

AMACONN REALTY, INC.

V.

**RENT LEVELING BOARD OF
THE CITY OF HOBOKEN
AND JEFFREY TRUPIANO**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No.: A-00434-22

Civil Action

Sat below:
Hon. Joseph A. Turula

***AMICI CURIAE* BRIEF OF FAIR SHARE HOUSING CENTER, NJ
APPLESEED, NJ TENANTS ORGANIZATION AND HOBOKEN FAIR
HOUSING ASSOCIATION IN SUPPORT OF THE APPELLANT**

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AMICI STATEMENT OF INTEREST

FAIR SHARE HOUSING CENTER (“FSHC”) is a non-profit organization that represents the interests of lower-income New Jerseyans by advocating for affordable housing and racially- and economically integrated communities, particularly through enforcement of the Mount Laurel doctrine. FSHC has been doing this work since 1975 and was founded by advocates who helped secure the Supreme Court’s canonical decision in S. Burlington Cty. NAACP v. Mount Laurel, 67 N.J. 151 (1975) (Mount Laurel I).

To this day, FSHC remains the only organization dedicated to representing the interests of lower-income New Jerseyans in Mount Laurel cases. FSHC is widely recognized as a leading expert on the Mount Laurel doctrine and has been designated by the New Jersey Supreme Court as a key interested party in Mount Laurel declaratory judgment proceedings. See In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 23 (2015) (Mount Laurel IV). FSHC has also frequently taken an active role in advocating for other mechanisms for creating and preserving affordable housing across the state, including development fee ordinances, inclusionary zoning, and rent control.

NEW JERSEY APPLESEED PUBLIC INTEREST LAW CENTER (“NJA”) is an independent public interest law center created and run by attorneys, which participates in a range of litigation and advocacy activities

aimed at confronting some of the most pressing and complex problems that threaten vulnerable communities and individuals in the state, and providing a legal voice to those who might otherwise not be heard.

NEW JERSEY TENANTS ORGANIZATION (“NJTO”) is one of the largest statewide tenant membership organizations in the United States with over 30,000 tenant members since its founding in 1969. NJTO has worked for over 50 years to secure legislative protections for the rights of vulnerable tenants and for affordable housing.

HOBOKEN FAIR HOUSING ASSOCIATION (“HFHA”)) is a nonprofit organization based in Hoboken, NJ that works to maintain the strongest possible rent protections in Hoboken through active involvement and monitoring of Hoboken’s city government and exposing inequities as they arrive. HFHA organized a GoFundMe page in July 2022 to assist Jeffrey Trupiano with the extreme cost burden of the additional \$1,717 monthly rental increase awarded by Judge Turula. Without this support Mr. Trupiano would be unable to cover the rent. At this time, the GoFundMe account funds will only last for 1-2 more months.

If permitted to appear as *amici*, FSHC, NJA, NJTO, HFHA can assist the court in understanding the legal context in which this appeal arises and the impacts the case is likely to have on low- and moderate-income residents in

Hoboken and the state. Our application is timely, and our participation will assist the court in the resolution of key issues of public importance, without unduly prejudicing any party to the case.

PRELIMINARY STATEMENT

FSHC, NJA, NJTO and HFHA respectfully submit this brief in support of its motion to participate as *amici curiae* and in support of the appeal filed by the Appellant, Mr. Jeffrey Trupiano. This case concerns the fundamental protections of rent control for tenants in New Jersey and necessary limitations on hardship rental increases at a time when affordable housing in the state is critically scarce. It also raises substantial questions about how New Jersey rent control boards should ensure that hardship rent increases do not undermine the affordability of rent controlled units, especially in the context of condo-converted buildings.

The hardship increase granted by the lower court exceeds the amount of rent that any landlord could secure for a 5th floor unrenovated walk-up apartment in the City of Hoboken. Should the increase be upheld, it would result in the displacement of a low-income tenant who qualified for and continues to be protected by the Tenant Protection Act of 1992. Currently, the only thing allowing Jeffrey Trupiano to remain in his home is his dwindling GoFundMe account that was organized by the HFHA.

