

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**MAYFLOWER CAPE COD, LLC,¹ ET AL. v. BOARD OF ASSESSORS OF THE
TOWN OF BARNSTABLE**

Docket Nos. F335532-F335540
F339181-F339189

Promulgated:
April 25, 2023

These are appeals filed under the formal procedure, pursuant to G.L. 58A, § 7, G.L. c. 59, §§ 64 and 65, and 831 CMR 1.03 and 1.04, from the refusal of the Board of Assessors of the Town of Barnstable ("assessors" or "appellee") to abate taxes on nine parcels of real estate in the Town of Barnstable that collectively comprise a major portion of the Cape Cod Mall. These parcels are owned by and assessed to the appellants identified below ("appellants") under G.L. c. 59, §§ 11 and 38 for fiscal years 2018 and 2019 ("fiscal years at issue").

Commissioner Elliott heard these appeals. Former Chairman Hammond, Chairman DeFrancisco, and Commissioners Good and Metzger joined him in the decisions for the appellants.

¹ At times in correspondence, filings, and pleadings, the appellants refer to Mayflower Cape Cod, LLC as Mayflower Cape Cod LLC, and the assessors refer to this appellant as Mayflower Cape Cod, Inc. The Appellate Tax Board ("Board") found that the parties intended all such references to be for and synonymous with Mayflower Cape Cod, LLC.

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

Kenneth W. Gurge, Esq., for the appellants.

Charles S. McLaughlin, Jr., Esq., and Kathleen Connolly, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

I. Introduction

At all relevant times, the appellants were the assessed owners of the nine parcels that are the subject of these appeals, totaling 54.92 acres of land located in the Town of Barnstable. The names of the appellants, the docket numbers, the addresses, the parcel identification numbers, and the land areas associated with each parcel are set out in the table below.

The Subject Parcels²

<u>Appellant</u>	<u>Docket No.</u>	<u>Rd. Address</u>	<u>Parcel ID</u>	<u>Land Area in Acres</u>
Mayflower Cape Cod, LLC	F335532/F339181	793 Iyannough	293-024	36.54
Doherty Real Estate	F335533/F339182	793 Iyannough	293-029	2.92
Carver, Herbert Et Als., Trs.	F335534/F339188	793 Iyannough	294-078	7.02
Cape Cod Mall LLC	F335535/F339184	921 Iyannough	294-018	2.00
Mayflower Cape Cod, LLC	F335536/F339187	151 Enterprise	294-023	0.46
Mayflower Cape Cod, LLC	F335537/F339186	137 Enterprise	294-020	0.32
Mayflower Cape Cod LLC	F335538/F339185	104 Enterprise	294-019	2.64
Mayflower Cape Cod, LLC	F335539/F339189	180 Falmouth	311-001	2.44
Cape Cod Mall LLC	F335540/F339183	226 Falmouth	293-043	0.58
Total				54.92

² Based on the property record cards in evidence, the Board found that in the petitions for docket numbers F335537 and F339186, the appellant, Mayflower Cape Cod, LLC, mistakenly identified the address of the parcel labeled for assessment purposes as 294-020, as 157 Enterprise Road instead of 137 Enterprise Road.

The subject parcels comprise the major portion of the Cape Cod Mall which, in its entirety, has approximately 724,000 square feet of gross leasable area including three department store anchors. The property at issue in these appeals is limited to seventy-three percent or approximately 529,500 square feet of that gross leasable area and includes only one anchor store - Sears - along with inline retail space, other major stores, several outparcels,³ and a twelve-screen movie theater (collectively, "subject property").⁴

The subject property is situated along Iyannough Road, also known as State Route 132, in the Hyannis section of the Town of Barnstable and is located approximately 2.5 miles southeast of the junction of State Route 132 and State Route 6 which is Cape Cod's major limited access highway. The subject property's neighborhood is a traditional retail district hosting a variety of commercial uses including gas stations, convenience stores, hotels, automotive dealerships, restaurants, big box stores, and other smaller shopping centers and commercial buildings that house a variety of small business and retail tenants. This area of Hyannis

³ The parties' real estate valuation experts used the terms "outparcels" or "outlots" for the three ground-leased spaces - TD Bank, Chick-fil-A, and All-Pro Transmission - connected to the Cape Cod Mall.

⁴ Because of his extensive research into the subject property's rent rolls and municipal records, as well as the Board's approval of the proposed net-operating incomes offered by the appellants' real estate valuation expert, the Board accepted his area measurement and not the 523,819 square foot measurement proposed by the assessors' real estate valuation expert.

has the highest concentration of retail uses on Cape Cod. The Barnstable Airport is situated just to the east of the subject property.

The subject property's single-story mall building was originally constructed circa 1970 with extensive renovations in 1998-1999 and some further renovations in 2017. It is primarily concrete-block construction with poured concrete floors and structural steel supports with a membrane roof. The interior floors are mostly tile in the public common areas and tile, carpet, or wood mixtures in the tenanted spaces. The interior walls are drywall and a combination of wood and other decorative treatments related to storefronts and interior tenant finishes. The ceilings vary depending on location but include acoustical tiles, finished wallboard, and open, unfinished space. There is an assortment of lighting, including recessed fluorescent, spot-lighting, and decorative fixtures, along with skylights. There are no elevators or escalators.

As of the relevant assessment dates, there were four additional structures, distinct from the mall building, that formed a part of the subject property: an approximately 3,000-square-foot bank built in 2009, an approximately 5,700-square-foot fast-food restaurant built in 2016, an approximately 4,000-square-foot automotive repair shop built in 1970, and an approximately 13,139-square-foot Sears Automotive building, which has since been

demolished. These additional structures were located on ground-leased space.

II. Jurisdiction

For fiscal years 2018 and 2019, the assessors valued the subject property at \$112,861,000 and \$112,874,400, respectively, and assessed taxes thereon at the respective rates of \$13.26 and \$13.76 per thousand, in the corresponding amounts of \$1,496,536.85 and \$1,553,151.74.⁵ The assessed values for the subject property's nine parcels for the fiscal years at issue are set forth in the table below.

