RENT BOARD
December 28, 2022
5:00 PM

ZOOM INFORMATION:

Please click the link below to join the webinar:
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II. ROLL CALL:

III. APPROVAL OF MINUTES

a. December 14, 2022 Minutes

IV. COMMUNICATIONS:

a. Please note: Written public comment must be received via email (rentboard@portlandmaine.gov) by 12pm the day before the scheduled meeting. Please make sure that the subject line reads "Written Public Comment"

b. MNOI Methodology Reference

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS

a. Executive Session - The Board may go into executive session pursuant to 1 M.R.S. 405(6)(E) to consult with its attorney regarding the Board's legal rights and duties

b. Rent Increase Application - Public Comment
Owner: Nevens LLC
Property: 26 Poland St
CBL: 146-B-005-001
Increase: Capital Improvement Costs

c. Rent Increase Application -Public Comment
Owner: Francine D'Alfonso
Property: 39 Holly St
CBL: 142-E-014-001
Increase: All

d. Rent Increase Application - Public Comment
Owner: Home State Properties LLC
Property: 25 Grant St
CBL: 036-D-013-001
Increase: Capital Improvement Costs

e. Rent Increase Application - Public Comment
Owner: Home State Properties LLC
Property: 27 Grant St
CBL: 036-D-012-001
Increase: Capital Improvement Costs

f. Rent Increase Application - Public Comment
Owner: 4 Bay View Dr
Property: 4 Bay View Dr
CBL: 129-I-003-001

Increase: Capital Improvement Costs, Increased Housing Service Costs, Fair Rate of Return

g. Rent Increase Application - Public Comment
Owner: 44 Pleasant St LLC
Property: 44 Pleasant St
CBL: 040-B-004-001
Increase: Renovation & Capital Improvement Costs

VII. ADJOURN

Remote Rent Board Meeting Minutes - Held Via Zoom

Wednesday, December 14, 2022

II. Roll Call - 00:00:24

Elliott Simpson, Tenant, District 3 - Chair
Barbara Vestal, Landlord, At-Large - Vice Chair
Amir Familmohammadi, Tenant, District 1
Hilary Glaus, Tenant, District 2 (arrived late)
Ian McCracken, Landlord, District 4
Philip Mathieu, Tenant, District 5
Elias Kann, Tenant, At-Large

Staff present:

Jessica Hanscombe, Director of Permitting & Inspections
Zachary Lenhert Licensing & Housing Safety Manager
Michael Goldman, Acting Corporation Counsel

III. Minutes - 00:00:55

Philip Mathieu moves to accept the minutes as written, seconded by Elias Kann. Vote: 6-0 (Hilary Glaus was absent at time of vote)

IV. Communications -

There were no agenda items for this section.

V. Unfinished Business -

There were no agenda items for this section.

VI. New Business - 00:02:41

A. Discussion of the Revised Rent Control Ordinance

No discussion was held in the public session.

B. Executive Session - The Board may go into executive session pursuant to 1 M.R.S. 405(6)(E) to consult with its attorney regarding the Board's legal rights and duties

00:03:21 - The Vice Chair makes a motion that the Board moves into Executive Session for the purpose of receiving information and advice from the Corporation Counsel's office on implementation of the new referendum. Seconded by Elias Kann. Vote: 6-0 (Hilary was absent at time of vote)

The Chair had requested Board members to mute themselves on Zoom and turn off the cameras to meet in Executive Session.

At 7:38pm (around 02:37:51) - the Vice Chair motioned out of executive session, seconded by Philip. Vote: 7-0

VII. Adjourn -

02:39:07 - Ian made a motion to adjourn, seconded by Elias. Vote: 7-0 portland

Tenant comment on rent increase at 25 Grant St

Madeleine Adelson <madeleine.adelson@gmail.com> Sat, Dec 24, 2022 at 2:23 PM
To: rentboard@portlandmaine.gov

To Whom It May Concern:

As a tenant of 25 Grant St, Portland, I would like to comment on the rent increase request submitted by my landlord, Roger Buck (Home State Properties LLC). I have written this letter from my first person perspective, but a number of other tenants at 25 Grant and 27 Grant (also owned by Mr. Buck) have contributed and co-signed to affirm their support of the points made herein. We have two primary concerns: 1) the improvements for which Mr. Buck is seeking reimbursement via rent increase are better characterized as long-overdue repairs rather than capital improvements, and 2) a wider view of the property's maintenance record shows that investment in improving the property is not being made in a consistent way.

This year, Mr. Buck completed masonry, woodwork and painting on the exterior of our building. As he details in his letter to your board, damage to the building's exterior was already causing water and cold air to penetrate the walls, sometimes causing mold. This appears to indicate that the exterior work was well overdue, as these repairs should have been done before the point of causing unsafe or unpleasant living conditions inside the building. My understanding is that the approved rent increase for capital improvement costs is intended for major renovations that improve the property's value, not repairs. It is difficult for me to see how the work this year qualifies, especially as Mr. Buck himself characterizes them as "repairs" in his request.

This also brings up a larger issue. As the rent control legislation in Portland is still fairly new, I imagine that precedents are being set that affect how the legislation will be interpreted going forward. I am concerned that if landlords are allowed to pass the cost of large repairs on to tenants, but not the cost of small maintenance projects, this will encourage landlords to skimp on regular maintenance until their property is in dire need of major repairs. This goes against the intent of the legislation as it will lower the quality of housing for tenants and perhaps even allow landlords to force tenants out by making their living space uncomfortable.

My view of the exterior work done on the buildings is in part colored by the patterns of maintenance (or lack thereof) that I have witnessed over my years of tenancy in this building. There has been a consistent pattern of putting off needed repairs and choosing the cheapest possible solution even when the quality of that solution is low. Below, I will list just a few of these issues:

- Recently, tenants in 27 Grant were without adequate heat for at least a month. It took several maintenance requests over several weeks before the issue was investigated, and it was found that the boiler was broken. While this issue was repaired fairly promptly once it was found, there was no reason to wait weeks before investigating the issue. Thermometers in a first-floor unit were routinely reading under 60 degrees Fahrenheit.
- My bedroom window has not closed properly since I arrived in 2019. It took about 6 months to get the window replaced, and unfortunately, the new window developed the exact same issue within a few months of being installed. I have repeatedly asked for the window to be properly repaired, but it is now 2022 and this has not happened. This causes a lot of heat loss during the winter - and as my building's heat is paid for by tenants, it increases my living costs. I recently asked maintenance to at least help seal my window for the winter, which they did, but they also managed to break the window latch in the process and have yet to tell me when it will be replaced.
- The masonry work was initiated in 2022, but signs that the buildings needed brick work done came as early as 2018. A tenant in 25 Grant has complained about a wasp infestation between floors, where wasps were seen flying in and out of a hole between bricks. Despite Mr. Buck's claims that the issue has been resolved, the issue continued on through 2020.
- Another tenant in 25 Grant had a leak in their ceiling recently, which was immediately reported to maintenance. Maintenance initially said they would handle the issue, but then told the tenant that they would hold off because he had recently had bed bugs in his unit. (The infestation was extremely minor and caught at the earliest stages; the bugs never even entered the room where the leak was happening.) Because they waited to repair the leak, it got significantly worse and damaged the tenant's living room furniture before it was finally dealt with.
- Tenants who moved into 27 Grant this fall discovered a hole in their ceiling, likely caused by water damage. They reported it to maintenance but were told there was "not much we can do about it". The hole has still not been fixed.
- There was an ongoing issue for over a year with unhoused people sleeping in the buildings' sheltered entryways. Tenants suggested several possible solutions to this problem that would have preserved the benefits of having an open entryway (door buzzers were located in the entryway, and delivery services often left packages there). These solutions were

ignored and instead, maintenance simply moved the locks to the exterior doors. We now have no functional door buzzers, which causes a huge hassle when trying to receive packages requiring signatures.

- The lock was improperly installed, and it took several iterations of maintenance requests to finally get it functioning as intended. The outside door was also improperly "repaired"; the door closer literally fell out of the wall at least once and the tension is now far too high so the door is a struggle to open. Door operation now requires two able-bodied hands, so it is impractical for people with low grip strength, arthritis, or anyone operating the door with one hand (e.g. cyclists bringing their bike in and out of the building).

My intention here is to give the committee a fuller picture of the way 25 Grant and 27 Grant have been maintained in recent years. On a regular basis, problems are ignored or dealt with in such a cursory way that more problems develop as a result. This is not indicative, in my mind, of a landlord who is improving the value of his property. In fact, some of the cheap fixes done in the recent past have potentially decreased the property's value (i.e. eliminating door buzzers).

I hope the committee will consider these comments when evaluating whether to let Mr. Buck pass the costs of property maintenance on to tenants via a rent increase. Tenants are already paying the price of inconsistent maintenance in the form of lower quality of housing. We urge you to ask Mr. Buck to improve his record on responding to basic maintenance requests, and to consider more lasting, high-quality fixes to those requests, before allowing him to reimburse himself for a single, likely long-overdue, repair by raising our rent.

Thank you,

Madeleine Adelson, 25 Grant, Apt 4
Cosigned by:
Tova Kemmerer, 25 Grant, Apt 1
Joel Tsui, 25 Grant, Apt 3
Jesenia Santana, 25 Grant, Apt 3
Katherine Kirby, 25 Grant, Apt 4
Roby Moulton, 25 Grant, Apt 5
Nicole Stepensky, 27 Grant, Apt 2
Charley Dimmock, 27 Grant, Apt 2
James DuBourdieu, 27 Grant, Apt 5
Catherine Collier, 27 Grant, Apt 6
Rebecca Myshrall, 27 Grant, Apt 6

Written Public Comment #2

portland

Response to 27 Grant St Rent Increase Request

James DuBourdieu <jamesdubourdieu@gmail.com>
To: rentboard@portlandmaine.gov

Wed, Dec 21, 2022 at 5:20 PM

To Whom It May Concern:

As a multi-year tenant in 29 Grant St (referred to as 27 Grant St in the application) I am concerned by the nature of Mr. Buck's rent increase request, which we received notice of on December 14th, 2022. It is my understanding that capital improvements are supposed to increase property values, and I would argue that the work outlined is more inline with routine maintenance carried out in order to keep the apartment building habitable. The masonry work was done because the bricks were in a state of disrepair leading to water damage and mold in apartments.

The brick work is just one example of deferred maintenance; there is a history of delayed or neglected maintenance work that has led to breaches of Maine's implied warrant of habitability. Most notably the recent lack of substantial heat in 29 Grant St, leading to apartment temperatures dropping to well below 68 degrees Fahrenheit. There were multiple documented requests to fix the building's heating system substantiated with documented temperatures, but the problem was not looked into or remedied for approximately a month. This has affected the building's tenants substantially. While the heat situation has marginally improved, it is still unclear whether the heat in the building is fully fixed as we've only been informed that "the boiler is being serviced at this time and will need to be shut down periodically through this process." While a promise has been made to keep us informed, no further progress updates have been delivered.

As Mr. Buck is also the owner of 25 Grant St, I would point to the history of problems with that building's maintenance as well. Most recently there was an incident where a leaky ceiling was reported but repairs were not done until the leak was so severe it caused damage to that tenant's property. Currently there is a leak in my apartment that I became aware of during the latest snow storm and have reported, it remains to be seen what the response will be to this maintenance request.

Previously there were multiple problems with the doors to both apartment buildings causing an issue with unhoused people sleeping and utilizing the vestibules of the building, creating an unsafe environment for the tenants of the building. The response was to switch the locks to the outer vestibule door instead of implementing one of the numerous proper fixes proposed by the residents of the buildings. This may seem like it has fixed the problem but it has rendered the doorbells of the buildings entirely useless, arguably decreasing the value of these buildings.

Mr. Buck also outlines renovations done to apartment 3 in 29 Grant St, but fails to mention that the apartment still has a hole in the ceiling in that apartment that has not been repaired despite the requests of the current tenants.

My hope in writing this is to give a clearer understanding of the history of maintenance on these buildings. It is clear to myself and many of the tenants here that the property value is not increasing because of the maintenance that has been done on the building. There are no new amenities or improvements to the common areas of the buildings that globally affect all the residents, there is merely less water leaking into our living spaces.

I want to emphasize that I understand it can be difficult dealing with costly repairs to these buildings and I know Mr. Buck is looking to recoup the maintenance costs from these units. Hopefully it is understood that rent increases drastically affect us as tenants, as does the maintenance of these buildings. While I do appreciate that Mr. Buck is trying his best to be fair about the rent increases outlined in his application, I do not believe that the rent board should approve maintenance and repairs as capital improvements to a building.

