COMMONWEALTH OF MASSACHUSETTS

**APPELLATE TAX BOARD**

# EXCHANGE ASSOCIATES REAL v. BOARD OF ASSESSORS OF THE

# ESTATE TRUST CITY OF WORCESTER

Docket No. F324142 Promulgated:

   February 27, 2019

 This is an appeal 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 City of Worcester (“appellee” or “assessors”) to abate a tax on certain real estate located in Worcester owned by and assessed to Exchange Associates Real Estate Trust (“appellant”), under G.L. c. 59, §§ 11 and 38, for fiscal year 2014 (“fiscal year at issue”).

 Commissioner Good heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Elliott joined her in a decision for the appellee.

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

 *Donna M. Truex*, Esq. and *AiVi* *Nguyen,* Esq. for the appellant.

 *John F. O’Day, Jr.*, Esq., Assistant City Solicitor, for the appellee.

## FINDINGS OF FACT AND REPORT

On the basis of 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, 2013, the relevant date of valuation and assessment for the fiscal year at issue, the appellant was the assessed owner of a 23,868-square-foot parcel of land improved with a five-story office building located at 303 Main Street in Worcester (“subject property”). For the fiscal year at issue, the assessors valued the subject property at $5,346,900, and assessed taxes thereon, at the rate of $30.83 per thousand, in the total amount of $164,844.93.

 The assessors mailed the actual tax bill for the subject property on or about December 31, 2013, and the appellant timely paid the tax due without incurring interest pursuant to G.L. c. 59, § 57C. In accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement with the assessors on Monday, February 3, 2014.[[1]](#footnote-1) The parties stipulated that the assessors acted on the abatement application on April 28, 2014, granting a partial abatement of value from $5,346,900 to $5,068,600.60.[[2]](#footnote-2) Not satisfied with the abatement, the appellant timely filed an appeal with the Board on June 24, 2014. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

1. **The Subject Property**

The subject property’s improvement is an 86,172-square-foot, five-story office building (“subject building”). It is located in Worcester’s central business district (“CBD”), with frontage on Main Street, Exchange Street, and Waldo Street. Built in 1910, the subject building has a steel and masonry frame with brick, stone, and marble siding. Interior finishes include: drywall, tile, and brick walls; acoustical tile and tin ceilings; and carpet, tile, wood, marble, and concrete flooring. It has adequate mechanical systems, including central air conditioning, fire alarms, sprinklers, and security systems, along with adequate bathroom facilities. The subject building has two passenger elevators along with a freight elevator. Overall, the subject building is in average to good condition.

The subject building covers almost the entirety of the subject property, such that on-site parking is limited to just five parking spaces. The record showed that the subject building’s tenants utilized a parking lot on an adjacent parcel. During the periods relevant to this appeal, the subject building was fully occupied. The majority of its office space was occupied by the law firm Bowditch & Dewey, an entity related to the appellant in this appeal. There were four additional tenants, who occupied space at the subject property as follows:

|  |  |  |
| --- | --- | --- |
| **Tenant** | **Size (SF)** | **Rent ($/SF)** |
| Advantage Staffing |  1,618 |  $15.49 |
| Ball and Sargent |  5,060 |  $11.27 |
| Worcester Credit Union |  4,365 |  $18.00 |
| Streamlined Solutions |  2,240 |  $13.00 |

Of the subject building’s 86,172 square feet, approximately 16,064 square feet - or 19% - was unfinished warehouse space. Pictures entered into the record indicated that the warehouse space was being used as storage by the subject building’s tenants.

1. **The Appellant’s Valuation Evidence**

The appellant presented its valuation evidence through the appraisal report and testimony of Joel A. Buthray, a licensed appraiser with an MAI designation, whom the Board qualified as an expert in real estate valuation without objection.

