

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**TWENTY PARK PLAZA LLC
MASS LLC**

v.

**BOARD OF ASSESSORS
OF THE CITY OF BOSTON**

Docket Nos. F338766
F340123
F343125

Promulgated:
February 13, 2026

These are appeals filed under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the City of Boston (“appellee” or “assessors”) to abate taxes on a certain parcel of real estate located in Boston and assessed to Twenty Park Plaza LLC Mass LLC, (“Twenty Park Plaza” or “appellant”) for fiscal years 2019, 2020, and 2021 (“fiscal years at issue”).

Commissioner Elliott heard these appeals. Chairman DeFrancisco and Commissioners Good, Metzger, and Bernier joined him in the decision for the appellant for fiscal year 2019 and the decisions for the appellee for fiscal years 2020 and 2021.

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

Frank E. Ferruggia, Esq., for the appellant.

Ellen M. Hutchinson, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits, including a statement of agreed facts, admitted into evidence at the hearing of these appeals, the Appellate Tax Board (“Board”) made the following findings of fact.

I. Jurisdictional Information

On January 1, 2018, January 1, 2019, and January 1, 2020, the relevant dates of valuation for the fiscal years at issue, the appellant was the assessed owner of an improved parcel of land located at 20 Park Plaza in the City of Boston (“subject property”), the improvement consisting of an office/retail building containing 258,924 square feet of net rentable area (“subject building”). The subject building is situated on a 1.842-acre parcel of land that it shares with an adjacent property, the Park Plaza Hotel (“hotel”), in condominium- ownership style, with the subject building constituting one of the units and the hotel constituting the other.

Relevant assessment information for the subject property for each of the fiscal years at issue is set forth in the following table:

Fiscal Year	Assessed Value	Tax Rate	Total Tax¹
2019	\$49,521,000	\$25.00/1,000	\$1,250,382
2020	\$52,702,000	\$24.92/1,000	\$1,326,441
2021	\$55,644,700	\$24.55/1,000	\$1,379,713

¹ Inclusive of the Community Preservation Act Surcharge.

For each of the fiscal years at issue, the appellant timely paid the taxes due in accordance with G.L. c. 59, § 64. Additional relevant jurisdictional information for each of the fiscal years at issue is set forth in the following table:

Fiscal Year	Abatement Application Filed	Abatement Application Denied	Petition Filed
2019	1/31/19	4/18/19	7/5/19
2020	1/30/20	2/27/20	6/3/20
2021	1/28/21	3/31/21	6/29/21

Based on the foregoing facts, the Board found that it had jurisdiction to hear and decide these appeals.

II. Description of the Subject Property and Neighborhood

The subject building has fourteen stories and, as stipulated by the parties, contains total rentable area of about 258,924 square feet, including: approximately 225,644 square feet of office space; a 16,880-square-foot Executive Center on the fourth floor; 15,122 square feet of retail space; and 1,278 square feet of storage area. The subject building was constructed in 1927 and was in overall average condition as of the relevant valuation and assessment dates.

The foundation for the subject building is steel-reinforced concrete, and the building's frame is steel-reinforced concrete and masonry with brick exterior walls. The subject building has double-hung wood-sash windows with insulated glass on the upper levels and fixed-aluminum-sash-thermal-pane windows on the street level. The flat roof is built up tar and gravel surface over concrete deck. The subject building's flooring

consists of commercial-grade carpet, marble in the Executive Center lobby, terrazzo in the first-floor lobby, and painted concrete in the basement. The walls are generally painted plaster or gypsum board. The first and thirteenth floor lobbies have marble panels and the Executive Center lobby walls are marble and stained wood panels. Ceilings are primarily suspended acoustic tile with recessed fluorescent or incandescent lighting. The ceilings are plaster in the office lobbies and Executive Center, with recessed fluorescent or incandescent lighting. The basement also has plaster ceilings along with ceiling or wall-mounted fluorescent lighting.

The subject building's street-level floor includes the office building lobby with security desk and elevators as well as a variety of retail spaces, including a restaurant.