Meanwhile, the landlord, Amaconn Realty, Inc., has already made a substantial return on their investment through the purchase and subsequent condominium conversion of the eleven-unit building in which the Appellant resides. For more than two decades, as owner of the building, Amaconn largely ignored Mr. Trupiano, providing little, if any, maintenance, services, or improvements to his dwelling unit. The company now has nonetheless been granted a rent increase by the court that is hundreds of dollars more than what the legal rent would have been had the building never gone through the conversion process.

Amaconn justified their rent increase request by presenting a formula of their own creation for determining a hardship, which the lower court largely adopted. This method, which the City's Rent Leveling and Stabilization Board was not required by Hoboken's rent control law to follow, incorporated various unsupported assertions about Mr. Trupiano's dwelling unit, namely— that the market value of the unit could be approximated based on a non-rent-controlled, fully renovated, and upgraded 2-bedroom, 2-bath condominium of similar size to the Appellant's unit; and the Appellant's unit had received \$76,000 in capital improvements (none of which were documented), nor did that speculative value include any consideration for depreciation over a twenty-year time period. These calculations, which were nothing more than unsupported

assertions or assumptions, ultimately derived from the unit's status as a condominium, and should not have been considered given the protections embedded in the Tenant Protection Act of 1992. As a result of the court's failure to consider the policy and provisions of such Act, Amaconn received a rent increase that it could not have received had the Appellant's building not been converted to condominiums. Despite the growing popularity of condominium conversions around the state, they cannot be a pathway for circumventing rent control protections. This court must reject any hardship rent increase that would achieve such an outcome.

FACTUAL AND LEGAL BACKGROUND

This matter concerns Hoboken, New Jersey's rent control ordinance ("RCO") and the City's Rent Leveling and Stabilization Board's ("The Board") proper application of the ordinance's hardship rent increase provision. In general, rent control ordinances must balance the dual interests of maintaining affordable rents for tenants while providing landlords with both enough rental income to cover their operating expenses and enough return on their real estate investment to incentivize their continued participation and investment in the rental market. To achieve these ends, rent control ordinances in New Jersey set limits on annual rent increases and provide landlords with a hardship rent

increase pathway through which they can apply for further increases due to extenuating circumstances.

Accordingly, Hoboken's RCO provides that, "In the event that a landlord cannot meet his operating expenses or does not make a fair return on his investment, he may appeal to the Rent Leveling and Stabilization Board for a hardship rental increase." Hoboken, N.J., Code § 155-14(A) (2018). The ordinance specifies that, "Fair return on the equity investment in real property shall be considered to be 6% above the maximum passbook demand deposit savings account interest rate available in the City of Hoboken." Hoboken, N.J., Code § 155-1 (2018). In addition, the ordinance further provides various factors that the Board shall consider in such an application including:

"Whether the landlord made a reasonably prudent investment in purchasing the property and arranging financing on said property. In considering this factor, the Board may consider the purchase price, the fair market value of the property and the existing rentals at the time of the purchase to determine, if the debt servicing expenses are excessive. The Board may also consider the amount of cash invested in the property in relation to said fair market value and purchase price, the interest rate of the mortgage and whether the mortgage instrument was arrived at and executed in an arms-length transaction." Hoboken, N.J., Code § 155-14(A)(3) (2018).

In 2017, the owner of the property located at 703 Park Avenue, #11 in Hoboken, NJ, Amaconn Realty ("Amaconn"), applied for a hardship rent increase for that rent-controlled unit. Unit #11 has been continuously occupied

by the Appellant, Mr. Jeffrey Trupiano, since 1990. Amaconn originally purchased the entire eleven-unit multifamily building at 703 Park Avenue in 1993. In 2001, Amaconn converted the entire building and its eleven units to condominiums, and subsequently sold ten vacant units for a profit.¹ The parties agree that Mr. Trupiano is a protected tenant under the Tenant Protection Act of 1992 and is therefore protected from eviction without good cause for as long as he lives there and meets the income requirements.² Amaconn has raised no issue in this matter concerning any cause for terminating Mr. Trupiano's tenancy.

Since 2017, this matter has been extensively litigated by the parties via prerogative actions against the Board in Superior Court. FSHC, NJA, NJTO and HFHA became involved following the court's most recent decision in 2022 by Judge Turula, in which the court found that the Board was arbitrary and capricious in its determination of Amaconn's hardship rent increase, and awarded Amaconn with a new monthly rent increase of \$1,717 for a total rent

¹ Mr. Trupiano has represented, and Amaconn does not appear to contest, that his unit does not have its own deed, and therefore it does not seem to be a separate condominium unit like the other units in the building.

