COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ARAMARK UNIFORM & CAREER APPAREL, LLC	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF NORWELL**

Docket No. F309631

Promulgated:
March 12, 2014

This is an appeal filed under the formal procedure, pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Norwell ("appellee" or "assessors") to abate taxes on certain real estate in Norwell owned by and assessed to Aramark Uniform & Career Apparel, LLC ("Aramark" or "appellant")[1] under G.L. c. 59, §§ 11 and 38, for fiscal year 2010 ("fiscal year at issue").

Commissioner Good heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Chmielinski joined her in the decision for the appellant.

These findings of fact and report are made pursuant to the Appellate Tax Board ("Board")'s own motion under G.L. c. 58A, § 13 and 831 CMR 1.32. The Board's decision is promulgated simultaneously herewith.

David G. Saliba, Esq. for the appellant.

James F. Sullivan, Esq. for the appellee.

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[1] The owner of record of the subject property on January 1, 2009 was Wearguard Acquisition Corp., but the appeal was brought by its successor by merger, Aramark Uniform & Career Apparel, LLC.

FINDINGS OF FACT AND REPORT

I. Introduction and Jurisdiction

On January 1, 2009, Aramark was the assessed owner of a 25.4-acre parcel of land located at 141 Longwater Drive which was improved with a 270,316 square-foot mixed-use commercial building and a paved parking area containing 784 parking spaces ("subject property"). For the fiscal year at issue, the assessors valued the subject property at $24,136,800 and assessed a tax thereon, at the rate of $12.75 per thousand, in the total amount of $307,744.20.[2]

The Collector of Taxes for the Town of Norwell mailed the fiscal year 2010 actual tax bills on December 31, 2009, and the appellant paid the tax due without incurring interest. On January 29, 2010, the appellant timely filed an Application for Abatement with the assessors. The appellant's Application for Abatement was deemed denied on April 29, 2010, and the assessors informed the appellant of the deemed denial by notice dated May 3, 2010. The appellant seasonably filed its petition with the Board in an envelope postmarked July 29, 2010, which the Board received on July 30, 2010.[3] On the basis of these facts, the

[2] A Community Preservation Act ("CPA") surcharge in the amount of $9,232.33 was added to the tax, for a total amount due of $316,976.53.

[3] Where, as here, the Board receives a petition after the three-month due date, the date of postmark is deemed to be the date of filing. G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 & 65.

Board found and ruled that it had jurisdiction to hear and decide this appeal.

II. The Subject Property

The subject building was originally constructed in 1981 as a one- and two-story facility with retail, office, manufacturing, and warehouse space. It was then enlarged through a series of additions, beginning with the addition of a two-story industrial space in 1984. In 1987, a two-story office addition was constructed adjacent to the existing office space in the subject building. Finally, in 1993, an approximately 50,000 square-foot second-story industrial space was constructed on top of the building's existing industrial space. As of the relevant date of valuation for the fiscal year at issue, the subject building consisted of 110,287 square feet of office space, 150,655 square feet of manufacturing/warehouse space, and 9,374 square feet of retail space,[4] for a total area of 270,316 square feet.

Building components are primarily pre-fabricated concrete panels over a partial steel-framed structure and a partial slab foundation with footings. The floors are concrete covered with tile or carpet, while the roof is a rubber membrane with stone ballast. There are three elevators in the subject building, including one freight elevator, as well as nine loading docks.

[4] See footnote 5, *infra*.

The subject property is situated on a 25.4-acre parcel of land located within an industrial/office park known as the Assinippi Park ("park"). It is located in a "Business C" zoning district, and there was no indication in the record that the manufacturing, office, retail, and other industrial uses to which Aramark put the property were non-conforming uses. Access to this park is primarily from Route 3. In addition, it is approximately 1.1 miles from Route 228. The subject property is also improved with a paved parking lot accommodating 784 cars.

III. The Appellant's Case-in-Chief

The appellant presented its case-in-chief through the testimony of two witnesses and the submission of several documentary exhibits.

A. Scott Jamieson

The appellant's first witness was Scott Jamieson, a commercial real estate broker with 20 years of experience in real estate transactions. In 2009, while he was employed at the firm Jones Lang LaSalle ("JLL"), Mr. Jamieson was engaged by Aramark to assist with the marketing of the subject property for sale. His testimony, which the Board found to be credible, primarily concerned the marketing and sale of the subject property during 2009 and 2010.

Mr. Jamieson testified that he was contacted in early 2009 by Aramark, which wished to sell the subject building.

