COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

FINER REALTY TRUST, PHILIP FINER, TRUSTEE	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF MANSFIELD**
Docket Nos. F283979 F288279		Promulgated: August 7, 2008

These are appeals under the formal procedure, pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the appellee Board of Assessors of the Town of Mansfield ("appellee" or "assessors") to abate taxes on certain real estate in the Town of Mansfield, owned by and assessed to appellant Finer Realty Trust, Philip Finer, Trustee ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal years 2006 and 2007.

Chairman Hammond heard these appeals and was joined by Commissioners Scharaffa and Egan in the decisions for the appellant.

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

Henry S. Levin, Esq. for the appellant.

James F. Sullivan, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2005 and 2006, appellant Finer Realty Trust was the assessed owner of property located in the Town of Mansfield at 110 Union Street (the "subject property"). The subject property, located in an older suburban residential neighborhood south of downtown Mansfield, has a lot size of approximately 9730 square feet. The parcel is town-numbered Lot 8 on Assessor's Map 27 in Mansfield. The parcel is improved with a three-story, five-unit apartment building. The structure has 2448 square feet of rentable living area.

For fiscal years 2006 and 2007, the assessors valued the subject property at $527,300 and $534,200 respectively. For fiscal year 2006, a tax was assessed at the rate of $11.30 per thousand in the total amount of $5,958.49. For fiscal year 2007, a tax was assessed at the rate of $11.27 per thousand in the total amount of $6,020.43. The Collector of Taxes for the Town of Mansfield mailed the actual tax bill for fiscal year 2006 on November 28, 2005, and the actual tax bill for fiscal year 2007 on December 29, 2006. In accordance with G.L. c. 59, § 57, appellant timely paid the taxes assessed without incurring interest.

On December 28, 2005, and on January 31, 2007, appellant timely filed Applications for Abatement for fiscal years 2006 and 2007 respectively. On March 2, 2006 and April 17, 2007, the assessors denied the Applications for Abatement. The Petition Under Formal Procedure for fiscal year 2006 was timely filed with the Appellate Tax Board ("Board") on May 24, 2006. The Petition Under Formal Procedure for fiscal year 2007 was timely filed with the Board on April 27, 2007. On the basis of the foregoing information, the Board found and ruled that it had jurisdiction over these appeals.

Four witnesses testified at the trial of this matter. Mr. Philip Finer testified as the owner while real estate appraiser Peter D. Tetreault was appellant's principal valuation witness. Susan Mitchell, a real estate appraiser associated with Mr. Tetreault's firm, assisted in the appraisal for the appellant and also offered testimony. Assistant Assessor Nancy Hinote testified for the assessors. Mr. Tetreault was qualified as an expert and presented an appraisal report received in evidence as Exhibit 5.

According to Mr. Tetreault's Report, the lot is rectangular in shape with 70.5 feet of frontage on Union Street. The improvement is a wood-framed apartment building with five units on three stories, with a foundation size of 24 feet by 34 feet. There is a full, unfinished basement which houses utilities for the apartment building. There are two studio apartments on the first floor, a four-room one-bedroom unit on the second story, and a studio apartment and a three-room unit on the third story. The first-floor-front unit has 303 square feet in living area, while the rear unit is 300 square feet in size. The front unit has been recently updated with fresh painting, carpeting, and vinyl flooring. The rear unit has not been updated as recently, and was described by Mr. Tetreault as semi-modern. The rear unit has a smaller living room than the front, but includes an eat-in kitchen.

The one-bedroom unit on the second floor has a living area of approximately 697 square feet. This unit was recently remodeled, and has both carpeted and vinyl flooring and painted walls. Mr. Tetreault opined that the unit's bedroom was very small, which limited tenant appeal.

The third-floor-front unit has a living area of 429 square feet, while the rear unit has 247 square feet. The front unit has three rooms, while the rear unit is a studio apartment. Mr. Tetreault indicated that these units were in generally average overall repair.

There is adequate parking on site for five or six cars, and room to expand the parking lot if desired. The building was originally constructed in 1884. The building is heated by oil-fueled forced hot water. The electrical systems were updated to six 100-amp services. The exterior surface is vinyl-sided. The mansard roof is asphalt shingled; the entire roof is in adequate repair. The building has aluminum gutters and downspouts. Approximately, half of the windows have been recently updated. Mr. Tetreault described the condition of the units and building as average. Mr. Tetreault emphasized that the building suffers from functional obsolescence due to the small size and unusual and "awkward" configurations of the units, which depressed fair market value.

