

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

July 17, 2017

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840 Walker Road
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RE: *Pot-Nets Lakeside, LLC. v. Lakeside Comm. Homeowners Assoc., Inc.*
C.A. No: S17A-03-001 ESB

Dear Counsel:

This is my decision on Appellant Pot-Nets Lakeside, LLC's appeal of Arbitrator Ronald L. Stoner's decision that the Appellant had not proven that it was entitled to a rent increase of \$33.74 per month based on a \$64,791 increase in salaries and wages and a \$108,389 increase in repair and maintenance for the fiscal year ended June 30, 2016, at the manufactured home community known as Pot-Nets Lakeside, located in Long Neck, Delaware. Appellee Lakeside Community Homeowners Association, Inc. is the homeowners association for those manufactured home owners who lease lots from the Appellant in Pot-Nets Lakeside. Appellant provides all of the property management infrastructure and services which support the operation and maintenance of Pot-Nets Lakeside. Tenants in Pot-Nets Lakeside

have access to a number of on-site amenities, including a community center, gazebo and pavilions, a swimming pool, conservation areas and nature trails, a fresh water lake and other recreational amenities. Tenants in Pot-Nets Lakeside have unrestricted access to facilities located in five other Pot-Nets communities, including additional swimming pools, boating facilities and beach access. Tunnell Companies, L.P. employs the workers that do the work in the six Pot-Nets communities. The cost of work done is “charged” to each community based on the actual amount of work done in that community.

Appellant wanted to increase the 2017 monthly lot rent because it had experienced an increase in operating and maintenance expenses in the 2016 fiscal year compared to the 2015 fiscal year. Appellant sent out the required notice of the rent increase to all affected tenants on October 4, 2016. Appellee filed a petition for arbitration on October 27, 2016. The Delaware Manufactured Home Relocation Authority appointed Ronald L. Stoner as the Arbitrator. The arbitration hearing was held on January 23, 2017. The Arbitrator issued his written decision on March 11, 2017. The Appellant then filed this appeal.

The Arbitration Hearing

Five witnesses testified at the arbitration hearing – Robert W. Tunnell, III, Cameron Marcelle, Carol Hastings, CPA, David Doane, CPA, and Elisabeth

Greenwalt. Tunnell, Marcelle, Hastings and Doane testified for the Appellant. Greenwalt testified for the Appellee. Tunnell is part owner of the entity that owns Pot-Nets Lakeside. Marcelle is a certified arborist for Tunnell Companies, L.P. Hastings is the Controller for Tunnell Companies, L.P. Doane is the senior partner of Jefferson, Urian, Doane & Sterner, P.A., a certified public accounting firm. Tunnell Companies, L.P. is one of Doane's clients. Greenwalt is the immediate past president of Appellee.

The following is a breakdown of the increases for Salaries & Wages and Repair & Maintenance and the testimony offered by the witnesses in support of them.¹

	Pot-Nets Lakeside <u>Salaries & Wages</u>		
	<u>07/01/14- 06/30/15</u>	<u>07/01/15 - 06/30/16</u>	<u>Increase</u>
<u>Salaries & Wages</u>			
Operations	\$110,349.20	\$126,168.38	\$15,819.18
Landscaping	83,238.10	121,292.62	38,054.52
Security	46,711.48	52,046.15	5,334.67
Administration	102,636.53	110,278.12	7,641.59
Total	<u>\$342,935.31</u>	<u>\$409,785.27</u>	<u>\$66,849.96*</u>

*\$64,791 after CPI Adjustment.

¹ All cites to testimony are from the Stipulated Record on Appeal and will be noted at ("A- _.").

