



CITY OF SAINT PAUL

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DATE: July 12, 2022

TO: Saint Paul City Council

FROM: Marcia Moermond

COPY: Saint Paul Rent Stabilization Staff
Jerad Rasmussen

RE: Rent Stabilization Determination Appeal for 1029 Raymond Avenue

Council File RLH RSA 22-1 is the appeal of Matthew and Jim Lindquist, doing business as Iron Range Holdings LLC, for an exception to the 3% rent increase cap for their property at 1029 Raymond Avenue. The rent cap is provided for in Saint Paul Legislative Code Chapter 193A, adopted in November 2021 by way of ballot initiative.

The Lindquists acquired the property April 11, 2022 and on May 18, 2022, applied to the City's Department of Safety and Inspections (DSI) for an exception to the 3% rent cap, seeking approval for a 15% rent increase. Staff reviewed the application and contacted the Lindquists for additional information on May 28, 2022. A meeting was held May 31, 2022 to discuss the additional information needed to review the application. This meeting was followed by a letter dated May 31, 2022 denying the application, stating the reasons for doing so. The staff determination to deny the application was appealed June 6, 2022 and Legislative Hearings were conducted on June 21 and 28, 2022 to consider the matter. The Lindquists provided materials in the appeal application which were not available to staff in their May review of the application. Additional materials were provided in the course of the hearing process and are a part of the Council record. It is not known if DSI would have made a different determination were they to have had all the materials in their application review process.

Notably, the exception the Lindquists sought originally in their application for exception to the rent cap and in the appeal process was for a 15% increase for the 2022-2023 tenant lease cycle. During the course of the appeal process, the appeal was expanded to include a request for an additional, deferred, increase for the 2023-2024 tenant lease cycle. This second increase ranges from 2-15% per unit, with a goal of bringing rents to an average of \$1,300 from their current average of \$985.

The Lindquists contended in their appeal application and in the Legislative Hearing process that an exception to the rent increase cap should be granted, as they meet all, or nearly all, of the criteria outlined in the ordinance as a basis for such an exception. What follows are the findings and recommendation of the Council's Legislative Hearing Officer to assist the Council in its decision on this quasi-judicial matter which is scheduled for public hearing July 20, 2022.

FINDINGS

The most significant characteristics of the Lindquists case are that they acquired the building from a trust which had been operating without debt for at least the 2 years prior to their acquisition. Thus, taking on debt to acquire the 12-unit apartment building introduced a new and significant expense the previous owner did not experience. The other characteristic that may be considered significant in this case is that it appears rents have not increased in recent history per the appellant's data and narrative description of previous years and have consistently been lower similarly situated apartment buildings.

Saint Paul Legislative Code Code 193A – Residential Rent Stabilization provides that *“the city shall establish a process by which landlords can request exceptions to the limitation on rent increases based on the right to a reasonable return on investment.”* It further clarifies the rationale for deviations from the limitation on rent increases. These factors from the Code are listed below with comments specific to this case.

- (1) *Increases or decreases in property taxes.*
 - Property taxes for 1029 Raymond Avenue increased 9.5% from 2020 to 2022.
- (2) *Unavoidable increases or any decreases in maintenance and operating expenses.*
 - Traditional operation and maintenance expenses, outside of debt service, appear to be increasing at relatively slow pace from 2020 to 2022.
 - The Lindquists propose a thorough renovation of most units over the next 3 years and indicate these updates will mostly be made at the time the units “turn over” and units are vacant between tenants. Outside of the addition of dishwashers, the updates seem to fall into a category of improvements which need to be undertaken in all properties from time to time, such as new flooring, carpet and appliance replacements. The Lindquists argue that the previous owner deferred these reasonable periodic updates, leaving them in a position to invest more to bring the building “up to date.”
 - Some general, non-unit-specific, building maintenance expenses, such as laundry room equipment replacement and roof repair have already been incurred, and will continue to be a consideration. Another example is upcoming repair and maintenance of garages.
 - The addition of the large mortgage (purchase price \$1,320,000, mortgage \$1,122,000) represents the vast majority of increased expenses from 2020 to 2022. It is not clear whether this debt would be accurately described as a “maintenance and operating expense” as described in the ordinance. It is not considered to be “maintenance and operating expense” under the Rules for Implementation used by DSI.
 - The mortgage is sufficiently large to change the return on investment from the property from approximately 25% in 2020 to a projected loss in 2022. (Note, profit taking under previous ownership occurred through payments made to the Winter Trust and were listed in the Income Statement as expenses. The building owner was the inheritor and holder of the trust.) The choice to acquire the property at a price point in excess of what would allow for a better return on investment cannot be considered unavoidable. Additionally, acquisition was made within a known regulatory environment requiring an exception for rent increases in excess of 3%, which was a private business decision.
- (3) *The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement.*
 - As indicated above, the Lindquists have already undertaken, and plan to make more, capital improvements to the building.
 - Based on available information from the City's Department of Safety and Inspection, 1029 Raymond Avenue was most recently inspected by Fire Certificate of Occupancy

staff in 2017, at which time it was determined to be an “A-Rated.” This rating denotes a very low average number of health and safety violations per unit and provides that the building be re-inspected on a 6-year cycle, the longest allowable interval between full Fire certificate of Occupancy inspections. (Note, if complaints are received on any building in the Fire Certificate of Occupancy program, they are investigated in a timely manner and do not wait for the next scheduled full inspection.) Such a rating implies the building is less likely to need substantial capital investment to come into code compliance.

