

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**45 RICE STREET REALTY TRUST,** v. **BOARD OF ASSESSORS OF**  
Docket Nos. F258865, F265984 **THE CITY OF CAMBRIDGE**  
F266695, F272036  
F277484

**ELLSWORTH REALTY, INC.,**  
Docket Nos. F265986, F266694  
F272037, F277486

**NEW BROADWAY REALTY, INC.,**  
Docket Nos. F265985, F266697  
F272038, F277485

**LEE STREET REALTY, INC.,**  
Docket Nos. F265983, F266696  
F275588, F277488

Promulgated:  
November 20, 2007

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and c. 59, §§ 64 and 65 from the refusal of the appellee to abate taxes on certain real estate in the City of Cambridge assessed under G.L. c. 59, §§ 11 and 38 for Fiscal Years 2001 through 2005, inclusive.

Commissioner Gorton heard these appeals. With Commissioner Gorton materially participating in the deliberations of these appeals<sup>1</sup>, Chairman Hammond and

---

<sup>1</sup> On September 11, 2006, Commissioner Gorton was sworn as a temporary member of the Appellate Tax Board pursuant to G.L. c. 58A, § 1, his status as a member of the Board having terminated on that date with the appointment and qualification of his successor. See G.L. c. 30, § 8. This appointment was renewed for an additional year commencing September 11, 2007. Commissioner Gorton's material participation in the deliberation of these appeals included, *inter alia*, drafting and

Commissioners Egan, Rose, and Mulhern joined in the decision to allow appellee's motion for directed findings. Commissioner Scharaffa took no part in the deliberations or decisions of these appeals.

These findings of fact and report are made on the Appellate Tax Board's ("Board's") own motion under G.L. c. 58A, § 13 and 831 CMR 1.32 and are promulgated simultaneously with its decision.

*David J. Saliba, Esq. and David G. Saliba, Esq.,* for the appellants.

*Anthony M. Ambriano, Esq.,* for the appellee.

#### **FINDINGS OF FACT AND REPORT**

This consolidated matter involves seventeen appeals relating to four different income-producing properties in the City of Cambridge. At issue are multi-tenant apartment complexes: the first situated at 399-401 Broadway and 2 Ellsworth Avenue, owned for all years at issue by New Broadway Realty, Inc.; the second situated at 4-6 Ellsworth Avenue, owned for all years at issue by Ellsworth Realty

---

distributing proposed Findings giving a detailed report on the evidence and his observations as to witness credibility. He also made oral presentations of his recommendations to the Board members.

Trust; the third located at 25-33 Lee Street, owned throughout the relevant time period by Lee Street Realty, Inc.; and the fourth situated at 41-43-45 Rice Street, owned for all years at issue by 45 Rice Street Realty Trust.

The years at issue are Fiscal Years 2002-2005. In addition, Fiscal Year 2001 is at issue for the property owned by 45 Rice Street Realty Trust only. The properties owned by New Broadway Realty, Inc. and Ellsworth Realty Trust are contiguous and are managed as a single entity. For ease of reference, the subject properties are referred to as "Broadway-Ellsworth", "Lee Street", and "Rice Street."

These matters came before the Board on the motion of the appellee Board of Assessors of the City of Cambridge ("appellee" or "assessors") for directed findings on all properties for all years. The motion was made at the close of the taxpayers' case in chief. Relying on the observations of the hearing officer as to matters of witness credibility, the Board evaluated the substantiality of the evidence proffered by the taxpayers, to ascertain whether the showing would support findings of value at variance with the assessed values, which are presumed to be correct. See generally *General Electric v. Bd. of Assessors*

*of Lynn*, 393 Mass. 591, 599 (1984). See also *Schlaiker v. Bd. of Assessors of Great Barrington*, 365 Mass. 243, 245 (1974). In this context the Board is entitled to "'weigh the evidence and resolve all questions of credibility, ambiguity, and contradiction in reaching a decision.'" *Western Massachusetts Lifecare Corp. v. Bd. of Assessors of Springfield*, 434 Mass. 96, 108 (2001)(Citation omitted.) Each of the foregoing subject properties will be discussed in turn, with the Broadway-Ellsworth properties addressed together.

#### Broadway-Ellsworth

Testifying for the appellant about the Broadway-Ellsworth apartment complex were Mr. Stephen Gasperoni, a certified real estate appraiser whom the Board qualified as an expert; Mr. Francis Privitera, the owner of the properties; and Mr. Robert Reardon, Director of Assessment for the City of Cambridge. In addition, the hearing officer took a view of the subject properties.

For all the fiscal years at issue, the appellants timely paid the taxes due. The appellants also filed applications for abatement with the assessors. Appellants filed Petitions under Formal Procedure with the Appellate Tax Board ("Board"). Jurisdictional information for the subject properties is summarized in the following tables:

New Broadway Realty, Inc.

	<u>Annual Tax Bills Mailed</u>	<u>Abatement Apps. Filed</u>	<u>Dates of Denials</u>	<u>Petition Filed With Board</u>
FY 2002	10/13/01	4/12/02	7/12/02	8/19/02
FY 2003	10/7/02	10/18/02	1/18/03	2/5/03
FY 2004	10/20/03	11/5/03	2/5/04	3/25/04
FY 2005	11/1/04	11/12/04	2/12/05	4/7/05

Ellsworth Realty Trust

	<u>Annual Tax Bills Mailed</u>	<u>Abatement Apps. Filed</u>	<u>Dates of Denials</u>	<u>Petition Filed With Board</u>
FY 2002	10/13/01	4/12/02	7/12/02	8/19/02
FY 2003	10/7/02	10/18/02	1/18/03	2/5/03
FY 2004	10/20/03	11/4/03	2/5/04	3/25/04
FY 2005	11/1/04	11/12/04	2/12/05	4/7/05

The foregoing facts establish the Board's jurisdiction over these appeals for all years except Fiscal Year 2002. With respect to Fiscal Year 2002, the April 12, 2002 filing of the abatement applications appears to be untimely under G.L. c. 59, § 59 (abatement applications due on the last day for payment of the first installment of the actual tax bill), although it is unclear from the record whether the tax bills mailed on October 13, 2001 were estimated or actual bills. Neither party objected to the Board's jurisdiction. Notwithstanding the apparent lack of jurisdiction for Fiscal Year 2002, the Board gave plenary consideration to the evidence relating to all years "where they have been fully litigated ...." See *Hill v. Bd. of Assessors of Sudbury*, Mass. ATB Findings of Fact and Report 1994-294, 1994-297. The evidence pertaining to Fiscal Year

2002 is inextricably linked to that relevant to the other years at issue, over which the Board has jurisdiction. The Board's entry of directed findings on the merits entails the same result as would dismissals for lack of jurisdiction for Fiscal Year 2002.

Mr. Gasperoni prepared a single appraisal report for the Broadway-Ellsworth properties, which was admitted in evidence as Exhibit 2. As appellants did not offer in evidence any of the relevant property record cards for either the 399-401 Broadway and 2 Ellsworth Avenue ("Broadway") parcel or the 4-6 Ellsworth Avenue ("Ellsworth") parcel, the following information is largely drawn from the Report of Mr. Gasperoni and the testimony.

Mr. Gasperoni appraised the subject properties "as is." The transmittal date for the Report was reflected as April 5, 2005, although the Report states at page 30 that Mr. Gasperoni inspected the property on April 9, 2005. Mr. Gasperoni indicated that he did inspect the properties before conducting his appraisal analysis, and that the date of the transmittal letter was incorrect. He did not supply a corrected date for the transmittal letter.

Mr. Gasperoni's Report supplies the following information on Assessed Values for the Broadway and Ellsworth parcels for the years at issue:

Valuation Date	Broadway	Ellsworth
1/1/01	\$3,375,000	\$5,061,000
1/1/02	\$3,425,700	\$5,212,000
1/1/03	\$5,571,300	\$5,434,300
1/1/04	\$6,170,200	\$6,618,700

The Broadway-Ellsworth properties are improved with five 3-and 4-story masonry, brick and wood-frame structures, according to Messrs. Gasperoni and Privitera. The Broadway property has a land area of 17,775 square feet, while the Ellsworth property has 15,467 square feet. The properties are located in central Cambridge, near Central Square. Mr. Gasperoni stated that, "[a]ccording to public records, the subject buildings were constructed circa 1900." Report at 45. Mr. Gasperoni considered the design of the subject apartment buildings and units "typical of like developments of the nineteen hundreds to the nineteen forties." Report at 47. Mr. Gasperoni's Report did not specify the gross building area or the total rentable space in the subject properties.