Floors two, three, and five through fourteen are office spaces occupied by multiple tenants on each floor except for a single tenant on the thirteenth floor. These floors typically include private offices and open workstations with access off of a central lobby.

The fourth floor consists of the 16,880-square-foot Executive Center which contains its own lobby and reception area, numerous small offices containing 250 to 500 square feet each, as well as support meeting space. Executive Center offices generally have superior quality finishes compared to the other offices located in the subject building, including raised-panel walls in the hallways, crown moldings, textured carpeting, and cherry wood finishes. The Executive Center is equipped with state-of-the-art technology, including videoconferencing, high-speed internet access, and in-house help desk support. The suite package also includes professional reception service, kitchenette with complimentary beverage service and use of fully equipped conference rooms. There is also a fitness center on the second floor.

All floors, including the Executive Center, have centrally located bathrooms for men and women. Each bathroom has standard quality fixtures with older ceramic tile floors and walls. The retail spaces and a number of executive suites have private bathrooms and showers.

The basement includes utility spaces and supply rooms, as well as storage spaces for the subject building tenants.

There are six elevators servicing floors one through fourteen plus one freight elevator connecting the basement to the fourteenth floor. Additional interior access is via two stairwells servicing floors one through fourteen and separate stairways connecting to the basement.

Heating and cooling systems are considered adequate for the subject building's age. Its electrical system is a 208/20 volt service with generators dating back to the 1940s and 1950s located throughout the building. There is an emergency generator on the roof. The subject building is equipped with high-speed internet access. There is a wet-pipe sprinkler system throughout the subject office building with hard-wired smoke detectors. There are also 24-hour security and video surveillance cameras on each floor.

The subject building's windows were replaced with insulated glass in the 1980s, but need re-caulking. The exterior walls also need some caulking and repointing. Many of the electrical generators are more than fifty years old.

The floor plates are approximately 18,000 square feet and with a considerable amount of exterior window space. A significant drawback to the subject building's floor plates is their triangular shape. This layout is inefficient and generally limits occupancy as the configuration makes sub-division difficult. Moreover, the small first floor lobby is also

characteristic of older, lower quality Class B office buildings and contributes to comparatively small tenants and possibly limited achievable rents for the space in comparison to other quality Class B buildings in the market area.

The subject property is situated at the corner of Park Plaza Street and Columbus Avenue adjoining the easterly side of the hotel and has 472 feet of frontage along Park Plaza Street, 580 feet of frontage along Columbus Avenue, and 255 feet of frontage along Arlington Street. These roads are two or three lane one-way streets in alternating directions and include curbs and sidewalks and traffic light intersections on Arlington Street at the corners of Columbus Avenue and Park Plaza Street. There are sidewalks surrounding the property.

The subject property is located in the Park Plaza and Bay Village areas of Boston at the easterly boundary of Back Bay, one block from the Boston Public Garden and Boston Common. Back Bay includes some of the most exclusive residential addresses in the city, including the Heritage on the Garden Condominiums and the Four Seasons Hotel and Condominiums. Back Bay also contains several prominent hotels, including the Colonnade, the Westin Copley Plaza, the Fairmont Copley Plaza, the Back Bay Hilton, the Marriott Copley, the Four Seasons, the Taj Boston, the Radisson Boston, and the Sheraton Boston. Located several blocks to the west of the subject property is Back Bay's main shopping destination, which encompasses four major locations – The Shops at the Prudential Center, Copley Place, Boylston Street, and Newbury Street. Many of the hotels and shopping destinations include high-end stores and restaurants. Additionally, there are numerous medical, educational, and cultural institutions located proximate to the subject property. These institutions include New England Law Boston, Emerson College,

Tufts New England Medical Center, as well as several theaters, including the Citi Performing Arts Center, the Shubert Theater, the Colonial Theater, The Charles Playhouse, the Majestic Theater, and the Wilbur Theater.

The subject building is serviced with city water and sewer, as well as natural gas and electricity. It is located within one block of the Arlington Street/Boylston Street Green Line MBTA station and within several blocks of the Orange Line and commuter rail stations as well as I-93 and the Mass. Turnpike (I-90) connections.