Best Regards,
James DuBourdieu
Tenant - 29 Grant St, Apt 5

rents have been increased through individual fair return adjustment mechanisms.[240] Even in cities where only a small fraction of rents are adjusted through individual fair return mechanisms, processing and consideration of these increase requests consumes a substantial portion of the board's time and resources.

A. *The Strengths and Weaknesses of the Alternate Fair Return Standards*

The most commonly used fair return standards are return on value, return on equity, return on gross rent, percentage net operating income, cash flow, and maintenance of net operating income. There are substantial differences in the manner in which each of these formulas operates and in the classes of landlords and tenants which they benefit.

In Table 7.1, each of the commonly used fair return standards is described in the form of a mathematical equation. In Table 7.2, the factors which each standard considers are compared.

TABLE 7.1

FAIR RETURN STANDARDS

1. *cash flow*
   gross rent = operating expenses + mortgage payments
   1a. *return on gross rent* (a variant of the cash flow standard)
   gross rent = x (operating expenses + mortgage payments)

2. *return on equity*
   gross rent = operating expenses + mortgage payments + x (cash investment)

3. *return on value*
   gross rent = operating expenses + x (value)

4. *percentage net operating income*
   gross rent = x (operating expenses)

5. *maintenance of net operating income*
   gross rent = base date gross rent + (current operating expenses − base date operating expenses)

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petitions, the view that they are constitutionally required has never been seriously questioned or reexamined. For data on the volume of fair return appeals under New Jersey rent controls, see GUIDE FOR NEW JERSEY, *supra* note 24, at 62.

240. Up to the present, only limited research has been conducted to discover which factors determine the volume of individual fair return petitions. The most probable determinants include: the difference between rent increases allowed under general adjustment and individual fair return standards; the administrative procedures for processing petitions; the size of regulated

TABLE 7.2

VARIABLES CONSIDERED IN FAIR RETURN FORMULAS

	Operating Expenses	Mortgage Interest	Value	Cash Investment	Base Date Gross Income	Base Date Operating Expenses
Cash Flow	X	X				
Return on Gross Rent	X	X				
Return on Equity	X	X		X		
Return on Value	X		X			
Percentage N.O.I.	X					
Maintenance of N.O.I.	X				X	X

Table 7.3, below, indicates where each of the types of fair return standards is in use and contains a rough estimate of the percentage of rent controlled units in the U.S. that are subject to each type of standard.

TABLE 7.3

CITIES WITH ALTERNATE FAIR RETURN STANDARDS

Type of standard	Estimated Percentage of U.S. Rent-Controlled Units*	Cities Using Standard
1. Cash flow	5%	Approximately half of New Jersey rent-controlled municipalities, mainly smaller towns with a mimimal number of fair return petitions.
2. Return on gross rent	2%**	A few New Jersey municipalities.
3. Return on investment	7%	Several New Jersey municipalities, including Newark and Jersey City.
4. Return on value	15%	New York City rent control (applicable to 20% of regulated units in the city); approx. 10% of New Jersey municipalities; District of Columbia uses a modified form of return-on-value standard (equity = assessed value − mortgage); a few California cities.
5. Percentage net operating income	3%	Approximately 10% of New Jersey municipalities.
6. Maintenance of net operating income	60%	All Massachusetts municipal rent controls (Boston, Cambridge, and Brookline); New York City rent stabilization (applicable to 80% of units subject to rent regulation); Los Angeles, Santa Monica, and Berkeley, California; approximately five New Jersey cities (including Camden).
7. Vague standard or a combination of standards	8%	Oakland, San Jose, and some other California cities; some New Jersey cities.

* Estimates are based on information contained in Table 5.1, *supra*, text accompanying note 1 and census data, *supra*, note 1.1.

** In 1983, without much discussion, this type of standard was adopted as an alternate standard under New York City Rent Stabilization, subject to conditions described in the text accompanying note 257.

1. Cash Flow

gross rent = operating expenses + mortgage payments

Under the cash flow standard, a landlord is entitled to rents which are sufficient to cover operating expenses and mortgage payments. In the early 1970's, a majority of the New Jersey municipal rent control ordinances contained this fair return standard.[241] The implications of such a standard were not a matter of serious concern or discussion at that time because the ordinances also provided for annual general adjustments equal to 100% of the percentage increase in the Consumer Price Index and, in addition, allowed landlords to pass through property tax increases.[242] By the second half of the 1970's, however, cash flow standards and the issue of whether landlords have a constitutional right to charge rents adequate to cover operating expenses and mortgage payments took on increased importance as purchase-price-to-rental-income ratios[243] soared[244] and negative cash flows[245] for new purchasers became common in areas where there was rapid appreciation in property values.

In 1977, Washington, D.C. adopted a cash flow standard as an alternate ground for "hardship" rent increases.[246] In 1980, Santa Monica adopted a fair-return-on-equity standard after trial court judges took the position that landlords subject to rent control in Santa

buildings and the sophistication of their owners; the portion of owners who have negative cash flows; code compliance preconditions for individual adjustments; and owner perceptions of rent board procedures.

241. The Fort Lee ordinance, which was drafted by the New Jersey Tenants Organization and was used as a model for other ordinances stated that: "in the event that a landlord cannot meet his mortgage payments and maintenance he may appeal to the Rent Leveling Board for increased rental." Fort Lee, N.J., Ordinance 72-1, § 10 (1972). *See* Baar, *supra* note 10 at 660-61.

242. When most municipalities adopted more stringent general adjustment standards in response to the high inflation rates of 1973 and 1974, they also amended their fair return standards. A substantial number of municipal ordinances, however, still contain the cash flow standard. This standard is particularly prevalent in instances in which the general adjustment standard permits substantial automatic increases and the number of individual adjustment petitions has been minimal. *See* Guide for New Jersey, *supra* note 24, at 37-38, 54.

243. This ratio is commonly known as the "gross rent multiplier."

244. In most periods, gross rent multipliers have ranged from 6 to 8. In the late 1970's, they ranged from 10 to 14 in some localities.

245. Negative cash flow occurs when rents are inadequate to cover operating expenses and mortgage payments.

246. Under this standard, fair return was defined as a rent which would cover operating expenses, including depreciation and debt service, and yield a cash flow equal to 0.25% of gross rents. D.C. Rental Housing Act of 1977, Act No. 2-118, § 212(c), 24 D.C. Reg. 5334, 5372. However, the board did not allow individual adjustments for negative cash flow when it concluded that such a step would be inconsistent with the overall purposes of the rent control act. Such an inconsistency would exist, for example, if the entire purchase were effectuated through financing, or if the owners purchased under conditions that would cause a negative cash flow at the time of purchase. This conclusion is based on the author's interviews of staff members in January 1982 and examination of board decisions.

Monica were constitutionally entitled to rents which were adequate to cover mortgage payments and operating expenses.[247]

Under the cash flow and the return-on-equity standards, fair rent is largely determined by the owner's financing arrangements, since mortgage payments are included as a variable. When such formulas are used, owners of buildings of "equal value" who were charging comparable rents prior to the adoption of rent controls may be allowed to charge differing rents because of the differences in their mortgage payments. The following hypothetical example, which involves three buildings with equal operating expenses, illustrates the operation of the cash flow standard.

TABLE 7.4

RENT REQUIRED TO YIELD FAIR RETURN FOR OWNERS WITH DIFFERING MORTGAGES UNDER CASH FLOW STANDARD

	Owner A	Owner B	Owner C
Mortgage debt	$250,000	$180,000	$50,000
Annual			
Operating expenses	$ 25,000	$ 25,000	$25,000
Interest payments	+ 25,000	+ 18,000	+ 5,000
Rent Required to Yield Fair Return	$ 50,000	$ 43,000	$30,000

As the example illustrates, the standard favors owners with large mortgages. Owners A and B might have paid the same price for a property, yet owner A will be permitted to charge substantially higher rents as a result of having relied more heavily on mortgage financing to purchase the property. In numerous instances, courts have roundly criticized fair return standards which lead to different fair return rent levels due to disparate financing arrangements.[248]

To some extent, the cash flow standard acts as a self-fulfilling prophecy in a market in which purchasers incur negative cash flows with the expectation that, due to the tight housing market, they will be able to increase rents faster than operating costs increase. It enables them to raise rents in an amount sufficient to cover whatever debt service they have chosen to incur. In this manner it operates to confirm free market expectations rather than to stabilize rents.

247. Interviews with Michael Heumann and Laurie Lieberman, Santa Monica Rent Control Board Staff Attorneys (May 1982). The return on investment standard was subsequently struck down as being irrationally discriminator against long-tern owners. *Baker v. City of Santa Monica*, *supra* note 55.

248. *See infra* notes 267-70 and accompanying text.

Other criticisms can also be made of standards which take mortgage payments into account. The purpose of rent controls is to regulate rents. Cash flow standards, however, open the rent-setting process to manipulation by those who are regulated. Formulas which include debt service as an expense in effect let sellers, purchasers, and lenders determine what rents shall be permitted. To this extent, cash flow standards defeat the regulatory purposes of rent controls.

Los Angeles, Berkeley, and Santa Monica rent control laws preclude the possibility of such "manipulation" under fair return standards by including "anti-speculation" clauses.[249] Under these clauses, boards may not take into consideration increases in mortgage payments which occur subsequent to the adoption of the rent control law. Even those trial courts which have held that rent controls may not lock pre-rent control purchasers into a negative cash flow have agreed that anti-speculation clauses are reasonable, because post-rent control increases in mortgage indebtedness are incurred with full knowledge of the existence of the rent restrictions.[250]

Another criticism of the cash flow standard, as well as other standards which do not consider base date net operating income, is that it fails to ensure that rent increases will be adequate to cover operating cost increases for all owners. Under the cash flow standard, as long as an owner has a substantial positive cash flow, there will be no entitlement to a rent increase even if operating expenses have increased faster than rents.[251] On the other hand, the application of a cash flow standard could result in substantial rent increases for heavily financed owners even if they incur no increases in operating expenses.

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249. Berkeley, Cal., Ordinance N.S. 5261 §§ 12.d–12.e (1980); Los Angeles, Cal., City Code § 151.07.B.3 (reprinted *infra* Appendix § VII (D)); Santa Monica, Cal., City Charter §§ 1805(f)–(g).

250. Los Angeles County trial courts took this position in 1979 and 1980 in cases involving Santa Monica landlords. Interview with Laurie Lieberman, Staff Attorney, Santa Monica Rent Control Board (May 1982).

251. For example, in the year that rent controls are adopted, income and expenses may be as follows:

Gross Income	$50,000	
Operating Expenses	– 25,000	
Mortgage Payments	– 12,000	
Net Income	$13,000	
(Net Operating Income		$25,000)

Hypothetically, ten years later, due to restrictions on across-the-board rent increases, income and expenses may be as follows:

Gross Income	$65,000	
Operating Expenses	– 50,000	
Mortgage Payments	– 12,000	
Net Income	$ 3,000	
(Net Operating Income		$15,000)

Under the cash flow standard, the owner would still be earning a fair return, because cash flow (net income) is still positive.

Despite its shortcomings, the cash flow standard has had appeal to legislatures and trial courts because it guarantees that no landlord will be forced to operate at a loss. It thereby protects owners who would otherwise be forced to contribute funds from their own resources each month in order to continue to hold their investments. These are the owners who are most likely to demand individual adjustments. From a policy perspective, it may be argued that the cash flow standard helps prevent disinvestment by this class of owners.

Appellate courts, however, have ruled that an owner does not have a constitutional right to charge rents which are adequate to cover mortgage payments and operating expenses. In 1975, the New Jersey Supreme Court held that "rent levels may permissably work hardships on landlords in atypical cases, may drive inefficient operators out of the market, and may preclude persons who have paid inflated purchase prices for buildings from recovering a fair return."[252]

Similarly, in rejecting a challenge to a Rent Board decision which did not permit an owner to obtain a rent increase necessary to overcome a negative cash flow, the Supreme Judicial Court of Massachusetts commented:

> Under c. 842 a rent control board is not bound to consider the landlord's financing arrangements in setting rates, and there are sound practical reasons consistent with the intent of that chapter which support the board's policy. The rationale is particularly evident on the facts of this case, where the landlord has chosen to finance 100% of the cost of the building . . . . Given the express concern of St. 1970, c. 842, § 1, with the "substantial and increasing shortage of rental housing accommodations for families of low and moderate income and abnormally high rents," a landlord's decision to minimize or wholly eliminate his initial capital outlay cannot justify imposing higher rents on his tenants. Nor does it warrant permitting him to collect higher rents than other less heavily financed landlords.[253]

a. Fair return on gross rent

gross rent = x (operating expenses + mortgage payments)

The fair return on gross rent formula is a variant of the cash flow standard. It uses the same variables as the cash flow standard in order to determine what rent will yield a fair return, and suffers from the same conceptual failings. It differs from the cash flow formula, however, because it guarantees that the rent will yield a cash flow equal to a specified percentage of the sum of operating expenses and mortgage

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252. Troy Hills Village v. Parsippany-Troy Hills Township Council, 68 N.J. 604, 628, 350 A.2d 34, 47 (1975).

