Housing Justice Center

September 29, 2022

Office of Legislative Hearings
City of St. Paul
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Saint Paul, MN 5512

By email to: legislativehearings@ci.stpaul.mn.us; marcia.moermond@ci.stpaul.mn.us

RE: Appeal of Katherine Banbury, 720 E. 7th St.. (The Cambric)
Two Final Arguments

To Hearing Officer and City DSI Staff:

I would like to make two final arguments and submit two final pieces of evidence which I hope the Hear Officer will consider in making her recommendation to the City Council

First, Dominium's own submission to the City in support of tax credits for the Cambric clearly demonstrates that the actual NOI for the current year substantially exceeds Dominium's own projections of a reasonable return. Dominium has continued to insist that it should be allowed to base rent increases on an adjusted base-year NOI which reflects rents of purportedly comparable market rate projects rather than on the NOI for the actual project. This assertion is necessarily based on the guarantee in the ordinance of a reasonable return, as that is the ultimate basis of any exception to the 3% rent increase limit. *See,* ordinance §§ 193A.03 and 193A.05. Attached is material from Dominium's submission to the City of low income housing tax credit numbers for the Cambric project.[i] Exhibit 1 is a 15 year cash flow projection.[ii] It projects income for each year and deducts operating expenses to calculate the NOI. That NOI starts at $686,997 in the first year and increases gradually to $784,578 in year 15. Those NOI projections must reflect a reasonable return on investment, or neither Dominium, or its investors, lender, or public partners would have proceeded with the project.

But the MNOI calculations in the amended worksheet presented to staff shows a NOI of $879,016 for the current year (2021). That is $94,400 more than Dominium's projections for year 15, in its tax credit submission to the City. There can be no other conclusion than that the current return from the Cambric is not only reasonable, but substantially exceeds Dominium's projections submitted to public agencies. Note that Exhibit 2 is the entire Workbook in which the cash flow projection appears on page 13. This Exhibit is provided to demonstrate the context for the cash flow projections.

Second, the staff conclusion of one fixed permissible rent number at the end of the MNOI worksheet calculation is both unfair and contrary to the plain language of the ordinance. The second-to-the-last step in the MNOI worksheet is to calculate the additional annual rental income to which the owner is entitled under the MNOI rules to ensure a reasonable

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return. The last calculation is to divide that number by 12 and then by the number of units to get an average monthly rent increase per unit. But applying this average rent increase to all units is obviously unfair. A typical project will include multiple unit sizes from efficiencies to 3-bedrooms. If all are assigned the same dollar rent increase, tenants in the smaller units will get a larger percentage increase than tenants in the larger units.

This is not only unfair, it violates the ordinance, which by its plain language regulates the **percentage increase** permitted. § 193A.03 (limiting rent increases to three percent). Exceptions permitted by § 193A.5 are exceptions to the 193A.3 limit – that is, exceptions to the maximum **percentage increase**. The regulations are not to the contrary, although they are ambiguous, providing that rent increases resulting from the NOI analysis are to be "allocated equally." But the "allocated equally" term could refer either to an equal amount or an equal percentage; and the plain language of the statute dictates that an equal percentage be used. Ms. Banbury testified at the hearing that she agreed, even though that would slightly raise the increased permitted for her apartment. The percentage increase, not the dollar increase, is what should be used in this case and in every case. The DSI should be required to amend the MNOI worksheet to conclude the MNOI calculation with a permitted percentage increase, not a permitted dollar increase.

Yours truly,

Jack Cann
Attorney for Katherine Banbury

END NOTES:

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[i] Received in response to this Data Practices Act request to the St. Paul Data Practices Request Center: "Record Requested: I am writing to request under the Data Practices Act the following: … the most current common application submitted for each development financed with 4% credits and Tax Exempt Bonds (private activity bonds) for the past 10 years where the developer is Dominium or a legal entity formed by Dominium."

[ii] This exhibit is a PDF of the cash flow projections on page 13 of the attached Exhibit 2. The size of the entries in the PDF may be increased to make the projection easier to read.