Robert W. Tunnell, III

- A-73 The cost of removing the pool furniture from the boxes and placing them round the pool is included in Salaries & Wages.
- A-78 Landscaping is cutting the grass, pulling weeds, planting annual flowers, tree maintenance. It is anything to do with maintaining any of the landscaping.
- A-96 Salaries & Wages would include Salaries & Wages of our employees doing repairs and maintenance and the person planting the flowers, salaries and wages of the person cutting a tree or doing power washing or cleaning, etc.
- A-98 A significant portion of the Salaries & Wages category was caused by tree maintenance. There were a large number of tree requests and hazards that we saw during this four-month period when compared to the prior 12 months.
- A-107 There were 71 entries on the tree log for 7/1/14 – 6/30/15.
- There were 419 entries on the tree log for 7/1/15 – 6/30/16.
- A-109 Work detail reports and timesheets are turned in weekly to the accounting department and are used to determine the costs of the tree work.
- A-140 The largest part of the increase in Salaries & Wages was \$38,000 in landscaping, and a lot of that was done because of the tree work.
- A-140 The security increase in Salaries & Wages was because of pay raises given to the security staff. We did a pay raise for patrol people and gate guards because of the surrounding labor market. The security department got higher increases than other departments.
- A-141 The administration and operations departments were increased as well. Operations – some of that was dealing with the pool and some of the

pool furniture, labor to dispose of that, etc.

- A-152 We also added an additional security patrol on our schedule as well. That and increased wages were the two factors responsible for the security Salaries & Wages increase.
- A-158 We incurred extra Salaries & Wages for replacing the lights in the community center with LED lights.

Cameron Marcelle

- A-170 Keeps logs of tree work done in each Tunnell community.
- A-171 71 log entries in July 2014 - 2015.
- A-171 All tree work done was necessary.
- A-172 419 entries for the next year.
- A-173 Tenant requests for tree work have gone up.
- A-180 Cameron Marcelle prioritizes the work in the communities – extreme priority, priority work and routine work.
- A-181 Did more tree work in 2015 - 2016 than the prior year, partly because the tree program started in 2010 on the other end of Long Neck and we've been moving up Long Neck ever since.

Carol Hastings, CPA

- A-185 Makes sure that Salaries & Wages and expenses have been categorized correctly and assigned to the proper communities.
- A-190 Does not analyze whether Salaries & Wages increases reflect an increase of employees and/or wages.
- A-191 Increase in Salaries & Wages for Lakeside was due to a combination of

more employees (working there) and an increase in wages.

David Doane, CPA

A-196- Verified accuracy of Salaries & Wages and Repair & Maintenance as to
200 them being in the proper category and amount.

A-326 The Appellant submitted a letter from Doane stating that he had compared the expenses recorded for Salaries & Wages and Maintenance for Lakeside and that they had increased as follows:

Salaries & Wages	\$66,849
Maintenance	\$108,389

A-328 The Appellant submitted an exhibit stating that Salaries & Wages includes Maintenance & Operations, Landscaping, Administration, Security, Salaries & Wages only.

Elizabeth Greenwalt

A-209 Attended the rent justification meeting on October 4.

A-212 Said that the Tunnells did not give details about the increases at the meeting and that they don't give much information.

A-218 Believes that the information should have been broken down into categories.

A-222 Wanted more information about increases to compare it to amounts they are already paying as part of the rent.

Pot-Nets Lakeside
Repair & Maintenance

	<u>07/01/14- 06/30/15</u>	<u>07/01/15 - 06/30/16</u>	<u>Increase</u>
Repair & Maintenance	\$180,897	\$289,376	\$108,389*

*\$107,303 after CPI Adjustment.

Robert W. Tunnell, III

- A-75 A subcontractor painted the roof of the Lakeside Community Center. This was an increase in Repair & Maintenance.
- A-96 Repair & Maintenance would be building, painting, changing a light bulb, power washing, cleaning, etc.
- A-97 Repair & Maintenance included for most of the painting the two different subcontractors we hired to do that.
- A-115 The types of work done under Repair & Maintenance were, for example, painting of the buildings, HVAC issues, etc.
- A-125 There is ongoing routine painting in the community.
- A-157 We replaced a major motor in one of the fountains. It was like \$2,700.
- A-158 We replaced all the light bulbs in the Community Center with LED lights for \$2,800.
- A-158 We did a large amount of painting. We painted railings and the bridges on the lake, as well as the roof of the Community Center and then some other buildings.
- A-158 We had some HVAC issues in the Community Center. That was \$7,000

of the increase. The rest was materials.

A-160 We spent \$43,000 on painting. It was the total done in 2015-2016. Robert Tunnell did not know what was spent on painting the prior year.

A-116 Discussed some major Repair & Maintenance items for 7/1/15 to 6/30/16 using the following exhibit that was only used for the arbitration hearing.

