**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**DYER INVESTMENT COMPANY, LLC v.   BOARD OF ASSESSORS OF**

**THE TOWN OF GREENFIELD**

Docket No. F300439   Promulgated:

  October 5, 2011

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Greenfield (“assessors” or “appellee”) to abate taxes on certain real estate owned by and assessed to Dyer Investment Company, LLC (“appellant”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2009.

Commissioner Mulhern heard this appeal and was joined by Chairman Hammond and Commissioners Scharaffa, Egan and Rose in the decision 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.

*Barry Auskern*, Esq. for the appellant.

*Ellen M. Hutchinson,* Esq. for the appellee.

**FINDINGS OF FACT AND REPORT**

Based on the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board (“Board”) made the following findings of fact.

On January 1, 2008 (“the relevant date of assessment”), the appellant was the assessed owner of a 1.41-acre parcel of real estate improved with a multi-level retail/office building (“the subject property”). The subject property was originally built circa 1930 as two separate buildings abutting on the side and rear. Prior to the appellant’s purchase of the subject property, the alley separating the two buildings was enclosed and made into a common hallway and entry; this area is now unheated and locked and not in use. Currently, the subject property operates as a single building with an “east side” and a “west side.”

The east side contains approximately 34,525 square feet of building area. The first floor has about 28,900 square feet of net leasable area, with only 3,000 square feet finished as office space and rented as of the relevant date of assessment. The remaining 25,900 square feet is older vacant retail space; this section has not been occupied for several years due to its poor condition with many areas damaged by water and decaying from lack of maintenance. There are two gas-fired space heaters in this part of the building that were temporarily installed to keep pipes from freezing. The main HVAC system is not in service and is obsolete. The second floor contains roughly 5,625 square feet of vacant, unfinished space. This space has an open utility area and operates as attic storage.

The west side has a gross building area of 27,288 square feet. The first floor contains approximately 13,070 square feet of net leasable space, which is renovated office space built out for use by the Commonwealth of Massachusetts Juvenile Trial Court. The second level is a mezzanine[[1]](#footnote-1) area and contains 2,660 square feet of low-grade office space in a very narrow configuration. The full width of the space is only 13.5 feet with a common hallway that is 4 feet wide. Much of the drywall on the second floor is unfinished and has never been painted. The third floor contains 7,150 square feet of raw unfinished space. This area is heavily damaged with large sections of the ceiling falling and many areas of the wood flooring buckled. The mezzanine and third floor windows have rotted sashes and frames; there is no heat, and the electric service is for minimal lighting only. There is an old elevator that provides access from the first to third floors; however, it has been out of service for at least five years.

The construction of the building is typical for the period with flat roofs with a tar and gravel cover and a mix of exterior wall types, primarily brick and block with sections having older wood siding. The first-floor office spaces have upgraded windows and doors. The interior of the rented office spaces have painted drywall and dropped ceilings with average quality ceiling tiles. The electrical is average, and there is commercial-grade carpeting and vinyl flooring.

For fiscal year 2009, the assessors initially valued the subject property at $3,123,600 and assessed a tax thereon, at the rate of $17.50 per thousand, in the amount of $54,663. On December 29, 2008, Greenfield’s Collector of Taxes sent out the town’s actual real estate tax bills for fiscal year 2009. In accordance with G.L. c. 59, § 57C, the appellant paid the tax without incurring interest. On February 2, 2009, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors.[[2]](#footnote-2) On March 4, 2009, the assessors granted the appellant a partial abatement, reducing the assessed value of the subject property by $318,000 to $2,805,600 and the tax by $5,565 to $49,098. On May 26, 2009, the appellant timely filed an appeal of the partial abatement with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant argued that the subject property was overvalued for the fiscal year at issue because the assessors improperly calculated the square footage of the subject property and also failed to take into consideration the deteriorating condition of the building. In support of its claim that the subject property was overvalued, the appellant offered into evidence numerous photographs of the subject property, which depicted the unfinished and dilapidated condition of much of the property. The appellants also presented the testimony and appraisal report of Kim A. Levitch, a certified real estate appraiser. Based on his certification and experience, the Board qualified Mr. Levitch as an expert real estate appraiser.

