RENT STABILIZATION BOARD MINUTES
February 23, 2012

The following are the minutes of the Rent Stabilization Board Meeting, which was held on Thursday, February 23, 2012, at 7:30 p.m., in the Lawrence Township Municipal Building, Lower Level Conference Room.

Statement of Proper Notice

Adequate notice of this meeting of the Lawrence Township Rent Stabilization Board on February 23, 2012 has been provided in accordance with the provisions of the Open Public Meeting Act., N.J.S.A. 10:4-10, specifying the date, time and place of the meeting.

The roll was called as follows at 7:40 p.m. by Susan Snook, Secretary:

Present:	Durwood Hankinson, James T. Lalli, Ian A. Kops, Kim Taylor, Andrew Schragger
Excused Absence:	None
Absent:	None
Also Present:	David Roskos, Attorney to the Board and Susan Snook, Secretary
For the Applicant:	Richard J. Carabelli, Martin Appraisal Associates, Inc., Daniel Vega, Lawrenceville Garden Apartments, Gary Rosensweig, Attorney for the Applicant

Opening of Meeting/Roll Call:

Chairperson Hankinson read the statement of Proper Notice and Susan Snook Secretary did roll call.

Minutes for Approval:

The January 19, 2012 minutes were approved as submitted by unanimous vote.

Applications:

Mr. Roskos stated to Chairman Hankinson that the Board left off with the Lawrenceville Gardens Apartment application where the applicant had concluded their presentation and the Board was going to review the materials that have been submitted and the two (2) new Board members were going to review the tapes of the prior meetings. Mr. Roskos asked if Mr. Schragger and Ms. Taylor had listened to the tapes of the prior meetings and both responded that they did.

Mr. Roskos stated that Ms. Taylor and Ms. Schragger have reviewed the tapes so that they may participate, deliberate and vote on this matter. Mr. Roskos wants it noted for the record that Mr. Rosensweig has made a submission to the Board that is consistent with the presentation made at the last meeting. We can certainly afford Mr. Rosensweig an opportunity to discuss briefly what he submitted to the Board and then move right onto deliberation.

Mr. Rosensweig introduced himself as the representative for the applicant then proceeded to state he submitted a letter dated February 17, 2012, which is Exhibit A4 addressing the issues discussed at the end of the meeting and will not go thru the letter to point out that Mr. Rosensweig provided the Affidavit of Mr. Vega who has been with the company since 1988 and is familiar with the capital improvements and the bills that were paid and certified.

Mr. Rosensweig provided certification of his legal fees that were expended in order to get this Board constituted discussions and research and the rest since 2010 and Mr. Rosensweig placed a notice of the meeting in the paper as requested. Mr. Rosensweig stated that he believes Mr. Carabelli is continued to be sworn in. Mr. Roskos stated that Mr. Carabelli is still sworn in and to address his Supplemental Report dated February 17, 2012 regarding some items that the Board has asked of Mr. Carabelli.

Mr. Rosensweig asked Mr. Carabelli to discuss his supplemental report. Mr. Rosensweig asked Mr. Carabelli if he prepared this supplemental report dated February 17, 2012 and Mr. Carabelli stated he did so Mr. Rosensweig asked Mr. Carabelli what he did and what was found.

Mr. Carabelli stated that the report basically addresses two issues. First, the capital improvement costs were adjusted down to $1,662,000 which would require that the amount to be raised by the proposed additional rent would have to be amended and the second thing requested by the Board what Mr. Carabelli did was to come up with an allocation as to how that proposed increase would be spread out among the 1 and 2 bedrooms apartments thru the same mathematical calculation as in the original report on Page 19. He basically imputed the $1,662,000.00 adjusted capital improvement cost and came up with almost the same results; if rounded to the nearest thousand dollars. The total was $158,000.00 subtracted the $56,000.00 as we did in the first case and came up the net annual rent increase of approximately $102,000.00.

This takes us to the second part of the supplement; how should this money be disbursed amongst the 1 and 2 bedroom units. Mr. Carabelli looked at similar garden apartment complexes throughout suburban Mercer County and gave a comparison between the average rents of 1 & 2 bedroom units, on Page 2 of the supplemental letter. There is approximately 25% premium that a 2 bedroom unit gets over a 1 bedroom unit, so doing the math we came up with a rental increase of approximately $47.00 a month for the 1 bedroom units and approximately $59.00 a month for the 2 bedroom units, again that is a differential or a premium of 25% for the 2 bedroom unit. Also as a check against that we looked at the size of the 1 bedroom units at Lawrenceville Gardens being approximately 660 SF; a 2 bedroom unit being 820 SF that is a differential of just under 25%.

In Mr. Carabelli's opinion using both competitive rents and the square footage size of the subject units, the increase of $47.00 for the 1 bedroom units and the increase of $59.00 for the 2 bedroom units are supported.

Mr. Kops added the numbers up on the letter where Mr. Carabelli came up with $1,662,000; however he comes up with $1,725,147.00; then Mr. Kops went back to the list of all expenditures and in the asphalt concrete, where you show on your list $360, 240,.00; on the list of expenditures it is $300,240. Mr. Rosensweig asked if it is the list of 10 items. Mr. Kops stated Item #6, asphalt concrete you show on your list $360,240, but in the expenditure page that you submitted, it is $300,240, a difference of $60,000.

Mr. Rosensweig said he will have to look at that. Mr. Kops then stated if you take the $60,000 off from the $1,662,000 you balance is $1,665,147. Chairperson Hankinson asked Mr. Vega what the current rent is on average. Mr. Vega stated for a 1 bedroom about $1,025 and on the 2 bedroom $1,275 - $1,300 on average.

Mr. Rosensweig stated if you look at Mr. Carabelli's report on Page 7 he had the $300,240, it must have been a mistake and I carried it and the original number was $1,684,000; so $300,240 is correct; and $1,684,000 appears to be the number.

Mr. Rosensweig stated it was his mistake and that $300,240 is the correct number and the total based on Mr. Carabelli's report on Page 7 is $1,684,330. What ever that comes to in terms of the increase has to be recalculated. Mr. Rosensweig stated it is a $22.00 difference.

