



IN THE MATTER OF THE APPLICATION FOR A RENTAL INCREASE AT  
**JASONTOWN II APARTMENTS**

HFA 12134-93

Housing and Finance

96 N.J.A.R.2d(HFA) 1; 1994 N.J. AGEN LEXIS 649

June 9, 1994, Initial Decision  
August 4, 1994, Final Agency Decision

**COUNSEL:** [\*1]

James A. Tarella, Esq., for **Jasontown II** Tenants Association, Emelia Jean Connelly, Frank and Tina Giovanielli, Patricia Dechon, Michael and Theresa Ognewchuk, Theodora Doran, Anthony DeGregorio, Bessie Fazzino, Roslyn Bressler, Cynthia Cavaliere and Lydia Gleason (Tarella & Liftman, attorneys).

Daniel J. Cronin, Esq. for Carole Veltri (Bergen County Legal Services, attorney).

Michael Blumenthal, Deputy Attorney General, for New Jersey Housing and Mortgage Finance Agency (Deborah T. Poritz, Attorney General of New Jersey, attorney).

Joseph L. Buckley, Esq., and Paul P. Josephson, Esq., for **Jasontown II** Associates (Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross, attorneys).

FINAL AGENCY DECISION

REQUEST FOR ACTION BY MEMBERS OF THE NEW JERSEY HOUSING AND MORTGAGE FINANCE  
AGENCY

Action Requested:

1) Board's determination to accept the Initial Decision of Administrative Law Judge, Honorable Richard McGill, in the matter of a rent increase at the **Jasontown** project. The Initial Decision approved a 28.5 percent rent increase.

2) Board determination that the rent increase will become effective on the first day of the month following one month's notice to tenants of the [\*2] rent increase amount.

Key Points:

. The owners of the **Jasontown** project applied to the Agency for a 50 percent rent increase in October 1993.

. The Agency approved a 45 percent rent increase, finding that the increase was needed to offset operating deficits at the project, to repay loans made to the project by the owners, and to provide one year's worth of return on equity (the owners have not been able to receive any return on equity for several years). The Agency also found that there had been no rent increase at the project since 1982.

. Under the Agency's rent regulations, the Agency may approve, without a hearing, an annual rent increase equal to the Consumer Price Index for Rent and Utilities plus an additional 12 percent if verified by the Agency to be needed for operational expenses of the project. This formula resulted in a 16.5 percent rent increase. The regulations also permit increases greater than this amount if needed, for the operational expenses of the project. In this case, the Agency determined that an additional 28.5 percent was needed. Under the regulation, 16.5 percent of the increase was implemented

on December 1, 1993. The remaining 28.5 percent was subject [\*3] to a hearing, which was conducted by the Office of Administrative Law by the Honorable Judge Richard McGill on April 4 and 5, 1994.

. Judge McGill issued his Initial Decision on June 15, 1994 approving the 28.5 percent balance of the rent increase. The Agency Board must review the Initial Decision and any exceptions filed by the parties to the hearing. The Board must act by August 30, 1994 to either accept, modify or reject the Initial Decision.

. All three parties (the owner, Agency and tenants) have submitted briefs in response to the Judge's Initial Decision. The Agency and owner recommend approval of the Decision as it is needed to maintain the property and provide services to the tenants. The tenants are requesting rejection or modification by way of a reduction in the rent increase amount.

. Staff believes the rents at the project will still be affordable after the full 45 percent increase is implemented. Prior to the increase, rents for a one, two and three bedroom unit were \$ 242, \$ 303 and \$ 335, respectively. A 45 percent rent increase would raise rents to \$ 351, \$ 439 and \$ 486, respectively. For a two-bedroom unit with a family size of four, the new rents would be affordable [\*4] to families earning \$ 17,550 in an area where the median income is \$ 58,500. If this project were to be financed today as a low-income project (50 percent of median), the two-bedroom rent would be set at \$ 731. Even with the full 45 percent rent increase, **Jasontown II** would still have the lowest rent of comparable Agency projects.

