

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

LOWE'S HOME CENTERS, LLC

v.

BOARD OF ASSESSORS OF
THE TOWN OF SAUGUS

Docket Nos. F332709, F335564
F337743, F339941

Promulgated:
July 14, 2025

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 Town of Saugus ("appellee" or "assessors") to abate taxes on certain real estate located in the Town of Saugus and assessed to Lowe's Home Centers, LLC ("appellant") for fiscal years 2017, 2018, 2019, and 2020 (collectively, "fiscal years at issue").

Commissioner Elliott heard these appeals. Chairman DeFrancisco and Commissioners Good, Metzger, and Bernier joined him in the decision for the appellee for Docket No. F332709, and the decision for the appellant for Docket Nos. F335564, F337743, and F339941.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.34.

Michael D. Benak, Esq., Daniel Zazzali, Esq., and Nicholas W. Allen, Esq., for the appellant.

Ellen M. Hutchinson, Esq., and Iwona Zamiejska-Wilt, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits entered into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

I. Introduction and jurisdiction

On January 1, 2016, January 1, 2017, January 1, 2018, and January 1, 2019, the appellant was the assessed owner of a 15.712-acre site comprised of three parcels of land in Saugus ("subject property"): (1) a 0.439-acre parcel ("parcel 1") identified as 1540 Broadway; (2) a 0.028-acre parcel identified as 0 Oriole Avenue ("parcel 2"); and (3) a 15.245-acre parcel identified as 1500 Broadway with a 133,970-square-foot building (the building alone referred to as "subject building" and the subject building together with the land referred to as "parcel 3").¹ The docket numbers for which the appellee requested findings of fact and report relate only to parcel 3, but because the opinions of value offered by both parties collectively encompass parcels 1, 2, and 3, the term "subject property" necessarily encompasses parcels 1, 2, and 3.²

¹ The subject building featured a canopied area for pick-up and an enclosed garden center, neither of which were considered part of the gross building area.

² The Board concurrently heard appeals concerning parcel 1 (Docket Nos. F332707, F335567, F337744, F339942), parcel 2 (Docket Nos. F332708, F335563, F337745, F339943), and parcel 3 for the fiscal years at issue. The Board found for the appellee for all of the parcel 1 and parcel 2 appeals, but neither party requested findings of fact and report for any of the parcel 1 and parcel 2 appeals.

The subject building, a concrete block building of average quality, was constructed in 2006 and operated as a Lowe's home improvement retail store during all relevant time periods.

The following table details the jurisdictional information concerning parcel 3 for the fiscal years at issue:

	Fiscal Year 2017 Docket No. F332709	Fiscal Year 2018 Docket No. F335564	Fiscal Year 2019 Docket No. F337743	Fiscal Year 2020 Docket No. F339941
Assessed Value	\$16,049,300	\$17,178,800	\$17,818,300	\$18,941,100
Tax Rate	\$25.78	\$24.58	\$25.78	\$25.10
Tax Amount	\$413,750.95	\$422,254.90	\$459,355.77	\$475,421.61
Abatement Application Filed	02/01/17	01/31/18	01/30/19	01/29/20
Payments Without Interest	Yes	Yes	Yes	Yes
Denial	04/24/17	03/12/18	02/11/19	04/13/20
Petition	05/05/17	05/23/18	05/09/19	05/26/20

Based upon these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals for the fiscal years at issue.

II. The appellant's case

The appellant presented its case primarily through the testimony and appraisal report of William McLaughlin, whom the Board qualified as an expert witness in commercial retail valuation, and the testimony and opinion letter of Benjamin Starr, whom the Board qualified as an expert witness in retail real estate transactions in the New England states. The appellant also

presented the rebuttal testimony of David Lennhoff, whom the Board qualified as an expert witness and whose appraisal practice centers on litigation valuation and expert testimony relating to appraisal methodology, Uniform Standards of Professional Appraisal Practice, and allocating assets of a going concern.

