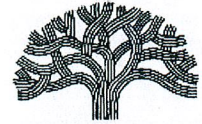


CITY OF OAKLAND



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REVISED MEMO

To: Rent Board Members

**From: Barbara Kong-Brown
Senior Hearing Officer**

Date: September 21, 2018

Re: Request for Information Regarding Hearing Decisions on New Construction Exemptions

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2018 SEP 21 AM 10:53

This memo is intended to supersede the prior memo regarding Request for Information Regarding Hearing Decisions on New Construction exemptions. Cases that are pending appeal have been removed from this memo.

At the Rent Board meeting on July 26, 2018, the Board postponed hearing T16-0683, Prager v. Lagos and requested information regarding new construction cases that have been decided in prior hearing decisions. There are two Board appeal decisions regarding the existence of prior structures on the subject property. Both Board appeal decisions granted an exemption based on new construction.

There are three hearing decisions regarding the existence of prior structures on the subject property since 2016.

One hearing decision which applied this standard was not appealed (Dragon).

One hearing decision which applied this standard was reversed by the board (Buggs).

One hearing decision applied the standard in the Buggs case where the prior building was demolished and granted the new construction exemption. (Wong).

Board Appeal Cases

T01-0107, Castellanos v. Greer

The property is a three bedroom lower unit in a residential building containing two units. The original structure consisted of a single family dwelling constructed on or about

December 1970. The tenant contested a rent increase. The owner appealed from the hearing decision which granted the tenant petition.

The Board held that the unit was exempt as new construction and the certificate of occupancy was issued after January 1, 1983. Even though the original building was built prior to 1983, the unit was newly created out of space not previously used for housing. It was added to the original structure.

T16-0377, Buggs v. Bay Property

The Buggs case has virtually identical facts to the Prager case-In that case, there was a single family residence on the property that was demolished. A totally new building was built which consists of 10 residential units. It was built after January 1, 1983.

The relevant section of the Rent Ordinance is Section 8.22.030(A)(5) which states that the exemption applies to property that constitutes new construction **or** was constructed from space that was formerly non-residential. The Board held that the hearing officer erred by interpreting the ordinance to mean that both conditions are required in order to get the exemption. The Board voted as follows:

Aye: U. Fernandez, E. Lai, J. Warner, K. Friedman

Nay: 0

Abstain: 0

T16-0706, Dagrón v. Shiu

Tenant contested rent increases. Landlord claimed new construction exemption. Single family residence on the lot was demolished prior to construction and a new single family residence was constructed with second dwelling unit. The hearing officer interpreted Section 8.22.030(A)(5) to mean that the building had to consist of new construction **and** be constructed from space that was formerly non residential.

L17-0091, Wong v. Tenant

Building records indicated that a building was demolished and a lot cleared as of 1974 before the subject property was built in 1988. The hearing officer granted an exemption on the basis of new construction on the grounds that the former building was completely demolished and the lot was cleared and the building was newly built on an empty lot after January 1, 1983.

I have provided a summary of selected new construction hearing decisions primarily covering the period from 2015-2018 for your information.

SUMMARY OF NEW CONSTRUCTION CASES

Case No.	Case Name	Description	Disposition
T12-0338	Robinson et al. v. Madison Park	T. alleged dhs & contested rent increase; Owner claimed exemption-property was formerly a warehouse building record and certificate of occupancy was issued; letter signed by building official and building record	T. petition Denied
L13-0040	Gregson v. Tenants	O. contends that 12 unit bldg. converted into 7 units which did not exist before 2001. Permit finalized on 1/8/01 for 15 habitable rooms; c/o dated 8/13/74 stated prior record of 19 habitable rooms build in 1912	L. petition Denied
T13-0104	Hughes v. Schinner	Vacant property for 5 years; bldg. rebuilt and converted into condos; c/o issued 3/10/11	T. petition denied
L15-0064	Dkafaripour v. Tenant	Prop. Built on empty lot; 1990-3 story sfr-no evidence of prior residential use-c/o;	L. petition granted
L15-0061; T15-0554	4CH, Inc. v. tenants	T. contests rent increases; L. filed for exemption ;this was formerly a commercial bldg; permit to convert commercial units on 3d floor and add 4 th floor units; c/o issued 3/14/18; permit inspection record; address history from building dept. records;	L. petition granted; T. petition denied
T15-0647	Watson v. Newman	Building permits; c/o issued after 1/1/83; built from empty basement space	T. petition denied
LI16-0037	AMP Pro Mgt v Tenants	Bldg. consisted of 8 units. C/o issued for 6 units after 1/83-No evidence of c/o for unit 7-8-evidenced by c/o, residential building record; update query project information from city of Oakland	L petition Granted in part-for units 1-6

T16-0448	Guidry v. Beacon Prop.	T. contested rent increases; Owner claimed bldg., built on empty lot; c/o issued 10.84	T. petition denied
L16-0088	Ma v. Tenant	Entire bldg. build on empty lot- c/o issued 5/7/07	L. petition granted
T16-0706	Dagron v. Shiu	T. contested rent increases; L. claimed new construction exemption; single family residence on lot was demolished prior to construction and new sfr was constructed with second dwelling unit; c/o issued 2007; due to former residential use; exemption was denied	T. petition Granted
L16-0043	Chan et al. v. Tenants	Bldg. built on empty lot; c/o issued 6/87	L. petition granted
L16-0053	Plaha v. Tenants	Appraisal report; mortgage statement; c/o issued 8/7/90 stats "new two family dwelling".	L. petition granted
L17-0004	Michelsen v. Tenants	O. contended units were formerly commercial and c/o dated after 1/83-2 separate units	L. petition granted
L17-0056	Brewer v. Tenant	c/o issued 2/27/91; description shows 2 family dwelling	L. petition granted
L17-0069	Kim v. Tenant	C/o issued 10/83 indicates "one-family dwelling, completed 8/24/83	L. petition granted
L17-0071	WM Allegro v. Tenants	c/os issued 5/03; 11/01; City of Oakland Project Informatin- 4/27/17-final inspection 3/25/02; City of Oakland Planning Commission Report; former parking lot/commercial	L. petition granted
L17-0091	Wong v. Tenant	Residential Building Record, 7/7/04-demolish bldg and clear lot 8/2/74; 4 unit bldg built 1989	L. petition granted
T17-0021	Tran v. Nguyen	T. contests rent increases; Permit inspection Record; updated project information record; letter from city of Oakland re permit, final inspection record; residential bldg. sheet; area was completely empty prior to	T. petition denied

