



PARK WATCH™ LEGAL DEVELOPMENTS NEWSLETTER

DOWDALL LAW OFFICES, A.P.C., Attorneys at Law

SOUTHERN CALIFORNIA: 284 NORTH GLASSELL STREET, FIRST FLOOR, ORANGE 92866 Ph. 714.532.2222, FAX 532.3238, 532.5381

NORTHERN CALIFORNIA: 980 NINTH STREET, 16TH FLOOR, SACRAMENTO 95814 Ph. 916.444.0777, FAX 444.2983

Risks of Attacking Rent Increase Rejections in Court Just Mushroomed.

By: Terry R. Dowdall, Esq.

■ **Upshot:**

So, you petition for a rent increase. You receive a paltry amount, well below fair. You sue. But the claim fails because the court finds “substantial” evidence to support the City decision, even if City did not preponderate. Or, you dismiss the *mandamus* proceeding before it goes to trial (hearing). *Can you then be saddled with the City cost of preparing the record in the amount of \$66,638.14? Yes.*

Summary and Holding:

In *Otay Ranch, L.P. v. County of San Diego* (230 Cal. App. 4th 60), the petitioner brought a *mandamus* proceeding which was dismissed. The action was based on a purported violation of the Public Resources Code. The county of San Diego sought to recover its costs (for preparation of the administrative record by the county's retained counsel and paralegals). The court held that the costs were appropriate and necessary in light of the history and complexity of the project and how the documents were maintained;. There was no reason to differentiate between costs incurred for work performed by county employees and costs incurred for work performed by retained counsel's employees.

Why Do We Care?

Park owners have sought to challenge rent increase hearing denials for decades. Now, you may be surprised with an *enormous* cost bill.

Facts:

San Diego County approved a “Remedial Action Plan” for a remediation project at the Trap Shooting Range in Chula Vista, California. Petitioner filed a petition for writ of mandate. The parties met to discuss the record. According to counsel for the County, over half of the documents listed in the proposed index were documents not properly part of the CEQA record and the index omitted hundreds of documents that were. After this meeting, petitioner voluntarily dismissed the CEQA cause of action. After filing an amended petition, petitioner did not file the administrative record with the amended petition.

During a preliminary hearing, the court inquired about the status of the record. County stated it would undertake preparation of the administrative record and would file it. Petitioner did not object to the County preparing the record nor did it challenge County's assertion petitioner would be obligated to pay the costs of preparing the record.

Creative Solutions,
Efficient, Practical
Representation,
Profitable Parks



In this Issue:

★ *Chilling Rent Petitions with Potential of Enormous City Cost for Preparing the Administrative Record*

★ *Rent Increase Strategies in Rent Control Jurisdictions: Basic Options, Strategies and DIY (Which Do Not Include Property Rights Court Challenges)*

Proudly Representing
Mobilehome Park Owners
since 1978

We recommend:
FEDERAL ARBITRATION CLAUSES;
MANDATORY MEDIATION;
BROAD ‘FACILITIES RELEASES’

DOWDALL LAW OFFICES, A.P.C.

Attorneys at Law

Home : HOME
Firm Overview :
Our Practice : **Our Goal: Your Success**

Contact us: admin@dowdalllaw.net

Please visit: www.dowdalllaw.com;
for

Current News, Updates, Alerts
Courtesy MRL, TITLE 25, TITLE 24

County asked an outside law firm to prepare the record. The hourly rates charged for the attorney and the paralegals for record preparation, which were discounted from their regular rates to \$350 and \$100 per hour, respectively.¹ Counsel for the County initially tasked preparation of the administrative record to experienced paralegals, document clerks and an electronic record vendor. However, as the work unfolded, it became necessary for the attorney to become actively involved in reviewing and organizing the record. Given the technical complexity of the documents, the scope of the record and the manner in which the documents were maintained, the attorney hired by the County was the only person who understood the interplay of the various versions of the documents as well as which documents should be included in the administrative record and which should not. The work purportedly required “someone with specific knowledge and a comprehensive understanding of the project” over the previous decade to reassemble various documents and technical reports with supporting documentation to prepare an adequate administrative record, but the County did not have adequate staffing to undertake this effort.

The attorney and the paralegals worked extended hours and through the weekend to prepare the record. The County filed and served the administrative record on May 8, 2013, consisting of 326 documents totaling more than 18,000 pages. The following day, petitioner dismissed the entire action. *The County submitted a memorandum of costs seeking recovery of \$66,638.14 for preparation of the administrative record.*

Petitioner claimed the cost is not valid because attorney’s fees are not warranted for a mandamus action. The County argued that the “labor costs of ‘persons with specialized knowledge,’ are recoverable when they are reasonably necessary” to prepare an administrative record.

The court held that labor costs incurred for preparing an administrative record are allowable if “necessarily incurred and reasonable,” including labor for “persons with specialized knowledge,” the trial court ruled “it was reasonably necessary” for the County’s attorney and her paralegals to prepare the administrative record since the County “did not have the resources or experienced personnel” to prepare the record.

Conclusion:

The costs to prepare the administrative record for an administrative mandamus action are recoverable. *Code of Civil Procedure* §1094.5, subdivision (a), provides “[e]xcept when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner” and “[i]f the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.” *Code of Civil Procedure* section 1094.6, subdivision (c), specifies the contents of the administrative record and reiterates the petitioner must bear the cost of preparing the record stating, in relevant part, “[t]he local agency may recover from the petitioner its actual costs for transcribing or otherwise preparing the record.”

“ . . . we cannot conclude the trial court exceeded the bounds of reason in determining it was “reasonably necessary” for the County’s retained counsel and paralegals to prepare the administrative record since the County “did not have the resources or experienced personnel to prepare the [r]ecord.”

Preparing the record may take hundreds of hours. It used to be that if a park owner loses, government may file a bill for litigation expense which is not demanded, collected or pursued. *This case* allows government to hire independent lawyers to prepare a record and bill it as a (punitive?) cost if the park owner is defeated. This imposes a severe *chilling effect* for the unsuspecting park owner, especially in jurisdictions which impose rigorous requirements for the filing of a petition for rent increase. Carson, Oceanside, San Jose, and many others, may now drive up a cost for record preparation, without any advance notice to the park owner, and then pounce after a defeat in court to ensure the park owner thinks twice before trying it again.



