the City of San Jose's Mobilehome Rent Ordinance, Chapter 17.22, is one permissible rent control approach. *Id.* at 221. On its face, the Ordinance allows park owners a fair return. *Id.* at 222. I therefore will apply the Ordinance to adjudicate this Mobile Home Petition.

ORDINANCE PROVISIONS

Like many California cities, the City of San Jose has adopted a Mobilehome Rent Ordinance. Section 17.22.020 of the Ordinance specifies its "Purpose." It provides:

> The purpose of the city council in enacting this chapter is to prevent excessive and unreasonable rent increases to mobilehome park residents, to prevent an exploitation of the shortage of available mobilehome lots in the city, to permit mobilehome park owners to receive a fair and reasonable return, and to establish a process for rent dispute resolution.

Section 17.22.580 of the Ordinance expressly compels the hearing officer to "set the rent increase in the amount required to provide the landlord with a fair and reasonable return."

Section 17.22.030 requires that:

> No provision of Chapter 17.22 of Title 17 of this code shall be applied so as to prohibit the administrative hearing officer from granting a rent increase that is demonstrated necessary to provide a mobilehome park owner with a fair return on investment.

The Ordinance operates on the rebuttable presumption that net operating income (NOI) provided owners with a fair return in the base year. Section 17.22.480 defines the "Presumption of fair base year net operating income:"

> For the purposes of determining the rent increase necessary to provide the landlord with a fair and reasonable return, it shall be presumed that the net

> operating income, as described in this part, received by the landlord in the base year, provided the landlord with a fair and reasonable return.

Section 17.22.510, "Rebuttal of fair net operating income presumption" provides the procedure for rebutting that presumption. It provides, in pertinent part:

> The landlord . . . may present evidence to rebut the presumption of fair and reasonable return based upon the base year net operating income as set forth in Section 17.22.480 and the administrative hearing officer may adjust said net operating income accordingly if the administrative hearing officer makes at least one of the following findings: . . . .
>
> > B. The gross income during the base year was disproportionate. In such instances, adjustments may be made in calculating gross income consistent with the purposes of this chapter. The administrative hearing officer shall consider the following factors in making this finding:
> >
> > > 1. The gross income during the base year was lower than it might have been because some residents were charged reduced rent. . . .

With an exception not relevant here, §17.22.490 of the Ordinance establishes 1985 as the base year. [1]

Section 17.22.530 establishes the procedure for calculation of gross income during the base year:

> A. For the purposes of determining the net operating income, gross income shall be the sum of the following:
>
> > 1. Gross rents calculated as gross rental income at one hundred percent occupancy, adjusted for uncollected rents as provided in subsection B. of this section;
> >
> > 2. Income from laundry facilities and garage or parking fees;
> >
> > 3. Costs of utilities paid directly to the landlord by the mobilehome owners or mobilehome tenants; and

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[1] It provides:
A. Except as provided in subsection B. of this section, base year means the 1985 calendar year.
B. For rental units which were exempt from the provisions of this chapter pursuant to a rental agreement as described in Section 17.22.370 and which are subject to the provisions of this chapter because of the expiration or other termination of such rental agreement, base year means the last twelve months of the term of the rental agreement.

4. All other income or consideration received or receivable in connection with the use or occupancy of the rental unit.

B. Gross rents shall be adjusted for uncollected rents due to vacancy and bad debts to the extent such are beyond the control of the landlord. No such adjustment shall be greater than three percent of gross rents unless justification for a higher rate is demonstrated by the landlord.

Section 17.22.540 establishes the procedure for calculation of operating expenses during the base year:

A. For the purposes of determining net operating income, operating expenses shall include the following:

1. Costs of operation and maintenance.

2. Utility costs to the extent they are not included in costs of operating and maintenance.

3. Landlord-performed labor compensated at reasonable hourly rates.

a. No landlord-performed labor shall be included as an operating expense unless the landlord submits documentation showing the date, time, and nature of the work performed.

b. There shall be a maximum allowed under this provision of five percent of gross income unless the landlord shows greater services were performed for the benefit of the residents.

4. License and registration fees required by law to the extent such are not otherwise paid by the residents.

5. Costs of capital improvements where all of the following conditions are met:

a. The capital improvement is made at a direct cost of not less than one hundred dollars per affected rental unit or at a total direct cost of not less than five thousand dollars, whichever is lower.

b. The costs, less any insurance proceeds or other applicable recovery, are averaged on a per unit basis for each rental unit actually benefitted by the improvement.

c. The costs are amortized over a period of not less than sixty months.

d. The costs do not include any additional costs incurred for property damage or deterioration resulting from any unreasonable delay in the undertaking or completion of any repair or improvement.

e. The costs do not include costs incurred to bring the rental unit into compliance with a provision of the San Jose Municipal Code or state law where the rental unit has not been in compliance from the time of its original construction or installation and such provision was in effect at the time of such construction or installation.

f. At the end of the amortization period, the allowable monthly rent is decreased by any amount it was increased because of the application of this provision.

6. Costs of rehabilitation, where all of the following conditions are met:

a. The costs, less any insurance proceeds or other applicable recovery, are averaged on a per unit basis for each rental unit actually benefitted by the rehabilitation.

b. The costs are amortized over a period of not less than thirty-six months.

c. The costs do not include any additional costs incurred for property damage or deterioration resulting from any unreasonable delay in the undertaking or completion of any repair or improvement.

d. The costs do not include costs incurred to bring the rental unit into compliance with a provision of the San Jose Municipal Code or state law where the rental unit has not been in compliance from the time of its original construction or installation and such provision was in effect at the time of such construction or installation. The costs may include costs incurred to maintain code compliance.

e. At the end of the amortization period, the allowable monthly rent is decreased by any amount it was increased because of the application of this provision.

7. Legal expenses limited to attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, and legal expenses necessarily incurred in dealings with respect to the normal operation of the park to the extent such expenses are not recovered from adverse or other parties, subject to the following requirements:

a. Allowable legal expenses which are of a nature that recurs annually shall be considered as elements of operating expenses.

b. Allowable legal expenses which are not of a nature that recurs annually shall be amortized over a reasonable period of time and at the end of the amortization period, the allowable monthly rent shall be decreased by any amount it was increased because of the application of this provision.

B. Operating expenses shall not include the following:

1. Mortgage principal or interest payments or other debt service costs.

2. Any penalties, fees or interest assessed or awarded for violation of any provision of this chapter or of any other provision of law.

3. Legal expenses, including attorneys' fees and costs, incurred in relation to administrative or judicial proceedings in connection with this chapter and legal expenses, where the pass- through of the expenses would constitute a violation of public policy.

4. Political contributions.

5. Depreciation of the rental unit or rental units.

6. Any expenses for which the landlord has been reimbursed by any utility rebate or discount, security deposit, insurance settlement, judgment for damages, settlement or any other method or device.

Under § 17.22.450 of the Ordinance, park owners are allowed "[a]ny rent increase which does not exceed the maximum annual percentage increase as applied to the then current base rent" without review under the administrative hearing process.

Pursuant to § 17.22.460, applications for extraordinary increases (in excess of those allowed without review) must be approved by an administrative hearing officer. Colonial Mobile Manor has brought such a petition. It maintains that if a Vega adjustment is

granted, it will need an extraordinary increase to adjust the revised "base year" net operating income for inflation under the MNOI approach. Parkowner's Post-Hearing Brief, page 1.

PROCEDURAL BACKGROUND

On February 27, 2012, Colonial Mobile Manor filed a Mobilehome Petition with the City of San Jose, Housing Department, Rental Dispute Program. On April 6, 2012, Bruce Stanton filed Mobilehome owners Proxy/Service Forms for a number of the units. On April 13, 2012, Bruce Stanton filed additional mobilehome owners Proxy Forms.

A prehearing conference was conducted on April 13, 2012, pursuant to the San Jose Mobile Home Park Ordinance, section 17.22.785 before Suzanne K. Nusbaum, Hearing Officer. Anthony C. Rodriguez appeared for the petitioner, Colonial Mobile Manor LLP, and Bruce Stanton appeared for some of the mobilehome owners. None of the pro se mobilehome owners appeared. The Hearing Officer inquired about the issues to be adjudicated and the witnesses to be presented. Hearing dates were scheduled accordingly based upon the information presented.

A view of the park and a second prehearing conference was conducted on May 21, 2012, before Suzanne K. Nusbaum, Hearing Officer. Anthony C. Rodriguez appeared for the petitioner, Colonial Mobile Manor LLP, and Bruce Stanton appeared for some of the mobilehome owners. None of the pro se mobilehome owners appeared. The Hearing Examiner again reviewed with the parties the schedule for document exchange and the hearings.

On June 11, 2012, the mobilehome owners represented by Bruce Stanton filed a Prehearing Brief. On June 12, 2012, the petitioner, Colonial Mobile Manor LLP, filed a Prehearing Brief in support of its request for a $114.22 rent increase.

Hearings began on June 18, 2012. Anthony C. Rodriguez appeared for the petitioner, Colonial Mobile Manor LLP, and Bruce Stanton appeared for some of the mobilehome owners. The pro se parties were asked by the Hearing Officer to identify themselves at the commencement of the hearing so that they could be included in examination of the witnesses and scheduling conversations. Only identified themselves as mobilehome owners not represented by counsel. They were invited to participate fully in the hearing. At the hearing the testimony of the Appraiser, Gerald Taylor, and Richard Fabrikant were presented.

Hearings continued on June 26, 2012. Anthony C. Rodriguez appeared for the petitioner, Colonial Mobile Manor LLP, and Bruce Stanton appeared for some of the mobilehome owners. The pro se parties were asked by the Hearing Officer to identify themselves at the commencement of the hearing so that they could be included in examination of the witnesses and scheduling conversations. Only and identified themselves as mobilehome owners not represented by counsel. They were

invited to participate fully in the hearing. Peter Wang, David Beccaria, and Kenneth Baar testified.

Hearings continued on June 27, 2012. Anthony C. Rodriguez appeared for the petitioner, Colonial Mobile Manor LLP, and Bruce Stanton appeared for some of the mobilehome owners. The pro se parties were asked by the Hearing Officer to identify themselves at the commencement of the hearing so that they could be included in examination of the witnesses and scheduling conversations. Only and identified themselves as mobilehome owners not represented by counsel. They were invited to participate fully in the hearing.

and testified.

Hearings continued on June 29, 2012. Anthony C. Rodriguez appeared for the petitioner, Colonial Mobile Manor LLP, and Bruce Stanton appeared for some of the mobilehome owners. The pro se parties were asked by the Hearing Officer to identify themselves at the commencement of the hearing so that they could be included in examination of the witnesses and scheduling conversations. and identified themselves as mobilehome owners not represented by counsel. They were invited to participate fully in the hearing. Kenneth Baar testified.

Hearings continued on July 2, 2012. Anthony C. Rodriguez appeared for the petitioner, Colonial Mobile Manor LLP, and Bruce Stanton appeared for some of the mobilehome owners. The pro se parties were asked by the Hearing Officer to identify themselves at the commencement of the hearing so that they could be included in examination of the witnesses and scheduling conversations and identified themselves as mobilehome owners not represented by counsel. They were invited to participate fully in the hearing.

testified.

At the conclusion of the July 2, 2012 hearing, the Hearing Officer heard closing argument from and reviewed with the parties the schedule for submitting written briefs.

As agreed by the parties who were present at the July 2, 1012 hearing, the park owner's brief was due on July 23, 2012, and the mobile homeowners' briefs were due on August 6, 2012.

On July 23, 2012, the park owner filed his post-hearing brief and an updated exhibit list. At the Hearing Officer's request an updated exhibit list, with Bates numbers was submitted on August 20, 2012.

The following documents were offered and admitted as exhibits:

COLONIAL MOBILE MANOR LLP MOBILEHOME AWARD, cont.

Exhibit	Description	Beginning Bates No.	Ending Bates No.
1	Grant Deeds, April 2, 1962	1	2
2	Application for Electrical Permit, 200 Spaces, August 3,1967	3	4
3	Application for Electrical Permit, Laundry Room, September 11, 1967	5	6
4	Application for Plumbing Permit, Water Treatment, December 27, 1967	7	8
5	Assessed Value of Colonial Mobile Manor, 1968	9	9
6	Bank of America Report Re: Mobilehome Parks, 1970	10	24
7	Assessed Value of Colonial Mobile Manor, 1974	25	25
8	Bank of America Report Re: Mobilehome Parks, 1976	26	45
9	City of San Jose Rent Stabilization Ordinance, July 10, 1979 [1]	46	84
10	1984-1985 Multiple Listing Service Transactions (San Jose Area)	85	498
11	1984-1985 Multiple Listing Service Transactions (Colonial Mobile Manor)	499	501
12	Assessed Value of Colonial Mobile Manor, 1985	502	502
13	Appraisal of Casa de Lago by Gerald Taylor, 1985	503	532
14	1985 Rent Statements, Colonial Mobile Manor, Space No: 47	533	537
15	1985 Statistical Analysis, San Jose	538	542
16	Rent Statements, June 1, 1985	543	544
17	Survey of Mobilehome Park by HDC, February, 1986	545	606
18	Rent Statements, June 1, 1986	607	611
19	Rent Statements, June 1, 1987	612	616

COLONIAL MOBILE MANOR LLP MOBILEHOME AWARD, cont.