Mr. Gasperoni said the common areas in the buildings "exhibit a tired and dated condition and in some locations give an old and dated impression." Report at 47. The Broadway property contains 54 apartment units according to the Report at page 21, though 52 units are described at

other places in the Report and in the testimony.<sup>2</sup> The Ellsworth property includes 42 apartment units<sup>3</sup>, according to the Report. Mr. Gasperoni asserted that “[n]early all of the units have had minimal upgrades. Typical appliances are dated...” Report at 47. According to Mr. Gasperoni, both the Broadway and Ellsworth properties include studio, one-bedroom, and two-bedroom units. According to an untitled document included in the appendix to Mr. Gasperoni’s Report, which sets forth Mr. Gasperoni’s projected market rents, the studio and one-bedroom apartments in the Broadway property are 450 square feet in size; the two-bedroom units are 600 square feet with the exception of two such apartments for which the size is given as 450 square feet. While units in the Ellsworth property are also reflected as being either 450 or 600 square feet in size, there was no readily discernible correlation between unit size and number of rooms.

However, in documents styled as “rent rolls” for each valuation date at issue, also included in the appendix, varying and discrepant room counts appear from year to year for several of the units in the subject properties. For

---

<sup>2</sup> Only 52 units appear on the rent rolls included in the Report. The owner, Mr. Francis Privitera, testified that there were 52 units in the Broadway property.

<sup>3</sup> Cambridge’s Director of Assessment Robert Reardon testified in response to questions from appellant’s counsel that the Ellsworth property has 43 units according to the property record card.

example, apartment #1 at 399 Broadway is listed on the rent rolls as having 3 bedrooms as of January 1, 2000, but only 1 bedroom as of January 1, 2002, even though Mr. Gasperoni was aware of no renovations during the interim. He conceded on cross-examination that "it would appear" that the owners were unaware of how many bedrooms were in that unit. He "guessed" that there might be some confusion on the part of management over the number of bedrooms versus the number of rooms in various units from year to year, and opined that the owner lacked "full knowledge of the property." In addition, the hearing officer determined on his view of the subject properties that some of the units had more rooms than reflected on the rent rolls.<sup>4</sup>

The subject properties also include a parking lot, accessible by driveways from Broadway and from Ellsworth, which can accommodate 24 vehicles, according to the Report. The parking lot is used for both the Broadway and Ellsworth properties. There are also ancillary areas for the storage of bicycles, motor scooters, and motorcycles. Laundry facilities for the use of tenants are also provided on the

---

<sup>4</sup> The discrepancies in the rent rolls from year to year could not be satisfactorily resolved if one assumes that the caption "BR" meant "rooms" rather than "bedrooms", as Mr. Gasperoni testified on redirect examination. For example, 401 Broadway unit 1 is reflected on January 1, 2003 rent roll as one "bedroom", while on January 1, 2004 it is described as a "studio."

subject property. The properties have a roof deck available for the use of tenants.

Mr. Gasperoni's Report indicates at page 21 that the Broadway-Ellsworth property is located in the zoning district styled "residential C-2B." When presented with a zoning map on cross-examination which revealed that a substantial portion of the properties stands outside Zone residential C-2B, Mr. Gasperoni at first reiterated the erroneous assertion. The following day, however, Mr. Gasperoni conceded that he had inaccurately described the zoning of the subject properties.

Mr. Gasperoni's Report states at page 42 that the "subject land at 4-6 Ellsworth has limited visibility and pedestrian and vehicular access." In his testimony, he indicated that visibility was limited only from the vantage point of Broadway: the Ellsworth property had to be approached by walking down Ellsworth Avenue from Broadway along a sidewalk. Pictures in the Report reflect, and the hearing officer determined on his view, that the Ellsworth parcel is prominently visible from Ellsworth Avenue. The parking lot is accessible from Ellsworth Avenue.

Mr. Gasperoni undertook both an income capitalization and a comparable sales analysis. His analysis of the highest and best use of the subject properties appears at

pages 54 and 55 of the Report. In conclusory fashion, he opined that no "alternative use is considered legally permissible, physically possible or financially feasible." Report at page 55. An allusion is made to factors such as "future market conditions, demand, supply and absorption over the recent past and especially the multi apartment unit occupancy." *Id.* There is no explanation given of why the subject properties would be unsuitable for condominium conversion.

Mr. Gasperoni relied on another appraiser, Mr. Larry McLucas, to identify two of three properties considered for purposes of sales comparisons. Mr. McLucas also identified all four of the properties upon which Mr. Gasperoni relied for his estimates of market rents for the subject units in applying the income approach. Notwithstanding the extensive reliance on Mr. McLucas' information without verification, Mr. Gasperoni's Report states that "[n]o one provided significant professional assistance to him." Report at page 25.

In light of the testimony, the Report appeared to exaggerate the extent to which he had researched information available from the City of Cambridge. Mr. Gasperoni said he gave little weight to sales of properties intended for condominium conversion, based on

the conclusion that the existing use was the "highest and best use," which was left unexplained in his Report. On cross-examination, he indicated that the lack of elevators, the configuration of the units, and the narrow, steep stairways made the buildings unsuitable for condominium conversion. While the size of units in the subject properties was small, units in comparable sale #3, located at 5 Haskell Street, were even smaller and that building was converted to condominium use after purchase.<sup>5</sup>

Mr. Gasperoni incorrectly stated the date of sale for the Haskell Street building used as a comparable sale as October 18, 2001. The deed reflected that the property was sold a year earlier. Moreover, his Report at page 61 provides inconsistent information about the number of units in this comparison property. While the comments in Mr. Gasperoni's Report describe only 19 units at 5 Haskell Street, the Report also states there are 25 units. He testified that Mr. McLucas told him there were 25 units, as he did no interior inspection himself.

In forming an opinion of value, Mr. Gasperoni placed the greatest weight on the income approach. He relied on unaudited income and expense statements for the property.

---

<sup>5</sup> There are indications in the testimony that Mr. Gasperoni understood his assignment to appraise the properties on an "as is" basis to exclude consideration of an alternative use, i.e. for condominium development.

He projected income streams for both the parking spaces appurtenant to the properties and the laundry facilities. No parking or laundry income was broken out on the income and expense statements, either as included in the Report or as certified for submission to the City of Cambridge pursuant to G.L. c. 59, § 38D. On the second day of trial Mr. Gasperoni testified for the first time that parking revenue was included in the rents as reflected in the income and expense statements, although not stated as such. (That observation is not mentioned in the Report.) Mr. Gasperoni did not explain how and at what price parking privileges were made available, or indicate market rates for open-air, off-street parking in central Cambridge. The rent rolls do not give any indication of which units had access to parking, or the premium charged for parking privileges.<sup>6</sup>

Mr. Gasperoni noted at page 71 of his Report that the properties "are forecasted to be 100% occupied." He testified that units "tended to rent up fairly rapidly" as tenants moved out. Nevertheless, he projected a 5% vacancy rate, for reasons left unclear in the Report. It does not appear that Mr. Gasperoni did any market research in

---

<sup>6</sup> Mr. Gasperoni also had no understanding of how the owner accounted for laundry income.

arriving at his vacancy rate. Mr. Gasperoni did not apply his 5% vacancy rate to parking income, but did apply it to laundry income without explanation.

At pages 67-68 of his Report, Mr. Gasperoni sets forth median and average rents for each of the five buildings comprising the Broadway/Ellsworth properties. Mr. Gasperoni's projected market rental rates for the subject properties for all four years at issue are set forth in the appendix to his Report. For three of the four fiscal years at issue, Mr. Gasperoni's projected rental income figures (after allowances for vacancy) were lower than the actual rents collected by the owner, according to the income and expense statements. Mr. Gasperoni nevertheless testified on direct examination that his projected income amounts exceeded the actual rents collected because "some of the units were underrented."<sup>7</sup> Mr. Gasperoni admitted on cross-examination that he was unaware of the relationship between his projected market rental income and the actual revenue reported by the owner. For all years at issue, Mr. Gasperoni's projected market rents were substantially

---

<sup>7</sup> In the second day of testimony, Mr. Gasperoni stated that actual rents included revenue realized from parking spaces. So, if gross rents collected were compared to his combined rental and parking income figures for the subject properties, his estimated totals are slightly higher than the actuals.

below the "typical" levels for Cambridge rents for one and two-bedroom apartments as indicated in the study *2003 Cambridge, Massachusetts Socioeconomic and Demographic Profile*, which is cited in his Report at page 36.

Mr. Gasperoni relied on a selection of comparable apartment properties supplied by Mr. McLucas to project market rents. He did not inspect building interiors, and thus any of the units in the assertedly comparable properties. His failure to conduct interior inspections cast doubt on the reliability of any conclusions about the extent to which the conditions in these comparison properties resembled conditions in the subject properties. The foregoing testimony contradicted the statement at page 30 of the Report that "[i]nformation on comparable apartment rental rates, occupancy rates, etc. was obtained through a detailed search of competitive apartment buildings in the subject's market area." The comparability of the units in the rental properties described at Pages 69-70 was called further into question by the substantial negative adjustments applied to rent levels. Mr. Gasperoni reduced actual rents as reported to him by Mr. McLucas for

the comparison apartment properties by approximately 43% in projecting rents for the subject property.<sup>8</sup>

Mr. Gasperoni said the income and expense statements he obtained from the owner of the properties reflected unreasonably high expense levels, in his judgment. Even excluding stated mortgage interest expenses, Mr. Gasperoni still considered the level of expenses excessive. He said "there was an inordinate amount, in my view, of repairs ongoing on the property." Mr. Gasperoni never reconciled his observations that interior conditions were "tired" and "dated", units had received minimal upgrades, and appliances were "dated," with the high level of expenditures for repairs reported by management.