Mr. Schragger stated the ordinance we are operating under establishes a request for a hardship and if the burden is on the applicant to show us it is a hardship that the rate of return is below market. But you have not shown us here; is the rate of return you get on those numbers that Mr. Vega just set up for us in terms of the market rents. You are asking us to increase, almost 7.5 percent rate of return on these capital expenses that go back about 12 years, but no idea what return you are getting on the rents you are charging right now in terms of rate of return. What your client's profit margin is on that $1,025 for a 1 bedroom, so what is the profit margin on that particular apartment and you are going to tell the Board that profit margin in that particular apartment is 10% and Mr. Schragger stated that in his mind there is no hardship.

Mr. Schragger stated that Mr. Vega is telling the Board that the profit margin is 2% or a ½%, then maybe you met your burden. There is no where you are showing the Board, but you are showing the Board the numbers that you spent and the Board could nit pick and say this is a capital improvement and this is not. So the overall conversation is that Mr. Vega is not telling us that there is a profit margin in there so if you happen to be making in the market and it happens to be such that you are able to raise your rents every month or every other month because the demand is there for it and people are paying for it so the rate of return is could it be 10%, 15%. Mr. Vega did not tell the Board what it is. If it is a certain percentage, then it is not sure if that is a considered a hardship on them.

Mr. Rosensweig stated that he did not draft the ordinance and it does have a lot of confusion in it. There is no process to determine a rate of return. The hardship increase is a list of things and one of those is the reimbursement for major capital improvements. If you go down to the item Mr. Schragger is talking about, that talks about operating and financing costs, not talking about the operating costs, it is about reimbursement for capital improvements to provide a reasonable rate of return. That just reasonable rate of return language does not include in Item 1 above. It just is to provide reasonable reimbursement for major capital improvements pro-rata to the units and that is what we provided for.

This Board has no guidelines, no procedures, no worksheet to figure out a rate of return, has never done that over the years and has not met over the past 9 or 10 years and now you want to get into a rate of return analysis, which I don't think your ordinance provides for in this case.

Mr. Schragger asked Mr. Rosensweig whether all the items on this list is a major capital improvement and not an operating expense? Mr. Rosensweig stated is it a major capital improvement and I am not talking about lights, heat, and we tried to get things that have to do with operating expenses. These things are major capital improvements which we paid for and we want a reimbursement.

Chairperson Hankinson asked Mr. Rosensweig if his basic argument for your hardship is based on the calculations made for the rate of return. Mr. Rosensweig stated no that is just the way we approached it and that Mr. Carabelli can explain what he did. Your ordinance called it hardship and could of called it capital improvement reimbursement procedure. I don't know why they call it a hardship. Chairperson Hankinson asked the way you are getting to what you would like us to raise it to, is based on a specified rate of return as opposed to what? Mr. Rosensweig stated for money spent for capital improvement. Chairperson stated but you can't get that rate of return now even with that money you spent.

Mr. Rosensweig stated he is not sure if I am following you. Mr. Schragger stated under the rent control ordinance you are asking for over and above what the rent control is. You are saying there is a hardship that the apartment complex has a hardship and needs to raise the rent over and above what the ordinance provides.

Mr. Rosensweig stated that is because that is what the ordinance calls it and it is a hardship, Mr. Schragger stated that is what he called it, Mr. Rosensweig continued if I don't get my money back; Mr. Schragger asked how do I know that you are getting the money now. Mr. Rosensweig continued that he paid the money out. Mr. Rosensweig stated this is a rent stabilization board and we made improvements based on these units and based on the improvements to the units such as equipment and ovens. Mr. Schragger asked don't you do improvements to these units on the market also.

Mr. Rosensweig stated when a new tenant comes in, we consider the market, but we are really free to raise it to the new tenant based on improvements that we made to the unit and we do that. Now we have an overall capital improvement that applies to everybody that lives there, the whole $1,662,000, so there is nothing here that says you are to take a look at my operating rate of occurrence for re-imbursement for major capital improvements. It is a straight reimbursement and we gave you the analysis on what we paid and are entitled to. Do you want Mr. Carabelli to explain it?

Mr. Schragger asked somewhere in the analysis you filled in the pool and Mr. Rosensweig stated the pool was filled in; Mr. Schragger continued based on Sec. 19A-17 (4). "The foregoing factors permitting a hardship increase may also be utilized to adjudicate hardship decreases where there is a reduction in facilities,..", so Mr. Schragger asked do you not agree that the pool being filled in is not a reduction in facilities? Mr. Rosensweig stated it was not used. Mr. Schragger stated it doesn't matter if it was used or not it was something you provided to your tenants. Mr. Rosensweig stated it was a deficiency because it was not in use. Mr. Schragger asked what if I were a tenant there and wanted to use a pool, once in the summer, Mr. Rosensweig stated but we don't know that, Mr. Schragger stated but the burden is on you. Mr. Rosensweig stated you are asking for an increase based on a reduction in the use of a facility and the ordinance provides this Board can decrease because you reduced facilities and cannot see the logic. Mr. Rosensweig stated it goes both ways and see what he is saying, but it is not a decrease, was not put to use.

Mr. Carabelli stated about another case he is working on in Mercer County and has not run into one with a rental with a pool; so maybe, if you are into the $2000 - $2025 a month range, then you are going to find pools, tennis courts, and cabanas with lights; and suggested that the pool was filled in for a reason; Mr. Schragger did not disagree, so Mr. Carabelli continued it might have been at the time it was constructed by definition "it contributes no value, so you lose value, by filling in something that could have been over built before it was started".