Mr. Tetreault used both the sales comparison and income approaches to value in developing his opinions of value for the subject property. The cost approach was excluded given the age of the subject property and the difficulty in estimating an appropriate allowance for depreciation. He determined that the highest and best use was a continuation of the existing use as an apartment building.[1]

With respect to his comparable sales analysis, Mr. Tetreault noted for fiscal year 2006 that "there have been no recent sales of truly comparable five unit

[1] Mr. Tetreault suggested that fewer units of larger size would be a better utilization of the existing space, but that the necessary renovations would not be cost-effective.

properties within the past 18 months within the Town of Mansfield." Report at page 36. For fiscal year 2007, he observed a lack of "truly comparable sales" in the preceding 30 month period. For comparable sales, Mr. Tetreault used four multi-family properties from Mansfield and one from Attleboro for fiscal year 2006. He relied on eight sales for the following fiscal year, three of which were multi-family properties in Mansfield, and five from the abutting communities of Foxboro, Norton, and Attleboro.

The following table is an abridged version of Mr. Tetrault's sales comparison grid summary for fiscal year 2006 found on page 44 of his Report.

Sale	Location	# of Units	Dwelling Area (S.F.)	Sales Price	Date of Sale	Total Adj.	Adjusted Sale Price
1	23-25 East St. Mansfield	6	4908	$592K	11/03	-45.04%	$357,900
2	87-89 Highland Ave. Mansfield	4	3549	$490K	10/04	-47.37%	$257,900
3	46 Pratt St. Mansfield	10	4288	$825K	1/04	-31.79%	$619,000
4	42-57 Fairfield Pk. Mansfield	16	12,580	$1.6M	2/05	-44.04%	$895,400
5	199 S. Main St. Attleboro	6	3784	$315K	10/04	8.79%	$342,700

The following table is an abridged version of the sales comparison grid summary for fiscal year 2007 found on page 46 of his Report.

Sale	Location	# of Units	Dwelling Area (S.F.)	Sales Price	Date of Sale	Total Adj.	Adjusted Sale Price
1	21 East St. Mansfield	12	8470	$1.25M	6/06	-44.09%	$698,900
2	31 Cocasset St. Foxboro	7	5947	$775K	7/05	-44%	$434,000
3	512 S. Main St. Attleboro	8	5976	$625K	6/05	-24.11%	$474,300
4	37 Pleasant St. Norton	7	5350	$635K	6/05	-36.61%	$402,539
5	75 Dennis St. Attleboro	7	6114	$612.5K	9/05	-29.66%	$430,808
6	35 Mulberry St. Attleboro	6	4638	$470K	5/05	-18.76	$381,828
7	46 Pratt St. Mansfield	10	4288	$970K	3/06	-36.03%	$620,500
8	42-57 Fairfield Pk. Mansfield	16	12,580	$1.6	2/05	-44.04%	$895,400

Mr. Tetreault made adjustments for time to approximate the valuation dates at issue, and adjusted most of the sales prices of the proposed comparison properties downward by 20% for the “superior utility” of their units. He also made 10% positive adjustments to the sales prices of properties in Attleboro to account for differences with the market in Mansfield, but made no similar adjustments to the prices of properties sold in Norton or Foxboro. Additional negative adjustments for such variables as superior condition and location were made to the sales prices of the Mansfield properties (except that of 21 East Street, which was adjusted upwards by 5% given its inferior condition.) He made across-the-board adjustments to all comparison properties of $50 per-square-foot to reflect differences in living area per unit.

In deriving his opinion of value based on the sales comparison approach, Mr. Tetreault took adjusted sales prices and divided them by the number of units in the comparison properties to yield an adjusted sales price "per-unit." For fiscal year 2006, his adjusted per-unit values from the comparison properties ranged from $55,963 to $64,475. For fiscal year 2007, his adjusted per-unit values ranged from $55,963 to $63,638. In arriving at a per-unit value to apply to the subject property for fiscal year 2006, he weighted the sales he numbered 1, 3, and 5 most heavily. For fiscal year 2007, he weighted the sales he numbered 1, 3, 5, and 7 most heavily. For both fiscal years at issue, he selected a per-unit value of $60,000, which he multiplied by the number of units at 5, to yield an indicated value of $300,000 for the subject property using the sales comparison approach.

Mr. Tetreault also utilized an income approach analysis in valuing the subject property. He deemed the income approach to be "the most reliable method of valuing the subject property since the subject property is considered to be an 'investor grade' multi-family property, not an owner occupied property." Report at 49. He noted the rents at the subject property as of the relevant time period: The two first-floor studio units rented for $575 per month; the second-floor one-bedroom unit rented for $925 per month; the three-room third-floor unit rented for $585 per month; and the studio unit on the third floor rented for $560 per month.

