City of Woodland

City Hall
300 First Street
Woodland, CA 95695

Meeting Agenda

Manufactured Home Fair Practices Commission

Wednesday, April 26, 2017 | **6:30 PM** | **Council Chambers**

SPECIAL MEETING AGENDA
CITY COUNCIL CHAMBERS
Second Floor
April 26, 2017
6:30pm

A CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. COMMUNICATIONS - PUBLIC COMMENT

This is an opportunity for the public to speak to the Board on any item other than those listed for public hearing on this agenda. Speakers are requested to use the microphone in front of the Board and to begin by stating their name, whether they reside in Woodland and the name of the organization they represent if any. The Chair may impose a time limit on any speaker depending on the number of people wanting to speak and time available for the rest of the agenda. In the event comments are related to an item scheduled on the agenda, speakers may be required to wait to make their comments until that item is considered.

E. COMMISSIONER STATEMENTS AND REQUESTS

F. REPORTS

17-0419 SUBJECT: Conduct Commission deliberations for Idle Wheel MHP LLC Special Adjustment Application

Recommendation for Action: The staff recommendation is to approve Resolution No. granting, in part, the Special Adjustment Application filed by Idle Wheel MHP LLC.

Attachments: Resolution on Idle Wheel_s SAA-c1 Redline.pdf
Resolution on Idle Wheel_s SAA-c1.pdf
NOI Spreadsheet 25April2017-c1.pdf

G. ADJOURN

I declare under penalty of perjury that the foregoing Agenda for the Manufactured Home Fair Practices Commission Special Meeting scheduled for Wednesday, April 26, 2017 was posted on April 21, 2017 in the outside display case at City Hall, 300 First Street, Woodland, CA, and was available to the public during normal business hours.

____

Jennifer Robinson, Deputy City Clerk

Upon request, agendas and documents in the agenda packet will be made available in appropriate alternative formats to persons with a disability, as required by law. Any such request must be made in writing to the Office of the City Clerk of the City of Woodland. Requests will be valid for the calendar year in which the request is received, and must be renewed prior to January 1st. Persons needing disability-related modifications or accommodations in order to participate in public meetings, including persons requiring auxiliary aids or services, may request such modifications or accommodations by calling the Office of the City Clerk (530-661-5806) at least 48 hours prior to the meeting.

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300 First Street
Woodland, CA 95695

Legislation Details (With Text)

File #:	17-0419 **Version:** 1	**Name:**	
Type:	Report of the City Manager	**Status:**	Agenda Ready
File created:	4/21/2017	**In control:**	Manufactured Home Fair Practices Commission
On agenda:	4/26/2017	**Final action:**	

Title: SUBJECT: Conduct Commission deliberations for Idle Wheel MHP LLC Special Adjustment Application

Recommendation for Action: The staff recommendation is to approve Resolution No. granting, in part, the Special Adjustment Application filed by Idle Wheel MHP LLC.

Sponsors:

Indexes:

Code sections:

Attachments: Resolution on Idle Wheel_s SAA-c1 Redline.pdf
Resolution on Idle Wheel_s SAA-c1.pdf
NOI Spreadsheet 25April2017-c1.pdf

Date	Ver.	Action By	Action	Result
4/26/2017	1	Manufactured Home Fair Practices Commission		

TO: THE HONORABLE CHAIR AND MEMBERS OF THE MANUFACTURED HOME FAIR PRACTICES COMMISSION

DATE: April 26, 2017
SUBJECT: Conduct Commission deliberations for Idle Wheel MHP LLC Special Adjustment Application

Recommendation for Action: The staff recommendation is to approve Resolution No. granting, in part, the Special Adjustment Application filed by Idle Wheel MHP LLC.

Staff Contact

Dan Sokolow, Senior Planner - (530) 661-5927, dan.sokolow@cityofwoodland.org

RESOLUTION NO. ______

A RESOLUTION OF THE CITY OF WOODLAND MANUFACTURED HOME FAIR PRACTICES COMMISSION GRANTING, IN PART, THE SPECIAL ADJUSTMENT APPLICATION FILED BY IDLE WHEEL MHP LLC

WHEREAS, Idle Wheel MHP LLC filed a Special Adjustment Application with the Commission seeking an approximate 45 percent monthly increase to rents for spaces at the Idle Wheel Estates Mobile Home Park within the City of Woodland; and

WHEREAS, the Commission set and held a public hearing on March 29, 2017 to hear and consider testimony, ask questions of witnesses, and hear comments from representatives of both the Applicant and Idle Wheel residents, continued the public hearing to April 5, 2017, and met again on April 11, 2017, April 17, ~~and~~ April 25, and April 26, 2017 to consider and deliberate upon the Application, and consider a draft decision for approval, all of which are described further in the attached decision.

NOW, THEREFORE, THE MANUFACTURED HOME FAIR PRACTICES COMMISSION OF THE CITY OF WOODLAND DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

After considering and reviewing all applicable evidence and testimony received during the Commission's public hearing on March 29 and April 5, 2017, and deliberating during meetings held on ~~March 29, April 5,~~ April 11, April 17, April 25, and April 26~~5~~, 2017, the Commission hereby approves of a space rent increase of 10.19 percent, or an average rent increase of $37.07 per space, at the Idle Wheel manufactured home park in accordance with the Net Operating Income approach set forth in the City of Woodland Municipal Code and approves of temporary rent increases in the amount of an $7.17~~8.60~~ increase for the first ten years, a $1.80 increase for years 10 through 15, and a $0.36 increase for 20 years, and adopts the decision set forth in **Attachment A**, attached hereto and incorporated herein**.**

PASSED AND ADOPTED THIS 26 day of April, 2017.

____
William Marcus, Commission Chair

ATTEST:

Approved as to form:

____
Ana B. Gonzalez
City Clerk

____
Kara K. Ueda
City Attorney

ATTACHMENT A

DECISION OF THE CITY OF WOODLAND MANUFACTURED HOME FAIR PRACTICES COMMISSION ON THE SPECIAL ADJUSTMENT APPLICATION FILED BY IDLE WHEEL MHP LLC

I. Executive Summary

On July 2, 2016, Idle Wheel MHP LLC filed with the City of Woodland a Special Adjustment Application to increase rent ceilings under the City's Manufactured Home Space Rent Control Ordinance, Chapter 16B of the City of Woodland Municipal Code. In accordance with the procedures set forth in the Ordinance and the Commission's Regulations, the City processed the application.

Idle Wheel MHP LLC asked for an increase of $163.29 per space per month based on a report prepared by Dr. Michael St. John that concluded that Idle Wheel MHP LLC would achieve a fair rate of return at an 8.93 percent capitalization rate. The Residents of Idle Wheel submitted information arguing that a more reasonable rate of return could be achieved at closer to a six percent capitalization rate.

The Commission evaluated the testimony of expert witnesses, asked questions of the witnesses, and examined the operating expenses and Net Operating Income worksheet submitted by Idle Wheel MHP LLC. The Commission concluded that while Idle Wheel MHP LLC was not achieving a fair rate of return in accordance with the presumptions set forth in the City's Ordinance, the appropriate capitalization rate is 6.16 percent for Idle Wheel MHP LLC to achieve a fair return.

As required by the City's Ordinance, the City evaluated twelve factors that could inform the setting of a fair rate of return. After considering the capitalization rate, the operating expenses, the adjusted NOI, and amortizing certain costs for capital improvements and legal and hearing fees, the Commission finds that Idle Wheel MHP LLC is entitled to an increase in maximum rent of 10.19 percent, or an average of $37.07 per space per month, based on the NOI in order to achieve a fair return. The Commission further finds that Idle Wheel MHP LLC is entitled to temporary rent increases to amortize the costs of capital improvements, legal and expert fees, and hearing fees and that such temporary rent increases shall not continue to be included in Residents' rents after their expiration. Those temporary rent increases are as follows:

	Amount	Years	Amortization
Pool Replaster	$ 19,180.00	15	$ 1,962.24
Slab Replacement	$ 6,800.00	15	$ 695.76
Carwash Roof	$ 7,500.00	20	$ 653.16
Legal/Expert Costs	$ 77,039.43	10	$ ~~1~~7~~0~~,703.94~~338~~
City Hearing Fee	$ 16,000.00	10	$ 2,146.92
Total Amortized			$ 13~~5~~,162~~796~~.0~~8~~2

The amortized costs will result in, on average, temporary rent increases of $7.17~~8.60~~ ($13,162.02~~15,796.08~~/year ÷ 153 spaces ÷ 12 months) per space per month for the first ten years and will decrease after the first ten years until the 20th year. The Commission notes that the amortization of legal and expert costs will add $503 in total to the rent for each space, paid over the next ten years.

II. Idle Wheel Estates Mobile Home Park

Idle Wheel Estates Mobile Home Park ("Idle Wheel") is located in the City of Woodland at 907 Bourn Drive. Idle Wheel has approximately 153 spaces on a 20.734-acre parcel and is subject to the City of Woodland's Manufactured Home Space Rent Control Ordinance (the "Ordinance"), which is codified at Chapter 16B in the City of Woodland Municipal Code. In addition to the Ordinance, the Woodland Manufactured Home Fair Practices Commission ("Commission") adopted Regulations for the Administration and Enforcement of Chapter 16B of the Woodland City Code ("Regulations").

Idle Wheel was constructed in approximately 1961. Its features and amenities include a community room, pool, green space, play structure, and laundry room. City staff's review of the features and amenities of Idle Wheel concluded that the amenities provided by Idle Wheel are similar to other manufactured home parks in the City of Woodland and that the current rent is similar to other base rents of other residents of manufactured home parks in the City of Woodland. Idle Wheel is the second largest manufactured home park in the City as Casa del Sol has 157 units, as compared to Idle Wheel's 153 units.

Idle Wheel has consistently applied for and received permissive rent adjustments since adoption of the Ordinance in 2002. Idle Wheel did not receive a permissive rent adjustment in 2006 but also did not apply for one. Most recently, the Commission approved a 1.58 percent rent increase in 2016. Average base rents at Idle Wheel range from $332.79 to $386.79, which is similar to other mobile home units in the City of Woodland.

The Idle Wheel parcel is bordered by single-family residences on all sides in addition to a church on the north. The current owners, Idle Wheel MHP LLC ("Owner" or "Applicant") purchased Idle Wheel on April 23, 2015 from Idle Wheel Partners LP in the amount of $6,700,000.00. The owner's financing for the purchase included a 10-year, $5,000,000 loan through Capital One Multifamily Finance at the fixed interest rate of 4.15 percent. The loan has two years of interest-only payments, 9.5 years of yield maintenance, and a 30-year amortization payable on an actual/360 basis.

III. Legal Principles

A. Standard of Review.

Under the Ordinance, the Applicant has the burden of establishing entitlement to a rent increase. *See* Woodland Mun. Code § 16B-9(e). In determining whether the Applicant is entitled to a rent increase pursuant to a Special Adjustment Application, the Commission's decision must be supported by substantial evidence in light of the entire record of the proceedings. The courts have defined substantial evidence as evidence that is relevant, credible, and reliable, and provides enough information to support a conclusion even though other conclusions might also be reached. *TG Oceanside, L.P. v. City of Oceanside*, 156 Cal. App. 4th 1355, 1371 (2007).

B. Manufactured Home Space Rent Control Ordinance.

The procedures for evaluating the SAA and the rules governing it are set forth in the Ordinance. City of Woodland voters adopted Measure T in November 2001, which added Chapter 16B to the Woodland Municipal Code, entitled "Manufactured Home Space Rent Control." Measure T provided for the establishment of the Manufactured Home Fair Practices Commission of the City of Woodland. Woodland Mun. Code § 16B-4(b)(1). The Ordinance was adopted to address the shortage of rental spaces, low vacancy rates, escalating rents, and the difficulty of moving a manufactured home. § 16B-1(a), (b). The Ordinance explicitly recognizes the need to protect the owners and residents of manufactured homes from unreasonable space rent increases while also providing the park owners with a just and reasonable return on their property. § 16B-1(d).

The Ordinance requires each manufactured home park to register the park with the City of Woodland. § 16B-5. The Ordinance provides that immediately following the November 2001 election, no owner of a manufactured home park shall charge space rent for any manufactured home space in an amount greater than the space rent in effect on January 1, 1996, which is referred to as the "space rent ceiling date." § 16B-7(a).

The Ordinance sets forth three ways in which a park owner may seek a rent adjustment. These three ways provide the exclusive means by which a park owner may seek to increase space rent. § 16B-7(c). A park owner is entitled to an annual permissive adjustment of "gross space rental income equal to the lesser of a three percent increase or an increase equal to seventy-five percent of the percentage increase in the CPI during the full twelve calendar months immediately preceding the date of the application." If the park owner believes that it would not receive a fair return on investment after receiving the maximum permissive adjustment, the owner may file an application for an alternative adjustment of the space rent ceiling based upon the park's net operating income ("NOI"). § 16B-7(c)(2). Net operating income is defined as "gross income (GI) less operating expenses (OE)." § 16B-11. Both GI and OE are defined terms in the Ordinance. *See* § 16B-12 and 16B-13, defining GI and OE respectively. The park owner, though, may only receive one annual adjustment within a twelve month period. § 16B-7(c)(3).

The Ordinance includes a presumption that the NOI produced by a park during the base year provided the owner with a just and reasonable return. § 16B-9(a). The Ordinance also has a presumption that where the NOI is less than 50% of gross income in the base year, the park owner was receiving less than a just and reasonable return on the manufactured home park. § 16B-9(b). The Ordinance contains a final presumption that the adjustment provided for in the Ordinance, including any adjustment to the NOI base year and any annual adjustment provides all of the adjustments necessary to provide the park owner with a just and reasonable return on investment for any given year. § 16B-9(c). "Base year" is defined for all manufactured home parks to be "the twelve (12) month period immediately preceding the space rent ceiling date applicable to that park" (§ 16B-10) but has been interpreted by City staff and the Commission over time to refer to any given twelve month period given the impracticality of this definition.

If a park owner does not believe that these adjustments (permissive annual or NOI) result in a just and reasonable return to the park owner for a particular year, the owner may apply for an additional "special adjustment." § 16B-9(d). That application must be in writing on a form as provided for by the Commission and shall be heard at a public hearing before the Commission at a "fair return hearing." *Id*. Notice of that hearing must be given to both the park owner/applicant and park residents by first class mail sent at least 20 days prior to the date set for the hearing. *Id*.

The park owner/applicant has the burden of presenting evidence rebutting the presumption set forth in section 16B-9(c), which presumes that the adjustments provided for in the Ordinance provide all adjustments necessary to permit the park owner a just and reasonable return on investment for any given year. § 16B-9(e). The Commission is to determine, based on the evidence presented, whether the adjustments allow the park owner a just and reasonable return, and whether and to what extent a special adjustment is necessary to allow a just and reasonable return. *Id*. "The Commission shall grant a special adjustment to the extent it finds such necessary to effectuate such just and reasonable return to that park owner/applicant." *Id*.

Prior to consideration of the SAA, the City must have determined that the park was in compliance with all applicable health and safety standards and other City zoning ordinances and land use permits. § 16B-14(b). The secretary of the Commission is also required to mail notice to the park owner and park residents at least fifteen (15) days prior to the scheduled hearing date. § 16B-14(c)(2).

During the hearing, the Commission is required to "hear all offered testimony and receive all offered documentary evidence relevant to the application." § 16B-14(d)(4). The Commission is also permitted to consider any other relevant information in addition to testimony and evidence offered at the hearing by any of the parties, as the Commission determines. § 16B-14(d)(6). The Commission is required to consider all relevant and available evidence, which includes a list of twelve factors set forth in Section 16B-14(d)(7). If the Commission requests any additional evidence, the applicant has the responsibility to provide such evidence to the Commission. *Id*.

C. <u>Regulations for the Administration and Enforcement of the Ordinance</u>.

The Commission also adopted Regulations for the Administration and Enforcement of Chapter 16B of the Woodland City Code pursuant to Section 16B-4(f)(2). Section 16B-4(f)(2) permits the Commission to "make and adopt its own rules and regulations for conducting its business consistent with the laws of the state, this chapter, and any guidelines adopted by the city council." It also requires the rules to be reduced to writing and be on file with the Commission secretary at all times. However, as the Ordinance was adopted by the City's voters and the Regulations were not and are, thus, given much less weight, the Regulations expressly provide that "a violation of a provision of the Regulations shall not be grounds to object to any action taken by the Commission, or individual acts of Commission Members or staff that are otherwise authorized by or consistent with the provisions of Chapter 16B." Regulations Preface.

The Regulations provide for a process to adjust the NOI if the actual NOI is less than fifty percent of gross income. The Commission is directed to adjust the NOI upward to equal the operating expenses, and the Regulations contain a specific formula or method for doing so. Regulation § 6.04. That process is further reflected in the NOI worksheet that is a part of the SAA.

The Regulations also set forth the process for the Commission's proceedings. Regulation 9.03(c) provides that City staff may present questions to the applicant no later than 20 days prior to the hearing, and the applicant shall respond no later than 10 days prior to the hearing. The Regulations also provide that all arguments and documentation must be received by the Commission staff no later than seven days prior to the scheduled fair return hearing. Regulation 9.03(d). Regulation 9.03(e) provides that a decision of the Commission on an SAA must be issued no later than ninety (90) days following the date that the Commission received the completed application. The Regulations also provide that the effective date of an allowable adjustment shall be no earlier than sixty (60) days from the date the Special Adjustment is granted.

IV. Procedural History

On July 1, 2016, approximately one year after Owner purchased Idle Wheel, Owner's counsel, Robert Williamson, Jr. of the Hart King law firm, sent a Special Adjustment Application ("SAA" or "Application") on behalf of Owner for a rent increase to the City of Woodland Manufactured Home Fair Practices Commission ("Commission") pursuant to the Ordinance. The City received the SAA on July 2, 2016.

As originally filed, the Application sought an approximate 45 percent increase over the then existing monthly rents. As filed, the Application included the following documents:

1. Completed Special Adjustment Application form, asserting (among other things) that the fair rate of return is 8.93 percent versus the park's actual rate of return of 4.69 percent.

2. Idle Wheel's Net Operating Income ("NOI") worksheet and supporting documents. Applicant selected a base year for purposes of the NOI worksheet from May 2015 through April 2016.

3. Report of Dr. Michael St. John dated July 20, 2016, concluding that the SAA outcome of 45.1% space rent increases, with an average increase of $164 per space is necessary for Idle Wheel to achieve a fair and reasonable return.

4. Report of James B. Netzer dated July 15, 2016, with attachments, the purpose of which was to measure if there was a "Leasehold Advantage" associated with the sale of individual coaches within Idle Wheel and to estimate the current "Market Rent" for the individual spaces at Idle Wheel.

5. Analysis in support of Idle Wheel SAA prepared by Hart King dated July 20, 2016, with 23 supporting documents. Those documents included various Woodland City Council agendas, minutes, and staff reports regarding the City's Mobile Home Space Rent Control Moratorium and Ordinance/Ballot Initiative from 2001 and 2002, the 2014 Registration Form for the Royal Palms Estates park, City of Woodland Resolution No. 6641 regarding Special Adjustment Application fees, the 2016 Notice of Approved Annual Permissive Adjustment, and a 1993 paper authored by Dr. Michael St. John.