Mr. Gasperoni's allowance for management expense was "based on conversations with the previously mentioned real estate brokers whose firms also manage real estate similar to the subject ..." Report at page 72. It is unclear who these sources were besides the manager of a nearby apartment building. Mr. Gasperoni asserted that the typical range for managing "suburban apartment properties" was "2%

---

<sup>8</sup> The Report indicates at pages 69-70 that Mr. Gasperoni applied negative adjustments of 43% to the comparable rental rates from 345-347-349-351 Harvard Street and "similar" adjustments for the other comparable rental properties. On cross-examination, Mr. Gasperoni conceded that larger adjustments were made to the Harvard Street rents, while the adjustments were "less" than 43% for the other three comparable rental properties. The exact percentages of these adjustments were never clarified.

to 8%.”<sup>9</sup> He selected a management allowance of 6%, without further explanation. He made unspecified adjustments to the category of “General/Administrative” expenses which appears in the income and expense statements; scant detail is offered on what expenses enter into this category in the Report. In his testimony, Mr. Gasperoni said that the category encompassed accounting, utilities including heat, electricity, water and sewer expenses, and cleaning costs. He was unable to indicate the allowances for the specific components of the “General/Administrative” expense. He allowed \$1000 per-unit for repairs; he increased this amount by a factor of 3% annually for the years at issue, according to the Report at page 72. As far as the Report reveals, Mr. Gasperoni failed to study the operating expenses of comparable apartment properties. Nor did he consult market research data in arriving at his operating expense estimates. He testified that he had obtained some “pro forma income and expense information on” assertedly comparable apartment properties from Mr. McLucas, which he assumed came from the property owners. Mr. Gasperoni was unable to explain why his operating expense estimates

---

<sup>9</sup> The Board questioned whether data applicable to suburban communities in general were apropos to Cambridge.

jumped by nearly 40% from Fiscal Year 2003 to Fiscal Year 2004.

Mr. Gasperoni purported to use mortgage-equity and debt-coverage-ratio methods for arriving at a capitalization rate for the subject properties. Mr. Gasperoni conceded that he was unable to identify sales of apartment properties for which he could ascertain net operating income and thus extract a market-based capitalization rate. He indicated that he did not use any sales data in deriving the figure he described as his "equity yield rate" at page 77 of his Report. This lack of support in market data undermined the reliability of his mortgage/equity or band of investment method for deriving an overall capitalization rate. As stated in THE APPRAISAL OF REAL ESTATE (12<sup>th</sup> ed. 2001) at 536-37, the mortgage-equity "technique is only applicable when sufficient market data is available to extract capitalization rates and when equity dividends are the primary criteria used by buyers and sellers. ... When available market data is scarce or less reliable, mortgage-equity techniques may be used to test capitalization rates but not to develop them." Yet Mr. Gasperoni conceded he used the mortgage-equity

technique to develop his capitalization rate, despite the cautions in *THE APPRAISAL OF REAL ESTATE, supra*, at 537.<sup>10</sup>

His Report discusses an "equity yield rate" at page 77, which is said to be "based upon the evaluation of a risk premium." He said he "utilized the current High Yield Corporate Bond Rate as listed in" year-edition editions of the *Wall Street Journal* to gauge a "risk premium" over the return on a risk-free investment. Mr. Gasperoni proceeded to add "ten percent (10%) of the average risk premiums for the three effective appraisal dates [sic] ... to the average High Yield Corporate Bond rates to satisfy the additional risk for hotel [sic] investment properties such as the subject as of the effective appraisal dates." Mr. Gasperoni conceded that, according to the explanation in his Report, the equity yield rate was "a little bit over 1 percent more than a junk bond." This risk analysis strained credulity in the context of the subject *apartment* properties, which were fully occupied throughout the years at issue and desirably located within walking distance of Central Square and Harvard Square in Cambridge.

---

<sup>10</sup> Mr. Gasperoni testified that sales were available in the marketplace for the extraction of a capitalization rate, but he excluded any transactions in properties subsequently converted to condominium use as reflecting inflated sales prices. Moreover, he found it difficult to obtain all the information he would need to assess comparability in order to rely on actual transactions to develop a capitalization rate.

The reliability of Mr. Gasperoni's development of a capitalization rate was cast into further doubt by his conflation of two distinct concepts: equity capitalization rates and equity yield rates. He initially testified, repeatedly, that he considered these terms to mean the same thing. The following passage in THE APPRAISAL OF REAL ESTATE, *supra*, at 537 was pointed out to him on cross-examination: "[A]n equity yield rate [should not] be substituted for an equity capitalization rate." At that point he said he had used "incorrect terminology" in the section of his Report discussing "equity yield rates." The two terms are not necessarily interchangeable where "[t]he equity capitalization rate may be more or less than the expected equity yield rate because the latter takes into account the effect of debt financing on the income received by the equity investor." THE APPRAISAL OF REAL ESTATE, *supra*, at 535.

Mr. Gasperoni selected a constant capitalization rate of 9%, before addition of a tax factor, for all four years at issue.<sup>11</sup> The indicated capitalization rate from the mortgage equity model was 10.22%, while the indicated rate from the debt coverage ratio analysis was 8.42%. He testified as to his analysis in reconciling these divergent

---

<sup>11</sup> The data attributed to the Real Estate Research Corporation Investment Survey at page 78 of the Report indicate that capitalization rate ranges for apartment properties were lower in the last two years at issue.

rates to arrive at a 9% overall capitalization rate: "I felt that a rate in the 10 percent range would generate a too low of a value and that a rate in the 8.5 percent would generate a value too high. That's why I reconciled to a 9 percent."

On cross examination Mr. Gasperoni first claimed that interest rates had "in general" remained constant over the years at issue. Then he conceded that his Report indicated that interest rates had declined over the years at issue. Given that mortgage costs accounted for a 70% component of his mortgage-equity methodology, it is difficult to comprehend how fluctuating interest rates would not be reflected in indicated capitalization rates from year-to-year based predominantly on the cost of debt financing.

Mr. Gasperoni arrived at the following opinions of value for the Broadway and Ellsworth parcels:

Valuation Date	Opinion of Value For Broadway Parcel	Opinion of Value For Ellsworth Parcel <sup>12</sup>
1/1/01	\$3,485,000	\$2,745,000
1/1/02	\$3,845,000	\$2,910,000
1/1/03	\$4,280,000	\$3,400,000
1/1/04	\$4,000,000	\$3,170,000

<sup>12</sup> Mr. Gasperoni valued the subject properties "as is." Mr. Reardon testified that "as is" value was a concept distinct from fair cash value as the term is understood by assessors. See G.L. c. 59, § 38. It appears that in appraising the properties "as is" Mr. Gasperoni truncated his analysis of "highest and best use." The Board was left in some doubt as to whether he utilized the definition of "fair market value" applicable under Massachusetts law. See generally **Boston Gas Co. v. Bd. of Assessors of Boston**, 334 Mass. 549, 566 (1956).

Mr. Gasperoni's combined values for both properties, divided by the number of units or 94, yield the following per-unit values for Broadway-Ellsworth for the Fiscal Years at issue: Fiscal Year 2002, \$66,276; Fiscal Year 2003, \$71,861; Fiscal Year 2004, \$81,702; Fiscal Year 2005, \$76,276. Mr. Gasperoni eschewed the "gross rent [or income] multiplier methodology" for arriving at an opinion of value. Explaining this judgment, Mr. Gasperoni stated: "In my view in properties such as the subject property, it is not always appropriate—it's not used extensively."

Testifying as the owner of the Broadway-Ellsworth properties was Mr. Francis Privitera, who is an attorney. He owns through various entities approximately 100 apartment buildings with a total of approximately 1500 units. He has experience as a realtor, and is actively involved in the management of his properties. However, Mr. Privitera was not a valuation expert, and was not qualified as such by the Board.

Mr. Privitera testified he bought the Broadway-Ellsworth properties from Sam Wasserman in 1973. He said they were built in 1905. He gave an overview of the history of the properties. Mr. Privitera confirmed that the information about unit size appearing in the rent rolls relied upon by Mr. Gasperoni was sometimes inaccurate. He

explained that the caption "BR" appearing as a column heading might have been a "misnomer" and actually reflected room counts. He also noted that the rent rolls sometimes failed to differentiate studio from one-bedroom apartments.