² Briefs submitted by the parties mention that Mr. Trupiano is protected from eviction without cause for forty years, but that is incorrect. As a qualified tenant in Hudson County (a qualified county under N.J.A.C. 5:24-3.2(b)) his protected tenancy is for as long as he lives in the unit and meets the income requirements of the Tenant Protection Act of 1992. The erroneous 40-year number refers to the Senior Citizen and Disabled Protection Tenancy Act. At the time of the conversion, Mr. Trupiano was neither a senior nor a disabled tenant.

of about \$2,400.³ Two-thirds of the rent increase, or \$1,568.25 per month, provides Amaconn with a return on its alleged equity investment and is in addition to the minimum rent needed for Amaconn to meet its operating expenses for the unit. According to Mr. Trupiano's brief in the appeal, his annual income is less than \$43,000 per year. As noted above, his only means of paying the rent increase ordered by the lower court is a GoFundMe account that will only last for 1-2 more months. Steinhagen Cert., ¶4.

The primary issue that is of concern to the *amici* is how the trial court ordered the Board to calculate Amaconn's fair and reasonable return on its equity investment. Over the course of this litigation, Amaconn, the Board, and Mr. Trupiano have argued for three different approaches to calculating return on equity, which are outlined below. Only the approach adopted by Amaconn and the lower court would raise the rent to unaffordable levels for Mr. Trupiano.

First, Amaconn has argued, and Judge Turula most recently substantially agreed in 2022, that a fair and reasonable return on its equity should incorporate an approximation of the dollar value of Mr. Trupiano's unit using Hoboken's

³ Mr. Trupiano's brief in this appeal has represented that the new rent is \$2,400 per month, while Amaconn's brief has represented that it is \$2,440.33.

tax assessment of the unit plus \$76,000 of alleged capital improvements. In application, Amaconn's rent will grow along with the value of Mr. Trupiano's unit as if it were a non-rent-controlled condominium unit with a market value that increases in proportion to the City's speculative real estate market. This method of calculating equity is the primary driver of the substantial rent increase, imposed by the court herein, which if implemented would displace a protected tenant who will no longer be able to afford his apartment.

Second, before Judge Turula's recent decision, the Hoboken Rent Leveling and Stabilization Board chose a different method of calculating Amaconn's return on equity. They effectively employed a compromise approach that would have awarded Amaconn with a hardship rent increase moderated by the inherently lower market value of a rent-controlled unit relative to an unencumbered unit, Amaconn's investment in the property at 703 Park as a whole and its subsequent equity return on ten of the building's eleven units, and the overall need to maintain some level of affordability for Mr. Trupiano.

The Board also found guidance in a previous decision on this same case by Judge Costello in which the court upheld the Board's decision to lower the property tax liability attributable to the hardship application from \$6,275.00 to \$1,937.22, an amount that roughly represents a 70% reduction. (See June 23, 2021 Hoboken Rent Stabilization Board Meeting Transcript, 1T134:2-6). The

Board also noted that this reduced liability represented 25% of the renovated and unencumbered unit directly across the hall from Mr. Trupiano's unit. By using the real (meaning actual) numbers made available to the Board, it was able to calculate a realistic applicable dollar amount to include for equity in the hardship calculation.

Third, Mr. Trupiano has taken the further position that the Board should not consider the value of his unit at all in determining his rent. Rather, he argues the Board should only calculate return on equity using Amaconn's prorated purchase investment in his unit, guaranteed them an annual return equivalent to what it would be if those funds had originally been invested in a savings account and adjusted as needed for inflation.

Either the Board's or Mr. Trupiano's above approaches to calculating rent hardship increases for a rent regulated unit in building that otherwise had been converted from rental units to owner-occupied condominium units is sustainable under state law. In contrast, the method used by the lower court not only violates the Tenant Protection Act of 1992 as we will further detail, but by raising the rent to such a high level, it frustrates one of the primary goals of rent control—creating and preserving affordable housing.

