

NO. 49836-7-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

EDNA ALLEN, an individual,

and

MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM,
WASHINGTON STATE ATTORNEY GENERAL'S OFFICE,

Petitioners,

v.

DAN & BILL'S RV PARK,

Respondent.

BRIEF OF PETITIONER STATE OF WASHINGTON

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I. INTRODUCTION

The Washington legislature found that “manufactured housing and mobile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing. . . . [I]t is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, . . . to protect low-income mobile home park residents from both physical and economic displacement.” RCW 59.22.010.

The Manufactured/Mobile Home Landlord Tenant Act (MHLTA or the Act), RCW 59.20, was enacted to govern relationships between parks like Dan & Bill’s RV Park (Dan & Bill’s) and their tenants who, by virtue of possessing homes that are impractical and cumbersome to move, are in vulnerable positions in housing disputes. MHLTA exists to safeguard tenants from unlawful rental increases and to offer protections of a written lease agreement. The legislature intended to classify parks such as Dan & Bill’s as a mobile home park to confer protections to their tenants who, like Edna Allen, are low-income and live at Dan & Bill’s, not recreationally or temporarily, but with no plans to leave.

The Office of the Attorney General administers the Manufactured Housing Dispute Resolution Program (the Program), which is charged

with enforcing the MHLTA.¹ The Program investigated and determined that Dan & Bill's was subject to and violated the MHLTA. The Program issued a Notice of Violation to Dan & Bill's, followed by a separate Order to Cease and Desist. Dan & Bill's appealed these actions. Following briefing and testimony at a hearing, the administrative law judge (ALJ) at the Office of Administrative Hearings (OAH) issued a final order (ALJ Order) that set aside and reversed the Program's determinations.

The question before this Court is whether Dan & Bill's contains two or more "park model" homes, as defined under MHLTA, which would have brought Dan & Bill's within the purview of the Act. The ALJ concluded that Dan & Bill's did not contain at least two park models and was not therefore subject to the Act. The ALJ committed legal error in doing so. As evident from the plain meaning of the relevant statutes and supported by the legislative history of the MHLTA provisions, Dan & Bill's has two or more tenants with park models on the property and is subject to MHLTA.

¹ Pursuant to General Order 2017-1 of Division II and RAP 3.4, the title of a case in the appellate court is the same as in the trial court. In pleadings and orders before the superior court, this case has been variously captioned as "Edna Allen v. Washington State Attorney General," "In re Complaint of Edna Allen Against Dan & Bill's RV Park," and "Edna Allen and Washington State Attorney General v. Dan & Bill's RV Park." The Program, through the Office of the Attorney General, styles this brief similar to the caption of Ms. Allen's opening brief for consistency and to make clear that Ms. Allen and the Program both petitioned the lower court – in this case, Thurston County Superior Court – for review of the ALJ order. CP 3; CP 251.

The Program, through the Office of the Attorney General, respectfully requests that this Court reverse the ALJ Order, as the superior court did, and find that, because at least two park models are present on the property, Dan & Bill's is subject to MHLTA. The Program further requests that this Court find Dan & Bill's violated the Act both times that it improperly increased Ms. Allen's rent and when it failed to provide Ms. Allen with a written lease agreement.

II. ASSIGNMENTS OF ERROR

The Program makes the following assignments of error to the conclusions of law in the ALJ Order:

1. The ALJ erred in its interpretation of the definition of "park model" under MHLTA. Conclusion of Law (COL) 5.21.
2. The ALJ erred when it concluded that no other unit besides Ms. Allen's constituted a "park model" as defined by MHLTA. COL 5.23 – 5.24.
3. The ALJ erred in concluding that Dan & Bill's did not contain two or more park models and is therefore not subject to the MHLTA. COL 5.25 – 5.26.
4. The ALJ further erred when it concluded that because MHLTA did not apply, Dan & Bill's did not violate RCW 59.20.050(1) and 59.20.060(1) when it failed to provide tenants with written rental agreements. COL 5.27.
5. The ALJ further erred when it concluded that because MHLTA did not apply, Dan & Bill's did not violate RCW 59.20.060(2)(c), 59.20.090(2), 59.20.070(5) either of the times that it raised Ms. Allen's rent. COL 5.28.
6. The ALJ further erred when it concluded that because MHLTA did not apply, the Program's Notice of Violation and Temporary Order to Cease and Desist should both be set aside. COL 5.30.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the ALJ Order should be reversed because the ALJ erroneously concluded that Dan & Bill's is not subject to the MHLTA, even though Dan & Bill's rents space to at least two park models.
2. Whether the ALJ Order should be reversed because MHLTA does apply to Dan & Bill's, and Dan & Bill's violated RCW 59.20.060(2)(c) and 59.20.090(2) when it increased the amount of Ms. Allen's monthly rent mere months' into her tenancy and when Dan & Bill's failed to provide Ms. Allen with three months' written notice of the rent increase.
3. Whether the ALJ Order should be reversed because MHLTA does apply to Dan & Bill's, and Dan & Bill's violated RCW 59.20.050(1) and 59.20.060(1) when it failed to provide Ms. Allen with a written rental agreement.
4. Whether the ALJ Order should be reversed because MHLTA does apply to Dan & Bill's, and Dan & Bill's violated RCW 59.20.070(5) when it retaliated against Ms. Allen by increasing her rent again after the Program issued the Notice of Violation.
5. Whether the ALJ Order setting aside the Program's Notice of Violation and Temporary Order to Cease and Desist should be reversed, because MHLTA does apply to Dan & Bill's and Dan & Bill's is subject to and violated MHLTA.

IV. STATEMENT OF THE CASE

A. **The Legislature Created The Program To Rectify Inequality Of Bargaining Positions Between Tenants And Landlords In The Manufactured/Mobile Home Setting**

The MHLTA, RCW 59.20, applies to rental tenancies where a tenant owns a manufactured or mobile home, as defined under the Act, and rents the land upon which the home is situated. In 2007, the legislature determined that a tenant's difficulty and expense of moving and relocating a manufactured home gave manufactured housing park owners unfair

leverage in disputes with tenants. RCW 59.30.010(1). To remedy this inequality, the legislature created the Manufactured Housing Dispute Resolution Program as an equitable, less costly, and more efficient way for manufactured housing tenants and landlords to resolve disputes alleging violations of the MHLTA. RCW 59.30.030(2). Under the Program, the Attorney General is authorized to facilitate negotiations between manufactured housing landlords and tenants, investigate alleged violations of the MHLTA, make determinations, and issue fines and penalties against landlords and tenants if the Attorney General finds violations of under the MHLTA. *See* RCW 59.30.010(3)(c).

