


ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 02/09/2009

Item No.: 13.a

Department Approval

City Manager Approval



Item Description: Centennial Gardens Apartments Update

BACKGROUND

In June of 2007, the Roseville City Council authorized the issuance of tax-exempt bonds for Centennial Gardens Apartments in the amount of \$12M to finance the acquisition and renovation of the buildings. The tax-exempt bonds are be considered “conduit financing” and have no fiscal impact on the part of the City. All of the costs for debt issuance were paid by the applicant.

In August 2008, the City Council discussed concerns regarding rent increases and tenant not having their leases renewed that occurred as part of the rehab of the apartments. In the fall of 2008, there were several letters from Jack Cann of the Housing Preservation Project regarding the project’s violation of state statutes governing the use of the tax-exempt bonds. Specifically, Mr. Cann alleged that the project did not meet the minimum threshold for providing affordable rents for at least 20% of the units since the developer failed to include utilities in their calculation of rents when determining the fair market rent.

Upon review of Mr. Cann’s assertions, the developer’s attorney recognized a mistake was made in the calculations. Subsequently, the developer reduced the rents to get into compliance with state statutes and reimbursed the tenants that were overcharged.

Councilmember Ihlan requested that staff bring forward an update on this matter to the February 9, 2009 City Council meeting. Staff has prepared this report to give the City Council an update and plan on discussing this matter more thoroughly at the March 9th City Council meeting.

DISCUSSION

Minnesota State Statutes 474A.047 describe the requirements that projects must adhere to if they are using Residential Rental Bonds. One of the requirements is that at least 20% of the units do not exceed the area fair market rent. Section 474A.047(3) discusses penalties:

474A.047 Subd. 3. Penalty.

The issuer shall monitor project compliance with the rental rate and income level requirements under subdivision 1. The issuer may issue an order of noncompliance if a project is found by the issuer to be out of compliance with the rental rate or income level requirements under subdivision 1. The owner or owners of the project shall pay a penalty to the issuer equal to one-half of one percent of the total amount of bonds issued for the project under this chapter

29 *if the issuer issues an order of noncompliance. For each additional year a project is out of*
30 *compliance, the annual penalty must be increased by one-half of one percent of the total amount*
31 *of bonds issued under this chapter for the project. The issuer may waive insubstantial*
32 *violations.*

33 The statutes are very clear that the penalty is a fixed amount. In Centennial Gardens case, the penalty
34 would be \$60,000 if the City finds the development out of non-compliance. In talking to City bond
35 counsel, the statutes do not allow the issuer (the City) to levy a lesser or greater penalty.

36 The developer has acknowledged that they miscalculated the rents when applying the 20% affordable
37 standard but that it was an oversight and not intentional and have since lowered the rent and refunded
38 the overpayments to those that were overcharged.

39 Staff is in the process of collecting the information regarding the rents that were charged and when they
40 were charged. At this point, staff is not ready to make a recommendation to the City Council in regards
41 to a penalty and plan on bringing the whole matter to the March 9, 2009 City Council meeting.

42 **REQUESTED COUNCIL ACTION**

43 No action necessary, report provided for information purposes.

44

Prepared by: Patrick Trudgeon, Community Development Director (651) 792-7071

Attachments: A: 2008 Minnesota Statutes Section 474A.047 Residential Rental Bonds; Limitations
B: Letter from Jack Cann, Housing Preservation Project dated October 24, 2008
C: Letter from Norm Jones , Attorney for Gardens East Limited Partnership, dated October 31, 2008
D: Letter from Jack Cann, Housing Preservation Project dated November 26, 2008

2008 Minnesota Statutes

474A.047 RESIDENTIAL RENTAL BONDS; LIMITATIONS.

Subdivision 1. **Eligibility.** (a) An issuer may only use the proceeds from residential rental bonds if the proposed project meets the following requirements:

(1) the proposed residential rental project meets the requirements of section 142(d) of the Internal Revenue Code regarding the incomes of the occupants of the housing; and

(2) the maximum rent for at least 20 percent of the units in the proposed residential rental project do not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development. The rental rates of units in a residential rental project for which project-based federal assistance payments are made are deemed to be within the rent limitations of this clause.