Mr. Tetreault used four rental properties in Mansfield to derive his estimates of market rental rates. His first comparable rental property was a four-unit property at 139 Union Street in Mansfield. Each unit had four rooms, including two bedrooms, and one bathroom. The first-floor unit had 1022 square feet while the second-floor unit had 790 square feet. Each unit rented for $1000 per month as of 2004, which included heat and hot water. Adjusting these rentals for the larger size and superior utility of having two bedrooms, Mr. Tetreault derived an indicated market rent of $925 per month for the subject’s four-room one-bedroom unit on the second floor.

Mr. Tetreault’s second rental comparable was located at 106-108 Union Street in Mansfield, next door to the subject property, which was rented out in 2005. The main building had three units, all of which had four rooms including two bedrooms, and one bathroom. Each unit was 876 square feet in living area. The first-floor unit rented for $995 per month, the second-floor unit was rented for $850 per month, and the third-floor unit was rented for $790. He noted that the property at 106-108 Union Street was in similar repair to the subject property. He made adjustments to the rent of first-floor unit at 106-108 Union Street to account for the superior utility of a two-bedroom unit as compared to the four-room unit on the second floor of the subject property. He also made an adjustment to reflect that heat and hot water were included in the rental price. The indicated rental value of the four-room unit at the subject property based on this rental comparable was $875 per month.

The third rental comparable Mr. Tetreault relied upon was the property at 80 Court Street, which was rented in 2004. This property had three units: the first-floor and second-floor units both had four rooms, two bedrooms, and one bathroom. The third-floor unit consisted of three rooms, with one bedroom and one bathroom. The first-floor unit had 1114 square feet of living area, the second-floor unit 1102 square feet, and the third-floor unit 503 square feet. The rents were $850, $950, and $750 per month respectively, and included heat and hot water. Mr. Tetreault used the third-floor unit at 80 Court Street to project a market rental rate for the three-room unit on the third-floor of the subject property. He adjusted the comparable rental to account for its larger size and superior repair, and arrived at an indicated rental value of $625 for the three-room unit at the subject property.

The fourth rental comparable was located at 479 North Main Street in Mansfield. The building was rented in 2005. To value the studio units in the subject property, Mr. Tetreault looked to a two-room studio apartment at 479 North Main Street, which had approximately 800 square feet in living area and rented for $680 per month. Mr. Tetreault adjusted the rent down $100 per month to reflect the larger size and superior utility of the comparison unit.

Based on his comparable rental analysis, Mr. Tetreault concluded that two first-floor studio units at the subject property were rented at market rates at $575 each. He also used the $575 per month rental estimate for the third-floor studio. He deemed that the four-room unit in the subject property was rented at market level at $925 per month, but the three-room unit was under market at $585 per month. He selected a market rental rate of $625 for the three-room unit. Mr. Tetreault's estimated market rents for the subject property added up to $3275 per month, or $39,300 on an annual basis. His selected market rental rates applied to both fiscal years at issue, given his opinion that the “rental market within the town of Mansfield remains stable….” Report at page 51.

For a vacancy and credit loss factor, Mr. Tetreault estimated 5%, or 3 months of vacancy and/or rent loss for the five units on a yearly basis. The vacancy rate was based on the actual vacancy at the subject property, which in Mr. Tetreault’s opinion was consistent with market conditions. In projecting market expenses, Mr. Tetreault relied on actual costs for the subject property for insurance, heat and hot water, electricity, and water and sewer. For fiscal year 2006, he estimated $750 in legal and accounting expenses, $2500 for repairs and maintenance, and 3% of effective gross income for a management fee. He made a separate allowance for grounds maintenance and snow plowing at $2000 for that year, and projected a cost of $700 annually to advertize. Expense estimates for fiscal year 2006 were typically rounded numbers, based on the owner’s actual costs. For fiscal year 2007, Mr. Tetreault adopted the actual legal costs incurred by the owners at $900, and actual heat and hot water costs at $2851. $2405 was allowed for repairs and maintenance, while 3% of effective gross income was used for management expense. For fiscal year 2007, he used the owners’ actual expenses also for grounds maintenance and plowing and advertising--$1008 for the former, $1230 for the latter. Mr. Tetreault did not consistently round the actual expense figures he adopted for fiscal year 2007.

