COMMONWEALTH OF MASSACHUSETTS

**APPELLATE TAX BOARD**

# JDMH REAL ESTATE v.    BOARD OF ASSESSORS OF

# OF EVERETT LLC    THE CITY OF EVERETT

Docket Nos.: F319209 Promulgated:

F322417    February 9, 2018

These are appeals 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 City of Everett (“appellee” or “assessors”) to abate taxes on certain real estate located in Everett owned by and assessed to the appellant, JDMH Real Estate of Everett LLC (“JDMH” or “appellant”), under G.L. c. 59, §§ 11 and 38, for fiscal years 2013 and 2014. (“fiscal years at issue”).

Commissioner Chmielinski heard these appeals. He was joined by Chairman Hammond and Commissioners Scharaffa, Rose and Good in decisions 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.

*David G. Saliba,* Esq., for the appellant.

*Kenneth W. Gurge*, Esq., and *Pamela Davis*, assessor for the appellee.

## FINDINGS OF FACT AND REPORT

On the basis of an Agreed Statement of Facts as well as testimony and exhibits offered into evidence at the hearing of these appeals, the Appellate Tax Board (“Board”) made the following findings of fact.

On January 1, 2012, the appellant was the assessed owner of an approximately 5.61-acre parcel of commercial property located at 82 Boston Street in Everett (“subject property”). For fiscal year 2013, the assessors valued the subject property at $8,789,300 and assessed a tax thereon, at a rate of $43.04 per $1,000, in the total amount of $378,291.47.  Everett’s Collector of Taxes mailed the fiscal year 2013 tax bill on December 31, 2012. The appellant timely paid the tax due without incurring interest and, in accordance with G.L. c. 59, § 59, timely filed an abatement application on January 28, 2013. The assessors denied the abatement application on February 25, 2013, and on May 8, 2013, the appellant seasonably filed an appeal under the formal procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal for fiscal year 2013.

On January 1, 2013, the appellant was the assessed owner of the subject property. For fiscal year 2014, the assessors valued the subject property at $9,101,500 and assessed a tax thereon, at a rate of $40.95 per $1,000, in the total amount of $372,956.43.[[1]](#footnote-1)  The appellant paid the tax due without incurring interest and timely filed an abatement application on January 21, 2014. The assessors denied the abatement application on February 10, 2014, and on April 11, 2014, the appellant seasonably filed an appeal under the formal procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal for fiscal year 2014.

The subject property is located along Boston Street, a secondary roadway that provides all utilities to the subject property. The general area is within an older, industrial section of Everett, which contains a mix of industrial and commercial uses and has good access to local and regional transportation systems. The subject property is easily accessible from Route 16 and major highways and is thus considered to be in a good location for a variety of industrial uses.

The subject property is an irregularly shaped parcel. It has frontage along Boston Street, Garden Street, Vine Street, and West Third Street. The site is relatively level with those streets. Access to the subject property is available via curb cuts along Boston Street and Garden Street. Parking is available for about 170 vehicles.

The appellant purchased the subject property in July of 2009 for $7,250,000 as unimproved vacant land. In 2010, the appellant constructed on the subject property a warehouse building containing 82,365 square feet of finished space (“subject warehouse”). The subject property is owner-occupied and operates as the food service supplier, Restaurant Depot. The subject warehouse has a steel and masonry frame structure with a primarily reinforced concrete exterior and flat roof with a membrane cover. Heating and cooling is supplied by gas-fired HVAC systems in the office areas and gas-fired suspended space heaters in the industrial areas. The subject warehouse is fully covered by a wet sprinkler system. Interior finishes consist of suspended acoustic tile ceilings in the office areas and exposed metal or vinyl ceilings in the industrial areas, and vinyl tile or carpet flooring in the office areas and concrete flooring in the industrial areas. There are 5 overhead doors with tailboard access located in the industrial area along the left side of the building.

