

1 Michael J. Lowy (SBN 92241)
2 Attorney at Law
3 2225 E. Bayshore Road, Suite 200
4 Palo Alto, CA 94303
5 Tel: (650) 856-6262

6 BEFORE THE CITY OF SAN JOSE
7 CITY OF SAN JOSE MOBILEHOME RENT
8 ORDINANCE

9 In Re:

10 COLONIAL MOBILE MANOR
11 MOBILEHOME PARK

ORDER ON PETITION FOR
WRIT OF MANDATE AFTER
REMAND FROM SUPERIOR
COURT

MICHAEL J. LOWY,
HEARING OFFICER

12
13
14
15
16 PROCEEDINGS

17 Colonial Mobile Manor Mobilehome Park filed a Petition for an increase in rent above the
18 allowable yearly increase on or about February 20, 2013. The Hearing Office was
19 appointed on or about April 3, 2013. Pre-Hearing Conferences were held and the Hearing
20 Officer made three Pre-Hearing Orders. There were a total of seven hearings and the
21 Hearing Officer wrote an Award on or about February 6, 2014 concluding “. . . after
22 recalculating the net operative income, the landowner is not entitled to the rent increase
23 pursuant to the Ordinance.” (Award, page 3, lines 9-10) The landowner filed a writ of
24 mandate on or about February 16, 2016, and on or about January 16, 2018 the Honorable
25 Helen E. Williams issued an order vacating the Hearing Officer’s decision and the matter
26 was remanded for further proceedings. Judge Williams concluded that “. . . the starting
27
28

1 point for a rent-increase and calculation under the MNOI approach of \$1,098,182.69 as a
2 fair return for the period ending 2011 as previously calculated by Suzanne Nussbaum.”

3 (Order on Petition for Writ of Mandate, page 22, lines 21-23)

4 Judge Williams granted the Preemptory Writ of Mandate in part (including the
5 employee’s rent credits and property management fees in the current expenses) and denied
6 in part (excluding attorney fees from operating expenses). The Judge’s Order focused on
7 these three issues: 1) Including rent credits for on-site employee housing as a legitimate
8 operating expense. 2) Including the flat-rate property management fee paid to a separate
9 entity as an operating expense. 3) Excluding attorney fees expended by the landowner in
10 pursuing this rent increase. The decision to exclude the attorney fees was upheld by Judge
11 Williams and therefore will not be reviewed any further and has not been included in
12 current operating expenses.
13


14
15 The remaining two issues required the Hearing Officer to use \$1,098,182.69 as the base
16 year net operating income. The current operating expenses are \$609,046.60. In my
17 original decision on November 25, 2013, I found that the park’s current operating
18 expenses were \$526,663.37. The original decision was modified as a result of landlord’s
19 counsel’s request for a correction of a mathematical error of \$527.00. The operating
20 expenses at the end of my original decision, dated November 25, 2013, showed the park
21 operating expense to be \$568,328.62. If you start with that amount of the operating
22 expenses, and you add \$24,098.37, which is the rent credits for the employee housing
23 which Judge Williams specifically included in the park expenses, and \$16,619.61 which is
24 1% of the management fees that Judge Williams ordered must be included in the park
25 expenses, and the current operating expenses were \$609,046.60.
26
27
28

LAW OFFICES OF
MICHAEL J. LOWY
2600 EL CAMINO
REAL, SUITE 506
PALO ALTO, CA
94306
(650) 856-6262

1 Therefore the calculation for a fair return is as follows: The base year net operating
2 income (taken from Ms. Nussbaum's Decision) was \$1,098,182.69. The current gross
3 income is \$1,618,143.73, based on my original Decision. The current gross operating
4 expenses was \$609,046.60. (See Bates Stamp page SJ005101) Adjusted expenses
5 contained changes to the rent credit and management fee per the order of Judge Williams.
6 The formula calls for an increase in the CPI. In the Hearing Officer's Decision, he
7 determined the CPI index out to two decimal places. In this response the Hearing Officer
8 has carried out the CPI three decimal places. The CPI on the date of the last Petition filing
9 was 236.88, per the original Decision. The CPI filing date of the current Petition was
10 242.677, per the original Decision. The increase in the CPI is therefore 0.02447. Taking
11 85% of the inflation adjustment, times the increase in CPI (0.02447) times \$1,098,182.69
12 (the base year NOI) results in an inflation factor of \$22,841.65. In order for the landlord
13 to receive a fair return, the base year NOI is \$1,098,182.69, plus the inflation factor of
14 \$22,841.65 equals a fair return of \$1,121,024.34. The fair return of \$1,121,024.34, plus
15 current operating expenses of \$609,046.60 requires a gross income of \$1,730,070.94 to
16 produce a fair return. Subtracting the current year gross income of \$1,618,143.73 from the
17 required gross income of \$1,730,070.94 allows for a gross annual rent increase of
18 \$111,927.21. Divide that number by the number of units in the park (207) and further
19 divided by 12 months, shows an allowable rent increase of \$45.06 per month, per space.
20 That amount shall be an allowable rent increase. (See Exhibit 1)

21 **IT IS SO ORDERED.**

22 Dated: December 5, 2018

23
24
25
26
27 
28 Michael J. Lowy
Hearing Officer

SCHEDULE DR
CALCULATION OF FAIR RETURN AND RENT INCREASE

I. SUMMARY OF INCOME AND EXPENSES STATEMENTS

1. Base Year Gross Income	1,098,182.61
2. Minus: Base year Operating Expenses	
3. Base Year Net Operating Income	1,618,143.73
4. Current Gross Income	
5. Current Operating Expenses	609,046.60

II. INCREASE IN CPI

6. CPI - Effective Date of Last Rent Increase ^{Petition Filing}	236.88
7. CPI - Filing Date of Current Petition	242.677
8. Increase in CPI	0.02447

($\frac{242.677 - 236.88}{236.88}$)

III. CALCULATION

$$\frac{.85}{\text{Inflation Adjustment}} \times \frac{.02447}{\text{9. Increase in CPI}} \times \frac{1,098,182.69}{\text{10. Base Year NOI}} = \frac{22,841.65}{\text{11. Inflation Factor}}$$

$$\frac{1,098,182.69}{\text{12. Base Year NOI}} + \frac{22,841.65}{\text{13. Inflation Factor}} = \frac{1,121,024.34}{\text{14. Fair Return}}$$

$$\frac{1,121,024.34}{\text{15. Fair Return}} + \frac{609,046.60}{\text{16. Current Operating Expenses}} = \frac{1,730,070.94}{\text{17. Required Gross Income to Produce Fair Return}}$$

$$\frac{1,730,070.94}{\text{18. Required Gross Income}} - \frac{1,618,143.73}{\text{19. Current Year Gross Income}} = \frac{111,927.21}{\text{20. Total Annual Rent Increase}}$$

$$\frac{111,927.21}{\text{21. Total Annual Rent Increase}} \div \frac{207}{\text{22. No. of Units}} \div 12 = \frac{\$45.06}{\text{23. Allowable Rent Increase Per Space / mo.}}$$