¹ The judge “. . . took into account the nature and complexity of the case, the results obtained, the amount of work involved, the skill required and the time consumed as well as the court’s own knowledge and experience with the rates charged in the community for similar work and concluded the “rates charged are at the low end of what the court would consider reasonable given the experience of counsel.”

Rent Increases Under Rent Control. A Methodologically-Based Checklist for the Park Owner.

By: Terry R. Dowdall, Esq.

Upshot: Owners call and say where do we start, I need to apply for a rent increase!

It all starts with an evaluation of the circumstances. What is the local political dynamic? The market? The ordinance? Judicial efforts? The level of financial distress being suffered by the park owner?

The evaluation of a rent application possibility includes the search for amiable solutions which bridge the gap of resident distrust and enhance value with cooperation and understanding. *Do the residents possess a capability to cooperate with the park owner to manage costs? Or must all disputes be resolved with my psychotic delusional residents who myopically fight me over every penny, unwilling to acknowledge the realities of operating real property?* Eventually, even the costs of processing applications are passed along as rents, and working together can ameliorate much of the collective costs to all (avoiding attorney's experts, accountants, time and efforts to present a rent increase).

Many cities and counties have no rent controls, or work out issues with accords, long term lease options, and mutual understandings. *The variable is the resident and local politics; not the park owner.* If the politics are right, the residents will have rent controls. Hence, you have celebrities living in mobilehomes along the Pacific Ocean worth millions of dollars, under rent control. Without decontrols. Even New York makes it a felony to pocket key money from sale of rent controlled units. Not here. The courts will remain deluded to these realities under our system of government. The question is how to adjust to this legitimized confiscation. Fight, or adapt?

Studying alternatives to rent controls such as leasing, pad control and recapture, renting, alternate uses or even sale. The following outline is a checklist I developed years ago and still serves well as a beginning orientation for the owner and management.

This outline can be used to spark discussion, analysis and the search for the most efficient solution. The best result may not be immediate or a decision to seek a rent increase.

RENT CONTROL ORDINANCES STRATEGIES: OUTLINE OF ISSUES, CONCEPTS AND IDEAS

POLITICAL CONSIDERATIONS, BOARD APPOINTMENTS, ELECTIONS, ALTERNATIVES, IN-PARK STRATEGIES.

1. SELLING LEASES AMIDST RENT CONTROL IS NOT MISSION IMPOSSIBLE; BUT THE GAME FIELD MUST BE LEVELED FIRST
2. VACANCY DECONTROL AS THE END RUN; REFERENDA POSSIBILITY (E.G., LAGUNA BEACH, PARAMOUNT, EL MONTE)
3. INITIATIVES, AMENDMENTS, LEASE ACCORDS, CITY MANDATED LEASES, SUBSIDY PROGRAMS
4. ELECTING COUNCIL MEMBERS TO WIN THE THIRD VOTE.
5. MULTI YEAR AGREEMENTS WITH TENANTS EVEN IF NOT LONG TERM LEASES; READ THE ORDINANCE FOR LOCAL EXEMPTIONS..
6. PARK CLOSURE.
7. CONSTITUTIONAL RELIEF FUTILE UNLESS FUNDAMENTAL FLAW (SUCH AS LAKEPORT, LAKE COUNTY, SAN MATEO COUNTY, ESCONDIDO, CHULA VISTA, BERKELEY)
8. CONTRIBUTE TO THE PACIFIC LEGAL FOUNDATION FOR CLAIMS WHICH BENEFIT THE INDUSTRY. FOR INDIVIDUAL CLAIMS, THE CHALLENGE TO THE DENIAL OF THE RENT INCREASE IS SOLELY PRUDENT AND REASONABLE FOR MOST PARK OWNERS.
9. CONSIDER WAYS AND MEANS OF PERMANENT WITHDRAWAL FROM THE RENT CONTROL MARKET. THE "EXORCISTIC AMALGAM™" APPROACH, THE RENTAL APPROACH, SALE AND CLOSURES.
10. DO NOT CONSIDER SUBDIVISION UNLESS THE RESIDENT DISPLAY COOPERATION BY FIRST ENTERING INTO LONG TERM LEASES. THAT GESTURE OF GOOD FAITH IS REQUISITE TO A GENUINE SHOWING OF COOPERATION; THE LONG TERM LEASE APPROVED BY A MAJORITY OF RESIDENTS CAN INCORPORATE THE RIGHTS OF FIRST REFUSAL TO BUY, SUBDIVIDE, TRANSFER CONTROL TO A TENANT-CONTROLLED PARK.
11. BE REASONABLE. SUPPORT WEAKENED IF POSITION IS PERCEIVED AS MALEVOLENT, GREEDY, OR UNCONSCIONABLE.

PARKWATCH™

CONCEPTS AND PROCEDURES TO OBTAIN THE LARGEST INCREASE:

1. IF ORDINANCE IS NEW:

- A. PARTICIPATE IN THE POLITICAL PROCESS OF IMPLEMENTING THE ORDINANCE: INPUT INTO THE DRAFTING AND CONTENT OF THE ORDINANCE. DO NOT AGREE TO THE ORDINANCE IF OWNER IDEAS INCORPORATED; BUT TRY FOR POSITIVE SPIN.
- B. STYLE AND APPROACH CRITICAL
- C. OPPOSE CARSON APPROACH (NO INCREASE UNLESS APPROVED BY CITY)
- D. WHO DECIDES: RENT CONTROLS A "LAW OF MEN" NOT PRINCIPALS.
- OPPOSE SANTA MONICA APPROACH (BOARD HAS DISCRETION TO DETERMINE ANNUAL INCREASE EACH YEAR; RENT BOARD MEMBERS ELECTED).
- OPPOSE OCEANSIDE/ESCONDIDO APPROACH (NOI FORMULA);
- OPPOSE DISCREDITED NET BOOK ASSETS APPROACH (JUNK SCIENCE WHICH PUNISHES LONG TERM OWNERSHIP PER RETIRED JUDGE)
- E. WORK RESIDENTS WHILE CONTROLS CONSIDERED, WITH LEASES (NORTHERN CALIFORNIA)
- F. FAVOR RIVERSIDE COUNTY (PRE-HEARING MEDIATION), ACCORD PROCESS, LEASE OPTION (LOS ANGELES COUNTY)
- G. FAVOR AUTOMATIC CPI INCREASE EACH 12 MONTHS (NUMEROUS LAWS)
- H. FAVOR "FAIR RETURN" HEARING WITH RIGHT TO INTRODUCE ALL RELEVANT EVIDENCE OF NEED FOR INCREASE
- I. FAVOR SEPARATE HEARING PROCEDURE FOR CAPITAL IMPROVEMENT RENT INCREASES; BE SURE CAPITAL IMPROVEMENT INCREASES ARE DEFINED AS "RENT INCREASES"
- J. ALTERNATE LEASE PROGRAM (L.A. COUNTY, REDWOOD CITY)
- K. EXEMPTIONS: FAVOR "SAFE HARBOR" FOR "LEASED" PARKS (IF NON-LEASE TENANTS TREATED SAME AS LEASED), EXEMPT R.V.'S, EXEMPT SECOND HOMES, EXEMPT SUBLEASED HOMES, EXEMPT PARKS WITH IN-PARK RENT SUBSIDIES, EXEMPT SMALL PARKS, EXEMPT PARKS 5% VACANT, EXEMPT OWNER-TENANT AGREEMENTS, VOLUNTARY LEASES UNDER C.C. 798.17, ALSO 798.18, PROVIDING RENT INCREASES EXCEEDING RENT CEILING;
- L. FAVOR SUBSIDY PROGRAM FOR DIRECT ASSISTANCE IN LIEU OF RENT CONTROL
- M. VACANCY DECONTROL
- N. INPUT INTO THE DRAFTING AND CONTENT OF THE REGULATIONS. ONCE THE ORDINANCE IS ENACTED, RENT CONTROLLERS PAY LESS ATTENTION TO THE IMPLEMENTING REGULATIONS---WHICH CAN BE MORE IMPORTANT THAN THE ORDINANCE ITSELF, ESPECIALLY IF THERE ARE AMBIGUITIES. ATTEND ALL HEARINGS, HAVE "GHOST" COUNSEL PROVIDE INPUT.
1. MEDIATION, CONCILIATION, NEGOTIATION, ARBITRATION, WITH THIRD PARTY ORGANIZATIONS, COSTS TO BE SHARED EQUALLY, TO PURSUE PARK "TREATY" OR FUTURE "PROSPECTUS" WITH TENANTS
 2. PEPPERING THE REGULATIONS WITH MANDATORY ("DIRECTORY") COMMANDS FOR CONSIDERING EVIDENCE IMPORTANT TO THE PARK OWNER:
 3. ITEMIZING/ILLUSTRATING THE EVIDENCE TO BE USED FOR THE CALCULATION OF RENT INCREASES;
 4. PROPOSING FORMULAE AND EXAMPLES OF HOW THE FORMULAE WORK.
 5. FAVOR: RENTS [NET OPERATING INCOME] "MUST"

EQUAL GOING CONCERN VALUE [PARK VALUE] MULTIPLIED BY REASONABLE PERCENTAGE RATE OF RETURN;

● IF RESIGNED TO NOIM ORDINANCE, FAVOR ALTERNATE FORMULA TO ESCAPE BASE YEAR NOI PRESUMPTION, FAVOR BASE YEAR RENT ADJUSTMENT BASED ON COMPARABLES

[●E.G., EXCLUDING "AUTOMATIC" PERMISSIVE ADJUSTMENTS (COVERING 'INFLATION LOSS') IN DETERMINING GROSS INCOME TO COMPARE TO EXPENSE ("PURE EXPENSE" REIMBURSEMENT)]

[●E.G., EXCLUDING EXPENSE REDUCTIONS WHICH REDUCE EXPENSES IN COMPARISON TO GROSS INCOME] [E.G., ALLOWING INCREASES IN EXPENSES IN ADDITION TO MAINTENANCE OF THE DOLLAR AMOUNT OF THE NET OPERATING INCOME IN THE BASE YEAR--SEE SAMPLE ARGUMENTS

O. FAVOR FORMULAE REQUIRING INTERPRETATION BY AN EXPERT (EXPLOITING THE WHISPERING PINES PRECEDENT)

P. FAVOR BAR AGAINST USE OF AGENCY EXPERTISE IN CALCULATING RENTS.

Q. FAVOR BAR ON UNANNOUNCED EX PARTE TRIPS TO THE PARK; REQUIRE PARK "VIEW" TO BE SCHEDULED AND CONDUCTED BY OWNER.

R. OPPOSE REQUIREMENT THAT ALL WRITTEN DOCUMENTATION BE SUBMITTED BEFORE HEARING

S. FAVOR SUBORDINATE FACT FINDER, HEARING OFFICER?

T. FAVOR EVIDENTIARY PROTECTION: SWEARING OF WITNESSES, C.S.R.'S, UNLIMITED TIME FOR PRESENTATION OF CASE, CROSS-EXAMINATION, REBUTTAL, FINDINGS OF FACT AND CONCLUSIONS OF LAW, FINAL DECISION, RIGHT OF RECONSIDERATION.

2. RENT CONTROL IS "GOVERNMENT OF MEN, NOT LAW." THE "RIGHT MEN" APPLYING THE ORDINANCE ARE MORE IMPORTANT THAN THE CONTENT OF THE ORDINANCE.

3. INSTALL FAVORABLE RENT BOARD MEMBERS.

A. IF THE BOARD HAS PARK OWNER MEMBERS, MAKE SURE THEY UNDERSTAND "FAIR RETURN" CRITERIA AND ELEMENTARY RULES OF EVIDENCE, WITH LEADERSHIP STRENGTH TO CHALLENGE BOARD ERROR AND CHEAPSHOTS.

B. AVOID USE OF MANAGERS AND RESIDENTS FOR FACT-FINDING-- UNLESS QUALIFIED. SERENDIPITY OF LIVING IN A PARK DOES NOT AN EXPERT MAKE-- ANY MORE THAN DOES LIVING NEXT TO IT. SUCH PERSONS ARE UNQUALIFIED TO MAKE DECISIONS AFFECTING REAL ESTATE INVESTMENT.

C. OFTEN THE BOARD CONTAINS NEUTRAL MEMBERS CARRYING CRUCIAL SWING VOTE POWER: ENLIST AID OF LOCAL INFLUENTIAL CITIZENS AND PERSUADE THEM TO SIT ON THE BOARD--NOT COUNCIL POLITICAL HACKS.