(b) The proceeds from residential rental bonds may be used for a project for which project-based federal rental assistance payments are made only if:

(1) the owner of the project enters into a binding agreement with the Minnesota Housing Finance Agency under which the owner is obligated to extend any existing low-income affordability restrictions and any contract or agreement for rental assistance payments for the maximum term permitted, including any renewals thereof; and

(2) the Minnesota Housing Finance Agency certifies that project reserves will be maintained at closing of the bond issue and budgeted in future years at the lesser of:

(i) the level described in Minnesota Rules, part 4900.0010, subpart 7, item A, subitem (2), effective May 1, 1997; or

(ii) the level of project reserves available prior to the bond issue, provided that additional money is available to accomplish repairs and replacements needed at the time of bond issue.

Subd. 2. **15-year agreement.** Prior to the issuance of residential rental bonds, the developer of the project for which the bond proceeds will be used must enter into a 15-year agreement with the issuer that specifies the maximum rental rates of the rent-restricted units in the project and the income levels of the residents of the project occupying income-restricted units. Such rental rates and income levels must be within the limitations established under subdivision 1. The developer must annually certify to the issuer over the term of the agreement that the rental rates for the rent-restricted units are within the limitations under subdivision 1. The issuer may request individual certification of the income of residents of the income-restricted units. The commissioner may request from the issuer a copy of the annual certification prepared by the developer. The commissioner may require the issuer to request individual certification of all residents of the income-restricted units.

Subd. 3. **Penalty.** The issuer shall monitor project compliance with the rental rate and income level requirements under subdivision 1. The issuer may issue an order of

noncompliance if a project is found by the issuer to be out of compliance with the rental rate or income level requirements under subdivision 1. The owner or owners of the project shall pay a penalty to the issuer equal to one-half of one percent of the total amount of bonds issued for the project under this chapter if the issuer issues an order of noncompliance. For each additional year a project is out of compliance, the annual penalty must be increased by one-half of one percent of the total amount of bonds issued under this chapter for the project. The issuer may waive insubstantial violations.

History: 1990 c 552 s 7; 1991 c 346 s 13,14; 1992 c 545 art 1 s 5; 1993 c 164 s 4; 1994 c 527 s 6; 1997 c 169 s 4; 2000 c 493 s 15; 2001 c 214 s 24,25; 2008 c 366 art 5 s 19



Housing Preservation Project
A Public Interest Law Firm

October 24, 2008

Mayor Craig Klausing
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Centennial Commons – non-compliance with Minn. Stat. § 474A.047

Dear Mayor Klausing:

We recently received, pursuant to a Data Practices Act request, communications from the owners of Centennial Commons to the City purporting to demonstrate compliance with Minn. Stat. § 474A.047. In fact, these communications demonstrate that the project is not in compliance with the statute's requirements and that the rents charged exceed the maximum permissible rents by amounts ranging from \$34 to \$39/month on 31 units for 2008. The owner's rents meet the statutory standard on only 7 units – 3.7% of the total, not the required 20%.

Minn. Stat. § 474A.047 Subd. 1(a)(2) requires that rent on 20% of the units in projects financed with tax exempt debt “not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development. The statute requires the issuer (here, the City of Roseville) to monitor compliance. Minn. Stat. § 474A.047 Subd. 3. The statute provides a penalty of .5% of the bond amount for non-compliance.

Attached as Exhibit 1 are excerpts from the owner's October 29, 2008 communication to the City demonstrating non-compliance. Exhibit 1 was submitted to the City by the owner purporting to demonstrate compliance with § 474A.047. It indicates that the contract rent for 41 units (21.6% of the 190 units) is set at or below the 2008 Fair Market Rent (FMR) set by HUD for the metropolitan area. However, FMRs are gross rents, including utilities paid by the tenant, not contract rents: “Fair market rent means the rent, including the cost of utilities (except telephone)” 24 C.F.R. § 888.111(b); see also Fair Market Rents: Overview, HUD website, <http://www.huduser.org/datasets/fmr.html> (“FMRs are gross rent estimates. They include the shelter rent plus the cost of all tenant-paid utilities, except telephones, cable or satellite television service, and internet service.”) Also included in Exhibit 1 is a utility schedule which the owner also included in its 9/29/08 communication to the City, indicating tenant paid utilities estimated at \$34/month for 1-bedroom units and \$39/month for 2-bedroom units. Because the rents for 31 units were set at the FMRs, rather than at the FMRs less the utility estimate, the rents on these units exceed the statutory maximum by the amount of the utilities estimated to be paid by the tenants.

