REQUEST FOR COUNCIL ACTION

Date: 03/23/2009
Item No.: 12.e

Department Approval

Acting City Manager Approval

Item Description: Consideration of Penalty for Centennial Gardens Apartments Non-Compliance

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 Gardens East Limited Partnership in order to finance the acquisition and renovation of the buildings. The tax-exempt bonds are considered "conduit financing" and have no fiscal impact on the part of the City. As part of arrangement, Gardens East Limited Partnership agreed to keep at least 20% of the units as affordable in accordance with Minnesota Statutes 474A.047.

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 and in response to the City's inquiries, the developer's attorney recognized a mistake was made in the rent calculations and that the project was not in compliance with state statutes. Subsequently, the developer reduced the rents to meet the affordability guidelines. In November 2008, Gardens East Partnership identified 31 households that were overcharged in rent and refunded a total of $1,687 to these parties

In order to confirm the developer's assertations, staff has requested and reviewed information regarding the rent charged to all of the units within the development from the time the bonds were issued (June 2007) to present to verify exactly when the project was not in compliance. The developer provided a spreadsheet detailing the rent each unit was being charged for rent between June 2007 to the present. (Attachment E).

POLICY OBJECTIVE

Providing affordable housing options in our community has long been identified as a priority for the City and the Roseville Housing and Redevelopment Authority thru the City's Comprehensive Plan and the RHRA Housing Policies.

BUDGET IMPLICATIONS

The costs for issuing the original bond was paid for by the developer. City and RHRA staff on this matter have not been billed to the developer, but the time for Briggs and Morgan, the City's bond counsel to review the matter is being charged back to the developer.

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 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.

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

In determining on whether to issue a penalty, the City Council should first discuss whether or not the violations of charger higher rent than allowed was an "insubstantial violation" or not. A total of 31 tenants were deemed to be overcharged a total of $1,687, with individual tenant overcharges ranging from $10 to $180. It should be noted that the developer's attorney asserts that in their opinion that actually only 15 households needed to be rebated. A detailed breakdown of the 31 refunds is contained in Attachment H.

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

In a letter dated February 26, 2009 the developer's attorney, Norm Jones indicates that based on his interpretation, rent is defined as payable directly by the tenant, and therefore, any tenant receiving a Section 8 voucher is often paying less than the fair marked rent out of their own pocket. Mr. Jones, further states that based on his interpretation (namely that Section 8 payments should <u>not</u> be counted as part of the rent the tenant pays), that the project was only in violation in the months of July, August, and September of 2008. Mr. Jones concludes that although various legal issues (from their point of view) remain unclear and would have to be tested in the courts, the developer has exhibited responsive behavior by refunding those that were overcharged and noted that the actual violation period was short and the dollar amounts were minimal. Mr. Jones has sent an additional letter dated March 16, 2009 further expanding his perspective of the matter.

The City's bond counsel, Mary Ippel of Briggs and Morgan, in response to Mr. Jones' February 26, 2009 letter and has prepared a letter, a copy of which is attached. Ms. Ippel's letter states that Mr.

Jones' position is not an unreasonable interpretation of the statutes, but has a concern that such a "literal interpretation of the statues defeats the goal of making housing affordable to all".

Staff has provided a simplified worksheet (Attachment J) showing the number of units that were in compliance with state statutes. The worksheet shows that if Section 8 vouchers are included in rent (contrary to Mr. Jones' opinion), there were six months of non-compliance. The second set of numbers shows that if Section 8 vouchers are not counted as rent (Mr. Jones' interpretation), the time of non-compliance is three months.

Regardless of how the statutes and regulations are interpreted, it is clear that there was a violation of the affordability guidelines for a period of time in 2008. Staff has reviewed the rent information from the time the bonds were issued to present. Staff's analysis (which holds that Section 8 vouchers are included in the rent, contrary to Mr. Jones' interpretation) has determined that in the 19 months since the bonds were issued, there were six months the project was not in compliance (June, July, August, September, October, and November of 2008).

In staff's review of the matter, we have not found any deliberate attempt to charge tenants more than was allowed. Based on the communication dated October 31, 2008 from Norm Jones, the attorney for the developer, the developer relied on a faulty interpretation on what was included in "gross rent". Staff did find that several mistakes occurred when the developer tried to apply the regulations and in calculating the correct rent. While review of situation has not found any malicious intent on the part of the developer, staff is concerned that these problems could recur if proper oversight and care is not applied in the future. Staff also found very poor communication between the developer and the tenants as well as between the developer's team members in regards to the proper rent that should be charged.

The City has received a letter dated February 23, 2009 from State Senator John Marty stating that the developer's non-compliance was substantial and that the City Council should levy the penalty.

STAFF RECOMMENDATION

Staff recommends that a letter of non-compliance be issued to the developer but that no penalty be levied. Specifically, the letter should state that Centennial Gardens was in non-compliance with the affordability regulations for the months of June, July, August, September, October and November 2008 but that the violations that occurred have been deemed "insubstantial" and no penalty will be levied at this time. The non-compliance letter should further state that violations were a result of a misinterpretation of regulations and poor communication. Finally, the letter should clearly state that if this or a similar violation occurs again, the City will levy a penalty.

REQUESTED COUNCIL ACTION

Motion to authorize staff to send a non-compliance letter fiding the violations as insubstantial and waiving a penalty to Gardens East Limited Partnership in regards to the Centennial Commons apartment development.

-or-

Motion to issue a non-compliance order to Gardens East Limited Partnership finding the violations substantial and levying a penalty of $60,000 in accordance with Minnesota State Statutes Section 474A.047(3).

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
E: Spreadsheet showing rent paid from June 2007 thru February 2009
F: Letter from Norm Jones, Attorney for Gardens East Limited Partnership, dated February 26, 2009
G: Letter from Mary Ippel, City Bond Counsel, dated March 4, 2009.
H: Spreadsheet showing units that were overcharged and the amount of rebate each received.
I: Letter from Norm Jones, Attorney for Gardens East Limited Partnership, dated March 16, 2009
J: Spreadsheet showing period of non-compliance
K: Letter from State Senator John Marty, dated February 23, 2009

Attachment A

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

Attachment B

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,

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

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

Exhibit I

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@michaeldevelopment 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>

<<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		$700	1		
	$625	9		$702	9		
	$635	1		$775	66		
	$650	53					
	$675	8					
	$700	4					
	$725	11					
2 Bedroom	$725	8	$770	$750	2	$848	$1,053
	$735	1		$775	2		
	$750	22		$848	16		
	$775	41		$850	33		
	$800	21		$900	38		
3 Bedroom	$1,000	1	$1,125	$1,000	1	$1,128	$1,217
	$1,100	1		$1,100	1		
	$1,200	2		$1,205	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 (0BR, 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*
0BR/SRO	1	456	$500	$6,000	$27	$527	2.5	2.5	60%	60%	HTC
0BR/SRO	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			

*** Eff/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

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

Utilities to be paid by Occupant (Excluding Telephone):

- ☐ Water & Sewer
- ☐ Hot Water
- ☑ Household Electric
- ☐ Heat -Type: _____
- ☑ Air Conditioning
- ☐ 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	$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 Unrealized 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	Units	Contract Rent	Utility estimate	Gross Rent	2008 FMR	Units Counted as <=FMR	Number Actually <=FMR	Amount Over FMR 2008 FMR	2009 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%	

Attachment C

WINTHROP WEINSTINE

ATTORNEYS AND COUNSELORS AT LAW

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

cc: Councilmember Amy Ihlan
Bob Odman
Jack Cann
Mary Ippel

4114993v1

Attachment D

HPP
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.