. Another related issue involves the effective date of the rent increase amount to be approved. Judge McGill's Decision deferred to the Agency the decision on when to make the rent increase effective. The tenants oppose any retroactive increase. The owners have requested that the increase be retroactive to January 1, 1994. This would enable the owner to cover those items for which the 45 percent increase was originally approved (i.e., operating deficits, loans to the project and return on equity).

. Agency staff recommends a prospective rent increase in order to eliminate the burden that would be placed upon tenants if a retroactive increase were imposed. This would give the tenants a month to decide whether to accept the rent increase or to seek alternative living arrangements. This is consistent with the New Jersey Supreme Court's decision in *Harry's Village, Inc. v. Egg Harbor Twp.*, 89 N.J. 576 (1982) which held, in part, that notice of a hearing to determine rent does not "provide tenants with adequate notice to adjust their affairs after the increase is granted."

. A prospective increase should still generate revenue needed to cover most of the projected operating deficits. Any shortfall can be covered from the project's Reserve for Repair and Replacement Account and recouped in the next fiscal year. The loans by the owner to the project and payment of return on equity would also have to be recouped by the owners in the next fiscal year.

#### RESOLUTION NO. 2269

BRESSLER, Assistant Secretary:

Resolution was duly adopted and approved by the Members of the Agency at a meeting duly called and held on the 4th day of August, 1994 and that not less than four Members of the Agency were present and voted in favor of said resolution.

#### RESOLUTION OF THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY REGARDING ACCEPTANCE OF THE INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE, HONORABLE RICHARD MCGILL IN THE MATTER OF A RENT INCREASE AT THE **JASONTOWN II** APARTMENTS

WHEREAS, on August 4, 1994, a meeting of the Members of the New Jersey Housing and Mortgage [\*6] Finance Agency was held; and

WHEREAS, the Members were presented with a Request for Action in the form attached hereto as Exhibit A; and

WHEREAS, the Request for Action requested the Members to adopt a resolution authorizing certain actions by the New Jersey Housing and Mortgage Finance Agency, as outlined and explained in said Request for Action.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY AS FOLLOWS:

Section 1. The actions set forth in the Action Requested section of the Request for Action, attached hereto as Exhibit A, are hereby approved, subject to any conditions set forth as such in said Request for Action.

Section 2. The Request for Action, attached hereto as Exhibit A, is hereby incorporated and made part of this resolution.

Section 3. The resolution shall take effect immediately upon expiration of the ten (10) day period following the delivery of the minutes of the meeting to the Governor or immediately upon approval of the minutes by the Governor within said ten (10) day period.

#### **INITIAL DECISION BY: McGILL, ALJ**

**INITIAL DECISION:** This matter involves an application by **Jasontown II** Associates, the owner of a housing project financed by the New Jersey Housing [\*7] and Mortgage Finance Agency (hereinafter "the Agency"), for a rental increase at **Jasontown II**, which is a garden apartment complex located in Wallington, New Jersey. The Agency reviewed the application and determined that a rental increase of 45 percent would be sufficient to fund operations. A rent increase of 16.5 percent may be approved pursuant to N.J.A.C. 5:80-9.9(a) without a hearing. The tenants requested a hearing pursuant to N.J.A.C. 5:80-9.10 in regard to the additional 28.5 percent increase. This proceeding concerns the additional rent increase of 28.5 percent.

#### **PROCEDURAL HISTORY**

On September 14, 1993, **Jasontown II** Associates (hereinafter "**Jasontown**" or "the sponsor") filed an application for a 50 percent increase in rents. By letter dated October 28, 1993, the Agency advised **Jasontown** that a rental increase of 45 percent would be sufficient to fund operations. The Agency further advised **Jasontown** that a rental increase up to 16.5 percent could be implemented without a hearing and that **Jasontown** must notify the tenants of their right to request a hearing concerning the additional 28.5 percent increase.

