

RESOLUTION NO. 2009-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUCAIPA  
SUPERSEDING YUCAIPA RENT REVIEW COMMISSION RESOLUTION  
NO. 2009-10, GRANTING THE APPEAL OF THE YUCAIPA MOBILEHOME  
RESIDENTS ASSOCIATION, DENYING THE APPEAL OF THE RUDRICH  
FAMILY TRUST, AND DENYING A RENT INCREASE FOR GRANDVIEW  
WEST MOBILE HOME PARK PURSUANT TO THE CITY OF YUCAIPA  
MOBILEHOME RENT STABILIZATION ORDINANCE (CHAPTER 15.20 OF  
THE YUCAIPA MUNICIPAL CODE)

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THE CITY COUNCIL OF THE CITY OF YUCAIPA HEREBY FINDS, DETERMINES  
AND ORDERS AS FOLLOWS:

SECTION I. RECITALS

A. On November 21, 2008, Helga Reese, on behalf of the Rudrich Family Trust (the "Park Owner"), filed a rent increase application ("application") with the City of Yucaipa for consideration by the Yucaipa Rent Review Commission (the "Commission") for a Net Operating Income and/or Fair Return rent adjustments in Grandview West Mobilehome Park (the "Park" or "Grandview West") under Sections 15.20.100 (A) and (C) of the Yucaipa Mobilehome Rent Stabilization Ordinance (the "Ordinance") and Sections 4.0003 and 4.0005(B)(1) of the Administrative Rules for the Implementation of the Yucaipa Mobilehome Rent Stabilization Ordinance ("Rules") implementing the Ordinance.

B. The application includes a report prepared by Edward Gogin, CPA, and other documentation, and a letter brief from Hart, King & Coldren, legal counsel for the Park Owner, in support of the requested rent adjustments.

C. In its application, the Park Owner contends that the Base Year is 1987 and the Current Year is 2007, and the Park Owner submitted certain documentation regarding the Park's alleged Base Year and Current Year Gross Income, Operating Expenses and Net Operating Income.

D. Staff of the Commission retained independent consultants, Kenneth K. Baar, Ph.D., and appraiser James Brabant, MAI, to evaluate the application pursuant to the Ordinance and make recommendations to the Commission regarding the requested rent adjustments.

E. On January 28, 2009, the City declared the application sufficiently complete to move forward with a hearing before the Commission, and set the hearing date for February 24, 2009 at 2:00 p.m. in the City Council Chambers, City of Yucaipa, California.

F. On February 11, 2009, the Yucaipa Mobile Home Residents' Association ("YMRA"), through its representative Len Tyler and attorney Joseph McGinley, submitted

written opposition to the application and a Declaration of Len Tyler, dated February 11, 2009, on behalf of the residents of Grandview West (hereinafter "Resident Opposition").

G. The application, including all documentation submitted by the Park Owner in support of the requested rent adjustments, the Resident Opposition, and the Staff report and all Staff exhibits including but not limited to the reports and analyses of the application by Dr. Baar and Mr. Brabant, were made available to the Park Owner, the affected residents and the public prior to the public hearing on the application; and the application, Resident Opposition and Staff report and other documentation were submitted to the Commission for their consideration at the public hearing.

H. On February 24, 2009, at 2:00 p.m., the Commission held a duly noticed public hearing on the application, and heard and considered all offered documentary evidence and oral testimony by all interested persons in support of and against the requested rent adjustments. The Park Owner was represented by Mark D. Alpert, Esq., of Hart, King & Coldren; YMRA was represented by Joseph B. McGinley, Esq., of the Law Offices of Joseph B. McGinley; City Staff was represented by Donald Lincoln, Esq., of Endeman, Lincoln, Turek & Heater; and the Commission was represented and advised by Amy Greyson, Esq., of Richards, Watson & Gershon. The Park Owner called four witnesses: Hedy Rudrich, Helga Reese, Edward Gogin, CPA; and Jakob Rudrich. YMRA, on behalf of the Park residents, called James Stein, of James Stein, Inc., an appraiser; and Park residents Nancy Shockley, Mary Wambsganss, Grace Greco, and Kathy Brown. City Staff called two witnesses: Kenneth K. Baar, Ph.D; and James Brabant, MAI. All testimony was presented under oath.

I. On February 24, 2009, following completion of oral testimony, Mr. Lincoln, Mr. McGinley and Mr. Alpert presented closing arguments to the Commission, and the Commission then closed the public hearing and conducted deliberations on the requested rent adjustments. At the conclusion of deliberations, the Commission adopted an oral motion granting the Park Owner a Net Operating Income ("NOI") rent adjustment of \$60.62 per space per month under Section 15.20.100 (A) of the Ordinance and Section 4.0003 of the Rules (Commissioner Cape voting noe, expressing concern for a number of reasons including "not meeting burden of proof"); denied the Park Owner a rent adjustment under Section 15.20.100 (C) of the Ordinance and Section 4.0005 of the Rules; and granted the Park Owner a temporary rent increase of \$10.03 per space per month for the hearing and application costs pursuant to *Galland v. City of Clovis*, 24 Cal.4th 1003 (2001). The Commission directed its legal counsel to prepare a resolution setting forth its decision, and continued the hearing to March 23, 2009.

J. A proposed resolution was submitted to the Commission at its duly noticed March 23, 2009 meeting, and the Commission conducted further deliberations on the proposed resolution on March 23, 2009 and at a subsequently continued meeting held on April 1, 2009.

K. On April 1, 2009, the Commission adopted Commission Resolution No. 2009-10, approving an NOI rent adjustment of \$60.62 per space per month, and a temporary rent adjustment of \$10.03 for the application and hearing costs (hereinafter "Commission Decision"). Copies of the Commission Decision were duly served on the Park Owner and YMRA as required under the Ordinance.

L. The Yucaipa Mobilehome Owners Association ("YMRA"), filed a timely appeal of the Commission Decision on behalf of the residents of the Park on the basis that the Park Owner failed to meet its burden of proof and that no rent adjustment should be granted. The Park Owner also filed a timely appeal of the Commission Decision, contending that the Commission erred in determining the rent adjustment and that a higher rent adjustment was warranted.

M. On May 27, 2009, the City Council held a duly noticed hearing on both appeals.

N. At the appeal hearing before the City Council, attorney Joseph McGinley and residents Sharon Nove, Mary Wambsganss and William Wambsganss spoke in favor of the Park residents and YMRA appeal; attorney Mark Alpert spoke on behalf of the Park Owner in favor of the Park Owner's appeal; attorney Donald Lincoln spoke on behalf of Staff; and City Attorney Michael Estrada served as legal advisor to the City Council on the appeal.

O. Following the close of public participation in the appeal hearing on May 27, 2009, the City Council deliberated on each appeal on May 27, 2009, and thereafter by verbal motion voted to grant the appeal filed by YMRA on behalf of the Park residents and to deny any rent adjustment to the Park Owner, pursuant to a four-to-one vote (Councilmember Masner voting "No").