Mr. Privitera based his opinions of value on the gross-income-multiplier methodology, which Mr. Gasperoni had previously rejected as an inappropriate and seldom used approach for valuing properties like the subject properties. Because the Broadway-Ellsworth apartment rents included heat and hot water, he selected a multiplier of seven, although the derivation of that multiplier is unclear from the record.<sup>13</sup> He applied his multiplier to the actual gross income from the combined properties and arrived at the following opinions of value as rounded: for Fiscal Year 2002, \$6,300,000; for Fiscal Year 2003, \$6,925,000; for Fiscal Year 2004, \$7,250,000; and for Fiscal Year 2005, \$7,410,000. Since the Broadway parcel contained 52 apartments compared to 42 at the Ellsworth parcel, he broke his opinions of value for the combined

---

<sup>13</sup> The multiplier was not extracted from sales of the properties used as comparable rentals in Mr. Gasperoni's Report. First, Mr. Gasperoni did not ascertain gross income for the comparison apartment properties, so he was unable to extract a multiplier using sales prices. In response to questions based on hypothetical assumptions made to arrive at a gross income estimate (on the high side) for the 138-140 Huron Avenue comparable rental, Mr. Gasperoni extracted a multiplier of 13.4.

parcels down on a ratio of 55/45 to separate values for the two parcels. This information is reflected at Exhibit 17.

The "gross income multiplier" methodology is explained in THE APPRAISAL OF REAL ESTATE, *supra*, at 546-47. The multiplier must be derived from market data. "To derive a gross income multiplier from market data, sales of properties that were rented at the time of sale or were anticipated to be rented within a short time must be available." *Id.* at 546. Moreover, application of this methodology must be undertaken with caution. "First, the properties analyzed must be comparable to the subject property and to one another in terms of physical, locational, and investment characteristics. Properties with similar or even identical multipliers can have very different operating expense ratios, and therefore, may not be comparable for valuation purposes." *Id.* at 546-47.

Moreover, the multiplier must be applied to multiplicands which accurately reflect potential or effective gross income in the market conditions prevailing as of the valuation date. Actual rental income from the subject property cannot be presumed to represent potential or effective gross income for purposes of applying the multiplier. Accordingly, it would be unsound to approximate a multiplier without a basis in market data. Moreover, it

would be an error to apply the multiplier to the actual income of the subject property without attention to the estimation of an income stream reflective of market conditions. Given that this methodology requires extreme care in the selection of comparable properties from which to derive multipliers and market income, a property owner without expertise in the appraisal of real estate lacks the qualifications to arrive at an opinion of value credible in proceedings before this Board using gross income multipliers. In this case, the only qualified valuation expert specifically rejected the gross-income-multiplier methodology as being inappropriate for the subject properties.

The Appellant also called Mr. Robert Reardon as a witness. Mr. Reardon became Director of Assessment in Cambridge in May of 2005, subsequent to the last valuation date at issue. He had little familiarity with the subject properties, and did not participate in the process of setting the values at issue in this proceeding. He testified that the Ellsworth property had 43 units, in contrast to Messrs. Gasperoni's and Privitera's representations that there were 42 units. Mr. Reardon was questioned on the mass appraisal methodology the City used in arriving at the assessed values of the Ellsworth

property, and information appearing in records of the Assessing Office, which he had no role in preparing. He offered no opinion of value except to recount assessed values.

On the basis of the foregoing, the Board, relying on the observations of the hearing officer as to matters of witness credibility, found that the evidence of value offered by Messrs. Gasperoni and Privitera, to the extent it informed the question of value, did not supply substantial evidence to support a finding of fair market value of the Broadway-Ellsworth properties lower than the assessments. First, the record reflects serious uncertainty as to the room counts in the respective units in the subject properties. The rent rolls were self-contradicting, and indicated, according to Mr. Gasperoni, that the owners were insufficiently familiar with the characteristics of apartment units in the properties. Without a credible basis for a finding of the number of studio, one-bedroom, and two-bedroom apartments, an income stream reflective of the property's earning potential on the respective valuation dates could not be projected. Second, neither Mr. Gasperoni nor Mr. Privitera satisfactorily accounted for whatever income was attributable to the parking spaces and the laundry facilities. The income potential of these amenities

available to tenants at Broadway-Ellsworth cannot be determined on the instant record.

Third, Mr. Gasperoni did not perform sufficient analysis to allow him to exclude the sales comparison approach as a means of arriving at value. He relied on another appraiser for two of the three comparable sales in his Report, and his investigation of these properties was limited. Moreover, based on a conclusory analysis of highest and best use, he rejected an inordinate number of sales of apartment properties in Cambridge as non-comparable.<sup>14</sup> He failed to provide a persuasive explanation of lack of comparability, *i.e.* why the subject properties could not be sold for condominium development, thereby attracting a premium sales price.

Fourth, Mr. Gasperoni conducted insufficient research into comparable rental properties in order to develop reliable market-based rents to impute to the subject properties. All of the information on comparable rental properties he used was supplied to him by another appraiser, and there was no attempt made to verify the data. Moreover, Mr. Gasperoni failed to inspect the interiors of any of the allegedly comparable properties,

---

<sup>14</sup> Mr. Gasperoni's conclusion that the "highest and best use" of the subject properties was the existing use seemed to be a function of his assignment to appraise the properties "as is."

and was thus unable to assess similarities and differences to the units in the subject property. The sizeable negative adjustments he made to rents at the comparable apartment properties in arriving at rents for the subject properties were unsupportable given the inadequacy of the investigation of the specific characteristics of the purported comparable properties. Mr. Gasperoni also did not accurately state the percentage adjustment applied to rents taken from the rental property at 345-347-349-351 Harvard Street in his Report.

Fifth, Mr. Gasperoni failed to supply any basis in market data for the 5% vacancy rate he selected.<sup>15</sup> Sixth, Mr. Gasperoni's projected expenses were inadequately explained in his Report and in the testimony, and lacked foundation in market data. And lastly, Mr. Gasperoni's development of a capitalization rate was fundamentally flawed: his 9% overall rate for all years at issue did not persuasively gauge the risk level of an investment in the subject properties and will not provide a basis for

---

<sup>15</sup> The apparent lack of market data support for the vacancy rate was not cured by testimony from Mr. Reardon to the effect that the assessors employed a 4% vacancy rate in their mass appraisal methodology. The Board stated in *Mayflower Emerald Square, LLC v. Bd. of Assessors of North Attleborough*, Mass. ATB Findings of Fact and Report 2007-421, 2007-506, that "a mass appraisal methodology ... is not targeted to the property-specific fact-finding necessary for the Board to determine fair cash value." Numbers used in a mass appraisal valuation model cannot be readily interpolated into a property-specific appraisal analysis.

converting an income stream into a reliable indication of value.

Given the absence of credible and persuasive evidence to support findings of value at variance with the assessed values, the appellants failed to carry their burden of proof. The Board accordingly entered directed findings, deciding the Broadway-Ellsworth appeals in favor of the appellee.

Lee Street

Testifying for the appellant about the Lee Street apartments were Mr. Gasperoni, whom the Board qualified as an expert; Mr. Privitera, the owner of the property; and Mr. Reardon, Director of Assessment for the City of Cambridge. In addition, the hearing officer took a view of the subject properties.

For all the fiscal years at issue, the appellant timely paid the taxes due. The appellant also filed applications for abatement with the assessors. Appellant filed Petitions under Formal Procedure with the Board. Jurisdictional information for the subject property is summarized in the following table:

	<u>Annual Tax Bills Mailed</u>	<u>Abatement Apps. Filed</u>	<u>Dates of Denials</u>	<u>Petition Filed With Board</u>
FY 2002	10/13/01	4/15/02	7/15/02	8/19/02
FY 2003	10/7/02	10/18/02	1/18/03	2/5/03
FY 2004	10/20/03	11/5/03	2/5/04	8/11/04
FY 2005	11/1/04	11/12/04	2/12/05	4/7/05

The foregoing facts establish the Board's jurisdiction over these appeals for all years except Fiscal Year 2002. With respect to Fiscal Year 2002, the April 12, 2002 filing of the abatement applications appears to be untimely under G.L. c. 59, § 59 (abatement applications due on the last day for payment of the first installment of the actual tax bill), although it is unclear from the record whether the tax bills mailed on October 13, 2001 were estimated or actual bills. Neither party objected to the Board's jurisdiction. Notwithstanding the apparent lack of jurisdiction for Fiscal Year 2002, the Board gave plenary consideration to the evidence relating to all years "where they have been fully litigated ...." See **Hill v. Bd. of Assessors of Sudbury**, Mass. ATB Findings of Fact and Report 1994-294, 1994-297. The evidence pertaining to Fiscal Year 2002 is inextricably linked to that relevant to the other years at issue, over which the Board has jurisdiction. The Board's entry of a directed finding on the merits entails the same result as would a dismissal for lack of jurisdiction for Fiscal Year 2002.

As appellant did not offer in evidence the relevant property record cards for the Lee Street property, the following information is largely drawn from the Report of Mr. Gasperoni, in evidence as Exhibit 5, and the testimony.