Mr. Jamieson testified that JLL began marketing the subject property in the spring of 2009, but had difficulty attracting interest because of the subject building's "challenging" layout. Mr. Jamieson explained that the ceiling heights in the manufacturing/warehouse space were, at most, 12 feet, while current standards for warehouse space require ceiling heights between 16 and 28 feet. Thus, Mr. Jamieson explained, that space was not suitable for warehouse use and was, practically speaking, limited to manufacturing uses. Mr. Jamieson testified that, to enhance the appeal of the subject property, they considered removing the second-story of industrial space to create a continuous block of space with greater ceiling heights, but that idea was dropped because the resulting reduction in square footage reduced the potential asking price by too much.

Mr. Jamieson stated that the potential purchasers to whom he marketed the subject property indicated that they did not believe they could re-adapt or occupy the building in an efficient manner because of its "unique blend of manufacturing and office space."[5] Although Aramark had hoped to achieve a sale price of $15 million, the subject property ultimately sold for $12,466,000 on April 16, 2010 after nine months of market exposure, which Mr. Jamieson testified was a slightly longer

[5] Mr. Jamieson explained that the 9,374 square feet of retail space would likely be used by a subsequent owner or tenant as office space because the subject property was not a true retail location. Thus, he considered the subject building as having only office and manufacturing space.

period of time than usual for a property like the subject property to be on the market. In conjunction with the sale, Aramark leased back 60,000 square feet of office space for a three-year term at $18.00 per square foot on a gross basis. Mr. Jamieson testified that he believed that the terms of the lease were "fair."

B. Donald P. Bouchard

The appellant's second witness was Donald P. Bouchard, a licensed real estate appraiser whom the Board qualified as an expert in real estate valuation without objection. Mr. Bouchard was retained by the appellant to conduct an appraisal of the subject property and his self-contained appraisal report was entered into evidence.

In preparation for his appraisal, Mr. Bouchard personally inspected the subject property. Like Mr. Jamieson, Mr. Bouchard considered the layout of the subject property to be challenging. He agreed with Mr. Jamieson's conclusion that, because of its maximum 12-foot ceiling heights, the industrial space at the subject property was best suited to manufacturing uses, rather than warehouse or distribution-type uses. In addition, Mr. Bouchard noted that approximately 18% of the subject building, or 48,000 square feet, had ceiling heights of approximately eight feet, which rendered that space essentially useless in Mr. Bouchard's opinion. Further, Mr. Bouchard noted that with 44% office space, the subject building was an anomaly in the market, where most so-called "flex" buildings, like the subject building, have a significantly smaller office component. It was Mr. Bouchard's opinion that the amount of office space at the subject building was detrimental to its appeal because typical users of such buildings do not require that much office space. Mr. Bouchard stated that Aramark appeared to have added on to the subject building over the years on an as-needed basis and without regard to how the additions affected its potential resale value.

Mr. Bouchard began his appraisal by discussing the economic outlook during the relevant time period. He noted that the upheaval in the banking and mortgage industries that occurred in 2008 resulted in increased unemployment and negatively impacted sales, leasing, and loan activity, both nationally and in the subject property's local vicinity. For example, industry reports indicated that industrial availability in the Boston area increased from the third quarter of 2008 to the fourth quarter and continued to increase in the first two quarters of 2009, while asking rents for flex buildings in the Boston area declined. Mr. Bouchard further noted that the market data indicated that vacancy rates were generally higher for larger buildings, like the subject building.

After taking the physical attributes of the subject property into consideration, as well as the overall economic trends during the relevant time period, Mr. Bouchard concluded that, despite its challenged layout and the declining market, the subject property was still more valuable as improved than as vacant. Therefore, Mr. Bouchard concluded that its highest and best use was its continued "as is" use, that is, as a flex-style industrial building with office and manufacturing space, occupied by a single tenant.

Mr. Bouchard considered the three usual approaches to value: the cost-reproduction approach, the sales-comparison approach, and the income-capitalization approach. Mr. Bouchard did not use the cost-reproduction approach, which is more appropriate for newer buildings, because of the age of the subject building, and also because he felt that there was significant functional and external obsolescence impacting the subject building. Mr. Bouchard considered both the sales-comparison and income-capitalization approaches to be useful methodologies to value the subject property, and he therefore valued the subject property using both approaches.

1. Mr. Bouchard's Sales-Comparison Analysis

For his sales-comparison analysis, Mr. Bouchard reviewed sales of eight large industrial buildings which had manufacturing, warehouse, or distribution uses as well as office space. Mr. Bouchard testified that the market for such buildings was migrating out toward the Route 495 belt, and his sales data supported that assertion. The following table summarizes relevant information about each of those sales.

