



CITY OF SAINT PAUL
OFFICE OF THE CITY COUNCIL

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October 13, 2022

Jack Cann
Housing Justice Center
275 4th St E., Suite 590
St Paul, MN 55101

Katherine Banbury
720 Seventh Street East, #330
Saint Paul, MN 55114

VIA EMAIL: katherinebanbury@gmail.com

VIA EMAIL: jcann@hjcmmn.org

Re: Rent Stabilization Hearing Follow-Up for property at 720 Seventh Street East, #330 (Cambric)

Dear Mr. Cann and Ms. Banbury:

The Legislative Hearing Office received your appeal of the proposed rent increase for this apartment unit on June 21, 2022. To summarize, Dominion, the property owner, provided the appellant, tenant Katherine Banbury a lease on June 1, 2022 for July 1, 2022 through June 30, 2023, which included a 7.1% increase in rent. This represents an increase of \$96 per month, or an increase from \$1,344 to \$1,440 in monthly rent. Dominion sought and was granted an exception to the 3% cap specified in the Saint Paul Legislative Code Chapter 193A Residential Rent Stabilization. Whether or not this exception to the cap should have been approved is the sole issue of this appeal. The increase in rent was stayed during the appeal process.

In order to carefully consider this matter, lengthy Legislative Hearings were conducted on July 19 and again on September 15, 2022. Department of Safety and Inspection (DSI) staff also conducted an audit of the application and met with the owner to clarify information. There is extensive correspondence and financial analysis of the basis for the increase and these documents are a part of the record in front of the Council. What follows are my findings and recommendation for the City Council to consider in the appeal.

FINDINGS:

- May 27, 2022 DSI received an application from Dominion for an exception to the 3% rent cap for this building, including this unit. Dominion requested and was approved an 8% increase using the City's self-certification process.
- The reasons listed in the application for an exception to the rent cap of 3% were an unavoidable increase in operating expenses, a decrease in rental income and a pattern of recent rent increases or decreases.
- When the appeal was filed on this self-certified rent cap exception, the Hearing Officer requested DSI staff to audit (conduct a staff review) the application and work with the owner to get the supporting materials for review and analysis. Notably, the rules DSI uses for implementing the

ordinance provide that applications for an exception to the 3% cap which fall between 3% and 8% may be done using a self-certification process. In this process, the owner is responsible for preparing the required supporting documentation for the increase, but that documentation does not need to be provided to the City unless the application/intake form is audited.

- DSI staff describe the intake form in this way – the intake form asks applicants to enter three pieces of information from the Maintenance of Net Operating Income (MNOI) worksheet: (1) income adjusted by CPI; (2) allowable rent increase; and (3) allowable increase unit per month. 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. As part of the self-certification process, the applicant received a confirmation email including their determination letter and a fillable flier for tenant notification.
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- DSI’s staff review of the MNOI indicates the following as to how the MNOI worksheet was prepared, reviewed and discussed:
 - *There was a lengthy discussion on the actual rent collected versus comparable rents in the area for non-Section 42 buildings. The rules state that base year can be adjusted for exceptional circumstances. In this way, DSI believes Dominion filled out the form for exceptional circumstances, as written. There is no provision in the rules for adjusting the current year. Therefore, Dominion, applied the comparable rent model to base year but not current year.*
 - *Staff believes this poses two issues as the rules are written.*
 1. *The rules are attempting to make an apples-to-apples comparison between base year and current year. **When it is talking about exceptional circumstances, they are exceptional to that year, not all years.** Therefore, in Dominion’s calculation, the income in base year is inflated for comparable units but the current year utilizes actual income. DSI does not believe this is an apples-to-apples comparison.*
 2. *Once a determination is made, the rules state: “In the event that a determination of the allowable Rent is made pursuant to this section, if a subsequent petition is filed, the Base Year shall be the year that was considered as the "current year" in the prior petition.” This means that in a future petition, the base year will be the actual income, not an inflation noting comparable rents.*
 - *Dominium has a right to a reasonable return on investment not only right now but for the future of their property. DSI believes the current rules assume a reasonable return on investment now equates to one for the life of the property. Dominion has a different opinion though DSI will refrain from presenting their rationale.*
- Procedurally, the MNOI document grows base year NOI by a change in CPI to produce what is considered to be a fair NOI. This fair NOI is then compared to the current year NOI and the difference between the two is the allowable increase. The MNOI document takes the total allowable increase for the building and divides it by 12 (months in the year) and then by the number of units at the property. This giving an allowable increase per unit, per month. Initially, this dollar value was compared to Ms. Banbury’s rent which equated to a 5.07% increase, which was DSI’s first recommendation on an exception to the rent cap.
- During the second Legislative Hearing, discussion expanded the thinking on how to best analyze an equitable distribution across the building’s units for the total allowable increase. Jack Cann recommended the City compare the total allowable increase to the current year rental income. City staff agreed this was a more level approach to the increase number that can be applied to all units, rather than comparing individual rents to the monthly allowable increase.
- Based on this adjustment in calculation, DSI staff concluded that an exception can be granted up to a 6.12% increase, which is almost entirely attributable to the increase in the CPI in this time frame and is also attributable to some capital improvements to the building.
- Dominion argues that the MNOI base year should be adjusted to comparable market rate rents. The argument for Dominion’s alternative approach to completing the MNOI is rooted in the

building's status as receiving Low Income Housing Tax Credit (LIHTC, aka Section 42) and charging reduced rents. The record before Council shows that all units in the building were rent restricted by federal guidelines and occupied by individuals whose income is 50%-60% or less of area median income in the base year. The building will continue to have the same restrictions for several additional years.

- The City's Residential Rent Stabilization ordinance currently has no provision for the disparate treatment of housing defined as affordable.
- Given the ordinance makes no distinctions for exception or special consideration of affordable housing, it does not make sense to make an exception in the application of the rules for reviewing MNOI data, as Dominium has proposed. Because the agreement charging reduced rents will remain in place for several additional years, the base year rent is not exceptional until the agreement expires.

RECOMMENDATION:

The Legislative Hearing Officer's recommendation to the City Council is to grant the appeal in part, allowing for a 6.12% increase in rent, rather than the self-certified approved level of 8% or the 7.1% level proposed in the lease renewal, noting the conditions required for this exception to the rent cap at this level of increase have been met by the owner.

COUNCIL PUBLIC HEARING:

Confirming earlier correspondence, the City Council's public hearing to consider the findings and recommendation for this appeal: this matter will go before the City Council at Public Hearing on **Wednesday, October 19, 2022 at 3:30 pm. in room 300 City Hall.** If you are contesting the recommendation you may appear in person or send written testimony to be added to the record to rentappeals@ci.stpaul.mn.us or by voicemail at 651-266-6805. **Should you wish to address Council directly but not appear in person, you must register in person by noon on Tuesday, October 18, 2022 here:** <https://www.stpaul.gov/departments/city-council/city-council-public-hearing-live-testimony>.

If you have any questions, please contact the Rent Stabilization Appeals Executive Assistant Sonia Romero at 651-266-8568 or email rentappeals@ci.stpaul.mn.us

Sincerely,

/s/

Marcia Moermond

Legislative Hearing Officer

- c: Rent Stabilization Staff
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