The subject warehouse contains about 2,000 square feet of office space on the ground floor, consisting of 3 private offices, an employee break area, an electrical room, a sprinkler room, and 2 lavatories. There is an additional 1,079 square feet of mezzanine office space consisting of an open office area and 1 private office. Access to the mezzanine is provided via 1 passenger elevator and 1 interior staircase. The remaining space in the subject warehouse is designed for a retail restaurant supply business. There are 17,182 square feet of refrigerator-cooler warehouse space, 8,084 square feet of freezer-cooler warehouse space, a shipping/receiving area, a large dry goods warehouse area, and a retail area. The ceilings in the warehouse space are 36 feet in height. The subject warehouse is in good overall condition.

The appellant presented its case-in-chief through the testimony and appraisal report of its witness, Eric Wolff, whom the Board qualified, without objection, as an expert witness in the area of industrial property valuation.

1. Appellant’s valuation evidence

Mr. Wolff began with a highest-and-best-use analysis. He concluded, and the parties stipulated, that the subject property’s highest and best use was its continued use as a single-occupant, food-storage warehouse.

Next, Mr. Wolff considered the three approaches to value – the cost approach, the sales-comparison approach and the income-capitalization approach. Mr. Wolff opined, and both parties stipulated, that the cost approach was not a meaningful approach for valuing the subject property. Mr. Wolff instead determined, and both parties stipulated, that the income-capitalization approach would provide the most meaningful opinion of value for the subject property. However, Mr. Wolff first developed a sales-comparison approach to use as a check on the value that he derived from the income-capitalization approach.

*a. Sales-comparison approach*

*i. Fiscal year 2013*

Mr. Wolff first selected 4 sales of purportedly comparable industrial properties. His analysis is summarized in the following table:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Sale #** | **Address** | **sale date** | **sale price psf** | **bldg. size (sf)** | **bldg. size adj.** | **bld. cond. adj.** | **locat. adj.** | **refrig/ freezer size adj.** |
| **1** | 120-130 Southampton St., Roxbury | 11/09/11 | $95.87 | 71,453 |  | 10% | -20% | 30% |
| **2** | 20 Sycamore Ave., Medford | 11/05/10 | $63.25 | 33,200 | -15% | 10% |  | 30% |
| **3** | 360 Beacham St., Chelsea | 10/21/10 | $51.42 | 33,060 | -15% | 10% |  | 30% |
| **4** | 395-401 & 404 Third St., Everett | 03/26/10 | $54.04 | 24,980 | -15% |  |  | 30% |

After applying the adjustments outlined above, Mr. Wolff reported that his purportedly comparable properties yielded a range of approximately $64 to $115 per square foot with an average of $86 per square foot. Based on his analysis, Mr. Wolff concluded that a value of $86 per square foot was indicated for the subject property. With the subject property containing a total of 82,367 square feet of finished floor area, Mr. Wolff concluded that the fee simple value of the subject property indicated by the sales comparison approach was $7,083,562, which he rounded to $7,085,000 for fiscal year 2013.

*ii. Fiscal year 2014*

Mr. Wolff first selected 4 sales of purportedly comparable industrial properties. His analysis is summarized in the following table:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Sale #** | **Address** | **sale date** | **sale price psf** | **bldg. size (sf)** | **bldg. size adj.** | **bld. cond. adj.** | **locat. adj.** | **refrig/ freezer size adj.** |
| **1** | 225 Wildwood Ave., Woburn | 12/20/12 | $64.96 | 66,968 |  |  |  | 30% |
| **2** | 64 Commercial St., Medford | 08/17/12 | $68.28 | 29,287 | -10% | 10% |  | 30% |
| **3** | 10 Micro Dr., Woburn | 04/12/12 | $79.41 | 88,154 |  | 10% |  | 30% |
| **4** | 950 Eastern Ave., Malden | 04/11/12 | $29.85 | 40,197 | -10% | 20% | 20% | 30% |