ARGUMENT

I. THE HARDSHIP RENT INCREASE REQUESTED BY AMACONN AND ORDERED BY THE LOWER COURT IS IN DIRECT CONFLICT WITH THE PURPOSES OF RENT CONTROL AND THE TENANT PROTECTION ACT OF 1992 AND IS INCONSISTENT WITH EXISTING LAW.

The hardship rental increase authorized by the trial court would result in a monthly rent for Mr. Trupiano that would be unaffordable for him and any low- or moderate-income resident in the City of Hoboken.⁴ It is a certainty that he will be displaced from his rent-controlled unit as a result. This is precisely what rent control in New Jersey and the City of Hoboken was established to prevent. Moreover, the Tenant Protection Act of 1992 specifically protects tenants like Mr. Trupiano from having to assume the costs of condominium conversion through increased rent, especially when the rent increase effectively amounts to eviction. Regardless of whether this court finds that the Hoboken RCO guarantees landlords a value-based return on equity, the Board was not required to follow Amaconn's methodology for calculating a hardship rent increase. The *amici* support two alternative approaches to calculating return

⁴ See *2023 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE*, AFFORDABLE HOUSING PROFESSIONALS OF NEW JERSEY (AHPNJ), https://ahpnj.org/member_docs/Income_Limits_2023.pdf (last updated May 26, 2023). The monthly rent of approximately \$2,400 ordered by the lower court would equal more than two-thirds of Mr. Trupiano's total monthly income.

on equity advanced by the Board and Mr. Trupiano respectively and ask the court to consider, as both the Board and Mr. Trupiano did, Amaconn's actual hardship, not that based on an assumed increase in value due simply to a change in status of the entire building; that is, the company's hardship must be evaluated in the context of its lucrative investment in the overall property at 703 Park.

A. Hardship Rent Increases Must Strike a Balance Between the Interests of Landlords and Tenants.

The New Jersey Supreme Court has long recognized rent control as a powerful and important means by which municipalities can respond to a critical need for affordable housing. See Inganamort v. Fort Lee, 62 N.J. 521, 527 (1973). It is used throughout the state, and like other affordable housing mechanisms such as inclusionary zoning, it serves a key anti-displacement function in places where market rents are no longer affordable to a substantial portion of the local population.

These objectives must be balanced against the right of an "efficient landlord to realize a 'just and reasonable return' on his property. Helmsley v. Fort Lee, 78 N.J. 200, 210 (1978) (quoting Hutton Park Gardens v. West Orange Town Council, 68 N.J. 543, 568 (1975)). The New Jersey Supreme Court has generally held that hardship increase formulas cannot, "indefinitely freeze the dollar amount of a landlord's profits 'without eventually causing confiscatory results.'" Mayes v. Jackson Twp. Rent Leveling Bd., 103 N.J. 362, 370 (1986).

However, this right of a “just and reasonable return” is also not without its limits. “[It] must be high enough to encourage good management including adequate maintenance of services, to furnish a reward for efficiency, to discourage the flight of capital from the rental housing market, and to enable operators to maintain and support their credit... [a] just and reasonable return is one which is generally commensurate with returns on investments in other enterprises having corresponding risks.” Troy Hills Vill. v. Twp. Council of Parsippany-Troy Hills, 68 N.J. 604, 629 (1975). However, there may be certain “atypical cases” where rent levels may still, “drive inefficient operators out of the market and may preclude persons who have paid inflated purchase prices for buildings from recovering a fair return.” Id. at 628. In essence, rent increases on rent-controlled units cannot be, “so high as to defeat the purposes of rent control nor permit landlords to demand of tenants more than the fair value of the property and services which are provided.” Id. at 629.

Amaconn’s requested hardship increase does not achieve the above required balance. On the contrary, since it would raise Mr. Trupiano’s rent to the point of being completely unaffordable to low- and moderate-income residents in the region, it would ultimately defeat the purposes of rent control in general and specifically Hoboken’s RCO—i.e., the maintenance of affordable housing in the City.

B. The Hardship Increase Request by Amaconn and Ordered by the Lower Court Would Violate the Tenant Protection Act of 1992, Which Was Specifically Designed to Provide Protection to Residential Tenants, Particularly Those of Low and Moderate Income from Eviction Resulting from Condominium and Cooperative Conversions.

