From: Anthony Rodriguez [redacted]
Sent: Sunday, August 20, 2023 4:44 PM
To: Pham, JoAnn <JoAnn.Pham@mountainview.gov>; 'Maria Ahmad' <maria@deanzaproperties.com>
Cc: Black, Patricia <Patricia.Black@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>; [redacted]; [redacted]; 'Karen Tiedemann' <ktiedemann@goldfarblipman.com>; 'Anthony Rodriguez' <[redacted]>
Subject: RE: 1075 Space Park Wy Spc 203 - August 21, 2023 RHC Meeting Agenda - Parkowner's Reply to Supplemental Report

Ms. Pham:

Attached please find my client's reply to Special Counsel's Supplemental Report, which was not served on the Parkowner until after the close of business on Friday. Please provide copies to the Rental Housing Committee and/or include it in the record of these proceedings. As you can see, I have included the tenants on this email, so they will receive it at the same time you do.

Thank you,

Anthony C. Rodriguez

Law Office of Anthony C. Rodriguez
1425 Leimert Boulevard, Suite 101
Oakland, California 94602
Telephone: (510) 336-1536
Facsimile: (510) 336-1537
Email: [redacted]

IMPORTANT / CONFIDENTIAL

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From: Pham, JoAnn <JoAnn.Pham@mountainview.gov>
Sent: Friday, August 18, 2023 6:02 PM
To: Anthony Rodriguez <[redacted]; Maria Ahmad <maria@deanzaproperties.com>
Cc: Black, Patricia <Patricia.Black@mountainview.gov>; van Deursen, Anky <Anky.vanDeursen@mountainview.gov>
Subject: 1075 Space Park Wy Spc 203 - August 21, 2023 RHC Meeting Agenda

Good afternoon,

Attached for your information and review is the Rental Housing Committee (RHC) Meeting Agenda for the meeting taking place on **Monday, August 21, 2023 at 7:00 p.m.** The Appeal Hearing for the 1075 Space Park Wy Spc 203 petition, petition number M22230001, is listed as agenda item 7.1. The meeting will be held according to the timelines set forth in the MHRSO Regulations, as outlined in the MHRSO Appeal Hearing Information Sheet, which is also reattached here for your convenience.

The meeting will be held in hybrid format and can be attended either in-person or virtually. Affected Parties may participate in-person at Council Chambers, located on the 2nd Floor of City Hall, 500 Castro Street, Mountain View, CA 94041, or virtually through Zoom by clicking mountainviewgov/meeting and entering the webinar ID **937 7306 8363**.

Thank you,

Joann Pham
Analyst I
Rent Stabilization Division
(650) 903-6132| MountainView.gov
Twitter | Facebook | Instagram | YouTube | AskMV

Sign-up for Rent Stabilization webinars at mountainview.gov/rspwebinars. Regístrese en los seminarios web sobre estabilización de renta en mountainview.gov/rspwebinars.

ANTHONY C. RODRIGUEZ
ATTORNEY AT LAW
1425 LEIMERT BOULEVARD
SUITE 101
OAKLAND, CALIFORNIA 94602-1808

TELEPHONE (510) 336-1536
FACSIMILE (510) 336-1537

August 20, 2023

VIA EMAIL AND U. S. MAIL

Mountain View Rental Housing Committee
Mountain View City Hall
500 Castro Street
Mountain View, California 94041

Re: Santiago Villa Mobilehome Park - Space No. 203
Case No. M22230001 - Reply to Supplemental Memo

Dear Committee Members:

As you know, this office represents the owner of Santiago Villa Mobilehome Park. I am writing to respond briefly to the "Supplemental Memo" submitted by Special Counsel regarding the appeal scheduled to be heard on August 21, 2023, in the above referenced matter.

Although some of the issues raised in the "Supplemental Memo" may become moot if the Committee adopts its tentative decision and the tenants do not appeal to the courts, those issues will matter if this case does wind up in the courts. As a general rule, issues that are not raised in an administrative hearing cannot be raised for the first time in court. In order to protect my client's rights in the event of court proceedings, I must make the following points.

1. The Concession Agreement Was Not a Liquidated Damages Clause, But Even if it Was, it Would Still Constitute "Consideration" Under California Law.

Special Counsel argues the "concession agreement" is a liquidated damages clause. That is not true. The "concession agreement" sets forth the terms under which monetary consideration would be paid. In the event of a breach, the Parkowner's damages were not limited to payment of the full amount of the rent, in cash.

For example, if a tenant breached the agreement by operating a business from its

home, and that business resulted in the mobilehome being damaged by fire, the tenant's exposure would not be limited to paying the full rent, in cash. The tenant would also be liable for any and all damage to the mobilehome, which could far exceed the amount owing for rent.