Mr. Levitch began his appraisal with a determination of the subject property’s highest and best use. Mr. Levitch noted that although the two sides of the subject property are located in the same zoning district, they are of different construction and have different uses, which do not benefit from their proximity to one another. Moreover, demand in the area is for smaller units. Therefore, Mr. Levitch concluded that the highest and best use of the subject property is for the elimination of the connecting covered alley, returning the subject property to its original condition as two separate buildings.

To estimate the subject property’s fair cash value, Mr. Levitch considered the three standard methods of valuation. He ruled out the cost approach because of the extensive deterioration and depreciation of the east side’s vacant first-floor retail space, the upper floors’ unfinished condition, and questions regarding the functionality of the west side, such as the jail cells, judges’ benches and jury areas. Mr. Levitch determined that the treatment and accounting for each applicable type of depreciation was difficult and prone to error and therefore did not provide a reliable basis for determining the subject property’s fair market value. Mr. Levitch also conducted a sales-comparison analysis for each side of the subject property. However, he used this approach only to support his conclusion of value derived through his income-capitalization analyses.

In arriving at his opinion of value for the subject property, Mr. Levitch relied primarily on the income-capitalization method, which he applied separately to the two sides of the subject property. To determine the potential gross income for each side, Mr. Levitch considered the subject property’s actual income, as evidenced by the existing leases, and also reviewed the appellant’s tax returns for tax years 2005 through 2008, inclusive. He further conducted a survey of existing rents for nearby comparable rental properties.

Based on this information, Mr. Levitch concluded that the actual rent of $11.55 per square foot for the east-side first-floor space leased to Beneficial Finance, and $18.80 per square foot for the west-side first-floor space leased to the Juvenile Court, were appropriate market rents. Given the poor condition of the rear portion of the east-side first floor, and also to account for the lack of demand for large retail spaces, Mr. Levitch determined what he considered to be an appropriate market rent of $2.50 per square foot for this space.

Further, because of the “bowling alley” layout of the west-side second floor, and the overall condition of both the east-side and west-side upper floors, Mr. Levitch assigned no rental value to any of these spaces because in his opinion the spaces were not rentable in their present condition. On this basis, Mr. Levitch calculated a potential gross income of $99,400 for the east side and $245,716 for the west side.

Mr. Levitch next focused on choosing appropriate vacancy and rent loss estimates. To determine these estimates, Mr. Levitch reviewed the subject property’s historical vacancy rates, surveyed the vacancy rates of nearby competing properties, and also considered the annual vacancy studies which he had conducted for the Franklin County Council of Governments. Based on this information, Mr. Levitch determined a vacancy and collection loss rate of 15% for the east side and 6% for the west side of the subject property. Applying these vacancy rates resulted in an effective gross income (“EGI”) of $84,490 for the east side and $230,973 for the west side.

Mr. Levitch next considered operating expenses. Mr. Levitch determined that the subject property’s actual operating expenses for property insurance, utilities, and maintenance and repair, as reported on the appellant’s 2005 through 2008 income tax returns were appropriate. He then allocated these expenses between the east and west side based on size and current use, were appropriate. Mr. Levitch also deducted a management expense of 10% of EGI for the east side and 6% of EGI for the west side. He explained that according to the subject property’s listing broker, Mr. Mark Abramson, management costs typically range from 7% to 10%. Based on the size of the east side, the number of units, and the higher degree of time involved in the management of this property, which is in poor condition, Mr. Levitch allowed a management deduction of 10%. Based on the single-occupancy of the west side, he determined that a lower management fee of 6% was appropriate. Mr. Levitch also allowed a deduction for reserves for replacement calculated at 10% of EGI for the east side and 4% of EGI for the west side, for the same reasons he chose his corresponding management fees. Finally, Mr. Levitch allowed a miscellaneous expense deduction, calculated at 2% for the east side and 1% for the west side. Deducting these expenses from the respective EGI resulted in a net operating income (“NOI”) of $51,833 for the east side and $113,989 for the west side.

