COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

DOCKET NO. 2024-P-0857

Katherine Dant and Cindy DeLonge,

Plaintiffs-Appellants

v.

City of Chicopee Mobile Home Rent Control Board,

Defendant-Appellee

and

M & S Bluebird, Inc.,

Intervenor-Appellee

Appeal from the Western Division Housing Court

(Docket No. 22-CV-446)

Plaintiffs' Application for Further Appellate Review

Date: September 4, 2025

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I. **REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW**

Pursuant to Mass. R.A.P. 27.1, Plaintiff-Appellants Katherine Dant and Cindy DeLonge (the "Tenants") hereby request that the Supreme Judicial Court grant further appellate review of the application of the Attorney General's regulations promulgated under G.L. c. 140, §32S to mobile home parks subject to statutory rent control regimes.

Specifically, the Tenants request further appellate review of the Appeals Court's holdings that (1) 940 C.M.R. 10.03(2)(m) does not apply to ongoing operating expenses and that (2) there may be a conflict between the rent control statute and the Attorney General's regulations that permits the City of Chicopee Rent Control Board to approve a rent increase where the Owner would otherwise be barred from seeking such an increase.

II. **STATEMENT OF PRIOR PROCEEDINGS**

The Tenants are low-income and elderly residents of the BlueBird Acres Mobile Home Park (the "Park") in Chicopee, Massachusetts. The Park is owned by M&S BlueBird, Inc. (the "Owner").

In 2017, the Massachusetts Department of Environmental Protection ordered that the Park be brought into compliance with Title V regulations governing disposal of waste-water by installing sewer lines connected to the municipal sewer system.

The City offered to build a necessary pumping station to serve the Park if the Owner paid $55,000 per year over 20 years in what it termed a "Betterment Fee." In order to recover the costs of the Betterment Fee and sewer fees, the Owner unlawfully sought an increase in the maximum allowable rent from the City of Chicopee Rent Control Board. The Tenants objected that in filing the petition the Owner was in direct violation of 940 C.M.R. 10.03(2)(m), which prohibits mobile home park operators from

> [seeking] to recover costs or expenses resulting from any legal obligation of the operator to upgrade or repair sewer, water, gas, or electrical systems to meet minimum standards required by law, unless such standards first become effective after a tenant has initially assumed residency in a manufactured housing community and unless such costs are recovered as capital improvements in accordance with 940 CMR 10.03(2)(l).

Although the testimony before the Board established that residents of the Park had assumed residency after the DEP standards had been promulgated, and the Owner failed to provide evidence showing he had conformed with 940 CMR 10.03(2)(l),[1] two independent reasons to reject the petition, the Board approved the increase over this objection without providing legal justification.

The Tenants sought judicial review under G.L. c. 30A, § 14 in the Western Division Housing Court arguing that the Board's decision was arbitrary and capricious and not in accordance with law because the Owner was legally prohibited from seeking the rent increase from the Board in the first place. However, the Housing Court held that the Attorney General's regulations did not apply in parks subject to rent control based on an erroneous reading of the Attorney General's regulations.

[1] 940 CMR 10.03 (2)(l) states: "It shall be an unfair or deceptive act or practice in violation of M.G.L. c. 93A for an operator to seek to recover, through lump sum charges, the costs of capital improvements to the community or any home site to the extent such costs exceed $100 in the aggregate, provided that the amortized costs of such capital improvements may (if specifically listed in the occupancy agreement) be recovered from tenants over the useful life of such improvements through community-wide nondiscriminatory rent increases."

The Tenants then sought review in the Appeals Court. The Appeals Court overturned the rationale for the Housing Court decision, holding that the Attorney General's regulations do, in fact, apply in parks subject to rent control.

The Appeals Court nevertheless affirmed the Housing Court's decision with respect to the sewer fees by constructing 940 C.M.R. 10.03(2)(m)'s language prohibiting operators from seeking to recover costs or expenses resulting from the operator's legal obligation to apply only to capital costs not operating expenses.