Exhibit	Description	Beginning Bates No.	Ending Bates No.
20	Rent Statements, June 1, 1988	617	621
21	Rent Statements, June 1, 1989	622	626
22	Business Entity Detail Re: Colonial Mobile Manor, LP, filed March 3, 2009	627	627
23	Appraisal of Colonial Mobile Manor by John Neet, dated March 5, 2009	628	673
24	Grant Deed, dated April 29, 2009	674	676
25	Buyer Final Closing Statement, dated April 29, 2009	677	678
26	December 31, 2009 Income Statement and General Ledger	679	724
27	February 17, 2010 Notice of Meeting and Rent Credit Program	725	729
28	November 19, 2010 Notice of Corrected Assessed Value	730	730
29	December 31, 2010 Income Statement and General Ledger	731	791
30	December 31, 2011 Income Statement and General Ledger	792	826
31	February 2012 Rent Roll, Colonial Mobile Manor	827	834
32	February 27, 2012 Notice of Rent Increase, Colonial Mobile Manor	835	846
33	May 22, 2012 Park Rules and Regulations, Colonial Mobile Manor	847	857
34	May 31, 2012 Assessed Value, Colonial Mobile Manor	858	858
35	Comparable Sales Reports, May 31, 2010-May 31, 2012	859	1059
36	Comps Detail Sheet Re: Sale of Colonial Mobile Manor, dated June 4, 2012	1060	1063
37	Multiple Building Property Summary for Colonial Mobile Manor	1064	1068

Exhibit	Description	Beginning Bates No.	Ending Bates No.
38	Assessor's Map of Colonial Mobile Manor 2011-2012	1069	1069
39	Bureau of Labor Statistics- Consumer Price Index: 1962-2012	1070	1071
40	HCD MH Parks by City, San Jose, Sunnyvale, Milpitas, Fremont	1072	1081
41	HCD MH Parks by County, Santa Clara, Alameda, San Mateo, Santa Cruz	1082	1110
42	Electric Schedule ET Mobilehome Park Service	1111	1115
43	Gas Schedule GT Mobilehome Park Service	1116	1117
44	Appraisal of Real Estate, 12th Edition, Pg. 82, 480, 489 and 498 through 501	1118	1125
45	Dictionary of Real Estate Appraisal, 4th Edition, Pg. 33	1126	1127
46	Health and Safety Code Section 18115.5 re: Depreciation of Mobilehomes	1128	1128
47	San Jose Mobilehome Rent Stabilization Ordinance	1129	1170
48	Comparative Rates of Return and Inflation Since 1962	1171	1172
49	Comparative Rates of Return and Inflation Since 1985	1173	1174
50	Rent Increases Based on Annual CPI Using Various Base Rents	1175	1175

COLONIAL MOBILE MANOR LLP MOBILEHOME AWARD, cont.

Exhibit	Description	Beginning Bates No.	Ending Bates No.
51	Property Taxes of Current Owner and Previous Owner	1176	1178
52	Various Invoices used by Tenants in Cross Examination of Peter Wang	1179	1220
53	Colonial Mobile Manor Rents on January 1, 1985 and June 1, 1985	1221	1221
54	Emails Regarding Spa Repairs and Permit at Colonial Mobile Manor	1222	1224
55	Three Memos from HOME to Peter Wang	1225	1227
56	Memo from Colonial Manor Residents Committee to Peter Wang	1228	1232
57	Letter from Attorney to Previous Owners Re: On Site Manager	1233	1239
58	Photographs of Joanne Ingold Re: Injuries Sustained on Pathway	1240	1240
59	Documents Regarding Spa Repairs and Permit at Colonial Mobile Manor	1241	1252
60	Bid to Repair Pathway	1253	1253
61	Various Documents Regarding TV Antennas and Digital Television	1254	1267
62	Analysis of Various Invoices Submitted By Tenants as Exhibit 52	1268	1271
63	Analysis of Expenditures at Three Park Owned Homes (60, 121, 138)	1272	1275

COLONIAL MOBILE MANOR LLP MOBILEHOME AWARD, cont.

Exhibit	Description	Beginning Bates No.	Ending Bates No.
64	Mobilehome Claim Form/Exhibits Submitted by Martha O'Connell	1276	1299
65	Analysis of Attorneys Fees Paid to Anthony Rodriguez During 2011	1300	1300
66	Mobilehome Claim Form Submitted by Harold and Ione West	1301	1303
67	Mobilehome Claim Form/Exhibits Submitted by William and Christina Lemon	1304	1305
68	Mobilehome Claim Form/Exhibits Submitted by Valda Evans	1306	1310
69	Mobilehome Claim Form Submitted by Dana Blaylock	1311	1313
70	Mobilehome Claim Form Submitted by Rose Clinton	1314	1315
71	Mobilehome Claim Form/Photos Submitted by David and Merrillee Smelter	1316	1318
72	Mobilehome Claim Form Submitted by Mary Lou Clark	1319	1319
73	Photographs of Fence and Repairs	1320	1322
A.	Rent Comparability Study by David Beccaria, MAI	n/a	n/a
B.	Rent Control Report by Kenneth Baar, JD, PhD	n/a	n/a
C.	Fair Rate of Return Analysis by Richard Fabrikant, MBA, PhD	n/a	n/a

Exhibit	Description	Beginning Bates No.	Ending Bates No.
D.	Market Rent Survey by Gerald Taylor, MAI	n/a	n/a
E.	Rent Control Report by Kenneth Baar, JD, PhD [Revised]	n/a	n/a

On August 2, 2012, filed a request for an extension for a review appraisal for Colonial Mobile Manor, which was denied by Order dated August 14, 2012.

By email dated August 16, 2012, the Hearing Officer advised the parties that she intended to take judicial notice of the cost of "limited basic cable service" provided by Comcast: $19.96 per month and by Dish TV $19.99 per month, and that if anyone wanted to provide the monthly charge for limited basic service by ATT UVerse, she would take judicial notice of that as well. She defined "limited basic service" as the cost of providing local broadcast stations (ABC, CBS, NBC, FOX, PBS, etc.), local government channels and education channels. See, e.g. http://customer.comcast.com/help-and-support/cabletv/difference-between-limited-basic-and-expanded-basic-cable/. She requested the parties to advise her immediately if they had an objection. The park owner filed an objection with two exhibits on August 20, 2012. The other parties were given until August 24, 2012 to submit comments on the question. No judicial notice was taken.

Due to confusion in the transmission and receipt of email copies, the time for all parties to present responsive briefs was extended to August 20, 2012.

Briefs have been received from the park owner, the tenants represented by Bruce Stanton, and

. A reply brief has been received from the park owner.

By email dated August 29, 2102, the park owner and the homeowners represented by Bruce Stanton submitted a document showing 2011 Actual Income & Expenses, Adjustments by the Parties & Stipulated and Disputed Items.

LOST OR MISSING BASE YEAR RECORDS

Colonial Mobile Manor claims that it does not have the information required to establish a base net operating income. Section 17.22.495 of the Ordinance allows estimates of net operating income (NOI) when actual base year information is unavailable. It provides for the reconstruction of lost or missing base year records as follows:

> Notwithstanding any provision of Chapter 17.22 of Title 17 of this code, in instances in which the exact information regarding base year income and

expenses is not available for the mobilehome park which is the subject of the hearing, the hearing officer has the discretion to consider all other information available to estimate the 1985.net operating income for the mobilehome park.

A. Such information may include, but shall not be limited to the following:

1. Information from tax returns, bank statements, annual reports or other financial data.

2. Information from the files of the rental rights and referrals program regarding the mobilehome park which is the subject of the hearing, including but not limited to previously issued rental mediation and arbitration decisions.

3. Such other information which may be available.

B. In making an estimation under this section, the hearing officer may make reasonable inference and assumptions about the existing data as are necessary to project what the actual amount was.

C. The hearing officer shall consider the comments from all parties to the hearing regarding the accuracy of the data used and the methodology in arriving at the estimated data.

D. In determining the burden of proving the reasonableness of the rent increase under Section 17.22.820, the hearing officer may consider the circumstances under which missing data became unavailable as well as the credibility of testimony from all parties.

I recreate the base year net operating income by following those principles and procedures and relying on the evidence presented.

Actual 1985 Base Rent:

The park owner produced actual rent increase notices from 9 spaces, showing the rents charged at those spaces on January 1, 1985, as well as the rent at those same spaces following the June 1, 1985 8% increase allowed under the old Ordinance. Ex. 16, Bates No. 543. The park owner also produced the rental agreement for Space 38, showing the rent that the homeowner paid on June 22, 1985. Ex. 16 Bates No. 544. The homeowners produced MLS information for 3 spaces at Colonial Mobile Manor during 1984, from which the 1985 rate could be deduced. Ex. 11 Bates Nos. 499 to 501. The homeowners also produced written statements from space number 47 for all 12 months during 1985. Ex. 14, Bates Nos. 533 to 537.

The evidence of actual rent paid is as follows:

Space No.	January 1, 1985 rent	June 1, 1985 rent
34	$189.52	$204.69
38	$199.01	$214.93
46	$189.52	$204.69
47	$201.30	$217.41
49	$174.09	$188.02
54	$207.86	$224.49
138	$189.52	$204.69
139	$189.52	$204.69
140	$207.86	$224.49
141	$220.45	$238.09
147	$225.00	$243.00
176	$207.86	$224.49
184	$216.00	$233.28
190	$196.00	$211.68
Total	$2813.51	$3038.64
Average	$200.97	$217.05

Dr. Fabrikant testified that the actual average rate per unit 1985 was $213.33. According to Dr. Fabrikant, the total rental income for 1985 was $529,911.72.

In addition to the evidence of actual base year rents produced by both sides, the park owner produced the rent roll for the entire park as of February 1, 2012. Ex. 31, Bates Nos. 827 to 834. The average rent for the 191 mobile home spaces without park owned homes was approximately $538.39 per month. Ex. C, page 19 and Ex. D page 50. Discounting the $538.39 average February 1, 2012 rent by the automatic rent increases allowed under the Ordinance since 1985 results in a June 1, 1985 average rent of $214.25. Ex. C page 49.

David Beccaria testified that the average rent in Colonial Manor in 1985 was $217. This figure was based on June 1, 1985 rent and would have included an 8% increase over the rent paid for the first 5 months of the year.

Because it alleges that the actual base year rents were significantly below market, the park owner is seeking a "Vega adjustment" of the 1985 rental income.

MOBILEHOME RENT ORDINANCE
§ 17.22.510: "VEGA ADJUSTMENT"

In general, the maintenance of net operating income formula is based on pre-control, fair-market assumptions. *MHC Operating Ltd Partnership,* v. City of San Jose, 106 Cal. App.

4th 204, 266. The Ordinance's MNOI formula presumes that the net operating income in the base year provided a just and reasonable return. § 17.22.480.

The purpose of selecting a base year is to find a starting point at which the base rent levels reflect general market so as to provide the property owner a fair return and then adjust those rents going forward to maintain that return. *Los Altos El Granada Investors v. City of Capitola*, 140 Cal. App. 4th 135c (2006).

Although called a "presumption," what §17.22.480 does is preliminarily allocate the burden of proof. The presumption, that application of the rent control ordinance resulted in a fair rate of return, is not triggered by "another fact . . . established in the action." See *Evid. Code*, § 600.

Section 17.22.510 establishes the procedure for the park owner to prevent the drawing of any inference created by § 17.22.480.

The Ordinance in § 17.22.510 provides, in pertinent part:

> The landlord or any mobilehome resident who is a party to the administrative hearing may present evidence to rebut the presumption of fair and reasonable return based upon the base year net operating income as set forth in § 17.22.480 and the administrative hearing officer may adjust said net operating income accordingly if the administrative hearing officer makes at least one of the following findings:
>
> ....
>
> B. The gross income during the base year was disproportionate. In such instances, adjustments may be made in calculating gross income consistent with the purposes of this chapter. ...

The question presented here is whether the 1985 base rents can "reasonably be deemed to reflect general market conditions." *See Vega v. City of West Hollywood*, 223 Cal. App. 3d 1342, 1351 citing *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 169 (1976). Both the park owner and the mobilehome owners have presented evidence on the issue. I therefore determine the issue on the evidence, not on the no-longer operative presumption of §17.22.480. I conclude that the 1985 base rents cannot reasonably be deemed to reflect general market conditions because the gross income during the base year was disproportionate.

