

REGULAR JOINT MEETING OF THE  
CONCORD CITY COUNCIL  
AND REDEVELOPMENT AGENCY  
CONCORD SENIOR CENTER  
2727 PARKSIDE CIRCLE  
CONCORD, CALIFORNIA  
JULY 12, 2005

The Concord City Council and Redevelopment Agency convened in regular joint meeting at 6:40 p.m. in the Wisteria Room at the Concord Senior Center located at 2727 Parkside Circle with Mayor/Agencymember Hoffmeister presiding. The pledge to the flag was led by Councilmember Peterson. Minutes follow in abbreviated form per Resolution 3361 and Council Minutes of September 26, 1966.

ROLL CALL

COUNCILMEMBERS PRESENT: Helen Allen, Susan Bonilla, Mark Peterson, Bill Shinn, Laura Hoffmeister

COUNCILMEMBERS ABSENT: None

STAFF PRESENT: Lydia Du Borg, City Manager; Mary Rae Lehman, City Clerk; Craig Labadie, City Attorney; Mark Deven, Assistant City Manager; Assistant City Attorney, Mark Coon; Hamid Pouya, Director of Building and Neighborhood Services; Captain Stuart Roloson; Amy Hodgett, Housing Manager

LEGAL COUNSEL PRESENT: Rochelle Browne, Special Counsel to City Council, Los Angeles; Richard Perlmutter, Special Counsel to Mobilehome Rent Review Board, San Francisco; Anthony Rodriguez, Attorney, Oakland; Bruce Stanton, Attorney, San Jose;

MEMBERS OF THE AUDIENCE WHO ADDRESSED COUNCIL: Eugene Tortora, Concord; Leslie Clawson, Concord; Mark Nolan, Concord; Nina Rudolff, Concord; Jeanae Hope, Concord; Valerie Holt, Concord; Ruth Stultz, Concord; Catherine Castelanno, Concord; Vicki Proctor, Concord; Albert Haines, Concord; Diann Davi, Concord; Carol Spry, Concord; Dr. George Johnson, Concord; Melanie Tarango, Concord; Kimberlie Pavloff, Concord; Carrol Mathey, Concord; Margaret Ferrerra, Concord; Jim Catlett, Concord; Mary Evans, Concord; Saundra Ferriera, Concord; Margaret Georgeovich, Concord; Tangie Terrell, Concord; Louise Smith, Concord; Josephine Johnson, Concord; Elizabeth Rosa, Concord

PUBLIC COMMENT PERIOD

Mark Nolan, resident of Concord, requested the definition of the term in-lieu.

ANNOUNCEMENTS

Councilmember Peterson stated his desire to move the Villa De La Vista Rezoning and Preliminary Development Plan Public Hearing scheduled for July 26, 2005 to the meeting of September 13, 2005, and moved that the matter be added to the evening's agenda as an urgency item as allowed by vote of the Council. The motion was seconded by Vice Mayor Bonilla. Motion passed by unanimous vote of the Council.

Councilmember Peterson stated that he would not be in attendance at the Council Meeting of July 26, 2005, and moved that the Public Hearing scheduled for July 26, 2005 to hear the Villa De La Vista Rezoning and Preliminary Development Plan be scheduled for the regular meeting of September 13, 2005. The motion was seconded by Councilmember Shinn. Motion passed by the following vote of the Council:

AYES: Bonilla, Peterson, Shinn, Hoffmeister      NOES: Allen      ABSENT: None

Councilmember Allen recognized in absentia, Shawn, a 13-year-old, who witnessed her trip and fall earlier in the day, and thanked him for coming to her aid and bringing her ice.

CITY COUNCIL MATTERSAPPROVAL OF MINUTES

Motion was made by Shinn and seconded by Bonilla to approve the minutes of May 24, 2005, May 31, 2005, June 7, 2005 and June 14, 2005. Motion passed by unanimous vote of the Council.

AGREEMENT WITH NEWPOINT GROUP – Consultant Services

Motion was made by Shinn and seconded by Bonilla to approve an agreement with NewPoint Group in an amount not to exceed \$94,970 to provide consultant services to assist the City in the Base-Year review of solid waste rates, and to authorize the City Manager to execute the agreement. Motion passed by unanimous vote of the Council.

SECOND AMENDMENT TO AGREEMENT WITH MILLER & VAN EATON, L.L.P. – Consultant Services

Motion was made by Shinn and seconded by Bonilla to approve a second amendment to a Consultant Services Agreement with Miller & Van Eaton L.L.P. to assist the City with cable franchise renewal negotiations between the Contra Costa Cable Consortium, of which Concord is a member, and Comcast. Motion passed by unanimous vote of the Council.