The Court held that:

> A future, recurring cost for use of a sewer system is not an expense "resulting from" the legal obligation to upgrade. As we read the regulation, it prevents the pass through of certain capital costs – such as the expense of building a new system or overhauling an old one; it does not prevent the recovery of charges from providing a necessary service. Such charges (provided they are reasonable) do not "result from" the upgrade; they result from the necessity of supplying sewer service to the residents, a necessity that preceded the upgrade and exists independently of it.

Dant v. Mobile Home Rent Control Bd. of Chicopee, No. 24-P-857, *11 (Mass. App. Ct., Aug. 15, 2025) (hereinafter, "Decision").

With respect to the Betterment Fee, the Appeals Court remanded the case to the Board to decide whether it was a reasonable operating expense, in which case the Attorney General's regulations would not apply to it, or a capital cost. If the latter, the Appeals Court suggested that it could create a conflict between the rent control statute and the Attorney General's regulations.

The Court held:

> Accordingly, as to the betterment charge there may well be a conflict between the board's enabling statute and the Attorney General's regulation. As noted above, if there is such a conflict then the regulation must yield to the statute, and the board's inclusion of the charge would be affirmed.

Decision, *12.

As explained below, there is no conflict between the board's enabling statute and the Attorney General's regulation. The latter prohibits the Owner from seeking the increase from the Board in the first place.

III. <u>STATEMENT OF FACTS</u>

The Appellants rely on the facts as stated in the decision of the Appeals Court.

IV. <u>THE POINTS WITH RESPECT TO WHICH FURTHER APPELLATE REVIEW IS SOUGHT</u>

The question presented to this Court is whether a mobile home park operator out of compliance with DEP regulations may, after renting lots to residents without providing the required notice in the occupancy agreement, seek to recover costs and expenses resulting from bringing the park into compliance despite the Attorney General's explicit recognition that doing so is an unfair and deceptive business practice.

Specifically, further appellate review is sought with respect to:

1) The Appeals Court's construction of 940 C.M.R. 10.03(2)(m)'s "resulting from" language to apply only to infrastructure costs and not ongoing expenses despite the unfair and deceptive nature of the operator's conduct applying regardless of the type of cost or expense.

2) The Appeals Court's holding that if there is a conflict between the rent control statute and the Attorney General's regulations, the statute must control when the Attorney General's regulation furthers the legislature's goal in prohibiting unfair and deceptive business practices in mobile home parks, such that any conflict is between the rent control statute and G.L. c. 140, §§ 32S.

V. **WHY FURTHER APPELLATE REVIEW IS APPROPRIATE**

A. Interpretation of 940 C.M.R. 10.03(2)(m) is a novel question with far reaching application to all mobile home parks and operators across the Commonwealth; the Appeals Court's decision removes protections from mobile home park tenants whom the legislature and judiciary have consistently sought to protect for 85 years.

The Appeals Court's interpretation of the term "resulting from" in 940 C.M.R. 10.03(2)(m) is inconsistent with the plain-meaning of the words of the regulation, which is broadly framed in keeping with the intent of the legislative and regulatory goal to protect a particularly vulnerable class – elderly and low-income residents. See Greenfield Country Estates Tenants Ass'n v. Deep, 423 Mass. 81, 83 (1996) ("Both the Legislature and the courts of the Commonwealth have recognized that manufactured housing communities provide a viable, affordable housing option to many elderly persons and families of low and moderate income, who are often lacking in resources and_deserving of legal protection."); Layes v. RHP Properties, Inc., 95 Mass. App. Ct. 804, 810-11 (2019) (describing history and development of manufactured housing law).

Despite this history, the Appeals Court decision narrowly constructs the phrase "costs and expenses resulting from" in 940 C.M.R. 10.03(2)(m) to exclude additional operating expenses resulting from the Owner's unlawful acts. The plain-meaning of "resulting from" is the "consequences of" – if the Owner had not been ordered by DEP to bring the Park into compliance with the law, the Tenants would not be charged an increased sewer fee. The sewer fee is a direct result from the need of the Owner to install the sewer system, something he had failed to notify the residents about when they moved into the Park. The legislative and regulatory intent of the unfair and deceptive business practices law in mobile home parks is to prevent mobile home operators from increasing rents without notice to cover increased costs and expenses related to unfulfilled legal obligations.

