REMOTE RENT BOARD COMMITTEE

July 28, 2021
5:00 PM

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403A, that authorizes cities and towns to conduct meetings online. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be uploaded to portlandmaine.gov/livestream the next day. For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

ZOOM INFORMATION:

Please click the link below to join the webinar:
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II. ROLL CALL

III. MINUTES FROM JUNE 23, 2021 MEETING

a. June 23, 2021 Minutes

RENT INCREASE APPLICATION

Landlord: Woodford Arms, Inc - Peter Colesworthy
Property address: 168 Woodford St
CBL: 124 J014001
Type of Increase: Capital Improvement costs, including financing costs

V. REMOTE MEETINGS

a. Rent Board Remote Meeting Policy - Public Comment will be accepted

VI. FAIR RATE OF RETURN

a. Continuation of discussion about how to handle "fair return" rent increase petitions in Portland pursuant to Portland's ordinance, given available resources. For purposes of generating discussion, materials are included from Takoma Park, Maryland which illustrate one specific methodology used by Kenneth Baar to determine "Fair Return Rent Increase Petitions" in two 2012 administrative decisions.

VII. FOLLOW-UP DISCUSSION OF OPENMAINE'S TOOLING

CHAIR'S REMARKS: RENT INCREASES IN 2021 AND RENT CONTROL ORDINANCE AWARENESS

MOCK RENT BOARD HEARING & DISCUSSION

ADJOURN

Minutes

Remote Rent Board Meeting - Held Via Zoom
Wednesday, June 23, 2021

Start time: 5:02PM

II. ROLL CALL

Austin Sims, Homeowner, District 5 - Chair Pro Tem
Barbara Vestal, Landlord, At-Large - Vice Chair Pro Tem
Christopher "Buddy" Moore, Tenant, District 1
Michelle Dunham, Landlord, District 2
Elliott Simpson, Tenant, District 3
Ian McCracken, Landlord, District 4
*Elias Kann, Tenant, At-Large (arrived late)

Staff Present:

Michael Goldman, Corporation Counsel
Katlyn Sawyer, Licensing & Registration Coordinator
Zachary Lenhert, Licensing & Housing Safety Manager

III. MINUTES

Barbara Vestal moves to accept the minutes as written.
-Austin Sims had one amendment to the proposal; on page 8 where it says "Austin clarified a potential motion on the table is to visually adopt the draft.."
-Change the word visually to provisionally
Barbara accepted the amendment to her motion
2nd by Michelle Dunham
Vote: 6-0 (Elias Kann was absent)

IV. VOTE FOR CHAIR & VICE CHAIR

Austin Sims reviewed with the Board that during its first meeting, it was unanimously agreed upon provisionally electing a Chair & Vice Chair for the first two months to allow such time for Board members to come to know one another. The Board has reached the agreed upon time to nominate an elective Chair & Vice Chair who will hold their positions for the remainder of the Rent Boards' first year - from tonight's meeting 6/23/2021 until the regular meeting in April of 2022.

Ian McCracken made a motion to stick with the current Chair (Austin Sims) & Vice Chair (Barbara Vestal).

2nd by Elliott Simpson

Vote: 6-0 (Elias Kann was absent at time of vote)

*Elias Kann joined the meeting

V. RATE OF CALCULATION AND CAPITAL IMPROVEMENT COSTS

Elias Kann presented the document to the Board

Upon research, it was gathered that fair return on investment and fair rate of return were the same.

Examples were provided on how courts in Maine and on the Supreme Court level have defined fair rate of return as it's not clearly defined in other rent control ordinances.

- -Best examples that were found in the context of Utility regulation
  - -Regulation that denies fair rate of return is a de facto way of taking. The minimum goal is to define fair rate of return so that it does not constitute a taking of someone's rights to their property to make money
  - -Case law from both the Supreme Court & Maine Supreme Court
    - -Talks about determinations involved for rate making in regards to public utility rates

The Maintenance of Net Operating Income (MNOI) method seems to be the most common and most fair.

- -Accounts for increased operating expenses overtime
- -Different ways that rent regulation can adjust that amount for inflation to make sure the Landlord is getting a fair rate of return
- -Provides a dollar for dollar passthrough meaning that for every dollar the Landlord increases operating expenses by they are allowed to offset the increased operating expense

-Capital Improvement Costs-

Landlords should be incentivized to do necessary maintenance and improvements but to also protect tenants from rent increases that they cannot afford.

- -Replacements should be operating expenses whereas improvements can be billed as capital improvements costs

Many jurisdictions have separate amortization schedules, meaning that there's a permitted rate for capital improvement costs. Portland does not have that, only the 10% cap which governs how much you can increase the rent each year for capital improvement costs

One of the major issues with capital improvement costs is whether they should expire or not.

-The rent increase should be permanent but not adjusted for inflation

-If it expires, rents will be fluctuating on a rolling period depending on what capital improvements people do and when they expire

-If no interest is included, it balances out the expiration and permanent rent increase

Another issue is how to define it - mentions the definition from the IRS.

-An example being that a small section of a roof being fixed is more of an expense versus replacing the roof as a whole would be an improvement.

*"Buddy" Moore made a few comments:

The implementation of this can't result in a person losing money. By using the Maintenance of Net Operating Income (MNOI), it will create a framework where everything is accounted for that is not already part of the law. So, if someone is still operating at a loss and they can prove that, then the Board can give them a higher rent increase.

*Barbara addressed some concerns -

Other ways that other people have calculated these things

Fair rate of return and utility comparison - difference between what is allowed for additional Board increases and the MNOI.

After 1983, there was a 1995 law in California - subject to vacancy decontrol.

*Ian McCracken suggested that the formula could be rewritten if it is a catchall to represent the forms that the Board has already created, to something such as:

Base Rent + Allowed Increases (already taken into account) -/+ Other Capital Expenditures (not discussed)

This formula is not meant to be used in replacement of, only after as consideration. This could be used as a general guide, not as a sole determinant of approval. Each case would be treated uniquely. To suggest using this as a benchmark for if someone comes to the Board that their net operating income is much lower and is essentially losing money - the Board could use this as a best practice starting point for deliberation.

Barbara Vestal directed the following questions to Michael Goldman, Corporation Counsel

-Sec 6-234 (b)(5) Additional Rent Board Approved Increases

Does the Board need to work toward a specific formulation for (d) or can the Board leave it vague for now?

-If the Board can look at some hypothetical examples to talk it through as a Board first vs practicing on live people. But to use live situations that may come about

Austin asked that Michael has Anne Torregrossa (who is absent at this meeting) email the Board before the next Board meeting so they can have it before the agenda packet gets published

Elliott Simpson motioned to move to the next agenda item. The motion was then temporarily held so that Buddy could speak.

Buddy Moore suggested that Board members could reach out to other municipalities who have gone through setting up a Rent Board. It might be informative for Board members to speak with someone who has been doing it for a while and working with the laws.

Elliott's motion to move to the next agenda item has been untabled
2nd by Buddy Moore
Vote: 7-0

VI. TENANT INTAKE FORM
A. TENANT COMPLAINT FORM CLEAN DRAFT

Buddy Moore presented the form

Added:
-Multiple contact lines for tenants with phone numbers and email addresses.
-Termination of Tenancies-At-Will
-Multiple tenant signatures
-Printed name of person assisting tenant & relationship (same thing for Landlord)

Moved the checkbox with "Please check this box if you wish to seek a Rent Board hearing, review, and decision regarding your complaint or dispute" towards the bottom of the form. Also made the checkbox bigger.

Will need to add a clause that if more than 5 tenant signatures, to attach another signature form

Buddy Moore moved onto the next subsection of this agenda item.

B. PROPOSED COMBINED TENANT COMPLAINT & RENT INCREASE APPEAL APPLICATION

Buddy Moore presented the form

The Board had discussed previously combining the Tenant Complaint Form with the Rent Increase Appeal Application as they can go hand in hand.

This form differs from the other in that it has space for the type of complaint. He had added extra lines for what the previous rent was, the proposed rent after rent increase, and the reason for increase.

Also added a note in parenthesis that if a tenant wishes to appeal a rent increase, that they must check the box at the bottom of the document

Barbara Vestal would like Anne Torregrossa to review the Termination of Tenancies-At-Will at the bottom of the disclosure page. There is still concern that a tenant would only file an appeal to the Rent Board and would think that they wouldn't need to show up in Court.

Suggested wordsmithing, so that it starts at -

"However, the State of Maine also has a statute that governs evictions other than for cause evictions. By statute, a Landlord must give a tenant-at-will a 30 days notice when terminating a tenancy. District Court will have jurisdiction over whether you will be evicted and if you are opposed, you should appear in District Court in accordance with any summons. The Rent Board will not have authority to reinstate a tenancy that was terminated by District Court.

Austin Sims summarized the items for consideration

Combining the two forms

A couple of small adjustments not captured in this version

Barbara's language having been verified by Anne Torregrossa

Zachary Lenhert made a comment that staff (Housing Safety office) may make clerical changes to the forms such as phone numbers, that won't require needing approval from the Board

Barbara Vestal made a motion to approve the second form being the Tenant Complaint Form/Rent Increase Appeal Application, subject to recognition of Zachary's statement that staff may make non substantive changes/corrections. Also subject to including the language on the Termination of Tenancies-At-Will.

2nd by Buddy Moore

Vote: 7-0

Michael Goldman seeked clarification on what needs to be discussed with Anne Torregrossa

-Buddy will send the form with the changes

-Barbara will send Michael or Anne an email with the changes she wanted for the Termination of Tenancies-At-Will

-Anne will then send it to Zachary for final review

VII. MERGING OF HIGHER LEVEL RULES WITH RULES & EVIDENTIARY REQUIREMENTS FOR HEARINGS

A. DRAFT RENT BOARD RULES OF PROCEDURE - SUBSTANTIVE REDLINE

Barbara Vestal presented the form

Wanted to make it known that the redline is not a complete redline since sections were moved around, so not all changes are being show

Substantive changes are -

- -Moved Buddy & Ian's draft to combine with Barbara & Elliott's draft. Buddy's draft became Article VI & Article VII
- -Who the parties are and who is going to be participating, and how - in Section 2(e)
  - -Applicant & Objector
    - -Could be landlord & tenant
  - -A specially interested party would be designated by the Chair. This person(s) would be able to present witnesses and cross examine witnesses.
    - -If someone wanted to be a specially interested party but the Chair declined to name them as such - that person would still have the opportunity to participate as a member of the general public. They would not have the same powers as one who was a specially interested party, and would be limited to 3 minutes with the possibility of an extension of time with an additional 3 minutes

- -Article VII - Deliberations, Voting, Decisions

Barbara mentioned that the following subsection is a clean version of the document without the redlining.

Article VII, Section 1 - will be reviewed by Anne Torregrossa to ensure that the Board is okay to have that on the document

Austin Sims proposed to adopt the rules with the stipulation that Article VII, Section 1 would be reviewed by Anne Torregrossa. If it contravenes the ordinance, that it be exercised.

2nd by Ian McCracken
Vote: 7-0

B. DRAFT RENT BOARD RULES OF PROCEDURE - CLEAN

See final discussion in Subsection A above.

VIII. PRESENTATION BY OPENMAINE

OpenMaine reached out to Austin Sims with an offer to build online tools to help guide Landlords and Tenants in interpreting and following this new ordinance. Caitlin Marshall and Arielle Morabito are present from OpenMaine to discuss what the group is, the work they do, and the specific project regarding Rent Control ordinance. 10 minutes was allotted for the presentation to the Board.

Caitlin Marshall started the discussion

OpenMaine is an all volunteer organization of bringing together coders and community members to try and build civic tech. How to create technology that makes the Government work well for everyone and make it more accessible. OpenMaine is a local chapter of a broader national network called Code for America, which is coders all across the country doing civic tech projects.

Examples of what OpenMaine has done:

-MaineBallot.Org
A website you can go to to find what's going to be on the ballot for every town in the State
-Food Bank Map
During pandemic

Arielle Morabito presented the site to the Board and did a walkthrough of "how to"

-The page brings forth a Rent Control Calculator where you can select if you are a Tenant or Landlord
-The next section leads to exemptions of the Rent Control ordinance. Depending on which button, it will alert them if it may apply to them or not
-If no exemptions apply, it will lead to a place where the tenant may input their monthly rent. It results in the tenant learning what % equals a new rent amount might be

The link will be emailed to Austin Sims for dispersion to Board members and City staff.

Austin Sims would like Board members to play around with the website to follow up for discussion at the next Rent Board meeting.

IX. ADJOURN

Austin Sims moved to Adjourn the meeting
2nd by Elias Kann
Vote 7-0

Meeting end time: 7:16pm

REMOTE PARTICIPATION POLICY OF THE CITY OF PORTLAND RENT BOARD

CITY OF PORTLAND, MAINE

Pursuant to 1 M.R.S. § 403-B, and after public notice and hearing, the above-named body adopts the following policy to govern the participation, via remote methods, of members of the body and the public in the public proceedings or meetings of the City of Portland Rent Board (hereinafter, "body").

Members of the body are expected to be physically present for meetings except when not practicable, such as in the case of an emergency or urgent issue that requires the body to meet via remote methods, or an illness or temporary absence of a member that causes significant difficulty traveling to the meeting location. The chair or presiding officer of the body, in consultation with other members if appropriate and possible, will make a determination that remote methods of participation are necessary in as timely a manner as possible under the circumstances. A member who is unable to attend a meeting in person will notify the chair or presiding officer of the body as far in advance as possible.

Remote methods of participation may include telephonic or video technology allowing simultaneous reception of information and may include other means necessary to accommodate disabled persons. Remote participation will not be by text-only means such as e-mail, text messages, or chat functions.

The public will be provided a meaningful opportunity to attend via remote methods when any member of the body participates via remote methods. If public input is allowed or required at the meeting, an effective means of communication between the body and the public will also be provided. The public will also be provided an opportunity to attend the meeting in person unless there is an emergency or urgent issue that requires the entire body to meet using remote methods.

Notice of all meetings will be provided in accordance with 1 M.R.S. § 406 and any applicable charter, ordinance, policy, or bylaw. When the public may attend via remote methods, notice will include the means by which the public may access the meeting remotely and will provide a method for disabled persons to request necessary accommodation to access the meeting. Notice will also identify a location where the public may attend the meeting in person. The body will not restrict public attendance to remote methods except in the case of an emergency or urgent issue that requires the body to meet using remote methods of attendance.

The body will make all documents and materials to be considered by the body available, electronically or otherwise, to the public who attend remotely to the same extent customarily available to the public who attend in person, provided no additional costs are incurred by the body.

All votes taken during a meeting using remote methods will be by roll call vote that can be seen and heard if using video technology, or heard if using audio technology only, by other members of the body and the public. A member of the body who participates remotely will be considered present for purposes of a quorum and voting.

This policy will remain in force indefinitely unless amended or rescinded.

ADMINISTRATIVE REGULATIONS

Fair Return Rent Increases
Takoma Park Code Section 6.20.080

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FAIR RETURN RENT INCREASES

Pursuant to Chapter 6.20 of the Takoma Park Code, the following Administrative Regulations (the "Regulations"), have been proposed and are to be used in coordination with Chapter 6.20.080 Rent increase pursuant to a fair return petition.

1. Right to a Fair Return

A landlord has a right to a Fair Return as defined by Takoma Park Code Section 6.20.080 and may petition the Commission on Landlord and Tenant Affairs (the "Commission") for a rent increase above the annual rent increase allowance to ensure the maintenance of a fair net operating income.

2. Fair Return Rent Increases

A. A fair return means the maintenance of a landlord's Base Year net operating income, adjusted for inflation, into the Current Year.

   i. Net operating income shall be the gross income, defined herein Section 4.C., minus operating expenses permitted herein Section 4.D.

   ii. The Commission shall, when adjusting for inflation, increase the Base Year net operating income by 70% of the percentage increase in the Consumer Price Index (the "CPI") from the Base Year through 2007 and by 100% of the percentage increase in the CPI from 2007 through the Current Year.

B. The annual CPI shall be the Consumer Price Index - All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year shall be the CPI published in December of the Current Year.

C. The Base Year shall be established in accordance with Section 4.A of these Administrative Regulations (the "Regulations") and shall serve as the basis for determining whether a fair net operating income has been maintained by the landlord during the Current Year.

D. The Current Year shall be either the calendar year (January 1 - December 31) or the fiscal year (July 1 - June 30) immediately preceding the date of the filing of the Fair Return Rent Increase Petition (the "Petition").

E. Fair Return rent increases ("rent increases") approved by the Commission shall be determined as a percentage of the Current Year rents, and each unit in the rental facility

shall be subject to the same percentage increase.

i. Except as provided in Subsection ii, any rent increase(s) approved by the Commission must be implemented within 12 months of the date of the issuance of the Decision or at the end of the current tenant's lease term, whichever is later, in accordance with Section 6.B of these Regulations.

ii. If the rent increase for an occupied unit is greater than 15%, the rent increase assessed to the tenant shall be phased-in over a period of more than one year until such time as the full rent increase awarded by the Commission has been taken. Rent increases of more than 15% must be implemented in consecutive years. For example, if a 35% rent increase is awarded, the rent increase must be assessed as follows: 1st year - 15%; 2nd year - 15%; 3rd year - 5%. Rent increases may be taken in addition to those permitted using the Annual Rent Stabilization Allowance as determined by Takoma Park Code Section 6.20.050.

iii. The implementation of any rent increase awarded by the Commission is governed by the terms of any existing lease. For example, if the tenant has a one year lease, the rent increase must be implemented at the end of the lease term. If the tenant has a month-to month lease, the rent increase can be implemented with a minimum of two months notice in accordance with Section 6.B herein.

iv. The landlord shall, upon the award of a rent increase, forfeit any prior rent increases which were permitted but not charged for the unit(s). Prior year rent increases include all capital improvement, hardship and fair return rent increases in addition to all annual rent increases banked as permitted by Takoma Park Code Section 6.20.060.

3. Fair Return Rent Increase Petitions

A. Prerequisites for Fair Return Rent Increase Petition

i. The Commission shall not consider the landlord's Petition:

a. If the landlord has not owned the rental facility for the entire Current Year;

b. If the Commission awarded a rent increase for the rental facility within the 12 months preceding the date of the Petition unless the Petition is justified by exceptional circumstances;

c. Until the properly completed Petition Form, two sets of copies of required supporting documentation, and two sets of mailing labels for each rental unit have been filed with the Commission;

d. When the landlord has not properly registered the rental property with the City of Takoma Park (the "City") and/or when the landlord has outstanding fees or fines assessed by the Department of Housing and Community Development (the "Department");

e. When the landlord has not filed required rent reports for the three years prior to the filing date of the Petition. The Commission may, at its discretion, waive the above requirement for good cause shown; or

f. When the landlord has failed to comply with an order of the Commission concerning any rental unit owned by the landlord in the City. The failure to comply with an order of the Commission shall not constitute a basis to decline to consider the landlord's Petition if the order has been appealed to the Circuit Court and no decision has been rendered on appeal.

ii. If the Commission declines to consider the landlord's Petition, it shall provide a written explanation for its action within ten business days of the decision.