253. Zussman v. Rent Control Bd., 371 Mass. 632, 359 N.E.2d 29, 33-34 (1976).

payments rather than merely guaranteeing that rental income will cover the sum of operating expenses and mortgage payments.[254]

The standard has not been widely used, except by a few New Jersey municipalities.[255] In the jurisdictions that use the standard, a 6 or 8% cash flow is usually designated as minimum fair return.[256] In 1983, this type of standard was adopted as an alternate fair return standard under New York rent stabilization, subject to the conditions that increases under the standard must not exceed 6% per year and that the applicant must have owned the property for at least three years.[257]

2. Fair Return on Equity (Cash Investment)

gross rent = operating expenses + mortgage payments + x (equity)

When the return-on-equity standard is used, equity is usually defined as cash investment.[258] The standard goes beyond the cash flow and return-on-gross-rent standards by providing for a return on the owner's cash investment as well as covering operating expenses and mortgage payments. It is presently used by some of the larger New Jersey municipalities, including Newark and Jersey City.[259] Where the standard is used, an 11 to 12% return on equity is usually designated as a fair return.[260]

Because the return-on-equity formula takes into consideration both the mortgage-financed and cash investment portions of a property owner's investment, fair rents for landlords who pay the same price for a building will be comparable, even if the sizes of their downpayments vary substantially, as the following example indicates:

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254. Irvington, N.J. qualifies its return-on-gross-rent standard by precluding consideration of mortgage payments in the event that the mortgage exceeds "80% of the cost or value of the property as determined by the Rent Leveling Board." Ownership of a property for at least one year is a precondition to applying for a fair return increase. Irvington, N.J., Ordinances § 5(d) (1972). The 80% ceiling on mortgage-to-value ratios does not eliminate the drawbacks of the fair-return-on-gross-rent standard since fair return levels depend on individual mortgages, which may range from 0% to 80% of the value of the property and have varying interest rates depending on when the property was purchased.

255. *See* Guide for New Jersey, *supra* note 24, at Appendix B.

256. *Id.*

257. Act of June 30, 1983, ch. 402, § 9, 1983 N.Y. Laws 698.

258. Cash investment includes the initial downpayment plus principal payments. Investments in capital improvements may also be included, unless the board has granted an individual adjustment for the capital improvement.

From a financial analysis viewpoint "current fair market value minus mortgage indebtedness" may be more appropriate than a "cash investment" definition of equity. See *supra* note 29 and accompanying text for a discussion of the alternate approaches to calculating equity. When current fair market value minus mortgage indebtedness is used to define equity in a rent controlled context, in effect, a variation of a return on value standard is being used.

259. Jersey City, N.J., Ordinances § 13-123(g) (1978). In Newark, the fair return on equity standard is set through Board policy. *See* Guide for New Jersey, *supra* note 24, at A-36.

260. Some New Jersey ordinances define fair rate of return on equity as a rate equal to 6% above the prevailing interest rate on demand deposit savings accounts. *See, e.g.*, Jersey City, N.J., Ordinances § 13-123(g) (1978).

TABLE 7.5

RENT REQUIRED TO YIELD FAIR RETURN FOR OWNERS WITH DIFFERING MORTGAGES, RETURN-ON-EQUITY STANDARD

	Owner A	Owner B	Owner C
Purchase price	$350,000	$350,000	$350,000
Mortgage debt	250,000	180,000	50,000
Equity (cash investment)	$100,000	$170,000	$300,000
Annual			
Operating expenses	25,000	25,000	25,000
10% interest on mtg.	25,000	18,000	5,000
12% return on equity	12,000	20,400	36,000
Gross rent required to yield 12% return on equity	$ 62,000	$ 63,400	$ 66,000

The different results in this example derive from the variations between the mortgage interest rate and the allowed rate of return on equity. To the extent owners' mortgage interest rates vary, the rent allowed under the formula will vary for different owners who paid the same purchase price and made the same size downpayment.[261] These variations are small, however, in comparison with the disparities resulting from standards which make no allowance for a return on cash investment.

While the standard overcomes the extreme inequities that result from the use of a formula which considers mortgage payments but not cash investment, it still leads to substantial differences in permitted rents in the common situation in which purchase prices for comparable properties differ due to differences in the time of purchase. The example in Table 7.6 illustrates such differences.

Where property values have been increasing over time, the purchase date in effect becomes a chief determinant of what rent yields a fair return under the return-on-equity formula. When return-on-equity formulas have been used in highly speculative markets, they have resulted in the reward of substantial rent increases for recent purchasers.[262]

261. For example, if in the hypothetical in the text owner A had a mortgage with a 12% interest rate, annual interest payments would be $30,000 per year and the fair gross rent would be $67,000.

For judicial conclusions regarding formulas which allow for differing rents for properties with the same value due to differences in mortgage interest rates and cash investments, see *infra* text accompanying notes 269–271.

262. In the late 1970's, prior to the adoption of rent and condominium conversion controls, real estate prices in Santa Monica, California, soared to 14 times gross annual income on the average. The average price for rental units was $45,000, although gross rental incomes averaged only $3,600 per year. Many owners purchased with the intention of converting their units to

TABLE 7.6

RENT REQUIRED TO YIELD FAIR RETURN FOR NEW, MODERATE-TERM AND LONG-TERM OWNERS, UNDER RETURN-ON-EQUITY STANDARD

	New Owner	Moderate-term owner	Long-term owner
Purchase price	$350,000	$250,000	$100,000
Mortgage debt	– 250,000	– 180,000	– 50,000
Equity	$100,000	$ 70,000	$ 50,000
Annual			
Operating expenses	25,000	25,000	25,000
Mortgage interest	30,000	18,000	4,000
12% return on equity	12,000	8,400	6,000
Gross rent required to yield 12% return on equity	$ 67,000	$ 51,400	$ 35,000

By assuring that rents will be adequate to cover mortgage payments and provide for a return on equity, the return-on-equity standard in effect guarantees that any investment will be reasonable.[263] Owners who pay the most and get the highest interest rate mortgages are permitted to charge the highest rents. Since investment is a business decision which is governed by expectations as to future income, the use of investment as a measure of what income shall be permitted defeats the purpose of price regulation, which is designed to result in something other than the rents which would be expected in the unregulated market. Such a standard also permits the regulated to regulate rents.

condominiums which were selling for $150,000 to $200,000 on the average. Some obtained very large increases under Santa Monica's return-on-investment standard, which was in effect in 1980 and 1981. Interviews with Santa Monica Rent Board staff (1981).

263. In 1981, a New Jersey Superior Court attempted to overcome this circularity by remanding an individual adjustment decision made under a return on cash investment fair return formula, with directions that "[t]he rent control board must consider the fair market value of the property to determine if the debt servicing expenses are excessive." Mahoney v. Hoboken Rent Leveling Bd., 178 N.J. Super. 51, 58-59, 427 A.2d 1138, 1141 (Law Div. 1981). The court noted that landlords did not have the right to a fair return on "imprudent investments" and that the use of an income capitalization approach to determining value would be circular in a rent regulation context. *Id.* at 57, 427 A.2d at 1141-42. However, it seemed to overlook both the state supreme court's more general conclusion, in Helmsley v. Borough of Fort Lee, 78 N.J. 200, 394 A.2d 65 (1978), that value-based criteria are "practically unworkable" in a rent-controlled context, and its conclusion in a "trilogy" of cases that use of market value as a determinant of what rents may be charged is circular in a rent-controlled context. *See* Hutton Park Gardens v. West Orange Town Council, 68 N.J. 543, 570, 350 A.2d 1, 15 (1975); Brunetti v. Borough of New Milford, 68 N.J. 576, 595, 350 A.2d 19, 29 (1975); Troy Hills Village v. Parsippany-Troy Hills Tp. Council, 68 N.J. 604, 624-25, 350 A.2d 34 (1975).

Judicial precedent regarding return-on-investment standards has been conflicting and internally contradictory. In 1971, the Massachusetts Supreme Court held that the "fair net operating income" standard contained in the various state enabling acts guaranteed landlords a "fair return on their investment."[264] The fair return standards that have been used in Massachusetts, however, have not taken the landlord's investment into account.[265] Moreover, in 1976, the Massachusetts Supreme Court indicated that landlords are not entitled to a fair return on investments which are excessive.[266] Since the return yielded on the investment may be the only objective measure that can be used to determine whether the investment was excessive, such logic may be circular.

In *Helmsley v. Borough of Fort Lee*,[267] the New Jersey Supreme Court stated, in dictum, that "there are no obvious theoretical obstacles to using an investment-based standard," and noted that other jurisdictions, including Massachusetts, have used such standards.[268] In the same opinion, however, the court stated that a standard which results in differences in allowable rents due to differing mortgage rates "serves no legitimate governmental purpose."[269] Discrimination of this type is inherent in return-on-equity standards, since they take mortgage interest payments into consideration. For precisely this reason, and because such a standard discriminates against long-term owners, other courts have found severe theoretical obstacles to the constitutionality of fair-return-on-investment standards.[270]

The circularity associated with the use of market value standards in rent control regulations is not overcome by using only market value to determine whether the debt service and/or investment is reasonable.

264. *See* Marshall House, Inc. v. Rent Control Bd., 358 Mass. 686, 706, 266 N.E.2d 876, 881 (1971).

265. Massachusetts boards have used net-operating-income and return-on-value standards. Presently, the three Massachusetts rent control boards use maintenance of net operating income standards. *See* Boston, Mass., Rent Regulation 6 (1974); Brookline, Mass., Rent Control Regulation 39 (1983); Cambridge, Mass., Rent Board Regulation 72 (1972).

266. Zussman v. Rent Control Bd., 371 Mass. 632, 359 N.E.2d 29 (1976). The court explained that: "Where the actual purchase price exceeds the fair market value of the units as apartments, the rent control board would be abdicating its duty if it granted an increase in rates to cover the excess cost." *Id.* at 639, 359 N.E.2d at 33.

267. 78 N.J. 200, 394 A.2d 65 (1978).

268. *Id.*, 78 N.J. at 216 n.8, 394 A.2d at 72 n.8. The court commented that:

> In view of the lack of evidence concerning plaintiffs' investment, we offer no comments on investment-based criteria for determining confiscation. Our silence does not, however, denote disapproval. Other jurisdictions have employed such criteria. *See, e.g.*, Marshall House, Inc. v. Rent Control Board of Brookline, 358 Mass. 686, 266 N.E.2d 876, 888 (1971). Although an investment-based standard may not be as easy to apply as some income-based criteria, there are no obvious theoretical obstacles to using an investment-based standard.

Id.

269. *Id.* at 232, 394 A.2d at 81.

270. *See, e.g.*, Hirsch v. Weiner, 116 Misc. 312, 190 N.Y.S. 111 (Sup. Ct. 1921); Helmsley v. Borough of Fort Lee, No. L-11348-74 (N.J. Super. Ct., Bergen County, June 20, 1975), *as cited in* Baar, *supra* note 9, at 668–89 n.239. The court in *Helmsley* concluded:

Despite its serious conceptual shortcomings, the return-on-equity formula has had widespread appeal. Both tenants and landlords often believe that the landlord is entitled to a fair return on cash investment,[271] and investors tend to measure their rates of return in terms of return on cash investment.[272]

The use of a return-on-equity standard also poses practical problems because it is often difficult to calculate equity. For example, if a property has been refinanced several times or cash investments in capital improvements were made many years prior to the passage of rent controls, the calculation of the owner's equity may be complicated and critical data may be unavailable.

Several modifications have been made to the return-on-equity formula in an effort to rectify its shortcomings. One approach has been to define equity in terms of value rather than cash investment. Under the Washington, D.C., rent control law, equity is defined as assessed value minus mortgage indebtedness.[273] Some New Jersey rent control boards use a definition of this type in instances in which the property has either been inherited and there is therefore no cash investment associated with the purchase, or when it was purchased so long ago that its purchase price bears no relation to its present value.[274] When equity is defined in terms of value, the formula does not discriminate on the basis of purchase price. However, it still discriminates on the basis of financing arrangements, since mortgage interest payments are a variable in the formula.[275] Furthermore, since this modification uses value in order to measure equity, it causes the return-on-equity standard to become a return-on-value standard.[276]

Another approach is to define equity as original cash investment adjusted for inflation. Recently, Fort Lee, New Jersey, adopted this

> The fair net return should remain identical for these three buildings even though the investments and equities are unduly disparate. Diverse financial arrangements should not be a factor.

