



City of Calimesa
Special Meeting of the City Council

AGENDA

Monday, August 8, 2016

2:00 p.m.

Norton Younglove Multipurpose Senior Center
908 Park Avenue, Calimesa, CA 92320

Jeff Hewitt, Mayor ♦ Joyce McIntire, Mayor Pro Tem
Bill Davis, Council Member ♦ Jim Hyatt, Council Member ♦ Ella Zanowic, Council Member
Bonnie Johnson, City Manager ♦ Kevin Ennis, City Attorney

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Any public writings distributed by the City to at least a majority of the Council Members regarding any item on this regular meeting agenda will be made available at the public counter at City Hall located at 908 Park Avenue, Calimesa, CA 92320

ANNOUNCEMENT REGARDING SPEAKER SLIPS

Anyone wishing to address the City Council either during "Communications from the Public" or on any item on the agenda should fill out a **blue speaker slip** and give that slip to the City Clerk **prior to the item being heard**. Please write the number of the agenda item or the subject of your presentation on the slip. **Please observe a time limit of three (3) minutes when giving your presentation**. When called upon, please step forward to the microphone, state your name for the record, whom you represent and any statement you wish to make. **Please be advised that you may not defer your three (3) minutes to another speaker.**

CALL TO ORDER

ROLL CALL: MAYOR HEWITT, MAYOR PRO TEM MCINTIRE, COUNCIL MEMBER DAVIS, COUNCIL MEMBER HYATT, COUNCIL MEMBER ZANOWIC.

STAFF: CITY MANAGER JOHNSON, ASSISTANT CITY ATTORNEY GREYSON, CITY CLERK GERDES, SPECIAL COUNSEL GILES.

PLEDGE OF ALLEGIANCE

COMMUNICATIONS FROM THE PUBLIC

Anyone wishing to address the Council on any item within the Council's jurisdiction that is not on the agenda may do so at this time. This is not a time for City Council discussion of non-agenda items. After receiving public comments, Council Members or staff, after being recognized by the Mayor, may briefly respond to statements made by the public or questions posed by the public. In addition, Council Members may ask questions for clarification or make a referral to staff for factual information to be reported back to the Council at a later meeting.

APPROVAL OF THE AGENDA

RECOMMENDATION: Move to approve the agenda

Motion _____ Second _____ Vote _____

PUBLIC HEARING

1. COUNCIL ADOPTION OF RESOLUTION NO. 2016-27 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALIMESA, CALIFORNIA DENYING THE APPEAL OF AVMGH THREE-GOLDEN PALMS LIMITED PARTNERSHIP OF THE MOBILE HOME RENT STABILIZATION BOARD DECISION DENYING THE SPECIAL RENT INCREASE PETITION AND TEMPORARY RENT INCREASE PETITION.

RECOMMENDATION: That the City Council adopt Resolution No. 2016-27 A Resolution of the City Council of the City of Calimesa, California denying the appeal of AVMGH Three-Golden Palms limited partnership of the Mobile Home Rent Stabilization Board decision denying the Special Rent Increase Petition and Temporary Rent Increase Petition.

CLOSED SESSION

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant Exposure to Litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 - **Number of Cases: One (1) case**

ADJOURNMENT

Adjourn to the Regular Meeting of the City Council on Tuesday, September 6, 2016 at 6:00 p.m.



Agenda Item No. 1

STAFF REPORT

CITY OF CALIMESA CITY COUNCIL MEETING

SUBJECT: **PUBLIC HEARING:** Appeal of the decision of the Calimesa Mobile Home Rent Stabilization Board as adopted by MHRSB Resolution No. 2016-01, denying the Special Rent Increase Petition and Temporary Rent Increase Petition filed by AVMGH Three-Golden Palms Limited Partnership pursuant to the City of Calimesa Mobile Home Rent Stabilization Ordinance, Chapter 9.05, Sections 9.05.100(D) and (F) and Section 9.05.140 of the Calimesa Municipal Code.

