


ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 3/09/2009
Item No.: 12.a

Department Approval

City Manager Approval



Item Description: 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 as defined by the State of Minnesota.

In August 2008, the City Council discussed concerns regarding rent increases and tenants not having their leases renewed. 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 calculations and that the project was not in compliance with state statutes for a period of time. Subsequently, the developer reduced the rents to meet the affordability guidelines. In addition, Gardens East Partnership identified 31 households that were overcharged in rent and refunded a total of \$1,687 to all of these parties. Although they were in compliance for the month of June, Gardens East Limited Partnership also rebated residents for that month. The rebates back to the individual tenants ranged from \$10 - \$180.

The partnership also attempted to reimburse those tenants that no longer lived at Centennial Gardens. Of those that moved, they were able to reimburse 4 tenants. They were unsuccessful in locating three former residents. However, they were able to reimburse a total of 28 households for overpayment of rent.

In order to confirm the developer’s assertions, 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.

28 **POLICY OBJECTIVE**

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

32 **BUDGET IMPLICATIONS**

33 The costs for issuing the original bond was paid for by the developer. City and RHRA staff on this
34 matter have not been billed to the developer, but the time for Briggs and Morgan, the City’s bond
35 counsel to review the matter will be charged back to the developer.

36 **DISCUSSION**

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

40 *474A.047 Subd. 3. Penalty.*

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

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

54 In determining on whether to issue a penalty, the City Council should first discuss whether or not the
55 violations of charger higher rent than allowed was an “insubstantial violation” or not. A total of 31
56 tenants were overcharged a total of \$1,687, with individual tenants being overcharged a total of \$10 -
57 \$180.

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

61 However on February 27, 2009, the City received a letter dated February 26, 2009 from the developer’s
62 attorney, Norm Jones which stated a slightly different perspective on Centennial Gardens non-
63 compliance than was previously communicated in the Fall of 2008. Mr. Jones indicates that based on
64 his interpretation, rent is defined as payable directly by the tenant, and therefore, any tenant receiving a
65 Section 8 voucher, is often paying less than the fair marked rent out of their own pocket. Mr. Jones,
66 further states that, based on his interpretation, that the project was only in violation in the months of
67 July, August, and September of 2008. Mr. Jones concludes that although various legal issues (from
68 their point of view) remain unclear and would have to be tested in the courts, the developer has

69 exhibited responsive behavior by refunding those that were overcharged and noted that the actual
70 violation period was short and the dollar amounts were minimal.

71 The City's bond counsel, Mary Ippel of Briggs and Morgan, has reviewed Mr. Jones' February 26,
72 2009 letter and has prepared a letter a copy of which is attached. In case the City Council has
73 questions, Ms. Ippel will be in attendance at the City Council meeting to discuss the issue.

74 Regardless of how the statutes and regulations are interpreted, it is clear that there was a violation of
75 the affordability guidelines for a period of time in 2008. Staff has reviewed the rent information from
76 the time the bonds were issued (June 2007) to present. Staff's analysis (which does not factor in the
77 Section 8 interpretation) has determined that the only time the project was not in compliance were the
78 months of July, August, September, October, and November of 2008.

79 In staff's review of the matter, we have not found any deliberate attempt to charge tenants more than
80 was allowed. Based on the communication dated October 31, 2008 from Norm Jones, the attorney for
81 the developer, it is stated that the developer relied on a faulty interpretation on what was included in
82 "gross rent". Staff did find that several mistakes occurred when the developer tried to apply the
83 regulations and in calculating the correct rent. These mistakes appear to be more due to the lack of
84 experience with specific affordable housing regulations than any malicious intent. However, these
85 mistakes do cause concern for staff and leaves staff concerned that these problems could recur if proper
86 oversight and care is not applied to the property management. Staff also found very poor
87 communication between the developer and the tenants as well as between the developer's team
88 members in regards the proper rent that should be charged.

89 **STAFF RECOMMENDATION**

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

97 **REQUESTED COUNCIL ACTION**

98 Motion to authorize staff to send a non-compliance letter to Gardens East Limited Partnership in
99 regards to the Centennial Commons apartment development.

100

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: Letter from Norm Jones, Attorney for Gardens East Limited Partnership, dated February 26, 2009
F: Letter from Mary Ippel, City Bond Counsel, dated March 4, 2009.

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,

A handwritten signature in black ink, appearing to read "Jack Cann", written in a cursive style.

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.

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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	\$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	
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 (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	\$138,100	\$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 rooms
 2 BR = 4.5 rooms
 3 BR = 6 rooms
 4 BR = 7 rooms
 5 BR = 8 rooms
 Bed = 2 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.

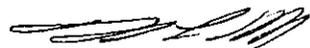
The owner hereby proposes to refund rent to tenants occupying units which were intended to meet the FMR requirement during the period from June 2008 forward such that the actual rent plus utility allowance meets the FMR rent restriction.

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

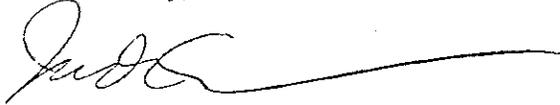
Dedicated to expanding and preserving the supply of affordable housing in Minnesota and nationwide

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



February 26, 2009

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

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

RE: Update on Centennial Gardens project FMR Compliance

Dear Mayor Klausung:

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 inconsistent 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.

Mayor Craig Klausing
February 26, 2009
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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



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

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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