The hardship increase, and particularly the return on equity calculation approach adopted by the lower court and Amaconn also violates the Tenant Protection Act of 1992 (“TPA”). The TPA was enacted to prevent condominium conversions from destroying affordable housing and evicting vulnerable tenants. The NJ Legislature specifically noted in its amendments to the TPA in 2000 that the earlier TPA “had yet to adequately preserve the supply of affordable housing in certain municipalities in which condominium and cooperative conversions have been especially common.” N.J.S.A. 2A:18-61.41(f). It declared that “In the public interest of preserving affordable housing...qualified municipalities may prohibit the conversion of affordable rental housing units. N.J.S.A. 2A:18-61.41(g)

In the context of hardship rent increase applications, the TPA provides that:

“Increased costs that are solely the result of a conversion, including but not limited to any increase in financing or carrying costs, and do not add services or amenities not previously provided shall not be used as a basis for an increase in a fair return or hardship hearing before a municipal rent board or on any appeal from such a determination.” N.J.S.A. 2A:18-61.52(b).
(Emphasis added)

Amaconn's return on equity approach, which the lower court largely adopted, effectively aims to achieve a return on the value of the Mr. Trupiano's dwelling unit as a condominium, not as a rental unit encumbered by rent control protections. Amaconn assumes that the value of Mr. Trupiano's unit has increased because of its conversion and tries to recoup this rise in value through a significant rent increase. Under the TPA, this is not allowed.

Both the Board and Mr. Trupiano have offered return on equity approaches that would be compliant with the TPA's protections, and which *amici* support. Although the Board's approach would still incorporate an estimation of the value of Mr. Trupiano's dwelling unit, the value would be discounted significantly due to its rent-controlled status, and Amaconn would be entitled to a lower return and resulting rent. This rent would ultimately be affordable to Mr. Trupiano, and therefore the Board's approach would ultimately still follow the legislative intent of the TPA that condominium conversions cannot destroy affordable housing.

Under Mr. Trupiano's return on equity approach, any hardship increase would not incorporate any market valuation of his dwelling unit post-condo conversion. The conversion of his unit in and of itself would therefore have no detrimental effect on his rent at all. This would clearly comply with the letter of the TPA's section 61.52(b), as well as the TPA's overall affordability objectives.

It is also more consistent with a reading of Hoboken's rent control law that contemplates a return on actual investment (i.e., equity) not an assumed increase in value simply due to conversion.

C. Regardless of Whether the Hoboken RCO Guarantees Landlords a Value-Based Return on Equity, the Board Was Not Required to Follow Amaconn's Methodology for Calculating a Hardship Rent Increase.

Hoboken's rent control ordinance does not guarantee landlords a return on equity investment based on the dollar market value of the rent-controlled unit, nor does it explicitly identify a particular method for calculating equity. Amaconn has argued that they are entitled to a rent increase based largely on an annual return on equity derived from Mr. Trupiano's unit's tax assessed value. There is no reason grounded in law to conclude that the Board was required to follow such an approach.

The NJ Supreme Court has long been skeptical of the accuracy of attempts to measure a landlord's just and reasonable return on investment using an approximated current value of the rent-controlled unit. In Troy Hills, it noted that "[t]hree methods are conventionally used for valuing real property: depreciated replacement cost, market value based on sales of comparable properties, and capitalized income...[though] [n]one of these methods is wholly suitable to the problem of determining value." Troy Hills, 68 N.J. at 625-26. The Court instructed that it was important to consider their limitations, and noted

there could be other valuation methods, such as “assessed valuation or original cost depreciated.” Id. at 626.

Three years later in Helmsley, after referencing the various value-based criteria for calculating a just and reasonable return on investment in Troy Hills, the Court ultimately upheld an ordinance that allowed rent adjustments tied to inflation but contained no value-based criteria for determining just and reasonable return at all. In justifying its decision, the Court reasoned that, “a value-based criterion for confiscation under rent control is practically unworkable.” Helmsley 78 N.J.at 215. It pointed to the inherent circularity of determining a fair rent based on property value when property value is typically at least partially based on rent. Id. at 213-215. Ultimately it found inflation adjustments were sufficient to prevent a confiscatory result. Id. at 217.