Id. See also Baker v. City of Santa Monica, No. WEC 058763 (Super. Ct., Los Angeles County, Cal., March 6, 1981).

The trial court judge, in *Helmsley*, reached the conclusion that a fair-return-on-cash-investment-fair-market-value standard was required. "The base figure should be pegged to true market value, an approach that can be uniformly applied in all cases." Helmsley v. Borough of Fort Lee, No. L-11348-74 (N.J. Super. Ct. L. Div. June 20, 1975).

271. Tenants and landlords often feel that an owner's actual cash investment is the fairest yardstick, because it reflects what the owner invested rather than unearned increments in value. This conclusion is based on the author's research, attendance at rent board hearings, and interviews with landlord and tenant representatives.

272. *See supra* note 30 and accompanying text.

273. D.C. CODE ANN. § 45-1501 (1981).

274. While such a step is not authorized by New Jersey municipal ordinances, several municipalities nevertheless follow this practice. This conclusion is based on the author's interviews of New Jersey rent board members and administrators during the past two years.

275. For criticism of such a result see Hirsch v. Weiner, 116 Misc. 312, 190 N.Y.S. 111 (Sup. Ct. 1921).

276. See *infra* text accompanying notes 283–321 for discussion of return-on-value standards.

type of approach.[277] Subsequently, a New Jersey trial court held that a return-on-investment standard was constitutional only if original investment was indexed for inflation.[278] A standard of this type provides for varying rates of increase in rents for owners depending on what portion of the original purchase price was paid in cash (which is adjusted for inflation) and what portion was financed by a fixed-rate loan (which is not adjusted for inflation).[279]

In October 1983, the California Court of Appeal, in an opinion which is distinguished for its creativity, its dealing with issues which long for consideration,[280] and its very impractical guidance, explained how a fair-return-on-investment standard can and should work.[281] It suggested that original investment could be indexed and even imputed, if necessary. Additionally it concluded that "no specific formula can or should be developed," and suggested factors which might be considered in setting prices for apartments.

> Section 5 of the [Cotati] ordinance contains a nonexclusive list of relevant factors [in calculating fair return]. Other factors that might be considered are:
>
> 1. Societal importance of ensuring that real estate remains a viable investment so that the rental housing stock is maintained, improved and replenished.
>
> 2. The return appropriate to this type of investment to attract and retain investors. An investment in rental property, which involves risk as well as active management and which usually involves anguish and worry

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277. Interview with Rent Board member, Fort Lee, N.J. (June 1982). Board resolutions reveal the problems associated with calculating original investment in instances in which a property was purchased many years earlier and subsequently refinanced. *See, e.g.*, Fort Lee, N.J., Board Resolution (Jan. 7, 1982) (*re* application No. 81-11). The Board does not apply this standard to rental units which have been converted to condominiums.

278. United Mobile Homes, Inc. v. Township of Jackson, No. 1-44125-81 P.W. (N.J. Super. Ct. Law Div. Jan. 28, 1983).

279. The following hypothetical is designed to illustrate these differences:

	Owner A	Owner B
Purchase price	$100,000	$100,000
Mortgage	80,000	50,000
Downpayment	20,000	50,000
Downpayment indexed for 50% inflation	30,000	75,000
Rent increase required to maintain 12% return on downpayment	1,200	3,000

The rent increase required to maintain a 12% return on downpayment is calculated by calculating the difference between the actual downpayment and the "indexed" downpayment (*e.g.*, $30,000-20,000 for owner A) and multiplying that amount by 12% (the required rate of return). These figures do not take into account whatever rent increase may be required to cover operating cost increases.

280. *See infra* note 349 and accompanying text.

281. Cotati Alliance for Better Housing v. City of Cotati, 1 Civ. 53178 (Cal. Ct. App. Oct. 24, 1983) (certified for publication). The appeal period for this decision had not expired as of the date of publication of this article.

on the part of the investor, should bear a greater rate of return than a passive investment involving no personal management and no risk, e.g., an insured certificate of deposit with a financial institution. The rate of return should be consistent with the risk in the investment, and should be high enough to discourage the flight of capital from the rental housing market and encourage landlords to maintain their buildings and services at appropriate levels. The rate of return should allow the owner to properly maintain the property, that is, to provide good management, to maintain services at an adequate level, and to properly maintain the physical asset itself, and should provide incentive to do so. At the same time, there is no reason why the rate of return to an efficient owner may not be greater than to an inefficient owner.

3. Tax benefits to the landlord, including consideration of comparable tax benefits in other types of investments. For example, the Board might consider the consequences to landlords whose property is fully depreciated.

4. The physical location of the property and the types of tenants. Buildings in different locations may well have different profits and thus have a different rent structure. Buildings in which tenants remain for lengthy periods may well have a different rental structure than those in which there is a rapid and regular turnover. Additionally, some buildings have types of tenants who create more psychological and management hardship to the owner than others.

5. Particular hardship circumstances of the owner.

6. The effects of the decrease in the purchasing power of the dollar during inflationary periods. A dollar ten years ago was worth more than a dollar today, and a reasonable rate of return will account for this factor. This may be counterbalanced in part by more favorable financing terms in older mortgages.

While all of the above are factors that may be considered, the extent to which they are considered in setting a fair rent is within the province of local government, not of the courts.[282]

If these standards were incorporated into a fair return standard, the following probably would occur: fair return hearings would develop into lengthy debates among expert economists about what rate of return was reasonable and desirable; "poor" landlords could charge higher rents than "rich" landlords; rich owners would have incentives to transfer title to poorer relatives; variations in an owner's financial situation would justify fluctuations in rents; the difficulty associated with managing particular tenants would have to be evaluated; and psychiatrists would be needed to evaluate "psychological" hardship. Furthermore, the overall procedure would become extremely subjective and the standard would be destined to be struck down as unconstitutional on a variety of grounds by another court. The court recognized the problems with using original investment as a measure of fair return in light of inflation. By stating that no specific formula can or should be used, it presented a strong case (apparently unintentionally) for the view that it may be impossible to develop a return-on-investment standard which is both reasonable and practical.

282. *Id.*, slip op. at 23–25.

3. Return on Value

gross rent = operating expenses + x (value)

a. General

Under a return-on-value standard, an owner is entitled to rents which are adequate to cover operating expenses and yield a specified rate of return on value. Mortgage interest is not considered as an expense, since the rate of return is calculated on the full value of the property rather than on the owner's equity.

Return-on-value standards have been used in New York City,[283] Washington, D.C.[284] and some New Jersey municipalities.[285] In New York City and Washington, D.C., an 8% return on value has been designated as fair,[286] while New Jersey municipalities have designated 9 to 12% as fair.[287]

In the 1920's, courts held that landlords were constitutionally entitled to a fair return on the value of their property.[288] Since that time, however, New Jersey, Massachusetts, and federal courts have concluded that the use of fair-return-on-value standards is conceptually unsound in a rent control context and have rejected the view that a fair return on value is constitutionally required.[289] Nevertheless, in the past few years, several California trial courts and one court of appeals have held that owners are constitutionally entitled to a fair return on the market value of their properties,[290] while others have rejected this view.[291]

283. N.Y. UNCONSOL. LAWS § 8584(4) (McKinney 1974).

284. D.C. CODE ANN. § 46-1644(a)(3) (Supp. IV, 1977).

285. *See, e.g.*, Belleville, N.J., Ordinance 2087 § 13 (1978).

286. D.C. CODE ANN. § 46-1644(a)(3) (Supp. IV, 1977); N.Y. UNCONSOL. LAWS § 8584(4) (McKinney 1974).

287. *See, e.g.*, Belleville, N.J., Ordinance 2087 § 13 (1978).

288. Federal and state courts applied the reasoning set forth by a New York City trial court in Hirsch v. Weiner, 116 Misc. 312, 190 N.Y.S. 111 (Sup. Ct. 1921). *See, e.g.*, Stephens v. American Real Estate Co., 279 F. 435 (S.D.N.Y. 1921); Karrick v. Cantrill, 277 F. 578 (D.C. Cir. 1922).

289. *See, e.g.*, Wilson v. Brown, 137 F.2d 348, 354 (1943); Troy Hills Village v. Township Council of Parsippany-Troy Hills, 68 N.J. 604, 350 A.2d 34 (1975); Niles v. Boston Rent Control Adm'r, 6 Mass. App. Ct. 135, 147, 374 N.E.2d 296, 300-02 (1978); Helmsley v. Borough of Fort Lee, 78 N.J. 200, 394 A.2d 65 (1978).

290. *See, e.g.*, Gregory v. City of San Juan Capistrano, 142 Cal. App. 3d 72, 85, 191 Cal. Rptr. 47, 56 (1983). In its opinion, the court relied on *Helmsley, supra* note 289, in support of its conslusion that owners are entitled to a fair return on the value of their property. If *Helmsley* stands for any proposition, it stands for the view that the use of fair-return-on-value standards is unworkable in the context of rental price regulations. *See also* Baker v. City of Santa Monica, No. WEC 058763 (Cal. Super. Ct. Mar. 6, 1981) (Memorandum of Intended Decision); *Oceanside Mobile Home Park Owners' Ass'n v. City of Oceanside, supra* note 87.

291. *See, e.g.*, City of Los Angeles v. Palos Verdes Shores Mobile Estates, Ltd., 142 Cal. App. 3d 362, 370-71, 190 Cal. Rptr. 866, 870-72 (1983); Rosenberg v. San Francisco Rent Stabilization and Arbitration Bd., No. 793343 (Cal. Super. Ct. Nov. 24, 1982).

(i.) *Conceptual issues*

The chief conceptual failing of the return-on-value standard lies in its circularity. "Value is defined as the present worth of the rights to all prospective future benefits, tangible and intangible, accruing to ownership of real estate."[292] The use of a return-on-value standard in a rent control context is "circular" because the value of a residential rental property is normally determined by its projected income stream. Therefore, when rent controls govern what rents may be charged, they determine the value of the property. Return-on-free-market-value standards incorporate free market projections of future income into the rent-setting scheme at the same time the rent control law in which they are included is supposed to regulate the market.

In 1978, in *Helmsley v. Borough of Fort Lee*,[293] the New Jersey Supreme Court observed:

> The preferred valuation method for apartment buildings is capitalization of income, since investors purchase apartment buildings as income producing properties . . . . Once income is controlled, however, using capitalization of income to determine value to regulate future income is a circular process.[294]

Massachusetts courts have reached a similar conclusion.[295]

(ii.) *Practical problems*

The use of market value in a fair return formula can also pose severe practical problems. Estimates of fair market value by an appraiser, an assessor, or a rent control board are highly subjective. Such estimates involve comparisons between the property which is being valued and "comparable" properties which have recently been sold, evaluation of the physical condition of the property, and adjustments for locational factors.[296] Because of such valuation problems, the use of market value standards can turn fair return hearings into expensive debates over value, which rent boards are not equipped to handle,

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292. *See, e.g.*, AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS, THE APPRAISAL OF REAL ESTATE 31-32 (6th ed. 1974). For a similar definition, see INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION 25 (1977).

293. 78 N.J. 200, 394 A.2d 65 (1978).

294. *Id.* at 213-14, 394 A.2d at 71.

295. *See* Niles v. Boston Rent Control Adm'r, 6 Mass. App. Ct. 135, 143-44, 374 N.E.2d 296, 301 (1978).

296. One poetic New Jersey Superior Court judge, after hearing 17 days of testimony about Fort Lee rental property values, in a challenge to the Fort Lee rent control ordinance, observed:

> Two real estate experts using one chart
> Have opinions of value millions apart
> Since both are correct, it would seem to impart
> That real estate appraisal is a miraculous art.