The Appeals Court's interpretation of the regulation to apply narrowly to capital expenses only allows operators in both rent-controlled and non-rent-controlled parks to take advantage of tenants by locking them into homes without notifying them that the rents may significantly increase, and therefore lower their property values, when the operators are forced into compliance with law.

This decision affects the rights of the thousands of residents of mobile home parks across the Commonwealth, residents who are often elderly, low income, and particularly vulnerable due to the circumstances of owning a home that is not easy to remove. Mobile home parks play an important role in the provision of affordable housing in the Commonwealth, and the Appeals Court's decision puts those residents at risk of unexpected substantial and unaffordable rent increases. Further appellate review of the issue is appropriate.

B. There is no conflict between the rent control statute and G.L. c. 140, § 32S; the Appeals Court's suggestion that the Attorney General's regulation should yield to the rent control statute is erroneous.

The legislature has sought to protect mobile home park tenants both through the Manufactured Housing Act, G.L. c. 140, §§ 32A-32S, and through rent control statutes enacted for specific municipalities such as the City of Chicopee, Acts of 1977, c. 596. These statutes are not in conflict with each other and serve the same goals. The Attorney General's regulation 940 C.M.R. 10.03(2)(m), promulgated under G.L. c. 140, §32S, directly serves to further the legislative goal of protecting mobile home park tenants from unfair business practices.

The Appeals Court's decision states that there may be a conflict between the rent control statute and the Attorney General's regulations, but this analysis is wrong. Given that the Attorney General's regulation in question simply specifies the legislative directive, if there is a conflict it is between the rent control statute and the Manufactured Housing Act, but such a conflict is easily harmonized: the operator cannot engage in an unfair and deceptive business practice by seeking the rent increase from the Board.

The Appeals Court cites to Veksler v. Board of Registration in Dentistry, 429 Mass. 650 (1999) as authority for the proposition that a regulation must yield to a statute, but that case involved a statute that directly provided the right to a hearing, while the Board relied on its own regulations that a hearing was only required in certain circumstances. This is the sort of conflict where a regulation must yield.

The supposed conflict in this case is completely different – the Manufactured Housing Act prohibits mobile home park operators from engaging in unfair and deceptive practices, which are spelled out by the Attorney General. Chicopee's rent control statute regulates the operations of Chicopee's Rent Control Board – to the extent there is a conflict, it is created solely by the operator's unfair, deceptive, and unlawful act of seeking the rent increase in the first place.

The Appeals Court itself earlier recognized that the resolution between a statute and regulation that appear to be in conflict is through harmonizing. See Decision, *9. ("[W]e are mindful that where two statutes are said to conflict, our first task is to determine whether the two can be harmonized, and that principle should apply as well where the allegedly conflicting laws are a statute and a regulation." citing School Comm. of Newton v. Newton Sch. Custodians Ass'n, Local 454, SEIU, 438 Mass. 739, 751 (2003)). Proper harmonizing here would recognize both that the legislature intended to prevent unfair and deceptive business practices in the mobile home park context and that it intended to prevent mobile home park owners in Chicopee from increasing rents arbitrarily beyond what was necessary to achieve a return on investment.

The unfairness of seeking a rent increase to recover costs and expenses resulting from an operator’s own unlawful acts without prior notice is independent of whether or not the mobile home park is subject to rent control. Like other business owners, mobile home park operators in Massachusetts are not entitled to engage in unfair business practices in order to turn a profit – regardless of whether they are subject to rent control.