6. Idle Wheel disclosure letter pursuant to Commission's Regulations.

The City acknowledged receipt of the SAA by letter dated September 27, 2016. The City determined that the Application was complete on January 11, 2017, but reserved its right to ask additional questions about the Application in writing. Prior to reaching this determination, Owner's counsel filed a petition for writ of mandate against the City seeking to force the City to set a hearing on its SAA. That litigation was stayed pending the hearing.

The Commission held two meetings to discuss the procedure for considering the SAA, on January 25, 2017 and February 8, 2017. During those meetings, the Commission considered and developed a preliminary outline setting forth how it would proceed during the SAA hearing. The Commission did not discuss the substance of the SAA during either meeting.

The Commission anticipated requiring more than one meeting to consider the SAA and scheduled the first meeting as a public hearing for March 15, 2017. To ensure at least 15-day advance written notice to Idle Wheel Residents, City staff deposited written notices of the hearing to Idle Wheel Residents after 5 p.m. on Friday, February 24, 2017, to be sent out on Saturday, February 25, 2017. However, the Ordinance contains conflicting notice procedures and in one place requires at least 20 ~~-~~days notice (*see* Section 16B-9) and yet in another requires only 15 days (*see* Section 16B-14(c)(2)). Bruce Stanton, counsel for the Residents, complained about the City's non-compliance with the Ordinance in sending out the notices. The Applicant subsequently requested that the hearing be rescheduled. The City, Applicant, and Residents agreed to a new hearing date of March 29, 2017. Applicant's counsel and Residents' counsel also agreed that, given the rescheduled hearing date, the Commission would have until April 28, 2017 to issue its final written decision.

The City provided notice of the time, date, and place of the March 29, 2017 hearing to the affected Idle Wheel Residents with 20 days advance written notice. City staff also provided notice of the hearing to Owner's counsel and Commissioners.

The City received additional correspondence, briefs, and documents from counsel for both the Owner and the Residents. While the Regulations provide that all correspondence must be received by the Commission seven days prior to the hearing (*see* Regulations 9.03(d), 12.05(b)(2)), the Commission waives that requirement and accepts all evidence and information submitted by counsel for the Owner and Residents as well as individual Residents.

The duly noticed public hearing took place before the Commission on March 29, 2017. The Commission heard and considered evidence and oral testimony by all interested persons in support of and against the requested Application. Robert G. Williamson Jr. of the Hart King law firm represented the Owner. Bruce Stanton of the Stanton Law Firm represented Idle Wheel Residents. The Commission was staffed by City staff, primarily Senior Planner Dan Sokolow and City Attorney Kara Ueda.

During the public hearing, the Applicant presented one witness, Kelly Allen, a Partner at Talley & Company in Orange, California. Mr. Allen had not previously provided any written documents or other reports to the Commission and did not submit a new report, study, or other summary of findings. Instead, Mr. Allen testified that he reviewed general ledgers, regulations, and the report prepared by Owner's witness Dr. St. John. Mr. Allen informed the Commission that the Applicant hired him to rely upon and test St. John's report and render an opinion based on that report. He presented a PowerPoint presentation, hard copies of which were distributed to the Commission during the meeting. Applicant's counsel also provided copies of Mr. Allen's biography to the Commission.

Mr. Allen's first slide presented a comparison between St. John's report and his firm's review concerning Net Operating Income as a percent of total revenue. Talley & Company made certain adjustments to expenses that were capital improvements and, thus, adjusted expenses by approximately $15,000. While St. John's report concluded that NOI was $331,548.65, Talley's NOI was $346,514.36. With revenue of $803,613.87, the NOI as a percent of gross income changed from 41.3 percent in St. John's report to 43.1 percent on Mr. Allen's slide.

Mr. Allen's other slides addressed the percent change of CPI versus the percent change of rent; a chart showing the effect of NOI as a percent of revenue with a conclusion that the NOI has not been maintained over the past 20 years; a bar graph showing NOI as a percent of revenue and comparing actual return versus the industry; a chart showing varying cap rate data; and a concluding slide showing cap rates and their effect on NOI. The chart stated that the current space rent produced a return on investment of 4.69 percent, with an average space rent of $361.32 and NOI as a percentage of revenue of 41%. On the other hand, with a return on investment of 8.93 percent, as submitted by Mr. Allen, the NOI as a percentage of revenue would be 58 percent, with an average space rent of $517.71 or an increase of approximately $158 per space per month.

Mr. Stanton had an opportunity to, and did, cross-examine Mr. Allen. Mr. Allen stated that he had not prepared a written report and that the PowerPoint slides shown to the Commission was his written product. Mr. Stanton asked Mr. Allen a number of questions about expenses Applicant claimed.

Mr. Stanton presented one witness, Deane F. Sargent. Mr. Sargent stated that he was hired to review whether an 8.9 percent capitalization rate is a fair rate of return. He testified that he has reviewed a lot of parks operated or managed by Waterhouse and that he had some data on the Idle Wheel park already. Mr. Sargent provided his opinion that 8.9 percent is not sustainable and that his opinion was that a 5.67 percent capitalization rate was appropriate due to the sale of the Idle Wheel park being an arms-length transaction. Additionally, the 5.67 percent rate was the actual rate that an investor was willing to pay. Mr. Williamson had an opportunity to, and did, cross-examine Mr. Sargent.

Mr. Williamson also had two witnesses in attendance to answer questions and for purposes of rebuttal: Mr. James Netzer, and Mr. Ruben Garcia. Mr. Netzer provided an expert report as an attachment to Owner's SAA. Mr. Netzer testified that he reviewed rents for manufactured home parks in Davis and Esparto but not necessarily in Woodland. Mr. Ruben Garcia is the Vice President of Waterhouse Management Corporation and oversees operations.

Mr. Garcia testified that he participated in the evaluation of whether Idle Wheel should be purchased by the owner prior to purchase.

During the March 29, 2017 Commission meeting, testimony was not presented under oath. No party had previously asked for witnesses to be sworn. Both Mr. Williamson and Mr. Stanton had the opportunity to present direct testimony by witnesses of their choosing, cross-examine each other's witnesses, and present rebuttal testimony and evidence as well as to introduce additional documents and evidence into the record. The City did not have an expert or present any additional or other witnesses.

Also during the March 29, 2017 meeting, the Commission asked Mr. Williamson and Mr. Stanton to provide two-page letter briefs to the Commission on the issue of a "premium," which is a factor permitted to be considered by the Commission pursuant to its Regulations. Mr. Williamson and Mr. Stanton were also directed to provide closing briefs to the Commission. The Commission requested that both the letter briefs and closing briefs be submitted to the Commission by April 5, 2017, prior to the scheduled 6:30 p.m. Commission meeting. The Commission received all four briefs on the afternoon of April 5, 2017. City staff distributed the briefs to Commissioners during the April 5, 2017 meeting.

The Applicant's Closing Brief stated that the Applicant had set forth evidence demonstrating that a monthly space rent increase, to be implemented on August 1, of **$155.71** per month per space, based on a fair and reasonable return rate of 8.93 percent, is necessary to provide the Applicant with a just and reasonable return. This requested change to the rent ceiling is lower than the amount requested in the SAA. The Applicant also claimed that it should recover, via the rent increase, ~~recovery of~~ approximately One Hundred Nine Thousand Dollars ($109,000) for legal and expert costs related to this rent increase process. The Applicant's closing brief contained redacted legal invoices from the Hart King law firm, invoices and travel receipts from its experts, and evidence of Applicant's payment of those fees.

The Applicant also argued that it should be entitled to recover and pass through to Residents the fees paid to the City for processing its application ($16,000.00). In total, the Applicant requested a monthly space rent increase of $253.79, comprised of (1) the fair return adjustment of $155.71, (2) $77.50 attributable to a "delay shortfall" that would be in effect for six months; (3) $8.71 for hearing fees that would be in effect for one year; and (4) $11.87 in attorneys and expert fees that would be amortized at a seven percent interest rate for five years.

The Residents' post-hearing brief argued that the Applicant's NOI analysis requires adjustment and that certain categories of expenses were suspect. In particular, the Residents questioned the claimed water expense (line 5230) in the amount of $85,144.45, fences (line 5440) in the amount of $6,106.97, gas system (line 5450) in the amount of $5,698.04, R&M water system (line 5570) in the amount of $21,321.22, tools and equipment (line 5650) in the amount of $3,470.31, dues, subscriptions, fees (line 5750) in the amount of $3,837.45, advertising and promotion (line 5710) in the amount of $357.38, education and seminars (line 5760) in the amount of $950.00, legal- general (line 5800) in the amount of $12,449.10, and travel (line 5940) in the amount of $22,261.76. The Residents submitted that the total reductions to be deducted is $87,685.23. The Residents argued that with that deduction, the base year NOI exceeds 50% of gross income, and no NOI adjustment is required.

The Commission reopened the public hearing on April 5, 2017 at 6:30 p.m. The Commission was informed that the City received the closing briefs submitted by Applicant's counsel and Residents' counsel, letter briefs on the premium issue submitted by Applicant's counsel and Residents' counsel, and letters from an Idle Wheel Resident and from the Vice President - Zone Administrator of Golden State Manufactured-home Owners League. City staff provided these documents to the Commission and counsel for the Owner and Residents, and had copies available for members of the public.

The Commission heard public comment from 23~~twenty-three~~ individuals. Almost all of the individuals who spoke were Idle Wheel residents, owners, or had an interest in an Idle Wheel motor home. In addition to the residents, Mayor Angel Barajas and Council member Xochitl Rodriguez addressed the Commission. After public comment concluded, the Commission closed the public hearing. The Commission next asked Applicant's counsel, Mr. Robert Williamson, a number of questions concerning the maintenance of Idle Wheel. The questions concerned the car wash, the laundry room, street lighting, water leaks, weed abatement, parking, security, fire hydrants, communications, as well as financial questions concerning the escrow account and the series of transactions for the park purchase, Mr. Williamson stated that he would respond in writing by the following Wednesday, April 12, 2017.

The Commission decided to begin its review of the evidence by reviewing the income statements. The Commission appointed a subcommittee to review the receipts submitted by the Applicant to determine whether the expenses were reasonable and if the receipts substantiated the expenses submitted. The subcommittee was comprised of Commission Chair Bill Marcus and Commission Member Dick Cronin. The subcommittee agreed to meet to review the receipts prior to the Commission's meeting on April 11, 2017. The Commission adjourned its meeting until Tuesday, April 11, 2017 at 6:30 p.m. On Monday, April 10, 2017, Mr. Williamson sent the Commission a two-page letter in response to the Commission's questions.

The Commission met again on April 11, 2017. During that meeting, the Commission received a copy of the Applicant's counsel's April 10 letter in response to the Commission's questions as well as draft spreadsheets generated by the subcommittee. The subcommittee's focus was to review the receipts submitted and to review the list of expenses the Residents argued should not be included. The Commission discussed the receipts and operating expenses and discussed the twelve factors specified in the Ordinance for consideration.

The Commission had previously scheduled a meeting for April 13, 2017. However, due to the unavailability of one, and possibly two Commissioners, for the April 13, 2017 meeting, the Commission decided to instead resume deliberations on April 17, 2017. The Commission also scheduled meetings for April 25 and 26, 2017 to review and adopt a draft decision.

The Commission convened again on April 17, 2017. The Commission covered five topics: (1) completion of the NOI worksheet and review of operating expenses; (2) appropriate capitalization rate for determining a fair rate of return; (3) whether to apply the "premium" issue raised by the Owner in determining whether a rent adjustment should be granted above the 50% NOI minimum established by the Ordinance; (4) an evaluation of the legal, hearing, and expert fees incurred by Applicant; and (5) objections to evidence submitted.

The Commission discussed changing two operating expenses. The first was that Idle Wheel inadvertently paid for a dumpster at Royal Palms. The Commission agreed to remove $2,065 in expenses related to this dumpster. The second operating expense was for a $750 deposit made for the carwash roof replacement. That amount should have been included with the carwash roof capital improvement cost and amortized with the rest of the carwash repair costs.

The Commission agreed to bring the Owner up to the fifty percent NOI and also to account for the passage of time since submittal of the SAA. The Commission also agreed that with these adjustments, the Owner's permissive rent adjustment would effectively be rolled in to this rent adjustment and that the Owner would not be allowed to receive an additional permissive rent adjustment.

The Commission also agreed to a 6.16 percent capitalization rate, which is discussed further below in Section VI.K. The Commission agreed not to consider the premium issue, which is discussed further below in Section V.E. The Commission also provided staff with direction concerning factors to consider in evaluating legal fees claimed by the Owner.

Finally, the Commission determined objections raised by counsel for both the Applicant and the Residents. During the March 29, 2017 and April 5, 2017 meetings, counsel for both the Applicant and the Residents raised various objections to information presented to the Commission. For most objections made, the Commission decided to wait until all of the evidence had been presented to the Commission and to then decide on the objections. During the April 17, 2017 Commission meeting, the Commission addressed each of the objections. The Commission does not follow rules of evidence. Rather, the Commission chose to allow all evidence submitted to be received, and then the Commission would decide how to treat the evidence. The objections raised and the Commission's responses are as follows:

1. Applicant Objections to Exhibits A, D, and E of Residents' Pre-Hearing Brief.

The objection was based on relevance, hearsay, lack of authentication, and foundation as the exhibits concerned other proceedings unrelated to Applicant's SAA. Residents' counsel asserted that these documents were provided for the purpose of impeaching Applicant's expert Dr. St. John. However, Residents' counsel admitted they had less value given Dr. St. John's lack of appearance at the March 29, 2017 Commission hearing.

Exhibit A is a decision of another mobile home rent control agency. The Commission finds it relevant to its review of the SAA as it is demonstrative of how a different mobile home rent control board responded to a legal issue raised by a park owner and Dr. St. John. Exhibits D and E are relevant to the Commission's consideration of the SAA as they establish that there are different sources of data for the calculation of capitalization rates beyond the information used by Dr. St. John and to demonstrate that Dr. St. John has used other data sources in the past. These documents would have been relevant for the purpose of cross-examining Dr. St. John had Applicant chosen to have him appear as a witness. The documents should not be excluded merely because the Applicant chose to bring a different witness while continuing to request that Dr. St. John's report be considered as a part of the SAA.

2. Applicant's Objections to Exhibits A, B, and D of the Sargent Report and the Neet Appraisal.

Applicant objects to three exhibits to the Residents' expert witness, Deane Sargent. These exhibits were relied upon by Residents' expert in formulating and supporting his opinions. It appears to the Commission that the Brabant documents are public records from other rent control boards. The Neet appraisal used by the expert demonstrates that Applicant's purchase price and capitalization rate have been used as a comparable property in other appraisals. However, as the purchase date is incorrect, it is not received or considered by the Commission for the truth of the matter.

3. Residents' Objection to Testimony of Kelly Allen and Dr. St. John Report.

The Residents object to the testimony of Mr. Kelly Allen as Applicant did not submit an expert report from him, and he could not testify as to Dr. St. John's report. Residents also object to the inclusion of the St. John report in the record as the Residents did not have the ability to cross-examine him as Applicants did not produce him as a witness. The Commission received and considered both Mr. Allen's testimony and Dr. St. John's report.

The Commission placed weight on that evidence to which both are entitled and recognized that the substitution of Mr. Allen for Dr. St. John affected the proceedings. The extent to which Mr. Allen could answer questions about Dr. St. John's report has also been considered by the Commission in weighing the evidence. Additionally, to mitigate the Residents' inability to cross-examine Dr. St. John, the Commission also received the exhibits set forth in Residents' brief and Residents' expert's brief.

4. Applicant's Objection to Public Comment.

Applicant objected to the Commission's consideration of public comment as it was not subject to cross-examination and also formed the basis of additional questions from the Commission regarding various amenities at Idle Wheel. The Commission finds that public comment is not expert evidence and has not been given the weight of experts on matters that are within the experts' expertise. The Commission also notes that the Applicant did not request to cross-examine any member of the public. *See Manufactured Home Communities, Inc. v. County of San Luis Obispo*, 167 Cal. App. 4th 705 (2008) (due process concerns when board refused to allow cross-examination). Therefore, the Commission received public comment into the record as non-expert evidence.

After consideration of the objections raised, the Commission adjourned its meeting until Tuesday, April 25, 2017, and provided direction to staff to prepare a draft written document for it to consider and adopt. The Commission held a meeting on April 25, 2017 at 6:30 p.m. to consider and comment upon the draft decision. The Commission discussed and made a determination regarding the amortization of legal fees, discussed further below. The Commission also considered comments from Applicant's counsel regarding the draft decision, including comments on Section VII, the contents of the administrative record. The Commission adjourned its meeting until April 26, 2017.

V. Analysis and Review of SAA

A. Overview

The Ordinance permits three different types of rent adjustments, as specified above: a permissive rent adjustment, an NOI adjustment, and a special adjustment if the park owner cannot achieve a fair rate of return after receiving a permissive adjustment and an NOI adjustment. Here, the Applicant or its predecessor owner has filed a permissive rent adjustment (the first type of adjustment that may be filed) application each year since adoption of the Ordinance with the exception of 2006. The Applicant did not, however, file an NOI application (the second type of adjustment that may be filed). The Ordinance provides that a park owner shall be entitled to a permissive annual adjustment and an NOI adjustment if the park owner believes that it is not receiving a just and reasonable return after receiving the maximum permissive adjustment. Woodland Mun. Code § 16B-8(c)(2).

Instead, Owner filed the SAA. Because the Applicant did not file for an NOI adjustment, the Commission's first task in evaluating Owner's SAA is to analyze the actual NOI and determine if an NOI adjustment is necessary pursuant to the terms of the Ordinance. Only then is it appropriate for the Commission to evaluate whether a special adjustment on top of an NOI is necessary and, if so, to analyze the circumstances that would require an additional adjustment. In evaluating the NOI, the Ordinance presumes that the Applicant is not receiving a fair and reasonable return on investment in the park if the actual NOI is less than fifty percent (50%) of gross income in the base year. Woodland Mun. Code § 16B-9(b).

B. NOI

Actual NOI is calculated by subtracting operating expenses from gross income during the 12-month period selected by the Applicant (May 2015 through April 2016). If NOI is less than fifty percent, then the actual NOI will be adjusted upward to equal the operating expenses.

1. NOI as Claimed on SAA

Here, Applicant asserts gross income of **$802,590.01**. Applicant submitted that its base year operating expenses were **$456,075**[1], consisting of real property taxes and assessments, management expenses, normal repair and maintenance, operating supplies, insurance premiums, other taxes, fees and permits, unbundled utility expenses, bundled utility expenses, employee costs, and other administrative costs. NOI was, as submitted, **$346,515**. The NOI, as submitted, was 43 percent, less than fifty percent of gross income in the base year.

