

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**MONSIGNOR NEAGLE APARTMENTS**

**v.**

**BOARD OF ASSESSORS OF  
THE CITY OF MALDEN**

Docket Nos. F340670 & F342242

Promulgated:  
June 4, 2024

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the City of Malden ("appellee" or "assessors") to abate taxes on certain real estate in the City of Malden, owned by and assessed to Monsignor Neagle Apartments ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal years 2020 and 2021 ("fiscal years at issue").

Commissioner Good heard these appeals. Chairman DeFrancisco and Commissioners Elliott and Metzger joined her in the decisions for the appellant. These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.<sup>1</sup>

*Robert J. Gaines, Esq.* and *Bryan D. Gaines, Esq.* for the appellant.

*Nathaniel Cramer, Chair of the Board of Assessors, and Robert Donnelly, Member of the Board of Assessors,* for the appellee.

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<sup>1</sup> This citation is to the regulation in effect prior to January 5, 2024.

## **FINDINGS OF FACT AND REPORT**

Based on the testimony and exhibits admitted into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

### **I. Introduction and Jurisdiction**

On January 1, 2019 and January 1, 2020, the relevant valuation and assessment dates for the fiscal years at issue, the appellant was the assessed owner of a 52,115-square-foot parcel of real estate located at 350 Charles Street in the City of Malden, improved with a seven-story, brick-veneer building ("subject building") completed in 1996, topped with a flat, rubber-membrane roof and containing 76 residential units, each with approximately 550 square feet of living area (together with the real estate, the "subject property"). The subject building has central air conditioning, is heated with gas, and is serviced by two elevators. Individual units with painted sheetrock walls include a living room, one bedroom, a galley kitchen, and one full bathroom. The first floor contains a community kitchen and living/dining room, as well as four coin-operated washers and four dryers. During the fiscal years at issue, T-Mobile leased space on the roof of the building for an antenna pursuant to an agreement entered into in 2014. The subject property accommodates 71 parking spaces and provides affordable housing for very low-income elderly persons in

75 of the subject building's units; an on-site maintenance person occupies the remaining unit. The subject building is considered to be in average overall condition.

For fiscal year 2020, the assessors valued the subject property at \$6,225,300 and assessed a tax thereon, at the rate of \$12.65, in the total amount of \$78,750.05, exclusive of the City's Community Preservation Act surcharge of \$774.85. The appellant timely paid the tax due without incurring interest. On February 3, 2020, the appellant timely filed an application for abatement with the assessors, which was deemed denied on May 3, 2020. On July 14, 2020, the appellant seasonably filed a Petition Under Formal Procedure with the Board.

For fiscal year 2021, the assessors valued the subject property at \$6,627,600 and assessed a tax thereon, at the rate of \$12.29, in the total amount of \$81,453.20, exclusive of the City's Community Preservation Act surcharge of \$802.24. The appellant timely paid the tax due without incurring interest. On January 28, 2021, the appellant timely filed an application for abatement, which was denied on February 24, 2021. On April 29, 2021, the appellant seasonably filed a Petition Under Formal Procedure with the Board.

Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

## **II. Background**

### **A. The HUD Project**

The appellant, formed as Monsignor Neagle Apartments Inc., a Massachusetts non-profit corporation, acquired land from the Roman Catholic Archdiocese of Boston in November of 1995 for \$300,000 and, with financing provided by the United States Department of Housing and Urban Development ("HUD"), constructed the subject building which serves as rental housing for very low-income elderly persons age 62 or older under HUD's Supportive Housing for the Elderly Program established pursuant to Section 202 of the Housing Act of 1959. So long as certain conditions are met, the funding provided by HUD bears no interest and repayment is not required, but all rights to income from the operation of the property are pledged to HUD as mortgagee. Prescribed conditions are contained in a Capital Advance Program Regulatory Agreement ("Regulatory Agreement") and a Capital Advance Program Use Agreement ("Use Agreement") between HUD and the appellant, both dated November 21, 1995, which severely limit income potential and place significant restraints on the use, operation, and transfer of the subject property ("Project") for a period of not less than 40 years from December 1, 1996. Modifications of these conditions require the approval of HUD.