Mr. Bouchard's Sales-Comparison Properties

Sale No.	Address	Sale Date	Sale Price	Sq. Ft.	$/Sq. Ft.	% Office
1	55 Cabot Blvd., Mansfield	1/6/09	$9,075,000	118,400	76.65	19.0
2	30 Miles Standish Dr., Taunton	10/1/08	$7,550,000	166,548	45.33	13.0
3	35 United Dr., W. Bridgewater	4/15/09	$23,000,000	618,000	37.22	21.0
4	11 Forbes Rd., Northborough	5/27/10	$17,500,000	211,600	82.70	24.0
5	300 Jubilee Dr., Peabody	12/28/09	$8,000,000	163,800	48.84	30.0
6	555 Main St., Hudson	3/18/08	$5,250,000	107,000	49.07	11.5
7	140 Depot St., Bellingham	7/31/09	$18,950,000	238,370	79.50	6.3
8	260 Kenneth Welch Dr., Lakeville	8/6/08	$7,750,000	104,723	74.00	2.0

Mr. Bouchard ultimately considered only four of these sales to be similar enough to the subject property to provide a reliable indication of its fair cash value, and those were sale numbers one, two, four, and six.

Those four properties sold for values ranging from $45.33 to $82.70 per square foot. Mr. Bouchard considered all four of them to be in superior physical condition than the subject property, and he made negative adjustments ranging from 10 to 15% to account for this discrepancy. Mr. Bouchard additionally considered all but one of the properties to be superior in location to the subject property, so he made negative adjustments to those sale prices ranging from 10 to 15%, while he made a positive adjustment of 10% to the sale price of sale number six, which he believed to be inferior in location to the subject property.

Mr. Bouchard made additional minor adjustments to the sale prices of sale numbers four and six, which occurred in mid-2010 and early 2008, respectively, to account for differences in market conditions. In addition, according to Mr. Bouchard, sale number four involved a leased-fee sale, as the building was leased in its entirety by Genzyme, an excellent credit tenant. Mr. Bouchard therefore made a negative adjustment of 20% to sale number four’s sale price to derive an indication of its fee-simple value.

After making all of these adjustments, Mr. Bouchard arrived at per-square-foot sale values ranging from $40.80 to $53.65, which, when applied to the subject building, yielded sale prices ranging from $11,028,636 to $14,503,230. Based on this data, Mr. Bouchard determined a rounded fair cash value of $13,000,000 for the subject property using the sales-comparison approach.

2. Mr. Bouchard’s Income-Capitalization Analysis

Mr. Bouchard then discussed his income-capitalization analysis. To begin this analysis, Mr. Bouchard reviewed 12 leases involving large industrial flex-style buildings, that is, buildings with either manufacturing, warehouse, or distribution space in addition to office space. The following table includes relevant information from those 12 leases.[6]

Mr. Bouchard's Comparable Leases

No.	Address	Lease Date	Square Feet	% Office	Rent $/SF
1	11 Forbes Rd., Northborough	6/1/09	211,000	24.0	5.60
2	100 Campanelli Pkwy., Stoughton	9/1/06	200,200	8.4	4.00
3	675 Canton St., Norwood	8/1/08	103,028	5.0	5.80
4	675 Canton St., Norwood	6/1/05	95,868	8.0	6.00
5	675 Canton St., Norwood	1/15/04	90,130	6.0	5.75
6	9 Forge Pk., Franklin	11/1/08	81,293	35.0	8.50
7	15 Forge Pk., Franklin	1/1/08	65,706	10.0	6.95
8	130 Constitution Dr., Franklin	8/27/08	59,970	15.0	6.00
9	179 Campanelli Pkwy., Stoughton	9/30/07	55,000	18.2	5.20
10	675 Canton St., Norwood	9/1/07	32,000	7.0	6.25
11	675 Canton, St., Norwood	12/21/07	24,000	12.0	6.50
12	12 Campanelli Pkwy., Stoughton	5/1/07	18,847	5.0	4.95

Mr. Bouchard placed the greatest weight on lease numbers one, six, seven, and eight, which he considered to be most comparable to the subject building because they had more than nominal percentages of office space.[7]

Mr. Bouchard then made adjustments to account for their differences from the subject property. He considered lease

[6] All leases were triple-net ("NNN") leases, and allowances for tenant improvements ("TI's") were $1.00 per square foot or otherwise minimal with the exception of lease numbers six and seven, which had TI allowances of $17.00 per square foot and $10.00 per square foot, respectively.

