

NEPTUNE TOWNSHIP RENT LEVELING BOARD - AGENDA JUNE 1, 2017 - 6pm

James Manning, Jr. calls the meeting to order and requests the Secretary to call the roll:

ROLL CALL:

James Manning, Jr. _____ Morrel Massicot _____ Connie Holmes _____

Ruth Johnson _____ Catherine McAphee _____ Alternate #I Jeff Klein _____

Alternate #II Naomi Riley _____

Flag Salute

Chairperson Manning announces that the notice requirements of R.S. 10:4-18 have been satisfied by the publication of the required advertisement in The Coaster on January 12, 2017 posting the notice on the Board in the Municipal Complex, and filing a copy of the said notice with the Municipal Clerk.

Consumer Price Index [April's price index was 267.948, area prices up 0.1 percent over the month and up 2.0% increase over the past twelve months]

Action Items:

1. Approval of Minutes – April 6, 2017.

Offered by: _____ Seconded by: _____

Vote:

Manning _____; Massicot _____; Holmes _____; Johnson _____; McAphee _____;

Klein _____ Riley _____

DISCUSSION ITEMS:

Opinion Letter – Section 8 Tenants – Subject to Rent Control
Jumping Brook Apartments - Capital Improvements

PUBLIC PARTICIPATION:

ADJOURNMENT (Time): _____

Offered by: _____ Seconded by: _____

Vote:

Holmes _____; Manning _____; Massicot _____; Johnson _____; McAphee _____;

Klein _____ Riley _____.

New York-New Jersey Information Office

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Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg
1987	114.7	115.3	115.8	116.6	117.3	117.8	117.9	118.9	119.8	120.2	120.5	120.6	118.0
1988	121.3	121.1	121.5	122.6	122.7	123.1	123.6	124.2	126.0	126.2	125.9	126.0	123.7
1989	127.0	127.6	128.9	129.5	130.2	130.5	130.6	130.9	132.2	132.8	133.2	133.3	130.6
1990	135.1	135.3	136.6	137.3	137.2	137.1	138.4	140.0	140.8	141.6	141.5	141.6	138.5
1991	143.0	143.6	143.4	143.7	144.0	144.6	145.2	145.4	145.8	145.7	146.6	146.6	144.8
1992	147.3	148.0	149.1	149.2	148.9	149.5	149.9	150.8	151.4	152.1	152.2	151.9	150.0
1993	153.0	153.6	154.1	154.0	153.8	154.2	154.3	155.3	155.3	155.5	155.4	155.6	154.5
1994	156.0	157.4	157.9	157.7	157.3	157.8	158.2	159.1	159.0	159.5	159.4	158.9	158.2
1995	159.9	160.3	160.9	161.4	161.8	162.2	162.3	162.8	163.2	163.6	163.8	163.7	162.2
1996	164.8	165.7	166.5	166.0	166.4	166.5	166.7	167.2	168.2	168.2	168.4	168.5	166.9
1997	169.1	170.1	170.7	170.2	169.9	170.3	170.8	170.8	171.7	172.3	172.0	171.9	170.8
1998	172.1	172.7	173.0	173.0	173.0	173.1	173.6	174.2	174.4	174.8	174.7	174.7	173.6
1999	175.0	175.1	175.5	176.0	176.1	176.8	177.2	177.6	178.2	178.9	178.8	178.6	177.0
2000	179.3	180.5	181.5	181.4	181.4	182.0	182.8	183.1	184.4	184.6	184.6	184.2	182.5
2001	184.9	185.3	186.4	186.6	187.3	188.3	187.8	188.1	188.0	187.8	187.8	187.3	187.1
2002	188.5	189.9	191.1	191.8	191.4	191.5	192.0	193.1	193.3	193.7	193.4	193.1	191.9
2003	194.7	196.2	197.1	196.7	196.8	196.9	197.7	199.1	199.6	200.0	199.4	199.3	197.8
2004	199.9	201.1	203.4	204.0	204.4	206.0	205.5	205.7	205.9	207.3	207.2	206.8	204.8
2005	208.1	208.9	212.4	212.5	211.4	210.7	212.5	214.1	215.8	216.6	215.3	214.2	212.7
2006	215.9	216.4	218.2	220.2	221.6	222.6	223.1	224.1	222.9	221.7	220.9	221.3	220.7
2007	221.767	223.066	224.551	225.780	227.146	228.258	228.628	228.326	228.308	228.552	229.504	229.395	226.940
2008	229.869	231.020	233.122	233.822	236.151	238.580	240.273	240.550	240.089	238.403	234.498	233.012	235.782
2009	233.402	234.663	235.067	235.582	235.975	237.172	237.600	238.282	238.568	238.380	238.777	238.427	236.825
2010	238.970	238.862	240.101	240.529	241.075	240.817	241.147	241.569	241.485	241.981	241.960	241.874	240.864
2011	242.639	243.832	245.617	246.489	248.073	248.505	249.164	250.058	250.559	250.051	249.317	248.307	247.718
2012	249.322	250.285	251.887	252.349	252.652	252.406	252.016	253.472	254.554	254.277	254.285	253.555	252.588
2013	254.807	256.234	256.589	255.967	256.270	256.911	257.326	257.659	258.504	257.069	257.377	257.284	256.833
2014	259.596	259.019	259.971	259.985	261.225	261.350	261.498	261.075	261.074	260.500	259.382	258.080	260.230
2015	258.376	259.240	259.647	259.959	261.066	261.512	261.199	261.347	261.887	261.515	261.009	259.941	260.558
2016	260.342	260.875	261.508	262.619	263.312	263.877	263.722	264.160	264.602	264.738	265.203	265.421	263.365
2017	266.917	267.662	267.582	267.948									