The maximum allowable rent per unit is set by HUD, such that the Project can operate on essentially a break-even basis. Rents

include all utility charges - among them, charges for heat, hot water, and electricity. Annually, the appellant must submit to HUD an operating budget, including all necessary operating expenses, and show the revenue expected to pay these expenses. Allowable expenses include the charges incurred for the services of a third-party management company. All proposed rent increases must be justified. At January 1, 2019, and January 1, 2020, monthly rents of \$895 and \$939 per unit, respectively, were allowed. Tenants pay not more than 30 percent of their income in rent; the balance of a unit's allowable monthly rent is subsidized by HUD pursuant to a Project Rental Assistance Contract between HUD and the appellant ("PRAC"), which during the periods relevant to these appeals was renewable only annually. The PRAC further governs the eligibility of tenants for admission to the rental units and the conditions for their continued occupancy.

As required by HUD, all Project revenues are deposited in a revenue fund account with a bank recognized by HUD, from which expenses may be paid only in accordance with the annual operating budget approved by HUD. The appellant is required to deposit annual Project revenues in excess of annual Project expenses in a separate residual receipts account under the control of HUD, which has the sole right to make disbursements for such purposes as it may determine. Should the appellant wish to incur expenses beyond those approved in the annual operating budget, it must submit a written

certification to HUD stating that these expenses are both unanticipated and necessary. The appellant is also required to maintain and fund a reserve fund for replacements subject to the control of HUD.

The Project remains subject to restrictions on use and transfer for not less than 40 years from December 1, 1996. Pursuant to the Use Agreement, the Project must be used solely as rental housing for very low-income elderly persons, and the appellant cannot transfer, convey, mortgage, or otherwise encumber the Project without "the release of . . . covenants by HUD." More specifically, the appellant may transfer the Project only with the prior written approval of HUD on the condition that the transferee assume all of the appellant's obligations to HUD under the Use Agreement.

The consequences of failure to adhere to the terms of the Regulatory Agreement and the PRAC are penal. HUD may declare a default, such that the total debt becomes immediately payable with accumulated interest at a default rate of 7 percent. If a breach of the Use Agreement occurs, a tenant or the Secretary of HUD may institute legal action to obtain whatever relief, including proven damages, may be appropriate.

#### **B. Assessment Methodologies**

The subject property was assessed by the appellee for each of the fiscal years at issue using the cost approach to valuation.

The property record cards for these years indicate that (i) HUD paid for the land, demolition, and construction, (ii) HUD's mortgage was not repayable so long as subsidized housing was maintained, and (iii) the income approach to valuation was not appropriate.

The assessors offered into evidence two property record cards for each fiscal year at issue. One lists building permits from 1995, including a permit dated July 25, 1995, for the demolition of a school. It reflects the cost approach to the valuation of the subject property, which was applied by the appellee. The second property record card for each fiscal year determines a value for the subject property applying an income approach to valuation, which was rejected by the appellee. Income-based values of \$5,647,600 for fiscal year 2020 and of \$6,909,100 for fiscal year 2021 are indicated on the second property record cards, respectively.

The appellant disputes the application of the cost valuation method. While stating the income valuation method to be the proper approach to the valuation of the subject property, the appellant also disputes the income valuation methodology reflected in the City's income-based property record cards.

### **III. The Appellant's Case**

At the hearing of these appeals, the appellant called two witnesses: James Regis, Vice President of Maloney Properties, Inc.

("Maloney Properties"), managing agent for the Project, and Rose M. Perrizo, a Massachusetts certified general appraiser.