Pot-Nets Lakeside
Major R&M Items
7/1/15 to 6/30/16
(Exhibit 13)

1. Replaced 1 fountain motor – 10/5/15 cost of \$2,741.
2. Community Center – Replacement of all light bulbs with LED lights – 10/15 **\$2,804.**
3. Painting – Gazebo and bridges summer of 2015, remainder of buildings spring 2016 **\$43,385** in total.
4. Community Center – HVAC Issues 10 & 11/15, 4/16 **\$7,053** in total.

Routine Repair & Maintenance includes but is not limited to the following:

- * Community Center
 - Cleaning
 - Trash Service
 - Fire Protection Service
 - Termite/Pest Control
 - HVAC/Mechanical repairs
 - Furniture/fixtures
- * Roads/Parking Lots
 - Catch Basin Repairs

- * Landscaping
 - Sod
 - Irrigation Parts
 - Annual Flowers **\$3,148**
 - Chemicals/Fertilizer

- * Pool
 - Chemicals
 - Misc. Hardware
 - Filter Pumps **\$1,910**
 - Paint
 - Paper products
 - Uniforms

- * Misc
 - Signs
 - Fencing
 - Misc. Hardware
 - Mailbox areas

A-161 The exhibit lists large single expenses done in 2015-2016. They are not the increases over the prior year. Robert Tunnell did not know what was spent on painting the prior year.

A-328 The Appellant submitted an exhibit stating that Repairs & Maintenance includes all repairs and maintenance in the community including landscaping, buildings, roads, pool, pathways, etc.

Major Repair & Maintenance Expenses

I have listed the major Repair & Maintenance expenses from the exhibit and totaled them.

1.	Replaced one fountain motor	\$ 2,741.00
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2.	Replaced all light bulbs in the Community Center with LED lights	2,804.00
3.	Painted the buildings (including the Gazebo and bridges)	43,385.00
4.	Community Center – HVAC issues	7,053.00
5.	Landscaping – annual flowers	3,148.00
6.	Pool – filter pumps	<u>1,910.00</u>
	Total	<u><u>\$61,041.00</u></u>

The Appellant only explained how it spent \$61,041.00 of the \$289,376 for Repair & Maintenance for 2016. The Appellant did not explain how much it spent on comparable items in 2015, making a year-to-year comparison in any thoughtful manner impossible.

The Arbitrator's Decision

The Arbitrator denied the Appellant's request for a rent increase of \$33.74 per month because he found that the Appellant did not provide enough information to justify it. More specifically, the Arbitrator found that in the absence of (1) more specific financial information about the increases in Salaries & Wages and Repair & Maintenance, and (2) more specific explanations about the increases in Salaries & Wages and Repair & Maintenance that he was simply unable to analyze whether the increases were reasonable. The Arbitrator was particularly frustrated by the fact that

the Appellant had this information and used it to prepare its request, but was unwilling to share it in any form with both the Appellee and him.

The Applicable Statute

Under the Rent Justification Act, a community owner must go through a series of steps to increase rent by more than the CPI-U. It must send out notices.² It must schedule and hold a meeting.³ At or before the meeting, it must “in good faith, disclose in writing all of the material factors resulting in the decision to increase the rent.”⁴ If the case goes to arbitration, it must prove that: (1) there have been no persistent health and safety violations,⁵ (2) the rent increase is “directly related to operating, maintaining or improving the manufactured home community,”⁶ and (3) the rent increase fits into one of the categories in 25 *Del.C.* §7042(c).⁷

25 Del.C. §7042

(a) A community owner may raise a home owner’s rent for any and all 12-month periods governed by the rental agreement in an amount greater than the

² 25 *Del.C.* §7043(a).

³ 25 *Del.C.* §7043(b).

⁴ *Id.*

⁵ 25 *Del.C.* §7042(a)(1).

⁶ 25 *Del.C.* §7042(a)(2).