III. The Valuation Evidence: Introduction

Both parties presented their cases through the testimony and appraisal reports of certified general appraisers, both of whom were qualified by the Board as experts in commercial real estate valuation. The appellant presented its case through the testimony and appraisal report of Emmet T. Logue, while the assessors presented their case through the testimony and appraisal report of Stephen R. Foster. Both appraisers concluded that the highest and best use of the subject property was its existing use as a retail/office tower. Both appraisers ruled out the use of the cost-reproduction approach to value. That methodology is more appropriate to use when valuing special-purpose properties or properties that are relatively new, and the subject property has neither of those attributes. Both appraisers used the income-capitalization approach to value, while Mr. Foster also utilized the sales-comparison approach.

In the present appeals, the parties stipulated to the subject property's effective gross income for each of the fiscal years at issue. Effective gross income reflects a property's potential gross income as well as an appropriate vacancy and collection loss rate. Accordingly, with respect to the income-capitalization approach to value, the matters

for the Board's consideration were narrowed to appropriate operating expenses for the subject property along with the selection of an appropriate capitalization rate. These Findings of Fact and Report will therefore omit discussion of market rents and vacancy when discussing the parties' income-capitalization analyses.

IV. The Appellant's Valuation Evidence

For purposes of his appraisal, Mr. Logue used only the income-capitalization approach to value, as he believed the lack of timely arm's-length, fee-simple sales of comparable properties negated the reliability of a sales-comparison approach.

To ascertain the appropriate operating expenses for the subject property, Mr. Logue first reviewed the subject property's financial statements for the calendar years 2016 to 2019. He likewise reviewed the reported operating expenses for several similar office/retail properties located proximate to the subject property. Mr. Logue noted that the subject building's Executive Center had significantly higher per-square-foot expenses than the rest of the subject building due to the level of services and amenities that are provided for that area, and therefore he treated it separately when discussing operating expenses.

Mr. Logue considered the following categories of operating expenses to be appropriate: general building operating expenses; utilities; management fees; brokerage commissions; reserves for replacement; and tenant improvements.

With respect to the general building operating expenses, Mr. Logue noted that for areas other than the Executive Center, the subject building had general building operating expenses ranging from a low of \$15.14 per square foot in 2017 to a high of \$17.48 per square foot in 2016. He observed that this figure was higher than other Class B multi-

tenant office buildings in the subject property's vicinity. He opined that it was likely that some of the subject property's reported operating expenses were for costs that would ordinarily be capitalized and amortized over the expected useful life of the improvement. For both of these reasons, Mr. Logue concluded that it was appropriate to adopt a general building operating expense figure that was slightly lower than the subject building's actual reported expenses, and he therefore adopted estimates for this category as follows: \$15.00 per square foot for 2019; \$15.50 per square foot for fiscal year 2020; and \$16.00 per square foot for fiscal year 2021.

As for the Executive Center, Mr. Logue noted that it had reported general building operating expenses ranging from a low of \$37.00 per square foot for calendar year 2016 to a high of \$41.00 per square foot for calendar year 2018. Using this data, Mr. Logue concluded stabilized general building operating expenses for the Executive Center in the following amounts: \$40.00 per square foot for fiscal year 2019 and \$41.00 per square foot for fiscal years 2020 and 2021.

With respect to utilities, Mr. Logue consulted the subject building's reported utilities expenses and ultimately based his estimates for each of the fiscal years at issue on an average of the reported utilities for the two years preceding the relevant date of value and the year immediately following it. That formula resulted in utilities estimates as follows: \$645,000 for fiscal year 2019; \$635,000 for fiscal year 2020; and \$625,000 for fiscal year 2021.

For management fees, Mr. Logue considered the subject property's actual reported management expense rate of 7.0% to be far higher than market norms. He therefore adopted a rate of 3.5% of effective gross income for each of the fiscal years at

issue, based on data extracted from other, similar Class B office buildings in the subject property's area. Mr. Logue also adopted a replacement reserve estimate of \$0.75 per square foot for each of the fiscal years at issue, which he considered to be a reasonable estimate based on the subject building's age and condition. He applied that estimate to the subject building's entire square footage with the exception of the basement storage area.