Urban Wage Earners and Clerical Workers - (CPI-W)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg
1987	113.2	113.8	114.4	115.3	116.0	116.5	116.5	117.4	118.5	118.8	119.1	119.1	116.6
1988	119.6	119.3	119.7	120.6	120.7	121.2	121.7	122.2	124.1	124.3	124.1	124.1	121.8
1989	125.1	125.5	126.8	127.5	128.2	128.7	128.7	128.9	130.3	130.8	131.3	131.3	128.6
1990	133.0	133.1	134.5	135.0	134.9	135.0	136.0	137.4	138.7	139.5	139.5	139.5	136.3
1991	140.3	140.6	140.5	141.0	141.4	142.1	142.3	142.6	143.2	143.0	144.0	143.9	142.1
1992	144.4	144.8	145.8	145.9	145.8	146.5	146.6	147.6	148.3	149.1	149.2	149.1	146.9
1993	149.9	150.3	150.7	150.7	150.4	150.7	150.7	151.7	151.8	152.1	152.0	152.1	151.1
1994	152.4	153.5	154.0	153.9	153.6	154.2	154.4	155.3	155.5	156.0	155.9	155.4	154.5
1995	156.3	156.6	157.1	157.5	158.0	158.4	158.3	158.9	159.5	159.7	159.9	159.9	158.3
1996	160.9	161.7	162.5	162.2	162.8	162.8	162.8	163.3	164.4	164.4	164.7	164.7	163.1
1997	165.1	166.2	166.6	166.1	166.0	166.2	166.6	166.7	167.7	168.1	168.0	167.7	166.8
1998	167.7	168.2	168.2	168.5	168.6	168.8	169.1	169.7	169.9	170.5	170.5	170.5	169.2

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Consumer Price Index, New York-Northern New Jersey – April 2017

Area prices up 0.1 percent over the month and 2.0 percent over the year

Prices in the New York-Northern New Jersey-Long Island area, as measured by the Consumer Price Index for All Urban Consumers (CPI-U), ticked up 0.1 percent in April after no change in March, the U.S. Bureau of Labor Statistics reported today. Chief Regional Economist Martin Kohli attributed the index movement to higher prices for food and energy. (Data in this report are not seasonally adjusted. Accordingly, month-to-month changes may reflect the impact of seasonal influences.)

Over the year, the CPI-U rose 2.0 percent. The index for all items less food and energy increased 1.7 percent. (See [table A](#) and [chart 1](#).) Higher prices for shelter drove the 12-month change in both indexes. (See [table 1](#).)

