City of Saint Paul

15 West Kellogg Blvd.
Saint Paul, MN 55102

Minutes - Final

Rent Stabilization Appeal Hearings

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Tuesday, July 19, 2022 **3:00 PM** **Room 330 City Hall & Court House**

1 RLH RSA 22-3 Appeal of Jack Cann, Housing Justice Center, representing Hannah Gray, to a Rent Stabilization Determination at 787 HAMPDEN AVENUE #213.

Sponsors: Jalali

Lay over to RSLH Thursday, September 1, 2022 at 9:00 AM. For further discussion.

Hannah Gray, tenant and Jack Cann, tenant representative, appeared
Owen Metz – property owner representative and Tammera Diehm, counsel to property owner, appeared
Rent Stabilization Staff: Lynn Ferkinhoff and Department of Safety & Inspections (DSI) Angie Wiese appeared

[Moermond gives background of appeals process]

Moermond: I will turn it over to staff to get us started and will be right back with you. Ms. Ferkinhoff, Ms. Wiese good afternoon. We will be getting a staff report. Tell us a little about this application and how it fits into the process. This is the very first tenant appeal we've heard so I don't think it would hurt to give a little bit of a 101 on the process.

Ferkinhoff: Tenants are allowed to appeal a decision that's been made by City staff through the process. First, they can go online and enter the information that they are prompted to provide on the form online and that would generate a complaint into our system. Staff reviews that complaint and determine whether or not additional action should be taken. In this particular case, on May 27th the department received an intake form from a request for exception to the 3% increase per Ordinance 193A. The application is part of the record and Jack Sipes is listed as the applicant representing Dominium. They were requesting an 8% increase on rent using the self-certification method. The reasons listed in the application were: an unavoidable increase in operating expense, a decrease in rental income, and a pattern of recent rent increase.

The intake form asks applicants to enter three pieces of information from the Maintenance of Net Operating Income (MNOI) worksheet: income adjusted by CPI is one of those items, allowable rent increase is another of those items, and allowable increase unit per month is the third item. As part of the self-certification process, the applicant received a confirmation email including their determination letter and a fillable flier for tenant notification. Staff also reviewed the recent inspection record. It was

approved by Fire Safety Inspections as an "A" property in October 2017 and it has had 11 complaints since. There are no current inspection issues.

The premise of MNOI is that an owner is entitled to the same rate of return on investment in the current year as they received in the base year. This premise assumes there is some profit margin attained that is allowed to remain. So, as part of this appeal, the interpretation of rental income has 2 questions. In the rules, gross rental income is gross rents calculated as gross scheduled rental income at 100% occupancy and all other income or consideration received or receivable in connection with the use or occupancy of the rental unit. There are further details about how to cover owner-occupied or vacant units which are not applicable to this appeal. Our interpretation of this has been the actual income received, not the income potential. Second, the base year income or operating expenses can be adjusted for exceptional circumstances. The landlord must present evidence to rebut the presumption that the base year net operating income provided a reasonable return. For this appeal, since we have not had a chance to discuss the supplemental appeal documents, staff is questioning how the proposed base year income is exceptional from 2019 or the current year. Finally, the department has not received a complaint from any resident at this address.

Moermond: Ok, to be clear, at this juncture there is no provision in the ordinance specifically or in the rules that have been finalized by the department for a tenant appeal. However, it is considered by me and backed up by the City Attorney's Office that tenants are interested parties and, therefore, due process would apply to the tenants and they would have the ability to appeal. This appeal came in directly to the Legislative Hearing office, it did not come through the Department of Safety and Inspections by way of a complaint which would be another procedure for that to have happened.

Wiese: Thank you for making that clarification and we just wanted to make a distinction or just recognize that we had not received one previous to the appeal coming in. So not saying that it couldn't come in the way it did just that we did not receive one and, therefore, did not review any sort of complaint. The web form is a way that complaints can be made it also can be made via phone call or any other method. We've received handwritten letters, but we prefer the website intake form.