Mr. Schragger stated he is still trying to figure out where the hardship is over and above the profit margin of your current rate of return. Mr. Carabelli stated that 4 % and 5% returns and that is a situation that spends an x amount of dollars and looks at a net income and does the math and comes up with a rate of 5 & 5% in your scenario. These are improvements beyond that initial expenditure. Whatever that cap rate is on what has been vested; and does not know how long these individuals have owned this project; and he knows it has been numerous years; so I don't know how they can even look at their investment and say this is what we are getting. You have to have a value and a return to do the math. Mr. Schragger asked Mr. Carabelli, based on what Mr. Vega said that the rents are x and you can say based on x for 1 bedrooms and y's for 2 bedrooms, we can add that you have a calculation based on occupancy rates of whatever the market is based on, whatever the rate of the market is, 75% - 90% occupancy is or stabilized occupancy for a 12 year period because you are going back to 1999 for some of these capital improvements and you can tell me if that company, based on the right rates, rents that we were showing that I am making 3% on an apartment or 4% on an apartment. It is a simple accounting thing to do.

Mr. Carabelli stated you have to have something to compare that income to, so if a person makes an investment they get a return and in our case the investment was made decades ago, 1960's, so you have nothing to base it on, so whatever that rate of return is, it is on value and income, we are increasing the value with these capital improvements and now the applicant is requesting a return on the added value, not on the existing value, that is what it is; Mr. Schragger stated but you have nothing to tell me this is the added value, 1.6 million is the added value, this is what you spent on it. You are not telling me this is added value.

Mr. Carabelli stated I am trying to follow through your scenario, we do not have a value, we don't know what that number is; to compare our return to answer your questions. What's our return, the investment is decades old so Mr. Schragger stated you have a profit margin every year or else you would be losing money. Mr. Carabelli stated you have a cash flow, yes; but what do you compare it to, you have to have the flow and something to compare it to. Mr. Schragger stated you have a cost of operations. Mr. Carabelli stated that "professionally that is not it". Mr. Schragger asked Mr. Carabelli that you can't tell me a reasonable rate of return on these people's investment in the project, not the capital improvements. Mr. Carabelli stated if I knew that I could give you the answer.

Mr. Schragger said you can't give me a rate of return for their investment 35 years ago. Mr. Carabelli stated he doesn't know anyone that could. Chairperson Hankinson stated that I assume on what you are saying is that of your client, has at this point, is looking for a greater return consequent to the new improvements that they felt they made. Mr. Carabelli stated they are looking for a greater return in absolute dollars, we want to carry that same percentage we tried to estimate the percentage of return at 7 ½% based upon competing investments. We did exactly what Mr. Schragger suggested we do using market data instead of the actual subject data, it doesn't exist. If you are doing a comparison today, you want to do it today, not in 1960 and what they are getting today in way of a return. Mr. Schragger asked Mr. Carabelli that you can't tell me what the profit margin for the year, so what do you pay in taxes? It isn't where you are reducing a product and you have a net income, you have a revenue, you have a cost of goods, it is a garden apartment. All that is suggesting is we can tell you what the bottom line is, but what do you compare that to, to come up with a cap rate. If it was like that then, I wouldn't have gone through the exercise of surveying all of the other garden apartments. Mr. Carabelli stated he does not know what the cap rate is for this property until it sells, that is where the cap rates come from, you don't know what someone has made until they cash out.

Mr. Roskos stated this is the issue he raised at the beginning of the last meeting where our ordinance talks about just and reasonable return, what would the just and reasonable return be, if you look at the complex as a whole; what is the return? The landlord is not making the return at its typical properties in this area, then I think a hardship can be found pretty quickly; at the same time, our ordinance doesn't say how you must do it. If you read subsection 19A-17 (b), Hardship increases and decreases. Hardship increases may be granted upon landlord application as follows: Numbers 1 -4 and no. 4 states you can do a decrease using 1, 2 3, "(1) to provide amortized reimbursement to the landlord for major capital improvements to the residential multiple-family dwelling pro-rata as applicable to units thereof".

Mr. Roskos thinks that is the section this applicant has focused in on and essentially said look at all the other apartment complexes in this area; this is the rate of return that is expected in the market place; if you expect landlords in Lawrence Township to take care of their properties, to improve their properties; keep up with the market place, they have to get a return that is comparable to these returns, that is what I understood the proposal to be. Mr. Roskos continued that there is no established methodology in case

law; there is no established methodology in our ordinance; there are ways to get to what is a rate of adjustable rate of return, this is one of them. Mr. Roskos asked Mr. Schragger if he is struggling in the way he is because I invision this presentation to be different than what it was; but Mr. Roskos does understand it for what it is. Mr. Roskos continued having been given a presentation like this, the Board operating under Subsection B1 can look at it and say can I agree with that rate of return; do I agree with all the items that are set forth here and maybe you don't buy the rate of return, and maybe you don't buy the items that have been listed; through the extent these items have been depicted and the landlord got the benefit of that and now they are coming to us some 13 years later and saying let me have a rent increase for this; maybe these items in there you don't accept as improvements that the landlord is entitled to, to get a rate of return on them.

Mr. Roskos is trying to make sense out of the ordinance, just like the Board members are. Mr. Roskos continued there is a component in the ordinance, if I read it generously and most favorably to the applicant; which is essentially saying we don't want our apartment complexes to become run down; we don't want them to be in ran shackle messes; we want to encourage landlords to make improvements and we will give them some rate of return on those improvements. Should the landlord come in and tell us what is really going on at the complex as a whole; that is what Mr. Roskos thought the process was here.

This landlord has chosen not to do it and I think their rational is that you can't go back to 1962 on an original investment. What we can do instead is show you what other apartments in the area are their rate of returns. Chairperson Hankinson asked about the pool issue; your closing of the pool because it was not in use and you only get a pool and tennis courts if you are in a higher dollar type of apartment complex was directed toward Mr. Rosensweig. Mr. Rosensweig stated that it wasn't being used; it was deficient and required expensive improvements; in any event, so restoring a pool for technically no use. The judgment was made to close it, to make it look nicer; it was an eyesore. There are usually tennis courts in other types of facilities; we never had a complaint that there was no pool. Chairperson Hankinson asked Mr. Rosensweig in your opinion it was not being used; the cost to the landlord as an operational cost that you could not justify. Mr. Rosensweig stated it would be a cost to the tenant as well in some ways. Chairperson Hankinson asked Mr. Rosensweig that you now want that to be a capital improvement by closing it. Mr. Rosensweig stated "yes".