A. Mr. McLaughlin's testimony and appraisal report

Mr. McLaughlin identified the subject property's location as a business zone, specifically a business highway subdistrict. He opined that Saugus has good access to Boston and other major employment areas within the region, as well as a strong commercial/retail presence in the region that will allow the neighborhood to remain stable over the long-term. However, he felt that limitations related to the subject property's specific location - off Route 1 rather than on Route 1 - restricted its potential within the retail market. He opined that the changing dynamics of retail has resulted in a decrease in construction of big-box stores, noting that many large stores are modifying their store formats to smaller footprints when possible.

Mr. McLaughlin determined that the subject property's highest and best use was its current use as a large-scale, big-box retail space. Though he conducted both a sales-comparison approach and income-capitalization approach to value the subject property, Mr. McLaughlin ultimately concluded that the income-capitalization

approach "was most applicable" and he placed "100 percent" reliance on the income-capitalization approach.

Mr. McLaughlin's first step in his income-capitalization approach was to determine the subject property's potential gross income for each of the fiscal years at issue. To accomplish this, Mr. McLaughlin researched and relied upon seven purportedly comparable retail leases for properties located in Nashua, New Hampshire; Dedham, Massachusetts; Warwick, Rhode Island; Seekonk, Massachusetts; Taunton, Massachusetts; Framingham, Massachusetts; and Milford, Massachusetts. These properties ranged in size from 62,676 square feet to 121,515 square feet, with lease terms ranging from five to fifteen years and rents ranging from \$6.59 to \$10.06 per square foot, with an average of \$8.05 per square foot. After Mr. McLaughlin's adjustments, the rents ranged from \$7.47 to \$9.84, with an average of \$8.68 per square foot. Mr. McLaughlin determined that a stabilized fair market rent of \$8.50 on a triple net basis was appropriate for each of the fiscal years at issue. Applying this rate to the subject building's 133,970 square feet, he derived a potential gross income of \$1,138,745 for each of the fiscal years at issue.

The next step in Mr. McLaughlin's analysis was the determination of a vacancy and collection loss allowance. While he noted that single-tenant properties like the subject property are either 100 percent occupied or 100 percent vacant, he maintained

that it is common for investors to apply a reasonable annual vacancy and collection loss factor to account for the possibility of some period of vacancy or collection loss during the ownership period. He consulted industry sources for data, including information published by *CoStar*, *REIS*, and *KeyPoint*, to highlight the vacancy rates in the Greater Boston market, specifically the subject property's submarket. Based on the historical occupancy of the subject property, the current vacancy in the market, and his perception of future market vacancy, he projected a global stabilized vacancy rate of 5 percent, to which he added a collection loss of 2 percent. These allowances resulted in an effective gross income of \$1,059,033 for each of the fiscal years at issue.

Turning to operating expenses, Mr. McLaughlin asserted that management fees for retail property typically range from 2 to 5 percent. He settled on a management fee of 4 percent of effective gross income. For other expenses, Mr. McLaughlin deducted tenant improvements at \$0.30 per square foot, leasing commissions at \$0.34 to \$0.37 per square foot, and replacement reserves at \$0.30 per square foot, for a total line item of \$0.95 percent per square foot for the category of "other expenses." The total expenses amounted to \$169,633 for each of the fiscal years at issue. Deducting these expenses resulted in a net operating income of \$889,400 for each of the fiscal years at issue.

For his capitalization rate, Mr. McLaughlin looked to investor surveys and a band-of-investment analysis. He consulted *RERC* and *RealtyRates.com*. He expressed the need to exercise caution with national investor survey information when determining a capitalization rate for a fee-simple analysis, but he acknowledged that *RealtyRates.com* - which he espoused as the only survey that has a category for freestanding retail properties - is a national survey. Despite repeatedly stating that the subject property was a freestanding, big-box retail property rather than a power center,³ Mr. McLaughlin ultimately concluded that the *RERC* category that best fit the subject property for capitalization rate purposes was the power center category. These sources indicated rates ranging from 7.6 percent to 9.68 percent from the first quarter of 2015 through the first quarter of 2019. Mr. McLaughlin's band-of-investment analysis yielded an indicated overall capitalization rate of 8.31 percent. Based upon this information, Mr. McLaughlin settled on a base capitalization rate of 8 percent, to which he then loaded pro-rated tax factors reflective of his 7 percent vacancy and collection loss rate for an ultimate rounded

