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IN THE SUPREME COURT OF THE STATE OF DELAWARE

SANDHILL ACRES MHC, LC, Respondent Below, Appellant, v. SANDHILL ACRES HOME OWNERS ASSOCIATION Petitioners Below, Appellee.	)	No. 525, 2018 UPON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN C.A. NO. S17A-08-001 ESB

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASE LAW

STATUTES AND OTHER AUTHORITIES

ARGUMENT[1]

The Superior Court's Opinion should be reversed and the Arbitrator's Decision affirmed. First, SAHOA implicitly conceded that $7.93 of the market rent increase was justified. More fundamentally, the record contains sufficient evidence for this Court to affirm the Arbitrator's Decision that Sandhill met the threshold requirement of Section 7042(a)(2). The Rent Justification Act permitted Sandhill to meet that requirement by showing it had made an investment directly related to operating, maintaining, or improving the Community. Sandhill did so by showing it installed a $12,185 water filtration system that benefited the homeowners. When Sandhill incurred that elective expense, the cost side of its ledger went up, meaning its expected return declined. Sandhill was not obligated to prove its profits declined or otherwise open its books; it merely had to produce "evidence suggesting the return on its property declined."[2] An elective improvement cost is a standalone expense. To show its costs increased, Sandhill need only show it incurred this new type of expense – an undisputed elective improvement cost.[3] As a result, having met this

[1] Sandhill uses the same defined terms and abbreviations as in the Opening Brief.

[2] *Bon Ayre Land, LLC v. Bon Ayre Comm. Assoc.* ("*Bon Ayre II*"), 149 A.3d 227, 235-236 (Del. 2016) ("This statutory requirement is a modest one, which only requires the landowner to produce evidence suggesting that the 'return' on its 'property' has declined.").

[3] *Bon Ayre II* at 235-236 (explaining the "landowner must show some increase in the costs").

threshold requirement, the Arbitrator correctly found that Sandhill was entitled to a market rent increase.

I. SAHOA'S ARGUMENT IN THE ALTERNATIVE DOES AMOUNT TO A CONCESSION PERMITTING $7.93 OF THE MARKET RENT INCREASE ABOVE THE CPI-U RATE PORTION.

SAHOA's arguments below included concession that $7.93 of the market rent increase was justified. SAHOA interprets "directly related" to mean that "the proposed rent increase is directly [proportionate] to operating, maintaining or improving the manufactured home community[.]" 25 *Del. C.* § 7042(a)(2). By making that argument, SAHOA necessarily concedes that, because the water filtration improvement cost incurred by Sandhill, calculated by SAHOA's own methods, amounts to $7.93 per lot per month, Sandhill has justified at least that portion of its rent increase. Therefore, SAHOA's argument implicitly concedes that Sandhill has shown that the $7.93 portion of its market rent increase is justified.

SAHOA now argues that it did not concede any portion of the rent increase – aside from the CPI-U rate portion – and was challenging the entire rent increase sought by Sandhill. SAHOA challenges Sandhill's rent increase on the basis that "Sandhill failed to provide evidence of a decrease in profits," and so SAHOA submits Sandhill cannot receive any rent increase above the CPI-U rate. In other words, because SAHOA challenged the threshold of Sandhill's entitlement to a rent increase, SAHOA contends it made no concession about a portion of the rent increase. (Ans. Br. at 23.)

But SAHOA's briefing below does not support this argument. SAHOA's

argument below that the Arbitrator's misapplied *December Corporation*[4] included an implicit concession that the $7.93 portion of the rent increase was justified:

> SAHOA also never argued that the expense cannot be used as evidence to show that a *portion* of the rent increase is "directly related" under Section. 7042(a)(2). As discussed *supra*, SAHOA instead has argued that the cost of the water filtration systems is not sufficient evidence to prove that Sandhill's *total* rent increase was "directly related."

