December 14, 2023

Via email to rentappeals@ci.stpaul.mn.us

The Honorable Marcia Moermond
Legislative Hearing Officer
St. Paul City Hall & Court House
15 West Kellogg Blvd.
St. Paul, MN 55102

Re: Second Supplemental Appeal Submission – Haven at Battle Creek
RLH RSA 23-13

Dear Hearing Officer Moermond:

Counsel for Appellant Sumeya Mohamed submit this letter to address the two Supplemental Appeal Memoranda submitted by DSI staff on October 19, 2023. In drafting these memoranda, DSI had the benefit of referencing a draft transcript of the appeal hearing. We requested a copy of this transcript on October 20, 2023, and had planned to submit a response to DSI's memoranda soon after. We later were informed that the draft transcript used by DSI had been generated using AI technology and contained mistakes, but that we could have access to minutes prepared by Legislative Hearing Office staff and an audio recording of the hearing to determine exact quotes. It has now been approximately 8 weeks since we first requested the transcript, and later the hearing minutes and accompanying recording. In the interest of moving this appeal forward, we are submitting this response letter without the benefit of having reviewed the draft transcript, minutes, or audio recording of the appeal hearing.

I. Unrebutted Evidence of Lead & Asbestos Law Violations Preclude Marquette's Rent-Increase Application.

In its Supplemental Memoranda, DSI did not respond to Ms. Mohamed's extensive evidence of lead and asbestos law violations by Marquette at the Haven property.[1] [pg. 1][2] Consequently, the unrebutted evidence is that there was, and continues to be, grave violations of lead and asbestos law at Haven. These violations place at extreme risk the health and safety of Haven tenants and are a violation of Minn. Stat. § 504B.161.

The Ordinance language is clear: "The city **will not** grant an exception to the limitation on rent increases for any unit where the landlord has failed to bring the rental unit into compliance

[1] DSI's memo states that "These items [building permits and lead and asbestos testing] are related to construction work and were forwarded to Construction Services for review." [pg. 1] We are aware of no investigation or response by Saint Paul "Construction Services."
[2] Unless otherwise noted, all cites refer to DSI's memorandum titled "The Haven of Battle Creek — 10-19-23 — Letter Response + Exhibits."

with the implied warranty of habitability in accordance with Minn. Stats. § 504B.161." SPLC § 193A.06(c). The City must follow the Ordinance as written. *See Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998) ("[P]ublic officials clearly have a duty to adhere to ordinances and statutes."); *Waste Recovery Coop. v. County of Hennepin*, 517 N.W.2d 329, 333 (Minn. 1994) ("[City official's] obligation was to enforce Ordinance 12 in conformity with state statutes. This duty was absolute, certain, and imperative, . . . and was fixed by the requirements of [ordinance and] statute.").

DSI itself recognized that habitability is "key to [] approval" of an exception to the rent cap. [*see* Appellant's Supplemental Appeal submission, pg. 7] Moreover, emails between DSI Director Angie Wiese and City staff show that Ms. Weise was attuned to the lead and asbestos safety issues and concerned about whether lead and asbestos testing had taken place. [*see* Appellant's Supplemental Appeal submission, pg. 7] But neither Marquette, nor DSI, have offered evidence that rebuts the comprehensive allegations of lead and asbestos law violations put forth by Ms. Mohamed.

Thus, regardless of what DSI did or did not do as it relates to the investigation of Marquette's rent-increase application, these unrebutted health and safety violations preclude the granting of a 26.48% (or greater) rent increase at Haven. If Your Honor agrees with this unrebutted showing of health and safety violations, then the appeal decision need go no further than to reverse DSI's decision based on unrebutted evidence of Marquette's violation of state and federal lead and asbestos laws, which violate Minn. Stat. § 504B.161's requirement that Marquette maintain Haven in compliance with applicable health and safety laws.

II. Significant Additional Evidence Confirms Continuing Violations of Habitability Law at Haven.

Since the appeal hearing, there has been an influx of additional evidence that confirms the existence of numerous habitability issues throughout Haven. As it relates to violations of lead and asbestos law, Marquette submitted third-party technical documents shortly after the hearing that contained information on lead and asbestos testing done at the Haven property. However, as explained by Greg Myers' in his supplemental report submitted on August 28, 2023, those technical documents showed that the prior testing at Haven had actually confirmed the presence of (1) asbestos in textured ceiling plaster and (2) lead coatings in bathtubs. Moreover, the 2021 asbestos testing done by Techtron was very limited in nature and came nowhere near the comprehensive asbestos testing required under federal and state OSHA laws. As a result, Mr. Myers concluded that the third-party technical documents reinforced his opinion that Marquette had violated, and continues to violate, lead and asbestos safety law.

Marquette also submitted a second report by Techtron on October 25, 2023. Mr. Myers reviewed that report and concluded that this additional very limited asbestos testing does not change his opinion that Marquette has comprehensively violated asbestos laws. A second supplemental expert report containing his opinion is included with this letter.

