Housing Justice Center

September 14, 2022

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RE: Appeal of Katherine Banbury, 720 E. 7th St.. (The Cambric)
Response to 8/29 DSI Staff Report

To Hearing Officer and City DSI Staff:

This is a response to the 8/29 Staff Report on the application for exceptions to the rent cap for Union Flats.

Preliminarily, note that the updated pages 6,7,and 15, and accepting Dominium's unaudited data, show only a 6.1% permitted increase: allowable increase of $92,44/current year potential rent of $1,510,440 = .061.

The Staff Report correctly raises concerns with Dominium's position that it should be able to calculate permitted rent increases using purportedly "comparable" market rate rents as exceptions to the base year rents. Most important, the Staff Report recognizes that all rent increase requests based on "exceptional circumstances" must be based on "apple to apple" comparisons using rents in the actual project, not a self-serving comparison to a hypothetical and totally unrelated project. If Dominium's approach were to be accepted, any Landlord could evade the rent stabilization limits by claiming that she had "reduced" her rent below those of a project charging more and should be able to use the other project's rents to calculate her base year NOI. We agree with the staff report that there are issues with Dominium's argument and believe that the additional arguments made in Ms. Banbury's 7/14/22 Reply conclusively establish that Dominium's argument fails for a number of reasons summarized below:

First, as the City Report says, Dominium's use of market rate rents is drastically different from the apples to apples comparison required by Section A.4.b.1. of the City Rules. Rather than comparing base year gross income to prior year's gross income to show exceptional circumstances in the base year, Dominium seeks to compare base year income from hypothetical market rate projects which have, as described below, totally different financing structures. Rather than comparing net operating income (NOI) from the base year in this project with the current year's NOI, Dominium seeks to use the NOI from totally different projects that didn't receive any public subsidies with the actual NOI from this project, generated by rents which are limited in return for the massive public subsidies received.

Dominium received federal and state financial assistance to cover its development costs worth more than $15 million: Tax credits sold to investors for $10.4 million;$2,291,000 in tax increment financing; a $975,000 loan of federal funds at 1% for 42 years; $1,030,000 of land costs owed the City and deferred until sale of the project; a $482,720 Grant for soil correction; a $200,00 Star Loan 2% for 42 years. These subsidies substantially reduced the Net Operating Income required to provide a reasonable return and thereby reduced to "affordable" levels the rent necessary for a reasonable return. Rents for market rate projects without such major subsidies are not remotely "comparable."

Indeed, because the substantial public subsidies have reduced the rent levels and NOI required for a reasonable return, use of market rents in the base year would produce a NOI nearly double what is required for a reasonable return. Compare the "fair" NOI of $1,804,853 calculated on the updated pages 20-21 using market rate rents to the $971,456 calculated on updated pages 6,7,15 showing a reasonable return based on the actual base year operations increased by the percentage increase in the CPI as provided for in the ordinance and rules. See attached table

Second, Dominium has failed to meet its obligation to present evidence to rebut the presumption that Base Year NOI provided a reasonable return as required by the Rule. Dominium has provided no evidence that the NOI generated in 2019, the base year, was less than that projected by Dominium when it received a $14.5 million mortgage funded with tax exempt bonds issued by the City. Applications for this assistance typically include at least a 10 year cash flow projection showing the NOI for each year. A comparison between expected NOI and actual NOI is necessary to provide evidence that Base Year NOI did not provide the reasonable, expected, return. Dominium has therefore provided no evidence demonstrating any justification for using an exception to the actual base year NOI, and therefore has failed to meet its burden to show that Base Year NOI does not provide the reasonable, expected, return.

Finally, Dominium has provided no evidence to establish that applying the Maintenance of NOI provisions of the rules to the actual base year NOI is insufficient to achieve the reasonable return which is guaranteed by the ordinance. There are therefore no exceptional circumstances requiring a base year NOI adjustment and Dominium has failed to rebut the presumption in Rule A(1) that base year NOI provided a reasonable return.

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Yours truly,

Jack Cann

Jack Cann
Attorney for Katherine Banbury

Cambric: Rent Increase Permitted by City MNOI Rules versus Dominium "Exceptional Circumstance" Proposal

***Note that operating and income numbers are provided by Dominium in its application for exception rents and are not independently verified**

	Using City Rules		Using Market Rate Rents In Base Year	
	Base Year	Current Year	Base Year	Current Year
Rental income	**1,428,095**	1,510,440	**2,213,948**	1,510,440
Average Rent Per unit	**1,053**	1,114	**1,633**	1,114
Total Income	**1,596,533**	1,675,660	**2,382,386**	1,675,660
Minus Operating expense	680,497	796,644	680,497	796,644
NOI	916,036	879,016	1,701,889	879,016
Guaranteed CPI increase of NOI	0.0605		0.0605	
NOI Permitted with CPI increase	971,456		1,804,853	
Minus Current Year actual	-879,016		-879,016	
Total Rent Increase		92,440		925,837
Percent rent increase		**6.12%**		**61.30%**
Average per unit rent increase		**68**		**682**