After applying the adjustments outlined above, Mr. Wolff reported that his purportedly comparable properties yielded a range of approximately $48 to $103 per square foot with an average of $79 per square foot. However, Mr. Wolff further opined that Sales 1 through 3 were best representative of the subject property’s value. Those comparables had an adjusted value ranging between $78 and $103 per square foot with an average of $89 per square foot. Based on his analysis, Mr. Wolff concluded that a value of $89 per square foot would be indicated for the subject property. With the subject property containing a total of 82,367 square feet of gross finished floor area, Mr. Wolff concluded that the fee simple value of the subject property indicated by the sales comparison approach is $7,330,663, which he rounded to $7,330,000 for fiscal year 2014.

*b. Income-capitalization approach*

Mr. Wolff conducted a single analysis under this approach applicable to both fiscal years at issue. He first decided to value separately the subject property’s non-refrigerator/freezer “dry” space and the refrigerator/freezer “cold” space. Mr. Wolff selected 10 purportedly comparable industrial market rental properties to value the “dry” warehouse space. The rentals that Mr. Wolff found to be most comparable are summarized below:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **#** | **Location** | **Tenant** | **Area**  **(sf)** | **Date**  **term** | **$/sf**  **NNN** | **Comment** |
| **1** | 18 Dorrance St., Charlestown | Alta Bicycle Share  a/k/a Hubway | 28,750 | 06/2012  4 yrs | $4.50 | multi-tenant warehouse const. in 1990, avg. condition |
| **2** | 41 Bartlett St., Everett | Confidential | 9,047 | 02/2012  5 yrs | $5.00 | multi-tenant manufacturing building constr. in 1982, avg. condition |
| **3** | 224 Crescent Ave., Chelsea | Cinco DeMayo Mexican Food Corp. | 24,045 | 11/2012  3 yrs | $5.95 | multi-tenant warehouse constr. in 1960, avg. condition |
| **4** | 130 Eastern Ave., Chelsea | Confidential | 6,047 | 07/2012  3 yrs | $12.00 | multi-tenant warehouse constr. in 1965 renovated in 1986, avg. condition |
| **5** | 191-201 Williams St., Chelsea | Steele Canvas Basket Corporation | 23,651 | 11/2011  5 yrs | $8.50 | multi-tenant manufacturing building constr. in 1970, renovated in 1986, avg. condition |
| **6** | 174 Williams St., Chelsea | Mystic Brewery | 12,841 | 04/2011  5 yrs | $6.50 | multi-tenant manufacturing building, constr. in 1970, avg. condition |
| **7** | 175 William F. McClellan Hwy., East Boston | S&S Wholesale | 6,345 | 07/2011  5 yrs | $5.00 | multi-tenant warehouse constr. in 1910, avg. condition |
| **8** | 73 Norman St., Everett | Distinctive Janitorial Services | 13,046 | 07/2011  5 yrs | $6.25  gross + util. | multi-tenant warehouse condo building constr. in 1940, avg. condition |
| **9** | 3-7 Griffin Way, Chelsea | Cran Barry, Inc. | 11,547 | 06/2011 | $9.50 | multi-tenant warehouse constr. in 1986, avg. condition |
| **10** | 56 Vine St., Everett | The Common Dog | 12,134 | 07/2010  10 yrs | $6.00 | single-occupant warehouse constr. in 1950, renovated in 2004, avg. condition |

After making undisclosed adjustments to the above comparables for size, condition and location, Mr. Wolff claimed that the indicated adjusted average rent was $7.00 per square foot. He therefore opined that the market rent for the 57,101 square feet of “dry” warehouse space was $7.00 per square foot on a triple-net basis for both fiscal years at issue.