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,

Jack Cann

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

Centennial Commons -- Rent Evaluation as of 3/14/09

	Max Rent 2008	Rent Jan, 2008	"1" if met FMR Jan, 2008	Rent Feb, 2008	"1" if met FMR Feb, 2008	Rent Mar, 2008	"1" if met FMR Mar, 2008	Rent April, 2008	"1" if met FMR April, 2008	Rent May, 2008	"1" if met FMR May, 2008	Rent June, 2008	"1" if met FMR June, 2008	Rebated Rent - Bond June	Rebate Amount - June	Jun.08 Sect. 8 HH Not Counted as Bond	Jun.08 Tenant Portion of Rent	Rent July, 2008	"1" if met FMR July, 2008	Rebated Rent - Bond July	Rebate Amount - July	Jul.08 Sect. 8 HH Not Counted as Bond	Jul. 08 Tenant Portion of Rent	Rent Aug, 2008	"1" if met FMR Aug, 2008	Rebated Rent - Bond Aug	Rebate Amount - Aug	Aug.08 Sect. 8 HH Not Counted as Bond	Aug.08 Tenant Portion of Rent	Rent Sep, 2008	"1" if met FMR Sep, 2008	Rebated Rent - Bond Sept.	Rebate Amount - Sep	Sep.08 Sect. 8 HH Not Counted as Bond	Sep.08 Tenant Portion of Rent	Max Rent 2008	Rent Oct, 2008	"1" if met FMR, Oct, 2008	Rebated Rent - Bond Oct	Rebate Amount - Oct	Oct.08 Sect. 8 HH Not Counted as Bond	Oct.08 Tenant Portion of Rent	Max Rent 2008	Rent Nov, 2008	"1" if met FMR, Nov, 2008	Rebated Rent - Bond Nov	Rebate Amount - Nov	Nov.08 Sect. 8 HH Not Counted as Bond	Nov.08 Tenant Portion of Rent	Rent Dec, 2008	"1" if met FMR, Dec, 2008	Dec.08 Sect. 8 HH Not Counted as Bond	Dec.08 Tenant Portion of Rent
1400-1	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900						834	900					834	900					900			
1400-2	809	900		900		900		900		900		900						900						900						900						834	900					834	900					900			
1400-3	665	650	1	650	1	650	1	650	1	650	1	650	1					650	1					775*		1	34			775*		1	34			685	699	1	14			688	699					688	1		
1400-4	665	650	1	650	1	650	1	650	1	775		775						775						775						702						685	702				1	439	688	702				702		1	439
1400-5	665	575	1	575	1	575	1	675		675		Vac						Vac						Vac						Vac						685	Vac					688	Vac					688	1		
1400-6	809	750	1	750	1	750	1	750	1	750	1	750	1					900						900						900						834	900					834	900					900			
1400-7	665	675		675		775		775		775		775						775						775						775						685	775					688	775					775			
1400-8	665	675		675		775		775		775		775						775						775						775						685	775					688	775					775			
1400-9	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900						834	900					834	900				1	230	900		1	230
1400-10	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900					1	123	834	900				1	123	834	900				1	123	900		1	123
1400-11	665	775		775		775		775		775		775						775						775						775						685	775					688	775					775			
1400-12	665	675		775		775		775		775		775						775						775						775						685	775					688	775					775			
1400-13	809	775	1	775	1	775	1	900		900		900						900						900						900						834	900					834	900					900			
1400-14	809	850		900		900		900		900		900						900						900						900					1	217	834	900				1	217	834	900				1	217	900		1	217
1400-15	665	675		675		675		675		675		Vac						Vac						Vac						Vac					1	496	685	0	1			*	496	688	699		*	11	1	496	688	1	*	496
1400-16	665	775		775		775		775		775		775						775						775						775						685	775					688	775					775			
1400-17	809	900		900		900		900		900		900						900						900						900						834	900					834	900					900			
1400-18	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900						834	900					834	900					900			
1400-19	665	775		775		775		775		775		775						775						775						775						685	775					688	775					775			
1400-20	665	675		675		675		675		675		675						775						775						775						685	775					688	775					775			
1400-21	809	775	1	775	1	775	1	900		900		900						900						900						900						834	900					834	900					900			
1400-22	809	775	1	775	1	775	1	775	1	900		900						900						900						900						834	900					834	900					900			
1400-23	665	625	1	625	1	625	1	625	1	675		675						775						775						775						685	775					688	775					775			
1400-24	665	675		675		675		675		675		675						775						775						775						685	775					688	775					775			
1405-1	809	850		850		850		850		850		900						900						900						900						834	900					834	900					900			
1405-2	1065	1000	1	1000	1	1000	1	1000	1	1000	1	1000	1			*	269	1000	1			*	269	1000	1			*	269	1000	1			*	1000	1098	1000	1			*	1000	1096	1000	1			*	1000	1000	1	*	1000
1405-3	566	500	1	500	1	500	1	500	1	500	1	500	1					500	1					500	1					500	1					583	500	1				588	500	1				588	500	1		
1405-4	665	675		675		675		675		675		702				1	158	702				1	158	702				1	158	702				1	158	685	702				1	158	688	702				1	158	702		1	158
1405-5	665	675		675		675		675		675		675						702						702				1	159	702				1	159	685	702				1	159	688	702				1	159	702		1	159
1405-6	665	675		675		675		675		675		675						775						775						775						685	775					688	775					775			
1405-7	665	775		775		775		775		775		775						775						775						775						685	775					688	775					775			
1405-8	665	675		675		675		675		675		775						775						775						775						685	775					688	775					775			
1405-9	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900						834	900					834	900					900			
1405-10	809	850		850		850		850		850		900						900						900						900						834	900					834	900					900			
1405-11	665	675		675		675		675		675		775						775						775						775						685	775					688	775					775			
1405-12	665	750		750		750		750		750		775						775						775						775						685	775					688	775					775			
1405-13	809	800	1	800	1	800	1	800	1	800	1	800	1					900						900				1	55	900				1	55	834	900				1	55	834	900				1	55	900		1	55
1405-14	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900				1	260	834	900				1	260	834	900				1	260	900		1	260
1405-15	665	625	1	625	1	625	1	625	1	625	1	625	1					Vac	1					Vac						Vac						685	Vac					688	0	1			*	378	688	1	*	378
1405-16	665	675		675		675		675		775		775						775						775						775						685	775					688	775					775			
1405-17	809	800	1	800	1	800	1	800	1	900		900						900						900						900						834	900					834	900					900			
1405-18	809	775	1	775	1	775	1	775	1	775	1	775	1					775	1					775	1					775	1					834	775	1				834	775	1				834	1		
1405-19	665	675		675		675		775		775		775						775						775						775						685	775					688	775					775			
1405-20	665	675		675		775		775		775		775						775				1	213	775				1	213	775				1	213	685	775				1	213	688	775				1	213	775		1	213
1405-21	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900						834	900					834	900					900			
1405-22	809	900		900		900		900		900		900						900						900						900						834	900					834	900					900			
1405-23	665	775		775		775		775		775		775						775						775						775						685	775					688	775					775			