Mr. Regis testified to the origins of the Project, in which the majority of the occupants have lived since 1996. He explained that the appellant was created as a single-purpose entity to work with the planning office of urban affairs and a local church to provide high-quality housing for seniors at low cost. He observed that the Project was "mission driven work." The church possessed available land, and HUD provided funding for the building secured by a mortgage on the subject property. Maloney Properties, which works primarily with multi-family affordable housing communities, was engaged as leasing agent at the outset, and has served as managing agent since then. Pursuant to a management agreement with the appellant, Maloney Properties is paid a management fee capped by HUD and is entitled to reimbursable costs for on-site staff directly related to the operation of the Project. Maloney Properties handles all the physical, financial, administrative, and regulatory needs of the Project, including property maintenance, accounts receivable and payable, necessary annual reporting, management of the tenant waiting list, and state regulatory compliance issues.

In his testimony, Mr. Regis confirmed the rigorous regulatory environment impacting the ongoing operations of the Project and noted the inherently greater needs of the elderly resident



population. He testified that, given HUD's so-called break-even budget process and its failure to allow a cushion for anomalies, minimizing operational expenses – such as maintenance and light-duty renovation costs, and utility charges – was critical and ongoing. He also testified to the need to recertify “every single unit . . . as to all sources of income[] and allowable HUD deductions on an annual basis.” He explained that an employee acting as recertification specialist was responsible for ensuring compliance with this requirement, and that a resident services coordinator met with and kept a case history on all residents as they continued to age in place.

The Board qualified the appellant's second witness, Ms. Perrizo, as an expert in the field of commercial property and low-income housing valuation. Her appraisal of the subject property as of January 1, 2019, and January 1, 2020, was entered into evidence.<sup>2</sup> Ms. Perrizo testified that she estimated the fair cash value of the fee simple interest in the subject property as of the dates of valuation, taking into consideration the restrictions running for at least 40 years on use and occupancy imposed by HUD pursuant to the Regulatory Agreement and the Use Agreement, which she referred to as “deed restrictions.” She stated

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<sup>2</sup> Although the Appraisal Report dated February 17, 2022, signed by Ms. Perrizo on behalf of RP Realty Advisors, also covers the valuation date January 1, 2021, for fiscal year 2022, to the extent it relates to that valuation date, it was excluded from the record.

that, in her experience, although the deed restrictions had a nominal term of 40 years, most affordable housing restrictions roll over at the end of their term, given the political and community pressure to keep the properties affordable. Accordingly, Ms. Perrizo opined that the continued operation of the subject property as affordable housing represented its highest and best use.

Ms. Perrizo rejected the sales-comparison approach to valuation, pointing out that affordable housing properties, each with unique and complicated deed restrictions governing rental rates, operating structures, and marketability, rarely change hands. Ms. Perrizo testified that, in her search of the metropolitan Boston market, she found no sales of apartment buildings with income restrictions and conditions similar to those impacting the subject property.

Ms. Perrizo rejected the cost-approach as well, due to its failure to address the impact of the long-term use and occupancy deed restrictions. She noted that affordable housing could not be built without public funding sources because the costs of development and maintenance exceeded what the restricted rental income would support in the conventional market. Consequently, all affordable housing suffered from economic obsolescence at the very outset because the gap existing between the cost of the project and market value was filled with a variety of grants and

governmentally provided deferred loans (soft debt) which might ultimately be forgiven or continually rolled over. Moreover, it was not possible accurately to quantify physical deterioration and functional and external obsolescence given the age of the subject property.