⁷ *Id.*

average annual increase of the Consumer Price Index for All Urban Consumers in the Philadelphia-Wilmington-Atlantic City area (“CPI-U”) for the most recently available preceding 36-month period provided the community owner can demonstrate the increase is justified for the following conditions:

(1) The Community owner, during the preceding 12-month period, has not been found in violation of any provision of this chapter that threatens the health or safety of the residents, visitors or guests that persists for more than 15 days, beginning from the day the community owner received notice of such violation; and

(2) The proposed rent increase is directly related to operating, maintaining or improving the manufactured home community, and justified by 1 or more factors listed under subsection (c) of this section.

(C) One or more of the following factors may justify the increase of rent in an amount greater than the CPI-U:

(1) The completion and cost of any capital improvements or rehabilitation work in the manufactured home community, as distinguished from ordinary repair, replacement and maintenance;

(2) Changes in property taxes or other taxes within the manufactured home community;

- (3) Changes in utility charges within the manufactured home community;
- (4) Changes in insurance costs and financing associated with the manufactured home community;
- (5) Changes in reasonable operating and maintenance expenses relating to the manufactured home community including, but not limited to: costs for water service; sewer service; septic service; water disposal; trash collection; and employees;
- (6) The need for repairs caused by circumstances other than ordinary wear and tear in the manufactured home community.
- (7) Market rent. – For purposes of this section, “market rent” means that rent which would result from market forces absent an unequal bargaining position between the community owner and the home owners. In determining market rent relevant considerations include rents charged to recent new home owners entering the subject manufactured home community and/or by comparable manufactured home communities. To be comparable, a manufactured home community must be within the competitive areas and must offer similar facilities, services, amenities and management.

A community owner shall not incorporate the cost of a civil penalty, criminal fine, or litigation-related costs for rent-related proceedings into rent charged under any circumstance. A community owner also shall not utilize as justification for any

future rental increase the cost of capital improvements or rehabilitation work, once that cost has been fully recovered by rental increases that were incorporated into a prior rental increase in excess of CPI-U, where the prior rental increase was properly implemented under this subchapter.

Burden of Proof

“At the hearing, the community owner shall open and close the presentation of evidence. The burden of proof shall be on the community owner.”⁸ The term “burden of proof” actually encompasses two separate burdens. One burden is that of producing evidence, satisfactory to the judge, of a particular fact in issue. That is the burden of producing evidence. The second is the burden of persuading the trier of fact that the alleged fact is true. The latter is the burden of persuasion. The burden of producing evidence on an issue means the liability to an adverse ruling, generally a finding or directed verdict, if evidence on the issue has not been produced. The burden of persuasion is crucial only when the parties have sustained their burdens of producing evidence and only after all of the evidence has been introduced.”⁹

Standard of Review

“The Delaware Supreme Court strongly signaled that the scope of review by

⁸ 1 Del. Admin. C. §202-7.14.

⁹ *Quaker Hill Place v. Saville*, 523 A.2d 947, fn. 7 (De. Super. Feb. 10, 1987) (citing McCormick, *Evidence* § 336 (2d ed. 1972)).

the Superior Court in appeals pursuant to the Act requires a substantial evidence and error of law review as opposed to a *de novo* consideration of the record.”¹⁰ The Delaware Supreme Court noted that the “appeal provision provides that any review by the Superior Court will be “on the record and the Court shall address written and/or oral arguments of the parties as to whether the record created in the arbitration is sufficient justification under the Code for the community owner’s proposed rental increase in excess of the CPI-U. That usage, although loose, is associated with the kind of review that is given to determinations by administrative agencies. Under that form of review, if a factual finding of the initial tribunal is supported by substantial evidence, that finding must be given deference.””¹¹

Discussion

The Appellant based its request for a rent increase on 25 *Del. C.* §7042(C)(5). That was the only issue for the Arbitrator to consider.

Salaries & Wages

1. Operations

The cost of Operations went from \$110,349.20 in 2015 to \$126,168.38 in 2016,

¹⁰ *Bon Ayre Land, LLC, v. Bon Ayre Community Association*, 2016 WL 7036580, at *2 (Del. Super. Dec. 2, 2016).

¹¹ *Bon Ayre Land, LLC, v. Bon Ayre Community Association*, 133 A.3d 559, at fn. 11 (Del. Feb. 25, 2016)(Table).

an increase of \$15,819.18. The Appellant did not say what Operations covered. The Appellant did not offer a further dollar breakdown of the \$15,819.18 increase in the cost of Operations. The Appellant offered the following testimony from Tunnell to explain the increase.

