



Minutes - Final

Rent Stabilization Appeal Hearings

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651-266-8568

Thursday, September 29, 2022

9:00 AM

Room 330 City Hall & Court House

9:00 a.m. Hearings

Rent Stabilization Appeals

- 1 [RLH RSA 22-4](#) Appeal of Jack Cann, Housing Justice Center, Representing Tenant, Angela Wilhight, to a Rent Stabilization Determination at 261 FIFTH STREET EAST, UNIT #604.

Sponsors: Noecker

Layover to RSLH October 11, 2022 at 9 a.m.

Angela Wilhight – appellants (tenant), appeared

Jesse Nordine – attorney, representing Rayette Lofts ownership, appeared

Malcolm Terry – attorney, representing Rayette Lofts, appeared

Sarah Davis – tenant witness, appeared

Jack Cann – attorney from Housing Justice Center, representing Angela Wilhight, appeared

Moermond: There has been a lot of correspondence. A lot of back and forth. Hopefully everybody has the documents that were guaranteed. I am sure that everybody does have all the relevant information. Apologies I know there was some confusion with making sure that everything had happen on a timely fashion and getting a report up. This was a miscommunication coming from my office. If that means we are trying to figure this out so that people have time to digest that is fine. I own that. The point in doing the layover is to have staff do additional analysis, for people to digest the information that had been put up on the record last time, and any additional information so that comments can be made. What I like to do is to have staff summarize the finding of what the analysis have been. I would like people to comment on them. One thing this hearing, and some of the other ones we have had with rent stabilization, is that there is a lot of information and detail coming forward is volumes. I think to the extent that people can summarize what they believe the main points are and point out the items they think are important. I can say it is unlikely that the City Council would look at every single line and every single spread sheet, but I think it is very likely that they will be looking at the notes from the hearing that people have generated. People digest information differently. For them reading the minutes synthesize our work in this process. That my thinking heading into this. I am turning it over to staff to find out more on their analysis. We should be talking to Mr. Malcolm Terry and Ms. Jessie Nordine as they have participated in the analysis. We left things off asking for more completed information because we had a self-certification that was going on.

Ferkinhoff: Regarding the staff analysis, on the hearing on September 8th we understood we were to research the specific unit numbers that were associated to the rent increase at Rayette Lofts, noting 2 applications were made, one for staff determination and one for self-certification. We also understood that we were to take a closer look on how parking works with the rent stabilization. Finally, the specific on the base rent adjustment that was part of the staff determination application. In terms of the units associated within the rent increase exception request. Staff send an email on September 9th requesting the unites that were associated with the rent increase request.

Moermond: Am I right that it wasn't 100 percent clear whether this particular unit was included for this rent increase? Also, there's the question of whether or not this particular unit was included for a rent increase, given utilities are being charge out separately.

Ferkinhoff: When we reached out to Rayette Lofts we first doubled checked the information that was previously provided to us. We couldn't find unit 604 in the documentation that we had. On the reach out they were able to provide the unit numbers that were associated with the rent increase request. Unit 604 was then on the self-certification request. That was post the September 8th appeal hearing.

Staff received the information in a spread sheet on September 14. The record then shows the delineation which unit numbers are associated with rent increase request. In response to how parking works given the stabilization rule. Under the rules, rent is defined "as all monetary consideration charge or received by a landlord concerning the use and occupancy of a rental unit. A rental unit is any dwelling unit that is rented or otherwise made available for rent for residential use or occupancy. Housing service comprises several things including vehicle parking spaces, as well as utilities. Staff interpretation of these definition is that any money, regardless of its classification, rent fee or charge all fall within the current definition of rent. If parking was included in the lease before and then in the new lease is not included this is how we would interpret. Would you want me to cover that right now?

Moermond: Would you consider parking a housing service as define by 193A?

Ferkinhoff: Yes, we would .

Sass: Yes, it is listed as definition for housing services.