News Release Information

17-614-NEW
Friday, May 12, 2017

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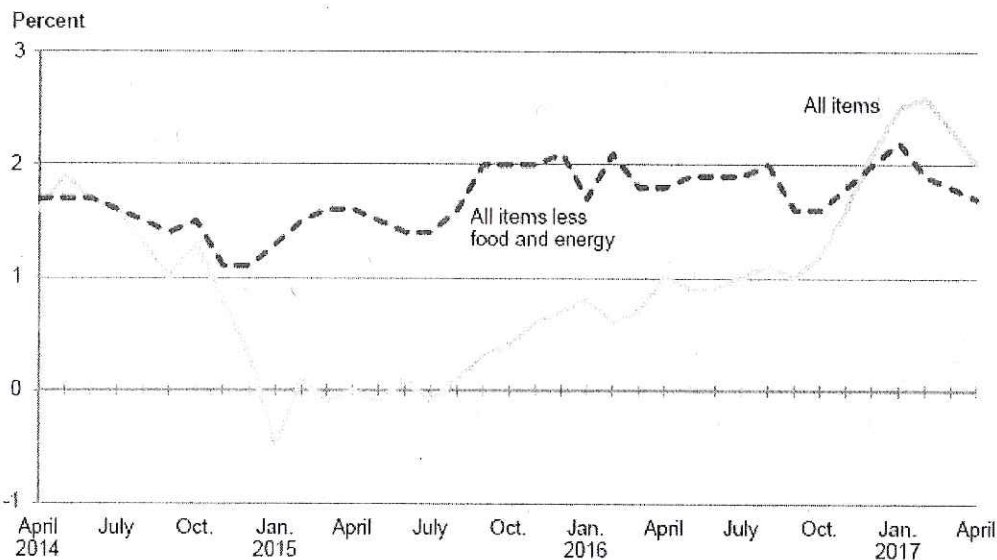
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Chart 1. Over-the-year percent change in CPI-U, New York-Northern New Jersey-Long Island, April 2014–April 2017



Source: U.S. Bureau of Labor Statistics.

Food

The food index rose 0.5 percent for the second consecutive month, with prices for food at home advancing 0.8 percent. Among the groceries with higher prices were lettuce, fats and oils, including peanut butter, and butter and margarine. Prices for food away from home were unchanged.

From April 2016 to April 2017, the food index increased 1.0 percent. Prices for food away from home rose 2.5 percent, in contrast to a 0.2-percent dip in prices for food at home.

Energy

are quite similar. **NOTE: Area indexes do not measure differences in the level of prices between cities; they only measure the average change in prices for each area since the base period.**

The New York-Northern New Jersey-Long Island, N.Y.-N.J.-Conn.-Pa. consolidated area covered in this release is comprised of Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester Counties in New York State; Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties in New Jersey; Fairfield County and parts of Litchfield, Middlesex, and New Haven Counties in Connecticut; and Pike County in Pennsylvania.

Information in this release will be made available to sensory impaired individuals upon request. Voice phone: (202) 691-5200; Federal Relay Service: (800) 877-8339.

Table 1. Consumer Price Index for All Urban Consumers (CPI-U): Indexes and percent changes for selected periods, New York-Northern N.J.-Long Island, NY-NJ-CT-PA (1982-84=100 unless otherwise noted)(not seasonally adjusted)