In response to complaints filed with the Office of the Attorney General, the Program attempts to facilitate negotiated resolutions between the parties. RCW 59.30.040(3). If parties are unable to informally resolve the dispute, the Program will investigate potential violations of RCW 59.20. *Id.* After investigation, the Program may issue a notice of violation, if warranted. RCW 59.30.040(5)(a). Once a notice of violation is issued, the Attorney General is authorized to order a landlord or tenant to cease and desist from the unlawful practices. RCW 59.30.040(7). The Program may take affirmative steps to carry out the purposes of RCW 59.30, including issuing refunds of improper rent increases or other charges collected in violation of the law. *Id.*

Either party may request an administrative hearing under the Administrative Procedures Act (APA), RCW 34.05, to contest a notice of violation or, alternatively, a notice of non-violation. RCW 59.30.040(8)(a). The order of the ALJ constitutes the final agency order of the Attorney General and is subject to judicial review pursuant to the APA. RCW 59.30.040(10).

B. Dan & Bill's Is The Primary Residence Of Edna Allen And Other Tenants In The Park

Dan & Bill's is located in Puyallup, Washington. Administrative Record (AR) 336:3-4 (Daniel Haugsness (Haugsness) Testimony). Dan & Bill's rents individual spaces to fewer than 64 trailers, recreational vehicles, park models, or fifth-wheels. AR 1221:10-12 (Haugsness Testimony). *See, e.g.*, AR 1013:13 (Barbara Hamrick (Hamrick) Testimony); AR 1056:6 (Ed Shinkle (Shinkle) Testimony); AR 1027:24 (Matthew Niquette (Niquette) Testimony). Each residential unit in the park is assigned a unique number by Dan & Bill's. AR 858 (ALJ Order, Finding of Fact (FOF) 4.8).

Edna Allen lives in a park model at Dan & Bill's, and she pays rent for space on the lot. AR 860 (FOF 4.19, 4.20); AR 969: 15-17 (Edna Allen (Allen) Testimony). The park model sat on Dan & Bill's lot before Ms. Allen took possession of it; it had been there for at least four years prior to

Ms. Allen moving in. AR 963:8-11 (Allen Testimony). Ms. Allen describes herself as a disabled senior on a fixed income; she was formerly homeless prior to moving into Dan & Bill's. AR 960:25; 966:12-13; 967:7-8; 968:2-3 (Allen Testimony); AR 348 (Allen Complaint).

Ms. Allen's park model trailer sits on a steel frame and is supported by numerous stacks of cinderblocks. AR 370-374 (State's Ex. 11-14), AR 989-90 (Allen Testimony). Though her home has attached wheels, Ms. Allen has never moved her home from its location at Dan & Bill's since she moved in on January 3, 2014. AR 860 (FOF 4.19, 4.23); AR 988:9-10 (Allen Testimony).

Ms. Allen regards her park model home at Dan & Bill's as her permanent and primary residence. AR 993:5-10 (Allen Testimony). Many other tenants at Dan & Bill's do as well. AR 1016:2-4 (Hamrick Testimony); AR 1027:25-1028:3, 1030:3-4 (Niquette Testimony); AR 1059:16-24 (Shinkle Testimony); AR 1082:9-10, 1083:16-19 (Roy Bordenik (Bordenik) Testimony). Many tenants have resided at Dan & Bill's for many years, some for over a decade. AR 1013:6-11 (Hamrick Testimony) (over fourteen years); AR 1028:8-9 (Niquette Testimony) (around five years); AR 1055:25 (Shinkle Testimony) (around five years); AR 1081:14-16 (Bordenik Testimony) (over nine years).

Because Dan & Bill's tenants have no plans to leave and intend to live there on a permanent basis, they have landscaped their rented lots by installing grass, hedges, trees, shrubs, potted plants, outdoor seating areas, fences, outdoor art, and walls to prevent erosion. *See* AR 364, 368, 376, 382, 402, 416-418 (State's Ex. 8, 10, 14, 17, 27, 33 & 34). One tenant has had cable television installed on her lot for the past five or six years. AR 1022:17-22 (Hamrick Testimony).

C. The Program Investigated Dan & Bill's For Violations Of MHLTA

When Ms. Allen moved into the park, Dan Haugsness, the owner of Dan & Bill's, did not provide her a written rental agreement. AR 864 (FOF 4.60, 4.61); AR 974:25-975:19 (Allen Testimony). Mr. Haugsness did not provide any of the tenants with a written rental agreement. AR 864 (FOF 4.60). Mr. Haugsness did provide Ms. Allen with a document indicating rules and regulations for the park. AR 975:5-13; AR 358 (State's Ex. 6). This document did not detail the amount of rent or period of tenancy. AR 358 (State's Ex. 6). Ms. Allen asked Mr. Haugsness several times for a written rental agreement, but Mr. Haugsness has never provided her with one. AR 864 (FOF 4.60, 4.61); AR 976:11-13, 977:7-16 (Allen Testimony).

Months into Ms. Allen's tenancy, Mr. Haugsness verbally informed Ms. Allen that he was increasing her monthly rent by \$20.00. AR 864 (FOF 4.65); AR 977:17 – 978:13 (Allen Testimony). Mr. Haugsness provided only one month's notice of the rent increase. AR 355 (State's Ex. 4). In May 2014, four months after her tenancy began, Ms. Allen began paying \$20.00 more each month for rent. AR 982:9-11 (Allen Testimony); AR 408-410 (State's Ex. 30). However, Ms. Allen also filed a request for dispute resolution with the Program, alleging that Dan & Bill's refused to provide her with a written rental agreement and improperly increased her rent. AR 347-349 (State's Ex. 1); AR 858 (FOF 4.1).

In response to Ms. Allen's Program complaint, Mr. Haugsness, through his attorney, maintained that Dan & Bill's was not a manufactured/mobile home community and therefore not subject to MHLTA and, by extension, the Program. Dan & Bill's stated it was an RV Park for recreational vehicles. The Program commenced an investigation to determine whether Dan & Bill's was a manufactured/mobile home park under MHLTA and if so, whether Dan & Bill's violated the law when it increased Ms. Allen's rent and failed to provide a written lease. AR 1163:23 – 1166:10 (Chad Crummer (Crummer) Testimony).

At the conclusion of its investigation, the Program issued a Notice of Violation against Dan & Bill's on November 17, 2014. AR 7-13. The

Program concluded that Dan & Bill's had violated RCW 59.20.060(2)(c) and RCW 59.20.090(2) when it improperly increased Ms. Allen's rent, as well as RCW 59.20.050(1) and RCW 59.20.060(1) for failing to provide Ms. Allen with a written lease. AR 9-10. Dan & Bill's appealed the Notice of Violation to OAH. AR 3.

On February 2, 2015, Mr. Haugsness notified Ms. Allen that he was increasing her monthly rent again, effective April 1, 2015. AR 984-87 (Allen Testimony). Mr. Haugsness told Ms. Allen that he was increasing her monthly rent another \$10.00 a month to pay his attorney's fees. AR 983:12 - 987:15 (Allen Testimony). This time, Mr. Haugsness provided written notice to Ms. Allen, along with the invoice for his attorney's services. *Id.* The Program issued Dan & Bill's an Order to Cease and Desist from increasing Ms. Allen's monthly rent as a retaliatory practice and without providing proper notice. AR 141. Dan & Bill's appealed the Order to Cease and Desist to OAH. AR 858 (FOF 4.5).

