



Minutes - Final

Rent Stabilization Appeal Hearings

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Thursday, September 8, 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 LH September 29, 2022 at 9 a.m. for further discussion.

Sarah Davis, witness for tenant and resident of unit 501, appeared
Jack Cann, attorney o/b/o Angela Wilhight, appeared
Angela Wilhight, tenant, appeared
Malcolm Terry, attorney o/b/o landlord, appeared

[Moermond gives background of appeals process]

Staff report by Lynn Ferkinhoff: on May 13, the department received an intake form to request an exception to the 3% increase cap on rent per ordinance 193A. It appears a duplicate entry was submitted that same day. The intake form is part of the record and Chelsea Dorval is listed as the applicant for 261 5th Street East (Rayette Lofts) – an apartment building in downtown Saint Paul. Ms. Dorval requested an increase using the staff determination method. The reasons for the increase listed in the application were 1) an increase in living space, furniture, furnishings, or equipment, 2) a pattern of recent rent increases and 3) a capital improvement project.

Since May 13, Ms. Dorval and staff have engaged in ongoing process-related communications, including topics like documentation needed to support an increase and how to claim a base year rent adjustment. However, no supporting documents were submitted under this original submission.

Moermond: can you state what the ask was in terms of percentage increase?

Ferkinhoff: there was not a percentage increase in the original request. On behalf of Rayette Lofts, Ms. Dorval submitted two new increase exception applications on July 26. One application followed the self-certification process and one application followed

the staff determination process.

These applications replaced the original request that was submitted on May 13. The reasons for the increase listed in the new applications were: 1) an increase in real property taxes, 2) an unavoidable increase in operating expenses and 3) a capital improvement project.

For the self-certification application, applicants are required to provide three pieces of information from the Landlord Worksheet used to calculate Maintenance of Net Operating Income or "MNOI": Income adjusted by CPI: \$869,828, allowable rent increase: \$357,821, and allowable increase/unit/month: \$338.85. The self-certified application was immediately approved for a maximum of an 8% increase. Rayette Lofts received an autogenerated approval letter for this request. Upon reviewing the staff determination application there was some missing and inconsistent information. Staff set up an appointment to meet with Ms. Dorval in person on August 11 to discuss the submitted documents. Ms. Dorval was not available, so staff met with the regional manager instead. At this meeting, staff reviewed discrepancies in the Landlord Worksheet. The regional manager was not involved in preparing the worksheet but was able to provide documentation that was used by others during its preparation. Staff is currently working with Rayette Lofts to finish processing this increase exception request.

Moermond: was unit 604 included in the self-certification request? Or the staff determination set of apartments?

Demetrius Sass: we only had the listing for the staff determination set, and it is not a part of that.

Moermond: so presumably this would be part of the self-certification 8%.

Sass: or outside of it. 3% or under.

Moermond: because you don't have specific listing for the self-determined units?

Sass: yes.

Moermond: and that is something you brought to the attention of the regional property manager?

Sass: not at this point. We are focused on the staff determination. Some of the numbers overlap.

Moermond: what kind of schedule are you working on to come to the end of your analysis.

Sass: we're close. They submitted finalized numbers last night. Within a week.

Ferkinhoff continues staff report: meanwhile, on July 6, a complaint was submitted from a tenant at Rayette Lofts. The basis of the complaint was that utility costs were being added to a 3% rent increase. On July 8, staff sent a complaint response letter to both the responsible party and owner for 261 5th Street East. The complainant filed an appeal with the hearing office on August 8. The last Fire Certificate of Occupancy was approved on September 16, 2016 as a Class A property. There have been 9 property complaints since the Certificate of Occupancy was issued, mostly interior with no

current issues.

Director Angie Wiese: since Lynn's report wasn't chronological, May 13 we received the submission form with no supporting documentation so that was ignored. July 6 when the complaint came in, we sent the letter July 8. Just to clarify, listing unit numbers isn't part of the intake form so it isn't in our course of practice to ask for those.

Moermond: is that something that is being looked at?

Weise: yes, especially given the amendments before Council.

Moermond: Mr. Cann, please come up with your folks and state your reason for appeal.