2. Operating Expenses

The Commission requested and received receipts, invoices, and other records documenting operating expenses claimed by Applicant. The Commission's subcommittee of Chair Marcus and Commissioner Cronin met to review the operating expenses claimed by Applicant and the receipts and other documentation submitted by Applicant in support of the expenses. The Ordinance requires all operating expenses to be reasonable and provides that the Applicant has the burden of proving reasonableness. Woodland Mun. Code § 16B-13(C). The Code further provides that the Commission may adjust the expense to reflect the normal industry or other comparable standard.

Upon review of that information by the full Commission, as well as additional decisions made by the Commission concerning Applicant's expenses, the Commission finds that **$32,943** in claimed expenses should not have been included in Applicant's NOI worksheet. The following expenses are listed by type and line number from the SAA along with a brief explanation about why the Commission excluded the expense.

a. Cost of SAA (5800/5870). The **$10,745** claimed for the cost of filing the application may not be included in the NOI pursuant to Section 16B-13(B)(4); although the Commission may choose to allow recovery as an amortized cost.

b. 2014 Tax Preparation Fees (5700). The **$300** cost is out of the applicable date range, and there is a 2015 Tax Preparation expense also requested.

c. Employment Insurance Taxes (5243/5244). The **$558** cost associated with two sets of unemployment insurance taxes paid in a single year is a non-recurring cost and should be removed according to the Applicant's witness Mr. Allen.

[1] As originally submitted, Applicant's operating expenses were $471,041.36. While Applicant did not submit an amended SAA or NOI Worksheet, Applicant's witness Kelly Allen modified the expenses as a result of his review of Dr. St. John's report and Applicant's expenses.

d. Legal Cost of LLC Formation (5800). The **$2,104** cost is not an operating expense, and the cost was not incurred during the applicable date range. The Commission also declines to amortize the cost.

e. Fictitious Business Name Statement (5750). 80 percent of the total cost, or **$77**, is removed from operating expenses as the cost is incurred every five years.

f. Lawn Mower Purchase (5650). 80 percent of the lawn mower cost, or **$2,720**, is removed from annual operating expenses to average the cost over five years.

g. Gifts and Meals to Lender (5710, 5830). The **$290** for gifts to, and the **$83** for a meal with, the Applicant's lender are unnecessary to provide service and are non-recurring.

h. Gift to Management Staff. The **$68** for a holiday gift to management staff is unnecessary to provide service.

i. Interest Earned on Reserves and Reserve Release (5750). The **$150** for interest earned on reserves and the **$150** for reserve release both appear to have misclassified as expenses, and the Applicant could not explain it at the hearing.

j. Late Fees (5750). The **$19** in late fees are unnecessary to provide service.

k. 2014 Income Tax Penalty. The **$70** in penalties are unnecessary to provide service and are outside of the applicable date range.

l. Utility Consulting (5870)**.** The **$46** for CARE/FERA consulting is unnecessary and is only necessary at submetered parks. Idle Wheel residents receive energy service from PG&E.

m. Training Seminar. The **$950** for a training seminar was not backed up with documentation. When asked about the training seminar during the Commission's hearing, the Applicant's witness did not have any specific information (topic, purpose, date, location) about the training.

n. Water Bill. The Commission reduces the water bill by **$11,384.35**. Applicant submitted a total expense of $85,144.45 in water bills for the base year. Residents proposed an adjustment of $29,917, stating that it appears from the Applicant's entries that there were significant system leaks requiring capital repairs. Residents note, and the Commission agrees, that water bills for December and January (billed in January and February) were much higher than the other ten months of the year. The January 2016 bill was $9,357.57, and the February 2016 bill was $14,320.13. In comparison, the average water bill for the remaining ten months was $6,146.68. As water usage is typically not high during these months, and given that a water leak was repaired in January according to the general ledger, the Commission assumes a water leak caused the spike in water costs. Removing the two high months and using the average monthly cost of $6,146.68 results in total annual water expenses of $73,760.10. The difference between the submitted expense and the annualized average is $11,384.35.

o. Travel (5940). The Commission removes **$415** related to travel. Residents challenged $13,333 of travel expenses for an employee. The Applicant claims that its employee receives a portion of compensation as travel reimbursement, which reduces the taxes paid by both the Applicant and the employee. The Commission adjustment is only to annualize the costs, which contained 53 weeks of expense.

p. Dumpster at Royal Palm. The Commission concluded that **$2,065** should be removed from expenses as Idle Wheel was paying for a dumpster located at Royal Palm. The Commission provided Applicant an opportunity to respond to this issue as it did not arise until the April 17, 2017 meeting. The Applicant reviewed its records and informed the City on April 21, 2017 that it agreed that due to an administrative oversight, Owner inadvertently paid Waste Management for a four yard dumpster at Royal Palm. The Applicant, however, claims that the amount should be $1,548.70.

q. Deposit for Roof Replacement (Account 5400). Applicant showed a **$750** deposit (10 percent) for the carwash roof replacement that should not be treated as an expense but, rather, as an amortized cost as the carwash roof replacement is not considered an operating expense.

In sum, the Commission concludes that Thirty-two Thousand Nine Hundred Forty-three Dollars **($32,943)** should be deducted from Applicant's claimed operating expenses.

3. NOI As Adjusted by Commission

The Commission next removed $32,943 from Applicant's claimed operating expenses, which results in a figure of **$423,132** for operating expenses. The revised NOI (gross income less operating expenses) is:

NOI: $802,590 - $423,132 = $379,458.

The return, as adjusted by the Commission, is 47.3 percent, which is under 50 percent. Thus, the Commission finds the presumption that the Applicant was achieving a fair rate of return has not been met as the presumption is that the Applicant must achieve at least 50 percent.

The NOI must be adjusted in order for the Applicant to achieve a fair return under the Ordinance. The Commission considers one of the factors in adjusting the NOI to be inflation. A number of factors were considered in adjusting the NOI, as follows, and in accordance with the Commission's NOI worksheet, a copy of which is attached hereto as **Exhibit A**:

- Using Section 2 of the NOI Worksheet and applying forty percent of the CPI adopted below to determine the allowable percentage increase of the base year NOI (lines 23 through 33 of the NOI Worksheet) yields an additional **$6,950.27** and increases the adjusted NOI to $430,082 (base year NOI using operating expenses rather than NOI pursuant to line 28 of the NOI Worksheet plus 40% CPI).
- Next, the Commission subtracted unbundled utility expenses (line 24.1 of the NOI worksheet) of $131,506.38, resulting in $291,624.27 in an adjusted NOI (line 36.1 of the NOI worksheet).
- Then the Commission determined inflation on operating expenses. Inflation from line 32 of the NOI Worksheet is .017693. The Commission recognizes, however, that the City's time to process and consider Applicant's SAA may have caused some financial difficulty or uncertainty to Applicant and, thus, grants an inflation-related adjustment through February 2017 of 0.041064 ~~percent~~ for operating expenses, resulting in an additional **$11,975.39**. The total operating expenses for Applicant is **$435,659**[2]**.**
- The next step is determining the allowable adjusted gross income in Line 37 of the NOI Worksheet. This number is determined by adding the adjusted NOI from line 35 ($430,890.90) to the estimated operating expenses on line 36 or 36.3 ($435,106.04). This total is $865,186.94. However, to achieve fifty percent recovery based on the operating expenses of $435,106.04, the allowable gross income must increase to $870,212.08.
- The new gross space rent ceiling (line 38 of the NOI Worksheet) before allowance for uncollected space rents then subtracts other income of $139,203.48 (line 8 of the NOI Worksheet) for gross space rent of $731,008.60. The allowance

[2] The Commission notes, however, that with this inflation-related adjustment, the permissive adjustment Applicant previously filed for this year is dismissed as inflation for this period is covered by the permissive adjustment period.

for uncollected rent is 0.9937 (line 39 of NOI Worksheet) for an Adjusted Space Rent Ceiling of $735,679.42 (line 40 of the NOI Worksheet).

- The resulting space rent ceiling adjustment (line 40 of NOI Worksheet) subtracts the base year gross space rents from the adjusted space rent ceiling for a **$68,054.15** resulting space rent ceiling adjustment.
- Thus, the percentage increase resulting from the NOI is **10.19 percent**. Using these numbers results in a 6.16% capitalization rate for just the NOI:

  $435,106.04 ($870,212.08 for allowable gross income, including $5,025.14 adjustment. - $435,106.04 in operating expenses) **/ $7,062,977** (park purchase price) = 0.061603 (6.16%).

C **Amortized Costs/Temporary Rent Increases**

The Commission is authorized to amortize capital improvements over the reasonable life of the improvement or such other period as the Commission deems reasonable under the circumstances. Woodland Mun. Code § 16B-13(a)(9). The Commission finds that the costs for three improvements may be included in the rent increase: pool replastering, slab replacement, and the carwash roof. All of these amortizations are assigned an interest rate equal to the capitalization rate of 6.16%.

1. Pool Replastering. The Commission finds that the pool replastering will be permitted to be included in the rent increase. The Commission accepts the Applicant's $19,180.00 cost for the pool replastering and finds an amortization period of fifteen years (**$1.962.24/year**) with an interest rate of 6.16% to be reasonable.

2. Slab Replacement. The Commission finds that the slab replacement will be permitted to be included in the rent increase. The Commission accepts the Applicant's $6,800 cost for the slab replacement and finds an amortization period of fifteen years (**$695.76/year**) with an interest rate of 6.16~~2~~% to be reasonable.

3. Carwash Roof.

The Commission noted that the carwash roof deposit of $750 was incorrectly considered by the Applicant to be an operating expense. Applicant agrees that the deposit should have been counted as an amortized capital improvement and that the $750 should be added to the cost of the carwash roof ($6,750.00). Thus, the total amount for the carwash roof is $7,500. The

Commission finds that a twenty year amortization period with an interest rate of 6.~~2~~16% is reasonable (**$653.16/year).**

4. Business Formation Cost.

The Commission rejects Applicant's request to amortize $2,104 for business formation costs as it was incurred in March 2015 prior to the Idle Wheel's ownership of the park.

5. Legal Costs.

The Ordinance provides that attorneys' fees and costs incurred in Commission proceedings, or in legal proceedings against the Commission or challenging the Ordinance, may not be covered as operating expenses. Woodland Mun. Code § 16B-13(B)(4). Applicant claimed $109,001.04 in legal and expert costs attributable to consultation, preparation, and participation in the City's mobile home rent control process[3]. Applicant's Closing Brief, 2:22-23. Applicant did not provide a separate accounting of its various experts or legal costs but submitted invoices as "Exhibit 1" to its post-hearing brief, which primarily consist of invoices from its experts and redacted time records of the Hart King law firm. Residents submitted in their Pre-Hearing Brief that the California Supreme Court has authorized attorneys' fees to be recovered in pursuit of a rent increase but that the fees must be reasonable and bear a relationship to the success achieved in connection with the expenditure of fees. *See Galland v. City of Clovis*, 24 Cal. 4th 1003, 1040 (2001).

Applicant also submitted $10,745 of attorneys' and experts' fees at a part of its operating expense in its NOI Worksheet. The Commission removed this amount from the Applicant's NOI filing but added it to the amount to be amortized for a total of $119,746.04.

The Commission's review of the time records indicates that the Hart King firm billed Idle Wheel MHC LLP **$78,200.47**. The Commission evaluated the time records of the Hart King firm using the following factors:

a. Hourly rate. Mr. Robert Williamson and Mr. William Dahlin are both partners in the Hart King law firm and, according to the firm's web site, each have over thirty years of legal experience. These two attorneys did virtually all of the legal work for this matter, at an hourly rate of $350/hour. The Commission views this rate as high but not unreasonably so in light of the attorneys' experience. However, as discussed further, the Commission finds that

[3] The Commission's review of expenses submitted did not add up to this total. However, the Commission in this decision addresses and evaluates the legal fees and expert witnesses separately.

some of the work could have been done by more junior attorneys, decreasing the hourly rate. Numerous time entries for Mr. Robert Williamson were for "research and analysis" on subjects that the law firm redacted. While the Commission understands that the redactions were to protect attorney-client confidentiality, it also has no way of knowing whether the research and analysis was on (a) a novel issue particular to this case; (b) highly specialized matters that could not be delegated to a more junior attorney with a lower billing rate; or (c) whether such work should have already been within the knowledge of the attorney or the firm as "Manufactured Home Communities" is one of the three primary areas the firm specializes in according to its web site. Additionally, work such as organizing and assembling exhibits could have been done by more junior attorneys or paralegals at lower billing rates.

Accordingly, the Commission finds that 9.2 hours could have been billed at lower billing rates. Taking into account that less experienced attorneys may require more time to perform the same work, the Commission reduces the total amount of such hours to a slightly more modest billing rate of $300 per hour, and **deducts $460** for those hours worked.

b. Duplication of Effort. Some of time entries for this matter show that the same work was done by two attorneys. The Commission finds that no explanation has been offered to explain why two partners were required to do the same work. As such, the Commission **deducts $2,510** from the total amount of attorneys' fees recoverable in this matter.

c. Unnecessary Work for the Proceedings. The Hart King firm billed time for work the Commission finds did not provide value for this proceeding. First, the firm's attorneys spent time reviewing past city council meetings and staff reports. The firm received many old documents from the City pursuant to a Public Records Act request, and the firm also chose to attach many of these old documents to its SAA. The Commission did not find these documents useful to this proceeding and does not find that the Hart King time spent reviewing these documents added value to the SAA and/or the Commission proceedings. Second, time spent reviewing and revising a proposed fee agreement for an unnamed expert witness is administrative in nature and should be absorbed by the firm as an operational expense. Third, the firm billed time for HCD title searches for sold units, which information was presumably used by Netzer. As the Commission is not relying on Netzer's report, time spent by counsel related to the Netzer report or conferring with Netzer will not be included as a part of the rent increase. Similarly, the firm billed time for conferring with Mr. Allen. The Commission finds that having two witnesses (Dr. St. John and Mr. Allen) perform essentially the same task(s) was redundant and unnecessary. Fourth, the firm billed a small amount of time for work it designated as "No Charge." If the firm did not intend to bill it to the client, the amount should not be included in the rent increase. Accordingly, the Commission **deducts $10,957.50** from the total amount of attorneys' fees recoverable in this matter.

d. Writ Proceeding. Subsequent to the filing of its SAA and prior to the Commission deeming the SAA complete, Applicant filed a petition for writ of mandate against the City of Woodland alleging that the City violated the Municipal Code by not scheduling the SAA for a hearing within 60 days. The Commission does not dispute that counsel spent time drafting this petition. However, the Commission notes that the law firm's time records do not show any attempt to locate the City's counsel to meet and confer regarding avoiding a lawsuit. Instead, Applicant's counsel sent letters to the City planner but never called City staff or asked to confer with the City Attorney. The Commission further finds that the lawsuit did not add any value to the Commission's proceedings. Accordingly, the Commission **deducts $5,130** from the total amount of attorneys' fees recoverable in this matter.

e. Legal Expenses. The Commission also finds that standard photocopying and color printing charges should not be recoverable. The Commission in particular does not see a need for color photocopies, which are costly. The Commission thus deducts **$1,294.75** from the total amount of attorneys' fees recoverable in this matter.

f. Interest. The Hart King billings contain interest charged to the Applicant's management company because they did not pay two of their bills on time. These charges are not reasonable for recovery from the residents. The Commission thus deducts **$273.79** from the total amount of attorneys' fees recoverable in this matter.

g. Other Considerations. In determining the total amount of attorneys' fees that are reasonable in this proceeding, the Commission also takes the following factors into consideration: (1) the Residents retained private outside counsel for this proceeding and used the services of an expert who testified at the Commission hearing; (2) other than the fee for the hearing discussed below, the City did not pass on all of its costs for staff time and City Attorney expenses to the Applicant, which the Applicant presumably would have asked to have had included in the requested rent increase; and (3) Applicant's counsel incurred costs for the month of April 2017 that have not been submitted and will not be included in a determination of reasonable attorneys' fees. In light of these factors competing against each other, the Commission concludes that the attorneys' fees submitted by Applicant, minus the deductions noted above provide a reasonable recovery of attorneys' fees for this proceeding and amount to Fifty-seven Thousand Five Hundred Seventy-four Dollars and Forty-three Cents **($57,574.43).**

The Commission, however, finds that had the Applicant filed an NOI application rather than a SAA, Applicant would have received a similar, if not the same, rent increase and that filing an NOI application would have been less complicated. Presumably Applicant's attorneys' fees would also have been lower had an NOI application been filed rather than a SAA. In particular, some of Applicant's counsel's time spent preparing witnesses and reviewing their reports, and the holding of multiple Commission hearings and meetings, may not have been necessary for an NOI application. As it is not possible to determine with precision how much time would have been spent by Applicant's counsel had Applicant submitted an NOI application rather than a Special Adjustment Application, the Commission determines instead that the attorneys' fees shall be further discounted by not applying an interest rate to the amortization. Thus, the attorneys' fees of $57,574.43 will be amortized for a ten-year period, with no interest, or a yearly amount of $5,757.44. Each Resident will, on average, experience a temporary rent increase for those ten years of $37.63/year, or $3.14/month. ~~Attorneys fees shall be amortized for a period of ten years at an interest rate of 6.16 %.~~

6. Expert Costs.

Applicant seeks cost recovery for its three experts:

a. Dr. Michael St. John: Applicant seeks recovery for **$19,865** in costs incurred for hiring St. John & Associates to provide an expert report. Dr. St. John performed work for $200.00/hour. The Commission accepted St. John's report even though he did not testify on behalf of Applicant. The Commission will allow recovery for this expert – except for $400.00 of clerical work charged at $100 per hour that should be part of the consultant's administrative overhead – for a total of **$19,465** and will amortize the cost.

b. Netzer: Applicant seeks recovery of **$10,533** in costs incurred for hiring Netzer & Associates. Netzer performed an appraisal, conducted research, wrote a report, and traveled to Woodland to attend the public hearing. Applicant made Netzer available for questions from the Commission. As discussed below, the Commission found neither Netzer's report nor his testimony useful in assisting the Commission evaluate the SAA or the NOI. Thus, the

Commission will not allow any portion of Netzer's report to be recovered in the form of a rent increase.

c. Talley & Company (Kelly Allen): Applicant seeks recovery of **$8,500** in costs incurred for hiring Talley & Company. Applicant submitted a retainer invoice dated February 27, 2017 from Talley & Company for professional services to be performed pursuant to an engagement letter that was not included with Applicant's submittal. It is unclear for what purpose Talley & Company was hired, what the scope of work was for which Talley & Company was engaged, and whether the $8,500 billed was reasonable in light of the work performed. The Commission finds that while Mr. Allen appeared before the Commission during the public hearing as the Applicant's sole witness, Mr. Allen's value appears to have been limited to a peer review of St. John & Associates' report and the preparation of a PowerPoint presentation~~slide~~. Regardless, the Commission finds the hiring of two experts to do similar, if not the same, work to be redundant and unnecessary. In light of the fact that Talley & Company's costs are less than St. John's, the Commission finds it reasonable to permit St. John's costs but to disallow Talley & Company's.

d. Conclusion. The Commission will allow **$19,465** in costs attributable to the work performed by St. John & Associates. Similar to the attorneys' fee issue discussed above, the Commission finds that the Applicant would have incurred fewer costs had it filed an NOI application rather than a SAA and similarly concludes that expert fees should be ~~The Commission finds that these costs should similarly be~~ amortized for a period of ten years but without any ~~at an~~ interest ~~rate of 6.16 percent~~.