As for brokerage commissions, Mr. Logue reviewed the subject property's reported amounts as contained in the annual financial reports for calendar years 2016 to 2019. For the subject building's office and retail areas, the reported amounts, on an annual basis, ranged from a low of \$0.70 per square foot in 2017 to a high of \$2.91 per square foot in 2019.² He additionally noted that general market rates for leasing commissions during the relevant time period were around \$1.50 per square foot per year. He concluded that it was reasonable to adopt that rate, but to apply it to only new leases, not renewals of existing leases. He assumed a 50% annual rollover probability, and therefore his final estimate for brokerage commissions was \$0.75 per square foot, on annual basis.

The last expense category considered by Mr. Logue was for tenant improvements. He again reviewed the actual reported figures for the subject building for calendar years 2016 through 2019. He noted that there was tremendous variability in the reported amounts during those years, but stabilized the amounts by considering the three-year average, which was \$1.35 per square foot, and a four-year average, which was \$1.79 per square foot. For purposes of estimating an appropriate tenant improvement estimate, Mr.

² Mr. Logue considered the subject building's comparatively high 2019 brokerage commission rate to be an anomaly as it reflected two leases to Emerson College for much more space than is typically leased to tenants.

Logue assumed that tenant improvements would only be granted for new leases, not renewals, and he further assumed a 40 to 50% tenant rollover rate. He then performed two calculations. In the first, he assumed that the tenant improvement allowance would be amortized over the lease term at a 5.0% annual interest rate, which resulted in a range of \$1.80 to \$2.25 per square foot per year for a tenant improvement allowance. He next assumed the same terms but on a straight-line basis without interest, which resulted in a range of \$1.60 to \$2.00 per square foot per year for a tenant improvement allowance. Mr. Logue ultimately selected \$1.75 per square foot per year for a tenant improvement allowance, which he applied to only the office areas of the subject building, as his market rent conclusions for the retail space reflected that they would be leased in as-is condition, without an allowance for tenant improvements.

After deducting all of his operating expense estimates from the effective gross income stipulated to by the parties, Mr. Logue arrived at net operating incomes for the subject property as follows: \$4,206,051 for fiscal year 2019; \$4,739,072 for fiscal year 2020; and \$4,979,186 for fiscal year 2021.

The final step in Mr. Logue's income-capitalization approach was the determination of an appropriate capitalization rate. He began by performing a band-of-investment analysis. He consulted industry publications, including *Fantini & Gorga* and *FHLB*, for appropriate factors to use in his analysis, which resulted in an indicated, rounded capitalization rate of 7.6%.

Mr. Logue next consulted the *PWC Real Estate Investor Survey* ("PWC Survey") for the fourth quarters of 2016 through 2020. The *PWC Survey* provides averages of and ranges of capitalization rates, by year, for institutional-grade and non-institutional grade

properties on both a national and local level. Mr. Logue included this information in his appraisal report, and pertinent parts are summarized in the following table:

PWC Survey Capitalization Rates

Year/First Quarter	Boston Average	Boston Range	National Average	National Range
2016	6.15%	4.0-8.0%	5.58%	3.5-7.5%
2017	6.27%	4.0-10.0%	5.55%	3.0-7.5%
2018	6.01%	4.0-9.5%	5.48%	3.0%-7.5%
2019	5.99%	4.0-9.5%	5.48%	3.0-7.5%
2020	5.96%	4.25-9.5%	5.45%	3.75-7.7%

Mr. Logue regarded the subject property as having institutional-grade attributes, such as its excellent location, along with non-institutional-grade attributes, including its age, level of functional obsolescence, and tenant mix. After taking all of this into consideration, Mr. Logue concluded a base capitalization rate of 7.5% for the subject property, which he used for each of the fiscal years at issue, and to which he added appropriate tax factors to reflect the owner’s obligation to pay real estate taxes, which resulted in final rates of 10.0% for fiscal year 2019; 9.92% for fiscal year 2020; and 9.95% for fiscal year 2021. After applying his loaded capitalization rates to his determined net operating incomes for each of the fiscal years at issue, Mr. Logue arrived at final, rounded fair cash values for the subject property as follows: \$41,800,000 for fiscal year 2019; \$46,600,000 for fiscal year 2020; and \$50,700,000 for fiscal year 2021.