Wilhight: My name is Angela Wilhight, and I am a St. Paul Renter fighting for fair market rent in efforts to extinguish major rent hikes that cause me and others to possibly experience temporary housing that forces me to live with another person until finding reasonable property to rent. A portion of the Minnesota Homeless study research incorporated rent overcharging, which property owners infringe upon their hardworking tenants. It is a known fact that people that pay more than 30% of their income for housing are considered housing cost burdened which leads to the onset to homelessness. Renters make up almost one-half of the eligible voting population. I am a citizen who actively uses the power of voting and did exercise that right in November of 2021. I, along with many other voters won the proposition on rent stabilization in St. Paul, Ramsey County.

However, today in this courtroom, it's a deliberate disgrace and profoundly unethical when a property owner ascertains cunning avenues to add fees and charges to tenant's ledger in which they would normally absorb. Property owners were given financial resources to stay afloat during the pandemic; however, Rayette Lofts increased my rent on my 2021-2022 lease agreement by \$100 more a month, from \$1475 to \$1575 which excluded \$185 for parking, for a 1 bedroom estimate 850 square foot apartment. I fought it reaching out to numerous Council representatives, organizations, and Mayor Carter but was not successful in my fight. Now here I am again, after filing a rent stabilization complaint with the city having no response, my 2022-2023 lease was presented to me with an 11.2% increase. Rayette Lofts has craftily posed my new rent of \$1622 which aligns to an approved 2.8% rent increase but has hidden an increased costs of 8% for new utility fees that are now being assessed to tenants.

In past years, these fees contractually have been paid by the property owner which Rayette Lofts is now passing this expense to their tenants. Additionally, whether 1 person or 4, one bedroom or two, this new sewers, water, and garbage fee charges are projected to range from \$130 to \$150 a month to every tenant. This expense is to be paid through a separate payment portal tool. In totality, my rent has increased by 11.2% (nearly \$2000) ... and I am present here today to fight for the adherence of the new rent stabilization ordinance and petition the court to instruct Rayette Lofts property owner to cease and desist unverifiable utility expenses to their tenants.

Cann: as she said, in August of 2022 and for the year prior Ms. Wilhight paid \$1,575 as rent and the lease provided paying for gas, water, wastewater and trash. The new lease is effective September 1 and includes a rent increase to \$1,622 (2.9%) but then it goes on to no longer say they will pay those four utilities. There has been no change in the relationship between the landlord and the four utility companies. He still contracts for and pays for them, but he's requiring Ms. Wilhight to pay an allocated portion of the utility bills. The manager projected the monthly average cost to be \$130

to \$150. That results in a total increase of \$177 to \$197 (11.2 to 12.5% increase).

I sent a letter to the owner on July 13 asserting this was a violation of Rent Stabilization. Mr. Terry, the landlord's attorney, responded that the utility payments were not rent because "utility services are not provided by the landlord, but by a third party provider". If he was referring to the utility company it is meaningless because it is always the utility company even under the old lease. It is always a third party providing those utilities. Mr. Terry also indicated the landlord had self-certified and that is what led to this appeal. Mr. Terry's August 8 response indicated that utility payments aren't received by the landlord. It is money received by a third party provider which is simply not true. I'm afraid that Ms. Wilhight, in her statement, misunderstood what was going on in the same way I did. That was until I met Sarah Davis, Ms. Wilhight's neighbor. Her former lease was similar to Ms. Wilhight's but expired 4 months ago. She provided a copy of her utility statements for the four utilities allocated to the tenants for Rayette Lofts.

Several things to note. On the bottom of the first page, it says the payment should be made to Rayette Lofts. Ms. Davis and Ms. Wilhight, is not paying anything to any utility company. Payments go to Rayette Lofts, the landlord. At the top of this utility statement is actually a broader statement that includes parking, rent, utilities and then a grand total. In Ms. Davis's case it's a total of \$2,655. That is paid to Rayette Lofts in a lump sum. Ms. Davis will indicate she has always paid that through that portal in a lump sum. She doesn't make any separate utility payment. The same will apply to Ms. Wilhight if she loses this appeal. The ordinance defines rent as "all monetary consideration charged or received by a landlord concerning the use or occupancy of a rental unit pursuant to a rental agreement".