- A-73 The cost of removing the pool furniture from the boxes and placing them around the pool is included in Salaries & Wages.
- A-96 Salaries & Wages would include Salaries & Wages of our employees doing repairs and maintenance and the person planting the flowers, salaries and wages of the person cutting a tree or doing power washing or cleaning, etc.
- A-141 The administration and operation departments were increased as well. Operations – some of that was dealing with the pool and some of the pool furniture, labor to dispose of that, etc.
- A-158 We incurred extra Salaries & Wages for replacing the lights in the community center with LED lights.

The Appellant did not attach a dollar amount to any of these reasons. At best, the Appellant explained, in the most general and conclusory manner, some unspecified portion of the Operations total expense of \$126,168.38 for 2016.

2. Landscaping

The cost of Landscaping went from \$83,238.10 in 2015 to \$121,292.62 in 2016, an increase of \$38,054.52. The Appellant defined Landscaping as cutting the grass, pulling weeds, planting annual flowers and tree maintenance. Landscaping

has, according to the Appellant, anything to do with maintaining any of the landscaping. The Appellant did not offer a further dollar breakdown of the \$38,054.52 increase in the cost of Landscaping. The Appellant offered the following testimony from Tunnell and Marcelle to explain the increase.

Tunnell

- A-96 Salaries & Wages would include Salaries & Wages of our employees doing repairs and maintenance and the person planting the flowers, salaries and wages of the person cutting a tree or doing power washing or cleaning, etc.
- A-98 A significant portion of the Salaries & Wages category was caused by tree maintenance. There were a large number of tree requests and hazards that we saw during this four-month period when compared to the prior 12 months.
- A-107 There were 71 entries on the tree log for 7/1/14 – 6/30/15.
- There were 419 entries on the tree log for 7/1/15 – 6/30/16.
- A-109 Work detail reports and timesheets are turned in weekly to the accounting department and are used to determine the costs of the tree work.
- A-140 The largest part of the increase in Salaries & Wages was \$38,000 in landscaping, and a lot of that was done because of the tree work.

Marcelle

- A-170 Keeps logs of tree work done in each Tunnell community.
- A-171 71 log entries in July 2014 – 2015.

- A-171 All tree work done was necessary.
- A-172 419 entries for the next year.
- A-173 Tenant requests for tree work have gone up.
- A-180 Cameron Marcelle prioritizes the work in the communities – extreme priority, priority work and routine work.
- A-181 Did more tree work in 2015 - 2016 than the prior year, partly because the tree program started in 2010 on the other end of Long Neck and we've been moving up Long Neck ever since.

The Appellant also introduced the tree logs for the two years. The Appellant did not break down the Landscaping increase into additional tree work and the other things that comprise Landscaping. The Appellant did not state how much was spent on tree work in 2015 versus how much was spent on tree work in 2016. At best, the Appellant explained, in the most general and conclusory manner, some unspecified portion of the Landscaping total expense of \$121,292.62 for 2016.

3. Security

The cost of Security went from \$46,711.48 in 2015 to \$52,046.15 in 2016, an increase of \$5,334.67. The Appellant did not say what Security covered other than gate guards and patrol people. The Appellant did not offer a further dollar break down of the \$5,334.67 increase in the cost of Security. The Appellant offered the following testimony from Tunnell to explain the increase:

A-140 The security increase in Salaries & Wages was because of pay raises given to the security staff. We did a pay raise for patrol people and gate guards because of the surrounding labor market. The security department got higher increases than other departments.

A-152 We also added an additional security patrol on our schedule as well. That and increased wages were the two factors responsible for the security Salaries & Wages increase.

The Appellant did not break down the cost of the pay raises and additional security patrol. At best, the Appellant explained, in the most general and conclusory manner, some unspecified portion of the Security total expense of \$52,046.15 for 2016.

4. Administration

The cost of Administration went from \$102,636.53 in 2015 to \$110,278.12 in 2016, an increase of \$7,641.59. The Appellant did not say what Administration covered. The Appellant did not offer a further dollar break down of the \$7,641.59 increase in the cost of Administration. The Appellant offered the following testimony from Tunnell to explain the increase:

A-141 The administration and operations departments were increased as well. Operations – some of that was dealing with the pool and some of the pool furniture, labor to dispose of that, etc.