B. Fair Return Rent Increase Petition Form

All Petitions shall be filed on the Fair Return Rent Increase Petition Form (the "Petition Form") provided by the Commission (Form A). All supporting documents required in the Petition Form shall accompany the Petition at the time the Petition is filed.

4. Standards Used in Determining a Fair Return Rent Increase

A. Selection of Base Year and Determination of Base Year Net Operating Income

i. If No Prior Hardship or Fair Return Ruling.

If the Commission has not previously made a ruling on a petition for a "hardship" or "fair return" adjustment for the property pursuant to the Takoma Park Code, the landlord shall choose a Base Year from one of the following options. The landlord must have reliable documentation of the rents for the Base Year selected. The Department typically has rent records for properties for 1990 through the present.

a. 1979

For those rental facilities containing more than four units, the landlord can elect to establish 1979 as the Base Year. When using 1979 as the Base Year, the Base Year net operating income shall be calculated using actual income and expenses documented by the landlord.

b. 1987

For those rental facilities containing four or fewer rental units, the landlord can elect to establish 1987 as the Base Year. When using 1987 as the Base Year, the Base Year net operating income shall be calculated using actual income and expenses documented by the landlord.

c. 1990

The Base Year can be established as 1990, regardless of the size of the rental facility.

1. The Base Year net operating income for 1990 may be calculated using actual income and expenses documented by the landlord, or

2. The base year net operating income may be imputed based on estimated base year operating expenses. In estimating the base year operating expenses, it shall be presumed that each operating expenses increased by the same percentage as the CPI since the base year. However if data, rate information or other sources of cost information indicate that particular operating expenses increases at a different rate, the estimate of the percentage increase in that expense shall be based on the best available data on increases in that type of expense.

d. 2000

The Base Year can be established as 2000, regardless of the size of the rental facility. When using 2000 as the Base Year, the Base Year net operating income shall be calculated using actual income and expenses documented by the landlord.

e. Alternative Base Year

1. When the rental facility has previously been granted an exemption from rent stabilization in accordance with Takoma Park Code Section 6.20.030(A)2 or Section 6.20.030(A)3, or has otherwise not been subject to the City's rent stabilization requirements, the Base Year shall be the first year that the rental facility becomes subject to the requirements of Takoma Park Code, Chapter 6.20.

2. In the event the required information is not available for any of the permitted Base Year options, a landlord may, at the discretion of the Commission, use an alternative year. Such approval must be secured in writing from the Commission prior to the filing of the Petition.

ii. Base Year Net Operating Income if Prior Hardship or Fair Return Ruling

When a prior "hardship" or Fair Return Rent Increase Petition has been filed and a ruling on the requested rent increase has been made by the Commission, the fair net operating income determined by the Commission shall become the Base Year net operating income for the purposes of reviewing subsequent Petitions.

B. Adjustment of Base Year Net Operating Income

The Commission, in its review of a Petition, may determine that the Base Year net operating income documented by the landlord yielded other than a fair return, in which case the Base Year net operating income may be adjusted. In order to adjust the Base Year net operating income, the Commission must make at least one of the following findings:

i. The base year net operating income was abnormally low due to one of the following factors:

a. The landlord made substantial capital improvements which were not reflected in the Base Year rents and the landlord did not obtain a rent adjustment for these capital improvements;

b. Substantial repairs were made to the rental facility due to exceptional circumstances; or

c. Other expenses were unreasonably high, notwithstanding prudent business practice.

ii. Base Year rents did not reflect market transaction(s), due to one or more of the following types of circumstances:

a. There was a special relationship between the landlord and tenant (such as a family relationship) resulting in abnormally low rent charges;

b. The rents had not been increased for five years preceding the Base Year;

c. The tenant lawfully assumed maintenance responsibilities in exchange for low rent increases or no rent increases; or

d. Other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

C. Determination of Gross Income

i. Gross income for both the Base Year and the Current Year includes the total amount

of rental income the landlord could have received if all vacant rental units had been rented for the highest lawful rent for the entire year and if the actual rent assessed to all occupied rental units had been paid. Gross income includes any fees paid by the tenants for services provided by the landlord.

ii. Gross income does not include income from laundry and vending machines, interest received on security deposits in excess of the amounts required to be refunded to tenants, and other miscellaneous income.

D. Determination of Operating Expenses

i. Allowable operating and maintenance expenses include reasonable expenditures for the following categories of expenses and other reasonable operating costs:

a. Utilities paid by the landlord which are not reimbursed by the tenant;

b. Administrative expenses such as advertising, legal fees, accounting fees, etc;

c. Management fees;

1. Management fees, whether the service is performed by the landlord or the fee is assessed by a professional property management firm, may not exceed 6% of the gross income generated by the rental facility.

2. It shall be presumed that these expenses increased by the percentage increase in the CPI between the Base Year and the Current Year unless there has been a change in the level of management services provided at the rental facility in the interim.

d. Payroll;

e. Property taxes;

f. Licenses, government fees and other assessments;

g. Insurance costs;

h. Maintenance related materials and labor costs, including self-labor costs: Eligible maintenance related expenses include routinely occurring general maintenance and repair costs related to both inside and outside the building, elevator maintenance, plumbing and electrical service, fire protection and smoke detector servicing, grounds maintenance, plastering and masonry repair, carpentry, painting, heating and/or air conditioning repair, roof repairs and tuck pointing;

i. Amortized cost of capital improvements;

1. Capital improvements are additions to or the partial replacement of property that add to the value of the rental facility, appreciably lengthen its life or adapt it to a different use, and are required to be depreciated by the Internal Revenue Code.

2. The total cost of all capital improvements, including the interest allowance permitted pursuant to Takoma Park Code Section 6.20.080.B.8(a)v., shall be amortized over the useful life of the improvement.

3. The length of the amortization period shall be determined at the discretion of the Commission. In determining the length of the amortization period, the Commission may consider generally accepted accounting practices, the Internal Revenue Code, and regulations, guidance, and opinions of the Internal Revenue Service.

j. Self labor expenses;

1. If the landlord or the landlord's family member(s) performs work which does not require a permit under the Montgomery County Code nor the services of a state-licensed contractor, there is a presumption that labor performed by the landlord is unskilled. Such self labor expenses are allowed if documented in accordance with Section 5.B.iii of these Regulations.

A. Self labor shall be charged at rates established by the Commission and included with these Regulations as Exhibit A. Said schedule shall be updated by the Commission on an annual basis and adjusted upward by 100% of the CPI.

B. Notwithstanding the self labor rates, a landlord may receive a greater or lesser allowance for self labor if it is shown that the hourly rates established are substantially unfair or unreasonable in a particular case.

2. For a landlord to receive compensation for skilled labor, the landlord must provide evidence of experience and skills comparable to specialized workers in the trade for which landlord is claiming reimbursement. If the landlord is licensed in a particular craft, the landlord shall be presumed to be skilled in that craft.

ii. Ineligible operating and maintenance expenses which may not be included as expenses in either the Base Year or the Current Year:

a. Any expense for which the landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed upon payments, or any other method;

b. Payments made for mortgage or deed of trust expenses, either principal or interest;

c. Fines resulting from failure to comply with the applicable property maintenance standards set forth in Takoma Park Code Chapter 6.12;

d. Fines resulting from failure to comply with orders issued by the Commission;

e. Damages paid to tenants as ordered by the Commission or a court;

f. Depreciation or other expense items recognized by the federal government but not recognized by the Takoma Park Code;

g. Late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental facility.

h. Membership fees in organizations established to influence legislation and regulations, or organizations that attempt to influence legislation in Takoma Park, Montgomery County, or the State of Maryland, regardless of the purpose of the organization;

i. Contributions to lobbying efforts;

j. Contributions for legal fees in the prosecution of class-action cases;

k. Political contributions for candidates for office;

l. Any expense which the tenant has lawfully paid directly or indirectly;

m. Attorney's fees charged for services connected with the counseling or litigation related to actions brought by the City due to the landlord's failure to comply with applicable housing regulations of the Takoma Park Code Chapter 6 Housing, as amended. This provision shall apply unless the landlord has prevailed in such an action brought by the City.

n. Any expense incurred in conjunction with the purchase, sale, or financing of the rental facility, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.

o. Any other expense that does not benefit the rental facility, such as, but not limited to, the cost of or forming a corporation, partnership or other entity or buying out a stockholder or partner of the landlord.

p. Expenses that are attributable to both the rental facility and any other property shall be allocated between the rental facility and the other property. The documentation of such expenses shall include a statement explaining the allocation and clearly indicating which expenses are being allocated.

iii. Adjustment of operating and maintenance expenses.

The Commission, in its review of a Petition, may adjust the operating and maintenance expenses for a particular year if it finds that the expense(s) is:

a. is not representative; or

b. in the case of Base Year expenses, is not a reasonable representation of average expenditures for that item in the years preceding and following the Base Year; or

c. in the case of Current Year expenses, is not a reasonable projection of future expenditures for that item, said expense shall be averaged with expense levels for other years or amortized or adjusted by the CPI or some other reasonable methodology in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison between the recurring level of the expense(s) in the Base Year and the Current Year.

5. Required Supporting Documentation

A. The Petition shall include all of the information required by these Regulations, and shall contain adequate documentation for both the Base Year and the Current Year.

B. The landlord shall supply the following documentation of operating and maintenance expense items for both the Base Year and the Current Year. Documentation of operating and maintenance expenses is not required if 1990 has been selected as the Base Year and the Base Year net operating income is calculated in accordance with Takoma Park Code Section 6.20.080 (B)6.

i. Copies of bills, invoices, receipts, or other documents that support all reported expense deductions are required. The Commission reserves the right to inspect the rental facility to verify that identified maintenance has been completed and associated costs are reasonable.

ii. Copies of time sheets maintained by the landlord in support all self labor charges. The time sheet must include an explanation of the services rendered and the landlord's calculation of the expense. If the landlord is claiming an expense for his/her skilled labor, a statement substantiating the landlord's skill or a copy of the applicable license is required.

iii. For amortized capital improvement expenses; copies of bills, invoices, receipts, or other documents that support all reported costs are required. The Commission reserves the right to inspect the rental facility to verify that identified capital improvements have been completed and associated costs are reasonable.

iv. All expense documentation shall be organized in sections by line item on the Petition. An adding machine or other printout or tape of each expense shall be attached to the front of the documentation for each line item. The documents shall be submitted to the Commission in the same order as the corresponding amounts on the printout or tape. The total of the documented expenses for each line item on the printout or tape shall be equal to the amount on the corresponding line on the petition.

C. The landlord may elect to provide as supplemental information, the following:

i. Federal income tax forms and schedules which relate to the rental facility and which were filed with the landlord's tax return for the tax return year that is closest to the Base Year;

ii. Federal income tax forms and schedules which relate to the rental facility and which were filed with the landlord's tax return for the tax return year that is closest to the Current Year or any other year which may explain variations in operating expenses;

iii. Federal income tax forms and schedules which support prior year capital improvements;

iv. Upon a finding by the Commission that the net operating income calculated using the financial information included on the landlord's tax return for the Base Year is more accurate than the financial information provided on the petition, the Base Year net operating income shall be re-computed using the financial information on the tax return. This decision shall be made at the Commission's discretion.

6. Petition Procedures

A. Filing of a Fair Return Rent Increase Petition

The Petition Form, and one copy of supporting documents, must be filed with the Department, 7500 Maple Avenue, Takoma Park, MD 20912. Electronic and faxed copies of the Petition Form and supporting documents will not be accepted.

B. Notice of Filing

The Department shall notify each affected tenant of the filing of the Petition within 5 business days of the filing of the Petition, providing each tenant with a copy of the Notice of Filing (Form B), and the Petition (excluding supporting documentation) submitted by the landlord.

C. Decisions on a Petition

i. The Rents Analyst, acting on behalf of the Commission, shall review the Petition and supporting documentation and shall issue a decision (the "Decision") stating the recommended rent increase, if any, to be awarded to the landlord pursuant to the provisions of Takoma Park Code Section 6.20.080.

ii. A draft of the Decision shall be provided to the landlord. The landlord shall have ten business days from the date of the draft to comment on the draft of the Decision. Comments submitted within the comment period shall be reviewed prior to the issuance of the Decision.

iii. The Commission shall, in good faith, endeavor to issue the Decision within 90 calendar days of the filing of the Petition. The landlord's failure to file all necessary documentation or to respond in a timely manner to requests for additional information or supporting documentation may delay the issuance of a Decision.

iv. The Decision shall be mailed to the landlord by regular first-class mail within three business days of its issuance.

v. The Decision shall become the final decision of the Commission if no written objections are filed with the Commission within 30 calendar days of the date of service of the Decision on the tenants by the landlord in accordance with Section D of these Regulations.

D. Required Notice to Tenants

i. If there is a tenants association representing the tenants residing in the rental facility and registered in accordance with Section 14 of the Administrative Regulations established for Takoma Park Code Section 6.16 Landlord Tenant Relations, the landlord shall distribute by regular first-class mail, a copy of the Decision to the president of the tenants association within five business days of the date of the

landlord's receipt of the Decision.

ii. The landlord shall distribute to all affected tenants by regular first-class mail, a copy of the Decision and notice of any rent increase awarded by the Commission within five business days of the date of the landlord's receipt of the Decision.

iii. Notice of any rent increase shall be provided in a form supplied by the Commission and included in these Regulations (Form C).

a. Notice of any rent increase shall include a notice of the right to challenge the Decision within 30 calendar days of the date of service of the Decision.

b. Notice of any rent increase shall be provided a minimum of two months prior to the date the increase is to take effect. The date the rent increase is to take effect shall be determined in accordance with Section 2.E.iii herein. Such notice period shall run concurrently with the tenant's right to challenge the Decision.

iv. The landlord shall certify to the Department as to the date of service of the Decision to the tenants association and affected tenants on a form provided by the Commission and included in these Regulations (Form D). The required certification shall be submitted to the Department within ten business days of the date of service.

C. Challenges to the Decision

i. All challenges to the Decision shall be in writing and shall be filed with the Commission within 30 calendar days of the date of service of the Decision on the party challenging the Decision. The party filing the challenge must identify and attach as exhibits, any documents that the party wishes the Commission to consider in ruling on the challenge..

ii. The Department shall distribute a copy of all challenges filed with the Commission to the landlord and the affected tenants or the president of any registered tenants association within five business days of the end of the 30-day challenge period.

D. Ruling on a Challenge

i. The Commission, represented by a panel of three Commissioners, shall rule on the challenge(s).

ii. The Commission, at its discretion, may hold a hearing on the challenge(s) to a Decision.

a. If the Commission holds a hearing on a challenge(s) to a Decision, the hearing

shall be conducted by a Hearing Panel consisting of three (3) Commissioners. One Commissioner will be appointed the Presiding Commissioner and shall have the authority to conduct the hearing in an equitable and expeditious manner, to regulate the course of the hearing, and to maintain order in accordance with the Administrative Regulations established for Takoma Park Code Section 6.24, Commission on Landlord and Tenant Affairs. Said regulations shall be provided upon request and made available on-line at http://www.takomaparkmd.gov.

b. Evidence and testimony presented at the hearing must be relevant to the challenge(s) filed in writing with the Commission. Parties may not present any documents that were not attached as exhibits to their written challenge or submitted to the Commission prior to the issuance of the Decision.

iii. The Commission shall state its findings of fact and conclusions of law in a written Opinion and Order, which shall constitute the final decision of the Commission.

a. The Commission may, at its discretion, retroactively increase or decrease the rent for each unit. The landlord may be required to refund any overpayment made by the tenants prior to the issuance of the Opinion and Order or require the tenants to pay additional rent to compensate the landlord for any subsequent underpayment.

b. The Commission's Opinion and Order shall be prepared in accordance with the Administrative Regulations established for Takoma Park Code Section 6.24, Commission on Landlord and Tenant Affairs.

c. The Commission shall provide the landlord with a copy of the Opinion and Order.

d. The Landlord shall, by regular first-class mail, provide affected tenants and the president of any registered tenants association with a copy of the Commission's Opinion and Order within five business days of the date of the landlord's receipt of the issuance of the Opinion and Order.

e. The landlord shall certify to the Department as to the date of service of the Opinion and Order on a form provided by the Commission and included in these Regulations (Form D). The required certification shall be submitted to the Department within ten business days of the date of service.

SELF LABOR RATES (HOURLY)

Year	Unskilled	Skilled	Year	Unskilled	Skilled
1979	$6.00	$10.00	1997	$14.81	$26.21
1980	$7.00	$11.00	1998	$14.97	$26.50
1981	$7.00	$12.00	1999	$15.27	$27.00
1982	$8.00	$13.00	2000	$15.96	$28.22
1983	$9.00	$14.00	2001	$16.68	$29.48
1984	$9.00	$15.00	2002	$17.43	$30.81
1985	$9.00	$15.00	2003	$18.21	$32.20
1986	$10.00	$16.00	2004	$19.03	$33.65
1987	$10.00	$16.00	2005	$19.89	$35.16
1988	$10.00	$16.00	2006	$20.78	$36.74
1989	$12.00	$20.00	2007	$21.72	$38.40
1990	$12.00	$20.00	2008	$22.75	$40.22
1991	$13.00	$23.00	2009	$23.82	$42.11
1992	$13.33	$23.57	2010	$24.37	$43.08
1993	$13.75	$24.33	2011	$24.37	$44.07
1994	$14.03	$24.82	2012	$25.68	$45.39
1995	$14.31	$25.32	2013	$26.27	$46.66
1996	$14.69	$25.99	2014	$26.64	$47.31
			2015	$27.07	$48.08

Labor rates for future years shall be increased by a corresponding increase in the Consumer Price Index.

WORKSHEET
Calculation of Allowable Rent Adjustment
For Illustrative Purposes Only

Step 1	**Calculation of Base Year Net Operating Income (NOI)**	
a.	Total Gross Income in Base Year (F7)	
b.	Total Operating Expenses in Base Year (G26)	
c.	Net Operating Income in Base Year (F7-G26)	
Step 2	**Calculation of Current Year Net Operating Income (NOI)**	
d.	Total Gross Income in Current Year (F7)	
e.	Total Operating Expenses in Current Year (G26)	
f.	Net Operating Income in Current Year (F7-G26)	
Step 3	**Calculation of Fair Net Operating Income (FNOI)**	
	If 1990 is used as the base year	
g.	FNOI = Base Year NOI x 1.42 x (current CPI/133.5)	
	(for example if current CPI=140, then FNOI = $100,000 x 1.42 x (140/133.5) = $148,914)	
	If 2000 is used as the base year	
h.	FNOI = Base Year NOI x 1.17 x (current CPI/133.5)	
	If 1979 is used as the base year	
i.	FNOI = Base Year NOI x 2.35 x (current CPI/133.5)	
	If 1987 is used as the base year	
j.	FNOI = Base Year NOI x 1.61 x (current CPI/133.5)	
	If a different year is proposed as base year contact staff for calculation of NOI adjustment over base year	
Step 4	**Calculation of Allowable Rent Increase**	
k.	Allowable Increase = Fair Net Operating Income – Current NOI	
l.	Allowable Increase/Unit/Month = Allowable Increase For Whole Property/No. of Units/12	

CPI – Consumer Price Index-All Urban Consumers-All Items-Washington-Baltimore (Nov. 1996=100) (Series ID: CUURA311SAO) available on the website of the Bureau of Labor Statistics or by telephone automated faxback of CPI charts (see attached). If in Part D of the Fair Return application, you chose calendar year, use the "annual" CPI. If you chose fiscal year, use the "November" CPI.

