

LINDSAY PROPERTIES, LLC

P.O. Box 559
Palo Alto, CA 94302

February 6, 2019

City of Mountain View
Rental Housing Committee
PO Box 500
Mountain View, CA 94039

Dear Members of the Rental Housing Committee:

Subject: Appeal No. 17180002- Second Tentative Appeal Decision- Lindsay Properties, LLC

Lindsay Properties, LLC (Lindsay Properties") respectfully submits the following response to the above-referenced Tentative Appeal Decision (the "Tentative Decision"). For ease of reference, our response tracks the issues in the same order as addressed in the Tentative Decision. However, because there are so many issues and Lindsay Properties is frustrated with this process, we have chosen to pursue only a few of the appeal elements. We also intend to address the Tentative Decision at the upcoming Committee hearing.

I. SUMMARY OF PROCEEDINGS.

In summary, Del Medio Manor has 104 units and the Lindsay Properties' petition covers 56 rental units. 20 of those tenants have formed the Del Medio Manor Tenants Association which was formed for the purpose of opposing the petition and are represented by the Community Legal Services of East Palo Alto in this proceeding. 36 of the Del Medio Manor tenants, whose units are the subject of the Lindsay Properties' petition, have not joined Respondent's opposition.

II. NO COMMENTS

III. NO COMMENTS

IV. TENTATIVE DECISION REGARDING APPEALED ELEMENTS

A.1 Vega Adjustment

a. Appellant-Landlord entitled to presumption for Vega Adjustment

We agree and appreciate the modification to the Decision After Remand, to grant a Vega Adjustment totaling \$15,979 (HUD Rent) for the 22 apartments as requested. Substantial evidence has been submitted indicating that the units are well maintained, that when work orders when submitted are addressed of in a timely manner, and that we purposely keep our rents for the entire complex 15% below market to reflect the property location. Thank you for considering the previously submitted evidence.

A.4. Calculation of Base and Petition Year Management Expenses

Del Medio Manor is owned by Lindsay Properties, LLC. Lindsay Properties has hired Calson Properties Inc., a third-party property management company to manage the apartment complex. (Copies of their invoices and checks were included in Exhibit B and C which were filed last year as Attachment # 1). Calson Properties manages multiple properties and uses many of the same maintenance crew for the various properties. We allocate these maintenance salaries equitably between each apartment complex. Each apartment has a resident onsite manager as required by California State Law, who is also an employee of Calson Properties.

The job responsibilities of the maintenance crew and resident managers were sent in with Exhibit B. The responsibilities of the actual "Property Management Company" was not included and perhaps that has created confusion regarding management expenses.

For clarification, the "Property Management Fee" includes accounting services, asset management, coordinating insurance coverage, vendor verification, vendor compliance, reporting to investors, etc. and per CSFRA regulations, is capped at 6% of the property's gross income and takes place in an off-site office.

The salaries of all the maintenance crew and resident managers who all work onsite, is paid proportionately by each property to Calson, who sends the payroll information and payment to Paychex and the employee payroll is distributed. Reimbursement for this maintenance and resident manager payroll liability from Del Medio Manor to Calson Properties are done via "intra-bank transfer" from the Del Medio account to the Calson Properties account. These transfers are shown in the financial statements as a "journal entry", **and there are no written checks**. (This also responds to B.1 "Employee Compensation General Ledger Entries")

A.5. Calculation of Petition Year Salary Expenses

Apparently, there still some confusion of the proper categorization of salary expenses. As mentioned in A.4, we want to clarify the difference in "Management or a.k.a. Management Fee" and "maintenance salaries and the on-site apartment managers" salary.

In Exhibit B submitted last year, we submitted copies of our monthly payroll journals for the Base Year and Petition Year. For your convenience, we have included a copy of these submissions. This information is the back up to Line 6 of the "MNOI Fair Return Calculation" as shown on Attachment # 2

On line 6 of this Exhibit, under the "Petitioner Worksheet Submissions on 4/4/2018", you'll see the costs of \$333,782.62. Included within this figure, is the "on-site manager and maintenance salaries" The Hearing Officer did not give us credit for these vital employees that keep the buildings running. In other words, the Hearing Officer deducted ***ALL OF THE ON SITE SALARIES*** from this spreadsheet.