[7] Mr. Bouchard did not comment on why he declined to place weight on lease number 11, which had 12% office space.

number one to be superior to the subject property because it had greater ceiling heights, and thus more functional utility, and he therefore adjusted that rent from $5.60 per square foot to $5.00 per square foot. Similarly, Mr. Bouchard made a downward adjustment in rent for lease number six, which, in addition to having greater ceiling heights than the subject, was located along the more desirable Route 495 belt in Franklin. Further, it was smaller in size than the subject building, and thus likely to rent for a slightly higher per-square-foot rate. He adjusted the rent for lease number six from $8.50 per square foot to $5.95 per square foot.

Lease numbers seven and eight were likewise located in Franklin, and superior to the subject property according to Mr. Bouchard because they had greater ceiling heights and smaller percentages of office space, and thus, better functional utility. Mr. Bouchard therefore adjusted the rent for lease number seven from $6.95 per square foot to $4.87 per square foot and he adjusted the rent for lease number eight from $6.00 per square foot to $4.50 per square foot.

Finally, lease number nine was a building with 18% office space and warehouse space with 23-foot ceilings. Mr. Bouchard adjusted the rent for lease number nine downward from $5.20 per square foot to $4.00 per square foot to account for its superior qualities versus the subject property. After adjustment, Mr. Bouchard's five most comparable rents ranged from $4.00 per square foot to $5.95 per square foot.

Mr. Bouchard took two approaches to selecting a market rent for the subject property. First, he attempted to distill a single rental rate for the whole building to a single occupant, using his five adjusted rents.[8] Second, Mr. Bouchard attempted to establish a market rent for each type of space within the subject building, which produced a weighted rent of $5.42 as follows:

Component	**Area (SF)**	**Market Rent**	**Totals**
Office Space	**119,661**	**$8.00**	**$957,288**
Industrial	**102,655**	**$4.00**	**$410,620**
Substandard Industrial	**48,000**	**$2.00**	**$96,000**
Totals	**270,316**		**$1,463,908**

Weighted Rent: ($1,463,908/270,316= $5.42)

From the range of rates indicated by this data, Mr. Bouchard ultimately selected a market rent for the subject property of $5.35 per square foot.

The next step in Mr. Bouchard's valuation analysis was the determination of an appropriate vacancy rate and collection allowance. Although the subject property, as an owner-occupied property, had no vacancy historically, Mr. Bouchard considered it appropriate to consult industry sources for applicable

[8] Although he did not include the calculations in his appraisal report, dividing the total of Mr. Bouchard's five adjusted rents by five resulted in a rent of $4.86 per square foot.

vacancy rates. The market data reviewed by Mr. Bouchard, including CoStar statistics, indicated that the vacancy rate for "flex" buildings at the end of 2008 was 13.5%, increasing to 14.0% over the first quarter of 2009. In contrast, Mr. Bouchard noted, high bay warehouse facilities had a lower vacancy rate of 10.7% at the end of 2008, increasing to 11.0% at the end of the first quarter of 2009. According to Mr. Bouchard, the general industrial vacancy rate in the region was 11.8% at the end of the first quarter of 2009, but that figure increased to as much as 15.7% for larger industrial buildings, like the subject property.

After taking this data into consideration, and bearing in mind the large size of the subject building as well as the functional obsolescence created, in Mr. Bouchard's opinion, by its layout, he concluded that an appropriate vacancy rate for the subject property as of January 1, 2009 was 12.5%.

Mr. Bouchard next considered appropriate operating expenses for the subject property. The market data indicated a trend for net leases in properties like the subject property, and Mr. Bouchard therefore assumed a net lease for purposes of his analysis. Because tenants are responsible for most of the expenses under a net lease, expenses incurred by the owner are minimal. Nevertheless, Mr. Bouchard noted, even in net-lease situations, landlords still incur management and administrative expenses in addition to miscellaneous and unexpected expenses. After discussions with his company's property management personnel, Mr. Bouchard learned that while management fees are often as high as 5% of gross revenue, management fees for net-lease situations are generally much lower. Mr. Bouchard testified that for net leases, reasonable management fees ranged from 2.0 to 3.0%, and he therefore used management fees of 2.5% of gross revenue for purposes of his analysis.[9] In addition, Mr. Bouchard allocated 1% of gross income to account for miscellaneous and unexpected expenses, which he believed a prudent owner would do.

