



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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**Docket Nos. F325162, F328665,
F331718, F334471,
F325161, F328664,
F331719, F334472,
F325164, F328667,
F331716, F334469**

**FARLEY-WHITE KILNBROOK ONE LLC
WLC THREE VI LLC**

Appellants.

V.

**BOARD OF ASSESSORS OF
THE TOWN OF LEXINGTON**

Appellee.

DECISION WITH FINDINGS

These appeals concern the appellants' overvaluation claims for fiscal years 2014 through 2017 ("fiscal years at issue") concerning three office buildings located in the Town of Lexington with addresses of 81 Hartwell Avenue, 83 Hartwell Avenue and 70 Westview Street ("subject properties"). For fiscal year 2014, appellant Farley-White Kilnbrook One LLC ("Farley-White") was the owner of the subject properties as of the relevant assessment date.

On July 1, 2013, Farley-White transferred the subject properties, along with two other similar office buildings, to appellant WLC Three VI LLC ("WLC") in a non-arms-length portfolio transaction. The transaction also included a leasehold interest in a five-acre parcel of land on which the five office buildings were situated. The ground lease had an annual rental of \$1,997,315 and a term that extended to 2078.

The three subject properties have net rentable areas of 74,832, 43,821 and 60,497 square feet, respectively. The parties' expert valuation witnesses both offered an income analysis to value the subject properties and the parties were able to stipulate to the rentable area, market rents, market expenses, and reserves for replacement for the fiscal years at issue. The principal dispute between the parties concerned the appropriate vacancy and capitalization rates to be used in developing the fair cash value of the subject properties for the fiscal years at issue.

The appellants offered the testimony of Marci Loeber, Managing Partner of WLC and Andrew Majewski, the leasing broker for the subject properties. Both testified to the difficulty in leasing the subject properties after several large tenants moved out leaving extremely high vacancy levels during the relevant periods. Both witnesses testified that the subject properties' condition, layout, lack of amenities, and lack of parking deterred potential tenants from signing leases. The appellants also relied on the testimony and appraisal report of Emmet Logue, whom the Board qualified as an expert witness in commercial real estate valuation.

The assessors offered the testimony and report of Christopher Bowler of Avery Associates, whom the Board qualified as an expert witness in commercial real estate valuation. Unlike Mr. Logue, Mr. Bowler used both the sales comparison and income approaches to value and then reconciled the resulting values to arrive at final value opinions for each of the fiscal years at issue.

The following table shows the assessed values and the opinions of value offered by the parties' appraisers in their respective reports.

81 HARTWELL AVE				
	FY 2014	FY 2015	FY 2016	FY 2017
ASSESSED VALUES	\$9,226,000	\$8,557,000	\$8,712,000	\$8,319,000
Bowler	\$7,900,000	\$8,700,000	\$9,400,000	\$10,200,000
Logue	\$6,100,000	\$6,200,000	\$7,300,000	\$8,400,000
Difference Between Logue Value And Assessed Value	\$3,126,000	\$2,357,000	\$1,412,000	(\$81,000)

83 HARTWELL AVE				
	FY 2014	FY 2015	FY 2016	FY 2017
ASSESSED VALUES	\$4,579,000	\$4,780,000	\$4,926,000	\$5,162,000
Bowler	\$4,900,000	\$5,400,000	\$5,700,000	\$6,200,000
Logue	\$3,200,000	\$3,300,000	\$3,800,000	\$4,200,000
Difference Between Logue Value And Assessed Value	\$1,379,000	\$1,480,000	\$1,126,000	\$962,000

70 WESTVIEW ST				
	FY 2014	FY 2015	FY 2016	FY 2017
ASSESSED VALUES	\$7,285,000	\$7,073,000	\$7,220,000	\$7,085,000
Bowler	\$6,800,000	\$7,500,000	\$7,800,000	\$8,500,000
Logue	\$4,500,000	\$4,600,000	\$5,300,000	\$5,800,000
Difference Between Logue Value And Assessed Value	\$2,785,000	\$2,473,000	\$1,920,000	\$1,285,000

These opinions of value were determined prior to the parties' stipulation concerning rents and expenses. The following table shows the gross income and expenses for the subject properties using the parties' stipulated rents and expenses.