The final step in Mr. Levitch’s income-capitalization analysis was the selection of an appropriate capitalization rate. To aid in the selection of a capitalization rate, Mr. Levitch considered the extracted rates from recent sales of comparable properties, the mortgage-equity technique, and also a review of published surveys in the *Valuation Insights & Perspectives* *Journal,* which is published by the Appraisal Institute. Based on this data, Mr. Levitch selected a base capitalization rate of 10.0354%. To this capitalization rate he added a tax factor[[3]](#footnote-3) of 1.768% to arrive at an overall capitalization rate of 11.8034% for the west side. For the east side, Mr. Levitch noted that the office tenant is required to pay a prorated share of the total property tax, which equates to approximately 7.8%. Therefore, Mr. Levitch reduced the tax factor to 1.63% to arrive at an overall capitalization rate of 11.6654% for the east side.

Finally, applying his overall capitalization rates to the NOI for each side, Mr. Levitch derived an indicated value, rounded, of $444,000 for the east side and $966,000 for the west side. Mr. Levitch further reduced the east-side value by $150,000 to account for the cost of a new HVAC system, which resulted in a final conclusion of value of $294,000.

Mr. Levitch’s income-capitalization analysis is duplicated in the following tables.[[4]](#footnote-4)

**East Side:**

**Income S.F. Rent/SF** **Total**

1st Floor (Beneficial) 3,000 $11.55 $34,650

1st Floor Retail 25,900 $2.50 $64,750

2nd Floor Office 5,625 None

**Gross Potential Income $99,400**

**Vacancy and Collection Loss** 15% -$14,910

**Effective Gross Income**                   $84,490

**Expenses**

Property Insurance $7,000

Utilities $2,000

Management 10% $8,449

Maintenance & Repair 6% $5,069

Reserve for Replacement 10% $8,449

Miscellaneous 2% $1,690

Total Expenses -$32,657

**Net Operating Income (NOI) $51,833**

**Capitalization Rate**

Rate 10.0354%

Tax Factor 1.6300%

**Overall Capitalization Rate** 11.6654%

**Indicated Value**  $444,328

**Rounded**  **$444,000**

Less HVAC cost $150,000

**Conclusion of Value $294,000**

**West Side:**

**Income S.F.** **Rent/SF** **Total**

JuvenileCourt (actual) 13,070 $18.80 $245,716

2nd Floor 2,660 n/a None

3rd Floor 7,150 n/a None

**Gross Potential Income**  **$245,716**

Vacancy and Collection Loss 6% -$14,743

**Effective Gross Income**  **$230,973**

**Expenses**

Property Insurance $16,000

Utilities $36,000

Management 6% 6% $13,858

Maintenance & Repair (actual) $39,577

Reserve for Replacement 4% $ 9,239

Miscellaneous 1% $ 2,310

Total Expenses       -$116,984

**Net Operating Income (NOI)** **$113,989**

**Capitalization Rate**

Rate 10.0354%

Tax Factor 1.7680%

**Overall Capitalization Rate** 11.8034%

**Indicated Value**  $965,727

**Rounded**  **$966,000**

The assessors did not present any witnesses or expert reports at the hearing of this appeal. Instead, they relied on their counsel's cross-examination of the appellant's witness and the introduction of several exhibits, including relevant jurisdictional documentation and the subject property’s property record cards. Outlined on the property record cards was the assessors’ income-capitalization analysis. The assessors valued each building separately and then added together the two values to calculate the subject property’s fiscal year 2009 assessment, prior to abatement.