4. IF ORDINANCE NEW OR SEEKING TO ESTABLISH THE BASE YEAR, ATTACK EARLY AND HARD. WHY?

A. PRESUMPTION THAT IF ACQUIESCE IN STATUS QUO AFTER ORDINANCE ATTACHES RENT CEILINGS, YOUR RETURN IS REASONABLE OR YOU'D HAVE APPLIED FOR INCREASES;

B. (BUT NOT NECESSARILY FATAL, AS IN ABRAHMSON CASE, WHERE PARK OWNER SOUGHT ADJUSTMENT OF BASE YEAR RENTS YEARS AFTER ORDINANCE TOOK EFFECT--BUT HAD TO FIGHT THROUGH CT OF APPEAL TO SETTLE THE POINT).

C. DOCTRINE OF ADMINISTRATIVE FINALITY; WAIVE RIGHT TO CHALLENGE RENT LEVELS IF DO NOT OBJECT WHEN HAVE

CHANCE TO TIMELY DO SO;

D. EVIDENCE OF COMPARABLE RENT FRESH, SO STUDY IMMEDIATELY VERIFIABLE;

E. BASE RENTS UNDER THE ORDINANCE. MUST REFLECT GENERAL MARKET CONDITIONS PREVAILING BEFORE THE TENANTS. SUFFERED FROM EXPLOITIVE RENT INCREASES, NOT JUST ASSURANCE OF A JUST RETURN---EXTREMELY CRITICAL TO DO MARKET STUDY;

F. CATCH THE CITY UNPREPARED. MEET DEADLINES FOR ACTION;

G. TAKE EARLY ADVANTAGE OF ANY DRAFTING FLAW OR LOOPHOLE: ONCE YOU APPLY---SEIZE ON A TECHNICALITY, CANNOT ABROGATE THE VESTED RIGHTS. ONE OPPORTUNITY TO CAPITALIZE ON THE DRAFTING OVERSIGHT OR FLAW. ONCE THE WEAKNESS IS EXPOSED, THE ORDINANCE WILL BE AMENDED AND FUTURE OPPORTUNITIES LOST.

H. MANY ORDINANCES COMPARE BACK-TO-BACK 12 MONTH PERIODS, IN ALLOWING EXPENSES. THEN, CUT BACK ONE YEAR, LOAD UP THE NEXT SO THE INCREASE LOOKS LARGE.

I. ORDINANCES MAY PERMIT INCREASES FOR SOME EXPENSES AND NOT OTHERS. FOCUS ON HOW TO EXPLOIT THE FLAWS AND THE LOOPHOLES. E.G., DEBT SERVICE PASSTHROUGHS:

J. IN SAN JOSE THE ORDINANCE ONCE PROVIDED FOR DEBT SERVICE PASSTHROUGHS. RE-FI THE PARK AT TENANTS EXPENSE TO PULL OUT EQUITY (PALM SPRINGS TOO--IN PALACIO DE ANZA)

K. ORDINANCES MAY PERMIT AN ANNUAL CPI INCREASE AND HARDSHIP INCREASES. SEEK THE HARDSHIP INCREASE, THEN TAKE THE CPI INCREASE (ABRAHMSON VS. WEST HOLLYWOOD)

5. TAKE EARLY ADVANTAGE BEFORE NEGATIVE PRECEDENT/PROCEDURE IS SET OR ESTABLISHED BY PRIOR OWNER WHO FAILED TO RAISE ISSUES OR INTERPRETIVE MATTER HANDLED BY "DEFAULT"

6. TENANTS WILL NOT HAVE THE CHANCE OR INCENTIVE TO ORGANIZE/ PREPARE, PERCEIVING THE CITY ORDINANCE WILL STOP RENT INCREASES

7. ONE "GOOD" INCREASE AND THE WAR IS OVER; TENANT COMPROMISE OR ONE MARKET INCREASE AND FUTURE HARDSHIP ADJUSTMENTS CAN BE OBIATED

A. STRATEGY FOR LARGE INCREASE DEPENDS ON THE ORDINANCE:

(INTERNAL, INVESTMENT RELATED MANIPULATION): READ CAREFULLY FOR THE DETAIL, FLAWS, HOLES, AND GAPS.

B. MAY CONSIDER CHANGING BUSINESS PRACTICES AND PROCEDURES TO ACCOMMODATE THE PARADIGM ENVISIONED BY THE ORDINANCE: E.G., BOOKKEEPING PROCEDURE, CATEGORIES, SUPPLIERS, CONTRACTORS.

1. TRACK OWNER LABOR HOURS

2. CONSIDER PROFESSIONAL MANAGEMENT

3. PLAN STRATEGY EARLY, PERHAPS 24 MONTHS IN ADVANCE OF PLANNED HEARING (12 FOR ONE COMPARISON PERIOD, 12 MONTHS FOR THE SECOND 12 MONTH PERIOD)

4. FOR NET OPERATING INCOME MAINTENANCE LAWS, IT IS CRITICAL TO MAXIMIZE NET OPERATING INCOME IN THE BASE YEAR. AVOID LARGE OUTLAYS WHEN RENT CONTROL IS IN THE WIND; ATTACK THE BASE YEAR PRESUMPTION.

5. BREAK OUT UTILITIES? IF THE UTILITY INCREASES FASTER THAN THE AMOUNT OF THE ANNUAL AUTOMATIC INCREASE, YES. IF LESS, LEAVE IT IN THE BASE RENT.

6. (NOI ORDINANCE)IF RENTING OUT MOBILEHOMES KEEP IT AS THE SAME BUSINESS UNTIL AFTER BASE RENT IS ESTABLISHED. WHEN THE COACHES ARE SOLD AND THE RENT

DROPS TO THE "DIRT" RATE, NOI WILL DROP ENTITLING OWNER TO GREATER INCREASE.

7. (NOI) AFTER BASE RENT IS ESTABLISHED, DRIVE UP EXPENSES IN THE VERY NEXT 12 MONTH PERIOD AS MUCH AS POSSIBLE IN RECOGNIZED CATEGORIES. IF NOI EVER WORKS, IT DOES SO ONLY IN THE NEXT YEAR OR SO AFTER BASE YEAR IS SET; WITH MULTIPLE PERMISSIVE INCREASES, THE ABILITY TO RECOVER EXPENSES IN ANY YEAR BECOMES INCREASINGLY REMOTE, ASSUMING EXPENSES REMAIN CONSTANT.