Mr. Lalli stated he had an issue as filling in a pool as an improvement. It just seems like you are taking away something and filling it in because it wasn't being used or it was in disrepair; you are also lowering your operating costs for that pool as well. Mr. Lalli stated he had a hard time with the pool issue.

Mr. Rosensweig stated it would be better to spend $60,000 to put in a new pool and charge the tenants. Mr. Rosensweig continued no one used it and it was empty, Mr. Schragger stated that is not a capital improvement; so Mr. Rosensweig stated then tell me how you define a capital improvement in your ordinance. Mr. Schragger stated I don't know the case law, how council and you provided and is not a capital improvement. Mr. Rosensweig stated it was deficient to the facility and it was a deficiency, which is an ugly pool that was in total disrepair. Mr. Schragger stated not because no one used it, but it was in disrepair. Chairperson Hankinson stated it was not being maintained and the maintenance issues.

Ms. Taylor asked Mr. Vega if there are two types of apartments in the development; Mr. Vega stated there are 1 bedroom and 2 bedroom units; Ms. Taylor asked what the rent is and Mr. Vega stated we asked for an average. Mr. Vega continued that it is $1,025 a month for a 1 bedroom on average and $1,275 - $1,300 a month on average for 2 bedrooms. Ms. Taylor asked Mr. Vega if there is a third grouping in the development. Mr.

Vega stated there is a group that was in the fire and those are 2 bedrooms which have different amenities in respect to the way they are heated and cooled. Mr. Vega continued that some of the interior floor plans might have been modified to be different than the rest of the property. The rest of the property is pretty much floor plan is cookie cutter and these units that were reconstructed due to fire, they did not gain any square footage per se but shuffled around with a little less of a living room; more room in the bathroom.

Chairperson Hankinson stated modernized. Ms. Taylor then asked Mr. Vega if any of these improvements are part of the capital improvements. Mr. Vega stated no. Ms. Taylor then asked if the rent is the same for those 2 bedrooms as the others; Mr. Vega stated no.

Chairperson Hankinson stated the project is a 50 year old project; purchased mid 1960's and the major capital improvements over that time period was started by replacing the boiler and do upgrades to the 50-year old building from when you bought it. It was originally built in 1960's; it was 40 years old when you started your major improvements; roofing, boilers, siding, etc.

Mr. Rosensweig stated the only work occurred over the years; the mortgage goes back to 1985. Chairperson Hankinson stated that your upgrades are over 40 years old. Mr. Rosensweig stated there may have been upgrades from the time when it was started from the time it was built, or started in 1999. Chairperson Hankinson asked if your replaced all boilers in 1999? and stated that your capital improvements were started in 1999 and that was after 40 years of building life expectancy. Mr. Rosensweig stated we don't know of other replacements prior to that; you can see from what we do out there; we just don't let things go; we take care of the facility.

Chairperson Hankinson understands that they take care of the facility; but it is 40 years old and for the next 40 years something had to be fixed; just like any homeowner would; house is 40 years you have to put in new heating, air conditions system, and after 20 years you put a new roof on it; those are things over time that must be projected for and replaced over time. Chairperson Hankinson continues now we get to the hardship which would be that after 40 years of the project you had to do these upgrades and there was no provisioning for that point in your 40 years before that, so you're at a hardship; now is to recover that investment.

Mr. Rosensweig said he does not agree with what you portrayed it; to Mr. Rosensweig you called it here, the Township, a hardship increase; to provide reimbursement. I think the theory is if we don't give this to you, it's a hardship on you, we spent the money and get no reimbursement and that is not fair. You do not have in Lawrence total rent control, you have rent stabilization and you have vacancy de control, but we followed what your ordinance said and one of the items we can seek reimbursement for, call it hardship, call it reimbursement, call it whatever it is; that is what we are seeking; we can get a certain amount of capital improvements that we put in.

Mr. Rosensweig agrees with the Board when he looked at it; I wouldn't have waited that period of time, the client waited. Mr. Rosensweig stated a more reasonable time, are one of the things that this Board should do is revise this ordinance and make changes to say what you mean; provide a worksheet and tell people what to do in advance before they make an application; maybe if you want a hardship reimbursement; you got to do it every two years; so it makes more sense, keep it more current but whatever it is, you have a group of expenses, capital expense and we want reimbursement for that and what we provided was Mr. Carabelli's testimony as how to handle the approach on what we need to recover that.

Ms. Taylor asked because of things that were presented to the Board as examples of hardship cases, is this the language hardship of Lawrence Township word; a state word, a legislative word; whose word?

Mr. Roskos stated the term is used in our ordinance; Mr. Roskos looked for a case law for a case that would be on all fours with this setting and he could not find one. Mr. Roskos thinks Mr. Rosensweig is making a point which the Board already has cognized and that is this is stabilization and not control. Stabilization meaning when an apartment is vacated, the landlord gets to increase the rent in that apartment so there is a certain makeup if you will, of the rate of return. Mr. Roskos continued that we are capping what they can do to existing residents but when somebody moves out it is kind of a chance for the landlord to catch up to the market at that point.

Mr. Roskos stated about some landlord in New York, who walk away from their apartment buildings; could not get an increase and he does not think this is the situation that we want to create here for Lawrence Township. That is certainly not the ordinance that we adopted, so recognizing that we have a rent stabilization ordinance and we do give the landlord a chance to catch up on people vacating the apartment. Mr. Roskos continued I think when we talk about hardship, not sure if hardship, what is a reasonable rate of return, is what we are really talking about here and since we don't establish one in the ordinance and there is a rule of thumb and that changes. What is a reasonable rate of return, has it changed over time and for different uses.