Furthermore, recent evidence demonstrates that Haven's pest infestation problem has continued unabated despite St. Paul Ordinance making the landlord of a residential property "responsible for the control and/or elimination of insects, rodents or other pests wherever infestation exists." St. Paul, Minn., Legislative Code § 34.10(6). Since the hearing, Ms. Mohamed has routinely seen cockroaches in her kitchen, in her mother's room, and in common areas. On December 5, 2023, Ms. Mohamed set out a cockroach trap behind her microwave. Before day's end, the trap had collected dozens of cockroaches.

The pest infestation extends beyond Ms. Mohamed's apartment. Just six days before the appeal hearing, Haven's property manager, Kelly Delisle, requested pest treatment for almost half of Haven's 216 units. In requesting this treatment, Ms. Delisle informed the pest-control vendor that the "roaches and mice are getting out of control again," a statement which admits to both the current pest infestation crisis at Haven and the fact that infestation is a reoccurring event.

From: Kelly Delisle <kdelisle@marqnet.com>
Sent: Friday, August 4, 2023 1:07 PM
To: Angie BrothersMFG <angie@brothersmfg.com>
Subject: Re: Appointment

Please see attached list.

I think we need to do them all together as the roaches and mice are getting out of control again.

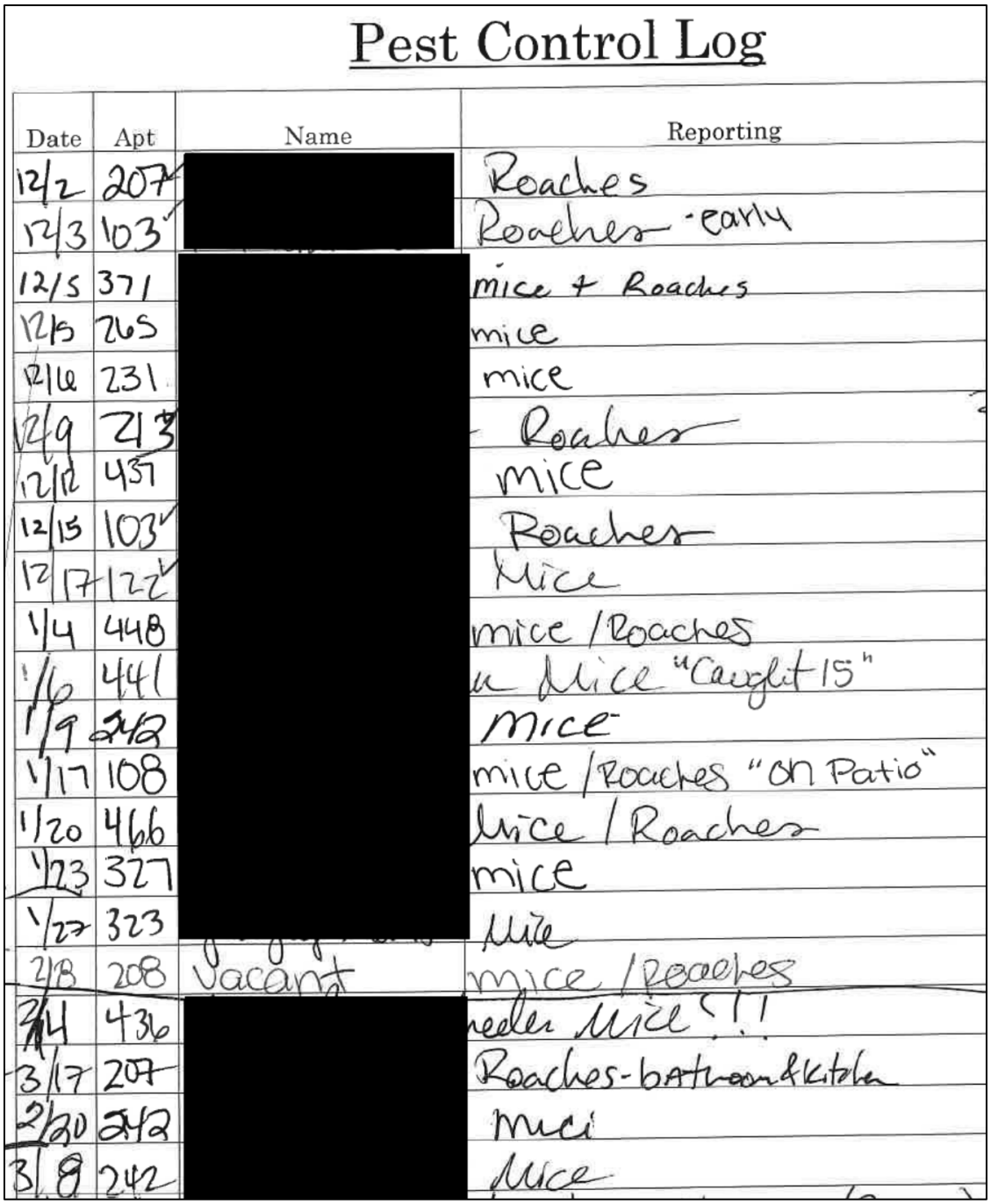
Thanks,

KELLY B DELISLE
Property Manager | Agent for Owner

MARQUETTE MANAGEMENT
EST. 1983

THE HAVEN OF BATTLE CREEK
651-447-5345
havenofbattlecreek@marqnet.com
www.thehavenofbattlecreek.com
200 Winthrop St. S | St. Paul, MN 55119