7. Hearing Costs. The Applicant paid a **$16,000** fee under protest to the Commission. This fee was intended to be an approximate estimate of the amount of City time necessary to process the SAA. However, the City has far exceeded that amount for legal and staff costs but has not separately billed Applicant for that time. The City's Ordinance permits recovery for the $16,000~~is~~ fee via a rent increase if authorized by the Commission. The Commission authorizes recovery of the $16,000 hearing fee~~costs~~ and ~~similarly~~ amortizes that cost over a ten year period at a 6.16 percent interest rate.

8. Amortized Costs and Temporary Rent Increase. In sum, the Commission authorizes the following capital improvements, legal fees, an expert witness, and hearing fees, which will result in monthly increases on a temporary basis, as follows:

	Amount	Years	Amortization
Pool Replaster	$ 19,180.00	15	$ 1,962.24
Slab Replacement	$ 6,800.00	15	$ 695.76
Carwash Roof	$ 7,500.00	20	$ 653.16
Legal/Expert Costs	$ 77,039.43	10	$ 7~~10~~,703.94~~338~~
City Hearing Fee	$ 16,000.00	10	$ 2,146.92
Total Amortized			$ 13~~5~~,162~~796~~.0~~8~~2

The "Total Amortized" amount is the yearly cost recovery that will be divided evenly across the 153 manufactured home spaces at Idle Wheel. The temporary rent increases as a result of amortization will result in, on average, a~~n~~ $7.17~~8.60~~ increase for the first ten years, a $1.80 increase for years 10 through 15, and a $0.36 increase for years 15-20.

D. Premium or Leasehold Advantage Issue

Section 9.04(d) provides that the Commission may consider, if the applicant raises it, "factors related to the capture by incumbent residents of a premium upon the sale of their mobilehomes attributable to the net value of the benefits of space rent control, including, but not limited to: (1) whether a premium exists; (2) whether other external factors exist that prevent the capture of a premium; and (3) whether a Special Adjustment is needed to prevent the creation or capture of such a premium." However, the Ordinance does not require consideration of this factor, and the Regulations permit (but do not require) its consideration. The Commission concludes that while it is not required to consider the factor, it received documentary evidence and testimony on this issue and will evaluate it.

Mr. Netzer's report addresses this issue. The report claimed to develop a fair rent as a matter of appraisal by calculating the difference between Idle Wheel mobile home sales prices to what a similar mobile home would sell for on a dealer's lot, using the National Automobile Dealer Association (NADA) database. Mr. Netzer argued that the difference was the premium resulting from rent control. For example, if an Idle Wheel mobile home sold for an average of $40,000 but would have an average value of $6,000 on the dealer's lot, the $34,000 difference is entirely attributable to rent control. Thus, he concluded that space rents should be between $635 to $645 per month to account for the premium.

The Commission finds, though, that valuation of a mobile home on a dealer's lot overestimates any possible premium. Mr. Netzer testified on March 29, 2017 that mobile homes in parks without rent control would be worth more than if they were on a dealer's lot. He also agreed that there are costs associated with moving a mobile home from a dealer's lot to a new park that he had not considered and agreed that older mobile homes sometimes may not be moved from a dealer's lot to a park, which would depress their value. Mr. Netzer also testified that he could have conducted a different kind of analysis, such as comparing sales prices of mobile homes in rent-controlled parks with those in similar parks without rent control, but he did not do that.

The Commission further finds that Mr. Netzer also used an interest rate of 10 percent without supporting documentation in his report supporting the reasonableness of that rate. He also testified on March 29, 2017 that if he had used a lower interest rate, his estimate of the appraised rate would have been lower.

The Commission further finds that the high rents and lower mobile home sales prices that Netzer's appraisal states is reasonable would reduce the quality of mobile homes in Idle Wheel by having high space rents and very low values. Idle Wheel residents may not just have space rents, but some also have mortgages or loans on their mobile homes. The Commission finds that a large increase in rents and a similar large reduction in value of the mobile home would create significant economic hardships for Residents and devalue a significant asset. In that scenario, Residents would not have an incentive to maintain their mobile homes. Mr. Netzer also did not complete a physical inspection of Idle Wheel in reaching his conclusion and could not specifically comment on the quality of the mobile homes in Idle Wheel.

As the Commission finds that it is not required to consider this factor and does not find the Netzer report to present credible evidence, the Commission declines to consider this factor in its determining the Special Adjustment Application and gives it no weight.

VI. Consideration of Factors Bearing on Fair Return

Section 16B-14(d)(7) of the Woodland Municipal Code requires the Commission to consider twelve factors, but none of these factors is given any greater or less prior priority of the other. According to the Applicant's expert, Dr. St. John, the SAA covered factors A, D, E, G, H, and K, and factors F, I, J, and L are inapplicable. Each is discussed here.

A. Changes in the Consumer Price Index.

It appears undisputed that the CPI has increased. *See* Residents Pre-Hearing Brief, 10:19-20. Applicant argued that the Ordinance depressed rents by not permitting 100 percent of CPI to be used in the permissive rent adjustment formula. Applicant claims that inflation (100 % of CPI) increased 61 percent while Idle Wheel's cumulative rent increase rose 43.65 percent, meaning that the rent ceiling has not kept up to inflation. The Commission agrees that CPI has increased and also notes that the Ordinance has methods of increasing space rents when the park owner~~Applicant~~ is not receiving a fair return.

B. Rent for Comparable Mobile Home Spaces in the City of Woodland

While Mr. Netzer, on behalf of the Applicant, studied mobile home space rents in the neighboring community of Davis, California and another Yolo County community of Esparto, the Commission finds that these mobile home spaces are not comparable to Idle Wheel and that they are located in different rental markets. Applicant argued in its brief that a fair market rent analysis is "circular" because all mobile home spaces within the City are subject to rent control except for resident-owned Leisureville. City staff provided the Commission with a comparison of mobile home space rents in the City of Woodland. Most of the mobile home spaces within the City rent for similar rents as those at Idle Wheel, in the mid $300 to $400 range. The Commission finds that there is not a need to increase rents to bring Idle Wheel rents up to other similar parks in the City of Woodland and that a rent increase of almost any amount would cause Idle Wheel's space rents to be on the higher end (and potentially be the highest) of manufactured home parks in the City of Woodland. The Applicant did not provide any information to address comparable mobile home spaces in the City of Woodland.

Regardless of comparable rents for mobile home spaces in the City of Woodland, the Commission finds that it is bound by the fifty percent presumption in the Ordinance and that it cannot consider comparable mobile home space rents in isolation.

C. Length of Time Since Last Rent Increase or Rent Adjustment

Idle Wheel has received a permissive rent adjustment each year it applied for one, including last year when it received a permissive rent increase of 1.58%. The Commission also finds that with this rent increase, the Owner shall not be entitled to an annual permissive rent increase for this year.

D. Capital Improvements Made to the Park and Costs for Such Improvements

The Commission finds that the Applicant made four capital improvements to Idle Wheel: road repair, which is part of the capitalization of the park, slab repair, pool resurfacing, and car wash roof. Applicant's costs for the latter three repairs have been amortized and calculated as a part of the rent increase granted by the Commission. The capitalization rate has been applied to the road repair.

E. Changes in Property Taxes or Other Assessed Taxes to the Park

Idle Wheel submitted documentation of an increase in property taxes due to the change in ownership. The Commission finds that factor is already considered in the NOI worksheet.

F. Rent Paid by Park Owner/Applicant for Leased Land

The Commission has not received any evidence of the applicability of this factor and, instead, has received evidence of the park's purchase by the Applicant. The Commission finds this factor to be inapplicable to the fair return analysis.

G. Changes in Utility Charges or Rates

This does not appear to have been a factor in the SAA although the Commission did make adjustments for a suspected water leak and a rise in water costs.

H. Changes in Reasonable Operating and Maintenance Expenses

The Applicant did not submit any information regarding changes in reasonable operating and maintenance expenses. Nor has the Commission found any evidence of such change. The Commission takes note of the Residents' challenge to three separate maintenance items and their argument that the Applicant should not recover the full cost for fence maintenance, gas maintenance, and water system maintenance. The actual maintenance costs incurred were 5.62% of base year revenue, which the Commission finds is reasonable. The Commission also does not have ongoing maintenance records to determine whether there have been changes in operation and maintenance expenses.

I. Need for Repairs Caused by Circumstances Other than Ordinary Wear and Tear

The Applicant has submitted documentation for road replacement, which the Commission has considered as a part of Owner's capital expenses.

J. Amount and Quality of Services and Amenities Provided by the Park Owner/Applicant to the Park Residents

There does not seem to be a dispute that the park amenities are average. Mr. Netzer's report (while not relied on for the purposes for which it was submitted) makes that assumption. The Residents pre-hearing brief refers to the amenities as "average at best." Residents' Pre-Hearing Brief, 11:17.

Residents provided information to the Commission about safety concerns, laundry facilities not being operational, furniture being sparsely provided in the club room, cracks in the pavement, and problems with the drainage system. The Applicant has provided very little information about the amenities. The Applicant did submit a letter on April 10, 2017 addressing some of the Commission's questions about amenities although the exact status of some of the amenities is still unclear. For example, concerning the laundry facilities, Applicant notes that prior to its purchase, the laundry facility machines had been either down or off and that most of the out of service machines occurred over the past 30-60 days. Applicant also states that new machines were recently purchased and installed, but it is unclear whether there are operational machines presently in use at Idle Wheel.

K. Park Owner/Applicant's Investment, Additional Investments, Appreciation, Depreciation, and Possible Tax Benefits

Applicant purchased Idle Wheel for $6,700,000. The owner financed $5,000,000.00 of the purchase price, at a rate of 4.15 percent, with a 4.37 APR for ten years. The capitalization rate at the time of purchase was 5.67 percent. The record does not contain any testimony or documentary evidence establishing that Owner analyzed potential returns on its investment in Idle Wheel prior to purchase. There is also no evidence in the record of Owner's intent to seek a NOI or Special Adjustment Application from the Commission following the purchase, and there is no evidence in the record about Owner's motivation for purchasing Idle Wheel or intent for the park following purchase.

The Commission considered written and oral testimony about the appropriate capitalization rate as it governs the fair rate of return analysis. Applicant's SAA contended that an 8.93 percent rate of return was necessary in order to achieve a fair return while the Residents' expert argued that a rate between five to six and a half is the prevailing rate of return. Residents claim that the conclusion is supported by data from Costar Group, Inc. as well as other sources, including appraisal reports prepared by John Neet and James Brabant.

The Commission finds that the data provided by the CoStar Group is the most reliable of all of the various sources presented by Applicant (including RealtyRates) and the Residents. CoStar purports to use actual mobile home park sales data.

The Commission also finds persuasive the reasoning set forth by Residents that a fair rate of return that is considerably higher than the rate at the time of purchase, especially for a recent purchase, is unreasonable. The Commission also finds that the owner made a sound investment with a very low vacancy rate and knew, or at least should have known, of the City's applicable rent control restrictions. The Commission finds that the Idle Wheel park is a stable long-term investment and that the property has appreciated significantly over the last decade, as evidenced by the increase in property taxes assessed.

Therefore, the Commission finds that a capitalization rate of in the range of **6.2 percent** is reasonable in light of those reasons. The specific capitalization rate of 6.16% that results after granting the NOI increase reflects the CoStar weighted average rate for 2016 and early 2017 and is appropriate without any additional change.

L. Any Particular Hardship Circumstances for the Park Owner/Applicant or Residents

In submitting the SAA, Applicant has asserted it was not receiving a fair rate of return. Residents have set forth hardship claims. Numerous Idle Wheel Residents submitted letters to the City explaining that a rent increase in the amount proposed would create a significant financial burden. Residents expressed concerns that the value of their mobile homes would decrease given the higher monthly rent. Many Residents noted that they are on fixed incomes and would find it extremely difficult to pay more each month in rent. In addition, the Residents held a meeting and distributed surveys for Residents to complete. The Residents provided the completed surveys to the City. Many residents indicated that they are barely meeting their household expenses with their monthly household incomes and that they could not afford to pay more rent.

VII. Contents of Administrative Record

The Commission considered and relied upon numerous documents as well as testimony before the Commission. Together, the briefs, documents, evidence, testimony, and public comment received prior to and during the Commission meetings constitute the administrative record of proceedings related to the Special Adjustment Application submitted by Idle Wheel

MHP LLC. The contents of the Administrative Record is as follows, and all documents are on file with the City Clerk of the City of Woodland:

1. Special Adjustment Application submitted by Idle Wheel MHP LLC on July 21, 2016, which includes the documents noted in Section IV above.

2. Written correspondence dated August 30, 2016, September 21, 2016, and October 4, 2016 from Applicant's counsel to City of Woodland regarding completeness of Special Adjustment Application and setting of hearing date,

3. Written correspondence dated September 27, 2016 from City of Woodland to Applicant regarding Special Adjustment Application.

4. Written correspondence dated January 11, 2017, transmitted via electronic mail on January 13, 2017, from City of Woodland to Applicant's counsel informing Applicant of City's completeness determination and reserving City's right to ask written questions regarding the contents of the SAA.

5. Commission meeting agendas of January 25, 2017 and February 8, 2017 when the Commission considered and developed a preliminary outline setting forth how it would proceed during the SAA hearing.

~~2.~~6. City of Woodland letter to Applicant's counsel asking questions about the SAA, dated and sent via electronic mail on March 1, 2017.

~~3.~~7. Applicant's Pre-Hearing Brief, received by the City of Woodland on March 23, 2017.

~~4.~~8. March 23, 2017 correspondence received from Bill Long regarding Idle Wheel MHP LLC balance sheet.

~~5.~~9. Residents' Pre-Hearing Brief, received by the City of Woodland on March 27, 2017, including five exhibits, an expert report from Deane F. Sargent and five exhibits to that report.

~~6.~~10. Applicant's counsel's letter to City of Woodland dated and received on March 27, 2017, sent in response to City's March 1, 2017 letter asking questions about the SAA.

~~7.~~11. 679 pages of receipts, invoices, and similar documents in support of Applicant's expenses, submitted to the City on March 27, 2017.

~~8.~~12. Commission Staff Report for the March 29, 2017 Commission Public Hearing, including six attachments: Special Adjustment Application; Public Hearing Notice Proof of

Publication; Correspondence from Idle Wheel Residents and Community Members; Resident Surveys submitted by Idle Wheel/Royal Palm Community Association; Correspondence from City of Woodland to Idle Wheel's Counsel dated March 1, 2017, and Chapter 16B of the City of Woodland Municipal Code.

~~9.~~13. PowerPoint slide presentation presented by Kelly Allen during the March 29, 2017 Commission hearing and biography of Mr. Allen.

~~10.~~14. Letter dated April 3, 2017 from Betty Storey, Vice President – Zone Administrator of Golden State Manufactured-home Owners League.

~~11.~~15. Letter dated March 29, 2017, received by the City on April 3, 2017, from Mohammad Chuadhry, Idle Wheel resident.

~~12.~~16. Applicant's letter brief on the "premium" issue dated and submitted April 5, 2017, including two exhibits.

~~13.~~17. Applicant's closing brief dated and submitted April 5, 2017, including two exhibits

~~14.~~18. Residents' letter brief on the "premium" issue dated and submitted April 5, 2017, including one attachment.

~~15.~~19. Residents' Post-Hearing brief dated and submitted April 5, 2017, including one exhibit.

~~16.~~20. Applicant's April 10, 2017 letter to the Commission addressing Commission questions.

21. City of Woodland Manufactured Home Fair Practices Commission agendas for March 29, 2017, April 5, 2017, April 11, 2017, April 17, 2017, April 25, and April ~~25~~26, 2017, and minutes for the same meetings (which at the time of this decision had not yet been adopted by the Commission).

~~17.~~22. Written transcript of Commission's March 29, 2017 meeting and video recordings of meetings of March 29, 2017, April 5, 2017, April 11, 2017, April 17, 2017, April 25, 2017, and April 26, 2017.

VIII. Conclusion

Based on substantial evidence in the record and in accordance with Chapter 16B of the City of Woodland Municipal Code, the Commission grants the Applicant's Special Adjustment Application, in part, for a space rent increase of 10.19 percent, which is approximately **$37.07** per month per space. Pursuant to Applicant's closing brief, the new rate increase shall go into effect on **August 1, 2017**. Costs that have been amortized shall be added to the rent as temporary rent increases in accordance with the rent schedule attached to this decision as **Attachment B** to the Commission's resolution**,** and shall result in temporary rent increases for the first ten years of $7.17~~8.60~~ on average that shall decrease over time until the twentieth year.

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Pursuant to Section 16B-14(h)(3) of the City of Woodland Municipal Code, the Commission's decision is final.

EXHIBIT A

MHFPC NET OPERATING INCOME WORKSHEET, ADJUSTED

EXHIBIT B

SPACE RENT SCHEDULE FOR IDLE WHEEL ESTATES MHP LLC

	Base Rent Increase (assuming no annual permissive adjustment)	Amortized Cost	Total Increase
Years 1-10	**$37.07**	**+$7.17~~8.60~~**	**$44.24~~45.67~~**
Years 11-15	**$37.07**	**+$1.80**	**$38.87**
Years 15-20	**$37.07**	**+0.36**	**$37.43**

RESOLUTION NO. ______

A RESOLUTION OF THE CITY OF WOODLAND MANUFACTURED HOME FAIR PRACTICES COMMISSION GRANTING, IN PART, THE SPECIAL ADJUSTMENT APPLICATION FILED BY IDLE WHEEL MHP LLC

WHEREAS, Idle Wheel MHP LLC filed a Special Adjustment Application with the Commission seeking an approximate 45 percent monthly increase to rents for spaces at the Idle Wheel Estates Mobile Home Park within the City of Woodland; and

WHEREAS¸ the Commission set and held a public hearing on March 29, 2017 to hear and consider testimony, ask questions of witnesses, and hear comments from representatives of both the Applicant and Idle Wheel residents, continued the public hearing to April 5, 2017, and met again on April 11, 2017, April 17, April 25, and April 26, 2017 to consider and deliberate upon the Application, and consider a draft decision for approval, all of which are described further in the attached decision.

NOW, THEREFORE, THE MANUFACTURED HOME FAIR PRACTICES COMMISSION OF THE CITY OF WOODLAND DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

After considering and reviewing all applicable evidence and testimony received during the Commission's public hearing on March 29 and April 5, 2017, and deliberating during meetings held on April 11, April 17, April 25, and April 26, 2017, the Commission hereby approves of a space rent increase of 10.19 percent, or an average rent increase of $37.07 per space, at the Idle Wheel manufactured home park in accordance with the Net Operating Income approach set forth in the City of Woodland Municipal Code and approves of temporary rent increases in the amount of an $7.17 increase for the first ten years, a $1.80 increase for years 10 through 15, and a $0.36 increase for 20 years, and adopts the decision set forth in **Attachment A**, attached hereto and incorporated herein**.**

PASSED AND ADOPTED THIS 26 day of April, 2017.

