

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**G.F. SPRINGFIELD MGMT., INC. v. BOARD OF ASSESSORS OF THE  
TOWN OF WEST SPRINGFIELD**

Docket Nos.: F220841  
F220843

Promulgated:  
April 5, 2000

These are appeals under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 from the refusal of the appellee to abate real estate taxes assessed under G.L. c. 59, § 38 for fiscal year 1994.

Chairman Gurge and Commissioners Scharaffa, Lomans and Gorton all joined in the decision for the appellant in Docket No. F220843 and the decision for the appellee in Docket No. F220841. Commissioner Burns took no part in the consideration and decision of these appeals.

These findings of fact and report are made pursuant to a request made by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

*John D. Stuebing, Esq.* for the appellant.

*James T. Donahue, Esq.* for the appellee.

## **FINDINGS OF FACT AND REPORT**

On January 1, 1993, the appellant or its predecessor in title was the assessed owner of two parcels of real estate in West Springfield. At all relevant times, the parcels were located at 1080 Riverdale Street and supported the West Springfield Ramada Inn. The combined parcels consisted of approximately 403,801 square feet (9.27 acres) of land improved with a hotel facility that contained a gross floor area of approximately 174,150 square feet. The facility was located on the primary parcel. The secondary parcel was vacant land and was situated behind the hotel. It provided parking and served as a buffer between the hotel and nearby residences.

The hotel facility was completed in phases. The first phase, which was constructed in 1972, contained 141 guestrooms and suites along with administrative offices, banquet facilities, restaurant facilities, and an enclosed courtyard. The second phase, which was constructed in 1980, consisted of a two-story addition to which two additional floors were added in 1984, bringing the total number of guestrooms to 263.

In fiscal year 1994, the Board of Assessors of the Town of West Springfield ("Assessors") valued the main parcel (docket number F220843) at \$9,748,700 and assessed

taxes thereon at the rate of \$23.56 per-thousand in the amount of \$229,679.37. The Assessors valued the secondary parcel (docket number F220841) at \$316,500 and assessed taxes thereon at the rate of \$23.56 per-thousand in the amount of \$7,456.74.

The taxes for both parcels were timely paid without incurring interest. The applications for abatement were timely filed with the Assessors on January 11, 1994, within thirty days of the December 13, 1993 sending of the related tax bills. The abatement applications were deemed denied on April 11, 1994, and the corresponding petitions were seasonably filed with the Appellate Tax Board ("Board") on July 6, 1994. On this basis, the Board found that it had jurisdiction over these appeals.

At the hearing of these appeals, two witnesses, including a real estate valuation expert, testified for the appellant. The appellant also introduced numerous exhibits into evidence. The appellant's expert witness also prepared and submitted an appraisal report. After the hearing, the appellant filed a brief. The Assessors did not call any witnesses. They introduced only two non-jurisdictional documents. They did not offer an appraisal report or submit a post-trial brief. On the basis of all

of the evidence and reasonable inferences drawn therefrom, the Board made the following findings of fact.

The subject property is located off of Riverdale Street which is a north-south four-lane divided road that is also known as Route 5. Route 5 intersects with I-91 to the south and the Kings Highway to the north, as well as I-90, the Massachusetts Turnpike. A number of other prominent hotel and motel properties are located in this commercial area, including Howard Johnsons, Hampton Inn, Days Inn, Motel Six, Red Roof Inn, and a Super 8 Motel. The Riverdale Shopping Mall, the second largest retail complex in Western Massachusetts, is also located nearby. Riverdale Street is the main roadway for what is considered the principal commercial area in West Springfield. This commercial district is served by regional public transportation and all of the usual utilities and infrastructure normally associated with a thriving commercial area.

The subject property is situated within a BA (Business A) zoning district which permits a variety of commercial uses including professional and business offices, banks, hotels and motels, apartment hotels, and tourist homes. The site contains 249.84 feet of frontage along the southerly side of I-91 and eighty feet of frontage on the

western side of Riverdale Street. The site is essentially a rear tract of land with only an eighty-foot access strip to and from Riverdale Street. A gas station, a restaurant, and several retail stores are located directly in front of the subject property obscuring its visibility from Riverdale Street. However, the property is visible from I-91 and is further distinguished with prominent signage. Both the east and west ends of the site contain natural wetlands features. A retention pond has been created for drainage along the eastern side while the western portion remains in its natural state. The site can also be accessed from a driveway that connects with Myron Street and the parking lot associated with the abutting Howard Johnsons' property.