Again, in August, she paid \$1,575 for her apartment which included the owner's payment and provision for those 4 utilities. It was contracted for and his operating expense. In September, but for this appeal, she would pay 11-12% more for the exact same things. The landlord pays the utility company as an operating expense, just like under the old lease. The only things that's changed is its costing her 11-12% more annually to live there. She is paying the landlord that money, not a utility company. It couldn't be clearer that under the plain language definition of rent under the ordinance that her rent has gone up 11-12%. That dramatically exceeds the 8% self certification limit. The materials submitted to the City doesn't address this issue at all because it doesn't show that what is being required from Ms. Wilhight is payment of an additional \$130 to \$150 to reimburse the landlord for the landlord's utility payments. It is rent under the ordinance. It isn't a payment to the utility company.

Sara Davis: I talked to Angela and found out she had some of the same issues with property management I did. Unfortunately my lease was up 2 weeks prior to Rent Stabilization going into effect April 14. I was hit with a 5% increase if I signed the lease and almost 10% if I did not sign the lease and went month to month. I was also hit with utilities, which was a contingency upon me signing the lease the first time. I specifically asked these questions because I came from out of state, not knowing laws here. I was told \$30 to \$50 dollars were their typical rent increases, nothing during Covid. Our ceilings are about 13 feet and all windows, so I was obviously concerned if I was paying heat and air what it would be. I was told those utilities, aside from electricity, were paid for by the building. I have had issues with transparency. I've asked for the actual bills from the utility company and how it is calculated. I have a larger unit, but I'm only one person, I don't use as much water. I've asked to see how they break that out and determine that if we aren't separately metered. I've noted the bill for garbage that I pay to Rayette is more than what is in my lease. They have been

charging me more. I've continually asked for their bills so I can see if I am being over-charged. I have yet to receive anything. They've changed management four times in the last year and a half. All have told me they have been instructed not to give out contact information beyond that office. Cushman and Wakefield is a large company. I finally think I finally got a hold of people to get me that information. I am paying because I don't want to assess late fees.

Moermond: the request for information that you made, when, to whom, and what exactly was it?

Davis: my initial request was with Joy Hepra, the property manager at the time. She gave me prior year's bills, but not all of them. No trash. That would have been in February 2022 when I got my initial letter for renewal. There was a switch to Chelsea Dorval. I didn't really have a lot of correspondence with her. Now there is a new on-site person, her name is Shae. I have requested information from her as well. This was within the last 10 days.

Moermond: did you request this by email? Phone?

Davis: both. They are difficult to get ahold of. I try to keep everything in writing.

Cann: can you confirm Ms. Davis, that one, this exhibit is in fact your September bill, and second, you make one lump sum payment to Rayette Lofts for parking, rent, and the utilities.

Davis: correct

Cann: no separate payment to a utility company and is done through the portal.

Davis: correct.

Malcolm Terry: there seems to be 2 issues here. One is utilities versus rent. The second is related to the rent increase and documentation submitted to support that. I indicated in my initial response that the issue related to utilities and rent isn't an issue that can be before this panel simply because it isn't a decision associated with the City of St. Paul. Whether utilities are included or not is not a decision that the City made. The original decision submitted Mr. Cann, he is appealing the increase to the cap and then immediately spends the entire appeal request addressing the utility versus rent issue. He says, "Angela Wilhight brings this appeal to challenge her landlord's violation of the City's rent stabilization ordinance and the City approval of that violation by granting exception to the ordinance limitation of rent increase to 3% annually." Then he spends the entire document talking about whether utilities are considered rent.

That isn't an issue that can be before the City based on those rules. He then submitted the supplementation, I'm not sure of the date, but I finally saw it mid-week last week. That starts to talk about the rent increase itself and picks apart the information submitted to the City regarding the request for the increase from 3%. I had the opportunity to go through the document over the last couple of days. A lot of the issues deal with what was submitted to Mr. Sass for the request past 3%. One of the things was why the 2020 and 2021 was used as the base year. They took over the building in 2020. They don't have 2019 data. When they asked the City, that's what they were told to do. They were told to submit 2020 and 2021.

