



City of Saint Paul

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Saint Paul, MN 55102

Minutes - Final - Final

Rent Stabilization Appeal Hearings

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651-266-8568

Thursday, July 13, 2023

11:30 AM

Room 330 City Hall & Court House

11:30 a.m. Hearings

Rent Stabilization Appeals

[RLH RSA 23-8](#)

Appeal of Geruth Buetow to a Rent Stabilization Determination at 250 SIXTH STREET EAST, Apt. 608.

Sponsors: Noecker

Attachments: [Appeal Application 250 6th St Apt 608 5-8-23](#)
[letter from attorney Malcom P. Terry to St. Paul Legislative appeals \(Cosmopolitan-Gureth\) 5-23-23](#)
[MNOI](#)
[Notice to landlord and appellant 5-26-23](#)
[Staff Report - 250 6th Street -- 06-22-23](#)
[Notice to landlord and appellant New Date 6-23-2023](#)
[Statement by Geruth Buetow- 07-30](#)

Deny the appeal.

Moermond: What I'm looking at today is an appeal that you have filed, and that appeal is of the decision of the City of Saint Paul to allow an exception to the rent increase, or the rent cap of 3%. My job is to review your appeal and develop a recommendation for that to the City Council. I'm giving the City Council a recommendation. If you are OK with what that is and the landlord is OK with what that is, there will be no discussion of the matter, it will simply be adopted. If for any reason an interested party does want to discuss the matter, object to my recommendation, it will be pulled off the agenda and discussed by the City Council and they will take testimony. My practice here is to start with the staff report and have staff described the information that they have, the information that we've received since and give their analysis of that. Then we can talk and find out a little bit more about why you're appealing and what you're looking for today. I will also hear from other interested parties and that looks to be property management and ownership will also have something to say that will go on the record. I may or may not be able to come to a decision today, as I may need additional information.

Buetow: The first step is that we will testify, and you will make a recommendation to this City Council. If we don't like your recommendation or have differences with that then we can ask for time on the agenda.

Moermond: What we're doing is establishing a record right now. It's findings and a recommendation, but we're just trying to put it together instead of going straight to the City Council. This allows for problem solving here. If it's not resolved, they have a hearing and this record helps get their conversation started.

Buetow: You are going to hear from me and from the staff, who is the staff?

Moermond: We have Lynn Ferkinhoff and Demetrius Sass and they're going to talk about the self-certification process and any additional analysis that they did. We will hear all of that and then talk with you a little bit more about your appeal and move forward. What are we looking at here 250 East 6th Street unit 260.

Ferkinhoff: On March 27, 2023, the department received a self-certification application for an exception to the 3% rent increase cap per ordinance 193A. The application is for 250 6th Street East (the Cosmopolitan Apartments). The intake form is part of the record and Olga Trimmer from AEW Capital Management is listed as the applicant. Ms. Trimmer submitted the application on behalf of OLY IDA Cosmopolitan LLC, which is listed as the owner of the property. The application notes that it comprises a consistent increase of 8% for the entire building. The increase was proposed to take effect on April 1, 2023. The reasons for the increase listed in the application include an unavoidable increase in operating expenses and a decrease in rental income. For self-certification, applicants are required to provide 3 pieces of information from the worksheet used to calculate Maintenance of Net Operating Income or "MNOI." These are 1) Current Year Gross Scheduled Rental Income (GSRI): \$4,416,900; 2) Fair Net Operating Income: \$3,618,029; and 3) Missed Fair Revenue: \$1,231,635. The applicant calculated an Allowable Rent Increase of 27.88%, which is Missed Fair Revenue divided by Current Year Gross Scheduled Rental Income (GSRI). Per the self-certification process, the application was automatically approved. On April 12, 2023, an approval letter was sent to Ms. Trimmer and letters were mailed to the units identified in the rent roll provided by the applicant during the application process. Please note that the actual Allowable Rent Increase in the self-certification process may not exceed 8.00% and may be less than 8.00%, depending on the financial information that was submitted. There are no known code violations for this property.

Moermond: Ms. Buetow, can you tell me a little bit about why you're appealing? I have the statement that you wrote on your appeal, but if you want to maybe explain a little bit more about where you're coming from. That would be good.

Buetow: Last year in August or September I had a rent renewal and found out that the company had put in an increase in our rent for utilities for air conditioning and heating that they had not done before. That was an additional at least \$40 a unit to be put into rent. It went over the 3% allowable income for the rent and according to the rent stabilization ordinance it said, and Demetrius maybe you could help me with this because I think I got it from you, that with the housing services if it's put into the rent it's an additional fee that shouldn't have been in there before. After, the rent stabilization went through with the 3%, and in addition they added the heating and air conditioning to that rent and still increased by 3%. I think it was against the rent amendment to add those additional cost for the rent increase. That was one area. Demetrius could you help me?