Upon receipt of the notice of the rent increase, a large number of tenants [\*8] submitted written comments in opposition thereto, and approximately fifteen tenants including representatives of the **Jasontown II** Tenants Association requested a hearing. The **Jasontown II** Tenants Association and several of its members (hereinafter "Tenants Association") were represented by counsel in this proceeding. Bergen County Legal Services entered an appearance on behalf of tenant Carol Veltri. Two other tenants, Alan Chernov and Ann Stancati, requested a hearing but did not take an active role in the proceeding.

The matter was transmitted to the Office of Administrative Law on December 22, 1993, for determination as a contested case. A hearing was conducted on April 4 and 5, 1994 at the Office of Administrative Law in Newark, New Jersey, and the record closed on May 4, 1994, upon receipt of the Tenants Association's reply brief.

#### **BACKGROUND**

**Jasontown II** is a 374-unit garden apartment complex located in Wallington, New Jersey. The project was sponsored and constructed by The Monday Corporation in 1970. In 1977, ownership was transferred to **Jasontown II** Associates. The Agency's predecessor financed 90 percent of the \$ 7.8 million cost of construction. The sponsor provided the [\*9] remaining ten percent and agreed to operate **Jasontown II** as affordable housing for moderate income families.

Loans from the predecessor agency, the New Jersey Housing Finance Agency, were subject to terms and conditions in accordance with N.J.S.A. 55:14J-9 (repealed by the New Jersey Housing and Mortgage Finance Agency Act of 1983, codified at N.J.S.A. 55:14K-1 to -44) such as a limit on the rate of return on equity and a requirement that rent increases be approved by the agency. The Agency is empowered to adopt regulations, N.J.S.A. 55:14K-5(g), to carry out its statutory purpose to encourage the construction of adequate and affordable housing for New Jersey residents of low and moderate income. N.J.S.A. 55:14K-2. In accordance with the pertinent regulation, N.J.A.C. 5:80-3.2, **Jasontown's** return on equity was set at eight percent of its original equity, or approximately \$ 62,000 annually.

During the 1970s and into the 1980s, **Jasontown** accumulated residual receipts, which are funds remaining after payment of expenses and the return on equity, totalling approximately \$ 750,000. As of 1982, the rent for a one-bedroom apartment was \$ 242 per month. At the time, the Agency determined that [\*10] the sponsor should use the residual receipts rather than rent increases to balance the operating budget. The residual receipts were not depleted until 1992, and the rents remained unchanged during the eleven years from 1982 to 1993. In September 1993, **Jasontown** applied for a rent increase of 50 percent to cover operating deficits, and in October 1993, the Agency approved an increase in rents of 45 percent. An increase of 16.5 percent was implemented in December 1993, and the balance of the rent increase is the subject of this proceeding.

As a housing project for tenants of moderate income, **Jasontown** must limit eligibility to families whose gross aggregate incomes at the time of admission fall within certain guidelines. N.J.S.A. 55:14K-8(a), N.J.A.C. 5:80-8.2. The tenants must recertify their income periodically, N.J.A.C. 5:80-8.5; tenants whose income exceeds the maximum by twenty-five percent must pay surcharges. N.J.S.A. 55:14K-8(b). Due to the low rents, the surcharges which are supposed to be paid to the Agency are substantial. However, due to the operating deficit, **Jasontown** with the approval of the Agency has not paid the surcharges in recent years but instead has used those [\*11] funds for the operating budget.

#### ISSUES

The specific legal issue in this case is whether the rents are sufficient to cover the items set forth in N.J.A.C. 5:80-9.1, which states as follows:

It is the express purpose of the following regulations to promote the statutory functions and obligation of the Agency by ensuring that the rents and/or carrying charges applied in housing projects are sufficient to pay normal operating, maintenance and utility costs; provide an adequate rate of return to individuals or corporations that provide capital to assist in the development of housing projects; provide debt service payments adequate to protect the financial interest of the Agency and its bondholders; provide reserves for repair and replacement; and ensure adequate, safe and sanitary housing for the low and moderate income families that the Agency was created to serve.