Based on the evidence presented, and reasonable inferences drawn therefrom, the Board found that the appellant met its burden of proving that the subject property was overvalued for the fiscal year at issue. In making this finding, the Board found that the subject property’s highest and best use was its continued use as a single, multi-tenant, mixed-use building. A property's highest and best use must be, among other things, legally permissible and also financially feasible. Mr. Levitch’s conclusion that the highest and best use of the subject property was as two separate buildings failed to take into consideration any legal restrictions that may exist and also the costs associated with the bifurcation. Accordingly, the Board rejected Mr. Levitch’s opinion of highest and best use and, on the basis of all of the evidence, found that the highest and best use of the subject property was its continued use as a single, multi-tenant, mixed-use building.

The Board, like the parties, found that the income-capitalization approach was the most reliable method to value the subject property. It is the preferred method for valuing income-producing properties such as the subject property. Moreover, the Board concluded that the other two valuation methodologies were less likely to yield reliable estimates of the subject building's fair market value. Furthermore, the Board, like the parties, found that it was appropriate to develop a separate income-capitalization analysis for each side of the subject property, and add together the two values to arrive at the subject property’s total fair cash value for the fiscal year at issue.

Based on Mr. Levitch’s testimony and also the photographs offered into evidence, the Board found that the appellant’s expert had a better understanding of the subject property than the assessors, including the subject property’s actual square footage and its overall condition. The Board further found that Mr. Levitch’s projected gross income and his vacancy and collection loss rates, which were supported by reliable market data as well as the subject property’s actual rents, were reasonable.

With respect to the operating expenses, the Board found that Mr. Levitch’s expenses, with a few exceptions, were appropriate. Specifically, with respect to the west side, the Board found that Mr. Levitch’s maintenance and repair expense, which amounted to 17.1% of EGI, was excessive and should be reduced to 10%. The Board further found that Mr. Levitch’s management expense and reserve for replacements for the east side, both calculated at 10%, were excessive and should be reduced to 6% and 4%, respectively, which are in line with the west side expenses.

Based on the subject property’s age and condition, the Board found that Mr. Levitch’s base capitalization rate of 10.0354%, plus the fiscal year 2009 tax factor of 1.750%, with an adjustment to the east side to account for the existing tenant’s obligation to pay a prorated share of the property taxes, was appropriate. A summary of the Board's income-capitalization approach is contained in the following tables.

**East Side:**

**Income S.F. Rent/SF** **Total**

1st Floor (Beneficial) 3,000 $11.55 $34,650

1st Floor Retail 25,900 $2.50 $64,750

2nd Floor (Mezzanine area) 5,625 None

**Gross Potential Income $99,400**

**Vacancy and Collection Loss** 15% -$14,910

**Effective Gross Income**                   $84,490

**Expenses**

Property Insurance $7,000

Utilities $2,000

Management 6% $5,069

Maintenance & Repair 6% $5,069

Reserve for Replacement 4% $3,380

Miscellaneous 2% $1,690

Total Expenses -$24,208

**Net Operating Income (NOI)                                  $60,282**

**Capitalization Rate**

Rate 10.0354%

Tax Factor 1.614%

**Overall Capitalization Rate** 11.65% (Rounded)

**Indicated Value  $517,442**

**West Side:**

**Income S.F.** **Rent/SF** **Total**

JuvenileCourt (actual) 13,070 $18.80 $245,716

2nd Floor 2,660 n/a None

3rd Floor 7,150 n/a None

**Gross Potential Income**  **$245,716**

Vacancy and Collection Loss 6% -$14,743

**Effective Gross Income**  **$230,973**

**Expenses**

Property Insurance $16,000

Utilities $36,000

Management 6% $13,858

Maintenance & Repair 10% $23,097

Reserve for Replacement 4% $ 9,239

Miscellaneous 1% $ 2,310

Total Expenses -$100,504

**Net Operating Income (NOI)**  **$130,469**

**Capitalization Rate**

Rate 10.0354%

Tax Factor 1.750%

**Overall Capitalization Rate** 11.79% (Rounded)

**Indicated Value**  $1,106,607

**East and West Combined $517,442 + $1,106,607 $1,624,049**

**Rounded $1,624,000**

On this basis, the Board found that the subject property was overvalued by $1,181,600 and, therefore, granted abatement in the amount of $20,678.