P. On May 27, 2009, the City Council directed the City Attorney to return to the City Council at the next regularly scheduled meeting on June 8, 2009 with a proposed resolution setting forth the City Council's decision on the appeals.

Q. Prior to issuing this decision, the City Council reviewed and considered the Record before the Commission, including the Park Owner's application and supporting documentation; the Staff Report and Staff exhibits; the Resident Opposition; all oral testimony and arguments submitted at the Commission hearing on February 24, 2009; the written appeals filed by the Park Owner and YMRA; and all briefs and oral argument submitted during the appeal hearing held before the City Council on May 27, 2009.

R. In issuing this decision, the City Council evaluated the weight, credibility and veracity of the information and documentation submitted by all persons participating in this appeal, both in favor of and opposed to the requested rent adjustments, as well as in favor of and against the Commission Decision.

S. The following rules and requirements apply for the City to evaluate and rule upon the Park Owner's application for any kind of rent adjustment under the Ordinance:

(1) The Park Owner may seek a rent increase in addition to an annual rent adjustment or capital improvement rent adjustment, by submitting an application to the Commission for any or all of the following: (i) an NOI rent adjustment under Section 15.20.100 (A) of the Ordinance and Section 4.0003 of the Rules; (ii) an NOI adjustment based on a readjusted Base Year NOI pursuant to Section 15.20.100 (B) of the Ordinance and Section

4.0004 of the Rules; and/or (iii) a rent adjustment pursuant to Section 15.20.100 (C) of the Ordinance and Section 4.0005 (B) (1) of the Rules on the basis that the rent adjustments under Sections 15.20.100 (A) and (B) do not provide the park owner with a just and reasonable return.

(2) The Park Owner has the burden of proof and must provide the evidence to justify approval of a rent adjustment under Sections 15.20.100 (A), (B) and/or (C) of the Ordinance. (Ordinance, Section 15.20.100; Rules, Section 1.0029 (E).)

(3) In granting or denying a rent adjustment under the Ordinance, the decision of the City must be supported by substantial evidence in light of the entire record of the proceedings. Evidence is substantial when it is relevant, credible and reliable and provides enough information, together with the reasonable inferences from that information, to support a conclusion even though other conclusions might also be reached. No decision may be supported solely by hearsay evidence. (Rules, Section 1.0029 (E).)

T. In addition to the general requirements under Recital S, above, the following rules and requirements apply for the City to evaluate and rule upon the Park Owner's application for an NOI rent adjustment under Section 15.20.100 (A) of the Ordinance and Section 4.0003 of the Rules:

(1) In order to determine if the Park Owner is entitled to an NOI rent adjustment, the Park Owner has the burden of providing evidence of the park's gross income, operating expenses and NOI for the Base Year (1987) and the Current Year (the 12 months preceding the date of the application.) The amount of the NOI rent adjustment, if any, is determined by increasing the Park's Base Year NOI by 66-2/3% of the increase in the Consumer Price Index ("CPI") between December 31, 1987 and October 28, 1996, and 80% of the increase in CPI between October 29, 1996 and the date of the application. (Ordinance, Section 15.20.100 (A) and Rules, Section 4.0004 (A) through (J).)

(2) In seeking an NOI rent adjustment, the Park Owner bears the burden of proving the categories and amount of gross income and operating expenses for the Base Year and the Current Year, as well as for its income and expenses for the last five years or since its prior special adjustment. (Ordinance, Section 15.20.100; Rules, Section 4.0003(E).)

(3) In determining whether the Park Owner is entitled to an NOI rent adjustment, the Park Owner has the burden of proving that all operating expenses are reasonable, and if the operating expenses exceed the normal industry or other comparable standard, the Park Owner has the burden of providing the reasonableness of the expense; and if the Commission finds that an expense is unreasonable, the Commission shall adjust an expense to reflect the normal or other comparable standard. (Rules, Section 4.0003(E).)

(4) In determining whether the Park Owner is entitled to an NOI rent adjustment, in calculating expenses for any year, when (i) an expense item for a particular year is not representative; or (ii) in the case of base year expenses, when the expense is not a reasonable projection of average past expenditures for that time; or (iii) in the case of current year expenses, when the expense is not a reasonable projection of future expenditures of that item, said expense shall be averaged with other expense levels for other years or amortized or adjusted by the CPI

or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses. (Rules, Section 4.0003 (D) (5).)

(5) In determining whether the Park Owner is entitled to an NOI rent adjustment, management expenses (contracted or owner-performed) are presumed to be the same percentage of gross income that were incurred in the base year unless the Park Owner produces evidence sufficient to justify that expenses increased at a higher rate despite prudent management; and further provides that in the event the base year expenses are not available they shall be estimated by taking the current expenses and decreasing them downward according to the CPI between the base year and the application year, unless the Park Owner produces evidence sufficient to establish that management expenses increased at a higher rate despite prudent management. (Rules, Section 4.0003 (D) (3) (c).)

(6) In determining whether the Park Owner is entitled to an NOI rent adjustment, the Ordinance and Rules provide that in determining expenses for owner-performed labor actually performed by the Park Owner, the Park Owner shall be compensated at the hourly rate of \$10.38/hour for general maintenance, and \$19.28/hour for skilled labor, subject to submittal of documentation showing the date, time, and nature of the work performed; the Park Owner may receive greater or lesser compensation for self-labor if it can be shown that the amounts set forth above are substantially unfair in a given case; and there shall be a maximum allowance under this paragraph of five percent (5%) of gross income, unless the Park Owner demonstrates that such additional expenses were reasonable and consistent with prudent business practices. (Rules, Section 4.0003 (D) (3) (e).)

U. In addition to the requirements under Recitals S and T, above, the following rules and requirements apply for the City to evaluate and rule upon the Park Owner's application for a rent adjustment under Section 15.20.100 (C) of the Ordinance and Section 4.0005 of the Rules:

(1) The Park Owner may not obtain approval of a rent adjustment under Section 15.20.100 (C) of the Ordinance and Section 4.0005 of the Rules, unless the Park Owner meets its burden of proof of demonstrating that the NOI adjustment provided under Section 15.20.100 (A) of the Ordinance does not provide the Park Owner with a just and reasonable return. (Ordinance, Section 15.20.100 (C); Rules, Section 4.0005 (A).)

(2) In order to evaluate the Park Owner's application under Section 15.20.100 (C) of the Ordinance and Section 4.0005 of the Rules, and to determine if the Park Owner met its burden of proof that the Park is not earning a just and reasonable return, the Commission (or City Council on an appeal) must consider *all relevant factors*, including but not limited to:

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(a) The rents being charged for spaces subject to the Ordinance in comparable mobilehome parks subject to the Ordinance in the City of Yucaipa;

(b) The capitalization rate being earned by the Park in the application year, each of the preceding five years, and in the first year after the Park was purchased. For purposes of this section capitalization rate means the ratio of a Park's NOI to its purchase price;

(c) The capitalization rate associated with the purchase of comparable mobilehome parks in the application year and the preceding five years;

(d) The Park's pattern of income and expenses over each of the past five (5) years;

(e) The quality of the services, amenities and maintenance provided at the Park and any decrease or increase in services, maintenance and amenities; and

(f) Any evidence of delay on the part of the Park Owner in seeking a rent increase pursuant to this section. (Rules, Section 4.0005 (B).)