The final step in Mr. Bouchard's income-capitalization analysis was the selection of an appropriate capitalization rate. Mr. Bouchard employed several approaches to assist in his determination. First, he was able to extract capitalization rates from the sale terms of three, large industrial buildings which took place between August of 2008 and May of 2010. The rates that he extracted from those sales ranged from 6.65 to 8.3%. Second, Mr. Bouchard consulted industry surveys, such as those published by *PriceWaterhouseCoopers,* which indicated rates

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[9] Mr. Bouchard's appraisal report indicated that he selected a management fee of 2% of gross revenues, but in his testimony, and on his pro forma, he adopted a fee of 2.5%. This appears to be the reason why Exhibit 4, an *errata,* was introduced by the appellant to correct what had appeared to be a mathematical error contained on Mr. Bouchard's original *pro forma.* In fact, the calculations on the original *pro forma* reflected a management fee of 2%, as Mr. Bouchard had originally concluded in his appraisal.

ranging from 5.5 to 9.25% for flex/R&D industrial properties as of January 1, 2009.

Third, Mr. Bouchard employed the band-of-investment methodology to determine an appropriate capitalization rate. Because of the aforementioned problems with the capital markets at the relevant time period, he used a 60% loan-to-value ratio. Mr. Bouchard stated that 7-year treasuries stood at 1.98% as of January 2009, while "spreads" ranged from 375 to 600 basis points, according to various market sources. Further, he assumed a 25-year amortization period. Therefore, using a 1.98%, 7-year term and a 400-basis point spread, Mr. Bouchard concluded that a fixed-rate loan percentage of 5.98%, which he then rounded to 6.0%, was reasonable.

For the equity component of his band-of-investment analysis, Mr. Bouchard consulted rates contained in the industry publication *Realty Rates.* According to that publication, average equity dividend rates for the first quarter of 2009 ranged from 11.09 to 11.74% for property categories including warehouse/distribution, R&D/flex, and manufacturing. Mr. Bouchard selected a 12% equity dividend rate after taking into consideration market conditions as well as the physical characteristics of the subject property. Using these mortgage and equity components in his band-of-investment calculation resulted in a rounded capitalization rate of 9.44%.

After considering the capitalization rates indicated by these various approaches and sources, as well as the market conditions, location, and other physical and functional attributes of the subject property, Mr. Bouchard ultimately selected a capitalization rate of 9.25%.

Applying all of these components in an income-capitalization analysis, Mr. Bouchard determined a rounded fair cash value of $13,200,000 for the subject property. His income-capitalization methodology is reproduced below.

Mr. Bouchard's Income-Capitalization Methodology

Gross Building Area	**(sf)**	**270,316**
Market Rent PSF	**($)**	**5.35**
Gross Potential Revenue	**($)**	**1,446,191**
Vacancy & Collection Loss Allowance @ 12.5%	**($)**	**(180,774)**
Effective Gross Revenue	**($)**	**1,265,417**
Management @ 2.5%	**($)**	**(31,635)**
Misc. @ 1.0%	**($)**	**(12,654)**
Net Operating Income	**($)**	**1,221,127**
Overall Cap. Rate		**9.25%**
Indicated Market Value	**($)**	**13,201,375**
Rounded	**($)**	**13,200,000**

After reconciling the values derived through both his sales-comparison and income-capitalization analyses, Mr. Bouchard's final opinion of value for the subject property as of January 1, 2009 was $13,100,000.

IV. The Appellee's Case

The assessors did not call any witnesses or introduce valuation evidence into the record but instead rested on the subject property's assessed value. The assessors did, however, cross-examine the appellant's witnesses and, in addition, introduced the relevant jurisdictional documents, as well as photographs of several of Mr. Bouchard's lease and sales-comparison properties along with a Notice of Lease dated January 22, 2007 relating to one of those properties.

V. The Board's Subsidiary Findings and Ultimate Conclusions

On the basis of the evidence of record, the Board found that the highest and best use of the subject property was its use by a single tenant as a flex-style industrial building with office and manufacturing space. This use was essentially the subject property's historical use and the highest and best use advocated by the appellant's valuation expert, Mr. Bouchard. In making this finding, the Board credited the documentary evidence of record as well as the testimony of Mr. Jamieson and Mr. Bouchard, who both stated that, due to the low ceiling heights, the subject building's industrial space was best suited to manufacturing uses, rather than warehouse or distribution uses. Further, the Board agreed with Mr. Jamieson and Mr. Bouchard's conclusions that the small retail area that had been used as a factory store by Aramark would most likely be converted for office use by a subsequent tenant.