Both the park owner and the homeowners agree that the actual base year rents were significantly below market. In their closing brief, the homeowners represented by Bruce Stanton agree that the base rents in Colonial Mobile Manor "were below the levels in some comparable parks." Post Hearing Brief of Mobile Homeowners, page 8. They concede that "Colonial Manor may have had amongst the lower space rents of other area parks." Id. at page 10.

Their positions are supported by the testimony of the appraiser Gerald Taylor, who testified that the 1985 market rent for Colonial Manor, if there had been no rent control, would have been $400 per month. That is the rent that the park owner could have charged in the open market without rent control. His testimony is supported by Ex. D, page 41. In the opinion of Dr. Fabrikant, the actual rent in 1985 was $213.33. It should have been $297.38 based upon the rent charged in 1985 in comparable parks, in order to provide the park owner with a fair return on investment. He testified that the Colonial Mobile Manor rents were much lower than the prevailing mobile home rents in 1985. He further testified that without a Vega adjustment, the rate of return would be only 4.82% which is unfair.

In the opinion of the appraiser, David Beccaria, a typical 1985 controlled rent in San Jose was $290, excluding water, trash, gas, electric and sewer. This was the prevailing rent at the time. Ex. A, page 3. He based this opinion on 1984 Santa Clara County MLS information stated in Exhibit 10, Bates Nos. 85 to 103 on which he relied in his report, which is Ex. 17, at page 66.

At the hearing on June 26, 2012 during the testimony of David Beccaria, the parties stipulated that the 1985 rent included water, trash and sewer.

At the hearing on July 2, 2012, agreed that Colonial Mobile Manor had a reduced rent in 1985. In his opinion, it was a result of the uncertainty of freeway access. He had been a real estate broker in 1985 and refused to show the property in this park because it was right next to Highway 87. The highway expansion at that time was planned right up to the side of the park. In his opinion, the required disclosure of a proposed freeway corridor next to this park affected the market value and would reduce the property value 10 to 15 per cent across-the-board. The highway interchange was not completed until 1987. However in 1985, everyone knew that the freeway could be installed. In 1985, the park was landlocked and the area was in highway gridlock. There was a horrible traffic situation. In 1985, the freeways were being constructed, but there was litigation over the extension of Highway 87 to the Almaden Expressway. Thus, there was no certainty that the gridlock would be corrected.

The homeowners argue that in order to receive a "Vega adjustment," the park owner must show that there were "unique or extraordinary circumstances." I disagree. The hearing officer may not read into the Ordinance a procedure which does not exist. *Abramson v. City of West Hollywood*, 7 Cal. App. 4th 1121, 1128 (1992). It would be unreasonable for the hearing officer to impose a requirement that the 1985 rent levels be a result of "unique or extraordinary circumstances," rather than using the requirements set forth in the Ordinance. *See Stardust Mobile Estates, LLC v. City of San Buenaventura*, 147 Cal. App. 4th 1170, 1184 (2007) (unreasonable for the agency to impose the "peculiar circumstances" requirement of the West Hollywood ordinance rather than using the requirement of the applicable ordinance).

Section 17.22.510 permits the park owner to rebut the presumption that the 1985 base year net operating income provided the park owner with a fair and reasonable return on its investment. Unlike the ordinance in West Hollywood, the San Jose Mobilehome Rent Ordinance does not require proof of "peculiar circumstances." See *Vega, supra*, 223 Cal. App. 3d at 1349. Unlike the ordinance in Concord, the San Jose Ordinance does not require proof that the rents charged by the park owner in the Base Year were significantly below the rents for mobilehome spaces in the City with comparable amenities, because of "unique or extraordinary circumstances." *See Concord Communities, LP v. City of Concord*, 91 Cal. App. 1407, 1411 (2001). Unlike the ordinance in Berkeley, the San Jose Regulations do not define "disproportionate" gross income during the base year. *See City of Berkeley v. City of Berkeley Rent Stabilization Bd.*, 27 Cal. App. 951, 957 (1994).

There is no requirement that the 1985 rental income be a result of "unique or extraordinary circumstances," as argued by the mobile homeowners.

Adjusted 1985 Total Base Rental Income:

I conclude as a fact that the general real estate market for rent-controlled mobile home spaces in 1985 set a space rent of $290 per month as of January 1, 1985. I further find as a fact that the controlled rent for Colonial Mobile Manor in 1985 was $200.97 per month as of January 1, 1985. Therefore, I conclude as a matter of law that the gross income during the base year was disproportionate. Pursuant to § 17.22.510 B, I therefore adjust the 1985 gross income accordingly.

Rent in this mobile home park was increased effective June 1, 1985. There were 5 months of rent at the January 1st level, and 7 months at the June 1st level. The adjusted gross rental income through May 1985 is calculated as follows: 207 units times $290 times 5 equals $300,150. There was an 8% rental increase as of June 1, 1985. Therefore I find that the general real estate market rent for rent controlled mobile homes as of that date was $313.20. The adjusted gross rental income from June 1, 1985 to December 31, 1985 is calculated as follows: 207 units times $313.20 times 7 equals $453,826.80. The adjusted gross rental income for the 1985 calendar year totals $300,150 plus $453,826.80, equaling $753,976.80.

Laundry:

Neither party presented evidence of the actual laundry income in 1985. And neither party argued that laundry income should be included.

Utilities:

At the hearing on June 26, 2012 the parties stipulated that the 1985 base rent included water, trash and sewer. These items were not separately billed and are included in the base rent.

By state law, gas and electricity can be submetered. Exhibit 14, Bates Nos. 533 to 537 established that the base rent did not include electricity and gas. These amounts were separately billed. Because their costs are excluded from the rent, the income received by them should not be included in rental income, and these utility expenses should not be included in calculating the net operating income.

Having considered all of the above evidence, I find as a fact that there was no includable electricity and gas income in 1985.

There was no credible evidence of any parking income in 1985.

I conclude as a fact that the adjusted total gross income for 1985 was $753,976.80 .

Gross Income:	Amount:
Rents	$753,976.80
Laundry	0
Utilities	0
Parking	0
Other	0
Total Gross Income:	$753,976.80

1985 Base Year Operating Expenses:

The park owner has agreed to use the 1985 expenses calculated by the homeowners' expert. Park owner's Post-Hearing Reply Brief, page 9. As a result of that stipulation, there is no dispute as to any expenses during the "base year." Based upon that stipulation I find that the "base year" expenses are $201,293.01, the amount set forth in the report of the homeowners' expert. Ex. E, Page 20.

1985 Base Year Net Operating Income (NOI):

Pursuant to § 17.22.500, "[t]he base year net operating income shall be determined by subtracting the actual operating expenses for the base year from the gross income realized during the base year."

Gross Income realized during the 1985 base year, as reconstructed and then adjusted pursuant to § 17.22.510, was $ 753,976.80

The actual operating expenses, by stipulation, were $201,293.01. Baar Report, Ex. E, page 20; park owner's Post-Hearing Reply Brief, page 9.

Therefore the base net operating income equals ($753,976.80 minus $ 201,293.01) $552,683.79.

Fair and Reasonable Return: Maintenance of Net Operating Income (MNOI):

Section 17.22.550 of the Ordinance provides:

> A. A fair and reasonable return is that amount required for the landlord to maintain the base year net operating income adjusted for inflation.
>
> B. The adjustment for inflation shall be that amount required for the base year net operating income to be increased annually by a percentage of the Consumer Price Index. The applicable percentage of the Consumer Price Index shall be set in accordance with Section 17.22.570.

The required adjustment for inflation set forth in § 17.22.570 is 1.987. Kenneth Baar Report, Ex. E, page 3.

The base net operating income adjusted for inflation is base NOI of $552,683.79 times 1.987, which equals $1,098,182.69.

Hearing process to Determine MNOI:

The park owner must proceed under § 17.22.460, Rent Increases Subject To Hearing and §17.22.470 C, where "the administrative hearing officer's determination of the rent increase necessary to provide the landlord with a fair and reasonable return shall be made in accordance with the standards set forth in this part."

The next step is to determine the current net operating income.

Section 17.22.520 provides, in pertinent part:

> The net operating income as of the date of filing a petition requesting an increase . . . shall be determined by:
>
> > A. Annualizing the rents in effect as of the date of filing to determine the annualized gross income.
> >
> > B. Determining the operating expenses during the immediately preceding calendar or fiscal year.
> >
> > C. Subtracting the operating expenses determined pursuant to subsection B. from the annualized gross income.

Annualized Gross Income on Date Petition Filed:

The petition was filed on February 27, 2012.

The calculation of gross income is governed by § 17.22.530 which provides, in pertinent part:

> A. ... gross income shall be the sum of the following:
>
> 1. Gross rents calculated as gross rental income at one hundred percent occupancy...;
>
> 2. Income from laundry facilities and garage or parking fees;
>
> 3. Costs of utilities paid directly to the landlord by the mobilehome owners or mobilehome tenants; and
>
> 4. All other income or consideration received or receivable in connection with the use or occupancy of the rental unit.
>
> ....

Section 17.22.700 requires the landlord to use the petition form prescribed by the commission. The commission's form defines the "current year" as the "previous calendar year or park fiscal year." "The same fiscal year must be applied for all rent increases and be reflected in the park financial records." The required form defines gross income as:

> 1. Rents
>
> ....
> B. current year rents are determined by annualizing the rents in effect as of the date of filing at 100% occupancy... Section 17.22.530 B.
>
> 2. Laundry
>
> Income collected from laundry facilities.
>
> 3. Utilities
>
> Cost of gas, electricity and water paid directly to the park owner by the residents or mobile home owners.
>
> 4. Parking
>
> Garage or parking fees collected.

5. Other

> All other income or consideration received in connection with the use or occupancy of a rental unit. Specified by type and amount received.

The park owner has used as the current year, the calendar year of 2011.

I conclude as a matter of law that the Ordinance, and supporting forms, require the use of 2011 actual income and expenses. I reject the opinion of Dr. Baar, given in his report dated June 24, 2012 admitted as Ex. E at page 15, that the current income can be estimated. I rely instead on the 2011 actual income statement of the park owner, and the stipulations made by the parties about the income and expenses. See Park Owner's Post-Hearing Brief and Park Owners Post-Hearing Reply Brief, and Colonial Mobile Manor 2011 Actual Income and Expenses & Adjustments by the Parties & Stipulated and Disputed Items submitted by email on August 29, 2012.

The park owner and the mobilehome owners represented by Bruce Stanton have stipulated to the following 2011 income:

Income Type:	**Income Shown on Ex. 30, Bates No.**	**Stipulated Adjustments**
Rental Income (200 Units)	1,260,748.99	1,292,136.00
RV Space Rent (7 Units)	37,883.	46,535.
Sub-metered Electricity	86,135.	0.0
Sub-metered Gas	82,365.	0.0
Sewer	54,677.	54,677.
Trash	64,684.	64,684.
Sub-metered Water	21,827.	21,827.
Laundry Income	1,261.	1,261.
Interest W/F # 6185	1,328.	0.0
Interest W/F # 8964742187	287.6	0.0
Interest W/F # 5658	0.3	0.0
Interest W/F # 5975	296.4	0.0
Total Income	$1,611,498.51	**$1,481,122.88**

I find as a fact that, as of the date of filing, the average rent for the 200 mobilehome spaces was $538.39, resulting in annualized rental income of $1,292,136.00. ($538.39 x 200 spaces x 12 months = $1,292,136.00). (Ex. C, page 19). The average rent for the

seven RV spaces was $553.99, resulting in annualized rental income of $46,535.16. (Petition, page 3). ($553.99 x 7 spaces x 12 months = $46,535.16).

Thus, the total annualized rental income pursuant to Section 17.22.520 of the Ordinance is $1,338,671.16. ($1,292,136.00+ $46,535.16 = $1,338,671.16).

I conclude as a fact that the Annualized Gross Income on Date Petition Filed as follows:

Gross Income per §17.22.520:	
Gross rents per §17.22.520A(1)	
Rental income (200 units)	1,292,136.00
RV space rental (7 units)	46,535.16
Income from laundry facilities and garage or parking fees	1,261.50
Costs of utilities paid directly to landlord	
Sub-metered electricity	0
Submetered Gas	0
Sewer	56,677.94
Trash	64,684.93
Sub-metered water	21,827.35
Total Gross Income:	**$1,481,122.88**

Operating Expenses:

The Ordinance in §17.22.120 defines the costs of operation and maintenance, in pertinent part, as follows:

> A. "Costs of operation and maintenance" means all expenses incurred in the operation and maintenance of a rental unit and the buildings or complex of buildings of which it is a part together with common areas, but excluding costs of debt service...
>
> B. "Costs of operation and maintenance" includes, but is not limited to, real property taxes, business taxes and fees (including fees payable by landlords under this chapter), insurance, sewer service charges, utility costs for common areas, utility costs for rental units to the extent such costs are included in the rent, janitorial services, professional property management fees, pool maintenance, building and grounds maintenance, supplies, equipment, refuse removal, and security services or systems.

