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RE: Appeal of Hannah Gray, 787 Hampden Ave. (Union Flats)  
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.

The Staff Report correctly raises concerns with Dominion'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 Dominion'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 Dominion's argument and believe that the arguments made in Ms. Gray's 7/14/22 Reply conclusively establish that Dominion's argument fails for a number of reasons.

First, as the City Report says, Dominion'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, Dominion 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, Dominion 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 at least \$25 million: Tax credits sold to investors for \$22.7 million; Metropolitan Council

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grants of \$1,378,365; a Minnesota DEED grant of \$763,327; and a \$225, grant from Ramsey County. 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 \$4,154,390 calculated on the updated pages 20-21 using market rate rents to the \$2,440,638 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.

Second, Dominion 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. The base year, 2020, was the first full year of operations. Dominion has provided no evidence that the NOI generated in that year was less than that projected by Dominion when it received a \$34.5 million mortgage funded with tax exempt bonds issued by the City. Dominion 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, Dominion 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 Dominion has failed to rebut the presumption in Rule A(1) that base year NOI provided a reasonable return.

Yours truly,



Jack Cann  
Attorney for Hannah Gray