The tenants challenge several items in the operating budget approved by the Agency. In addition, the tenants maintain that funds are available from reserves to cover operating expenses. Further, the tenants maintain that the sponsor has failed to operate the property in an economically efficient manner and that the sponsor [\*12] voluntarily passed up the opportunity for smaller rent increases. In the tenants' view, those circumstances disqualify the sponsor from a substantial rent increase. Finally, the tenants emphasize the impact of the 45 percent rent increase which, according to the tenants, is unconscionable and would render the apartments unaffordable for some tenants.

#### OPERATING BUDGET

In support of its application for a 50 percent rent increase, **Jasontown** submitted an annual budget with supporting data including audited financial statements for 1991 and 1992. The Agency reviewed the application and made adjustments to four items: apartment rents, managing agent's fee, debt service and return on equity. **Jasontown** does not contest the adjustments which reduce the rent increase to 45 percent based upon an operating deficit of \$ 495,832.

The Tenants Association challenges five items in the annual budget approved by the Agency. These items include apartment rents, managing agent's fee, debt service, accounts payable to owners, and the reserve for repair and replacement.

The remaining items in the budget include primarily expenses and are uncontested. After a review of the supporting data, I FIND that the [\*13] budgeted amounts are adequately supported and sufficient to pay these normal operating, maintenance and utility costs.

#### Apartment Rents

In its annual budget for 1994, **Jasontown** included the requested 50 percent rent increase to produce a total rental income of \$ 1,746,479. The Agency reduced the apartment rentals to the pre-increase level of \$ 1,160,100 for budgetary purposes.

The Tenants Association proposes to adjust the apartment rents to reflect the rent increase of 16.5 percent that went into effect on December 1, 1993. The effect of the adjustment is to increase apartment rentals by approximately \$ 191,500 to \$ 1,351,600.

This proposed adjustment does not represent a real change since all parties recognize that a 16.5 percent rent increase went into effect in December 1993. Under the Agency's approach, any increase in this proceeding would be limited to the amount in excess of the 16.5 increase previously approved by the Agency. Under the circumstances, I FIND that the Agency's approach adequately addresses the tenants' concern, is reasonable and should be approved.

#### Managing Agent's Fee

The apartment complex is managed by CIB International, which is a management company that [\*14] manages eleven apartment complexes with approximately 2,000 units and a shopping center. The managing agent's fee is set at 4.5 percent of total income.

In its budgetary submission, **Jasontown** included a managing agent's fee of \$ 79,350, representing 4.5 percent of an income level which included the proposed 50 percent rent increase. The Agency reduced the managing agent's fee by \$ 25,850 to \$ 53,500 to reflect an expense based upon the level of income prior to any increase. The Tenants Association adjusted the expense to reflect a level of income which included the 16.5 percent rent increase.

Consistent with the treatment of apartment rents, the managing agent's fee should be based upon the level of rents prior to the increase. Therefore, I FIND that a budgetary allowance of \$ 53,500 for the managing agent's fee is reasonable and should be approved.

#### Debt Service

**Jasontown** included in its budget \$ 416,298 for debt service and \$ 49,852 for the New Jersey Housing and Mortgage Finance Agency (NJHMFA) Housing Finance Fund. The Agency adjusted both amounts to reflect the correct level of annual payments. The Agency increased debt service by \$ 17,302 to \$ 433,600 and reduced the amount [\*15] for the NJHMFA Housing Finance Fund by \$ 17,752 to \$ 32,100. The adjustments are offsetting and are uncontested by **Jasontown**.