V. The Assessors’ Valuation Evidence

Mr. Foster utilized both the income-capitalization and sales-comparison approaches to value. He began with the sales-comparison approach, for which he analyzed numerous sales of Class B office buildings in Boston that occurred between 2016 and 2020. In analyzing these transactions, Mr. Foster considered an array of factors

such as location and physical characteristics of the comparison properties; financing terms; market conditions, and property rights conveyed, among other criteria. He distilled his list down to those properties he considered most relevant, and information about each of his comparable sales is set forth in the following tables:

Assessors' Comparable Sales 2016-2017

Address	Sale Date	Sale Price \$/psf
13-19 Congress St.	8/16	\$288
45 School St.	7/17	\$360
294 Washington St.	3/16	\$408
50 Congress St.	5/17	\$439

Assessors' Comparable Sales 2017-2018

Address	Sale Date	Sale Price \$/psf
45 School St.	7/17	\$360
50 Congress St.	5/17	\$439
40 Court St.	2/18	\$492

Assessors' Comparable Sales 2018-2020

Address	Sale Date	Sale Price \$/psf
31 St. James Ave.	3/20	\$483
18 Tremont St.	3/19	\$484
40 Court St.	2/18	\$492

Because most of these sales involved the transfer of leased-fee interests, Mr. Foster highlighted the information regarding the sale of 13-19 Congress St. in August of 2016. That sale involved the transfer of adjacent, vacant buildings with a total of 50,432 square feet of building area, for a total of \$14,550,000, or \$288.50 per square foot, although it should be noted that it was in shell condition, thus inferior to the subject property.

Also contained within his sales-comparison analysis was a "Market Appreciation-Sale/Resale Analysis," in which he reviewed office buildings in Boston that had sold and then resold again within a condensed period of time, spanning from 2012 to 2019. He analyzed these sales to discern the percentage change in price, and his analysis showed that over this time period, prices had been appreciating at an average of 1.0 to 2.0% per month.

After reviewing all of this sales data, it was Mr. Foster's opinion that the property at 40 Court Street provided a very good indication of value for the subject property, as it was similar in age, construction, and layout to the subject property. That property sold for \$492 per square foot in February of 2018. He opined that the subject property should fall within, but at the lower end of, the per-square foot sale prices of these comparable properties. It was Mr. Foster's conclusion that the sale of 13-19 Congress Street indicated the absolute low end of that range, as it was in shell condition. After taking all of this information into consideration, including the market appreciation rates deduced from his analysis, Mr. Foster concluded per-square-foot sale prices for the subject property of \$300 for fiscal year 2019; \$325 per-square-foot for fiscal year 2020; and \$350 per-square-foot for fiscal year 2021. These produced final, rounded fair cash values for the subject

property of \$77,000,000 for fiscal year 2019; \$84,150,000 for fiscal year 2020; and \$90,600,000 for fiscal year 2021.

Mr. Foster then performed his income-capitalization analysis. To ascertain appropriate operating expenses for the subject property, Mr. Foster first reviewed the subject property's reported operating expenses for calendar years 2016 to 2020. He noted that they were relatively stable during that time period, ranging from a low of \$24.96 per square foot to a high of \$30.30 per square foot, including real estate taxes.

Mr. Foster next reviewed the reported operating expenses for similar Class B office buildings in the Boston area between 2017 and 2018. These properties had an overall average operating expense of \$16.28 per square foot, inclusive of real estate tax. He then reviewed similar information for calendar years 2019 and 2020, where reported operating expenses ranged from a low of \$12.11 per square foot to a high of \$22.41 per square foot, inclusive of real estate tax. Mr. Foster also reviewed information provided by *BOMA* for 2017, which indicated operating expenses ranging from \$9.89 to \$12.76 per square foot.