Helmsley v. Borough of Fort Lee, No. L-13-719-78 at 32 n.12 (N.J. Super. Ct. L. Div. Oct. 7, 1978).

especially if a substantial portion of owners claim that they are not receiving a fair return on the value of their property. In 1967, the New York Court of Appeals commented:

> Indeed, the avowed purpose of the successive rent control statutes has always been to avoid protracted valuation proceedings of the kind associated with utility regulation, especially in the light of the millions of rental units to be regulated and the burden such proceedings would place on landlords and tenants of small or low rent properties.[297]

In order to avoid expensive and time-consuming debates over value, rent controls which have used a return-on-value standard have usually defined value as assessed value or equalized assessed value.[298] The use of assessed value as the measure of value in a fair return formula may avoid protracted debate over value. Conceptually it suffers, however, from the same type of circularity as the use of fair market value[299] since in most states assessors are required by law to assess properties at market value or a designated percentage of fair market value.[300]

In fact, the use of assessed value as a standard may lead to arbitrary results because, in many, if not most, cities, properties are reassessed infrequently and the relationships between assessed values and market values vary substantially among properties.[301] In urban areas, the average variation of the assessment-to-value ratio for individual properties from the mean assessment-to-value ratio for the jurisdiction typically ranges from 30 to 60%.[302] As a result, the outcome of the application of a return-on-assessed-value standard for a particular property largely hinges on the particular assessment-to-value ratio of that property. Many courts have held that assessments are not sufficiently accurate as a measure of value to make their use reasonable for rent control valuation purposes.[303] In at least one rent-controlled juris-

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297. Colton v. Berman, 21 N.Y.2d 322, 327, 234 N.E. 2d 679, 684, 287 N.Y.S.2d 647, 654-55 (1967).

298. *See, e.g.*, the laws cited in notes 283-85.

299. This conclusion was reached by the New Jersey Supreme Court in Helmsley v. Borough of Fort Lee, 78 N.J. 200, 215, 394 A.2d 65, 72 (1978).

300. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CENSUS OF GOV'TS: TAXABLE PROPERTY VALUES AND ASSESSMENT SALES PRICE RATIOS, Appendix A, table 1 (1977); LEGAL BASIS FOR ASSESSED VALUE OF REALTY, BY STATE: 1976 AND SUBSEQUENT PERIODS.

301. For discussion of the origins and extent of inequalities in assessments in major cities see Baar, *Property Tax Assessment Discrimination Against Low-Income Neighborhoods*, 13 URB. L. 333 (1981). *See also* Town of Sudbury v. Comm'r of Corps. and Taxation, 366 Mass. 558, 567, 321 N.E.2d 641, 648 (1974) ("[t]he [Boston assessment] process has lost contact with reality.").

302. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CENSUS OF GOV'TS: TAXABLE VALUES AND ASSESSMENT SALES PRICE RATIOS, PART II (1977) for data on coefficients of dispersion in assessment sales price ratios in U.S. cities.

303. *See, e.g.*, City of Miami Beach v. Forte Towers, Inc., 305 So.2d 764, 769 (Fla. 1974); Wilson v. Brown, 137 F.2d 348, 353 (Emer. Ct. App. 1943).

diction, the return-on-assessed-value standard has been "manipulated" by property owners who have appealed for higher assessments in order to obtain higher rents under a return-on-assessed-value formula.[304]

In an effort to overcome the shortcomings associated with using assessed value as a standard in its return-on-value formula, New York gave owners the option of using purchase price as a measure of value.[305] This led to a new set of problems and inequities. Purchase prices have never been a good indicator of current value, because properties typically undergo substantial appreciation or depreciation after purchase. The use of purchase price as a measure of value often discriminates against long-term owners, opens the standard to manipulation, and rewards speculators with higher rents than more conservative purchasers.

A subsequent amendment to the New York law attempted to address these shortcomings by limiting the circumstances under which purchase price could be used as a measure of value. Under the amendment, the rent administrator was directed to consider several factors in determining whether the sales price should be used as the measure of the value of the property, including the ratio of the cash payment received by the seller to the sales price and annual gross income of the property, the amount of outstanding mortgages as compared with the equalized assessed value of the property, and the ratio of the sales price to gross income of the property.[306] Qualifications of this type create considerable administrative and judicial discretion to decide whether a given purchase price is an appropriate measure of value.[307] Such discretion could be used to disqualify any sale price which is not justified by the present rent roll. When Brookline, Massachusetts, used a return-on-market-value standard in the first half of the 1970's, the Board often reached a conclusion about value that was designed to justify the rent level it considered most reasonable.[308]

Value is a highly subjective matter. Therefore, when courts or boards are authorized to determine the value of a rent-controlled property in order to determine what rent is fair, they tend to first

304. Interview with Washington, D.C. Rent Control Board staff members (Jan. 26, 1982).

305. N.Y. UNCONSOL. LAWS §§ 8581-8597 (McKinney 1974).

306. NEW YORK, N.Y., ADMINISTRATIVE CODE § YY51-5.0, g (4)(a), (b), (c) (1962). See also Colton v. Berman, 21 N.Y.2d 322, 332, 234 N.E.2d 679, 683-84, 287 N.Y.S.2d 647, 653-54 (1967), for a discussion of the history of this amendment.

307. For discussion of administrative and judicial interpretation of the New York statute see Comment, *Residential Rent Control in New York City*, 3 COLUM. J.L. & SOC. PROBS. 30, 45-47 (1967).

308. Interviews with Brookline, Mass., Rent Control Board staff (Jan. 1982).

make a mental determination as to what rent is fair and then choose a value and rate of return which support their conclusion.

b. Alternate approaches to value

(i.) *The "historic" value approach*

In some instances, other measures of value have been proposed in order to overcome the "circularity" problem. One such measure is "historic" value, such as value just prior to the adoption of rent control.[309] An "historic" value standard eliminates the spiralling process in which one rent increase leads to a higher value, which in turn justifies another rent increase, and thereby avoids incorporating into the regulatory scheme the effect of rent control on value. But such an approach does not eliminate the circularity problem, because pre-rent control expectations concerning future rental income and appreciation are major determinants of pre-rent control values. In particularly tight housing markets, pre-rent control values are based on expectations of rapidly rising rents. Therefore, the use of pre-rent control values in a fair return standard incorporates expectations derived from the "imbalanced market" which led to the imposition of rent controls. In the case of *Wilson v. Brown*,[310] rejecting a return-on-value approach, the Emergency Court of Appeals commented:

> The use of market value as a test is inconsistent with the regulation of rents, because the value of the property on the market depends in large measure upon its earnings and inflated rents result in inflated market values.[311]

Similarly, in 1971, a Massachusetts district court, in an opinion which was ultimately affirmed by the Supreme Judicial Court of Massachusetts, concluded that the use of a return-on-value standard incorporates into the rate-making scheme the housing shortage factors which led to the adoption of rent controls:

> If the fair return is to be based on market value, other elements than the landlord's investment are involved, such as the increased value which has arisen because of a substantial and increasing shortage of rental housing accommodations which result in the landlord receiving more than a fair return on his investment. It results in his getting the benefit of the emer-

309. In a case involving a facial attack on the constitutionality of Santa Monica's maintenance-of-net-operating-income standard, plaintiffs argued that the rent control board could use a return-on-value standard which used property values just prior to the adoption of rent controls as a rate basis in order to avoid the circularity problem. *Baker v. City of Santa Monica*, *supra* note 55. Rent controls had been adopted two years before the trial.

310. 137 F.2d 348 (Emer. Ct. App. 1943).

311. *Id.* at 353.

gency conditions which [the rent control act] gives as the reason for enactment of the act.[312]

(ii.) *Value of property in "balanced" markets as a measure of value*

The use of the value of "comparable" properties in "balanced" or "equilibrium" markets as a measure of value also suffers from conceptual and practical failings. In 1975, the New Jersey Supreme Court adopted such a measure of value in an attempt to overcome the conceptual problems associated with using fair market value.[313] The court defined "value" as:

> the value of the property in a rental housing market free of the aberrant forces which led to the imposition of controls. . . . [i.e.,] the worth of the property in the context of a hypothetical market in which the supply of available rental housing is just adequate to meet the needs of the various categories of persons actively desiring to rent apartments in the municipality.[314]

Three years later, however, the same court concluded that a "value-based criterion is practically unworkable" in a rent control context.[315] With regard to the task of "estimating value in a hypothetical housing market where supply and demand are in equilibrium," the court

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312. Ackerman v. Corkery, Third Dist. Ct. of E. Middlesex, Mass., Eq. 17 (1971), *cited in* Niles v. Boston Rent Control Adm'r, 6 Mass. App. Ct. 135, 145 n.10, 374 N.E.2d 296, 302 n.10 (1978). The district court decision was affirmed in *Rent Control Bd. of Cambridge*, 362 Mass. 870, 285 N.E.2d 449 (1972).

313. *See* Troy Hills Village v. Township Council of Parsippany-Troy Hills, 68 N.J. 604, 350 A.2d 34 (1975).

314. *Id.* at 623-24, 350 A.2d at 44. In fashioning this standard, the *Helmsley* court used the British fair return standard as a model. *Id.* (For the text of a subsequent act which contains the same language see *supra* note 37.) However, it failed to note that the British were having difficulties applying the standard. A British text on landlord-tenant law contains the following discussion of its "fair" rent standard.

> [The] section was examined by the Francis Committee (1971), whose report, despite subsequent changes in the law, contains the only detailed discussion of its operation. Many of the provisions are not thought to cause much difficulty, merely raising familiar points of valuation. The most controversial is the working of s. 70(2), on which the Committee had the following to say (Francis, 1971, pp. 57-61):
>
> We have inquired fully into the operation of S. [70](2)—normally referred to as the "scarcity" section—and the main points which have emerged in the course of the evidence are the following:
>
> (*a*) We have received a good deal of evidence—mainly from persons or bodies who have not been actually engaged in the task—to the effect that the assessment of the scarcity element in the rent is an extremely difficult task and, indeed, that scarcity is incapable of measurement except by way of an intelligent guess. Even the Institute of Rent Officers tell us: "Essentially it is a matter of opinion whether a rent is inflated by an excess of demand, and, if so, to what extent." Certainly, it is now generally, if not universally, accepted that it is not possible to quantify the scarcity element directly.

M. PARTINGTON, LANDLORD AND TENANT 246 (1981).

315. *See Helmsley v. Borough of Fort Lee*, 78 N.J. at 215, 394 A.2d at 72.

observed that "none of the [expert] witnesses had performed such an analysis before; none knew of any recognized appraisal method for making hypothetical equilibrium valuations."[316]

The New Jersey court also rejected the view that comparables from a neighboring jurisdiction could be used to calculate "equilibrium" value, noting that "the requisite foundation for comparability of geographically remote buildings is difficult and expensive to establish."[317] Beyond the foregoing practical problems of valuation under this measure, the court concluded that, conceptually, "contemporaneous local comparisons are unavailable by hypothesis,"[318] because the value of a building is determined by expectations of future growth in income and appreciation, and such expectations differ in controlled and uncontrolled markets.[319]

(iii.) *Replacement cost*

The use of replacement cost as a guide to value would not be logical in a rent regulation context, since replacement cost is a ceiling on value, rather than an accurate indicator of value.[320] Often the replacement cost of a property far exceeds its current value, even if depreciation factors are taken into consideration. This is true especially in lower income areas. As a practical matter, the use of replacement cost would lead to substantial rent increases for most units.[321]

4. Percentage Net Operating Income

gross rent = x (operating expenses)

(alternative expression of formula:
net operating income = x% of gross rents)

Under the percentage-net-operating-income standard, a rent increase is warranted if the net operating income from a property is less than a designated percentage of its gross rental income. The purpose of this standard is to provide landlords with a guaranteed minimum net-operating-income-to-gross-rent ratio which will provide adequate income for debt service and profit.

Percentage-net-operating-income standards were in effect under federal rent controls from 1949 to 1953,[322] and under some of the state

316. *Id.* at 215.
317. *Id.*
318. *Id.*
319. *Id.*
320. *Id. See also* Wilson v. Brown, 137 F.2d 348, 353 (Emer. Ct. App. 1943).
321. *Supra* note 10, at 668-69 n.239, *quoting* Helmsley v. Borough of Fort Lee, No. L-11348-74 (Bergen County, N.J. Super. Ct., June 30, 1975).
322. 24 C.F.R. 825.5(18) (1949). *E.g.*, 1953 N.J. Laws 216, § 16(h).

rent controls in the 1950's. Within the past few years, such standards have been adopted in a number of New Jersey municipalities.[323]

The fair-net-operating-income percentages that have been chosen typically fall within the range of average-net-operating-income ratios for the jurisdiction. Net operating incomes equal to 35% to 50% of gross rental income have generally been designated as fair returns.[324]

There are major advantages to the percentage-net-operating-income standard. It avoids the circularity associated with return-on-value standards. In addition, the owner's particular purchase price, investment, or financing arrangements are not variables in the rent calculation.