(AEOB at A-500 – 501 (emphasis in original).) Because SAHOA has interpreted "directly related" to mean "directly proportional," SAHOA has consistently argued that the water filtration cost is insufficient to prove the *entire* amount of the market rent increase is "directly related," and that it is only enough to show that a *portion* is "directly related." Thus, SAHOA's position is that the only portion of the market rent increase that is "directly related" is the $7.93 per month expense incurred on the water filtration improvement. SAHOA has therefore conceded that Sandhill had a reduction in its expected returns of $7.93 per month per lot "directly related" to improving the Community for the benefit of its homeowners.

Given SAHOA's implicit concession about the $7.93 portion of the market rent increase, the Superior Court erred by failing to award at least the $7.93 per month portion of the market rent increase that both parties agree is necessarily "directly related" to maintaining, operating, and improving the Community.

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[4] *December Corp. v. Wild Meadows Home Owner Ass'n*, 2016 WL 3866272 (Del. Super. Ct. July 12, 2016).

II. SANDHILL SATISFIED ITS OBLIGATIONS UNDER § 7042(A)(2); THEREFORE, IT WAS ERRONEOUS FOR THE SUPERIOR COURT TO OVERTURN THE ARBITRATOR'S AWARD OF MARKET RENT.

This case turns on what disclosure is required under Section 7042(a)(2) and this Court's *Bon Ayre II* decision.[5] *Bon Ayre II* requires that a community owner produce some "evidence suggesting that the 'return' on its 'property' has declined." *Bon Ayre II* at 235-236. Section 7042(a)(2) and *Bon Ayre II* clearly set forth three areas in which costs can increase for community owners – operating costs, maintenance costs, or improvement costs. Improvement costs are standalone expenses that, in and of themselves, represent an increase in costs. Sandhill's disclosure of its improvement investment costs and related invoices and pictures fully satisfied the disclosure requirements of § 7042(a)(2).

A. SAHOA conflates Sandhill's justification requirements by incorrectly presuming "directly related" means "directly proportional" and that all 128 lots incurred a $35 per month increase.

SAHOA argues that the improvement expense of $12,185 is not sufficient to show that its increase is "directly related" because Sandhill must show an expense to justify a rent increase of $53,760. SAHOA interprets Section 7042(a)(2) to mean that the increase must be "directly proportional" to operating, maintaining or improving the Community. SAHOA then presumes that all 128 lots within Sandhill

[5] *Bon Ayre Land, LLC v. Bon Ayre Community Assoc.*, 149 A.3d 227 (Del. 2016).

are being increased at a rate of $35 per month.

SAHOA's statutory interpretation argument is not correct. Had the General Assembly intended § 7042(a)(2) to mean "directly proportional," it would have used that term. Instead, Section 7042(a)(2) says the increase must be "directly related to operating, maintaining or improving" the community. "When interpreting a statute, '[t]he most important consideration for the court . . . is the words the General Assembly used in writing it."[6] Using the specific words in the Rent Justification Act, this Court in *Bon Ayre II*, in both the majority and dissenting opinions, interpreted "directly related" to mean related to the "benefits and costs of living in the community." *Bon Ayre II* at 235. Nowhere in the Rent Justification Act or the case law is "directly related" explicitly or implicitly interpreted to mean "mathematically related" or "directly proportional."

Even if SAHOA's interpretation of § 7042(a)(2) was correct, the factual premise of SAHOA's argument is flawed, for two reasons. *First*, there are only eleven lots at issue in this appeal. None of the remaining 117 lots disputed their rent increase. At least seven of those lots were already paying the $455 market rent rate,[7]

[6] *Pot-Nets Coveside Homeowners Ass'n v. Tunnell Cos., L.P.*, 2015 WL 3430089, at *10 (Del. Super. Ct. May 26, 2015); *Bon Ayre II* at 236 ("But, in giving effect to the plain meaning of the word 'and,' we reflect the importance that the General Assembly's chosen words rightly have in our approach to statutory interpretation.").