Subject Parcels' Assessed Values

<u>Docket No.</u>	<u>Address</u>	<u>Parcel ID</u>	<u>Assessed Value</u>	
			<u>FY 2018</u>	<u>FY 2019</u>
F335532/F339181	793 Iyannough Rd.	293-024	\$106,848,900	\$106,848,900
F335533/F339182	793 Iyannough Rd.	293-029	\$ 572,000	\$ 569,300
F335534/F339188	793 Iyannough Rd.	294-078	\$ 346,500	\$ 340,400
F335535/F339184	921 Iyannough Rd.	294-018	\$ 96,200	\$ 96,100
F335536/F339187	151 Enterprise Rd.	294-023	\$ 341,700	\$ 339,900
F335537/F339186	137 Enterprise Rd.	294-020	\$ 303,800	\$ 302,600
F335538/F339185	104 Enterprise Rd.	294-019	\$ 2,242,900	\$ 2,266,500
F335539/F339189	180 Falmouth Rd.	311-011	\$ 842,400	\$ 835,400
F335540/F339183	226 Falmouth Rd.	293-043	\$ 1,266,600	\$ 1,275,300
	Total		\$112,861,000	\$112,874,400

⁵ The tax rates and amounts include the fire district tax and the three-percent Community Preservation Act ("CPA") surcharge.

The tax assessments for the subject property's nine parcels for the fiscal years at issue are set forth in the table below.

Subject Parcels'
Tax Assessments

<u>Docket No.</u>	<u>Address</u>	<u>Parcel ID</u>	<u>Tax Assessment</u>	
			<u>FY 2018</u>	<u>FY 2019</u>
F335532/F339181	793 Iyannough Rd.	293-024	\$1,416,816.41	\$1,470,240.86
F335533/F339182	793 Iyannough Rd.	293-029	\$ 7,584.72	\$ 7,833.57
F335534/F339188	793 Iyannough Rd.	294-078	\$ 4,594.59	\$ 4,683.90
F335535/F339184	921 Iyannough Rd.	294-018	\$ 1,275.61	\$ 1,322.34
F335536/F339187	151 Enterprise Rd.	294-023	\$ 4,530.94	\$ 4,677.02
F335537/F339186	137 Enterprise Rd.	294-020	\$ 4,028.39	\$ 4,163.78
F335538/F339185	104 Enterprise Rd.	294-019	\$ 29,740.85	\$ 31,187.04
F335539/F339189	180 Falmouth Rd.	311-011	\$ 11,170.22	\$ 11,495.10
F335540/F339183	226 Falmouth Rd.	293-043	\$ 16,795.12	\$ 17,548.13
Total			\$1,496,536.85	\$1,553,151.74

For both fiscal years at issue, in accordance with G.L. c. 59, § 57C, the appellants timely paid the taxes due without incurring interest. The appellants also seasonably filed their abatement applications with the assessors and the petitions appealing their abatement denials with the Board. The corresponding dates for these filings are listed in the following table.

Jurisdictional Dates

<u>Fiscal Year</u>	<u>Date Tax Bills Mailed</u>	<u>Date Applications for Abatement ("AAs") Filed</u>	<u>Date AAs Denied</u>	<u>Date Petitions Filed at Board</u>
2018	12/31/2017	02/01/2018	04/10/2018	06/04/2018
2019	12/31/2018	01/25/2019	04/25/2019	07/25/2019

On this basis, the Board found and ruled that the appellants complied with G.L. c. 59, §§ 59 and 64-65, and the Board therefore had jurisdiction to hear and decide these appeals.⁶

III. The Evidence

The appellants presented their case through the testimony of their real estate valuation expert, Donald P. Bouchard, and his appraisal report. The appellants also introduced additional demonstrative evidence in the form of rent rolls and several industry surveys and reports.

In defense of the assessments, the assessors presented their case through the testimony of: Aaron Carter, Sr., Manager of Taxation for the Simon Property Group; William Garrefffi, Chair of the assessors; Elizabeth Jenkins, Director of Planning and Development for the town of Barnstable; and their real estate valuation expert, James R. Johnston. The assessors also introduced into evidence: Mr. Johnston's appraisal report; the requisite jurisdictional documents; the subject property's relevant property record cards; an excerpt from an Appraisal Institute publication; and Mr. Bouchard's fiscal year 2014, 2015, and 2016 appraisal reports for the two Macy stores located at the Cape Cod Mall, which are not part of these appeals.

⁶ Three and one-half months following the hearing in these appeals, the assessors sought to dismiss them for the appellants' purported failures to comply with their reporting obligations under G.L. c. 59, § 38D. As discussed below, the Board denied the assessors' motion to dismiss.

Based on the Board's familiarity with Mr. Bouchard's and Mr. Johnston's experience, certifications, and other credentials, as well as the verbal stipulation of the attorneys for both parties to the real estate valuation experts' qualifications and expertise, the Board qualified Mr. Bouchard and Mr. Johnston as expert real estate appraisers for purposes of these appeals.

A. The Appellants' Case

After concluding that the subject property's highest-and-best use was its continued utilization as a regional mall, Mr. Bouchard considered the three usual methods for estimating the value of the subject property for the fiscal years at issue. He rejected and did not develop a value using the cost approach because of this method's reliance on reproduction cost and depreciation, which he regarded as speculative, as well as the unlikelihood of a buyer for the subject property relying on this method. He also considered but did not develop a value using a sales-comparison approach because of the difficulty adjusting leased fee values to fee simple ones. He did, however, rely on sales to assist in his development of capitalization rates for his income-capitalization methodology. To generate an opinion of value for the subject property for the fiscal years at issue, Mr. Bouchard used an income approach because he considered it the most relevant, reliable, and accurate methodology for valuing properties of this type for ad valorem tax purposes.

To develop a value for the subject property for the fiscal years at issue, Mr. Bouchard emphasized the importance of classifying the Cape Cod Mall for comparison with other malls to ascertain appropriate market data and in particular, capitalization rates. While he considered the Cape Cod Mall to be well-managed and the dominant and only regional mall in the area, Mr. Bouchard identified significant shortcomings with it and its location, including considerable functional and external obsolescence, declining common area maintenance ("CAM") and tax reimbursements, a flat income stream, demographic trends inimical to retail growth, an occupancy cost ratio ("OCR") exceeding industry standards,⁷ an eroding market share, per-square-foot inline sales volume below industry standards, and a decline in total property revenues, tenant quality, and tenant sales volume. Moreover, he noted that the only owned anchor - Sears - had given notice by the second valuation date at issue that it was closing. Based on his consideration of these and other factors, Mr. Bouchard classified the Cape Cod Mall as a Class C-plus mall.