81 HARTWELL						Gross Potential Income
	RENTS					
		LOGUE	BOWLER	STIPULATED	SIZE	
FY 2014		\$22.00	\$22.00	\$22.00	74,832	\$1,646,304
FY2015		\$22.50	\$23.00	\$22.75	74,832	\$1,702,428
FY2016		\$24.00	\$23.50	\$23.75	74,832	\$1,777,260
FY2017		\$25.50	\$24.00	\$24.75	74,832	\$1,852,092
	OPERATING EXPENSES					
		\$8.00	\$7.25	\$7.75	74,832	\$579,948
		\$8.25	\$7.50	\$8.00	74,832	\$598,656
		\$8.25	\$7.75	\$8.125	74,832	\$608,010
		\$8.75	\$8.00	\$8.375	74,832	\$626,718
	RESERVES					
		\$0.30/SF	\$0.50/SF	\$0.40/SF	74,832	\$29,933

83 HARTWELL						Gross Potential Income
	RENTS					
		LOGUE	BOWLER	STIPULATED	SIZE	
FY 2014		\$21.00	\$22.00	\$21.50	43,821	\$942,152
FY2015		\$21.50	\$23.00	\$22.25	43,821	\$975,017
FY2016		\$22.50	\$23.50	\$23.00	43,821	\$1,007,883
FY2017		\$23.50	\$24.00	\$23.75	43,821	\$1,040,749
	OPERATING EXPENSES					
		\$8.00	\$7.25	\$7.75	43,821	\$339,613
		\$8.25	\$7.50	\$8.00	43,821	\$350,568
		\$8.25	\$7.75	\$8.125	43,821	\$356,046
		\$8.75	\$8.00	\$8.375	43,821	\$367,001
	RESERVES					
		\$0.30/SF	\$0.50/SF	\$0.40/SF	43,821	\$17,528

70 WESTVIEW						Gross Potential Income
	RENTS					
		LOGUE	BOWLER	STIPULATED	SIZE	
FY 2014		\$21.00	\$22.00	\$21.50	60,497	\$1,300,686
FY2015		\$21.50	\$23.00	\$22.25	60,497	\$1,346,058
FY2016		\$22.50	\$23.50	\$23.00	60,497	\$1,391,431
FY2017		\$23.50	\$24.00	\$23.75	60,497	\$1,436,804
	OPERATING EXPENSES					
		\$8.00	\$7.25	\$7.75	60,497	\$468,852
		\$8.25	\$7.50	\$8.00	60,497	\$483,976
		\$8.25	\$7.75	\$8.125	60,497	\$491,538
		\$8.75	\$8.00	\$8.375	60,497	\$506,662
	RESERVES					
		\$0.30/SF	\$0.50/SF	\$0.40/SF	60,497	\$24,199

With the resolution of the gross income and expenses for the fiscal years at issue, the parties focused on the vacancy and capitalization rates. Mr. Logue pointed to the high actual vacancy rates in the buildings during the fiscal years at issue, which he stated were from fully occupied to 100% vacant. Within the four years they fluctuated from an average of 33% to 55%. Based on studies he conducted using market and the actual data, Mr. Logue opined that the appropriate vacancy rates for the four years were 18.0 percent for fiscal years 2014, 2015 and 2016 and 16.0 percent for fiscal year 2017.

Mr. Bowler utilized many of the same studies that Mr. Logue consulted and discounted the actual vacancy in the building to arrive at vacancy rates of 13.0 percent for fiscal year 2014, 12.0 percent for fiscal years 2015 and 2016, and 10.0 percent for fiscal year 2017.

Regarding the capitalization rates, Mr. Logue developed overall rates before the tax factor of 8.75 percent for the first two fiscal years and 8.25 percent for the last two fiscal years. In contrast, Mr. Bowler developed rates that started lower than Mr. Logue's rate for the first fiscal year at issue and declined by 0.25 percent each subsequent year: 7.25 percent for fiscal year 2014; 7.00 percent for fiscal year 2015; 6.75 percent for fiscal year 2016; and 6.50 percent for fiscal year 2017. While the interest rate component used by the two appraisers varied by between 0.25 and 0.35 basis points, on a yearly basis, the major difference was in the equity rate they used. Mr. Logue chose 11.0 percent for the first two years and 10.0 percent for the last two, while Mr. Bowler used 10.0 percent for fiscal year

2014, 8.0 percent for fiscal year 2015, and 7.0 percent for fiscal years 2016 and 2017.