8. BUY HOMES, RENT OR SELL AT MARKET RATES. BUILD A COMPARABLE RENT STUDY FROM WITHIN.

A. END RUN RENT CONTROL VIA ATTRITION

B. AFTER BASE YEAR ESTABLISHED, PULL OUT COACH RENTAL FROM GROSS INCOME IF ORDINANCE ALLOWS. CASES FORCE CONSIDERATION OF ALL GROSS.

● IF CONTROL SOUGHT, IT IS ALL OR NOTHING PROPOSITION;

● UNDER RENT CONTROL, LAW PUNISHES THE CAPITALISM.

● FORCES SUBSIDY BASED ON GAINS IN OTHER MARKET SECTORS.

C. PURCHASING AND RE-SELLING/RENTING COACHES WITH LEASES ERODES RENT CONTROL'S INFLUENCE

9. APPRAISALS AND RATE OF RETURN ANALYSIS: THE EXCLUSIVE DOMAIN OF THE EXPERT

A. APPRAISALS AND RATE OF RETURN ANALYSIS: EXPERTS ARE CRITICAL [TO THE EXCLUSION OF THE ATTORNEY IF NECESSARY] FOR THE "LARGE" RENT INCREASE REQUEST. POOL RESOURCES WITH ALL THE PARK OWNERS TO REDUCE COSTS OF THE EXPERT; BEST CASE SCENARIO FILES FIRST VS. TAKE BY STORM WITH FILINGS BY ALL OWNERS TOGETHER.

● OPTION A. THE EXPERT "HIRED GUN" NEEDS QUALIFICATIONS; Phd. OR EQUIVALENT EXPERIENCE; UNIVERSITY ECONOMIC DEPTS., APPRAISAL FIRMS, CPA'S, PRIOR TESTIMONY, TRIALS, CONDEMNATION

● OPTION B. THE "LOCAL" EXPERT: KNOWN IN THE COMMUNITY, PRIOR WORK EXPERIENCE WITH THE CITY OR COUNTY.

B. STRAW MEN AND THE ILLUSORY PERILS OF THE "CAPITALIZATION OF INCOME STREAM APPROACH" TO FAIR MARKET VALUE APPROACH TO RETURN ON PROPERTY

C. PUBLIC UTILITY APPROACH (IF RENT CONTROL PERMISSIBLY CURTAILS APPRECIATION [BAKER], THEN CASH THROW-OFF MUST BE GREATER TO SUSTAIN THE INVESTMENT-BACKED EXPECTATIONS OF THE OWNERS)

D. COMPARABLE SALES APPROACH

E. REPRODUCTION APPROACH

F. INCOME MULTIPLIERS

G. RETURN ON EQUITY APPROACH

H. RETURN ON INVESTMENT APPROACH FAILS TO ACCOUNT FOR ECONOMIC CHANGE AND THEREFORE FATALLY FLAWED

I. INTERNAL RATE OF RETURN APPROACH CONTINGENT ON CONJECTURE OF THE FUTURE SALE AND INADMISSIBLE

J. RATE OF RETURN ANALYSIS

10. OFFERS TO PURCHASE THE PARK

● FROM THIRD PARTIES ("SIGNS "FOR SALE FOR FUTURE DEVELOPMENT")

● FROM THE TENANTS THEMSELVES

11. COMPARABLE RENT STUDY (RELEVANT GEOGRAPHICAL TERRITORY)

12. EXPERT OPINIONS FROM OTHER EXPERTS (BROKERS, COMMERCIAL AGENTS WHO MAY DESIRE TO LIST THE PROPERTY, OR FROM THE TENANTS THEMSELVES) . STRATEGY FOR LARGE INCREASE DEPENDS ON THE ORDINANCE:

i. EXTERNAL: NO ONE FACTOR HAS SUCCEEDED IN OVERTURNING UNDERMARKET RENT SITUATIONS; A PROGRAM COMBINING MANY ACTIONS MAY TOGETHER CREATE A MILIEU CONDUCTIVE TO ACHIEVING FAIR RENT)

ii. LAWSUIT CHALLENGING THE ORDINANCE, APPLICATION OF THE ORDINANCE, CHALLENGING ORDINANCE AS REGULATORY TAKING ON THE FACE OF THE ORDINANCE

A. CASTS CLOUD OVER THE ENFORCEMENT OF THE ORDINANCE

B. MAY ENSURE FAIRER TREATMENT

C. MAY ANGER CITY AND DEFEAT EFFECT

D. MAY TEMPER TENANT ARROGANCE (PERCEIVING THEY MAY BE NEXT)

1. IF CAUSE LIES TO SUE FOR OTHER REASONS, SEEK ADVICE AND ACT. STANDING UP FOR OWNERS' RIGHTS SENDS A STRONG MESSAGE

2. STRONG DISCLOSURE STATEMENT FOR NEW BUYERS WARNING OF FACTS A CONSUMER WANTS TO KNOW IN DECIDING TO BUY INTO LEGAL ENTANGLEMENTS

3. AVOID COMMON ANNIVERSARY DATES

4. APPLY FOR RENT INCREASES FOR A FEW TENANTS AS THEIR ANNIVERSARY DATES APPROACH IF ORDINANCE PERMITS (DIVIDE AND CONQUER)

5. PASSOVER THE TENANT LEADERS FOR A RENT INCREASE (HARD TO COMPLAIN IF THEIR RENTS ARE NOT INCREASED)

6. THIRD PARTY OFFERS TO BUY TENANT LEADERS MOBILEHOME

7. CONSIDER CHANGE TO ALL AGE PARK DUE TO HUD'S AGGRESSIVE ENFORCEMENT POLICY UNDER THE CLINTON ADMINISTRATION

8. PICTURES OF THE COACHES TO IMPEACH CLAIMS THE PARK IS NOT WELL MAINTAINED ("HOW CAN TENANTS COMPLAIN OF THIS [showing photo of clubhouse] WHEN THE COACH THEY LIVE IN LOOKS LIKE THIS (photo of tenants' coach)?"")