Mr. Schragger talked about how he has a sense that the reasonable rate of return is 5% for apartment owners. Mr. Roskos stated he is not saying that is the rate of return, but what Mr. Roskos is saying this applicant has the burden of proof, not the Board. So the applicant came in said to you look at these sales. I calculated the rate of return at 7 ½%, you can either buy that or not buy that and then you could go through the improvements and look at what really are capital improvements and say yes this is something I will consider to be an improvement or this is something I really don't'. I fell the pool is an increase, if some members of the Board feel the pool is actually a decrease in services.

Our ordinance talks about you getting a decrease in your rent when you decrease services. He advanced the argument that the pool antiquated, was not used was a detriment to the property and enhanced the property by removing the pool. That is their argument. Mr. Roskos thinks a hardship does make this applicant at least have to come in and say we are losing our shirt and give us a rent increase. I don't think this is what the ordinance was intended to do. Mr. Roskos doesn't think we have to go that far.

Ms. Taylor stated we have been given this information and told to consider a hardship and now tonight we are being told it is not a hardship that we are asking to reimburse for capital improvements that we have done on our property. So do we have the authority to consider, since that is in question, a hardship and if not can we proceed under the claim of a hardship. Ms. Taylor asked what are we here to do?

Mr. Roskos stated that we are here to do is to listen to what the applicant is telling you in terms. I made these capital improvements; I am entitled to some rate of return on those improvements. Because if you don't give me a reasonable rate of return on those improvements, I am not going to make anymore, I am not going to do it so is that what the ordinance intended to send a message to all landlords in Lawrence Township; don't make any capital improvements unless you are losing your shirt and that is the only time we are going to give you a return on a capital improvement if you are basically about to go out of business because you had a hardship.

Mr. Schragger asked how do I know what a just and reasonable rate of return is, the way they are getting a current return? Mr. Roskos stated as a complex as a whole. That was the issue that I raised the beginning of the last meeting and what we are dealing with is an ordinance that doesn't specifically say you must show us your rate of return. Mr. Schragger stated a just and reasonable rate of return, which is under part "A" and Mr. Roskos continued # 3 in our ordinance, it says "to ensure that, considering all applicable landlord operating and financing costs, landlord may legally receive sufficient rental income to provide a just and reasonable return".

Mr. Schragger stated they have to show the Board the return. Mr. Rosensweig stated it benefits the landlord, the landlord may legally receive and Mr. Schragger stated they must show us a reasonable rate of return; Mr. Rosensweig continued but that is another item and if I am losing money on operating costs then I would make a different application.

Mr. Schragger stated your application is under B1, Mr. Rosensweig stated under B1 and that is all it has ever been. Mr. Schragger stated so a just reasonable rate of return has no relevance to this application. Mr. Rosensweig stated not in that context, it has to do with how we recover from the testimony of Mr. Carabelli how we recover the capital improvements; that is what he addressed, not overall operating rate of return; that is not what we came in for, not what we asked for, that is not what the ordinance provides. You have a multi part ordinance; hardship, Ms. Taylor, is simply a language used when it was drafted thinking you don't get it back then it is a hardship on you. Mr. Rosensweig would never use that if I was drafting it, but obviously it needs some corrections.

Chairperson Hankinson stated the terminology of hardship, I don't think the Board wants to get bogged down on that one word for one reason alone because why we are here is they want to increase their rent and we are here to help stabilize and not allow unwarranted rent increases that would unduly make hardship on the tenant or the landlord. That is where the word hardship comes in.

Mr. Schragger stated that he thinks what the confusion is that the Rent Stabilization Board, so they can raise the rent on an empty apartment 15, 20, 30% if that is the market and they will get that rate of return on that particular apartment. So what we are talking about is apartments that are not vacate. So someone stays there we have no testimony right now how many apartments it effects.

Chairperson Hankinson stated that they are at 95% occupancy therefore Chairperson Hankinson asked Mr. Vega if there is a waiting list; Mr. Vega stated not anymore. Chairperson Hankinson stated they are fully occupied and Mr. Schragger stated he is having a difficult time calling it a hardship or not. Chairperson Hankinson stated that Mr. Vega stated earlier that $1,025 for 1 bedroom and $1,075 for 2 bedrooms, which puts you right into the market rate for that type of apartment, is this correct. Mr. Vega stated yes. Chairperson Hankinson continued that this would put Lawrenceville Garden at the top of the market. You would not be at your $1,450 but would be the next highest rent in the area based on calculations. Mr. Carabelli stated assuming that could be sustained by the market.

Chairperson Hankinson stated the questions we would have; if we are here as a stabilization agency to ensure that both landlord and the tenant have a fair hearing, going by what they have given us, their intent to make a return of 7.5, what is the fair assessment?

Mr. Schragger stated his thoughts are two fold: the first is the ordinance is very clear and says the burden is on the applicant to show a hardship and I read a hardship as being by definition "that a hardship is being not in excessive of what is a normal rate of return; but Lawrenceville Garden did not show me what the normal rate of return has been over a period of time and still not clear whether they met that burden or not.

The other section of it is that a numerical calculation is all of this stuff in there or not and why are we going back just to 1999 and whether the apartment complex is taken depreciation and will give benefit we are allowing them to increase their income and also have the benefit of a tax break. The tax break is giving them more then the 7.5%. The final part of the numbers is that you come up with a $47 for a 1 bedroom and $59 for 2 bedroom; how long is that suppose to be for, is that once on renewal or is that every year when someone renews and we will give this to you now but you can't come back for another 10 years under this provision; can't we say that because Mr. Schragger does not want this applicant back in 3 years, as Mr. Rosensweig suggested and make another application and that is another $40 increase.

Mr. Schragger stated he is suppose to be the landlord member of this Board, suppose to be on the landlord side and would like to give you something but wants to make sure it is fair to the citizens.

Mr. Rosensweig stated he responded to the rate of return and that is not what we are asking for and he thinks we are going down the wrong path. Chairperson Hankinson would like to deliberate with the Board members. Mr. Roskos stated we are in the give and take process with the applicant and we are going to shut that down soon and we are going to deliberate. Mr. Roskos continued that we are also trying to understand the applicant's arguments and then mull them over and make sense out of what was submitted and then the Board will decide what increase, if any, should be granted. Mr. Roskos continued that at some point we have to end the dialogue and we are going to close the meeting off and the Board alone is going to deliberate.