Sass: This was something that was prior to the self-certification application. This was a complaint dating back to last year, the addition of utility fees on Geruth unit. She felt it was in addition to the rent increase. We created a complaint letter that she could

deliver to the landlords.

Buetow: I think that I was speaking for not just myself, but for the residents of the entire building, because it happened across the board. It was a utility that none of us had paid before rent stabilization came through. It was sort of a back door to increase rent to avoid the 3% and to make it higher with the 3%. I didn't think that was in the law.

Sass: I would just like to add that we do have that complaint on file and the first letter was sent on September 1st of last year.

Moermond: Just to be clear on the record, you have a lease cycle that runs from September one through September one?

Buetow: It is a 13 month.

Moermond: It's a 13-month lease and the lease that you are on right now, what is the time period?

Buetow: Until September 28th of 2023.

Moermond: September 28th of 2023 is when your current lease expires?

Buetow: Yes. I have to give credit to the management, they were very receptive to working with me on some other kinds of things. They're good management team, but it was not just for me that I appealed. It was because it went across for all of the tenants in the building.

Moermond: I want to clarify some things and I'll ask Mr. Sass for follow-up information. You can only appeal on your own behalf, so you can't appeal and say it's going to apply to everybody, it can only be you. Next, under the former version of the ordinance, that was in effect through December 31st, it was possible for the landlord to move things into the rent or bill separately but the 3% cap applied. Could the landlord change the way the payment is configured and do different arrangements like bill separately? Yes, but we're looking at a total amount of money charged before and after to calculate the rent increase. I'm going to ask Mr. Sass, if he has done any investigation at all on that situation that isn't in front of me today. I'm going to take that as background information for how we go forward, and then I have one other comment after that. Mr. Sass, can you elaborate on the nature of the complaint and the kind of investigation that you did, that's not in the record today?

Sass: I would say at that time DSI (Department of Safety and Inspection) was in a very educational point with Geruth's complaint being submitted. We sent out the letters to go to the responsible party listed for the property to make sure that they knew the ordinance was in effect and that complaint was necessary, but there was not any further investigation into other units in the building or what the overall utility change was.

Moermond: Was it the type of letter which says "a tenant has reached out this about a particular concern and here's the rule that applies in these circumstances?"

Sass: It was our form letter that we sent out with any complaint that comes through. Here are some common things an ordinance that are being breached, here is how to remedy it, here's the application process.

Moermond: If that is your circumstance, you are not coming to that conclusion.

Sass: Correct.

Moermond: Last thing, as we're looking at an appeal of the determination that DSI made on an application, would that apply to future leases for Ms. Buetow, which would presumably take effect after September 28th? That would be the decision made here but leases are renewed in buildings throughout the year and this to be the determination for the forthcoming year.

Sass: Correct.

Moermond: You make a decision April 12th, the approval letter goes out, and that decision applies through April 11th of the following year.

Sass: I will say at this time there is not a time limit on the implementation of the rent increase. They have been approved for 8% over the rents reported in the current year. They don't need to be put in that one-year period. If they were approved for 100% rent increase, we don't expect them to double the rents of every tenant, that is of their choosing to implement that increase.

Moermond: So administratively, it is envisioned that this could be a multi-year increase based on the percent approved.

Sass: Correct.

Buetow: Could there be an increased every year?

Moermond: Well, in theory, we're talking about if there is an increase approved and he was giving a hypothetical 100% increase, that it could be staggering over multiple years is how The City is interpreting the ordinance. This is how The City's administration's interpreting it now. Correct me if I'm wrong?

Sass: Correct.

Moermond: That it could not just apply to your next lease but it could apply to any future lease moving forward. That being said, have you seen Ms. Buetow's lease? I don't see it as a part of the record in front of me about what the actual increase was last time when the complaint was filed did you get any materials?

Sass: Not at that time.

Moermond: So, just the statement that is here the way that it's configured.

Sass: We had several phone conversations.

Moermond: Tell me more Ms. Beutow, do you have other comments?

Buetow: I do have other comments. I like this apartment and I like the management, but I don't see that there are a lot of improvements made to justify the increase in rent up to 8%. They say that we have a business center, but we do not. We do not have computers that are available. We have a counter and an area that has internet access and that's a business center. It really isn't a business center.

Moermond: Tell me where it says that. Is it something that's in your lease?