RENEWAL OF MAINTENANCE AGREEMENT WITH NORTHROP GRUMANN INFORMATION TECHNOLOGY, INC (FORMERLY PRC) – Software Maintenance of the Computer-Aided Dispatch (CAD) System

Motion was made by Shinn and seconded by Bonilla to approve the renewal of a Maintenance Agreement with Northrop Grumman Information Technology, Inc. (formerly PRC) in the amount of \$145,676.75 to provide software maintenance of the computer-aided dispatch (CAD) system for a period of three years, and to authorize the City Manager to sign the agreement. Motion passed by unanimous vote of the Council.

AMENDMENT TO AGREEMENT WITH CONCORD BOCCE FEDERATION – Use of Bocce Ball Courts at Newhall Park

Motion was made by Shinn and seconded by Bonilla to approve an amendment to the agreement with the Concord Bocce Federation for use of the bocce ball courts at Newhall Park and to authorize the City Manager to execute the amendment. Motion was passed by unanimous vote of the Council.

CITY COUNCIL PUBLIC HEARING

Prior to beginning the Public Hearing, City Attorney Craig Labadie left the staff table and Special Counsel Rochelle Browne, of Richards, Watson, Gershon law firm, joined the staff table to provide legal counsel over the proceedings.

PUBLIC HEARING - Appeal From Decision Of Mobile Home Rent Review Board Re. Petition For Base Rent Adjustment

Mayor Hoffmeister confirmed that all public hearing notices had been sent and presented a list of ground rules for the evening's hearing activities which included: a) a statement that it was not a judicial proceeding; b) that speakers would be heard in turn; c) that only Councilmembers could address questions to the speakers; d) that there would be no cross-examination of one speaker by another; e) that a time limit would apply, 20 minutes each to staff and appellants and 3 minutes each to all other speakers.

Housing Manager Amy Hodgett introduced Richard Perlmutter, of the Shute, Mihaly & Weinberger law firm, who was retained by the City to be the independent legal advisor to the City's Mobilehome Rent Review Board ("MHRRB").

Attorney Richard Perlmutter stated that he did not prepare the staff report for the evening's meeting, and summarized the events leading to the MHRRB's decision which was the basis of the evening's appeal. He stated that the matter was previously before the City Council in 1996, at which time the Council affirmed the decision of the MHRRB to grant Concord Communities Maintenance of Net Operating Income (MNOI) rent increases of \$34.26 per space for Adobe Mobile Lodge and \$17.03 per space for Diablo Mobile Lodge. However, in its 1996 decision the City Council denied Concord Communities' request for a Base Rent adjustment. He went on to say that in 2001, a Court of Appeals decision found that the 1993 Base Rents established for Adobe and Diablo were below Base Rents established at comparable parks in the City of Concord, and that that there were unique and extraordinary circumstances affecting both parks existed which justified a Base Rent adjustment. Accordingly, the Court of Appeal ordered the Mobilehome Rent Review Board to reconsider Concord Communities' request for a Base Rent adjustment.

Attorney Perlmutter stated that on remand, the Board used a three-step approach in reaching a decision: 1) determining the appropriate Base Rent adjustment; 2) determining if the Base Rent adjustment decided upon in step one would provide fair rate of return to Concord Communities; and 3) determining how to allocate any required Base Rent adjustment to the residents of spaces in the parks subject to the City's rent stabilization ordinance. The third step also required a determination of the appropriate method for assessing retroactive rents (also known as a *Kavanau* adjustment).

Attorney Perlmutter recited that the Board determined that the Base Rents at both Adobe and Diablo as of January 1, 1994 were, on average, \$38 less than the Base Rents at comparable mobilehome parks in Concord on the same date; that 9.1% was a fair and reasonable rate of return for Concord Communities; that adjusting Base Rents at Adobe and Diablo by \$38 (in combination with the previously granted MNOI increases) would provide that rate of return to the

park owner, Concord Communities; and that a *Kavanau* adjustment would be required to compensate Concord Communities for the rent increase it had not collected from July 1, 1996, (the date of Concord Communities' Base Rent adjustment petition) through the Board's decision on March 10, 2005.

Attorney Perlmutter further stated that over the course of their deliberations, the MHRRB heard expert testimony provided by appraisal and economist experts retained by the City and Concord Communities, and that they had determined that the adopted Base Rent adjustments and the corresponding *Kavanau* adjustment should be assessed on a space by space basis, determined by the base rent actually paid as of January 1, 1994.