Mr. Wolff then selected 5 purportedly comparable industrial market rental properties to value the subject warehouse’s “cold” space. The rentals found to be most comparable to the subject property are summarized below:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **#** | **Location** | **Tenant** | **Area (sf)** | **Date**  **Term** | **$/SF**  **NNN** | **Comment** |
| **1** | 30 Commerce Blvd. Middleboro | Trader Joe’s | 123,377 | 10/2011  4 yrs | $6.50 | single-occupant refrig. (42%) and dry storage warehouse constr. in 2003, good condition |
| **2** | 155 Market St., Everett | Anco Fine Cheese | 5,053 | 11/2011  1½ yrs | $12.00 | multi-tenanted refrigerated/cold storage warehouse constr. in 1960, avg. condition |
| **3** | 55 Murphy Dr., Avon | Preferred Freezer | 150,995 | 11/2012  20 yrs | $8.00 | single-occupant freezer warehouse constr. in 1988, avg. condition |
| **4** | 55-61 Food Mart Rd., Boston | Boston Salads & Provisions | 13,578 | 01/2011  5 yrs | $15.00  gross + util. | multi-tenanted refrigerated/cold storage warehouse constr. in 1969, avg. condition |
| **5** | 1 Technology Dr., Peabody | US Foodservice, Inc. | 182,680 | 06/2010  15 yrs | $7.75 | single-occupant freezer/cold storage (34%) and dry storage warehouse constr. in 1981, avg. condition |

After making undisclosed adjustments to account for size, condition and location, Mr. Wolff claimed that the indicated adjusted average rent was $10.00 per square foot. He therefore opined that the market rent for the 25,266 square feet of “cold” warehouse space was $10.00 per square foot on a triple-net basis for both fiscal years at issue.

Adding the income for the two types of space yielded a total potential gross income of $652,367.

Next, Mr. Wolff analyzed the vacancy and credit loss deduction. Based on his discussions with local brokers, and after consulting market survey reports by CoStar Group and Jones Lang LaSalle, Mr. Wolff concluded that 5% of potential gross income was a reasonable vacancy rate for the subject property’s industrial space. This rate includes rent losses due to tenant default and delinquencies. Both parties stipulated that the market vacancy allowance and collection loss for the subject property for both fiscal years at issue is 5% of potential gross income.

Mr. Wolff next analyzed the subject warehouse’s expenses. Based on current leasing activity within the subject property’s competitive market, Mr. Wolff assumed the following expense: a management fee of 3% of the effective gross income; a replacement reserve allowance of $0.15 per square foot of the gross square footage of the building, which both parties stipulate is equal to $12,355; and a commission expense of 1% of the potential gross income. Mr. Wolff deducted these expenses from the effective gross income to derive a stabilized net operating income of $594,531.

In determining the capitalization rate, Mr. Wolff utilized the band-of-investment technique, assuming a 75% mortgage and 25% equity and based on a 4.5% interest rate and a 12.0% equity capitalization rate (as supported by a 4.39% interest rate and a 12.0% equity rate as provided by *RealtyRates.com Investor Survey for Fourth Quarter 2011* and *RealtyRates.com Investor Survey for Fourth Quarter 2012*). This calculation yielded an 8.00% total weighted capitalization rate, which Mr. Wolff found to be consistent with rates published by national surveys for industrial warehouse properties. Both parties stipulated that the overall capitalization rate to be applied to the imputed net operating income of the subject property for both fiscal years at issue was 8.0%. Applying a capitalization rate of 8% to the net operating income yielded an estimated value for the subject property of $6,994,488, rounded to $7,000,000 for both fiscal years at issue.