The Tenants Association would reduce the debt service by \$ 110,000 from \$ 433,600 to \$ 323,600. In support of this adjustment, the Tenants Association argues that the debt service figure in the Agency's budget includes amortization of the mortgage principal in the amount of approximately \$ 110,000. The Tenants Association would allow the interest portion as an expense but maintains that the amortization of mortgage principal could be considered a return of equity or income to the sponsor. According to the Tenants Association, the owner's equity in the property increases to the extent that the principal is paid down on the mortgage, and this increase in equity should not be funded by the tenants' rent. The Tenants Association also refers to testimony of Wayne Meyer, CIB Internationals' chief financial officer, who states that for the purpose of income tax returns, payment of mortgage principal is not considered an expense.

The distinction between principal and interest is important for tax purposes as well as financial accounting. However, the purpose of this [\*16] proceeding is to evaluate the need for a rent increase. In accordance with N.J.A.C. 5:80-9.1, the rents must be sufficient to "provide debt service payments adequate to protect the financial interest of the Agency and its bondholders." Under this standard, debt service refers to the full payment to the Agency including both interest and principal. Under the circumstances, the adjustment proposed by the Tenants Association should not be approved. Therefore, I FIND that a budgetary allowance of \$ 433,600 for debt service is sufficient and should be approved.

#### Return on Equity

The return on equity is set by regulation, N.J.A.C. 5:80-3.2, at eight percent of the sponsor's investment. For **Jasontown**, the eight percent return on equity equates to \$ 62,889 annually.

Because **Jasontown** did not achieve a return on equity during 1991, 1992 and 1993, the sponsor included \$ 251,556 in its 1994 annual budget as the return on equity. This sum is the equivalent to the return on equity for the four-year period from 1991 through 1994. The Agency reduced this figure by \$ 188,667 to \$ 62,889 to allow one year's return on equity in the annual budget for 1994. **Jasontown** does not contest this adjustment. [\*17]

The Agency's treatment of the return on equity is consistent with the pertinent regulations, N.J.A.C. 5:80-3.2 and N.J.A.C. 5:80-9.1. Therefore, I FIND that an allowance of \$ 62,889 as the return on equity is adequate and should be approved.

#### Accounts Payable to Owners

In its proposed annual budget for 1994, **Jasontown** included \$ 150,000, which represents contributions made over time by the owners. After the residual receipts were fully depleted in 1992, the rents were insufficient to cover not only the return on equity and surcharges owed to the Agency but also basic operating expenses. As a result, the owners found it necessary to contribute their own funds to sustain the viability of the project. The Agency approved the \$ 150,000 in the annual budget for 1994.

The Tenants Association maintains that the sum of \$ 150,000 represents an accumulated shortfall which is a product of the sponsor's refusal to implement smaller annual rent increases. The Tenants Association views **Jasontown's** failure to implement smaller rent increases as unsound fiscal management. Instead of a one-year recoupment, the Tenants Association would allow recovery of this sum over a period of five years at a rate [\*18] of \$ 30,000 per year. This approach results in a downward adjustment of \$ 120,000 to accounts payable to owners.

The accounts payable of \$ 150,000 raises several concerns. As pointed out by the Tenants Association, the contribution by the owners stems from a failure to implement smaller rent increases at an earlier date. Evidently, the owners were reluctant to implement a rent increase which they viewed as less than adequate.

While it may have been more prudent to implement smaller rent increases to the extent that they may have been approved by the Agency, it is noteworthy that the tenants benefitted directly in the form of lower rents in recent years. Additionally, a primary goal at this point is to restore the financial integrity of the project for the long-term benefit of both the owners and the tenants. While the short-term impact on the tenants must be weighed against this goal, the burden of the rent increase does not appear on balance to be excessive, for reasons set forth in greater detail below, despite the magnitude of the percentage increase.

Another concern is the possibility that allowance of \$ 150,000 in the annual budget to recover the accounts payable in one year [\*19] could result in excess rents in future years. The Agency's witness, Anthony Cupano, who is the Assistant Director of the Agency's Property Management Division, allayed this concern. First, the budget is reviewed each year to ensure that the rents are not excessive. Additionally, **Jasontown** did not achieve its return on equity during the three-year period from 1991 to 1993, and it has not paid surcharges owed to the Agency in recent years in the amount of approximately \$ 290,000. Under the circumstances, it is highly unlikely that recovery of the accounts payable in one year could lead to excessive rents.