Moermond: Ok, so keeping that in mind. We have an application that was made for self-certification for an exception to the 3% rent increase cap. It was self-certified and therefore granted by way of email. When the appeal came in, I asked building management to submit the MNOI and other associated materials that were supporting of the exception to the ordinance to be sent. The DSI rules do state that those forms should be retained for the records of the owner so they should have been available. They were submitted upon request and made available to the appellant, as well. You have had a chance to look them over. You have not had a chance to talk either with the appellant or the property owner with follow up questions you would have for that. Is it typical that you would have follow up questions for this? This is a significant proposal, there's a lot of units involved, so I'm assuming that you would in the normal course of events.

Wiese: Yes, Hearing Officer Moermond. I don't know that we've approved or denied a single one of these applications yet without confirming our understanding with what's on the piece of paper that's in front of us. We always have a conversation with the applicant to make sure that our understanding of what's on the written document is what they intended to share with us and then we clarify through the documents any

discrepancies in our understanding so that the record is really clear. So yes, under normal protocol for a staff determination we would do that back and forth.

Moermond: So if it were a staff determination and the paperwork would need to be submitted, and that would be 8% or more of an increase in rent, then you would have that paperwork and do that follow up communication with the applicant.

Wiese: Yes.

Moermond: So you do have follow up questions; you enumerated them and we'll come back to those. What I'm going to do right now is turn it over to Mr. Cann. You filed an appeal without the background knowledge of what the supporting information was, which you didn't need to have with you at that time, but you appealed based on what you knew. What I'd like you to do is talk a little bit about that appeal and then I would like to switch and hear from the building owner about what their comments are on the paperwork they submitted. You did submit, I believe you titled it a rebuttal, of the information that they provided. So, I'd like to take this in chronological order as it came into my office so that we can review it that way. Mr. Cann you have a client who wants to appeal this, tell me the story of the appeal.

Cann: Well, the appeal, was really simply to get them to submit the MNOI and the guts of everything is the rebuttal. And the rebuttal is based on really two sets of arguments. One is that the MNOI worksheet is wholly inconsistent in really two important ways in this case.

Moermond: Wholly inconsistent with what?

Cann: Internally inconsistent. Staff pointed out that that they wanted to see actual operating income, actual operating expenses used to calculate an actual net operating income. The form requires that for the base year and the current year, which is basically defined as 2021 in this case, it's the full calendar year before the application for exemption. The problem is that this building didn't open until May of 2019 and it was still accepting applications at least through the fall of that year. Nevertheless, what appears to have been submitted is a full year's operating statement with a full year of income, a full year of expenses. That doesn't make any sense because the income was only generated over part of a year. The other problem is that the net operating income that was calculated isn't based on real numbers and real operating experience. It's somehow hypothetical, I have no idea how Dominium came up with it. The second problem is that the very first line in this calculation of net operating income is supposed to be the potential gross rents for the building for the entire year. Basically, summing up all of the rents of all of the units multiplying by 12, assuming 100% occupancy. Then the next line following is a vacancy reduction. Well, the problem is that later on in the form, and in this case it's attached in five pages of appendix, is a complete list of all the initial rents, of all the rents used to make the calculation. Right next to it is a complete list of all of the initial rents for the for the tenants. Well, things don't add up.

Oh and then, and actually most important, if you add up all of the rents for the current year that are on this five page list, which shows for the current year the rent for each unit added up multiply it by 12 it exceeds the number put into the net income calculation for this year by, I think it's more than $300,000. In other words, their net income calculation for the current year is way too low and their net income calculation for the base year is based on purely hypothetical numbers. So that's the first set of problems. The second set of problems is that their argument, there's a two- or

three-page argument that they submitted explaining why they were entitled to the 8% percent exception. And it's based entirely on the notion that the rents on this project, which is a low-income housing tax credit project, are somehow reduced from market rate units that are somehow comparable. What they did is they looked at the rules and what the rules provide for an exception to the 3% limit, is that the rules permit an exception if the net operating income from the building since the base year has not kept up with the consumer price index, kept up with inflation. The rule provides that under exceptional circumstances the base year net operating income can be adjusted and among those exceptional circumstances are reduced rents for particular or certain tenants. So, their argument is that this is a is a low-income housing tax credit building, it's not a market rate building. Therefore, we have reduced rents and therefore, we should be able to base our net operating income as if our building had comparable market rents.