Ms. Taylor stated if this was to be granted, would this be in association with the yearly increase that you normally do? Mr. Rosensweig stated only the existing tenants would be charged whenever the Township permits us, plus an additional $47 for a 1 bedroom, but on lease renewal or lease extension, not going to get anybody in the middle of a contract.

Chairperson Hankinson said if this was 2% across the board at time of renewal, plus additional $47 on top of that, which is a 7.5% increase on the 1 bedroom. Chairperson Hankinson asked how much of that is an increase on a 1 bedroom and 2 bedroom? so you would end up with a 9.5% increase at the lease renewal. Mr. Roskos asked what is the typical turnover in terms of the units themselves; what is your annual average? Mr. Vega answered 30%.

Mr. Roskos stated he would think there are some people who moved in 1981 and still have them as residents, Mr. Vega stated we do, but Mr. Roskos continued that 30% of the apartments on average still turn over after a year. Mr. Vega stated yes and Mr. Roskos asked that you could back out to the market on your 30% of your units every year. Mr. Vega stated it depends on the market and then the rent will be rolled back just complete. Mr. Schragger asked you actually reduce rents. Mr. Vega stated yes. Mr. Roskos stated this is for the record – Mr. Vega you were previously sworn that your testimony tonight is under oath; Mr. Vega stated yes.

Chairperson Hankinson stated looking at both sides of this issue; decrease in rent is normally done when the economics time when housing ownership has gone way up. The decrease in rents does not happen very often. It remains stable for a number of years in the landlord situations and depends on vacancy rate and Lawrenceville is not Philadelphia.

Mr. Carabelli stated in the study we are doing now, 2 apartment complexes in Hamilton, the rent went down from last ear to this year $100 a month. Chairperson Hankinson asked Mr. Carabelli what were the conditions for that and Mr. Carabelli stated vacancy. Chairperson Hankinson asked the Board members

if no one else has any questions and then continued we understand your reason for closing the pool and you kept your landscaping costs in there as a capital improvement; we recognize that the 9.5% increase at renewal time for the current tenants at this point; we recognize that you're, just trying to give a summary of, and won't go over everything; we recognize that you are looking at the capital improvements and trying to make a rate of return as that dollar figure associated with it; we also recognize that you have been a good and stable landlord in Lawrence for 50 years now; we thank you and welcome you and we want that in Lawrence.

Mr. Roskos stated that what the Board needs to do is deliberate with reference to what the applicant has produced. They have the burden of proof; they gave it to you with essentially 2 reports; Mr. Carabelli's original report and now his supplement. Mr. Roskos continued that the Board needs to first pass on whether the rate of return that has been proposed by the applicants expert is acceptable the next thing to do is go through the improvements; are these improvements capital improvements; are these improvements, improvements that actually enhance the property and that we don't have a limit.

Mr. Roskos stated he has a hard time with improvements that are as old as this, but he looked at the ordinance for some guidance and he could not see it. Mr. Roskos continued that a boiler is probably amortized over at least 15 years, if not much longer than that; I would have a hard time going a rate increase for something that his landlord has already depreciated 7 years ago and is now coming to us and saying give me a rent increase on my existing tenant even though I depreciated that asset along time ago, that to me is inequitable; but we are not being offered evidence of their books, per say, what instead the argument is, is this the rate of return that apartment complexes are generating on making these capital improvements and I think the ordinance wants to encourage capital improvements, so the Board needs to go through the capital improvements, look at the rate of return and then do it's own calculation.

It is not a question of to whether accept their number or give them nothing; the Board can go through this deliberation and arrive at its own conclusion.

Chairperson Hankinson has a couple of concerns and wants to go back to the pool, it is a benefit, whether it is being used or not, it should not be a capital improvement. I don't agree that maintenance items for landscaping are a capital improvement and has a real problem with calling the boiler a red tag removal. The oil tank was filled in when the switch over to natural gas per Mr. Vega's testimony. They did the switch over in 1998 and 1999 and removal was done in 2002 that is not an original cost that is not a capital improvement.

Chairperson Hankinson looked at the fact that since that boiler has been replaced in 1998, there has been 14 years of depreciated values, you had 14 years of rent increases; you had 14 years of stabilization of these costs because the old one was costing more to run as opposed to the new one which would run more efficiently and then add a 7.5% increase on the rent. Mr. Kops stated he has a problem with the landscaping issue and the oil tank removal.

Chairperson Hankinson stated he is not going to argue legal fees and management fees that is a gray area because you can make a judgment call. Mr. Kops asked on the calculation was management fees part of legal fees and did you put the 3% on the $56,000.00. Mr. Rosensweig stated no, that is separate; so Mr. Kops stated you did not put the 3% on the $56,000 in the management fee? Mr. Rosensweig stated there is management & legal fees and professional; they are two separate fees.

Mr. Schragger is having a real difficult time with the idea that they met their burden to show us, it is not that they met their burden, but they showed us that they did these capital improvements; this $47.50 is a just reasonable rate of return whether the fact that 30% of the apartments is available and what is the greater rate of return they made for the year.

Mr. Schragger did a quick calculation and took out all the landscaping and also took out everything that was older than the year 2000 expenditure and noticed that they were double dipping, when you look at asphalt, also in 2008, and got down to instead of $102,000 to $60,000, haven't been able to do the calculations that Mr. Carabelli did for the 1 bedroom and 2 bedroom units. Mr. Schragger continued that right now he was not inclined to agree with the number they are asking for.

Mr. Lalli stated he shares a lot of the same concerns such as the pool. Mr. Lalli thinks the pool is an asset and thinks $11,000 to fill in a pool and another $15,000 could have been brought to its original glory and would have been an emenity for the complex. It is a lot of maintenance and operating costx and would draw a lot of attention to.

Chairperson Hankinson stated that they should put away a certain amount in a reserve fund for capital improvement expenditures from the profits and budget someway. After 40 years when this started very year there was a 1.5 million dollar expenditure; calculated that $40,000 a year should be put away for this and the rent increases about $58,000 a year that they would be getting just from what their numbers are.