Revised 6/2014

PRELIMINARY ADMINISTRATIVE DECISION

FAIR RETURN RENT INCREASE PETITION
HILLWOOD MANOR APARTMENT COMPLEX

(7101, 7103, 7105 New Hampshire Ave.; 1100, 1102, 1106, 1108, 1110 Linden Ave., 1200, 1201, 1202, 1204, 1210, 1212, 1214, 1216, 1218, 1206, 1208, 1220, 1222 Myrtle Ave.; 1101, 1103, 1105, 1107, 1109, 1111, 1113 Hillwood Ct.)

(Case # 2011- 15-L)

(Takoma Park, Maryland)

TIME PERIODS FOR RESPONSES TO PRELIMINARY DECISION

The landlord and the tenants shall have 30 calendar days from the date of service of the Official Preliminary Decision on the tenants by the landlord to file written objections. If no objections are filed within this period this Decision shall become the final decision of the Commission.

Objections should be mailed or submitted in person to: Commission on Landlord-Tenant Affairs, c/o Jean Kerr, 7500 Maple Avenue, Takoma Park, MD 20912 or submitted by email to: JeanK@takomagov.org

Kenneth K. Baar, Ph.D.
Rent Analyst on behalf of the Commission
June 28, 2012 / Revised July 18, 2012

(This decision was revised twice - first on June 28 on the basis of new information about operating costs and subsequently on July 18, 2012, pursuant to a revised statement of rental income submitted by the owner on July 9, 2012.)

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Summary

Apartment owners have a constitutional right to a fair return under rent regulation. Under the Takoma Park rent stabilization ordinance fair return is defined as base period net operating income adjusted by 70% of the percentage increase in the Consumer Price Index (CPI) from the base year to 2007 and 100% of the percentage increase in the CPI since 2007. Owners have several options in the selection of a base year and may impute base year operating expenses instead of using actual base year expense data.

In this case, the apartment owner used 1990 as a base year and in accordance with regulations imputed base year operating expenses of 60% of rental income.

From 1990 to 2010, the average monthly rent in the complex increased from $557.60 to $836.04. In 2010, the operating expenses that are included as allowable under a fair return analysis were $308,743 over the level imputed for 1990, an increase of $276.65 / apartment unit / month compared with rent increases of $278.44 / apartment unit/month during this period.

While the rent increases were adequate to cover operating cost increases, they did not permit the amount of growth in net operating income required to provide a fair return. From 1990 to 2010, net operating income for the complex increased by $8,236 (from $248,911.40 to $257,146.80), the equivalent of $7.38 / apartment unit / month. In percentage terms the net operating income increased by 3.3%.

Under the fair return standard, the apartment owner is entitled to a net operating income which is 57% above the base year level. An additional increase in annual rental income of $133,644.10, an adjustment equal to 14.3% of the legal rent as of December 2010, is required to meet this standard. (See table below.)

The increase calculation is to be based on 14.3% of the allowable rent as of December 2010, rather than the current rent ceilings which include increase allowances for 2011 and 2012. The increases are in addition to the annual increases allowed since 2010 (The rents of most units were increased by 4.17% pursuant to the 2011 and 2012 annual increases allowed since December 2010.) Calculations of those amounts are set forth in Appendix C.

Since this decision is a Preliminary Decision, the issues it considers may be addressed in a hearing before a final decision is reached, if a hearing is requested by either party. New evidence may be submitted prior to and during that hearing and adjustments may be made on the basis of testimony and new evidence.

This Preliminary Decision, which is pursuant to the Rent Stabilization ordinance, does not take into account issues related to the adequacy of the maintenance or services in the complex. Remedies and rent adjustments related to these issues are available under other portions of Title 6 of the Takoma Park Municipal Code.

Calculation of Fair Return Rent Adjustment

Base Year NOI	
Rental Income	622,278.50
Operating Expenses (60% of rental income)	373,367.10
NOI	248,911.40
Fair NOI Adjustment	
Indexing - Pct. Adjustment of Base Year NOI	57.0%
Fair NOI - (Base Year NOI Adjusted by Pct Indexing Adjustment) (248,911.40 x 1.57)	390,790.90
Current NOI	257,146.80
Rent Adjustment (=Fair NOI - Current NOI)	133,644.10
Annual Rental Income (excl. air-condition elec. cost passthru)	933,016.90
Percentage Rent Adjustment (133,644.10 / 953,764)	14.3%
Average Increase / Unit / Month	$121.05

The Analyst

The analyst has a Ph.D in urban planning and is an attorney.

His articles on fair return issues have been cited in numerous California, Massachusetts, and New Jersey appellate court opinions. Over the past 30 years, he has served as a consultant to thirty California jurisdictions on issues related to rent stabilization and has prepared fair return reports for twenty cities.

The analyst has published extensively on housing and real estate issues. Also, he has served as a consultant to the World Bank and U.S. AID on policy issues in East European nations undergoing economic transition and on two occasions has been a visiting Fulbright professor in East Europe.

Appellate Court Opinions Relying on the Testimony of Kenneth K. Baar

Rainbow Disposal Co., Inc. v. Mobilehome Park Rental Review Board, 64 Cal. App.4th 1159 (1998) California Court of Appeal

MHC Operating Limited Partnership v. City of San Jose, 106 Cal. App.4th. 204 (2003) California Court of Appeal

Hillsboro Properties v. Public Utilities Commission, 208 Cal. App. 4th 246 (2003)

Berger Foundation v. Escondido, 127 Cal. App.4th 1 (2005) California Court of Appeal

Los Altos El Granada Investors v. City of Capitola, 139 Cal.App.4th 629 as modified by 140 Cal.App.4th 135c (2006) California Court of Appeal

Besaro Mobile Home Park v. City of Fremont, ___ Cal. App. 4th. ___ (March 2012, No. A130753) California Court of Appeal

Appellate Court Opinions Citing Law Review Articles of Kenneth Baar on Rent Regulations

Westchester West No.2 Limited Partnership v. Montgomery County, 246 Md. 448, 348 A.2d. 856 (1975) Maryland Court of Appeals

Helmsley v. Borough of Fort Lee, 78 N.J. 200; 394 A.2d. 65 (1978) New Jersey Supreme Court, appeal dismissed, 440 U.S. 978, 99 S.Ct. 1782, 60 L.Ed. 2d. 237 (1979)

Fisher v. City of Berkeley, 37 Cal.3d. 644 (1984) California Supreme Court; affirmed, 475 U.S. 260, 106 S.Ct. 1045, 89 L.Ed.2d. 206 (1986)

Oceanside Mobile Home Park Owners Association v. City of Oceanside, 157 Cal.App.3d. 887 (1984) California Court of Appeal

Mayes v. Jackson Township, 103 N.J. 362; 511 A.2d. 589 (1986) New Jersey Supreme Court; cert. denied, 479 U.S. 1090, 107 S.Ct. 1300, 94 L.Ed. 2d. 155 (1987).

Yee v. Mobilehome Park Rental Review Board, 17 Cal. App. 4th 1097 (1993) California Court of Appeal

Palomar Mobilehome Park v. City of San Marcos, 16 Cal.App.4th 481 (1993) California Court of Appeal

Guimont v. Clarke, 121 Wash. 2d. 586; 854 P.2d.1 (1993) Washington Supreme Court; cert. denied, 510 U.S. 1176, 114 S.Ct. 1216, 127 L.Ed.2d. 563 (1994)

Kavanau v. Santa Monica Rent Control Board, 16 Cal.4th. 761 (1997) California Supreme Court); cert. denied, 522 U.S. 1077, 118 S.Ct. 856, 139 L.Ed. 2d. 755 (1998)

Rainbow Disposal Co., Inc. v. Mobilehome Park Rental Review Board, 64 Cal.App.4th 1159 (1998) California Court of Appeal

Quinn v. Rent Control Board of Peabody, 45 Mass. App.Ct. 357, 698 N.E.2d.911 (1998, Massachusetts Court of Appeal)

Galland v. City of Clovis, 24 Cal.4th 1003 (2001) California Supreme Court; cert. denied, 534 U.S. 826, 122 S.Ct. 65 (2001)

MHC Operating Limited Partnership v. City of San Jose, 106 Cal. App.4th 204 (2003) California Court of Appeal

Berger Foundation v. Escondido, 127 Cal.App.4th 1 (2005) California Court of Appeal

T.G. Oceanside L.P. v. City of Oceanside, 156 Cal. App.4th. 1355 (2007) California Court of Appeal

I. Introduction

This section provides a background discussion of the fair return provisions in the Takoma Park rent stabilization ordinance and constitutional doctrines regarding fair return.

Section II of the report sets forth a fair return analysis in this case. Section III contains a projection of the rent increase required to provide a fair return.

A. The Ordinance

The Takoma Park rent stabilization ordinance permitted annual rent increases equal to 70% of the percentage increases in the Consumer Price Index (CPI) from 1992 to 2007, and has permitted annual rent increases equal to 100% of the percentage increase in the CPI since 2007.

In addition, apartment owners may petition for additional rent increases pursuant to a fair return standard. The right to a fair return under regulation is a constitutional right. In the Takoma Park ordinance, fair return is defined as the base period net operating income adjusted by 70% of the percentage increase in the CPI from the base year to 2007 and 100% of the percentage increase in the CPI since 2007. (This type of standard is known as a "maintenance of net operating income" [MNOI] standard.)

Under the ordinance, an owner may select 1979, 1990, or 2000 as the base year in a fair return petition and may elect to impute base year expenses if 1990 is used as the base year.[1]

B. Judicial Guidelines for Fair Return

Since this is only the second fair return application that the Commission on Landlord-Tenant Affairs has received in several years, some discussion of judicial standards regarding fair return under rent stabilization is appropriate.[2]

Most of the judicial precedent regarding fair return under rent stabilization comes from Massachusetts, New Jersey, and California appellate court decisions since 1970 and federal court opinions regarding emergency rent regulations during World War II.

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1 Sec. 6.20.090. B.2.

2 For background discussion of fair return issues see Baar, "Guidelines for Drafting Rent Control Laws: Lessons of a Decade," 35 *Rutgers Law Review*, 723-885 (1983)[section on fair return, pp. 781-817] and Baar, "Fair Return under Mobilehome Park Space Rent Controls: Conceptual and Practical Approaches:, 29 *Real Property Law Reporter* 333 (Sept. 2006, California Continuing Education of the Bar [CEB])

Fair return is a complex concept. In 1993, a California Court of Appeal noted the complexity of the fair return issue:

> **What appears at first blush to be a simple question of substantial evidence turns out to be something considerably more complex when one realizes that the formula for determining a "fair return" is hotly debated in economic circles and has been the subject of sparse, scattered, and sometimes conflicting comment by appellate courts. In particular, only the broad outlines have been discussed in California decisions.[3]**

The courts have repeatedly reiterated that: **"a governmental entity may choose to regulate pursuant to any fairly constructed formula"** and that: **"[r]ent control agencies are not obliged by either the state or federal Constitution to fix rents by application of any particular method or formula. ... The method of regulating prices is immaterial so long as the result achieved is constitutionally acceptable."[4]**

The Courts have also repeatedly reiterated the principle that there is a "range" of rents that may be considered reasonable. One California Court of Appeal, relying on precedent from the U.S. and New Jersey Supreme Courts, explained:

> **There is a range of rents which can be charged, all of which could be characterized as allowing a "just and reasonable" return. (See Hutton Park Gardens v. Town Council (1975) 68 N.J. 543 [350 A.2d 1, 15] [the terms "just and reasonable" and "confiscatory" are not precise formulations]; Power Comm'n v. Pipeline Co. (1942) 315 U.S. 575, 585 [86 L.Ed. 1037, 1049, 62 S.Ct. 736, 743] [there is a zone of reasonableness which is higher than a confiscatory rate].) Thus, many decisions by rent control boards will focus on the issue of where the requested increases fall within the range of possible rents -- all of which rents would allow the owner a return sufficiently "just and reasonable" as to not be constitutionally confiscatory.[5]**

While the courts have held that no specific formula is required and that a range of rents may be considered reasonable, they have set forth some criteria for fair return. However, those guidelines have been largely theoretical - such as "commensurate with returns ... in other enterprises having comparable risks" or based on a balance of the "interests of the investor" and the "interests of the consumer."

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3 *Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.*, 16 Cal.App.4th 481, 484 (California Court of Appeal)

4 *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd.* 64 Cal.App.4th 1159, 1172 (1998, California Court of Appeal)

5 *San Marcos Mobilehome Park Owners' Assn. v. City Of San Marcos*, 192 Cal.App.3d 1492, 1502-1503 (1987, California Court of Appeal)

In 1975, the New Jersey Supreme Court set forth general criteria for a fair return which have been included in subsequent fair return opinions by California appellate courts.

> **...the return should be one which is generally commensurate with returns on investments in other enterprises having comparable risks. Determination of what level of return is 'just and reasonable' involves evaluation not only of the interests of the investor but also of the interests of the consumer and of the general public sought to be advanced by the regulatory legislation.[6]**

In 1997, the California Supreme Court reiterated longstanding principles for fair return that have been set forth in utility cases and rent control fair return cases, stating that fair return: 1. "**involves a balancing of the investor and consumer interests,**" 2.should be a "**return ... commensurate with returns on investments in other enterprises having corresponding risks.**", and **3. "should be sufficient ... to attract capital.**"[7]

In 2001, the California Supreme Court held that the concept of "fair rate of return" is a legal term which refers to a "**constitutional minimum**", although the terminology is borrowed from finance and economics. The return must "allow a [property owner] to continue to operate successfully."

> **Although the term "fair rate of return" borrows from the terminology of economics and finance, it is as used in this context a legal, constitutional term. It refers to a constitutional minimum within a broad zone of reasonableness. As explained above, within this broad zone, the rate regulator is balancing the interests of investors, i.e. landlords, with the interests of consumers, i.e. mobilehome owners, in order to achieve a rent level that will on the one hand maintain the affordability of the mobilehome park and on the other hand allow the landlord to continue to operate successfully. [cite omitted]. For those price-regulated investments that fall above the constitutional minimum, but are nonetheless disappointing to investor expectations, the solution is not constitutional litigation but, as with nonregulated investments, the liquidation of the investments and the transfer of capital to more lucrative enterprises.[8]**

In *Fisher v. City of Berkeley*, the California Supreme Court identified five types of fair return standards under rent controls: (1) cash flow/return on gross rent; (2) return on equity (investment); (3) return on value; (4) percentage net operating income; and (5) maintenance of net operating income.[9] The Court rejected the apartment owner's contention that a fair return on value was

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6 *Hutton Park Gardens v. Town of West Orange*, 350 A2d. 1, 15 (1975, New Jersey Supreme Court).

7 *Kavanau v. Santa Monica Rent Control Board*, 16 Cal.4th 761, 772 (1997, California Supreme Court)

8 *Galland v. Clovis*, 24 Cal.4th 1004, 1026 (2001)

9 *Fisher v. City of Berkeley*, 37 Cal.3d. 644, 680 (1984, California Supreme Court)

constitutionally required and concluded that this type of standard is "circular" in the context of a rent regulation, since value depends on the rent that is permitted.[10]

An exception to the theoretical nature of the judicial guidelines has been the concept of a "floor" for fair return - the preservation of prior levels of net operating income. In 1975, the New Jersey Supreme Court ruled that: "At some point, steady erosion of NOI becomes confiscatory."[11] Subsequently, a California Court of Appeal ruled in 1983[12] and the State Supreme Court ruled in 1984,[13] that net operating income may not be frozen. While the California courts have held that net operating income may not be frozen, they have rejected the contention that net operating income must be allowed to increase at the full rate of increase in the CPI (the rate of inflation) and have upheld standards which provided for indexing net operating income by 40% or 50% of the percentage increase in the CPI.[14] They have not set forth a minimum rate at which net operating income must be allowed to increase.

Rationale for the Use of an MNOI Standard In a Fair Return Case

There are strong rationale for the use of an MNOI standard. The MNOI standard insures that rent increases are adequate to cover operating cost increases and provide growth in net operating income.

The MNOI type of standard may be contrasted with a "rate of return" standard, which designates a particular rate of return on overall investment or equity or value as fair. The problem with rate of return standards is the reality that rates of return - ratios of income to cash investment, current equity, overall investment, and value - vary among properties depending on such factors as length of ownership and market expectations about appreciation. Therefore, rather than designating a particular ratio as fair, MNOI standards pursue the best available alternative, which is to preserve prior NOI levels, taking into account inflation since the base period. Under most of the MNOI standards, a pre-rent control net operating income is seen as reasonable base because it is based on the market, rather than regulation. The standard avoids the problems of circularity associated with return on investment standards and cannot be manipulated through increased investments.

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10 Id.

11 *Helmsley v. Borough of Fort Lee*, 394 A.2d. 65, 76 (1978, New Jersey Supreme Court)

12 *Cotati Alliance for Better Housing v. City of Cotati*, 148 Cal.App.3d 280,293 (1983, California Court of Appeal)

13 *Fisher v. City of Berkeley*, 37 Cal.3d. 644, 681 (1984, (California Supreme Court)

14 *Berger v. Escondido*, 127 Cal.App.4th 1, 13-15 (2005, California Court of Appeal); *Stardust Mobile Estates v. San Buenaventura*, 147 Cal.App.4th 1170, 1182 (2007)

In *Oceanside Mobilehome Park Owners' Ass'n v. City Oceanside*[15] and *Baker v. City of Santa Monica*[16], California appellate courts upheld maintenance of net operating income fair return standards. In Oceanside the Court found that the fair return standard was reasonable because it allowed an owner to maintain prior levels of profit.[17]

In 1993, the California Court of Appeal commented: "The maintenance-NOI approach has been praised by commentators for both its fairness and ease of administration. ... It was approved by this court in Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside [cite omitted]."[18]

In Rainbow Disposal v. Mobilehome Park Rental Review Board) the Court concluded that the MNOI formula is a "fairly constructed formula" which provides a ""just and reasonable" return on ... investment," even if another formula may provide a higher return.[19]

II. Hillwood Manor Rent Increase Application

A. Rental Income

The Hillwood Manor apartment complex has a total of 93 apartment units spread among multiple buildings.

In this case, the owner elected to use 1990 as the base year and, in lieu of providing actual 1900 income and expense data, elected to use the option of imputing base year net operating income as 40% of base year income. (See Ordinance Sec. 6.20.90.B.6) (When this election is made operating expenses equal 60% of income.)

The application indicates that the base period rental income was $632,571.72; however, this analysis uses the staff estimate of rental income in December 1990 of $622,571. The staff estimate is based on 1991 rental income in its data base, with adjustments to exclude rent increases in the first half of 1991.

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15 157 Cal.App.3d.887; 204 Cal.Rptr.239 (1984).

16. *Baker v. City of Santa Monica*, 181 Cal.App.3d. 972 (1986, California Court of Appeal) .