The MHRRB determined that with inflationary indexing mandated under Concord Municipal Code Section 58-95, the \$38 Base Rent adjustment would be increased by 60% of the Consumer Price Index for the period January 1, 1994 through March 10, 2005, equating to an average per space increase of \$45.26 per space per month. This number will differ to the extent a given space was paying above or below the adjusted Base Rent of \$305 for Diablo and \$350 for Adobe during this period.

Attorney Perlmutter went on to advise that the Mobilehome Rent Review Board determined that controlling law required a *Kavanau* Adjustment assessment covering the period January 1, 1996 through March 10, 2005 plus interest, which will be applied to each tenant subject to the City's mobilehome rent stabilization ordinance currently occupying a space at the park, regardless whether they have been a tenant for the entire period at issue. He explained that the MHRRB determined an additional 4% annual interest will be assessed as respects the *Kavanau* adjustment, he also explained that interest at the rate of 6% would be assessed for an amortization period of 60 months.

Attorney Perlmutter concluded by reading the Mobilehome Rent Review Board's final determination that they had "not made any determination regarding the apportionment of liability for the *Kavanau* adjustment between past, current, or future tenants at individual spaces, having been advised by counsel that the Board lacked the authority to do so."

Housing Manager Amy Hodgett read the recommendations the Council would be asked to act upon. She explained that the MHRRB had considered the Ordinance, specific case law related to this matter, and constitutional requirements, and had followed what the law required in reaching their conclusions.

The Councilmembers asked questions of Attorney Perlmutter to gain a better understanding of his presentation.

Mayor Hoffmeister stated for the record that City Attorney Craig Labadie was not participating in the proceedings and introduced the City's Special Counsel, Rochelle Browne, of the Richards, Watson and Gershon law firm.

Attorney Anthony Rodriguez, representing park owner Concord Communities, confirmed with the Council that they had received the briefs that he had submitted dated July 6, 2005 and July 8, 2005, and stated that Concord Communities is complying with what the Board decided. He further stated that Concord Communities had mailed notices to the park tenants advising of a rent increase effective July 1, 2005, based upon the MHRRB's decision. He stated that in his opinion, the City should pay the retroactive rent, not the tenants.

Councilmember Peterson asked if Attorney Rodriguez's client would try to collect from the tenants who used to live in the park, and was advised by Rodriguez that he would check with his client on the matter.

Attorney Rodriguez continued by stating numerous opinions about the methods used by the expert witnesses for calculating base rents and fair market values during the proceedings, stating his interpretations of case law, and concluded by stating that his client was entitled to realize a fair return on his long-term investment. Rodriguez stated that he does not believe that the Base Rent adjustments adopted by the MHRRB provide a fair return.

The Councilmembers asked questions of Attorney Rodriguez to gain a better understanding of his presentation.

Attorney Bruce Stanton, representing the tenants of the Adobe Mobile Lodge and the Diablo Mobile Lodge, stated that the Mobilehome Rent Review Board decision imposed increases that could reach 20% or more of the total purchase price of some of the tenant's homes, and that it could place many of the tenants in jeopardy of eviction. He further stated that neither the park owner nor the park manager had given any indication to new tenants that there was legal action pending regarding the rents at the park, nor that the new tenants would be subject to possible rent increases. He stated there had been no evidence of disclosure in the nine years when this matter has been pending, no indication of a possible rent increase on the monthly billing statements, and no indicators on the annual rent increases. He added that in his opinion, the *Kavanau* case does not talk about mobilehome parks, but instead addresses a remedy for damages relating only to apartment buildings. He challenged the right to assess retroactive rent increases on tenants who weren't at the park at the time, stating that the tenant who had moved in recently had received no benefit from what happened prior to that time. He cited 34 spaces within the two parks, whose owners would be required to pay 34 months or more of back rents, but who had not lived in the park during that period of time. He asked that the cost be allocated justly to the tenants.

The Councilmembers asked questions of Attorney Stanton to gain a better understanding of his presentation.

The Council recessed at 8:25 p.m. and reconvened at 8:55 p.m.