**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)), *aff’d,* 63 Mass. App. Ct. 1116 (2005).

The appellant has the burden of proving that the property has a lower value than that assessed. “‘The burden of proof is upon the [appellant] to make out its right as a matter of law to abatement of the tax.’” ***Schlaiker v. Board of 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 taxpayer[]  . . . prove[s] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In appeals before this Board, a taxpayer "'may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing affirmative evidence of value which undermines the assessors' valuation.'" ***General Electric***, 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston,*** 389 Mass. 848, 855 (1983)). In this appeal, the appellant demonstrated overvaluation "'by introducing affirmative evidence of value which undermined the assessors' valuation.'" ***Id***.

“‘Prior to valuing the subject property, its highest and best use must be ascertained, which has been defined as the use for which the property would bring the most.’” ***Tsissa, Inc. v. Assessors of West Tisbury,*** Mass. ATB Findings of Fact and Reports 2011-198, 216 (quoting ***Tennessee Gas Pipeline Co. v. Assessors of Agawam,*** Mass. ATB Findings of Fact and Reports 2000-859, 874). A property’s highest and best use must be legally permissible, physically possible, financially feasible, and maximally productive. Appraisal Institute, The Appraisal of Real Estate 279 (13th ed., 2008); *see also* ***Skyline Homes, Inc. v. Commonwealth***, 362 Mass. 684, 687 (1972). Property cannot be valued on the basis of hypothetical or future uses that are remote or speculative. ***Id.***; *see also* ***Tigar v. Mystic River Bridge Authority***, 329 Mass. 514, 518 (1952); ***Salem Country Club, Inc. v. Peabody Redevelopment Authority***, 21 Mass. App. Ct. 433, 435 (1986).

In the present appeal, the appellant’s real estate valuation expert opined that the subject property’s highest and best use was as two separate and distinct buildings. However, Mr. Levitch failed to offer any evidence showing that the elimination of the covered, connecting alley would be permitted by the town and if so, the cost of such removal. Accordingly, the Board found that the subject property’s highest and best use was its continued use as a single, multi-tenant, multi-use building.

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). When reliable sales data are not available and when the subject is income-producing property, the use of the income-capitalization approach is appropriate. ***Assessors of Weymouth v. Tammy Brook Co.***, 368 Mass. 807, 881 (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). In the present appeal, both the appellant’s real estate valuation expert and the assessors used the income-capitalization approach to determine the fair market value of the subject property. The Board agreed with the parties that the subject property’s fair cash value could most reliably be estimated by using the income-capitalization approach, and the Board therefore adopted that approach.

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). Under this approach, a valuation figure is determined by dividing net operating income by a capitalization rate. ***Board of Assessors of Brookline v. Buehler,*** 396 Mass. 520, 522-23 (1986).

In applying the income-capitalization method, the income stream used must reflect the property’s earning capacity or market rental value. ***Pepsi-Cola Bottling v. Assessors of Boston,*** 397 Mass. 447, 451 (1986). Imputing rental income to the subject property based on fair market rentals from comparable properties is evidence of value if, once adjusted, the rents are indicative of the subject property’s earning capacity. *See****Correia v. New Bedford Redevelopment Authority***, 5 Mass. App. Ct. 289, 293-94 (1977), *rev’d on other grounds*, 375 Mass. 360 (1978); ***Library Services, Inc. v. Malden Redevelopment Authority***, 9 Mass. App. Ct. 877, 878 (1980) (rescript); ***AVCO Manufacturing Corporation v. Assessors of Wilmington,*** Mass. ATB Findings of Fact and Reports 1990-142. It is the earning capacity of real estate, rather than its actual income, which is probative of fair market value. ***Boston Consolidated Gas,*** 309 Mass. at 64. Vacancy rates must also be market based when determining fair cash value. ***Donovan v. City of Haverhill,*** 247 Mass. 69, 71 (1923). The Board found here that the actual rents for the first-floor office space, and Mr. Levitch’s suggested rent for the first-floor retail space, reflected the market and were appropriate.