Item and Group	Indexes			Percent change from-		
	Feb. 2017	March 2017	April 2017	April 2016	Feb. 2017	March 2017
Expenditure category						
All items	267.662	267.582	267.948	2.0	0.1	0.1
All items (1967=100)	773.774	773.542	774.600			
Food and beverages						
Food and beverages	258.137	259.424	260.491	0.9	0.9	0.4
Food	258.088	259.498	260.674	1.0	1.0	0.5
Food at home	249.874	250.689	252.619	-0.2	1.1	0.8
Food away from home	276.661	278.974	279.083	2.5	0.9	0.0
Alcoholic beverages	254.398	254.000	253.582	-0.3	-0.3	-0.2
Housing						
Housing	289.614	289.620	289.908	2.6	0.1	0.1
Shelter	365.599	366.030	366.709	2.8	0.3	0.2
Rent of primary residence ⁽¹⁾	377.592	378.523	378.952	2.5	0.4	0.1
Owners' equivalent rent of residences ⁽¹⁾⁽²⁾	372.060	371.896	372.122	2.4	0.0	0.1
Owners' equivalent rent of primary residence ⁽¹⁾⁽²⁾	371.598	371.431	371.660	2.4	0.0	0.1
Fuels and utilities						
Fuels and utilities	187.826	186.430	186.115	4.3	-0.9	-0.2
Household energy	179.619	178.134	177.792	4.8	-1.0	-0.2
Energy services ⁽¹⁾	173.010	171.430	171.091	2.6	-1.1	-0.2
Electricity ⁽¹⁾	178.298	176.237	174.619	-1.6	-2.1	-0.9
Utility (piped) gas service ⁽¹⁾	154.239	153.583	155.490	12.1	0.8	1.2
Household furnishings and operations	110.939	110.465	109.807	-2.1	-1.0	-0.6
Apparel	130.424	133.045	130.086	0.5	-0.3	-2.2
Transportation						
Transportation	213.382	211.912	214.862	2.7	0.7	1.4
Private transportation	199.648	197.863	199.689	3.0	0.0	0.9
Motor fuel	195.510	191.121	197.812	16.8	1.2	3.5
Gasoline (all types)	194.680	190.285	196.995	16.8	1.2	3.5
Gasoline, unleaded regular ⁽³⁾	193.165	188.519	195.682	17.3	1.3	3.8
Gasoline, unleaded midgrade ⁽³⁾⁽⁴⁾	205.484	202.504	206.500	14.8	0.5	2.0
Gasoline, unleaded premium ⁽³⁾	207.121	204.318	208.244	13.7	0.5	1.9
Medical care	474.262	476.228	471.473	2.8	-0.6	-1.0
Recreation ⁽⁵⁾	123.301	123.262	123.860	3.5	0.5	0.5
Education and communication ⁽⁵⁾	144.602	142.675	142.737	-0.4	-1.3	0.0
Other goods and services	417.807	418.840	416.715	0.9	-0.3	-0.5
Commodity and service group						
All items	267.662	267.582	267.948	2.0	0.1	0.1
Commodities	187.427	188.169	187.872	1.2	0.2	-0.2
Commodities less food and beverages	143.987	144.434	143.523	1.4	-0.3	-0.6
Nondurables less food and beverages	182.479	183.575	181.968	4.0	-0.3	-0.9
Durables	95.108	94.884	94.726	-3.2	-0.4	-0.2
Services	335.546	334.838	335.718	2.4	0.1	0.3
Special aggregate indexes						

Minutes – April 6, 2017

James Manning, Jr., Chairperson, called the meeting to order at 6:00 pm and requested the Secretary to call the roll. The following members were present: Connie Holmes, Catherine McAphee, Jeff Klein, Naomi Riley, James Manning and Ruth Johnson. Absent: Morrell Massicot.

Mr. Manning stated adequate notice of this meeting as required by P.L. Chapter 231 has been provided by notice in the Coaster on January 12, 2017, which was posted on the bulletin board of the Municipal Complex and filing said notice with the Municipal Clerk.

Mr. Manning announced that the Consumer Price Index [February's price index was 267.662, area prices up 0.3 percent over the month and up 2.6% over the year].

APPROVAL OF MINUTES

The approval of the minutes for January 5, 2017 was offered by Mrs. Holmes, moved and seconded by Mrs. Johnson; all that were eligible to vote were in favor.

The approval of the minutes for February 2, 2017 was offered by Mrs. Holmes, moved and seconded by Mr. Klein; all that were eligible to vote were in favor.

RESOLUTIONS

There were none

DISCUSSION ITEMS

Mr. Anthony stated he would be on vacation on May 4th which is also the date of the next regularly scheduled meeting. He recommended cancelling the meeting unless someone wants to come before the Board, then we can have an alternate date or have it in June.

Mr. Anthony stated it would be correct to assume that it will be cancelled unless something came up.