17 157 Cal.App.3d.887, 902-905; 204 Cal.Rptr.239, 249-251 (1984) .

18 *Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.*, 16 Cal.App.4th 481, 486 (1993, California Court of Appeal))

19 *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd,*. 64 Cal.App.4th 1159, 1172 (1998, California Court of Appeal)

In the original application, the landlord projected an annual current rent of $978,432. In July 2012, after the Preliminary Decision was issued, the Owner submitted a new rent roll for 2010, which consisted of lower amount of either the average rents in 2010 or the allowable rents computed by the City staff. In the case of two units, the allowable rent levels set forth in a rollback order of the Commission on Landlord Tenant Affairs (COLTA) were used, rather than the actual rents. On this basis the 2010 annual rent was calculated to be $933,016.

Calculation of actual and allowable rental income has been complicated by disputes about allowable rents, COLTA rent reduction orders in overcharge cases, and alleged discrepancies between actual rent charges and the rents reported by the Owner in annual reports to the Housing Office.

From December 1990 to December 2010 rents increased by 50%, from an average of $557.60 to an average of $836.04, compared to a 77% increase in the CPI during this period.

Heat, gas, water, electricity, and trash collection services are covered by the rent rather than separately charged to the tenants. Electricity costs for air-conditioning are passed through to the tenants.

B. Operating Expenses

1. Overview

Applicants are required to submit operating expense information for the "current" year and the two prior years. In this application 2010 is used as the Current Year.

Under the ordinance, a fair return analysis takes into account "reasonable" operating expenses in a manner that projects the ongoing reasonable operating expenses of a property.

> When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses. (Section 6.20,090.B.8.c)

The reported operating expense levels for 2010 were substantially higher than the expense levels for the two prior years. The reported operating expenses in 2010 totaled $834,866.58, compared with $639,297 in 2008 and $698,255 in 2009. The operating cost increase from 2008 to 2010 is $195,569 (30.6% or $175.24/ unit / month.)

$152,283 of the $195,569 increase from 2008 to 2010 was attributable to an increase in legal expenses. $23,215 of the increase was attributable to an increase in painting expenses.

Utility expenses - gas, electricity, and water and sewer - decreased from 2008 to 2010. The aggregate cost for these items decreased by $23,352. (See p. 13, Table 1 of this report, categories G5, G6, and G7).

2. Modifications to Cost Calculations for the Purposes of a Fair Net Operating Income Analysis

In this analysis several significant modifications are made to the operating expenses reported by the landlord.

a. Legal Expenses

Allowed expenses in a fair return calculation must be "reasonable". "Operating expenses means all reasonable operating and maintenance expenses." (Section 6.20.090.B.8). Also, they must reflect recurring legal expense levels, since the rent increase calculation is a permanent (annually recurring) adjustment to the allowable rent ceiling. (See Section 6.20,090.B.8.c set forth on p.6 of this report.)

The level of legal expenses in 2010 of $177,540, was extraordinary compared to the preceding years. It appears that the bulk of the exceptional cost level in 2010 was associated with the bankruptcy proceedings and legal challenges to the constitutionality of the ordinance.

In 2008 and 2009 respectively, the legal expenses were $23,357 and $63,372. Also, in 2011, the legal expenses were far above the levels in 2008 and 2009. In 2011, the legal expenses billed by one firm totaled $138,840.66. However, the 2011 legal expenses consisted mainly of expenses that should not be considered or should be amortized in a fair return analysis.

The attorney for the Owner provided the following breakdown of the $138,840.46 in legal expenses billed by his office in 2011.

Legal Expenses in 2011 - Portion Billed by Gill, Sippel & Gallagher[20]

Expense Category	*Amount*
Preparing & Filing Fair Return Petition	$74,092.77
Appeal of COLTA Punitive Damages Decision to Circuit Court - reversal obtained	7,002.50
Bankruptcy Proceedings	50,273.19
COLTA proceedings - rent overcharges	7,472.50

20 Letter from William Day, Gill, Sippel, & Gallagher to City, June 7, 2012.

Fair Return Petition Expenses

There are no standardly available guidelines for measuring reasonable expenditures for a fair return petition. However, the reported expense level seems extraordinary compared to the expenditures in fair return cases under rent regulations in California. The typical legal cost for filing petitions under similar fair return standards under California local rent stabilization ordinances has been in the range of $30,000.[21] Typically these costs, which are usually for properties with more than one hundred units, have included the submission of attorney memo briefs and attendance in at least one public hearing. In contrast, the petition submission in this case was limited to providing income and expense documentation for several years and providing responses to City inquiries regarding the income and expense information provided.

Several rounds of inquiries of the Owner were required. However, it appears that these difficulties were associated with the level of organization of the records, rather than the burdens associated with the petition process. These appear to be matters that ordinarily could have been largely handled by an Owner's administrative staff.

In any case, it would be appropriate to amortize legal expenses associated with the petition process since typically they are not annually recurring costs. Subject to the qualification that there is no single answer as to the annual amount that should be allowed for this expenditure, this analysis allows for an allowance of $30,000 for legal expenses associated with the petition, with an annual amortized allowance of $5,940.36, based on an amortization period of five years at 5.25%.

Legal Costs of Bankruptcy Proceedings

Expenses related to the landlord's bankruptcy proceeding totaled $50,273.19 in 2011. Since the landlord has had a right under the fair return provisions in the ordinance to cover operating cost increases and has had a right to petition for preemption and rent setting according to HUD's preemption standards it would not be reasonable to passthrough the bankruptcy costs to the tenants.

While the rent stabilization ordinance limited annual rent increases, the net operating income of the property was $313,656.96 in 2008 and $269,964.63 in 2009, according to the Owner's calculations. In 2010, the net operating income was only $115,548.90 according to the Owner's calculations. However, as indicated, operating expense levels were exceptionally high in 2010.

Under these circumstances, it would not be reasonable to allow the bankruptcy costs as an operating costs since the bankruptcy was the outcome of a net operating income level inadequate to meet the debt service obligations, rather than a rental income inadequate to cover operating expenses. The fair return standard provides for growth in net operating income tied to the percentage increase in the CPI. This growth in NOI provides for additional income available for debt service. Therefore,

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21 Copies of analyses of legal expenses for fair return petitions in California rent stabilization cases will be available from staff.

if the net operating income is increased in accordance with the fair return standard, the inadequacy of the net operating income should not be a basis for a rent adjustment.

Appeal of COLTA Punitive Damages Decision to Circuit Court - reversal obtained

A portion of the landlord's legal expenses over the past three years, a total of $16,777.48, is related to a successful defense against a city award of punitive damages for illegal entry.[22] In 2011, the legal expenses associated with these proceedings were $7,002.50. The regulations specifically provide that legal expenses shall be taken into account in enforcement actions brought by the City in which the landlord prevails.

> 4. Standards Used in Determining a Fair Return Rent Increase
>
> D. Determination of Operating Expenses
> .....
> ii. Ineligible operating and maintenance expenses which may not be included as expenses in either the Base Year or the Current Year:...
>
> m. Attorney's fees charged for services connected with the counseling or litigation related to actions brought by the City due to the landlord's failure to comply with applicable housing regulations of the Takoma Park Code Chapter 6 Housing, as amended. This provision shall apply unless the landlord has prevailed in such an action brought by the City. (Regulations section

In this analysis one-third of the legal expenses associated with this proceeding are attributed to 2010. Since this amount is incorporated into the ongoing operating expenses for the purposes of the MNOI analysis, the full amount is recovered within a period of three years.

Other Legal Expenses

$6,100 in legal expenses were related to the preparation of tax returns and $1,232 was related to rent collection actions (billed by the Ammons law firm).

Overall Allowance for Legal Expenses

In this analysis, the allowed legal expenses are set at the 2008 level, plus one-third of the costs which are associated with obtaining a reversal of the punitive damages award, plus the amortized cost of the rent increase application. The total of these amounts is $35,784.10 (petition costs

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22 The following invoices relate to the code enforcement action by the City in which the landlord prevailed. June 2, 2009 - $4,292.48; September 4, 2009 - $4,135.19; October 2, 2009 - $7,390.81; May 3, 2010 - $959.

amortized: $5,591.49) + (one third cost appeal punitive damages award: $6,834.95) + (2008 legal expenses: $23,357)

At this point it does not appear that the owner has presented clear evidence of the level of annually recurring legal costs.

b. Maintenance and Repair Costs

i. Painting Expenses

The painting expenses of $48,350 in 2010 are nearly two and a half times the norm for garden apartment buildings in the Washington D.C. area. The Institute of Real Estate Management (IREM) publishes annual reports setting forth income and expense data for professionally managed buildings in the U.S., with data sets by municipal area and type of building.[23] In the IREM sample of 82 garden apartment buildings in the Washington, D.C. area, the average annual painting expenditure per apartment unit was $220,[24] compared to Hillwood's expenditure of $519.89 per apartment unit in 2010. Also, the 2010 painting expenditure for Hillwood was double the total for 2008. (See p. 13, Table 1 of this report, category G11)

In regards to painting expenses the Owner noted: "Hillwood had a large number of turnovers in 2010. ... In addition, the Hillwood units are larger than the average one or two bedroom garden apartments in the area. In addition, the cabinets require painting on turnover increasing the costs. ... the management of the Colebrook apartment complex ... was paying $450 per unit and the units did not require that the cabinets be painted."[25]

The average annual painting expenditure for 2008 through 2010 was $35,350. For the purposes of this analysis this average is used. This amount, in lieu of using the actual amount for 2010, takes into account that the turnover rate in 2010 was higher than average and that the allowance of $35,350 is equal to $374/apt./year, which is still well above the industry annual average of $220 for Washington DC area garden apartments in the IREM sample.

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23 Institute of Real Estate Management (National Ass'n of Realtors), 2011 Income/Expense Analysis: Conventional Apartments (Chicago) [report based on 2010 data]

24 Id. at p. 116.

25 See letter from Thomas Sippel, Gill, Sippel & Gallagher, to City, May 11, 2012, p. 2.

In response to a City Survey a substantial portion of the responding tenants reported move-in dates which differed from those reported in the rent increase petition.

Overall Maintenance and Repair Expenses

Maintenance and repair expenses of $1,023 per apartment unit were approximately four times the average of $239 for Washington D.C. area garden apartment buildings reported in the IREM sample. Overall national data by age of building indicates that the average for buildings constructed before 1980 ranges up to 50% higher. However, the data based on age of building is not broken down by region; therefore, some of the differences may be attributable to regional factors as well as age.

In addition, the 2010 maintenance and repair expenses were 41% above the total for 2009. Approximately $59,000 out of $95,163.77 was for plumbing and heating related work, compared to $42,859 in 2008 and $34,791 in 2009.

Heating System Maintenance Expenses and Heating Fuel Expenses

A substantial portion of the plumbing and heating work is related to maintenance and replacements in the steam heating system. In addition, the Owner reported that in 2011, $74,000 was spent on the replacement of the two boilers.[26]

In light of the substantial expenses in 2010 for the system and the owner's report of the expenditure for the new boilers in 2011, the City employed a contractor with expertise about boiler systems to inspect the system and provide estimates of the costs for necessary upgrading and maintenance of the system.

At least two-thirds (at least $64,000 out of $92,475) of the annual gas expenditures is attributable to the steam heating system.[27] The contractor estimated that heating gas bills would be cut by more than one-third if temperature control valves (thermostats) were installed on each radiator.[28] This would amount to a saving of $21,000 to $32,000 year. The contractor indicated that life expectancy of the valves would be in the range of 10 years and the cost of each valve would be $325. The apartment owner has indicated that there are approximately 497 radiators in the building.

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26 See letter from Thomas Sippel, Gill, Sippel & Gallagher, to City, May 11, 2012, p. 1

27 This conclusion is based on a review of the gas company invoices for the account that served the boiler system. (Account # 2416050520, invoices under category G5 in the owner's submissions of 2010 operating expenses. The invoices for January through November total $54,235.94. This total excludes the December which this author could not locate. The bills for the other winter months exceeded $10,000 on the average.)

28 The inspection report is included as Appendix B of this report. In addition, the contractor provided oral comments to this author and City staff.

At a cost of $325. radiator the overall cost would be $161,525. If this cost was amortized over a ten year period with 7% interest, than annual payments would be $22,505.31.

Also, the contractor found that the pipes in the system are in poor condition. He stated this upgrading could take place on a piecemeal basis over the coming years. According to the estimates, the overall cost of replacing all of the pipes would be in the range of $300,000 to $400,000.

c. Calculation of Overall Operating Expenses and Net Operating Income

The following table contains the income and expense data provided by the applicant and the adjustments made to that data for the purposes of a fair return analysis. In this analysis, the projected operating expense total for 2010 is $682,110 compared to the $834,866 total projected by the applicant.

Table 1

Income, Operating Expenses, and Net Operating Income

(adjustments of applicant's projections in shaded cells)

		1990	2008	2009	2010	2010 adjusted (adjusted amounts in shaded cells)
	units	93				
	INCOME	622278.50	949992.00	965700.00	978432.00	933016.90
	Rent Per Unit/Month	557.60				836.04
	Annual Rent					
	Air Conditioning		2962.50	2520.00	6240.00	6240.00
	TOTAL INCOME	622278.50	952954.50	968220.00	939256.90	939256.90
	OPERATING EXPENSES					
G2	Management Fees		89905.18	91884.97	95340.45	95340.45
G3	Prof. Mgmt Firm					
G4	Self-Labor					
	Subtotal Administrative					
G5	Natural Gas		108652.73	108239.85	92475.99	92475.99
G6	Heating Fuel					
G7	Electricity		51603.25	59223.59	49158.67	49158.67
G8	Water & Sewer		36318.40	39296.07	31587.07	31587.07
G9	Grounds Maintenance		16859.80	16640.00	24267.00	24267.00
G10	Bldg Maint & Repairs		74692.39	67475.91	95163.77	95163.77
G11	Painting & Decorating		25135.00	35350.00	48350.00	35350.00
G12	Self-Labor					
G13	Misc. Supplies	Imputed 60% of Rental Income	13904.19	17269.36	8683.27	8683.27
G14	Real Estate Taxes		67724.55	77472.97	84673.64	84673.64
G15	Insurance		27306.97	21405.26	21676.01	21676.01
G16	Misc. Taxes & Insurance			924.35		
G17	Legal Services		23357.66	63372.59	175540.58	35784.10
G18	Accounting Services					
G19	Misc. Admin. Services		26837.28	26966.62	35273.59	35273.59
G20	Rental Hsg License Fees		8544.00	9024.00	9204.48	9204.48
G21	Stormwater Fees		2231.82	2231.82	2231.82	2231.82
G22	Misc. Fees & Assessments		300.00	1407.50	610.00	610.00
G23	Cleaning Services		31419.50	30105.50	33549.00	33549.00
G24	Extermination Services		2290.71	2778.51	3632.76	3632.76
G25	Trash Collection & Recycle		13759.30	15776.00	16802.40	16802.40
G26	Misc. Contract Services		18454.81	11410.50	6646.08	6646.08
G27	TOTAL OPERATING EXP.	373367.10	639297.54	698255.37	834866.58	682110.10
	NET OPERATING INCOME	248911.40	313656.96	269964.63	104390.32	257146.80

III. Calculation of Rent Adjustment Pursuant to Fair Return Standard

A. Increase in Net Operating Income 1990 - 2010

The allowable operating expenses for 2010 for the purpose of this analysis ($682,110) were 82.7% over the imputed level of operating expenses in 1990 ($373,367). The increase in the CPI from 1990 to 2010 was 77%.

In dollar terms, the operating expenses for 2010 were $308,743 over the level imputed for 1990, an increase of $276.65 / apartment unit / month compared with rent increases of $278.44 / apartment unit/month during this period.

While the rent increases were adequate to cover operating cost increases they did not permit the amount of growth in net operating income required to provide a fair return. From 1990 to 2010, the net operating income that is calculated for the purposes of this analysis increased by $8,235 or $7.38/ apartment unit / month (from $248,911.40 to $257,146.80) In percentage terms the increase was 3.3%.

B. Increase in Net Operating Income Based on Fair Return Standard

As indicated, the ordinance provides for indexing net operating income by 70% of the percentage increase in the CPI from 1990 to 2007 and 100% of the percentage increase in the CPI since 2007.

> **Sec. 6.20.090 Rent increases pursuant to a fair return petition.**
>
> **B. Standards for Rent Increases Pursuant to a Fair Return Petition.**
>
> **1. Fair Return. Fair return is defined as base year net operating income adjusted by 70% of the percentage increase in the Consumer Price Index (CPI) from the base year until 2007, and 100% of the percentage increase in the CPI since 2007.**

The increase in the CPI from 1990 to 2010 was 77%,[29] which provides the basis for a 57% adjustment in the base period NOI.[30] From 1990 to 2007, the CPI increased by 60%. The applicable

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29 Administrative Regulations Sec. 2.B. The annual CPI shall be the Consumer Price Index - All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year shall be the CPI published in December of the Current Year. (Exhibit A).

30 The calculation of the indexing adjustment has some complexity because the CPI index for the area, which had been in effect since 1970, was replaced by a new index with a new base date in 1996. Furthermore, the indexing ratio under the ordinance changed from 70% of the percentage increase in the CPI through 2007 to 100% of the percentage increase since 2007.

NOI adjustment for that period is 70% of the 60% increase in the CPI or 42%.. From 2007 to 2010, the CPI increased by 10.6%, providing for a 10.6% adjustment in the fair NOI for 2007. The overall NOI adjustment in order to provide a fair NOI is 57% above the 1990 NOI level.[31] (The 42% increase over the base level is compounded by the 10.6% increase [1.42 x 1.106].)

C. Calculation of Rent Increase Pursuant to Fair Return Standard

As the table below indicates, an increase in annual rental income of $133,644.10 is required to provide a fair return. The allowable increase per unit is equal to 14.3% of the 2010 rent, which could be added to the current (2012) rent.

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31 The owner objected that the CPI increases from 1990 to 2007 were not compounded on an annual basis in calculating the overall percentage increase in the CPI. See letter from Thomas Sippel, Gill, Sippel & Gallagher, to City, May 11, 2012, p. 1. However, the increases prior to 2007 were measured by the overall percentage change in the CPI between 1990 and 2007 (using the "beginning" and "endpoint" CPI levels for this period). This approach takes in to account the compounding factor. (In contrast adding the individual annual increases between 1990 and 2007 would not take into account the compounding factor.).

(Table 2)

Calculation of Fair Return Rent Adjustment

Base Year NOI	
Rental Income	622,278.50
Operating Expenses	373,367.10
NOI	248,911.40
Fair NOI Adjustment	
Indexing - Pct. Adjustment of Base Year NOI	57.0%
Fair NOI - (Base Year NOI Adjusted by Pct Indexing Adjustment) (248,911.40 x 1.57)	390,790.90
Current NOI	257,146.80
Rent Adjustment (=Fair NOI - Current NOI)	133,644.10
Current (Dec. 2010) Rental Income	933,016.90
Percentage Rent Adjustment (112,897 / 953,764)	14.3%
Average Increase in Monthly Rent	$121.05

The increase calculation is to be based on 14.3% of the rent levels in 2010 rather than the current rents which include increase allowances for 2011 and 2012. The increase is in addition to the annual increases in 2011 and 2012. Calculations of those amounts are included in Appendix C.