And the following is an excerpt from a lengthy Pest Control Log maintained by Marquette, showing the widespread and pervasive nature of Haven's pest infestation. The log, which starts in December 2022, includes infestation reports from units across the complex and on all floors of the complex—including a note for one unit that reads "Mice 'Caught 15.'"



Pest Control Log

Date	Apt	Name	Reporting
12/2	207	[redacted]	Roaches
12/3	103	[redacted]	Roaches - early
12/5	371	[redacted]	mice + Roaches
12/5	265	[redacted]	mice
12/12	231	[redacted]	mice
12/9	213	[redacted]	Roaches
12/12	457	[redacted]	mice
12/15	103	[redacted]	Roaches
12/17	122	[redacted]	Mice
1/4	448	[redacted]	mice / Roaches
1/6	441	[redacted]	Mice "Caught 15"
1/9	242	[redacted]	Mice
1/17	108	[redacted]	mice / Roaches "on Patio"
1/20	466	[redacted]	Mice / Roaches
1/23	327	[redacted]	mice
1/27	323	[redacted]	Mice
2/8	208	Vacant	mice / Roaches
2/14	436	[redacted]	needs Mice!!!
3/17	207	[redacted]	Roaches - bathroom & kitchen
2/20	242	[redacted]	mice
3/8	242	[redacted]	Mice

This newly produced evidence reinforces that Haven has had, and continues to have, a serious pest infestation problem, in direct violation of St. Paul Ordinance § 34.10(6), and thus in direct violation of Minn. Stat. § 504B.161. *See* SPLC 193A.03(p). In addition, this evidence

contradicts DSI's assertation at the appeal hearing and in its memoranda that "All habitability issues," including infestation issues, "through the hearing date on August 10, 2023 have been remedied." [pg. 4; *see also* pg. 2]

The overwhelming evidence showing Marquette's continuing violations of health and safety law, whether it be through violations of lead and asbestos regulations or failure to control and eliminate pest infestations, preclude it from receiving an exception to the rent cap.

III. Marquette Misled DSI by Providing Incorrect and Incomplete Information.

DSI's response memoranda has provided even clearer evidence that it is not properly following its investigatory obligations under the Ordinance. Nevertheless, it appears that the limited investigation DSI did conduct was obstructed by Marquette, who provided incorrect and incomplete information throughout both the application and appeal process.

For example, and as noted above, just six days before the appeal hearing, Haven's property manager emailed a pest control vendor and admitted that the building's "roaches and mice are getting out of control again." Yet, at the appeal hearing less than a week later, DSI staff were under the impression that all Haven's habitability violations, including those related to pest infestation, had been remedied. [*see* pgs. 2 & 4] Clearly, Marquette concealed the true extent of the pest infestation from DSI's on-site inspectors, and as a result DSI was misled about the status of reported habitability concerns.

But Marquette's misinformation goes beyond infestation concerns. At the outset of its application, Marquette told DSI that Haven had been constructed in 1988. However, Haven was actually built more than a decade earlier, between 1976 and 1977. This discrepancy is important because a construction date of 1988 would place Haven outside the time period for which health and safety laws presume the presence of lead and asbestos in certain building materials. But, because Haven was actually built between 1976 and 1977, it is presumed under these health and safety laws that lead and asbestos are present in certain building materials throughout the property. Marquette's misstatement of a basic fact—the year the building was constructed—certainly complicated DSI's investigation into lead and asbestos violations.

Critically, Marquette also failed to disclose to DSI an environmental assessment conducted for the prior owner of the Haven complex by an independent consulting firm Nova Consulting Group dated December 12, 2017 ("2017 Nova Report") which revealed that prior testing of Haven had confirmed the presence of both asbestos and lead and that they were "issues of environmental concern":

The following issues of environmental concern were identified in connection with the Property:

- Previous sampling identified asbestos in textured ceiling plaster within the Site building and lead in the coating of original vintage bathtubs. Operations and Maintenance Programs are reportedly in place to manage the identified building materials. The observed building materials and painted surfaces were generally in good condition at the Site.