[7] A-0437 (Arb. Trans. at 46).

and other lot rental rates were already within less than $35 of the market rent rate. Thus, SAHOA's supposition that 128 lots increased at $35 per month is misleading. Second, SAHOA's math is wrong. Using SAHOA's average increase of $35 per month, the total annual increase amount for all eleven lots is $4,620. Only those eleven lots can be used to evaluate SAHOA's proportionality argument. Looking at the eleven actual increase amounts in the record, the exact increase amount in dispute for these elevent lots is a monthly increase of $390 for a yearly increase of $4,680.[8] That amount is about one-third of the water filtration improvement cost used to justify the rent increase.

SAHOA's argument, taken to its logical conclusion, shows that the rent increase sought is justified. SAHOA argues that a market rent increase can be targeted to only certain homeowners (Ans. Br. at 33) and that the increase costs required by *Bon Ayre II* be "directly proportional" to the rent increase. So, according to SAHOA's argument, the operating, maintenance, or improvement cost used to justify the rent increase must be equal to or greater than the rent increase sought. Applied here, Sandhill is using an improvement investment cost of $12,185 to justify a rent increase for the eleven homeowners of $4,680. As a result, even under SAHOA's incorrect and burdensome interpretation of "directly related" as "directly

[8] A-0014, A-0019, A-0024, A-0034, A-0039, A-0049, A-0077, A-0087, A-0097, A-0102, and A-0112.

proportional," Sandhill's disclosure of an investment improvement cost of $12,185 satisfied § 7042(a)(2)'s requirement. Thus, if SAHOA's argument is correct, the Superior Court erroneously reversed the Arbitrator's Decision.

B. Sandhill satisfied § 7042(a)(2) by showing that it incurred an investment expense of $12,185 in its Community.

Sandhill satisfied *Bon Ayre II*'s "modest" burden under § 7042(a)(2) by showing it incurred an investment expense of $12,185 for a water filtration system. With that burden met, Sandhill could pursue its market rent increase.

Before a community owner can increase a homeowner's rent rate, it must first satisfy certain threshold conditions. The community owner must show that it has not been found in violation of the Act and that the increase is "directly related to operating, maintaining ***or*** improving the manufactured home community." 25 *Del. C.* § 7042(a)(2) (emphasis added).

Bon Ayre II interpreted that provision to mean that a "landowner must show that its original expected return has declined, because the cost side of its ledger has grown." *Bon Ayre II* at 234. To meet that test, this Court, giving weight to the entire statute and the three cost categories in § 7042(a)(2), specified that an investment expense will show that the cost side of its ledger has grown. Specifically, *Bon Ayre II* states that if "a landowner invests in its development, and therefore has 'improve[ed]' the community, it can also reap the reward from that investment through higher-than-inflation rent increases." *Id.* The *Bon Ayre II* Court held that

to be "directly related," the expense must benefit the community. *Id*. at 235.

Here, Sandhill provided sufficient evidence to satisfy its "modest" burden under § 7042(a)(2). It fully disclosed its investment expense of $12,185 on a water system investment cost directly related to improving the Community for the benefit of the homeowners. Given that the annual increase Sandhill is seeking from the SAHOA is only $4,680, this investment expense is more than enough to satisfy even SAHOA's erroneous application of "directly related." Sandhill thus could justify its increase based on market rent under § 7042(c)(7), and Sandhill's market rent evidence and justification was uncontested.

C. Sandhill provided sufficient evidence suggesting that its expected return had declined.

Sandhill provided sufficient written evidence to suggest that its expected return had declined. *Bon Ayre II* stated that a community owner must show its "expected return has declined, because the cost side of its ledger has grown." *Bon Ayre II* at 234. Sandhill met this requirement in three ways. First, at the informal rent increase meetings, Sandhill disclosed in writing that "costs went up such that [its] return on its property ha[d] declined." (A-0149.) Second, Sandhill presented an invoice and related pictures for the new $12,185 water filtration system. Third, testimony at the arbitration hearing explained that an increase in sewer costs was discussed with the homeowners at both meetings and that the homeowners were

informed the NOI had decreased.[9] This written and testimonial evidence was sufficient to "suggest[] that the 'return' on its 'property' has declined" and it was sufficient under 25 *Del. C.* § 7043(b). *Bon Ayre II* at 235-236.

