CITY OF CHULA VISTA
MINUTES
MOBILEHOME RENT REVIEW COMMISSION

Wednesday, October 20, 2010
6:00 P.M. CLOSED SESSION
6:30 P.M. TIME CERTAIN PUBLIC START

276 FOURTH AVENUE
PUBLIC SERVICES NORTH, BUILDING 300
HUMAN RESOURCE TRAINING ROOM

CALL TO ORDER/ROLL CALL – 6:02 P.M.

PRESENT: Rudy Gonzalez, Pat LaPierre, Sam Longanecker, Cesar Padilla, Ramon Riesgo, Mitch Thompson

ABSENT: Steve Epsten

STAFF: Stacey Kurz, Senior Project Coordinator
Simon Silva, City Attorney

Chair Padilla announced that the meeting would now be closed to the public until 6:30 when it would be reopened to resume with the agenda. The closed session item was as follows:

1. CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(a)

- Brentwood MHP Investors, LLP v. City of Chula Vista, San Diego Superior Court Case No. 37-2010-00079506-CU-WM-SC

Members of the public were asked to join the Commission and at 6:32 pm Chair Padilla announced the reopening of the meeting. Chair Padilla announced that agenda items number 3 and 4 would be switched per the request of attorney Silva.

2. APPROVAL OF MINUTES

July 15, 2010

Member Gonzalez made a motion to approve the minutes with two changes to paragraph 10 under item #2 as follows: change "entire system" to "substantial part of the system" and delete the word "little" from the end of the first sentence. Member Riesgo seconded the motion. All members (4-0-1) agreed to the approval of the minutes with noted changes. Member Thompson abstained as he was not yet a commission member on July 15th.

3. ADOPTION OF FINDINGS FROM BRENTWOOD MOBILE HOME PARK HEARING (Item #4 on noticed agenda)

Attorney Silva indicated that tonight's item was to adopt the documentation of record from the decision made on July 15, 2010. The findings serve as a summary not a replacement of the hearing process.

Attorney Silva addressed the section of the City's ordinance which allows the Commission some discretion on the effective date of any increases determined by the commission as follows: the later of the date of decision or 90 days after original notice, or the ability to fix a new date. In the Brentwood case Attorney Silva indicated that it was staff's understanding that it was the expectation that the increase would be retroactive to the original notice date by the park owner in his request, staff's recommendation at the hearing, previous practice of the commission, and our understanding that the residents were paying retroactively and therefore the staff recommendation reflect a retroactive start to the increase as identified in the findings.

Chair Padilla asked if this was an accurate account of the hearing process. Member LaPierre indicated he recollected discussion on the effective date but no decision by the commission.

Vice Chair Gonzalez indicated that he had issue with page 2 regarding the replacement of the electrical system. It was his intent to indicate that he felt the replacement was "substantial" enough to constitute a replacement, but he did not have enough evidence to determine if the "entire system" had been replaced and would like the text to indicate "a substantial part of the system" had been replaced. Vice Chair Gonzalez also clarified that under the statement regarding the fire hydrant system the word "reasonable" should be deleted prior to the words safety measure.

Attorney Silva indicated that when we refer to the replacement of the electrical system we are referring to what they have requested reimbursement on. He felt it would be more ambiguous to use the word substantial and as written is more accurate. In regards to the fire hydrant system his recommendation would be to leave the word reasonable in the text since the alternative is unreasonable and the word reasonable does not add or take away from the statement. In addition, the word "reasonable" was the actual term used at the prior hearing.

Attorney Silva further indicated that he believed it was a reasonable expectation by the park owner for the effective date to be retroactive based on discussions at the hearing. Chair Padilla followed indicating that he believed his expectation was for it to be retroactive but that the commission never officially made a decision on the matter. Staff Kurz indicated that the minutes from June 15th reflect the discussion between herself and Chair Padilla regarding whether a retroactive increase would require a lump sum payment by residents, but did not indicate an effective date. Staff Kurz further indicated the minutes reflected discussion between Commissioner Gonzalez and herself regarding the date of notice for residents indicating that several residents were noticed for a May 1st increase but not all residents were affected by that date some were a month or more after that May 1st date. And finally the meeting of June 15th ended with a statement from Chair Padilla reminding residents that should the commission determine that the increase be effective to the original date of notice, they would be expected to pay that retroactive amount.

Vice Chair Gonzalez clarified that he believes it was his intent that the increase take effect on the date of decision. Attorney Silva indicated that the Commission could amend the findings at this time to reflect a different start date. Chair Padilla polled the other members on their intent. Commissioner Riesgo indicated that he was flexible. Attorney Silva added that any change would present a legal matter since rents are already being collected and based on the expectation and past practices, the better answer would be to leave the findings as written with an effective date retroactive to the original notice date. Chair Padilla went on record indicating his intent was date of notice.