The table attached as Exhibit 2 shows the amounts by which the owner's rents exceed the statutory maximum, for 2008 as well as for FY 2009 (which began October 1,

2008) for 31 units.

We request that the City take the following steps to bring the owner into compliance with Minn. Stat. § 474A.047:

- 1) Require that the owner immediately reduce the rents on 31 units so that the gross rents do not exceed the FMRs for units of that size.
- 2) Require that the owner pay the statutory .5% penalty for 2008, equal to \$60,000. This is a substantial violation which has gone on for more than a year, and may not be waived by the issuer.
- 3) Require that the owner reimburse all tenants overcharged to date.

Yours truly,



Jack Cann

cc: Councilmember Ihlan
State Senator Marty
Bob Odman, MHFA
Norman L Jones, owners' attorney

Chris Miller

From: Jones Norman [NJones@winthrop.com]
Sent: Monday, September 29, 2008 1:54 PM
To: Jeanne Kelsey, Chris Miller
Cc: Terry McNellis, swenson@michaelddevelopment.com, bmcdonough@briggs.com, mippel@briggs.com
Subject: Owner response letter to City of Roseville (revised 9/29/08) PDF
Attachments: Owner response letter to City of Roseville (revised 9/29/08) PDF



Owner response
letter to City ...

Jeanne,

In response to your request, we've revised the attachment to include additional rent schedules showing compliance with the rental restrictions. Let me know of any questions.

Thank you.

--Norm

Norman L. Jones
Winthrop & Weinstine, P.A.
Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629
Direct Dial: 612-604-6605
Fax: 612-604-6905
E-mail: njones@winthrop.com

Internet: www.winthrop.com <file://www.winthrop.com>

Circular 230 Disclosure: Unless expressly stated otherwise, any federal tax advice contained in this communication (including any attachments), is not intended to be used, and cannot be used, for the purpose of (i) avoiding federal tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

NOTICE - CONFIDENTIAL INFORMATION

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<<Owner response letter to City of Roseville (revised 9/29/08).PDF>>

Centennial - Rent Data

# of Units by Type (June 2007)	
Studio	2
1 Bedroom	91
2 Bedroom	93
3 Bedroom	4

	Rents (June 2007)	# Units at this Rent Level	Average Rent for Type	Rents (September 2008)	# Units at this Rent Level	Average Rent for Type	Tax Credit Maximum Rents																																																				
Studio	\$450	1	\$475	\$500	2	\$500	\$822																																																				
	\$500	1						1 Bedroom	\$575	3	\$657	\$699	17	\$770	\$875	\$600	2	\$625	9	\$635	1	\$650	53	\$675	8	\$700	4	\$725	11	2 Bedroom	\$725	8	\$770	\$750	2	\$848	\$1,053	\$735	1	\$750	22	\$775	41	\$800	21	3 Bedroom	\$1,000	1	\$1,125	\$1,000	1	\$1,128	\$1,217	\$1,100	1	\$1,200	2	Total # Units	
1 Bedroom	\$575	3	\$657	\$699	17	\$770	\$875																																																				
	\$600	2																																																									
	\$625	9																																																									
	\$635	1																																																									
	\$650	53																																																									
	\$675	8																																																									
	\$700	4																																																									
	\$725	11																																																									
2 Bedroom	\$725	8	\$770	\$750	2	\$848	\$1,053																																																				
	\$735	1																																																									
	\$750	22																																																									
	\$775	41																																																									
	\$800	21																																																									
3 Bedroom	\$1,000	1	\$1,125	\$1,000	1	\$1,128	\$1,217																																																				
	\$1,100	1																																																									
	\$1,200	2																																																									
Total # Units		190			190																																																						

Centennial - Tax Credit Rent Limitations

	Rents (September 2008)	# Units at this Rent Level	Tax Credit Rent Limit *	# Units Meeting Tax Credit Rent Limit
Studio	\$500	2	\$822	2
1 Bedroom	\$699	17	\$875	17
	\$700	1	\$875	1
	\$702	9	\$875	9
	\$775	66	\$875	66
2 Bedroom	\$750	2	\$1,053	2
	\$775	2	\$1,053	2
	\$848	16	\$1,053	16
	\$850	33	\$1,053	33
	\$900	38	\$1,053	38
3 Bedroom	\$1,000	1	\$1,217	1
	\$1,100	1	\$1,217	1
	\$1,205	2	\$1,217	2
Total # Units **		190		190

