



Minutes - Final

Rent Stabilization Appeal Hearings

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Thursday, June 27, 2024

8:00 AM

Room 330 City Hall & Court House

8:00 a.m. Hearings

Lynne Ferkinhoff, DSI-Rent Stabilization, appeared.
Demetrius Sass, DSI-Rent Stabilization, appeared.
Colin Gulling, Property Owner, appeared via phone.

(Marcia Moermond gives a background of the appeals process)

Staff report by Rent Stabilization Staff Lynne Ferkinhoff: On March 24, 2024, the Department of Safety and Inspections received a self-certification application for an exception to the 3% rent increase cap per ordinance 193A. The application is for a single-family home located at 1184 Seminary Avenue. The intake form is part of the record, and Colin Gulling is listed as the applicant. Mr. Gulling is the owner of the property and submitted the application. The application proposes an increase of 8%, with the rent increase applied on July 1, 2024. The reason for the increase listed in the application is, "An increase in real property taxes," "An unavoidable increase in operating expenses" and "A pattern of recent rent increases." In addition, the property owner notes in the application that he purchased the house in 2020 and rented it for the first time starting July 1, 2023. Due to a work relocation, he offered rent at below market value because the house had to be rented quickly. He was not advised by Renters Warehouse, (the property manager) about the City of Saint Paul Rent Stabilization Ordinance.

A Renters Warehouse fee of \$20 monthly is paid by the tenant in addition to the monthly rent that is being charged by the property owner. The property owner further notes in the application that he is losing money on the property this year. Tax increases, insurance increases, below market rent are factors in having to raise the rent to the level allowed. For self-certification, applicants are required to provide three pieces of information from the worksheet used to calculate Maintenance of Net Operating Income or "MNOI," including current year Gross Scheduled Rental Income (GSRI) at \$21,540. The Fair Net Operating Income was \$14,664, and the Missed Fair Revenue was \$1,805. The numbers provided in the application and listed above are not accurate as there was insufficient data to complete the MNOI worksheet correctly. The property entered the rental market on July 1, 2023, and the rent increase exception application was submitted on March 25, 2024. For the self-certification process - the rent increase exception was denied. On May 8, 2024, a denial letter was emailed to Mr. Gulling and a notice was mailed to the tenant. The exception was denied by the City for the following reasons: 1) the property only recently entered the rental market; 2) a lack of financial information prevents a determination on a staff level; and 3) a Fire Certificate of Occupancy is required to meet the ordinance's habitability requirements. At the time of determination, only a provisional certificate was available.

Marcia Moermond: I have a couple of questions. You indicated that there was

insufficient data to complete the MNOI worksheet correctly. Could you expand on that?

Demetrius Sass: Yes, the MNOI worksheet requires two years of data or at least one full year. If a projection was possible at the time of application, we didn't even have a single full year of data, so we couldn't project a potential or fictional base year to try to make a comparison, and there wasn't enough financial information to complete our form.

Marcia Moermond: If you take that a step further, you're looking for a complete base year. You could use projections for the application or upcoming rent, but you would need that full first base year.

Demetrius Sass: So actually, if we have a single year, we can project a base year so that we can decrease the current expenses and income by CPI between that time period and then basically create a false base year that can represent what expenses may have been like in the past and then make a comparison there if we have. An example would be if we have real utility numbers from a previous year. We have been able to project back what homeowners' insurance looked like, but when able to get solid utility numbers from a previous year, compare specific expenses apples to apples, and then project the ones we cannot find.

Marcia Moermond: So, I guess I would want to ask this in that case. The kind of methodology that you have applied is when somebody has purchased a property, and they don't have information from the previous owner; they just have a partial year of their experience.

Demetrius Sass: Correct. This is what we do. If we had at least one full year of data, you know this is for a very specific piece of the rules where this is allowed. And so, we're stringent on needing at least one entirely complete year before making projections.

Marcia Moermond: OK for Fair Revenue; you said it was \$1,805?

Demetrius Sass: That would have been the difference between the previous year's and the current year's income. While the previous year's net operating income and current year's net operating income, without the ability to fully complete this application, those numbers are not correct, or those numbers aren't necessarily relevant.

Marcia Moermond: Ok. Check one more math question here. I was just checking if the Missed Fair Revenue would be-what should be gained.