Mr. Tetreault relied on extractions from sales for his capitalization rates, along with the Ellwood or mortgage-equity model. He used all his comparable sales properties for fiscal year 2006 to extract capitalization rates, and in addition considered six other sales outside Mansfield. He relied on extractions from three of his comparable sales properties, and two other properties in addition, for fiscal year 2007. However, he was unable to review income and expense information for most of the properties he relied upon to develop his capitalization rate in fiscal year 2006. None of the sales he used in developing his fiscal year 2007 capitalization rate occurred in Mansfield. For his mortgage-equity model he used the following assumptions:

Loan-to-Value Ratio	80%
Amortization	25%
Interest Rate	7%
Equity Yield Rate	15%
Holding Period	5 years
Overall Change In Value	5 percent
Developed Overall Rate	8% as rounded

Using these methods, Mr. Tetreault derived an 8% base capitalization rate for both years at issue, and added a tax factor to arrive at his overall capitalization rates. The following tables supply the pro forma income and expense analysis Mr. Tetreault used to arrive at indications of value using the income approach:

FY 2006 Tetreault Pro Forma

Potential Gross Income				$	39,300
Vacancy and Credit Loss			5%	$	1,965
Effective Gross Income				$	37,335
Less Fixed Expenses					
Insurance	$	1,830			
Less Operating Expenses					
Heat & Hot Water	$	2,800			
Electric	$	150			
Water/Sewer	$	550			
Legal & Accounting	$	750			
Repairs/Maintenance	$	2,500			
Management by owner (at 3%)	$	1,120			
Grounds/Plowing	$	2,000			
Advertising	$	700			
Total Expenses				$	12,400
Net Operating Income				$	24,935
As Rounded				$	24,900
Capitalization					
Capitalization Rate			0.0800		
Tax Factor			0.0113		
Total Overall Rate			0.0913		
Indicated Value				$	272,727
As Rounded				$	273,000

FY 2007 Tetreault Pro Forma

Potential Gross Income				$ 39,300
Vacancy and Credit Loss			5%	$ 1,965
Effective Gross Income				$ 37,335
Less Fixed Expenses				
Insurance	$ 1,830			
Less Operating Expenses				
Heat & Hot Water	$ 2,851			
Electric	$ 121			
Water/Sewer	$ 600			
Legal & Accounting	$ 900			
Repairs/Maintenance	$ 2,405			
Management by owner (at 3%)	$ 1,120			
Grounds/Plowing	$ 1,008			
Advertising	$ 1,230			
Total Expenses			$ 12,065	
Net Operating Income			$ 25,270	
As Rounded			$ 25,300	
Capitalization				
Capitalization Rate		0.0800		
Tax Factor		0.0113		
Total Overall Rate		0.0913		
Indicated Value			$ 277,108	
As Rounded			$ 277,000	

Mr. Tetreault's opinion of value for the subject property using the direct capitalization of income methodology was $273,000 for fiscal year 2006, and $277,000 for fiscal year 2007. Mr. Tetreault based his valuation conclusions on the income approach and assigned no weight to the values developed using the comparable sales approach. He estimated fair market value at $273,000 for fiscal year 2006 and $277,000 for fiscal year 2007. For fiscal year 2006, Mr. Tetreault’s indication of value was markedly less than the opinion of value appellant stated on the Application for Abatement at $455,000.

Testifying for the assessors, Ms. Hinote relied exclusively on the sale of the apartment property next door to the subject property, at 106-108 Union Street, for which the property record card was introduced in evidence. 106-108 Union Street sold on June 15, 2005 for $579,000. In addition to the three units described by Mr. Tetreault (who used this property as a rental comparable), there was an additional small structure at 106-108 Union Street. 400 square feet in living area, this structure was also rented out as an apartment unit.

The property at 106-108 Union Street was comparable to the subject property in style, location, size, construction, and age, according to the property record card and Ms. Hinote. The 400 square foot unit outside the main building at 106-108 Union Street was somewhat comparable to the small studio units in the subject property. Mr. Finer, who testified as an owner, agreed that the property at 106-108 Union Street was generally comparable with the subject, but noted that the property next door was in better condition, and had units which were better configured for use by tenants.[2] Ms. Hinote failed to offer adjustments to take account of differences between the comparable property and the subject property.

WEIGHING THE EVIDENCE

While the Board agreed with aspects of Mr. Tetreault's appraisal analysis, his opinions of value were undermined by a pervasive difficulty in locating reasonably comparable properties to provide appropriate support for his conclusions. Based on all the evidence, the Board was unable to find that the properties he utilized in his sales comparison analysis were generally similar to the subject property. None of the assertedly comparable properties he utilized in his analysis of sales had units very similar in size, configuration, or number to those at the subject property. Nor did the comparison properties have the problem with functional obsolescence that was attributed to the units in the subject property. The pictures of the comparison properties included in the Report revealed considerable differences in style, construction, and

[2] Inexplicably, Mr. Tetreault failed to utilize the sale of 106-108 Union Street in his comparable sales analysis, instead roaming further afield into surrounding communities different in character from Mansfield.

layout.[3] Moreover, Mr. Tetreault relied heavily on sales of properties from outside Mansfield, without establishing comparability to the market for rental properties in Mansfield. The substantial downward adjustments Mr. Tetreault made to the sales prices of nearly all of the supposedly comparable sales underscored their lack of similarities to the subject property. The adjustments were inconsistent with basic comparability: the smallest downward adjustments made to a Mansfield apartment property exceeded 30%, and pertained to 46 Pratt Street, which bore the least physical resemblance to the subject property according to the photographic evidence.[4]

