DISSENTING OPINION

REGARDING THE FINDINGS AND RECOMMENDATIONS OF THE RENT CONTROL COMMITTEE

During 1988 the Rent Control Committee (RCC) held several hearings relating to the issue of capital expenditures in rent controlled properties. Testimony was heard from, among others, Michael Rosenberg, the Assistant City Manager for Community Development.

Mr. Rosenberg concluded that a voluminous number of rent controlled properties were deteriorating and/or distressed and that substantial capital expenditures would be required to maintain habitable apartments. His testimony and report supported his finding that the current condition of rent controlled properties and the issue of deterioration of the housing raises serious questions about the future of affordable housing in Cambridge.

In a report dated November 15, 1988 Mr. Rosenberg found

"Although the scope of the problem is not entirely clear, the Community Development Department (CDD) has collected data which indicates that over 60% of the buildings inspected by qualified rehab specialists from the Community Development Department and non-profit housing organizations in the past two years involve rehab costs of over $25,000 per unit."

Mr. Rosenberg recognized there are two levels of analysis for deteriorating properties. The first relates solely to repairing individual code violations. The second level of analysis compliments the violation level with a concern toward the long-term usefulness and habitability of the dwelling-unit or the building.

The violation level, as confirmed by Mr. Rosenberg, does not necessarily address causes or even flagrant problems and can undermine the progression of rehabilitation by concentrating on treatment of the symptoms rather than the causes. As a corollary, one should consider the medical field. Early detection and treatment of the cause of medical problems is the goal in medicine, not mere treatment of symptoms. If treatment of the cause is delayed by concentration on the symptoms, the stage of incurability is more readily reached.

Mr. Rosenberg's testimony was supported by the testimony of Peter Dailey of the Neighborhood Association of Housing Services. He confirmed the City is experiencing a serious disinvestment of property.

Funding Necessary Capital Investment

In addition to the Revolving Loan Fund suggested in Mr. Rosenberg's report and in Councillor David Sullivan's Findings and Recommendations, we must adopt changes which will encourage the property owners themselves to make capital expenditures. Public funding alone will not suffice. If we do not dramatically amend the rent adjustment process as an incentive for capital expenditures by private landowners, the number of distressed and deteriorating buildings will completely deplete the affordable housing in Cambridge. This is one issue on which we all agree. The current condition of rent controlled buildings viewed along with the statistics as to the low numbers of units for which adjustments have been applied are evidence in part of the need for changing the rent adjustment process.

We all agree our policy should not be to encourage gold plating. However, the City need to decide an issue of policy: whether to act to encourage capital improvements on Cambridge rent controlled properties or whether to take a piecemeal approach and allow our buildings to fall to pieces. We propose the following:

Proposed Changes

1. Creation of the Adjustment Review Board

When Ms. Drury testified before the Committee, she recognized that the Community Development Department had more expertise pertaining to the condition of properties. Furthermore, the fact that safety and lives are at stake, as is the economic future of this City, mandate involvement by additional city agencies. I propose we adopt a program of prospective rent adjustments, with each application to be reviewed by an Adjustment Review Board containing:

a. a hearing examiner from the CRCB;
b. a person from the Community Development Department; and,
c. a building inspector from Inspectional Services.

The Adjustment Review Board shall draft the application for the rent adjustment and implement a procedure for inspection after completion of the work. The tenant, if any, should object prior to the inspection. The on-site inspection should be dispositive of the issue of completion. There should be a 60 day time limitation.

2. Revisions of Basis for Rent Adjustments

The system of useful lives assigned to capital improvements must be revised. Refrigerators do not break down on the tenth anniversary of their purchase. Roofs do not loose their usefulness on a specified date. Overall values of a dwelling unit are increased by capital improvements, and reverting back to pre-adjustment rents is not consistent with time generated values. Removing the interest rate part of the adjustment should occur.

Adjustments should continue for at least the life of a loan taken out for making the capital improvement. Owners should receive adjustments based on actual interest rates paid.

3. Adjustments for Cited Code Violations.

Capital improvements are often needed to remedy code violations and also to remedy secondary damages. The Rent Control Board should not continue a policy of denying adjustments for these, except in the event of a finding or deliberate or gross negligence.

4. Adjustments for Follow-Up Work and High Work Costs.

Either to perform additional work on the same system or structure to to remedy some contractor's work, at times Owners have to duplicate previous work. When this happens, the Rent Board disallows the previous adjustment even though the Owner has expended the money. An Owner should not have to be the victim of this issue.

It has also been learned that Hearing Examiners or the Board will deny requested increases based on a finding that the cost paid by the Owner for the work was "too high", or based on numerous other claims. These practices contribute toward the other disincentives for capital expenditures. The Board should instruct Hearing Examiners to be sure that no adjustments are denied to property owners where the cost incurred was within the standard paid in the industry.

Stemming Massive Rent Increases

Provided encouragement of private monies for capital improvements is effectuated, the next issue to handle is how to avoid massive rent increases.

We recommend the use of the Revolving Loan Fund, the Housing Trust Fund and the Linkage Fee to supplement rents of tenants who are unable to pay the increases because of their financial status. To this end, the Board should employ a standard similar to HUD requirements.

The proposal of Councillor David Sullivan relies heavily upon distinguishing between large and small landlords. The courts require rent boards to allow a fair net operating return on investments. We can not base City policy on an unconstitutional distinction. The overall financial worth of a landlord is not a justifiable counter-argument as a matter of law.

Furthermore, such a distinction shows an unreasonable reliance on the size of buildings as opposed to a more reasonable primary concern about the tenants and their safety.

Conclusion

Based on the testimony heard by and reports submitted to the Committee, it is apparent the City's future for affordable housing is at stake.

The capital expenditure needed just to totally rehab the approximate 5,500 units of distressed properties known as of today would cost $231,000,000.00 -- and no new housing unit would have been created.

The need to implement the impact fee to subsidize part of the capital expenditure will accordingly cause an increase in the cost of construction of new housing in Cambridge and thus create an added demand and need for rent controlled units.

Two hundred and thirty-one million (231,000,000.00) dollars is more money than the city of Cambridge has. The safety and even lives of many Cambridge residents are at stake. Arguments for caps on adjustments and other proposals which are contrary to incentives for privately supplied capital expenditures do not withstand a weighing of the balances. We must encourage rent adjustment applications and ensure a fair rate of return to owners through the rent adjustment process.

Respectfully submitted by,

Wm H Walsh
William H. Walsh
City Councillor

Sheila T. Russell
Sheila Russell
City Councillor

opinion/mcp

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opinion/mcp

23. S-74

Comm. from Joseph E. Connarton, City Clerk, transmitting a comm. from Councillors William Walsh & Sheila Russell, members of the Council Committee on Rent Control, recording their dissenting opinion Re: findings & recommendations of said Committee relating to the issue of capital expenditures in rent-controlled properties, as discussed in hearings in 1988.

In City Council,

January 30,1989

1-30-89

Referred to the City Manager.

Copy sent to the City Manager 2/1/89 ah