The contrary holding creates irrationality across mobile home parks in the Commonwealth that are subject to different legal regimes. Park operators subject to statutory rent control regimes will be allowed to engage in unfair and deceptive business practices that park operators not subject to rent control are prohibited from engaging in. Meanwhile, a decision that rests solely on the distinction between statutory and regulatory authority does not create a rule of decision that applies to regulatory, as distinct from statutory, rent control regimes, even though they mimic the statutory language.[2]

VI. <u>CONCLUSION</u>

Because the Appeals Court decision on the application of the Attorney General's regulations to operating expenses leaves all residents of mobile home parks, an essential component of affordable housing in the Commonwealth and a class of tenants the legislature has especially sought to protect, vulnerable to unfair rent increases by constructing the regulations narrowly against their plain meaning, and because the Appeals Court decision on the Betterment Fee identifies a conflict between the rent control statute and the Manufactured Housing Act where none exists and creates inequity within the legal schemes governing mobile home parks, the Supreme

[2] <u>See, e.g.</u>, Acts of 2013, c. 53 (empowering the Town of West Stockbridge to regulate rents by its bylaws).

Judicial Court should take up this case for Further Appellate Review.

Respectfully submitted,
KATHERINE DANT and
CINDY DELONGE,
PLAINTIFF-APPELLANTS,
By their attorney,

Dated: September 4, 2025

/s/ Dan Ordorica

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CERTIFICATE OF COMPLIANCE

I hereby certify, in compliance with R.A.P. 27.1(b) that the foregoing Petition for Further Appellate Review complies with rule 20(a). In compliance with Rule 27.1(b) and 20(a), the brief uses Courier New, 12-point monospaced font, with 10 characters per inch; there are 7 non-excluded pages.

__/s/ Dan Ordorica______

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2025, I served the above *Appellants' Application for Further Appellate Review* in Katherine Dant and Cindy DeLonge v. City of Chicopee Mobile Home Rent Control Board, Docket # 2024-P-0857, upon the attorney of record for each party, via the electronic filing system at EFileMA.com and by email to:

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APPENDIX

24-P-857 Appeals Court

KATHERINE DANT & another[1] vs. MOBILE HOME RENT CONTROL BOARD OF CHICOPEE & another.[2]

No. 24-P-857.

Hampden. April 8, 2025. – August 15, 2025.

Present: Massing, Englander, & D'Angelo, JJ.

Mobile Home. Rent Control, Mobile home, Rent increase. Sewer. Attorney General. Regulation. Statute, Construction. Practice, Civil, Judgment on the pleadings, Reconsideration, Review of action of rent control board.

Civil action commenced in the Western Division of the Housing Court Department on June 28, 2022.

The case was heard by Jonathan J. Kane, J., on motions for judgment on the pleadings, and a motion for reconsideration was also heard by him.

Daniel Ordorica for the plaintiffs.
Timothy J. Ryan for the defendant.
John Moran for the intervener.
Andrea Joy Campbell, Attorney General, & Ellen J. Peterson, Assistant Attorney General, for the Attorney General, amicus curiae, submitted a brief.

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[1] Cindy DeLonge.

[2] M & S Bluebird, Inc., intervener.

ENGLANDER, J. In 2022, the defendant intervener, M & S Bluebird, Inc. (M & S Bluebird, or owner), the owner of Bluebird Acres, a manufactured housing park located in the city of Chicopee (park), sought and obtained a substantial across-the-board increase in its rent charges from the defendant City of Chicopee Mobile Home Rent Control Board (board). The basis for the rent increase was additional expenses that the owner would incur because it was required to connect the park's residents, its tenants, to the Chicopee public sewer system.

The board's enabling legislation sets forth a specific formula for determining rents, which formula establishes a defined rate of return above a park's "reasonable operating expenses." See St. 1977, c. 596, § 3 (a) (c. 596). The plaintiffs, two residents of the park, objected to the rent increase and appealed the board's decision under G. L. c. 30A. The plaintiffs argued that the rent increase violated regulations of the Attorney General that state that it is an unfair or deceptive act or practice in violation of G. L. c. 93A for a manufactured housing community operator "to seek to recover costs or expenses resulting from any legal obligation of the operator to upgrade . . . sewer . . . systems to meet minimum standards required by law." 940 Code Mass. Regs.