(3) In evaluating the rents being charged in the Park and the rents being charged in comparable parks in the City under Rules, Section 4.0005 (B) (1), "comparable park" means "a park in the City subject to the Yucaipa Municipal Code (YMC), which has similar quality, number and type of amenities, construction, and services, is located in a similar neighborhood and provides similar access and proximity to schools, medical and educational facilities, recreation, entertainment, parks, shopping and other services and amenities as is similarly maintained as the applicant's park". (Rules, Sections 4.0004 (B) and 4.0005 (C).)

V. In its application, the Park Owner sought alternative rent adjustments under Sections 15.20.100 (A) and (C) of the Ordinance, as follows:

(1) Alternative #1: The Park Owner contended that the Park Owner is entitled to an NOI rent adjustment of \$104.48 per space per month under Section 15.20.100 (A) of the Ordinance, but also contended that this monthly rent increase will not provide the Park Owner with a reasonable return; and

(2) Alternative #2: The Park Owner alternatively contended that the Park Owner is entitled to a modified NOI rent adjustment of \$144.76 per space per month under Sections 15.20.100 (A) and (C) of the Ordinance. The Park Owner contended that the NOI rent adjustment must be calculated based on 100% of the increase in the CPI between the Base Year and the Current Year because use of the two-tier CPI indexing factor in the Ordinance will not provide the Park Owner with a reasonable return; and

(3) Alternative #3: The Park Owner alternatively also contended that the Park Owner is entitled to a rent adjustment of \$142.36 per space per month under Section 15.20.100 (C) of the Ordinance. The Park Owner contended that the average rents at comparable parks in the City of Yucaipa -- Fremont Heights Mobile Home Park, Mission Valley Oaks Mobile Home Park, and Crest View Mobile Estates -- are more than \$200 per month higher than the rents at Grandview West, and that any rent adjustment less than \$142.36 would be inconsistent with the purposes of the Ordinance to protect against unreasonable rents; and

(4) Temporary rent adjustment: The Park Owner also contended that the City must grant a temporary rent adjustment of \$15.65 per space per month, to enable the Park Owner

to recover the costs of the application and hearing costs, pursuant to *Galland v. City of Clovis*, 24 Cal.4th 1003 (2001). The Park Owner contended that the total estimated costs for bringing the application were \$25,830.50, and that this \$25,830.50 sum should be amortized over three years at seven percent interest, or \$15.65 per space per month.

W. During the hearing on the application before the Commission, the Park Owner modified its alternative rent adjustment requests under Section 15.20.100 (A) as follows:

(1) Alternative #1 (Modified): Based on information provided by the City's expert, Dr. Baar, during the application review process, the Park Owner modified its contention regarding determination of Base Year management expenses, and revised its request for an NOI rent adjustment under Section 15.20.100 (A) to \$84 per space per month. However, at the Commission hearing, the Park Owner still contended that the \$84 rent adjustment will not provide the Park Owner with a fair return; and

(2) Alternative #2 (Modified): Based on information provided by the City's expert, Dr. Baar, at the Commission hearing, the Park Owner revised its request for a modified rent adjustment under Section 15.20.100 (A), using 100% of the percentage increase in the CPI between the Base Year and the Current Year, and contended that the Park Owner is entitled to a rent adjustment of \$121 per space per month. However, the Park Owner still contended that the \$121 rent adjustment will not provide the Park Owner with a fair return.

X. The Park Owner did not apply for a rent adjustment under Section 15.20.100 (B) of the Ordinance (an NOI adjustment based on a readjusted Base Year NOI). The Park Owner conceded that the space rents in the Park in the Base Year were comparable to space rents in comparable spaces in the City in the Base Year.

Y. The total amount of application and hearing costs projected from the Park Owner's application by Dr. Baar, was \$25,861.73. At the Commission hearing, the Park Owner did not contest that sum.

SECTION II. GENERAL FINDINGS. Based on the foregoing Recitals, the Record before the Commission, the Commission transcript, and all written and oral argument submitted to the City Council during the appeal hearing, the City Council determines that the following general findings are true and correct.

A. Grandview West is located at 12700 2nd Street, Yucaipa, California.

B. Grandview West is owned by Rudrich Family Management.

C. The application for a rent adjustment, submitted to the City on November 21, 2008, was signed by Helga Reese, on behalf of the Park Owner.

D. Grandview West is within the jurisdiction of the Commission and the City Council pursuant to the Ordinance.

E. Grandview West consists of 51 spaces, of which all 51 spaces are on month-to-month tenancies, and not owned by the Park Owner, and are therefore subject to the rent control provisions of the Ordinance. There are no long-term leases in the Park.

F. The application reflects that no services or utilities are included in the base rents at Grandview West; that separately billed utilities include water, trash, gas, electric, sewer, and paramedic fees; and that rent control registration fees are also separately billed to the residents.

G. Grandview West is a senior park (55 years and above).

H. The Park Owner purchased Grandview West on March 1, 1994, and 1995 was the first full year of ownership.

I. Since the enactment of the Ordinance, the Park Owner has been permitted to receive and has charged the Annual Adjustments permitted by the Ordinance, based on 66-2/3% of the increase of the CPI between 1987 and 1996, and based thereafter on 80% of the annual increase in the CPI.

J. On January 23, 1996, the Park Owner sought and obtained approval of a capital improvement rent adjustment under the Ordinance, for replacement and buildup of the recreation hall roof and interior repairs of the ceiling and walls of the recreation hall at the Park. On February 19, 1996, the City granted final approval of a capital improvement rent adjustment of \$5,532.45 for the Park as a whole, and a corresponding rent increase of 90 cents per month for each individual mobilehome park space, for a period of 10 years. The ten-year amortization period ended March 31, 2006.

K. Other than the 90-cent per month capital improvement rent adjustment referred to in subparagraph (b), the Park Owner has not applied for approval of any other capital improvement rent adjustment in the Park.

L. Other than the present application, the Park Owner has not previously applied for a special rent adjustment under Section 15.20.100 (A), (B) or (C) of the Ordinance.

SECTION III. FINDINGS WITH REGARD TO APPLICATION FOR NOI RENT ADJUSTMENT UNDER SECTION 15.20.100 (A) OF THE ORDINANCE. Based on the foregoing Recitals and Findings, the Record before the Commission, the Commission transcript, and all written and oral argument submitted to the City Council during the appeal hearing, the City Council finds and determines that the Park Owner did not meet its burden of proof to establish that the Park Owner is entitled to an NOI rent adjustment under Section 15.20.100 (A) of the Ordinance and Section 4.0003 of the Rules, for the following reasons.