1420-1	1065	1200		1200		1200		1200		1200		1200						1200						1200						1205						1098	1205					1096	1205					1205			
1420-3	665	700		700		700		700		700		700				1	218	700				1	218	700				1	218	700				1	218	685	700				1	218	688	700				1	218	700		1	215
1420-4	665	650	1	650	1	650	1	650	1	650	1	775						775						775						775						685	775					688	775					775			
1420-5	665	575	1	575	1	575	1	575	1	775		775						775						775						775						685	775					688	775					775			
1420-6	665	775		775		775		775		775		775						775						775						775						685	775					688	775					775			
1420-7	665	650	1	650	1	650	1	650	1	650	1	775						775						775						775						685	775					688	775					775			
1420-8	665	650	1	650	1	650	1	650	1	650	1	650	1					650	1					650	1					650	1					685	650	1				688	775					775			
1420-9	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900						834	900					834	900					900			
1420-10	809	850		850		850		850		850		900						900						900						900						834	900					834	900					900			
1420-11	665	675		775		775		775		775		775						775						775						775						685	775					688	775					775			
1420-12	665	700		700		700		700		700		700		1	35			Vac						Vac						Vac						685	0	1				688	699		1	11			688	1		
1420-13	809	775	1	775	1	775	1	775	1	775	1	900						900				1	439	900				1	439	900				1	439	834	900				1	439	834	900				1	439	900		1	439
1420-14	809	775	1	775	1	775	1	775	1	775	1	850						900						900				1	424	900				1	424	834	900				1	424	834	900				1	424	900		1	424
1420-15	665	775		775		775		775		775		775						775						775						775						685	775					688	775					775			
1420-16	665	675		675		675		675		675		675						775						775						775						685	775					688	775					775			
1420-17	809	775	1	775	1	775	1	775	1	775	1	775	1					775	1					775	1					775	1					834	775	1				834	775	1				834	1		
1420-18	809	850		850		850		850		850		850						900						900						900						834	900					834	900					900			
1420-19	665	650	1	650	1	650	1	650	1	650	1	775						775						775						775						685	775					688	775					775			
1420-20	665	650	1	650	1	675		675		775		775						775						775						775						685	775					688	775					775			
1420-21	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900						834	900					834	900					900			
1420-22	809	800	1	800	1	800	1	800	1	800	1	900						900						900						900						834	900					834	900					900			
1420-23	665	675		675		675		675		675		775						775						775						775						685	775					688	775					775			
1420-24	665	675		675		675		675		675		675						775						775						775						685	775					688	775					775			
1425-1	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900						834	900					834	900					900			
1425-2	809	775	1	775	1	775	1	775	1	775	1	775	1					900						900						900						834	900					834	900					900			
1425-3	665	650	1	650	1	675		675		675		675						775						775				1	527	775				1	527	685	775				1	527	688	775				1	226	775		1	226
1425-4	665	675		675		675		675		675		675						775						775						702					1	15	685	702				1	15	688	702				1	15	702		1	15
1425-5	665	675		675		675		675		675		Vac						Vac						Vac						Vac						685	0	1			*	182	688	699		*	11	1	182	688	1	*	182
1425-6	809	775	1	775	1	775	1	775	1	775	1	775	1					900						900				1	341	900				1	341	834	900				1	341	834	900				1	341	900		1	341
1425-7	665	675		675		675		675		775		775						775						775				1	287	775				1	287	685	775				1	287	688	775				1	287	775		1	287
1425-8	665	675		675		675		675		775		775						775						775						775						685	775					688	775					775			
1425-9	809	775	1	775	1	900		900		900		900						900						900						900						834	900				1	765	834	900				1	765	900		1	765
1425-10	809	800	1	800	1	800	1	800	1	800	1	850						900						900						900						834	900					834	900					900			
1425-11	665	650	1	650	1	675		675		675		675						702						702						702						685	702					688	702					702			
1425-12	665	650	1	650	1	650	1	650	1	675		675						775						775						775						685	775					688	775					775			
1425-13	809	850		850		900		900		900		900						900						900						900						834	900					834	900					900			
1425-14	809	825		825		825		825		825		900						900						900						900						834	900					834	900					900			
1425-15	665	650	1	650	1	650	1	675		675		Vac						Vac						Vac						Vac						685	Vac					688	Vac					688	1		
1425-16	665	650	1	650	1	650	1	650	1	650	1	650	1					650	1					Vac						640.75	1					685	640.75	1				688	640.75	1				640.75	1		
1425-17	809	775	1	775	1	775	1	775	1	900		900						900						900						900						834	900					834	900					900			
1425-18	809	775	1	775	1	775	1	775	1	775	1	775	1					900						900						900						834	900					834	900				1	104	900		1	104
1425-19	665	650	1	650	1	650	1	650	1	650	1	675						775						775						775						685	775					688	775					775			
1425-20	665	625	1	625	1	625	1	625	1	625	1	775						775						775						775						685	775					688	775					775			
1425-21	809	775	1	775	1	775	1	775	1	775	1	900						900						900						900						834	900					834	900					900			
1425-22	809	850		850		850		850		850		900						900						900						900						834	900					834	900					900			
1425-23	665	650	1	650	1	650	1	650	1	650	1	775						775						775						775						685	775					688	775					775			
1425-24	665	675		675		675		675		775		775						775						775						775						685	775					688	775					775			
2815-1	665	702		702		702		702		702		702				1	172	702				1	172	702				1	172	702				1	172	685	702				1	172	688	702				1	172	702		1	172
2815-2	809	850		850		850		850		850		850						850						850						850						834	850					834	850					850			
2815-3	809	750	1	750	1	750	1	750	1	850		850						850						850						850						834	850					834	850					850			
2815-4	665	650	1	650	1	650	1	650	1	650	1	775						775						775						775						685	775					688	775					775			
2815-5	665	675		675		675		675		675		775						775						775						775						685	775					688	775					775			
2815-6	809	750	1	750	1	750	1	750	1	750	1	750	1					750	1					850	1	41				777.17	1					834	777.17	1				834	777.17	1				777.17	1		
2815-7	809	850		850		850		850		850		850						850						850						850						834	850					834	850					850			
2815-8	665	650	1	650	1	650	1	650	1	650	1	650	1					650	1					775	1	110				Vac						685	Vac					688	Vac					688	1		
2815-9	665	675		675		775		775		775		775						775						775						775						685	775					688	775					775			
2815-10	809	750	1	750	1	750	1	750	1	750	1	750	1					750	1					850						Vac						834	Vac					834	Vac					834	1		
2815-11	809	850		850		850		850		850		850						850						850						850						834	850					834	850					850			
2815-12	809	750	1	750	1	750	1	750	1	750	1	850						850						850						850						834	850					834	850					850			
2815-13	665	650	1	650	1	650	1	650	1	650	1	675						675						675						675						685	675	1				688	675	1				675	1		
2815-14	809	850		850		850		850		850		850						850						850						850						834	850					834	850					850			