9. PHOTOS OF THE COMMON AREAS IS MANDATORY: THE TENANTS WILL HAVE PICTURES; YOU MUST HAVE THEM TOO

10. LIST THE PARK FOR SALE "FOR SALE FOR FUTURE DEVELOPMENT"

11. ASK FOR "ENOUGH" OF AN INCREASE TO ALLOW FOR ADMINISTRATIVE SLIPPAGE; WATCH FOR RETALIATORY "SERVICE REDUCTION" PETITIONS TO REDUCE RENTS, OFFSET INCREASES.

12. BUY COACHES AND RESELL THEM WITH LEASES IN PLACE; THE COACHES ARE SOLD AT A LOSS AND THE LEASES ARE ENTERED INTO AT A PREMIUM: THIS BUILDS A COMPARABLE RENT STUDY FROM WITHIN;

13. BUY COACHES AND RE-RENT THEM IN PLACE. RENTS ARE HIGHER THAN A 2-BEDROOM APT., AND THE TENANTS ARE NOT COVERED BY THE ORDINANCE

14. CONSIDER ALLOWING SUB-LEASING, IF THE TENANTS WILL AGREE TO A LONG TERM LEASE. IF TENANTS HAVE MORTGAGES, LENDERS REQUIRE OWNER-OCCUPANCY, LEGALLY CANNOT SUBLEASE WITHOUT BREACH OF MORTGAGE.

15. CONSIDER CHANGING TO THE ALL AGE PARK TO ACCELERATE ATTRITION, AND INTRODUCE POLITICALLY APATHETIC NON-VOTERS.

16. CONTRIBUTE TO LOCAL CHARITIES, FIND MORE

COMMUNITY INVOLVEMENT, BECOME VISIBLE IN THE COMMUNITY (THE "NICE GUY" POSITIVE PUBLIC RELATIONS ANGLE)

17. IF PARK BUILT BEFORE 1982, ALLOW R.V.'S TO BE MOVED INTO THE PARK FOR SHORT TERM TENANCY.

18. RELAX THE RULES AND REGULATIONS TO ALLOW FOR THE INTRODUCTION OF USED MOBILEHOMES WHICH YOU CAN INSTALL AND RENT OUT OR SELL; CONSIDER OTHER RULE CHANGES WHICH ALLOW OWNER TO REDUCE EXPENSE AND ENFORCEMENT COSTS [UNDER RENT CONTROL, IT SHOULD BE CONSIDERED AN "ECONOMIC SIN" TO PAY AN ATTORNEY FOR RULE EVICTIONS.

● PSYCHOLOGICAL MAKE-UP OF THE RENT CONTROL REVIEW BOARD MEMBERS.

A. POLITICAL HACKS

B. ASPIRANTS TO POLITICAL OFFICE; CRUSADER

C. COMMUNITY "DO-GOODERS"; THE "VOLUNTEER"

D. THE "HUMANIST"

E. THE "GREAT COMPROMISER"

F. THE EASILY CONFUSED

G. THE FOLLOWER

H. ALL ATTEMPT TO ENFORCE THE RENT CONTROL LAW; NONE DISAGREE WITH THE OFFICIAL CHARGE OF DUTY, EXCEPT POSSIBLY OWNER MEMBERS, AND EVEN THEY GO ASTRAY OVERVIEW OF DISCRETIONARY RENT INCREASE APPLICATION: PROCEDURES OF DISCRETIONARY RENT INCREASE

13. TENANTS' PETITION IF THEY DISAGREE WITH INCREASE AFTER SERVICE OF NOTICE. WHAT TO DO?

A. TENANTS FILE LATE - JURISDICTIONAL?

B. OTHER PROCEDURAL DEFECTS (E.G. INSUFFICIENT SIGNATURES ON THE PETITION)

C. OWNER MAY BE BESTOWED WITH THE GIFT OF JURISDICTIONAL ARGUMENTS THEREFORE

D. NO INCREASE UNLESS OWNER APPLIES FIRST

1. CARSON STYLE LAW: NO INCREASE UNTIL THE BOARD MAKES ITS RULING; NO AUTOMATIC INCREASE WHATSOEVER

2. WIDE OPEN HEARING; ALL DOCUMENTATION MUST BE FILED OR WILL NOT BE CONSIDERED UNLESS PARTY IS THE TENANT

E. STAFF REVIEW FOR COMPLETENESS IS FIRST STUMBLING BLOCK

1. STAFF MAY DEMAND FURTHER DOCUMENTATION OWNER MAY NOT BE ANXIOUS TO SUPPLY

2. MAY BE FRIENDLY, BUT UNINFORMED.

3. MAY REQUIRE ALL DOCUMENTATION. DECIDE WHAT TO HOLD BACK; WHAT TO PROVIDE

4. DECIDE TO REVEAL IDENTITY OF WITNESSES OR LEGAL COUNSEL: PERHAPS CONSIDER "GHOST SUPPORT" UNTIL HEARING TO DISARM TENANTS

F. POSSIBLE OUTSIDE CPA, EXPERT REVIEW

G. HEARING DATE

a. STAFF REPORT

b. INTRODUCTORY STATEMENT

c. CASE IN CHIEF

d. TENANT CASE

e. REBUTTAL EVIDENCE

f. CLOSING ARGUMENT

H. FINAL DECISION USUALLY ISSUED UPON THE CONCLUSION OF THE HEARING.

I. DEPRECIATED NET BOOK ASSETS EXPOSED AND DISREGARDED BY HEARING EXAMINER AS JUNK SCIENCE. NEED EXPERT TO DISCREDIT ALL SUCH PROPONENTS. BEWARE CONTRARY CASE LAW BY FOURTH DISTRICT.