What's more, SAHOA's own testimony acknowledged that it had received sufficient evidence that Sandhill incurred significant expenses on the sewer system. Mr. Ray testified: "Septic issues being pumped. A lot of the homes across the street, down the road, all over getting pumped serval times a week, a couple and three times a week." (A-0310.) On cross examination, Mr. Ray confirmed there was a lot of work being completed on the septic system:

> Q Okay. And you've seen a lot of work being done in the community. You mentioned calls about sewer, the trucks out there regularly pumping?
> A They are regularly pumping two, sometimes three times a week.
> Q And that's currently happened in this past year, constantly doing work?
> A It's constantly being pumped every week, not just in the last year but in the last week.

(A-0313 (Arb. Trans. at 136).) Mr. Dodge's testimony described the extensive work Sandhill is doing in the Community, particularly on the sewer system.[10] Thus, the

[9] A-0292 (Arb. Trans. at 51 ("I specifically mentioned as one of them the sewer costs that had gone up as well as other operating expenses."); A-0295 (Arb. Trans. at 62 (explaining that *specific numbers* relating to the decrease NOI and the increased sewer costs, which were discussed at both rent increase meetings, were provided to the homeowners at one meeting)).

[10] A-0315-0316.

written statement informing the homeowners that Sandhill's "costs went up such that [its] return on its property ha[d] declined," together with the discussion between the homeowners and Sandhill at the rent increase meetings, as evidenced by the testimony at Arbitration, is sufficient evidence in the record to suggest that Sandhill's expected return had declined. Thus, this Court should affirm the Arbitrator's finding that Sandhill complied with §§ 7042(a)(2) and 7043(b).

Finally, it would be erroneous for this Court to now require Sandhill to disclose more books and records based on the *Donovan Smith* decision, for two reasons. First, the rent increase meetings, arbitration, and Superior Court appeal occurred in 2017. At the time of those events, none of the case law required a specific kind of disclosure for a community owner seeking market rent increases. This Court's *Donovan Smith* decision was issued after those events. Second, SAHOA, like the homeowners in *Donovan Smith*, did not seek information about Sandhill's costs of operation before the arbitration hearing.[11] Instead, SAHOA simply contested that Sandhill's voluntary disclosure of its limited books and records was not sufficient to satisfy § 7043(b).[12] Given the lack of specific disclosure requirements in the case law, the lack of such a mandate in the Rent Justification

[11] *Donovan Smith HOA v. Donovan Smith MHP, LLC,* 190 A.3d 977, at *3 (Del. 2018).

[12] And SAHOA did not dispute the investment cost. A-0282 (Arb. Trans. at 10).

Act, and the lack of SAHOA's demand for such written records before Arbitration, Sandhill acted in good faith and consistent with the mandates in Section 7042(a)(2) and *Bon Ayre II* to meet its "modest" burden.

D. Sandhill is not required to show its profits declined.

Despite repeated pleas from homeowners to the Legislature and the Courts, nothing in § 7042(a)(2) or *Bon Ayre II* requires a community owner to disclose records revealing their profit margin or show that their "profits" have decreased.[13] Rather, the Rent Justification Act seeks to provide the community owners with a way "to receive a just, reasonable and fair return on their property," while protecting homeowners from "unreasonable and burdensome" rent increases by permitting increases limited to fair market rent. 25 *Del. C.* §§ 7040, 7042(c)(7).

With this legislative intent in mind, *Bon Ayre II* does not require the community owner to reveal its profit margins to homeowners. While a community owner cannot merely show that "some costs" were incurred, if a community owner can show an improvement investment cost in its community that benefits its homeowners, then that community owner is entitled to an increase above CPI-U.

[13] Just as SAHOA wants to substitute "proportionate" for "related," it wants to replace this Court's use of "expected return" with "profits." While these terms are certainly related, they are not perfect analogs of one another and their distinct meanings are significant in interpreting the Rent Justification Act.