³ In his report Mr. McLaughlin stated that "[a] Power Center would be leased by multiple anchors and junior anchors which diversifies risk versus a big-box property, inherently atypically large, that is leased to a single entity and offers no diversification of tenant risk."

capitalization rate of 8.25 percent for each of the fiscal years at issue.⁴

After applying the capitalization rate to his determined net operating income, Mr. McLaughlin determined a final, rounded fair cash value of \$10,800,000 for each of the fiscal years at issue for the subject property. Mr. McLaughlin allocated this amount as follows to parcel 1, parcel 2, and parcel 3, for each of the fiscal years at issue, with parcel 1 and parcel 2 remaining at their full assessed values:

	Fiscal Year 2017 - Fair cash value	Fiscal Year 2018 - Fair cash value	Fiscal Year 2019 - Fair cash value	Fiscal Year 2020 - Fair cash value
parcel 1	\$ 166,500	\$ 178,400	\$ 183,400	\$ 203,200
parcel 2	\$ 66,200	\$ 70,500	\$ 78,600	\$ 82,100
parcel 3	\$10,567,300	\$10,551,100	\$10,538,000	\$10,514,700
Total	\$10,800,000	\$10,800,000	\$10,800,000	\$10,800,000

B. Mr. Starr's testimony and opinion letter

Mr. Starr considered the subject property as having certain limitations that impacted its marketability and attractiveness to retail market participants. He discussed traffic patterns and the lack of retail prominence hindering the subject property as compared to "more desirable retail locations, such as the Square One Mall and Saugus Plaza" with "easy ingress and egress from both

⁴ As noted by the appellee during cross-examination, the tax rates used in Mr. McLaughlin's analysis were incorrect. Mr. McLaughlin used tax rates of \$26.51, \$25.78, \$24.58, and \$25.78, respectively, for fiscal years 2017 through 2020, versus the actual tax rates of \$25.78, \$24.58, \$25.78, and \$25.10, for fiscal years 2017 through 2020, respectively. Mr. McLaughlin insisted that these errors would not impact his determination of an 8.25 percent capitalization rate.

northbound and southbound Route 1 as well as communities to the east and west.”

He cited the familiar real estate principle that as size increases, unit price decreases, attributing this “in large part due to the diminishing number of potential tenants as you climb higher in size” and to economies of scale in constructing big-box spaces contributing to lower construction costs on a per square foot basis. “Taken together,” he opined, “the impact is such that the further below the large-scale big-box foot threshold, the less comparable a space is to the” subject property.

Mr. Starr highlighted the extensive cost and potential infeasibility as obstacles to “demising” the subject property’s space into smaller tenant spaces. He also suggested that Lowe’s entered the New England market a decade after Home Depot and Lowe’s often had to settle for inferior real estate locations as a consequence, with multiple Lowe’s location closures in New England versus zero Home Depot location closures in New England since each respectively entered the New England market.

C. Mr. Lennhoff’s rebuttal testimony

Mr. Lennhoff’s testimony chiefly aspired to rebut the testimony of Thomas J. Jensen, the appellee’s appraiser, whose testimony is discussed in detail below. Mr. Lennhoff testified that in valuing a fee simple interest a historical occupant is not considered, and that “fee simple has nothing to do with the

business. It has to do with the real estate in which this particular occupant happens to be doing business.”

III. The appellee’s case

The appellee presented its case primarily through the testimony and appraisal report of Mr. Jensen, whom the Board qualified as an expert witness in commercial real estate appraisals.

Mr. Jensen “didn't observe anything that [he] considered functional obsolescence when [he] inspected the property,” and he contended that the subject property “is the appropriate size, roughly, for a home improvement center for a national chain. It's also a similar appropriate size for a wholesale club.”