The Appellant did not attach a dollar amount to any of these reasons. At best, the Appellant explained, in the most general and conclusory manner, some unidentified

portion of the total Administration expense of \$110,278.12 for 2016.

The Appellant also offered the following statement from Hastings regarding the overall increase in Salaries & Wages.

A-191 Increase in Salaries & Wages for Lakeside was due to a combination of more employees (working there) and an increase in wages.

The Appellant did not quantify in any way the number of additional employees (or man-hours) or the increase in wages (either as a percentage or gross dollar amount), making this statement unhelpful.

Repair & Maintenance

The cost of Repair & Maintenance went from \$180,897 in 2015 to \$289,376 in 2016, an increase of \$108,389. The Appellant defined Repair & Maintenance as all repairs and maintenance in the community including landscaping, buildings, roads, pools, etc. The Appellant also broke out Repair & Maintenance in an exhibit as including but not limited to the following:

Community Center

- Cleaning
- Trash Service
- Fire Protection Service
- Termite/Pest Control
- HVAC/Mechanical repairs
- Furniture/fixtures

Roads/Parking Lots

Catch Basin Repairs

Landscaping

Sod
Irrigation Parts
Annual Flowers
Chemicals/Fertilizer

Pool

Chemicals
Misc. Hardware
Filter Pumps
Paint
Paper products
Uniforms

Miscellaneous

Signs
Fencing
Misc. Hardware
Mailbox areas

The Appellant did not offer a further dollar breakdown of the \$108,389 increase in the cost of Repair & Maintenance. The Appellant offered the following testimony from Tunnell to explain the increase.

A-75 A subcontractor painted the roof of the Lakeside Community Center. This was an increase in Repair & Maintenance.

A-96 Repair & Maintenance would be building, painting, changing a light

bulb, power washing, cleaning, etc.

- A-97 Repair & Maintenance included for most of the painting the two different subcontractors we hired to do that.
- A-115 The types of work done under Repair & Maintenance were, for example, painting of the buildings, HVAC issues, etc.
- A-125 There is ongoing routine painting in the community.
- A-157 We replaced a major motor in one of the fountains. It was like \$2,700.
- A-158 We replaced all the light bulbs in the Community Center with LED lights for \$2,800.
- A-158 We did a large amount of painting. We painted railings and the bridges on the lake, as well as the roof of the Community Center and then the other buildings.
- A-158 We had some HVAC issues in the Community Center. That was \$7,000 of the increase. The rest was materials.
- A-160 We spent \$43,000 on painting. It was the total done in 2016-2016. Robert Tunnell did not know what was spent on painting the prior year.
- A-161 The exhibit lists large single expenses done in 2015-2016. They are not the increases over the prior year. Robert Tunnell did not know what was spent on painting the prior year.
- A-328 The Appellant submitted an exhibit stating that Repairs & Maintenance includes all repairs and maintenance in the community including landscaping, buildings, roads, pool, pathways, etc.
- A-116 Discussed some major Repair & Maintenance items for 7/1/15 to 6/30/16 using the following exhibit that was only used for the arbitration hearing.

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Major R&M Items
7/1/15 to 6/30/16
(Exhibit 13)

1. Replaced one fountain motor – 10/5/15 cost of \$2,741.
2. Community Center – Replacement of all light bulbs with LED lights – 10/15 **\$2,804**.
3. Painting – Gazebo and bridges summer of 2015, remainder of buildings spring 2016 **\$43,385** in total.
4. Community Center – HVAC Issues 10 & 11/15, 4/16 **\$7,053** in total.

Routine Repair & Maintenance includes but is not limited to the following:

- * Community Center
 - Cleaning
 - Trash Service
 - Fire Protection Service
 - Termite/Pest Control
 - HVAC/Mechanical repairs
 - Furniture/fixtures
- * Roads/Parking Lots
 - Catch Basin Repairs
- * Landscaping
 - Sod
 - Irrigation Parts
 - Annual Flowers **\$3,148**
 - Chemicals/Fertilizer
- * Pool
 - Chemicals
 - Misc. Hardware

Filter Pumps **\$1,910**

Paint

Paper products

Uniforms

* Miscellaneous

Signs

Fencing

Misc. Hardware

Mailbox areas

Major Repair & Maintenance Expenses

I have listed the major Repair & Maintenance expenses from the exhibit and totaled them.