Ms. Perrizo relied exclusively on the income approach to valuation, using direct capitalization, noting that this method best addressed the deed restrictions. To determine stabilized apartment rent, she examined the rent rolls listing the monthly rent at the January 1 valuation dates for each unit allowable by HUD. To determine gross rental income for each of the fiscal years at issue, she annualized and then totaled the allowable rent for each unit, to arrive at annual rental income of \$805,500 for fiscal year 2020 and \$845,100 for fiscal year 2021. To each of these totals she added the annual rental income due from T-Mobile on account of its rooftop-antenna lease, and other annual income, including charges for use of the laundry facilities. From the resulting potential gross income for each fiscal year at issue, Ms. Perrizo deducted 1 percent for vacancy and 1 percent for collection loss (a total of 2 percent), to arrive at effective gross income of \$834,871 for fiscal year 2020 and of \$874,867 for fiscal year 2021. She based her vacancy loss percentage on actual

vacancy rates for the subject property<sup>3</sup> and vacancy rates at three local affordable housing facilities in audited years 2016, 2018, and 2020.

Ms. Perrizo next determined stabilized operating expenses for each of the fiscal years at issue, taking into account actual figures for 2019 and 2020 and market data. Actual administrative, payroll and maintenance, utility, and property insurance costs were stabilized based upon a per unit amount selected for the first fiscal year at issue, increased by 2 percent for the following year. To these amounts, Ms. Perrizo added a market-rate management fee equal to 5 percent of potential gross income, approximately 4 percent below the actual management fees for the appellant's audited fiscal years 2019 and 2020. Using her total stabilized expenses of \$672,595 and \$687,236 so determined, before consideration of real estate taxes and reserves, Ms. Perrizo arrived at operating expense ratios of 79 percent for fiscal year 2020 and 77 percent for fiscal year 2021,<sup>4</sup> pointing out that these relatively high operating expense ratios were due to the extremely low allowed revenue given that HUD's Section 202 Program is structured on a break-even basis. By way of comparison, she noted

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<sup>3</sup> Ms. Perrizo testified to her belief that, as of the relevant dates, although not at the time of the hearing, vacancy loss was a permitted offset to revenue in the operating budgets submitted to HUD.

<sup>4</sup> Ms. Perrizo computed the actual operating expense ratios for the appellant's audited fiscal years 2019 and 2020 to be 82 percent of potential gross income and 82.2 percent of potential gross income, respectively.

the operating expense ratio of 81.1 percent for audited year 2020 shown on the audited financial statements of another local HUD Section 202 affordable housing facility.

Ms. Perrizo further determined a reserve for replacement. Modeling market expectations, she used 3 percent of potential gross income for each fiscal year, recognizing that the property was in very good condition, resulting in reserves of approximately 42 percent of the actual reserves for 2019 and 2020. Then, deducting her stabilized operating expenses and reserve for replacement from her effective gross income, Ms. Perrizo arrived at stabilized net operating income of \$136,718 and \$160,849 for fiscal years 2020 and 2021, respectively.

Finally, Ms. Perrizo determined her basic capitalization rate recognizing that, unlike conventional apartment buildings, affordable properties rarely change hands. She applied a two-step process, using conventional market data and then adjusting for the unique benefits and detriments of the affordable housing program. To derive an unadjusted basic capitalization rate, Ms. Perrizo first applied a band-of-investment method to arrive at rates of 8.11 percent for fiscal year 2020 and 7.50 percent for fiscal year 2021, combining 73 percent of her mortgage interest rate component and 27 percent of her 10 percent equity dividend rate component. She then performed two other rate analyses, determining rates based on (i) the average overall capitalization rates in the national,

institutional-grade apartment market for the fiscal years at issue published in the PwC Real Estate Investor Survey, adjusted upwards to reflect a non-institutional premium, and (ii) her review of market rate multi-family building sales in seven neighboring communities between 2015 and 2019 for fiscal year 2020 and between 2016 and 2020 for fiscal year 2021. To arrive at her basic capitalization rates prior to adjustment for the subject property's affordability restrictions, Ms. Perrizo reconciled the three annual rates that she determined based on her band-of-investment, investor survey, and market-sales analyses, to arrive at average basic rates of 6.98 percent for fiscal year 2020 and 7.19 percent for fiscal year 2021. She reconciled these to an overall rate, prior to adjustment, of 7 percent for each of the fiscal years at issue.

