

December 7, 2009

Vacancy Decontrol

Background

The most recent survey of rent-controlled communities by the New Jersey Apartment Association shows a reduced number of towns with stringent rent control (12) and a declining number of towns with any form of rent control. This follows the national trend, which has seen 34 states adopt specific legislation prohibiting rent control and an additional 12 in which rent control is not permitted. Four states plus the District of Columbia allow rent control. Of the four states that permit rent control, Maryland has it in only one small town. New York and New Jersey represent most of the rent control communities in the country, with about 120 ordinances in New Jersey alone, although many of these cover only mobile homes and/or senior citizens.

The answer to rent control is a resounding NO in more than 450 New Jersey communities where rent control either never existed or has been abolished.

The topic of tonight's hearing is vacancy decontrol. Vacancy decontrol recently was adopted by Referendum in Morristown. In Belleville and Bloomfield apartments have been permanently decontrolled upon vacancy. Lodi dissolved its rent control ordinance, calling "a waste of money." In 1999 California, the state with the most rent controlled communities outside of New Jersey, adopted a statewide law requiring full vacancy decontrol. New York is decontrolling at a rapid pace under a 1997 legislative act geared to creating tax equity in New York City and State, where rent control had provided a sweeping subsidy not based on need, but based on political agenda.

Policy Discussion

Mile Square Taxpayers Association advocates for a decontrol/recontrol regime in Hoboken, whereby each apartment is decontrolled upon a vacancy but becomes immediately under rent control for the duration of the tenancy. This provides a tenant with the ability to predict their housing budget and the Council to maintain controls of rent increases in perpetuity. As social legislation, there can be some justification for maintaining a housing-budget platform, similar to what HUD and other government agencies impose. Those programs have many dynamics absent in rent control, including price increases to cover additional expenses and the expiration of the program and the return of the real estate to market pricing.

There is no justification for the absence of full vacancy decontrol in Hoboken. Restrictive controls only have a place in the rent control regime when there is a “housing emergency” as required by statute. Recent increases in vacancy rates and decreases in market rents show that there is no housing emergency in Hoboken.

The benefits of decontrol include:

- no existing tenant is affected by vacancy decontrol – they are all permanently protected by rent control and their rents can only increase as allowed annually by the Council.
- improvements to, and modernization of, the existing housing stock occur when rents are permitted to raise to market upon vacancy;
- preservation of rental units is realized rather than conversion to condominium;
- improved fiscal health is realized through growing real estate tax ratables.

Some arguments against vacancy decontrol include stalking horses that have no relevance in practice. Myths of restrictive controls include:

- a) Affordable housing. Rent control is consumer protection legislation and not affordable housing legislation. Applicants with limited incomes or facing financial difficulties are seen as higher risk to landlords and are unlikely to have their applications approved. This results in below market rents being charged to new residents of Hoboken whose incomes exceed \$100,000 per year.
- b) Protection for local residents. Applications for apartments in Hoboken are more than 80% generated from people moving to Hoboken from other locations.
- c) Prevent harassment. Harassment is a crime in New Jersey punishable by incarceration. We have found no instance of a conviction of criminal harassment based on a landlord seeking vacancy decontrol as a result of this very effective disincentive. In Morristown the Referendum assured harsh penalties for harassment, including the loss of vacancy decontrol, and not one credible complaint of harassment was filed.
- d) Owners don't make improvements even when there is vacancy decontrol. In Morristown more than \$7.5 million in improvements were undertaken in the year following vacancy decontrol; and in New Brunswick an “earned” vacancy decontrol was enacted to ensure reinvestment.

Issues to Study

Mile Square Taxpayers Association has surveyed some of its members on applications for vacant apartments and encourages the city to affirm its findings by establishing:

- turnover rate.
- percentage of turnover to new residents versus existing Hoboken residents.
- difference between market and controlled rents and the impact on property taxes from bringing vacated units to market rent.
- economic impact of renovations to residences.
- prospect of adding new fees and revenue streams to permit vacancy decontrol and/or other modifications of the rent leveling ordinance.

Certification Requirement and Timeliness of Filing Procedures

MSTA has testified repeatedly on the modernization of the rent control ordinance; the reconstruction of the rent leveling office; and new rent leveling policies and procedures. The topics of Certification Requirement and Timeliness of Filing Procedures are obviated if approached within a construct that modernizes the rent control ordinance and its administration:

- New Base Year. because the records in the rent leveling office are corrupted to the point of unconstitutionality based on a judicial decision, backfilling of records is an immaterial act. Instead, a new base year with a period of repose provide a clean solution to the issue of records and history. It has been argued that such a move deprives existing and past residents of their rights, in truth, the misadministration of the office has already deprived them of those rights based on its inapplicability. Instead, a phase-in of a new regime will allow those residents within the period of repose to assert any claim they might have, and over the period of repose all prospective past claims will either be considered or expire;
- Affirmative Administration. future claims will also be obviated if the rent leveling office works form an affirmative, rather than reactive, posture. By requiring rent registrations and imposing strict fines for violators, the rent leveling office will be able to use registrations filings as its record-keeping base. By automating these records with a simple computerized database program, calculating allowed increase will be automated and provide a means of comparing registered rents with allowed rents on every unit in town. This will have the effect of vastly reducing required staff; eliminating litigation; and allowing tenants the means of certifying allowed rents from the outset of their tenancy.