This Preliminary Decision, which is pursuant to the Rent Stabilization ordinance, does not take into account issues related to the adequacy of the maintenance or services in the complex. Remedies and rent adjustments related to these issues are available under other portions of Title 6 of the Takoma Park Municipal Code.

Resolution of Disputed Issues and Consideration of Adjustments to Calculations used in this Fair Return Analysis

Since this decision is a Preliminary Decision, the issues that it considers may be addressed in a hearing before a final decision is reached, if a hearing is requested by either party. New evidence may be submitted prior to and during that hearing and adjustments may be made on the basis of testimony and new evidence.

CITY OF TAKOMA PARK
COMMISSION ON LANDLORD-TENANT AFFAIRS
By: _____
Kenneth K. Baar, Ph.D.
Rent Analyst on behalf of the Commission
July 18, 2012

Appendix A

Consumer Price Index Tables

CPI-All Urban Consumers (Old Series)

Series Catalog:

Series ID : MUURA315SA0

Not Seasonally Adjusted
Area : Washington, DC-MD-VA
Item : All items
Base Period : 1982-84=100

Data:

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann
1970		39.1			39.7			40.1			40.4		39.8
1971		41			41.4			41.8			42.1		41.6
1972		42.2			42.5			43.3			43.9		43
1973		44.3			45.2			46.2			47.2		45.7
1974		48.8			50			51.7			52.9		50.8
1975		53.5			54.2			55.3			56		54.7
1976		56.6			57.6			58.6			59		58
1977		60.3			61.5			62.6			63.5		62
1978	64.3		64.7		65.8		67		68		69.1		66.7
1979	70.7		72		73.2		74.7		75.5		76.3		74
1980	78.5		80.9		81.7		83.7		84.4		85.9		82.9
1981	87.1		88.8		89.7		90.5		92.1		93.3		90.5
1982	94.2		94.4		94.3		95.3		97		97		95.5
1983	98		98		99.2		100.6		100.7		101.2		99.8
1984	102.9		103.3		103.5		104.4		106		106.7		104.6
1985	106.6		108.1		108.3		109.5		109.6		110.7		109
1986	112.2		111.5		111.6		111.5		112.6		113.1		112.2
1987	113.7		114.5		115.3		116.2		117.8		118.5		116.2
1988	118.3		119.2		120.1		120.7		122.8		123.2		121
1989	124.3		126.1		127.1		127.8		130.1		130.5		128
1990	132		133.8		134		135.7		138		138.4		135.6
1991	139.1		139.3		140.9		140.9		143.3		142.6		141.2
1992	142.9		143		143.2		144.8		146		146.9		144.7
1993	147.8		148.5		149.2		149.2		149.7		150.9		149.3
1994	150.9		151.5		151.4		151.8		153.7		153		152.2
1995	153.8		155.1		154.7		156.1		156.2		155.2		155.3
1996	156.8		158.4		159		160.1		160.8		161.2		159.6
1997	161.6		161.9		162.1		162.9		163.6		161.8		162.4

Consumer Price Index - All Urban Consumers
Original Data Value

Series Id: CUURA311SA0,CUUSA311SA0
Not Seasonally Adjusted
Area: Washington-Baltimore, DC-MD-VA-WV
Item: All Items
Base Period: NOVEMBER 1996=100
Years: 1996 to 2012

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1996											100.0		
1997	100.4		100.8		100.5		101.1		101.4		100.5		100.8
1998	101.0		101.6		101.5		102.8		102.9		102.4		102.1
1999	102.8		103.2		103.6		104.6		105.4		105.0		104.2
2000	105.4		107.1		106.7		108.4		108.7		108.5		107.6
2001	108.9		109.7		110.1		110.8		111.7		110.9		110.4
2002	110.9		111.9		112.8		113.4		114.0		114.0		113.0
2003	114.6		115.9		115.7		116.8		117.2		116.7		116.2
2004	117.1		118.1		118.9		120.2		120.8		120.9		119.5
2005	121.3		122.7		123.6		125.0		126.7		125.4		124.3
2006	126.3		126.8		128.8		130.7		130.2		129.3		128.8
2007	129.956		131.945		132.982		134.442		134.678		135.151		133.464
2008	136.293		138.090		139.649		142.065		142.036		138.547		139.499
2009	137.598		138.620		139.311		140.810		140.945		140.718		139.814
2010	141.124		141.741		142.025		141.966		142.738		142.915		142.218
2011	144.327		146.044		147.554		147.747		147.658		147.565		146.975
2012	148.163												

Source: Bureau of Labor Statistics

Generated on: March 12, 2012 (09:12:39 AM)

Appendix B

Report on Steam Heating System by Contractor on Behalf of City

SUMMER WINTER AUTOMATION
HVAC Services - Digital Controls - Pneumatic Controls - VFD Drives - Refrigeration Systems - Building Automation

Summer/Winter Automation Co. Inc – PO Box 695, Edgewater MD 21037
Email info@summerwinter.net – Phone 410 798 9915 – Fax 1 866 839 5136

Date: 5/29/2012

Takoma Park housing;
7500 Maple Ave.
Takoma Park
Attn: Linda Walker

To whom in may concern.

The S/W/A Co. surveyed Hillwood Manor located at 7101 New Hampshire Avenue, in Takoma Park. I found boiler to be in very good shape. But when it came to the process piping (steam pipe's) very old and they need to be replaced under building and in the ground. Also noticed that the apartments had no control valves on the radiator which is a big concern for the property fuel consumption and the apartments overheating.

Pricing:

Replace pipes:	$40,000 to $60,000
Control Valve for Radiators per unit:	$ 325.00
Boilers maintenance per year	$1,950.00

- As per replacing the steam traps every 12 to 18 months that is not happening they are changing them as needed.
- Boilers are steam type boilers which there is not much can do to modernize the boiler them self. Adding control valve on each radiator will be the only thing to keep fuel cost down and stop the overheating of the apartments.
- Installing the control valve would cut their utility bills by more than 1/3 because right now the boilers run 24/7 until outside air is above set point of heat timers that are installed on both boilers.
- The banging that the residences hear is common on steam boiler when they are heating up when turn off and then turn on. This one of the main reasons that owners get rid of this type of system.

Thank you for using the Summer/Winter Automation Co. Inc. If you have any question please feel free to call me.

President
Kevin Winters

Appendix C

Calculation of Allowable Rent Increase Pursuant to Fair Return Standard

HILLWOOD MANOR APARTMENTS

Property Address	Unit #	December 2010 Rents	Calculation Method (see note on p. c-3)	Jan. 2012 Rents	Allowable Rent Increase
7101 New Hampshire Ave	101	$814.65	A	$848.62	$116.49
	102	$663.50	L	$670.00	$94.88
	201	$750.50	L	$775.00	$107.32
	202	$792.32	A	$825.37	$113.30
7103 New	101	$842.92	L	$869.00	$120.54
	102	$732.00	COLTA Case	$856.37	$104.68
	201	$825.00	L	$879.78	$117.98
	202	$814.64	A	$848.62	$116.49
7105 New Hampshire Ave	1	$814.64	A	$848.62	$116.49
	101	$799.76	L	$833.12	$114.37
	102	$854.82	A	$885.00	$122.24
	103	$879.00	L	$889.00	$125.70
	104	$814.64	A	$848.62	$116.49
	201	$771.48	A	$803.66	$110.32
	202	$807.20	A	$840.87	$115.43
	203	$963.47	L	$1,003.65	$137.78
	204	$774.46	A	$806.76	$110.75
1100 Linden Ave	1	$909.00	L	$946.57	$129.99
	2	$796.56	A	$829.78	$113.91
	101	$826.32	A	$860.78	$118.16
	102	$1,007.88	A	$1,049.92	$144.13
	103	$826.32	A	$860.78	$118.16
	104	$759.35	A	$791.02	$108.59
	201	$723.00	L	$752.00	$103.39
	202	$1,022.76	A	$1,065.42	$146.25
	203	office		$885.00	
	204	$855.00	L	$885.00	$122.27
1102 Linden Ave	1	$854.82	A	$885.00	$122.24
	2	$976.00	L	$1,016.00	$139.57
	101	$690.50	L	$698.70	$98.74
	102	$799.76	A	$833.12	$114.37
	103	$901.00	L	$938.00	$128.84
	104	$799.76	A	$833.12	$114.37
	201	$819.11	A	$853.27	$117.13
	202	$837.50	L	$847.00	$119.76
	203	$1,010.35	A	$1,052.48	$144.48
	204	$708.50	L	$738.00	$101.32
1106 Linden Ave	101	$837.50	L	$872.00	$119.76
	102	$799.76	A	$833.12	$114.37
	201	$845.90	A	$881.18	$120.96
	202	$799.76	A	$833.12	$114.37

Property Address	Unit #	December 2010 Rents	Calculation Method (see note on p. c-3)	Jan. 2012 Rents	Allowable Rent Increase
1108 Linden Ave	101	$964.15	A	$1,004.36	$137.87
	102	$744.00	L	$784.00	$106.39
	103	$830.21	A	$864.84	$118.72
	201	$879.32	A	$916.00	$125.74
	202	$830.21	A	$864.84	$118.72
	203	$830.58	A	$865.22	$118.77
1110 Linden Ave	101	$854.08	A	$885.00	$122.13
	102	$784.88	A	$817.61	$112.24
	201	$632.00	COLTA Case	$768.00	$90.38
	202	$845.90	A	$862.38	$120.96
1200 Myrtle Ave	101	$690.50	L	$698.00	$98.74
	102	$822.09	A	$856.37	$117.56
	201	$850.36	A	$885.83	$121.60
	202	$845.90	A	$879.78	$120.96
1202 Myrtle Ave	101	$611.00	L	$631.00	$87.37
	102	$834.00	L	$843.00	$119.26
	103	$886.00	L	$896.14	$126.70
	201	$799.76	A	$833.12	$114.37
	202	$868.00	L	$885.00	$124.12
	203	$963.47	A	$1,003.65	$137.78
1204 Myrtle Ave	101	$1,011.09	A	$1,053.26	$144.59
	102	$1,272.50	EXEMPT	$1,375.00	$181.97
1210 Myrtle Ave	101	$1,019.29	A	$1,061.80	$145.76
	102	$1,130.00	EXEMPT	$1,175.00	$161.59
	103	$632.00	L	$658.00	$90.38
	201	$974.64	A	$1,015.29	$139.37
	202	$833.26	A	$868.01	$119.16
	203	$807.07	A	$840.73	$115.41
1212 Myrtle Ave	101	$881.50	L	$879.00	$126.05
	102	$814.64	A	$848.62	$116.49
	201	$845.90	A	$881.18	$120.96
	202	$794.70	A	$827.84	$113.64
1214 Myrtle Ave	1	$831.01	A	$865.67	$118.83
	2	$707.00	L	$736.00	$101.10
1216 Myrtle Ave	101	$814.64	A	$848.62	$116.49
	102	$857.80	A	$893.58	$122.67
	201	$676.50	L	$704.00	$96.74
	202	$740.00	L	$748.00	$105.82
1218 Myrtle Ave	1	$846.27	A	$879.78	$121.02
	2	$777.44	A	$809.86	$111.17
1220 Myrtle Ave	101	$847.39	A	$879.00	$121.18
	102	$695.00	L	$724.00	$99.39
	201	$850.36	A	$885.00	$121.60
	202	$822.09	A	$856.37	$117.56

Property Address	Unit #	December 2010 Rents	Calculation Method (see note below)	Jan. 2012 Rents	Allowable Rent Increase
1101 Hillwood Court	1101	$784.88	A	$817.61	$112.24
	1103	$807.20	A	$840.87	$115.43
	1105	$837.50	L	$847.00	$119.76
	1107	$660.50	L	$688.00	$94.45
	1109	staff			
	1111	$788.45	A	$821.33	$112.75
	1113	$814.64	A	$848.62	$116.49
1201 Myrtle Ave	1201	$695.00	A	$703.00	$99.39
	1206	$814.64	A	$848.62	$116.49
	1208	$814.64	A	$848.62	$116.49
	1222	$784.88	A	$817.61	$112.24

Key
A=average of 6/30/10 and 6/30/11 allowable rents
L= Lower rent-of amount reported on 2011 report or the average of 6/30/10 and 6/30/11 allowable rents

PRELIMINARY ADMINISTRATIVE DECISION

FAIR RETURN RENT INCREASE PETITION
CARROLL GARDENS APARTMENT COMPLEX

(26, 28, 30, & 32 Lee Avenue and 7401, 7403, & 7011 Hancock Avenue)

(Case # 2011-11L)

(Takoma Park, Maryland)

TIME PERIODS FOR RESPONSES TO PRELIMINARY DECISION

The tenants and the landlord shall have 30 calendar days to file written objections from the date of mail service by the landlord on the tenants of this Official Preliminary Decision. If no objections are filed within this period this Decision shall become the final decision of the Commission.

Objections should be mailed or submitted in person to: Commission on Landlord-Tenant Affairs, c/o Jean Kerr, 7500 Maple Avenue, Takoma Park, MD 20912 or submitted by email to: JeanK@takomagov.org

Kenneth K. Baar, Ph.D.
Rent Analyst on behalf of the Commission
March 28, 2012

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Appendices

A. Consumer Price Index Tables A-1

Summary

Apartment owners have a right to a fair return under rent regulation. Under the Takoma Park rent stabilization ordinance fair return is defined as base period net operating income adjusted by 70% of the percentage increase in the Consumer Price Index (CPI) from the base year to 2007 and 100% of the percentage increase in the CPI since 2007.

In this case, the apartment owner used 1990 as a base year.

In 2010, the operating expenses were $171,834.71 over the level imputed for 1990, an increase of $213.72/ apartment unit / month compared with rent increases of $273.43 / apartment unit/month during this period.

While the rent increases were adequate to cover operating cost increases, they did not permit the amount of growth in net operating income required to provide a fair return. From 1990 to 2010, net operating income increased by $60,917.29 - $75.77 / apartment unit / month (from $220.06 / apartment unit / month to $295.83 / apartment unit / month.) In percentage terms the increase was 34.4%.

Under the fair return standard, the apartment owner is entitled to a net operating income which is 57% above the base year level. An additional, rent increase of $40,267.16 per year or $50.53 / apartment unit / month is required to provide this return. (See table below.)

Calculation of Fair Return Rent Adjustment

Base Year NOI	
Rental Income	430,524.00
Operating Expenses	253,592.00
NOI	176,932.00
Fair NOI Adjustment	
Indexing Pct. Adjustment of Base Year NOI	57.0%
Fair NOI - (Base Year NOI Adjusted by Pct Indexing Adjustment) (176,932 x 1.57)	277,783.24
Current NOI	237,155.68
Rent Adjustment (Fair NOI - Current NOI)	40,267.16
Rent Adjustment / Unit / Month	$50.53

The Analyst

The analyst has a Ph.D in urban planning and is an attorney.

His articles on fair return issues have been cited in decisions of the California and New Jersey Supreme Courts and in numerous California Court of Appeal decisions. Over the past 30 years, he has served as a consultant to about thirty California jurisdictions on issues related rent stabilization and has prepared fair return reports for approximately twenty cities in rent control fair return cases.

The analyst has published extensively on housing and real estate issues. Also, he has served as a consultant to the World Bank and U.S. AID on policy issues in East European nations undergoing economic transition and on two occasions has been a visiting Fulbright professor in East Europe.

Appellate Court Opinions Relying on the Testimony of Kenneth K. Baar

Rainbow Disposal Co., Inc. v. Mobilehome Park Rental Review Board, 64 Cal. App.4th 1159 (1998) California Court of Appeal

MHC Operating Limited Partnership v. City of San Jose, 106 Cal. App.4th. 204 (2003) California Court of Appeal

Hillsboro Properties v. Public Utilities Commission, 208 Cal. App. 4th 246 (2003)

Berger Foundation v. Escondido, 127 Cal. App.4th 1 (2005) California Court of Appeal

Los Altos El Granada Investors v. City of Capitola, 139 Cal.App.4th 629 as modified by 140 Cal.App.4th 135c (2006)

Appellate Court Opinions Citing Law Review Articles of Kenneth Baar About Rent Regulations

Westchester West No.2 Limited Partnership v. Montgomery County, 246 Md. 448, 348 A.2d. 856 (1975) Maryland Court of Appeals

Helmsley v. Borough of Fort Lee, 78 N.J. 200; 394 A.2d. 65 (1978) New Jersey Supreme Court, appeal dismissed, 440 U.S. 978, 99 S.Ct. 1782, 60 L.Ed. 2d. 237 (1979)

Fisher v. City of Berkeley, 37 Cal.3d. 644 (1984) California Supreme Court; affirmed, 475 U.S. 260, 106 S.Ct. 1045, 89 L.Ed.2d. 206 (1986)

Oceanside Mobile Home Park Owners Association v. City of Oceanside, 157 Cal.App.3d. 887 (1984) California Court of Appeal

Mayes v. Jackson Township, 103 N.J. 362; 511 A.2d. 589 (1986) New Jersey Supreme Court; cert. denied, 479 U.S. 1090, 107 S.Ct. 1300, 94 L.Ed. 2d. 155 (1987).

Yee v. Mobilehome Park Rental Review Board, 17 Cal. App. 4th 1097 (1993) California Court of Appeal

Palomar Mobilehome Park v. City of San Marcos, 16 Cal.App.4th 481 (1993) California Court of Appeal

Guimont v. Clarke, 121 Wash. 2d. 586; 854 P.2d.1 (1993) Washington Supreme Court; cert. denied, 510 U.S. 1176, 114 S.Ct. 1216, 127 L.Ed.2d. 563 (1994)

Kavanau v. Santa Monica Rent Control Board, 16 Cal.4th. 761 (1997) California Supreme Court); cert. denied, 522 U.S. 1077, 118 S.Ct. 856, 139 L.Ed. 2d. 755 (1998)

Rainbow Disposal Co., Inc. v. Mobilehome Park Rental Review Board, 64 Cal.App.4th 1159 (1998) California Court of Appeal

Quinn v. Rent Control Board of Peabody, 45 Mass. App.Ct. 357, 698 N.E.2d.911 (1998, Massachusetts Court of Appeal)

Galland v. City of Clovis, 24 Cal.4th 1003 (2001) California Supreme Court; cert. denied, 534 U.S. 826, 122 S.Ct. 65 (2001)

MHC Operating Limited Partnership v. City of San Jose, 106 Cal. App.4th 204 (2003) California Court of Appeal

Berger Foundation v. Escondido, 127 Cal.App.4th 1 (2005) California Court of Appeal

T.G. Oceanside L.P. v. City of Oceanside, 156 Cal. App.4th. 1355 (2007) California Court of Appeal

I. Introduction

A. The Ordinance

The Takoma Park rent stabilization ordinance permitted annual rent increases equal to 70% of the percentage increases in the Consumer Price Index (CPI) from 1992 to 2007, and has permitted annual rent increases equal to 100% of the percentage increase in the CPI since 2007.