In preparation for the appraisal, the appellant’s appraiser inspected the subject property in December of 2013. He testified regarding two negative attributes of the subject property: its insufficient on-site parking and comparatively high percentage of warehouse space. It was his opinion that the subject property had a higher percentage of warehouse space than most office buildings of its kind, and he considered that to be a negative factor. Similarly, with just five on-site parking spaces, the appellant’s appraiser opined that the subject building was inferior to most office buildings in its immediate area, which offered ample on-site parking.

To begin his appraisal, the appellant’s appraiser first determined the subject property’s highest and best use. It was his conclusion that the existing use of the subject property as an office building was its highest and best use.

The appellant’s appraiser next considered appropriate valuation methodologies. He ruled out the cost approach to value because of the age of the subject building and the degree of depreciation. Because he was able to identify sufficiently comparable market sales, the appellant’s appraiser concluded that the sales-comparison approach was a useful methodology for valuing the subject property. Additionally, because the subject property is an income-producing property, he also considered the income-capitalization approach to be a useful valuation methodology. Accordingly, the appellant’s appraiser applied both of those approaches to determine the subject property’s fair cash value.

1. **Sales-Comparison Analysis**

The appellant’s appraiser selected ten sales of office buildings in Worcester as the basis for his sales-comparison analysis. These ten sales took place between October of 2011 and December of 2016. His selected sales-comparison properties ranged in building size from 15,432 square feet to 233,850 square feet, and the sale prices ranged from $550,000 to $9,932,400. One of the selected sales was the sale of the subject property itself. That sale occurred in December of 2016. The sale price was $2,800,000, but it involved a leaseback of the majority of the building.

After making adjustments to account for factors such as building condition, parking, date of sale, percentage of warehouse space, and location, the ten comparison sales had per-square-foot sale prices ranging from $22.23 to $40.01. From this range, the appellant’s appraiser concluded a per-square-foot sale price for the subject property of $31.00, which, applied to the subject building’s 86,172 square feet, resulted in an indicated rounded value of $2,670,000.

1. **Income-Capitalization Analysis**

Because the subject property was comprised of both office and warehouse space, the appellant’s appraiser selected two sets of lease comparables for his income-capitalization analysis. To ascertain a fair market office rent, he selected eight office leases in the subject property’s neighborhood. His office comparison leases had lease commencement dates ranging from January of 2010 to September of 2012. They ranged in leased area from 4,780 to 25,505 square feet, with rents ranging from $13.50 to $19.50 per square foot. The lease terms varied; some were on a gross basis, while others were modified net. For purposes of his analysis, the appellant’s appraiser assumed that the subject property would be leased net of increases in operating expenses above a base amount, the prevailing terms for office leases in the subject property’s neighborhood. Under those terms, the tenant is responsible for operating expenses over a stated base amount.

After making adjustments to account for differences in factors such as condition, location, parking, and tenant expenses, the eight office comparison leases yielded adjusted per-square-foot rents ranging from $14.18 to $17.55. Based on this data, the appellant’s appraiser concluded a fair market office rent for the subject property of $16.00 per square foot, net of increases in operating expenses above the base amount.

To determine a fair market rent for the subject property’s warehouse space, the appellant’s appraiser selected five leases for warehouse space in Worcester. His warehouse comparison leases had lease commencement dates ranging from February of 2010 to July of 2012. Three of them were for spaces of 3,000, 32,225, and 39,000 square feet in size, respectively. He did not provide information as to leased area for the remaining two properties. Rents ranged from $1.40 to $4.00 per square foot, with terms varying from gross to triple net and modified net. After making adjustments to account for differences in factors such as location, condition, lease terms, and functional utility, the adjusted rents ranged from $1.33 to $3.60 per square foot. From these lease comparables, the appellant’s appraiser concluded a fair market warehouse rent for the subject property of $2.75 per square foot, net of increases in operating expenses above a base amount.

After applying his estimate of fair market warehouse rent to the subject property’s 16,064 square feet of warehouse space, and applying his estimate of fair market office rent to the subject property’s 70,108 square feet of office space, the appellant’s appraiser arrived at a total potential gross income of $1,165,904 for the subject property.