Mr. Gasperoni appraised the subject property "as is." Mr. Gasperoni's Report includes a transmittal letter reflecting a date of April 5, 2005, while the Report indicates that his inspection of the property occurred on April 9, 2005. He explained on direct examination that the transmittal date should have been April 25, 2005, and the reference to the 5<sup>th</sup> was a typographical error. Mr. Gasperoni inspected the property subsequent to the transmittal of his Report, when questions arose about the size of units. Although he had been advised by property management that some units were three bedrooms, he described them as two-and-one-half bedrooms in his Report, and adhered to that description in his testimony.

Mr. Gasperoni's Report supplies the following information on assessed values for the Lee Street parcel for the years at issue:

Valuation Date	Assessed Values
1/1/01	\$4,285,000
1/1/02	\$4,413,600
1/1/03	\$4,601,200
1/1/04	\$6,117,300

The Lee Street property is situated on a land area of 18,423 square feet, and is improved with a two and three story brick and wood-frame, 37-unit apartment building. Mr. Gasperoni indicated that the front exterior wall had been refaced with a "Brickmaster" surface. Mr. Gasperoni

indicated that there had been "little or no significant upgrades" in the interior common areas, which "exhibit a tired and dated condition and dingy impression." Report at 37. Moreover, he asserted that "[m]ost of the apartments have had little refurbishing and display similar conditions as the halls and stairways as dated and tired." Report at 37. He thought that the common areas needed to be repainted. He also described the interior lighting in some of the common areas as poor.

According to Mr. Gasperoni's Report, the property includes 15 one-bedroom units, 19 two-bedroom units, and 3 two-and-one-half-bedroom units. The one-bedroom units are 438 square feet; the two-bedroom units are 518 square feet; and the two-and-one-half-bedroom units are 574 square feet, according to Mr. Gasperoni's Report at page 35. The rentable area totaled 18,134 square feet according to Mr. Gasperoni's Report.<sup>16</sup> However, the rent rolls received from the property manager and appended to the Report do not differentiate apartments according to square footage or room count. Mr. Gasperoni's Report states that 10 units are basement apartments, representing 27% of the overall units in the building. Eight of the basement units are one-bedrooms, while two are two-bedrooms. It is asserted that

---

<sup>16</sup> No gross building area was stated in Mr. Gasperoni's Report.

"[t]he large percentage of basement apartments ... generally affects cash flow as these units often have a low rental value as compared to upper floor apartments." Report at 37.

Mr. Gasperoni acquired information about unit size from the property managers. He did not review actual site plans. Mr. Gasperoni's Report says at page 33 that there were 19 parking spaces available to tenants at Lee Street. On direct examination, he testified that there were "19 to 20" parking spaces at the Lee Street property. He testified on cross-examination that he did not recall the exact number but asserted "a difference between 19 and 20 [parking spaces] isn't a large difference I don't believe." He said snow-buildup might impair access to 1 to 4 parking spaces depending on winter conditions. He then stated that there were in fact 20 parking spaces. There are also laundry facilities available for the use of tenants.

Mr. Gasperoni indicated at page 40 of his Report in his zoning analysis that the Lee Street property is situated in residential Zone C-2B. However, as he conceded on cross examination, that statement was in error and he did not know the correct zoning designation. Later in the course of his testimony he corrected that testimony to indicate that the appropriate zoning district was C-1. On page 43 of the Report, in the course of the highest and

best use analysis, Mr. Gasperoni stated that the current improvements on the property are non-conforming, which constrained possibilities for further improvements. However, at page 40 of the Report, the existing use is said to be conforming. On cross-examination, Mr. Gasperoni conceded that he reached "separate conclusions as to whether or not the property is conforming or nonconforming."

As with the Broadway/Ellsworth properties, Mr. Gasperoni considered both the sales comparison and the income approaches to value, utilizing the latter to arrive at his opinions of value. His analysis of the highest and best use of the subject property appears at pages 43 and 44 of the Report. In conclusory fashion, he opined that no "alternative use is considered legally permissible, physically possible or financially feasible." Report at page 44. A cryptic reference is made to factors such as "future market conditions, demand, supply and absorption over the recent past and especially the multi apartment unit occupancy." *Id.* There is no explanation given of why the subject property would be unsuitable for condominium conversion.

Mr. Gasperoni acquired his information about both comparable sales and comparable rentals from Mr. McLucas,

with the exception of one property he researched himself.<sup>17</sup> He used the same comparable sales and comparable rentals for the Broadway/Ellsworth and the Lee Street properties.<sup>18</sup> He was unable to recall on the cross-examination pertaining to Lee Street which comparable properties came from Mr. McLucas and which property he had identified himself.<sup>19</sup> Mr. Gasperoni did not inspect the interiors of the comparison properties given in the Report himself. Yet, Mr. Gasperoni indicated that he did not consider the assistance rendered by Mr. McLucas significant in conducting his appraisal assignment. Although Mr. McLucas supplied all but one of the properties used for comparison purposes, Mr. Gasperoni's Report at page 22 fails to identify Mr. McLucas as a source of information relied upon.

Mr. Gasperoni's treatment of an assertedly comparable property at 345-347-349-351 Harvard Street was inconsistent. He rejected the property as a comparable sale, even though it was not converted to condominium use. He felt that the property was superior, and could not be

---

<sup>17</sup> Mr. Gasperoni testified that he reviewed other sales online, but did not cite them in his Report or identify them in his testimony.

<sup>18</sup> Mr. Gasperoni's testimony about the rental property at 138-140 Huron Avenue left the Board in some doubt as to the room counts of the units in that property.

<sup>19</sup> In the cross-examination pertaining to the Lee Street property, Mr. Gasperoni said that the one property he identified himself was a comparable rental, contradicting his testimony in the Broadway-Ellsworth appeals that he had identified the sale of 52 Garden Street.

adjusted so as to bring it in line with the subject property. However, Mr. Gasperoni used this property as a "comparable rental" for purposes of projecting market rents for the subject property. He discounted rents at the Harvard Street property by a factor of 43%, according to his Report, in arriving at market rentals for the subject property. While Mr. Gasperoni's narrative description of the Harvard Street comparable accounts for only 47 units, he testified that the property had 48 units in actuality.

At page 22 of the Report, Mr. Gasperoni stated that "Whenever possible, the terms and conditions of each sale were verified with the buyer, seller, or broker involved with these transactions." Mr. Gasperoni conceded on cross-examination that he verified none of the sales transactions. His explanation was that he "couldn't reach anybody" despite making attempts. Mr. Gasperoni answered in the affirmative when asked if the recitation in the Report was "boilerplate."<sup>20</sup>

At page 56 of his Report, Mr. Gasperoni details median and average rents for the units in the Lee Street property. For Fiscal Year 2002, the median rent for one-bedroom

---

<sup>20</sup> There are inconsistencies in the testimony regarding the extent to which Mr. Gasperoni may have confirmed some of the information received from Mr. McLucas through online services. Mr. Gasperoni also attempted to "amend" his earlier testimony to reflect that he obtained comparable sales information through the "Co-Star" service.

apartments at the subject property is misreported. This error carried over to subsequent years, where values were trended up from the Fiscal Year 2002 starting point. Also indicated at page 56 are Mr. Gasperoni's estimated market rents. While the Report puts the market rental rates for the two-and-one-half-bedroom units at \$900 for Fiscal Year 2003 and \$925 for Fiscal Year 2004, Mr. Gasperoni stated that these amounts were erroneous. His market rents for the two-and-one-half-bedroom units should have been reflected as \$925 for Fiscal Year 2003 and \$975 for Fiscal Year 2004, according to his testimony.

Mr. Gasperoni presented the "actual rent roll" for the subject property at page 53 of his Report. The rents reflected include parking privileges and laundry income, according to the information Mr. Gasperoni testified that he received from the property management.<sup>21</sup> Mr. Gasperoni did not verify this information by reviewing leases or other documentation. Moreover, the Report did not specify that parking access was included in the projected rents; nor can one discern from the Report which units have access to parking, and the premium paid for the privilege. At page 56, following the discussion of rents, Mr. Gasperoni speaks

---

<sup>21</sup> However, on redirect examination Mr. Gasperoni stated that only parking income was included in rents.

of "additional income capabilities which can/are [sic] applicable to the subject properties and include vehicle parking fees and laundry income," which implies that parking and laundry income are separate from rent. The income and expense statements reflect parking and laundry income separate from rents. Mr. Gasperoni also projected income streams for the parking and laundry facilities separately from rental income in his appraisal. While Mr. Gasperoni said that the basement units commanded lower rents than units in the upper stories, there were several instances where a higher rent was assigned to basement units than to upper-story units with the same square footage.

Mr. Gasperoni projected a 5% vacancy rate for the Lee Street property, despite the observation that the "subject properties are forecasted to be 100% occupied." The derivation of this rate is left unilluminated in the Report. Mr. Gasperoni's information on property expenses appears at pages 58-60. As with the Broadway/Ellsworth properties, Mr. Gasperoni adjusted reported expenses for the subject property downward. Yet he testified that he was unsure if there was sufficient money available to do maintenance and repairs, either with the high expense levels reported by management or with his allowance for

such expenses. He could not reconcile his observations that the property was in a "tired" condition with the sizeable amounts being reported as expenses.