Most notably, the 2017 Nova Report showed the presence of pervasive asbestos-containing and suspect asbestos-containing materials at Haven—materials that Marquette dangerously and unlawfully impacted and continues to impact today during the demolition and renovation activities it began after it took over the property in 2021:

4.9 Asbestos-Containing Building Materials (ACBM)

Historically suspect asbestos-containing building materials noted during the Property visit included flooring and mastic, ceiling tile, textured ceiling plaster, sheetrock and taping compound, and roofing materials. The roof was not observed during Nova's reconnaissance. Prior sampling and testing for asbestos was completed in 1996 and asbestos was detected in textured ceiling plaster from apartment units and hallways. These materials were generally in good condition at the time of Nova's site reconnaissance. Reportedly, an Operations and Maintenance Plan (O&M) was prepared for the Property in 1996. The current site manager, Lea Gilson, was unaware of an O&M Plan in place at the property.

Prior to demolition or renovation activities, previously untested suspect asbestos-containing materials, if identified, that are likely to be impacted should be sampled by a licensed asbestos inspector and analyzed by an accredited laboratory.

The 2017 Nova Report also revealed that lead was present in bathtub coatings at Haven—a lead-based hazard that was never disclosed to tenants and that had been repeatedly impacted by Marquette contractors during renovation:

> **4.10 Lead Based Paint**
>
> In accordance with the Scope of Services, Nova has conducted a limited, visual evaluation to note the condition of painted surfaces at the Property. Due to the date of construction (1977), lead-based paint may be present. The objective of this visual survey was to note the presence and condition various painted surfaces. Prior sampling and testing completed in 1996 identified lead-containing enamel coating on a bathtub. The identified lead-containing surface was reported to be in good condition and the reports indicated the material is managed in an O&M Plan reportedly in place for the building. In general, the painted surfaces appeared in good condition, as no chalking, peeling or flaking paint was observed.
>
> The Property falls under the definition of *Target Housing,* and is regulated under Title X. The seller or renter of the Property will need to make available a federally approved lead hazard information pamphlet and must disclose known lead-based paint and/or lead-based paint hazards to purchasers and renters of the Property pursuant to the requirements of 24 CFR 35.92 and 40 CFR 745.113.

The 2017 Nova Report affirmed what Mr. Myers had said in his initial expert report, submitted on February 28, 2023: lead and asbestos health and safety laws applied to the Haven property and lead and asbestos hazards were (and are) being actively disturbed by Marquette's renovation.

Marquette—a national development and property management firm with decades of experience in the acquisition of large multi-family properties—performed extensive due diligence regarding Haven prior to purchase and was almost certainly in possession of these historical environmental reports prior to its application for an exception to the rent cap. Despite this, Marquette did not provide these documents to DSI, even though emails between DSI Director Angie Wiese and City staff show Ms. Weise was concerned about whether lead and asbestos testing had taken place. [*see* Appellant's Supplemental Appeal submission, pg. 7] The 2017 Nova Report only came to light after we pressured Marquette to produce the lead and asbestos testing its representative, Jason Wood, had mentioned—for the first time—at the appeal hearing. And this failure to provide DSI with complete information likely impaired its investigation into these serious violations of lead and asbestos laws.

IV. DSI's Memoranda Contain Inaccurate Interpretations of Ordinance Language.

Throughout DSI's response memoranda, there are multiple inaccurate interpretations of important Ordinance language that directly affect the evaluation of Ms. Mohamed's appeal, whether it be the calculation of the proposed rent increase or DSI's obligation to investigate.

A. Habitability

In response to Ms. Mohamed's extensive allegations of habitability violations, DSI Staff wrote that "The word 'habitability' appears one time in the Rent Stabilization Ordinance[.]" [pg. 2] DSI's response seems to suggest that because "habitability" appears only once, its significance in the evaluation of exceptions to the rent cap is diminished. That is not the way laws work, of course. As explained in the hearing and submitted appeal documentation, the Ordinance's

language unequivocally conditions any exception to the 3% rent cap on compliance with habitability law: "The city **will not** grant an exception to the limitation on rent increases for any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability in accordance with Minn. Stats. § 504B.161." SPLC § 193A.06(c). Compliance with section 504B.161 is not contingent on a word count. Compliance with section 504B.161 is required by the Ordinance's **word choice**—the "City **will not** grant an exception" absent compliance with section 504B.161. The fact that DSI would suggest differently shows how far it has departed from its mandatory duties under the Ordinance. DSI must implement the Ordinance as written, *see Wiederholt*, 581 N.W.2d at 316; *Waste Recovery Coop.*, 517 N.W.2d at 333, and that means landlords must comply with Minn. Stat. § 504B.161 in order to be considered for an exception to the rent cap.

Moreover, to the extent that DSI staff equate the existence of a Fire Certificate of Occupancy to full compliance with Minn. Stat. § 504B.161 [pg. 15], such an equivalence is mistaken. The mere existence of a Fire Certificate of Occupancy does not automatically mean the building complies with the implied warranty of habitability. Multiple habitability violations, ranging from suspected lead and asbestos exposure to pest infestation, exist at Haven despite its possession of a Fire Certificate of Occupancy. And, in fact, thousands of code violations exist at properties across St. Paul with Fire Certificates of Occupancy. As explained more fully in Section V(A), the lack of stringent review by DSI onsite inspectors in the enforcement of Fire Certificate of Occupancy standards has resulted in tenant complaints about active habitability concerns being marked as "remedied" or closed. Accordingly, Haven's possession of a Fire Certificate of Occupancy does not mean that the Ordinance's habitability mandate has been met.