APPELLANT: AVMGH Three-Golden Palms Limited Partnership

LOCATION: Rancho Calimesa Mobile Home Ranch, 10320 Calimesa Boulevard, Calimesa, California 92320

MEETING DATE: August 8, 2016

PREPARED BY: Darlene Gerdes, City Clerk/Rent Administrator
Tim Giles, Special Counsel

RECOMMENDATION: That the City Council adopt Resolution No. 2016-27, A Resolution of the City Council on the City of Calimesa, California denying the appeal of AVMGH Three-Golden Palms limited partnership of the Mobile Home Rent Stabilization Board decision denying the Special Rent Increase Petition and Temporary Rent Increase Petition

BACKGROUND: This Appeal was filed by Bruce A. Hohn, as authorized representative of AVMGH Three-Golden Palms Limited Partnership ("AVMGH" or "Park Owner") with respect to the decision of the Mobile Home Rent Stabilization Board ("Board") denying AVMGH's Petition for Special Rent Increase ("Special Rent Increase Petition" or "Petition"), for Rancho Calimesa Mobile Home Ranch ("the Park" or "Rancho Calimesa"). AVMGH filed the Petition pursuant to the City's Mobile Home Rent Stabilization Ordinance (Chapter 9.05, Sections 9.05.010 through 9.05.190 of the Calimesa Municipal Code) (the "Ordinance"), and the Administrative Rules for Implementation of the Mobile Home Rent Stabilization Ordinance ("Rules"). In its Petition, AVMGH contends that a Special Rent Increase is required under CMC § 9.05.100(D) or (F) to provide a fair return.

The City Council met and opened the Public Hearing on the Appeal on July 5, 2016, during this hearing the Council heard Introductions and Opening Comments by staff, the appellant and his representative and the resident representatives, as well as comments from the public. The Public Hearing was then continued to July 25, 2016 at 2:00 p.m.

The City Council continued with the opened public hearing on July 25, 2016 at 2:00 p.m. and heard arguments in and favor and against the appeal, more public comments and then final rebuttal and closing arguments from staff, the appellant and resident representatives. The public

hearing was closed and the Council commenced their discussion and deliberations and motions were made as follows:

MOTION BY COUNCIL MEMBER ZANOWIC, SECONDED BY MAYOR PRO TEM MCINTIRE, CARRIED 5-0 TO DENY THE APPEAL AND UPHOLD THE DECISION OF THE MOBILE HOME RENT STABILIZATION BOARD.

MOTION BY COUNCIL MEMBER ZANOWIC, SECONDED BY MAYOR PRO TEM MCINTIRE, CARRIED 5-0 TO DIRECT SPECIAL COUNSEL GILES TO CREATE THE RESOLUTION OF FINDINGS AND BRING BACK TO A SPECIAL MEETING ON AUGUST 8, 2016 AT 2:00 P.M.

ATTACHMENTS:

Attachment A: Draft Resolution No. 2016-27

RESOLUTION NO. 2016-27

A RESOLUTION OF THE CITY COUNCIL ON THE CITY OF CALIMESA, CALIFORNIA DENYING THE APPEAL OF AVMGH THREE-GOLDEN PALMS LIMITED PARTNERSHIP OF THE MOBILE HOME RENT STABILIZATION BOARD DECISION DENYING THE SPECIAL RENT INCREASE PETITION AND TEMPORARY RENT INCREASE PETITION

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALIMESA DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section I. RECTIALS