____
William Marcus, Commission Chair

ATTEST:

____
Ana B. Gonzalez
City Clerk

Approved as to form:

____
Kara K. Ueda
City Attorney

ATTACHMENT A

DECISION OF THE CITY OF WOODLAND MANUFACTURED HOME FAIR PRACTICES COMMISSION ON THE SPECIAL ADJUSTMENT APPLICATION FILED BY IDLE WHEEL MHP LLC

I. Executive Summary

On July 2, 2016, Idle Wheel MHP LLC filed with the City of Woodland a Special Adjustment Application to increase rent ceilings under the City's Manufactured Home Space Rent Control Ordinance, Chapter 16B of the City of Woodland Municipal Code. In accordance with the procedures set forth in the Ordinance and the Commission's Regulations, the City processed the application.

Idle Wheel MHP LLC asked for an increase of $163.29 per space per month based on a report prepared by Dr. Michael St. John that concluded that Idle Wheel MHP LLC would achieve a fair rate of return at an 8.93 percent capitalization rate. The Residents of Idle Wheel submitted information arguing that a more reasonable rate of return could be achieved at closer to a six percent capitalization rate.

The Commission evaluated the testimony of expert witnesses, asked questions of the witnesses, and examined the operating expenses and Net Operating Income worksheet submitted by Idle Wheel MHP LLC. The Commission concluded that while Idle Wheel MHP LLC was not achieving a fair rate of return in accordance with the presumptions set forth in the City's Ordinance, the appropriate capitalization rate is 6.16 percent for Idle Wheel MHP LLC to achieve a fair return.

As required by the City's Ordinance, the City evaluated twelve factors that could inform the setting of a fair rate of return. After considering the capitalization rate, the operating expenses, the adjusted NOI, and amortizing certain costs for capital improvements and legal and hearing fees, the Commission finds that Idle Wheel MHP LLC is entitled to an increase in maximum rent of 10.19 percent, or an average of $37.07 per space per month, based on the NOI in order to achieve a fair return. The Commission further finds that Idle Wheel MHP LLC is entitled to temporary rent increases to amortize the costs of capital improvements, legal and expert fees, and hearing fees and that such temporary rent increases shall not continue to be included in Residents' rents after their expiration. Those temporary rent increases are as follows:

	Amount	Years	Amortization
Pool Replaster	$ 19,180.00	15	$ 1,962.24
Slab Replacement	$ 6,800.00	15	$ 695.76
Carwash Roof	$ 7,500.00	20	$ 653.16
Legal/Expert Costs	$ 77,039.43	10	$ 7,703.94
City Hearing Fee	$ 16,000.00	10	$ 2,146.92
Total Amortized			$ 13,162.02

The amortized costs will result in, on average, temporary rent increases of $7.17 ($13,162.02/year ÷ 153 spaces ÷ 12 months) per space per month for the first ten years and will decrease after the first ten years until the 20th year. The Commission notes that the amortization of legal and expert costs will add $503 in total to the rent for each space, paid over the next ten years.

II. Idle Wheel Estates Mobile Home Park

Idle Wheel Estates Mobile Home Park ("Idle Wheel") is located in the City of Woodland at 907 Bourn Drive. Idle Wheel has approximately 153 spaces on a 20.734-acre parcel and is subject to the City of Woodland's Manufactured Home Space Rent Control Ordinance (the "Ordinance"), which is codified at Chapter 16B in the City of Woodland Municipal Code. In addition to the Ordinance, the Woodland Manufactured Home Fair Practices Commission ("Commission") adopted Regulations for the Administration and Enforcement of Chapter 16B of the Woodland City Code ("Regulations").

Idle Wheel was constructed in approximately 1961. Its features and amenities include a community room, pool, green space, play structure, and laundry room. City staff's review of the features and amenities of Idle Wheel concluded that the amenities provided by Idle Wheel are similar to other manufactured home parks in the City of Woodland and that the current rent is similar to other base rents of other residents of manufactured home parks in the City of Woodland. Idle Wheel is the second largest manufactured home park in the City as Casa del Sol has 157 units, as compared to Idle Wheel's 153 units.

Idle Wheel has consistently applied for and received permissive rent adjustments since adoption of the Ordinance in 2002. Idle Wheel did not receive a permissive rent adjustment in 2006 but also did not apply for one. Most recently, the Commission approved a 1.58 percent rent increase in 2016. Average base rents at Idle Wheel range from $332.79 to $386.79, which is similar to other mobile home units in the City of Woodland.

The Idle Wheel parcel is bordered by single-family residences on all sides in addition to a church on the north. The current owners, Idle Wheel MHP LLC ("Owner" or "Applicant") purchased Idle Wheel on April 23, 2015 from Idle Wheel Partners LP in the amount of $6,700,000.00. The owner's financing for the purchase included a 10-year, $5,000,000 loan through Capital One Multifamily Finance at the fixed interest rate of 4.15 percent. The loan has two years of interest-only payments, 9.5 years of yield maintenance, and a 30-year amortization payable on an actual/360 basis.

III. Legal Principles

A. Standard of Review.

Under the Ordinance, the Applicant has the burden of establishing entitlement to a rent increase. *See* Woodland Mun. Code § 16B-9(e). In determining whether the Applicant is entitled to a rent increase pursuant to a Special Adjustment Application, the Commission's decision must be supported by substantial evidence in light of the entire record of the proceedings. The courts have defined substantial evidence as evidence that is relevant, credible, and reliable, and provides enough information to support a conclusion even though other conclusions might also be reached. *TG Oceanside, L.P. v. City of Oceanside*, 156 Cal. App. 4th 1355, 1371 (2007).

B. Manufactured Home Space Rent Control Ordinance.

The procedures for evaluating the SAA and the rules governing it are set forth in the Ordinance. City of Woodland voters adopted Measure T in November 2001, which added Chapter 16B to the Woodland Municipal Code, entitled "Manufactured Home Space Rent Control." Measure T provided for the establishment of the Manufactured Home Fair Practices Commission of the City of Woodland. Woodland Mun. Code § 16B-4(b)(1). The Ordinance was adopted to address the shortage of rental spaces, low vacancy rates, escalating rents, and the difficulty of moving a manufactured home. § 16B-1(a), (b). The Ordinance explicitly recognizes the need to protect the owners and residents of manufactured homes from unreasonable space rent increases while also providing the park owners with a just and reasonable return on their property. § 16B-1(d).

The Ordinance requires each manufactured home park to register the park with the City of Woodland. § 16B-5. The Ordinance provides that immediately following the November 2001 election, no owner of a manufactured home park shall charge space rent for any manufactured home space in an amount greater than the space rent in effect on January 1, 1996, which is referred to as the "space rent ceiling date." § 16B-7(a).

The Ordinance sets forth three ways in which a park owner may seek a rent adjustment. These three ways provide the exclusive means by which a park owner may seek to increase space rent. § 16B-7(c). A park owner is entitled to an annual permissive adjustment of "gross space rental income equal to the lesser of a three percent increase or an increase equal to seventy-five percent of the percentage increase in the CPI during the full twelve calendar months immediately preceding the date of the application." If the park owner believes that it would not receive a fair return on investment after receiving the maximum permissive adjustment, the owner may file an application for an alternative adjustment of the space rent ceiling based upon the park's net operating income ("NOI"). § 16B-7(c)(2). Net operating income is defined as "gross income (GI) less operating expenses (OE)." § 16B-11. Both GI and OE are defined terms in the Ordinance. *See* § 16B-12 and 16B-13, defining GI and OE respectively. The park owner, though, may only receive one annual adjustment within a twelve month period. § 16B-7(c)(3).

The Ordinance includes a presumption that the NOI produced by a park during the base year provided the owner with a just and reasonable return. § 16B-9(a). The Ordinance also has a presumption that where the NOI is less than 50% of gross income in the base year, the park owner was receiving less than a just and reasonable return on the manufactured home park. § 16B-9(b). The Ordinance contains a final presumption that the adjustment provided for in the Ordinance, including any adjustment to the NOI base year and any annual adjustment provides all of the adjustments necessary to provide the park owner with a just and reasonable return on investment for any given year. § 16B-9(c). "Base year" is defined for all manufactured home parks to be "the twelve (12) month period immediately preceding the space rent ceiling date applicable to that park" (§ 16B-10) but has been interpreted by City staff and the Commission over time to refer to any given twelve month period given the impracticality of this definition.

If a park owner does not believe that these adjustments (permissive annual or NOI) result in a just and reasonable return to the park owner for a particular year, the owner may apply for an additional "special adjustment." § 16B-9(d). That application must be in writing on a form as provided for by the Commission and shall be heard at a public hearing before the Commission at a "fair return hearing." *Id*. Notice of that hearing must be given to both the park owner/applicant and park residents by first class mail sent at least 20 days prior to the date set for the hearing. *Id*.

The park owner/applicant has the burden of presenting evidence rebutting the presumption set forth in section 16B-9(c), which presumes that the adjustments provided for in the Ordinance provide all adjustments necessary to permit the park owner a just and reasonable return on investment for any given year. § 16B-9(e). The Commission is to determine, based on the evidence presented, whether the adjustments allow the park owner a just and reasonable return, and whether and to what extent a special adjustment is necessary to allow a just and reasonable return. *Id*. "The Commission shall grant a special adjustment to the extent it finds such necessary to effectuate such just and reasonable return to that park owner/applicant." *Id*.

Prior to consideration of the SAA, the City must have determined that the park was in compliance with all applicable health and safety standards and other City zoning ordinances and land use permits. § 16B-14(b). The secretary of the Commission is also required to mail notice to the park owner and park residents at least fifteen (15) days prior to the scheduled hearing date. § 16B-14(c)(2).

During the hearing, the Commission is required to "hear all offered testimony and receive all offered documentary evidence relevant to the application." § 16B-14(d)(4). The Commission is also permitted to consider any other relevant information in addition to testimony and evidence offered at the hearing by any of the parties, as the Commission determines. § 16B-14(d)(6). The Commission is required to consider all relevant and available evidence, which includes a list of twelve factors set forth in Section 16B-14(d)(7). If the Commission requests any additional evidence, the applicant has the responsibility to provide such evidence to the Commission. *Id*.

C. <u>Regulations for the Administration and Enforcement of the Ordinance</u>.

The Commission also adopted Regulations for the Administration and Enforcement of Chapter 16B of the Woodland City Code pursuant to Section 16B-4(f)(2). Section 16B-4(f)(2) permits the Commission to "make and adopt its own rules and regulations for conducting its business consistent with the laws of the state, this chapter, and any guidelines adopted by the city council." It also requires the rules to be reduced to writing and be on file with the Commission secretary at all times. However, as the Ordinance was adopted by the City's voters and the Regulations were not and are, thus, given much less weight, the Regulations expressly provide that "a violation of a provision of the Regulations shall not be grounds to object to any action taken by the Commission, or individual acts of Commission Members or staff that are otherwise authorized by or consistent with the provisions of Chapter 16B." Regulations Preface.

The Regulations provide for a process to adjust the NOI if the actual NOI is less than fifty percent of gross income. The Commission is directed to adjust the NOI upward to equal the operating expenses, and the Regulations contain a specific formula or method for doing so. Regulation § 6.04. That process is further reflected in the NOI worksheet that is a part of the SAA.

The Regulations also set forth the process for the Commission's proceedings. Regulation 9.03(c) provides that City staff may present questions to the applicant no later than 20 days prior to the hearing, and the applicant shall respond no later than 10 days prior to the hearing. The Regulations also provide that all arguments and documentation must be received by the Commission staff no later than seven days prior to the scheduled fair return hearing. Regulation 9.03(d). Regulation 9.03(e) provides that a decision of the Commission on an SAA must be issued no later than ninety (90) days following the date that the Commission received the completed application. The Regulations also provide that the effective date of an allowable adjustment shall be no earlier than sixty (60) days from the date the Special Adjustment is granted.

IV. Procedural History

On July 1, 2016, approximately one year after Owner purchased Idle Wheel, Owner's counsel, Robert Williamson, Jr. of the Hart King law firm, sent a Special Adjustment Application ("SAA" or "Application") on behalf of Owner for a rent increase to the City of Woodland Manufactured Home Fair Practices Commission ("Commission") pursuant to the Ordinance. The City received the SAA on July 2, 2016.

As originally filed, the Application sought an approximate 45 percent increase over the then existing monthly rents. As filed, the Application included the following documents:

1. Completed Special Adjustment Application form, asserting (among other things) that the fair rate of return is 8.93 percent versus the park's actual rate of return of 4.69 percent.

2. Idle Wheel's Net Operating Income ("NOI") worksheet and supporting documents. Applicant selected a base year for purposes of the NOI worksheet from May 2015 through April 2016.

3. Report of Dr. Michael St. John dated July 20, 2016, concluding that the SAA outcome of 45.1% space rent increases, with an average increase of $164 per space is necessary for Idle Wheel to achieve a fair and reasonable return.

4. Report of James B. Netzer dated July 15, 2016, with attachments, the purpose of which was to measure if there was a "Leasehold Advantage" associated with the sale of individual coaches within Idle Wheel and to estimate the current "Market Rent" for the individual spaces at Idle Wheel.

5. Analysis in support of Idle Wheel SAA prepared by Hart King dated July 20, 2016, with 23 supporting documents. Those documents included various Woodland City Council agendas, minutes, and staff reports regarding the City's Mobile Home Space Rent Control Moratorium and Ordinance/Ballot Initiative from 2001 and 2002, the 2014 Registration Form for the Royal Palms Estates park, City of Woodland Resolution No. 6641 regarding Special Adjustment Application fees, the 2016 Notice of Approved Annual Permissive Adjustment, and a 1993 paper authored by Dr. Michael St. John.

6. Idle Wheel disclosure letter pursuant to Commission's Regulations.

The City acknowledged receipt of the SAA by letter dated September 27, 2016. The City determined that the Application was complete on January 11, 2017, but reserved its right to ask additional questions about the Application in writing. Prior to reaching this determination, Owner's counsel filed a petition for writ of mandate against the City seeking to force the City to set a hearing on its SAA. That litigation was stayed pending the hearing.

The Commission held two meetings to discuss the procedure for considering the SAA, on January 25, 2017 and February 8, 2017. During those meetings, the Commission considered and developed a preliminary outline setting forth how it would proceed during the SAA hearing. The Commission did not discuss the substance of the SAA during either meeting.

The Commission anticipated requiring more than one meeting to consider the SAA and scheduled the first meeting as a public hearing for March 15, 2017. To ensure at least 15-day advance written notice to Idle Wheel Residents, City staff deposited written notices of the hearing to Idle Wheel Residents after 5 p.m. on Friday, February 24, 2017, to be sent out on Saturday, February 25, 2017. However, the Ordinance contains conflicting notice procedures and in one place requires at least 20 days notice (*see* Section 16B-9) and yet in another requires only 15 days (*see* Section 16B-14(c)(2)). Bruce Stanton, counsel for the Residents, complained about the City's non-compliance with the Ordinance in sending out the notices. The Applicant subsequently requested that the hearing be rescheduled. The City, Applicant, and Residents agreed to a new hearing date of March 29, 2017. Applicant's counsel and Residents' counsel also agreed that, given the rescheduled hearing date, the Commission would have until April 28, 2017 to issue its final written decision.

The City provided notice of the time, date, and place of the March 29, 2017 hearing to the affected Idle Wheel Residents with 20 days advance written notice. City staff also provided notice of the hearing to Owner's counsel and Commissioners.

The City received additional correspondence, briefs, and documents from counsel for both the Owner and the Residents. While the Regulations provide that all correspondence must be received by the Commission seven days prior to the hearing (*see* Regulations 9.03(d), 12.05(b)(2)), the Commission waives that requirement and accepts all evidence and information submitted by counsel for the Owner and Residents as well as individual Residents.

The duly noticed public hearing took place before the Commission on March 29, 2017. The Commission heard and considered evidence and oral testimony by all interested persons in support of and against the requested Application. Robert G. Williamson Jr. of the Hart King law firm represented the Owner. Bruce Stanton of the Stanton Law Firm represented Idle Wheel Residents. The Commission was staffed by City staff, primarily Senior Planner Dan Sokolow and City Attorney Kara Ueda.

During the public hearing, the Applicant presented one witness, Kelly Allen, a Partner at Talley & Company in Orange, California. Mr. Allen had not previously provided any written documents or other reports to the Commission and did not submit a new report, study, or other summary of findings. Instead, Mr. Allen testified that he reviewed general ledgers, regulations, and the report prepared by Owner's witness Dr. St. John. Mr. Allen informed the Commission that the Applicant hired him to rely upon and test St. John's report and render an opinion based on that report. He presented a PowerPoint presentation, hard copies of which were distributed to the Commission during the meeting. Applicant's counsel also provided copies of Mr. Allen's biography to the Commission.

Mr. Allen's first slide presented a comparison between St. John's report and his firm's review concerning Net Operating Income as a percent of total revenue. Talley & Company made certain adjustments to expenses that were capital improvements and, thus, adjusted expenses by approximately $15,000. While St. John's report concluded that NOI was $331,548.65, Talley's NOI was $346,514.36. With revenue of $803,613.87, the NOI as a percent of gross income changed from 41.3 percent in St. John's report to 43.1 percent on Mr. Allen's slide.

Mr. Allen's other slides addressed the percent change of CPI versus the percent change of rent; a chart showing the effect of NOI as a percent of revenue with a conclusion that the NOI has not been maintained over the past 20 years; a bar graph showing NOI as a percent of revenue and comparing actual return versus the industry; a chart showing varying cap rate data; and a concluding slide showing cap rates and their effect on NOI. The chart stated that the current space rent produced a return on investment of 4.69 percent, with an average space rent of $361.32 and NOI as a percentage of revenue of 41%. On the other hand, with a return on investment of 8.93 percent, as submitted by Mr. Allen, the NOI as a percentage of revenue would be 58 percent, with an average space rent of $517.71 or an increase of approximately $158 per space per month.

Mr. Stanton had an opportunity to, and did, cross-examine Mr. Allen. Mr. Allen stated that he had not prepared a written report and that the PowerPoint slides shown to the Commission was his written product. Mr. Stanton asked Mr. Allen a number of questions about expenses Applicant claimed.

Mr. Stanton presented one witness, Deane F. Sargent. Mr. Sargent stated that he was hired to review whether an 8.9 percent capitalization rate is a fair rate of return. He testified that he has reviewed a lot of parks operated or managed by Waterhouse and that he had some data on the Idle Wheel park already. Mr. Sargent provided his opinion that 8.9 percent is not sustainable and that his opinion was that a 5.67 percent capitalization rate was appropriate due to the sale of the Idle Wheel park being an arms-length transaction. Additionally, the 5.67 percent rate was the actual rate that an investor was willing to pay. Mr. Williamson had an opportunity to, and did, cross-examine Mr. Sargent.