A. The Park Owner failed to meet its burden of proof to establish, by substantial evidence, the Gross Income and Operating Expenses for the Park in the Base Year or in the Current Year, because the documentation and oral testimony submitted by the Park Owner did not substantiate its claimed Gross Income and Operating Expenses. There were significant discrepancies and inaccuracies in the documentation, missing documentation, commingling of

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~~expenses with other parks and personal expenses~~, and incomplete ~~and inconsistent~~ oral testimony submitted by the Park Owner's witnesses, which impaired the credibility of the information submitted by the Park Owner and the City Council, ~~determined~~ that the Park Owner failed to submit substantial evidence to establish the Gross Income and Operating Expenses.

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B. In issuing these findings, the City Council evaluated all categories of claimed Gross Income and Operating Expenses in light of the contentions raised in and documents submitted with the application; the testimony of Ed Gogin, the Park Owner's CPA and Dr. Kenneth Baar, the MNOI expert retained by the City; the Resident Opposition, and the oral testimony submitted before the Commission and City Council.

C. For purposes of determining whether the Park Owner is entitled to an NOI adjustment under the Ordinance, the Base Year is 1987, and the Current Year is 2007. As set forth above, under the Ordinance the Park Owner bears the burden of presenting substantial evidence of the Park's Gross Income and Operating Expenses for 1987 and 2007.

D. The Park Owner did not own Grandview West in 1987. In its application, the Park Owner did not submit any evidence of the purchase price of the Park to the City, and also did not provide the City with any documentation reflecting the actual Operating Expenses for 1987.

E. If Base Year operating expense information is not available, the Park's Base Year Operating Expenses ~~shall be determined by using the Operating Expenses from the Park Owner's year of purchase (1995), adjusted back to the Base Year by the increase or decrease in the CPI between 1995 and the Base Year, except that pursuant to Section 4.0003 (D) (3) (c) of the Rules,~~ Base Year management expenses ~~shall be determined by decreasing the Current Year management expenses to the Base Year by the percentage change in the CPI between the Current Year and the Base Year.~~ (Ordinance, Section 15.20.100 (C) and Administrative Rules Section 4.0003 (D), (E), (F) and (J).)

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F. None of the information or documentation provided by the Park Owner of their purported Gross Income or Operating Expenses for the Base Year (determined using 1995 figures discounted to 1987 by the decrease in CPI) or Current Year was audited by the Park Owner or by the Park Owner's CPA, Edward Gogin. The Park Owner did not correlate its invoices and receipts with the profit and loss statement and other financial documents submitted with the application, and the application and oral testimony submitted by the Park Owner's witnesses did not resolve any discrepancies between their various documents.

G. Mr. Gogin had no personal knowledge of any of the Gross Income or Operating Expense information submitted for the Base Year ~~or Current Year~~ for the Park. The application and testimony reflects that Mr. Gogin's analysis was based on an acceptance of the documentation provided to him by the Park Owner as true, without any performance of a certified or audited financial statement, and without any personal knowledge of the veracity or accuracy of the information contained in the documentation. Mr. Gogin's testimony also reflects that he did not perform any kind of detailed examination of the documentation submitted in support of the claimed Gross Income or Operating Expenses for the Base Year or Current Year.

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H. Several of the Park Owner witnesses, when asked about specific income or expense categories for the Base Year or Current Year, were unprepared and unable to respond to the questions or produce evidence in support of their claims during the Commission hearing.

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I. Although the Park Owner testified that the Park was professionally managed, the application and documentation submitted reflects a lack of professional management, and an inability to correlate claimed Operating Expenses for Grandview West, resulting in a determination that the Park Owner's documentation is not reliable or credible. For example:

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(1) Many alleged timesheets, labor and other expense records for the Park were kept on handwritten notes, including notes kept on scraps of paper, with no way to verify their accuracy or time of preparation. Submitted labor records were insufficient to justify claimed management expenses.

(2) The Park Owner erroneously included documentation for expenses incurred in 2006 in the Current Year (2007) Operating Expense calculation. The Park Owner's documentation intermingled personal expenses with business expenses, and intermingled operating expenses for Grandview West with operating expenses for other parks, owned by the Rudrich's such that it is not possible to determine to which park the expenses pertain. One of the Park Owners admitted during testimony that expenses incurred for one park would at times be charged against the other parks owned by the Rudrich's to ease the burden of accounting.

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(3) The Park Owner failed to submit documentation of claimed expenses. For example, the Park Owner claimed that it purchased a Rug Doctor to clean the carpet at the Park, but the Park Owner did not submit any documents of actual labor in cleaning the carpet, the receipt indicated delivery to Hedy Rudrich's personal residence, and there was resident testimony that there was only a small carpet in the clubhouse such that use of the Rug Doctor was unnecessary and was never observed. In addition, the Park Owner claimed the cost of an organ in their application, however testimony provided by a resident questioned this claim since the organ was donated to the park by a deceased resident.

(4) The Park Owner claimed mileage purportedly between parks owned by the Park Owner without any correlation with work incurred at Grandview West, and without any recordation of mileage incurred by the representatives of the Park Owner or management for this Park.

(5) The Park Owner failed to submit receipts or invoices for entries included in the Profit and Loss Statement; checks listed in the general ledger were written for amounts that did not correspond to any receipts; and there were missing check numbers in the general ledger.

(6) Sound accounting principals were not followed which is partly why alleged management costs increased by ten times.

J. None of the representatives of the Park Owner had any personal knowledge of the level of management or conditions in the Park in 1995 (the first year of ownership) or in the Base Year.

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K. The Report and testimony of Dr. Kenneth Baar, the NOI expert retained by the City to evaluate the application, also identified numerous problems and inconsistencies with the Operating Expense information submitted by the Park Owner for the Base Year and Current Year.

(1) In explaining the methodology for determining an NOI rent adjustment, Dr. Baar testified that there is an incentive in the NOI process to show the highest possible expenses in the current year to demonstrate that there had been a large increase in operating costs, while showing lower expenses in the Base Year.

(2) In the application, the Park Owner contended that management expenses between the Base Year and Current Year substantially increased. Dr. Baar testified there was not sufficient evidence to justify the huge difference in management expenses reported by the applicant.

(3) Dr. Baar also testified that if the Park Owner's contention is accepted, on-site management expenses in 1995 would have increased more than ten times what they were in the Base Year, which is not typical or normal, and Dr. Baar testified that the Park Owner failed to present evidence of a drastic change in the management of the Park. Dr. Baar also testified that the "Park is a family-run operation where some management expenses are reported, some are not taken and they really are kept as income." Thus, the records may not reflect an accurate recordation of expenses, as distinct from income.

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(4) In his report, Dr. Baar attempted to evaluate the claimed increase in management services allegedly provided by the Park Owner between 1995 (when they purchased the Park) and 2007. Dr. Baar noted that there was insufficient documentation to justify the substantial increase in management expenses between the Current Year and the preceding four years. Dr. Baar concluded that "because the park owners manage the business (rather than employing others and/or contracting these services), management compensation and profit are virtually interchangeable. Both are compensation to the owners." (Dr. Baar Report, p. 10.) Dr. Baar further explained that using the Park Owner's approach, current expenditures claimed by the owner, for management and related services are ten times the expenditure in the Base Year, and that this purported increase between the Base Year and Current Year is "exceptional". Dr. Baar concluded "In the absence of evidence of drastic change in the level of management services, it is reasonable to conclude that the difference between management expense ratios in 1995 and 2007 is attributable to changes in the categorization of income within the combined categories of park management and return to park ownership, rather than an increase in "real" costs." (Dr. Baar Report, p. 11.)