Although the subject building is larger than most in the market and may well be suited for use by multiple tenants, there was no evidence in the record as to the cost of converting the subject building for use by multiple tenants, and the Board therefore concluded, on this record, that the highest and best use of the subject property as of January 1, 2009 was as a flex-style industrial building with office and manufacturing components, for occupancy by a single tenant.

In selecting a valuation methodology, the Board ruled out the cost-reproduction approach because it is more appropriate for relatively new or special-purpose properties, and the subject building is neither.

The appellant's valuation witness, Mr. Bouchard, conducted both sales-comparison and income-capitalization analyses, ultimately giving slightly more weight to his income-capitalization approach. The income-capitalization approach is an appropriate method to use when the market fails to provide adequately comparable sales, as the Board found to be the case here.

Specifically, the Board found that most of Mr. Bouchard's sales-comparison properties were not sufficiently comparable to the subject property to provide a reliable indication of its fair cash value. Mr. Bouchard testified that the market for buildings like the subject property was becoming more concentrated in the Route 495 belt, and his sales-comparison properties, which were primarily located on the Route 495 belt, reflected that trend. The subject property, however, is located off of Route 3 in Norwell, closer to the Route 128 South market than the Route 495 belt. Further, of the eight sales used by Mr. Bouchard, only three occurred during calendar year 2008, while the remainder occurred in 2009 and 2010, a period during which, according to Mr. Bouchard's own report, the market was in decline. The Board found that these locational and temporal differences diminished the probative worth of these sales.

Moreover, of the buildings selected for comparison by Mr. Bouchard, only sale numbers four and seven were in the subject building's 200,000-plus square-foot size range, while the rest were nearly half the size of the subject property, or, in the case of sale number three, more than double its size. The Board found that these differences in size would require significant adjustment to make the comparison properties comparable to the subject property. Finally, although they were closer in size to the subject property, sale numbers four and seven were not useful for determining the fee-simple value of the subject property because they were both leased-fee transactions.[10] As there were simply too many significant differences between his selected comparison properties and the subject property, the Board declined to give weight to Mr. Bouchard's sales-comparison analysis.

In addition, the Board declined to place weight on the actual sale of the subject property, which occurred on April 16, 2010. As an initial matter, the sale occurred over 15 months after the relevant date of valuation, which diminished its probative worth. Moreover, the sale involved a leaseback of a significant portion of the subject property, indicating that the sale price alone did not necessarily reflect the consideration paid for the subject property. Accordingly, the Board gave no weight to the actual sale price of the subject property.

The Board's rejection of Mr. Bouchard's sales-comparison analysis and its refusal to give weight to the actual sale of the subject property effectively left the record devoid of comparable sales evidence. The Board therefore used the income-capitalization approach to determine the subject property's fair cash value, as it is an appropriate method with which to value income-producing properties and is also appropriate for use when

[10] Mr. Bouchard did make an adjustment to sale number four to account for the fact that it was a leased-fee sale, but he made no such adjustment to sale number seven.

the market, or record, fails to provide reliable comparable sales.

The Board by and large adopted the income-capitalization analysis used by the appellant’s valuation expert, Mr. Bouchard. The Board found that his approach was, for the most part, appropriate, well-reasoned, and supported by market data. Further, it was not meaningfully challenged by the assessors, who presented no valuation evidence to contradict Mr. Bouchard’s conclusions. Accordingly, the Board adopted the vacancy and collection loss allowance, management and miscellaneous expenses, and capitalization rate suggested by Mr. Bouchard.

However, in view of the record in its totality, the Board found Mr. Bouchard’s estimate of market rent to be understated for numerous reasons, and it therefore declined to adopt his market rent.

First, although Mr. Bouchard opined that the highest and best use of the subject property was as a flex building with office and manufacturing components, only one of his twelve lease comparables – lease number six - involved manufacturing space. The remaining eleven leases involved warehouse or distribution space along with office space. However, warehouse and distribution uses are generally lower industrial uses than manufacturing, a fact that is well documented in the many industry publications included by Mr. Bouchard in his appraisal report. Those materials, including reports by Cushman & Wakefield, CBRE Richard Ellis, and Grubb & Ellis, consistently showed that asking rents for warehouse/distribution properties were significantly lower than asking rents for manufacturing or other industrial properties.