Mr. Williamson also had two witnesses in attendance to answer questions and for purposes of rebuttal: Mr. James Netzer, and Mr. Ruben Garcia. Mr. Netzer provided an expert report as an attachment to Owner's SAA. Mr. Netzer testified that he reviewed rents for manufactured home parks in Davis and Esparto but not necessarily in Woodland. Mr. Ruben Garcia is the Vice President of Waterhouse Management Corporation and oversees operations.

Mr. Garcia testified that he participated in the evaluation of whether Idle Wheel should be purchased by the owner prior to purchase.

During the March 29, 2017 Commission meeting, testimony was not presented under oath. No party had previously asked for witnesses to be sworn. Both Mr. Williamson and Mr. Stanton had the opportunity to present direct testimony by witnesses of their choosing, cross-examine each other's witnesses, and present rebuttal testimony and evidence as well as to introduce additional documents and evidence into the record. The City did not have an expert or present any additional or other witnesses.

Also during the March 29, 2017 meeting, the Commission asked Mr. Williamson and Mr. Stanton to provide two-page letter briefs to the Commission on the issue of a "premium," which is a factor permitted to be considered by the Commission pursuant to its Regulations. Mr. Williamson and Mr. Stanton were also directed to provide closing briefs to the Commission. The Commission requested that both the letter briefs and closing briefs be submitted to the Commission by April 5, 2017, prior to the scheduled 6:30 p.m. Commission meeting. The Commission received all four briefs on the afternoon of April 5, 2017. City staff distributed the briefs to Commissioners during the April 5, 2017 meeting.

The Applicant's Closing Brief stated that the Applicant had set forth evidence demonstrating that a monthly space rent increase, to be implemented on August 1, of **$155.71** per month per space, based on a fair and reasonable return rate of 8.93 percent, is necessary to provide the Applicant with a just and reasonable return. This requested change to the rent ceiling is lower than the amount requested in the SAA. The Applicant also claimed that it should recover, via the rent increase, approximately One Hundred Nine Thousand Dollars ($109,000) for legal and expert costs related to this rent increase process. The Applicant's closing brief contained redacted legal invoices from the Hart King law firm, invoices and travel receipts from its experts, and evidence of Applicant's payment of those fees.

The Applicant also argued that it should be entitled to recover and pass through to Residents the fees paid to the City for processing its application ($16,000.00). In total, the Applicant requested a monthly space rent increase of $253.79, comprised of (1) the fair return adjustment of $155.71, (2) $77.50 attributable to a "delay shortfall" that would be in effect for six months; (3) $8.71 for hearing fees that would be in effect for one year; and (4) $11.87 in attorneys and expert fees that would be amortized at a seven percent interest rate for five years.

The Residents' post-hearing brief argued that the Applicant's NOI analysis requires adjustment and that certain categories of expenses were suspect. In particular, the Residents questioned the claimed water expense (line 5230) in the amount of $85,144.45, fences (line 5440) in the amount of $6,106.97, gas system (line 5450) in the amount of $5,698.04, R&M water system (line 5570) in the amount of $21,321.22, tools and equipment (line 5650) in the amount of $3,470.31, dues, subscriptions, fees (line 5750) in the amount of $3,837.45, advertising and promotion (line 5710) in the amount of $357.38, education and seminars (line 5760) in the amount of $950.00, legal- general (line 5800) in the amount of $12,449.10, and travel (line 5940) in the amount of $22,261.76. The Residents submitted that the total reductions to be deducted is $87,685.23. The Residents argued that with that deduction, the base year NOI exceeds 50% of gross income, and no NOI adjustment is required.

The Commission reopened the public hearing on April 5, 2017 at 6:30 p.m. The Commission was informed that the City received the closing briefs submitted by Applicant's counsel and Residents' counsel, letter briefs on the premium issue submitted by Applicant's counsel and Residents' counsel, and letters from an Idle Wheel Resident and from the Vice President - Zone Administrator of Golden State Manufactured-home Owners League. City staff provided these documents to the Commission and counsel for the Owner and Residents, and had copies available for members of the public.

The Commission heard public comment from 23 individuals. Almost all of the individuals who spoke were Idle Wheel residents, owners, or had an interest in an Idle Wheel motor home. In addition to the residents, Mayor Angel Barajas and Council member Xochitl Rodriguez addressed the Commission. After public comment concluded, the Commission closed the public hearing. The Commission next asked Applicant's counsel, Mr. Robert Williamson, a number of questions concerning the maintenance of Idle Wheel. The questions concerned the car wash, the laundry room, street lighting, water leaks, weed abatement, parking, security, fire hydrants, communications, as well as financial questions concerning the escrow account and the series of transactions for the park purchase, Mr. Williamson stated that he would respond in writing by the following Wednesday, April 12, 2017.

The Commission decided to begin its review of the evidence by reviewing the income statements. The Commission appointed a subcommittee to review the receipts submitted by the Applicant to determine whether the expenses were reasonable and if the receipts substantiated the expenses submitted. The subcommittee was comprised of Commission Chair Bill Marcus and Commission Member Dick Cronin. The subcommittee agreed to meet to review the receipts prior to the Commission's meeting on April 11, 2017. The Commission adjourned its meeting until Tuesday, April 11, 2017 at 6:30 p.m. On Monday, April 10, 2017, Mr. Williamson sent the Commission a two-page letter in response to the Commission's questions.

The Commission met again on April 11, 2017. During that meeting, the Commission received a copy of the Applicant's counsel's April 10 letter in response to the Commission's questions as well as draft spreadsheets generated by the subcommittee. The subcommittee's focus was to review the receipts submitted and to review the list of expenses the Residents argued should not be included. The Commission discussed the receipts and operating expenses and discussed the twelve factors specified in the Ordinance for consideration.

The Commission had previously scheduled a meeting for April 13, 2017. However, due to the unavailability of one, and possibly two Commissioners, for the April 13, 2017 meeting, the Commission decided to instead resume deliberations on April 17, 2017. The Commission also scheduled meetings for April 25 and 26, 2017 to review and adopt a draft decision.

The Commission convened again on April 17, 2017. The Commission covered five topics: (1) completion of the NOI worksheet and review of operating expenses; (2) appropriate capitalization rate for determining a fair rate of return; (3) whether to apply the "premium" issue raised by the Owner in determining whether a rent adjustment should be granted above the 50% NOI minimum established by the Ordinance; (4) an evaluation of the legal, hearing, and expert fees incurred by Applicant; and (5) objections to evidence submitted.

The Commission discussed changing two operating expenses. The first was that Idle Wheel inadvertently paid for a dumpster at Royal Palms. The Commission agreed to remove $2,065 in expenses related to this dumpster. The second operating expense was for a $750 deposit made for the carwash roof replacement. That amount should have been included with the carwash roof capital improvement cost and amortized with the rest of the carwash repair costs.

The Commission agreed to bring the Owner up to the fifty percent NOI and also to account for the passage of time since submittal of the SAA. The Commission also agreed that with these adjustments, the Owner's permissive rent adjustment would effectively be rolled in to this rent adjustment and that the Owner would not be allowed to receive an additional permissive rent adjustment.

The Commission also agreed to a 6.16 percent capitalization rate, which is discussed further below in Section VI.K. The Commission agreed not to consider the premium issue, which is discussed further below in Section V.E. The Commission also provided staff with direction concerning factors to consider in evaluating legal fees claimed by the Owner.

Finally, the Commission determined objections raised by counsel for both the Applicant and the Residents. During the March 29, 2017 and April 5, 2017 meetings, counsel for both the Applicant and the Residents raised various objections to information presented to the Commission. For most objections made, the Commission decided to wait until all of the evidence had been presented to the Commission and to then decide on the objections. During the April 17, 2017 Commission meeting, the Commission addressed each of the objections. The Commission does not follow rules of evidence. Rather, the Commission chose to allow all evidence submitted to be received, and then the Commission would decide how to treat the evidence. The objections raised and the Commission's responses are as follows:

1. Applicant Objections to Exhibits A, D, and E of Residents' Pre-Hearing Brief.

The objection was based on relevance, hearsay, lack of authentication, and foundation as the exhibits concerned other proceedings unrelated to Applicant's SAA. Residents' counsel asserted that these documents were provided for the purpose of impeaching Applicant's expert Dr. St. John. However, Residents' counsel admitted they had less value given Dr. St. John's lack of appearance at the March 29, 2017 Commission hearing.

Exhibit A is a decision of another mobile home rent control agency. The Commission finds it relevant to its review of the SAA as it is demonstrative of how a different mobile home rent control board responded to a legal issue raised by a park owner and Dr. St. John. Exhibits D and E are relevant to the Commission's consideration of the SAA as they establish that there are different sources of data for the calculation of capitalization rates beyond the information used by Dr. St. John and to demonstrate that Dr. St. John has used other data sources in the past. These documents would have been relevant for the purpose of cross-examining Dr. St. John had Applicant chosen to have him appear as a witness. The documents should not be excluded merely because the Applicant chose to bring a different witness while continuing to request that Dr. St. John's report be considered as a part of the SAA.

2. Applicant's Objections to Exhibits A, B, and D of the Sargent Report and the Neet Appraisal.

Applicant objects to three exhibits to the Residents' expert witness, Deane Sargent. These exhibits were relied upon by Residents' expert in formulating and supporting his opinions. It appears to the Commission that the Brabant documents are public records from other rent control boards. The Neet appraisal used by the expert demonstrates that Applicant's purchase price and capitalization rate have been used as a comparable property in other appraisals. However, as the purchase date is incorrect, it is not received or considered by the Commission for the truth of the matter.

3. Residents' Objection to Testimony of Kelly Allen and Dr. St. John Report.

The Residents object to the testimony of Mr. Kelly Allen as Applicant did not submit an expert report from him, and he could not testify as to Dr. St. John's report. Residents also object to the inclusion of the St. John report in the record as the Residents did not have the ability to cross-examine him as Applicants did not produce him as a witness. The Commission received and considered both Mr. Allen's testimony and Dr. St. John's report.

The Commission placed weight on that evidence to which both are entitled and recognized that the substitution of Mr. Allen for Dr. St. John affected the proceedings. The extent to which Mr. Allen could answer questions about Dr. St. John's report has also been considered by the Commission in weighing the evidence. Additionally, to mitigate the Residents' inability to cross-examine Dr. St. John, the Commission also received the exhibits set forth in Residents' brief and Residents' expert's brief.

4. Applicant's Objection to Public Comment.

Applicant objected to the Commission's consideration of public comment as it was not subject to cross-examination and also formed the basis of additional questions from the Commission regarding various amenities at Idle Wheel. The Commission finds that public comment is not expert evidence and has not been given the weight of experts on matters that are within the experts' expertise. The Commission also notes that the Applicant did not request to cross-examine any member of the public. *See Manufactured Home Communities, Inc. v. County of San Luis Obispo*, 167 Cal. App. 4th 705 (2008) (due process concerns when board refused to allow cross-examination). Therefore, the Commission received public comment into the record as non-expert evidence.

After consideration of the objections raised, the Commission adjourned its meeting until Tuesday, April 25, 2017, and provided direction to staff to prepare a draft written document for it to consider and adopt. The Commission held a meeting on April 25, 2017 at 6:30 p.m. to consider and comment upon the draft decision. The Commission discussed and made a determination regarding the amortization of legal fees, discussed further below. The Commission also considered comments from Applicant's counsel regarding the draft decision, including comments on Section VII, the contents of the administrative record. The Commission adjourned its meeting until April 26, 2017.

V. Analysis and Review of SAA

A. Overview

The Ordinance permits three different types of rent adjustments, as specified above: a permissive rent adjustment, an NOI adjustment, and a special adjustment if the park owner cannot achieve a fair rate of return after receiving a permissive adjustment and an NOI adjustment. Here, the Applicant or its predecessor owner has filed a permissive rent adjustment (the first type of adjustment that may be filed) application each year since adoption of the Ordinance with the exception of 2006. The Applicant did not, however, file an NOI application (the second type of adjustment that may be filed). The Ordinance provides that a park owner shall be entitled to a permissive annual adjustment and an NOI adjustment if the park owner believes that it is not receiving a just and reasonable return after receiving the maximum permissive adjustment. Woodland Mun. Code § 16B-8(c)(2).

Instead, Owner filed the SAA. Because the Applicant did not file for an NOI adjustment, the Commission's first task in evaluating Owner's SAA is to analyze the actual NOI and determine if an NOI adjustment is necessary pursuant to the terms of the Ordinance. Only then is it appropriate for the Commission to evaluate whether a special adjustment on top of an NOI is necessary and, if so, to analyze the circumstances that would require an additional adjustment. In evaluating the NOI, the Ordinance presumes that the Applicant is not receiving a fair and reasonable return on investment in the park if the actual NOI is less than fifty percent (50%) of gross income in the base year. Woodland Mun. Code § 16B-9(b).

B. NOI

Actual NOI is calculated by subtracting operating expenses from gross income during the 12-month period selected by the Applicant (May 2015 through April 2016). If NOI is less than fifty percent, then the actual NOI will be adjusted upward to equal the operating expenses.

1. <u>NOI as Claimed on SAA</u>

Here, Applicant asserts gross income of **$802,590.01**. Applicant submitted that its base year operating expenses were **$456,075**[1], consisting of real property taxes and assessments, management expenses, normal repair and maintenance, operating supplies, insurance premiums, other taxes, fees and permits, unbundled utility expenses, bundled utility expenses, employee costs, and other administrative costs. NOI was, as submitted, **$346,515**. The NOI, as submitted, was 43 percent, less than fifty percent of gross income in the base year.

2. Operating Expenses

The Commission requested and received receipts, invoices, and other records documenting operating expenses claimed by Applicant. The Commission's subcommittee of Chair Marcus and Commissioner Cronin met to review the operating expenses claimed by Applicant and the receipts and other documentation submitted by Applicant in support of the expenses. The Ordinance requires all operating expenses to be reasonable and provides that the Applicant has the burden of proving reasonableness. Woodland Mun. Code § 16B-13(C). The Code further provides that the Commission may adjust the expense to reflect the normal industry or other comparable standard.

Upon review of that information by the full Commission, as well as additional decisions made by the Commission concerning Applicant's expenses, the Commission finds that **$32,943** in claimed expenses should not have been included in Applicant's NOI worksheet. The following expenses are listed by type and line number from the SAA along with a brief explanation about why the Commission excluded the expense.

a. Cost of SAA (5800/5870). The **$10,745** claimed for the cost of filing the application may not be included in the NOI pursuant to Section 16B-13(B)(4); although the Commission may choose to allow recovery as an amortized cost.

b. 2014 Tax Preparation Fees (5700). The **$300** cost is out of the applicable date range, and there is a 2015 Tax Preparation expense also requested.

c. Employment Insurance Taxes (5243/5244). The **$558** cost associated with two sets of unemployment insurance taxes paid in a single year is a non-recurring cost and should be removed according to the Applicant's witness Mr. Allen.

[1] As originally submitted, Applicant's operating expenses were $471,041.36. While Applicant did not submit an amended SAA or NOI Worksheet, Applicant's witness Kelly Allen modified the expenses as a result of his review of Dr. St. John's report and Applicant's expenses.

d. Legal Cost of LLC Formation (5800). The **$2,104** cost is not an operating expense, and the cost was not incurred during the applicable date range. The Commission also declines to amortize the cost.

e. Fictitious Business Name Statement (5750). 80 percent of the total cost, or **$77**, is removed from operating expenses as the cost is incurred every five years.

f. Lawn Mower Purchase (5650). 80 percent of the lawn mower cost, or **$2,720**, is removed from annual operating expenses to average the cost over five years.

g. Gifts and Meals to Lender (5710, 5830). The **$290** for gifts to, and the **$83** for a meal with, the Applicant's lender are unnecessary to provide service and are non-recurring.

h. Gift to Management Staff. The **$68** for a holiday gift to management staff is unnecessary to provide service.

i. Interest Earned on Reserves and Reserve Release (5750). The **$150** for interest earned on reserves and the **$150** for reserve release both appear to have misclassified as expenses, and the Applicant could not explain it at the hearing.

j. Late Fees (5750). The **$19** in late fees are unnecessary to provide service.

k. 2014 Income Tax Penalty. The **$70** in penalties are unnecessary to provide service and are outside of the applicable date range.

l. Utility Consulting (5870)**.** The **$46** for CARE/FERA consulting is unnecessary and is only necessary at submetered parks. Idle Wheel residents receive energy service from PG&E.

m. Training Seminar. The **$950** for a training seminar was not backed up with documentation. When asked about the training seminar during the Commission's hearing, the Applicant's witness did not have any specific information (topic, purpose, date, location) about the training.

n. Water Bill. The Commission reduces the water bill by **$11,384.35**. Applicant submitted a total expense of $85,144.45 in water bills for the base year. Residents proposed an adjustment of $29,917, stating that it appears from the Applicant's entries that there were significant system leaks requiring capital repairs. Residents note, and the Commission agrees, that water bills for December and January (billed in January and February) were much higher than the other ten months of the year. The January 2016 bill was $9,357.57, and the February 2016 bill was $14,320.13. In comparison, the average water bill for the remaining ten months was $6,146.68. As water usage is typically not high during these months, and given that a water leak was repaired in January according to the general ledger, the Commission assumes a water leak caused the spike in water costs. Removing the two high months and using the average monthly cost of $6,146.68 results in total annual water expenses of $73,760.10. The difference between the submitted expense and the annualized average is $11,384.35.

o. Travel (5940). The Commission removes **$415** related to travel. Residents challenged $13,333 of travel expenses for an employee. The Applicant claims that its employee receives a portion of compensation as travel reimbursement, which reduces the taxes paid by both the Applicant and the employee. The Commission adjustment is only to annualize the costs, which contained 53 weeks of expense.

p. Dumpster at Royal Palm. The Commission concluded that **$2,065** should be removed from expenses as Idle Wheel was paying for a dumpster located at Royal Palm. The Commission provided Applicant an opportunity to respond to this issue as it did not arise until the April 17, 2017 meeting. The Applicant reviewed its records and informed the City on April 21, 2017 that it agreed that due to an administrative oversight, Owner inadvertently paid Waste Management for a four yard dumpster at Royal Palm. The Applicant, however, claims that the amount should be $1,548.70.

q. Deposit for Roof Replacement (Account 5400). Applicant showed a **$750** deposit (10 percent) for the carwash roof replacement that should not be treated as an expense but, rather, as an amortized cost as the carwash roof replacement is not considered an operating expense.

In sum, the Commission concludes that Thirty-two Thousand Nine Hundred Forty-three Dollars **($32,943)** should be deducted from Applicant's claimed operating expenses.

3. NOI As Adjusted by Commission

The Commission next removed $32,943 from Applicant's claimed operating expenses, which results in a figure of **$423,132** for operating expenses. The revised NOI (gross income less operating expenses) is:

NOI: $802,590 - $423,132 = $379,458.