* LIHC Limit calculated by subtracting the following utility allowances from the published 60% gross rent limits:

Studio	\$27
1 bedroom	\$34
2 bedroom	\$39
3 bedroom	\$45

* Note: LIHC and federal bond rules require at least 40% of the units must meet these rent limits

Electronic Application

IV. ESTIMATED ANNUAL INCOME AND EXPENSES

A. HOUSING INCOME											
RFP Unit Type (OBR, 1BR, 2BR, etc.)	# of DU	Approx. Size (Net Rentable Sq. Ft.) of Units	Proposed Monthly Contract Rent Per Unit	Total Annual Contract Rent (# x rent x 12)	Estimated Cost of Monthly Utilities Paid by Occupant	Monthly Gross Rent (Proposed Contract Rent + Utilities)	Rental Rooms Per Unit***	Total Rooms (# of Units x Rooms Per Unit)	Rent Limit (% of AMI)	Income Limit (% of AMI)	Unit Type*
OBR/SRC	1	456	\$500	\$6,000	\$27	\$527	2.5	2.5	60%	60%	HTC
OBR/SRC	1	456	\$500	\$6,000	\$27	\$527	2.5	2.5			MR
1BR	76	623	\$740	\$674,880	\$34	\$774	3.5	266	60%	60%	HTC
1BR	17	623	\$775	\$158,100	\$34	\$809	3.5	59.5			MR
2BR	70	876	\$860	\$722,400	\$39	\$899	4.5	315	60%	60%	HTC
2BR	21	876	\$869	\$218,988	\$39	\$908	4.5	94.5			MR
3BR	3	1,044	\$1,125	\$40,500	\$45	\$1,170	6.0	18	60%	60%	HTC
3BR	1	1,044	\$1,140	\$13,680	\$45	\$1,185	6.0	6			MR
				\$0		\$0	0.0	0			
				\$0		\$0	0.0	0			
				\$0		\$0	0.0	0			
				\$0		\$0	0.0	0			
				\$0		\$0	0.0	0			
				\$0		\$0	0.0	0			
				\$0		\$0	0.0	0			
				\$0		\$0	0.0	0			
UNITS	190			TOTAL GRP \$1,840,548				TOTAL ROOMS 764			

* Indicate if HTC, HOME, Market Rate (MR), Employee Occupied (EO), Owner Occupied (OO), Project Based Assistance (PBA), Hollman (MHOP), Federally Assisted (FA)

*** ETR/SRO = 2.5 rooms
 1 BR = 3.5 rooms
 2 BR = 4.5 rooms
 3 BR = 6.0 rooms
 4 BR = 7.0 rooms
 5 BR = 8.5 rooms
 Bed = 2.0 rooms

Utilities to be paid by Occupant (Excluding Telephone):

<input type="checkbox"/> Water & Sewer	<input type="checkbox"/> Heat -Type: _____
<input type="checkbox"/> Hot Water	<input checked="" type="checkbox"/> Air Conditioning
<input checked="" type="checkbox"/> Household Electric	<input type="checkbox"/> Other-Specify: _____

Source of Utility Allowance Calculation (HTC code IRS Notice 94-60, Issued 6/96):

Public Housing Authority Metro HRA Other (Specify) _____

Utility Company _____ Effective Date of Source of Information: 11/6/2006

1. GROSS POTENTIAL RENT:

a Rental Housing Potential		\$1,840,548
b Parking/Garage Rent Potential		
# of surface parking	143	Monthly fee \$0
# of covered parking	192	Monthly fee \$0
c Commercial Rent Potential (specify)		
d Miscellaneous Rent Potential (specify)		
e Gross Potential Rent (Total Lines 1a thru 1d)		\$1,840,548

2. RENTAL LOSS:

a Rental Housing Vacancy		
Vacancy Factor	7.0%	x Line 1a = \$128,838
b Parking/Garage Vacancy		
Vacancy Factor		x Line 1b = \$0
c Commercial Vacancy		
Vacancy Factor		x Line 1c = \$0
d Miscellaneous Unutilized Income		
e Employee Rent Credits		
f Out of Service Units		
g Rental Concession Adjustments		
h Bad Debt		
i Total Rental Loss (Total Lines 2a thru 2h)		\$128,838