Ferkinhoff: I am not going to cover those specific situations, but they are on the record. In terms of the base rent adjustment landlords are allowed to claim a base rent adjustment if the rent or earlier rent amount were disproportionately low. A base year rent adjustment would be considered if the evidence supporting it is sufficiently compelling to claim a base year rent adjustment. Rayette didn't had had information for the 2019. The base year rent was from April of 2020 to March of 2021 and the current year rent, for comparison, was March of 2021 to February of 2022. I would just add on the appeal on the staff determination application for 261 5th Street, we were in the process at the same time. The appeal was submitted on August 8th and the staff determination application was submitted on July 26th. Upon review the staff determination application, staff identified inconsistent information. We set up an appointment to meeting in person with Chelsea Dorval on August 11th to discuss the submitted documents, Staff instead met with Jessie Nordine, the reginal property manager. At this meeting staff reviewed discrepancies found in the landlord worksheet. Ms. Nordine was not involved in preparing the worksheet but was able to provide

documentation that was used by others during its preparation. Staff had a supplemental meeting with Julia Lasota and Jessie Nordine on September 14 to discuss the state application and to request material. Staff continued to review the application on September 27th. We made the determination that Rayette Loft could be approved for a 9% increase base on the available documentation. An approval letter was via email to the applicant. Dorval was the applicant. The letter was also sent out via US Mail to the office at 261 5th Street East.

Moermond: That's your staff determination? Does that cover all the units in the building?

Ferkinhoff: It cover the units that they provided in the spread sheet for the staff determination increase. Then there was a second spread sheet that outlined the units that were included in the self-certification increase.

Moermond: From what I understand this unit was part of the self-certification

Sass: Their approval percentage is based on their entire building expenses not on individual units. In theory, if they had applied for staff determination for all units the percentage wouldn't have change. They gave us a specific list on the ones that they wanted this applied to.

Moermond: We started out and we have an incomplete application for the staff determination on an unclear list of units. We have an application for self-certification for an increase on a undetermined list of units within the structure. That one auto generated an approval.

Sass: We were provided with a list for the staff determination for those units. It wasn't initially clear to us what the interaction was there.

Moermond: At which juncture were you provided that?

Sass: Immediately, on the application.

Moermond: Prior to this appeal process beginning and this unit was not in that listing.

Sass: Correct, for the staff determination, it was not in that listing.

Moermond: We have staff determination as an ongoing process. We have self-certification but we don't have this unit listed out specifically in either of the documents. We have a rent increase showing up in a new lease along with a different approach for utility payments. Attached is an appeal coming forward saying this is not how it should be handled because utility and parking payments are part of house services, therefore, they are an increase. Which an exception to the cap is not granted. Then we have what I would call an audit to the application to renew weather the self cert would have covered this. If it did what would that be? I am going to ask Mr. Cann to expand on this. In his written material he says he doesn't conquer with the analysis that there can be a rate of increase in the rent that is being asked. I think it's important because we have things that are under appeal base on the correspondence. We have moved beyond the original appeal that was filed because circumstances have change through the appeals process.

Ferkinhoff: I just want to make sure it's clear. In looking at the staff determination record on the share point site, Rayette Lofts has submitted their initial application. It

says there is a field there where they have to say in the request and in this one, they day entire building. I think that adds another layer of complexity.

Moermond: Mr. Terry, Ms. Nordine you worked with staff in developing this analysis of the submissions. I do not know if you would have any comment base on the on the results of their analysis of what your submissions are?

Nordine: I have not had the chance to discuss with the client, so I don't have comments at this time. There hasn't been a lot of time to review.

Moermond: What kind of timeline would you be looking at to discuss with your client if there is additional comments.

Nordine: just a week.

Moermond: Would you feel conferrable submitting them in writing? Or would you want to discuss them in person?

Terry: It depends because I don't know if that is going to prep more questions from staff or anyone else. I just go the material a day ago and forward it on to them and now we are here. I did not have the time to talk to the client other then Cushman and Wakefield.

Moermond: We got you the materials that you just received. Understandably you want more time with it. Any other comments at this juncture.