1. Rancho Calimesa Mobile Home Ranch (“Rancho Calimesa” or the “Park”) is subject to the Calimesa Mobile Home Rent Stabilization Ordinance (the “Ordinance”).
2. The Ordinance is codified in Chapter 9.05 of the Calimesa Municipal Code, and is implemented by the Administrative Rules for the Implementation of the Calimesa Mobil Home Rent Stabilization Ordinance (“Rules”).
3. AVMGH Three- Golden Palms Limited Partnership (“AVMGH” or “Petitioner”) is the owner of the Park. On August 18, 2015, Bruce A. Hohn and Boyd L. Hill, Esq. submitted a Petition for a Special Rent Increase (“Petition”) on behalf of AVMGH to the City of Calimesa Mobile Home Rent Stabilization Board (“Board”) on behalf of AVMGH pursuant to Section 9.05.100 (D) and (F) of the Ordinance and Rules.
4. On November 10, 2015, Messrs. Hohn and Hill, on behalf of AVMGH submitted a Petition for a Temporary Rent Increase (“Temporary Increase Petition”) to the Board pursuant to Section 9.05.140.
5. On March 15, 16, and 16, 2016 May 10, 18 and 31, 2016, the Board conducted a duly noticed public hearing on AVMGH’s Petitions. On May 18, following the public testimony portion of the hearing, the Board adopted an oral motion denying the Petition. On May 31, 2016, the Board considered and adopted A Resolution of the Mobile Home Rent Stabilization Board of the City of Calimesa Denying the Special Rent Increase Petition and Temporary Rent Increase Petition filed by AVMGH Three-Golden Palms Limited Partnership Pursuant to the City of Calimesa Mobile Home Rent Stabilization Ordinance, Chapter 9.05, Sections 9.05.100 (D) and (F) and Section 9.05.140 of the Calimesa Municipal Code (“Board Resolution No. 2016-01” or “Board Decision”).

6. On June 15, 2016, Mr. Hill, on behalf of AVMGH, filed a timely appeal of the Board Decision to the City Council pursuant to Section 9.05.120 of the Ordinance and Rules (“Appeal”).
7. The City Council held a duly notice public hearing on the Appeal on July 5, 2016 and July 25, 2016 and continued the matter to August 8, 2016 to consider a Resolution deciding the Appeal.
8. The City Council was represented by independent special legal counsel, Tim W. Giles, Esq. regarding the Appeal.
9. The arguments contained in the Appeal of AVMGH were received, reviewed and considered by the City Council.
10. The City Council received, reviewed, considered and relied upon the evidence contained in the Administrative Record of the proceedings before the Board.
11. An Agenda for the Public Hearing on the Appeal was posted on June 30, 2016 for the July 5, 2016 City Council Public Hearing on the Appeal. The City Council received, reviewed and considered the Agenda and the arguments contained in the report from Staff on the Appeal.
12. The City Council received, reviewed and considered written public argument on the Appeal.
13. On July 5, 2016, in the context of the Public Hearing on the Appeal, the City Council heard, received and considered introductory arguments and comments on general issues from Amy Greyson, Esq on behalf of City Staff, Messrs. Hill and Hohn on behalf of AVMGH, Resident’s Representative Mr. Robin Minnear and oral arguments from members of the public.
14. On July 8, 2016, Ms. Greyson filed a Response Brief on behalf of Calimesa Staff. The arguments contained in the Response Brief were received, reviewed and considered by the City Council.
15. On July 14, 2016, Mr. Hill filed a Reply Brief on behalf of AVMGH. The arguments contained in the Reply Brief were received, reviewed and considered by the City Council.
16. On July 25, 2016, the City Council continued the Public Hearing on the Appeal. The City Council heard, received and considered oral argument and closing statements on the Appeal from Ms. Greyson on behalf of City Staff and Mr. Hill on behalf of AVMGH and Mr. Minnear as representative of the residents and oral arguments from members of the public.

Section II. THE ORDINANCE

17. The appeal hearing is required to be conducted pursuant to paragraph G of section 9.05.120 of the Ordinance which provides: “The appeal hearing shall be conducted in accordance with the rules and regulations. The city council shall issue its decision in writing, including findings of fact, within 45 days of the commencement of the public hearing; provided, that the city council may extend the time limits under this subsection for reasonable cause, and failure of the city to act within the time limit specified herein shall not result in the automatic approval of any petition. The decision of the city council on any appeal shall be final.”
18. The City Council decision on the Appeal is to be determined pursuant to paragraph F of section 9.05.120 of the Ordinance which provides: “The city council shall affirm the board’s decision if it is supported by substantial evidence, and complies with this chapter and rules and regulations. If the city council finds that the board’s decision is not supported by substantial evidence, or does not comply with the rules and regulations, the city council shall grant the appeal, and may deny the petition, modify the board’s decision on the petition, or refer the petition back to the board for further proceedings consistent with the city council’s decision on the appeal.”