Buetow: It says that is one of the amenities. They did pay for new community patio furniture this last year, which was nice. But again, we're talking about over a million dollars and excess of that. We've got a new copy machine, and some new security out front. The parking lot in front was repaired and they also put in a garden. We only have one cleaner for the entire building, so it isn't really clean all the time. They did have to put a lot of work and money into the garage because it was old and it was going to have some code violation if it was not fixed. That was kind of inherent on some of the things that happen to an old building. We're not a condominium or a town house because we don't pay into a community fund that we should have to have our rent increased because the building owners have to fix the garage for safety and code violations. I think that the rent should be increasing as it always has, 3% but not 8 % because they will get less revenue. The reason that they have less revenue right now is because of some things that are happening within the city. There are vacancies all over, so it's not just this building and if they keep increasing the rents then fewer people will live there. It will be a cycle of them pricing themselves out of people that can rent there. I am a senior and I live on a fixed income, so every year that's a big deal. That's some of the things I have.

Moermond: One question for staff here. It looks like in the MNOI some of the reasons listed for needing to increase the rent beyond 3% were an unavoidable increase in operating expenses and a decrease in rental income. Can you distinguish with those operating expenses look like versus say the capital improvements to the garage and how you would parse that out in evaluating this?

Sass: Lets go back a little bit. In the reported numbers there is a decrease in rental income, not just based on vacancy but actively post and during the pandemic. The rent income did decrease and is now increasing at a slower rate than their operating expenses. Their operations have increased by roughly 15% over the last 3 years. This would be assessed on just the actual operation of the business, not adding capital projects. For example, improvements to the garage would be taken separately and aren't a part of this calculation. This is just simply based on the actual income versus the cost to run the business.

Moermond: Mr. Terry come on up and I invite anyone else who will be speaking with you.

Terry: Myself and Ms. Nordine.

Crawford: And me, Shannon Crawford.

Terry: Two things I want to address. The first thing I want to address is Ms. Buetow's assertion in her claim that her rent went above 3% because of the addition of the utility that were added in. We did a calculation and her rent was \$2,073 a month, which had been her rental rate for 4 years and had not had an increase. Ms. Buetow had a \$135 monthly parking fee, and had around \$45 a month bill for water, sewer, and trash. That's what she was paying before September 2022 lease. As of the September 2022 lease her rent increased from \$2,073 to \$2,135 a month. Ms. Butow's parking was reduced to \$100 a month. She still had the same utilities that were around \$45 a month, and there was the addition of the \$30 per month on heating and cooling, which actually that's the highest amount that's been attributed. I think Ms. Nordine has the amounts that go from roughly \$21.84, which was January to November, the highest

was \$30.26. The percent increase with those adjustments is actually 2.7%. Ms. Buetow actually put in her appeal as a complaint as she started out saying that her rent was increased over 3%. It wasn't, it was increased by 2.7% which included the addition of the fee. That's the first point I wanted to make with regard to the determination that her appeal involves the exception. As I mentioned in one of my emails we are sitting here today because it's not in her written appeal, and doesn't know what she is objecting to. We don't know what the complaint was and there was nothing that was previously given to us. We are sitting here a little blind hearing what Ms. Buetow had to say and then trying to come up with a response to what that is. I don't have anything prepared for that other than what we just heard. I can let Ms. Nordine kind of comment on what we heard with regard to the increase. One thing that staff mentioned is that increased had nothing to do with capital improvements to the property, it was increase in operating costs and decrease in income.

Moermond: Before we go further, I am separating out the increase which occurred last year, which has been discussed, but that isn't it all what's in front of me, that's just background information that is informing her comments. What is in front of me as that determination and how that impacts things moving forward. I appreciate that clarification on what had been. I would also say that I often receive appeals that are not exhaustive in their explanation. People are often not adept at engaging in this kind of process. We want to take people where they're coming from. The question becomes - do you have the right to appeal, even if you don't formulate a formal argument and kind of walk through it. I understand you haven't had a chance to reflect on this. I have not had a chance to reflect on this either. I welcome your comments that you have now, off the cuff, and take them as being just that.

Terry: I raise my first points merely because that's literally what she wrote in her appeal. I don't think Miss Buetow did the math. She just saw an additional increase for the lease that went into effect on September 2022. With regard to the 8% exception, it doesn't have anything to do with capital improvements.

Nordine: I want to say that she's appealing that her rent was increased over 3%. It was not. Then we have a separate thing in which is that we received approval on the exemptions of 3% to increase rent up to 8%. We received the approval on April 12th it's now July 13, and we have not been able to implement that approval because we are assuming that her appeal is on the 8%. But again, to Malcolm's point, that's not what she's appealing. She's appealing that her rent was above 3%. It seems like they're 2 separate things and we're being penalized because we are assuming that her appeal is on the 8%, but I don't see that anywhere.