As her final step, Ms. Perrizo adjusted her reconciled overall rates to reflect the special burdens and benefits of the subject property's affordability restrictions. Her analysis took account of four factors. She concluded that the market would assign upward adjustments due to both the lack of upside and government encumbrances on title, citing (i) restrictions that not only severely limited revenue for sixteen to eighteen more years, but also placed significant restraints on the property, and (ii) the numerous state and federal rules and regulations placing substantial burdens on ownership. More specifically, Ms. Perrizo

noted HUD's allowance under its budget-based program of very paltry rent increases, and the appellant's inability to transfer, convey, mortgage, or otherwise encumber the subject property without HUD's release of the deed restrictions.

On the other hand, Ms. Perrizo applied downward adjustments associated with certain benefits afforded by HUD. First, she noted that HUD's rental assistance contract (PRAC), although renewable only annually with respect to the fiscal years at issue, provided rent subsidies that investors would credit as an advantage. Secondly, Ms. Perrizo observed that the market recognized favorable HUD financing as a net benefit, a factor to which she gave triple weight. The market understood that the soft debt provided by HUD in the form of a deferred loan, which might ultimately be forgiven or continually rolled over, provided a needed source of funds to build and maintain property as affordable housing. Moreover, it ensured that the owners would maintain a project's affordability status long after the initial project term, given that the full amount of principal and accumulated interest would become due and payable only once the property ceased to operate as affordable housing. Ms. Perrizo referred to this factor as effectively a "poison pill."

Taking into account the four adjustments to her reconciled overall rates, Ms. Perrizo arrived at a basic capitalization rate of 6.5 percent for each of the fiscal years at issue, to which she

added effective municipal tax rates of 1.27 percent for fiscal year 2020 and 1.23 percent for fiscal year 2021. She thus arrived at total capitalization rates with tax factor of 7.77 percent for fiscal year 2020 and 7.73 percent for fiscal year 2021. Applying these rates to her determined net operating income, Ms. Perrizo opined that the subject property had a fair cash value of \$1,800,000 as of January 1, 2019, for fiscal year 2020 and of \$2,100,000 as of January 1, 2020, for fiscal year 2021.

#### **IV. The Assessors' Case**

Unlike the appellant, the assessors used a cost approach to value the subject property. To determine the value of the subject building for fiscal year 2020, they started with a base price of \$155 per square foot, entered into the system by Patriot Properties, Inc. ("Patriot"). They then adjusted this amount for size and construction, and other features, as well as for depreciation totaling 74.8 percent, based on a rate of 16 percent for physical condition and 70 percent for economic depreciation. Mr. Cramer, Chair of the Board of Assessors, testified that Patriot generally used the Marshall and Swift Cost Handbook, a construction cost index, to arrive at a basic price per square foot, and that the 16 percent depreciation factor, which was table driven, reflected items of deferred maintenance and short-lived items, without specific identification. To their resulting depreciated value for the subject building, the assessors added an amount for



special features, resulting in a rounded building value of \$2,776,500 for fiscal year 2020. To arrive at the value of the land for the same period, the assessors applied a unit price of \$60,000, reduced by 25 percent, producing a land value of \$3,420,000. Finally, the assessors added their determined building and land values, plus \$28,800 for paving, to arrive at a total assessment of \$6,225,300 for fiscal year 2020.

To determine the value of the subject property for fiscal year 2021, the assessors took the same approach to cost valuation, using as their variables (i) a basic price per square foot for the subject building of \$175, (ii) depreciation of 75.76 percent, determined based on a rate of 19 percent for physical condition and 70 percent for economic depreciation, (iii) amounts for other and special features somewhat smaller than those used in the prior year, and (iv) a unit price for land of \$66,000, reduced by 25 percent. The corresponding computations resulted in values for fiscal year 2021 of \$2,832,700 for the building, \$3,762,000 for the land, and \$32,900 for paving, giving a total assessed value for the subject property of \$6,627,600 for fiscal year 2021.