Pursuant to the Ordinance, § 17.22.540, operating expenses are calculated as follows, in pertinent part:

> A. For the purposes of determining net operating income, operating expenses shall include the following:

1. Costs of operation and maintenance.

2. Utility costs to the extent they are not included in costs of operating and maintenance.

....

4. License and registration fees required by law to the extent such are not otherwise paid by the residents.

....

7. Legal expenses limited to attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, and legal expenses necessarily incurred in dealings with respect to the normal operation of the park to the extent such expenses are not recovered from adverse or other parties, subject to the following requirements:

a. Allowable legal expenses which are of a nature that recurs annually shall be considered as elements of operating expenses.

b. Allowable legal expenses which are not of a nature that recurs annually shall be amortized over a reasonable period of time and at the end of the amortization period, the allowable monthly rent shall be decreased by any amount it was increased because of the application of this provision.

B. Operating expenses shall not include the following:

....

3. Legal expenses, including attorneys' fees and costs, incurred in relation to administrative or judicial proceedings in connection with this chapter and legal expenses, where the pass- through of the expenses would constitute a violation of public policy.

....

I accept the parties' stipulated expenses shown on the Colonial Mobile Manor 2011 Actual Income and Expenses & Adjustments by the parties & Stipulated and Disputed Items, submitted by email on August 29, 2012.

The following table summarizes the stipulations about the expenses. I adopt those stipulations as fact:

COLONIAL MOBILE MANOR LLP MOBILEHOME AWARD, cont.

Expense	Expenses Shown on Ex. 30, Bates No. 792	Stipulated Adjustment
*Adjustment for Victor Lopez**	*n/a*	*-462.00*
*Adjustment Per Exhibit 62**	*n/a*	*-4,309.00*
Amortization Expense	131,692.00	0.00
*Attorneys Fees for Petition**	*n/a*	*-4,250.00*
*Attorneys Fees Per Galland**	*n/a*	*850.00*
*Attorneys Fees Perez Eviction**	*n/a*	*-9,600.00*
Auto & Travel	1,174.94	1,174.94
Bank Charges	209.00	209.00
Cleaning & Maintenance	21,808.82	21,808.82
*Common Area Gas/Electricity**	*n/a*	*10,622.83*
Depreciation Expense	287,731.00	0.00
Dues and Subscriptions	156.96	156.96
*Extra Water Payment/1 mo.**	*n/a*	*-1,974.61*
Garden and Landscaping	11,435.00	11,435.00
Insurance	8,368.00	8,368.00
Insurance Workers Comp	5054.1	5,054.10
Legal and Professional	41,647.24	41,647.24
Licenses and Permits	20,650.74	20,650.74
Mortgage Interest No. 1	56,3474.79	0.00
Mortgage Interest No. 2	84,204.16	0.00
Office Expense	7,415.91	7,415.91
*Park Owned Homes/All Costs**	*n/a*	*-49,535.41*

Expense	Expenses Shown on Ex. 30, Bates No. 792	Stipulated Adjustment
Payroll Tax	4,281.10	4,281.10
Pest Control Expense	750.00	750.00
Pool Service Expense	4,898.50	4,898.50
Property Tax Expense	41,4401.48	163,283.48
Repair Painting & Decorating	9,532.64	9,532.64
Repair Plumbing & Electrical	9,652.81	9,652.81
Repairs General	17,350.00	17,350.00
*Sub Meter Gas/Elec Repairs**	*n/a*	*-3,908.85*
Supplies Expense	1,4037.48	14,037.48
Taxes-Partnership	800.00	800.00
Telephone Expense	2,338.58	2,338.58
Utilities Electricity	61,707.96	0.00
Utilities Gas	44,520.32	0.00
Utilities Meter Reading	5,513.35	0.00
Utilities Tax and Surcharge	11,253.87	0.00
Wages Expense	43,777.50	43,777.50
Total Stipulated Expenses		**$326,055.76**

*Items in "Italics" with an Asterisk are not separately listed categories on the 2011 Income Statement (Ex. 30, Bates No. 792), but have been added or subtracted by the parties, based on their legal and evidentiary arguments and/or their stipulations.

According to the August 29, 2012 stipulation, the following 2011 expenses remain in dispute:

Disputed Expense:	Parkowner Position:	Homeowner Position:
Management Fee	73,000.00	60,000.00
Utilities Trash	76,334.54	64,719.13

Disputed Expense:	Parkowner Position:	Homeowner Position:
Utilities Water	37,442.64	21,827.35
*Appraisal for Partner**	*0.00*	*-3,000.00*
*Fence / Amortized**	*751.66*	*0.00*
*Spa / Amortized**	*1,150.00*	*0.00*
*Water Meters / Amortized**	*2,203.30*	*0.00*

*Items in "Italics" with an Asterisk are not separately listed categories on the 2011 Income Statement (Ex. 30, Bates No. 792), but have been added or subtracted by the parties, based on their legal and evidentiary arguments and/or their stipulations.

I will discuss each disputed expense in turn.

Management Fee:

The management fees are listed in Ex. 30, Bates No. 810. The list shows a payment to Wang Investment of $13,000 by check no. 2279 on December 15, 2011, which the homeowners challenge.

Peter Wang testified that he is the general partner of Colonial Mobile Manor LP , a limited partnership. He manages the park for Colonial Mobile Manor LP. He is a professional property manager, who manages 9 other mobile home parks. He charges 4.5% of gross revenue for the management fee. There is no written management contract.

Exhibit 30, Bates No. 810 shows monthly payments of the management fees. Most months, the park paid $5,000. But it paid $10, 000 in April and August. Ex. 30, Bates No. 810.

The homeowners argue that the December check for $13,000 was a self-created payment made to retroactively increase management fees for the current calendar year. I reject that contention.

The Ordinance in § 17.22.120 defines the costs of operation and management as including "professional property management fees." Based upon the testimony of Peter Wang, I find that a management fee of 4.5 % is a reasonable fee. The park owner paid $73,000. The total income for the park in 2011 was $1,481,122.88. 4.5% of that amount is $ 66,650.49. I conclude that payment in excess of that amount was in error and is disallowed. I conclude as a fact that there was an overpayment of $ 6,349.51.

Utilities- Trash:

Exhibit 30, Bates No. 792 shows the Utilities- Trash expense as $ 76,334.54. The homeowners assert that trash collection expenses exceeded trash collection charges to the residents by $11,615.41. Peter Wang testified that the park provides dumpsters at the laundry area. He further explained that the trash company has raised its fees, but that the park charges to the residents have not kept up with that increased expense.

I am persuaded that the expense for Utilities-trash of $ 76,334.54 is correct, and should be included in calculating MNOI.

Utilities- Water:

Exhibit 30, Bates No. 792, shows a net loss of $15,615.29 associated with the provision of water for the park. (Submetered Water Income of $ 21,827.35. Utilities- Water Expense of $ 37,442.64. Difference $ 15,615.29).

The homeowners contend that this amount should also be deducted for the following reasons:

> Cross-examination of Peter Wang established that a portion of the claimed water expenses were actually attributable to water use by a neighboring pre-school property owner. It is also possible that some part of the water use was for the service of common areas of the Park. However, under these unusual circumstances, no claim for water expenses in excess of the water reimbursements of the Residents should be permitted. The Parkowner has the burden of proof in demonstrating the existence and the costs of water provision that are attributable to the park but are not reimbursed by the Residents. In this case the Parkowner has not provided any evidence of what this amount could be. Nor has the Parkowner made any attempt to rectify this "cross-billing" problem, even though he appears to have known about it for several years.

Homeowners' Post-Hearing Brief, page 17.

Peter Wang testified that Daycare and Boat Storage may be using part of the park's water. He first became aware of this problem in 2011. In his opinion, a difference between the income and the expense of $ 15,615.29 is high for the difference to be only attributable to the park common areas.

In its response brief, the park owner asserts the water provided to neighboring facilities is submetered and paid for by those businesses, citing Ex. 30, Bates No. 799 "Adrian." Parkowners' Post-hearing Reply Brief, page 14. However, I have no persuasive evidence identifying who or what the entry for "Adrian" is. And the response does not explain why the net water expense is so high.

I am not persuaded that all the utilities- water expense of $37,442.64 is due to water usage at the park. I am persuaded that the utilities- water expense attributable to water usage at the park is $30,000. I disallow the utility-water expense in excess of that amount because the park owner has failed to establish that it is attributable to water usage at the park.

The park owner has the burden of proving its expenses. It suffered no violation of procedural due process with respect to the water expenses. It was provided a fair and full opportunity to prove its case. After all the evidence was received and a proposed decision sent disallowing a portion of the expense as unproven, the park owner now seeks to reopen the evidence for judicial notice of the meaning of the Adrian entry. I deny that request.

Appraisal for Partner:

The homeowners challenge $3,000 in expenses for a partnership appraisal performed by Wayne Horiuchi. Two checks to Wayne K. Horiuchi appear in the category of legal expenses: Check No. 2235 dated 11/4/11 in the amount of $2,500 and Check No. 2294 dated 12/27/11 in the amount of $500. Ex. 30, Bates Nos. 808 and 809.

Peter Wang testified that he had a fiduciary duty to the other investors in the Colonial Mobile Manor LP to obtain this information.

I am unpersuaded that, as a matter of law, these appraisal expenses are "necessarily incurred in dealings with respect to the normal operation of the park," as required by the Ordinance, in §17.22.120 and §17.22.540A7. I therefore disallow $3,000 of the legal expenses.

Amortized Expenses:

The park owner claims that, because § 17.22.540.7.b requires amortization of legal fees, some non-recurring expenditures from 2009 and 2010 should be included in the calculation of operating expenses in 2011. The specific expenditures are the $26,439.63 incurred for water meters during 2009 (Ex. 25, Bates No. 691), the $9,020 incurred for a new fence during 2009 (Ex. 25, Bates No. 692), and the $23,035 incurred for a new spa during 2010 (Ex. 29, Bates No. 747 and Ex. 59, Bates No. 1252). (See also Exhibit C, Appendix 8, Page 5). Peter Wang testified that the water meters and the fence should be amortized over twelve years, while the spa should be amortized over twenty years. Even if no interest is added to the amortization period, the park owner argues that 2011 expenses should be increased by $4,104.96 based on the amortized portion of those non-recurring expenditures, calculated as follows:

Item:	Amount:	Years	Per year:
Fence	$9,020.00	12	$751.66
Water Meters	$26,439.63	12	$2,203.30

Spa	$23,035.00	20	$1,150.00
Total	$58,494.63		$4,104.96

The Ordinance in § 17.22.450 permits the inclusion in the calculation of operating expenses, the cost of capital improvements made in the current year, where certain conditions are met (all of which are met here). The Ordinance presumes that, for capital improvement expenses incurred in prior years for which no extraordinary petition was filed, the rent increases permitted by § 17.22.450 (the annual adjustment made without review) are sufficient to account for any increased costs of capital improvement and to permit the landlord to receive a fair and reasonable return. However, I have already adjudicated that the park owner has rebutted this presumption.

The expenses for the fence and the spa benefit the homeowners. I therefore find that the annual amortized expenses for them, totaling $ 1,901.66, should be included in the 2011 MNOI calculation in order to provide the park owner with a fair and reasonable return on investment.

The ordinance in § 17.22.090.B.2 defines capital improvements as an addition "primarily to benefit the residents of the affected rental units." I am not persuaded that the expense to submeter the water provides any benefit to the homeowners. I therefore deny the park owner's request to include this expense in the 2011 MNOI calculation.

I conclude that the following Expenses are allowable:

Disputed Expense:	**Expense Allowed:**
Management Fee	66,650.49
Utilities Trash	76,334.54
Utilities Water	30,000.00
Legal Expenses: Appraisal for Partner	-3000.00
Fence / Amortized	751.66
Spa / Amortized	1,150.00
Water Meters / Amortized*	0
Total:	**$171,886.69**

I conclude as a fact that the 2011 operating expenses were:

COLONIAL MOBILE MANOR LLP MOBILEHOME AWARD, cont.