Staff Kurz indicated that there was historical data in the past five years to support a retroactive effective date. In five years only three cases have been heard and in each case where the occupant was in place and a decision was made after the original date of notice the commission made the increase effective retroactively. Staff Kurz further clarified that the park did not institute any increases until September first due to administrative constraints and therefore residents with an effective date of May 1st made a one-time lump sum payment of $60 and those with August 1st dates made a one-time lump sum payment of $15 in addition to the $15 increase to their base rent.

Commissioner Riesgo indicated that he would support the July 15 start. Attorney Silva indicated that overall the residents will pay regardless of the start date and based on the history, expectations from the hearing process and the fact that residents have already paid the retroactive portions as necessary, it would be his recommendation that the findings be left as written.

Commissioner Longanecker indicated that he does not recollect any other date besides the retroactive date mentioned during the hearing and that the commissions' motivation could begin to be questioned if we continued to postpone hearings and make an effective date upon decision. He therefore indicated he always believed the increase would be retroactive.

Staff Kurz added that staff's recommendation was retroactive due to the fact that this potential was repeated throughout the hearing process and our ordinance indicates that all attempts shall be made to come to decision within 120 days and we were close to that target at the first hearing in May. The park owner had provided all requested information for that hearing and the main reason for delay was caused by the commission's desire to wait for potential information from the Public Utilities Commission (PUC).

Commissioner Thompson indicated that he is not participating in the discussions and will be abstaining from the vote since he was not a commissioner at the start of the hearing process.

Vice Chair Gonzalez made a motion to approve the findings as submitted by staff with the rent increase effective to the date of notice, without any additional amendments to the findings. Member Longanecker seconded the motion. The motion passed (4-0-1) with Member Thompson abstaining.

4. ELECTION OF NEW CHAIR AND VICE CHAIR FOR FISCAL YEAR 2010/2011 (Item #3 on noticed agenda)

Chair Padilla opened the floor for nominations for Chair. *Member Longanecker made a motion to nominate Chair Padilla for FY 10/11 Chair. Member Gonzalez seconded the motion* and Chair Padilla accepted the nomination. *The motion passed (4-0-1) with Chair Padilla abstaining.*

Chair Padilla opened the floor for nominations for Vice Chair. Member Gonzalez expressed his interest in serving again. *Member Longanecker made a motion to nominate Vice Chair Gonzalez for FY 10/11 Vice Chair. The motion passed (4-0-1) with Vice Chair Gonzalez abstaining.*

5. STAFF COMMENTS

Attorney Silva thanked the commission and residents for their dedication to this hearing process. He further added that there is current litigation related to this case and the agenda closed session item provides information on the case number to access additional information..

6. MEMBER'S COMMENTS

Commissioner Longanecker thanked Chair Padilla for his guidance through this case.

Commissioner Thompson asked that a future agenda topic be discussion of the effective date and the latitude currently provided by our ordinance for the commission to alter such when legal notices are served.

Chair Padilla asked that if in the Bayscene case the retroactive rent increase was made in a lump sum payment. Staff Kurz indicated that she would research this issue and bring it back when the agenda allows.

Commissioner Gonzalez indicated that he would have been willing to make a decision earlier regarding the Brentwood case and was frustrated by the PUC process since he did not believe they would not provide a ruling. He further wanted to welcome Commissioner Thompson.

Commissioner Thompson added that large delays are problematic and emotions should not overrule facts and set standards for decisions.

7. PUBLIC COMMUNICATIONS

Dan Runyon indicated that he does not believe in closed session items and all government discussions should occur in open public.

Penny Vaughn welcomed Commissioner Thompson and thanked all of the commissioners. She further indicated she felt the park owner's request was greedy and unnecessary in this economy.

Jim Matney asked that staff look at state law in relation to the ability to increase rents prior to an arbitration process being completed.

Commissioner LaPierre asked Attorney Silva to clarify what issues are allowed to be discussed in closed session. Attorney Silva indicated that the Brown Act identifies specific matters that can be discussed in closed session as follows: personnel matters, negotiations on property, and pending litigation. Closed Session is designed to protect the City's position. If the body takes action in closed session, that action must publically be reported. Closed sessions are confidential and punishable by legal sanctions if any person involved in the closed session discloses.

8. **ADJOURNMENT –** Meeting was adjourned at 7:57 p.m. to the next regularly scheduled meeting of January 20, 2010.

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Recorder, Stacey Kurz