E. Despite SAHOA's contrary arguments, Sandhill is seeking a market rent increase and nothing more.

Sandhill sought to justify its rent increase to market rent under § 7042(c)(7), and nothing more. The homeowners represented by SAHOA were paying below market rent for their lots in the Community. Sandhill, wanting to receive a fair return on its investment while not burdening the homeowners with an unreasonable rent amount, chose to limits its increase to the market rate. Sandhill noticed a rent increase under § 7042(c)(7) to market rent.[14] Its notification to homeowners showed that rent would be $455 at the start of its lease term because that was the market rent rate for the Community.

Sandhill did not use its increase in sewer costs or its investment expense to calculate its monthly rent rate. Sandhill is not seeking a rent increase under the Section 7042(c) factors related the cost of capital improvements or to changes in operating or maintenance expenses. Instead, Sandhill used those increased expenses to satisfy the preliminary requirements of Section 7042(a). Specifically, Sandhill used those increased expenses to show that its increase was directly related to operating, maintaining, or improving its Community, and *Bon Ayre II* provides that such a showing is possible "if a landowner invests in its community[.]" *Bon Ayre II*

[14] *Supra*, n. 8.

at 234. Thus, Sandhill could use the § 7042(c) factors to justify its rent increase above CPI-U. Sandhill did so using the § 7042(c)(7) market rent factor.

F. Section 7042(a)(2) and *Bon Ayre II* permit a community owner to increase its rent above the CPI-U rate based on an improvement expenditure.

Under *Bon Ayre II*, because Sandhill invested in an improvement in the Community, Sandhill incurred a new, increased expense and thereby satisfied requirements of Section 7042(a)(2). An improvement expense is a standalone cost that can satisfy Section 7042(a)(2) without a year-to-year comparison.

There are three ways to satisfy Section 7042(a)(2)'s threshold requirement: 1) produce records showing that the community owner's operating expenses have increased; 2) produce records showing that the community owner's maintenance expenses increased; 3) produce records showing that the community owner incurred expenses improving the community.

Alternatives (1) and (2) require a community owner to show a difference in operating or maintenance expenses by showing a new operating or maintenance cost[15] or by showing that a reoccurring operating or maintenance cost changed on a

[15] For example, before the revision to the Act requiring community owners to maintain the life and health of trees at least 25 feet in height or having a stem/trunk larger than 6 inches in diameter, a community owner could have had no maintenance or operation expenses related to trees. However, in the years following Section 7006(a)(13)(l)'s enactment, it is likely a community owner incurred expenses maintaining trees in the community, or may have hired an arborist to inspect the health of trees in the community. These maintenance and operation costs would

year-over-year basis. But, under alternative (3), an improvement expense itself represents an increase on the cost ledger. No comparison is necessary because an improvement cost is a new expenditure. There is nothing to compare it to.

Stated differently, reoccurring annual maintenance and operating expenses may require a year-over-year analysis to show a cost increase. But a new maintenance cost, a new operating cost, or an improvement expense on their own represent an increase on the cost ledger.[16]

SAHOA contends that Sandhill and FSMHA misinterpret the statute and *Bon Ayre II*. But it is SAHOA who fails to consider these three separate categories in which community owners incur expenses in their communities – operating, maintaining, and improving. Section 7042(a)(2) shows the Legislature intended for community owners to operate, maintain, and improve their communities in order to have the opportunity to justify a rent increase above the CPI-U rate. The *Bon Ayre II* Court understood that community owners must incur expenses annually in the

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have been new costs representing an increase on the ledger without comparison to any other year.