D. The ALJ Concluded That Dan & Bill's Is Not Subject To MHTLA

Dan & Bill's two appeals of the Program's actions were consolidated by OAH, which conducted a live hearing and heard testimony from numerous tenants and Mr. Haugsness. At the hearing, Dan & Bill's argued that it was not a manufactured/mobile home park subject

to MHLTA. The evidence at hearing included testimony from Ms. Allen and at least four other tenants who have resided at Dan & Bill's for periods of time ranging between 18 months and 12 years and claim Dan & Bill's as their primary and permanent residence. *See, supra*, IV.B. at 6-8. The evidence also established that tenants have installed landscaping and cable television on their lots, and they had no plans to move elsewhere. *See id.*

Following the hearing, an ALJ Order was issued on November 9, 2015, reversing the Program's actions and setting aside the Program's Notice of Violation and Order to Cease and Desist. AR 855, 870. The ALJ Order is the agency action at issue in this appeal.

In his order, the ALJ concluded that the question of whether Dan & Bill's was a manufactured/mobile home park subject to the MHLTA was, at its essence, a question of "whether [Dan & Bill's] contains two or more park models." AR 867, 868 (COL 5.14, 5.17). The ALJ analyzed the definition of "park model" under MHLTA – "a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence" (RCW 59.30.020(11)) – and found the phrase "intended for permanent or semi-permanent installation" to be vague. AR 868 (COL 5.21).

The ALJ next reviewed the definition of “recreational vehicle” under MHLTA—a unit that “is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot” (RCW 59.30.020(12)) – and determined that “‘immobilized’ describes ‘semi-permanent installation’ and ‘permanently affixed’ describes ‘permanent installation.’” AR 868 (COL 5.21). Having made this determination, the ALJ found that Ms. Allen’s unit, her primary residence, was “immobile in its present state” and “semi-permanently installed,” and therefore a park model. AR 869 (COL 5.22). The ALJ noted that while the other residents indicated their respective units were also their primary residences, unlike Ms. Allen’s unit, “[t]he evidence is that they are movable and able to be relocated with as little as 15 minutes and no more than 2 hours of preparation.” *Id.* (COL 5.23). The ALJ reasoned that unlike Ms. Allen’s unit, none of the other tenants’ units featured attributes that “restrict the units’ mobility.” *Id.* The fact that tenants have taken it upon themselves to install storage sheds, decks, stairs, and landscaping, the ALJ decided, only “are evidence that the units are primary residences. Those attributes are not evidence that the units are permanently or semi-permanently installed . . . [or] evidence that anyone intends that the units be permanently or semi-permanently installed.” *Id.*

Having found only one park model in Dan & Bill's, the ALJ determined that Dan & Bill's was not a mobile home park and thus not subject to MHLTA. AR 869 (COL 5.24 – 5.26). Having reached this conclusion, the ALJ did not find that Dan & Bill's violated MHLTA as outlined in the Program's Notice of Violation, and the ALJ set aside both the Notice of Violation and the Temporary Order to Cease and Desist. AR 870 (COL 5.27 – 5.30).

The Program, through the Office of Attorney General, and Edna Allen perfected their respective appeals to the Thurston County Superior Court. Brief of Pet. Edna Allen, Appendix C at 7 (Thurston County Superior Court Oct. 7, 2016 Letter Ruling (Letter Ruling) at 2). Dan & Bill's filed an unsigned cross appeal but did not pay filing fees. *Id.*

E. The Superior Court Held That Dan & Bill's Is Subject To MHLTA And Reversed The ALJ Order

Like the ALJ, the superior court also determined that the “sole dispute is whether the park rents to two or more park models.” Brief of Pet. Edna Allen, Appendix C at 7 (Letter Ruling, at 2.). The court concluded that the definitions of “park model” and “recreation vehicle” under the MHLTA were “mutually exclusive” “and could not be harmonized regarding the residency requirement. *Id.* at 8-9 (Letter Ruling, at 3-4.) Citing the principle that the provisions of a specific more recent

statute prevails in a conflict with a more general predecessor, the superior court determined that the definition of “park model” prevails over the definition of “recreational vehicle” with regard to the residence requirement. *Id.* at 9 (Letter Ruling at 4.)

In harmonizing the “park model” and “recreational vehicle” definitions with regard to the permanency requirement, in contrast, the superior court found no conflict: park models require that “the vehicle must be installed on a permanent or semi-permanent basis, but not immobilized or permanently affixed to the lot.” Brief of Pet. Edna Allen, Appendix C at 9 (Letter Ruling at 4.). With this understanding, the superior court found more than two tenants had units at Dan & Bill’s that qualified as park models. The park model tenants had vehicles the superior court found *could* be relocated but nevertheless have been minimally moved, sometimes only to a different location within Dan & Bill’s lot, during their tenancies. *Id.* at 9-10 (Letter Ruling at 4-5). Having reached this conclusion, the superior court found that Dan & Bill’s was a manufactured/mobile home park under MHLTA and remanded the matter back to OAH for proceedings consistent with the order. *Id.* at 2-3 (Thurston County Superior Court Dec. 16, 2016 Order at 2-3). Dan & Bill’s appealed to this Court.

V. STANDARD OF REVIEW

Judicial review of this matter is governed by the APA. RCW 59.30.040(10). The Court of Appeals sits in the same position as the superior court and reviews the agency's decision by applying the standards in the APA directly to the agency record. *Eidson v. State, Dep't of Licensing*, 108 Wn. App. 712, 717-18, 32 P.3d 1039 (2001).

Under the APA, the party challenging the agency action bears the burden of proof. RCW 34.05.570(1)(a); *ZDI Gaming, Inc. v. State ex rel. Washington State Gambling Comm'n*, 151 Wn. App. 788, 805, 214 P.3d 938 (2009). A reviewing court may grant relief from an ALJ order if it determines that the order results from an erroneous interpretation or application of the law, is not supported by substantial evidence when viewed in light of the whole record before the court, or is arbitrary or capricious. RCW 34.05.570(3)(d), (e), (i); *ZDI Gaming*, 151 Wn. App. at 805-06.

In determining whether an ALJ order is the result of an erroneous interpretation or application law, where statutory construction is necessary, the reviewing court will interpret statutes *de novo*. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 587, 90 P.3d 659 (2004). Questions of law are reviewed under the error of law standard. *Waste Mgmt. of Seattle, Inc. v. Utils. and Transp. Comm'n*, 123 Wn.2d

621, 627, 869 P.2d 1034 (1994). A mixed question of law and fact occurs when a court must apply legal principles to factual circumstances. *Tapper v. State Employment Sec. Dep't*, 122 Wn.2d 397, 403, 858 P.2d 494 (1993). The process of applying the law to the facts is a question of law and is subject to *de novo* review. *Id.*; *Port of Seattle*, 151 Wn.2d at 588.