1.	Replaced one fountain motor	\$ 2,741.00
2.	Replaced all light bulbs in the Community Center with LED lights	2,804.00
3.	Painted the buildings (including the Gazebo and bridges)	43,385.00
4.	Community Center – HVAC issues	7,053.00
5.	Landscaping – annual flowers	3,148.00
6.	Pool – filter pumps	<u>1,910.00</u>
	Total	<u><u>\$61,041.00</u></u>

The Appellant only explained how it spent \$61,041.00 of the \$289,376 for Repair & Maintenance for 2016. The Appellant did not explain how much it spent

on comparable items in 2015, making a year-to-year comparison in any thoughtful manner impossible.

Conclusion

I agree with the Arbitrator that the Appellant did not provide enough financial information to justify its rent increase of \$33.74 per month. The proposed increase was based on increases in Salaries & Wages and Repair & Maintenance. The Appellant provided two years of summarized expenses, a few exhibits and the brief testimony of four witnesses to support its request. I will address Salaries & Wages and Repair & Maintenance separately.

Salaries & Wages

The Appellant broke Salaries & Wages into four categories – Operations, Landscaping, Security and Administration and provided the following information:

	Pot-Nets Lakeside Salaries & Wages		
	07/01/14- 06/30/15	07/01/15 - 06/30/16	Increase
<u>Salaries & Wages</u>			
Operations	\$110,349.20	\$126,168.38	\$15,819.18
Landscaping	83,238.10	121,292.62	38,054.52
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Total	<u>\$342,935.31</u>	<u>\$409,785.27</u>	<u>\$66,849.96*</u>

*\$64,791 after CPI Adjustment

The Appellant did not further break down each category. The Appellant also did not further break down the increase for each category. The Appellant did describe what Landscaping and Security covered. The Appellant did not describe what Operations and Administration covered. The Appellant offered very brief and general testimony describing the reasons for the increase in each category. However, the Appellant never attached a dollar amount to the reasons for each increase. Frankly, the Appellant only explained, in a general fashion, unspecified portions of the Salaries & Wages for 2016.

In the absence of enough financial information to allow the Arbitrator to understand in any meaningful way how and why the Salaries & Wages expenses increased from year-to-year, he was simply in no position to determine if the increases were justified. For example, the cost of Landscaping increased \$38,054.52. The Appellant described Landscaping as cutting the grass, pulling the weeds, planting annual flowers and tree maintenance. The Appellant said that a big part of the increase in the cost of Landscaping was due to an increase in tree maintenance. Tunnell and Marcelle both testified that more tree maintenance was done in 2016 than 2015 and they offered the tree logs to prove it. However, to evaluate their explanation for the increase it would have been helpful to know how much the

Appellant spent on tree maintenance in 2015 and 2016. If you knew that, then you would at least know how much of the \$38,054.52 increase in Landscaping could be explained by a year-to-year increase in tree maintenance. However, that information was not provided, making it impossible for the Arbitrator to make an informed decision. The same criticism is applicable to the other categories as well.

Repair & Maintenance

The Appellant provided the following information:

	<u>07/01/14- 06/30/15</u>	<u>07/01/15 - 06/30/16</u>	<u>Increase</u>
Repair & Maintenance	\$180,897	\$289,376	\$108,389*

*107,303 after CPI Adjustment.

The Appellant said that Repair & Maintenance included the Community Center, Roads/Parking Lots, Landscaping, Pools and Miscellaneous. The Appellant further broke down each of these categories into its constituent parts. For example, the Community Center included cleaning, trash service, fire protection service, termite/pest control, HVAC/Mechanical repairs and furniture/fixtures. However, the Appellant did not provide a further dollar breakdown for any of the categories or the constituent parts of the categories.