Eugene Tortora, Leslie Clawson, Mark Nolan, Concord; Nina Rudolff, Concord; Jeanae Hope, Concord; Valerie Holt, Concord; Ruth Stultz, Concord; Catherine Castelanno, Concord; Vicki Proctor, Concord; Albert Haines, Concord; Diann Davi, Concord; Carol Spry, Concord; Dr. George Johnson, Concord; Melanie Tarango, Concord; Kimberlie Pavloff, Concord; Carrol Mathey, Concord; Margaret Ferrera, Concord; Jim Catlett, Concord; Mary Evans, Concord; Sandra Ferriera, Concord; Margaret Georgeovich, Concord; Tangie Terrell, Concord; Louise Smith, Concord; Josephine Johnson, Concord; and Elizabeth Rosa, Concord, all residents of either Adobe Mobile Lodge or Diablo Mobile Lodge, each addressed the Council, sharing their concern over the imposed rent increase, the retroactive rent during periods of time when they were not owners of a dwelling at the park, the lack of improvements to the parks, the inequity of the increases, and the lack of proper disclosures.

During testimony by the above residents, Attorney Rodriguez moved to strike the testimony being given, stating that it was new evidence, and Attorney Stanton stated that the testimony should be allowed for it was producing evidence of illegal issues being imposed by the park owner.

The Council recessed at 10:25 p.m. and reconvened at 10:43 p.m.

Attorney Rodriguez provided closing comments, stating that no one had addressed the fair market return on his client's investment and commenting that he believes the City should pay the back rent due his client. He concluded his comments by stating that the park would work out something on the side regarding long term leases if they were exempt from the Mobilehome Rent Review Board's control.

Councilmember Peterson and Mayor Hoffmeister asked questions of Attorney Rodriguez to gain a better understanding of his statements.

Attorney Bruce Stanton provided closing comments stating that Section 798.17 of Civil Code exempts from Rent Control any lease longer than 12 months, and further noting that if the rental agreement is not extended, then the last rental rent under previous rental agreement is the beginning rent of the rent control. Attorney Stanton stated that he was offering the information just to clarify the terms. He also clarified that the disclosure form mentioned during public testimony was required effective January 1, 2004, and that he had just begun to hear about long-term leases at the parks. He concluded his comments by stating that the original 1996 hearing should have identified the spaces with long-term leases.

The public hearing was closed

Special Counsel Browne stated that some of the testimony given was beyond the scope of the Council's review. The standard of review for the Council, according to Attorney Browne, is whether the MHRRB abused its discretion in reaching its decision, or whether its decision was not supported by the weight of the evidence. The only evidence that the Council was permitted to consider was the evidence presented to the MHRRB. She confirmed that while the *Kavanau* case related to apartment rent control, its reasoning is equally applicable to mobilehomes. She also noted that in the recent California Supreme Court decision in *Galland v. City of Clovis*, the Supreme Court applied the reasoning of *Kavanau* to a mobilehome rent dispute. She stated that the *Kavanau* case references a rent increase sufficient to compensate the landlord for the rents that it wasn't able to charge. That there are two ways for that to be done; a large rent increase going forward, or a lump sum base rent increase. In this case, the MHRRB calculated how much was lost, divided it by the number unit spaces, and assigned it as a rent increase to each individual unit, amortized over a 60 month period.

A discussion ensued regarding the difficulty in calculating rent adjustments on an individual basis which would provide some protection to the folks who are paying a higher level of rent because the rental roles were not available from the park owner.

Councilmember Shinn acknowledged that the 9.1% rate of return to the park owner was less than the 12% requested and stated that in his opinion the MHRRB had objectively reviewed and applied the facts and law.

Councilmember Peterson commented that the park owner is entitled to a fair return on his investment and that the Mobilehome Rent Review Board had been established to keep the amount of the return fair. He stated that he supported the decision of the MHRRB, calculating the rents on a per site basis.

Vice Mayor Bonilla confirmed her satisfaction with the decision of the MHRRB and asked that staff provide a report on the feasibility of providing assistance to the tenants who might be in the position of losing their homes.

Mayor Hoffmeister stated that the report should go before the Housing and Economic Development Council Committee first, and brought back to the full Council in September. There was a verbal consensus by the Council.

Councilmember Allen expressed her dissatisfaction with the current condition of the Adobe and Diablo Mobilehome Parks and stated that she would not be supporting an increase in rents.

Mayor Hoffmeister stated her support of the rent increase and of the decisions made by the MHRRB. She expressed her concerns over the suggestion to provide assistance to the tenants at a time when the City does not have the money.