The next step in his income-capitalization analysis was the determination of an appropriate rate of vacancy and collection loss. The appellant’s appraiser noted that the subject property’s office space was fully occupied, while its warehouse space was minimally occupied by the primary tenant, Bowditch & Dewey. He considered the subject property to be class B office space, and he cited a 2011 survey that reported average vacancy for class B office space in downtown Worcester at 26%. After taking into consideration the subject property’s actual level of occupancy, its limited on-site parking, vacancy rates in the neighborhood, and the limited demand for warehouse space in Worcester’s CBD, the appellant’s appraiser concluded a vacancy rate of 17% for the subject property, to which he added a 1% rate for collection loss, for a total rate of 18%. Applying that rate to his potential gross income resulted in an effective gross income of $956,041.

The appellant’s appraiser next considered operating expenses for the subject property. To determine appropriate operating expenses, he reviewed the subject property’s historical income and expenses for calendar years 2010-2013, as provided by its owners. He also consulted information published by the Institute of Real Estate Management for calendar year 2013.

The following is his list of categories of expenses and the expense amounts for each category: insurance ($9,700), utilities ($200,000), cleaning ($95,000), maintenance ($95,000), trash removal ($7,500), legal and accounting ($5,000), management ($60,000), miscellaneous ($3,000), and lastly, parking ($144,000). Because the subject property has limited on-site parking, and most landlords in Worcester’s CBD include parking as part of the lease, he included parking as a landlord expense. He cited typical parking rates in the CBD at between $100 to $125 per space, per month, including the parking lot adjacent to and used by tenants of the subject property, which charged $100 per space per month. Using an average of one parking space per 583 square feet of office area translated to 120 parking spaces for the subject property, or an annual parking expense of $144,000.

After deducting these expenses from his effective gross income, the appellant’s appraiser arrived at a net operating income (“NOI”) of $336,841 for the subject property.

The final step in his income-capitalization analysis was the determination of an appropriate capitalization rate. The appellant’s appraiser first extracted capitalization rates from nine office building sales in Worcester and nearby communities. Those sales took place between December of 2010 and April of 2016, and the capitalization rates ranged from 8.1% to 12.59%. He noted that these properties were all superior to the subject property in that they had adequate on-site parking. In addition, he concluded that the three sales that were outside of Worcester were superior in location.

The appellant’s appraiser additionally employed the band-of-investment technique to determine a capitalization rate. Using that technique resulted in an indicated capitalization rate of 9.75%.

Lastly, the appellant’s appraiser consulted capitalization rates as published in industry materials, specifically, the *PWC Real Estate Investor Survey* for the fourth quarter of 2012. He opined that the market most relevant for the subject property was the non-institutional-grade national suburban office market, and the published rates for that segment ranged from 5.25% to 13.0%, with an average of 8.75%.

After considering the rates indicated through all of these sources, and taking into consideration the subject property’s attributes, including its limited parking and its high percentage of warehouse space, along with vacancy rates in the CBD, the appellant’s appraiser concluded that a base capitalization rate of 10.0% was appropriate for the subject property. He loaded that base rate with the appropriate tax factor to arrive at an overall capitalization rate of 13.083%. Applying that overall capitalization rate to his NOI, the appellant’s appraiser determined a rounded fair cash value of $2,575,000 for the subject property through his income-capitalization analysis.

The appellant’s appraiser opined that the income-capitalization analysis provided the most reliable indication of the subject property’s fair cash value, and accordingly, his final opinion of the subject property’s fair cash value for the fiscal year at issue was $2,575,000.

1. **The Assessors’ Valuation Evidence**

The assessors offered the requisite jurisdictional documents into evidence. They engaged in a brief cross-examination of the appellant’s appraiser, but otherwise rested on the assessed value of the subject property.