Although the *amici* do not take a position on whether the Hoboken RCO is a value-based ordinance (though there is strong evidence that Hoboken’s RCO is not a value-based ordinance and instead bases hardship increases on actual cash investment and/or mortgage interest along with operating expenses, such as insurance, taxes etc.), either Mr. Trupiano or the Board’s approaches to calculating a hardship rent increase would be viable alternatives to Amaconn’s.

If this court accepts the arguments of Mr. Trupiano that the Hoboken RCO is not a value-based ordinance, then the Board should not have considered the

value of his apartment at all, including its assessed value for tax purposes, and, for sure, Amaconn's requested methodology for calculating the rent increase should be wholly rejected. Such interpretation is supported by the language of the RCO and would withstand any facial challenge (though no party has made one to date). Indeed, such a reading of the RCO would be nearly identical to the Helmsley ordinance. It also guarantees landlords rent adjustments tied to inflation that would allow them to meet their operating expenses and receive a fair return on their initial investment.

If this court finds that the Hoboken RCO return on equity provision is value-based or partially value-based, the above case law also reflects the considerable latitude afforded to municipalities and rent control boards to create methodologies for calculating fair rent increases that ensure the maintenance of housing affordability. There is no case law or text in the Hoboken RCO that commits the Board to calculate return on equity using the specific methodology requested by Amaconn. Moreover, if the RCO uses a value-based return on equity formula, there would be reason due to Mr. Trupiano's protected tenancy status to find that the Board's action, which sought to estimate a return on equity that also preserved an affordable rent, was clearly rational, well-reasoned, and consistent with the broader aims of the Tenant Protection Act of 1992.

In contrast, Amaconn's methodology for calculating return on equity depends almost entirely on an estimation of Mr. Trupiano's unit's market value, despite the difficulties and inaccuracies in doing so for a rent-controlled unit. Not only has the NJ Supreme Court made clear that such an approach is disfavored, but this court should also view Amaconn's process with particular skepticism since it would have such a destructive effect on affordability and undermine the purpose of rent control, especially in the context of a unit located in a building that has undergone conversion to condominium ownership.

D. The Court Should Consider Amaconn's Hardship in the Context of the Larger Investment in 703 Park Avenue.

Amaconn has already realized the bulk of its return on its initial investment in the building at 703 Park Avenue through the conversion of the building to condominium units and its sale of over 90% of the former rental units for profit. This broader context cannot be ignored.

The Hoboken RCO gives the Board considerable discretion in weighing a hardship increase to consider factors including: "Whether the landlord made a reasonably prudent investment in purchasing the property [,] ...the purchase price [,] ... [as well as] the amount of cash invested in the property in relation to... fair market value." Hoboken, N.J., Code § 155-14(A)(3) (2018)

Overall, Amaconn's investment in 703 Park Avenue has been extremely lucrative for the company. However, when viewing Mr. Trupiano's unit in

isolation, as Amaconn has asked the Board and this court to do, the unit could not reasonably be considered a prudent investment, as the only way to render it as profitable as the other condo units would be to increase its rent so much, it would no longer be affordable to its long term, *protected* tenant.

The length of time from purchase – 1993, when all 11 units were occupied, until 2001 when Mr. Trupiano was the only remaining tenant also strongly implies that the investment was made in the first place for the sole purpose of converting the building to condominiums. It appears that the landlord attempted to wait until the building was fully vacant prior to undertaking conversion by warehousing 10 rental units in direct violation of Hoboken’s anti-warehousing laws over the 8-year period from purchase to conversion. (Aa 44).

Accordingly, we would ask the court to consider what would have been a realistic purchase price for this building at the time of the purchase if there was no intent to convert. A prudent investment would require a determination by the Hoboken Rent Leveling Officer of what the legal rents on the 11 units actually were at the time of purchase. No such determination was requested by Amaconn. (absent from record referred to at 7T 151: 23-25 to 152: 1-3) However, Mr. Trupiano’s rent was substantially reduced around the time of conversion and a letter from the Hoboken Rent Leveling Officer in the property file indicates that there had been a determination of a rental overcharge. (7T 150: 10-25 to 7T 151:

1-16) Any investor making a prudent investment in a rental property in a rent-controlled municipality would assuredly get a determination on what the legal rents were and, thus, a realistic understanding of what the income generated from the property would be before making an offer to purchase. Having access to the actual legal rents and an expense statement just prior to the sale would have been the only way that the Board could determine the actual value at the time of purchase based on the income capitalization method – i.e., the standard method used for rental buildings. Such figure is the one that should have been the actual purchase price and would have been the best indicator of whether the price Amaconn actually paid represented a prudent investment. This information was not provided to the Board (absent from the record) and presumably does not exist as it was not relevant to a purchaser who was buying the rental building for the purpose of conversion. Even in an overheated real estate market (where the State moved forward with legislation that protected tenants specifically in Hudson County, just like Mr. Trupiano, due to ongoing speculative conversion and displacement), it stands to reason that the actual purchase price, were it purchased for rental purposes, would have been extremely low. Taking into account the much lower taxes previously approved by Judge Costello and what would have been a much lower equity return attributable to an investment that did not contemplate condo conversion, it is likely that the landlord would not be

entitled to any increase at all. While that may sound shocking, it is a fact that any “hardship” claimed at this time is due solely to the fact that the unit is being operated as a condominium. There would be no hardship if the unit was still being operated as a part of an 11-unit rental building with lower taxes and no monthly HOA fees; and that is exactly the standard that the Tenant Protection Act of 1992 essentially contemplates.

Although The Board did not use this method, they did try to find an approach that would be more generous to the owner while not destroying the affordability of the unit and Mr. Trupiano’s statutory protection. It was essentially a compromise, and though one could argue that it was too generous to the landlord, it is sustainable under Hoboken’s RCO (which permits consideration of all operating expenses including taxes and HOA fees) and the Tenant Protection Act.

II. THE ROLE OF RENT CONTROL IN PRESERVING AFFORDABLE RENTS IN HOBOKEN IS PARTICULARLY IMPORTANT AS FEW OTHER AFFORDABLE HOUSING OPTIONS EXIST FOR LOW- AND MODERATE-INCOME TENANTS.

Like many municipalities in the New Jersey, Hoboken has a critical lack of affordable housing options for low- and moderate-income residents. According to census data from 2017-2021, Hoboken had a median gross rent of

\$2,479 per month.⁵ Today, the median rent is likely closer to \$4,000.⁶ In 2023, the upper limit for moderate income single person households in NJ, like Mr. Trupiano's, was \$67,431.⁷ According to the U.S. Department of Housing and Urban Development, households are considered cost burdened when they spend more than 30% of their income on rent, mortgage and other housing needs.⁸

Based on the above data, no moderate-income household in Hoboken, much less a low-income household like Mr. Trupiano's, would be able to afford an apartment with a monthly rent equal to the area median rent or above without being severely cost-burdened. Assuming rents have increased in Hoboken since the last Census data was published, market rate apartments are virtually unattainable for low-income households. This reality highlights the necessity of rent control and other affordable housing mechanisms. For tenants like Mr.

⁵ *Quick Facts-Hoboken City, New Jersey*, UNITED STATE CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/hobokencitynewjersey/HSG860221#HSG860221> (last visited Jul. 3, 2023).

⁶ *Hoboken NJ Rental Market*, Zillow Rental Manager, <https://www.zillow.com/rental-manager/market-trends/hoboken-nj/> (last visited Jul. 3, 2023).

⁷ *Supra*, note 2.

⁸ *2023 Housing Plan Element and Fair Share Plan*, City of Hoboken, https://assets-global.website-files.com/58407e2ebca0e34c30a2d39c/642489e6bc8a95f6a02b5c0c_23.02.08%20Final_Hoboken%20Housing%20Element%20and%20Fair%20Share%20Plan.updatedfrom%20PB.pdf (last updated Feb 8, 2023).

Trupiano, there is simply not a readily available and viable alternative to his current apartment in which he has now lived for over thirty years.

CONCLUSION

For the reasons discussed above, FSHC, NJA, NJTO and HFHA respectfully request that the court grant the motion for leave to participate as *amici* and grant Appellant, Mr. Jeffrey Trupiano's request to reverse the decision below, and reject Amaconn's requested hardship rent increase.

Dated: August 2, 2023

Respectfully submitted,

FAIR SHARE HOUSING CENTER

/s/ William Fairhurst
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NJ APPLESEED PUB. INTEREST
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