Mr. Foster noted that the subject property's expense categories were higher than market norms in several areas. In particular, he believed that its reported 7.0% management expense was excessive, and he concluded an estimate of 3.5% instead. He also opined that the expense figures reported for the Executive Center most likely include expenses related to business functions, rather than real estate. He similarly concluded that some of the reported expenses for repairs and maintenance were higher than market trends because they likely included expenses for capital improvements, and that the reported general administrative expenses were similarly excessive. Lastly, he excluded

leasing administration costs, because he opined that those functions would likely be handled by an outside broker.

After taking all of these observations into consideration and making adjustments, Mr. Foster concluded operating expenses for the subject property as follows: \$17.07 per square foot for fiscal year 2019; \$17.31 per square foot for fiscal year 2020; and \$17.54 per square foot for fiscal year 2021. After subtracting his concluded operating expense figures from the effective gross income figures stipulated by the parties, Mr. Foster derived net operating incomes for the subject property as follows: \$5,909,685 for fiscal year 2019; \$6,415,268 for fiscal year 2020; and \$6,922,083 for fiscal year 2021.³

The final step in Mr. Foster's income-capitalization analysis was the selection of an appropriate capitalization rate. He first examined a number of timely sales of office buildings in downtown Boston, which indicated a range of capitalization rates between 4.0% to 6.0%. He also considered industry information published in *CBRE Econometric Advisors*, which likewise indicated rates ranging from 4.0 to 6.0%. He additionally consulted the rates reported in the *PWC Survey* for the first quarters of 2016-2020, see page 15, *supra*. Lastly, he performed a band-of-investment analysis, which resulted in an indicated capitalization rate of 5.5%. After considering all of these sources, Mr. Foster ultimately selected a capitalization rate of 5.0% for the subject property. He used this base capitalization rate for each of the fiscal years at issue, but added appropriate tax factors for each year, such that his final capitalization rates were: 7.5% for fiscal year 2019; 7.49% for fiscal year 2020; and 7.46% for fiscal year 2021.

³ Mr. Foster did take into consideration expenses for tenant improvements, leasing commissions, and replacement reserves, however he chose to reflect those expenses in the selection of a capitalization rate rather than as a separate line-item.

After applying these loaded capitalization rates to his determined net operating incomes, Mr. Foster's final, rounded fair cash values for the subject property as determined through his income-capitalization approach were: \$78,800,000 for fiscal year 2019; \$85,700,000 for fiscal year 2020; and \$92,800,000 for fiscal year 2021. As Mr. Foster considered the income-capitalization approach to be the most reliable method of determining the subject property's fair cash value, these estimates were also his ultimate opinions of the subject property's fair cash value for the fiscal years at issue.

VI. The Board's Conclusions

In the present appeals, the Board, like both parties' valuation experts, found that the subject property's highest and best use was its continued use as an office/retail building. The Board also agreed with both parties' valuation experts that the most reliable method for determining the subject property's fair cash value was the income-capitalization approach, as this methodology is most frequently used to value income-producing properties like the subject property.

Because the parties stipulated to the effective gross incomes for each of the fiscal years at issue, as well as the net rentable area of the subject building, the matters for the Board's consideration were essentially narrowed down to operating expenses and the selection of a capitalization rate.

With respect to operating expense, the Board adopted the expenses propounded by Mr. Logue, as it found these to be supported by both the market and the subject building's operational history. The Board found that Mr. Foster's operating expense estimates were simply too low in light of the record evidence, which revealed that the

subject building has many age and design-related functional and operational challenges, translating to higher-than-typical operating expenses. After deducting these expenses from the effective gross incomes stipulated to by the parties, the Board determined net operating incomes for the subject property as follows: \$4,206,051 for fiscal year 2019; \$4,739,072 for fiscal year 2020; and \$4,979,186 for fiscal year 2021.