To determine the income for the subject property for the fiscal years at issue, Mr. Bouchard examined the actual revenues for the size and types of tenants at the subject property during the relevant period, as well as their past and more recent rents

⁷ OCR is determined by dividing a tenant retailer's total rental charges by its gross sales.

to identify changes that may have occurred. This examination and comparison revealed the landlord's continued offering of concessions to tenants in the form of reductions in or the elimination of real estate tax and CAM payments or reimbursements. The rent rolls revealed that during the relevant period, CAM and real estate tax reimbursements were below thirty-two percent and thirty-eight percent, respectively, suggesting that the subject property was no longer leasing as a triple-net property. Mr. Bouchard similarly reviewed market data from what he considered to be comparable properties and tenants as well as municipal records and based on all these information sources concluded that the leasable area and market rental rates for the subject property for the fiscal years at issue were as summarized in the table below.

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Mr. Bouchard's
Market Rent Conclusions

<u>Type of Tenant</u>	<u>Square Footage ("SF")</u>	<u>01/01/2017 (\$/SF)</u>	<u>01/01/2018 (\$/SF)</u>
Inline <1,000 SF	6,548	100.00	100.00
Inline 1,000 - 9,999 SF	179,374	27.50	27.00
Inline 10,000 - 20,000 SF	35,192	17.00	16.75
Theater	48,229	11.00	11.00
Food Court	6,748	60.00	60.00
Jewelry	9,098	90.00	90.00
Kiosk	570	430.00	430.00
Majors/Mini Anchors	85,292	18.00	18.00
Sears Anchor	122,048	3.50	3.50
Sears Auto Building	13,139	7.00	7.00
Full Service/Other Restaurants	10,290	32.00	32.00
Outparcels*	12,932	30.00	30.00
TOTAL SF and MARKET REVENUES	529,530	10,957,575	10,794,629

*Average market rent for the TD Bank, Chick-Fil-A, and All Pro
Transmission buildings.

These market-rent conclusions resulted in gross potential revenues of \$10,957,575 for fiscal year 2018 and \$10,794,629 for fiscal year 2019.⁸

For vacancy and collection allowance, Mr. Bouchard reviewed the actual vacancy percentages for the relevant period for the types of tenants renting in the subject property and those percentages reported in industry surveys. Based on this information, Mr. Bouchard selected a market vacancy of 9.0% for the subject property for both fiscal years at issue, which resulted in vacancy amounts of \$986,182 for fiscal year 2018 and \$971,517

⁸ The Board noted that there are several minor mathematical discrepancies in Mr. Bouchard's calculations of market rents, vacancy and collection allowances, effective gross incomes, and expenses that do not meaningfully affect his net incomes or valuation conclusions.

for fiscal year 2019. Subtracting these vacancy amounts from his gross potential revenues produced effective gross rental revenues of \$9,971,393 for fiscal year 2018 and \$9,823,113 for fiscal year 2019.

To these effective gross rental revenue figures, Mr. Bouchard added other sources of income for fiscal years 2018 and 2019, which included: temporary or short-term in-line tenant rents of \$400,000; CAM recoveries of \$2,700,000; marketing recoveries of \$225,000; and miscellaneous revenues of \$135,000. The amounts for these additional categories of revenue were based primarily on the subject property's historical data. They resulted in an effective gross revenue ("EGI") of \$13,431,393 for fiscal year 2018 and \$13,283,113 for fiscal year 2019.

Mr. Bouchard reviewed the subject property's operating expense history for calendar years 2014 through 2018 to understand the various categories of expenses related to the subject property and their trends. He also reviewed real estate tax recovery information, as well as industry data regarding expenses and reserves for replacement. Considering the subject property's historical data and condition, as well as industry survey information, Mr. Bouchard estimated the subject property's operating expenses and categories of expenses for fiscal years 2018 and 2019 as set forth in the table below.

Mr. Bouchard's Operating Expenses

<u>Categories</u>	<u>FY 2018</u> <u>(\$)</u>	<u>FY 2019</u> <u>(\$)</u>
Utilities	175,000	178,500
Security	460,000	469,200
Janitorial	330,000	336,600
Landscaping	25,000	25,500
Administration	325,000	331,500
Temporary Tenant	65,000	66,300
Food Court	140,000	142,800
Repairs & Maintenance	750,000	765,000
Insurance	145,000	147,900
Advertising & Promotion	240,000	244,800
Management Fee @ 4.5% of EGI	604,413	597,740
Other Expenses	75,000	76,500
Reserves for Replacement @ \$0.75/SF	397,148	397,148
Total Operating Expenses	3,731,560	3,779,488

By subtracting his total operating expenses from his EGI, Mr. Bouchard calculated his net-operating incomes ("NOIs") at \$9,699,833 and \$9,503,625 for fiscal years 2018 and 2019, respectively.

Mr. Bouchard advanced his 10.5% and 10.75% capitalization rates for fiscal years 2018 and 2019, respectively, after having first classified the Cape Cod Mall as a Class C-plus mall. As discussed above, he made this classification after considering the subject property's sales per square foot and how the subject property was negatively impacted by: alternative venues and redevelopment projects; rental rate declines; declines in sales volumes, occupancy rates, and recoveries; poor anchor performance; increased tenant concessions; and essentially flat trade area

demographics. He also considered how the subject property was positively influenced by: being the only enclosed mall on Cape Cod; the difficulty in gaining approvals for commercial development on Cape Cod, which the Cape Cod Mall had already obtained; and the subject property's ability to be better positioned with an infusion of capital.

In developing capitalization rates for the fiscal years at issue, Mr. Bouchard reviewed industry survey data from sources such as: Green Street Advisors; Newmark Knight; and Cushman & Wakefield. He also synthesized rates utilizing band-of-investment and mortgage-equity approaches. Lastly, he considered overall rates from mall sales and discussed mall capitalization rates with commercial real estate brokers specializing in mall sales. These calculations and research resulted in his determination of capitalization rates of 10.50% and 10.75% for fiscal years 2018 and 2019, respectively, to which he added partial tax factors to account for vacancies in the respective amounts of 0.17239% and 0.22701%. Accordingly, the capitalization rates that Mr. Bouchard used in his methodology for fiscal years 2018 and 2019 were 10.67239% and 10.97701%, respectively.