An agency's decision is arbitrary and capricious if it results from willful and unreasoning disregard of the facts and circumstances. *Overlake Hosp. Ass'n v. Dep't of Health of State of Washington*, 170 Wn.2d 43, 50, 239 P.3d 1095 (2010); *Hayes v. City of Seattle*, 131 Wn.2d 706, 717, 934 P.2d 1179 (1997) (holding agency's action was arbitrary and capricious where agency's findings were too conclusory to show consideration of the surrounding facts and circumstances).

In this case, the ALJ Order results from erroneous interpretation or application of the law, draws conclusion that are not supported by substantial evidence in the record, and is arbitrary and capricious. As such, this court must reverse the ALJ Order.

VI. ARGUMENT

The threshold issue on appeal is whether Dan & Bill's is a manufactured/mobile home park subject to the MHLTA. Under the Act, a "mobile home park" or "manufactured/ mobile home community" means "any real property which is rented or held out for rent to others for the

placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.” RCW 59.20.030(10).

First, there is no dispute that Dan & Bill’s operates a park that is rented to others—it is operated for the purpose of producing income. AR 1247:23-24, 1248: 6-7 (Haugness Testimony). Second, the administrative record contains no evidence that any of the tenants use their homes at Dan & Bill’s as transient, temporary, or seasonal lodging. To the contrary, Ms. Allen, Ms. Hamrick, Mr. Niquette, Mr. Shinkle, and Mr. Bordenik each testified before the ALJ that they live at Dan & Bill’s year-round. Ms. Allen has lived at Dan & Bill’s for over two years; Mr. Niquette and Mr. Shinkle have lived at Dan & Bill’s for five years; Mr. Bordenik has lived at Dan & Bill’s for nine years; and Ms. Hamrick has lived at Dan & Bill’s for 12 years. *See, supra*, IV.B. at 6-8. This is not seasonal occupancy. Additionally, the Program’s investigator, Chad Crummer visited Dan & Bill’s numerous times during the Program’s year-and-a half-long investigation. *See* AR 1164:11-17, 1182:6-10 (Crummer Testimony). Mr. Crummer testified that there were no substantial changes to the park during his visits and that the majority of the tenants remained

where they were during the course of the investigation. AR 1182:6-18. (Crummer Testimony).

Finally, the parties do not dispute that Dan & Bill's contains no mobile homes or manufactured homes. AR 867 (COL 5.14). Rather, the question is whether Dan & Bill's contains two or more park models to meet the definition of "mobile home park" or "manufactured/mobile home community" under MHLTA.

A. Dan & Bill's Contains At Least Two Park Models, As Defined By MHLTA

Under the MHLTA, a park model is "a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence." RCW 59.20.030(14). Therefore, in order to determine whether Dan & Bill's contains park models, the court must first determine whether Dan & Bill's contains recreational vehicles.

As shown below, the definition of "park model" was added to MHLTA in 1999 and amended in 2003. *See* H.B. 1378, 56th Leg., Reg. Sess., 1999 Wash. Sess. Laws 1999; H.B. 1786, 58th Leg., Reg. Sess., 2003 Wash. Sess. Laws 2003; RCW 59.20.030(4). The MHLTA definition of "recreational vehicle" was enacted 6 years earlier, in 1993, and has not been amended since. H.B. 5482, 53rd Leg., Reg. Sess., 1993 Wash. Sess. Laws 1993; RCW 59.20.030(17). A "recreational vehicle" is

a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot.

The interpretation of a statute is a question of law reviewed *de novo*. *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The Washington Supreme Court explained,

it is this court's paramount duty to discern and give effect to the intent of the legislature. Statutes relating to the same subject are to be read together so as to constitute a unified whole. Where possible, we will read statutes as complementary, rather than in conflict with each other. To the extent there are apparent conflicts between statutes, courts generally resolve such conflicts by giving "preference to the more specific and more recently enacted statute."

Lenander v. Wash. State Dep't of Retirement Systems, 186 Wn.2d 393, 412, 377 P.3d 199 (2016) (citations omitted).

A conflict is apparent between the definition of "park model" in RCW 59.20.030(14) and "recreational vehicle" in RCW 59.20.030(17): a "recreational vehicle" is defined as one that is *not* occupied as a primary residence, while a "park model" – itself defined as a type of recreational vehicle – *is* defined as a primary residence. Since both definitions are contained within the same act, the definitions conflict. Under *Lenander*, it is the court's duty to harmonize the two definitions to the extent possible to limit conflict. 186 Wn. 2d 39. Where the conflict is unavoidable, as

here, the court must use tools of statutory construction to resolve the conflict.

Where related statutes conflict, as between the definitions of “park model” and “recreational vehicle,” the provisions of a specific, more recent statute prevails over a more general predecessor. *Lenander*, 186 Wn.2d at 412; *accord Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 37, 785 P.2d 447 (1990). In keeping with this principle, aspects of the “recreational vehicle” definition should yield to the more specific and more recently enacted definition of “park model,” to the extent they conflict. To illustrate, the more general definition of “recreational vehicle” describes a “travel trailer, motor home, truck camper, or camping trailer . . . primarily designed and used as temporary living quarters, . . . is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot.” However, even if a recreational vehicle is designed and primarily used by campers as temporary living quarters, a park model under the MHLTA is specifically defined to be a recreational vehicle that is used by tenants as a primary residence. A park model under the Act is intended to be permanently or semi-permanently installed and thus cannot be described as transient, placing it in conflict with the definition of “recreational vehicle” under the Act. Indeed, if a park model were permanently installed, it might be

immobilized or permanently affixed to a mobile home lot, resulting in additional conflict with the definition of “recreational vehicle” under the Act. Applying the principles noted in *Lenander*, those aspects of the general definition of “recreational vehicle” should not prevail or otherwise place limitations on the definition of “park model” under the MHLTA. 186 Wn. 2d 393.

As a result, a statutory interpretation that comports with *Lenander* would define “park model” as a type of recreational vehicle—a travel trailer, motor home, truck camper, or camping trailer that is either self-propelled or mounted on or drawn by another vehicle—that is also a primary residence and intended for semi-permanent or permanent installation. 186 Wn. 2d 393.

Legislative history bears out this interpretation, and it is appropriate for the court to review this history in interpreting conflicting statutory language. *Lenander*, 186 Wn.2d at 412 (noting that in the event of conflicting statutes, “a court may ascertain legislative intent by examining the legislative history of particular enactments”). *See also Dep’t of Ecology*, 146 Wn. 2d at 10. (“[T]he plain meaning rule requires courts to consider legislative purposes or policies appearing on the face of the statute as part of the statute’s context. In addition, background facts of which judicial notice can be taken are properly considered as part of the

statute's context because presumably the legislature also was familiar with them when it passed the statute. Reference to a statute's context to determine its plain meaning also includes examining closely related statutes, because legislators enact legislation in light of existing statutes.") (citation omitted).