Mr. Gasperoni was unable to provide breakdowns of the specific amounts entering into his broad expense categories. Mr. Gasperoni did not receive expense information from the comparable rental properties relied on in his Report. While Mr. Gasperoni stated that he used actual expense data in arriving at expense estimates, he could not explain why insurance expense dropped to roughly \$1000 in Fiscal Year 2003. For the other years, the insurance expense ranged between approximately \$8700 and \$9700.

The methodological errors affecting the development of a capitalization rate made in the Report on the Broadway/Ellsworth properties were repeated in the appraisal of the Lee Street property. In addition, Mr. Gasperoni based his capitalization rate analysis in part on erroneous source data. At page 62 of his Report, he indicates various items of financial data he took from the *Wall Street Journal*. He reported a prime rate of 4% as of December 26, 2001. However, he conceded that the actual rate reflected in the *Wall Street Journal* for that date was 4.75%. He reported the rate for "90-Day Treasury Bills" as

of December 26, 2001 as 0.88%. This number was also in error: it should have been 1.68%. The rates on commercial paper and certificates of deposit for December 26, 2001 were also erroneously reflected. The Federal Home Loan Bank Boston Advance Rate was attributed to the *Wall Street Journal*, but does not appear in that publication. The one year LIBOR rate Mr. Gasperoni cited was attributed to the *Wall Street Journal* also, but the publication reports that the markets were closed on the date in question. There were multiple errors in the financial data reported at page 62 for 12/20/02 and 12/26/03. He answered in the affirmative the following question on cross examination: "Would it be fair to say that most of the information [on page 62 of] the Report is wrong?"

In his listing of capitalization rate ranges for apartment properties as reported by the Real Estate Research Corporation, which appears at page 63 of his Report, Mr. Gasperoni incorrectly states the "Going [sic] Cap Rate" range for the Fourth Quarter of 2001. For that period, Mr. Gasperoni testified that "the going in cap rate should read 7.5% to 9.2."<sup>22</sup> Mr. Gasperoni's opinions of

---

<sup>22</sup> Mr. Gasperoni also testified that the second reference to the "4<sup>th</sup> quarter 2001" in the chart on page 63 pertained to the 4<sup>th</sup> quarter of 2002.

value for the Lee Street property for the relevant dates are as follows:

Valuation Date	Opinion of Value <sup>23</sup>
1/1/01	\$2,435,000
1/1/02	\$2,415,000
1/1/03	\$2,575,000
1/1/04	\$2,525,000

These opinions of value, when divided by the number of units in the Lee Street property, yield the following per-unit values: Fiscal Year 2002, \$65,810; Fiscal Year 2003, \$65,270; Fiscal Year 2004, \$69,595; and Fiscal Year 2005, \$68,243. While Mr. Gasperoni's opinions of value for the Lee Street property trended upward only 3.69% over the years at issue, his opinions of value for the combined Broadway/Ellsworth properties rose by 15% over that same time period. Mr. Gasperoni indicated that the locational influences on the properties were much the same, given their proximity to each other. He described all the properties as being "tired." Both properties offer parking to some tenants, and the same comparable rental properties were used in arriving at market value rents. Similar adjustments were made to the comparable rental rates. Mr. Gasperoni offered no satisfactory explanation of why

---

<sup>23</sup> As with his appraisal of the Broadway/Ellsworth properties, Mr. Gasperoni appraised the Lee Street property "as is." Given his conclusory analysis of highest and best use, this qualification raised questions as to whether Mr. Gasperoni applied the definition of "fair market value" which controls under Massachusetts law.

trends in the values of the Broadway/Ellsworth and Lee Street properties would diverge over the same time period.

Mr. Privitera testified as the owner of the property, which he bought in the 1960's. He visited the Lee Street property roughly once a month, and delegated management to others to whom he gave an equity interest. He described the property as a three-story walk-up and one-story walk-down. He indicated that there were 10 basement units. Mr. Privitera identified the rent roll and income and expense statements which were contained in Mr. Gasperoni's Report. Mr. Privitera indicated that rents were increasing every year during the relevant time period.

Mr. Privitera again used a gross-income-multiplier methodology to arrive at his own opinions of value for the subject property. He chose the number 7 as the multiplier to apply to income. He explained his choice of a multiplier thus: "Traditionally, in the business, if it's heated, depending on the price of fuel and for hot water and heat, you would use a factoring ratio of 6 to 7. But I used the 7." It does not appear that the multiplier being used was derived from actual transactions in the marketplace, proximate in time to the valuation dates at issue. The multiplier was applied to the actual income reflected for

the property on the income and expense statements provided by management.

Mr. Privitera's opinions of value using this methodology were as follows:

Valuation Date	Opinion of Value
1/1/01	\$2,356,600
1/1/02	\$2,520,000
1/1/03	\$2,620,000
1/1/04	\$2,700,000

This information is reflected at Exhibit 18. As discussed in the context of the Broadway/Ellsworth properties, Mr. Privitera's application of the gross-income-multiplier methodology was unsound. The methodology calls for a market-derived multiplier to be applied to a market-derived income stream, yet there was no foundation for Mr. Privitera's multiplicands in actual property transactions or other market data. Moreover, Mr. Privitera lacked expertise in the appraisal of real estate, casting doubt on opinions of value based on a methodology even experts are advised to use with caution.

The Appellant also called Mr. Reardon as a witness. Mr. Reardon became Director of Assessment in Cambridge in May of 2005, subsequent to the last valuation date at issue. He had little familiarity with the subject property and did not participate in the process of setting the

values at issue in this proceeding. Mr. Reardon was questioned on the mass appraisal methodology the City used in arriving at the assessed values at issue, and information appearing in records of the Assessing Office, which he had no role in preparing. He offered no opinions of value except the assessed values for the property.

On the basis of the foregoing, the Board, relying on the observations of the hearing officer as to matters of witness credibility, found that the evidence of value offered by Messrs. Gasperoni and Privitera did not supply substantial evidence so as to support appellant's claims of the fair market value of the Lee Street Property. First, Mr. Gasperoni did not take sufficient steps to familiarize himself with the Lee Street property, so as to lend credibility to his opinions of value. He did not review site plans to gain a clearer view of the configuration of the units, to resolve conflicting information as to whether certain units were two-and-one-half or three-bedrooms. His Report misstates the number of parking spaces attached to the property, according to the testimony. Moreover, Mr. Gasperoni supplied incorrect zoning information about the property in his Report, and made inconsistent statements about whether the existing use of the subject property was conforming or non-conforming.

Second, neither Mr. Gasperoni nor Mr. Privitera gave a satisfactory accounting for whatever income was attributable to the parking spaces and the laundry facilities at the Lee Street property. The income potential of these amenities available to tenants cannot be determined on the instant record.

Third, Mr. Gasperoni's rejection of the comparable sales approach to value was not well-considered. The Board found that he relied on another appraiser for information about the comparable sales listed in his Report, without adequate verification or attribution. Moreover, he excluded most sales transactions he researched based on a conclusory assertion that sales of properties intended for condominium conversion were not comparable. He failed to provide a persuasive explanation of why the subject property could not be sold for condominium development, thereby attracting a premium sales price.

Fourth, Mr. Gasperoni conducted insufficient research into comparable rental properties in order to develop reliable market-based rents to impute to the subject property. Most or all of the information on comparable rental properties he used was supplied to him by another appraiser, and there was no attempt made to verify the data. His Report failed to fully account for the sizes of

units in the 138-140 Huron Avenue property. Moreover, Mr. Gasperoni failed to inspect the interiors of any of the allegedly comparable properties, and was thus unable to assess similarities and differences to units in the subject property. The sizeable but largely unquantified negative adjustments he made to rents at the comparable apartment properties in arriving at rents for the subject property were unsupportable given the inadequacy of the investigation of the characteristics of the comparable properties.

Fifth, Mr. Gasperoni failed to supply any basis in market data for the 5% vacancy rate he selected. Sixth, Mr. Gasperoni's projected expenses were inadequately explained in his Report and in the testimony, and lacked foundation in market data. And lastly, Mr. Gasperoni's development of a capitalization rate was fundamentally flawed and infected by erroneous source data. His 9% overall rate for all years at issue did not credibly gauge the risk level of an investment in the subject property and will not provide a basis for converting an income stream into a reliable indication of values.

Given the absence of credible and persuasive evidence to support findings of value at variance with the assessed values, the appellant failed to carry its burden of proof.

The Board accordingly entered directed findings, deciding the Lee Street appeals in favor of the appellee.

Rice Street

Although he prepared a Report on the Rice Street property, Mr. Gasperoni was not called to offer expert testimony concerning its value. The appellant relied on two witnesses only: Mr. Privitera and Mr. Reardon. In addition, the hearing officer took a view of the subject property.