Demetrius Sass: Correct. That would be allowed as a rent increase on an annual level. So, the Missed Fair Revenue divided by 12 would be a monthly rent increase. But again, these numbers are being pulled from partial data, so I don't think they will have any weights.

Marcia Moermond: Sure, but if weight was applied to them, just for clarity's sake we take the Missed Fair Revenue and divide it by the month, which would be \$1,805, and then I would add \$150 a month to get to a new total.

Demetrius Sass: Correct.

Marcia Moermond: If I charge an additional 8% monthly, I get to \$1,938 per month. If I am charging an additional 8% and looking at the missed fare revenue, I get to \$1,946.

So that would be pretty close.

Demetrius Sass: So, what you do is multiply by 8%. That doesn't need to be increased. So, \$1805 would be the total.

Marcia Moermond: No, I divided that by 12, and I ended up with \$150.

Demetrius Sass: Correct. If these numbers were correct, \$150 would be the monthly rent increase allowed.

Marcia Moermond: And if we take the \$1,805 and add 8% to it as a comp, the ask is for an 8% increase. I was trying to compare an 8% increase to the ask for Missed Fair Revenue and they're almost identical. The application was made for a Fire Certificate of Occupancy (C of O) on May 3, 2024. I want to note you didn't get a Fire C of O quickly. It does get issued as a provisional, and that program would count as being a Fire C of O until there is an inspection, which may or may not have a different conclusion. Ok, I will turn it over to you, Mr. Gulling, and say what would you like to comment on? I know we received some additional information yesterday. I turn it over to you.

Colin Gulling: Well, thank you all for taking the time. I know that the spirit of the law is that it was passed to protect tenants. So, I get all that. I understand that you know the lack of rental history is the source of this issue; as far as you know, having to go into appeals and have this discussion right now. What I sent yesterday was just. I guess there is proof that my taxes have increased, and my insurance has almost doubled since the tenants moved in and I am just trying to get out of the red, basically, and I've already had discussions with the tenants about this rent increase after the appeals process started. I just leveled with them about what was happening and why I was raising the rent, so they are already aware of that. I am looking to raise the rent from \$1,805 to \$1950, which is right about at that 8% level. I don't have any additional recaps to say, but I think the recap Lynn gave was good. If I could do this all over again, I wish I had known what I know now and certainly wouldn't have hired Renters Warehouse as a management group because they've given me terrible advice from the start, and I have never been a landlord before. I don't have any other evidence to present besides what I sent over via email the other day. I've already talked with the tenants. I am happy to answer other questions but I humbly ask that I be allowed to raise my rent because I have been losing money on the property since day one. I was kind of Ok with that because I had to move so quickly. I now work for the City of Chicago as a firefighter, and the process is very rushed. I had to move quickly, so I was Ok with losing money in the first year, but now it's just a situation combined with that move and moving to Chicago and taking a pay cut and all that, like financially, I am hurting. And I don't want to be in some position where I am backed into a corner financially and have to sell the house and displace the tenants. And that's a reality if I can't raise my rent to that level. So, I am happy to answer any other questions as needed.

Marcia Moermond: When I was thinking about this case, one thing struck me, and I don't quite know how to get to it, but I will ask for your comment, and that is the expenses that are incurred by an owner occupant. Would it differ from the expenses incurred when it becomes an investment property? So, for example, I might make a different choice for the kind of furnace that I install or the countertops that I put in if I am personally living there versus renting the property. And so, has that played a role, or have you had an experience deciding that?

Colin Gulling: No, I think I am a good landlord. When I handed the house over to the tenants, we left it in very good shape. When there was a plumbing issue, I resolved it within a 12-hour period. I think you're asking that because I don't live there, and I am telling you that financially, I am hurting. Would I not provide updates to the tenants?

Marcia Moermond: No, I did not mean to imply that you wouldn't provide for them. The expenses you would have incurred before it became an investment property may be different than the expenses that you incur as an owner-occupied property. Not that you wouldn't fix the plumbing. Not that you wouldn't replace the countertops if that's what needed to happen, but rather that the expense for doing that would be higher as an owner-occupant than it would be as an investment property. So, for example, when I replaced my furnace, and I am living on an owner-occupied property, I chose to go with a high-efficiency furnace instead of replacing it with like and like. And so that's the kind of decision point, and I imagine you haven't had to deal with that in the under a year that you've had it as an investment property. But I was asking if, for example, you had what that looked like.