By dividing each fiscal year's capitalization rate into its corresponding NOI, Mr. Bouchard concluded that the value of the subject property for fiscal year 2018 was \$90,887,143, from which he subtracted a personal property assessment of \$139,900 and then

rounded to \$90,750,000. Similarly, for fiscal year 2019, Mr. Bouchard concluded that the value of the subject property was \$86,577,562, from which he subtracted a personal property assessment of \$124,360 and then rounded to \$86,450,000. A summary of his income-capitalization methodology is contained in the following table.

**Summary of Mr. Bouchard's
Income-Capitalization Methodology**

<u>Component</u>	<u>FY 2018</u> <u>(\$)</u>	<u>FY 2019</u> <u>(\$)</u>
Gross Rent Potential Revenues	10,957,575	10,794,629
Vacancy and Collection Allowance @ 9.00%	-986,182	-971,517
Effective Gross Rental Revenue	9,971,393	9,823,113
Additional Revenue	3,460,000	3,460,000
Effective Gross Revenue	13,431,393	13,283,113
Operating Expenses	-3,731,560	-3,779,488
NOI	9,699,833	9,503,625
Capitalization Rate	10.67239%	10.97701%
Indicated Market Value	90,887,143	86,577,562
Personal Property Assessment	-139,900	-124,360
Market Value of Real Estate	90,747,243	86,453,202
Rounded Value	90,750,000	86,450,000

B. The Assessors' Case

In addition to their real estate valuation expert, Mr. Johnston, the assessors offered three other witnesses; the most informative of whom for their case was Elizabeth Jenkins, the Director of Planning and Development for the Town of Barnstable. Ms. Jenkins testified that during the relevant period, in and around the subject property's location, "the economic and

permitting atmosphere . . . [was] overwhelmingly positive." She described several commercial projects near the subject property that were underway and some others that were in the permitting process seeking likely approvals, including projects related to the subject property.

Like Mr. Bouchard, Mr. Johnston determined that the subject property's highest-and-best use was its continued use as a regional mall. And like Mr. Bouchard, Mr. Johnston considered the three usual approaches for valuing the subject property for the fiscal years at issue. He eschewed cost and sales-comparison approaches for similar reasons to Mr. Bouchard's and relied on an income-capitalization approach because "[i]t is the primary valuation approach for income producing properties."

In determining market rent for the subject property for the fiscal years at issue, Mr. Johnston divided the rental space into various categories, including: anchors; junior anchors and large stores; small shops; and kiosks, outlots, and food court. In assigning market rents to these categories, he examined rent rolls and information from what he considered to be comparable tenants or spaces. The following table summarizes his market rent conclusions for both fiscal years at issue.⁹

⁹ The Board noted that there are several minor mathematical discrepancies in Mr. Johnston's calculations that do not meaningfully affect his valuation conclusions.

Mr. Johnston's
Market Rent Conclusions

<u>Type of Space</u>	<u>Square Footage</u>	<u>Fiscal Years 2018 & 2019</u>	<u>Market Rent</u>
Anchor (Sears)	135,187	\$ 5.00/SF	\$ 675,935
Jr. Anchor/Big Box/Theater	158,719	\$ 17.67/SF	\$ 2,804,565
Small Shops (5,000-12,500 SF)	93,709	\$ 25.61/SF	\$ 2,993,066
Small Shops (under 5,000 SF)	116,871	\$ 38.01/SF	\$ 3,561,879
Kiosks	570	\$ 485.21/SF	\$ 276,570
Outlots	12,000	\$ 35.03/SF	\$ 420,310
Food Court	6,763	\$ 98.39/SF	\$ 665,412
Total	523,819		\$11,397,736

In addition to these market rents, Mr. Johnston included in his potential gross revenue, which totaled \$15,957,917 for the fiscal years at issue, temporary tenant rents in the amount of \$335,279 and miscellaneous income in the amount of \$17,307. He also included recoveries for: CAM - amounting to \$2,703,371; marketing - amounting to \$235,000; and real estate tax - amounting to \$1,269,224. Mr. Johnston projected these amounts from the market and the subject property's historical information.

Mr. Johnston relied on the market and the subject property's actual vacancy rates in applying a ten-percent vacancy and collection allowance for the fiscal years at issue. The application of this percentage resulted in an EGI of \$14,362,125.

For his expenses, which totaled \$4,677,388 for fiscal year 2018 and \$4,646,418 for fiscal year 2019, Mr. Johnston's underlying categories included: CAM at \$2,252,809; marketing at \$235,000; management at 5.2 and five percent of EGI for fiscal years 2018

and 2019, respectively, which corresponded to \$749,087 and \$718,106; tenant improvements at \$1.75 per square foot, which totaled \$916,683; and reserves for replacement at \$1.00 per square foot, which totaled \$523,819. Mr. Johnston's expenses are summarized in the table below.

Mr. Johnston's Expenses

<u>Categories</u>	<u>FY 2018</u> <u>(\$)</u>	<u>FY 2019</u> <u>(\$)</u>
Recoverable CAM @ \$4.30/SF	2,252,809	2,252,809
Marketing	235,000	235,000
Management @ 5% of EGI	749,087	718,106
Tenant Improvement @ \$1.75/SF	916,683	916,683
Reserve for Replacement @ \$1.00/SF	523,809	523,819
Total Expenses	4,677,388	4,646,418

Mr. Johnston calculated his NOIs of \$9,684,737 for fiscal year 2018 and \$9,715,708 for fiscal year 2019 by subtracting his total expenses from his EGI.