B. Inadequate Investigation

The Ordinance mandates that "Upon receipt of a complete **RROI application** or complaint, the department shall conduct review of the RROI application or complaint and **conduct any necessary investigation to determine whether rent conforms to the requirements of this chapter**[.] 193A.07(a)(5)." Therefore, Marquette's submission of an RROI application triggered a duty on the part of DSI to conduct the investigation necessary to determine whether Marquette's exception request conformed with the Ordinance.[3] Contrary to its assertions, DSI failed to conduct the necessary investigation.

i. Tenant Complaints

DSI takes the position that its lack of investigation into tenant complainants complied with the Ordinance. [pg. 14-17] That conclusion is incorrect.

Marquette submitted its RROI application in early January 2023. All but one of the tenant complaints identified by DSI were received *after* Marquette submitted its RROI application. [pg. 18-20] Thus, when DSI received the tenant complaints, its duty to conduct "any necessary investigation" had already been triggered. And, as conceded by DSI, "each [tenant] complaint

[3] Submissions of tenant complaint are themselves sufficient to trigger investigation by DSI. [*see* Appellant's Supplemental Appeal submission, pgs. 2-3; Appellant's Rent Stabilization Complaint pg. 1]

included some version of habitability issues, utilities or problems with management." [pg. 15] Those are all issues that must be considered in the evaluation of an RROI application. SPLC § 193A.06(a)(2), (8), (c); MNOI Rule A(5)(c)(vii). Consequently, investigation into the allegations contained in those complaints was "necessary" to determine whether the rent increase proposed in Marquette's RROI application conformed to the requirements of the Ordinance. Yet, there are no DSI staff notes associated with these tenant complaints and the only staff actions identified are the granting of rent increases.

DSI staff also wrote that "In all but one of the examples provided below, the tenant did not comply with the Rent Stabilization Ordinance by providing evidence concerning the complaint." [pg. 17] That statement is incorrect and minimizes the experiences of the tenants. All complaints identified by DSI contained statements by tenants concerning the conditions of Haven. Statements by tenants are evidence. Further, the tenants used the online form developed by the city to document their concerns. The online form only allows tenants to document their concerns via a text box. The form contains no place for a tenant to attach additional evidence, beyond their statements, and neither the online form, nor the webpage linking to the online form, direct tenants to send additional evidence via email or mail.

DSI's failure to reach out to tenants during the investigation of Marquette's RROI application, especially those tenants who submitted written complaints, highlights the one-sided nature of DSI's investigative process and demonstrates its failure to conduct the "necessary investigation" required.

ii. Section 8 Inspections

DSI also attempts to justify its decision not to investigate Marquette's suspected intentional failing of Section 8 inspections.

As noted in our initial supplemental letter, DSI's own internal briefing had stated that Marquette "may be purposely failing Section 8 inspections to get Just Cause Vacancy." The "Section 8 inspections" referred to are periodic unit inspections done by the local public housing authority to determine if rental units meet minimum quality standards designed to ensure the health and safety of Section 8 program participants. 29 §§ C.F.R. 982.4(b) (Housing Quality Standards), .405. Because exceptions to the rent cap are conditioned on compliance with habitability laws, a suspicion that Marquette was intentionally failing Section 8 inspections would certainly trigger DSI's duty to conduct "any necessary investigation."

However, in its response memoranda, DSI asserts that it "is not allowed access to information about Section 8 tenants, therefore precluding [DSI] staff from investigating the idea that Marquette '[m]ay purposely be failing Section 8 inspections to get Just Cause Vacancy.'" [pg. 5] DSI also notes that Marquette had abandoned its Just Cause Vacancy application. [pg. 5]

It is alarming that DSI recognized that Marquette "may ***purposely*** be failing" inspections designed to assess minimum health and safety standards, yet still granted a (at minimum) 26.48% rent increase throughout the entire building. Assuming DSI cannot investigate the individual unit inspection failures, that does not mean DSI can proceed as if those inspection failures do not exist and forgo investigation entirely. DSI could have pursued the investigation of intentional Section 8

inspection failures through methods that do not rely on personally identifiable information. For example, DSI could have requested redacted copies of failed inspection reports from the PHA. On behalf of Ms. Mohamed, we requested and received those reports, which are enclosed with this letter. A quick review of those reports shows the extensive nature of repair and habitability issues at Haven. These issues ranged from inoperable outlets and leaking plumbing, to torn carpets and pest infestation. Such deficiencies indicate broad habitability concerns and delayed repairs by management, factors which must be considered in the evaluation of an RROI application. *See* SPLC § 193A.06(a)(8), (c).