That's ridiculous for at least a couple of reasons. This building received, let me actually get the numbers, a little over $2.5 million in low-income housing tax credits annually for 10 years. They sold those tax credits to investors for $22.7 million. In addition, they got over $1 in grants to write down the cost of the project. And they got a long-term federally insured fixed rate mortgage. It's not a market rate project. The project was underwritten obviously with all of those tax credits and all that tax credit equity, resulting in a much lower net operating income then a market rate project would require. The market rate projects that they've used as comparables have much higher rents because they don't have $20 million in tax credit equity syndication to write down the mortgage. So they're not even remotely comparable. First of all, they've taken reduced rent completely out of context. There is nothing in 2019, the base year, that was remotely different than what they completely expected. There were no exceptional circumstances. The rents were exactly what they projected, and the rents are exactly what all the underwriters involved in both the provision of the mortgage and the provision of the tax credit equity assumed would provide them with: a reasonable return. They don't need market rate rents to give them a reasonable return because they've got all this public subsidy. I guess the final point to make about this reasonable return is if they actually were, if they actually got rents, market rate rents, that they're saying they should be able to use to sort of calculate a hypothetical net operating income for the base year that would be totally unreasonable for two reasons. For one thing it would provide them with way, way, way, way more cash flow then everybody that put in all of that public money expected and secondly the investors, because they're buying tax credits, are looking for tax shelters. The last thing they want and the last thing that would be reasonable for them is to get a huge amount of cash each year. So, their use of reduced rent as an excuse for the exception is taken totally out of context because there was nothing exceptional about the operation of the project. The comparables, and it's really ridiculous to use a market rate project that hasn't received 10s of millions of dollars of public subsidy as a comparable and as setting comparable rents. So, for those two basic sets of reasons they have no right at all to any kind of exception. The two basic reasons are one, their MNOI worksheet doesn't make any sense and doesn't hold together and two, their written explanation doesn't make any sense or hold together. I'll leave it at that.

Moermond: So, the other arguments that you presented in the appeal you filed with my office you're not carrying forward? Would you like to make any comments, specific to Ms. Gray's unit in particular because you are representing her and her unit in this? It's not a discussion of the entire building.

Cann: Well if the 8% rent increases are not permissible under the ordinance or under the rules then of course Ms. Gray's 8% rent increase is not permissible.

Moermond: Any other comments about the appeal that you filed originally?

Cann: Well, the original appeal was made without any knowledge whatsoever of how they could possibly have justified this in the MNOI worksheet that they purportedly did before they filed the appeal. And what it said was look, if you look at the rent increases in that building between the 2019 base year and the increased rent that they're proposing right now, it was something like a 24-25% rent increase. If you looked at the increase in consumer price index from the base year, and I actually took it all the way to this year, this March, it was like it was 1.2% + 3% + 8%., way, way less than the percentage increase in the rents. And my argument was well, if the CPI has increased by only 10 or 12%, I forget what the number was, and that's the amount that the net operating income can increase and you're increasing the rents by over 20% the only way that works mathematically is if the operating expenses have increased dramatically more than the 20% or 24% increase that the rents laid out. I mean it was the best I could do knowing nothing about what the actual net operating income said. The idea that that the operating expenses could have increased that much when the actual inflation was on the order of 10 or 12% seemed ridiculous.

Moermond: OK. Do staff have any questions at this juncture or would you prefer to hold them until we hear also from the owner?

Ferkinhoff: We'd prefer to hold them until we hear from the owner.

Moermond: Alright do you have any other comments?

Cann: No… well I point out that you suggested that this appeal is just about Ms. Gray and I'm suggesting it obviously is not.

Moermond: I am saying that Ms. Gray has the ability to file an appeal on her own behalf and on no one else's. If there's follow up based on any outcome here, that is separate from what I'm looking at today.

Cann: I understand that. I'm just telling you there will be a follow up.

Moermond: Enough said then. Thank you, Mr. Cann. Alright, who do we have here from Dominium? Can I get your names for the record please?

Diehm: Yes, my name is Tammera Diehm.

Moermond: And your name sir?

Metz: I'm Owen Metz, I'm with Dominium.

Moermond: Can I ask what your roles are with the corporation?

Diehm: I'm an attorney at Winthrop and Weinstine, so we are legal counsel to the landlord.