The other thing he complained about in that August 10 submission were the items submitted didn't correspond with items in the application itself. The application lays out line items that are different than how the accounting is done for the property. If you look at the PNL and the reports generated, those line items are different. They had to figure out a way to take the PNL and general ledger and make them fit within the categories. I got permission to submit these general ledger which have all the information for the breakdown for the entire site. They changed the codes on their report, from the way they track the information, to codes associated with what were in here under the income and operating expense worksheet. You can look at their PNL and it corresponds to the line items here which will make it make more sense to the City. There was also a complaint that portions were incomplete. Those sections were blank, but there were separate reports didn't fit within the allocated amount of space. There were separate reports submitted with that information. It was provided, it just wasn't provided with this document. That would explain his questions and issues regarding missing information. It was in fact provided. Item 23 is one of the ones that came up which is amortization portion of capital expenses. That is significant because a number of units are being upgraded.

Davis & Wilhight: no.

Terry: they are updated on a schedule; it isn't done all at once. They don't get upgraded when an individual is in a unit. Apartment 604, it doesn't require it to be broken down in the application. In fact, in the supplementation submitted apartment 604 is in there. There was a big increase in operating expenses from \$28,000 in 2020 to \$97,000 in 2021. We're all aware there was a pandemic and companies weren't going into buildings and doing capital improvements in 2020. Everything that would have normally happened each year kind of skipped 2020 and plowed into 2021.

He also raised the question about utilities and being charged separately under the lease. That did get rolled out January 1, 2022. Each tenant learned about it 90 days before their renewal. So when she says she didn't learn about it until June, that's because it was 90 days before the lease renewal. It did roll out January 1.

I have the income statement for 2020 and 2021, this is standing naked in front of the City and the public, but it shows you everything that happens with no secrets. All the category codes have been changed to reflect the codes on the submission so it is easy to line up. That portion of the appeal, related to what was submitted. Mr. Cann has questioned the information that was submitted to the City without knowing where all the information to the City is. He hasn't laid out why there should not be a rent increase at this property he has just questioned what was submitted without knowing what they were. That doesn't inform a basis to overturn or to reject an increase from 3% to 8%. He also noted in his material was the fact that the actual rent increase was just under 3% is an indication that the increase isn't needed. I didn't understand that argument. The increases for each unit are different. It depends on what is going on in that unit and renovations or pending renovations. 3% isn't static for everyone's rent. It is individualized to apartments depending on what is happening in the apartment. He indicated it is a clear indication that we don't need the increase. It is simply not true.

If we look at the original appeal of utilities vs. rent. When you pay your utilities, that goes to the utility company. In this instance Minnesota statute 504B requires a single meter building to be the payer of record. The reason for that is so there is always a responsible party, even if the tenant isn't paying the utilities. That happens frequently. They don't get shut off because the landlord is the responsible party because it is a single meter building. That doesn't mean the landlord retains that money as money

associated with the use and occupancy of that apartment. It still goes on to the utility company. That's why on the conserve invoice it says payment should be made to Rayette Lofts. This is for two reasons. One I just described. They have to be the payer of record so they funnel that money through. They don't retain it. It was pointed out there are other things on here besides utility. Conserve is a company many companies use to process and send out billing so it isn't on-site at each office. It has rent, parking, why would you make the actual rent payment to a utility company? It doesn't go there. If you look at someone who moves into a separately metered building, they pay those directly to the utility provider because of how the statute reads and requires them to be set up. You would have to have a separate standard related to a single-meter utility building or separate with regard to whether that payment which goes to a third party service provider is rent or not. It doesn't make sense. At the end of the day these companies can go in and separately meter every one of these single meter buildings. It will pull it out of rent if that is where that decision goes. It is simply not rent.

Moermond: single meter vs. building meters. Ms. Wiese has a hard stop at 10 am, so I'd like to see if she has any commentary she would like to provide.

Terry: with the exception of one thing I will note, the current lease for Miss Wilhight actually covers water, wastewater, gas, trash. Electricity is not part of that. She's been paying that separately the entire time.

Wiese: we believe there is a misconception within the landlord community that utilities can be added onto a 3% increase and not be considered a rent increase. The reason we think that is because rent is defined as "all monetary considerations charged or received by a landlord concerning the use or occupancy of a rental unit pursuant to the rental agreement". That definition brings you to the definition of rental agreement, which is "oral, written, or implied between the landlord and his tenant's use or occupancy of any rental unit." That refers you to housing services, and that is where we get into utilities. And that is why we think it isn't clear in the community. The current amendment in front of the Council right now does clearly articulate utilities as part of rent. The only way it cannot be considered rent are the single-metered, however in these situations where we have a change of terms of the rental agreement. Those utilities were paid as part of the previous rental agreement. If they are going to be broken out then we have to look at the full picture for the increase. Presumably rent would go down because the utilities are being paid separately. That is something we will have to analyze on all the applications when we have a change in terms of the lease which is not articulated on the MNOI worksheet as it stands today.