The following table shows the appraisers' opinions regarding vacancy and capitalization rates for the fiscal years at issue.

	Vacancy Rate		
		Logue	Bowler
FY 2014		18.00%	13.00%
FY 2015		18.00%	12.00%
FY 2016		18.00%	12.00%
FY 2017		16.00%	10.00%

	Capitalization Rate		
		Logue	Bowler
FY 2014		8.75%	7.25%
FY 2015		8.75%	7.00%
FY 2016		8.25%	6.75%
FY 2017		8.25%	6.50%

On the basis of the testimony and evidence of record, the Board finds that both parties' appraisers offered detailed and generally well-supported analyses. However, in consideration of the entire record, the Board finds that neither appraiser established that his selected vacancy and capitalization rates best reflected the market. Rather, they established the range within which the appropriate rates fell. Using the data offered by the appraisers, the Board finds that the appropriate rates fell in the midrange between the parties' rates, just as the stipulated rents and expenses were in the midrange of the appraisers' originally reported rents and expenses.

The following tables show the Board's determination of fair cash values of the subject properties for the fiscal years at issue:

81 HARTWELL AVENUE

. **LOGUE BOWLER ATB SIZE FINAL ATB**

	RENTS					PGI
FY 2014		\$22.00	\$22.00	\$22.00	74,832	\$1,646,304
FY 2015		\$22.50	\$23.00	\$22.75	74,832	\$1,702,428
FY 2016		\$24.00	\$23.50	\$23.75	74,832	\$1,777,260
FY 2017		\$25.50	\$24.00	\$24.75	74,832	\$1,852,092

	VACANCY					
				ATB		EGI
FY 2014		18.00%	13.00%	15.50%		\$1,391,127
FY 2015		18.00%	12.00%	15.00%		\$1,447,064
FY 2016		18.00%	12.00%	15.00%		\$1,510,671
FY 2017		16.00%	10.00%	13.00%		\$1,611,320

	EXPENSES					
FY 2014		\$8.00	\$7.25	\$7.75	74,832	\$579,948
FY 2015		\$8.25	\$7.50	\$8.00	74,832	\$598,656
FY 2016		\$8.25	\$7.75	\$8.125	74,832	\$608,010
FY 2017		\$8.75	\$8.00	\$8.375	74,832	\$626,718
	Reserves	\$0.30/SF	\$0.50/SF	\$0.40	74,832	\$24,933
	TOTAL EXPENSES					
FY 2014						\$609,881
FY 2015						\$628,589
FY 2016						\$637,943
FY 2017						\$656,651

	NET OPERATING INCOME					
FY 2014						\$781,246
FY 2015						\$818,475
FY 2016						\$872,728
FY 2017						\$954,669

	CAP RATES					
		LOGUE	BOWLER	ATB	TAX RATE	TOTAL
FY 2014		8.75%	7.25%	8.00%	2.96%	10.96%
FY 2015		8.75%	7.00%	7.88%	2.91%	10.79%
FY 2016		8.25%	6.75%	7.50%	2.84%	10.34%
FY 2017		8.25%	6.50%	7.38%	2.81%	10.19%

	INDICATED VALUE					
FY 2014						\$7,130,760
FY 2015						\$7,589,013
FY 2016						\$8,440,311
FY 2017						\$9,369,607

On the basis of the foregoing, the Board determined following fair cash values for 81 Hartwell Avenue the fiscal years at issue as follows.

FY 2014

ASSESSMENT:	\$9,226,000
FAIR CASH VALUE: \$	\$7,130,000
OVERVALUATION: \$	\$2,096,000
TAX RATE:	\$29.56
TAX ABATEMENT:	\$61,957.76

FY 2015

ASSESSMENT:	\$8,557,000
FAIR CASH VALUE: \$	\$7,590,000
OVERVALUATION: \$	\$967,000
TAX RATE:	\$29.10
TAX ABATEMENT:	\$28,139.70

FY 2016

ASSESSMENT:	\$8,712,000
FAIR CASH VALUE: \$	\$8,440,000
OVERVALUATION: \$	\$272,000
TAX RATE:	\$28.40
TAX ABATEMENT:	\$7,724.80