In addition to the hotel facility, the site is improved with almost 500 parking spaces. Around the periphery of the site and building improvements are a variety of ornamental shrubbery and other landscaping. The site is maximally developed.

The original structure, built in 1972, is principally constructed of masonry block with a brick exterior. It has central heating, ventilation, and air conditioning. Heating and cooling is provided by eight electric rooftop resistance heaters which are approximately 23 years old and

need to be replaced. The ventilation system is a gas-fired fresh-air makeup system. The cooling tower for the air conditioning units is located outside the boiler room. Two pumps provide a closed air-conditioning system. The original structure has four stairwell towers, but no elevator. The addition, completed in 1984, is of plank construction with a combination of a brick and Dryvit exterior. It has combined heating and air-conditioning units built into the walls of each room. The addition has three stairwells and two elevators. Both the original structure and the addition have membrane roofs.

The kitchen flooring was recently replaced with quarry tile. Wall-to-wall carpeting was installed in the restaurant about the same time. The wall-to-wall carpeting in the lounge is approximately seven years old. The remaining common areas and rooms have various grades of wall-to-wall carpeting, including some in the original structure that is extremely worn. The large banquet room floor is a combination of wood parquet and carpeting.

The interior has a variety of ceiling finishes ranging between textured paint over concrete planking in the guest rooms to recessed suspended ceiling panels in common areas. The enclosed courtyard has a two-story atrium with three dome-shaped overhead skylights. The quality and

condition of the ceiling finishes vary. Some of the suspended ceiling panels need replacing, and the skylights leak causing water damage to the carpeting below.

The wall finishes also vary. Most common bathrooms and the kitchen walls are finished with ceramic tile. Other common space walls are finished with either cloth or vinyl wallpaper. The guest room walls are either unfinished brick or wallpaper. Each guestroom has at least a three-fixture bathroom. Some of the larger suites also contain an extra one-half bath and Jacuzzi tub. The conditions of the fixtures vary considerably. The beds in the guestrooms include rooms with two double-size beds, rooms with a single king-size bed, rooms with a single queen-size bed, and suites with various combinations of beds.

The hotel also contains some additional features including back-to-back fireplaces in the lobby and meeting room, wired smoke detectors in the hallways, a fully automated front reception desk, one public washer and dryer, and a concierge lounge. There is also an irregular-shaped Gunite pool ranging in depth from two to nine feet, a natural gas back-up electric generator for emergency lighting in the original building, and a sprinkler system throughout.

The improvements exhibit substantial wear and tear and are in fair overall physical condition. The public areas in the hotel are severely worn. It is obvious that the guestrooms were neglected over the years. Virtually all of the beds are in excess of eight years old and need replacing. The original structure evidences considerable deferred maintenance. The evidence indicates that it would cost approximately \$1.5 million to \$3.1 million to renovate the facility. The Board found that this range was a credible approximation.

Daiwa Bank acquired the property through a deed in lieu of foreclosure from the prior owner, Simon Konover on April 30, 1993. Title to the property was taken through a nominee trust under the name of G.F. Springfield Management, Inc. ("G.F. Springfield") as trustee of West Springfield Hospitality Nominee Trust. The deed was subject to a mortgage from Simon Konover and Donald J. Wallace to Lloyd's Bank, PLC, and was later assigned to Daiwa Bank. The mortgage was also subject to a modification agreement under which the holder of the mortgage had "no right or ability to collect the debt secured by said Mortgage or any amount thereunder from any person or entity." Similarly, G.F. Springfield, as trustee of the nominee trust, agreed to refrain from suing



Simon Konover. Accordingly, the Board found that neither Daiwa Bank nor G.F. Springfield, as trustee, could recover any amount owed on the mortgage other than by selling the subject property.