[16] This tracks the full reading of the Rent Justification Act. A community owner must simply show its amount of capital improvements, its cost of repairs, or monies given in rental assistance in the community for the year to justify an increase under § 7042(c)(1)(6) and (8). Yet, for an increase based on taxes, utility charges, insurance and financing costs, or ordinary maintenance and repairs, the community owner must show "changes in" in these expenses by conducting a year-over-year analysis. *See* § 7042(c)(2)(3)(4) and (5).

operation and maintenance of their communities; yet, investments in the community are not necessarily made annually. As a result, *Bon Ayre II* required that, for a community owner to secure a rent increase above the CPI-U rate, it must show that "the cost side of its ledger has grown", and such a showing is made where "a landowner [has] invest[ed] in its development." *Bon Ayre II* at 234.

Applied here, Sandhill's investment in the Community's water filtration system was, on its own, a Community improvement that met the requirements of Section 7042(a)(2). Sandhill did not need to replace the Community's water filtration system. This was an optional expense. It was not part of normal annual maintenance requirements for the water system, which, in turn, may have required a year-over-year comparison to show a cost increase. As a result, the water improvement investment stands on its own. There was nothing to compare it to, so Sandhill was not required to open its books or provide additional historical records about it. The Arbitrator understood this, finding that "[i]t seems clear that the water filtration system was clearly a benefit to the community and the cost thereof is related to improving Sandhill Acres." (A-0457.) Because the water filtration improvement expense stands on its own, full disclosure of such an expense satisfies a community owner's "modest" obligations under the Rent Justification Act. Thus, as contemplated by *Bon Ayre II*, by making an improvement in the Community, Sandhill incurred a new, increased expense and thereby satisfied the requirements

of Section 7042(a)(2).

G. Only Sandhill's and FSMHA's interpretations give full meaning to the entire Rent Justification Act.

Sandhill and FSMHA's interpretation of the Rent Justification Act are the only interpretations that give full meaning to the entire Act. SAHOA argues that those interpretations eliminate portions of the Rent Justification Act. To the contrary, SAHOA's interpretation is the one suffering from that flaw.

SAHOA argues that to satisfy § 7042(a)(2), the "directly related" expense must equal the amount used to justify the rent increase. If that were the case, why would the Legislative have included subsection (c)? Instead, it could have simply listed the factors set forth in § 7042(c) in § 7042(a)(2) and stated: "the cost of the increase must be in direct proportion to the increase in cost of operating, maintaining or improving the manufactured home community by showing an improvement expense, repair costs, the amount of rental assistance provided under § 7021A, increase in taxes, increase in utility charges, increase in insurance and financing costs, or increase in reasonable operating and maintenance expenses." The Legislature chose not to do that.

Courts prefer to give statutes their ordinary meaning.[17] Section 7042(a)(2) says the increase must be "directly related to operating, maintaining or improving"

[17] *Pot-Nets*, 2015 WL 3430089, at *10.

the community. Consistent with this statutory language, *Bon Ayre II* interpreted "directly related" to mean related to the "benefits and costs of living in the community." *Bon Ayre II* at 235. The Rent Justification Act states that if a community owner did not violate the Act and its increase is directly related to benefiting its community, then it can use the factors under subsection (c) to justify an increase greater than the CPI-U rate without showing the increase is directly proportional to the costs of operating, maintaining, or improving the community.

Neither Sandhill nor FSMHA argue that any amount, much less a *de minimis* amount, can be used to show that the increase is directly related to operating, maintaining or improving the community. Rather, the community owner must incur some good faith expense benefiting its community before it can use the subsection (c) factors to justify an increase above the CPI-U rate. For a market rent increase, a community owner cannot simply invest a penny to satisfy § 7042(a)(2). At the same time, it does not mean the community owner must spend an amount equal to its market rent increase. Were the community owner to make such expenditures, it could increase the rent under factors other than market rent, making factor (c)(7) meaningless, and factor (c)(7) is the only factor that limits a community owner's rent increase amount.

There is likely no exact amount that can be specified to inform community owners how much they must invest in their community before they may justify a

rent increase. It is likely somewhere between SAHOA's mischaracterization of Sandhill's argument that a penny is sufficient; and also far less than the absurdity of SAHOA's argument that it must be in the same amount as their misleading calculations of the rent increase. Here, Sandhill has incurred an expense of $12,185 and is only seeking an increase of $4,680 per year. These facts are sufficient to satisfy § 7042(a)(2)'s good faith test.