- The proposed capital expenses are a blend of improvements which are 1) necessary to maintain the code compliance of the building, such as replacement of extremely soiled and damaged flooring in a “trashed” unit; and 2) improve the amenities and comfort of the units, such as the addition of dishwashers. It is difficult to parse when an upgrade is simply on-time improvement to maintain compliance or when the expense goes beyond this level. In either case, the information provided regarding the capital costs for improvements to the building and its individual units indicates they will be covered by the overall rent increase and timed over the next 3 years at points when the units turn over. An argument to connect the rent increase for particular units, and not others, due to improvements and amortize those costs was not made.
- (4) *Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules.*
- No anticipated change in number of tenants per unit was included in the application.
 - No change increasing or improving the living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules was included in the application – outside of dishwashers being added and the updates described above when a unit is renovated at turnover with fresh paint, carpet, etc. (Note, a decrease in one aspect of housing services was included in the application and is discussed later in this memorandum.)
- (5) *Substantial deterioration of the rental unit other than as a result of normal wear and tear.*
- Information on one unit recently in need of “junk out,” heavy cleaning and upgrade was provided.
- (6) *Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health, and safety codes, or the rental agreement.*
- Not applicable for this building. As described above, this 12-unit apartment building was most recently inspected by Fire Certificate of Occupancy staff in 2017, at which time it was determined to be an “A-Rated.”
- (7) *The pattern of recent rent increases or decreases.*
- Information was presented indicating the average rent per unit is \$985 and had been for the 2 ½ years reported. Individual unit rents currently vary from \$940 to \$1,105.
 - Information regarding current comparable rents using Zillow and Rentometer was presented by the appellants and showed 2-bedroom apartment rents ranged from \$1,381-\$1,982 depending on amenities.
 - Per request of the Legislative Hearing Officer, City’s Planning and Economic Development housing staff provided a cursory review of current rental costs for similar properties listed on Facebook Marketplace and Craigs List, a 2-bedroom generally ranges from \$1,200-\$1,300.
 - Using the U.S. Bureau of Labor Statistics inflation calculator, \$985 in January of 2020 is the equivalent of \$1,116 in May 2022, an increase of 13.3%.
 - Per data maintained by the Metropolitan Council on Twin City rent trends, Saint Paul’s rent has changed little in the 2020-2022. (Metropolitan Council data used from Rent

Revue, CoStar and Zillow show very small increases or decreases for the time period in question.)

- Taking these factors into consideration, it seems very likely that the building rents were below market in 2020 and there is a pattern of not increasing the rent which followed.

RECOMMENDATIONS

1. Appeal to allow exception of 3% rent cap for 2022-2023 lease cycle to increase rent by 15%: Grant.
 - It needs to be clearly stated that the rent increase does include costs which were previously paid by building ownership and are now being transferred to individual lease holders, per the definition of housing services in the Legislative Code.
 - *Section 193A.03. Definitions (d) Housing services. Housing services include but are not limited to repairs, maintenance, painting, light, hot and cold water, elevator service, window shades and screens, storage units, kitchen, bath, and laundry facilities and privileges, janitorial services, utilities that are paid by the landlord, refuse removal, furnishings, telephone services, vehicle parking spaces, the right to have a specified number of occupants, and any other benefit, privilege, or facility connected with the use or occupancy of any rental unit. Housing services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the unit is contained. (emphasis added)*
 - The data provided in the expense by unit table attached to the record provides for a direct rent increase and a transfer of utility costs. The average additional cost for natural gas is \$21/month and water and sewer is \$33/month.
 - Notably, for the average \$985/month apartment, a simple 3% increase is \$1,015. A 15% increase brings the total to \$1,133. Adding the transferred utility costs would translate to a new monthly rent of \$1,187, a 21% increase.
 - The recommendation to grant an exception allowing for a 15% increase does not approve the noted 21% increase described in the appeal materials. The ordinance provides that landlords should not circumvent the increase limitations by transferring utility fees to the tenant and increasing the overall rent.
2. Appeal to allow exception of 3% rent cap for 2023-2024 lease cycle to increase rent from 2-15% per unit, in order to bring rents to an average of \$1,300 from their current average of \$985: Refer to Legislative Hearing for review and report to City Council with recommendation by March 1, 2023.
 - It is extremely early in the implementation of City's new Residential Rent Stabilization ordinance. Therefore, it is prudent to review this request with updated building-specific information and the experience of several more months of enforcing the new ordinance requirements.
3. Appeal to increase rent for Unit 4, from its current \$985 per month to something greater than a 15% increase (to \$1,133): Deny and allow a 15% increase over current lease to \$1,133.
 - *Section 193A.05. Vacancy: The limitation on the amount of annual rent increase shall apply regardless of change of occupancy in a residential rental unit except as otherwise allowed under sections 193A.06 or 193A.07.*

Please note, additional information submitted in the process of Council consideration will be reviewed by the Legislative Hearing Officer and may result in revised recommendations. Should you have questions or comments, please contact legislativehearings@ci.stpaul.mn.us or 651-266-8585.