In view of the above, recovery of the accounts payable in one year will contribute to the restoration of the financial integrity of the project without an undue burden on the tenants. Therefore, I FIND that an allowance of \$ 150,000 for accounts payable to owners is reasonable and should be approved.

#### Reserve for Repair and Replacement

**Jasontown** is required by its regulatory agreement with the Agency to maintain a reserve fund for repairs and replacement. The regulatory agreement requires payments of \$ 3,630 per month into the reserve fund, unless a different amount is approved by [\*20] the Agency. Evidently, the balance in the reserve fund is viewed as adequate since the annual budget approved by the Agency does not include any payment to the reserve fund. The balance in the reserve fund is now approximately \$ 1.1 million. The interest on the reserve fund is in a range from \$ 45,000 to \$ 50,000 per year. **Jasontown** also maintains a reserve for bonded projects and a development cost escrow.

The Tenants Association cites the NJHMFA Accounting Policies and Procedures concerning the reserve for repair and replacement for the proposition that the account must cover repair and replacement costs for items including refrigerators, ranges, outside painting and caulking, carpeting and decorating common areas, and site improvements. A schedule of expenditures for 1991 and 1992 indicates annual levels of approximately \$ 23,000 for kitchen equipment, \$ 16,000 for painting and decorating, and carpentry and masonry between \$ 4,000 and \$ 6,000. The Tenants Association maintains that these specific items come within the standards for expenditures from the reserve for repair and replacement. Noting that the sum of those items is roughly equal to the interest on the reserve fund, the [\*21] Tenants Association maintains that those costs could be covered by the reserve fund without depletion thereof.

Preliminarily, the figures from 1991 and 1992 are not directly related to the budget for 1994. More pertinent is Schedule E in the application for a rent increase which indicates estimated expenditures of \$ 25,000 for kitchen equipment and \$ 15,000 for masonry and carpeting, with no expenditure for painting and decorating supplies in 1994.

**Jasontown's** expert witness opined that these expenditures did not constitute major repairs or replacements that should be covered by the reserve fund. The Agency supports **Jasontown's** position. In the absence of evidence to the contrary, I accept the position of **Jasontown** and the Agency, and I FIND that the expense for maintenance and repairs in the annual budget for 1994 is reasonable and appropriate and that the reserve for repair and replacement should not be invaded to cover those operating expenses.

#### OTHER CONSIDERATIONS

Under N.J.A.C. 5:80-9.1, the rents should be sufficient to "ensure adequate, safe and sanitary housing for the low and moderate income families that the Agency was created to serve." The tenants argue that the rent increase [\*22] should be denied or reduced because the sponsor has failed to maintain the facility properly and because the rent increase is unduly burdensome particularly for low income tenants.

#### Maintenance Problems

The tenants reported a variety of maintenance problems including water leaks from outdoors into rooms and electric fixtures, torn rugs in common areas, a section of the parking lot that appears to be sinking, broken concrete steps, uneven sidewalks, leaking gutters, ceilings and cabinets separating from walls, cracks in walls, appliances that do not work, lack of heat, sidewalks from which snow is not properly removed, and lack of hot water. To place the maintenance problems in a proper context, **Jasontown** refers to a survey of tenants concerning the condition of their apartments. An overwhelming majority of the tenants indicate that the condition of their apartments is good (32 percent) or fair (54 percent). Additionally, **Jasontown** contends that it has done exceptionally well to maintain the property in its current condition in view of the lack of adequate rents.

After consideration of the evidence related to this issue, it appears that the maintenance problems are the direct result [\*23] of a lack of adequate revenues from rents. Therefore, any maintenance problems which may exist do not constitute a reason to deny or reduce the rent increase.