Terry: Not particularly. You pointed out something that has been kind off in my head for a while. If we started this out as the issue being utilities, then it kind of morphed into the issue of whether or not the increase of the cap was appropriate or not. Blend in to that and a few other things, too. As a lawyer I look back and say, "okay this is my appeal issue and now we are talking about this." It seems to be going all over the place as we through the process. We are here, Cushman and Wakefield are here to provide whatever information the City needs.

Moermond: As a hearing officer looking at this, I am inclined to allow the appealed decisions of the Department of Safety to be expanded upon rather than ask that additional appeals be file to cover these ancillary issues as they arise. I think it's easier to tackle it that way then have supplemental appeals. Is that okay with you?

Terry: Sure. It is just when we get it we then have to react to it.

Moermond: Right. It's a lot and there are a lot of moving pieces.

Terry: I want to clarify something. The only thing that I have of Mr. Cann since the first appeal on the communication is a letter dated September 27th of 2022. I am assuming that is the only additional thing he has submitted to the City.

Moermond: Ms. Vang you have been in the center of this paper work going back and forth. Does everybody has everything to the best of your knowledge.

Vang: As far as I know. Mr. Terry indicated that he did not the last one so then I forward it to him.

Moermond: can we delay action on the minutes for a day or two in order for everyone to

access a live record with all the attachments on it? Right now, if you went to the City's calendar of hearings you will find this hearing and this case, as well as every single thing we see attach to that record. That is what my office has. That is not necessarily everything DSI has. It is everything my office has received on this case. The Legislative Hearing record contains everything DSI has submitted to us, as well as those items Mr. Terry and Mr. Cann have forwarded to be attached to this record. What happens internally is that the record is all live but when they go and write the notes of the meeting it goes down, and then when the notes are done, the record goes back up again. We will delay it until Monday doing any changes so that it all can continue to be live and accessible. That is the list of documents that we have. We will make sure Mr. Cann gets that. Any additional review we will put that in there. I am sorry that you only had a brief time to review this. Obviously, we are going to stay in place until we get this resolve. I need you guys to stay comfortable. You have enough time to analyze the information. If you don't have any other comments, I am going to bring Mr. Cann and his clients up here from him and his summary on what he is thinking base on his brief amount of time to analyze at least parts of the record.

Cann: In response to your other comment let me summarize where I think we are at. First, let me start by saying prior to the last hearing I wrote most on what I think it's important as well as said on what I think is important. A few things have come up since then. After, I give you what I think the issues are here and what the resolutions us I would like to take 10 minutes to go over the new stuff. Although, I did put it all in the September 27th letter here is where I think we are at. The appeal necessary generates two issues. First, is whether utilities are part of the rent because she (Ms. Wilhight) is challenging what she considers a rent increase. She is paying at 3% rent increase plus utilities cost that were estimated to increase her total cost in living in the apartment by 11-12%. The appeal necessary relates to two issues. One is we are saying these utilities cost were cost that are rent for purposes of the rent control law and the total increase exceeds what's permitted in the ordinance and the rules.

The first issue is are those utility allocations rent that is control by the ordinance? The answer is yes. Secondly, is the total rent including those utilities clause an excess of what is permitted in the ordinance and regulations? The answer is yes, it does. It obviously exceeds. Again, its 11.3% to 12.5%, depending because they gave her a range of the utilities cost from \$130-150 dollars. That exceeds the 3% that is in the ordinance. It exceeds the 8% that they applied for, with respect to her apartment. It also exceeds the 9.67% that Mr. Sass found. In more detail, it seems to me that the staff position is that those addition to those utilities cost or rent, for purpose of definition and statute. The DSI director stated and this is a quote from the last hearing "There is a misconception within the landlord community that utilities can be added onto a 3% increase and not be considered a rent increase". It seems about as clear as it can get that yes of course is rent. Finally, the staff report on parking said essentially the same thing. Anything that the owners charge characterizes it as rent or a fee or something else. It is rent for the purposes of rent the control law. It may not be rent for the purposes of other laws. It is rent for the purposes of the City Rent Control law. Mr. Terry has insisted that it is not rent because somehow it is pay by the tenant to the utility company. The introduction of Sarah Davis' bill in the last hearing demolishes that notion. She doesn't pay a utility allocation she pays lump sum to the landlord every month that includes rent, parking fee what amounts to a utility fee. The owner she certainly doesn't pay anything to the utility company. All of that lump sum flows into the owner's bank account. Then the owner pays all the owner's operating expenses out of that bank account and some of those expenses includes utility payments. Faced with Sarah Davis bill, what Mr. Terry came up with at the last hearing was that still those portion utility payments are not rent because quote "the utilities are