Motion was made by Shinn and seconded by Peterson to affirm the Mobilehome Rent Review Board's decisions and staff recommendations 1-10, with the exception of staff's proposal to increase base rents by \$38 (before CPI indexing) across the board. The Council determined that the Base Rent adjustments should be applied on a space by space basis, dependant upon the actual difference between the Base Rents being paid on January 1, 1994, and the adjusted Base Rent of \$350 and \$305 respectively at Adobe and Diablo. The motion noted that a Resolution would be the appropriate document to confirm the findings. Motion passed by the following vote of the Council:

AYES: Bonilla, Peterson, Shinn, Hoffmeister      NOES: Allen      ABSENT: None

Motion was made by Peterson and seconded by Shinn to modify the effective date of the Mobilehome Rent Review Board decision to July 1, 2005, from August 1, 2005, to coincide with the notifications for rent increase that have been distributed by Concord Communities, based upon Concord Communities' agreement to waive all penalties to tenants who have not paid their rent by the July 1, 2005 deadline, and to affirm the following:

- a. Adopt the decision of the Concord Mobilehome Park Rent Review Board to grant Concord Communities a Base Rent adjustment at both Adobe and Diablo effective January 1, 1994, increasing the Base Rent at Adobe to \$350, and at Diablo to \$305.
- b. Adopt the Board's decision that base Rent adjustments shall be calculated on an individual, space by space basis, affecting only those spaces subject to the City of Concord's Mobilehome Rent Stabilization Ordinance ("the Ordinance").
- c. Adopt the Board's finding that the appropriate financial data for calculating Base Rent adjustments is for the calendar year 1995.
- d. Adopt the Board's conclusion that based upon 1995 financial data, adjusting Base Rents to \$350 at Adobe and \$305 at Diablo, effective January 1, 1994, will provide Concord Communities with a "fair return."
- e. Calculate the base Rent adjustments based upon financial data specific to each space subject to the ordinance, in accordance with the General Annual Adjustment mechanism of the Ordinance, set forth at CMC Section 58-95, utilizing the formulas and calculations submitted by Dr. James Gibson, as set forth in Attachments 5 and 6 to the Staff Report.
- f. Establish July 1, 2005 as the date when Base Rent adjustments shall take effect, based on Concord Communities' agreement to waive any penalties for late July payments.
- g. Adopt the Board's conclusion that an adjustment for retroactive rents (a "*Kavanau*" adjustment) shall be allocated to each space subject to the ordinance, effective for the period July 1, 1996 through July 1, 2005.
- h. Adopt the Board's conclusion that interest shall be applied to the amount accruing during the retroactive rent (*Kavanau*) adjustment period at a rate of 4% per annum, compounded in accordance with the formulas and calculations submitted by Dr. James Gibson, as set forth in Attachments 5 and 6 to the Staff Report.
- i. Adopt the Board's conclusion that retroactive rents (*Kavanau*) adjustments shall be amortized over a period of 60 months from the month first begun, with interest

accruing at a rate of 6% annually. Alternatively, residents may pay the *Kavanau* adjustment in full, at their election.

- j. Establish July 1, 2005, as the date when monthly amortization payments of the retroactive rents (*Kavanau*) adjustment shall commence.

AYES: Bonilla, Peterson, Shinn, Hoffmeister      NOES: Allen      ABSENT: None

JOINT CITY COUNCIL/REDEVELOPMENT AGENCY MATTERS

APPROVAL OF A 2% INTEREST RATE MODIFICATION – Lakeside Apartments

Motion was made by Peterson and seconded by Shinn to approve a 2% interest rate modification to the existing 55-year loan for Lakeside Apartments. Motion passed by unanimous vote of the Council.

CORRESPONDENCE

- a. July 6, 2005 letter from Anthony C. Rodriguez, Attorney-at-law.
- b. July 7, 2005 memorandum from Rochelle Browne, Special Counsel, Richards/Watson/Gershon, Attorney at Law.
- c. July 5, 2005 correspondence from Brent and Josephine Johnson.
- d. July 8, 2005 letter from Anthony C. Rodriguez, Attorney-at-law.
- e. National Reporter System version of Roger Galland v. City of Clovis.
- f. National Reporter System version of Earl W. *Kavanau* v. Santa Monica Rent Control Board.
- g. Letter received July 11, 2005 from Ken Fregien, Jr. regarding back rent for Adobe and Diablo Parks.

By order of the chair, the meeting adjourned at 12:25 a.m., July 13, 2005.

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LAURA M. HOFFMEISTER  
MAYOR/AGENCYMEMBER

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MARK PETERSON  
COUNCILMEMBER/AGENCY CHAIR

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MARY RAE LEHMAN  
CITY CLERK/AGENCY SECRETARY