1. **The Board’s Conclusions**

The Board agreed with the appellant’s appraiser that the subject property’s highest and best use was its continued use as an office building. The Board further agreed with the appellant’s appraiser that the cost approach was not an appropriate valuation methodology here because of the subject property’s age, and that both the sales-comparison approach and income-capitalization approach were reliable methods with which to value the subject property, with the income-capitalization approach being the most reliable.

However, the Board found that the appellant failed to meet its burden of demonstrating that the subject property’s assessed value exceeded its fair cash value for the fiscal year at issue. In reaching this conclusion, the Board gave no weight to the December 2016 sale of the subject property. That sale occurred nearly four years after the relevant date of valuation in this appeal, and it also involved a sale-leaseback. Accordingly, the Board placed no weight on the sale price of $2.8 million.

Further, in finding that the appellant failed to meet its burden of proof, the Board gave no weight to the opinions of value offered by the appellant’s appraiser. There were myriad shortcomings in both the sales-comparison analysis and income-capitalization analysis that he offered, which detracted from the probative worth of his opinions of value.

As an initial matter, the record cast doubt on several of the key assumptions made by the appellant’s appraiser in forming his opinions of value. First, while it was his opinion that the subject property constituted class B office space, marketing materials referenced in the record touted the subject property as class A office space.

In addition, although the appellant’s appraiser opined that the subject property’s warehouse space was virtually useless and had a significant negative impact on its value, photographs entered into the record showed the warehouse areas to be in full use as storage by the subject property’s tenants. Further, there was no consideration given by the appellant’s appraiser as to whether that warehouse space could be converted into additional office space, or what the impact on value of so doing would be.

With respect to his sales-comparison analysis, the appellant’s appraiser failed to make appropriate adjustments to account for differences between the subject property and the comparison properties. For example, he made no adjustment to account for differences in size, even though two of the comparison properties were nearly two times the size of the subject property, one of them was nearly three times the size of the subject property, and three of them were nearly one quarter the size of the subject property. Given the well-established impact that size has on unit values, the Board found that the failure of the appellant’s appraiser to adjust for these differences detracted from the probative worth of his sales-comparison approach.

Additionally, although several of his sales-comparison properties were leased-fee sales, the appellant’s appraiser made no attempt to adjust for this difference in determining the fee simple value of the subject property, the value relevant to this appeal. The Board found that his failure to consider these significant differences detracted from the reliability of his sales-comparison approach, and it therefore gave no weight to his opinion of value as determined through that approach.

The Board likewise found significant flaws in the income-capitalization approach of the appellant’s appraiser. The primary source of the error was his treatment of the subject property’s lack of parking. It was the opinion of the appellant’s appraiser that the subject property’s lack of parking had a negative impact on its value because nearly all leases for office space in Worcester’s CBD included parking as part of the lease. This claim was somewhat undercut by the properties used in his sales-comparison analysis, four of which were located in the CBD and had no parking.

More problematic, however, was his double counting of this factor. While it may be true as a general matter that leases including parking generate higher rents than leases that do not include parking, the appellant’s appraiser did not limit his consideration of the subject property’s lack of parking to his determination of fair market rent. Instead, the appellant’s appraiser took it into consideration to conclude a higher base capitalization rate than the average rates indicated in the prevailing publications and his own band-of-investment technique, as well as a much higher vacancy rate – 18% - than the subject property’s actual vacancy rate of zero. The Board found most questionable his inclusion of parking expenses as a landlord expense in determining his operating expenses. If parking is being paid for by the landlord, then parking is in fact included in the lease, and his conclusions as to office market rent, capitalization rate, and vacancy rate, all of which were predicated on the subject property’s lack of parking, were not warranted.

The pattern of double counting continued with respect to his treatment of the subject property’s warehouse space. The appellant’s appraiser considered the subject property’s comparatively high percentage of warehouse space to be a negative factor. He used a different set of leases to determine a fair market rent for the warehouse space, which was much lower than his concluded fair market office rent. While the application of different market rents for different types of space within a single building is a common appraisal practice, the appellant’s appraiser again failed to confine his consideration of this supposedly negative factor to his determination of market warehouse rent. Instead, he also cited the “limited demand for warehouse space in the CBD” as part of the basis for his vacancy rate. It is notable, however, that he applied this higher vacancy rate to the entire potential gross income of the subject property, and not just the comparatively minor amount attributable to the warehouse space. Similarly, he recited the subject property’s high percentage of warehouse space as a justification for his conclusion of a base capitalization rate higher than the average rates indicated in industry publications or through his band-of-investment technique.