The remaining matter for the Board's consideration was the selection of an appropriate capitalization rate. After reviewing the evidence, the Board rejected the rates selected by Mr. Logue as being too high and those proposed by Mr. Foster as being too low. The Board concluded that the subject building's operational and functional challenges, as well as its unique status as part of a condominium, would likely be factors considered by investors. At the same time, the Board concluded that the subject property's premier location cannot be overlooked. The Board therefore adopted an overall capitalization rate of 8.75%, to better reflect the totality of the subject property's economic and physical attributes. Applying this overall capitalization rate to its determined net operating incomes resulted in final, rounded fair cash values for the subject property as follows: \$47,780,000 for fiscal year 2019; \$53,200,000 for fiscal year 2020; and \$57,650,000 for fiscal year 2021. Because the Board's concluded fair cash value was less than the subject property's assessed value for fiscal year 2019, the Board issued a decision for the appellant for Docket No. F338766 and granted an abatement in the amount of \$43,960.25, inclusive of the Community Preservation Act Surcharge. Because the Board's concluded fair cash values for fiscal years 2020 and 2021 exceeded the subject property's assessed values, the Board issued decisions for the appellee in Docket Nos. F340123 and F343125.

OPINION

Assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). 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). The goal is to ascertain the maximum value of the property for any legitimate and reasonable use. ***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. ***Colonial Acres, Inc. v. North Reading***, 3 Mass. App. Ct. 384, 386 (1975). “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 (citing Appraisal Institute, *The Appraisal of Real Estate* 315-16 (12th ed., 2001)), *aff’d*, 62 Mass. App. Ct. 428 (2004). Here, the Board agreed with both parties’ valuation experts that the subject property’s existing use represented “[t]he reasonably

probable and legal use of . . . improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value.” Appraisal Institute, *The Appraisal of Real Estate* 277-78 (13th ed., 2008).

Generally, real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. ***Correia v. New Bedford Redevelopment Authority***, 375 Mass. 360, 362 (1978). “The [B]oard 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, like the parties’ valuation experts, found that the cost-reproduction approach was not a suitable method to value the subject property, as it was neither a newer property nor a special-purpose property. See, e.g., ***Digital 55 Middlesex LLC v. Assessors of Billerica***, Mass. ATB Findings of Fact and Reports 2017-415, 449.

Although Mr. Foster performed a sales-comparison analysis, he ultimately gave primary weight to his income-capitalization approach, which was also the valuation methodology selected by Mr. Logue. The Board, too, concluded that the income-capitalization approach was the most reliable method of determining the subject property’s value, as it is a method frequently used to value income-producing properties. See ***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 Consolidated Gas Co.***, 309 Mass. 60, 67 (1941).

“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 a 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 451.

In the present appeals, the parties stipulated to the subject property’s effective gross income for each of the fiscal years at issue in the following amounts: \$10,252,821 for fiscal year 2019; \$10,876,966 for fiscal year 2020; and \$11,393,103 for fiscal year 2021. The parties also stipulated to the subject building’s net rentable areas, such that the matters for the Board’s consideration were narrowed to operating expenses and the selection of a capitalization rate.

The Board adopted the operating expenses propounded by Mr. Logue, as they better reflected both market data as well as the subject building’s unique physical characteristics, including its age. Operating 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. v. Assessors of Taunton***, 393 Mass. 295 (1984). In the present appeals, the Board selected from among the

capitalization rates suggested by both parties' valuation experts, but ultimately formed its own, independent capitalization rate, which it felt better reflected all of the physical and economic attributes of the subject property.

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); ***Assessors of Lynnfield***, 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***, 309 Mass. at 72. See also ***New Boston Garden Corp.***, 383 Mass. at 473.

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After applying its concluded capitalization rates to its determined net operating incomes, the Board's income-capitalization approach resulted in final, rounded fair cash values for the subject property as follows: \$47,780,000 for fiscal year 2019; \$53,200,000 for fiscal year 2020; and \$57,650,000 for fiscal year 2021. Because the Board's concluded fair cash value was less than the subject property's assessed value for fiscal year 2019, the Board issued a decision for the appellant for Docket No. F338766 and granted an abatement in the amount of \$43,960.25, inclusive of the Community Preservation Act Surcharge. Because the Board's concluded fair cash values for fiscal years 2020 and 2021 exceeded the subject property's assessed values, the Board issued decisions for the appellee in Docket Nos. F340123 and F343125.

THE APPELLATE TAX BOARD

By: 
Mark J. DeFrancisco, Chairman

A true copy,

Attest: 
Clerk of the Board