§ 10.03(2)(m) (1996).[3] The plaintiffs accordingly contended that the board was barred from using the sewer expenses at issue as a basis for increasing rents.

A Housing Court judge rejected the plaintiffs' challenge, concluding that the Attorney General's regulations "d[id] not apply." We do not agree that § 10.03(2)(m) "do[es] not apply" in the rent control context. Rather, the question before us requires us to construe the enabling legislation for the rent control board, and the Attorney General regulations, and to determine if they are in conflict and harmonize them if reasonable. Cf. School Comm. of Newton v. Newton Sch. Custodians Ass'n, Local 454, SEIU, 438 Mass. 739, 751 (2003) ("In the absence of explicit legislative commands to the contrary, we construe statutes to harmonize and not to undercut each other").

[3] Section 10.03(2)(m) states in pertinent part:

"It shall be an unfair or deceptive act or practice in violation of [G. L.] c. 93A, § 2, for an operator:

". . .

"(m) to seek to recover costs or expenses resulting from any legal obligation of the operator to upgrade or repair sewer, water, gas, or electrical systems to meet minimum standards required by law, unless such standards first become effective after a tenant has initially assumed residency in a manufactured housing community and unless such costs are recovered as capital improvements in accordance with 940 [Code Mass. Regs. §] 10.03(2)(l) . . . ."

As discussed below, we conclude that as to one of the sewer expenses at issue -- the future and ongoing costs for using the city's sewer system -- the board's enabling legislation and the Attorney General's regulations are not in conflict, but rather can be harmonized such that sewer usage costs can be a basis for rent increases through the board. As to the second cost, however -- the betterment charge for the city's new pumping station -- the rent control legislation and the Attorney General regulations appear to be in conflict. Accordingly, as to the betterment charge, we remand the matter to the board for further evaluation of whether those charges constitute "reasonable operating expenses" under the circumstances.

Background. The park, which consists of 170 lots, has been in operation for around sixty years, operated for much of that time by the Grochmal family and its company, M & S Bluebird. The Grochmals sold the park in 2013, and repurchased it in 2016.

Beginning in the 1970s, the park used a septic system to handle sewage. By the time the owner repurchased the park in 2016, the septic system was failing. The Massachusetts Department of Environmental Protection (Mass DEP) advised the owner that even a fully compliant upgrade to the septic system would be sufficient for only seventeen lots under Title 5 of the State environmental code (310 Code Mass. Regs. §§ 15.000 [2016]). Accordingly, Mass DEP and the owner entered into a consent order, which evidently required the owner to connect the park to the city sewer system.

By 2022, the owner had begun the conversion to sewer, and anticipated finishing the work in 2023. The costs associated with the new sewerage arrangement had three components. First, a pumping station was required in order for sewage to flow out of the park, which cost over $2 million. The city of Chicopee installed and paid for the pumping station, and then assessed the owner a "betterment fee" of $1.1 million to be paid over twenty years, or $55,000 yearly (exclusive of interest). Second, costs arose from connecting the park to the sewer system, including installing sewer pipes, connecting pipes to individual lots, and resurfacing the roads after installation, totaling approximately $875,000. Third, there were anticipated future charges for the use of the sewer system; these charges were estimated to be $156,310 yearly.

In January of 2022, the park submitted a request for a rent increase to the board. The board was established pursuant to special legislation, enacted in 1977. See c. 596. Under § 3 (a) of that statute, the board

> "may make such individual or general adjustments . . . as may be necessary to assure that rents for mobile home park accommodations in the city . . . yield to owners a fair net operating income for such units. Fair net operating income shall be that income which will yield a return, after all reasonable operating expenses, on the fair market value of the property equal to the debt service rate generally

available from institutional first mortgage lenders . . ." (emphasis added).