Section III. FINDINGS

General Findings

19. The City Council finds that the Appeal was timely filed by AVMGH.
20. The City Council finds that the Public Hearing on the Appeal was duly noticed as required by California Law and the Ordinance and Rules.
21. The City Council finds that there is substantial evidence in the administrative record to support the findings and decisions of the Board.
22. The City Council finds that the Board findings and decisions comply with the Ordinance and the Rules.
23. The City Council finds that the Board weighed all of the evidence presented to them and that their findings and determinations are reasonable and supported by substantial evidence in the administrative record.
24. The City Council finds that there is substantial evidence in the administrative record to support the Board’s determination on reasonable Base Year expenses for the purposes of applying the MNOI standard.
25. The City Council finds that the Board’s determination of Base Year expenses was reasonable and was sufficient to support application of the MNOI standard.

26. The City Council finds that the Board's determination that the expense of resurfacing the water tank was required to be amortized and not taken as a single year expense is consistent with the Ordinance and Rules.
27. The City Council finds that the Board's allocation of management expenses is reasonable and supported by substantial evidence in the record and is consistent with the Ordinance and Rules.
28. The City Council finds that despite the conflicting evidence on the accuracy of the Base Year operating expenses, there was substantial evidence to support the Board determination of reasonable and reliable Base Year operating expenses and MNOI calculations.
29. The City Council finds that the Plantation mobilehome park is not comparable to the subject Rancho Calimesa Park and the Board decision to not rely exclusively on evidence of the capitalization rate for the Plantation mobilehome park was supported by substantial evidence in the record and is consistent with the Ordinance and Rules.
30. The City Council finds that the Ordinance and Rules support the conclusion of the Board that the water tank repair is a major repair that is properly amortized over the life of the work.
31. The City Council finds that despite the conflicting evidence on the number of vacancies in the Base Year, there was substantial evidence in the record to support the Board determination on base year vacancies.
32. The City Council finds that despite the conflicting evidence on the reasonable current year management expenses, there was substantial evidence in the record to support the Board determination that five percent of gross income was a reasonable outside management expense.
33. The City Council finds that the Board's findings and determinations were based on substantial and relevant evidence in the record and not on motives or intentions of the Appellant.

Specific Findings

34. The City Council finds that the Board decisions to allow Dr. Baar to testify regarding the Modified Net Operating Income (MNOI) methodology were reasonable and a proper interpretation of the Ordinance and Rules. The Ordinance and Rules do not require that only a court approved economist testify regarding the MNOI methodology, but AVMGH had sufficient opportunity to impeach the testimony of Dr. Baar regarding his lack of credentials as an economist which the Board could and did rely upon in determining the weight of the testimony. The Ordinance and

Rules require that documents in support of a calculation of a proposed rent increase must be prepared by a certified public accountant, but does not preclude any testimony regarding those documents from an expert who is not a certified public accountant. AVMGH had sufficient opportunity to impeach the testimony of Dr. Baar regarding his not being a certified public accountant which the Board could and did rely upon in determining the weight of his testimony. Despite any objection to Dr. Baar's testimony, the Board properly determined that his testimony constituted substantial evidence.