After accounting for vacancy and collection losses, the net operating income is obtained by deducting the landlord’s appropriate expenses. ***General Electric Co.,*** 393 Mass. at 609. The expenses should reflect the market. ***Id.*** Real estate taxes are not considered operating expenses for purposes of determining net operating income. ***Alstores Realty Corporation v. Assessors of Peabody,*** 391 Mass. 60, 70 (1984). “The expense of local taxation turns on the very point in dispute, the fair cash value of the property. Logically, therefore, income should be capitalized before taxes.” ***New England Oyster House,*** 362 Mass. at 700 n.2.

The capitalization rate should consider the return necessary to attract investment capital. ***Taunton Redevelopment***, 393 Mass. at 295. Generally, in multiple tenancy properties like the subject property, it is appropriate to add a tax factor to the capitalization rate because the landlord is assumed to be responsible for paying the real estate taxes, and the tenants’ contribution toward the real estate tax is included in the landlord’s gross income. ***Id.*** at 295-96; s*ee also* ***General Electric Co.***, 393 Mass. at 610. 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 [capitalization] formula.” ***Board of Assessors of Lynn v. Shop-Lease Co.,*** 364 Mass. 569, 573. If, however, the tenants’ tax payments are not included in gross income then the tax factor must be proportionately reduced. ***Alstores Realty Corp.,*** 391 Mass. at 69. In the present appeal, the Board found that the east-wing tenant was responsible for payment of a pro-rata share of the subject property’s real property taxes. Accordingly, the Board reduced the tax factor in calculating the east wing’s overall capitalization rate.

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. 679, 683 (1982); ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 473 (1981); ***New England Oyster House, Inc.,*** 362 Mass. at 702. “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 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.” ***Boston Consolidated Gas Co.,*** 309 Mass. at 72. 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 Co.,*** 393 Mass. at 605; ***North American Philips Lighting Corp. v. Assessors of Lynn,*** 392 Mass. 296, 300 (1984).

The Board applied these principles in reaching its conclusion that the appellant met its burden of proving that the subject property was overvalued for the fiscal year at issue. Accordingly, the Board issued a decision for the appellant and granted an abatement in the amount of $20,678.

**APPELLATE TAX BOARD**

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

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Clerk of the Board**

1. “Mezzanine” is defined as “an intermediate floor with less area than the standard full floors.” APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL 182 (13th ed. 2008). [↑](#footnote-ref-1)
2. Pursuant to G.L. c. 59, §§ 57C and 59, the appellant had until February 1, 2009 to file its fiscal year 2009 abatement application. However, when, as here, the last day for filing the application falls on a Saturday, Sunday, or holiday, the deadline is extended by operation of law to the next business day. G.L. c. 4, § 9. *See also* ***CFM Buckley/North, LLC v. Assessors of Greenfield***, Mass. ATB Findings of Fact and Reports 2007-220, 223, n. 2; ***Holt v. Assessors of West Springfield***, Mass. ATB Findings of Fact and Reports 2010-946, 948, n. 1. Accordingly, the Board found that the appellant's abatement application filed on Monday, February 2, 2009, was timely.  [↑](#footnote-ref-2)
3. Mr. Levitch erroneously used the fiscal year 2010 tax factor. The correct tax factor for the year at issue was 1.75%. [↑](#footnote-ref-3)
4. The Board noted that there appeared to be minor mathematical errors in Mr. Levitch’s calculation of the indicated values.

   [↑](#footnote-ref-4)