Mr. Donnelly, a member of the Board of Assessors, testified that the assessors could not complete the income approach because of their inability to develop a capitalization rate. More generally, he stated the income approach made no sense given the "benefit of not having to pay any interest and not having to pay

back the principal," noting that, in 1995, the appellant paid \$300,000 for the land and pulled permits for some \$4,200,000 to put up a building. In his view, the appellant was "trying to come up with a value that wouldn't replace the windows in the building," maintaining that the \$1,800,000 value determined by the appellant for fiscal year 2020 "[didn't] pass the smell test."

#### **V. The Board's Findings and Rulings**

On the basis of the record in its entirety, the Board found and ruled that the appellant met its burden of proving that the subject property was overvalued for both of the fiscal years at issue. In reaching this conclusion, the Board agreed with the appellant's valuation witness that the highest and best use of the subject property for both of the fiscal years at issue was its continued use as rental housing for very low-income elderly persons age 62 or older under HUD's Supportive Housing for the Elderly Program established pursuant to Section 202 of the Housing Act of 1959. Rejecting the cost and sale-comparison approaches to valuation, the Board agreed with the appellant's valuation expert that the income-capitalization approach was the most appropriate method to determine the subject property's fair cash value.

The Board found the components of net operating income under Ms. Perrizo's income-capitalization analysis to be reasonable and supported by the actual operating history of the subject property. Stabilized rents were determined for each fiscal year at issue

based on rents allowed by HUD at January 1, 2019, and January 1, 2020, respectively, and were then adjusted for vacancy and collection loss at a stabilized rate of 2 percent, reflective of actual vacancy rates. Similarly, stabilized operating expenses were determined for fiscal year 2020 based on actual administrative, payroll and maintenance, utility, and insurance costs for 2019 and 2020, increased by 2 percent for the following year fiscal year. These amounts were increased by a market-rate management fee of 5 percent of potential gross income and a reasonable replacement reserve equal to 3 percent of potential gross income. The resulting net operating income before replacement reserve reflected operating expense ratios of 79 percent for fiscal year 2020 and 77 percent for fiscal year 2021, below the actual operating expense ratios for the appellant's audited fiscal years 2019 and 2020.

The Board, however, rejected Ms. Perrizo's adjusted capitalization rates for the fiscal years at issue. The Board found that the adjustments made to her basic capitalization rate of 7 percent failed adequately to account for the benefits of government-subsidized property. Although Ms. Perrizo's reliance on the subject property's actual, rather low-income stream and actual, rather high expenses adequately accounted for HUD's use and operational restrictions affecting the Project, Ms. Perrizo failed to give appropriate weight to the essentially risk-free

nature of the property, given that HUD's requirements, while restricting the ability to make money, essentially guaranteed that investors would not lose money. She herself opined that the subject property would likely never go to market at the end of HUD's initial 40-year restriction period. Accordingly, the Board determined a base capitalization rate of 5 percent for each of the fiscal years at issue, resulting in a final capitalization rate of 6.27 percent for fiscal year 2020 and 6.23 percent for fiscal year 2021, inclusive of the applicable municipal tax rate. Applying these rates to Ms. Perrizo's net operating income, the Board determined a rounded fair cash value for the subject property of \$2,200,000 for fiscal year 2020 and of \$2,600,000 for fiscal year 2021.

Accordingly, the Board issued decisions for the appellant in these appeals in the amount of \$51,429.25 for fiscal year 2020 and \$49,994.19<sup>5</sup> for fiscal year 2021, each inclusive of the City's CPA surcharge.