35. The City Council finds that the Board findings and decision that concluded AVMGH failed to rebut the presumption that MNOI rent increase standard does not provide the Park Owner with a just and reasonable return is supported by substantial evidence and is consistent with the Ordinance and Rules.
36. The City Council finds that the Board finding that the Base Year Management Expenses were \$30,158.13 is supported by substantial evidence, including the expert testimony of Dr. Baar.
37. The City Council finds that the Board finding that AVMGH did not provide substantial evidence to support a determination that the Base Year Management Expenses were \$17,679.33 is supported by substantial evidence and is consistent with the Ordinance and Rules including Rule 8.3(B)(9)(a)(2).
38. The City Council finds that the Board finding that Base Year refuse collection services were provided in the amount of \$21,236 is supported by substantial evidence, including city wide refuse collection rates and resident testimony.
39. The City Council finds that the Board findings that a vacancy rate of 3.4% is appropriate in calculating Current Year Gross Income is supported by substantial evidence, including the expert testimony of Dr. Baar and Mr. Gogin and is consistent with the Ordinance and Rules.
40. The City Council finds that the Board finding that the expense of resurfacing the water tank is property amortized over the seven year life of the work and only one-seventh of the expense should be included in the Current Year operating expenses and the total cost of the repair should not be included as a single year expense is supported by substantial evidence, including the testimony of Dr. Baar and Mr. Hohn and is consistent with the Ordinance and Rules including Section 9.05.100(B)(7)(h) and (B)(7)(g).
41. The City Council finds that the Board finding that 5% of gross space rents is the appropriate and reasonable allocation for outside management expenses as part of the Current Year operating expenses is supported by substantial evidence including the expert testimony of Dr. Baar, Mr. Brabant and Mr. Neet and the testimony of Mr. Hohn and is consistent with the Ordinance and Rules including Section 9.05.100(B)(7)(b) and Rule 7.3(D)(1) and (D)(2).

42. The City Council finds that the Board finding that AVMGH failed to establish that the MNOI Rent Increase methodology did not provide a just and reasonable return is supported by substantial evidence including expert testimony of Dr. Baar and Mr. Brabant on the reasonableness of the capitalization rate and is consistent with the Ordinance and Rules including Section 9.05.100(A) and Rule 7.3(F).
43. The City Council finds that the Board finding that the Park earns a just and reasonable return is supported by substantial evidence including expert testimony of Dr. Baar and Mr. Brabant on the reasonableness of the return as compared to mobilehome parks in Riverside and San Diego Counties and Mr. Hohn's testimony regarding purchasing the Park without investigating the Ordinance, regarding a lack of negotiation of the purchase price, regarding the filing of the Special Rent Increase Application just over two years after purchasing the park, regarding a lack of evidence showing investigation of the potential return on investment on the park, regarding the purchase of the park as part of a Section 1031 tax exchange, regarding the capitalization rate at the time of purchase and lack of evidence to expect an increase in the capitalization rate, regarding a failure to carry out due diligence of the condition of the Park, regarding an awareness of the increase of property taxes as a result of the sale, regarding an awareness of the rejection of the "discount rate" approach by a court, and regarding a lack of comparability analysis regarding any other park and is consistent with the Ordinance and Rules including Section 9.05.100(F)(1) and (2) and Rule 7(A) and 7.5.
44. The City Council finds that the Board decision denying AVMGH's Application for a Temporary Rent Increase is supported by substantial evidence and is consistent with the Ordinance and Rules including Section 9.05.140 and Rules 11.1, 11.2, 11.4(C).
45. The City Council finds that the Board provided AVMGH with a fair hearing. This is supported by the entire record and the absence of any evidence of actual bias or concrete facts which would support a finding of actual bias. The Board hearing was held consistent with the Ordinance and Rules.

Section IV. DECISION

46. The Appeal is denied and the decision of the Board is upheld. The special rent increase application and temporary rent increase application filed by AVMGH is denied.

Section V. DIRECTION

47. The City Clerk is directed to mail, by first class mail, postage prepaid, a copy of this resolution to the park owner and to each park resident, along with an affidavit of mailing. The decision of the city council shall be final on the date of mailing by the city clerk pursuant to this subsection.

PASSED, APPROVED AND ADOPTED this 8th day of August, 2016.

JEFF HEWITT, MAYOR

ATTEST:

DARLENE GERDES, CITY CLERK

APPROVED AS TO FORM:

TIM W. GILES, SPECIAL COUNSEL