The primary disadvantage of the standard is that it establishes a uniform net-operating-income-to-gross-rental-income ratio as fair, when, in fact, net-operating-income-to-gross-rent ratios vary widely among "classes" of buildings.[325] For relatively new buildings, luxury

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323. *See, e.g.*, Clifton, N.J., Rev. Ordinances ch. 25A, art. 25A-7 (1979); Rutherford, N.J. Ordinance 2194-76, § 83A-6,A(2) (1979); Springfield, N.J. Rev. Gen. Ordinances § 13-6 (1980); Bayonne, N.J. Rent Control Ordinance § 23-6.2.2 (1980). *See also* North Plainfield, N.J. Ordinance 741, § 19 (Oct. 13, 1981). This ordinance requires the owner to allege in his hardship application that he is an "efficient operator of the residential property." *Id.*

The adoption of percentage-net-operating income standards by New Jersey municipalities is the result of an interesting combination of circumstances. In Helmsley v. Borough of Fort Lee, 78 N.J. 200, 394 A.2d 65 (1978), the New Jersey Supreme Court struck down the Fort Lee ordinance because it was certain to lead to a steady erosion of net operating incomes. However, the court noted with apparent approval, as it had three years earlier in Troy Hills Village v. Parsippany-Troy Hills, 68 N.J. 604, 621, 350 A.2d 34, 43 (1975) percentage-net-operating-income standards contained in other rent control laws and in a 1978 state assembly bill. 78 N.J. at 215–16, 394 A.2d at 72-73. While the court noted with approval both maintenance-of-net-operating-income standards and percentage-net-operating-income standards, it did not explicitly indicate that a standard which allows for a reduction in net operating income may be constitutional, although percentage-net-operating-income standards leave room for an across-the-board reduction in net operating incomes in jurisdictions where most properties are yielding above the minimum net-operating-income-to-gross-income ratio.

The author, in the course of a 1980 study of New Jersey rent controls, *supra* note 24, found that percentage-net-operating-income standards were adopted with the belief that they satisfied the dictates of the *Helmsley* decision. Rent administrators and board members, except in one jurisdiction, were unfamiliar with the concept of maintaining base date net operating income levels, although a standard of this type would meet the concerns expressed in the *Helmsley* decision and is common outside of New Jersey.

324. Under the 1949 federal regulations, a net operating income of 25% or less for buildings with four units or less, and a net operating income of 20% or less for buildings with five or more units was considered less than fair. Depreciation claimed on tax returns was allowed as an operating expense, however, subject to the proviso that it could not exceed 21% for a building containing four units or less and 16% for a building with five units or more. *See* 24 C.F.R. 825.5(18) (1949).

Under most New Jersey laws which use a percentage-net-operating-income standard, a net operating income equal to 40% of gross income is designated as a fair return. *See* ordinances cited *supra* note 323. However, some ordinances designate a different percentage. Under the West New York, New Jersey, hardship regulations, "hardship" is defined as a situation in which net operating income is less than 25% of gross income. *See* Hardship Regulations of the West New York Rent Control Board (1979).

325. For data indicating the variation in ratios among regions, cities within regions, and types of buildings, see I.R.E.M. Income/Expense Analysis, *supra* note 54. Variations of 10 to 20 points among regional averages and among averages for older and newer buildings are standard.

buildings, and buildings in highly desirable locations, operating expenses are usually low relative to gross rental income, while the net operating income required to cover mortgage payments and yield a return on cash investment is usually high relative to gross rental income. In contrast, older buildings and buildings in poorer neighborhoods are characterized by high operating-expense-to-gross-rental-income ratios and low net-operating-income-to-gross-rental-income ratios.[326] The designation of a single minimum net operating income ratio as fair thus benefits those classes of property which normally have low net-operating-income-to-gross-rental-income ratios.

In the marketplace, differences in net-operating-income-to-gross-rental-income ratios are compensated for by variations in purchase-price-to-gross-rental-income ratios. As a result, buildings with varying net-operating-income-to-gross-income ratios may yield equal rates of return on investment. Because a percentage-net-operating-income standard considers the net-operating-income-to-gross-rent ratio, but fails to consider differences in investment which compensate for differences in such ratios between buildings, it may destabilize rather than stabilize net operating incomes.

The following examples illustrate how owners may receive similar rates of return on their respective investments, despite the fact that they have different net-operating-income-to-gross-rent ratios. In both cases, the net operating income is equal to 7% of the purchase price and the return on equity will be about the same, if the owners have financed on the same terms with the same loan-to-purchase-price ratios. In both cases, the rents may be reasonable in light of the location, condition and age of the building, and expectations with respect to appreciation.

A 1977-1978 study of operating-cost-to-gross-rental-income ratios of Washington, D.C., apartments, conducted by the rent board, revealed significant differences in average ratios according to location and building size. Average ratios among wards ranged from .53 to .81. Average ratios for different size buildings were as follows:

D.C. Operating Cost Ratios

Building Size (Units)	Average Operating Cost Ratio	Average Rent per Unit
1	.459	178.28
2	.613	146.44
3	.493	185.21
4-11	.583	158.01
12 or more	.648	204.11

Divided into quartiles, ratios for the whole city were as follows: first quartile:.765 or higher; second quartile:.571 to .764; third quartile:.384 to .570; fourth quartile:.383 or less. *See* DISTRICT OF COLUMBIA RENTAL ACCOMODATIONS COMMISSION, 1978 ANNUAL REPORT 4-9 (March 1979).

326. *See supra* note 59.

TABLE 7.7

NET-OPERATING-INCOME-TO-GROSS-RENT RATIOS OWNERS WITH EQUAL NET-OPERATING-INCOME-TO-PURCHASE-PRICE RATIOS

	Building No. 1	Building No. 2
Purchase Price	$640,000	$500,000
Gross Rental Income	80,000	80,000
Operating Expenses	35,000	45,000
Net Operating Income	$ 45,000	$ 35,000
Net-Operating-Income-to-Gross-Rent Ratio	56%	44%
Net-Operating-Income-to-Purchase-Price Ratio	7%	7%

In this example, if a 50% net-operating-income-to-gross-rent ratio were designated as fair, the owner of Building Number 1 would not be entitled to any rent increase, while the owner of Building Number 2 would be entitled to an increase of 6% or $5,000, despite the fact that, in the absence of any individual adjustments, both owners are earning the same rate of return on their investments.

In recognition of the variations in net-operating-income-to-gross-rent ratios among different types of properties, some rent control regulations have specified different ratios for different classes of property. Under post-World War II federal regulations, the ratio for buildings with less than five units was 5% higher than the ratio for buildings with five or more units.[327] Under Boston regulations, the ratio is higher for newer buildings.[328] Distinctions of this type may reduce the disparities that arise from the use of a single percentage-net-operating-income standard. There are other important variables, however, which may not be easily incorporated within the regulatory scheme. For example, while it would be difficult to develop classifications based on neighborhood, this variable may be a critical determinant of variations in net-operating-income-to-gross-rent ratios in cities with neighborhoods of varying desirability.

Another criticism of the percentage-net-operating-income standard is that it provides incentives to increase operating expenditures, in-

327. *See supra* note 324.
328. Boston, Mass. Rent Regulation ch. 842 § 5(b) (1974).

cluding maintenance, only for those owners whose returns are at or below the fair return level. Moreover, the incentives provided to such owners may be excessive and may lead to unnecessary operating cost increases. Since the standard guarantees a minimum ratio of gross income to operating expenses, each dollar increase in operating expenses results in an increase in the minimum gross rent in excess of one dollar. Table 7.8 illustrates the impact of operating cost increases on gross rents when fair net operating income is defined as 40% of gross income.

TABLE 7.8

IMPACT OF INCREASES IN OPERATING EXPENSES ON FAIR RETURN UNDER PERCENTAGE N.O.I. STANDARD

	Base Period	Period #2	Period #3
Operating expenses	\$1500	\$1800	\$2000
Gross rent required to yield 40% N.O.I.	2500	3000	3333
Increase in operating expenses		300	200
Increase in rent required to yield fair return		500	333

For every \$1.00 increase in operating expenses, the rent needed to yield a fair return increases by \$1.66. Incentives for excessive increases in operating expenses may be offset by excluding unnecessary operating cost increases from consideration. As an administrative matter, however, it may be far more difficult to determine whether a cost increase is necessary or reasonable than to simply verify whether such an increase has, in fact, been incurred.

Percentage-net-operating-income standards have not been struck down by appellate courts.[329] In *Helmsley v. Borough of Fort Lee*, they

329. In one case, a New Jersey trial court held that a percentage-of-net-operating-income standard was unconstitutional as applied to one property in particular. Harrison Assocs. v. Township of Franklin, No. L-22056-78 (N.J. Super. Ct. Law Div., Somerset County, 1981), *rev'd*, No. A-4620-79 T1 (N.J. Super. Ct. App. Div. Jan. 22, 1982). The court concluded that the 35% net operating income guaranteed under the ordinance was not adequate to provide a fair return on investment in the plaintiff's luxury building.

> Thus, the 3.5% ceiling on rent increases combined with the insufficient hardship provisions make this Ordinance invalid as applied to plaintiff's building. . . . The plaintiff in this case had a debt service of approximately 45% of income, considerably higher than the 33% indicative of a typical highrise. Furthermore, unlike the majority of the other apartment buildings in Franklin Township, there was not an

were cited with approval.[330] However, the conclusion of the *Helmsley* court that a standard which leads to steady erosion of net operating income is unconstitutional raises a question as to whether a standard, which specified a ratio substantially below the prevailing ratio in a jurisdiction, if accompanied by a general adjustment standard which did not allow for increases adequate to cover operating cost increases, would survive the *Helmsley* test.

5. Conceptual Problems Associated With Designating a Particular Percentage Rate of Return as "Fair"

Return-on-equity, return-on-value, and percentage-net-operating-income standards each require the designation of a particular rate of return as fair. However, there are major fallacies connected with the designation of a particular rate as fair in the context of rent regulation. Briefly described, they are as follows:

1. Under rent controls, when rate of return is calculated, only one of the components of return, current net operating income or net income, is taken into account, with no consideration of other critical factors, such as appreciation or depreciation in value.[331] However, in the marketplace, widely varying net-operating-income or net-income-to-equity or -value ratios prevail, due to variations in rates of appreciation and depreciation of rental properties. Properties for which appreciation provides a substantial portion of all profits usually generate a low income in relation to value. In contrast, in the case of a depreciating property, a high income in relation to value or investment will be required in order to offset future losses in value.

2. Rates of return on value or equity also vary according to whether a property is put to its "highest and best use." For example, a two-family dwelling on a lot that is zoned for large multi-family dwellings, commercial uses, or apartments which may be converted to

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> overwhelming demand for the [luxury] type of housing [plaintiff's building] was designed to provide. As the evidence shows, plaintiff had considerable difficulty renting up the entire building. A rent control is defensible and justifiable as a method to balance housing availability and housing demands. Where availability and demand are in equilibrium or where availability exceeds demands, a rent control is neither required nor defensible. . . . All of this evidence supports the proposition that the Rent Control Ordinance should not be applicable to this building.

Id. at 20-21.

The case may illustrate the shortcomings of a standard which designates a particular percentage net operating income as fair for all buildings.

330. 78 N.J. 200, 216, 394 A.2d 65, 73.

331. For discussion of the factors which are considered in rate of return analysis for apartment investments, see AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS, THE APPRAISAL OF REAL ESTATE (6th ed. 1973); WENDT & P.A. CERF, REAL ESTATE INVESTMENT ANALYSIS AND TAXATION (1969); W. KINNARD, INCOME PROPERTY VALUATION (1971); W. BRUEGGEMAN & L. STONE, REAL ESTATE FINANCE (7th ed. 1981).

condominiums may yield very low incomes compared to their value, even when market rents are charged.[332]

3. The rate of return which is acceptable in the marketplace fluctuates in response to the rates of return that are available from alternative investments and mortgage interest rates. For example, a 12% rate of return on value may be adequate if the prevailing mortgage interest rate is 10%, but inadequate if the prevailing rate is 14%. If rent control fair return standards attempted to compensate for these fluctuations by tying fair-rate-of-return levels to an index of interest rates, rent levels guaranteed under fair return standards could fluctuate from year to year.

4. Acceptable ratios of net operating income to equity or value vary according to the degree to which investments may be financed through loans, financing terms for loans, and the tax benefits available for such investments.[333]

5. A necessary corollary to the judicial position that owners are constitutionally entitled to a fair return on the value of their property or on their equity is a determination as to what rate of return meets that requirement. Nevertheless, courts which have required a fair return on value or equity have usually failed to formulate specific standards for determining what rate is constitutionally sufficient.[334] In fact, rate designation in a rent control context becomes very seriously flawed, because for practical and policy reasons, consideration of the multitude of factors which govern investors' rate of return calculations, such as depreciation, appreciation, financing, and tax benefits, is inappropriate in a rent control context.

