

BOROUGH OF RED BANK

COUNTY OF MONMOUTH

RESOLUTION NO. 13-204

**A RESOLUTION MEMORIALIZING THE FINDINGS AND DETERMINATIONS OF
THE GOVERNING BODY OF THE BOROUGH OF RED BANK ON
APPEALS FROM THE RENT LEVING BOARD REGARDING GRANDVILLE TOWERS**

Mr. Zipprich offered the following resolution and moved its adoption:

WHEREAS, Teddy Construction Co. d/b/a Grandville Towers Apartments (the "Landlord") presented an application for a Capital Improvement Surcharge encompassing a three phase plan of upgrades and incidental improvements associated therein. The aforesaid application was dated and filed December 3, 2012 with the Red Bank Rent Leveling Board (the "Board"); and

WHEREAS, Chapter XII of the "Open Housing Practices Rent Control; Protective Tenancy" Ordinance Section 12-2.4 entitled "Appeal by Landlord" Subsection B provides that a "Landlord may seek additional surcharges for major capital improvements or services. Under the Borough's ordinance, to qualify for major improvement surcharge, a claimant must show a benefit to the tenant, in the form of improved lifestyle, convenience, ease and/or security; and

WHEREAS, the Board conducted hearings on the Landlord's application on May 1, 2013, May 30, 2013, with final deliberations and decision by the Board on June 27, 2013; and

WHEREAS, the landlord presented its application seeking surcharges on capital certain improvements totaling \$3,588,100.00, with construction covering three phases and likewise surcharges covering three phases; and

WHEREAS, the on June 27, 2013 the Board deliberated and found that certain of the line items either to be Capital Improvements subject to a surcharge, or not to be Capital Improvements subject to a surcharge, pursuant to the decision of *Green Acres of Verona v. Borough of Verona*, 146 N.J. Super. 468 (App. Div. 1977) and as further defined by *Tenant's Association v. Georgian Gardens*, 249 N.J. Super. 475 (1991), and pursuant to the Board's reading of the local ordinance's definition of major Capital Improvements; and

WHEREAS, on July 25, 2013, the Board adopted a Resolution memorializing its findings and decisions regarding the Landlord's application for a Capital Improvement Surcharge (the "Board's Resolution"), and

WHEREAS, pursuant to Section 12-2.7 of the Rent Control Ordinances, both the Landlord and any tenant may appeal in writing the findings of the Board to the Governing Body within twenty (20) days from the date of the determination pursuant the Rules and Regulations set forth for the Rent Leveling Board and Municipal Ordinance for such appeals; and

WHEREAS, pursuant to said Ordinances, any such appeal to the Governing is a record appeal; and

WHEREAS, on August 1, 2013, the Landlord Filed a Notice of Appeal of the Board's decision; and

WHEREAS, the Landlord appeals from that part of the Board's decision disallowing the following items as Capital Improvements and from qualifying for a Capital Improvement Surcharge:

PHASE 1

Entrance Portico	\$ 60,000.00
Lobby-Lighting	\$ 7,500.00

PHASE 2

Granite Floor Tile	\$ 12,975.00
Pool	\$ 60,000.00
Rear Hall-Awning	\$ 3,500.00
Rear Hall-Replacement mailboxes	\$ 6,900.00

PHASE 3

Baseboard heat common area	\$ 13,000.00
Landscape, including tree removal	\$173,250.00
Millwork/trim, common area	\$ 38,000.00
Replace roof exhaust fans	\$ 9,400.00
Wallpaper foyer and common areas below chair rail	\$ 29,275.00

WHEREAS, in connection with its appeal, the Landlord served upon the Governing Body the entire record of the hearings before the Board, including copies of all exhibits presented at the hearings and copies of the transcripts; and

WHEREAS, the Landlord served notice of its appeal on all tenants of Grandville Towers and the Landlord's counsel provided to the Borough a copy of the service list with proof of service; and

WHEREAS, tenant Jane Manning, Apt. 7F ("Manning"), has filed an appeal from that part of the Board's decision allowing the following items as Capital Improvements and qualifying for a Capital Improvement Surcharge:

PHASE 1

Storage Bins	\$ 73,700.00
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WHEREAS, the Landlord received proper notice of the Manning appeal; and