Mr. Jensen discussed his impression of a power center, which he considered to be a large, big-box retail center with a half-dozen to twenty tenants. He did not consider the subject property to be a power center but rather a single-user, freestanding retail building with above-average access, noting that “[t]he Massachusetts DOT reported Broadway (Route 99) to have an average daily traffic count of 10,627 in 2018 in front of the subject site.”

Mr. Jensen determined that the subject property’s highest and best use was its continued retail use. He conducted an income-capitalization approach to value the subject property “because fair cash value typically relies solely on the income

capitalization approach and there was sufficient market data available to develop a reliable value estimate based on the approach." However, "recent sales of similar properties in the local market were included primarily for informational purposes and for more detailed background related to market extracted capitalization rates."

To begin his income-capitalization approach, Mr. Jensen selected purportedly comparable leases from which to determine a fair market rent for the subject property. He believed it was important to find comparable leases as close as possible to the subject property, balanced with the need for an adequate-sized set of comparable leases. In his opinion, when in a major metropolitan area such as Boston, as one moves closer to the downtown of that major city, the population density tends to increase and therefore underlying land values tend to increase.

Mr. Jensen researched and relied upon five purportedly comparable retail leases for properties located in Saugus, Massachusetts; Medford, Massachusetts; Franklin, Massachusetts; Wilmington, Massachusetts; and Stoneham, Massachusetts. These properties ranged in size from 24,272 square feet to 119,545 square feet, with lease terms ranging from ten to twenty years and rents ranging from \$10.40 to \$21.27 per square foot. For adjustments, no

quantitative range was developed.⁵ Mr. Jensen instead developed a qualitative range. From this analysis, he selected a market rent of \$12.00 per square foot on a triple net basis, with increases of 2 percent for fiscal years 2018 to 2020 to reflect market increases. Applying this rate to the subject building's 133,970 square feet, he derived a potential gross income of \$1,607,640 for fiscal year 2017, \$1,639,793 for fiscal year 2018, \$1,673,287 for fiscal year 2019, and \$1,706,778, for fiscal year 2020.

Turning to vacancy and collection loss, Mr. Jensen projected a stabilized vacancy rate and credit loss of 5 percent based on a review of market conditions and the subject property's occupancy history. He indicated that when it comes to a property occupied by a company such as Lowe's, he considers it to be consistent with market participants not to take a credit loss on a property that is 100 percent occupied by Lowe's given their financial stature, and thus 5 percent was inclusive of both vacancy and collection loss.

Turning to operating expenses, Mr. Jensen maintained that a reasonable management expense for a single-tenant, triple-net-leased retail center was 2.5 percent of effective gross income. He

⁵ Mr. Jensen testified that he made qualified adjustments rather than quantified adjustments because "[i]t can be a challenge to come up with a specific percentage for each of these deviations from the subject property whether it be beneficial or a detriment. And I think that by using quantified adjustments, it can diminish the reliability of the conclusion if you're being that specific."

explained that triple-net properties are typically self-managed by the tenant so there is very nominal oversight required by the landlord. Considering the subject's age and what he thought was a well-maintained condition, he used a replacement reserve of \$0.25 per rentable square foot of building area, which he felt was consistent with typical market participants' behavior. He declined to apply any tenant improvement allowances or leasing commissions, rationalizing that the property is not a vacant building that needs to be leased up. Deducting these expenses resulted in a net operating income of \$1,455,584 for fiscal year 2017, \$1,486,129 for fiscal year 2018, \$1,516,390 for fiscal year 2019, and \$1,547,410 for fiscal year 2020.

For his capitalization rate, Mr. Jensen considered an analysis of market extraction based on comparable sales; investor surveys; band of investment; and interviews with market participants, with most reliance placed on market extraction, investor surveys, and market participants.