Per my calculation they will be getting $4,888 a month, would be $58,000 a year and you are talking about $40,000 a year in a reserve fund for a $58,000 return at this point. Chairperson Hankinson continued to the Board members, where would you like to go with this. 9.5% is too much; can't justify. Mr. Kops asked about taking out the landscaping which is $158,000. Mr. Schragger stated on Pages 8, 9, 10, 11 the first section is windows on Pages 8 & 9 $438,000 which is okay because they are all windows; removed the boiler, there were two entries, one in 1999 and boiler removal all buildings in 2000.

Mr. Roskos asked what the numbers are for the record. Mr. Schragger stated there is an entry of $796.13 on 10/11/99; a reduction of $22,504.00 on 12/16/99; a deduction on 11/13/10 of $10,530.00 and did not include any of the landscape upgrades because he does not believe landscape is a capital improvement, at all, then removed from the calculation the 1999 reductions/expenditures for the front door of $21,424.09.

Chairperson Hankinson asked to go back to the boiler, in 2000, there was a code correction to get their permit corrected and they are charging $14,598; Mr. Schragger stated he did not take that out because he did not know what that was, did a recalculation to take that out.

Mr. Schragger continued that he removed the four entries at the top of Page 10, 5/11 and 5/12 of 1999 because they actually look like double dipping, removed minor entry in 2009 on the last page for mileage reimbursement. So based on those; here are the calculations and asked Mr. Carabelli to follow along:

$438,894.76 plus $226,469.45 minus $5,796.13 minus $22,504.00 minus $14,598. minus $10,530 plus $27,211.80 plus $300,242.44 minus $17,274.84 (which is asphalt double dipping) plus $348,650.02 minus $86,000 equals $1,270,679.24 based on our discussions, that is the number that Mr. Schragger comes up with based on what we talked about we believe collectively as the Board does not belong.

Mr. Schragger asked Mr. Carabelli to confirm the number and he is checking. We multiply that by .0948451 gets $114,000 (give or take) minus the $56,000. $58,000 allocated for 1 bedrooms and 2 bedrooms and haven't seen the formula, came to $58,361.00 instead of $102,000 looking at Mr. Carabelli's February 17th letter. Mr. Carabelli stated the only issue is that by several issues, the major issue is the $56,000 addressed some of the items that you took out, so if you didn't count in your analysis, they should not be counted as a reserve, which is essentially the reserve.

Mr. Schragger stated this is a reserve for one year and Mr. Carabelli stated it is an annual reserve and if you mentioned $40,000, we use $56,000 so actually we are more aggressive. Mr. Carabelli stated he doesn't think it should be $56,000.

Mr. Kops asked Mr. Schragger of the $1,270,679.24 did you include the management fee of $55,000, so you need to take that out, you need to take the $56,400 out for legal fees and you multiply that number by .03%. Mr. Roskos stated the management fee comes down.

Mr. Schragger stated let us start again, $1,270,679.24 x .03 = $48,000 - $56,400. Chairperson Hankinson stated looking at things, they are at least 10 years old and having deprecated and the boiler is valued at 15 year period and we are coming to the end of that period; they use 20 year period for everything; we are at the half way point now, so we should take a ½ or ¾ of that number. Chairperson Hankinson continued we are getting down to the idea is regardless of the rate of return they would like to have. What kind of decrease do we start to look at to balance out the fact that we are looking at average 7% increase.

Mr. Schragger stated that everyone has pointed out there is no formula in the Ordinance; which either means we can make up a formula that we find reasonable as long as we can justify on the record, I think we can justify a formula because Council gave us the authority to come up with a formula, if they have, it is the power of the Rent Stabilization Board to come up with the formula.

Mr. Roskos stated that the Board should not engage in some kind of guesstimate as how many seniors are there and how much they can afford; he continued that the rule book we should be using; it is more what is a reasonable rate of return and what of these expenses should actually be the subject of a rent increase. Mr. Roskos continued he does not have a problem with the Board taking into consideration the age of some of these improvements; it is what it is. In terms of the rate of return, there has been no discussion about that yet and Mr. Carabelli offered his theory about that and gave us a number of different sales and does not know if some of these sales are right on target and does not know if that's, remember those are sales, those are not improvements, those aren't capital improvement numbers, they are sales numbers. Mr. Roskos continued he doesn't think we are the tenant advocate that when we do the calculation we can't really measure this based on what we think the existing tenants, what their personal financial situation is.

Chairperson Hankinson stated the reason for stabilization is just that. Mr. Roskos stated you are right, that's the purpose, but in this context we are dealing with a landlord who says I made capital improvements to make my place better and I need to get a rate of return on it. Chairperson Hankinson said he will have to give both some consideration, not saying one balances more than the other.

Mr. Roskos stated he agreed and when asked are you still going to get your CPI increase this year and they said yes that was the question that went to the heart of that. Mr. Roskos questioned about what is your turn over and it is 30% that is another factor here. In terms of being able to get back the market, they are able to get back the market every 3 ½ years, if the turnover is 30%, 30%, 30%.

Mr. Schragger gave the number based on what kind of was on the list we went through. $1,270,679.24, calculated a management fee of $38,120.38 = 41,365,199.62 and Mr. Kops stated the professional fee of $56,400.00 which also is in there, stated Mr. Schragger that is how I go to $1,365,199.62.

Mr. Carabelli stated I think your bottom line is going thru your expense $1,270,679.24 is the same; and we want to take 3.5% add to that is $44,474.00 plus the $56,400 = $371,552.00 x .0948451 =, Mr. Roskos said we acknowledged that was the calculation and we are asking that the factor be applied of .0948451, Mr. Carabelli stated he got $130,085.00 and it would something less than $56,000 while Mr. Schragger stated $25,000.

Mr. Carabelli stated maybe we would do a proportion and looking at 20% take off $13,000 = $43,000; Mr. Carabelli stated $97,085.00 and agreed it should be $87,085.00; however, it is unknown what the formula Mr. Carabelli did in the last part to come up to $47,059.