actually consumed by the tenant. That is what makes them different from every other operating expense". Mr. Terry is wrong there because those utility allocations include the utility for the common areas. Those common areas include all the hallways, stair walls, and front entry, which is used by the restaurant guest, as well as tents, the lobby, the mail area, the management office, the community room, the gym, the bathroom associated with the gym, the elevators. There are two levels of parking. There may be separate metering for some of that. If not, it is solely the responsibility of the landlord. We don't know, but it is virtually certain that the hallways are not separately metered. They couldn't be nor the elevator shafts. It is probably the case and virtually certain that the gym isn't separately metered probably the management office isn't, maybe the parking is or maybe it isn't. However, that works out it is clear that there is a significant amount of utility expense for each of the utility except maybe trash that is not associated with any specific tenant at all. He is wrong that the utilities are actually consumed by the tenant. The utilities are but the utility billing doesn't reflect that. Additionally, any kind of utility allocation doesn't consider the actual utility usage by individual tenants. It makes no distinction between the tenants that are careful about their utility usage and the tenants that are profligate in their utility usage. There is no meaningful sense in which this apportionment of utility cost to the tenants anything is other than sticking the tenants with yet another typical standard landlord operating expense. It is just obviously rent staff has said so at least two different ways. The ordinance is plain rent.

The next question is it rent that is within the statute or the ordinance? The staff report concluded that the Rayette was approved for a 9.59% increase, but my understanding is that Ms. Wilhight's unit was not included in the request for staff approval of cost in rent. In addition, there is more than 8%. I see Mr. Sass nodding affirmatively. Regardless, with that analysis concluded it doesn't relate directly to Ms. Wilhight appeal. The most that this could have been approved implicitly by the staff, with respect to the self-certification, was 8%. Those utilities vastly exceed the 8% and there is no way for the owner to split them and say "we really mean a little part of the utility payments that are within the ordinance." That is not what the lease says. There is no way for them to do that. Therefore, the current rent increase that is represented by the apportionment of utility payments is a violation of the ordinance. It is not supportable, and it can't possibly fall within the 8% limit. Further, the MNOI worksheet that Mr. Sass did it resolved the 9.59% rent increase. It included \$49,981 of amortized utility cost, but the email exchange that I submitted within my September 27th letters shows clearly the last time Ms. Wilhight signed a lease it had a \$100 increase. She challenged the increase and management's response was quote "the reason behind the rent increase is due to renovation projects". Ms. Wilhight has at least a year paying an extra \$100 a month to cover capital improvements projects. As it is she is already paying any possible capital improvements. As Mr. Sass said in the staff presentation, the rules make clear to the extent that capital improvements lost are allocable to any specific unit, the rent has to be associated with that specific unit. The 9.59% is sort of a general thing that doesn't necessarily apply to any specific unit at all to the extent that it includes and is based in part in capitalize improvements amortized cost. Putting all of that together, the total amount that Ms. Wilhight can be charged in her new lease starting September 1st is the 3% rent increase that they impose. That is my conclusion.

Moermond: Mr. Sass when you were nodding your head earlier on a comment. Would that have to do with the increase of this unit and how that fit into your analysis?

Sass: I was acknowledging that it was not present initially in the staff determination list of units.

Moermond: Does staff have any questions for Mr. Cann?

Sass: No question I have a comment. I just want to make sure the utility vision is clear. That if it was a housing service in general if they were included previously and now separated that is an issue. That becomes were the rent increase is coming from not just the house service cost. If utilities were never included and are still not included and the cost of utilities goes up that is not the rent portion, something with parking. If parking was an additional fee a tenet was paying previously that was not included in their lease and the cost of parking goes up that is not a portion of their rent. It's things that were included and are not being separated out having the tenant paying for it.