WHEREAS, on August 14, 2013, the Governing Body conducted a record appeal hearing on the Landlord's and Manning's appeals; and

WHEREAS, Paul Schneider, Esq. of the firm of Giordano, Halleran, & Ciesla, appeared on behalf of the Landlord; Manning did not appear.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Borough of Red Bank that following determinations have been made record the subject appeals:

1. That the Governing Body had jurisdiction to hear the subject appeals and that all notice requirements were satisfied; and

2. That the Governing Body, having reviewed and considered the record before the Board, having heard the arguments of the Landlord's counsel and the tenant, and having considered and debated the issues presented on the appeal pursuant to the decision of *Green Acres of Verona v. Borough of Verona*, 146 N.J. Super. 468 (App. Div. 1977) and as further defined by *Tenant's Association v. Georgian Gardens*, 249 N.J. Super. 475 (1991), and pursuant to the Governing Body's reading of the definition of major capital improvement in the Borough's Ordinances, that following determinations of the Board are either affirmed or reversed:

A. Manning's Appeal-Storage Bins

Given that that there are 90 units in the building, and only 30 storage bins, the Governing Body found that Manning had a legitimate argument that the cost of this item should not be passed along to all of the tenants as Capital Improvement and it was therefore disallowed as Capital Improvement by the Governing Body. The Landlord's attorney consented to the disallowance of the storage bins as a Capital Improvement.

B. Landlord’s Appeal

PHASE 1

a. Entrance Portico (\$60,000.00).

Moved to approve as Capital Improvement by: Mr. DuPont
Seconded by: Mr. Murphy

	Yes	No	Abstain	Absent
Ms. Lewis	(x)	()	()	()
Mr. Zipprich	(x)	()	()	()
Mr. DuPont	(x)	()	()	()
Ms. Horgan	()	(x)	()	()
Ms. Lee	(x)	()	()	()
Mr. Murphy	(x)	()	()	()

Motion carries by five to one vote and the decision of the Rent Leveling Board is reversed and the Entrance Portico is allowed as a Capital Improvement.

b. Lobby-Lighting (\$7,500.00)

Moved to approve as Capital Improvement by: Mr. DuPont

There being no second, the motion to approve the Lobby Lighting as a Capital Improvement fails and the decision of the Rent Leveling Board disallowing the Lobby Lighting as a Capital Improvement is affirmed.

PHASE 2

c. Granite Floor Tile (\$12, 975.00).

There being no motion to approve the Granite Floor Tile as a capital improvement, the decision of the Rent Leveling Board disallowing the Granite Floor Tile as a Capital Improvement is affirmed.

d. Pool (\$60,000)

Moved to approve as Capital Improvement by: Mr. Murphy
Seconded by: Mr. DuPont

	Yes	No	Abstain	Absent
Ms. Lewis	(x)	()	()	()
Mr. Zipprich	(x)	()	()	()
Mr. DuPont	(x)	()	()	()
Ms. Horgan	(x)	()	()	()
Ms. Lee	(x)	()	()	()
Mr. Murphy	(x)	()	()	()

Motion carries by six to zero vote and the decision of the Rent Leveling Board is reversed and the Pool is allowed as a Capital Improvement.

e. Rear Hall Awning (\$3,500).

Moved to approve as Capital Improvement by: Mr. Murphy
Seconded by: Mr. DuPont

	Yes	No	Abstain	Absent
Ms. Lewis	()	(x)	()	()
Mr. Zipprich	()	(x)	()	()
Mr. DuPont	(x)	()	()	()
Ms. Horgan	()	(x)	()	()
Ms. Lee	(x)	()	()	()
Mr. Murphy	(x)	()	()	()
Mayor Menna	(x)	()	()	()

There being three yes votes and three no votes and the Mayor having voted yes to break the tie, the motion carries and the decision of the Rent Leveling Board is reversed and the Rear Hall Awing is allowed as a Capital Improvement.

f. Rear Hall Replacement Mailboxes (\$6,900)

Moved to approve as Capital Improvement by: Mr. Murphy
Seconded by: Mr. DuPont

	Yes	No	Abstain	Absent
Ms. Lewis	()	(x)	()	()
Mr. Zipprich	()	(x)	()	()
Mr. DuPont	(x)	()	()	()
Ms. Horgan	()	(x)	()	()
Ms. Lee	()	(x)	()	()
Mr. Murphy	(x)	()	()	()

There being two yes votes and four no votes, the motion fails and the decision of the Rent Leveling Board is affirmed and the Rear Hall Replacement Mailboxes are disallowed as a Capital Improvement.