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(5) Dr. Baar's Report also expressed concern about the practice of including self-management expenses as profit (or NOI) in the Base Year, but recording them as expenses in the Current Year, stating that "a type of 'double-counting' can occur under an MNOI fair return standard. On the one hand, under the MNOI standard, an owner is entitled to index the base year profit (NOI) by a CPI factor; therefore providing some increase in the profit attributable to self-management. On the other hand, if compensation for self-management is treated as an expense in the current year but not the base year, then all of the self-management

expense is treated as an expense increase which may be passed through under the MNOI standard.” (Dr. Baar Report, p. 11.)

L. The Park Owner also did not meet its burden of proof with regard to the amortizable capital expenses included in the Base Year and Current Year.

(1) Dr. Baar testified that the increase in capital improvement expenses reported by the Park Owner -- \$287 in 1995 and \$5,977 in 2007 (the Current Year) -- was not reasonable. Dr. Baar testified that in 1995, 24 years after the Park was constructed, capital expenses were only 7.9% of the amortized capital expense cost in 2007, and that this is not a reasonable difference because capital expenses are a recurring type of expense, and there is a lack of evidence of a significant amount of capital expenditures in 1995, particularly if the Park Owner contends that the useful life of each capital expense was ten to fifteen years.

(2) The Park Owner’s contention that it incurred a \$45,000 capital expense for an \$18,000 roof replacement in 1995 is also not supported by the evidence. Mr. Gogin testified that the total cost of the \$18,000 roof replacement should be amortized over a ten-year period, and that the \$18,000 sum must be treated as a loan from the partnership to the Park because it was funded by the individual owners of the Park. Mr. Gogin also testified that under this “loan”, no payments would be due on principal or interest by the Park Owner until expiration of the ten year period (2015), and that the \$18,000 would be amortized with a 9.25% interest rate, for a total cost to the Park residents of \$45,885.76 at the end of this ten-year term. Mr. Gogin also testified that it is not appropriate or necessary to treat the \$18,000 cost as an amortizable capital expense that should be reduced by payments on principal and interest each month over a 10-year amortization period.

(3) In contrast, Dr. Baar testified that he has never seen a financing arrangement from a lender like the one proposed by Mr. Gogin – in which the Park Owner would not have to pay any portion of the principal or interest on the \$18,000 “loan” from the individual owners until the end of the ten-year term. Dr. Baar testified that the \$18,000 cost should be treated like an amortized loan that the Park Owner obtained from a bank, in which the Park Owner would have to start paying interest and a portion of the principal from the outset, at the rate of 7%.

(4) When Mr. Gogin was asked in cross-examination if he has ever seen a financing arrangement from a lender like the fictional loan he proposed for the roof replacement, Mr. Gogin responded only that “there are some crazy loans out there.” Mr. Gogin also offered inconsistent testimony on the method for determining the amortizable cost of the roof replacement. On the one hand, he testified that the amortization schedules contained in Section 5.0004 of Chapter 5 of the Rules should be used to determine the applicable amortization schedule for each listed capital expense, but that the actual cost of the capital expense should not be determined by reference to Section 5.0005 of Chapter 5. Mr. Gogin did not offer a plausible or credible explanation for this inconsistent application of Sections 5.0004 and 5.0005 of the Rules in order to determine the cost of the roof replacement.

(5) There was also a conflict in the testimony whether the Park Owner had any expectation that at the time the roof was replaced, the Park Owner intended to charge the

residents for this expenditure through a capital expense or capital improvement. Hedy Rudrich testified that a prior capital improvement was made by the Owner and then repaid through a capital improvement rent adjustment over a ten-year period, at the rate of 90 cents per space per month. Hedy Rudrich also testified that the prior improvements and the \$18,000 roof replacement were overseen by her deceased husband, and that she did not know if her husband intended to seek a capital improvement rent adjustment from the City under the Ordinance for the roof replacement because he was ill with lung cancer when the roof replacement was made in 2005, and subsequently died at the end of 2005. Helga Reese and Jakob Rudrich, the Rudrich's children, also testified that no one thought about the roof replacement when Mr. Rudrich was ill. They did not offer any explanation about why they did not seek a capital improvement rent adjustment for the roof replacement after 2005. Accordingly, the Park Owner did not meet its burden of proof that the roof expense was an actual amortizable capital expense.

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(6) Based on the application and testimony, the City Council finds that the Park Owner did not meet its burden of proof that the Park Owner would have been able to obtain a loan payable on the terms proposed by Mr. Gogin – a loan of \$18,000, borrowed with no expectation of repayment for a ten-year period and ultimately totaling \$45,885.76. No competent evidence was presented by the Owner that a reasonable and prudent Park Owner would finance an improvement or expense in the Park by using a loan that would not require periodic payments over time or that would allow a lump sum payment at the end of a fictional term. Such an approach would maximize the expense to the residents of the Park, rather than reflect a reasonable and prudent operating expense of a reasonable and prudent park owner. Based on this testimony, the City Council also finds that the Park Owner did not present substantial evidence that the \$18,000 roof work was ever intended to be charged to the residents either as a capital improvement rent adjustment, or through inclusion in the Operating Expenses of the Park in determining an NOI rent adjustment.

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M. For all of these reasons, the Park Owner did not meet its burden of proof to establish its Base Year or Current Year Operating Expenses, and therefore did not meet its burden of proof to establish its Base Year NOI. In order to determine a Base Year NOI, the City would have to assume that expenses were incurred, contrary to the Ordinance which requires that the Park Owner to bear the burden of proof of demonstrating that the Park Owner incurred the Operating Expenses, the amount of the Operating Expenses, and that the Operating Expenses were reasonable. Dr. Baar was hampered in his attempts to calculate a base year and resulting NOI because he had very little verifiable data from the park owners on current and/or base year management expenses and therefore was left with a study of national averages for park management costs with limited relevance to Yucaipa in supporting his calculations. Because determination of the Base Year NOI is critical for determination of the NOI adjustment for the Park, and the City is not able to determine Base Year NOI, the Park Owner has not met its burden of proof to submit substantial evidence demonstrating that it is entitled to an NOI rent adjustment under Section 15.20.100 (A) of the Ordinance and Section 4.0003 of the Rules.

SECTION IV. FINDINGS WITH REGARD TO THE APPLICATION FOR A RENT ADJUSTMENT TO PROVIDE JUST AND REASONABLE RETURN UNDER SECTION 15.20.100 (C) OF THE ORDINANCE. Based on the foregoing Recitals and Findings, the Record before the Commission, the Commission transcript, and all written and oral argument

submitted to the City Council during the appeal hearing, the City Council finds and determines that the Park Owner did not meet its burden of proof to establish that the Park Owner is entitled to a rent adjustment under Section 15.20.100 (C) of the Ordinance and Section 4.0005 of the Rules, for the following reasons.