In sum, the Board found that the repeated consideration by the appellant’s appraiser of the same supposedly negative attributes of the subject property in various factors of his income-capitalization analysis was without merit and likely caused his opinion of value to be significantly understated. The Board therefore gave no weight to his opinions of fair cash value, as determined through both his sales-comparison and income-capitalization approaches, and instead deferred to the presumptive validity of the assessed value in reaching a decision for the appellee in this appeal.

**OPINION**

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). The appellant has the burden of proving that the subject property’s fair cash value was lower than its assessed value. “‘The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] 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)).

In appeals before the Board, taxpayers “‘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 Co. v. Assessors of Lynn,*** 393 Mass. 591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)). “[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.***, 393 Mass. at 598 (quoting ***Schlaiker***, 365 Mass. at 245).

“Prior to valuing the subject property, its highest and bestuse must be ascertained, which has been defined as the use for which the property would bring the most.” ***Tennessee Gas Pipeline Co. v. Assessors of Agawam***, Mass. ATB Findings of Fact and Reports 2000-859, 875 (citing [***Conness v. Commonwealth***, 184 Mass. 541, 542-43 (1903);](http://www.lexis.com/research/buttonTFLink?_m=c74ce50e9adec4dc3eef78af886e997d&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2005%20Mass.%20Tax%20LEXIS%2012%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=3&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b184%20Mass.%20541%2cat%20542%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=4&_startdoc=1&wchp=dGLbVzb-zSkAA&_md5=2e503d34817a0343dc58d9605ff9cd23) [***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989)](http://www.lexis.com/research/buttonTFLink?_m=c74ce50e9adec4dc3eef78af886e997d&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2005%20Mass.%20Tax%20LEXIS%2012%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=4&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b26%20Mass.%20App.%20Ct.%20838%2cat%20843%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=4&_startdoc=1&wchp=dGLbVzb-zSkAA&_md5=4e690377f4439060b845cd97e89501bc). 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 335 (14th ed., 2013); *see also* [***Skyline Homes, Inc. v. Commonwealth***, 362 Mass. 684, 687 (1972);](http://www.lexis.com/research/buttonTFLink?_m=c74ce50e9adec4dc3eef78af886e997d&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2005%20Mass.%20Tax%20LEXIS%2012%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b362%20Mass.%20684%2cat%20687%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=4&_startdoc=1&wchp=dGLbVzb-zSkAA&_md5=92c75cd982580e8a5e7da450986e4c66) ***DiBaise v. Town of Rowley***, 33 Mass. App. Ct. 928 (1992). In the instant appeal, the appellant’s appraiser opined that the subject property’s current use was its highest and best use, and the Board agreed.

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 cost reproduction. ***Correia v. New Bedford Redev. 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). The cost approach “has been limited to special situations in which data cannot be reliably computed under the other two methods,” ***Correia,*** 375 Mass. at 362, and those situations may include when the property in question is a newer building or a special-purpose property. As the subject property was neither a newer or special-purpose property, the Board agreed with the appellant’s appraiser that the cost approach was not an appropriate valuation method.

Because the subject property was an income-producing property, and there were a sufficient number of recent market transactions of reasonably similar properties, the Board agreed with the appellant’s appraiser and found and ruled that the income-capitalization and sales-comparison approaches were reliable methodologies with which to determine the subject property’s fair cash value. *See* ***Taunton Redev. Assocs. v. Assessors of Taunton***, 393 Mass. 293, 295 (1984) (“The capitalization of income approach . . . is frequently applied with respect to income-producing property[.]”); ***Giard v. Assessors of Colrain***, Mass. ATB Findings of Fact and Reports 2009-115, 123 (“Sales of comparable realty in the same geographic area . . . contain credible data and information for determining the value of the property at issue.”) (citations omitted). However, the Board did not find either of the valuation analyses offered by the appellant’s appraiser to be reliable or persuasive evidence of value.