Furthermore, DSI was not relieved of its duty to investigate simply because it made this observation with respect to the Just Cause Vacancy exception. DSI had reason to believe Marquette was intentionally failing inspections designed to assess basic housing standards. Under the RROI's "any necessary investigation" mandate, such a suspicion requires further investigation by DSI, regardless of whether the suspicion originated from a Just Cause Vacancy application or otherwise.

C. Pass Through Utility Expenses

DSI staff assert that "The Rent Stabilization Ordinance is silent on any utility cost and / or fee changes that took place prior to 05/01/2022, when the Ordinance took effect. The Ordinance and / or rules do not include a 'look back' provision to a time before the law and rules existed." [pg. 3]

The Ordinance is not silent on this issue. First, under the Ordinance, landlords must comply with Minn. Stat. § 504B.215, subdivision 2a. SPLC § 193A.06(a)(2)(a)(1). To comply with Minn. Stat. § 504B.215 a landlord must follow strict apportionment, reporting, and disclosure requirements. If a landlord has not followed those requirements, the utilities charged to tenants thereafter are illegal. Second, under the Ordinance, violations of Minn. Stat. § 504B.161 preclude exceptions to the 3% rent cap. SPLC § 193A.06(c). Failure to comply with Minnesota's single-meter utility law is a violation of section 504B.161. *See* Minn. Stat. § 504B215, subd. 2a(c).

Thus, the Ordinance requires DSI to consider the legality of any shift in utilities, irrespective of whether that shift occurred before or after May 1, 2022. Assuming Marquette shifted utility costs onto tenants prior to May 1, 2022,[4] its compliance with section 504B.215 in the months preceding the Ordinance's effective date has an impact on the legality of the charged utility costs going forward and must be considered by DSI. As an example, Ms. Mohamed's household signed a new lease in April 2022 that took effect May 1, 2022. The lease shifted utility costs onto Ms. Mohamed's family, yet Marquette did not provide the required disclosures or include in Ms. Mohamed's lease an equitable method of apportionment. Accordingly, the utility fees paid by Ms. Mohamed's household after May 1, 2022, are illegal under Minnesota law *and* under the Ordinance. The illegality of these utility fees must be considered by DSI and would preclude Marquette from receiving an exception to the rent cap.

[4] It is unclear when the shift occurred for all Haven tenants (and it does not appear that DSI investigated). Depending on when the lease change was made, a shift of utility costs to tenants must result in a rent reduction. SPLC § 193A.06(a)(2)(a)(1)(A).

In addition, under the Rules, a landlord's operating expenses do not include utility costs paid by the tenant on a pass-through basis. MNOI Rule A(5)(b)(iii). Application of this Rule to Marquette's RROI application required DSI to "look back" at fees charged prior to 2022. In Marquette's case, the prior landlord paid gas, water/sewer, and garbage removal bills directly. [pg. 31] According to the Operating Expense Worksheet submitted by Marquette, the prior owner's 2019 expenses related to gas, water/sewer, and garbage removal were $118,210, $159,318, and $45,946 respectively. This same worksheet provides that Marquette's gas, water/sewer, and garbage removal expenses in 2022 were $125,727, $186,216, and $68,679 respectively. A more detailed expense sheet identifies the gas expense as "common area" gas. But Marquette's elevated utility charges do not make sense in comparison with the total gas, water/sewer, and garbage bills for 2019, which were smaller and represented a time when the owner was *not* allocating the cost of these utilities to tenants. DSI must "look back" to base year utility costs in order to fully evaluate a landlord's operating expenses.

The Ordinance is not "silent" on the issue of utility costs and fee changes that took place prior to May 1, 2022, and instead requires DSI to investigate the legality of shifts and evaluate those shifts within the operating expenses of a landlord.

D. Increase in Management Expenses

Marquette's MNOI operating expense worksheet shows a 77% increase in management expenses since the base year of 2019. Under Ordinance Rules, "management expenses" is one of eight specific categories of recognized operating expenses. MNOI Rule A(5)(b)(i)-(viii). The Rules provide that a percentage increase in "management expenses" is presumed not to exceed the greater of the percentage increase in rents or in the CPI, absent an increase in services. MNOI Rule A(5)(b)(ii). Moreover, the Ordinance provides that exceptions to the rent cap may be made "only when the **landlord** demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment." SPLC § 193A.06(b).

Appellant challenged Marquette's 77% increase in management expenses on the basis that it had not justified such an increase and that there had been no increase in services sufficient to justify such an increase. In response, DSI pointed out constraints in the MNOI form and argued that Marquette's management expenses could have been recharacterized as one of the other seven types of operating expense, potentially reducing the 77% increase in management expenses. [pg. 29-30]

DSI's response is inadequate for two reasons. First, the 77% expense increase cited above is based on the numbers submitted by the landlord. Under the Ordinance, it is up to the *landlord* to justify this increase, given the presumption in the rules. *See* SPLC § 193A.06(b). Instead, DSI has taken it upon themselves to attempt a justification. Second, DSI's attempted justification fails. Although DSI argues that the detailed base and current year expense figures could fit into different operating expense categories, specifically calling out the "Reasonable costs of operation and maintenance of the Rental Unit" category, it makes no attempt to redistribute expenses in a way that would ultimately result in management-expense increase that is allowable under MNOI Rule A(5)(b)(ii).