To generate opinions of value for the subject property for the fiscal years at issue, Mr. Johnston developed capitalization rates to divide into his NOIs. In synthesizing his rates, he used a band-of-investment technique as an upper limit for his capitalization rate range and examined various industry and investor market surveys, including: PricewaterhouseCoopers; Real Estate Research Corporation Real Estate Report; Integra Realty Resources; and Cushman & Wakefield, for the lower limit of his range. For purposes of reviewing and obtaining relevant data from these industry sources, Mr. Johnston sought to classify the subject

property just as Mr. Bouchard had done. To do that, Mr. Johnston primarily examined the subject property's sales per square foot and tenants' cost of occupancy. He also considered the Cape Cod Mall's position as the dominant mall in the area, its relatively recent renovations, its occupancy rate, and Sears' notice that it was vacating. This information informed Mr. Johnston's determination that the mall's classification was a Class B mall. Further informed by his band-of-investment calculation and the capitalization rate data from referenced industry sources, which subsumed expenses for tenant improvements, leasing commissions, and/or reserves for replacement, Mr. Johnston selected a capitalization rate of 8.00% for both fiscal years at issue, which he then adjusted downward to 6.81% to reflect the inclusion in his methodology of tenant improvement expenses and reserves for replacement, as well as leasing commission expenses that he had built-in to his management fees. Mr. Johnston then added full tax factors of 1.33% for fiscal year 2018 and 1.38% for fiscal year 2019. By dividing these capitalization rates into the corresponding NOIs, Mr. Johnston opined that the value of the subject property for fiscal year 2018 was \$118,977,116 which he rounded to \$119,000,000, and for fiscal year 2019 was \$118,628,913 which he rounded to \$118,600,000.

Mr. Johnston's income-capitalization methodology is summarized in the table below.

Summary of Mr. Johnston's
Income-Capitalization Methodology

<u>Component</u>	<u>FY 2018</u> <u>(\$)</u>	<u>FY 2019</u> <u>(\$)</u>
Potential Gross Revenues	15,957,917	15,957,917
Vacancy @ 10.00%	<u>-1,595,792</u>	<u>-1,595,792</u>
Effective Gross Revenue	14,362,125	14,362,125
Total Expenses	<u>-4,677,388</u>	<u>-4,646,418</u>
NOI	9,684,737	9,715,708
Capitalization Rate	8.140%	8.190%
Indicated Market Value	118,977,116	118,628,913
Rounded Value	119,000,000	118,600,000

C. The Assessors' Adoption of the NOIs Proposed by the Appellants' Real Estate Valuation Expert

Prior to the hearing of these appeals and after recognizing the near equivalence between both real estate valuation experts' NOIs, the assessors adopted the NOIs presented by the appellants' real estate valuation expert, which were \$9,699,833 for fiscal year 2018 and \$9,503,625 for fiscal year 2019. When Mr. Johnston applied his readjusted capitalization rates to these NOIs, he estimated the rounded values of the subject properties at \$119,500,000 for fiscal year 2018 and \$117,000,000 for fiscal year 2019.

D. The Assessors' Discovery and Primary Evidentiary Exceptions and Post-Hearing Motion

1. The Assessors' Discovery Exceptions

Throughout the course of the discovery phase of these appeals, the assessors sought discovery from the appellants of, among other things, post-valuation and assessment date information, enterprise

finances, and mortgage or indebtedness data. The appellants objected to these discovery requests in their responses to them. Well after the date the Board had set for the close of discovery, the assessors moved to compel the appellants to respond to these aspects of the assessors' discovery. Because of the assessors' failure to comply with the Board's Scheduling Order, the appellants' agreement to provide additional relevant leases, and the limitation to discovery in Board proceedings under G.L. c. 231, § 61, to "facts and documents admissible in evidence," which most of the assessors' discovery requests in the motion were not, the Board denied the assessors' motion and their attempt to obtain what the Board deemed to be inadmissible information and material by subpoena.

2. The Assessors' Primary Evidentiary Exception

During the hearing of these appeals, the assessors sought to introduce into the record through Mr. Garrefffi, who testified that he is not only the Chair of the assessors, but also the Director of Real Estate Review for the Cape Cod Five Cents Savings Bank and a member of the Massachusetts Board of Real Estate Appraisers,¹⁰ a nine-page excerpt from Trepp, LLC ("Trepp") containing a corporate overview of Trepp and a Loan Detail report focused on the Cape Cod Mall ("Trepp report"). Mr. Garrefffi described Trepp as a data and

¹⁰ The assessors did not seek to nor did the Board qualify Mr. Garrefffi as a real estate valuation expert.

analytics firm that provides loan and property performance risk analysis on commercial real estate for commercial mortgage-backed securities investors and banks. Mr. Garrefffi testified that the Trepp report contained financial information regarding a 2011 \$100 million note and mortgage on the Cape Cod Mall and NOIs that exceeded by roughly twenty-five percent the ones adopted here. The appellants objected to the introduction of the Trepp report on the grounds that a proper foundation had not been laid, the derivation of the information had not been provided, and the document dealt with indebtedness that is irrelevant for fee simple valuation. For these reasons and others, the Presiding Commissioner sustained the appellants' objection but allowed the Trepp report to be marked as a chalk for the limited purpose of inclusion in the assessors' offer of proof.

3. The Assessors' Post-Hearing Motion

In combination with their post-hearing brief, the assessors sought to dismiss these appeals on jurisdictional grounds because the appellants purportedly provided the assessors with inaccurate and possibly knowingly false financial data in their submissions

to the assessors under G.L. c. 59, § 38D ("Section 38D").¹¹ The assessors alternatively requested to withdraw from their adoption of the NOIs proposed by the appellants' valuation expert.

In support of their motion to dismiss under Section 38D, the assessors alleged that because the reported debt secured by the Cape Cod Mall exceeded Mr. Bouchard's valuations for the subject property, Simon Property Group, an owner and operator of the Cape Cod Mall, was obligated under federal law to disclose in its reports filed with the Security and Exchange Commission ("SEC") that the property was in technical bankruptcy. Because the Simon Property Group did not make any such disclosure, the assessors alleged that the Simon Property Group must have been aware that Mr. Bouchard had undervalued the subject property for purposes of these appeals using inaccurate income and expense information. The assessors also requested that the hearing of these appeals be reopened, and further discovery be permitted "to identify and thoroughly examine witnesses and documentary information that may bear on the issue of Simon's financial reporting."

¹¹ Under Section 38D, assessors may request an owner or lessee of real property to make a written return under oath "containing such information as may reasonably be required by [the assessors] to determine the actual fair cash valuation of such property." An owner or lessee who fails to comply with the request within sixty days will be barred from appealing a refusal of the assessors to abate taxes on the property "unless such owner or lessee was unable to comply with such request for reasons beyond his control." Similarly, if, in reply to such a request, an owner or lessee submits a statement known by that person to be false "in a material particular," there will be no right of statutory appeal.