With respect to his sales-comparison approach, the Board found that the appellant’s appraiser failed to make adjustments for several significant differences between the transactions and properties that he offered for comparison and the subject property. *See* *generally* ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 470 (1981) (“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.”). Although the inquiry relevant in this appeal is the fair cash value of the fee simple interest, *see****Olympia & York State Street Co. v. Assessors of Boston,*** 428 Mass. 236, 247 (1998), the appellant’s appraiser used several leased-fee sales for comparison, but made no adjustment to account for this difference. *See* ***USAA Properties IV, Inc. v. Assessors of Chelmsford***, Mass. ATB Findings of Fact and Reports 2012-1191, 1235 (“[The expert appraiser”] did not make adjustments for purposes of deriving fee-simple values from the leased-fee sales that he deemed comparable, nor did he provide information about the leases necessary to support reliable adjustments.”).

Similarly, although the appellant’s appraiser used comparison properties that differed significantly in size from the subject property, he made no adjustment to account for this difference, despite the well-established impact that size has on unit values. *See* Appraisal Institute, The Appraisal of Real Estate 198 (14th ed., 2013) (“Generally as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase.”). The Board found that his failure to make adjustments for these important differences rendered his sales-comparison approach unreliable.[[3]](#footnote-3)

The Board found that the income-capitalization approach offered by the appellant’s appraiser was similarly flawed, and therefore, unreliable. As detailed above, the Board found that he inappropriately double counted for the same factor in many areas of his income-capitalization analysis, with the cumulative effect being the understatement of the subject property’s fair cash value. *See* ***Fairlane Homes Realty Trust, Peter Knox, Trustee v. Assessors of Shirley,*** Mass. ATB Findings of Fact and Reports 2011-793, 807-08. (“The Board found that by both decreasing his market rent and using a higher capitalization rate, [the appraiser] in effect double counted for the supposed functional obsolescence attributable to the subject property’s size restriction.”). The Board therefore gave no weight to the opinions of value offered by the appellant’s appraiser as determined through his income-capitalization analysis.

In conclusion, the Board found and ruled that the appellant failed to meet its burden of establishing that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. It therefore issued a decision for the appellee in this appeal.

 **THE APPELLATE TAX BOARD**

 **By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Thomas W. Hammond, Jr., Chairman**

**A true copy,**

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

 **Clerk of the Board**

1. Because the statutory due date under G.L. c. 59, § 59, February 1, 2014, was a Saturday, the appellant had until the next business day, Monday, February 3, 2014, to file its abatement application. *See* G.L. c. 4, § 9. [↑](#footnote-ref-1)
2. While the parties stipulated that the assessors granted the partial abatement on April 28, 2014, the Board noted that the abatement certificate entered into the record indicated that the vote occurred on May 5, 2014. In either case their action was timely. Under G.L. c. 58A, § 6 and G.L. c. 59, §§ 64 and 65, the assessors had three months from the February 3, 2014 filing of the abatement application, or until May 3, 2014, to act on the abatement application. However, as May 3, 2014 was a Saturday, the assessors had until the next business day, or Monday, May 5, 2014, to act on the abatement application. *See* G.L. c. 4, § 9. [↑](#footnote-ref-2)
3. The Board gave no weight to the December 2016 sale of the subject property, as it took place nearly four years after the relevant date of valuation in this appeal and also involved a sale-leaseback. *See* ***Pepsi-Cola Bottling Co.,*** 397 Mass. at 450 (affirming the Board’s decision to place no weight on actual sale price of property that sold in a sale-leaseback transaction). [↑](#footnote-ref-3)