In addition, apartment owners may petition for additional rent increases pursuant to a fair return standard. The right to a fair return under regulation is a constitutional right. In the Takoma Park ordinance, fair return is defined as the base period net operating income adjusted by 70% of the percentage increase in the CPI from the base year to 2007 and 100% of the percentage increase in the CPI since 2007. (This type of standard is known as a "maintenance of net operating income" [MNOI] standard.)

Under the ordinance, an owner may select 1979, 1990, or 2000 as the base year in a fair return petition.[1]

B. Judicial Guidelines for Fair Return

Since this is the first fair return application that the Commission on Landlord-Tenant Affairs has received in several years, some discussion of judicial standards regarding fair return under rent stabilization is appropriate.[2]

Most of the judicial precedent regarding fair return under rent stabilization comes from New Jersey and California appellate court decisions.

Fair return is a complex concept. In 1993, a California Court of Appeal noted the complexity of the fair return issue:

> **What appears at first blush to be a simple question of substantial evidence turns out to be something considerably more complex when one realizes that the formula for determining a "fair return" is hotly debated in economic circles and**

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1 Sec. 6.20.090. B.2.

2 For background discussion of fair return issues see Baar, "Guidelines for Drafting Rent Control Laws: Lessons of a Decade," 35 *Rutgers Law Review*, 723-885 (1983) and Baar, "Fair Return under Mobilehome Park Space Rent Controls: Conceptual and Practical Approaches:, 29 *Real Property Law Reporter* 333 (Sept. 2006, California Continuing Education of the Bar [CEB])

> has been the subject of sparse, scattered, and sometimes conflicting comment by appellate courts. In particular, only the broad outlines have been discussed in California decisions.[3]

The courts have repeatedly reiterated that: **"a governmental entity may choose to regulate pursuant to any fairly constructed formula"** and that: "**[r]ent control agencies are not obliged by either the state or federal Constitution to fix rents by application of any particular method or formula. ... The method of regulating prices is immaterial so long as the result achieved is constitutionally acceptable.**"[4]

The Courts have also repeatedly reiterated the principle that there is a "range" of rents that may be considered reasonable.

One California Court of Appeal, relying on precedent from the U.S. and New Jersey Supreme Courts, explained:

> There is a range of rents which can be charged, all of which could be characterized as allowing a "just and reasonable" return. (See Hutton Park Gardens v. Town Council (1975) 68 N.J. 543 [350 A.2d 1, 15] [the terms "just and reasonable" and "confiscatory" are not precise formulations]; Power Comm'n v. Pipeline Co. (1942) 315 U.S. 575, 585 [86 L.Ed. 1037, 1049, 62 S.Ct. 736, 743] [there is a zone of reasonableness which is higher than a confiscatory rate].) Thus, many decisions by rent control boards will focus on the issue of where the requested increases fall within the range of possible rents -- all of which rents would allow the owner a return sufficiently "just and reasonable" as to not be constitutionally confiscatory.[5]

While the courts have held that no specific formula is required and that a range of rents may be considered reasonable, they have set forth some criteria for fair return. However, those guidelines - such as "commensurate with returns ... in other enterprises having comparable risks" or evaluating the "interests of the investor" and the "interests of the consumer" - have been largely theoretical.

In 1975, the New Jersey Supreme Court set forth general criteria for a fair return which have been included in subsequent fair return opinions by California appellate courts.

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3 *Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.*, 16 Cal.App.4th 481, 484 (California Court of Appeal)

4 *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd.* 64 Cal.App.4th 1159, 1172 (1998, California Court of Appeal)

5 *San Marcos Mobilehome Park Owners' Assn. v. City Of San Marcos*, 192 Cal.App.3d 1492, 1502-1503 (1987, California Court of Appeal)

> ...the return should be one which is generally commensurate with returns on investments in other enterprises having comparable risks. Determination of what level of return is 'just and reasonable' involves evaluation not only of the interests of the investor but also of the interests of the consumer and of the general public sought to be advanced by the regulatory legislation.[6]

In 1997, the California Supreme Court reiterated longstanding principles for fair return that have been set forth in utility cases and rent control fair return cases, stating that fair return: 1. "**involves a balancing of the investor and consumer interests,**" 2.should be a "**return ... commensurate with returns on investments in other enterprises having corresponding risks.**", and 3. "**should be sufficient ... to attract capital.**"[7]

In 2001, the California Supreme Court held that the concept of "fair rate of return" is a legal term which refers to a "**constitutional minimum**", although the terminology is borrowed from finance and economics. The return must "allow Park Owner to continue to operate successfully."

> Although the term "fair rate of return" borrows from the terminology of economics and finance, it is as used in this context a legal, constitutional term. It refers to a constitutional minimum within a broad zone of reasonableness. As explained above, within this broad zone, the rate regulator is balancing the interests of investors, i.e. landlords, with the interests of consumers, i.e. mobilehome owners, in order to achieve a rent level that will on the one hand maintain the affordability of the mobilehome park and on the other hand allow the landlord to continue to operate successfully. [cite omitted]. For those price-regulated investments that fall above the constitutional minimum, but are nonetheless disappointing to investor expectations, the solution is not constitutional litigation but, as with nonregulated investments, the liquidation of the investments and the transfer of capital to more lucrative enterprises.[8]

In *Fisher v. City of Berkeley*, the California Supreme Court identified four types of fair return standards under rent controls: (1) cash flow/return on gross rent; (2) return on equity (investment); (3) return on value; (4) percentage net operating income; and (5) maintenance of net operating income.[9] The Court rejected the apartment owner's contention that a fair return on value was constitutionally required and concluded that this type of standard is "circular" in the context of a rent

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6 *Hutton Park Gardens v. Town of West Orange*, 350 A2d. 1, 15 (1975, New Jersey Supreme Court).

7 *Kavanau v. Santa Monica Rent Control Board*, 16 Cal.4th 761, 772 (1997, California Supreme Court)

8 *Galland v. Clovis*, 24 Cal.4th 1004, 1026 (2001)

9 *Fisher v. City of Berkeley*, 37 Cal.3d. 644, 680 (1984, California Supreme Court)

regulation, since value depends on the rent that is permitted.[10]

An exception to the theoretical nature of the judicial guidelines has been the concept of a "floor" for fair return - the preservation of prior levels of net operating income. In 1975, the New Jersey Supreme Court ruled that: "At some point, steady erosion of NOI becomes confiscatory."[11] Subsequently, a California Court of Appeal ruled in 1983[12] and the State Supreme Court ruled in 1984,[13] that net operating income may not be frozen. While the California courts have held that net operating income may not be frozen, they have rejected the contention that net operating income must be allowed to increase at the full rate of increase in the CPI (the rate of inflation) and have upheld standards which provided for indexing net operating income by 40% or 50% of the percentage increase in the CPI.[14] They have not set forth a minimum rate at which net operating income must be allowed to increase.

In the following decades, the MNOI standard has been approved by the courts. In *Rainbow Disposal v. Mobilehome Park Rental Review Board)* the Court concluded that the MNOI formula is a "fairly constructed formula" which provides a ""just and reasonable" return on ... investment," even if another formula may provide a higher return.[15]

Rationale for the Use of an MNOI Standard In a Fair Return Case

There are strong rationale for the use of an MNOI standard. The MNOI type of standard may be contrasted with a "rate of return" standard, which designates a particular rate of return on overall investment or equity or value as fair. The problem with rate of return standards is the reality that ratios of income to cash investment, current equity, overall investment, and value vary among properties depending on such factors as length of ownership and market expectations about appreciation. Therefore, rather than designating a particular ratio as fair, MNOI standards pursue the best available alternative, which is to preserve prior NOI levels, taking into account inflation since

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10 Id.

11 *Helmsley v. Borough of Fort Lee*, 394 A.2d. 65, 76 (1978, New Jersey Supreme Court)

12 *Cotati Alliance for Better Housing v. City of Cotati*, 148 Cal.App.3d 280,293 (1983, California Court of Appeal)

13 *Fisher v. City of Berkeley*, 37 Cal.3d. 644, 681 (1984, (California Supreme Court)

14 *Berger v. Escondido*, 127 Cal.App.4th 1, 13-15 (2005, California Court of Appeal); *Stardust Mobile Estates v. San Buenaventura*, 147 Cal.App.4th 1170, 1182 (2007)

15 *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd,*. 64 Cal.App.4th 1159, 1172 (1998, California Court of Appeal)

the base period. Under most of the MNOI standards, a pre-rent control net operating income is seen as reasonable base because it is based on the market, rather than regulation. The standard avoids the problems of circularity associated with return on investment standards and cannot be manipulated through increased investments.

In Oceanside Mobilehome Park Owners' Ass'n v. City Oceanside[16] and Baker v. City of Santa Monica[17], California appellate courts upheld maintenance of net operating income fair return standards. In Oceanside the Court found that the fair return standard was reasonable because it allowed an owner to maintain prior levels of profit.[18]

In 1993, the California Court of Appeal commented: "The maintenance-NOI approach has been praised by commentators for both its fairness and ease of administration. ... It was approved by this court in Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside [cite omitted]."[19]

II. Carroll Gardens Rent Increase Application

A. Rental Income

The Carroll Gardens apartment complex has a total of 67 apartment units spread among seven buildings.

From 1990 to 2010 rents have increased by 51%, from an average of $535.48 to an average of $808.91, compared to a 68% increase in the CPI during this period.

Heat, water, electricity, and trash collection are included services which are not separately charged to the tenants.

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16 157 Cal.App.3d.887; 204 Cal.Rptr.239 (1984).

17. *Baker v. City of Santa Monica*, 181 Cal.App.3d. 972 (1986, California Court of Appeal) .

18 157 Cal.App.3d.887, 902-905; 204 Cal.Rptr.239, 249-251 (1984) .

19 Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com., 16 Cal.App.4th 481, 486 (1993, California Court of Sppeal))

B. Operating Expenses

1. Overview

Under the ordinance, in a fair return application, an apartment owner may elect to impute base year operating expenses for the year 2000 as 60% of rental income.[20] In this case, the owner made this election. In this case, the base year rental income was $430,524. The imputed operating expenses are $253,592.

Applicants are required to submit operating expense information for the "current" year and the two prior years. In this case, the application was submitted in November 2011 and the current year was 2010.

The reported operating expenses for 2010 were $498,179.55, 96.4% above the imputed expense level for 1990. The owner supplied documentation of 2008 through 2010 expenses which was thoroughly reviewed by City staff for the purpose of assuring that level of claimed expenses for each category was documented. As a result of the staff review, minor modifications were made to the totals originally calculated by the owner.

2. Changes in Reported Costs from 2008-2010

This subsection discusses increases in operating costs between 2008 and 2010. In order to place this discussion in perspective it should be noted that it does not consider the increases in operating costs from 1990 to 2008.

It is particularly notable that the reported operating expense levels for 2010 were substantially higher than the expense levels for the two prior years. The 2010 expenditure of $498,179.55 compared with $414,519.07 in 2009 and $366,715.75 in 2008. The increase from 2008 to 2010 was 35.8% ; $163.51 / unit / month.

More than half of this increase was attributable to an increase in building maintenance and repairs expenses from $24,413.11 in 2008 to $48,946.96 in 2009 to $95,367.10 in 2010. Within the maintenance and repair category, the combined cost of replacements of underground water pipes and heating duct pipes- $44,470 and boiler repairs - $25,570 is virtually equal to the $70,953 difference in maintenance and repair costs between 2008 and 2010

If the operating expense levels of the current year are exceptional, rather than likely to be recurring on annual basis, their incorporation into the fair net operating income calculation will

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20 Sec. 6.20.090.B.2

provide more than a fair return in the following years.

The other half of the increase increase in operating costs was attributable to increases in utility costs and property taxes.

Water and sewer costs increased by 112%, from $13,128 to $27,937.69, an increase of $14,809.10 ($18.42 / unit / month) between 2008 and 2010. These two services are billed by a single provider and sewer costs are a function of water usage. The rate for these services increased by 66% during this period. However, there was also a 44% increase in water usage.

The variations in annual water usage have been substantial - (2008 - 2.2 million gallons, 2009 - 2.7 million, 2010 - 3.6 million, 2011 - 3.2 million). The Owner has indicated that leaks in the water system resulted in increased consumption in 2010. However, after the system was replaced, in 2011, water usage was 44% above the 2008 level and 17.5% above the 2009 level..

Electricity costs increased by $14,448.26 or $18.02 / unit / month from 2008 to 2010. In percentage terms the electricity costs increased 28.6%. About 10% of the increase can be attributed to a 19.3% increase over the electricity rates which were in effect during the first half of 2008..[21] The current rates commenced with the utility charges after June 11, 2008 .

On the other hand, natural gas and heating fuel expenses decreased by $34,241.92 ($42.59 / unit / month between 2008 and 2010. This drop in gas heating costs exceeded the combined total of the increase in water and sewer and electricity costs.

From 2008 to 2010, property taxes increased by $12,444.96, an increase of $15.32/ apartment unit / month.

The combined costs of the on-site manager and the professional management firm increased by 22.8% , $24.35/ apartment unit/month from $85,986.06 in 2008 to $105,562.42 to 2010.

Insurance expenses in 2010 were $20,078.80 compared to $4,477.80 in 2008, but were equal to the insurance cost in 2009. The difference between the 2008 and 2010 cost levels is attributable to the fact that insurance expenses in 2008 were exceptionally low.

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21 The electricity rates increased from $0.1147 / kwh to $0.13297 / kwh.

3. Modifications to Cost Calculations for the Purposes of a Fair Net Operating Income Analysis

In this analysis several significant modifications are made to the operating expenses reported by the owner.

a. Maintenance and Repair Costs

Amortization of Capital Improvements

The replacements of the underground water pipes and the major repairs to the boiler were exceptional expenditures which would substantially increase the life of these systems, rather than annually recurring types of expenses.

The regulations provide for the amortization of capital improvement expenditures.

> **D. Determination of Operating Expenses**
> **i. Allowable operating and maintenance expenses include reasonable expenditures for the following categories of expenses and other reasonable operating costs:**
> **...i. Amortized cost of capital improvements**
> **1. Capital improvements are additions to or the partial replacement of property that add to the value of the rental facility, appreciably lengthen its life or adapt it to a different use, and are required to be depreciated by the Internal Revenue Code.**
> **2. The total cost of all capital improvements, including the interest allowance permitted pursuant to Takoma Park Code Section 6.20.090.B.8(a)v., shall be amortized over the useful life of the improvement.**
> **3. The length of the amortization period shall be determined at the discretion of the Commission. In determining the length of the amortization period, the Commission may consider generally accepted accounting practices, the Internal Revenue Code, and regulations, guidance, and opinions of the Internal Revenue Service. (Section**

In regards to the allowable interest allowance for capital improvements, the ordinance provides that the interest rate allowance for amortized capital improvements is equal to the federal reserve prime loan rate plus 2%.

> **Amortized cost of capital improvements;**
> **An interest allowance shall be allowed on the cost of amortized capital expenses; the allowance shall be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate**

equal to the Federal Reserve Board bank prime loan rate as of the date of the initial submission of the petition plus 2% per annum. (Section 6.20.090.B.8.a.v)

Currently, the prime rate is 3.25%, which in turn justifies the use of 5.25% interest rate in amortizing capital improvements under the MNOI standard.

Water Pipe Replacements

The cost of the water pipe replacements, including the pipes serving the heating system was $44,470.12 (See Application, Nov. 14, 2011, p. 235 and supporting documentation on the following pages) The expected life of these replacements is 15 years.[22]

When a 15 year amortization period is used, the annual amortized cost is $4,289.82 and the cost per apartment per month is $5.34 ($4,289.82 / (67 apartments x 12 months).

In order to place the significance of the selection of a particular amortization period in perspective, it is noted that the impact of alternate amortization periods on the allowable rent increase per apartment unit/ month is small. If a 20 year amortization period was used the cost per apartment per month would be $4.47. If a 10 year amortization period was used, the cost per apartment per month would be $7.12.

Boiler

The cost of upgrading the boiler was $24,663.79. (See Application, Nov. 14, 2011, p. 278 and supporting documentation on the following pages)

The boiler part replacements have a life expectancy of ten years.[23]

The annual amortized cost is $3,175.46 and the cost per apartment per month is $3.95 / apartment / month ($3,175.46 / (67 apartments x 12 months).

If the amortization period was 5 years the allowable amount per apartment per month would be $6.99 and if a 15 year amortization period was used the amount would be $2.96.

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22 Source:.Code Enforcement Supervisor, City of Takoma Park.

23 Source: Facility Maintenance Supervisor, City of Takoma Park, February 2012.

Calculation of Maintenance and Repair Expenses in Fair Return Analysis

In order to calculate Repair and Maintenance Expenses the expenses for the replacement of water system and heating system pipes and the overhaul of the boiler system, the total expenditures for these items are replaced by an amortized cost allowance.

b. Adjustment of Exceptional Expense Levels

The ordinance provides for the adjustment of expense levels which are atypical and do not represent a reasonable projection of ongoing expense levels.

> **When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses. (Section 6.20.090.B.8.c.)**

In 2010, water and sewer expenses were exceptionally high, due to abnormally high water consumption levels in several months, which apparently were connected with the leaks in the water system. (See the following tables.)

Annual Water Consumption Levels

Year	Annual Consumption-Gallons
2008	2,211,000
2009	2,708,000
2010	3,571,000
2011	3,181,000

Months with Exceptional Water Consumption in 2010

Time Period*	2010 Avg. Consumption / Apartment Unit / Day/ (Gallons)	2008, 2009, & 2011 Avg. Consumption / Apartment Unit / Day (Gallons)
May 10 - June 11	187	124, 114, 115
Sept. 10 - Oct. 13	184	95, 109, 154
Oct. 14 - Nov. 12	226	85, 111, 103

* Ranges of dates in 2010.. Ranges of dates for comparison years vary; the most comparable date ranges were used.

The resulting increase in costs was greater than the percentage increase in consumption because water and sewer rates which are applicable to all consumption levels are graduated based on overall water consumption. For example if average water usage was from 100 to 149 gallons per day per unit, the overall rate on all of the usage was $6.76 / 1,000 gallons in 2010; if the consumption level was between 150 and 199 gallons, the overall rate on all of the usage was $7.70).[24]

There is no single correct determination of what size adjustment should be made of the 2010 water and sewer expenses. In this analysis, the allowable water and sewer costs for 2010 are established by adjusting the 2009 costs by the 8.6% percentage increase in 2010 rates over 2009 rates.

Adjusting the 2009 costs by 8.6%, results in an imputed cost for 2010 of $19,435 (17,901.81 x (1 + .086)).

c. The Reasonability of Management Expenses

The ordinance provides that:

> **iii. Management fees, whether performed by the landlord or a property management firm;**

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24 If the average consumption was from 100-149 gallons / day / unit the rates were $2.71 / 1,000 gallons for water and $4.06 / 1,000 gallons for sewer. If the average consumption was from 150-199 gallons / day / unit the rates were $3.04 / 1,000 gallons for water and $4.66 / 1,000 gallons for sewer.

....shall not exceed 6% of gross income unless the landlord demonstrates by a preponderance of the evidence that a higher percentage is reasonable. (Sec. 6.20.090.B.8.a.iii)

The tenants association comments note that management fees paid to Craig Lenkin, the son of the owner, exceeded the 5% level authorized by the contract.