Metz: I'm a partner at Dominium and a partner in the ownership group that owns the apartment community.

Moermond: Thank you. Alright so you have heard now from Mr. Cann about his appeal and about the reasoning that he has applied to the information that Dominium provided

when requested as part of the application for the 8% increase which would be an exception to the 3% cap. So, what I'd like to do is to provide you an opportunity to describe the information you provided and if you have comments about Mr. Cann's statements I will accept them and also hear again from Mr. Cann if he has any follow up after that. We will do it that way then and it looks like Ms. Diehm I will turn it over to you to begin.

Diehm: Good afternoon. Again my name is Tammera Diehm. I am an attorney at Winthrop and Weinstine and I am representing the landlord entities. I am joined today by Owen Metz who is also a representative of the landlord entities. First of all, thank you for giving us the opportunity to participate in this process. We recognize this as a new process for the city and with that there's some learning on all sides and so we appreciate being here and having a chance to share our comments. We do understand there are two separate and distinct appeals, so we'll go through those and then we are happy to talk specifically about the information in each appeal to the extent that is helpful, too. These two properties Union Flats and Cambric are affordable housing residential communities which means that the appellants, Ms. Gray and Ms. Banbury are paying and will continue to pay rent that is well below market rent for their residential units. The record that you have received and that is before you for review has a lot of information in it, a lot of information from the Housing Justice Center, as well as information that has been provided by the landlord. As you review this information and you listen to our testimony today and others who are here and present, you'll see that affordable developments, like Union Flats and Cambridge do not fit neatly into the city's current rent stabilization rules. In fact, most communities that have rent control or rent control rules or rent restricted affordable housing that is developed using federal tax credits or other public subsidies are treated differently than regular market rate properties under those rent control rules. That is one way in which many cities provide affordable housing in and of itself which helps the city further its goals of providing stable affordable housing for residents. We are not here today, and we understand it's not the purpose of this appeal, to argue that these properties fall outside of the city's ordinance, but instead we think the record will show that the landlord for these two properties followed the City's process and increased rent well below the amount that would be legally allowed not only under the City's rent control rules but also under contractual agreements that are in place between the landlord and the city.

As a starting point it's important to acknowledge the underlying goals of the residential rent stabilization ordinance that was approved by Saint Paul voters in November of 2021. The ordinance seeks to balance the desire to ensure that Saint Paul residents have access to affordable housing with an acknowledgement that property owners in this state have a right to a reasonable return on investment. To achieve this balance, the ordinance creates a presumption that monthly rent increases should be limited to 3% in any 12-month period. But this presumption is just that, a presumption or a starting point. For an analysis that allows landlords to present information that would justify an increase of more than 3% in certain situations. As part of the ordinance implementation the city developed rules to clarify first, whether a property qualifies for an exception to the rent cap and two, how the requests for the exception to the three percent cap would be considered. The rules were finalized in late April and the limits on rent increases took effect on May 1. In this case the landlord followed the City's regulatory process and was granted an exception to the 3% rule. For reasons that I will explain in greater detail both Union Flats and Cambric are affordable housing developments that operate in a way that allows them to qualify for the exceptions to the rent cap under the city rules that have been adopted.

The appellants have argued that the city erred when it granted the exception. In doing so they attempt to create a cloud of confusion by first claiming that we're not legally entitled to an exception and then challenging the net operating income calculations that have been provided by the landlord through the worksheet. The rules as adopted by the City define what the city believes to be a reasonable return on investment. The city starts with an assumption that the landlord's actual net operating income, or NOI, in the year 2019 represents a reasonable return on investment for that particular property. Using 2019 as a base year, landlords then have a right to continue to receive the same NOI adjusted by 100% of the percentage increase in the consumer price index. The rules, however, acknowledge that the 2019 base year adjusted by CPI may not work in all situations. To that end, the rules allow a property owner to rebut the presumption that the 2019 base year NOI is a reasonable return on investment if they can show that they were exceptional circumstances in the base year. To help clarify when a property may qualify for an exception to the rent cap the city provides examples of what may be considered an exceptional circumstance. These examples are provided in the rules and they're also included in the worksheets that landlords receive as part of the exception process.