V. DSI's Requests for Clarification.

Finally, briefly addressed below are select issues on which DSI requested clarification and select issues for which we would like to provide additional context.

A. "All habitability issues through the hearing date on August 10, 2023 have been remedied." [pg. 4; see also pg. 2]

This is incorrect. First, the unrebutted lead, asbestos, and pest violations noted above are continuing habitability violations that have yet to be rectified. Second, to the extent that habitability issues have been marked as "remedied," it is due to the lack of stringent review by DSI onsite inspectors. For example, the flooding in the garage that was "remedied" as of the August 10 hearing, is still occurring. Only one day after the hearing, on August 11, Ms. Mohamed observed a significant amount of water coming through the ceiling of Haven's garage, running over an electrical box, and pooling on the ground. Ms. Mohamed took a video of the incident, which we have included with this letter. Because of the safety risk this posed, Ms. Mohamed reported the issue to DSI, sent the video, and requested that DSI reach out to her as part of its investigation into the flooding.

After approximately one week had passed, Ms. Mohamed had still not heard from DSI and so she reached out on August 17, 2023, to request a contact. Staff from DSI responded that:

> The inspector, James Thomas (651-266-8983) has already inspected the property on August 14th; he contacted the landlord to fix the leak issues. James will be back out to review the plumbing issues on August 21st.

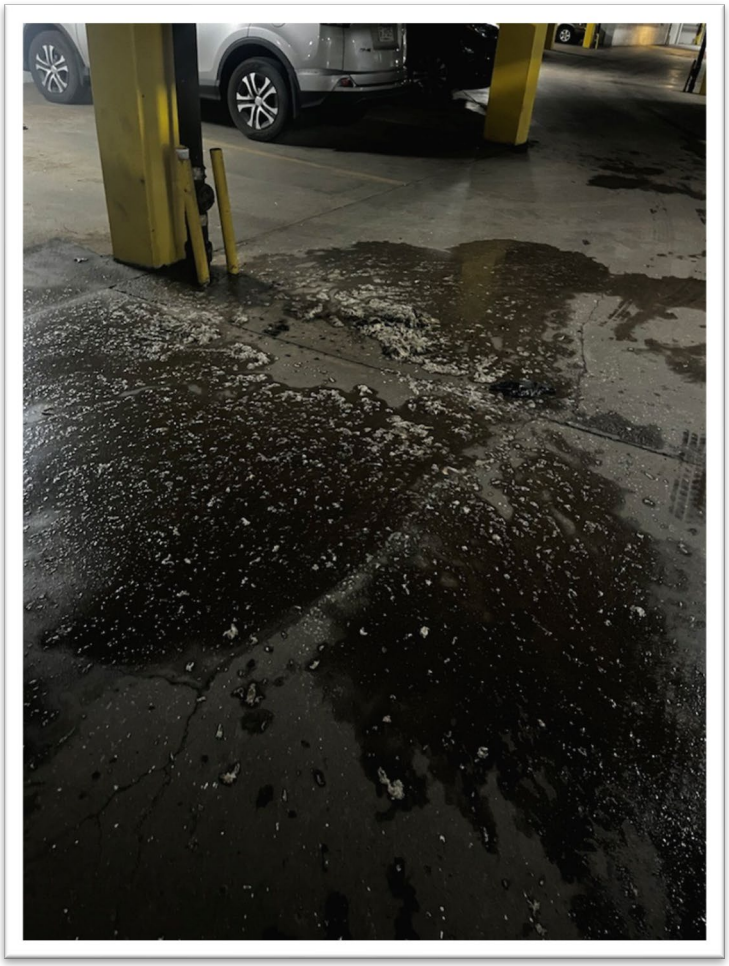
On August 23, 2023, Ms. Mohamed again reached out to DSI because she had not heard from Mr. Thomas or anyone else about the flooding. She requested documentation related to the investigation of her complaint. Instead of providing her the documentation, DSI directed Ms. Mohamed to submit a data practices request. On August 31, 2023, counsel for Ms. Mohamed submitted the data practices request. On October 26, 2023, nearly two months later, counsel received a response.[5]

It is unclear from the materials produced exactly *how* DSI addressed the safety issue identified by Ms. Mohamed. We have attached what we believe are the records of DSI's response. It appears that the inspector identified a leak in unit 114's kitchen sink, but that unit was nowhere near the garage in which Ms. Mohamed saw the flooding. The report also includes a note from the Inspector in which he states:

> Tried calling the complaint [sic] twice 0930Am and at 1230Pm
> Phone inoperable knocked on door 1227PM on 8 15 23 JT

[5] We note that the data practices request submitted on August 31, 2023 was for documents and internal/external communications related to complaints submitted about Haven during the entire month of August 2023, and was broader than just Ms. Mohamed's complaint.