Mr. Anthony reported that he has been talking to Isaac Gluck, the owner of Jumping Brook Country Club and he has requested the procedures that would be used in filing a capital improvement because he would be interested in doing so. Mr. Anthony stated he fell under the capital improvement category and explained to the Board the difference between a hardship application and a capital improvement application. He stated this could take a couple of meetings to do.

PUBLIC PARTICIPATION

There were none.

Mrs. Johnson offered a motion to adjourn the meeting at 6:45 pm, moved and seconded by Ms. Riley; All were in favor.

Pamela D. Howard
Secretary

RESOLUTIONS

THERE ARE NO RESOLUTIONS THIS EVENING

THE LAW OFFICES OF
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May 15, 2017

Via email only

Neptune Township Rent Leveling Board
Township of Neptune
25 Neptune Blvd.
Neptune Township, NJ 07753

Re: Opinion Letter – Section 8 Tenants – Subject to Rent Control

Dear Mr. Chairman and Members of the Rent Leveling Board:

This opinion letter was prompted by a number of inquiries as to whether Section 8 tenants at Jumping Brook Apartments, or anywhere else for that matter, would be subject to a Capital Improvement Surcharge.

The question of public assistance in payment of rent for certain tenants was first raised in 2016 and an opinion letter was provided to the Board. At that time I indicated that as a general rule, assistant rental programs were of two general types: (1) Project-based (the public housing is owned by a Housing Authority or Privately Owned or Subsidized or Financed Housing or (2) Tenant-based (depending on qualifications of the tenant in privately-owned housing). It seems clear that Project-based Housing, such as a Housing Authority or a project financed by HUD or the New Jersey Housing Finance Agency for New Jersey are preempted from regulation under the Rent Control Ordinance. Overlook Terrace Management v. Rent Control Board of West New York, 71 N.J. 451 (1976). In Overlook, the Supreme Court of New Jersey found that the New Jersey Housing and Finance Law was not subject to Municipal Rent Control Ordinances with regard to “rent fixing.” The Court noted that the purpose of the New Jersey Housing Finance Agency Law of 1967 was to alleviate the need for adequate housing of families of moderate income, and as such, funds are to be advanced to qualified sponsors for construction of housing projects. N.J.S.A. 55:14J-6(a) and (b).

However, in the instant case we are primarily concerned with Tenant-based public assistance in the form of Section 8 Voucher Tenants in private apartment complexes. The system of subsidized housing assistance, known as, “Section 8” was established by the Housing

and Community Development Act of 1974; codified at 42 U.S.C.A. Section 1437f (2006). The program is administered on a national level by the United States Department of Housing and Urban Development (“HUD”). A major objective of the program is to assist, “low income families in obtaining a decent place to live.” Id. at Section 1437(f)(a). The Federal Government will typically enter into contracts with local Public Housing Authorities such as the Neptune Housing Authority, which will, in turn, make assistance payments enabling eligible participants to obtain housing. Id. at Section 1437(f)(b).

There are two main programs under the umbrella of Section 8; the Voucher Program and the Certificate Program. HUD Housing Choice Voucher Program, 24 C.F.R., such as 982.1(a)(1)(2010). In the Voucher Program, which is apparently applicable in most cases, a “Payment Standard” is calculated based on the typical cost of a leased unit in a local housing market. If the rent for the program participant in the given unit is less than the payment standard, the participant generally pays 30% of his or her adjusted monthly income. If the rent is more than the payment standard, then the participant’s share of the rent will be adjusted upward. Id. at Section 982.1(a)(4)(ii). The Local Housing Authority enters into a separate contract with the building owner to pay the balance of the fair market rent as established by HUD. Id. at Section 982.311.

The Section 8 Program provides that, “The selection of tenants shall be the function of the owner.” 42 U.S.C.A. Section 1437(f)(d)(1)(A). This makes the landlord responsible for “selecting a Certificate-holder or Voucher-holder to lease the unit, deciding that the family is suitable for tenancy of the unit.” Based on that language, several Courts have found that the Section 8 Selection Program was voluntary with regard to landlords. However, in 1987 Congress amended Section 8 to include a prohibition against discrimination in the selection of Section 8 Tenants. 42 U.S.C.A. Section 1437(f)(t), which made selection of Section 8 Tenants mandatory if the landlord already had accepted Section 8 Tenants in its complex. This was often called, “Take One Take All Provision.”