More important, even if the "concession agreement" was a liquidated damages clause, such a clause would still be valuable consideration under California law, as there is no evidence the Parkowner would have accepted the "concession agreement" without that clause.

It must also be stressed that the "concession agreement" applied to *any* breach of the rental agreement. As there are countless ways by which a tenant can breach a rental agreement, there is no need to list every single one of them in advance. Such breaches could include, but are not limited to, not paying the agreed to rent or utilities, not paying the rent or utilities on time, engaging in commercial activity in the unit, using or selling illegal drugs, not properly maintaining the mobilehome, or tampering with the park's utilities.

2. The United States Constitution Applies to Every Administrative Hearing, Regardless of Whether a Specific Constitutional Right is Listed in the Ordinance.

Special Counsel argues that an administrative agency cannot determine whether constitutional rights have been violated, unless the ordinance gives it specific authority to do so. More specifically, Special Counsel suggests the only reason either the Hearing Officer or the Committee can determine whether the constitutional right to a fair return has been violated is because the ordinance expressly allows them to do so. Again, that is not true.

Both the United States Supreme Court and the California Supreme Court have held that the owners of rent controlled properties have a constitutional right to a "fair return on investment." *Cacho v. Boudreau* (2007) 40 Cal. 4th 341, 350. Contrary to Special Counsel's argument, the California Courts have also held if the right to a fair return is not specifically included in the text of a rent control ordinance, it ***"will be implied therein."*** *152 Valparaiso Associates v. City of Cotati* (1997) 56 Cal. App. 4th 378, 383.

The Committee is also directed to the Court of Appeal's decision in *Manufactured Home Communities v. County of San Luis Obispo* (2008) 167 Cal. App. 4th 705. In that case, an administrative hearing was conducted to determine whether a parkowner's rental agreements were in violation of the local rent control ordinance. After the tenants'

testified, their attorney argued they could not be subject to cross-examination, because there was ***"absolutely no entitlement*** ***in this ordinance*** ***to such cross-examination."*** (*Id.* at 709).

The Rent Review Board agreed with the tenants' attorney, and denied the parkowner's right to cross-examination, with one Board member stating "we always allow people to speak without fear of cross-examination, because it is a fearful thing." (*Id.* at 709). In finding the Board had violated the parkowner's constitutional rights, the Court held as follows:

> "The right to cross-examine witnesses in quasi-judicial administrative proceedings is considered a fundamental element of ***due process***, as it is in court trials. . . . [I]n almost every setting where important decisions turn on questions of fact, ***due process*** requires an opportunity to confront and cross-examine adverse witnesses. . . . The Board undermined the fairness of the proceeding by preventing [the parkowner] from questioning its adversaries and then making findings against it based on unchallenged testimony." (*Id.* at 711-712). (Emphasis added).

The United States Constitution is the supreme law of the land. *Public Utilities Commission of California v. United States* (1958) 355 U.S. 534, 544-545. Under the Supremacy Clause, no law may be ***applied*** in a manner that is inconsistent with the Constitution. *Mulkey v. Reitman* (1936) 64 Cal. 2d 529, 533. Although neither the Hearing Officer nor the Rental Housing Committee may have the power to declare a law unconstitutional, they have an obligation to apply the law in a manner that is consistent with the Constitution, regardless of whether any specific provision of the Constitution is contained in the ordinance.

3. The Hearing Officer Improperly Ruled on a Cross-Complaint that Did Not Exist.

In her ruling, the hearing officer found that neither party owed the other party anything. Although her decision is not entirely clear on that point, it could be construed as an attempt to rule on the Parkowner's potential action against the tenants for breach of their rental agreement. As the Hearing Officer had no jurisdiction to rule on such a claim, and as no such claim was filed by the Parkowner, any such ruling against the Parkowner

was clearly improper.

Although the Parkowner would prefer not to become involved in litigation with any of its tenants over issues that would not have arisen but for COVID-19, the Parkowner has reserved all of its rights, in the event such litigation become necessary. *McHugh v. Santa Monica Rent Control Board* (1989) 49 Cal. 3d 348, 374-375. [rent control agencies do ***not*** have jurisdiction to adjudicate "a landlord's common law counterclaims . . . against a tenant," because doing so would violate the judicial powers clause of the California Constitution.].

4. Conclusion.

Again, the above issues may become moot if the Committee adopts its tentative ruling and the tenants do not appeal the Committee's decision to the courts. However, as an issue can be deemed waived if not raised at the administrative level, the Parkowner is raising these issues now, in an abundance of caution, in the event this matter does proceed to the courts someday.

Very truly yours,

Anthony C. Rodriguez

cc: Client
Tenants