After Daiwa Bank received the deed in lieu of foreclosure, it hired G.F. Management, Inc. ("G.F. Management") to operate and manage the hotel.<sup>1</sup> G.F. Management specializes in providing hotel management services for lending institutions in work out or bankruptcy situations. Under G.F. Management's control, the hotel continued its long-term trend of declining revenues. The hotel fell victim to a sluggish economy, increased competition from newer hotels in the immediate area, and declining demand.

At the behest of Daiwa Bank, G.F. Springfield entered into a brokerage agreement on July 15, 1993 with New England Hotel Realty to sell the subject property. The hotel was originally listed at an asking price of \$4,100,000. A number of offers were received and ranged from \$1.2 million to a \$4.0 million offer contingent on seller financing. On August 18, 1994, the property was sold and deeded to Nachas Realty Corp. ("Nachas Realty")

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<sup>1</sup> G.F. Management is an operating company whereas G.F. Springfield is a corporation holding title to a single property, the subject hotel.

for \$2,007,639.25.<sup>2</sup> As part of the closing transaction, Nachas Realty simultaneously recorded a discharge of the Simon Konover mortgage that had been assigned to Nachas Realty.

The appellant's expert real estate appraiser valued the property at \$2,125,000. He testified that the August 18, 1994 sale was an arm's-length market transaction because the parties were knowledgeable and disinterested, they were not related, and the property had been exposed to the market for a reasonable length of time. He also concluded that the buyer and seller were free of compulsion. The appellant's expert appraiser rejected the use of two other sales of hotels in the area during the relevant time period because they were not arm's-length transactions.

The appellant's expert appraiser also estimated the value of the hotel property using an income-capitalization approach. He based his figures on the actual income and expense figures generated by the subject property during the 1992 calendar year. Because of the "specific

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<sup>2</sup> The purchase price stated in the purchase and sale agreement was \$2,125,000. The difference between the price stated in the purchase and sale agreement and the price on the deed apparently reflects the net effect of certain assets and liabilities which were included in the sale such as cash, accounts receivable, accounts payable, and certain prepaid items.

characteristics" of the property, such as its "size, condition of finish, accommodations, function rooms and attendant supporting spaces" and because of the generally depressed status of the market for hotels in the West Springfield area during the relevant time period, the appellant's expert appraiser concluded that the hotel's actual income and expense figures best represented the West Springfield market for this type of property. He verified these income and expense figures by comparing them, as ratios to total revenue, with ratios to total revenues from similar full-service hotels.<sup>3</sup>

In addition, the appellant's expert appraiser subtracted "other fixed charges" from the hotel's income. He defined these fixed charges as "the capital investment required and the reserve account necessary to deal with furniture, fixtures and equipment (FF&E)." He defined FF&E as the beds, bureaus, tables, lamps, chairs, couches, lobby furniture, dining room furniture, ballroom accoutrements, and meeting room installations, as well as the individual HVAC units. In his income capitalization

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<sup>3</sup> Using an annual nationwide hotel survey entitled, "Trends in the Hotel Industry" by Pannell, Kerr and Forster ("Trends"), the appellant's expert appraiser compared the income and expenses associated with the subject hotel to those associated with all full-service hotels, ones in the \$50.00 to \$75.00 rate group, ones with over 200 guestrooms, and ones in the New England and mid-Atlantic states.

approach, the appellant's expert appraiser accounted for FF&E by calculating both a return on and a return of the personal property associated with the hotel operations. The return on personal property reflected the amount of the hotel's income attributable to the personal property. The return of personal property was essentially a reserve account for the replacement of the personal property. The appellant's expert appraiser determined that the "capital value of FF&E," or its investment value, was \$5,000 per room or \$1,315,000 for the hotel as a whole. He calculated his return on FF&E each year by multiplying the investment value of FF&E by a return rate of six percent. He calculated a return of FF&E by dividing its total capital value by a ten-year rate of return. Accordingly, he calculated the fixed charges at \$210,400<sup>4</sup>