While the contractual agreement may be enforceable by the parties, the parties also may make other arrangements. The issue in a fair return hearing is whether the expense level is reasonable.

The Apartment Owner reports a salary of $61,461.92 for the on-site manager and $44,100 for off-site management fees. The total of $105,562.42 is equal to 16.2% of rental income and $1,575 / apartment / year. The off-site management fee is equal to 6.8% of rental income and $658.22 / apartment / year. The on-site management cost is equal to 9.5% of the rent or $917.34 / apartment / year.

The Institute of Real Estate Management (IREM) annual income/expense analysis for conventional apartments provides data based on a sample of 82 garden apartment complexes in the Washington D.C. area.[25] The applicant's overall management fees (on-site and off-site) are a higher percentage of the rent than the average for professionally managed large garden type complexes in the Washington D.C. area. However, in terms of dollars per apartment unit it is equal to the average. The lower management fee to rent ratio for the IREM sample is attributable to the fact the average rents are substantially higher in the IREM sample, rather than a difference between dollar amount of management costs reported by the owner and the dollar average in the IREM sample.

d. Calculation of Overall Operating Expenses and Net Operating Income

The following table contains the income and expense data provided by the applicant and the adjustments made to that data for the purposes of a fair return analysis. In this analysis, the projected operating expense total for 2010 is $425,426.71 compared to the $498,179.55 total reported by the applicant.

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25 Institute of Real Estate Management, 2011 Income/Expense Analysis: Conventional Apartments (National Association of Realtors, Chicago), p. 116.

Income, Operating Expenses, and Net Operating Income

(adjustments of applicant's projections in cells with bold outline)

			1990	2008	2009	2010	2010 adjusted
							(adjusted amounts in cells with bold outline)
		INCOME					
		Rent Per Unit/Month	535.48			808.91	
		Annual Rent	430524.00			650365.00	663276
		Air Conditioning				13045.00	
		TOTAL INCOME				663410.00	
		OPERATING EXPENSES					
G2		On Site Manager		51245.06	58754.86	61461.92	61461.92
G3		Prof. Mgmt Firm		34741.00	38741.00	44100.50	44100.50
G4		Self-Labor					
G5		Natural Gas		93421.61	73851.70	64083.79	64083.79
G6		Heating Fuel					
G7		Electricity		50673.33	53942.06	65161.59	65161.59
G8		Water & Sewer		13128.56	17901.81	28765.77	19435.00
G9		Grounds Maintenance		0.00	6136.00	8130.13	8130.13
G10		Bldg Maint & Repairs		24413.11	48946.96	93630.93	31385.64
G11		Painting & Decorating		3104.72	2747.75	2206.72	2206.72
G12		Self-Labor		0.00	0.00	0.00	0
G13		Misc. Supplies		0.00	0.00	0.00	0
			Imputed 60%				
G14		Real Estate Taxes	of Rental	44933.67	48107.38	57178.63	57178.63
G15		Insurance	Income	4447.78	20369.96	20078.80	20078.80
G16		Misc. Taxes & Insurance		300.00	300.00	300.00	300.00
G17		Legal Services		5236.00	6462.00	7802.00	7802.00
G18		Accounting Services		2250.00	2200.00	1300.00	1300.00
G19		Misc. Admin. Services		4268.19	1665.95	2008.98	832.20
G20		Rental Hsg License Fees		5963.00	6298.00	6298.00	6298.00
G21		Stormwater Fees		0.00	1466.74	1466.74	1466.74
G22		Misc. Fees & Assessments		330.00	393.40	121.00	121.00
G23		Cleaning Services		0.00		10953.96	10953.96
G24		Extermination Services		reported in G-9	8923.00	4411.00	4411
G25		Trash Collection & Recycle		8683.00	8571.50	8595.00	8595
G26		Misc. Contract Services		19576.72	8739.00	10124.09	10124.09
G27		TOTAL OPERATING EXP.	253592.00	366715.75	414519.07	498179.55	425426.71
		NET OPERATING INCOME	176932.00			165230.45	237849.29

Per Unit Per Month

Rental Income	535.48					808.91
Operating Expenses	315.41					529.14
Net Operating Income	220.06					295.83

III. Calculation of Rent Adjustment Pursuant to Fair Return Standard

The allowed operating expenses for 2010 were 67.8% over the imputed level of operating expenses in 1990. This increase compares with the 68% increase in the CPI from 1990 to 2010.

In dollar terms, the operating expenses for 2010 were $171,834.71 over the level imputed for 1990, an increase of $213.72/ apartment unit / month compared with rent increases of $273.43 / apartment unit/month during this period.

While the rent increases were adequate to cover operating cost increases they did not permit the amount of growth in net operating income required to provide a fair return. From 1990 to 2010, net operating income increased by $60,917.29 - $75.77 / apartment unit / month (from $220.06 / apartment unit / month to $295.83 / apartment unit / month.) In percentage terms the increase was 34.4%

As indicated, the ordinance provides for indexing net operating income by 70% of the percentage increase in the CPI from 1990 to 2007 and 100% of the percentage increase in the CPI since 2007.

Sec. 6.20.090 Rent increases pursuant to a fair return petition.

B. Standards for Rent Increases Pursuant to a Fair Return Petition.

1. Fair Return. Fair return is defined as base year net operating income adjusted by 70% of the percentage increase in the Consumer Price Index (CPI) from the base year until 2007, and 100% of the percentage increase in the CPI since 2007.

The increase in the CPI from 1990 to 2010 was 77%,[26] which provides the basis for a 57% adjustment in the base period NOI.[27] From 1990 to 2007, the CPI increased by 60%. The applicable NOI adjustment for that period is 70% of the 60% increase in the CPI or 42%.. From 2007 to 2010, the CPI increased by 10.6%, providing for a 10.6% adjustment in the fair NOI for 2007. The overall

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26 Administrative Regulations Sec. 2.B. The annual CPI shall be the Consumer Price Index - All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year shall be the CPI published in December of the Current Year. (Exhibit A).

27 The calculation of the indexing adjustment has some complexity because the CPI index for the area, which had been in effect since 1970, was replaced by a new index with a new base date in 1996. Furthermore, the indexing ratio under the ordinance changed from 70% of the percentage increase in the CPI through 2007 to 100% of the percentage increase since 2007.

NOI adjustment in order to provide a fair NOI is 57% above the 1990 NOI level (The 42% increase over the base level is compounded by the 10.6% increase [1.42 x 1.106].)

Calculation of Fair Return Rent Adjustment

Base Year NOI	
Rental Income	430,524.00
Operating Expenses	253,592.00
NOI	176,932.00
Fair NOI Adjustment	
Indexing Pct. Adjustment of Base Year NOI	57.0%
Fair NOI - (Base Year NOI Adjusted by Pct Indexing Adjustment) (176,932 x 1.57)	277,783.24
Current NOI	237,155.68
Rent Adjustment (Fair NOI - Current NOI)	40,267.16
Rent Adjustment / Unit / Month	$50.5

Appendix A

Consumer Price Index Tables

CPI-All Urban Consumers (Old Series)

Series Catalog:

Series ID : MUURA315SA0

Not Seasonally Adjusted
Area : Washington, DC-MD-VA
Item : All items
Base Period : 1982-84=100

Data:

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann
1970		39.1			39.7			40.1			40.4		39.8
1971		41			41.4			41.8			42.1		41.6
1972		42.2			42.5			43.3			43.9		43
1973		44.3			45.2			46.2			47.2		45.7
1974		48.8			50			51.7			52.9		50.8
1975		53.5			54.2			55.3			56		54.7
1976		56.6			57.6			58.6			59		58
1977		60.3			61.5			62.6			63.5		62
1978	64.3		64.7		65.8		67		68		69.1		66.7
1979	70.7		72		73.2		74.7		75.5		76.3		74
1980	78.5		80.9		81.7		83.7		84.4		85.9		82.9
1981	87.1		88.8		89.7		90.5		92.1		93.3		90.5
1982	94.2		94.4		94.3		95.3		97		97		95.5
1983	98		98		99.2		100.6		100.7		101.2		99.8
1984	102.9		103.3		103.5		104.4		106		106.7		104.6
1985	106.6		108.1		108.3		109.5		109.6		110.7		109
1986	112.2		111.5		111.6		111.5		112.6		113.1		112.2
1987	113.7		114.5		115.3		116.2		117.8		118.5		116.2
1988	118.3		119.2		120.1		120.7		122.8		123.2		121
1989	124.3		126.1		127.1		127.8		130.1		130.5		128
1990	132		133.8		134		135.7		138		138.4		135.6
1991	139.1		139.3		140.9		140.9		143.3		142.6		141.2
1992	142.9		143		143.2		144.8		146		146.9		144.7
1993	147.8		148.5		149.2		149.2		149.7		150.9		149.3
1994	150.9		151.5		151.4		151.8		153.7		153		152.2
1995	153.8		155.1		154.7		156.1		156.2		155.2		155.3
1996	156.8		158.4		159		160.1		160.8		161.2		159.6
1997	161.6		161.9		162.1		162.9		163.6		161.8		162.4

Consumer Price Index - All Urban Consumers
Original Data Value

Series Id: CUURA311SA0,CUUSA311SA0
Not Seasonally Adjusted
Area: Washington-Baltimore, DC-MD-VA-WV
Item: All items
Base Period: NOVEMBER 1996=100
Years: 1996 to 2012

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1996											100.0		
1997	100.4		100.8		100.5		101.1		101.4		100.5		100.8
1998	101.0		101.6		101.5		102.8		102.9		102.4		102.1
1999	102.8		103.2		103.6		104.6		105.4		105.0		104.2
2000	105.4		107.1		106.7		108.4		108.7		108.5		107.6
2001	108.9		109.7		110.1		110.8		111.7		110.9		110.4
2002	110.9		111.9		112.8		113.4		114.0		114.0		113.0
2003	114.6		115.9		115.7		116.8		117.2		116.7		116.2
2004	117.1		118.1		118.9		120.2		120.8		120.9		119.5
2005	121.3		122.7		123.6		125.0		126.7		125.4		124.3
2006	126.3		126.8		128.8		130.7		130.2		129.3		128.8
2007	129.956		131.945		132.982		134.442		134.678		135.151		133.464
2008	136.293		138.090		139.649		142.065		142.036		138.547		139.499
2009	137.598		138.620		139.311		140.810		140.945		140.718		139.814
2010	141.124		141.741		142.025		141.966		142.738		142.915		142.218
2011	144.327		146.044		147.554		147.747		147.658		147.565		146.975
2012	148.163												

MODIFIED PRELIMINARY ADMINISTRATIVE DECISION

April 19, 2012

FAIR RETURN RENT INCRESASE PETITION

CARROLL CARGENS APARTMENT COMPLEX

(26, 28, 30, & 32 Lee Avenue and 7401, 7403, 7011 Hancock Avenue)

Case # 2011-11L

TIME PERIOD FOR FILING WRITTEN OBJECTIONS TO MODIFIED PRELIMINARY ADMINISTRATIVE DECISION

The landlord and tenants may challenge the modified Preliminary Administrative Decision by filing written objections with the Commission. The written objections must be filed within 30 days of the date the Department sends this Corrected Preliminary Administrative Decision to the tenants, which is noted on the attached Certificate of Mailing. If no objections are filed within this period, this Corrected Preliminary Administrative Decision shall become the final decision of the Commission.

Objections should be mailed or submitted in person to: Commission on Landlord-Tenant Affairs, c/o Jean Kerr, 7500 Maple Avenue, Takoma Park, MD 20912 or submitted by email to: JeanK@takomagov.org

Kenneth K. Baar, Ph.D.

Rent Analyst on behalf of the Commission

April 19, 2012

CORRECTED PRELIMINARY ADMINISTRATIVE DECISION

The City of Takoma Park Commission on Landlord-Tenant Affairs hereby corrects its Preliminary Administrative Decision in this proceeding dated March 28, 2012. The Preliminary Administrative Decision erroneously calculated the rent increase awarded to the Landlord as a flat dollar amount applicable to every unit in the Property. In accordance with section 2(E) of the City of Takoma Park Administrative Regulations governing Fair Return Rent Increases, fair return rent increases are to be calculated as a percentage of the Current Year rents for the Property, and the increase for each unit is to be calculated by applying the percentage increase to the Current Year rent for each unit.

In this proceeding, the Current Year is 2010, and the percentage increase necessary for the Landlord to earn a fair return is 6%. Rather than awarding an increase of $50.53 per month per unit, the Preliminary Administrative Decision should have multiplied the Current Year rent for each unit by 6% to calculate the increase applicable to each unit.

The Tenants should disregard any Notice of Rent Increase issued pursuant to the March 28, 2010, Preliminary Administrative Decision.

This Corrected Preliminary Administrative Decision incorporates by reference the Preliminary Administrative Decision dated March 28, 2012, in its entirety, subject to the following modifications:

1. The Tables located on pages iii and 15 of the Preliminary Administrative Decision shall be replaced by the following table:

Calculation of Fair Return Rent Adjustment

Base Year NOI	
Rental Income	*430,524.00*
Operating Expenses	*253,592.00*
NOI	*176,932.00*
Fair NOI Adjustment	
Indexing - Pct. Adjustment of Base Year NOI	*57.0%*
Fair NOI - *(Base Year NOI Adjusted by Pct Indexing Adjustment)* *(176,932 x 1.57)*	*277,783.24*
Current NOI	*237,155.68*
Rent Adjustment *Fair NOI - Current NOI)*	*40,267.16*
Current (2010) Rental Income	*663,276.00*
Percentage Rent Adjustment (40,267.16 / 663,276.00)	*6%*

Rent Adjustment (Percentage of 2010 Rents) **6%**

2. The attached "Appendix B," which sets forth the rent increase authorized for each unit, shall be appended to the Preliminary Administrative Decision. The rent increases authorized in Appendix B shall be applied to the actual rent for the unit at the time of the increase and shall not preclude the Landlord from imposing an annual increase.

CITY OF TAKOMA PARK
COMMISISON ON LANDLORD-TENANT AFFAIRS
By:_____
Kenneth K. Baar, Ph.D.
Rent Analyst on behalf of the Commission
April 19, 2012

Appendix B

Address		6% Allowable Increase
Street	Apt. #	
26 Lee	100	$ 53.64
26 Lee	101	$ 51.72
26 Lee	102	$ 47.40
26 Lee	103	$ 52.02
26 Lee	201	$ 50.10
26 Lee	202	$ 45.84
26 Lee	203	$ 55.14
26 Lee	301	$ 51.72
26 Lee	302	$ 46.62
26 Lee	303	$ 58.14
		$ -
28 Lee	100B	$ 42.36
28 Lee	100	$ 43.92
28 Lee	101	$ 57.12
28 Lee	102	$ 45.78
28 Lee	103	
28 Lee	201	$ 54.06
28 Lee	202	$ 44.28
28 Lee	203	$ 56.64
28 Lee	301	$ 52.08
28 Lee	302	$ 42.24
28 Lee	303	$ 44.28
		$ -
30 Lee	101	$ 56.34
30 Lee	102	$ 44.70
30 Lee	103	$ 44.34
30 Lee	201	$ 51.30
30 Lee	202	$ 44.70
30 Lee	203	$ 47.94
30 Lee	301	$ 52.08
30 Lee	302	$ 44.70
30 Lee	303	$ 56.40
		$ -
32 Lee	100	$ 43.38
32 Lee	101	$ 52.02
32 Lee	102	$ 45.60
32 Lee	103	$ 48.48
32 Lee	201	$ 55.92
32 Lee	202	$ 45.12
32 Lee	203	$ 51.18
32 Lee	301	$ 56.34
32 Lee	302	$ 41.70
32 Lee	303	$ 59.52

Address		6% Allowable Increase
Street	Apt. #	
7401 Hancock	101	$ 47.58
7401 Hancock	102	$ 57.18
7401 Hancock	201	$ 54.30
7401 Hancock	202	$ 44.70
7401 Hancock	301	$ 57.60
7401 Hancock	302	$ 44.88
		$ -
7403 Hancock	100	$ 52.02
7403 Hancock	101	$ 54.60
7403 Hancock	102	$ 43.92
7403 Hancock	103	$ 52.44
7403 Hancock	201	$ 56.22
7403 Hancock	202	$ 45.72
7403 Hancock	203	$ 60.48
7403 Hancock	301	$ 58.80
7403 Hancock	302	$ 44.88
7403 Hancock	303	$ 57.78
		$ -
7411 Hancock	100B	$ 37.98
7411 Hancock	100	$ 45.60
7411 Hancock	101	$ 56.10
7411 Hancock	102	$ 43.08
7411 Hancock	103	$ 55.68
7411 Hancock	201	$ 57.12
7411 Hancock	202	$ 44.04
7411 Hancock	203	$ 49.08
7411 Hancock	301	$ 51.78
7411 Hancock	302	$ 48.06
7411 Hancock	303	$ 56.16

Average Allowable Increase in Dollars	$	50.53
Average Monthly Rent	$	837.03
Percentage Allowable Increase		6.04%

FAIR RETURN PETITION

Part I
Selection of Base Year and Current Year

COLTA Case_____ **(City staff will enter case #)**

A) General Information					
Address of Rental Facility					
Name of Property Owner			Owner ☐ Agent ☐		
Mailing Address					
Telephone (Days)		Email Address			
Property License Number		Total Number Rental Units		Date of Purchase of Property	
B) Most Recent Hardship or Fair Return Petition (The filing of a previous petition created a new base year even if no rent increase was awarded)					
Type of Petition (check one)	☐ Hardship Petition ☐ Fair Return Petition				
Date of Decision		COLTA Case Number			
C) Selection of Base Year (Please check one option)					
☐	1979	May be selected as Base Year for rental facilities containing five or more rental units. When selecting this option, actual income and expenses must be documented by the landlord.			
☐	1987	May be selected as Base Year for rental facilities containing four or fewer rental units. When selecting this option, actual income and expenses must be documented by the landlord.			
☐	1990	May be selected as Base Year regardless of the size of the rental facility. Base year income shall be calculated from the official rent reports filed with the Department. The Base Year net operating income may be calculated using documented income and expenses or, at the election of the landlord, base year operating expenses shall be imputed in order to determine base year net operating income using the standard in **section 6.20.080B** which states: **In estimating the base year operating expenses, it shall be presumed that each operating expense increased by the same percentage as the CPI since the base year. However, if data, rate information or other sources of cost information indicate that particular operating expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense shall be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases, in particular types of expenses between the base year and the current year may be introduced by the landlord, affected tenants, the Department, and the Rents Analyst.**			

☐	2000	May be selected as Base Year regardless of the size of the rental facility. When selecting this option, actual income and expenses must be documented by the landlord.
☐	Year of Prior Petition	Must be selected if a prior year rent increase is listed in Section (B) above. The net operating income determined by the Commission shall become the Base Year net operating income.
☐	Alternate Base Year	An alternate Base Year may be selected in accordance with Section 4.A.i.e. of the Regulations. Written approval of the alternate Base Year by the Commission must be obtained prior to the submission of the Petition.
D) Selection of Current Year (Please check one option)		
☐	Calendar Year	January 1 - December 31 immediately preceding the date of the filing of the Fair Return Rent Increase Petition.
☐	Fiscal Year	July 1 - June 30 immediately preceding the date of the filing of the Fair Return Rent Increase Petition.