New Jersey Statute N.J.S.A. 2A:42-100 further established a mandatory prohibition against discrimination based on rental income sources. This was later incorporated in the New Jersey Law against discrimination, which prohibits discrimination based on income sources, including Section 8. This Statute, along with the New Jersey strong public policy of protecting tenants from unjustified evictions, led to the New Jersey Supreme Court decision of Franklin Tower One, LLC v. N.M., 157 N.J. 602 (1999), which held that any landlord’s refusal to accept a Section 8 Voucher violates both the letter and the spirit of State Law, and furthermore that with regard to the question of acceptance of Section 8 Vouchers, Federal Law had not preempted the State Statute and therefore, the State Statute was binding.

The above raises the question of preemption in general. Do the Federal and State Statutes requiring acknowledgment and acceptance of Section 8 Tenants preempt local Rent Control Ordinances, which might allow landlords regulated rent increases or, in the case of the subject issue, a surcharge based on capital improvements? As I stated in my opinion letter to the Board on May 4, 2016, a true copy of which I attached hereto for our review, there are cases where Federal Law does preempt rent control and other cases where it does not. For example, 24 C.F.R. Section 246.21 of the United States Code of Federal Regulations, entitled, “Rental

Charges” specifically holds that, “. . . the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local Rent Control Boards (hereinafter referred to as ‘Board,’ or other authority acting pursuant to State or Local Law as it affects projects covered by this subpart.” This is clearly true with regard to HUD owned projects under 24 C.F.R. Section 246.30. However, it is not true for unsubsidized insured projects. Under 24 C.F.R. Section 246.5 of the United States Code of Federal Regulations, entitled, “Rental Charges” it specifically provides that, “The Department will generally not interfere in the regulation of rents by a Rent Control Board or Agency constituted under State or Local Laws (hereinafter referred to as a ‘Board’) for unsubsidized projects with mortgages insured or held by HUD. However, HUD will preempt the regulation of rents, together with any Board regulation which require the mortgagor to offer a lease for a term I excess of one year under certain conditions . . .”

It was concluded in my opinion letter of May 4, 2016 that the tenants under Winding Ridge Apartments were involved in subsidized housing, and that the complex was financed through HUD financing. Therefore, the tenants receiving Section 8 Vouchers were preempted by Federal Statute. It was therefore concluded that such Section 8 Tenants prevented the Board from having jurisdiction to hear cases concerning unfair rent increases.

However, in the case of Jumping Brook, it appears that unless otherwise indicated, that the project has been purchased through private financing, and is therefore not federally subsidized. The Board has already concluded, for example, with regard to reduced services that the Court decision of Housing Authority v. Scott, 137 N.J. Super. 110 (App. Div. 1975) that the Rent Control Ordinance may still have authority to provide for rent reductions due to reduced services, since the Court in Scott held that abatement of rents was not in violation of Federal Statute.

Moreover, it would appear that Section 8 Tenants receiving Section 8 Vouchers from the Neptune Housing Authority at Jumping Brook may not be entirely preempted by Federal Statute, where Jumping Brook is an unsubsidized project (24 C.F.R. 246.5), unless it is in conflict with the Federal Statutes or intent.

Preemption takes on a number of different theories. The obvious determination of the preemption is whether there is a Federal Statute which expressly indicates the intent to preempt State Law. Schneidewind v. A.N.R. Pipeline Co., 485 U.S. 293 (1991). As cited above, the Federal Statute does not seem to explicitly preempt local Rent Control Ordinances where the subject housing is unsubsidized.

However, preemption could still be found under the theory that, “The State Law or local Rent Control Ordinance actually conflicts with the Federal Law where compliance with both Federal and State Regulations may be physically impossible or where the State Law or Local Law stands as an obstacle to the accomplishment and execution of the full purposes and the objectives of Congress.” Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963) (physically impossible) and Michigan Cannery and Freezers Association v. Agricultural Manufacturing and Bargaining Board, 467 U.S. 461 (1984) (obstacle to objectives of Congress).