The appellant's expert appraiser determined his overall capitalization rate of 0.1200 by referring to prime interest rates, rates relating to BAA industrial bonds, the Korpacz Real Estate Investment Survey for the Fourth Quarter, 1993 ("Korpacz Survey"), and the quarterly Bulletin of the American Council of

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<sup>4</sup> His calculations were as follows:

Investment value \$1,315,000 @ 6% return	= \$ 78,900
Capital value \$1,315,000/10 years reserve	= <u>\$131,500</u>
Fixed Charges (FF&E)	= <u>\$210,400</u>

Life Insurance Companies (May 28, 1993) ("ACLI Bulletin"). After adding a tax factor, he arrived at a total capitalization rate of 0.1436.

Using his income-capitalization method, the appellant's expert appraiser estimated the value of the subject property at \$1,400,000. However, he did not rely on the estimate of value that he derived from his income-capitalization approach because, in his words, it did not represent "the future potential" of the property. The appellant's expert appraiser's income-capitalization methodology is summarized in the table below.

	<b>% of Total Revenue</b>	<b>\$/Amount</b>
<b>Revenues</b>		
Rooms	55.14	2,283,573
Food	27.88	1,154,847
Beverages	11.47	475,195
Telephone	2.05	84,908
Other Operated Departments	0.76	31,615
Rentals & Other Income	2.69	111,470
<b>Total</b>	<b>100.00</b>	<b>4,141,608</b>
<b>Department Costs &amp; Expenses</b>		
Rooms	15.53	643,296
Food & Beverage	35.06	1,451,909
Telephone	0.98	40,654
Other Operated Departments	0.00	0
<b>Total</b>	<b>51.57</b>	<b>2,135,859</b>
<b>Total Operated Department Income</b>	<b>48.43</b>	<b>2,005,749</b>

<b>Undistributed Operating Expenses</b>		
Administrative & General	10.00	414,002
Franchise Fees	3.71	153,605
Marketing & Guest Entertainment	4.47	185,209
Property Operation & Maintenance	6.75	279,362
Energy Costs	8.31	344,365
Other Unallocated Operated Departments	0	0
<b>Total</b>	<b>33.24</b>	<b>1,376,543</b>
<b>Income Before Fixed Charges</b>	<b>15.19</b>	<b>629,206</b>
<b>Fixed Charges</b>		
Management Fees	2.41	99,999
Property Taxes & Other Municipal Charges	Factored	Factored
Insurance on Buildings & Contents	3.04	125,820
<b>Total</b>	<b>5.45</b>	<b>225,819</b>
<b>Income Before Other Fixed Charges</b>	<b>9.74</b>	<b>403,387</b>
<b>Other Fixed Charges</b>		
FF&E - Return on & Reserve		210,400
<b>Net Income Before R. E. Taxes &amp; Debt Service</b>		<b>192,987</b>
<b>Capitalization Rate (0.1200 + 0.0236)</b>	<b>0.1436</b>	
<b>Estimate of Value</b>		<b>1,343,920</b>
<b>Rounded Estimate of Value</b>		<b>1,400,000</b>

Notwithstanding the appellant's expert appraiser's opinion, the Board found that the actual sale of the subject property on August 18, 1994 represented the floor for the value of the hotel on January 1, 1993, but not its actual fair cash value. The seller was a Japanese bank that acquired the property on April 30, 1993 through a release deed in lieu of foreclosure. The bank retained a management company, G.F. Management, to operate the hotel until it could be sold. G.F. Management specialized in provisionally operating problem properties for banks or mortgage holders. G.F. Management also purchased

distressed hotel and motel properties and attempted to turn them around. The bank, almost immediately after acquiring the hotel, retained a real estate broker to market it. After marketing the property for about one year, the bank sold it for \$2,007,639.25. The Board found little evidence describing how extensively the hotel was marketed. Nor did it find any direct evidence from the bank itself regarding its compulsion, or lack thereof, to sell. The Board observed that the bank made few, if any, improvements to the hotel during its ownership tenure despite the hotel's deteriorating condition. The bank expected G.F. Management to control costs and to maintain the hotel until a buyer could be found. G.F. Management kept the hotel operating but was unable to stabilize the hotel's declining revenues. As the appellant's expert appraiser testified, banks are not in the business of owning hotels. It appeared to the Board that the bank wanted out of a losing proposition in which it had no expertise.