Attachment E

2815-15	809	725	1	725	1	725	1	725	1	725	1	725	1
2815-16	665	775		775		775		775		775		775	
2815-17	665	650	1	650	1	650	1	650	1	650	1	775	
2815-18	809	850		850		850		850		850		850	
2815-19	809	750	1	750	1	750	1	750	1	750	1	750	1
2815-20	809	750	1	750	1	750	1	750	1	750	1	850	
2815-21	665	675		675		675		675		675		675	
2815-22	809	850		850		850		850		850		850	
2815-23	809	750	1	750	1	750	1	750	1	750	1	750	1
2815-24	665	675		775		775		775		775		775	
2825-1	665	635	1	635	1	635	1	635	1	635	1	635	1
2825-2	809	775	1	775	1	775	1	775	1	850		850	
2825-3 (converted)	1065	1100		1100		1100		1100		1100		1100	
2825-5	665	675		675		675		675		675		675	
2825-6	809	850		850		850		850		850		850	
2825-7	809	775	1	850		850		850		850		850	
2825-8	665	675		675		675		702		702		702	
2825-9	665	650	1	650	1	650	1	650	1	650	1	775	
2825-10	809	850		850		850		850		850		850	
2825-11	809	775	1	775	1	775	1	775	1	775	1	775	1
2825-12	809	775	1	850		850		850		850		850	
2825-13	665	650	1	650	1	650	1	675		675		675	
2825-14	809	850		850		850		850		850		850	
2825-15	809	775	1	775	1	850		850		850		850	
2825-16	665	625	1	625	1	625	1	625	1	625	1	625	1
2825-17	665	625	1	625	1	625	1	625	1	625	1	775	
2825-18	809	725	1	725	1	725	1	725	1	850		850	
2825-19	809	775	1	775	1	775	1	775	1	850		850	
2825-20	809	750	1	750	1	750	1	750	1	750	1	750	1
2825-21	665	675		675		675		675		675		675	
2825-22	809	775	1	775	1	775	1	850		850		850	
2825-23	809	850		850		850		850		850		850	
2825-24	665	675		675		675		675		675		775	
2835-1	665	650	1	650	1	650	1	675		675		675	
2835-2	809	750	1	750	1	750	1	750	1	850		850	
2835-3	809	750	1	750	1	750	1	750	1	750	1	750	1
2835-4	665	675		675		675		675		675		775	
2835-5	665	650	1	650	1	675		675		675		Vac	
2835-6	809	725	1	725	1	725	1	725	1	725	1	850	
2835-7	809	775	1	775	1	775	1	775	1	850		850	
2835-8	665	650	1	650	1	650	1	650	1	650	1	775	
2835-9	665	650	1	650	1	650	1	650	1	650	1	775	
2835-10	809	775	1	775	1	775	1	775	1	775	1	850	
2835-11	809	725	1	725	1	725	1	725	1	850		850	
2835-12	809	750	1	750	1	750	1	750	1	750	1	850	
2835-13	665	625	1	625	1	625	1	625	1	625	1	625	1
2835-14	809	775	1	775	1	775	1	775	1	775	1	775	1
2835-15	809	750	1	750	1	750	1	750	1	750	1	850	
2835-16	665	775		775		775		775		775		775	
2835-17	665	625	1	625	1	625	1	625	1	625	1	775	
2835-18	809	750	1	750	1	750	1	750	1	775	1	850	
2835-19	809	725	1	725	1	725	1	725	1	725	1	725	1
2835-20	809	775	1	775	1	850		850		850		850	
2835-21	665	675		675		675		675		675		675	
2835-22	809	850		850		850		850		850		850	
2835-23	809	775	1	775	1	775	1	850		850		850	
2835-24	665	675		675		675		675		675		Vac	
2845-1	665	675		675		675		675		675		Vac	
2845-2	809	775	1	775	1	850		850		850		850	
2845-3	1065	1100		1100		1100		1100		1100		1100	
2845-4	566	500	1	500	1	500	1	500	1	500	1	500	1
2845-5	665	675		775		775		775		775		775	
2845-6	809	775	1	775	1	775	1	775	1	775	1	850	
2845-7	809	750	1	750	1	750	1	750	1	775	1	Vac	
2845-8	665	675		675		675		675		675		675	
2845-9	665	675		675		675		675		675		675	
2845-10	809	750	1	750	1	750	1	750	1	750	1	750	1
2845-11	809	750	1	750	1	750	1	750	1	750	1	750	1
2845-12	809	750	1	750	1	750	1	775	1	775	1	850	
2845-13	665	675		675		675		775		775		775	
2845-14	809	750	1	750	1	750	1	750	1	750	1	750	1
2845-15	809	750	1	750	1	750	1	750	1	750	1	750	1
2845-16	665	650	1	650	1	650	1	650	1	650	1	650	1
2845-17	665	675		675		675		775		775		775	
2845-18	809	850		850		850		850		850		850	
2845-19	809	775	1	775	1	775	1	775	1	850		850	
2845-20	809	750	1	750	1	750	1	750	1	750	1	750	1
2845-21	665	650	1	650	1	650	1	650	1	650	1	775	
2845-22	809	775	1	775	1	775	1	775	1	775	1	775	1
2845-23	809	775	1	775	1	775	1	775	1	850		850	
2845-24	665	750		750		750		750		750		775	
UNITS AT FMR			109		107		100		91		77		35
			Jan 08		Feb 08		Mar 08		Apr 08		May 08		Jun 08
				Units in Compliance after Rebates								June 2008	
Total FMR Rents		78,635		77,085		72,035		65,785		55,535		28,939	
Avg. FMR Rents		721.42		720.42		720.35		722.91		721.23		723.48	