6. Maintenance-of-Net-Operating-Income (Cost Passthrough Approach)

gross rent = *base period rent* + (*current operating expenses* − *base period operating expenses*)

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332. For discussion of rate of return issues associated with regulation of a golf course lease under New York commercial rent controls, see Steinberg v. Forest Hills Golf Range, 303 N.Y. 577, 105 N.E.2d 93 (1952). The New York Court of Appeals concluded: "Obviously, the owner of an unimproved parcel of land found to be valuable because of its availability for development cannot expect to receive the same rate of return upon its value as he would if it were appropriately improved." *Id.* at 585, 105 N.E.2d at 96.

333. *See supra* note 331.

334. In 1975, the New Jersey Supreme Court explained:

> In determining what is a "just and reasonable" return, the court must evaluate the interests of the consumer and general public as well as the interests of the landlord. . . . to be "just and reasonable" a rate of return must be high enough to encourage good management including adequate maintenance of services, to furnish a reward for efficiency, to discourage the flight of capital from the rental housing market, and to enable operators to maintain and support their credit. A just and reasonable return is one which is generally commensurate with returns on investments in other enterprises having corresponding risks.

Troy Hills Village v. Township Council, 68 N.J. 604, 629, 350 A.2d 34, 47 (1975).

Under the maintenance-of-net-operating-income standard, owners may obtain rent increases which are adequate to cover increases in operating expenses. Fair net operating income is defined as the net operating income that a property yields during a base period. This type of standard was used under federal rent controls starting in 1944,[335] and is presently used by New York City,[336] the three Massachusetts rent control boards,[337] several California cities,[338] and several New Jersey municipalities.[339]

The maintenance-of-net-operating-income standard recognizes that in the rental housing market, ratios of rental income to value, equity, and gross income vary substantially among buildings. Therefore, rather than designating a particular rate of return as fair, maintenance-of-net-operating-income standards pursue the best available option, which is to preserve prior net operating income levels.[340]

From a conceptual point of view the maintenance-of-net-operating-income standard is the only fair return standard which is consistent with the general policy of tying rent increases to landlords' increases in operating costs. The practical effect of such an individual adjustment standard, in jurisdictions which base across-the-board increases on average operating cost increases, is to provide additional rent increases for those owners who incur above-average increases in operating costs.

In addition to being conceptually consistent with the "stabilization" purpose of rent controls, the maintenance-of-net-operating-income standard has several significant advantages over other types of standards. Like percentage-net-operating-income standards, it avoids the circularity associated with return-on-value standards, and it does not base fair return levels on the particular purchase price, investment, or financing arrangements of the owner. It also offers the most reasonable type of incentive for increased operating and maintenance ex-

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335. *See* 24 C.F.R. 825.5(a)(12) (1944).

336. *See* New York, N.Y., ADMIN. CODE, § YY-51-6.0(c)(6) (1975), which applies to rent "stabilized" units.

337. *See* Boston, Mass., Rent Regulation 6, § 5(a) (1974); Brookline, Mass., Rent Regulation 39 (1983); Cambridge, Mass., Rent Regulation Series No. 72 (1972).

338. *See, e.g.*, Berkeley, Cal., Rent Stabilization Board Regulations §§ 1262-66 (1981); City of Los Angeles Rent Adjustment Commission, Just and Reasonable Return Guidelines, § 240.00 (1981); Santa Monica, Cal., Rent Control Board Regulations § 4100 (1981); Santa Cruz County, Cal., Code § 13.13.040 (1982) (mobile home rent control).

339. *See, e.g.*, Camden, N.J., Ordinance MC 1719, § 9(b) (1981).

340. The federal, Massachusetts, and California standards have utilized pre-rent control base periods. It has not been feasible to use such base periods under the New York and New Jersey standards, because the standards were adopted long after the passage of rent controls, and it would have been unreasonable to expect landlords to provide pre-rent control income and operating loss data.

If operating expenses increased at less than the inflation rate, then rents would not have to increase at the inflation rate in order to allow net operating income to grow at the inflation rate.

penditures, a dollar-for-dollar passthrough, to which all owners are entitled regardless of whether their pre-rent control return levels were high or low. Finally, it is the only standard that assures that a landlord's net operating income will not be reduced by rent control.

a. Indexing net operating income

The principal issue associated with the use of maintenance-of-net-operating-income standards has been the question of what types of adjustments, if any, should be made for inflation in defining fair net operating income. Some maintenance-of-net-operating-income standards provide for maintenance of base period dollar net operating incomes, without any adjustment for inflation subsequent to the base period.[341] Other jurisdictions have adopted maintenance-of-net-operating-income to gross-income-ratio standards,[342] or have provided for full inflation adjustments to the base period net operating income[343] in defining fair net operating income. As indicated by the example below, the difference may be a significant difference between maintaining dollar net operating income (column A), increasing net operating income at the inflation rate (column B), and maintaining a net-operating-income-to-gross-rent ratio (column C):

TABLE 7.9

THE IMPACT OF ALTERNATE MAINTENANCE-OF-NET-OPERATING-INCOME STANDARDS (OPERATING EXPENSES INCREASE 20% DURING A PERIOD OF 10% INFLATION)

	Base year	Current Year		
		maintain dollar net operating income	increase net operating income at inflation rate	maintain net operating income to gross ratio
Gross Rental Income	$10,000	$11,000	$11,500	$12,000
Operating Expenses	- 5,000	- 6,000	- 6,000	- 6,000
Net Operating Income	$ 5,000	$ 5,000	$ 5,500	$ 6,000

341. *See, e.g.*, Boston, Mass., Rent Regulation 6, § 5(b) (1974); Berkeley, Cal., Rent Stabilization Board Regulations §§ 1262-66 (1981); New York, N.Y. Admin. Code, § YY51 -6.0(c)(6) (1969). *See also* 24 C.F.R. 825.5(a)(12), 9 F.R. 10188 (1944).

342. A standard of this type was in effect under New York City rent stabilization from 1969-1975. New York, N.Y., Admin. Code, § YY51-6.0(c)(6) (1969), *amended by* Act of July 1, 1975, No. 16. The amendment provided for maintenance of base date dollar net operating income.

343. *See, e.g.*, Cambridge, Mass., Rent Control Board Regulation 72 (1972).

The example illustrates that a $1,000 rent increase is adequate to maintain base period dollar net operating income, where operating expenses increase by $1,000 (column A). A $2,000 increase is required, however, to maintain the base period net-operating-income-to-gross-income ratio. A $1,500 rent increase is required to allow net operating income to increase at the inflation rate (column B).

The result of maintaining the net-operating-income-to-gross-income ratio or allowing net operating income to grow at the inflation rate would be to allow landlords a growth in income that would be higher than the United States average in the unregulated market. As previously indicated, rents have increased at about two-thirds the inflation rate on average during the past seventy years.[344] Furthermore, operating-cost-to-gross-income ratio surveys have indicated that average-net-operating-income-to-gross-rent ratios decline substantially as a building gets older.[345]

An intermediate choice to the foregoing alternatives would be to adjust base date net operating income by a fraction of the inflation rate. Even if net operating income were allowed to increase at only one-half the inflation rate, owners who devoted more than 50% of their net operating income to fixed debt service payments would realize a growth in cash flow which exceeds the inflation rate. The following example, in which it is assumed that one-half of net operating income is devoted to fixed payment mortgage debt service and that there has been 40% inflation between the base period and the

TABLE 7.10

INCREASING NET OPERATING INCOME AT THE INFLATION RATE (INFLATION OF 40% SINCE BASE YEAR)— IMPACT ON CASH FLOW, GROSS INCOME, AND NET OPERATING INCOME COMPARED

	Base Year	Current Year	Percentage Increase over Base Year
Consumer Price Index	100	140	40
Gross rental income	$10,000	$13,000	30
Operating expenses	− 5,000	− 7,000	40
Net operating income	5,000	6,000	20
Debt service	− 2,500	− 2,500	
Cash flow	$ 2,500	$ 3,500	40

344. *See supra* Table 2.1.
345. *See* I.R.E.M. INCOME/EXPENSE ANALYSIS, *supra* note 54, at 34.

current year, illustrates the impact of increasing net operating income at one-half the inflation rate.

In the example, operating expenses and cash flow have increased by 40%, while net operating income has increased by only 20%. When operating expenses constitute half of gross income, increasing net operating income by one-half the inflation rate results in rent increases of approximately three-quarters of the inflation rate.

As the example below illustrates, more highly leveraged properties will generate substantial percentage growth in cash flow from relatively modest increases in net operating income:

TABLE 7.11

INCREASING NET OPERATING INCOME BY 20% — IMPACT ON CASH FLOW (LEVERAGED PURCHASE)

	Base Year	Current Year	Percentage Increase over Base Year
Net operating income	$5,000	$6,000	20
Debt service payments	- 4,000	- 4,000	0
Cash flow	$1,000	$2,000	100

In this case, net operating income has increased by only 20%, but cash flow has doubled.

Despite the fact that a partial inflation adjustment may be the most reasonable approach consistent with the purposes of rent control, most jurisdictions which have used the maintenance-of-net-operating-income standard have either made no adjustment for inflation or have provided for a 100% adjustment.[346] Santa Monica, Brookline, and some California mobile home rent control ordinances are exceptions to this pattern.[347] In 1981, Santa Monica adopted a fair return standard under which net operating income is permitted to increase at 40% of the inflation rate.[348] The Brookline, Massachusetts, rent control regulation permits net operating income to grow at two-thirds the inflation rate.[349] Up to this time, only two courts have considered

346. *See, e.g.*, Laws cited *supra* notes 425-27. New York City has alternated between the two extremes. *See supra* text accompanying notes 425-27.

347. *E.g.*, Santa Cruz County, Cal., Code § 13.13.040 (1982).

348. Santa Monica, Cal., Rent Control Regulations § 4106 (1981).

349. Other exceptions include the mobile home rent control ordinances of Santa Cruz County, California (net operating income permitted to increase at 50% of the inflation rate, Santa Cruz County, Cal., Code § 13.13.040 (1982)), and of Westminster, California (net operating income permitted to increase at 60% of the inflation rate, Westminster, Cal., Municipal Code § 2.63.5.07 (1983)).

whether inflation adjustments, either partial or 100%, are constitutionally required when maintenance-of-net-operating-income standards are used.[350]

Any choice regarding "indexing" of net operating income under an individual adjustment standard should take the general adjustment standard into consideration. A policy of 100% inflation indexing of net operating income for individual adjustments combined with a general adjustment policy that does not allow for any growth in net operating income may lead to a substantial volume of individual adjustment applications.[351]

Although the maintenance-of-net-operating-income standard may be the only fair return standard which operates in a manner which is consistent with rent "stabilization" purposes, it has been subject to a number of criticisms.

b. Establishment of a "fair" base rent

One criticism is that the presumption that base period rents yielded fair net operating incomes penalizes owners who have been charging below market rents with a low base-period-net-operating-income level. This result is inherent in the rent "stabilization" principle (as opposed to a rent "equalization" approach).

Some boards have responded to this criticism by using a percentage-net-operating-income standard in conjunction with a maintenance-of-net-operating-standard.[352] To the extent that low net-operating-income-to-gross-rent ratios are associated with below market rents, rather than age or location of buildings, this approach operates to raise rents which are substantially below average. If a percentage-net-operating-income standard is used to correct "inequities" in base period rents, then the adoption of different "fair return" net-operating-income-to-gross-rent ratios for different classes of rental property should be considered.[353] Also, it may be reasonable to restrict buildings to one such adjustment and require that subsequent petitions be filed under maintenance-of-net-operating-income standards.

Another common approach to dealing with the "inequities" caused by the presumption that base period rents yield a fair net operating income is the establishment of exceptions to the presumption. Exceptions are typically made for situations in which the rent on the base

350. In *Helmsley*, the court specifically declined to rule on this issue. 78 N.J. 200, 223 n.15, 394 A.2d 65, 76 n.15. In October 1983, in Cotati Alliance for Better Housing v. City of Cotati, 1 Civ. 53178 (Cal. Ct. App. Oct. 24, 1983), the court held that freezing net operating income during an inflationary period is confiscatory. Plaintiffs plan to appeal the *Cotati* decision.

351. See *supra* note 216 for data on the number of individual petitions in Cambridge.

352. *See, e.g.*, Boston, Mass., Rent Regulation 6 (1974); Santa Monica, Cal., Rent Regulations §§ 4103, 4106 (1981).