Mr. Tetreault stated in his report that there were no transactions in reasonably comparable properties during the time periods relevant to the fiscal years at issue. However, based on the testimonies of Ms. Hinote and Mr. Finer, and the property record card, the Board found

[3] The comparison property least dissimilar to the subject property was 23-25 East Street in Mansfield, which sold in November of 2003 for $592,000. However, the -45.04% adjustment he applied to the sales price was clearly excessive in view of his assumption of a rising market over the 13 months from the time of sale to the first valuation date at issue, and his smaller-than-average -10% adjustment for superior unit utility.

[4] The Board also questioned Mr. Tetreault's method of dividing adjusted sales prices the by the number of units in his comparable sales properties, to yield a "per-unit" value to multiply by the number of the subject units. As the comparable properties were sold as apartment buildings, not condominium units, there was some artificiality in reconstructing unit values to develop a sales price for the subject property as a whole. *See generally* ***Mason v. Assessors of Winchester,*** Mass. ATB Findings of Fact and Reports 2004-110, 2004-138-141.

that the apartment building at 106-108 Union Street, next door to the subject property was sufficiently comparable to support an indication of value. Mr. Tetreault's sales comparison analysis was flawed by his unexplained failure to consider this sale, which occurred at the mid-point between the two valuation dates at issue.[5]

The probative force of Mr. Tetreault's income capitalization analysis was also diminished by weak support in relevant market data. He utilized four properties as rental comparables, but none of the properties had units similar in size and layout to the mix of units at the subject property.[6] He typically used each of his rental comparable properties to estimate market rental rates for only one unit-type in the subject property: the three-room unit, the four-room unit, or the small studio units; leaving the market rental estimates for each subject unit on a slender foundation. He made sizeable downward adjustments to all the rents in the rental comparison properties, casting further doubt on the comparability of these units to the subject units. He attributed none of the

[5] Mr. Tetreault used the property at 106-108 Union Street as a rental comparable in his income capitalization analysis, which sharpened questions as to why he overlooked the sale in his review of market transactions.

[6] The unit most comparable in size to the studio apartments and the three-room unit at the subject property was probably the 400-square-foot unit outside the main structure at 106-108 Union Street, which Mr. Tetreault did not consider in deriving his market rental estimates.

functional obsolescence he emphasized in his descriptions of the subject property to the comparable properties. Given his difficulty in finding a range of rental comparables useful in developing rents for individual units without excessive adjustments, he evidently relied on actual rents without a convincing frame of reference in the rental market in Mansfield. Accordingly, each of the rental rates he assigned to the units in the subject property lacked solid foundation in market data.

It appeared doubtful that Mr. Tetreault reviewed expenses from comparable rental properties in projecting market expenses for the subject property. His Report made no references to other properties he considered in arriving at his market expense estimates. Actual expenses in the subject property were almost invariably used in his income capitalization analysis, but lacked a sufficient predicate in rental-market data specific to Mansfield. Moreover, he was inconsistent in his treatment of actual expenses for the two fiscal years at issue. He rounded off actual expenses in developing expense estimates for use in his income approach analysis for fiscal year 2006, but largely relied on the actual expense numbers without rounding for fiscal year 2007. Thus, he failed to arrive at stabilized expense estimates for the subject property for the years at issue, as was most strikingly evident in the 75% spike in advertising expense from fiscal year 2006 to fiscal year 2007. He made this increase despite opining that his 2006 advertising expense estimate took account of rising advertising expense levels in the local market and the history of vacancies in the subject property. Conversely, the grounds maintenance and plowing expense estimate for fiscal year 2007 was barely half of his estimate for the preceding fiscal year. These fluctuations over a one-year period were not sufficiently explained in the Report or the testimony. The failure to arrive at stabilized expense estimates based on adequate foundation in market evidence made his income capitalization analysis for the subject property less probative.

Moreover, there was a discrepancy in how he treated heat and hot water expenses on the income side versus the expense side of the ledger. He adjusted indicated rental rates downward for at least two of his rental comparables because those rents included the cost of heat and hot water. Nevertheless, he included an allowance for heat and hot water expense in the expenses he subtracted from effective gross income, despite having allowed for this cost in his rental estimates. This “double-counting” for heat and hot water expense had the effect of depressing his final value estimates based on the income approach and rendering them unreliable. Finally, Mr. Tetreault's opinion of value under the income approach for fiscal year 2006 sharply diverged from the opinion of value stated in appellant's abatement application for that year. In sum, the Board gave only limited weight to Mr. Tetreault's appraisal analysis overall, and no weight to his final value estimates.