2815-15					725	1				
2815-16					702					
2815-17					775					
2815-18					850					
2815-19					750	1				
2815-20					850					
2815-21	1	10			Vac					
2815-22					850					
2815-23					750	1				
2815-24					775					
2825-1					635	1				
2825-2					850					
2825-3 (converted)					1100					
2825-5					775					
2825-6					850					
2825-7					850					
2825-8			1	172	702				1	172
2825-9					775					
2825-10					850					
2825-11					775	1				
2825-12	1	41			850		1	41		
2825-13					775					
2825-14					850					
2825-15			1	208	850				1	208
2825-16					625	1				
2825-17					775					
2825-18	1	41			Vac					
2825-19					850					
2825-20					750	1				
2825-21					775					
2825-22					850					
2825-23					850					
2825-24					775					
2835-1					775					
2835-2	1	41			850		1	41		
2835-3					750	1				
2835-4					775					
2835-5					Vac					
2835-6					850					
2835-7	1	41			850		1	41		
2835-8					775					
2835-9					775					
2835-10					850					
2835-11					850					
2835-12					850					
2835-13					625	1				
2835-14					775	1				
2835-15					850					
2835-16					775					
2835-17					775					
2835-18					850					
2835-19					850		1	41		
2835-20					850					
2835-21					775					
2835-22					850					
2835-23					850					
2835-24					Vac					
2845-1					Vac					
2845-2					850					
2845-3					1100					
2845-4					500	1				
2845-5					775					
2845-6					850					
2845-7					Vac					
2845-8					702					
2845-9					775					
2845-10					750	1				
2845-11					750	1				
2845-12					850				1	213
2845-13					775					
2845-14					750	1				
2845-15					850		1	41		
2845-16					650	1				
2845-17					775					
2845-18					850					
2845-19					850					
2845-20					750	1				
2845-21					775					
2845-22					850					
2845-23					850					
2845-24					775					
UNITS AT FMR	6		5			27	5		9	
			JunSec8			July 08			JulSec8	
	41		46		July 2008		32		41	
		$209.00 June,08 Rebate Total						$205.00 July,08 Rebate Total		
Total FMR Rents					26,041					
Avg. FMR Rents					723.36					

2815-15	848		1	20			0	1				
2815-16	702						702					
2815-17	775						775					
2815-18	850						850					
2815-19	850		1	41			850		1	41		
2815-20	850						850					
2815-21	Vac						Vac					
2815-22	850						850					
2815-23	850						Vac					
2815-24	775						775					
2825-1	Vac						Vac					
2825-2	850						850					
2825-3 (converted)	1100						1100					
2825-5	775						775					
2825-6	850						850					
2825-7	850						850					
2825-8	702				1	172	702				1	172
2825-9	775						775					
2825-10	850						850					
2825-11	775	1					775	1				
2825-12	850		1	41			848		1	39		
2825-13	775						775					
2825-14	850						850					
2825-15	850				1	208	850				1	208
2825-16	775		1	110			Vac					
2825-17	775						775					
2825-18	Vac						99	1				
2825-19	850						850					
2825-20	Vac						Vac					
2825-21	775						775					
2825-22	850						850					
2825-23	850						850					
2825-24	775						775					
2835-1	775						775					
2835-2	Vac						0	1				
2835-3	750	1					750	1				
2835-4	775						775					
2835-5	Vac						Vac					
2835-6	850						850					
2835-7	850		1	41			850		1	41		
2835-8	775						775					
2835-9	775						775					
2835-10	850						850					
2835-11	850						850					
2835-12	850						850					
2835-13	775		1	110			Vac					
2835-14	775	1					775	1				
2835-15	850						850					
2835-16	775						775					
2835-17	775						775					
2835-18	850						850					
2835-19	850		1	41			Vac					
2835-20	850						850					
2835-21	775						775					
2835-22	850						850					
2835-23	850						850					
2835-24	Vac						Vac					
2845-1	Vac						Vac					
2845-2	850						850					
2845-3	1100						1205					
2845-4	500	1					500	1				
2845-5	775						775					
2845-6	850						850					
2845-7	Vac						Vac					
2845-8	702				1	137	702				1	137
2845-9	775						775					
2845-10	Vac						Vac					
2845-11	850		1	41			Vac					
2845-12	850				1	213	850				1	213
2845-13	775						775					
2845-14	Vac						0	1				
2845-15	850		1	41			850		1	41		
2845-16	Vac						Vac					
2845-17	775						775					
2845-18	850						850					
2845-19	850						850					
2845-20	Vac						848		1	39		
2845-21	775						775					
2845-22	850						850					
2845-23	850						850					
2845-24	775						775					
UNITS AT FMR		9	12		15			15	6		19	
		Aug 08			AugSec8			Sept 08			SepSec8	
	Aug 2008		21		36		Sept 2008		21		40	
				$671.00 Aug,08 Rebate Total						$235.00 Sep,08 Rebate Total		
Total FMR Rents	18,335						22,354					
Avg. FMR Rents	763.96						657.47					

2815-15	834	848		1	14			834	848		1	14			834	1			
2815-16	685	702						688	702						702				
2815-17	685	775						688	775						775				
2815-18	834	850						834	850						850				
2815-19	834	Vac						834	Vac						834	1			
2815-20	834	850						834	850						850				
2815-21	685	Vac						688	Vac						688	1			
2815-22	834	850						834	850						850				
2815-23	834	0	1					834	848		1	14			834	1			
2815-24	685	775						688	775						775				
2825-1	685	Vac						688	Vac						688	1			
2825-2	834	850						834	850						850				
2825-3 (converted)	1098	1100						1096	1100						1100				
2825-5	685	775						688	775						775				
2825-6	834	850						834	850						850				
2825-7	834	850						834	850						850				
2825-8	685	702				1	172	688	702				1	172	702		1	172	
2825-9	685	775						688	775						775				
2825-10	834	850						834	850						850				
2825-11	834	775	1					834	775	1					775	1			
2825-12	834	848		1	14			834	848		1	14			834	1			
2825-13	685	775						688	775						775				
2825-14	834	850						834	850						850				
2825-15	834	850				1	208	834	850				1	208	850		1	208	
2825-16	685	Vac						688	Vac						688	1			
2825-17	685	775						688	775						775				
2825-18	834	848		1	14			834	848		1	14			834	1			
2825-19	834	850						834	850						850				
2825-20	834	0	1					834	848		1	14			834	1			
2825-21	685	775						688	775						775				
2825-22	834	850						834	850						850				
2825-23	834	850						834	850						850				
2825-24	685	775						688	775						775				
2835-1	685	775						688	775						775				
2835-2	834	848		1	14			834	848		1	14			834	1			
2835-3	834	750	1					834	750	1					834	1			
2835-4	685	775						688	775						775				
2835-5	685	0	1			*	177	688	699		*	11	1	177	688	1	*	177	
2835-6	834	850						834	775	1					775	1			
2835-7	834	850		1	16			834	Vac						834	1			
2835-8	685	775						688	775						775				
2835-9	685	775						688	775						775				
2835-10	834	850						834	850						850				
2835-11	834	850						834	850						850				
2835-12	834	850						834	850						850				
2835-13	685	Vac						688	Vac						688	1			
2835-14	834	775	1					834	775	1					775	1			
2835-15	834	850						834	850						850				
2835-16	685	775						688	775						775				
2835-17	685	775						688	775						775				
2835-18	834	850						834	850						850				
2835-19	834	Vac						834	Vac						834	1			
2835-20	834	850						834	850						850				
2835-21	685	775						688	775						775				
2835-22	834	850						834	850						850				
2835-23	834	850						834	850						850				
2835-24	685	0	1			*	194	688	699		*	11	1	194	688	1	*	194	
2845-1	685	Vac						688	Vac						688	1			
2845-2	834	850						834	850						850				
2845-3	1098	1205						1096	1205						1205				
2845-4	588	500	1					588	500	1					500	1			
2845-5	685	775						688	775						775				
2845-6	834	850						834	850						850				
2845-7	834	848						834	0	1					834	1			
2845-8	685	702				1	137	688	702				1	137	702		1	137	
2845-9	685	775						688	775						775				
2845-10	834	Vac						834	Vac						834	1			
2845-11	834	Vac						834	Vac						834	1			
2845-12	834	850				1	213	834	850				1	213	850		1	213	
2845-13	685	775						688	775						775				
2845-14	834	848		1	14			834	848		1	14			834	1			
2845-15	834	Vac						834	Vac						834	1			
2845-16	685	Vac						688	Vac						688	1			
2845-17	685	775						688	775						775				
2845-18	834	850						834	850						850				
2845-19	834	850						834	850						850				
2845-20	834	0	1					834	848		1	14			834	1			
2845-21	685	775						688	775						775				
2845-22	834	850						834	850						850				
2845-23	834	850						834	850						850				
2845-24	685	775						688	775						775				
UNITS AT FMR			20	7		21				14	10		27			44	23		767 Total Units at FMR before rebate
			Oct 08			OctSec8				Nov 08			NovSec8			Dec 08	DecSec8		
		Oct 2008		27		48			Nov 2008		24		51				67		
					$100.00 Oct,08 Rebate Total							$178.00 Nov,08 Rebate Total							
Total FMR Rents		25,432							30,153						51,911				552,240 Total Rents paid on FMR units
Avg. FMR Rents		620.29							735.44						774.79				720.00 Avg. Rents paid on FMR units