SAHOA incorrectly argues that no specific types of expenses are required to satisfy the "directly related" prong. Section 7042(a)(2) specifically says the increase must relate to operating, maintaining, or improving the community. Those are the three types of expenses – operating, maintaining, or improving – that satisfy Section 7042(a)(2). SAHOA's argument is based on the mistaken conclusion that increased expenses relating to "ordinary repair, replacement and maintenance" cannot be used to justify a rent increase. (Ans. Br. at 33.) Contrary to SAHOA's position, the Rent Justification Act does allow community owners to recuperate costs of "ordinary repair, replacement and maintenance." Under Section 7042(c)(5), a community owner can notice an increase for "changes in reasonable operating and maintenance expenses[.]" 25 *Del. C.* § 7042(c)(5). SAHOA is conflating two independent sections of the Rent Justification Act.

In sum, the only way to give full meaning to the entire Rent Justification Act is to interpret § 7042(a)(2) as a provisional, gatekeeping requirement. Under that

interpretation, the community owner is required to make a good faith showing that its rent increase is directly related to operating, maintaining, or improving the community. This is accomplished by submitting evidence of some increase in operating, maintaining, or improving expenses that benefit the homeowners in the community. Once a community owner satisfies this threshold requirement, it may seek a rent increase using the factors stated in Section 7042(c).

Thus, the Arbitrator correctly analyzed Sandhill's rent increase justification and it was erroneous for the Superior Court to overturn the Arbitrator's Decision.

H. SAHOA's application of *Donovan Smith* is erroneous.

SAHOA contends the facts here drastically differ from the "case-specific, narrow basis" of *Donovan Smith*. While Sandhill agrees that *Donovan Smith* was decided on a "case-specific, narrow basis," in both cases the parties argued over Section 7042(a)(2)'s "directly related" issue, and in both cases the homeowners failed to demand information on the community owner's cost of operation before arbitration. Without a demand from SAHOA, Sandhill produced competent evidence of its increased improvement expense as well as its increased operating and maintenance costs. The "directly related" issue was adequately argued here and was correctly decided by the Arbitrator, and the record created in the Arbitration is sufficient justification for the Arbitrator's Decision.

SAHOA argues that the Arbitrator had to find evidence "sufficient to satisfy

'the modest requirement of producing evidence that suggests the return on the property has declined.'"[18] The Arbitrator correctly found that Sandhill satisfied its modest burden to put forth evidence satisfying Section 7042(a)(2) by showing its increased improvement expense, and that expense suggests Sandhill's expected return declined. If this Court decides more information must be disclosed, Sandhill made that showing by informing its homeowners in writing that its costs increased, causing a decrease in its expected return, and then discussing the well-known costs related to the Community's septic system. In the end, there is substantial evidence in the record supporting the Arbitrator's Decision and it should be affirmed without remand.

A costly and time-consuming remand is unnecessary because the record is already complete. SAHOA never requested additional evidence from Sandhill before the arbitration hearing. And Sandhill informed the homeowners in writing that its costs increased and its expected return decreased. Still, out of an abundance of caution, the Arbitrator evaluated the investment expense on its own, which, for all of the above reasons, is sufficient to satisfy Section 7042(a)(2)'s modest burden.

A remand is necessary only if this Court finds the Arbitrator failed to consider certain evidence. If this Court determines the evidence relating to the increased

[18] Ans. Br. at 36 (quoting *Donovan-Smith MHP v. KDM Dev. Corp.*, May 4, 2019 Arbitration Decision).

sewer costs or decreased NOI should be ordered through discovery (the disclosure of which was not demanded by SAHOA before Arbitration) and considered by the Arbitrator, then this Court should require that the record be reopened for limited discovery.

CONCLUSION

For these reasons, this Court should reverse the Opinion and affirm the Arbitrator's Decision as it is free of legal error.

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