The terms "manufactured home", "mobile home", and "park model" were all added to the MHLTA by the legislature in 1999 with the enactment of House Bill 1378. H.B. 1378, 56th Leg., Reg. Sess., 1999 Wash. Sess. Laws 1999. This bill was the product of negotiations between park owners and tenants and supported by both groups to "provide[] needed clarification to vague and confusing parts of the Mobile Home Landlord-Tenant Act." S. Committee on Commerce, Trade, Housing, & Fin. Inst., Senate Bill Report, H.B. 1378, Apr. 1, 1999, at 3. The term "park model" was specifically rewritten during the bill process "to include recreational vehicles currently used for habitation." *Id.* at 2. Again, by this time, "recreational vehicle" had already been defined in the Act. When House Bill 1378 passed, "park model" was defined as "a recreational vehicle intended for permanent or semi-permanent installation and habitation." H.B. 1378, 56th Leg., Reg. Sess., 1999 Wash. Sess. Laws 1999. By broadening the vehicles and specifically calling attention to the particular *use* of a vehicle, as opposed to merely identifying a type of

vehicle, the legislature intended to extend protections under MHLTA to tenants who had essentially converted their recreational vehicles into permanent habitations and to the park owners that rented spaces to them.

The legislature has amended or proposed amendments to MHLTA on numerous occasions, but it has never wavered from its intent to extend protections of the Act to tenants who use recreational vehicles as permanent homes. In 2003, the definition of “park model” was amended to mean “a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence,” which is its current wording. H.B. 1786, 58th Leg., Reg. Sess., 2003 Wash. Sess. Laws 2003; RCW 59.20.030(14). While the legislature elected to replace the word “habitation” with the phrase “used as a primary residence,” this amendment merely made clear that in order to be covered by the MHLTA, the tenants who had been living in their recreational vehicles could not otherwise maintain primary residences elsewhere. By choosing to use the words “primary residence” rather than “habitation,” the legislature made clear it was focused on tenants who reside exclusively in their recreational vehicles.

Significantly, the legislature did not opt to remove or redefine “recreational vehicles” when it amended the definition of “park model” in 2003, notwithstanding the obvious conflict in statutory language it created

by injecting “used as a primary residence” into the definition of “park model.” The legislature is presumed to be well aware of both definitions. *Dep’t of Ecology*, 146 Wn. 2d at 10 (noting “legislators enact legislation in light of existing statutes”). To date, the legislature has not amended the definition of “park model” to mean something other than “recreational vehicles,” making clear the legislative intent that park models should encompass the reality of tenants’ using recreational vehicles as primary residences in manufactured/mobile home parks.²

Accordingly, the legislative history reflects the legislature’s intent that recreational vehicles used as primary residences are park models under MHLTA. *See also Lawson v. City of Pasco*, 168 Wn.2d 675, 684, 230 P.3d 1038 (2010) (en banc) (holding that “[t]he statutory definitions in RCW 59.20.030 apply to any RV used as a permanent residence once a landlord-tenant relationship is established”).

² While not indicative of legislative intent alone, it is worth noting that testimony from mobile home park owners and their advocates at legislative committee hearings on proposed MHLTA amendments lends support to the general understanding that when used as primary residences, recreational vehicles are included in the definition of “park model” and are covered by both MHLTA, RCW 59.20, and the Program, RCW 59.30. *See, e.g.*, Hearing Before the S. Fin. Insts., Hous. & Ins. Comm. on S.B. 6384, 61st Leg., Reg. Sess., at 53:55 (Wash. Jan. 27, 2010, 3:30 PM), <http://www.tvw.org/watch/?eventID=2010011059> (John Woodring, attorney and park owner advocate, testifying “Let me state here unequivocally, that under the [MHLTA] . . . RVs that are primary residences . . . in manufactured housing communities . . . are subject to the [Act]”); *id.* (Walt Olsen, attorney representing park owners, testifying that “the definition of ‘park model’ in 59.20.030 includes recreational vehicles that are intended as primary residences”).

1. At Least Two Tenants Live In Recreational Vehicles At Dan & Bill's To Satisfy The Definition Of "Park Model"

Many of the homes at Dan & Bill's are recreational vehicles within the meaning of the Act. The photographs in the administrative record depict motor homes, camping trailers, travel trailers, and fifth-wheels. AR 364-88, 392-402, 416, 418 (State's Exs. 8-20, 22-27, 33, 34). Mr. Bordenik testified his motor home was self-propelled. AR 1084:14-17 (Bordenik Testimony); AR 863 (FOF 4.54). Ms. Allen, Ms. Hamrick, and Mr. Niquette all testified that their homes could ostensibly be mounted on or drawn by another vehicle. AR 860 (FOF 4.23), 861 (FOF 4.30, 4.35), 869 (COL 5.22). Substantial evidence in the record demonstrate that all of the tenants who testified before the OAH live in recreational vehicles. The photos of other homes on the lot also show that other Dan & Bill's tenants live in recreational vehicles. AR 364-402 (State's Ex. 8-27).

2. At Least Two Tenants Primarily Reside At Dan & Bill's In Recreational Vehicles To Satisfy The Definition Of "Park Model"

The evidence in the record demonstrates that two or more of Dan & Bill's tenants use their recreational vehicles as their primary homes. Ms. Allen, Ms. Hamrick, Mr. Niquette, Mr. Shinkle, and Mr. Bordenik each testified that their home at Dan & Bill's is their primary residence; they have no other home. AR 966:12-13, 992:16-17 (Allen Testimony) (prior to

Dan & Bill's "I was camped out at Walmart" in a truck); AR 1016:3-4 (Hamrick Testimony) ("I stay in the trailer all the time"); AR 1028: 4-5 (Niquette Testimony); AR 1059:21-24 (Shinkle Testimony); AR 1082:9-10, 1083:13 & 19 (Bordenik Testimony) ("I'm 80 years old I'm very comfortable where I'm at.").

3. At Least Two Recreational Vehicles Used For Primary Residence At Dan & Bill's Are Intended For Permanent Or Semi-Permanent Installation To Satisfy The Definition Of "Park Model"

Under the MHLTA, a park model must also be intended for "permanent or semi-permanent installation." These terms are not defined within the Act and are not technical terms of art.

A court may consult a dictionary to determine the plain meaning of an undefined term. *HomeStreet, Inc. v. State Dep't of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297 (2009). "Semi-permanent" means "lasting for an indefinite time: virtually permanent." Philip B. Gove, *Webster's Third New International Dictionary of the English Language, unabridged* (2002). "Installation" is defined as "the setting up or placing in position for service or use." *Id.*

By the plain meaning of the words of the statute, then, a park model under the MHLTA is a type of recreational vehicle that is intended to be placed in service or use for an indefinite period of time.

The tenants that testified before the ALJ lived in vehicles that fit this description. They had all resided in their homes at Dan & Bill's for multiple years in the same location. *See, supra*, IV.B. at 6-8. Each of the tenants testified to their primary residence at Dan & Bill's. *See, supra*, VI.A.2, at 25-26. The administrative records reflects how their homes and yards are semi-permanent or permanent installations at Dan & Bill's. AR 364, 368, 376, 382, 402, 416-418 (State's Ex. 8, 10, 14, 17, 27, 33, 34).