Ms. Hinote's testimony was not sufficiently developed to support an indication of value. While the Board agreed that the sale of the apartment property next door to the subject property was sufficiently comparable overall to be utilized in a probative comparable sales analysis, she failed to make appropriate adjustments to account for differences brought to light by other evidence.

THE BOARD'S VALUATION FINDINGS

Since neither Mr. Tetreault nor Ms. Hinote offered definitive evidence of value, the Board drew from the portions of the evidence that appeared to have the greater weight. The Board concluded that the subject property was difficult to value given the unique number, size, and configuration of the units therein. The Board agreed with Mr. Tetreault's basic opinion that the subject property was overvalued because the assessed values did not sufficiently take in account the functional obsolescence issues. However, the Board rejected Mr. Tetreault's opinions of value as being too low in view of the totality of the evidence.

The Board agreed with Ms. Hinote that the most probative market evidence was the sale of the apartment property at 106-108 Union Street in June of 2005, at the mid-point between the two valuation dates at issue. The evidence warranted a finding that this next-door, four-unit apartment property was basically comparable to the subject property, and that the sale was appropriately timed to be useful in valuing the subject property as of both January 1, 2005 and January 1, 2006. The Board accordingly relied on a comparable sales analysis in its valuation findings. Nevertheless, differences between the property next-door and the subject property necessitated adjustments in order to derive a reliable indication of value. The Board credited Mr. Finer's testimony that 106-108 Union Street was in somewhat better condition than the subject, and also evidence drawn from Mr. Tetreault's Report that generally the units in the comparable property had better utility than did units in the subject property, even while there were four units in the comparable property versus five in the subject property. Moreover, the Board noted that there was a small increase in the assessed value of the subject property from fiscal year 2006 and fiscal year 2007; Mr. Tetreault's final value estimates also trended up slightly from January 1, 2005 to January 1, 2006. The assessed value of the comparable property at 106-108 Union Street increased from $456,880 to $496,900 between the respective fiscal years at issue. The Board inferred from this evidence that the value of small apartment properties in Mansfield increased slightly in calendar year 2005.

In estimating appropriate adjustments to the sales price of 106-108 Union Street for each fiscal year at issue, the Board relied in part on elements of Mr. Tetreault's appraisal analysis and on its own expertise grounded in the evidence as a whole. Mr. Tetreault was correct to adjust for the inferior utility and configuration of the units in the subject property, but his across-the-board 20% adjustment for functional obsolescence was inconsistent with the basic comparability of the 106-108 Union Street property. The Board concluded that for fiscal year 2006, a 15% negative adjustment to the $579,000 June 15, 2005 sales price of 106-108 Union Street would yield a reliable indication of value for the subject property, taken together with other evidence which was suggestive. The Board accordingly arrived a finding of fair cash value of $492,000 as rounded for the subject property for fiscal year 2006. This adjustment would allow for the better utility of the units at 106-108 Union Street, and the slightly better condition, without reducing sales price so much as to be incompatible with basic comparability.

A slightly smaller adjustment to the sales price of $579,000 was warranted to arrive at an indicated value for fiscal year 2007, given the slight upward trend in values for apartment properties in Mansfield over calendar year 2005 suggested by the evidence. The Board concluded that an adjustment of 13.5% would yield a reliable indication of value for the subject property for fiscal year 2007. As rounded, the Board's finding of fair cash value for the second fiscal year at issue was $500,000.[7]

In sum, the Board found and ruled that appellant met his burden of proof to prove that the subject property was overvalued in both fiscal years 2006 and fiscal year 2007. Moreover, the Board found that there was substantial evidence to support findings of fair cash value of $492,000 and $500,000 respectively. The Board's findings of fair

[7] The most comparable of the sales properties Mr. Tetreault cited, relatively speaking, was the 6-unit property at 23-25 East Street, Mansfield, which sold for $592,000 in November of 2003. Adjusting this sales price more conservatively than did Mr. Tetreault for same factors, the Board found it provided some additional support for the findings of fair cash value.

cash value entailed that the subject property was overvalued by $34,800 for fiscal year 2006 and $34,200 for fiscal year 2007. For fiscal year 2006 an abatement was ordered in the amount of $393.24. For fiscal year 2007 an abatement was ordered in the amount of $385.43. Accordingly, the Board decided the instant appeals for the appellant.

OPINION

Fair cash value is the standard for assessing real property for tax purposes in Massachusetts. *See* 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…. Accordingly, fair cash value means … fair market value." ***Northshore Mall Limited Partnership v. Assessors of Peabody***, Mass. ATB Findings of Fact and Reports 2004-195, 246, *citing* ***Boston Gas Co. v. Assessors of Boston,*** 334 Mass. 549, 566 (1956).