**Centennial Rent Rolls reflect the rents charged for the previous month. Therefore, the rents listed above are listed on the following month's rent roll (if it says June, 2008 above, the information is taken from the rent roll showing a July, 2008 date)

Attachment F

WINTHROP WEINSTINE

ATTORNEYS AND COUNSELORS AT LAW

February 26, 2009

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: Update on Centennial Gardens project FMR Compliance

Dear Mayor Klausing:

We have been asked to provide an update to our letter of October 31, 2008 reporting on the historical compliance of the Centennial Gardens project with the requirements of Minnesota Statutes Section 474A.047. We have been asked to (i) consider the effect of certain Section 8 voucher payments, (ii) reflect some corrected data reported by the owner's outside consultant when looking at actual rent payments received, and (iii) report on the corrective measures taken.

As you know, the first 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. ..."

The term "rent" is defined in Minnesota Statutes 474A.02 Subd. 23b as:

"the total monthly cost of occupancy payable directly by the tenant and the cost of any utilities, other than telephone. It does not include a charge for a service that is not required as a condition of occupancy." (emphasis added)

We conclude that only amounts payable directly by the tenant can be considered "rent" under this provision.

We have been informed that a number of Section 8 vouchers are being utilized at the project. Section 8 vouchers work by requiring the tenant to pay a certain amount directly to the owner (which amount has been determined by HUD to be affordable to that tenant), and HUD also pays an amount to the owner. In these cases, the amount to be treated as "rent" under the above definition is the amount payable by the tenant.

This result is consistent with the policy underlying the rent limitation in Minnesota Statutes, which is affordability to residents. The definition of "rent" focuses on what the resident has to pay out of his or her own pocket. If the opposite were true, and the statute were to also include as "rent" payments by others who are not residents, that (i) would do nothing to help affordability to residents, and (ii) would hinder what the various state or federal rental assistance programs are designed to do. In that case, would the owner, for example, have to refuse to rent FMR units to Section 8 voucher holders? Or would the owner first have to negotiate a lower voucher amount with HUD? One can quickly see how such a statute would create conflict between the FMR requirements in Minnesota statutes versus the federal or state rental assistance provider.

We have also been asked to interpret an additional sentence appearing in Minnesota Statute Section 474A.047, Subd. 1(a)(2), as follows:

"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."

Our interpretation of this sentence is threefold. First, this sentence by its terms has no direct application to this project because no project-based federal assistance payments are being made to the project. Second, as a policy statement, it appears to be entirely consistent with the policy we describe above, which is noninterference with other governmental programs designed to assist tenants to pay for housing. Third, it seems to indicate deference to HUD. As if to say, "If HUD says the rent is affordable, we won't impose a harsher standard." We don't think it's appropriate to interpret this sentence as saying "federal assistance payments that are not project based are deemed not to be within the rent limitations." This would be inconsistant with the plain words in the definition of "rent" in the statute and would make nonsense of the policy described above.

As a separate matter, the owner's consultant has made the owner aware that, most likely due to a computer error, rent rolls on which we based our conclusions as to June 2008 in some cases stated increased rent levels which were not actually paid by tenants until 30 or 60 days later. The data which we have now been provided and upon which we rely for purposes of this letter has been verified with actual tenant ledgers for the relevant periods.

In our October 31, 2008 letter, we had concluded that the project was in compliance with the Minnesota FMR requirement through May 2008. Below is a chart which summarizes our conclusions from June 2008 (revised) through the remainder of the year. We found the following numbers of units that were rented at or below the FMRs (out of 190 total units), as described above using only amounts paid by the tenants:

Month	Total units at or below FMR	% at or below FMR
June 2008	40	21.1%
July 2008	36	18.9%
August 2008	24	12.6%
September 2008	34	17.9%
October 2008	41	21.6%
November 2008	41	21.6%
December 2008	67	35.6%

We should note that for the above we used the conservative assumption that no vacant units met the FMR requirement, although the statute is not clear in this regard and an argument could certainly be made the other way.

We also did not take into account any refund actions taken by the owner, although the owner issued refunds to residents and former residents occupying certain units during the period from June through November 2008. We feel the owner did the right thing by trying to correct what was in its power (as it said in October it would do). The refunds did serve the policy of affordability by putting money back in the tenant's pockets. The refunds in total were small, because the amounts overcharged were small (leading to the conclusion that the violation was small).

We also see that the owner has corrected rent levels going forward (again as the owner said in October it would do) and the issue has been completely fixed for the future.

Finally, various legal issues surrounding compliance under Minnesota Statute Sec. 474A.047 remain unclear and would have to be tested in the courts. Legal arguments could be made by the owner as to, for example (i) compliance by means of vacant units, (ii) compliance by means of refunds, and (iii) compliance by means of annual periods versus monthly periods. For the 2008, at least 33.6% of the units on average were actually rented at or below FMR.

Fortunately, the owner's responsive behavior and the small size of the problem indicates that a penalty is unwarranted anyway at this time. The owner thought it was always in compliance, and when the issue was brought to its attention, sincere corrective measures were begun immediately and successfully. The period of the problem was short and the dollar amounts involved were small.

Thank you for your consideration and please let me know if you have any questions regarding this matter.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

Norman L. Jones III

cc: Mary Ippel, Esq.
Terry McNellis

4338153v1

Attachment G

BRIGGS
BRIGGS AND MORGAN

W2200 First National Bank Building
332 Minnesota Street
St. Paul MN 55101-1396
tel 651.808.6600
fax 651.808.6450

March 4, 2009

Mary L. Ippel
651.808.6620
mippel@briggs.com

City of Roseville, Minnesota
Roseville City Hall
2660 Civic Center Drive
Roseville, MN 55113-1815
Attn: Patrick Trudgeon

Re: Centennial Gardens Project FMR Compliance

Dear Pat:

Minnesota Statutes, Section 474A.047, Subdivision 3 requires the City to monitor the Centennial Gardens Project's compliance with the statutory rental rate and income level requirements set forth in Minnesota Statutes, Section 474A.047, Subdivision 1. In particular, the City is required to monitor the requirement that the maximum rent for at least 20 percent of the units in the Centennial Gardens Project does not exceed the area fair market rent or exception fair market rents for existing housing. If the City determines that the Centennial Gardens Project is not in compliance it must either assess a penalty or determine that the violation is insubstantial.