Mr. Jensen performed two separate market extractions, one involving four sales of local properties and one involving six sales of Lowe's around the country. Capitalization rates from both extractions ranged from 5.06 percent to 6.39 percent. He reviewed the PWC Real Estate Investor Survey for the National Net Lease Market, which indicated going-in capitalization rates ranging from 5.25 percent to 9.00 percent. He noted that the National Net Lease

Market survey includes other asset classes and is considered less reliable than surveys focused strictly on net leased retail properties. He also considered the Net Lease Market Report prepared by The Boulder Group, which indicated going-in capitalization rates for the retail sector ranging from 6.10 percent to 6.25 percent.

Mr. Jensen's band-of-investment analysis resulted in a 6.23 percent capitalization rate and his market participant interviews indicated capitalization rates between 6 percent and 6.25 percent.⁶ Based upon this information, Mr. Jensen settled on a base capitalization rate of 6.25 percent, to which he then loaded pro-rated tax factors reflective of his 5 percent vacancy rate to derive capitalization rates of 6.38 percent for fiscal year 2017, 6.37 percent for fiscal year 2018, 6.38 percent for fiscal year 2019, and 6.38 percent for fiscal year 2020.

After applying the capitalization rates to his determined net operating income, Mr. Jensen determined final, rounded fair cash values for the subject property of \$22,800,000 for fiscal year 2017, \$23,300,000 for fiscal year 2018, \$23,800,000 for fiscal year 2019, and \$24,400,00 for fiscal year 2020. Unlike Mr.

⁶ Mr. Jensen testified that he based the development of a capitalization rate in part on Lowe's credit rating and acknowledged that the capitalization rate could "[p]ossibly" have changed if the subject property were occupied by a tenant with a lower credit rating than Lowe's.

McLaughlin, Mr. Jensen did not allocate his values individually among parcels 1, 2, and 3.

IV. The Board's findings

On the basis of the record in its entirety, the Board found and ruled that the appellant met its burden of proving that the subject property was overvalued for fiscal years 2018, 2019, and 2020. The Board found and ruled that the appellant did not meet its burden for fiscal year 2017.

In reaching these conclusions, the Board agreed with the parties' experts that the highest and best use of the subject property was its continued use as a retail property as of the relevant assessment dates for the fiscal years at issue. While the Board agreed with the parties' selection of an income-capitalization approach to determine fair cash value and found portions of each expert's testimony and report to be probative on the issue of whether the assessments were excessive, it declined to strictly adopt any particular expert's elements of value.

The Board found inherent limitations with both parties' experts, from the appellant's and appellee's experts' respective underestimation and overestimation of the subject property's value reflective of its location in Saugus, to Mr. McLaughlin's inconsistent testimony and reliance on national surveys and power centers. The aggregate of the record, however, provided the Board with sufficient evidence to form its own judgment as to the fair

cash value of the subject property for each of the fiscal years at issue.

The Board was unpersuaded by the appellant's critique of Mr. Jensen and whether his analysis truly valued a fee-simple interest versus leased-fee interest. The Board found that the expert testimony and reports from both parties were not inconsistent with a fee-simple analysis.

After reviewing the leases relied upon by each of the experts in their respective reports, the Board selected a fair market rent for the subject property of \$10.00 per square foot for each of the fiscal years at issue. This rent resulted in a potential gross income of \$1,339,700 for each of the fiscal years at issue.

The Board found the appellant's 7 percent vacancy and collection loss to be excessive, and the Board instead adopted a vacancy and collection loss rate of 5 percent. Applying this rate resulted in an effective gross income of \$1,272,715 for each of the fiscal years at issue. With respect to operating expenses, the Board found that the record supported a management fee of 2.5 percent and replacement reserves of \$0.25 per square foot, but the Board eschewed any tenant improvements and leasing commissions, finding the record as it concerned such expenses to be too speculative for such allowances. After deducting these expenses, the Board determined a net operating income of \$1,207,405 for each of the fiscal years at issue.

With respect to capitalization rates, the Board ultimately selected a base capitalization rate of 7.25 percent for each of the fiscal years at issue. The Board then added to this base rate appropriate tax factors for each of the fiscal years at issue to reflect its conclusion of a 5 percent vacancy rate. This resulted in loaded capitalization rates of 0.073789 for fiscal year 2017, 0.073729 for fiscal year 2018, 0.073789 for fiscal year 2019, and 0.073755 for fiscal year 2020. After applying these rates to its concluded net operating income, the Board determined a rounded fair cash value for the subject property of \$16,350,000 for each of the fiscal years at issue.