PHASE 3

g. Baseboard Heat Common Area (\$13,000)

Moved to approve as Capital Improvement by: Mr. DuPont
Seconded by: Ms. Lee

	Yes	No	Abstain	Absent
Ms. Lewis	(x)	()	()	()
Mr. Zipprich	(x)	()	()	()
Mr. DuPont	(x)	()	()	()
Ms. Horgan	()	(x)	()	()
Ms. Lee	(x)	()	()	()
Mr. Murphy	(x)	()	()	()

Motion carries by five to one vote and the decision of the Rent Leveling Board is reversed and the Baseboard Heat, Common Area is allowed as a Capital Improvement.

h. Landscape, including Tree Removal (\$173,250)

With respect to this item, the Mayor observed that there were many sub-categories of improvements within this category, including certain items that appeared to be site plan type improvements that per the Borough Engineer may have been mandated by the Zoning Board of Adjustment when they approved the expansion of the site, including the roadway, parking lot, access roads and sidewalks. The Mayor suggested that this aspect of the appeal should be referred back to the Rent Leveling Board for greater clarification of these issues, with the assistance of the Borough Engineer. The Landlord’s counsel had no objection to the proposed remand for this item.

Moved to remand to the Rent Leveling Board by: Mr. DuPont
Seconded by: Ms. Lee

	Yes	No	Abstain	Absent
Ms. Lewis	(x)	()	()	()
Mr. Zipprich	(x)	()	()	()
Mr. DuPont	(x)	()	()	()
Ms. Horgan	(x)	()	()	()
Ms. Lee	(x)	()	()	()
Mr. Murphy	(x)	()	()	()

Motion carries by six to zero vote, and the determination on the Landscaping category of improvements is remanded back to the Rent Leveling Board to go through each line item in this category to provide further clarification as to which items are, or are not, capital improvements, including consideration of any items that might have been mandated by the Zoning Board of Adjustment.

i. Millwork/trim, common area (\$38,000)

There being no motion to approve the Millwork/trim, common area as a capital improvement, the decision of the Rent Leveling Board disallowing the Millwork/Trim as a Capital Improvement is affirmed.

j. Replace roof exhaust fans (\$9,400)

Moved to approve as Capital Improvement by: Mr. DuPont
Seconded by: Mr. Murphy

	Yes	No	Abstain	Absent
Ms. Lewis	(x)	()	()	()
Mr. Zipprich	()	(x)	()	()
Mr. DuPont	(x)	()	()	()
Ms. Horgan	()	(x)	()	()
Ms. Lee	()	(x)	()	()
Mr. Murphy	(x)	()	()	()
Mayor Menna	(x)	()	()	()

There being three yes votes and three no votes and the Mayor having voted yes to break the tie, the Motion carries and the decision of the Rent Leveling Board is reversed and the roof exhaust fans are allowed as a Capital Improvement.

k. Wallpaper foyer and Common Areas below Chair Rail (\$29,275)

There being no motion to approve the Wallpaper as a Capital Improvement, the decision of the Rent Leveling Board disallowing the Wallpaper as a Capital Improvement is affirmed.

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be provided to the Secretary of the Rent Leveling Board, the attorney for the Rent Leveling Board, Gene J. Anthony, Esq., the Landlord’s Attorney and to Jane Manning; and

BE IT FURTHER RESOLVED that the Rent Leveling Board shall take all necessary and required actions to implement the findings and directives of the Governing Body contained in this Resolution, and the Landlord may implement all actions necessary with regard to this Resolution.

Seconded by Ms. Lewis and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Ms. Lewis	(x)	()	()	()
Mr. Zipprich	(x)	()	()	()
Mr. DuPont	()	()	()	(x)
Ms. Horgan	(x)	()	()	()
Ms. Lee	(x)	()	()	()
Mr. Murphy	(x)	()	()	()

Dated: August 28, 2013