Cann: Let me clear about what's going on here. The lease that was in effect until the end of August. Ms. Wilhight paid the rent and was responsible for paying the electrical cost, but the lease specifically said gas, trash, water, and waste are onus. That was the old lease. The new lease there is an allocated lease addendum that allocates a portion of the gas, water, trash and waste to each tenant, including her. There is a different allocation method for those different utilities. She is now paying \$130-150 dollars more in the form of these portion utilities.

Sass: Can I add one additional thing? Mr. Cann pointed out the \$49,000 dollars in amortized utilities. I think that might just be due to how the worksheet looks. That \$49,000 is based on the capital improvements. You are correct in that. Their capital improvements are in lump sum, so they are not split out. Kind of how the city has set this up. Our accounting doesn't match their accounting. I don't see this being a utility cost that were change. Looking at the capitol improvements listing for amortizing the utilities I think it was just listed that way.

Cann: I am talking about the fact that an additional 9.59% conclusion is that it does include amortize capital improvements and those have to be under the rules allocated to the extent that they apply to a specific unit. It has to be allocated to that unit. That has not been done in her case. What I said earlier is that the maximum that her rent can increase is 8%. They show nothing that indicated how much her rent actually should be or what sort of rent increase she might, in addition to the 3%, saddled with, depending on allocation of amortize capital improvements cost. They have not addressed or provided any justification for anything more than a 3% increase for her.

Moermond: Ms. Nordine, it appears that you have a comment. I also have a question that I neglected to ask earlier. Can you come back up?

Nordine: Regarding the utility statement. We purchased the property in March of 2020 with the intent to do a value add to upgrade the units and increase the value of the property. In addition, we budgeted for 2022 before the rent ordinance was on the ballot, to start to build back utilities to the residents. A very common practice for landlord. Oftentimes if they are not individually metered which this property is not except for electricity. The lease provides how the utilities are billed to the residents. In my opinion, as we know gas has increase substantially, we are not billing back common area gas to residents aside from their gas usage, trash, water, and the sewer.

Terry: Mr. Cann has made a few assumptions during the first argument. The common area gas isn't being portioned back to the tenants. I think that's important to be said. There was a comment in regards to the \$100 increase that Ms. Wilhight is paying. Her unit was renovated and that's where the \$100 came from. The cost to renovate these units are about \$45,000. It is not an egregious amount of money. With regards to the

utilities we keep talking about utilities and defining them because that is what they are utilities. They are gas, water, and electricity. It is something that is consumed by each unit. You can call it rent or categorize it as rent but it's still a utility and we all know what those are because we all go home and pay them. It is consumed by the person within the unit.

Nordine: As are the hallway lights the garage lights. Those are all utilities that we maintain on the residents' behalf. Those are all utilities that we have to provide. You have to have a light on your hallway. In regard to those comments all of these places that he (Mr. Cann) names are all places that the residence uses this specifically for the residence including the manager's office. We are on site for our residence, that's our purpose.

Terry: The statute in Minnesota requires that in a single metered building that the owner of the building be the bill payer. There is a logical reason for that, to protect the tenants and so the utilities won't be shut off. Making the building owner responsible for the whole building. That kind of turns it over into a quirk for us here because we are talking about a single metered building versus a separately metered building where everything is metered out separately. Technically, the landlords can go in there and breakout all their utilities in these units. It still does not change what I was trying to say which is a product provided by another company that is consumed by the tenant in their unit. With regards to rent increase for Ms. Wilhight we are still working through that process. What Mr. Cann was saying is that we have not identified what we want that increase to be other than what was in her lease now. We don't know where we are going to land yet. Is it the 8% is it the 9.59% I don't know we have not gotten there yet. We are still weighing that issue. Once we figure that out then we will know what the increase is those are the only major comments that I have.