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As with the parties' final opinions of value, the Board's determination of fair cash value comprised the entirety of the subject property - parcels 1, 2, and 3. But because the actual income-producing property was parcel 3, the parcel containing the subject building, the Board agreed with the appellant and allocated the reduction in assessed value solely to parcel 3, with parcels 1 and 2 remaining at their full assessed values. The following table details the Board's findings:

	Fiscal Year 2017	Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020
Gross potential income (\$10 x 133,970)	\$1,339,700	\$1,339,700	\$1,339,700	\$1,339,700
Vacancy (5%)	\$66,985	\$66,985	\$66,985	\$66,985
Effective gross income	\$1,272,715	\$1,272,715	\$1,272,715	\$1,272,715
Expenses:				
Management (2.5%)	\$31,818	\$31,818	\$31,818	\$31,818
Repl. Res. (\$.25 x 133,970)	\$33,493	\$33,493	\$33,493	\$33,493
Total Expenses	\$65,310	\$65,310	\$65,310	\$65,310
NOI	\$1,207,405	\$1,207,405	\$1,207,405	\$1,207,405
Cap. Rates	0.073789	0.073729	0.073789	0.073755
Value indications	\$16,362,935	\$16,376,251	\$16,362,935	\$16,370,478
Value rounded	\$16,350,000	\$16,350,000	\$16,350,000	\$16,350,000
Assessed values parcels 1 and 2	\$232,700	\$248,900	\$262,000	\$285,300
FCV of parcel 3 (rounded minus assessed values parcels 1 and 2)	\$16,117,300	\$16,101,100	\$16,088,000	\$16,064,700
Assessed value parcel 3	\$16,049,300	\$17,178,800	\$17,818,300	\$18,941,100
Overvaluation (assessed value parcel 3 minus reduced rounded)	(\$68,000)	\$1,077,700	\$1,730,300	\$2,876,400
Abatement (tax rate applied to overvaluation)	\$0.00	\$26,489.87	\$44,607.13	\$72,197.64

Based on the above findings, the Board issued a decision for the appellee for fiscal year 2017, and a decision for the appellant for fiscal years 2018, 2019, and 2020, with respective abatements of \$26,489.87, \$44,607.13, and \$72,197.64 concerning parcel 3.

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 will agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). A taxpayer has the burden of proving that the property at issue has a lower value than its assessed value. "The burden of proof is upon the petitioner to make out its right as [a] matter of law to abatement of the tax." ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). The assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. ***Schlaiker***, 365 Mass. at 245.

In determining fair cash value, all uses to which the property was or could reasonably be adapted on the relevant assessment dates should be considered. ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989). "In determining the property's highest and best use, consideration should be given to

the purpose for which the property is adapted." **Peterson v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2002-573, 617 (citation omitted), *aff'd, in relevant part*, 62 Mass. App. Ct. 428 (2004). In the present appeals, the Board agreed with the parties' real estate valuation experts that the subject property's highest and best use was its continued use as a retail property.

Generally, real estate valuation experts, Massachusetts courts, and the 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 Auth.**, 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 use of the income-capitalization approach is appropriate when reliable cost and market-sales data are not available. **Assessors of Weymouth v. Tammy Brook Co.**, 368 Mass. 810, 811 (1975); **Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. 696, 701-02 (1972). It is also recognized as an appropriate technique to use for valuing income-producing property. **Taunton Redevelopment Assocs. v. Assessors of Taunton**, 393 Mass. 293, 295 (1984). In these appeals, the Board found and ruled that the income-capitalization approach was the most appropriate method to value the subject property.