3 NET RENTAL COLLECTIONS: (Line 1e minus 2i) \$1,711,710

EXHIBIT 2

From 9/24 email

BRs	Contract Units Rent	Utility estimate	Gross Rent	2008 FMR	Units Counted as <=FMR	Number Actually <=FMR	Amount Over FMR 2008 FMR	Number Actually <=FMR	Amount Over FMR 2009 FMR		
0	1	500	27	527	593	1	1	610	1		
0	1	500	27	527	593	1	1	610	1		
1	17	699	34	733	699	17	0	34	719	0	14
1	1	700	34	734	699		0		719	0	
1	9	702	34	736	699		0		719	0	
1	66	775	34	809	699		0		719	0	
2	2	750	39	789	848	2	2		873	2	
2	2	775	39	814	848	2	2		873	2	
2	16	848	39	887	848	16	0	39	873	0	14
2	33	850	39	889	848		0		873	0	
2	38	900	39	939	848		0		873	0	
3	1	1000	45	1045	1110	1	1		1143	1	
3	1	1100	45	1145	1110	1	0		1143	0	
3	2	1205	45	1250	1110		0		1143	0	
	190					41	7			7	
						21.58%	3.68%			3.68%	



October 31, 2008

Norman L. Jones III
Direct Dial: (612) 604-6605
njones@winthrop.com

Mayor Craig Klausing
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

RE: October 24, 2008 letter from Jack Cann

Dear Mayor Klausing:

We were copied on a letter dated October 24, 2008 from Jack Cann addressed to you.

The letter related to the interpretation of Minnesota Statutes Section 474A.047 which requires that certain bond-financed apartment projects maintain 20% of the apartment units at rents at or below Fair Market Rents as established by HUD. In this case our firm disagrees with Mr. Cann's rationale, but agrees with him as to the end result. This represents a reversal of our firm's previous position, and it was our advice on which the owner relied in determining its compliance with this provision.

The relevant part of Minnesota Statutes 474A.047, Subd. 1(a)(2) provides as follows:

“(2) the maximum rent for at least 20 percent of the units in the proposed residential rental project do not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development. ...”

Our firm had previously interpreted the first use above of the term “rent” to mean actual rent. As recently as Tuesday, we informally received the same interpretation from a responsible official at the Department of Finance, which has regulatory authority over this portion of the Minnesota statutes. However, after further research by Briggs & Morgan, we have concluded our past interpretation was in error and have notified our client. The owner is immediately correcting its FMR rent limits going forward to take into account the utility allowance.

Looking backward, to discover the extent of the issue in the past, we reviewed past rent rolls from the project, including for December 2007, May 2008 and June 2008. We found the following numbers of units that were rented or offered for rent at or below the FMRs (out of 190 total units), when properly adding utility allowances to the rent:

Month of Rent Roll	Efficiencies below FMR	1-beds below FMR	2-beds below FMR	3-beds below FMR	Total units below FMR	% below FMR
December 2007	2	40	75	2	119	62.6%
May 2008	2	25	51	1	79	41.5%
June 2008	2	1	17	1	21	11.0%

It is our conclusion, based on this data, that the project was in compliance with the FMR requirement through the end of May 2008.

As stated above, as soon as we notified the owner of our changed interpretation, the owner immediately started correcting its rent structure to come back into compliance this month. The extent of the issue is the 5-month period from June 2008 through this month during which the project was in only partial compliance.

The owner hereby proposes to refund rent to tenants occupying units which were intended to meet the FMR requirement during the period from June 2008 forward such that the actual rent plus utility allowance meets the FMR rent restriction.

Although Mr. Cann's letter makes the immediate call to penalize the owner, we would suggest that a penalty is unwarranted at this time. The purpose of a penalty is to induce voluntary compliance or change behavior. As stated above, the owner thought it was fully and voluntarily in compliance for the entire period and relied on our advice in support of that. As soon as we brought this matter to their attention on Tuesday they began corrective measures. Also, the period of noncompliance was very short. Fortunately, Mr. Cann's inquiry at this time allowed us to catch our error and have the owner correct it before the situation went on for a long period of time. Finally, it appears the situation can be completely corrected by refunds to tenants, bringing the project back into full compliance.

An additional submission will be made to you when the corrective measures have been completed by the owner. Please let me know if you have any questions regarding this matter.

Very truly yours,

WINTHROP & WEINSTINE, P.A.