Colin Gulling: Yeah, it's been a year, and when the tenants moved in, there were expenses we had. My wife and I wanted to leave it in a state that we would be happy. For example, we replaced the over-range microwave. I had the roof redone but never lived in it after the roof was redone, granted, that in part had to do with hail damage. And it was an insurance situation. But I still had to pay, I think, \$3,000 out of pocket for the deductible. I like my tenants and have a good relationship with them. So, if something were to break, I wouldn't buy something basic because it would also be a detriment to myself if I am getting lower quality or lower efficiency items. Eventually, that will come back to me because there's a very real possibility that I will move back to this house after some years. So, I don't try to be short-sighted in that way.

Marcia Moermond: Ok, I will ask the staff a follow-up question based on some of our conversations here.

Mr. Sass, You commented on this not being a full base year but being willing to project more into the upcoming year. Looking at this particular property, have you sketched out your timing if there is a full base year to determine off? So, when would an application be accepted from DSI?

Demetrius Sass: Yes, it's the earliest based on it being rented in July of last year. The earliest I could start looking at that would be once we hit July this year because then we would have one year of information, and we could project backward. I think we still run into the same problem. Maybe you're lacking some information. Right now, we don't technically have a current year. We have two partials, so the year we use in the MNOI is always the most recently completed year. We work on a January to December timescale. It's not a rolling calendar since we'll have July to July, things like CPI will be a bit difficult.

Marcia Moermond: As a base year.

Demetrius Sass: It would be July, which is the current year. We would project the base year backward.

Marcia Moermond: That's what I intended to say

Demetrius Sass: We project backward. So, with July to July, we run some issues with CPI just because we don't have it and only use an annualized number. So, we would

probably have to do some additional thinking about using the semiannual half-year number, and we want to compare those and get an apples-to-apples comparison, or I would like to look at that data before making that choice and how I would assess that.

Marcia Moermond: There is a provision in the ordinance. Grounds for not using the base year and that landlords or tenants may, as a part of their perspective ROI, application complaint or appeal, present evidence to rebut the presumption that the base year net operating income provided a reasonable return. Grounds for rebuttal shall be based on at least one of the following: 1) findings were exceptional expenses in the base year; 2) extraordinary amounts were expended on maintenance, repairs, and expenditures; 3) other expenses were unreasonably high or low, notwithstanding the application of prudent business practices. The pattern of rent increases in the years before the base year is based on whether those increases reflect the CPI and other exceptional circumstances. So, presumably, if we can come up with a full year, an argument may be made based on this code provision and you working with Mr. Gulling to extrapolate what would that period look like if an exception was made? It is possible looking at a complicated consumer price index model to develop the July to July CPI numbers.

Demetrius Sass: I would say it's potentially feasible to do that. CPI comes out bi-monthly, so they'll release the number in July. I am unsure if it's at the beginning or the end of July. I would probably lean toward the end of July, which would be my guess. So, I'd say it's possible, but likely not within the period that Mr. Gulling is looking for because it's likely to be again—at least a month from now until that data is available.

Marcia Moermond: I am thinking that if he can't get everything he wants timeline-wise, let's say putting something in place immediately, can we get part of the way there? There may not be an immediate rent increase, but it could be expedited based on an argument from that.

Demetrius Sass: I could probably set up most of the projections once we have this month's final expense data. We could set it up, but I would need a CPI number to plug in at some point to make the projections because CPI decreases between the two time periods. We are going in July to July- so I need to look at the difference between those two. And again, this is now getting out of what we used since we'd use annualized data now. We're branching beyond that, depending on whether you want to use the July or the averaged half-year numbers.

Lynne Ferkinhoff: Right.

Demetrius Sass: Again, it's possible it would get complex.

Marcia Moermond: Ok, Mr. Gulling, I just kept talking, and I know you were trying to break in there. I'll turn it back over to you.

Colin Gulling: I just googled when CPI will be released, and it's on July 11. I just wanted to add that to your conversation. I don't have anything else to say. I just want to interject that.

Marcia Moermond: OK.

Colin Gulling: Oh, excuse me—one other one other thing. While you were talking, I didn't anticipate any new expenses in the next three days. Unless something were to

break, so you know the data will remain the same on my end. You know, handling anything catastrophic.