TYPICAL FORMULAS AND FACTORS USED:

MAINTENANCE FORMULAE

1. ESTABLISHES INCOME ALLOWANCE, RENT LEVELS, RETURN IN THE BASE YEAR OR ASSUMES EXISTING RETURN IS FAIR; HARDSHIP HEARING AVAILABILITY LIMITED TO RE-ADJUSTMENT TO BASE YEAR CONDITION, TYPICALLY WITH PARTIAL INFLATION ADJUSTMENT AS A TOKEN "FAIRNESS" GESTURE; USES CONCLUSIVE CRITERIA SUCH AS NET OPERATING INCOME, PROFIT, INFLATION, EXPENSES, OTHER STATU QUO INDICIA FIXED AT BASE YEAR

a. FAILS TO ACCORD ANY HARDSHIP RELIEF FOR CHANGES IN EXTERNAL MARKET CONDITIONS IN SUBSEQUENT YEARS REQUIRING RE-ADJUSTMENT OF RATE OF RETURN

b. PROVIDES NO DISCRETION TO CONSIDER REAL ECONOMIC CHANGE OR RELEVANT FACTORS AS TO PROJECT ITSELF AND EXTERNAL TO THE PROJECT (GENERAL MARKET CHANGES, COMPARABLE RENTS, HOUSING VALUE, RE-FINANCING).

c. STRINGENT CONTROLS DISALLOWING ORDINARY EXPENSES IN MANY CASES; REQUIRING RECOGNITION OF INCOME FOR REGULATED UTILITIES AND OTHER SERENDIPITOUS INCOME

d. CONSIDER ALTERNATE INTERPRETATIONS ON THE NOIM THEME STRESSING THE NEED TO RECOVER ALL THE EXPENSES RECOGNIZED UNDER THE ORDINANCE (SEE SAMPLE ARGUMENTS FOR ALTERNATE CONSTRUCTION OF THE NOIM FORMULA TO ALLOW REAL EXPENSE INCREASES) MARKET SURVEY, RELEVANT FACTORS, OTHER

1. SOURCES FOR ESTABLISHING A MONTHLY RENT BASED ON MARKET CONDITIONS

a. BIRKENFELD VS. CITY OF BERKELEY (1976) 17 Cal.3d 129, 169; FISHER VS. CITY OF BERKELEY (1984) 37 Cal. 3d RENTS SHOULD BE PERMITTED TO REFLECT "GENERAL MARKET CONDITIONS"

b. GIVONI VS. CITY OF SANTA MONICA (1989) RENT ROLLBACKS CANNOT BE IMPOSED TO REDUCE RENTS LESS THAN THE MARKET VALUE OF THE RENTALS EXISTING BEFORE HOUSING SHORTAGE CREATED UNFAIR PROFITEERING.

c. VEGA VS. CITY OF W. HOLLYWOOD (1990) 223 Cal.App.3d 1342, 1351 – RENT ROLLBACK CANNOT BE SUSTAINED BASED ON COLLECTING A FAIR RATE OF RETURN WHEN RENT CONTROL TAKES EFFECT; MARKET RENTS MUST BE ALLOWED BECAUSE THE RENT ROLLBACK MUST ALLOW MARKET RENTS BEFORE RENT EXPLOITING BEGAN

2. STUDIES AND RELEVANT FACTORS

a. ALL RELEVANT FACTORS MUST BE PERMITTED TO BE INTRODUCED. OCEANSIDE MOBILEHOME PARK OWNERS' ASSOCIATION VS. CITY OF OCEANSIDE (1983) 157 Cal.App.3d 887; COTATI ALLIANCE FOR BETTER HOUSING VS. CITY OF COTATI (1983) 148 Cal. App.3d 280

b. MARKET STUDIES SHOW COMPARABLE RENTS, RENTS REFLECTING GENERAL MARKET CONDITIONS, HOUSING VALUE, EXTERNAL ECONOMIC CONDITIONS IN THE MARKET IN WHICH THE SUBJECT PROPERTY COMPETES.

i. COMPARABILITY IS CRITICAL, AND EASILY IMPUGNED IF THERE ARE DISSIMILAR PROPERTIES INCLUDED.

ii. E.G., THE SURVEY MAY INCLUDE NON-RENT CONTROLLED PROPERTIES AND BE ATTACKED FOR THAT REASON; SAME WITH PROPERTIES WITH MORE FACILITIES, ETC.

iii. MARKET STUDY PROBABLY NECESSARY FOR

"FOUNDATION" (FACTUAL INFORMATION USED FOR THE BASIS OF TESTIMONY AND EXPERT OPINION).

3. FORM AND SUBSTANCE OF NECESSARY FINANCIAL RECORDS

1. LOCAL PROCEDURES VARY

a. SOME "LENIENT" AREAS REQUIRE A SWORN APPLICATION BUT LITTLE ELSE

b. SOME AREAS REQUIRE AN APPLICATION FORM SPECIFYING INCOME AND EXPENSE INFORMATION FOR MANY PRIOR YEARS

c. SOME "STRICT" AREAS REQUIRE PRODUCTION OF THE CANCELLED CHECKS FOR ALL EXPENSE ITEMS

2. NOI ORDINANCES: MAY NEED TO EXHAUST COMPLIANCE WITH

LOCAL PROCEDURE TO QUALIFY TO ARGUE FOR THE APPLICATION OF "JUST RETURN" CRITERIA (E.G., RELYING ON EXTERNAL ECONOMIC CHANGES AND CONDITIONS AT VARIANCE WITH THE BASE YEAR). KIRKPATRICK VS. CITY OF OCEANSIDE.

3. IN KIRKPATRICK, COURT HELD OWNER MAY SEEK AN INCREASE BASED ON HARDSHIP CRITERIA OWNER SELECTS TO INTRODUCE. ONE CASE UPHOLDS RIGHT TO PROCEED TO INTRODUCE JUST THE EVIDENCE IN SUPPORT OF THE INCREASE BASED ON SELECTIVE CRITERIA.

4. CAREFULLY CONSIDER WHETHER TO "OPEN THE BOOKS" AND SHOW CONSIDERABLE PROFIT WHEN A SELECTIVE SHOWING OF EXTERNAL FACTORS ALONE MIGHT JUSTIFY A LARGE INCREASE. THE EXTERNAL EVIDENCE WILL BE WRONGLY DISCOUNTED OR REJECTED IF A JUST RETURN IS ALTERNATELY ESTABLISHED.

SAME TIME NEXT YEAR; CHANGE IN BOARD MEMBERSHIP, ANNUAL BASIS TO GET HIGHEST RETURNS.

1. BOARD CHANGES: STAFF BECOMES MORE IMPORTANT AS AUTHORITY FOR GUIDANCE RESPECTING OFFICIAL POSTURE ABOUT ADMINISTRATION OF THE ORDINANCE

2. TAKE ADVANTAGE OF LACK OF EXPERIENCE.

3. OWNER REPRESENTATIVES SHOULD REMAIN AS LONG AS POSSIBLE; NEW MEMBERS MAY FOLLOW THE LEAD OF SENIOR MEMBERS

4. ABRAHMSON CASE: ONE VICTORY AND THE WAR IS OVER. THE YEAR TO YEAR BATTLE IS ECONOMIC NECESSITY TO FIGHT FOR A FAIR RETURN.