Moermond: we don't have the units listed out on the self certification or the staff determination applications. It strikes me that there may be no application associated with this particular unit because the landlord is under the impression that 29% doesn't require staff review if they have separated out the utilities. Can staff report back, or work with landlord, on any enforcement measures if there is a determination that indeed utilities are included in housing services provided. That was determined in appeal number 1. We are talking about an appeal of one single unit. Clarity on that point will be important moving forward.

Wiese: when the appeal first came in there was no determination, as there isn't now for the staff determination piece. The appeal as it was laid out initially was appealing that the rent stabilization ordinance was not properly applied in Ms. Wilhight's case. I think now we have an application; they do conflate and we'll probably need to look at them holistically. The base question of whether the utilities are in fact rent and should be

included in a 3% increase? I haven't heard Mr. Terry say whether or not this unit is considered in the self-certification or not, that was requested and may change the ruling as well. We need some point of clarification on that element.

Moermond: staff has time to work on that question and come back. That would be really helpful.

Terry: this unit is part of the request and from what I was told yesterday was part of the submissions outside the scope of the general worksheet provided by the City. That information is there, and to your point, as indicated earlier by Mr. Sass he did send a series of questions and all this information was responded to. You'll get these general ledgers with all the codes associated with the different categories. Looking at paragraph 7 of Ms. Wilhight's current lease she has water, wastewater, gas, and trash as items that the landlord pays for as part of their overhead. Not electricity. I am not sure if every unit pays their own or if it is prorated. It is an important point, because she is including her cost of electricity in her rent increase, she is already paying that.

I appreciate what Ms. Wiese said with regard to the distinction but I still don't see how challenging the allowable increase to 8% to 3% exception constitutes a basis to argue whether or not the landlord's decision to separate out utilities from its overhead versus charging it back to the tenant constitutes an appealable issue. Nothing in the 8% allowable increase from the City says you can't separate out utilities. To me it is a separate issue from whether the issue allowed by the City was appropriate or not. I think that issue is improperly before you. I don't think it is something that you can appeal, it wasn't a decision from the City. It was a decision made by the landlord. Unless you have any other questions, that summarizes it. I am not an accountant which is why I want to be able to submit this information to you.

Moermond: we can scan them now and send them on to Mr. Sass and your client wants to submit them electronically?

Terry: they have my notes on them. I'd like to submit it electronically because it is so much easier to read.

Moermond: you are talking about supporting materials for your application so it makes sense you would share the ones you think support your application. Those would go to Mr. Sass and become a part of the record. When he submits his report they will be attached. Does anyone have any other comments?

Terry: with regards to Ms. Davis, I am truly surprised to hear, considering I represent Cushfield and Wakeman, that if she is going down to the community office and asking for information related to utilities and it isn't being provided. In all the times I've represented them when utilities have come up it has never been issue. I'll make sure that is addressed when I leave here.

Moermond: I had a clarifying question about the rules under which you are interpreting the ordinance and the question of using 2020 vs. 2019 as a base year.

Ferkinhoff: in working with Chelsea Dorval, she mentioned the property had recently changed hands and they didn't have a full year's worth of data for 2019. Under the rules they are able to request a base year adjustment, which they did. They used 2020 as their base year and 2021 as their current year.

Moermond: for both kinds of questions and concerns being brought up by both

landlord and tenant, this is exactly the forum to sort these things out. The appeals process is intended to sort through these more complicated issues. I don't view an appeal as a "bad" thing, it is a normal way to get to the bottom of these things. These are early days with lots of open questions. There are always cases with square pegs and round holes.

Cann: my concern wasn't so much that he used 2020 as the base year, it was he used the consumer price index increase that was on the form which assumed the base year of 2019. So he had two years of consumer price index inflation rather than the one.