Marcia Moermond: Here's what I think about it if I have to decide today - I would go with the staff recommendation. If we can put a pin in it for a reanalysis to occur once a full year is in place, that would make it sound like we're ready to go with the July 1, and then that's going to require setting some staff time aside to work with you. We could get you through a process with simply a month or two delay from your anticipated ask so that you would be out the money you would have expected as an increase in July and August. For example, but recoup it faster than possible if we were to wait until the end of this year or into next year even? So, I would like to continue the case in the hearing to allow for additional analysis. Otherwise, I am happy to send it to the Council with my recommendation to deny and offer the option that it be referred back to hearing, and I am willing to look at it more. It's just a logistical question at this point. And I guess the question to you is, would you want to testify at Council now and look for a different outcome, or would you be Ok with the delay and the potential of getting a different recommendation out of this process and then sending it to Council? I am seeing if you agree or not, and that's fine either way.

Colin Gulling: A couple of questions. When does the City Council meet next to approve or deny?

Marcia Moermond: Well, the City Council's next meeting is the second Wednesday in July, which would be the 10th. At this point, we might be able to get the case together for the 10th, and we would definitely be able to get the case together for the 17th. Let me tell you what's going on there. We can pull the case together to the best of our ability by July 2. We will require some cracking with the whip around here, but we still need a Council sign-off, and that agenda needs to be locked on July 2. And if a Councilmember is on vacation next week when they're not meeting, we won't get that signature to put it on the agenda. That is just something that's beyond our control. Hopefully, the 10th, definitely by the 17th.

Colin Gulling: Ok, either way, you know my verbal agreement. So, once the decision is made by Council, am I allowed to raise my rent, or is there an additional month or two until all the paperwork is done?

Marcia Moermond: The Council is making a final determination on your increase, and so that is the final in terms of when that rent increase would apply. It would default to state law and notice requirements around that, and that's not my bailiwick to give advice on. There is a great reference document on the Attorney General's website about tenant and landlord rights and responsibilities, and I often refer people to that. It covers so much that it probably has that information in it. And then you wouldn't have to go to somebody you have to pay to get that information.

Colin Gulling: Well, I am not looking to try to charge the tenants up per diem kind of situation starting the 10th. Then it would begin on August 1. There are many dates for CPI and for what Demetris and his colleagues need. So, if we were to put a pin in it and the office were to do what they need to do in three days, have that July to July year over year, then would there be another hearing like this, or would it just be able to be resolved through some emails and phone calls? Or what's that going to look like?

Marcia Moermond: I would look for a hearing because I want to talk explicitly with you and the staff at the same time about what their new recommendation is and whether there's been a revision. So that you could make an argument and discuss your

position and their position on it, and if it is a place in between a 3% and an 8% increase to have that flushed out better. So, given those unknowns, I would say I plan on doing a hearing. Unless staff come to me and say it's a clean 8% in our analysis, I would want to read their report and talk about that a little bit. So, it can be a short hearing, but a hearing all the same.

Colin Gulling: Correct. However, that causes concern for me because I know that the hearings can only be scheduled at certain times, and I know here's a backlog.

Marcia Moermond: No, there's no backlog. We can schedule you today for another hearing, and I'll be happy to do that. We just had a waiting period that was required by the ordinance that we go through, I can schedule it. Honestly, I don't want to say that staff, you know, can immediately get to this or that they're not taking vacations like most people are this time of year. So, I will turn it over and just the back-and-forth communication between you and them if they need additional information or if you want to submit it, more you know, they need time to do that. I heard Mr. Sass say that this will be a complex analysis, so giving credit, as this isn't easy for them to accomplish. I know you'd like to have it done in July. I don't know if that's possible to have it done in July. I will look at staff. You'll need more information. You've got to look at CPI and see what's possible. If something is possible there, what kind of timeline would you need to complete this?

Demetrius Sass: If Colin is correct and CPI is based on the 11th, I would still need until at least the 11th when that number comes out to finish the calculations. In addition, I am in training all week that week, so I won't be around. I am back on Friday, so I'd say the very earliest I could start working on this would be Friday the 12th. I don't think it'll take much, and we'll get most of it set up between Colin and me before then. So, the following week would likely be the earliest point for a hearing. So, the week of the 15th.