There are three examples of exceptions that we would like to draw your attention to today. First, one example of exceptional circumstances is that gross income in the base year, that 2019 year in most cases, was lower than it may have been because some residents were charged reduced rent, and Mr. Cann spoke to that. Second, base year rents were disproportionately low in comparison to base year rents of other rental units in the city. Mr. Cann also spoke to that. And finally, the rules contemplate that there may be kind of a catch all "other" exceptional circumstances. So, I just want to talk briefly about all three of those situations. As noted earlier, both these properties that are subject to the appeals today are rent restricted affordable developments which means that both Ms. Gray and Ms. Banbury are currently paying and will continue to pay below market rates for the residential units. The landlord for both Union Flats and Cambric established exceptional circumstances for each of these properties because the gross income in the base year was lower than it would have been as a result of residents paying reduced rent. The two properties are residential communities that were developed using a complex financing structure designed and administered by the federal and state regulators to provide affordable housing to residents in the City of Saint Paul. As part of this financing the developer entered into multiple contracts to ensure that rent in these communities would continue to be affordable to a segment of the population who earns income at a level that is 60% of the area's median income. The first contract is called the Declaration of Land Use Restrictive Covenants or LURA. The LURA is an agreement between the City of Saint Paul and the developer. The second agreement, a regulatory agreement, is an agreement between the developer and the United States Department of Housing and Urban Development or HUD. And finally, the bond financing that was used to support these developments resulted in a regulatory agreement that was signed by the developer and the Saint Paul HRA.

These agreements impose restrictions on the maximum amount of rent that can be charged for units that are part of these developments. The restrictions in these documents, specifically the LURA, the first one I mentioned, not only binding the original developer, but all future owners of the property and those restrictions last for 30 years. For Union Flats, where Ms. Gray lives, there are 217 units and 100% of these units in the development must be rented to individuals who earn no more than 60% of the area's median income. Under federal and state guidelines and the terms the LURA, rent for these units is set at 30% of the income that is earned by someone who makes 60% of the area's median income. For Cambric, where Ms. Banbury resides, there are

113 units and like Union Flats all of these units are encumbered by a LURA and this along with the state and federal regulations impose restrictions that result in below market rent and it sets limits on the income of the residents who live in these units. In accordance with these documents, which are legally binding agreements with the City of Saint Paul, HUD establishes what rent should be for residents who live in these communities ensuring that rent is affordable for families at specific income levels. Because of this, residents in these communities are paying rent that is reduced from what the market would otherwise dictate the rent to be for these units. As a result, both of these properties qualify for an exceptional circumstance that's listed in the ordinance because the gross income in the base year was lower than it might have been as a result of some residents paying reduced rent.

For the same reasons both Union Flats and Cambric qualify for an exceptional circumstance under the city stated description that base year rents were disproportionately low in comparison to base year rents of other rental units in the city. That's the language from the exception: base year rents were disproportionately low in comparison to base year rents for other residential units in the city. In 2019, Ms. Gray's rent was $1060 for a one-bedroom apartment and Ms. Banbury rent was $1243 for a two-bedroom apartment. Both of these rental rates are significantly lower than the average Saint Paul rent for units of a similar size even before adjusting for differences. Specifically the City's average rental rate for a one-bedroom unit like Ms. Grays in 2019 was $1525 or 30% higher than the rent that Ms. Gray was paying. Ms. Banbury's rent in 2019 was $1243, this is 40% less than the average Saint Paul rent for a two-bedroom apartment. The Saint Paul average in 2019 for this unit was $2060 and the average does not take into account that Ms. Banbury's unit was brand new, and the building boasted more amenities than many of the other apartments in the city. The reason that the 2019 rents paid by Ms. Gray and Ms. Banbury are so far below what a typical unit in Saint Paul would rent for is because HUD, not the typical rental market, establishes what the maximum rate for units are when these units are financed by low income tax credits and they're subject to a LURA and regulatory agreements. And these rates that are established and published by HUD are below the market rental rates that would otherwise be paid for a unit like this in the open market in the City of Saint Paul. Based on this both Union Flats and Cambric qualify for an adjustment to the base year NOI under the City stated standard that rent paid by residents at these properties is disproportionately low when compared to base rents for other comparable properties in Saint Paul.