FY 2017

ASSESSMENT:	\$8,319,000
FAIR CASH VALUE: \$	\$8,319,000
OVERVALUATION: \$	\$0
TAX RATE:	\$28.13
TAX ABATEMENT:	\$0.00

83 HARTWELL AVENUE

. **LOGUE BOWLER ATB SIZE FINAL ATB**

	RENTS					PGI
FY 2014		\$21.00	\$22.00	\$21.50	43,821	\$942,152
FY 2015		\$21.50	\$23.00	\$22.25	43,821	\$975,017
FY 2016		\$22.50	\$23.50	\$23.00	43,821	\$1,007,833
FY 2017		\$23.50	\$24.00	\$23.75	43,821	\$1,040,749

	VACANCY					
				ATB		EGI
FY 2014		18.00%	13.00%	15.50%		\$796,118
FY 2015		18.00%	12.00%	15.00%		\$828,765
FY 2016		18.00%	12.00%	15.00%		\$856,701
FY 2017		16.00%	10.00%	13.00%		\$905,451

	EXPENSES					
FY 2014		\$8.00	\$7.25	\$7.75	43,821	\$339,613
FY 2015		\$8.25	\$7.50	\$8.00	43,821	\$350,568
FY 2016		\$8.25	\$7.75	\$8.125	43,821	\$356,046
FY 2017		\$8.75	\$8.00	\$8.375	43,821	\$367,001
	Reserves	\$0.30/SF	\$0.50/SF	\$0.40	43,821	\$17,528
	TOTAL EXPENSES					
FY 2014						\$357,141
FY 2015						\$368,096
FY 2016						\$373,574
FY 2017						\$384,529

	NET OPERATING INCOME					
FY 2014						\$438,977
FY 2015						\$460,668
FY 2016						\$483,127
FY 2017						\$520,922

	CAP RATES					
		LOGUE	BOWLER	ATB	TAX RATE	TOTAL
FY 2014		8.75%	7.25%	8.00%	2.96%	10.96%
FY 2015		8.75%	7.00%	7.88%	2.91%	10.79%
FY 2016		8.25%	6.75%	7.50%	2.84%	10.34%
FY 2017		8.25%	6.50%	7.38%	2.81%	10.19%

	INDICATED VALUE					
FY 2014						\$4,005,265
FY 2015						\$4,269,398
FY 2016						\$4,672,408
FY 2017						\$5,112,090

On the basis of the foregoing, the Board determined the following fair cash values for 83 Hartwell Avenue for the fiscal years at issue:

FY 2014

ASSESSMENT:	\$4,579,000
FAIR CASH VALUE: \$	\$4,000,000
OVERVALUATION: \$	\$579,000
TAX RATE:	\$29.56
TAX ABATEMENT:	\$17,115.24

FY 2015

ASSESSMENT:	\$4,780,000
FAIR CASH VALUE: \$	\$4,270,000
OVERVALUATION: \$	\$510,000
TAX RATE:	\$29.10
TAX ABATEMENT:	\$14,841.00

FY 2016

ASSESSMENT:	\$4,926,000
FAIR CASH VALUE: \$	\$4,670,000
OVERVALUATION: \$	\$256,000
TAX RATE:	\$28.40
TAX ABATEMENT:	\$7,270.40

FY 2017

ASSESSMENT:	\$5,162,000
FAIR CASH VALUE: \$	\$5,110,000
OVERVALUATION: \$	\$52,000
TAX RATE:	\$28.13
TAX ABATEMENT:	\$1,462.76

70 WESTVIEW STREET

. **LOGUE BOWLER ATB SIZE FINAL ATB**

	RENTS					PGI
FY 2014		\$21.00	\$22.00	\$21.50	60,497	\$1,300,686
FY 2015		\$21.50	\$23.00	\$22.25	60,497	\$1,346,058
FY 2016		\$22.50	\$23.50	\$23.00	60,497	\$1,391,431
FY 2017		\$23.50	\$24.00	\$23.75	60,497	\$1,436,804

	VACANCY					EGI
FY 2014		18.00%	13.00%	15.50%		\$1,099,079
FY 2015		18.00%	12.00%	15.00%		\$1,144,150
FY 2016		18.00%	12.00%	15.00%		\$1,182,716
FY 2017		16.00%	10.00%	13.00%		\$1,250,019