Ferkinhoff: To your last comment Mr. Terry. I am a bit confused. I understand that Ms. Wilhight is included in the self-certification approval, not the staff determination. The staff determination was a 9.59% increase.

Moermond: Mr. Terry I have a little bit of a who is on first kind of question for you to walk me through. My understanding is that you work at Cushman and Wakefield?

Terry: I am their outside attorney.

Moermond: You, Ms. Nordine are an employee at Cushman and Wakefield?

Nordine: Yes, correct.

Moermond: I see that the fire certificate of has a contact person by the name of Brandon Fritz. Is Mr. Fritz an employee at Cushman Wakefield?

Nordine: No, not that I am aware of.

Moermond: As of September 1st of 2022 that was the most recent record that the fire certificate of occupancy has. Ms. Zimny has forms to update the information on who the correct contact people are for this ongoing Fire Certificate of Occupancy. I just want to make sure we have the right people listed. This is something that I bring up on hearings relevant to fire certification, as well. Last question, this is something Mr. Cann brought up but I think it bears clarification and that is that has to do with the lease agreement itself. It appears to be Bradbury Limited Partnership and Ms. Wilhight on the lease and I have Cushman and Wakefield who is the manager and Rayette LLC as

the owner out of Englewood Colorado. I am wondering who is Bradbury and how do they fit into this situation.

Nordine: I think Bradbury could have been the prior name of the property.

Terry: This happens a lot. We run into this when we do evictions. We represent most of the property management in Minnesota. When these communities change names sometimes, or excuse ownerships, sometimes there is a lag in entity it exists and it transcripts to new ownership entity. I don't know the answer to your question right now. I will have to figure that out. My understanding is that Rayette Loft is the owner of the entity

Moermond: It appears in the Ramsey County records that the action occurred in 2020.

Terry: I wasn't involved in the purchase agreement, so I am not sure.

Moermond: They are accessible in the county website.

Terry: I don't know about the transaction records or purchase agreement. There is a notice that goes out to the tenants about change of ownership so that the tenants are aware.

Moermond: One would expect that after the transaction there was an update to the tenants.

Terry: In a renewal or new lease it would have stated the new ownership.

Wilhight: I just want to be clear the rent increase that I had last year was based upon a so-called renovation. I fought and lost so here it is again. I am getting another rent increase. It wasn't until I filed and submitted the claim to Chelsea about the ordinance complain that they push me as far as moving forward with the renovation and everything else that was supposed to be taken. Here we are with another 11.2 percent increase and now add the utilities.

Cann: Sarah Davis just show me her lease that was sign in April of this year. The owner was Bradbury Partnership which is not register in Minnesota or do business in the state. Cushman and Wakefield are not the property managers to the property according to the lease rather American Family management central. I try to track down who is responsible for the property has been a nightmare for me for Ms. Wilhight and for Sara Davis. There are entities in the metro area and all over the community. Who knows who is actually responsible? Mr. Terry said that as far as Ms. Wilhight there are still working on the rent. As far as her lease it expired at the end of August.

Moermond: I heard that in the context of the appeal process. That they are working through that.

Terry: American Family Management is Cushman and Wakefield

Davis: I am trying to figure out who am I in a lease with. Before it was Pinnacle and know its Bradbury. I do not know who to ask. I do not get a statement I just get a number. They have instructed people in the office not to give me their number. I have email Ms. Nordine and Ms. Lasota and they have not provided anything.

Nordine: We are working and we are responding daily.

Moermond: Today is September 29th and I think we have all the information in the record that we need. October 13th at 9am I am going to pencil in a hearing. We are just going to go on the record that we have. If an agreement was reach let us know before the date.

Mr. Cann: I assuming that I will actually get what

Moermond: One point person. Sonia Romero. We will make accommodation. Will you be able to provide something by the end of next Friday. I don't foresee that we will have any concerns moving forward.

Cann: do they have a deadline to submit what they were going to submit.

Moermond: Will you be able to submit by next Friday

Terry: Yes.

Moermond: Adjourned

Laid Over to the Rent Stabilization Appeal Hearings due back on 10/13/2022