Gardens East Partnership (the "Developer") acknowledges that the Centennial Gardens Project was not in compliance with the rent restriction which leaves the City Council in the position of determining whether or not the noncompliance was insubstantial. However, there remains a question over the correct method of quantifying the noncompliance. Minnesota Statutes, Section 474A.02, Subdivision 23b defines rent as the "total monthly cost of occupancy payable directly by the tenant and the cost of any utilities". The question that has been raised is whether amounts paid under the Section 8 voucher program on behalf of tenants are included in determining whether the rental payment rates are within the statutory limitations. Those amounts are not literally paid directly by the tenant. Therefore, a literal reading of the statute would exclude those amounts and the noncompliance by Gardens East Partnership would be even smaller than the approximately $1,700 originally determined. That is the interpretation set forth in Norm Jones's February 26, 2009 letter, which is not an unreasonable interpretation of the statute.

However, there may be a policy reason for including Section 8 voucher payments in quantifying rent. Prospective tenants without Section 8 vouchers may not have rented units in the Centennial Gardens Project because they couldn't afford the rents being advertised and

charged. Therefore a literal interpretation of the statute defeats its goal of making housing affordable to all.

At any rate, whether we consider policy or solely the text of the statute, the Centennial Gardens Project was still out of compliance for some portion of the units as acknowledged in Mr. Jones's letter. We suggest evaluating Gardens East Partnership's original quantification of its noncompliance as approximately $1,700. That way, the Council will have applied the more cautious standard in determining whether or not the noncompliance was insubstantial and, if a court ever determined that it is incorrect to exclude amounts paid under the Section 8 voucher program from the determination of rent, the Council would not have to reevaluate a finding of insubstantiality.

Sincerely,

Mary L. Ippel

JSB

Centennial Commons -- Refund Data

Unit #	# of Bdrms	Tenant	June Rebate	July Rebate	August Rebate	Sept Rebate	Oct Rebate	Nov Rebate	Rent Rebate
1400-15	1		$ -	$ -	$ -	$ -	$ -	$ 11.00	$ 11.00
1400-3	1		$ -	$ -	$ 34.00	$ 34.00	$ 14.00	$ 11.00	$ 93.00
1420-12	1	Second Occupant	$ -	$ -	$ -	$ -	$ -	$ 11.00	$ 11.00
1420-12	1	First Occupant	$ 35.00	$ -	$ -	$ -	$ -	$ -	$ 35.00
1425-5	1		$ -	$ -	$ -	$ -	$ -	$ 11.00	$ 11.00
2815-15	2		$ -	$ -	$ 20.00	$ -	$ 14.00	$ 14.00	$ 48.00
2815-21	1		$ 10.00	$ -	$ -	$ -	$ -	$ -	$ 10.00
2815-23	2	Second Occupant	$ -	$ -	$ -	$ -	$ -	$ 14.00	$ 14.00
2815-23	2	First Occupant	$ -	$ -	$ 41.00	$ -	$ -	$ -	$ 41.00
2815-6	2		$ -	$ -	$ 41.00	$ -	$ -	$ -	$ 41.00
2825-12	2		$ -	$ -	$ -	$ 39.00	$ 14.00	$ 14.00	$ 67.00
2825-12	2		$ 41.00	$ 41.00	$ 41.00	$ -	$ -	$ -	$ 123.00
2825-16	1		$ -	$ -	$ 110.00	$ -	$ -	$ -	$ 110.00
2825-18	2	Second Occupant	$ -	$ -	$ -	$ -	$ 14.00	$ 14.00	$ 28.00
2825-18	2	First Occupant	$ 41.00	$ -	$ -	$ -	$ -	$ -	$ 41.00
2825-20	2		$ -	$ -	$ -	$ -	$ -	$ 14.00	$ 14.00
2835-13	1		$ -	$ -	$ 110.00	$ -	$ -	$ -	$ 110.00
2835-2	2	Second Occupant	$ -	$ -	$ -	$ -	$ 14.00	$ 14.00	$ 28.00
2835-2	2	First Occupant	$ 41.00	$ 41.00	$ -	$ -	$ -	$ -	$ 82.00
2835-24	1		$ -	$ -	$ -	$ -	$ -	$ 11.00	$ 11.00
2835-5	1		$ -	$ -	$ -	$ -	$ -	$ 11.00	$ 11.00
2845-14	2		$ -	$ -	$ -	$ -	$ 14.00	$ 14.00	$ 28.00
2845-20	2		$ -	$ -	$ -	$ 39.00	$ -	$ 14.00	$ 53.00
2815-10	2		$ -	$ -	$ 41.00	$ -	$ -	$ -	$ 41.00
2815-19	2		$ -	$ -	$ 41.00	$ 41.00	$ -	$ -	$ 82.00
2815-8	1		$ -	$ -	$ 110.00	$ -	$ -	$ -	$ 110.00
2835-19	2		$ -	$ 41.00	$ 41.00	$ -	$ -	$ -	$ 82.00
2835-7	2		$ 41.00	$ 41.00	$ 41.00	$ 41.00	$ 16.00	$ -	$ 180.00
2845-11	2		$ -	$ -	$ 41.00	$ -	$ -	$ -	$ 41.00
2845-15	2		$ -	$ 41.00	$ 41.00	$ 41.00	$ -	$ -	$ 123.00
2845-7	2		$ -	$ -	$ -	$ -	$ 7.00	$ -	$ 7.00
			$ 209	$ 205	$ 753	$ 235	$ 107	$ 178	$ 1,687

= Pink shaded fill box equals refund undeliverable.

Attachment I

WINTHROP WEINSTINE

ATTORNEYS AND COUNSELORS AT LAW

March 16, 2009

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: Summary of Data on Centennial Gardens project FMR Compliance

Dear Mayor Klausing:

At and following the City Council meeting of March 9, 2009, I was asked to present data relating to the number of households experiencing an overcharge above FMR levels and the dollar amounts involved. Full detailed rent and refund data is contained in a large spreadsheet provided by the owner's compliance consultant Juanita Pekay to City staff at the end of February. However, I attach a spreadsheet which was prepared just to reflect refund data and which is a bit more accessible. In an effort to provide a more accessible summary of certain data from those sheets, we have incorporated certain data into a compliance summary chart on the following page.

Our conclusion, based on the positions and approach stated previously, is that a total of 15 households were overcharged a total of $908 over a period of three months.

City staff has suggested that we present data based on a more conservative approach that Section 8 voucher payments count as "Rent" for purposes of the FMR statute. We do not subscribe to that interpretation. However, as an accommodation, we present that interpretation in the final two columns on the chart on the following page.