Expense:	**Factual Finding:**
*Adjustment for Victor Lopez**	*-462.00*
*Adjustment Per Exhibit 62**	*-4,309.00*
Amortization Expense	0.00
*Attorneys Fees for Petition**	*-4,250.00*
*Attorneys Fees Per Galland**	*850.00*
*Attorneys Fees Perez Eviction**	*-9,600.00*
Auto & Travel	1,174.94
Bank Charges	209.00
Cleaning & Maintenance	21,808.82
*Common Area Gas/Electricity**	*10,622.83*
Depreciation Expense	0.00
Dues and Subscriptions	156.96
*Extra Water Payment/1 mo.**	*-1,974.61*
Garden and Landscaping	11,435.00
Insurance	8,368.00
Insurance Workers Comp	5,054.1
Legal and Professional	41,647.24
Licenses and Permits	20,650.74
Mortgage Interest No. 1	0.00
Mortgage Interest No. 2	0.00
Office Expense	7,415.91
*Park Owned Homes/All Costs**	*-49,535.41*
Payroll Tax	4,281.10
Pest Control Expense	750.00
Pool Service Expense	4,898.50
Property Tax Expense	163,283.48
Repair Painting & Decorating	9,532.64

Expense:	**Factual Finding:**
Repair Plumbing & Electrical	9,652.81
Repairs General	17,350.00
*Sub Meter Gas/Elec Repairs**	*-3,908.85*
Supplies Expense	14,037.48
Taxes-Partnership	800.00
Telephone Expense	2,338.58
Utilities Electricity	0.00
Utilities Gas	0.00
Utilities Meter Reading	0.00
Utilities Tax and Surcharge	0.00
Wages Expense	43,777.50
Appraisal for Partner	-3000.00
Fence / Amortized	751.66
Management Fee	66,650.49
Spa / Amortized	1,150.00
Utilities Trash	76,334.54
Utilities Water	30,000.00
Water Meters / Amortized	0
Total 2011 Expenses	**497,942.45**

I conclude as a fact that the income and operating expenses for 2011 were:

2011 Gross Income	$1,481,122.88
2011 Expenses	-497,942.45
Total 2011 Net Operating Income	**$983,180.43**

As determined above, the fair and reasonable return in accordance with § 17.22.550 of $1,098,182.69, plus the current net operating expenses of $ 497,942.45 equals the gross income required to produce a fair return, $ 1,596,125.14.

Fair return in accordance with § 17.22.550	$ 1,098,182.69
+ Current operating expenses	$ 497,942.45
Gross income required to produce a fair return	**$ 1,596,125.14**

The gross income required to produce a fair return, $1,596,125.14 , minus the current year gross income, $1,481,122.88, equals the total annual rent increase.

Gross income required to produce a fair return	$1,596,125.14
- Current year gross income	-$ 1,481,122.88
Total Annual Rent Increase	**$ 115,002.26**

The total annual rent increase, $115,002.26, divided by the number of units, 207, divided by 12 equals the allowable monthly rent increase of $46.30 per unit.

SERVICE REDUCTIONS

Section 17.22.280 defines a "Service reduction." It provides:

> "Service reduction" means a decrease or diminution in the basic service level required to be provided by the landlord pursuant to any of the following:
>
> A. California Civil Code Section 1941.1 and 1941.2.
>
> B. The Mobilehome Residency Law, California Civil Code Section 798 et seq.
>
> C. The Mobilehome Parks Act, California Health and Safety Code Sections 18200 et seq.
>
> D. The landlord's implied warranty of habitability.
>
> E. An express or implied agreement between the landlord and the resident.
>
> F. The level of service as implied by the condition of improvements, fixtures, and equipment, and their availability for use by the resident, at the time of the last rent increase.

G. Applicable rules or regulations of the mobilehome park.

The last rent increase for the mobile homeowners occurred on June 1, 2011.

Section 17.22.590 of the Ordinance governs the decision-making procedure for adjudicating for service reductions. It provides as follows:

> A. If the administrative hearing officer finds that service reductions have occurred, the administrative hearing officer shall determine the value of the service reductions and shall offset the allowable rent increase by the value of the service reductions. Service reductions which affect all rental units subject to the proposed rent increase shall be prorated over all such rental units, regardless of the number of residents claiming such service reductions.
>
> B. In determining the value of any service reductions, the administrative hearing officer shall consider the following factors:
>
> 1. The area affected by the service reduction.
>
> 2. The length of time the resident has been subjected to the service reduction.
>
> 3. The degree of discomfort the service reduction imposes on the resident.
>
> 4. The extent to which the service reduction causes the rental unit or rental units to be uninhabitable.
>
> 5. The extent to which the service reduction causes a material reduction in the usability of the rental unit.
>
> 6. Other similar factors deemed relevant by the administrative hearing officer.

The Mobilehome Rent Program Regulations, Chapter 2, Part. 2, also govern the adjudication of service reductions. They provide in pertinent part:

> § 2.02 Service Reductions and Housing Code Violations
>
> A service reduction which occurs without a corresponding decrease in rent is an additional rent increase. ...
>
> § 2.02.01 Basic Service Level

The landlord is required to furnish to the tenant a basic level of housing services, herein called the "Basic Service Level." The Basic Service Level for a particular housing service for a particular rental unit is established by:

....

(c) Express or implied agreement between landlord and tenant;

(d) The level of service consistent with subsection ... (c) above and implied by:

(1) The nature and quality of original construction of improvements, fixtures, and equipment;

(2) The age of the improvements, fixtures, and equipment;

(3) The condition of the improvements, fixtures, and equipment at the beginning of the applicable term of tenancy.

(4) The landlord's policies of operation and maintenance, repair, and replacement communicated to the tenant at the beginning of the applicable term of tenancy.

§ 2.02.02 Service Reductions

A service reduction occurs when the landlord has breached his obligation to furnish to the tenant the Basic Service Level and the tenant's usability of the premises is therefore measurably reduced.

....

§ 2.02.04 Proof of Service Reduction

The burden of proof each service reduction is on the person alleging the reduction. A service reduction for a particular service for particular rental unit shall be proven as follows:

(a) The person alleging the service reduction shall prove:

(1) The Basic Service Level for the particular service for the particular rental unit; and

(2) The actual service level for the particular service for the particular rental unit; and

(3) That the actual service level is, or was, maternally lower than the Basic Service Level.

....

(e) Proof of service reduction shall be received only for that period of time since the last increase which complied with the requirements of the Ordinance §§ 17.22.650 and 17.22.660.

§ 2.02.05. Determining Value of Unreasonable Service Reductions (SJMC 17.22.590)

(a) The Hearing Officer shall determine the percentage reduction in usability of the rental unit caused by the service reduction, commencing with the accrual date.

(b) In determining the percentage reduction of usability, the hearing officer shall consider the following factors:

(1) The area affected;

(2) The amount of time the occupant is exposed to the condition;

(3) The degree of discomfort the condition imposes;

(4) The extent to which such a condition causes tenants defined the premises uninhabitable and leave; and

(5) Similar factors.

(c) The Hearing Officer shall apply the percentage reduction to the monthly rent, divided by 30, and multiply the resulting sum by the number of days commencing from the accrual date to the date of restoration of the service reduction condition to the basic service level, to determine the value of the service reduction.

§ 2.02.06 Consequences of the Service Reduction Unreasonable under the Circumstances

If the value of the service reduction is determined in a proceeding to determine reasonableness of a pending rent increase, the value of the service reduction shall be applied as a credit against the rent increase which is otherwise cost justified.

I conclude as a matter of law that pursuant to Regulation § 2.02.04 (e) I am limited in awarding rent reductions to service reductions occurring within 12 months of the last rent increase, which occurred on June 1, 2011. I will consider service reductions that commenced prior to, and continued after, June 1, 2011.

I will first address the service reduction claims that affect the entire park.

Park Walkway:

Four homeowners filed service reduction claims for walkway: space 147, Ex. 70, Bates No. 1315; , space 169; , space 111; and , space 81. I was shown this walkway during my inspection of

the Park on May 21, 2012. The walkway is in need of repair. It has cracks and uneven sections that create a tripping hazard.

1. The area affected by the service reduction.

This is the major common walkway in the park between the streets. It is used by all occupants of the park. All units in the park are affected by the service reduction.

2. The length of time the resident has been subjected to the service reduction.

first noticed the problem in 2002 but did not notify the manager. , in her service reduction request, states "[t]he manager walks this area every day coming and going to work and should be aware." The occupants in space 101 notified the manager about the problem in 2006 but no action was taken. The problem has existed since prior to June 1, 2012.

3. The degree of discomfort the service reduction imposes on the resident.

The current condition of the walkway presents a safety hazard to all unit occupants.

reported in her service reduction complaint that tripped and fell but she did not report it to the manager. reported in her service reduction complaint that she tripped and fell but did not report it to the manager.

testified as follows: She started using the walkway after 1995. In the mid-1990s, there were a few places that were rough but she never reported it. The walkway got worse. She fell in 2002 but does not remember whether she ever told the management about it. After this case started, the park owner tried to mend the walkway, but it is still not fixed. It is still dangerous for people who are disabled.

testified that fell on the concrete walkway on May 21, 2012.

testified about her fall. She took pictures of her skinned knee. Ex. 58, Bates No. 1240. The bottom photograph in that exhibit shows the area of her fall. She fell after the asphalt had been placed along the uneven surface. She tripped because the level of the surface dropped.

4. The extent to which the service reduction causes the rental unit or rental units to be uninhabitable.

The service reduction does not cause the rental units to be uninhabitable.

5. The extent to which the service reduction causes a material reduction in the usability of the rental unit.

The service reduction causes a common area of the park to be unsafe. This is an elderly mobile home park. Falling risks are a serious concern for this population. I conclude that the service reduction causes a material reduction in the usability of a common area of the park.

6. Other similar factors deemed relevant by the administrative hearing officer.

Mr. Wang, the park's managing owner, testified that he first noticed the uneven surface or trip hazard during the walk through on May 21, 2012. He was not aware of the problem prior to the walk through. He now realizes the severity of the problem and has entered into a contract with LP Construction Company to overlay concrete on the walkway in 3 areas and to pour new concrete in the walkway areas near spaces 137 and 152. The contract has been admitted as Exhibit 60, Bates No. 1253. The cost of this work is $4,900.

As of the date of the last testimonial hearing, the condition had not as yet been corrected. The parties are unable to agree on whether the condition has subsequently been corrected. They may request an additional hearing, if this remains a point of contention.

In determining the percentage reduction of usability, I have not considered traditional tort factors, because local rent control boards may not adjudicate claims that have been traditionally reserved for the courts, such as claims for personal injury. *McHugh v. Santa Monica Rent Control Board*, 49 Cal. 3d 348, 374 (1989). The mobilehome owners who allegedly have been injured may pursue their traditional tort remedies.

I conclude that the failure to maintain the common area walkway was an unreasonable service reduction. I conclude that the value of the service reduction is 3 %.

Spa:

Service reduction claims for the spa were filed by space 59, Ex. 67, Bates No. 1304; space 83: space 84, Ex. 69, Bates No. 1312; space 86, space 140; and space 169.

I was shown the spa during my inspection of the Park on May 21, 2012. At that time, the spa looked good.

The Mobile Home Residency Act, California Civil Code § 798.37.5 makes park management solely responsible for the removal of any tree in the common areas of the mobilehome park. The Colonial Mobile Manor Community Regulations § 3.H provide that the park owner may remove any tree it deems necessary to mitigate any hazard, health and safety violation, property damage or other loss. Ex. 33, Bates No. 849. The removal shall be "without reduction or other adjustment to monthly rent." Ex. 33, Bates

No. 850. Thus, the removal of trees did not constitute a reduction in the Basic Service Level of the park.

The Mobilehome owners complained because the spa was closed for renovations. Section 798.24 of the Mobile Home Residency Act, California Civil Code 798 et seq., requires that each common area facility shall be open or available to residents at all reasonable hours. Closure for renovations, if unreasonable, could constitute a service reduction.

1. The area affected by the service reduction.

It is used by all occupants of the Park. All units in the park were affected by the service reduction. According to the testimony of Christina Lemon, the rental agreement provided for a spa.

2. The length of time the resident has been subjected to the service reduction.

The service reduction claim form by states the spa was out of service for more than 2 years. The spa was damaged and had cracks. She first noticed the problem in September 2008 and notified the manager. In response, he locked the gate so that nobody could use the spa and left notices on the porch for each resident telling them that he was getting bids for repairs on the spa. The problem was not corrected until June 2011.

Multiple tenants complained about the hours that the spa was open. In the opinion of , space 59, the spa should be available in the winter time. They complain that the spa was rebuilt but that the gate was locked and no one could use it in April 2012. , space 86, also complained about the hours of both the pool and the spa. Her service reduction claim form says that they used to be open until 10:00 PM with lights on the fence. It is now closed at 8:00 PM. She first noticed the problem in January 2000 and notified the manager, who did nothing. She also complained about the removal of palm trees, which caused a loss of shade.
, space 84 complained that he did not have full-time access and was locked out.

space 182, testified about the removal of 3 or 4 trees around the swimming pool. In her opinion, they had aesthetic value but not much shade value. In her opinion, the trees had looked healthy and beautiful and made the pool look tropical.

n testified that the spa was not operational in January 2010 when she moved in.