For these reasons, the Board found that the bank acted more like an owner who was anxious to sell, than one who wanted to maximize its return. Daiwa Bank was not a willing seller, but, rather, was one acting under compulsion. Under the circumstances, the Board found that the sale was not indicative of the market, and the

appellant did not successfully meet its burden in showing that the August 18, 1994 sale price reflected the fair cash value of the subject property on January 1, 1993.

The Board further found that, under the circumstances present in these appeals, an income-capitalization approach, similar to the one offered by the appellant's expert appraiser, was the best method to use to estimate the fair cash value of the hotel on January 1, 1993. Accordingly, the Board first adopted the actual income figures from the hotel, just as the appellant's expert appraiser had done, as best reflecting the fiscal year 1994 market for hotels like the subject. However, the Board further found that some of the actual expense figures that the appellant's expert appraiser incorporated into his income-capitalization approach were excessive when compared to the expense ratios from Trends.<sup>5</sup> The Board also found that his methodology for calculating a return on FF&E was flawed. More specifically, the Board found that the operation and maintenance costs, the energy costs, and the insurance costs were all excessive when compared to market data. Accordingly, the Board adjusted them downward to better reflect the market as surveyed by Trends. Except for

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<sup>5</sup> There was also evidence that G.F. Management contained costs once it assumed the management of the hotel in 1993, thereby suggesting that the prior cost figures and ratios had been on the high side.



these adjustments, the Board adopted the actual expense ratios to total revenues as reported and verified by the appellant's expert appraiser. However, the Board did find it necessary to reduce the appellant's expert appraiser's return on FF&E after applying the proper methodology for computing that amount.

With respect to property operation and maintenance costs, the Board found that the subject's actual costs compared to total revenues, 6.75%, exceeded the average of the ratios, 5.6%, reported in Trends. In its income-capitalization approach, the Board adopted Trends ratio of 5.6% because, in the Board's opinion, it better reflected the market.

With respect to energy costs, the appellant's expert appraiser reported the subject's actual costs at 8.31% of total revenues. Trends reported energy costs, on average, at only about five percent of total revenues. The Board found that the ratios reported in Trends better reflected the market for those expenses and, therefore, used five percent of total revenues for energy costs in its income-capitalization approach.

With respect to insurance, the Board found that the subject's actual costs compared to total revenues, 3.04%, far exceeded the average of the ratios, 0.7%, reported in

Trends. Consequently in its income-capitalization approach, the Board lowered its ratio to 1.50% because, in the Board's opinion, it better reflected the market.

Finally, with respect to the methodology that the appellant's expert appraiser used to calculate a return on FF&E, the Board found that it was flawed. The appellant's expert appraiser should have adopted the current market value of the FF&E, not its original investment value, to determine a return on FF&E.<sup>6</sup> According to Stephen Rushmore's ***Hotels and Motels: A Guide to Market Analysis, Investment Analysis, and Valuations*** (The Appraisal Institute 1997) ("***Hotels and Motels***"), "the current market value of FF&E in place" is used for calculating a return on FF&E. ***Hotels and Motels*** at 240. The evidence overwhelmingly suggests that the hotel's personal property was old and worn. The appellants' witnesses acknowledged that the personal property was well-over eight years old and in dire need of replacement. Using the appellant's expert appraiser's estimate of a ten-year useful life for this property, the Board found that the FF&E had essentially spent its useful

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<sup>6</sup> The Board noted that the appellant's expert appraiser's return-on-FF&E methodology placed a value of \$1,315,000 on the FF&E alone which is almost the same value that he estimated for the entire hotel using his income capitalization approach.

life and only retained a residual value of ten percent. Accordingly, for its return on FF&E, the Board found that the current market value of the FF&E was 10% of the appellant's expert appraiser's estimate of \$1,315,000 or \$131,500. Using the appellant's expert appraiser's return of six percent, the Board calculated the return on FF&E at \$7,890. The appellant's expert appraiser equated the future replacement value of FF&E with its investment or capital value. The Board found that the appellant's expert appraiser's methodology for calculating a return of personal property was a reasonable approach under the circumstances. "To estimate a reserve with the straight-line method, the estimated future replacement cost of the item is divided by its weighted-average useful life (usually 8 to 10 years)." **Hotels and Motels** at 240. On this basis, the Board added its return on FF&E to the appellant's expert appraiser's return of FF&E and found that \$139,390 was the appropriate amount of fixed charges attributable to FF&E.