The appellant has the burden of proving that the property has a lower value than that assessed. "'The burden of proof is upon the petitioner to make out its right as a matter of law to abatement of the tax.'" ***Schlaiker v. Assessors of Great Barrington,*** 365 Mass. 243, 245 (1974) (*quoting* ***Judson Freight Forwarding Co. v.***

Commonwealth, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (*quoting* ***Schlaiker***, 363 Mass. at 245).

Generally, real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to ascertain the fair cash value of property: income capitalization; sales comparison; and cost of reproduction. ***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). Regardless of which method is employed to determine fair cash value, the Board "must determine 'the highest price which a hypothetical willing buyer would pay to a hypothetical willing seller in an assumed free and open market.'" ***Irving Saunders Trust v. Assessors of Boston,*** 26 Mass. App. Ct. 838, 843 (1989). (Citation omitted.) "The validity of a final estimate of market value depends to a great extent on how well it can be supported by market data." ***Chatham Investment Trust of Newton v. Assessors of Newton,*** Mass. ATB Findings of Fact and Reports

2007-298, 2007-308, *citing THE APPRAISAL OF REAL ESTATE,* at 134 (12th ed. 2001.)

"Evidence of the sale prices of 'reasonably comparable property' is the next best evidence to the sale of the property in question." ***Lattuca v. Robsham,*** 442 Mass. 205, 216 (2004). Required are "'fundamental similarities'" between the subject property and the comparison properties. *See* ***Lattuca,*** 442 Mass. at 216.(Citation omitted.) Thorough investigation and consideration of transactions reflective of relevant market conditions are also important. *See* ***James Millar Co. v. Commonwealth,*** 251 Mass. 457, 458, 463-64 (1925). *See also* ***45 Rice Street Realty Trust v. Assessors of Cambridge,*** Mass. ATB Findings of Fact and Reports 2007-1269, 2007-1325-1326.

"[B]asic comparability is established upon considering the general character of the properties." ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 470 (1970). Considerations relevant to choosing appropriately comparable sales for valuing the subject property are catalogued in *THE APPRAISAL OF REAL ESTATE*, *supra,* at 157-59. "Once basic comparability is established, it is then necessary to make adjustments for the differences, looking primarily to the relative quality of the properties, to develop a market indicator of value." ***New Boston Garden***

Corp., 383 Mass. at 470. However, "[t]he greater the amount of … adjustment[s], the more the appraiser may reduce the weight placed on a given comparable, or the appraiser may determine that it is not sufficiently comparable to be used at all." *See THE APPRAISAL OF REAL ESTATE, supra,* at 458-59. The Board has ruled that adjustments which are "excessive" in amount "compromise[] the indicated values derived from [the] comparable sales methodology" and "raise[] serious questions regarding the initial comparability of" properties utilized. ***Trustees of the Charles Cotesworth Pinckney Trust v. Assessors of West Tisbury,*** Mass. ATB Findings of Fact and Reports 2007-621, 2007-630-31.

The income capitalization method "is frequently applied with respect to income producing property." ***Taunton Redevelopment Associates v. Assessors of Taunton,*** 393 Mass. 293, 295 (1984). In applying this method, the income stream used must reflect the property's earning capacity or market rental value. ***Pepsi-Cola Bottling,*** 397 Mass. at 451. *See also* ***Main Street Property, Inc. v. Assessors of Wayland,*** Mass. ATB Findings of Fact and Reports 2008-490, 2008-502-03. ("Imputing rental income to the subject property based on fair market rentals from comparable properties is evidence of value if, once adjusted, they are indicative of the subject property's earning capacity.")

After accounting for vacancy and rent losses, the net-operating income is obtained by deducting the landlord's appropriate expenses. ***General Electric,*** 393 Mass. at 610. Expenses should also reflect the market. *See* ***Olympia & York State Street Co. v. Assessors of Boston***, 428 Mass. 236, 243 (1998). A capitalization rate based on the return necessary to attract investment capital is then applied to the net operating income to determine the property's fair market value. *See* ***Taunton Redevelopment***, 393 Mass. at 295.

In the instant appeals, the Board found that Mr. Tetreault's appraisal analysis was entitled to diminished weight because of its weak foundation in market evidence. The Board agreed that the unique characteristics of the units in the subject property contributed to functional obsolescence, which, while detracting from value, also made comparisons to other rental properties in Mansfield tenuous. The Board found and ruled that the properties Mr. Tetreault relied upon for his comparable sales analysis generally lacked sufficient similarities to the subject property, in aspects including style, number, size, and configuration of units, location, and condition. He also made excessive adjustments to bring the supposedly comparable sales into line with the features of the subject property, which underscored the lack of basic comparability.