Finally, the third way in which we meet that standard is the rent stabilization ordinance and related rules contemplate that flexibility will be provided if there are "other exceptional circumstances." Here there is an additional exceptional circumstance because the City entered into a contractual agreement with the property owner agreeing that the regulations established by HUD would be used to set the rent for these residential communities. HUD entered into a similar agreement with the property owner. Following the terms of these previously agreed to contracts the landlord is entitled to increase rent this year by almost 12% based on what HUD has established and published as 2022 changes in the calculation of median income of this area. Limiting the landlord to a 3% cap on rent increases for these two properties would be contradictory to the City's legal commitment to the property owner, the developer, the lenders, the investors all as set forth in the LURA and the regulatory agreements.

The fact that both the City and HUD entered into contractual agreements related to appropriate rent for units in these communities, that in and of itself creates an exceptional circumstance to rebut the presumption that the 2019 NOI as increased by CPI would be a reasonable return on investment for the property owner. Mr. Cann

argues that the landlord expects a reasonable rate of return to be the same as what market rent would be. That is simply not true. To the contrary in these two cases a reasonable return on investment should be defined as the return that was negotiated by the City, HUD, the developer, the lender, and the tax credit investors when these two communities were developed and financed. This agreed upon return is already well below market for a 30-year time period. Accordingly, Union Flats and Cambric properties that are the subject of today's appeals satisfy the exceptional circumstance standard in the rent stabilization rules in three separate and distinct ways. First, residents paid reduced rent. Second base rents in 2019 were significantly lower than the rent that would be charged for comparable units in the city. Finally, third, the other exceptional circumstances are the contractual agreements that are in place between the city and the property owner and HUD which already set forth the process of determining rent. Once the property owner establishes that there are exceptional circumstances as the landlord has done here, the 2019 net operating income is no longer presumed to be the basis for the landlords reasonable return on investment.

Instead, the City agrees that it will allow an adjustment to the base year NOI and evaluate subsequent rent increases accordingly. Here the landlord followed the specific regulatory procedures that were established by the City to apply for the exception. Specifically, the owner provided support for the increases in rent through the adjusted income and operating expense worksheet. Using the maintenance of net operating income worksheet the 2019 increase in allowable rent for Union Flats. when you do the adjustments and the calculations, would be 66%. The 2019 increase in allowable rent for Cambric would be 51%. That is certainly not what the landlord is asking the City to approve. Using HUD calculations related to median income, the LURA, and the regulatory agreements with the City, rent increases for these communities, or for the residents in these communities, would be close to 12%. Again, that is not what the landlord has asked for and not the adjustment that they made. Notwithstanding their right to request a greater increase, in an acknowledgement of the fact that this is a new process for the City, and the City has a self-certification and beyond that there's some question as to exactly how the process would work, the landlord provided notice for the 8% increase in rent and followed the self-certification process that the City developed.

The Housing Justice Center's position that the base year NOI cannot be adjusted because the financing of the original development used subsidies and tax credits makes absolutely no sense. In fact, if the 2019 NOI is left in place and you don't allow there to be an ability to adjust, the City would be creating a situation in which the rent stabilization ordinance would prohibit the City from honoring the legal obligations that are in the contractual agreements the City has with the landlord. Specifically, under the LURA following 30 years of compliance with affordability the City has promised that the landlord would have the right to adjust rent to then market rates. But if the City's rent stabilization ordinance is read in such a way as to prevent any adjustment to the NOI for affordable housing developments then the City's rent stabilization ordinance would make it impossible for the landlord to ever achieve anything close to a market rate rent 30 years from now. Not only would this scenario result in the City's violation of the LURA but it would constitute unconstitutional taking of the landlord's property. We are confident that that is not the intent of the City today.