Terry: The only thing I would add to that, is that technically if she was bringing up her appealed related to the exception, it's not ripe yet because she hasn't been impacted by a lease that would increase her beyond a 3%. She could get another 3% increase, or she could get a less than a 3% increase or an 8%. We don't know, so her objection isn't right.

Sass: I would just clarify that the timing that she has for the appeal is post a determination, not when she received her lease. She has 45 days from our decision to decide if she's going to appeal or not.

Nordine: I understand that, but she's appealing that her rent exceeded 3%.

Terry: Her objection to The City, as you stated earlier, came into play when she got her September 2022 lease not after the exception went into effect. Technically it's not even

right for her to appeal.

Nordine: To elaborate on the 3-8% exemption, we've now missed our peak on leasing season. If there was an opportunity to increase rent past 3% because 3% is generally the rent increase that that we see that. If there was an opportunity to increase rents above 3% that would be right now being that we have not been able to implement the approval that we received. We have now missed our opportunity for 2023. Based on the market based on seasonality in Minnesota we won't see that opportunity again until spring of next year.

Moermond: You have heard her comments this morning, and some of them do apply towards leases moving forward. I haven't analyzed this, but a part of your operating expense is indeed paying the bills to do all the things related to the building and that has to do with the cleaning, maintaining parking lot, simple repairs, as well as complex repairs. The accountant could be charging more, or you as their lawyer could be charging more. Those are operational expenses that maybe a part of what she is saying and I need to listen to those things as well. The business center if that's a part of what we're talking about just kind of equalizing that in my own analysis, you all may have comments based on those particular things that I think could apply to future leases. I'm struggling with the question of ripeness because it does apply to future applications and the way the ordinance is constructed right now. There is a 45-day window to file an appeal, and the determination is not final until either 45 days passed without an appeal or when the Council makes a final determination. There have been delays and I believe they have been legitimate. Can we proceed expeditiously? We can do our best. What kind of time would you like to be able to reflect on this? I am assuming you would like to submit something in writing, rather than conduct another hearing. Do you have additional thoughts that you want to share based on what you've heard this morning?

Terry: What I heard this morning is there's a business center that doesn't have computers but her lease in amenity addendum doesn't say it will have computers. It's a room that's available for that use with free Internet. The capital improvements to the parking lot was indicated by staff and myself isn't part of what resulted in the rent increase. In regard to the capital improvements to the parking ramp, those are capital improvements that need to be done that are outside the scope of what was looked at here. In regard to the cleaning services, the cleaning services are what they've always been. That's generally what I noted from what I heard that had been brought up with regard to Ms. Buetow's discussion about the 8%. The way I see it is Ms. Buetow has a position to complain when she's affected by the 8% increase and that hasn't happened. It could happen in the future, but we don't know what her rent increase will be until the property sees where it's at in September, it could be 3%.

Nordine: As far as the amenities that she mentioned, I'm not aware we have a business center advertise anywhere or that we tell anyone we have a business center. We make every year several improvements like new fitness equipment, new patio furniture we refresh our theater room, we added additional seasonal planters, and increase resident events. These are things of value to the residents in which part of the costs that the expenses increased because they are a reinvested into the property. We like to keep our community happy.

Terry: You have to make it better so that it matches the communities that are around, including the newer communities. That's everything that we have based on what we've heard. If The City is reviewing everything and decides it wants more information, let me know.

Moermond: I'm going to ask staff about their analysis. One of the things that was just brought up by Mr. Terry was the question if you need additional information for your analysis. Can you tell me about what you looked at the completeness of the information?

Sass: Management supplied their historical accounting information, which was very clearly labeled, both in terms of their current market incomes, as well as the lost lease values. Using that, actual rents and operating expenses can be calculated in detail.

Moermond: Ms. Buetow, do you have any comments based on what you've just heard?

Buetow: I just want to add a couple things. I don't think I was aware that they were self-certified and I don't think that it came through to all the residents. There was a piece of paper that said that you could appeal, I did that. The thing about the business center it is in the lease and the residents agree to use the business enter. It isn't a room it's just a space, just as a simple clarification on that. Regarding my rent they have been more than generous in some ways. 3 years ago, there was a big moth infestation in my apartment. I had to get rid of a number of articles, including a couple rugs from Morocco, my wedding dress, and a couple of other things. My rent was reduced because of that. It was reduced and adding that 3% on top of that reduced rate it added up. I am very nervous about having the rent increase more and have an increased substantially more every year because I would like to live there until I die. I don't know if I can do that if they keep increasing the rent, especially if they increase it to 8%. It's an expensive building but I like living there. I garden in the park, and I am involved in some other community affairs. I do like the location, and I do like the building, but affordability is becoming an issue.