The return, as adjusted by the Commission, is 47.3 percent, which is under 50 percent. Thus, the Commission finds the presumption that the Applicant was achieving a fair rate of return has not been met as the presumption is that the Applicant must achieve at least 50 percent.

The NOI must be adjusted in order for the Applicant to achieve a fair return under the Ordinance. The Commission considers one of the factors in adjusting the NOI to be inflation. A number of factors were considered in adjusting the NOI, as follows, and in accordance with the Commission's NOI worksheet, a copy of which is attached hereto as **Exhibit A**:

- Using Section 2 of the NOI Worksheet and applying forty percent of the CPI adopted below to determine the allowable percentage increase of the base year NOI (lines 23 through 33 of the NOI Worksheet) yields an additional **$6,950.27** and increases the adjusted NOI to $430,082 (base year NOI using operating expenses rather than NOI pursuant to line 28 of the NOI Worksheet plus 40% CPI).
- Next, the Commission subtracted unbundled utility expenses (line 24.1 of the NOI worksheet) of $131,506.38, resulting in $291,624.27 in an adjusted NOI (line 36.1 of the NOI worksheet).
- Then the Commission determined inflation on operating expenses. Inflation from line 32 of the NOI Worksheet is .017693. The Commission recognizes, however, that the City's time to process and consider Applicant's SAA may have caused some financial difficulty or uncertainty to Applicant and, thus, grants an inflation-related adjustment through February 2017 of 0.041064 for operating expenses, resulting in an additional **$11,975.39**. The total operating expenses for Applicant is **$435,659**[2]**.**
- The next step is determining the allowable adjusted gross income in Line 37 of the NOI Worksheet. This number is determined by adding the adjusted NOI from line 35 ($430,890.90) to the estimated operating expenses on line 36 or 36.3 ($435,106.04). This total is $865,186.94. However, to achieve fifty percent recovery based on the operating expenses of $435,106.04, the allowable gross income must increase to $870,212.08.
- The new gross space rent ceiling (line 38 of the NOI Worksheet) before allowance for uncollected space rents then subtracts other income of $139,203.48 (line 8 of the NOI Worksheet) for gross space rent of $731,008.60. The allowance

[2] The Commission notes, however, that with this inflation-related adjustment, the permissive adjustment Applicant previously filed for this year is dismissed as inflation for this period is covered by the permissive adjustment period.

for uncollected rent is 0.9937 (line 39 of NOI Worksheet) for an Adjusted Space Rent Ceiling of $735,679.42 (line 40 of the NOI Worksheet).

- The resulting space rent ceiling adjustment (line 40 of NOI Worksheet) subtracts the base year gross space rents from the adjusted space rent ceiling for a **$68,054.15** resulting space rent ceiling adjustment.
- Thus, the percentage increase resulting from the NOI is **10.19 percent**. Using these numbers results in a 6.16% capitalization rate for just the NOI:

  $435,106.04 ($870,212.08 for allowable gross income, including $5,025.14 adjustment. - $435,106.04 in operating expenses) / **$7,062,977** (park purchase price) = 0.061603 (6.16%).

C **Amortized Costs/Temporary Rent Increases**

The Commission is authorized to amortize capital improvements over the reasonable life of the improvement or such other period as the Commission deems reasonable under the circumstances. Woodland Mun. Code § 16B-13(a)(9). The Commission finds that the costs for three improvements may be included in the rent increase: pool replastering, slab replacement, and the carwash roof. All of these amortizations are assigned an interest rate equal to the capitalization rate of 6.16%.

1. Pool Replastering. The Commission finds that the pool replastering will be permitted to be included in the rent increase. The Commission accepts the Applicant's $19,180.00 cost for the pool replastering and finds an amortization period of fifteen years (**$1.962.24/year**) with an interest rate of 6.16% to be reasonable.

2. Slab Replacement. The Commission finds that the slab replacement will be permitted to be included in the rent increase. The Commission accepts the Applicant's $6,800 cost for the slab replacement and finds an amortization period of fifteen years (**$695.76/year**) with an interest rate of 6.16% to be reasonable.

3. Carwash Roof.

The Commission noted that the carwash roof deposit of $750 was incorrectly considered by the Applicant to be an operating expense. Applicant agrees that the deposit should have been counted as an amortized capital improvement and that the $750 should be added to the cost of the carwash roof ($6,750.00). Thus, the total amount for the carwash roof is $7,500. The

Commission finds that a twenty year amortization period with an interest rate of 6.16% is reasonable (**$653.16/year).**

4. Business Formation Cost.

The Commission rejects Applicant's request to amortize $2,104 for business formation costs as it was incurred in March 2015 prior to the Idle Wheel's ownership of the park.

5. Legal Costs.

The Ordinance provides that attorneys' fees and costs incurred in Commission proceedings, or in legal proceedings against the Commission or challenging the Ordinance, may not be covered as operating expenses. Woodland Mun. Code § 16B-13(B)(4). Applicant claimed $109,001.04 in legal and expert costs attributable to consultation, preparation, and participation in the City's mobile home rent control process[3]. Applicant's Closing Brief, 2:22-23. Applicant did not provide a separate accounting of its various experts or legal costs but submitted invoices as "Exhibit 1" to its post-hearing brief, which primarily consist of invoices from its experts and redacted time records of the Hart King law firm. Residents submitted in their Pre-Hearing Brief that the California Supreme Court has authorized attorneys' fees to be recovered in pursuit of a rent increase but that the fees must be reasonable and bear a relationship to the success achieved in connection with the expenditure of fees. *See Galland v. City of Clovis*, 24 Cal. 4th 1003, 1040 (2001).

Applicant also submitted $10,745 of attorneys' and experts' fees at a part of its operating expense in its NOI Worksheet. The Commission removed this amount from the Applicant's NOI filing but added it to the amount to be amortized for a total of $119,746.04.

The Commission's review of the time records indicates that the Hart King firm billed Idle Wheel MHC LLP **$78,200.47**. The Commission evaluated the time records of the Hart King firm using the following factors:

a. Hourly rate. Mr. Robert Williamson and Mr. William Dahlin are both partners in the Hart King law firm and, according to the firm's web site, each have over thirty years of legal experience. These two attorneys did virtually all of the legal work for this matter, at an hourly rate of $350/hour. The Commission views this rate as high but not unreasonably so in light of the attorneys' experience. However, as discussed further, the Commission finds that

[3] The Commission's review of expenses submitted did not add up to this total. However, the Commission in this decision addresses and evaluates the legal fees and expert witnesses separately.

some of the work could have been done by more junior attorneys, decreasing the hourly rate. Numerous time entries for Mr. Robert Williamson were for "research and analysis" on subjects that the law firm redacted. While the Commission understands that the redactions were to protect attorney-client confidentiality, it also has no way of knowing whether the research and analysis was on (a) a novel issue particular to this case; (b) highly specialized matters that could not be delegated to a more junior attorney with a lower billing rate; or (c) whether such work should have already been within the knowledge of the attorney or the firm as "Manufactured Home Communities" is one of the three primary areas the firm specializes in according to its web site. Additionally, work such as organizing and assembling exhibits could have been done by more junior attorneys or paralegals at lower billing rates.

Accordingly, the Commission finds that 9.2 hours could have been billed at lower billing rates. Taking into account that less experienced attorneys may require more time to perform the same work, the Commission reduces the total amount of such hours to a slightly more modest billing rate of $300 per hour, and **deducts $460** for those hours worked.

b. Duplication of Effort. Some of time entries for this matter show that the same work was done by two attorneys. The Commission finds that no explanation has been offered to explain why two partners were required to do the same work. As such, the Commission **deducts $2,510** from the total amount of attorneys' fees recoverable in this matter.

c. Unnecessary Work for the Proceedings. The Hart King firm billed time for work the Commission finds did not provide value for this proceeding. First, the firm's attorneys spent time reviewing past city council meetings and staff reports. The firm received many old documents from the City pursuant to a Public Records Act request, and the firm also chose to attach many of these old documents to its SAA. The Commission did not find these documents useful to this proceeding and does not find that the Hart King time spent reviewing these documents added value to the SAA and/or the Commission proceedings. Second, time spent reviewing and revising a proposed fee agreement for an unnamed expert witness is administrative in nature and should be absorbed by the firm as an operational expense. Third, the firm billed time for HCD title searches for sold units, which information was presumably used by Netzer. As the Commission is not relying on Netzer's report, time spent by counsel related to the Netzer report or conferring with Netzer will not be included as a part of the rent increase. Similarly, the firm billed time for conferring with Mr. Allen. The Commission finds that having two witnesses (Dr. St. John and Mr. Allen) perform essentially the same task(s) was redundant and unnecessary. Fourth, the firm billed a small amount of time for work it designated as "No Charge." If the firm did not intend to bill it to the client, the amount should not be included in the rent increase. Accordingly, the Commission **deducts $10,957.50** from the total amount of attorneys' fees recoverable in this matter.

d. Writ Proceeding. Subsequent to the filing of its SAA and prior to the Commission deeming the SAA complete, Applicant filed a petition for writ of mandate against the City of Woodland alleging that the City violated the Municipal Code by not scheduling the SAA for a hearing within 60 days. The Commission does not dispute that counsel spent time drafting this petition. However, the Commission notes that the law firm's time records do not show any attempt to locate the City's counsel to meet and confer regarding avoiding a lawsuit. Instead, Applicant's counsel sent letters to the City planner but never called City staff or asked to confer with the City Attorney. The Commission further finds that the lawsuit did not add any value to the Commission's proceedings. Accordingly, the Commission **deducts $5,130** from the total amount of attorneys' fees recoverable in this matter.

e. Legal Expenses. The Commission also finds that standard photocopying and color printing charges should not be recoverable. The Commission in particular does not see a need for color photocopies, which are costly. The Commission thus deducts **$1,294.75** from the total amount of attorneys' fees recoverable in this matter.

f. Interest. The Hart King billings contain interest charged to the Applicant's management company because they did not pay two of their bills on time. These charges are not reasonable for recovery from the residents. The Commission thus deducts **$273.79** from the total amount of attorneys' fees recoverable in this matter.

g. Other Considerations. In determining the total amount of attorneys' fees that are reasonable in this proceeding, the Commission also takes the following factors into consideration: (1) the Residents retained private outside counsel for this proceeding and used the services of an expert who testified at the Commission hearing; (2) other than the fee for the hearing discussed below, the City did not pass on all of its costs for staff time and City Attorney expenses to the Applicant, which the Applicant presumably would have asked to have had included in the requested rent increase; and (3) Applicant's counsel incurred costs for the month of April 2017 that have not been submitted and will not be included in a determination of reasonable attorneys' fees. In light of these factors competing against each other, the Commission concludes that the attorneys' fees submitted by Applicant, minus the deductions noted above provide a reasonable recovery of attorneys' fees for this proceeding and amount to Fifty-seven Thousand Five Hundred Seventy-four Dollars and Forty-three Cents (**$57,574.43).**

The Commission, however, finds that had the Applicant filed an NOI application rather than a SAA, Applicant would have received a similar, if not the same, rent increase and that filing an NOI application would have been less complicated. Presumably Applicant's attorneys' fees would also have been lower had an NOI application been filed rather than a SAA. In particular, some of Applicant's counsel's time spent preparing witnesses and reviewing their reports, and the holding of multiple Commission hearings and meetings, may not have been necessary for an NOI application. As it is not possible to determine with precision how much time would have been spent by Applicant's counsel had Applicant submitted an NOI application rather than a Special Adjustment Application, the Commission determines instead that the attorneys' fees shall be further discounted by not applying an interest rate to the amortization. Thus, the attorneys' fees of $57,574.43 will be amortized for a ten-year period, with no interest, or a yearly amount of $5,757.44. Each Resident will, on average, experience a temporary rent increase for those ten years of $37.63/year, or $3.14/month.

6. <u>Expert Costs</u>.

Applicant seeks cost recovery for its three experts:

a. <u>Dr. Michael St. John</u>: Applicant seeks recovery for **$19,865** in costs incurred for hiring St. John & Associates to provide an expert report. Dr. St. John performed work for $200.00/hour. The Commission accepted St. John's report even though he did not testify on behalf of Applicant. The Commission will allow recovery for this expert – except for $400.00 of clerical work charged at $100 per hour that should be part of the consultant's administrative overhead – for a total of **$19,465** and will amortize the cost.

b. <u>Netzer</u>: Applicant seeks recovery of **$10,533** in costs incurred for hiring Netzer & Associates. Netzer performed an appraisal, conducted research, wrote a report, and traveled to Woodland to attend the public hearing. Applicant made Netzer available for questions from the Commission. As discussed below, the Commission found neither Netzer's report nor his testimony useful in assisting the Commission evaluate the SAA or the NOI. Thus, the

Commission will not allow any portion of Netzer's report to be recovered in the form of a rent increase.

c. Talley & Company (Kelly Allen): Applicant seeks recovery of **$8,500** in costs incurred for hiring Talley & Company. Applicant submitted a retainer invoice dated February 27, 2017 from Talley & Company for professional services to be performed pursuant to an engagement letter that was not included with Applicant's submittal. It is unclear for what purpose Talley & Company was hired, what the scope of work was for which Talley & Company was engaged, and whether the $8,500 billed was reasonable in light of the work performed. The Commission finds that while Mr. Allen appeared before the Commission during the public hearing as the Applicant's sole witness, Mr. Allen's value appears to have been limited to a peer review of St. John & Associates' report and the preparation of a PowerPoint presentation. Regardless, the Commission finds the hiring of two experts to do similar, if not the same, work to be redundant and unnecessary. In light of the fact that Talley & Company's costs are less than St. John's, the Commission finds it reasonable to permit St. John's costs but to disallow Talley & Company's.

d. Conclusion. The Commission will allow **$19,465** in costs attributable to the work performed by St. John & Associates. Similar to the attorneys' fee issue discussed above, the Commission finds that the Applicant would have incurred fewer costs had it filed an NOI application rather than a SAA and similarly concludes that expert fees should be amortized for a period of ten years but without any interest.

7. Hearing Costs. The Applicant paid a **$16,000** fee under protest to the Commission. This fee was intended to be an approximate estimate of the amount of City time necessary to process the SAA. However, the City has far exceeded that amount for legal and staff costs but has not separately billed Applicant for that time. The City's Ordinance permits recovery for the $16,000 fee via a rent increase if authorized by the Commission. The Commission authorizes recovery of the $16,000 hearing fee and amortizes that cost over a ten year period at a 6.16 percent interest rate.

8. Amortized Costs and Temporary Rent Increase. In sum, the Commission authorizes the following capital improvements, legal fees, an expert witness, and hearing fees, which will result in monthly increases on a temporary basis, as follows:

	Amount	Years	Amortization
Pool Replaster	$ 19,180.00	15	$ 1,962.24
Slab Replacement	$ 6,800.00	15	$ 695.76
Carwash Roof	$ 7,500.00	20	$ 653.16
Legal/Expert Costs	$ 77,039.43	10	$ 7,703.94
City Hearing Fee	$ 16,000.00	10	$ 2,146.92
Total Amortized			$ 13,162.02

The "Total Amortized" amount is the yearly cost recovery that will be divided evenly across the 153 manufactured home spaces at Idle Wheel. The temporary rent increases as a result of amortization will result in, on average, a $7.17 increase for the first ten years, a $1.80 increase for years 10 through 15, and a $0.36 increase for years 15-20.

D. Premium or Leasehold Advantage Issue

Section 9.04(d) provides that the Commission may consider, if the applicant raises it, "factors related to the capture by incumbent residents of a premium upon the sale of their mobilehomes attributable to the net value of the benefits of space rent control, including, but not limited to: (1) whether a premium exists; (2) whether other external factors exist that prevent the capture of a premium; and (3) whether a Special Adjustment is needed to prevent the creation or capture of such a premium." However, the Ordinance does not require consideration of this factor, and the Regulations permit (but do not require) its consideration. The Commission concludes that while it is not required to consider the factor, it received documentary evidence and testimony on this issue and will evaluate it.

Mr. Netzer's report addresses this issue. The report claimed to develop a fair rent as a matter of appraisal by calculating the difference between Idle Wheel mobile home sales prices to what a similar mobile home would sell for on a dealer's lot, using the National Automobile Dealer Association (NADA) database. Mr. Netzer argued that the difference was the premium resulting from rent control. For example, if an Idle Wheel mobile home sold for an average of $40,000 but would have an average value of $6,000 on the dealer's lot, the $34,000 difference is entirely attributable to rent control. Thus, he concluded that space rents should be between $635 to $645 per month to account for the premium.

The Commission finds, though, that valuation of a mobile home on a dealer's lot overestimates any possible premium. Mr. Netzer testified on March 29, 2017 that mobile homes in parks without rent control would be worth more than if they were on a dealer's lot. He also agreed that there are costs associated with moving a mobile home from a dealer's lot to a new park that he had not considered and agreed that older mobile homes sometimes may not be moved from a dealer's lot to a park, which would depress their value. Mr. Netzer also testified that he could have conducted a different kind of analysis, such as comparing sales prices of mobile homes in rent-controlled parks with those in similar parks without rent control, but he did not do that.

The Commission further finds that Mr. Netzer also used an interest rate of 10 percent without supporting documentation in his report supporting the reasonableness of that rate. He also testified on March 29, 2017 that if he had used a lower interest rate, his estimate of the appraised rate would have been lower.

The Commission further finds that the high rents and lower mobile home sales prices that Netzer's appraisal states is reasonable would reduce the quality of mobile homes in Idle Wheel by having high space rents and very low values. Idle Wheel residents may not just have space rents, but some also have mortgages or loans on their mobile homes. The Commission finds that a large increase in rents and a similar large reduction in value of the mobile home would create significant economic hardships for Residents and devalue a significant asset. In that scenario, Residents would not have an incentive to maintain their mobile homes. Mr. Netzer also did not complete a physical inspection of Idle Wheel in reaching his conclusion and could not specifically comment on the quality of the mobile homes in Idle Wheel.

As the Commission finds that it is not required to consider this factor and does not find the Netzer report to present credible evidence, the Commission declines to consider this factor in its determining the Special Adjustment Application and gives it no weight.

VI. Consideration of Factors Bearing on Fair Return

Section 16B-14(d)(7) of the Woodland Municipal Code requires the Commission to consider twelve factors, but none of these factors is given any greater or less prior priority of the other. According to the Applicant's expert, Dr. St. John, the SAA covered factors A, D, E, G, H, and K, and factors F, I, J, and L are inapplicable. Each is discussed here.

A. Changes in the Consumer Price Index.

It appears undisputed that the CPI has increased. *See* Residents Pre-Hearing Brief, 10:19-20. Applicant argued that the Ordinance depressed rents by not permitting 100 percent of

CPI to be used in the permissive rent adjustment formula. Applicant claims that inflation (100 % of CPI) increased 61 percent while Idle Wheel's cumulative rent increase rose 43.65 percent, meaning that the rent ceiling has not kept up to inflation. The Commission agrees that CPI has increased and also notes that the Ordinance has methods of increasing space rents when the park owner is not receiving a fair return.