The appellants opposed the assessors' motion with factual, procedural, and legal arguments supported by affidavits from high-level employees within the Simon Property Group coupled with several attachments.

The Board denied the assessors' motion to dismiss the appeals under Section 38D and found and ruled that the portion of the motion seeking to withdraw from the adoption of the NOIs offered by appellants' real estate valuation expert was moot. The Board also denied the assessors' request to re-open the hearing.

IV. The Board's Findings

A. The Assessors' Discovery and Primary Evidentiary Exceptions and Post-Hearing Motion

1. The Assessors' Discovery Exceptions

Upon further review of the Board's discovery rulings in conjunction with its analysis of the assessors' post-hearing motion to dismiss or withdraw from their adoption of the NOIs proposed by the appellants' real estate valuation expert, the Board affirmed its rulings and reiterates that because of the assessors' failure to comply with the Board's Scheduling Order, the appellants' agreement to provide additional relevant leases, and the limitation to discovery in Board proceedings under G.L. c. 231, § 61, to "facts and documents admissible in evidence," which most of the assessors' discovery requests in the motion to compel were not, the Board's denial of the assessors' motion and

their attempt to obtain what the Board deemed to be inadmissible information and material by subpoena was proper. The information sought was outside the relevant valuation and assessment dates, was for leased fee or enterprise valuations, and, accordingly, was not relevant or material to fee simple valuation.

2. The Assessors' Primary Evidentiary Exception

Upon further review of the Presiding Commissioner's evidentiary ruling in conjunction with the Board's analysis of the assessors' motion to dismiss or withdraw from the adoption of the NOI proposed by the appellants' real estate valuation expert, the Board found, as the Presiding Commissioner had, that the Trepp report was irrelevant and immaterial for purposes of these appeals and had been offered without proper foundation. The Board further found that the assessors had not: included the Trepp report in its pre-marked exhibits; sought to address its evidentiary worth prior to trial; authenticated it despite having had ample opportunity to do so; or allayed hearsay concerns. Moreover, the Board found that the assessors' attempt to introduce the Trepp report through Mr. Garrefffi who had not been qualified as an expert witness and had not demonstrated any first-hand knowledge about it or the underlying sources of its data was properly denied.

Lastly, an affidavit submitted by Simon Property Group's Vice President of Property Tax, Michael D. Larsen, stated under oath that "[n]either Simon Property Group or Mayflower Cape Cod LLC

report Realty Operations Statements or any other financial data directly to Trepp.” The Board found that there was no indication that the NOIs in the Trepp report were intended to be or in fact were accurate depictions of the NOIs for the subject property’s real estate or necessarily an accurate reflection of NOIs for the mall enterprise.

On this basis, the Board affirmed the Presiding Commissioner’s evidentiary ruling regarding the Trepp report.

3. The Assessors’ Post-Hearing Motion

The Board found that the assessors did not show that the appellants had failed to provide in an appropriate and timely manner the requested information or had knowingly provided false information to the assessors on their returns under Section 38D.¹² An affidavit submitted by Simon Property Group’s Senior Tax Manager for Property Tax, Aaron Carter, stated that the appellants had provided the assessors with accurate “income and expense information, rent rolls, leasing and other data, including Realty Income Operations Statements [for all fiscal years requested].” The affidavit further provided that the “Realty Income Operations Statements are regular accounting documents made and kept in the

¹² The Board noted that on February 6, 2017, the assessors’ Director of Assessing sent appellants a letter stating, in pertinent part, that the assessors “will NOT be issuing income and expense requests . . . for fiscal years 2018 and 2019 . . . and any income and expense forms submitted will be immediately shredded.” [Emphasis in original]. On April 30, 2018, the assessors altered course for fiscal year 2019 and requested “income and expense information relating to the ownership of the real estate and not the business within the real estate.”

ordinary course of business [and] contain all income and expense items derived from the real property assets”

An additional affidavit submitted by Simon Property Group’s Senior Vice President for Financial Reporting & Operations, Steven K. Broadwater, states that: “Information submitted to the SEC in 10-K Reports includes leased-fee property data and corporate business level revenue items not related to the fee simple value of the real property.” Furthermore, “[i]nformation reported to the SEC in 10-K Reports . . . does not include data directly related to fair cash value of the fee simple interest in the underlying real estate assets.”

For their part, the assessors provided no documents, affidavits, or factual support for their suppositions which the Board found were based on speculation and leased fee or enterprise valuation theories. The Board found that the information contained in responses to Section 38D requests need not be and likely are not the same as information in SEC communications and submissions or in the Trepp report because of differing purposes, uses, and requirements. Accordingly, the Board denied the assessors motion to dismiss under Section 38D.

The Board also found that the assessors’ belated request to withdraw from their adoption of the NOIs proposed by the appellants’ real estate valuation expert was moot because, as discussed in greater detail in its valuation findings below, the

Board found that the underlying components of Mr. Bouchard's NOIs were well-founded and representative of the market for the relevant period, and the Board, therefore, adopted his NOIs for its income-capitalization methodology. Moreover, if the Board were to rule on the assessors' request to withdraw, the Board noted that the request was submitted three and one-half months after the conclusion of the hearing and the close of evidence in these appeals. The assessors had ample opportunity to request such a withdrawal prior to and during trial. The Board further noted that the assessors' real estate valuation expert relied on his own independent development of NOIs in his income-capitalization methodology and his reported valuation conclusions were not bound to the adopted NOIs.

In addition, the Board found that the assessors' reliance on the Trepp report as justification for their withdrawal was misplaced. As the Board has discussed above, it found that the Trepp report was irrelevant, immaterial, and hearsay, and the assessors' attempted introduction of it into evidence lacked proper foundation, authentication, and identification of the sources of the data contained within it.

Finally, the Board declined to re-open the hearing on such inadequate grounds.

B. Valuation

Consistent with both real estate valuation experts' determinations, the Board found that the highest-and-best use of the subject property for the fiscal years at issue was its then-current use as a regional mall and that the preferred method for ascertaining the fair cash value of the subject property was through the application of a direct income-capitalization methodology. The Board adopted the NOIs reported by Mr. Bouchard, which were \$9,699,833 for fiscal year 2018 and \$9,503,625 for fiscal year 2019. The Board found that his revenues, vacancy and collection allowances, and expenses were reasonable, well-supported, and reflected the market. The Board further found that while these NOIs included a reserve for replacement expense, they did not include one for tenant improvements or leasing commissions. The Board also found that the NOIs did not include reimbursements for real estate taxes paid by the landlord or denote a clear obligation for the tenants to pay real estate taxes themselves.