In any case, the Federal Courts have permitted states to impose greater restrictions than those imposed by Federal Law. California Federal Savings and Loan Association v. Guera, 479 U.S. 272 (1987).

Hence, in the situation of an unsubsidized apartment complex, Section 8 Voucher Tenants, arguably there is no preemption to providing rent reductions due to reduced services, since they are not in conflict with Federal Statute, nor an obstacle to the Federal Statute, and provides a greater protection or restriction than the Federal Statute provides. Likewise, under the same circumstances, restrictions and rent increases that may provide better rent protection than that determined by the Federal Government under the Voucher Program may also establish jurisdiction with regard to the Rent Control Ordinance and Board. However, I sincerely question whether the granting of a Capital Improvement Surcharge upon a tenant who is a Section 8 Voucher Tenant would not be in conflict with the Federal Statute's intent. I have not been able to find a case decision on point with regard to Capital Improvement Surcharges. However, it would appear that a Section 8 Voucher Tenant would be required to pay through the surcharge more rent than would be allowed by the sponsor of the Voucher, namely the Neptune Township Housing Authority. This would establish a less restrictive regulation than envisioned by the Federal Government in protecting Section 8 Tenants and providing them with subsidized funding. Therefore, without any case decision supporting my opinion, it is my belief that to impose a Capital Improvement Surcharge upon a Section 8 Tenant would be in violation of the Federal Statute, without first getting the consent of the Neptune Township Housing Authority or other authority providing the Section 8 Voucher.

I believe the position of the Board should be that if Jumping Brook makes an application for a Capital Improvement Surcharge, that such surcharges cannot be imposed upon Section 8 Tenants within the complex without the approval of the Neptune Township Housing Authority first. If the Neptune Township Housing Authority does not approve such surcharges, then the entire apportionment of the Capital Improvement Surcharge must be provided to all non-Section 8 Tenants and Section 8 Tenants should be excluded from the Capital Improvement Surcharge.

If you should have any questions, we can discuss this more fully at our next meeting on June 1, 2017, or feel free to contact me.

Very truly yours,

Gene J. Anthony

Gene J. Anthony, Esq.

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May 4, 2016

Via email only

Neptune Township Rent Leveling Board
Township of Neptune
25 Neptune Blvd.
Neptune Township, NJ 07753

**Re: Complaints of Mary Eason; Lynette Thomas and Marva Wright
Rent Increases and Jurisdiction over Publically Assisted Housing**

Dear Chairwoman and Members of the Rent Leveling Board:

Three Complaints will be forwarded to your attention by Pam Howard, if you have not received them already, prior to our next Rent Board Meeting on May 5, 2016. These are Complaints of Mary Eason; Lynette Thomas and Marva Wright, who are tenants of Neptune Housing Associates. All of these cases involve Section 8 tenants, who have received subsidized vouchers from the Neptune Township Housing Authority. The three Complaints before the Board raise the question of illegal increases, but more importantly, the jurisdictional question of whether the Board has the authority to act with regard to the increase under the unique circumstances of these particular cases, where the tenants are Section 8 tenants, as a result of a voucher issued by the Neptune Township Housing Authority.

The first question with regard to all three Complaints is whether there is jurisdiction for the Board to hear and decide the case. Jurisdiction can be decided in the beginning of the case, or the Board can reserve its decision until it hears the case. All three cases involve some sort of public assisted housing. As a general rule assisted rental programs are of two general types – (1) Project Based (Public Housing or owned by a Housing Authority) or privately owned or subsidized or financed, or (2) Tenant Based (depending on qualifications of the tenant in privately owned housing). The rent to be paid by the tenant in these cases depends on the program under which the project or tenant qualifies. Upon creating the tenancy, the tenant must complete a certification process, administered by the landlord, pursuant to HUD requirements. All tenants must recertify their income and expenses annually thereafter (including household composition), except that interim re-certifications required when there is a change to the household composition, employment status or income increase/decrease of \$40.00 or more per month. A tenant's failure to comply may result in termination from the program.