A. The Park Owner contends that it is entitled to a rent adjustment determined by using 100% of the increase in the CPI between the Base Year and Current Year. For example, in Alternative #2 of the application, the Park Owner contends that it is entitled to an NOI adjustment of \$121 per space per month, based on 100% of the increase in the CPI between the Base Year and the Current Year. In Alternative #3 of the application, the Park Owner contends that the Park Owner is entitled to a rent adjustment of \$142.36 per space per month under Section 15.20.100 (C) of the Ordinance. However, the Park Owner did not meet its burden of proof that the Park Owner is entitled to use 100% of the increase in CPI between the Base Year and Current Year to determine a rent adjustment under the Ordinance, or that a \$142.36 rent adjustment is necessary to provide the Park Owner with a just and reasonable return.

B. The City Council rejects the Park Owner's contention, set forth in Alternative #2 of the application, that the Park Owner is entitled to an NOI rent adjustment of \$121 per space per month.

(1) As set forth in Section I, Finding T (1), above, the formula for determining an NOI rent adjustment set out in Section 15.20.100 (A) requires that the Commission determine the NOI rent adjustment using the two-tiered CPI indexing factor (66-2/3% of the increase in CPI between December 31, 1987 and October 28, 1996, and 80% of the increase in CPI between October 29, 1996 and the date of the complete Application), *not* 100% of the increase in CPI between the Base Year and Current Year. Use of 100% of the increase in CPI between the Base Year and Current Year to determine an NOI rent adjustment is contrary to and not authorized by, Section 15.20.100 (A) of the Ordinance.

(2) The Park Owner provided no evidence in either the application or in any of its witnesses' testimony, to support its contention that 100% of the increase in CPI between the Base Year and Current Year is required in order to determine the Park Owner's NOI rent adjustment.

(3) The lack of evidence to support this contention is reflected by the comments made by the Park Owner's attorney, Mark Alpert, during the City Council appeal hearing. During the appeal hearing, Mr. Alpert conceded that his contention that a park owner is entitled to 100% of the increase in CPI is based on his personal argument, and not based on any evidence for this particular Park.

(4) The Park Owner thus failed to meet its burden of proof, that it would not receive a just and reasonable return in the Current Year unless it were provided with an NOI rent adjustment of \$121 per space, using 100% of the increase in the CPI since the Base Year.

C. The City Council also rejects the Park Owner's contention, under Alternative #3 of the application, that it is entitled to a rent adjustment of \$142.36 under Section 15.20.100 (C)

of the Ordinance, as implemented by Section 4.0005 of the Rules. The City Council finds that the Park Owner did not meet its burden of proof to support its contention that the Park Owner is entitled to a rent adjustment of \$142.36 per space per month in order to provide the Park Owner with a just and reasonable return.

(1) Alternative #3 is also based on the Park Owner's contention that the Park's Base Year NOI must be adjusted by 100% of the percentage increase in the CPI between the Base Year and the Current Year in order to determine the NOI rent adjustment, and that comparable rents in comparable parks are \$142.36 higher than the rents in Grandview West. Section 15.20.100 (C) of the Ordinance and Section 4.0003 of the Rules provide that an Owner may seek an increase *in addition to* the NOI adjustment authorized under Section 15.20.100 (A) *if* the Owner meets its burden of proof that the Park is not earning a just and reasonable return *even with the NOI adjustment*. Factors to be considered are set out in Section 15.20.100 (C) of the Ordinance and Section 4.0005 of the Rules. Examining *all* relevant factors, the City Council determines that the Park Owner did not meet its burden of proof that it is entitled to a rent adjustment of \$142.36 per space, or any other rent adjustment pursuant to Section 15.20.100 (C) of the Ordinance.

(2) The Park Owner did not submit any evidence of the return earned by the Park in the Current Year or any prior year, to support its contention that the \$142.36 rent adjustment is necessary in order to provide the Park Owner with a just and reasonable return. In addition, although the application states that the Park Owner would submit evidence of returns earned by investors in comparable investments and that such returns are expected to increase faster than the rate of inflation, the Park Owner did not submit any such evidence in its application or at the hearing in support of its requested rent adjustments. The Park Owner did not submit evidence regarding any of the other factors required under Section 4.0005 of the Rules and as such, did not meet its burden of proof that it is entitled to a \$142.36 rent adjustment in order to earn a just and reasonable return.

(3) The Park Owner contends, in Alternative #3 of the application, that it is entitled to a rent adjustment of \$142.36 per space per month under Section 15.20.100 (C) of the Ordinance and Section 4.0005 (B) (1) of the Rules, on the grounds that the current rents in Grandview West are \$142.36 below the rents in comparable parks in the City. The City Council carefully examined the documentation submitted by the Park Owner, YMRA and the residents, and City staff, related to the issue of rents in comparable parks. The City Council finds that the Park Owner failed to meet its burden of proof to demonstrate that the rents in Grandview West are \$142.36 below rents in comparable parks in the City.

(4) In evaluating the Park Owner's contention under Alternative #3 that the rents in the Park are \$142.36 lower than rents in comparable parks, the City Council finds that the rent surveys submitted by the Park Owner in its application were not prepared by the Park Owner, or by any person on behalf of the Park Owner. The documents included rent surveys prepared in 1987 and 1993, and for a rent adjustment application submitted in prior years for Park Terrace Mobile Home Park, a completely different park from Grandview West. Several of the surveys did not identify the author or source of the information contained in them; the

application did not identify who prepared the surveys; and the authors of the surveys were not present at the Commission hearing for questioning.

(5) In support of its contention under Alternative #3 that the Park Owner is entitled to a \$142.36 rent adjustment, the Park Owner also submitted an appraisal prepared by James Brabant, MAI, in 2005 that was apparently previously submitted to the Commission in connection with a prior application for Valley Breeze, a totally unrelated mobilehome park. Mr. Brabant's 2005 appraisal analyzed the comparability of other parks to Valley Breeze, a completely different park than Grandview West, the subject of this application.

(6) In support of the Park Owner's contention that rents in comparable parks are \$142.36 higher than the rents in Grandview West, the Park Owner also submitted a declaration from Helga Reese, who is one of the partners of Rudrich Family Management, Park Owner. Mrs. Reese is not an appraiser. According to Mrs. Reese's declaration and her testimony, three other parks in the City are comparable to Grandview West – Fremont Heights Mobile Home Park, Mission Valley Oaks Mobile Home Park, and Crest View I Mobile Estates. Mrs. Reese also testified that the average rents in these three parks are \$142.36 higher than the average rents in Grandview West. Although Mrs. Reese contends that these parks are comparable to Grandview West, her declaration and her testimony did not contain any facts setting forth her qualifications to testify as to comparability or rental values. Accordingly, Mrs. Reese's declaration and testimony do not provide any basis to conclude that she is qualified to render an opinion about the rental value of rents in the Park, what parks are comparable to Grandview West, or what are comparable rents.