Mr. Wolff’s income-capitalization analysis is reproduced below:[[2]](#footnote-2)

Rental space

57,101 sf “dry” @ $ 7.00 $ 399,707

25,266 sf “cold” @ $10.00 $ 252,660

Potential Gross Income $ 652,367

Vacancy/collection (@ 5% PGI) ($ 19,985)

Effective Gross Revenue $ 632,382

Management Fee (@ 3% EGI) ($ 18,971)

Replacement Reserve (@ $0.15 psf) ($ 12,355)

Market commission (@ 1% PGI) ($ 6,524)

Net operating income $ 594,531

Capitalization rate /8%

Total Indicated Value $6,994,488

Rounded $7,000,000

*c. Mr. Wolff’s reconciliation of his two analyses*

Finally, Mr. Wolff reconciled the indicated values for the subject property that he derived under both approaches to value, the sales-comparison and the income-capitalization approaches. He noted that his sales-comparison approach yielded a value of $7,085,000 for fiscal year 2013 and $7,330,000 for fiscal year 2014. He opined that, because 1 of his 4 sales was located outside of Everett and did not contain any refrigerator or freezer warehouse space, he did not consider this approach to be the most reliable indicator of value.

Mr. Wolff next looked to his income-capitalization analysis, which yielded an indicated value of $7,000,000 for both fiscal years at issue. Opining that this approach is typically considered reliable for determining a property’s final value, Mr. Wolff concluded that $7,000,000 was his final opinion of the market value of the subject property for both fiscal years at issue.

On cross-examination, Mr. Wolff admitted that the subject property would not rent at two different rates for “dry” and “cold” space but instead would rent at one blended rate. Mr. Wolff stated that his blended rate, based on his calculations, would be $7.92, which he admitted was lower than the rents in 3 of his purportedly comparable “dry” spaces, which contained no refrigerated space. Mr. Wolff further admitted that his $7-per-square-foot rental figure would calculate to less than what the appellant paid to purchase just the subject property’s vacant land alone.

2. Appellee’s valuation evidence

The appellee presented its case-in-chief through the testimony and appraisal report of John G. Petersen, whom the Board qualified, without objection, as an expert witness in the area of industrial property valuation.

Given the parties’ stipulations as to vacancy expense, replacement reserves expense and capitalization rate, the Board will focus on the areas of Mr. Petersen’s appraisal report that concern the elements upon which the parties disagree: market rental rate and certain management expenses.

Mr. Petersen performed a single income-capitalization analysis applicable to both fiscal years at issue. First, Mr. Petersen selected 6 purportedly comparable industrial properties. Unlike Mr. Wolff, Mr. Petersen did not analyze separately the “cold” and “dry” spaces. He also selected different purportedly comparable properties. Pertinent details of Mr. Petersen’s comparable properties are summarized in the chart below:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **#** | **Location** | **Tenant** | **Area (sf)** | **Date**  **Term** | **$/SF**  **Terms** | **Comments** | **Relative to Subject property** |
| **1** | 1 Griffin Way, Chelsea | Hua Shing, Inc. | 11,216 | 04/2010  5 yrs | $9.94  NNN | 11,216 sf food processing building with office space and 0-degree freezer space | Similar |
| **2** | 801 Jubilee Dr., Peabody | Fishery Products Int’l | 122,282 | 05/2007  7 yrs | $11.00  NNN | 1-story built-to-suit cold storage whse | Superior |
| **3** | 1 Fibertech Center (Lot #2), Haverhill | General Mills | 108,869 | 10/2013  10 yrs | $9.00  NNN | 1-story build-to-suit cold storage whse, nearly fully refrigerated | Similar |
| **4** | 1 Commercial St. Sharon | Preferred Freezer Services | 103,171 | 07/2005  25 yrs | $13.91  (avg)  NNN | 2-story office, loading dock and mech. space, 75% freezer space with 52-ft ceiling height | Superior |
| **5** | 253 Williams St, Chelsea | State Garden | 52,133 | 06/2012 | $9.38  (avg)  NNN | “shell condition” - State Garden brought in freeze/refrig. at own cost | Inferior |
| **6** | 220-240 Second St, Chelsea | State Garden | 36,000 | 05/2011 | $9.00  (avg)  NNN | Multi-tenant bldg.; “shell condition” | Inferior |

In reconciling the rental data, Mr. Petersen opined that the most supportable market rental rate for the subject property was $10.00 per square foot, on a triple-net basis. Applying this market rent estimate to the subject building area yields a potential gross income of $823,620.