Pursuant to the above formula, the board had previously set the rent at $296 monthly. In 2022, the park sought a $120 increase in monthly rent, to be implemented over time. This increase derived in large part from two of the three costs identified above: (1) the anticipated sewerage usage charges, and (2) the betterment charge. Notably, the park did not seek an increase based on the cost of the connection infrastructure.

Two residents of the park, plaintiffs Dant and DeLonge, objected to the proposed increase before the board, arguing that 940 Code Mass. Regs. § 10.03(2)(m) prohibited the board from including the costs resulting from the sewer upgrade. The board ultimately included the costs, however, increasing the monthly rent from $296 to $416.

The residents then filed a complaint in the Housing Court seeking judicial review under G. L. c. 30A, and requesting a declaratory judgment under G. L. c. 231A that the increase was unlawful. The residents renewed their argument that § 10.03(2)(m) forbade the board from including the betterment and sewerage usage fees as "reasonable operating expenses" of the owner. The Housing Court judge entered judgment for the board and owner, holding that the Attorney General's regulations "do not apply" to manufactured housing communities subject to rent control.[4] This appeal followed.

Discussion. The question is whether it was lawful for the board to include the two sewerage costs at issue as "operating expenses" in determining the park's rent -- or whether, as the plaintiffs urge, the inclusion of these costs violated G. L. c. 93A. There are two provisions of law at issue -- the board's enabling statute, duly enacted as special legislation in 1977, and the Attorney General regulations, duly promulgated in 1996.[5] See c. 596; 940 Code Mass. Regs. §§ 10.00. No party questions the validity of either provision. The key language of the statute establishes the formula for determining rent, which is designed to "yield to owners a fair net operating income" for mobile home parks. See c. 596, § 3 (a). "Fair net operating

[4] The parties filed cross motions for reconsideration. Aside from an adjustment to the timing of the rental increases, the judge denied the motions. Although the plaintiffs' notice of appeal included both the judgment and the denial of their motion for reconsideration, the plaintiffs make no separate argument on appeal as to their motion for reconsideration and we, therefore, consider it waived. See Mass. R. A. P. 16 (a) (9) (A), as appearing in 481 Mass. 1628 (2019).

[5] The Attorney General is authorized by G. L. c. 140, § 32S, to promulgate rules and regulations "necessary for the interpretation, implementation, administration and enforcement of [the Manufactured Housing Act]." The Attorney General's authority to promulgate such regulations is "in addition to, and not in derogation of, the attorney general's authority to promulgate rules and regulations under [G. L. c. 93A, § 2,] with respect to manufactured housing communities." Id.

income," in turn, is defined as "that income which will yield a return, after all reasonable operating expenses, on the fair market value of the property equal to the debt service rate generally available from institutional first mortgage lenders" (emphasis added). Id. As for the Attorney General regulation, it addresses the "costs or expenses" that manufactured housing park operators can charge residents; it prohibits operators from seeking to "recover costs or expenses resulting from any legal obligation . . . to upgrade . . . sewer . . . systems." 940 Code Mass. Regs. § 10.03(2)(m).

As indicated, the plaintiffs argue that the anticipated future charges for the use of the city's sewer system, as well as the betterment charge, are each "costs or expenses resulting from" a "legal obligation . . . to upgrade . . . sewer" -- and thus that the board was precluded from including them as a basis for increasing rent. The board and the owner, on the other hand, argue that the regulation in essence does not matter -- because the enabling statute granted the board the power to include each of the costs as "reasonable operating expenses" under the statute's formula. The board's position is that if the Attorney General regulations conflict with the board's enabling legislation, then the enabling legislation wins out. Perhaps. Certainly, in the case of an irreconcilable conflict between a statute and a regulation, it is the statute that must be followed. See Veksler v. Board of Registration in Dentistry, 429 Mass. 650, 652 (1999), quoting Pinecrest Village, Inc. v. MacMillan, 425 Mass. 70, 73 (1997) ("[T]o the extent that there is a conflict [between a statute and a regulation], the statute must prevail over the administrative regulation"). On the other hand, we are mindful that where two statutes are said to conflict, our first task is to determine whether the two can be harmonized, and that principle should apply as well where the allegedly conflicting laws are a statute and a regulation. See School Comm. of Newton, 438 Mass. at 751 (rule is to construe statutes to harmonize in absence of contrary legislative commands). See also DeCosmo v. Blue Tarp Redev., LLC, 487 Mass. 690, 697-698 (2021) (courts should attempt to harmonize apparently conflicting administrative rules). We consider the board's actions here with those basic principles in mind. Our review is for whether the board acted arbitrarily or capriciously, or committed other error of law. See Ten Local Citizen Group v. New England Wind, LLC, 457 Mass. 222, 228 (2010) ("Under G. L. c. 30A, § 14 (7), we review an agency's decision to determine whether it was not supported by substantial evidence, was arbitrary or capricious, or was otherwise based on an error of law"). See also c. 596, § 4 (provisions of c. 30A applicable to board).