B. <u>Rent for Comparable Mobile Home Spaces in the City of Woodland</u>

While Mr. Netzer, on behalf of the Applicant, studied mobile home space rents in the neighboring community of Davis, California and another Yolo County community of Esparto, the Commission finds that these mobile home spaces are not comparable to Idle Wheel and that they are located in different rental markets. Applicant argued in its brief that a fair market rent analysis is "circular" because all mobile home spaces within the City are subject to rent control except for resident-owned Leisureville. City staff provided the Commission with a comparison of mobile home space rents in the City of Woodland. Most of the mobile home spaces within the City rent for similar rents as those at Idle Wheel, in the mid $300 to $400 range. The Commission finds that there is not a need to increase rents to bring Idle Wheel rents up to other similar parks in the City of Woodland and that a rent increase of almost any amount would cause Idle Wheel's space rents to be on the higher end (and potentially be the highest) of manufactured home parks in the City of Woodland. The Applicant did not provide any information to address comparable mobile home spaces in the City of Woodland.

Regardless of comparable rents for mobile home spaces in the City of Woodland, the Commission finds that it is bound by the fifty percent presumption in the Ordinance and that it cannot consider comparable mobile home space rents in isolation.

C. <u>Length of Time Since Last Rent Increase or Rent Adjustment</u>

Idle Wheel has received a permissive rent adjustment each year it applied for one, including last year when it received a permissive rent increase of 1.58%. The Commission also finds that with this rent increase, the Owner shall not be entitled to an annual permissive rent increase for this year.

D. <u>Capital Improvements Made to the Park and Costs for Such Improvements</u>

The Commission finds that the Applicant made four capital improvements to Idle Wheel: road repair, which is part of the capitalization of the park, slab repair, pool resurfacing, and car wash roof. Applicant's costs for the latter three repairs have been amortized and calculated as a part of the rent increase granted by the Commission. The capitalization rate has been applied to the road repair.

E. Changes in Property Taxes or Other Assessed Taxes to the Park

Idle Wheel submitted documentation of an increase in property taxes due to the change in ownership. The Commission finds that factor is already considered in the NOI worksheet.

F. Rent Paid by Park Owner/Applicant for Leased Land

The Commission has not received any evidence of the applicability of this factor and, instead, has received evidence of the park's purchase by the Applicant. The Commission finds this factor to be inapplicable to the fair return analysis.

G. Changes in Utility Charges or Rates

This does not appear to have been a factor in the SAA although the Commission did make adjustments for a suspected water leak and a rise in water costs.

H. Changes in Reasonable Operating and Maintenance Expenses

The Applicant did not submit any information regarding changes in reasonable operating and maintenance expenses. Nor has the Commission found any evidence of such change. The Commission takes note of the Residents' challenge to three separate maintenance items and their argument that the Applicant should not recover the full cost for fence maintenance, gas maintenance, and water system maintenance. The actual maintenance costs incurred were 5.62% of base year revenue, which the Commission finds is reasonable. The Commission also does not have ongoing maintenance records to determine whether there have been changes in operation and maintenance expenses.

I. Need for Repairs Caused by Circumstances Other than Ordinary Wear and Tear

The Applicant has submitted documentation for road replacement, which the Commission has considered as a part of Owner's capital expenses.

J. Amount and Quality of Services and Amenities Provided by the Park Owner/Applicant to the Park Residents

There does not seem to be a dispute that the park amenities are average. Mr. Netzer's report (while not relied on for the purposes for which it was submitted) makes that assumption. The Residents pre-hearing brief refers to the amenities as "average at best." Residents' Pre-Hearing Brief, 11:17.

Residents provided information to the Commission about safety concerns, laundry facilities not being operational, furniture being sparsely provided in the club room, cracks in the pavement, and problems with the drainage system. The Applicant has provided very little information about the amenities. The Applicant did submit a letter on April 10, 2017 addressing some of the Commission's questions about amenities although the exact status of some of the amenities is still unclear. For example, concerning the laundry facilities, Applicant notes that prior to its purchase, the laundry facility machines had been either down or off and that most of the out of service machines occurred over the past 30-60 days. Applicant also states that new machines were recently purchased and installed, but it is unclear whether there are operational machines presently in use at Idle Wheel.

K. Park Owner/Applicant's Investment, Additional Investments, Appreciation, Depreciation, and Possible Tax Benefits

Applicant purchased Idle Wheel for $6,700,000. The owner financed $5,000,000.00 of the purchase price, at a rate of 4.15 percent, with a 4.37 APR for ten years. The capitalization rate at the time of purchase was 5.67 percent. The record does not contain any testimony or documentary evidence establishing that Owner analyzed potential returns on its investment in Idle Wheel prior to purchase. There is also no evidence in the record of Owner's intent to seek a NOI or Special Adjustment Application from the Commission following the purchase, and there is no evidence in the record about Owner's motivation for purchasing Idle Wheel or intent for the park following purchase.

The Commission considered written and oral testimony about the appropriate capitalization rate as it governs the fair rate of return analysis. Applicant's SAA contended that an 8.93 percent rate of return was necessary in order to achieve a fair return while the Residents' expert argued that a rate between five to six and a half is the prevailing rate of return. Residents claim that the conclusion is supported by data from Costar Group, Inc. as well as other sources, including appraisal reports prepared by John Neet and James Brabant.

The Commission finds that the data provided by the CoStar Group is the most reliable of all of the various sources presented by Applicant (including RealtyRates) and the Residents. CoStar purports to use actual mobile home park sales data.

The Commission also finds persuasive the reasoning set forth by Residents that a fair rate of return that is considerably higher than the rate at the time of purchase, especially for a recent purchase, is unreasonable. The Commission also finds that the owner made a sound investment with a very low vacancy rate and knew, or at least should have known, of the City's applicable rent control restrictions. The Commission finds that the Idle Wheel park is a stable long-term investment and that the property has appreciated significantly over the last decade, as evidenced by the increase in property taxes assessed.

Therefore, the Commission finds that a capitalization rate of in the range of **6.2 percent** is reasonable in light of those reasons. The specific capitalization rate of 6.16% that results after granting the NOI increase reflects the CoStar weighted average rate for 2016 and early 2017 and is appropriate without any additional change.

L. Any Particular Hardship Circumstances for the Park Owner/Applicant or Residents

In submitting the SAA, Applicant has asserted it was not receiving a fair rate of return. Residents have set forth hardship claims. Numerous Idle Wheel Residents submitted letters to the City explaining that a rent increase in the amount proposed would create a significant financial burden. Residents expressed concerns that the value of their mobile homes would decrease given the higher monthly rent. Many Residents noted that they are on fixed incomes and would find it extremely difficult to pay more each month in rent. In addition, the Residents held a meeting and distributed surveys for Residents to complete. The Residents provided the completed surveys to the City. Many residents indicated that they are barely meeting their household expenses with their monthly household incomes and that they could not afford to pay more rent.

VII. Contents of Administrative Record

The Commission considered and relied upon numerous documents as well as testimony before the Commission. Together, the briefs, documents, evidence, testimony, and public comment received prior to and during the Commission meetings constitute the administrative record of proceedings related to the Special Adjustment Application submitted by Idle Wheel MHP LLC. The contents of the Administrative Record is as follows, and all documents are on file with the City Clerk of the City of Woodland:

1. Special Adjustment Application submitted by Idle Wheel MHP LLC on July 21, 2016, which includes the documents noted in Section IV above.

2. Written correspondence dated August 30, 2016, September 21, 2016, and October 4, 2016 from Applicant's counsel to City of Woodland regarding completeness of Special Adjustment Application and setting of hearing date,

3. Written correspondence dated September 27, 2016 from City of Woodland to Applicant regarding Special Adjustment Application.

4. Written correspondence dated January 11, 2017, transmitted via electronic mail on January 13, 2017, from City of Woodland to Applicant's counsel informing Applicant of City's completeness determination and reserving City's right to ask written questions regarding the contents of the SAA.

5. Commission meeting agendas of January 25, 2017 and February 8, 2017 when the Commission considered and developed a preliminary outline setting forth how it would proceed during the SAA hearing.

6. City of Woodland letter to Applicant's counsel asking questions about the SAA, dated and sent via electronic mail on March 1, 2017.

7. Applicant's Pre-Hearing Brief, received by the City of Woodland on March 23, 2017.

8. March 23, 2017 correspondence received from Bill Long regarding Idle Wheel MHP LLC balance sheet.

9. Residents' Pre-Hearing Brief, received by the City of Woodland on March 27, 2017, including five exhibits, an expert report from Deane F. Sargent and five exhibits to that report.

10. Applicant's counsel's letter to City of Woodland dated and received on March 27, 2017, sent in response to City's March 1, 2017 letter asking questions about the SAA.

11. 679 pages of receipts, invoices, and similar documents in support of Applicant's expenses, submitted to the City on March 27, 2017.

12. Commission Staff Report for the March 29, 2017 Commission Public Hearing, including six attachments: Special Adjustment Application; Public Hearing Notice Proof of Publication; Correspondence from Idle Wheel Residents and Community Members; Resident Surveys submitted by Idle Wheel/Royal Palm Community Association; Correspondence from City of Woodland to Idle Wheel's Counsel dated March 1, 2017, and Chapter 16B of the City of Woodland Municipal Code.

13. PowerPoint slide presentation presented by Kelly Allen during the March 29, 2017 Commission hearing and biography of Mr. Allen.

14. Letter dated April 3, 2017 from Betty Storey, Vice President – Zone Administrator of Golden State Manufactured-home Owners League.

15. Letter dated March 29, 2017, received by the City on April 3, 2017, from Mohammad Chuadhry, Idle Wheel resident.

16. Applicant's letter brief on the "premium" issue dated and submitted April 5, 2017, including two exhibits.

17. Applicant's closing brief dated and submitted April 5, 2017, including two exhibits

18. Residents' letter brief on the "premium" issue dated and submitted April 5, 2017, including one attachment.

19. Residents' Post-Hearing brief dated and submitted April 5, 2017, including one exhibit.

20. Applicant's April 10, 2017 letter to the Commission addressing Commission questions.

21. City of Woodland Manufactured Home Fair Practices Commission agendas for March 29, 2017, April 5, 2017, April 11, 2017, April 17, 2017, April 25, and April 26, 2017, and minutes for the same meetings (which at the time of this decision had not yet been adopted by the Commission).

22. Written transcript of Commission's March 29, 2017 meeting and video recordings of meetings of March 29, 2017, April 5, 2017, April 11, 2017, April 17, 2017, April 25, 2017, and April 26, 2017.

VIII. Conclusion

Based on substantial evidence in the record and in accordance with Chapter 16B of the City of Woodland Municipal Code, the Commission grants the Applicant's Special Adjustment Application, in part, for a space rent increase of 10.19 percent, which is approximately **$37.07** per month per space. Pursuant to Applicant's closing brief, the new rate increase shall go into effect on **August 1, 2017**. Costs that have been amortized shall be added to the rent as temporary rent increases in accordance with the rent schedule attached to this decision as **Attachment B** to the Commission's resolution, and shall result in temporary rent increases for the first ten years of $7.17 on average that shall decrease over time until the twentieth year.

Pursuant to Section 16B-14(h)(3) of the City of Woodland Municipal Code, the Commission's decision is final.

EXHIBIT A

MHFPC NET OPERATING INCOME WORKSHEET, ADJUSTED

EXHIBIT B

SPACE RENT SCHEDULE FOR IDLE WHEEL ESTATES MHP LLC

	Base Rent Increase (assuming no annual permissive adjustment)	Amortized Cost	Total Increase
Years 1-10	**$37.07**	**+$7.17**	**$44.24**
Years 11-15	**$37.07**	**+$1.80**	**$38.87**
Years 15-20	**$37.07**	**+0.36**	**$37.43**

A. Base Year Gross Income	
1 - Space rents actually collection from tenants	663,386.53
2. Uncollected space rents due to vacancy beyond the park owner's control	4,238.74
3. Uncollected space rents due to bad debts beyond the park owner's control	
4. **Gross space rents.** Add lines 1 through 3 and enter result here.	667,625.27
5. *Net* income from sale of natural gas separately billed to park residents [*See* Sec. 16B.12(c.)]	
6. *Net* income from sale of electricity separately billed to park residents [*See* Sec. 16B12(c.)]	
7. All other gross income generated by operation of the park (including payment of utility fees and charges billed separately to park residents by park management). [*See* Sec. 16B.12(b)] Specify each source of income:	
a. Water	47,748.15
b. Sewer	55,707.94
c. Trash	28,050.29
d. Other (See Table I)	7,697.10
Enter total 7a - d:	139,203.48
8. **Total other income.** Add lines 5, 6 and 7 and enter result here. percentage increase, e.g., 0.0475)	139,203.48
9. Enter sum of lines 2 and 3.	4,238.74
10. Multiply line 4 by .03 (3 percent)	20,028.76
11. **Allowable uncollected space rents.** Enter the *smaller* of lines 9 or 10 as a negative number [*See* Sec. 16B.12(d)].	-4,238.74

12. **Base Year Gross Income.** Enter the sum of lines 4, 8, and 11.	802,590.01
B. Base Year Operating Expenses	
13. Real property taxes and assessments	71,349.18
14. Management expenses, not to exceed 5% of line 12 [*See* Sec.16B.13(A)(2)]	24,454.63
15. Normal repair and maintenance. [*See* Sec. 16B.13(A)(3)]	45,124.39
16. Reasonable value of uncompensated owner-performed labor, not to exceed 5% of line 12 [*See* Sec. 16B.13(A)(4)]	N.A.
17. Operating supplies [*See* Sec. 16B.13(a)(5)]	1,124.60
18. Insurance permiums [*See* Sec. 16B.13(A)(6)]	22,687.74
19. Other taxes, fees and permits	1,887.00
20. Deposit to reserve for replacement of necessary capital improvements, not to exceed 5% of line 12 [*See* Sec. 16B.13(A)(8)]	N.A.
21. Expenditures for necessary capital improvements exceeding reserves for replacement [*See* Sec. 16B.13(A)(9)]	N.A.
22. Involuntary refinancing of mortgage or debt principal [*See* Sec. 16B.13(A)(10)]	N.A.
23. Increased payments on lease of park land [*See* Sec. 16B.13(A)(11)]	N.A.
24. Other operating expenses	

24.1. Unbundled Utility Expenses. Utility service fees and charges which are assessed by the utility and separately billed to park residents for the following services, if applicable:
Liquid propane gas

Water	47,748.15		
Cable television			
Garbage or refuse service	28,050.29		
Sewer service	55,707.94		
Enter subtotal of 24.1:		131,506.38	
24.2. Bundled Utility Expenses. Service fees and charges for utilities which are provided to park residents at no additional charge. Specify:			
a. Water	26,011.95		
b. Electricity	5,000.46		
c. Sewer, Trash, Gas, Storm Damage	3,238.46		
Enter subtotal of 24.2:		34,250.87	
24.3. All other operating expenses. [*But see* Sec. 16B.13(B)]. Specify:			
a. Employee costs	61,592.65		
b. Administrative Costs not mentioned	44,119.57		
c.			
d.			
e.			
Enter subtotal of 24.3:		105,712.22	
Line 24 total [add 24.1, 24.2, and 24.3 subtotals]:			271,469.47
25. **Total Base Year Operating Expenses.** Enter sum of lines 13 through 24:			423,130.65

C. Resulting Base Year NOI

26. Subtract from line 12 the amount in line 25. Enter here as the actual base year NOI.	379,459.36	
27. Enter the amount from line 25.	423,130.65	
28. **Base Year NOI.** Enter the *larger* of lines 26 or 27. [*See* Sec. 16B.9(b)]		423,130.65

Section 2 **Determining the Adjusted NOI**

29. Enter the reported monthly CPI for the last month of the 12-month period specified in Section 1 of this worksheet (page 4). [May be provided by Commission staff] **Commission agreed to change date to February 2017 and eliminate 2017 permissive adjustment**	**252.252**	**(Feb 2017)**
30. Enter the monthly CPI reported for the month immediately preceding the 12-month period. [May be provided by Commission staff]	242.302	(April 2015)
31. Subtract line 30 from line 29 and enter here.	9.95	
32. Divide line 31 by the number in line 30 to determine the percentage increase in the CPI. Enter as four-digit decimal (*e.g.,* 0.0678)	0.0411	
33. Multiply line 32 by the *smaller* of (a) the percentage of the CPI that represents the housing component of the CPI (provided by Commission staff) or (b) 40%, to determine the allowable percentage increase of the Base Year NOI. Enter as a four digit decimal (*e.g.* , 0.0271).	0.0164	
34. Multiply line 28 by line 33 to determine the dollar amount of the available NOI adjustment.	6,950.25	
35. **Adjusted NOI.** Add lines 28 and 34, and enter the result here.		430,080.90

Section 3. **Determining the Available NOI Adjustment**

36. **Estimated Operating Expenses.** If the subtotal on line 24.1 is greater than zero, leave this line 36 blank and skip ahead to line 36.1 now. If the subtotal on line 24.1 is blank or zero, multiply the Base Year Operating Expenses on line 25 by the sum of 1 plus the percentage increase in the CPI found on line 32 (*e.g.,* 1 + 0.0678 = 1.0678), enter the result here, and skip to line 37:	
36.1 If the subtotal on line 24.1 is great than zero, subtract the amount on line 24.1 from the total Base Year Operating Expenses found on line 25, enter the result here, and continue to line 36.2:	291,624.27
36.2 Multiply line 36.1 by the sum of 1 plus the percentage increase in the CPI found on line 32 (*e.g.,* 1 + 0.0678 = 1.0678), enter the result here, and continue to line 36.3:	303,599.66

36.3 Add the subtotal on line 24.1 to the amount on line 36.2, and enter here:	435,106.04
37 **Allowable Adjusted Gross Income.** Add the Adjusted NOI found in line 35 to the Estimated Operating Expenses found either on line 36 (applicable only when specified utility service fees and charges are *not* separately billed to park residents) or on line 36.3 (applicable only when specified utility service fees and charges *are* separately billed to park residents):	865,186.94
37A Commission added amount to raise the NOI to equal expenses	**5,025.14**
37B Commission's Allowable Adjusted Gross Income	**870,212.08**
38. Subtract from line 37 the amount of "other income" found on line 8 and enter result here as the new gross space rent ceiling before allowance for uncollected space rents.	**731,008.60**
39. Divide line 1 by line 4. Enter here as a four-digit decimal (*e.g.,* 0.9876)	0.9937
40. **Adjusted Space Rent Ceiling.** Divide the amount on line 38 by line 39 or ".97", whichever is larger, and enter result here.	735,679.42
41. **Space Rent Ceiling Adjustment.** Subtract from the Adjusted Space Rent Ceiling on line 40 the base year gross space rents on line 4.	68,054.15
42. **Percentage increase in current rents available under the Annual NOI Adjustment method.** Divide line 41 by line 4 and enter result here as a four-digit percentage increase in the space rent ceiling (*e.g.,* 0.0475).	0.1019
43. Enter on Part V of the Special Adjustment Application the amount found on Line 28 of this Worksheet. Then, proceed with Part III of this Worksheet on the following page.	