In the Housing Justice Center's reply documents Mr. Cann descends into what I consider a hyper technical and somewhat erroneous examination of our maintenance of net operating income worksheet in an effort to kind of confuse the process and argue that the properties don't qualify. He also, as he stated earlier today, claims that the exceptional circumstances standard cannot be met. In doing so he then goes on and

asks for four orders that I think clearly exceed the issues that are presented in these two appeals. Instead, the only question before you this afternoon, and before the City Council in accepting your recommendation, is whether the landlord for Union Flats and the Cambric property properly adjusted the 2022 rents for Ms. Gray and Ms. Banbury based on the self-certification paperwork and the process that's outlined in the City rules. The record that you have before you today, and as we will clarify with any questions, establishes that the rent increases are justified and the landlord did so not only in accordance with the rules that have been established by the City but also in accordance with the contractual documents in the LURA and the regulatory agreements that are binding; not only on us as the property owner but also on the City. So, based on the record we respectfully request that you recommend to the City Council that the appeal of Ms. Gray and the appeal of Ms. Banbury be denied and that the legal agreements between the landlord and the City be honored and the rent increase be affirmed. Thank you.

Metz: I'll just add, we use actual income and expenses. The form has asked for that so certainly if there's request to see the financial statements, we have a HUD audit done every year. The auditors and accountants look deeply at the operating expenses and incomes of the properties. We're happy to share that information. You know, we follow our agreements with the City in good faith and we believe we're following the rules established by the City. To Tammy's point, without an adjustment to these base year rents to a hypothetical market rent, which is done all the time in market studies and information, where you look at a comparable market rate property. For example, Lyric at Carleton Place Lofts is directly across the street from Union Flats and a one-bedroom there rents for $443 more than a comparable one-bedroom in our building. We have comparable amenities, we're actually a newer building than that building and we have a pool, they don't. There are high amenities at both of these apartment communities that would justify significantly higher market rent. We're asking to follow the agreements, we're asking to follow the rules and equally as important we're asking that 30 years from now that we're not removed from our obligation to at some point theoretically charge a market rent. And under the ordinance there's no vacancy decontrol and without an adjustment to these base year rents and to have NOI that's hypothetically market that is taken from us and that is a major problem. It would be in direct violation of our agreements with the city and something we're very happy to continue to honor the affordability which we have been all along. The rent increases have been done in accordance with those agreements. We've never had any finding of charging more rents than what is allowed under our agreements and will continue to happily abide by those. Thank you.

Moermond: Alright, I will let you folks take your seats again and invite Mr. Cann to make a couple comments and then hear from anyone else. Do you have any follow up on anything you heard just now?

Cann: Absolutely. So first of all, she made the point that the rules in discussing exceptional circumstances in the base year say the gross, so it's headed "exceptional circumstances in the base year" the gross income during the base year was disproportionately low due to exceptional circumstances. What she said was well disproportionately low means disproportionately low compared to all of the other buildings, market rate buildings in the City. But the context makes it completely clear that disproportionately low means disproportionately low compared to other years. The entire section is about adjustments to the base year and exceptional circumstances in the base year compared to other years. So first of all, the disproportionately low doesn't help her at all. Secondly, she said look the City and various governmental entities have entered into contracts with us that provide for a guaranteed return. They

absolutely do not. They provide for potential rent increases. The return; there has been no testimony whatsoever that in either project the return that they got in the base year or in 2020 or in 2021 is any different from the return they completely expected given the 10s of millions of dollars of public subsidy that was put into those projects to assure that they did not need a net operating income like, that they did not need rents like a market rate project.

You know in order to have a net operating income that that gave them a reasonable return on investment. In their MNOI worksheet for Union Flats they did a calculation of the allowable rent increase they could get if they were allowed to use comparable rents in making the calculation. The allowable rent increase that they came up with was $739.50, average rent increase using the mechanisms and procedures that they were talking about. That would produce way more than a reasonable return on investment because it would produce an enormous cash flow, a cash flow that's enormously greater than any of the parties that reviewed their applications for tax credits or reviewed their applications for millions of dollars of public subsidy thought they that would ever get. What they're asking for is a procedure in setting their exemptions that wouldn't come even close to guaranteeing them a reasonable return, that would guarantee them a return that is ridiculously higher than a reasonable return. We're not saying that they shouldn't be able to increase their net operating income, to keep up with inflation. Absolutely, that's what the ordinance says and that's what they should be able to do. But they have not shown, or even tried to show, that the net operating income in the base year was in any way exceptional in any way other than what they completely bargained for. We're fine with them increasing that net operating income by the consumer price index increase, assuming that you use the consumer price index that's specified in the preface to the rules rather the one than that the city for some reason stuck into the to the form.