(7) In opposition to the Park Owner's requested rent adjustment of \$142.36 under Alternative #3 pursuant to Section 15.20.100 (C), YMRA and the residents submitted testimony from appraiser James Stein at the Commission hearing. Mr. Stein testified that none of the parks offered by the applicant are comparable to Grandview West. Mr. Stein testified that both Fremont Heights and Mission Valley Oaks are vastly superior to the Park, and are inappropriate to use as comparables, due to such factors as location, the age of the mobilehomes, and the neighborhood. Mr. Stein also testified that Crestview I is comparable to Grandview West, but that Crestview I is superior to the Park, and that as such, it is necessary to make a downward adjustment of Crestview I's average rents. Based on his analysis, he testified that there is only a \$28 difference between rents in Grandview West and in Crestview I. As noted, Mr. Stein concluded that Crestview I is superior to Grandview West.

(8) In opposition to the Park Owner's requested \$142.36 rent adjustment under Section 15.20.100 (C) of the Ordinance, YMRA also submitted a declaration from Len Tyler, of YMRA. Mr. Tyler's declaration discussed the parks offered as "comparable" by the Park Owner. According to Mr. Tyler's declaration, Carriage Trade Manor, Caravan Mobilehome Park, Valley View Mobilehome, and Yucaipa Village Mobilehome Park are comparable to the Park, and that they do not support a rent adjustment of \$142.36 per space per month because their rents are less than or only slightly more than the current rents in the Park. According to Mr. Tyler, Carriage Trade is equivalent to the Park but its rents are \$28 less per month than the Park's rents; Caravan Mobilehome Park is comparable to the Park but its rents are \$16 less than the Park's rents; Valley View Mobilehome Park is equal to or slightly better than Grandview

West but its rents are \$11 more per space per month; and Yucaipa Village is \$20 more per month than Grandview West. Mr. Tyler's declaration also states that the three parks offered by the Park Owner as comparable, are all located in superior areas and better neighborhoods, and have lower density than Grandview West. Although Mr. Tyler is not an appraiser, his declaration establishes that he has lived in the City in a mobilehome park since July 1989, that he has been Chairman of YMRA for 17 years, and that he is extremely familiar with mobilehome parks in the City, including Grandview West, and that he is familiar with other parks in terms of rents, facilities, amenities, construction, types of mobilehomes, and quality of the neighborhoods and proximity to recreation, parks, schools, medical and education facilities.

(9) In response to the Park Owner's request for a \$142.36 rent adjustment under Alternative #3, at the Commission hearing, City Staff submitted an appraisal from James Brabant, MAI, regarding rental value of the spaces in Grandview West in the Base Year and in 2008. Mr. Brabant also testified at the Commission hearing. Mr. Brabant's appraisal concluded that ten other parks were comparable to Grandview West in the Base Year (1987), and that Grandview West's rents were comparable to these parks in the Base Year. The Park Owner does not dispute Mr. Brabant's conclusions as to the Base Year rents.

(10) Mr. Brabant's appraisal also concluded that eight parks were comparable to Grandview West in 2008, but that only one park offered by the Park Owner is comparable to the Park -- Crestview I. Mr. Brabant concluded that the other two parks offered by the Park Owner -- Fremont Heights and Mission Valley Oaks -- are not comparable to Grandview West but rather are superior to Grandview West based on their amenities, location and density. Mr. Brabant concluded if rents in Grandview West were compared with the rents in his eight comparable parks under his analysis, the rents in the Park were at most \$46 lower than rents in the comparable parks.

D. Based on its consideration of all documentation and testimony presented by the Park Owner, YMRA and the residents, and City staff, the City Council concludes that the Park Owner did not meet its burden of proof to demonstrate that rents in comparable parks in the City are \$142.36 higher than rents in Grandview West or that any rent adjustment is required under Section 15.20.100 (C) of the Ordinance and Section 4.0005 of the Rules. The City Council finds:

(1) The rent surveys, 2005 Brabant report, and Reese declaration, by themselves or in combination with each other or the other evidence submitted, do not provide substantial evidence of rents in comparable parks, and the Park Owner failed to meet its burden of proof, of demonstrating that the rents in comparable parks in the City are \$142.36 higher than the rents in Grandview West. The rent surveys provided by the Park are quite old, do not relate to Grandview West, and their authors were not made available for questioning by the Commission. The 2005 Brabant report was prepared in 2005 for a totally unrelated park -- Valley Breeze -- and did not analyze parks comparable to Grandview West.

(2) The City Council finds that the testimony by appraiser James Stein and the declaration by Mr. Tyler, supported by Mr. Stein, are more credible and reliable than the documentation offered by the Park Owner and Mr. Brabant's appraisal regarding rents in

comparable parks. Mr. Stein is an appraiser, and his analysis is based on a larger and more representative group of comparable parks in the City of Yucaipa than the three parks offered by Mrs. Reese on behalf of the Park Owner. Mrs. Reese is an owner of a park but she is not an appraiser, and her declaration and testimony do not establish any qualifications to establish her expertise. Mr. Tyler is not an appraiser, but his declaration explained his role as an YMRA representative and his familiarity with mobilehome parks in the City supports Mr. Stein's assessment. The Park Owner did not make any objections to the testimony or declaration submitted by Mr. Tyler or Mr. Stein. For all of these reasons, the Park Owner did not meet its burden of proof that the rents in comparable parks are \$142.36 higher than those in Grandview West. Furthermore, the City Council finds that Mr. Stein's testimony suggesting that the average rent at the five most similar parks to Grandview West is the same as the current Grandview West space rent of \$263 is more credible, based on the critique offered by Mr. Stein of Mr. Brabant's appraisal.

(3) The factor of rents in comparable parks, as set out in Section 4.0005 (B) (1) of the Rules, is only *one* of several factors that the City Council must consider in determining if the Park Owner met its burden of proof of establishing that the Park Owner is entitled to a \$142.36 rent adjustment in order to provide the Park Owner with a just and reasonable return. As set forth above, the Park Owner did not submit any evidence of the return earned by the Park in the Current Year or any prior year, in its application. And, as set forth in Finding E, *infra*, the Park Owner did not submit evidence regarding any of the other factors required under Section 4.0005 of the Rules and as such, did not meet its burden of proof that it is entitled to a \$142.36 rent adjustment in order to earn a just and reasonable return.

E. In addition to failing to meet its burden of proof that rents in comparable parks are \$142.36 higher than those in Grandview West, the Park Owner did not meet its burden of proof that it is entitled to a rent adjustment by examination of all of the other factors under Section 15.20.100 (C) of the Ordinance and Section 4.0005 of the Rules, for the following additional reasons:

(1) The Park Owner did not submit any evidence of the capitalization rate earned by the Park in the application year, each of the five preceding years, and in 1995 (the first year of ownership). (Rules, Section 4.0005 (B) (2).) The Park Owner did not submit evidence of purchase price of the Park to the City.