For all the fiscal years at issue, the appellant timely paid the taxes due. The appellant also filed applications for abatement with the assessors. Appellant filed Petitions under Formal Procedure with the Appellate Tax Board ("Board"). Jurisdictional information for the subject property is summarized in the following table:

	<u>Annual Tax Bills Mailed</u>	<u>Abatement Apps. Filed</u>	<u>Dates of Denials</u>	<u>Petition Filed With Board</u>
FY 2001	10/20/00	10/27/00	1/11/01	2/20/01
FY 2002	10/13/01	4/12/02	7/12/02	8/19/02
FY 2003	10/7/02	10/18/02	1/18/03	2/5/03
FY 2004	10/20/03	11/5/03	2/5/04	3/25/04
FY 2005	11/1/04	11/12/04	2/12/05	4/7/05

The foregoing facts establish the Board's jurisdiction over these appeals for all years except Fiscal Year 2002. With respect to Fiscal Year 2002, the April 12, 2002 filing of the abatement applications appears to be untimely under G.L. c. 59, § 59 (abatement applications due on the last day for payment of the first installment of the actual tax

bill), although it is unclear from the record whether the tax bills mailed on October 13, 2001 were estimated or actual bills. Neither party objected to the Board's jurisdiction. Notwithstanding the apparent lack of jurisdiction for Fiscal Year 2002, the Board gave plenary consideration to the evidence relating to all years "where they have been fully litigated ...." See **Hill v. Bd. of Assessors of Sudbury**, Mass. ATB Findings of Fact and Report 1994-294, 1994-297. The evidence pertaining to Fiscal Year 2002 is inextricably linked to that relevant to the other years at issue, over which the Board has jurisdiction. The Board's entry of a directed finding on the merits entails the same result as would a dismissal for lack of jurisdiction for Fiscal Year 2002.

The relevant property record cards were not offered in evidence, and the testimony about the subject property was imprecise in many important respects. The assessed values appear in the petitions as follows:

Valuation Date	Assessed Values
1/1/00	\$ 638,000
1/1/01	\$1,011,000
1/1/02	\$1,026,200
1/1/03	\$1,149,300
1/1/04	\$ 898,900

Mr. Privitera purchased the Rice Street property in 1963. The Rice Street property was managed through

Mr. Privitera's office, and he visited the site "a minimum of once a month." According to Mr. Privitera, the subject property consisted of a lot of approximately 6,000 square feet in size, improved with three structures. The hearing officer determined on his view of the subject property that the structures were of wood-frame construction. The first building, at 45 Rice Street, had three four-room units on three stories. A three-family structure was situated behind the first building, with three-room units on three stories. At the rear of the property is a structure which was originally a caretaker's house. According to Mr. Privitera, "[t]he back house is four rooms with a bath. Each of the apartments have one bath ..."

The lot was fenced in on three sides. Mr. Privitera said there were a total of seven units in the Rice Street property. In the front building, 45 Rice Street, there were three two-bedroom units. The units included one larger and one smaller bedroom, with an eat-in kitchen and a living room. The units in the middle building were one-bedroom apartments. The back structure consisted of a four-room unit. Mr. Privitera indicated that rent concessions were offered for the upkeep of the property.

The units in the front building were "approximately" 500 square feet. The units in the middle building were

"about 350 to 400 square feet." The back building was about 500-550 square feet.

Profit and loss statements for the Rice Street property for the years 1999-2003 were offered through the testimony of Mr. Privitera. The documents appear in the record as Exhibits 6, 7, 10, 12 and 14. He described "an exorbitant amount [of expenses] for repairs and maintenance" attributable to the phase-out of rent control. The rent rolls for the valuation dates at issue, January 1, 2000 through January 1, 2004 were also introduced through the testimony of Mr. Privitera, and appear in the record as Exhibits 8, 9, 11, 13, and 15.

Mr. Privitera utilized the gross-income-multiplier methodology to arrive at opinions of value for the Rice Street property for Fiscal Years 2001-05. He took the gross income figures appearing on the profit and loss statements and applied two alternative multipliers, 8 and 9. He indicated that he chose multipliers higher than the number 7 applied to the gross income from the Broadway/Ellsworth and Lee Street properties because rents at the Rice Street property did not include heat or hot water. The following are the alternative opinions of value Mr. Privitera gave for the Rice Street property, varying based on the multiplier used:

Valuation Date	Multiplier of 8	Multiplier of 9
1/1/00	\$326,400	\$367,200
1/1/01	\$283,200	\$318,600
1/1/02	\$443,600	\$499,050
1/1/03	\$528,728	\$594,819
1/1/04	\$546,680	\$615,015

These values are reflected on Exhibit 16. The Appellant also called Mr. Reardon as a witness. Mr. Reardon became Director of Assessment in Cambridge in May of 2005, subsequent to the last valuation date at issue. He had little familiarity with the subject property, although he recalled having driven by it many times. He did not participate in the process of setting the values at issue in this proceeding. Mr. Reardon was questioned on the mass appraisal methodology the City used in arriving at the assessed values at issue, and information appearing in records of the Assessing Office, which he had no role in preparing. He offered no opinion of value except to recount assessed values for the property.

On the basis of the foregoing, the Board, relying on the observations of the hearing officer as to matters of witness credibility, found that the evidence of value offered by Mr. Privitera did not supply substantial evidence so as to support appellant's claims of the fair market value of the Rice Street Property. Mr. Privitera's descriptions of the subject property were too generalized

to provide a sufficient basis upon which to reach any conclusions as to value. More fundamentally, as discussed in the context of the Broadway/Ellsworth and Lee Street properties, Mr. Privitera's application of the gross-income-multiplier methodology was unsound. The methodology calls for a market-derived multiplier to be applied to a market-derived income stream, yet there was no foundation for Mr. Privitera's multiplicands in actual property transactions or other market data. Moreover, Mr. Privitera lacked expertise in the appraisal of real estate, casting further doubt on opinions of value based on a methodology even experts are advised to use with caution.

There was an additional flaw in the gross-income-multiplier methodology applied by Mr. Privitera in the context of the Rice Street property. He acknowledged that rent concessions were offered for the maintenance and upkeep of the property. Because the rent concessions were not accounted for in the income and expense statements offered in evidence, the gross income figures Mr. Privitera used did not reflect the full value received by the owner for the lease of the subject premises. Where the multipliers were applied to amounts not reflective of the actual earning capacity of the subject property, the resulting opinions of value were necessarily understated.

Given the absence of credible and persuasive evidence to support findings of value at variance with the assessed values, the appellant failed to carry its burden of proof. The Board accordingly entered directed findings, deciding the instant appeals in favor of the appellee.

#### OPINION

The instant appeals came before the Board on the appellee's motion for directed findings. This procedural device was recognized in *General Electric Co. v. Bd. of Assessors of Lynn*, 393 Mass. 591, 599 (1984) and affords the appellee an opportunity to test the sufficiency of the appellant's evidence before it proceeds to offer evidence in defense of a disputed assessment. The motion for a directed finding derives its basis from the well-settled proposition that "the assessment is entitled to a presumption of validity ... [and] the taxpayer bears the burden of persuasion of every material fact necessary to prove that its property has been overvalued." *Id.* A motion for a directed finding for the appellee will be allowed if there is "no credible or persuasive evidence that the taxpayers' property had a lower value than that assessed [so that] it was proper for the board to conclude that the taxpayers had not sustained the burden of proof." *Schlaiker*

**v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974). If the taxpayer fails "to introduce sufficient evidence to warrant a finding for that party" the "result [will be] a dismissal or a directed verdict." **General Electric**, 393 Mass. at 599.

A motion for a directed finding is analogous to a motion to dismiss as authorized at 801 CMR 1.01(7)(g)(1), the "Standard Adjudicatory Rules of Practice and Procedure", which provides that "[u]pon completion by the initiating Party of the presentation of evidence, the responding Party may move to dismiss on the grounds that, upon the facts and/or the law, the initiating Party has not sustained its case." While similar in some respects to a Motion for a Directed Verdict as authorized at Mass. R. Civ. P. 50(a), a motion for a directed finding in the Appellate Tax Board does not require that "all evidence [be considered] in the light most favorable to the plaintiff." **Uno Restaurants, Inc. v. Boston Kenmore Realty Corp.**, 441 Mass. 376, 382 (2004). As the Supreme Judicial Court explained in **Western Massachusetts Lifecare Corp. v. Assessors of Springfield**, 434 Mass. 9, 107-108 (2001),

[o]n ... a motion [to dismiss], the board may engage in weighing the evidence to determine whether the party bearing the burden of proof has met that burden. 'In granting a motion to dismiss at the close of evidence in a nonjury trial, a judge is

entitled to 'weigh the evidence and resolve all questions of credibility, ambiguity, and contradiction in reaching a decision.' **Delano Growers' Coop. Winery v. Supreme Wine Co.**, 393 Mass. 666, 676, 473 N.E.2d 1066 (1985), quoting **Ryan, Elliott & Co. v. Leggat, McCall & Werner, Inc.**, 8 Mass. App. Ct. 686, 689, 396 N.E.2d 1009 (1979).