Edna Allen testified that she lives in a park model trailer. AR 987:20-21 (Allen Testimony). When Ms. Allen acquired her home, it had already been installed at Dan & Bill's and had been there for four years prior. AR 963:8-9 (Allen Testimony). When Ms. Allen moved in, the owner of Dan & Bill's told her the home was a permanent home. AR 992:18-21 (Allen Testimony). Ms. Allen moved in with the intention of residing at Dan & Bill's permanently in her park model trailer, and she has lived there for over two years. 961:22-24, 993:5-10 (Allen Testimony).

Ms. Allen's home sits on a rock foundation and is supported by numerous stacks of cinderblocks, and she has placed skirting around the bottom of her home. AR 370-374 (State's Ex. 11-13); AR 990:16-18, 992:7-8 (Allen Testimony). Ms. Allen's home is hooked up to the septic

tank at Dan & Bill's. AR 988:1-8 (Allen Testimony). Though her home has wheels attached to it, Ms. Allen has never moved her home from its location at Dan & Bill's. AR 988:9-10, 989:5-6 (Allen Testimony). Ms. Allen testified that her home bears no license plate to travel on the road. AR 965:17-19 (Allen Testimony). She also testified that her home might fall apart if moved—one of the sliders that extends out from the main portion of the home is broken and cannot be retracted. AR 989:9-19 (Allen Testimony). This evidence in the administrative record establishes that Ms. Allen's home is permanently or semi-permanent installed.

Barbara Hamrick testified that she has lived in her recreational vehicle at Dan & Bill's for approximately 14 years. AR 1013:10-11 (Hamrick Testimony). Ms. Hamrick's home is set up for use on a semi-permanent or permanent basis. Ms. Hamrick has had cable TV installed at the home for the past five or six years. AR 1022:17-22 (Hamrick Testimony). Ms. Hamrick has no plans to leave Dan & Bill's. AR 1016:8-16 (Hamrick Testimony)("[T]o rent a place, I'd never be able to afford it, so I'll probably just keep buying RVs and living in an RV court. . . . I've told [Dan Haugsness] I'd probably die there.") The evidence establishes that Ms. Hamrick's home is permanently or semi-permanently installed at Dan & Bill's.

Matthew Niquette testified that he has lived in his home at Dan & Bill's for five years. AR 1028:8-9 (Niquette Testimony). Mr. Niquette testified that he does not keep the registration tabs current. AR 1037:21-25 (Niquette Testimony) ("I don't necessarily keep them up to date due to the simple fact that I don't ever hardly move it, and only to go to higher ground or whatever.") Mr. Niquette has no plans to leave Dan & Bill's. AR 1030:3-4 (Niquette Testimony). The evidence regarding Mr. Niquette's home – that it has been situated at the same place at Dan & Bill's for five years, that he does not maintain updated registration tabs for the home because he has little reason to ever move it, and that he does not intend to move it or leave Dan & Bill's – establishes that Mr. Niquette's home is semi-permanently or permanently installed.

Ed Shinkle testified that he has lived in his home at Dan & Bill's for five years. AR 1055:18-19 (Shinkle Testimony). Mr. Shinkle has extensive landscaping installed around his home including plants, trees, rockery, art, and an outdoor seating area. AR 386, 388, 390 (State's Exs. 19-21); AR 1058:1-21 (Shinkle Testimony). Mr. Shinkle does not keep current registration tabs on his home. AR 1059:4-5 (Shinkle Testimony). Mr. Shinkle has no plans to leave Dan & Bill's. AR 1059:19-20 (Shinkle Testimony). The evidence establishes that Mr. Shinkle's home is semi-permanently or permanently installed at Dan & Bill's.

Roy Bordenik testified that he has lived in his home at Dan & Bill's for nine years. AR 1081:14-16 (Bordenik Testimony). Mr. Bordenik testified that the motor home is his primary residence, and he has no plans to leave Dan & Bill's. AR 1082:9-10, 1083:16-17 (Bordenik Testimony). Mr. Bordenik trims the grass and weeds around his home. AR 1083:1-9 (Bordenik Testimony). Mr. Bordenik sometimes goes camping for a weekend with his recreational vehicle, but he does not trim the grass and weeds at the campground. AR 1093:17-20 (Bordenik Testimony) ("I don't go there to cut grass. I go there to camp."). The distinction is significant. Mr. Bordenik maintains the grass next to his motor home at Dan & Bill's because Dan & Bill's is not a campground—it is Mr. Bordenik's permanent home and has been for the past five years. Mr. Bordenik's home is semi-permanently or permanently installed at Dan & Bill's.

The evidence in the record shows that these homes are all park models under the Act. Even though some tenants can and do occasionally move their home out of or to another location within the park, the testimony reflects that tenants' excursions are short and occur infrequently. AR 1014:4-20 (Hamrick Testimony) (moves home twice a year due to flooding for less than two weeks at a time, sometimes to another location within Dan & Bill's); AR 1082:1-8 (Bordenik Testimony) (moves home "several times a year" a couple days at a time); AR 1028:11-

21 (Niquette Testimony) (only moves home if Puyallup River floods). That a few tenants can move their homes does not affect whether or not the homes are permanently or semi-permanently installed for purposes of MHLTA. Indeed, mobility of the park models alone cannot be the touchstone. By definition, any manufactured or mobile home can be moved. Manufactured homes and mobile homes are specifically designed to be transported along the street or highway. Under RCW 59.20, a “manufactured home” includes homes that “can be transported in one or more sections” RCW 59.20.030(6). Even though a manufactured home can be transported, it is still covered by the MHLTA. Likewise, a park model and a recreational vehicle also can be transported, and their mobility does not exclude them from RCW 59.20.

Rather, whether RCW 59.20 applies to Dan & Bill’s is dependent on whether the homes are permanently or semi-permanently installed. The landscaping, landscape maintenance, cable TV, and skirting around the bottom of homes are characteristics of permanent or semi-permanent installation as well as the tenants’ intent to live at the homes permanently. The tenants have all testified to their use their homes as their primary and permanent residences. Accordingly, their homes all qualify as park models under the Act.

4. The ALJ Committed Error In Concluding That Dan & Bill's Contained Only One Park Model And That The MHLTA Did Not Apply

In the ALJ Order, the ALJ extracted part of the definition of “recreational vehicle” – again, a definition that predates the enactment of the “park model” definition under the MHLTA by six years – and ascribed it to different words in the “park model” definition. The ALJ explained his rationale in conclusory terms: “[T]he legislature defined a recreational vehicle as one that ‘is not immobilized or permanently affixed’ That phrase sheds light, especially given the juxtaposition comparing ‘park model’ to ‘recreational vehicle.’ . . . I suggest that ‘immobilized’ describes ‘semi-permanent installation’ and ‘permanently affixed’ describes ‘permanent installation.’” AR 868 (COL 5.21).