The Appellant also identified the following major Repair & Maintenance

expenses:

1.	Replaced one fountain motor	\$ 2,741.00
2.	Replaced all light bulbs in the Community Center with LED lights	2,804.00
3.	Painted the buildings (including the Gazebo and bridges)	43,385.00
4.	Community Center – HVAC issues	7,053.00
5.	Landscaping – annual flowers	3,148.00
6.	Pool – filter pumps	<u>1,910.00</u>
	Total	<u><u>\$61,041.00</u></u>

The Appellant offered very brief and general testimony describing the reasons for the increase in Repair & Maintenance. The Appellant was only able to identify \$61,041.00 of the Repair & Maintenance for 2016, leaving no testimony at all as to how the balance of \$228,335 was spent.

Once again, in the absence of enough financial information to allow the Arbitrator to understand in any meaningful way how and why the Repair & Maintenance expenses increased from year-to-year, he was simply in no position to determine if the increases were justified. Once again, I will give an example. The Appellant said that it spent \$43,385 to paint the buildings in 2016. However, to evaluate the Appellant's explanation for the increase in Repair & Maintenance, it

would have been helpful to know how much the Appellant spent to paint the buildings in 2015. If you knew that, then you would at least know how much of the \$108,389 total increase in Repair & Maintenance could be explained by the year-to-year increase in painting the buildings. However, that information was never provided, making it impossible for the Arbitrator to make an informed decision. The same criticism is equally applicable to the other \$17,656 of specified expenses. The Appellant simply never told the Arbitrator how much, if any, it spent on comparable expenses in 2015, leaving the Arbitrator unable to evaluate whether those items even represented an increase over the prior year or not.

The following is a breakdown by year and category of Repair & Maintenance for the two years and the information the Appellant provided.

<u>Repair & Maintenance</u>		
	<u>07/01/14- 06/30/15</u>	<u>07/01/15 - 06/30/16 Increase</u>
<u>Community Center</u>		
Painting		43,385*
Cleaning		
Trash Service		
Fire Protection Service		
Termite/Pest Control		
HVAC/Mechanical repairs		7,053*
Furniture/fixtures		
Fountain motor		2,741*
LED Lights		2,804*

Repair & Maintenance (Continued)

	<u>07/01/14-</u> <u>06/30/15</u>	<u>07/01/15 -</u> <u>06/30/16</u>	<u>Increase</u>
<u>Roads/Parking Lots</u>			
Catch Basin Repairs			
<u>Landscaping</u>			
Sod			
Irrigation Parts			
Annual Flowers		3,148*	
Chemicals/Fertilizer			
<u>Pool</u>			
Chemicals			
Misc. Hardware			
Filter Pumps		1,910*	
Paint			
Paper products			
Uniforms			
<u>Miscellaneous</u>			
Signs			
Fencing			
Misc. Hardware			
Mailbox areas			
Total	<u>\$180,897</u>	<u>\$289,376</u>	<u>\$108,389*</u>

*The sum of these is only \$61,041.

There is no dollar breakdown for the various categories for 2015. There is only \$61,041.00 in detail of the \$289,376 spent in 2016. Of course, there is no dollar

breakdown of the year-over-year increase because no information was provided for 2015.

The Appellant's Argument

The Appellant provided to the Arbitrator the total amount it spent on Salaries & Wages and Repair & Maintenance for 2015 and 2016 and the year-over-year increase for each. The Appellant also broke down Salaries & Wages into four categories. The Appellant's controller and outside auditor testified that the amounts presented for Salaries & Wages and Repair & Maintenance were properly categorized and correct. The Appellant's owner and arborist explained why some of the expenses increased. The Appellant argues that this is more than adequate and that it is not required to provide source level accounting data. The Appellant also argues that the Appellee offered nothing to contradict its evidence.

I disagree. In order to persuade someone that what you have done is justified, you have to tell them what you have done in some level of detail that is meaningful and explain in a meaningful manner why you have done what you have done. The Appellant failed to do this. The Arbitrator did not require, or expect, the Appellant to provide source level accounting data. That would be too much detail. The Arbitrator was simply not persuaded by the summarized financial information and brief testimony that the Appellant did provide. As to the fact that the Appellee did

not challenge the Appellant's presentation, it does not matter. The Appellant had the burden of proof, not the Appellee. Moreover, the information provided by the Appellant was so brief it was not susceptible to challenge.

The Arbitrator's decision is Affirmed.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal

cc: Prothonotary