Second, I thought I heard the Director say clearly that utilities are part of the rent. That seemed clear. She said landlords misunderstand that. It is clear the way the ordinance is crafted and rent defined that if payments are made as lump sum for rent, parking, and utilities it is all rent. No matter what the landlord calls it. To the argument that ultimately the money goes to the utility company—virtually all money paid to the landlord goes to someone else. It goes to utilities, property taxes, management staff. It is all operating expense and goes to someone else. The fact it goes to utilities doesn't mean it is something other than rent. My initial memo to the City about the owner's submission of the MNOI worksheet was based on what he submitted initially. If there has been supplementary information, he's right, I didn't know about it. I want copies of everything.

Terry: the concept that all the money paid to the landlord going to someone else is not accurate. The utilities are actually consumed by the tenant. That's the distinction. There's operating costs and profit, sure. But utilities are something they consume. I didn't hear the Director say it is rent. I heard that is the concept being looked at and there is an amendment that hasn't been passed yet.

Moermond: as part of the staff analysis I'd like you to comment on parking and how you deal with that in your analysis.

Davis: as far as what he said regarding upgrades and rent increase and everyone being charged differently based on those upgrades. My unit was upgraded before I moved in. I still got hit on my next lease term of 5 to 12% depending on what kind of lease I signed. That is incorrect and I wanted to make that distinction. We are also paying utilities for common areas. My whole problem is I feel like I was being rent-gouged 2 weeks before the ordinance went into effect.

Terry: I do have a response to that.

Moermond: if you want to copy my office eon your response to Ms. Davis so it is in the record. I'm going to continue this to September 29, at 9 am. We'll half a staff report within a week at most it sounds like. So a couple weeks to digest that information and submit anything additional. One final reminder that the Council in reviewing this appeal is acting in their quasi-judicial capacity and should not be contacted any more than you would a judge presiding on a case. Thank you for your comments I think this has been productive.

Laid Over to the Legislative Hearings due back on 9/29/2022

10:00 a.m. Hearings

- 2 [RLH RSA 22-5](#) Appeal of Patrick Hogan, on behalf of North End Apartments, LLC, to a Rent Stabilization Determination at 325 BIRMINGHAM STREET.

(September 15, 2022 Legislative Hearings)

Sponsors: Prince

Layover to LH September 15, 2022 at 11 am for further discussion.

Patrick Hogan, North End Apartments, LLC, appeared

[Moermond gives background of appeals process]

Staff report by Lynn Ferkinhoff: On July 11, the department received an intake form and Landlord Worksheet for a request for exception to the 3% increase cap on rent per ordinance 193A. The Landlord Worksheet is used to calculate Maintenance of Net Operating Income or "MNOI." The application is part of the record and Patrick Hogan is listed as the applicant for 325 / 327 Birmingham Street – a duplex property. He requested an increase using the staff determination method. The reasons for the increase listed in the application were 1) an increase in real property taxes and 2) an unavoidable increase in operating expenses. Upon reviewing the application, staff decided to meet virtually with Mr. Hogan to discuss the status of the application and his rent increase expectations. Staff set up an appointment to meet with Mr. Hogan on July 29 via Microsoft Teams to discuss the submitted documents and the increase determination.

During the meeting, staff understood that the proposed determinations didn't align with Mr. Hogan's increase expectations. Staff clarified that Mr. Hogan was looking for a larger increase than allowed by the MNOI on 325 Birmingham. Mr. Hogan mentioned the potential of a Section 8 tenant living in this unit. The maximum allowable rent for a Section 8 tenant is higher than what could be achieved under the Rent Stabilization Ordinance.

Moermond: Section 8's reimbursement and rate of rent is higher than what a 15% rent increase would be under the ordinance? What is the measure here?

Sass: the values of the MNOI worksheet as to what Mr. Hogan would have been allowed for increase would not have reached the value Section 8 would have allowed for rent. We couldn't get him to that allowable level.

Moermond: do you have a percentage of what you could get him to versus what the Section 8 allowable rent would be?

Sass: MNOI puts a dollar value on rent increases. It comes out to a 10.85% increase that was allowed. I can't remember the Section 8 limit.

Hogan: roughly it was 27% approximately. About a 17% difference from the 10.85%.