These final two columns also are the same as the refunds issued last November to 31 households for a total of $1,687. These refunds were issued prior to the owner considering how to treat Sec. 8 voucher payments. Incidentally, this was the basis for the "31 households affected" statement in the owner's prior letter, mentioned at the City council meeting. If the owner were to recalculate those refunds today, the amounts would be less now that the owner realizes the treatment of Section 8 voucher payments.

Month	Total units at or below FMR (assuming Sec. 8 voucher payments **NOT** includable in Rent)	% at or below FMR (assuming Sec. 8 voucher payments **NOT** includable in Rent)	Number of Households Overcharged (assuming Sec. 8 voucher payments **NOT** includable in Rent)	$ of Overcharge (assuming Sec. 8 voucher payments **NOT** includable in Rent)	Number of Households Overcharged (assuming Sec. 8 voucher payments **ARE** includable in Rent)	$ of Overcharge (assuming Sec. 8 voucher payments **ARE** includable in Rent)
January 2008	109	57.4%	-	-	-	-
February 2008	107	56.3%	-	-	-	-
March 2008	100	52.6%	-	-	-	-
April 2008	91	47.9%	-	-	-	-
May 2008	77	40.5%	-	-	-	-
June 2008	40	21.1%	-	-	6	$ 209
July 2008	36	18.9%	2	$ 82	5	$ 205
August 2008	24	12.6%	14	$ 753	14	$ 753
September 2008	34	17.9%	4	$ 155	6	$ 235
October 2008	41	21.6%	-	-	8	$ 107
November 2008	41	21.6%	-	-	14	$ 178
December 2008	67	35.6%	-	-	-	-
Total	**767 occupied months** **64 (avg.)**	**33.6% (avg.)**	**20 occupied months** **15 households**	**$ 908**	**53 occupied months** **31 households**	**$ 1,687**

We tried to see how to put these amounts in perspective against the accomplishments of the larger project, as follows.

Assuming Section 8 voucher payments are includable as rent (City staff conservative approach): $1,687 amounts to a 0.305% overcharge on a total of $552,240 rent paid on FMR units for the year. This also amounts to a $2.20 per month overcharge on average for FMR qualified units

($1,687 / 767 FMR occupied months). The total overcharges affected 53 occupied months, compared to 767 occupied months (6.9%). To put the penalty in perspective, a $60,000 penalty would be 3,356% of the amount of the $1,687 overcharge.[1]

Perhaps it is worth considering that (i) for the most of the year, the complex far exceeded the minimum number of FMR units, (ii) refunds to tenants were accomplished very quickly by November 13, 2008 (with a few exceptions), or about two weeks after the owner received advice as to the resolution of the utility allowance issue (this is an indication of how eager the owner was to correct the situation), (iii) even though refunds were never expected to be a cure for noncompliance, they were done to "balance the scales" and make sure any harm to tenants was wiped clean, and (iv) the noncompliance was an accident. It is hard to see what a penalty is supposed to accomplish in this case, except punish people who are trying their hardest to comply. Given how the owner understood the statute until October 2008, it would be hard to see how the owner could have acted in any way faster or differently than it did.

Thank you for your consideration and please let me know if you have any questions regarding this matter.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

Norman L. Jones III

cc: Mary Ippel, Esq.
Terry McNellis

4338153v2

[1] The same analysis, assuming Section 8 voucher payments are **NOT** includable as "rent" (our position): $908 amounts to a 0.164% overcharge on a total of $552,240 rent paid on FMR units for the year. This also amounts to a $1.18 per month overcharge on average for FMR qualified units ($908 / 767 FMR occupied months). The total overcharges affected 20 occupied months, compared to 767 occupied months (2.6%). A $60,000 penalty would be 6,607% of the amount of the $908 overcharge.

Centennial Commons -- Refund Data

Unit #	# of Bdrms	Tenant	June Rebate	July Rebate	August Rebate	Sept Rebate	Oct Rebate	Nov Rebate	Rent Rebate
1400-15	1							11	11
1400-3	1				34	34	14	11	93
1420-12	1	Second Occupant						11	11
1420-12	1	First Occupant	35						35
1425-5	1							11	11
2815-15	2				20		14	14	48
2815-21	1		10						10
2815-23	2	Second Occupant						14	14
2815-23	2	First Occupant			41				41
2815-6	2				41				41
2825-12	2					39	14	14	67
2825-12	2		41	41	41				123
2825-16	1				110				110
2825-18	2	Second Occupant					14	14	28
2825-18	2	First Occupant	41						41
2825-20	2							14	14
2835-13	1				110				110
2835-2	2	Second Occupant					14	14	28
2835-2	2	First Occupant	41	41					82
2835-24	1							11	11
2835-5	1							11	11
2845-14	2						14	14	28
2845-20	2					39		14	53
2815-10	2				41				41
2815-19	2				41	41			82
2815-8	1				110				110
2835-19	2			41	41				82
2835-7	2		41	41	41	41	16		180
2845-11	2				41				41
2845-15	2			41	41	41			123
2845-7	2						7		7
			$ 209	$ 205	$ 753	$ 235	$ 107	$ 178	$ 1,687

= Shaded fill box denotes that the refund was undeliverable.

Attachment J

Centennial Gardens
Compliance with 20% of units with Fair Market Rent
Total Amount of Units: 190
20% = 38

Section 8 included in rent amount (Tenant payment, certain utilities, and Section 8 voucher)

	Jun-08	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08	Jan-09	Feb-09
# of units in Compliance	35	27	9	15	20	14	44	44	46
% of units in Compliance	18%	14%	5%	8%	11%	7%	23%	23%	24%

Section 8 not included in rent amount (Tenant payment and certain utilities)

	Jun-08	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08	Jan-09	Feb-09
# of units in Compliance	40	36	24	34	41	41	44	44	46
% of units in Compliance	21%	19%	13%	18%	22%	22%	23%	23%	24%

Period of non-compliance

Attachment K

Senator
John Marty

Senate

State of Minnesota

February 23, 2009

Mayor Klausing and Roseville City Council
2660 Civic Center Drive
Roseville, MN 55113

RE: Centennial Gardens Noncompliance:

Dear Mayor Klausing and City Council Members:

I urge you to issue Gardens East Limited Partnership a letter of noncompliance for rent levels at Centennial Gardens Apartments in Roseville. Not only has the noncompliance been demonstrated, but it has had a significant impact on the residents of the property.

When Gardens East came to the city asking for public funds, they argued that they needed the money to create affordable housing. In reality, they raised rents for virtually all the units, in direct contradiction to their promise.

I strongly disagree with the staff contention that the damages from noncompliance are "insignificant," and therefore eligible for a fine waiver. The residents of these properties need affordable housing because they have **very** low incomes. Any increase in their rents will cause hardship. In fact, seven rent-capped households moved out after the rent was increased. For these low income residents, this caused a housing crisis. That is certainly a "significant" impact.

Sincerely,

John Marty

State Capitol, St. Paul, MN 55155-1606 (651) 296-5645 jmarty@senate.mn