The ALJ erred in statutory interpretation. The legislature, in enacting the definition of “park model” in 1999, could have used the same words used in the definition of “recreational vehicle” but chose not to do so. The legislature intentionally selected different words for its definition of “park model.” The ALJ’s determination to read in an equivalence between different words in related statutes without analyzing legislative intent, legislative purpose, or statutory context does not represent the harmonization of statutes that *Lenander* contemplated or the process of statutory interpretation discussed in *Dep’t of Ecology*. The ALJ’s

Conclusion of Law 5.21 is not supported by law or legislative history, is based on an erroneous application of law, and is arbitrary and capricious.

The ALJ also erred in determining that the utility connections were “simple connections” that somehow prevented the recreational vehicles from being deemed permanent or semi-permanent installations. AR 869 (COL 5.23) (finding the utilities “can be unplugged or disconnected with no more effort than unplugging a lamp or disconnecting a garden hose”). The ALJ also determined that none of the units besides Ms. Allen’s had the requisite attributes of a permanent or semi-permanent installation: “[The units] are movable and able to be relocated with as little as 15 minutes . . . preparation. . . . [N]one of them are immobile or affixed.” *Id.* Further, the ALJ noted none of the units besides Ms. Allen’s had “attributes [that] restrict the units’ mobility. Those attributes [in the record] are not evidence that anyone intends that the units be permanently or semi-permanently installed. Therefore, none of the units other than Ms. Allen’s constitute ‘park models.’” *Id.*

First, the legislature did not prescribe the manner in which a park model’s utilities must be connected or the type of connection required to qualify as a semi-permanent or permanent installation in the MHLTA. Second, the park model definition did not require that the recreational vehicle be rendered immobile. The court should not now insert

qualifications into the statutory language that would bar MHLTA protections from tenants who primarily reside in recreational vehicles; this outcome would be counter to the legislature's purpose in enacting MHLTA and the Program and in its enactment of the "park model" definition, which had the effect of extending the protections of MHLTA and the Program to a larger class of tenants. *See Strunk v. State Farm Mut. Auto. Ins. Co.*, 90 Wn.2d 210, 217, 580 P.2d 622 (1978) (noting that "the spirit or intention of the law prevails over the letter thereof, and no construction should be given to a statute which leads to gross injustice or absurdity").

Finally, the evidence in the agency record does not support the ALJ's conclusion that the tenants who proffered testimony did not intend their units to be permanently or semi-permanently installed. Indeed, the record reflects that each tenant who testified before the ALJ had no plans to leave Dan & Bill's and declared that their recreational vehicles would remain set up as their primary residence at Dan & Bill's indefinitely. *See, supra*, VI.A.2 & 3, at 25-31.

In sum, the ALJ's Conclusion of Law 5.23 that there were not at least two permanently or semi-permanently installed units at Dan & Bill's is based on an erroneous application of law, not supported by the substantial evidence in the record, and is arbitrary and capricious.

The ALJ's Conclusion of Law 5.24, that there were not at least two park models in Dan & Bill's RV Park, is not supported by substantial evidence in the record. Rather, as detailed in this brief, the evidence establishes that multiple tenants have permanently or semi-permanently installed their homes at Dan & Bill's and that they intend their homes at Dan & Bill's to remain their permanent, primary residences.

Because the ALJ erred in concluding that there was not at least two park models at Dan & Bill's, the ALJ committed further errors in determining that Dan & Bill's was not a mobile home park and thus not subject to MHLTA. The ALJ's Conclusions of Law 5.24, 5.25, and 5.26 are based on an erroneous application of law, not supported by substantial evidence in the record, and is arbitrary and capricious.

The ALJ's Conclusion of Law 5.30 that the Program's Notice of Violation and Temporary Order to Cease and Desist should be set aside because the MHLTA did not apply to Dan & Bill's is similarly based on an erroneous application of law, not supported by substantial evidence in the record, and is arbitrary and capricious.

For these reasons, the ALJ Order should be reversed.

B. Dan & Bill's Violated The MHLTA By Increasing Ms. Allen's Rent On Two Occasions And By Failing To Provide A Written Rental Agreement

Because the MHLTA applies to Dan & Bill's, it is appropriate to consider Dan & Bill's compliance with the requirements of the Act. The evidence in the record shows that Dan & Bill's violated provisions of the MHLTA.

1. Dan & Bill's Violated RCW 59.20.060(2)(c) And RCW 59.20.090(2) When It Increased Ms. Allen's Rent Shortly After She Commenced Tenancy And Without Three Months' Written Notice

The MHLTA contains specific provisions establishing how frequently a landlord may increase rent and the length of notice required. Under the MHLTA, a landlord may increase rent only once per year if the rental agreement is for a term of one year or more and not at all if the term is less than one year. RCW 59.20.060(2)(c). Furthermore, a landlord "shall notify the tenant in writing three months prior to the effective date of any increase in rent." RCW 59.20.090(2).

Dan & Bill's violated RCW 59.20.060(2)(c) when it increased Ms. Allen's rent after she had been living in the park for only four months. Ms. Allen moved into Dan & Bill's on January 3, 2014. AR 961:15-16. In April of 2014, as Ms. Allen was paying her rent, the owner of Dan & Bill's informed her that he had increased the monthly rent by \$20.00. AR 864 (FOF 4.65). Ms. Allen objected to the lack of advance notice of

the rent increase. *Id.*; AR 967:8-13 (Allen Testimony) (“[M]ost of us there are disabled and on fixed incomes, and I think we have a right to know ahead of time or in a timely manner, you know, when they're going to raise the rent on us, not just to have someone pull in and I'm handing them their rent check, my rent check, and, Oh, by the way, your rent's went up \$20.”).

Later that day, Mr. Haugsness handed Ms. Allen a Rate Change Notice, informing her that the rent was increasing by \$20.00 per month. AR 355 (State's Ex. 4); AR 979:11-15 (Allen Testimony). In May 2014, Ms. Allen began paying \$20.00 extra in monthly rent. AR 408-10 (State's Ex. 30); AR 982:5-11 (Allen Testimony). Pursuant to RCW 59.20.060(2)(c), the earliest Dan & Bill's lawfully could increase Ms. Allen's rent was January 3, 2015, because she had only commenced tenancy on January 3, 2014. Dan & Bill's violated RCW 59.20.060(2)(c) when it increased her rent more frequently than annually.

Dan & Bill's also violated RCW 59.20.090(2) by failing to provide Ms. Allen with three months' written notice of the rent increase. Mr. Haugsness initially provided no notice as he informed her of the rent increase the same day it was due and with no written notice at all. AR 864 (FOF 4.65); AR 977:17 – 978:13 (Allen Testimony). Though Mr. Haugsness provided written notice in the form of the Rate Change Notice

later that day, the notice provided Ms. Allen with, at most, one or two months' notice. AR 355 (State's Ex. 4) (dates crossed off in the original so the date of notice is unclear). Ms. Allen had to begin paying the increased monthly rent in May 2014, the month after receiving notice. AR 408-10 (State's Ex. 30); AR 982:5-11 (Allen Testimony). The uncontroverted record demonstrates Dan & Bill's did not provide three months' written notice of the rent increase.