5. DROPPING FUTURE RENT INCREASE HEARINGS ADMITS DEFEAT, AND RECEIPT OF A FAIR RETURN.

i. THE DOCTRINE OF ADMINISTRATIVE FINALITY; RES JUDICATA; COLLATERAL ESTOPPEL MAY PREVENT RECONSIDERATION OF FACTS PREVIOUSLY INTRODUCED IN PRIOR HEARINGS.

ii. NEW FACTS ARISING WITHIN THE PAST 12 MONTHS MAY BE INTRODUCED

ACCOUNTANTS, ATTORNEYS, APPRAISERS NEEDED?

1. WHISPERING PINES. THE RATE OF RETURN ON A MOBILEHOME PARK CAN ONLY BE ESTABLISHED BY THE EXPERT WITNESS.

2. RATE OF RETURN ON A MOBILEHOME PARK IS THE RETURN EARNED ON SIMILARLY RISKY INVESTMENTS. EXPERTS ARE NEEDED TO COMPARE OTHER INVESTMENTS TO ESTABLISH A RATE OF RETURN.

3. EXPERTS ARE NECESSARY TO DETERMINE THE RATE OF RETURN ON THE PARK AND ITS VALUE

4. EXPERTS ARE NECESSARY TO ESTABLISH WHAT THE RATE OF RETURN ON THE PARK SHOULD BE

5. AN EXPERT IS NECESSARY TO COVER THE ACCURACY OF THE FINANCIAL INFORMATION SUBMITTED TO THE BOARD, DESCRIBE DIFFERENCES BETWEEN CAPITAL INVESTMENTS AND DEDUCTIBLE EXPENSES

6. EXPERT IS NECESSARY TO ESTABLISH THAT ORDINANCE FORMULA IS UNFAIR IN THE APPLICANT'S CASE, UNRELATED TO THE DECISIONS MADE BY THE PRUDENT ECONOMIC ACTOR, UNRELATED TO REAL WORLD ECONOMIC DECISION-MAKING

7. PRESENTATION ATTITUDES

- i. CALM, PROFESSIONAL, MAKE THE RECORD, ANTICIPATE OBJECTIONS AND IMPEACHMENT AND DEAL WITH IT EARLY.
- ii. DEAL WITH NEGATIVE INFORMATION, ISSUES AND FACTS BEFORE THE TENANTS DO SO: MAKE THE TENANTS' PRESENTATION "OLD NEWS"
- iii. KEEP IT SIMPLE: IF THE BOARD CANNOT UNDERSTAND YOUR PRESENTATION, THE JUDGE MAY NOT UNDERSTAND IT EITHER. THE BOARD MAY NOT EVEN COMPROMISE A REQUEST IF FORCING AN INCREASE ON THE TENANTS THEY CANNOT EXPLAIN.

iv. ANSWER BOARD QUESTIONS CLEARLY AND DIRECTLY. TAKE THEM ON, DO NOT FEAR DISAGREEMENT: FEAR PERCEIVED EVASION OF THE HARD QUESTIONS.

LAWSUIT: PETITION FOR ADMINISTRATIVE WRIT OF MANDAMUS

- a. LAWSUIT IS A MISNOMER FOR ATTACKING THE ADMINISTRATIVE DECISION: THE WRIT OF MANDATE IS A SINGLE ISSUE COURT MOTION--ONE COURT APPEARANCE 30 MINUTES LONG, FOLLOWED BY IMMEDIATE JUDGMENT.
- b. OWNER HAS BURDEN TO ENSURE A RECORD IS PREPARED AND DELIVERED TO THE COURT (BURKHART).
- c. THE ONLY EVIDENCE IS THE DOCUMENTATION SUBMITTED TO THE BOARD AND THE TRANSCRIPT.
- d. RESULT IS A JUDGMENT:
 - i. GRANTING THE RENT INCREASE FROM THE BENCH
 - ii. GRANTING OF THE PETITION AND REMANDING TO THE AGENCY WITH ORDERS TO PROCEED CORRECTLY (CORRECT THEIR MISTAKE OF LAW--A "MERRY-GO-ROUND" EFFECT)
 - iii. DENIAL OF THE PETITION
 - iv. ATTORNEY'S FEES, COSTS

PARKWATCH™ is for informational purposes only. Some information contained on our website may contain information that is dated or the laws may have changed with regard to some of the statements contained in our materials. Therefore, we warn you that the information contained in our materials is not to be construed as legal advice to be relied upon by you in any capacity. The information provided does not create an attorney/client relationship. Readers should not act on information without seeking professional counsel. Our client intake process must be completed before we represent you. In addition, we reserve the right to accept or decline representing any person or organization in any matter. Accordingly, please do not send us any confidential information about any matter until you receive a written statement from a firm attorney advising that we represent you. When you return an executed engagement letter with remittance of the retainer, you will be our client and we may then exchange confidential information freely. If you have any questions regarding the materials on our Website or any of the information contained therein, we encourage you to contact us in writing to assist in clarifying any statement you find on our Website. The receipt, downloading, or copying of information from this website does not create an attorney-client relationship. In addition, we may provide links to other sites that we believe may be useful or informative to you. These links are not intended as constituting or implying our endorsement, sponsorship or recommendation of third-party information, products or services found therein. You may download, copy and use the materials found on the Dowdall Law Offices Website for personal, non-commercial use only, provided that all copies must bear any copyright, trademark, or other proprietary notice located on the site which pertains to the material being copied. You are not otherwise being granted a license under any copyright, trademark, patent or other intellectual property right in the material found or described therein. Also such rights are retained by Dowdall Law Offices APC and/or any third-party owner of such rights. You may not create framed links to the Dowdall Law Offices APC Website or webpages without our express written permission.

DISCLOSURE REQUIRED BY CIRCULAR 230. This Disclosure may be required by Circular 230 issued by the Department of Treasury and the Internal Revenue Service. If this article, including any attachments, contains any federal tax advice, such advice is not intended or written by the practitioner to be used, and it may not be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer. Furthermore, any federal tax advice herein (including any attachment hereto) may not be used or referred to in promoting, marketing or recommending a transaction or arrangement to another party. Further information concerning this disclosure, and the reasons for such disclosure, may be obtained upon request from the author of this article. Thank you.



Please Feel Free to Contact Us with Any Questions!