The parties stipulated that 5% of potential gross income was an appropriate vacancy and credit loss expense for the subject property. When applied to Mr. Petersen’s potential gross income, this expense yielded an effective gross income of $782,439.

Next, Mr. Petersen analyzed operating expenses. He determined that 2% of effective gross income was a reasonable estimate of management expenses, as opposed to Mr. Wolff’s 3% rate. Mr. Petersen testified that he found 2% to be sufficient for the subject property because it was a single-tenant building, very new and in excellent condition, and therefore would require little management beyond rent collection. Like Mr. Wolff, Mr. Petersen determined, and the parties stipulated, that $0.15 per square foot ($12,355) was a reasonable estimate for reserves for structural maintenance. However, unlike Mr. Wolff, Mr. Petersen did not find a market commission to be an appropriate expense for the subject property, because the subject property is not being rented on a yearly basis.

Like Mr. Wolff, Mr. Petersen also concluded, and the parties stipulated, that 8% was a reasonable capitalization rate for the subject property.

Mr. Petersen’s income-capitalization analysis is reproduced below:

Rental space

82,362 sf @ $ 10.00 $823,620

Potential Gross Income $823,620

Vacancy/collection (@ 5% PGI) ($ 41,181)

Effective Gross Revenue $782,439

Management Fee (@ 2% EGI) ($ 15,649)

Replacement Reserve (@ $0.15 psf) ($ 12,354)

Net operating income $754,436

Capitalization rate /8%

Total Indicated Value $ 9,430,449

Rounded $ 9,430,000

Mr. Petersen concluded, consistent with the parties’ stipulation, that the value obtained by the income-capitalization approach was most reliable. Therefore Mr. Petersen concluded that $9,430,000 was the market value of the subject property for both fiscal years at issue.

3. The Board’s findings

Based on the parties’ stipulations, the issues remaining for the Board’s determination were the appropriate amounts for rent, management fee, and commission allowance under the income-capitalization approach to fair market value.

With respect to rental amounts, the Board determined that Mr. Wolff’s purportedly comparable lease properties were not sufficiently comparable to the subject property. Many of the properties were older than the subject property, with lower ceiling heights, and in less desirable, more remote locations. Mr. Wolff did not disclose or explain his adjustments to his purportedly comparable properties to account for these important differences that affect rental values. Furthermore, many of his leases were multi-tenanted warehouses with smaller spaces and therefore not comparable to the single-tenanted subject property.

The Board also rejected Mr. Wolff’s method of separately valuing the subject property’s “dry” and “cold” warehouse spaces, finding that the evidence established that properties comparable to the subject property would be rented at a single blended rate in the market. Finally, Mr. Wolff’s blended rent of $7.92 per square foot is lower than 3 of his “dry” comparable leases, despite the fact that cold spaces tend to be priced higher in the marketplace.

With respect to his expenses, the Board found that Mr. Wolff’s 2 non-stipulated expenses were too high and not supported by the market. First, the Board agreed with Mr. Petersen that 2% was appropriate for a management expense deduction for the subject property, which was single-tenanted, new, and in excellent condition. The Board also found that Mr. Wolff’s use of a yearly commission expense was not appropriate, given the stipulated highest and best use of the subject property as a single-occupant warehouse.

Finally, the Board noted that Mr. Wolff made calculation errors, which compromised his analysis. First, for his vacancy and loss expense, Mr. Wolff incorrectly calculated 5% of PGI to be $19,985. Second, and more significantly, when dividing the net operating income by his capitalization rate, Mr. Wolff incorrectly calculated his indicated value at $6,994,488, when it should have been higher, at $7,431,638. These multiple mathematical errors detracted from Mr. Wolff’s credibility.

On the basis of all of the evidence, the Board found and ruled that the appellant failed to meet its burden of proving a fair market value for the subject property that was less than its assessed value for either of the fiscal years at issue.