As a result of these Complaints, I have contacted the Neptune Township Housing Authority and spoke to Executive Director, Bart Cook, Esq., who along with his Section 8 Employee Administrator, indicated that two of the three cases involve increases requested by the landlord and allowed by the Housing Authority, which will be entirely covered by the Neptune Township Housing Authority. The third Complaint is an increase in the tenant's contribution due to an increase in income stated by the tenant. In all three cases, the question is whether or not the Neptune Township Rent Leveling Board has the authority to act on any increase or reduced services in cases of Section 8 tenants who are subject to Federal subsidies. In regard to reduced services, there is case law that indicates that action is recognized for tenants to enforce the implied warranty of habitability through all means available by law, including seeking an abatement of rent, which also applies to subsidized housing as well as market housing. Housing Authority v. Scott, 137 N.J.Super. 110 (App. Div. 1975). Therefore, the implication of the Scott case is that a Rent Control Board could hear cases of reduced services, which amounts to the same thing as an abatement of rent should a Rent Board find reduced services.

Although it appears that rent control has the distinction in many statutes as preempting the State Statutes in rent control, there is some authority which indicates that HUD, the part of the Federal Government and the New Jersey Housing Finance Agency for New Jersey may preempt local rent control where it involves rent increases; despite what was said by the DCA previously in establishing Home Rule and alluded to the Scott case. I have had discussions with members of the DCA on similar cases in Red Bank, and was led to believe that at least with regard to State subsidies, State Law does not necessarily preempt local rent control. However, in the Supreme Court case of Overlook Terrace Management v. Rent Control Board of West New York, 71 N.J. 451 (1976), the Court found that the New Jersey Housing Finance Agency Law was not subject to municipal rent control ordinances with regard to "rent fixing." The Court noted that the purpose of the New Jersey Housing Finance Agency Law of 1967 was to alleviate the need for adequate housing of families of moderate income and as such, funds are to be advanced to qualified sponsors for construction of housing projects. N.J.S.A. 55:14J-6(a) and (b).

In the cases of the aforesaid three Complaints, State subsidies are not involved, but rather Federal subsidies, and all three tenants appear to be Section 8 Voucher Tenants in a private apartment complex, namely, Neptune Housing Associates, raising the issue of whether Federal Law preempts local rent control. Clearly, 24 C.F.R. Section 246.21 of the United States Code of Federal Regulations entitled, "Local Rent Control" indicates preemption by the Federal Law of all rent control in subsidized, insured projects. This is also true with regard to the HUD owned projects under 24 C.F.R. Section 246.30. Generally unsubsidized insured projects are not preempted. 24C.F.R. Section 246.5. The Supreme Court in Overlook Terrace Management recognized the preemption in most cases. There is a possible issue of whether Neptune Housing Associates falls under the exception to the Preemption Rule of being an unsubsidized, insured project. This issue was raised in the Thelma Davis case before the Neptune Township Rent Leveling Board with regard to Winding Ridge in 2015. The Board in that case determined that pursuant to 24 C.F.R. Section 246.21 of the United States Code of Federal Regulations, entitled "Local Rent Control," Federal Law preempted local rent control in subsidized, insured projects, as well as Tenant Based Federal Subsidized Housing and therefore, the Neptune Township Rent Control Board was preempted from addressing rent increases, such as the one at Winding Ridge.

Base on the above analysis, I do not see any difference between the Section 8 Voucher tenant at Winding Ridge, and the Section 8 Voucher tenants in Neptune Housing Associates, and therefore, I believe that the ruling of the Board in the Thelma Davis matter should be consistently applied in the instant three cases before the Board from Neptune Housing Associates.

Although I believe that the Board does not have jurisdiction to hear any of the aforesaid three cases with regard to unfair rent increases, at least one of the tenants, Marva Wright, also alleges lack of heat, which is a Reduced Service Complaint, as well as the question of rent increase. Based on the Scott decision, it is my legal opinion that we can hear any case involving reduced services; even though it involves a Section 8 tenant, but only to the extent of the reduced service portion of the Compliant.

Hopefully, this review will help you in your deliberations on the hearing scheduled for May 5, 2016. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Gene J. Anthony

Gene J. Anthony, Esq.