At the outset, the contention that the Attorney General's manufactured housing regulations "do not apply" in those communities that have mobile home rent control boards is incorrect. The regulations are duly promulgated and apply across the Commonwealth. The purpose of the regulations is to define certain acts as unfair and deceptive when performed by an operator of "<u>any</u> manufactured housing community" (emphasis added). 940 Code Mass. Regs. §§ 10.01 and 10.02. The regulations address many types of unfair and deceptive practices affecting manufactured housing parks; they are not limited to the one regulation at issue here. There is no provision that states that the regulations do not apply in rent control communities, nor are we aware of any policy that would suggest such a limitation. Indeed, there are regulations that specifically address certain unfair and deceptive practices in rent controlled communities. See, e.g., 940 Code Mass. Regs. § 10.02(7) (operator in rent control jurisdiction may not increase rent except as permitted by rent control law).

That the regulations apply, however, does not at all resolve whether the charges at issue could properly be included in the board's expense base for determining rents. In addressing that issue, we think it useful to consider the two charges separately. As to the $156,310 per year charge for future sewer usage, that charge qualifies as a "reasonable operating expense" under the board's enabling statute. Indeed, the cost of the park's future use of the city's sewer system is a classic operating expense -- it is a necessary expense of doing business, incurred regularly. It is not different in kind than other utility costs such as electricity or water. See Lindheimer v. Illinois Bell Tel. Co., 292 U.S. 151, 167 (1934) (in context of determining reasonable rate of return for public service, "operating expenses" are "cost of producing the service").

The board accordingly was directed by statute to include the reasonable sewerage cost in the operating expenses considered when determining rent. Moreover, as to this charge we perceive no conflict with the Attorney General regulation. A future, recurring cost for use of a sewer system is not an expense "resulting from" the legal obligation to upgrade. As we read the regulation, it prevents the pass through of certain capital costs -- such as the expense of building a new system or overhauling an old one; it does not prevent the recovery of charges from providing a necessary service. Such charges (provided they are reasonable) do not "result from" the upgrade; they result from the necessity of supplying sewer service to the residents, a necessity that preceded the upgrade and exists independently of it. Accordingly, as to the sewer usage charges we perceive no conflict between the board's enabling statute and the regulation, and that charge was properly included in the board's operating expense base.

The betterment charge presents a different case. On the one hand, the board decided to include the betterment charge as a "reasonable operating expense" of the park. On the other hand, the betterment charge is in fact a cost of the upgrade of the park's sewage disposal system; it is not contested that the pumping station was required to connect the park to the city's sewer system, and that the betterment charge was a condition to the building of the pumping station. The pumping station is unlike the charge for future sewer usage. It is in fact the "upgrade" to the system, and including the charge for the pumping station in the expense base appears to be inconsistent with the Attorney General's regulation.[6]

Accordingly, as to the betterment charge there may well be a conflict between the board's enabling statute and the Attorney General's regulation. As noted above, if there is such a conflict then the regulation must yield to the statute, and the board's inclusion of the charge would be affirmed. See Veksler, 429 Mass. at 652. On the present record, however, we are not