Following the first unlawful increase in Ms. Allen's rent, in February 2015, Dan & Bill's notified Ms. Allen of its intention to raise her rent again, effective April 1, 2015. AR 983:12 – 984:8 (Allen Testimony). Again, Dan & Bill's did not give Ms. Allen three months' written notice. *Id.*; AR 357 (State's Ex. 5).

The record shows that Dan & Bill's violated RCW 59.20.090(2) when it failed to provide Ms. Allen with three months' written notice of the rent increases. The ALJ's Conclusion of Law 5.28 holding otherwise is based on erroneous application of law, not supported by substantial evidence in the record, and is arbitrary and capricious.

2. Dan & Bill's Violated RCW 59.20.050(1) And RCW 59.20.060(1) When It Failed To Provide Ms. Allen With A Written Rental Agreement

The MHLTA requires a written rental agreement signed by the parties. RCW 59.20.050(1); RCW 59.20.060(1). "Any mobile home space

tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties” RCW 59.20.060(1). “No landlord shall allow a mobile home, manufactured home, or park model to be moved into a mobile home park in this state until a written rental agreement has been signed by and is in the possession of the parties.” RCW 59.20.050(1). Further, the written rental agreement must include “[t]he terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant.” RCW 59.20.060(1)(a).

Dan & Bill’s never provided Ms. Allen with a written rental agreement. AR 976:11-977:16 (Allen Testimony). Ms. Allen testified that she has asked Mr. Haugsness for a written rental agreement on several occasions. *Id.* There is no evidence in the administrative record that Dan & Bill’s has ever provided Ms. Allen with a rental agreement.

Dan & Bill’s violated RCW 59.20.050(1) and RCW 59.20.060(1) when it failed to provide Ms. Allen with a written rental agreement.

For these reasons, the Conclusion of Law 5.27 in the ALJ Order is based on an erroneous application of law, not supported by substantial evidence in the record, and is arbitrary and capricious.

3. Dan & Bill's Violated RCW 59.20.070(5) When It Increased Ms. Allen's Rent Within 120 Days Of Receiving The Notice Of Violation

The MHLTA prohibits landlords from retaliating against tenants who file complaints alleging that the landlord violated a statute, regulation, or ordinance. RCW 59.20.070(5) (prohibiting landlords from taking retaliatory actions such as eviction, termination of rental agreements, failure to renew agreements, or increasing rental obligations). Retaliation is presumed if a landlord increases a tenant's rent within 120 days after any proceeding of a governmental agency resulting from a good faith and lawful complaint by the tenant. RCW 59.20.075.

The Program issued its Notice of Violation against Dan & Bill's on November 17, 2014. AR 11. On February 2, 2015, Mr. Haugsness informed Ms. Allen he would be increasing her rent, effective April 1, 2015, to pay his attorney's fees. AR 983:12 - 987:15 (Allen Testimony). The notice of rent increase on February 2, 2015 is within 120 days of the date the Program issued its Notice of Violation against Dan & Bill's. Moreover, Mr. Haugsness flatly told Ms. Allen that he was increasing her rent to pay for his attorney's fees and showed her the bill from his attorney. AR 986:9 - 987:15 (Allen Testimony). Dan & Bill's did not dispute Ms. Allen's account at the administrative hearing nor did it present any evidence to controvert it.

Substantial evidence in the administrative record establishes that Dan & Bill's increased Ms. Allen's rent in retaliation her for filing the complaint with the Program. Dan & Bill's violated RCW 59.20.070(5). The Conclusion of Law 5.28 in the ALJ Order is based on an erroneous application of law, not supported by substantial evidence in the record, and is arbitrary and capricious.

For all of the foregoing reasons, the ALJ Order should be reversed.

VII. CONCLUSION

In enacting MHLTA, the legislature intended to protect low-income mobile home park residents from physical and economic displacement and to maintain low-cost housing for the elderly, poor, and infirmed. When tenants began to use recreational vehicles originally designed for temporary living quarters as permanent primary residences in these parks, the legislature reacted by amending the Act to include a definition for "park model," the effect of which extends protections of MHLTA to tenants who live primarily in their recreational vehicles and to the park owners who rent lot space to them.

By requiring a particular type of utility connection or possession of some attribute of mobility restriction, the ALJ imposed additional restrictions on what can be deemed a park model under the Act; none of these qualifications are evident from the statutory text. Worse, the ALJ's

interpretation of the definition of “park model” under the Act deeply undercuts the legislature’s intent to extend the protections of MHLTA to a broader class of tenants. The ALJ’s arbitrary and conclusory determination denies MHLTA protection and Program benefits to tenants who reside exclusively in recreational vehicles in mobile home parks, whom the legislature had intended to protect.

The ALJ failed to consider the legislative purpose of MHLTA and the legislative intent in amending the Act to include the “park model” definition. The ALJ’s statutory construction and conclusions of law based on his construction are neither supported by law or legislative history. They are based on erroneous applications of law and arbitrary and capricious.

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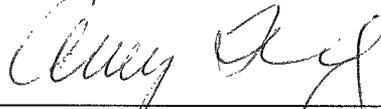
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For these reasons, the Attorney General respectfully requests that this Court reverse the ALJ Order and find that Dan & Bill's is subject to MHLTA. The Attorney General further requests that this Court find that Dan & Bill's was in violation of the Act when it subjected her to two rent increases and when it failed to provide Ms. Allen with a written lease agreement.

RESPECTFULLY SUBMITTED this 25th day of May, 2017.

ROBERT W. FERGUSON
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Assistant Attorney General
Attorneys for Respondent
State of Washington

CERTIFICATE OF SERVICE

I certify that I served a copy of the forgoing on the following party/parties via the following methods:

| | |
|---|--|
| <p>Seth S. Goodstein Carolyn A. Lake Goodstein Law Group PLLC 501 S G St. Tacoma, WA 98405-4715 Email: sgoodstein@goodsteinlaw.com clake@goodsteinlaw.com</p> | <p><input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> First-Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Receipt Requested <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> COA E-Service <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> E-filed with Clerk</p> |
| <p>Dan Robert Young Attorney at Law 1000 2nd Ave. Ste. 3200 Seattle, WA 98104-1074 Email: dan@truthandjustice.legal</p> | <p><input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> First-Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Receipt Requested <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> COA E-Service <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> E-filed with Clerk</p> |

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25th day of May, 2017, at Seattle, Washington.

/s/ P. Joseph Drouin
 P. JOSEPH DROUIN
 Legal Assistant

WASHINGTON STATE ATTORNEY GENERAL
May 25, 2017 - 4:00 PM
Transmittal Letter

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Comments:

Per the Brief Scheduling Order, the State has been designated as a Respondent to file an opening brief with the Court.

Sender Name: Philip J Drouin - Email: jdrouin1@atg.wa.gov

A copy of this document has been emailed to the following addresses:

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