"The direct capitalization of income method analyzes the property's capacity to generate income over a one-year period and converts the capacity into an indication of fair cash value by capitalizing the income at a rate determined to be appropriate for the investment risk involved." ***Olympia & York State Street Co. v. Assessors of Boston***, 428 Mass. 236, 239 (1998). "[I]t is the net income that the property *should* be earning, not necessarily what it actually earns, that is the figure that should be capitalized." ***Peterson v. Assessors of Boston***, 62 Mass. App. Ct. 428, 436 (2004) (emphasis in original). Accordingly, the income stream used in the income-capitalization method must reflect the property's earning capacity or economic rental value. ***Pepsi-Cola Bottling Co.***, 397 Mass. at 452.

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), *aff'd on other grounds*, 375 Mass. 360 (1978). Vacancy rates must also be market based when determining fair cash value. ***Olympia & York State Street Co.***, 428 Mass. at 239. After accounting for vacancy and rent losses, net operating income is obtained by deducting the landlord's appropriate expenses. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 610 (1984). The expenses should also reflect the

market. See **Olympia & York State Street Co.**, 428 Mass. at 239. Lastly, the capitalization rate selected should consider the return necessary to attract investment capital. **Taunton Redevelopment Assocs.**, 393 Mass. at 295.

In reaching its opinion of fair cash value in these appeals, the Board was not required to believe the testimony of any witness or to adopt any particular method of valuation that an expert witness suggested. **Cumington School of Arts, Inc. v. Assessors of Cumington**, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board."). Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight. **Foxboro Associates v. 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**, 362 Mass. at 702. The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." **Assessors of Quincy v. Boston Consol. Gas Co.**, 309 Mass. 60, 72 (1941). See also **New Boston Garden Corp.**, 383 Mass. at 473.

In **Boston Consol. Gas Co.**, 309 Mass. at 72, the Supreme Judicial Court ruled that "the conclusion reached by the board . . . did not coincide with the figure given by any witness, but it

does not follow . . . that this conclusion was, therefore, unsupported by the evidence." The Court noted that "[t]he board was not required to believe the testimony of any particular witness but it could accept such portions of the evidence as appeared to have the more convincing weight. . . . The board could select the various elements of value as shown by the record and from them form, as it properly did, its own independent judgment." *Id.* See also ***New Boston Garden Corp.***, 383 Mass. at 473 ("The essential requirement is that the board exercise judgment.").

In evaluating the evidence before it in these appeals, the Board selected among the various elements of value presented by the parties. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 604 n.9 (1984) ("The assessors' argument that the figures supplied by [the appraiser] and by the admission differed significantly is irrelevant. Both figures were less than half of the assessment and were therefore still persuasive that the assessment was incorrect."); ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass 296, 300 (1984); ***Liberty Norfolk Dev. II, LLC v. Assessors of Norfolk***, 90 Mass. App. Ct. 1110 (2016) (decision under Rule 1:28) ("Nor do we see any reason to set aside the board's own determination of the fair market rent of the subject property, where it was the product of its own analysis based upon the evidence."). While the Board declined to adopt any particular expert's elements of value in their entirety, the record

in the aggregate afforded the Board sufficient and probative evidence to form its own judgment as to the fair cash value of the subject property for each of the fiscal years at issue.

Based on all the evidence presented in these appeals, and reasonable inferences drawn therefrom, the Board found and ruled that the appellant met its burden of demonstrating that parcel 3's assessed value exceeded its fair cash value for fiscal years 2018, 2019, and 2020, but failed to meet its burden for fiscal year 2017. Relying on the information contained in the record, and after exercising its own independent judgment, the Board ultimately determined fair cash values for parcel 3 of \$16,117,300 for fiscal year 2017, \$16,101,100 for fiscal year 2018, \$16,088,000 for fiscal year 2019, and \$16,064,700 for fiscal year 2020, with abatements of \$26,489.87, \$44,607.13, and \$72,197.64, respectively, for fiscal years 2018, 2019, and 2020.

Accordingly, the Board found and ruled for the appellant for fiscal years 2018, 2019, and 2020, and for the appellee for fiscal year 2017.

THE APPELLATE TAX BOARD

By: 

Mark J. DeFrancisco, Chairman

A true copy,

Attest: 

Clerk of the Board