The Board further found and ruled that there was an insufficient basis on the record to derive market rental rates and expense levels. The properties relied upon by Mr. Tetreault for his market rental estimates differed from the subject property in important respects, most particularly the size, number, and configuration of the units. Mr. Tetreault's expense estimates were not probative because he did insufficient investigation of the cost of operating similar apartment properties. Relying on actual expense information from the subject property, he failed to establish a factual predicate for concluding that the owner's expenses represented the market. "Without sufficient consideration of market data, actual rents and expenses cannot be presumed to accurately reflect the property's fair market value earning capacity." ***45 Rice Street Realty Trust,*** Mass. ATB Findings of Facts and Reports at 2007-1326. Moreover, Mr. Tetreault made adjustments to his income projections on the assumption that heat and hot water costs were not included in the rents at the subject property, while at the same time deducting an allowance for heat and hot water expense from effective gross income. This double-counting further eroded the probative weight of Mr. Tetreault's opinions of value based on the income approach. Finally, Mr. Tetreault's opinion of value for fiscal year 2006 sharply differed from the opinion of value the owner expressed on his abatement application for that year.[8]

Nevertheless, the evidence did support a finding of overvaluation, principally in light of the functional obsolescence issues Mr. Tetreault emphasized, which, in the view of the Board, the assessed values did not sufficiently reflect. Moreover, the testimonies of Mr. Finer and Ms. Hinote persuasively established the basic comparability of the property next door at 106-108 Union Street, which sold proximate in time to both relevant assessment dates. The Board accordingly used a comparable sales analysis to arrive at findings of fair cash value. However, Ms. Hinote did not offer adjustments to account for differences between the property next door and the subject property with respect to the utility and layout of units and condition. Accordingly, weight was given to aspects of Mr. Tetreault's appraisal analysis and other evidence on the record, as well as the Board's own judgment, in

[8] It strains credulity to assume that the subject property somehow lost 40% of the value it had in the owner's opinion as of January 1, 2005, within the space of a year.

arriving at appropriate adjustments to support a reliable indication of value for the subject property for the fiscal years at issue. *See* ***Pepsi-Cola Bottling Co.,*** 397 Mass. at 452 (Finding of fair cash value affirmed where "[t]he record indicates that the board considered the testimony of the experts and exercised it own independent judgment.") *See also* ***Assessors of Quincy v. Boston Consolidated Gas Company***, 309 Mass. 60, 72 (1941). ("The [B]oard [can] select the various elements of value as shown by the record and from them form . . . its own independent judgment.")

The opinion of an expert witness must be based on a proper foundation. *See* ***State Tax Commission v. Assessors of Springfield,*** 331 Mass. 677, 684 (1954). "That a person qualifies as an expert does not endow his testimony with magic qualities." ***Boston Gas Co.,*** 334 Mass. at 579. The Board is entitled to "'accept such portions of the evidence as appeared to have the more convincing weight.'" ***Medical Malpractice Underwriting Ass'n of Massachusetts v. Commissioner of Insurance***, 395 Mass. 43, 56 (1985)(Citation omitted.) *See also* ***Alstores Realty Corp. v. Assessors of Peabody,*** 391 Mass. 60, 66 (1984)("The board's determination was not erroneous simply because it did not accept one expert's testimony completely.") "The essential requirement is that the Board exercise judgment." ***New Boston Garden,*** 383 Mass. at 473.

Decisions of the Board must be based on substantial evidence, 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.) "[T]he fair cash value of property 'could not be proved with mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment.'" ***Montaup Electric Co. v. Assessors of Whitman,*** 390 Mass. 847, 854 (1984), *quoting* ***Assessors of Quincy v. Boston Consolidated Gas Co.***, 309 Mass. at 72. *See also* ***Fawcett Street Associates v. Assessors of Cambridge,*** Mass. ATB Findings of Fact and Reports 2008-813, 2008-872 ("'The appraisal of real estate is an art, not a science.'")(Citation omitted.) Thus, "[t]he board is not required to specify the exact manner in which" its finding of fair cash value was derived. ***Jordan Marsh Co. v. Assessors of Malden,*** 359 Mass. 106, 110 (1971).

The Board found that appellant carried his burden of proof to establish that the fair cash value of the subject property was less than the amounts assessed for fiscal years 2006 and 2007. Moreover, the Board found that there was substantial evidence on the record to support findings that the fair cash value of the subject property was $492,000 on January 1, 2005 and $500,000 on January 1, 2006. The Board accordingly decided the instant appeals for the appellant and ordered abatements in the amounts of $393.24 for fiscal year 2006 and $385.43 for fiscal year 2007.

APPELLATE TAX BOARD

By: ________________________________
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: ______________________________
Clerk of the Board