Accordingly, the Board issued decisions for the appellee in the instant appeals.

**OPINION**

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market 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 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 [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 this Board, therefore, 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 Co. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984) (quoting***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855). “[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).

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 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), but the income capitalization method “is frequently applied with respect to income-producing property.” ***Taunton Redev. Assocs. v. Assessors of Taunton***, 393 Mass. 293, 295 (1984).

Under the income-capitalization approach, valuation is determined by dividing net operating income by a capitalization rate. *See* ***Assessors of Brookline v. Buehler,*** 396 Mass. 520, 522-23 (1986). After accounting for vacancy and rent losses, the net-operating income is obtained by deducting the appropriate expenses. ***Pepsi-Cola Bottling Co.,*** 397 Mass. at 452-53. The capitalization rate should reflect the return on investment necessary to attract investment capital. ***Taunton Redev. Assocs.,*** 393 Mass. at 295.

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. *See* ***Correia v. New Bedford Redevelopment Auth.***, 5 Mass. App. Ct. 289, 293-94 (1977), *rev’d on other grounds,* 375 Mass. 360 (1978); ***Library Services, Inc. v. Malden Redevelopment Auth.***, 9 Mass. App. Ct. 877, 878 (1980)(rescript).  In the instant appeals, the Board found fault with the rental income that the appellant’s expert imputed to the subject property, because Mr. Wolff’s purportedly comparable properties were not sufficiently comparable to the subject property to provide meaningful rental data. Factors that impeded comparability were that many of the properties were older than the subject property, with lower ceiling heights, in less desirable industrial locations, some lacking “cold” storage space, and in multi-tenanted warehouses with smaller spaces, and therefore not readily comparable to the subject property. Moreover, Mr. Wolff did not disclose or explain his adjustments to his purportedly comparable properties to account for these important differences that affect lease values.

The Board also found error with Mr. Wolff’s method of separately valuing the subject property’s “dry” and “cold” warehouse spaces, finding that the evidence established that properties comparable to the subject property would be rented at a single blended rate in the market. The Board thus found and ruled that Mr. Wolff’s rental figure lacked probative value.

Under the income-capitalization approach, the expenses should also reflect the market. ***General Electric Co.,*** 393 Mass. at 610***;*** *see* ***Olympia & York State Street Co.***, 428 Mass. 236, 245 (1998). In the instant appeals, Mr. Wolff failed to offer market-source data or concrete explanations to prove that his figures for management fee and market commission were supported by the market. Therefore, the Board found and ruled that these expenses were unfounded and thus unpersuasive.

Finally, significant mathematical errors compromised the credibility of Mr. Wolff’s estimates of the subject property’s values and detracted from the report’s overall reliability. *See* ***Northshore Mall Ltd. Partnership et al. v. Board of Assessors of the City of Peobody***, Mass. ATB Findings of Fact and Reports 2004-195, 255 (finding and ruling that where the appellant’s valuation analysis “was so replete with errors that it was unreliable and essentially without merit,” the appellant failed to meet its burden of proof).

The burden of proving a value that is lower than the assessed value is firmly on the appellant. *See* ***Schlaiker***, 365 Mass. at 245. The Board found and ruled that the appellant failed to meet its burden of proving a value for the subject property that was less than its assessed value for either of the fiscal years at issue. The appellant also did not expose flaws or errors in the assessors’ method of valuation. *See* ***General Electric Co.***, 393 Mass. at 600.

Accordingly, the Board issued decisions for the appellee in these appeals.

**THE APPELLATE TAX BOARD**

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

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

**A true copy,**

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

**Clerk of the Board**

1. This amount includes a $250 penalty for failure to timely submit an income and expense form. [↑](#footnote-ref-1)
2. The Board notes mathematical errors in Mr. Wolff’s analysis but is simply reproducing his analysis here. [↑](#footnote-ref-2)