#### Affordability

Several tenants testified to the effect that the 45 percent rent increase would be burdensome and jeopardize the affordability of the apartment. Those tenants included senior citizens whose only income comes from Social Security benefits, persons receiving welfare benefits, and disabled individuals who receive Supplemental Security Income (SSI). Letters from tenants indicate that there is a considerable number of retirees living on fixed incomes.

**Jasontown** and the Agency maintain that the apartments remain very affordable. This apartment complex was intended for moderate as opposed to low income families. The complex has 264 one-bedroom apartments, 86 two-bedroom apartments and 23 three-bedroom apartments. Prior to the 16.5 percent rent increase in December 1993, the rent for a one-bedroom apartment was \$ 242 per month. Subsequent to the rent increase, the rent was \$ 282 per month. In the event that the full 45 percent rent increase is approved, the rent for the same apartment will be \$ 351 per month.

A tenant [\*24] profile dated July 1993 indicates that 320 out of 373 tenants were paying less than twenty-five percent of their income toward the rent. Only sixteen out of 373 tenants were paying more than thirty percent of their income toward the rent, and of those sixteen, seven had guarantors. The tenants challenge the accuracy of some of the income figures, but allowing that some incomes need to be updated, the tenant profile appears to be substantially accurate.

**Jasontown** also points to rents for comparable apartments. At **Jasontown I**, which is adjacent to **Jasontown II** and under common owner but not financed by the Agency, the rent for a one-bedroom apartment is \$ 695 per month. In Bergen County, the average rental for a one-bedroom apartment in 1993 was \$ 767 per month. At six comparable NJHMFA projects, the monthly rents ranged from a low of \$ 367 per month to a high of \$ 674 per month. Thus, even with the full rent increase to \$ 351 per month, **Jasontown** would still have the lowest rent of comparable NJHMFA projects. The tenants testified to the fact that they observed a number of expensive cars in the parking lots. This fact underscores that other tenants have the means to pay higher rents. [\*25]

Based upon the above, I FIND that with the full rent increase, the rents at **Jasontown** will remain affordable for moderate income families for whom this project was intended. Those tenants who now find themselves with low incomes may be eligible for various forms of public assistance.

#### CONCLUSION

Based upon the above, the conclusion is warranted that the full 45 percent increase in rents approved by the Agency is justified based upon the standard set forth in N.J.A.C. 5:80-9.1. Since the Agency previously approved a rent increase of 16.5 percent which became effective in December 1993, the rent increase which remains to be implemented is 28.5 percent. Based upon the determinations herein, I CONCLUDE that the 28.5 percent increase in rents is consistent with the standard set forth in N.J.A.C. 5:80-9.1 and that the 28.5 percent rent increase should be approved.

**Jasontown** requests an effective date of January 1, 1994, for the rent increase in order to eliminate the operating deficit for 1994. The sponsor suggests that any retroactive amounts be paid by means of a short-term surcharge imposed on all tenants for the remaining months of 1994. The Tenants Association opposes a retroactive [\*26] rent increase and contends that the tenants must be given a notice to quit in order to raise the rent. The question of the effective date is best left to the sound discretion of the Agency to be exercised when both the amount of the rent increase and the date of the final determination are known.

Accordingly, it is ORDERED that a rent increase of 28.5 percent at **Jasontown II**, to become effective on a date to be determined by the Agency, is approved.

I hereby FILE my Initial Decision with the NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY for consideration.

This recommended decision may be adopted, modified or rejected by the NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY, which by law is authorized to make a final decision in this matter. If the New Jersey Housing and Mortgage Finance Agency does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the EXECUTIVE DIRECTOR, NEW JERSEY [\*27] HOUSING AND MORTGAGE FINANCE AGENCY, 3625 Quakerbridge Road, CN 18550, Trenton, New Jersey 08650-2085, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

**Legal Topics:**

For related research and practice materials, see the following legal topics:

Business & Corporate Law Agency Relationships General Overview Energy & Utilities Law Utility Companies Rates-Ratemaking Factors Rate of Return Real Property Law Financing Mortgages & Other Security Instruments General Overview