Mr. Rosensweig stated why Mr. Carabelli is calculating that, somebody is going to have to explain to me why the Board took out all of the boilers; he did not understand it, it is one thing to say we are taking it out, but what is the theory?

Chairperson Hankinson, which is his opinion stated the boiler was, when you did your natural gas turnover in 1998, 1999, according to State law you had to either remove it or cap it in place; that oil tank was then a part of that original boiler replacement; then in 2002 you came back and removed it as an operational cost because it was a change in the State law. Mr. Rosensweig stated there is nothing on the record that supports that and again Mr. Hankinson stated this is his opinion. Mr. Rosensweig stated a change in State law, you take a boiler or anything, it's a capital improvement.

Chairperson Hankinson stated in 1999 you did a capital improvement you actually changed the boilers from coil to natural gas at that point you, by law, had to either remove or cap it in place; three years later you came back and removed it. Mr. Vega said it was in 2002 while Chairperson Hankinson said in 1999 was your boiler replacement. Mr. Rosensweig stated it started then and another thing you chose '99 you knocked out anything in '99, don't know why; the boiler seems to be a capital improvement, while Chairperson Hankinson stated we are giving you the boiler.

Mr. Roskos spoke up and said the boiler replacement and they only took out a small aspect of that which was from 1999. I think you are misunderstanding the tank removal was not included, the oil tank removal of $51,470 was not included; a lot of the boiler improvements were included; there were just a couple of line items in the boiler improvements that were removed. You got the lions share of the boiler replacement. There was a brief back and forth between Mr. Schragger and Mr. Rosensweig about the boiler.

Mr. Carabelli stated if you increase the one bedroom by $40/month and the two bedroom by $50/month; then the increased revenue would be $87,120.00/ Mr. Roskos stated is that proportional with the suggested split that you offered before; was $47 to $59 the same ratio to $40 to $50. Mr. Carabelli stated it is 25% of $40 is $10.00 so $40 to $50. Chairperson Hankinson asked if we could get a copy of what Mr. Carabelli is using to make the calculations; the formula sheets for the record. Mr. Roskos stated for the 1 bedroom, 2 bedroom split, what the numbers are just so we know how we got you where we are.

Mr. Carabelli stated the facts are there are 104 1 bedroom, 62 2 bedrooms, we concluded in our survey that 2 bedrooms get a 25% premium so the formula would be 104 x 62 x 1.25 x = $87,100 which is the funds that we raised; so for $480 divide by 12 = $40. A month for 1 bedroom; add 25% and get $50 a month for 2 bedrooms. Chairperson Hankinson stated that is a percentage increase of approximately 3.9% and 2% increase for the CPI is 5% increase and will take at the renewals. Mr. Rosensweig stated yes.

Mr. Schragger stated that we agree to the $40 and the $50; it is only on the people who are staying in the $40's and $50's in the 1 bedroom and 2 bedroom and renewing their leases at their anniversary of their lease. You are going to market on the vacant ones 30%; that $40 & $50 will be part of that market number or it could be more. Mr. Rosensweig stated the way they have done is the unit changes; floors, appliances, that's what they market up when a new tenant rents, that is what they use that for, not for the outside stuff, which is different.

Mr. Schragger stated if we agree, consent and adopt the resolution $40 for 1 bedroom and $50 for 2 bedrooms, whether it's a tenant who is staying there and renewing or a new tenant you are going to add those numbers onto the rent owners, whether they are staying or coming off the street. Mr. Rosensweig stated yes, it could be applied to everybody.

Mr. Roskos stated someone should make a motion indicating based upon Mr. Schragger's calculations as articulated during the deliberations that the rent increase $40 for 1 bedroom apartments; $50 for 2 bedroom apartments is being granted by this Board with the understanding that those rent increases will not be imposed until an annual renewal for existing tenants and those rent increases will also apply to vacant apartments which will have new tenants.

Chairperson Hankinson stated we are looking at a 5% increase and the CPI will be applied to this. Mr. Roskos stated to the extent this is permitted through the ordinance and continued that this Board does not have the authority to change the ordinance. Chairperson Hankinson stated not trying to change; trying to look at the total increase for those staying in the apartments approximated by our calculations would be about 5% quoted by our numbers.

Mr. Roskos doesn't know if this is something this Board can actually determine right now; continued to say what you have determined there is a 3.9% increase is what you are granting and to the extent the ordinance allows a CPI increase, whatever that CPI increase is, Chairperson Hankinson stated this would be added on top of this; Mr. Roskos continued if the ordinance so provides; if the ordinance doesn't so provide, it doesn't and by that; Mr. Roskos stated he read this a couple of times; he wishes it was codified instead of being piece meal; the Board can do what it only allows it to do.

Chairperson Hankinson stated we should only look at the 3.9% increase, that we would grant and note the fact there might be a CPI percent increase. Mr. Roskos stated that this is part of the ordinance, if that is applicable to this hardship increase, in addition to this hardship increase; that is the way this ordinance is written.

Mr. Schragger stated this is the purpose of the ordinance to allow them to go above CPI and we are saying we are allowing by doing numbers as we calculated it. If they do not like the numbers they can appeal to Council; we could put conditions on it that you can't come back before this Board. Mr. Rosensweig stated you can't do that, you have to deny us

A motion was made by Andrew Schragger to grant the applicant's application conditioned upon modifications, being that the increase for a 1 bedroom apartment would be $40 month instead of the applicant's request of $47 month and the applicant's application for 2 bedroom apartment would be $50 month and not $59 month as requested in the most recent submitted application; seconded by James Lalli.

The motion was approved by a unanimous vote.

Other Business:

None

Adjournment:

A motion was made to adjourn the meeting. There being no further business, the meeting was adjourned at 9.37 p.m.

The next meeting is scheduled for Thursday, March 29, 2012 at 7:00 p.m, in the lower level conference room.

Susan Snook

Susan Snook, Secretary
Rent Stabilization Board

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