Marcia Moermond: I am looking at July 22nd and 25th as possible hearing dates.

Colin Gulling: I need to check my calendar quickly to see if it's my work schedule. Not regular working hours. July 22nd and 25th. I am working both of those days. Let me take a quick closer look here.

Marcia Moermond: We can look at July 29.

Colin Gulling: But then, if it is July 29, then the City Council couldn't ratify it until the second Wednesday.

Marcia Moermond: No, they're not meeting on July 3 because of the federal holiday the next day. They published their calendar for the entire year and don't have meetings scheduled on July 3. They usually would meet on the first Wednesday of the month if we were to conduct a hearing on the 22nd or the 25th, there is a good chance we can have it on the council agenda on August 7, which would click along pretty well. There's no chance for July 31, and I'll tell you it is a victim of poor timing. If there are five Wednesdays in a month, they don't meet the 5th Wednesday, so you're in this odd place with July where you've got the July 4th holiday and then the fifth Wednesday situation. So, whether we have a hearing on the 22nd, 25th, or 29th, that would still be August 7 agenda.

Colin Gulling: There's no guarantee that it would even be able to get on by the 7th because you said because if there's somebody on vacation.

Marcia Moermond: No, I think it's much more likely we'll be able to get it approved on the 7th, so I am pretty comfortable saying that.

Colin Gulling: If we were to have another hearing on the 29th, it gets on to the City Council meeting on August 7. If it is approved, then, hypothetically, I could raise the rent starting September 1. Is that correct?

Marcia Moermond: If that's consistent with state law; yes, I can only say that the increase would be approved, and I do not speak to the timing. You know, in terms of notice and all of that. So, if you're good there, you're good there. If you're not, that's not my bailiwick to speak to. For our purposes, you'd be cleared to move forward.

Colin Gulling: Ok, but as far as the notice, the official notice is being sent. That might be another while after the 7th; if it was August 7, it might be because it passes what into the state's hands?

Marcia Moermond: No, you need to look at what the state law says about notice and because I am not in a position to be able to speak to anything beyond city code.

Colin Gulling: Ok. I guess I'll have to look into that document. But I feel like if the city approves it on August 7, then, well, I don't know these things.

Marcia Moermond: Well, it could be, but I couldn't say.

Colin Gulling: Ok. So what I am hearing is that my options are to deny today through this hearing, and I would talk to the Council in July anyway. Maybe I will get approved to raise my rent for August, or we can meet again for a mini-hearing on July 29. Then, the Council would likely be able to have it on their thing by the 7th; if not, they would meet again in August. I'd take it maybe towards the end of the month.

Marcia Moermond: They meet the 7th, 14th, 21st, 28th, 4th. So, you just got a really solid calendar and then on end.

Colin Gulling: Yeah. I don't want to have to keep this going. This has been stressful all this for me, but I also don't want to take my chances with a denial and go present in front of the city just for an extra 150 bucks, being able to have it start in August. So yes, I am fine with the timeline we have been discussing the hearing on July 29th. It would give Demetrius and his colleagues July to July. Again, I don't expect any changes on my end for expenses. Following the 29th, the council would meet in August and pending- I'll look into the state code, and then I will be able to start raising the rent on September 1 and that sounds fine to me. We can move forward with that.

Marcia Moermond: Ok, we could do a hearing in the afternoon, we're available; we have all afternoon for-room availability on the 29th.

Colin Gulling: My calendar is fairly open, but with my daughter's summer camp stuff, I'd prefer to be there as early as possible in the afternoon. Do you have anything?

Marcia Moermond: How about 1:00?

Colin Gulling: Yeah, 1:00 is great.

Marcia Moermond: All right. We'll do 1:00 on the 29th. Just you and Mr. Sass keep in

touch. Make sure you have what each other needs, and that'll ensure we can get this conversation rounded out.

Colin Gulling: Ok.

Marcia Moermond: Fingers crossed, and everything on the 29th.

Colin Gulling: All right. Well, thank you.

*Marcia Moermond:
Have a good rest of your day, Sir. We'll send you a letter confirming all this.*

Colin Gulling: Thanks!

Lynne Ferkinhoff: OK, Colin. Bye.

Colin Gulling: Thank you. Bye.