Moermond: Can I pause right there? That remark, there was some e-mail that you sent to the Department of Safety and Inspections on that exact point and I just want to allow them a chance to correct what their information had said and because there is a change here. Director Wiese?

Wiese: Yes, I can address that. The former language in the rules talked about the CPI as of March and it was listed in a couple different places in the narrative. The worksheet itself used the annual CPI. So, in understanding that there was a discrepancy there in the language versus the worksheet. And the language is in the worksheet, so they're both in the same document but referencing a different CPI which would have yielded a different number. We got a city attorney's office opinion that the number in the worksheet is the one that people expected to utilize and, therefore, to keep as far as the correct CPI for MNOI. Therefore, we've now, and I believe it is posted currently, has been corrected today in all locations. It should now say the annual CPI and then also gives the reference to the BLS which is where we come up with the CPI numbers for the Minneapolis Saint Paul Bloomington area.

Moermond: That acronym being?

Wiese: The Bureau of Labor Statistics.

Moermond: Mr. Cann, I apologize that I interrupted but I thought that that needed to be clarified because I know that there had been a correction. You can respond.

Cann: My response is that the only there are all kinds of CPIs and you know there's not.

Moermond: You enumerated several in your materials.

Cann: There's consumer price indexes for different geographical locations, there's a CPI for the 12 months ending in March and 12 months ending in a couple of other months. The point I'd like to make is that the only CPI that's actually referenced in the rules adopted by the City Council.

Moermond: I need to correct you on that point that the rules were not adopted by the City Council.

Cann: Oh, they weren't?

Moermond: No. The ordinance was not either, that was by ballot initiative.

Cann: And the council didn't adopt the rules?

Moermond: No.

Cann: So, the rules were made up by the city staff.

Moermond: Department of Safety and Inspection drew up draft rules and they finalized rules. As specified in the ordinance itself.

Cann: OK, but nevertheless the CPI, the only CPI that's actually referenced in the rules is the 12 month CPI for March so you know

Moermond: We've gone over that territory a couple times now. You have more comments though it appears.

Cann: Well, again basically the ordinance itself requires a demonstration by the city or by the applicant that they're entitled to an exception in order to get a fair return. They have not demonstrated that the exception they proposed, which would again allow a $739 rent increase, is related in any way to a fair return. Nor; I'll leave it at that.

Moermond: Are there other people who wish to testify today on the Hampton Ave property? Does counsel for this property, for Dominium have any other comments right now? OK I'm going to ask staff, do you have questions that you want to put on the record right now? I'm not expecting that anyone will be answering them, but just questions that have come up for you during the course of this. I'm anticipating that on reflection from what you're hearing today you will have additional questions and I'd like to reduce those to writing so that they can be shared with all of the parties involved and we're all in the same place on what still could be done. Where I want to get is that staff will have had an opportunity to review what you would have reviewed if this were a staff determination question, so that there is that recommendation on the record from staff for me to consider in the context of this appeal. So that I have information from you as well. So, anything right now that you would want to share?

Wiese: One, I would like the reference that Ms. Diehm gave to the, and Mr. Cann brought it up too, the comparison to other properties. Which section of the rules specifically for that citation? And then, also on the rental income just clarification on both properties actually what year the owner is using for base year and what rents. I think we all saw in the record that there's several columns of the spreadsheet with several different numbers, so we'd like to get a confirmation from the owner what base

year they are considering and the rents they are utilizing in the base year.

Moermond: Anything else? And that applies to both properties?

Wiese: That applies to both properties and may generate further questions.

Moermond: Of course. Mr. Cann, I can see you have one other comment on this property and then we'll go on to the next one.

Cann: Oh, well I guess I was just gonna get to that. Dominum addressed both properties at once and I was simply going to make the point that the arguments are virtually the same for the Cambric except that the problem with

Moermond: Can I just try to run the hearing for just a second? I wanted to get to wrapping up on 787 Hampden and did you have any other comments on 787 Hampden before we switch gears to talk about the other property?

Cann: I wanted to make sure you were going to switch gears or that we would come back we come back in some way.

Moermond: That's my job. Alright?

Laid Over to the Rent Stabilization Appeal Hearings due back on 9/1/2022