If this comment was in regard to Ms. Mohamed, she disputes the accuracy of the statement. Ms. Mohamed's phone was operable that day, as she both made and received phone calls. Also, according to her work calendar, Ms. Mohamed took a sick day on August 15, 2023, and thus was likely home during the day. Because Ms. Mohamed was not contacted by DSI, and because the inspector's internal notes seem to be unrelated to the safety issue identified by Ms. Mohamed, it is unclear what actions DSI took in response to Haven's garage flooding. But whatever DSI's response was, the flooding has not been remedied. On December 4, 2023, Ms. Mohamed observed flooding in the same area of the garage in which she had seen flooding in August. She took videos of the flooding. Those videos are included with this letter. The flooding left malodorous debris behind, which is pictured below.



B. "If Ms. Mohamed and her legal representation provides copies of the two most recent leases (the first dated on or about May 1, 2022), DSI staff could investigate allegations about the pass through utility charges." [pg. 3]

Ms. Mohamed's May 2022 lease has already been provided to DSI staff. The lease was submitted on February 15, 2023 as Exhibit C to her Rent Stabilization Complaint. This same lease was submitted on July 7, 2023 as part of Exhibit 2 to Ms. Mohamed's Rent Stabilization Appeal.

Ms. Mohamed's May 2022 lease reverted to a month-to-month lease upon its expiration in June 2023, and thus she and her household only have one lease with Marquette.

C. "DSI Staff is not sure why it would contact Ms. Mohamed about her class action complaint, since the City of Saint Paul is not a party to this lawsuit." [pg. 14]

This sentence was in response to the following statement found in Appellant's Supplemental Letter: "Nor is there evidence that DSI ever attempted to contact any of the foregoing tenants about their complaints, **just as it never contacted Ms. Mohamed about her DSI complaint or her class action complaint**." [Appellant's Supplemental Appeal submission, pg. 4]

DSI staff provided **no answer** as to why it never reached out to Ms. Mohamed about her rent stabilization complaint. Instead, it shifted focus to her class action complaint, questioning why that document merited contact. The class action complaint was submitted to DSI on May 11, 2023, the day after it was filed. As explained in our email to DSI (to which we received no response) "The information in this [class action] complaint is directly relevant to our Rent Stabilization Complaint submitted on February 15, 2023." Indeed, the class action complaint is a detailed, thorough document, containing allegations of building-wide issues in Haven that range from serious habitability violations to noncompliance with Minnesota utility law. Review of such a document would be mandated by the Ordinance as "necessary investigation," and given the document's depth and complexity, would seemingly merit some type of contact by DSI. SPLC § 193A.07(a)(5).

But, putting aside the relevance of the class action complaint, DSI has failed to articulate a reason as to why it never contacted Ms. Mohamed about her initial rent stabilization complaint.

D. DSI staff respectfully requests clarification from Ms. Mohamed's Legal Counsel of the circumstances under which DSI communicating with landlords would be ex parte. [pg. 22]

Ex parte means "On or from one party only, usu. without notice to or argument from the adverse party" *Ex Parte*, Black's Law Dictionary (11th ed. 2019). During the period in which DSI was evaluating Marquette's rent-increase application, there are over 25 documented communications between one party—Marquette—and DSI. See attached chart. Those are communications done by, and on behalf of, one party: Marquette. Such communications fall within the definition of "ex parte."

E. Poradek (Transcript – Page 7): "Here's the end point, it's unclear if lead based paint removal and asbestos removal actually took place during the renovation." Staff respectfully requests clarification on this statement. (Transcript Memoranda pg. 1)

We do not yet have copies of the draft transcript or minutes, nor do we have an audio recording of the hearing. As a result, we are not able to provide a complete response to DSI staff's request for clarification. However, Appellant's counsel remembers that he was quoting from DSI's own May 25 "The Haven of Battle Creek Briefing," in which DSI staff stated:

> 02/28/23: The Housing Justice Center submits an "Expert Report" and accompanying exhibits which suggest that lead-based paint removal and asbestos removal may not have been properly abated. It's unclear if lead-based paint removal and asbestos removal actually took place during the renovation. The City would not be the appropriate authority on this matter.

This material is also quoted in Appellant's Supplemental Letter submitted on August 9, 2023. From counsel's memory, this statement was made to underscore the fact that DSI (1) had not properly investigated whether lead and asbestos had been disturbed, and (2) had misunderstood that the operative question was whether lead and asbestos had been *disturbed* by Marquette's renovation, not whether these substances had been removed by Marquette.

Best regards,

s/James Poradek

James Poradek
Tenant Rights Attorney, Housing Justice Center

Encl:

- Greg Myers: second supp opinion re asbestos test
- Redacted Section 8 Inspection Documents
- Haven Garage Flooding Videos 1, 2, and 3
- DSI's Response to Haven Garage Flooding
- Marquette-DSI Communication Chart