Second, the Board disagreed with Mr. Bouchard's conclusion that the significant amount of office space at the subject property required downward adjustments to comparable rents. The lease with the greatest amount of office space among Mr. Bouchard's lease comparables was lease number six, with 35% office space. At $8.50 per square foot, lease number six was by far the highest rent among Mr. Bouchard's comparable leases, and thus it seems that the large amount of office space did not have a negative impact on rent at that property. Further, although the subject property may have had more office space than is desirable to typical users of flex buildings, it is equally true that rents for office space are generally much higher than rents for industrial space, a fact which Mr. Bouchard acknowledged in his appraisal report. Thus, the Board found that whatever detrimental impact the subject building's large amount of office space may have had on its potential market rent was likely offset by the fact that office space itself commands higher rents. The Board therefore disagreed with Mr. Bouchard's downward adjustments to his comparable rents to account for the subject property's large amount of office space.

Accordingly, the Board found that Mr. Bouchard's market rent was artificially deflated by his reliance on properties that were neither as comparable to the subject property nor consistent with his – and the Board's – conclusions as to its highest and best use, and further by his erroneous conclusion that the subject building's large amount of office space required downward adjustments in his comparable rents. The Board therefore declined to adopt Mr. Bouchard's estimate of market rent and instead formed its own, independent determination of market rent.

In making its determination of market rent, the Board placed considerable weight on Mr. Bouchard's comparable lease number six, which it, like Mr. Bouchard, found to be the most comparable to the subject property. It was the only lease which involved manufacturing space, and in addition, at 35%, had the greatest amount of office space among the comparable leases. However, lease number six was located in Franklin, along the Route 495 belt, and therefore it was superior in location to the subject property. Further, lease number six involved 81,293 square feet in total, significantly less than the subject building's 270,316 square feet, and it was therefore likely to rent at a higher per-square-foot value. After making downward adjustments to account for these differences, and taking into consideration the record in its totality, the Board determined a fair market rent for the subject property of $7.00 per square foot for the fiscal year at issue.

In reaching this estimate of fair market rent, the Board gave no weight to the leaseback of 60,000 square feet of office space by Aramark in connection with the April 16, 2010 sale of the subject property. According to Scott Jamieson, who brokered the transaction, that leaseback involved the rental of 60,000 square feet of office space at $18.00 per square foot, on a gross basis, for a period of three years. As an initial matter, the lease occurred more than 15 months after the relevant valuation date, a period during which the evidence indicated that the market was in decline.

Further, the Board found the terms of the lease, and the circumstances surrounding it, to be indications that it did not reflect a fair market rent. As established by Mr. Bouchard's appraisal report, the majority of leases for properties like the subject property were net leases, not gross leases, and most were for terms between five and ten years in duration. Thus, by its plain terms, the actual lease was atypical for the market. Moreover, although Scott Jamieson testified that he thought the terms of the lease were "fair," the lease was not a stand-alone lease, but instead was entered into as part of the overall negotiations for the sale of the subject property, and as such, the Board found that the rent was not a reliable indicator of fair market rent. As stated above, the Board placed no weight on the actual sale price of the subject property, and in determining its fair market rent, the Board likewise placed no weight on the rent paid by Aramark in connection with its leaseback of space at the subject property.

After incorporating its fair market rent into an income-capitalization approach which otherwise adhered to Mr. Bouchard's conclusions, the Board determined a rounded fair cash value for the subject property of $17,270,000 as of January 1, 2009. The Board's income-capitalization analysis is as follows:

Board's Income-Capitalization Methodology

Gross Building Area	**(sf)**	**270,316**
Market Rent PSF	**($)**	**7.00**
Gross Potential Revenue	**($)**	**1,892,212.00**
Vacancy & Collection Loss Allowance @ 12.5%	**($)**	**(236,526.50)**
Effective Gross Revenue	**($)**	**1,655,685.50**
Management @ 2.5%	**($)**	**(41,392.14)**
Misc. @ 1.0%	**($)**	**(16,556.86)**
Net Operating Income	**($)**	**1,597,736.50**
Capitalization Rate		**9.25%**
Indicated Market Value	**($)**	**17,272,827.03**
Rounded Fair Cash Value	**($)**	**17,270,000**

The Board thus found that the appellant met its burden of demonstrating that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. It therefore issued a decision for the appellant in this appeal and granted an abatement totaling $90,178.25, including a Community Preservation Act surcharge of $2,626.55.