(2) The Park Owner did not submit any evidence of the capitalization rate associated with the purchase of comparable mobilehome parks in the application year and preceding five years. (Rules, Section 4.0005 (B) (3).)

(3) The evidence submitted by the Park Owner of the Park's income and expenses over each of the past five (5) years, does not support the conclusion that the Park Owner will not earn a fair return, since the Park Owner failed to provide any of the other evidence required by Section 4.0005 of the Rules. (Rules, Section 4.0005 (B) (4).)

(4) There is evidence of delay on the part of the Park Owner in seeking a rent increase pursuant to Section 15.20.100 (C). (Rules, Section 4.0005 (B) (5).) The Park Owner previously applied for and received approval of a capital improvement rent increase in 1996, for the prior roof improvement. No capital improvement application was submitted when the Park Owner allegedly incurred the \$18,000 roof expense in 2005 to install the foam roof. As further set forth above, there was a conflict in the testimony whether the Park Owner ever intended to impose the cost of the \$18,000 roof replacement on the Park residents, as a result of which the Park Owner did not meet its burden of proof that it ever intended to apply for a rent adjustment using this roof replacement.

F. For all of these reasons, the Park Owner failed to meet its burden of proof that a \$142.36 rent adjustment is necessary in order to provide the Park Owner with a just and reasonable return under Section 15.20.100 (C) of the Ordinance and Section 4.0005 of the Rules.

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SECTION V. FINDINGS WITH REGARD TO THE APPLICATION FOR A TEMPORARY RENT INCREASE FOR THE APPLICATION AND HEARING COSTS. Based on the foregoing Recitals and Findings, the Record before the Commission, the Commission transcript, and all written and oral argument submitted to the City Council during the appeal hearing, the City Council finds and determines that the Park Owner is not entitled to a temporary rent increase to recover any application and hearing costs in connection with this application under *Galland v. City of Clovis*, 24 Cal.4th 1003 (2001), for the following reasons.

A. Because the Park Owner is not entitled to any rent adjustment under Section 15.20.100 (A) or (C) of the Ordinance, the Park Owner is not entitled to recover any costs of the application and public hearing in connection with its application.

B. In its appeal to the City Council of the Commission Decision, the Park Owner requested an additional \$6,919.50 as costs incurred by the Park Owner in the application and hearing process before the Commission. The City Council denies this request because the Park Owner waived its right to request any additional hearing costs beyond the sum of \$25,861.73, based on the Park Owner's failure to seek any costs above \$25,861.73 during the Commission hearing. In addition, as provided in Finding A of this Section V, the City Council denies all application and hearing costs to the Park Owner based on the denial of any rent adjustment under the Ordinance.

C. In addition, the Park Owner failed to submit any evidence to support its contention that denial of application and hearing costs would constitute a confiscatory result, or otherwise deprive the Park Owner of a fair return.

D. Expenses incurred by the Park Owner in presenting the application were not relevant to the Park Owner's contentions. As set forth above, although the Park Owner contended, in the application, that the Park Owner is entitled to a rent adjustment based on 100% of the increase in the CPI between the Base Year and Current Year, during the City Council appeal hearing, Mr. Alpert, the attorney for the Park Owner, conceded that the Ordinance does not permit use of 100% of the CPI in determining whether a park owner is entitled to an MNOI rent adjustment. Mr. Alpert also admitted that this argument is a personal issue for him. As

provided above, the Park Owner failed to meet its burden of proof that the Park Owner is entitled to a rent adjustment based on 100% of the increase in CPI, or that 100% of the increase in CPI is constitutionally required in order to provide this Park Owner with a fair return. Furthermore, incurring costs to prove a personal point of the Park Owner's attorney is not a proper basis to award any costs of an application or hearing to the Park Owner.

E. Although the Park Owner contends that it is entitled to a rent adjustment of \$142.36 under Section 15.20.100 (C) of the Ordinance, as set forth above, the Park Owner did not submit any evidence of the return earned by the Park in the Current Year or any prior year. The Park Owner's failed to submit evidence of returns earned by investors in comparable investments and that such returns are expected to increase faster than the rate of inflation, contrary to the allegation in its application. The Park Owner did not submit evidence regarding any of the other factors required under Section 4.0005 of the Rules and as such, did not meet its burden of proof that it is entitled to an NOI rent adjustment based on 100% of the increase in the CPI since the Base Year. For these additional reasons, the City Council finds that the Park Owner did not incur in good faith application and hearing costs associated with its contentions under Section 15.20.100 (C) of the application.

**SECTION VI. DETERMINATION.** Based on the foregoing Recitals and Findings, all of which are incorporated herein by this reference as though set forth in full, the City Council determines as follows:

A. Based on all the evidence and arguments submitted in favor of and against the rent adjustment application, and the appeals filed by the Park Owner and by YMRA on behalf of the Park residents, the City Council finds that the Park Owner did not carry its burden of proof that it is entitled to an NOI rent adjustment under Section 15.20.100 (A) of the Ordinance and Section 4.0003 of the Rules.

B. Based on all the evidence and arguments submitted in favor of and against the rent adjustment application, and the appeals filed by the Park Owner and by YMRA on behalf of the Park residents, the City Council finds that the Park Owner did not meet its burden of proof justifying a rent adjustment under Section 15.20.100 (C) of the Ordinance or Section 4.0005 of the Rules.

C. The City Council hereby grants the appeal of YMRA, on behalf of the Park residents, and denies any rent adjustment for Grandview West under the Ordinance.

D. The City Council hereby denies the appeal of the Park Owner.

E. The City Council hereby denies any temporary adjustment for the Park Owner to recover application or hearing costs associated with this application.

F. No rents, charges or other costs shall be imposed by the Park Owner on any month-to-month spaces above the current rents as reflected in the most recent Annual Adjustments previously approved by the Rent Administrator and on file with the City.

G. The decision of the Yucaipa Mobilehome Rent Review Commission, set forth in Commission Resolution 2009-10, is hereby superseded and rescinded in its entirety and shall have no further force or effect.

H. This Resolution and any decision herein shall be binding upon the Park Owner and any of their successors in interest, assignees or transferees, and shall be binding upon YMRA and all of the residents/tenants of the month-to-month spaces in the Park.

I. The procedures and determinations herein have been carried out in compliance with the Yucaipa Rent Stabilization Ordinance (Chapter 15.20 of the Yucaipa Municipal Code).

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SECTION VII. FINAL DECISION. This decision of the City Council is final.

SECTION VIII. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

SECTION IX. LEGAL CHALLENGE. Pursuant to California Code of Civil Procedure Section 1094.6 any legal challenge to this decision of the City Council must be filed within ninety (90) days of the date when a copy of this Resolution is mailed to both the Park Owner and the Residents' representative via first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing.

SECTION X. CERTIFICATION. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Yucaipa this 8<sup>th</sup> day of June, 2009.

\_\_\_\_\_  
Dick Riddell  
Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Shankland  
Director of General Services/City Clerk