Sass: I would like to add that if they are approved for this increase of up to 8% now, that only applies to your upcoming lease – not future leases

Buetow: How's the self-certification done? It seems like it was just automatically approved.

Sass: There's a financial form in the back side that they need to fill out and when it comes to us, we asked for a few specific pieces of information from the finance form. This information allows us to verify the rent increase of up to 8%. When theirs is analyzed further, they would technically qualify for more, but they only applied for up to 8

Ferkinhoff: I would just add to that the notification in terms of the tenants, a post card was mailed to the tenants that were identified on the rent roll that was provided by the building management. That's where it would have said it was a self-certification process.

Moermond: I need to look at the ordinance as it relates to the owner's ability to seek and get a reasonable return on their investment. It is a private business venture with whom you have contracted for housing services. What those housing services are, how you negotiate that and how that fits together, that's really between you folks. I say this because changes in services are between you folks, and that would include what the business center looks like. What I'm going to concern myself with is the reasonable return on investment for ownership. There are factors in the ordinance which would allow for the reasonable return to be pushed up or down, such as property taxes, capital improvements, unavoidable increases in expenses, or decreases in rental

income. Those are all things that would push up ownership's ability to qualify for an increase (above the rent cap). Staff analyzed that information and determined they qualify for the 8% they applied for. Had they applied for more of an increase, a staff determination process would have been used. The math looks like they would qualify for almost 28% rent increase and that isn't what they applied for, they asked for 8%. However, it does inform my analysis. Do they qualify for that? Yes. What pushes down on their ability ask for those kinds of things would have to do with code violations that needed repairs: if they were to let the building linger in a very bad state not taking those things. However, I was not hearing those things exist from you or from staff. What I was hearing is that we have a Fire Certificate of Occupancy that show a good history and it's a Class A building. Although there are other factors which would decrease the amount of increase they would be eligible for, none of them were mentioned by the appellant or staff. Importantly, if there were such adverse factors impacting the analysis, their impact would need to be huge in order to bridge the gap mathematically between what they qualify for and what they asked for. I'm hearing is information that says, yes, they qualify under the ordinance. I need to deny your appeal. I have sympathy for where you're at. I can't use my sympathy for your situation to interpret the code differently.

Buetow: Why did the citizens pass the ordinance for 3%?

Moermond: I would answer you this way, the 3% that was put in the ballot initiative was a number that was arrived at, because at the time it was the average rent increase. It is unfortunate for people who are advocates for the rent control situation that rent increased after the ballot initiative was adopted. As you know, inflation alone has been significant since the ballot initiative was adopted. I would hope that inflation and property taxes and other things that make up the costs that we all experience go downward again, so that 3% would be the average. It was well intentioned to have it at 3%. When it was done, it was done on the history it wasn't done on what might happen moving forward. The pandemic happened and all of these things change that. That doesn't diminish the importance of the argument that's being made. The economy is so different now than what it was then and hopefully it will stabilize. I'm going to ask Mr. Sass, what is the CPI now? It is on a downward trajectory.

Sass: It's slowing, I haven't checked as of late but the increase in inflation is slowing down compared to the last 2 years.

Moermond: it is likely that we're going to be looking at a significantly lower inflation from the beginning of this year to the end of this year than we saw in 2022. The rates that you are looking at now versus what you anticipate you'll be looking at when the 2023 numbers are published, you're thinking it's going to go down a couple of percentage points?

Sass: I would imagine that goes down the future.

Moermond: That will impact the analysis that is done for anyone who applies for rent increases after January 1 of 2024. At this moment in time the numbers don't wash if we were back when the ballot initiative happened the numbers would look completely different.

Buetow: As a citizen, I feel discouraged that there was a ballot initiative that was voted on by the people of the city, and now that has been changed without the people that voted for that ballot initiative.

Moermond: I appreciate that and definitely the Council will be able to see that on the record. If you want to testify to that effect, you are welcome to do that as well.

Nordine: For the approval does that start today? [inaudible]

Moermond: That will start when a final determination is made by the City Council. Looking at the calendar, I think we could expedite and get you on for July, 26. We may not have complete minutes when we publish, but there will be complete minutes by the time that the council hears the case.

Referred to the City Council due back on 7/26/2023