

**RESOLUTION**

**RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE, IN THE COUNTY OF ESSEX, NEW JERSEY, REMANDING TO THE RENT LEVELING BOARD THE TENANTS' APPEAL OF THE DECISION OF THAT BOARD GRANTING RENT INCREASES FOR HARDSHIP AND OTHER RELIEF TO THE LANDLORD, 91 ASHLAND AVE., LLC, FOR FURTHER INFORMATION AND CONSIDERATION.**

**Whereas**, The Township of West Orange's Rent Leveling Board ("the Board"), formed and operating pursuant to The Revised General Ordinances of the Township of West Orange, Chapter 15, §15-1, et seq., ("the Rent Control Ordinance") considered the application of landlord 91 Ashland Ave., LLC, ("the Landlord") for relief under its hardship and major capital improvement provisions contained in §15-3.3 a., and b.; and

**Whereas**, the Board heard testimony of the Landlord and several Tenant objectors over the course of hearings conducted on February 10, March 10, and April 14, 2022, then deliberated and came to a decision on May 12, 2022, that decision and the resulting remedies then set forth in a 4-page (unnumbered) letter of Peter Smeraldo, Board Administrator, dated June 10, 2022, which decision and remedies have been appealed to the West Orange Township Council by the Tenant objectors ("the Appeal"); and

**Whereas**, on August 23, 2022, the Township Council met to consider the Appeal de novo based on the record below, being the videotaped Board hearings, documents filed with the Board by the Landlord and Tenant objectors, and the Board's deliberations; and

**Whereas**, after review of that record the Township Council could not determine the Board's reasoning for its decision and remedies, no rationale, or insufficient rationale for them being readily apparent from the hearings, deliberations and the resulting Board Administrator's letter-decision dated June 10, 2022, which was marked "C-1" for identification at the Council's hearing; and

**Whereas**, the Township Council in its deliberations determined it best and necessary to remand the matter to the Board for further hearing and deliberation if necessary and for a formal Resolution of the Board setting forth its detailed findings of fact, conclusions of law and the remedy(ies) to be imposed as a result, and to clearly provide the reasoning for its decision; and

**Whereas**, the Township Council also expressed some specific evidential and information shortcomings and some further directions to the Board which will be set forth in some detail in the below resolving clause of this Resolution in order to guide the Board in its proceedings on remand; and

**Whereas**, the Township's Law Department may submit with regard to this remand some further legal advice to the Board in the form of a Memorandum to the Board Administrator in order to provide some further direction and advice to the Board regarding this matter and its role generally;

**NOW, THEREFORE, BE IT RESOLVED** by the Township Council of the Township of West Orange, that having considered de novo and on the record below the Tenants' appeal of the West Orange Rent Leveling Board's decision in the matter of 91 Ashland Ave., LLC, the Landlord's petition for hardship and major capital improvement relief under the Township's Rent Control Ordinance as codified in Chapter 15, §15-1, et seq., and the Council having determined that the record below does not provide sufficient information from which the Council can make its own independent determination as to whether or not the Landlord has met its burden of proof with respect to its petition and the relief sought, the entire matter is and hereby is remanded to the Rent Leveling Board for such further hearing and deliberation as the Board requires or wishes to arrive at a correct and supportable decision based on the language in the Township's Rent Control Ordinance and for a formal Resolution of the Board setting forth its detailed findings of fact, conclusions of law and the remedy(ies) to be imposed as a result so that the Council can determine and fully understand the Board's decisions and the reasoning supporting them; and

**BE IT FURTHER RESOLVED**, that the Board shall consider in its further hearing and deliberation the overall purpose of rent control in the State of New Jersey, the specific language and provisions contained in the Township's Rent Control Ordinance, the specific issues raised by the Landlord's petition, the minimum proofs any landlord should present in order to satisfy the Board, any and all evidence and objections in opposition by the Tenants, and the fact that the Board is creating a record which will be considered in any appeal of its decision, whether by the Township Council or a Court of Law; and

**BE IT FURTHER RESOLVED**, that the Council wishes the Board to specifically address, consider and determine the following:

- verify any and all income being received by the landlord from the property, not just rent received from the residential tenants;
- verify all expenses paid by the landlord for the property, including submission of documentation for such expenses, including, but not limited to, monies paid for and debt incurred for the purchase of the property, mortgage payments, taxes, utilities, common area expenses, repairs, all expenditures for the property, bills, vouchers, and similar documentary evidence to support the Landlord's claim of hardship under the Ordinance;
- consider whether or not existing leases comply with our ordinance, whether or not all required notice has been properly given by the Landlord, and all other prerequisites for relief contained in the ordinance have been met, or the Board's justifications for waiving such compliance;

- tenants have no burden of proof, but if able to do so, should be invited to substantiate any claims they have about additional income generated from the property to the Landlord and any further relevant testimonial or documentary evidence they wish to offer in opposition to any of the relief sought by the Landlord;
- to the extent the Board is granting the Landlord relief based on its “major capital improvement” petition, identify the specific capital improvements it finds to have been completed to be “major” and all of the other required information contained in Section 15-3.3 b., including, but not limited to, the surcharge being sought from each tenant and how the specific percentage limitation on relief provided for in the ordinance has been met;
- prepare, consider, adopt and provide a formal Resolution of the Rent Leveling Board setting forth the Board’s detailed findings of facts, conclusions of law, and the remedy(ies) to be granted, the Resolution to make clear the Board’s reasoning, how it arrived at its findings of facts, conclusions of law and its remedy(ies), so that in the event of an appeal, whether to the Council or to the Superior Court of New Jersey, Law Division, the appellate body can fully understand and consider what occurred with respect to this petition before the Board, the testimonial and documentary evidence considered, and then to make its own determination based on the record of the proceedings before the Board as required by law;
- in remanding this matter to the Board, the Council wishes to convey that it is not in favor of and will not support gentrification of the neighborhood in which the Landlord’s property is located, gentrification being contrary to the intent of the Township’s Rent Control ordinance; and

**BE IT FURTHER RESOLVED**, that the Council wishes the Board to take the time it needs to act properly in this matter, but also to act in reasonably expeditious fashion in view of the interest all have in coming to a resolution of all of the issues on a timely basis.

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**Karen J. Carnevale, R.M.C**  
**Municipal Clerk**

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**Susan McCartney**  
**Council President**

**Adopted: September 6, 2022**