[6] It does not matter for purposes of our analysis that the pumping station is owned by the city rather than the park. Under the circumstances, the betterment charge that the city assessed "resulted from" the park's legal obligation to connect to the sewer system, and accordingly would fall within the language of the Attorney General's regulation.

confident that the board's decision reflects consideration of the proper legal framework. Under the enabling statute, the board is directed to consider all "reasonable operating expenses" of the park. See c. 596, § 3 (a). The board's decision does not address what is an "operating expense" for these purposes, or why the betterment charge qualifies. We assume that one-time capital charges would not qualify as an "operating expense," although we also expect that appropriately amortized capital costs -- that is, a charge for the depreciation of capital assets over time -- would need to be included in the expense base.[7] See Lindheimer, 292 U.S. at 167 ("In determining reasonable rates for supplying public service, it is proper to include in the operating expenses . . . an allowance for consumption of capital"). These are considerations as to which the board has considerable discretion, see Marshal House, Inc. v. Rent Control Bd. of Brookline, 358 Mass. 686, 706 (1971) ("fair net operating

[7] Relatedly, the Attorney General regulations forbid operators from passing on the costs of capital improvements to their tenants as lump-sum charges, but allow operators to recover the amortized costs of such improvements if certain conditions are met. See 940 Code Mass. Regs. § 10.03(2)(l). We note that the Attorney General has published a "guide" to the Manufactured Housing Community Law, which indicates that the Attorney General regulations "generally allow a community owner/operator to recover the cost of improvements over time through rent increases." See The Attorney General's Guide to Manufactured Housing Community Law 27 (Nov. 2017).

income" as used in rent control statute with identical language is flexible definition, "consistent with the overriding requirement of a reasonable return on investment"), but here the board did not explain its reasoning in including the charges.[8] There is the possibility, as well, that the board accepted the (incorrect) argument that the Attorney General regulations did not apply, and thus applied incorrect law. We accordingly vacate the judgment as it applies to the betterment charge, so that the board may reconsider and explain its decision in light

[8] The plaintiffs argue that a charge that violates the Attorney General regulations must be considered "unreasonable" for purposes of the rent control statute essentially as a matter of law. The contention proves too much, as it would have the regulation, in essence, redefine the language of the preexisting statute. Cf. Veksler, 429 Mass. at 652.

We note as well that while the plaintiffs' argument assumes that the Mass DEP sewage disposal requirements at issue were effective and applicable before the plaintiffs came to the park, the board made no findings on this issue, which would be critical to the application of the regulation.

of this opinion.[9,10] In all other respects, the judgment is affirmed and the order denying the plaintiffs' motion for reconsideration is affirmed.[11]

So ordered.

[9] At oral argument, the plaintiffs presented their c. 93A argument as premised upon a "bait and switch" -- that is, the gist of their position at argument was that the plaintiffs had moved to the park under false pretenses, because the operator knew that the septic system would have to be upgraded and that rents would therefore increase. We note that this is not the unfair and deceptive practice theory that was presented to the board, it is not the theory in the administrative record for the c. 30A appeal, and it was not pleaded in the complaint. The theory is not properly before us. See Doe, Sex Offender Registry Bd. No. 10800 v. Sex Offender Registry Bd., 459 Mass. 603, 630 (2011) (in appeal from agency decision, judicial review confined to administrative record).

[10] Our opinion herein is not intended to suggest any particular outcome on remand.

[11] The owner's request for attorney's fees is denied.

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 24-P-857

KATHERINE DANT & another

vs.

MOBILE HOME RENT CONTROL BOARD OF CHICOPEE & another.

Pending in the Western Housing Court

Court for the County of Hampden

Ordered, that the following entry be made on the docket:

So much of the judgment as applies to the rent increase deriving from the betterment charge is vacated and the matter is remanded for further consideration consistent with the opinion of the Appeals Court. The judgment is otherwise affirmed.

The order denying the plaintiffs' motion for reconsideration is affirmed.

By the Court,

Paul Tuttle, Clerk

Date August 15, 2025.