OPINION

"All property, real and personal, situated within the commonwealth . . . shall be subject to taxation." G.L. c. 59, § 2. The assessors are required to assess real estate at its fair cash value determined as of the first day of January of each year. G.L. c. 59, §§ 2A and 38. Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellant has the burden of proving that the subject property has a lower value than that assessed. "'The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax.'" ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In appeals before this Board, a taxpayer "'may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing affirmative evidence of value which undermines the assessors' valuation.'" ***General Electric Co.,*** 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)). 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 cost-reproduction approach "has been limited to special situations in which data cannot be reliably computed under the other two methods." ***Id.*** Those circumstances were not present in this appeal, and accordingly, the Board ruled out the cost-reproduction approach.

Sales of property generally "furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." ***Foxboro Associates v.***

Assessors of Foxborough, 385 Mass. 679, 682 (1982); ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 469 (1981); ***First National Stores, Inc. v. Assessors of Somerville,*** 358 Mass. 554, 560 (1971). Also required are "fundamental similarities" between the comparison properties and the property at issue. ***Lattuca v. Robsham,*** 442 Mass. 216, 216 (2004). For example, sales in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the value of the property at issue. ***Graham v. Assessors of West Tisbury***, Mass. ATB Findings of Fact and Reports 2007-321, 400, *aff'd*, 73 Mass. App. Ct. 1107 (2008). The appellant bears the burden of "establishing the comparability of . . . properties [used for comparison] to the subject propert[ies]." ***Fleet Bank of Mass. v. Assessors of Manchester***, Mass. ATB Findings of Fact and Reports 1998-546, 554. *Accord* **New Boston Garden Corp.,** 383 Mass. at 470.

In the present appeal, the Board found and ruled that the sales-comparison approach was not appropriate because the record lacked adequate data regarding properties that were sufficiently comparable to the subject property to provide a reliable indication of its fair cash value. The properties offered for comparison by the appellant's valuation expert were, for the most part, vastly different from the subject property in size and location, were sold well after the relevant date of valuation, and, in some cases, were leased-fee sales.

Moreover, the Board declined to place weight on the actual sale of the subject property. That sale took place well after the relevant date of valuation and, more importantly, included a leaseback by the seller of a significant amount of space, such that the sale price did not appear to accurately reflect fair cash value. *See* ***Pepsi-Cola Bottling Co. v. Assessors of Boston,*** 397 Mass. 447, 450 (1986) (affirming Board's decision to place no weight on actual sale price of property which sold in a sale-leaseback transaction); ***LVF Newport Avenue LLC and SSB Realty LLC v. Assessors of Quincy,*** Mass. ATB Findings of Fact and Reports 2012-1111, 1132 (declining to use actual lease in place as anything but a check on other rents where lease was part of a sale-leaseback of the property at issue).

The use of the income-capitalization approach is appropriate when reliable 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,*** 362 Mass. 696, 701-702 (1972); ***Assessors of Quincy v. Boston Consolidated Gas Co.,*** 309 Mass. 60, 67 (1941). It is also an appropriate technique to use for valuing income-producing property. ***Id.*** at 64-65. Having ruled that the other approaches to value were not suitable in this case, the Board found and ruled that the income-capitalization approach was the most reliable method to determine the subject property's fair market value.

In the present appeal, the Board found that the income-capitalization methodology used by the appellant's valuation expert, Mr. Bouchard, was, for the most part, appropriate, well-reasoned, and supported by the evidence. For these reasons, and because the assessors did not offer evidence which undermined his conclusions, the Board by and large adopted the income-capitalization methodology used by Mr. Bouchard, with the exception of his market rent. The Board found Mr. Bouchard's estimate of market rent to be understated, given the evidence of record, and it therefore formed its own, independent conclusion of market rent.

In reaching its opinion of fair cash value in this appeal, the Board was not required to believe the testimony of any particular witness or to adopt any particular method of valuation that an expert witness suggested. "The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the [B]oard." ***Cummington School of the Arts, Inc. v. Assessors of Cummington,*** 373 Mass. 597, 605 (1977). Further, the mere qualification of a person as an expert does not endow his testimony with any magic qualities. ***Boston Gas Co.,*** 334 Mass. at 579. Rather, the Board could accept those portions of the evidence that it determined had more convincing weight. ***Foxboro Associates,*** 385 Mass. at 683; ***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 appropriately 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). After doing so, the Board determined a fair market value for the subject property of $17,270,000 for the fiscal year at issue. Accordingly, the Board found and ruled that the appellant met its burden of proving that the subject property was overvalued, and therefore granted an abatement of $90,178.25, which included a Community Preservation Act surcharge of $2,626.55.

THE APPELLATE TAX BOARD

By:_________________________________
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest:______________________________
Clerk of the Board