In determining what capitalization rate to use in its income-capitalization approach, the Board relied on the underlying data and information provided by the appellant's expert appraiser in the addenda to his appraisal report. After examining relevant prime interest rates, BAA

industrial bond rates, the Korpacz Survey, and the ACLI Bulletin, the Board determined that, under the circumstances present in these appeals, 0.1175 was an appropriate overall capitalization rate to use in its income-capitalization methodology. The Board's overall capitalization rate is within 0.0025 of the appellant's expert appraiser's recommendation of 0.1200. The Board then added a tax factor (0.0236) to its rate to reach a total capitalization rate of 0.1411. A summary of the Board's income-capitalization approach is contained in the table below.

	<b>% of Total Revenue</b>	<b>\$/Amount</b>
<b>Revenues</b>		
Rooms	55.14	2,283,573
Food	27.88	1,154,847
Beverages	11.47	475,195
Telephone	2.05	84,908
Other Operated Departments	0.76	31,615
Rentals & Other Income	2.69	111,470
<b>Total</b>	<b>100.00</b>	<b>4,141,608</b>
<b>Department Costs &amp; Expenses</b>		
Rooms	15.53	643,296
Food & Beverage	35.06	1,451,909
Telephone	0.98	40,654
Other Operated Departments	0.00	0
<b>Total</b>	<b>51.57</b>	<b>2,135,859</b>
<b>Total Operated Department Income</b>	<b>48.43</b>	<b>2,005,749</b>
<b>Undistributed Operating Expenses</b>		
Administrative & General	10.00	414,002
Franchise Fees	3.71	153,605
Marketing & Guest Entertainment	4.47	185,209
Property Operation & Maintenance	5.60	231,930
Energy Costs	5.00	207,080
Other Unallocated Operated Departments	0	0
<b>Total</b>	<b>28.78</b>	<b>1,191,826</b>
<b>Income Before Fixed Charges</b>	<b>19.65</b>	<b>813,923</b>

<b>Fixed Charges</b>		
Management Fees	2.41	99,999
Insurance on Buildings & Contents	1.50	62,124
<b>Total</b>	<b>3.91</b>	<b>162,123</b>
<b>Income Before Other Fixed Charges</b>	<b>15.74</b>	<b>651,800</b>
<b>Other Fixed Charges</b>		
FF&E - Return on & Reserve		139,390
<b>Net Income Before R. E. Taxes &amp; Debt Service</b>		<b>512,410</b>
<b>Capitalization Rate (0.1175 + 0.0236)</b>	<b>0.1411</b>	
<b>Estimate of Value</b>		<b>3,631,538</b>
<b>Rounded Estimate of Value</b>		<b>3,625,000</b>

On this basis, the Board found that on January 1, 1993, the fair cash value of the two parcels and improvements that comprised the subject hotel was \$3,625,000. The Board adopted the appellant's expert appraiser's logical approach of valuing the two parcels together, as one entity, because the parcels combined to form the hotel property. The Board decided to round down its estimate of value because of the deteriorated condition of the property and the estimate of \$1,500,000 or more for repairs, replacement, and remodeling. From its rounded estimate of value, the Board allocated the amount of the secondary parcel's original assessment, \$316,500, to the secondary parcel. There was no other evidence of that parcel's separate value. For this reason, the Board decided that appeal (Docket No. 220841) for the Assessors.