353. *See supra* text accompanying notes 324-25.

date was not established by an arm's-length transaction, capital improvements made in the year prior to the base period were not reflected in the base period rent, and other peculiar factors were present, such as seasonal variations in rent.[354]

In jurisdictions in which rent controls were in effect prior to the adoption of a maintenance-of-net-operating-income standard, the use of a post-rent control base date has been criticized as unreasonable because it defines as a fair net operating income a level that has been determined by regulation rather than the free market. To correct this problem, an estimate can be made of the impact of rent controls on pre-rent control net operating incomes in order to determine the relationship between pre-rent control net operating income and post–rent control base period levels, and appropriate adjustments can be incorporated into the definition of fair net operating income.

c. Record-producing requirements

In response to proposals that New Jersey rent control boards adopt maintenance-of-net-operating-income standards, interested parties objected that it was unreasonable to require property owners to produce old income and expense records,[355] especially in instances where properties have changed hands. Requirements that expense information for several years accompany individual adjustment petitions are inherent in the application of maintenance-of-net-operating-income standards.[356] Many operating expenses such as property taxes and utility bills can easily be obtained or closely estimated. In instances in which property ownership has not changed, maintenance of expense and income records for at least three years can be considered minimum good business practice, since it is required by the Internal Revenue Service.[357]

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354. *See, e.g.*, Boston, Mass., Rent Regulation 6, § 5(c)(1974). (Reprinted *infra* Appendix § VI(B)).

355. This conclusion is based on interviews and meetings with New Jersey rent control board members and administrators in 1980 and 1981. Objections to record production requirements associated with the standard have been strenuous in instances in which the standard has been proposed rather than in jurisdictions in which the standard is actually used. Rent control board administrators responsible for applying maintenance-of-net-operating income standards have not experienced serious problems associated with requiring information on base period expenses.

356. The Federal Register, Record Retention Guide § XI.4.1, states that the general requirement for retention of records as set forth in 26 C.F.R. § 1.6001-1 (1978) is that records that are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information must be kept "so long as the contents thereof may become material in the administration of any Internal Revenue Service law." 26 C.F.R. § 301.6501(a)-1 (1972) contains the general rule that the amount of any tax imposed by the Internal Revenue Service shall be assessed within three years after the return is filed.

357. *See* Boston, Mass., Rent Regulation 6, § 7(b) (1974); Cambridge, Mass., Rent Control Board Regulation 72-03(c) (1980). For discussion of rent board discretion in calculating operat-

Massachusetts rent control boards have the authority to estimate base period operating expenses where records are unavailable. Cambridge bases its estimates on a "red book" which contains information on average ratios of specified types of costs to gross income and their absolute dollar amounts in the base year for different building types.[358] It may be assumed, alternatively, that certain types of costs have increased at the overall inflation rate or at the rate of inflation for that particular cost item since the base period.[359]

d. Summary

While all types of fair return standards are subject to conceptual and practical criticisms, maintenance-of-net-operating-income standards have the following advantages over other types of standards:

1. They do not discriminate on the basis of purchase price, cash investment, or financial arrangements.

2. They provide an incentive for increased maintenance by providing for a passthrough of all operating cost increases, regardless of profit levels. Other fair return standards, by comparison, do not provide for a passthrough of operating cost increases in instances in which the owner is making more than a "fair" return on the base date, since such owners may experience a reduction in net operating income and still be earning more than a "fair" return.

3. The outcome of the application of such standards cannot be regulated by owners through manipulation of financing arrangements or increases in investments.

4. Maintenance-of-net-operating-income standards are objective and the analysis required to administer them is relatively simple. Base period net operating income is calculated and compared with current net operating income. It is not necessary to determine the value of the property or the owner's cash investment. While subjective evaluation of the reasonableness of operating expenses is required, operating expenses are a variable which must be evaluated under all fair return formulas.

5. They do not insert free market expectations into rental price determinations.

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ing expenses when the landlord does not have base period data, see World Wide Realty v. Boston Rent Control Admin'r, 7 Mass. App. Ct. 135, 387 N.E.2d 598 (1979).

358. Interview with Robert Levitt, Cambridge Rent Control Board hearing officer (June 3, 1982).

359. One shortcoming of the maintenance-of-net-operating-income standard is that greater increases can be obtained by an understatement of base period operating expenses and corresponding overstatement of base period net operating income. Omissions of base year expenses are particularly difficult to detect. Brookline and Cambridge Rent Board staff members indicated, therefore, that they adjusted base year operating expenses which were exceptionally low. Interviews with the Brookline and Cambridge Rent Control Board staff members (1980 and 1981).

Maintenance-of-net-operating-income standards have fared well in the constitutional arena relative to other standards. In Massachusetts, they have not been struck down by appellate courts, although they have been in effect for years and the state courts have extensively considered constitutional issues regarding fair return standards.[360] They have been cited with approval by the New Jersey Supreme Court in *Helmsley*.[361] Furthermore, they meet the concern expressed by the court in that case that Fort Lee's stringent rent controls would lead to a steady erosion of owners' net operating incomes.[362] One California appellate court has specifically approved the use of such a standard.[363] New York's net operating income standards have not been struck down, although they have been in effect under rent stabilization since 1970.[364] In a few instances, maintenance-of-net-operating-income standards have been struck down by trial courts.[365]

VIII. Capital Improvements Increases

A. *Generally*

Virtually all rent control laws allow landlords to petition individually for rent increases to cover the cost of capital improvements. However, capital improvements provisions take varying forms which differ significantly in substantive impact. Drafting of such provisions entails consideration of a complex interrelation of conceptual issues and of the practical "realities" of capital improvements rent adjustments.

Capital improvements increase regulations may be viewed as a tool which can be used to encourage all or certain types of maintenance or improvements. They can be tailored to the particular needs and conditions of a community. Policy considerations involved in drafting capital improvements standards may include: encouraging housing maintenance; protecting tenants from displacement caused by rent increases which they cannot afford; distinguishing true improvements from ordinary replacements that are required in the course of rental property ownership; and determining what types of improvements should be rewarded with rent increases.

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360. *See* Niles v. Boston Rent Control Admin'r, 6 Mass. App. 135, 374 N.E.2d 296 (1978) and cases cited therein.

361. Helmsley v. Borough of Fort Lee, 78 N.J. 200, 215-18, 394 A.2d 65, 72-73 (1978).

362. *Id.*

363. *See* City of Los Angeles v. Palos Verdes Shores Mobile Home Estates, Ltd., *supra* note 291, 142 Cal. App. 3d 362, 190 Cal. Rptr. 866 (1983).

364. *See supra* note 336.

365. In *Baker v. City of Santa Monica*, *supra* note 55, a Los Angeles trial court held that Santa Monica's fair return standard, which allows for a passthrough of operating cost increases and growth in net operating income at 40% of the inflation rate, is constitutional only if owners have the right to demolish their rental units. *Id.* (Announcement of Intended Decision Phase IIIA Dec. 29, 1982).

City of Portland - Housing Safety Division
LANDLORD APPLICATION FOR RENT INCREASE SUMMARY

Date of Hearing:

December 28, 2022

Owner Name and Address:

Nevens LLC, 53 Rustic Lane, Portland, ME 04103

Landlord's Representative and Address:

N/A

Property Address, Unit, and CBL:

26 Poland Street (single family) - CBL: 146-B-005-001

Tenants/Interested Parties:

Yes

Supplement Information Provided to HS (if different than application):

- Unit #: 26
- Base Rent (6/1/2020): $2,550.00
- Previous Rent (11/1/2021): $2,550.00
- Current Rent (11/1/2022): -

Type of Request:

- ☐ Renovation of a unit or Reconfiguration of one or more units (6-233(c))
- ☒ Capital improvement costs, including financing costs (6-234(b)(5)(a))
- ☐ Uninsured repair costs (6-234(b)(5)(d))
- ☐ Increased housing service costs (6-234(b)(5)(c))
- ☐ Fair rate of return (6-234(b)(5)(d))

City of Portland - Housing Safety Division
LANDLORD APPLICATION FOR RENT INCREASE SUMMARY

Date of Hearing:

December 28, 2022

Owner Name and Address:

Francine D'Alfonso, 25 Hurricane Rd, Falmouth, ME 04105

Landlord's Representative and Address:

N/A

Property Address, Unit, and CBL:

39 Holly Street, Unit 2 - CBL: 142-E-014-001

Tenants/Interested Parties:

Yes

Supplement Information Provided to HS (if different than application):

- Unit #:
- Base Rent (6/1/2020):
- Previous Rent (11/1/2021):
- Current Rent (11/1/2022):

Type of Request:

- ■ Renovation of a unit or Reconfiguration of one or more units (6-233(c))
- ■ Capital improvement costs, including financing costs (6-234(b)(5)(a))
- ■ Uninsured repair costs (6-234(b)(5)(d))
- ■ Increased housing service costs (6-234(b)(5)(c))
- ■ Fair rate of return (6-234(b)(5)(d))

City of Portland - Housing Safety Division
LANDLORD APPLICATION FOR RENT INCREASE SUMMARY

Date of Hearing:

December 28, 2022

Owner Name and Address:

Home State Properties LLC, 150 Glenwood Ave, Portland, ME 04103

Landlord's Representative and Address:

N/A

Property Address, Unit, and CBL:

25 Grant St, all 7 units - CBL: 036-D-013-001

Tenants/Interested Parties:

Yes, all 7 units

Supplement Information Provided to HS (if different than application):

- Unit #:
- Base Rent (6/1/2020):
- Previous Rent (11/1/2021):
- Current Rent (11/1/2022):

Type of Request:

☐ Renovation of a unit or Reconfiguration of one or more units (6-233(c))
☒ Capital improvement costs, including financing costs (6-234(b)(5)(a))
☐ Uninsured repair costs (6-234(b)(5)(d))
☐ Increased housing service costs (6-234(b)(5)(c))
☐ Fair rate of return (6-234(b)(5)(d))

City of Portland - Housing Safety Division
LANDLORD APPLICATION FOR RENT INCREASE SUMMARY

Date of Hearing:

December 28, 2022

Owner Name and Address:

Home State Properties LLC, 150 Glenwood Ave, Portland, ME 04103

Landlord's Representative and Address:

N/A

Property Address, Unit, and CBL:

27 Grant St, all 6 units - CBL: 036-D-012-001

Tenants/Interested Parties:

Yes, all 6 units

Supplement Information Provided to HS (if different than application):

- Unit #:
- Base Rent (6/1/2020):
- Previous Rent (11/1/2021):
- Current Rent (11/1/2022):

Type of Request:

☐ Renovation of a unit or Reconfiguration of one or more units (6-233(c))
☒ Capital improvement costs, including financing costs (6-234(b)(5)(a))
☐ Uninsured repair costs (6-234(b)(5)(d))
☐ Increased housing service costs (6-234(b)(5)(c))
☐ Fair rate of return (6-234(b)(5)(d))

City of Portland - Housing Safety Division
LANDLORD APPLICATION FOR RENT INCREASE SUMMARY

Date of Hearing:

December 28, 2022

Owner Name and Address:

Jonas Allen, 147 Ryder Rd, Yarmouth, ME 04096

Landlord's Representative and Address:

N/A

Property Address, Unit, and CBL:

4 Bay View Dr (Single Family) - CBL: 129-I-003-001

Tenants/Interested Parties:

Yes

Supplement Information Provided to HS (if different than application):

- Unit #: 1
- Base Rent (6/1/2020): $2,300.00 (For reference)
- Previous Rent (11/1/2021): $2,300.00 (For reference)
- Current Rent (11/1/2022):

Type of Request:

- ☐ Renovation of a unit or Reconfiguration of one or more units (6-233(c))
- ☒ Capital improvement costs, including financing costs (6-234(b)(5)(a))
- ☐ Uninsured repair costs (6-234(b)(5)(d))
- ☒ Increased housing service costs (6-234(b)(5)(c))
- ☒ Fair rate of return (6-234(b)(5)(d))

City of Portland - Housing Safety Division
LANDLORD APPLICATION FOR RENT INCREASE SUMMARY

Date of Hearing:

December 28, 2022

Owner Name and Address:

44 Pleasant St LLC, 9E Oxford St, Portland, ME 04101

Landlord's Representative and Address:

N/A

Property Address, Unit, and CBL:

44 Pleasant Street, Unit 6 - CBL: 040-B-004-001

Tenants/Interested Parties:

Vacant

Supplement Information Provided to HS (if different than application):

- Unit #:
- Base Rent (6/1/2020):
- Previous Rent (11/1/2021):
- Current Rent (11/1/2022):

Type of Request:

- ■ Renovation of a unit or Reconfiguration of one or more units (6-233(c))
- ■ Capital improvement costs, including financing costs (6-234(b)(5)(a))
- ☐ Uninsured repair costs (6-234(b)(5)(d))
- ☐ Increased housing service costs (6-234(b)(5)(c))
- ☐ Fair rate of return (6-234(b)(5)(d))