	EXPENSES					
FY 2014		\$8.00	\$7.25	\$7.75	60,497	\$468,852
FY 2015		\$8.25	\$7.50	\$8.00	60,497	\$483,976
FY 2016		\$8.25	\$7.75	\$8.125	60,497	\$491,538
FY 2017		\$8.75	\$8.00	\$8.375	60,497	\$506,662
	Reserves	\$0.30/SF	\$0.50/SF	\$0.40	60,497	\$24,199
	TOTAL EXPENSES					
FY 2014						\$493,051
FY 2015						\$508,175
FY 2016						\$515,737
FY 2017						\$530,861

	NET OPERATING INCOME					
FY 2014						\$606,028
FY 2015						\$635,975
FY 2016						\$666,979
FY 2017						\$719,158

	CAP RATES					
		LOGUE	BOWLER	ATB	TAX RATE	TOTAL
FY 2014		8.75%	7.25%	8.00%	2.96%	10.96%
FY 2015		8.75%	7.00%	7.88%	2.91%	10.79%
FY 2016		8.25%	6.75%	7.50%	2.84%	10.34%
FY 2017		8.25%	6.50%	7.38%	2.81%	10.19%

	INDICATED VALUE					
FY 2014						\$5,529,453
FY 2015						\$5,894,115
FY 2016						\$6,450,474
FY 2017						\$7,057,488

On the basis of the foregoing, the Board determined the following fair cash values for 70 Westview Street for the fiscal years at issue:

FY 2014

ASSESSMENT:	\$7,285,000
FAIR CASH VALUE: \$	\$5,530,000
OVERVALUATION: \$	\$1,755,000
TAX RATE:	\$29.56
TAX ABATEMENT:	\$51,877.80

FY 2015

ASSESSMENT:	\$7,073,000
FAIR CASH VALUE: \$	\$5,900,000
OVERVALUATION: \$	\$1,173,000
TAX RATE:	\$29.10
TAX ABATEMENT:	\$34,134.30

FY 2016

ASSESSMENT:	\$7,220,000
FAIR CASH VALUE: \$	\$6,450,000
OVERVALUATION: \$	\$770,000
TAX RATE:	\$28.40
TAX ABATEMENT	\$21,868

FY 2017

ASSESSMENT:	\$7,085,000
FAIR CASH VALUE: \$	\$7,060,000
OVERVALUATION: \$	\$25,000
TAX RATE:	\$28.13
TAX ABATEMENT:	\$703.25

Accordingly, the decision is for the appellants in all but Docket No. F334471 (81 Hartwell Avenue – FY 2017) and abatements are granted in the following amounts:

#	DOCKET #	FISCAL YEAR	ADDRESS	OVERVALUATION	TAX RATE	ABATEMENT
1	F325162	FY 2014	81 Hartwell Ave	\$2,096,000	\$29.56	\$61,957.76
2	F328665	FY 2015	81 Hartwell Ave	\$967,000	\$29.10	\$28,139.70
3	F331718	FY 2016	81 Hartwell Ave	\$272,000	\$28.40	\$7,724.80
4	F334471	FY 2017	81 Hartwell Ave	\$0	\$28.13	\$0.00
5	F325161	FY 2014	83 Hartwell Ave	\$579,000	\$29.56	\$17,115.24
6	F328664	FY 2015	83 Hartwell Ave	\$510,000	\$29.10	\$14,841.00
7	F331719	FY 2016	83 Hartwell Ave	\$256,000	\$28.40	\$7,270.40
8	F334472	FY 2017	83 Hartwell Ave	\$52,000	\$28.13	\$1,462.76
9	F325164	FY 2014	70 Westview St.	\$1,755,000	\$29.56	\$51,877.80
10	F328667	FY 2015	70 Westview St.	\$1,173,000	\$29.10	\$34,134.30
11	F331716	FY 2016	70 Westview St.	\$770,000	\$28.40	\$21,868.00
12	F334469	FY 2017	70 Westview St.	\$25,000	\$28.13	\$703.25
	TOTALS			\$8,455,000		\$247,095.01

APPELLATE TAX BOARD

/s/ Thomas W. Hammond Chairman

/s/ James D. Rose Commissioner

/s/ Patricia M. Good Commissioner

/s/ Steven G. Elliott Commissioner

/s/ Patricia Ann Metzger Commissioner

Attest: /s/ William J. Doherty
Clerk of the Board

Date: June 3, 2020

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.