Norman L. Jones III

Mayor Craig Klausing
October 31, 2008
Page 3

cc: Councilmember Amy Ihlan
Bob Odman
Jack Cann
Mary Ippel

4114993v1



Housing Preservation Project
A Public Interest Law Firm

November 26, 2008

Mayor Craig Klausing
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Centennial Commons – non-compliance with Minn. Stat. § 474A.047

Dear Mayor Klausing:

On October 24, we wrote you demonstrating that the owners of Centennial Commons were not in compliance with Minn. Stat. § 474A.047 Subd. 1(a)(2). The statute requires that 20% of the units in projects financed with tax exempt bonds be rented at no more than the area Fair Market Rents. Fair Market Rents are gross rents – contract rents plus tenant paid utilities. The owner's communication to the City indicated that the owners were charging contract rents equal to the fiscal year 2008 Fair Market Rents on those units designated to comply with the statute. Thus, during fiscal 2008, residents of these units were being over-charged by the amount of the utility allowance (\$34 for 1-BR units and \$39 for 2-BR units). An increase in the Fair Market Rents for fiscal 2009 (beginning October 1, 2008) appeared to reduce the amount of the violation to \$14/unit. We asked that the City require the owner to reduce the rents to the levels permitted by the statute, reimburse tenants who had overpaid, and pay the statutory penalty equal to .5% of the bond amount.

The owner's attorneys responded on October 31, 2008 conceding that FMRs are gross rents and were set too high. They indicated that the owner would reduce the contract rents on at least 20% of the units to the FMRs less the utility allowances and would reimburse tenants who had overpaid. They argued, however, that the non-compliance with the statute was an innocent mistake based on bad advice from the law firm and therefore the penalty should not be imposed.

We were informed late last week by tenant Marsha Cressy that the owner, having previously given her a two month notice that her two bedroom rent would be raised to \$848 on December 1, had still not rescinded that notice in conformance with the attorney's promise that they would do so. The rent level set for December 1 is the FMR for 2-BR units for FY 2008. It is apparently intended by the owner to comply with the Minnesota statute. But, as we pointed out in our letter, and as the owner's attorney conceded, it does not. The FY 2009 FMR is \$873 for a 2-BR units; the utility allowance cited by the owner is \$39, so the contract rent for a 2-BR unit intended to meet the 20% requirement may not exceed \$834. It is quite disturbing that as recently as last week the owner was demanding rents in excess of the statutory limit, having promised more than a month ago through their attorneys not to do so.

570 Asbury Street, Suite 105 • St. Paul, MN 55104 • tel: 651.642.0102 • fax: 651.642.0051

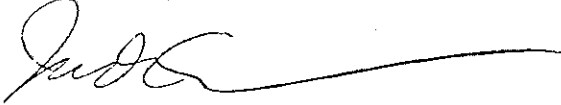
Dedicated to expanding and preserving the supply of affordable housing in Minnesota and nationwide

The statute requires the issuer (here, the City of Roseville) to monitor compliance. Minn. Stat. § 474A.047 Subd. 3. We appreciate the City's recent request that the owner document compliance with the statute. We request that the City immediately assure that any improper rent increases scheduled for December 1 have been canceled.

As to the statutory penalty, we would point out that the assertion that the violation was based on a misinterpretation of the law is highly suspect. The rent limits in the tax credit program, with which the owner and its attorney are quite familiar are gross rent limits; so owner and attorney were familiar with the concept as is indicated by the fact that the owner included utility allowances in its submissions to the MHFA. That FMRs are likewise gross rents is a concept familiar to any experienced housing professional – and the owners are experienced professionals. That the owners understood the meaning of the statute is further indicated by the fact that the owner's initial submission to the MFHA set contract rents for 20% of the units at levels intended to be below the FMRs when utility allowances were added. For instance, the 2007 1-Br FMR was \$707 and the utility allowance was \$30, permitting a contract rent of no more than \$677. The standard rent shown for 1-Brs was \$725 but 19 units were set at \$675 – clearly recognizing the need to deduct utility costs from the FMR to arrive at a contract rent within the statutory limit for units intended to satisfy the 20% requirement.

This was a substantial violation of the statute; one which appears to have continued long after the owner's attorney promised that it would stop. In such cases, the penalty is mandatory.

Yours truly,

A handwritten signature in black ink, appearing to read "Jack Cann", with a long horizontal flourish extending to the right.

Jack Cann

cc: Councilmember Ihlan
State Senator Marty
Bob Odman, MHFA
Norman L Jones, owners' attorney