: testified that the spa was locked only one month after it was reopened. He complained about being deprived after that. He said that ladies with arthritis would use it. He complained about the spa being closed during the winter time, even though historically, that had been the schedule.

testified that the spa was closed in 2009 and reopened in 2011 at the normal opening time for this season.

Peter Wang testified that the spa was not functional when he purchased the park in April 2009.

3. The degree of discomfort the service reduction imposes on the resident.

rarely uses the pool area, less than one time per month. did not complain to the management about the spa's unavailability. Since the spa has reopened, she has not used it. testified that he has not used the spa since it was reopened.

4. The extent to which the service reduction causes the rental unit or rental units to be uninhabitable.

I am unpersuaded that the service reduction causes the rental units to be uninhabitable.

5. The extent to which the service reduction causes a material reduction in the usability of the rental unit.

The service that was reduced was for adult recreational services of a type found in luxury housing. A landlord may provide adequate housing services without providing tenants with a hot tub. *Santa Monica Properties v. Santa Monica Rent Control Board*, 230 Cal. App. 4th 739, 752 (2012). However, the spa services were part of the Basic Service Level agreed between the park owner and the mobile home owners. The Mobile Home Residency Act, California Civil Code § 798.24 provides that "[e]ach common area facility shall be open or available to residents at all reasonable hours..." I conclude as a matter of law that under the San Jose Ordinance, one could recover for deprivation of spa services, if one met the other requirements of the Ordinance.

The mobile home owners who complained, rarely used the spa.

I am unpersuaded that the service reduction caused a material reduction in the usability of the rental units.

6. Other similar factors deemed relevant by the administrative hearing officer.

The basic service level does not include having the spa open during the winter time. The normal hours of operation are from Memorial Day to Labor Day.

Peter Wang testified that upon purchasing the property in 2009, he promptly took steps to correct the problems with the spa. He put the repairs out for bid and signed a contract for the renovations. Ex. 59, Bates No. 1249. Between October 28, 2009 and June 16, 2012, he had to get permission from the County of Santa Clara for the design. He was anxious

to get the project done. The necessity for permits was holding up the work. On June 16, 2010 he applied for a permit. Ex. 59, Bates No. 1251. The permit was actually issued to the contractor shortly after June 16, 2010. Work commenced and on December 17, 2010 the park owner received an invoice for a progress payment. Ex. 59, Bates No. 1252. He made the last payment for work on the spa on January 31, 2011. At that time the spa was turned on; it was tested to see if it worked. It was not left on because it was winter time.

I am unpersuaded that a service reduction, as defined by § 17.22.280, has occurred. The spa was out of service for repairs. I am not persuaded that the park owner unreasonably delayed the repairs. I am unpersuaded that the spa's unavailability was unreasonable under the circumstances. Based upon the above considerations, I deny the service reduction claim for the spa.

Shuffleboard Court Area:

Service reduction claims were filed for the outdoor game area that had been a shuffleboard court by the following mobile home owners: , space 111; space 47; , space 82, Ex. 68, Bates No. 1307 and space 53, Ex. 66, Bates No. 1301.

I was shown this area during my inspection of the Park on May 21, 2012. It is unusable.

The Mobile Home Residency Act, California Civil Code § 798.24, provides, in pertinent part:

> Each common area facility shall be open or available to residents at all reasonable hours...

The common area was closed to the residents for years.

1. The area affected by the service reduction.

It is a recreational area used by all occupants of the Park. All units in the park are affected by the service reduction.

The brochure "Welcome to Colonial Manor Park" dated December 5, 2001, stated that: "Shuffleboard games are a regular and fun activity for some of our residents. They meet Tuesdays and Thursdays sometime between 8:00 AM and 9:00 AM from May 1 to October. There are 3 other parks where shuffleboard is played. For more information call Lee Honegger (President) at 448-1482 for more information." Ex. 64, Bates No. 1295.

2. The length of time the resident has been subjected to the service reduction.
In his claim form, , space 47, wrote that the problem had existed since late 1980 or early 1990. reported that they first noticed the problem in 1998 and notified the manager verbally at that time.

testified that the area had become deteriorated and was useless by the time she moved in, in November 2007. At that time, the area was fenced in and used as junk and equipment storage.

testified that when he moved in, in 2000, the shuffleboard court was barely operational. Use of the court stopped shortly after he moved in and then the court became a junkyard. He never had a chance to use the shuffleboard court. The cabinets were torn out. The equipment was discarded in 2008. It is now a dead zone with no ability to use the area.

Peter Wang testified that the shuffleboard courts were not in use when he bought the property in 2009. The area was used for storage of abandoned equipment- it was a massive garbage area.

I find that the residents have been subjected to this service reduction since prior to June 1, 2011 and that it is continuing.

3. The degree of discomfort the service reduction imposes on the resident.

The service reduction does not impose discomfort, but deprives the residents of healthy age-appropriate community athletic activity.

4. The extent to which the service reduction causes the rental unit or rental units to be uninhabitable.

California Civil Code 1941.1 provides, in pertinent part, that a dwelling shall be deemed untenantable if it substantially lacks any of the following affirmative standard characteristics: ....

> f. Building, grounds, and appurtenances at the time of the commencement of the the lease or rental agreement, and all areas under the control of the landlord, kept in every part clean, sanitary and free from all accumulations of debris, filth, rubbish...

I am persuaded that the service reduction caused this common area to be uninhabitable.

5. The extent to which the service reduction causes a material reduction in the usability of the rental unit.

and reported that shuffleboard had been a popular senior activity. testified that the court should be redone and put to another athletic or recreational use.

, testified that she played shuffleboard in college and before. She reported that: "From listening to other park residents, I get information that they did not lose

interest in shuffleboard so much as the surface of the lane(s) became too broken to use. The area remains unavailable and unusable by residents." Ex. 68, Bates No. 1307.

I find that the service reduction causes a material reduction in the usability of the common areas in the mobile home park. It is important to elderly people to engage in athletic activity and the deprivation of space where that can occur is significant.

6. Other similar factors deemed relevant by the administrative hearing officer.

reported that the park management allowed the shuffleboard Court to deteriorate and ultimately destroyed all the sheds and threw away the shuffleboard equipment. In their opinion, management decided to let the court fall into such a deplorable condition because park management thought that they could bring another mobile home into that space. They notified the manager several times about the problem verbally. In their view, the Court is a disgrace as well as an eyesore. testified that the manager decided to let it go because he wanted to put another mobile home there.

Peter Wang testified that new rental spaces created after January 1, 1991 would be exempt from rent control. He was advised to take out the shuffleboard court and turn it into a new rental space.

reported that she asked management about it and was told it was too expensive to repair and was no longer used by that many people. According to , Mr. Wang had spoken of revamping the area for other uses by the residents. Ex. 68, Bates No. 1307. She testified that she would use the shuffleboard area if it was repaired, but would not picnic and might not barbecue.

By letter dated May 12, 2009, the Colonial Manor Residents Committee requested cleanup and redevelopment of the shuffleboard area into a covered outdoor barbecue picnic facility, with propane gas barbecues, sinks and a storage area for equipment. On May 28, 2009, on behalf of the HOME Rent Adjustment Committee, and others sent the park owner a letter which stated opposition to redevelopment of the shuffleboard area into a covered outdoor barbecue, picnic facility, with propane gas barbecues, sinks, and storage area for equipment, if it was going to result in rent increases. These letters were attached to Karen Jackson's Service Reduction Claim. testified that she would have to see the operating expenses before she would say that she was in favor of cleaning up the area and redeveloping it into a covered outdoor barbecue, picnic facility with propane gas barbecues sinks in a storage area for equipment.

I conclude that the failure to maintain the shuffleboard court recreational area was an unreasonable service reduction. I conclude that the value of the service reduction is 2 %.

Laundry Facilities:

Service reduction claims were filed for the laundry by the following mobilehome owners: ı, space 169; , space 84, Ex. 69, Bates No. 1312; e and , space 111; , space 31, Ex. 64, Bates Nos. 1276 to 1278; k, space 83; and] .t, space 53, Ex. 66, Bates No. 1303.

The homeowners have established that the removal of washing machines, the malfunction of hair driers and clothes driers and the deteriorated gates and fencing around the laundry building constitute reductions in service.

1. The area affected by the service reduction.

The laundry area is available for use by all occupants of the Park. It contains washers and dryers, a beauty salon area with hair dryers, a sauna room and a pool room. All units in the park are affected by the service reduction. Outside the laundry room is a fence and a concrete area used for hanging laundry to dry.

; and , space 111, reported that the number of washing machines was reduced from 6 to 4 and only 3 out of the 6 dryers worked properly. , in his claim form, reported that the laundry facility is missing at least 10 washers. Of those remaining, at least one or 2 do not work. One half of the dryers do not work. Ex. 69, Bates No. 1312.

reported that the gate and fencing around the laundry room was in disrepair. The gates were falling off. Ex. 64, Bates no. 1276.

When I inspected the Park on May 21, 2012, this deteriorated condition continued to exist. The gate was being held open by a brick, the fence was not in good repair, and the concrete was cracked as shown on the photographs in Ex. 64, Bates Nos. 1277 and 1278.

also testified that the hair dryers were broken so that no one could use them. In her opinion, they should be taken out. She opposes the removal of the sauna because of ADA issues. She agrees with the conditions and concerns of the Colonial Manor Residents Committee. Ex. 65, Bates No. 1229.

: testified that there were not enough working washing machines. There are too many people to use the ones that are working. Some machines are gone completely. Since purchasing the park in 2009, Mr. Wang has put in some machines, but the park still needs more operable ones. They also need to have the dryers all working. Right now only two dryers are working.

2. The length of time the resident has been subjected to the service reduction.

and reported that they first noticed the problem in 2004 and informed the manager orally, but he took no action. According to the letter on behalf of HOME Rent Adjustment Committee to Peter Wang dated May 28, 2009, the laundry area had not been maintained in a professional manner for years. See attachment to Service Reduction Claim. reported that the problem had lasted at least 2 years. He had notified the manager and one or 2 new washers were installed but so many of the bad ones were removed that it really changed absolutely nothing. Currently one half of the dryers are useless. Ex. 69, Bates No. 1312.

and reported that the facility had fallen into a state of disrepair by September 1, 2000. Ex. 66, Bates No. 1303.

testified that she reported her March 30, 2012 fall in the laundry area to the manager. He did not repair the gate. He just moved the brick, but someone keeps putting it back.

I find as a fact that the service reduction has existed since prior to the date of the last rent increase, June 1, 2011.

3. The degree of discomfort the service reduction imposes on the resident.

See # 4 below. According to the letter on behalf of the HOME Rent Adjustment Committee to Peter Wang dated May 28, 2009, included with rent adjustment claim, "the laundry facilities are used by the poorest of the poor: those without washers and dryers. There are people in this Park who use the laundry that cannot drive, either permanently or intermittantly, due to disabilities or lack of the vehicle."

reported that if several residents arrive at the same time, which in a park this size is inevitable, then they are forced to leave your laundry baskets and return home and wait. "That's a lot of walking for the elderly!" Ex. 69, Bates No. 1312.

testified that he has used the laundry occasionally since 2000. In 2000, the laundry was barely operational.

Peter Wang testified that most mobile homeowners have their own washers and driers. and t reported that many of the mobile homeowners use this facility. Ex. 66, Bates No. 1303.

The laundry usage was low, even though the park charges less than outside laundromats. Peter Wang estimated that less than 10% of the park residents use the laundry.

It is unclear whether the low usage of the laundry facilities is due to their poor condition or the lack of interest because homeowners have their own machines.

Peter Wang speculated that people were coming from outside the park to use the laundry facilities.

The building was broken into. The new park owner has replaced two machines, countertops and faucets. There are now 4 or 5 working washing machines.

reported that on March 30, 2012 she stumbled over a brick holding the gate shut, that was not visible from her side of the gate. In her opinion, the condition was very unsafe. Ex. 64, Bates Nos. 1276 to 1278. She testified that the cement was cracked, broken and uneven, and that the gate was falling off its hinges.

4. The extent to which the service reduction causes the rental unit or rental units to be uninhabitable.

I am unpersuaded that the service reduction made a common area of the park uninhabitable.

5. The extent to which the service reduction causes a material reduction in the usability of the rental unit.

At the time of my park visit on May 21, 2012, I saw that some of the washing equipment had been removed, leaving empty spaces, and the non-operational hair driers. The laundry room and adjacent areas were somewhat clean but had dirty areas remaining, and outside there was a deteriorated fence and gate.

I conclude as a fact that there was a material reduction in the usability of this common area.