This concept was explained in the August 27, 2018 hearing by Elizabeth Lindsay Walch, wherein she represented:

“As reflected in the city’s own petition forms there is a clear distinction between Management Expenses and Ordinary Repair, Replacement and Maintenance Expenses. And yet, both decisions would actually deny the salaries required to maintain the level of onsite services that Lindsay Properties is required to provide in order to comply with the CSFRA. Those salary expenses for onsite services cannot be allocated to management. Rather, as anyone who has experience with this industry knows, salaries of onsite personnel are always categorized as part of ordinary repair, replacement, and maintenance. Those services are not part of “property management.” Ironically, because of this misunderstanding of these standard accounting practices, the decisions would even deny the salary of our resident onsite manager, who we are required by law to have living onsite. That’s just one example—in fact all the salaries attributable to ordinary repair were excluded as well as many other expenses. How can exclusion of these expenses be considered to be providing a fair rate of return? The City must reverse this decision and, if remanded, the Committee must give specific instructions to the Hearing Officer that include giving careful consideration to all the evidence we submitted.”

We implore the committee to allow Lindsay Properties to be entitled to receive credit for the **SALARIES OF OUR ON-SITE MANAGER AND MAINTENANCE STAFF** for their service at Del Medio Manor. We ask that you to please reverse this item and allow the \$215,505.92 for on-site personnel salary that is essential to upkeep and maintenance of Del Medio Manor.

A.7. Exclusion of Pavers from Amortized Capital Improvements

It is clear from the property narrative reports (Exhibit B) that the paver project was started long before the CSFRA was adopted, limiting what is considered the “Fair Return Standard” for investors on their investments. The very last portion of this “phased property wide improvement project”, (see Attachment #3) specifically being the pool deck, was started in late 2016 to replace the uneven and heaving concrete deck that had been in place for 30 years. In addition, the Santa Clara Health Department had inspected the facility in 2015 and noted that the “Pool Deck needs attention, also repair sunken/splintered wood deck spacers at shallow end of the pool.” Not only was the previous deck unsightly but had numerous cracks and trip hazards.

As you have seen in the property reports (Exhibit B) the new deck is level and includes a permanent bike rack to lock bicycles so that tenants do not bring them into the building, damaging the carpet and walls in the halls and apartments.

8. Exclusion of Certain Parking Lot Resurfacing and Elevator Costs from Amortized Capital Improvements.

We recognize that we have received the benefit of the amortized elevator upgrades costs. To recognize that these improvements were essential to safety and the welfare of all the tenants is appreciated. The elevators continue to require ongoing maintenance.

Every parking lot requires ongoing maintenance as well to keep the parking lot in safe condition. It is common to have expenses for "parking lot repairs and maintenance" in every calendar year to maintain the integrity of the parking lot. Most likely there was some parking lot work done somewhere within the Del Medio Parking lot 2 years before the 2017 work to remove and replace potholes or other failed areas and that is what the tenant remembers and testifies to. However, as the CPM invoices indicate (Exhibit C and also as Attachment # 4), eight (8) failed areas of asphalt were removed and replaced totaling 4,091 sq. ft at a cost of \$26,627.72 in March 2017 and then the entire parking lot was crack filled, sealed and striped to help maintain the parking lot at a cost of \$13,622.16 in May 2017. Seal and stripe are part of our 3-4-year maintenance cycle depending on the condition of the asphalt throughout all of our properties.

Conclusion

We realize that you, the Rental Housing Committee, come from varied backgrounds and that you have differing points of view. However, hopefully you truly want what is best for the City of Mountain View. So far, this particular process has been frustrating, and we have felt that the system was against the Landlords. We are hoping that you will give this response your fair and unbiased review.

Del Medio Manor is owned by Lindsay Properties LLC and that is comprised of a good sized group of working people as well as people on fixed incomes and those in their late 80's who are counting on you to make fair decisions that will allow them to get a fair return on their long-term investment. We have always been proud of our properties and worked to keep them looking good and functioning well. By making it difficult for property owners of Del Medio Manor and all the other older apartment complexes in Mountain View to be able to upgrade and maintain them, we fear you will diminish the housing market and create the exact opposite of what you are looking for.

Please work with us and not against us.

Respectfully,

Cynthia Lindsay Christensen

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