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<sup>5</sup> The Decision of the Board dated August 8, 2022 indicated a decision for the appellant for fiscal year 2021 in the amount of \$50,034.88, inclusive of the City's CPA Surcharge. That abatement amount was calculated incorrectly. Accordingly, the Board is issuing a Revised Decision for the appellant simultaneously with this Findings of Fact and Report granting an abatement in the amount of \$49,994.19 for fiscal year 2021, inclusive of the CPA Surcharge.

## OPINION

Assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The fair cash value of property is estimated by considering factors that may both (i) make it attractive for valuable use, and (ii) diminish its attractiveness to the buying public. ***Hampton Associates v. Assessors of Northampton***, Mass. ATB Findings of Fact and Reports 1998-770,787-88, (citing ***Massachusetts General Hospital v. Belmont***, 233 Mass. 190, 208 (1919)), and ***Lodge v. Swampscott***, 216 Mass. 260, 263 (1913). See ***Montaup Electric Co. v. Assessors of Whitman***, 390 Mass. 847, 850-51 (1984). The purpose for which a property is adapted is a relevant consideration in determining fair cash value. ***Boston Gas Co.***, 334 Mass. at 566; ***Peterson v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2002-573, 617 (citing APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 316-16 (12<sup>th</sup> ed., 2001)), *aff'd in relevant part*, 62 Mass. App. Ct. 428 (2004).

In the present appeals, the Board agreed with the appellant's real estate valuation expert that the subject property's highest and best use was its continued use as rental housing for very low-income elderly persons age 62 or older under HUD's Supportive

Housing for the Elderly Program established pursuant to Section 202 of the Housing Act of 1959. The Board has recognized "the unique status of a federally regulated low-income housing project because in the absence of subsidy the rental stream produced by the property would not justify the actual expenditures on the construction," and because, without federal financing provided on favorable terms but conditioned on restrictions, the project would not be possible. **Hampton Associates**, Mass. ATB Findings of Fact and Reports at 1998-788. Accordingly, the Board has held that "governmental policies or actions that regulate the return a property can produce and also promote an important public interest must be taken into account in valuing real estate." See **Koppelman v. Assessors of Amesbury**, Mass. ATB Findings of Fact and Reports 2012-950, 963.

As did the parties, the Board found the sales comparison approach not to be a useful or reliable method for valuing the subject property. See **Assessors of Weymouth v. Tammy Brook Co.**, 368 Mass. 810, 811 (1975). The parties, however, disagreed on the applicability of the other two recognized approaches to the valuation of real property. See **Correia v. New Bedford Redevelopment Auth.**, 375 Mass, 360, 362 (1978).

The assessors relied solely on the cost approach, which the Board found not to be an appropriate technique to use for valuing the subject property. Evidence based on "[r]eproduction cost, less

accrued depreciation and a reasonable deduction for obsolescence" (see **Foxboro Assocs. v. Assessors of Foxborough**, 385 Mass. 679, 687 (1982)) "may be introduced in certain circumstances where reliable data based on the other methods is not available" (**Correia**, 375 Mass. at 364), and may be particularly relevant in the case of properties not frequently bought or sold (see **Lipinski v. Lynn Redevelop. Auth.**, 355 Mass. 550, 551 (1969)). In the instant case, although the subject property cannot be said to be frequently bought or sold, its status as a federally subsidized and regulated low-income housing project makes it ill-suited to valuation applying a cost approach. "Construction costs are known; but these overstate the market value of a project, since in the absence of subsidy the rental stream produced by the property would not justify the actual expenditure on construction." **Community Develop. Co. v. Assessors of Gardner**, 377 Mass. 351, 355 (1979) (quoting G. Peterson, A. Solomon, H. Madjid, W. Apgar, Jr., *Property Taxes, Housing and the Cities*, at 73 (1973)). Moreover, in the instant case, reliable data based on the income-capitalization approach to valuation are, in fact, available.