The controlling principle which guides the resolution of a motion for a directed finding is the requirement of "substantial evidence" to support a finding of value at variance with the assessed value, which is presumptively valid. See **Schlaiker**, 365 Mass. at 245. "Substantial evidence" has been defined to mean "'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" **RCN-BecoCom LLC v. Commissioner of Revenue**, 443 Mass. 198, 204 (2005)(Citation omitted.) Where there are "'explicit and objectively adequate reason[s] to reject the evidence proffered by a party having the burden of proof,'" **Mayflower Emerald Square, LLC. v. Bd. of Assessors of North Attleborough**, Mass. ATB Findings of Fact and Report 2007-421, at 2007-528, quoting **Tennessee Gas Pipeline Co. v. Assessors of Agawan**, 428 Mass. 261, 267 (1998), a directed finding in favor of the appellee may be appropriate.

Evaluating the evidence offered by the taxpayers and relying on the observations of the hearing officer as to

matters of witness credibility, the Board found clear and persuasive grounds to reject the opinions of value offered by Messrs. Gasperoni and Privitera as insufficient to meet the burden of proof. See generally ***New Boston Garden Corp. v. Bd. of Assessors of Boston***, 383 Mass. 456, 467 (1981)("testimony that 'carries its own death wound' [may be discredited.]")(Citation omitted.)

The credibility of the expert evidence offered by Mr. Gasperoni with respect to the Broadway/Ellsworth and Lee Street properties suffered a death by a thousand cuts, not all of which were canvassed in the Board's review of his Reports and testimony. Mr. Gasperoni's opinions of value lacked probative weight because of the clear violation of Uniform Standards of Professional Appraisal Practice Standard 1.1(c), which forbids "a series of errors that although individually might not significantly affect the results of an appraisal in the aggregate affects the credibility of those results."

Some of the errors were clearly insignificant standing alone, such as the erroneous, pre-inspection date that appeared on the transmittal letter for Mr. Gasperoni's Reports. The valuation of the properties "as is" appeared to compromise the analysis of "highest and best use", which is the starting point for the income approach to value he

relied upon. Cf. *Peterson v. Assessors of Boston*, 62 Mass. App. Ct. 428, 429 (2004). Anomalous references to industrial and hotel properties appear in the Reports. Other errors, such as the contradictions regarding the sizes of units in the Broadway-Ellsworth properties and the failure to adequately investigate comparable rental properties before adjusting indicated rental rates downward by approximately 43%, eroded confidence in Mr. Gasperoni's income capitalization analysis at a more fundamental level. The many contradictions and inconsistencies in Mr. Gasperoni's testimony, and between his testimony and Reports, undermined his credibility as a witness.

A pervasive difficulty with Mr. Gasperoni's appraisal analysis was his insufficient investigation of market conditions affecting the rental of apartment properties in Cambridge, brought out on thorough cross examination. Insufficient market data were obtained to arrive at reliable rental rates and expenses or a vacancy rate consistent with the demand for rental housing in the vicinity of Central Square and Harvard Square. While it is true that an appraiser may use actual rents and expenses of the subject property in an income capitalization analysis, these data must "adequately reflect earning capacity" in the prevailing market environment. See *Carye v. Bd. of*

*Assessors of Chelmsford*, 394 Mass. 1001 (1985). See also, *Irving Saunders Trust v. Bd. of Assessors of Boston*, 26 Mass. App. Ct. 838, 842 (1989). "It is the earning capacity of the real estate, rather than its actual income, which is probative of fair market value." *Pappas v. Bd. of Assessors of Brookline*, Mass. ATB Findings of Fact and Reports 2006-665, at 2006-675, citing *Assessors of Quincy v. Boston Consolidated Gas Co.*, 309 Mass. 60, 64 (1941). "Vacancy rates must also be market based when determining fair cash value." *Pappas*, Mass. ATB Findings of Fact and Report at 2006-675. Without sufficient consideration of market data, actual rents and expenses cannot be presumed to accurately reflect the property's fair market value earning capacity.

Moreover, Mr. Gasperoni's development of capitalization rates was fundamentally flawed both in terms of the source data drawn upon to calculate them, and in the application of well-settled principles of appraisal technique as set forth in *THE APPRAISAL OF REAL ESTATE* (12<sup>th</sup> ed. 2001). The capitalization rates he proposed did not credibly capture the level of risk inherent in ownership of fully occupied apartment properties in highly advantageous locations. Taken as a whole, Mr. Gasperoni's appraisal analyses of the Broadway/Ellsworth and Lee Street

properties were "so replete with errors that [they were] unreliable and essentially without merit." ***Northshore Mall Limited Partnership v. Bd. of Assessors of Peabody***, Mass. ATB Findings of Fact and Report 2004-195, 2004-255. ***Accord Textron Systems v. Bd. of Assessors of Wilmington***, Mass. ATB Findings of Fact and Report 2001-877, 2001-894-896. (Expert evidence excluded in light of pervasive errors.)

While the income capitalization approach to value is appropriate for estimating values of properties like the subject apartment complexes in the absence of reliable sales data, see ***Mason v. Bd. of Assessors of Winchester***, Mass. ATB Findings of Fact and Report 2004-110, 2004-141, the Board has traditionally followed the approach set forth in ***Olympia & York State St. Co. v. Bd. of Assessors of Boston***, 428 Mass. 236, 239 (1998):

The direct capitalization of income method analyzes the property's capacity to generate income over a one-year period and converts the capacity into an indication of fair cash value by capitalizing the income at a rate determined to be appropriate for the investment risk involved. In reaching a fair cash value for the property by means of the direct capitalization of income method, appraisers analyze competitive facilities and determine market rents, market vacancy and credit loss rates, market expenses, market capitalization rates, and general market conditions.

Accord **Mayflower Emerald Square**, Mass. ATB Findings of Fact and Reports at 2007-522-523. As applied by the Board, the income capitalization approach utilizes "[n]et operating income, to which the capitalization rate is applied..." **Id.** at 2007-523. Net operating income is derived "by subtracting expenses from gross income." **Mayflower Liberty Tree, L.L.C. v. Bd. of Assessors of Danvers**, Mass. ATB Findings of Fact and Reports 2005-291, 2005-331. The gross-income-multiplier method is not the equivalent of income capitalization analysis because it fails to take into account such important variables as expenses and capitalization rates.

"[I]t is ... established that '[a]n owner of real estate ... having adequate knowledge of his property may express an opinion as to its value.'" **Valkyrie Co. v. Assessor of Worcester**, Mass. ATB Findings of Fact and Report 2005-407, 2005-416 (Citations omitted.) Nevertheless, the rule permitting an owner to express an opinion of value as to his own property coexists with the "well-settled [principle] that 'the value of property ... [is] a proper matter for expert opinion.'" **Id.** at 414, citing **Sheffer v. Rudnick**, 291 Mass. 205, 212 (1935). There is no authority for the proposition that the owner's competence to offer an opinion of value about his own property extends to the

application of complex appraisal techniques which are the province of experts in the field of real estate valuation. See **Salem Traders Way Realty LLC v. Bd. of Assessors of Salem**, Mass. ATB Findings of Fact and Report 2007-236, 2007-246 (Corporate officer permitted to testify as owner "did not possess the requisite expertise" to utilize the sales comparison approach to value to support his opinion of value for an income-producing property.)<sup>24</sup> Mr. Privitera's opinions of value for the subject properties did not afford persuasive evidence of value of income-producing properties like the subject apartment complexes.

"The Board was not required to believe the testimony of any particular witness ...'" **Medical Malpractice Underwriting Ass'n of Massachusetts v. Commissioner of Insurance**, 395 Mass. 43, 56 (1985)(Citation omitted.) "The mere qualification of a person as an expert does not endow his testimony with any determinative weight.'" **Mayflower Emerald Square** at 2007-527 (Citation omitted.) As was emphasized in **Foxboro Associates v. Bd. of Assessors of Foxborough**, 385 Mass. 679, 683 (1982), "[t]he board was not required to accept the opinion expressed, or the

---

<sup>24</sup> The hearing officer has discretion to exclude evidence such as the non-expert gross income multiplier analysis offered by Mr. Privitera. Cf. **Textron Systems v. Bd. of Assessors of Wilmington**, Mass. ATB Findings of Fact and Report 2001-877, 2001-894-896.

valuation principles used by [the taxpayer's expert witness.]" Rather, "[t]he essential requirement is that the Board exercise judgment." *New Boston Garden*, 383 Mass. at 473.

The Board carefully considered the appellants' showing in these appeals, and found it lacking in credibility and persuasiveness. See *Schlaiker*, 365 Mass. at 245. With "objectively adequate reasons for disregarding the opinion of value offered by the taxpayer as evidence 'substantially lacking in probative force'...", see *Foxboro Associates*, 385 Mass. at 683 (citation omitted), the Board relied on the presumption of the validity of the assessed values. Therefore, the Board allowed the assessors' motion for directed findings and decided these appeals in favor of the appellee.

**THE APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: \_\_\_\_\_  
Clerk of the Board