The Board allocated the remaining value, \$3,308,500, to the primary parcel and decided that appeal (Docket No. F220843) for the appellant. Using a tax rate of \$23.56 per-thousand, the Board computed the \$151,731.11 tax abatement for the primary parcel as follows:

Docket Number	Year	Location	Assessed Value	Tax Assessed	Fair Cash Value	Over-Valuation
F220843	1994	1080 Riverdale	\$9,748,700	\$229,679.37	\$3,308,500	\$6,440,200

#### OPINION

The principal issue in these appeals is whether the subject hotel was overvalued in fiscal year 1994. The Assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). Generally real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and reproduction cost. ***Correia v. New Bedford Redevelopment Authority***, 375 Mass. 360, 362 (1978).

"The board is not required to adopt any particular method of valuation." ***Pepsi-Cola Bottling Co. v. Assessors***

*of Boston*, 397 Mass. 447, 449 (1986). In these appeals, the Board ruled that the cost approach was not appropriate. The appellant's expert appraiser agreed. The Assessors did not disagree. "The introduction of evidence concerning value based on [cost] computations has been limited to special situations in which data cannot be reliably computed under the other two methods." ***Correia v. New Bedford Redevelopment Authority***, 375 Mass. at 362. Such was not the case here.

The fair cash value of property may be determined by recent sales of comparable properties in the market. ***Id.*** In these appeals, the appellant's expert appraiser rejected this approach because the only two potentially comparable sales were not arm's-length transactions. The Board agreed and also rejected this approach.

However, the appellant's expert appraiser did rely on an actual sale of the subject property that occurred one and one-half years after the assessment date. Actual sales of the subject property generally "furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." ***Foxboro Associates v. Board of Assessors of Foxborough***, 385 Mass. 679, 682 (1982); ***New Boston Garden Corp. v.***

**Assessors of Boston**, 383 Mass. 456, 469 (1981); **First National Stores, Inc. v. Assessors of Somerville**, 358 Mass. 554, 560 (1971). Nevertheless, the sale price recited in the deed is not conclusive evidence of fair cash value. **Foxboro Associates v. Board of Assessors of Foxborough**, 385 Mass. at 682-683. Evidence of sales may be considered "only if they are free and not under compulsion." **Congregation of the Mission of St. Vincent de Paul v. Commonwealth**, 336 Mass. 357, 360 (1957). The Board ruled that the August 18, 1994 sale of the subject property was not a transaction that was representative of the market. The Board found that the seller was not a "willing seller" because it sold the property under compulsion. Under the circumstances, the Board ruled that while the sale price may set the floor for the value of the subject property during the fiscal year at issue, it certainly did not set the ceiling.

Use of the income capitalization method is appropriate when reliable market data are not available. **Assessors of Weymouth v. Tammy Brook Co.**, 368 Mass. 807, 811 (1975); **Assessors of Lynnfield v. New England Oyster House**, 362 Mass. 696, 701-702 (1972); **Assessors of Quincy v. Boston Consolidated Gas Co.**, 309 Mass. 60, 67 (1941). The income capitalization method "is frequently applied with respect



to income-producing property." **Taunton Redev. Assocs. v. Assessors of Taunton**, 393 Mass. 293, 295 (1984). The income capitalization method is also appropriate for valuing real estate improved with a hotel. See **Analogic Corporation v. Assessors of Peabody**, 1999 Mass. App. Tax Bd. Adv. Sh. 267, 295-95 (Docket Nos. 166292, etc., June 22, 1999); **Cambridge Hyatt Joint Venture v. Assessors of Cambridge**, 12 Mass. App. Tax Bd. Rep. 153, 172 (1990). Under the income capitalization approach, valuation is determined by dividing net operating income by a capitalization rate. See **Assessors of Brookline v. Buehler**, 396 Mass. 520, 522-23 (1986). Net operating income is obtained by subtracting expenses from gross income. **Id.** at 523. The capitalization rate selected should consider the return necessary to attract investment capital. **Taunton Redev. Assocs. v. Assessors of Taunton**, 393 Mass. at 295. The tax factor is a percentage added to the capitalization rate "to reflect the tax which will be payable on the assessed valuation produced by the [income capitalization approach]." **Assessors of Lynn v. Shop-Lease Co.**, 364 Mass. 569, 573 (1974).