As for capitalization rates, the Board found that Mr. Johnston's suggested rate of 8.0% for the fiscal years at issue was appropriately developed and supported by the underlying data and industry survey ranges in evidence, and correctly accounted for the Board's additional finding that, as Mr. Johnston proposed and for similar reasons, the Cape Cod Mall was a Class B mall throughout this period. In making this finding, the Board also

considered favorably Ms. Jenkins' credible testimony regarding the improving economic climate, development, and optimism in Barnstable during the relevant period.

The Board, however, did not reduce this capitalization rate, as Mr. Johnston had done in his reported methodology, because the Board found that the 8.0% capitalization rate reflected NOIs that had not been reduced by tenant improvements or leasing commissions, like the NOIs adopted here. The original NOIs that Mr. Johnston used in his methodology had been reduced by tenant improvement expenses and leasing commissions included in his management fee, thereby necessitating his capitalization rate's downward adjustment.

The Board also found that the NOIs that it adopted did not include reimbursements for real estate taxes that the landlord had paid or denote an obligation on the part of tenants to pay them directly. The Board found credible Mr. Bouchard's observation that the subject property was no longer leasing on a triple-net basis which the Board also found was indicative of the market. Accordingly, the Board loaded the 8.0% capitalization rate for the full corresponding tax factors, resulting in loaded capitalization rates of 9.326% for fiscal year 2018 and 9.376% for fiscal year 2019.

By dividing each fiscal year's loaded capitalization rate into the corresponding NOI, the Board calculated a value for the

subject property for the fiscal years at issue. These calculations produced values for the subject property of \$104,008,500 for fiscal year 2018 and \$101,361,188 for fiscal year 2019, which the Board then adjusted for personal property assessments and rounded to fair cash values of \$104,000,000 for fiscal year 2018 and \$101,000,000 for fiscal year 2019.

Based on these fair cash value determinations, the Board found and ruled that the subject property was overvalued for fiscal years 2018 and 2019 and, therefore, decided these appeals for the appellants, ordering abatements in the total amounts calculated in the table below.

<u>Fiscal Year</u>	<u>Assessment</u>	<u>Fair Cash Value</u>	<u>Over-Valuation</u>	<u>Tax Rate per \$1,000</u>	<u>Tax Abatement</u>
2018	\$112,861,000	\$104,000,000	\$ 8,861,000	\$13.26	\$117,496.86
2019	\$112,874,400	\$101,000,000	\$11,874,400	\$13.76	\$163,391.74

At the request of the appellants, the Board did not allocate the subject property's fair cash values and tax abatements among the nine parcels that comprise the subject property as is its ordinary practice but instead left any such allocations or assignments to the parties themselves.

OPINION

It is axiomatic that the ultimate question in real estate valuation appeals before the Board is the property's fee simple fair cash or market value. "The assessors must determine a fair

cash value for the property as a fee simple estate" *Olympia & York State St. Co. v. Assessors of Boston*, 428 Mass. 236, 247 (1998). The property's leased fee value and its mortgage indebtedness are irrelevant and immaterial to the ascertainment of that fee simple value. *Id.*; *Galli v. Assessors of Egremont*, Mass. ATB Findings of Fact and Reports 1980-79, 91 (citing *Lembo v. Framingham*, 330 Mass. 461, 463-464 (1953)). Moreover, the value of an enterprise of which the property may be a part is not the ultimate determination; it is the value of the property. G.L. c. 59, § 2 ("All [real property] situated within the commonwealth shall be subject to taxation."); G.L. c. 59, § 2A ("Real property for purposes of taxation shall include all land . . . and all buildings and other things thereon."); and G.L. c. 59, § 38 ("The assessors of each city and town shall . . . make a fair cash valuation of all the estate, real and personal, subject to taxation therein.").

With respect to the assessors' attempt to reargue its discovery and primary evidentiary exceptions in conjunction with its motion to dismiss, the Board found and ruled that the arguments were redundant and inapposite. The information sought was outside the relevant valuation and assessment dates, was for leased fee or enterprise valuations, and, accordingly, was not relevant or material to fee simple valuation. "In the matter of discovery, the board is accorded considerable discretion." *Olympia and York*, 428

Mass. at 244. The Board additionally found and ruled with respect to the Trepp report that it was hearsay, and the assessors' attempted introduction lacked a proper foundation and authentication. "[The] admission of evidence is left largely to the discretion of the board" *Id.* at 249. The general rule is that ordinary rules of evidence apply in Board proceedings, ***Boston Gas Co. v. Assessors of Boston***, 402 Mass. 346, 349 (1988), although "the Board reserves the right to make hearings and proceedings as informal as possible" 831 CMR 1.37.

With respect to the assessors' motion to dismiss the appeals for the appellants' supposed failure to comply with their reporting requirements under Section 38D, the Board denied the motion. In accordance with its underlying factual findings above, the Board determined that the appellants had complied with their reporting obligations and had not knowingly provided false information. The assessors did not show otherwise. The information sought under Section 38D must be "reasonably . . . required . . . to determine the actual fair cash valuation of such property." G.L. c. 59, § 38D. The Board found and ruled that the appellants met the requirement of providing such information.

With respect to the assessors' belated request to withdraw from their adoption of the NOIs proposed by the appellants' real estate valuation expert, the Board ruled that the request was moot because the Board found that the underlying components of Mr.

Bouchard's NOI were well-founded and representative of the market for the relevant period, and the Board, therefore, had adopted his NOIs in its income-capitalization methodology. Moreover, if it were to rule on the assessors' request to withdraw, the Board noted that the request was submitted three and one-half months after the conclusion of the hearing and the close of evidence in these appeals. The assessors had ample opportunity to request a withdrawal prior to and during trial. Furthermore, the assessors' reliance on the Trepp report as justification for their withdrawal was misplaced. As discussed above, it found that the Trepp report was irrelevant, immaterial, and hearsay, and the assessors' attempt to introduce it into evidence lacked proper foundation, authentication, and disclosure of the source of its data.