Accordingly, the Board found the income-capitalization valuation approach to provide the best evidence of the fair cash value of the subject property. See **Beacon Oread LP et al. v. Assessors of Worcester**, Mass. ATB Finding of Fact and Reports 2020-

258, 285, (citing **Tammy Brook Co.**, 368 Mass. at 811) ( stating that “use of the income-capitalization approach is appropriate when reliable market data are not available, and it is specifically applicable when valuing income-producing property whose rental income is subject to governmental restrictions”).

Under the income-capitalization approach, valuation is determined by dividing net operating income by a capitalization rate. See **Assessors of Brookline v. Buehler**, 396 Mass. 520, 522-23 (1986). After accounting for vacancy and rent losses, the net operating income is obtained by deducting the appropriate expenses. Cf. **Pepsi-Cola Bottling Co. v. Assessors of Boston**, 397 Mass. 447, 452 (1986). A capitalization rate reflective of the return on investment necessary to attract investment capital is then applied. See **Taunton Redev. Assocs. V. Assessors of Taunton**, 393 Mass. 293, 295 (1984).

The Board found the net operating income determined by the appellant’s valuation expert to be reasonable and supported by the actual operating history of the subject property. See **Cummins Towers Co. v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 1984-291, 307-08 (basing the valuation of projects subject to HUD restrictions on the maximum rents allowed by HUD and actual expenses with some modifications for reserves); see also **Union Congregational Church Homes, Inc. et al. v. Assessors of Weymouth**, Mass. ATB Findings of Fact and Reports 1997-1107, 1119 (basing the



value of an apartment complex on actual rents allowed under a regulatory agreement with HUD governed by Section 202 of the Housing Act of 1959); **Beacon Oread LP et al. v. Assessors of Worcester**, Mass. ATB Finding of Fact and Reports at 2020-286, 87 (stating that “the actual rent rolls . . . and the actual expense ratios . . . yielded the most accurate net operating incomes” for the affordable housing developments at issue).

The Board, however, found that the capitalization rate determined by the appellant’s valuation expert did not reflect the essentially risk-free scenario presented by the subject property. In arriving at a capitalization rate for an affordable-income property, consideration should be given not only to restrictions on the investors’ rate of return but also to the benefits of HUD financing. See **Hampton Associates**, Mass. ATB Findings of Fact and Reports at 1998-792; **President Village Co. v. Assessors of Fall River**, Mass. ATB Findings of Fact and Reports 1987-23, 31-32; **Cummins Towers Co.**, Mass. ATB Findings of Fact and Reports at 1984-308. Upon analyzing the evidence presented, the Board determined a base capitalization rate of 5 percent for each of the fiscal years at issue, to which the applicable tax factors were added.

In reaching its opinion of fair cash value in these appeals, the Board was not required to adopt any particular method of valuation. Rather, the Board could accept those portions of the

evidence that the Board determined had more convincing weight. ***Foxboro Assocs.***, 385 Mass. at 683; ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 473 (1981); ***Assessors of Lynnfield v. New England Oyster House, Inc.***, 362 Mass. 696, 702 (1972). In evaluating the evidence before it, the Board selected among the various elements of value and appropriately formed its own independent judgment of fair cash value. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 605 (1984); ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass. 296, 300 (1984).

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Based on all the evidence presented in these appeals, and reasonable inferences drawn therefrom, the Board found and ruled that the appellant met its burden of demonstrating that the subject property's assessed value exceeded its fair cash value for each of the fiscal years at issue. Relying on this evidence, and after exercising its own independent judgment, the Board determined fair cash values for the subject property of \$2,200,000 for fiscal year 2020 and \$2,600,000 for fiscal year 2021. Accordingly, the Board issued decisions for the appellant in these appeals and granted abatements in the amount of \$51,429.25 for fiscal year 2020 and \$49,994.19 for fiscal year 2021, each inclusive of the City's CPA surcharge.

**THE APPELLATE TAX BOARD**

By:



**Mark J. DeFrancisco, Chairman**

**A true copy,**

**Attest:**



**Clerk of the Board**