Ferkinhoff: Additionally, Mr. Hogan had a tight deadline for the determination on 327 Birmingham. The information submitted for the property supported the increase Mr. Hogan was seeking for this unit. Therefore, staff advised Mr. Hogan to submit a second self-certified application for 327 Birmingham, which was immediately approved for the amount requested (5.45%). Had Mr. Hogan pursued the staff determination path, this unit would've been approved for 11.80%. Mr. Hogan received an auto-generated approval letter for this request.

Additionally, a staff-created spreadsheet is attached to the Rent Stabilization increase request record for this unit. Staff completed a new staff determination request for 325

Birmingham, which was approved for 10.85% on August 15. The approved amount is being appealed today. A staff-created spreadsheet and approval letter are attached to the Rent Stabilization increase request record for this unit. The last Fire Certificate of Occupancy was approved on January 19, 2022 as a Class B property. There have been no property complaints since the Certificate of Occupancy was issued.

Moermond: what are you looking for today?

Hogan: I was approved for the 10.85% rent increase. I would like to increase rents to match with the HUD Public Housing payment standards, which would require more than that 10.85% increase. The biggest issue is to be able to get to the Section 8 standard. My understanding is those are set on the lower end of market value to begin with. To not even be able to get to the low end of those standards seems to put an unfair burden on me. During this period in questions with the calculations on the MNOI form, our operating expense increased 41%. To only be able to increase 10.85%, if you do the calculations and the numbers continue that way, eventually I will be out of business. Sooner or later the operating expenses will exceed the income on the property.

The previous tenant was also part of Section 8 housing and lived there since April 2018 and in that 4.5 years we didn't raise rents on them at all. In theory I've passed the opportunity to increase at 3.5% for the last four years. That would be about 14% that I've essentially forgone. The 327 unit, we were granted roughly 10%. That unit, which is still occupied, we chose not to even use the full 10%. We aren't in the business of doing drastic increases for people living in the units already. The only reason we want to do this increase is because it is now vacant and we want to at least get to low income housing standards. To me that seems more than fair. As you know there is a shortage of low income housing in St. Paul and if landlords can't even charge low income housing standards, it isn't going to be possible for people to even provide low income housing. I understand the difference in the big pictures but decisions are being made by landlords who will choose not to invest or sell their properties.

Moermond: so the question seems pretty straightforward. There are two questions as it relates to the Section 8 piece of this. One is the 10.85% vs. 27% and what is allowable under the ordinance the City is operating under until December 31. That's the here and now. I'm assuming if you do not qualify under the current ordinance to increase to the full 27% you would like to get at least the 15%.

Hogan: what is the 15%?

Moermond: under the rules that the Department of Safety & Inspections uses to enforce the ordinance, they have a cap of 15% for an annual rate increase. If you have less than 3% you don't have to file. If you are between 3 and 8% you can file and do self-certification. If you are between 8 and 15% then there is a staff review of the application, which you've done. You'd hit the ceiling there at 15%. The ordinance, as it pertains to exceptions for affordable housing changes January 1. So I am putting that out there. I'm not saying what my determination to the Council will be, but that given the change, your answer from here might be more complicated and that is the reason for that. There is that upcoming clarification in the ordinance that is on the nose for your situation.

Hogan: has that been determined?

Moermond: the Council voted on amendments yesterday and they need to continue the

matter for one week in its final form. Unless there are any changes next week they will vote and the one in front of them has additional affordable housing exemptions that aren't included in the one we are operating under now. So the law is the law until it isn't the law anymore. By the time I put something in writing we'll likely have a vote on that ordinance. That will influence how you act on your situation. You have choices. You don't have to do annual leases. There may be ways you may strategize to deal with the unusual legislative circumstance for the next 3 months. So that is an open question mark for me. I wanted you to know that is in play. What is your time pressure?

Hogan: I have a person who wants to move in ASAP. She wanted September 15. We're looking at October 1 realistically.

Moermond: let's put this at 11:00 next Thursday. That doesn't put you in front of the Council for a vote until September 21. That is the fast track too. We'll talk next Thursday and I'll have something in writing and we can walk through it. I don't think there will be an objection in your case, but these are early days for these cases. I can't guarantee it.

Hogan: for the sake of communicating with Public Housing and the resident, are you thinking the decision will be something to the effect I can increase 15% upon the decision and then effective January 1 I wouldn't be held to the Rent Stabilization program?

Moermond: that is what I need to analyze.

Referred to the City Council due back on 9/21/2022