6. Other similar factors deemed relevant by the administrative hearing officer.

By letter dated May 12, 2009 to Peter Wang, the Colonial Manor Residents Committee requested that he remove and replace inoperable washers and dryers with new energy efficient equipment, providing that a survey of tenants can justify the continued use. In that committee's opinion, the whole building should be renovated. The beauty salon removed and converted into a storage area for the ladies club and club house decorations. Possibly eliminate the sauna room and enlarge the pool room. Ex. 56, Bates No. 1229.

According to the letter on behalf of the HOME Rent Adjustment Committee to Peter Wang dated May 28, 2009, HOME opposed a survey to determine that the laundry facilities should be set shut down. See attachment to Karen Jackson's Service Reduction Claim.

By letter to Peter Wang, dated December 31, 2009, the HOME Rent Adjustment Committee complained about the installation of double sinks and new faucets in the 2 bathrooms in the laundry building. Ex. 55, Bates No. 1225.

and reported that the manager in September 2000 stated that the park owner wasn't collecting enough money to make it worth their time to keep the facility in good repair. Ex. 66, Bates No. 1303.

Peter Wang testified about the laundry income, which last year was $1,261.50. He testified that there were four working washers and dryers and there was only $3.50 per day collection from laundry. If all the washers and driers were being used, the collection would've been $4 per hour as the laundry is opened 12 hours a day. In his opinion, only one washer and one dryer is used every second day based upon the current income.

I conclude that the failure to maintain the laundry area in a safe condition with working equipment is an unreasonable service reduction. I conclude that the value of the service reduction is 1 %.

The park owner may wish to consult with the mobilehome owners regarding the extent of washing machine replacement and whether and how to replace the hairdriers, and other issues regarding rehabilitation of this common area. Should there be a continuing dispute about the proper cure for this service reduction, the parties may request a mediation session with the Hearing Examiner.

Master TV Antenna Service:

The following homeowners filed service reduction claims about the Master Antenna Service: and , space 18; , space 31, Ex. 64, Bates Nos. 1280 to 1285; Rose Clinton, space 147, Ex. 70, Bates No. 1314; and , space 83, , space 140; and , space 82, Ex. 68, Bates Nos. 1307, 1310.

For the following reasons, I am unpersuaded that a service reduction exists.

The standard park lease provides, in pertinent part:

> 7. UTILITIES:
>
> > b. UTILITIES PROVIDED BY PARK AND INCLUDED IN THE BASE RENT: ... Master Antenna Service...
> >
> > > c. Management will exercise reasonable diligence and care to furnish and deliver a continuous and sufficient supply of utilities to Homeowner... Management will not be liable for interruption or shortage or insufficient of supply.... if the same is caused by... governmental restrictions or regulations... or any other cause except that arising from its failure to exercise reasonable diligence. Homeowner will remain responsible for the ... base rent charges to

> be paid by Homeowner pursuant to the terms of this Lease Agreement.

Ex. 68, Bates No. 1310.

... testified that in 1985, there was a hookup in mobilehomes connected to the park antenna.

The standard park lease, as shown in Ex. 68, Bates No. 1310, provides that:

> 8. MAINTENANCE AND REPAIR:
>
> Homeowner agrees . . . to maintain and repair all utility lines from his/her utility connection pad to the mobilehome.

The homeowners have the burden of proving service reductions. I am unpersuaded that the failure to maintain the Master Antenna Service listed as a provided utility in paragraph 7 in the mobilehome owners' leases (see, e.g. Ex. 68, Bates No. 1310) is an service reduction, as defined by the Ordinance in § 17.22.280.

I am unable to determine the cause of the reception problem. If it stems from poor connection to the mobilehome, that maintenance is the responsibility of the mobilehome owner. If it stems from the government regulation of the form of the tv signals, the mandatory switch to digital, correction of that problem is excepted by the lease. Although the provision of digital tv signals to the park through a master antenna system would be highly desirable in an elderly park, it is not required by the lease. I find that there has been no reduction in the Basic Service Level specified in the lease.

I have also considered the following factors:

1. The area affected by the alleged service reduction.

The Master Antenna Service serves the entire park. According to DTV.gov, the area of this mobile home park with a 30 foot tall outdoor antenna above ground level, should receive eight television stations with a strong signal, and 10 television stations with the moderate signal, including CBS, IND, MYTV, KQED PBS, FOX, KCSM PBS, KMTP ATV, ION, CW, TELEFUTURA, TELEMUNDO, TELEMUNDO and UNIVISION and ABC. Ex. 61, Bates No. 1259.

2. The length of time the residents have been subjected to the alleged service reduction.

Based upon the testimony of , I find that reception started to deteriorate in 1995.

reported that she had complained to the management about the problem in December 2007. , the manager, said "use antenna if you can get it to work or find other service as they were not updating the antenna." Ex. 68, Bates No. 1307.

I conclude as a fact that the reception problem has existed continuously since prior June 1, 2011.

3. The degree of discomfort the alleged service reduction imposes on the resident.

testified that service was poor in 2007. The picture was blurry. The hookup to the mobile home was in disrepair. Because of the dissatisfactory service, she switched to AT&T Uverse.

, space 83, reported in her service reduction complaint that she first noticed the problem of poor reception in the summer of 2008. When she notified the manager, he told her that the TV antenna was not functional and he was removing it. She found service through direct TV which cost her $49.95 per month.

4. The extent to which the alleged service reduction causes the rental unit or rental units to be uninhabitable.

The reduction in the Master Antenna Service did not cause the rental units to be uninhabitable.

5. The extent to which the alleged service reduction causes a material reduction in the usability of the rental unit.

Based upon the testimony of , I find that the Master Antenna Service is not obsolete and is still desired by the residents. Television service is very important entertainment and provides critical information for the elderly, particularly for those who are sedentary or disabled. testified that lot of people in the Park cannot afford one of the alternative cable services or Dish TV. Mobilehome owners who want basic public free TV service have been forced to switch to commercially provided services at significant expense per month.

6. Other similar factors deemed relevant by the administrative hearing officer.

Peter Wang testified that he is willing to test the residents' TV hookups.

In his testimony, Peter Wang offered to purchase an indoor antenna for any resident who wants to get reception who does not want to subscribe to cable TV. According to FCC Consumer Facts, Ex. 61, Bates No. 1254, simple indoor antennas will usually be sufficient for locations having strong TV signals. However, there is no persuasive evidence in the record that this location has strong TV signals. The only evidence is that a

Master Antenna Service had been required, from which I infer that the area did not have strong TV signals.

I did not find persuasive Peter Wang's testimony that he did not receive any complaints about the lack of TV reception. Instead, I was persuaded by the residents' testimony that reception had deteriorated prior to the 2009 change to Digital TV signals. However, the change to digital compounded the problem.

reported in her service reduction claim that: "In 2009, when TV service went from analog to digital, even with the black box, we get poor, broken reception on 2 or 3 channels." She verbally reported the problem to the manager who did nothing.

In September 2009, the property manager informed the mobilehome owners that because the government had changed to digital signals, the park was not responsible to the mobilehome owners to provide Master Antenna Service that would give reception. Ex. 64, Bates Nos. 1281, 1283. The park owner refused to make changes to the antenna, estimated to cost $2,000, to give some reception. *Id.*, Bates No. 1281.

reported that: "Other residents asked Mr. Wang about it in a meeting in 2009. He stated that the service would be discontinued, the antenna removed, and no compensating rent reduction would be made." Ex. 68, Bates No. 1307.

The Master TV Antenna has not been repaired. The mobilehome owners are not able to receive tv signals from the master tv antenna. The antenna remains on location; it has not been removed.

In conclusion, the burden of proving service reductions rests on the homeowners. I am unpersuaded that the reception problems are due to a service that the park owner is required to provide. I conclude that there is no service reduction as defined by the Ordinance and therefore deny the service reduction claim the master antenna system.

Reduction in Office Hours:

Service reduction claims for a reduction in office hours were filed by , space 31, Ex. 64, Bates Nos. 1279, 1286 to 1292; , space 82, Ex. 68, Bates No. 1308; , space 84, Ex. 69, Bates No. 1313; and and , space 140.

The Mobile Home Residency Act, California Civil Code 798.24, provides, in pertinent part:

> Each common area facility shall be open or available to residents at all reasonable hours and the hours of the common facility shall be posted at the facility.

California Health & Safety Code, § 18603 provides, in pertinent part:

> (a) In every park there shall be a person available by telephonic or like means, including telephones, cellular phones, telephone answering machines, answering services or pagers, or in person who shall be responsible for, and who shall reasonably respond in a timely manner to emergencies concerning, the operation and maintenance of the park. In every park with 50 or more units, that person or his or her designee shall reside in the park, have knowledge of emergency procedures relative to utility systems and common facilities under the ownership and control of the owner of the park, and shall be familiar with the emergency preparedness plans for the park.
>
> ....
>
> (e) Notwithstanding any other provision of this part, a violation of this section shall constitute an unreasonable risk to life, health, or safety and shall be corrected by park management within 60 days of notice of the violation.

Peter Wang admitted in his testimony that the phone is not answered after 9 pm. It is only answered 8 am to 9 pm.

California Health & Safety Code, § 18603 requires that a person be available to respond in a timely manner to emergencies. A phone that is not answered and voicemail that is not checked between 9 pm and 8 am does not satisfy this requirement. I find as a fact that this violation constitutes an unreasonable risk to life, health, or safety.

I conclude that there has been a service reduction because of the violation of these two statutory provisions.

1. The area affected by the service reduction.

The service reduction claim affects all the park units.

2. The length of time the resident has been subjected to the service reduction.

, testified as follows: In 2007, the office hours were 9 to 5 Monday through Friday and on weekends when rent was due. Subsequently the hours were reduced. They are now 9 to 12. There are no weekend hours. One has to call the emergency number on weekends. She has been discouraged from calling the emergency number. The on-site manager told her not to call unless she really needed to. Today the office is not open until 4:00 PM. The clubhouse is open from 8:00 AM to 8:00 PM and it has a rent drop off box. The clubhouse is also open on the weekends. The park management provides telephone service 24 – 7. However when one calls, they usually get voicemail and not a human being.

, in her service reduction claim, Ex. 64, asserted that when Wang purchased the Park, the office was open 9 to noon and 1 to 5 weekdays except for the first 5 days of the month (rent days). On those days, regardless of whether they fell on the weekend, the office was open 9 to noon and 1 to 5. Wang kept to those hours until

October 2009. In October, the hours were cut back to 9 to noon and 1 to 4 with no openings at all on the weekends. This was announced via a flyer to all the residents, Bates No. 1287, and a notice in the November 2009 issue of the Chatter, Bates No. 1288. It was confirmed again in the March 2010 issue of the chatter, Bates No. 1289. Even with the cuts in hours, the office was frequently deserted. See Bates No. 1290. Members of the Homeowners Organized to Maintain Equity, HOME, complained to the manager, Dee Norgard, about the service reduction. Around July 2011, when a new manager, Robert Hall, was hired, the office hours were cut still further to 9 to noon and 1 to 4 on rent days only and 9 to noon on all other days of the month, as shown on the office hours posting, Bates No. 1292.

Peter Wang testified that the office hours are now 9 to 12 and 1 to 4 Monday through Friday. The office is not open on the weekends and the mobile home owners have been instructed to use a rent drop. Park management has begun to implement cell phone service for other hours, after 4:00 PM and Saturdays and Sunday. The assistant manager is supposed to answer the phone. He testified that he didn't know about the sign saying the office was not open in the afternoon. He called the manager and told her to remove the sign and have a sign that correctly shows the office hours. Until 4:00 PM the manager should be in the office. Bob may be out in the Park during office hours and when he is, he uses call forwarding to his cell phone. Most people request service by phone and not by visiting the office. When Bob is out in the field, he can be reached by phone. If the caller leaves a voicemail, Bob will call them back shortly. He acknowledged that the sign showing park hours, Ex. 64, Bates No. 1292, is wrong. The office number is not answered 24 hours, 365 days a year.

3. The degree of discomfort the service reduction imposes on the resident.

testified that he wants the offices open in the afternoon like it always was. He goes to the office two to three times a week. In the afternoon, the manager is not there. When you call in the afternoon, you get a response like it is an inconvenience. However, he has not reported this problem to the management.

testified that many residents were extremely annoyed and angry that the office hours were not being honored. When there were afternoon hours, the office would not be open. Instead there would be a note left on the door: "back at 2:30." One day, she waited until 4:30 PM and no one showed up.

testified that the park never formally noticed a change in office hours until July 2011. She offered a photograph of the office hours posted today, Ex. 64, Bates No. 1292, but the hours have again been changed. After the petition was filed, the hours of 9 to 12 and 1 to 4 were changed back. However, the sign is still in the window with the old hours. Bob told her he is there now in the afternoon.

4. The extent to which the service reduction causes the rental unit or rental units to be uninhabitable.

The service reduction affects safety.