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Thus, a property must be valued at its "fair market value," which is 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). In determining fair market value, all uses to which the property was or could reasonably be adapted on the relevant assessment dates should be considered. ***Newton Girl Scout Council, Inc. v. Massachusetts Turnpike Authy.***, 335 Mass. 189, 193 (1956); ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989). The idea is to ascertain the

maximum value of the property for any legitimate and reasonable use. See *id.* If the property is particularly well-suited for a certain use that is not prohibited, then that use may be reflected in an estimate of its fair market value. See ***Colonial Acres, Inc. v. North Reading***, 3 Mass. App. Ct. 384, 386 (1975). On this basis, the Board ruled that the highest-and-best use of the subject property during the fiscal years at issue was its continued use as a regional mall. Both the assessors' and the appellants' real estate valuation experts valued the subject property on this premise.

Generally, real estate valuation experts, Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization; sales comparison; and cost. ***Correia v. New Bedford Redev. Authy.***, 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).

In these appeals, the Board, consistent with the view of the parties' real estate valuation experts, ruled that a direct capitalization of income methodology was the most appropriate way to estimate the value of the subject property. The use of this approach is advised 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, 701-702 (1972); **Assessors of Quincy v. Boston Consol. Gas Co.**, 309 Mass. 60, 66-67 (1941); and the subject property is income producing. *Id.* at 64-65. In these appeals, the Board relied exclusively on values determined from its income-capitalization methodology because the other approaches were not suitable, and an income methodology was one that buyers and sellers in the marketplace would use under similar circumstances. See **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 469 (1981); **New England Oyster House, Inc.**, 362 Mass. at 701-702.

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 451. 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 Authy.**, 5 Mass. App. Ct. 289, 293-94 (1977), *rev'd on other grounds*, 375 Mass. 360 (1978); **Library Services, Inc. v. Malden Redevelopment Authy.**, 9 Mass. App. Ct. 877, 878 (1980) (rescript); **Avco Manufacturing Corp. v. Assessors of Wilmington**, Mass. ATB Findings of Fact and Reports 1990-142, 166. After accounting for vacancy and rent losses, the NOI is obtained by deducting the landlord's appropriate market expenses. **Pepsi-Cola Bottling Co.**, 397 Mass. at 452-53. Generally, the selection of expenses is for the Board. *Id.* at 453.

In these appeals, the Board adopted Mr. Bouchard's NOIs. The Board found that his revenues, vacancy and collection allowances, and expenses were reasonable, well-supported, and reflected the market.

The capitalization rate chosen should consider the return necessary to attract investment capital. ***Taunton Redevelopment Assoc. v. Assessors of Taunton***, 393 Mass. 293, 295 (1984). Use of a full tax factor is appropriate when the rental income reflects the assumption that the landlord pays the taxes without any reimbursement from the tenants. See ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 609 (1984). "In the multiple tenancy situation, the landlord rather than the tenant generally pays the real estate taxes. When employing the capitalization of income approach to valuing property under the multiple tenancy model, it is appropriate to use a tax factor when capitalizing the stream of rents from the tenants." ***Id.***

Relying on these principles, as well as Mr. Bouchard's observation that the subject property was no longer operating under a triple-net leasing scenario, the underlying data, the Board's adoption of Mr. Bouchard's NOIs, and the Board's agreement with Mr. Johnston's classification of the Cape Cod Mall as a Class B mall, the Board accepted Mr. Johnston's suggested capitalization rate of 8.0% for the fiscal years at issue. The Board, however, did not reduce this capitalization rate, as Mr. Johnston had done

in his methodology, because the Board found that the 8.0% capitalization rate reflected net incomes that had not been reduced by tenant improvements or leasing commissions, similar to the net incomes adopted here. The original net incomes that Mr. Johnston used in his methodology had been reduced by tenant improvement expenses and leasing commissions included in his management fee necessitating his capitalization rate's downward adjustment.

The Board also found that the NOIs that it adopted did not include reimbursements for real estate taxes that the landlord had paid or denote an obligation on the part of tenants to pay it directly. Accordingly, the Board loaded the 8.0% capitalization rate for the full corresponding tax factors, resulting in loaded capitalization rates of 9.326% for fiscal year 2018 and 9.376% for fiscal year 2019. "The property is valued by first calculating gross rents from the tenants to the landlord, then deducting any expenses to the landlord to determine net income from the property, and finally applying a capitalization rate and a tax factor."

General Electric Co., 393 Mass. at 609. These calculations produced values for the subject property of \$104,008,500 for fiscal year 2018 and \$101,361,188 for fiscal year 2019, which the Board then adjusted for personal property assessments and rounded to fair cash values of \$104,000,000 for fiscal year 2018 and \$101,000,000 for fiscal year 2019.

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. 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.**, 383 Mass. at 473; **New England Oyster House, Inc.**, 362 Mass. at 702. In evaluating the evidence before it, the Board selected among the various elements of value and formed its own independent judgment of fair cash value. **General Electric Co.**, 393 Mass. at 605; **North American Philips Lighting Corp. v. Assessors of Lynn**, 392 Mass 296, 300 (1984). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." **Boston Consol. Gas Co.**, 309 Mass. at 72. "The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board." **Cummington School of Arts, Inc. v. Assessors of Cummington**, 373 Mass. 597, 605 (1977).

"The burden of proof is upon the [appellant] to make out its right as [a] matter of law to abatement of the tax." **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974) (quoting **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 55 (1922)). The taxpayer must show that it has complied with the

statutory prerequisites to its appeal, ***Cohen v. Assessors of Boston***, 344 Mass. 268, 271 (1962), and that the assessed valuation of its property was improper. See ***Foxboro Associates***, 385 Mass. at 691. The assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. ***Schlaiker***, 365 Mass. at 245. The Board found and ruled here that the appellants complied with the statutory prerequisites to their appeals and met their burden of proving that the subject property was overvalued for the fiscal years at issue.

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On this basis, the Board found and ruled that the fair cash value of the subject property was \$104,000,000 for fiscal year 2018 and \$101,000,000 for fiscal year 2019. Accordingly, the Board decided that the subject property was overvalued in the amounts of \$8,861,000 for fiscal year 2018 and \$11,874,400 for fiscal year 2019. The Board, therefore, decided these appeals for the appellants and granted abatements for fiscal years 2018 and 2019 in the respective amounts of \$117,496.86 and \$163,391.74.

THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

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