In these appeals, the Board ruled that the capitalization of the net income of the hotel was the best method for determining the fair cash value of the subject

property. The Board ruled that the actual income and many of the actual expenses used by the appellant's expert appraiser in his income capitalization methodology were the best evidence of the market. **Carye v. Assessors of Chelmsford**, 394 Mass. 1001 (1985) (rescript opinion); see generally **Pepsi-Cola Bottling Co. v. Assessors of Boston**, 397 Mass. at 449 (1986) (using actual figures are acceptable as long as they reflect the market). The Board further ruled that the market data published in Trends was a better indication of the market with respect to operation and maintenance costs, energy costs, and insurance costs. Accordingly, the Board made the necessary adjustments in its income capitalization methodology.

The Board also adjusted the methodology that the appellant's expert appraiser used to calculate a return on the FF&E. The Board ruled that the current market value of the FF&E, not its investment or capital value, was the correct value of the FF&E for calculating a return on that property. See **Hotels and Motels** at 240. The Board adjusted the appellant's expert appraiser's methodology accordingly. The Board ruled that the appellant's expert appraiser's methodology to account for the return of FF&E was reasonable under the circumstances. See **Hotels and Motels** at 240; see also **Cambridge Hyatt Joint Venture v.**

**Assessors of Cambridge**, 12 Mass. App. Tax Bd. Rep. at 169-170.

Finally, relying on data and information provided by the appellant's expert appraiser in his appraisal report, the Board determined that 0.1175, not 0.1200, was the most appropriate overall capitalization rate to use in these appeals. See **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. at 467 (the Board's findings regarding overall value and its various underlying components may be outside the range of expert testimony provided the findings are supported by other evidence and sufficiently explained). After adding a tax factor, the Board ruled that the total capitalization rate should be 0.1411. See **Assessors of Lynn v. Shop-Lease Co.**, 364 Mass. at 573. Neither the appellant's expert appraiser nor the record suggested that any other adjustments or considerations were necessary. "The Board may rely upon any method of valuation that is reasonable and supported by the record." **Blakely v. Assessors of Boston**, 391 Mass. 473, 477 (1984).

In reaching its opinion of fair cash value in this appeal, the Board was not required to believe the testimony of any particular witness or to adopt any particular method of valuation that an expert witness suggested. Rather, the

Board could accept those portions of the evidence that the Board determined had more convincing weight. **Foxboro Associates v. Board of Assessors of Foxborough**, 385 Mass. at 683; **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. at 473; **Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. at 701-702. In evaluating the evidence before it, the Board selected among the various elements of value and formed its own independent judgment of fair cash value. **General Electric v. Assessors of Lynn**, 393 Mass. 591, 605 (1984); **North American Philips Lighting Corp. v. Assessors of Lynn**, 392 Mass 296, 300 (1984).

The Board need not specify the exact manner in which it arrived at its valuation. **Jordan Marsh v. Assessors of Malden**, 359 Mass. 106, 110 (1971). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." **Assessors of Quincy v. Boston Consol. Gas Co.**, 309 Mass. at 72. "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the board." **Cummington School of the Arts, Inc. v. Assessors of Cummington**, 373 Mass. 597, 605 (1977).

The burden of proof is upon the appellant to make out its right as a matter of law to an abatement of the tax. **Schlaiker v. Assessors of Great Barrington**, 356 Mass. 243, 245 (1974). After the admission of evidence warranting a finding that a sale was made under compulsion, the burden of showing that the sale price resulted from fair bargaining, and not by some form of compulsion, was on the appellant who offered the price. See **Epstein v. Boston Housing Authority**, 317 Mass. 297, 300-01 (1944). In the instant appeals, the Board ruled that the appellant met its burden of proving that the subject property was overvalued. However, it did not show that the August 18, 1994 sale price represented the fair cash value of the subject property on January 1, 1993.

The Board applied these principles in reaching its opinion of fair cash value in this appeal; in determining that the subject property was overvalued by \$6,440,200; and in granting the appellant a tax abatement of \$151,731.11.

**THE APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Frank J. Scharaffa, Member

A true copy,

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