5. The extent to which the service reduction causes a material reduction in the usability of the rental unit.

The failure to provide a person between 9 PM and 8 AM to reasonably respond in a timely manner to emergencies concerning the operation and maintenance of the park, and the failure to have properly posted hours, causes a material service reduction in the usability of the rental units.

6. Other similar factors deemed relevant by the administrative hearing officer.

testified that she disagrees with the Colonial Manor Residents' Committee's complaints in Ex. 56, Bates No. 1231, paragraph 10. In her opinion, the park can be run efficiently with one office manager with hours 9 to 5, and weekends and holidays on rent days.

Peter Wang testified that all mobile home parks need intense management to operate well.

I am persuaded that the failure of the park owner to provide a person between 9 PM and 8 AM to reasonably respond in a timely manner to emergencies concerning the operation and maintenance of the park, and the failure to have properly posted hours, are unreasonable service reductions. I conclude that the value of the service reductions is 5%.

Bingo:

A service reduction claim for the termination of permission to run public Bingo games in the park clubhouse was filed by , space 31, Ex. 64, Bates Nos. 1280, 1293, 1294, 1296, and 1297.

Bingo is illegal under the San Jose Municipal Code unless (1) a permit is obtained; (2) the game is open to all members of the public; and (3) accurate books and records are kept so as to prevent the game from providing a front for gambling.

The owners decided to disallow Bingo due to two reasons: the clubhouse was for use of residents and their families only, and liability. Ex. 64, Bates No. 1296.

The Community Regulations of Colonial Mobile Manor provide that the general public is not permitted unless they are an individual guest of the homeowner or their family members. Ex. 33, Bates No. 847.

testified that a City of San Jose permit was required to play Bingo and that they had a permit. To play Bingo, the game had to be open to all comers, including

many outside the park, i.e. open to the general public. She talked to Judy Tsai, the park owner's attorney about the Bingo issue. They had a lengthy exchange to try to cure the problem and get Bingo back in the park.

As a residential facility, Colonial Mobile Manor currently is not subject to the Americans With Disabilities Act. 42 U.S.C. § 12181(7). See also *Independent Housing Services of San Francisco v. Fillmore Center Associates* 840 F. Supp. 1328, 1344 fn. 14 (N.D. Cal. 1993). However, if the park is opened to the public for Bingo, the park owner runs the risk of being required to comply with the Americans with Disabilities Act, meaning it could have to incur hundreds of thousands of dollars to upgrade the common area facilities, including the restrooms, the walkways, the doorways, the swimming pool and the spa. *Carolyn v. Orange Park Community Association*, 177 Cal. App. 4th 1090, 1099-1100 (2009). For this reason, the park owner does not want to open the park to the general public.

I am unpersuaded that the termination of permission to play Bingo in the clubhouse was service reduction as defined by the Ordinance in § 17.22.280.

I also considered the following factors:

1. The area affected by the alleged service reduction.

The service reduction claim affects all the park units.

2. The length of time the resident has been subjected to the service reduction.

testified that Bingo was discontinued in 2005.

A petition to allow Bingo was circulated in the park by , and Shirley Eckstrom. Ex. 64, Bates No. 1297. The owners never replied, but the manager verbally told at Bingo would no longer be allowed. The Bingo equipment, including the light up board was removed from the Clubhouse in 2009. Ex. 64, Bates No. 1293.

3. The degree of discomfort the alleged service reduction imposes on the residents.

The termination of Bingo does not cause discomfort but eliminates a source of pleasurable entertainment for the residents. Ex. 64, Bates Nos. 1293, 1294.

4. The extent to which the alleged service reduction causes the rental unit or rental units to be uninhabitable.

The termination of Bingo does not cause the rental units to be uninhabitable.

5. The extent to which the alleged service reduction causes a material reduction in the usability of the rental unit.

I am unpersuaded that the termination of Bingo causes a material reduction in the usability of the rental units.

Based upon this evidence, I deny the Bingo service reduction claim.

Individual Unit Claims:

[redacted]:

and filed a service reduction claim for the removal of the hedge between unit 59 (their home) and unit 60. In their opinion, the hedge should have been left alone. It straddled the border between their home and next-door. The border hedge was beautiful, a natural division between their home and the next home and was taken down and removed without their input or consent in January 2011. Ex. 67, Bates No. 1305.

The park regulations provide that park management may remove any tree, as it deems necessary to mitigate any hazard, health & safety violation, property damage or other loss. "The removal ... of any tree shall be without reduction or other adjustment to the monthly rent or other charges." Ex. 33, Bates Nos. 849-850.

I am unpersuaded that the hedge removal was a service violation as defined by the Ordinance.

I also relied upon the following evidence:

1. The area affected by the alleged service reduction.

Unit 59 and unit 60.

2. The length of time the resident has been subjected to the alleged service reduction.

Since January 13, 2011.

3. The degree of discomfort the alleged service reduction imposes on the resident.

The border hedge was beautiful, 35 or 40 years old and was a 12 foot high divider between 2 lots. It was aesthetically pleasing and is now gone.

4. The extent to which the alleged service reduction causes the rental unit or rental units to be uninhabitable.

The removal of the hedge does not cause the rental unit to be uninhabitable.

5. The extent to which the alleged service reduction causes a material reduction in the usability of the rental unit.

I am not persuaded that the hedge removal causes a material reduction in the usability of the rental unit.

The Mobile Home Residency Act, California Civil Code § 798.37.5(a) provides, in pertinent part:

> With respect to trees on rental spaces in a mobilehome park, park management shall be solely responsible for the trimming, pruning, or removal of any tree, ..., upon ... a determination by park management that the tree poses a specific hazard or health and safety violation. In the case of a dispute over that assertion, the ... homeowner may request an inspection by the Department of Housing and Community Development or a local agency responsible for the enforcement of the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 3 of the Health and Safety Code) in order to determine whether a violation of that act exists.

Neither the park owner nor the homeowner requested any such inspection.

The mobilehome owner testified that she provided a handwritten letter to the park owner about the removal. The park owner sent a letter back stating that he would provide a privacy screen to replace the hedge that was taken down. The homeowner has not responded to the offer. She has never told Mr. Wang what she wants for a privacy screen.

6. Other similar factors deemed relevant by the administrative hearing officer.

Pursuant to the Ordinance, § 2.02.04, the burden of proof of each service reduction is on the person alleging the reduction. I am unpersuaded that there was a service reduction as defined by the Ordinance in § 17.22.280. I therefore deny the service reduction claim for the hedge.

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and filed a service reduction claim for no gutter drainage around their home. Ex. 71, Bates Nos. 1316-1318.

1. The area affected by the service reduction.

The gutter in front of her home.

2. The length of time the resident has been subjected to the service reduction.

Twelve years.

3. The degree of discomfort the service reduction imposes on the resident.

testified that when it rains, all the water from spaces 160 to 200 flow down in front of her space, 159. The gutter area of the roadway becomes slippery from dark sludge. Her space is lower than that of the surrounding area so it gets run-off from the surrounding area. The drain is inadequate to keep the water from pooling in front of her house.

4. The extent to which the service reduction causes the rental unit or rental units to be uninhabitable.

The problem does not make the rental unit uninhabitable.

5. The extent to which the service reduction causes a material reduction in the usability of the rental unit.

She and her husband are handicapped and have mobility problems. Although she testified that the area was slippery, no actual slip and falls have occurred. She notified the maintenance people every winter and spring orally, but never made a written complaint. She last reported a problem on Easter 2012. When the sludge dries up, she sweeps up the dirt.

6. Other similar factors deemed relevant by the administrative hearing officer.

r testified that she never got a response to her reports other than: "We'll send someone out to look at it." The problem is probably caused by the design of the park.

Pursuant to the Ordinance, § 2.02.04, the burden of proof of each service reduction is on the person alleging the reduction. I am unpersuaded that the actual service level was materially lower than the basic service level. I am unpersuaded that there was a service reduction as defined by the Ordinance in § 17.22.280. I therefore deny the service reduction claim for gutter drainage.

Total Service Reductions Affecting All Units:

I conclude that the service reductions for the park walkway, shuffleboard court recreational area, laundry building area, and office hours entitle the homeowners to the rent adjustments.

Adjustment to Rent Reduction from Service Reductions:

Because the 1985 rent was disproportionate, the park owner has not been receiving a fair return on its investment. The Ordinance in §§ 17.22.030 and 17.22.580 directs the hearing officer to set the rent in the amount required to provide the landlord with a fair and reasonable return. Section 17.22.810 of the Ordinance provides that the hearing officer's "allowance or disallowance of any proposed rent increase or portion thereof may be reasonably conditioned in any manner necessary to effectuate the purposes of this chapter."

Under these circumstances, offsetting the rent increase with the value of service reductions prior to the adjustment of rents to bring them up to a fair level, would not provide the park owner with a fair return. However, an order prospectively offsetting any rent increase with the amount of continuing service reductions would serve the purpose of the Ordinance to prevent excessive and unreasonable rent increases, while permitting the park owner a fair and reasonable return. Therefore, I order that the rent offset for continuing service reductions shall commence on October 1, 2012, the date of the first increase pursuant to this decision.

The maximum allowable rent shall be reduced per diem from October 1, 2012, as follows:

One shall calculate the Per Diem by dividing the Monthly Rent by 30. Then one shall multiply that amount by the percentage reduction of value that was found.

Service Reduction:	**%age Rent Reduction**
Park Walkway	3%
Shuffleboard Court Recreational Area	2%
Laundry	1%
Office Hours- Evening Emergency Personnel & Posted Hours	5%
Total	11%

The percentage reduction shall be based on the rent in effect on and after October 1, 2012. The offset shall continue for so long as the service reduction continues. [2] When the Basic Service Level is restored for each service, then the reduction in rent for that service reduction shall end.

The parties are urged to mediate any disputes about whether the service reduction continues after October 1, 2012 or when it ceased. This decision only adjudicates conditions in existence up to the date of the last hearing, July 2, 2012. In any hearing

[2] In other words, if the rent is increased on June 1, 2013 and the service reduction continues, the reduction on and after that date shall be based upon the new rent.

subsequent to this decision, the hearing officer may determine that the service reduction ceased prior to October 1, 2012.

FAIR RETURN ON INVESTMENT

I am aware that §17.22.030 gives me the discretion to grant a rent increase necessary to provide the park owner with a fair return on investment. I utilized that provision in deciding not to award for a reduction in rental services prior to the date of this rent adjustment.

Pursuant to § 17.22.810, the Hearing Officer's allowance or disallowance of any proposed rent increase or portion thereof may be reasonable conditioned in a manner necessary to effectuate the purposes of the Ordinance. I deny the park owner's rental adjustment requests for a Vega adjustment calculated in a different manner from that set forth in the Ordinance and for a § 17.22.030 Fair Return on Investment Adjustment because they do not effectuate the purposes of the Ordinance set forth in § 17.22.020.

The burden of proving the reasonableness of a rent increase is on the park owner. §17.22.820. The park owner has not persuaded me that any additional increase over that awarded under the Ordinance's MNOI formula is reasonable.

"A 'just, fair and reasonable' return is characterized as sufficiently high to encourage and reward efficient management, discourage the flight of capital, maintain adequate services, and enable operators to maintain and support their credit status. However, the amount of return should not defeat the purpose of rent control to prevent excessive rents." *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd., supra,* 82 Ca;. Rptr. 2d at 574.

I am persuaded that Peter Wang and his management company are good and efficient managers, who have been adequately rewarded by their management contract at the rate that they themselves set.

I have no persuasive evidence that there was a flight of capital or an inability to maintain and support credit status. To the contrary, this property was only on the market for one day in 2009 before the current park owner decided to purchase, even though he knew that the rents were significantly below market. "Within one day, the broker had procured a buyer and a contract was signed.... the Buyer wanted this property for its high quality..." Ex. E, Appendix F, page F-2. The bank that financed the purchase required an appraisal, which showed a value $400,000 higher than the purchase price.

I find as a fact that the park is in good condition. See Market Rent Survey and Analysis, Ex. D, page 50. Although there were some services reductions, they are not predominant. Furthermore, I am not persuaded that they were caused by low rents as opposed to the old age and subsequent deaths of the prior owners. I am not persuaded that a rent increase in

excess of that provided by the Ordinance's MNOI formula is necessary in order to maintain adequate services.

I conclude that the MNOI calculation provided by the Ordinance in fact provides a fair and reasonable return on investment.

CONCLUSION:

Commencing October 1, 2012, the monthly rent may increase up to $ 46.30 per unit. Said rent may be further adjusted on the annual anniversary date, June 1, 2013. Said rent shall be reduced by the above-found service reductions that continue in existence on and after October 1, 2012 until the date of their cessation.

SO ORDERED.

DATED: September 6, 2012.

Suzanne K Nusbaum

Digitally signed by Suzanne K Nusbaum
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Date: 2012.09.06 09:37:58 -07'00'

Administrative Hearing Officer