I - 1

PART II
RENT SCHEDULE
Base Year and Current Year

List the rents charged for each rental unit as of the final month of the Base Year and the Current Year. If the petition is based on a fiscal year (July - June), record the rent charged for the month of June. If the petition is based on a calendar year (Jan - Dec), record the rent charged for the month of December. Information must be provided for each rental unit for both the Base Year and the Current Year.

Please use additional pages if necessary to report the income for ALL rental units and include the additional pages with the Petition.

E) Rent Schedule - Base Year and Current Year
If the rental unit was vacant the final month of the Base Year or the Current Year, report the highest allowable rent that could have been charged if the unit was occupied. If the rental unit was occupied, report the actual monthly rent charged to the tenant.

	Rental Unit (List by Unit Number)	**Column A** Monthly Rent **Base Year** ☐ (Month, Year)	**Column B** Monthly Rent **Current Year** ☐ (Month, Year)
E1			
E2			
E3			
E4			
E5			
E6			
E7			
E8			
E9			
E10			
E11			
E12			
E13			
E14			
		Fill in below only if this is the last page of this schedule.	
	Total Scheduled Monthly Rent only if this is the final page of rent schedule.		
	Total Schedule Annual Rent (Monthly Rent x 12)		

Continuation of Part II: Rent Schedule Base Year and Current Year			
Rental Unit (List by Unit Number)		**Column A** Monthly Rent **Base Year** [ ] (Month, Year)	**Column B** Monthly Rent **Current Year** [ ] (Month, Year)
E15			
E16			
E17			
E18			
E19			
E20			
E21			
E22			
E23			
E24			
E25			
E26			
E27			
E28			
E29			
E30			
E31			
E32			
E33			
E34			
E35			
		Fill in below only if this is the last page of this schedule.	
	Total Scheduled Monthly Rent only if this is the final page of rent schedule.		
	Total Scheduled Annual Rent (Monthly Rent x 12)		

(Include additional pages as needed)

II - 2

RENT SCHEDULE
Prior Two Years

List the rents charged for each rental unit as of the final month for each of the two years PRIOR to the Current Year of the Petition. For example, if the Current Year is 2014, the information recorded on the rent schedule for Prior Year A should be 2013 and Prior Year 2012.

List the rents charged for each rental unit as of the *final month* of the Prior Year. If the petition is based on a fiscal year (July - June), record the rent charged for the month of June. If the petition is based on a calendar year (Jan - Dec), record the rent charged for the month of December. Information must be provided for each rental unit for both Prior Years.

Please use additional pages if necessary to report the income for ALL rental units and include the additional pages with the Petition.

E) Rent Schedule – Prior Two Years

If the rental unit was vacant the final month of either Prior Year, report the highest allowable rent that could have been charged if the unit was occupied. If the rental unit was occupied, report the actual monthly rent charged to the tenant.

	Rental Unit (List by Unit Number)	**Column A** Monthly Rent **Prior Year A** ____ (Month, Year)	**Column B** Monthly Rent **Prior Year B** ____ (Month, Year)
E1			
E2			
E3			
E4			
E5			
E6			
E7			
E8			
E9			
		Fill in below only if this is the last page of this schedule.	
	Total Scheduled Monthly Rent only if this is the final page of the rent schedule.		
	Total Scheduled Annual Rent (Monthly Rent x 12)		

Continuation of Part II : Rent Schedule - Prior Two Years			
	Rental Unit (List by Unit Number)	**Column A** Monthly Rent **Prior Year A** [ ] (Month, Year)	**Column B** Monthly Rent **Prior Year B** [ ] (Month, Year)
E10			
E11			
E12			
E13			
E14			
E15			
E16			
E17			
E18			
E19			
E20			
E21			
E22			
E23			
E24			
E25			
E26			
E27			
E28			
		Fill in below only if this is the last page of this schedule.	
	Total Scheduled Monthly Rent only if this is the final page of the rent schedule.		
	Total Scheduled Annual Rent (Monthly Rent x 12)		

(Include additional pages as needed.)

II - 4

PART III
GROSS INCOME
Base Year and Current Year

List scheduled income (derived from official rent reports and must be calculated as if all the units were fully rented) of the rental facility for both the Base Year and the Current Year.

Gross income includes the total amount of rental income the landlord would have received if all units had been rented for the highest lawful rent for the entire year without any vacancies. Gross income includes any fees paid by the tenants for services provided by the landlord.

Gross income does not include income from laundry and vending machines, interest received on security deposits in excess of the amounts required to be refunded to tenants, and other miscellaneous income.

F) Gross Income - Base Year and Current Year			
Type of Income		**Column A** **Base Year** [ ] (Year)	**Column B** **Current Year** [ ] (Year)
F1	Total Annual Scheduled Rental Income (From Part II: Rent Schedule)		
	Miscellaneous Income (List by type)*		
F2			
F3			
F4			
F5			
F6			
F7	TOTAL Gross Income (Total of Lines F1 - F6)		

(*) DO NOT include reimbursed utilities or other reimbursed expenses. For example, security deposits used to pay for damages billed to the tenant should not be reported as income.

GROSS INCOME
Prior Two Years

List gross scheduled income of the rental facility for each of the two years, PRIOR to the Current Year of the Petition. For example, if the Current Year is 2014, information recorded for Prior Year A should be 2013 and Prior Year B should be 2012.

Gross income includes the total amount of rental income the landlord could have received if all units had been rented for the highest lawful rent for the entire year without any vacancies. Gross income includes any fees paid by the tenants for services provided by the landlord.

Gross income does not include income from laundry and vending machines, interest received on security deposits in excess of the amounts required to be refunded to tenants, and other miscellaneous income.

F) Gross Income - Prior Two Years			
Type of Income		**Prior Year A** [ ] (Year)	**Prior Year B** [ ] (Year)
F1	Total Annual Scheduled Rental Income (From Part II: Rent Schedule)		
	Miscellaneous Income (List by type) *		
F2			
F3			
F4			
F5			
F6			
F7	TOTAL Gross Income (Total of Lines F1 - F6)		

*DO NOT include reimbursed utilities or other reimbursed expenses. For example, security deposits used to pay for damages billed to the tenant should not be reported as income.

PART IV
OPERATING AND MAINTENANCE EXPENSES
Base Year and Current Year

List all operating and maintenance expenses incurred at the rental facility for both the selected Base Year (unless using imputed base year net operating income) and the Current Year. Rules on permitted operating and maintenance expenses can be found in Section 4.D. of the Regulations. DO NOT include any capital improvement expenses as defined in Section 4.D.i.i. of the Regulations. DO NOT include any interest or debt service expenses.

Landlords electing to use 1990 as the Base Year elect to have the expenses from that year imputed as per Section C in Part I of the petition form. The gross income information from the 1990 and 1991 annual rent reports must be used and is available upon request from the Department.

All expenses (except imputed expenses) must be documented as described in Exhibit A.

G) Operating and Maintenance Expenses - Base Year and Current Year			
Type of Operating and Maintenance Expense		**Column A** Base Year ☐ (Year)	**Column B** Current Year ☐ (Year)
		If 1990 expenses will be imputed, check here ☐ and leave Column A (G1-G26) blank.	
Management Services - Not to exceed 6% of Gross Income			
G1	On-Site Manager		
G2	Professional Management Firm		
G3	Self-Labor Expenses		
Utility Expenses - **DO NOT** include any costs reimbursed by the tenant(s)			
G4	Natural Gas		
G5	Heating Fuel		
G6	Electricity		
G7	Water and Sewer		
Maintenance and Repairs - Include all supplies, materials and related expenses			
G8	Grounds Maintenance		
G9	Building Maintenance and Repairs		
G10	Painting and Decorating Expenses		
G11	Self-Labor Expenses		
G12	Miscellaneous Supplies		

G) Operating and Maintenance Expenses - Base Year and Current Year (Continued)			
Type of Operating and Maintenance Expense		**Column A** Base Year [ ] (Year)	**Column B** Current Year [ ] (Year)
Taxes and Insurance			
G13	Real Estate Taxes		
G14	Insurance		
G15	Miscellaneous Taxes and Insurance		
Administrative Services			
G16	Legal Services		
G11	Accounting Services		
G18	Miscellaneous Administrative Services		
Fees and Assessments			
G19	Rental Housing License Fees		
G20	Stormwater Fees		
G21	Miscellaneous Fees and Assessments		
Other Contract Services			
G22	Cleaning Services		
G23	Extermination Services		
G24	Trash Collection and Recycling		
G25	Miscellaneous Contract Services		
G26	TOTAL Operating and Maintenance Expenses (Total of Lines G1 - G25)		

Part IV
OPERATING AND MAINTENANCE EXPENSES
Prior Two Years

List all operating and maintenance expenses incurred at the rental facility for each of the two years PRIOR to the Current Year of the Petition. For example, if the Current Year is 2014, the information recorded on the rent schedule for Prior Year A should be 2013 and 2012 for Prior Year B.

Rules on permitted operating and maintenance expenses can be found in Section 4.D. of the Regulations. DO NOT include any capital improvement expenses as defined in Section 4.D.i.i. of the Regulations. DO NOT include any interest or debt service expenses.

All expenses must be documented as described in Exhibit A.

G) Operating and Maintenance Expenses - Prior Two Years (DO NOT include amortized capital improvement expenses.)			
Type of Operating and Maintenance Expense		**Prior Year A** [ ] (Year)	**Prior Year B** [ ] (Year)
Management Services - Not to exceed 6% of Gross Income			
G1	On-Site Manager		
G2	Professional Management Firm		
G3	Self-Labor Expenses		
Utility Expenses - **DO NOT** include any costs reimbursed by the tenant(s)			
G4	Natural Gas		
G5	Heating Fuel		
G6	Electricity		
G7	Water and Sewer		
Maintenance and Repairs - Include all supplies, materials and related expenses			
G8	Grounds Maintenance		
G9	Building Maintenance and Repairs		
G10	Painting and Decorating Expenses		
G11	Self-Labor Expenses		
G12	Miscellaneous Supplies		

G) Operating and Maintenance Expenses - Prior Two Years (Continued)			
Type of Operating and Maintenance Expense		**Prior Year A** _____ (Year)	**Prior Year B** _____ (Year)
Taxes and Insurance			
G13	Real Estate Taxes		
G14	Insurance		
G15	Miscellaneous Taxes and Insurance		
Administrative Services			
G16	Legal Services		
G17	Accounting Services		
G18	Miscellaneous Administrative Services		
Fees and Assessments			
G19	Rental Housing License Fees		
G20	Stormwater Fees		
G21	Miscellaneous Fees and Assessments		
Other Contract Services			
G22	Cleaning Services		
G23	Extermination Services		
G24	Trash Collection and Recycling		
G25	Miscellaneous Contract Services		
G26	TOTAL Operating and Maintenance Expenses (Total of Lines G1 - G25)		

DOCUMENTATION REQUIREMENTS

Required documentation of expenditures - invoices, canceled checks, etc. - must be organized chronologically by subcategory, listed individually on a separate a spread sheet or worksheet as illustrated below. **All documentation must be stapled to the back of the spreadsheet for each subcategory in the order listed on the spreadsheet**. The expenditures noted in the petition must equal the expenses included in the listing for each subcategory. A blank worksheet is included with this application for your use.

Failure to organize the required documentation as described above will result in the rejection of the Petition.

Example A

Category: G7 - Utility Expenses Water and Sewer			
Date	Vendor	Purpose	Amount
01-01-2007	WSSC	Water / Sewer	$205.36
02-15-2007	WSSC	Water / Sewer	$306.75
03-10-2007	WSSC	Water / Sewer	$500.00
04-12-2007	WSSC	Water / Sewer	$125.98
05-06-2007	WSSC	Water / Sewer	$625.00
		TOTAL	**$1,763.09**

Example B

Category: G10 - Painting and Decorating			
Date	Vendor	Purpose	Amount
08-05-2007	Home Depot	Painting Supplies	$175.00
10-15-2007	Bed Bath and Beyond	Blinds	$525.89
10-20-007	Walmart	Curtains	$750.25
11-13-2007	True Value Hardware Store	Paint	$900.00
12-25-2007	Duron Paint Supplies	Paint/supplies	$1,000.00
		TOTAL	**$3,351.14**

Fair Return Rent Increase Petition

Use one spread sheet for each Expense Category (e.g. G1, G2, G3, etc.). Indicate on each sheet the year that corresponds to the attached documents - **Base Year, Current Year, Prior Year A or Prior Year B.**

Expense Category:

(enter from tables in section IV of application)

Year	Base Year (Year)	Current Year (Year)	Prior Year A (Year)	Prior Year B (Year)
Date	**Vendor**		**Purpose**	**Amount**
TOTAL				

PART V
CAPITAL IMPROVEMENT SCHEDULE

List the cost of all unamortized capital improvements made at the rental facility.

Capital improvements are additions or the partial replacement of property that adds to the value of the rental facility, appreciably lengthen its life or adapts it to a different use, and are required to be depreciated by the Internal Revenue Code. The total cost of the capital improvement, including the interest allowance permitted pursuant to Takoma Park Code Section 6.20.080.B.8(a)v., will be amortized over the useful life of the improvement.

The Petition must include all of the information required in Section 5 of the Regulations and shall contain adequate documentation organized as described in Exhibit A. The landlord may elect to provide as supplemental information, federal income tax forms and schedules which support prior year capital improvements.

H) Capital Improvement Schedule		
Date Completed	Description of Capital Improvement	Total Cost of Improvement

V

PART VI
TENANT LISTING AND MAILING LABELS

List the name and unit number of all affected tenants residing within the rental facility. Please use additional sheets as needed.

In addition, one set of mailing labels for the rental facility is required and must be included with the Petition. Labels must include the name of the primary tenant and mailing address.

Unit Number	***Name of Tenants***	***Move In Date***

(Include additional pages as needed.)

PART VII
CERTIFICATION OF LANDLORD

I hereby certify that I am the owner or authorized representative of the rental facility identified in this Petition. I further certify that the information included in the Petition and the supporting documentation that has been provided is true and correct.

Name (Please Print): _____

Signature: _____

Title: _____

Date: _____

Contact Numbers: Days _____ Cell _____

SUBMISSION REQUIREMENTS

The following materials must be submitted to the Commission on Landlord and Tenant Affairs at the address listed below:

- Original of the completed Petition (Form A)
- One copy of all supporting documentation
- One set of Mailing Labels

For more information, please contact the

Commission on Landlord and Tenant Affairs
Attention: City of Takoma Park
Housing and Community Development Department
7500 Maple Avenue, Takoma Park MD 20912
301.891.7216

Form B

NOTICE OF FILING FAIR RETURN PETITION

The Takoma Park Code Section 6.20.080 gives landlords the right to petition for a rent increase above the Rent Increase Allowance to ensure the maintenance of a fair net operating income. Requests for rent increases are reviewed by the Commission on Landlord and Tenant Affairs. A decision regarding a rent increase is generally issued by the Commission within three months of filing.

You are hereby notified that your landlord has filed a Fair Return Petition with the Commission on Landlord-Tenant Affairs. This Notice DOES NOT constitute a Notice of a Fair Return Rent Increase. You will be notified by separate notice if any rent increase is awarded by the Commission as a result of the Petition filed by your landlord.

A copy of the Petition, excluding supporting expense documentation submitted by your landlord, is enclosed for your review. Copies of the supporting expense documentation may be viewed at the Department of Housing and Community Development.

Address of Rental Facility: _____

Date of Filing of Fair Return Petition: _____

Any rent increase awarded by the Commission, will be distributed equally among all of the units in your building.

If the Fair Return rent increase awarded by the Commission is greater than 15%, the increase will be phased-in over a period of more than one year until such time as the full rent increase has been taken. For example, if a 35% rent, increase is awarded by the Commission, your rent would be increased 15% the first year, 15% the second year and 5% the third year. If the increase is 15% or less, your landlord may elect to increase your rent by the approved amount in a single year.

IF YOU HAVE A ONE YEAR LEASE: If you have entered into a one year lease with your landlord, the increase must be taken at the end of the lease term.

IF YOU HAVE A MONTH - TO- MONTH LEASE: If you have a month-to month lease, the rent increase can be taken at any time. A minimum of two months' notice must be given to you regardless of when the rent increase is taken.

If you find any errors within the forms, please submit your comments to the Housing and Community Development Department.

The documentation filed by your landlord in support of the fair return rent increase petition is available for review during normal working hours at the City of Takoma Park, Housing & Community Development Department, 7500 Maple Avenue, Takoma Park, MD.

For additional information, please contact the Office on Landlord-Tenant Affairs at 301- 891-7216.

Form C

NOTICE OF FAIR RETURN RENT INCREASE

The Takoma Park Code Section 6.20.080 gives landlords the right to petition for a rent increase above the Rent Increase Allowance to ensure the maintenance of a fair net operating income. A copy of the Fair Return Petition and notice of its filing was previously provided by the City of Takoma Park=s Housing and Community Development Department.

You are hereby notified that your rent will be increased in accordance with the Decision issued by the Commission on Landlord and Tenant Affairs following. A copy of the Decision is attached.

Address of Rental Facility: _____

Rental Unit: _____

Date Decision Issued: _____

Approved Fair Return Rent Increase: _____%

Current Rent: $_____

New Rent (Rent Increase): $_____

Effective Date of Rent Increase: _____

You have 30 calendar days from the date of service of this Notice to challenge the Decision issued by the Commission. Your challenge must be submitted in writing to the Commission on Landlord and Tenant Affairs c/o City of Takoma Park, Housing & Community Development Department, 7500 Maple Avenue, Takoma Park, MD 20912.

The Commission will review your challenge or, at its discretion, schedule a date for the matter to be heard. You and the other tenants in the building will receive a minimum of 14 days advance notice of the date of the hearing. If no challenge is received, the Decision issued by the Commission and the rent increase detailed above becomes final.

For additional information, please contact the Office on Landlord-Tenant Affairs at 301- 891-7216.

Form D

CERTIFICATE OF SERVICE
Fair Return Rent Increase Petition

Property Address: _____

COLTA Case Number: _____

I certify under penalty of perjury that on this _____day of _____, 20_____, I sent by regular first-class mail, postage prepaid, a copy of the following identified document(s) to each of the affected tenants residing in the above referenced rental facility and to the president of any registered tenants association as required by Takoma Park Code Section 6.020.080.

A listing of the tenants receiving this information - and their respective rental unit units - is attached.

☐ Notice of Fair Return Rent Increase

☐ Fair Return Petition Form

☐ Opinion and Order of the Commission

_____
Signature of Certifying Official

_____
Title

_____
Date

Decision on a Fair Return Rent Increase by the Commission:
The Notice of Fair Return Rent Increase and the Fair Return Petition Form must be served by regular first class mail to all affected tenants and the president of any registered tenants association within five business days of the date of receipt of the issuance of the Decision.

Opinion and Order of the Commission:
The Opinion and Order of the Commission must be served by regular first class mail to all affected tenants and the president of any registered tenants association within five business days of the issuance of the Opinion and Order of the Commission.